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U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, SEPTEMBER 8, 2017

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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C., at 10:00 a.m., Catherine E. Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair

DEBO P. ADEGBILE, Commissioner*

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

*Present via telephone

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STAFF PRESENT:

LASHONDRA BRENSON

IVY DAVIS, Director, ERO

BARBARA DE LA VIEZ

PAMELA DUNSTON, Chief, ASCD

LATRICE FOSHEE

ALFREDA GREENE

DAVID MUSSATT, Chief, RPCU

WARREN ORR

MICHELE RAMEY

SARALE SEWELL

BRIAN WALCH

MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

ALEC DUELL

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

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

(10:00 a.m.)

CHAIR LHAMON: Okay. This meeting of the U.S. Commission on Civil Rights comes to order at 10:00 a.m. on September 8, 2017.

The meeting takes place at the Commission's national headquarters located at 1331 Pennsylvania Avenue, Northwest, Washington, D.C.

I am Chair Catherine Lhamon. Commissioners who are present in addition to me are the Vice Chair, Patricia Timmons-Goodson; Commissioner Heriot; Commissioner Kirsanow; Commissioner Kladney; and Commissioner Narasaki. I believe we have on the phone Commissioner Adebile and Commissioner Yaki. Could you confirm that you're on the phone? Commissioner Adebile? Commissioner Yaki?

COMMISSIONER YAKI: Commissioner Yaki. Commissioner Yaki is on the phone.

CHAIR LHAMON: Terrific. Thank you.

We have a quorum of the Commissioners present.

I see the Court Reporter is present. Is the Staff Director present?

STAFF DIRECTOR MORALES: Yes.

CHAIR LHAMON: Thank you. The meeting now

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1 comes to order.

2 **I. APPROVAL OF AGENDA**

3 CHAIR LHAMON: So a motion to approve the
4 agenda for this business meeting?

5 COMMISSIONER NARASAKI: So moved.

6 CHAIR LHAMON: Thank you. Is there a
7 second?

8 VICE CHAIR TIMMONS-GOODSON: Second.

9 CHAIR LHAMON: We will look for
10 amendments. I have a few to start us off. First, I'd
11 like to remove the discussion and vote on Report
12 Public Education Funding Inequality in an Era of
13 Increasing Concentration of Poverty and Resegregation
14 to allow time for edits and further review.

15 I thank the staff for finalizing the
16 report for all of you, including very swift and
17 thorough revisions following our first draft review,
18 and we will place it on the agenda for our next
19 meeting.

20 So, again, I'd like to amend consideration
21 for a statement titled the U.S. Commission on Civil
22 Rights Denounces the Pardon of Former Sheriff Joe
23 Arpaio. Are there any other amendments?

24 COMMISSIONER NARASAKI: Madam Chair, I
25 would also like to add a statement on the agenda about

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1 the DACA entitled "The U.S. Commission on Civil Rights
2 Condemns Ending of Undocumented Youth Program."

3 CHAIR LHAMON: Thank you. Are there any
4 further amendments? Hearing none, let's vote to
5 approve the agenda, as amended. All those in favor,
6 say aye.

7 (Chorus of ayes.)

8 CHAIR LHAMON: Any opposed? Any
9 abstentions? The motion passes unanimously.

10 II. BUSINESS MEETING

11 A. Discussion and Vote on Report: Working 12 for Inclusion: Time for Congress to Enact Federal 13 Legislation to Redress Workplace 14 Discrimination against Lesbian, Gay, 15 Bisexual, and Transgender Americans

16 CHAIR LHAMON: Turning to program planning,
17 first we will discuss and vote on the report titled
18 "Working for Inclusion: Time for Congress to Enact
19 Federal Legislation to Address Workplace
20 Discrimination against Lesbian, Gay, Bisexual, and
21 Transgender Americans."

22 We will proceed with two votes on this
23 report; one for the report text, Chapters 1 through 3,
24 and a separate vote for the findings and
25 recommendations contained in Chapter 4.

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1 Begin with a motion to approve the text of
2 the report, Chapters 1 through 3, as amended in the
3 version circulated by my special assistant on Friday,
4 September 1st, subject to any editorial fixes deemed
5 necessary by staff. Do I have a second?

6 COMMISSIONER NARASAKI: I second.

7 CHAIR LHAMON: Thank you. We will now
8 have a discussion on the motion. I want to start by
9 offering a few comments. This will be the first
10 report from the Commission that is entirely focused on
11 issues impacting the LGBT community. I recognize
12 former Commissioner Roberta Achtenberg, at whose
13 impetus the Commission took up the important issue of
14 employment discrimination facing LGBT persons.

15 The report text that we vote on today
16 presents a compelling and thorough picture of
17 pervasive discrimination faced by LGBT individuals in
18 the workplace, not only in the private sector but also
19 sometimes sanctioned in federal, state, and local
20 government levels. It presents arguments on all sides
21 of the debate regarding a need for federal legislation
22 to enact antidiscrimination workplace protections with
23 the LGBT community. I thank our staff, particularly
24 Marik Xavier-Brier and Maureen Rudolph for presenting
25 us with this expert analysis for our consideration

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1 today.

2 Of particular note, Marik joined the
3 Commission very recently, less than a year ago and
4 after the briefing on this topic, and has impressively
5 culled voluminous testimony and research material in a
6 very short period to draft and recraft this report for
7 our consideration, and I am deeply grateful.

8 Any other points for discussion on this
9 report? Commissioner Narasaki?

10 COMMISSIONER NARASAKI: Thank you, Madam
11 Chair. I also would like to acknowledge the great
12 work of staff. I'm very proud of the report, and it
13 is particularly timely given the debate that is
14 currently going on in this country about these rights.

15 And so I hope that the staff feel very proud of their
16 work.

17 COMMISSIONER YAKI: Madam Chair?

18 CHAIR LHAMON: Commissioner Yaki?

19 COMMISSIONER YAKI: Thank you very much.
20 I also want to commend the staff and also the work of
21 my special assistant, Alec Duell, at the time that he
22 was working for Commissioner Achtenberg. This is
23 amazing to me when I think about how far this country
24 has come, and this Commission has come, in the first
25 60 years; that this is the, actually, first real

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1 report on the impact of discrimination and civil
2 rights laws on the LGBTQ community.

3 And it's especially proud for me being
4 from San Francisco, one of the birthplaces of LGBTQ
5 protections that this Commission has taken up this
6 report. And it is due in no small part to the hard
7 work and the leadership of people in the community,
8 especially former Commissioner Achtenberg.

9 So I just wanted to add my thanks to the
10 staff and to Alec and to Roberta for her leadership on
11 this, and commend this report, and we look forward to
12 its passage.

13 CHAIR LHAMON: Thank you. Any further
14 discussion? Hearing none, I will call the question
15 and take a roll call vote.

16 Commissioner Adegbile, are you present?
17 No?

18 COMMISSIONER ADEGBILE: Present.

19 CHAIR LHAMON: Oh. And how do you vote?
20 Terrific.

21 COMMISSIONER ADEGBILE: Aye.

22 CHAIR LHAMON: Commissioner Heriot?

23 COMMISSIONER HERIOT: I am going to
24 abstain on this one.

25 CHAIR LHAMON: Commissioner Kirsanow?

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1 COMMISSIONER KIRSANOW: Abstain.

2 CHAIR LHAMON: Commissioner Kladney?

3 COMMISSIONER KLADNEY: Yes.

4 CHAIR LHAMON: Commissioner Narasaki?

5 COMMISSIONER NARASAKI: Yes.

6 CHAIR LHAMON: Commissioner Yaki?

7 COMMISSIONER YAKI: Aye.

8 CHAIR LHAMON: Vice Chair Timmons-Goodson?

9 VICE CHAIR TIMMONS-GOODSON: Yes.

10 CHAIR LHAMON: And I vote yes. The motion
11 passes; two Commissioners abstained, all others were
12 in favor.

13 Now we will discuss and vote on Chapter 4
14 of the report, the findings and recommendations. I
15 move these as a package, unless any Commissioner
16 wishes us to vote them individually. I begin with a
17 motion to approve the text of Chapter 4, the findings
18 and recommendations, as amended in the version
19 circulated by my special assistant on Friday,
20 September 1, subject to any editorial fixes deemed
21 necessary by staff. Is there a second?

22 COMMISSIONER KLADNEY: I'll second.

23 CHAIR LHAMON: Thank you. Any discussion?

24 Okay. I'll call the question and take a roll call
25 vote.

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1 Commissioner Adegbile, how do you vote?

2 COMMISSIONER ADEGBILE: Aye.

3 CHAIR LHAMON: Commissioner Heriot?

4 COMMISSIONER HERIOT: I'm a no on this
5 one.

6 CHAIR LHAMON: Commissioner Kirsanow?

7 COMMISSIONER KIRSANOW: No.

8 CHAIR LHAMON: Commissioner Kladney?

9 COMMISSIONER KLADNEY: Yes.

10 CHAIR LHAMON: Commissioner Narasaki?

11 COMMISSIONER NARASAKI: Yes.

12 CHAIR LHAMON: Commissioner Yaki?

13 COMMISSIONER YAKI: Aye.

14 CHAIR LHAMON: Vice Chair Timmons-Goodson?

15 VICE CHAIR TIMMONS-GOODSON: Yes.

16 CHAIR LHAMON: And I vote yes. The motion
17 passes; two Commissioners opposed, all others were in
18 favor.

19 We will now consider the amended business
20 items, beginning with a statement on the pardon of Joe
21 Arpaio. I will first read the statement, so we know
22 what it is that we are voting on, and I note that my
23 special assistant circulated some changes very shortly
24 before the meeting.

25 The statement is titled The U.S.

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1 Commission on Civil Rights Denounces the Pardon of
2 Former Sheriff Joe Arpaio. The U.S. Commission on
3 Civil Rights denounces President Donald J. Trump's
4 pardon of former sheriff Joe Arpaio. The pardon of
5 Mr. Arpaio, who repeatedly violated the civil rights
6 of Latino residents of Maricopa County, Arizona, and
7 also violated a federal court order to desist from
8 violating those civil rights, flouts the rule of law.

9 Moreover, because these violations
10 occurred while Mr. Arpaio was acting as a law
11 enforcement officer, the pardon erodes the promise of
12 fair administration of justice. Pardoning a person
13 convicted of deliberately and flagrantly defying a
14 federal court order over a sustained period of time
15 undermines the rule of law in this country by
16 signaling that supporters and allies of the President
17 who violate civil rights and ignore orders from
18 federal courts will not be held accountable as our
19 system of justice requires.

20 The many court decisions filed over the
21 course of nearly a decade of litigation against Mr.
22 Arpaio and the Maricopa County Sheriff's Office
23 establish a disturbing course of intentional
24 violations of civil rights.

25 In 2007, litigants filed a class action

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1 lawsuit on behalf of all Latino persons who had or
2 would be detained in Maricopa County, Arizona,
3 claiming that Mr. Arpaio and his office had illegally
4 and without authorization engaged in discriminatory
5 behavior against Latino individuals in Maricopa
6 County.

7 Despite a federal court order -- excuse
8 me. Despite a federal court ordering Mr. Arpaio and
9 his office to stop their unlawful behavior, court
10 records show that he made repeated public statements
11 that he understood he was violating the court's order,
12 including that he would "never give in to control by
13 the Federal Government."

14 Even if the Supreme Court struck down an
15 Arizona immigration law, he declared, "I am still
16 going to do what I'm doing."

17 The underlying reasons for Mr. Arpaio's
18 criminal conviction are alarming. Latino residents of
19 Maricopa County sought justice for the violation of
20 their civil rights only to be confronted with Mr.
21 Arpaio's public and blatant contempt for the law after
22 a court vindicated their claims.

23 The pardon functionally endorses racial
24 profiling and abuses of authority, contrary to the
25 work of hundreds of thousands of hard-working law

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1 enforcement officers around the country who faithfully
2 uphold the law.

3 Chair Catherine E. Lhamon said, "The
4 President's pardon of Sheriff Arpaio damages the
5 fabric of our nation by condoning, from law
6 enforcement, deliberate, flagrant violation of a court
7 order specifically to protect fundamental
8 constitutional principles.

9 The federal courts fulfilled their obligation to
10 protect and uphold civil rights, and it is anathema to
11 the fair administration of justice for the President
12 to dismiss that judgment."

13 I now move to approve the statement to
14 open the floor for discussion. Do I have a second?

15 COMMISSIONER KLADNEY: Second.

16 CHAIR LHAMON: Thank you. Any discussion
17 on the statement?

18 COMMISSIONER YAKI: Madam Chair?

19 CHAIR LHAMON: Commissioner Yaki?

20 COMMISSIONER YAKI: Thank you very much,
21 and I want to thank the leadership of you and others
22 on this Commission for putting this statement
23 together. I don't really have much to add to this
24 other than to say that to me this is the moral
25 equivalent of pardoning someone like Bull Connor in

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1 terms of the impact this person has had on a minority
2 community in their jurisdiction.

3 It is unconscionable, and I think that if
4 I could I would condemn the President even more so
5 than what we have done today because this is nothing
6 less than, to me, a conspiracy to cover up civil
7 rights violations and aid and abet civil rights
8 violations in this country.

9 Thank you.

10 CHAIR LHAMON: Thank you. Vice Chair?

11 VICE CHAIR TIMMONS-GOODSON: Madam Chair,
12 I intend to vote for this statement. I think there is
13 a compelling reason for us to issue it. We have laid
14 out very clearly and succinctly why we're issuing the
15 statement.

16 One thing that we don't mention, and that
17 weighs heavily on me, to support this is that I have
18 not seen one single word from the sheriff indicating
19 that he is in the least bit remorseful. And normally
20 when pardons are issued that is a consideration, and
21 let us get the statement out.

22 CHAIR LHAMON: Thank you. Commissioner
23 Narasaki?

24 COMMISSIONER NARASAKI: Yes. I'm
25 particularly struck by the fact that we have two

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1 judges who have reviewed his actions, Judge Snow, who
2 declared that the facts of the case were particularly
3 egregious and extraordinary; that the sheriff's office
4 constitutional violations are broad in scope, involve
5 its highest-ranking command staff, and flow into its
6 management of internal affairs investigations; that
7 they had engaged in multiple acts of misconduct,
8 dishonesty, and bad faith; that they had demonstrated
9 a persistent disregard for the orders of the court, as
10 well as an intention to violate the laws and policies.

11 And then the criminal judge who looked at
12 the case for criminal contempt also held that the
13 evidence showed a flagrant disregard for Judge Snow's
14 order, despite the knowledge of the order; that the
15 sheriff had broadcast to the world and his
16 subordinates that he would, and that they should,
17 continue what he had always been doing. And I feel
18 very strongly about issuing this statement.

19 CHAIR LHAMON: Thank you. Any further
20 discussion? Okay. Call the question for a roll call
21 vote.

22 Commissioner Adegbile, how do you vote?

23 COMMISSIONER ADEGBILE: Aye.

24 CHAIR LHAMON: Commissioner Heriot?

25 COMMISSIONER HERIOT: I, too, am very,

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1 very troubled by the sheriff's behavior. I also agree
2 with the Vice Chair that remorse is ordinarily a
3 consideration. But I'm going to have to abstain on
4 this one. I feel that like if I had had an earlier
5 opportunity to negotiate how this is worded, I might
6 have been able to come up with something, but I'm
7 going to have to abstain.

8 CHAIR LHAMON: Okay. Commissioner
9 Kirsanow?

10 COMMISSIONER KIRSANOW: I don't agree with
11 the pardon, but I abstain.

12 CHAIR LHAMON: Commissioner Kladney?

13 COMMISSIONER KLADNEY: Yes.

14 CHAIR LHAMON: Commissioner Narasaki?

15 COMMISSIONER NARASAKI: Yes.

16 CHAIR LHAMON: Commissioner Yaki?

17 COMMISSIONER YAKI: Aye.

18 CHAIR LHAMON: Vice Chair Timmons-Goodson?

19 VICE CHAIR TIMMONS-GOODSON: Yes.

20 CHAIR LHAMON: And I vote yes. The motion
21 passes; two Commissioners abstained, all others were
22 in favor.

23 We will now consider the statement on the
24 DACA program. I'll turn it over to Commissioner
25 Narasaki to read the statement, so we know what we are

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1 voting on.

2 COMMISSIONER NARASAKI: Thank you, Madam
3 Chair. The statement reads -- the title is the U.S.
4 Commission on Civil Rights Denounces -- oh, sorry.
5 Need to move on.

6 The U.S. Commission on Civil Rights
7 Condemns the Ending of Undocumented Youth Program.
8 The U.S. Commission on Civil Rights disapproves of
9 President Donald J. Trump's decision to end the
10 Deferred Action for Childhood Arrivals, otherwise
11 known as DACA, program.

12 The decision is a step backward for our
13 country, which draws its strength from the valuable
14 social and economic contributions from all members of
15 society. The DACA program provided temporary relief
16 from deportation and work permits to many young
17 undocumented immigrants known as Dreamers who were
18 brought to the U.S. as children and are considered
19 Americans in every way except on paper.

20 Over 800,000 Dreamers have benefited from
21 the DACA program, which has allowed them to attend
22 college, start businesses, and serve and protect our
23 country. Repealing the program would have a
24 significant economic impact on the nation.
25 Approximately 700,000 jobs would be removed from the

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1 economy, as well as hundreds of billions of dollars in
2 lost tax revenue and economic growth over the next
3 decade.

4 If the administration pursues deportation
5 of these immigrants, the costs could run into billions
6 of dollars. The decision is a tremendous blow to the
7 personal dreams and ambitions that Dreamers have been
8 working toward since the DACA program began in 2012.
9 They now face a reality where they are at risk of
10 being exploited in the workplace and deported and
11 prevented from fully contributing to and supporting
12 their families, their community, and their country.

13 For decades, the Commission and its State
14 Advisory Committees have investigated and reported on
15 the often-negative civil rights implications of our
16 nation's immigration laws and policies. In addition,
17 ending the program after participants have relied now,
18 to their serious detriment, on its promises, raises
19 serious access to justice concerns.

20 Although the administration has stated,
21 absent a law enforcement interest, the Department of
22 Homeland Security will generally not take actions to
23 remove active DACA recipients, DACA recipients may
24 still have their status revoked and, after their
25 status expires, can be subject to deportation.

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1 Undocumented people were encouraged to
2 come forward under DACA and are now vulnerable because
3 they took action to protect themselves and their
4 families.

5 The Commission strongly urges Congress to
6 pass legislation to protect DACA beneficiaries and to
7 work on a compassionate and comprehensive
8 modernization of our immigration system.

9 Chair Catherine E. Lhamon stated,
10 "Branding America's social fabric to target children
11 solely on the basis of their parents' decision offends
12 the American values embodied in the Dreamers and their
13 principal contributions to our nation."

14 CHAIR LHAMON: Thank you. We will now
15 discuss the statement. Is there a motion, so we can
16 open the floor for discussion?

17 VICE CHAIR TIMMONS-GOODSON: So moved.

18 CHAIR LHAMON: Is there a second?

19 COMMISSIONER NARASAKI: I'll second.

20 CHAIR LHAMON: Any discussion on the
21 statement?

22 COMMISSIONER KIRSANOW: Yes, Madam Chair.

23 I'm going to vote against this one as opposed to
24 abstaining and have several reason for doing so. I
25 take seriously the previous statement with respect to

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1 Sheriff Arpaio and the mention made of his failure to
2 abide by the rule of law, and that there are a number
3 of people who faithfully execute the law, and that his
4 misconduct related to that argues against the issuance
5 of a pardon.

6 In the same vein, this DACA order was
7 unconstitutional, and beyond that, violated -- even if
8 it was arguably constitutional, it violated the
9 Administrative Procedure Act. So if we are going to
10 be consistent, and we should be, about our respect for
11 the rule of law, then with respect to this particular
12 DACA statement we should oppose the implementation of
13 DACA.

14 Here DACA is not being repealed. There is
15 a six-month lead time, so that Congress should weigh
16 in on it. That's what should have been done in the
17 first instance. But beyond that, there are factual
18 errors contained in the statement, even if everything
19 else didn't pertain.

20 And that is, we say here that this affects
21 800,000 Dreamers, and that somehow this would cause
22 the loss of 700,000 jobs. And only two things could
23 be plausible here on its face. One is that Dreamers
24 have a labor force participation rate that is 88
25 percent, whereas the typical labor force participation

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1 rate for most Americans is 62 percent. I doubt that
2 it's 88 percent.

3 The only other way of looking at it is the
4 800,000 Dreamers created another 250,000 jobs to
5 support them. If that were the case, if that were
6 extrapolated to the rest of the United States'
7 population, that would cause a creation of 25 to 40
8 million new jobs just to support the people who are
9 currently in the workforce. That's implausible. But
10 then again, I have only been practicing labor and
11 employment law for 38 years, and probably don't have
12 the insights that the boys and girls who wrote this on
13 behalf of some advocacy organizations who came up with
14 these studies did.

15 In addition to that, there is flaws with
16 respect to the data related to the cost of this. I am
17 very pleased that we are concerned about the fiscal
18 consequences of the repeal or potential appeal of
19 DACA, or maybe even deportation. But some of the
20 absurdities relate to -- and there's copious reporting
21 on this, but more importantly, we have government
22 stats that show this. But we want to -- advocacy
23 organizations to look at their stats with respect to
24 the fiscal impact of this.

25 If you look at government stats, it is

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1 true that those with advanced degrees probably are a
2 net contributor; \$420,000 to the economy over and
3 above what they take out of the economy over their
4 lifetimes. However, for those who don't have advanced
5 degrees, among illegal immigrants, the net drain is
6 \$173,000 over their lifetime.

7 And if you put those both together, we are
8 looking at \$63,000 per illegal immigrant net drain on
9 the economy. That doesn't influence my opinion.

10 But since we are talking about the fiscal
11 impact of this, I should at least hope that we would
12 be accurate about that.

13 So, at bare minimum, for those three
14 reasons, but principally because DACA was flawed from
15 its inception because it was unconstitutional, and if
16 you argue that it's not unconstitutional, despite the
17 5th Circuit ruling on DAPA, then it at least did not -
18 - does not satisfy the prerequisites of Section 5 of
19 the Administrative Procedure Act.

20 CHAIR LHAMON: Commissioner Narasaki?

21 COMMISSIONER NARASAKI: Yes. A couple of
22 things. I dispute the comparison of this to Sheriff
23 Arpaio, who not only swore to uphold the Constitution
24 but who knowingly was violating several judicial court
25 orders.

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1 I find that particularly heinous, given
2 the important role that federal courts have played in
3 protecting the civil rights of minorities. And in
4 this case, that was the role they are trying to play
5 today. And in pardoning him, that undermined that
6 very important principle of what the court's role is.

7 I also dispute that it is -- that what
8 President Obama's executive order did was
9 unconstitutional. I agree, actually, that Congress
10 needs to act swiftly. The reality is that the
11 President had to act because Congress has been unable
12 for well over a decade now to address a long-broken
13 immigration system that does not serve our economic
14 needs or our humanitarian values as a nation.

15 So I think that it's very important in
16 this case where you have young people who were asked
17 by the Federal Government to come forward in order to
18 have more transparency to protect our security as a
19 nation, to then turn on them and say, "We were just
20 kidding, and we are now going to use that against you"
21 I think hurts the nation's credibility in the long
22 term.

23 When the Federal Government ever tries to
24 make promises again to fix problems, people are not
25 going to trust the Federal Government, and I think

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1 that undermines our democracy very strongly. So
2 that's why I think it's very important to act now, and
3 this is not just a position held by advocates; it is a
4 position held by many members of Congress on both
5 sides of the aisle, many corporations, and many other
6 moral leaders.

7 COMMISSIONER KIRSANOW: Madam Chair, I do
8 think that if someone who is in a position of
9 authority and is sworn to uphold the rule of law
10 knowingly violates it, should be held to account, and
11 it is particularly egregious if they do.

12 On at least 12 separate occasions,
13 President Obama, the chief law enforcement officer in
14 the country, knowingly stated that he didn't have the
15 authority to do what DACA did. He said it on numerous
16 occasions. It's recorded. It's on television. It's
17 on -- in transcripts, in a number of occasions over
18 the years, yet he went ahead and did it.

19 It is not the function of the President of
20 the United States to usurp the role of Congress,
21 simply because Congress doesn't take action on
22 something. That's not the way our system works.
23 Nonetheless, he took action on it.

24 Moreover, it is unlawful, Judge Hanen held
25 it unlawful, not with respect to DACA but its

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1 correlative, DAPA -- and it's abundantly clear. I
2 mean, this is almost inarguable, and I know we'll be
3 arguing it because of the political imperatives
4 related to it. But this was a categorical amnesty.
5 It was not selective prosecutorial discretion.

6 But, moreover, it did not -- it conferred
7 positive benefits. It wasn't simply a declaration of
8 amnesty or an amnesty related to certain individuals
9 that might, arguably, constitute prosecutorial
10 discretion.

11 What we have here is a conferring of
12 positive benefits, not just declining to prosecute but
13 going above and beyond by giving positive benefits and
14 actual action that is only the province of Congress to
15 do.

16 So with respect to the rule of law, if
17 we're going to be saying that Judge Arpaio, and I
18 think appropriately so, violated or knowingly violated
19 the rule of law, DACA was a knowing violation of the
20 rule of law, DACA is not being summarily repealed; it
21 is being given to Congress appropriately to tackle
22 this issue sometime in the next six months.

23 CHAIR LHAMON: Commissioner Narasaki?

24 COMMISSIONER NARASAKI: We could debate
25 this for a long time. And as you correctly point out,

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1 the Judge ruled on DACA, which had to do with the
2 parents, which is one step removed from this case and
3 I think distinguishable. I don't think there is any
4 point in us -- because we're not -- clearly, not going
5 to convince each other on that point.

6 I would note that President Obama was
7 actually referring to his inability to comprehensively
8 address immigration reform for all undocumented
9 immigrants through executive action, something that
10 advocates in fact were trying to press him to do, but
11 he did not. But he did spend a lot of time, and a lot
12 of attorneys spent a lot of time, looking at the
13 question of whether it fell within the prosecutorial
14 discretion to be able to reallocate resources.

15 It was not an amnesty. They were not
16 given permanent path to citizenship. They are only
17 allowed to stay, and they had to keep renewing
18 themselves and proving themselves worthy. There are
19 many limitations on it. So I think to call it a
20 blanket amnesty is a little bit of an overstatement.

21 Thank you.

22 CHAIR LHAMON: I want to add to that that
23 the current President of the United States has made
24 clear his own view that the President does have
25 executive authority to act, Tweeting on September 5th,

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1 "Congress now has six months to legalize DACA,
2 something the Obama administration was unable to do.
3 If they can't, I will revisit this issue."

4 We will wait to see if there is any
5 further discussion. Hearing none, I'll call the
6 question and take a roll call vote.

7 Commissioner Adegbile, how do you vote?

8 COMMISSIONER ADEGBILE: Aye.

9 CHAIR LHAMON: Commissioner Heriot?

10 COMMISSIONER HERIOT: No.

11 CHAIR LHAMON: Commissioner Kirsanow?

12 COMMISSIONER KIRSANOW: No.

13 CHAIR LHAMON: Commissioner Kladney?

14 COMMISSIONER KLADNEY: Yes.

15 CHAIR LHAMON: Commissioner Narasaki?

16 COMMISSIONER NARASAKI: Yes.

17 CHAIR LHAMON: Commissioner Yaki?

18 COMMISSIONER YAKI: Aye.

19 CHAIR LHAMON: Vice Chair Timmons-Goodson?

20 VICE CHAIR TIMMONS-GOODSON: Yes.

21 CHAIR LHAMON: And I vote yes. The motion
22 passes; two Commissioners opposed, all other
23 Commissioners were in favor.

24 **C. State Advisory Committees**

25 CHAIR LHAMON: Next we will turn to our

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1 State Advisory Committees. Today's agenda gives us
2 three State Advisory Committee appointment slates to
3 consider. Before we begin discussion, I remind all
4 that objections to these slates have already been
5 shared with all of the Commissioners.

6 To the extent anyone would like to discuss
7 continuing objections, I ask that you not mention
8 specific candidates by name. Each of these
9 individuals has agreed to volunteer time and energy in
10 the pursuit of the protection of civil rights.

11 With that, I will begin with the New
12 Jersey Advisory Committee. I move that the Commission
13 appoint the following individual to the New Jersey
14 Advisory Committee based on the recommendation of the
15 Staff Director: Lawrence Lustberg, Sahara Aziz,
16 Marcia Brown, Lora Fong, Brian Gaffney, Manuel Garcia,
17 Erica Jednyak, Donita Judge, Pearl Park, Joan Rivitz,
18 Saulo Santiago, Daniel Schuberth, Amol Sinha, John
19 Stanley, Jr., William Stephney, Kristian Stout, Frank
20 Tinari, and Carole Tonks.

21 With this motion, the Commission will also
22 appoint Lawrence Lustberg as chair of the New Jersey
23 State Advisory Committee. All of these members will
24 serve as uncompensated government employees. If the
25 motion passes, the Commission will authorize the Staff

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1 Director to execute the appropriate paperwork for the
2 appointments. Do I have a second for the motion?

3 COMMISSIONER KLADNEY: Second.

4 CHAIR LHAMON: Thank you. Any discussion?
5 Commissioner Narasaki?

6 COMMISSIONER NARASAKI: I just would like
7 to acknowledge the staff for doing such a great job
8 for all of the slates and recruiting younger people
9 from the communities that they serve, so that they
10 could participate with their perspective. So I just
11 want to acknowledge it because it was something that I
12 had been asking for, and I appreciate it.

13 CHAIR LHAMON: Thank you. Any further
14 discussion? Okay. I'll call the question and take a
15 roll call vote.

16 Commissioner Adegbile, how do you vote?

17 COMMISSIONER ADEGBILE: Aye.

18 CHAIR LHAMON: Commissioner Heriot?

19 COMMISSIONER HERIOT: I vote yes.

20 CHAIR LHAMON: Commissioner Kirsanow?

21 COMMISSIONER KIRSANOW: No.

22 CHAIR LHAMON: Commissioner Kladney?

23 COMMISSIONER KLADNEY: Yes.

24 CHAIR LHAMON: Commissioner Narasaki?

25 COMMISSIONER NARASAKI: Yes.

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1 CHAIR LHAMON: Commissioner Yaki?

2 COMMISSIONER YAKI: Aye.

3 CHAIR LHAMON: Vice Chair Timmons-Goodson?

4 VICE CHAIR TIMMONS-GOODSON: Yes.

5 CHAIR LHAMON: And I vote yes. The motion
6 passes; one Commissioner opposed, all others were in
7 favor.

8 I now move that the Commission appoints
9 the following individuals to the North Dakota Advisory
10 Committee based on the recommendations of the Staff
11 Director: Eric Asa, Cesario Alvarez, Scott Beaulier,
12 David Chapman, Yee Han Chu, Kirsten Dauphinais,
13 Crystal Dueker, Stephanie Johnson, Cheryl Kary, Lisa
14 Lone Fight, Michelle Rydz, and Sheryl Stradinger.

15 With this motion, the Commission will also
16 appoint Eric Asa as chair of the North Dakota Advisory
17 Committee. All of these members will serve as
18 uncompensated government employees. If the motion
19 passes, the Commission will authorize the Staff
20 Director to execute the appropriate paperwork for the
21 appointments. Do I have a second for this motion?

22 COMMISSIONER KLADNEY: Second.

23 CHAIR LHAMON: Thank you. Any discussion?

24 Hearing none, I will call the question and take a
25 roll call vote.

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1 Commissioner Adegbile, how do you vote?

2 COMMISSIONER ADEGBILE: Aye.

3 CHAIR LHAMON: Commissioner Kirsanow?

4 COMMISSIONER KIRSANOW: Yes.

5 CHAIR LHAMON: Commissioner Heriot?

6 COMMISSIONER HERIOT: Yes.

7 CHAIR LHAMON: Commissioner Kladney?

8 COMMISSIONER KLADNEY: Yes.

9 CHAIR LHAMON: Commissioner Narasaki?

10 COMMISSIONER NARASAKI: Yes.

11 CHAIR LHAMON: Commissioner Yaki?

12 COMMISSIONER YAKI: Aye.

13 CHAIR LHAMON: Vice Chair Timmons-Goodson?

14 VICE CHAIR TIMMONS-GOODSON: Yes.

15 CHAIR LHAMON: And I vote yes. The motion
16 passes unanimously.

17 I now move that the Commission appoint the
18 following individuals to the Rhode Island Advisory
19 Committee based on the recommendations of the Staff
20 Director: Alero Akporiaye, Donald Anderson, Farid
21 Ansari, Charles Berkley, Jr., Marcela Betancur,
22 Langdon Clough, Ernest Grego, Margaux Morisseau,
23 Adelita Orefice, Gary Sasse, Elena Shih, Jennifer
24 Steinfeld, Andrew Tugan, and William Wray.

25 With this motion, the Commission will also

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1 appoint Jennifer Steinfeld as chair of the Rhode
2 Island Advisory Committee. All of these members will
3 serve as uncompensated government employees. If the
4 motion passes, the Commission will authorize the Staff
5 Director to execute the appropriate paperwork for the
6 appointments. Do I have a second for this motion?

7 COMMISSIONER KLADNEY: Second.

8 CHAIR LHAMON: Thank you. Any discussion?
9 Hearing none, I will call the question and take a
10 roll call vote.

11 Commissioner Adegbile, how do you vote?

12 COMMISSIONER ADEGBILE: Aye.

13 CHAIR LHAMON: Commissioner Kirsanow?

14 COMMISSIONER KIRSANOW: No.

15 CHAIR LHAMON: Commissioner Heriot?

16 COMMISSIONER HERIOT: Yes.

17 CHAIR LHAMON: Commissioner Kladney?

18 COMMISSIONER KLADNEY: Yes.

19 CHAIR LHAMON: Commissioner Narasaki?

20 COMMISSIONER NARASAKI: Yes.

21 CHAIR LHAMON: Commissioner Yaki?

22 COMMISSIONER YAKI: Aye.

23 CHAIR LHAMON: Vice Chair Timmons-Goodson?

24 VICE CHAIR TIMMONS-GOODSON: Yes.

25 CHAIR LHAMON: And I vote yes. The motion

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1 passes; one Commissioner opposed, all others were in
2 favor.

3 I note that after passing these three
4 slates we now have all 51 of our advisory committees
5 appointed and doing their part to be the Commission's
6 eyes and ears around the country. I am so very
7 grateful to our regional program staff for their hard
8 work to identify persons to nominate for these
9 advisory committees as well as to support the advisory
10 committee's work itself.

11 The state advisory committees provide
12 crucial civil rights functions, identifying concerns
13 in their states and recommending reforms, and I am
14 thrilled that we now have the full slate of these
15 committees appointed. I have had the pleasure to
16 witness the work of our regional staff as they have
17 moved us to this place, and I am deeply, deeply
18 grateful.

19 I turn it over to the Commission's
20 supervisory chief of our regional programs unit, David
21 Mussatt, for a few words on that topic.

22 MR. MUSSATT: Thank you, Madam Chair,
23 Madam Vice Chair, and Commissioners. I want to thank
24 you for providing me a few moments to recognize staff
25 who worked to not only appoint but to fulfill the

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1 mission of these 51 advisory committees that are now
2 appointed.

3 Our designated federal officers David
4 Barreras, Ivy Dies, Barbara De La Viez, Ana Victoria
5 Fortes, Jeff Hinton, and Melissa Wojnarowski.

6 We also have four support staff who have
7 been instrumental in working together as a team to
8 form our committees across the nation, Carolyn Allen,
9 Evelyn Bohor, Corrine Sanders, and Angelica Trevino.

10 We have been further aided by the
11 technological improvements provided to us by Dan and
12 Michelle, so I want to thank them for the help.

13 It is important to recognize the work of
14 our amazing interns who did an exceptional job
15 searching for and identifying potential candidates,
16 particularly Sarah Dincin, Delaney Earley, and Breanna
17 Davidson.

18 In addition, without the work of Alison
19 Somin, Sheryl Cozart, and Maureen Rudolph, who drafted
20 a more efficient and effective administrative
21 instruction at the direction of Staff Director
22 Morales, it is unlikely these committees would all be
23 appointed.

24 Through this new process, we have been
25 able to constructively work through the inevitable

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1 challenges that arise. We also have been able to work
2 closely with all special assistants who have been
3 incredibly helpful in identifying potential
4 candidates. I personally want to thank them for the
5 help and professional support.

6 This has really been a team effort, and it
7 has been rewarding and beneficial to work with all of
8 the special assistants as part of that team.

9 Finally, thank you to the Commissioners,
10 who, after all, do the actual appointing of the
11 members to our committees; and to Staff Director
12 Morales who sets the clear goal of getting all of the
13 committees appointed.

14 I realize it is impossible to fully
15 satisfy all Commissioners with every committee, but
16 please know any deficiencies were not out of lack of
17 effort by the staff.

18 Thank you again for providing me with this
19 opportunity.

20 CHAIR LHAMON: Thank you, David.

21 Next we will hear from Staff Director
22 Mauro Morales for the monthly Staff Director's report.

23 **D. Management and Operations**

24 STAFF DIRECTOR MORALES: Thank you, Madam
25 Chair. As always, I won't go into the details of the

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1 report. We have an additional section we need to add
2 to the report, from General Counsel's office I
3 believe. If we haven't already received it, I will
4 make sure to circulate it to everybody. It has just
5 been a very busy month, and we had a short turnaround
6 from the last business meeting.

7 In addition, Madam Chair, you had asked me
8 to come back with Commissioners -- with a plan on the
9 status of OCRE's ability to accomplish their mission
10 in the future. But because of staffing challenges
11 over the last two weeks, and a personal matter that
12 developed for me, I have not been able to address that
13 plan, create that plan for you, but I will do so
14 forthwith, and I apologize. But I will address that
15 this week and get back to you in an email or -- well,
16 in an email to all Commissioners on that plan -- what
17 my recommendation should be for that plan.

18 In addition, I will also be coming back to
19 Commissioners with additional information on the
20 planning for the 60th anniversary event. We have been
21 working on it. We have been working on a few details.

22 We have a few more left to iron out, and I will also
23 be coming back to Commissioners in an email on the
24 status of what that looks like at this point.

25 And, lastly, I circulated at the last

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1 moment yesterday a statement on the anniversary of the
2 60th of the signing of the 1957 Civil Rights Act,
3 which created the 60th -- I'm sorry, which created the
4 U.S. Commission on Civil Rights. And so I know it was
5 out of order, but I thought it might be worthwhile to
6 consider.

7 And unless there is any strong opposition
8 to it, I was thinking that perhaps I could issue it,
9 if not today then perhaps on Monday. But I will defer
10 to the collective wisdom of the Commissioners as to
11 the timing on that. And with that, I have nothing
12 more to add.

13 Thank you.

14 CHAIR LHAMON: Thank you. Appreciate you
15 letting us know where you are in responding to my
16 request. Do you have a timeline for when you will get
17 back to us?

18 STAFF DIRECTOR MORALES: Within the next
19 week.

20 CHAIR LHAMON: Okay. Thank you.

21 We can now recess until 11:00 a.m. when we
22 will begin our historical presentation, to which I
23 very much look forward.

24 Thanks.

25 (Whereupon, the above-entitled matter went off the

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1 record at 10:39 a.m. and resumed at 11:01 a.m.)

2 CHAIR LHAMON: Okay. I'm bringing us back
3 into session. We will turn now to our historical
4 presentation scheduled for today, President
5 Eisenhower's Civil Rights Legacy and the Creation of
6 the U.S. Commission on Civil Rights.

7 **E. Presentations on President Eisenhower's**
8 **Civil Rights Legacy and the Creation**
9 **of the U.S. Commission on Civil Rights**

10 CHAIR LHAMON: On September 9, 1957, one
11 day short of exactly 60 years ago, President Dwight D.
12 Eisenhower signed into law the Civil Rights Act of
13 1957 establishing the U.S. Commission on Civil Rights.

14 This legislation was the first major civil
15 rights legislation since the Reconstruction Era,
16 creating both this Commission and the United States
17 Department of Justice Civil Rights Division.

18 The law was a testament to the power of
19 bipartisan compromise and survived the longest
20 filibuster in Senate history. Though the legislation
21 was hotly contested, it reflects an origin point for
22 today's national consensus as expressed in federal
23 legislation such as the Civil Rights Act of 1964, the
24 Voting Rights Act of 1965, the Americans with
25 Disabilities Act, and other critical legislation, that

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1 there are certain civil rights that must be protected,
2 and that the Federal Government has a powerful and
3 necessary role in ensuring those protections.

4 We are so grateful to have with us today
5 two individuals who will bring a wealth of knowledge
6 about President Eisenhower and his work on civil
7 rights. Our first speaker, Dawn Hammatt, is with us
8 here in person. Ms. Hammatt was named Director of the
9 Dwight D. Eisenhower Library, Museum, and Boyhood Home
10 in May 2017. Ms. Hammatt has served in museums across
11 the southeast for her entire career.

12 In South Carolina, she served as managing
13 director for a local history museum, and on the
14 governing board for the South Carolina Archival
15 Association. In New Orleans, she was the Director of
16 Curatorial Services for the Louisiana State Museum, a
17 statewide museum system that maintains nine museums.
18 She has also been active in the southeastern museums
19 conference and currently serves as the Vice President.

20 Ms. Hammatt holds a Bachelor of Arts
21 degree from Louisiana State University, a master of
22 liberal studies from the University of Oklahoma, and
23 is currently enrolled in a professional certificate
24 program in nonprofit administration at the University
25 of Montana.

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1 Our second speaker, Dr. David Nichols,
2 joins us by phone. Dr. Nichols is a presidential
3 historian and a leading authority on the presidency of
4 Dwight D. Eisenhower. Dr. Nichols' book on President
5 Eisenhower and civil rights titled "A Matter of
6 Justice: Eisenhower and the Beginning of the Civil
7 Rights Revolution," was published in 2007.

8 His publisher, Simon & Schuster, describes
9 it as the definitive book on Eisenhower's civil rights
10 policies.

11 He also published a book on the Suez Canal
12 Crisis entitled "Eisenhower 1956: The President's
13 Year of Crisis -- Suez and the Brink of War." And his
14 newest book, "Eisenhower and McCarthy: Dwight
15 Eisenhower's Secret Campaign against Joseph McCarthy,"
16 documents for the first time how Eisenhower destroyed
17 Senator McCarthy's political influence.

18 A native of Kansas, Dr. Nichols has his
19 Ph.D. in history from the College of William & Mary.
20 Dr. Nichols is the former academic dean at
21 Southwestern College in Winfield, Kansas.

22 Ms. Hammatt, we will hear from you first.

23 Thank you.

24 MS. HAMMATT: Good morning, Commissioners,
25 special guests, ladies and gentlemen. What a delight

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1 it is to be here with you on this beautiful September
2 day.

3 We are here to observe and commemorate the
4 creation of the United States Commission on Civil
5 Rights, which was established under the Eisenhower
6 presidency. As the Director of the Eisenhower
7 Presidential Library, Museum, and Boyhood Home in
8 Abilene, Kansas, I was invited to share a few thoughts
9 with you on Eisenhower and his formative years. I am
10 rather new to this position, having only begun in
11 early June, and I still find myself learning about
12 this great man. So I am truly honored to be here
13 today representing the National Archives and Records
14 Administration and the Eisenhower Presidential
15 Library.

16 I do firmly believe that his childhood in
17 Kansas and early career in the Army supported his
18 belief in equality for all. Please let me share just
19 a few of the highlights of what I have learned.

20 The Eisenhower family belonged to a
21 religious group known as the River Brethren. This
22 religious movement was primarily composed of German
23 immigrants in Pennsylvania who were generally farmers,
24 hard workers, and pacifists. The Eisenhower family
25 moved from Pennsylvania to the Kansas plains in 1878

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1 when Ike's father, David, was merely 15 years old.

2 Ike's mother, Ida Stover, was of German-
3 Swiss Protestant heritage and was born in Virginia.
4 Due to her mother's death, Ida lived with other family
5 members. They believed that girls should study the
6 Bible rather than go to school. When she was not
7 allowed to enroll in high school, she ran away. She
8 successfully graduated high school at the age of 19
9 and moved to Kansas with two of her brothers.

10 She was even a teacher for two years prior
11 to enrolling in Lane University in Kansas, where she
12 met and married fellow student, David, in 1885. David
13 received money and land from his father when he and
14 Ida married, but David was not interested in farming.
15 He sold the land and bought a dry goods store in
16 partnership with a man named Milton Good.

17 The store was located about 25 miles south
18 of Abilene in Hope, Kansas. The store prospered until
19 a drought and grasshopper invasion destroyed crops, as
20 well as the fortunes of the local farmers. Many of
21 these farmers shopped in David's store on credit, and
22 they could no longer pay their bill.

23 The result, of course, was the closing of
24 the store, and David moved his small family to
25 Denison, Texas, in 1889 to work for the railroad.

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1 There he worked as an engine wiper on the Missouri,
2 Kansas, and Texas Railroad.

3 The family's third son, David Dwight
4 Eisenhower, now known to the world as Ike, was born in
5 Denison in 1890. He is the only one of the seven
6 Eisenhower boys to be born outside of Kansas, but
7 their extended family back in Kansas encouraged the
8 young family to return home. So David moved his
9 family to Abilene in 1892.

10 No matter where they lived, the family
11 participated in religious services by holding Bible
12 classes and hymn-singing at the home. We know that
13 Bible teachings were very important to the family, and
14 this followed Ike throughout his life.

15 The family's second home in Abilene where
16 they moved in 1898 is the cornerstone of our campus.
17 It is the only presidential home owned by the National
18 Archives. In this very modest structure, Ike lived
19 with his immediate family as well as well as his
20 grandfather, Jacob.

21 The family Bible is on exhibition in the
22 home. It is prominently displayed, and the wear is
23 quite visible.

24 David worked at a local creamery as a
25 refrigeration engineer. He received his certification

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1 through a correspondence course, which is like the
2 19th century version of an online school. He earned
3 \$10 per week and averaged 80 hours working each week.

4 Ida was in charge of all of the day-to-day activities
5 of the household. She taught all her sons to cook and
6 clean and take care of themselves.

7 I am sure you can imagine how much help
8 she needed as she ran a family of six boys. The boys
9 tended the animals and helped with planting and
10 harvesting and putting up the produce from the
11 family's half-acre garden, and that was their main
12 source of food.

13 Those familiar with the Eisenhower family
14 know that they lived on the wrong side of the tracks.

15 They were not considered affluent at all, and Ike
16 recalled that the boys were not aware that they were
17 poor and wrote that the boys lived a wonderful life of
18 hunting, fishing, helping with family chores, and
19 playing sports.

20 But I can imagine, as any parent can, that
21 Ida was protective of her boys. She shielded them
22 from any snide remarks about their hand-me-downs or
23 their lack. She made sure they understood to respect
24 other people, respect a hard day's work, and an honest
25 living. She taught them fairness, humility, and

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1 earnestness.

2 Abilene during this time was not
3 particularly diverse. But one story has been handed
4 down that Ike, while playing football for Abilene High
5 School, was initially the only team member willing to
6 play directly against an African American student.

7 In a handwritten note now located in the
8 Army Chief of Staff Files, Ike wrote, "I played center
9 that day for the only time in my life. I shook hands
10 with the chap before and after the game. The rest of
11 the team was a bit ashamed."

12 Ike's willingness to step up and do the
13 right thing by shaking hands and then agreeing to play
14 opposite the African American student demonstrated his
15 philosophy of equality and his early leadership
16 skills. Without his words, his forthright actions
17 shamed fellow teammates into joining him in the game.

18 There are no records that discuss his
19 reasons, but I believe that Ida taught him to be a
20 good man, to be kind to others, to do what is right
21 for your team, and to do what is right for each other.

22 I can imagine that the Bible stories
23 shared as a family, and hymns sung together, played a
24 role in how Ike decided to treat this young man.

25 Ike's other childhood interactions with

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1 non-whites were also on the athletic field. He joined
2 the local Abilene town baseball team and played
3 against the Cherokee Indians, which was a noted team
4 out of Nebraska, and against an all-African American
5 team.

6 Eisenhower also fought a boxing match
7 against a local African American fighter named Dirk
8 Tyler one summer during a break from West Point.
9 These early experiences, along with his personal
10 responsibility and respect for others instilled by his
11 parents, served as the foundation for his actions in
12 adulthood.

13 Ike spent his military career in a
14 segregated Army, but he still managed to work with
15 people of color in a variety of different assignments.

16 He was briefly the Executive Officer of the 24th
17 Infantry Regiment at Fort Benning in 1926. This is
18 one of the historic Buffalo Soldier units.

19 But even this modest assignment was more
20 than most officers ever experienced. Eisenhower also
21 had the advantage over his fellow officers, first with
22 service in Panama in the early 1920s, and later in the
23 Philippines from 1934 to 1939, where he worked closely
24 with his hosts to build an army and an air force.

25 His social activities in the Philippines

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1 included bridge games with the Commonwealth's
2 president, Manuel Quezon. Eisenhower, in other words,
3 was no stranger to diverse cultures and people. But
4 later some historians claimed that Ike never
5 socialized with non-whites -- a statement which is
6 easily refuted by evidence in our archival holdings.

7 The Army's official segregation policies -
8 - despite the Army's official segregation policies,
9 Eisenhower developed a close friendship with his Army
10 valet, Sergeant John Moaney. Moaney joined Ike's
11 staff in 1942 and remained with the general until
12 Ike's death in 1969.

13 Moaney's wife, Delores, also worked for
14 the Eisenhower's. The Moaneys were so close to Ike,
15 Mamie, their son John, and his children, that they
16 considered the Moaneys family. They still do. As a
17 matter of fact, just last night, one of the family
18 members told me two stories about the Moaneys, how
19 Delores already remembered that Ike would take his hat
20 off for her, and that was something that was very
21 impressive to her, that it meant a lot to her that Ike
22 took his hat off to her every time he saw her.

23 And she reminded me that John Moaney was
24 the only African American poll-bearer at a
25 presidential funeral, ever.

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1 Eisenhower, as David Nichols will tell
2 you, finished the integration of the military ordered
3 by President Truman. In his final speech before the
4 presidential election in 1952, Ike issued a 10-point
5 statement summarizing the pledges he made during the
6 campaign and promised to fulfill them, including
7 serving all of the people, regardless of color, and
8 promoting equality of opportunity.

9 When he entered office in 1953, Ike was
10 determined to do everything he could in his role as
11 President to remove social barriers for all Americans.

12 Here is what he did, either by executive order,
13 executive decision, or enabling legislation. He
14 desegregated Washington, D.C., and its schools. He
15 banned discrimination in firms receiving federal
16 contracts. As I noted a moment ago, he completed the
17 desegregation of the armed forces, and this included
18 base housing and dependent schools.

19 He appointed desegregationist federal
20 judges. He signed the first two civil rights bills
21 since Reconstruction. These bills also served as the
22 basis for the 1965 voting rights bill, according to
23 Bill Moyers of the Johnson administration.

24 Those bills also established the
25 Department of Justice Civil Rights Division and

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1 formalized his ad hoc President's Committee on Civil
2 Rights with the U.S. Commission on Civil Rights.

3 He sent federal troops to Little Rock to
4 enforce a federal court order to integrate schools.
5 He appointed the first African American to executive
6 position in the White House, E. Frederic Morrow. He
7 had the first African American secretary, Lois
8 Lippman, and welcomed the first African American to a
9 cabinet meeting, J. Ernest Wilkins, as the Secretary -
10 - Assistant Secretary of Labor.

11 I would note that any President prior to
12 Ike could have done any number of these things by
13 executive order or by personal decision, and they
14 didn't. Yet Eisenhower didn't get the credit he
15 deserved until records released by the Eisenhower
16 Presidential Library enabled scholars like David
17 Nichols to put the whole story together.

18 Prior to the books of Mr. Nichols and
19 other historians correcting the record, an image of
20 Ike as a do-nothing President on civil rights
21 prevailed among scholars. I think part of the problem
22 can be traced to Ike's words, or lack thereof, and
23 this particular part of the problem can be traced to
24 his core beliefs in both leadership and the role of
25 the chief executive.

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1 Ike's creed is succinctly expressed in his
2 motto. We all know Harry Truman's, "The buck stops
3 here," right? But do we remember Ike's? It's not
4 well-known, but here it is. "Suaviter in modo,
5 fortiter in re," or in English, "Gentle in manner,
6 strong in deed." I think this is reminiscent of his
7 boyhood hero, Theodore Roosevelt's "Speak softly and
8 carry a big stick."

9 The idea is that your actions are more
10 important than your words. Ike didn't have to say
11 that he was honest or humble or that he believed in
12 equality. His actions spoke volumes. And while Ike's
13 actions on civil rights were strong and enforced by
14 the big stick of the Federal Government and the 101st
15 Airborne Division, his rhetoric was quiet yet firm.

16 He did not believe it was his place to
17 either praise or condemn the decision of the Supreme
18 Court. Rather, he firmly believed in the
19 constitutional separation of powers and that the
20 executive branch, through its actions, must uphold the
21 law.

22 In summary, Ike learned from a young age
23 that right was right and wrong was wrong, and that a
24 higher power created all men equal. He carried these
25 beliefs to the athletic field, to the Army, and to the

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1 Oval Office where he advanced the cause of civil
2 rights to the furthest in more than a generation.

3 All of this laid the groundwork for the
4 legislative achievements of his successors and
5 commenced the important work of the U.S. Commission on
6 Civil Rights.

7 CHAIR LHAMON: Thanks very much.
8 Appreciate it.

9 Next we will turn to Dr. Nichols.

10 DR. NICHOLS: Yes. I'm on?

11 CHAIR LHAMON: Terrific. We can hear you.

12 DR. NICHOLS: Okay. Great. Well, good
13 morning. Dawn, hi, Dawn. Thank you for a great job.

14 Commission members and staff, I regret
15 that I cannot be with you there today, but I am
16 honored to be with you. And as an American citizen, I
17 take great pride in the work of the Commission on
18 Civil Rights. Your existence is indeed a major legacy
19 of President Eisenhower's civil rights program.

20 For decades, Dwight Eisenhower's record
21 was ignored and deprecated by my profession. In 1962,
22 a survey of historians rated Ike 28th out of 34
23 Presidents. Recently, a survey of 193 historians
24 ranked Eisenhower 5th, only behind Lincoln,
25 Washington, and the two Roosevelts.

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1 However, a decade after the publication of
2 my book on civil rights, numerous scholars and
3 journalists still resist the documented facts. So
4 Dawn has given you an overview of some of those, and I
5 will be -- sound a little bit repetitious but dig
6 those holes just a little deeper, if possible. And
7 then we will come back to look at the legislation
8 particularly, and how it was passed to create the
9 Civil Rights Commission.

10 But just to reemphasize what Eisenhower
11 did in civil rights, as Dawn said, he desegregated the
12 District of Columbia, something President Truman had
13 not done. When Eisenhower took office, an African
14 American visitor to downtown Washington could not buy
15 a meal, a ticket to a movie, rent a room in a first-
16 class hotel, or with rare exceptions, enjoy
17 unsegregated parks, playgrounds, swimming pools, or
18 bowling alleys.

19 Eisenhower personally lobbied motion
20 picture moguls to desegregate the movie theaters. The
21 Eisenhower's desegregated White House events and
22 refused to attend segregated activities in the city.
23 By the end of 1954, in Washington, D.C., segregation
24 was largely a thing of the past.

25 Again, as Dawn mentioned, Eisenhower

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1 completed the desegregation of the armed forces, and
2 completed it as it were. President Truman issued an
3 executive order in 1948, but in 1953 most American
4 combat units were still segregated.

5 By October 30, 1954, not a single
6 segregated combat unit remained. During his first two
7 years in office, Eisenhower also desegregated the
8 Veterans Administration, military bases in the south,
9 federally controlled schools for military dependents,
10 and other military agencies.

11 And, again, as Dawn noted, Eisenhower
12 appointed the first African American executive in the
13 White House, E. Frederic Morrow, and he created
14 committees on government contracts, both to eliminate
15 discrimination in contracting and discrimination in
16 hiring.

17 And, of course, our point here today is
18 that Eisenhower proposed, fought for, and signed the
19 civil rights -- the first -- the Civil Rights Act of
20 1957, the first such legislation in 82 years. In
21 fairness, President Truman had proposed legislation,
22 but it was unsuccessful due to the stranglehold
23 Democratic southern segregationists had on the Senate.

24 Eisenhower's proposal included provision
25 for the creation of a bipartisan Civil Rights

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1 Commission. And that's you, folks.

2 We'll come back to that legislation, but
3 let me just finish this -- the main points about
4 Eisenhower's record. In 1953, Eisenhower nominated
5 Earl Warren, the governor of California, as Chief
6 Justice of the United States. The President announced
7 that nomination on September 30, 1953, and with
8 Congress out of town made a recess appointment.

9 Warren assumed his seat immediately and
10 began to work on the Brown school desegregation case.
11 Warren was not confirmed by the Senate until March 1,
12 1954. But on May 17, 1954, Warren announced the
13 unanimous Supreme Court decision declaring segregated
14 schools unconstitutional and striking down the court's
15 1896 separate but equal ruling.

16 A year later, Brown 2, the Eisenhower
17 administration's Justice Department proposed that
18 school districts be required to submit desegregation
19 plans within 90 days, and Eisenhower personally edited
20 that brief. However, the Supreme Court chose a less
21 stringent requirement order desegregation "with all
22 deliberate speed."

23 Thurgood Marshall said that meant slow.

24 When the Brown ruling was announced,
25 Eisenhower immediately ordered the Commissioners of

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1 the District of Columbia to develop a desegregation
2 plan for the District's schools. He later appointed
3 four additional justices to the Supreme Court, all
4 strong supporters of Brown and desegregation. And
5 Dawn I think noted also that Eisenhower refused to
6 appoint known segregationists to the lower federal
7 courts. His appointees to the 4th and 5th Circuits in
8 the south were courageous defenders of Brown and
9 desegregation.

10 But Ike's most dramatic civil rights
11 action was his decision to send the 101st Airborne
12 into Little Rock, Arkansas, on September 24, 1957.

13 Mob violence erupted when nine African
14 American students attempted to desegregate central
15 high school in response to a court order by an
16 Eisenhower appointee, Ronald Davies.

17 Governor Orval Faubus deployed the
18 Arkansas National Guard to prevent desegregation.
19 Faubus later broke an agreement with Eisenhower to
20 order the guard to protect the students desegregating
21 the school, instead withdrawing the troops and
22 allowing new violence against the students. Then
23 Eisenhower acted, sending in the 101st.

24 Now, get back to what you are really
25 waiting for is the 1957 Civil Rights Act. It is a

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1 complicated task to explain the workings of Congress
2 in a few minutes, but I will try.

3 On January 10, 1957, in his State of the
4 Union Address, President Eisenhower proclaimed his
5 goal of "moving closer to the goal of fair and equal
6 treatment of citizens without regard to race or
7 color." His four-part proposal included: one, a
8 bipartisan civil rights commission; a civil rights
9 division in the Justice Department; authority for the
10 attorney general to seek federal court orders in civil
11 rights cases; and, finally, protection of voting
12 rights.

13 That third part, the new authority for the
14 attorney general, became the great bone of contention
15 in getting the legislation passed. Eisenhower's
16 challenge was to break the alliance of segregationist
17 southern Democrats with conservative Republicans that
18 had blocked Truman's legislation; and he did it,
19 creating a powerful civil rights coalition.

20 Democratic majority leader Lyndon Johnson
21 cooperated in some regards, agreeing to conduct
22 around-the-clock sessions to exhaust the filibustering
23 southerners and make sure that the legislation got to
24 the floor, bypassing Senator James Eastland's
25 Judiciary Committee where civil rights legislation had

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1 always gone to die.

2 The segregationists charged that part 3,
3 giving the authority to the attorney general to seek
4 court orders for desegregation, would: one, empower
5 the President to use troops in the south to enforce
6 the segregation; and, two, the prosecution of
7 defendants resisting court orders before a judge,
8 thereby depriving the defendants of a trial by jury.

9 These civil suits, they argued, would
10 become criminal prosecutions if the defendant failed
11 to comply. The segregationists, with Lyndon Johnson's
12 support, relentlessly pushed these two strategies to
13 take the teeth out of the legislation.

14 Ike's civil rights legislation easily
15 passed the House of Representatives. Johnson was
16 complicit in devising a sneaky strategy to bypass the
17 Judiciary Committee. Vice President Nixon read the
18 House bill title in a low voice. A southern Senator
19 raised a point of order, but Nixon overruled him.

20 Then, the entire Senate voted to support
21 the Vice President's ruling, taking the bill out of
22 the Judiciary Committee and making it official
23 legislation for the entire Senate. That set the stage
24 for the big fight in July and August 1957.

25 On July 2, 1957, the prestigious Senator

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1 Richard Russell of Georgia rose on the Senate floor to
2 attack part 3 of the civil rights bill. That section,
3 Russell proclaimed, would "destroy the system of
4 separation of the races in the southern states at the
5 point of a bayonet."

6 Russell doubted that the "full
7 implications of the bill" have ever been fully
8 explained to President Eisenhower. Russell's attack
9 put Ike under siege. He worried to the attorney
10 general that the language of the bill might "scare
11 people to death." Eisenhower met with Russell and
12 reluctantly agreed to consider amendments to the bill.

13 On July 16th, the Senators voted 71 to 18
14 to make the civil rights bill the pending business of
15 the Senate. Eisenhower publicly supported all four
16 parts of the bill, but heeded a compromise. At a news
17 conference, Eisenhower proclaimed that he could not
18 "imagine any set of circumstances that would ever
19 induce me to send federal troops to enforce the orders
20 of a federal court."

21 In fact, Ike and Attorney General Brownell
22 had introduced legislation to provide an alternative
23 to military action. Moreover, as you know, two months
24 later Eisenhower sent troops into Little Rock.

25 But Ike could not hold out against the

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1 agitation stirred up by Senator Russell. Lyndon
2 Johnson met with the President and told him bluntly
3 that he had the votes to kill the bill altogether if
4 part 3 stayed in it. Reluctantly, Eisenhower agreed
5 to drop the provision.

6 The southerners now redoubled their effort
7 to weaken part 4, which would allow the attorney
8 general to sue in civil court to enforce voting
9 rights. They argued that such actions would be
10 criminal prosecutions in disguise and should be tried
11 by a jury. And in the south, in 1957, that meant an
12 all-white jury, and, yes, LBJ supported that argument.

13 August 1st, the Senate voted 51 to 43 to
14 require a jury trial for the prosecution of criminal
15 contempt for voting rights violations. Eisenhower's
16 aide said he was, "Angrier than ever before during his
17 presidency." One senator said Ike was damned unhappy.

18 Eisenhower hinted he might veto the bill,
19 but even liberal Democrats caved in and supported the
20 weakened bill. Eisenhower scorned them. "Why have
21 liberals put so much heat on to get a bill after
22 abandoning all of their principles?"

23 Then, the Eisenhower forces made a bold
24 gamble. They threatened to revive the hated part 3 of
25 the bill if the jury trial provision stayed in it.

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1 After a big fight on August 16th, the administration
2 proposed that in voting rights cases a federal judge
3 could act without a jury as long as the penalty did
4 not exceed \$300 or 90 days in jail.

5 Lyndon Johnson, still wanting a cosmetic
6 bill to promote his presidential aspirations, finally
7 called Ike and proposed a ceiling of \$300 and 45 days
8 in jail. Ike accepted that compromise, and on August
9 29th the Senate passed the final version of the civil
10 rights bill 60 to 15.

11 Those 60 votes included 37 Republicans and
12 23 Democrats, and some scholars still haven't figured
13 out that Lyndon Johnson could muster only 23
14 Democratic votes out of 49 for this weakened bill.
15 It's the Eisenhower coalition that had carried the
16 day.

17 Some advocates, especially African
18 American leaders, urged Ike to veto the bill.
19 However, even Martin Luther King, Jr., concluded "that
20 the present bill is better than no bill at all."

21 Well, the legacy. However weakened the
22 bill was, the provisions for the Civil Rights
23 Commission and the Civil Rights Division in the
24 Justice Department survived. And as you know so well,
25 still exists, making an impact for six decades.

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1 The new Commission at that time had two
2 mandates; one, to investigate any deprivation of
3 voting rights and to study the laws and policies of
4 the Federal Government to ensure equal protection of
5 the laws. Southerners dragged out the appointment
6 process, especially for appointees perceived as anti-
7 segregation.

8 The appointees were finally confirmed on
9 March 5, 1958. Since the 1957 Act, the Commission has
10 been reauthorized and reconfirmed by legislation in
11 1983, 1991, and 1994. I might add that all of this
12 since the legislation is not what I am expert on, so I
13 don't mind if you catch me in an error.

14 The Commission published its first report
15 in September 1959 recommending that federal registrars
16 assist African American voting registration. It also
17 reported on public school desegregation in the south
18 and the need for low-cost housing throughout the
19 nation.

20 The Commission assessed voting in
21 Montgomery, Alabama, resulted in fierce resistance
22 from Governor George Wallace. It held hearings on the
23 implementation of the Brown Supreme Court decision in
24 Nashville, Tennessee, and housing discrimination in
25 Atlanta, Chicago, and New York.

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1 Most important, the Commission's findings
2 provided a foundation for the Civil Rights Acts of
3 1960, 1964, 1965, and housing discrimination in 1968.

4 In 1981, I understand that President
5 Reagan appointed a conservative African American
6 Chairman, Clarence Pendleton, an opponent of
7 affirmative action. And, in 1983, Reagan attempted to
8 fire three members of the Commission, but the law
9 stated that a president could fire a Commissioner only
10 for "misbehavior in office."

11 A Senate compromise bill resulted in the
12 current Commission makeup of eight, half appointed by
13 the President and half by the Congress, with six-year
14 terms that do not expire with the inauguration of a
15 new President. And thank goodness for that.

16 I understand that the Commission recently
17 voted to investigate federal civil rights enforcement
18 under President Trump, expressing grave concerns over
19 the administration's proposal to cut spending and
20 staffing on civil rights efforts in multiple agencies
21 and cutting out many positions in the Civil Rights
22 Division in the Justice Department, the other enduring
23 provision from Eisenhower's 1957 Civil Rights Act.

24 With that, I will stop. Like with our
25 soldiers, we should thank you, the Commission, the

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1 Civil Rights Commission members, for your service to
2 the country.

3 And if this brief presentation about Ike
4 and civil rights confuses you, I can only say the book
5 is a lot better than me.

6 (Laughter.)

7 DR. NICHOLS: Thank you.

8 CHAIR LHAMON: Thank you very much, Dr.
9 Nichols, and thank you very much, Ms. Hammatt. I
10 enjoyed your presentations, and I invite my fellow
11 Commissioners to ask questions if they have any.
12 Commissioner Narasaki?

13 COMMISSIONER NARASAKI: I really want to
14 thank both of the speakers. It was very eye-opening
15 to hear the background of President Eisenhower, who is
16 not talked about that often, and has an incredible
17 record.

18 I am curious because he was so forward-
19 thinking on the issue of race, and yet under his
20 administration he signed an executive order that
21 officially added sexual perversion as a ground for
22 investigation and dismissal under the federal loyalty
23 program, and basically allowed the denial/revocation
24 of security clearance for people who were LGBT.

25 So I'm wondering if you have any

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1 background history on -- that squares that with how
2 forward-thinking he was on the issue of race.

3 DR. NICHOLS: Dawn, did you want to answer
4 that, or shall I?

5 MS. HAMMATT: You can take it, David.

6 DR. NICHOLS: Okay. Yeah. That -- those
7 orders are explored in my new book on Eisenhower and
8 Joe McCarthy. And this is in the midst of the Big Red
9 Scare, and I don't excuse Eisenhower for that. He was
10 not progressive on that matter, and, you know, the
11 1950s was a tremendously homophobic period. And so
12 just the rumor that someone was gay, let alone the
13 fact, could cost them their federal job, including
14 under the Eisenhower administration.

15 So I do not pretend that they were
16 progressive about that. They were more progressive in
17 some respects than the Truman administration, but
18 there had not been any kind of awakening in that. And
19 Eisenhower is just, frankly, not that progressive on
20 it. He considered -- you will find, and it is
21 explained quite a bit in my new book, he considered
22 the employment a privilege, not a right.

23 And they were worried -- and this is where
24 the weak trade agreement gets mixed with the flowers,
25 and they really worried that gay folks could be

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1 blackmailed by the Communists. And in the midst of
2 that Communist Red Scare, a lot of people believed
3 that, but that does not excuse it. It certainly
4 doesn't excuse it for me, but they were not ready to
5 move as progressively on that as they were on African
6 American civil rights.

7 CHAIR LHAMON: Commissioner Narasaki, do
8 you have a follow up?

9 COMMISSIONER NARASAKI: Yes, I have a
10 separate question. So, my father actually served in a
11 segregated unit during World War II, the all-Japanese
12 American 442nd Regimental Combat Team. So I'm
13 wondering where Eisenhower -- what caused his interest
14 in trying to continue the desegregation of the Army
15 and whether he ever came across -- had any comment on
16 the 442nd?

17 DR. NICHOLS: I do not -- forgive me,
18 Dawn, did you want --

19 MS. HAMMATT: No, go ahead.

20 DR. NICHOLS: Let me know. I tend to jump
21 in on these things. I do not know of any comment
22 about that particular troop contingent at all, but it
23 is outlined in my book how Eisenhower campaigned to at
24 least allow black regiments to be integrated with
25 white regiments in the war. And he was turned down

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1 consistently by the Department of War.

2 He could not carry it out. He did behind
3 the scenes. He didn't make any public push for it.
4 He did attempt to go farther than the government had
5 gone. Having said that, I won't claim too much for
6 that. He -- Ike was, in many ways, a man of his time,
7 but I think the important thing to remember is that he
8 -- Truman, for all of -- Truman always get credit in
9 the textbooks for desegregating the armed forces, but
10 Ike did most of it. And he was campaigning to do that
11 even before he became President.

12 COMMISSIONER NARASAKI: Thank you.

13 Vice Chair, do you have questions?

14 VICE CHAIR TIMMONS-GOODSON: Yes. Thank
15 you very much.

16 Ms. Hammatt and Dr. Nichols, this has
17 absolutely been fascinating. I am a beneficiary of
18 the schools that were operated for military dependent
19 children that I have now learned were desegregated by
20 President Eisenhower. I grew up thinking that not
21 only was he not a leader in civil rights, but all he
22 did was play golf. I mean, I can remember that being
23 said, you know, in my hearing coming up.

24 I began elementary -- excuse me, began
25 kindergarten in 1959 in Wiesbaden, Germany, in the

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1 dependent schools. And for one with my date of birth,
2 it's fairly uncommon for one never to have attended
3 segregated schools, but I owe it to the efforts that I
4 now understand President Eisenhower was directly
5 responsible for. And so I --

6 DR. NICHOLS: Forgive me for interrupting,
7 but --

8 VICE CHAIR TIMMONS-GOODSON: Yes.

9 DR. NICHOLS: -- bless you for raising
10 that issue because Eisenhower desegregated the schools
11 for military dependents before the Brown decision,
12 before the Supreme Court decision.

13 VICE CHAIR TIMMONS-GOODSON: I was noting
14 that --

15 DR. NICHOLS: It is really a very
16 important thing.

17 VICE CHAIR TIMMONS-GOODSON: I was noting
18 that because I think Brown was May of '59 -- excuse
19 me, May of '54, and I believe you said that '53 was --
20 or -- anyway, '53 or --

21 DR. NICHOLS: Yes.

22 VICE CHAIR TIMMONS-GOODSON: -- was when
23 he did this. So absolutely ahead of his time. So I
24 thank you for the information, and I hope all of that
25 word gets out.

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1 Let me ask you, now, Ms. Hammatt, you said
2 that President Eisenhower didn't see his role as one
3 to speak out or take positions on court's opinions,
4 yet, Dr. Nichols, you indicate that President
5 Eisenhower strongly supposed the Supreme Court in
6 Cooper v. Aaron. Would you say a bit more about how,
7 in fact, he supported that opinion?

8 DR. NICHOLS: Are you asking me?

9 VICE CHAIR TIMMONS-GOODSON: Yes, sir.

10 DR. NICHOLS: Yeah. Well, again, that
11 felt like -- you've read my book, haven't you?

12 VICE CHAIR TIMMONS-GOODSON: No. But I'll
13 be going out to get it as quickly as I can.

14 DR. NICHOLS: Oh. Well, he does -- you
15 know, I don't have the quote in front of me, but
16 actually he -- people point that -- miss that he spoke
17 out pretty strongly in Cooper v. Aaron, and this was
18 having to do with Arkansas again.

19 And so but, you know, I wouldn't oversell
20 that point. Eisenhower -- it's true with Joe
21 McCarthy, too, in my new book. Ike just wasn't a
22 bully pulpit guy. You know, and we modern people
23 think if the President doesn't lead by using the bully
24 pulpit they are just not leading. That's not
25 necessarily true. Lots of things are done by

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1 Presidents behind the scenes.

2 But Eisenhower did -- I don't have that
3 quotation in front of me, but you would look up in my
4 book the -- I did tell about how he in fact told the
5 head of the civil -- head of the Civil Rights Division
6 in the Justice Department, when there was a
7 desegregation crisis in New Orleans, he threatened to
8 send troops in again.

9 And so behind the scenes, he was always in
10 favor of it, and the myth that Eisenhower didn't want
11 to do anything but play golf is just horrendous and
12 false and, frankly, it's the fault of my profession
13 when it did not do its job.

14 VICE CHAIR TIMMONS-GOODSON: One more.
15 Now, you give the President credit for, of course, one
16 Earl Warren. My recollection of history is that Earl
17 Warren had to go to President Eisenhower two or three
18 times to remind him of the promise that he had made
19 that he would indeed get the very next appointment to
20 the Supreme Court of the United States, and that it
21 took a little time and it was more Earl Warren
22 refusing to take no or refusing to be denied that
23 appointment than it was Ike enthusiastically putting
24 him on the court. Would you say a word or two more
25 about that, please?

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1 DR. NICHOLS: Yeah. Eisenhower -- well,
2 the important thing in that story is that Eisenhower
3 calls Earl Warren, personally calls him. It wasn't a
4 subordinate doing it. In November of 1952, after the
5 election, he promised him the next opening on the
6 Supreme Court. That is an extraordinary thing. There
7 were no openings on the Supreme Court.

8 And why would Eisenhower do that? And the
9 answer is because Ike knew that Warren was very liberal
10 on civil rights. He knew him well, and so it's a
11 complete myth that he didn't know him. And it's still
12 out on the internet, alleging that Ike said that
13 appointing Warren was the worst damned fool mistake he
14 ever made in his presidency. That's false. It never
15 happened, but it's still out there.

16 But having said that, why did Warren go
17 back to him? I don't have in the documents much about
18 Warren going back to him. The question about it was,
19 should he be the Chief Justice? And when Ike had
20 called Warren in November of 1952, he had not
21 anticipated that the Chief Justice would die. And so
22 he looked at it, again, to be sure he should appoint
23 Warren Chief Justice, and he even talked to John
24 Foster Dulles about that, and all of that.

25 But with Ike, you just have to look out

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1 for what Eisenhower does in a process. He is a very
2 deliberate decision-maker. He will try everything on
3 for size. But look where he lands, and where he
4 landed was on Earl Warren. And he made that recess
5 appointment, which would be very controversial today,
6 as you know, a recess appointment and one didn't get
7 confirmed until March 1, 1954, but look where he
8 landed, and I think that's the main thing.

9 There is an entire chapter in my book on
10 the relationship between these two men, and there was
11 some tension in their relationship, and I think it was
12 primarily political. Warren had run for president
13 three times. But anyway, I've gone longer than I
14 should, but great question. Thank you.

15 VICE CHAIR TIMMONS-GOODSON: Thank you.

16 CHAIR LHAMON: Any other questions?
17 Commissioner Kirsanow?

18 COMMISSIONER KIRSANOW: Thanks very much
19 for both of your presentations. I've read a few
20 biographies on Eisenhower, and there was one event
21 that both biographies -- there's one by Carlos D'Este.
22 Are you familiar with that one?

23 DR. NICHOLS: Yes.

24 COMMISSIONER KIRSANOW: There is one where
25 he indicates that in the drive toward the Saar, Patton

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1 wanted to desegregate the rifle brigades because he
2 just, frankly, needed more shooters.

3 But the Army was formally segregated. He
4 went to Eisenhower to get approval -- approvals.
5 Eisenhower said, "Well, SHAEF can't make that
6 determination. I've got to take it up to George
7 Marshall."

8 George Marshall pretty much wanted to do
9 it, but it was taken up to the staff of FDR who said,
10 "They are not going to allow that to happen."

11 Marshall then communicated that to
12 Eisenhower, basically saying that you can't do it, and
13 Eisenhower simply said to Patton, "Do whatever you
14 want to do." Is that true?

15 DR. NICHOLS: I'm sorry. I'm not expert
16 on that. As far as I know, your account is accurate,
17 but I'm -- that's not my -- Dawn, do you know anything
18 on that?

19 MS. HAMMATT: I'm sorry. I'm not an
20 expert on that particular moment either, but it is
21 sounding familiar to me.

22 DR. NICHOLS: Yeah. Ike was certainly not
23 happy with the policy. But I can't validate that
24 story for sure. I'm sorry.

25 CHAIR LHAMON: Commissioner Heriot?

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1 DR. NICHOLS: I should explain, I've made
2 a point in my old age, by the way, of focusing on the
3 Eisenhower presidency. And I'm not a war expert. I'm
4 sorry.

5 COMMISSIONER HERIOT: I just have a quick
6 comment. First, I want to thank you both for the very
7 interesting presentation. I am particularly
8 interested in the ins and outs of the strategies of
9 passing the Civil Rights Act of 1957, in part because
10 I want to make a plug for my friend and late
11 colleague, Carl Auerbach, who is a professor of law or
12 was a professor of law at the University of San Diego
13 up until last year when he passed away at the age of
14 100.

15 Professor Auerbach was very closely
16 involved in the negotiations for the Civil Rights Act
17 of 1957. As a law professor at the University of
18 Minnesota at the time, he was very knowledgeable about
19 the differences between law and equity between civil
20 and criminal -- civil and criminal contempt.

21 And, as a result, he was the one who came
22 up with the legal basis for the compromise that
23 finally got the Act through. And so I just want to
24 mention my late colleague because I know I speak for
25 the faculty at the University of San Diego. We all

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1 miss him.

2 DR. NICHOLS: Yeah. A great man. Thank
3 you.

4 CHAIR LHAMON: Thank you very much. I
5 will just end with thanks again for your presentation,
6 for coming to join us, and we are all very, very
7 grateful to be able to be the recipient of so much
8 information about President Eisenhower and the origin
9 of this Commission.

10 And also thank Brian Walch, Pam Dunston,
11 Michele Yorkman-Ramey, Warren Orr, and all of our
12 staff for their assistance in setting up today's
13 presentations and making today's meeting run as
14 smoothly as possible.

15 Thank you.

16 **III. ADJOURN MEETING**

17 CHAIR LHAMON: If there is no further
18 business, I hereby adjourn our meeting at 11:50
19 Eastern Daylight Time.

20 Thank you.

21 (Whereupon, the above-entitled matter went
22 off the record at 11:50 a.m.)

23

24

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