

Archived Information

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1 THE SECRETARY'S COMMISSION
2 ON
3 OPPORTUNITY IN ATHLETICS
4 WASHINGTON, D.C., FULL BUSINESS MEETING
5 HOTEL WASHINGTON
6 515 15TH STREET, NW
7 WASHINGTON, D.C. 20004
8
9 Wednesday, January 29, 2003
10 9:00 o'clock a.m.

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1		I N D E X
2	APPEARANCES:	
3	CHAIRS:	CYNTHIA COOPER
4		TED LELAND
5	COMMISSIONERS:	PERCY BATES
6		BOB BOWLSBY
7		EUGENE DeFILIPPO, JR.
8		DONNA de VARONA
9		JULIE FOU DY
10		THOMAS GRIFFITH
11		CARY GROTH
12		LISA GRAHAM KEEGAN
13		RITA J. SIMON
14		MIKE SLIVE
15		GRAHAM SPANIER
16		DEBORAH YOW
17	EX OFICIO MEMBERS:	BRIAN JONES
18		GERALD REYNOLDS
19		SALLY STROUP
20	STAFF:	DEBORAH PRICE
21		MATTHEW BECKER
22		WILLIAM DUNCAN
		MARISSA ANN MUNOZ
		VIRGINIA DeMINT
		SALLY RICHARDS
		CHERYL MOSS
	CONSULTANT:	JAY DISKEY

1 MR. LELAND: Good morning. Welcome
2 to the final meeting of the Secretary's
3 Commission on Opportunity in Athletics. I'm
4 Ted Leland and along with Cynthia Cooper to my
5 right, your left. I am Chair of this Commission.

6 First of all for the Commissioners,
7 we have a new mike system here, and you push the
8 button on the right to speak, and it lights this
9 little red light, and you push again, it goes
10 off. And hopefully the mike goes off too.

11 Remember to speak clearly. We have
12 to have some kind of person-by-person process or
13 one at a time process because we are transcribing
14 this. So let's make sure we talk into the mike
15 so that we can get an accurate reading of what
16 you have to say.

17 In addition to that we have -- this
18 is for all members of the audience -- we have a
19 signed interpreter that will -- presently plans
20 on signing only those opening remarks by the
21 co-chair and myself, and then she will be
22 available for signing if anyone in the audience

1 requests it, she will be sitting over on the
2 side.

3 Let me begin with my opening remarks,
4 then.

5 The U.S. Secretary of Education,
6 Rod Paige, appointed the Commission to examine
7 ways to strengthen enforcement, expand
8 opportunities, and ensure fairness for all
9 college intercollegiate athletes.

10 President Bush and Secretary Paige
11 fully support Title IX, and the many
12 opportunities that have followed since its
13 passage almost three decades ago.

14 Over the past six months, the
15 Commission has learned how Title IX is serving
16 our nation. At four town meetings we have
17 listened to dozens of experts and hundreds of
18 citizens.

19 This process enabled us to learn
20 about the law and to gather information we need
21 to prepare our report. Our process in my opinion
22 had been open, fair, an inclusive. We listed all

1 points of view. I believe the report we are
2 putting together represents a fair assessment of
3 the many issues surrounding Title IX, and I also
4 believe the draft represents a consensus of this
5 Commission.

6 Unfortunately, over the past several
7 weeks, we have seen a great deal of speculation
8 about the draft report and its potential impact.
9 I feel that some organizations have
10 mischaracterized our work and framed worst-case
11 scenarios.

12 We need to remember this, the
13 Commission is not the last word on Title IX.
14 Rather the Commission is an important step in a
15 long, public discussion about the future of
16 Title IX.

17 We will provide Secretary Paige with
18 findings and recommendations. It will be up to
19 the Secretary to decide which, if any,
20 recommendations he will implement.

21 In my view the speculation in
22 mischaracterizations have served us no good in

1 the end. In fact, they do a disservice to those
2 individuals and organizations that have worked
3 diligently to provide the Commission with
4 accurate and comprehensive information.

5 Before I describe the process we will
6 work through Today, I would first like to thank
7 the subcommittee that reviewed this report we
8 have in front of us today. The subcommittee was
9 composed of Percy, Rita, Tom, and Donna, thank
10 you. I am pleased to report that I heard good
11 things about -- from them about the draft. It's
12 my understanding that they did not ask for
13 extensive revisions.

14 Today the Commission will review the
15 findings and recommendations we developed in our
16 meeting in Philadelphia last month.

17 At the onset I want to emphasize that
18 we are here today to review and refine the
19 report. We are not here to build a new one. The
20 time frame to put in new material has passed.

21 Here are the ground rules we'll work
22 with. We will walk through this report section

1 by section in the following order. First it will
2 be Spectrum of Opinions, and you should have this
3 report in your binders in front of you.

4 The Spectrum of Opinions, which
5 begins on Page seven; when we complete that
6 section, we will go to the background
7 information, which starts on Page 12; then we
8 will do the appendix and glossary, which starts
9 on Page 42; we'll do the findings, which on
10 Page 21, and we'll probably go through those
11 question by question; and then we will begin the
12 recommendations which begin on Page 34, and our
13 attempt will be to go through those item by item.

14 Two sections, the letter of
15 transmittal and the short extensive (sic) summary
16 have not been drafted yet. These will be written
17 once we have our final report and recommendations
18 completed.

19 The task of completing these sections
20 typically falls with the Chair; in this instance,
21 Cynthia and myself. We will work with staff to
22 write these sections. Obviously both sections

1 will reflect the body of the report.

2 The Executive Summary will contain an
3 overview of our charge, the Commission's process,
4 the findings, and the recommendations. We
5 appreciate in advance the Commissioner's trust in
6 us, Cynthia and I, to complete these tasks with
7 the staff.

8 As we review each -- as we -- the
9 third part of our process is the reviewed
10 section, the co-chairs will first ask if the
11 section can be approved by unanimous consent.

12 For the Spectrum of Options and
13 Background sections, the co-chairs will ask if
14 there are edits and then discuss the section and
15 finally pass the section with a consensus or with
16 a vote.

17 Once we finish a section or an item,
18 we will not revisit it.

19 For the Findings section, we will
20 proceed question by question and ask if there are
21 any concerns or edits.

22 At the end of time -- at the end of

1 the question and the findings -- at the end of
2 each question and its findings, we will consider
3 that section for approval by consensus or, if
4 necessary, by a vote. We will then move to the
5 next question and its findings.

6 For the Recommendations sections we
7 will follow this process: Overall the language
8 of the recommendations can be edited or
9 recommended and can be approved or disapproved.

10 In our review of the Recommendations
11 sections, the co-chairs will first ask if there
12 is unanimous consent. If there are concerns
13 about specific recommendations, we will discuss
14 each of these recommendations individually.

15 If unanimous consent cannot be
16 reached on a recommendation, we will allow
17 approximately 15 minutes for a discussion of
18 these recommendations allowing for defenses and
19 criticisms and continued discussion.
20 Commissioners who are making statements about the
21 recommendations should be succinct. I would also
22 ask that they preface their comments by stating

1 whether they support, oppose, or just need a
2 clarification of each recommendation.

3 At the end of each recommendation,
4 the co-chairs will seek approval for the item,
5 either by consensus or by simple majority vote.

6 Please note that one recommendation
7 need not be mutually exclusively of the others.
8 The recommendations will be presented to the
9 Secretary of Education so he can study, consider,
10 and research them and see if they are viable. We
11 don't have to make trade-offs if we want to pass
12 on ideas to the Secretary.

13 On the topic of minor views, which
14 has received a lot of discussion, in fairness to
15 the Commissioners that have worked hard to
16 achieve a consensus, a Commission report will not
17 include minority views.

18 The co-chairs have developed the
19 following process. If the Commissioner wants to
20 express his or her opposition to a
21 recommendation, there are, I believe, we believe,
22 three ways that we make it available to do so.

1 Commissioner can speak against the proposal
2 before the Commission; that statement will be
3 part of the transcript in the permanent record.

4 Secondly, the Commissioner can vote
5 against the proposal. However, we should keep in
6 mind that we will not be voting on many items --
7 however, we should keep in mind that we may not
8 be voting on many items given the fact that we
9 reach a consensus for most of the findings and --
10 we reached a consensus in Philadelphia for most
11 of our findings and our recommendations.

12 And finally, the Commissioner can
13 continue his or her dialogue by making his or her
14 concerns known to the Department after the
15 Commission is over, and the report has been
16 submitted.

17 Throughout this process, I hope we
18 can be disciplined and focused. In doing so, we
19 can complete our -- the task at hand.

20 Go briefly through some of the ideas
21 we had regarding the way we would vote, just to
22 try to clear it up. On the topic of votes, as I

1 mentioned previously, we hope the Commission will
2 work by consensus. Consensus has been the
3 expectation from the onset of our work last
4 summer. Consensus is what the Secretary of
5 Education has expected, and most of us share that
6 we can reach -- share the expectation we can
7 reach a consensus.

8 In cases where we neither have a
9 unanimous consent or -- on a recommendation, nor
10 a clear majority, we will then vote.

11 In the event of a vote, the co-chairs
12 will ask for a show of hands. The staff will
13 record the votes and the tally sheets they have
14 prepared. The vote will become part of record.

15 In each vote will be listed with its
16 vote count in the appendix of the report.

17 Given the fact that Muffet McGraw is
18 not here, we may indeed have tie votes, and I
19 guess we could because someone could abstain.

20 So here's what we thought we would
21 do, is that we would -- should we need a tie
22 breaker, should we have a tie, we'll hold the

1 vote until Thursday when Muffet will be here.

2 So in other words, we'll try to
3 delay. We said earlier we were going to take
4 items one by one, and not revisit them. If we
5 end up with a tie vote, we'll sort of consider
6 that vote tabled until we get Muffet here and she
7 has a chance to vote.

8 She has, by the way, I don't know if
9 we passed it out to everyone, sent us a fax that
10 has her -- doesn't have really votes, just says I
11 agree or disagree. I think that Cynthia and I
12 feel that's probably not fair to consider that as
13 actual vote. We'll wait for her to get here if
14 we have a tie vote, and hopefully that will end
15 the issue of tie votes.

16 Now, is there any questions on the
17 process now? Yes. Got to punch your little
18 button there.

19 MS. VARONA: Ted, I would just like
20 to know how you two arrived at the process by
21 which we will vote and make decisions on these
22 findings? How did this come about, as far as

1 voting consensus?

2 Because in Chicago when
3 Cynthia Cooper read our task, it was said, With
4 regard to the Commission's findings, we have been
5 asked to present the Secretary with a report that
6 lays out main arguments from each side, main
7 arguments from each side.

8 Under the seven questions we should
9 attempt to accurately capture the two main
10 competing arguments.

11 And I've been told today that now we
12 have consensus, and there will be no minority
13 report. So I am very concerned because I've been
14 part of this process because of the trust factor
15 that we talked about from the very beginning when
16 we decided to sign on as Commissioners.

17 And I think we are going to have
18 differences of opinions as I read through this
19 report. And I think they are very important that
20 they are expressed in the final report.

21 MR. LELAND: I think there's -- I
22 think Donna, I don't know if we -- I'd probably

1 be better off working through this and see how
2 comfortable you are with it. You can always
3 voice your opinions as we go through this thing,
4 obviously.

5 But I think what we meant by that, we
6 have tried to stay true to, and that's that if
7 you read the body of the findings, we try to
8 present, and the staff has tried to present, and
9 we've all tried to present, a balanced argument
10 in there.

11 Now, eventually we have to vote on
12 our recommendations. But I think if you look at
13 sort of the body of the discussion, I think they
14 tried to present both sides.

15 And I think now when we get to that
16 portion of the process, when we start talking
17 about the recommendations, if you have concerns
18 and you would like parts of the rationale
19 statements, I guess is the way to say it, the
20 background, if you would like that amended and
21 changed, I think that's the time to bring it up.
22 There's always a possibility you can do that and

1 maybe we could put it in the body of the report.

2 But I think the idea that we were
3 going to try to present both sides of the
4 argument, is -- I think we've stayed true to
5 that, I think in the end, though, we have to
6 vote.

7 It is unusual. We checked in I think
8 in all the Commissions that we know of and been
9 able to find out both through the last
10 administration, there's not been, you know,
11 minority reports.

12 So I don't know -- I know you feel
13 strongly about this, and I'm disappointed we're
14 not able to accommodate you, at least the present
15 time. But I think there's plenty of time for you
16 to voice your opposition and/or amend the report.

17 MS. VARONA: Just on the onset before
18 we begin, I want to let you know that I'm going
19 to participate under protest. Because of the
20 decision -- we were not part of the decision
21 making process on how we would report. We've
22 gone through this -- this whole process with the

1 understanding that we would have competing
2 arguments, and as I read through -- as I read
3 through this document, I didn't find competing
4 arguments that were expressed during our hearing
5 process.

6 And at the end of this, again, I
7 don't want to be in the front of the senate
8 committee explaining why we didn't function as
9 prescribed early on in the process.

10 So I'm just -- I have to express
11 this --

12 MR. LELAND: I understand.

13 MS. VARONA: -- that I am going to
14 participate under protest.

15 MR. LELAND: Okay.

16 MS. SIMON: Just a minor point. I
17 only count 13 commissioners here, Gene isn't here
18 so what's this business about the tie? Oh, he
19 will be here? Okay.

20 MS. FOUDY: My understanding as well
21 we had the meeting in Philadelphia, and the
22 recommendations were to be put on the table. And

1 I don't have the transcript right in front of me
2 right here, where we talked about them many
3 times. This is going to be something where we
4 are going to throw all these out there. We are
5 not necessarily going to debate them here in
6 Philadelphia, but we are going to talk about
7 them. We're going to put them all on the table,
8 and then we're going to have a chance to talk
9 about them in our next meeting once we get a
10 draft in front of us.

11 And you say today that we are not
12 here to build a report, we are here to refine it.
13 And that there's going to be no minority voice
14 and there's really going to be no discussion,
15 then, if you are not a majority voice.

16 And I, like Donna, have a real
17 problem with that. Because we, I feel like we
18 are missing a very important and crucial step.

19 If we are going to be sending
20 something to the Secretary, we need to spend more
21 time I think on some of these issues.

22 And to just all of the sudden say,

1 well, we have consensus, we don't have consensus.
2 I don't think we, from the Philadelphia meeting
3 to walk out of that meeting and say that we were,
4 you know, felt like we had consensus on a lot of
5 these issues I think is a misrepresentation of
6 what happened there.

7 And we wouldn't become part -- a
8 minority voice would not become part of the
9 official public record, and that needs to be in
10 that report.

11 If we're making recommendations here
12 that are changing Title IX and the spirit of
13 Title IX, I have a problem with that, and what we
14 are doing. And I want to have a voice in that.

15 And essentially you are putting a gag
16 order on anyone that doesn't agree with the
17 majority and the consensus. And there's some
18 issues in here that are very controversial and
19 that are very contradictory that I think we have
20 to address.

21 And to not give someone a voice goes
22 against everything this nation is about, I think.

1 I have a real problem with that.

2 MR. LELAND: So you don't accept the
3 idea that there are other ways, you are voicing
4 your opinion now, you have other ways to voice
5 your opinion? I think the gag order accusation
6 is inappropriate. I think it's unfair. I don't
7 think anybody has gagged you.

8 MS. VARONA: Ted, but if it doesn't
9 wind up in the official report to the secretary,
10 as I read it, if there are great minority
11 opinions within this group, that we can send a
12 report in after this report is sent out to the
13 Secretary. We can send one separately. And I --

14 MR. LELAND: That's not enough for
15 you.

16 MS. VARONA: No.

17 MR. LELAND: I understand.

18 MR. GRIFFITH: Maybe I'm hearing Ted
19 different, and I may be.

20 But what I hear you saying, Ted, is
21 that what we will do is on -- and correct me if
22 I'm wrong -- on each issue we have a couple of

1 options. If there's consensus, there's
2 consensus. If it's not clear that there's an
3 overwhelming majority for something, we will vote
4 on it.

5 In the process of that vote, if you
6 disagree that this is a recommendation that
7 should go forward to the Commissioner, you will
8 have an opportunity to explain why you disagree.

9 MR. LELAND: Right.

10 MR. GRIFFITH: I think all you are
11 saying there is not going to be a separate
12 minority report. There's going to be a report of
13 the Commission. There may be votes on the
14 Commission showing where people disagree, but
15 there won't be a separate minority report. Am I
16 misunderstanding or is that -- is that all we're
17 saying here, there is not going to be a separate
18 minority report?

19 MR. LELAND: I think, you know, as
20 of -- we had to somehow structure this thing, and
21 I think we've, Cynthia and I, believe the best
22 way for us to have a voice here is not to have a

1 minority report. And I'm comfortable with that.
2 I don't feel that we are stifling debate.

3 I think that if there are concerns
4 about certain proposal that maybe has a majority
5 support here, but there is a concern about that
6 specific either finding and/or recommendation, I
7 think we'll try to accommodate a way for that
8 concern to be in the official report, but it
9 doesn't have to be a separate minority report.

10 I think there's -- let's go through
11 couple more. Cary?

12 MS. GROTH: My concern is a little
13 different; however, I do share their concern, and
14 that is the timing of all this. When we were in
15 Philadelphia, I know I made the recommendation
16 that we receive the report at least a week in
17 advance. And the time was extended and we
18 appreciate that the time was extended so we would
19 have more time to look at the report.

20 However, we didn't get the report
21 until Friday late day. And there's a lot of
22 information in this report that needs to be

1 discussed.

2 And the issue on the table right now
3 about the process and the timing and what was
4 told in Philadelphia is systematic of some of the
5 issues we challenged throughout this Commission,
6 and that is the communication in hindsight, I
7 think that would have been beneficial for the
8 Commissioners to know the process of today, prior
9 to walking through this report, so we are a
10 little better prepared.

11 Because my concern is 15 minutes on
12 each issue is not time enough. There is a
13 30-year old law with some significant
14 recommendations that's going to need more time.

15 And further, I didn't read the
16 recommendation -- the process that you indicated,
17 Ted, so correct me if I'm wrong, we are not
18 allowed to go back and make additional
19 recommendations.

20 Well, what happens if we engage in a
21 conversation and we all come up with a better
22 recommendation than what's on paper? Do we not

1 have the ability to make that recommendation if
2 it makes more sense?

3 MR. LELAND: Well, excuse me. Let me
4 answer that specifically, then I would like to
5 hop back to the issue of the minority report.
6 And then we'll talk about -- this is a separate
7 issue.

8 But I think it is fair process to say
9 that after all this time and after the meeting we
10 had in Philadelphia that brand-new subjects,
11 brand-new recommendations are probably not
12 appropriate right now. I mean I just don't know
13 how -- we have to stop at some point in time.

14 Now, clearly you can, you know, voice
15 concern, we can amend the findings, we can do
16 some things like that for people to express
17 themselves, but I think to allow someone to come
18 in today and make a recommendation that's --
19 that's not contained in the present documents is
20 a little bit difficult for us. I think at some
21 point in time I think we have to stop. And
22 again, this is not -- I'm not trying to gag

1 anyone. I'm just trying to move the thing along.

2 MS. KEEGAN: Well, Ted, I just wanted
3 to speak in favor of this process of just moving
4 this forward. I have to say, I think it is a
5 little bit disingenuous to at this moment all the
6 sudden pretend that none of us have the ability
7 to voice our opinion or have that ability now.

8 And we all know because we have been
9 getting 600 e-mails a day, that are the exact
10 same e-mail, it crashes our server on a daily
11 basis. And it is an e-mail delivered by pushing
12 a button on a web site when you and put in your
13 zip code, and then the e-mail goes. It's very
14 thoughtful, very personal.

15 I mean, that's just the nature of
16 Commissions like this. That happens; that's
17 fine.

18 But to somehow suggest that that's
19 indicative of public view and that any Commission
20 like this can go through and get -- delve through
21 and get everybody's exact opinion inserted into
22 report is impossible. It is not the nature of a

1 democracy.

2 At some point we have over and over
3 again admitted that there are things we would
4 like to make better. We all have the ability to
5 say we either agree with that or disagree with
6 that. There's going to be a report. This many
7 people voted for that, this many people voted
8 against that.

9 I just really resent what I think is
10 being stated here for the record and in hopes
11 that it ends up on the front page of a newspaper
12 that there's some sort of gag order. It makes me
13 angry.

14 And it makes me angry in fact to say
15 to young women, like my daughter, that there's a
16 group of people of there trying to do away with
17 your opportunity to play sports. It's made me
18 angry over the past couple of weeks. Because
19 that never, ever came out of anybody's mouth.

20 And I understand politics, I
21 understand public relations, and I understand the
22 business of a press conference, but this meeting

1 is supposed to be a meeting. And press
2 conferences can and should happen later.
3 Everybody gets to say what they want to say.

4 If we don't have some process, such
5 as the one that is been proposed, we would just
6 be here forever discussing this, forever, which
7 is fine, but I'm not sure that's how you want to
8 spend the rest of your life.

9 I just appreciate that there is a
10 process by which we are going to be able to get
11 all views out on the table.

12 And one final comment, some of us are
13 trying to come to consensus. And there's a
14 difference between believing that you have got to
15 forward something out of consensus and
16 believing -- if I thought the whole time we are
17 going to do minority reports, I would never have
18 changed my mind about anything or accommodated
19 anybody else's view. I would have just stuck to
20 mine. And I didn't. Because I understand from
21 somebody else's perspective at this point.

22 MR. LELAND: Let's go on to Rita and

1 then Graham and then Julie.

2 MS. SIMON: I think we have a
3 question of clarification.

4 Ted, if there is disagreement on any
5 of the recommendations, and there is a formal
6 vote taken, will that formal vote be reported?
7 If, for example, we are nine-six on something,
8 will it be reported that nine people supported
9 this and six people did not?

10 MR. LELAND: Yes. Our intention was,
11 but our intention was not to -- again, we had to
12 make a decision sometime -- not to necessarily
13 take role call and do it. So not say Rita voted
14 for, or Rita voted against it.

15 MS. SIMON: Yeah, but you will give
16 the number?

17 MR. LELAND: Yes, ma'am. Yes.

18 MS. SIMON: Well, I think that's --
19 that's okay.

20 MR. LELAND: Graham.

21 MR. SPANIER: Well, I think all of
22 the points of view I've heard seem to be valid

1 points to me and there probably ought to be a
2 middle ground here. I think that -- I mean I
3 would hope that on most of the points we would
4 some consensus, and when we did not, the vote
5 would accurately reflect that.

6 A minority report I'm not sure is the
7 right kind of product from the Commission. I
8 think what's more important than a minority
9 report, if there were to be one, is that the
10 discussion adequately reflect, indeed, what's in
11 the findings ought to reflect the different
12 points of view.

13 Now, the writers of this document I
14 think tried to do that. And it could be what
15 Donna and Julie were saying is that that's not
16 reflected.

17 But I remind the group that at our
18 meeting in Philadelphia, this document, the -- a
19 very large portion, if not the majority of the
20 findings were written by Julie. You were the
21 principal author of many of the key findings of
22 this document. And I think that narrative

1 stands. In some case it was amended a little bit
2 through discussion.

3 But you and your colleagues did the
4 lion's share of the work in bringing into that
5 meeting quite a bit of substance that provided
6 the platform for subsequent discussion.

7 If that still didn't adequately, and
8 the document still doesn't adequately reflect
9 those divergent views that is might be there,
10 then I think it is important we try to make sure
11 they do.

12 But you might be referring to the --
13 not so much the findings, but the recommendations
14 which would be voted on. And I think if there is
15 a split vote, there ought to be some basis for
16 someone reading the report to understand why
17 someone might have voted against a particular
18 recommendation.

19 There are a cluster of
20 recommendations at the end -- near the end
21 regarding proportionality. That it seems to me
22 you can't be in support of all of them. Because

1 they are all different approaches to dealing with
2 a particular issue. Some people might not be in
3 any support of any of them.

4 But my point is that a vote against
5 or for certain recommendations may also reflect
6 the fact that somebody feels one solution is
7 better than another.

8 So I think, I don't see a separate
9 report over here as being the solution. I think
10 what makes much more sense is that this final
11 report give any reasonable reader an
12 understanding what the different points of view
13 are, and then let the votes be the votes.

14 MS. FOU DY: In response to Lisa, when
15 I talk about there not being the opportunity to
16 debate it, one of the things we haven't been able
17 to do is we haven't been able to e-mail, we
18 haven't been able -- I mean by law, we haven't
19 been able to have conference calls, we haven't
20 been able to get together and discuss the
21 different issues.

22 And my point being from Philadelphia

1 when we really went from taking all the testimony
2 we've heard to actually trying to formulate some
3 type of document and draft to, now, where all of
4 these recommendations are in front of us, and you
5 have to either vote for or against, and if you
6 are against, then your voice isn't going to
7 become part of the report.

8 We've had chances to debate in the
9 past Commission meetings, but my point is, is you
10 are not going to have a voice in the report. The
11 minority voice is not going to be represented at
12 all in the report. If you are voting against
13 something, and you're of the minority, it's not
14 going to go in there, and that's what people
15 read, and that's what our names are tied to.

16 And I think that for us to not give
17 it time and to not say okay, here -- I mean this
18 is a very -- as we have heard from both sides,
19 there is tremendous passion on this issue, from
20 both sides.

21 And I think that to not represent
22 both sides of the passion does a disservice to

1 what we've giving the Secretary. Because we've
2 talked about all along, representing both sides
3 of the arguments, giving like Cynthia said in
4 Chicago, giving the Secretary something that
5 draws out on both sides.

6 And for us to only try and come up
7 with a consensus on an issue that for a lot of
8 people has different meanings, I think doesn't
9 fully represent what we have heard and what
10 exists out there today, the current state of
11 Title IX.

12 MR. LELAND: Tom.

13 MS. GRIFFITH: I was just going to
14 say, I just disagree, Julie. I don't think that
15 the only way a minority voice on a Commission can
16 be heard needs to be through a minority report.
17 I think that's the only issue we are taking about
18 here. I think we're talking about having a
19 full -- a fulsome -- there's going to be a
20 transcript of everything that's done here. As
21 Rita pointed out, there are going to be votes
22 showing that this proposition got six votes on

1 the Commission.

2 I think what Ted is talking about is
3 a very uncontroversial proposition. And that is,
4 we are not going to have a minority report. That
5 is not no gag order. That is not squelching
6 dissent. That's just saying we are not going to
7 have a minority report.

8 I think the way the report is written
9 now gives a balanced view of the passion that was
10 involved in each of these hearings. I think it
11 accurately represents what we've heard.

12 I, for one, I don't want to ever say
13 that I can't learn more about a topic than I
14 learned now. I've got a lot to learn about a lot
15 of things. But I tell you, I, for one, have
16 heard a lot, and I think I'm pretty well aware of
17 what the issues are.

18 And I think it is time for us to do
19 what we've been asked to do and have spent six
20 months reading and hearing about and thinking
21 about, and that's to give the Secretary
22 recommendations, which as I hear the Chair's

1 suggestion, are recommendations that the
2 secretary consider different points of view.

3 So in other words, if I understand
4 it, I could vote for the Secretary to hear a
5 recommendation on an issue that I might not want
6 him to eventually act on. I -- I see this as
7 simply nothing more than offering up to the
8 Secretary, Here is what we have heard. Here are
9 some things that you should consider as you go
10 forward enforcing Title IX.

11 If I could get two for now. I am
12 suggesting, that if it's in order, that we make a
13 motion that we proceed along the lines that the
14 Chair and co-chair have recommended.

15 MR. BATES: You know, in listening to
16 our discussion, I guess I'm sensitive to both
17 sides of the issue.

18 However, I have to say that when I
19 read our process, I did have the feeling that
20 there were couple of areas that we were
21 tightening up a little more than I was really
22 comfortable with.

1 I think one was once we decide we
2 can't go back, that I found slightly troubling.

3 That the second one I think has to do
4 with how we in some way -- and I don't know
5 whether a minority report is the appropriate
6 thing, but I do think that everybody on this
7 Commission has worked very hard, and I think in
8 some way we need to have a way to reflect that
9 other than a vote that simply shows a difference
10 in numbers. And I don't know how to go about
11 that.

12 But it just seems me that I'm willing
13 to move ahead, I think we've got to move ahead.
14 I have no idea how we are going to wind up or how
15 I might feel at the end of this process and what
16 I think our needs might be.

17 So I would like to see us move ahead,
18 but I do think rather than voting at the moment
19 on the present procedure, that we allow ourselves
20 some opening at the end of this, so that we don't
21 feel that whatever we agree to at this moment, it
22 is totally locked in.

1 So I guess I would not want to see us
2 vote on it just as is without having some options
3 at the end of this. Because I really do feel
4 that somehow we need to do that.

5 And as I said, I don't know whether
6 that's a minority report, but somehow to reflect
7 differences need to be included in the process.

8 MR. SLIVE: Ted, I think if you
9 combine Percy's comments with Graham's comments,
10 what you get is that on each vote that is not
11 consensus, I would expect that there would be a
12 follow-up paragraph that indicates the basis of
13 majority view and also a paragraph or whatever
14 length that is necessary that reflects the
15 minority view on that particular issue. And in
16 that way, then, there can be a fair presentation
17 to the Secretary as to the rationale for the fact
18 that there was a split vote.

19 MR. LELAND: I see a lot of heads
20 nodding. Let's do a couple more.

21 MS. YOW: Ted, I think part of this
22 too, I agree with what Michael said. I think

1 that probably would work well.

2 But I think terminology is part of
3 the issue as well in terms of perception of what
4 it means. I think when people look at the word
5 "recommendations," what they normally associate
6 with that word is that we recommend that you do
7 this.

8 Well, I think what I hear you saying
9 is that a recommendation in the report is not
10 recommendation that the Secretary of Education
11 take action on that recommendation. In other
12 words, to follow it.

13 It is more as Tom has described it,
14 which is there could be -- we could conceivably
15 pass every recommendation and just forward all
16 the information. We are basically not saying "do
17 this," we are saying, "please consider this in
18 your deliberations about what should be done."

19 So that every recommendation does not
20 mean that we agree that's something he should do.
21 We are just suggesting it is something he should
22 look at.

1 Is that -- is that accurate or are
2 the recommendations, in fact, something that we
3 are recommending that he take action on?

4 MR. LELAND: Yeah, I think what we
5 said in the findings, the pertinent sense is that
6 the Commission recognizes that some of these
7 recommendations may not be feasible, but urges --
8 this is on Page 34 -- but urges the department
9 give them serious consideration and study.

10 I think that was crafted by us to try
11 to walk the line you are talk about.

12 Okay. A couple more.

13 MS. SIMON: I want to say I strongly
14 agree with Percy and Mike. I think that when we
15 have to vote on some things and we have things
16 like nine-six, we might even have eight-seven,
17 that not to indicate how the seven came at their
18 decision or what their recommendation is really
19 doesn't give a comprehensive enough report.

20 And we are only going to be voting on
21 issues about which there is real disagreement,
22 and therefore I think that not only numbers, but

1 reasons should be included. It doesn't have to
2 be very long, a paragraph or so.

3 MR. BATES: Could I amend Tom's
4 motion then to include something like this that
5 Rita just mentioned? I would -- did you see that
6 as friendly amendment?

7 MR. GRIFFITH: Very much so. I think
8 that's a good move.

9 MR. LELAND: So what I take the
10 amendment to say is that we'll move forward with
11 the process as Cynthia and I have outlined with
12 the addition if we get into a situation where we
13 vote, the courtesy will be extended to those
14 voting in the minority to have a, you know, a
15 rationale statement or some kind of a
16 protective -- not protective, but some kind of
17 voice in the recommendation that explained why
18 there is dissent and why there was concern.

19 That combined with registering the
20 vote, the numbers of the votes would -- would
21 give the Secretary of Education -- what I'm
22 hearing is our feelings, that would give the

1 Secretary of Education a feel for the debate pro
2 and con and -- okay. Let's move. Donna?

3 MS. VARONA: I just want to say that
4 I appreciate that amendment and that it does --
5 it is consistent with your statement, Cynthia,
6 that we would attempt to accurately capture the
7 two main competing arguments when there's a
8 questions of recommendation. Thank you.

9 MR. LELAND: Okay. A couple more and
10 then we'll --

11 MS. GROTH: Ted, also you had
12 indicated that want -- you and Cynthia are going
13 to finish the report with the staff, is that what
14 you've said, and then will we have a chance to
15 review the report before it goes to
16 Secretary Paige, the final report?

17 MR. LELAND: Yes, I think if that's
18 the will of the group, what Cynthia and I are
19 going to do is the Letter of Transmittal and the
20 Executive Summary, which is -- should be
21 noncontroversial, normally is.

22 Would it be the will of the group

1 that you would like to see a draft of the
2 final --

3 MS. VARONA: I would like to make
4 that recommendation. I think that would be good.

5 MR. LELAND: Cynthia says no.
6 Griffith?

7 MR. SPANIER: Yeah, I'm very
8 supportive of this change that's emerging, but I
9 would just like to suggest one nuance.

10 The report -- the whole process has
11 been designed and the report had been written to
12 try with a common voice to capture all of the
13 discussion with recognizing all the controversy.

14 I would be -- well, I'm very
15 supportive, as I said in my first statement, of
16 making sure the report includes all the points of
17 view. I would hate on any given vote for the
18 three people who voted against it or the five or
19 the seven, whatever it might be, to feel that
20 they on that issue represent a caucus, and they
21 have to go off and write a minority report for
22 that question.

1 I hope what we are talking about is
2 in the spirit of a larger report, the report
3 writer or the chairs or the subcommittee attempts
4 to capture the essence of the counter argument
5 that was fundamentally part of the negative vote,
6 as opposed to we all have to decide on any given
7 issue which caucus we are in for writing that
8 particular paragraph or sentence.

9 Am I summarizing what you are all
10 thinking or am I introducing a new element to
11 the --

12 MR. BATES: That's within the intent
13 of my amendment, yes.

14 MS. FOU DY: But I envision it,
15 Graham, also as being something that -- like Cary
16 says, when we leave today or tomorrow, that we
17 have a chance to at least look at it again. Not
18 to just say okay, that's it, you know, you write
19 the first two sections, and we are good with it.

20 I think being that our names are all
21 tied to this, you know, I want to see a copy
22 of -- because there is going to be a lot of

1 discussion today, from both sides, the majority
2 and the minority, and I just want to see what
3 goes in there and what will ultimately be our
4 final product.

5 MR. SPANIER: Well, I support that.
6 I assume that we will have a chance to all look
7 and comment on the wording that emerges from
8 extra sentences that are written.

9 MR. LELAND: Well, Debbie informs me
10 if this helps the discussion, that she thinks
11 Bill and Jay might be able to, in terms of edits,
12 but also sort of paragraphs of dissent or
13 whatever you want to call it, might be able to
14 begin drafting those up during the course of this
15 meeting, and work on it.

16 So if we can work this out, there
17 might be a way for those people who can't -- who
18 want to have their voice in and want to see that,
19 we could do that fairly quickly. I don't think
20 that takes a long time.

21 Go ahead, Debbie.

22 MS. PRICE: Just as a point of

1 clarification. We did have -- they do have their
2 computer with a printer. So in the thinking is
3 if there's -- you have a finding and you switch a
4 word, you do whatever, they can print it out and
5 read it back and then you have the piece that
6 would then be in there.

7 For the -- your comments on minority
8 view, they may not be able to articulate it
9 exactly, this quickly, but to get the thrust of
10 what you are saying, and get that signed off.

11 But they do -- I mean that's the
12 purpose of us having the computer and the printer
13 here today so we can --

14 MS. FOU DY: Yeah, and logistically, I
15 mean, if we can't get this done that quickly, I
16 mean, my only concern is again, you cannot, you
17 know, e-mail, you can't do call separately.

18 And so I don't know what the process
19 would be and the next step in terms of having
20 some type of evaluation tool, since we don't have
21 another meeting together. And you can't -- you
22 know, you can't do it on e-mail; correct?

1 Legally?

2 MS. PRICE: No, you can't. Anything
3 we have that's substantive, has to be a public
4 meeting.

5 MR. BOWLSBY: Ted?

6 MR. LELAND: Bob.

7 MR. BOWLSBY: At a practical level on
8 all this, and I know that some of this is just
9 jousting, but at a practical level, I can't
10 imagine a salient argument on one side of one of
11 these issues or the other, especially on the
12 major points, that hasn't been pretty well
13 fleshed out by the Commission and by the speakers
14 and presenters that will we have had.

15 I can't -- this is a very well
16 publicized process, and seems to me if there's an
17 eight-seven vote in the closest of situations,
18 virtually everyone is going to know what the
19 arguments are on both sides of issue. I find it
20 hard to imagine that they aren't.

21 Now, given that as an assumption, it
22 would seem like some representation of the

1 dissent should be appropriately noted in its
2 briefest form.

3 But to go through a process to fully
4 flesh out an essay on both sides of the issue, I
5 think is a counter productive process.

6 It seems to me, I agree exactly with
7 Graham. We ought to represent that there were
8 two sides of the story. We ought to represent
9 that there were key points on both sides.

10 But any effort to fully flesh out an
11 argument that's going to be included in the
12 report is not only redundant, but unnecessary.

13 I think on the critical issues of
14 this, people know what the issues are on both
15 sides.

16 MR. LELAND: Okay. I think we are
17 ready to vote on Tom's motion as amended by
18 Percy. And also Debbie --

19 MS. YOW: Which was what?

20 MR. LELAND: Which was I think
21 generally the motion was that to support the
22 co-chair's decision regarding the general process

1 that we'll use today with the exception of making
2 sure that as we work through, you know, sections
3 and findings and recommendations, that in
4 addition to vote, people being able to express
5 non-consensus opinions by voting against it, we
6 would also make some accommodation in the text to
7 try to knowledge what you might call minority
8 views on each issue.

9 And I think we'll work on the -- if
10 it's okay with you guys, let us work on the
11 process with Jay and Bill and see how close we
12 can come to the best of all worlds, which is what
13 Julie suggested, which was if someone has a
14 concern, asks something to be written, that they
15 get a chance to see that and make sure they are
16 comfortable with that without it being a, you
17 know, 14-page paper.

18 But let's just see how quickly we can
19 come to -- I mean we may end up -- you know, this
20 may just be a logistical issue. Because there
21 may be end up being, you know, 4- or 500 minority
22 concerns and people voting. We may end up going

1 through this thing fairly quickly and only being
2 eight or ten issues that people feel strongly
3 that they want to object to.

4 So I'm comfortable sort of moving
5 along with a process that Cynthia and I and the
6 staff have figured out with the issue of having a
7 minority voice I guess the way it's said.

8 MR. SLIVE: Just a brief amendment if
9 Tom doesn't mind -- which Cary's concerned, that
10 then once the document is prepared, we will have
11 a opportunity to review and correct the
12 documents.

13 MR. LELAND: Right. Okay. So
14 there's two amendments. One is the -- one is the
15 amendment regarding the minority voice, and the
16 other one is the amendment regarding the
17 everybody getting a chance to see the draft
18 before the e-mail or something.

19 Yes?

20 MS. GROTH: Does anyone else feel the
21 need to revisit one of the findings or
22 recommendations, the ability to go back other

1 into a potentially awkward situation.

2 MR. LELAND: If we box ourselves into
3 a situation where we're being contradictory and
4 someone objects to that.

5 MR. SPANIER: Yeah.

6 MS. FOU DY: But on that note, Graham,
7 I mean, that's my question is what is the process
8 in terms of we get the draft, we have a chance to
9 look at it again, but we don't have a chance for
10 input because we don't have another meeting and
11 there's no forum in which we can give input.

12 MR. LELAND: Well, we're talking
13 about a different subject right now. Okay. So
14 let me finish with this one and then we'll --

15 MS. FOU DY: But it is related.

16 MR. LELAND: No, I'm just talking
17 about the process for discussion, the process of
18 this meeting.

19 MR. JONES: And, Ted, let me just
20 interject and I can answer that point quickly.

21 You do have an opportunity for input.
22 I mean, there's no -- there's nothing that would

1 preclude you from getting a copy of the report
2 and making comments to Debbie. The prohibition
3 is on sort of collection action of the body that
4 isn't in a public forum.

5 Any individual Commissioner can make
6 comments on a draft of the document and those can
7 go to Debbie and that sort of thing.

8 So I mean we can receive the
9 comments, it's just that we can't, you know, we
10 can't as a collective sort of make decisions that
11 are not adopted.

12 MR. LELAND: So let's take this
13 question, a little out of order, but let's take
14 it anyway.

15 I think if there are editorial
16 comments, you know, I think those will be
17 perfectly acceptable, and we will taken them and
18 probably run them by Cynthia and I, as long as it
19 doesn't significantly change and helps to
20 clarify, you know, et cetera, I think we would be
21 okay with that.

22 Eventually we have to stop somewhere,

1 though. Somewhere we have to have to have a
2 report and we have to hand it to somebody.

3 And so the idea that we are going to
4 have another meeting doesn't work. I mean I
5 don't want to send this report out as we are
6 going to draft it today and then have everybody
7 look at it and then have another meeting. I
8 think that's not what all of us -- everybody
9 signed up to.

10 So to have a general discussion about
11 another idea coming up, if it is just editorial,
12 I think we'll be fine with that. If it is
13 substantial, Julie, I think we have -- that is
14 going to be a problem.

15 MR. JONES: Right. If we subset it,
16 it would require a vote of the committee, and
17 we'd have to do that in public.

18 MR. LELAND: Let's hop back to the
19 other subject about this -- about this meeting
20 itself.

21 What I had read in my preamble was
22 that as we finished each one of the five sections

1 of discussion, we would not go back and revisit
2 after we'd finished that section of discussion,
3 we would not go back and revisit anything.

4 The concern here is is that we could
5 end up in a position where we want to go back and
6 amend something, there's a feeling that along the
7 Commission that we want to amend something, and
8 we, what Ted and Cynthia have decided sort of
9 doesn't allow for that.

10 So let's discuss that, not editing of
11 the report.

12 MS. SIMON: I want to speak to Cary's
13 motion about having Commissioners have a chance
14 to look at the whole report again and make
15 substantive comments. Because if we get into
16 that, then we have to have another meeting. Then
17 this goes on endlessly.

18 So I would vote against the amendment
19 that says that the Commissioners has the
20 opportunity to read the record what is, quote,
21 the final report and then make substantive
22 comments. Then we'll never finish.

1 MS. GROTH: Rita, that wasn't my
2 recommendation.

3 MS. SIMON: I'm sorry. Okay.

4 MR. LELAND: Okay. Let's talk
5 about -- I mean, then, I'm sort of working off
6 what Graham suggested, which was the problem
7 being that Cynthia and Ted decided we would go
8 section and by section and not revisit sections
9 once we've worked our way through that section,
10 sort of like we had a -- almost like the close of
11 business at a certain day, a lot of organizations
12 you're on, at the close of business that day,
13 everything done that day becomes part of the
14 permanent record or whatever you want to call it.
15 We were thinking of is section by section.
16 There's an objection to that. Anybody else have
17 concerns? Do you --

18 MR. BATES: That would certainly meet
19 my concern. Because I just felt that essentially
20 we were locking ourselves in at all cost.

21 And I think what Graham had said
22 would certainly meet that. We may find that

1 there is something that is really conflictual and
2 we would be silly to even have in there and we
3 need to have the option to be able to deal with
4 that. I would be okay with that.

5 MR. DE FILIPPO: Yeah, my though was,
6 too, that we could go back if we had a majority
7 of the 15 of us.

8 So that something that's a 13 to two
9 vote, Ted, we are not going back to discuss one
10 more time to see if I could get some people to
11 come with me.

12 But maybe if something has got five
13 votes, a third of the committee, or then we could
14 go back, or by a vote of the committee. That way
15 we're not going to be able to go back over
16 everything, but things that as a committee we
17 really feel like we need to discuss one more
18 time.

19 MR. LELAND: Is there a consensus
20 here? I mean -- Bob.

21 MR. BOWLSBY: Just a question here.

22 When you first read the passage that

1 dealt with this, my understanding of it was that
2 we just weren't going to introduce new
3 recommendations in new areas that dealt with
4 issues that aren't already dealt with in the
5 report.

6 I guess I just assumed that there was
7 an opportunity to massage and play with the
8 recommendations a little bit based upon our
9 ability to arrive at some sort of consensus
10 position.

11 Is that accurate, or when we say we
12 have the opportunity to, you know, deal with
13 several of these recommendations en mass and come
14 up with something entirely different, my
15 assumption was that we just weren't going to
16 start throwing new things on the table. But that
17 if we could make what we already have better,
18 that was an opportunity available to us.

19 MR. BATES: Yes. But, Ted, I thought
20 I read someplace where it says once we have
21 decided something that we are not going back. So
22 I heard it a little differently than perhaps Bob

1 did. That's what I wanted to open up; so that we
2 can go back, even though we may have already gone
3 past it and made a decision, I read it
4 differently than Bob.

5 MR. LELAND: I think we'll -- there
6 seems to be a consensus here that that's what
7 want to do. We want to -- you all want to be
8 able to go back at the end and look at
9 contradictory issues. We'll have threshold vote
10 to require that. But this sort of goes against
11 what I said earlier, and I'm fine with that.
12 Pretty soon my ego is going to be bruised. But
13 that's okay.

14 MS. FOU DY: Ted, I'm going to keep
15 bruising it, then. Hold on.

16 I'm just going back one thing,
17 because all along this process, you know, that we
18 are new to all of this.

19 I just feel, again, that we are
20 missing a leak somewhere, in that we are going to
21 discuss all this today, and we are going to have
22 two different sides of the argument given in

1 brief paragraphs, or whatever we decided.

2 But there's no opportunity
3 substantively to give feedback after that. And
4 so basically what comes out of this report, who
5 is writing that, is that done by the subcommittee
6 when we have these two different voices
7 represented?

8 Because we're really -- if we can't
9 make substantive changes, we have no opportunity
10 then to look at what the final report is. We are
11 going to look at and say -- we're going to have
12 to say, okay, we signed off of that and our
13 name's on that.

14 And I just feel like -- and I know we
15 can't drag this on forever. But I feel like we
16 are not accurately representing perhaps what some
17 of those voices are if we don't have any input in
18 it.

19 MS. YOW: Okay. Here are the ways,
20 that if you do not agree with the
21 recommendations, you have opportunity for input.
22 And, Ted, thank you for allowing your ego to be

1 bruised. I don't know that I could do what you
2 are doing today.

3 I think we're fine, Julie, really
4 listen. First, whatever you say is transcribed
5 for the rest of the universe forever.

6 Secondly, there is the vote.

7 Third, there will now be a minority
8 statement of some type included in the report.

9 Fourth, we will receive a draft of
10 the final report.

11 And fifth, you will be allowed, all
12 of us will be allowed to send editorial comments
13 and slash clarifications.

14 And six, plus there is a computer
15 here; there is a printer here. Changes will be
16 made on the spot for our review, as many as
17 possible.

18 Really, guys, let's let them off the
19 hook. Okay. Can we just start the meeting,
20 please.

21 MR. DE FILIPPO: If that's a motion,
22 I would like to second it.

1 MR. LELAND: Okay. Any other
2 comments? Do I need to go through what Ted
3 seemed to perceive as the motion? I think we've
4 got it, the motion is accept what we have done
5 but to change everything. No, I'm just kidding.

6 Motion is to accept sort of the
7 outline of the procedures as I describe them,
8 with the changes that we've gone through, and I
9 think we are sort of obvious to everybody.

10 Any other questions? Show of hands,
11 all of those favor of Tom's motion, raise your
12 hand.

13 Opposed? Okay. Yes.

14 MS. COOPER: I'm just going to forgo
15 a lot of my comments, and I just want to thank
16 everyone.

17 First I want to thank Ted and all of
18 the Commissioners because each of you have
19 devoted a great deal of your time and effort to
20 this Commission. You took time out of your very
21 busy schedules to travel to our hearings and
22 meetings.

1 Thanks to the public. I want to
2 also -- I'm sure Secretary Paige appreciates all
3 the sacrifices that you all have made to serve on
4 this panel.

5 Secondly, I want to thank Debbie and
6 her staff the very fine job they have done on
7 keeping us organized, informed, and focused.

8 Debbie, you and your staff did an
9 incredible job in a very brief period of time.
10 We appreciate the effort and I am sure the
11 Secretary does also.

12 Finally, I want to thank the
13 organizations and individuals who provided us
14 with expert opinions, public comments, reports,
15 and data. We also appreciate your contributions.
16 You enable us to do our job. You've enabled us
17 to do our job.

18 As we go through our draft report
19 today, will see many, if not all, of those views
20 expressed. And I just want to -- let's just get
21 started. I'm just skipping everything. Let's
22 get going. Good Lord.

1 MR. LELAND: All right. Since
2 we've -- ready to begin.

3 The first item is the Spectrum of
4 Opinions, which you'll find on Page seven of your
5 draft report. It is, in effect, Page seven
6 through Page 11, and we will just proceed that it
7 is now before us, our hope -- before us in effect
8 been moved and seconded. We'll take that as an
9 assumption.

10 And now let's discuss concerns or
11 thoughts people have, things that people would
12 like to change about this sort of introductory
13 piece.

14 Yes, Graham?

15 MR. SPANIER: Well, I think it is a
16 good section and I think it is very useful to
17 have all the different -- a sample of quotes in
18 there as you do.

19 I -- with all the sections I've made,
20 and what I think are principally stylistic
21 editing changes, it's hard to know what point
22 someone might feel any of it is substantive.

1 But since we are going to have a
2 chance to look at it again, I don't feel like I
3 have to go every word or comma that I'm
4 suggesting be changed.

5 One of the things that I'm a little
6 uncomfortable with is sentences that have
7 quotation marks around them that are not
8 attributed to anyone. It is stylistic thing
9 where in that first paragraph, it is intended to
10 be a generalized quote, I think, not that anybody
11 specifically said that.

12 I would just be more comfortable not
13 having it be a quote. And just saying -- so I've
14 edited it to reflect that this is a point -- a
15 general point of view that some people have as
16 opposed to a specific quote that nobody actually
17 ever said.

18 The only other substantive comment I
19 have in that introductory section is that the
20 debate over Title IX, I think, is fundamentally a
21 national policy issue. Characterizing it as a
22 legal issue, it only beComes a legal issue

1 because it is national policy issue over which
2 there are some uncertainties that have required
3 it to go into a courtroom on many occasions to be
4 clarified.

5 So I would like to suggest that it is
6 fundamentally a national policy issue. And, yes,
7 it is also an emotional debate.

8 So these are -- I don't know if those
9 substantive, but I have the specific wording
10 changes that I think would take care of those.

11 MR. LELAND: I think when we are
12 editing like this, I think the best thing to do
13 is move quickly is for people to make suggestions
14 like that, and then just let's see if there are
15 objections, see if there's -- we won't need to
16 vote on every one of these. I happen to really
17 like what Graham just suggested as a change. I
18 think it is national policy not basically a
19 legal.

20 Yeah, you can use the page number and
21 the line to identify those. So this is -- we are
22 talking about Page seven, line number three,

1 changing that phrase from a legal one to a
2 national policy.

3 MR. SPANIER: Well, it's change, the
4 changes are on several lines if you do each comma
5 or --

6 MR. LELAND: Yeah, Graham has those.
7 Any other -- any objections or
8 thoughts regarding that proposal -- proposed
9 change. Maybe that's the way we should do it.
10 Just call it proposed change.

11 MR. SPANIER: Well, I'd hate to be
12 contrariant, but if we're going to get into
13 matters of style, there's a lot about the style I
14 would do differently. I just assumed that at
15 some point you let staff do descriptive work and
16 just let them do it.

17 And as a matter of fact, I think it's
18 not a good change to say it's national policy and
19 legal. I don't want to cede any ground from --
20 everything is legal; right? Legal issues run the
21 world. I mean the point of the --

22 MR. GRIFFITH: And the author of this

1 chose to use the phrase legal and emotional.
2 Whether it is national policy, which I don't
3 know, and I'm worried about getting into that
4 sort of discussion. I think that's a stylistic
5 change. I would write it much differently, but
6 we have able staff who's done it. And I think
7 generally the -- the message that's sent here is
8 one I'm okay with. And I'm worried about getting
9 into --

10 MR. SPANIER: Yeah, I think, you
11 know, if every little nuance that I have, I mean
12 I just was following orders. And it said if you
13 have commas, and please tell us about any
14 grammatical errors. And as a writer, I just
15 can't help read a document and not do that.

16 MR. GRIFFITH: That's fine.

17 MR. SPANIER: But what I'm happy to
18 do is send these comments to the writer and the
19 staff, I am happy to take them or leave them.
20 And as you do your final version, and anybody
21 here can come by, I'll put my name on it, look on
22 any of the pages I have changes and, you know,

1 look at the comments I suggest we change.

2 MR. LELAND: Yes. Rita?

3 MS. SIMON: Yes, I think it is very
4 important that we decide in how much detail we
5 are going to go into this. Because for example,
6 I would say that Spectrum of Opinions is not how
7 you should begin your report. I would have began
8 the report with Background information.

9 But if we are going to spend our time
10 discussing these things, we are going to be here
11 for a very long time.

12 So I think we have to allow the
13 people who have drafted this report to go ahead.
14 We could give them input. But I don't think we
15 could get into all these differences of
16 phraseology and so forth.

17 MR. LELAND: Okay. So the consensus
18 I'm hearing right now is we allow Commissioners
19 to make sort of editorial, grammerical (sic)
20 stylistics comments and send them to the authors,
21 and the authors do with them -- at least in these
22 sections. Right now we are in a little bit

1 softer part of the report.

2 Are we okay with that? I mean is
3 there anybody that disagrees with that sort of as
4 a philosophy?

5 Yes, Donna?

6 MS. VARONA: I just want to clarify.
7 Are we changing why the debate over Title IX is a
8 fundamentally a national policy issue; was that
9 the suggestion?

10 MR. LELAND: That was a suggestion.

11 MR. SPANIER: That was my suggestion,
12 yeah.

13 MR. GRIFFITH: I suggest we not get
14 into this issues.

15 MS. VARONA: All right. That is the
16 problem with this. Because it is also a legal
17 issue, as supported by court cases, every one of
18 them. So this is substantive --

19 MR. LELAND: So you don't like that
20 change.

21 MS. VARONA: Well, I think it is
22 national policy and also a legal issue.

1 MR. SPANIER: On this comment then we
2 should say both. I think --

3 MS. VARONA: Yeah, can we use both?

4 MR. LELAND: Use both.

5 MR. SPANIER: Again, I would suggest
6 we just send these because we can't have 18
7 people editing a 40,000 word document. I think
8 we just send it in, and in the final version they
9 figure it out.

10 MR. LELAND: Okay. Let's hope we
11 don't have to work through every sentence with
12 the same.

13 Okay. I think we've heard a
14 consensus that people liked using both of those
15 terms. And we are not going to get into too much
16 editorial -- other comments, concerns, thoughts?
17 Let's -- if you have a concern, let's get it out
18 on the --

19 MS. YOW: I just want to tell you you
20 are doing to great job.

21 MR. LELAND: Oh, now stop that.

22 MR. SPANIER: Who do we give these

1 to. Who is the one person who should collect
2 them?

3 MR. LELAND: Give them to Debbie.

4 MS. KEEGAN: It's only been an hour
5 and seven minutes and we've got a change.

6 MR. LELAND: And we're doing great.

7 Okay. Page seven through 11. Yes?

8 MS. GROTH: The two quotes that are
9 on the first paragraph, do we need to have those
10 in there? I know, Graham, you had mentioned
11 those. But can we just delete those? Lines
12 seven through nine, first paragraph. It just to
13 me doesn't set the stage very well. And I think
14 we should just eliminate both of those quotes and
15 end with change, at the end of line seven. So I
16 would like to recommend the elimination of those
17 two. I think we're going to get into those in
18 the report.

19 MS. KEEGAN: I agree.

20 MR. LELAND: Okay. There is a sort
21 of a consensus. We'll ask the editors not to --
22 the writers, the authors not to put those in

1 there.

2 Other thoughts or comments on this
3 first section?

4 MR. GRIFFITH: I think Yogi Bear
5 ought to be quoted in it somewhere. Could we --

6 MR. LELAND: Donna?

7 MS. VARONA: When you say the first
8 section, are you talking about just the first
9 paragraph?

10 MR. LELAND: No, we're talking about
11 all of Page seven through 11.

12 MS. VARONA: Okay. I have a comment.

13 I do feel when we declare that this
14 was an inclusive process, totally, I can think of
15 areas where we weren't as inclusive as we may
16 have been if we'd had more time, which is hearing
17 from financial experts, high schools, leaders,
18 and I'm not comfortable with saying it is
19 all-inclusive. So I don't know how to get around
20 that.

21 MR. LELAND: Line 12.

22 MS. VARONA: I'm on the second

1 paragraph, Page seven, line 12.

2 MS. KEEGAN: It doesn't say
3 all-inclusive. It says inclusive.

4 MS. COOPER: I disagree totally. I
5 think we have been very fair. I think we've been
6 very inclusive. I think --

7 MS. VARONA: I didn't say fair. I
8 said inclusive.

9 MS. COOPER: Well, I think we've been
10 inclusive as much as we could. Throughout all of
11 the --

12 MS. VARONA: Then maybe we should say
13 inclusive as much as we could.

14 MR. LELAND: Well, let's take that as
15 a -- I mean our process I guess at the present
16 time is take that as a suggestion to the writers,
17 to the authors.

18 MR. GRIFFITH: I would like to make a
19 motion. Motion is always in order, I think. I
20 would like to make a motion that we accept
21 Pages seven through 11 as written. If members of
22 the Commission have stylistic or editorial

1 changes, that they may feel free to submit those
2 to the staff, and the staff is to be charged to
3 adequately and fairly consider those stylistic
4 changes.

5 MS. YOW: I second that motion.

6 MR. LELAND: Okay. Moved and
7 seconded. Comments?

8 MR. GRIFFITH: I move the question.
9 Let's vote.

10 MR. LELAND: Can you do that?

11 MR. GRIFFITH: Yeah, I just did. If
12 I get a second.

13 MR. LELAND: The lawyers are taking
14 over the world.

15 MR. GRIFFITH: I want to get to the
16 real meat in this.

17 MR. LELAND: Okay. Is there a
18 unanimous -- is there a consensus here?

19 MR. DE FILIPPO: Yes.

20 MR. LELAND: Okay. Hearing a
21 consensus there, we will move on to Background,
22 which begins on Page 12 and goes through to Page

1 20.

2 So we are now look and discussing the
3 Background and goes through Page 12 and goes
4 through Page 20.

5 Comments and concerns. Rita?

6 MS. SIMON: I sent this in when I
7 read this report as part of this subcommission,
8 on Page 13, line 15, 16, 17, and 18, that's fine.

9 But that only describes the data in
10 1971. We need a few more lines that describe the
11 data between '71 and the present time. That's
12 not included in terms of athletic participation
13 and sports.

14 When you are taking about the state
15 high school associations, you say that, but then
16 you don't tell us what happens after '71.

17 MR. LELAND: Give us the page and
18 line item again.

19 MS. SIMON: It's Page 13, and you go
20 through lines 15, 16, 17, 18, you need more to
21 say what has happened after 1971.

22 MR. JONES: That information is on

1 the graph on the next page. But we could use the
2 narrative. We could actually add the narrative.

3 MS. SIMON: You need the narrative.
4 I know it's on the graph. You need the
5 narrative.

6 MS. PRICE: I'm sorry. We did make
7 that edit, Rita. Apparently, and this would have
8 been my error, I'm sorry. And I apologize. We
9 will copy this page for everyone. We made the
10 edit, but it was the only edit to the document.
11 The only difference in the document and I sent
12 you the wrong version. He is copying this page
13 for everyone. But in the meantime, let me read
14 the change, how we adapted the change.

15 It would be -- well, it will be
16 slightly different than yours because it is an
17 addition but it will start on page --

18 MR. GRIFFITH: Where will you be
19 inserting?

20 MS. PRICE: Page 13 starting on line
21 16. It should be reading, I'm sorry about this,
22 it's my error: According to the National

1 Federation of State High School Associations, in
2 1971 approximately 7.3 million boys participated
3 in high school sports as compared to 294,000
4 girls.

5 In 2002 3,960,517 boys participated,
6 but girls' participation had grown to 2,806,998.

7 So we added those --

8 MS. SIMON: That's what I phoned in,
9 and thank you.

10 MS. PRICE: He is making copies and
11 we'll get to that everyone. I apologize.

12 MS. VARONA: I have that on mine.

13 MS. PRICE: I don't have it on mine,
14 so let's make sure we get that accurate page to
15 everyone. That was the only change that was
16 suggested. Apparently it was in the ones I
17 e-mailed, but I sent the wrong document to the
18 girls who copied it. I apologize. We'll print
19 another page for you.

20 MR. LELAND: Other? We are on
21 Page 12 through 19 or 20. Everybody -- Any other
22 comments? Yes?

1 MS. FOU DY: I have a comment on just
2 some of the tone of the language because in the
3 first, for example on the first sentence --

4 MR. LELAND: Page and line.

5 MS. FOU DY: Sorry. I'm on the wrong
6 page. Number 12, Page 12, line five. When they
7 say: For much of nation's history societal
8 attitudes placed an artificial limit on girls.

9 Then they go on later to talk about
10 Page 13, line one, many women were denied
11 opportunities.

12 And I think that we've recognized
13 that we have made progress and that we have made
14 great strides, but I think we are putting
15 everything in the past tense. And I think we
16 also need to recognize what the present state is.

17 And there is no mention in this
18 report of what the present state of the union is
19 in terms of women's participation numbers.
20 Because there still is a gap.

21 And I think we need to recognize
22 that. That women's participation numbers are

1 still only at 42 percent. The athletic
2 scholarships are still only at 43 percent,
3 operating budgets, 36 percent, and recruiting
4 budgets, 32 percent.

5 And nowhere in this report do we give
6 a present state of the union. We talk about the
7 great strides we have made, but I think we also
8 need to also highlight there are still strides to
9 be made and that there still exists a gap.

10 And none of these statistics are
11 shown in here, and I think that we should add
12 something that gives -- I mean here is a report
13 on Title IX, we need to say where we are at, what
14 the state of Title IX is.

15 MR. LELAND: Okay. Debbie?

16 MS. YOW: Two different subjects
17 Julie is bringing up. Julie, I don't want to
18 address the part about the statistics that aren't
19 there.

20 But in terms of the context, in the
21 content of the lines that you referenced,
22 don't -- I encourage you not to read into that

1 more than what was suggested.

2 This was provided by historical
3 context, and by the nature of being historical,
4 it is in the past tense. So your subject verb
5 agreement needs to be in the past tense. That
6 would mean that the statement, "women were
7 denied," in reference to the past, would be
8 appropriate.

9 The other part I'm not trying to --
10 there may or may not need more statistical data
11 as for today. But that's all this is, is as part
12 of paragraph siting history.

13 MS. FOU DY: Yes. I agree with that,
14 that we have to give the background, we have to
15 set history, but somewhere in the background,
16 there must be an inclusion of where we are today
17 and what the total big picture is. Because we
18 don't have any type of big picture, chart, or
19 acknowledgement even that there is still a gap.

20 MR. LELAND: So nowhere in the
21 findings you found anything that meets your
22 concern.

1 MS. FOU DY: No.

2 MS. VARONA: Nowhere in the findings
3 is it put into perspective where women are today,
4 we have with these statistics.

5 MR. JONES: Well, the charts include
6 statistics for 2000, 2001. Every one of the
7 grafts comes right up to the modern.

8 MS. VARONA: It would be helpful,
9 though, to clarify it in language. You have
10 clarified it in language in the past, but I think
11 it is very important to clarify it in language as
12 to the state of union where women are today.

13 MS. FOU DY: I mean, they give the
14 participation numbers, but I think it is helpful
15 to also look at athletic scholarships and
16 operating budgets and recruiting budgets. I
17 mean, that's all part of it, a very big part of
18 it, and we don't acknowledge it anywhere. I'm
19 just saying I think we should acknowledge what
20 the present state is.

21 MS. YOW: I have no problem with
22 that. I think it could be helpful.

1 I only ask that if and when we do
2 that, that we put it in its proper context. You
3 do not -- the public will not get the true
4 picture of this if you just cite the figures
5 without listing or providing a statement relative
6 to nondiscriminatory reasons for the differences,
7 as an example in equipment budgets. If you are
8 going to go to operating budgets and talk about
9 percentages, you are going to have to make it
10 clear that it costs more to outfit and equip a
11 football player than it would a woman's lacrosse
12 player, as an example.

13 So if you do Julie's suggestion,
14 which I don't see a problem with personally,
15 please be sure that that is denoted in some way.
16 Because the public won't -- they will just look
17 the percentage and think, wow, that's bad. They
18 don't have the experience to understand that it
19 could be due to nondiscriminatory reasons.

20 MR. LELAND: I know we're -- I think
21 this is very important, and I wonder as I'm look
22 at findings I see some -- I don't see those

1 numbers, but I see some verbiage that's similar
2 to what -- that acknowledges some of your
3 concerns.

4 I'm wondering if we wouldn't be
5 better off asking to have some numbers and charts
6 put in the findings as opposed to considering
7 that background. I'm just trying to make it a
8 friendly way to do that.

9 If you look at Page 22.

10 MS. FOUDY: I think -- okay. Sorry,
11 go ahead. 22?

12 MR. LELAND: Number -- line eight,
13 nine, 10, 11, it talks about it is not probably
14 emphasized as much as you would like to emphasize
15 it, Julie, but it does say that there's --

16 MS. FOUDY: Which line?

17 MR. LELAND: Page 22, line eight,
18 nine, 10, 11, I'm not really -- I'm struggling in
19 my own mind with how to handle your concern
20 because I think probably a lot of the
21 Commissioners share it.

22 MS. FOUDY: I think the way -- and I

1 saw that on Page 22, but I think it's kind of
2 like, "and by the way," in some cases.

3 Where I think this is a very
4 important issue because I don't want to
5 misrepresent that. I think we definitely need to
6 acknowledge that what we've -- the strides we
7 have made with Title IX have been tremendous and
8 there have been wonderful things that have come
9 about because of Title IX.

10 But I also don't want to misrepresent
11 that all things are equal and that we are at a
12 state that is ideal.

13 And so I think you have to give
14 somewhere in the background present state of
15 what -- the gaps that still exist, and I don't
16 think we really address that adequately in the
17 findings or in the background.

18 MS. GROTH: I would like to agree
19 with Julie because I think that the findings make
20 it lost and I think the background is a very
21 strong statement. And I think it is beneficial
22 for us to add that information in the background.

1 MR. LELAND: Yeah, Lisa.

2 MS. KEEGAN: Ted, would it be
3 possible, Julie, to get the essence of what you
4 want, look at Page 19, line two, where it stops,
5 last line before that time line.

6 If you add the word currently and a
7 comma, and you just give it, this is what it
8 looks like right now, here's participation,
9 here's any of the -- Page 19, Cary, line two, the
10 last sentence of this report. It says, The gap
11 has narrowed, and then either another paragraph
12 or something, just go currently and give the
13 state of affairs that addresses what you think
14 needs to be in there, Julie, and you mentioned a
15 number of things.

16 Would that work for putting it --
17 without going, you know, 14 pages more. I mean,
18 just a sentence or two so that you get the
19 essence of that in there.

20 MS. FOU DY: Well, I have issues with
21 Page 18 that we haven't gotten to yet as well.

22 MS. KEEGAN: I'm on Page 19.

1 MS. FOU DY: I know, 18 and 19 in
2 terms of participation numbers.

3 MS. KEEGAN: Oh, okay. All right.

4 MS. FOU DY: More -- mine is the
5 conceptual approach of, yes, we've made great
6 strides, but here's what the current state is.
7 And that's all I'm saying.

8 MR. LELAND: I think people, at least
9 I'm not hearing any of the Commissioners object
10 to the concern that you've voiced, it is just a
11 matter of where would you be most comfortable
12 putting it in the report, and I think we can --
13 staff said they would be willing to work with you
14 on a paragraph or two in the next few hours to
15 see if we can't write up something, because I
16 think that is something that seems to me the
17 Commissioners share a concern on and would
18 support you.

19 So, Julie, I mean, do you want us to
20 give it a try? We could try to amend line two
21 and three on Page 19, begin a paragraph there
22 that lays out your concerns --

1 MS. FOU DY: Yes.

2 MR. LELAND: -- and then that seems
3 to put it in a prominent space -- place. Place,
4 space. Thank you.

5 Yes, Bob.

6 MR. BOWLSBY: I do want to go back to
7 what Debbie said, though.

8 I think we've all talked about the
9 EADA report, and if this is just going to be a
10 regurgitation of numbers that are in the EADA
11 report, I think that's exactly what Debbie's
12 concern was, that those are not going to be what
13 we would like them to be.

14 For instance, I think, you know, we
15 have talked about expenditures in football, but
16 it would surprise most people to find out that
17 the cost per student athlete in both men's and
18 women's basketball is higher than what most
19 institutions are spending per student athlete in
20 football. You can't look at the numbers and get
21 that.

22 And so I think we need to be

1 responsible in how we present this. And I agree
2 with Julie that it needs to be in there as state
3 of affairs, but I also agree with Debbie. It is
4 extremely deceiving, and I just think we need to
5 be careful how we present it.

6 MR. LELAND: So what I'm hearing from
7 the two of you, you are very supportive of what
8 Julie suggested. You would like to leave out the
9 dollar issues, I mean not the scholarship issues,
10 not the participation issues, but --

11 MS. YOW: I don't really have an
12 issue with whatever statistics she wants to put
13 in there as long as they are accurate.

14 But when you talk about their being
15 accurate, the problem is what -- there has to be
16 a caveat, a footnote, somewhere you have to try
17 to help the public understand what they are
18 looking at and what it really represents, whether
19 it is the difference in outfitting and equipment
20 a football player, or whether it is the
21 difference in scholarship expenditures when we've
22 talked about this a lot, and that is that we have

1 a predominant number of men who, no offense, need
2 to go to summer school to stay eligible. And we
3 don't have that situation a lot of places with
4 our women.

5 Somehow if the public just looks at
6 numbers, the percentages like 65, 35, they would
7 just say, wow, that really is out of kilter,
8 something terribly is wrong.

9 We have to help them better
10 understand what it is they are looking at if we
11 are going to do this.

12 MR. LELAND: Well, I think we could
13 try to draft something up and get the three of
14 you try to draw some kind of consensus.

15 I think everybody is supportive of
16 what you want to do, and I just think there is
17 some sort of -- I don't know what to call them,
18 just some concerns about certain parts of the
19 numbers that you said.

20 Other -- I had one -- I hate to do
21 this. But I had one, and I think it along
22 Julie's -- on line one of Page 19. "Men have

1 experienced a decrease in opportunities and
2 teams."

3 You know, I just feel more
4 comfortable if it said slight increase, small
5 decrease. I mean, I thought that we sort of left
6 the room without being able to reconcile that
7 number.

8 And if there's a feeling in the
9 commission that there has been a decrease in
10 men's opportunities, it had been slight at best.
11 At the biggest I should say, at worst, and not --
12 this -- this -- the way it is written it almost
13 sounds like for the increase women's
14 participation, we have had a subsequent identical
15 decrease in men's opportunities, and that's not
16 what the numbers tell us.

17 I think there's a debate on this from
18 what we've heard as to whether there's been an
19 increase in men's participation opportunities, a
20 flat or a slight decrease in them, but I don't
21 think -- sort of leaves it -- I just though this
22 was -- I don't know.

1 MR. BOWLSBY: Ted, I take issue with
2 that. Whether you want to go out and line people
3 up or just use the statistics, I think it is
4 clear many men's teams have gone away, and many
5 opportunities for student athletes on the male
6 side have gone away.

7 I think the numbers are mitigated by
8 a migration from NEI institutions and other
9 divisions so you are right about a slight
10 decrease being in place.

11 But I think if you look at
12 institutions across this country, there are many
13 wrestling programs, gymnastics programs, swimming
14 programs, baseball programs that is have gone
15 away.

16 And so somehow that needs to be
17 reflected, and if the gross numbers are a slight
18 decrease, I think we also ought to footnote that
19 so that it is clear that the reason that that's a
20 slight decrease, and the reason is that many of
21 these programs have gone away, and that at the
22 same time there's been a migration that has

1 created a leveling effect there. I think it is
2 inaccurate to portray it any other way.

3 MS. FOU DY: We are talking about line
4 seven on page 18, correct? For men athletic
5 participation fell from 248 to 234?

6 But that is in reference to line
7 seven on 18; correct? And it is also referenced
8 on line 12 where it talks about participation
9 numbers and teams.

10 And you looking at the GAO report
11 from 2000. And if you look at the most recent
12 GAO report from 2001, it actually shows that
13 men's participation opportunities have increased
14 by 11,000. And I think that's what you are
15 talking about is we had the debate, the most data
16 shows they've actually increased and the team
17 numbers have increased as well.

18 I agree with Bob, that, you know,
19 obviously we have lost men's teams, but the
20 migration of -- is it because of a migration of
21 wrestlers becoming -- universities choosing to
22 start other men's teams or why are we saying in

1 the latest report an increase in numbers and not
2 addressing that?

3 MR. BOWLSBY: Well, nobody anywhere
4 is adding men's teams, in any sport, except
5 perhaps soccer when the boom took place, but it
6 is -- it's just not a fair representation unless
7 we portray that.

8 And if 11,000 gain is the right
9 number, you know, we all -- we've talked about
10 having to eventually come to some closure on what
11 the right number is. It is slight decrease, it's
12 a slight increase. It doesn't matter to me
13 particularly how it is portrayed, in terms of
14 those numbers.

15 But I think to not recognize that
16 there have been hundreds and hundreds of men's
17 programs in Olympic sports lost is an inaccurate
18 and irresponsible way to portray this.

19 MS. COOPER: I agree.

20 MS. GROTH: At the same time I think
21 it's important if we are going to address the
22 team issue, one thing we didn't hear throughout

1 our hearings was the number of women's teams,
2 particularly women's gymnastics, and while the
3 numbers may vary depending on who you hear from,
4 there are still more significant number of
5 women's teams, particularly gymnastics and now
6 swimming that have been eliminated.

7 I think the bottom line is
8 participation. And if we are going to refer to
9 the GAO report in this document, then we need to
10 be consistent with the data that we are using.

11 And the GAO report indicates that
12 there's been an increase in participation in
13 men's programs, not necessarily teams, but
14 participation rates.

15 And if you look at 13 and ask -- you
16 were talking about on Page 13, we list the NCAA,
17 we have the chart there, anyone just looking at
18 the snapshot, it shows there's been an increase
19 in participation.

20 But yet, the next page -- or excuse
21 me, you go to Page 18, it contradicts the chart.
22 Says there's been a decrease.

1 So we need to make sure that we use
2 the same information throughout this document.

3 MR. LELAND: Well, Rita.

4 MS. SIMON: If you pull together all
5 of the data that are described from line two, I'm
6 talking about Page 18 from line two through
7 line 31, then the summary statement I think
8 accurately reflects those data.

9 There has been great progress for the
10 women, and there has been a decrease for men. I
11 don't think you should add any adjectives,
12 adverbs, or anything.

13 Those data from page -- if the data
14 from line two through line 31 are the data we are
15 going with, then the summary statement accurately
16 reflects those data.

17 MS. FOU DY: But that's what I'm
18 saying, Rita, is that the most recent data from
19 the 2001 GAO report contradicts what we have
20 here, and I think we should put the most recent,
21 which is Cary's point, which is what the graft
22 points out.

1 And so I think it's inaccurate what
2 we are representing.

3 MS. SIMON: Then we have to add those
4 data. But -- okay. Then you have to change the
5 data. Not in the paragraph?

6 MS. KEEGAN: It is in the paragraph,
7 March 2001, GAO report. Is that inconsistent
8 with what's above, Julie?

9 MS. FOUDY: What paragraph are you
10 talking about, Lisa?

11 MS. KEEGAN: Line 22, page 18.

12 MS. SIMON: All right. That's the
13 six of 25 women sports experience lost, for
14 men -- half of men's sports. Okay. Then that's
15 still the summary statement is still accurate.

16 MS. GROTH: Lisa, that's addressing
17 teams, but I don't remember, recall if it was
18 Cory or in the GAO report that indicates that
19 participation numbers -- if a wrestling team or
20 another men's program was discontinued, still
21 there was an increase in participation in some
22 sports such as baseball, football, and men's

1 basketball.

2 So if we are going to talk about
3 participation, we should talk about participation
4 throughout the document. I think the team issue
5 muddies the water. We still need to acknowledge
6 that there have been men's programs and women's
7 programs, teams, that have been eliminated.

8 MR. LELAND: Could I make a
9 suggestion? You know, we at one point in time
10 during the Commission's deliberations, we had
11 Commissioner who said, you know, the least we
12 could do as a Commission is agree on what these
13 numbers are and what the numbers mean.

14 In this particular issue, the
15 decrease in men's -- I don't think we ever came
16 to that position. I don't think we ever agreed,
17 these are a set of data we'll agree with. We
18 heard one guy, one expert in statistics say one
19 thing, we said another one say another. We look
20 at one GAO report and it has one cohorted
21 compared, you have another GAO report that
22 compares two different cohorts.

1 And so I propose as a, hopefully, a
2 compromise that this line one on 19 be amended in
3 some way that will reflects the feeling that
4 there have been some lost opportunities from the
5 men's side, but in aggregate there's a debate
6 over whether -- I shouldn't say, where there's a
7 debate over an aggregate of men's lost
8 opportunities.

9 Because that's the way I feel. I
10 don't think we ever -- we're trying to re-debate
11 what we tried to debate when we had experts do,
12 and I don't think we came to a conclusion, and
13 I'm worried that we can't today.

14 MS. FOU DY: What if -- Ted, what if
15 we on that note, what if we put in the most
16 recent data, which is the 2001, so that that's
17 accurate.

18 And then to Bob's point underneath we
19 recognize that there has been, which we hit on
20 line 21 through 31, there has been a big
21 decrease, you know, in these programs.

22 And then summarize it at the end, but

1 make it accurate saying, there has been an
2 increase in participation numbers gross, but
3 clearly one of issues here is, you know, the loss
4 of some of these, you know, men's finer sports.

5 MR. LELAND: Did you authors,
6 potential authors hear that?

7 MS. PRICE: There needs to be --
8 there should be clarification, though, between
9 what the 2000 GAO numbers represent and what the
10 2001 GAO numbers represent.

11 MR. SPANIER: I think you are just
12 treading on very dangerous territory here.

13 One year you are showing a decrease
14 of a couple of percent, and the next year you are
15 showing an increase of a tiny fraction of one
16 percent, and we're using words like -- we're
17 using descriptive -- I just want to go back. We
18 are going to make those changes and look at the
19 data again.

20 Because one of our -- one of the
21 folks who testified prepared like a 40-page
22 statistical analysis that I looked at very

1 carefully and was rather persuasive, and now that
2 another report to pop up that I haven't looked
3 at.

4 To in a statistical sense if it is
5 even -- I mean if you said the numbers -- while
6 the participation numbers, overall participation
7 numbers of men have not changed much, that would
8 be all right. Then we don't have to argue about
9 whether it is three one-hundredths of one percent
10 decline or 1.2 percent of an increase or
11 something.

12 I'm just -- worry about looking at a
13 new set of numbers and say a-ha, now we could
14 have a different conclusion.

15 It is not the right way to treat
16 data. And what we have attempted to do in this
17 report, and it does trouble me, and I'm going to
18 suggest a few words on Page 12 -- to bend over
19 backwards to show that we are being geared to
20 another point of view on one issue or another, we
21 have a tendency to engage in hyperbole.

22 And so there is a section in here

1 which is the university president, which troubles
2 me greatly where we are indicting all of higher
3 education for gross discrimination in all
4 respects of our functioning prior to 1972.
5 There's even comment in there, even state
6 universities.

7 Well, I could point to a lot of state
8 universities that were not discriminating in
9 their admissions in 1972. Back on Page 12.

10 So I understand how we got there. We
11 are engaging in a certain amount of hyperbole to
12 prove how open we are to one point of view or
13 another.

14 But we just ought to stick to the
15 facts. And if the facts are in dispute, just
16 generalize a little bit to make a point.

17 There's no disputing that a lot of
18 men's teams have been lost. There may be some
19 difference of opinion whether it is a tiny
20 fraction up or down in the overall participation.
21 Let's just say that.

22 MR. LELAND: Yes, Rita.

1 MS. SIMON: It's a basic statement
2 that anyone who teaches research methods knows
3 that you don't look at blips in data, which is
4 what you are talking about, Graham, and see them
5 as long-term trends. You have to wait and see.

6 So what happens from year to year, if
7 they go up a little bit and then the next year
8 they go down, that is not indicative of any
9 trends. And we have to be very careful of it.

10 I brought with us this Cravet's
11 report, U.S. Department of Education. And what
12 those data show in terms of men's teams and men's
13 athletics from 1982 to 2001 and women's,
14 et cetera, suggest what the authors have
15 summarized as the data.

16 There have been big increases for
17 women. There have been decreases for men.
18 That's what it shows. Big increases for women,
19 and decreases, and I don't think you need an
20 adjective or adverb from that. That's what these
21 data show.

22 MR. LELAND: Okay. Let's try to come

1 to the question on this. You know, I think we
2 have move along. We couldn't decide on what the
3 data showed earlier.

4 One or two more questions and then
5 we'll move. Cary, we'll need a motion of some
6 kind.

7 MS. GROTH: Rita.

8 MS. SIMON: Yes.

9 MS. GROTH: I struggled with that
10 information as well, yet the NCAA and the GAO
11 report contradict his data.

12 And as I was reading through our
13 draft and the numerous testimonies that we heard,
14 the bottom line still is: Women still only have
15 42 percent of the participation rate.

16 So regardless of what the numbers
17 are, were, whatever, the issue we are dealing
18 with is women currently have -- we can all agree
19 that women have 42 percent of the athletic
20 participation numbers. We all -- that's one fact
21 that we agree upon. And I would agree with Julie
22 that it needs to be stated in there.

1 MR. LELAND: I think we have already
2 done that. We are talking about something
3 different now. We are onto this issue of line
4 one, Page 19.

5 Is anyone going to make a motion to
6 change what is there, or should we just.

7 MS. FOU DY: Say that again?

8 MR. LELAND: I asked if anyone wanted
9 to make a motion to change Page 19, line one.

10 MS. FOU DY: Yes. I would like to
11 change it because I don't think it's accurate.
12 Or at least explain this situation like Graham
13 said better.

14 MR. LELAND: How so? Explain that
15 there is not consensus --

16 MS. FOU DY: Graham, what was your
17 wording? You said that -- I liked it. I don't
18 remember what you said, though. It is my old
19 age, Graham.

20 MR. SPANIER: I guess I would just
21 leave it.

22 MR. LELAND: Okay. I see no -- I'm

1 sorry I brought it up. I won't do that again.

2 MS. FOU DY: But how can we leave it
3 if the most current data shows that it totally
4 contradicts what we have here? I think we have
5 to recognize that the 2001 report shows an
6 increase in men's. I mean, I know this is -- we
7 have all said that this is a big debate. The
8 fact that we don't point that out in here
9 somewhere.

10 MS. SIMON: Julie, look at this.

11 MS. FOU DY: Rita, they quote the 2001
12 GAO report in this report, in this draft.

13 And so the most recent GAO report
14 going directly across, not switching studies,
15 staying with the GAO, the most recent GAO report
16 shows a different outcome, and I think we have to
17 recognize that somewhere.

18 MR. LELAND: Would you be comfortable
19 if this read, Amended experience, decreased in
20 opportunities to teams parents, although not
21 everyone agrees with that, close parents?

22 I don't think -- by the way, I don't

1 think there's a statistical consensus. I know
2 you can pull out a piece of paper that shows
3 something --

4 MS. FOU DY: Well, maybe we say that.

5 MR. LELAND: -- but there is so many
6 people we listen to.

7 MR. SPANIER: Data are data, but the
8 problem is the metrics are different from all --
9 we have looked at a half a dozen different
10 reports, and the metrics are different because
11 they have different starting points, they have
12 different ending points. They have whether you
13 include the new schools that have migrated the
14 NCAA or you control for them.

15 There are so many different ways --
16 you in the end, I suppose, could make any
17 argument you want to make.

18 So the trick is just to get the words
19 approximately right. There are some people who
20 will pick the one report that's out there to
21 support a particular point of view, and we are
22 not going to get around that.

1 I don't think we ought to change
2 anything unless we believe what's here is wrong.
3 If there have been some new data released that we
4 haven't seen, I think we then have to go back and
5 look at that data. I want to say what they're --
6 how it's different from the other data sets we've
7 looked at.

8 And if, as has been described, we are
9 talking about a shift of 11,000 on a base of
10 8 million. I don't know if that results in
11 changes of words, where maybe it means we didn't
12 get the word right in the first place.

13 MS. FOU DY: But again, conceptually
14 I'm saying is that what we are portraying here I
15 don't think is necessarily accurate, given that
16 the data reflects different things.

17 And I think we need to recognize
18 somewhere that there's different data that
19 supports different things. Maybe just -- I mean
20 maybe what you said to being with that there's
21 different conclusions, but maybe it pretty much
22 remains steady over the course of the last 30

1 years.

2 MR. LELAND: Rita.

3 MS. SIMON: On this report which is
4 by Gerome Cravets (ph) statistician, U.S.
5 Department of Education, he traces data from 1982
6 to 2001. Women's teams have gone from 4,776 in
7 1982 to 8,414. That's almost a hundred percent
8 increase. Women's athletes have gone from 74,239
9 to 150,916 over the '82 to 2001 period.

10 Men have gone, teams, from 6,843 to
11 7,832. Men's athletes gone from 169,800 to
12 208,866.

13 Women have made great progress. We
14 still need more progress. We are still at the
15 42, 58 percent. But progress means increase,
16 progress means which direction are you moving in.
17 And if you look at those data, it clearly means
18 women have made great progress. You have almost
19 doubled.

20 MS. FOU DY: I'm not debating that,
21 Rita, though. I agree with you. That's not my
22 point. My point is that we need to accurately

1 reflect the men's side of it.

2 MR. LELAND: Well, there was -- you
3 know, I asked if anyone wanted to amend line one
4 of Page 19. Julie said she would like to do it
5 in a way that -- sort of like Graham had
6 suggested. We had trouble figuring --
7 remembering what that was, although I happened to
8 find it a compelling suggestion before.

9 MR. SPANIER: Let me -- I simply said
10 that while there had been some loss, I don't
11 know, significant loss or a recognized loss in
12 the number of men teams, the number of
13 participation opportunities for men has not
14 changed appreciably.

15 Something along those lines. Then
16 you don't have to worry whether you are a couple
17 thousand up one year or a couple thousand down
18 another. I mean if that's an accurate statement,
19 I think you can just describe it in those general
20 words. And then you're not really having to
21 worry which report you are looking at.

22 It deals with Bob's point that we all

1 understand. Because, you know, we have had
2 hundreds of people tell us, yes, there are teams
3 being closed down. But in the aggregate, the
4 number of overall opportunities across the
5 spectrum for men has not changed very much.

6 MR. LELAND: Are you are okay with
7 that one?

8 MS. SIMON: I'm not okay. Because
9 what do you do with the phrase, The gap between
10 male and female athletic participation has
11 narrowed. It has narrowed.

12 MR. LELAND: Nobody's changing
13 that --

14 MR. SPANIER: But I think that's
15 adequately recognized in the part leading up to
16 it.

17 MR. LELAND: Only suggesting a change
18 in line one, women have experienced a decrease in
19 opportunities and teams.

20 MS. SIMON: I understand, and I
21 disagree with it.

22 MR. LELAND: You'd rather not change

1 that?

2 MS. SIMON: That's right.

3 MR. LELAND: Okay. So I guess we'd
4 better vote.

5 Yes, Lisa.

6 MS. KEEGAN: Ted, just at the risk of
7 suggesting something concrete here. If you --
8 men have experienced a decrease in opportunities
9 in teams, comma, although not appreciatively in
10 participation. Is that what we're saying, comma,
11 so that the gap between male and female -- does
12 that work, Rita?

13 MR. LELAND: Okay. Well done.

14 MR. SPANIER: In participation across
15 all sports, because in the circuit sports, yes.

16 MR. LELAND: Okay. There seems to be
17 a consensus on that. I know this sounded to some
18 people like a argument over nothing, but think it
19 is important. It is really important that we get
20 it clear. We don't have a unanimous consensus on
21 the exact statistics here and what they
22 represent, yet at the same time I think there

1 has -- we do note a trend in here and we need to
2 be clear about what we're noting.

3 MS. FOU DY: Okay. Time-out. I'm
4 sorry. I like Graham's wording better because I
5 think the word "decrease" comes back to the point
6 that we don't even know from all the different
7 data, and I like his wording better, that the
8 numbers have -- the aggregate numbers have
9 remained fairly steady.

10 MR. LELAND: Or have not changed
11 appreciably.

12 MS. FOU DY: But we are talking
13 aggregate participation numbers. We've already
14 addressed teams. We're talking about
15 participation numbers, and I think if you use the
16 word "decrease," that you are not necessarily
17 representing it right.

18 MR. LELAND: The number of teams
19 decrease, you are objecting to that?

20 MS. FOU DY: No, I like -- I'm saying
21 I like Graham's wording better than Lisa's
22 because it talks about the aggregate number

1 remaining steady.

2 MR. SPANIER: Well, I didn't hear
3 mine to sound very different than Lisa's, but I
4 think the writer heard this discussion, they
5 could come up with a good sentence. You know
6 let's see the sentence --

7 MR. LELAND: I thought hers did
8 acknowledge that. I think she thinks it did.

9 MS. GROTH: When we are addressing
10 teams being discontinued, I remember the swimming
11 association federation and the gymnastics
12 federation, talked about men's and women's teams,
13 and we need to make sure that we include those
14 men's and women's teams, I think in that line.

15 Because we address men's teams, but
16 swimming and gymnastics, while we were in
17 Colorado stress that not only men's teams were
18 being eliminated, but women's teams were as well.
19 And I think it's an appropriate place to add
20 that.

21 MR. LELAND: I mean you want -- you
22 are requesting specific reference to those two

1 sports?

2 MS. GROTH: I don't think so, just
3 the number of teams.

4 MR. LELAND: I think we're -- I think
5 we're -- it is in there already. The last three
6 comments have all, I think --

7 MS. KEEGAN: Page 18, line 23.

8 MR. BOWLSBY: Is there a question to
9 be called anywhere in here or are we in
10 consensus?

11 MR. LELAND: I think there is a
12 consensus on that last one. Is there a
13 consensus, did anybody shake their head no, if
14 there's a problem with it?

15 Okay. Let's continue, try to stay
16 within issues of Background.

17 And any other comments or concerns
18 about this particular section?

19 MR. GRIFFITH: The Background
20 section?

21 MR. LELAND: Yes, sir.

22 MR. GRIFFITH: Yeah, I have one on

1 Page 14, at the end of line 23.

2 This is the section that's talking
3 about the history of Title IX, both the statutory
4 history and the regulatory history.

5 And there is a huge omission here in
6 discussing Title IX that bears directly upon, I
7 think, the work of this Commission in trying to
8 determine what congress intended when it passed
9 Title IX.

10 And that is at the same time this
11 language cited on lines 21 through 23 was an act
12 of congress, and also an act in other language to
13 make crystal clear that whatever else Title IX
14 meant, it could not be system for using quotas.
15 It's the Albert, I don't know how you pronounce
16 the congressman's name, "Key" or "Quee" or
17 whatever.

18 But I think to say that Title IX
19 provides these three lines and to omit the fact
20 that Title IX expressly bars the use of quotas, I
21 think is a significant omission.

22 I understand the writers desire to be

1 brief. But I don't think one can -- I think we
2 are overlooking and mislead the public to say
3 that this is all that Title IX says.

4 So I would recommend that the writers
5 put something just quote the Quee or Key
6 amendment, however you say his name.

7 MR. LELAND: Anybody comment on that?

8 Seems like there's a consensus for
9 asking the authors to do something there.

10 Okay. Thank you, sir.

11 Other comments or concerns about the
12 Background section?

13 MS. GROTH: I do. On Page 16, you
14 start on line 13 where it starts addressing the
15 various court decisions. I think it is important
16 that we have all eight court decisions or
17 reference to the eight court decisions that every
18 single -- you know, in the 1990s, for example,
19 every single court case, eight of eight.

20 You know, I think that's important
21 information in the Background because those were
22 significant court cases.

1 MR. DE FILIPPO: Aren't they listed
2 on Page 19?

3 MS. GROTH: Yes, but we single out,
4 you know, one or two here and there, and I think
5 we need to be inclusive of all eight because they
6 all -- I just think that's very important, Gene.

7 MR. GRIFFITH: And that can be easily
8 done at footnote 11, just by a string cite,
9 listing them all there.

10 MR. LELAND: That's been -- anybody
11 object to that? Seems like there's a consensus
12 to make that clear. Eight court cases if there
13 are eight.

14 Okay. Other -- Donna?

15 MS. VARONA: I would just like to
16 have also reflect that in every case -- that in
17 every case the court's upheld the intent of the
18 law, and every appellate court to consider the
19 issues upheld the policies against any kind of
20 attack.

21 So it's been consistent with every
22 court case that the courts have upheld the law.

1 I mean, if we are going to go into history, I
2 mean it's kind of a convoluted --

3 MR. GRIFFITH: I think -- we probably
4 agree. I think the statement here accurately
5 reflects what the courts have done -- what the
6 courts did in those eight cases is said we defer
7 to the enforcement agency in their
8 interpretation, and I think that captures that
9 here.

10 MR. LELAND: Already?

11 MR. GRIFFITH: Already. Yeah.

12 But I do think Cary's suggestion is a
13 good one. To go ahead and list them all. People
14 who are going to read this are going to want to
15 see, you know, be able to find the court cases
16 themselves.

17 MR. LELAND: Okay. Other -- you
18 okay, Donna, with that?

19 MS. VARONA: Fine.

20 MR. LELAND: Cary?

21 MS. GROTH: On Page 18, if you go to
22 line 17, the independent survey regarding all

1 female body -- student body colleges, Title IX
2 doesn't deal with all female school body, and I
3 just think that is irrelevant information.

4 MR. LELAND: Okay. Are there
5 other -- yes, Rita?

6 MS. SIMON: I disagree. I found
7 that -- that actually somebody in U.S. Today sent
8 a letter to editor in response to the whole
9 Title IX issue, and he asked, What about the
10 participation level of women in sports in all
11 women's institutions.

12 And I was delighted to see these data
13 here. I think it is interesting. I think it
14 again gives you a fuller picture of what's
15 happening. I would vote to keep it in.

16 MR. LELAND: Yes.

17 MS. KEEGAN: Could we -- I agree with
18 Rita that that's a very interesting statistic,
19 particularly for those of us who don't work in
20 these numbers all the time and know who it means.
21 I mean, we're not really talking about all
22 college athletes here. We're talking about a

1 certain segment.

2 Could you enhance that point
3 potentially by citing the figures or student body
4 participation in mixed universities, X percentage
5 of women, how many women are we talking about, at
6 Stanford, how many women participate in sports,
7 how many men participate in sports. And then
8 what does that look like versus Mount Holyoke,
9 whatever. I think that's very interesting. And
10 it gives some context to this.

11 MS. SIMON: Maybe also, Lisa, to
12 look -- there are still some more men's
13 institutions, I think.

14 MS. KEEGAN: We don't want most of
15 those, but if there are still there.

16 MR. GRIFFITH: I have a question. I
17 was unclear what this -- what it meant. Is it
18 varsity athletics? I didn't know what it meant,
19 participating in athletics.

20 MS. VARONA: But also Title IX
21 doesn't apply in this situation in all girl's
22 schools so I don't know why it's there.

1 MR. GRIFFITH: I think it is
2 marginally interesting on the, you know, the
3 interests prong that Rita's been quite interested
4 in.

5 But my question is more fundamental.
6 I don't know -- what does it mean? Participating
7 in athletics. Is that on, you know, intramural
8 or --

9 MS. VARONA: Club or recreational.

10 MR. GRIFFITH: Club or what. I think
11 with that sort of clarification, I'd be in favor
12 of it.

13 MS. VARONA: But who did the
14 statistics and do they mean? Like you said, I
15 don't know what they are measuring. Are they --
16 do they take into account that a female student
17 may want to jog every morning and stay fit before
18 school, and how does that predetermine their
19 interest in sports. I just -- I don't think it
20 is relevant.

21 MS. KEEGAN: Ted, if we could -- if
22 it's possible to -- I agree with Donna, if this

1 is just an out the -- I don't know what the
2 Independent Women's Forum used for this because
3 it is sited.

4 But if you can match these numbers to
5 numbers at the university, I mean, again, I think
6 most people when they hear us talk about Title IX
7 and the numbers and 43 percent women or
8 57 percent men, they think we're talking about
9 total sports participation, intramurals we're
10 not.

11 But if you could match these numbers
12 at mixed universities and single sex
13 universities, I just think they are extremely
14 interesting and informative about how many people
15 are actually coming out for sport, because we are
16 asking about opportunities, demand, and whether
17 we are meeting it or not or discriminately
18 against it. I think it is incredibly relevant.

19 MS. SIMON: I agree completely.

20 MR. LELAND: So you are arguing for
21 keeping them in there, but expanding this
22 paragraph to get some kind of a --

1 MS. KEEGAN: Making sure the data set
2 match.

3 MR. LELAND: -- comparison. And we
4 need to clarify what the data set is.

5 MS. FOUDY: Yeah, I think it is
6 dangerous to make any type of comparisons when
7 don't even know what the focus of the
8 universities are. I mean, what if we were to do
9 that on a men's university that was a liberal
10 arts focus and maybe their percentages are low.

11 I mean to draw conclusions based on
12 these numbers, not having enough background
13 information is taking a large leap.

14 MS. SIMON: I don't know that we're
15 drawing any conclusions, we're just looking at a
16 whole variety of data sets.

17 But I agree. Let's find out where
18 Independent Women's Forum got these data from.
19 That I would certainly support.

20 MS. VARONA: Do we have time to do
21 this? Isn't this a new -- a whole dimension --

22 MS. YOW: No, I think Donna, it is

1 just a clarification. If this, in fact, does not
2 reference varsity sports only, which is how we in
3 the business have referenced it, then there is no
4 comparison to be made.

5 However, if it does, in fact, equal
6 these participation rates at these institutions
7 for varsity sports, then it does lend itself to
8 providing additional information relating to the
9 interested party.

10 MS. SIMON: Absolutely. That's what
11 I'm talk about.

12 MS. GROTH: I guess my further
13 concern is this is first time we discussed this
14 or talked about it or seen this information that
15 I'm aware of. And it just stood out to me. I
16 just didn't think it was relevant.

17 MR. LELAND: Okay. Percy.

18 MR. BATES: Ted, I think this is
19 interesting information, but I'm not sure what
20 purpose it serves at this point in the report.
21 So I guess I would argue to just take it out. I
22 mean, it is interesting, but I don't know that it

1 ties to anything else. It is just hanging there
2 by itself.

3 MR. LELAND: Okay. Let me tell you
4 where I think we are procedurally. We have
5 got -- clarify what we mean participating in
6 athletics, a lot of us sort of assume that means
7 varsity athletics, but let's clear that up.

8 Let's ask the authors to look into
9 some kind of comparison cohort; right?

10 That sort of -- those are proposals
11 by the people seem to want -- think that this is
12 interesting and ought to be a part.

13 There seems to be another group of
14 Commissioners who would be very interested in
15 having this removed.

16 MR. BATES: If we tied it to
17 something, that would be okay. I mean I'm okay
18 with that. The way it stands now, it doesn't go
19 anyplace.

20 MR. LELAND: Okay. Let's make the
21 assumption that we tied it into a cohort, and
22 we've is also been explicit about what our

1 definition is. So that's sort of where we stand
2 now.

3 Now, there's still a group of people
4 that would like to have it removed. Are there
5 not? Is there?

6 MS. SIMON: Let's take a vote.

7 MS. KEEGAN: I would move that given
8 the matched data sets and comparison putting it
9 in context that we expand it and leave it in.

10 MS. SIMON: I second it.

11 MR. LELAND: Okay. It's been moved
12 and seconded that we expand, clarify, and leave
13 this section in. That's what we're going to do.

14 MS. FOUDY: I thought you were going
15 to do a vote.

16 MR. LELAND: More discussion.

17 MR. BATES: Ted, one point more.

18 Does this mean it is still ties to something? I
19 guess --

20 MR. LELAND: Yes.

21 MS. SIMON: Yes, the varsity sports.

22 MR. BATES: Okay.

1 MR. LELAND: Yes. We have to clarify
2 what we mean by participating athletics and also
3 some kind of external cohort to compare to that's
4 meaningful. And that's where we are with Lisa's
5 motion.

6 Okay. I guess all those in favor of
7 leaving it in, raise your hand.

8 MS. PRICE: Seven.

9 MR. LELAND: Opposed?

10 MS. PRICE: I have six. Should we
11 do --

12 MR. LELAND: Let's vote again. All
13 those in favor.

14 MS. PRICE: Seven in favor.

15 MR. LELAND: Opposed?

16 MS. PRICE: Six opposed.

17 MR. LELAND: Okay. Stays in.

18 MS. VARONA: We can express why we
19 feel that it should not be left in? Because
20 Title IX doesn't apply to an all women's school,
21 that the minority opinion doesn't understand how
22 it relates to the issue.

1 MR. GRIFFITH: Title IX most
2 certainly does apply.

3 MS. VARONA: No, it's an all women's
4 school.

5 MR. GRIFFITH: You receive federal
6 funds through your students, it is going to
7 apply.

8 MS. VARONA: But how --

9 MR. JONES: But on the other hand,
10 too, though, you could make the argument that if
11 it doesn't apply, I mean that actually does, it
12 is probative of an issue that's been before this
13 commission over and over again.

14 And that's the question of what would
15 the relative interest of men and women be, absent
16 discrimination.

17 And here you've got institutions that
18 just involve women. And so if, in fact, it is
19 tied as the amendment suggests, to varsity
20 participation, varsity athletic participation, it
21 seems to me it is clearly probative at least.
22 That may not be decisive --

1 MS. VARONA: So now you are giving me
2 a reason why it was put in there. That's your
3 explanation why the statistics are --

4 MR. JONES: What I'm suggesting is I
5 don't know how -- I don't see any reasonable
6 argument that it is not relevant. I mean it is
7 certainly probative of the question.

8 And so that's -- again, what we do
9 with it or how decisive it is or how important it
10 is, I mean is another question. But whether it
11 is probative of any issue that's been before this
12 Commission, I don't see how that can be denied.

13 MS. FOU DY: I just don't think -- I
14 don't understand how we could take these numbers
15 and jump to the assumption that it indicates
16 interest.

17 Because what if I am a liberal arts
18 student and I go to this school for a certain
19 degree, and I'm great softball player, but they
20 don't have a great softball program and I don't
21 play in it. Does that mean I'm not interested
22 because those numbers aren't reflected there.

1 MS. VARONA: And I might be playing
2 for the U.S. team outside in the club program,
3 but that doesn't reflect itself in the statistics
4 so I don't know how accurate it is --

5 MR. SPANIER: The report contains --
6 the sentence involves no commentary about what it
7 means. I voted for it simply because I saw it as
8 an interesting fact that might be relevant.

9 MR. LELAND: I think the issue right
10 now --

11 MR. SPANIER: The minority report is
12 designed to say there are some of us who think
13 it's irrelevant and therefore voted against
14 having this sentence in the report, then take it
15 out. But come on, everybody, it is an
16 interesting fact that some people think is
17 relevant.

18 If it results in the need for a
19 minority report, then I'll change my vote to
20 eliminate it from the report because I think that
21 is taking this discussion to absurdity and we
22 won't be done by noon tomorrow.

1 MS. SIMON: But if we are talking
2 about varsity sports, it is interesting,
3 probative and relevant, if we're talking about
4 varsity sports, and that's what we are going to
5 find out. That's what the motion --

6 MR. LELAND: I think we've already
7 voted on it. Let's decide a little bit what
8 Graham just mentioned. I mean the issue is we
9 now have six people who voted against this, and
10 the question is how could we recognize their
11 concern?

12 MS. YOW: The way Donna suggested,
13 which you had already decided. We've decided.
14 That there could be commentary relative to why
15 the six did not think it should be included. You
16 said not to write a book, not 14 chapters, but
17 there could be a statement.

18 So it could be left in if it's
19 varsity, and if there is a relevancy there, and
20 then we have a statement.

21 MS. GROTH: Okay. But when do we
22 decide whether it is relevant or not. That's the

1 only thing. This is our last meeting. That was
2 my concern. It's just --

3 MR. LELAND: It's in. It's in. We
4 just did it.

5 What we are talking about now is how
6 we acknowledge the dissent.

7 MR. SPANIER: I would like to change
8 my vote to exclude it. Because I don't want to
9 look foolish along with the rest of you including
10 minority reports that are longer than the
11 sentence to explain why some people think this
12 fact should not be revealed in the report.

13 MR. BOWLSBY: I think that's exactly
14 right. And my impression of the presenting both
15 sides of the story when we discussed it earlier
16 pertained to the findings and the
17 recommendations.

18 This is a narrative that's intended
19 to be an introduction. It's been approved by the
20 majority, and I would suggested we move on.

21 MS. VARONA: Move on how?

22 MR. GRIFFITH: My understanding of

1 what -- it was my motion to accept the process as
2 set forth with the clarifications, was that that
3 was referring -- it was not referring to this, it
4 was referring to recommendations.

5 Graham, I don't think there's any
6 interpretation there which we'd need to have a
7 description of why people didn't think this line
8 ought to be in here.

9 MS. YOW: I know you don't want to
10 let -- I was wrong. I was thinking about the
11 recommendations, those kinds of things, versus
12 the narrative in the description. Sorry I said
13 that.

14 MR. LELAND: Well, it is in.

15 MS. VARONA: He changed his vote.

16 MR. GRIFFITH: Graham, there isn't
17 going to be a descriptive, there isn't going to
18 be a minority report description of why the six
19 thought it would be out.

20 MS. VARONA: Okay. That's right.

21 MS. SIMON: Do you still change your
22 vote, Graham?

1 MR. SPANIER: Yes.

2 MS. SIMON: Let's re-vote again.

3 MR. LELAND: Do you want to ask for a
4 re-vote here?

5 Make a motion to reconsider is I
6 guess what we will do.

7 MS. YOW: Graham, just tell me, and
8 why are you changing your vote?

9 MR. SPANIER: Because I think some of
10 us should be embarrassed to have minority reports
11 about --

12 MS. VARONA: There won't there.

13 MR. SPANIER: Well, we haven't had a
14 ruling on that yet.

15 MR. GRIFFITH: And I also like to
16 point out that only someone in the majority can
17 vote to reconsider.

18 MS. VARONA: He is in the majority.

19 MS. FOU DY: I don't understand. I
20 mean we are going to come from different sides of
21 the issue. I think that, I mean, I think it is a
22 healthy debate. To be embarrassed about that, to

1 have a different opinion, I don't think that's an
2 embarrassing thing. I think we're going to all
3 come from different sides.

4 MR. SPANIER: What you are doing in
5 this case is you are revealing -- I mean the
6 debate is about whether a fact should be included
7 in the report. As I said, I voted for it because
8 I thought it was interesting and potentially
9 relevant. I think an argument about that, it's
10 not very important to me.

11 MR. LELAND: I don't think there's
12 any -- I don't think people are backing away from
13 their earlier commitment to provide dissenters
14 with the appropriate forum to -- in their report.

15 Editorially it doesn't make much
16 sense right here to have it. I mean I think it
17 would be -- but where we are.

18 MR. BATES: Why don't we re-vote.

19 MR. LELAND: There's motion to
20 reconsider. We have to vote on the motion to
21 reconsider. So the thing we're voting on now is
22 do we want to reconsider the proposal that we

1 passed last time, which in effect put this line
2 17 through 19 on Page 18, put it in -- amended it
3 and expanded it, but left it in the report.

4 That's where we are. We have to vote
5 if we want to reconsider that. So please raise
6 your hands. All those in favor of
7 reconsideration, raise your hand.

8 MS. PRICE: Six.

9 MR. LELAND: Opposed.

10 MS. PRICE: Six. Are there any
11 abstains?

12 MR. LELAND: Abstains, yes.

13 But the motion fails; right? The
14 motion fails. So we can't reconsider it.

15 So we are back to the issue of how do
16 we acknowledge the dissent here. There's a --
17 part of me say the chairman -- Tom made the
18 original motion with the amendments to approve
19 the process that we are going through. His --
20 recently stated was that he didn't envision the
21 acknowledgement of dissent to happen in this
22 particular section.

1 Are you, Tom, are you okay with that
2 still?

3 MR. GRIFFITH: Yeah. It is my
4 understanding that you don't put a minority
5 explanation of why a line didn't make it in the
6 Background. What Graham's considering is not
7 something we need to face.

8 MR. LELAND: Yes, Lisa.

9 MS. KEEGAN: Ted, can I just make a
10 suggestion that -- just for the purposes of
11 knowing what might be -- what would be said here
12 in this bullet, that by the end of today we come
13 up with what would be in that bullet, generally.

14 I mean we have those statistics.
15 It's basically participation rates in mixed
16 gender universities in varsity sports and
17 participation rates in varsity sports in single
18 sex universities.

19 Those are the numbers I want. Just
20 that they are matched data sets because to me it
21 is extremely interesting, and it is funny to me
22 it is only place in this report, really, until we

1 start talking about whether we ask people if they
2 are interested or not, it is where we get to the
3 issue of desire being denied.

4 And I think that is really important.
5 Because we need to know where and when it happens
6 so the issue of discrimination can only be dealt
7 with if you know what demand is. And I think it
8 could not be more relevant, so long as that data
9 set is correct.

10 So I just would like to have a chance
11 to look at it at the end of today.

12 MR. LELAND: Well, since we -- and
13 here's a suggestion. We could try to get that
14 data today, amend line 17 through 21 on Page 18,
15 and then come back to this group later since we
16 amended our rules of order, and we could come
17 back and reconsider the dissent issue later.

18 So then I guess what I'm saying is
19 that people that want -- we have some people
20 wanting to amend -- you know, we have something
21 that's in here. They want to add their dissent
22 somehow. There's people objecting on sort of

1 editorial grounds.

2 Can we wait and you guys read and see
3 what this thing says before you push forward and
4 continue to take our time up with a push for a
5 minority statement at this time?

6 Who wants a minority statement at
7 this time. Donna?

8 MS. VARONA: No, I can wait. I'm
9 willing to wait.

10 MR. BOWLSBY: If we do that, I'd like
11 to reserve the right to go back, and having voted
12 on the prevailing side of the original point, ask
13 that to be reconsidered because when I voted on
14 the process earlier, I certainly didn't expect
15 that we were going to be including minority
16 positions in the narratives and introduction of
17 this report. I voted on it presuming that it was
18 in the findings and recommendations.

19 So if we are going to go down that
20 path, I want to revisit my vote on the original
21 motion.

22 MR. GRIFFITH: Yeah, I think it is

1 appropriate for the Chair to rule. I mean I'm
2 telling you my intention was that that minority
3 report mechanism was not to be in this section.

4 And I think it is fair to ask the
5 ruling of the Chair if that's his understanding,
6 and if it is, I think we sustain that and move
7 on.

8 MS. SIMON: I agree, Tom. I thought
9 it was in the findings and the recommendation
10 stage.

11 MR. DE FILIPPO: As member of the
12 committee, may we ask both chairs to take a
13 minute and talk about this and give us an answer.

14 MR. SLIVE: We could use a break
15 anyway.

16 MR. LELAND: I don't know whether
17 this is for a discussion or for a break. Let's
18 take a ten-minute break and then we'll try to
19 come back with a ruling from the Chair. Thank
20 you.

21 (Break taken.)

22 MR. LELAND: If we could come to

1 order, please.

2 We are still work on approving the
3 Background section that begins on Page 12.
4 Cynthia and I discussed the issue of making a
5 ruling regarding a dissent, call minority report
6 a dissent report as part of the Background
7 section.

8 And after what we heard from
9 Tom Griffith who made the original motion, I
10 think -- I don't think, I know, our ruling is is
11 that we will not accept a dissent report in this
12 portion of the report.

13 So -- and I think just a word of
14 caution. We need to -- the Chair needs to maybe
15 be a little tougher and move us along a little
16 more quickly. Rule a few more things out of
17 order. This was described as worse than a normal
18 faculty meeting during the break. I think that's
19 quite a damning -- for those of us who have been
20 in faculty meetings, that's quite a charge. Now
21 my ego really is hurt now.

22 But I think we need to move things

1 along, because there are some real issues that we
2 want to get to in the findings and
3 recommendations.

4 And so, again, I'm not trying to
5 stifle dissent or particular comments, but let's
6 move forward as quickly as we can.

7 So that being a brief introduction,
8 we will break at 12:30 and go to lunch.

9 So let's begin discussion, again, of
10 any other comments or concerns about the
11 Background section that begins on Page 12?

12 Donna?

13 MS. VARONA: Can I just suggest a
14 word change on Page 16, line 23. In reference to
15 the court held it in construing Title IX, courts
16 are deferred to the office of Civil Rights policy
17 interpretation. In 1996 the Department of
18 Education issued a "dear colleague" letter that
19 purportedly -- can we get rid of the word
20 "purportedly." That attempted or that --

21 MR. LELAND: Attempted would be fine.
22 I think that's to clarify.

1 MS. VARONA: To clarify. I'm sorry,
2 it's line 23, Page 16, and it refers to the
3 letter of clarification. I just think it is a
4 prejudicial word. Purportedly.

5 MR. LELAND: Attempted to clarify.
6 I've also been asked during the break
7 to ask everyone, especially when you are reading
8 from the report to slow down and enunciate so our
9 court reporter can keep us with up. Thank you.
10 So let's try to accommodate that so we can make
11 sure the transcripts accurately reflect what we
12 say.

13 Okay. Other comments about
14 Background?

15 Good. We need a vote, then, to --
16 let me put it this way. By consensus, anyone
17 that doesn't want to accept the Background
18 section as amended? Seeing no dissenters, we'll
19 consider that consensus.

20 And let's move on to --

21 MS. VARONA: Can I just have one
22 point of clarification?

1 MR. LELAND: Yes.

2 MS. VARONA: When Rita read the
3 statistics about teams versus individuals
4 increase, whatever. Could you read that? Can --
5 I'm just confused. Because I think that when we
6 left this discussion, did we finally make the
7 distinction between teams and individuals and
8 decreases and increases or did we settle on this
9 compromise with narrowing the gap.

10 Aren't we being very clear about
11 concluding that women's teams were dropped, that
12 men's teams have been eliminated, but the
13 aggregate number of men participating has
14 increased? Or has stayed the same.

15 MR. LELAND: I think it's
16 participation has stayed -- pretty much stayed
17 the same. I think that's what -- Graham's not
18 here so.

19 MS. VARONA: I just want to make sure
20 I understood what we ended with there in that
21 section.

22 MR. LELAND: Well, I think we're

1 trying to write something up, Donna. Why don't
2 you wait until we.

3 MS. VARONA: All right. Can we go
4 back to that later after --

5 MR. LELAND: Yes.

6 MS. VARONA: Okay.

7 MR. LELAND: Since that got
8 overruled, too.

9 Okay. Let's turn to section 42 --
10 Page 42, the appendix and glossary.

11 Any thoughts or concerns?

12 MS. FOU DY: I have a question about
13 just timing. Is it possible to request to do
14 this after since we'll have gone through some of
15 these terms in the full report? It just seems
16 backwards to go over it now when we haven't gone
17 through what their meaning is in the context of
18 the report.

19 MR. SLIVE: Shouldn't we know the
20 meaning before we do that report?

21 MR. LELAND: I mean, I think it can
22 be argued either way.

1 Do you want to make a motion, Julie,
2 to change this order?

3 MS. FOU DY: It is not that big of a
4 deal.

5 MR. LELAND: Thank you.

6 MS. FOU DY: I just think that it
7 would be easier to understand.

8 MR. LELAND: Okay. Any other
9 questions or concerns? Not about the order --

10 MR. GRIFFITH: I have a suggestion,
11 again, reflecting my earlier motion that when we
12 described Title IX that it references made to the
13 key amendment. On Page 43, I'm sorry. Page 43,
14 lines 26 through 33.

15 MR. LELAND: Page 43, 26 through --
16 okay. Do you hear that?

17 MR. GRIFFITH: That's just consistent
18 with what the earlier --

19 MS. GROTH: Ted?

20 MR. LELAND: Yes.

21 MS. GROTH: I don't think walk-on
22 athletes, the definition is correct. And I

1 didn't read through all these. On Page 43, line
2 40, these athletes are neither recruited nor have
3 they previously received scholarships. They can
4 be recruited walk-ons.

5 So that's inaccurate. So they can be
6 recruited. So maybe we can mess with that a
7 little bit. Get the NCAA ruling.

8 MR. LELAND: Yeah, I think they are
9 either recruited or not recruited walk-ons.

10 MS. GROTH: Yeah.

11 MR. LELAND: They are -- in the NCAA
12 there's a difference.

13 MR. BATES: Right. Basic walk-on and
14 the other kind you're talking about is a
15 different kind of walk-on.

16 MS. GROTH: Yeah, but they are still
17 not walk-ons. So unless we -- I guess we just,
18 you know, I don't want to get into a huge debate
19 on this, but I think you can recruit a walk-on.
20 So I just -- it says in here neither recruited.
21 And I just don't want that to be misleading.

22 MS. SIMON: So why don't we simply

1 add another thing to the glossary and say
2 recruited walk-ons.

3 MR. BATES: That was my suggestion
4 because there is a another category of walk-ons.

5 MS. SIMON: So why don't we include
6 it in the glossary?

7 MR. BATES: Is that adding on to
8 what's --

9 MS. SIMON: I don't care. I'm trying
10 to accommodate --

11 MR. LELAND: Okay. We really need to
12 discipline ourselves and get to substantial
13 issues. I think these glossary terms are
14 referred to in the body of the paper. If we want
15 to add one here, I don't know if that one doesn't
16 do us any good, because I think it doesn't refer
17 to anything that's -- all she is trying to do is
18 clarify the present term. I'm a little
19 uncomfortable if we start adding to the glossary
20 right now. Plus spending the time doing that.

21 MS. KEEGAN: I would like to make a
22 motion that we add glossary of terms as used in

1 this report and that we agree that these are
2 fine. That's my motion.

3 MR. LELAND: Okay. There is a
4 motion. Is there a second?

5 MS. COOPER: I second that.

6 MR. LELAND: Okay. Any other
7 comments? We are talking about now just
8 specifically the glossary section of the appendix
9 glossary.

10 MS. FOU DY: I have question on
11 non-revenue sports. "These are athletic teams
12 that do not generate revenue, (for instance, from
13 spectators,) given the divergence in popularity
14 of various sports at different campuses, the
15 numbers and types of non-revenue sports vary by
16 campus."

17 Shouldn't we make a distinction
18 between profit-producing and non-revenue sports
19 because most, in fact, bring in revenue, because
20 most sell tickets, but the distinction really is
21 whether they are profit-producing.

22 MR. LELAND: Julie, net revenue;

1 right?

2 MS. FOU DY: That's why I don't know.
3 I was hoping we would do that first. That's why
4 I thought we were going backwards.

5 MR. LELAND: I think we ought to add
6 net revenue. We don't want to talk about profit.
7 But net revenue to these. I think that's
8 compatible with the way the report is written. I
9 think the report talks about net revenue
10 producing sports.

11 Okay. These are good comments.

12 Donna?

13 MS. VARONA: Under regulation or
14 rule, could we -- could I -- could that be
15 rewritten to say under the Federal Administration
16 Procedures Act, a regulation has the same
17 definition as any administrative procedure acts.

18 Do you have to ask the lawyers?

19 MR. LELAND: Donna, tell us what page
20 you are on, what line.

21 MS. VARONA: Oh, I'm sorry.

22 MR. LELAND: Read slower.

1 MS. VARONA: 42, line 39, regulation
2 or rule. Under the Federal Administrative
3 Procedures Act, a regulation has the same
4 definition as in the Administrative Procedures
5 Act.

6 MR. JONES: I'm not sure I
7 understand. The Administrative Procedures Act
8 defines what the regulation is. So it defines
9 the process by which --

10 MS. VARONA: Defines the process by
11 which, okay.

12 MR. LELAND: So, Donna, are you still
13 suggesting a change?

14 MR. JONES: I mean I do I think that
15 this definition is adequate and accurate.

16 MS. VARONA: Okay.

17 MR. LELAND: Rita.

18 MS. SIMON: On the known tradition of
19 students, I wondered that why we have the phrase,
20 students who have children. If the student is a
21 full-time student between 18 -- full-time
22 undergraduate student between 18 and 24 years

1 old, what difference does it make whether he or
2 she has children?

3 MR. GRIFFITH: Come see the BYU
4 football team, for example.

5 MS. STROUP: I was just going to say,
6 for student aid purposes, we treat as independent
7 a student, if have a child, you are considered
8 independent under the rules, as compared to a
9 student 18 to 24 who doesn't have a child who is
10 considered dependent.

11 MS. FOU DY: My question is where did
12 this definition come from, the non-traditional
13 student definition.

14 MS. KEEGAN: It is not the definition
15 that we use. I mean that's the definition used
16 at my understanding higher education to determine
17 what kind of scholarship or aid you qualify for.
18 I think it's a common term.

19 MS. YOW: I think there's something
20 in the NCAA manual about age limits and who can
21 participate on intercollegiate athletic teams.
22 I'm sorry I can't remember, but I do believe it

1 starts at age 25. I think there's something in
2 there.

3 MR. LELAND: Okay. Why do you care?

4 MS. FOU DY: Well, I'm just wondering
5 in terms of how we are using it in the report.
6 How we are referencing it.

7 MR. LELAND: Well, that's a different
8 question.

9 MS. FOU DY: Right, and I guess we
10 could get to that later when we get to the
11 section on.

12 I don't mean to point that out again.

13 MR. LELAND: Yeah, please.

14 Other comments or concerns about the
15 glossary?

16 Okay. We have a motion to approve
17 it.

18 We will do it by consensus. Anybody
19 dissenting, give me a nod, let me know.

20 Okay. It is approved.

21 Now, I suppose we ought to have -- we
22 have now the appendices. Is that the right way

1 to say it? Any -- check your bios. Just a word
2 to the wise.

3 Any other comments on the appendices?

4 Yes, Rita.

5 MS. SIMON: If I want to make a
6 couple of changes in my bio, do I just give it to
7 the office of the report?

8 MR. LELAND: Yes.

9 Okay. Any other comments?

10 Okay. I take it it is before us to
11 approve to appendices. Seeing no dissent, we
12 will assume they are approved by consensus.

13 Okay. Moving on.

14 Now we must turn to the findings,
15 which are on -- begin on Page 21.

16 And I think we just ought to start
17 by -- okay. Let's start with Page 21, finding
18 one on question one.

19 MR. SPANIER: Before we do that, I
20 just have a general comment.

21 MR. LELAND: Yes, sir.

22 MR. SPANIER: Is it the intent to

1 have names of Commissioners associated with each
2 finding?

3 MS. PRICE: No, we only included
4 those in parentheses as a tool for us to use
5 today so you saw who was involved in that
6 finding. The names will be removed from the
7 report, here and in recommendations. It's just
8 for a tool today.

9 MR. LELAND: Okay. Finding Number
10 one on Page 21 for question one is now before us.

11 So comments and discussion,
12 questions.

13 Julie.

14 MS. FOU DY: My one comment is that --
15 which I brought up earlier about the present
16 state of the union, we need to acknowledge
17 somewhere what that present state is.

18 Because we talk about, more needs to
19 be done to create opportunities for women and
20 girls, but we don't ever in the Background
21 section -- and I think we agree that we're going
22 to put something in there that is going to give a

1 present state of the union.

2 MR. LELAND: Is it more appropriate
3 in the background or in here? Both?

4 MS. FOU DY: Both would be great,
5 yeah.

6 MR. JONES: Ted, can I just make a
7 suggestion just for the benefit of the public;
8 and that is that as we go through these findings
9 that you read what the finding is. Because not
10 everybody has a copy of the draft report. Some
11 do, but most don't.

12 MR. LELAND: Okay. Question one of
13 the questions that we have been asked to answer
14 is our time line standards for accessing equal
15 opportunity in athletics, working to promote
16 women's opportunities for male and female
17 athletes. That's the general question.

18 Finding number one, the draft of
19 finding number one is after 30 years of Title IX,
20 great progress has been made, comma, but more
21 needs to be done to create opportunities for
22 women and girls, and retain opportunities for

1 boys and men. That's what's before us now.

2 Okay. Questions. We have an
3 amendment from Julie that says we'd like to make
4 sure we have the present state of affairs in
5 terms of how -- we are going to agree on what
6 that says included in here somewhere in the
7 verbiage.

8 Other thoughts and comments on
9 finding one for question one.

10 MR. GRIFFITH: I just suggest that I
11 think Julie's concern is met by the, "but more
12 needs to be done." I mean I think that reflects
13 that we are not satisfied with the, you know,
14 status quo, that the work of Title IX is perhaps
15 left unfinished. Doesn't that get to what you
16 need?

17 MS. FOU DY: Or you could say that
18 inequities still exist as such and such graph
19 points to. As long as we did it somewhere. I
20 mean right now we have nothing in there that
21 talks about the gap that still exists.

22 MR. GRIFFITH: Except saying more

1 needs to be done.

2 MR. LELAND: Okay. All right. We'll
3 still -- there seems to be a consensus that we'll
4 add something in there that talks about the
5 present state of affairs, present state of the
6 gap. Let's put it that way.

7 Other questions and concerns
8 regarding finding one, question one.

9 All right. Hearing none, I assume
10 that we'll pass this by consensus. We said we
11 wouldn't vote if there was a consensus.

12 Is there anyone who wishes to dissent
13 and discuss it longer?

14 Okay. And seeing none and hearing
15 none, we'll consider that as approved, supported.

16 Let's move on to finding two on
17 Page 22. Again, the main question is are
18 Title IX standards for assessing equal
19 opportunity in athletics working to promote
20 opportunities for male and female athletes.

21 Finding number two says, quote,
22 current Title IX enforcement aims to provide

1 three separate ways for institutions to
2 demonstrate that they are in compliance with
3 Title IX's participation requirement.

4 This goes through -- begins on --
5 well, we could see it ourselves. Begins on line
6 38 on Page 22.

7 Okay. Questions and comments.

8 Cary.

9 MS. GROTH: Ted, this was one of my
10 findings, and I would like to just suggest some
11 different language under the findings.

12 On line 34, Page 22, if it would
13 read, "Current Title IX enforcement does provide
14 three separate ways," instead of "aims to"
15 because it does. There are three different
16 prongs.

17 And then on Page 23, line five, if we
18 could remove "thus in its concept" and just start
19 with, "the three-part test is a flexible way for
20 schools to comply."

21 And somewhere in that body, if we
22 could use the, example the data that two-thirds

1 of the schools reviewed by OCR met Title IX
2 standards through prongs two and three.

3 MS. YOW: Cary, would you accept as
4 kind of a friendly suggestion that if you are
5 going to do that or move in that direction that
6 there needs to be some acknowledgment that
7 because prong one carries the terminology of safe
8 harbor, that there are institutions across this
9 country that have gravitated to that for that
10 reason, and therefore it has not --

11 MS. GROTH: You know, I think it's on
12 finding three, though, Deb, because --

13 MS. YOW: Major issue.

14 MS. GROTH: I think it's covered and
15 I think that's a very important point.

16 But at least my intent was to make
17 sure that the point was made in finding two that
18 a significant amount of the schools reviewed met
19 prongs two and three, and I think that the other
20 Commissioners that sponsored this as well felt
21 that the test is flexible, and we just have to
22 make sure --

1 MS. YOW: Can I ask you a question?
2 When you say significant number of institutions
3 have met that standard through two or three, you
4 mean of the ones that have been reviewed.

5 MS. GROTH: Correct.

6 MS. YOW: Not of the current body,
7 because the majority of them have never been
8 reviewed.

9 MS. GROTH: Yes. Thanks, Debbie.

10 MR. LELAND: Go ahead, Tom.

11 MR. GRIFFITH: I don't agree with
12 those changes. I think I understand what you are
13 getting at.

14 But would you be comfortable with
15 this, if it were -- current Title IX policy
16 allows for, you know, three separate ways.
17 Because the -- what we -- her testimony is that
18 the enforcement of that policy, the way it has
19 been enforced, there have been instances where
20 the regional office of the OCR have gone to
21 schools and said, you know, number one or
22 nothing. And I think no one is comfortable with

1 them doing that. And so --

2 MS. GROTH: Yes, I am. I'm
3 comfortable with that.

4 MR. LELAND: Current Title IX policy,
5 what was the second word?

6 MR. GRIFFITH: Provides.

7 MR. LELAND: Three separate ways.

8 Cary says that's okay, so that's the
9 newest that we have there.

10 And there's another suggestion, Cary,
11 that we put something in about the cases, the
12 percent of cases that have been looked at by OCR
13 and the number that are met under prong two and
14 prong three?

15 MS. GROTH: And then remove "thus in
16 its concept." Just start with the three-part --

17 MR. LELAND: Okay. Other comments
18 and concerns about finding number two as amended,
19 so far?

20 MR. GRIFFITH: I would suggest there
21 on line five, as properly enforced, the
22 three-part test can be a flexible way.

1 MR. LELAND: You okay with that,
2 Cary?

3 MS. GROTH: Okay.

4 MR. LELAND: As properly enforce.
5 Okay. Any further amendments,
6 discussion, concerns?

7 Okay. Again, let's -- hearing no
8 dissent, not seeing any, can we approve this by
9 consensus. Shake heads, anyone who is
10 uncomfortable with that, let me know.

11 Okay. We'll rule that finding number
12 two approved by consensus.

13 We are now to finding number three on
14 Page 23.

15 Again, the question is are Title IX
16 standards for assessing equal opportunity in
17 athletics working to promote opportunities for
18 male and female athletes.

19 Finding number three in draft says,
20 many practitioners feel that their institution
21 must meet the proportionality test to ensure a
22 quote, safe harbor, close quote, and avoid

1 expensive litigation.

2 Okay. Comments and concerns. This
3 begins on line 28 on Page 23. Okay. Comments
4 and concerns.

5 MS. FOU DY: I have a concern with the
6 last -- with Page 23, line 35, "The Cohen case in
7 particular demonstrates the difficulties an
8 institution may face in establishing Title IX
9 compliance when it attempts to rely on parts two
10 and three of the test."

11 I think as the Cohen case
12 demonstrated, test two was the history and
13 continuing expansion, they had not met those
14 requirements. They had added teams in the '70s,
15 I believe, and hadn't done much since then.

16 And clearly, test three that they had
17 an interest in that they dropped two women's
18 teams. I think that to put this in here confuses
19 it. I think we should take that line out
20 entirely.

21 MR. LELAND: Okay. Other -- anybody
22 want to argue on the other side either for or

1 against the removal of that reference to the
2 Cohen case?

3 MR. BOWLSBY: Well, Ted, I guess I'm
4 not quite sure what the restrictions ought to be
5 on us relative to findings, but I think we did
6 hear quite clearly from Beverly Ledbetter (ph)
7 that what was there was their impression of their
8 experience with Title IX. I don't have that
9 material in front of me, and I just recall her
10 testimony.

11 But I think based upon what she
12 testified with her experience in the Brown case,
13 that that line does represent what she believed
14 to be their experience.

15 I don't know how -- I don't disagree
16 strongly with Julie, in terms of leaving it in or
17 taking it out, but I do think that's what we
18 heard from lead counsel on that case.

19 MS. FOUDY: My point is more to the
20 tone of it, when it says that -- I mean one of
21 the things we've talked about repeatedly is
22 trying to give more weight to the three separate

1 tests and the three prongs.

2 And this is basically saying, hey,
3 you really can't rely on two or three. But the
4 reason they couldn't rely on two or three was
5 because they hadn't met two or three. Not
6 because the courts wouldn't give it weight. And
7 I think it confuses the issue.

8 MR. BATES: Ted, couldn't this be
9 solved by simply rewording it? Because I think
10 Bob is correct in what he said. It is a question
11 of what the case demonstrates, which is what I
12 think Julie is getting at. Because it could
13 probably just handle that through some shift in
14 wording.

15 MR. LELAND: You know, the Cohen case
16 in particular may demonstrate, is that.

17 MR. BATES: Or related to the
18 testimony I guess in some ways is what I'm
19 hearing. I mean clearly that was used as a
20 problem in some ways for them. But I'm not
21 sure -- if we characterize it as the case
22 demonstrates it, then it puts it into a different

1 category.

2 MR. BOWLSBY: Yeah, I think that's
3 right, Percy. I was just a little uncomfortable
4 with any amendment to it that would
5 mischaracterize what we heard from Ms. Ledbetter.

6 MR. LELAND: Are you guys are
7 following --

8 MR. DISKEY: If we could hear from
9 Percy again.

10 MR. BATES: Well, if we could do this
11 in some way in terms of the wording, I think have
12 two views here. One is what is indicated as what
13 this case really describes, when, in fact, we
14 heard from people from there that said, This is
15 sort of why they would move more towards prong
16 one versus two and three, rather than saying that
17 this is a case that really shows the difficulty
18 in it.

19 MR. SPANIER: It is, in fact, that
20 case that has generated the point of view of many
21 university legal counsels that prong one is the
22 safe harbor, and to attempt prongs two and three

1 is not what they recommend.

2 So it is summarizes the realty. The
3 fact that some schools have met prong two or
4 three along the way does not change the accuracy
5 of this statement.

6 MR. LELAND: Are you guys okay --
7 hopefully we sort of made a commitment to the
8 commissioners we'll try to get this wording back
9 to them. But I see a way we could accommodate
10 all four of the concerns here.

11 MS. FOU DY: We talk about repeatedly
12 trying to make people understand and educate
13 people about the weight of two and three.

14 And this sentence to me is saying
15 that, well, in fact, you can't rely on two and
16 three in the courts.

17 But the reality of it is why couldn't
18 they rely on two and three, not just because you
19 can't, but because they didn't meet those
20 requirements of two and three, not because you
21 couldn't rely on them in the courts.

22 And I think if we are going to try

1 and really educate people about the validity of
2 all three prongs, then to put this statement in
3 is basically saying, yeah, but don't go there,
4 which I think is the problem.

5 MR. LELAND: No. I think people are
6 willing to amend it. It's talking about this --
7 I think -- it's talking about -- the suggestion
8 was we drop it altogether. I think people are
9 leaning towards amending it in a way that
10 accommodates your concerns, Julie, yet at the
11 same time leaves a reference in there to the case
12 because of its importance.

13 Mike.

14 MR. SLIVE: I think Graham's comments
15 about the sentence are accurate, does accurately
16 reflect the situation. And it would seem to me,
17 Julie, that the opposite, in fact, is -- comes
18 from leaving it in here which is a fact that if
19 institutions had this view, then we need to help
20 correct that view as a result of what we're doing
21 here. This sentence is precursor for some
22 recommendations that two and three be

1 strengthened.

2 So I think you are reading it the
3 wrong way.

4 MS. KEEGAN: Can I make a suggestion?
5 You guys are all attorneys and you know this
6 case.

7 I'm sympathetic to Julie's view here.
8 Because I think what -- I think what we're trying
9 to say is that the Cohen case resulted in
10 precedence that subsequently mean, you know, the
11 OCR said if you meet proportionality, you're
12 done, two and three don't matter, et cetera.

13 It is that precedent that then we are
14 now dealing with.

15 But this suggests -- this suggests
16 that they met two and three and just weren't able
17 to prove it. And I don't think that's an apt
18 description of that court case.

19 So is it possible to say that the
20 Cohen case -- along Percy's lines, I mean it
21 resulted in precedence that have done
22 something -- you guys are attorneys.

1 But I agree with Julie. This makes
2 it sound like they were in compliance with two
3 and three and couldn't prove it.

4 MR. DE FILIPPO: Just that the
5 precedence has caused many legal attorneys on
6 institutional campuses to use proportionality as
7 the safe harbor in a court of law.

8 Is that what we are getting at?

9 MS. KEEGAN: Yes.

10 MR. BOWLSBY: Well, you know, I think
11 the other thing is there is a point of time issue
12 regarding two and three. It's the concept that
13 campus attorneys have is that you could comply
14 with two and three, but you are only on your way
15 to one.

16 And I think that's why what Graham
17 and Mike said is a widely held perception. It is
18 indeed a safe harbor, even though they were all
19 intended to be equally accessible. They tend to
20 be waysides instead of final resting points.

21 And whether that is accurate or not,
22 it is certainly a widely held perception. And I

1 think in a finding, we have to say that that's
2 what we heard.

3 Now, whether it is correct or not,
4 you know, then the recommendations ought to
5 reflect that. But if you go back and read the
6 finding, "many practitioners feel," this is an
7 impression held by them, and I think our finding
8 and the text that goes along with that has to
9 reflect it.

10 MR. LELAND: Okay. I think we have a
11 consensus here. Let's try to wrap it up as
12 quickly as we can if we're all going to just, you
13 know, pile on this one.

14 MR. GRIFFITH: We don't have a
15 consensus. I think the language is fine as it
16 is. The Cohen case says what the Cohen case
17 says. We are not going to rewrite the Cohen case
18 here.

19 And the fact is that Cohen case
20 demonstrates that if you are going to rely on two
21 or three, it's difficult.

22 But Julie is right. They tried to

1 rely on two and three, and they couldn't even
2 make that. But I don't see any controversial
3 about that, to say that facts of the Cohen case
4 show, that if you are going to rely on two or
5 three, that's --

6 MS. FOU DY: Maybe we should add
7 something that says, an amendment says why they
8 couldn't rely on two or three. I think it leaves
9 it too open. You know, the fact that they didn't
10 meet two or three I think is an important note,
11 and the fact that we don't mention it here says,
12 well, even if you meet two or three, you are
13 still going to be, you know, dinged for one.

14 MS. GROTH: And it goes back to the
15 point that these are jus the cases or
16 institutions where it went to court. When they
17 could not prove two and three.

18 And it goes back as well that
19 two-thirds of the institutions that were reviewed
20 by Title IX met Title IX through two and three.
21 Had they not, there would have been more court
22 cases.

1 So somehow we have got to tie that
2 information in.

3 MR. LELAND: Let me just work on this
4 one sentence here. We sort of started off in one
5 direction and everybody seems to be agreeing with
6 each other but we're wandering all around as to
7 whether we can --

8 MS. FOU DY: I don't disagree to Bob's
9 statement that many practitioners actually feel
10 that. That is a finding. We heard that. No
11 question.

12 It is just that I don't want to give
13 misleading information that even if you meet two
14 or three it is not going to hold up.

15 MR. GRIFFITH: That's not what it is
16 saying. All it is saying is that the Cohen case,
17 the facts, everything about the Cohen case
18 demonstrates that it is tough to get there. It
19 demonstrates these difficulties in trying to get
20 there. Excuse me, Chairman demonstrates the
21 difficulty of getting there through two or three.
22 Here's a school that tried to get there through

1 two and three, they didn't meet the test that --

2 MS. FOU DY: Yeah, that would -- as
3 long as we put in wording that why they didn't
4 meet two or three.

5 MR. GRIFFITH: Yeah. It is not
6 suggesting that they were somehow unfairly
7 treated. It's just showing if you are going to
8 go down two or three, as we all know, it is more
9 difficult to show that than if you have -- that's
10 why it is called safe harbor, right, it is easier
11 to show that. I think that's --

12 MS. GROTH: Well, speaking from an
13 institution that went through a Title IX review
14 and met prong three, I mean it wasn't easy, but
15 we did it. And had we not been able to prove
16 that, we would have ended up in court.

17 And I think the more I read this, the
18 more misleading it is, because it says on
19 line 36, difficulties an institution may face,
20 that's generally speaking, and I'm not so sure
21 that's true.

22 So I think that's where Julie's

1 coming in, if I can speak for you, Julie.

2 But you can meet Title IX regulations
3 through prongs two and three; and yes, there is a
4 perception out there because of the public cases
5 that proportionality is the only safe harbor. We
6 all agree to that. But there is -- there are
7 schools that have met prongs two or three and
8 have not ended up going to court.

9 MR. GRIFFITH: This doesn't say
10 anything differently. It is just pointing out
11 that if you are going to go two or three, it's a
12 different process and there are difficulties
13 involved.

14 MR. LELAND: A couple more comments
15 and then we are going to try to move this thing
16 along.

17 MR. BATES: I thought we had a
18 compromise between taking it out and modifying
19 it. And it seems to me they are saying to take
20 it out.

21 We could get some wording that would
22 accurately reflect what we think happened in

1 relationship to it and go on. There are a number
2 of other places where we are going to talk about
3 prongs two and three. And I'm not sure this is
4 necessarily the place to solve that question.

5 MR. LELAND: Mike.

6 MR. SLIVE: I don't know if this
7 works or not, but would it be satisfactory to say
8 that the difficulties that Brown University
9 faced, rather than generalizing it.

10 MS. FOU DY: Say it again, Mike.

11 MR. SLIVE: I don't know if this
12 helps or not, but if you didn't generalize it and
13 you said that it shows the difficulties that
14 Brown University faced.

15 MR. BATES: Why don't we let the
16 writers --

17 MR. LELAND: Seems to me we have some
18 options here. We can drop the thing out, which
19 people didn't want to do; or we could ask the
20 authors to try to craft something that takes care
21 of people's concerns.

22 Could we just let them try to do that

1 and then bring it back to -- for a chance to look
2 at it later? I understand this is a big issue, I
3 understand what we are taking about is important.

4 But I feel like we just keep going
5 round and round, and I don't think we are going
6 to be able to wordsmith this thing as a
7 collective -- on this particular point.

8 I also would say to people, try to
9 take individual sentences like this in the
10 context of the whole report and the flow of the
11 report. This is not the only thing we are saying
12 about prong two and prong three. This doesn't
13 have to be all-inclusive. Every sentence doesn't
14 have to be all-inclusive to everyone. I
15 understand we want to wordsmith that. I'm
16 acknowledging that.

17 But let's take into consideration
18 this is a report that's very complex, long, and
19 is difficult issues and we can't solve them all
20 in one sentence, although we'll ask the authors
21 to give a run at this one. Okay. To do so.

22 Okay, couple more comments and then

1 we need to move on.

2 Yes, Rita.

3 MS. SIMON: I just don't understand,
4 probably my ignorance, why this is so important.
5 When we come to recommendations, we'll talk about
6 the relative value, importance, complexity of
7 prongs two or three. I just don't understand why
8 this is important and why we can't just let it go
9 as it is.

10 MS. KEEGAN: Ted, can I make a motion
11 we take it out? Because it -- we're talking
12 about the precedence -- does that just create a
13 nightmare? All right. Leaving it in creates the
14 nightmare.

15 MR. BATES: Can I make a motion that
16 we try it with the language. Bring it back, if
17 we don't like it then, get -- take it out.

18 MR. DE FILIPPO: I'll second that
19 motion.

20 MR. LELAND: Thank you.

21 We need to move through these things.
22 I know everyone here is used to being in

1 executive position and having people sort of
2 respond to their opinions and their whims.

3 But we really need to -- if you have
4 something that moves us forward, let's hear it,
5 but otherwise, let's, you know, try not to delay
6 this thing anymore than we have to. We want to
7 be thorough, but gosh.

8 MR. SPANIER: Since we approved these
9 findings last time, it was really the
10 recommendations I think that we expected to come
11 back and literally approve item by item.

12 Could we simply ask if anybody has
13 any comments on any of them. I think by bringing
14 each one up for a full-fledged discussion, we are
15 all trying to find a word we don't like.

16 And frankly, I didn't find anything
17 in the recommendations that were contrary to what
18 we previously discussed, agreed on, negotiated,
19 fine tuned, the wording, I feel like we sort of
20 done it and we are opening up Pandora's box
21 again.

22 MR. LELAND: Well, I'm hesitant to

1 deviate again and spend another half hour talking
2 about the process. I would rather just stick
3 with the process that we've sort of -- unless
4 somebody wants to make a motion to change the
5 process again. But I think we are two or three
6 findings into this thing.

7 And I don't know any -- seems to me
8 the issue like this one is unavoidable. I'm just
9 trying to talk though issues of how we express
10 ourselves when it relates to the Cohen B. Brown
11 case. That's absolutely understandable, that's
12 part of what we have to do, and it is not solved
13 here.

14 But I just -- procedurally, we just
15 keep going round and round, and we need to move
16 forward and get people to vote on things. I'm
17 having difficult organizing you guys, and I
18 apologize for that.

19 Any other -- so I think -- I
20 appreciate that, but I think we'll just stick
21 with what we're doing.

22 Is there any other -- on finding

1 three, other comments. These are good comments.
2 I'm not trying to stifle debate, I just want to
3 move it more quickly.

4 Okay. Hearing none, seeing no other
5 comments on finding three, we'll assume it's
6 passed by consensus.

7 Finding four on Page 24, although in
8 a strict sense the proportionality part of a
9 three-part test does not require opportunities
10 for boys and men to be limited. It has been a
11 factor along with other factors in the decision
12 to cut or cap teams, period.

13 Okay. Comments or questions about
14 this finding?

15 Donna.

16 MS. VARONA: Can I suggest that it
17 has been stated as a factor? Because I -- you
18 know, this goes to the whole argument of is it
19 Title IX unintended consequences of Title IX or
20 is it a resource issue. Has it been a factor or
21 been a stated factor. It's been very clear that
22 some schools have used Title IX as an excuse to

1 cut men's sports. And I would like to add that.

2 MR. LELAND: Well, other -- it's a
3 stated factor.

4 MS. YOW: If you are going to do
5 that, though, Donna, you're going to be going
6 through this whole document and they'll be all of
7 popping up around saying state factor, not a
8 factor, state factor. I mean that's getting
9 ready to happen. I mean it is a factor.

10 MS. KEEGAN: I agree, Ted, it is a
11 factor.

12 MR. LELAND: It seems to me, Donna,
13 that if we take your idea that it is a stated
14 factor, we sort of have to assume that people
15 lied. We have to assume it wasn't really a
16 factor, but they stated that it was one. And if
17 there are athletic directors that said this was
18 the case, we'd have to say they were fibbing, not
19 lying.

20 MS. VARONA: I just want to be very
21 clear that Title IX does not require that men's
22 teams be cut.

1 MR. LELAND: But it says that.

2 Other comments or questions on
3 finding four?

4 The stated factors, no. Finding four
5 is what's before us now, Page 24.

6 Are we ready to approve it by
7 consensus?

8 Okay. Seeing no objections, let's
9 move on to finding number five.

10 Escalating operational costs in
11 intercollegiate athletics may threaten the effort
12 to end discrimination in athletics and preserve
13 athletic opportunities. Escalating operational
14 costs intercollegiate may threaten to end
15 discrimination -- may threaten the effort, excuse
16 me, I thought that sounded wrong. Excuse me, I
17 apologize. Escalating operational costs in the
18 intercollegiate athletics may threaten the effort
19 to end discrimination in athletics and preserve
20 athletic opportunities.

21 Okay. Discussion. This is the arm's
22 race issue.

1 Yes.

2 MS. GROTH: This is not my finding,
3 but after reading this, I'm more comforting
4 instead of made, putting do, they do threaten the
5 effort to end discrimination because I think
6 we've all addressed the escalating cost issue.

7 But since it is not my finding, I
8 look to the authors of that.

9 MR. LELAND: I think anybody can
10 suggest a change. I don't think you have to --
11 are you suggesting? Take may out. Omit that.

12 Is there a consensus on that?

13 Okay. We'll make that change.

14 Other comments on finding five for
15 question one?

16 All right. Hearing no other
17 comments, I assume we'll pass it by consensus, as
18 long as no one objects.

19 Okay. It is passed by consensus.

20 My co-chair is going to jump in here
21 and save me.

22 MS. COOPER: We are going to move on

1 to question two, and we're on Page 25, line 38.

2 Is there adequate Title IX guidance
3 that enables colleges and school districts to
4 know what is expected of them and to plan for an
5 athletic program that effectively meets the needs
6 and interests of their students.

7 That's question two.

8 Finding one, Page 26, line one.

9 There is a great -- there is great confusion
10 about Title IX requirements caused by a lack of
11 clarity in guidance from the Office of Civil
12 Rights, period.

13 Discussion, comments? We pass it?
14 Consensus. Yes.

15 Okay. Finding two, do I need to
16 repeat the question?

17 The Office of Civil Rights
18 enforcement of Title IX can be strengthened. The
19 Office of Civil Rights enforcement of Title IX
20 can be strengthened. Finding two, Page 27, line
21 27.

22 MS. SIMON: Do we need "can" or

1 "should" or "must"? What do we mean there?

2 "Can" means are you physically capable. What
3 does "can" mean?

4 MR. JONES: No, I think "should"
5 would probably be more appropriate for the
6 recommendations.

7 MS. COOPER: It should be changed in
8 the findings or the recommendations? Leave in
9 "can" under findings and deal with the change in
10 recommendations?

11 Consensus?

12 All right.

13 MS. VARONA: May I ask for a
14 clarification.

15 When we discuss the statistics as it
16 relates to teams, et cetera, and how that relates
17 to numbers of men participating in schools, under
18 finding four when we come up with that finding --
19 we're going to go back to finding four. I'm
20 sorry. It is Page 24.

21 When we talk about the decrease in
22 men's sports, et cetera, in teams can we agree to

1 have this statement this paragraph 23 to 37
2 reflect the language that we are working on now
3 as it relates to teams and the cuts and also the
4 demise of women's sports teams as well, because
5 it is not reflected here in this finding, finding
6 four. Statistically.

7 MR. LELAND: Well, since we are sort
8 of following Roberts rules of orders, and since
9 we've already passed this, it seems to me, we've
10 been through this before, you need to make a
11 motion to reconsider finding four.

12 MS. VARONA: Well, because I think we
13 have to include the language that we're already
14 working on in finding four that was at the
15 beginning of the report, as it relates to cutting
16 of teams and numbers of athletics, et cetera, we
17 are working on language that appears in the
18 beginning of the report, but we need to reflect
19 it in the findings as well. Because when we talk
20 about.

21 MR. LELAND: It was referred to in
22 the Background section?

1 MS. VARONA: Yes, but I suggest that
2 we also put it into the findings.

3 MR. LELAND: Yeah, but did we not do
4 that when we were discussing finding four?

5 MS. VARONA: No, we did not. I was
6 on a planet somewhere, I was looking at the
7 language at the top and I -- when you get to the
8 testimony about how the statistics are in the GAO
9 report and the language we're working on as it
10 relates to the decrease in men's teams, it's
11 not -- vis-a-vis women's teams, in the overall
12 numbers of male participation, it isn't clear
13 here that -- is not reflected here.

14 MR. LELAND: Yeah. I think
15 procedurally, though, I think you need to make a
16 motion to reconsider --

17 MS. VARONA: Can I make the motion
18 that include --

19 MR. LELAND: I think you have to make
20 a motion to reconsider finding four.

21 MS. VARONA: I would like to make a
22 motion to reconsider finding four so we can

1 include the language that's being worked on as it
2 relates to statistics of men's and women's.

3 MR. LELAND: Okay. You just want to
4 include something in there that was your
5 intention to do, but it just didn't get done
6 when --

7 MS. VARONA: Right, got past me.

8 MR. BOWLSBY: It seems to me, though,
9 that the finding only pertains to the capping or
10 elimination of men's programs.

11 I don't see anything in the finding
12 that would cry out for that sort of data;
13 although, I will have to say it seems like at
14 some point in time, all of the data we present in
15 this report is going to have to be compared to
16 make sure it is consistent throughout document.
17 That would seek to get at your point, I think,
18 Donna.

19 MS. VARONA: I am just concerned that
20 it is in the places it should be.

21 MR. LELAND: Okay. Since this was by
22 consensus, I assume that Donna voted on the

1 prevailing side.

2 MS. KEEGAN: Ted, I was just going to
3 say. In this one, I think, Donna, it is
4 described better than in most places.

5 And I'm just -- I think the point we
6 need know when we are talking about teams and
7 when we are talking about participation.

8 This paragraph does that, and this is
9 a comment about elimination of men's teams. I'm
10 not comfortable -- I'm not sure what we are
11 proposing, if there's something specific you
12 wanted to add. And so that's jus the reason I'm
13 not going to vote in favor of reconsideration.

14 MR. LELAND: Okay. Anyone else want
15 to discuss why we might reconsider or not?
16 There's a motion. Is there a second?

17 MS. FOUDY: I'll second the motion.

18 MR. LELAND: Okay. There's a motion
19 and second to reconsider. Any discussion on the
20 motion to reconsider?

21 Okay. All those in favor of
22 reconsideration, raise your hand.

1 Three.

2 All those opposed. Okay. Voted not
3 to.

4 We are now at lunch time --

5 MS. PRICE: I'm sorry. I didn't get
6 a chance to count the noes.

7 MR. LELAND: You are against
8 reconsideration.

9 MS. FOU DY: Ted, I'm sorry. I'm
10 going to have one thing I have to go back on,
11 too, so I'm going to have to make a motion. I
12 was in the bathroom.

13 I just have a question on finding
14 five, on where this information comes from. The
15 last line, it should be noted.

16 MR. LELAND: What page?

17 MS. FOU DY: Page 25, line 35.

18 It should be noted that many of the
19 athletic opportunities that have been lost have
20 occurred at the division two and three levels. I
21 think that's a typo. It says two and two. I'm
22 assuming that's two and three.

1 Am I correct on that, two and three?
2 Because when I look at the most GAO report, it
3 shows 30 percent have been lost at the division
4 one level, 27 percent at division two, and 18 at
5 division three. So maybe we are saying in the
6 aggregate.

7 MR. LELAND: You mean you would feel
8 more comfortable, when you said in the aggregate,
9 it should be noted in the aggregate --

10 MS. FOU DY: I think that's confusing.

11 MR. LELAND: We have to have another
12 motion to reconsider.

13 So you want to make that motion to
14 reconsider that?

15 MS. FOU DY: But I mean, if you look
16 at.

17 MR. LELAND: No, wait, now we have
18 to --Julie, procedurally --

19 MS. FOU DY: Yes. Sorry.
20 Procedurally, yes, I would like to motion to
21 reconsider that.

22 MR. LELAND: Okay. Is there a

1 second?

2 A motion seconded to reconsider,
3 let's discuss the reconsideration motion.

4 Any further discussion?

5 All right. All those in favor of
6 reconsideration, raise your hand?

7 Three.

8 All those opposed? Looks like we are
9 developing voting blocks here.

10 MS. PRICE: I'm sorry, raise your
11 hands again.

12 MR. LELAND: Eight for opposed.

13 MS. COOPER: Okay. We are going to
14 break for lunch right now and come back with
15 question three. Thanks.

16 (Recess)

17 MS. COOPER: Question three. Is
18 there further guidance or other steps needed at
19 the junior and senior high school levels where
20 the availability of absence of opportunities will
21 critically affect the perspective interest and
22 abilities of student athletes when they reach

1 college age.

2 That's question three, and we are on
3 finding one. Page 28. Currently in structuring
4 their athletic programs, colleges are not
5 appropriately responsive to athletic
6 participation at the high school level.

7 That's finding one. All right. I'll
8 read the question again on Page 27, line 39.

9 Question three: Is further guidance
10 or other steps needed at the junior or senior
11 high school levels, comma, where the availability
12 or absence of opportunities will critically
13 affect the prospective interests and abilities of
14 student athletes when they reach college age.

15 Finding one, Page 28, line one.
16 Currently, comma, in structuring their athletic
17 programs, comma, colleges are not appropriately
18 responsive to the athletic participation at the
19 high school level.

20 Any discussion for or against?

21 A consensus for?

22 Okay. We'll move on.

1 Question four.

2 MR. LELAND: Question four, Page 28,
3 how should activities such as cheerleader or
4 bowling factor into the analysis of equitable
5 opportunities.

6 Finding one. The Office of Civil
7 Rights utilizes flexible guidelines in helping
8 schools determine whether an activity is a sport.

9 Comments and concerns, thoughts.

10 So -- the sound of silence.

11 MS. FOU DY: I have one comment.

12 Page 29, line 38. Thus, emerging
13 sports, including cheerleading and bowling as
14 well as many others, may help schools meet their
15 commitment to offer athletic participation
16 opportunities to their students that meet the
17 requirements of Title IX.

18 I ask that we just add, "if they meet
19 the OCR sport criteria test." Just for
20 clarification.

21 MR. LELAND: Sounds -- anybody
22 concerned about that add? Sounds like a friendly

1 amendment, to the end of line 40.

2 Any other comments or concerning
3 about finding number one from question four.

4 Is there a consensus for approval?

5 Here and seeing no dissent, let's
6 move on to question five.

7 MS. COOPER: Okay. Question five,
8 Page 30, line one. How do revenue producing and
9 large roster teams affect the provision of equal
10 athletic opportunities? The Department has heard
11 from some parties that whereas some men athletes
12 will walk-on to intercollegiate teams, without
13 athletic financial aid and without having been
14 recruited, women rarely do this. Is this
15 accurate, and if so, what are the implications
16 for Title IX analysis.

17 Finding one, Page 30, row nine, or
18 sentence nine, number nine, that. Title IX does
19 not require mirror image men's and women's sports
20 programs. Title IX does not require mirror image
21 men's and women's sports program.

22 MR. LELAND: Comments and questions.

1 Let's move forward.

2 Finding two. Page 30, line 34.

3 Artificial limits on walk-on opportunities will
4 not benefit anyone.

5 MS. SIMON: Mine says do not.

6 MS. COOPER: Do not. I'm sorry. Did
7 I say will not? That's what I meant. Do not.
8 Maybe I wanted to say will not.

9 Artificial limits on walk-on
10 opportunities do not benefit anyone.

11 Okay. Comments.

12 MS. VARONA: I just wanted to -- I
13 think through this process, there's been no real
14 clear definition of exactly what a walk-on is.

15 MS. COOPER: Well, it is in the
16 glossary what we intend by this -- for the
17 purpose of this document, what we intend a
18 walk-on to be.

19 MS. SIMON: Also line 38.

20 MS. VARONA: Okay. I'm just --

21 MR. DE FILIPPO: On line 38, though,
22 we determined earlier that a walk-on could be a

1 recruited walk-on or a nonrecruited walk-on. We
2 did make that change.

3 MS. GROTH: Can we talk about this
4 one a little bit more, as to what exactly it
5 means? I mean, I've read it over and over, and
6 then the paragraph underneath.

7 But are you, Gene, trying to get away
8 from some of the women's programs, the men's
9 programs inflating walk-ons, where -- what
10 exactly does this one mean?

11 MR. DE FILIPPO: I'm not sure if --
12 how this one got attributed to me. But I will
13 accept it because it has my name on it.

14 No, I just feel like the capping of
15 teams, which is really what artificial limits on
16 walk-on opportunities, I just think I would love
17 to be able to see if schools can really support
18 them. You know, both males and female have an
19 opportunity to walk on to teams.

20 MS. GROTH: Which gets us back to
21 prongs two and three, and probably my biggest
22 concern about the three prongs that two and three

1 have now been viewed as prongs where you can now
2 accommodate walk-ons.

3 MS. YOW: Cary, that's -- I hear what
4 you are saying, and from your experience, I know
5 that it would be true.

6 But he's not -- what he's saying is
7 not flying in the face of what you are saying.
8 You know, for institutions whose legal staffs
9 have told them that they are to abide by prong
10 one safe harbor, this is a huge issue for us.

11 That's all he is saying. He is not
12 saying what you are saying is not true. He is
13 saying that this is a situation that exists, and
14 it is accurate, it is true. It does.

15 MS. FOU DY: I just have a problem
16 with the language I guess. The artificial limits
17 on walk-on opportunities do not benefit anyone.
18 I just feel like for a finding, it is real
19 strong. It is almost like a recommendation. I
20 would rather put it in more of a statement.

21 We know the testimony we have heard
22 that, you know, walk-on opportunities are

1 limited.

2 I guess because my biggest issue is
3 that with walk-ons you have in it an innate sense
4 of cultural bias and it addresses it there. And
5 the fact that people say men walk on more than
6 women because they have larger recruiting
7 budgets, operating budgets. It is more
8 attractive for men to play.

9 The corresponding result is if we
10 don't count them, then it is going hurt the
11 women's side. So I'm not sure that I agree with
12 the finding statement. Artificial limits on
13 walk-on opportunities do not benefit anyone.

14 MR. BOWLSBY: I think that is exactly
15 the point, that artificial limits on walk-on
16 opportunities for one gender do not create
17 additional opportunities for the other gender. I
18 think it is a statement of fact.

19 Capping sports is not going to create
20 a single opportunity; that's what we heard. We
21 will have a chance to debate that during the
22 recommendations portion of this. I think it is

1 an accurate finding. Perhaps it could be better
2 stated, but I think it is accurate.

3 MS. KEEGAN: Cynthia, I was going to
4 suggest maybe on Page 31, lines 15 and 16 are
5 even more specific. Walk-ons that mean --
6 walk-on limitations that means one sex loses the
7 opportunities to walk on and no corresponding
8 benefit is gained by the other sex, that's a
9 problem. And it is being done and seems to me we
10 need to address it. If that's not the way to say
11 it, maybe this is more specific.

12 MR. DE FILIPPO: I think those two
13 lines do a better job of explaining it than I
14 did. So I'll go with you on those two lines.

15 MR. GRIFFITH: I would strike
16 enforcement from line 16, it's not the intent of
17 Title IX.

18 MS. GROTH: If we give our walk-ons
19 the same benefits that we give our student
20 athletes with scholarships, then they cost money.

21 Therefore, if we were in a position
22 to add opportunities for women or another men's

1 sport, we are less likely to do so because our
2 resources may be tied up with walk-ons, by
3 choice, per institution. You may choose to have
4 more walk-ons in men's programs or cap your
5 sports and offer more sports for men.

6 But the reality is the walk-on still
7 costs money. At least at my institution, it
8 does. You get the same benefits with the
9 exception of a scholarship. So to say that
10 capping the walk-ons would not provide additional
11 opportunities, I think is an unfair statement.

12 MS. KEEGAN: Then in that case, Cary,
13 it would not apply. If what you are doing is a
14 systematic way of managing your teams or whatever
15 so you say there is an allocation of funds here,
16 we are going to have this many members yada,
17 yada, but what we're hearing is that this is a
18 specific attempt to meet proportionality, assumed
19 proportionality requirements, numbers of kids,
20 and if the reduction of one team does not result
21 in the creation of benefit of another, it is
22 silly. So why do it.

1 Specifically, if saying we are not
2 going to spend that much money on this sport,
3 we're going to spend it on this one, that's a
4 different exercise, and that's left to the
5 institution as far as I know.

6 But automatically doing some of this
7 number stuff is not making sense. That's my
8 belief. And I think this is what this is trying
9 to say.

10 Says for reasons other than those
11 related to lack of resource or coaching
12 decisions. That would make it artificial.

13 MS. GROTH: I think this is very
14 confusing to me. Maybe I don't get it. I know
15 what we're trying to get at, but it just doesn't
16 read well to me. And at this point, I don't have
17 any recommendations. I think this needs work.
18 Because I know what a intent is, I think. But it
19 may be sending a different message.

20 MS. VARONA: Can you say in your own
21 words what you think the intent is to help us?

22 MS. GROTH: Well, initially, I

1 thought this was meant to make more sense with
2 our caps in how we count participation.

3 But I'm not sure this isn't implying
4 that walk-ons should not count in any equation.

5 And it ties into the recommendation
6 where we don't count walk-ons. And I want to
7 make sure that is either not the meaning of this,
8 the intent, or it is.

9 So I was a little confused by it,
10 that's all. Because I personally have a problem
11 with not counting walk-ons, because they are a
12 warm body, male or female in your program, and
13 they cost us dollars, resources.

14 MR. BOWLSBY: Let me try and provide
15 an example of what we are trying to get at.

16 We don't cap programs at the
17 University of Iowa. Our philosophical position
18 is we're going to enhance and expand
19 opportunities for young women without diminishing
20 the quality or the quantity of opportunities for
21 young men.

22 On our golf team, we have 16 men and

1 we have 4.5 scholarships, whatever the maximum
2 is.

3 On our women's teams, we also have
4 the maximum scholarships, I think it's eight, or
5 something like that, and we have eight kids on
6 the team.

7 Now, the budgets are the same, the
8 opportunity to travel is the same, all of those
9 elements are the same.

10 Is taking those eight males that are
11 participating on that team and telling them they
12 can't participate going to create any additional
13 opportunities?

14 Well, it is not. Because whatever
15 the budget is what the budget is. And you are
16 going to spread that budget over 16 participants,
17 or you are going to spread it over eight
18 participants.

19 That's what's happening on many
20 campuses. And I think that's the point of this
21 to identify that going through the exercise of
22 diminishing those walk-on opportunities is not

1 going to necessarily create any opportunities in
2 any other position. It isn't a zero sum
3 proposition. And I think that's real and it's
4 valid.

5 MS. VARONA: Sorry.

6 MS. COOPER: Okay. So the finding
7 stays?

8 MS. FOU DY: Can we vote?

9 MS. GROTH: This might be a good time
10 to bring up the NCAA scholarships. Because I
11 know it was one of my recommendations.

12 But going along with what you said,
13 Bob, and I agree, using the example of golf, or
14 let's use men's and women's tennis.

15 NCAA allocates eight full
16 scholarships, head count, to women's tennis. 4.9
17 equivalencies to men's tennis.

18 Our women's tennis coach will tell
19 you that she will go out and recruit eight tennis
20 players, maybe nine. Because those players are
21 used to getting a full scholarship, head count.

22 Whereas the men's team, particularly

1 in the example, has a different philosophy. They
2 will go get ten, 12 and 14 players and split that
3 money up amongst those players.

4 And I believe the head count in
5 equivalencies has some part in this walk-on
6 debate. Because equivalencies encourage walk-ons
7 because a male athlete in our institution will
8 walk on, and if he gets \$200 in equivalencies
9 sport to play wrestling, to compete in wrestling
10 or tennis or golf, it is like a full ride to one
11 of our women's programs in head count.

12 There is just a different philosophy
13 in how you recruit those sports, and I think it's
14 damaging or could be damaging to the walk-on
15 situation in various women's programs.

16 MR. BOWLSBY: I don't disagree with
17 that. We can't apply a uniform standard in one
18 part of the management of it and disparate
19 standard in another part of it.

20 I have long thought that the issue of
21 head count versus equivalency is not a favorable
22 thing for women's participation. It is there

1 because reductions were made on the men's side
2 and were envisioned as cost reduction measure,
3 and then of course when it came to actually do
4 it, it became apparent that we weren't going to
5 be able to make these reductions on the women's
6 side.

7 Those things are historical, they've
8 been around for a long time. I don't think the
9 head count numbers in so many women's sports is a
10 positive thing for growth in college athletics.
11 The approach, to use your example, that men's
12 tennis uses, is probably healthier in terms of
13 attracting more young women to participate at the
14 collegiate level, because instead of having eight
15 full rides, they could have 16 kids that are
16 getting a half ride.

17 MS. COOPER: Let's vote on keeping
18 this finding in.

19 All in favor as keeping it as is --
20 all in favor of keeping it in.

21 MS. PRICE: Nine in favor.

22 MS. COOPER: Opposed?

1 MS. PRICE: Three opposed.

2 MS. COOPER: Okay. Stays in.

3 Let's move on to finding three,

4 Page 31, lines 24.

5 A one-time survey of student interest
6 in athletics would not adequately reflect women's
7 interest, since interest levels can change over
8 time.

9 MS. SIMON: Cynthia, I don't know
10 what to do with this. I don't know whether I
11 should save this for the recommendation stage or
12 not. But let me read how I wish this finding
13 read.

14 Although a one-time survey of student
15 interest in athletics would not adequately
16 reflect women's interest, continuous surveys on a
17 regular basis might accurately predict and
18 reflect men's and women's interest in athletics
19 over time.

20 How can I fill that in? Does it
21 belong in findings, does it go to
22 recommendations? I think that finding doesn't

1 mean anything. Of course a one-time survey is
2 ridiculous.

3 MS. COOPER: Further discussion?

4 MS. FOU DY: I don't -- like Gene I'm
5 not sure how my name applied to this one with
6 this specific language, but since my name is
7 there, Gene, like you, I'll talk about it.

8 I'm more comfortable with the wording
9 that apply to -- would specify what prong we are
10 using here. I have wording such as under no
11 circumstances should interest surveys be used to
12 set participation opportunity standards under
13 prong one.

14 Now, the issue that Rita is talking
15 about, I think we've talked about in length in
16 Philadelphia where there is a place for surveys,
17 and that's under prong three. I think that comes
18 up later in recommendations, we can address that.

19 But that is the language I would be
20 more comfortable with.

21 MS. SIMON: Then I would suggest we
22 simply eliminate finding three.

1 MR. GRIFFITH: I second that. Let's
2 move it to the recommendations.

3 MS. COOPER: Okay. Let's vote on
4 taking it out completely, finding three.

5 All in favor of taking it out
6 completely?

7 MS. PRICE: Ten.

8 MS. COOPER: All opposed?

9 MS. PRICE: Ten to zero.

10 MS. COOPER: All right. Finding
11 four. Legislative action and inaction, as well
12 as lack of support, counsel against exempting
13 revenue producing sports from consideration of
14 athletic participation in Title IX enforcement.

15 That's Page 32 starting with line
16 one.

17 MS. FOU DY: Okay. Like the previous
18 one, my name is on this and I'm going to talk
19 about it.

20 But I don't know that language --
21 that language I don't think is my language.

22 I would be more comfortable with just

1 the last line on Page 32, line 13, Congress has
2 previously declined to exempt revenue producing
3 sports from Title IX consideration. Any change
4 in that policy would have to be generated by
5 congressional action. And just leaving that as
6 your finding.

7 MR. DE FILIPPO: Do we need net
8 revenue producing there?

9 MS. FOU DY: Yes.

10 MR. DE FILIPPO: I think that would
11 be kept in.

12 MR. LELAND: Change that throughout.

13 MS. FOU DY: I actually won one?

14 MS. COOPER: I think so. Is there a
15 consensus to support that change?

16 Yes. All right.

17 MR. LELAND: Question six on Page 32,
18 in what ways do opportunities in other sports
19 venues, such as Olympics, professional leagues,
20 and community recreation programs, interact with
21 the obligations of colleges and school districts
22 to provide equal athletic opportunity? What are

1 implications for Title IX.

2 There's one finding under there.
3 Opportunity at the Olympic and professional level
4 enhances student interest in participating in
5 these sports in high school collegiate programs.

6 That's one finding we have here.

7 Discussion?

8 Relatively noncontroversial.

9 Okay. It passes by -- unless I see
10 dissent, passes by acclimation or by consensus.

11 So on to question seven.

12 MS. COOPER: Apart from Title IX
13 enforcement, are there other efforts to promote
14 athletic opportunities for male and female
15 students that the Department might support, such
16 as public private partnerships to support the
17 efforts of schools and colleges in this area.

18 Finding one, Page 33, line two.

19 An increase in allowable scholarships
20 for women's sports might help schools to come
21 into compliance with Title IX.

22 MS. YOW: The comment on that is

1 relative to basically what Cary was talking
2 about -- what Bob and Cary were talking about.
3 Also head count sports, obviously it is valid.
4 One more scholarship equals one more participant.

5 But even more valuable in the
6 equivalency sports where one can spread out a
7 single scholarship over four, five, six different
8 individuals.

9 In -- prior to women's sports being
10 in the NCAA, when we were in the AIEW, there
11 were, in various cases for different sports,
12 additional scholarship opportunities offered at
13 that time that later were reduced when we went
14 into the NCAA.

15 There's a need there. If you are
16 carrying 30 young women on a field hockey team to
17 suggest that, say, 12 scholarships is enough, too
18 much, I mean, there's plenty of room there for
19 growth, and opportunity and interest by those
20 students athletes, I'm sure they're interested in
21 the money, and sure their parents are interested
22 in securing those funds. The more money we

1 provide, the more opportunity we have to attract
2 the walk-ons and to keep the ones out there that
3 are even getting, as Cary suggested, \$200. 200
4 could become 600.

5 So I think it strengthens the women's
6 sports program, top to bottom, or would. We
7 don't have the authority to do that.

8 MS. COOPER: Any other comments?

9 MS. VARONA: I just wonder if it is
10 still the situation that the NCA (sic) would
11 welcome it. Have they changed their position on
12 that?

13 MS. YOW: Donna, we did hear from
14 Judy Sweet (ph) was here, and we were talking
15 about it, maybe at San Diego, I can't remember.

16 Wherever we were, she said that
17 women's issues committee there was a body that
18 she referenced that was now more open to it than
19 they had been at one point in time.

20 MS. VARONA: So can we just strike
21 although through Title IX?

22 MS. YOW: What line are you on?

1 MS. VARONA: Eight though 11. Excuse
2 me, eight and nine.

3 MS. YOW: You mean the clause?

4 MS. VARONA: Yeah, sure.

5 MS. YOW: Striking, Although the
6 Commissioners recognize that the possibility may
7 not be welcomed by the NCAA, just start it has
8 been.

9 MR. DE FILIPPO: Or, Debbie, you
10 could say NCAA membership because it has been
11 brought up at the management counsel before. And
12 those people with more broad based sports
13 programs would like to see the other schools
14 adding additional sports. Those with, you know,
15 less sports want to have more scholarships.

16 So I think we could leave it there.
17 It should be NCAA membership. There's two ways
18 to go about this. You can either add sports or
19 you can add scholarships.

20 MS. YOW: And there are those of us
21 who already have broad-based programs don't need
22 to add additional sports but want to add

1 additional scholarship opportunities to the women
2 that we have participating.

3 MR. SPANIER: I like the idea of
4 taking that sentence out because I don't think we
5 should be guessing what the NCAA might do.
6 That's really a decision ultimately for the
7 governing boards of the NCAA, and that group
8 changes it thinking over time as the membership
9 evolves.

10 But I do think what's very relevant
11 to this discussion, which is not inconsequential
12 issue for this Commission, is do you have a
13 better shot at promoting opportunities for women
14 by adding new women's sports or by creating
15 additional scholarship opportunities in existing
16 sports.

17 I received a call recently. I had a
18 nice, long talk with Donna Shillalah (ph) about
19 this who is now back in the university
20 president's roll, who's very eager to see -- her
21 position is add additional scholarship
22 opportunities because you get more bang for your

1 buck that way. It is much easier to do than
2 adding new sports.

3 But the counter argument to that
4 would be that you are not adding participation
5 opportunities, because you can only put so many
6 people on the field at a point and you have more
7 people sitting on the bench with scholarships.

8 MS. YOW: Maybe. Fact of the matter
9 is if you add more scholarship opportunities in
10 existing women's sports, then you are going to
11 have more people attracted to the sport as
12 walk-ons who might end up with scholarship
13 support.

14 We kind of have this artificial --
15 especially in equivalency sports where one can
16 spread that money out.

17 You know what it does provide is
18 greater degree of flexibility. You could go
19 either way. And I understand everything you just
20 said.

21 MR. SPANIER: Of course, overlying
22 this whole issue is a cross-containment issue.

1 Not to put a wet blanket on the whole discussion.

2 But if you would add more scholarship
3 slots for women, what's going to give elsewhere
4 in the budget?

5 Now, one could argue that it
6 exacerbates the problem the Commission has been
7 struggling with because there's more scholarships
8 for women in a budget that might be relatively
9 fixed or declining. Where do you make the cuts
10 to deal with that? Are you put position of
11 having to cut out more opportunities for men or
12 skew even further the head count versus
13 equivalency problem.

14 I don't have an answer to this, but I
15 do think it is a very important topic to get on
16 the table.

17 MS. YOW: I do, too. You know, if
18 institution is not in compliance with Title IX, I
19 would suggest they need to get into compliance,
20 and this would be one method to do that. And I
21 would personally be sorry if they had to make
22 cuts in areas where they wouldn't want to, but

1 that would be a necessary situation.

2 MR. SPANIER: Well, I'm just
3 ruminating on this. I'm in favor of including
4 this, but I think it is good idea to take that
5 sentence out about the NCAA. Because we are
6 giving our opinions here, not guessing what
7 somebody else's is.

8 MS. STROUP: Look at the last
9 sentence, which is really framed like a
10 recommendation, not consistent with the way we've
11 been doing findings.

12 And it should really be tied probably
13 to recommendation number 12 on Page 37 where we
14 talk about recommendations related to
15 scholarships.

16 MR. BATES: Are you suggesting we
17 delete that?

18 MS. STROUP: Yeah, I was suggesting
19 that you delete the last sentence so it's not a
20 recommendation in the finding section. Back --
21 it ties into recommendation 12, which is already
22 there, about reviewing NCA scholarship numbers.

1 MS. PRICE: Just for a point of
2 clarification, it is proposed you remove the
3 entire sentence regarding the NCAA, or the first
4 half of the sentence and keep it after the comma.
5 And I got lost in that --

6 MS. YOW: First clause.

7 MS. PRICE: First clause. Okay.

8 MS. COOPER: Let me read the part,
9 and then you guys tell me should there be more.

10 Although the Commissioners recognize
11 that the possibility may not be welcomed by the
12 NCAA. That's it?

13 MR. BATES: That's out.

14 MS. COOPER: Okay. And then we go
15 down to line 15, and we start at "while" and we
16 end on line 17 at "NCAA" period. That's should
17 be taken out.

18 And we have consensus.

19 MS. FOUDY: Just moved, not taken
20 out. Moved to Page 37. It's more of a
21 recommendation.

22 MS. COOPER: It's there already.

1 Okay. So we are taking it out here. Yes.

2 MR. LELAND: We are done with
3 recommendations section and -- the finding
4 section, excuse me.

5 And Julie?

6 MS. FOU DY: I had one procedural
7 issue. When I was in the restroom, the finding
8 number 5 on Page 25, I'm going to request that a
9 Port-a-party be brought in here, please, so I can
10 knock twice so I can vote.

11 I didn't get a vote on finding five
12 and I wasn't allowed to reopen that one.
13 Page 25, the escalating operation of cost. I
14 don't disagree with the language of the finding.

15 My issue is with the last sentence.
16 It should be noted that many of the athletic
17 opportunities that have been lost have occurred
18 at the division two and three levels because I
19 think that misrepresents the statistics.

20 So I would just ask that we open it
21 up, instead of -- for a vote, instead of
22 consensus. Because I don't want to give

1 consensus on that because I don't agree with that
2 last language. And I missed that vote.

3 MR. LELAND: Didn't we amend that
4 last sentence anyway or did we not?

5 MR. DISKEY: Yes.

6 MR. LELAND: Okay. Seems to me that,
7 Julie, to get to where you want to go, we have to
8 have a motion to reconsider.

9 MS. VARONA: We never voted on it.

10 MR. BOWLSBY: Ted, I don't believe
11 that a correction would require a
12 reconsideration. I think if it is a clerical
13 matter, I think you could go back.

14 It is quite obvious that it is a
15 mistake rather than a change in the sentiment.

16 MR. LELAND: I think she wants the
17 whole sentence out. I don't think you could
18 reconsider a motion twice.

19 MR. SPANIER: You already read us
20 what the numbers were and told us that they were
21 accurate.

22 MS. FOUDY: No, I was saying that it

1 misrepresents because the number of division one
2 is actually greater, 30 percent, division two was
3 27, division three, was 18.

4 So you could also say the numbers for
5 division one and three in aggregate are more than
6 division two.

7 I just think it is misleading because
8 our statement up above the finding is very
9 strong, that the escalating operation costs in
10 collegiate athletics threatens the effort to end
11 discrimination in athletics and preserve athletic
12 opportunities.

13 And I think that last sentence here
14 misrepresents that. By saying, actually, the
15 majority of losses come at the division two and
16 three levels.

17 MR. LELAND: It doesn't say majority.
18 It says many.

19 Okay. So I'm worried procedurally
20 here. In order to be fair to each other -- we
21 don't give hall passes. We probably ought to
22 give hall passes.

1 MS. FOU DY: No Port-o-potty.

2 MR. LELAND: I'm concerned. I think
3 we need a motion to reconsider to discuss this
4 any further, otherwise we have to go on to
5 recommendation. We are in effect changing
6 business we've already done.

7 MS. FOU DY: I guess my point is being
8 that since it was a consensus vote and I wasn't
9 here.

10 MR. LELAND: That still changes the
11 action that we took. We took a consensus action.
12 We took an action, a consensus.

13 Julie, if you want to change that,
14 you have to make a motion to reconsider.

15 MR. BOWLSBY: But we've already
16 defeated a motion to reconsider.

17 MS. FOU DY: I would like to re-motion
18 a motion to reconsider.

19 MR. LELAND: We will accept that
20 motion. There is a motion before us to
21 reconsider. All -- any debate, discussion?

22 MS. VARONA: The only debate is I

1 think if we have the right statistics, we should
2 add them to this motion. That's my debate about
3 that. That's why I think we should open.

4 MR. LELAND: So you are in favor of
5 reconsideration?

6 MS. VARONA: Yes.

7 MR. LELAND: Okay. Other comments
8 about reconsideration of finding five on Page 25.

9 MS. GROTH: So the reconsideration if
10 we were to vote to do so, you would just want to
11 add those statistics for division one, two, and
12 three. Wouldn't open up the whole -- we would be
13 adding additional information.

14 MS. FOU DY: If I can add the
15 information, then I would like to vote that I did
16 not approve that language.

17 MR. LELAND: We already ruled that
18 you can't do that unless we can get this thing
19 reconsidered. We have to vote that we as a
20 group, being fair to each other, are willing to
21 go back and consider an action we have already
22 taken. So that's where we.

1 Are any other comments on the motion
2 to reconsider.

3 MR. BATES: Ted, I'm wondering if we
4 could accomplish that without the vote. Seems to
5 me she is asking that we simply include the
6 numbers for division one, two, and three.

7 MR. LELAND: That's not what she
8 asked. She said her intent was to remove that
9 sentence. Let's be clear.

10 MS. FOUDY: No, Cary then said you
11 would be comfortable with adding the three
12 division numbers, and I said yes.

13 MR. BATES: We could do that if
14 there's some agreement to that.

15 MR. LELAND: I'm uncomfortable doing
16 this unless we reconsider it. Again, you have to
17 give the Chair a little bit of prerogative to try
18 to move this thing forward and we would all just
19 be able to throw our opinions out and that's what
20 we're used to doing.

21 But let's try to be fair to everyone
22 here. Because there are some people that aren't

1 going to agree with this. And then they are
2 going to have a grievance because they didn't get
3 treated fairly.

4 We've passed this, we took the
5 action. And now we are where we are. We have
6 people who want to reconsider.

7 Okay. Any other comments on the
8 motion to reconsider?

9 Okay. All those in favor, raise your
10 hand, motion to reconsider.

11 MS. PRICE: Five.

12 MR. LELAND: Opposed?

13 MS. PRICE: Eight opposed.

14 MR. LELAND: Any more discussion or
15 issues regarding the findings before we move on
16 to the recommendations?

17 MS. COOPER: Okay. Page 34,
18 recommendation one, line 12. The Department of
19 Education should reaffirm its strong commitment to
20 equal opportunity for girls and boys, women and
21 men.

22 Any discussion for or against or do

1 we have a consensus and we could move on?

2 MR. BATES: Ted, let me ask, in the
3 introduction to this, the statement that says,
4 some of these recommendations may prove not to be
5 feasible.

6 As I read this, I'm just wondering if
7 we need to say that. Because I'm assuming that
8 we are not going to make recommendations that we
9 don't consider feasible. It is necessary. It's
10 just a question.

11 MR. LELAND: Well, I worry that some
12 of the Commissioners have indicated they are not
13 comfortable knowing what the full implications of
14 some of these recommendations might or might not
15 be.

16 So it seems to me the caveat of
17 saying that may prove not to be feasible is an
18 appropriate protection for those people who might
19 like the Secretary of Education and/or the
20 government or someone else to take a strong look
21 at a proposal but -- and want to move the
22 proposal forward, but aren't convinced they know

1 all the outcomes, both intended and unintended
2 that might come from that. That's what I've
3 heard from Commissioners.

4 Let's open it. I think it is a good
5 question.

6 MS. SIMON: Percy, what about if we
7 wait and consider that issue when we are through
8 with our recommendations. I am sympathetic to
9 what you are saying.

10 But why don't we wait and see what
11 our recommendations actually are and then look at
12 your --

13 MR. BATES: Well, I'm okay with that.
14 It just sounds to me like an apology before you
15 get started, and that seems to me don't need to
16 do.

17 MS. SIMON: That's why I say let's
18 wait on that introductory language until we are
19 through with the recommendations.

20 MS. GROTH: Rita, are you suggesting
21 that we wait on lines three through eight or just
22 that sentence because I have the same concern

1 with the second sentence where it says, All of
2 these recommendations are designed to strengthen
3 and improve Title IX enforcement.

4 I'm not so sure we know that until we
5 go through all of these.

6 MS. SIMON: I would adjust my
7 amendment to say let's wait on the introductory
8 paragraph about recommendation until we are
9 through with our discussion and see what our
10 recommendations actually are.

11 MR. LELAND: If it's okay with
12 everybody and we will reorder and make sure we
13 come back to that paragraph when we have
14 completed.

15 Is that okay, Percy.

16 MR. BATES: Yes.

17 MR. LELAND: Thank you.

18 MS. COOPER: Are we still on number
19 one? Do we have a consensus to support number
20 one? Recommendation number one.

21 MS. VARONA: I would like to add.

22 This is a suggestion.

1 The Department of Education should
2 reaffirm its strong commitment to equal
3 opportunity for girls and boys, women and men,
4 and to the elimination of continuing
5 discrimination against girls or to strong
6 enforcement of Title IX's purpose to level the
7 playing field.

8 MS. SIMON: To the extent apparently
9 I'm responsible for this statement, I would
10 prefer that we leave the statement as it is
11 rather than add the additional phrases.

12 MR. GRIFFITH: If I can ask, Donna,
13 what does that add to it?

14 MS. VARONA: I think it says it
15 stronger. It is not commitment. There is still
16 discrimination. We know there is still
17 discrimination.

18 MR. GRIFFITH: This is just saying,
19 just telling the Department of Education, we want
20 you to press forward.

21 MS. VARONA: Well, I guess I want it
22 in stronger terms. Because there is still

1 discrimination, and we want -- the intent is to
2 level the playing field.

3 MR. GRIFFITH: Can you read it again,
4 then, I'm sorry.

5 MS. VARONA: Okay. Either one of
6 these.

7 And to the elimination of continuing
8 discrimination against girls, or to the strong
9 enforcement of Title IX's purpose to level the
10 playing field.

11 I think the second one would be more
12 be more a middle ground. And to the strong
13 enforcement of Title IX's purpose to level the
14 playing field.

15 That means to make things equitable
16 between the sexes.

17 MR. LELAND: Donna, is your motion an
18 either or?

19 MS. VARONA: You can -- I withdraw
20 the first one and recommend the second.

21 MR. LELAND: Okay. So our authors
22 have a chance to --

1 MS. VARONA: Or to strong enforcement
2 of Title IX's purpose to level the playing field.

3 MS. SIMON: You do see in line 18 and
4 19, The Commission recognizes that while women
5 and girls have had many new opportunities, there
6 is much more that must be done. We do say that
7 in the discussion of that recommendation as
8 originally written.

9 MS. YOW: On line, around line 44,
10 there might be an opportunity for you to drop
11 something in stronger related to the enforcement,
12 that sentence on line 44 is directly relating to
13 enforcement, might be easier place for you to add
14 that.

15 MS. VARONA: Okay. I'm flexible.

16 MR. LELAND: Let's stick with the
17 motion in front of us.

18 Right now we have a motion to add,
19 since we are on recommendation one, to add a
20 phrase at the end of it, correct, about the level
21 of playing field, is that where we are, Donna, is
22 that your proposal?

1 MS. VARONA: Mine is to do it under
2 recommendation one because I think this is the
3 heart of Title IX is to level the playing field.
4 That's intent of Title IX.

5 MR. SPANIER: I'm very supportive of
6 the motion as stands. I feel like adding those
7 extra words, leveling the playing field, which
8 around a table of athletic people shouldn't sound
9 vague to me, but I must confess it does. It
10 seems to water things down.

11 I think if you want to strengthen it,
12 I could see saying commitment to equal
13 opportunity and to the elimination of
14 discrimination for girls and boys.

15 If you add those words in, then I
16 can't imagine it being any stronger, but leveling
17 the playing field so it is neutral waters down
18 the whole intent of that. That's the important
19 first recommendation. I just think it should be
20 clear, not ambiguous.

21 MS. VARONA: All right. And to the
22 elimination of discrimination. I would --

1 MR. LELAND: You are going to amend
2 your proposal --

3 MS. VARONA: I would amend my
4 proposal.

5 The Department of Education should
6 reaffirm it's strong commitment to equal
7 opportunity for girls and boys, women and men,
8 and to the elimination of discrimination. That
9 was a better suggestion.

10 MR. SPANIER: I would have put it
11 right up you know, commitment to equal
12 opportunity, and the elimination of
13 discrimination for girls and boys, women and men.

14 MS. SIMON: Excuse me, elimination of
15 discrimination for girls and boys, women and men,
16 that's different than what Donna suggested.

17 Donna, you understand that. He is
18 saying discrimination for girls and boys, women
19 and men. Are you happy with that?

20 MS. VARONA: I'm happy with that.

21 MS. SIMON: Okay.

22 MS. COOPER: So do we have a

1 consensus on changing that language?

2 No?

3 Okay. Let's have a vote.

4 Everyone who supports the change --
5 all who support the change as Graham so
6 eloquently described.

7 MS. PRICE: Twelve.

8 MS. COOPER: Opposed.

9 MS. PRICE: One.

10 MR. LELAND: Okay. Now, it is time
11 to vote on the recommendation itself. Department
12 of Education -- I don't need to read it again.
13 Recommendation number one, Page 34.

14 Any discussion, concerns?

15 Could we pass by consensus, everyone
16 shake their heads yes if we can?

17 Approved by consensus.

18 Move on to number two, that's my
19 turn.

20 The Department of Education's office
21 of Civil Rights should provide clear, consistent
22 and understandable written guidelines for the

1 implementation of Title IX and make every effort
2 to ensure the guidelines are understood through a
3 national education effort. Any clarification or
4 policy interpretation should consider the
5 recommendations that are approved by this
6 Commission and substantive adjustments to current
7 enforcement of Title IX should be developed
8 through a normal federal rules-making process.

9 It is recommendation number two.
10 Discuss, any additions, deletions, concerns,
11 thoughts?

12 MS. FOU DY: I have a thought.

13 The second sentence, line 27, any
14 clarification of policy interpretation should
15 consider the recommendations that are approved by
16 this Commission, substantive arguments -- or
17 adjustments to current enforcement of Title IX
18 should be developed through the normal federal
19 rule-making process.

20 Did we discuss that or where does
21 that come from, Tom?

22 MR. GRIFFITH: Yeah, that's sort of

1 my pet peeve since the beginning is that -- since
2 this is law, since this adjusts relationships
3 between and among people, in a democratic public
4 we have ways of going about doing that. And I
5 would rather see the Department of Education come
6 up with whatever they are going to come up,
7 through the rule-making process instead of
8 having, excuse me, Jerry, bureaucrats, make
9 decisions without the input that comes from the
10 normal law-making process.

11 MR. SPANIER: Tom, you would
12 acknowledge that along the way some of what is
13 now law is based on Department of Education
14 clarifications, or interpretations that were not
15 developed way you described. So you are
16 suggesting a new, higher standard?

17 MR. GRIFFITH: That's exactly right.
18 I'm suggesting a different standard, one I think
19 ought to be followed when you are making law.

20 MR. LELAND: Okay. Other thoughts
21 and discussion?

22 Yes.

1 MS. GROTH: If you go to line 35, the
2 Commission heard criticism that the current
3 interpretation of Title IX was implemented
4 through a nonregulatory processes.

5 I guess I feel that that should be
6 more finding and not in the recommendation.

7 MR. GRIFFITH: Go ahead.

8 MR. JONES: This is an explanation,
9 though, so in some ways it's got to be
10 descriptive.

11 MS. GROTH: Okay. And it is, but
12 that sentence in there is really reiterating what
13 we've heard, which is typically found in our
14 findings. It seemed odd to be in there.

15 MR. GRIFFITH: If you notice in
16 recommendation one, we do that same thing, we say
17 Commission heard testimony on this and this, and
18 explaining, I think explaining what was behind
19 recommendation one. So I don't think it has any
20 particular force, it is just explaining what's
21 being a recommendation.

22 So I think if we start doing that, we

1 are going to have to change a lot of explanations
2 and recommendations.

3 MS. GROTH: But more importantly, and
4 those of you who were in Philadelphia know, that
5 I think the 1996 interpretations, we have yet to
6 go through them. And this recommendation is
7 asking for clear, consistent, and understandable
8 written guidelines, which I think we all support.
9 And it probably will not surprise you that I
10 brought copies of the 1996 clarification.

11 But we are yet to determine what is
12 not clear in the interpretations. I may feel
13 there are certain lines or verbiage that is not
14 clear to me but as a Commission, I'm not sure
15 what is wrong with this document as a group. And
16 I know we are under time constraints. Perhaps we
17 could address some of the concerns of that
18 document because this recommendation pertains
19 exactly to that, 1996 interpretation.

20 And until we find out what's wrong or
21 what's not working, I'm not so sure we can move
22 forward with recommendations to make it better.

1 MR. GRIFFITH: Well, my idea has very
2 little to do with the substance of the '96
3 recommendation. I probably do have issues with
4 that. But I'm talking about the process of this.
5 To me it comes down to something quite simple.

6 Are we going to recommend the
7 Department of Education govern this sensitive and
8 important matter of national political policy
9 through the law-making function that's central to
10 how government goes about doing things, or are we
11 going to leave it up to un-elected, perhaps
12 nonresponsive bureaucrats.

13 I certainly don't want to be in that
14 world. I want to be in the world where things
15 are enacted by Congress or the Department of
16 Education, pursuant to delegated, rule-making
17 authority.

18 MS. FOU DY: I think, Tom, my issue is
19 that we never -- I just don't understand the
20 whole process of that. I don't understand the
21 rule-making process. I don't understand. And we
22 never got a presentation on how that would work.

1 MR. GRIFFITH: I think we did. We
2 had lots of testimony about this concern about
3 the way we got to where we are now.

4 MS. FOU DY: We did? Where was that?

5 MR. GRIFFITH: I think we did the
6 first meeting in Atlanta.

7 MS. FOU DY: Really?

8 MR. GRIFFITH: It was wherever we
9 talked about history of Title IX, how we got
10 there.

11 MS. FOU DY: I guess simply because it
12 seems all these letters of clarifications and
13 dear colleagues have been sent out through the
14 OCR, is it our position to change that process?

15 MR. GRIFFITH: This is my
16 recommendation. That's what's in mine to change
17 it so that whatever the Secretary does going
18 forward, he does to the rule-making process.

19 MS. GROTH: But the first part of the
20 recommendation says, OCR should provide clear,
21 consistent, and understandable written
22 guidelines. And those guidelines are in the 1996

1 document.

2 So there's really two parts. I
3 understand what you are saying regarding, you
4 know, the procedure after we determine what needs
5 to be changed, if anything.

6 But to this date we haven't talked
7 about what's unclear about the document. And I
8 think it is great recommendation. It is a
9 wonderful recommendation, but we need to come to
10 some sort of agreement as to what isn't work in
11 that document that causes the confusion.

12 MR. LELAND: I understand it might be
13 a worthwhile task. But I think we are going to
14 have to move from here forward. For us to pull
15 out the other letters that have been discussed
16 and testified about, talked to, and then do a
17 four-hour education program for this Commission
18 the right now -- I think what this -- probably
19 out of order. I shouldn't talk about whether I
20 think it makes sense or not.

21 I think it is out of order. Right
22 now we are trying to deal this proposal and this

1 recommendation and I think a long, educational
2 process about the two letters that have been in
3 discussion for all this time is inappropriate
4 now. I don't think we have time to do that.

5 Let me go to Donna first.

6 MS. VARONA: Can I make a suggestion,
7 then? Could we strike the sentence, The
8 Commission heard criticism of the current
9 interpretation of Title IX --

10 MR. LELAND: Where is that sentence,
11 Donna?

12 MS. VARONA: I'm sorry, line 35,
13 Page 34 just strike, The Commission heard
14 criticism that the current interpretation of
15 Title IX was implemented through nonregulatory
16 processes.

17 MR. GRIFFITH: I would oppose that.
18 That is a fact. We did hear that testimony.

19 MS. VARONA: But isn't that a
20 finding?

21 MR. GRIFFITH: As I said before, it
22 is an explanation of the recommendation, it isn't

1 a finding.

2 MR. LELAND: I think we as a
3 Commission, Donna, have some obligation to
4 explain, as succinctly as we can why we might
5 come to one of these recommendations. There
6 needs to be a little bit there.

7 So I don't think those are findings;
8 I think there are reasonable statements of
9 intent. Statements of why we got to where we
10 are, and Tom's sort of the defender of this. I
11 don't think -- it is a appropriate here.

12 I think if we do that, we have to
13 take -- logically, you take up all the rationale
14 statements. I think that would be a mistake.

15 MS. VARONA: I understand where you
16 are coming from. But I think there is a gray
17 area as to the opinion, the interpretations of
18 the guidelines were -- they were implemented
19 through nonregulatory processes.

20 Because the clarification letter and
21 history, legal history has confirmed how Title IX
22 guidelines have been instituted and they have

1 been supported in a court of law. I think it is
2 a debatable sentence.

3 MR. GRIFFITH: That has nothing to do
4 with it. No one is disputing that eight circuit
5 courts have upheld the policy interpretations of
6 the Department of Education.

7 All this says you could do it through
8 the rule-making process, or you can do it through
9 interpretation of the Office of Civil Rights,
10 apart from the rule-making process.

11 I'm suggesting whatever the Secretary
12 comes up with, it will be a better footing if he
13 does it through the rule-making process.

14 MS. VARONA: I agree with you. I
15 just object to it here.

16 MR. JONES: I want to clarify
17 without, you know, expressing any opinion at all
18 in the recommendation, clarify for Cary. I think
19 Tom is right. That statement here doesn't say
20 anything about the merits of the '96 letter or
21 the contents of it.

22 What this language seems to be

1 talking about to me is the process by which it
2 became effective.

3 The point about the testimony that we
4 heard or where we have heard, you know, this
5 discussion about this, this notion, you know,
6 that we have acted in a nonregulatory process in
7 the past, principally where that argument is made
8 and where we heard discussion of it in this body,
9 is because the National Wrestling Coaches
10 Association lawsuit that's been filed against the
11 Department, and that's pending today, which we
12 have talked about at these Commission meetings,
13 fundamentally makes that argument, that -- it
14 doesn't, you know, focus so much on the question
15 of whether this is all reasonable interpretation,
16 that's part of it, but what they are really
17 focused on is the process by which all this stuff
18 became effective, enforcement policy. They are
19 suggesting we didn't comply with the
20 Administrative Procedures Act, that we didn't
21 follow this process that Tom's talking about.

22 MR. LELAND: Okay. Percy.

1 MR. BATES: I guess I'm listed first
2 on this. But a lot of us talked about it. I
3 don't want some of this to get lost.

4 But I see two issues here. The first
5 part of this is what I'm most concerned about.
6 This sort of clarification, the national
7 education effort, et cetera.

8 The second part gets, it seems to me,
9 into something else. I don't know that we
10 necessarily put these two together.

11 But I'm very concerned that the first
12 part of this gets clearly implemented, laid out,
13 outlined as an educational effort, et cetera.

14 Now, my concerns with the second
15 part, though, is that we also talked about
16 consistent from one region to another. It may
17 very well be depending on how we go about
18 establishing the law, that it might have some
19 sort of credibility there, but that's not
20 interest for me. I don't want to lump these
21 things together.

22 So that how we go about making the

1 laws get lost in the process of the need to
2 clarify, to specify, and to educate everybody
3 humanly possible to understand what this law is
4 all about.

5 And as I said, I really see two
6 pieces to this part of it, and I've heard some of
7 what we have talked about in our discussion of
8 getting them sort of confused. And I would hope
9 we'd not do that. The educational component to
10 me is an important one and must be there,
11 separate of the notion of how we go about making
12 laws and what process we go through.

13 MR. DE FILIPPO: Ditto. But we did
14 have many, many people speak to us about the need
15 for more clarity and definition regarding prong
16 two and prong three on a college campus. That,
17 to me, is what I see as the meat of this
18 recommendation.

19 The other part, I too, can go with
20 you and separate out. I don't want the first
21 part to get lost either. I think that's the real
22 part we were trying to get across in this

1 recommendation.

2 MR. BATES: No problem with that.

3 MR. GRIFFITH: I have no problem
4 separating it, provided it is not an effort to
5 kill the second one.

6 Let me not put too fine a point on
7 this. I think this is major issue. If you vote
8 against this proposal in the second one, here's
9 what you are voting for. Okay. You are saying
10 that you do not trust the law-making process.

11 Well, this is a country that's run by
12 the law-making process. It is run by -- laws are
13 created by congress. Congress can delegate
14 authority to make laws, we call them regulations
15 to agencies.

16 But we do not, hopefully, have a
17 country in which unelected, unresponsive
18 bureaucrats, separate and apart from that system,
19 make the laws that govern college campuses.

20 I think this is a huge point, and I
21 certainly don't want this Commission to
22 misunderstand what they would be doing if they

1 vote down, if there's a sentiment to vote this
2 down and say, well, this is just sort of
3 technical, legal jargon, it's all about process
4 and not about substance.

5 It is who decides a fundamental
6 issue. Who decides laws in our country,
7 bureaucrats or Congress giving delegated
8 authority to people in the executive branch.

9 That's what it's about. It is very
10 fundamental issue. So I have no problem
11 separating it, but if your goal is to separate it
12 so that you could vote down this arcane technical
13 legal argument I think it is a grave mistake.

14 MR. BATES: Let me assure you, that
15 is not my goal.

16 MR. GRIFFITH: Okay. Good.

17 MR. BOWLSBY: Would it be possible, I
18 recognize this is a little more editorial than we
19 might be comfortable with, but would it be
20 possible to take that first line and bundle it up
21 with recommendation number three that's talking
22 about consistent education and enforcement across

1 regional lines, just take that whole first line
2 and then leave --

3 MR. LELAND: Are you talking about
4 the recommendation or the rationale statement.

5 MR. BOWLSBY: I'm talking about th
6 recommendation. Take the first line of the
7 recommendation, that being 24, 25, and 26, and
8 add it as 41, 42, and 43 down below. And then
9 just leave 27, 28, and 29 as the crux of the
10 recommendation in recommendation two.

11 MR. LELAND: In looking at our
12 authors, we probably could do that. At least
13 from the head shaking seems there's a consensus
14 to separate these two issues so we could be aware
15 of the importance of both of them.

16 MS. FUDY: I just had a comment on
17 switching now those three lines down to
18 recommendation number three. Staying on that
19 theme. I had in my original recommendations a
20 point saying I would just like to add at the end,
21 In providing technical assistance, the Department
22 of Education should not change current policies

1 that would undermine the spirit and purpose of
2 interpretations.

3 I had put that in before, and I don't
4 see it in there. I knew that. Okay. Good.
5 Just kidding.

6 MR. LELAND: Okay. Are we -- from my
7 position, separating the two issues in combining
8 the first sentence of recommendation two with
9 recommendation three makes it stronger and
10 clearer, from a reader's point of view.

11 Does everyone agree with that?

12 It's been moved to separate.

13 Is there any objections?

14 Okay. I guess, then, so we'll
15 consider them separate. Let's work on
16 recommendation number two, then, which would
17 remain, Any clarification or policy
18 interpretation should consider the
19 recommendations that are approved by this
20 Commission and adjustments, substantive
21 adjustments, to the current enforcement of
22 Title IX should be developed through the normal

1 rule-making process.

2 That's where we are and we'll adjust
3 the rationale statements appropriately.

4 So we are on Tom's issue of the
5 process for changes.

6 MS. FOU DY: Tom, I don't want you to
7 think that I'm not a law abiding citizen. As
8 every minute passes I wish I had a legal
9 background.

10 My issue is that I don't understand
11 it. Because it is different from the way that
12 clarifications have been fastened, dear
13 colleagues in the past. So if I would vote
14 against it, Tom -- I wish we had more
15 explanation.

16 MR. GRIFFITH: This is a change.
17 This is a status quo, not acceptable. Again,
18 whatever the Secretary comes up with, he ought to
19 go out through the normal rule-making process so
20 it has force of law.

21 MS. VARONA: Tom, this is just a
22 comment. Title IX has been challenged in the

1 courts, and it has won every time. Every
2 challenge to Title IX has won in the court
3 system.

4 So Title IX is based on legal
5 findings already. I guess I'm where Julie is. I
6 suppose you are proposing this in case we come up
7 with at the end of the day concepts for how
8 implementation of Title IX should be changed or
9 how we recommend them to Secretary Paige, and if
10 he considers that, he has to go through congress
11 again.

12 From my perspective, Title IX's
13 already been codified into law, supported and
14 tested in the court system. And from my
15 perspective, from my readings of the legal cases,
16 Title IX is law, and we have followed the letter
17 of the law as a country, as it relates to this.

18 MR. GRIFFITH: I couldn't disagree
19 more strongly.

20 MS. VARONA: I'm going to have to
21 dissent, too.

22 MR. GRIFFITH: Okay. A good portion

1 of the way that Title IX is interpreted, enforced
2 today, comes as a result of decisions that were
3 made apart from the law-making, rule-making
4 process. And that that shouldn't stand. That
5 whatever goes forward ought to be put to part of
6 the political process. It shouldn't be decisions
7 that are made by career people or even political
8 people at the Department of Education. Ought to
9 be done through the rule-making process, or by
10 congress.

11 You've got two options here in our
12 system. Congress can pass a statute telling us
13 what the law is, or congress can pass a statute
14 telling us what the law is and then delegate to
15 the Department of Education the authority to
16 promulgate regulations consistent with that law.

17 I'm saying those are the two options
18 that I would like to see.

19 MR. LELAND: We have a clarification.

20 MS. PRICE: Can I make one statement?
21 If I understand what Tom said, he said a phrase
22 that might be misconstrued. And I can't remember

1 exactly how he said it.

2 But what he is saying now is not
3 undoing -- it does negate the current policy
4 interpretations that are there.

5 What he is saying in any future, so
6 it would be open to public comment, and wouldn't
7 be the determination of the Secretary to write a
8 policy without --

9 MS. VARONA: I do understand what he
10 is saying.

11 MR. LELAND: Okay. I think the
12 issues are -- we may not understand the nuances
13 here, the issues on this one are fairly clear.

14 Again, it's any clarification or
15 policy interpretation should consider -- any
16 future, I guess -- the recommendations that are
17 approved by this Commission in the substantive
18 adjustments to current enforcement of Title IX
19 should be developed through the normal federal
20 rule-making process. I've been told to slow
21 down.

22 That's what's before us now. I have

1 a feeling there is not a consensus on this,
2 strange suspicion.

3 So if we could all vote. 2.

4 MR. BATES: I have a question for
5 clarification. Maybe Brian, someone else could
6 answer this.

7 Are we talking about things that are
8 likely to slow us down and make us less
9 effective? When I listen, while I agree, that
10 that's probably the best way to do it, I don't
11 want to vote on something that's going to make it
12 terribly cumbersome and in a manner that we can't
13 operate this law efficiently.

14 So that's my hesitation at the
15 moment.

16 MR. JONES: Well, no, I think
17 certainly to follow the rule-making process it is
18 a slow, more deliberate process. What that means
19 is if you have got a regulation or even if you
20 were to go through the regulatory process with
21 guidance, for example, you know, you have got
22 to -- well, you don't have to.

1 Typically the way it would work is
2 you put a proposed rule out there that would go
3 out for comment for a period of time, maybe 30,
4 60 days. You'd review the comments, and then you
5 would develop a final rule. You would post that,
6 and then there would be a period of public
7 comment on the final rule, and that's going to be
8 out there for 30 or 60 days.

9 So again, you are building in several
10 months, really, to ensure you have got adequate
11 consideration of public comment.

12 So it certainly is more timely. But,
13 again, we have done that. We could do that with
14 regulations, but you could also go through that
15 process with guidance and -- for example, the
16 1975 regulations went through that process. The
17 policy interpretation went through that process.
18 That '79 policy interpretation.

19 So it takes time, but I wouldn't say
20 that it's terribly burdensome or complicated.

21 MR. BATES: Okay. Thank you.

22 MR. LELAND: Any other comments or

1 questions?

2 I think we are going to do a hand
3 vote.

4 All those in favor of the new
5 recommendation number two, raise your hand.

6 MS. GROTH: Ted, could you clarify
7 recommendation two? One more time.

8 MR. LELAND: Take line 27 and read
9 it. It's 27. I read it four times. You know I
10 can't pronounce that one word and you want me to
11 do it again. Just read the next three lines.

12 Okay. Let's vote again. All those
13 in favor of recommendation two as amended, raise
14 your hand.

15 MS. PRICE: Twelve in favor.

16 MR. LELAND: Opposed.

17 MS. PRICE: One opposed. The vote
18 passes 12 to one.

19 MS. COOPER: We are going to move on
20 to recommendation number three. I'm going to
21 read the amended one. Okay.

22 The Department of Education's Office

1 for Civil Rights should provide clear,
2 consistent, and understandable written guidelines
3 for implementation of Title IX, and make every
4 effort to ensure that the guidelines are
5 understood through a national, educational
6 effort. The Office of Civil Rights should ensure
7 that enforcement of an education about Title IX
8 is consistent across all regional offices.

9 Any discussion?

10 Consensus to pass it? Do we have a
11 consensus?

12 Okay. We could move forward.

13 MR. LELAND: Page 35, recommendation
14 number four, line eight. In providing technical
15 assistance, the Office for Civil Rights should
16 not directly or indirectly change current
17 policies in ways that would undermine the spirit
18 and purpose of existing interpretations. Nothing
19 in the Commission's recommendation should be
20 understood as decreasing the emphasis on Title IX
21 enforcement on equal treatment in support
22 services and scholarships.

1 MS. FOU DY: Can I make one friendly
2 amendment?

3 MR. LELAND: Yes.

4 MS. FOU DY: On line 11 -- actually
5 I'll start on ten with the whole sentence.

6 Nothing in the Commission's
7 recommendation should be understood as decreasing
8 the emphasis in Title IX enforcement on equal
9 treatment -- sorry.

10 Nothing in the Commission's
11 recommendation should be understood as decreasing
12 the emphasis in Title IX enforcement on equal
13 participation, equal treatment and support
14 services, and scholarships.

15 So you are adding equal participation
16 just to clarify.

17 MR. LELAND: Okay. We'll take
18 that -- since your name is on there is one
19 privilege you have for having your name on there,
20 as long as nobody stringently objects, we'll put
21 that in there.

22 Open that for discussion.

1 MR. SPANIER: I'm not sure what that
2 addition really means. I hate for us to just
3 treat that casually. You must have a very
4 specific reason for putting that in there.

5 If you mean participation in the
6 way -- if that's just a substitute way of dealing
7 with question of walk-ons, or the federal report,
8 or counting participation opportunities, then it
9 opens up a whole set of topics that are going to
10 be dealt with completely in other
11 recommendations. So I want to understand why you
12 want to add that one word in there.

13 MS. FOU DY: My purpose, Graham,
14 through all of this we talked about the gap in
15 numbers, the participation number of women being
16 at 42 percent is the big picture and I don't want
17 to lose focus of that participation issue and it
18 is not mentioned in this recommendation.

19 MR. GRIFFITH: What does equal
20 participation mean? That's what I would take it
21 to mean, you have the same numbers --

22 MS. FOU DY: No, it would fall under

1 the Title IX guidelines and regulations of the
2 three-part test.

3 MS. YOW: For your purposes, Julie, I
4 think you mean equitable versus equal, addressing
5 Tom's concern.

6 MR. LELAND: Does equitable make
7 it --

8 MS. FOU DY: Yes, that's fine.

9 MR. LELAND: Graham, does it make you
10 more comfortable?

11 MR. SPANIER: Yes. A little more.

12 MR. LELAND: I think the concern, by
13 changing this, you know, verbally I have a lot of
14 sympathy for, it is not a trump card that when we
15 talk about the eight or nine other proposals that
16 deal with proportionally and all those other
17 things, we don't say wait a minute, that's
18 already taken care of in recommendation four.

19 To me, equitable as a substitute word
20 sort of -- then we can derive what's equitable of
21 some of the other contentious issues we'll get to
22 later.

1 Bob?

2 MR. BOWLSBY: In order to be
3 consistent with the law, really aren't we talking
4 about enforcement on nondiscriminatory treatment;
5 isn't that really -- it goes maybe a step farther
6 than equitable, but it is consistent with the
7 language of the law.

8 MS. FOU DY: Which is the exact
9 language -- whatever is consistent with the
10 language. You understand the point.

11 What page is that on?

12 MR. SPANIER: Fourteen.

13 MR. LELAND: Yes, Page 14, lines 21,
14 23.

15 MS. FOU DY: Why don't we add in
16 nondiscriminatory towards the end to represent a
17 gender, and which is the language.

18 MR. LELAND: Nothing in the
19 Commission's recommendation should be understood
20 as decreasing the emphasis in Title IX
21 enforcement on nondiscriminatory
22 clauses --something like that.

1 MS. FOU DY: Say something about
2 gender (inaudible). That's the direct language.

3 MR. SLIVE: Clarification, Ted.

4 What's the relationship of the second
5 sentence to the first sentence. It is my first
6 reading, the second sentence, the intent of this
7 was to talk about support service and
8 scholarships and that we were debating some older
9 areas, those areas we were clear on. That's what
10 I thought this was saying. Now I'm not sure I
11 understand the first sentence.

12 MR. LELAND: You mean by Julie's
13 suggestion that we change the end of second
14 sentence, you think it changes the meaning of
15 first sentence?

16 MR. SLIVE: Well, the second sentence
17 and the description talks about
18 non-discrimination and facilities and support
19 services.

20 I guess I thought that that's what
21 particular this recommendation was about. And
22 the discussion of the first sentence now is not

1 clear to me as to how first and second sentences
2 relates to each and how it relates to the
3 description. And now I'm asking for
4 clarification.

5 MR. GRIFFITH: On the first sentence,
6 I don't like the way it is written now. Because
7 as I understand it, it is saying that we don't
8 want the Secretary to do anything that might
9 change the status quo. That's how I read that.

10 So I would think those in favor of
11 the status quo would be in favor of the first
12 sentence.

13 If you think that there are some
14 difficulties or problems with the status quo that
15 the Secretary ought to consider, then you
16 wouldn't be in favor of that first sentence.

17 If I'm missing something, I would
18 like to vote for it if I can. But the way I see
19 it, a vote for the first sentence is saying, We
20 like what the Office of Civil Rights has been
21 doing. And we want them to keep doing what they
22 are doing. I get that from existing

1 of worded in a way -- I understand that the
2 purpose -- I wouldn't read the first sentence as
3 saying that's an argument for the status quo. I
4 would say in terms of the technical part but
5 certainly in terms of the spirit and the purpose
6 of existing interpretations.

7 So, you know, I read that first
8 sentence a little bit differently. Because I
9 thought there was a consensus in this Commission
10 we wanted to give the message to the Secretary
11 that although we maybe interested in lots of
12 issues regarding the interpretations, et cetera,
13 we didn't want to take a step backwards as it
14 goes to -- comes to providing equal opportunity,
15 and we wanted to give an admonition to the
16 Secretary that no matter what happened, we didn't
17 anything we did to be interpreted as suggesting
18 he take a step backwards as we move towards equal
19 opportunity for women.

20 I see that is subsumed better in line
21 14 through 19 than it is in line four.

22 MS. FOU DY: I disagree. Because you

1 are saying, given the widespread support for and
2 success of Title IX, the commission encourages,
3 the Department of Education not to change
4 policies in way that would threaten any progress
5 in creating athletic opportunities for the
6 under-represented gender?

7 The idea is that Title IX is against
8 discrimination based on gender, and we have
9 nothing in that second paragraph that talks about
10 the spirit of law. Being that we are creating
11 opportunities for the under-represented gender.

12 I just don't think it is strong
13 enough. I think that one of the points being is
14 we are opening up -- we all agree that we need
15 clarification on the three prongs and we need
16 more educational materials out there.

17 And at the same time, what are we
18 opening up? Are we opening up Pandora's box that
19 we are changing everything. And I'm saying we
20 have to stay within the spirit of the law and
21 these recommendations and the spirit --

22 MS. YOW: But, Julie, this doesn't

1 say the spirit of law, it says the spirit of the
2 existing interpretations. The interpretations
3 shouldn't be confused with the law itself.

4 You could agree with the law and not
5 agree with the interpretation.

6 MR. SPANIER: I think the
7 recommendations one through three as we have
8 amended and passed them state in the most
9 unequivocal terms our support, this Commission's
10 support for Title IX, the spirit and so on.

11 Then to come across recommendation
12 four, which in light of first three, adds a few
13 additional words could have the appearance of we
14 only support the status quo and please feel free
15 to ignore anything else we now do in the rest of
16 the report, if it is your opinion that it
17 violates any current interpretations.

18 So if we didn't have recommendations
19 one through three, we would need something like
20 four. But that one sentence in number four does
21 give that impression. It may not have been a
22 intent of it because as we all recall, everybody

1 fed these recommendations in, we didn't know what
2 all the others would be, so we ended up with a
3 bunch of stuff on the table that may be
4 internally consistent.

5 But you go back and look at the three
6 we've already adopted, I'm not sure we need that
7 phraseology in there, unless we want that to be
8 the definitive statement, and unless we believe
9 whole purpose of this Commission is not to change
10 a thing.

11 MS. FOU DY: On that note, Graham, I
12 think what we are saying is we all agree that
13 more technical assistance is needed, and we all
14 agree that more clarification is needed and
15 educational materials.

16 And I'm not saying that we shouldn't
17 provide that information and we shouldn't provide
18 examples and illustrations and try and give more
19 weight to all three tests.

20 But in the process is what we are
21 talking about is where are we taking that to?
22 What are we opening up, you know, what's the

1 license we are giving. And that's where I feel
2 we need to keep the spirit of the law in mind.
3 That doesn't mean you can't look at things and
4 give illustrations and give examples, it just has
5 to be in the spirit of Title IX.

6 MS. SIMON: I think that the first
7 three lines, eight, nine, and ten of
8 recommendation four says we can't change
9 anything. It is rigid and should not be a
10 recommendation. We may want to make some
11 changes. We may want to make some adjustments in
12 procedures or other kinds of things. I think we
13 should take lines 14, 15 and part of 16 and make
14 that the recommendation because that's a more
15 general statement of principle and philosophy,
16 and the first thing I think binds us to the
17 status quo.

18 MR. LELAND: Julie, would you be
19 comfortable if it says creating athletic
20 opportunities for women?

21 MS. FOUDY: And if took out, The
22 Commission encourages.

1 MR. LELAND: The Commission
2 encourages the Department not to change policies
3 in a way --

4 MS. FOU DY: Given the widespread
5 support for and success of Title IX, the
6 Department of Education should not change
7 policies in a way that would threaten any
8 progress in creating athletic opportunities for
9 the under-represented gender. I would be more
10 comfortable with that.

11 MR. LELAND: I heard what Graham
12 said, I sort of feel that's a nice addition to --

13 MR. SPANIER: If that were the
14 recommendation, then that's fine. That's
15 entirely consistent with what we've been saying
16 all along, and it eliminates that fuzziness of
17 whether we are saying we are not open to any
18 change.

19 MR. LELAND: Okay. Let's have a
20 little more discussion, then we'll see if there's
21 a substitute motion to switch those, to amend to
22 first sentence of the rationale here 14, 15, 16

1 lines in the way that Julie said, and then
2 substitute that for the recommendation.

3 MR. BATES: So moved.

4 MR. LELAND: Is there a second?

5 (inaudible)

6 MR. GRIFFITH: Question. You added,
7 see if my notes are right. In way that would
8 threaten any progress in creating athletic
9 opportunities for the under-represented sex;
10 right? Okay.

11 MR. LELAND: Is that okay with you,
12 Tom?

13 MS. SIMON: Could I hear the whole
14 revised recommendation?

15 MR. LELAND: Julie, you had one other
16 change, I didn't get.

17 MS. FOUDY: Starting with line 14:
18 Given the widespread support for and success of
19 Title IX, the Department of Education should not
20 change policies in a way that would threaten any
21 progress in creating athletic opportunities for
22 the under-represented gender.

1 MR. SPANIER: By that, do we mean
2 women; if so, why don't we just say that?

3 MS. FOU DY: I'm following the
4 language of the statute, which is what we were
5 directed to do in the beginning. It could be men
6 one day.

7 MR. LELAND: I think women's fine,
8 but I'll ask our authors here.

9 Let's have more discussion.

10 MS. VARONA: The only I would like to
11 ask the authors are, we have in the first
12 statement, we do detail support services and
13 scholarships, which is left out if we take the
14 amendment.

15 What if we, under recommendation
16 (inaudible) we said in providing technical
17 assistance, the Office of Civil Rights should not
18 directly or indirectly change current policies in
19 ways that would undermine, and then scratch
20 everything, Title IX enforcement on
21 nondiscriminatory basis as it relates to
22 participation, support services, and

1 scholarships.

2 Can you just scratch, if you have a
3 problem with interpretations, we could scratch
4 that go back to Title IX enforcement on a
5 nondiscriminatory basis on equal treatment in
6 participation sports, services, and scholarships.

7 MR. LELAND: The way I'm hearing you,
8 Donna, you would be in favor of substituting line
9 14, 15, and 16, that sentence as amended by
10 Julie. And then the second sentence of the
11 recommendation becomes in providing technical
12 assistance, the Office of Civil Rights should not
13 directly or indirectly change current policies in
14 ways that would undermine the spirit and purpose
15 of existing Title IX enforcement on equal
16 treatment in support services and scholarships,
17 something else --

18 MS. VARONA: Nondiscriminatory
19 treatment because we had problem with equal or
20 equitable.

21 MR. GRIFFITH: You want to leave
22 existing in? I think it's the crux of the --

1 MS. VARONA: We scratch would
2 undermine, scratch the spirit and purpose of
3 existing interpretations, scratch nothing in the
4 Commission's recommendations should be understood
5 as decreasing the emphasis in Title IX
6 enforcement.

7 So it would read this way: In
8 providing technical assistance, the Office of
9 Civil Rights should not directly or indirectly
10 change current policies in ways that undermine
11 Title IX enforcement on nondiscriminatory
12 treatment in participation support, services, and
13 scholarships.

14 MR. LELAND: And that following the
15 amended first sentence; right?

16 MS. VARONA: Leave in, in lieu of.

17 MS. FOUDY: I'm saying change what
18 Donna did in the italics in your recommendation,
19 and then just leave 14 through 16 amended as part
20 of your first sentence.

21 MR. LELAND: As part of the first
22 sentence of the rationale or the last sentence of

1 the recommendation?

2 MS. FOU DY: First sentence in the
3 rationale.

4 MR. LELAND: First sentence of
5 rationale.

6 MR. SPANIER: Ted, this one is carved
7 up enough I wonder if we could get a look at it.

8 MS. VARONA: Do you want me read it
9 again?

10 MR. SLIVE: I would move that we see
11 drafts of this recommendation in its various
12 forms before we move on. Or go to another one
13 and come back.

14 MR. LELAND: Let's make it clear what
15 we are asking the authors to do. We need to
16 rework first sentence of rationale the way Julie
17 has suggested which is lines 14 through 16 on
18 Page 35, and then in addition to that, we have to
19 rework the recommendation, which is lines eight
20 through 12, take two sentences, turn it into one
21 with some amendments. And it seems to me we
22 could get those two on one piece of paper

1 separately and then discuss whether the
2 recommendation stands by itself or whether we
3 need to add the rationale statement underneath
4 it. Is that all right with you? Okay.

5 MS. VARONA: Okay.

6 MR. LELAND: Okay. So in effect
7 we'll table or delay the consideration, the
8 completion or consideration of recommendation
9 number four until we have seen drafts.

10 Okay. Do the authors have an idea of
11 when that will be?

12 Should we go on to recommendation
13 number five, then?

14 MS. COOPER: Okay. Recommendation
15 number five. Page 35, line 23. In providing
16 technical assistance to institutions, the Office
17 for Civil Rights should make clear that cutting
18 teams in order to demonstrate compliance with
19 Title IX is a disfavored practice.

20 MR. BATES: Ted, I have a question on
21 this one.

22 Is it the intent to tie this only to

1 the professional development? Because it seems
2 to me that the Office of Civil Rights could make
3 this clear without in some other context other
4 than just providing technical assistance.

5 MR. GRIFFITH: What is in providing
6 assistance technical assistance to institutions
7 means? Is that just when the NCR goes out to do
8 it's work teach people?

9 MR. LELAND: You are suggesting we
10 take out the first six words? Just start with
11 the Office of Civil Rights should make it clear.

12 MR. BATES: Right. That would be my
13 suggestion.

14 MS. SIMON: Well, I want to
15 understand. Let me give you an example and tell
16 me if this would be included.

17 Does that mean that all the testimony
18 we heard from the men's gymnastics teams, and the
19 wrestling teams, et cetera, that we are saying
20 that compliance with Title -- that we should not
21 use Title IX as an excuse for cutting teams;
22 that's what we are saying?

1 MR. BATES: That's what I would be
2 saying.

3 MS. SIMON: That would be fine. I
4 want to be sure that's what that meant.

5 MR. GRIFFITH: Can I get a
6 clarification from someone, and maybe one of the
7 authors.

8 The clause, In providing technical
9 assistance to institutions. What's that mean?
10 Thanks, Gerry.

11 MR. REYNOLDS: Okay. Often schools
12 have questions about a policy or interpretations
13 and they will call an office. And sometimes we
14 do this over the phone, and the sometimes it is
15 more formal where someone from the regional
16 office will go to a school or sometimes held at
17 other sites and give a PowerPoint presentation,
18 walking interested parties through policy.

19 MR. GRIFFITH: Educating how to
20 comply.

21 MR. REYNOLDS: Right.

22 MR. SPANIER: You're alleged to be a

1 author of this, Tom, and I don't know what
2 suggestions -- I'm going to make another rone
3 now.

4 I would suggest we just eliminate
5 that first clause. Why be limiting.

6 But I would also like to ask about
7 the last sentence. Therefore education
8 institutions should not choose to cut or cap any
9 team when gender is a factor in that decision.

10 I think that's something we all find
11 desirable, but can you have your cake and eat it
12 too.

13 MS. YOW: I had underlined that,
14 Graham, as well. If you had not said that, I
15 would have. We are way out there making a
16 statement like that to institutions.

17 MR. SPANIER: That's part of -- let's
18 face it. That's part of what a lot of schools
19 had to do to comply with Title IX. If we believe
20 that so strongly, then that's pretty inconsistent
21 with a whole bunch of things we've already said.

22 This is not desirable. I like the

1 idea we are saying, you know, it is a disfavored
2 practice. It should be your last resort. But we
3 can't do it or don't do it. Because then how do
4 you get the rest of done.

5 That's why we have this Commission
6 and why we heard 300 different people to get
7 different opinions about that. It feels like
8 boxing ourselves in a little bit by having that
9 last statement.

10 I think it is enough to say this is
11 not the right way to do it. But you can't rule
12 it out. What's the other alternative.

13 MS. COOPER: Okay. So are we
14 suggesting that --

15 MR. SPANIER: I'm suggesting taking
16 out the first six words of the recommendation and
17 the last sentence of explanations.

18 MS. COOPER: Okay. Is there a
19 motion? (Inaudible)

20 MR. BATES: Second.

21 MR. GRIFFITH: What are we moving on
22 both together or separately.

1 I'm in favor of cutting the first
2 clause. I would have to think more about the
3 last sentence. I didn't write that. The staff
4 wrote that.

5 That doesn't seem to me to be too
6 controversial a proposition. You shouldn't
7 choose to cut a team based on sex. I'm not
8 certain that's a harmful statement.

9 MR. BOWLSBY: Graham, I wanted to
10 make an amendment you could try on that last
11 line.

12 Just instead of deleting it
13 altogether, amend it to say, Therefore
14 educational institutions should pursue all other
15 alternatives before capping or cutting any team
16 when gender is a factor in that decision.

17 MR. SPANIER: I like that. That's
18 even better.

19 MS. COOPER: Could you repeat it one
20 more time.

21 MR. BOWLSBY: Therefore educational
22 institutions should pursue all other alternatives

1 before cutting or capping any team when gender is
2 factor in that decision.

3 MS. SIMON: That's more consistent
4 with the last phrase of the recommendation. It
5 is a disfavored practice. That recommended
6 change is more consistent.

7 MR. SPANIER: Let me, just because we
8 are going get to this later. So let me remind
9 everybody right now, by having that word capping
10 in there. Cutting the whole team is one thing.
11 But we all do capping. There might be an
12 exception around the table. Stanford, if you
13 told us as an example. You have no roster
14 management, euphemistically speaking?

15 MR. BOWLSBY: No.

16 MR. SPANIER: Let's just say most of
17 us who are in compliance with Title IX are only
18 in compliance --

19 MR. GRIFFITH: You know of many who.

20 MR. SPANIER: -- because we engage in
21 serious roster management. So by having capping
22 in there, I'm in favor of having that word in

1 there, but let's remember later that we put that
2 in there so we are not incompletely inconsistent.

3 MS. COOPER: Okay. So let's stick
4 with the -- do we have a consensus on the taking
5 out in providing technical assistance to
6 institution? Do we have a consensus with that?

7 MR. GRIFFITH: Yes.

8 MS. COOPER: Okay. For the last line
9 as read by Bob, is there consensus for that
10 change to be made?

11 MS. VARONA: I just had comment to
12 the authors. I think somewhere there was a
13 discussion about if indeed a team had to be cut,
14 that reason should be given and notification to
15 the student because basically it would be very
16 unfair to athletes to have their programs ripped
17 out from underneath them at the last minute.

18 Is there any way to get some kind of
19 sentiment as it relates in support of our student
20 athlete in this situation?

21 MS. COOPER: Are you saying add some
22 language?

1 MS. VARONA: Yes. Does this
2 Commission feel comfortable in doing that?
3 Because I think we hear a lot from these athletes
4 that had their programs cut at the last minute.
5 There is no language as it relates to their
6 rights or lead time or their loss and explanation
7 from the university as to why these teams were
8 cut.

9 I think that's a whole area really
10 left, we haven't been responsive to. Which goes
11 to the heart of this whole --

12 MS. YOW: Donna, are you suggesting
13 that we suggest that be done or pursued?

14 MS. VARONA: Yes. We can't mandate
15 it, but in situations where teams have to be cut
16 or there's a consideration thereof, there should
17 be proper athletes' notice given, reasons.

18 And then it gets into can you endow
19 it and all those other deals which is later on,
20 we have a suggestion for that. Maybe we can put
21 that sentiment in, endowment.

22 MS. YOW: That makes a lot of sense

1 for cutting teams as a suggestion. I'm not sure
2 about capping teams. Capping is just a way of
3 life.

4 MS. VARONA: I don't mean capping. I
5 misspoke myself. Bob doesn't do that.

6 MS. YOW: The wealthy programs.

7 MS. VARONA: Can we work on that
8 language and come back to it?

9 MR. BATES: Where would this will be
10 inserted?

11 MS. VARONA: Right at the end of it,
12 right at the end.

13 If indeed teams have to be cut,
14 student athletes should be given justification
15 for such action and due notice, adequate notice.

16 Because that just opens up maybe the
17 opportunity for these teams to find other ways to
18 find resources. It just happened at Dartmouth.
19 They just put both swimming teams back. They
20 were going to cut them and there was notice
21 given, and those two teams got put back into the
22 program because enough lead time was given so

1 these parents and athletes could find a way to
2 fund the teams.

3 I think it shows a sensitivity on our
4 part in a very direct way.

5 MR. BATES: I wouldn't have any
6 problem with that insertion.

7 MS. COOPER: So do we have a
8 consensus that we can make that friendly
9 amendment?

10 MS. YOW: I would like to hear it
11 stated. (Inaudible) One sentence. A run-on
12 sentence if we're starting here.

13 MS. COOPER: So that goes to the
14 authors. Would you guys be able to craft a
15 sentence that captures what Donna -- so I guess
16 we could go back to recommendation four now that
17 we have the revised copy, and then we could come
18 back to five and vote on it.

19 MR. BATES: I have the same question
20 on four if you have it in front of you. Are we
21 limiting this to providing technical assistance?
22 We could scratch that on this one?

1 MS. FOU DY: No, I would keep it in
2 because it is in direct relation to the guidance
3 we are given, that the OCR is going to be giving.

4 MR. BATES: But are you limiting only
5 when they are providing TA. It seems to me there
6 are other times when they could convey this. But
7 this seems to be limiting it only when they are
8 providing TA.

9 MR. LELAND: Let me back up for a
10 second and read it. This is the recommendation
11 four as revised.

12 Quote, in providing technical
13 assistance, the Office of Civil Rights should not
14 directly or indirectly change current policies in
15 ways that would undermine Title IX enforcement on
16 nondiscriminatory treatment in participation,
17 support services, and scholarships.

18 And there's a rationale statement
19 below it, and they have adjusted the first
20 sentence as you suggested, Julie.

21 I like it -- I was the one saying,
22 gee, maybe the first sentence of the rationale

1 should be moved up, but I like it the way it
2 reads here.

3 MR. BOWLSBY: Ted, just for clarity,
4 could we insert, regarding after enforcement so
5 it reads Title IX enforcement regarding
6 nondiscriminatory treatments.

7 MR. LELAND: I didn't think that
8 sounded correctly, but I was reading into the
9 mike.

10 Okay. Other comments or thoughts on
11 either the recommendation and/or rationale
12 statement here?

13 MS. VARONA: Do you want me to try
14 and add my amendment.

15 MR. LELAND: I thought that was to
16 the other recommendation.

17 We've gone back to recommendation
18 four now.

19 MS. VARONA: Okay. I was ahead of
20 myself.

21 MR. LELAND: Okay. Yes, Mike.

22 MR. SLIVE: Point of clarification.

1 Can somebody using other words tell me what this
2 means. Revised for, what does it mean.

3 MS. COOPER: Don't be shy, just jump
4 right in.

5 MR. DE FILIPPO: I think it is a good
6 question, and I would like to know what we're
7 voting for here too.

8 MR. GRIFFITH: Is saying that if
9 there are changes, if the Secretary changes the
10 status quo, he should not undermine Title IX
11 enforcement regarding nondiscriminatory treatment
12 and participation support services and
13 scholarship.

14 MR. LELAND: I saw it as a necessary
15 recommendation given the fact that we probably
16 will make some suggestions for further study by
17 the Department of Education regarding different,
18 you know, participatory rules and all those kinds
19 of things.

20 And I thought to go on record to say
21 that no matter what we do, we don't want to take
22 a step backward in our enforcement or our

1 providing of opportunities or in our push to
2 provide more opportunities for women. This is
3 the way to say that.

4 I thought it gave the people we pass
5 this on to a statement that says we don't want to
6 go backward no matter what your implementing.

7 That's why I thought in providing
8 technical assistance is appropriate in this case,
9 because that's what we're really talking about,
10 when the rubber meets the road, we don't want to
11 take a step backward.

12 MR. BATES: But, Ted, this is my
13 point. In providing TA, just wondered, do you
14 often change policies at that time. That's why
15 the notion of limiting it to TA is a little
16 troubling to me. Maybe one of you can respond to
17 that.

18 MR. REYNOLDS: No. If the policy's
19 going to change, it is supposed to go through a
20 rule-making procedure. It is not supposed to be
21 changed each time technical assistance is
22 provided to recipients.

1 MR. LELAND: So are you arguing for
2 or against having providing technical -- does
3 that mean in terms of your organization, does
4 that make a difference, or should we take that
5 out, the first phrase?

6 MR. REYNOLDS: The way it is written
7 now, you have limited it. We could provide --
8 technical assistance, we conduct compliance
9 reviews, and we respond to complaints.

10 MR. LELAND: So providing technical
11 assistance is a specific task you undertake. So
12 there may be people like myself who are in favor
13 of this might like to have that removed and have
14 all activities sort of subsumed under this;
15 right?

16 MR. BATES: That would be my
17 suggestion, harping on that.

18 MR. JONES: If I could just add
19 something. It seems to me it's a clear intent
20 here that you are saying that as we undertake
21 whatever policy-making actives that we undertake,
22 that we should adhere to this.

1 Technical assistance is not a
2 policy-making effort. That is a time when we
3 communicate what the policy is.

4 So I think in the spirit of what you
5 are trying to accomplish here, you need to delete
6 that.

7 MR. LELAND: Are you okay with that,
8 Julie?

9 MS. FOU DY: Yes.

10 MR. LELAND: All right. Anybody that
11 doesn't want that removed.

12 Mike, did we allay your scepticism?

13 MR. SLIVE: That's a help.

14 MR. LELAND: Any other comments or
15 thoughts on either the recommendation or the
16 rationale statement for our revised
17 recommendation four?

18 Hearing none, can we pass this by
19 consensus.

20 All right. No disagreement.

21 Now we are back on to --

22 MS. COOPER: Back on to five.

1 And I think Donna wants to read her
2 amendment.

3 MS. VARONA: I know I'm going to need
4 some words missing, but the spirit of it is if --

5 MS. COOPER: One second. I think he
6 has something for you.

7 MS. VARONA: Okay. Therefore
8 educational institutions should pursue all other
9 alternatives when cutting or capping any team
10 when gender is a factor in that decision. If
11 indeed teams have to be cut, student athletes
12 should be given justification and adequate
13 notice.

14 MS. COOPER: Can you read that one
15 more time.

16 MS. VARONA: It is revisions of line
17 32 through 34 on Page 35.

18 MS. SIMON: Could you read the
19 recommendation first?

20 MS. COOPER: The recommendation is
21 the Office of Civil Rights should make clear that
22 cutting teams in order to demonstrate compliance

1 with Title IX is a disfavored practice.

2 MS. VARONA: Okay. Therefore, this
3 is after the loss of teams described, and we are
4 going to revise lines 32 through 34.

5 Therefore educational institutions
6 should pursue all other alternatives when cutting
7 or capping any team when gender is a factor in
8 this decision. If indeed teams have to be cut,
9 student athletes should be given justification
10 and adequate notice.

11 MS. COOPER: Good job.

12 MR. BOWLSBY: Cynthia, I think Donna
13 said, seek all other alternatives when cutting or
14 capping. My language was seek -- pursue all
15 other alternatives before cutting or capping.

16 MS. COOPER: Make that friendly
17 amendment, before.

18 MR. JONES: Ted, can I just raise an
19 issue for everybody's consideration.

20 When we talk about gender, you know,
21 should not cut teams when gender is a factor in
22 that decision, is it really the intent of the

1 body here to say when gender is a factor in the
2 decision or when Title IX compliance is a factor
3 in the decision.

4 Because what Title IX itself by its
5 own terms says you cannot exclude someone from
6 participating, deny them a benefit or
7 discriminate against them on the basis of sex.

8 So it would seem to me if sex is a
9 consideration in your capping or your elimination
10 of men's team, arguably, that is a violation of
11 the very terms of the statute itself.

12 And I think what we are really trying
13 to get at is the question of when institutions
14 are considering Title IX compliance, when they
15 are making these decisions. Not gender.

16 I toss that out there for
17 consideration.

18 MS. VARONA: I think that then you
19 get into well, are they cutting a team because of
20 Title IX compliance or because of a resource
21 issue, because if you interest. So I think if
22 you interject that language, you are going to

1 complicate the statement.

2 MS. SIMON: But I support your
3 suggestion because I think what we've been
4 hearing at all town hall meetings is how so many
5 of the young men that are on gymnastics,
6 wrestling, et cetera, they are told it is because
7 of Title IX. Further investigation suggests that
8 it is not because of Title IX.

9 And I think to say cutting a team and
10 using Title IX as an excuse is a mistake.

11 MR. SPANIER: Unless it is the
12 reason.

13 MS. SIMON: Unless it is. But I
14 think in many instances, we have found that it is
15 not. It has to be a statement of fact and not
16 useful explanation or politically correct
17 explanation.

18 MR. GRIFFITH: Brian, can you give us
19 a thought with some language how you would change
20 the explanation on the last sentence.

21 MR. JONES: I'm really sort of
22 throwing it out. I'm not quite sure what the

1 intent is here. I'm just raising the question of
2 what the intent really is to say -- again, I
3 don't recall what the modified language is that
4 Donna proposed is, but just looking at this
5 language.

6 Let's see. Okay. Therefore
7 education institutions should pursue all other
8 alternatives before cutting or capping any team
9 when, and here I was just wondering whether you
10 meant to say gender or whether you meant to say
11 when Title IX compliance is a factor in that
12 decision.

13 Again, just laying on the table this
14 issue that the statute itself does say that you
15 can't excludes people from programs or deny them
16 benefits or discriminate against them on the
17 basis of sex.

18 So if sex is one of considerations
19 that you are using to eliminate a team as opposed
20 to just Title IX compliance, then arguably you
21 are in violation of the statute. That is just a
22 question I'm throwing out for your consideration.

1 I understand Donna's point.

2 MS. VARONA: You already say it is
3 not favored way of complying with Title IX. It
4 is already said in this paragraph.

5 MR. GRIFFITH: It is difference
6 between saying it is disfavored or illegal.

7 What Brian is saying is we maybe
8 making a recommendation in here on its face is
9 illegal --

10 MR. JONES: I'm just throwing it out
11 there. I don't know what the intent is. I'm not
12 entirely clear what the intent is.

13 I'm just saying arguably that's
14 right, that what I see when you're suggesting
15 here that there are things you should do before
16 you cut a team or cap a team with sex being a
17 factor.

18 I'm just raising the question for you
19 all to consider, you know, is that what you mean
20 to say, are you talking about Title IX
21 compliance.

22 That seems to be the issue that we've

1 dealt with that teams blaming Title IX for the
2 elimination of teams, not so much they are
3 blaming gender. It seems they are blaming
4 Title IX, whether rightly or wrongly, whether
5 honestly or dishonestly.

6 MR. LELAND: Donna, are you
7 comfortable with Brian's substitution --

8 MS. VARONA: I would like to hear it
9 again. Bob or Brian.

10 MR. BOWLSBY: Well, I think it is a
11 good change. We could tiptoe around it all we
12 want to, but that's where the rubber hits the
13 road. And we've said it up above, and I don't
14 see any reason not to say it down below.

15 If anything, it is going to diminish
16 the number of occasions when somebody hangs a
17 financial decision on the back of Title IX,
18 rather than the other way. I think it is a
19 positive in dealing with both the reality of
20 those institutions that do have to make those
21 difficult decisions, and the illusion that some
22 have made those decisions for Title IX reasons

1 when that really wasn't the case. I think this
2 helps in both of them.

3 MR. LELAND: Okay. So substitute
4 Title IX for the gender --

5 MR. GRIFFITH: Do we have language in
6 front of us yet?

7 MR. DISKEY: Be one minute.

8 MR. BOWLSBY: Do the whole paragraph.

9 MR. LELAND: Recommendation number
10 five, the Office of Civil Rights should make
11 clear that cutting teams in order to demonstrate
12 compliance with Title IX is a disfavored
13 practive.

14 And I think the only thing we are
15 fussing with is the last sentence, is it not, in
16 the description.

17 MR. GRIFFITH: Line 27 through 32
18 remain unchanged; is that right?

19 MR. LELAND: Correct.

20 MR. GRIFFITH: So we are just dealing
21 with --

22 MR. LELAND: That last sentence. It

1 has been confusing. We've been sort of hopping
2 all over. I think we are getting to where --

3 MS. COOPER: I think this is the
4 sentence that we've revised. I might as wait
5 for --

6 MR. LELAND: The real McCoy.

7 MS. COOPER: The envelope, please.

8 Therefore educational institutions
9 should pursue all other alternatives before
10 cutting or capping any team when Title IX
11 compliance is a factor in that decision. If
12 indeed teams have to be cut student athletes
13 should be given justification and adequate
14 notice.

15 MS. FOU DY: Do we talk anywhere about
16 the point of universities blaming Title IX? I
17 know we brought that up somewhere else. Did we
18 address that anywhere in here? I know we did in
19 Philly. But we are not putting it in there?

20 MS. GROTH: I think this language
21 helps, Julie.

22 MR. LELAND: The language helps. If

1 you are asking me is there anything in there,
2 don't blame Title IX.

3 MS. FOU DY: Rita, I know you
4 mentioned it earlier.

5 MR. LELAND: That's a hard one.

6 MR. SLIVE: I move acceptance of
7 recommendation as five as revised.

8 MS. GROTH: I second.

9 MS. COOPER: Do we have a consensus
10 on recommendation five as revised?

11 Yes, consensus.

12 Now, line 32 as it's been revised.

13 Has it been -- oh, cool, dude, let's move on, I'm
14 all for it.

15 Okay. Recommendation number six.

16 The Office of Civil Rights should aggressively
17 enforce Title IX standards including

18 implementations, sanctions for -- implementing

19 sanctions for institutions that is do not comply.

20 The Department of Education should also explore

21 ways to encourage compliance with Title IX rather

22 than merely threatening sanctions.

1 Discussion.

2 MR. DE FILIPPO: Recommend approval.

3 MS. COOPER: Consensus.

4 MR. GRIFFITH: I'm not sure what the
5 second sentence is.

6 MR. BOWLSBY: Second sentence of
7 recommendation.

8 MR. GRIFFITH: Explore ways to
9 encourage compliance other than merely
10 threatening sanctions.

11 MR. BOWLSBY: I think when we talked
12 about that in Philadelphia. We were really the
13 withholding of federal funds had never been done.
14 And we thought perhaps there was a way to do it
15 other than withholding federal funds. Maybe
16 there's some other approach to do it. We talked
17 about ways to incentivize compliance rather than
18 penalize compliance.

19 MR. GRIFFITH: What this is saying is
20 right now it's our judgment that they are just
21 threatening sanctions. We want them to do more
22 than that?

1 MS. GROTH: I think this is good, but
2 on line 44 where it says other mechanisms exist
3 and should be pursued with other educational
4 institutions.

5 What are those other mechanisms?

6 MR. JONES: Under Secretary's
7 authority, he had a broad range of enforcement
8 authorities that he could explore. Withdrawing
9 funds it is like the death penalty.

10 He could enter into a compliance
11 agreement with institutions, and he could issue
12 cease and desist order. We could refer things, I
13 suppose we could sue in the Court, refer things
14 to the Justice Department.

15 So there is -- there's a real range.
16 The typically the approach has been you try to
17 work with an institution in an amicable fashion.
18 The rationale, again, being that withdrawing
19 federal funds is a very significant consequence
20 because, you know, these federal dollars often
21 work to the benefit of a lot of students who are
22 at these institutions. If you withdraw them, you

1 are punishing a lot of students who are innocent
2 bystanders.

3 So that's why withdrawing the federal
4 funds has always been a very extreme and
5 obviously serious consequence but short of that,
6 there is a range.

7 I hope I answered the question.

8 MS. COOPER: There's a motion to pass
9 this recommendation.

10 Is there a consensus?

11 Move on to recommendation seven.

12 MR. LELAND: Okay. Before we hop
13 into recommendation seven, let me give you a few
14 statistics here. Since we came back from lunch,
15 which was two hours ago, we passed on 15 or 16
16 motions. We have about 15 or 16 left. This is
17 one of the instigators for great succinct debate.
18 If we persist, we may be able to complete this in
19 a timely way, today.

20 I don't want to say that in a way
21 that limits debates. I want everybody to feel
22 comfortable bringing up what want to bring up.

1 But let's move forward anybody.

2 In light of this, I think we'll not
3 take a break.

4 MS. COOPER: A five-minute break.

5 (Recess)

6 MR. LELAND: Okay. If we could come
7 to order, please, before we barge ahead.

8 Most of the people in the audience
9 aren't back yet, but I was asked by the media
10 people to indicate that Cynthia and I will have a
11 media avail, whatever they call it, immediately
12 after our deliberations end today. So the media
13 people can talk to us then.

14 I do have a short list of things that
15 our authors are working on trying to get back to
16 us by the time we get done.

17 One is Julie's concern, the
18 Background area about some current statistics
19 being included, they are working on that.

20 Debbie's had a concern about some
21 kind of, what did you say, differential --

22 MR. DUNCAN: Caveat.

1 MR. LELAND: They did try to find
2 some clarification on the statistics that we saw
3 earlier in the women's only schools. Those are
4 all varsity sports only.

5 But to get comparison statistics it
6 is going to take them more than just today.

7 Those people that are concerned about
8 that, my recommendation is we let them insert
9 those numbers later and not get -- then see when
10 a draft comes around of the proposal.

11 But if anybody else thinks that our
12 authors are working on a paragraph on their
13 behalf, they should get to those authors and tell
14 them.

15 Because as far as they know, besides
16 the little editorial changes that we've asked
17 for, that's what their workload is for the rest
18 of today.

19 MS. FOU DY: Ted, did you mention
20 something about the Cohen case, did you say that
21 clarification they were going to give --

22 MR. LELAND: I think you're right,

1 Julie.

2 Is there something we are working on?

3 MS. FOU DY: On one of the findings;
4 right?

5 MS. SIMON: Ted, also when we are
6 getting the data on the women's only schools, and
7 we know their varsity sports, what kinds of
8 schools are we comparing them to? We should be
9 comparing them to small, liberal arts colleges,
10 because that's all the women colleges are.

11 Did they hear me?

12 MR. LELAND: Okay. I'll make sure.

13 MS. VARONA: Rita, your comparison,
14 could you just repeat what you just said?

15 MS. SIMON: At the women's colleges
16 they are talking about varsity sports
17 participation. I'm saying if there's comparison
18 with other schools, they should be with liberal
19 arts colleges.

20 MR. LELAND: Okay. Any other
21 comments before we leap in?

22 Now on recommendation seven, Page 36.

1 The Department of Education should initiate
2 programs to promote female student interest in
3 athletics at the high school level, explore the
4 possibilities of a pilot program to encourage
5 participation in physical education and explore
6 ways of encouraging woman to walk on teams.

7 Discussion, thoughts.

8 MR. GRIFFITH: Well, I'm all in favor
9 of somebody encouraging female student interested
10 in athletics at the high school level. I'm not
11 comfortable that's the charge of the Department
12 of Education to do that.

13 I would like to see education funds
14 used on whole host of things. I'm not certain
15 this would be on a list of Department of
16 Education involved with.

17 So seems to me the Department of
18 Education enforces an anti-discrimination
19 statute, but I'm just not comfortable with the
20 Department of Education doing this. If we were
21 to say it more generally that somebody ought to
22 do this, I just worry about whether it is them.

1 MS. FOU DY: What I was saying for all
2 boys and girls, K through 12, encourage, yeah,
3 generally. You could say something like the
4 Department of Education should initiate programs
5 to promote physical education for all boys and
6 girls in K through 12.

7 MS. COOPER: I agree.

8 MS. FOU DY: And make it general. On
9 the paragraph to follow --

10 MR. LELAND: Wait a minute now.
11 Are -- do you have substitute motion now on
12 number seven? We do.

13 Men's and women's still includes a
14 Department of Education, so you weren't persuaded
15 by Tom's argument that --

16 MR. GRIFFITH: I don't know who does
17 it, though. Somebody help me here.

18 MS. FOU DY: Well, I know the
19 President's Physical Fitness council has been a
20 big issue, so I think in relation to that
21 initiating programs to --

22 MS. PRICE: It may not be

1 and sports opportunities for young boys and
2 girls, K through 12.

3 MR. LELAND: Is that another
4 substitute motion?

5 MS. VARONA: I was trying to help
6 with a language.

7 MR. SPANIER: Department of Education
8 should encourage educational leaders to promote
9 programs to encourage male and female student
10 interest in athletics and so on. And the rest of
11 it. That's not changing any other words.

12 MS. SIMON: Graham, would you accept
13 as a friendly amendment, educational leaders and
14 sports leader. I mean having Michael Jordan
15 (inaudible) high school kids to participate in
16 sports might have more effect than the Department
17 of Education.

18 MR. LELAND: We have -- any other --
19 I think everybody -- so far we understand the
20 amended recommendation. I think so far.

21 MR. SPANIER: The Department of
22 Education should encourage educational and sports

1 leaders to promote programs to encourage male and
2 female student interest in athletics at the high
3 school level and so on.

4 MS. FOU DY: Yeah, K through 12. I
5 think we should broaden it and generalize it.

6 MR. SPANIER: How about the
7 elementary and high school levels?

8 MS. VARONA: Are we leaving out PE,
9 don't we want the word PE in there?

10 MR. SPANIER: I haven't changed the
11 rest of this. It's still in there. I just
12 wasn't reading the whole thing, just didn't seem
13 to want to spend a half an hour on this.

14 MR. LELAND: I agree.

15 We will still talking about the
16 recommendation. Let's not go to the rationale
17 statement yet. We are still wordsmithing the
18 recommendation.

19 Anybody have any other comments on
20 the recommendation?

21 Okay. Hearing none, let's go down
22 and talk about the rationale statement now.

1 Any thoughts or comments?

2 MS. FOU DY: I would scratch on line 9
3 after the comma, particularly among girls and
4 women, and just keep it general like we did at
5 the top. I would scratch from 15 to 18, the last
6 sentence.

7 MR. LELAND: Anybody object to those?

8 MR. GRIFFITH: What's wrong with 15
9 to 18; is it excessive or something you just
10 disagree with?

11 MS. FOU DY: I have to read it again.

12 I'm okay with it. Either way, it
13 doesn't really matter. We don't need to spend a
14 lot of time on this.

15 MS. VARONA: It assumes there's more
16 high school girls participating in sports than
17 there are slots available on the collegiate
18 level.

19 So in a subtle way I don't want to
20 endorse the idea that there is an interest out
21 there. I think we have -- and some of the
22 barriers have been not because of cultural

1 reasons only, but because of opportunities.

2 So I think it begs all that. So if
3 get rid of that, I think we don't have to look at
4 the nuances or read something into it that it
5 isn't intended.

6 MR. LELAND: So you are supporting
7 removal of the last sentence?

8 MS. VARONA: Yeah.

9 MR. LELAND: Okay. Other thoughts?
10 I don't see any objections to removing the last
11 sentence.

12 MR. GRIFFITH: I object. I think it
13 is an important statement, that one way you bring
14 about change is to create opportunities. I think
15 it is a fine statement.

16 MR. LELAND: Okay. Other comments.
17 We are talking about last sentence.

18 MS. VARONA: I'll give you that if
19 you could get rid of naturally.

20 MR. GRIFFITH: Yeah, okay.

21 MS. SIMON: Tom, go ahead.

22 MR. LELAND: So far we have the last

1 sentence without one word.

2 Any other comments or thoughts on the
3 rationale statement for recommendation number
4 seven?

5 Okay. Hearing none, seeing none, can
6 we approve recommendation seven and the rationale
7 statement by consensus?

8 MS. COOPER: Yes.

9 MR. LELAND: Yea. Eight.

10 MS. COOPER: Recommendation eight.
11 Because using financial resources wisely and not
12 excessively is more likely to contribute to broad
13 sports programs that include Olympic sports the
14 Department of Education should encourage
15 educational institutions and national athletic
16 government organizations to address the issue of
17 reducing excessive expenditures in the
18 intercollegiate athletics. Possible areas to
19 explore might include the possibility of an
20 antitrust exemption for college athletics, urging
21 the use of the President's and Secretary's bully
22 pulpits, quotes unquotes, to call for restraint

1 in expenditures an in creating an entity outside
2 of the NCAA to monitor expenditures.

3 MS. YOW: Is this where we comment.

4 MS. FOU DY: Can I just say, my name's
5 on it. I don't know what bully pulpits means.
6 That's not me.

7 MS. YOW: Okay. Bully pulpits is not
8 what I was going to comment on.

9 Creating an entity outside of the
10 NCAA to monitor expenditures, we already did
11 that. It's called the EADA report, reports to
12 the Department of Education. We also report to
13 our respective campuses. We report to the Board
14 of Regents of our statewide institutions and the
15 chancellor.

16 We are one of the most over-regulated
17 industries ever to be in existence. We report to
18 the faculty senate, you know, which is not to be
19 confused with four or five other groups we report
20 to.

21 I'm not sure why that is there or --
22 we already report lots of places. So.

1 MR. SPANIER: I would like to support
2 Debbie's comment there. I don't know where that
3 came from. There are too many organizations out
4 there trying to be the NCAA or to work around the
5 NCAA, and it is just doesn't make any sense.

6 I recommend we either take that out
7 or if somebody had a compelling reason for
8 putting that in the first place to change words
9 to say and encourage the NCAA to monitor
10 expenditures.

11 To one or the other. Either is okay
12 with me. Encouraging someone else to get in the
13 act and do it, is heading in the wrong direction.

14 MR. BATES: Ted, I think this
15 recommendation is bit cumbersome, seems to me we
16 could take some of it out.

17 The first sentence I don't know that
18 adds much. And it seems to me the recommendation
19 is Department of Ed should encourage educational
20 institutions and national governments
21 organizations to address the issue of reducing
22 excessive expenditures in intercollegiate

1 athletics.

2 That's the recommendation. Then
3 there's a lot of some of the other stuff could go
4 it seems to me elsewhere in the rationale. But
5 it seems misplaced in the recommendation.

6 MS. COOPER: So do we have consensus
7 for that change?

8 MS. FOU DY: Can we put it down below?

9 MR. BATES: Some of it should be down
10 below. Whatever is appropriate, I would suggest
11 going down to level of rationale.

12 MS. COOPER: Okay. Are you saying
13 recommendation eight should read, the Department
14 of Education should encourage educational
15 institutions and national athletic governing
16 organizations to address the issue of reducing
17 excessive expenditures in intercollegiate
18 activities.

19 MR. BATES: Right. That's the
20 recommendation.

21 MR. SPANIER: I think very important
22 that we have explore the possibility of an

1 anti-trust exemption for college athletics.
2 That, as we talked about last time, is a very
3 important barrier currently cross containment.

4 MR. BATES: I would then support that
5 particular sentence as part of the
6 recommendation.

7 MS. COOPER: Okay. I'd read it
8 again. The Department of Education should
9 encourage educational institutions and national
10 athletic governing organizations to address the
11 issue of reducing excessive expenditures in
12 intercollegiate athletics. Possible areas to
13 explore might include the possibility of an
14 anti-exemption for -- anti-trust exemption for
15 college athletics.

16 MR. BATES: I would just remove one
17 of the possibilities. I think the second can be
18 taken out.

19 MR. SLIVE: Put period at
20 expenditures. Line 28.

21 MR. BATES: Yeah.

22 MS. COOPER: Okay. Do we have a

1 consensus?

2 MR. GRIFFITH: I'm not in favor of
3 encouraging the Secretary to suggest that there
4 be anti-trust exemptions. I know that's part of
5 it, but I'll vote against it if that's in it.

6 MR. BATES: Let me add to -- I think
7 when we talked about it, it needed to come from
8 some place other than intercollegiate athletics,
9 that's why we're saying secretary. But it could
10 be somebody educational.

11 MS. COOPER: So we should vote, have
12 a motion to vote?

13 MS. FOU DY: You were talking about
14 recommendation? Not the total --

15 MR. SPANIER: I think what the
16 suggestion was to take very first sentence of the
17 recommendation, which has now been eliminated,
18 and move it to become what would probably be the
19 second sentence in the section below.

20 MS. FOU DY: Can I add just one thing
21 I noticed. One of major factors -- line 32 --
22 one of the major factors identified by the

1 Commission in the decision to cut teams is a lack
2 of resources at some schools.

3 I would like to add, due to
4 escalating expenditures.

5 MR. SPANIER: Lack of resources is
6 not necessarily due to escalating expenditures.
7 It might be at some schools.

8 MS. VARONA: You could put "and"
9 escalating expenditures to support revenue
10 producing sports.

11 MS. FOU DY: I just want to somehow
12 tie it into this recommendation. Not just a
13 field issue --

14 MR. DE FILIPPO: It's not applicable
15 at every school. At some it is, not all.

16 MS. FOU DY: Right. That's just why
17 we're saying one of the major factors.

18 MS. VARONA: It is in the next
19 sentence.

20 MS. FOU DY: Right. Okay. Sorry.

21 MS. VARONA: So is your
22 recommendation to move because using financial

1 resources wisely and not excessively is more
2 likely to contribute, that sentence, you move it
3 down. And underneath the recommendation, and
4 then you pick up, one of major factors identified
5 by the Commission.

6 MR. SPANIER: Become the second
7 sentence of that paragraph.

8 MS. VARONA: I'm all right with that.

9 MS. COOPER: Any further discussion?
10 Consensus?

11 MS. VARONA: We don't have a
12 consensus.

13 MR. GRIFFITH: No.

14 MS. COOPER: For recommendation
15 eight. All in favor of recommendation eight with
16 the amendments, raise your hand.

17 MS. PRICE: Twelve in favor.

18 MS. COOPER: All against, opposed?

19 MS. PRICE: One opposed.

20 Motion passes twelve to one.

21 MR. GRIFFITH: For the record, I'm
22 for democracy and free markets.

1 MR. LELAND: We're now on to
2 recommendation nine. It is something of either
3 or. Let me read the two -- not necessarily the
4 either or. We said today we could have sort of
5 contradictory recommendations and the Secretary
6 could choose between them or choose none of them.

7 So we shouldn't back away if we want
8 to make two recommendations here, but these seem
9 to us the ones we could decide on.

10 The first recommendation nine A, lets
11 put it, is the Department of Education should
12 encourage the redesign of the equity in athletics
13 disclose act to -- focus away from collecting
14 only raw participation statistics, which
15 (inaudible) proportionality is the best way to
16 comply with the three-part task.

17 Other recommendation, which I'll call
18 9B is the department of education should
19 encourage congress to repeal the equity in
20 athletics disclose act reporting requirement.

21 So let's open up for discussion on
22 two of them.

1 We have one that says amended.

2 Cary, supposed author here.

3 MS. GROTH: Right. If I could change
4 the wording on recommendation nine to read: The
5 Department of Education should redesign the EADA
6 to enable schools to identify which prong they
7 need in complying with Title IX, period. The
8 EADA should be required for high schools as well
9 as colleges.

10 I believe I was told as
11 representative Olympia Snow as already submitted
12 this bill, senator, excuse me, this bill, and
13 would be good to support this as well. But I
14 would reword the way --

15 MR. LELAND: Let's take the issue.
16 First issue is the rewording of nine A. Is
17 everybody comfortable with the rewording of it?

18 MR. JONES: Can I make a quick
19 interjection here.

20 Cary, you left out the word encourage
21 the redesign. I would just suggest as a legal
22 matter, we are going to need to leave it that

1 way. Because the secretary doesn't have the
2 power on his own to redesign the EADA.

3 MS. YOW: I have a question to Sally.
4 I remember when we discussed this, might have
5 been Philadelphia. What I can't remember
6 exactly, we were talking about the EADA reports.
7 I thought you made it clear to us, but maybe not.
8 That you guys -- I'm not sure I understand the
9 purpose of the reports. You made it clear to us
10 there is no enforcement. You are not enforcing
11 anything we are going.

12 If we are going to do what Cary wants
13 to suggest, why we are doing it, what benefit we
14 will derive from doing it.

15 MS. STROUP: That's right. We don't
16 do anything with the report. We put the date on
17 the website. That's the sole extent of what
18 happens with it at the Department. Correct me if
19 I'm wrong, if anyone from OCR ever looks at it.
20 I doubt they do. The recording issue.

21 And my question is I want to know how
22 we are going to redesign it. Redesigning that

1 report it is a monster report now. The thought
2 of it getting even longer scares me to death.

3 Maybe you guys have some good ideas.
4 I hope that's part of this recommendation --

5 MS. GROTH: The redesigning is only
6 to allow the schools to identify which prongs
7 they meet in complying with Title IX. Our
8 discussion in Philadelphia, was based on that
9 fact that report gives false impression that
10 institutions who do not meet proportionality
11 automatically are not in compliance with
12 Title IX.

13 So I remember one of the
14 recommendations maybe adding two boxes, or how do
15 you comply with Title IX, which prong.

16 So not any major changes but --

17 MR. LELAND: I think, Sally, in
18 addition on the cover sheets, in addition to the
19 proportionality of appropriate or numbers, the
20 participation numbers, scholarship dollars, you
21 have another box that says, are you complying
22 with prong two. Another box that says, are you

1 complying with prong three.

2 And would allow the president of the
3 institution, before they get called before the
4 OCR or get sued to be able to declare -- not only
5 be able to but have to -- declare on which one of
6 these three prongs they think they are using to
7 comply. And I hope a lot of people feel
8 hopefully there will be more discrete
9 descriptions for prong two and three in how you
10 comply.

11 Nobody is suggesting we redesign all
12 the statistical information inside or all the
13 dollar information inside. But I think there is
14 a feeling that, gee, if we are going to -- if an
15 institution wants to comply with prong three and
16 doesn't want to get called before the OCR or
17 sued, they would like a way to do that, to
18 declare on that form.

19 Because that's what most people are
20 concerned about, your compliance with Title IX,
21 look at that form. How is Stanford doing. They
22 look at that form. Right now they don't see

1 prong two or three information. Not even
2 acknowledged it was there.

3 So I think that was -- not make you
4 go through and do the finance again.

5 MR. SPANIER: I'm with Sally on this.
6 I think this is a supreme example of a wasteful,
7 time-consuming report that nobody uses, nobody
8 reads. It's results in millions of dollars of an
9 unfunded mandate. And I don't see any way in
10 which it promotes Title IX.

11 If we want to promote Title IX, let's
12 find another way of doing it than assigning a
13 member of our staff to put 45 pages of statistics
14 together that can't actually be compared from one
15 institution to the next, because the
16 methodologies and budget centers are all
17 different.

18 It is terribly wasteful and
19 inefficient. Who knows over time what the prongs
20 will be, how many there will be, what OCR will be
21 doing to enforce them, checking a box on the 46th
22 page of this form is meaningless in the overall

1 scheme of things.

2 I just don't see -- before we spend a
3 lot of time wordsmithing it, we ought to find out
4 if anybody sees a compelling reason in this
5 spirit of this Commission to recommend a
6 continuation of that report.

7 I'm speaking as someone who had staff
8 members preparing these reports, and I have to
9 review them and personally sign off on them.

10 It's just another one of those
11 documents that nobody ever looks at once it
12 leaves your hands.

13 MR. LELAND: Sounds like he wants to
14 vote for 9B.

15 Let's have more discussion.

16 MS. FOU DY: How do you know, Graham,
17 outside of your office, how do you know on the
18 general public whether they look at it or not.
19 Is there a tracking of that, or where does that
20 assumption come from is my question.

21 MR. SPANIER: Well, I can't track the
22 hits on the Department of Education website, but

1 we get about one call a year from somebody who
2 wants to see it. And it is just not worth the
3 time and the effort.

4 And if someone's really interested
5 in, you have to sit down with them and explain
6 anyway. And occasionally when somebody in the
7 newspaper wants to take a bunch of them and
8 analyze them, they don't come out right anyway.
9 Because it is very complicated and very
10 cumbersome.

11 And usually somebody wants one or two
12 numbers out of report that contains hundreds of
13 numbers to try and do something with.

14 What's the idea here? If the idea is
15 some reporting mechanism to encourage compliance
16 of Title IX, get rid of this and appoint a
17 working group to come up with a little report
18 that's meaningful to demonstrate it. Maybe that
19 report asks this question of how do you go about
20 fine tuning. How are you as sure as you are,
21 what are the meaningful data.

22 But the data that are in this report

1 don't end up telling -- at some point it is so
2 long, you can't make sense of it.

3 MR. LELAND: Let's move forward. We
4 are talking about 9A and B.

5 MS. KEEGAN: Maybe what Jerry was
6 going to say would be helpful, where you use it.

7 MR. REYNOLDS: Few quick comments.

8 You can't tell currently from the
9 document whether a school is in compliance. And
10 often the data contained in the report, people --
11 it's been used in ways that haven't been helpful.

12 Now, the suggestion that we should
13 have additional boxes that would indicate whether
14 a school has come into compliance with prongs two
15 and three, just because an institution declares
16 that it is in compliance with prong two and three
17 does not mean that at the end of the day OCR is
18 going to agree with that finding.

19 So I just don't want to put the
20 public in a position where it is relying on a
21 document that doesn't mean anything.

22 A box where someone has checked prong

1 two doesn't necessarily mean that the Office of
2 Civil Rights is going to agree.

3 But at the same time, though, a
4 parent can look at that report and assume that
5 the school is in compliance with that prong.

6 MS. GROTH: Jerry, what we could do
7 then -- I think we are simplifying this too much.
8 I think the box could say such and such
9 institution meets the requirements of prong two
10 per the Office for Civil Rights.

11 I agree it is not as simple as a
12 check-off box. I also agree with Graham. I
13 don't want us to be putting together information
14 that is not useful.

15 However, we do need to be accountable
16 to the public as to what our athletic departments
17 do, and our revenues and expenditures as well as
18 the participation numbers.

19 MR. REYNOLDS: If you are asking for
20 OCR to certify that each college in America is in
21 compliance or isn't in compliance, that is just
22 not feasible.

1 MR. LELAND: We heard testimony --
2 the problem right now is with the EAD form. If
3 you're a university president, the only public
4 acknowledgement you have, if you haven't been
5 sued or hauled before OCR with a complaint, is
6 the ADA report. And that only deals with one
7 prong.

8 So when you get a letter from some
9 organization that says you're in violation or
10 prove to me why you were not in violation, it's
11 based on that one particular set of data.

12 I think a lot of us who have
13 universities are committed to complying with
14 Title IX would like to have the flexibility of
15 using two and three, would like not to be sued
16 and not hauled before OCR with a complaint, not
17 to have it adjudicated by someone else. We could
18 self evaluate ourselves.

19 Your argument is you don't rely on
20 the present EADA form and you investigate people,
21 why wouldn't a new EADA form or some form that
22 maybe Graham suggested, do away with that.

1 But particularly most universities
2 presidents would like some public acknowledgement
3 that they are complying with Title IX, and right
4 now, there's only one way to do that, and that's
5 with the EADA form, and that only deals with one
6 prong.

7 So if you are a university president,
8 and counsel, you say I need to be out there in
9 the public as being supportive of women's
10 opportunities, that's what my community demands,
11 and gosh, there's only one way to acknowledge it.

12 I happen to like the idea -- I'm not
13 sure the EADA form is right, but giving people a
14 chance to declare I'm in compliance using prong
15 two and here's why.

16 MR. REYNOLDS: I understand this
17 desire to do this. But coming into compliance
18 with prongs two and three requires lots of legal
19 analysis. And often people with goodwill
20 disagree over whether a school is in compliance.

21 All I'm saying that this declaration
22 could be misleading.

1 MR. LELAND: I agree.

2 MS. VARONA: I was just trying to
3 follow up with Graham's recommendation, why don't
4 we recommend that the document reflects what we
5 are looking for. And we put that language in our
6 report. This EADA report doesn't seem to be
7 meeting the needs of the Office of Civil Rights
8 for these school that want to be in compliance
9 that this EDA report doesn't seem to be
10 delivering or meeting the needs of the Office of
11 Civil Rights for those schools that want to be in
12 compliance, that the EDA report must be reviewed
13 or another report --

14 I'm not in your business, but we just
15 embrace Graham's concept.

16 MR. LELAND: I think Graham's concept
17 was he votes for nine B -- or suggested the
18 Department of Education encourage congress to
19 appeal -- and if he had to do a substitute
20 process to try develop a different form that
21 would meet my problems or give me a chance -- my
22 concerns.

1 But I think right now all he is on
2 record of saying he's in favor of 9B, which is
3 eliminated.

4 MS. KEEGAN: Ted, are the issues,
5 Cary, on the high schools -- A, I don't know
6 enough about what's in the current form, much
7 less what we are contemplating -- it seems to me
8 a good idea to have this better, simpler model of
9 saying to the public, here's what we do. Seems
10 to me it could probably be derived from one of 47
11 reports you are already doing, but that's just
12 me.

13 If there's some way you could
14 consolidate that and easily get it transparent to
15 the public, I think that's right.

16 But I will tell you in the high
17 school level where we already identified that we
18 don't keep these kind of statistics, there is no
19 NC2A.

20 Right now we're having a hard time
21 graduating our kids in reading and doing math,
22 much less calculating how many of them -- we try

1 to do that. Title IX is enforceable and should
2 be in the high schools. This form at high school
3 level, my fear is we are going to have to hire
4 somebody who used to teach math to do this form.
5 That worries me. I'm wondering about how
6 strongly you feel about leaving high schools in
7 here.

8 MS. GROTH: I feel strongly because
9 Title IX applies to all levels.

10 MS. KEEGAN: Of course it does. But
11 they are not exempt from it right now. They
12 simply aren't -- this form, as I understand it,
13 is not the be-all and end-all to everyone's
14 compliance with Title IX. It was an additional
15 congressional attempt.

16 What I've devoted a good portion of
17 my life of doing away with reports that just get
18 filed, particularly in K-12. And we just
19 specialize in them.

20 If this is a report that just gets
21 filed, is it going to substitute for something
22 else they are doing -- if I understood what we

1 are try to do it would be meaningful at the high
2 school.

3 But right now without that kind of
4 information, I couldn't in good conscience say
5 every high school in the United States should now
6 devote its attention to a new 47-page form, I
7 couldn't sleep.

8 MS. GROTH: I added this
9 recommendation because in Chicago this was a
10 recommendation that came from the IHSA.

11 So, you know, I think it would be
12 important for us to know what Senator Snow is
13 doing as well. I'm not that familiar with.

14 MR. LELAND: Gene.

15 MR. DE FILIPPO: Ted, you know, we
16 all really dislike it when people tell us how to
17 do our jobs. Those of us in college athletics,
18 we have a lot of people that tell us how to do
19 our jobs.

20 We are hearing from the high schools
21 this is not good, we are hearing from OCR, who
22 have to deal with it on a day-to-day basis that

1 it is not good, yet we are trying to enforce
2 something.

3 I would make a motion we adopt 9B and
4 let's move on.

5 MS. FOU DY: Can I disagree?

6 MR. LELAND: Well, let Percy first,
7 please.

8 MR. BATES: Well, this is one I've
9 been thinking of since Philadelphia. I try to
10 listen to both sides.

11 But the one troubling part of this to
12 me, and now leads me to think that maybe we
13 should get rid of it, tends to, at least as it
14 currently exists, forces people towards prong
15 one, which is really troubling.

16 While we may be able to change it,
17 I'm not sure we could get rid of that completely.

18 So I would want to argue and now feel
19 that I am leaning towards the fact that we ought
20 to get rid of it and find something else that
21 makes a lot more sense to us.

22 Seems to me it is something that's

1 doing harm. Everybody is saying it is of no
2 help. Not only that, it seems to be doing harm
3 to our efforts.

4 And therefore I'm leaning towards
5 suggesting we get rid of it.

6 MR. LELAND: Julie, and then Bob.

7 MS. FOU DY: Clearly there's issue
8 with it not being effective. But to take a
9 radical leap of saying we should do away with it
10 entirely, this is disclosure act for the public.

11 Wouldn't it serve the public better
12 to say clearly with the time constraints of the
13 Commission, we don't have time to send out
14 recommendations on how it would change. It's not
15 our expertise, but someone should tackle this, it
16 is an issue.

17 Does that mean we scrap the entire
18 program after it's been built for the public to
19 access information, which is why it's there. If
20 the information is bad, that's no good.

21 But it's more an issue of how we can
22 clean it up rather than totally dismantle the

1 whole program.

2 We are taking a large step here, and
3 we should say maybe our recommendation is that we
4 should acknowledge problems with that report, one
5 of them being focusing on prong one, another one
6 being numbers are inaccurate.

7 Graham, I think you said they don't
8 even track across the board -- and acknowledge
9 that, but say we feel like someone else should be
10 looking at this as an issue, but not scrap it
11 entirely. Because it is to serve the public.

12 MR. LELAND: Bob and then Tom.

13 MR. BOWLSBY: It is fatally flawed in
14 a lot of ways. Even those of us that know the
15 numbers can't make any sense of them. You
16 absolutely can't take a report and compare any
17 one institution over another on any front.
18 Choose salaries, anything.

19 We have tried to use it as a
20 comparison for such things assistant coaches
21 salaries. You don't have the average cost for
22 men's assistant coach salary versus women's

1 assistant coach salary. The numbers don't even
2 compare within the individual institution.

3 It's a very costly undertake just to
4 be filed away. And everybody has said other than
5 just being able to get on the website and compare
6 one institution with another, there doesn't seem
7 to be any viable use for the thing.

8 It has zero to do with compliance.
9 All of us are making decisions on our own
10 campuses that deal with that, and we all have our
11 own board and control of athletics, own board of
12 regents, own conference initiatives.

13 I can't see that it is doing anything
14 to help us comply in any way with Title IX,
15 either the letter or the spirit.

16 As I said, the aggregation of the
17 data and the opportunity for comparison is
18 fatally flawed. I can't imagine an environment
19 at which it is valid or useful.

20 We could do so much better if we just
21 focus on what it is we want the thing to
22 accomplish, and then go about recreating it.

1 I don't think this one can be amended
2 to be functional. I think we need to get away
3 from the EADA and identify what it is we want to
4 provide in the way of information to each other,
5 to the public, and to Department of Education,
6 and then design that document to make it happen.

7 Of all things, it needs to be a lot
8 simpler. This one, our institutions are spending
9 thousands and thousands of dollars preparing this
10 report to be put up in a website and then left.
11 Each one of us is investing many dozens of staff
12 time to prepare this report, for some nebulous
13 purpose.

14 MR. SPANIER: Imagine all the high
15 schools around the country who don't have enough
16 money to buy textbooks for their students, and we
17 are going to have them hire someone for 10,000
18 bucks and prepare -- they could hire a couple of
19 new coaches to start sports up for that. I
20 wouldn't want to be party to imposing that on
21 anybody else.

22 MR. GRIFFITH: I have a question that

1 maybe Brian can answer.

2 Is one use of this report, is it used
3 effectively by plaintiffs in litigation to make
4 cases about discrimination at the university
5 level?

6 MR. JONES: I'm not aware of that
7 use, but I can't speak authoritatively.

8 MR. GRIFFITH: Okay. Seems to me
9 that's one significant use. We could argue, even
10 though I represent the university, a positive use
11 to for it to force universities to provide
12 information to the public so that judgments can
13 be made about whether they are in compliance so
14 plaintiffs to have, but I don't know.

15 Does anyone know, seen anything like
16 that?

17 MR. BOWLSBY: Wouldn't there be other
18 avenues to get that.

19 MR. GRIFFITH: (Inaudible) re-design
20 rather than junking it altogether. I don't know.

21 MS. GROTH: Okay. Hearing all this,
22 this really isn't a bad recommendation. So let

1 me take a stab at it before you all bury it.

2 Would you entertain this?

3 The Department of Education should
4 encourage the redesign of the EADA so that it
5 provides the public a significant tool to
6 evaluate the status of gender equity on the
7 nation's campuses.

8 MS. YOW: Change significant to a
9 relevant, please. Significant tool would become
10 a relevant tool.

11 MR. BOWLSBY: And I would suggest to
12 evaluate Title IX compliance rather than gender
13 equity.

14 MR. SPANIER: Well, now you are up to
15 60-page report. I couldn't support that, much as
16 I see how you are trying to accommodate.

17 MS. GROTH: Let's give it a shot. It
18 may come out.

19 MR. LELAND: And I would see it is
20 really substitute for 9A.

21 MS. YOW: Can there be an opportunity
22 to take what Cary is talking about, take it

1 another step further to cover what Graham's
2 talking about. And there really are, you know,
3 useless reports.

4 Is there a way to add to this some --
5 I don't know if it is the recommendation itself
6 or the subtext following it. Something -- it
7 could come back 60 pages.

8 We have to address the core issue,
9 which is not only can you not compare the data as
10 it is currently provided, but it is 47 pages. So
11 we have to address the length of it and viability
12 of the use of material as it is currently
13 presented.

14 MS. GROTH: So it provides the public
15 with a relevant and non-cumbersome tool.

16 MR. LELAND: Okay. I still think
17 that's a substitute -- I like it, but we don't
18 have a consensus. We still have people do away
19 with the whole EADA report and leave it there.
20 There are others that would like to support this
21 idea there is a public disclosure requirements
22 here, and we ought to engage in that in a better

1 way than we are doing now.

2 MS. FOU DY: What if you added some
3 words in there -- like a strong recommendation
4 for redesign. Maybe making that language
5 stronger. Or even suggesting that another group
6 be formed to look at that. So I don't leave
7 anything out.

8 MR. SPANIER: May I make a proposal
9 suggestion.

10 MR. LELAND: Certainly.

11 MR. SPANIER: Let's vote. If there
12 is no discussion on 9B. If there is no interest
13 in having this report, then the discussion is
14 over. If 9B is defeated, go back to 9A and fine
15 tune it and come up with some wording.

16 If I'm the only one, I'll be quiet
17 and you folks can work out a new methodology.
18 Shouldn't we vote on 9B to see where we stand.

19 MR. LELAND: Are we comfortable with
20 that. Normal procedure is to go to the most
21 draconian to the last, the most draconian is to
22 drop it altogether. Logically that makes sense

1 to take 9B first.

2 Anybody doesn't like that idea?

3 Anybody wants to object?

4 Let's discuss 9B, then. Ready to
5 vote.

6 Okay. All those in favor of 9B,
7 which is in the Department of Education should
8 encourage congress to repeal the equity in
9 athletics report requirement.

10 All those in favor of that, raise
11 your hand.

12 MS. PRICE: Six.

13 MR. LELAND: Opposed.

14 MS. PRICE: Eight. Fail, six to
15 eight.

16 MR. LELAND: Okay. Let's hop over to
17 9A as amended by --

18 MS. GROTH: The Department of
19 Education should encourage the redesign of the
20 EADA so that it provides the public a relevant
21 tool to evaluate the status of Title IX on the
22 nation's campuses.

1 MS. KEEGAN: Can you add drastically
2 simplify?

3 MS. GROTH: Yes.

4 MR. REYNOLDS: In thinking about how
5 we would go about this redesign, it seems to me
6 in order to have a document where you compared
7 the data across schools, you are going to have to
8 get all the schools to agree to the same
9 categories.

10 What are the chances that all of
11 schools in the country are going to agree to use
12 the same methodology?

13 MS. SIMON: Jerry, that's what the
14 Department of Education can do. The Department
15 of Education can send out a questionnaire to all
16 of these schools, have them fill out the
17 questionnaire to answer all of these questions.

18 Then you have the same data that
19 is -- that are being collected. If you send out
20 the questionnaire, you know what information you
21 want and then the information is (inaudible).

22 MR. REYNOLDS: The school store, most

1 of the schools store this data in software
2 systems that cost thousands of dollars and took
3 years to build.

4 If we want to do this, it seems to me
5 a whole lot of money is going to be spent in
6 order to redesign to financial software systems
7 that collect all this data.

8 MS. SIMON: I bet the data are there,
9 and they could pull it out. Why don't you
10 consider that --

11 MR. SPANIER: No way.

12 MS. SIMON: -- and see whether there
13 is some common ground, prepare a broad-based
14 questionnaire where when you get the answers,
15 they would generalize to all schools.

16 MR. BOWLSBY: I could tell without
17 reservation, this is the most labor intensive,
18 manually manufactured report that we do during
19 the entire year in our department. Without
20 question.

21 MR. SPANIER: There are at least 20
22 different ways a university pays for the medical

1 expenses of its intercollegiate athletes. You
2 can have some of them attributed to -- some of it
3 is in one department, some of them is a
4 reimbursement to some separate entity or to the
5 university's health center.

6 There is no -- you would need five
7 pages just to get some kind of understanding of
8 that one budget item. You multiple that by all
9 of the hundreds of budget items in athletics --
10 you take the employee benefits of an employee.
11 Some are paid centrally, some are paid sport by
12 sport. Some are paid by all intercollegiate
13 athletics. You have some coaches at some schools
14 that FTEs are split between coaching and teaching
15 classes.

16 That's why it takes us hundreds of
17 hours to fill out this report. You'll never get
18 it the same.

19 MS. SIMON: If you cannot get
20 comparable data, and if you are getting apples
21 and oranges and pears and so forth from different
22 schools, bad data are worse than no data, then we

1 should adopt Sally's proposal.

2 If you are telling me it's impossible
3 to get comparable data, then drop it. Because
4 then you'll be dealing and forever bugged by data
5 that is junk.

6 MR. BOWLSBY: When you co-mingle all
7 of that with the fact that you've got a bunch of
8 dumb athletic administrators gathering this
9 stuff.

10 MS. KEEGAN: I wasn't going to say
11 anything, Bob. This ain't happening in the math
12 department.

13 MS. SIMON: If we could be ending up
14 with data that is meaningless or distorting a
15 picture, that is very serious. Sally, you are
16 absolutely right.

17 MS. GROTH: We don't know that for
18 sure.

19 MR. LELAND: Some people told you
20 that, Rita.

21 I think there's a feeling that people
22 that fill out the EADA form that the

1 complications and the lack of transferability has
2 very little to do with proportionality or
3 scholarship dollars, which are pretty well
4 defined. It has to do with all these other
5 categories which are tangentially related to
6 compliance with Title IX.

7 So issues about recruiting dollars,
8 all those things, coaches salary, and are hard to
9 compute. There probably is no transference
10 across institutions that way. I've been on
11 dozens of committees over the years that have
12 tried to figure out a common system to compare
13 those things, and you can't.

14 It is very hard to do because of
15 different systems. But you can compare
16 proportionality, participation rates, some things
17 like that. My opinion, are very valuable for an
18 institution to have to disclose.

19 I could envision a way that the EADA
20 report would be severely simplified, but you have
21 to drop certain categories that are now asked
22 for. And I, me, would add a way to try to

1 acknowledge compliance with prong two or prong
2 three, if that was the institution's choice.

3 I think there is a way this could be
4 done. I feel strongly that we don't want to put
5 ourselves in a position where institutions
6 aren't -- have some public reporting requirements
7 regarding proportionality.

8 One of reasons we made the progress
9 slow though its been to 42 percent female
10 participation because institutions have had to
11 publicly acknowledge that. I don't want to lose
12 that. But I'm not sure we need to do a cost per
13 student of choose. That's what you get in
14 trouble trying to compute.

15 MS. SIMON: Ted, that's wonderful.
16 If there is some consensus about some basic
17 reliable and valid data that can be collected,
18 then do that on a simplified basis. Let's look
19 at that, at least if the data are meaningful,
20 then you see if there is anything more.

21 But certainly the kinds of data that
22 can be easily directed sounds like it may be

1 worthwhile.

2 MR. SLIVE: If you could reduce to
3 writing what you just said, I think maybe we
4 could make some progress here.

5 I'm not sure the language we have
6 here says that. But, you know, just to talk
7 about the report, if you, Cary, agree to that. I
8 think what Ted said, citing some specific
9 examples so we just don't go out into the
10 wilderness on this, maybe we can get somewhere
11 with this.

12 MS. SIMON: Can we have our excellent
13 editors prepare a new recommendation 9A which
14 takes into account Ted's language and then vote
15 on it.

16 MR. LELAND: They look as befuddled
17 as I do. I don't know.

18 MR. DISKEY: We have run out of ink.

19 MS. SIMON: But certainly the issues
20 as you say can be compared, seem to be some of
21 the most important issues.

22 MR. LELAND: Well, I don't know where

1 to go. We have 9A in front of us. As amended, I
2 think that what I just pleaded about, I think is
3 subsumed in what Cary has suggested.

4 If I wanted to do what I just said, I
5 will vote in favor of 9A so that there is some
6 push to make sure there is a public
7 acknowledgement of our status, each institution's
8 status in regard to Title IX, then simplified.
9 I'm going to vote in favor of her.

10 MS. COOPER: Should we vote?

11 MR. LELAND: We need to do 9A. We
12 did 9B, which said -- which proposed we were
13 going to encourage the Department of Education to
14 repeal. That was defeated.

15 Now we are on to Cary's
16 recommendation, which is substituted for 9A --

17 MR. GRIFFITH: But I think Mike's
18 point, is your gloss on that very significant,
19 and I think our reporter has it and maybe our
20 editors would be able to reclaim it.

21 MS. GROTH: We don't have to go into
22 detail. That's covers the recommendation.

1 MS. SIMON: (Inaudible) of what Ted
2 said.

3 MR. LELAND: In the rationale
4 statement. So we could get a recommendation
5 done, work with these guys on the rationale if
6 that moves us forward.

7 Cary, want to read again.

8 MS. GROTH: The Department of
9 Education should encourage the redesign of the
10 EADA so that it provides the public with a
11 relevant and simplified tool in order to evaluate
12 status of Title IX on our nation's campuses.

13 MS. SIMON: I move to accept.

14 MR. GRIFFITH: Compliance with --

15 MR. BOWLSBY: That motion doesn't
16 speak to the simplicity of preparation that I
17 think has been a portion of the substance of our
18 discussion.

19 MR. GRIFFITH: It does.

20 MR. LELAND: Significantly
21 simplified, would that be better.

22 MR. GRIFFITH: Really, really

1 simplified.

2 MR. LELAND: Drastically simplified.

3 MS. KEEGAN: You have campus in
4 there, when you say campus, I think of
5 university.

6 Is your intention still to pull up
7 high schools in this process?

8 MS. GROTH: Yes, it is. And going
9 back to Bob's concern, I think it is a good one,
10 but we can accommodate that underneath the
11 recommendation, as we have done with some of
12 these other recommendations, further describe
13 what we are trying to get at.

14 MS. KEEGAN: Let me just remind you
15 that when I came to this discussion, I had to be
16 told that you guys, OCR does not define sport
17 necessarily for the purpose of Title IX. NCA has
18 different definitions of what sport is on the
19 universities than OCR does. It took forever for
20 you guys to decide what's going to be a sport.
21 You have agreements on now what sports are
22 included, et cetera, for the purposes of this

1 report.

2 All I'm saying is, I really don't
3 think it is responsible for us to foist this on
4 high schools until we get it right in the arena
5 that is now most practiced. Later on, part of
6 the recommendation once people are comfortable
7 with that and it works, great. Public reporting
8 of this information is important. I am also
9 familiar with data bases in the high schools and
10 they are very sorry.

11 MS. GROTH: Okay. I'm okay with
12 that.

13 MR. LELAND: So high schools are not
14 part of the motion, in the future.

15 Are we ready to vote on 9A as
16 amended, and I'll work with the people.

17 Is there a consensus? Anyone want to
18 vote. No?

19 Okay. I think we have a consensus.
20 We are past 9A.

21 We have ten minutes. Is it the will,
22 since we are coming back tomorrow. Like it or

1 don't. These per diems -- we are making money
2 with these government per diems, we are doing
3 okay.

4 So recommendation --

5 MS. GROTH: I would like to
6 disassociate myself with the Chairman's remarks.

7 MS. SIMON: I have a seminar tomorrow
8 at 1:00 o'clock. Could we go longer than
9 5:00 o'clock this evening?

10 MR. GRIFFITH: I would say because we
11 are making such good progress, we don't need no.

12 MR. LELAND: We'll be done. Cynthia
13 and I, we are a little tired.

14 Any other -- I think we'll adjourn
15 seven minutes early for good behavior and --
16 we'll try to get through ten.

17 MS. COOPER: Recommendation number
18 ten. The Office for Civil Rights should
19 disseminate information on the criteria it uses
20 to help schools determine whether activities they
21 offer qualify as athletic opportunities as well
22 as the definitions of sport among the different

1 national governing organizations.

2 MS. VARONA: Could we just get rid of
3 everything after athletic opportunities?

4 MS. COOPER: So then it would read --

5 MS. VARONA: The Office for Civil
6 Rights should disseminate information on the
7 criteria it uses to help schools determine
8 whether activities they offer qualify as athletic
9 opportunities, period.

10 MS. COOPER: Is there a consensus?
11 Do we agree, not agree, is there more discussion?

12 MS. FOU DY: Agree.

13 MS. COOPER: Okay. There's
14 consensus.

15 MR. LELAND: One more.

16 MS. SIMON: Yes, one more.

17 MR. LELAND: Recommendation number
18 11. Office of Civil Rights should re-examine its
19 regulations regarding private funding of
20 particular sports, aimed at preventing those
21 sports from being dropped or to allow specific
22 teams to be added.

1 Okay. Any discussion?

2 MS. VARONA: Since my name is on it,
3 can I. OCR, can I change it to OCR should
4 educate educational institutions about the
5 standards governing private funding for
6 particular sports. Because, you know, there is
7 language as it relates to endowment of sports, I
8 don't think a lot of schools know.

9 MR. LELAND: You mean excludes the
10 return on that endowment from Title IX
11 compilations?

12 MS. VARONA: If you endow a sport,
13 you still have to come under Title IX guidelines
14 and compliance as it relates to everything that
15 the law it stands for.

16 MR. GRIFFITH: Are there regulations
17 right now regarding -- is that the right phrase?

18 MS. VARONA: I don't want
19 regulations. I want to scratch that. I want to
20 start with the Office for Civil Rights should
21 educate educational institutions about the
22 standards governing private funding for a

1 particular sports aimed at preventing those from
2 being dropped or to allow specific teams to be
3 added.

4 MR. GRIFFITH: I'm just asking a
5 background question.

6 Are there currently regulations.

7 MR. REYNOLDS: We have rules in place
8 now. And if I understand you, Donna, you're
9 saying basically we should tell people what the
10 current rules are and not change a current rule.

11 MR. GRIFFITH: What are the current
12 rules?

13 MS. VARONA: If you endow a sport,
14 you still have to comply with Title IX. You
15 can't separate that sport out. It still has to
16 come under the umbrella of Title IX.

17 MR. REYNOLDS: Right now our current
18 interpretation is -- it is possible that to build
19 more flexibility in it. I don't think it is good
20 idea to say we'll completely do away with the
21 rule. But I think we should explore the
22 feasibility of building some more flexibility

1 into the current role.

2 And the example that comes to mind is
3 Marquette. In that example, the alumni came up
4 with money they could have funded the wrestling
5 team, because of our current rule that wasn't an
6 option for the school.

7 MS. GROTH: But Marquette could have
8 accepted that money. There's a lot of
9 misunderstandings about the Marquette situation.

10 The institution can accept those
11 dollars, but they still need to be calculated in
12 the expenditures of your athletics program.

13 I don't want us to misunderstand what
14 happened at Marquette.

15 MR. REYNOLDS: That's true. Because
16 of that they decided it wasn't worth doing.

17 MS. GROTH: That was institutional
18 decision. It wasn't because they chose not to
19 accept the endowed moneys. They did not want to
20 continue their program.

21 MR. REYNOLDS: With the restrictions
22 that were attached, they decided to -- not to

1 walk away from the offer.

2 I'm saying we should take a look at
3 the conditions and see if it is possible to come
4 up with a new set of conditions. I'm not
5 suggesting we do away with the rule completely,
6 but to see if it could be modified.

7 MS. FOU DY: Can I comment on that?

8 We have to be real careful about the
9 loophole we create because if you exempt endowed
10 programs, then you're basically a good analogy is
11 I gave it in Philadelphia, it is like creating a
12 lab and only white students can use it.

13 Who is to say when they could stop
14 saying -- who is to say they would have limits on
15 what's privately funded, what's not. It really
16 creates a dangerous situation to exempt that.

17 MR. REYNOLDS: Yes. But no one is
18 recommending exemption.

19 MS. FOU DY: What do you mean when you
20 say flexibility then?

21 MR. REYNOLDS: I don't have any
22 concrete ideas. If we set out and thought about

1 this, we could come up with maybe a formula.
2 Right now the money has to go basically 50/50.
3 It doesn't have to be that way.

4 MS. VARONA: My recommendation was I
5 really felt the endowment was a very important
6 issue wasn't to exclude or exempt or --
7 educational institutions from their
8 responsibility not to discriminate.

9 I did want the Office of Civil Rights
10 to educate institutions on how they could accept
11 endowments. I don't think many schools know
12 that. But I certainly don't want to depart from
13 30 years of federal law.

14 MS. FOU DY: This is case in point,
15 Jerry, that it doesn't have to be split 50/50. A
16 school can say, yeah, I want to take that
17 \$500,000, and I'll give it all to men's tennis.
18 But it doesn't mean that men's tennis becomes
19 exempt from counting in your numbers and
20 scholarship figures and in your budget.

21 It doesn't say they can't take that
22 money. It just means they are going to give the

1 universities flexibility to offset it somewhere
2 else in their budget.

3 And to exempt them from that I think
4 is a really dangerous precedent that we're
5 setting.

6 MR. REYNOLDS: Again, we are not
7 talking about exemptions. I don't know why we
8 keep going back to that. If we review the
9 transcript, I would be surprised if we can point
10 to anyone who said that except you.

11 I would not be in favor of a complete
12 exemption. But the idea of building in more
13 flexibility as to how -- under what circumstances
14 money can be accepted to create incentive for
15 schools to give hard looks at accepting offers, I
16 see nothing wrong with that.

17 MS. FOU DY: So what's to stop a
18 university from saying I want to build a new
19 chemistry lab that only white Catholics can use.
20 What's to stop university from saying I want to
21 build an arena that only white men can use.

22 MS. KEEGAN: Wait. Julie, if we

1 regulated academics. If we had the fervor for
2 equity in academics the way we do in sports, I
3 would be a happy woman, A.

4 But B, we do not regulate on campuses
5 because it's a completely different deal. We
6 don't keep statistics. We don't have teams of
7 math. If we did you could envision -- if that's
8 the way you separate it out -- men and women are
9 just men and women. We don't play our sports
10 together. We have different sports.

11 If it were the case you had
12 African-American math and Hispanic math and white
13 math, and you had to add a white math because
14 your Hispanic math and African-American math was
15 working well, that's the scenario you are talking
16 about.

17 This is a completely different deal.
18 That kind of that gets way out there, and start
19 to sound like people are intentionally trying to
20 be discriminating against women.

21 Fact of the matter is women's teams
22 are women's teams, men's teams are men's teams.

1 We don't have men's and women's math.

2 MR. REYNOLDS: To answer the question
3 directly, we could start with the 14th Amendment,
4 the hypothetical that you gave us, an easy one to
5 respond to. It is not permitted.

6 MR. JONES: I don't think you have to
7 get there in Title VI wouldn't allow an
8 institution that receives federal funds to have a
9 separate program based upon rates.

10 But by its term, Title IX does
11 acknowledge there are times you have a different
12 program for men and women. That's how we have
13 men's teams and men's teams (sic). Because
14 Title IX acknowledges that difference. Title VI
15 doesn't recognize any difference like that based
16 upon rates.

17 MS. FOUDY: Correct. In the
18 flexibility issue is where I have a problem.
19 What kind of flexibility issues would you work
20 into that that would still fall under the spirit
21 of Title IX?

22 MR. LELAND: Let's go over to Bob.

1 MR. BOWLSBY: I have a question for
2 everybody. What possible good can come of not
3 accepting and endowing a program -- at the
4 practical level, nobody is going to give
5 \$2 million to the wrestling program at Marquette
6 if they have to give \$1 million to women's
7 athletics at Marquette at the same time. It is
8 screwy to even discuss it.

9 It is just like the tennis and golf
10 analogy we used earlier. What possible good
11 other than balancing numbers on a ledger sheet
12 can turning down a gift like that that will keep
13 the program alive, serve for anybody, women or
14 men, either one. The money is gone; the program
15 is gone; and no one has gained anything except
16 the person taking care of the ledger sheet. It's
17 crazy.

18 I don't think there should be an
19 exemption, but there ought to be some way to work
20 our way through this so those kinds of gifts can
21 be received and a hundred percent of the dollars
22 can go to the place they are intended. That part

1 of it is not as difficult as some of the rest of
2 the things we are dealing with.

3 We ought to empower the staff to find
4 a way to do it. It makes no sense. There is
5 nobody gaining from that situation. Nobody.

6 MS. VARONA: Well, that's why I
7 fought for this particular recommendation.

8 But I did want to express my support
9 of the law of Title IX.

10 In order to express this within these
11 recommendations, I also feel very compelled to
12 honor the law of the land.

13 But I must say there are two examples
14 where endowments were accepted. At UCLA for
15 water polo ball, and the school was able to
16 balance its program to meet the guidelines of
17 Title IX; and just now at Dartmouth where they
18 put back swimming and that was done through an
19 endowment and it met all the standards under the
20 guidelines.

21 I don't think we can make the
22 assumption that endowments aren't going to be

1 accepted. I know that they haven't been in
2 several situations, perhaps this process has
3 enlightened those in our college campuses, and
4 they are more sensitive to the fact they could do
5 this.

6 MR. LELAND: Julie, would you be okay
7 if recommendation 11 had a sentence that said
8 total exemption of sports specific funding
9 from -- in its repercussions if Title IX is not
10 an option to be looked at. I know Jerry is
11 saying he thinks there might be other options.
12 He is not in a position to identify them right
13 now. You are skeptical there are other options,
14 other than exemption. Most of us -- seems to be
15 a consensus here, if there were other options
16 besides exempting those funds, we'd probably all
17 be okay.

18 MS. FOU DY: I agree with Donna. I
19 don't want to dissuade people from giving
20 endowment. I don't think Title IX does. It
21 simply says that you can't do it and also not
22 count those numbers. And I think that's what

1 Donna said in her language.

2 MR. LELAND: That's what I said
3 exemption. You have to count those numbers.

4 MS. VARONA: Can we accept my motion
5 to amend this statement recommendation 11?

6 MR. LELAND: How?

7 MS. VARONA: The OCR should educate
8 educational institutions about the standards
9 governing private funding of particular sports
10 aimed at preventing those sports from dropped or
11 to allow specific teams to be added.

12 MR. LELAND: That's a total
13 substitution for this?

14 MS. VARONA: Get rid of Office of
15 Civil Rights should reexamine its regulations
16 regarding private funding.

17 MR. GRIFFITH: Yours would be keep
18 status quo, we just educate people. Jerry's
19 would be we'd like flexibility to change to
20 status quo. We are obviously competing --

21 MR. LELAND: The one in front of us,
22 the one on paper, suggested substitution. Let's

1 have suggestion on the substitute motion.

2 MS. VARONA: I thought we just did
3 that.

4 MR. LELAND: Okay. If there's no
5 more discussion, let's vote on the substitute
6 motion as sort of superseding this one.

7 We'll take vote on Donna's -- vote
8 now, not that Donna's becomes the recommendation,
9 it is that Donna's replaces this one so people
10 then can vote later.

11 MR. DE FILIPPO: I want to read it
12 again, if she could.

13 MS. VARONA: Okay. The Office of
14 Civil Rights should educate educational
15 institutions about the standards governing
16 private funding for a particular sports aimed at
17 preventing those sports from being dropped or
18 from allowing specific sports to be added.

19 MR. LELAND: Okay. Does everybody
20 understand that?

21 MR. REYNOLDS: I would suggest that
22 we treat them as two different recommendation and

1 vote up and down on each one of them.

2 MR. LELAND: You mean we could vote
3 for hers and for this one, and then we have hers
4 go into effect and have flexibility.

5 MR. REYNOLDS: We would just vote on
6 both of the proposals basically maintain the
7 current rules while educating the public and
8 what's on paper.

9 MR. LELAND: Does that work?

10 MR. GRIFFITH: As long as we don't
11 have a majority vote for both.

12 MS. FOU DY: What's the other one, the
13 language with re-examine its regulations
14 regarding.

15 MR. GRIFFITH: Let's vote on that.

16 MS. FOU DY: With no mention of
17 exemptions.

18 MR. LELAND: Presently. We have
19 commitments on the staff that's probably not what
20 they're looking at. We could deal with that --
21 in front of us now is Donna's motion. What's
22 written in front of us, and if you want to make

1 an amendment, then you can.

2 Okay. Anymore discussion on Donna's
3 motion. Show of hands.

4 All those in favor of Donna's motion,
5 raise your hand.

6 MS. PRICE: Ten in favor.

7 MR. LELAND: All those opposed.

8 MS. PRICE: Three opposed.

9 MR. LELAND: Okay. Now we go to
10 original recommendation number 11, and it is in
11 front of us. We have had some discussion.

12 Is there need for more discussion?

13 MS. KEEGAN: I would add to the body
14 of that as a final sentence would encourage OCR
15 to explore possibilities might be an effective
16 response to loss of team's exemption.

17 I can't come up the with sentence but
18 basically exemption is not one of the options to
19 be considered.

20 MR. LELAND: Do you understand what
21 we mean by exemptions?

22 Does that make sense to everybody?

1 Understand the gist of it, which is what you were
2 concerned with.

3 Anymore discussion?

4 Okay. All those in favor, raise your
5 hand.

6 MS. PRICE: Ten in favor.

7 MR. LELAND: Opposed.

8 MS. PRICE: Two opposed.

9 MR. LELAND: Okay. One abstention.

10 I think we have concluded our work.

11 Is there any announcements or any
12 questions?

13 MS. SIMON: I know this is special
14 pleading, and I will plead. I will turn into a
15 pumpkin at a quarter to 12:00 tomorrow morning.
16 I have to be at the law school to teach my
17 seminar. Since there is no desire to continue
18 meeting now, could we possibly start at
19 8:00 o'clock tomorrow morning?

20 MR. LELAND: I can't.

21 MS. COOPER: And my baby eats at
22 8:00.

1 MR. GRIFFITH: I think we might be
2 finished by then.

3 MR. LELAND: Okay. We did good work
4 today.

5 See you in the morning.

6 (Off the record at 5:10 p.m.)

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