

## U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, JULY 16, 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 F. 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  
DEMITRIA DEAS  
LILLIAN DUNLAP  
PAMELA A. DUNSTON, Chief, ASCD  
PETER MINARIK, Chief, RPCU  
LENORE OSTROWSKY  
JOHN RATCLIFFE, Chief, Budget and Finance  
EILEEN RUDERT  
AUDREY WRIGHT

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COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN  
ALEC DEULL  
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

(9:34 a.m.)

CHAIRMAN REYNOLDS: This meeting will come to order. Please put your mics on. This is a meeting of the U.S. Commission on Civil Rights.

It is 9:30 Eastern Standard Time on July 16, 2010.

All Commissioners are present at 624 Ninth Street, Northwest, Room 540, Washington, D.C., where the meeting is being held, except for Commissioner Melendez, who is participating by phone.

Commissioner Melendez, please confirm that you are still on. Commissioner Melendez?

(No response.)

Okay. Before we begin, I would like to note that this month on July 2nd the Civil Rights Act of 1964 celebrated its 46th birthday. This landmark law signed into law by President Lyndon Johnson prohibits racial discrimination in public accommodations, publicly-owned or operated facilities, employment, and union membership, as well as voter registration.

The Commission's early efforts led the predicate for the Act, which has played an important role in transforming the nation. I would also like to

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1 note the passing earlier this month of former  
2 Commission General Counsel and Staff Director William  
3 Taylor, a highly successful desegregation lawyer who  
4 litigated cases for the NAACP, Legal Defense Fund, and  
5 Education Fund, following the Supreme Court's landmark  
6 decision in Brown v. Board of Ed, for which he wrote  
7 one of the briefs.

8 As the General Counsel, and later Staff  
9 Director, of the U.S. Commission on Civil Rights, Mr.  
10 Taylor directed investigations and research efforts  
11 that laid the foundation for the passage of a Civil  
12 Rights Act and other major civil rights legislation.

13 He was also the founder and Chairman of  
14 the Citizen's Commission on Civil Rights and the Vice  
15 Chairman of the Leadership Conference on Civil Rights.  
16 In later years, and most recently, he worked on  
17 education reform legislation to advance opportunities  
18 for poor and minority children. He received the D.C.  
19 Bar's first Thurgood Marshall Award in 1993 and taught  
20 law at Georgetown Law School.

#### 21 I. APPROVAL OF AGENDA

22 CHAIRMAN REYNOLDS: The first item on the  
23 agenda is the approval of the agenda. I move that we  
24 approve the agenda. Is there a second?

25 VICE CHAIR THERNSTROM: Second.

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1 CHAIRMAN REYNOLDS: Discussion?

2 (No response.)

3 Okay. I would like to amend the agenda in  
4 the following manner. I would like to move a  
5 discussion of the New Black Panther Party  
6 investigation to appear at the first item under our  
7 discussion of Program Planning. I would also like to  
8 table our 2012 budget discussion until our next  
9 meeting.

10 Furthermore, I would like to delete  
11 discussion of the concept paper on South Philadelphia  
12 High School Racial Violence, because it will be  
13 covered in our discussion on the enforcement report  
14 for FY 2011, and also delete Item 4 regarding  
15 Announcements. Finally, I would like to amend the  
16 agenda to add consideration of the Texas SAC, right  
17 after consideration of the Florida SAC, onto our  
18 agenda.

19 Is there a second?

20 COMMISSIONER GAZIANO: Second.

21 CHAIRMAN REYNOLDS: Discussion?

22 VICE CHAIR THERNSTROM: Could you just,  
23 then, now tell me the first will be the New Black  
24 Panther Party, then we move to -- what is the second  
25 item now going to be?

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1 CHAIRMAN REYNOLDS: It would be the STEM  
2 report. We have to finish up the recommendations.

3 VICE CHAIR THERNSTROM: Okay. And then,  
4 on the Philadelphia concept paper, what you're saying  
5 is --

6 CHAIRMAN REYNOLDS: That will be folded  
7 into the discussion of the 2011 enforcement report.

8 VICE CHAIR THERNSTROM: Right. Okay,  
9 fine.

10 CHAIRMAN REYNOLDS: Commissioner Yaki?

11 COMMISSIONER YAKI: Yes. What is the  
12 rationale for moving the New Black Panther Party  
13 enforcement thing to the first part of the agenda? Is  
14 it simply to accommodate the press who is here?

15 CHAIRMAN REYNOLDS: Oversight on my part.  
16 I should have taken care of that when I prepared the  
17 agenda originally.

18 COMMISSIONER YAKI: Really.

19 CHAIRMAN REYNOLDS: Other questions?

20 (No response.)

21 All in favor please say aye.

22 (Chorus of ayes.)

23 Objections?

24 COMMISSIONER YAKI: I object.

25 CHAIRMAN REYNOLDS: Abstentions?

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1 (No response.)

2 Commissioner Melendez, are you on the  
3 phone?

4 (No response.)

5 Okay. Let the record reflect that we have  
6 one vote against the motion. The motion passes.

7 **II. PROGRAM PLANNING**

8 CHAIRMAN REYNOLDS: General Counsel  
9 Blackwood, please provide us with an update on the  
10 recent developments in our investigation of the  
11 Department of Justice's mishandling of the New Black  
12 Panther Party case.

13 Before you start, Commissioner Melendez,  
14 is that you?

15 COMMISSIONER MELENDEZ: Yes.

16 CHAIRMAN REYNOLDS: Okay. Welcome back.

17 Mr. Blackwood?

18 MR. BLACKWOOD: Thank you, Mr. Chairman.  
19 As you are aware, this Tuesday we had scheduled the  
20 deposition of Malik Zulu Shabazz, the head of the New  
21 Black Panther Party, and self-styled attorney at war.  
22 Unfortunately, the day before, he filed a motion to  
23 quash. That will be addressed in the U.S. District  
24 Court. We are working with the Assistant U.S.

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1 Attorneys assigned to that case, but it will take a  
2 while before it is resolved.

3 At this time, I would note that Mr.  
4 Shabazz did -- was served on July 2nd. He had several  
5 days to raise this issue. He did not. He waited  
6 until 3:00 the night before.

7 That said, I would also point out that he  
8 was available to give a national television interview  
9 as late as Friday, the 9th, and at this point I think  
10 there was -- it's important also to note that on the  
11 9th, Friday, a video got public currency. It's a  
12 broadcast of a speech Malik Zulu Shabazz gave on  
13 December 2009 at a Dallas convention of the party.

14 And we have a compilation video that has  
15 been -- we found on YouTube, and at this time I'd like  
16 to show that to the Commission, because specifically  
17 there are admissions against interests and statements  
18 that directly contradict what Mr. Shabazz has said  
19 publicly before about the incident.

20 (Whereupon, the aforementioned YouTube compilation  
21 video was shown.)

22 MR. BLACKWOOD: Now, I will point out that  
23 this is only a snippet of a very long video that  
24 addresses a variety of matters that Mr. Shabazz talked  
25 about. We were -- it is available, at least at the

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1 moment, on the Black Panther website under the  
2 convention in Dallas for December 2009.

3 We are also tracking down a video that we  
4 have found just recently as well where King Samir  
5 Shabazz, the gentleman who was allegedly suspended, is  
6 giving a speech in April of this year before a Black  
7 Panther convention in Atlanta at which he urges  
8 Panthers to be armed and resist the police.

9 We are attempting to find that video for  
10 the whole speech, but at this time we have only found  
11 it on YouTube, and it's a short clip. But we will be  
12 trying to find that, and when we do I will notify  
13 everyone where they can find that.

14 COMMISSIONER GAZIANO: Mr. Chairman, can I  
15 ask that -- just a clarification -- that the entire  
16 video will be put in our record, even though only a  
17 portion of it was played today?

18 MR. BLACKWOOD: Absolutely. Absolutely.

19 Lastly, as I have said just the last  
20 couple of days, we have received three statements from  
21 members of the public regarding the matter. Three of  
22 them -- all three of them are former employees of the  
23 Department of Justice.

24 CHAIRMAN REYNOLDS: Before you go on --  
25 and I would encourage the public, to the extent you

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1 have experience at the Civil Rights Division at the  
2 Department of Justice, if you have knowledge of any of  
3 the matters that we have covered in the investigation,  
4 please send your statements to the Commission.

5 VICE CHAIR THERNSTROM: Can I just --  
6 again, this was a convention of the Panther Party?  
7 What was it -- is --

8 MR. BLACKWOOD: It was a Panther  
9 convention. You're referring to the video.

10 VICE CHAIR THERNSTROM: Right.

11 MR. BLACKWOOD: That took place in  
12 December 2009. As I say, it's about an hour-long  
13 speech, and those were snippets from that.

14 VICE CHAIR THERNSTROM: I see. Okay. And  
15 do we have any sense of the size of this convention?  
16 I mean --

17 MR. BLACKWOOD: No.

18 VICE CHAIR THERNSTROM: -- I'm just  
19 curious.

20 MR. BLACKWOOD: Absolutely not. It was  
21 limited to party members. We have information  
22 advertising it, etcetera, but it is limited to party  
23 members.

24 Lastly, as you all are aware, this  
25 Wednesday the Chair sent a letter to Mr. Perez with

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1 regard to our request that Mr. Coates be freed to  
2 testify. As you all are aware, Mr. Adams' testimony  
3 indicated, to a large extent, that Mr. Coates was  
4 actually the party that was participating in many of  
5 the conversations that have become so controversial.

6 So we are asking that Mr. Perez release  
7 Mr. Coates, so he can testify before the Commission on  
8 the matters, both with regard to the New Black Panther  
9 Party, as well as the topics about race-neutral  
10 enforcement of the civil rights laws. And that's all  
11 I have.

12 CHAIRMAN REYNOLDS: Questions?  
13 Commissioner Gaziano, then Commissioner Yaki.

14 COMMISSIONER GAZIANO: I, first of all,  
15 assume that the statements are going to be released to  
16 the public at this time?

17 MR. BLACKWOOD: I think -- at the  
18 appropriate time. The question is: at what point do  
19 we want to put -- assuming that we continue to get  
20 them, are we going to put them up on a rolling basis?  
21 And, frankly, since we got them just yesterday, I  
22 haven't had a chance to contemplate that.

23 COMMISSIONER GAZIANO: Well, my -- I move  
24 that we make them available to the public and on our  
25 website as soon as reasonable. This is -- these

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1 obviously aren't subpoenaed material, so they are not  
2 covered by our other rules.

3 CHAIRMAN REYNOLDS: Well, I would prefer,  
4 if you would allow me to exercise discretion, I don't  
5 know what is going to come through the door. I don't  
6 know what's credible.

7 COMMISSIONER GAZIANO: Obviously, if it's  
8 a racist screed or something --

9 CHAIRMAN REYNOLDS: Right.

10 COMMISSIONER GAZIANO: -- then hopefully  
11 that would be withheld.

12 CHAIRMAN REYNOLDS: Commissioner Yaki?

13 COMMISSIONER YAKI: Yes, I have several  
14 questions. Number one, the letter from you, Mr.  
15 Chair, to Assistant Attorney General Perez did not  
16 seem to indicate that it came on behalf of the  
17 Commission or an individual Commissioner. It simply  
18 seemed to emanate.

19 The question is: under our administrative  
20 regulations, did you accurately identify it as either  
21 coming on behalf of the Commission or on behalf of  
22 yourself as an individual Commissioner? Because I  
23 could not tell from the opening paragraph of that  
24 letter exactly in what capacity that letter was being  
25 sent.

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1 CHAIRMAN REYNOLDS: It was sent in my  
2 capacity as the Chairman.

3 COMMISSIONER YAKI: Okay. I don't think  
4 that letter so identified. I think it simply said  
5 "I," and just kept on rolling from there. Number one.

6 Number two, if you are doing it in the  
7 capacity as the Chair, then I also think it needs to  
8 be clear that you are not speaking on behalf of the  
9 entire Commission, especially this Commissioner,  
10 number one.

11 Number two, as for putting some of these  
12 statements on the website, I am going to object  
13 strongly to that simply for very simple reasons,  
14 namely that if this is -- first of all, the time --  
15 the fact of the matter is is that the people who sent  
16 these statements also sent it out to their friends in  
17 the right-wing press the same day.

18 So it's all over the blogosphere already.  
19 So the idea that we are somehow putting it into the  
20 public domain is ridiculous, because they themselves  
21 have already put it in the public domain as it is.  
22 And, again, if anyone wants any further confirmation  
23 that this is simply a conservative right-wing attack  
24 on the Justice Department, the mere fact that so-  
25 called, you know, very important public testimony that

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1 we have to consider whether to put on our website or  
2 not is already on every single conservative blog that  
3 you can count. Right now, this morning, when I did a  
4 search, in fact, I think some of the timing of them is  
5 before we even got it is, you know, quite suspect.

6 Number two, if we are going to be putting  
7 documents into the public record, as I have said all  
8 along, and have continued to say, that the -- and, by  
9 the way, the remark that the General Counsel made  
10 about Mr. Shabazz giving an interview, showing his  
11 availability, speaks to my point about why we could  
12 not schedule Adams' deposition hearing at a time when  
13 I could attend and Commissioner Melendez could attend,  
14 because certainly we could see Mr. Adams all over the  
15 news during that entire week.

16 But somehow or another we couldn't find a  
17 single day between then and now to have -- to do it in  
18 a way that I could attend, number one.

19 Number two, now we're talking about  
20 issuing subpoenas that will take it beyond the  
21 discovery date of today, which then vitiates the  
22 entire rationale for why we were trying to compress it  
23 within these two days. So that's another thing.

24 Number three, the point I have continued  
25 to make, and will continue every single time we talk

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1 about this fiasco, this farce, this complete Star  
2 Chamber proceeding, is this. We are talking about a  
3 single one-off case. And I have said before, and I'll  
4 say it again, if we were talking about something --  
5 and you even threaten it in your letter, Mr. Chair,  
6 about the unequal administration of justice -- I would  
7 argue, and have continued to argue, that there are  
8 cases involving political and voter intimidation that  
9 Mr. Perez testified went up to the Assistant Attorney  
10 General level during the Bush administration, cases  
11 involving people who did not have nightsticks but who  
12 had guns, people who did not wear black uniforms but  
13 wore fake badges, people who did not stand in front of  
14 an overwhelmingly African-American precinct but went  
15 into people's homes with questionnaires questioning  
16 whether or not they really had the right to vote or  
17 not.

18 Those were not pursued by the Justice  
19 Department during that period of time, and those  
20 things were not put in there. So I am going to --

21 CHAIRMAN REYNOLDS: Commissioner Yaki?

22 COMMISSIONER YAKI: No. You know --

23 CHAIRMAN REYNOLDS: Commissioner Yaki?

24 COMMISSIONER YAKI: I would like to say,  
25 if we are going to do that --

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1 CHAIRMAN REYNOLDS: Commissioner Yaki?

2 COMMISSIONER YAKI: -- I am going to  
3 ask --

4 CHAIRMAN REYNOLDS: Commissioner Yaki, I  
5 have been patient. We have all been patient. I have  
6 tried not to --

7 COMMISSIONER YAKI: I'm sorry. You guys  
8 had a hearing --

9 CHAIRMAN REYNOLDS: -- interrupt you.

10 COMMISSIONER YAKI: -- which I could not  
11 participate in. I think I have a right to speak.

12 CHAIRMAN REYNOLDS: Commissioner Yaki?

13 COMMISSIONER YAKI: Are you trying to cut  
14 me off?

15 CHAIRMAN REYNOLDS: You do not have --  
16 yes.

17 COMMISSIONER YAKI: Do you want to --

18 CHAIRMAN REYNOLDS: Yes.

19 COMMISSIONER YAKI: -- the folks over  
20 here --

21 CHAIRMAN REYNOLDS: Yes, yes.

22 COMMISSIONER YAKI: -- that you have no  
23 ability --

24 CHAIRMAN REYNOLDS: Yes, yes.

25 COMMISSIONER YAKI: -- no right?

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1 CHAIRMAN REYNOLDS: You do not have an  
2 unfettered right to speak. You don't.

3 COMMISSIONER YAKI: I really -- oh, do you  
4 mean as a Commissioner I don't --

5 CHAIRMAN REYNOLDS: You don't.

6 COMMISSIONER YAKI: -- have an unfettered  
7 right to speak?

8 CHAIRMAN REYNOLDS: As a Commissioner,  
9 none of us have --

10 COMMISSIONER YAKI: About an important  
11 issue that five of you have decided is --

12 CHAIRMAN REYNOLDS: No Commissioner --

13 COMMISSIONER YAKI: -- somehow the most  
14 important issue --

15 CHAIRMAN REYNOLDS: -- has an unfettered  
16 issue --

17 COMMISSIONER YAKI: -- in America today  
18 when we are ignoring racism in --

19 CHAIRMAN REYNOLDS: Commissioner --

20 COMMISSIONER YAKI: -- our schools, when  
21 we are --

22 CHAIRMAN REYNOLDS: Commissioner Yaki?

23 COMMISSIONER YAKI: -- ignoring racism on  
24 our college campuses.

25 CHAIRMAN REYNOLDS: Commissioner Yaki?

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1 COMMISSIONER YAKI: When we are  
2 ignoring --

3 CHAIRMAN REYNOLDS: Commissioner Yaki?

4 COMMISSIONER YAKI: -- voter intimidation  
5 elsewhere?

6 CHAIRMAN REYNOLDS: Commissioner Yaki?

7 COMMISSIONER YAKI: I am going to submit  
8 for the record the --

9 CHAIRMAN REYNOLDS: Commissioner Yaki?

10 COMMISSIONER YAKI: -- investigation of  
11 allegations --

12 CHAIRMAN REYNOLDS: Commissioner Yaki?

13 COMMISSIONER YAKI: -- a politicized  
14 hiring and other improper personal actions.

15 CHAIRMAN REYNOLDS: I move to suspend your  
16 --

17 COMMISSIONER YAKI: -- in the Civil Rights  
18 Division --

19 CHAIRMAN REYNOLDS: Commissioner Yaki?

20 COMMISSIONER YAKI: -- July 2, 2008, for  
21 the record --

22 CHAIRMAN REYNOLDS: Mr. Blackwood is  
23 before us right now.

24 COMMISSIONER YAKI: This will help to deal  
25 with the fact that we are dealing with the fact of

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1 testimony from individuals who come from this Civil  
2 Rights Division --

3 CHAIRMAN REYNOLDS: May I have a second?

4 COMMISSIONER YAKI: -- and I am going to  
5 put this into the record.

6 COMMISSIONER HERIOT: Do you want a  
7 second? You've got a second.

8 CHAIRMAN REYNOLDS: Thank you. Do we need  
9 to discuss this?

10 COMMISSIONER YAKI: Sure. I have a right  
11 to discuss it. You are trying to --

12 CHAIRMAN REYNOLDS: I'm talking about --

13 COMMISSIONER YAKI: You are trying --

14 CHAIRMAN REYNOLDS: -- the motion that  
15 just received a second.

16 COMMISSIONER YAKI: And I can speak on  
17 that motion.

18 COMMISSIONER GAZIANO: May I ask  
19 Commissioner Yaki a question?

20 CHAIRMAN REYNOLDS: Sure.

21 COMMISSIONER GAZIANO: How much longer did  
22 you want to --

23 COMMISSIONER YAKI: I was finishing up.

24 COMMISSIONER GAZIANO: -- speak? I  
25 thought you might be, and I was --

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1                   COMMISSIONER YAKI: I was finishing up,  
2 but apparently Mr. Reynolds has a very short attention  
3 span.

4                   COMMISSIONER GAZIANO: Could I just ask  
5 that we not proceed on the motion to censor and just  
6 allow -- if he needs another two minutes, and then --

7                   CHAIRMAN REYNOLDS: Commissioner Gaziano,  
8 for you, anything.

9                   (Laughter.)

10                  The floor is yours.

11                  COMMISSIONER YAKI: As I was saying, I am  
12 going to enter into the record, as is my right as a  
13 Commissioner, the Office of Inspector General and the  
14 Office of Professional Responsibility report, July 2,  
15 2008, regarding the conclusions -- the investigation  
16 and conclusions about the improper politicization of  
17 the Civil Rights Division and the Department of  
18 Justice during the Bush administration, which talks  
19 about the hiring and the environment in the Civil  
20 Rights Division to contradict many of these so-called  
21 statements from the people who are hired to do exactly  
22 what Bradley Schlozman wanted to do, which was to  
23 completely eradicate the Voting Rights Division in the  
24 Justice Department.

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1 I am going to put that into the record,  
2 because we need -- how should I put it? We need to be  
3 fair and balanced.

4 CHAIRMAN REYNOLDS: Okay. I --

5 COMMISSIONER GAZIANO: Mr. Chair, may I --

6 CHAIRMAN REYNOLDS: I would like to  
7 respond to a few of the things that were just said.  
8 The fact that it is a so-called one-off incident is  
9 not -- it's not a consideration under the law. The  
10 law does not require multiple violations before the  
11 Justice Department has an obligation to defend a  
12 fundamental right.

13 And I am surprised that anyone would  
14 suggest that we require something more than what is  
15 contained in the statute. We can't rewrite the  
16 statute. The statute gives the Justice Department the  
17 power to move in reaction to a single incident --

18 COMMISSIONER YAKI: True.

19 CHAIRMAN REYNOLDS: -- and has done so.

20 COMMISSIONER YAKI: Was I talking about  
21 the Civil Rights Division? No. I was talking about  
22 us.

23 CHAIRMAN REYNOLDS: Commissioner Yaki?

24 Let me finish.

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1           COMMISSIONER YAKI: I just want -- you're  
2 mischaracterizing what I was saying, so I just wanted  
3 to correct it for the record.

4           CHAIRMAN REYNOLDS: I'm sure you believe  
5 that's not the first time.

6           And as for the testimony of Mr. Adams, the  
7 date was not convenient to anyone. People had to  
8 interrupt vacations. I had to make a sacrifice  
9 myself. That is what we do as Commissioners. And,  
10 you know, to the extent anyone could not make it  
11 because they were unable to change their schedules,  
12 that's unfortunate. But we have important business to  
13 conduct here, and it does not -- it cannot require  
14 that we have unanimity on our schedules in order to  
15 proceed. If that were the case, very little would get  
16 done here.

17           COMMISSIONER YAKI: But bipartisanship  
18 would be a good idea.

19           COMMISSIONER GAZIANO: Mr. Chairman, may  
20 I? First of all, I have I think three points in  
21 response. First of all, I do not think that  
22 individual Commissioners have the right to insert  
23 whatever they want into the record individually, but I  
24 think that they ought to be given wide latitude by the  
25 rest of us. And I -- so I endorse the receipt into

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1 the record of whatever Commissioner Yaki argues is  
2 relevant.

3 CHAIRMAN REYNOLDS: Would you consider  
4 that a display of bipartisanship?

5 COMMISSIONER GAZIANO: Maybe.

6 COMMISSIONER YAKI: I would.

7 COMMISSIONER GAZIANO: And I thought we  
8 ought to, going forward, provide wide latitude to  
9 fellow Commissioners in that regard.

10 I wanted to explain the point that you  
11 just went over that I think we covered somewhat  
12 extensively in the hearing where we had former Acting  
13 Associate Attorney General Katsas. This case may have  
14 been corrosive of the rule of law, even as a single  
15 incident, because it was viewed by millions of  
16 Americans. Whenever millions of Americans are  
17 watching the enforcement of justice, and they think an  
18 injustice is done, it is more corrosive than if the  
19 rest of the public isn't aware of it.

20 I think we all agree that it became even  
21 more in-famous, or infamous, when the Justice  
22 Department not only dismissed it after a default  
23 judgment, which involved no further resources on the  
24 Department, but also when the Department gave excuses  
25 that are more damaging to the rule of law, namely that

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1 the facts and circumstances that millions of Americans  
2 had seen did not constitute voter intimidation, and,  
3 quite frankly, it has been the Justice Department's  
4 response that has made this so crucial a case for this  
5 Commission to investigate. And that was our  
6 understanding when we began this investigation.

7 But at this point, this investigation is  
8 far more important, and what's far more important is  
9 the sworn testimony under oath that the Deputy  
10 Assistant Attorney General in the Holder Justice  
11 Department, Julie Fernandes, has instructed the chief  
12 of the voting section, Chris Coates, that he shall  
13 never -- or that the voting section will never bring  
14 another lawsuit against a black or other national  
15 minority.

16 If we don't continue the investigation, or  
17 don't try to continue the investigation, then we, as a  
18 Commission, should be disbanded. If the Justice  
19 Department doesn't answer those charges, it is a grave  
20 indictment of them. If they don't allow us to  
21 interview the witnesses to that alleged conversation,  
22 then it speaks volumes.

23 So whether we had a disagreement about the  
24 importance of the implications of the Justice

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1 Department's dismissal of this infamous suit, I think  
2 we are at a very different point right now.

3 And regarding the letter that the Chairman  
4 sent to Assistant Attorney General Perez, I move at  
5 this time that the Commission adopt and endorse the  
6 letter the chair sent to Assistant Attorney General  
7 Perez on July 14, 2010, so that there is no confusion  
8 that it -- I think it will garner a majority vote, and  
9 I think the Department should know that it is  
10 supported by a majority of the Commission.

11 CHAIRMAN REYNOLDS: I'm sorry, Vice Chair.  
12 Commissioner Kirsanow was next.

13 VICE CHAIR THERNSTROM: Sure.

14 COMMISSIONER GAZIANO: Is there a second  
15 on my motion?

16 COMMISSIONER KIRSANOW: I would second the  
17 motion.

18 COMMISSIONER GAZIANO: Okay.

19 CHAIRMAN REYNOLDS: Discussion?

20 (No response.)

21 All in favor say aye.

22 (Chorus of ayes.)

23 Objections?

24 COMMISSIONER YAKI: Absolutely not.

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1 VICE CHAIR THERNSTROM: I'm sorry, I was  
2 thinking about something else. What is the motion,  
3 that we --

4 COMMISSIONER GAZIANO: Endorse -- adopt  
5 and endorse the letter that --

6 VICE CHAIR THERNSTROM: I do not have the  
7 letter in front of me. I can't possibly vote on a  
8 letter that I am not reading.

9 COMMISSIONER GAZIANO: Did you read it?

10 VICE CHAIR THERNSTROM: Well, yes, but I  
11 -- you know, I would need to see it again.

12 CHAIRMAN REYNOLDS: Do you abstain or  
13 object?

14 VICE CHAIR THERNSTROM: I abstain.

15 CHAIRMAN REYNOLDS: Commissioner Melendez?

16 COMMISSIONER MELENDEZ: I object.

17 CHAIRMAN REYNOLDS: Okay. We have two  
18 objections, one abstention. The motion passes.

19 Commissioner Kirsanow, you were up next.

20 COMMISSIONER KIRSANOW: Thank you, Mr.  
21 Chairman. Actually, Commissioner Gaziano stated much  
22 of what I was about to say, but I would add one other  
23 thing. To the extent this investigation began with  
24 respect to the dismissal of the New Black Panther case  
25 by the Department of Justice, it is clear it has since

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1 evolved significantly beyond that, particularly  
2 because of the testimony of Mr. Adams about 10 days  
3 ago, but I would add one other component to that  
4 testimony that goes beyond also the testimony related  
5 to an extant policy at DOJ not to enforce certain  
6 provisions of the Voting Rights Act against minority  
7 defendants or on behalf of white victims, but also the  
8 testimony that DOJ will not enforce Section 8 of the  
9 motor voter law, the MVRA.

10 That's of extreme significance in this  
11 particular case. We are charged with, among other  
12 things, not just matters with respect to racial  
13 discrimination, but voting rights, and that is a  
14 significant component of the voting regime in this  
15 country.

16 So to the extent anyone wants to continue  
17 to say, "Well, the New Black Panther case is just a  
18 lunatic fringe issue, not a big deal, we have  
19 testimony that we would like to introduce more  
20 evidence on, but, unfortunately, we are being stymied  
21 in our effort to do so, but we have testimony that is  
22 uncontroverted thus far --

23 CHAIRMAN REYNOLDS: Commissioner Yaki,  
24 could you --

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1                   COMMISSIONER KIRSANOW: -- uncontroverted  
2 thus far that we have the policy within the division  
3 that is charged with enforcing federal civil rights  
4 laws that they will do so on an unequal basis.

5                   Now, to the extent that it is not  
6 rebutted, I think that impels us -- compels us to  
7 continue the investigation and to try to adduce  
8 testimony to either controvert it or corroborate it.

9                   CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

10                  VICE CHAIR THERNSTROM: I question --  
11 first, a question for the General Counsel. I don't  
12 think there is any dissent among Commissioners on the  
13 fact that the New Black Panther Party is not a very  
14 appealing group, to say the least.

15                  And I wonder whether -- I wonder what the  
16 video tells us that we don't already know. They are  
17 an ugly group. They're -- you know, their website is  
18 full of ugly language, and so forth. I'm just -- I  
19 mean, it seems to me our job here is not to prove that  
20 the New Black Panther Party is unappealing. Our  
21 mission is something other than that, and I'm not sure  
22 how this advances our mission.

23                  MR. BLACKWOOD: Well, it does, and it's  
24 relevant to the investigation, because of the term

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1 "admission against interest," which can be done at any  
2 time before or after an event.

3 To say the least, Malik Zulu Shabazz has  
4 given a variety of different statements. Previously,  
5 at the hearing I believe of April 23rd, we put on an  
6 interview he gave to Fox News three days I believe  
7 after the election in which he said aryan nation  
8 members and nazis were at the polling place. There is  
9 no indication that that was true.

10 There are public statements that they  
11 posted on their website that they were putting King  
12 Samir Shabazz, the gentleman with the nightstick, on  
13 -- he was being suspended.

14 The clip we just showed -- one, we had the  
15 President laughing about a baton -- syke -- mocking  
16 the seriousness of the event. He admitted that they  
17 sent people to the polling places.

18 And, bluntly, it sounds like he was  
19 acknowledging also that he knew that people were going  
20 there armed. Now, that's subject to interpretation.  
21 I will say if someone watches the whole video, he  
22 explicitly acknowledges at one point in time that we  
23 did a bunch of things to get this thing removed, that  
24 also would be some kind of admission as far as we gave  
25 multiple stories. I mean, I showed the video,

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1 because, one, I think it is -- openly he gave  
2 admissions against his interest, but it is still  
3 necessary to talk to him.

4 Under oath, for once, give us a version  
5 under oath about what the party did, what it  
6 organized, did it condone, did it plan. He has  
7 acknowledged that there were plans, and he said  
8 "policies." What were those plans? What were the  
9 policies?

10 VICE CHAIR THERNSTROM: Okay.

11 MR. BLACKWOOD: He may well give us an  
12 explanation that will satisfy all.

13 VICE CHAIR THERNSTROM: Okay. Second, the  
14 Assistant Attorney General Perez, Tom Perez, did  
15 insist under repeated questioning by Commissioner  
16 Gaziano when Mr. Perez appeared here that he was not  
17 distinguishing between white and black victims, and so  
18 it's not quite correct to say that there has been, you  
19 know, no response to that allegation. You may not  
20 believe Mr. Perez. That is another --

21 COMMISSIONER GAZIANO: There has been no  
22 response to the allegation that Julie Fernandes, his  
23 deputy -- he may not have known about it at the time,  
24 but there has been no response to the allegation that  
25 Julie Fernandes, his deputy -- maybe unknowingly --

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1 instructed the voting section that they would not,  
2 shall not, file any more cases against blacks or other  
3 national minorities. And that is at the heart of the  
4 Civil Right's Division's responsibility.

5 I am waiting. If he denies it, then we  
6 should interview the witnesses under oath, and that  
7 would be news. If he admits it, that would be news,  
8 and I want to know what he is going to do about it and  
9 what we should do about it. If he says nothing, that  
10 is news as far as I'm concerned.

11 But we should press for an answer to  
12 whether these statements that Perez said he didn't  
13 believe -- in his testimony he said, "I don't believe  
14 anyone in my division has that attitude, that the  
15 civil rights law should be enforced in a race -- not a  
16 race-neutral way." And I said, "I hope so." But  
17 that's what we need to get at.

18 VICE CHAIR THERNSTROM: Well, the question  
19 would not be, I would hope, whether there is a single  
20 person in the entire division that believes that, but  
21 whether that is -- whether somebody important --

22 COMMISSIONER GAZIANO: But you would admit  
23 that his deputy, who is the senior person in charge of  
24 voting rights, giving an instruction is more  
25 significant than --

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1 VICE CHAIR THERNSTROM: Yes.

2 COMMISSIONER GAZIANO: -- a paralegal.

3 VICE CHAIR THERNSTROM: Yes, I would agree  
4 with that.

5 COMMISSIONER GAZIANO: His right-hand  
6 person for voting rights.

7 VICE CHAIR THERNSTROM: Yes. And if we  
8 have hard evidence to --

9 COMMISSIONER GAZIANO: You have sworn  
10 testimony.

11 VICE CHAIR THERNSTROM: I --

12 CHAIRMAN REYNOLDS: It's just an  
13 allegation. Vice Chair Thernstrom, would you agree  
14 that we have an allegation on the table that we should  
15 try to confirm it or --

16 VICE CHAIR THERNSTROM: I am delighted to  
17 get at the facts. As I keep saying to members of the  
18 media who ask me about this, look, I'm an evidence  
19 girl. All I want is evidence, and so, you know, fine.  
20 At the point at which we have it, I am going to be  
21 really happy.

22 Then, the last thing is, I would like this  
23 Commission to be -- members of this Commission to be  
24 very careful -- this is related to the previous point  
25 -- very careful about charging any member of the

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1 administration -- basically, calling them a racist or  
2 implicitly calling them a racist. It is the ugliest  
3 term in American politics.

4 CHAIRMAN REYNOLDS: Has that occurred?

5 VICE CHAIR THERNSTROM: Well, I think --

6 CHAIRMAN REYNOLDS: Which Commissioner  
7 made that allegation?

8 VICE CHAIR THERNSTROM: Isn't that the  
9 implication of the charge?

10 CHAIRMAN REYNOLDS: Which Commissioner  
11 made a statement that you -- I mean, you have  
12 inferred, based on a comment made by a particular  
13 Commissioner, that --

14 VICE CHAIR THERNSTROM: Isn't that the  
15 implication of the charge, that there are racial  
16 double standards that are driving --

17 CHAIRMAN REYNOLDS: The charge -- the  
18 allegation that has been made, and the allegation that  
19 we are looking into, is that a senior person in the  
20 Justice Department has issued a rule that a portion of  
21 the Voting Rights Act will not be enforced against  
22 minority defendants. That is the allegation. That is  
23 what we are looking into.

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1 I do not see how you conclude that -- from  
2 that set of facts that we are accusing anyone of being  
3 a racist.

4 VICE CHAIR THERNSTROM: Well, certainly,  
5 if you are engaging in double racial standards,  
6 enforcing the law against one group racially defined  
7 and not the other, it seems to me there is an  
8 implication.

9 COMMISSIONER GAZIANO: Would you have us  
10 not examine it? I don't know how we can examine it  
11 without --

12 VICE CHAIR THERNSTROM: No, I don't. I  
13 just want -- all I'm saying is I want us to be very  
14 careful in exactly how we frame the allegations,  
15 because, as you know --

16 COMMISSIONER GAZIANO: Consistent with --

17 VICE CHAIR THERNSTROM: Can I just finish?

18 COMMISSIONER GAZIANO: -- what you've  
19 said, I have tried to be. I have only repeated the  
20 exact allegation. I don't know whether you're  
21 referring to me or someone else.

22 CHAIRMAN REYNOLDS: The allegation was  
23 framed by Mr. Adams.

24 COMMISSIONER GAZIANO: Right.

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1                   CHAIRMAN REYNOLDS: Mr. Adams threw it on  
2 the table. Now, whether the accusation is true,  
3 that's what we're trying to find out.

4                   COMMISSIONER GAZIANO: And three or four  
5 other incidents, maybe as many as eight other  
6 incidents. And now we have affidavits sworn under  
7 oath as well that corroborate Mr. Adams' statement  
8 about the general culture of some supervising  
9 attorneys in the division, which, again, may or may  
10 not -- Mr. Perez may not have known about, but some of  
11 those were in the press. And if you remember, I asked  
12 Mr. Perez, "Did you ever investigate?" They said,  
13 "Well, I don't believe anyone really had those views."

14                   We now have more direct evidence of that.  
15 And so I hope the Department investigates, but we need  
16 to investigate as well.

17                   CHAIRMAN REYNOLDS: Okay. Commissioner  
18 Kirsanow is up next, then Commissioner Yaki.

19                   COMMISSIONER KIRSANOW: I just wanted to  
20 augment something that the General Counsel said in  
21 response to Vice Chair Thernstrom's question as to the  
22 relevance or significance of the video.

23                   There has been, throughout our  
24 investigation, this kind of subtext of this is all  
25 about the New Black Panther party, or something of

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1 that nature, and trying to highlight inflammatory  
2 aspects or that we are somehow trying to highlight  
3 inflammatory aspects of the party or their rhetoric.

4 I think what this video goes to is  
5 Assistant Attorney General Perez's testimony as to why  
6 the New Black Panther Party was dismissed out of the  
7 case, that there was no evidence of any agency or  
8 endorsement by the party of the actions of the  
9 discrete two Black Panthers in front of the  
10 Philadelphia polling station.

11 What this video tends to show is that in  
12 fact they did support that, were aware of it, and in  
13 fact were possibly complicit in doing so. So it is  
14 just a component or a piece of evidence that tends to  
15 show that, in fact, agency or endorsement did exist  
16 sufficient to maintain the actions against the New  
17 Black Panther Party. Whether or not this Commission  
18 ultimately determines that after all evidence is  
19 adduced, received into the record, is a wholly  
20 different issue.

21 CHAIRMAN REYNOLDS: Commissioner Yaki?

22 COMMISSIONER YAKI: I just want to follow  
23 up on a point that Commissioner Thernstrom made about  
24 characterization of folks in the Justice Department.  
25 But I actually wanted to take it a step back in terms

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1 of characterization of the testimony that we have  
2 received.

3 It is disturbing to me to see how we  
4 characterize testimony that right now we haven't even  
5 released, but which is available on the blogosphere,  
6 involving so-called sworn affidavits from two  
7 individuals who were political appointees of the prior  
8 administration, who do not have any information on  
9 this particular case, who were part of a culture and a  
10 regime where their boss talked about the need to  
11 "scream with a blood-curdling cry" at some commi  
12 person, subordinate, i.e., most of the voting section  
13 staff.

14 I think that we have to be very careful  
15 about saying that somehow these so-called sworn  
16 affidavits have anything whatsoever to do with the  
17 charges made by Mr. Adams, because in fact they do  
18 not. They support a very small portion of his  
19 characterization of his tenure -- during his time  
20 there, but their time limits did not extend anywhere  
21 into the new administration.

22 They have no personal knowledge of that,  
23 and it is absolutely a disservice to say anything that  
24 would imply that those affidavits supported a single  
25 allegation specifically made by Mr. Adams. They do

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1 not. And the people who make those statements know  
2 they do not.

3 They know those people left well  
4 beforehand. They know they did not have personal  
5 knowledge. And to the extent that they have any  
6 knowledge whatsoever, and perhaps, you know, I don't  
7 know how Mr. Kirsanow feels about this, but I am very  
8 reluctant to allow rank hearsay as part of any of the  
9 evidentiary matters that we will consider.

10 But even those aside, the fact of the  
11 matter is those affidavits have nothing whatsoever to  
12 do with the so-called charges leveled by Christian  
13 Adams. And I do understand what Commissioner Gaziano  
14 said about how, in his mind, it has moved to another  
15 -- to a different level. I understand that.

16 But it moves to the same level that I have  
17 been trying to make the point at all before, which is,  
18 what exactly does go on in the voting rights decision  
19 on these types of cases? Why are they treated  
20 differently in some administrations versus others?

21 That to me is worthy -- is just as worthy  
22 of exploration, because if indeed we have a report by  
23 two different entities within Justice that talk about  
24 inappropriate behavior in terms of the leadership in  
25 the prior administration, we know that there is

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1 testimony regarding decisions made at that level  
2 regarding voter intimidation cases involving  
3 individuals openly wearing guns, openly wearing fake  
4 badges, what have you, that to me is a more  
5 appropriate inquiry rather than simply turning this  
6 into a let's go get Eric Holder thing, which to me is  
7 exactly what this has become.

8 CHAIRMAN REYNOLDS: Commissioner Yaki, you  
9 said some things that I agree with. When we started  
10 this conversation about the affidavits, I suggested  
11 some discomfort with the notion of putting all  
12 affidavits up. I haven't seen these affidavits. I  
13 don't know what level of credibility they have, and I  
14 think that what -- in my capacity as Chairman, I want  
15 to take a look at it before making a decision what  
16 goes up.

17 COMMISSIONER YAKI: I appreciate that.

18 CHAIRMAN REYNOLDS: That's one thing.

19 COMMISSIONER GAZIANO: I would urge the  
20 same wide latitude that we have -- I have asked to be  
21 extended to Commissioner Yaki's evidence for --

22 CHAIRMAN REYNOLDS: No, we're making a  
23 different point. We're not talking about what goes on  
24 the record. I am talking about what goes up on the  
25 website.

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1           In any event, you also -- well, on several  
2 occasions you have mentioned things that have gone on,  
3 or at least you made allegations about things that  
4 have gone on during the Bush administration. If I  
5 entertain -- for purposes of our conversation, if I  
6 just grant you that all of your allegations are true,  
7 I don't think that that speaks to whether this  
8 investigation into the current administration should  
9 go forward.

10           I don't think -- I hope you're not saying  
11 that while they refused to enforce the law during the  
12 Bush administration, so we have to even the score by  
13 giving the current administration a pass.

14           COMMISSIONER YAKI: No, to the contrary.

15           CHAIRMAN REYNOLDS: Good. Good.

16           COMMISSIONER YAKI: But my point is that  
17 that's not the focus of this investigation.

18           CHAIRMAN REYNOLDS: And I don't even  
19 disagree with your point that it is legitimate to look  
20 back, into the Bush administration or any other  
21 administration. My small point is that that is not  
22 the decision that was made. You disagree with it.  
23 You have always disagreed with it. But it is the  
24 majority that rules this Commission. We --

25           COMMISSIONER YAKI: For now.

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1 CHAIRMAN REYNOLDS: That is correct. We  
2 took a different approach, and --

3 COMMISSIONER GAZIANO: Well, I want to  
4 support Commissioner Yaki's point, if I might be  
5 allowed, in one way. Because he and Vice Chair  
6 Thernstrom were not present, I -- and I don't know if  
7 they carefully read -- had a chance to carefully read  
8 the transcript, but that I spent some time, or at  
9 least a little bit of time with Christian Adams, since  
10 he was the only witness from the voting section the  
11 Department has allowed us, whether he was --

12 CHAIRMAN REYNOLDS: Did he say that the  
13 Justice Department allowed folks to --

14 VICE CHAIR THERNSTROM: He had left the  
15 Justice Department by then.

16 COMMISSIONER GAZIANO: No, no. I'm just  
17 saying because he was the only one who was able to  
18 testify, whether he had personal knowledge of some of  
19 these other cases that Commissioner Yaki and Mr. Perez  
20 brought before us, he said he didn't and he identified  
21 the individual.

22 Mr. Coates is the person who was involved  
23 in all of those, and I wanted to remind the Commission  
24 -- and I'm mentioning to them right now that that was  
25 always a part of the plan of investigation that we

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1 adopted at the Commission is to compare. The primary  
2 focus is going to be on the dismissal of this New  
3 Black Panther case and whether we agreed with it,  
4 whether we thought it was supported, but also to try  
5 to compare and contrast it to others.

6 And I am renewing today my interest in  
7 hearing Chris Coates not only testify about the New  
8 Black Panther case, but also Mr. Coates to talk about  
9 the Pima, Arizona matter, and several of the other  
10 matters.

11 CHAIRMAN REYNOLDS: Which occurred under  
12 the Bush administration.

13 COMMISSIONER GAZIANO: That's absolutely  
14 right. So I have always supported that, and I renewed  
15 that request. And that's another reason why the  
16 Justice Department should allow the chief of the  
17 voting section during that period to testify.

18 And Commissioner Yaki and anyone else on  
19 this Commission can ask as many questions as are  
20 relevant.

21 COMMISSIONER YAKI: Well, just as a  
22 friendly amendment to that, since Assistant Attorney  
23 General Perez identified that the decisionmaking on  
24 those particular cases was made at the Assistant AG

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1 level, why are we not extending the subpoena to that  
2 individual as well?

3 COMMISSIONER TAYLOR: Yes.

4 CHAIRMAN REYNOLDS: Well, let's --

5 COMMISSIONER YAKI: I was just asking. I  
6 will --

7 CHAIRMAN REYNOLDS: I've been going in  
8 turn, and actually --

9 COMMISSIONER YAKI: I apologize, but I  
10 just wanted to follow it up.

11 CHAIRMAN REYNOLDS: Please respond, and  
12 then we are going to get back in order. It is  
13 Commissioner Kirsanow, Vice Chair Thernstrom, and then  
14 Commissioner Taylor.

15 COMMISSIONER KIRSANOW: Just a very  
16 discrete point.

17 CHAIRMAN REYNOLDS: But let's respond  
18 to --

19 COMMISSIONER GAZIANO: Well, I think that  
20 the chair -- as I understand the evidence, the voting  
21 section chief has the -- let me yield to Commissioner  
22 Taylor.

23 COMMISSIONER TAYLOR: If I may not  
24 respond, but actually agree with what Commissioner  
25 Yaki has said. If the suggestion is what we really

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1 need to do is have the decisionmakers testify, I think  
2 that is a very good idea. What I don't want to  
3 happen, though, is I don't want them to be able to  
4 cherrypick the people who testify.

5 If they want the Assistant Attorney  
6 General to testify, then I would also like Mr. Coates  
7 to testify, particularly since Mr. Adams, in his  
8 testimony -- and I point you to page 55 -- said that  
9 Mr. Coates will testify that there are statements that  
10 you made earlier that until blacks and whites achieve  
11 economic parity in Mississippi, we had no business  
12 bringing cases like this. That is the type of  
13 testimony that I would like him to either confirm or  
14 deny.

15 So it -- I would agree with your  
16 suggestion. If the decisionmakers -- if you think  
17 it's good to have --

18 COMMISSIONER GAZIANO: Well, I think  
19 Commissioner Yaki was asking for --

20 CHAIRMAN REYNOLDS: Well, hold on, hold --

21 COMMISSIONER GAZIANO: -- prior Assistant  
22 Attorney General. We have already had the testimony  
23 from this -- the current Assistant Attorney General.  
24 And with regard to prior -- if their testimony is  
25 really very helpful, I wouldn't object if the -- to

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1 having them, but there were two or three acting and  
2 confirmed. And, you know, Mr. Acosta, as I know, is a  
3 law dean, and I don't know where Grace Becker -- what  
4 cases she might be involved with.

5 And that's why I suspect Chris Coates  
6 would be the most relevant single witness. But if  
7 hearing from him it became clear that the testimony of  
8 Ralph Boyd or Grace Becker or Alex Acosta was  
9 important or reasonably relevant, then I would support  
10 it. But I just think that's one step ahead of where  
11 we need to be.

12 COMMISSIONER YAKI: I need to ask --  
13 something that Mr. Taylor said, I need to ask the  
14 General Counsel something about. Commissioner Taylor  
15 talked about an incident involving someone speaking  
16 with someone about an issue regarding a case, which, I  
17 might add, was actually brought to trial and won by  
18 the Justice Department.

19 So one has to question whether or not what  
20 someone may have felt in terms of how -- what their  
21 role was actually interfered in the pursuit of their  
22 duties is I think a legitimate -- is a legitimate  
23 point to make rather than simply, by innuendo -- and  
24 this is my concern -- by innuendo attempting to

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1       disparage the character of someone on a decision like  
2       this.

3                   And this goes, again, to the affidavits  
4       and stuff in terms of defame, degrade, other things  
5       like that that we need to -- I think we need to be  
6       very concerned about, because even in the testimony by  
7       Mr. Adams you have to wonder whether or not there have  
8       been instances wherein the innuendo of the  
9       conversation is such that it doesn't jive with the end  
10      result. That was Noxubee. The Justice Department  
11      brought Noxubee. They won Noxubee.

12                   So whether or not this person felt  
13      uncomfortable doing it or not begs the question of  
14      whether or not -- it doesn't beg the question whether  
15      he did or -- --

16                   COMMISSIONER GAZIANO:       There is an  
17      allegation of fraudulent tampering to defeat the  
18      Noxubee case.

19                   CHAIRMAN REYNOLDS:   Let him finish.

20                   COMMISSIONER GAZIANO:   I thought he was.  
21      There is an allegation of fraudulent tampering.

22                   COMMISSIONER KIRSANOW:   Mr. Chair, I would  
23      move that everyone be recognized before they speak.

24                   VICE CHAIR THERNSTROM:   Yes, I think that  
25      would be a very good idea.

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1 CHAIRMAN REYNOLDS: You're right, you're  
2 right, you're right.

3 VICE CHAIR THERNSTROM: I mean, there are  
4 some of us who have been waiting to speak here.

5 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

6 VICE CHAIR THERNSTROM: One point and one  
7 question. There has -- at various points in our  
8 investigation of this issue, the point has come up  
9 that only three cases in the 45 years since the  
10 passage of the Voting Rights Act have -- only three  
11 cases under Section 11(b) of the statute have been won  
12 by the government, and that there have been a lot of  
13 other cases that, you know, in which -- that failed,  
14 in which they prosecution just -- the evidence wasn't  
15 there to pursue them.

16 I would actually like some information on  
17 -- I don't even know the names of the three cases in  
18 which the government did prevail, and I would like  
19 some information about those, and which they did not.

20 MR. BLACKWOOD: There is information in  
21 the answers to interrogatories supplied by the  
22 Department of Justice. And I can provide that later  
23 on. But they did address -- that was one of the  
24 questions we had, "Identify all 11(b) cases," and they  
25 did provide a list.

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1 VICE CHAIR THERNSTROM: Okay. And do I  
2 have that list?

3 MR. BLACKWOOD: You should, yes. But it  
4 is in a great deal of paper that they provided.

5 VICE CHAIR THERNSTROM: Okay. I would  
6 like that, because I think it is extremely relevant.  
7 I mean, as I have said before, look, I have written  
8 two books on the Voting Rights Act, and in neither one  
9 did I even mention Section 11(b), because it was -- it  
10 was such a minor section with, you know, only these  
11 three cases, and these three cases provided no  
12 guidelines as to handle any future allegations of  
13 voter intimidation. And so I just left the whole  
14 topic alone, but I would like to see that list again.

15 And, look, in terms of receiving  
16 testimony, one of my objections to this topic from the  
17 very beginning was that we were going to be dependent  
18 on the Justice Department to enforce subpoenas. And,  
19 therefore, our hands were going to be tied.

20 You know, in answering the central  
21 question that was posed, why did the Justice  
22 Department not pursue this case further, our hands  
23 were going to be tied.

24 Now, and, therefore, I didn't want to make  
25 it our statutory report. I never had any objections

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1 to making -- just simply having a briefing, a normal  
2 briefing, on this topic. But to make it our year-long  
3 statutory report, I thought we are not going to get at  
4 the evidence that we need.

5 That remains a problem today. You are  
6 talking about trying to get testimony from people who  
7 would need to be subpoenaed and whom the Justice  
8 Department and -- and being dependent on the Justice  
9 Department to enforce those subpoenas. So --

10 CHAIRMAN REYNOLDS: So, Vice Chair  
11 Thernstrom, you believe that we should not have  
12 undertaken this investigation, because the Department  
13 of Justice -- you believe the Department of Justice  
14 would not cooperate in our investigation.

15 VICE CHAIR THERNSTROM: I thought we  
16 should not make it a big, year-long statutory report,  
17 because our ability to acquire the evidence we would  
18 need to answer the central question, and in fact at  
19 that time the only question, was so very limited.

20 CHAIRMAN REYNOLDS: And it's limited  
21 because?

22 VICE CHAIR THERNSTROM: Because we were  
23 unlikely to get the Justice Department to enforce the  
24 subpoenas that to --

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1 CHAIRMAN REYNOLDS: But even before we get  
2 to the issuance of subpoenas, the cooperation, did you  
3 doubt cooperation from the Justice Department?

4 VICE CHAIR THERNSTROM: Well, it would  
5 depend on your definition of "cooperation," but I  
6 thought --

7 CHAIRMAN REYNOLDS: Complying with the  
8 law. We -- under the law, we have the right to  
9 investigate matters within our jurisdiction.

10 VICE CHAIR THERNSTROM: Yes.

11 CHAIRMAN REYNOLDS: This issue before us,  
12 would you agree, is within our jurisdiction --  
13 allegations of voter intimidation?

14 VICE CHAIR THERNSTROM: Yes, I would agree  
15 that the general topic is within our jurisdiction.  
16 Yes. I am still having a hard time with the notion  
17 that we have got evidence of actual voter intimidation  
18 here. You know, I haven't seen it yet.

19 CHAIRMAN REYNOLDS: And you also would  
20 agree that our ability to investigate has not been  
21 restricted by Congress, so that the Justice Department  
22 is exempt.

23 VICE CHAIR THERNSTROM: Oh, I agree with  
24 that.

25 CHAIRMAN REYNOLDS: So --

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1 VICE CHAIR THERNSTROM: But, you know, I  
2 live in the real world, and so do you.

3 CHAIRMAN REYNOLDS: Yes. And in the real  
4 world, I don't run from fights. In my world, because  
5 it is going to be a difficult investigation does not  
6 mean I throw up my hands and I say, "It's not worth  
7 it." We are talking about a fundamental right. We  
8 are talking about voting rights, an area where you  
9 have spent a significant amount of your time  
10 researching.

11 VICE CHAIR THERNSTROM: Too much time.

12 CHAIRMAN REYNOLDS: It seems to me that --  
13 I agree with you. It has been difficult. But that is  
14 no reason not to move forward with that -- to decide  
15 to investigate and to continue with the investigation.

16 There have been many agencies throughout  
17 many administrations that have stonewalled  
18 investigations.

19 VICE CHAIR THERNSTROM: Okay.

20 CHAIRMAN REYNOLDS: It is not new.

21 VICE CHAIR THERNSTROM: Mr. Chairman, my  
22 only point from the very beginning was -- I objected  
23 to making this our statutory report and consuming our  
24 year, really, because, you know, I felt the evidence  
25 we were going to get was going to be extremely

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1 limited, and it has turned out so far to be extremely  
2 limited.

3 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

4 COMMISSIONER KIRSANOW: Thank you, Mr.  
5 Chair. In response to Vice Chair Thernstrom, first, I  
6 would say that if in fact she objected initially to  
7 this being the statutory --

8 VICE CHAIR THERNSTROM: I did.

9 COMMISSIONER KIRSANOW: -- report because  
10 of this one incident, I would disagree with that. But  
11 since the onset of our investigation, we have adduced  
12 evidence that is truly extraordinary, if it is true.

13 VICE CHAIR THERNSTROM: If it is true.

14 COMMISSIONER KIRSANOW: If it is true.  
15 You would agree with that.

16 VICE CHAIR THERNSTROM: Oh, again, I'm  
17 just --

18 COMMISSIONER KIRSANOW: If we have  
19 evidence --

20 VICE CHAIR THERNSTROM: I'm just an  
21 evidence girl.

22 COMMISSIONER KIRSANOW: -- at the  
23 Department of Justice, then we should pursue the  
24 evidence, and not simply wash our hands, turn a blind  
25 eye, and say, "The agency charge with enforcing our

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1 subpoena is going to stonewall us, despite the fact  
2 that that very agency is the" --

3 VICE CHAIR THERNSTROM: Look, I'm not --

4 COMMISSIONER KIRSANOW: -- "top agency in  
5 the country" --

6 VICE CHAIR THERNSTROM: -- washing my  
7 hands.

8 COMMISSIONER KIRSANOW: -- "in the entire  
9 country to ensure that federal civil rights laws are  
10 enforced equally." And we have testimony that is  
11 unrebutted, uncontroverted, that shows or suggests at  
12 least very strongly by an individual who actually left  
13 the Justice Department after having been promoted, and  
14 he testifies that we have a bifurcated justice system.  
15 If that is true, that is something that should involve  
16 not just our statutory report but an ongoing report to  
17 determine whether or not that in fact is true. That's  
18 extraordinary.

19 Second is going to the issue of whether or  
20 not we are going to get testimony on the discrete  
21 issue, again, of the New Black Panther dismissal. We  
22 have been confronted with privileges asserted by the  
23 Department of Justice that a number of very credible  
24 and experienced experts have said are spurious  
25 privileges.

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1 I have been a litigator for 30 years.  
2 Some of these privileges I have never seen. Maybe I'm  
3 not the best litigator in the world. Maybe I haven't  
4 read all of the texts in the world. But some of these  
5 privileges are astonishing.

6 But take that aside, let's grant them that  
7 there may be privileges attached to the deliberative  
8 process related to New Black Panther Party dismissal.  
9 This case has now morphed far beyond that. New Black  
10 Panther, compared to what has been alleged, is a minor  
11 matter now. Now MVRA is minor in comparison to a  
12 systemic practice on the part of DOJ, which has been  
13 alleged, that they discriminate on the basis of race  
14 in the enforcement of our civil rights laws.

15 If in fact that is the case, there is no  
16 privilege that attaches to evidence or statements we  
17 could get from current Justice Department attorneys,  
18 either corroborating or abutting that. It has nothing  
19 to do with the deliberative process. We could get the  
20 testimony of a whole raft of witnesses who have been  
21 identified who say they heard this policy statement  
22 being made by a political appointee.

23 If that policy statement was made, there  
24 is nothing privileged about that, and we should get  
25 that testimony, and I would move -- by the way, Mr.

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1 Chairman, I am going to make a separate motion that we  
2 append to the letter that you sent to Mr. Perez a  
3 couple of days ago, a request that he produce just  
4 those witnesses.

5 There are no privileges that attach. All  
6 we want to know is: were those statements made  
7 unrelated to New Black Panther dismissal? Were the  
8 statements with respect to Section 8 made? Because  
9 that's extraordinary. That could invite massive voter  
10 fraud, could invite massive voter fraud.

11 That is the charge of the Commission. To  
12 the extent, again, this was ever a minor case -- and I  
13 disagree that it was -- it has now evolved far beyond  
14 that into a major, major issue precisely within the  
15 charter of this Commission.

16 VICE CHAIR THERNSTROM: We have known each  
17 other now for about eight years, and you know that  
18 neither I, and I don't think anybody else on this  
19 Commission, would be indifferent to a Justice  
20 Department that was discriminating on the basis of  
21 race. And so, you know, I hope you're not --

22 COMMISSIONER KIRSANOW: But you don't  
23 want --

24 VICE CHAIR THERNSTROM: -- implying that  
25 anybody here --

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1 COMMISSIONER KIRSANOW: Vice Chair  
2 Thernstrom, I'm not implying that you have no interest  
3 in pursuing voting rights. I'm simply saying --

4 VICE CHAIR THERNSTROM: Or --

5 COMMISSIONER KIRSANOW: -- disagreeing  
6 with your characterization of this as not something we  
7 should be pursuing. I would disagree with that  
8 assessment, because I can't countenance it at all.

9 VICE CHAIR THERNSTROM: I'm perfectly  
10 happy for you to try to get at the answer to the  
11 questions you are posing. I am only objecting to the  
12 notion that I would be indifferent to actual findings  
13 of discrimination on the basis of race within the  
14 Justice Department. Of course I wouldn't be  
15 indifferent to that.

16 COMMISSIONER KIRSANOW: The only manner in  
17 which we can get to whether or not that in fact is  
18 true is by pursuing the investigation, and apparently  
19 you do not want to. That's what is extraordinary.  
20 Whatever this started out to be, it strikes me as  
21 being clear that it is now something quite different.

22 VICE CHAIR THERNSTROM: Now, if you can  
23 pursue that, I applaud. You've got my applause. If  
24 you can come up with evidence, I'm not --

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1 COMMISSIONER GAZIANO: Will you support us  
2 now in doing so?

3 CHAIRMAN REYNOLDS: Assistance would be  
4 nice, as opposed to a characterization of the issue  
5 being small potatoes.

6 VICE CHAIR THERNSTROM: Well, I think the  
7 issue of the -- the original issue that we started out  
8 with and that we were supposed to be investigating,  
9 which was that particular -- one incident of two Black  
10 Panthers standing in front of the polling place, I  
11 think is small potatoes. I'm sorry.

12 COMMISSIONER GAZIANO: Will you support us  
13 now?

14 VICE CHAIR THERNSTROM: It depends on what  
15 you are talking about, Mr. Gaziano.

16 CHAIRMAN REYNOLDS: Okay.

17 VICE CHAIR THERNSTROM: But I am certainly  
18 interested in whether you've got evidence, and whether  
19 there is evidence, that there is a racial double  
20 standard within the Justice Department.

21 CHAIRMAN REYNOLDS: We're going to have to  
22 work for it. We're going to have to work for it.  
23 It's not going to be easy.

24 Commissioner Yaki?

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1                   COMMISSIONER YAKI: I thought I had made  
2 myself clear about how characterizing this in a  
3 framework that actually makes some logical sense is  
4 something that I think we should all strive toward.  
5 But when my colleague starts going from the  
6 unsubstantiated allegations of one person into  
7 "massive voter fraud" is completely ridiculous and  
8 only serving to try and fan unfounded hysteria about  
9 an issue that there is no factual evidence on.

10                   It is a far cry -- if someone made that --  
11 let me just say this for the record. If someone made  
12 that statement within the Department of Justice, that  
13 person should be fired. That person should be tossed  
14 out on their ear in two seconds flat. Number one.

15                   But, number two, there is a far cry from  
16 that to saying there is going to be massive voter  
17 fraud in November, and playing scare tactics like  
18 that, which is just irresponsible on the part of this  
19 Commission.

20                   And when I think about this, when I think  
21 about -- whenever I try and give the benefit of the  
22 doubt to anything that goes on in this crazy one-sided  
23 investigation, it comes back to this. This Commission  
24 sat on its hands -- sat on its hands -- running up the  
25 2008 election, as voter rolls were being purged

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1 throughout this country, as there were allegations  
2 about -- and there were allegations in 2004 and 2006  
3 regarding voter intimidation, involving people who had  
4 a gun.

5 And we sit here and we start crying about  
6 massive voter fraud, because one person who was part  
7 of a politically-charged -- who was a politically-  
8 charged hire of a politically-charged apartment, that  
9 it was concluded by two independent investigations  
10 within DOJ and made these allegations. Maybe he heard  
11 it right.

12 And, if so, that person and those people  
13 should be gone. But to somehow bootstrap that into a  
14 system-wide attack on the Obama administration to say,  
15 "There's going to be massive voter fraud," is just  
16 completely 100 percent fear-mongering, irresponsible,  
17 and out of line, completely out of line. It is  
18 politics by fear. It is exactly what we are trying  
19 not to do in this Commission.

20 Again, someone says this stuff -- and I  
21 will say this for the record. I change my vote. I  
22 will -- I don't exactly agree with the tone of the  
23 letter, but if there are people who made those  
24 statements, they should be produced or something  
25 should be done about that. Fine, I agree with that.

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1 But I cannot, and will not, countenance this idea that  
2 somehow there is this vast conspiracy for voter fraud  
3 that there are no facts alleged anywhere, unlike --

4 CHAIRMAN REYNOLDS: Commissioner?  
5 Commissioner Yaki?

6 COMMISSIONER YAKI: -- instances that we  
7 had in the past.

8 CHAIRMAN REYNOLDS: Commissioner Yaki, I  
9 suspect that Commissioner Kirsanow would like to  
10 respond. I could be wrong.

11 COMMISSIONER KIRSANOW: Well, I would  
12 commend Mr. Yaki for -- Commissioner Yaki for agreeing  
13 with our letter. I'm very happy about that.

14 Number two is I made no allegation that  
15 there was going to be massive voter fraud.

16 COMMISSIONER YAKI: You used the words  
17 "massive voter fraud."

18 COMMISSIONER KIRSANOW: I did. And listen  
19 to how I use the words, listen to how I use them, talk  
20 about the politics of --

21 COMMISSIONER YAKI: But you know -- the  
22 power of words. You know what it is they are looking  
23 at --

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1 CHAIRMAN REYNOLDS: Commissioner Yaki?  
2 Commissioner Yaki? He showed you a little respect of  
3 listening to you.

4 COMMISSIONER YAKI: I apologize. I'll  
5 take it back.

6 COMMISSIONER KIRSANOW: I was responding  
7 to Commissioner Thernstrom's characterization of the  
8 nature of this investigation as being small potatoes,  
9 and I said it morphed into something bigger than that.

10 VICE CHAIR THERNSTROM: Than the nature of  
11 the incident.

12 CHAIRMAN REYNOLDS: Could you let him  
13 talk?

14 VICE CHAIR THERNSTROM: Not the  
15 investigation.

16 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
17 let him speak.

18 COMMISSIONER KIRSANOW: It morphed into  
19 something far larger than that, something that which,  
20 if the allegation is true, yes, it is unsubstantiated,  
21 that's why we want to pursue it. One person said it  
22 -- standing alone, it's evidence. I want to know,  
23 given the nature of the allegation, which is  
24 extraordinary, whether it's true.

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1           That's why I wanted Commissioner  
2 Thernstrom's agreement that we should pursue this  
3 investigation, because it is an extraordinary  
4 statement. If in fact Section 8 is not being  
5 enforced, that very well could lead to massive voter  
6 fraud. We don't know. That's why we need to pursue  
7 it. That's why we can't shut this down.

8           In addition to that, with respect to any  
9 types of incidence of voter intimidation that were or  
10 were not pursued in the Bush administration, and the  
11 fact that this Commission didn't pursue those, I was  
12 not aware of them, and Commissioner Yaki or anyone  
13 else who was aware of them could have brought them up.  
14 Had they been brought up, I would have supported an  
15 investigation.

16           I don't recall at any time when any of  
17 those incidents occurred or allegedly occurred anyone  
18 on this Commission saying, "We're not going to  
19 investigate it." I don't recall anyone on this  
20 Commission saying, "We should investigate it." It, to  
21 my knowledge -- and I would like to read the record --  
22 was never raised. This incident was raised, and we  
23 should be pursuing it.

24           If Pima, Arizona, or some of the other  
25 incidents you have raised in fact were discussed at

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1 some point, I would have said, "Let's take a look at  
2 whether or not it merits an investigation." Nothing  
3 prevented you, Mr. Yaki, from introducing that for our  
4 consideration.

5 CHAIRMAN REYNOLDS: Commissioner Yaki?

6 COMMISSIONER YAKI: Well, Commissioner  
7 Kirsanow, with all due respect, the mere fact that  
8 today there was an acknowledgement by the chair that  
9 we are not going to look at that confirms what I have  
10 always believed for the last three to four years while  
11 I have been on this Commission, which is it doesn't  
12 matter. No, you said we weren't going to look at  
13 Pima. You said we chose not to go into that. You  
14 said that.

15 CHAIRMAN REYNOLDS: I said that we took a  
16 particular approach that you disagree with.

17 COMMISSIONER YAKI: Right, which was to  
18 expand it to these other --

19 CHAIRMAN REYNOLDS: And --

20 COMMISSIONER YAKI: -- and to compare and  
21 contrast was always part of it.

22 CHAIRMAN REYNOLDS: But hold on. You do  
23 raise an important point. The original concept paper  
24 was broad enough to encompass the issues that you  
25 mentioned, that you have discussed several times

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1 today. Commissioner Gaziano's discussion of the  
2 concept paper jogged my memory. We were supposed to  
3 look at other cases to compare and contrast how cases  
4 were handled, and there was no restriction on -- there  
5 was no restriction on time limits. So --

6 COMMISSIONER GAZIANO: We actually have  
7 received some information from the Department on those  
8 other matters as well. We are not completely  
9 stonewalled on those, like we are on the central  
10 points in the New Black Panther Party.

11 CHAIRMAN REYNOLDS: Right. So --

12 COMMISSIONER GAZIANO: May I clarify one  
13 other point?

14 CHAIRMAN REYNOLDS: I'm acknowledging the  
15 correction that was delivered by Commissioner Yaki. I  
16 believe he is right.

17 COMMISSIONER YAKI: So just -- and just to  
18 make this point, I don't agree with the letter. I  
19 agree with the fact that if there are people who made  
20 those statements, they should be questioned either by  
21 the Assistant Attorney General and made available to  
22 us in one fashion or another.

23 I am not for stonewalling the truth by  
24 anyone, Democrat or Republican. And anyone who says  
25 -- who says anything as onerous as, "We are only going

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1 to enforce the rights of one group versus another," is  
2 dead wrong. Just dead wrong.

3 But I am not going to join in the  
4 hysterical, for lack of a better words, red baiting  
5 mania that has gone on about what Christian Adams  
6 said, because to me still he is not a credible  
7 witness. He is one individual who is part of -- who  
8 is part of the politicization of the Civil Rights  
9 Division where the atmosphere of the people who were  
10 brought in was contemptuous of the people who were  
11 there at that time.

12 And to pose an alternate theory of the  
13 case, which I will, I don't say I subscribe to it, but  
14 I will, the fact is is that I know for a fact that Mr.  
15 Adams has been -- talked to several of our colleagues  
16 about this whole case, this whole incident. As far as  
17 I can tell, it was not until he showed up at a time  
18 and place when I could not make it that these other  
19 allegations started to mushroom out.

20 And was it -- to me, you know, as an  
21 alternate theory of the case, did it come about at a  
22 time when it was clear that, as Commissioner  
23 Thernstrom has said, the small potatoes nature of that  
24 New Black Panther Party was getting very little  
25 traction despite the fact that some members of the

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1 media were flogging it every single day? I don't  
2 know.

3 But I will say this: I am not going to  
4 condemn an entire department so easily based on  
5 allegations of a single individual, and where in an  
6 attempt to bolster his credibility the only  
7 affidavits, which had no relationship to the  
8 allegations that he made, came from people who were  
9 part of the politicization of the prior Justice  
10 Department. That, to me, is very -- makes it very --  
11 weakens the credibility of what he said during that  
12 testimony, to me. That is my opinion.

13 And so that is why I will not -- and  
14 refuse to join, you know, the hue and cry that somehow  
15 this is a horrendous chapter in American voting rights  
16 history, because, aside from this one individual, we  
17 have no proof, we have no cases, we have no people who  
18 say they brought issues up that have been denied, we  
19 have no people who have come forward.

20 And, believe me, we know they would. We  
21 know they would. They would be on YouTube yesterday  
22 if they had brought something to Justice saying that  
23 this had happened, and they had been denied. So, you  
24 know, I just want to -- I am very concerned about the  
25 level of rhetoric and hysteria around this, around --

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1 CHAIRMAN REYNOLDS: Now, when you say  
2 "hysteria," is it here, or is it on the internet?  
3 Just so --

4 COMMISSIONER YAKI: It's both.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER YAKI: It's both. From  
7 everything that I've read, from interviews given by  
8 people and a number of different things, and it is --  
9 and I think that it --

10 CHAIRMAN REYNOLDS: I mean, we have testy  
11 exchanges from time to time.

12 COMMISSIONER YAKI: Oh, you and I have  
13 testy exchanges all the time.

14 CHAIRMAN REYNOLDS: Well, no.

15 COMMISSIONER YAKI: We're okay.

16 CHAIRMAN REYNOLDS: From time to time.  
17 But I don't think that there has been any hysteria  
18 around the table. I think that when we can put our  
19 pistols down there are moments where we can actually  
20 find some common ground and agree. That has been  
21 demonstrated today. But at the end of the day, a lot  
22 of this goes away if we have cooperation.

23 COMMISSIONER GAZIANO: Mr. Chairman, I  
24 want to --

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1                   COMMISSIONER YAKI:    But, Mr. Chair -- I'm  
2                   sorry, I hadn't finished, because the last point I was  
3                   going to make is --

4                   VICE CHAIR THERNSTROM:   And I have my hand  
5                   up.

6                   COMMISSIONER YAKI:    -- but I still --

7                   COMMISSIONER GAZIANO:   I had my hand up  
8                   earlier.

9                   COMMISSIONER YAKI:    -- if the Assistant  
10                  Attorney General produced individuals who said flatly  
11                  that Christian Adams is lying, I am not under any  
12                  illusion that this investigation would end.  I think  
13                  that it would simply then just turn into a "he  
14                  said/she said, she said/he said, he/he whatever said"  
15                  kind of game, and we would still be screaming about  
16                  this and yelling about this and arguing about it and  
17                  talking to the blogs and everything like that, you  
18                  know, tomorrow, even if they came in.

19                  So, I mean, I'm under no -- if there is --  
20                  I don't think there is anything to hide, and I believe  
21                  that there is nothing to hide.  But, if not, they  
22                  should -- someone should be knocked out of their  
23                  position.  But I am not sure that if someone came in  
24                  and denied it that would still be the end of this  
25                  investigation.

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1                   CHAIRMAN REYNOLDS:     Commissioner Yaki,  
2                   when this issue was brought up as our statutory report  
3                   by Commissioner Gaziano, it was not one of my favorite  
4                   -- of the choices that we had, it was not my favorite.  
5                   My assumption was that a mistake had occurred at DOJ,  
6                   there would be a quick investigation at DOJ, and they  
7                   would fix this, and there would be no need for us to  
8                   spend time and resources on this issue.

9                   Unfortunately, that did not happen. There  
10                  are times where I will, out of comity, support  
11                  investigations or topics that are not near and dear to  
12                  my heart. And I've got to tell you, this was one of  
13                  them. But I am glad I did.

14                 There is no reason why the Department of  
15                 Justice should not have cooperated in our  
16                 investigation. The Department of Justice can make  
17                 this case -- this case should not have dragged on this  
18                 long. If they had just presented the evidence,  
19                 presented the witnesses, that we wanted to talk to, I  
20                 believe that this would have been wrapped up quite  
21                 some time ago.

22                 Instead of cooperation, we have been -- we  
23                 face a formidable resistance. So on a certain level,  
24                 I agree with them -- those Commissioners and those  
25                 critics who believe that we shouldn't have spent time

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1 on this matter. We shouldn't have had to spend time  
2 on this matter. Either fix it or send the people  
3 here, allow us to conduct our investigation, then it's  
4 over.

5 To the extent that there is a controversy,  
6 it is a direct result of the resistance that we faced  
7 at the Department of Justice. I wish that someone  
8 from the Department of Justice would approach us and  
9 say, "Hey, let's sit down and talk about a path where  
10 we can resolve this." But to date that has not  
11 happened. And to the extent that you have any  
12 influence in the Holder Justice Department, please let  
13 them know I am more than willing to sit down and try  
14 to find a path where we can wrap up our investigation.

15 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

16 VICE CHAIR THERNSTROM: I just want to say  
17 that I really do have a problem with some of the  
18 charges against me this morning. I have never been  
19 for stonewalling the truth. I have never been for  
20 shutting this investigation down. I have the same  
21 doubts that the chair just expressed at the outset. I  
22 think those were legitimate doubts about making this  
23 our year-long statutory report.

24 And I am not opposed to trying to gather  
25 information. Of course I'm not opposed to trying to

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1 gather information about whether there are racial  
2 double standards operating within the Justice  
3 Department, and operating in such a way as to affect  
4 their actions and policies, not one, you know, minor  
5 career attorney here or there, but people who actually  
6 are shaping the policies of the Justice Department.

7 So, you know, any notion that I have ever  
8 refused to cooperate with you, or are doing so now, is  
9 just not correct. I have raised legitimate questions  
10 about this investigation. I still think they are  
11 legitimate questions, and I think we ought to have the  
12 civility to hear -- to agree to disagree on certain  
13 matters.

14 CHAIRMAN REYNOLDS: Well, I agree with  
15 that point, Vice Chair Thernstrom. I think it has  
16 been perfectly clear from the record and the articles  
17 that you have written that you have not been --

18 VICE CHAIR THERNSTROM: One article.

19 CHAIRMAN REYNOLDS: -- statements that you  
20 have made in writing and at the hearing that you are  
21 not supportive of our undertaking, and that is your  
22 privilege. You need not be supportive of this  
23 investigation or anything else that is done by -- you  
24 know, if you are uncomfortable with a particular

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1 topic, or for whatever reason, you don't have to  
2 support it.

3 VICE CHAIR THERNSTROM: No, I agree with  
4 that. But I have had questions about the  
5 characterization of the incident. That is what I have  
6 had characteristics with. That is what the small  
7 potatoes was about.

8 I have had questions about our -- having  
9 this as our year-long, big statutory report.

10 CHAIRMAN REYNOLDS: This is a big issue.

11 COMMISSIONER GAZIANO: Mr. Chairman?

12 VICE CHAIR THERNSTROM: Well, it --

13 CHAIRMAN REYNOLDS: It's a big issue, and  
14 it is --

15 VICE CHAIR THERNSTROM: As you just  
16 agreed, when we started out, even you did not think  
17 this was a big issue.

18 CHAIRMAN REYNOLDS: Because I thought they  
19 would fix it or that they would cooperate in our  
20 investigation, and we would be able to reach a  
21 conclusion based on the evidence. That hasn't  
22 happened, and --

23 VICE CHAIR THERNSTROM: There are other  
24 problems that, I mean, 11(b) --

25 CHAIRMAN REYNOLDS: You have to --

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1                   VICE CHAIR THERNSTROM:       -- is a  
2                   problematic provision in the Voting Rights Act. That  
3                   is why -- in part why it is not a big issue.

4                   CHAIRMAN REYNOLDS:           You're right.  
5                   Commissioner Gaziano? You're right. You're next,  
6                   then Commissioner Heriot is next.

7                   COMMISSIONER GAZIANO:   Thank you. It  
8                   sounds to me like Vice Chair Thernstrom, whatever her  
9                   prior disagreements may be enthusiastically, or what  
10                  -- the investigation as it is evolving, which is -- I  
11                  hope that is true, and I hope she reads -- rereads the  
12                  letter that we have now endorsed and that she  
13                  expresses her endorsement for the central portion,  
14                  which is an insistence that Christopher Coates -- and  
15                  the importance of Christopher Coates testifying.

16                  But I wanted to address now some matters  
17                  that --

18                  VICE CHAIR THERNSTROM: I'm happy to --

19                  COMMISSIONER GAZIANO: I want to address  
20                  some matters that Commissioner Yaki mentioned and  
21                  explain myself, in response to Vice Chair's point that  
22                  we should be very clear about what the allegations are  
23                  and not inadvertently mention some what seem to be  
24                  inflammatory claims.

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1                   Commissioner Yaki, if I heard him  
2 correctly, seemed to say that most statements or  
3 actions prior to the current administration would be  
4 irrelevant to our investigation, and also that  
5 expressions by individual members that they were  
6 hostile to the Noxubee case were relevant if they did  
7 their duty.

8                   The allegation -- one of the allegations  
9 that has now been corroborated by two sworn witnesses  
10 to this Commission is that the then-voting section  
11 chief, Joe Rich, fraudulently altered a memorandum  
12 that went up to the front office deleting the  
13 recommendation of the career staff, but adding their  
14 name to it and implying that they supported his view  
15 that the Noxubee case should not be filed.

16                   If his fraudulent actions were successful,  
17 that would have killed the investigation in its crib,  
18 which resulted in a Department of Justice victory,  
19 which the Fifth Circuit Court of Appeals affirmed and  
20 praised the Department for bringing.

21                   We have further sworn testimony that Joe  
22 Rich's fraudulent actions were discovered, and that he  
23 was reprimanded for that.

24                   Now, why is that possibly relevant? There  
25 are people still in the -- it is relevant because

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1 there are people still in the voting section who are  
2 in the department who may have been involved in the  
3 discussions to dismiss the New Black Panther suit.  
4 But the culture that exists in the Civil Rights  
5 Division is certainly relevant for both us to examine,  
6 and hopefully Assistant Attorney General Perez to look  
7 into.

8 There were press reports of this kind of  
9 matter, and I am disappointed --

10 COMMISSIONER YAKI: I'm hearing Joe  
11 McCarthy here. What is this?

12 CHAIRMAN REYNOLDS: Hold on. Hold on.

13 COMMISSIONER GAZIANO: I'm disappointed --

14 CHAIRMAN REYNOLDS: Let Joe finish.

15 (Laughter.)

16 COMMISSIONER GAZIANO: I'm disappointed --

17 CHAIRMAN REYNOLDS: It's a joke. It's a  
18 joke.

19 VICE CHAIR THERNSTROM: How do you know --

20 CHAIRMAN REYNOLDS: It's a joke.

21 COMMISSIONER GAZIANO: It's relevant,  
22 because the Assistant Attorney General didn't deny  
23 that that kind of culture would be irrelevant. It's  
24 just that he denied that he investigated and he didn't  
25 believe it existed.

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1                   Now that we have sworn evidence that that  
2 culture may exist in his division, it is incumbent  
3 upon us to investigate how -- whether that is true,  
4 how deep that -- the tentacles of this caustic culture  
5 might be if it does exist, whether employees are  
6 currently in the division who have these views, and  
7 that is certainly relevant to our ongoing  
8 investigation.

9                   CHAIRMAN REYNOLDS: Okay. The order is  
10 Commissioner Heriot, then Commissioner Yaki. But  
11 before we go, Commissioner Gaziano, I apologize for my  
12 joke. Would you just state it? I fully support.  
13 From time to time, we have to lighten the mood here,  
14 and I attempted to do so with a joke that apparently  
15 did not go over well with you.

16                   COMMISSIONER YAKI: Thank you.

17                   CHAIRMAN REYNOLDS: Commissioner Heriot.

18                   VICE CHAIR THERNSTROM: I thought it was  
19 funny.

20                   CHAIRMAN REYNOLDS: So did I.

21                   COMMISSIONER HERIOT: Okay. I just want  
22 to make a very, very brief point, and that is in  
23 agreement with the Chairman about how I perceived this  
24 project when we entered into it. I, too, thought that  
25 there was a fairly -- I don't want to say that it was

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1 likely, because I don't think likely was what I  
2 thinking, but a substantial chance that the project --  
3 the investigation would not lead to a full report,  
4 that it wouldn't pan out as a yearly project.

5 But I want to remind everybody that is why  
6 we picked two projects for this year. As it turned  
7 out, it is the other project that hasn't panned out  
8 for sad reasons, tragic reasons, and that is that the  
9 member of our staff who was in charge of that other  
10 project passed away during the year.

11 But it turns out -- and I do hope that  
12 project is going to pan out over the next few months,  
13 and I have every confidence that it will, but whether  
14 it will by September 30th, which is when we like to  
15 get these reports done, you know, that seems unlikely  
16 at this point.

17 VICE CHAIR THERNSTROM: But it was never  
18 our statutory project, correct?

19 COMMISSIONER HERIOT: It was adopted as an  
20 alternative enforcement report, yes, at the same time.  
21 That was a meeting that you left in the middle of, as  
22 I recall.

23 CHAIRMAN REYNOLDS: And was that because  
24 there was a concern -- I mean, I'd have to go back and

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1 read the transcript, but was there a concern that this  
2 --

3 COMMISSIONER HERIOT: That either of them  
4 might not pan out. I think for the reasons that you  
5 are talking about that the Department of Justice could  
6 have, in the course of the year, simply said, "You  
7 know, we have looked back at this, and you're right,  
8 we shouldn't have done that."

9 CHAIRMAN REYNOLDS: Right.

10 COMMISSIONER HERIOT: Had they done that,  
11 it would have made a very short report.

12 CHAIRMAN REYNOLDS: Right. Or to offer up  
13 a rationale that explained -- I mean, we all could  
14 have said, "Oh, we didn't know these facts," and so  
15 now it all makes sense to us.

16 COMMISSIONER HERIOT: Exactly. Exactly.  
17 Although, in fairness, at the time, you know, I  
18 thought that Mr. Adams' testimony was very interesting  
19 and very much a revelation. But, nevertheless, it  
20 wasn't that I wasn't thinking at the time that we  
21 heard about this case that there really weren't very  
22 many possible explanations based on the facts that we  
23 knew at that point why they might have decided to do  
24 what they did, and it was in the back of my mind

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1 something like what Mr. Adams testified may turn out  
2 to be the case.

3 I wasn't confident that we were going to  
4 get someone to be able to testify that way, but we  
5 did. We now have evidence, sworn evidence, direct  
6 evidence, evidence of someone who actually was there  
7 and heard these statements, I think this evidence is  
8 very strong. Is it possible that Mr. Adams is a big  
9 fat liar? It's possible anyone is a big fat liar.

10 However, I don't see what his motivation  
11 would be under these circumstances. We now have  
12 affidavits that very much corroborate that testimony,  
13 and I think that we are in a position to where we need  
14 to insist that Christopher Coates be brought as a  
15 witness here. He is the obvious witness that we would  
16 want to talk to. He would be able to confirm or deny  
17 some of the things that Mr. Adams has said, and I  
18 think that's where we need to focus.

19 I think there are other witnesses that we  
20 are going to want to hear, but I think Coates is the  
21 one who is the linchpin at this point.

22 CHAIRMAN REYNOLDS: Commissioner Yaki?

23 COMMISSIONER YAKI: You know, whenever I  
24 think that maybe I might agree with something that the  
25 majority is trying to do --

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1 CHAIRMAN REYNOLDS: They get close.

2 COMMISSIONER YAKI: -- something comes  
3 along and just pulls me right back. Just when I think  
4 -- the last two speakers basically summed up my  
5 problems with this investigation to date.

6 Commissioner Gaziano goes off on a  
7 conspiratorial, McCarthyesque tangent, that somehow --  
8 and I don't think he used the word "cabal," he used  
9 some other kind of word -- of career staff attorneys  
10 who are engaged in a nefarious act of, what,  
11 protecting voting rights and possibly ticking off  
12 Christian Adams.

13 I mean, let's -- the reason why I want to  
14 enter this into evidence is because the contemptuous  
15 attitude of the folks who were brought in by Schlozman  
16 and his gang into the Civil Rights Division is  
17 palpable.

18 The idea that these -- that career voting  
19 rights attorneys who were there to enforce the Voting  
20 Rights Acts are lunatics, liberals, commies,  
21 partisans, all these words are in this document that  
22 was done by two independent investigative arms of the  
23 Department of Justice, under a Republican  
24 administration no less. This is not done by the  
25 Democrats. This is not done by a congressional

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1 committee. This is done by Mukasey, the last Attorney  
2 General under President Bush.

3 The idea that -- it seems to me that this  
4 is simply a continuation of that from the outside.  
5 And, you know, I hate to say this, but it is -- it is  
6 as if they are trying to continue the cleansing of the  
7 Voting Rights Division of the people who had been  
8 there for years and attempting to enforce the law,  
9 getting resistance from the political appointees  
10 during the prior administration, and subsequently  
11 being transferred, termed out, bypassed, and replaced  
12 by people like Mr. Adams, and, yes, later on by Mr.  
13 Coates.

14 And I think that's important to note,  
15 because if we are making these vague accusations that  
16 there is some sort of cabal going on, it is -- all we  
17 are doing is simply repeating what Schlozman and his  
18 gang were doing over that time period. And now we are  
19 trying to effectuate from the outside.

20 And I just want to point out that one of  
21 those affidavits, so-called substantial affidavits,  
22 two of those came from political hires of that cabal  
23 who were trying to get rid of the career staff of the  
24 Voting Rights Division in the Justice Department.

25 CHAIRMAN REYNOLDS: Commissioner Yaki?

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1 COMMISSIONER YAKI: No, this --

2 CHAIRMAN REYNOLDS: This will -- just  
3 briefly, I mean, at some point -- at some point, we  
4 all have to stop blaming the Bush administration. At  
5 some point, we have to own it.

6 COMMISSIONER YAKI: I will --

7 CHAIRMAN REYNOLDS: Let me --

8 COMMISSIONER YAKI: I'll own it.

9 CHAIRMAN REYNOLDS: President Bush and the  
10 cabal, including myself, since I served the  
11 administration, they're gone. We have many -- we have  
12 several documents that were prepared by the career  
13 civil servants at the Department of Justice that were  
14 ignored.

15 We can start with the J memo. We can  
16 start with the document produced by the appellate  
17 section. The individuals who supported the course of  
18 action that Mr. Adams fought for, they didn't serve in  
19 the Bush administration. They are career civil  
20 servants. It is the -- if there is resistance to the  
21 recommendation by the career staff, it is not by a  
22 Bush appointee.

23 COMMISSIONER YAKI: But that's not the  
24 point I'm trying to make. The point I'm trying to

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1 make is this. The complaints and the continued  
2 outside agitation on this comes from --

3 CHAIRMAN REYNOLDS: Oh, outside agitators.

4 COMMISSIONER YAKI: Yes, and you know what  
5 I'm talking about.

6 CHAIRMAN REYNOLDS: I surely do.

7 COMMISSIONER YAKI: Comes from --

8 (Laughter.)

9 -- former Bush era appointees, both -- one  
10 of whom recently exited the Department of Justice.  
11 And then, when I hear statements made by Commissioners  
12 that there is a continuing -- I mean, the fact is is  
13 that we heard testimony from Mr. Perez that said that  
14 there is a difference of opinion, an honest difference  
15 of opinion, maybe a difference of opinion that, in  
16 retrospect, maybe they would --

17 CHAIRMAN REYNOLDS: Commissioner Yaki,  
18 you're an attorney. Do you think you would have had  
19 difficulty succeeding when the defendants don't show  
20 up?

21 COMMISSIONER YAKI: I'm not going to --

22 CHAIRMAN REYNOLDS: Wouldn't a first-year  
23 --

24 COMMISSIONER YAKI: I am not going to --

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1 CHAIRMAN REYNOLDS: I mean, someone fresh  
2 out of law school, that would have been a lay-up for  
3 an individual fresh out of law school. There is no  
4 fight. There was no resistance. The defendants  
5 didn't show up. This was not -- this did not  
6 require --

7 COMMISSIONER YAKI: Then, let's also  
8 stipulate that for one of the defendants who didn't  
9 show up an injunction was issued, correct?

10 CHAIRMAN REYNOLDS: That's correct.

11 COMMISSIONER YAKI: Then, for the -- and  
12 that defendant was the one --

13 CHAIRMAN REYNOLDS: I'm focusing on the  
14 three --

15 COMMISSIONER YAKI: -- who was allegedly  
16 carrying the nightstick, right?

17 CHAIRMAN REYNOLDS: I am focusing on the  
18 three --

19 COMMISSIONER YAKI: And there were two  
20 other defendants. You may decide to call it a lay-up.  
21 I was not a party to that discussion. I was not part  
22 of the transition team. I was not part of the regime  
23 change. I don't have any contacts over at DOJ who I  
24 speak to about this issue.

25 CHAIRMAN REYNOLDS: Okay. Commission?

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1 COMMISSIONER YAKI: Nor would I want to.

2 CHAIRMAN REYNOLDS: Commissioner Yaki, I  
3 apologize for taking up some of your time, but --  
4 continue, but give me an indication of how long you  
5 are going to go.

6 COMMISSIONER GAZIANO: Yes, point of  
7 order. I don't know how much time other Commissioners  
8 have, but we do have other important agenda items  
9 to --

10 COMMISSIONER YAKI: I would like to say --  
11 look, I was not here for that hearing. I think we  
12 have beat this horse to death today. So I just want  
13 to finish by stating, though, things that I was not  
14 able to make as points during that time period, and  
15 that is we cannot -- it is -- I think it is simplistic  
16 to think of this as anything -- I mean, I would say  
17 this. We have an important mission at the Commission  
18 -- to investigate issues.

19 As this case started off, I thought this  
20 had nothing to do -- this had nothing to do with that  
21 mission. As this case has progressed, we have one  
22 individual who has attempted to elevate it to  
23 something that we would. And if I believe that person  
24 was credible, and had more credibility other than he

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1 and other -- and someone else who was also part of  
2 that -- of the remaining --

3 CHAIRMAN REYNOLDS: If we had other people  
4 to support his position --

5 COMMISSIONER YAKI: But the fact of the  
6 matter is --

7 CHAIRMAN REYNOLDS: -- other witnesses --

8 COMMISSIONER YAKI: -- we don't.

9 CHAIRMAN REYNOLDS: -- if other  
10 witnesses --

11 COMMISSIONER YAKI: We have corroboration  
12 from people prior who didn't know --

13 CHAIRMAN REYNOLDS: If other witnesses  
14 were allowed to testify --

15 COMMISSIONER YAKI: We didn't --

16 CHAIRMAN REYNOLDS: -- for example, the  
17 individual -- there is an allegation against an  
18 individual, that she ordered folks not to --

19 COMMISSIONER YAKI: This is where I will  
20 agree with you, Mr. Chair.

21 CHAIRMAN REYNOLDS: Right, right.

22 COMMISSIONER YAKI: But I will say --

23 CHAIRMAN REYNOLDS: But she should not be  
24 fired unless there is a thorough investigation of the  
25 facts.

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1                   COMMISSIONER YAKI:     But I would just  
2 conclude with this.  The question I ask, and it is a  
3 rhetorical question, is if that person were to come  
4 here and state unequivocally that he or she did not  
5 say those things, then what?  And I don't think for a  
6 moment that -- I have no illusion that this  
7 investigation would end.  It would simply become what  
8 I have always thought it would be in the beginning --

9                   CHAIRMAN REYNOLDS:  That is not the --

10                  COMMISSIONER YAKI:  -- and in the end -- a  
11 partisan political fight, which does not benefit this  
12 Commission and which --

13                  CHAIRMAN REYNOLDS:  Commissioner Yaki?

14                  COMMISSIONER YAKI:  -- wasting our time  
15 and resources.

16                  CHAIRMAN REYNOLDS:  Commissioner Yaki, you  
17 are aware of the individuals we would like to speak  
18 to, I assume.  And you are aware that that individual  
19 is not the only individual that we would like to speak  
20 to.  And so if that individual shows up, answers our  
21 questions, if there is a categorical denial or if she  
22 makes an admission, you're right, the investigation  
23 continues.  There are other facts that we need to  
24 understand before we can, you know, write this up.

25                  COMMISSIONER YAKI:  But I think that --

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1 CHAIRMAN REYNOLDS: With that --

2 COMMISSIONER YAKI: -- is a different  
3 point. It reduces itself ultimately -- ultimately,  
4 this is being reduced to -- and this is where I think  
5 it is dangerous for the future of this Commission, it  
6 is dangerous for the future of the discussion of civil  
7 rights. We are simply engaged in a partisan political  
8 crossfire, and we are the tool being used --

9 CHAIRMAN REYNOLDS: Why is it a crossfire?  
10 Why is it a crossfire?

11 COMMISSIONER YAKI: Because if the  
12 administration comes in and denies it flat out --

13 CHAIRMAN REYNOLDS: Right. That  
14 particular allegation --

15 COMMISSIONER YAKI: -- then we are just  
16 going to be saying that --

17 CHAIRMAN REYNOLDS: -- this allegation --

18 COMMISSIONER YAKI: -- which evidence is  
19 better.

20 COURT REPORTER: One at a time.

21 COMMISSIONER YAKI: I have no illusion --  
22 no illusion where the majority is going to come out  
23 on, and it is just going to be a partisan political  
24 decision, and that is what I object -- have objected  
25 from the beginning with this investigation. And where

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1 it has progressed to only proves to me that it is.  
2 That's all I'm --

3 CHAIRMAN REYNOLDS: Commissioner Taylor?

4 COMMISSIONER TAYLOR: I'm going to do  
5 something dangerous --

6 COMMISSIONER YAKI: Ask me a question.

7 COMMISSIONER TAYLOR: -- which is ask you  
8 a question and try to negotiate in open session, as a  
9 member of the voting majority, to continue to ask  
10 questions in this matter.

11 Commissioner Yaki, I tell you, if -- I  
12 think you are a man of your word, and I take you at  
13 your word. And I understand your point. Your point  
14 is that you feel comfortable moving forward, even on  
15 discrete witnesses, for fear that even if those  
16 witnesses come forward in denial of the allegations we  
17 will, nevertheless, continue the investigation and  
18 move forward. And I appreciate that.

19 In response I would say if you -- if you  
20 would agree --

21 COMMISSIONER YAKI: I think there are a  
22 couple -- I think you -- I would --

23 COMMISSIONER TAYLOR: I didn't accurately  
24 state --

25 COMMISSIONER YAKI: I am uncomfortable --

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1 COMMISSIONER TAYLOR: Right. You would be  
2 uncomfortable moving --

3 COMMISSIONER YAKI: I thought you said --

4 COMMISSIONER TAYLOR: No. You would be  
5 uncomfortable moving forward, because you don't  
6 believe that even if those folks came forward and  
7 denied the allegations that we would end this matter.  
8 So I appreciate that.

9 I would say in response the flip side of  
10 that same coin. Would you agree to subpoena and ask  
11 for particular witnesses? If as a voting member of  
12 the majority I said to you, "If they come forward and  
13 categorically deny the allegations, I won't vote to  
14 move forward anymore," could I get your support on  
15 then subpoenaing those people?

16 COMMISSIONER YAKI: Well, I don't know.  
17 I --

18 COMMISSIONER TAYLOR: And I would point to  
19 the particular people Adams identified. He identified  
20 Deputy Assistant Attorney General Julie Fernandes, who  
21 he quoted as saying, "We have no interest in enforcing  
22 this section of the law."

23 COMMISSIONER YAKI: Coates.

24 COMMISSIONER TAYLOR: It has nothing to do  
25 with increasing voter turnout. We are going to do it.

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1 And Christopher Coates -- I would start with those  
2 two. If you -- if your position is that they were to  
3 come forward and categorically deny the allegations,  
4 that would be the end of it, I would tend to agree.

5 COMMISSIONER YAKI: Well, let me just say  
6 this. I have no --

7 COMMISSIONER TAYLOR: I would --

8 COMMISSIONER YAKI: -- I have no --

9 COMMISSIONER TAYLOR: I want to move  
10 forward in a position of unanimity, if at all  
11 possible, and that --

12 COMMISSIONER YAKI: Well, you won't get it  
13 for one simple reason. I have no illusion, given the  
14 tenor of Mr. Coates' -- Mr. Adams' testimony and the  
15 fact that he acknowledged discussions with Mr. Coates,  
16 that there is going to be a categorical denial from  
17 Mr. Coates. And that is --

18 CHAIRMAN REYNOLDS: I'm sorry for doing  
19 this, but could you restate that?

20 COMMISSIONER YAKI: I have no illusion  
21 that there is going to be a categorical denial of the  
22 statement made by Mr. Coates, given the fact that Mr.  
23 Adams has discussed this and has admitted discussing  
24 this with Coates in the media, and I believe in the  
25 testimony today. I just -- you know, it would -- I am

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1 not going to walk into something where, obviously, the  
2 answer is going to be yes and no. It is going to be a  
3 dispute. You are going to have -- you are going to  
4 have one witness say "didn't do it," and the other  
5 witness will say "yes" and we're --

6 CHAIRMAN REYNOLDS: I don't --

7 COMMISSIONER YAKI: -- then, once again --

8 CHAIRMAN REYNOLDS: -- know any witness  
9 that is going to say --

10 COMMISSIONER YAKI: I am -- well, I am  
11 guessing that that is how it might happen, and that --  
12 it goes to my discomfort with this in that ultimately  
13 this is --

14 CHAIRMAN REYNOLDS: Okay. His proposal  
15 doesn't meet your standard.

16 COMMISSIONER YAKI: No.

17 CHAIRMAN REYNOLDS: Do you have a counter?

18 COMMISSIONER YAKI: I have to think about  
19 it.

20 CHAIRMAN REYNOLDS: Okay. Fair enough.

21 Vice Chair Thernstrom?

22 VICE CHAIR THERNSTROM: I just want to  
23 restate something that I have stated before, but I  
24 think really is important and hasn't come up this  
25 morning. When Mr. Perez appeared before us, he said,

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1 "Look, Section 11(b), which has barely been litigated,  
2 is a provision of the Voting Rights Act that is open  
3 to various legal interpretations, we interpret it one  
4 way, others can interpret it another way," and I  
5 thought fair enough.

6 And I would extend that statement to every  
7 provision in the Voting Rights Act, whether you are  
8 talking about Section 5, whether you are talking about  
9 Section 2. I mean, different attorneys and different  
10 scholars -- I'm not an attorney, I am a scholar --  
11 read those provisions differently. They read the  
12 Supreme Court holdings on those provisions  
13 differently, on those sections of the Voting Rights  
14 Act differently.

15 And so, you know, at the end of the day,  
16 this really may come down to, how do you read that  
17 section of the Voting Rights Act in the light of -- in  
18 light of very limited precedent, no guidelines, unlike  
19 Section 2, unlike Section 5 -- well, unlike Section 5,  
20 really, most importantly, no guidelines within the  
21 Justice Department on how that section should be  
22 interpreted and enforced.

23 And so, you know, there are legitimate  
24 disagreements here that need to be acknowledged, at  
25 the same time that, of course -- and I will repeat --

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1 of course, if there is -- if racial double standards  
2 are being used to enforce the Voting Rights Act, I  
3 care.

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
5 there are moments where, you know, men and women of  
6 good will could look at the same set of facts and  
7 disagree. But I would challenge you on the notion  
8 that the facts that have been presented thus far falls  
9 into that category.

10 The memos that were produced by the career  
11 staff at the Department of Justice are compelling.  
12 For one person to offer up the statement that people  
13 can disagree, no analysis, an allegation that the  
14 decisionmaker didn't even read the memorandum -- the  
15 memoranda that were prepared by the career staff, and  
16 yet that individual made this important decision, I  
17 don't think that we're there. I don't think that the  
18 hypothetical that you just put on the table is one  
19 that we are entertaining.

20 The facts are different. It is -- so far  
21 -- and things could change, but so far it is not  
22 close. It is not a close call.

23 VICE CHAIR THERNSTROM: Well, which is not  
24 a close call? I mean, if they --

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1 CHAIRMAN REYNOLDS: That the Department of  
2 Justice --

3 VICE CHAIR THERNSTROM: -- a law is --

4 CHAIRMAN REYNOLDS: -- had they proceeded,  
5 would have gotten a default judgment and could have  
6 gotten the sanctions that it had originally proposed.

7 COMMISSIONER GAZIANO: Regular order. Can  
8 we possibly have Mr. --

9 CHAIRMAN REYNOLDS: Okay. Let's try to  
10 move on, so --

11 COMMISSIONER GAZIANO: I have a concluding  
12 -- but Mr. Kirsanow, Commissioner Kirsanow, first.

13 COMMISSIONER KIRSANOW: Thank you,  
14 Commissioner Gaziano. I much appreciate it.

15 And I'm sure Commissioner Gaziano has more  
16 to say, but I'd like to see if we can move this  
17 forward.

18 I want to crystallize something. We have  
19 not gotten cooperation from the Department of Justice,  
20 and let's credit their position that some of the  
21 testimony that we seek to elicit is privileged. I  
22 disagree, but let's credit that.

23 That pertains only to the deliberations  
24 related to dismissal of the New Black Panther case.  
25 As I indicated before, this matter has morphed into

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1 something potentially far larger than that.  
2 Everything related to that -- that is, whether or not  
3 an edict was issued or a pronouncement was made that  
4 no cases would be brought against minority defendants,  
5 and also that Section 8 will not be enforced, none of  
6 that is privileged.

7 I would move that we send a letter or  
8 subpoena to Mr. Perez related to those witnesses who  
9 could testify one way or another --

10 CHAIRMAN REYNOLDS: Second.

11 COMMISSIONER KIRSANOW: -- either --

12 CHAIRMAN REYNOLDS: Second.

13 COMMISSIONER KIRSANOW: -- rebut or  
14 corroborate the allegation that in fact there is a  
15 discriminatory enforcement of the civil rights laws  
16 within the voting section of the Civil Rights  
17 Division, and there is a refusal to enforce Section 8.

18 None of that is privileged, and I would  
19 assume that DOJ would have absolutely no problem in  
20 rebutting evidence that is standing out in the public  
21 domain that seems to implicate the Justice Department.  
22 If we can adduce such testimony, then we can make a  
23 determination. Or if we can't make that  
24 determination, at least the evidence will be out there  
25 for others to judge for themselves.

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1 CHAIRMAN REYNOLDS: Second. Discussion?

2 COMMISSIONER GAZIANO: May I --

3 CHAIRMAN REYNOLDS: Yes.

4 COMMISSIONER GAZIANO: -- speak to the  
5 motion? First of all, I am tempted to stand and  
6 pontificate, but I will --

7 CHAIRMAN REYNOLDS: Come on now. We're  
8 getting toward the end.

9 COMMISSIONER YAKI: If you have a bad  
10 back, Commissioner Gaziano, you can be --

11 COMMISSIONER GAZIANO: I'll --

12 COMMISSIONER YAKI: Before you make those  
13 kind of allegations, you might want to ask whether or  
14 not my back is hurt.

15 COMMISSIONER GAZIANO: If you can't take a  
16 joke, Commissioner Yaki, I apologize. I apologize.

17 CHAIRMAN REYNOLDS: Whoa. You two are the  
18 most sensitive Commissioners.

19 COMMISSIONER GAZIANO: I apologize.

20 (Laughter.)

21 I apologize.

22 Okay. Now --

23 COMMISSIONER YAKI: If you want to say  
24 "aggrandize," that would be different.

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1 COMMISSIONER GAZIANO: Commissioner, I  
2 just wanted to endorse your --

3 COMMISSIONER YAKI: Don't pontificate.

4 COMMISSIONER GAZIANO: -- wanted to  
5 endorse one of your points. First of all, I just want  
6 to point out again for some in our audience who have  
7 not followed this as carefully as we have is that the  
8 Justice Department, after months of being asked  
9 whether the President and Attorney General has invoked  
10 executive privilege to support the cover-up and the  
11 refusal not to enforce our subpoenas, did say in a  
12 rather surprising letter of May 13th that the  
13 President and Attorney General, who must personally  
14 invoke executive privilege, have not done so.

15 But I would state as a matter of law U.S.  
16 v. Nixon. The Supreme Court held that executive  
17 privilege does not apply to cover up wrongdoing, and  
18 that the particular allegations that Commissioner  
19 Kirsanow, and I think the rest of us, are interested  
20 in do amount to wrongdoing.

21 So I think even if the President of the  
22 United States were to invoke executive privilege, that  
23 would not arise above our interest in hearing the  
24 witnesses. And we may disagree, or I don't know where

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1 we'll come down, but at least hearing the witnesses,  
2 adducing the evidence.

3 And the point about categorical denials,  
4 in 1957, the states in the South categorically denied  
5 that they disenfranchised blacks and other minorities,  
6 but this Commission didn't take those categorical  
7 denials at their word. We heard witnesses. We made  
8 findings of fact. That is our sole central purpose.  
9 It is our most important purpose today.

10 Commissioner Yaki seems to think that  
11 there will be a disagreement among the witnesses about  
12 whether certain statements were made. It is our duty  
13 to hear them, to let the public hear them, and then to  
14 make our determination based on the credibility, and  
15 let the rest of the world judge whether we have made  
16 the right call.

17 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

18 COMMISSIONER KIRSANOW: I want to distill  
19 the motion down a little bit more. Christopher Coates  
20 has not been produced, presumably because his  
21 testimony would fall within an asserted privilege by  
22 DOJ related to dismissal of New Black Panther.

23 I would move that the letter or subpoena  
24 would cap everything related to New Black Panther  
25 Party dismissal. We will forswear any inquiry into

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1 that. Our sole element of inquiry will be into  
2 whether or not those statements were made saying that  
3 there is going to be discriminatory enforcement of  
4 civil rights laws and a non-enforcement of Section 8.

5 So nothing that they assert a privilege  
6 about is what we are going to be seeking testimony on,  
7 as Christopher Coates is clearly the most important  
8 witness here, but there are a raft of other witnesses  
9 who have been identified, either by Mr. Adams or  
10 subsequent affidavits, that either could rebut or deny  
11 what Mr. Adams said. And I'm willing to entertain any  
12 other witnesses.

13 And, again, we would make a representation  
14 to DOJ that nothing that they assert a privilege on  
15 will we make inquiry into.

16 COMMISSIONER GAZIANO: May I make a  
17 friendly amendment? May I make a friendly amendment?

18 COMMISSIONER KIRSANOW: I'll also say  
19 this. I think this will go to it. We will not waive,  
20 however, our right to at some point ask them to  
21 testify about those matters related to New Black  
22 Panther Party. This is not a waiver of that. But for  
23 the purposes of adducing testimony only on the very  
24 narrow issue of, is there a policy of discriminatory  
25 enforcement of civil rights laws, and is there a

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1 policy not to enforce Section 8, only on that will we  
2 inquire of those witnesses.

3 CHAIRMAN REYNOLDS: And was there  
4 direction or a statement made by a particular  
5 individual that the law would not be enforced on --

6 COMMISSIONER KIRSANOW: Exactly. And is  
7 there, in fact, a culture within the Department,  
8 regardless of which administration is in charge,  
9 whether or not it's the Bush administration, whether  
10 it goes back to the Clinton administration, is  
11 irrelevant as far as I'm concerned. Is there a  
12 culture within this particular department that says,  
13 "We are not going to move in a certain direction"?

14 COMMISSIONER GAZIANO: My friendly  
15 amendment is that the Department -- I suppose the --  
16 it is just in the details of how we indicate whether  
17 we are or are not interested in the original  
18 information that we have Mr. Coates under subpoena  
19 for. Certainly, they can instruct him simply not to  
20 answer those questions. That's one alternative to --  
21 but that I think can -- we can work out in subsequent  
22 negotiations with the Department of Justice, if they  
23 are willing to produce Christopher Coates for others.

24 I think Mr. Popper has been identified,  
25 the Deputy Chief of the voting section, as another

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1 witness who was -- may be relevant at this time for  
2 some of these statements. But I think, in general,  
3 that that's a fair motion, as long as we don't  
4 inadvertently or misleadingly waive our continued  
5 right and interest to the other evidence.

6 CHAIRMAN REYNOLDS: And Commissioner  
7 Kirsanow made clear that that was not the intent.

8 Commissioner Yaki?

9 COMMISSIONER YAKI: Can we just close this  
10 in a second? I mean, as the motion started from  
11 Commissioner Kirsanow, it had --

12 CHAIRMAN REYNOLDS: We can vote now, if  
13 you'd like.

14 COMMISSIONER YAKI: -- I had some interest  
15 possibly. And then, as it started to get broader, and  
16 then amended, and then you started talking about a  
17 culture within the Department of Justice, it just  
18 proves again to me that there is going to be no  
19 resolution of this investigation other than that of  
20 which the majority wishes it to be.

21 So I move to call the question and vote on  
22 that, and also end discussion on this topic and move  
23 on to the rest of the agenda.

24 CHAIRMAN REYNOLDS: Okay. Let's vote,  
25 folks. All in favor please say aye.

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1 (Chorus of ayes.)

2 Opposition? Abstentions?

3 VICE CHAIR THERNSTROM: Me.

4 COMMISSIONER MELENDEZ: Abstention.

5 Melendez.

6 CHAIRMAN REYNOLDS: Okay. Two  
7 abstentions, one objection. The motion passes.

8 Next up?

9 COMMISSIONER KIRSANOW: Mr. Chair, I will  
10 supply names of individuals, as have been set out in  
11 the record thus far, who have been identified as  
12 individuals who were either present when this  
13 testimony rendered by Mr. Adams as to a statement  
14 being made that there was going to be discriminatory  
15 enforcement of the laws.

16 Those individuals I will supply, so that  
17 such letter or subpoena can be sent out in an  
18 expeditious fashion. I have at least thus far  
19 identified five individuals. I think Commissioner  
20 Gaziano may have others.

21 CHAIRMAN REYNOLDS: Okay. Everyone, send  
22 whatever you have to me, and I'll take a look at it.

23 Commissioner Yaki, would you like to  
24 submit anything?

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1 COMMISSIONER YAKI: I'd like to move for a  
2 10-minute break.

3 CHAIRMAN REYNOLDS: Yes.

4 COMMISSIONER GAZIANO: Are we going to get  
5 through our agenda?

6 CHAIRMAN REYNOLDS: Okay. Let's get  
7 through STEM first.

8 VICE CHAIR THERNSTROM: I do think we need  
9 a 10-minute break.

10 COMMISSIONER YAKI: I would like a 10-  
11 minute break.

12 COMMISSIONER TAYLOR: We just need to --  
13 we'll have to press through lunch, that's all.

14 COMMISSIONER GAZIANO: Well, some people  
15 have lunch, and they are going to go. So I think we  
16 need to --

17 CHAIRMAN REYNOLDS: Yes.

18 COMMISSIONER TAYLOR: Oh, okay.

19 COMMISSIONER GAZIANO: -- let's get  
20 through STEM and then take a break.

21 CHAIRMAN REYNOLDS: Yes. Yes. Let's move  
22 quickly. Let's -- okay. In that case, STEM is not  
23 going to go quickly.

24 VICE CHAIR THERNSTROM: Yes. I mean --

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1 CHAIRMAN REYNOLDS: Okay. That's fine.  
2 I've got the time.

3 COMMISSIONER GAZIANO: I've got the time,  
4 too.

5 CHAIRMAN REYNOLDS: Okay. At the  
6 June 11th meeting --

7 COMMISSIONER HERIOT: Let's take a 10-  
8 minute break.

9 CHAIRMAN REYNOLDS: I'm sorry?

10 COMMISSIONER HERIOT: Wouldn't a 10-minute  
11 break work better here?

12 VICE CHAIR THERNSTROM: It would work  
13 better.

14 CHAIRMAN REYNOLDS: It would work a lot  
15 better.

16 VICE CHAIR THERNSTROM: People need a 10-  
17 minute break.

18 COMMISSIONER HERIOT: Just a 10-minute  
19 break, and, you know, at the end of 10 minutes we  
20 start again.

21 CHAIRMAN REYNOLDS: That's fine.

22 COMMISSIONER KIRSANOW: Let's go. Ten  
23 minutes. Let's go, let's go, let's go.

24 CHAIRMAN REYNOLDS: Okay, folks. We're  
25 going to do this, but you need to be back here in 10

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1 minutes. And those who are not, if we have a quorum,  
2 we're going to start.

3 (Whereupon, the proceedings in the foregoing matter  
4 went off the record at 10:30 a.m., and  
5 went back on the record at 10:44 a.m.)

6 CHAIRMAN REYNOLDS: Okay. The  
7 recommendations have been recirculated. Any luck?  
8 Commissioner Melendez, are you still on the line?

9 COMMISSIONER MELENDEZ: Yes.

10 CHAIRMAN REYNOLDS: Commissioner Melendez,  
11 one day we will have to sit down and talk. You are a  
12 wise man.

13 CHAIRMAN REYNOLDS: Okay. We have all  
14 returned from our break. Next up is -- well, on  
15 June 11, 2010, at that meeting we were unable to  
16 conclude consideration of the recommendations for the  
17 briefing report on encouraging minority students to  
18 pursue science, technology, engineering, and math  
19 careers, also known as STEM careers.

20 We will now consider the remaining  
21 recommendations. Prior to the break, we distributed a  
22 revised set of recommendations, and I will read them  
23 into the record. Well, first, I would like to move to  
24 reconsider the first recommendation. We voted on the

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1 first recommendation, and we voted it down. I was one  
2 of the individuals who voted against it.

3 I would like to reconsider that  
4 recommendation. Is there a second?

5 COMMISSIONER HERIOT: Second.

6 CHAIRMAN REYNOLDS: Second. Discussion?

7 COMMISSIONER YAKI: So are we voting on  
8 whether we are allowing you to reconsider your opinion  
9 on the subject, or discussing the entire thing?

10 COMMISSIONER HERIOT: We are actually  
11 doing a somewhat different version.

12 VICE CHAIR THERNSTROM: But are we voting  
13 on this version, or are we voting for --

14 COMMISSIONER YAKI: The idea is taking a  
15 joke, because you led off as saying, "I'd like to  
16 reconsider this. Is there a second?"

17 CHAIRMAN REYNOLDS: Okay. You are about  
18 as funny as I am.

19 COMMISSIONER YAKI: That's right. And  
20 that really takes some real hard work.

21 CHAIRMAN REYNOLDS: Okay. Let's not quit  
22 our day job.

23 COMMISSIONER HERIOT: It's probably more  
24 efficient for us just to go straight to the version  
25 that --

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1 CHAIRMAN REYNOLDS: Okay. All right.

2 COMMISSIONER HERIOT: -- read that version  
3 and then --

4 CHAIRMAN REYNOLDS: Okay. Here we go.

5 COMMISSIONER YAKI: When does this version  
6 come out?

7 CHAIRMAN REYNOLDS: This was --

8 VICE CHAIR THERNSTROM: Two minutes ago.

9 COMMISSIONER YAKI: This is not the  
10 version that was e-mailed to us a few days ago.

11 VICE CHAIR THERNSTROM: I'm seeing it for  
12 the first time.

13 CHAIRMAN REYNOLDS: Rather than trying to  
14 talk through the proposed modifications, the thought  
15 was to provide something that people can read. In the  
16 past, people have commented, rightly so, that it is  
17 sort of disjointed to have discussions about  
18 modifications without having any paper in front of  
19 them.

20 COMMISSIONER YAKI: True. But I just  
21 wanted to state for the record that what we got in the  
22 packet, and then what we got in e-mail, is different  
23 from what we just received now.

24 CHAIRMAN REYNOLDS: Yes.

25 COMMISSIONER YAKI: Okay.

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1 CHAIRMAN REYNOLDS: Yes.

2 VICE CHAIR THERNSTROM: I have had no time  
3 to think about these.

4 COMMISSIONER YAKI: No, we had 10 minutes  
5 during our recess --

6 VICE CHAIR THERNSTROM: Oh.

7 COMMISSIONER YAKI: -- to do it.

8 CHAIRMAN REYNOLDS: Okay. All right.  
9 First recommendation, I move to approve the following  
10 recommendation. A college -- a selective college or  
11 university should not admit any student with a large  
12 deficit in academic credentials relative to its median  
13 student, without fully informing the student of the  
14 impact that this deficit could have. Such deficits  
15 place students at a high risk of failure.

16 Is there a second?

17 COMMISSIONER KIRSANOW: Second.

18 CHAIRMAN REYNOLDS: Discussion?  
19 Commissioner Yaki?

20 COMMISSIONER YAKI: Okay. I need some  
21 word definition here.

22 CHAIRMAN REYNOLDS: Yes.

23 COMMISSIONER YAKI: Well, first of all, I  
24 am a little leery about saying "should not admit any

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1 student," but that being the -- that aside, what is a  
2 large deficit in academic credentials?

3 CHAIRMAN REYNOLDS: Two standard  
4 deviations.

5 COMMISSIONER HERIOT: No, it would be a  
6 large deficit as defined in the cases that -- in the  
7 articles that we have looked at. I think actually the  
8 best article on this issue is the one that is coming  
9 out shortly -- and I don't know what journal that is  
10 -- by Richard Sander and his colleague, whose name  
11 escapes me right now. But this is a reference to the  
12 report as a whole.

13 COMMISSIONER YAKI: Does this --

14 COMMISSIONER HERIOT: So I think "large  
15 deficit" is the right term.

16 COMMISSIONER YAKI: But are we talking  
17 about -- when we say "large deficit," are we talking  
18 in all aspects of academic credentials, you know, SAT,  
19 GPA, you know --

20 COMMISSIONER HERIOT: We're allowing  
21 schools to have a certain amount of leeway in  
22 interpreting this recommendation. It is not meant to  
23 be a stranglehold.

24 COMMISSIONER YAKI: Why isn't it when we  
25 say they should not admit?

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1                   COMMISSIONER HERIOT:     Should not admit  
2     without fully informing the student of the impact the  
3     deficit would have.    I think actually they should  
4     admit people when even they have a small deficit, but  
5     still -- okay.   You know, it is what it is.

6                   CHAIRMAN REYNOLDS:   Vice Chair Thernstrom?

7                   VICE CHAIR THERNSTROM:     In the first  
8     place, I do not want to give directives to private  
9     colleges and universities.    So as far as I'm  
10    concerned, can set an admission standards they choose,  
11    provided they don't violate the 14th Amendment and  
12    ESEA, if they -- they obviously get federal funds.

13                   But, I mean, large deficits -- I mean, I  
14    happen to know a lot about the Harvard admissions  
15    process, for better or worse, and they admit students  
16    with large deficits all the time.   It is -- somebody  
17    who has an enormous strength in one area and --

18                   CHAIRMAN REYNOLDS:     For example, a  
19    musician.

20                   VICE CHAIR THERNSTROM:   A musical --

21                   CHAIRMAN REYNOLDS:     Or a football player.

22                   VICE CHAIR THERNSTROM:   -- or a writer.

23                   CHAIRMAN REYNOLDS:     What about the black  
24    student population?

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1 VICE CHAIR THERNSTROM: Well, Harvard in  
2 fact has almost no disparity in -- not a significant  
3 disparity in the -- I mean, it's one --

4 CHAIRMAN REYNOLDS: Right. It's cascading  
5 --

6 VICE CHAIR THERNSTROM: It stops up all of  
7 -- you know --

8 CHAIRMAN REYNOLDS: Right.

9 VICE CHAIR THERNSTROM: -- a large  
10 proportion. You know, if a school -- I agree with  
11 Richard Sander. It is not a good idea, but I don't  
12 want to start issuing directives from this Commission.

13 CHAIRMAN REYNOLDS: It is not a directive.  
14 I mean, we don't have any power --

15 VICE CHAIR THERNSTROM: Well, I only want  
16 a recommendation. Let these schools figure out --

17 CHAIRMAN REYNOLDS: Shouldn't they inform  
18 the student that they are -- that the likelihood of  
19 being able to succeed or graduate based on the  
20 historical data that they have is --

21 VICE CHAIR THERNSTROM: It's a really ugly  
22 message.

23 CHAIRMAN REYNOLDS: Okay, fine. The world  
24 is an ugly place. And unless we face things squarely,  
25 we don't have -- I mean, just as -- as a consumer

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1 protection approach, wouldn't you agree that it is --  
2 that these families would be better off, and these  
3 students would be better off if they knew what their  
4 fate looked like? Is there any harm in giving people  
5 information and allowing them to make a decision?

6 VICE CHAIR THERNSTROM: It depends on how,  
7 when you're 18 years old, you process that  
8 information.

9 CHAIRMAN REYNOLDS: So we are going to --  
10 and, I mean, we are going to hide data, essentially.

11 VICE CHAIR THERNSTROM: The data is  
12 available.

13 CHAIRMAN REYNOLDS: The data is not  
14 available.

15 VICE CHAIR THERNSTROM: Well, it is  
16 available if you really are interested in it. But --

17 CHAIRMAN REYNOLDS: That data is guarded  
18 by -- I mean, that data is not available. If I wanted  
19 to know --

20 VICE CHAIR THERNSTROM: Well, crudely so.  
21 No, okay, it's not available on an individual school  
22 basis. But -- excuse me for eating.

23 COMMISSIONER YAKI: We'll just have the  
24 Court Reporter put in an appropriate translation of  
25 everything that you're saying.

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1 VICE CHAIR THERNSTROM: Right. I'm sorry.  
2 I got really hungry, and I didn't eat breakfast.

3 CHAIRMAN REYNOLDS: She actually agreed  
4 with --

5 (Laughter.)

6 She supports this. To me it sounded -- it  
7 may have come out different, but she really supports  
8 it. Did you get that?

9 COMMISSIONER HERIOT: Watch out.  
10 Transcripts don't do irony very well.

11 VICE CHAIR THERNSTROM: I am uncomfortable  
12 with this.

13 CHAIRMAN REYNOLDS: I am uncomfortable  
14 with aspects of it myself. But my discomfort is  
15 outweighed by the damage being done. These  
16 universities know with a fair amount of precision how  
17 someone is going to fare based on the historical data.  
18 And the fact that people feel uncomfortable, that's a  
19 personal problem. As a parent, I would want to know.

20 Commissioner Yaki?

21 COMMISSIONER YAKI: Well, this goes back  
22 to what I said the last time we considered this. It  
23 really is -- it goes toward recommendations 1, 2, and  
24 3, and that is at some point we have to recognize that  
25 each of these students -- each of these young people

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1 is an individual with their own potential, their own  
2 hopes and dreams, their own, you know, choice to  
3 exercise. If, as you were --

4 CHAIRMAN REYNOLDS: Is it informed choice?

5 COMMISSIONER YAKI: Wait. Hang on. You  
6 -- I'm going to do Chairman Reynolds. You --

7 (Laughter.)

8 VICE CHAIR THERNSTROM: The Court Reporter  
9 is --

10 (Laughter.)

11 COMMISSIONER YAKI: If we -- the problem  
12 with this is that I think it turns the responsibility  
13 on its head. I agree, and I said last time that I  
14 agree that there is some responsibility in terms of  
15 the colleges and universities not to lead someone down  
16 a primrose path of student loan ruin and personal  
17 failure.

18 I think that, to the contrary, if, to the  
19 extent that universities choose to do -- choose to  
20 admit students with loan deficits as -- whatever that  
21 definition should be, that it is incumbent upon them  
22 to remedy those -- to remedy that and provide  
23 appropriate support, remediation, as necessary,  
24 because I just worry about how we are to be -- this  
25 Commission is to be perceived as basically stating

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1 that, you know, there are just students out there who  
2 just are not going to cut it.

3 One of the things I have always had an  
4 objection to educational systems in other parts of the  
5 world is how they so readily and ably and ruthlessly  
6 steer students into -- potential students into a lower  
7 track or a lower tier. I think it's classist. I  
8 think it goes against the very spirit of American  
9 individuality, self-reliance, and essentially the  
10 elements of the American dream that all of us still  
11 aspire to and agree with.

12 So I really am uncomfortable with us  
13 putting forth statements and guidelines that basically  
14 state that we are going to -- in essence, we are going  
15 to make sure the students -- colleges tell you that  
16 you're a loser, you're going to be a loser, and you  
17 should not even consider coming here because you are  
18 going to be -- you are never going to make it.

19 I think if colleges are going to engage in  
20 this kind of admission behavior, which I think that  
21 they should, they should be spent a lot more money and  
22 a lot more time on ensuring that these students, whose  
23 potential they see something in, live up to that  
24 potential.

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1 CHAIRMAN REYNOLDS: Okay. Commissioner  
2 Taylor?

3 COMMISSIONER TAYLOR: You have shown great  
4 restraint. That was very good.

5 VICE CHAIR THERNSTROM: Who has shown  
6 great restraint?

7 COMMISSIONER TAYLOR: Right there, right  
8 there. He really wanted to get something in. He  
9 really did.

10 I'll be brief. And let me state at the  
11 outset that I support recommendations 1 and 2, in  
12 particular, for a number of reasons. First of all, I  
13 agree with Commissioner Yaki that every student should  
14 be viewed as an individual. We should never place  
15 people in typecast, such that we eliminate their  
16 opportunity to expand and excel, but that we give  
17 people every opportunity to do so, and we shouldn't  
18 make assumptions about any individual. And that is  
19 the beauty of our country is that we don't do that.  
20 We don't have scripts for people, depending on what  
21 class of society they come from.

22 It is also important, however, that that  
23 student be made aware of the facts. And in this  
24 regard, I agree with Commissioner Thernstrom. Those  
25 facts could be brutal, those facts could be

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1 demoralizing, and I understand your reluctance and  
2 hesitation of presenting those facts to a student, an  
3 18 year-old young adult who may not have the capacity  
4 to properly process and assimilate that information.  
5 I fully appreciate that.

6 And I also agree with Commissioner Yaki  
7 that the schools are -- have a duty to provide the  
8 support for every student they admit. Unfortunately,  
9 my sense is that we focus, as a society, and the  
10 school focuses a lot on admissions and matriculation  
11 and not enough focus on graduation and success upon  
12 graduation.

13 Because of that lack of focus, I support 1  
14 and 2. I also support recommendations 1 and 2 for  
15 this very important reason, and this is a personal  
16 reason. In life, the only way you can know how much  
17 pressure to apply to a situation is if you know what  
18 you are up against.

19 To your point, Commissioner Thernstrom, I  
20 am very concerned that minority students walking into  
21 certain academic environments, where the school, to  
22 Commissioner Yaki's point, fails to provide that  
23 support naturally --

24 CHAIRMAN REYNOLDS: Like walking into a  
25 buzz saw.

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1                   COMMISSIONER TAYLOR: -- when they -- when  
2 the school doesn't uphold their end of the bargain,  
3 the student doesn't know how much force they are going  
4 to have to apply, how much harder they are going to  
5 have to work than the person sitting beside them. And  
6 they would apply that pressure if they knew.

7                   And so I'm supporting recommendation 1 and  
8 2, because I want those students who are in those  
9 difficult situations to know they are in a different  
10 situation. I want to encourage them. I want to say,  
11 "Buck up. You've got resources out there. You've got  
12 people out there who want to help." But I want you to  
13 know how much work it is going to take, and together  
14 we can do it.

15                   I don't want you to assume that you can  
16 party like the person beside you and go party on  
17 Friday night. Don't make that assumption. Don't look  
18 to your peer to determine how much work you are going  
19 to have to put in to get an A in this class, because  
20 you are behind for reasons unrelated to your effort at  
21 the K through 12 stage.

22                   So that is why I am supporting 1 and 2, so  
23 they can succeed, so they know exactly what they are  
24 up against, and it is a delicate balance and I  
25 acknowledge it's a delicate balance. But I fear,

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1 because of our lack of focus on graduation at the end  
2 of the system, that students don't know and they  
3 assume entering into an environment that they simply  
4 need to put forth the effort that their peers are  
5 putting forth, and that's not the case.

6 They need to work a little harder. They  
7 need to burn the midnight oil, and that's okay. And  
8 I'm confident they can do it, if they're told that's  
9 what they need to do. And in some cases the school is  
10 not telling them.

11 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

12 COMMISSIONER KIRSANOW: I just want the  
13 record to reflect that I align myself with  
14 Commissioner Taylor's comments who expressed my  
15 position better than I could have.

16 CHAIRMAN REYNOLDS: That's right. Thank  
17 you, Ashley.

18 COMMISSIONER GAZIANO: Call the question.

19 CHAIRMAN REYNOLDS: All those in favor  
20 please say aye.

21 (Chorus of ayes.)

22 VICE CHAIR THERNSTROM: Well, wait a  
23 minute. Are we moving on just recommendation 1?

24 CHAIRMAN REYNOLDS: Yes.

25 COMMISSIONER HERIOT: One.

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1 COMMISSIONER GAZIANO: One.

2 CHAIRMAN REYNOLDS: All in favor please  
3 say aye.

4 (Chorus of ayes.)

5 Objections?

6 VICE CHAIR THERNSTROM: I object.

7 COMMISSIONER YAKI: I object.

8 CHAIRMAN REYNOLDS: Abstentions? I'm  
9 sorry. Commissioner Melendez?

10 COMMISSIONER MELENDEZ: Opposed.

11 CHAIRMAN REYNOLDS: Okay. Three  
12 objections. The motion passes.

13 Okay. Next up, I move to approve the  
14 following. In addition to providing other appropriate  
15 support and advice to students interested in STEM  
16 majors and careers, high school student -- high  
17 school --

18 COMMISSIONER YAKI: Point of order. It  
19 was a call the question, which is a two-thirds vote.  
20 There is five-three, which is I -- whatever. I just  
21 wanted to --

22 COMMISSIONER GAZIANO: No. No. Call the  
23 question to vote was on approval of --

24 COMMISSIONER YAKI: Calling the question  
25 is a two-thirds vote.

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1 CHAIRMAN REYNOLDS: Folks, folks, come on.  
2 Come on. We don't follow the Robert's Rules. We  
3 don't. We never have.

4 COMMISSIONER YAKI: That will change.

5 VICE CHAIR THERNSTROM: Has everybody got  
6 that on the record?

7 COMMISSIONER YAKI: That will change.

8 (Laughter.)

9 CHAIRMAN REYNOLDS: Okay. In addition to  
10 providing other appropriate support and advice to  
11 students interested in STEM majors and careers, high  
12 school guidance counselors should advise these  
13 students about the significant impact of large  
14 deficits and academic credentials on college  
15 performance. Is there a second?

16 COMMISSIONER KIRSANOW: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 (No response.)

19 All those in favor signify --

20 COMMISSIONER YAKI: Hey, hey, I've got my  
21 hand up.

22 CHAIRMAN REYNOLDS: Oh, I'm sorry.

23 COMMISSIONER YAKI: Excuse me? Hello?

24 CHAIRMAN REYNOLDS: You usually make a  
25 noise.

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1 (Laughter.)

2 Commissioner Yaki?

3 COMMISSIONER YAKI: Well, in that case,  
4 I would just like to point out one thing. I just  
5 wanted to thank Commissioner -- I was going to say  
6 Commissioner Ashley -- Commissioner Taylor for his  
7 well thought out remarks. I just wanted to point out  
8 that I agree that students in some instances, if they  
9 understand the challenge that they have, they can  
10 apply themselves better. My only problem is that  
11 recommendation 1 won't give some of those students  
12 that opportunity.

13 As regard to number 2, my concern about  
14 this goes to the fact that I think that it is more --  
15 it is -- it takes a little bit more than just telling  
16 high school guidance counselors to do this kind of  
17 thing, because this is something that I believe should  
18 require -- would require a fair amount of training and  
19 understanding to do rather than simply telling some  
20 kid coming in, looking at colleges, nope, nope, that  
21 one, nope, nope.

22 I mean, this is something that requires a  
23 little bit more than just someone reading numbers off  
24 a page. There should be training. There should be a  
25 serious amount of -- some resources invested to ensure

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1 that they -- if they do that, they do it in a way that  
2 doesn't unduly chill that student's ability to make an  
3 informed decision.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER YAKI: That's my concern.

6 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

7 VICE CHAIR THERNSTROM: Well, as somebody  
8 who has had kids go through large -- a large public  
9 high school, I mean, these guidance counselors are --  
10 I mean, they've got a slew of kids to advise. Their  
11 advice is ill-informed and pretty worthless, and they  
12 are not about to become -- I mean, they don't have the  
13 time, they don't have the resources, they aren't --  
14 they themselves do not have the academic background to  
15 give proper advice to students, even if they were  
16 interested in doing so.

17 Look, colleges do weed out kids. They  
18 say, "I want to come as a physics major." Well, it  
19 becomes very clear on the first weeks of college  
20 whether you are going to make it through a physics  
21 class you have signed up for.

22 And the colleges and the admissions  
23 process weed out kids. I mean, I just -- you know, I  
24 just -- I think the up side of allowing this process  
25 to work out, as it now does, is larger than the down

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1 side of this kind of intrusion, advice, whatever you  
2 want to call it.

3 CHAIRMAN REYNOLDS: Okay. All those in  
4 favor please say aye.

5 (Chorus of ayes.)

6 Objections?

7 COMMISSIONER YAKI: I object.

8 VICE CHAIR THERNSTROM: I object.

9 COMMISSIONER MELENDEZ: Opposed.

10 CHAIRMAN REYNOLDS: Okay. Same as before.

11 We have --

12 COMMISSIONER YAKI: Just in case you  
13 didn't hear me.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER HERIOT: Mr. Chairman, I know  
16 you're in a hurry.

17 CHAIRMAN REYNOLDS: No, no.

18 COMMISSIONER HERIOT: The other three here  
19 are not --

20 CHAIRMAN REYNOLDS: No, no --

21 COMMISSIONER GAZIANO: I'd like to try to  
22 get to them.

23 CHAIRMAN REYNOLDS: Okay. The motion  
24 passes.

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1           Each individual student's right to decide  
2           which high school to attend -- oh, I'm sorry -- which  
3           school to attend based on the best available evidence  
4           and with help from parents and advisors should be  
5           respected. To aid students with the decisionmaking  
6           process, schools with STEM programs should disclose to  
7           all admitted students their projected college grade  
8           point averages, and the range of error. Schools  
9           should also disclose to interested students the  
10          school's track record for graduating students with  
11          similar academic indices and STEM majors.

12                           Is there a second? Is there a second?

13                           COMMISSIONER GAZIANO: Second.

14                           CHAIRMAN REYNOLDS: Discussion?

15                           COMMISSIONER YAKI: I want to discuss it,  
16           just in case you didn't hear.

17                           CHAIRMAN REYNOLDS: Commissioner Yaki?

18                           COMMISSIONER YAKI: Similar basic question  
19           to what I asked about number 1. How in the name of  
20           whatever can you project someone's GPA within a range  
21           of error?

22                           CHAIRMAN REYNOLDS: Oh, you can.

23                           COMMISSIONER HERIOT: It's done all the  
24           time.

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1                   COMMISSIONER YAKI: Well, I would argue  
2 that what you may project, and what you may tell  
3 someone, can become a self-fulfilling and self-  
4 defeating prophecy. And I strongly -- I have real  
5 strong concerns about telling kids that they are --  
6 whether they are going to be A students, B students, C  
7 students, or D students, I have no idea what they  
8 would have projected me to be. Probably a D student,  
9 based on your opinion of me.

10                   But the fact of the matter is is that I  
11 don't understand why we should be engaged in this kind  
12 of scientific steering for kids whose potential is  
13 still yet to be fulfilled. I object to this.

14                   CHAIRMAN REYNOLDS: Any other thoughts?  
15 And I do have not a rejoinder but a comment to make in  
16 response. But I will share it with Commissioner Yaki  
17 after the meeting.

18                   All those in favor please say aye.

19                   (Chorus of ayes.)

20                   Objections?

21                   COMMISSIONER YAKI: I object.

22                   COMMISSIONER MELENDEZ: Opposed.

23                   VICE CHAIR THERNSTROM: I am opposed.

24                   CHAIRMAN REYNOLDS: Okay.

25                   COMMISSIONER KIRSANOW: I abstain.

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1 CHAIRMAN REYNOLDS: Okay. The motion  
2 passes.

3 Well designed academic -- I move that we  
4 adopt the following recommendation. Well designed  
5 academic support programs can sometimes help students  
6 with modest deficits in credentials to succeed in STEM  
7 programs. Schools should study and implement the best  
8 practices employed by successful academic support  
9 programs. Schools should also routinely disclose  
10 information about academic support services to all  
11 admitted students.

12 Is there a second?

13 COMMISSIONER HERIOT: Second.

14 CHAIRMAN REYNOLDS: Commissioner Yaki?

15 COMMISSIONER YAKI: If you take out the  
16 word "modest," I might support this.

17 CHAIRMAN REYNOLDS: Commissioner Heriot,  
18 do you accept that as a friendly amendment?

19 COMMISSIONER HERIOT: No. It seems to  
20 invite large deficits. I guess I don't.

21 CHAIRMAN REYNOLDS: Okay. Vice Chair  
22 Thernstrom?

23 VICE CHAIR THERNSTROM: You know, the  
24 problem here, it seems to me, is that there are  
25 schools -- and this is in part a response to what

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1 Commissioner Ashley has said before -- Commissioner  
2 Taylor, sorry -- there are schools that are well  
3 equipped to provide individual help to students, to  
4 provide remedial classes, to -- you know, to nurture  
5 students along.

6 In general, the elite schools cannot do  
7 that, will not do that, do not have the facility  
8 interested in doing that. And, I mean, it's just --  
9 you know, it's sink or swim.

10 CHAIRMAN REYNOLDS: So you let them in,  
11 knowing that they are two standard deviations from the  
12 main. You provide no support, and you don't let them  
13 know what their likely fate is.

14 VICE CHAIR THERNSTROM: And you know what?  
15 They all graduate, because --

16 CHAIRMAN REYNOLDS: Whoa, whoa, whoa,  
17 whoa, whoa.

18 VICE CHAIR THERNSTROM: From your highly  
19 selective schools --

20 CHAIRMAN REYNOLDS: No, no. Even there,  
21 there is a significant washout rate.

22 VICE CHAIR THERNSTROM: Look, if you look  
23 at the Bok and Bowen data, for instance, I mean, the  
24 great inflation means kids find a way. They go to,  
25 you know, basket-weaving as a --

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1 CHAIRMAN REYNOLDS: I'm not sure that that  
2 is a solution.

3 COMMISSIONER HERIOT: Because that is just  
4 what we are trying to fight against here.

5 CHAIRMAN REYNOLDS: I don't feel better  
6 because --

7 VICE CHAIR THERNSTROM: If you take a  
8 Princeton or a Yale or a Harvard or a Swarthmore, or  
9 whatever, these schools are not -- they are not  
10 remedial schools. They are not going to become  
11 remedial schools. Their faculty is not interested in  
12 teaching such kids. And, you know, if the schools let  
13 them in, those students will eventually -- will  
14 graduate. There are very few dropouts from the elite  
15 schools.

16 COMMISSIONER KIRSANOW: But they won't  
17 graduate in STEM. They will graduate --

18 VICE CHAIR THERNSTROM: They will graduate  
19 in --

20 COMMISSIONER KIRSANOW: They will graduate  
21 in basket-weaving, and that is what this is directed  
22 toward, to --

23 VICE CHAIR THERNSTROM: They will not  
24 graduate in STEM. You know why? Because as soon as  
25 they find out, and it's true for most math majors at a

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1 place like Harvard, it's true for most majors in the  
2 Harvard sciences, they are not going to be very good.  
3 There are really whiz bang kids at a very early age.  
4 They won't pursue -- those courses are too hard.

5 COMMISSIONER HERIOT: That's what this  
6 briefing has been all about, the fact that some of  
7 those students would have done well going to a less  
8 selective school where they could have become MDs,  
9 they might have gotten into medical school if they had  
10 just made it through physical chemistry.

11 CHAIRMAN REYNOLDS: And to give an  
12 example, being in the top three percent -- well, the  
13 top, you know, 97th percentile in math, that will get  
14 you into MIT. But --

15 VICE CHAIR THERNSTROM: You have to be in  
16 the top -- it's 0.5 percent, but, anyway, go on.

17 CHAIRMAN REYNOLDS: But if you -- but you  
18 let someone in who is in the top 10 percent of the  
19 country, that individual may be -- that individual may  
20 be a superstar at Harvard, but will -- is not going to  
21 make it at MIT.

22 VICE CHAIR THERNSTROM: Okay. I -- that  
23 is correct. And MIT will not admit them, by the way.

24 CHAIRMAN REYNOLDS: No. MIT has a racial  
25 preference policy and has had it for years.

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1 VICE CHAIR THERNSTROM: Okay. How many of  
2 those students have actually flunked out of MIT?

3 COMMISSIONER HERIOT: They wash out of  
4 STEM at MIT, too. I --

5 VICE CHAIR THERNSTROM: They wash out of  
6 STEM, but --

7 COMMISSIONER HERIOT: Well, that's what  
8 this report is about, washing out of STEM.

9 VICE CHAIR THERNSTROM: Students with very  
10 high credentials wash out of STEM all the time.

11 COMMISSIONER HERIOT: Yes, but that's  
12 what --

13 COMMISSIONER GAZIANO: They might succeed  
14 at a different --

15 COMMISSIONER HERIOT: But your dream is to  
16 succeed at that.

17 VICE CHAIR THERNSTROM: No. I mean --

18 COMMISSIONER HERIOT: And you want to be a  
19 doctor, or you want to be a scientist, or you want to  
20 be an engineer.

21 VICE CHAIR THERNSTROM: People come into  
22 Harvard and want to enter a STEM program, wash out of  
23 a STEM --

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1                   COMMISSIONER GAZIANO: They ought to have  
2 a realistic chance. If they have a realistic chance  
3 and they wash out, that's life.

4                   CHAIRMAN REYNOLDS: That's right.

5                   COMMISSIONER GAZIANO: But if they don't  
6 have a realistic chance, they have been fooled, they  
7 have been told that they really do have a --

8                   CHAIRMAN REYNOLDS: Right.

9                   COMMISSIONER GAZIANO: -- and then, they  
10 wash out, that's tragedy. Or tragic, anyway. That's  
11 what we're talking about here.

12                  VICE CHAIR THERNSTROM: Yes. I just, you  
13 know, you're talking about students that -- I mean, I  
14 don't have any problem with --

15                  COMMISSIONER GAZIANO: Can we have a vote?

16                  VICE CHAIR THERNSTROM: -- law students.  
17 You're talking about kids who are 18 years old. I  
18 just -- I don't like the message.

19                  CHAIRMAN REYNOLDS: But you don't mind the  
20 likely consequences?

21                  VICE CHAIR THERNSTROM: I think the  
22 muddling through that we now do, I am of course -- I  
23 am long -- I have long been opposed to racial and  
24 ethnic preferences in institutions of higher

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1 education. But I would rather do the muddling through  
2 than this.

3 COMMISSIONER HERIOT: Mr. Chairman, I just  
4 want to say something. You know, imagine the student  
5 that has told all his friends and all of his  
6 relatives, I want to be a doctor, I'm going off to  
7 such and such a school, because I want to be a doctor.  
8 That's the dream there. And it's not that they wanted  
9 to go to that particular school. They are thrilled to  
10 get into that school.

11 But had they been told they had a better  
12 shot at being a doctor, or being an engineer, or being  
13 a scientist, if they had gone to a different school,  
14 they would have gone to that different school. You  
15 know, it's a disservice to students.

16 VICE CHAIR THERNSTROM: Well, actually,  
17 you know, you don't know that they would have gone to  
18 a different school.

19 CHAIRMAN REYNOLDS: But they would have --

20 COMMISSIONER HERIOT: There's 300 million  
21 people in the country. They --

22 CHAIRMAN REYNOLDS: Vice Chair Thernstrom  
23 is right. An individual student could decide to --  
24 fully weigh the risk and decide to go into that  
25 program anyway.

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1 COMMISSIONER GAZIANO: Yes, some might.  
2 But the recommendation we are discussing, and  
3 hopefully voting on real soon, is whether they should  
4 be given the information to allow --

5 CHAIRMAN REYNOLDS: Thanks for reminding  
6 me.

7 COMMISSIONER GAZIANO: -- them to make  
8 that decision for themselves.

9 CHAIRMAN REYNOLDS: All those in favor of  
10 the motion please say aye.

11 (Chorus of ayes.)

12 COMMISSIONER YAKI: I objection.

13 VICE CHAIR THERNSTROM: Which one are we  
14 doing now?

15 CHAIRMAN REYNOLDS: Number 4.

16 VICE CHAIR THERNSTROM: Four? I am  
17 opposed.

18 CHAIRMAN REYNOLDS: Okay.

19 STAFF DIRECTOR DANNENFELSER: And  
20 Commissioner Melendez I think opposed.

21 CHAIRMAN REYNOLDS: Yes, he opposes the  
22 motion.

23 STAFF DIRECTOR DANNENFELSER: Okay.

24 COMMISSIONER KIRSANOW: I support it.

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1 CHAIRMAN REYNOLDS: Okay. The motion  
2 passes.

3 Next up. I move that the following  
4 recommendation be adopted. K through 12 schools  
5 should recruit qualified math and science teachers  
6 using, if necessary, pay adjustments and incentives.  
7 Is there a second?

8 COMMISSIONER GAZIANO: Second.

9 CHAIRMAN REYNOLDS: Discussion?  
10 Commissioner Yaki, you get to go again. You get to go  
11 first again.

12 COMMISSIONER YAKI: No, no. I'll wait.  
13 I'll pass.

14 CHAIRMAN REYNOLDS: All right. All right.  
15 Vice Chair Thernstrom?

16 VICE CHAIR THERNSTROM: Look, they already  
17 try to do that using, if necessary, pay adjustments  
18 and incentives. Well, I mean, you know, not going to  
19 happen, but whatever.

20 (Laughter.)

21 CHAIRMAN REYNOLDS: There are some  
22 districts who do this.

23 VICE CHAIR THERNSTROM: Specifically with  
24 math and science?

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1 CHAIRMAN REYNOLDS: I am sure that  
2 somewhere in the country someone has tried it.

3 VICE CHAIR THERNSTROM: Well, it is really  
4 opposed by the unions.

5 CHAIRMAN REYNOLDS: That is true. It will  
6 be difficult.

7 VICE CHAIR THERNSTROM: I don't have an  
8 objection to that.

9 CHAIRMAN REYNOLDS: All those in favor  
10 please say aye.

11 COMMISSIONER YAKI: Hold on.

12 CHAIRMAN REYNOLDS: I'm sorry. I'm so  
13 accustomed to you being first. Commissioner Yaki?

14 COMMISSIONER YAKI: What I was going to  
15 say, very briefly, was I'm okay with this one.

16 CHAIRMAN REYNOLDS: All those in favor  
17 please say aye.

18 (Chorus of ayes.)

19 Commissioner Melendez?

20 (No response.)

21 COMMISSIONER KIRSANOW: I heard a door  
22 close.

23 COMMISSIONER TAYLOR: I did, too.

24 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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1 VICE CHAIR THERNSTROM: No, I'm going  
2 along with it. I said I would.

3 CHAIRMAN REYNOLDS: Okay. Let the record  
4 reflect that Commissioner Melendez did not vote. The  
5 motion passes unanimously.

6 And I have to run, so, Vice Chair  
7 Thernstrom, I pass the gavel to you.

8 VICE CHAIR THERNSTROM: All right. Do you  
9 really trust me with the rest of the meeting?

10 COMMISSIONER GAZIANO: I don't want to  
11 reach rankings or discussion of our rankings without  
12 the chair. Do we want to try to go through the SACs?

13 COMMISSIONER YAKI: Move to adjourn.

14 CHAIRMAN REYNOLDS: How do you feel?

15 COMMISSIONER GAZIANO: I'm happy to do  
16 them.

17 CHAIRMAN REYNOLDS: How do you feel?

18 VICE CHAIR THERNSTROM: SACs?

19 COMMISSIONER GAZIANO: Yes, SACs.

20 CHAIRMAN REYNOLDS: We'll hold on.

21 COMMISSIONER GAZIANO: But I don't want to  
22 do the potential --

23 CHAIRMAN REYNOLDS: Hold on. There is  
24 something simmering over on this side.

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1 COMMISSIONER YAKI: I was going to move to  
2 adjourn because quorum may be an issue.

3 CHAIRMAN REYNOLDS: Well, no, I would  
4 prefer that quorum go, as opposed to --

5 COMMISSIONER YAKI: Okay.

6 CHAIRMAN REYNOLDS: -- a natural death.

7 COMMISSIONER YAKI: Quorum may be an  
8 issue.

9 CHAIRMAN REYNOLDS: Oh, I understand.

10 VICE CHAIR THERNSTROM: I'm letting the  
11 rest of you decide. I'm willing to stay here. I mean  
12 -- oh, God, I'm so thrilled to hold this in my hand.  
13 First time you have allowed me to do so in so long.

14 (Laughter.)

15 STAFF DIRECTOR DANNENFELSER: All right.  
16 Florida SAC.

17 VICE CHAIR THERNSTROM: Look, what do  
18 people want to do? They want to adjourn? They want  
19 to -- does somebody want to make a motion to simply  
20 adjourn? Do you want to go through this agenda? I'm  
21 willing to go with the group.

22 COMMISSIONER TAYLOR: What is next on our  
23 revised agenda? Oh, yes, 2011 enforcement report.

24 VICE CHAIR THERNSTROM: Want to discuss  
25 the items? We've got a list here.

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1 COMMISSIONER GAZIANO: Do you have the  
2 script for the approval of the Florida SAC? Could you  
3 borrow the script?

4 COMMISSIONER YAKI: There's a script for  
5 the approval?

6 COMMISSIONER GAZIANO: I think so.

7 VICE CHAIR THERNSTROM: But first is  
8 consideration of FY2011 enforcement --

9 COMMISSIONER GAZIANO: We amended -- I  
10 think we amended -- did we not amend the agenda?

11 COMMISSIONER YAKI: I move to adjourn.

12 COMMISSIONER TAYLOR: We did, but that's  
13 what's next.

14 COMMISSIONER GAZIANO: Oh, is that what's  
15 next? Oh, okay.

16 COMMISSIONER KIRSANOW: I second  
17 Commissioner Yaki's motion.

18 VICE CHAIR THERNSTROM: Pardon me?

19 COMMISSIONER KIRSANOW: I second  
20 Commissioner Yaki's motion.

21 VICE CHAIR THERNSTROM: I'm abstaining.  
22 I'm letting the rest of the group decide this. I'll  
23 call the question. All in favor?

24 COMMISSIONER YAKI: Aye.

25 COMMISSIONER KIRSANOW: Aye.

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1 COMMISSIONER MELENDEZ: Aye.

2 (Laughter.)

3 VICE CHAIR THERNSTROM: All opposed to  
4 adjourning, the question on the table is adjourning.

5 COMMISSIONER GAZIANO: I move we amend the  
6 agenda again to put the SACs ahead of --

7 VICE CHAIR THERNSTROM: I think that there  
8 is a vote on the table. We need to vote on that.

9 COMMISSIONER GAZIANO: Okay. My friend --  
10 I want to amend the motion to strike everything and  
11 to --

12 VICE CHAIR THERNSTROM: You can't amend a  
13 motion to --

14 COMMISSIONER YAKI: We're in the middle of  
15 a vote.

16 VICE CHAIR THERNSTROM: We're in the  
17 middle of the vote. Just vote against the motion to  
18 adjourn.

19 COMMISSIONER GAZIANO: I vote against the  
20 motion to adjourn.

21 VICE CHAIR THERNSTROM: How many people  
22 vote against the motion to adjourn, so we stay and  
23 discuss this?

24 COMMISSIONER TAYLOR: I want to stay.

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1                   STAFF DIRECTOR DANNENFELSER: You're the  
2 deciding vote.

3                   VICE CHAIR THERNSTROM: I'm the deciding  
4 vote?

5                   STAFF DIRECTOR DANNENFELSER: Yes.

6                   VICE CHAIR THERNSTROM: All right. I  
7 think we should just stay and discuss this, then.

8                   COMMISSIONER GAZIANO: Now I move to amend  
9 the agenda to take up the SAC rechartering of the  
10 State of Florida and the State of Texas.

11                   VICE CHAIR THERNSTROM: Why are we doing  
12 the most boring and inconsequential --

13                   COMMISSIONER HERIOT: That's the one that  
14 Congress tells us that we have to do.

15                   COMMISSIONER GAZIANO: That's our clear  
16 statutory duty. We have the rankings, which we should  
17 study, and I think there is two topics that just for  
18 the record may be able to be married in some  
19 interesting ways. But without the full Commission  
20 present --

21                   COMMISSIONER YAKI: Are we for that  
22 version of marriage? I didn't know.

23                   COMMISSIONER GAZIANO: I'm for all  
24 versions of marriage, except those that are bad.

25                   (Laughter.)

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1 VICE CHAIR THERNSTROM: Okay.

2 COMMISSIONER GAZIANO: But I move to take  
3 up the Florida and Texas SAC rechartering. Is there a  
4 second?

5 COMMISSIONER HERIOT: Second.

6 VICE CHAIR THERNSTROM: All in favor? Any  
7 discussion?

8 COMMISSIONER YAKI: I oppose.

9 VICE CHAIR THERNSTROM: Well, we haven't  
10 had a vote yet. Is there any discussion?

11 COMMISSIONER YAKI: Yes, I oppose.

12 VICE CHAIR THERNSTROM: Oh, that's your  
13 discussion.

14 COMMISSIONER YAKI: That's my discussion.

15 VICE CHAIR THERNSTROM: All right. I'm  
16 calling the question. How many in favor?

17 (Chorus of ayes.)

18 How many -- Yaki is opposed. Who else is  
19 opposed?

20 COMMISSIONER YAKI: Opposed.

21 COMMISSIONER MELENDEZ: Oppose. Melendez.

22 VICE CHAIR THERNSTROM: Abstain.

23 STAFF DIRECTOR DANNENFELSER: Okay. So  
24 four-two-one, right?

25 VICE CHAIR THERNSTROM: Yes, okay.

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1                   STAFF DIRECTOR DANNENFELSER:    Okay.    So  
2                   Florida SAC, right?

3                   **III.   STATE ADVISORY COMMITTEE ISSUES**

4                   VICE CHAIR THERNSTROM:       Florida SAC.  
5                   Okay.    On June 25, 2010, the Staff Director shared  
6                   potential -- oh, no, this is not it, is it?    No.  
7                   Sorry, wrong part of the script.

8                   The meeting binder distributed by the  
9                   Staff Director on July 8, 2010, contained a  
10                  recommended list of candidates for the Florida State  
11                  Advisory Committee.    Could I have a motion that the  
12                  Commission recharter the Florida State Advisory  
13                  Committee?

14                  Under this motion, the Commission appoints  
15                  the following individuals to that Committee based on  
16                  the recommendations of the Staff Director:    Elena M.  
17                  Flom, Judith Ann Albertelli, Clint Cline, Gilbert  
18                  Colon, Charles Fred Hearn, Jay Robert McClure, Susan  
19                  Perers, Elizabeth M. Rodriguez, Frank S. Shaw, III,  
20                  Robert Siedlecki, M. Lourdes Villanueva, Allen B.  
21                  Williams.

22                  Pursuant to this motion, the Commission  
23                  reappoints Elena Flom as chair of this rechartered  
24                  Florida Advisory Committee.    These members will serve  
25                  as uncompensated government employees.    Under this

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1 motion, the Commission authorizes the Staff Director  
2 to execute the appropriate paperwork for the  
3 appointment.

4 COMMISSIONER GAZIANO: So moved, if you --  
5 if that wasn't a motion.

6 VICE CHAIR THERNSTROM: That was a motion.

7 COMMISSIONER TAYLOR: Second.

8 VICE CHAIR THERNSTROM: I need a second.

9 COMMISSIONER GAZIANO: Second. Either --

10 VICE CHAIR THERNSTROM: Okay. Any  
11 changes? Discussions? Questions? No discussion  
12 about the Florida SAC Committee?

13 (No response.)

14 Okay. Calling the question. How many in  
15 favor?

16 (Chorus of ayes.)

17 How many opposed?

18 COMMISSIONER YAKI: I oppose.

19 COMMISSIONER MELENDEZ: One abstain.  
20 Melendez.

21 STAFF DIRECTOR DANNENFELSER: For the  
22 record, what was the count of the ayes?

23 VICE CHAIR THERNSTROM: What were the  
24 ayes?

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1                   STAFF DIRECTOR DANNENFELSER: Was everyone  
2 else in favor?

3                   VICE CHAIR THERNSTROM: Well, I'm  
4 abstaining. I haven't looked through this carefully  
5 enough.

6                   STAFF DIRECTOR DANNENFELSER: So it would  
7 be four to two to -- oh, wait a minute. Melendez  
8 abstained?

9                   VICE CHAIR THERNSTROM: Yes.

10                  COMMISSIONER MELENDEZ: Yes.

11                  STAFF DIRECTOR DANNENFELSER: So four in  
12 favor, one against, two abstentions.

13                  VICE CHAIR THERNSTROM: Passes.

14                  Okay. You want to go on to the Texas one  
15 as well. Could I have a motion that the Commission  
16 recharter the Texas State Advisory Committee? Under  
17 this motion, the Commission appoints the following  
18 individuals to that Committee, based on  
19 recommendations of the Staff Director: Charles  
20 Burchett, Bill Calhoun, Frances A. Carnot, Jason A.  
21 Caselias, Russell B. Casey, Cecilia R. Castillo,  
22 Norval D. Glenn, Glenn O. Lewis, Merrill Matthews,  
23 Cathy M. McConn, Harriet Miller, Martha Orozco,  
24 Charles -- with apologies from me if I don't get

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1 people's names right -- Charles Stolfus, Barbara J.  
2 Walters. Hold on here.

3 Pursuant to this motion, the Commission  
4 appoints Merrill Matthews as chair of this rechartered  
5 Texas Advisory Committee. These members will serve as  
6 uncompensated government employees. Under this  
7 motion, the Commission authorizes the Staff Director  
8 to execute the appropriate paperwork for the  
9 appointment.

10 So I need a "so move."

11 COMMISSIONER GAZIANO: Do you so move?

12 VICE CHAIR THERNSTROM: Yes, I so move.

13 COMMISSIONER GAZIANO: I second.

14 VICE CHAIR THERNSTROM: You second. Any  
15 changes? Discussion? Questions?

16 (No response.)

17 All in favor please indicate aye.

18 (Chorus of ayes.)

19 Anybody opposed?

20 COMMISSIONER YAKI: I object.

21 COMMISSIONER MELENDEZ: Melendez.

22 Opposed.

23 VICE CHAIR THERNSTROM: And I abstain. So  
24 the tally?

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1                   STAFF DIRECTOR DANNENFELSER:     Four in  
2 favor, two against, one abstention, right?

3                   VICE CHAIR THERNSTROM:   Okay.  New Jersey  
4 State Advisory Committee.  Is there a motion to  
5 appoint Joan Gary to the New Jersey State Advisory  
6 Committee?

7                   COMMISSIONER YAKI:   I so move.  Do we have  
8 that on the agenda?

9                   COMMISSIONER GAZIANO:  Yes, I didn't know.  
10 I asked the Commissioner -- Commissioner Yaki if the  
11 -- we had a sort of side agreement.  I would ask it to  
12 be postponed, if it is on the agenda.  I didn't see it  
13 on the agenda either.

14                  VICE CHAIR THERNSTROM:  I see it.  I've  
15 got it in front of me.  That's why I'm just reading --

16                  COMMISSIONER YAKI:   It was on the agenda.  
17 I thought that maybe you had done what you told me you  
18 were going to do.

19                  COMMISSIONER GAZIANO:  No.  I thought you  
20 were going to call me.

21                  COMMISSIONER YAKI:  No.  You said you were  
22 going to --

23                                       (Laughter.)

24                  VICE CHAIR THERNSTROM:  I'm going to make  
25 a motion that we postpone this.

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1 COMMISSIONER YAKI: Just put it on the  
2 next regular business meeting.

3 VICE CHAIR THERNSTROM: We're going to put  
4 it on the next regular business meeting.

5 COMMISSIONER YAKI: In-person business  
6 meeting.

7 VICE CHAIR THERNSTROM: In-person business  
8 meeting.

9 **V. APPROVAL OF MARCH 12, APRIL 16,**  
10 **MAY 14, MAY 28, AND JUNE 11 MEETING MINUTES**

11 STAFF DIRECTOR DANNENFELSER: Want to do  
12 minutes?

13 VICE CHAIR THERNSTROM: Yes.

14 COMMISSIONER GAZIANO: I don't think so,  
15 but let's -- now let's be clear after the meeting.

16 VICE CHAIR THERNSTROM: I'm sorry. Tell  
17 me what you're saying.

18 COMMISSIONER GAZIANO: We had a little  
19 side -- we're fine.

20 STAFF DIRECTOR DANNENFELSER: Okay.

21 COMMISSIONER GAZIANO: We're fine.

22 VICE CHAIR THERNSTROM: Are we approving  
23 the minutes of March 12, March 16 -- April 16, May 14,  
24 May 28, and June 11? Does anybody want to make a  
25 motion to --

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1 COMMISSIONER GAZIANO: I would abstain.  
2 If I -- I can make the motion, but I would abstain. I  
3 haven't read those minutes.

4 VICE CHAIR THERNSTROM: Me neither. I  
5 abstain.

6 COMMISSIONER YAKI: Move to adjourn.

7 VICE CHAIR THERNSTROM: Move to adjourn?  
8 You don't want to discuss the enforcement topic?

9 COMMISSIONER GAZIANO: I think we can --  
10 now that we have covered the other business, I don't  
11 mind a brief discussion. Sure. But I just wanted to  
12 make sure we got through other --

13 VICE CHAIR THERNSTROM: The reason for  
14 having a discussion, Commissioner Yaki, is only to get  
15 a little bit of a sense of where people are coming  
16 from on this. And then, we can have a full discussion  
17 at the next in-person business meeting.

18 COMMISSIONER YAKI: I did not have the  
19 opportunity to even vote on these things, so my votes  
20 aren't even reflected in --

21 VICE CHAIR THERNSTROM: Why? Never mind.

22 COMMISSIONER YAKI: Because they are lost  
23 in like 400 other e-mails, and I was trying to figure  
24 out what was going on.

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1 VICE CHAIR THERNSTROM: Okay. So we have  
2 a very brief discussion, just to lay the groundwork  
3 for a full discussion.

4 COMMISSIONER YAKI: Move to limit the  
5 discussion to five minutes, and then we adjourn.

6 VICE CHAIR THERNSTROM: I move to limit  
7 the discussion to five minutes, and then we adjourn,  
8 just to get a sense of the ground upon which we --

9 COMMISSIONER GAZIANO: We are probably all  
10 in agreement on that. Let's go.

11 VICE CHAIR THERNSTROM: Okay. Who has got  
12 anything to say on the -- have you all got in front of  
13 you the list? Okay. The potential enforcement  
14 reports, the number one came in, the Department of  
15 Justice investigation into anti-Asian violence at  
16 South Philadelphia High School. It got 21 points.

17 But one Commissioner voted for this topic  
18 on the understanding that its current scope would be  
19 subject to further refinement. Two, disparities in  
20 school discipline. That got 20 votes. One  
21 Commissioner voted for this topic on the understanding  
22 that the scope would be expanded beyond the  
23 Hispanic --

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1                   COMMISSIONER YAKI: A point of personal  
2 privilege. Does that indicate that I didn't vote,  
3 that not all Commissioners voted on this?

4                   VICE CHAIR THERNSTROM: No, it does not on  
5 this piece of paper.

6                   COMMISSIONER YAKI: Well, I think it  
7 should have.

8                   VICE CHAIR THERNSTROM: Let us make a note  
9 that not all Commissioners voted on this. And this  
10 list, as we have known from past experience, is very  
11 fluid. We have started out with lists in numerical  
12 order, and the order has changed.

13                   Commissioner Gaziano?

14                   COMMISSIONER GAZIANO: I would be very  
15 eager to see all Commissioners votes tallied and  
16 recirculated, so that I know what the -- but as far as  
17 the votes here, I don't know -- I don't -- I think the  
18 first topic of partner justice investigation of the  
19 Asian -- anti-Asian violence at South Philadelphia, we  
20 have had more work on that. But if it was going to be  
21 an enforcement report, I think it should be refined,  
22 although I don't think I was the Commissioner who  
23 voted for it, with that understanding. But I think it  
24 would need a little bit more refinement.

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1 I am not for investigating for an  
2 enforcement report one-off single incident. I am  
3 interested in only investigating matters that there is  
4 a significant enforcement issue on. And it is my  
5 understanding that we did not yet know whether,  
6 although the incident seems rather important, whether  
7 there was a significant enforcement matter about it,  
8 as was clearly the case with the New Black Panther --

9 VICE CHAIR THERNSTROM: As is clearly not  
10 the case with the New Black Panther.

11 COMMISSIONER GAZIANO: But I would also  
12 like to -- so that is one kind of reservation I have  
13 in defining that. But I also -- I think I was at  
14 least one of the Commissioners -- maybe there were  
15 more -- who voted for the second topic with the  
16 understanding that the scope be expanded beyond  
17 Hispanics.

18 Obviously, is this were an enforcement  
19 report, it would need to focus on the Department of  
20 Education's recent initiative to sort of warn or  
21 follow up on disparities in student discipline  
22 generally. But I also think there is the potential  
23 and that we ought to consider the potential to making  
24 one topic where the umbrella is school violence.

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1           And the Justice Department, Department of  
2 Education -- I'm sorry, school violence and  
3 misconduct, because I think that the two may well be  
4 related or at least we should try to see if we can  
5 come up with topics and angles that make them relevant  
6 and related. And I think that one of the issues is is  
7 when, you know, student violence is -- or student  
8 disciplinary problems aren't properly taken care of,  
9 they may lead to violence.

10           So I think there is some potential to  
11 please everyone, at least everyone who has so far  
12 voted, in marrying these two topics. I don't know,  
13 you know, how we can work with staff to try to come up  
14 with a synthesis on that, but I think that I would be  
15 a little happier if we answered a few of those  
16 questions.

17           VICE CHAIR THERNSTROM: I have actually --  
18 this is a topic I have written on in an article called  
19 -- I just lost the title for a minute, but, in any  
20 case, it's an issue I've done quite a bit of work on.  
21 It is a huge topic, Commissioner Gaziano. But when  
22 you are talking about disorder in the schools, as well  
23 as violence, two separate issues -- and there is much  
24 more of the former than the latter -- you are taking

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1 on the world of education, because disorder in the  
2 schools is so pervasive.

3 And I would say, by the way, that the  
4 black anti-Asian violence -- I mean, we know by now it  
5 was -- is not confined to simply that South  
6 Philadelphia high school. It is quite pervasive in  
7 Philadelphia. It exists in San Francisco, and I don't  
8 know where else.

9 COMMISSIONER GAZIANO: What's the federal  
10 enforcement book? That is a little less clear to me  
11 at this point. Is it being appropriately  
12 investigated? Is it not? Our report for the  
13 statutory -- or I don't -- the federal enforcement  
14 report has -- we can have other briefings on other  
15 state issues, but the issue for our annual federal  
16 enforcement report has to be a federal enforcement  
17 angle. So I just think a little bit more work needs  
18 to be done.

19 And I hope maybe others on our staff can  
20 help us think of a way of looking at school violence  
21 generally and the relationship to the Department of  
22 Education's current inquiry into disparities in -- or  
23 apparent disparities, whether they exist or not, and  
24 whether they are explained or not in discipline.

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1                   So I don't know that we can. I'm just  
2 suggesting that as a possibility.

3                   VICE CHAIR THERNSTROM: Commissioner Yaki?

4                   **VIII. ADJOURN**

5                   COMMISSIONER YAKI: I don't think we can,  
6 and let's adjourn.

7                   COMMISSIONER KIRSANOW: Five minutes are  
8 up.

9                   VICE CHAIR THERNSTROM: Let's adjourn.  
10 That's fine. Let me have a motion to adjourn. Can I  
11 have a motion to adjourn?

12                   COMMISSIONER YAKI: No, no, we've already  
13 adopted a motion to adjourn.

14                   VICE CHAIR THERNSTROM: Oh, that's right.  
15 That's right.

16                   (Whereupon, at 12:35 p.m., the proceedings in the  
17 foregoing matter were adjourned.)

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