

Archived Information

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1 THE SECRETARY OF EDUCATION'S COMMISSION
2 ON
3 OPPORTUNITY IN ATHLETICS
4 COLORADO SPRINGS TOWN HALL MEETING
5 CHEYENNE MOUNTAIN RESORT
6 3225 BROADMOOR VALLEY ROAD
7 COLORADO SPRINGS, COLORADO 80906
8 719-538-4000
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10 OCTOBER 23, 2002 - WEDNESDAY
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1 MR. LELAND: Let's go ahead and
2 get started. Wait for at least a couple
3 announcements. We will have our sign interpreter
4 interpret my opening remarks, and then retire to the
5 back of the room. If anybody would like the
6 services of the sign interpreter continued through
7 the deliberations this morning, we're perfectly
8 willing to do it, but if there's no one taking
9 advantage of the service, we would like to give them
10 a rest.

11 I would like to say sadly at
12 this time we're missing Jerry Reynolds from this
13 Commission meeting. His -- he had a -- his father
14 passed away.

15 MS. PRICE: No, he had
16 open-heart surgery.

17 MR. LELAND: He had open-heart
18 surgery. Excuse me. I'm still sad. And that's why
19 he missed. It was an emergency surgery situation.

20 And welcome, Lisa and Percy. We
21 didn't have a chance to introduce you guys
22 yesterday. Percy Bates just came in, and I think
23 we're expecting Mike Slive.

24 MR. BATES: Mike is not coming,

1 by the way.

2 MS. PRICE: He's not coming. I
3 just got a thing from him.

4 MR. LELAND: All right. Welcome
5 everybody, and good morning to the second day of our
6 third town hall meeting. My name is Ted Leland.
7 I'm director of athletics and recreation at Stanford
8 University, and I'm co-chair of the Commission.

9 Yesterday, we had, I thought,
10 very good testimony from a number of experts
11 regarding the implementation of Title IX. We also
12 heard from dozens of members of the general public.
13 The info we received will become part of the rapidly
14 increasing and impressive deep body of information
15 that this Commission has collected since its
16 inception in August.

17 At the onset today, I want to
18 emphasize that the Commission remains in a
19 fact-finding role and in a listening mode. I know
20 that in a process such as this, pressure can build
21 quickly to preview our recommendations. Each
22 commissioner, I'm sure, has been asked, "Where is
23 the Commission headed? What will the report say?
24 Is there anything we can preview?"

1 At this point, I believe there's
2 nothing for us to preview and no conclusions should
3 be drawn at this time. It's premature.

4 Secretary Paige has asked us
5 first and foremost to continue to listen and to
6 gather facts, and we are listening. We're listening
7 to athletes, students, parents, university
8 administrators, researchers, and members of the
9 general public. In doing so, we are collecting
10 information and building findings that will define
11 the debate for the Secretary and for the American
12 public.

13 Secretary Paige has also asked
14 us to, quote, think consensus throughout the --
15 closed quote, throughout this process, and I urge us
16 to do so today, and not only today but throughout
17 the next town hall meetings in San Diego. In early
18 December we will begin the process of developing our
19 findings and finalizing our conclusions.

20 Here's the plan that Cynthia and
21 I and Debbie have worked out for this morning.
22 First, we'll take the seven questions from the
23 Commission's charter and discuss each question one
24 by one. They're in Section O of your binder.

1 Each commissioner will be given
2 the opportunity to comment on each question,
3 objectively stating what you've heard and your
4 understanding of the issues involved. You're not
5 being asked to draw conclusions. That process will
6 come later after we have completed our town hall
7 meetings.

8 The Commission and its staff
9 need to hear your thoughts. Not only do we need to
10 receive your comments on the issues related to the
11 question, we need to hear what information you need
12 to be better informed.

13 After we hear each
14 commissioner -- from each commissioner, we will as a
15 group have general discussion regarding each
16 question. Then we will repeat the process with the
17 next question. I think this is a good format for us
18 to begin.

19 Following a review of the
20 questions, we will check to see if there are any
21 additional topics or opinion -- options we need to
22 address. The entire process today will take us to
23 noon or maybe 1:00 p.m. I must note that during
24 this time, we will neither accept public comment,

1 nor will we take questions from the audience.

2 With that, hearing no further --
3 I didn't ask for questions. Let's begin. If you
4 turn to Section O, and -- but before we start, if
5 there's any other questions, any questions on the
6 process as we're going through? And please try to
7 use your microphone, because we are transcribing.
8 We do have members of the public that have the right
9 to hear.

10 Yes, Donna?

11 MS. deVARONA: As a former
12 member of the President Ford's Commission on Olympic
13 Sport, in which I think we enjoyed a very successful
14 process, I am frustrated with our process in regard
15 to the submission of names and the response of the
16 staff to the submission of names that we want to
17 have appear, these people appear at our hearings.

18 In Chicago, we said we needed
19 more experts to talk to us about finances. Only
20 from the floor when Betty Jaynes talked about
21 basketball did we get a handle on the finances of
22 basketball in our collegiate community so we can
23 sort out how we can fund minor sports in our
24 colleges.

1 There have been a list of names
2 submitted to the staff by my -- by me and by Julie.
3 These people have not been contacted, nor have they
4 appeared on the hearing panels.

5 I hope when we get to San Diego,
6 that I can resubmit all those names, I have them
7 listed, and that we can have them appear. It
8 appears to me that people are being weeded out, and
9 I don't know why. But when I was a commissioner on
10 President Ford's Commission, and I left that
11 experience, I left it very proudly, because we had
12 heard from Walter Byers, we had heard from the AAU,
13 we had heard from the athletes, we had heard from
14 the politicians, we had heard from people that, you
15 know, had their entrenched points of view.

16 Well, we've heard entrenched
17 points of view three times from the same groups. I
18 have -- my time is valuable, and so is yours. And
19 you know what? If we don't do that here, when it's
20 all over, and we don't express majority and minority
21 opinions, we're going to be before Congressional
22 hearings, every one of us, and we're going to be
23 discredited.

24 So when we submit names, I want

1 a response back from the staff. I don't want to
2 feel like this is driven by the staff. I'm a
3 commissioner, and I've been through this process
4 before.

5 All of us have donated our --
6 devoted our life to sport, and I want to see the end
7 product reflect the fact that we're open and that we
8 hear from everyone, and that when we submit a name,
9 we get a reason why they're not appearing here at
10 hearings. And I have a list of names if you want
11 them. Thank you.

12 MS. PRICE: Let me just
13 generally respond. I do have all the names. We
14 have a list of over about 290 names that have been
15 submitted to the Commission, and I have all of
16 those, and I have identified each of the
17 commissioners who has submitted each of those names
18 and why, so it's a little chart. I'm even happy to
19 pass it along if you would like to see it.

20 At our last town hall meeting,
21 besides the finances someone asked for, they also
22 asked to hear from a panel of athletic directors
23 about how to implement --

24 MS. deVARONA: And also retired

1 athletic directors and successful athletic
2 directors, and we had one. It was a combined.

3 MS. PRICE: And we had three
4 fairly successful --

5 MS. deVARONA: No, we had one
6 that was in compliance.

7 MS. PRICE: But -- and then we
8 asked for general counsels, and so that was the
9 focus this time. We still have San Diego, and
10 finances will be dealt with in San Diego.

11 You know, there are -- you know,
12 we have a -- taking all of the comments that were
13 here, and plus other comments that people have made
14 by e-mail, and conversations with Ted and Cynthia
15 about who do we need to hear from, you know, we
16 clearly have that, and are trying to check those
17 off, and to get to each of those categories at the
18 town hall meetings.

19 We still need to hear from
20 finances. We still need to hear from someone about
21 statistics. That was another area that someone came
22 up with, and quite honestly, my mind is blank for
23 the other ones, but there are.

24 And, you know, working with Ted

1 and Cynthia, there is a real desire and focus, at
2 least I can say from my part in whatever role I
3 have, to be -- to address all those needs that are
4 given, and so they will be --

5 MS. deVARONA: We're on such
6 short time. I just hope that in San Diego we fill
7 in those holes.

8 MS. PRICE: Clearly, we will. I
9 mean --

10 MS. deVARONA: It's hard to
11 answer the seven questions if we don't have
12 information.

13 MS. PRICE: Absolutely. And,
14 you know, one of the tools of today will be, besides
15 the finances, I'm sure there will be some other
16 holes that we need to fill in to make sure that --
17 to get that so that we hear from those people, we
18 need to fill in those holes at our San Diego
19 meeting.

20 MR. LELAND: Yeah, and in
21 fairness, let me say Debbie has -- the staff has
22 cleared the, quote, final list of invitees with
23 Cynthia and I before, so we're sort of -- if there
24 is a problem, we're clearly part of the problem.

1 And I think I heard from other
2 commissioners their frustration over this process.
3 You're not the only one, I think, who feels that
4 they've submitted names, and those names haven't
5 been paid attention to, I guess, and I'll work with
6 Cynthia and the staff to make sure that we give
7 responses back.

8 In many cases there was a
9 legitimate reasons why we weren't able to invite
10 some of the people that you guys suggested. And
11 other times, they sort of just didn't make the cut.
12 And so I apologize. It seems to me reasonable that
13 if you take the time to send us a name, and it's --
14 we should give you a response back saying, "This
15 isn't going to work" or "This is going to work, and
16 here's why it's going to work" or "Here's why it is
17 not going to work." I understand.

18 You're not -- Donna, you're
19 clearly not the only one that has -- because
20 Muffet -- some other people have mentioned it to me,
21 too. And so I think that we'll work on that.

22 MS. deVARONA: And also, then I
23 just also want some clarity on the final report and
24 how we're going to deal with that --

1 MS. SIMON: Yes.

2 MS. deVARONA: -- and Rita, you
3 know, can --

4 MR. LELAND: Well, let's stay on
5 this subject, because I saw some other hands go up,
6 and yes.

7 MS. GROTH: Ted and Debbie, is
8 it possible if after today, after we're done
9 deliberating about the questions and finding out
10 where the holes are, can we as a group go through
11 that list and come to some sort of consensus as to
12 the individuals we would like to hear from at the
13 San Diego hearings?

14 MS. PRICE: We could. I didn't
15 bring it with me. I didn't expect that, but I
16 didn't -- so I don't have it as a tool to work with
17 today. I can e-mail it to everybody.

18 MS. GROTH: Or perhaps we can
19 discuss some of the individuals that we recommended.

20 MS. PRICE: Sure, sure, I would
21 be happy to --

22 MR. LELAND: Well, I think in
23 fairness to the three of us and the staff, I think
24 we tried to -- the word we heard out of the last

1 meetings was we wanted to talk -- you wanted to hear
2 from athletic directors, from the decision-makers,
3 and from people who had actually been involved in
4 causes, and we tried to -- we had already committed
5 to the governing bodies panel. We had already
6 committed ourselves to the public comment period, so
7 it really left us with two panels left, and I
8 thought we did -- I thought we had great panels
9 yesterday, and I think, you know, we could argue
10 about the diversity of opinion, and, you know, the
11 sort of employment status, whether they're retired
12 or not, but I thought they were certainly
13 forthcoming and good, so when I left yesterday
14 morning, after the morning, I thought we had, you
15 know, complied maybe with 80 or 90 percent of what
16 you guys were asking us to do.

17 We hadn't resolved the issue of
18 the specific names and hadn't followed up, and we
19 will clear that process up, and we apologize for it,
20 but I thought at least the two panels we had
21 yesterday were very, very, you know, interesting and
22 exciting and very forthcoming, so again, the
23 practice -- the procedures isn't perfect, but we're
24 working on it.

1 Debbie?

2 MS. YOW: Since Debbie has said
3 to Donna that she has this list of 290 people --

4 MS. PRICE: Lots of names.

5 MS. YOW: -- lots of names, I'm
6 not comfortable, Cary, just pulling out of the list
7 of 290 a few people that you personally are aware of
8 and would like to talk about today.

9 I think Debbie has made it clear
10 she's going to invite some people that Donna has
11 identified she thinks are very important for us to
12 hear from, so I don't think it's particularly good
13 use of our time to talk about four or five people on
14 the list of 290 in Colorado.

15 If we're going to look at the
16 list and circle people that we would like to hear
17 from, I would prefer she e-mail it to all of us, and
18 then we just get it right back to her.

19 MS. GROTH: I think more so,
20 Debbie, people representing areas that can provide
21 us with the information we need, not necessarily
22 specific names, but let's all come to consensus as
23 to who we would like to hear from or who they
24 represent.

1 MS. YOW: That's different than
2 who. That's people with a level of expertise. I
3 understand and agree with that wholeheartedly.

4 MS. PRICE: And one other thing.
5 There will be a variety of commissioners who will
6 submit a variety of names that deal with one topic,
7 one issue, and I try to -- you know, try to make
8 sure that we hit at least somebody's recommendation
9 in somewhere each time, you know.

10 We've actually had several of
11 Donna's suggestions that were similar. I think
12 Julie was some of those. Cary submitted some of
13 those names, but I do try to -- I mean, I don't know
14 how to say this. I want to hit everybody's -- at
15 least one of everybody's suggestions, you know, each
16 time, and so, you know, there are sometimes when,
17 you know, we have to pull from somebody else's list
18 because we've drawn from some other lists, so that
19 comes into play a bit.

20 But clearly, we want to have
21 speakers that you all want to hear from on the
22 topics that you need to hear from, and so we'll
23 address that as much as we can.

24 MR. LELAND: I'm also sort of

1 getting a feeling of panic since there's a lot of
2 information many of you want to have and you know we
3 only have one more public meeting where we're
4 gathering, so I think we have to be acutely aware
5 that the people that we invite to San Diego have to
6 be the right people, and they have to bring specific
7 information, maybe in response to specific
8 questions, and I think as we charted out this
9 morning's tasks, we thought that one of the primary
10 reasons we said to go through the questions the way
11 we did, to try to get information on what you guys
12 -- more information you guys want, so that we could
13 be guided in who we invite to come to San Diego.

14 MS. SIMON: More than that,
15 there are people who refer to data that they have,
16 and Debbie, you're going to collect those data and
17 distribute it to us?

18 MS. PRICE: Yes. Just let me
19 hit another thing that we put in your book, so there
20 are things in here this time other than just the
21 statements of the speakers.

22 You know, in listening last time
23 there were questions about the EADA report and
24 should we, you know, address some of that. Well,

1 there is -- I thought it would be helpful for you
2 all to have very clear information, background
3 information on the EADA report, so that briefing
4 paper is in here. Sally actually did it. She's the
5 assistant secretary of postsecondary there at the
6 agency, the arm of the department that governs it.

7 But, for example, the EAD report
8 is mandated by Congress. I mean, so in order to
9 change anything in it, a period in it, it has to be
10 done by Congress. That's just really helpful
11 information for you.

12 There is high school information
13 on just statistics about cases at OCR things. We're
14 doing a side-by-side chart from the different -- and
15 I may not use the right term, I call them governing
16 bodies -- like NCAA, NJCAA, NAIA, National
17 Federation of High Schools, USOC, and OCR, all of
18 those entities that in some manner define sports for
19 someone, and so last time it was pointed out that, I
20 think Graham and Jerry were talking about, NCAA has
21 one definition of sport, and OCR has another, and
22 it's good for you all to see, in kind of a
23 side-by-side comparison, that information, so -- and
24 how that, you know, and then what -- you know, then

1 as you're determining things.

2 So I'm trying to catch, as you
3 talk, areas where just those, I don't know how else
4 to call it, but a down and dirty briefing paper on
5 the fact of something is helpful to you, so if there
6 are other things that you come up with that you
7 need, you know, something like that, we are more
8 than happy to do that, and we'll either get them to
9 you in our Friday packet.

10 My only concern about the Friday
11 packet is they might not stick out to you to pull it
12 aside, but, you know, we'll put it in the notebooks
13 in San Diego, but really happy to do that.

14 When we did the -- one of the
15 reasons why we're doing that side by side on sports
16 is the whole issue of emerging sports where we were
17 focusing on cheerleading and bowling, and they are
18 examples of emerging sports, but it's more important
19 to understand what those rules are in each of those
20 bodies. So hopefully that's helpful.

21 So, you know, Rita mentioned
22 the -- some numbers. Anything that you need more
23 specific information on, just let me know. I'm
24 happy to take care of that.

1 MR. LELAND: Let's work on that
2 this morning, okay. Let's work on making sure that
3 we are able to identify the kinds of information you
4 guys want, and we'll bend over backwards to try to
5 provide it.

6 Yes, Percy?

7 MR. BATES: And while we're
8 talking about process, is there any way to involve
9 the commissioners, I guess, more in the process?

10 I think we individually submit
11 names, and we don't know who is being submitted from
12 where, and then at some point, the e-mail comes out
13 that says, "These are the people who are going to be
14 in Colorado Springs." And we don't -- I guess I
15 don't really know how to relate to that.

16 I'm assuming that someone sifted
17 through and done all of what has been done, but I
18 don't feel as a commissioner that involved in that
19 process, so that as we arrive to the panel that we
20 really have the people that somehow as a group we've
21 decided make sense to us.

22 And as I said, I went down the
23 road on this, but we're talking about process. I'm
24 just wondering if we can't figure out a way sort of

1 to do that.

2 MR. LELAND: Well, if you'll
3 remember, I think you -- if I'm not mistaken, at the
4 very first meeting we had you brought this up, and
5 we decided that the first set of invitees we would,
6 you know, get a preliminary list done and then have
7 a conference call which everybody would be on. And
8 we didn't do that. You know, we just sort of --
9 we're moving rapidly. This Commission has got a
10 very truncated time period, so we probably made a
11 mistake in not doing that.

12 I think we could certainly think
13 about trying to do that again, especially since
14 San Diego -- the time especially for our guest
15 presenters in San Diego is going to be so imperative
16 that we get the right people in front of us.

17 MS. COOPER: Or maybe just
18 submit a preliminary list to everyone by e-mail or
19 other ways of communication and then be able to --

20 MS. PRICE: Sure, and then do a
21 conference call after that.

22 MR. LELAND: Would that do,
23 Percy? Would that be where you --

24 MR. BATES: Well, that would

1 help. I just think we need a broader input process.

2 MS. PRICE: Yeah, that would be
3 better.

4 MR. LELAND: I understand. A
5 lot of this, you know, I think that's the one
6 question I've been getting, not the one question but
7 a question I get a lot is, you know, "Why did you
8 invite these people?"

9 I think some of the people who
10 are very interested in this sort of attribute who
11 gets invited to some kind of, you know, preconceived
12 political leaning of the group, and they -- kind of
13 like people attribute, you know, things to the
14 Justices of the Supreme Court based on the questions
15 they ask. We get things attributed to us by the
16 people that we invite, and I think we have to be
17 sensitive to that. We have to develop a public
18 consensus that the process has been fair, and so we
19 need to make sure that we're fair in the way we
20 invite these people. So I think it's absolutely
21 correct.

22 If it's okay, if there's no more
23 discussion on this, maybe Cynthia and I can work
24 with Debbie and either have a conference call, or

1 we'll send out a preliminary list and have people be
2 able to call in with concerns and suggestions, and
3 maybe we'll even put a little sentence or two on
4 each one of why we think these are particularly
5 appropriate people to be.

6 And I do think I absolutely --
7 nothing's been said here today, I think, reflects on
8 any of the people we've had speak before us. I
9 think they've all been great, and we've learned a
10 lot from all of them, but we only have a little bit
11 of time left, and we've got to make sure this
12 process is fair. So I think --

13 MR. GRIFFITH: Finance and
14 statistics in San Diego, is that what we said?

15 MS. PRICE: Well, hopefully
16 other things besides that. We've got 12 spots.

17 MR. GRIFFITH: Okay.

18 MR. LELAND: Well, Tom, I would
19 like to go through these seven questions this
20 morning and see if there are not more things.

21 MS. COOPER: Unless everyone
22 wants to miss their flight. Is there any other
23 thing on the invite list?

24 MS. SIMON: Oh, no, not on the

1 invite list.

2 MR. LELAND: Okay. Any other
3 thoughts? Bob?

4 MR. BOWLSBY: I think my
5 reaction to the two hearings I've been at, Atlanta
6 and yesterday, is that the presentation of facts as
7 a matter of perspective has been particularly
8 unhelpful.

9 As we configure the list for San
10 Diego, let's try and gravitate to people that we can
11 all agree are experts, and then I think that's one
12 of the things -- that's one of the things we -- we
13 need to decide on a set of numbers. If we -- if
14 we're going to continue to joust back and forth
15 on -- there's an absolute number on how many
16 programs have been dropped; we ought to identify it
17 and agree to it. There's an absolute number on some
18 of these other things, too.

19 And it's -- there's a lot of
20 spin doctoring going on when these numbers are
21 presented in the context of a panel presentation,
22 and I don't know how we get at that, but whether
23 it's presentations from GAO, or from somebody at the
24 NCAA, or someplace else, I think we need to identify

1 authoritative sources that can present numbers to us
2 that we can all agree that are going to be the basis
3 of our discussions.

4 And if we go further down the
5 path in San Diego of allowing, "These are my
6 numbers" and "These are your numbers," I think we're
7 going to have a great deal more difficulty getting
8 to the bottom of the discussion to substantive
9 issues. And so if it's possible, I would like to
10 have us think along those lines, because it seems to
11 me, after listening yesterday, that would be very
12 helpful.

13 MR. LELAND: Okay.

14 MR. deFILIPPO: I would just
15 like to echo what Bob said. One of the numbers
16 that's been confusing is we've had one of our
17 speakers say that the increase in male participation
18 on college campuses is due to an influx from
19 two-year schools becoming four-year schools, and
20 other institutions such as NAIA schools becoming
21 NCAA schools, and we've had other people say that
22 that's not the case.

23 So those kinds of numbers, there
24 are correct figures out there, and I think it's

1 important that we have those, you know, at our next
2 meeting.

3 MR. BOWLSBY: Well, another one
4 that came out yesterday was that there was a decline
5 in the average number of male participants on a
6 campus, and then it was said that there wasn't, that
7 the gross numbers were higher. Well, it may be
8 possible that both are true, and if it is, we ought
9 to identify that.

10 If there's a decline in the
11 average number of participants on a campus, we ought
12 to be able to determine that, and then agree that
13 that's our number, and we needn't have anyone else
14 introduce other numbers, because we, as a
15 commission, decided that's what's going to be our
16 basis for discussion.

17 MR. LELAND: Okay. Donna?

18 MS. deVARONA: I was going to
19 say also, we haven't really even addressed how many
20 women's programs have been dropped and why, so we
21 need someone to talk about that.

22 MR. BOWLSBY: Absolutely.

23 MS. KEEGAN: Just, I guess, from
24 the perspective of the public that doesn't know as

1 much as you all know, and that would be my
2 perspective, because you all have far more
3 information, and in listening to Bob's
4 interpretation of what's been done here, I think to
5 myself often in these hearings that I am hearing
6 something entirely different than you all are
7 hearing, because you have a background for it, and
8 you have a perspective, and we talked at our last
9 meeting about letting the members of this panel even
10 talk about their own experiences.

11 Everybody here is an expert, and
12 they're here for a reason, and I've wished a number
13 of times that I knew what you know, just because I
14 would like to know why we're hearing this through
15 the filters that we hear it from, because, you know,
16 somebody stands up and says one thing, somebody
17 stands up and says the other, and I agree with
18 everybody, because I have had no reason not to, and
19 so it would be really nice -- and Debbie, I just
20 would not want the job that you've got right now --
21 if you could absolutely fit all of this conversation
22 into San Diego or something, but it would benefit me
23 enormously to know Donna's view based on her
24 experience, Cynthia's, yours, Ted's, you know, you

1 guys who are ADs doing this all the time.

2 So I know we're here so that we
3 bring whatever our experience is to the table. It
4 would be enormously helpful, I think to the public
5 as well, to understand what -- how the commissioners
6 see this, how they do see it and why they ultimately
7 will make the decision that they make, and I don't
8 know -- I don't know where we're going to have time
9 for that. I know Philadelphia, we're supposed to
10 finalize our conclusions, but I don't know how to do
11 that. I don't know how to do that without the
12 conversation amongst the members themselves.

13 MR. LELAND: Okay. We're still
14 talking about who to invite to San Diego and the
15 process of coming up with those names. Anybody else
16 have any thoughts or concerns?

17 I know I just want to get this
18 sort of on the record. There's one number I would
19 love to have, Bob, along the lines of accreditable.
20 But we hear that, you know, during a certain time
21 frame the escalation in costs to add women's
22 programs dollarwise is one to three the dollars, and
23 the escalation in the men's program says we endure
24 this arms race. I would love to have someone sit

1 and explain that to me, and really that knows the
2 numbers and maybe even differentiates between
3 schools that have dropped men's sports and schools
4 that haven't dropped men's sports.

5 Has there been -- in other
6 words, there's an argument, a very cogent argument,
7 that says this isn't -- this isn't proportionality;
8 this is really cost allocation on a campus, and
9 gosh, we -- and I would like to get some kind of
10 figures on how to do that.

11 I mean, we did hear a witness
12 yesterday say dropping a men's sport had very little
13 to do with Title IX. You know, well, how much more
14 of that is there? And how much are -- and just sort
15 of a feeling that people might hide behind Title IX
16 as a way to trim their budgets when they're
17 escalating the costs of their men's revenue, men's
18 football and basketball, I guess. I would like to
19 get somebody to get at those numbers just to say,
20 "No, that isn't happening" or "Yes, it is," and as
21 you said, all agree.

22 Apparently, somewhere we have to
23 have findings, and the findings might want to
24 address these issues we're talking about. Here's

1 what happens with men's sports. Here's the dollar
2 allocation that's being made.

3 So other comments on who --
4 okay. Let's go to the next subject before we get
5 into --

6 MS. SIMON: I'm concerned about
7 the report. A commission doesn't write --

8 MS. COOPER: The microphone.

9 MR. LELAND: Move closer.

10 MS. SIMON: I'm sorry. I'm
11 concerned about the report. A whole commission
12 doesn't write a report. Now, we have many, many
13 talents on this Commission. Some of the members of
14 the Commission have had much more experience writing
15 and editing books, journals, reports, and so forth.
16 I want to know what the procedure will be. Who will
17 actually write this report? When will it be
18 written? Who will actually edit this report? Who
19 will determine what data are included in this
20 report? Who will examine the reliability and
21 validity of those data? When is all this going to
22 happen?

23 MS. PRICE: Okay. Let me
24 address that. Last time at the meeting we

1 introduced to you Jay Diskey, and Jay, we hired as
2 an editor. He has done this with commissions
3 multiple times. Just most recently he did it with
4 the Commission on Special Education. They just
5 finished one, and he ended one contract, and we
6 brought him in as another contract. That is what
7 Jay miraculously does.

8 While we're meeting, you know,
9 all the notes we're taking, Jay is meticulously
10 reading through them, absorbing them, getting them
11 together. We will -- the commissioners will come,
12 they will, you know, after our San Diego meeting,
13 when we meet as a group, we can put some more, you
14 know, nails on, you know, outline, directions we
15 want to take with the report. We have
16 Philadelphia. We'll be putting all this information
17 in. People, you know, individual commissioners may
18 be writing certain things for the report.

19 I mean, some of this is
20 speculation on my part at this point. As I'm -- but
21 as we get all of the content and the things that we
22 want to have in here, it will be Jay's job as an
23 editor to make sense of it all, to put it in its
24 place, to keep it intact, to make the sentences

1 actually be sentences, to make the tenses be the
2 same throughout the entire document, I mean, stuff
3 like that, but to substantively be able to make a
4 document that makes sense out of all of the input
5 that we have.

6 And some of that very well may
7 be individual commissioners feeling the desire to
8 write a specific portion of the report. So, you
9 know, Jay's job there will be to make it so that it
10 keeps tone with the other things and makes -- you
11 know, reads properly.

12 MS. SIMON: All right. My
13 concern is that all the members of the Commission
14 will then read what Jay has written.

15 MS. PRICE: Absolutely.

16 MS. SIMON: Okay. But then what
17 responsibility and what role and how much power will
18 individual members of the Commission and the
19 commissioners collectively have in saying, "This
20 whole section is wrong," or "We don't like the tone
21 of this section"? How will these things happen, or
22 "Your analysis of those data do not make sense."
23 What happens after we see -- I remember your
24 discussion of Jay, but what happens after we see his

1 edited version?

2 MS. PRICE: Well, and, I mean,
3 honestly, some of this is speculating this is what
4 will happen, but it's my assumption this is what
5 will happen. It is also my hope this is what will
6 happen. That we want to have -- that the report
7 that comes from this Commission is something that
8 each commissioner feels proud about putting their
9 name to, that if there are areas of disagreement
10 about something in the report, we work through
11 that.

12 You know, there's been the
13 reference to working towards consensus on this. I
14 think that is where we're -- and Ted mentioned that
15 today in his opening remarks. We are working
16 towards consensus. And as we are working on the
17 report with that goal in mind, we will deal with
18 those issues that come up as they come up.

19 And not to assume that we won't
20 have consensus on something or assume that
21 everything will just be easy and slam, bam, you're
22 done with this great report. As we run up to
23 hurdles, we'll deal with each of those as they come
24 up, so that no one in -- no commissioner here would

1 feel that this -- this report didn't do what it's
2 supposed to do.

3 Does that -- is that helpful?

4 MS. deVARONA: I'm just a
5 little -- in Chicago we talked about that we were
6 supposed to outline the issues and respond to each
7 subject with outlining the arguments.

8 MS. PRICE: Uh-huh.

9 MS. deVARONA: That we weren't
10 necessarily to suggest resolution to issues. Is
11 that correct? Because I always -- I envisioned that
12 the end game would be we would kind of leave the
13 environment with a little bit of -- with some
14 recommendations --

15 MS. PRICE: And some direction.

16 MS. deVARONA: -- and some
17 direction.

18 MS. PRICE: Yeah, and clearly we
19 may do that. I mean --

20 MS. deVARONA: Because I don't
21 understand what the exercise is for if we don't
22 leave a legacy.

23 MS. PRICE: Well, you know,
24 someone else asked me that. They said, "Well, you

1 know, to just put the arguments out there, you know,
2 people already know that." People don't already
3 know that. I mean, even you all sitting here are
4 hearing things from someone else that you hadn't
5 heard before, and that's why we're having questions
6 about that.

7 To be able to go through -- you
8 know, the one requirement of the charter is to
9 report with findings, and findings on each of these
10 questions, and to give the arguments that you've
11 heard on these, to lay out the issues. That is --
12 that is not to be taken lightly. That is a huge
13 underrated goal of this Commission. I mean, that is
14 what a lot of Commission reports are, and some never
15 get to the point of actually making
16 recommendations.

17 I think we will probably make
18 some recommendations. I would hope -- I mean, I
19 think that we can -- we've heard enough here to say,
20 you know, there are some recommendations that need
21 to be made, but to not take lightly the other aspect
22 of that report, that -- because the report isn't
23 just for athletic directors. The report is for the
24 general public to read and to get a clear

1 understanding of what this is and what's going on
2 out there on this. So, you know, that is a huge
3 undertaking and a very valuable result of the
4 report.

5 Now, hopefully, you know, we'll
6 be able to do something beyond that. I'm not in any
7 way saying we wouldn't, but that is -- you know,
8 that much of the report is really mandated to us by
9 the charter.

10 MS. SIMON: I don't mean to be
11 persistent on this, but I guess I do. My doctoral
12 students always say, "Data, data, data. We know,
13 Professor Simon. We have to have data." But I
14 think it's very important that the data we have are
15 reliable and valid. For example, if we can't
16 generalize from a few high schools' experiences, if
17 we're talking about secondary schools and their
18 experiences with the differences in boys and girls
19 and their involvement in sports, if we're going to
20 generalize, we have to have a representative sample
21 of high schools. I mean, there are issues like
22 this.

23 I hope your editor appreciates
24 how to handle statistical data and what you can

1 generalize to. You can't generalize from a few high
2 schools and say that describes the picture. And
3 there are other kinds of data: The differences in
4 salaries; what schools are we talking about; what
5 kinds of schools. You have to understand the
6 basis. I assume he does. But really, I mean,
7 otherwise, the report will be attacked, rightfully
8 so.

9 MS. PRICE: And one other area
10 that clearly has come to mind that this report will
11 deal with, that is -- I mean, just in writing the
12 facts about the report will address is, you know,
13 there are -- Title IX is, besides being an
14 incredibly value important document, there are a lot
15 of finger -- people with their fingers in that pie.

16 OCR has the job of enforcing
17 Title IX, but as we've heard, NCAA has -- they apply
18 Title IX, and they've got -- you know, they have an
19 effect, you know, what NCAA -- their decisions
20 affect Title IX. National Federation of High
21 Schools, they make decisions; they affect Title IX.

22 It's really important to be able
23 to identify, you know, when you see an area that,
24 you know, like, say, "Wow, we would really like to

1 change this area," like the EADA report, it's really
2 good to know whose entity that is so that if you
3 make suggestions or make recommendations to change a
4 certain thing, are you asking OCR to make a change?
5 Are you asking a governing body to make a change?
6 Are you -- you know -- and, you know, to be able to
7 clarify that, those kinds of issues in this report
8 would be incredibly helpful, I think.

9 MR. LELAND: Okay. Let's keep
10 this going for a couple more minutes, and then we'll
11 get on to our task, because that is work in
12 progress, and we don't have all the answers, but we
13 need to get on with our job pretty soon here.

14 MS. YOW: Just to add to what
15 Rita said and what Debbie said, the EADA report,
16 which is what we call it, instead of the E-A-D-A,
17 the EADA report, just as an example about
18 statistics. When you look at the report, and you
19 look at scholarship dollars that are provided male
20 to female, if you aren't in the know, as an AD,
21 about --

22 MS. KEEGAN: Thank you for my
23 ignorance on that.

24 MS. YOW: -- it, then you would

1 not understand that that scholarship dollar amount
2 reflects summer school costs, as well, and that
3 Title IX allows nondiscriminatory use of funds.

4 In other words, I think we can
5 hold it against our men, sorry guys, that they need
6 to be in summer schools more often than do our women
7 to either remain eligible or stay in the
8 institution.

9 And I know anecdotally from our
10 case, just our perspective at Maryland, and I don't
11 think we're unique, that every year I talk to our
12 women about -- the coaches of our women's teams
13 about sending our female athletes to summer school,
14 and they do occasionally, but not very often, and
15 they say they don't need to be there for
16 eligibility, they don't need to be there to stay on
17 track to graduate. They want a break; we want a
18 break; leave us alone. Conversely, our men
19 routinely need to be in summer school.

20 So if you didn't know how to
21 read the report, you're going to make an assumption
22 there's a huge discrepancy in scholarship dollars,
23 and it isn't discriminatory. So that's an example
24 of how difficult I think this can be.

1 MR. GRIFFITH: I know you had
2 another agenda you want to get to.

3 MR. LELAND: That's all right.
4 I'm a patient man.

5 MR. GRIFFITH: But I think this
6 is a very helpful exercise for this group --

7 MR. LELAND: I do, too.

8 MR. GRIFFITH: -- to decide,
9 what are we going to do? Are we going to solve the
10 Title IX problem by consensus? I think not. I
11 mean, maybe we will. Maybe we will. But I think
12 not.

13 I think the comment Debbie made,
14 and that the discussion that I think Cynthia led in
15 Chicago resonated with me. I think if we can simply
16 identify for the Secretary of Education what the
17 issues are, and identify what the reasonable
18 approaches to the issue might be, give him a set of
19 options, I think that would be no small thing.

20 And here's why I think that
21 would be a significant contribution. And I take
22 it -- I really enjoy what we've now come to call
23 colloquially the open mike segment of our meetings.
24 I find those to be most valuable.

1 I am greatly concerned, however,
2 by some of the comments that I hear in the open
3 mike. For example, it gets a lot of people excited
4 and elicits a passionate response from the audience
5 when someone stands up and says, you know, "You're
6 not going to take down Title IX," and, you know --
7 but, you know, no one -- I haven't heard anyone, at
8 least on this Commission, and none of the panelists,
9 advocate that. But the fact that there is that
10 perception out there, I think it would be highly
11 valuable if the Commission were simply to identify
12 what the real issues are and to give some comfort
13 that no one is talking about taking away Title IX.

14 So I guess what I'm sort of --
15 I'm advocating is if we can get to the end game of
16 coming up with the magic, the silver bullet that
17 solves all these problems, that would be great. But
18 I think -- I think that there is a more realistic
19 and absolutely invaluable goal that we can attain,
20 and that's to identify for the Secretary of
21 Education what the reasonable arguments are on
22 either side of these issues. If we do that and
23 nothing more, and I think we will do more than that,
24 but if we do that and nothing more, then I would be

1 very proud to be associated with the Commission that
2 performs that function.

3 MR. LELAND: Okay. Gene?

4 MR. deFILIPPO: Ted, I too think
5 this is very valuable. I know, just speaking for
6 myself, I've been thinking, what are we going to do
7 in Philadelphia, and how are we going to do it? How
8 are we all going to reach consensus? I mean, that's
9 something that I'm sure has been on the mind of all
10 the commissioners.

11 And I would like to just throw
12 out something. We may not be able to reach
13 consensus, and, you know, maybe the best thing to do
14 is for us to come forth with two or three
15 recommendations, and, you know, that -- rather than
16 trade this and trade that, and trade this for that,
17 and try to come out with something consensus. That
18 may not happen.

19 You know, my thought about a
20 possible way would be to give three recommendations,
21 or maybe it's two or four, I don't certainly have a
22 number at this point, but that a certain number of
23 us, maybe 10 people out of 15, maybe two-thirds is
24 the number, that we feel strongly about, and maybe

1 there's not all 15 of us agree on anything. But I
2 do feel like this discussion has been good, because
3 I have a better idea of where we're headed.

4 MR. LELAND: Well, I mean, it's
5 certainly been -- I'm now beginning to understand a
6 little bit more of your frustrations regarding sort
7 of what the final product looks like, but I do
8 appreciate what Tom just said. I think there's a --
9 you know, we tend to be real problem solvers, and
10 maybe this Commission ends up being the first step
11 in a problem-solving process that involves lots of
12 other people, and there's an important role for us
13 to play just in defining the issues and defining the
14 problems and passing that along, and in a very
15 articulate and thoughtful way, and not being so hung
16 up.

17 Because I'm a little bit like
18 you guys. Gee, if we don't make eight
19 recommendations that will solve six of the problems
20 that we've heard, we are a big failure, and maybe
21 there's a big argument on the other side that says,
22 no, no, we need to identify what the issues are
23 first and foremost and be sure that our numbers are
24 fair and accurate, and et cetera, and then if we end

1 up, that's all we do, that's a pretty darn good step
2 in the athletic community in this country, so to
3 help solve some of the problems we've heard.

4 Is there any other thoughts on
5 the process? I'm really glad we went through this
6 this morning, because I think I can look just from
7 your guys's feeling a little more sense of
8 security.

9 We will clean up the whole
10 back -- feedback issue regarding the potential
11 nominees for San Diego. We'll make sure that you
12 guys get --

13 MR. GRIFFITH: Can we have
14 dinner in San Diego?

15 MS. COOPER: Who's buying?

16 MS. PRICE: You know, there are
17 some --

18 MS. deVARONA: We can't have
19 dinner.

20 MS. PRICE: There are great
21 restaurants in San Diego. You don't want us to plan
22 a dinner.

23 MS. deVARONA: I just want to
24 say, about my passion getting in my way of being as

1 articulate as I would like to be, that I do want to
2 thank all the panelists. I respect all the
3 panelists for coming forward. I didn't mean to
4 infer that they weren't successful. I was talking
5 about the balance of trying to bring people in that
6 have been able to accommodate Title IX mandates as
7 well as running a program. So I wanted to put that
8 on the record.

9 MR; LELAND: Okay. If you'll
10 turn to Section O, then, let's try to start working
11 our way through these questions, and --

12 MS. PRICE: And Sally has a
13 transcript. We only have one of the transcripts.
14 If we need to have a transcript from the previous
15 meeting, she'll pull it up.

16 MR. LELAND: Okay.

17 MS. COOPER: Did you guys hear
18 that? If you need to pull anything up from a
19 transcript from a previous meeting, Sally has the
20 transcript.

21 MR. LELAND: Okay. Let's do
22 sort of by -- what we -- and I'm trying to read from
23 my opening statement here. Each commissioner will
24 be given the opportunity to comment on each

1 question, objectively stating what you have heard,
2 your understanding of the issues involved, don't
3 necessarily need to draw conclusions, the process
4 will come later.

5 The Commission and its staff
6 needs to hear your thoughts. Not only do we need to
7 receive your comments and issues related to each
8 question, we need to hear what information you need
9 to receive to be better informed.

10 So let's start with the first
11 question, which is our -- and we'll just do this by
12 getting our attention up here as co-chairs, and
13 we'll try to monitor the sound. I don't think we
14 need to go around the room and require that
15 everybody say anything.

16 But the first question is, Are
17 Title IX standards for assessing equal opportunity
18 in athletics working to promote opportunities for
19 male and female athletes? Title IX standards for
20 assessing equal opportunity.

21 Okay. What are the comments,
22 questions, thoughts, concerns about this one? I can
23 call on people, you know.

24 MS. deVARONA: I have a problem

1 with the way the question is phrased.

2 MR. LELAND: Go ahead.

3 MS. deVARONA: In the question,
4 are we saying -- is the question -- is the question
5 are the Title IX guidelines working? Is that what
6 the question -- because I feel assessing -- I get
7 confused. I get lost at the end of that question.
8 I mean, is the question is Title IX working to
9 promote women's sports? Or does the subtlety of
10 that Title IX question, as it's phrased, mean is
11 Title IX confusing the environment in which we are
12 supposed to provide equal opportunity to both men
13 and women? Or is that the next one? I just have --

14 MR. GRIFFITH: I've just always
15 assumed that that meant is the current -- I hate to
16 use the word "regime." That's not the right --

17 MR. LELAND: The current
18 structure.

19 MR. GRIFFITH: Is the current
20 structure for interpreting and enforcing Title IX,
21 is it advancing? Is it working to promote
22 opportunities for male and female? I'm kind of
23 stuck on the word "assessing," because when I think
24 of assessing I think of --

1 MR. BATES: What standard for
2 assessment are we referring to? Are we talking OCR?
3 Are we talking NCAA?

4 MR. GRIFFITH: The current law.
5 The way the law is being interpreted now is the way
6 I understood it.

7 MR. LELAND: My impression would
8 be it's the whole myriad of assessing vehicles we
9 have, and that's one of the complaints we've heard,
10 of course, is the NCAA has an assessment vehicle,
11 different offices of the OCR might have ones, you
12 know, that there might be many of these things as
13 opposed to just one set of them. But I think we
14 ought to look at it as the big picture as --

15 MR. BATES: Rita, could I just
16 ask one question? Can we rephrase some of these
17 questions? I know that that's what we're given, but
18 the way this reads maybe could be worded in a
19 different way to get at what we need to get at.

20 MS. PRICE: Let me ask -- make
21 one comment about your question previously, and then
22 answer what you just said. If you think about -- I
23 mean, this is a charter from the Department of
24 Education, so clearly there's a focus on OCR. How

1 does the department direct this?

2 Now, in hearing all this, we've
3 heard many entities have, as Ted said, deal with
4 Title IX. I think addressing your question, Percy,
5 about can we change questions? If Brian would take
6 his hat off as an ex officio member of the
7 Commission and put his hat on as the general counsel
8 for the Department, because he is who we go to with
9 those questions, we can let Brian answer that
10 question.

11 MR. BATES: But before you do, I
12 guess when I read it, it says "Are the Title IX
13 standards for assessing," which assumes that we're
14 talking about a particular entity, like for example
15 the three prongs or something else, and if I read it
16 that way, that's what I'm looking for. What are we
17 talking about that we have that we use to assess,
18 then I can respond to that.

19 MR. JONES: Oh, you're asking
20 what the standards are, the reference in the
21 question?

22 MR. BATES: Right. The
23 standards for assessing, right.

24 MR. JONES: Uh-huh. Well, I

1 mean, I think that's something that we ought to be
2 able to talk about here. You know, obviously, it
3 deals with, you know, the whole range of things that
4 we've discussed, you know, the policy interpretation
5 of the statute and the regulations, the '96
6 clarification letter, and basically just all of the
7 governing material that OCR uses in order to assist
8 institutions with compliance. And so that -- I
9 mean, that is -- it's a whole universe of material,
10 and maybe it would be helpful to the Commission to
11 have a more comprehensive statement of exactly what
12 it is that OCR looks to when it goes out to
13 institutions to work on compliance.

14 In terms of the questions, I
15 mean, and again, I don't have the charter right in
16 front of me, but as I recall, I mean, what the --
17 you know, what the charter basically says is that
18 we're asked to examine the issue, including these
19 particular questions. I mean, I think we can go
20 beyond these questions if the Commission so chose,
21 or if I think there is a way that we can sort of
22 clarify the issue as we understand it, then I think
23 that there's nothing wrong with us doing that.

24 I mean, I think from the

1 Secretary's perspective, I mean, these are the
2 issues that he's focused on, and so we ought to try,
3 just as a practical matter, to stick as close to
4 these questions as we can. But again, I don't think
5 that there's -- you know, nobody's going to sue the
6 Commission, I think, if we, you know, if we tweak
7 the Commission -- or tweak the questions based upon
8 what we see as a, you know, as a clarification of
9 the issue as we understand it.

10 MR. LELAND: Rita?

11 MS. SIMON: As I read this
12 question, I guess I focused on "working to promote,"
13 and in looking at that, I remember some data that I
14 heard yesterday, and I think at other meetings, and
15 I think this is right. If I'm wrong, somebody, I'm
16 sure, will correct me. That at the present time, 58
17 percent of the athletic scholarships go to men and
18 42 go to women. Now, I also know that for many
19 years, but I don't know how many, there have been a
20 higher percentage of full-time women undergraduates
21 at university campuses than men, and so when I read
22 "working toward," I would say how are we -- what are
23 we doing about bringing together those two
24 disconnects? If we're supposed to base some of our

1 decision on equal opportunities on the basis of
2 full-time male and female undergraduates, how long
3 are we living with the 58-42 percent? So I guess in
4 looking at that question, I would have to come to
5 grips with what I see as two disparate data sets.

6 MR. LELAND: Okay.

7 MS. COOPER: Okay.

8 MS. YOW: I just meant, in the
9 softest possible manner, and really with great
10 respect, we've got to stop picking questions to
11 death. I'm going to die over here. I'm going to
12 like pass out or something, okay? You're killing
13 me.

14 Just take it to mean whatever
15 you think it means and then give your opinion on it,
16 and if you say something that's really out there,
17 somebody else will say, "Gee, that's not what I
18 thought the question meant. I thought it meant X."
19 "Well, I thought it meant Y." "Well, I thought --"

20 You know, we can do this, guys.
21 Just say what you really think, and then, you know,
22 we'll have a chance to actually answer the
23 questions, please.

24 MR. BATES: Yeah, and I would

1 like to respond to that, because I love Debbie to
2 death, and I have to -- I must respond to that,
3 because the concern that I have is that as we
4 respond to questions as we think they are, I worry
5 that we may miss the boat in answering the question
6 that was not intended necessarily to be answered.
7 So I'm not picking it.

8 I just want to know that if the
9 standard -- if we're looking at the three prongs, I
10 can respond to that. But if I don't know what we're
11 talking about, and it's wide open, we run, I think
12 personally, some serious risk of doing the task that
13 we're asked to do, and I can always say, "I've
14 answered the questions you asked, but I have some
15 other things that I want to say," but I don't want
16 to confuse the issues.

17 Now, I must say the other
18 questions are less like that than No. 1. No. 1 to
19 me is critical, because it does assume that there is
20 a standard that we're going to refer to. The rest
21 of them, I'm a lot more comfortable with.

22 MR. LELAND: So would you like
23 me to rule from -- or us to rule from the chair that
24 we're really talking about the government materials,

1 the three-prong test, et cetera, when we're looking
2 at this?

3 MR. JONES: Exactly, and then we
4 can have clarify -- we can have somebody clarify,
5 you know, all of the material that OCR relies upon.

6 MR. LELAND: Because it seems to
7 me there's the government documents, there's the
8 letters that we've seen, there's also case law,
9 there's all this, and then there's policies and
10 procedures of the offices. We can just limit it to
11 that.

12 MR. JONES: And we could, in
13 fact, get a, you know, a sort of a fact-related
14 document, you know, that Debbie talked about
15 earlier, some of the kinds of things that we have in
16 the book here. You know, she's got this fact sheet
17 on EADA. We could do a similar fact sheet on what
18 it is that OCR relies upon in its compliance
19 efforts.

20 And then just let me also touch
21 on Debbie's question. I mean, I have some sympathy
22 with Debbie's point, and I think that what we ought
23 to just do is when we set about to respond to these
24 questions, is I think we just need to sort of set

1 out what our understanding of the question is and
2 proceed from there. I just -- I'm not so sure that
3 we're going to be able to get sort of crystal
4 clarity as to what was intended by, you know, the
5 drafters of the charter, and I will acknowledge that
6 those are people in my office.

7 But I think if we set about our
8 work with just setting out our understanding of what
9 the question is asking, then I think we will have
10 done the Secretary some service.

11 MR. LELAND: Okay. Then we're
12 clear on what the -- we've taken a couple minutes,
13 Debbie, as fast as we could to try to clarify what
14 the question is, and I think we have. We're talking
15 about the government materials, actions, processes,
16 procedures, et cetera, et cetera, that relate to
17 this question. So let's start --

18 MS. COOPER: With Debbie.

19 MR. LELAND: Let's start with
20 Debbie trying to answer the question.

21 MS. YOW: Is this payback? When
22 I look at the question, I assume that it means OCR
23 Title IX guidelines, as well as comments, as well as
24 the regional offices. I know that we've heard

1 comments from people relative to the fact that
2 regional offices, in their application of what we
3 see as the same law in the guidelines offered by
4 Title IX, are not applied consistently. So I would
5 suggest that one of the areas we would want to look
6 at or consider is, whatever the standards are, is
7 how to better ensure that they're applied
8 consistently, equitably, region to region, that that
9 has been a repeated theme that we've heard, at least
10 through Atlanta and in Colorado Springs.

11 MR. LELAND: Let's -- does
12 anybody want to just tackle the basic question? I
13 mean, you know, need more information? I don't know
14 if anybody needs to -- we sort of said don't draw
15 conclusions a whole lot, but it seems --

16 MS. KEEGAN: If you're going to
17 answer a question, you're drawing conclusions.

18 I would just tell you what we
19 seem to be hearing, over and over again, is that
20 Title IX, yes, it's working to promote opportunities
21 for women, or it is part of a culture change that
22 is -- that, you know, sees increasing opportunities
23 for young women. Some places not so much. I mean,
24 you get testimony where it's not working.

1 As Debbie said, it's not equally
2 applied, probably, but what we're hearing is it's
3 not working real well for male athletes, if it is
4 true that whatever it is about this three-prong test
5 is causing us to, without wanting to, and in the
6 face of demand, to eliminate programs that would
7 otherwise be there for young men.

8 I don't know how anybody could
9 miss the messages that we've been getting. Now,
10 whether that -- whether you can explain that some
11 other way, or we're misunderstanding because the
12 data has just been horribly presented or something,
13 but it seems to me that anybody just casually
14 listening would say, yeah, this has been really
15 helpful for young women. This has been terrific.

16 You know, those of us who are
17 soccer moms think it's outstanding if our daughters
18 are playing, but it seems to be that it is not as
19 wonderful a mechanism right now for young men, just
20 to do a really gross, blunt answer.

21 MR. LELAND: Okay. Donna?

22 MS. deVARONA: Well, that's why
23 we need the financial statistics, because then we
24 get caught up in is it the Title IX application

1 proportionality that's causing the demise of men's
2 sports, or is it how athletic directors choose to --

3 MS. KEEGAN: Exactly. I'm not
4 saying why. I'm just saying -- so if we -- that's
5 what it sounds like.

6 MS. deVARONA: That's why the
7 question is difficult to fit it into that question.

8 MR. LELAND: But that's a call
9 for more information.

10 MS. KEEGAN: That's a call for
11 more information.

12 MR. LELAND: Yeah. That's a
13 call for more information. We need money numbers.
14 We need statistics numbers.

15 MR. deFILIPPO: Ted, and we need
16 accurate numbers on the real numbers of have we lost
17 male participation on campuses in the last 20 years,
18 what we talked about earlier; have we not. Are the
19 numbers the result of schools coming from the NAIA
20 and two-year institutions becoming four-year
21 institutions. So that's certainly another area
22 where we need accurate information.

23 MS. KEEGAN: But then you would
24 need -- I hate to jump in here, but you would need

1 numbers on how many women's programs also came in.
2 You would need the whole budget, where it went, you
3 know, who got it, who didn't. Because you don't
4 just want to ask half the question.

5 MR. LELAND: Let's keep going.
6 Bob, do you -- and then Donna.

7 MR. BOWLSBY: Well, a couple of
8 questions that I think need to be answered. One is
9 the base question, and it actually takes a step back
10 from where I think we are with enforcement.

11 Is the comparison to
12 undergraduate student population a valid comparison
13 group for this law? And/or would a comparison to
14 the feeder system or some other body of individuals
15 be a more valid entry assumption? And if -- or
16 perhaps we -- and we answer yes, that's the best --
17 that's the best place to compare.

18 If that's the comparison group,
19 we -- I think we heard from other people that maybe
20 there are nontraditional students, and that the --
21 that that undergraduate population ought to be
22 shaped or mitigated somehow by exclusion of people
23 who aren't realistically participants in athletics
24 programs.

1 I think the -- you know, if it
2 stays the same comparison group, if it becomes a
3 different comparison group such as the feeder
4 system, does the application of the three-part test
5 change, how it's applied, and what the outcomes
6 are? At that point, do you -- are you able to say,
7 Institutions, we require you to have absolute
8 compliance, because this is -- this is where it is,
9 in the feeder system, or this is where it is in some
10 other group, and, you know, come hell or high water,
11 you're going to have to get to that by a date
12 certain. So does the three-part test change if you
13 use a different comparison group.

14 And then I think the other
15 bigger question, and it's perhaps on the other end
16 of the continuum, is how do we incentivize
17 compliance? Because what we're hearing over and
18 over from the people that are providing testimony is
19 that, you know, whether we're getting there or not,
20 whether it's benefiting males or females or not,
21 everyone seems to be going kicking and screaming.
22 There's got to be a better way to make this fit
23 together.

24 And so I think those are some

1 questions that, the first of which are fundamental
2 to our other discussions on enforcement, and the
3 latter of which are -- you know, go to the root of
4 perhaps what we end up with as a final product.

5 MR. LELAND: Yeah, the incentive
6 seems to be the threat of a complaint to OCR.
7 That's basically what it is. You're worried about a
8 complaint. If the complaint goes through, then you
9 have to enter your negotiations with your local OCR,
10 and away you go. That seems to be what we're --

11 Donna?

12 MS. deVARONA: Yeah, I was
13 thinking that here -- I also don't think we've heard
14 enough from the feeder system, enough from, again,
15 back to the high schools, and I did seem to hear
16 from the few who did testify that there is great
17 confusion about how to comply, and there's different
18 interpretations about the safe harbor first-prong
19 test.

20 I would like to hear about it
21 from Norma Cantu. I would like to hear her and
22 somebody from OCR that's been there for many years,
23 because I think we could learn a lot about what
24 happened.

1 But I also think that we need to
2 reeducate the high schools about how to comply and
3 what their options are. Because it seems to me that
4 there's a lot of schools that jump to the
5 proportionality part of the test and do the
6 expedient thing to the detriment of the student
7 population.

8 MR. LELAND: Okay. Rita?

9 MS. SIMON: Again, as I think
10 about answering this question, I think are we
11 working -- is Title IX "working toward"? I would
12 say yes. But Title IX was written 30 years ago.
13 Are we working toward it too slowly? Is it taking
14 too long? Are there differences in equal
15 opportunities for different kinds of sports? Do we
16 have to spell out different kinds of sports?

17 I think a good analogy is Brown
18 versus the Board of Education. To what extent, 30
19 years after the 1954 decision, were we, in fact,
20 totally desegregating schools on the basis of race?
21 How successful was that? What was all the bussing
22 issues and so on?

23 I think we have to look at it
24 and say 30 years is a long time. Where are we now

1 compared to where we want to be to be in total
2 compliance with Title IX, and are there big
3 differences in types of sports? Are we in
4 compliance in certain sports and not in others, and
5 so on?

6 MR. LELAND: Lisa?

7 MS. KEEGAN: Respond to that,
8 because Rita's allusion to Brown versus Board of
9 Education struck me yesterday in some of these, and,
10 God, at the great risk of being knocked out of my
11 chair by Debbie over here, let me just tell you that
12 I'm going to have to leave early to do some
13 campaigning for somebody today, so you'll feel
14 better when I'm gone.

15 But one of the things I worry
16 about is you can comply perfectly with a test and
17 not have improved a situation greatly. And
18 unfortunately, Brown versus Board of Education, in
19 many instances may be precisely what happened. We
20 have desegregated schools, and yet the young
21 children who came from poor or minority communities
22 are still in raunchy curriculum. And you attracted
23 a bunch of white kids into the school with
24 accelerated program; they're doing fantastic. But

1 the kids for whom that was meant have not profited
2 as they should have from Brown versus the Board of
3 Education.

4 So it doesn't work for me if by
5 -- we can get into compliance. It seems to me it's
6 a mathematical equation. You just -- you just
7 eliminate these programs and add those. But the
8 question is, did you eliminate programs somebody
9 wanted to put programs in place that you have to
10 fight to get people to participate in? And so I
11 don't know.

12 I think it's a great analogy, or
13 it makes it very difficult, because you don't want
14 to simply -- I think too often this happens, and I
15 think Brown is just a perfect example of hugely
16 important public policy with all the right
17 intention, that because expectation was not part of
18 it, our expectation for what children were capable
19 of, and our expectation for what young women are
20 capable of, it's the same thing. And I struggle
21 with that. I struggle with crossing the T and
22 dotting the I and missing the boat completely.

23 So that doesn't help us at all,
24 Debbie, and I'm going get you a cup of tea, because

1 I've confused myself, but I do think we have to keep
2 in mind it's a bigger issue. You might get it right
3 on paper and miss it for young women anyhow.

4 MR. LELAND: I would just like
5 to, for a second, add one thing. I always like Bob
6 Bowsby's lists of questions, and so I would like to
7 add one.

8 I think that if we're worried
9 about the effectiveness of increasing, you know,
10 legitimate opportunities for women and men, I'm
11 concerned. I would like us to -- or someone to take
12 a look at the whole issue of, gee, we can't define
13 opportunity, so we'll count it as participants the
14 first day of competition, and I just think that, for
15 most of us who work in that, know what a weird
16 number that is, and what a -- I'm not sure now that
17 all of us are sort of are philosophically convinced
18 that, and the public's convinced, that women ought
19 to have equal opportunity. We can't go back and
20 find a measure of opportunity for women athletes and
21 male athletes that's fairer and better and makes
22 their experience better.

23 I mean, for me to say that we're
24 going to meet Title IX at my institution by having

1 80 women on the rowing team, and the second week of
2 practice in the fall, because our team rows at the
3 head of the Charles, when at the end of the year we
4 have 24 women on our rowing team when they really
5 compete in their championship competition, yet I get
6 credit on the EADA form for 80, because at the first
7 day of competition in the fall, I had 80.

8 I would just like to look at
9 that issue. We gave up on the idea you could have
10 equal opportunity. We decided we had to have equal
11 outcome. Equal outcome is the participants the
12 first day. I think that was probably really, in my
13 opinion, really an appropriate way to do it for a
14 while. It helped us make progress, but maybe it's
15 time for us to look at the way to measure
16 opportunities.

17 MS. YOW: We have to also decide
18 what equal opportunity means, and does that mean
19 50-50, and what does it really mean? I am struck by
20 what Bob said relative to going back to the concept
21 of whether or not we should have a logic flow
22 between what's being done in high schools and what's
23 expected of us in the collegiate setting.

24 I'm not sure about a lot of

1 things, but 26 years in the business, I am sure of
2 one thing, and that is there is no logic flow
3 between the undergraduate enrollment, male to
4 female, and the number of men and women that we have
5 in intercollegiate athletics. There is no logic
6 flow there.

7 I would like to look for
8 something that makes more sense than just male to
9 female undergraduate enrollment.

10 The other thing that I'm
11 concerned about is the use of -- is the issue
12 related to the walk-ons, and again, that comes out
13 of personal experience, and we've -- I'm not unique
14 in that regard, and there are other ADs at the table
15 where we've turned away walk-on males, whether it's
16 wrestling or baseball or whatever, and then
17 struggled like crazy to get women to walk-on in
18 large numbers, and -- reasonably large numbers.

19 You're always going to have an
20 exception. You have women who just love the sport,
21 like Donna did, like I do. We didn't -- we didn't
22 -- there weren't any scholarships out there, and
23 that was never an issue, and we were still
24 competing.

1 But I do know year in and year
2 out we fight to keep those women on those squads,
3 even if they're squads that are winning national
4 championships, I might add, and yet we turn away men
5 who just want to be able to wear the uniform. And I
6 know, you know, in my gut that's wrong. I don't
7 know how to fix it. But I know that that's an issue
8 with how the law is currently applied using the OCR
9 standards, and there has to be a better way.

10 MR. SPANIER: I would like to
11 just make a pitch for us taking a more
12 forward-looking approach than looking back. I think
13 if our Commission can have a legacy, it should
14 really be what can we collectively do to enhance
15 opportunities for young men and women going
16 forward.

17 I'm a quantitative sociologist
18 and a demographer, and nobody here is going to beat
19 me on the statistics thing, but I think we could
20 dump a lot of energy in getting all the statistics
21 clarified about what happened in the past, and
22 that's not really what I would like to do. I would
23 like us to have some general understanding of what
24 the data are and where we came from, but let's now

1 focus on the issues.

2 I don't think that the Secretary
3 of Education and the President of the United States
4 brought all of these distinguished people together
5 and asked 200 people to fly from all around the
6 country to give us impassioned statements about what
7 they believe so we could put a report together about
8 what we think happened over the last 30 years.

9 While it would, indeed, be a
10 great service to say, "Here are the issues, and now
11 you folks, the policymakers, do something reasonable
12 now that you know what the lay of the land is," I
13 think we can do better than that. And I would like
14 to give my opinion by the time this is all over
15 about what I make of this, and what I think about
16 it, and I think most of the people around this table
17 would like to be heard, I mean, at least to give it
18 their best shot.

19 I think everybody around the
20 table is, because of hearing 150 people already, a
21 little bit confused about exactly what the right
22 thing is to do. About the only thing everybody's
23 agreed on is that Title IX will not be abandoned.
24 Nobody has suggested that. That's not going to

1 happen. But in the end, knowing how government
2 works, there could be a change in the regulations.
3 There could be a new letter of clarification. There
4 could be some additional interpretations, and
5 different courts in the future could give some
6 different opinions about whatever changes they saw
7 in letters of clarification, and I assume what we're
8 trying to do is to lay the groundwork for what
9 fine-tuning, if any, needs to occur so we can create
10 these better opportunities in the future.

11 So I would just hope we don't
12 get too hung up on the semantics of the question. I
13 think we are under some obligation to give our best
14 shot in answering those questions, and we need to do
15 it with as much information and data as possible,
16 but I'm not sure the last 30 years have been good
17 enough from either the perspective of male athletes
18 or female athletes. I mean, we have heard very
19 compelling testimony that great things have happened
20 for women's athletics, but we've still got a ways to
21 go there. I think we would all agree with that.
22 And we've heard very compelling testimony from men
23 who believe that this has not worked well for them.
24 So what I'm worried about is how do we get from here

1 to there.

2 And you know, I'm a university
3 president. I'm very realistic about it. Finances
4 are very relevant here. We can't just come up with
5 some big grand dream and expect it to happen. I
6 think it would be a big mistake if we came out of
7 this thing, well, here's what needs to happen, so
8 let's ask the government to pay for it. I think you
9 can't hitch your future to somebody else's
10 pocketbook, so it's going to be in our universities
11 and in our public schools where this has got to
12 happen.

13 And I just want to say one other
14 thing. I hope wherever we end up on this, we come
15 out with a strong statement that whatever changes
16 are made should then result in stepped-up
17 enforcement and a greater consistency in
18 enforcement, because what we have now is a lot of
19 people reacting to what they think -- this really
20 pertains maybe to the next couple of questions -- to
21 what they think the rules are, and they're sort of,
22 you know, running alongside of those rules, but what
23 I'm not sure we're all being proactive enough about,
24 you know, where we have to go to get from here to

1 there. I mean, maybe with a better set of rules and
2 another clarification, people would have some real
3 guidance, and once that guidance was clear, then
4 there could be some serious enforcement.

5 I think it's a fascinating piece
6 of information that we've heard from about half a
7 dozen people reminding us, by the way, no university
8 has ever actually been shut down or sanctioned
9 because of this. Nobody's actually experienced the
10 ultimate threat of losing their funding because of
11 this.

12 Now, I know there's some bad
13 apples out there. You know, we may argue about,
14 between the top 10 or 20 universities, are they good
15 or bad because they're at 1 percent or 2 percent or
16 3 percent off the number, but we know darn well
17 there are some people that are 20 and 30 percent
18 off, and why haven't they been shut down? What's
19 the deal there?

20 So, you know, we need to get
21 this all figured out in some reasonable way, in my
22 opinion. We need to say what we think should
23 happen. I don't think we've all been brought
24 together to go through an idle exercise. I would be

1 surprised if there weren't some letter of
2 clarification, some further set of guidelines to
3 straighten a lot of things out with whatever
4 forward-looking thinking and flexibility is needed
5 there, but then I would hope that we would make a
6 recommendation that there is a mandate to be much
7 more serious about enforcement where it's going to
8 really make a difference.

9 MS. COOPER: I've kind of been
10 quiet over here taking everything in and had a
11 couple comments on the actual -- the question and
12 some questions that have come up in my mind in
13 regards to the question.

14 First, I wanted to address a
15 point that Tom and others have made. I think the
16 concern, or at least what I've received from the
17 public input and from the panelists, I think their
18 concern for Title IX is not that we're actually
19 going to change Title IX, the law. But more
20 importantly, at least in a lot of people's mind,
21 that we might change the rules of the game, that we
22 might change the test, and as a result of changing
23 the test, we change the enforcement or how Title IX
24 is enforced, and put women back another 10, 20

1 years.

2 And so from what I've gathered
3 from everyone who's testified, and the public -- the
4 public comments, is that they're concerned for
5 Title IX's health and the enforcement of Title IX if
6 we did change or recommend changing the enforcement
7 of Title IX or the rules of the enforcement.

8 And then it says are Title IX
9 standards -- and this is a question that I have.
10 Are Title IX standards for assessing equal
11 opportunity for athletics working to promote
12 opportunities for male and female athletes?

13 And we've heard a lot of
14 passionate testimony from swimmers, gymnastics -- or
15 gymnasts, and also wrestlers, and I guess the first
16 question that comes to my mind, or came to my mind
17 when I read the question was, does Title IX, or do
18 we, or does Title IX need to promote male athletes?

19 I think we can agree that
20 Title IX has really been beneficial to women, but
21 when we -- when the law was first drawn up, was
22 it -- was it -- we talk a lot about the spirit of
23 the law, and it was, of course, for education, but
24 at the time the law was drawn up 30 years ago, was

1 it intended to promote, or did it need to promote --
2 did it need to be drawn up in order to promote
3 opportunities, whether in education or athletics,
4 for men? Were those opportunities already there?
5 And the law was -- the law was drawn up more for the
6 women, for women, for us to benefit from it.

7 And I -- you know, you guys talk
8 about how you didn't have scholarships. Well, I am
9 from the inner city. You know, I sympathize a lot
10 with a lot of the testimony from athletes coming
11 from the inner city on both education and athletics,
12 and I can tell you that there's no way I would have
13 been able to attend college, and definitely not a
14 private university like USC, if it had not been for
15 Title IX and its enforcement.

16 And we talked about enforcing
17 Title IX, and I thought, God, that's a great point.
18 How, after 30 years, there's so many schools who are
19 not in compliance, and after 30 years, no one's been
20 made accountable for that. So that's kind of my
21 thoughts on the subject. Sorry.

22 MR. LELAND: Doing great. Any
23 other kind of general comments? Let's focus back on
24 the first question, if we can, for a second. And is

1 there any other comments or thoughts about issues
2 that surround this first question, Title IX
3 standards, assessing equal opportunity, working to
4 promote male and female athletes?

5 MS. YOW: Can somebody
6 summarize? Can someone summarize for us?

7 MR. LELAND: Oh, yeah, this is
8 payback time. You talk about payback earlier.

9 MS. KEEGAN: No is the answer.

10 MS. YOW: What? Yes. I could
11 do part of it. Yes, that it is helping female
12 athletes, although there appears to be a question
13 about whether or not the current standard in
14 proportionality in prong one is the best means of
15 providing opportunities for women. I mean, there's
16 several things that have been said.

17 MR. LELAND: I just don't know
18 if I can summarize it. I think there's been -- I
19 thought Lisa's comments sort of got us going with,
20 you know, certainly we would have to say that we've
21 heard testimony, the preponderance of it, that, yes,
22 it's been effective in terms of working to promote
23 women's opportunities. We're not sure about --

24 MS. YOW: What Graham said is

1 important to include as part of the summary. We had
2 the death penalty in the NCAA. How many
3 institutions did we have who were ever assessed the
4 death penalty? One. Is there a reason for that?
5 You bet there is. We all knew it then had teeth,
6 and no one else wanted to ever get caught in that
7 situation. So, I mean, that's -- that should --
8 that's a kind of a summary.

9 MR. LELAND: I understand. That
10 was going to be part of my second sentence in my
11 summary.

12 MS. KEEGAN: Excellent summary.

13 MR. LELAND: Just kidding. But
14 I guess the only way I could summarize is to say
15 this, is that I thought Lisa's original comment
16 about, you know, yes, certainly we've heard
17 testimony from men; there's sort of an uncertainty
18 about whether it promoted women even; some people
19 might even think it wasn't designed to do that; and
20 then there was, starting with what Bob said and what
21 Donna said was there was some concerns in areas that
22 people wanted to either know more about or wanted to
23 address, and I can't -- that's what I can't do is
24 just come up with all those in my brain. Do we have

1 accurate numbers? How come we haven't forced
2 compliance more? The differences in the OC offices,
3 apparently, you know, and, I mean, all those kinds
4 of things, and to me, we'll ask staff to draft that
5 up for us as a statement and then put down the
6 concerns that people addressed, and that's our next
7 step in answering No. 1. Unless there's anybody
8 else wants to add anything. No, I can't summarize,
9 but we'll try to, given the testimony that we've
10 heard.

11 And I think it's been great. I
12 think we're where we want to be in terms of question
13 No. 1 right now. We've defined it a little bit;
14 we've got a general kind of inclination; and we've
15 got some concerns. Any other things on question one
16 before we hop to --

17 MS. deVARONA: I would just like
18 to -- can we, if we leave this setting, just e-mail
19 extra thoughts if we --

20 MR. LELAND: Yes, yes.

21 MS. deVARONA: -- to define
22 this? It's my thought that if the schools had come
23 into compliance in a reasonable way, individual
24 athletes and parents wouldn't have gone to court,

1 and that we wouldn't be in the situation we're in
2 now, and that this proportionality debate wouldn't
3 be one.

4 But it also seems to me that
5 schools aren't completely clear, because of this
6 concept, that that's the only test that has to be
7 applied; that they can comply by meeting any one of
8 the three-part test, and I think maybe that's a
9 question of education and clarity from the Office of
10 Civil Rights and the regional offices.

11 MR. LELAND: Let's keep on
12 question one, if we could.

13 MS. MCGRAW: I don't really know
14 where I'm going to go with this, when I start
15 talking about it, but one thing that's kind of
16 struck me throughout these hearings so far is we've
17 listened to wrestlers, male wrestlers, we've
18 listened to gymnasts and swimmers who have lost
19 their sport, and then I was looking at some date
20 from the NCAA about the number of women sports that
21 are on a decline, field hockey and certainly
22 gymnastics, and we haven't really heard from any of
23 those women about the endangerment of their sport.

24 And then I go back and forth on

1 the participation. Has men's participation
2 declined, or is it really just specific sport teams
3 that are declining while participation for men have
4 increased perhaps in other sports like soccer,
5 baseball, so on and so forth.

6 So it's just a comment, but I
7 think that, you know, the wrestling, the swimming,
8 and the gymnastics issue for men is real in the
9 women's environment as well with certain sport teams
10 that have been very silent, and I think it's
11 important for us to recognize that there is a
12 decline in some women sport teams that have been
13 substituted with participation in other programs.

14 MR. SPANIER: I think that's an
15 excellent point, and I just want to say that I think
16 in the past and in the future, that there's going to
17 be an ebb and flow in the interest of certain
18 sports, and we don't have the opportunity to do a
19 controlled experiment here. I mean, nobody's been
20 brave enough to say it, but it would be a very
21 interesting sociological question as to what would
22 have happened over 30 years without Title IX. I
23 don't think the answer is nothing. Something would
24 have happened, but we attribute a lot or everything

1 that's happened to Title IX, but something would
2 have happened without it.

3 And I just -- this is to
4 reinforce my earlier pitch of looking forward. I
5 just don't think we can necessarily figure out --
6 you know, we could do a lot of arguing about how
7 much of what happened to wrestling or men's
8 gymnastics is because of Title IX, versus some of
9 that would have happened anyway, and as you said, we
10 never looked at what's been happening to women's
11 gymnastics, but okay, some stuff happened.

12 I'm much more interested at this
13 point in creating a system that helps us looking
14 forward, so that nobody loses out because of some
15 narrow interpretation. I don't want to close off
16 any opportunities for women or men. I want to
17 enhance -- in particular, I would like to enhance
18 opportunities for women, and I would like to make
19 sure to enhance opportunities for men, within
20 whatever the legal guidelines and financial
21 wherewithal is of all of these enterprises that
22 we're associated with.

23 So, you know, we had a lot of
24 witnesses come forward and give us their

1 interpretation of what the three-part test was and
2 what the words meant in the test. Maybe there
3 should be a one-part test. Maybe there should be a
4 three-part test with some different definitions.
5 Maybe there should be a five-part test. I don't
6 know, but let's see if we can make some
7 recommendations to design a system that really works
8 for this country.

9 I thought yesterday we heard
10 some very compelling testimony. I mean, I don't
11 want to sound mushy patriotic about it here, but I
12 could go beyond what we heard yesterday from some of
13 the Olympics folks and say, do we really care about
14 the future of athletic competition in this nation
15 and where we stand as a country with regard to
16 others? What should we be doing? What can this
17 Commission do to help this country make sure that we
18 have competitive athletes in our Olympic sports for
19 men and women going forward? And what role do high
20 schools and universities and AAU teams, club teams
21 play in making that happen?

22 Let's design a system of
23 compliance, and let's support Title IX going forward
24 so that it makes those things happen. It's even a

1 little more than just scholarships and college, as
2 important as that might be.

3 MS. MCGRAW: I agree with
4 Graham. I think that we're going to get the
5 finances and the statistics, but those things may
6 change, but we still have the three-prong test, we
7 still have some things that I think we need to
8 discuss a little bit more, whether it's student
9 enrollment that we're looking at or whatever it is,
10 but I think for this Commission to move forward and
11 make some recommendations, I think that's the key
12 issue that we need to discuss.

13 MR. LELAND: What's that?

14 MS. MCGRAW: The three-prong
15 test.

16 MR. LELAND: As I'm reading the
17 questions, it seems to me the three-prong test issue
18 isn't in this question.

19 MS. MCGRAW: Right.

20 MR. SPANIER: See, I see that
21 very squarely in question one, because the
22 standards, the standards consist of the law, the
23 Title IX law. We're not going to talk much about
24 that because that's -- you know, I think everybody's

1 agreed that's okay. But then you've got the
2 regulations, and I can't remember all the dates now.
3 1979 --

4 MR. JONES: '75.

5 MR. SPANIER: '75. What was in
6 '79? Was that --

7 MR. JONES: Policy
8 interpretation.

9 MR. SPANIER: Policy
10 interpretations. 1996 letter of clarification.
11 You've got the law, the policy, the interpretation,
12 and the clarification, and then we have actual
13 practice and enforcement, right? There's about five
14 things that to me constitute the standards
15 collectively, and I think we've heard about a
16 hundred people say that needs to be straightened
17 out.

18 Now, we've also heard a few
19 dozen people say, "Don't touch any of this." I'm
20 just not sure that's a realistic point of view, but,
21 I mean, they're speaking from what they believe.
22 "Don't do anything," but I think -- I understand
23 where they're coming from in saying "Don't do
24 anything," but if we did nothing, ten years from now

1 there would be another Commission having this same
2 discussion saying things are still a little messy.

3 MS. deVARONA: Well, I think we
4 also heard that men's sports are dropped at the last
5 minute for reasons, and we have to look at those
6 reasons, and I think we have to consider that when
7 men's and women's sports are dropped, why they're
8 dropped. I think that there should be rationale
9 given, and a responsibility by the athletic director
10 and the presidents of the universities to give the
11 rationale.

12 MR. LELAND: Let me break in
13 here. I think we're getting into a little free
14 association. If we have comments about question
15 No. 1, I think those are in order now, all right?
16 Because I'm afraid -- I'm afraid -- I want
17 everybody -- everybody's going to have a chance to
18 talk, but we need to move -- look forward, move
19 forward, and talk, and the three-prong test is
20 certainly part of question one, and let's talk about
21 the three-prong test, but let's try to get as sort
22 of specific on where we're trying to go.

23 We've got kind of a general
24 outline I think the staff can work with. We've got

1 some concerns people have expressed about the whole
2 institutional governmental press, and as it relates
3 to schools trying to comply and all that stuff.

4 Now, what other things can we
5 talk about in terms of that issue so we can move on
6 to the next question?

7 MS. KEEGAN: Ted, just -- and I
8 apologize for needing to leave early here, but I
9 just wanted to make sure that what Donna requested
10 is something we can do, and that is to sort of have
11 this conversation or bring up some ideas around
12 these issues as they come forward. It would be
13 enormously helpful for me to read that, for the most
14 part.

15 And the only other thing I think
16 we absolutely need to keep in mind here is an issue
17 that it certainly is coming up right now in
18 Title IX, and it's not athletics. And there are
19 hearings on the Hill right now in the Senate about
20 Title IX as it pertains to gender equity in the
21 sciences and mathematics, and I think some of you
22 may have seen a report from the Women's -- Center
23 for Women's Law.

24 I mean, it is -- my fear is

1 that -- you know, gender is easy to spot, usually,
2 and we -- we have decided, you know, this one was an
3 easy one to take on, Title IX, in a lot of ways.

4 In education, I mean, in my
5 world, the bigger issue is what we expect from
6 certain children, and the poison that gets into a
7 system when what you do is you count colors or you
8 count numbers, and you're not looking at excellence.

9 And I think it's a huge danger
10 for Title IX that we get into the business of just
11 counting numbers of who's participating, and we
12 aren't driven by excellence. That worries me a
13 great deal.

14 I mean, the fact that the
15 testimony about the Olympics and what happened and
16 teams that are outstanding, somehow we have to find
17 a way to balance participation, men and women, you
18 know, all young people who want to be involved. At
19 the same time we're driving those kids just, you
20 know, to be their absolute best. But just counting
21 them isn't enough, and I don't even know -- I don't
22 know how you do that.

23 But we made this mistake. We've
24 got 30 -- well, 50 years of public policy history in

1 Percy has made a motion, acclamation.

2 We'll move to question No. 2:
3 Is there adequate Title IX guidance that enables
4 colleges and school districts to know what is
5 expected of them and to plan for an athletic program
6 that effectively meets the needs and interests of
7 their students?

8 We talked a little bit about
9 this under question one. Other thoughts on this?

10 MR. GRIFFITH: I think we heard
11 a lot of testimony yesterday that there's a fair
12 amount of frustration with the OCR on that point
13 that -- and the frustration that I heard was
14 directed largely at the regional offices of the OCR,
15 because just different ways of implementing things,
16 so . . .

17 MR. LELAND: I know one thing
18 that's concerned me that a couple people have
19 mentioned to me, not necessarily in evidence, but is
20 the fact that other people, other organizations try
21 to play a role in determining what's Title IX
22 guidance and what's Title IX not guidance, and it
23 ends up being confusing for many of the
24 institutions.

1 In other words, you hear from, I
2 mean, for instance, the NCAA, and their
3 certification process comes in and has -- their
4 emphasis is on Title IX, and they come in, and they
5 tell you something different than the OCR tells you,
6 and it's confusing, and you're trying to comply.

7 I mean, I've heard this from
8 other schools, and I think there's other
9 organizations that are doing that, so there's -- I
10 mean, I think that's a concern we should put down
11 here is that, gee, I mean, the suggestion has been
12 made to me, again off the record, that maybe instead
13 of the NCAA running Title IX seminars, the Office of
14 Civil Rights should run seminars so that we get it
15 right from the people that are actually dealing with
16 the cases and the suits and things like that.

17 There's also been a suggestion
18 made to me, let's finish one more, that, you know,
19 maybe there would be some kind of -- instead of
20 having to wait to get sued, maybe you have some sort
21 of certification process you could go through with
22 OCR that said, in effect, you are, you know, in
23 compliance, and then that we give the CEOs of the
24 university some assurance that, gosh, if I get sued,

1 I have a little protection here in that we've done
2 our due diligence. We may not be perfect, but we've
3 done our due diligence. So what other guidance?

4 MS. YOW: Add the regional
5 offices into this one, as well.

6 MR. LELAND: Okay.

7 MR. GRIFFITH: I want to push
8 back a little bit on what you said. I'm not certain
9 I feel -- maybe this isn't the time to express our
10 personal opinions. That would involve, the
11 certification process, my assumption is, a
12 massive -- a massive intrusion of the federal
13 government into the athletic programs here that in a
14 way that would, for one thing, I think, greatly
15 enlarge the Office of Civil Rights. I think the
16 resources to do that would be -- would be difficult,
17 and then I just have a philosophical problem with
18 encouraging the federal government into --

19 MR. SPANIER: I don't think that
20 would be very welcome.

21 MR. GRIFFITH: Yeah. Now the
22 education part --

23 MR. SPANIER: The educational
24 seminars --

1 MR. GRIFFITH: Bingo, yeah. But
2 to try and create a certification that would be a
3 safe harbor, I'm just not certain how you get there,
4 the resources, and I just have some certain --

5 MR. LELAND: I understand.

6 MR. GRIFFITH: But I hadn't
7 thought about that.

8 MR. LELAND: I was just -- pass
9 on. Muffet? Gene?

10 MR. deFILIPPO: Yeah. I heard a
11 lot of people very, very frustrated with prong two,
12 and that it's not clear enough. What does a history
13 of meeting -- what does a history of improvement
14 mean for the underrepresented sex? Does it mean the
15 addition of a sport a year? One every two years?
16 One every three years? I heard a lot of people say
17 that they needed some clarity with regard to prong
18 two, so I don't think that a lot of people feel
19 comfortable with the guidance that they've received
20 from OCR in that regard.

21 MS. YOW: That's why prong two
22 needs to go away. You know, we're all, again, in
23 the business. Basically, how this works from an
24 AD's perspective is this: If you inherit a

1 situation or an institution that's not in
2 compliance, the first thing you look at -- and
3 someone mentioned this yesterday as a speaker. I
4 can't remember who it was. They were very
5 insightful in this way. You look at how often you
6 need to add a sport in order to stay out of
7 trouble. It's just the way it is. Especially if
8 you're in a situation where finances are very
9 tight.

10 So then you have the regional
11 offices, need I mention them again, Ted, where the
12 guidance that you get is as different as your
13 region, and so they are determining, Gene, you know,
14 if you have to add a sport once every year, once
15 every two years, you know, does it depend on the
16 size of the squad or the number of the teams? So
17 that prong.

18 And people in this country,
19 there are loads of institutions, and Graham
20 mentioned this, people who are out of compliance, as
21 related to prong one, by 15 and 20 percentage
22 points, that are going to stay that way because
23 there's no enforcement. They're going back to prong
24 two to find out if and when there ever is an issue,

1 how closely they can -- how they can structure this
2 thing.

3 There are so many ADs out there,
4 how sad, who are waiting to retire. They stretch
5 this out and try to figure out how to survive it
6 just so they can get to retirement age, and then
7 they'll pass it off to the next group of
8 administrators.

9 So I know sometimes I sound like
10 I'm talking against myself in the sense that I might
11 sound fairly conservative about it at one point, and
12 at another point in terms of enforcement just
13 wanting so much to see enforcement done. That's why
14 I'm looking for a logic flow between what is safe
15 harbor, because I think once you get to something
16 that there's a good logic flow, you ought to ensure
17 very quickly that people come into compliance, no
18 more, you know, ten years to add a sport every other
19 year, every third year, every fourth year. Get into
20 compliance. But I think for people to rise to that
21 occasion, they have to have a very clear logic flow
22 between what the connection is in terms of what's
23 expected of them, and I think there is something
24 better than the undergraduate student enrollment.

1 MS. PRICE: I have a question.
2 Hopefully it's not totally inappropriate for me to
3 ask a question. But I was struck by prong two,
4 because as an athletic director, Debbie, any of you
5 all, does prong two set you up to have to be
6 continually adding a program, and won't you
7 eventually -- I mean, won't a school just eventually
8 not be able to take on new programs? I mean,
9 doesn't it set -- does it set up sort of a false
10 ability to be -- I mean, you can only --

11 MR. SPANIER: I think what we've
12 heard eloquently in a lot of the testimony is that
13 prongs two and three are really temporary solutions
14 to getting to prong one. And that's really, in the
15 '96 clarification letter, where the language --
16 somewhere along the way language shifted from
17 proportionality to strict proportionality, number
18 one, and number two, it came up with the notion of
19 the safe harbor. And I think somewhere in our
20 discussions, we need to look at these things very
21 specifically.

22 We know what all the court
23 interpretations are, and lots of people have
24 explained it to us, but should there be one safe

1 harbor? Is that the right way to approach this? Or
2 should we have a new set of prongs or standards that
3 clarify for each one what's involved? Or maybe it's
4 even got to be a combination of things.

5 I think -- I think that -- that
6 would be a service that could be provided, and it
7 relates to a couple of these other questions, is to
8 laying out a set of standards that are very fair and
9 that really accomplish the objective of promoting
10 women's and men's athletics.

11 We -- you know, a lot of the
12 debate has focused on whether or not Title IX --
13 whether or not men's sports have been eliminated
14 because of Title IX or because of finances. And,
15 you know, I've been mildly amused by all of that,
16 because you can't -- you can't take to the bank what
17 the ADs and the presidents have said publicly about
18 why they did what they had to do. It's usually very
19 complicated, and there's a lot of stuff behind it.

20 But any of the ADs here know,
21 and I know, because I've talked with the presidents,
22 and the ADs have talked to their colleagues who
23 eliminated programs, and we know what the deal is.

24 I mean, just a little dose of

1 reality here for everyone. It is not -- it is
2 almost never about finances alone or about Title IX
3 alone. If it were -- if it weren't about finances,
4 then all of us would have added absolutely every
5 women's sport we could think of. If finances
6 weren't an issue, we wouldn't be here, because we
7 would all take the money that we could garner and
8 add more women's sports, and we wouldn't even have
9 the differentials we have between men's soccer,
10 women's soccer, men's volleyball, women's
11 volleyball, women's golf, men's golf, where now
12 there's this difference in how many scholarships are
13 given. We would just have solved the problems, and
14 we would have done it proudly by adding more women's
15 sports.

16 So of course finances are a part
17 of it. And if finances are a part of it, and you're
18 trying to deal with gender equity issues, of course
19 you're going to eliminate some men's sports. I
20 mean, the two -- the most common reason is a
21 combination of those two things.

22 So, you know, a lot of people
23 spinning their wheels arguing, is it A or is it B?
24 It's both of them together.

1 In second place, yes, there are
2 some purely -- some programs have been eliminated
3 purely because of Title IX, and some programs have
4 been purely eliminated because of finances, but I
5 believe the most common thing is a direct
6 combination of the two.

7 MR. BOWLSBY: Ted?

8 MR. LELAND: Yeah, well, let's
9 try to get on to question No. 2 here as quick as we
10 can. So, Gene?

11 MR. deFILIPPO: No. I agree with
12 that, and the other thing that I think has been a
13 factor is also facilities. You know, so many of us
14 are landlocked and don't have the facilities, so I
15 think it's a combination of Title IX, of finances,
16 facilities, and other things that might be specific
17 to a particular campus, but I agree.

18 MR. LELAND: Okay.

19 MR. BOWLSBY: One of the
20 questions, I think I may have asked it at our first
21 get-together in Washington and was told it was a
22 closed meeting, and so I couldn't asked substantive
23 questions, but I don't think in any of the materials
24 we've received we ever got a real good answer to how

1 the letters of clarification are issued; who has
2 input into them; what triggers a letter of
3 clarification; who has discretion to issue a letter
4 of clarification; and what the timing of those
5 issues might be; and perhaps even upon whom they
6 maybe binding. If they are specifically issued to
7 take care of a specific problem, are they
8 universally binding?

9 But it -- Graham's comment about
10 thinking prospectively is one that certainly bears
11 on this issue, because as much as we like to have
12 this nonpoliticized, there is the possibility down
13 the road that administrations change and somebody
14 else wants to have a hearing on this. That probably
15 ought to be part of our charge is to know just
16 exactly how that all works so that, you know, that
17 which we do is not undone.

18 MR. LELAND: Well, I mean, let's
19 balance it between how it's been done in the past
20 and how we suggest it's being done. I mean, I'm a
21 little bit like Graham. We might want to -- I mean,
22 it seems to me what you just suggested fits under
23 No. 2, because it has to do with the guidance
24 universities receive, and how does that guidance

1 come out, and what does it look like, and who is it
2 binding on, but maybe we ought to talk
3 prospectively.

4 You know, we got the letters in
5 the past, but I can't -- I hope we don't spend an
6 hour in San Diego talking about how these things are
7 going to go, because we only have so much time.

8 MR. BOWLSBY: Well, as far as
9 I'm concerned, it could be issued to us by a letter
10 from the staff just to give us a little bit of an
11 idea how it works, because I'm naive. I don't know.
12 I don't know how that process works.

13 MR. LELAND: Okay. Let's stick
14 to question two. That was pertinent to question
15 two.

16 MR. JONES: I was just going to
17 say, too, and as the deliberations continue, I mean,
18 in this sort of public forum, here, San Diego,
19 Philadelphia, I mean, that's also information that I
20 think Jerry and Sally and I can help provide the
21 Commission, too, given that that's a process that
22 each of us is involved in.

23 MS. COOPER: Are there any more
24 comments, questions?

1 MS. deVARONA: I want to address
2 the athletic directors here because --

3 MR. LELAND: Does it have to do
4 with No. 2?

5 MS. deVARONA: It does.

6 MR. LELAND: Okay. Okay.

7 MS. deVARONA: I want to have a
8 football program. I want it to have 85 scholarship
9 athletes. I want to be in compliance. So then in
10 order to meet the numbers, I have to field at least
11 85 women athletes in other sports. In this
12 scenario, men's minor sports are always going to be
13 cut. How can we get around that?

14 Because what we're saying to
15 kids is the football athlete, basically, is more
16 valuable on the collegiate campus than a wrestler,
17 whether you want to blame it on Title IX, or whether
18 you want to blame it on finances. If we're in this
19 numbers game, are we going to meet what you want and
20 we want, which is to accommodate the needs in
21 athletes of our student body in the future? And
22 would that necessitate not having varsity
23 scholarship athletes, but then dealing with this
24 whole other issue of walk-ons and athletes that want

1 to just compete whether they've got a scholarship or
2 not.

3 Because I see that -- we were
4 drawing boxes all day yesterday. I'm in a box. I
5 feel like I'm a scorpion in a box, and we're talking
6 about how to -- you know, how to help these people
7 meet the mandate and, you know, where are we?

8 MS. YOW: May I answer that?

9 MS. COOPER: Can I just
10 interrupt for a second? I think that's another
11 question about the big revenue sports.

12 MS. YOW: I want to make a plea
13 that you not let us finish this one, because it's so
14 central to what Graham was saying.

15 MR. LELAND: Not let us finish
16 what one?

17 MS. YOW: Just response to
18 Donna. I know it's not --

19 MR. LELAND: Okay. But I -- you
20 know, this I heard in cats today.

21 MS. deVARONA: But isn't that
22 under -- that's not under -- isn't that under two?
23 I can make a connection.

24 MR. LELAND: Well, you could

1 probably make a connection, Donna, I'm sure, but I'm
2 having difficulty here. My co-chair couldn't do it
3 at all. So -- but --

4 MS. YOW: I'll wait.

5 MR. GRIFFITH: I think she's got
6 the answer. Debbie's on the verge of discovering a
7 cure for cancer.

8 MR. LELAND: I think what we are
9 trying to do is frame our response basing it around
10 these seven questions, and I think --

11 MS. COOPER: I mean, we're going
12 to get your response.

13 MR. LELAND: We'll let you --
14 okay. Okay, Debbie, one more, and then let's --
15 I'll assume, since I haven't heard any more on
16 No. 2, we'll go to No. 3. Okay. So this can be our
17 last nonconnected comment.

18 MS. COOPER: That we've
19 connected.

20 MR. LELAND: You did, right.

21 MS. YOW: Well, Donna, it isn't
22 so much that football, and by the way men's
23 basketball, are more important. Intrinsically, it
24 is human beings.

1 It is, in fact, true that
2 they're more important to the department and its
3 ability to meet its goals and objectives. If one of
4 the goals and objectives is to have a women's
5 athletic program in compliance, that will take
6 money. There are only two sports that make money,
7 football and men's basketball.

8 Now, different -- by degree,
9 admittedly very different from institution to
10 institution. If you're Percy, and you're at
11 Michigan, you're rolling in money. If you're at
12 Maryland, and you only seat 50,000 people at
13 football, then you have less, but it's football and
14 men's basketball. And therein lies the rub.

15 For ADs it's a bit like if we
16 were talking in counseling terms, you would call it
17 being in a double bind. The vernacular of the
18 public would be, damned if you do and dammed if you
19 don't.

20 The fact of the matter is, we
21 all feel the stress and the need. We must be
22 successful in football and in men's basketball to
23 drive the revenue that we need for wrestling,
24 baseball, swimming, and all the women's programs.

1 MS. deVARONA: I understand
2 that.

3 MS. YOW: So now we are in a
4 free -- we're in a society where we have a free
5 enterprise system where it's a matter of supply and
6 demand and market value, and so it becomes more
7 expensive to better ensure that we're successful in
8 those sports, so that fuels the opportunity for us
9 to do more.

10 And who has to give in that
11 scenario to stay in compliance with Title IX, as you
12 do that, is the men's nonrevenue -- men's Olympic
13 sports. You might be able to hang onto them and
14 have them exist, but they're only partially funded.
15 As an example, in a worst-case scenario, they can't
16 even exist, and you have to cut them. Some of us
17 haven't yet had to cut, but we know it's ever, ever
18 present.

19 And that's one of the dynamics
20 that I know you've talked about before in terms of
21 having people come in and talk about how they
22 successfully negotiated this and that kind of thing,
23 but I see it as being -- I don't think that part of
24 the equation is going to change. I think that's

1 going to continue to become more and more expensive,
2 but for those reasons, and the reasons are good
3 reasons, so we have the money to take care of the
4 women and the other men's sports.

5 MR. LELAND: No follow-up.

6 MS. deVARONA: I'm not going to
7 follow up.

8 MR. LELAND: No. I can see that
9 hand. Nope. Nope.

10 MS. deVARONA: I knew that
11 answer.

12 MR. LELAND: Okay. We're done
13 with --

14 MS. COOPER: -- question three.

15 MR. LELAND: Thank you.

16 MS. COOPER: Question,
17 question, question, question.

18 MR. LELAND: Yes. We're on
19 three now. Is further guidance or other steps
20 needed --

21 MS. COOPER: And besides, you
22 guys are rolling in money, so, hey.

23 MR. LELAND: That's right.

24 MR. BATES: That's her -- that's

1 her perception.

2 MR. LELAND: -- at the junior
3 and senior high levels, where the -- excuse me,
4 guys. Let's try to move forward here. All right.
5 We're going to all miss our plane flights, and some
6 people are going to be disgruntled if we don't so --
7 if we do.

8 Is further guidance or other
9 steps needed at the junior and senior high school
10 levels, where the availability or absence of
11 opportunities will critically affect the
12 prospective interests and abilities of student
13 athletes when they reach the college level?

14 MR. BATES: Let me -- I was
15 going to say something on two, but two and three
16 link together, so I'll respond.

17 MR. LELAND: Okay. This is a
18 new tactic, but we'll take it. We'll give this one
19 a try. All right.

20 MR. BATES: Well, I think we
21 need to know a lot more about what guidance there
22 is. I mean, I think we've heard sort of a glitch
23 between what is there and how people interpret it,
24 and so -- and I think it was Donna who talked about

1 somebody promotes the -- or somebody needs to let us
2 know what guidance there is out there, because I
3 think we've heard people say it's not clear.

4 I don't know whether it's not
5 clear or whether or not there is some
6 misinterpretation, or the practice is not meeting
7 what is there in terms of guidance, so as we move
8 ahead, and maybe we ought to try to figure out a
9 little better as to whether it's -- whether we're
10 talking about high schools or colleges or what is
11 the -- what is the status of the guidance, so we can
12 get a sense as to whether or not it's a question of
13 a lack of guidance or whether it's interpretation
14 that seems to be creating a problem.

15 MR. LELAND: I apologize for my
16 snippy comment. That was a great question and very
17 pertinent to No. 3. Thank you, Percy, because I had
18 the exact same question.

19 I'm not familiar with what
20 guidance is available, and I'm not sure we took any
21 testimony regarding this. Did we? Does anybody --

22 MS. SIMON: Will we get any?
23 Will we hear from people on this?

24 MR. LELAND: I would think we

1 have to add -- if we're going to answer this
2 question and try to answer it to --

3 MR. BATES: Where would -- where
4 would we find out what the guidance is, Brian? Is
5 that compiled somewhere so we would have an idea as
6 to what people really get?

7 MR. JONES: It is. I mean, I
8 think what we need to do is I think it probably
9 would make sense to get somebody in from OCR or have
10 Jerry make some sort of presentation as to what they
11 look to.

12 I mean, one of the issues in the
13 past has been, you know, for example, you know, the
14 policy interpretation that speaks to the three-part
15 test. I mean, in its title, it relates specifically
16 to intercollegiate athletics, and there's a question
17 about the extent to which that applies, the high
18 school level and so forth, and so I think it would
19 be helpful to have somebody from OCR give us some
20 historical perspective on the extent to which that's
21 factored into their enforcement efforts at that
22 level. I can't speak to it now, but maybe that's
23 something that Jerry can do for us at the
24 next meeting.

1 MR. LELAND: Yeah, I mean, we
2 need clarification of this, but I remember -- I
3 think I remember from the testimony from Chicago
4 that they were under a different set of guidelines,
5 and it really focused on the laundry list of
6 resources, more than it did with the three-prong
7 test.

8 MR. JONES: Than the three-prong
9 test. That's right.

10 MR. LELAND: Maybe what we need
11 to do is get that clarified.

12 MS. PRICE: And that's one of
13 the briefing papers that just follows this, either
14 the next tab or the tab after. We did a general
15 look at what cases have come in on high schools that
16 have -- OCR has addressed, what were the issues
17 involved, you know, facilities, proportionality --

18 MR. JONES: Seasons.

19 MS. PRICE: -- seasons, playing
20 fields, you know, locker rooms. You know, what were
21 the issues that came in from high schools, and a
22 look at not all court cases, but some of the court
23 cases and some things. There's three documents in
24 there that might be helpful, hopefully just factual

1 things related to high school.

2 MR. SPANIER: I think those
3 documents are helpful. Bill Duncan's memo and stuff
4 tells us, yes, there are problems in what's going
5 on, but I think what they point to is that the
6 answer to No. 3 is, yes, further guidance is needed,
7 because obviously a lot of the high schools haven't
8 figured it out. So, I mean, I think that's just
9 pretty much just a yes/no answer, and the answer is
10 yes.

11 MS. COOPER: Okay. So on to
12 question No. 4.

13 MR. LELAND: Okay. Is everybody
14 ready to move on to No. 4? Okay.

15 How should activities such as
16 cheerleading or bowling factor into the analysis of
17 equitable opportunities?

18 MS. SIMON: Well, here I thought
19 that when we talked about this in other contexts, we
20 had to go to the definition of what is a sport.

21 MR. LELAND: Yes.

22 MS. SIMON: And it seems to me
23 we look at what we're assuming is the definition of
24 a sport and see whether bowling and cheerleading

1 meet those criteria.

2 MS. PRICE: And that's the other
3 briefing paper we're working on. We had just sent
4 the letter, identical letter to the different
5 governing bodies, including OCR and USOC. We are
6 just getting the answers back, so we should have a
7 side-by-side document with those responses for you
8 to see just factually how do they define a sport,
9 what criteria, what they are, and that, so you can
10 do a comparison, and to then answer because -- you
11 know, the whole issue of emerging sports.

12 MR. BATES: Is this one of the
13 areas where NCAA is getting out ahead of OCR?
14 Because bowling, it seems to me, has already been
15 somehow determined to be an emerging sport, and when
16 I look at cheerleading and bowling, I guess I see
17 them in different ways now.

18 MR. JONES: Though, again, I
19 think the way I read this question, and we talked
20 about this in our subcommittee in Chicago, Graham
21 and Julie and I forget who else, oh, and Cynthia,
22 right. I think that bowling and cheerleading are
23 simply used in this question as examples.

24 I think the larger issue is the

1 question of how do we define emerging sports, and so
2 I do think that the document that Debbie mentions
3 that's being worked on, I think will help us to
4 examine what the definition is, whether the
5 definition needs to be expanded, whether OCR needs
6 to revisit its definition.

7 But again, I would urge that we
8 not get too bogged down on the question of whether
9 cheerleading is a sport or bowling is a sport, but
10 instead look at the framework within which those
11 questions can be decided.

12 MR. LELAND: The only thing I
13 would add, I did ask the fellow from BYU, the
14 ex-athletic director there, you know, he mentioned
15 cheerleading. Jiminy, they look a lot like
16 athletes; we have a locker room, and we give
17 scholarships. And he did say that, again off the
18 record, you know, just in the hallways, that they
19 were told by OCR that cheerleading wasn't a sport,
20 and that was the end of the discussion.

21 So I think we ought to -- you
22 know, I think we can do some good here if we can
23 open up some guidelines or something to --

24 MR. BOWLSBY: Debbie, in

1 conjunction with your request for their definition
2 of what is a sport and what's not, did you also ask
3 for a list of those that they consider emerging
4 sports?

5 MS. PRICE: Yeah, I think,
6 because I sent out so many e-mails at the end of the
7 week last week to you that I may not have actually
8 sent it, but I think I sent it to you just telling
9 you about this with a copy of the letter that I sent
10 all the people.

11 I asked, What's a sport? How do
12 they define a sport? So they clarify that, and are
13 there sports that they consider -- I mean, what's
14 their list of sports, if they have a list.

15 Same for emerging sports. Do
16 they have a list? I asked if they had a policy
17 regarding club sports, because they may; they may
18 not. It seems like that's more of a school issue
19 than the other, but what's their policy on club
20 sports? What's their policy on walk-ons? And if
21 there's something unique to their organization that
22 makes them address those issues, where, you know,
23 maybe the junior college organization addresses
24 issues differently than the NCAA because it's a

1 two-year institution, and the whole scholarship
2 thing.

3 So I tried to ask as broad -- if
4 you see that there's some other questions that would
5 be helpful to be addressed, I'm happy to pursue
6 that.

7 And while I'm saying that, let
8 me say, if after we meet here, if there are other
9 substantive statements you would like to -- you
10 know, you think, "Oh, I should have said this," send
11 them to me, because we can incorporate them into the
12 record of this. You know, just like in the Senate,
13 hold the document open until, you know, so many days
14 later for you to submit any other comments that
15 would be submitted for the public record. We would
16 be happy to do that.

17 MR. SPANIER: I would like to
18 make just one substantive point in relation to this
19 specific question. I have very mixed feelings about
20 the answer to this question. I think the fairer
21 thing to do is to say, yes, they should be included,
22 and I would support that in the end.

23 But why I have a mixed feeling
24 about it is that I imagine in some people's

1 thinking, that is just a way of introducing into the
2 equation some numbers that make this all work out a
3 little better for some folks, and my concern is that
4 that doesn't address the issues that the wrestlers
5 and the swimmers and the gymnasts and others are
6 addressing. It doesn't help an athletic director or
7 a university president or a student body deal with
8 the larger issue.

9 So I just hope that when we, I
10 think, inevitably say yes, we've got to be more
11 flexible and broader and include other people who
12 are athletes in sports that probably should be
13 considered sports. It's not for the purpose of
14 getting us off the hook of sinking our teeth into
15 the larger real-life issues that are out there.

16 MS. deVARONA: I second that.

17 MS. COOPER: Okay.

18 MR. LELAND: Well said. Because
19 I think that's everybody's -- a lot of people share
20 that concern about this. It looks like it's an easy
21 way out to meet proportionality just by doing this,
22 and that's not really the purpose behind it. Let's
23 be fair, but let's not back away from the real
24 issue. Okay.

1 Any other thoughts on what --
2 No. 4? Are you ready?

3 MS. COOPER: Yep.

4 MR. LELAND: No. 5. Okay. How
5 do revenue-producing and large-roster teams affect
6 the provision of equal athletic opportunities? The
7 Department has heard from some parties that whereas
8 some men athletes "walk-on" to intercollegiate
9 teams -- without athletic financial aid and without
10 being recruited -- women rarely do this. Is this
11 accurate and, if so, what are the implications for
12 Title IX analysis?

13 MS. COOPER: Donna?

14 MS. deVARONA: Well, actually,
15 we got part of the way into this answer, but -- the
16 first part. I think that's really a two-part
17 question. I don't -- I think walk-ons, I think the
18 walk-on issue is huge, and there's common ground
19 here, and I think we have to look at a way to
20 accommodate them and also -- well, this is too
21 freethinking, so I won't say it, but how to bring --
22 we heard about individuals who wanted to endow
23 swimming at Nebraska, and they weren't permitted to
24 do it, and I think we have to look at that.

1 MR. LELAND: Sport-specific
2 funding or something like that?

3 MS. deVARONA: Yeah. I guess
4 the answer is if they want to endow it there, they
5 must be directed to endow both men's and women's
6 teams. Maybe that's the simple answer, but I heard
7 there were other issues, tax issues and, you know,
8 there are a lot of other issues that come along with
9 that. The numbers, again, the numbers game.

10 MR. LELAND: Okay. How do
11 revenue-producing large-roster teams affect the
12 provision of equal athletic opportunities?

13 MS. deVARONA: May I make one
14 comment about Deborah?

15 MR. LELAND: Yes.

16 MS. deVARONA: About when I
17 suggested that the revenue-producing athlete was
18 more valuable than nonrevenue and looking to the
19 future. As long as we perceive that only basketball
20 and football can be revenue-producing -- and it used
21 to be that only football and men's basketball used
22 to be revenue-producing, but women's basketball
23 is -- we codify the way of thinking, and we don't
24 give -- we're not opening up the opportunity, where,

1 for instance, soccer on campus could be
2 revenue-producing, or swimming, in some schools
3 gymnastics is, so I -- you know, I think we get
4 locked into tradition, and that hurts where I think
5 we want to go.

6 MS. YOW: I think it's an
7 excellent point. Interestingly enough, I think that
8 part of what you have to consider when you look at
9 that -- and I say this as someone who just paid a
10 small fortune for a women's basketball coach, and
11 pretty much proud of it, kind of, maybe, I know
12 she's the right person for us -- is whether or not,
13 Donna, that happens from the top down or the bottom
14 up.

15 The fact of the matter is, it's
16 been my experience that if high school soccer in our
17 area doesn't draw well, that it's pretty near
18 impossible to change that consistently in a
19 significant way at the collegiate level. And so I
20 have some questions about that.

21 I do believe that the concept
22 you're talking about is appropriate and right, and
23 that is that there have to be significant and
24 various sort of marketing initiatives for targeted

1 sports that traditionally might not draw crowds, and
2 certainly that's what we have in mind in a number of
3 our sports. I don't -- I guess that that could be
4 part of the answer, I don't know to what degree,
5 because even when you fill arenas or soccer stadiums
6 with people coming to watch a men's or women's
7 soccer event, the cost of the ticket is such that
8 just the raw number of dollars is not what it would
9 be with football, as an example.

10 MS. deVARONA: Right. I
11 understand.

12 MR. LELAND: Well, I'm a little
13 concerned about this one, because I think that --
14 in answering this question, because we are
15 overrepresented by large football playing
16 institutions here, and it's a little -- I feel like
17 we ought to -- I mean, how do revenue-producing
18 sportsmen -- there's a number of -- I mean, I assume
19 that means net revenue-producing, and computing that
20 is not simple on any campus, and there's so many of
21 our institutions that are affected by and struggling
22 to comply with Title IX that don't have any net
23 revenue-producing sports at all, but still have to.

24 So I'm a little concerned that

1 we either need more testimony on this from people
2 who are Division 2 and Division 3 or Division 1
3 schools that don't have net revenue-producers, or we
4 need to just admit that the answer to this question
5 varies by campus. You know, because I -- you know,
6 I think there are -- there's a real cogent argument
7 to be made that, you know, the best -- we've heard
8 some testimony that among the better competitive
9 women's teams are major football-playing
10 institutions, so you can make an argument that, gee,
11 those seem to win a lot of championships, yet at the
12 same time that's not the experience that, you know,
13 maybe 800 of the NCAA schools have. So let's -- you
14 know, do we need --

15 MR. SPANIER: It's not really
16 about the production of revenue. It's the
17 large-roster part of the question that, even at
18 Division 3 schools, many Division 3 schools, and
19 certainly Division 1 schools, it's not really about
20 85 football players. It's -- the average is
21 probably more like 115, 120, which really gets to
22 the walk-on question, and I think that's -- the
23 walk-ons in football, plus the whole walk-on
24 phenomenon in other sports, and the way that the

1 federal report and the NCAA reports define that day
2 on which you have to put down how many people are
3 participating, that's what goes into the formulas.
4 And, I mean, we've heard a lot of about roster
5 management, and I think that's a very fundamental
6 issue here. Where we end up on the topic of
7 walk-ons, I think, is going to be very important
8 here.

9 MR. LELAND: Is this the
10 question under which we should address the walk-on
11 issue?

12 MS. deVARONA: You know --

13 MR. LELAND: It seems to me that
14 it could be.

15 MR. SPANIER: It's mentioned
16 explicitly.

17 MS. SIMON: I want to talk to
18 the first part of the question, if I may.

19 MR. LELAND: Okay.

20 MS. SIMON: The athletic
21 director of American University was very happy to
22 call me as soon as he heard that I was on this
23 commission to tell me that American University is in
24 compliance with Title IX. And one of the things he

1 said is, you know, "We don't have a football team,
2 but, for example, our soccer team is
3 revenue-producing," and I think that probably there
4 must be other universities like American University
5 that do not have the football teams, but then you --
6 some of the other sports take on much more publicity
7 and do, in fact, increase the revenue.

8 MS. YOW: You have to be
9 careful, though, in use of the terms, Rita. When he
10 says "revenue-producing," I don't necessarily -- I'm
11 not sure he really means net revenue-producing.

12 MS. SIMON: I thought he did,
13 Debbie. I thought he did.

14 MS. YOW: I need to talk to
15 him.

16 MS. SIMON: I think he did.

17 MS. deVARONA: I just think also
18 we have to make sure that we don't always presume
19 that revenue-producing means a profit. You know, I
20 think that's the point, because there's so -- we're
21 so top-heavy with profit-making schools here through
22 their sports and basketball, but so many schools
23 don't, and so many football teams really, you know,
24 use up the resources, and it's the prerogative of

1 the athletic director to have a football team, but
2 then it leaves little resources available to field
3 other teams, so, you know, I think that that's the
4 argument.

5 That argument has to be
6 clarified, too, or that -- that reality has to be
7 understood, which I don't think in the big world it
8 is out there.

9 MR. LELAND: I mean, I took this
10 first part to be the old Tower Amendment where they
11 were going to -- you know, people argued early on
12 that, gee, we should exclude revenue-producing
13 sports from these equations, because they're net
14 revenue-producers, and they shouldn't count, and
15 that was defeated, and the other amendment was
16 that --

17 MS. deVARONA: Javitz.

18 MR. LELAND: -- the Javitz
19 Amendment passed that said they're included, so it's
20 clear legislative intent that they're included, and
21 I took this question to mean do you want to look at
22 that again. I'm not sure of that, because Donna
23 sort of says no, there's also -- maybe even if
24 you're not a net revenue-producer, if you're a

1 revenue-producer, does that affect how this works.
2 And then we've got the walk-on question.

3 Is there any more information we
4 need regarding this in San Diego to -- I mean, we
5 clearly have identified the walk-on issue, and I
6 think we've identified maybe the variability of the
7 revenue-producing. Is there any other thing? You
8 know, is it accurate --

9 MR. BOWLSBY: Ted?

10 MR. LELAND: Yeah, Bob?

11 MR. BOWLSBY: I think this does
12 illustrate something that we're going to have to
13 build into our discussions at some point in time,
14 because it's obvious that those institutions that
15 support football programs or anything else where
16 there's -- they've had enough success that there's
17 an exorbitant number of people involved in it or an
18 unusually high number of people.

19 For those institutions,
20 compliance is a different matter than it is for
21 the -- I remember at the Atlanta -- I think it was
22 at the Atlanta hearing one of the panelists made the
23 comparison of starting a new Division 3 program
24 where there was same sports, same numbers, both

1 genders, and some of the issues there. For that
2 program, compliance is a different matter than it is
3 for programs where there are non-male/female
4 counterpart sports, and where there are large
5 rosters, and somehow, we're going to have to build
6 that in.

7 As you noted, for some of the
8 people around this table it's one issue; for others,
9 or perhaps all of the other 800 in division -- or in
10 various divisions, it's a different matter
11 altogether. Our work somehow needs to be
12 overarching enough that we can take into -- that
13 variance into account, and I think it's something we
14 need to keep in mind as we go forward.

15 MR. SPANIER: I think there's
16 one piece of data that doesn't exist that would be
17 interesting. I don't know exactly how you get it.
18 You might just have to do a survey of some
19 institutions. And that is, with this roster
20 management phenomenon, what is the best estimate of
21 the athletic director as to how many opportunities,
22 participation opportunities are being denied to men
23 or women. We've heard it would be mostly men, but
24 there might be some women's, as well.

1 Because of that phenomenon, what
2 is our best guess of how many people are being
3 turned away? That could be extrapolated to a
4 national estimate and would tell us something about
5 missed opportunities.

6 MR. deFILIPPO: Also, do we have
7 information that says that, or that would say that
8 men do walk on at a greater rate than women?

9 MS. SIMON: We keep hearing
10 about that.

11 MR. deFILIPPO: We keep hearing
12 that that's the case, but then we've also heard
13 others say that that's not the case; that, you know,
14 women do walk on, as well, and walk-ons are
15 continuing to grow yearly in women's sports. So I
16 was wondering if there's any documentation about
17 that.

18 MS. McGRAW: I think on that
19 walk-on issue, I know it's a sport-by-sport. In
20 women's basketball, at our level, we don't have a
21 lot of walk-ons, but our crew team had 120 girls try
22 out, and our lacrosse team had about 30, so I think
23 it really varies on the sport.

24 MS. GROTH: I would like to add

1 something to what Muffet said. It also varies on
2 the division and also the different institutions
3 within 1-A. A case in point, we lost a football
4 recruit that went to Nebraska as a walk-on versus a
5 full scholarship athlete, so there's a huge variance
6 in 1-A institutions and the success those programs
7 have had, so you have to be very cautious how we
8 look at the walk-on issue.

9 MS. deVARONA: I don't know if
10 this is freethinking or not. You can stop me. You
11 can.

12 MR. LELAND: If you can connect
13 it to walk-ons in the first three sentences.

14 MS. deVARONA: No, then I can't
15 talk about it.

16 MR. LELAND: Did I do okay that
17 time?

18 MS. deVARONA: No, it had to do
19 with big-roster -- it has to do with big-roster
20 teams.

21 MR. LELAND: Yeah, I think at
22 this -- I would like to amplify a little bit,
23 though, what was just said a moment. I would like
24 to -- I think some statement about the variability,

1 because I've heard a lot of testimony about women
2 not wanting to walk on and men being willing to, and
3 that's not been my experience at my university,
4 although I hear at other places that it is.

5 Our experience has been we offer
6 a women's team, they show up in droves. Okay. We
7 have to beat them off -- we don't have any problem
8 with having women show up to participate.

9 Other schools report exactly the
10 opposite, and I think they're doing a good job of
11 trying to get people to come out, women to come out.
12 They've offered a good experience.

13 It's just -- I think there's
14 just a difference between whether it's a residential
15 campus or nonresidential, whether it's small,
16 whether it's big, where it's located, what part of
17 the country, how big. You know, I just think it's
18 a --

19 MS. deVARONA: What difference
20 does it make if women -- I mean, yes, men walk on,
21 and I know it's a numbers thing, but what -- and
22 there may be many reasons that woman just doesn't
23 want to sit in a uniform and be part of a team that
24 she doesn't play on, or I don't know, but, I mean,

1 what difference -- where does that fit into the
2 discussion anyway?

3 MR. LELAND: Well, I think
4 because the problem people are reporting is if men
5 are willing to walk on --

6 MS. deVARONA: I know.

7 MR. LELAND: -- and women
8 aren't, then you have to cut the men to reach
9 proportionality.

10 MS. deVARONA: Right. I
11 understand. I understand that.

12 MR. LELAND: I think that's
13 probably -- as far as I know, that's the only issue,
14 and it's a big one, because it is, and we've heard
15 the testimony, people say --

16 MS. deVARONA: No, I understand
17 that, but I also understand that it depends on who
18 you recruit to your campus; how much money you spend
19 in recruiting money to your campus; what kind of
20 student athlete you have there.

21 I mean, maybe we have to look
22 into reasons why women don't walk on if they don't,
23 so we can really see the picture, if that's the
24 truth. I mean, it isn't the truth in your

1 institution, and if it's being used as the argument
2 to say that women aren't walking on, and therefore
3 the system is unfair to men, then we have to -- I
4 think we have to understand why women aren't walking
5 on if, indeed, that's the truth. You know, what are
6 the reasons why?

7 MS. COOPER: I have a question.
8 Well, actually, it's the question we're supposed to
9 be answering. "How do revenue-producing sports,"
10 and I'm going to take that part out, and I'm just
11 going to say, "How do large-roster teams affect the
12 provision of equal athletic opportunities?" and
13 that's my question. So it's for anyone.

14 I mean, I know it's a numbers
15 game, and I think we've all determined it's a
16 numbers game, and so I think just kind of refocus
17 everybody on kind of the issue at hand, and how do
18 large-roster teams affect the provision of equal
19 athletic opportunities?

20 MS. SIMON: My question goes
21 to -- my comment goes to that question and to a
22 whole slew of other questions that have come up. Is
23 there time for this Commission to prepare a survey
24 to be sent to a representative sample of colleges

1 and universities in this country, and collect data,
2 collect data on all kinds of questions like walk-ons
3 and the other issues that have come up in which
4 we've said we don't have data. Could we -- could we
5 do a questionnaire which would be sent to a
6 representative sample, and include many of these
7 questions about which we say we need data?

8 And I guess the questions this
9 survey would be directed to may be the athletic
10 directors and/or the presidents of the
11 universities. And of course, you would have to keep
12 following up so you get a high enough rate of return
13 to make the responses meaningful.

14 MR. LELAND: Does anybody want
15 to respond?

16 MS. GROTH: At NCAA, the
17 response is that we fill out recruited walk-ons. I
18 mean, that might be a start for the information.

19 MS. PRICE: What was that?

20 MS. GROTH: At NCAA we're all
21 required to provide, you know, information about our
22 squad sizes per sport, recruited walk-ons, walk-ons.
23 I don't know if that answers your questions, but at
24 least it's some information that might be helpful.

1 MS. SIMON: But I think as we've
2 tried to answer these questions so far, we always
3 come up with "We need more information." Why can't
4 we, as a Commission, go directly to a random and
5 representative sample in universities and try to get
6 those answers? We don't need our report in until
7 January. I would be happy to help work on a
8 survey. I've certainly done a lot of them.

9 MR. LELAND: Anybody want to
10 respond? Tom?

11 MR. GRIFFITH: I don't want to
12 respond. I want to --

13 MR. LELAND: Yeah, I'm perfectly
14 willing to, you know, consider that. I'm a little
15 concerned that we would get accurate data back
16 because of all of the -- any -- any of the national
17 surveys that I respond to, as in my professional
18 position, I've always been very skeptical of the
19 outcome of them because of the ambiguity of the data
20 gathering.

21 I mean, it's just so -- our job
22 -- our departments, especially at the level that
23 we're at, are so complicated that you ask from the
24 outside what you consider to be a simple question,

1 and the answer is so complicated that the way that
2 all of us would answer it might be so different.
3 The variance there might just throw out all the date
4 that you might get. That would be my concern.

5 And it's true on the EADA form.
6 I think anybody on our campuses who fills out those
7 EADA forms just says they're garbage. They don't
8 mean anything because the way we do it, and it's
9 uncertain, and even though the government has tried
10 to -- you know, every year it gets more complicated,
11 and every year there's more clarifications and more
12 questions, in the end, the people in most campuses
13 that fill it out say "These numbers don't make any
14 sense to the numbers I handed in last year. My
15 numbers don't make any sense to the guy that's
16 across the bay because they're just different." And
17 I think that's -- that was one of the things that
18 vexed the Title IX originally.

19 In '79, '78, I worked with the
20 office of OCR on their original manual of how to,
21 you know, implement Title IX, and those people were
22 so confused because our department was so different
23 than the one that was across the street. You
24 couldn't -- you couldn't make connections between

1 the numbers.

2 MR. JONES: I would think, too,
3 that the complexity of that process, as you define
4 it, also begs the question of the cost of actually
5 getting this data in and analyzing it in an
6 effective way, and again, I just don't know that's
7 that something that -- the very limited budget that
8 this Commission has would support it, but Debbie
9 could speak better to that than I.

10 MS. SIMON: I could provide you
11 with some very well-trained doctoral students in
12 statistics to help analyze the data.

13 MS. YOW: Could we just ask the
14 question? I mean, I can answer for Maryland, but
15 Gene, if you could answer for BC, and Bob. The
16 question is, does the institution, does the athletic
17 program, keep any record, a factual record of the
18 numbers, year to year, of individuals who were
19 turned away as walk-ons, and our answer is, no, we
20 do not. We have a coach walk in the office once a
21 year and say, "This is one of the worst days of my
22 life. I just had tryouts, and I just told 16 guys
23 they can't walk-on," and that's the end of the
24 conversation, and life goes on. So unless you -- I

1 mean, we don't have the data.

2 MS. SIMON: Okay. But you see,
3 Debbie, that's important. If we come out in a
4 result and say, "We've been hearing about how
5 there's so many men walk-ons than female walk-ons,"
6 if, in fact -- with a good survey and a
7 representative survey and a high -- and a valid rate
8 of return, it turns out the universities don't know,
9 that's not a meaningless answer. That's an
10 important answer: They don't know.

11 And so we've been hearing all
12 kinds of experts giving us data, but when you go
13 back to the universities, the answer is, "We don't
14 know." That's just one kind of question, and maybe
15 "We don't know" will be the answer for a lot of the
16 other questions that we ask.

17 MS. COOPER: I have a question
18 for you, Deborah. If that coach -- is there -- if
19 there wasn't a walk-on problem, how many of those
20 walk-ons would your coach actually keep or would he
21 or she have cut anyway?

22 MS. YOW: Depends on the sport.

23 MS. COOPER: Well, let's say
24 football. Let's say football came in and said,

1 "Hey, I had to cut --" you know, we talk about
2 roster management. "I had to cut 20 walk-ons." How
3 many of --

4 MS. YOW: He gets to keep 109,
5 just so you know. That's his number. I know his
6 number by heart.

7 MS. COOPER: He gets to keep 109
8 on scholarship or --

9 MS. YOW: You only have 85 on
10 scholarship.

11 MR. SPANIER: I know that. I
12 bet all the ADs know, and some of the president, we
13 know what our coaches' philosophies are and how many
14 in a typical year they turn away.

15 MS. YOW: Correct. Correct.

16 MR. SPANIER: That would be
17 pretty easy.

18 MS. YOW: We could provide that.

19 MR. LELAND: But in many schools
20 it varies by the coach. We have some coaches who
21 say, "Just give me --" you know, our women's
22 basketball coach, "Just give me 11 or 12 kids, and
23 they've got to be all dedicated, and I can do that,
24 but don't give me 19 kids."

1 The male basketball coach may
2 say, "I would love to have 19. I can run my
3 practice better. It's great." So it just varies by
4 the coach that you have, and a lot of us give our
5 coaches, if we're not in an issue of roster
6 management, which some of us don't have to
7 roster-manage, if you don't have to roster-manage,
8 you give your coach the flexibility. You say,
9 "Coach, if you want to keep 20 soccer players, keep
10 20. If you want to keep 24, keep 24. If you want
11 to keep 18, whatever you need to do for the dynamics
12 of your team, you go ahead and do that."

13 So finding those numbers is -- I
14 mean, there is no number. If you sent me that, I
15 would have a heck of a time filling it out, and my
16 number this year would be different than the number
17 next year.

18 And so I just don't -- I think
19 it's clear that there are some walk-ons that don't
20 get a lot -- don't get walked on. How many of those
21 there are, I don't know.

22 MR. deFILIPPO: Is there some --
23 oh.

24 MS. COOPER: Go ahead. Go

1 ahead.

2 MR. deFILIPPO: No. I was just
3 going to say, we have more managers sometimes than
4 walk-ons in some of our sports, and you know what I
5 mean.

6 MR. GRIFFITH: Is there
7 someplace in this question to deal with the topic
8 that came up many times yesterday about the train
9 wreck and coming out of the arms race? Is that
10 something that this question would support? And
11 if -- the arms race is coming out of the
12 revenue-producing sports, I take it. But is that
13 issue linked, or --

14 MR. BOWLSBY: I think one of
15 the things that was sort of unspoken in Ted's answer
16 on -- to use the soccer example, you know, "If you
17 want to keep 19, keep 19. If you want to keep 24,
18 keep 24," most of us would give them the caveat,
19 "But you've got what money you've got in your
20 budget."

21 MR. LELAND: That's right. You
22 only get so many uniforms to use as you want.

23 MR. BOWLSBY: If you want to
24 spend it that way, you spend it that way. If you

1 don't, you don't. And that one is, at least in
2 part, driven by finances, as well.

3 MS. COOPER: Is this question
4 working towards, and I haven't heard much about
5 this, and it may be my ignorance, about the numbers?
6 Like, you know, you have 100 football players, and
7 so you have to go and have 100 female participants
8 in different sports. I think that question is more
9 geared towards that problem, and if you didn't have
10 to count the walk-ons, then you wouldn't have to go
11 on the other side and --

12 MS. YOW: I think that's part of
13 what Lisa was talking about in terms of quality
14 versus numbers. I mean, suddenly rowing is very
15 popular for women. I think we all understand in our
16 industry why that is. You know, if you can get 60
17 participants and 20 scholarships in a sport, there
18 isn't anything else like that out there, and so
19 you're seeing conference championships pop up all
20 over the country in those sports where there is no
21 history in the high schools of competition in that
22 sport. There's no real feeder system there. It
23 just works because the numbers work.

24 MS. COOPER: And so if you

1 didn't -- if you didn't count the walk-ons, then are
2 you saying that you wouldn't have to provide that
3 sport with those numbers?

4 MS. YOW: It would certainly
5 change the dynamics. I don't know to what degree.
6 Now you're back to Ted's part of this individual
7 campus to campus, but there's no question it would
8 relieve pressure on the baseball programs, the
9 wrestlers, the gymnasts, the male gymnastics. It
10 would relieve that kind of pressure.

11 It would also do something else,
12 Cynthia, that's much more important. They would
13 have a sense of fairness. If this group ever came
14 out and dealt somehow with the walk-on issue in an
15 attempt to recognize that some type of a fairness
16 issue for men who want to walk on versus woman who
17 don't, we would have won in a huge way with this
18 disenfranchised population, because I don't think
19 they think we can do that, we'll do that, in any
20 way.

21 Now, I don't know if you can
22 figure out how to do it without damaging women who
23 also might want to walk on. Because as Ted points
24 out, it's different from school to school,

1 institution to institution, but it would be a
2 marvelous thing if it could work out.

3 MR. LELAND: I think that --
4 have we exhausted all the questions on this one with
5 the concerns you have? Is there more facts you
6 need? Is this the place where we talk about the
7 arms race? I mean, it seems to me that the argument
8 that, Jiminy, that a lot of these disenfranchised
9 male athletes, the issue isn't the adding of women's
10 sports; the issue is the arms race on the men's
11 side. You know, it seems -- you know, we've heard a
12 lot of comment about where should -- is this -- this
13 does mention revenue-producing sports, and that's
14 where the arms race is taking place, so maybe this
15 is the place where we try to take that on.

16 MR. SPANIER: Ted, I would just
17 like -- I would like to work with about 10 percent
18 of what you're saying.

19 MR. LELAND: Okay.

20 MS. COOPER: Let's everyone use
21 the microphones.

22 MR. SPANIER: We are
23 experiencing the arms race on the women's side, as
24 well, particularly with regard to women's basketball

1 and certain other sports where your school happens
2 to be in the upper echelon, and you're competing for
3 the top coaches, and as you become a more national
4 team in that area, you're recruiting out-of-state
5 students instead of in-state students, and therefore
6 at the state university you're paying out-of-state
7 tuition instead of in-state tuition. There is an
8 escalation of cost in some of the women's sports,
9 and I've heard you say that about five times in the
10 last two days in regard to women's basketball. So
11 it's not just men's sports.

12 Maybe if you're talking about
13 expanding football stadiums, you know, big-ticket
14 numbers, that's -- okay, that's men's. But I think
15 it's not quite -- it's a more general issue, and so
16 it relates to the underlying finances of the whole
17 intercollegiate athletics program.

18 MR. LELAND: Yeah, I mean, I've
19 sort of had a desire for a while, and working with a
20 member of our audience, to try to see if there's a
21 difference between those institutions that have
22 dropped men's sports, and those aren't as it relates
23 to their allocation of resources over the last 20
24 years, and to try to answer this question. You

1 know, is it -- if we drop wrestling or drop the
2 gymnastics, is it really because of Title IX, or is
3 it because we're paying our football coach an
4 exorbitant salary?

5 And I think I would like to get
6 some numbers. Get someone from the NCAA or the GAO
7 or from the Department of Education to try to look
8 at those numbers and give us a chance to look at
9 them, because I think one of the sad things about
10 Title IX for all of us has been blaming all the
11 disenfranchisement of the men on the women, and I
12 think to me this is the critical linchpin of the
13 argument for me, because I see it in our budgets,
14 and I know how much more we're spending now for
15 football players. The cost per student is just
16 extraordinary now, and you need to do that to
17 compete, but is that the reason?

18 And so is there any -- I mean, I
19 would like to get some numbers on that, if somebody
20 can do that, you know, if the NCAA can do that.

21 Is there any other things?

22 MS. COOPER: I have a question.
23 If we were to -- I'm sorry. I'm still on this
24 walk-on issue. If we were to not count the walk-ons

1 in the numbers, if we were to not count the
2 walk-ons, do you think that would -- you said that
3 that would take a lot of the pressure off of the
4 different universities, but do you think that that
5 would still save the revenue, or the minor sports,
6 wrestling, gymnastics, swimming?

7 Because it seems to me if you
8 take the walk-ons out of the equation, then you
9 still have the problem of finances, because you then
10 have 200 football players, and so you still have
11 that -- you still have the problem. You don't --
12 you don't resolve the problem by not counting
13 walk-ons, because most of that money then goes --
14 the money in the budget goes to --

15 MS. YOW: Well, there are two
16 different questions and two different scenarios, and
17 one of the scenarios is the Maryland scenario where
18 you keep a team, but it's not scholarshipped, and so
19 we have men's tennis -- my poor men's tennis coach
20 would just love that I keep bringing him up in this
21 setting. But they have one-half of a scholarship,
22 and they're competing against all other ACC schools,
23 of which the majority are fully scholarshipped.

24 So you get down to

1 philosophically as an institution, Cynthia, what
2 happens is you decide among the two options: Is it
3 better to have a nonscholarshipped men's varsity
4 program, or to drop the whole program and save the
5 operational expenses?

6 As much as our men might
7 complain about their fate in life, none of them have
8 suggested that they would just prefer we go ahead
9 and ditch the program. So to me, it's worth it just
10 to allow them to live and exist.

11 Maybe what Donna said earlier
12 happens somewhere down the road, and that is there's
13 some way to fund-raise, separately, privately, to
14 create funding that somehow isn't counted, doesn't
15 damage the Title IX perspective, and so they've been
16 able to continue to exist.

17 So to me, you allow the team --
18 if nothing else, you don't -- you have -- you create
19 a possibility where scholarship money might go away,
20 but not the whole team. There is so -- there is
21 value, and I'm -- as a former athlete in college who
22 didn't have a scholarship, and as Donna pointed out,
23 she faced the same scenario, you could never take
24 that experience away from me, just the thought that

1 I would never have had it. So I think it has value
2 in and of itself. So you can keep it.

3 MR. deFILIPPO: But I think
4 there's two questions, or two -- what you're asking,
5 there's two different answers. One, if you don't
6 count the walk-ons, that would certainly help young
7 men or young women to come out for a sport and to
8 walk on. But it still doesn't help your numbers,
9 because you still have to add women's programs if
10 you have football and basketball.

11 So it helps you in one area, it
12 relieves the pressure, but you still have a numbers
13 game that you have to deal with, and if you have
14 football, you have to add more women's sports.

15 Rowing has become a very popular
16 sport that's been added by a lot of institutions,
17 and that's why we have 17 women's programs at Boston
18 College, and 14 men, because we have men's ice
19 hockey and men's football.

20 MR. SPANIER: That's not how I
21 understood your question. You were asking if you
22 left walk-ons out of the formula, would that help
23 with Title IX compliance? Absolutely. Is that what
24 you're asking?

1 MS. deVARONA: I thought the
2 question was if you left formulas --

3 MS. COOPER: No, go ahead. Go
4 ahead.

5 MS. deVARONA: If you left
6 walk-ons out of the formula, you would still have to
7 support those walk-ons.

8 MR. SPANIER: Yeah. It doesn't
9 help on the financial side.

10 MS. deVARONA: Would it save
11 wrestling and swimming and gymnastics? I mean,
12 would those programs still exist? Would that be the
13 end result?

14 MR. SPANIER: It could. It's
15 saving her tennis program. It could save the
16 program, but I look at that more in relation to
17 participation opportunities for men.

18 I mean, as it is now, wrestling
19 is only, God -- wrestling is an equivalency as
20 opposed to a head-count sport. What, it's
21 nine-point-some scholarships that have to be divided
22 up among, let's say, 25 people, but I know we have
23 39 who showed up and wanted to wrestle. We told the
24 coach, huh-uh, you can't have them all. You've got

1 to cut them back.

2 So it really doesn't affect --
3 for us that's not so much a financial issue as we
4 had to tell ten guys, or whatever, you're off the
5 team, and that's ten less than that we had to count
6 against our equity report. So yes, it would be
7 great for those ten male athletes if we could leave
8 the walk-ons out of the picture. That's the way I
9 would see it.

10 MR. JONES: Can I ask a quick
11 question, just a point of information? Who is it
12 that decides what sports are head-count sport versus
13 equivalency sports? Is it the NCAA, or who makes
14 that determination?

15 MR. SPANIER: The NCAA, yes.

16 MS. GROTH: The walk-on student
17 athletes, at least at Northern Illinois University,
18 are treated the same way as our scholarship
19 athletes. I mean, they receive the same
20 opportunities to train, and they get the uniforms,
21 and so on and so forth. The only difference, at
22 least at our institution, is the scholarship. And I
23 would be opposed to not counting walk-ons, because
24 they're receiving the same opportunity, virtually,

1 as the scholarship.

2 MS. YOW: And Cary, why would
3 you be opposed to doing that?

4 MS. GROTH: Well, I think it's
5 because, you know, have football programs, some
6 football programs. In our case, I think our biggest
7 walk-on sport is baseball. You know, and I think
8 there's a time where you have to say, are these
9 numbers realistic at our institutions to support?
10 You know, whether they're walk-ons or scholarship
11 athletes, you know, uniforms and so on and so forth,
12 so to take walk-ons out of the mix, I think would
13 not be good because they are receiving the same
14 benefit as a scholarship athlete. And I'm not sure
15 if that's what you're suggesting.

16 MS. YOW: I think I am. You
17 would still maintain control institutionally of how
18 many walk-ons you would allow on any respective
19 team. You would still have control of that. You
20 just would put that -- you would empower the
21 institution to make those choices for those young
22 men who are not going to be receiving scholarships,
23 and probably aren't going to be competing either,
24 but at least they are going to be practicing, so you

1 give them the opportunity to have the experience, be
2 that as it may, and then you would decide, just like
3 I would and like Bob would, and anyone else as an
4 AD, within the scope of your own budget, how many
5 you could allow to walk-on.

6 MS. GROTH: Yes. I guess maybe
7 I misunderstood you, Debbie. I thought you were
8 suggesting that we don't count walk-ons as part of
9 our participation numbers.

10 MS. YOW: I am. I am, in fact.
11 I am suggesting that, and then suggesting that you
12 institutionally set your own limits for your
13 walk-ons.

14 If you said -- if we said
15 theoretically, let's do that, I might be having a
16 talk with Coach Friedgen, and maybe we're talking
17 about it, and I'm saying, you know, how do you feel
18 about, instead of 109 total, how about 120? And so
19 that would be an institutional decision to allow 11
20 more walk-ons and just choose that sport.

21 It would be that same way. But
22 you might decide that your coach needs 125, and so
23 you decide you're going to allow him to have 125
24 total, 85 of which are scholarship, and the rest are

1 walk-ons, but it would be an institutional decision.
2 And they're not going to play. You know that. But
3 they're going to be able to go to practice. And
4 they'll have the experience, and because there's
5 a -- you know, there's a -- we haven't even talked
6 about the value to the institution, the far-reaching
7 value of having an individual be allowed to do that
8 and how they feel about the institution later when
9 they go out and start doing well professionally and
10 have to make choices about whether or not they're
11 going to give back to their institution.

12 I know again, to pick on tennis,
13 one of my assistant ADs was captain of the tennis
14 team, and he works for us, and he understands the
15 situation, but his roommate, who was his doubles
16 partner, refuses, will not give us any money, and
17 Terry just will never give us money. He's not going
18 to, and the reason he didn't is, you know, he's glad
19 we existed, but we didn't have scholarships, and,
20 you know, he's just not going to do that.

21 But there will always be some
22 that will be grateful that you had -- that we
23 allowed them to exist, and they can give back
24 because they have that closer connection to the

1 institution.

2 MS. GROTH: And I agree with
3 you, and I think you're picking on tennis, because
4 you know I'm a former tennis coach, in all honesty.

5 At Maryland, what would it do to
6 your numbers if you did what you're suggesting? You
7 had indicated yesterday that you're in compliance.
8 We believe that to be true, but what would happen at
9 the University of Maryland, case in point, if you --
10 if you put caps, or if you decided the walk-on
11 limitations for men's and women's programs, where
12 would you end up; do you think?

13 MS. YOW: We would end up, you
14 know, we should be around 52-48, and we probably end
15 up around 55-45. That's probably what would
16 happen. We would set our own limits. Financially,
17 we'll set our limits. We're not going to let a team
18 just have unlimited number of walk-ons, because even
19 though they're not receiving scholarships, there is
20 some other expenses associated with, as you pointed
21 out, the services provided, academic support,
22 trainers, equipment, that kind of thing, so there
23 will always be limits.

24 But you know what's neat is we

1 get to choose. We get to choose in our institution
2 what that number would be for the number of walk-ons
3 for the wrestling team and men's swimming team. We
4 don't get that choice in that way now.

5 MS. GROTH: Are you at all
6 worried about -- I mean, you may be reasonable and
7 logical in your decision in making that choice, but
8 if we had a blanket statement out there that said it
9 was -- institutions could choose, I mean, I would be
10 afraid that we would end up in a situation we were
11 in 30 years ago, perhaps.

12 MS. YOW: Interesting point, and
13 I think has some validity, and it goes to the issue
14 of trust, of course, trusting other human beings,
15 and some of us who were disadvantaged all those
16 years have a tendency to not trust, which I think is
17 reasonable.

18 It could be, Cary, that there's
19 a number of walk-ons that are allowed to occur that
20 aren't counted against you in the Title IX numbers,
21 but there's a cap on that. Maybe it's 20 percent of
22 the number of scholarship athletes you can have. So
23 you take, you know 20, percent, choose a sport,
24 wrestling. You know, I don't know what percentage

1 it would be, but that would -- that could be
2 managed, I think.

3 MR. LELAND: Let me -- let me --

4 MR. JONES: I would like to ask
5 a question, just a follow-up on that.

6 MR. LELAND: Okay. But we need
7 to move off this question fairly soon, so go ahead.

8 MR. JONES: I'm curious why it
9 is in that instance, you know, trust would be the
10 thing that you would be relying on, and why there
11 wouldn't be -- if you suggest that, you know, a
12 walk-on is it entitled to all the same benefits as
13 any other athlete, why finances, budgeting, you
14 know, facilities, all the institutional, the
15 structural limitations, that an institution wouldn't
16 provide a limitation as opposed to just relying on
17 trust? That, I guess I just don't understand why
18 your budget wouldn't serve as a limitation.

19 MS. GROTH: It just -- I mean,
20 and again, it goes back to institutions or
21 divisions. I think it's a -- you know, if we had a
22 blanket statement that said you didn't have to count
23 walk-ons, you know, it's going to be a much
24 different scenario at an institution like Northern

1 Illinois University versus a Maryland versus a
2 Division 2 or Division 3. I mean, it's just -- it's
3 not that simple, I guess. I think that's the point
4 I'm making.

5 MR. SPANIER: You have to build
6 in some other safeguards.

7 MS. GROTH: Exactly. And I wish
8 it was as simple as Debbie says, that we trust. I
9 do. I think all of us wish it was that way in this
10 profession. It just isn't.

11 MR. LELAND: Go ahead.

12 MS. deVARONA: I just think we
13 should try to think of how this could be
14 circumvented to -- I'm really in favor of
15 accommodating excellence in kids that want to
16 compete and using our facilities to do that, and not
17 depriving people of either gender the opportunity.

18 I feel we -- in this discussion,
19 we are making the presumption that everybody is in
20 compliance, and since most of the world, in most
21 universities the schools are not in compliance, you
22 know, we still have to protect that, which we said
23 in the beginning, protect that option. But I
24 think -- we're not going to solve it here, but I

1 really think we should think, you know, down the
2 line about how we can do it, how it wouldn't be
3 abused, because I think we have an obligation to
4 support the needs and interests of all our
5 athletes. That's just my comment.

6 MR. LELAND: Okay. Any other
7 comments on question No. 5?

8 MS. COOPER: Good. Time up.
9 Question No. 6.

10 MR. LELAND: According to me,
11 it's not 10:55, it's 11:55, so let's make our
12 comments as succinct and cogent as we can. I don't
13 need -- oh, I guess I should read it.

14 In what ways do opportunities in
15 other sports venues, such as the Olympics,
16 professional leagues, and community recreation
17 programs, interact with the obligations of colleges
18 and school districts to provide equal opportunity in
19 athletics? What are the implications for Title IX?

20 Let me break out here. I think
21 for most of us in higher education, those of us on
22 this Commission, it's been hard to make these
23 connections. So, as a matter of fact, I think when
24 I had this sort of the same reaction, although I've

1 been intimately involved with a lot of international
2 governing bodies, and we have a lot of athletes who
3 competed, it's not one of my highest priorities to
4 provide the next set of Olympians.

5 I know Donna will give me input
6 on that, but go ahead. I just want to start it.

7 MR. BOWLSBY: Well, I've been
8 asked this question a number of times when I was
9 chair of the NCAA's Olympic Sports Committee, and we
10 get asked it in the context of our student athletes,
11 and football and men's basketball, and now women's
12 basketball, moving on to the professional ranks, and
13 those that have ice hockey and some other things are
14 asked it, as well. I've always thought the same way
15 about the high school experience, relative to the
16 college experience, that I do about the college
17 experience relative to the professional ranks or the
18 Olympic ranks or any post-higher education
19 participation.

20 In my opinion, it is a highly
21 desirable by-product of a quality high school
22 activities experience to prepare those students, and
23 that are capable and willing and interested, to move
24 on to the college level. Likewise, at the college

1 level, I think a highly desirable by-product of a
2 quality collegiate athletics experience is a
3 preparation that those who are gifted enough and so
4 inclined would have an opportunity to prepare
5 themselves through our programs for an Olympic
6 experience or a professional experience. It isn't
7 fundamental to our charge. It isn't what I would
8 consider our core business, but it is a highly
9 desirable by-product of a quality collegiate
10 experience.

11 MS. deVARONA: I'm going to take
12 responsibility for this question, because I think
13 it's the only way we can think outside the box, and
14 when we were talking about walk-ons and using the
15 best training grounds and the facilities that we
16 have in this country that are supported by
17 taxpayers' money, the only way we're going to be
18 able to accommodate these minor sports, if we don't
19 progress in this Commission and come out with some
20 recommendations, is to pool resources and bring
21 these people onto the campuses and fund-raise that
22 way and, you know, have Olympic days in our schools
23 and things like this that we have never been
24 prepared to do.

1 And I think a lot of it has to
2 do with turf issues and focus, because we're so
3 busy. And because of past relationships between the
4 AAU and Walter Byers and the Olympic Committee, I
5 think we're in a different place, and, you know,
6 maybe the least we could do is not address the
7 specifics of this, but that we recommend that the
8 leadership in government and whatever create a
9 commission to continue the dialogue, and how we can
10 pool our resources to continue to benefit the
11 athlete.

12 Because as an athlete, I'm loyal
13 to my YMCA, my club coach. I wish I could have, you
14 know, claimed a college scholarship. I didn't. But
15 we pass through the system, and when you go through
16 each one, there's all these turf battles. "I
17 developed that athlete." You know, the NCAA claims
18 they've put so many people on the Olympic team.
19 Well, that person came probably from a club
20 program.

21 And I also think the
22 professional leagues have an obligation, whether
23 it's a national lottery to support the walk-ons? I
24 don't know, but we can't even get to think that way

1 if we don't acknowledge we should be thinking that
2 way.

3 And that's -- I feel passionate
4 about this, because that's the only way we're really
5 going to accommodate more people.

6 MR. BATES: I agree with Donna.

7 MR. LELAND: The old ditto, huh?

8 MR. BATES: Ditto.

9 MR. GRIFFITH: I disagree, and I
10 don't want to disagree when she's feeling passionate
11 and I'm sitting next to her. Maybe I ought to go
12 over there. Title IX is linked to education.

13 MS. COOPER: Microphone.

14 MR. GRIFFITH: Oh. Title IX is
15 linked to education. We're talking about the
16 federal government setting standards for how we act
17 in education. Education is primarily about not -- I
18 don't think it's primarily about preparing people
19 for the Olympics. I think it is a by-product. I
20 think it's a healthy by-product. But I think the
21 primary goal here has to be athletics within the
22 context of education, higher education, high school
23 education. And I think sometimes those goals
24 coincide, and that's happened, but they don't

1 always, and I don't think that the purpose of
2 Title IX is to -- well, I won't say that. Anyway,
3 I've made the point. I think it needs to -- I think
4 we need to think inside the box.

5 MS. deVARONA: Are we the
6 Athletics in Opportunity Commission?

7 MR. GRIFFITH: Yeah, but it's
8 related back to Title IX, which is linked to
9 education.

10 MS. McGRAW: I just want to say
11 I agree with Tom and, I think, with Bob, that it is
12 a healthy by-product, but it is not our commission.

13 MS. SIMON: I agree with John,
14 as well.

15 (At this time Mr. deFilippo and
16 Ms. McGraw left the room.)

17 MR. BATES: But let's go back a
18 moment now. While I think that we could clearly
19 make some separations here, but it seems to me that
20 we rely on K-12 as a feeder system to college, and
21 to sit back and say that Olympics is not somehow
22 part of that, I think would be -- would be
23 shortsighted, and we get to this because we've heard
24 a lot of testimony about, quote, the Olympic sports

1 and what's happening to them, and I think if we're
2 going to respond to that, we can't leave that
3 outside of the box. That's why I said that I
4 clearly do agree. Although I understand where the
5 lines are drawn, it seems to me when you talk about
6 quote, the greater good, it would be difficult for
7 me to leave that out of the mix, particularly with
8 all we've heard from the Olympic sports people and
9 what's happening to them and what we might do as a
10 way to support that effort. That's why I'm in
11 agreement, but I do understand that it's not our
12 central job, but we do need to take a look at that
13 to see what we might be able to do.

14 (At this time Ms. Simon left the
15 room.)

16 MS. COOPER: Any more
17 comments?

18 MR. LELAND: I think we've heard
19 enough to craft something. You know, it's sort of a
20 tentative answer to that one. Last one. We're
21 moving, right?

22 Apart from Title IX
23 enforcement -- it's on the next page -- are there
24 other efforts to promote athletic opportunities for

1 male and female students that the Department might
2 support, such as private-public partnerships and to
3 support the efforts of schools and colleges in this
4 area?

5 MS. COOPER: Is that what you
6 were --

7 MS. deVARONA: This goes back
8 to --

9 MR. LELAND: This is our
10 outside-the-box question.

11 MS. deVARONA: Well, it could go
12 to the endowment question.

13 MS. PRICE: Nobody else leave
14 until we finish this or we will lose our quorum.

15 MS. deVARONA: It could go to
16 the endowment question.

17 MR. LELAND: Yeah, I think
18 Donna's -- I mean, this is a good place Donna's
19 been, I think, all along concerned about, what
20 happened to her at UCLA when the people wanted to
21 step up and endow something or help a position, you
22 know, and when it was going to get dropped, and they
23 weren't able to do it because of proportionality,
24 and that just sort of flies in the face of fairness,

1 and, "Gosh what's going on here?"

2 And, you know, this may be the
3 spot to say that's something that we've seen as a
4 flaw in the system. We don't necessarily have a
5 solution for it right now, but it certainly is
6 something -- and I get that a lot from people. You
7 know, "That seems the height of unfairness that I'm
8 willing to support this wrestling team, and we could
9 raise X number of dollars, and they still won't let
10 me do it because of the women." You know, that's
11 what you hear, sort of the extreme end of the
12 argument, but that's probably -- it's clearly an
13 unfortunate by-product of the way the thing has been
14 enforced and interpreted and the way people feel
15 about it, so I'm not sure it's accurate, but that's
16 the way --

17 MS. PRICE: Regarding this
18 question, when I was going through all the questions
19 and thinking who we've heard from, who we haven't
20 heard from, who do we need to hear from, I draw a
21 blank in trying to figure out who we need to hear
22 from, what kind of question, maybe a briefing paper.
23 So if you could help me with direction on that,
24 particularly related to this question, I would

1 appreciate it, because, you know, do we need to
2 know, are there legal boundaries? Should I persist
3 after that? So I really do draw a blank on this
4 question, so any help from you all would be
5 helpful.

6 MS. GROTH: Ted, regarding this
7 question, I think what comes to mind, besides the
8 higher education, are the high schools pay-for-play
9 today, particularly I'm talking about Chicago Public
10 League and some of the suburbs. I worry about the
11 discontinuation of physical education and some of
12 the athletic opportunities at our primary and
13 secondary levels, as well, so I think if I had an
14 effort in some way, that that's where it would be
15 focused.

16 MR. LELAND: Yeah, I think
17 that's a -- I haven't thought of it that way at all,
18 but that happens to be a real, you know, area of
19 interest for me is, you know, how can the Department
20 of Education and other people, you know, fight this
21 retreat we've had from physical education and health
22 and fitness in our schools, because we really have
23 done that, in my opinion, all the way through. And,
24 you know, if this is the right spot to take that on,

1 we ought to think about having somebody come and
2 talk to us. I think that's been an issue with the
3 administration, too, so they seem to be, you know,
4 very interested in this whole topic, so --

5 MS. PRICE: It's a shame that
6 Lisa is not here any longer, because Lisa, as
7 superintendent of schools in Arizona, and currently
8 the president of the Education Leadership Council,
9 knows very clearly about, not only this issue, but
10 the issues that affects K through 12, and some of
11 this you get into areas that go beyond what the
12 department, you know, some -- you know, the
13 department doesn't get into areas of curriculum and
14 some of those things, and it would be good to have
15 Lisa. Maybe we could ask Lisa some questions on
16 this.

17 MR. LELAND: Okay. This is the
18 last of our questions. Anybody else? Okay. Is
19 that -- I think we worked our way through that. I
20 think we did a great job. And we didn't hurt
21 ourselves with our little digressions, right?

22 MS. PRICE: And if they want to
23 submit any more comments or statements, please do.

24 MR. LELAND: Yeah. Let's leave

1 it this way. There are box lunches in the --

2 MS. PRICE: Same room.

3 MR. LELAND: -- same room that
4 we had breakfast in. Thank you for coming, and
5 please get us your list of potential invitees so
6 that we can -- we need them early, because part of
7 the reason we've worked the way we've worked with
8 these is because we have to invite them and get them
9 to come. So try to get them to us in the next 24
10 hours by e-mail, and then we'll sit down and either
11 send an e-mail out to all you guys, or we'll have a
12 conference call.

13 WHEREUPON, the within
14 proceedings were concluded at the approximate hour
15 of 12:02 p.m. on the 23rd day of October, 2002.

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21 The Secretary of Education's Commission on

22 Opportunity in Athletics 10/23/02 (tcm)

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REPORTER'S CERTIFICATE

STATE OF COLORADO)
) ss.
 CITY AND COUNTY OF DENVER)

I, TRACY C. MASUGA, Registered Professional Reporter and Notary Public, State of Colorado, do hereby certify that the within proceedings were taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form, consisting of 169 pages herein, and that the foregoing is a true transcript of the proceedings had.

IN WITNESS WHEREOF, I have affixed my signature this 28th day of October, 2002.

My commission expires April 24, 2004.