U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING ON THE EFFECTIVENESS OF
HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

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FRIDAY,
MAY 5, 2006

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The Commission meeting was held in Room 540, 624 Ninth Street, N.W., Washington, D.C., at 9:30 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
ABIGAIL THERNSTROM, Vice Chairman
JENNIFER C. BRACERAS, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

Kenneth L. Marcus, Staff Director

STAFF PRESENT:

JOHN BLAKELEY
TERESA BROOKS
MARGARET BUTLER
CHRISTOPHER BYRNES
DEBRA CARR, ESQ., Associate Deputy Staff Director
RANILA CARTER
IVY DAVIS, Regional Director
BARBARA DELAVIEZ
PAMELA A. DUNSTON, Chief, Administrative Services and Clearinghouse Division
BARBARA FONTANA, Library
LATRICE FOSHEE

STAFF PRESENT (Continued):

PATRICIA JACKSON, Chief, Budget and Finance Division
SOCK-FOON MACDOUGALL
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor/Parliamentarian
EILEEN RUDERT
VANESSA WILLIAMSON
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS

PANELISTS PRESENT:

LOUIS W. SULLIVAN, Chair of the President's Board of Advisors on Historically Black Colleges and Universities, Founding Dean and First President of Morehouse School of Medicine, and Former Secretary of Health and Human Services

EARL S. RICHARDSON, Professor, Morgan State University, and Former Chair of the President's Board of Advisors on Historically Black Colleges and Universities

JAMIE P. MERISOTIS, President, Institute for Higher Education Policy

RAYMOND C. PIERCE, Dean and Professor, North Carolina Central University School of Law and Former Deputy Assistant Secretary for Civil Rights, U.S. Department of Education

MIKYONG MINSUN KIM, Associate Professor of Higher Education and Director of the Virginia Campus Higher Education Administration Doctoral Program, George Washington University

C O N T E N T S

PAGE

P-R-O-C-E-E-D-I-N-G-S

(9:31 a.m.)

CHAIRMAN REYNOLDS: In any event, on behalf of the Commission on Civil Rights, I welcome everyone to this briefing on the effectiveness of historically black colleges and universities.

The Commission frequently arranges such public briefings with presentations from experts outside the agency in order to inform itself and the nation of civil rights issues. At this briefing, a panel of experts will advise the U.S. Commission on Civil Rights concerning the effectiveness of historically black colleges and universities. These institutions have been pivotal in educating students, especially African American students. And this was being done when blacks had no other opportunities.

Amongst the topics to be addressed is how these schools adequately prepare students for the 21st Century.

This morning we are pleased to welcome five experts on the effectiveness of historically black colleges and universities:

The Honorable Dr. Louis Sullivan, Chair of the President's Board of Advisors on HBCUs;

Dr. Earl Richardson, President of Morgan State University;

Mr. Jamie Merisotis -- and if I mispronounce anyone's name, please, stop me and let me know -- he is the founding President of the Institute for Higher Education Policy;

Raymond Pierce, the Dean of North Carolina Central University School of Law;

And Dr. Mikyong Minsun Kim, Associate Professor of Higher Education and the Director of the Virginia campus of Higher Education Administration Doctoral Program at George Washington University.

I welcome all of you on behalf of the Commission. I will introduce everyone and describe your activities, and then I will call on you according to the order in which you have been given for the record.

The Honorable Louis W. Sullivan is the founding dean and the first President of Morehouse School of Medicine in Atlanta, Georgia. With the exception of his tenure as Secretary of the U.S. Department of Health and Human Services from 1989 to 1993, Dr. Sullivan was President of the Morehouse School of Medicine for more than two decades.

On July 1st, 2002, he left the presidency, but continues to assist in national fund raising activities on behalf of the school and he is an adjunct Professor of Medicine.

A native of Atlanta, Dr. Sullivan graduated magna cum laude from Morehouse College and earned his medical degree cum laude from Boston University School of Medicine. He is certified in internal medicine and hematology.

Dr. Sullivan became the founding dean and Director of the Medical Education Program at Morehouse College in 1975. He left Morehouse School of Medicine in 1989 to join President George H.W. Bush's cabinet as the Secretary of the U.S. Department of Health and Human Services. Dr. Sullivan's tenure, 47 months stands as the longest of any HHS Secretary in history. Dr. Sullivan's accomplishments are too long to list.

Welcome.

Next we will have Dr. Earl Richardson, who was appointed the 11th President of Morgan State University on November 1st, 1984, after serving eight months as interim President.

Dr. Richardson holds a Bachelor's of Arts degree in social science from the University of

Maryland, Eastern Shore, and both a Master's of Science degree and a Doctorate in education administration from the University of Pennsylvania.

He was Assistant to the President of the University of Maryland system and Executive Assistant to the Chancellor, Director of Career Planning and Placement and Acting Director of Admissions and Registration at the University of Maryland's Eastern Shore.

Again, we will have the same problem with all of our panelists. Their CVs run page after page. So I'll cut it off here, but needless to say, we have an accomplished group of men and women here today.

Next we have Jamie Merisotis, who is the founding President of the Institute for Higher Education Policy established in 1993 in Washington, D.C. The institute is regarded as one of the world's premier research and policy organizations concerned with higher education policy development.

As the institute's President, Mr. Merisotis has worked extensively on nearly every aspect of the institute's work. He is recognized as a leading authority on college and university financing, particularly student financial aid and has published

major studies and reports on topics ranging from higher education ranking systems to technology based learning.

Mr. Merisotis has managed the institute's growing global portfolio working to further educational opportunity and access primarily in nations in transition, such as in southern Africa and the former Soviet Union.

Raymond Pierce. Raymond and I have crossed paths in the past. We have both spent some time in the Office of Civil Rights at the Department of Education. That's where I got to know Raymond initially. We didn't serve at the same time, but I guess it's like it becomes a club.

In any event, Raymond C. Pierce was appointed Dean of North Carolina Central University School of Law in July of 2005. Prior to his appointment, Dean Pierce had a successful career in the national law firm of Baker, Hostetler.

As a partner in the firm's office in Cleveland, Ohio, Dean Pierce, his legal practice concentrated in business transactions and public policy. In addition he served state governments with higher education and pension investment related

matters and was also a member of the law firm's federal policy group based in Washington, D.C., where he assisted clients with government related issues.

Prior to joining Baker & Hostetler, dean Pierce was a candidate for the Mayor of Cleveland, and despite the fact that I belong to a different tribe politically, I was rooting for you.

(Laughter.)

CHAIRMAN REYNOLDS: From 1993 to 2000, Dean Pierce served as Deputy Assistant Secretary for Civil Rights at the U.S. Department of Education. While Deputy Assistant Secretary, Dean Pierce managed the enforcement of federal civil rights laws and education and the development of federal civil rights education policies.

Pierce led the development of the administration's federal education and civil rights policy in response to the 1992 U.S. Supreme Court decision in Ayers v. Fordice, which addressed equal protection and higher education opportunities for African American students and the impact of state policies on historically black colleges and universities.

Once again, a very long CV.

And next we have Dr. Mikyong Minsun Kim, and she is an Associate Professor of higher education and the Director of the Virginia campus Higher Administration Doctoral Program of George Washington University. Former posts includes faculty positions at the University of Arizona at Tucson and the University of Missouri at Columbia.

She also served as a grant panelist and consultant for the National Science Foundation. She has been actively engaged in contributing to the field of higher education. Her teaching and research interests include college impact, comparative higher education, finance, equity, and opportunity issues.

While she encompasses a wide range of interests, she has dedicated a great deal of her focus on the impact and effectiveness of historically black colleges and universities on African American students.

Welcome.

Dr. Sullivan, you're up first.

DR. SULLIVAN: Well, thank you very much, Mr. Chairman and members of the Commission.

My remarks are entitled "Contributions of Historically Black Colleges and Universities to the

Nation." I appreciate very much this opportunity to appear before you.

For more than two centuries, our country has struggled with the social and economic consequences of former systems of legally sanctioned slavery of its black citizens in our southern states, followed by decades of legally sanctioned segregation and discrimination based upon race.

The majority of the nation's historically black colleges and universities were created in the second half of the 19th Century, following the Emancipation Proclamation by President Lincoln which abolished slavery on January 1st, 1863.

Many of our nation's black colleges were created by religious organizations and others by state governments following that time. With passage of voting rights legislation in the 1960s and other legislation designed to eliminate the vestiges of segregation and discrimination, the question has arisen about the need for or the educational effectiveness of historically black colleges and universities.

For most young people entering college, this is their first experience away from home for an

extended period. It is a time of socialization, of developing a clear identity, and a time for reinforcing their values. It is during this time that young people move from the familiar, protected environment of home to the new, more open and challenging, less secure ambiance of the college campus.

For some African American young people, this interplay of academic, social, and personal development which occurs on the campus of historically black colleges and universities during their transition from home to the wider world can have a profound influence on their development as scholars, as future family members, as members of the country's work force, and as responsible citizens.

An example of this is illustrated by the number and percentage of graduates of some HBCUs who are successful in gaining entry to and graduation from schools of medicine, engineering, law, and other fields.

For a number of HBCUs, these percentages are equal to or even exceed the outcomes achieved by African American students and graduates from predominantly white colleges and universities which

are usually wealthier and older. Among the nation's HBCUs who have demonstrated this level of success and their graduates are such institutions as Xavier University in New Orleans, Spelman College in Atlanta, Morehouse College, Atlanta, Florida A&M in Tallahassee, Florida, North Carolina A&T University in Greensboro, Jackson State University, among others.

This phenomenon may also be seen at the professional school level. Here I wish to share with you an experience I've had at the Morehouse School of Medicine, a predominantly African American medical school founded in 1975 by Morehouse College for the purpose of increasing the number of African American and other minority positions in Georgia and the nation.

Our institution began with modest financial resources, getting its first class as a medical school in 1978, becoming a four year school of medicine in 1981 and receiving full accreditation in 1985.

Today we have 800 M.D. alumnae. They include the Commissioner for Health of the State of Georgia, a Vice President of a large, prestigious medical school and the personal physician of the

President of South Africa, and physicians who are providing services in medically under served rural and inner city areas.

Today our students pass medical examinations given nationally at rates equal to or exceeding the rates of all medical students nationwide, although we are one of the youngest medical schools in the nation.

What accounts for this experience of our students, as well as the graduates of other HBCUs? There are multiple factors, including the dedication of the faculty to their teaching responsibilities, the support of social environment, the strong encouragement given to the students to explore a full range of career responsibilities, including leadership roles in those careers. That includes business, the sciences, public service, education, and other fields.

And the fourth item is the role model for these students that they see among the faculties of HBCUs.

As U.S. citizens, all of us look forward to the time when the lingering vestiges of segregation and discrimination will no longer be present in our society, but our experience as a nation has shown us

that we have not yet reached that goal and to reach it will require the sustained, dedicated efforts of all of us. That includes the contributions of our nation's HBCUs to our nation's higher education communities and the effectiveness of HBCUs in facilitating the academic, social, and personal development of a significant number of our nation's African American and other minority citizens.

Thank you.

CHAIRMAN REYNOLDS: Thank you.

I should have mentioned at the onset that the comments will be restricted to ten minutes.

Next up we have Dr. Richardson.

DR. RICHARDSON: Thank you very much, and thank you for inviting me to present at this particular forum.

Obviously when you are following Lou Sullivan, someone who has been at this a long time, you always have a sense of trepidation that he's going to say everything that you planned to say, and he did.

(Laughter.)

DR. RICHARDSON: But I think that the fact that he did say what he said speaks to the topic today, the effectiveness of our historically black

colleges and universities.

I'm not good for following text. So if I deviate, you'll understand, and it comes from the soul rather than the paper.

I think that Dr. Sullivan referred to the legislation that kind of changed the landscape for us. One piece of legislation was the Civil Rights Act of 1964. I think that since the Civil Rights Act of 1964 and the early efforts of our federal government to enforce those acts, that, in fact, there has been that discussion about the future role of historically black colleges in contemporary higher education.

And I think it has been that concern primarily because there was some misunderstanding from the very beginning as to the sum total of our historically black colleges, that is, they were often thought of simply as institutions for black citizens.

Well, the fact of the matter is they were founded as institutions that did not discriminate, but that were open to students regardless of their race. The circumstance was, in fact, that that was the only place for many of our black students to get an education in the southern states. And because there was such a high concentration of African Americans in

the South, then today many of our prominent African American leaders, Dr. Sullivan being one of those, as you went through his dossier, are graduates of our historically black colleges and universities.

In our own State of Maryland, of course, that is, indeed, the history. Among the Morgan graduates who would be the first black Senator in the state, would be the first judge of the state court, would be the first Chief of the Court of Appeal, the highest court in Maryland, would be the first to be elected or to be appointed to a statewide office, the State Treasurer's Office, and you could go on and on and on with that.

And I think that it is very, very significant that but for the historically black colleges, those leaders would not be in those positions.

I think, yes, the Civil Rights Act did change the game a bit, and changed the game a bit because I believe that it was, again, the notion that we were looking at how we integrated white institutions by bringing black students to those universities rather than how do we create open access and choice for students regardless of their race,

meaning, of course, that you could increase the number of African Americans going to our traditionally white institutions and hopefully attract more white students to our black institutions for a fully integrated, a fully desegregated system of higher education.

I think we all know the story that, in fact, much of the effort initially was increasing the number of blacks in traditionally white institutions, which then was a little devastating for our historically black colleges, one, because there were great financial incentives offered to those black students as they often are now to come to their institutions.

The other was because our historically black colleges had not been developed to the level of the traditionally white institutions, meaning the investment had not been made, you did not have the quality of facilities. You did not have, in fact, the variety of programs. So the program options were limited.

But even with all of that, the historically black colleges became the mainstay of access for our black students.

Of course, when we looked at the public

schools, that devastation was quite clear to us. For K through 12, many of our black schools were closed throughout the country as black students were brought to the better supported white elementary and secondary schools.

At higher education, the same thing had started to occur until the initiative to enhance our black colleges. You had our black students being attracted away, and we did not have in return the white students coming to our black institutions, and so the enrollment that many of these black schools had declined significantly in the '70s, and only now have we been able to regain that posture as, in fact, our institutions have been developed to a greater point here.

I think it was, indeed, a certain set of circumstances that caused our black colleges and universities to be different from our elementary and secondary schools in terms of their fate. One was that around '75 or there about was the initiative to enhance our black colleges, to create parity and comparability between our black institutions and our white institutions so that they could be equally competitive to students regardless of their race.

Of course, that is still a task that is yet to be accomplished, and that is the creating of comparability and parity between our institutions.

But there were also other positive factors, and one is that there was a core of African Americans who, regardless of their choices, felt loyal to the black colleges and so stayed with the black college community.

The third was the changing demographics. During the '60s, there was significant increase in the young African American population, that by 1980, meaning that the college age students had grown significantly, while at the same time there was a little decline in the numbers of white students that were going to college or of college age.

The fourth factor, of course, was that of the selectivity, the increasing selectivity of our traditionally white institutions. Fascinated with the various rankings, the U.S. news report, and some of the other rankings, our institutions began to look at the SAT scores of the entering class as being the indicator of how effective and how prestigious they would be.

All of that being said then, our

historically black colleges continued then to be institutions very, very important for granting access to African Americans, but even with all of the success of our African American institutions, the educational attainment of African Americans still lagged significantly that of white students. And if you look at the indicator that we can sometimes use, perhaps one of the best indicators, and that is the educational attainment of young people, ages 25 to 29, students with Bachelor's degrees or greater.

There's a great disparity there, as you know, between blacks and whites. In 1970, if you use 1970 as the base date because that is, in fact, the time when we began to put so much emphasis on parity, equity, affirmative action, in 1970 the differential was about ten percentage points.

Today it's about 17 percentage points, and if you look at the increase in population, that represents significant numbers in terms of how many it would take in black American graduates to then have parity with the percentages in white student graduates with a Bachelor's degree and above.

In 1970, you could have created parity with about 160,000 more African American

baccalaureates and above. Now that number is about 400,000, which means that we would have to double the number of graduates, African Americans, in order to achieve parity in the age group 25 to 29 with a Bachelor's degree and higher.

Well, with all of that, our historically black colleges have been the mainstay. Okay. Time is getting up, but the point is that our historically black colleges are the institutions that are producing the largest number and could have the greatest impact, and therefore, should be the group of institutions that we give a lot of attention as we move forward this next century and beyond.

CHAIRMAN REYNOLDS: Thank you, Dr. Richardson.

Mr. Merisotis.

MR. MERISOTIS: Thank you very much, Mr. Chairman, and thank you, members of the Commission for this opportunity to be here at this briefing.

Improving the educational effectiveness of higher education continues to be one of the most important contributions that I think the federal government, states, individuals and the private sector can make to our national well-being. The simple fact

remains that increasing educational opportunities for all Americans results in tremendous public, private, social, and economic benefits.

Going to college is much more than just a process of enhancing your own person economic status. The combination of societal and individual benefits of higher education must continue to motivate what we do at many levels, and I hope it will be an important consideration for the Commission as it takes up this important issue of the educational effectiveness of HBCUs.

At this briefing you're hearing from many distinguished leaders from the community of HBCUs, individuals who speak with a great deal of authority and experience. As a complement to their testimony, I'd like to focus my remarks on several issues regarding the effectiveness of HBCUs that draw from the Institute for Higher Education Policy's combined experience both as an independent research and analytical organization and also as an organization that manages programs on behalf of HBCUs and other minority serving institutions. You can read more about those in my written testimony.

My remarks address four areas concerning

the educational effectiveness of HBCUs. These are somewhat lesser known, but nonetheless critically important ways in which we should be viewing the effectiveness of HBCUs.

They are, first, HBCUs as leaders in student engagement;

Second, HBCUs as community based institutions that promote civic engagement and service learning;

Third, HBCU's as drivers of educational attainment for low income, first generation, and disabled students;

And, fourth, HBCUs as examples of success in a national effort to improve the quality of science, technology, engineering, and mathematics, the so-called stem fields in education and research. In each case, I'll point to a specific example of the effectiveness of HBCUs in this area as illustrations of the type of accomplishments that we've seen in recent years.

Let's begin with the issue of HBCUs in student engagement. One of the most important trends in higher education in the last decade has been an effort to document how well institutions engage in

effective educational practices, that is, activities that are empirically related to desired learning and personal development outcomes of college.

Perhaps the best example of this is the work that has been conducted by the National Survey of Student Engagement, sometimes called NSSE, administered by the Indiana University Center for Post Secondary Research.

NSSE is designed to obtain information from colleges and universities nationwide about student participation in programs and activities that institutions provide for their learning and personal development. The results provide an estimate of how undergraduates spend their time and what they gain from attending college.

Nearly 1,000 higher education institutions have administered NSSE since it began national administration in the year 2000. According to the 2004-2005 NSSE, African American students at HBCUs report more frequent interactions with faculty than African American students at predominantly white institutions.

HBCUs also generally appear to provide more supportive learning environments for students,

including more contact with faculty. Students at these HBCUs report a greater belief that their institutions contribute to their personal spiritual growth and report a higher likelihood that they will vote compared to their counterparts at predominantly white institutions.

These data from NSSE, combined with a significant body of research undertaken by others, suggest that HBCUs provide a superior level of student engagement and, therefore, offer an educational experience that enhances the intellectual gains and accomplishments of students. This increased engagement of students is an important indicator of the effectiveness of HBCUs that deserves closer examination.

Next is the issue of HBCUs and civic engagement. A key national issue is the extent to which institutions of higher education contribute to civic engagement and participation in our democratic institutions, such as voting, volunteering and community involvement. In general, we know that higher education attainment is highly correlated with increased civic engagement.

For example, a 50-state study of the

benefits of higher education published last year by the Institute for Higher Education Policy found that 36 percent of Americans over the age of 25 with a bachelor's degree volunteer compared to just 21 percent of those with a high school diploma.

Similarly, voting rates in national elections for individuals with Bachelor's degrees are nearly 50 percent higher than for those with a high school diploma. Clearly, higher education makes a profound difference in terms of our national civic well-being.

The question for higher education institutions is what specifically they may be doing to foster those goals and values. What opportunities do colleges and universities provide to students in order to foster increased civic engagement?

According to the National Campus Compact, which represents over 950 colleges and universities committed to the civic purposes of higher education, HBCUs do a remarkable job of civically engaging students. The 2004 Campus Compact membership survey found that these institutions are more likely than others to require service and service learning for graduation.

They also found that HBCUs and other minority serving institutions are more likely than other colleges than other colleges and universities to have a community service or service learning office, to have a director of community service or service learning, and to have partnerships with K-12 schools and faith based organizations.

These intentional strategies by HBCUs to engage their students at the community and civic level are not well documented in the national literature about service learning and civic engagement. As an example of the effectiveness of institutions, they point to a profoundly different approach to student success than what is seen at many other colleges and universities.

The third area of effectiveness concerns HBCUs and success for low income, first generation, and disabled students. HBCUs are well known for the opportunities it provides the students who come from educationally and economically disadvantaged circumstances. In so doing, these institutions work hard to provide these students with additional support, guidance, and mentoring that will improve their opportunities to get into and succeed in

college.

For example, the federal government has long supported increased opportunity for these populations through the federally funded TRIO programs. These programs with well known names, such as Upward Bound, Talent Search and Student Support Services authorized under the Higher Education Act provide a continuum of services from pre-college to pre-graduate level study for the nation's low income, first generation and disabled students.

HBCUs demonstrate a high level of commitment to these low income, first generation and disabled students by working hard to participate in the TRIO programs and serve these populations. According to the Council for Opportunity in Education, nearly three-quarters of all HBCUs have TRIO programs, serving nearly 70,000 students.

This compares to less than one-quarter of all other colleges and universities. The more than $70 million in support provided by these programs to serve students at HBCUs goes a long way towards increasing the odds of student success than students who do not have the benefit of these programs.

Finally, there is the issue of quality of

science, technology, engineering, and mathematics, STEM, education and research. At the national level, investments in STEM have been universally accepted as a national imperative. The President's proposed 2007 budget, for example, advocates significant new investments in these efforts as key drivers of the nation's global competitiveness and economic capacity.

However, research indicates that African Americans are significantly under represented both as a percentage of the national STEM work force and as proportion of those enrolling and succeeding in STEM programs at colleges and universities.

One way to enhance the nation's capacity in the STEM fields is to enhance the quality and success of STEM at HBCUs. One example of a very successful program in this regard is the historically black colleges' and universities' undergraduate program, HBCU UP, at the National Science Foundation. This program includes a variety of activities, including curriculum enhancement, faculty professional development, undergraduate research, collaborations with research institutions, and other activities that meet institutional needs.

According to the National Science

Foundation, Math gatekeeper passing rates, that is, courses that are critical to STEM success, such as algebra, pre-calculus and Calculus I, have improved at all 14 of the HBCU UP grantee sites that have had projects in place for five years.

Improvements have also been seen in other STEM gatekeeper courses, such as Biology I and Physics I. Approximately 25 percent of STEM graduates from these HBCUs now have had an undergraduate research experience that better prepares them for success in graduate school.

These brief examples of the educational effectiveness of the HBCUs are not intended to be definitive or conclusive. Rather, they're designed to illustrate that the educational effectiveness of HBCUs has many dimensions that go beyond the simple calculation of aggregate graduation rates, retention rates or job placements.

In assessing the effectiveness of HBCUs, it's critical to consider a wide array of information and data that paint a more complete portrait of effectiveness than might be indicated by more narrowly drawn measures. This more comprehensive picture of educational effectiveness can then be used to provide

a fair assessment of HBCU performance, and in so doing, help to improve the targeting of strategies to continuously upgrade quality and performance at these nationally essential institutions of higher learning.

Thank you very much for this opportunity.

CHAIRMAN REYNOLDS: Thank you.

Dean Pierce.

PROF. PIERCE: Thank you, Mr. Chairman.

I appreciate you all inviting me to this event, and for your comment about OCR being a club. Yes, I do consider that a club, and I'm glad to see another member of the club, Mr. Marcus, here also. Members of the OCR, we don't go away. We continue in our duties.

The value of historically black colleges and universities to our nation is clear. Our nation or any nation benefits from an educated population. Historically black colleges and universities continue to provide educational opportunities for African Americans in significant numbers.

There is no indication that closing public HBCUs would create a comparable shift in African American student enrollment and graduation from traditionally white institutions. The case has been

made for HBCUs in terms of their effectiveness and contribution toward the education of the people of this nation.

My presentation, however, focuses on a real and continuing threat to HBCUs in large part due to the federal government's refusal to enforce federal civil rights laws as they relate to African Americans attending public historically black colleges and universities.

This threat puts in jeopardy the significant contribution HBCUs provide in allowing our nation to be competitive in a world where higher education is necessary for participation in a fast moving, global economy.

For the most part federal civil rights laws affecting historically black colleges and universities came in the aftermath of Brown v. Board of Education and it can pretty much be pulled together in the Adams cases, Adams v. Richardson or Adams v. Caliafano where, at that time, the Secretary of Health, Education and Welfare, Mr. Caliafano, was the subject of litigation along with the Department of Health Education and Welfare and the Office for Civil Rights. Action was brought by private litigants

claiming that the nation's federal civil rights laws as they impact African Americans attending historically black colleges and universities were not being enforced by the agency that was created to actually enforce those laws.

The Office of Civil Rights at that time found 19 states in violation of Title VI of the 1964 Civil Rights Act for failure to equally protect the rights of African Americans attending historically black colleges and universities pursuant to the Fourteenth Amendment of the Unites States Constitution.

These 19 states were required to submit plans to OCR designed to bring themselves into compliance with the 1964 Civil Rights Act. Fourteen of the states submitted acceptable plans and entered into agreement with OCR to implement those plan in order to correct the Title VI violations.

Four states were unable to reach agreement with the federal government and they each proceeded to litigation. Those states were Louisiana, Tennessee, Alabama, (Knight v. Alabama), and of course, the Mississippi case (Ayers v. Fordice) that went all the way to the United States Supreme Court. A fifth

state, Ohio, also was unable to reach an agreement with the federal government and that state was referred by OCR to the U.S. Department of Justice for litigation along with the other four states. Although the Department of Justice prepared papers for litigation against Ohio the case was never filed in court.

The fourteen Adams states that entered into agreements with OCR were required to implement Title VI compliance plans that were based on 1978 federal civil rights policy that was developed by OCR in the wake of the Adams cases. That 1978 federal policy was "The Revised Criteria for the Desegregation of State Systems of Higher Education". That federal civil rights policy really had two parts to it.

Part one was the strengthening or enhancement of historically black colleges and universities, as Dr. Richardson talked about, and the second part was affirmative action. It was not affirmative action in terms of admissions. It was affirmative action in terms of affirmatively recruiting African Americans to attend traditionally white institutions.

The enhancement of historically black

colleges and universities, part on of the policy, was designed to address the real problem that historically black colleges and universities, public HBCUs, were born in apartheid during an era of lawful segregation, and these institution were constricted and restricted in the educational offering they could provide. In addition, the facilities and other resources provided by the states for these institution were substandard in comparison to the state supported traditionally white institutions.

The idea was to strengthen these HBCUs by enhancing existing educational programs and adding new programs that would attract a more diverse student population. These programs were placed at historically black colleges and universities so that they would not only be known as historically black colleges, but as good colleges. And student would select an institution of higher learning not based on just this congregation on the basis of race, but by what it offers in terms of education programming. In addition, enhancing HBCUs was also to address the limited educational opportunity provided African Americans attending HBCUs due to state practices of restricting resources at these institutions.

Now, we understand that historically black colleges and universities for the most part remain predominantly African American, but you cannot say it has been racially steered that way. You cannot say it is because of a state government policy of limitation of educational programs at HBCUs that reduces the attraction of a diverse student population.

Most of the 19 states entered into these compliance plans. As I mentioned, five states did not enter into those plans, and one of those states went all the way to the United States Supreme Court.

In 1988, then U.S. Secretary of Education, William Bennett, directed the Office for Civil Rights to conduct reviews of those states that had entered into agreements to make determinations as to whether or not they were brought into compliance with Title VI of the 1964 Civil Rights Act.

The method of determining compliance was basically a checklist analysis. OCR simply referred to a checklist and asked, "State of Georgia, did you put in affirmative action plans to attract African American students to attend the University of Georgia? And did you, State of George enhance your public HBCUs by placing engineering programs at Savannah

State or Fort Valley State? If you did these things, check, check, check, and your state is now in compliance with Title VI."

Eight states were found in compliance using this checklist analysis policy and were then released from OCR monitoring: Those states were Arkansas, Missouri, West Virginia, Oklahoma, Missouri, Delaware, North Carolina and South Carolina.

That left six states that were not released: Kentucky, Maryland, Pennsylvania, Texas, Florida, and Virginia.

Another state as I mentioned earlier, the State of Ohio, was still lingering over at the Department of Justice awaiting litigation where actually it never was filed.

In 1993, the United States Supreme Court ruled on the the Mississippi case. There the court ruled that states have an affirmative duty, to the greatest extent practical, to remove all vestiges of the past practice of segregation that have a present day effect.

An initial response from the state of Mississippi was to offer to correct the constitutional issue and desegregate the state system of higher

education by shutting down the historical black colleges and universities. There were some conversation by the state that went so far as to propose shutting down Mississippi Valley State University and turning it into a prison.

In 119, OCR publish new federal guidelines for states involved in desegregating their state systems of higher education. This new policy was done in direct response to the Supreme Court decision in Ayers v. Fordice. The new policy elevated the standard of the 1978 guidelines. Pursuant to the 1994 guidelines OCR would now use a vestiges analysis to review states for determination of their compliance with Title VI regarding higher education desegregation. The new standard is no longer a question of whether or not a state instituted programs to enhance HBCUs and affirmative action programs to attract African Americans to traditionally white colleges. The standard now pursuant to the 1994 policy is whether or not a state has taken affirmative action, to the greatest extent practicable, to remove all vestiges of the past practice of segregation in higher education have a present day effect on the educational opportunities of African Americans

attending historically black colleges and universities. It should be understood that Title VI does not protect HBCUs. Title VI protects people. In this situation the protected class of people are African Americans seeking educational opportunity at HBCUs. This allows the remedy to attach to the institution that serves the people resulting in HBCUs receiving increased funding for enhancement as a means of correcting a civil rights violation.

The 1994 "Fordice" policy was used to negotiate resolution agreements with the remaining six states; Pennsylvania, Florida, Texas, Kentucky, Virginia and Maryland. The Ohio case was returned to OCR from the Department of Justice and that state also entered into an agreement based on the Fordice policy.

The plans basically were the same as those for the eight states that were based on the 1978 policy. The only difference was that there was no affirmative action to attract African Americans to traditionally white institution. The focus on these plans was to strengthen those historically black colleges and universities that had been restricted in their educational offerings and to address the remaining vestiges of that past practice of apartheid that were

found to have continuing and present day effects.

The plans based on the 1994 policy were five year plans aw were those based on the 1978 policy. However, unfortunately we began to see in the year 2000, 2001, particularly definitely in 2002, states backing out of these agreements, basically non-performing on these agreements. I would even go so far as to say as a breach of contract, to actually back away from the commitments they had made to the federal government to address violations of federal civil rights laws, while at the same time receiving federal funds to support a state system of higher education.

The problem we face today is almost a revisitation of the situation that led to the Adams cases in the 1970s. There is substantial indication that many of the seven states have ceased performance pursuant to the new agreements, and some of the states, Ohio, particularly, there is actually action being taken to revert back to a policy of constraining HBCUs and their ability to offer attractive educational programs.

I would also add that the same thing is happening in the State of Maryland which has a

devastating impact on Morgan State University.

Clearly, in many cases in these states there is no focus on compliance with federal civil rights laws. In addition, there is strong evidence that HBCUs in some of the eight states that were closed out in 1988 based on the 1978 policy are being negatively impacted by state actions that are in direct contradiction of federal higher education desegregation policy.

The most egregious of these state actions is unnecessary program duplication.

Duplication of programs in colleges within close proximity of HBCUs was historically done for apartheid reasons, and we see that happening again where programs are being placed in close proximity to historically black colleges and universities to once again bring about segregation with the result of weakening the HBCU.

I believe that we will find ourselves in a situation where the litigation that was brought in the Adams cases will once again find its way to the courts again.

Thank you.

CHAIRMAN REYNOLDS: Thank you, Dean

Pierce.

Dr. Kim.

DR. KIM: Thank you. Thank you for the opportunity to testify before the Commission.

I will try to present some of the content from my PowerPoint and written testimony.

For your reference, I studied the impact and effectiveness of women only colleges before I studied the impact and effectiveness of HBCUs. I will speak from my data and research perspective.

First I'll briefly compare the institution and student characteristics of HBCUs with those of historically white colleges and universities.

Second, I'll review the findings of my studies on the effectiveness of HBCUs and compare my findings with those of other previous studies.

Third, I will discuss how HBCUs contribute to the development of African American students in the higher education community

And, fourth, I'll discuss whether and why HBCUs merit strong support.

Briefly talking about demographic information, there are 103 HBCUs in this country. About 30 percent of university degrees are awarded to

African American students from the 89 four-year institutions, 41 public, and 48 private HBCUs.

As some of the panelists already indicated, some reports said a higher percentage of political leaders, lawyers, doctors, and Ph.D. recipients have graduated from HBCUs.

Before we talk about the effectiveness of HBCU's, let me review basic institutional and student characteristics.

HBCUs tend to have academically less prepared students and poorer institutional resources than HWCUs, and HBCUs also tend to have a lower student-factual ration, a lower enrollment, and a somewhat higher student-faculty interaction, which is somewhat consistent with previous panelists.

African American students are more likely to be involved in faculty's research projects at HBCUs (almost one and a half times more likely, based on my national data set).

The degree completion rate for African American students is 55 percent for HBCUs and 63 percent for HWCUs, but college GPAs of African American students did not differ between the two types of institutions.

Let me show you some of my findings. For your inference, for my studies, I used national longitudinal sets, especially Higher Education Research Institute data from UCLA. I also used institutional effectiveness models and rigorous multi-level statistical techniques, so-called hierarchical linear and nonlinear modeling, for the design and analysis of my HBCUs studies.

Initially, the finding of no significant difference throughout three academic outcomes, (especially overall academic ability, writing ability, and math ability) was rather surprising. However, I found the same pattern of no significant difference between HBCUs and HWCUs in their graduates' early career earnings as well as the probability of obtaining a baccalaureate degree.

Compared with previous studies, my initial research findings that attending HBCUs is not more beneficial in developing black students overall academic ability, writing ability and math ability than attending white institutions, is somewhat consistent with previous studies by the following people. I don't think I need to list them, but I just listed Centra and colleagues, and Bohr and colleagues,

and Pascarella and colleagues, which were all published at least ten years ago.

The finding of no differential effect of HBCUs on obtaining a Bachelor's degree is somewhat inconsistent with previous studies. Cross and Astin, Pascarella, and Ehrenberg's studies were conducted at least 10 to and 15 years ago, but that's inconsistent. Of course, there are many different reasons, as well.

Regarding early career earnings, my findings show that HBCUs are doing as well as HWCUs in producing African American graduates who are financially successful at least in the early part of their careers. The finding of no difference in HBCUs' impact on their graduates' early income is consistent with that of Pascarella, Smart, and Stoecker and with that of Ehrenberg and Rothstein's, but it is contradictory to some of the other studies.

In conclusion, we should take the findings of no significant difference as a positive sign that African American students, as a group, now benefit equally in their academic development and early career earnings, whether they attend HBCUs or HWCUs.

Let me talk about students' learning opportunities as previous panelists discussed.

African American students at HBCUs are more actively and deeply involved in the academic community than are their counterparts at HWCUs, and HBCUs seem to provide more academically supportive and engaging environment for African American students.

One of my previous studies also indicates less satisfying and more difficult academic experiences among African American female students, at HWCUs.

There are obvious compensating factors and the two types of institutions contribute to student learning in different ways. HWCUs provide more visible monetary resources and prestige, while HBCUs offer greater humane support and deeper involvement. I speculate that the discriminatory climate at HWCUs might have eased since the desegregation movement.

Let me conclude this presentation. HBCUs appear to be more cost effective in achieving their mission of educating black students. How they manage to produce the same level outcomes as HWCUs in spite of poorer academic and financial resources needs to be investigated further in future studies.

Given that, HBCUs are significantly under funded relative to HWCUs, the findings of my studies

and of other reports lend support to the proposition that HBCUs contributes significantly to higher education in this country and merit strong support.

Thank you very much for this valued opportunity.

CHAIRMAN REYNOLDS: Thank you, Dr. Kim.

And I'd like to thank all of the panelists for the fine presentations.

At this point I'd like to open up the floor for questions or comments.

Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Thank you, Mr. Chairman.

Thanks to all of the panelists for coming. A really distinguished group. I'm very pleased to see Dean Pierce, that would be mayor of Cleveland, and then he sobered up and decided to take a better job.

I have a number of questions, but the first question I would have would be to Professor Kim. You noted that there was no difference, at least no effective difference between the quality of education or at least the outcomes between HBCUs and HWCUs, but isn't the picture probably even a little bit better than that given that you're starting out with a cohort

of students at HBCUs that at least according to some of your own material have lower SAT scores than those that traditionally go to or go to traditionally white institutions? The parental income of HBCU students is lower. So the predictive outcome for HBCUs would generally be lower than for HWCUs; isn't that correct?

PROF. KIM: That's a very good question. In these studies, I controlled for institutional selectivity and enrollment size. HBCUs tend to be smaller than HWCUs, and smaller institutions are usually more conducive for student-faculty interactions and seem a little better for academic outcomes.

In addition to the institutional characteristics, I controlled for SAT and grades, some high school GPA, as well as parental income and education level.

COMMISSIONER KIRSANOW: Okay.

PROF. KIM: I even controlled for some pre-test measures. Controlling for all of these characteristics, I found there is no significant difference between HBCUs and HWCUs.

COMMISSIONER KIRSANOW: One other. When you say you controlled, did you also control for the

nature of the institution?

For example, a lot of HBCUs, I think it may not be appropriate to compare them to large traditionally white universities. HBCUs may have a better correlative among, say, urban universities like, say -- I don't know -- a Cleveland State University. The demographics are similar in that regard.

Did you compare HBCUs against all types of traditionally white universities or was it against a certain cohort of traditionally white universities?

PROF. KIM: Actually I compared the two types of institutions using HERI data, samples of African American students who completed a nine-year follow-up survey.

My data did not allow for me to investigate and compare specific regional effects.

COMMISSIONER KIRSANOW: Good. Thank you.

DR. RICHARDSON: Let me just respond by saying, Commissioner, I think you have hit on a very important thing, and that is the notion that when you're doing these measurements to compare apples with apples and oranges with oranges.

If you're looking at the graduation rate

for Morgan State University, for example, it's about 43 percent after about six years. That sounds modest when you first hear it. However, when you compare it, Morgan is an urban university. With other urban institutions across the country, what you will find is that Morgan does much better on the retention graduation than other similarly situated urban universities in urban settings.

So you're right on it when you say let's make sure that we control for all of the variables and we control in a way that compares apples with apples and oranges with oranges.

COMMISSIONER KIRSANOW: It seems though that even if you take all of the controls that Dr. Kim mentions, that given that what I think many of the panelists described as the generally lower funding level for HBCUs, they're doing a much better job --

DR. RICHARDSON: Absolutely.

COMMISSIONER KIRSANOW: -- than traditionally white universities in educating African American students.

DR. RICHARDSON: Yes.

COMMISSIONER KIRSANOW: And you mentioned the figure 43 percent. It strikes me because I recall

that there's data that indicates that 43 percent of black students that matriculate to law schools eventually drop out, and the question is for Dean Pierce.

Do you have any idea as to what the dropout rate is for -- I know there are only five black law schools -- what the dropout rate is for those institutions?

PROF. PIERCE: No, I don't, but I would say this. Given that -- and, again, you've got to compare apples to apples and oranges to oranges -- we would differ from Howard University, but I would say that Southern University, Baton Rouge and Texas Southern and FAMU, which is more equivalent to our law school at North Carolina Central University. We do experience a higher attrition rate, particularly amongst African American males, and that is because we will take a chance on students with perhaps a lower predictive indicator, particularly the LSAT GPA. We'll bring them in with a high GPA but perhaps a lower LSAT score, and we do seem to have a higher attrition rate, but, again, we're taking in more.

COMMISSIONER KIRSANOW: Yes. Could that also be attributable -- I know in some of Dr. Kim's

material I think something like 84 percent of students that attend historically black colleges need financial aid versus 55 percent of traditionally white students that matriculate to traditional white institutions.

PROF. PIERCE: And that continues to this day, yes.

CHAIRMAN REYNOLDS: Dr. Sullivan.

DR. SULLIVAN: If I could comment on that question, I'd like to say that Spelman College in Atlanta has a graduation rate of 77 percent of the students who enter, and that percentage exceeds the rate, let me tell you, of these following white institutions: Bates, Colby, University of California at Berkeley, UCLA, University of Michigan, Claremont College, and Carnegie-Mellon University. All of those institutions have greater resources, financial resources, than Spelman College, but it is doing better.

Secondly, in my remarks I stated that the scores of our students at Morehouse School of Medicine are greater than the scores of all medical students around the country, black or white. That is in spite of the fact that if you look at the SAT scores of the students when they enter, they're lower.

So in other words, they progress much more because our motto at Morehouse is we're flexible coming in, but we're rigid going out.

(Laughter.)

DR. SULLIVAN: So that means that our students -- because we want there to be no question about the quality of our graduates, but we, indeed, as stated by others, recognize the potential that a number of students have which has not been developed frequently because of the institutions that they have had for their education, as well as their high school experiences.

So our experience is similar to what your question directs.

PROF. PIERCE: And if I might add, just to further demonstrate that, North Carolina Central University School of Law, our Bar passage rate last year was 81 percent, tied with Duke, and we bring in students, lower resources, lower predictive indicators, but the ultimate and final measure is first time Bar passage, and our first time Bar passage rate is 81 percent, and we tied Duke University School of Law.

CHAIRMAN REYNOLDS: I find it interesting

that the -- well, you mentioned that you take a chance on students on the front end. Some traditional white schools do the same, but the outcomes seem to be quite different. There seems to be a much higher attrition rate among traditional white schools, and based on the conversations, based on the discussions today, it seems to me that there is a different teaching model, and I just want someone to comment on the fact that it could make a significant difference if a student, especially a student who has not received a rigorous preparation, enters into a college that focuses on research that uses a lot of teaching assistants as opposed to an environment where students are going to have professors who concentrate on teaching.

PROF. PIERCE: I have to comment on that. I'm new to this world of academia. I'm a first time dean. I read up on what you have to do to be dean of a law school and took on the job.

(Laughter.)

CHAIRMAN REYNOLDS: Is there a correspondence course for that?

PROF. PIERCE: Two days in Jackson Hole, Wyoming. It's true.

And one of the things it says was, you

know, you're measured by your scholarship, the scholarship that your faculty produce for publication, and I get mounds of journals every day from law schools around the country because we're all doing the same thing, sending out the scholarship produced by our faculty so we can get our rankings up in U.S. News & World Report, and it didn't take me long to back off of that because I sent a memo out to the faculty that I expect them to produce more scholarship and I want to put money to this, but then I realized the reason why we could match Duke in our Bar passage rate was students who have lower predictive indicators coming in. It's because of the high level of engagement the faculty have with the students outside of the classroom.

Faculty spend a great deal of time with the students, and this is something that Mikyong mentioned earlier in her studies and her reports, and I'm quite sure Dr. Sullivan and Dr. Richardson would say the same thing. There just appears to be this legacy, this history of this nurturing at historically black -- I attended an HBCU. I didn't know this, but that's just what it is, and it has carried on through the ages, where the faculty -- it's just a culture of

engaging the students and spending time with the students, having them in their classes, having them at their homes, and it works, and the students are focused, and they don't feel that they're just a number.

So yes. So if I have to sacrifice from the scholarship end in terms of my faculty being able to produce a scholarly piece to be produced in the UVA Law Journal on the confirmation of Judge Alito, I will sacrifice that because I'm going to get five more students through my law school.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIRMAN THERNSTROM: And I apologize for having to leave for a few minutes and I missed Commissioner Kirsanow's questions. So I hope I'm not repeating them.

I have a bunch of questions. I should start out by saying that I'm a fan of HBCUs, and my husband and I had a wonderful experience giving a talk at and spending a couple of days looking at Savannah State a couple of years ago, and I came away so overwhelmed by the quality of education that was being offered there.

And a lot of their students come in, of

course. I mean, it's the old story of the racial gap in academic achievement at the end of high school. A lot of their students come in with low academic skills and not only the dedication to really getting those students up academically, but also the quality of what they were doing I thought was just stunningly good.

Oh, well, that's -- you know.

I don't think anybody has mentioned a statistic that I came across a number of years ago. I don't know whether it's still true, but it was very striking to me that if you look at the colleges in America that are sending the highest number of black students on to graduate programs, that nine out of ten of those colleges are the historically black colleges and universities.

COMMISSIONER KIRSANOW: Actually it's higher than that. I mean, the top 20 are historically black colleges and it depends on the discipline, too. In STEM programs, depending on the discipline, in biology it's 12 out of 15. In physical sciences it's, I think, about 15 or 14 out of 15.

VICE CHAIRMAN THERNSTROM: Well, that reinforces the point. In the data I looked at, the tenth was Wayne State, which of course is also -- its

student population is overwhelmingly black, and that again says something. This additional data reinforces the point says something about the strength of the education that's being provided.

A couple of questions. The first to Dr. Sullivan.

It wasn't absolutely clear to me how Morehouse Medical School differs from other medical schools. That is, what is the heart of the difference in having a predominantly African American student population there?

I've got about four questions for each of you. Why don't we just do one at a time?

DR. SULLIVAN: Surely, right. Well, as I mentioned, we have higher scores on national U.S. medical licensing examination of our students than is the case with black students from other institutions.

VICE CHAIRMAN THERNSTROM: But I was interested in the curricular differences. I mean, you've got an anatomy course in one medical school and you've got one in the other. What's the heart of the difference in the training?

DR. SULLIVAN: It is not in the curricula. The difference is in the commitment of the faculty.

Our faculty are very committed to the success of our students.

VICE CHAIRMAN THERNSTROM: I see.

DR. SULLIVAN: And spend inordinate amounts of time there.

But I also maintain that there's another factor at Morehouse and I think for other historically black colleges and universities as well. It's the environment. We have an environment that encourages students to take risks, risk asking a question.

You know, learning is a two-way process. You not only have to have a good teacher, but you have to have a student who is willing to engage in that, and I maintain that the environment of black colleges that are successful is an environment that encourages the students to, indeed, engage in that process.

Many students don't for fear of being embarrassed, of exposing the fact that they don't know, et cetera.

The other thing that I know at Morehouse School of Medicine and would adhere at other HBCUs, we encourage our students to think of themselves and their future careers as leaders, not simply as members of the pack. And that's why I cited some of our

graduates who are in leading positions both in academic institutions, one of them, for example, the Vice President at Baylor Medical College, one of the nation's strongest academic institutions.

So I think it really is the environment. It's not that the curriculum is different, but in fact, the commitment of the faculty and the supportive environment.

CHAIRMAN REYNOLDS: Excuse me, Vice Chair Thernstrom.

VICE CHAIRMAN THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Could I ask a second question? Wouldn't another explanation be one of pace? If you assume that the black students who attend a school that's traditionally white, and you look at the total population, if the white kids have higher SAT scores and have better preparation, that would enable the teacher, the professor, to teach at a faster pace, and that faster pace would have a negative impact, assuming that the black students did not have the same preparation.

So wouldn't another explanation be that at HBCUs you have students there who are synced up in terms of the pace at which the material is being

taught?

DR. SULLIVAN: Well, in one sense I would say yes, and that would lead me to modify the statement I made before in terms of the difference in our curriculum. We have the earliest opening date for first year medical students to be at the medical school in the country. Our students being mid-July, and that is something that happened where we learned by experience.

We opened with our first class of students in 1978. We identified among the students we had admitted the students we felt would need some academic support or preparation. So we invited those students to come in early July. The experience of the students was, "Why did you have us come earlier? That means you have already determined that we are not going to be successful."

When the other students came in September, their question was, "Why didn't you bring us? What could the students" --

(Laughter.)

DR. SULLIVAN: The next year we started everyone in mid-July, and the reason we started that was for those students who may have some deficiencies

or some borderline areas. We use that time in the summer to bring them up to speed.

Once the curriculum gets going in September though, no, it's the same as the curriculum in any medical school around the country. Our faculty do, however, spend time with those students who are having difficulty, and we have many stories.

We just lost our first Chairman of Biochemistry who happened to have been a great cook, but really had won teaching awards from our students because he always had students at his home over the weekends learning actually, and he was very popular. In fact, he got into difficulty with the other basic science faculty because he didn't limit his teaching to biochemistry, but he involved anatomy and microbiology and physiology, et cetera.

So I think it really is the commitment of the faculty.

VICE CHAIRMAN THERNSTROM: Dr. Richardson, you talked about equally competitive -- creating a parity between black and white institutions. I wasn't clear what your definition of parity was there.

DR. RICHARDSON: Yes. I think the whole notion of parity has to do with providing equitable

resources, resources consistent with the magnitude of the task. Oftentimes we hear that the cost per student at our historically black college is greater than that at some of our white institutions, and at first glance we think that that means that you have more resources than the white institutions.

The fact of the matter is because you start with students who are under prepared, because the magnitude of the task for getting them from where they are to where they have to be four, five, six years later is that you have a greater work load for faculty and staff.

I oftentimes give the example of let's just take -- before we even get to the academic part of it, let's just take the notion of getting them in school, providing financial resources. Oftentimes our students come and the Pell grant, for example covers less than half of the total cost of their going to school.

When they come with the Pell grants, they don't have other dollars. Neither do they have a family contribution, and therefore, the institution has the responsibility of trying to make up the difference.

Well, often many of us take monies that ordinarily come through tuition and fees that normally go for faculty and equipment and then we take that money and augment Pell grants. That means a total amount of money that we have now to spend toward operating the institution, hiring more faculty, putting in new equipment and whatnot, is no longer there.

So we have to be careful of what we're saying when we look at the measure and what we're determining is comparability or not. No, the absolute dollars are greater in some instances, but the workload is far different.

Let's take that in a different perspective. The number of staff, one would normally look at two campuses, historically black, historically white campus, and say each having 5,000 students. You should have relatively the same staffing and whatnot.

Not so. When my students come to me even with the latest technology, we can't just run them through on an assembly line in terms of processing them.

If you had the money, then you could apply over the Internet. You could register over the

Internet. You could make your payment over the Internet.

The fact of the matter is they don't have it. What does that mean? That means that they have to come to the campus. They have to stand in long lines. We have to talk with each of them, determine their credit worthiness, and try to work out ways. The staffing for that is horrendous.

If you talk just about how many times that means that a staff person has to see almost every member of the student body, if you go to most of our majority institutions with that same 5,000, they are middle and upper middle class. They either have the money or have the credit worthiness to get the credit to do it, and so they come in. You give them their invoice. They pay. You don't have to see them anymore for that semester.

Well, at most of our historically black colleges, you've got to come back at the end of the month for an installment payment, and we have to go through the records again to work it, and you've got to come back at the end of the next month and work it again. You've got to do this each of the months. Workload measure.

Then that means more resources, more staffing and whatnot. So when you begin to dissect it, disaggregate the cost centers of our historically black college vis-a-vis a traditional white institute, you begin to see this disparity.

But let's go to another level. Let's go in terms of our facilities. I have at Morgan an architectural program. It's now 30 years old. I moved that architectural program into almost every building on the campus just to tuck it away and get accredited.

There's a traditionally white institution. I'm one of two state supported architectural programs. It has a beautiful, state of the art architectural school building. That's a disparity. That's not comparability. My students don't have the same opportunity in terms of the state of the art.

If there's any profession that should have state of the art facilities, it is an architectural program because it's all about art design and built environment. That's not comparable. That's a lack of comparability.

If I'm looking at my institution of Morgan State University, we have one of the best engineering

programs you'll find anywhere, and we had references to that. By the way, Morgan is the largest producer of African Americans in engineering in the State of Maryland, yet it's the youngest, and it has done that at the undergraduate level and now is doing it at the doctoral level.

But usually where there are institutions with engineering programs and business programs, they have well established, in Maryland at least, technology transfer and commercialization centers.

There are two such centers in Maryland. The two majority institutions that have business and engineering combinations. Morgan State University has a combination, but it does not have the commercial transfer, not that it hasn't requested it. It's that the state hasn't provided the facilities.

That's a disparity. That's not comparability. That's not parity, and you can move along each of those indices and see the issue of comparability or lack of comparability played out across the whole spectrum.

VICE CHAIRMAN THERNSTROM: What are the faculty -- and I have kind of a larger question for everybody in a minute though. I'm going to skip my

question in the interest of time to Dean Pierce so I can get in this larger question -- but just a smaller one, what do the faculty salaries look like in general at the HBCUs?

And is it in terms of achieving that parity, has it been a problem that the predominately white elite institutions have been rating the historically black colleges and universities?

DR. RICHARDSON: Well, let me answer first. Yes, indeed, Commissioner. Faculty salaries are always an issue, but it goes back to the amount of resources you have at your disposal from the very beginning, and how you have to distribute those over the various cost centers in order to have viable institutions.

But in most instances, yes, faculty salaries at historically black colleges still lag those at majority institutions, even when you control for classification.

Morgan does reasonably well compared to other black colleges, but when you compare it to majority institutions, then there's a large disparity there.

Now, the interesting part of that is that

most of our faculty come with the same Ph.D.s from the same prestigious institutions as any other, but when you're competing for faculty and you're not offering them the same salaries that are being offered next door, and that's part of the struggle. That's part of the difficulty of it all.

VICE CHAIRMAN THERNSTROM: Right, and, Dean Pierce, if there's time I'll come back to you later, but let me pose a kind of larger question here, which is, I guess, a political question, which is: are there still significant voices, politically significant voices that are questioning whether there should be a racially identifiable institutions of higher education?

I mean, you know, if I think of K through 12 education and think about academics writing on K through 12 education, I mean, there are voices like Gary Orfield at Harvard, a leading spokesman for integrated schools and, indeed, still for busing to achieve that integration. I mean if he and others like him are going to be consistent, they would naturally have grave questions about the HBCUs.

You know, I wonder how much of that conversation persists, and I would like a part of that

for you to remind me because I forget this story of exactly at the time of the Fordice decision if I remember there was a significant split within the civil rights community and among specifically black spokesmen for civil rights on the issue of exactly -- on precisely that issue. So, you know, I'd be interested in -- well, the question is obvious.

PROF. PIERCE: If I may, Commissioner, two things. Again, back to comparing apples and apples and oranges to oranges, when you talk about K through 12 segregation or racial identifiable schools, it's totally different from racially identifiable schools in higher education because you have the different dynamic there.

K through 12 students are assigned by district.

VICE CHAIRMAN THERNSTROM: Right. I just wondered whether this was still a matter of conversation, controversy.

PROF. PIERCE: I wouldn't count it much. With all due respect to Mr. Orfield, and I understand his argument, but it just doesn't play in the world of higher education particularly as it impacts historically black colleges and universities,

particularly given everything you've heard here today.

Secondly, when the Ayers case was about to be argued before the United States Supreme Court, there was a bit of concern because folk thought that it could backfire on HBCUs, and that it could be seen as a way of dismantling and shutting down HBCUs as a way of thrusting integration into higher education.

And, secondly, it was perceived by some as counter to the Gary Orfield type integration in K through 12, none of which, in my opinion, is really significant in the legal context.

I've got to go back to what you said earlier and bring you back to your visit to Savannah State University and something Dr. Richardson was talking about earlier. Savannah State University right now is under significant threat because the State of Georgia is locating a program at a two-year public community college in close proximity to Savannah State duplicating --

VICE CHAIRMAN THERNSTROM: I didn't know that. Actually, I don't think that was occurring when we were there.

PROF. PIERCE: It is happening now. It is happening in Morgan State. It's happening at Kentucky

State. It's happening at Bowie State. It's happening elsewhere, and when you talk about the voices arguing against HBCUs, you find them at the general assemblies and the state legislatures because higher education is very competitive now, and it is very costly. When you're sitting down in Albany or wherever at the state house and the legislator is beginning to debate how we're going to fund higher education of the state, they look around and they see all of these colleges. the easy pickings are the public black colleges.

And so that's where you will find your voices, and it's not so much an argument that we shouldn't have these black colleges, racially identifiable colleges because they're not segregated by law per se.

VICE CHAIRMAN THERNSTROM: Right.

PROF. PIERCE: They're segregated by choice, and so that's where you have that voice, and it's because Ohio State University needs money that Central State University has or the University of Mississippi needs money that Alcorn State has or the University of Georgia needs money that Savannah State has.

So state senator or state representatives

in these various states, when they look around to legislate these bills, they look to say, "Well, we'll reduce the funding for the program at the historically black colleges and universities so that we can put it somewhere else. So we will back off of an agreement to enhance or strengthen historically black colleges and universities so that we have more money for the traditionally white institutions."

VICE CHAIRMAN THERNSTROM: But surely their public argument isn't interested in exactly, you know, what the argument sounds like. Their public argument isn't we need money.

PROF. PIERCE: No.

VICE CHAIRMAN THERNSTROM: So we can reduce the funds given the HBCUs.

What is the public argument? Is the public argument one about racially identifiable schools? Is that an element in the --

PROF. PIERCE: Oftentimes, and it's a misled argument in my opinion because, again, students who attend Savannah State University are not attending that university because they can't go to the University of Georgia now, but before that was the case.

VICE CHAIRMAN THERNSTROM: Sure.

PROF. PIERCE: They attend Savannah State University because they know they will enter a nurturing environment where they have a higher likelihood of graduating. That is why they will attend the university.

Whereas the state senator or state representative will say, "Well, that's a segregated school. We should not be maintaining a black college."

Well, you're not maintaining a black college.

VICE CHAIRMAN THERNSTROM: So that's where that argument comes in is what you're saying, is that the state legislators' level.

PROF. PIERCE: It's at the state, and I submit, Madam Commissioner, that it is a pretext because what it is all about is competitiveness. It's reduced finances for higher education and where are you going to get the money from? You'll get it from the HBCU, and that is why you see increasing levels of program duplication in direct contradiction to establish federal policy and case law, duplicating programs in close proximity to an HBCU to water down

and diminish the effectiveness of the HBCU and build up a traditionally white institution to help the argument for shutting down the black college.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: I suggest based on some of this testimony that our next briefing is why is it that white institutions do such a pathetic job in educating given their vast increase in resources.

VICE CHAIRMAN THERNSTROM: Well, we can start with kindergarten on that question.

COMMISSIONER KIRSANOW: Dr. Sullivan, you had indicated you had responded to Commissioner Thernstrom in terms of why it is that -- and several of you did -- why it is that it appears that there are a greater number of graduates of historically black colleges that go on to get baccalaureate degrees or Master's degrees. My question is a little bit different than that.

Given that today a Bachelor's degree is similar to what a high school diploma would have been maybe 40 years ago, it seems almost imperative that you go on to secondary or get postgraduate education. But then what strikes me also is there is a disproportionate number of black graduates that go on

to, quote, unquote, the soft sciences, and everybody knows the guys in soft sciences are basically looking around saying, "Okay. What do I do now?"

PARTICIPANT: Like us.

COMMISSIONER KIRSANOW: Right, exactly.

(Laughter.)

COMMISSIONER KIRSANOW: What strikes me is -- and I think Mr. Merisotis made mention of STEM programs -- 40 percent of all graduate STEM degrees, black STEM degrees, come from historically black colleges. That's stunning.

And also I mentioned that depending on male or female, as many as the top 30 historically black colleges produce the most graduates that go on to STEM programs, doctoral programs.

Why do we find among historically black colleges a much greater concentration of students in STEM programs?

DR. SULLIVAN: Why are there more at historically black colleges?

COMMISSIONER KIRSANOW: Right, in STEM programs. I understand, you know, in terms of faculty involvement and everything, but why STEM as opposed to, say, the softer sciences? Do you have any idea?

DR. SULLIVAN: I would only be speculating here. So I really can't answer that precisely, but again, my view would be the commitment of the faculty. Xavier University sends more black students to medical school than any other institution in the country, black or white. Why is that? Because Xavier has marginal resources. The commitment of the faculty.

Now, there is a Professor Carmichael there who has been there for years who is well known among pre-medical people who spends an inordinate amount of time with those students there. So he and others like him at that institution are really credited for the success of that university.

It's not that they have more resources. In fact, they have less, but so far as the STEM program I really could not answer that.

MR. MERISOTIS: Another reason, I think, is that the majority of historically black colleges and universities are generally open access institutions, and what that suggests is that they're more market responsive, that is, that they're responding to the need of the community so that students come in and they say, "Okay. What can we do

with these students to help them best serve this community, you know, the City of Norfolk, for example?" or what have you, and the key is to get them into the STEM fields because that's what that work force needs.

And as open enrollment institutions, you've got that opportunity. In other words, they are less rigid in their structures than other institutions might be.

Another example, by the way, that I wanted to mention outside of STEM that HBCUs get under credited for is the significant proportion of African American teachers in this country that are educated at HBCUs. Almost half of all African American teachers in our schools today were educated in an HBCU, and it's a stunning statistic that has never been adequately discussed in the debate about how do we narrow the gap at the K-12 level between a proportion of students of color and a proportion of teachers of color in our K-12 classrooms.

Certainly one of the answers has to be investment in HBCUs as a key pathway to success in educating teachers of color.

COMMISSIONER KIRSANOW: There have been a

number of articles suggesting that at historically white colleges, for example, lack of interaction between black students and faculty is one of the reasons why black students don't go on to postgraduate programs and become professors, and so forth, and I think you indicated that there was much more interaction. Dr. Sullivan had indicated that.

But aside from that, another kind of subset, there's this dearth of black male undergraduates at white institutions. At some institutions 80 percent of the black student population is female, sometimes more than that, but at historically black colleges that figure is -- well, I don't know what the exact figure is. I know what the percentage is, but it seems to me to be much more -- there's more parity.

Number one, why is that?

And, number two, again, with respect to STEM, there is a disproportionate number of black males in STEM programs at historically black colleges. That's true in other institutions anyway, but it's astonishing at historically black colleges.

Any ideas?

DR. RICHARDSON: Well, we'd be less than

candid and honest with you if we did not tell you that the black male issue is one that is perplexing us all, whether or not we're black institutions or white institutions. You are absolutely correct in saying that some of the student bodies now at our majority institutions may be 80-20, but even at our institution now, 58-42 at Morgan. So there is a major issue in terms of that.

If you go further into that, you're also going to find that some of our graduation rates are negatively affected by our black male population. We're not doing as well with them as we have done with the females for whatever reason. Okay?

But going back to this whole issue of STEM and the productivity of our historically black colleges, you've heard just all around the table the words "culture." That's the operative term here. Many of our institutions, black or white, have a list of programs that are designated to help minorities. You go to any white institution and you're going to find this long list.

But there are an appendage of programs, individual programs. What you have at historically black colleges is a culture. It's a culture that runs

through the entire university, whether or not you're talking about the students themselves, the faculty, the staff, the community around them and all, that culture that says, "If you are serious and want to do this, no matter what your standardized test scores are, you can do this. If you resolve to do it, you can do it and we're here to help you every step of the way."

And we present to them -- you heard the issue of modeling. We said we came from the same places you came from, and if we could do it, you can do it. That's a powerful statement to make to somebody that knows that they came from the same place.

But our black colleges are more than what they produce in and of themselves. They are a catalyst of change for all of higher education. Let me just run one example to you. In 1980, less than one percent of the graduates in engineering in the State of Maryland were African American. We had graduate programs at Hopkins, Naval Academy, University of Maryland, all of them, one percent.

Today 19 percent of the graduates in engineering in the State of Maryland are African

American. What made the difference?

Morgan State University got an engineering program in 1984. If you look at the total numbers that are produced, in 1981 we were talking 20, 21 graduates in engineering were African American. Today we're talking about 150. About 100 of them are produced at Morgan, but look what happened at the other institutions.

Before it was to say that we don't have enough blacks that can do engineering. Now they say, "Let's find those blacks and get them in our engineering schools."

So it's not just the absolute numbers we have produced. It's that by our example, we force the issue on other higher education institutions that says if you are committed and you want to do this, you can do it.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Thank you.

And I want to give you all a sense of how I come to this issue. Given time I will perhaps adverse -- when I was in the Virginia Attorney General's Office, we were actually defending a matter, and we successfully resolved a case regarding a global

review of our institutions of higher education in Virginia relative to program duplication and other issues that I know you all are very familiar with.

And what I learned through that process and what astonished me and what I saw as the driver was that very issue, one of program duplication. So I followed with interest through the press what happened in Maryland.

And you know, at my undergraduate institution we have a very strong graduate base, and we do a very good job of insuring that when we want a particular program, we think that program would help us attract the folks we want to attract. We're pretty successful in Virginia at least at getting that program.

Candidly, when I did the research for the historical black schools in Virginia, Norfolk State where my folks went and VSU, then I started looking around the country at other historical black colleges. I saw many times when there were opportunities for a program of excellence, a novel program, that first engineering program that would really attract all of the folks all the schools were clamoring for, that new nursing program that everyone in the state recognized

was needed and would attract the best and brightest from around the state.

It was a rare occurrence when I found that program to be placed at an historical black college, and for me at least, I kept coming back to that as the driver of so many other things, and the discussion I saw was not one of pretext in terms of people having an adversarial racial motive in the public hearings, but one of pure, raw economics in competition. They would say, "Well, this school has a better infrastructure. So it makes sense if we're going to invest $2 million here to put it at this school rather than this other school which would have a difficult time really maximizing state resources."

And I didn't see people of bad will, but I did say to myself, you know, it seems as if you're having the discussion which I can answer the question if you're going to point to who started from the best baseline.

That's a long way of saying is there any state that has done a good job in this regard relative to program duplication. I just see that as driving so many things when you put that center of excellence at a school and you create the market force of saying,

"Wow, I didn't realize there were so many bright people out there of color that could actually serve as competent engineers."

It does serve to expand the pool in the other institutions. I don't know how to change it. Has anyone done it well? Is there any state out there that you can point to?

PROF. PIERCE: I can name Oklahoma, to some degree Kentucky with the Master's in public administration. If you went to Kentucky State University at night time, it's an historically black institution. You would think you were at a traditionally white institution campus. It's the only state supported institution that offers a Master's in public administration in close proximity to the state capital of Frankfort. So if you work for the state government and you want to get a Master's in public administration, which is a good degree to have if you want to advance yourself, you've got to go to an HBCU.

Now, what would happen if the University of Kentucky right up the road were to put in a Master's of public administration to duplicate that program in close proximity? It's basically apartheid all over again.

That's why FAMU right across the street from Florida State University right now and they have two engineering duplicate programs. Well, who's going to get the most?

The State of Oklahoma, by placing the School of Physical Therapy at Langston University, an historical black university. I gave the commencement speech there once. Dr. Holloway invited me down. Most of the students who were graduating getting that degree in physical therapy were white. They didn't care they were at an HBCU. They were getting a degree which was much more valuable because the state insurance association recognized physical therapy as a coverable expense, and now they're going to make some money.

(Laughter.)

PROF. PIERCE: But there are some states where dollars are tight now. Georgia is one of them. Maryland is one of them. Ohio is definitely one of them. Tennessee is definitely one of them. Dollars are tight in higher education, and you've been there. You've seen it.

What was your Attorney General's name? I had to stare the guy down once.

COMMISSIONER TAYLOR: Jim Petro?

PROF. PIERCE: No.

COMMISSIONER TAYLOR: In Virginia?

PROF. PIERCE: In Virginia.

COMMISSIONER TAYLOR: Was it Earley or Gilmore?

PROF. PIERCE: Earley, Earley. He didn't win, did he?

COMMISSIONER TAYLOR: Be careful. I was leading that team.

(Laughter.)

PROF. PIERCE: Yeah, yeah, yeah, stared him down. He didn't blink an eye, and there was a group of African American legislators who were calling for me, begging me to come down there. Virginia actually did a pretty decent job.

COMMISSIONER TAYLOR: Yeah, ultimately I think we did.

PROF. PIERCE: Yes, you did. You did.

Norfolk State is a very well run institution. I was there a little while ago recruiting students.

Again, it's where you have the states that are having economic troubles, and this goes back to

answer your question, Madam Commissioner. The voice that you hear out, when they say, "Well, you shouldn't have this," it's competition. The dollars are tight, and when you look at the weak ones, you go, "Pick an HBCU." You can pick a Savannah State or Fort Valley or what's the other one that's a public one in Georgia, Albany State?

PARTICIPANTS: Albany State.

PROF. PIERCE: Albany State. You can pick on them. You can pick on Alabama A&M and Alabama State. You can pick on Tennessee State to some degree. You definitely can pick on University of Arkansas at Pine Bluff. You used to could pick on Jackson State. Jackson State is flourishing now because of the Ayes case.

But the action right now is at the state assembly, the legislature. That's where you're going to have your greatest threat or your greatest champions for HBCUs.

VICE CHAIRMAN THERNSTROM: Although you didn't answer the other part of my question, which is I couldn't remember exactly what the fight, at the time of the Fordice decision, but my strong impression was that within the civil rights community, the black

community, there was also a significant split in view.

PROFESSOR PIERCE: Clearly, and there is. I didn't know that until I got to OCR, and I found that out because you have your -- I'll just say it. The NAACP, particularly the legal defense and education funding fought the K-12 cases and then moved on to the other cases.

Let's be honest. We're not the champions of the Fordice case. They were not. They're my friends, but they were not because they --

VICE CHAIRMAN THERNSTROM: That's what I thought.

PROFESSOR PIERCE: -- see a difference of philosophy.

VICE CHAIRMAN THERNSTROM: Yes.

PROFESSOR PIERCE: We argued this, what, just last month down in New Orleans in a panel discussion. My good friend Teddy Shaw, who is now the executive director of the Legal Defense Fund. Yes, we do have our differences there because the thought, the concern is that -- and I think Justice Thomas said this and then aired his decision, his concurring opinion.

On one hand, we do not want to create

HBCUs as, he said "enclaves", for the black community. Yet, at the same time, Justice Thomas did say, to his credit, he did say it's wrong for the very institutions that have carried the burden of segregation, meaning the HBCUs, to now suffer the burden of desegregation.

So, if you want to desegregate or you want to remove these vestiges of the past practice of segregation, which the Supreme Court said you have to do, it's wrong to do it by shutting down or merging the HBCUs, which is still an argument -- to merge and shut down the HBCUs, and it's federal policy now on the table. Tell me if I'm wrong here. Unless you all changed it in my absence. Was that the Office for Civil Rights would strictly scrutinize any state effort to close or merge an historical black college or university in the desegregation process.

And as long as you have these outstanding Title VI violations, merging or closing HBCUs, a public HBCU, will be strictly scrutinized. And the reason why you have to say that is because we are realists here, and we know that state higher education dollars are tight, and there may be a time where public colleges may have to be merged or closed.

CHAIRMAN REYNOLDS: Isn't there a train wreck coming down the road here? I mean, you talk about the chase for the dollars and the fact that, in many state houses, many states are dealing with shrinking revenue sources. A few overlays -- we have a social security crisis, we have an even larger Medicare crisis looming, and we have an aging population. Aren't these financial constraints just going to grow in time?

And then you look at the fact that both public and private HBCUs depend heavily on state and federal dollars, dollars that will be shrinking over time. Is there any conversations amongst HBCUs to come up with a different funding model?

DR. RICHARDSON: Well, let me just respond. I think the budget situation is one that we have to contend with, but it seems to me that in times of fiscal constraints, we have to look to the most efficient ways for delivering quality education.

One of the most efficient ways is by having complementary systems of higher education, where the institutions constituting those systems -- complement one another and do not duplicate one another. I mean, there is a portion of it that, of

course, has to be duplicated, and that's that core liberal arts part of it, but beyond that, there are ways of building strengths in institutions that complement one another.

And that's the whole notion about -- you determine those high-demand, unique programs that one state needs to build a kind of work force that it needs, and then you distribute that across the institutions in a way that, if someone wanted to get a quality program, the best in the state, they go to institutions A, B, and C, and not A through S. Or ten institutions as opposed to three, four institutions that are geographically dispersed throughout the state.

And so, in getting a complementary system, you get an efficient model for doing things. What we have done now is -- going to your issue in question -- is we've created, during the latter part of the seventies and early eighties, began to act on the notion of a complementary system, doing away with the dual system of higher education.

But after we started those programs, engineering at Morgan was one of them, then we began -- we didn't, first of all, fully invest in those so

that they became the only and the best of the kind that you could find, and before they invested in those, they then duplicated them at the nearby white institution and built them bigger and better with bigger facilities.

You can't do that. That argues against efficiency in higher education. So one solution to this whole notion of budget constraint is greater efficiency in the way we distribute programs across the universe of institutions, which is the whole issue of program duplication and non-duplication.

CHAIRMAN REYNOLDS: Commissioner Yaki has been quite patient. Commissioner Yaki?

COMMISSIONER YAKI: Yes. Thank you very much, Mr. Chair, and thank you very much, this very distinguished panel. My question kind of goes at the whole issue of duplication and resource allocation. I guess I would just like to -- here's more elaboration about -- in the -- my experience was with the UC system in California, which is, as you probably know, is oversubscribed, people being turned away for two years and going to community colleges, what have you.

Now, they are all talking about how we'll designate different campuses to do different kinds of

things rather than have everyone have engineering, everyone have architecture, and in -- for the -- hasn't there been, one, any discussion amongst the HBCs about becoming -- trying to become the specialists in one or the other kind of area amongst the HBCs as a pool -- the pool within the state, number one, and then, number two, how does the allocation process work its way out, at a state level, in terms of does a state just consciously say, well, we're going to put in a new engineering school, and we are going to put it right here, and oh, it just happens to be across the road from North Carolina Central, or something like that.

Is that basically what's going on right now, and if so, is there -- are there Title VI implications that we should be looking at or encouraging OCR to look at?

PROFESSOR PIERCE: I'll answer that latter -- I would defer to Dr. Richardson or anyone else for the first one in terms of discussion amongst the HBCUs. Dr. Richardson with respect to collaborations for a particular specialty and things of that nature.

But as far as the latter -- and again, I point to the general assemblies and the political

nature of it. When the general assembly for the state of Georgia is in session, come up with this budget on higher education, and it is being -- and members of the leaders of these committees are being lobbied by the powerful University of Georgia, or Georgia Tech, they don't have much competition with the folks who support Albany State and Fort Valley, the public Historically Black Colleges and Universities in that state.

So if the economic predictors say that the state of Georgia would do well to increase more mechanical engineers, to produce more mechanical engineers, Georgia Tech is going to say, well, we can do that. Or what about the good folks up at Savannah, across the street from Savannah State University, let's put a mechanical engineering program up there.

Savannah State and Albany, they get left out of those conversations. That's just the way it is, sir. They just get left out of those conversations. It's just that. Now, does that have Title VI implications? Absolutely.

The Adams case? *Adams v. Richardson*, *Adams v. Caliafano*? Both cited program duplication as a remnant of apartheid, as a remnant of segregation,

and violated federal policy to -- in support of equal protection for people of color attending publicly supported institutions of higher education.

The Supreme Court said the same thing in the Ayers decision. Ayers, of course, was at a lower level, a circuit court level, but it's the same thing at the Supreme Court level. And the United States Department of Education's Office for Civil Rights incorporated what was said in Adams and in Ayers into federal policy and said that program duplication is a no-no because it supports segregation; it's a violation of Title VI.

It is indicative of a violation of Title VI. Clear.

COMMISSIONER YAKI: And is the enforcement going on?

PROFESSOR PIERCE: No.

COMMISSIONER YAKI: That's my question.

PROFESSOR PIERCE: No, no. And that's a problem.

DR. RICHARDSON: Let me just say more about why is it indicative of not enforcing it and the fact that it is a very -- has very negative impact on the desegregation of higher education.

During the early seventies, Morgan State University, for example, was the institution that was unique in that it had many of the graduate programs in the Baltimore area, and it was the only institution, and notwithstanding the -- of the required resources, it was the only institution offering several programs.

As a result, slightly over fifty percent of the students in the graduate programs were white. Ten years later, after all the duplication and the refusal to invest in it, that same graduate program is overwhelmingly black. This is raising the issue on the MBA.

Now, that is deliberate. I mean, because otherwise, one would not support the development of all of these programs without having invested here. It is a matter of institutional ambition rather than state need.

And you've got to start, when you are talking about a higher education system, you talk about, first, with state needs. What are the work force needs? What are the needs in terms of the larger community? And we had distributed programs based on that across the universe of institutions.

Now, we are coming back without having properly financed and funded those. We are building them next door. It's institutional ambition now taking priority over the state need and the state commitment to this.

COMMISSIONER YAKI: I mean, have you contacted OCR? I mean, what are the responses that you are getting when you talk about lack of enforcement? What is it that --

DR. RICHARDSON: Well, I'll just comment in terms of Maryland on this, and then Raymond can also. But you also raise the issue, and I'll come back to this, you raise the issue of have the black colleges got together to talk about how they would distribute areas of strength across it.

The issue is not within the black college community. All of them are under-resourced. It is a disparity between the black colleges and the white colleges, in terms of the resource base. So it's not an issue within the black college community; it's within the total higher education community.

Now, OCR is in the process of reviewing or will be reviewing what has taken place in Maryland, what -- where that will lead, I have no idea what

their findings will be. What I am simply saying here is here you had an institution that, when it did operate, no matter the under-resourcing of that institution, it still had a very large white population at the graduate level in particular and reasonable representation at the undergraduate.

Once you started the duplication without having developed these programs to their best and the largest, then that white population moved away. To me, we are worse off now on the issue of desegregation than we were before when it comes to looking at the black institution.

Again, we put so much focus on whether or not our white institutions now have black students as opposed to whether or not we have now given students a choice to go to black institutions or white institutions without having to sacrifice quality of life on the campus or quality of program. And that's what the final measure has to be.

COMMISSIONER YAKI: So one really quick question in follow-up. And this is just my own curiosity. Last month, we had a briefing from my old friend and nemesis, Ward Connerly, on the census, and I think what has happened to the UC system in terms of

African-American students is, I think, a national shame.

The question is I've been wondering where they've been going, and I'm just wondering if there has been any up-tick at all in HBCU enrollment from students who are now no longer -- who have been no longer getting into the bigger institutions because of challenges by this group or that group to affirmative action policies and missions policies, that kind of thing.

PROFESSOR PIERCE: I don't know. I do recall, when Mr. Connerly was making his advances, that the argument that he and others were making was that those students, particularly those students of color, the African-American students, would not be locked out of the UC system, they would drop down to the UC Richmonds and those, the other colleges and universities.

Whether or not that has translated into an increase in student enrollment at the HBCUs, I would not know that. I wouldn't think so because you are going across, you know, the plains to get all the way to, you know, the populations where you find our HBCUs, but if I could respond to your first question

about response to OCR.

I mean, I'm still a member of the club with Ken and Jerry, so I'm not going to mercifully beat up on our agency here, and I will say this also. The Office for Civil Rights and the Department of Education, as the chairman and the director know, has limited resources for huge demand.

I can remember when I got there was -- and you all I'm sure have faced the same thing -- well, you know, there is a demand for Title IX, women athletics. The higher education, not just in participation but in scholarships. I mean, with the rising rate of students in this nation who do not have English as their primary language, as their first language. We've got to do something about that.

The disability issue continues. We still have colleges and K-12 institutes and schools throughout this country that have doorways that are 17 inches wide, and wheelchairs are 24 inches wide. I mean, there was plenty of work, and where are you going to put your resources?

So, I have that sympathy, you know, for the Office for Civil Rights. But what is going on is, from what I understand, and again, I'm not there, but

what is going on is reports. Reports are coming in from the state, so this is what we're doing, and OCR, I guess, is they are reading the reports, so I guess monitoring is going on.

But when you have a clear violation, when you see that a doctoral program and education is being located across the street from Morgan State. Or you are taking a public community college and beefing up a business school across the street from Savannah State. Atlanta commissioner, you know Savannah State. It sits on beautiful land.

VICE CHAIRMAN THERNSTROM: Gorgeous.

PROFESSOR PIERCE: People want that land. Let's just be honest. That's right up the road from Hilton Head. Down the road from Hilton Head, and we know the history of Hilton Head, so let's just be honest with what's going on there.

VICE CHAIRMAN THERNSTROM: And they use the waterfront, of course, for educational purposes.

PROFESSOR PIERCE: Two HBCUs that have that type of view. That's Hampton and Savannah State, and Savannah State is just a sitting duck, and I just believe that is going to happen.

VICE CHAIRMAN THERNSTROM: Oh, that's so

interesting.

PROFESSOR PIERCE: It's going to happen one day. If something doesn't happen, it is the placement of programs in close proximity to HBCUs in direct violation of established federal civil rights policy and case law that is a major issue, and there is no enforcement of that issue. There just clearly is no enforcement.

And one other thing. When Dr. Sullivan and Dr. Richardson talk about these large numbers, and Commissioner Kirsanow said the same thing in terms of the success for HBCUs in producing students, keep in mind, it may be an historical black college or university, but they are still falling under the -- there are no historically black accreditation associations.

So it's the same disciplines that Yale School of Medicine standards have to meet are the same for the American Medical Association. I have the same for the American Bar Association that my friends up the road in Duke have and Chapel Hill.

And you are talking about the successes in terms of desegregation and integration? I have a law school now that is fifty percent white. Fifty percent

African-American. Yet, throughout the -- and that is a success story for desegregation. That is a success story, but throughout the history of this law school, there have been repeated attempts to close it down and move it to Charlotte as it has become more and more successful.

CHAIRMAN REYNOLDS: Dr. Sullivan.

DR. SULLIVAN: Mr. Chairman, if I could make this statement. I certainly agree with the discussion that has been underway here, but I would like to voice this concern, and I know the health profession better than the rest of higher education. We, as a nation, are under-investing in education, and what I see happening now is competition for the scarce resources that are made available.

And I and a lot of others in the higher education community and broader are very concerned about that. Specifically, we have a shortage of nurses in this country. That shortage has been for a number of years, but there is no effort underway to respond to that.

We have a pending shortage of physicians. The Association of the American Medical Colleges put out a white paper only about three months ago

proposing there should be a thirty percent increase in the percentage of physicians trained in this country. We graduate 16,000 physicians from the nation's medical schools, but there are 22,000 physicians who start post-graduate training every year.

These are foreign medical graduates who fill those positions. So it means that we are not training enough physicians to fill the post-graduate training physicians. It also raises questions for us as the most affluent nation on earth. Many of these foreign graduates come from poor countries.

I was in Malawi last November and learned that of 11 million people in that country, they have 92 physicians. There are more Malawian physicians in the United Kingdom and in Canada and in the United States than in Malawi. So my concern, which is perhaps a little beyond this discussion is the fact that we, as a nation, really are compromising our future.

We are not training enough engineers, and we go right down the list. So, clearly, we want to see equitable distribution of the resources that are available, but in a larger sense, we need to have more resources because these, if we don't, this lack of

investment in our nation's future really is going to compromise our future in a great extent, so I simply wanted to make that comment that what we need, as a nation, going beyond the issue of equity, is really more investment in our future.

CHAIRMAN REYNOLDS: Okay, just -- okay, last question from Commissioner Kirsanow, provided that Commissioner Braceras doesn't have a question since you haven't asked a question.

VICE CHAIRMAN THERNSTROM: I think Dr. Kim had her hand raised.

COMMISSIONER KIRSANOW: Let me ask Dr. Kim a question. Maybe she will just follow up on that.

VICE CHAIRMAN THERNSTROM: Okay.

COMMISSIONER KIRSANOW: Actually, I am going to ask a couple of questions. One specific, one in general. The specific one to Dr. Kim is I think you indicated that early earnings rates between HBCU grads and traditional white college grads are comparable. Is there any -- I think there is -- Professor Sorenzano, I think his name is, who says that predictive indicators would indicate that grads from historically black colleges make 38% more money than you would think they would make as compared to

their white college graduate comparatives.

Is there any data with respect to longitudinally? Further down the road, how HBCU grads fare in terms of earnings?

PROFESSOR KIM: This is a very good question. I have just finished a study on career earnings. We don't have data to track graduates' earning beyond nine years. We should collect some data beyond the nine-year follow-up. Without data, there is not much we can explain.

CHAIRMAN REYNOLDS: Okay. You wanted to say something, also.

PROFESSOR KIM: Thank you. It appears the panel and commissioners have several questions related to STEM graduates and high productivity of HBCU graduates. I will speculate and add a comment based on my data analysis.

The role models at HBCUs are critical. African American TAs and professors in engineering, math, and science at HBCUs provide special role models. In addition, based on my study, a much higher percentage of African-American students (about 1.5 times) got involved in professors' research during their undergraduate years.

This indicates not only the importance of involvement and encouragement by faculty members for black students, but also suggest that white institutions may not include these African-American students in the scientific inquiry process as much as they should.

The HBCU effectiveness issue is not necessarily answered by what and how well HBCUs do. It is also related to what and how white institutions do for their minority students.

Students who attend a particular institution experience a unique campus culture, for example, black-dominant culture of white-dominant culture. The culture can also be integrated into classroom interaction between professors and students. I have not found good studies connecting power, culture, and teaching techniques. I think that dominant culture on campus and the dynamics of inclusiveness and exclusiveness may partially explain the effectiveness and productivity of HBCUs.

CHAIRMAN REYNOLDS: Okay. Well, one --

COMMISSIONER KIRSANOW: One more, I had a general listed question

CHAIRMAN REYNOLDS: You're killing me,

you're killing me.

COMMISSIONER KIRSANOW: I'd like to answer Michael's question with respect of black students went after prop 209 and went to UC Riverside, UC Davis, UC San Diego, and the graduation rates actually went up. But the general question is -- and I suspect I know the answer to this, and it very often comes back to mind, but for anyone who wants to, or all of you, if there -- if you can identify two of the principle impediments or threats to continued vitality of HBCUs, and on the other hand, two policy initiatives that you think may be recommended to enhance the continued vitality or viability of HBCUs.

DR. RICHARDSON: Well, let me respond. One is, I think is, moving back to a concept of complementarity in our institutions. That is the non-duplication of the programs. The second is continued pursuing the policy of enhancement of black colleges to the point of comparability imperative with their white counterparts. I think they are absolutely important.

And the third is an effort that is not new to us in the black colleges, but trying to get that greater investment in our black colleges that Lou

Sullivan just spoke about. He was speaking about it in the macro, in terms of all of higher education, but certainly when it comes to historically black colleges.

Many of the research grants and whatnot that come from our federal government, we all know that if you are going to build a viable, strong graduate program with research opportunities for students, undergraduate and graduate, much of the resources of that comes from the federal government.

So, increasing the investment from our federal government, making our state colleges and universities, historically black colleges and universities, more privy to those dollars.

The issue that was mentioned over here by Commissioner Taylor here, when he said oftentimes those decisions are based on whether or not there is an infrastructure. Well, if you never build the infrastructure, it will never be there, so it's a vicious circle there, and it continues to go on and on.

So, we've got to have something special -- for that investment. And look in terms of the return on that investment in terms of these higher numbers in

the STEM areas, in terms of the numbers of students that are then going from a minority group, particularly African-American, in the cases of the historically black colleges.

So, those three things, I would say, would be very, very important in terms of the increased viability of our institutes.

PROFESSOR PIERCE: Greatest threat? Program duplication. The greatest things you could do to support the vitality of HBCUs? The agency that is created to address federal civil rights policy issues, the Office for Civil Rights, in this case, Department of Education, were it to enforce the federal civil rights laws with respect to HBCUs, particularly those seven states now that have outstanding Title VI violations.

There are seven stages right now that have been found in violation of Title VI of the 1964 civil rights act, one by Clarence Thomas in 1982, the state of Ohio, they are still in outstanding violation. They have not been corrected.

If those seven states were addressed, I would think that nationally, states would look to that and say, okay, let's look at what we are doing in

terms of duplicating programs. And the reason why Virginia was the last on the list of those seven is because you have the least problems.

The first one on the list was Ohio. Second was Florida, and then Maryland.

MR. MERISOTIS: I think the two biggest threats are clearly the declining availability of financial resources. It's got to be on the list. The -- as is institutions are serving increasingly educationally and economically disadvantaged students, they are having to fight this battle with one hand tied behind their back.

The second is the broader cultural problem. Historically black colleges are the only group of institutions in this country whose right to exist is questioned daily by members of the public, and it is very difficult, as institutions, to continue to function when your right to exist is questioned.

Nobody questions the right for the University of California to exist, for community colleges, what have you, but HBCUs are the one group whose right to exist is challenged, and that's a serious problem for HBCUs.

Too biggest things we can do, particularly

in terms of federal policy. Significant increase in support for Title III and the higher education act, strengthening institutions. That has been a big aspect of the success that we've seen in historically black colleges and universities in the last two decades, and that needs significant strengthening.

And secondly, increasing financial aid, particularly grant aid for students. Financial aid is the driver of so much of the success of what happens at these institutions. These institutions serve students that are about twice as economically disadvantaged as students in other institutions.

CHAIRMAN REYNOLDS: Okay. We could continue this conversation, obviously, for a few days, but unfortunately, we have to finish up some business that we didn't complete yesterday. I would like to thank all of the panelists. Your contributions were greatly appreciated. So, let's take a five-minute break, a quick five-minute break, and then resume.

(Whereupon, the matter went off the record briefly.)

CHAIRMAN REYNOLDS: Okay, we are going to -- hold on, here. Okay, we are going to complete the work that we didn't complete yesterday. Commissioner

Yaki, I've been looking for a reason to use the gavel for a while, but I think you are about to give it to me, so I just --

(Laughter.)

CHAIRMAN REYNOLDS: Okay, folks, if we want to get out of here at a decent hour, we are going to have to be efficient. On December 16, 2005, the commission held a briefing on disparity studies as evidence of discrimination in federal contracting.

The event was the commission's fact-finding effort to evaluate the research that the government relies on to form the foundation of affirmative action and federal procurement.

On March 23, 2006, the staff director sent you, via email, a draft of the disparity studies report as directed by the commission staff then prepared the report, compiling witness statements, a summary of the discussion, and proposed findings and recommendations.

This report was distributed in draft forms to the commissioners on March 30, 2006. The March 30 version included changes requested after review by Dr. Sitrow and Ayres. May I have a motion to approve the publication of the disparities briefing report?

COMMISSIONER YAKI: So move.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER KIRSANOW: Did you move to second yourself?

COMMISSIONER YAKI: Yes.

(Laughter.)

COMMISSIONER YAKI: Well, he was mad at me for talking, so I thought I would just get it going.

(Laughter.)

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER KIRSANOW: Mr. Chair, I just had a couple of questions. First of all, going to page 79, finding number three under National Disparity Studies, it says the three national studies of disparities --

CHAIRMAN REYNOLDS: I'm sorry. I'm sorry.

COMMISSIONER KIRSANOW: Page 79.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER KIRSANOW: Finding three.

CHAIRMAN REYNOLDS: Finding three?

COMMISSIONER KIRSANOW: Yes, under National Disparity Studies. At least, that's what I

have on my draft.

CHAIRMAN REYNOLDS: Okay. I have a different pagination. Okay, go ahead.

COMMISSIONER KIRSANOW: Okay. It says -- let's see what it says. Three national studies of disparities Department of Justice 1996 appendix to its guidance, and the Urban Institutes' meta-analysis. The Department of Commerce's benchmark studies are outdated and inappropriate, and I'm not sure that that's merited by what was adduced at the hearing. In terms of the Department of Commerce.

We had conflicting testimony, I think, on that issue, and Dr. -- what's his name, Ayres, I think --

COMMISSIONER BRACERAS: Ayres.

COMMISSIONER KIRSANOW: Ayres said --

COMMISSIONER YAKI: My classmate.

COMMISSIONER KIRSANOW: -- that the Department of Commerce's study is -- needs to be updated but isn't necessarily outdated. He said that they had changed their metrics that they had used, so it -- to a capacity study, so it seems to me that it is something that is maybe evergreen.

So, but I'm not sure it's outdated. I

would move that we change outdated to updated -- or should be updated. That the Department of Commerce study should be updated.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER KIRSANOW: I'm not sure it's inappropriate either.

CHAIRMAN REYNOLDS: Okay, so this is in the form of a motion, and I'll second it. Discussion; does anyone disagree?

VICE CHAIRMAN THERNSTROM: I don't have a problem with that, I just don't know what the difference between being -- updating is.

CHAIRMAN REYNOLDS: If you don't disagree --

COMMISSIONER BRACERAS: So it should be updated to serve?

COMMISSIONER KIRSANOW: Yes, updated -- wait -- to serve as basis for federal policy or agency action.

COMMISSIONER BRACERAS: Okay.

COMMISSIONER KIRSANOW: Okay.

MR. MARCUS: Just for clarification.

COMMISSIONER KIRSANOW: Strike inappropriate.

Mr. MARCUS: This is for all three of the studies --

COMMISSIONER KIRSANOW: No, just Department of Commerce. Just Department of Commerce. So the way it would work is -- because the other ones, there is support for it in the testimony.

COMMISSIONER BRACERAS: Oh, okay.

COMMISSIONER KIRSANOW: So it would read, I guess, let me think. The three national studies of disparities in Department of Justice 1996 appendix to its guidance, and the Urban Institutes' meta-analysis are outdated and inappropriate now to serve as a basis. The Department of Commerce's benchmark studies need to be updated to serve as a basis for federal policy. That's somewhat awkward and cumbersome, but that's --

VICE CHAIRMAN THERNSTROM: We don't need the second to serve. Just need to be updated period.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER KIRSANOW: That's fine.

CHAIRMAN REYNOLDS: Anything else?

COMMISSIONER KIRSANOW: Yes.

VICE CHAIR THERNSTROM: so the --

COMMISSIONER YAKI: And I just wanted, on

that particular motion, at least there is also a conflict on the urban institute meta-analysis, Constance Sitrow actually did say the study approach is useful and needs to be updated but did not say it was inappropriate.

COMMISSIONER BRACERAS: Well, why don't we just leave it as is and say that all three should be updated.

COMMISSIONER YAKI: I'd prefer that.

COMMISSIONER BRACERAS: I don't think it's contradictory –

CHAIRMAN REYNOLDS: well

COMMISSIONER KIRSANOW: No, it's not.

CHAIRMAN REYNOLDS: I guess, my concern is that -- how old is this data? How does this data change the whole?

COMMISSIONER KIRSANOW: Five years for Department of Commerce has been -- was the testimony. It's five years old.

CHAIRMAN REYNOLDS: But we want to change -- if I understand Commissioner Yaki, he wants to change it for each of the three studies. So basically to say that the three needs to be updated.

COMMISSIONER YAKI: Well, I just wanted to

point out that Constance Sitrow, who is the -- I would say the independent person on the panel, did make the conclusion that the urban institute meta-analysis may have -- may be a little outdated, but the study approach was useful and could continue to be useful with continued new data. So I didn't want that to say it was inappropriate either.

COMMISSIONER BRACERAS: Actually, this is nit-picky, but to say it should be updated is more than -- of a recommendation than a finding. Right? To say that it is outdated is to state a fact. Once you start saying something should be done, it's not a finding anymore.

COMMISSIONER KIRSANOW: That's true.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIRMAN THERNSTROM: Aside from the fact that to say something -- that something is outdated is to say it needs updated, and the separate point here, inappropriate to serve as a basis for federal policy -- that is a finding that is really separate from the issue of needing updating.

I mean, if it is literally inappropriate for the use that it is made or if they are inappropriate for the uses that are made, that is a

separate point. It is not simply covered by the outdated.

COMMISSIONER KIRSANOW: I'm not sure it's inappropriate, though. I don't know that we deduced any evidence that they are inappropriate --

VICE CHAIRMAN THERNSTROM: Whatever. They are two separate points here. They can't be put under the same -- under the umbrella of the same word.

CHAIRMAN REYNOLDS: At least one of the panelists pointed out what he felt were significant flaws in each of the studies. He pointed out strengths in the Commerce study, but he also pointed out certain flaws.

COMMISSIONER KIRSANOW: I agree with you. I think George LaNue did that. My concern is this. If we are making findings, and I know we are not an adjudicatory agency, I'm not sure that we make credibility determinations. I'm not sure to what extent we credit one person over another person when the data, the testimony that's given, is based to a large extent on opinion. We've got conflicting opinion.

CHAIRMAN REYNOLDS: Well, I --

COMMISSIONER BRACERAS: May I speak to

that? As a procedural matter, I think that is incorrect. When we have a briefing, we strive to bring in people of different perspectives, and I would hope that the testimony would not be 100% consistent across our panelists.

So if we are going to be in the business of making findings at all, certainly part of our job in making the findings is to credit the testimony of one witness over another. There may be areas where there is unanimity among the panelists, and that's even stronger support for a finding.

But I think it is perfectly alright if we democratically vote to do so to credit the testimony of one witness, even if it's in complete disagreement with the testimony of the rest of the panel. That is our choice as a deliberative body.

CHAIRMAN REYNOLDS: Yes, I agree, and to add to that, I guess I'm just a little hypothetical. I mean you know, David Duke is sitting down here giving me his views on civil rights, I think that we have an obligation to give his testimony whatever credit it deserves --

COMMISSIONER YAKI: And then laugh privately.

CHAIRMAN REYNOLDS: -- and I suspect that the other members of the panel, I would probably give more weight to what they had to say.

COMMISSIONER KIRSANOW: I agree with you, except that that's in apposite. There is a fundamental quality of difference between expression of opinion and expression of fact. We are making findings of fact. If somebody says, if one individual says there are 15 apples, and nobody contradicts that, and then we come up and say there are not 15 apples, then that's different.

Now, if somebody says, I think that it is a nice day, and somebody else says it's not a nice day, then we can credit whomever we want because it's an expression of opinion.

COMMISSIONER BRACERAS: Right, but the expression of whether or not something is appropriate or inappropriate is a subjective determination much more akin to your second example. So, in other words, if they are not saying there are 15 apples or 12 apples, that's not the debate. The question of whether or not a particular study is an appropriate -- is an appropriate study to be used by the federal government is a subjective determination.

COMMISSIONER KIRSANOW: You're exactly right, but then I go back to my initial premise, and that is I didn't see any evidence adduced in the record about the appropriateness or inappropriateness of the Department of Commerce study, and that's why I think --

COMMISSIONER BRACERAS: Did George LaNue speak to that?

COMMISSIONER KIRSANOW: I think he did. I think everybody spoke to --

COMMISSIONER BRACERAS: Okay, but did he say --

COMMISSIONER KIRSANOW: -- the Department of Commerce study, but nobody said it was inappropriate.

COMMISSIONER BRACERAS: I don't think you -- first of all, that's another issue. I mean, I don't think you need to use the exact word. If the essence of George LaNue's testimony was that it's inappropriate, the fact, you know, whether or not he said that buzzword is irrelevant. We all know what inappropriate means --

COMMISSIONER YAKI: We abuse the word outdated --

COMMISSIONER BRACERAS: I guess my concern is not with Commissioner Kirsanow's particular concern about this finding. I'm sure we can work together to come up with a formulation that will satisfy Commissioner Kirsanow, and I'm willing to do that, but my concern as a policy matter going forward in terms of how we analyze these reports and how we decide whether or not we support them -- I feel very strongly that we, as a commission, are able -- should be able to select out testimony that we choose to credit, and we should be able to reformulate that into our own words without necessarily having to --

COMMISSIONER KIRSANOW: I don't dispute that except that we can't create our own testimony. I didn't see any testimony about the appropriateness of any given --

CHAIRMAN REYNOLDS: No, that's the conclusion that at least some of the commissioners, I presume -- that's a conclusion that some commissioners have reached.

COMMISSIONER KIRSANOW: Well, then, if that's the --

COMMISSIONER BRACERAS: We are entitled to reach conclusions.

COMMISSIONER KIRSANOW: Conclusions, but these are fact-findings.

COMMISSIONER YAKI: I mean, the fact is that, if we really want to get nitpicky, the fact is that George LaNue has been DQ'd from a number of disparity study cases because he is not qualified to comment on them.

COMMISSIONER TAYLOR: What's DQ'd?

COMMISSIONER YAKI: Disqualified as an expert witness.

COMMISSIONER BRACERAS: My point -- my point is a larger point having nothing to do with George LaNue or this particular document, so let's just stick to that for a minute because we could go back and forth on it whether you think George LaNue is a credible witness or not, and some people here will and some people here won't, and that's fine.

But it's a larger question of whether or not the Commission, as a body, should be making findings that are, in effect, our conclusions that we glean from the testimony. And I think -- excuse me -- I think that that is a perfectly appropriate function.

COMMISSIONER KIRSANOW: I think it's appropriate, but I think we've got to -- if we are

going to come up with conclusions, they better be based on testimony from the hearing, and I don't know that anyone said that use of these metrics is inappropriate.

In fact, George LaNue talks at length about these things. He said they need -- they need to be ticked, they need to be revised, but use of the base documents is not inappropriate.

CHAIRMAN REYNOLDS: Ian Ayres actually wrote it.

VICE CHAIRMAN THERNSTROM: I think you're wrong on this. On what LaNue said.

CHAIRMAN REYNOLDS: I think we need to move this along.

COMMISSIONER KIRSANOW: Let's move along.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: What formulation would --

COMMISSIONER KIRSANOW: Let's just move it --

COMMISSIONER BRACERAS: -- satisfy your concern.

COMMISSIONER KIRSANOW: -- let's leave it as -- it doesn't satisfy me because the -- I agree in

substance with what the document says, but I don't agree with the manner in which the documents were created. So that's --

COMMISSIONER BRACERAS: Why is that?

COMMISSIONER KIRSANOW: Because I think that we've got a briefing report that purports to be of the same ilk as a statutory report, but we're not putting it through the same type of ringer that we put a statutory report through.

COMMISSIONER BRACERAS: Well, that's a different issue, so --

COMMISSIONER KIRSANOW: But that's right --

CHAIRMAN REYNOLDS: Folks, folks, come on. If we are going to make our flights --

COMMISSIONER KIRSANOW: Move on.

CHAIRMAN REYNOLDS: Yes.

VICE CHAIRMAN THERNSTROM: Commissioner, let's just accept the current language.

COMMISSIONER KIRSANOW: Let's go. I'm not going to make a change to that.

CHAIRMAN REYNOLDS: Next issue. Any comments? Any further comments?

COMMISSIONER KIRSANOW: I've got a lot of

them, but I'm just going to let them go.

CHAIRMAN REYNOLDS: Okay, well, let's vote. All in favor, say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: All in opposition?

VICE CHAIRMAN THERNSTROM: That face --

COMMISSIONER YAKI: You're using the word -- I'm waiting for the A-word.

CHAIRMAN REYNOLDS: Okay, abstentions?

COMMISSIONER MELENDEZ: I'm abstaining. I wasn't here for that one.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER KIRSANOW: I'm abstaining also.

CHAIRMAN REYNOLDS: Okay. Alright, please let the record reflect that Commissioners Kirsanow, Yaki, and Melendez abstain, and the remaining commissioners voted in favor. Therefore, the motion passes. First Commissioner Braceras and then Commissioner Kirsanow.

COMMISSIONER BRACERAS: Maybe now is not the time because we have flights to make and other things like that, but I do think Commissioner Kirsanow raises a good point, and it's a larger point about

what the goal is of putting out a briefing report, and some of the briefing reports that we've put out did not have findings and recommendations attached to them, and now they've started to do that, and I think that is a discussion that --

COMMISSIONER KIRSANOW: We need to have them.

COMMISSIONER BRACERAS: But I think we need to have it globally as opposed to with respect to a specific document --

COMMISSIONER KIRSANOW: I agree. I just --

COMMISSIONER BRACERAS: -- my point, and I --

COMMISSIONER KIRSANOW: -- I just think --

COMMISSIONER BRACERAS: -- think we should discuss that.

COMMISSIONER KIRSANOW: -- we need to address that, and I would say, having said that, that I thought that the findings and recommendations in this report were more closely tethered to the facts deduced in the hearing than were the findings and recommendations of yesterday's consideration.

But that -- the basis for my abstention is

the process and how we are getting findings and recommendations in a briefing report as opposed to a statutory report. I fundamentally or intuitively agree with what is contained in the findings and recommendations, but I'm concerned about the process that led us to that point.

COMMISSIONER BRACERAS: Okay --

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER BRACERAS: -- well, we should have that discussion.

COMMISSIONER YAKI: I just have a quick question. What is the -- what was the deadline for the descents in the Hawaii case?

CHAIRMAN REYNOLDS: Did we establish?

MR. MARCUS: I believe --

COMMISSIONER YAKI: It was ten days.

CHAIRMAN REYNOLDS: Two weeks?

MR. MARCUS: -- that the consensus was that the two weeks be from yesterday.

COMMISSIONER YAKI: Was it two weeks or ten days?

VICE CHAIRMAN THERNSTROM: Two weeks.

COMMISSIONER KIRSANOW: I thought it was ten days.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: I believe I said two weeks.

COMMISSIONER YAKI: Seeing that there's no, I think, urgency to the disparity studies briefing, being that dissent is being put out as quickly, can we push that off so they are not due -- it's not due the same day?

CHAIRMAN REYNOLDS: I'm not following.

COMMISSIONER YAKI: This is the dissent --

VICE CHAIRMAN THERNSTROM: Two weeks from today.

COMMISSIONER YAKI: -- the same time as the Hawaii one.

COMMISSIONER BRACERAS: He wants additional time for this one.

COMMISSIONER YAKI: Because I don't have a staff person.

VICE CHAIRMAN THERNSTROM: Yes, let's do three weeks on that one.

COMMISSIONER YAKI: Three weeks, no, no, no, no.

VICE CHAIRMAN THERNSTROM: You want four?

COMMISSIONER YAKI: Yes, because I just

can't --

COMMISSIONER BRACERAS: Yes, I think that's --

VICE CHAIRMAN THERNSTROM: All right, that's fine.

COMMISSIONER YAKI: Thank you. Okay.

CHAIRMAN REYNOLDS: Okay, so -- but you have no objections to the document being placed on the website? Okay. Alright. Next up. Oh, this is going to be fun.

VICE CHAIRMAN THERNSTROM: I do want to second what Commissioner Braceras said. I want on the agenda, in fact, for the future that we discussed exactly the nature of the briefing reports and the question of blurring the difference between a statutory and a briefing --

COMMISSIONER BRACERAS: Well, we can do it at the working group level, too, with the --

COMMISSIONER YAKI: Strategic thing-a-ma-jiggy.

CHAIRMAN REYNOLDS: Ok, Alright. Next up is annual program planning. In order to facilitate the discussion and approval of commission projects for part of fiscal years 2007 and 2008, the staff director

recommended that commissioners follow a procedure similar to the one followed for the May 2005 planning meeting in selecting potential projects. Specifically, that process as commissioners to rank potential projects in order to streamline the process of developing a slate of potential candidates. Well, potential projects.

On March 3, 2006, the staff director invited each commissioner to submit a list of -- a list containing up to five of his or her top preferences in -- for potential 2008 statutory reports and up to five of his or her top preferences for potential briefings for 2007 and 2008, ranking them in order of preference with one being the highest, two the second highest, et cetera, by March 8, 2006, in preparation for the March 10, 2006 business meeting.

The Office of the Staff Director's staff would then assign points to each proposal selected by each commissioner, weighing them according to how high each commissioner places his or her -- places on his or her list. For example, five points for a number one choice, four points for a number two choice, et cetera.

If commissioners selected five or more

briefing -- five briefings or reports, the Office of Staff Director would assign a half a point for every briefing or report ranked below five. Each commissioner's -- all commissioners, rather, submitted rankings by March 9, 2006, during the business meeting held on March 10, 2006.

However, commissioners voted to table discussion on potential projects for fiscal years 2007 and 2008 to allow for a better-informed discussion of the projects and so that they could have more time to discuss additional projects. As a result, on Friday, March 22, 2006, the Office of the Staff Director again asked commissioners to rank their preferences following the procedures used in the March 9th round of rankings.

This time, however, commissioners would not necessarily be bound by their previous rankings, and the previous Office of Staff Director tabulations of commissioner preferences would be discarded. Six commissioners responded with rankings during this second round.

The Office of Staff Director advised those commissioners that did not respond in time that staff would rely on previous rankings -- on their previous

rankings of March 9 to determine those preferences unless those commissioners responded otherwise. As these commissioners had not responded otherwise, the staff used the previous March 9 rankings.

It should be noted that the staff could not locate Commissioner Taylor's rankings of potential briefings but was able to locate his rankings of potential statutory reports for 2008. Thus, the ranking of potential statutory reports reflects all commissioners' submissions, but the rankings of potential briefings reflect only those of six commissioners.

The Office of Staff Director has tabulated the results of this ranking, and they are as follows. Now, what I am talking about now is --

COMMISSIONER KIRSANOW: You let Price Waterhouse do this?

(Laughter.)

COMMISSIONER YAKI: I was about to say, this is more boring than the freaking Academy Awards, Ken.

CHAIRMAN REYNOLDS: Now, I looked at all of this, and I said is it -- do we need to do --

COMMISSIONER YAKI: Can't we just waive in

and read --

CHAIRMAN REYNOLDS: -I said we need to get this into the record somehow.

COMMISSIONER YAKI: I move to waive the reading and submit it to the record.

VICE CHAIRMAN THERNSTROM: I agree. Waive the readings.

CHAIRMAN REYNOLDS: Okay, well, let's get down to business, then. For the 2008 statutory reports, the top vote-getter was Religious Discrimination and Prisoners' Rights with 23 points. Racial Profiling was next with 18 points. Federal Agency Emergency Preparedness for People with Disabilities came in with 8 points, and Evaluation of the Effectiveness of Federal Agency Implementation -- the bottom line is --

COMMISSIONER BRACERAS: That's for reports?

CHAIRMAN REYNOLDS: Yes, that's for statutory reports. So, let me just -- Vice Chair Thernstrom.

VICE CHAIRMAN THERNSTROM: Well, I frankly felt utterly paralyzed looking at the list for the following reason: we need so much, it seems to me, of

-- well, at least for me, how I weighed these various topics reflected my concern about the fact that we no longer have Terri Dickinson. We don't know who we're going to hire. We don't know, you know, the strength, frankly, the social science quantitative strength of the person who will replace her, and some of these topics do require a level of expertise, so I felt that we may or may not have.

And I thought, for instance, on No Child Left Behind, I would have placed it perhaps first, except I need to know what our staff capabilities are, so, you know, my rankings were basically worthless. That's where I come out.

CHAIRMAN REYNOLDS: Okay, well, to add to that, I -- looking at the rankings, I had not so much concerns but surprise. I just don't have a strong sense that we all had enough data to give us comfort in these rankings. That's just a feeling. But, in any event, be that as it may, this is what we came up with.

We have a ranking. We're not locked into this, but this is the methodology we used last year, and it more or less worked. We can stick with that methodology, or we can entertain discussions of, you

know, of a different approach. Okay, we have --

VICE CHAIRMAN THERNSTROM: Can somebody spell out exactly what the question, since it is the number one, exactly what the questions are with respect to religious discrimination and prisoner rights to give me a sense of whether this is a topic that really justifies the designation of our annual statutory reports?

CHAIRMAN REYNOLDS: Well, you raise an interesting -- well, personally, that's not my -- I didn't vote for it, but I'm assuming that there is a consensus that this be the statutory report.

COMMISSIONER KIRSANOW: I didn't vote for it.

VICE CHAIRMAN THERNSTROM: I didn't vote for it.

CHAIRMAN REYNOLDS: Okay, this is.

COMMISSIONER KIRSANOW: So somebody gave it really high marks.

COMMISSIONER MELENDEZ: I voted for it.

COMMISSIONER YAKI: I voted for it.

VICE CHAIRMAN THERNSTROM: As the number one?

COMMISSIONER YAKI: Yes. And Ashley did.

And then Ashley asked me for my vote, so I gave it to him.

(Laughter.)

VICE CHAIRMAN THERNSTROM: But you always do.

CHAIRMAN REYNOLDS: I'm surprised you didn't sell the votes.

(Laughter.)

COMMISSIONER YAKI: Actually, when I was looking at this, I thought it probably would have helped, but it would have killed more trees to have actually had the staff write-ups, because I had a feeling this was going to happen.

VICE CHAIRMAN THERNSTROM: Yes, right.

COMMISSIONER YAKI: Talk to us, Ashley.

VICE CHAIRMAN THERNSTROM: Well, I do need to have -- and Ashley is a good person to do it. To justify --

COMMISSIONER TAYLOR: What I had in my mind, at least --

VICE CHAIRMAN THERNSTROM: I mean, this is our annual statutory report. This isn't a rich enough topic to justify that.

CHAIRMAN REYNOLDS: Well, I approach it

differently. I approach it as there is a hierarchy, or there are other things on here that arguably should be ranked before that. The answer obviously, for me, is yes. The answer obviously, for you, is no. But anyway.

COMMISSIONER YAKI: I mean, there are two clear things that set themselves apart from the rest of the pack. Racial profiling and the prisoners' rights one. Right? I mean, if you got eight points, that means that maybe you got one person giving you five and then a couple of other people giving you a half or a four or a three ranking. So in terms of the -- where priorities are, it's pretty clear that's between those two.

If there was a third priority that wasn't there, Mr. Chairman, and you want to bring it up --

CHAIRMAN REYNOLDS: No, quite frankly, I make these comments, but at the end of the day, I am more than -- I feel comfortable sticking with the methodology we used last year, and this got 23 points, and so -- Vice Chair Thernstrom.

VICE CHAIRMAN THERNSTROM: Well, I would be much more enthusiastic about this topic if we could broaden it, like as in segregation, discrimination,

and the rights of the incarcerated, I mean, so we get in the whole question of segregating prisoners on the basis of race.

COMMISSIONER TAYLOR: Of race.

CHAIRMAN REYNOLDS: Well, there was an email that was circulated with this request, I believe.

VICE CHAIRMAN THERNSTROM: It might have come from there, I don't know.

COMMISSIONER BRACERAS: And so the topic would be discrimination in prisons generally?

VICE CHAIRMAN THERNSTROM: Segregation and discrimination --

COMMISSIONER BRACERAS: So religious, racial --

VICE CHAIRMAN THERNSTROM: Yes, but, I mean, you know, there is a very interesting and important question revolving around --

COMMISSIONER BRACERAS: the Johnson case?

VICE CHAIRMAN THERNSTROM: Yes, I mean, the segregation of prisoners. I would like to broaden the description, and then, at the end of the day, if for resource and other reasons, we need to narrow it, let's do the narrowing at that point.

COMMISSIONER TAYLOR: Well, Mr. Chairman, I guess I start in my thinking on this topic, I am guided by first of all, what I have before me, and that is our options.

CHAIRMAN REYNOLDS: Good point.

COMMISSIONER TAYLOR: And we only, in my view it appears to me that we only have two viable options. The racial profiling or religious discrimination in prisoner rights. I don't see, I guess in this respect I am agreeing with Commissioner Yaki, I don't argue against a theoretical, hypothetical statutory report. I argue against what we have before us, and as -- what I compare what I have before me, racial discrimination and a component of that being related to prison rights is far and away our best option for this reason.

I think the --

VICE CHAIRMAN THERNSTROM: You mean religious discrimination?

COMMISSIONER TAYLOR: Religious discrimination, rather. The establishment clause of jurisprudence is -- this is a topic I think we should jump into directly. It is shifting ground, whether you are talking about the state contracting questions.

We have on the street now a federal RFP from the administration asking for a single faith unit in federal prisons, and you have states, at least 12 states that have issued similar SFPs.

The whole question of providing a secular service and a sectarian group offering to provide that secular service but doing so at a reduced rate because the supporters of that sectarian group have said we will donate our own time and energy for the opportunity to, for example, serve in a soup kitchen, giving us, in our view, the opportunity to share the light of Christ in that soup kitchen and whether or not that violates the establishment clause, whether or not that state entity can simply say if your point of providing the secular service is that you believe it is an opportunity to share the light of Christ, we are therefore going to prevent you from bidding on that service, even though it is providing a purely secular service.

To me, that is a critical question, and it is one that is pending in a variety of contexts, whether it be prisons or state covenant contracting generally.

CHAIRMAN REYNOLDS: You should have

updated the contract paper that says this is all new --

COMMISSIONER BRACERAS: That seems more to do with faith-based initiatives than with discrimination against prisoners.

COMMISSIONER TAYLOR: This is why it's broader because the issue of faith-based groups providing secular services is different than faith-based initiatives. For example, in most states, what they have requested is they -- it's happening more in the prison context than other contexts, but they have said we want you to come in and provide us with a pre-release program in this prison.

Operate this prison. Provide a purely secular service. You then have sectarian groups saying we want to provide the secular service. So it's not a faith-based initiative at all. The question is whether or not Christians and other folks of faith can participate in providing purely secular services.

Quite frankly, most of the government entities are surprised when they receive a response from a secular or a sectarian organization. They don't anticipate the response, they don't understand

what is going on in the faith community, that more members of faith have decided that by participating in the public square this way, it's a way to share, in their words, the light of Christ, but by doing so through providing a purely secular service.

And that is when some states, California for example, they simply said that if you are a religious organization, you can't apply because we don't believe you can provide this secular service without prostheletizing. And that's the -- that's the question I have in mind, and it's much broader than a faith-based initiative.

CHAIRMAN REYNOLDS: So this is, I mean, that is, as Commissioner Braceras pointed out, that is -- it's quantitatively -- qualitatively different from religious discrimination or just discrimination.

COMMISSIONER TAYLOR: Right. It really -- it's more a question of the conditions under which a person of faith can participate in public square or public service when the point of the government's request is not to provide a sectarian service but a purely secular service, but the group or individual offering to provide that secular service is a person of faith, and they provide it from a faith

perspective. What does that mean? What does the establishment clause permit?

CHAIRMAN REYNOLDS: Okay --

COMMISSIONER TAYLOR: Those are the questions that --

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: This is really intriguing and interesting, and I'm not opposed to it, just an observation. It seems to be a somewhat narrowly-crafted issue for a statutory report, which traditionally has a more broader impact. Border rights, for example, has a national impact.

And I'm wondering whether it is something that is appropriate for a statutory report where we are trying to address issues and send a message to the nation as a whole. It's federal policy. It's an intriguing issue -- I'd like to address it at some point, but I'm conflicted as to whether it merits a statutory report.

COMMISSIONER YAKI: Or just a briefing.

COMMISSIONER TAYLOR: Right.

CHAIRMAN REYNOLDS: Any other comments?

VICE CHAIRMAN THERNSTROM: Well, can it be crafted in a way -- I mean, that's what I was

addressing my remarks to before. Can it be crafted in a way that would turn it into a statutory report by defining the prisoner rights question more broadly.

STAFF DIRECTOR MARCUS: If the commissioners wanted to, one option would be to fold it into a broader religious discrimination issue, so it would deal with the topic that Commissioner Taylor discussed together with issues raised by Muslim groups who feel they have been discriminated against and other religious groups. So it could be coupled with other religious discrimination --

COMMISSIONER KIRSANOW: That's, in fact, when I looked at it, I had almost presumed it had to do with --

COMMISSIONER YAKI: Yes, so did I.

COMMISSIONER KIRSANOW: -- Muslim chaplains, access to Muslim chaplains --

COMMISSIONER YAKI: I think it does, actually.

COMMISSIONER KIRSANOW: -- people taking peyote, things of that nature --

COMMISSIONER TAYLOR: It does. It actually does because you have a situation where some states have said the reason we have to reject your

response to providing the secular service is that we don't have similar responses from other faiths, so that if we accept your response, we are limited to that single faith, and then we are in violation of the establishment clause because we can't offer the service because we haven't received response from the other faiths, so that was -- I'm sorry, that was part of the discussion.

VICE CHAIRMAN THERNSTROM: So can you -- can you give a different title to this so that those of us who are concerned about precisely what Commissioner Kirsanow articulated a few minutes ago --

CHAIRMAN REYNOLDS: Well, if -- couldn't we broaden it by just simply deleting "religious," and under discrimination, we would look at various types of discrimination, including these issues that Ashley just discussed?

COMMISSIONER YAKI: I don't think -- you mean just changing discrimination and prisoner rights?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: As someone who has done some of this work in his past, that is a gigantic

COMMISSIONER KIRSANOW: -- would swallow --

VICE CHAIRMAN THERNSTROM: Yes --

COMMISSIONER YAKI: -- gigantic topic. It would just be too huge.

CHAIRMAN REYNOLDS: Okay, well, what -- what other proposals, then? We are merely talking -- it sounds like we are going to have to go back to the drawing board and do some thinking on what the --

COMMISSIONER YAKI: Statutory --

CHAIRMAN REYNOLDS: -- contours would be. I think that we have a, you know, we have the broad outlines of a statutory topic, but just -- we need to do some thinking about what the focus --

COMMISSIONER YAKI: I don't know if we have, I mean, I don't know if we have a broad outline for a statutory topic. I think that we have a very narrow outline, specific outline, that becomes a briefing where you can invite someone from a state correctional institute, someone from a religious faith-based organization, someone from the Department of Corrections, what have you, and sort of -- and get it out there.

But I'm just wondering if it were a statutory report, if we start extending the tentacles out, then we really are talking more an examination of

the establishment clause and faith-based initiatives, and that's a whole different topic.

VICE CHAIRMAN THERNSTROM: Well, it does seem to me that if we could agree that there is a topic there and then -- and that that's going to be our statutory report, but we need to redefine it, and of course, it doesn't mean that we cannot have a briefing as well on the question, as we did with voting rights, that we would be ahead in this process today. We would have said, okay, we're going to work that topic out so it is a truly a statutory report.

COMMISSIONER YAKI: Well, we need to get this done for the budget, right?

STAFF DIRECTOR MARCUS: We do, and we're at least two to three months behind, so we really have our backs against the wall in preparing it.

COMMISSIONER KIRSANOW: I'll just voice my preference. My preference would be I want to do justice to what Ashley's main concern is, or main topic is. I don't want to diffuse or -- I'm sorry, kind of make this a more amorphous topic or larger topic because I think it gets lost. But for that reason, I think it makes more sense to have this as a bang-up briefing as opposed to a statutory report

because I do think that the subject matter is more narrow than we traditionally have for a statutory report.

I know it's gotten the most votes, so I'm not going to oppose it or anything, but it's just a suggestion.

VICE CHAIRMAN THERNSTROM: And you can't imagine defining this in such a way that would have --

COMMISSIONER YAKI: Can I just say something about the votes because, actually, I did vote for this I think as my second choice, and it was based on -- my reading of the description was a little bit different than I think I'm hearing about it now.

Maybe I'm wrong, but -- or maybe I just didn't read it all that carefully because I thought of it as what you did, which is the whole issue and what we talked about, Abby, at one point, which is a whole issue of religious segregation access to -- access to people of your particular faith, services, diet, things like that that go into traditional "prisoners'" rights type issues versus access to prisons to -- on behalf of faith-based groups, which is where Ashley is coming from, which I think is also a good topic but not quite, quite frankly, what I voted for --

COMMISSIONER MELENDEZ: The reason I voted for it was because in the Nevada State Prison, we are actually dealing with the issue on Native Americans on actually putting sweat lodges on the ground, and they just closed those down, and it was a religious issue on whether or not you could do that or it violated the prisoners' rights to religion on putting those sweat lodges on -- and so it was just an issue, that's why I actually voted for it.

COMMISSIONER YAKI: So we may have 23 points that have no consensus whatsoever.

VICE CHAIRMAN THERNSTROM: But Commissioner Yaki, can you rephrase -- I mean, I -- this is potentially a very good topic. Can you rephrase it in such a way that for you it's a statutory report?

COMMISSIONER YAKI: Well, I would say -- I would just say the issue of access to religious -- to religious services and access by religious -- by faith-based organizations to prisons might be a worthy topic.

I mean, there you are talking about the inside and the outside. You are talking from the viewpoint of prisoners who are interested in

practicing their religion, and then you are talking about from the viewpoint of organizations that Ashley is talking about who want to participate in the prison life and bring their particular viewpoint or religious prosthelization or whatever you want to call it, or just simply secular type service, as part of what they feel is their mission to help with prisoners.

I think you could -- you can look at inside the wall and outside the wall and maybe make --

VICE CHAIRMAN THERNSTROM: Give us some precise wording. We are, as Ken said, up against a wall.

COMMISSIONER YAKI: Why am I the guy --

(Laughter.)

VICE CHAIRMAN THERNSTROM: You've done more work than anybody on this commission on the question of prisoner's rights, and so I'm looking at you because you've --

COMMISSIONER YAKI: It wasn't my first choice.

(Laughter.)

COMMISSIONER YAKI: Here, why don't you give me a couple of minutes, and why don't we move on?

VICE CHAIRMAN THERNSTROM: Well, okay,

let's move on. Can we move on to the briefings?

CHAIRMAN REYNOLDS: Okay, yes, indeed. All right, the top vote-getter for the briefings -- how many briefings for -- okay. Okay, the first nine bullet points --

VICE CHAIRMAN THERNSTROM: Where does it end? Count for me.

CHAIRMAN REYNOLDS: Religious discrimination.

VICE CHAIRMAN THERNSTROM: Yes, religious discrimination is the cutoff, although there is almost no point difference between religious discrimination and community reinvestment and corporate diversity.

CHAIRMAN REYNOLDS: That is true. Okay, so if we limit ourselves to the first nine, that would end with religious discrimination in K-12 schools. If you are not going to -- if you are going to expand the review to the community reinvestment act and corporate diversity because those two have four points each versus the five points that the religious discrimination got, then that's the -- those are the choices that we have to make.

VICE CHAIRMAN THERNSTROM: I would say that however we describe the -- whatever language that

Commissioner Yaki comes up with that it would be very useful to do what we did with voting rights and to have a briefing as well.

CHAIRMAN REYNOLDS: Well --

VICE CHAIRMAN THERNSTROM: That wasn't raised --

CHAIRMAN REYNOLDS: Okay.

VICE CHAIRMAN THERNSTROM: -- but I think it's a good idea.

CHAIRMAN REYNOLDS: Okay, well hold on that. Do we have an open slot for that?

MR. MARCUS: I'm sorry, for what?

CHAIRMAN REYNOLDS: To have a briefing for the statutory report?

MR. MARCUS: Yes, I think that it is a very good practice, and we should -- keep one open.

COMMISSIONER YAKI: I would say just one thing, which is the briefing should only focus on one part --

VICE CHAIRMAN THERNSTROM: That's fine, but I think that it is --

COMMISSIONER YAKI: -- because --

VICE CHAIRMAN THERNSTROM: -- nice to have a little bit of --

COMMISSIONER YAKI: -- I'm drafting is more meatier.

VICE CHAIRMAN THERNSTROM: That's fine. We'll focus on one part --

COMMISSIONER YAKI: Even though I may not vote for it.

VICE CHAIRMAN THERNSTROM: -- but it does enrich our understanding to have a briefing.

COMMISSIONER TAYLOR: I agree.

VICE CHAIRMAN THERNSTROM: So let us somehow, as we pick these briefings --

COMMISSIONER TAYLOR: Reserve a spot.

VICE CHAIRMAN THERNSTROM: -- reserve a spot.

CHAIRMAN REYNOLDS: Oh, so this -- so -- okay. All right, I have some additional information, folks. We need to fill up some slots in 2007 with briefings, and so the idea is that the first three bullet points ending in The Effect of No Child Left Behind on Minority Achievement, that those would be the three briefings for 2007. I mean, if we approve that, then we would have 2007 -- we would have all the briefings for 2007.

Then, for 2008, we would just look at

everything up until Corporate Diversity?

STAFF DIRECTOR MARCUS: Give us another eight, which would leave room for one to coincide with the statutory report and give us an extra two that would be open for emerging issues.

VICE CHAIRMAN THERNSTROM: Good. Because I think there is a consensus on having a briefing on that corner of the statutory issue.

CHAIRMAN REYNOLDS: Okay, so, at this point, do we need any additional discussion, or do we want to just stick with our methodology and vote?

VICE CHAIRMAN THERNSTROM: Let's vote. On 2007.

CHAIRMAN REYNOLDS: Okay. Okay --

VICE CHAIRMAN THERNSTROM: Let's do them separately. Vote on 2007.

CHAIRMAN REYNOLDS: Okay, then the motion is -- I move that the -- that Discrimination Against Native Americans in Border Towns and Title IX Athletics: Accommodating Interest and Abilities, and finally, The Effect of No Child Left Behind on Minority Achievements -- on the Minority Achievement Gap be approved as briefings for 2007. Is there a second?

VICE CHAIRMAN THERNSTROM: I will second it, but I would like to take out the word minorities since that covers Asians as well, and there is not an achievement gap with respect to Asians, so just on the achievement gap.

CHAIRMAN REYNOLDS: Well --

COMMISSIONER YAKI: Why are you leaving out my wiretapping? I'm busy writing this.

VICE CHAIRMAN THERNSTROM: That's going in 2008.

CHAIRMAN REYNOLDS: Next vote.

VICE CHAIRMAN THERNSTROM: Next vote.

COMMISSIONER YAKI: Why is it going in 2008?

VICE CHAIRMAN THERNSTROM: Because we need only three in 2007. We took the top three.

CHAIRMAN REYNOLDS: Right.

COMMISSIONER YAKI: But they scored exactly the same.

CHAIRMAN REYNOLDS: Well -- okay, okay. That's true.

COMMISSIONER KIRSANOW: What were the top three again? I don't have my materials.

COMMISSIONER YAKI: There's a top four.

CHAIRMAN REYNOLDS: Of the -- what the debate, apparently, involves The Effect of No Child Left Behind on -- Abby wants The Achievement Gap, and the other option is Domestic Wiretapping and the War on Terror, both --

COMMISSIONER KIRSANOW: What --

VICE CHAIRMAN THERNSTROM: Discrimination against Native Americans in Border Towns that got the top vote. Title IX Athletics: Accommodating Interests and Abilities, got the second highest. So then the next two, which got the same number of votes are No Child Left Behind and Domestic Wiretapping and the War on Terror.

COMMISSIONER YAKI: And so we only have three slots available for next year?

STAFF DIRECTOR MARCUS: We could do a fourth, it would just take away one emerging issue.

VICE CHAIRMAN THERNSTROM: All right, let's do four. Let's do four. Let's do four. So the domestic wiretapping --

COMMISSIONER YAKI: -- I'm gonna stop writing here --

VICE CHAIR THERNSTROM: Let's do four.

CHAIRMAN REYNOLDS: So the motion is

amended so that it includes domestic wiretapping as a briefing for 2007. Any additional discussion?

VICE CHAIRMAN THERNSTROM: Well, as I said, I would like minority -- just the achievement gap. We all know what it means, but minority suggests it is white versus all minorities, and it is not white versus all minorities.

COMMISSIONER TAYLOR: A friendly perhaps amendment. How about the effect of the no child left behind act on minorities because doesn't it require the gathering of data on some minorities that may not have a gap, per se, but it still requires localities and states to collect the data? Or are we just focusing on the achievement gap?

VICE CHAIRMAN THERNSTROM: I thought we were focusing on the achievement gap.

COMMISSIONER TAYLOR: If we are, then forget everything I've said.

VICE CHAIRMAN THERNSTROM: And no child left behind is all about the gap. That's what the preamble states.

COMMISSIONER KIRSANOW: Practically speaking, there is still a gap, though, between Asians and everybody else, so --

(Laughter.)

CHAIRMAN REYNOLDS: I think we are getting wrapped around the axle unnecessarily. In any event, whatever we happen to -- whatever we wind up calling it, all in favor of the first four bullet points that have already been read into the record, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: All in opposition?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion passes unanimously.

VICE CHAIRMAN THERNSTROM: Great, so -- oh, wait, we are adding the statutory --

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes, this is my first crack at the statutory report, which is an examination of the role that the free exercise and establishment clause play in the (a) administration and management in federal and state prisons and (b) the individual religious rights and needs of prisoners. To this end, the statutory report will focus on the role that

federal and state law regulations and prison administrators act in the conduct of something religious services in prison so by calling the ability of faith-based organizations who bid for an access, traditional programs for prisoners, and participate in traditional programs for prisoners, and so by calling in the question of accommodating -- accommodation or discrimination of an inmate's religious preferences or needs.

VICE CHAIRMAN THERNSTROM: Start over.

CHAIRMAN REYNOLDS: Yes, that was a lot.

VICE CHAIRMAN THERNSTROM: Yes.

COMMISSIONER YAKI: Well.

VICE CHAIRMAN THERNSTROM: Slowly.

COMMISSIONER YAKI: An examination of the role that the free exercise and establishment clauses play in the (a)administration and management of federal and state prisons and (b)the individual religious rights and needs of prisoners, period. To this end --

COMMISSIONER KIRSANOW: You can stop right there.

COMMISSIONER YAKI: Oh, okay.

COMMISSIONER KIRSANOW: I think you really

could.

VICE CHAIRMAN THERNSTROM: Let's just stop right there.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: I'm assuming that this discussion will also involve the security concerns that wardens have in making these decisions --

COMMISSIONER YAKI: That's why I said, to this end, the statutory report will focus on the role that federal and state law, regulations, and administrators have in the conduct or allowance of religious services --

CHAIRMAN REYNOLDS: Okay, I just wanted to make sure we were all on the same page.

COMMISSIONER YAKI: -- the ability of faith-based organizations to participate in traditional programs for prisoners, which is what you are talking about, and the question of accommodation or discrimination of inmates religious preferences or needs.

VICE CHAIRMAN THERNSTROM: Actually, for the -- I changed my mind -- the further language is important. Let's not cut it off. Let's have the whole kit and caboodle.

COMMISSIONER YAKI: Is that okay?

VICE CHAIRMAN THERNSTROM: Yes, it's good.

COMMISSIONER YAKI: Can I vote against it now?

(Laughter.)

(SIDE CONVERSATION BETWEEN REYNOLDS AND MARCUS)

VICE CHAIR THERNSTROM: You can do whatever your contrarian self –

COMMISSIONER YAKI: One of the first cases I ever brought as a law student was against then-attorney general Joe Lieberman in Connecticut, for the Connecticut prison system, and that was at Yale Law School.

They are silly enough to allow first-years to practice law in Connecticut.

COMMISSIONER KIRSANOW: Actually practice? Really?

COMMISSIONER YAKI: Yes, you can -- I mean, you have to have a supervising attorney, but you can file lawsuits, argue motions, take depositions, do the whole thing. I mean, do full trials. But Joe Lieberman and I were busy fighting over prisoners' rights issues. It was a cottage industry, the whole

prisoners' rights issue.

CHAIRMAN REYNOLDS: Okay, for 2008, basically --

VICE CHAIRMAN THERNSTROM: Wait a minute. Have we voted on this?

CHAIRMAN REYNOLDS: Oh, I'm sorry, the statutory report. Okay, let's vote on the statutory report as amended by the wonderful draftsmanship from Commissioner Yaki. All in favor of the statutory report as amended, say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: All in opposition?

(No answer.)

CHAIRMAN REYNOLDS: Abstentions?

(No answer.)

CHAIRMAN REYNOLDS: Please let the record reflect that the motion passes unanimously. Next up, bouncing back to briefings but for 2008. We would be looking at starting at racial profiling, U.S. Department of Justice remedies through race conscious admission and financial aid in higher education.

VICE CHAIRMAN THERNSTROM: Have we -- have we -- we need to inject part of the statutory -- some corner of the statutory report into the list of

briefings.

CHAIRMAN REYNOLDS: We reserve a slot.

VICE CHAIRMAN THERNSTROM: You have reserved a slot?

CHAIRMAN REYNOLDS: Yes.

VICE CHAIRMAN THERNSTROM: Okay.

COMMISSIONER YAKI: Okay, I move that.

CHAIRMAN REYNOLDS: Is there a second?

VICE CHAIRMAN THERNSTROM: Wait a minute, where does it end now? At corporate diversity?

CHAIRMAN REYNOLDS: No, race conscious admission.

VICE CHAIRMAN THERNSTROM: At race conscious admissions? We're down to there. Where are we? Is that the cut off?

CHAIRMAN REYNOLDS: Right here.

VICE CHAIRMAN THERNSTROM: That's the last one.

CHAIRMAN REYNOLDS: Yes. Okay, is there a second?

COMMISSIONER YAKI: Second.

VICE CHAIRMAN THERNSTROM: Second.

COMMISSIONER YAKI: Oh, I moved it, so I can't second, sorry.

VICE CHAIRMAN THERNSTROM: I'll second it.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All in favor, say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: All in opposition?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion passes unanimously.

VICE CHAIRMAN THERNSTROM: I can't believe it.

CHAIRMAN REYNOLDS: Okay. Okay.

VICE CHAIRMAN THERNSTROM: Nothing like having planes to catch.

CHAIRMAN REYNOLDS: Hold on a moment.

COMMISSIONER TAYLOR: Focuses the mind.

VICE CHAIRMAN THERNSTROM: Focuses the mind.

COMMISSIONER TAYLOR: That's right.

COMMISSIONER YAKI: We should probably get in the airport lounge.

COMMISSIONER KIRSANOW: Maybe we ought to

schedule --

VICE CHAIRMAN THERNSTROM: I was just thinking that.

COMMISSIONER KIRSANOW: Concentrates the mind.

VICE CHAIRMAN THERNSTROM: Right.

CHAIRMAN REYNOLDS: Okay. I'm a little confused, but you won't be surprised by that. Oh, I see. Okay, yes. Next up, we will discuss whether to conduct a briefing in Omaha, Nebraska, to review a recently-passed Nebraska statute that would apparently divide the Omaha school district into three separate districts along racial lines on April 13, 2006.

Governor David Heineman signed a legislative bill 10/24, which takes effect July 2008. It divides the Omaha school districts into three districts, one predominantly white, one mostly black, and the other largely Hispanic.

Now, the supporters of the OSD argue that minority control of the school board and of the budgetary process will be an advantage for minority communities and have a positive effect on students and the education quality.

Some legal scholars claim that Senator

Chambers amendment went against *Brown v. Board of Education*.

COMMISSIONER KIRSANOW: Some?

(Laughter.)

CHAIRMAN REYNOLDS: Just trying to be fair. I'm assuming there's at least one person out there that supports them. Vice Chair Thernstrom?

VICE CHAIRMAN THERNSTROM: Question, which -- of timing. July, so this is going to be after it goes into effect. It's also going to be --

CHAIRMAN REYNOLDS: No, it goes into effect in 2008.

VICE CHAIRMAN THERNSTROM: Oh, it goes into effect in 2008? Okay. Misunderstood. It is also at a time when everybody connected with education disappears because they all have such a cushy job. Strike that from the record.

COMMISSIONER YAKI: I have a schedule problem. I am scheduled to be on this coast that week, but not in the middle of the country.

COMMISSIONER KIRSANOW: What date again?

CHAIRMAN REYNOLDS: I don't know, but --

COMMISSIONER YAKI: It's Friday the 28th.

VICE CHAIRMAN THERNSTROM: It's Friday the

28th.

CHAIRMAN REYNOLDS: What about moving the date? I mean, we can always move the date on which --

COMMISSIONER YAKI: Would you -- I would rather have it during the school year, wouldn't you?

VICE CHAIRMAN THERNSTROM: I would much rather have it during the school year. Really, I'm serious. The whole education establishment --

COMMISSIONER YAKI: July is kind of dead press month anyway.

VICE CHAIRMAN THERNSTROM: -- and people are gone. Now, I can't make the September meeting at all.

CHAIRMAN REYNOLDS: Okay, so we are looking -- okay, so September?

COMMISSIONER YAKI: No, she just said she can't make September.

VICE CHAIRMAN THERNSTROM: I can't make -- please don't do this without me. I can't make it on September.

COMMISSIONER YAKI: October would be good.

COMMISSIONER TAYLOR: We could -- at no point in September?

VICE CHAIRMAN THERNSTROM: Well --

COMMISSIONER TAYLOR: We could change the date if we are not --

VICE CHAIRMAN THERNSTROM: Oh, yes, I can't make it on the current -- the -- it's -- when is it scheduled for? September 15th, I believe. I can't make that. And this is a topic that really interests me, so I beg of you.

COMMISSIONER YAKI: The question is, to get the maximum number of educators and other people, would it be more -- would it be better to hold it on, I hate to say this, a Saturday? When educators are not in school or not in classes, and otherwise, we'll just get the principal -- you know, we'll just get --

CHAIRMAN REYNOLDS: At this point, I haven't given too much thought about who we would invite, but Senator Chambers definitely would be someone. Someone from maybe the AG's office --

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: A community leader. I don't know. I -- well, I guess I don't know -- well, what do you have in mind in terms of --

COMMISSIONER YAKI: No, I was just --

CHAIRMAN REYNOLDS: -- educators --

COMMISSIONER YAKI: No, I was just

thinking that this is, I think, a nice moment of the commission where we're all kind of getting together to go in there and go -- and say some interesting things to people. I'm just wondering if -- Ashley's laughing. To be quite honest, if we did it on a Saturday, when there is more opportunity for parents and other people to come and watch and attend, it would be interesting. And then, number two, it gets in the Sunday paper.

CHAIRMAN REYNOLDS: Well, personally, that's better for me. A Saturday. So I don't know what's --

VICE CHAIRMAN THERNSTROM: All right, I'm out of pocket from the 11th of September to the 18th of September. I can't make anything on those days.

COMMISSIONER TAYLOR: Can I just make a recommendation? If we vote -- if we decide today that it is something we want to do, we can leave the scheduling to the staff director to communicate with us, and that's a detail we can work out rather than all getting our calendars out.

COMMISSIONER YAKI: Yes, you can do a phone poll.

COMMISSIONER TAYLOR: If we decide --

COMMISSIONER YAKI: Let's do a phone poll -- as you can see, I'm moving my --

(Laughter.)

CHAIRMAN REYNOLDS: Okay, folks, are we ready to vote on this issue, with the understanding that the date would be decided at a later date?

VICE CHAIRMAN THERNSTROM: And that you will not have it the days I can't make it.

CHAIRMAN REYNOLDS: Within reason, we are going to work with you.

VICE CHAIRMAN THERNSTROM: I just told you what the dates are, so a week there.

CHAIRMAN REYNOLDS: All right.

COMMISSIONER TAYLOR: You have our moral commitment.

CHAIRMAN REYNOLDS: All right, all in favor, say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: All in opposition?

(No answer.)

CHAIRMAN REYNOLDS: Abstentions?

(No answer.)

CHAIRMAN REYNOLDS: The motion passes unanimously.

COMMISSIONER KIRSANOW: You know we may want to make it a hearing so we can exercise appeal --

VICE CHAIRMAN THERNSTROM: Do we want to make a what?

COMMISSIONER KIRSANOW: Make it a hearing so we can exercise subpoena power? --

CHAIRMAN REYNOLDS: All right, we can consider that. Okay, a few quick things. As you pack, please listen. Several commissioners have sent letters with their concerns about the petition for renewal of recognition by the ABA to the U.S. Department of Education concerning accreditation throughout the United States of programs and legal education.

I'm going to skip all the rest of that. The bottom line is that two letters -- the two letters were sent out. The original letter was sent out March 8 by Vice Chair Thernstrom, a second letter sent out March 20 by Commissioners Kirsanow, Braceras, Taylor, and me. All -- is there -- I move that these letters be placed on the website. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: Can we amend that to

also include the letter that Commissioner Yaki and Melendez will be sending as well?

CHAIRMAN REYNOLDS: Actually, that was the next motion, but let's collapse it all in.

VICE CHAIRMAN THERNSTROM: Second.

CHAIRMAN REYNOLDS: As amended, yes. Okay, all in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: All in opposition?

(No answer.)

CHAIRMAN REYNOLDS: Abstentions?

(No answer.)

CHAIRMAN REYNOLDS: The motion passes unanimously. Okay, State Advisory Committee, we have two retiring packages, one from Florida, one from Kentucky. I presume that everyone has carefully reviewed the information, and I move that --

COMMISSIONER YAKI: Commissioner, the one concern I had is that Kentucky is eight men, three women.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER YAKI: Kentucky is eight men, three women.

COMMISSIONER KIRSANOW: My understanding

is that's the demographics --

(Laughter.)

CHAIRMAN REYNOLDS: Moving right along. Commissioner Yaki -- but the second comment is that I noticed the same thing and made a comment to the staff director. I would be mindful of that issue.

VICE CHAIRMAN THERNSTROM: Who cares?

CHAIRMAN REYNOLDS: Well, Commissioner Yaki and me.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: In any event, I move that the Commission re-charter the Florida State Advisory Committee. Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any in opposition?

(No answer.)

CHAIRMAN REYNOLDS: Any abstentions?

(No answer.)

CHAIRMAN REYNOLDS: Okay. Okay, I have been told that I have to read the names into the record. So for the Florida sect, the members would be Judith Albertelli, Juanita Alvarez-Mainster, Frances

Bohnsack, Clint Cline, Elena Flom, Wilfredo Gonzalez, Charles Hearns, Walter Hill, J. Robert McClure, Elizabeth Rodriguez, Frank Shaw III, Alan Williams, and Sofian Zakkout.

STAFF DIRECTOR MARCUS: And Elena Flom as chair?

CHAIRMAN REYNOLDS: And Elena Flom will be the new chair of the Florida SAC. Okay, I move that --

STAFF DIRECTOR MARCUS: And the members will serve uncompensated.

CHAIRMAN REYNOLDS: And the members will serve uncompensated, as has been the rule forever.

VICE CHAIRMAN THERNSTROM: And we wave goodbye to Commissioner Yaki.

CHAIRMAN REYNOLDS: Okay, hold on, hold on. I need your vote.

COMMISSIONER YAKI: Why? We've got --

CHAIRMAN REYNOLDS: Okay. Okay, here we go.

CHAIRMAN YAKI: Unless I go over here and Peter jumps out the door behind me.

CHAIRMAN REYNOLDS: Well that's a possibility. Okay, I move that we -- the Kentucky

State Advisory Committee. The members will be Troy Body, Richard Clay, Betty Griffin, J. Blaine Hudson, Vickie Maley, John McCarthy, Linda McCray -- alright, I'll skip that one for now. William Summers V, Tom -- Phil Tom, Jim Waters, and Osi Onyekwuluje. That was my attempt. I apologize for mangling the gentleman's name.

Is there a second?

VICE CHAIRMAN THERNSTROM: Second.

CHAIRMAN REYNOLDS: Okay, yes, and J. Blaine Hudson will serve as chair, and the new members will serve as uncompensated government employees. All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any in opposition?

(No response.)

CHAIRMAN REYNOLDS: What did I forget? Okay, and under these -- okay, let me finish. Any in opposition?

VICE CHAIRMAN THERNSTROM: No.

CHAIRMAN REYNOLDS: Any abstentions?

VICE CHAIRMAN THERNSTROM: No.

CHAIRMAN REYNOLDS: Okay, one last thing. I move that we authorize the staff director to

execute the appropriate paperwork for these appointments. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Okay, all in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any in opposition?

COMMISSIONER KIRSANOW: No.

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: Let's -- we need to carefully book our flights in the future so that we are short on time. I like the efficiency that these deadlines impose on us. Folks, thank you.

(Whereupon, at 1:11 p.m., the foregoing matter was adjourned.)