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
COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH
KIMBERLY SCHULD
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Approval of Agenda</td>
<td>5</td>
</tr>
<tr>
<td>II. Program Planning</td>
<td>8</td>
</tr>
<tr>
<td>III. State Advisory Committee Issues</td>
<td>143</td>
</tr>
<tr>
<td>IV. Management and Operations</td>
<td>--</td>
</tr>
<tr>
<td>V. Approval of March 12, April 16, May 14, May 28, and June 11 Meeting Minutes</td>
<td>148</td>
</tr>
<tr>
<td>VI. Announcements</td>
<td>--</td>
</tr>
<tr>
<td>VII. Staff Director's Report</td>
<td>--</td>
</tr>
<tr>
<td>VIII. Adjourn</td>
<td>154</td>
</tr>
</tbody>
</table>
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.


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

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

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

I. APPROVAL OF AGENDA

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

VICE CHAIR THERNSTROM: Second.
CHAIRMAN REYNOLDS: Discussion?

(No response.)

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

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

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

VICE CHAIR THERNSTROM: Could you just, then, now tell me the first will be the New Black Panther Party, then we move to -- what is the second item now going to be?
CHAIRMAN REYNOLDS: It would be the STEM report. We have to finish up the recommendations.

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

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

VICE CHAIR THERNSTROM: Right. Okay, fine.

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

COMMISSIONER YAKI: Really.

CHAIRMAN REYNOLDS: Other questions?

(No response.)

All in favor please say aye.

(Chorus of ayes.)

Objections?

COMMISSIONER YAKI: I object.

CHAIRMAN REYNOLDS: Abstentions?
(No response.)

Commissioner Melendez, are you on the phone?

(No response.)

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

II. PROGRAM PLANNING

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

Before you start, Commissioner Melendez, is that you?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Okay. Welcome back.

Mr. Blackwood?

MR. BLACKWOOD: Thank you, Mr. Chairman.

As you are aware, this Tuesday we had scheduled the deposition of Malik Zulu Shabazz, the head of the New Black Panther Party, and self-styled attorney at war. Unfortunately, the day before, he filed a motion to quash. That will be addressed in the U.S. District Court. We are working with the Assistant U.S.
Attorneys assigned to that case, but it will take a while before it is resolved.

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

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

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

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

MR. BLACKWOOD: Now, I will point out that this is only a snippet of a very long video that addresses a variety of matters that Mr. Shabazz talked about. We were -- it is available, at least at the
moment, on the Black Panther website under the
convention in Dallas for December 2009.

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

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

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

MR. BLACKWOOD: Absolutely. Absolutely.
Lastly, as I have said just the last
couple of days, we have received three statements from
members of the public regarding the matter. Three of
them -- all three of them are former employees of the
Department of Justice.

CHAIRMAN REYNOLDS: Before you go on --
and I would encourage the public, to the extent you
have experience at the Civil Rights Division at the
Department of Justice, if you have knowledge of any of
the matters that we have covered in the investigation,
please send your statements to the Commission.

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

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

VICE CHAIR THERNSTROM: Right.

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

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

MR. BLACKWOOD: No.

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

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

Lastly, as you all are aware, this
Wednesday the Chair sent a letter to Mr. Perez with
regard to our request that Mr. Coates be freed to testify. As you all are aware, Mr. Adams' testimony indicated, to a large extent, that Mr. Coates was actually the party that was participating in many of the conversations that have become so controversial.

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

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

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

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

COMMISSIONER GAZIANO: Well, my -- I move that we make them available to the public and on our website as soon as reasonable. This is -- these
obviously aren't subpoenaed material, so they are not covered by our other rules.

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

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

    CHAIRMAN REYNOLDS: Right.

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

    CHAIRMAN REYNOLDS: Commissioner Yaki?

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

    The question is: under our administrative regulations, did you accurately identify it as either coming on behalf of the Commission or on behalf of yourself as an individual Commissioner? Because I could not tell from the opening paragraph of that letter exactly in what capacity that letter was being sent.
CHAIRMAN REYNOLDS: It was sent in my capacity as the Chairman.

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

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

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

So it's all over the blogosphere already. So the idea that we are somehow putting it into the public domain is ridiculous, because they themselves have already put it in the public domain as it is. And, again, if anyone wants any further confirmation that this is simply a conservative right-wing attack on the Justice Department, the mere fact that so-called, you know, very important public testimony that
we have to consider whether to put on our website or not is already on every single conservative blog that you can count. Right now, this morning, when I did a search, in fact, I think some of the timing of them is before we even got it is, you know, quite suspect.

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

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

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

Number three, the point I have continued to make, and will continue every single time we talk
about this fiasco, this farce, this complete Star Chamber proceeding, is this. We are talking about a single one-off case. And I have said before, and I'll say it again, if we were talking about something -- and you even threaten it in your letter, Mr. Chair, about the unequal administration of justice -- I would argue, and have continued to argue, that there are cases involving political and voter intimidation that Mr. Perez testified went up to the Assistant Attorney General level during the Bush administration, cases involving people who did not have nightsticks but who had guns, people who did not wear black uniforms but wore fake badges, people who did not stand in front of an overwhelmingly African-American precinct but went into people's homes with questionnaires questioning whether or not they really had the right to vote or not.

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No. You know --

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: I would like to say, if we are going to do that --
CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

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

CHAIRMAN REYNOLDS: -- interrupt you.

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Are you trying to cut me off?

CHAIRMAN REYNOLDS: You do not have -- yes.

COMMISSIONER YAKI: Do you want to --

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: -- the folks over here --

CHAIRMAN REYNOLDS: Yes, yes.

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

CHAIRMAN REYNOLDS: Yes, yes.

COMMISSIONER YAKI: -- no right?
CHAIRMAN REYNOLDS: You do not have an unfettered right to speak. You don't.

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

CHAIRMAN REYNOLDS: You don't.

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

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

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

CHAIRMAN REYNOLDS: No Commissioner --

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

CHAIRMAN REYNOLDS: -- has an unfettered issue --

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

CHAIRMAN REYNOLDS: Commissioner --

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: When we are ignoring --

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: -- voter intimidation elsewhere?

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: -- investigation of allegations --

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

CHAIRMAN REYNOLDS: I move to suspend your --

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

COMMISSIONER YAKI: This will help to deal with the fact that we are dealing with the fact of
testimony from individuals who come from this Civil
Rights Division --

CHAIRMAN REYNOLDS: May I have a second?

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

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

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

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

CHAIRMAN REYNOLDS: I'm talking about --

COMMISSIONER YAKI: You are trying --

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

COMMISSIONER YAKI: And I can speak on
that motion.

COMMISSIONER GAZIANO: May I ask
Commissioner Yaki a question?

CHAIRMAN REYNOLDS: Sure.

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

COMMISSIONER YAKI: I was finishing up.

COMMISSIONER GAZIANO: -- speak? I
thought you might be, and I was --
COMMISSIONER YAKI: I was finishing up, but apparently Mr. Reynolds has a very short attention span.

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

CHAIRMAN REYNOLDS: Commissioner Gaziano, for you, anything.

(Laughter.)

The floor is yours.

COMMISSIONER YAKI: As I was saying, I am going to enter into the record, as is my right as a Commissioner, the Office of Inspector General and the Office of Professional Responsibility report, July 2, 2008, regarding the conclusions -- the investigation and conclusions about the improper politicization of the Civil Rights Division and the Department of Justice during the Bush administration, which talks about the hiring and the environment in the Civil Rights Division to contradict many of these so-called statements from the people who are hired to do exactly what Bradley Schlozman wanted to do, which was to completely eradicate the Voting Rights Division in the Justice Department.
I am going to put that into the record, because we need -- how should I put it? We need to be fair and balanced.

CHAIRMAN REYNOLDS: Okay. I --

COMMISSIONER GAZIANO: Mr. Chair, may I --

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

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

COMMISSIONER YAKI: True.

CHAIRMAN REYNOLDS: -- and has done so.

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

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

COMMISSIONER YAKI: But bipartisanship would be a good idea.

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

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

COMMISSIONER GAZIANO: Maybe.

COMMISSIONER YAKI: I would.

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

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

I think we all agree that it became even more in-famous, or infamous, when the Justice Department not only dismissed it after a default judgment, which involved no further resources on the Department, but also when the Department gave excuses that are more damaging to the rule of law, namely that
the facts and circumstances that millions of Americans had seen did not constitute voter intimidation, and, quite frankly, it has been the Justice Department's response that has made this so crucial a case for this Commission to investigate. And that was our understanding when we began this investigation.

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

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

So whether we had a disagreement about the importance of the implications of the Justice
Department's dismissal of this infamous suit, I think we are at a very different point right now.

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

CHAIRMAN REYNOLDS: I'm sorry, Vice Chair.

Commissioner Kirsanow was next.

VICE CHAIR THERNSTROM: Sure.

COMMISSIONER GAZIANO: Is there a second on my motion?

COMMISSIONER KIRSANOW: I would second the motion.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

All in favor say aye.

(Chorus of ayes.)

Objections?

COMMISSIONER YAKI: Absolutely not.
VICE CHAIR THERNSTROM: I'm sorry, I was thinking about something else. What is the motion, that we --

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

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

COMMISSIONER GAZIANO: Did you read it?

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

CHAIRMAN REYNOLDS: Do you abstain or object?

VICE CHAIR THERNSTROM: I abstain.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDZ: I object.

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

Commissioner Kirsanow, you were up next.

COMMISSIONER KIRSANOW: Thank you, Mr. Chairman. Actually, Commissioner Gaziano stated much of what I was about to say, but I would add one other thing. To the extent this investigation began with respect to the dismissal of the New Black Panther case by the Department of Justice, it is clear it has since
evolved significantly beyond that, particularly
because of the testimony of Mr. Adams about 10 days
ago, but I would add one other component to that
testimony that goes beyond also the testimony related
to an extant policy at DOJ not to enforce certain
provisions of the Voting Rights Act against minority
defendants or on behalf of white victims, but also the
testimony that DOJ will not enforce Section 8 of the
motor voter law, the MVRA.

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki,
could you --
COMMISSIONER KIRSANOW: -- uncontroverted thus far that we have the policy within the division that is charged with enforcing federal civil rights laws that they will do so on an unequal basis.

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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

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

MR. BLACKWOOD: Well, it does, and it's relevant to the investigation, because of the term
"admission against interest," which can be done at any
time before or after an event.

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

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

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

And, bluntly, it sounds like he was
acknowledging also that he knew that people were going
there armed. Now, that's subject to interpretation.
I will say if someone watches the whole video, he
explicitly acknowledges at one point in time that we
did a bunch of things to get this thing removed, that
also would be some kind of admission as far as we gave
multiple stories. I mean, I showed the video,
because, one, I think it is -- openly he gave admissions against his interest, but it is still necessary to talk to him.

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

VICE CHAIR THERNSTROM: Okay.

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

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

COMMISSIONER GAZIANO: There has been no response to the allegation that Julie Fernandes, his deputy -- he may not have known about it at the time, but there has been no response to the allegation that Julie Fernandes, his deputy -- maybe unknowingly --
instructed the voting section that they would not, shall not, file any more cases against blacks or other national minorities. And that is at the heart of the Civil Right's Division's responsibility.

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

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

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

COMMISSIONER GAZIANO: But you would admit that his deputy, who is the senior person in charge of voting rights, giving an instruction is more significant than --
VICE CHAIR THERNSTROM: Yes.

COMMISSIONER GAZIANO: -- a paralegal.

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

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

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

COMMISSIONER GAZIANO: You have sworn testimony.

VICE CHAIR THERNSTROM: I --

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

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

Then, the last thing is, I would like this Commission to be -- members of this Commission to be very careful -- this is related to the previous point -- very careful about charging any member of the
administration -- basically, calling them a racist or implicitly calling them a racist. It is the ugliest term in American politics.

CHAIRMAN REYNOLDS: Has that occurred?

VICE CHAIR THERNSTROM: Well, I think --

CHAIRMAN REYNOLDS: Which Commissioner made that allegation?

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

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

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

CHAIRMAN REYNOLDS: The charge -- the allegation that has been made, and the allegation that we are looking into, is that a senior person in the Justice Department has issued a rule that a portion of the Voting Rights Act will not be enforced against minority defendants. That is the allegation. That is what we are looking into.
I do not see how you conclude that -- from that set of facts that we are accusing anyone of being a racist.

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

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

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

COMMISSIONER GAZIANO: Consistent with --

VICE CHAIR THERNSTROM: Can I just finish?

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

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

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

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

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

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

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

There has been, throughout our investigation, this kind of subtext of this is all about the New Black Panther party, or something of
that nature, and trying to highlight inflammatory aspects or that we are somehow trying to highlight inflammatory aspects of the party or their rhetoric.

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

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

They have no personal knowledge of that, and it is absolutely a disservice to say anything that would imply that those affidavits supported a single allegation specifically made by Mr. Adams. They do
not. And the people who make those statements know they do not.

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

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

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

That to me is worthy -- is just as worthy of exploration, because if indeed we have a report by two different entities within Justice that talk about inappropriate behavior in terms of the leadership in the prior administration, we know that there is
testimony regarding decisions made at that level regarding voter intimidation cases involving individuals openly wearing guns, openly wearing fake badges, what have you, that to me is a more appropriate inquiry rather than simply turning this into a let's go get Eric Holder thing, which to me is exactly what this has become.

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

COMMISSIONER YAKI: I appreciate that.

CHAIRMAN REYNOLDS: That's one thing.

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

CHAIRMAN REYNOLDS: No, we're making a different point. We're not talking about what goes on the record. I am talking about what goes up on the website.
In any event, you also -- well, on several occasions you have mentioned things that have gone on, or at least you made allegations about things that have gone on during the Bush administration. If I entertain -- for purposes of our conversation, if I just grant you that all of your allegations are true, I don't think that that speaks to whether this investigation into the current administration should go forward.

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

COMMISSIONER YAKI: No, to the contrary.

CHAIRMAN REYNOLDS: Good. Good.

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

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

COMMISSIONER YAKI: For now.
CHAIRMAN REYNOLDS: That is correct. We took a different approach, and --

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

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

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

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

Mr. Coates is the person who was involved in all of those, and I wanted to remind the Commission -- and I'm mentioning to them right now that that was always a part of the plan of investigation that we
adopted at the Commission is to compare. The primary focus is going to be on the dismissal of this New Black Panther case and whether we agreed with it, whether we thought it was supported, but also to try to compare and contrast it to others.

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

CHAIRMAN REYNOLDS: Which occurred under the Bush administration.

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

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

COMMISSIONER YAKI: Well, just as a friendly amendment to that, since Assistant Attorney General Perez identified that the decisionmaking on those particular cases was made at the Assistant AG
level, why are we not extending the subpoena to that individual as well?

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Well, let's --

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

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

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

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

COMMISSIONER KIRSANOW: Just a very discrete point.

CHAIRMAN REYNOLDS: But let's respond to --

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

COMMISSIONER TAYLOR: If I may not respond, but actually agree with what Commissioner Yaki has said. If the suggestion is what we really
need to do is have the decisionmakers testify, I think
that is a very good idea. What I don't want to
happen, though, is I don't want them to be able to
cherrypick the people who testify.

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

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

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

CHAIRMAN REYNOLDS: Well, hold on, hold --

COMMISSIONER GAZIANO: -- prior Assistant
Attorney General. We have already had the testimony
from this -- the current Assistant Attorney General.
And with regard to prior -- if their testimony is
really very helpful, I wouldn't object if the -- to
having them, but there were two or three acting and confirmed. And, you know, Mr. Acosta, as I know, is a law dean, and I don't know where Grace Becker -- what cases she might be involved with.

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

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

So one has to question whether or not what someone may have felt in terms of how -- what their role was actually interfered in the pursuit of their duties is I think a legitimate -- is a legitimate point to make rather than simply, by innuendo -- and this is my concern -- by innuendo attempting to
disparage the character of someone on a decision like this.

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

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

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

CHAIRMAN REYNOLDS: Let him finish.

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

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

VICE CHAIR THERNSTROM: Yes, I think that would be a very good idea.
CHAIRMAN REYNOLDS: You're right, you're right, you're right.

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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

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

MR. BLACKWOOD: There is information in the answers to interrogatories supplied by the Department of Justice. And I can provide that later on. But they did address -- that was one of the questions we had, "Identify all 11(b) cases," and they did provide a list.
VICE CHAIR THERNSTROM: Okay. And do I have that list?

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

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

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

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

Now, and, therefore, I didn't want to make it our statutory report. I never had any objections
to making -- just simply having a briefing, a normal briefing, on this topic. But to make it our year-long statutory report, I thought we are not going to get at the evidence that we need.

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

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

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

CHAIRMAN REYNOLDS: And it's limited because?

VICE CHAIR THERNSTROM: Because we were unlikely to get the Justice Department to enforce the subpoenas that to --
CHAIRMAN REYNOLDS: But even before we get to the issuance of subpoenas, the cooperation, did you doubt cooperation from the Justice Department?

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

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

VICE CHAIR THERNSTROM: Yes.

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

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

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

VICE CHAIR THERNSTROM: Oh, I agree with that.

CHAIRMAN REYNOLDS: So --
VICE CHAIR THERNSTROM: But, you know, I live in the real world, and so do you.

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

VICE CHAIR THERNSTROM: Too much time.

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

There have been many agencies throughout many administrations that have stonewalled investigations.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: It is not new.

VICE CHAIR THERNSTROM: Mr. Chairman, my only point from the very beginning was -- I objected to making this our statutory report and consuming our year, really, because, you know, I felt the evidence we were going to get was going to be extremely
limited, and it has turned out so far to be extremely limited.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

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

VICE CHAIR THERNSTROM: I did.

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

VICE CHAIR THERNSTROM: If it is true.

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

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

COMMISSIONER KIRSANOW: If we have evidence --

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

COMMISSIONER KIRSANOW: -- at the Department of Justice, then we should pursue the evidence, and not simply wash our hands, turn a blind eye, and say, "The agency charge with enforcing our
subpoenas is going to stonewall us, despite the fact that that very agency is the" --

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

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

VICE CHAIR THERNSTROM: -- washing my hands.

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

Second is going to the issue of whether or not we are going to get testimony on the discrete issue, again, of the New Black Panther dismissal. We have been confronted with privileges asserted by the Department of Justice that a number of very credible and experienced experts have said are spurious privileges.
I have been a litigator for 30 years. Some of these privileges I have never seen. Maybe I'm not the best litigator in the world. Maybe I haven't read all of the texts in the world. But some of these privileges are astonishing.

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

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

If that policy statement was made, there is nothing privileged about that, and we should get that testimony, and I would move -- by the way, Mr.
Chairman, I am going to make a separate motion that we append to the letter that you sent to Mr. Perez a couple of days ago, a request that he produce just those witnesses.

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

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

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

COMMISSIONER KIRSANOW: But you don't want --

VICE CHAIR THERNSTROM: -- implying that anybody here --
COMMISSIONER KIRSANOW: Vice Chair Thernstrom, I'm not implying that you have no interest in pursuing voting rights. I'm simply saying --

VICE CHAIR THERNSTROM: Or --

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

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

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

VICE CHAIR THERNSTROM: Now, if you can pursue that, I applaud. You've got my applause. If you can come up with evidence, I'm not --
COMMISSIONER GAZIANO: Will you support us now in doing so?

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

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

COMMISSIONER GAZIANO: Will you support us now?

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

CHAIRMAN REYNOLDS: Okay.

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

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

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

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

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

And when I think about this, when I think about -- whenever I try and give the benefit of the doubt to anything that goes on in this crazy one-sided investigation, it comes back to this. This Commission sat on its hands -- sat on its hands -- running up the 2008 election, as voter rolls were being purged
throughout this country, as there were allegations about -- and there were allegations in 2004 and 2006 regarding voter intimidation, involving people who had a gun.

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

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

Again, someone says this stuff -- and I will say this for the record. I change my vote. I will -- I don't exactly agree with the tone of the letter, but if there are people who made those statements, they should be produced or something should be done about that. Fine, I agree with that.
But I cannot, and will not, countenance this idea that somehow there is this vast conspiracy for voter fraud that there are no facts alleged anywhere, unlike --

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

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

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

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

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

COMMISSIONER YAKI: But you know -- the power of words. You know what it is they are looking at --
CHAIRMAN REYNOLDS: Commissioner Yaki?
Commissioner Yaki? He showed you a little respect of
listening to you.

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

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

VICE CHAIR THERNSTROM: Than the nature of
the incident.

CHAIRMAN REYNOLDS: Could you let him
talk?

VICE CHAIR THERNSTROM: Not the
investigation.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
let him speak.

COMMISSIONER KIRSANOW: It morphed into
something far larger than that, something that which,
if the allegation is true, yes, it is unsubstantiated,
that's why we want to pursue it. One person said it
-- standing alone, it's evidence. I want to know,
given the nature of the allegation, which is
extraordinary, whether it's true.
That's why I wanted Commissioner Thernstrom's agreement that we should pursue this investigation, because it is an extraordinary statement. If in fact Section 8 is not being enforced, that very well could lead to massive voter fraud. We don't know. That's why we need to pursue it. That's why we can't shut this down.

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

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

If Pima, Arizona, or some of the other incidents you have raised in fact were discussed at
some point, I would have said, "Let's take a look at whether or not it merits an investigation." Nothing prevented you, Mr. Yaki, from introducing that for our consideration.

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

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

CHAIRMAN REYNOLDS: And --

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

CHAIRMAN REYNOLDS: But hold on. You do raise an important point. The original concept paper was broad enough to encompass the issues that you mentioned, that you have discussed several times
today. Commissioner Gaziano's discussion of the concept paper jogged my memory. We were supposed to look at other cases to compare and contrast how cases were handled, and there was no restriction on -- there was no restriction on time limits. So --

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

CHAIRMAN REYNOLDS: Right. So --

COMMISSIONER GAZIANO: May I clarify one other point?

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

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

I am not for stonewalling the truth by anyone, Democrat or Republican. And anyone who says -- who says anything as onerous as, "We are only going
to enforce the rights of one group versus another," is
dead wrong. Just dead wrong.

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

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

And was it -- to me, you know, as an
alternate theory of the case, did it come about at a
time when it was clear that, as Commissioner
Thernstrom has said, the small potatoes nature of that
New Black Panther Party was getting very little
traction despite the fact that some members of the
media were flogging it every single day? I don't know.

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

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

And, believe me, we know they would. We know they would. They would be on YouTube yesterday if they had brought something to Justice saying that this had happened, and they had been denied. So, you know, I just want to -- I am very concerned about the level of rhetoric and hysteria around this, around --
CHAIRMAN REYNOLDS: Now, when you say "hysteria," is it here, or is it on the internet? Just so --

COMMISSIONER YAKI: It's both.

CHAIRMAN REYNOLDS: Okay.

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

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

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

CHAIRMAN REYNOLDS: Well, no.

COMMISSIONER YAKI: We're okay.

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

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

VICE CHAIR THERNSTROM: And I have my hand up.

COMMISSIONER YAKI: -- but I still --

COMMISSIONER GAZIANO: I had my hand up earlier.

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

So, I mean, I'm under no -- if there is -- I don't think there is anything to hide, and I believe that there is nothing to hide. But, if not, they should -- someone should be knocked out of their position. But I am not sure that if someone came in and denied it that would still be the end of this investigation.
CHAIRMAN REYNOLDS: Commissioner Yaki, when this issue was brought up as our statutory report by Commissioner Gaziano, it was not one of my favorite -- of the choices that we had, it was not my favorite. My assumption was that a mistake had occurred at DOJ, there would be a quick investigation at DOJ, and they would fix this, and there would be no need for us to spend time and resources on this issue.

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

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

Instead of cooperation, we have been -- we face a formidable resistance. So on a certain level, I agree with them -- those Commissioners and those critics who believe that we shouldn't have spent time
on this matter. We shouldn't have had to spend time on this matter. Either fix it or send the people here, allow us to conduct our investigation, then it's over.

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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

And I am not opposed to trying to gather information. Of course I'm not opposed to trying to
gather information about whether there are racial
double standards operating within the Justice
Department, and operating in such a way as to affect
their actions and policies, not one, you know, minor
career attorney here or there, but people who actually
are shaping the policies of the Justice Department.

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

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

VICE CHAIR THERNSTROM: One article.

CHAIRMAN REYNOLDS: -- statements that you
have made in writing and at the hearing that you are
not supportive of our undertaking, and that is your
privilege. You need not be supportive of this
investigation or anything else that is done by -- you
know, if you are uncomfortable with a particular
topic, or for whatever reason, you don't have to support it.

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

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

CHAIRMAN REYNOLDS: This is a big issue.

COMMISSIONER GAZIANO: Mr. Chairman?

VICE CHAIR THERNSTROM: Well, it --

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

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

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

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

CHAIRMAN REYNOLDS: You have to --
VICE CHAIR THERNSTROM: -- is a problematic provision in the Voting Rights Act. That is why -- in part why it is not a big issue.

CHAIRMAN REYNOLDS: You're right.

Commissioner Gaziano? You're right. You're next, then Commissioner Heriot is next.

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

But I wanted to address now some matters that --

VICE CHAIR THERNSTROM: I'm happy to --

COMMISSIONER GAZIANO: I want to address some matters that Commissioner Yaki mentioned and explain myself, in response to Vice Chair's point that we should be very clear about what the allegations are and not inadvertently mention some what seem to be inflammatory claims.
Commissioner Yaki, if I heard him correctly, seemed to say that most statements or actions prior to the current administration would be irrelevant to our investigation, and also that expressions by individual members that they were hostile to the Noxubee case were relevant if they did their duty.

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

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

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

Now, why is that possibly relevant? There are people still in the -- it is relevant because
there are people still in the voting section who are
in the department who may have been involved in the
discussions to dismiss the New Black Panther suit.
But the culture that exists in the Civil Rights
Division is certainly relevant for both us to examine,
and hopefully Assistant Attorney General Perez to look
into.

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

COMMISSIONER YAKI: I'm hearing Joe
McCarty here. What is this?

CHAIRMAN REYNOLDS: Hold on. Hold on.

COMMISSIONER GAZIANO: I'm disappointed --

CHAIRMAN REYNOLDS: Let Joe Finish.

(Laughter.)

COMMISSIONER GAZIANO: I'm disappointed --

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

VICE CHAIR THERNSTROM: How do you know --

CHAIRMAN REYNOLDS: It's a joke.

COMMISSIONER GAZIANO: It's relevant,
because the Assistant Attorney General didn't deny
that that kind of culture would be irrelevant. It's
just that he denied that he investigated and he didn't
believe it existed.
Now that we have sworn evidence that that culture may exist in his division, it is incumbent upon us to investigate how -- whether that is true, how deep that -- the tentacles of this caustic culture might be if it does exist, whether employees are currently in the division who have these views, and that is certainly relevant to our ongoing investigation.

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

COMMISSIONER YAKI: Thank you.

CHAIRMAN REYNOLDS: Commissioner Heriot.

VICE CHAIR THERNSTROM: I thought it was funny.

CHAIRMAN REYNOLDS: So did I.

COMMISSIONER HERIOT: Okay. I just want to make a very, very brief point, and that is in agreement with the Chairman about how I perceived this project when we entered into it. I, too, thought that there was a fairly -- I don't want to say that it was
likely, because I don't think likely was what I thinking, but a substantial chance that the project -- the investigation would not lead to a full report, that it wouldn't pan out as a yearly project.

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

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

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

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

CHAIRMAN REYNOLDS: And was that because there was a concern -- I mean, I'd have to go back and
read the transcript, but was there a concern that this --

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

CHAIRMAN REYNOLDS: Right.

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

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

COMMISSIONER HERIOT: Exactly. Exactly. Although, in fairness, at the time, you know, I thought that Mr. Adams' testimony was very interesting and very much a revelation. But, nevertheless, it wasn't that I wasn't thinking at the time that we heard about this case that there really weren't very many possible explanations based on the facts that we knew at that point why they might have decided to do what they did, and it was in the back of my mind
something like what Mr. Adams testified may turn out to be the case.

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

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: You know, whenever I think that maybe I might agree with something that the majority is trying to do --
CHAIRMAN REYNOLDS: They get close.

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

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

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

The idea that these -- that career voting rights attorneys who were there to enforce the Voting Rights Acts are lunatics, liberals, commies, partisans, all these words are in this document that was done by two independent investigative arms of the Department of Justice, under a Republican administration no less. This is not done by the Democrats. This is not done by a congressional
committee. This is done by Mukasey, the last Attorney General under President Bush.

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

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: No, this --

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

COMMISSIONER YAKI: I will --

CHAIRMAN REYNOLDS: Let me --

COMMISSIONER YAKI: I'll own it.

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

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

COMMISSIONER YAKI: But that's not the point I'm trying to make. The point I'm trying to
make is this. The complaints and the continued outside agitation on this comes from --

CHAIRMAN REYNOLDS: Oh, outside agitators.

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

CHAIRMAN REYNOLDS: I surely do.

COMMISSIONER YAKI: Comes from --

(Laughter.)

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

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

COMMISSIONER YAKI: I'm not going to --

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

COMMISSIONER YAKI: I am not going to --
CHAIRMAN REYNOLDS: I mean, someone fresh out of law school, that would have been a lay-up for an individual fresh out of law school. There is no fight. There was no resistance. The defendants didn't show up. This was not -- this did not require --

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

CHAIRMAN REYNOLDS: That's correct.

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

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

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

CHAIRMAN REYNOLDS: I am focusing on the three --

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

CHAIRMAN REYNOLDS: Okay. Commission?
COMMISSIONER YAKI: Nor would I want to.

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

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

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

As this case started off, I thought this had nothing to do -- this had nothing to do with that mission. As this case has progressed, we have one individual who has attempted to elevate it to something that we would. And if I believe that person was credible, and had more credibility other than he
and other -- and someone else who was also part of that -- of the remaining --

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

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

CHAIRMAN REYNOLDS: -- other witnesses --

COMMISSIONER YAKI: -- we don't.

CHAIRMAN REYNOLDS: -- if other witnesses --

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

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

COMMISSIONER YAKI: We didn't --

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

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

CHAIRMAN REYNOLDS: Right, right.

COMMISSIONER YAKI: But I will say --

CHAIRMAN REYNOLDS: But she should not be fired unless there is a thorough investigation of the facts.
COMMISSIONER YAKI: But I would just conclude with this. The question I ask, and it is a rhetorical question, is if that person were to come here and state unequivocally that he or she did not say those things, then what? And I don't think for a moment that -- I have no illusion that this investigation would end. It would simply become what I have always thought it would be in the beginning --

CHAIRMAN REYNOLDS: That is not the --

COMMISSIONER YAKI: -- and in the end -- a partisan political fight, which does not befit this Commission and which --

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: -- wasting our time and resources.

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

COMMISSIONER YAKI: But I think that --
CHAIRMAN REYNOLDS: With that --

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

CHAIRMAN REYNOLDS: Why is it a crossfire?

Why is it a crossfire?

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

CHAIRMAN REYNOLDS: Right. That particular allegation --

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

CHAIRMAN REYNOLDS: -- this allegation --

COMMISSIONER YAKI: -- which evidence is better.

COURT REPORTER: One at a time.

COMMISSIONER YAKI: I have no illusion -- no illusion where the majority is going to come out on, and it is just going to be a partisan political decision, and that is what I object -- have objected from the beginning with this investigation. And where
it has progressed to only proves to me that it is. That's all I'm --

CHAIRMAN REYNOLDS: Commissioner Taylor?

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

COMMISSIONER YAKI: Ask me a question.

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

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

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

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

COMMISSIONER TAYLOR: I didn't accurately state --

COMMISSIONER YAKI: I am uncomfortable --
COMMISSIONER TAYLOR: Right. You would be uncomfortable moving --

COMMISSIONER YAKI: I thought you said --

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

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

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

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

COMMISSIONER YAKI: Coates.

COMMISSIONER TAYLOR: It has nothing to do with increasing voter turnout. We are going to do it.
And Christopher Coates -- I would start with those two. If you -- if your position is that they were to come forward and categorically deny the allegations, that would be the end of it, I would tend to agree.

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

COMMISSIONER TAYLOR: I would --

COMMISSIONER YAKI: -- I have no --

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

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

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

COMMISSIONER YAKI: I have no illusion that there is going to be a categorical denial of the statement made by Mr. Coates, given the fact that Mr. Adams has discussed this and has admitted discussing this with Coates in the media, and I believe in the testimony today. I just -- you know, it would -- I am
not going to walk into something where, obviously, the answer is going to be yes and no. It is going to be a dispute. You are going to have -- you are going to have one witness say "didn't do it," and the other witness will say "yes" and we're --

CHAIRMAN REYNOLDS: I don't --

COMMISSIONER YAKI: -- then, once again --

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

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

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

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Do you have a counter?

COMMISSIONER YAKI: I have to think about it.

CHAIRMAN REYNOLDS: Okay. Fair enough.

Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I just want to restate something that I have stated before, but I think really is important and hasn't come up this morning. When Mr. Perez appeared before us, he said,
"Look, Section 11(b), which has barely been litigated, is a provision of the Voting Rights Act that is open to various legal interpretations, we interpret it one way, others can interpret it another way," and I thought fair enough.

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

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

And so, you know, there are legitimate disagreements here that need to be acknowledged, at the same time that, of course -- and I will repeat --
of course, if there is -- if racial double standards are being used to enforce the Voting Rights Act, I care.

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

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

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

VICE CHAIR THERNSTROM: Well, which is not a close call? I mean, if they --
CHAIRMAN REYNOLDS: That the Department of Justice --

VICE CHAIR THERNSTROM: -- a law is --

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

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

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

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

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

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

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

That pertains only to the deliberations related to dismissal of the New Black Panther case. As I indicated before, this matter has morphed into
something potentially far larger than that. Everything related to that -- that is, whether or not an edict was issued or a pronouncement was made that no cases would be brought against minority defendants, and also that Section 8 will not be enforced, none of that is privileged.

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

CHAIRMAN REYNOLDS: Second.

COMMISSIONER KIRSANOW: -- either --

CHAIRMAN REYNOLDS: Second.

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

None of that is privileged, and I would assume that DOJ would have absolutely no problem in rebutting evidence that is standing out in the public domain that seems to implicate the Justice Department. If we can adduce such testimony, then we can make a determination. Or if we can't make that determination, at least the evidence will be out there for others to judge for themselves.
CHAIRMAN REYNOLDS: Second. Discussion?

COMMISSIONER GAZIANO: May I --

CHAIRMAN REYNOLDS: Yes.

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

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

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

COMMISSIONER GAZIANO: I'll --

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

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

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

COMMISSIONER GAZIANO: I apologize.

(Laughter.)

I apologize.

Okay. Now --

COMMISSIONER YAKI: If you want to say "aggrandize," that would be different.
COMMISSIONER GAZIANO: Commissioner, I just wanted to endorse your --

COMMISSIONER YAKI: Don't pontificate.

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

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

So I think even if the President of the United States were to invoke executive privilege, that would not arise above our interest in hearing the witnesses. And we may disagree, or I don't know where
we'll come down, but at least hearing the witnesses, adducing the evidence.

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

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

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

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

I would move that the letter or subpoena would cap everything related to New Black Panther Party dismissal. We will forswear any inquiry into
that. Our sole element of inquiry will be into whether or not those statements were made saying that there is going to be discriminatory enforcement of civil rights laws and a non-enforcement of Section 8.

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

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

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

COMMISSIONER KIRSANOW: I'll also say this. I think this will go to it. We will not waive, however, our right to at some point ask them to testify about those matters related to New Black Panther Party. This is not a waiver of that. But for the purposes of adducing testimony only on the very narrow issue of, is there a policy of discriminatory enforcement of civil rights laws, and is there a
policy not to enforce Section 8, only on that will we inquire of those witnesses.

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

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

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

I think Mr. Popper has been identified, the Deputy Chief of the voting section, as another
witness who was -- may be relevant at this time for some of these statements. But I think, in general, that that's a fair motion, as long as we don't inadvertently or misleadingly waive our continued right and interest to the other evidence.

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

Commissioner Yaki?

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

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

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

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

CHAIRMAN REYNOLDS: Okay. Let's vote, folks. All in favor please say aye.
(Chorus of ayes.)
Opposition? Abstentions?
VICE CHAIR THERNSTROM: Me.
COMMISSIONER MELENDEZ: Abstention.

Melendez.

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

Next up?

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

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

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

Commissioner Yaki, would you like to submit anything?
COMMISSIONER YAKI: I'd like to move for a 10-minute break.

CHAIRMAN REYNOLDS: Yes.

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

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

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

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

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

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

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER TAYLOR: Oh, okay.

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

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

VICE CHAIR THERNSTROM: Yes. I mean --
CHAIRMAN REYNOLDS: Okay. That's fine.
I've got the time.

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

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

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

CHAIRMAN REYNOLDS: I'm sorry?

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

VICE CHAIR THERNSTROM: It would work better.

CHAIRMAN REYNOLDS: It would work a lot better.

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

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

CHAIRMAN REYNOLDS: That's fine.

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

CHAIRMAN REYNOLDS: Okay, folks. We're going to do this, but you need to be back here in 10
minutes. And those who are not, if we have a quorum, we're going to start.

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

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

COMMISSIONER MELENDEZ: Yes.

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

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

We will now consider the remaining recommendations. Prior to the break, we distributed a revised set of recommendations, and I will read them into the record. Well, first, I would like to move to reconsider the first recommendation. We voted on the
first recommendation, and we voted it down. I was one of the individuals who voted against it.

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

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Second. Discussion?

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

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

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

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

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

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

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

COMMISSIONER HERIOT: It's probably more efficient for us just to go straight to the version that --
CHAIRMAN REYNOLDS: Okay. All right.

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

CHAIRMAN REYNOLDS: Okay. Here we go.

COMMISSIONER YAKI: When does this version come out?

CHAIRMAN REYNOLDS: This was --

VICE CHAIR THERNSTROM: Two minutes ago.

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

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

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

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

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: Okay.
CHAIRMAN REYNOLDS: Yes.

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

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

VICE CHAIR THERNSTROM: Oh.

COMMISSIONER YAKI: -- to do it.

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

Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

Commissioner Yaki?

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

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: Well, first of all, I am a little leery about saying "should not admit any
student," but that being the -- that aside, what is a large deficit in academic credentials?

CHAIRMAN REYNOLDS: Two standard deviations.

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

COMMISSIONER YAKI: Does this --

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

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

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

COMMISSIONER YAKI: Why isn't it when we say they should not admit?
COMMISSIONER HERIOT: Should not admit without fully informing the student of the impact the deficit would have. I think actually they should admit people when even they have a small deficit, but still -- okay. You know, it is what it is.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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

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

CHAIRMAN REYNOLDS: For example, a musician.

VICE CHAIR THERNSTROM: A musical --

CHAIRMAN REYNOLDS: Or a football player.

VICE CHAIR THERNSTROM: -- or a writer.

CHAIRMAN REYNOLDS: What about the black student population?
VICE CHAIR THERNSTROM: Well, Harvard in fact has almost no disparity in -- not a significant disparity in the -- I mean, it's one --

CHAIRMAN REYNOLDS: Right. It's cascading --

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

CHAIRMAN REYNOLDS: Right.

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

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

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

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

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

CHAIRMAN REYNOLDS: Okay, fine. The world is an ugly place. And unless we face things squarely, we don't have -- I mean, just as -- as a consumer
protection approach, wouldn't you agree that it is --
that these families would be better off, and these
students would be better off if they knew what their
fate looked like? Is there any harm in giving people
information and allowing them to make a decision?

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

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

VICE CHAIR THERNSTROM: The data is
available.

CHAIRMAN REYNOLDS: The data is not
available.

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

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

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

COMMISSIONER YAKI: We'll just have the
Court Reporter put in an appropriate translation of
everything that you're saying.
VICE CHAIR THERNSTROM: Right. I'm sorry. I got really hungry, and I didn't eat breakfast.

CHAIRMAN REYNOLDS: She actually agreed with --

(Laughter.)

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

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

VICE CHAIR THERNSTROM: I am uncomfortable with this.

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

Commissioner Yaki?

COMMISSIONER YAKI: Well, this goes back to what I said the last time we considered this. It really is -- it goes toward recommendations 1, 2, and 3, and that is at some point we have to recognize that each of these students -- each of these young people
is an individual with their own potential, their own
hopes and dreams, their own, you know, choice to
exercise. If, as you were --

CHAIRMAN REYNOLDS: Is it informed choice?

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

(Laughter.)

VICE CHAIR THERNSTROM: The Court Reporter
is --

(Laughter.)

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

I think that, to the contrary, if, to the
extent that universities choose to do -- choose to
admit students with loan deficits as -- whatever that
definition should be, that it is incumbent upon them
to remedy those -- to remedy that and provide
appropriate support, remediation, as necessary,
because I just worry about how we are to be -- this
Commission is to be perceived as basically stating
that, you know, there are just students out there who just are not going to cut it.

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

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

I think if colleges are going to engage in this kind of admission behavior, which I think that they should, they should be spent a lot more money and a lot more time on ensuring that these students, whose potential they see something in, live up to that potential.
CHAIRMAN REYNOLDS: Okay. Commissioner Taylor?

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

VICE CHAIR THERNSTROM: Who has shown great restraint?

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

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

It is also important, however, that that student be made aware of the facts. And in this regard, I agree with Commissioner Thernstrom. Those facts could be brutal, those facts could be
demoralizing, and I understand your reluctance and hesitation of presenting those facts to a student, an 18 year-old young adult who may not have the capacity to properly process and assimilate that information. I fully appreciate that.

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

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

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

CHAIRMAN REYNOLDS: Like walking into a buzz saw.
COMMISSIONER TAYLOR: -- when they -- when the school doesn't uphold their end of the bargain, the student doesn't know how much force they are going to have to apply, how much harder they are going to have to work than the person sitting beside them. And they would apply that pressure if they knew.

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

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

So that is why I am supporting 1 and 2, so they can succeed, so they know exactly what they are up against, and it is a delicate balance and I acknowledge it's a delicate balance. But I fear,
because of our lack of focus on graduation at the end of the system, that students don't know and they assume entering into an environment that they simply need to put forth the effort that their peers are putting forth, and that's not the case.

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

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

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

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

COMMISSIONER GAZIANO: Call the question.

CHAIRMAN REYNOLDS: All those in favor please say aye.

(Chorus of ayes.)

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

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: One.
COMMISSIONER GAZIANO: One.

CHAIRMAN REYNOLDS: All in favor please say aye.

(Chorus of ayes.)

Objections?

VICE CHAIR THERNSTROM: I object.

COMMISSIONER YAKI: I object.

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

COMMISSIONER MELENDEZ: Opposed.

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

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

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

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

COMMISSIONER YAKI: Calling the question is a two-thirds vote.
CHAIRMAN REYNOLDS: Folks, folks, come on. Come on. We don't follow the Robert's Rules. We don't. We never have.

COMMISSIONER YAKI: That will change.

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

COMMISSIONER YAKI: That will change.

(Laughter.)

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

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

All those in favor signify --

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

CHAIRMAN REYNOLDS: Oh, I'm sorry.

COMMISSIONER YAKI: Excuse me? Hello?

CHAIRMAN REYNOLDS: You usually make a noise.
(Laughter.)

Commissioner Yaki?

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

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

I mean, this is something that requires a little bit more than just someone reading numbers off a page. There should be training. There should be a serious amount of -- some resources invested to ensure
that they -- if they do that, they do it in a way that
doesn't unduly chill that student's ability to make an
informed decision.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: That's my concern.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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

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

And the colleges and the admissions
process weed out kids. I mean, I just -- you know, I
just -- I think the up side of allowing this process
to work out, as it now does, is larger than the down
side of this kind of intrusion, advice, whatever you want to call it.

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

(Chorus of ayes.)

Objections?

COMMISSIONER YAKI: I object.

VICE CHAIR THERNSTROM: I object.

COMMISSIONER MELENDEZ: Opposed.

CHAIRMAN REYNOLDS: Okay. Same as before.

We have --

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

CHAIRMAN REYNOLDS: Okay.

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

CHAIRMAN REYNOLDS: No, no.

COMMISSIONER HERIOT: The other three here are not --

CHAIRMAN REYNOLDS: No, no --

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

CHAIRMAN REYNOLDS: Okay. The motion passes.
Each individual student's right to decide which high school to attend -- oh, I'm sorry -- which school to attend based on the best available evidence and with help from parents and advisors should be respected. To aid students with the decisionmaking process, schools with STEM programs should disclose to all admitted students their projected college grade point averages, and the range of error. Schools should also disclose to interested students the school's track record for graduating students with similar academic indices and STEM majors.

Is there a second? Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

CHAIRMAN REYNOLDS: Oh, you can.

COMMISSIONER HERIOT: It's done all the time.
COMMISSIONER YAKI: Well, I would argue that what you may project, and what you may tell someone, can become a self-fulfilling and self-defeating prophecy. And I strongly -- I have real strong concerns about telling kids that they are -- whether they are going to be A students, B students, C students, or D students, I have no idea what they would have projected me to be. Probably a D student, based on your opinion of me.

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

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

All those in favor please say aye.

(Chorus of ayes.)

Objections?

COMMISSIONER YAKI: I object.

COMMISSIONER MELENDEZ: Opposed.

VICE CHAIR THERNSTROM: I am opposed.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER KIRSANOW: I abstain.
CHAIRMAN REYNOLDS: Okay. The motion passes.

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

Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

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

CHAIRMAN REYNOLDS: Okay. Vice Chair Tbernstrom?

VICE CHAIR THERNSTROM: You know, the problem here, it seems to me, is that there are schools -- and this is in part a response to what
Commissioner Ashley has said before -- Commissioner Taylor, sorry -- there are schools that are well equipped to provide individual help to students, to provide remedial classes, to -- you know, to nurture students along.

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

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

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

CHAIRMAN REYNOLDS: Whoa, whoa, whoa, whoa, whoa.

VICE CHAIR THERNSTROM: From your highly selective schools --

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

VICE CHAIR THERNSTROM: Look, if you look at the Bok and Bowen data, for instance, I mean, the great inflation means kids find a way. They go to, you know, basket-weaving as a --
CHAIRMAN REYNOLDS: I'm not sure that that is a solution.

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

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

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

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

VICE CHAIR THERNSTROM: They will graduate in --

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

VICE CHAIR THERNSTROM: They will not graduate in STEM. You know why? Because as soon as they find out, and it's true for most math majors at a
place like Harvard, it's true for most majors in the Harvard sciences, they are not going to be very good. There are really whiz bang kids at a very early age. They won't pursue -- those courses are too hard.

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

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

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

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

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

CHAIRMAN REYNOLDS: No. MIT has a racial preference policy and has had it for years.
VICE CHAIR THERNSTROM: Okay. How many of those students have actually flunked out of MIT?

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

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

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

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

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

COMMISSIONER GAZIANO: They might succeed at a different --

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

VICE CHAIR THERNSTROM: No. I mean --

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

VICE CHAIR THERNSTROM: People come into Harvard and want to enter a STEM program, wash out of a STEM --
COMMISSIONER GAZIANO: They ought to have a realistic chance. If they have a realistic chance and they wash out, that's life.

CHAIRMAN REYNOLDS: That's right.

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

CHAIRMAN REYNOLDS: Right.

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

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

COMMISSIONER GAZIANO: Can we have a vote?

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

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

VICE CHAIR THERNSTROM: I think the muddling through that we now do, I am of course -- I am long -- I have long been opposed to racial and ethnic preferences in institutions of higher
education. But I would rather do the muddling through than this.

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

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

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

CHAIRMAN REYNOLDS: But they would have --

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom is right. An individual student could decide to -- fully weigh the risk and decide to go into that program anyway.
COMMISSIONER GAZIANO: Yes, some might.

But the recommendation we are discussing, and hopefully voting on real soon, is whether they should be given the information to allow --

CHAIRMAN REYNOLDS: Thanks for reminding me.

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

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

(Chorus of ayes.)

COMMISSIONER YAKI: I objection.

VICE CHAIR THERNSTROM: Which one are we doing now?

CHAIRMAN REYNOLDS: Number 4.

VICE CHAIR THERNSTROM: Four? I am opposed.

CHAIRMAN REYNOLDS: Okay.

STAFF DIRECTOR DANNENFELSER: And Commissioner Melendez I think opposed.

CHAIRMAN REYNOLDS: Yes, he opposes the motion.

STAFF DIRECTOR DANNENFELSER: Okay.

COMMISSIONER KIRSANOW: I support it.
CHAIRMAN REYNOLDS: Okay. The motion passes.

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

COMMISSIONER AZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

Commissioner Yaki, you get to go again. You get to go first again.

COMMISSIONER YAKI: No, no. I'll wait.

I'll pass.

CHAIRMAN REYNOLDS: All right. All right. Vice Chair Ternstrom?

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

(Laughter.)

CHAIRMAN REYNOLDS: There are some districts who do this.

VICE CHAIR THERNSTROM: Specifically with math and science?
CHAIRMAN REYNOLDS: I am sure that somewhere in the country someone has tried it.

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

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

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

CHAIRMAN REYNOLDS: All those in favor please say aye.

COMMISSIONER YAKI: Hold on.

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

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

CHAIRMAN REYNOLDS: All those in favor please say aye.

(Chorus of ayes.)

Commissioner Melendez?

(No response.)

COMMISSIONER KIRSANOW: I heard a door close.

COMMISSIONER TAYLOR: I did, too.

CHAIRMAN REYNOLDS: Vice Chair Ternstrom?
VICE CHAIR THERNSTROM: No, I'm going along with it. I said I would.

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

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

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

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

COMMISSIONER YAKI: Move to adjourn.

CHAIRMAN REYNOLDS: How do you feel?

COMMISSIONER GAZIANO: I'm happy to do them.

CHAIRMAN REYNOLDS: How do you feel?

VICE CHAIR THERNSTROM: SACs?

COMMISSIONER GAZIANO: Yes, SACs.

CHAIRMAN REYNOLDS: We'll hold on.

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

CHAIRMAN REYNOLDS: Hold on. There is something simmering over on this side.
COMMISSIONER YAKI: I was going to move to adjourn because quorum may be an issue.

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

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: -- a natural death.

COMMISSIONER YAKI: Quorum may be an issue.

CHAIRMAN REYNOLDS: Oh, I understand.

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

(Laughter.)

STAFF DIRECTOR DANNENFELSER: All right. Florida SAC.

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

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

VICE CHAIR THERNSTROM: Want to discuss the items? We've got a list here.
COMMISSIONER GAZIANO: Do you have the script for the approval of the Florida SAC? Could you borrow the script?

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

COMMISSIONER GAZIANO: I think so.

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

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

COMMISSIONER YAKI: I move to adjourn.

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

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

COMMISSIONER KIRSANOW: I second Commissioner Yaki's motion.

VICE CHAIR THERNSTROM: Pardon me?

COMMISSIONER KIRSANOW: I second Commissioner Yaki's motion.

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

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: Aye.
COMMISSIONER MELENDEZ: Aye.

(Laughter.)

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

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

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

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

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

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

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

COMMISSIONER GAZIANO: I vote against the motion to adjourn.

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

COMMISSIONER TAYLOR: I want to stay.
STAFF DIRECTOR DANNENFELSER: You're the deciding vote.

VICE CHAIR THERNSTROM: I'm the deciding vote?

STAFF DIRECTOR DANNENFELSER: Yes.

VICE CHAIR THERNSTROM: All right. I think we should just stay and discuss this, then.

COMMISSIONER GAZIANO: Now I move to amend the agenda to take up the SAC rechartering of the State of Florida and the State of Texas.

VICE CHAIR THERNSTROM: Why are we doing the most boring and inconsequential --

COMMISSIONER HERIOT: That's the one that Congress tells us that we have to do.

COMMISSIONER GAZIANO: That's our clear statutory duty. We have the rankings, which we should study, and I think there is two topics that just for the record may be able to be married in some interesting ways. But without the full Commission present --

COMMISSIONER YAKI: Are we for that version of marriage? I didn't know.

COMMISSIONER GAZIANO: I'm for all versions of marriage, except those that are bad.

(Laughter.)
VICE CHAIR THERNSTROM: Okay.

COMMISSIONER GAZIANO: But I move to take up the Florida and Texas SAC rechartering. Is there a second?

COMMISSIONER HERIOT: Second.

VICE CHAIR THERNSTROM: All in favor? Any discussion?

COMMISSIONER YAKI: I oppose.

VICE CHAIR THERNSTROM: Well, we haven't had a vote yet. Is there any discussion?

COMMISSIONER YAKI: Yes, I oppose.

VICE CHAIR THERNSTROM: Oh, that's your discussion.

COMMISSIONER YAKI: That's my discussion.

VICE CHAIR THERNSTROM: All right. I'm calling the question. How many in favor?

(Chorus of ayes.)

How many -- Yaki is opposed. Who else is opposed?

COMMISSIONER YAKI: Opposed.

COMMISSIONER MELENDEZ: Oppose. Melendez.

VICE CHAIR THERNSTROM: Abstain.

STAFF DIRECTOR DANNENFELSER: Okay. So four-two-one, right?

VICE CHAIR THERNSTROM: Yes, okay.
STAFF DIRECTOR DANNENFELSER: Okay. So Florida SAC, right?

III. STATE ADVISORY COMMITTEE ISSUES

VICE CHAIR THERNSTROM: Florida SAC. Okay. On June 25, 2010, the Staff Director shared potential -- oh, no, this is not it, is it? No. Sorry, wrong part of the script.

The meeting binder distributed by the Staff Director on July 8, 2010, contained a recommended list of candidates for the Florida State Advisory Committee. Could I have a motion that the Commission recharter the Florida State Advisory Committee?

Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director: Elena M. Flom, Judith Ann Albertelli, Clint Cline, Gilbert Colon, Charles Fred Hearns, Jay Robert McClure, Susan Perers, Elizabeth M. Rodriguez, Frank S. Shaw, III, Robert Siedlecki, M. Lourdes Villanueva, Allen B. Williams.

Pursuant to this motion, the Commission reappoints Elena Flom as chair of this rechartered Florida Advisory Committee. These members will serve as uncompensated government employees. Under this
motion, the Commission authorizes the Staff Director 
to execute the appropriate paperwork for the 
apPOINTment.

COMMISSIONER GAZIANO: So moved, if you --
if that wasn't a motion.

VICE CHAIR THERNSTROM: That was a motion.

COMMISSIONER TAYLOR: Second.

VICE CHAIR THERNSTROM: I need a second.

COMMISSIONER GAZIANO: Second. Either --

VICE CHAIR THERNSTROM: Okay. Any 
changes? Discussions? Questions? No discussion
about the Florida SAC Committee?

(No response.)

Okay. Calling the question. How many in 
favor?

(Chorus of ayes.)

How many opposed?

COMMISSIONER YAKI: I oppose.

COMMISSIONER MELENDEZ: One abstain.

Melendez.

STAFF DIRECTOR DANNENFELSER: For the 
record, what was the count of the ayes?

VICE CHAIR THERNSTROM: What were the 
ayes?
STAFF DIRECTOR DANNENFELSER: Was everyone else in favor?

VICE CHAIR THERNSTROM: Well, I'm abstaining. I haven't looked through this carefully enough.

STAFF DIRECTOR DANNENFELSER: So it would be four to two to -- oh, wait a minute. Melendez abstained?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER MELENDEZ: Yes.

STAFF DIRECTOR DANNENFELSER: So four in favor, one against, two abstentions.

VICE CHAIR THERNSTROM: Passes.

Okay. You want to go on to the Texas one as well. Could I have a motion that the Commission recharter the Texas State Advisory Committee? Under this motion, the Commission appoints the following individuals to that Committee, based on recommendations of the Staff Director: Charles Burchett, Bill Calhoun, Frances A. Carnot, Jason A. Caselias, Russell B. Casey, Cecilia R. Castillo, Norval D. Glenn, Glenn O. Lewis, Merrill Matthews, Cathy M. McConn, Harriet Miller, Martha Orozco, Charles -- with apologies from me if I don't get
people's names right -- Charles Stolfus, Barbara J. Walters. Hold on here.

Pursuant to this motion, the Commission appoints Merrill Matthews as chair of this rechartered Texas Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment.

So I need a "so move."

COMMISSIONER GAZIANO: Do you so move?

VICE CHAIR THERNSTROM: Yes, I so move.

COMMISSIONER GAZIANO: I second.

VICE CHAIR THERNSTROM: You second. Any changes? Discussion? Questions?

(No response.)

All in favor please indicate aye.

(Chorus of ayes.)

Anybody opposed?

COMMISSIONER YAKI: I object.

COMMISSIONER MELENDEZ: Melendez.

Opposed.

VICE CHAIR THERNSTROM: And I abstain. So the tally?
STAFF DIRECTOR DANNENFELSER: Four in favor, two against, one abstention, right?

VICE CHAIR THERNSTROM: Okay. New Jersey State Advisory Committee. Is there a motion to appoint Joan Gary to the New Jersey State Advisory Committee?

COMMISSIONER YAKI: I so move. Do we have that on the agenda?

COMMISSIONER GAZIANO: Yes, I didn't know. I asked the Commissioner -- Commissioner Yaki if the -- we had a sort of side agreement. I would ask it to be postponed, if it is on the agenda. I didn't see it on the agenda either.

VICE CHAIR THERNSTROM: I see it. I've got it in front of me. That's why I'm just reading --

COMMISSIONER YAKI: It was on the agenda. I thought that maybe you had done what you told me you were going to do.

COMMISSIONER GAZIANO: No. I thought you were going to call me.

COMMISSIONER YAKI: No. You said you were going to --

(Laughter.)

VICE CHAIR THERNSTROM: I'm going to make a motion that we postpone this.
COMMISSIONER YAKI: Just put it on the next regular business meeting.

VICE CHAIR THERNSTROM: We're going to put it on the next regular business meeting.

COMMISSIONER YAKI: In-person business meeting.

VICE CHAIR THERNSTROM: In-person business meeting.

V. APPROVAL OF MARCH 12, APRIL 16, MAY 14, MAY 28, AND JUNE 11 MEETING MINUTES

STAFF DIRECTOR DANNENFELSER: Want to do minutes?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER GAZIANO: I don't think so, but let's -- now let's be clear after the meeting.

VICE CHAIR THERNSTROM: I'm sorry. Tell me what you're saying.

COMMISSIONER GAZIANO: We had a little side -- we're fine.

STAFF DIRECTOR DANNENFELSER: Okay.

COMMISSIONER GAZIANO: We're fine.

VICE CHAIR THERNSTROM: Are we approving the minutes of March 12, March 16 -- April 16, May 14, May 28, and June 11? Does anybody want to make a motion to --
COMMISSIONER GAZIANO: I would abstain.

If I -- I can make the motion, but I would abstain. I haven't read those minutes.

VICE CHAIR THERNSTROM: Me neither. I abstain.

COMMISSIONER YAKI: Move to adjourn.

VICE CHAIR THERNSTROM: Move to adjourn? You don't want to discuss the enforcement topic?

COMMISSIONER GAZIANO: I think we can -- now that we have covered the other business, I don't mind a brief discussion. Sure. But I just wanted to make sure we got through other --

VICE CHAIR THERNSTROM: The reason for having a discussion, Commissioner Yaki, is only to get a little bit of a sense of where people are coming from on this. And then, we can have a full discussion at the next in-person business meeting.

COMMISSIONER YAKI: I did not have the opportunity to even vote on these things, so my votes aren't even reflected in --


COMMISSIONER YAKI: Because they are lost in like 400 other e-mails, and I was trying to figure out what was going on.
VICE CHAIR THERNSTROM: Okay. So we have a very brief discussion, just to lay the groundwork for a full discussion.

COMMISSIONER YAKI: Move to limit the discussion to five minutes, and then we adjourn.

VICE CHAIR THERNSTROM: I move to limit the discussion to five minutes, and then we adjourn, just to get a sense of the ground upon which we --

COMMISSIONER GAZIANO: We are probably all in agreement on that. Let's go.

VICE CHAIR THERNSTROM: Okay. Who has got anything to say on the -- have you all got in front of you the list? Okay. The potential enforcement reports, the number one came in, the Department of Justice investigation into anti-Asian violence at South Philadelphia High School. It got 21 points.

But one Commissioner voted for this topic on the understanding that its current scope would be subject to further refinement. Two, disparities in school discipline. That got 20 votes. One Commissioner voted for this topic on the understanding that the scope would be expanded beyond the Hispanic --
COMMISSIONER YAKI: A point of personal privilege. Does that indicate that I didn't vote, that not all Commissioners voted on this?

VICE CHAIR THERNSTROM: No, it does not on this piece of paper.

COMMISSIONER YAKI: Well, I think it should have.

VICE CHAIR THERNSTROM: Let us make a note that not all Commissioners voted on this. And this list, as we have known from past experience, is very fluid. We have started out with lists in numerical order, and the order has changed.

Commissioner Gaziano?

COMMISSIONER GAZIANO: I would be very eager to see all Commissioners votes tallied and recirculated, so that I know what the -- but as far as the votes here, I don't know -- I don't -- I think the first topic of partner justice investigation of the Asian -- anti-Asian violence at South Philadelphia, we have had more work on that. But if it was going to be an enforcement report, I think it should be refined, although I don't think I was the Commissioner who voted for it, with that understanding. But I think it would need a little bit more refinement.
I am not for investigating for an enforcement report one-off single incident. I am interested in only investigating matters that there is a significant enforcement issue on. And it is my understanding that we did not yet know whether, although the incident seems rather important, whether there was a significant enforcement matter about it, as was clearly the case with the New Black Panther --

VICE CHAIR THERNSTROM: As is clearly not the case with the New Black Panther.

COMMISSIONER GAZIANO: But I would also like to -- so that is one kind of reservation I have in defining that. But I also -- I think I was at least one of the Commissioners -- maybe there were more -- who voted for the second topic with the understanding that the scope be expanded beyond Hispanics.

Obviously, is this were an enforcement report, it would need to focus on the Department of Education's recent initiative to sort of warn or follow up on disparities in student discipline generally. But I also think there is the potential and that we ought to consider the potential to making one topic where the umbrella is school violence.
And the Justice Department, Department of Education -- I'm sorry, school violence and misconduct, because I think that the two may well be related or at least we should try to see if we can come up with topics and angles that make them relevant and related. And I think that one of the issues is is when, you know, student violence is -- or student disciplinary problems aren't properly taken care of, they may lead to violence.

So I think there is some potential to please everyone, at least everyone who has so far voted, in marrying these two topics. I don't know, you know, how we can work with staff to try to come up with a synthesis on that, but I think that I would be a little happier if we answered a few of those questions.

VICE CHAIR THERNSTROM: I have actually -- this is a topic I have written on in an article called -- I just lost the title for a minute, but, in any case, it's an issue I've done quite a bit of work on. It is a huge topic, Commissioner Gaziano. But when you are talking about disorder in the schools, as well as violence, two separate issues -- and there is much more of the former than the latter -- you are taking
on the world of education, because disorder in the schools is so pervasive.

And I would say, by the way, that the black anti-Asian violence -- I mean, we know by now it was -- is not confined to simply that South Philadelphia high school. It is quite pervasive in Philadelphia. It exists in San Francisco, and I don't know where else.

COMMISSIONER GAZIANO: What's the federal enforcement book? That is a little less clear to me at this point. Is it being appropriately investigated? Is it not? Our report for the statutory -- or I don't -- the federal enforcement report has -- we can have other briefings on other state issues, but the issue for our annual federal enforcement report has to be a federal enforcement angle. So I just think a little bit more work needs to be done.

And I hope maybe others on our staff can help us think of a way of looking at school violence generally and the relationship to the Department of Education's current inquiry into disparities in -- or apparent disparities, whether they exist or not, and whether they are explained or not in discipline.
So I don't know that we can. I'm just suggesting that as a possibility.

VICE CHAIR THERNSTROM: Commissioner Yaki?

VIII. ADJOURN

COMMISSIONER YAKI: I don't think we can, and let's adjourn.

COMMISSIONER KIRSANOW: Five minutes are up.

VICE CHAIR THERNSTROM: Let's adjourn. That's fine. Let me have a motion to adjourn. Can I have a motion to adjourn?

COMMISSIONER YAKI: No, no, we've already adopted a motion to adjourn.

VICE CHAIR THERNSTROM: Oh, that's right. That's right.

(Whereupon, at 12:35 p.m., the proceedings in the foregoing matter were adjourned.)