

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, AUGUST 13, 2010

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

PRESENT:

GERALD A. REYNOLDS, Chairman
ABIGAIL THERNSTROM, Vice Chairman
TODD GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner (via telephone)
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
CHRISTOPHER BYRNES, Director, RPCU
PAMELA A. DUNSTON, Chief, ASCD
ALFREDA GREENE
TINALOUISE MARTIN, Director, OM
LENORE OSTROWSKY, Attorney Adviser
KIMBERLY TOLHURST

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH
KIMBERLY SCHULD

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

(9:35 a.m.)

CHAIRMAN REYNOLDS: The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is 9:37 Eastern Standard Time on August 13th, 2010. All commissioners are present at 624 9th Street with the exception of Commissioner Melendez, who is participating by phone.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: The first item on the agenda is the approval of the agenda. I move that it be adopted. Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All those in favor of the motion, please say, "Aye."

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

II. PROGRAM PLANNING

- NBPP ENFORCEMENT PROJECT

CHAIRMAN REYNOLDS: The motion passes

1 unanimously. First up is an update on the New Black
2 Panther Party enforcement report. Mr. General
3 Counsel, please provide us with an update on the
4 recent developments in the investigation.

5 MR. BLACKWOOD: Good morning. As you are
6 aware and received copies, we got a letter from the
7 Department of Justice, specifically from Assistant
8 Attorney General Perez, on August 11th, in which Mr.
9 Perez indicated that they would not allow Christopher
10 Coates to testify before the Commission, even with the
11 compromise that we had proposed, with regards to the
12 status of the report.

13 Each of you should get a copy of the
14 report electronically later this afternoon. It will
15 come in at approximately 100 pages, but that is
16 because it is double-spaced. When it actually is
17 printed, I still believe our estimate of 25 to 30
18 pages is more accurate.

19 COMMISSIONER YAKI: This is the draft?

20 MR. BLACKWOOD: That is correct. It is
21 the draft. One thing that you will see is the
22 citations are perhaps not the standard citations.
23 That is simply the citations to the record are there
24 for informational purposes because it is still our
25 purpose to implement hyperlinks into the report.

1 We'll be working with editors to do that. But for
2 purposes of your reviewing the report by the
3 commissioners, you will see the cites and be able to
4 find the transcript references that we have.

5 And, lastly, we will as I mentioned
6 before, while it is our intention to eventually
7 release the report for the most part electronically,
8 we are going to publish and print approximately one to
9 two thousand hard copies of the report, which should
10 be in a slightly different format since we're not
11 going to be able to use the hyperlinks. But that way
12 the public will be able to reach the report, both
13 electronically and in print.

14 CHAIRMAN REYNOLDS: Any questions?

15 (No response.)

16 CHAIRMAN REYNOLDS: Commissioner Gaziano,
17 you have a motion that was a proposed motion.

18 COMMISSIONER GAZIANO: Before we do that,
19 I would like to at least discuss or begin a
20 discussion, see if other commissioners find Perez's
21 letters breathtaking and insulting, as I do.

22 COMMISSIONER YAKI: I didn't.

23 COMMISSIONER GAZIANO: You do?

24 COMMISSIONER YAKI: I didn't.

25 COMMISSIONER GAZIANO: Oh, you didn't.

1 Okay. Well, let me --

2 VICE CHAIR THERNSTROM: I did not either.

3 COMMISSIONER GAZIANO: Thank you. Let me
4 explain why, then, I --

5 COMMISSIONER HERIOT: I did, by the way.

6 COMMISSIONER KIRSANOW: I find it -- and
7 so did I.

8 COMMISSIONER GAZIANO: Breathtaking and
9 insulting.

10 COMMISSIONER KIRSANOW: I didn't find it
11 breathtaking. I found it contemptuous.

12 COMMISSIONER GAZIANO: Contemptuous?
13 Insulting, too?

14 COMMISSIONER KIRSANOW: Nonresponsive.

15 COMMISSIONER GAZIANO: Okay. We have
16 sworn testimony before the Commission that the Deputy
17 Assistant Attorney General, Julie Fernandes,
18 instructed the management of the voting section when
19 Chris Coates was the head of the voting section to
20 never file another voting rights lawsuit against a
21 black or other national minority. And the Department
22 has still neither admitted, denied, or commented on
23 that statement.

24 But what is more remarkable is that when
25 Assistant Attorney General Perez was at the witness

1 table before us, he asked us to bring any such
2 statement to his attention. And the Chairman did
3 raise it to his attention and explained that that is
4 why we wanted Chris Coates.

5 And that was the basis of Commissioner
6 Kirsanow's motion, that we would agree to have Chris
7 Coates not for the deliberative process matters that
8 were part of our hearing but were -- we would be
9 willing to have Chris Coates testify just about the
10 policy statements that Julie, other policy statements
11 that Julie Fernandes and others made, hostility to the
12 race-neutral enforcement of the civil rights laws, the
13 culture that Christian Adams testified to in the
14 Division, hostility to race-neutral enforcement.

15 And, yet, in Perez's response to us, he
16 does not even acknowledge the statements that we
17 raised to his attention. He does not acknowledge that
18 he is investigating. He does not acknowledge that he
19 has done anything.

20 And, yet, he refuses to allow, continues
21 to refuse to allow, Chris Coates to testify when it's
22 clear that he would have relevant and material
23 evidence to present to the Commission about what are
24 now the central concerns that this Commission has
25 uncovered, whether there is a hostility against

1 race-neutral enforcement of the civil rights and
2 specific instructions from the Obama political
3 appointees to enforce the voting laws in
4 race-conscious ways.

5 So it's rather dumfounding to me that he
6 doesn't acknowledge those statements and he continues
7 to refuse to allow Chris Coates to testify.

8 CHAIRMAN REYNOLDS: Commissioner Yaki?

9 COMMISSIONER YAKI: Well, I can't disagree
10 more with the characterization of the letter by
11 Commissioner Gaziano. The fact of the matter is that
12 Assistant Secretary Perez did answer the question by
13 simply stating a fact that was conveniently omitted in
14 the statement by Commissioner Gaziano. And that is,
15 you know, there is this continuing mantra.

16 There is sworn testimony. There was sworn
17 testimony by one individual, who is no longer an
18 employee about a statement by another individual, who
19 said he heard it from a third individual. I mean, the
20 evidentiary problems for that alone are mind-boggling
21 to consider.

22 But, taking that aside, what Commissioner
23 Gaziano failed to state and which I think is the
24 central tenet of why that particular testimony is
25 extremely unbelievable, to say the least, is that

1 witness came here before this Commission and said, "I
2 will bet" -- and he said those words, "I will bet that
3 you will see this policy, the so-called policy, of
4 racial hostility toward non-enforcing against whites,"
5 whatever.

6 You will see that in the Noxubee case. I
7 will bet you they will not do anything in the Noxubee
8 case. And the fact of the matter is --

9 COMMISSIONER GAZIANO: No, he didn't say
10 that.

11 COMMISSIONER YAKI: Yes, he did.

12 CHAIRMAN REYNOLDS: No, no, no, no, no.

13 COMMISSIONER GAZIANO: That is not --

14 COMMISSIONER YAKI: I have the transcript.

15 COMMISSIONER GAZIANO: That is false.

16 COMMISSIONER YAKI: I have the transcript.

17 CHAIRMAN REYNOLDS: Folks, folks, folks.

18 COMMISSIONER YAKI: I have the transcript.

19 COMMISSIONER GAZIANO: We have the
20 transcript.

21 COMMISSIONER YAKI: Do you want me to get
22 the transcript out?

23 CHAIRMAN REYNOLDS: Commissioner Gaziano,
24 let him finish.

25 COMMISSIONER YAKI: I have the transcript.

1 I am ready to roll. You may not have the transcript.
2 He said, "I will bet." he used those words. Are you
3 denying that he used those words?

4 COMMISSIONER GAZIANO: He --

5 COMMISSIONER YAKI: Are you denying that
6 he used those words?

7 COMMISSIONER KIRSANOW: He used several
8 alternatives.

9 COMMISSIONER YAKI: Are you denying that
10 he used those words?

11 COMMISSIONER KIRSANOW: The entire
12 sentence --

13 COMMISSIONER YAKI: Are you denying --

14 COMMISSIONER KIRSANOW: You are
15 cherry-picking what he said.

16 COMMISSIONER YAKI: Are you denying that
17 he used the word "bet"?

18 COMMISSIONER GAZIANO: He said very --

19 COMMISSIONER YAKI: You are denying.

20 COMMISSIONER GAZIANO: "Bet"?

21 COMMISSIONER YAKI: That's what he said,
22 "bet."

23 COMMISSIONER KIRSANOW: Different
24 alternatives --

25 COMMISSIONER YAKI: He lost.

1 COMMISSIONER KIRSANOW: -- would
2 demonstrate unequivocally --

3 COMMISSIONER YAKI: He lost.

4 COMMISSIONER GAZIANO: -- that they are
5 not --

6 COMMISSIONER YAKI: He lost.

7 COMMISSIONER GAZIANO: -- neutral fashion.
8 And you know it.

9 COMMISSIONER YAKI: He completely lost.
10 And he can --

11 COMMISSIONER KIRSANOW: You cannot --

12 COMMISSIONER YAKI: And you can deny --

13 CHAIRMAN REYNOLDS: Commissioner Yaki.
14 Commissioner Yaki.

15 COMMISSIONER YAKI: They filed in the
16 Noxubee case.

17 CHAIRMAN REYNOLDS: Commissioner Yaki.

18 COMMISSIONER YAKI: Are you denying that
19 they filed in the Noxubee case?

20 COMMISSIONER KIRSANOW: I am telling you
21 --

22 CHAIRMAN REYNOLDS: We cannot have this
23 useless exchange. Commissioner Yaki, please finish
24 your statement.

25 COMMISSIONER YAKI: Well, I would have

1 liked to have finished my statement because the mere
2 fact is in the Noxubee case, which apparently you're
3 unwilling to admit, the Department of Justice did
4 respond. And they did file. In fact, they went
5 beyond what Adams predicted they may or may not do.
6 But he bet they wouldn't.

7 He did say that. He gave, "Well, maybe
8 they might do" one, two, three, but he bet they
9 wouldn't do any of them.

10 CHAIRMAN REYNOLDS: Commissioner Yaki, may
11 I ask you a question?

12 COMMISSIONER YAKI: The fact of the matter
13 is that in that letter by Assistant Secretary Perez,
14 --

15 CHAIRMAN REYNOLDS: Commissioner Yaki?

16 COMMISSIONER YAKI: -- he talked about the
17 Noxubee filing.

18 CHAIRMAN REYNOLDS: Commissioner Yaki?

19 COMMISSIONER YAKI: Yes?

20 CHAIRMAN REYNOLDS: Before you go on, may
21 I ask you a question?

22 COMMISSIONER YAKI: You may.

23 CHAIRMAN REYNOLDS: My letter didn't focus
24 on Noxubee.

25 COMMISSIONER YAKI: True. I think Noxubee

1 is the answer because --

2 CHAIRMAN REYNOLDS: We have --

3 COMMISSIONER YAKI: -- the part of --

4 CHAIRMAN REYNOLDS: Commissioner Yaki, let
5 me get my question out.

6 COMMISSIONER YAKI: Sure.

7 CHAIRMAN REYNOLDS: What I was trying to
8 do -- we have an allegation that was made by Adams.
9 We have a fact on the table that has not been directly
10 addressed by the Department of Justice. It seems to
11 me that we went out of our way to avoid the
12 deliberative process issue. We wanted Coates
13 primarily as a fact witness.

14 The statement made by Fernandes, was that
15 statement -- can he support Adams' statement or will
16 he refute Adams' statement that Julie Fernandes
17 instructed management that it would not enforce voting
18 rights laws against racial minorities defendants?
19 That is the issue on the table.

20 COMMISSIONER YAKI: No, no, no. That's --
21 Mr. Chairman, with all due respect --

22 CHAIRMAN REYNOLDS: And do you --

23 COMMISSIONER YAKI: -- that is the issue
24 as you characterized it.

25 CHAIRMAN REYNOLDS: Let me ask a question.

1 COMMISSIONER YAKI: The issue really on
2 the table --

3 CHAIRMAN REYNOLDS: Well, it's my letter.

4 COMMISSIONER YAKI: -- which was -- it may
5 be your letter.

6 CHAIRMAN REYNOLDS: I'm telling you --

7 COMMISSIONER YAKI: But your letter
8 doesn't speak for me, and your letter doesn't speak
9 for me, and your letter doesn't speak for the
10 Department of Justice.

11 CHAIRMAN REYNOLDS: No, no, no, no, no.

12 COMMISSIONER YAKI: Nor does your letter
13 speak to the actions of --

14 CHAIRMAN REYNOLDS: Commissioner Yaki, if
15 I understood what started this conversation, it was
16 the letter and the response to it.

17 COMMISSIONER YAKI: If you want to discuss
18 other issues --

19 CHAIRMAN REYNOLDS: No. I am --

20 COMMISSIONER YAKI: Let's be clear on what
21 it is I am talking about. It is precisely about the
22 letter because this is the point that I am making.
23 The point that I am making is that we have this
24 continued talking about this sworn testimony by this
25 one witness.

1 But the fact of the matter is is that one
2 witness does not a conspiracy make.

3 CHAIRMAN REYNOLDS: Agreed. Agreed.

4 COMMISSIONER YAKI: And --

5 COMMISSIONER HERIOT: But we're talking
6 about another witness.

7 COMMISSIONER YAKI: And if you have --
8 thank you very much for that irrelevant remark. If
9 you are talking about --

10 COMMISSIONER HERIOT: Quite relevant, I
11 would say. That's what this is about.

12 COMMISSIONER YAKI: If you are talking
13 about a policy -- and that's what you were talking
14 about, is a policy -- then I would argue and I think
15 that this letter from Perez argues very well that, no
16 matter what Adams thinks he heard from someone else,
17 who thought he heard it from somebody else -- because,
18 remember, that's the chain here. Adams did not hear
19 this.

20 COMMISSIONER GAZIANO: He heard some of it
21 directly. He denied it.

22 COMMISSIONER YAKI: He denied it. He did
23 not --

24 COMMISSIONER GAZIANO: He heard it from
25 Melendez himself.

1 COMMISSIONER YAKI: He did not hear that
2 particular statement directly.

3 CHAIRMAN REYNOLDS: Okay.

4 COMMISSIONER YAKI: We can go back to the
5 transcript.

6 CHAIRMAN REYNOLDS: We don't agree.

7 COMMISSIONER GAZIANO: He heard some --

8 CHAIRMAN REYNOLDS: Okay. We don't agree
9 on that. We don't agree on that point.

10 COMMISSIONER YAKI: That's a different
11 question, Commissioner Gaziano.

12 CHAIRMAN REYNOLDS: I would like to hear
13 from Coates on that matter.

14 COMMISSIONER YAKI: The fact of the matter
15 is that what --

16 COMMISSIONER KIRSANOW: The Chairman's
17 letter --

18 COMMISSIONER YAKI: -- you did not say and
19 what this letter says and what the filing says in
20 black and white is that there is no policy, there is
21 no fire. All this blowing smoke is just that.

22 CHAIRMAN REYNOLDS: Commissioner.

23 COMMISSIONER YAKI: The proof of --

24 CHAIRMAN REYNOLDS: Commissioner Yaki.

25 COMMISSIONER YAKI: -- the policy is the

1 filing in the Noxubee case, --

2 CHAIRMAN REYNOLDS: Commissioner Yaki.

3 COMMISSIONER YAKI: -- where it went above
4 and beyond --

5 CHAIRMAN REYNOLDS: Commissioner Yaki,
6 didn't you say in a previous hearing that if the
7 statements attributed to Julie Fernandes regarding the
8 enforcement of the Voting Rights Act, if that
9 allegation was true, then she should be fired?

10 COMMISSIONER YAKI: I indeed did say that.

11 CHAIRMAN REYNOLDS: Right. So what we --

12 COMMISSIONER YAKI: But the problem I have
13 --

14 CHAIRMAN REYNOLDS: How long will it take
15 to --

16 COMMISSIONER YAKI: The problem I have --

17 CHAIRMAN REYNOLDS: -- a factual dispute
18 --

19 COMMISSIONER YAKI: The problem I have is
20 that and what I said in that also is that I don't
21 believe that if anyone came in and denied that, that
22 this investigation would be finished at all. I think
23 it would just simply be carried on in a different way.

24 There is nothing independent about what this
25 Commission is doing at this point. This is all about

1 taking the word of one ex-employee --

2 CHAIRMAN REYNOLDS: But it should be --

3 COMMISSIONER YAKI: -- who was part of a
4 group --

5 CHAIRMAN REYNOLDS: It's one --

6 COMMISSIONER YAKI: -- supporting it, too.

7 CHAIRMAN REYNOLDS: Oh, you wouldn't --

8 COMMISSIONER YAKI: The sworn affidavit he
9 is talking about is from someone who was --

10 CHAIRMAN REYNOLDS: That was a sworn
11 affidavit.

12 COMMISSIONER YAKI: -- refused to
13 cooperate with two investigations by the Department of
14 Justice --

15 COMMISSIONER GAZIANO: That's not true.

16 COMMISSIONER YAKI: -- into the -- he did
17 not talk.

18 COMMISSIONER GAZIANO: That is not true.

19 COMMISSIONER YAKI: He did not talk.

20 COMMISSIONER GAZIANO: You know it's not
21 true.

22 COMMISSIONER YAKI: Did he refuse to talk
23 to them?

24 COMMISSIONER GAZIANO: You know it's not
25 true.

1 COMMISSIONER YAKI: Did he refuse to talk
2 to them? That's what I'm asking. So, I mean, we can
3 go into this all you want, but don't give me this
4 mantra as if there's some sworn area of witnesses
5 around us. There is none. It is a farce.

6 CHAIRMAN REYNOLDS: Commissioner?
7 Commissioner?

8 COMMISSIONER YAKI: It is a joke.

9 CHAIRMAN REYNOLDS: Commissioner Yaki, I
10 suspect that there are other commissioners who would
11 like to either respond or continue the other aspects
12 of the conversation.

13 COMMISSIONER YAKI: But I just want to
14 make this one point. The letter states that the
15 Department -- one, the letter did address that other
16 point you were talking about, which was the section 8
17 National Voter Registration Act issues, but the key
18 point of this letter is that it shows actual actions
19 by the Department of Justice that completely belie the
20 claims made by that one witness.

21 CHAIRMAN REYNOLDS: Such as?

22 COMMISSIONER YAKI: The best would be the
23 filing in the Noxubee case. The witness --

24 CHAIRMAN REYNOLDS: The letter did not --

25 COMMISSIONER YAKI: -- that Justice would

1 not --

2 CHAIRMAN REYNOLDS: -- mention that case.

3 The letter, I mean --

4 COMMISSIONER YAKI: His response --

5 CHAIRMAN REYNOLDS: The letter speaks for
6 itself, but --

7 COMMISSIONER YAKI: The letter that talks
8 about --

9 CHAIRMAN REYNOLDS: -- the author's intent
10 --

11 COMMISSIONER YAKI: You're trying to look
12 for evidence of further evidence of a policy by the
13 Department to not enforce the laws in a race-neutral
14 manner when, in fact, what this letter states is that
15 very clearly in the Noxubee case, which was a case
16 where a county Democratic chair, who is African
17 American, was doing all of these pretty awful things
18 to suppress the white vote, the Department of Justice
19 got involved, and there was a filing made this year
20 that Adams said would not be responded to in any way,
21 shape, or form --

22 COMMISSIONER GAZIANO: That's not what it
23 said.

24 CHAIRMAN REYNOLDS: Commissioner.

25 COMMISSIONER YAKI: -- that would -- well,

1 it wasn't responded to in a manner, he said, that
2 would show the Department had a policy to enforce this
3 in a race-neutral manner. He gave some things where
4 they might do something, but they said that wouldn't
5 amount to anything.

6 The fact is that he was wrong. They made
7 a filing. They objected to it. They asked for an
8 injunction against Ike Brown, trying to enforce his
9 particular brand of law, in addition to the other
10 parts of the filings that he did.

11 It is perfectly consistent with what the
12 Justice Department has been doing. It is consistent
13 with what the Bush administration did. It is
14 consistent with a policy --

15 CHAIRMAN REYNOLDS: Commissioner Yaki.

16 COMMISSIONER YAKI: -- that is
17 race-neutral. So I just don't understand how you can
18 say, "Well, I don't care what the evidence is about
19 what it is you do."

20 CHAIRMAN REYNOLDS: Commissioner.

21 COMMISSIONER YAKI: "I'm just trying to
22 figure out if there is a policy" --

23 CHAIRMAN REYNOLDS: Commissioner Yaki,
24 share --

25 COMMISSIONER YAKI: The policy doesn't

1 exist.

2 CHAIRMAN REYNOLDS: Share the microphone.

3 COMMISSIONER YAKI: Take it away.

4 CHAIRMAN REYNOLDS: Okay. Would anyone
5 else like to weigh in? Commissioner Kirsanow?

6 COMMISSIONER KIRSANOW: Just a few points.
7 We have the witness who testified under oath.

8 COMMISSIONER YAKI: Yes.

9 COMMISSIONER KIRSANOW: He didn't send a
10 letter and making broad assertions. He testified
11 under oath that, in fact, there is a policy and a
12 culture within DOJ not to enforce voting rights laws
13 in a race-neutral manner. He testified under oath.
14 He was there. He was a witness. You've heard these
15 things.

16 And he also indicated that Christopher
17 Coates, Section Chief, would corroborate all of those
18 things if he were permitted to testify. He was not
19 permitted to testify.

20 And we made a very, very reasonable offer
21 to DOJ, saying, "We will not ask him to testify on
22 privileged matters. We just want him to testify about
23 matters related to enforcement within DOJ and whether
24 or not he heard Julie Fernandes say that section 8
25 will not be enforced by this administration."

1 None of those matters are part of
2 deliberative process. None of those matters are
3 privileged. None of those matters can be plausibly
4 withheld from this Commission which they have a duty
5 to comply with. By statutory authority, they have a
6 requirement to cooperate with us. And they by virtue
7 of this letter gave us the back of the hand, said, "No
8 way."

9 And then they went even further and said,
10 "Guess what. We transferred a guy outside of the
11 jurisdiction of your subpoena authority. And you
12 can't get him either." It's extraordinary. This is
13 contemptuous of this particular process.

14 All we want is a witness who would
15 corroborate this. And, yet, no one wants to hear from
16 him. No one would permit us to hear from him. He
17 could validate this one way or another.

18 Second point with respect to Mr. Adams in
19 the Noxubee case. Mr. Adams very clearly testified
20 that he predicted that DOJ would do three possible
21 different things that would telegraph very clearly
22 that they, in fact, have a policy of not enforcing
23 voting rights laws in a nondiscriminatory fashion.

24 And what we have here is in this
25 particular filing precisely what he predicted. He

1 said those things under oath. And what we get in
2 return is a letter basically saying, "Believe me, even
3 though I am not willing to come here and testify or
4 bring someone who has firsthand knowledge to testify,
5 this is an abomination to this process. It's an
6 abomination to civil rights laws. It's an abomination
7 to race-neutral enforcement of the laws. It's an
8 abomination to the 1964 Civil Rights Act. It's an
9 abomination to the 1965 Voting Rights Act."

10 CHAIRMAN REYNOLDS: Commissioner Taylor?
11 No. Vice Chair Thernstrom?

12 VICE CHAIR THERNSTROM: Well, a couple
13 things. It seems to me it's strange. It is simply
14 impossible to believe that Julie Fernandes said
15 anything remotely like "We are not going to enforce
16 civil rights laws when blacks are defendants."

17 I mean, she cannot have said that. Maybe
18 she said something that some people interpreted as
19 saying that. But she surely didn't announce that. I
20 mean, unless she is some sort of moron -- and she
21 certainly could not have been speaking for the
22 Department if she was a moron.

23 CHAIRMAN REYNOLDS: How do we go about
24 settling this factual dispute over this allegation?

25 VICE CHAIR THERNSTROM: I think we should

1 assume that the Justice Department does not have a
2 racial double standard? I mean, give them a break.

3 COMMISSIONER GAZIANO: Could they possibly
4 have an employee that's a problem?

5 CHAIRMAN REYNOLDS: Whoa, whoa, whoa,
6 whoa. Vice Chair Thernstrom?

7 VICE CHAIR THERNSTROM: If they do, I'm
8 sure they will get rid of that employee.

9 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?
10 In your written works, you have stated the very thing
11 that you're now suggesting is not the case. In your
12 written work, you have said that there is a double
13 standard.

14 VICE CHAIR THERNSTROM: Where have I said
15 there is a double standard?

16 CHAIRMAN REYNOLDS: In your most recent
17 book on the Voting Rights Act.

18 VICE CHAIR THERNSTROM: No, I don't think
19 that that is what I said. I don't like you turning a
20 very complicated; very nuanced; and, by the way, an
21 argument that has a multiple footnote to everything --

22 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
23 I concede that I could be dead wrong. But I think
24 that the way to settle the dispute is just to get the
25 book and present you with the words or to concede that

1 --

2 VICE CHAIR THERNSTROM: That is fine.

3 CHAIRMAN REYNOLDS: -- I am indeed wrong.

4 VICE CHAIR THERNSTROM: That is fine. I

5 would be delighted to defend my book.

6 CHAIRMAN REYNOLDS: But the way to settle

7 factual disputes is to --

8 VICE CHAIR THERNSTROM: To have some

9 facts.

10 CHAIRMAN REYNOLDS: Right, right.

11 VICE CHAIR THERNSTROM: Yes. Well, we

12 don't in this case.

13 CHAIRMAN REYNOLDS: That's right. But we

14 are trying to get them.

15 VICE CHAIR THERNSTROM: Right.

16 CHAIRMAN REYNOLDS: Would you --

17 VICE CHAIR THERNSTROM: I'm saying there

18 is no possibility that Julie Fernandes or its --

19 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,

20 in the past --

21 VICE CHAIR THERNSTROM: It is really

22 improbable.

23 CHAIRMAN REYNOLDS: In the past, you

24 stated that you wanted to hear from Coates.

25 VICE CHAIR THERNSTROM: Look, I said --

1 CHAIRMAN REYNOLDS: Is that still your
2 position?

3 VICE CHAIR THERNSTROM: Well, it is my
4 position that I would be delighted to hear from
5 Coates, but it is also my position as I thought about
6 it more that if I were running the Justice Department,
7 if the Republicans were running the Justice
8 Department, I think that, for reasons of internal
9 management to the Department, they would undoubtedly
10 handle this in the same way that Tom Perez is. It is
11 --

12 COMMISSIONER GAZIANO: What do you base
13 that upon?

14 VICE CHAIR THERNSTROM: My understanding
15 of how the voting section at least works --

16 COMMISSIONER GAZIANO: Out of the --

17 CHAIRMAN REYNOLDS: Let her finish.

18 VICE CHAIR THERNSTROM: -- which I have
19 been hanging around, not consistently, but since
20 roughly 1980. Starting in the '80s, I spent a great
21 deal of time there, through Republican
22 administrations.

23 I have another question, a couple of other
24 points. It does seem to me that it is undeniable that
25 Christian Adams made the Noxubee case a litmus test

1 for whether the Department had racial double
2 standards. And, indeed, he flunked in doing so, as
3 Commissioner Yaki said.

4 Third, I wish I had, Mr. Chairman, your
5 letter in front of me. But let me explain something
6 in the letter. You did have a sentence in the letter
7 which said that if you don't provide evidence in a
8 form of witnesses -- I can't remember exactly how you
9 stated it, but evidence that contradicts our
10 assumptions, we can conclude you're guilty. In other
11 words --

12 CHAIRMAN REYNOLDS: Some commissioners may
13 infer, some commissioners may treat their refusal to
14 provide fact witnesses on this point in a manner that
15 would be adverse to DOJ. That was --

16 VICE CHAIR THERNSTROM: Well, I think in
17 American law and I think you would agree with me that
18 you are innocent until proven guilty. You are not
19 guilty --

20 COMMISSIONER GAZIANO: This isn't a
21 criminal case, Vice Chair Thernstrom.

22 COMMISSIONER YAKI: You are making it one.

23 CHAIRMAN REYNOLDS: It's not a criminal
24 case. That's not the standard.

25 VICE CHAIR THERNSTROM: Well, I think it

1 is the standard. Oh, here it is. Yes. Okay. I
2 think it is the standard. I mean, I think it's really
3 an astonishing statement.

4 CHAIRMAN REYNOLDS: Would you like to --

5 VICE CHAIR THERNSTROM: We cannot conclude
6 --

7 CHAIRMAN REYNOLDS: Would you like to read
8 the statement?

9 VICE CHAIR THERNSTROM: We cannot conclude
10 anything. Yes, I was just handed to it.

11 CHAIRMAN REYNOLDS: Would you like to
12 receive it in the record?

13 VICE CHAIR THERNSTROM: Okay.
14 "Consequently, in the event that Mr. Coates is not
15 produced, the Commission may reasonably infer that his
16 testimony would corroborate that of J. Christian Adams
17 before the Commission on July 6, 2010 and that the
18 Department is hostile to the race-neutral enforcement
19 of voting rights laws and the Department refuses to
20 enforce section 8 of the NVRA." I mean, that does not
21 seem to me a really sound inference.

22 CHAIRMAN REYNOLDS: You don't believe that
23 this body can draw an inference from the Department of
24 Justice's refusal to produce fact witnesses to settle
25 this dispute? It seems to me that the simplest thing

1 in the world to do for the Department of Justice in
2 terms of putting this to bed is to turn to Mr. Coates
3 and just instruct him to go testify.

4 VICE CHAIR THERNSTROM: Well, they may
5 have.

6 CHAIRMAN REYNOLDS: He will either come
7 here -- well, here are the two obvious outcomes. He
8 will either refute the statements made by Mr. Adams on
9 this point or he will confirm them.

10 Now, if I have confidence that these
11 statements were not made, this issue would not still
12 be hanging out there. I would have waited for the
13 letter. I would have volunteered Mr. Coates to go
14 settle this factual dispute.

15 VICE CHAIR THERNSTROM: Well, you are not
16 the Assistant Attorney General.

17 CHAIRMAN REYNOLDS: That is right.

18 VICE CHAIR THERNSTROM: You are not
19 running that Department.

20 CHAIRMAN REYNOLDS: That is right.

21 VICE CHAIR THERNSTROM: And there can be
22 perfectly legitimate internal reasons in running a
23 federal department for not doing so.

24 CHAIRMAN REYNOLDS: Mr. Coates has
25 testified before this body in the past. Is that so?

1 VICE CHAIR THERNSTROM: Yes.

2 CHAIRMAN REYNOLDS: He was given the
3 authority by the Department of Justice to testify in
4 front of this body?

5 VICE CHAIR THERNSTROM: Yes.

6 CHAIRMAN REYNOLDS: And on this particular
7 issue, the Department has refused to authorize him to
8 clear this matter.

9 VICE CHAIR THERNSTROM: It may have --

10 CHAIRMAN REYNOLDS: Is that right?

11 VICE CHAIR THERNSTROM: It may have
12 reasons having to do with --

13 CHAIRMAN REYNOLDS: I understand that, but
14 --

15 VICE CHAIR THERNSTROM: -- the functioning
16 of the Department that you don't know, I don't know.

17 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
18 do you agree with my statement?

19 VICE CHAIR THERNSTROM: That what?

20 CHAIRMAN REYNOLDS: That the Department in
21 this particular instance has refused to allow Coates
22 to testify before this body?

23 VICE CHAIR THERNSTROM: Yes, it has
24 refused to allow it, but it may have perfectly good
25 reasons for doing so.

1 CHAIRMAN REYNOLDS: Right. Would you
2 entertain --

3 VICE CHAIR THERNSTROM: I do not infer
4 anything from it.

5 CHAIRMAN REYNOLDS: Would you entertain
6 the --

7 COMMISSIONER GAZIANO: Has it offered any
8 perfectly good reasons?

9 CHAIRMAN REYNOLDS: Whoa, whoa, whoa,
10 whoa, whoa, whoa.

11 COMMISSIONER GAZIANO: Has it offered any
12 good reasons?

13 COMMISSIONER YAKI: Does it need to?

14 VICE CHAIR THERNSTROM: Why are you --

15 COMMISSIONER GAZIANO: Yes, it does. It
16 does owe this Commission an explanation --

17 VICE CHAIR THERNSTROM: I don't think so.

18 COMMISSIONER GAZIANO: -- when it is
19 compelled by law to cooperate fully -- and that is the
20 wording of the statute -- with any request we make.

21 VICE CHAIR THERNSTROM: You know, look --

22 COMMISSIONER GAZIANO: Good faith requires
23 to actually comply.

24 VICE CHAIR THERNSTROM: As I understand it
25 --

1 COMMISSIONER GAZIANO: Good faith also
2 requires if there is any delay or other reason, to
3 state the reason.

4 VICE CHAIR THERNSTROM: Right. I think --

5 COMMISSIONER YAKI: You're assuming. You
6 are assuming, --

7 COMMISSIONER GAZIANO: And it has not done
8 so.

9 COMMISSIONER YAKI: -- Commissioner
10 Gaziano, that there is any reasonableness on the part
11 of the Commission in making some of these demands.

12 And I'm telling you right now I agree with
13 Commissioner Thernstrom. If I were them, faced with
14 the statements that you and others have made in the
15 press, I would refuse to get involved in this
16 firefight because there is no win. It's a
17 predetermined outcome.

18 COMMISSIONER GAZIANO: Assistant Attorney
19 General --

20 COMMISSIONER YAKI: It's a predetermined
21 outcome.

22 COMMISSIONER GAZIANO: Assistant Attorney
23 --

24 COMMISSIONER YAKI: You already made it
25 from day one, --

1 COMMISSIONER GAZIANO: Commissioner Yaki,
2 --

3 COMMISSIONER YAKI: -- day one.

4 COMMISSIONER GAZIANO: -- answer your
5 question.

6 CHAIRMAN REYNOLDS: One at a time.

7 COMMISSIONER GAZIANO: Assistant Attorney
8 General Perez made perfectly clear that if any
9 statement to the effect that we now have an allegation
10 that Julie Fernandes made, he would investigate it.
11 And he accepted that we would need to investigate
12 that. And, yet, he has given us no reason --

13 VICE CHAIR THERNSTROM: Wait a minute. I
14 didn't hear the latter.

15 COMMISSIONER GAZIANO: -- to refuse
16 Coates, to not have Coates.

17 VICE CHAIR THERNSTROM: I did not hear the
18 latter from him. All I heard from him is they were
19 internally investigating the --

20 COMMISSIONER GAZIANO: No, no, no.

21 CHAIRMAN REYNOLDS: No, no, no.

22 COMMISSIONER GAZIANO: He has not
23 acknowledged that he is internally investigating
24 anything.

25 VICE CHAIR THERNSTROM: Well, he said very

1 early --

2 COMMISSIONER GAZIANO: He said if we heard
3 of such a statement, we should give it to him.

4 CHAIRMAN REYNOLDS: He would bring it to
5 --

6 COMMISSIONER GAZIANO: He would
7 investigate. And he acknowledged that we would need
8 to investigate. And, yet, he is thwarting our
9 investigation.

10 VICE CHAIR THERNSTROM: Wait a minute.

11 COMMISSIONER GAZIANO: Let me now address
12 another point that Vice Chair Thernstrom made. She
13 cannot imagine that the statement we had by the
14 witness Adams --

15 VICE CHAIR THERNSTROM: In that raw form,
16 no.

17 COMMISSIONER GAZIANO: Please don't
18 interrupt.

19 VICE CHAIR THERNSTROM: Well, I just want
20 to make clear --

21 COMMISSIONER YAKI: I'm sorry. You
22 interrupted her, if I recall.

23 CHAIRMAN REYNOLDS: Hold on. Hold on.
24 Hold on.

25 COMMISSIONER YAKI: And I believe I had my

1 hand up next.

2 CHAIRMAN REYNOLDS: Commissioner Yaki,
3 your point is right. Both you and Commissioner
4 Gaziano and others have interrupted --

5 VICE CHAIR THERNSTROM: Okay. I just
6 don't want --

7 CHAIRMAN REYNOLDS: -- fellow
8 commissioners.

9 VICE CHAIR THERNSTROM: I don't want what
10 I said distorted. That's my point.

11 COMMISSIONER GAZIANO: Okay. What we know
12 is that Commissioner Yaki said if the statement
13 attributed to Fernandes is true, she should be fired.
14 You don't believe that statement was made either.

15 And, yet, you made the strange notion that
16 in a Republican administration --

17 VICE CHAIR THERNSTROM: I made the --

18 COMMISSIONER GAZIANO: Let me finish the
19 sentence.

20 VICE CHAIR THERNSTROM: That's not -- I
21 didn't make --

22 COMMISSIONER GAZIANO: Let me finish the
23 sentence.

24 VICE CHAIR THERNSTROM: Okay.

25 COMMISSIONER GAZIANO: You made the very

1 strange point that you believe any other
2 administration would thwart the Commission's
3 investigations in exactly the same way. And I can
4 submit to you that --

5 VICE CHAIR THERNSTROM: Might.

6 COMMISSIONER GAZIANO: -- historically
7 that is not true. And one of the most recent examples
8 is Mary Frances Berry issued about some-teen pages of
9 subpoenas to the Department of Justice to assist in
10 Attorney General Alex Acosta in the Bush
11 administration, which seemed very burdensome on the
12 Voting Rights Act, a very similar type of
13 investigation. The subpoena from the Commission in my
14 view was what the Assistant Attorney General Alex
15 Acosta complied.

16 There isn't -- the history refutes your
17 point that the Department does always thwart this
18 Commission, should always --

19 VICE CHAIR THERNSTROM: I did --

20 COMMISSIONER GAZIANO: -- thwart this
21 Commission, ought to thwart this Commission. That
22 seems to be the message.

23 VICE CHAIR THERNSTROM: You are taking
24 words out of my mouth. I did not say any of those
25 things. You have totally distorted what I said.

1 CHAIRMAN REYNOLDS: Folks. Folks.

2 COMMISSIONER YAKI: This is going -- Mr.
3 Chair, this is going freaking nowhere.

4 CHAIRMAN REYNOLDS: Commissioner Yaki.

5 VICE CHAIR THERNSTROM: That is business
6 as usual on your part. You just distort what I have
7 to say. And you think that somehow it makes it true.

8 CHAIRMAN REYNOLDS: Okay. Folks, I don't
9 think that there is much ground left here.

10 COMMISSIONER YAKI: Mr. Chair, I just
11 wanted to read the last part of what you said in your
12 letter.

13 CHAIRMAN REYNOLDS: Go ahead.

14 COMMISSIONER YAKI: You say that "My
15 reason for this testimony would corroborate that of J.
16 Christian Adams that, inter alia., the Department is
17 hostile to the race-neutral enforcement of voting
18 rights laws and that the Department refuses to enforce
19 section 8 of the NVRA."

20 What I don't understand, Mr. Chair, is how
21 you can say that the letter back was unresponsive when
22 they clearly gave examples about how they are
23 enforcing section 8 of the NVRA and that in the
24 statement, in the letter by --

25 CHAIRMAN REYNOLDS: Minorities.

1 COMMISSIONER YAKI: -- Assistant Attorney
2 General Perez, that you just simply say "refuses to
3 enforce section 8 of the NVRA." And you said that it
4 is hostile to the race-neutral. We can conclude that.
5 That clearly is not -- you may be able to say that
6 the Commission has the ability to --

7 CHAIRMAN REYNOLDS: Commissioner Yaki, I
8 think that we have reached some common ground. I
9 think that we both concluded that there is not much
10 more substance to be had from our discussion of this
11 issue.

12 COMMISSIONER YAKI: In that case, Mr.
13 Chair, I will conclude my remarks.

14 CHAIRMAN REYNOLDS: Fine.

15 COMMISSIONER YAKI: If it opens up again,
16 I am prematurely ending them out of respect for your
17 desire to get this thing moving on to other subjects.

18 CHAIRMAN REYNOLDS: Thank you.

19 COMMISSIONER YAKI: But I reserve the
20 right --

21 CHAIRMAN REYNOLDS: I understand.

22 COMMISSIONER YAKI: -- if someone comes
23 back and --

24 CHAIRMAN REYNOLDS: I understand.
25 Commissioner Taylor?

1 COMMISSIONER TAYLOR: I do so with great
2 trepidation.

3 (Laughter.)

4 COMMISSIONER YAKI: You should.

5 COMMISSIONER TAYLOR: I don't want to
6 address any particular fact because I think that our
7 discussion, particularly for the folks here who have
8 taken time out of a busy to come, will --

9 COMMISSIONER YAKI: Those guys are going
10 to pay for it.

11 COMMISSIONER TAYLOR: -- not be helpful,
12 but I do think -- and I want to try to put a fine
13 point on this -- that this discussion really
14 highlights the fundamental issue of whether we are an
15 independent Commission. That is the fundamental
16 question.

17 Are we an independent Commission with the
18 ability to make a determination as to what we deem to
19 be relevant and important information that we want to
20 review or whether we are not an independent agency but
21 whether we are put in the position of having others
22 determine outside of our agency when they can provide
23 information, what information they provide.

24 This whole debate in my view goes to that
25 fundamental question. And it is something that we

1 should discuss I think openly as to what we really
2 think we are. Are we an independent Commission or are
3 we a Commission that can ask a question and when
4 rebuffed must go away?

5 CHAIRMAN REYNOLDS: Okay. That's a nice
6 segue into the findings of fact and recommendations
7 that Commissioner Gaziano would like to discuss.
8 However, before going there, I take it that
9 Commissioner Yaki has something else to say.

10 COMMISSIONER YAKI: Well, I would just
11 like to modify slightly what Commissioner Taylor said.

12 I agree that some of what this involves is whether we
13 -- deals with our status as an independent Commission,
14 but I would like to state that our original mission,
15 the mission of the United States Commission on Civil
16 Rights was as an independent bipartisan Commission.

17 And I use that word very carefully because
18 that has a very different meaning in terms of what --
19 and it's not simply whether we are an independent
20 Commission or not. It's whether or not we are an
21 independent bipartisan Commission and what is it that
22 we are truly charged with versus what we are engaging
23 in now. I think that is a distinction that needs to
24 be made.

25 CHAIRMAN REYNOLDS: Okay. Thank you for

1 making that distinction.

2 Commissioner Gaziano?

3 COMMISSIONER GAZIANO: Let me recirculate
4 at this time copies of the motion that I first
5 circulated a week ago to commissioners and that I sent
6 in the current form yesterday afternoon with a
7 revision to the last sentence of the finding.

8 It is unfortunate because of the
9 stonewalling of the Justice Department that we won't
10 be able to make findings of fact and recommendations
11 regarding the original focus of our investigation, at
12 least in the interim report, we have to vote on in
13 September.

14 But the stonewalling has raised a larger
15 issue. And that goes to what Commissioner Taylor was
16 just talking about, which is the lack of clarity in
17 the law as to whether we can go to court to enforce
18 our subpoenas or that command the separate command in
19 the U.S. Code that states, "All federal agencies shall
20 cooperate fully with the Commission to the end that it
21 may effectively carry out its functions and duties."

22 There is a lack of clarity whether we can
23 go to court to enforce that without the Department of
24 Justice's assistant. It's been clear to me in the
25 course of this investigation that when the Department

1 of Justice has a conflict of interest, as it does
2 right now when it doesn't want us to investigate what
3 we have set out to investigate, it has sometimes
4 cooperated in the past, but it has not cooperated this
5 time.

6 And that raises the -- we should make such
7 a finding that there is a problem when the Department
8 of Justice has a conflict of interest in the
9 Commission doing its work.

10 And our recommendation, which I will read
11 for the record, is that Congress should consider
12 amendments to the Commission statute to address
13 investigations in which the Attorney General and/or
14 the Department of Justice have a conflict of interest
15 in complying fully with the Commission's requests for
16 information.

17 Options to address a potential conflict of
18 interest might include the following: one, enactment
19 of a statutory procedure by which the Commission may
20 request the Attorney General to appoint a special
21 counsel with authority to represent it in federal
22 court, which request the Attorney General must
23 personally respond to in writing within a specified
24 period of time; two, enactment of a statutory
25 provision to clarify that the Commission may hire its

1 own counsel and proceed independently in federal court
2 if the Attorney General refuses to enforce the
3 subpoena or other lawful requests, especially those
4 directed at the Department of Justice, its officers,
5 and employees; or, three, a conscious decision not to
6 alter the Commission's statute or statutory
7 confirmation that the Attorney General and the
8 Department of Justice can act against the Commission's
9 interest without any particular explanation.

10 My motion today is not that these exact
11 words will go into our report because we can always
12 amend findings and recommendations at the stage where
13 we normally do. My motion is simply today that
14 findings and/or recommendation similar to this be
15 included in the draft report that we consider and vote
16 on next month.

17 CHAIRMAN REYNOLDS: Okay. So --

18 COMMISSIONER HERIOT: Is that a motion?

19 COMMISSIONER GAZIANO: That's a motion. I
20 so move.

21 COMMISSIONER HERIOT: Second.

22 CHAIRMAN REYNOLDS: Discussion? Vice
23 Chair Thernstrom?

24 VICE CHAIR THERNSTROM: You know, this is
25 a question I have had all along. When we talk about

1 the history here and the Justice Department's response
2 to this independent agency -- and this comes up also
3 in response to Commissioner Taylor's remarks -- are we
4 assuming that this agency is different than all other
5 agencies and its experience with respect to this
6 investigation is different than the experience of
7 other independent agencies, that subpoenas from all
8 other agencies are regularly enforced, that conflicts
9 of interest as they exist are ignored by the
10 Department of Justice?

11 I mean, it seems to me we are talking
12 about how Washington works, for want of a better
13 phrase. And we are not kind of uniquely victimized
14 her by the statutory limitations.

15 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
16 I don't know if there are any other agencies whose
17 jurisdictions would include the ability to investigate
18 the Department of Justice. I could be wrong on that
19 point, but nothing comes to mind.

20 So if you are talking about whether we are
21 in a unique position, I think the answer is yes. And
22 also, I mean, is there -- forgetting about the facts
23 of this particular case, if there is a conflict
24 between the Department of Justice and the U.S.
25 Commission on Civil Rights or any other agency that

1 has the ability to investigate the goings-on at the
2 Department, is that a problem? I mean, how is that
3 resolved? I mean, is there a conflict? And if so,
4 how is that conflict resolved?

5 COMMISSIONER YAKI: I can answer that if
6 you let me.

7 CHAIRMAN REYNOLDS: But the --

8 VICE CHAIR THERNSTROM: I would be
9 delighted to --

10 CHAIRMAN REYNOLDS: Actually, I am
11 interested in Vice Chair Thernstrom's response.

12 VICE CHAIR THERNSTROM: Well, look, I mean
13 -- now, I suspect that Commissioner Yaki has a better
14 answer than I do to this, but I think there is a
15 naivete here. Oh, my God.

16 You know, the Justice Department with this
17 agency should bow down and say, "Yes, sir" and --

18 CHAIRMAN REYNOLDS: It's not bowing down.

19 Didn't Congress authorize us --

20 VICE CHAIR THERNSTROM: Well, the language
21 evidently is not so clear or we wouldn't be amending
22 it, but I would like to yield to Commissioner Yaki
23 because he knows more about this than I do. I am not
24 an attorney.

25 CHAIRMAN REYNOLDS: But you have offered

1 an opinion on a topic that --

2 VICE CHAIR THERNSTROM: I haven't, no. I
3 asked a question.

4 COMMISSIONER YAKI: Mr. Chair, with
5 respect, I think that Commissioner Thernstrom offered
6 the opinion on the topic on a brief conversation that
7 we had prior to the meeting exactly on this issue.
8 And the point that she was trying to make is a point
9 that I will make now, which is that you ask the other
10 body --

11 CHAIRMAN REYNOLDS: Are you speaking for
12 her now or yourself?

13 COMMISSIONER YAKI: Both.

14 -- what other body has the --

15 CHAIRMAN REYNOLDS: And you know what her
16 position was, despite the fact that she hasn't
17 articulated her position?

18 COMMISSIONER YAKI: Yes.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER YAKI: Because we had a
21 discussion about it.

22 VICE CHAIR THERNSTROM: That is correct.

23 COMMISSIONER YAKI: Just the two of us.

24 VICE CHAIR THERNSTROM: We did.

25 COMMISSIONER YAKI: Just the two of us.

1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER YAKI: And you won't violate
3 any open meeting act by meeting in a closed room
4 somewhere. The --

5 VICE CHAIR THERNSTROM: Unlike others do.

6 COMMISSIONER YAKI: When you asked is
7 there another entity capable of investigating the
8 Department of Justice that might fact a similar
9 conflict in the enforcement of its subpoenas, the
10 answer is clearly the United States Congress. And the
11 most recent example of that was the U.S. Attorney
12 firings in the Gonzalez administration, in which
13 people were subpoenaed and did not appear.

14 Now, I'm not saying that it's right one
15 way or another. I am saying that it is very odd to
16 think that we would arrogate to ourselves greater
17 powers and with an attendant budget and other fiscal
18 consequences than the Congress itself has delegated to
19 itself --

20 CHAIRMAN REYNOLDS: So to be clear --

21 COMMISSIONER YAKI: -- in its oversight on
22 departments such as the Department of Justice.

23 CHAIRMAN REYNOLDS: So that I am clear on
24 what I believe you are saying, you are saying that the
25 fact that the Department of Justice may have a

1 conflict and could avoid its statutory duty to
2 cooperate with the Commission, that that is okay?

3 COMMISSIONER YAKI: I am saying that it is
4 a conundrum of the separation of powers between
5 Executive, Legislative, and Judicial. We may not fall
6 into any one of them, but in terms of the fact that
7 these disputes continue on to this day between the
8 Executive and the Legislative, regardless of who is in
9 power at any given period of time, I think it is very
10 presumptuous of us to think that any agency deserves
11 to sort of override a doctrine that --

12 CHAIRMAN REYNOLDS: What's the doctrine?

13 COMMISSIONER YAKI: Well, the doctrine of
14 separation of powers that has had some --

15 CHAIRMAN REYNOLDS: So you are attacking
16 the Congress' decision to provide us with jurisdiction
17 to oversee or at least to investigate the work at the
18 Department of Justice? Because that's --

19 COMMISSIONER YAKI: Well, now that you
20 bring that issue up, I am going to address that
21 because you talked about some -- some other
22 commissioner talked about what the functions and
23 duties of this Commission are -- is. I have a little
24 problem with the tense right now.

25 We have a situation where we began

1 investigating this small incident in Philadelphia over
2 a year ago, maybe even longer. And it has now been
3 escalated into somehow this inquiry as to whether the
4 DOJ has derogated its responsibility to enforce the
5 Voting Rights Act, which, by the way, this Commission
6 did not seek fit to commemorate the 45th anniversary
7 of just last week. But that is beside the point.

8 The fact is that we are in a position here
9 of -- I mean, we can get into a whole bunch of issues
10 involving the structure of this Commission, including
11 the fact that at this point right now, we are in the
12 last gasp of a conservative majority of this
13 Commission and how we wind up with 62 super majorities
14 where minorities, like the Democrats and myself in
15 this particular instance, have very little ability to
16 do anything other than to simply object to what it is
17 that the super majority is attempting to do,
18 including, as I have said before in this case -- and I
19 don't want to reopen a can of worms, but I think there
20 is a clear conflict of agendas here that surpass that
21 of what the original charge of this Commission was
22 supposed to be, which was independent bipartisan
23 investigation into civil rights wrongs occurring in
24 our society today.

25 And we have spent over a year and a half

1 obsessing about whether or not there is some sort of
2 cabal conspiracy culture at DOJ, which, by the way,
3 the previous administration spent many years obsessing
4 about as well, and very little on what is going on in
5 the outside world.

6 So, you know, we can talk all we want
7 about what we are doing as a Commission. I would say
8 that I do not feel that we are in a very good position
9 to ask for that which no other agency has simply
10 because we are ourselves naive and acting in the best
11 spirit.

12 COMMISSIONER GAZIANO: Mr. Chairman, let
13 me --

14 COMMISSIONER YAKI: The point is --

15 CHAIRMAN REYNOLDS: Hold on. Let him
16 finish. Whoa, whoa, whoa, whoa.

17 COMMISSIONER YAKI: The point is that you
18 are. And if you would just stop interrupting all the
19 time, all the time.

20 COMMISSIONER GAZIANO: If you will answer.

21 CHAIRMAN REYNOLDS: Come on now.

22 COMMISSIONER GAZIANO: Mr. Chairman?

23 CHAIRMAN REYNOLDS: We don't have time for
24 this.

25 COMMISSIONER YAKI: Seriously, seriously.

1 CHAIRMAN REYNOLDS: But, look, I would --

2 VICE CHAIR THERNSTROM: Let him finish.

3 COMMISSIONER YAKI: Mr. Commissioner --

4 CHAIRMAN REYNOLDS: Commissioner Yaki.

5 COMMISSIONER YAKI: You know, what is your
6 point other than --

7 CHAIRMAN REYNOLDS: Commissioner Yaki.

8 Commissioner Yaki. Commissioner Yaki.

9 COMMISSIONER KIRSANOW: Commissioner Yaki.

10 CHAIRMAN REYNOLDS: Commissioner Yaki, he
11 should not have interrupted you, but you know? You
12 have mud on your hands, too, because you escalated and
13 you didn't have to.

14 COMMISSIONER YAKI: When did I escalate?

15 CHAIRMAN REYNOLDS: You need to show some
16 discipline.

17 COMMISSIONER YAKI: When did I escalate?

18 CHAIRMAN REYNOLDS: And that goes for
19 everyone.

20 COMMISSIONER GAZIANO: Mr. Chairman, I
21 would like to agree with the --

22 COMMISSIONER YAKI: I'm sorry. I don't
23 believe I was actually finished, Mr. Chair. I would
24 just simply say this in conclusion. You asked me the
25 question, do I think this is -- in essence, whether I

1 believe we are in the same boat as Congress or not, is
2 it right for us to be stymied in our investigation?

3 And I would say that part of me would
4 answer yes, but part of me would also answer I think
5 that we are not in a great position to argue that
6 right now given the way that we had behaved in this
7 investigation.

8 I would also say that it is a conundrum in
9 the separation of power that Congress has not even
10 seen fit to be able to resolve with the Executive
11 Branch. And I think it would be very difficult for us
12 to find from a real political point of view being able
13 to allocate to ourselves powers beyond which the
14 Congress itself has not done for itself.

15 CHAIRMAN REYNOLDS: Okay. Now --

16 COMMISSIONER YAKI: Mr. Chair --

17 CHAIRMAN REYNOLDS: Whoa, whoa. Wait. In
18 terms of order, we're going with Commissioner
19 Kirsanow. Then we're going with Commissioner Gaziano
20 -- but before we do that -- and Commissioner Heriot --
21 you mentioned the fact that the ideological balance is
22 about to shift.

23 And you are correct. The rule that you
24 just articulated I hope that you embrace that rule for
25 consistency's sake when the balance of power changes.

1 Well, actually, I take that back. I don't hope. I
2 hope you change your position because I think your
3 position is wrong.

4 Congress gave us the power to do exactly
5 what we are doing. There is a reason why we were
6 given the authority to look into all federal agencies.

7 There was no carve-out for the Department of Justice.

8 And the question, the type of questions,
9 that we have asked the Department of Justice, we have
10 asked other federal agencies. And they have complied.

11 And in the past, the Department of Justice has
12 complied.

13 Having said that, Commissioner Kirsanow?

14 COMMISSIONER KIRSANOW: Yes. Mr.
15 Chairman, speaking to this motion, by statute, the
16 Department of Justice must fully cooperate with our
17 investigation. If it chooses not to do so, there is
18 no entity, including Congress, as currently
19 constituted, that can investigate possible serious
20 wrongdoing at the Department of Justice.

21 Could Congress or anyone else have
22 contemplated that? Unlikely. This motion would
23 rectify that. Consider we have at this particular
24 moment several outstanding requests from the ranking
25 members of Congress to the Department of Justice

1 seeking to solicit precisely what we have been seeking
2 to solicit.

3 Government oversight ranking member has
4 requested this information. He was given the back of
5 the hand. Seven members of the Senate Judiciary
6 Committee have asked for this information. They were
7 given the back of the hand. Representative Lamar
8 Smith has asked for this information. He was given
9 the back of the hand. Representative Frank Wolf was
10 asking for this information. He was given the back of
11 the hand.

12 No one can access this information in the
13 current construct if DOJ insists on erecting an
14 impenetrable stone wall. That's what we have right
15 now.

16 So they have enveloped themselves in a
17 bubble whereby they are excluding anyone from any
18 inquiry. They can engage in this type of conduct with
19 impunity as long as no one can get access to this
20 information.

21 And by constructing this particular motion
22 in the way it is, there is at least one agency that is
23 us that can go ahead and investigate this, as I think
24 Congress contemplated all along.

25 CHAIRMAN REYNOLDS: Commissioner Gaziano?

1 COMMISSIONER GAZIANO: Commissioner Yaki's
2 misunderstanding of separation of powers principles
3 and laws is as breathtaking as some of his other
4 statements. But I do --

5 CHAIRMAN REYNOLDS: Commissioner Yaki, he
6 is calling you out. I just don't want you to miss
7 this.

8 (Laughter.)

9 COMMISSIONER YAKI: Mr. Chairman, I have
10 long since learned to ignore most of --

11 CHAIRMAN REYNOLDS: That is not true.

12 COMMISSIONER YAKI: -- Commissioner
13 Gaziano's -- well, when it comes to his ranting, when
14 it --

15 COMMISSIONER GAZIANO: Mr. Chairman, could
16 I continue?

17 COMMISSIONER YAKI: -- comes to his
18 ranting, I do.

19 COMMISSIONER GAZIANO: Can I continue?

20 COMMISSIONER YAKI: The Chairman actually
21 interrupted you.

22 CHAIRMAN REYNOLDS: Yes. And I apologize
23 for interrupting. I was wrong.

24 COMMISSIONER GAZIANO: Commissioner Yaki's
25 analogy to Congress isn't far off, but his conclusions

1 are exactly backward. It is indeed the fact that we
2 are not part of the Executive Branch. And we probably
3 by analogy and by law are closer to Congress, but it
4 is not true that Congress is without recourse as we
5 may be without recourse.

6 Congress has the following powers, as we
7 pointed out to Assistant Attorney General Perez, both
8 here in person and in letters. Our Congress can hold
9 Executive Branch officials in contempt. Congress by
10 tradition can hold Executive Branch officials
11 potentially against its will. Congress can go to
12 court. Congress can litigate before a federal judge.

13 And because of that, the Department of
14 Justice does not have the same conflict of interest
15 under the separation of powers to resist all of
16 Congress' requests. But the particular acute conflict
17 of interest the Department of Justice has right now is
18 that it by statute is supposed to enforce all of our
19 subpoenas. And it is supposed to see that our other
20 powers are enforced.

21 So I am not asking that Congress grant us
22 anything. As a matter of fact, I am only asking by
23 this motion that Congress consider various options.
24 And the greatest option I am suggesting that Congress
25 consider is giving us one of its powers.

1 By the way, Congress also has the power of
2 the purse. The wisdom of the framers was that it gave
3 each branch the power to confront intrusions by the
4 other branch.

5 And what I am suggesting is that Congress
6 consider giving us one of the four options that
7 Congress has when the Department of Justice refuses
8 it. And that one option is the authority to go into
9 federal court and have a judge decide how to resolve
10 the conflict of interest. And historically, of
11 course, that is how U.S. v. Nixon was resolved and
12 many other separation of powers issues were resolved.

13 The current situation we are in right now
14 is that it's unclear whether anyone other than the
15 Justice Department can decide what materials we get.
16 And that is unique in my understanding of any other
17 investigative body with the subpoena power.

18 CHAIRMAN REYNOLDS: Okay. Commissioner
19 Heriot?

20 COMMISSIONER HERIOT: I just want to
21 respond to something that the Commissioner Yaki said
22 about what the Commission should be doing, what
23 Congress intends the Commission to do.

24 He suggested that we should be looking
25 around the country for civil rights violations, rather

1 than looking into what the Department of Justice is
2 doing. And I agree with him that we should indeed be
3 looking around the country for civil rights
4 violations. And, for example, that is what our
5 current Title IX program is doing, where we are
6 looking to see whether colleges and universities
7 discriminate against women in admissions.

8 On the other hand, a point that hasn't
9 been made and I think is actually important, if you
10 look back at our statute, it's not just that we may
11 look at whether the Department of Justice is fairly
12 executing the laws. In fact, we are required by the
13 statute that creates the Commission, required to look
14 into enforcement issues. That means looking at what
15 government agencies are doing to enforce civil rights
16 laws.

17 We now have sworn testimony from someone
18 who actually works or worked in the voting rights
19 section that civil rights laws are not being enforced
20 in a racially neutral manner. All we are trying to do
21 now is get a witness who can confirm or deny that.

22 Commissioner Thernstrom has said that
23 somehow the Chairman acted inappropriately in
24 suggesting that the Department of Justice will not
25 produce such a witness that a reasonable person, not

1 just a commissioner, I would add, any citizen, could
2 draw an adverse inference from that.

3 As the only law professor who teaches
4 evidence law on the Commission, I can say that that is
5 a misinterpretation of the law. The Fifth Amendment
6 does not apply in this situation. And it is, in fact,
7 perfectly appropriate for a fact finder, commissioners
8 and citizens, to draw an adverse inference from that
9 if they believe it is reasonable to do so under the
10 circumstances. And I believe it is.

11 CHAIRMAN REYNOLDS: Okay. At this point,
12 Commissioner Kirsanow?

13 COMMISSIONER KIRSANOW: I would simply
14 call the question on the motion.

15 VICE CHAIR THERNSTROM: Could I ask a
16 question of Mr. Blackwood?

17 CHAIRMAN REYNOLDS: Yes.

18 VICE CHAIR THERNSTROM: Does the statute
19 say that the Department of Justice may enforce our
20 subpoenas or does it say it shall enforce our
21 subpoenas?

22 MR. BLACKWOOD: The citation is 1975(a),
23 subparagraph (e)(2). In relevant part, "In case of
24 contumacy or refusal to obey a subpoena, the Attorney
25 General may in a federal court of appropriate

1 jurisdiction obtain an appropriate order to enforce
2 the subpoena."

3 VICE CHAIR THERNSTROM: May.

4 COMMISSIONER YAKI: I have a question, Mr.

5 --

6 VICE CHAIR THERNSTROM: Well, you know, I
7 am going to go back to a point that I made before,
8 which is that we do not know that the Assistant
9 Attorney General for Civil Rights does not have
10 legitimate managerial reasons for refusing to send
11 people or material, for refusing to send them to this
12 Commission.

13 I mean, should all staff at the DOJ
14 conduct its business feeling vulnerable to being
15 hauled before the U.S. Commission for Civil Rights or,
16 you know, any other body? I mean, these have got to
17 be judgment calls involving how the Department is
18 managed. And the judgment calls are up to the
19 Assistant Attorney General for Civil Rights.

20 CHAIRMAN REYNOLDS: Commissioner Heriot?

21 COMMISSIONER HERIOT: I am not sure how
22 that cuts with regard to this motion. The point here
23 is that Congress did indeed initially decide that the
24 Department of Justice would have some discretion when
25 it comes to enforcing our subpoenas, no doubt thinking

1 about the typical subpoena that we would issue. It is
2 not directed at the Department of Justice, where there
3 is no conflict of interest.

4 The point here is that we have run across
5 an unusual situation, where Congress probably did not
6 think about the issue of when the subpoena would be
7 directed at the Department of Justice itself.

8 There is no doubt they intended us to look
9 at Department of Justice enforcement issues because,
10 again, they require us to once a year do at least one
11 report that is directed towards civil rights
12 enforcement. Our typical subpoena, however, is not
13 directed to the Department of Justice. And what we're
14 trying to do is draw an issue to Congress' attention.

15 When you have a situation like this where there is a
16 conflict of interest, should we not have an
17 alternative procedure?

18 And Commissioner Gaziano's motion is
19 simply designed to draw that unusual situation to
20 Congress' attention. It does not even suggest only
21 one alternative. It suggests many alternatives on how
22 to deal with that problem.

23 I think some of these alternatives are
24 very sensible, but we understand that the Department
25 of Justice does indeed have situations where they have

1 got too many things to do to enforce a single subpoena
2 of ours. And they have to make judgment calls on
3 this. But a judgment call should not be made in a
4 situation where there is a conflict of interest. And
5 that is the point.

6 CHAIRMAN REYNOLDS: Okay. Vice Chair
7 Thernstrom, please?

8 VICE CHAIR THERNSTROM: Yes?

9 CHAIRMAN REYNOLDS: If you will respond to
10 --

11 VICE CHAIR THERNSTROM: Yes. Just to
12 this. And then I'm happy to have the question called.
13 Look, from day one, I mean, I said it day one. We
14 knew that this topic was going to run into precisely
15 this problem. And, yet, we went ahead.

16 I mean, it's part of my argument. This
17 was a bad topic from the very beginning.

18 COMMISSIONER HERIOT: Is it your position
19 that we should not have enforcement reports on topics
20 that might be difficult to --

21 VICE CHAIR THERNSTROM: No. But, you
22 know, this was a topic in which we were going to
23 insist that the Justice Department enforce subpoenas
24 against itself. That was an unlikely thing to happen.

25 COMMISSIONER HERIOT: Is it your position

1 this would not --

2 VICE CHAIR THERNSTROM: And, again, I
3 think --

4 COMMISSIONER HERIOT: -- the Department of
5 Justice because it would be too difficult?

6 VICE CHAIR THERNSTROM: No. It's not a
7 question of difficulty. It is a question of the
8 legitimacy of making judgment calls about how to
9 manage, properly manage, the internal workings of the
10 Civil Rights Division. And I think that those
11 judgment calls are up to the Assistant Attorney
12 General for Civil Rights.

13 And we knew from the very start there was
14 a problem here.

15 COMMISSIONER GAZIANO: I thought in the
16 press, you wanted to investigate another part of the
17 Justice Department. How is that logically consistent?

18 COMMISSIONER YAKI: Mr. Chair?

19 CHAIRMAN REYNOLDS: Just hold on. Just
20 hold on.

21 VICE CHAIR THERNSTROM: I didn't say we
22 should be investigating the subpoenas and so forth. I
23 said if you want to worry about how the Voting Rights
24 Act is being enforced -- I didn't ask for any
25 investigation. I just asked the people to read the

1 new guidelines for section 5.

2 COMMISSIONER GAZIANO: You're all over the
3 map.

4 VICE CHAIR THERNSTROM: I am not all over
5 the map.

6 CHAIRMAN REYNOLDS: All right. All right.

7 VICE CHAIR THERNSTROM: I am completely
8 consistent. I was not asking for an investigation --

9 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

10 VICE CHAIR THERNSTROM: -- on any point.

11 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?
12 Commissioner Yaki?

13 VICE CHAIR THERNSTROM: Yes?

14 COMMISSIONER YAKI: I have a question for
15 the General Counsel. And it goes to the statement
16 that some commissioners seem to believe has a magical
17 effect that is beyond what I can understand.

18 The statute talks about agencies
19 cooperating fully with the Commission. When you read
20 that, cooperate fully, there are certainly going to be
21 some limits on what that full cooperation could be.

22 For example, if we were to make a series
23 of unreasonable requests related to things that may
24 have been of interest to a particular commissioner but
25 not pertain to a particular investigation, they would

1 be under really no obligation to have to cooperate
2 with that or anything we send over -- because the
3 statute according to one commissioner, they simply
4 have to cooperate, regardless of what it is we send
5 over.

6 MR. BLACKWOOD: I think that goes beyond
7 my competencies and calls for more of an opinion. But
8 the statute speaks for itself. The section (e), "All
9 federal agencies shall cooperate fully with the
10 Commission," not specific individual commissioners but
11 "the Commission to the end that it may effectively
12 carry out its functions and duties."

13 COMMISSIONER YAKI: Okay. So the question
14 of whether it may effectively carry out its functions
15 and duties. And I think that that is an interesting
16 part of this because there is essentially a qualifier
17 on what that cooperation is. And I think that this
18 goes again to what Commissioner Thernstrom and I have
19 been saying, Melendez and I have been saying all along
20 with regard to this investigation.

21 That is, there is a point at which I think
22 the Department of Justice could send out 14 different
23 instances where they had prosecuted cases in addition
24 to Noxubee with similar fact situations.

25 And because of the focus on one particular

1 witness and whether or not that witness has
2 corroborating statements or not, they believe that we
3 have the all-encompassing power to force that person
4 to testify or not.

5 I would agree with -- and this is where I
6 agree with Commissioner Thernstrom again, which is I
7 think that departments do have ways and policies about
8 how they do work.

9 To the extent that the Department believes
10 it has sent to us sufficient evidence regarding a
11 particular issue in this case, the issue of whether or
12 not there is race-neutral enforcement of our voting
13 rights laws, I would say that the Department may
14 indeed feel that it has cooperated fully with the
15 Commission.

16 So there is no mantra. It is not a
17 one-way thing where the Commission gets to decide
18 whether or not there is full cooperation or not.

19 CHAIRMAN REYNOLDS: Okay. Commissioner
20 Yaki --

21 COMMISSIONER YAKI: I would just think
22 that that is why I think that there are some real
23 serious issues remaining with this. And it goes again
24 to my points that --

25 CHAIRMAN REYNOLDS: I think that --

1 COMMISSIONER YAKI: -- they could produce
2 --

3 CHAIRMAN REYNOLDS: The question has been
4 called.

5 COMMISSIONER YAKI: -- four million reams
6 of evidence.

7 CHAIRMAN REYNOLDS: So we are going to
8 have to wrap this up soon. The majority would still
9 --

10 CHAIRMAN REYNOLDS: Commissioner Taylor?

11 COMMISSIONER TAYLOR: I do want to speak
12 to the motion.

13 CHAIRMAN REYNOLDS: Yes?

14 COMMISSIONER TAYLOR: Because this entire
15 investigation in my view has done nothing more than
16 bring this issue to light and this motion is not a
17 motion about the particulars of Commissioner Gaziano's
18 recommendation, the motion as I see it is a motion as
19 to whether or not we as a body want to make
20 recommendations to Congress regarding this quagmire --
21 that's what this is really about. Do we as a body
22 want to make a recommendation to Congress as to what
23 we can do when we are left with no recourse? That's
24 what the motion is.

25 I would rise in favor of that motion, that

1 we as a body should say to Congress, "We want to
2 provide you with our thoughts as to in a situation
3 such as this, when we are left with no recourse, what
4 we should be able to do next."

5 CHAIRMAN REYNOLDS: Okay. The question
6 has been called. Let's vote. All in favor please
7 say, "Aye."

8 (Chorus of ayes.)

9 CHAIRMAN REYNOLDS: Objections?

10 COMMISSIONER YAKI: I would like a
11 recorded vote, please.

12 CHAIRMAN REYNOLDS: Okay. Commissioner
13 Kirsanow, how do you vote?

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Heriot?

16 COMMISSIONER HERIOT: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Gaziano?

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

20 VICE CHAIR THERNSTROM: Nope.

21 CHAIRMAN REYNOLDS: Commissioner Taylor?

22 COMMISSIONER TAYLOR: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Yaki?

24 COMMISSIONER YAKI: I don't think you can
25 separate this motion from what the Commission has been

1 doing for the past two years. So I vote no.

2 CHAIRMAN REYNOLDS: Commissioner Melendez?

3 COMMISSIONER MELENDEZ: No.

4 CHAIRMAN REYNOLDS: I vote in favor of the
5 motion. The motion passes.

6 - CONSIDERATION OF DISCOVERY PLAN AND PROJECT
7 OUTLINE,REPORT ON SEX DISCRIMINATION IN
8 LIBERAL ARTS COLLEGE ADMISSIONS

9 CHAIRMAN REYNOLDS: Okay. Next up. Next
10 up is we're going to have an update of our Title IX
11 project. At this point I will call Mr. Byrnes to
12 provide us with an update.

13 MR. BYRNES: Thank you, Mr. Chairman.

14 I have provided commissioners and special
15 assistants with revised copies of the project outline
16 for the project. Revisions were made to address the
17 concerns raised in the last meeting to streamline the
18 report and not identify the schools by name.

19 I will say that counsels for the four
20 holdout schools have expressed an initial willingness
21 to consider providing data. If the Commission
22 described the type of analysis it would perform and
23 described the intended use of the data in the report,
24 once this information was provided, they would then
25 confirm which categories of information they would

1 supply and whether it would simply be aggregated data
2 or the individualized data that we would prefer. Even
3 if they provided the data, they preferred to run the
4 data analyses at their own facilities.

5 Finally, even after these steps were
6 taken, the Commission and the schools may need to
7 conclude a confidentiality agreement. At this point
8 the Commission is reviewing the FOIA-bility of the
9 data it seeks as a first step to discussing what kind
10 of confidentiality it can provide.

11 Now, it should be noted the schools
12 indicated that they were not willing at this point to
13 provide data on the applicants' race, high school
14 grade point average, high school class rank, whether
15 the applicant was considered to be a legacy, whether
16 the applicant was offered an athletic scholarship,
17 whether the applicant was offered merit-based
18 financial aid, or whether the enrollee plays on a
19 variety-level intercollegiate athletic team.

20 I also want to note that the religious
21 schools were not willing to provide individualized
22 data on the applicants' religious affiliation.

23 CHAIRMAN REYNOLDS: Okay. We have gone
24 back and forth on it with counsel for recalcitrant
25 schools. We have offered up what are in my

1 estimations reasonable accommodations. And, while we
2 have made some progress, the amount of progress is not
3 enough. And it's not moving along quick enough.

4 I would move that we form a subcommittee
5 so that we can push this issue and to reach a
6 resolution as soon as possible. And, in addition to
7 that, I would move that we send a letter to DOJ asking
8 that our subpoena be enforced.

9 COMMISSIONER HERIOT: Would that be under
10 your signature?

11 CHAIRMAN REYNOLDS: Yes. As for the
12 subcommittee, obviously I would ask that Commissioner
13 Heriot serve on it. Commissioner Melendez, would you
14 be willing to serve on the subcommittee?

15 COMMISSIONER MELENDEZ: Unless
16 Commissioner Yaki wants to.

17 CHAIRMAN REYNOLDS: Commissioner Yaki,
18 would you want to serve on the subcommittee?

19 COMMISSIONER YAKI: No.

20 CHAIRMAN REYNOLDS: The response was no,
21 Commissioner Melendez. So, if I understood you, that
22 means you are willing to serve.

23 COMMISSIONER MELENDEZ: You mean just on a
24 conference call or something?

25 CHAIRMAN REYNOLDS: Yes. That's how

1 subcommittees conduct business.

2 COMMISSIONER MELENDEZ: How long is this
3 going to last?

4 CHAIRMAN REYNOLDS: It is hard to say, but
5 I --

6 COMMISSIONER MELENDEZ: If it is something
7 short, fine.

8 CHAIRMAN REYNOLDS: Okay. I suspect that
9 this will be wrapped up soon enough, especially if we
10 move since we're moving to have our subpoena enforced.

11 And, Commissioner Taylor, I would also ask
12 that you serve on the subcommittee.

13 COMMISSIONER TAYLOR: I will agree to do
14 so.

15 CHAIRMAN REYNOLDS: Okay. The letter.
16 Actually, I started this discussion by asking for a
17 motion, but I don't think that that is actually
18 necessary.

19 But, in any event, I do invite discussion
20 from Commissioner Yaki. I believe you raised your
21 hand.

22 COMMISSIONER YAKI: No. Sorry.

23 COMMISSIONER HERIOT: Are we better off
24 having -- we started out as a motion, --

25 CHAIRMAN REYNOLDS: Right.

1 COMMISSIONER HERIOT: -- which I am happy
2 to second. I think it's better. Since we're all
3 here, we might as well vote on it.

4 CHAIRMAN REYNOLDS: Okay. If that's the
5 case, all in favor please say, "Aye."

6 (Chorus of ayes.)

7 CHAIRMAN REYNOLDS: Objections?

8 (No response.)

9 CHAIRMAN REYNOLDS: Abstentions?

10 (No response.)

11 COMMISSIONER HERIOT: Can we take that on
12 the record with each name, --

13 COMMISSIONER YAKI: I abstain.

14 COMMISSIONER HERIOT: -- do a roll?

15 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

16 COMMISSIONER KIRSANOW: Aye.

17 CHAIRMAN REYNOLDS: Commissioner Heriot?

18 COMMISSIONER HERIOT: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Gaziano?

20 COMMISSIONER GAZIANO: Yes.

21 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

22 VICE CHAIR THERNSTROM: I haven't even
23 been listening. I'm sorry. I have been doing
24 something else. So I abstain.

25 CHAIRMAN REYNOLDS: Commissioner Taylor?

1 COMMISSIONER TAYLOR: Aye.

2 CHAIRMAN REYNOLDS: Commissioner Yaki?

3 COMMISSIONER YAKI: No.

4 CHAIRMAN REYNOLDS: Commissioner Melendez?

5 COMMISSIONER MELENDEZ: I abstain.

6 CHAIRMAN REYNOLDS: Okay. I vote for it.

7 The motion passes.

8 Commissioner Yaki?

9 COMMISSIONER YAKI: Yes. I have a quick
10 question. It goes back to the -- this is just a
11 procedural question. On the draft report we're
12 receiving today on the New Black Panther, it has
13 always been my understanding -- correct me if I am
14 wrong -- that these reports are for commissioner
15 confidential use and review only. They are not public
16 records at that point.

17 The reason I say this is I actually
18 received a rather disturbing e-mail that a news media
19 outlet actually is teasing that they are going to get
20 a copy of this report today. And I am just trying to
21 figure out what exactly our responsibilities are with
22 regard to this.

23 CHAIRMAN REYNOLDS: Okay. To that --

24 MR. BLACKWOOD: These are private. They
25 only are being disclosed to special assistants and

1 commissioners. No one has seen this report at this
2 stage other than the General Counsel's Office.

3 COMMISSIONER YAKI: Okay. I just wanted
4 to alert you that one network is teasing that it is
5 going to be getting it. So I just wanted to let you
6 know.

7 CHAIRMAN REYNOLDS: Okay. When did you
8 announce that you were going to distribute the draft
9 report?

10 MR. BLACKWOOD: I announced that at the
11 last meeting, I believe, the last telephonic meeting.

12 CHAIRMAN REYNOLDS: Okay.

13 MR. BLACKWOOD: It should go out
14 electronically later today.

15 COMMISSIONER YAKI: But these are private?

16 MR. BLACKWOOD: Yes, private.

17 COMMISSIONER YAKI: For our review?

18 COMMISSIONER HERIOT: Clarification. You
19 said only the Office of the General Counsel has seen
20 it? I assume the Staff Director has seen it or will
21 see it when we see it? What's the --

22 MR. BLACKWOOD: The Staff Director has
23 reviewed a draft.

24 COMMISSIONER GAZIANO: And since we voted
25 to include this finding and recommendation for

1 consideration, would you try to incorporate that?

2 MR. BLACKWOOD: We'll try to incorporate
3 it by this afternoon.

4 COMMISSIONER GAZIANO: Okay. If possible.

5 MR. BLACKWOOD: Yes.

6 COMMISSIONER GAZIANO: It has been
7 distributed, but it would be handy if --

8 MR. BLACKWOOD: Our staff is going through
9 right now, going through the last edits. And after
10 this meeting, I will be working on those and hopefully
11 sending it out. And I will try to incorporate this,
12 even if we have to do it as a separate document.

13 COMMISSIONER GAZIANO: Okay. But that has
14 been since we have discussed that publicly, that part
15 is known to the press that that will be in
16 consideration. But I certainly agree with
17 Commissioner Yaki that we need to stick to our normal
18 rules of confidentiality with regard to draft reports.

19 COMMISSIONER YAKI: I would simply say
20 that I think that we should make sure that an e-mail
21 goes out with that statement, confidential, et cetera.

22 CHAIRMAN REYNOLDS: We stated this on the
23 record.

24 COMMISSIONER YAKI: I like triple
25 protections. I think that, you know, when you send an

1 e-mail --

2 CHAIRMAN REYNOLDS: That's fine.

3 COMMISSIONER YAKI: -- I put the
4 "confidential."

5 CHAIRMAN REYNOLDS: That's fine.

6 COMMISSIONER YAKI: Okay.

7 CHAIRMAN REYNOLDS: Mr. Staff Director,
8 please send an e-mail to commissioners and staff and
9 special assistants, reminding everyone of their
10 obligation not to disclose this draft report.

11 VICE CHAIR THERNSTROM: And any discussion
12 by e-mails should have at the top of the e-mail
13 "Confidential." I mean, e-mail is going to be the
14 death of all of us because it is so unprivate.

15 COMMISSIONER TAYLOR: Just for the record,
16 I have an expectation of privacy for all of my
17 e-mails.

18 VICE CHAIR THERNSTROM: Well, I do, too,
19 but, you know, it's not followed.

20 COMMISSIONER YAKI: I would think that the
21 government servers that are running --

22 COMMISSIONER TAYLOR: That's why I'm
23 putting it on the record I have an expectation of
24 privacy.

25 COMMISSIONER YAKI: I think that just

1 caught them and sent you into a new database.

2 COMMISSIONER TAYLOR: That's right.
3 That's right. Put me on a special list.

4 COMMISSIONER YAKI: That's right. Put you
5 on the special list.

6 COMMISSIONER TAYLOR: I know. That's what
7 it did.

8

- CONSIDERATION OF FY 2011 ENFORCEMENT REPORT TOPIC

9 CHAIRMAN REYNOLDS: Okay, folks. Next up
10 is our 2011 enforcement report topic. On June 25th,
11 the Staff Director shared potential 2011 project
12 topics with you based on staff and staff members'
13 suggestions and asked for additional suggestions in
14 order to get a head start on the program planning for
15 that year.

16 He recirculated this list on July 8th
17 together with suggestions proposed by commissioners to
18 determine your preference for following a ranking
19 procedure similar to the one followed in recent years
20 selecting potential projects.

21 Specifically, that process asked
22 commissioners to rank potential projects in order to
23 streamline the process of developing a slate of
24 potential candidates for an enforcement report for
25 2011.

1 The Office of Staff Director tabulated the
2 results of the commissioners' rankings and provided
3 you with the results as an aid to collective
4 decision-making as we consider a potential enforcement
5 report topic for the coming fiscal year.

6 Mr. Staff Director, will you discuss in
7 greater detail the topics receiving the most
8 commissioner votes?

9 VICE CHAIR THERNSTROM: And I have a
10 question about the second one, if I can ask it. It
11 says that one commissioner voted for this topic on the
12 list saying that its scope be expanded beyond Hispanic
13 students. This is the disparity in student
14 discipline.

15 I didn't know that this was a topic
16 confined to Hispanic students. And so I would like to
17 hear the original wording of the proposed topic. It
18 was never my understanding that this involved --

19 CHAIRMAN REYNOLDS: Okay. Let's let the
20 Staff Director go through his summary. then we'll
21 open up the floor for a discussion.

22 STAFF DIRECTOR DANNENFELSER: Thank you,
23 Mr. Chairman.

24 With respect to the issue about student
25 discipline, we had done outreach to various

1 organizations and to state advisory committees for
2 recommendations. And the recommendation on this
3 particular topic came from a state advisory committee
4 member, who recommended that we look into this as it
5 relates to Hispanic students. So we did circulate
6 that proposal based on how it was submitted by the
7 state advisory committee member.

8 But in presenting it to commissioners,
9 there were 21 votes for the topic of the Department of
10 Justice's investigation into anti-Asian violence at
11 South Philadelphia High School. There were 21 points
12 based on our system of asking commissioners to pick up
13 to 5 choices and rank them and that their first choice
14 would get 5 points, second choice 4, third choice 3,
15 fourth choice 2, and fifth choice 1.

16 So in this case, there was one
17 commissioner who made it the first choice and then
18 four other commissioners who made it the second
19 choice. It received 21 points.

20 The disparities in student discipline
21 received 20 points. And, again, as noted here, one of
22 the commissioners voted for that topic with the
23 understanding that it be expanded beyond Hispanic
24 students.

25 And also regarding the first topic on

1 anti-Asian violence in the schools, one commissioner
2 voted for that on the basis that the scope would be
3 subject to further shaping and refinement.

4 The topic that received the third most
5 points was school choice as a civil right. And that
6 received 12 points. The topic of implementation of
7 the Individuals With Disabilities and Education Act
8 received four points. And federal and state
9 enforcement of hate crimes laws received three points.

10 During the last meeting, there was some
11 discussion about the possibility of merging the first
12 two topics. I believe that Commissioner Gaziano, in
13 particular, spoke to the idea of possibly merging the
14 issue of anti-Asian violence at South Philadelphia
15 High School with the issue of disparities in student
16 discipline.

17 So at this point I would encourage further
18 commissioner discussion on that topic to see about a
19 possible area of agreement to merge those topics in
20 some way or if there are some other sentiments among
21 commissioners on how to pick the topic.

22 CHAIRMAN REYNOLDS: The floor is open.
23 Commissioner Gaziano?

24 COMMISSIONER GAZIANO: There were some
25 other discussion points in our last meeting that I

1 will hopefully remember accurately. For the record, I
2 wanted to know what the enforcement hook was with
3 regard to the violence in Philadelphia before it was
4 included in the other discipline.

5 It seemed to me that it might fit within
6 the investigation of student discipline on if it was
7 -- if the federal enforcement hook was such that I was
8 on record of being against one off, investigations of
9 one-off incidents in Philadelphia if there was any
10 serious enforcement hook. In fact, such an
11 investigation would be small potatoes in my book.

12 And so I don't know if there has been any
13 further investigation of that issue. So just as a
14 personal matter, I'm not prepared to lump that in with
15 the issue of student discipline that we know has a
16 federal enforcement hook at this point.

17 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

18 COMMISSIONER GAZIANO: Has there been any
19 further investigation into the federal enforcement?

20 STAFF DIRECTOR DANNENFELSER: Not at this
21 point. We have not heard what the Department of
22 Justice's decision is. But there had been previously
23 some investigation into what was going on in
24 Philadelphia. There had been some special commissions
25 set up in the City of Philadelphia to look into the

1 situation.

2 And a complaint had been filed with the
3 Department of Justice, but we were not able to get a
4 copy of that complaint. We had made some inquiries
5 about getting a copy of that complaint. And we have
6 not done that at this point.

7 So we don't know yet what the Department
8 of Justice's decision will be in terms of how they
9 will investigate this particular incident.

10 COMMISSIONER GAZIANO: But I think I heard
11 the Vice Chair say that the Department of Justice
12 might have a good reason always to do whatever it
13 does.

14 VICE CHAIR THERNSTROM: No, I didn't say
15 that.

16 COMMISSIONER GAZIANO: Therefore --

17 VICE CHAIR THERNSTROM: I mean, you are
18 really remarkable in distorting what I have to say.
19 But, anyway, go on. I didn't say that.

20 COMMISSIONER GAZIANO: But so we did.
21 But, just to make the record clear, we requested the
22 Department of Justice send us a copy of information it
23 had on this matter? And the Department has been
24 nonresponsive?

25 STAFF DIRECTOR DANNENFELSER: I don't know

1 that I would characterize it as nonresponsive at this
2 point because it was a very preliminary request.

3 COMMISSIONER GAZIANO: But they haven't
4 given us anything?

5 STAFF DIRECTOR DANNENFELSER: Let me just
6 ask the attorney adviser, who has had some dealings
7 with them, to address that point.

8 MS. OSTROWSKY: We've made several
9 inquiries to the Department of Justice, both in the
10 educational opportunities section and the criminal
11 section, under the Civil Rights Division. And we have
12 gotten no response from either one.

13 COMMISSIONER HERIOT: Is this in writing?

14 MS. OSTROWSKY: No.

15 COMMISSIONER HERIOT: Telephone calls?

16 MS. OSTROWSKY: We have made telephone
17 calls.

18 COMMISSIONER HERIOT: When did they occur
19 approximately?

20 MS. OSTROWSKY: Some months ago I think it
21 must have been, four, maybe even five months ago.

22 We also made a call to the Philadelphia
23 District Attorney's Office. And they told us that
24 their hands were tied because no complaint had been
25 filed with them. They said that it is often difficult

1 for complainants to come forward there because they
2 fear retribution.

3 COMMISSIONER HERIOT: Okay. So there is a
4 possibility that nobody has brought this up to --

5 MS. OSTROWSKY: No one has --

6 COMMISSIONER HERIOT: -- school
7 authorities?

8 MS. OSTROWSKY: As of four or five months
9 ago, no one had filed a complaint locally with the
10 district attorney in Philadelphia.

11 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

12 STAFF DIRECTOR DANNENFELSER: I'm sorry.
13 What complaint had been filed?

14 MS. OSTROWSKY: The complaint, the Asians
15 United did file a complaint with the Department of
16 Justice. They would not give us a copy of that
17 complaint. Tim Fay, the Special Assistant to Vice
18 Chair Thernstrom, obtained a copy of what looked very
19 similar, from Asians United's website, but we do not
20 have an actual copy of the complaint.

21 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

22 VICE CHAIR THERNSTROM: Well, a couple of
23 things. I don't want any more investigations into
24 one-offs just for Commissioner Todd Gaziano's
25 information. We have had one too many already.

1 I don't want us wandering beyond our
2 jurisdiction. I don't think this will turn out to be
3 the case with respect to this topic. And, as was just
4 noted, there has been a complaint filed.

5 We will have to see what happens. But the
6 notion that this Philadelphia High School incident is
7 unique in this country, it's just wrong. We are still
8 thinking of this country -- and I'm talking not about
9 the Commission here but about a lot of writing on race
10 and ethnicity-related issues -- thinking of this
11 country in black and white terms when, in fact, of
12 course, Hispanics are now a larger ethnic group than
13 blacks are and there is a tremendous amount of
14 inter-ethnic and interracial, Asians being a racial
15 group, Hispanics not being a racial group, conflict.
16 And we have got incidents that have occurred in San
17 Francisco as well as Philadelphia.

18 So I don't think there is any possibility
19 that this is going to look like small potatoes at all.
20 I think it is an enormously important topic, the
21 dimensions of which cannot be clear until we do a bit
22 more investigating.

23 And I would say, indeed, that it is
24 important to remember that, however we define it or
25 decide not to define it because we drop it today, you

1 know, the definition of the topic, the outlines of the
2 investigation will change over time and especially
3 because the Commission is going to change, the
4 composition of the Commission is going to change.

5 So whatever we do is tentative. I still
6 remain convinced this is a very good topic because it
7 is of national scope and because -- I mean, if you
8 look at a city like Los Angeles, you know, the
9 black-Hispanic tension runs very, very high. Asians
10 are in that mix as well as we saw up to -- I can't
11 even remember the occasion, but in any way.

12 So, you know, we are wandering into
13 something very important. And it is a recognition
14 that this country is no longer, as I said, blacks and
15 whites.

16 CHAIRMAN REYNOLDS: I'm sorry.
17 Commissioner Heriot?

18 COMMISSIONER HERIOT: I just wanted to get
19 on the record my own thoughts about the interaction
20 between these two topics that we have been discussing,
21 the Philadelphia case and disparate impact in
22 discipline. I ranked disparate impact and discipline
23 as my top choice. And I believe I am fairly certain
24 that I ranked the Philadelphia case as my second
25 choice.

1 And what was on my mind at the time was
2 that these two topics could be combined. I would not
3 have ranked the Philadelphia case in my top five had I
4 not been thinking that.

5 One of the problems I think with the
6 Philadelphia case being our enforcement report is that
7 the enforcement hook is very slender there. To what
8 extent has the federal government even had the
9 opportunity to do anything here? Ordinarily we think
10 of state authorities as being the first actors in
11 situations like this.

12 The disparate impact in discipline issue
13 is again my top choice because this is very clearly an
14 issue of federal enforcement. It is now the policy of
15 the Department of Education. And they have sent out a
16 letter to this effect.

17 And Secretary Duncan has spoken on this
18 issue, that they are going to be looking very, very
19 closely at school districts to make sure that there is
20 no disparate impact in the level of discipline that
21 schools are giving out. So that there will be
22 essentially quotas on how many students can be
23 suspended or expelled or punished in this way or that
24 way for misbehavior.

25 And so I think that is a very interesting

1 topic and one that clearly fits our statutory mandate
2 to examine a federal enforcement issue. So if these
3 topics are not combined, then I would prefer to
4 withdraw my support for the Philadelphia case because
5 I think we need something that has that strong federal
6 enforcement hook, as I think the New Black Panther
7 issue did for the current year's report.

8 I also have another topic that I just want
9 to throw out here in case support for the topics that
10 we have already discussed dissipates. And that is
11 that Byron York had an article in the Washington
12 Examiner last week, I believe, on the Civil Rights
13 Division's settlement agreements and consent orders,
14 where it is now becoming common -- and I don't think
15 it's just in the Civil Rights Division.

16 I think this is common in other sections
17 of the Department of Justice, also common at the state
18 level now -- for settlements to include a promise on
19 the part of the defendant to give some substantial sum
20 of money to a particular -- I guess we would say a
21 charitable organization but these are generally
22 advocacy organizations as well as part of the
23 settlement. And I think that is a fascinating issue
24 and one that would perhaps garner bipartisan support
25 to look at how this is done, which organizations are

1 being given these monies, who makes these decisions,
2 and how the money is actually spent by these
3 organizations when they get it.

4 CHAIRMAN REYNOLDS: Okay. Well, there are
5 several issues that have been placed on the table, the
6 first being how we shape the scope of the topic that
7 has garnered the greatest support and now this
8 proposal that Commissioner Heriot just put on the
9 table.

10 VICE CHAIR THERNSTROM: Could I ask a
11 question about the disparities in school discipline?
12 I am just not sure how research would proceed on that
13 question. I mean, the numbers alone obviously are not
14 going to tell us anything.

15 Okay. We've got a higher percentage of
16 black kids and Hispanic kids than Asian kids being
17 disciplined in most urban school systems, in all urban
18 school systems. I don't need to modify it with most.

19 Yes. Where do we go from there?

20 COMMISSIONER HERIOT: I think that's a
21 good question because I think you are right that the
22 numbers are not really going to reveal everything we
23 have to know. And, in fact, that is the point. The
24 very point is that with disciplinary cases, to look at
25 cold numbers and say, gee, you know, the percentages

1 should be equal across races, that doesn't tell the
2 whole story.

3 VICE CHAIR THERNSTROM: Okay. But that is
4 a draft report.

5 COMMISSIONER HERIOT: Pardon? What I
6 would like to do and I think can be done is examine
7 how the bureaucratic structure is growing up around
8 this kind of policy at individual school districts, to
9 pick out a few school districts and find out how
10 they're reacting to the new Department of Education
11 mandate. What sort of bureaucratic structure are they
12 creating?

13 And talk to teachers about how they go
14 about deciding what to do. Talk to administrators to
15 find out how this is working out at the level where it
16 is actually being administered.

17 And so I don't think this is gather data,
18 add it up, and then have a graph kind of situation. I
19 think the whole point of this is to get away from that
20 and to talk to people that are actually administering
21 this kind of policy and see how bureaucratic
22 requirements like this are causing issues that I think
23 really can't be analyzed just by ten numbers, how that
24 is causing discipline to be allocated.

25 VICE CHAIR THERNSTROM: And how are we

1 going to get into those schools and talk to teachers?

2 I mean, having been on a state board of education for
3 11 years, I know the difficulty of getting --

4 COMMISSIONER HERIOT: We've got subpoena
5 power.

6 VICE CHAIR THERNSTROM: -- of getting in
7 --

8 COMMISSIONER HERIOT: We should use it.

9 VICE CHAIR THERNSTROM: -- into schools.

10 COMMISSIONER TAYLOR: Well, let me ask you
11 --

12 VICE CHAIR THERNSTROM: Yes?

13 COMMISSIONER TAYLOR: What is the basis of
14 the Department's mandate?

15 COMMISSIONER HERIOT: They think that this
16 is fouling Title VI and that this is simply a matter
17 of preventing race discrimination in programs that
18 receive --.

19 COMMISSIONER TAYLOR: So their view is
20 that the mere existence of the numbers in and of
21 itself --

22 CHAIRMAN REYNOLDS: They have drawn
23 inference from the statistical --

24 COMMISSIONER TAYLOR: -- enables them to
25 draw a conclusion?

1 COMMISSIONER HERIOT: Yes. I think to be
2 fair to them, they would say that they recognize that,
3 you know, different situations call for different
4 actions. But they're creating a presumption.

5 And my fear is that a presumption like
6 that basically inhibits schools from engaging in any
7 kind of discipline. And one of my fears is that there
8 are inner city schools that really have difficult
9 problems with discipline.

10 And to hamstring school districts so that
11 they have to be so very careful before they do the
12 things that are necessary to maintain order in the
13 classroom, there are going to be students that are
14 really hurt by this, students that want to be good
15 students, students that are struggling to get out of
16 the inner city.

17 But discipline is not being maintained, in
18 part because of fear that the Department of Education
19 is going to come down like a ton of bricks on them.
20 And that is what I would like to get into in this.

21 VICE CHAIR THERNSTROM: Okay. I don't
22 object to what you're saying at all, but discipline is
23 not being maintained in these schools as it is way
24 before --

25 COMMISSIONER HERIOT: That's my fear.

1 VICE CHAIR THERNSTROM: Well, for --

2 COMMISSIONER HERIOT: I don't know if --

3 VICE CHAIR THERNSTROM: -- came along.

4 And part of the reason -- well, there are multiple
5 reasons for that, including the fact that in most
6 schools, principals don't want to deal with kids who
7 are disciplinary problems --

8 COMMISSIONER HERIOT: My point exactly.

9 VICE CHAIR THERNSTROM: -- and so forth.
10 I mean, you walk into most inner city public schools
11 and they are chaotic nightmares. Okay?

12 COMMISSIONER HERIOT: But my biggest fear
13 is federal enforcement.

14 VICE CHAIR THERNSTROM: And you go into
15 the students --

16 COMMISSIONER HERIOT: That's a question of
17 what is the federal government doing to make it work.

18 VICE CHAIR THERNSTROM: Well, I am not
19 sure. And I guess this is part of my problem here. I
20 don't object to this topic at all. I am just raising
21 questions about it. I think part of my problem is
22 schools are local institutions. There is a limit to
23 what states can do, no less the federal government can
24 do in the way of imposing discipline on --

25 COMMISSIONER HERIOT: We're just trying to

1 prevent the federal government from making it worse.

2 And I think it is one of the central education issues
3 that exists today, the discipline issue generally.

4 VICE CHAIR THERNSTROM: Oh, it's been a
5 central issue for a long time.

6 COMMISSIONER HERIOT: It's true that, you
7 know, as a matter of fact children who are in
8 one-parent households tend to have a higher proportion
9 of discipline problems for a very complex set of
10 reasons that, you know, we could talk about some other
11 day here, but it is just a fact.

12 And, as a result, it may well be that
13 given that there are very different rates of
14 one-parent households across races, you may have a
15 different set of disciplinary problems across races.

16 And, hence, if you have got school
17 districts that have a high degree of discipline
18 problems, if you add one more reason, a federal reason
19 now, that schools have to be very, very careful not to
20 enforce discipline, you know, that is one more reason
21 that students will not get a fair education.

22 You have got a lot of students that are
23 struggling to do well in school. And it's not easy
24 when the other students in the class are being
25 disruptive.

1 And I don't think Secretary Duncan has
2 done anybody any favor by making it more difficult to
3 enforce discipline. And that is what I would like to
4 look into.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER HERIOT: I also want to keep
7 my other topic on the table here in case that appeals
8 more.

9 CHAIRMAN REYNOLDS: Okay. Let's shift the
10 conversation to other commissioners. I just want to
11 get a sense of how people feel about the
12 recommendation that we make the amendment that
13 Commissioner Heriot has recommended and also
14 Commissioner Heriot's proposal, the new topic that she
15 has introduced.

16 VICE CHAIR THERNSTROM: And I would like
17 some discussion, Mr. Chairman, of whether this is
18 becoming an unmanageable topic that we address --

19 CHAIRMAN REYNOLDS: Which one?

20 VICE CHAIR THERNSTROM: Well, if we
21 combine these two, the Philadelphia and the --

22 COMMISSIONER HERIOT: Yes. I wouldn't
23 favor the Philadelphia thing. If people think that
24 it's going to overburden the disparate impact in
25 discipline. I would rather just do disparate impact

1 in discipline.

2 I only included the Philadelphia thing as
3 my second choice because I thought that that might
4 gain more support if we were to combine it. If it
5 doesn't, I would rather just do discipline.

6 CHAIRMAN REYNOLDS: Okay. Let's hear from
7 some other commissioners. Commissioner Gaziano?

8 COMMISSIONER GAZIANO: Yes. Since I
9 already spoke, I will yield to others first. I think
10 I made clear the same sort of assumption that there
11 are two conditions that I had, including the
12 Philadelphia matter into the other discipline -- and I
13 also voted for it. I think it may be ranked at
14 second. So I will withdraw my points if either of the
15 two conditions isn't met.

16 One is that we don't have at the time we
17 are voting a clear federal enforcement hook that is
18 worthy. And it seems like there is staff work that
19 was done to try to find that out. And that has gone
20 nowhere. So I think that first condition may not be
21 -- or at least doesn't satisfy me.

22 The second is that it really be -- by the
23 way, on that first point, it may be true that that
24 kind of racial violence is very important and this
25 Commission can look into it. Maybe this Commission

1 should look into it. But it can't look into it as the
2 federal enforcement, part of the federal enforcement
3 report, unless we know there is a real federal
4 enforcement angle.

5 The second condition in my mind is that it
6 be somehow further developed and not way down the
7 other. And I have some skepticism on that as well.

8 CHAIRMAN REYNOLDS: Okay. I am detecting
9 a -- it seems as if support for the investigation into
10 violence in South Philadelphia, but the initial
11 support, there were conditions attached. And what I'm
12 hearing is that the conditions haven't been satisfied.

13 I just want to get a clear assent of the
14 level of support. We are going to have to make a
15 decision.

16 COMMISSIONER GAZIANO: Yes. That's a fair
17 statement. I have a fair degree of interest in the
18 other topic that Commissioner Heriot proposed, I think
19 either the second topic or the discipline in schools,
20 disparate impact study, either of which would be very
21 good.

22 CHAIRMAN REYNOLDS: No? Are you sure?
23 Anyone else? Commissioner Melendez?

24 COMMISSIONER MELENDEZ: Yes. I would
25 support the Philadelphia, the number one. I think

1 that if it's a hot topic, I think that we ought to
2 look at it. And we need more information from the
3 Justice Department or whoever is enforcement. I would
4 support looking at that.

5 CHAIRMAN REYNOLDS: Okay. Thank you,
6 Commissioner Melendez. I know where Commissioner
7 Melendez stands on this particular issue. So where
8 are we at this point?

9 VICE CHAIR THERNSTROM: I think, Mr.
10 Chairman, we need to have separate votes, on these two
11 separate topics, the top two ones, and then another
12 vote on whether they should be combined because I am
13 reluctant at this point to combine them.

14 You've got topics that leads us in
15 different directions here. They're not the same. And
16 they're both --

17 CHAIRMAN REYNOLDS: How about this? What
18 do you think if we had a vote on the original proposal
19 for anti-Asian violence in South Philadelphia, that we
20 have --

21 VICE CHAIR THERNSTROM: And, by the way,
22 elsewhere we might put that in.

23 CHAIRMAN REYNOLDS: So it would be
24 expanded, then?

25 VICE CHAIR THERNSTROM: Well, we would

1 like to look at other incidents.

2 CHAIRMAN REYNOLDS: Well, I'm just --

3 VICE CHAIR THERNSTROM: Okay.

4 CHAIRMAN REYNOLDS: Okay.

5 VICE CHAIR THERNSTROM: And other
6 incidents of inter-ethnic violence in high schools.

7 CHAIRMAN REYNOLDS: Another option would
8 be the combination that Commissioner Heriot has
9 recommended. And then I guess the third option would
10 be the use of consent decrees to funnel money to
11 advocacy organizations.

12 COMMISSIONER HERIOT: I don't advocate the
13 putting of the two together. If people think that is
14 going to be a little problem.

15 CHAIRMAN REYNOLDS: These are --

16 COMMISSIONER HERIOT: I would advocate
17 disparate impact in discipline. I would also advocate
18 the other one if somebody is interested in that.

19 CHAIRMAN REYNOLDS: Okay. I am just
20 trying to establish what the remaining options are --

21 COMMISSIONER HERIOT: Yes.

22 CHAIRMAN REYNOLDS: -- in terms of --

23 COMMISSIONER HERIOT: I was just trying
24 to, you know, offer a compromise when I said, "Let's
25 put them together." If people aren't interested in

1 that compromise, then that's fine.

2 CHAIRMAN REYNOLDS: Okay.

3 COMMISSIONER GAZIANO: Could I ask for a
4 clarification from Commissioner Thernstrom on looking
5 at I suppose violence? What is the federal
6 enforcement study that we would conduct?

7 VICE CHAIR THERNSTROM: Well, I think that
8 there are -- I have just been handed by my assistant
9 what the federal hooks are here potentially, but, you
10 know, we've got attorneys around the room. And I'm
11 not one of them.

12 There is federal statute prohibiting
13 interfering with students receiving public,
14 interfering with the education of students in the
15 public, system.

16 There is a racial component here that I
17 assume if DOJ is looking into, that is what it is
18 focusing on.

19 COMMISSIONER GAZIANO: Yes. Do you have
20 reason to believe they are not doing a good job? That
21 is my question.

22 VICE CHAIR THERNSTROM: Well --

23 COMMISSIONER GAZIANO: Do you have any
24 reason to think they're not doing a good job?

25 VICE CHAIR THERNSTROM: No. I have no

1 reason to think they are doing a good or not good job.

2 COMMISSIONER GAZIANO: So we don't really
3 have any knowledge of whether if we investigated this
4 we would find anything?

5 VICE CHAIR THERNSTROM: Well, I mean in a
6 way you're saying if I say to you you're thinking of
7 writing a book on pride and prejudice and I say,
8 "Well, there have been a lot of books on Jane Austen"
9 and you say to me, "Well, yes, but they haven't been
10 written by me."

11 So whatever the Justice Department does I
12 assume we have a distinctive voice that is different
13 than the Justice Department. And the questions we may
14 ask may be different than they may ask.

15 COMMISSIONER GAZIANO: But we're supposed
16 to study the Justice Department. So my question, you
17 say you have no reason to know whether they have done
18 a good job, bad job, indifferent job.

19 VICE CHAIR THERNSTROM: But they may be
20 asking a series of questions that are different than
21 the ones we would ask.

22 COMMISSIONER GAZIANO: They may, but it
23 just doesn't seem like --

24 VICE CHAIR THERNSTROM: They may be trying
25 the issue --

1 COMMISSIONER GAZIANO: -- a very strong
2 factual basis to decide to devote the Commission's
3 resources --

4 CHAIRMAN REYNOLDS: Let me see if I can
5 help. I hate to do this.

6 VICE CHAIR THERNSTROM: We are all feeling
7 sorry for you.

8 CHAIRMAN REYNOLDS: With the New Black
9 Panther Party issue, we had a decision which we
10 reacted to. In the case of what went on in South
11 Philadelphia, we don't have an action or admission by
12 the Department of Justice that would suggest that
13 there is an issue.

14 VICE CHAIR THERNSTROM: Well, we have an
15 absence of actions so far.

16 CHAIRMAN REYNOLDS: But there is nothing
17 that -- we have a situation where apparently the
18 investigation is ongoing. No decision has been made.
19 They have not rendered -- there have been no
20 determinations --

21 VICE CHAIR THERNSTROM: I agree it could
22 become moot.

23 CHAIRMAN REYNOLDS: And we would be
24 investigating. We would be investigating them while
25 their investigation is not only ongoing but when no

1 preliminary determinations have been made.

2 VICE CHAIR THERNSTROM: Well, when would
3 our investigation, in fact, get off the ground?

4 CHAIRMAN REYNOLDS: Well, we'll know --

5 COMMISSIONER GAZIANO: As soon as we vote
6 on it.

7 CHAIRMAN REYNOLDS: I'm trying to --

8 VICE CHAIR THERNSTROM: The staff has
9 other things to do.

10 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
11 I am not trying to get into this on the merits. I'm
12 just trying to I think clarify Commissioner Gaziano's
13 concern.

14 VICE CHAIR THERNSTROM: Okay. I mean, the
15 point is that were the Justice Department to go
16 through with the report, I doubt that it would be at
17 the point at which we had done a lot of work on this.

18 CHAIRMAN REYNOLDS: So if the Department
19 of Justice rendered an opinion that there was no issue
20 implicating civil rights statutes, that is one set of
21 facts. And I think that that is one set of facts that
22 we would have a solid basis for looking into that
23 determination.

24 But at this point -- Commissioner Yaki, I
25 will get to you. But at this point, I am not sure

1 what the focus will be.

2 VICE CHAIR THERNSTROM: Well, I think the
3 focus is -- I mean, again, I don't want to confine
4 this to South Philadelphia. I mean --

5 CHAIRMAN REYNOLDS: Okay.

6 VICE CHAIR THERNSTROM: There is an
7 unrecognized problem in talking about civil rights
8 issues as if all conflict is between blacks and whites
9 when, indeed, that is not the case.

10 CHAIRMAN REYNOLDS: I guess that is where
11 you two are missing each other. He is focusing on the
12 federal hook. You know, I agree with you and your
13 larger point, but would there be a federal hook, even
14 if we broaden it?

15 VICE CHAIR THERNSTROM: I assume there
16 would be. Some lawyer here has to address that issue.

17 CHAIRMAN REYNOLDS: Commissioner Yaki, are
18 you a lawyer?

19 COMMISSIONER YAKI: Not according to
20 Commissioner Gaziano, but Yale Law School would
21 disagree.

22 The question, I think what I like about
23 Commissioner Heriot -- I should say Commissioner
24 Thernstrom's proposal has to do with the fact that I
25 think this is the tip of a very large iceberg.

1 And part of the -- I think that we are
2 being hung up on the word "enforcement" because I
3 think where the Commission has done some of its
4 greatest work is in identifying where there are holes
5 in the law that could or should have an impact on
6 enforcement of civil rights issues in certain areas.

7 So, whether or not Justice has or has not
8 done it or if they do or do not do anything, there are
9 two things I respond. One, I agree with Commissioner
10 Thernstrom that we should expand this beyond
11 Philadelphia, number one; and, number two, I think
12 that part of that expense for analysis is going to be,
13 how is this being treated elsewhere? And is there, in
14 fact, a gap in statute or coverage that could
15 recommend itself to remediation through a finding and
16 recommendation by this Commission?

17 I mean, that is essentially what we used
18 to do. That is the sum and substance of what we were
19 created to do. So I am not as hung up about whether
20 or not there is a specific statutory hook or not. I
21 think that the word "enforcement" has many meanings,
22 including if you can't enforce it, why not? And what
23 could you do to do it if there is a reason to create
24 enforcement?

25 CHAIRMAN REYNOLDS: Okay. Vice Chair

1 Thernstrom?

2 VICE CHAIR THERNSTROM: Yes. No. I like
3 that a lot. And, look, there are too many students
4 who are afraid to go to school for a variety of
5 reasons. And one of the reasons is that there are
6 ethnic and racial clusters of kids who are at war with
7 one another.

8 And it's not confined to Philadelphia,
9 again.

10 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

11 COMMISSIONER KIRSANOW: I'm not going to
12 argue on behalf of any particular issue. I just
13 wanted to voice my sentiment in favor of Commissioner
14 Thernstrom -- Heriot's proposal with respect to --

15 VICE CHAIR THERNSTROM: Both of you seem
16 to be mixing the two women up.

17 COMMISSIONER KIRSANOW: -- to DOJ --

18 COMMISSIONER HERIOT: It's that syllable
19 Gail in both our names, too.

20 VICE CHAIR THERNSTROM: We need more
21 women, obviously.

22 COMMISSIONER KIRSANOW: -- DOJ, what
23 appears to be the practice or policy, which my
24 understanding is it has been going on for quite some
25 time from data of this particular administration

1 directing certain settlement monies to different
2 groups.

3 Now, I know in the private sector, you
4 know, if there is an award made or there are damages
5 pursuant to litigation and not all of the damages are
6 recovered by individual defendant, there is the cy
7 pres doctrine. Now, this is completely different from
8 that. And I would like to take a closer look at that.

9 Obviously it's a definitive federal
10 enforcement angle to it.

11 CHAIRMAN REYNOLDS: Okay. In terms of the
12 mechanics for making a decision, I would propose that
13 we circulate the remaining options. And I guess that
14 would be the anti-Asian violence topic, incorporating
15 the revisions recommended by Vice Chair Thernstrom.

16 We would also look at Commissioner
17 Heriot's disparities impact in discipline and also
18 Commissioner Heriot's recommendation that we look into
19 the use of consent decrees to funnel money to advocacy
20 groups.

21 We would just recirculate those three
22 topics. We would tally the votes. And then we would
23 have a brief discussion, I hope, and then vote. Is
24 that process okay with everyone?

25 VICE CHAIR THERNSTROM: And what's the

1 timetable here?

2 CHAIRMAN REYNOLDS: At the next business
3 meeting.

4 VICE CHAIR THERNSTROM: Next business
5 meeting. In-person business meeting.

6 COMMISSIONER HERIOT: Couldn't we do it on
7 the telephone?

8 VICE CHAIR THERNSTROM: I am not going to
9 get on these conference calls.

10 COMMISSIONER HERIOT: You're not willing
11 to get on a conference call?

12 VICE CHAIR THERNSTROM: I'm not willing to
13 get on the scheduled conference calls.

14 COMMISSIONER HERIOT: You're not willing
15 to get on any of them?

16 VICE CHAIR THERNSTROM: No, none of them.

17 COMMISSIONER HERIOT: No?

18 VICE CHAIR THERNSTROM: I have not been on
19 one of them. No.

20 COMMISSIONER HERIOT: You haven't been on
21 one?

22 VICE CHAIR THERNSTROM: No.

23 CHAIRMAN REYNOLDS: Okay.

24 COMMISSIONER HERIOT: Why not?

25 CHAIRMAN REYNOLDS: Okay. Let's not go

1 back to --

2 COMMISSIONER HERIOT: Hold on. Why not?

3 CHAIRMAN REYNOLDS: If Vice Chair
4 Thernstrom does not want to participate in the
5 teleconference, that is her decision. I think that
6 the next meeting -- and I don't know if it's in person
7 or telephonic, but I think that we should resolve this
8 issue at the next meeting, whether telephonic or not.

9 VICE CHAIR THERNSTROM: Well, I would ask
10 that it be done at the next in-person meeting. I
11 think there's all the difference in the world between
12 having discussions in person and having them on the
13 telephone.

14 COMMISSIONER GAZIANO: I think that's
15 September 24, Mr. Chair.

16 CHAIRMAN REYNOLDS: Yes.

17 MR. FAY: Last meeting. Friday, September
18 10th was an in-person meeting that was diverted to a
19 phone meeting.

20 CHAIRMAN REYNOLDS: Yes.

21 MR. FAY: It was already scheduled in the
22 first --

23 VICE CHAIR THERNSTROM: And I'm not even
24 around on that date now, now that you changed it.

25 STAFF DIRECTOR DANNENFELSER: September

1 24th is the next scheduled in-person meeting.

2 VICE CHAIR THERNSTROM: All right.

3 CHAIRMAN REYNOLDS: When is the next
4 telephonic?

5 STAFF DIRECTOR DANNENFELSER: August 27th.

6 CHAIRMAN REYNOLDS: Okay. I would
7 recommend that we handle this at the next meeting,
8 which is a telephonic meeting at the end of the month.

9 VICE CHAIR THERNSTROM: Okay. I will not
10 be on that meeting. I'm not even in town on that date
11 again. And so there isn't even a choice on my part.
12 But, in any case --

13 COMMISSIONER HERIOT: Which day are we
14 talking about?

15 CHAIRMAN REYNOLDS: Would you be available
16 in September, at the September 10th?

17 VICE CHAIR THERNSTROM: No. I've got to
18 -- I haven't had a vacation all summer. So I've got
19 to save the trips.

20 COMMISSIONER HERIOT: You don't need to be
21 in town to be on a telephone meeting.

22 VICE CHAIR THERNSTROM: Pardon me?

23 COMMISSIONER HERIOT: You don't need to be
24 in town.

25 VICE CHAIR THERNSTROM: You know, I really

1 do because if I'm on a vacation, I'm preoccupied.

2 CHAIRMAN REYNOLDS: Okay.

3 COMMISSIONER HERIOT: Why did you schedule
4 a vacation on a date that we had scheduled for --

5 VICE CHAIR THERNSTROM: I scheduled it
6 after you changed it.

7 CHAIRMAN REYNOLDS: Okay. Let's --

8 COMMISSIONER HERIOT: It's a telephone
9 meeting. It's still scheduled.

10 CHAIRMAN REYNOLDS: Okay, folks. Let's
11 have it --

12 VICE CHAIR THERNSTROM: Anyway --

13 CHAIRMAN REYNOLDS: The September 10th
14 telephonic meeting, --

15 VICE CHAIR THERNSTROM: No. I want it at
16 the next business meeting.

17 CHAIRMAN REYNOLDS: -- let's deal with the
18 issue at that time.

19 COMMISSIONER HERIOT: That's fine.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER GAZIANO: September 10th.

22 - CONSIDERATION OF TIMELINES FOR COMPLETION OF THE
23 HEALTH CARE DISPARITIES BRIEFING REPORT

24 CHAIRMAN REYNOLDS: Yes. Okay. During
25 our April 16th and May 28th business meetings,

1 commissioners considered how to proceed with the
2 completion of our health care disparities report.
3 While part A was approved by commissioners on May
4 28th, there has been some confusion about how
5 commissioners agreed to proceed with findings and
6 recommendations as well as their statements and
7 rebuttals.

8 On April 16th, Commissioner Taylor
9 recommended that commissioners write their statements
10 first and upon reading their colleagues' statements
11 try to agree upon a set of findings and
12 recommendations.

13 On May 28th, part A was adopted as a very
14 short executive summary, but no timeline for
15 commissioner statements was discussed or voted upon.
16 And the issue of findings and recommendations wasn't
17 discussed any further.

18 In order to bring this report to
19 completion, we need to clarify how we are going to
20 proceed without findings and recommendations agreed
21 upon first.

22 At this point I would like to open the
23 floor up to Commissioner Taylor to try to help us
24 formulate how we were going to proceed.

25 COMMISSIONER TAYLOR: I don't know.

1 (Laughter.)

2 VICE CHAIR THERNSTROM: An honest man.

3 CHAIRMAN REYNOLDS: That is not what I
4 expected.

5 COMMISSIONER TAYLOR: I mean, you know, I
6 think we should start with commissioner statements to
7 get the ball rolling if that works. That would be my
8 initial recommendation. But this is a --

9 CHAIRMAN REYNOLDS: Okay.

10 COMMISSIONER TAYLOR: -- egg we've been
11 trying to unscramble for a while. That would be my
12 first thought.

13 CHAIRMAN REYNOLDS: Okay. How about this?
14 How about this? What are some --

15 VICE CHAIR THERNSTROM: Have you ever
16 unscrambled eggs? Pardon me?

17 COMMISSIONER TAYLOR: Can you?

18 VICE CHAIR THERNSTROM: No.

19 CHAIRMAN REYNOLDS: Let us proceed with --

20 VICE CHAIR THERNSTROM: If they've been
21 scrambled, that's it.

22 CHAIRMAN REYNOLDS: Let's proceed with
23 Commissioner Taylor's initial recommendation. Let's
24 do our statements, distribute them, and see if we can
25 form a consensus as to the findings and

1 recommendations. What do you think?

2 COMMISSIONER HERIOT: I have two problems.
3 One is if we're talking about the timeline here, I am
4 working on my statement on STEM. Then we're going to
5 have the national conference. I don't see how I can
6 get anything done by September the 27th.

7 But, second, I don't know what to write
8 about until I know what the findings and
9 recommendations are.

10 CHAIRMAN REYNOLDS: Okay. How about this?

11 COMMISSIONER TAYLOR: Yes. I mean, well,
12 let me say this. I'm not opposed at all to issuing a
13 report without findings and recommendations to
14 continue the process.

15 CHAIRMAN REYNOLDS: We have a path, ladies
16 and gentlemen.

17 COMMISSIONER TAYLOR: That is --

18 COMMISSIONER HERIOT: Are you sure you
19 want to do that?

20 COMMISSIONER TAYLOR: From my purpose --

21 CHAIRMAN REYNOLDS: Put this to bed.

22 COMMISSIONER TAYLOR: -- in terms of
23 getting it out the door to the extent points want to
24 be emphasized, people can do so in their individual
25 statements.

1 COMMISSIONER HERIOT: There's no --

2 COMMISSIONER TAYLOR: I would prefer
3 findings and recommendations, but I don't want that to
4 get in the way of us proceeding apace to move this
5 thing along.

6 COMMISSIONER HERIOT: What about -- I'm
7 just trying to think of -- I hate the idea of just
8 eliminating findings and recommendations from that
9 report because I think that's one where findings and
10 recommendations will be very useful.

11 I've still got the problem of just I can't
12 write something in time for September the 27th.

13 COMMISSIONER TAYLOR: Right.

14 COMMISSIONER HERIOT: It just can't be
15 done. If we're definitely not going to have findings
16 and recommendations, if that's the way you want to
17 run, given that --

18 COMMISSIONER TAYLOR: Let me make this
19 recommendation. I could draft my statement, which
20 would include proposed findings and recommendations
21 that others could perhaps join, I could move the
22 process along that way. That wouldn't bind us as a
23 body on the findings and recommendations, but we can
24 still have some out there if people concur in that
25 statement.

1 CHAIRMAN REYNOLDS: Commissioner Yaki, how
2 do you feel about that approach?

3 COMMISSIONER TAYLOR: So there wouldn't
4 necessarily be findings and recommendations voted upon
5 but folks --

6 CHAIRMAN REYNOLDS: There would be a
7 proposal.

8 COMMISSIONER HERIOT: There might be if --

9 COMMISSIONER TAYLOR: I could circulate
10 some early. That's right. It would shift the burden
11 to me. What I said is I could put them in my proposed
12 statement. Folks could join my proposed statement.

13 COMMISSIONER YAKI: I like your original
14 proposal best because I can just tell you it will drag
15 out because I will have issues with --

16 CHAIRMAN REYNOLDS: Anything you propose?

17 COMMISSIONER TAYLOR: You won't just say,
18 "I concur"?

19 COMMISSIONER YAKI: No. Why not just say,
20 "I dissent"?

21 COMMISSIONER GAZIANO: Why not you
22 circulate proposed findings and recommendations in the
23 ordinary course?

24 COMMISSIONER TAYLOR: I guess let me move
25 them up, then, in my own time.

1 COMMISSIONER GAZIANO: But you proposed
2 them for the rest of --

3 COMMISSIONER TAYLOR: I agree. No. I
4 agree. I just do it earlier in the process than
5 originally thought. So I'll still work on the
6 statement, but I will circulate proposed findings and
7 recommendations in the next few days.

8 COMMISSIONER HERIOT: And then we vote on
9 them, I hope, in September.

10 COMMISSIONER TAYLOR: Yes.

11 COMMISSIONER HERIOT: And then we start
12 the clock running on statements.

13 COMMISSIONER TAYLOR: Yes.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER HERIOT: Because --

16 COMMISSIONER TAYLOR: Yes.

17 CHAIRMAN REYNOLDS: Let's stop.

18 COMMISSIONER HERIOT: And if we fail to
19 adopt them in September, then we'll just go ahead and
20 write statements.

21 COMMISSIONER TAYLOR: And I will contact
22 Commissioner Yaki to form a subcommittee so that we
23 can work on these. He's not listening to me.

24 But yes, I will circulate those early in
25 the process.

1 COMMISSIONER HERIOT: Because I agree with
2 your concerns about getting this done --

3 COMMISSIONER YAKI: I want to strike that
4 "He's not listening to me" from the record. I was
5 listening to him.

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER YAKI: I was merely feigning.
8 I was listening to him.

9 CHAIRMAN REYNOLDS: He does that from time
10 to time.

11 COMMISSIONER YAKI: Yes.

12 CHAIRMAN REYNOLDS: Okay. We have a
13 process.

14 - UPDATE ON THE NATIONAL CONFERENCE

15 CHAIRMAN REYNOLDS: Okay. Next up, update
16 on the national conference. Staff has been working on
17 the Commission's conference. Well, staff has been
18 working with the Commission's conference planners to
19 finalize arrangements for the national conference
20 entitled "A New Era: Defining Civil Rights in the
21 Twenty-First Century."

22 As you know, the event will take place on
23 Tuesday, September 14th at the National Press Club.
24 William Raspberry, the Pulitzer Prize-winning writer,
25 has graciously agreed to be our keynote speaker.

1 We have assembled an impressive list of
2 accomplished panelists from a variety of perspectives,
3 which will ensure a fascinating discussion that day.
4 Two-thirds of our speakers have committed at this
5 time. And we are waiting for the remaining invites by
6 next week.

7 The Commission website has also gone live
8 and is accessible from our Commission website.
9 Interested individuals can register to attend on the
10 website. It will be updated as more information
11 becomes available regarding our speakers. And it will
12 also include further details about the event.

13 I encourage commissioners and staff
14 members who plan to attend to register on the website.

15 We need to account for everyone in order to have an
16 accurate account for the Press Club.

17 We also hope that you will advertise the
18 event to your colleagues and other interested
19 contacts. As you can see from the website, the
20 conference will consist of five panels. The
21 discussions will last for approximately an hour and 20
22 minutes. Each panel will consist of a maximum of four
23 panelists plus a moderator.

24 Commissioners who have previously
25 indicated that they intend to participate in the event

1 will serve as moderators. The subject matter of the
2 panels reflects that which was agreed upon when our
3 concept paper for the event was adopted with the
4 addition of one panel that focuses on education and
5 education reform issues.

6 I open up the floor for comments and
7 questions. Commissioner Yaki?

8 COMMISSIONER YAKI: When are we going to
9 get a list of the panelists?

10 CHAIRMAN REYNOLDS: Next week.

11 Commissioner Yaki?

12 COMMISSIONER YAKI: Who are our conference
13 planners?

14 CHAIRMAN REYNOLDS: Might I have some
15 assistance on that point?

16 STAFF DIRECTOR DANNENFELSER: I don't have
17 the name right in front of me.

18 CHAIRMAN REYNOLDS: Does anybody know?

19 MS. TOLHURST: Project special events
20 group, Bethesda.

21 CHAIRMAN REYNOLDS: Okay. An outfit
22 called the Event Planning Group.

23 COMMISSIONER YAKI: Can you simply really
24 to them I find it very amusing that my invitation came
25 at least a week and a half before other people got

1 their invitations to the point where people were
2 asking me questions and I didn't know.

3 VICE CHAIR THERNSTROM: After other people
4 got theirs.

5 COMMISSIONER YAKI: After, after. We have
6 it after other people got it. And I had no freaking
7 idea about --

8 CHAIRMAN REYNOLDS: That should have not
9 happened. And whoever is working with the planners,
10 please let them know that the commissioners should
11 receive information at the same time.

12 COMMISSIONER YAKI: Thank you.

13 CHAIRMAN REYNOLDS: Commissioner Heriot?

14 COMMISSIONER HERIOT: I just wanted to say
15 congratulations on getting William Raspberry as a
16 speaker. I think that's great.

17 CHAIRMAN REYNOLDS: Well, yes. I think
18 that he is a good pick. And I think that we should
19 have a lively discussion, in part in response to his
20 e-mail.

21 III. STATE ADVISORY COMMITTEE ISSUES
22 - CONSIDERATION OF ADDITIONAL NOMINEE TO
23 THE NEW JERSEY SAC

24 CHAIRMAN REYNOLDS: Next up, the New
25 Jersey State Advisory Committee. I move to appoint

1 Joan Garry to the New Jersey State Advisory Committee.

2 Is there a second?

3 COMMISSIONER GAZIANO: Second.

4 CHAIRMAN REYNOLDS: Discussion?

5 (No response.)

6 CHAIRMAN REYNOLDS: All in favor please
7 say, "Aye."

8 (Chorus of ayes.)

9 CHAIRMAN REYNOLDS: Objections?

10 (No response.)

11 CHAIRMAN REYNOLDS: Abstentions? I'm
12 sorry. Commissioner Taylor has abstained,
13 Commissioner Heriot, Commissioner Kirsanow. So we
14 have three abstentions. Commissioner Melendez, how do
15 you vote?

16 COMMISSIONER MELENDEZ: Yes.

17 CHAIRMAN REYNOLDS: And I vote in favor of
18 the motion also. The motion passes.

19 VICE CHAIR THERNSTROM: Did you ask me for
20 my vote?

21 CHAIRMAN REYNOLDS: I'm sorry. I assumed
22 that --

23 VICE CHAIR THERNSTROM: It's yes.

24 CHAIRMAN REYNOLDS: -- you said, "Yes."

25 VICE CHAIR THERNSTROM: It's yes, but I

1 didn't say it. It is yes.

2 CHAIRMAN REYNOLDS: Okay. Next up is the
3 approval of the July 30th --

4 COMMISSIONER GAZIANO: For the record, it
5 was a voice vote. But, for the record, I voted yes.

6 CHAIRMAN REYNOLDS: Okay.

7 COMMISSIONER YAKI: For the record, I want
8 to thank Commissioner Gaziano for the vote.

9 CHAIRMAN REYNOLDS: Okay. All right.
10 Vice Chair Thernstrom?

11 VICE CHAIR THERNSTROM: I'm sorry. What?

12 CHAIRMAN REYNOLDS: Did you say something?

13 VICE CHAIR THERNSTROM: No.

14 COMMISSIONER YAKI: She was being a little
15 snarky. So we're going to strike that from the
16 record.

17 CHAIRMAN REYNOLDS: Snarky?

18 COMMISSIONER YAKI: Snarky.

19 CHAIRMAN REYNOLDS: I'm not sure that
20 that's accurate. Sarcasm. I think sarcasm is closer
21 to the mark.

22 COMMISSIONER YAKI: Whatever. I reiterate
23 my thank you to Commissioner Gaziano.

24 CHAIRMAN REYNOLDS: The next item is the
25 approval of the minutes.

1 COMMISSIONER YAKI: It's twice in one
2 meeting.

3 VICE CHAIR THERNSTROM: Thanking him for
4 the same thing twice.

5 CHAIRMAN REYNOLDS: Are you going to
6 respond?

7 COMMISSIONER GAZIANO: You're welcome.

8 (Laughter.)

9 COMMISSIONER TAYLOR: Please move on
10 before peace breaks out, Mr. Chairman.

11 (Laughter.)

12 CHAIRMAN REYNOLDS: Well, no. I am
13 enjoying this.

14 COMMISSIONER TAYLOR: I could not stand
15 it.

16 CHAIRMAN REYNOLDS: I am enjoying this. I
17 mean, one-upmanship here in terms of being courteous
18 doesn't happen too often. It should be encouraged.

19 IV. APPROVAL OF MINUTES OF JULY 30 MEETING

20 CHAIRMAN REYNOLDS: Anyway, the next item
21 is the approval of the minutes of the July 30th
22 meeting. These minutes were distributed by the Staff
23 Director on August 5th.

24 I move that these minutes be approved. Is
25 there a second?

1 COMMISSIONER KIRSANOW: Second.

2 CHAIRMAN REYNOLDS: Discussion?

3 (No response.)

4 CHAIRMAN REYNOLDS: All those in favor
5 please say, "Aye."

6 (Chorus of ayes.)

7 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
8 I heard an "Aye"?

9 VICE CHAIR THERNSTROM: Yes, you did.

10 CHAIRMAN REYNOLDS: All objections?

11 (No response.)

12 CHAIRMAN REYNOLDS: Any abstentions?

13 (No response.)

14 CHAIRMAN REYNOLDS: Just to be clear,
15 Commissioner Melendez, how do you vote?

16 COMMISSIONER MELENDEZ: Yes.

17 CHAIRMAN REYNOLDS: It was approved
18 unanimously.

19 V. ANNOUNCEMENTS

20 CHAIRMAN REYNOLDS: Next up is
21 announcements. This year on August 6th, we celebrate
22 the 45th anniversary of the signing of the Voting
23 Rights Act, 1965, into law.

24 COMMISSIONER HERIOT: So we are marking
25 it. Commissioner Yaki had objected to our failure to

1 mark it.

2 CHAIRMAN REYNOLDS: Okay.

3 COMMISSIONER GAZIANO: He didn't look at
4 where it was on the agenda.

5 CHAIRMAN REYNOLDS: Okay. Thank you.

6 VICE CHAIR THERNSTROM: That is a major
7 failing.

8 CHAIRMAN REYNOLDS: Thank you for that
9 clarification.

10 COMMISSIONER YAKI: I was thinking more
11 about doing it on the actual day.

12 CHAIRMAN REYNOLDS: Okay. All right. We
13 celebrate the 45th anniversary of the signing of the
14 Voting Rights Act of 1965 into law by President Lyndon
15 Johnson.

16 This Commission's initial reports and
17 hearings have chronicled massive resistance by state
18 officials to the enforcement of the 15th Amendment,
19 marked by measures to interfere with blacks' right to
20 vote, which existing federal anti-discrimination laws
21 have been insufficient to overcome. These reports and
22 hearings formed the factual predicate for the Voting
23 Rights Act.

24 Echoing the language of the 15th
25 Amendment, the act prohibits states from imposing any

1 "voter qualification or prerequisite to voting or
2 standard practice or procedure to deny or abridge the
3 right of any citizen of the United States to vote on
4 account of race or color."

5 The act, thus, suspended literacy,
6 knowledge, or character tests, which had been used to
7 disenfranchise blacks in the south. Under section 5,
8 covered jurisdictions were required to seek approval
9 from the Attorney General or U.S. Court for the
10 District of Columbia for any changes affecting voting.

11 The act also authorized the appointment of
12 federal voting examiners and directed the Attorney
13 General to challenge the use of coal taxes, which the
14 Supreme Court ultimately ruled unconstitutional in
15 1966.

16 Also, we would like to recognize the 19th
17 anniversary of the ratification of --

18 STAFF DIRECTOR DANNENFELSER: Ninetieth.

19 CHAIRMAN REYNOLDS: Oh, the 90th. Thank
20 you.

21 -- the 90th anniversary of the
22 ratification of the 19th amendment. August 18th marks
23 the 90th anniversary of the ratification of the 19th
24 amendment to the Constitution, which prohibits states
25 and the federal government from denying citizens the

1 right to vote because of their sex. We commemorate
2 those who worked for the recognition of this right and
3 look forward to celebrating its 90th anniversary next
4 week.

5 That concludes the announcements. Next up
6 is the Staff Director's report.

7 VICE CHAIR THERNSTROM: I think that
8 Commissioner Yaki had his hand up.

9 CHAIRMAN REYNOLDS: I'm sorry.

10 COMMISSIONER YAKI: I can't recall if at
11 the last meeting or not we made an announcement
12 regarding the 20th anniversary of the ADA.

13 CHAIRMAN REYNOLDS: I don't recall.

14 COMMISSIONER YAKI: Neither do I. I think
15 it should be rectified at a future meeting.

16 CHAIRMAN REYNOLDS: That is fine. That is
17 fine. We will check the record and --

18 COMMISSIONER YAKI: Just for the record,
19 how can I possibly look at announcements and know that
20 Voting Rights Act was going to be on there? I can't
21 read your mind.

22 CHAIRMAN REYNOLDS: Well, we will look at
23 the record and see if you're indeed right. And if so,
24 we will rectify that matter.

25 COMMISSIONER YAKI: Thank you.

1 CHAIRMAN REYNOLDS: Mr. Staff Director?

2 VI. STAFF DIRECTOR'S REPORT

3 STAFF DIRECTOR DANNENFELSER: Thank you,
4 Mr. Chairman.

5 I would just like to follow up on a few
6 points in addition to the items that we distributed to
7 commissioners in the written Staff Director's report.

8 Commissioners, a reminder that concurring
9 and dissenting statements on the HBCU and STEM
10 briefing reports are due by midnight Pacific Time on
11 Monday, August 16th. I will circulate those
12 statements to commissioners on Tuesday. And rebuttals
13 will be due on September 13th.

14 We have an entrance meeting scheduled with
15 the auditors on Wednesday, August 18th. The staff
16 will be working cooperatively with the auditors over
17 the next couple of months to ensure a smooth process.

18 Also, if commissioners have a backlog of
19 billable hours to report, please try to submit them as
20 soon as possible. And this will help us with the
21 end-of-the-year fiscal budgeting.

22 CHAIRMAN REYNOLDS: And on that point,
23 please distribute to each commissioner the remaining
24 hours.

25 STAFF DIRECTOR DANNENFELSER: We will do

1 that, as we have done that in the past. We will get
2 similar reports out to commissioners to help with that
3 process.

4 And that is all I have for right now, Mr.
5 Chairman.

6 CHAIRMAN REYNOLDS: Mr. Staff Director, as
7 a part of our clearinghouse function, we have asked a
8 number of federal agencies to provide us with
9 information on a regular basis, I believe a monthly
10 basis.

11 It is my understanding that the Department
12 of Justice is no longer providing information in
13 response to that standing request. Is that true?

14 STAFF DIRECTOR DANNENFELSER: That's
15 correct. We had very good cooperation early on in the
16 process. And the individual we were working with
17 assumed a different position in the Department. And
18 since then, we have had difficulty getting the
19 information.

20 We have made several requests and had
21 contact with that individual, but no information has
22 actually been provided.

23 CHAIRMAN REYNOLDS: When you say, "that
24 individual," referring to?

25 STAFF DIRECTOR DANNENFELSER: They gave us

1 a new point of contact when the one individual was
2 transferred to a different position in the Department.

3 COMMISSIONER HERIOT: Could you be more
4 specific on that? Have we sent letters, phone calls?
5 What happened?

6 STAFF DIRECTOR DANNENFELSER: We have sent
7 thus far phone calls and e-mails to the person who has
8 been identified as the new point of contact.

9 COMMISSIONER YAKI: Who is this?

10 STAFF DIRECTOR DANNENFELSER: The name of
11 the person is Karen Stevens, is the new point of
12 contact.

13 COMMISSIONER HERIOT: And when was she
14 first e-mailed on this matter? Do you have an
15 approximate date?

16 STAFF DIRECTOR DANNENFELSER: January.

17 COMMISSIONER HERIOT: January. That was
18 when the other person was in charge, right, or --

19 STAFF DIRECTOR DANNENFELSER: Well, that
20 is when it transitioned.

21 COMMISSIONER HERIOT: He left in January.
22 He left in December of 2008.

23 STAFF DIRECTOR DANNENFELSER: Nine, 2009.

24 CHAIRMAN REYNOLDS: Nine.

25 COMMISSIONER HERIOT: Two thousand and

1 nine. Okay. So we have been in contact since
2 January, and we haven't gotten any response on this?

3 STAFF DIRECTOR DANNENFELSER: No.

4 COMMISSIONER HERIOT: Oh, my.

5 CHAIRMAN REYNOLDS: So there have been
6 telephone conversations and e-mails. What is the
7 response? Yes, please? And telephone conversations,
8 for example, what's --

9 MS. OSTROWSKY: There have been a series
10 of telephone calls. There was an e-mail which was
11 responded to by Ms. Stevens, in which she said she
12 would provide the information as soon as it was
13 reviewed by a section that they have that reviews
14 information that goes to Congress. It's a special
15 review.

16 And at that point, after that point, there
17 was no response to e-mail.

18 COMMISSIONER HERIOT: She said send that
19 where? She wrote that when?

20 MS. OSTROWSKY: I believe it was in either
21 January or February. And subsequent to that, she did
22 not respond to e-mails or calls.

23 CHAIRMAN REYNOLDS: Okay. At this point,
24 let's send a formal letter, get a sense of why
25 cooperation has ceased.

1 COMMISSIONER HERIOT: It should perhaps be
2 more assertive than "get a sense of why," but, you
3 know, request that cooperation occur.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER HERIOT: You know?

6 (Laughter.)

7 COMMISSIONER HERIOT: We've got a right to
8 this. I think this is very central to our function of
9 being a civil rights watchdog. We need to find out
10 what has actually happened to the Department of
11 Justice.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER HERIOT: And this is very
14 serious.

15 CHAIRMAN REYNOLDS: Commissioner Yaki, did
16 you --

17 COMMISSIONER YAKI: Yes?

18 CHAIRMAN REYNOLDS: -- suggest that we
19 issue a subpoena?

20 COMMISSIONER YAKI: No. I am simply
21 saying I'm sure the flow of information will resume
22 shortly.

23 VICE CHAIR THERNSTROM: I have a question
24 on a completely different subject for the Staff
25 Director.

1 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

2 VICE CHAIR THERNSTROM: So I stared at
3 those numbers on the --

4 CHAIRMAN REYNOLDS: Thanks for reminding
5 me.

6 VICE CHAIR THERNSTROM: Pardon me?

7 CHAIRMAN REYNOLDS: Oh, no, no. You have
8 just reminded me of the topic.

9 VICE CHAIR THERNSTROM: -- on the amount
10 of time, resources devoted to the New Black Panther
11 Party project. And I just wondered what the process
12 was by which you arrive at such numbers, which looked
13 implausibly low to me, frankly.

14 It is my impression that we've got -- I
15 mean, this is an old problem of the Commission. I'm
16 not looking at you and saying it's a problem that's
17 occurred under your watch. It's my impression that we
18 don't have a really good way, an accounting system
19 that really does enable us to count up exactly what
20 the hours are that people spend on various projects --
21 but I would be glad to be corrected on this -- and,
22 therefore, arrive at really accurate information.

23 CHAIRMAN REYNOLDS: And I would like to
24 add -- well, I guess it's a question -- when folks
25 submit time, is there a breakout of what they are

1 actually working on?

2 STAFF DIRECTOR DANNENFELSER: There is a
3 project code for this particular report. And the
4 people who are working on the report when they submit
5 their time sheets every two weeks are supposed to
6 allocate how many hours they devoted to that
7 particular project. So that's what it's based on.

8 CHAIRMAN REYNOLDS: So we have a system in
9 place. And the only issue is whether the code is
10 being used.

11 VICE CHAIR THERNSTROM: Whether the
12 self-reporting is accurate.

13 CHAIRMAN REYNOLDS: Yes.

14 STAFF DIRECTOR DANNENFELSER: But it's
15 primarily been in the Office of General Counsel is
16 really where the time has been allocated. But I think
17 they have pretty good experience at reporting the
18 time.

19 Now, if someone works above and beyond
20 their 40 hours, I guess we have no way of capturing
21 that, but basically when people are reporting their
22 time, they are supposed to make a good faith estimate
23 of how many hours they devoted to that particular
24 project.

25 Now, we have had -- the other expense, of

1 course, has been out-of-pocket expenses. And those
2 have actually been less than what was originally
3 projected because we had not had as many trips to
4 Philadelphia as were budgeted for originally, although
5 we do still have some substantial costs that will come
6 particularly relating to the printing of the report.
7 We will have to have the cover design, the printing of
8 the report. And we will also probably need the
9 services of a copy editor, copy editor, for a period
10 of time, particularly with the numerous links that we
11 hope to establish for the report.

12 CHAIRMAN REYNOLDS: And it's also
13 important to note that the investigation -- this
14 number is being compared against projects that have
15 been completed. This one is ongoing. So it's going
16 to be a larger number.

17 VICE CHAIR THERNSTROM: It looks
18 implausibly small to me, frankly, as I said.

19 CHAIRMAN REYNOLDS: I guess are these
20 numbers, this type of analysis -- I guess I question
21 how much information -- well, I'm not sure what we get
22 from these numbers. And I'm not sure -- I mean, most
23 of the costs are fixed. They're salaries. And so the
24 dollar is going to be paid regardless.

25 VICE CHAIR THERNSTROM: Right.

1 CHAIRMAN REYNOLDS: In any event, the
2 information was requested by --

3 COMMISSIONER GAZIANO: Mr. Chairman, just
4 because one or two points -- I just wanted to pose
5 this partially as a question, but also it is my
6 understanding that the figure for similar means
7 through last year's mortgage crisis report was
8 211,000, actually closer to 212,000 dollars, which is
9 about \$115,000 more than we spent so far on the New
10 Black Panther case.

11 And one of the things that makes me think
12 that the amount that we had spent has been very
13 economically done -- and I commend the General
14 Counsel's office, obviously, for shouldering so much
15 work on this with a reduced staff that he is currently
16 laboring under -- is that this investigation, as
17 opposed to the mortgage crisis, involved several trips
18 to Philadelphia to take depositions. It involved
19 three hearings of this Commission, rather than one
20 briefing in the mortgage crisis.

21 So I assume that whether the cost
22 accounting is perfectly accurate or not, I assume that
23 it is consistent. And this suggests to me that: a)
24 the New Black Panther investigation has been
25 undertaken in a rather economical way. And b) what it

1 also suggests to me is that there are only a few
2 people who -- on our reduced staff size who have been
3 asked to shoulder a very heavy load.

4 And I would like to commend all of them,
5 particularly all of the attorneys in the General
6 Counsel's Office, who worked on this report so hard.

7 STAFF DIRECTOR DANNENFELSER: One of the
8 reasons the cost is a little bit less than we
9 projected as well is that we have done these hearings
10 in Washington, D.C., in this office. So we haven't
11 had the travel expenses and hotels and other things
12 that we projected might be the case if we had several
13 hearings in Philadelphia.

14 CHAIRMAN REYNOLDS: Okay, folks. We have
15 reached the end of the agenda. The meeting is
16 adjourned.

17 (Whereupon, the foregoing matter was
18 concluded at 12:00 p.m.)
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