

Archived Information

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2 ON
3 OPPORTUNITY IN ATHLETICS
4 CHICAGO TOWN HALL MEETING
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1 MR. LELAND: I would like to bring the
2 meeting to order.

3 First of all, let's start off this
4 morning. We are now and formally in session and
5 welcome everyone to the second day of our public
6 meetings here in Chicago.

7 I thought we had a great day
8 yesterday and made a lot of progress. Because
9 of the physical layout here and the small little
10 name tags we have, let me start off by asking
11 all of the commissioners -- we'll go around
12 clockwise, I guess, it is, and ask all of them
13 to identify themselves so the general public
14 can get some idea of who or whom we are.

15 I'm Ted Leland, director of
16 athletics at Stanford University.

17 MS. COOPER: I'm Cynthia Cooper,
18 former head coach of the WNBA and former
19 player.

20 MR. BATES: Percy Bates, faculty
21 athletic rep, University of Michigan.

22 MS. FOU DY: Julie Foudy, soccer player
23 or something like that, water girl.

24 MS. de VARONA: Donna de Varona,

1 co-chair of women's -- co-chair United States
2 Olympic Committee, Government Relations Committee.

3 MS. SIMON: I'm Rita Simon. I'm a
4 professor at American University in the law school
5 and school of public affairs.

6 MS. STROUP: I'm Sally Stroup. I'm
7 the assistant secretary for post-secondary education
8 at the United States Department of Education.

9 MR. JONES: I'm Brian Jones, the
10 general counsel for the U.S. Department of
11 Education.

12 MR. REYNOLDS: My name is Jerry
13 Reynolds. I am the assistant secretary for the
14 Office of Civil Rights for the Department of
15 Education.

16 MR. SPANIER: Graham Spanier,
17 president of Penn State University.

18 MS. MCGRAW: Muffet McGraw, women's
19 basketball coach, University of Notre Dame.

20 MS. GROTH: Cary Groth, athletic
21 director of Northern Illinois University.

22 MR. GRIFFITH: Tom Griffith, assistant
23 to the president and general counsel of Brigham
24 Young University.

1 MS. KEEGAN: Lisa Keegan, CEO of the
2 Educational Leaders Council in Washington.

3 MS. PRICE: Debbie Price, and I'm the
4 executive director for the Commission.

5 MR. LELAND: Well, thank you. Welcome
6 everyone.

7 Just to lay some ground rules out,
8 under the Federal Advisory Committee Act, that's
9 under the federal statute in which we're working,
10 today's meeting will be open to the public, but the
11 public will not have an opportunity to participate.

12 So all of our -- the objective
13 here is to make our deliberations transparent and
14 open to the public, yet I think they need to be
15 between the commissioners. We do have a couple more
16 meetings; one in Colorado Springs and one in San
17 Diego where there will be a chance for public input
18 and we look forward to input at that time.

19 Of course, again, I'll make the
20 offer that anyone who wishes to submit written
21 documents to the Commission can and there are
22 assurances that they will be passed out to all
23 of the Commission members.

24 I want to start off by sort of

1 just outlining the way we see today working -- when
2 I say "we," I mean Cynthia and myself. I'm going
3 to make some briefly introductory comments here sort
4 of on the process and then Debbie will introduce a
5 staff person that we are bringing on to help us
6 write the report. Then Cynthia will have some
7 comments generally about what the report might
8 look like or what the finished product might look
9 like, I should say.

10 Then my hope is to go around the
11 commissioners and make sure that if there's any
12 issues that they want to bring up regarding the
13 process so far and any piece of information that
14 they haven't gotten so that we can get that from --
15 input from the Commission.

16 Then our -- we will break up into
17 subcommittees, which we have already identified and
18 the committee commissioners have already agreed to
19 serve on, and we will have one table here, one table
20 here, and one table there. The idea is that those
21 subcommittees, which have been sort of assigned
22 questions out of the Commission charge to help us
23 answer, those subcommittees will meet for about two
24 hours. Then our hope is to get back here at noon

1 and then move forward from there and kind of check
2 and see where we are and adjourn at 1:00 o'clock.

3 The one forbearance that I ask
4 from the general public today is that we weren't
5 quite as organized as we should have been regarding
6 the setup. I shouldn't say that, but I sort of --
7 let's put it this way, I sort of changed our mind
8 on how we're going to do this thing early this
9 morning. So when we set up into three
10 subcommittees, we may need to physically move chairs
11 around and stuff.

12 It won't be as smooth of a
13 transition as you've seen maybe in other places,
14 but we do -- because of the sort of spirit of
15 the federal regulations under which this Commission
16 has been charged, I want the public to be able to
17 listen to the subcommittee deliberations, but we're
18 physically not set up in a way that -- that's
19 going to make that easy. So we're just going to
20 ask everybody to try to be as comfortable and
21 convenient with each other as you possibly can.

22 I think we're still in the
23 process of gathering information. We're still in
24 the listening stage. This morning, as the -- as

1 we have more opportunity to do that, as I said
2 earlier, we're -- we shouldn't, I don't think, be
3 in a position of reaching conclusions at this stage
4 and I think one of the concerns that many of the
5 commissioners have had, and myself specifically,
6 is how do you -- at such a public hearing, how do
7 you have a fair intellectual debate?

8 How do you answer the tough --
9 ask the tough questions and how do you put out
10 alternative answers without being, you know, sort
11 of painted into a corner publicly or with your
12 fellow commissioners. So I ask not only the
13 commissioners, but the general public and also
14 the press to be careful about attributing positions
15 to people simply because they ask a question and
16 be careful about attributing opinions to people
17 because they offer alternatives.

18 You know, coming from a -- working
19 on a university campus for the last 30 years, I'm
20 very used to intellectual banter where crazy ideas
21 are put out and they are talked about and thought
22 about and either discarded or accepted and we're
23 used to that process on a campus. I don't know how
24 it works in a situation like this, but I do know

1 MS. PRICE: Actually, I'm going to
2 introduce the commissioners Jay Diskey. Jay, would
3 you stand just a second? I don't know how many of
4 you have had an opportunity to meet him as we had
5 breakfast or lunch or whatever.

6 Jay has been hired to be our
7 outside editor. He will be working with all of you
8 taking drafts, taking your input and forming it
9 into a readable, legible document, from all of those
10 perspectives.

11 Jay is the president of Diskey &
12 Associates, which is a Washington-based consulting
13 firm and he has worked with many of the departments
14 in working with the different commissions -- various
15 commissions and as an editor in their report
16 writing. He basically will take all of our input
17 and pull it together and, as I said, put it in
18 intelligible and readable form. He is a great
19 person for that. He has done a good job with it.

20 Most recently, he just put the
21 finishing touches on the report for the Special
22 Education Commission, the White House initiative --
23 the White House Commission. So Jay will be working
24 with you all and he may be sitting in a little bit

1 at each of the subcommittee tables today, but he
2 will be participating.

3 That's Jay. Jay?

4 MR. LELAND: Oh, stand up, Jay, so
5 everybody can see you. Thank you for your help.

6 MS. COOPER: Thanks, Jay.

7 Now, I want to talk about some
8 thoughts on how we should go about the business of
9 producing this final report. I'm going to go right
10 down my list because I want to be very clear on what
11 I'm talking about.

12 As the Secretary of Education and
13 other administration officials told us at our first
14 meeting, they do not want or expect any particular
15 result from the Commission's report. The President
16 and the Secretary asked us to serve the country by
17 carefully studying the issues and listening to all
18 witnesses with an open mind. Of course, that -- we
19 haven't finished that. Again, as Ted said, that's a
20 work in progress.

21 The president and the secretary
22 have expressed their trust in us as commissioners
23 and simply want to learn from our expert analysis of
24 these issues. From dealing with other commissions,

1 the secretary has learned that there are some
2 procedural issues that are very important.

3 With regard to the Commission's
4 findings, we have been asked to present the
5 secretary with the report that lays out main
6 arguments from each side -- main arguments from each
7 side. Under the seven questions, we should attempt
8 to accurately capture the two main competing
9 arguments.

10 The co-chairs and the chairs of
11 each of the subcommittees should take careful steps
12 to ensure that all of the commissioners will be in
13 agreement with this portion of the report, fully
14 understanding the competing viewpoints -- that
15 competing viewpoints is a necessary starting point
16 in any intellectual exercise.

17 Moreover, if this is all that
18 the report accomplishes, it will be a worthwhile
19 achievement. Much of the controversy and the
20 current debate comes from overheated arguments
21 from both extremes. The country will be well
22 served if the best arguments from each prospective
23 are presented in an objective, studious way.

24 It will at least help the public

1 to understand that both sides have strong arguments
2 and that reasonable people can debate these issues,
3 come to different conclusions, and still respect
4 each other.

5 With regard to any recommendations
6 from the Commission, we are not to present a report
7 nor we should not or probably not present a report
8 that has a majority and minority opinions. We want
9 to come together as a group and come to some
10 conclusions as a group. This should allow us to
11 operate in a collaborative fashion. This will give
12 us more freedom to trust this process and trust our
13 fellow commissioners.

14 Now, I want to pass it back over
15 to Ted. I hope I was very clear, and if not, so
16 what. No, I'm just kidding. If you guys have any
17 questions, we'll answer them later on.

18 MR. LELAND: Great. Let me -- I've
19 got to talk a little bit about the subcommittees
20 for a second and then we'll open it up for
21 discussion from the commissioners regarding the
22 process and questions that you might have of
23 ourselves, Debbie or Jay, who is going to hopefully
24 write the report.

1 Subcommittee one, which is over
2 here, will meet at that table over there, is chaired
3 by Tom Griffith, is Bob Bowsby, Deborah Yow, not
4 here, Cary Groth, Muffet McGraw and Jerry Reynolds.
5 Their topics, I'm doing this mostly for the public
6 so they'll be able to maybe follow where their
7 interests are -- are really questions one and two
8 that I outlined yesterday in my opening remarks.

9 Question one is are Title IX
10 standards for assessing equal opportunity in
11 athletics working to promote opportunities for
12 male and female athletes?

13 The second question is, is there
14 adequate Title IX guidance that enables colleges
15 and school districts to know what is expected of
16 them and to plan for an athletic program that
17 effectively meets the needs and interests of their
18 students.

19 Subcommittee two, which will meet
20 at this table back here, we may have some logistics
21 trying to get some public input there, is -- will be
22 chaired by Lisa Keegan, Percy Bates, Donna de
23 Varona, Mike Slive, who called in this morning and
24 couldn't make it today, myself and Sally Stroup, Ex

1 officio. They have three questions.

2 Question number one to them is
3 further guidance or other steps needed at the
4 junior and senior high school levels, where the
5 availability or absence of opportunities will
6 critically affect the prospective interests and
7 abilities of student athletes when they reach
8 college age?

9 The second question that they
10 have is how do revenue-producing and large roster
11 teams affect the provision of equal athletic
12 opportunities? The department has heard from some
13 parties that whereas some men athletes will walk on
14 to intercollegiate teams, without athletic financial
15 aid and without having been recruited, women rarely
16 do this. Is this perception accurate and, if so,
17 what are the implications for Title IX analysis?

18 The third question that
19 subcommittee two has, again, meeting to my left in
20 the back, is in what ways do opportunities in other
21 sports venues, such as the Olympics, professional
22 leagues, and community recreation programs, interact
23 with the obligations of colleges and school
24 districts to provide equal athletic opportunity?

1 What are the implications for Title IX?

2 The third subcommittee, which will
3 meet at this table up here, is chaired by Gene
4 DeFilippo, Julie Foudy, Graham Spanier, Rita Simon,
5 Cynthia Cooper and Brian Jones, Ex officio.

6 For the members of that
7 committee -- subcommittee, the first question is how
8 should activities such as cheerleading or bowling
9 factor into the analysis of equitable opportunities?

10 The next question is apart from
11 Title IX enforcement, are there other efforts to
12 promote athletic opportunities for male and female
13 students that the Department of Education might
14 support, such as public/private partnerships to
15 support the efforts of schools and colleges in this
16 area.

17 I have a couple more comments and
18 then we'll open up. I don't think, I would hope,
19 and I think I speak on Cynthia and my and maybe
20 Debbie's behalf, I would hope the subcommittees
21 not be reaching conclusions.

22 The first job, I think, of the
23 subcommittees is to find out what more information
24 that you need. We still have plenty of time for

1 public comment, but we need to get going with
2 invitations and find out who we need to have in
3 and what kind of information, and find out who
4 might present this information to the Commission.

5 Then I think we need to -- the
6 subcommittees may need to begin to handle and
7 talk about the main arguments. What are the best
8 arguments for the competing viewpoints that they've
9 heard, fully understanding the competing viewpoints
10 are an essential starting point for any dialogue or
11 debate of any kind of intellectual enterprise.

12 That's sort of what we see is
13 laying out today and then we will get back together
14 at noon and maybe get a report from each one of the
15 subcommittees on how they did and away we go.

16 So let's open it up now for
17 commissioners only for thoughts and concerns.

18 Donna?

19 MS. De VARONA: Given the view that
20 we've really heard about the proportionality debate
21 and the interest studies debate, I think it would
22 be really helpful for all of us to have a panel of
23 speakers that address how they implemented Title IX,
24 the schools that are in compliance, how they found

1 how to do it.

2 Because I think that, you know,
3 those that are worried about non-revenue producing
4 sports disappearing, especially men's, I think it
5 would be helpful to us if we found colleges like
6 yours, and universities that have found a way to
7 come into compliance and how they've done it from
8 Division I, Division II, Division III, so we can
9 hear -- so we can see some role models for that.

10 MR. LELAND: Okay. Graham and then
11 Muffet?

12 MR. SPANIER: Two things; it would be
13 helpful to have some understanding of what the plan
14 is for future meetings. If, indeed, we're each
15 going to be in these subcommittees from now until
16 the end, that would feel a little frustrating to
17 me because there are just two questions in my
18 subcommittee, which I don't think get quite to the
19 heart of some of the issues as questions being
20 discussed in other subcommittees, and I do have
21 some things, I think, to contribute to the broader
22 discussion.

23 So I would hope that there is
24 some format in which we can all talk about what our

1 reflections are based on the 100 or so people we
2 have heard from already.

3 That leads me to another
4 observation. While I think it is important for
5 people at all the sites to have an opportunity
6 to speak to us, after having heard the first
7 100 people give their viewpoints, it's somewhat
8 difficult to imagine what we haven't heard already.
9 I'm not sure there is a large body of additional
10 information that is going to be important for us
11 to hear that we haven't been briefed on already,
12 but I would hope that instead of having another
13 100 people say many of the same things again in
14 subsequent hearings, that we might begin to think
15 about fewer panels and fewer speakers, more written
16 testimony, and more of our time together to really
17 talk about these issues, which we are hearing for
18 the first time.

19 There is a lot to talk about.
20 That's just sort of a conclusion that I have
21 after four days of, you know, hearings.

22 MS. COOPER: And more breaks, right?

23 MR. SPANIER: Well, I don't care
24 about -- I don't care about the breaks, but...

1 MR. LELAND: Okay. Muffet?

2 MS. MCGRAW: Well, kind of getting
3 back to what Donna was saying, I agree. I would
4 like to hear how people are doing it and also,
5 how the ones that are struggling, why is that?

6 What about the state of finances?
7 I think we need to have somebody come in and just
8 tell us what it's like at the college level.
9 Economically, what are they trying to -- how are
10 we going to be able to make it work? I would like
11 to hear more about the EADA, the Equity and
12 Disclosure Act, and how that's impacting how we
13 are looking at the proportionality issues.

14 I thought we had a good sense of
15 exactly what the law of Title IX is. I'm wondering
16 if -- if it would help us if somebody came in and
17 talked about the actual cases and gave us a little
18 more insight into the problems that we are having
19 with that.

20 MR. LELAND: Julie -- oh, excuse me.
21 Rita?

22 MS. SIMON: In terms of the future,
23 can you tell me when this final report -- when we
24 will be working on our final report?

1 MS. PRICE: We'll be -- well, the
2 second day of each of the rest of our -- of the
3 two town hall meetings that are two-day meetings,
4 Colorado Springs and San Diego --

5 MS. SIMON: Right.

6 MS. PRICE: -- are working our report
7 time.

8 MS. SIMON: Ah-hah.

9 MS. PRICE: The December meeting is
10 only working on our report.

11 MS. SIMON: Right.

12 MS. PRICE: Town hall meetings are
13 over. We'll have a full day of working on the
14 report as we will also in January.

15 MS. SIMON: All right. Now, what --
16 in January, what did you say?

17 MS. PRICE: January, hopefully at
18 that time, it will be pretty much getting all of
19 the -- this will be when Jay's work really gets
20 hard. We'll have all of what -- you know, the
21 information that we want in the report, he as an
22 editor has to make sense out of that and put it
23 in its place so it makes a readable,
24 understandable --

1 MS. SIMON: And we'll all be -- I
2 won't be there, but everyone -- you'll all be there
3 at that January meeting --

4 MS. PRICE: Yes.

5 MS. SIMON: -- to work on it?

6 MS. PRICE: Yes.

7 MS. SIMON: Okay. All right.

8 MS. PRICE: And in responding to
9 Graham, you know, one of the things of today, as
10 we work in -- we go to the subcommittees and we
11 look at these questions, it would be really helpful
12 to get some directions about next time, do you want
13 to meet totally as a whole, do you not want to meet
14 as a subcommittee, you know, lesser time in a
15 subcommittee, more time as a whole?

16 Certainly, every commissioner
17 should have equal input into the report in all
18 areas, but because of the questions asked in the
19 report, it's a lot to focus on when you have
20 basically four or five hours to focus on the
21 report.

22 That's why we all thought that
23 subcommittees were to get good focus on those
24 issues, but certainly not limited -- each

1 commissioner is not limited to their area of the
2 subcommittee.

3 Is that helpful?

4 MS. SIMON: Debbie, I know we are
5 inundated with paper, but we will, if possible,
6 get any surveys that have been done on interests --
7 on assessment of interests.

8 MS. PRICE: Absolutely.

9 MS. SIMON: And will we get copies of
10 the decisions at the Appellate Court level that have
11 been made on top of that?

12 MS. PRICE: Yes. We can get you
13 those.

14 MS. SIMON: I'd like that.

15 MS. PRICE: If you -- if you let me
16 know you need a document, we will get it for you.

17 MS. SIMON: Thank you.

18 MS. PRICE: Many people are submitting
19 documents to us --

20 MS. SIMON: Yes.

21 MS. PRICE: -- and you got a bundle
22 this week.

23 MS. SIMON: Yes.

24 MS. PRICE: We have -- let me ask one

1 question of the staff.

2 Have the transcripts arrived?

3 Okay.

4 MS. MUNOZ: No.

5 MS. PRICE: Okay. We do have
6 transcripts. We had some difficulty with the
7 formatting on the transcripts, but they should
8 be arriving so you would be able to have last
9 time's complete transcripts to work with at
10 some point in the subcommittee time. They are
11 coming Fed Ex today.

12 MS. FOU DY: Just to touch on what
13 Donna, Muffet and Graham were talking about, I
14 agree in that, I think, three things we could
15 look at hopefully at future meetings, the financial
16 side and I know -- I believe there's the most
17 recent NCAA report that's coming out in the next
18 couple weeks and getting, you know, perhaps
19 Mr. Fulks on a panel to talk about that because,
20 I think, that's obviously a key issue in this
21 whole debate.

22 From the legal side, we've
23 heard from one person. I think it's important
24 that we really get a grasp on the legal issues

1 and I don't think one person can represent that.

2 I think we need to hear different sides on that.

3 And then finally, when Donna
4 talked about solutions, I would love to hear from
5 some ex-athletic directors who aren't bound to
6 constituents right now and can speak openly and
7 freely and maybe some past presidents also who
8 have been close to the issue and are still close
9 to the issue.

10 MR. LELAND: Cary?

11 MS. GROTH: What everybody said.
12 Julie too.

13 MR. GRIFFITH: Ditto.

14 MS. STROUP: Yes.

15 MS. MCGRAW: Ditto.

16 MS. FOU DY: Ditto.

17 MS. COOPER: I just want to go on
18 the record. We talked -- Debbie and I talked about
19 cheerleading. We haven't gotten much testimony on
20 cheerleading and should we actually consider that
21 as a sport or not and I just want to go on the
22 record saying that we would probably need more
23 information on cheerleading, bowling, and just
24 to determine whether they should be considered.

1 MS. KEEGAN: Ted, just to sort of
2 follow-up on this whole issue of how we're going
3 to spend our time from now in and writing the
4 report, is it possible that the subcommittees
5 today sort of come up with -- these are the
6 questions as we see them being laid out to us
7 now, here's the information that we need, and I'm
8 not quite sure past that point if this is best
9 done in subcommittee because after that, after
10 you've defined what the issues are that we still
11 need information on, et cetera, A., we're going to
12 need it, and that takes time, and B., we're going to
13 need -- I mean, I benefit from hearing what people
14 on this panel think about these issues and I don't
15 think that can be done on subcommittee because you
16 lose too much information.

17 MS. COOPER: So what you're saying is
18 once we establish what the findings are --

19 MS. KEEGAN: Yeah, or once -- what
20 we --

21 MS. COOPER: -- we should come
22 together and discuss it?

23 MS KEEGAN: I -- I think so, Cindy.
24 I think -- or even here's what we know and here's

1 what we don't know so we could say to you could
2 you -- like Julie just said could we get the
3 person who wrote this report in or could we get
4 some people who are ex-ADs and really have
5 no -- that can speak freely or whatever it is we
6 think we need to hear, get those people here and
7 then let the Commission sort of together come to
8 the major topics.

9 I just don't see how beyond --
10 I mean, we don't have very much time left really
11 for hearing what this panel thinks about different
12 issues and quite frankly, we haven't -- we haven't
13 had that open discussion yet unless I missed it in
14 Atlanta, but it was my fault.

15 MR. LELAND: Other thoughts before
16 we break up? I just have one -- oh, Percy?

17 MR. BATES: I just have one question.
18 Given the task that we have, I guess, I have a
19 little concern as to having two more meetings and
20 a session together whether or not we need to find
21 additional ways to get information that's going to
22 be needed because I just have a feeling that the
23 time is going to be a problem given the format and
24 the time that we've already allotted together. It

1 seems to me there are other kinds of issues that
2 we're going to have to deal with whether we are
3 talking to ex-presidents, ex-AD's. This is
4 certainly valuable input, but I don't see it as part
5 of this sort of public hearings in the two other
6 places that we have and then the minimal amount of
7 time that I think we're going to have. So I think
8 we need to think about ways of getting some
9 additional information that we may not be able to
10 get in terms of the current format.

11 MS. PRICE: One of -- one of the major
12 roles of the Commission's staff and my job is to get
13 you the information that you need and -- and being
14 under the Federal Advisory Committee Act, any piece
15 of information that we get, all of the e-mails that
16 we have received, every document needs to come from
17 the Commission office to you all so we have a copy
18 of it because we have to have all of the
19 documentation.

20 So if you make a request to us
21 for anything that we can get you, any -- or even
22 if you get -- it could be specific, it can be broad.
23 We need a report that deals with ex-issue.

24 MR. BATES: Yes.

1 MS. PRICE: We will get that to you.

2 MR. BATES: Okay. And I feel
3 comfortable with that, Debbie. I guess I'm raising
4 a different kind of question.

5 MS. PRICE: Uh-huh.

6 MR. BATES: It seems to me that --
7 that we have committed to four public sessions with
8 public input and there may be the need, for example,
9 to hear from ex-presidents or ex-athletic directors
10 that I don't necessarily see fitting into that and
11 we -- we need that kind of information and I'm just
12 a little concerned as to how -- as we identify it,
13 how do we go about fitting that into the kind of
14 schedule that we have if we -- if we decide that
15 that's important?

16 I mean, I don't know that either
17 Colorado Springs or San Diego would be served well
18 by bringing in either, let's say, ex-presidents or
19 ADs. I imagine they could be there, but we may need
20 to hear directly from them in some other way and I
21 would just like as we -- as we deliberate to think
22 about how we might go about getting that that might
23 be in addition or outside and I'm certainly not one
24 who's looking for additional work because the time

1 is limited, but I am concerned that we get
2 everything that we need and somehow be able to fit
3 it into the current process.

4 MS. PRICE: Well, let me ask you a
5 question. The charter or the Commission mandates
6 that we have a minimum of three town hall meetings.
7 We're having four because we wanted to have one
8 that clearly focused on high school and two-year and
9 junior colleges that we had yesterday.

10 I mean, wouldn't the format --
11 I mean, if we had the athletic directors in, would
12 it be different than a panel format? Would it be
13 different -- I mean, it would have to be a public
14 meeting. We're mandated that every meeting that we
15 have be a public meeting.

16 MR. BATES: Yeah. Well, I -- it
17 seems to me that's what we would have to talk about,
18 whether it means modifying the sort of existing plan
19 if we --

20 MS. PRICE: Sure.

21 MR. BATES: -- decide on that.

22 MS. PRICE: Okay.

23 MS. GROTH: And, Debbie, just to
24 follow up, I think it's important that the public

1 hear a lot of the things that we're wanting to hear
2 so that when we -- when we do our report and provide
3 a report, they have that information.

4 MR. LELAND: Cary, mic?

5 MS. MCGEE: Whoops! I'm sorry. I
6 just think it's important that these people be part
7 of the panel so the public will have the opportunity
8 to hear what we're hearing as well. I think that's
9 real important.

10 MS. PRICE: Okay.

11 MR. LELAND: Julie?

12 MS. FOU DY: And in regards to
13 information that gets passed along to us, is there
14 a system in place right now for how often that will
15 come? I'm on the road all the time so I just --
16 if there is a system, I could give you address
17 updates on all of that.

18 MS. PRICE: Sure. We'll try and get
19 it out. As I lay -- I wasn't sleeping well
20 last night so I was processing all of these thoughts
21 in my head.

22 But obviously, in the beginning,
23 information came slower. Now that the Commission
24 has been running, we've had now, you know, basically

1 one and a half or two town hall meetings, whichever
2 you want to say, information is coming in and we
3 would hope to get it out to you on Fridays.

4 So we will send you whatever
5 testimonies we've received, you know, all --
6 yesterday, we had several people who wanted to speak
7 at the open mic time. They provided written
8 testimonies. All of those will be distributed to
9 you.

10 Any one of the commissioners who's
11 asked for specific documentation, we'll put that in
12 the package as well as news clips that we've
13 received, anything that is helpful for you in your
14 process, and we'll try to get that out and just send
15 it out on Fridays.

16 MS. FOU DY: Fridays, okay.

17 MS. PRICE: And we'll most likely
18 Fed Ex it so you have it at your fingertips as soon
19 as you need it. And hopefully it's not so big each
20 time you get it that it's, like, overwhelming to try
21 and process it.

22 MR. GRIFFITH: It takes me a while to
23 process things and I'm now just thinking about what
24 Graham said.

1 MS. COOPER: It was 15 minutes ago.

2 MR. GRIFFITH: Yeah. A couple hours
3 later, I'll respond to what Donna and Julie said.

4 I share some of Graham's concerns
5 about the repetitive nature of the public comments,
6 but I want to add this note of caution, and I'll do
7 it by a story that I told Lisa and a couple of the
8 others yesterday as the public testimony was going
9 on and on.

10 Years ago, there was a famous
11 Congressman from Arizona named Mo Udall, who was
12 the chairman of the House Interior Committee and
13 he had a habit of saying at Interior Committee
14 meetings that everything has been said, but not
15 everyone has said it.

16 And -- but I think there's a real
17 value to that. I know Graham -- I don't think
18 would disagree with this. I think this is a real
19 important part of our process is to allow the public
20 to come and maybe say the exact same thing that
21 everyone else has said, but so -- I don't know how
22 we can balance both.

23 I think we need to be careful
24 about the limited amount of time that we have. I

1 would like to see more deliberative time amongst
2 each other. I know in formal settings where I have
3 heard from various commissioners, I've learned a
4 tremendous amount and I'm very anxious to hear what
5 members of the Commission feel about these various
6 issues.

7 At the same time, I think it's
8 important that we continue to provide in some --
9 I'm not saying the amount of time that we devoted
10 to it is the precise time that ought to be spent
11 to it, but I think it's an important ingredient to
12 allow the public to come and respond even if we
13 don't hear anything new, we might, but even if we
14 don't hear anything new, I think it's an important
15 outlet for members of the public to respond.

16 MS. PRICE: And -- and just as one
17 thought, it is required in the charter that we hear
18 from the general public. It doesn't say how much we
19 hear from the general public, but it's a big portion
20 of what we're called to hear from. So -- but we can
21 work with this -- you know, work within the
22 schedule.

23 MR. JONES: It doesn't say -- it
24 doesn't say how much or in what format. So I think

1 one thing that Graham proposed was that we take
2 written testimony and that sort of thing. So that's
3 an option.

4 MR. SPANIER: Well, yeah. I'm not
5 suggesting cutting off the flow, but what I would --
6 what I would suggest is, you know, instead of having
7 three panels, maybe one or two, and have those be
8 people that have information that -- we're hearing
9 now several people say we need more of. You know,
10 we're hearing -- we're hearing different viewpoints,
11 but we -- we haven't heard much about the actual
12 context in which these decisions are being made and
13 the decision-makers are making the decisions.

14 What we haven't heard about the
15 realities of the lay of the land out there. I mean,
16 nobody has stepped forward who really has to make
17 these decisions as the university president or an
18 athletic director and say here's what I'm dealing
19 with. Here are all the variables. Here's what goes
20 into the thinking. Here's what I'm up against.
21 Yes, I know all of your points of view here, but
22 here's -- here's what the deal is.

23 I mean, that kind of thing might
24 be -- might be a missing link and we've heard a

1 couple other things about people. You know, if
2 there's interest in hearing while some programs
3 seem to have done it, how did they do it? You
4 know, then, we need to have people come and say,
5 okay, here's how I did it. I put more money into
6 it. I added women's sports and I'm seriously
7 engaged in roster management, if that's what they
8 did. You know, let's hear an example or two of a
9 plan that we know -- if -- you know, if you're going
10 to meet the current guidelines, here's what you do.
11 You might want to get a couple of people who aren't
12 -- who
13 are way outside of the guidelines. I mean, that
14 might be hard to get somebody to admit that, but --

15 MR. GRIFFITH: There is a fifth
16 amendment privilege.

17 MR. SPANIER: Well, I mean it. You
18 know, and say okay, yeah, we're -- we're struggling
19 to get there and here's why I don't think I can get
20 there. I mean, you know, that might be interesting.

21 But then I would focus the
22 remaining panels on that and, you know, I've heard
23 now -- well, we've all heard from 100 people with
24 opinions on this, but I haven't heard from a single

1 person around this table about what they're
2 thinking. I'd like to try to, you know, start --

3 MS. COOPER: Right.

4 MR. SPANIER: -- moving a little more
5 in that direction.

6 MR. LELAND: Yes, Rita?

7 MS. SIMON: This is just one specific
8 kind of question. Is there -- are the only sports
9 about which there is some question, bowling and
10 cheerleading? I haven't heard fencing discussed,
11 for example. Is there consensus about what all the
12 sports are and could we have a list of them so we
13 know what all the sports are that are being
14 considered and the two that are apparently under
15 discussion are bowling and cheerleading.

16 MS. COOPER: And cheerleading.

17 MR. REYNOLDS: Such as?

18 MS. COOPER: Are you trying to get
19 a list of all activities that should be -- or that
20 we're considering to be -- to name as sports or are
21 you trying to get a list of non-revenue that are
22 being dropped?

23 MS. SIMON: I want to know if you
24 say how should activities such as cheerleading or

1 bowling factor into the analysis, are there other
2 such, quote, activities that we're not considering
3 and what are all the activities that we do define
4 as sports, what are they?

5 Is that not a reasonable question?

6 MR. LELAND: I think that's the bigger
7 question inside the little question about bowling.

8 MS. SIMON: Okay.

9 MR. LELAND: Yeah. I think you're --
10 my perception -- you're absolutely correct. We
11 heard from the High School Federation, their
12 definition of what a sport is and --

13 MS. SIMON: Right.

14 MR. LELAND: -- what's it really like
15 on a campus.

16 MS. SIMON: Yes.

17 MR. LELAND: What about ultimate
18 frisbee? How do --

19 MS. SIMON: That's right.

20 MR. LELAND: -- all of these things
21 work?

22 MS. SIMON: Martial arts, for example.

23 MR. LELAND: Because the OCR has made
24 some determinations about what they would consider

1 as part of your proportionality computations and
2 what they won't and how do -- is that fair, is that
3 right, what that --

4 MS. SIMON: I would like data on that.
5 I would like to hear that. I would like to hear
6 that.

7 MR. LELAND: I think it's fair to
8 extrapolate that question.

9 Donna?

10 MS. De VARONA: I think Gerald was
11 first.

12 MR. REYNOLDS: Okay. I just want to
13 add that OCR has decided that it's not going to be
14 in the business of deciding what's a sport. There
15 is a category that we call emerging sports and we
16 have a laundry list of factors that we look at.
17 And if you satisfy a good number of them, then, we
18 will presume that it's a sport.

19 For instance, you have to have a
20 schedule, you have to provide scholarships, you have
21 to be competitive, but we have stayed away from an
22 imperial approach where we say, okay, that is a
23 sport and that is not.

24 MS. FOU DY: It's case by case, is that

1 correct?

2 MR. REYNOLDS: That's correct.

3 MS. de VARONA: Actually, there is a
4 study that's been done at one university and I can
5 get it for the Commission on looking at cheerleading
6 as a sport within the university system.

7 I also -- aside from the finances,
8 I would love to have a solution panel.

9 MR. GRIFFITH: A what?

10 MS. de VARONA: A solution panel.

11 I don't care if people think outside the box or
12 not. I mean, I'm -- I always think outside the
13 box. I mean, my feeling is you're going to have
14 to think outside the box if you're going to leave
15 a legacy.

16 So I would love to invite people
17 that have proposed -- I know former Congressman
18 Tom McMillan wrote a paper on thinking outside the
19 box as it related to accommodating athletes on
20 campuses. So I think that that would be important
21 even though our mandate may not be that, I think
22 that -- I personally feel that we're not doing our
23 job if we don't come up with some solutions or
24 suggestions on how to look at this and how to think

1 about it not -- not for the next five years, but
2 for the next 25 years. So that's my suggestion.

3 And maybe we could do it -- you
4 know, I know we're just working very hard from the
5 9:00 to 5:00, but maybe we take a break and have a
6 dinner and just -- I wouldn't have a problem with
7 using my evening to continue discussions.

8 MS. COOPER: Yes, but they have to be
9 public.

10 MS. de VARONA: It will be public.

11 MS. PRICE: Oh, yes.

12 MS. KEEGAN: Okay. Yes.

13 MS. FOU DY: Touching upon the
14 subcommittee issue that Tom and Graham brought up,
15 I think, you know, maybe after we meet today with
16 our subcommittees, we can get a grasp on -- we have
17 a full two hours, if that was enough to touch upon
18 and decide because I'm looking at we have two other
19 days, you know, to actually share information and I
20 agree with Lisa and everyone else, that I think we
21 need a greater representation in the question so
22 maybe after today, we can decide do we need more
23 subcommittees or can we go on into a general session
24 on the two other days.

1 MR. LELAND: How about if we left it
2 this way on the subcommittee issue. I mean, I think
3 we saw the subcommittees as a tool. You can always
4 throw the tool away.

5 Why don't we do what Lisa
6 suggests, which is try to define, you know, in sort
7 of shorthand what the major issues are and what your
8 need for more information is as specific as you can
9 make it, specific information, not gee, we'd like --
10 or I shouldn't say that.

11 General -- if it needs to be
12 general, but as specific as we can make it and then
13 when we get back together at noon, we can decide
14 collectively whether the subcommittees should
15 continue or whether their work is done and where we
16 meet as a group as a whole.

17 MS. KEEGAN: I've got one question.

18 Jerry, if I could just follow-up
19 what you just said, and I realize those of you who
20 work in this realm all the time probably think that
21 this is a normal thing, but for those of us who
22 come to proportionality from this moment on and
23 see proportionality as a number which you divide
24 by to get -- and to hear you say that there's no

1 fixed definition of a sport, all sorts of bells
2 and whistles go off in my head saying there's --
3 I mean, maybe it's just -- Rita, I don't know if
4 that's where you were going, but I just need to
5 kind of -- sort of put on the table that if that
6 thing is always moving, I'm not quite sure how we
7 bring anything to this debate because how can --
8 I mean, proportional to what?
9 Somebody, somewhere at some point, probably in
10 your office, makes a decision, and I was teasing
11 Jerry yesterday, if I was going to be heinously
12 manipulated by somebody, in my opinion, I'm glad
13 it's towards Jerry's end and so, you know, I just
14 need to, I guess, get my hands around them.
15 Maybe it's not to be answered now, but I can't
16 help solve the problem that I didn't -- need
17 defined for me somehow.

18 MR. REYNOLDS: Well, there are a lot
19 of issues. There are a lot of moving targets. In
20 the case of emerging sports, I think the key thing
21 to remember is that it's emerging. Over time,
22 certain things -- certain activities, people get
23 serious about.

24 People start to view it in a

1 competitive fashion and, I guess, you could make the
2 argument that this is how all sports have -- have
3 evolved. And the primary difference is that certain
4 sports have huge head starts, but that -- the only
5 point that I was trying to make is that OCR just
6 does not dictate what's a sport.

7 I mean, we have a list of factors
8 that we look at and -- and that list helps us --
9 well, it prevents schools -- it enables us to tell
10 when a school is trying to manipulate the process in
11 order to get its numbers right.

12 For instance, if you wanted to
13 affect your numbers, you could say that juggling is
14 a sport and create teams, but the process that we
15 have in place, we're not going to say that juggling
16 is not a sport, but we're going to ask is there a
17 schedule in place? Are there many schools that have
18 this particular activity? Are they competing?

19 MS. KEEGAN: But so it's fixed
20 criteria, though?

21 MR. REYNOLDS: Yes.

22 MS. KEEGAN: Something has to be fixed
23 somewhere.

24 MS. SIMON: Wait a minute.

1 MR. REYNOLDS: The criteria, it's a
2 laundry list and if you can satisfy most of them,
3 there's a presumption that it's a sport or not a
4 sport.

5 MS. SIMON: But why, then, are we
6 focusing -- why is the subcommittee focusing on
7 bowling and cheerleading? Are they not -- why
8 aren't we focusing on martial arts?

9 MR. REYNOLDS: It's -- for me, it's
10 illustrative. I mean, these are --

11 MR. SPANIER: Oh, it's just
12 illustrative?

13 MR. SPANIER: Such as bowling.

14 MR. REYNOLDS: Yeah. These are
15 examples.

16 MS. SIMON: I don't know what "such
17 as" means in this context. I mean, what are you
18 comparing bowling to?

19 MR. REYNOLDS: Well, the way I
20 view it, it's the entire universe of emerging
21 sports, activities that people haven't viewed,
22 at least traditionally, as a sport, but they're
23 in the process of transitioning to a competitive
24 sport.

1 MS. SIMON: Then, Jerry, is there a
2 list that you have or anybody of what emerging
3 sports are?

4 MS. GROTH: Yes. There -- there's --
5 there are sports listed within the NCAA and then
6 there's a list of emerging sports. That might be
7 helpful to the Commission that we can provide.

8 MS. SIMON: I would -- see, as an
9 outsider, I would like to see that.

10 MS. KEEGAN: But has the OCR bought
11 off on the NCAA'S list?

12 MR. REYNOLDS: No.

13 MS. KEEGAN: Okay. I mean, I would
14 hate to be a real pain here, this is fundamental to
15 me.

16 MS. SIMON: This seems --

17 MR. GRIFFITH: I think there's a lot
18 of overlap.

19 MR. SPANIER: That's a part of the
20 question -- there ought to be a question on that
21 because the history of enforcement of Title IX seems
22 to be -- to go back to what the NCAA has defined as
23 sports, areas in which they offered championships,
24 areas in which they set scholarship limits, areas

1 that are reflected now in reports that are required
2 by law for universities to provide.

3 But while Penn State, for example,
4 operates 29 NCAA sports, we have another 50 club
5 sports. We have another 50 competitions in
6 intramurals involving 90,000 students a year.
7 That's, I think, part of what we're dealing with.
8 How -- how are you -- and then the NCAA now has a
9 list of emerging sports and at some point, they will
10 decide that some of those merging sports should
11 become like other NCAA sports, right? Percy, I
12 mean, these are questions that are on the table now.

13 So I think that these discussions
14 need to take place both in relation to and with some
15 knowledge of what the NCAA has decided, but also in
16 relation -- putting the NCAA aside, what's the right
17 thing to do. We're really trying to give some
18 guidance here back to the Department of Education
19 and OCR, right? So it's kind of a two way thing.

20 MR. REYNOLDS: Yes.

21 MS. SIMON: Especially if we're
22 thinking of Title IX as it will operate in the
23 future. We have to know what, of the current,
24 quote, emerging sports, are likely to result in

1 the scholarships.

2 MS. FOU DY: Well, didn't -- didn't
3 Judith Sweet in the last town hall say that they
4 were going -- I don't want to put words in her
5 mouth, but we need to get a confirmation on this
6 because this will take away this whole debate on
7 the bowling side. Didn't she say they were going
8 to sanction it as a new sport to Debbie Yow?

9 MS. COOPER: I think she said that
10 her --

11 MS. GROTH: Did she?

12 MS. KEEGAN: Did she?

13 MR. LELAND: Yes, it is. It is.

14 MS. FOU DY: Because I think we need to
15 take that off the list because that's already been
16 determined. I think cheerleading is the issue we're
17 looking at, correct?

18 MR. REYNOLDS: You're referring to
19 bowling? That's -- I'm sorry. I lost you there.

20 MS. FOU DY: Last week -- or last
21 month when Judith Sweet from the NCAA spoke as a
22 panelist, I believe, and I haven't seen the
23 transcript, but she said something to Debbie Yow
24 to the effect of that bowling had been decided

1 that it was a sport. So if that's the case, I
2 think we need that updated because we don't need to
3 discuss that.

4 MR. LELAND: Let me break in here as
5 the traffic cop here for a second. I think this is
6 absolutely the kind of discussion we need. We need
7 more facts. I think, to end this, the fact is the
8 NCAA has recognized bowling as an emerging sport.
9 That still doesn't answer what Jerry is still over
10 here in terms of the OCR. Now, they look at this
11 thing. I don't think the definitions are identical.

12 MR. REYNOLDS: Yeah. There's a lot of
13 overlap.

14 MR. LELAND: Yeah. But let's stop
15 for a second. I mean, what I'd like to do is try
16 to get us into subcommittees so that -- Cynthia
17 and I sort of think that this kind of discussion,
18 identifying these types of issues that need more
19 drawing out is what we'd like you to do in
20 subcommittee for a while.

21 Then, let's get back together
22 and continue to discuss it because this is a -- I
23 mean, I think this is the kind of discussion we
24 need to put off until we sort of identify an agenda

1 of items that we can handle in a more organized way
2 because I think -- but this is exactly the kind of
3 conversation we need to get into eventually.

4 I'm just not -- I would like
5 to move to the subcommittees fairly soon.

6 Yes?

7 MR. GRIFFITH: Is another way to
8 state -- I agree with you, that this is subcommittee
9 discussion, but is another way to state it simply
10 how should emerging sports factor into the analysis?
11 Isn't that what we're really saying rather than
12 focusing on bowling and cheerleading? I mean, I
13 think that the subcommittees should look at how do
14 emerging sports enter into this.

15 MS. COOPER: And I think the
16 subcommittee will, but right now, we're not in a
17 subcommittee. So we've kind of got to get moving.

18 MR. LELAND: Yeah. I just have --
19 because I have one other question I'd like to ask.
20 I want to make sure that, you know, within the
21 eight or seven questions that we have, that the
22 issues that are really -- affect athletes and the
23 athletic community as a result of Title IX are
24 somehow captured in those questions.

1 Those questions were sort of
2 handed to Cynthia and I and Debbie and all of us
3 and here's the questions, answer them, and we've
4 heard a lot of testimony and I want to make sure
5 that we have some way of addressing other issues
6 that relate to Title IX that might affect -- I don't
7 have any issues that aren't -- that can't be covered
8 with the seven or eight questions that we've been
9 given.

10 So I'm -- but if your issues,
11 you say, you know, gee, I'm hearing from public
12 testimony or I'm hearing from the people or my
13 professional background tells me that this is a
14 problem and it's not covered anywhere in the
15 questions, let's bring that up at some point in
16 time and try to -- try to identify it because I
17 do think this is -- our Commission is a, you know,
18 once in a period of time shot to try to make this a
19 law as good as we can make it and the effects of it
20 as good as we can so let's make sure we don't miss
21 anything just because it's not a question. We have
22 to answer the questions, but let's take a look at
23 other issues that you've -- that you've come across.
24 Yes, Donna?

1 MS. de VARONA: Yeah, in the
2 context of the revenue-producing sports on campus
3 and how they impact minor sports, I think the
4 way -- the way the question is phrased takes a turn
5 because then we talk about walk ons instead of just
6 simply the question, which is, how does revenue
7 producing sports impact minor sports. I think
8 that's separate as to how walk ons impact the sports
9 community. So I would like to see that two-part
10 instead of one.

11 MR. LELAND: Okay. Is there any
12 other -- I didn't want to stifle the debate too
13 badly, but we do want to -- so I guess we'll ask
14 people to go ahead and move to their subcommittees
15 one, two, three and we'll try to accommodate the
16 general public as best we can. Please forgive
17 us for not having a spectator line.

18 (Whereupon, after the
19 subcommittee sessions
20 were had, following
21 proceedings were held
22 accordingly.)

23 MR. LELAND: Okay. Let me start
24 off by thanking everyone for their forbearance in

1 terms of making the accommodations to sit around
2 in circles and have the subcommittees' comments
3 public. I thought it worked okay.

4 I apologize to everyone for not
5 making it more clear that we couldn't -- because
6 of the way the committee is set up, because of the
7 sort of rules and regulations under which we have
8 agreed to operate, we couldn't allow public comment
9 and public interaction during the subcommittee
10 meeting. So on behalf of Cynthia, Debbie and I,
11 we apologize for having to go around and stop.

12 I didn't -- it's my fault for not
13 making it more clear in the beginning that that was
14 sort of the ground rules, but I'll try to make it
15 clear next time. I -- I did tell a few people that
16 were -- were asked for public comment like myself
17 and Tom, that their federal marshals are outside
18 from Leavenworth. The penalties are about a year at
19 Leavenworth -- no, I'm just kidding, of course, but
20 I don't want to be made too much fun of a rule and
21 regulation that we've decided to abide by, but we've
22 agreed to abide by it, but we'll do a better job of
23 making it clearer.

24 What we've decided to do now is

1 ask -- there is a written set of notes from each one
2 of the subcommittees that will become part of the --
3 we did not take transcriptions, but we took notes --
4 detailed notes and those notes will be part of the
5 public record and we'll put them on -- post them on
6 the website as soon as we can get them done. But I
7 would ask each one of the chairpeople of the three
8 subcommittees maybe to make a short one or two or
9 three-minute report on how their discussions went
10 and some of the issues and some of the requested
11 information that they might have and then we'll pass
12 on at that time -- we'll open up the commissioners
13 for any other thing that's for the good of the
14 cause, any other concerns people have, and then
15 we'll be in a position to adjourn.

16 So, Tom, do you mind starting?

17 MR. GRIFFITH: Sure.

18 MS. FOU DY: Wait. Here he comes.

19 MS. COOPER: Testing! Hey!

20 MR. GRIFFITH: I'll make a report,
21 but I hope that the members of the subcommittee will
22 feel free to correct and revise if I got it wrong.
23 In actually quite a stunning development, in our 45
24 minutes together, we solved all the problems. It

1 was amazing.

2 MS. COOPER: So did we.

3 MS. GRIFFITH: On question one,
4 which is the effectiveness of Title IX as it's
5 currently interpreted and being implemented, we
6 decided that there were three comments to make
7 about its effectiveness.

8 There is a group that thinks,
9 yes, it's effective and no correction is needed,
10 we're on the right path.

11 There's also another group that
12 says, yes, it has been very effective for women,
13 but there have been some unintended consequences
14 for men that need to be addressed. And it was our
15 sense that the major argument there had to do with
16 proportionality.

17 But we thought another theme that
18 should be stated is we're laying out the arguments
19 for, and against, is that it's important to note
20 that virtually everyone that we've heard from thinks
21 that Title IX has -- has had significant benefits.
22 So that's sort of an over-arching -- over-arching
23 theme.

24 Now, with regard to the

1 information that we think the Commission needs on
2 question one, we came up with several categories.
3 First of all, we feel that we need to have reliable
4 participation figures. We just need to get a better
5 sense of what the participation levels are. The
6 suggestion was that we go to NCAA and the National
7 Federation of High Schools as places that might be
8 good sources for some objective information on
9 participation.

10 We thought that this would be a
11 great place to pick up on Donna and Julie's idea
12 to have athletic directors and decision-makers
13 come and tell their story about how they achieved
14 compliance and also have other decision-makers
15 come to talk about their frustrations at not being
16 able to achieve compliance. So I put this down as
17 we need decision-makers to come tell their stories.

18 We think it's important to hear
19 on the compliance side that -- from those who were
20 in compliance, we think it's important to hear from
21 folks who complied through prong one, folks who
22 complied through prong two and folks who complied
23 through prong three.

24 There was also a suggestion that

1 in this -- coming to hear the stories that are told
2 that it might be helpful in addition to athletic
3 directors to perhaps hear from -- from heads of
4 conferences who might be able to give them a larger
5 view and then a very good suggestion that Muffet
6 just made that it might be good to hear from some
7 finance experts to try and get at this -- this --
8 whether what's happening here is responding to the
9 coercive effects of a regulatory scheme or if they
10 are simply resource decisions that are being made
11 and to understand the interplay between the two.

12 I fear I'm running out of time so
13 let me just quickly -- when it got to question two,
14 we didn't think -- we thought that the information
15 that would be addressed to question one is probably
16 going to answer question two as well.

17 On question two, we understood
18 that question to be simply is the law clear? Is the
19 law clear enough so that people can understand that
20 they are in compliance or out of compliance and it
21 was the sense of our subcommittee that that's not
22 that interesting a question, no offense, it's an
23 important question because we thought it pretty
24 clear that folks -- that prong one is fairly clear

1 and that prongs two and three are less clear and,
2 therefore, because they are less clear, there is
3 some anxiety about consistency of application, but
4 we never got to what the -- is there any information
5 that we need other than the stuff that we're going
6 to get from question one that we need for question
7 two.

8 I just realized that I skipped
9 over my notes, perhaps the most significant
10 discussion that we had, in terms of the information
11 we need on question one and that is we need to have
12 people come and give us their views on
13 proportionality, whether it works, what would happen
14 if you changed the meaning of substantial
15 proportionality, what would happen if you did away
16 with proportionality, what would the world look like
17 in that sort of -- in that sort of regime and then
18 for those who don't like proportionality, we'd like
19 to put them to the task of telling us what might
20 work.

21 Muffet, Cary, Jerry, have I --

22 MS. GROTH: All done.

23 MR. GRIFFITH: I think that's where we
24 are.

1 MR. LELAND: Thank you. Jerry?

2 MR. SPANIER: That did solve all the
3 problems.

4 MR. GRIFFITH: Jerry has something.

5 MR. REYNOLDS: Okay. I'll make this
6 quick. Under question number one, there are a lot
7 of other subcategories that are -- that I believe
8 should be discussed; traditional students versus
9 non-traditional students, stuff like that. So we
10 didn't unpack all of the concepts that were involved
11 in the first question.

12 MR. LELAND: Any other comments from
13 the committee?

14 MS. COOPER: Subcommittee two?

15 MS. KEEGAN: We had three questions
16 and actually we sort of combined the first and the
17 third questions which were is there enough guidance
18 at the high school level and also what -- how do we
19 fold in what's going on in community sports and
20 sports outside the school setting into this picture.

21 It became very clear to us that we
22 do not know that much about what goes on in the K-12
23 system in terms of data. The reason for that being
24 that these systems are locally controlled in every

1 sense of the word. Usually, there are very few
2 instances of centrally controlled information.

3 The question that Donna asked was
4 how do we know what's happening if -- you know, if
5 we don't have good data. So there's a desire to try
6 and fix some numbers on participation rates and
7 what's really going on. So that's one thing we're
8 looking for.

9 Obviously, those numbers probably
10 have to come from the sports themselves, but we were
11 acknowledged that there are several activities,
12 maybe even the majority of activities, although I
13 don't know, that go on for children who are in K-12
14 that are outside of any sort of organized
15 organization where you could find those kind of
16 numbers.

17 You certainly are going to be able
18 to get the numbers where they are counted, but so
19 much of what goes on in the schools themselves is
20 informal and because of local control arrangements,
21 you don't have in most states any sort of counting
22 at that level. You begin to have it in high school,
23 junior high school just a little bit, but we
24 definitely said we wanted to get those numbers.

1 Then the question was also asked
2 what happens at OCR. Maybe we need some information
3 from OCR, Jerry, about what are the complaints filed
4 at that level for the most part. Try to get a fix
5 on where are these problems. I made the comment
6 that I thought it was interesting when we went about
7 from a leader's council standpoint trying to collect
8 information on what are your situations in K-12,
9 there aren't as many readily organized groups
10 around these issues.

11 You have them in abundance at the
12 university levels. They are -- they are not as much
13 in evidence, for whatever reason, in the K-12 system
14 immediately although you certainly have the high
15 school athletic organizations and you have a lot
16 of -- we all could come up with stories of things
17 that we had managed on behalf of individual students
18 or individual cases. It doesn't seem to be as well
19 organized in terms of advocacy or opposition to a
20 certain way of handling things.

21 For all that that says, either
22 it's just unorganized or there aren't that many
23 problems or there's a ton of problems no one knows
24 what to do about it. It's just an interesting

1 difference in the way these things are being handled
2 from the K-12 system and the university systems.

3 There also was a comment about
4 states that independently passed echoing legislation
5 to the Federal Title IX legislation; Georgia,
6 California, Donna said, has that, I think, New
7 Jersey. It would be interesting to hear from those
8 states why they did that, if they think it makes a
9 difference, maybe from states who didn't pass
10 echoing legislation, why they didn't do it and did
11 they think they meet the same ends with just federal
12 legislation in place. Is that something that we'd
13 even want to talk about having states echo the Title
14 IX intent in their own laws.

15 The issue that we may -- we
16 probably spent the most time on was our second
17 question, which was how to revenue large roster
18 revenue-producing teams, how does that affect
19 other sports and is the issue -- is the walk on
20 argument true that men walk on and women don't?

21 The discussion that we had was
22 probably, and I think Percy put it well, people
23 walk on to teams or want to be affiliated with
24 teams that have a tradition of being really

1 successful when they're not -- when they know they
2 may not be able to play very much, they want to be
3 there if there is a sense of that's an important
4 place to be. That probably is not so much men or
5 women driven as it is men have a longer tradition of
6 teams generally and so you have that going on more.

7 Somebody asked the question do
8 the Tennessee Volunteers, as a women's team, do
9 they have that walk-on problem, situation, because
10 that's such a strong tradition and has been for so
11 long. So that's an -- that was an interesting
12 question.

13 It sort of led us, though, into
14 the whole question of we probably got into your
15 discussion over proportionality or how you deal --
16 how you manage rosters if you do have to in these
17 large teams, is it possible we could come up with a
18 way to create a huge amount of opportunity for all
19 students, equal opportunities for young men and
20 young women athletes at the same time and still
21 allow people who just want to play to play who
22 seem to be cut from potentially being on a team
23 because at that point, you would have too many
24 people -- too many men on a given roster and not

1 enough women playing.

2 We obviously weren't in the
3 business of trying to solve that problem. We
4 decided, though, that solutions are probably
5 going to come from thinking outside -- not just
6 tweaking with this system the way that we have
7 it, but thinking outside of that.

8 The question was posed how are
9 the independent sports -- are they the Olympic
10 sports interacting with collegiate sports?
11 Could sort of we be making better use of shared
12 facilities, shared revenue available, et cetera? Is
13 it possible we even need to count participation a
14 little bit differently than we do given all of the
15 different accesses to sports at the university that
16 everybody has?

17 Also, we had a discussion about
18 what are outside resources, endowments, et cetera.
19 What are they -- how are they affecting what is
20 happening at the university and should they be
21 allowed? Donna had a good story about what had
22 happened at UCLA in water polo. When that was --
23 they wanted to have that endowed. Is that something
24 that can and should be allowed and what happens to

1 other sports when that happens?

2 So I think what we were looking
3 for in terms of information was just sort of stories
4 about how that's happened and also we had the same
5 desire to hear from athletic directors. I thought
6 Julie's idea about people who are retired would be a
7 little bit more free to speak right now about what
8 really goes on and what they did to either maintain
9 some sort of compliance or why they had difficulty
10 staying there and what all of these issues -- how
11 they affected them, but probably the best people to
12 hear from are those who have tried to make these
13 systems work.

14 And Percy and Donna and Ted, you
15 can add to that if I missed anything.

16 MS. FOU DY: Can I just comment on one
17 thing? With the high school data collection, when
18 we talked to Mr. -- I believe his name was Gardner
19 yesterday with the NFHS?

20 MS. KEEGAN: You're right.

21 MS. FOU DY: I think that will be a
22 good idea is to get ideas from people in that
23 community. We talked about solutions at the
24 collegiate level and hearing from all the different

1 divisions, but we did have someone tied into that
2 that would know how to collect that because I know
3 that's a big issue.

4 MS. KEEGAN: We did write down -- it's
5 Bob Gardner's name and also somebody spoke about
6 getting the Title IX -- I think, Donna, that was
7 you -- talking to the Title IX commissioners in
8 every state. We actually had, I think, on our list
9 of potential people to talk, the Tennessee Title IX
10 coordinator had, said he might be willing to come
11 and talk about that because those are probably
12 people we need to hear from. What kind of
13 complaints do they get or congratulatory comments or
14 whatever even though people don't call you up just
15 to say how wonderful life is.

16 MS. de VARONA: I have something to add
17 to it. Our sentiment also during the discussion was
18 our acknowledgment that, at least in our group, that
19 --

20 MS. GROTH: We can't hear you, Donna.

21 MS. de VARONA: I think there was a
22 sentiment in our group that was expressed that --
23 that we're -- we feel for women that are blamed
24 for -- for the cutting of men's sports, that the

1 blame game is something that's damaging to both
2 males and females in the college environment --
3 the sporting environment and that there are
4 forces that have to be acknowledged and that
5 proportionality isn't the only force, that we
6 have to look at finances, that we're very interested
7 in really exploring the finances and how
8 revenue-producing sports impact this discussion.

9 The pressure of athletic directors
10 to try to meet the guidelines, but also manage the
11 sport environment and that goes back to the question
12 of talking to athletic directors that have been able
13 to comply with Title IX and how they've done it.

14 MS. KEEGAN: And probably I would
15 echo, Donna, that Ted made the point we need to talk
16 to these finance directors that I think, Tom, you
17 brought up in your group, the same thing. What have
18 actual expenditures been on the really big teams?
19 Have those gone up considerably and is that what
20 actually is cutting perhaps or impacting other teams
21 in addition to any other roster concerns that people
22 have.

23 MR. LELAND: Okay. Is that it?

24 MS. GROTH: That's it.

1 MR. SPANIER: Graham?

2 MR. SPANIER: I'm substituting for
3 Gene DeFilippo.

4 Our topics related to emerging
5 sports and the -- any potential role for the
6 Department of Education in fostering public/private
7 partnerships in support of athletics.

8 On the subject of emerging
9 sports, we talked a little bit about what some of
10 the underlying issues were that may have motivated
11 a question like that and the pros and cons of
12 putting more emphasis on emerging sports.

13 And I think it got us a little
14 bit into a territory that overlapped with some of
15 the other discussions that you've been reporting
16 on. Among the issues behind the question of why
17 we might be so interested in adding sports like
18 cheerleading is the fact that you have a men's sport
19 like football that involves a lot of participation
20 and that leads to -- has lead to schools looking at
21 women's crew and equestrian and cheerleading and
22 maybe some others that might hold more interest for
23 women and whether that can be brought into the
24 picture to help with issues of proportionality,

1 which, then, of course, raises the same issues of
2 how important is strict proportionality as a goal.

3 But we then also talked about
4 emerging sports and what do we mean by that?
5 What are the definitions? I think that the two sets
6 of issues -- there are -- one important issue is
7 should the Department of Education and the Office
8 of Civil Rights be using NCAA definitions of what
9 is a sport or not a sport or an emerging sport and
10 to what extent should we be focusing on data that
11 the NCAA produces as defining all of the different
12 topics as a basis for deciding whether a school is
13 in compliance with Title IX.

14 So there is an important set of
15 issues there about what the definitions are and
16 what's being counted and what all the rules are
17 for scholarships between the NCAA and what the
18 federal government's larger interests might be.

19 But, then, secondly, what --
20 we need more information on what these emerging
21 sports are, what do the cheerleading people
22 nationally say about cheerleading, what is that
23 sport all about and what does it mean to be
24 competitive and have schedules and compete. We

1 need to hear a little more on where we can get
2 that information. We don't need people to testify.
3 We just need some data and some paper about what
4 the whole deal is there and that might help inform
5 us.

6 In terms of public/private
7 partnerships, that's a concept that, of course,
8 sounds very good on the surface, but I think
9 that there's a genuine question, is there really
10 legitimate role for the U.S. Department of Education
11 in fostering partnerships for colleges and
12 universities? I don't know.

13 We talked about the possibility
14 that there might actually be a role for certain
15 national organizations like wrestling organizations
16 nationally or gymnastics organizations in promoting
17 those sports. They have a general interest in it.
18 They care about the Olympic movement and so on and
19 maybe their needs to be a closer partnership with
20 colleges and universities and perhaps there's an
21 opening for funding streams in that direction.

22 When you talk about public/private
23 partnerships, corporate support, mostly that's going
24 to happen at the level of a given college or

1 university, all of whom raise money through
2 sponsorships and partnerships in a number of
3 different ways and, of course, that's happening
4 now and maybe should be encouraged, but it's
5 a little unclear how that would fit to in the
6 mission of the Department of Education.

7 MS. FOU DY: Just one thing. Graham,
8 I don't think you said this in the last bit, but
9 Brian's suggestion about looking at possible
10 relationships formed by the Department of Education
11 at the high school level and how you can do programs
12 really into the high school level and Graham
13 mentioned it might be hard to do at the university
14 level, but doing it at the high school level and
15 encouraging, you know, sports participation and I
16 know the Department of Health and Human Services
17 does things with non-smoking that our team has
18 worked on so something maybe partnering with
19 that, which I thought was a very good idea.

20 MR. LELAND: Okay. Any other
21 comments? I think we're --

22 MS. PRICE: The girls right now
23 are bringing in the transcripts that we've been
24 expecting to arrive since the night before we got

1 here. One is almost 300 pages long and the other
2 is 200 pages long.

3 If you want to take them with
4 you, you are welcome to take them with you if you
5 need to have them. Otherwise, it breaks my heart
6 to say this since it took so long to get them
7 here, we will Fed Ex them to you. They will be
8 eternally Fed Ex'd somewhere across this country,
9 but we do have them if you want to take them,
10 you're welcome to take them with you.

11 We would be happy to Fed Ex
12 them to you and just as a reminder, your notebooks,
13 whatever you need us to Fed Ex back to you, please
14 put your name in them, not just a piece of paper
15 with your name on it because it will get lost and
16 we'll make sure we get it back to you just like
17 before.

18 MS. MCGRAW: I just -- I have one
19 concern about the speakers that we bring in in
20 that I would hope that they would have a bigger
21 frame of reference, maybe than just their one
22 school.

23 I think when we had the
24 Division III people come in at Atlanta, it was

1 good, but I didn't know if what they were doing
2 was what everybody in Division III was doing so
3 I think when we start calling people, it would
4 be good if they had a little more frame of
5 reference for a bigger group, if somebody could
6 speak for all of I(A) or I(AA) or Division II
7 because obviously what happens at Notre Dame
8 is not what happens at Northern Illinois and
9 I think for us to hear, you know, from every
10 state or from every school, we obviously can't
11 do that. So the more national people, maybe
12 conference commissioners or somebody higher
13 than that, I don't know, would be good.

14 MS. GROTH: Again, Ted, should
15 we recommend speakers for our specific areas
16 or overall or how -- how should we proceed?

17 MR. LELAND: Yes. I don't think
18 you need to do it right now, but let Debbie
19 know who you would like to see. We can't
20 promise anything because we sort of have to
21 negotiate it out -- not only ourselves, but
22 other people in Washington, but we'll do the
23 best we can.

24 I think we're ready to adjourn.

1 By the way, I think the subcommittees did very
2 well.

3 MS. COOPER: Great job.

4 MR. LELAND: I was a little skeptical
5 about how it was going to go, but you did a great
6 job. Thank you for your input and we're further
7 ahead than we were.

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9 (Whereupon, the proceedings in
10 the above-entitled cause were
11 adjourned.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

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4 I, LORI ANN ASAUSKAS, a notary
5 public within and for the County of Cook and State
6 of Illinois, do hereby certify that heretofore,
7 to-wit, on the 18th day of September, A.D., 2002,
8 personally appeared before me at The Drake Hotel,
9 140 East Walton Place, in the City of Chicago,
10 County of Cook and State of Illinois, The Secretary
11 of Education's Commission on Opportunity in
12 Athletics, Chicago Town Hall Meeting, called by
13 the United States Department of Education in a
14 certain cause now pending and undetermined before
15 the appointment Commission.

16 I further certify that the said
17 testimony was by me reduced to writing by means
18 of shorthand in the presence of said Commission
19 and afterwards transcribed upon a computer, and the
20 foregoing is a true and correct transcript of the
21 testimony so given as aforesaid.

22 I further certify that the
23 taking of the proceedings were pursuant to public
24 notice, and that resent at the taking of the

1 proceedings were the aforementioned parties.

2 I further certify that I am not
3 counsel for nor in any way related to any of the
4 parties to this suit, nor am I in any way interested
5 in the outcome thereof.

6 In testimony whereof I have
7 hereunto set my hand and affixed my notarial seal
8 this 24th day of September, A.D., 2002.

9

10

LORI ANN ASAUSKAS, CSR, RPR.
Notary Public, Cook County, IL
Illinois License No. 084-002890

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