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

PRESENT:

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

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

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

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH
KIMBERLY SCHULD
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(9:35 a.m.)

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

I. APPROVAL OF AGENDA

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

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

II. PROGRAM PLANNING

- NBPP ENFORCEMENT PROJECT

CHAIRMAN REYNOLDS: The motion passes
unanimously. First up is an update on the New Black Panther Party enforcement report. Mr. General Counsel, please provide us with an update on the recent developments in the investigation.

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

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

COMMISSIONER YAKI: This is the draft?

MR. BLACKWOOD: That is correct. It is the draft. One thing that you will see is the citations are perhaps not the standard citations. That is simply the citations to the record are there for informational purposes because it is still our purpose to implement hyperlinks into the report.
We'll be working with editors to do that. But for purposes of your reviewing the report by the commissioners, you will see the cites and be able to find the transcript references that we have.

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

CHAIRMAN REYNOLDS: Any questions?

(No response.)

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

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

COMMISSIONER YAKI: I didn't.

COMMISSIONER GAZIANO: You do?

COMMISSIONER YAKI: I didn't.

COMMISSIONER GAZIANO: Oh, you didn't.
Okay. Well, let me --

VICE CHAIR THERNSTROM: I did not either.

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

COMMISSIONER HERIOT: I did, by the way.

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

COMMISSIONER GAZIANO: Breathtaking and insulting.

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

COMMISSIONER GAZIANO: Contemptuous? Insulting, too?

COMMISSIONER KIRSANOW: Nonresponsive.

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

But what is more remarkable is that when Assistant Attorney General Perez was at the witness
table before us, he asked us to bring any such statement to his attention. And the Chairman did raise it to his attention and explained that that is why we wanted Chris Coates.

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

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

And, yet, he refuses to allow, continues to refuse to allow, Chris Coates to testify when it's clear that he would have relevant and material evidence to present to the Commission about what are now the central concerns that this Commission has uncovered, whether there is a hostility against
race-neutral enforcement of the civil rights and specific instructions from the Obama political appointees to enforce the voting laws in race-conscious ways.

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

But, taking that aside, what Commissioner Gaziano failed to state and which I think is the central tenet of why that particular testimony is extremely uncredible, to say the least, is that
witness came here before this Commission and said, "I will bet" -- and he said those words, "I will bet that you will see this policy, the so-called policy, of racial hostility toward non-enforcing against whites," whatever.

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

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

COMMISSIONER YAKI: Yes, he did.

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

COMMISSIONER GAZIANO: That is not --

COMMISSIONER YAKI: I have the transcript.

COMMISSIONER GAZIANO: That is false.

COMMISSIONER YAKI: I have the transcript.

CHAIRMAN REYNOLDS: Folks, folks, folks.

COMMISSIONER YAKI: I have the transcript.

COMMISSIONER GAZIANO: We have the transcript.

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

CHAIRMAN REYNOLDS: Commissioner Gaziano, let him finish.

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

COMMISSIONER GAZIANO: He --

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

COMMISSIONER KIRSANOW: He used several alternatives.

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

COMMISSIONER KIRSANOW: The entire sentence --

COMMISSIONER YAKI: Are you denying --

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

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

COMMISSIONER GAZIANO: He said very --

COMMISSIONER YAKI: You are denying.

COMMISSIONER GAZIANO: "Bet"?

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

COMMISSIONER KIRSANOW: Different alternatives --

COMMISSIONER YAKI: He lost.
COMMISSIONER KIRSANOW: -- would demonstrate unequivocally --

COMMISSIONER YAKI: He lost.

COMMISSIONER GAZIANO: -- that they are not --

COMMISSIONER YAKI: He lost.

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

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

COMMISSIONER KIRSANOW: You cannot --

COMMISSIONER YAKI: And you can deny --

CHAIRMAN REYNOLDS: Commissioner Yaki.

Commissioner Yaki.

COMMISSIONER YAKI: They filed in the Noxubee case.

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

COMMISSIONER KIRSANOW: I am telling you --

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

COMMISSIONER YAKI: Well, I would have
liked to have finished my statement because the mere fact is in the Noxubee case, which apparently you're unwilling to admit, the Department of Justice did respond. And they did file. In fact, they went beyond what Adams predicted they may or may not do. But he bet they wouldn't.

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

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes?

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

COMMISSIONER YAKI: You may.

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

COMMISSIONER YAKI: True. I think Noxubee
is the answer because --

CHAIRMAN REYNOLDS: We have --

COMMISSIONER YAKI: -- the part of --

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

COMMISSIONER YAKI: Sure.

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

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

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

CHAIRMAN REYNOLDS: And do you --

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

CHAIRMAN REYNOLDS: Let me ask a question.
COMMISSIONER YAKI: The issue really on the table --

CHAIRMAN REYNOLDS: Well, it's my letter.

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

CHAIRMAN REYNOLDS: I'm telling you --

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

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

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

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

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

CHAIRMAN REYNOLDS: No. I am --

COMMISSIONER YAKI: Let's be clear on what it is I am talking about. It is precisely about the letter because this is the point that I am making. The point that I am making is that we have this continued talking about this sworn testimony by this one witness.
But the fact of the matter is is that one witness does not a conspiracy make.

CHAIRMAN REYNOLDS: Agreed. Agreed.

COMMISSIONER YAKI: And --

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

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

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

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

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

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

COMMISSIONER GAZIANO: He heard it from Melendez himself.
COMMISSIONER YAKI: He did not hear that particular statement directly.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: We can go back to the transcript.

CHAIRMAN REYNOLDS: We don't agree.

COMMISSIONER GAZIANO: He heard some --

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

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

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

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

COMMISSIONER KIRSANOW: The Chairman's letter --

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

CHAIRMAN REYNOLDS: Commissioner.

COMMISSIONER YAKI: The proof of --

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: -- the policy is the
filing in the Noxubee case, --

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

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

COMMISSIONER YAKI: I indeed did say that.

CHAIRMAN REYNOLDS: Right. So what we --

COMMISSIONER YAKI: But the problem I have
--

CHAIRMAN REYNOLDS: How long will it take
to --

COMMISSIONER YAKI: The problem I have --

CHAIRMAN REYNOLDS: -- a factual dispute
--

COMMISSIONER YAKI: The problem I have is
that and what I said in that also is that I don't
believe that if anyone came in and denied that, that
this investigation would be finished at all. I think
it would just simply be carried on in a different way.
There is nothing independent about what this
Commission is doing at this point. This is all about
taking the word of one ex-employee --

CHAIRMAN REYNOLDS: But it should be --

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

CHAIRMAN REYNOLDS: It's one --

COMMISSIONER YAKI: -- supporting it, too.

CHAIRMAN REYNOLDS: Oh, you wouldn't --

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

CHAIRMAN REYNOLDS: That was a sworn affidavit.

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

COMMISSIONER GAZIANO: That's not true.

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

COMMISSIONER GAZIANO: That is not true.

COMMISSIONER YAKI: He did not talk.

COMMISSIONER GAZIANO: You know it's not true.

COMMISSIONER YAKI: Did he refuse to talk to them?

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

CHAIRMAN REYNOLDS: Commissioner?

COMMISSIONER YAKI: It is a joke.

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

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

CHAIRMAN REYNOLDS: Such as?

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

CHAIRMAN REYNOLDS: The letter did not --

COMMISSIONER YAKI: -- that Justice would
CHAIRMAN REYNOLDS: -- mention that case.

The letter, I mean --

COMMISSIONER YAKI: His response --

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

COMMISSIONER YAKI: The letter that talks about --

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

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

COMMISSIONER GAZIANO: That's not what it said.

CHAIRMAN REYNOLDS: Commissioner.

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

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

CHAIRMAN REYNOLDS: Commissioner.

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

CHAIRMAN REYNOLDS: Commissioner Yaki,

share --

COMMISSIONER YAKI: The policy doesn't
exist.

CHAIRMAN REYNOLDS: Share the microphone.

COMMISSIONER YAKI: Take it away.

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

COMMISSIONER KIRSANOW: Just a few points.

We have the witness who testified under oath.

COMMISSIONER YAKI: Yes.

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

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

And we made a very, very reasonable offer to DOJ, saying, "We will not ask him to testify on privileged matters. We just want him to testify about matters related to enforcement within DOJ and whether or not he heard Julie Fernandes say that section 8 will not be enforced by this administration."
None of those matters are part of deliberative process. None of those matters are privileged. None of those matters can be plausibly withheld from this Commission which they have a duty to comply with. By statutory authority, they have a requirement to cooperate with us. And they by virtue of this letter gave us the back of the hand, said, "No way."

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

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

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

And what we have here is in this particular filing precisely what he predicted. He
said those things under oath. And what we get in
return is a letter basically saying, "Believe me, even
though I am not willing to come here and testify or
bring someone who has firsthand knowledge to testify,
this is an abomination to this process. It's an
abomination to civil rights laws. It's an abomination
to race-neutral enforcement of the laws. It's an
abomination to the 1964 Civil Rights Act. It's an
abomination to the 1965 Voting Rights Act."

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

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

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

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

VICE CHAIR THERNSTROM: I think we should
assume that the Justice Department does not have a racial double standard? I mean, give them a break.

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

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

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

In your written works, you have stated the very thing that you're now suggesting is not the case. In your written work, you have said that there is a double standard.

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

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

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, I concede that I could be dead wrong. But I think that the way to settle the dispute is just to get the book and present you with the words or to concede that
VICE CHAIR THERNSTROM: That is fine.

CHAIRMAN REYNOLDS: -- I am indeed wrong.

VICE CHAIR THERNSTROM: That is fine. I would be delighted to defend my book.

CHAIRMAN REYNOLDS: But the way to settle factual disputes is to --

VICE CHAIR THERNSTROM: To have some facts.

CHAIRMAN REYNOLDS: Right, right.

VICE CHAIR THERNSTROM: Yes. Well, we don't in this case.

CHAIRMAN REYNOLDS: That's right. But we are trying to get them.

VICE CHAIR THERNSTROM: Right.

CHAIRMAN REYNOLDS: Would you --

VICE CHAIR THERNSTROM: I'm saying there is no possibility that Julie Fernandes or its --

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, in the past --

VICE CHAIR THERNSTROM: It is really improbable.

CHAIRMAN REYNOLDS: In the past, you stated that you wanted to hear from Coates.

VICE CHAIR THERNSTROM: Look, I said --
CHAIRMAN REYNOLDS: Is that still your position?

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

COMMISSIONER GAZIANO: What do you base that upon?

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

COMMISSIONER GAZIANO: Out of the --

CHAIRMAN REYNOLDS: Let her finish.

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

I have another question, a couple of other points. It does seem to me that it is undeniable that Christian Adams made the Noxubee case a litmus test
for whether the Department had racial double standards. And, indeed, he flunked in doing so, as Commissioner Yaki said.

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

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

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

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

COMMISSIONER YAKI: You are making it one.

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

VICE CHAIR THERNSTROM: Well, I think it
is the standard. Oh, here it is. Yes. Okay. I think it is the standard. I mean, I think it's really an astonishing statement.

CHAIRMAN REYNOLDS: Would you like to --

VICE CHAIR THERNSTROM: We cannot conclude --

CHAIRMAN REYNOLDS: Would you like to read the statement?

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

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

VICE CHAIR THERNSTROM: Okay.

"Consequently, in the event that Mr. Coates is not produced, the Commission may reasonably infer that his testimony would corroborate that of J. Christian Adams before the Commission on July 6, 2010 and that the Department is hostile to the race-neutral enforcement of voting rights laws and the Department refuses to enforce section 8 of the NVRA." I mean, that does not seem to me a really sound inference.

CHAIRMAN REYNOLDS: You don't believe that this body can draw an inference from the Department of Justice's refusal to produce fact witnesses to settle this dispute? It seems to me that the simplest thing
in the world to do for the Department of Justice in terms of putting this to bed is to turn to Mr. Coates and just instruct him to go testify.

VICE CHAIR THERNSTROM: Well, they may have.

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

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

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

CHAIRMAN REYNOLDS: That is right.

VICE CHAIR THERNSTROM: You are not running that Department.

CHAIRMAN REYNOLDS: That is right.

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

CHAIRMAN REYNOLDS: Mr. Coates has testified before this body in the past. Is that so?
VICE CHAIR THERNSTROM: Yes.

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

VICE CHAIR THERNSTROM: Yes.

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

VICE CHAIR THERNSTROM: It may have --

CHAIRMAN REYNOLDS: Is that right?

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

CHAIRMAN REYNOLDS: I understand that, but --

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

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

VICE CHAIR THERNSTROM: That what?

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

VICE CHAIR THERNSTROM: Yes, it has refused to allow it, but it may have perfectly good reasons for doing so.
CHAIRMAN REYNOLDS: Right. Would you entertain --

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

CHAIRMAN REYNOLDS: Would you entertain the --

COMMISSIONER GAZIANO: Has it offered any perfectly good reasons?

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

COMMISSIONER GAZIANO: Has it offered any good reasons?

COMMISSIONER YAKI: Does it need to?

VICE CHAIR THERNSTROM: Why are you --

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

VICE CHAIR THERNSTROM: I don't think so.

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

VICE CHAIR THERNSTROM: You know, look --

COMMISSIONER GAZIANO: Good faith requires to actually comply.

VICE CHAIR THERNSTROM: As I understand it --
COMMISSIONER GAZIANO: Good faith also requires if there is any delay or other reason, to state the reason.

VICE CHAIR THERNSTROM: Right. I think --

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

COMMISSIONER GAZIANO: And it has not done so.

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

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

COMMISSIONER GAZIANO: Assistant Attorney General --

COMMISSIONER YAKI: It's a predetermined outcome.

COMMISSIONER GAZIANO: Assistant Attorney --

COMMISSIONER YAKI: You already made it from day one, --
COMMISSIONER GAZIANO: Commissioner Yaki,

--

COMMISSIONER YAKI: -- day one.

COMMISSIONER GAZIANO: -- answer your

question.

CHAIRMAN REYNOLDS: One at a time.

COMMISSIONER GAZIANO: Assistant Attorney

General Perez made perfectly clear that if any
statement to the effect that we now have an allegation
that Julie Fernandes made, he would investigate it.
And he accepted that we would need to investigate
that. And, yet, he has given us no reason --

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

COMMISSIONER GAZIANO: -- to refuse

Coates, to not have Coates.

VICE CHAIR THERNSTROM: I did not hear the

latter from him. All I heard from him is they were

internally investigating the --

COMMISSIONER GAZIANO: No, no, no.

CHAIRMAN REYNOLDS: No, no, no.

COMMISSIONER GAZIANO: He has not

acknowledged that he is internally investigating

anything.

VICE CHAIR THERNSTROM: Well, he said very
early --

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

CHAIRMAN REYNOLDS: He would bring it to --

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

VICE CHAIR THERNSTROM: Wait a minute.

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

VICE CHAIR THERNSTROM: In that raw form, no.

COMMISSIONER GAZIANO: Please don't interrupt.

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

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


COMMISSIONER YAKI: And I believe I had my
hand up next.

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

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

CHAIRMAN REYNOLDS: -- fellow commissioners.

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

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

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

VICE CHAIR THERNSTROM: I made the --

COMMISSIONER GAZIANO: Let me finish the sentence.

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

COMMISSIONER GAZIANO: Let me finish the sentence.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER GAZIANO: You made the very
strange point that you believe any other administration would thwart the Commission's investigations in exactly the same way. And I can submit to you that --

VICE CHAIR THERNSTROM: Might.

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

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

VICE CHAIR THERNSTROM: I did --

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

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

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

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

CHAIRMAN REYNOLDS: Go ahead.

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

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

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

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

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

CHAIRMAN REYNOLDS: Fine.

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

CHAIRMAN REYNOLDS: Thank you.

COMMISSIONER YAKI: But I reserve the right --

CHAIRMAN REYNOLDS: I understand.

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

CHAIRMAN REYNOLDS: I understand.

Commissioner Taylor?
COMMISSIONER TAYLOR: I do so with great trepidation.

(Laughter.)

COMMISSIONER YAKI: You should.

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

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

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

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

This whole debate in my view goes to that fundamental question. And it is something that we
should discuss I think openly as to what we really think we are. Are we an independent Commission or are we a Commission that can ask a question and when rebuffed must go away?

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

COMMISSIONER YAKI: Well, I would just like to modify slightly what Commissioner Taylor said. I agree that some of what this involves is whether we -- deals with our status as an independent Commission, but I would like to state that our original mission, the mission of the United States Commission on Civil Rights was as an independent bipartisan Commission.

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

CHAIRMAN REYNOLDS: Okay. Thank you for
making that distinction.

Commissioner Gaziano?

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

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

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

There is a lack of clarity whether we can go to court to enforce that without the Department of Justice's assistant. It's been clear to me in the course of this investigation that when the Department
of Justice has a conflict of interest, as it does right now when it doesn't want us to investigate what we have set out to investigate, it has sometimes cooperated in the past, but it has not cooperated this time.

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

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

Options to address a potential conflict of interest might include the following: one, enactment of a statutory procedure by which the Commission may request the Attorney General to appoint a special counsel with authority to represent it in federal court, which request the Attorney General must personally respond to in writing within a specified period of time; two, enactment of a statutory provision to clarify that the Commission may hire its
own counsel and proceed independently in federal court
if the Attorney General refuses to enforce the
subpoena or other lawful requests, especially those
directed at the Department of Justice, its officers,
and employees; or, three, a conscious decision not to
alter the Commission's statute or statutory
confirmation that the Attorney General and the
Department of Justice can act against the Commission's
interest without any particular explanation.

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

CHAIRMAN REYNOLDS: Okay. So --

COMMISSIONER HERIOT: Is that a motion?

COMMISSIONER GAZIANO: That's a motion. I

so move.

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion? Vice

Chair Thernstrom?

VICE CHAIR THERNSTROM: You know, this is

a question I have had all along. When we talk about
the history here and the Justice Department's response
to this independent agency -- and this comes up also
in response to Commissioner Taylor's remarks -- are we
assuming that this agency is different than all other
agencies and its experience with respect to this
investigation is different than the experience of
other independent agencies, that subpoenas from all
other agencies are regularly enforced, that conflicts
of interest as they exist are ignored by the
Department of Justice?

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

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

So if you are talking about whether we are
in a unique position, I think the answer is yes. And
also, I mean, is there -- forgetting about the facts
of this particular case, if there is a conflict
between the Department of Justice and the U.S.
Commission on Civil Rights or any other agency that
has the ability to investigate the goings-on at the
Department, is that a problem? I mean, how is that
resolved? I mean, is there a conflict? And if so,
how is that conflict resolved?

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

CHAIRMAN REYNOLDS: But the --

VICE CHAIR THERNSTROM: I would be
delighted to --

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

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

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

CHAIRMAN REYNOLDS: It's not bowing down.

Didn't Congress authorize us --

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

CHAIRMAN REYNOLDS: But you have offered
an opinion on a topic that --

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

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

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

COMMISSIONER YAKI: Both.

-- what other body has the --

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

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: Because we had a discussion about it.

VICE CHAIR THERNSTROM: That is correct.

COMMISSIONER YAKI: Just the two of us.

VICE CHAIR THERNSTROM: We did.

COMMISSIONER YAKI: Just the two of us.
CHAIRMAN REYNOLDS: Okay.

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

VICE CHAIR THERNSTROM: Unlike others do.

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

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

CHAIRMAN REYNOLDS: So to be clear --

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

CHAIRMAN REYNOLDS: So that I am clear on what I believe you are saying, you are saying that the fact that the Department of Justice may have a
conflict and could avoid its statutory duty to cooperate with the Commission, that that is okay?

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

CHAIRMAN REYNOLDS: What's the doctrine?

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

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

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

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

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

And we have spent over a year and a half
obsessing about whether or not there is some sort of
cabal conspiracy culture at DOJ, which, by the way,
the previous administration spent many years obsessing
about as well, and very little on what is going on in
the outside world.

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

COMMISSIONER GAZIANO: Mr. Chairman, let
me --

COMMISSIONER YAKI: The point is --

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

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

COMMISSIONER GAZIANO: If you will answer.

CHAIRMAN REYNOLDS: Come on now.

COMMISSIONER GAZIANO: Mr. Chairman?

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

COMMISSIONER YAKI: Seriously, seriously.
CHAIRMAN REYNOLDS: But, look, I would --

VICE CHAIR THERNSTROM: Let him finish.

COMMISSIONER YAKI: Mr. Commissioner --

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

CHAIRMAN REYNOLDS: Commissioner Yaki. Commissioner Yaki.

COMMISSIONER KIRSANOW: Commissioner Yaki.

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

COMMISSIONER YAKI: When did I escalate?

CHAIRMAN REYNOLDS: You need to show some discipline.

COMMISSIONER YAKI: When did I escalate?

CHAIRMAN REYNOLDS: And that goes for everyone.

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

COMMISSIONER YAKI: I'm sorry. I don't believe I was actually finished, Mr. Chair. I would just simply say this in conclusion. You asked me the question, do I think this is -- in essence, whether I
believe we are in the same boat as Congress or not, is it right for us to be stymied in our investigation?

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

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

CHAIRMAN REYNOLDS: Okay. Now --

COMMISSIONER YAKI: Mr. Chair --

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

And you are correct. The rule that you just articulated I hope that you embrace that rule for consistency's sake when the balance of power changes.
Well, actually, I take that back. I don't hope. I hope you change your position because I think your position is wrong.

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

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

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

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

Having said that, Commissioner Kirsanow?

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

Could Congress or anyone else have contemplated that? Unlikely. This motion would rectify that. Consider we have at this particular moment several outstanding requests from the ranking members of Congress to the Department of Justice.
seeking to solicit precisely what we have been seeking
to solicit.

Government oversight ranking member has
requested this information. He was given the back of
the hand. Seven members of the Senate Judiciary
Committee have asked for this information. They were
given the back of the hand. Representative Lamar
Smith has asked for this information. He was given
the back of the hand. Representative Frank Wolf was
asking for this information. He was given the back of
the hand.

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

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

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

CHAIRMAN REYNOLDS: Commissioner Gaziano?
COMMISSIONER GAZIANO: Commissioner Yaki's misunderstanding of separation of powers principles and laws is as breathtaking as some of his other statements. But I do --

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

(Laughter.)

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

CHAIRMAN REYNOLDS: That is not true.

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

COMMISSIONER GAZIANO: Mr. Chairman, could I continue?

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

COMMISSIONER GAZIANO: Can I continue?

COMMISSIONER YAKI: The Chairman actually interrupted you.

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

COMMISSIONER GAZIANO: Commissioner Yaki's analogy to Congress isn't far off, but his conclusions
are exactly backward. It is indeed the fact that we are not part of the Executive Branch. And we probably by analogy and by law are closer to Congress, but it is not true that Congress is without recourse as we may be without recourse.

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

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

So I am not asking that Congress grant us anything. As a matter of fact, I am only asking by this motion that Congress consider various options. And the greatest option I am suggesting that Congress consider is giving us one of its powers.
By the way, Congress also has the power of the purse. The wisdom of the framers was that it gave each branch the power to confront intrusions by the other branch.

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

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

CHAIRMAN REYNOLDS: Okay. Commissioner Heriot?

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

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

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

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

Commissioner Thernstrom has said that somehow the Chairman acted inappropriately in suggesting that the Department of Justice will not produce such a witness that a reasonable person, not
just a commissioner, I would add, any citizen, could
draw an adverse inference from that.

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

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

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

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

CHAIRMAN REYNOLDS: Yes.

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

MR. BLACKWOOD: The citation is 1975(a),
paragraph (e)(2). In relevant part, "In case of
contumacy or refusal to obey a subpoena, the Attorney
General may in a federal court of appropriate
jurisdiction obtain an appropriate order to enforce the subpoena."

VICE CHAIR THERNSTROM: May.

COMMISSIONER YAKI: I have a question, Mr.

--

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

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

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I am not sure how that cuts with regard to this motion. The point here is that Congress did indeed initially decide that the Department of Justice would have some discretion when it comes to enforcing our subpoenas, no doubt thinking
about the typical subpoena that we would issue. It is not directed at the Department of Justice, where there is no conflict of interest.

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

There is no doubt they intended us to look at Department of Justice enforcement issues because, again, they require us to once a year do at least one report that is directed towards civil rights enforcement. Our typical subpoena, however, is not directed to the Department of Justice. And what we're trying to do is draw an issue to Congress' attention. When you have a situation like this where there is a conflict of interest, should we not have an alternative procedure?

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

I think some of these alternatives are very sensible, but we understand that the Department of Justice does indeed have situations where they have
got too many things to do to enforce a single subpoena of ours. And they have to make judgment calls on this. But a judgment call should not be made in a situation where there is a conflict of interest. And that is the point.

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom, please?

VICE CHAIR THERNSTROM: Yes?

CHAIRMAN REYNOLDS: If you will respond to --

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

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

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

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

COMMISSIONER HERIOT: Is it your position
this would not --

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

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

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

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

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

COMMISSIONER YAKI: Mr. Chair?

CHAIRMAN REYNOLDS: Just hold on. Just hold on.

VICE CHAIR THERNSTROM: I didn't say we should be investigating the subpoenas and so forth. I said if you want to worry about how the Voting Rights Act is being enforced -- I didn't ask for any investigation. I just asked the people to read the
new guidelines for section 5.

COMMISSIONER GAZIANO: You're all over the map.

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

CHAIRMAN REYNOLDS: All right. All right.

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: -- on any point.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom? Commissioner Yaki?

VICE CHAIR THERNSTROM: Yes?

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

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

For example, if we were to make a series of unreasonable requests related to things that may have been of interest to a particular commissioner but not pertain to a particular investigation, they would
be under really no obligation to have to cooperate
with that or anything we send over -- because the
statute according to one commissioner, they simply
have to cooperate, regardless of what it is we send
over.

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

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

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

    And because of the focus on one particular
witness and whether or not that witness has corroborating statements or not, they believe that we have the all-encompassing power to force that person to testify or not.

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

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

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

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki --

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

CHAIRMAN REYNOLDS: I think that --
COMMISSIONER YAKI: -- they could produce

--

CHAIRMAN REYNOLDS: The question has been
called.

COMMISSIONER YAKI: -- four million reams
of evidence.

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

CHAIRMAN REYNOLDS: Commissioner Taylor?

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

CHAIRMAN REYNOLDS: Yes?

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

I would rise in favor of that motion, that
we as a body should say to Congress, "We want to provide you with our thoughts as to in a situation such as this, when we are left with no recourse, what we should be able to do next."

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

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

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

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Nope.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: I don't think you can separate this motion from what the Commission has been
doing for the past two years. So I vote no.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: No.

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

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

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

MR. BYRNES: Thank you, Mr. Chairman.

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

I will say that counsels for the four holdout schools have expressed an initial willingness to consider providing data. If the Commission described the type of analysis it would perform and described the intended use of the data in the report, once this information was provided, they would then confirm which categories of information they would
supply and whether it would simply be aggregated data
or the individualized data that we would prefer. Even
if they provided the data, they preferred to run the
data analyses at their own facilities.

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

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

I also want to note that the religious
schools were not willing to provide individualized
data on the applicants’ religious affiliation.

CHAIRMAN REYNOLDS: Okay. We have gone
back and forth on it with counsel for recalcitrant
schools. We have offered up what are in my
estimations reasonable accommodations. And, while we have made some progress, the amount of progress is not enough. And it's not moving along quick enough.

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

COMMISSIONER HERIOT: Would that be under your signature?

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

COMMISSIONER MELENDEZ: Unless Commissioner Yaki wants to.

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

COMMISSIONER YAKI: No.

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

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

CHAIRMAN REYNOLDS: Yes. That's how
subcommittees conduct business.

COMMISSIONER MELENDEZ: How long is this going to last?

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

COMMISSIONER MELENDEZ: If it is something short, fine.

CHAIRMAN REYNOLDS: Okay. I suspect that this will be wrapped up soon enough, especially if we move since we're moving to have our subpoena enforced. And, Commissioner Taylor, I would also ask that you serve on the subcommittee.

COMMISSIONER TAYLOR: I will agree to do so.

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

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

COMMISSIONER YAKI: No. Sorry.

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

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

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

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

COMMISSIONER YAKI: I abstain.

COMMISSIONER HERIOT: -- do a roll?

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Aye.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Vice Chair Ternstrom?

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

CHAIRMAN REYNOLDS: Commissioner Taylor?
COMMISSIONER TAYLOR: Aye.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: I abstain.

CHAIRMAN REYNOLDS: Okay. I vote for it.

The motion passes.

Commissioner Yaki?

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

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

CHAIRMAN REYNOLDS: Okay. To that --

MR. BLACKWOOD: These are private. They only are being disclosed to special assistants and
commissioners. No one has seen this report at this stage other than the General Counsel's Office.

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

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

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

CHAIRMAN REYNOLDS: Okay.

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

COMMISSIONER YAKI: But these are private?

MR. BLACKWOOD: Yes, private.

COMMISSIONER YAKI: For our review?

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

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

COMMISSIONER GAZIANO: And since we voted to include this finding and recommendation for
consideration, would you try to incorporate that?

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

COMMISSIONER GAZIANO: Okay. If possible.

MR. BLACKWOOD: Yes.

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

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

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

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

CHAIRMAN REYNOLDS: We stated this on the record.

COMMISSIONER YAKI: I like triple protections. I think that, you know, when you send an
e-mail --

CHAIRMAN REYNOLDS: That's fine.

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

CHAIRMAN REYNOLDS: That's fine.

COMMISSIONER YAKI: Okay.

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

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

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

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

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

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

COMMISSIONER YAKI: I think that just
caught them and sent you into a new database.

COMMISSIONER TAYLOR: That's right.

That's right. Put me on a special list.

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

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

- CONSIDERATION OF FY 2011 ENFORCEMENT REPORT TOPIC

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

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

Specifically, that process asked commissioners to rank potential projects in order to streamline the process of developing a slate of potential candidates for an enforcement report for 2011.
The Office of Staff Director tabulated the results of the commissioners' rankings and provided you with the results as an aid to collective decision-making as we consider a potential enforcement report topic for the coming fiscal year.

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

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

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

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

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

With respect to the issue about student discipline, we had done outreach to various
organizations and to state advisory committees for recommendations. And the recommendation on this particular topic came from a state advisory committee member, who recommended that we look into this as it relates to Hispanic students. So we did circulate that proposal based on how it was submitted by the state advisory committee member.

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

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

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

And also regarding the first topic on
anti-Asian violence in the schools, one commissioner voted for that on the basis that the scope would be subject to further shaping and refinement.

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

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

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

CHAIRMAN REYNOLDS: The floor is open.

Commissioner Gaziano?

COMMISSIONER GAZIANO: There were some other discussion points in our last meeting that I
will hopefully remember accurately. For the record, I wanted to know what the enforcement hook was with regard to the violence in Philadelphia before it was included in the other discipline.

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

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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

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

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

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

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

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

COMMISSIONER GAZIANO: Therefore --

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

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

STAFF DIRECTOR DANNENFELSER: I don't know
that I would characterize it as nonresponsive at this point because it was a very preliminary request.

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

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

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

COMMISSIONER HERIOT: Is this in writing?

MS. OSTROWSKY: No.

COMMISSIONER HERIOT: Telephone calls?

MS. OSTROWSKY: We have made telephone calls.

COMMISSIONER HERIOT: When did they occur approximately?

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

We also made a call to the Philadelphia District Attorney's Office. And they told us that their hands were tied because no complaint had been filed with them. They said that it is often difficult
for complainants to come forward there because they fear retribution.

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

MS. OSTROWSKY: No one has --

COMMISSIONER HERIOT: -- school authorities?

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Well, a couple of things. I don't want any more investigations into one-offs just for Commissioner Todd Gaziano's information. We have had one too many already.
I don't want us wandering beyond our jurisdiction. I don't think this will turn out to be the case with respect to this topic. And, as was just noted, there has been a complaint filed.

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

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

And I would say, indeed, that it is important to remember that, however we define it or decide not to define it because we drop it today, you
know, the definition of the topic, the outlines of the investigation will change over time and especially because the Commission is going to change, the composition of the Commission is going to change.

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

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

CHAIRMAN REYNOLDS: I'm sorry.

Commissioner Heriot?

COMMISSIONER HERIOT: I just wanted to get on the record my own thoughts about the interaction between these two topics that we have been discussing, the Philadelphia case and disparate impact in discipline. I ranked disparate impact and discipline as my top choice. And I believe I am fairly certain that I ranked the Philadelphia case as my second choice.
And what was on my mind at the time was that these two topics could be combined. I would not have ranked the Philadelphia case in my top five had I not been thinking that.

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

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

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

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

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

I think this is common in other sections
of the Department of Justice, also common at the state
level now -- for settlements to include a promise on
the part of the defendant to give some substantial sum
of money to a particular -- I guess we would say a
charitable organization but these are generally
advocacy organizations as well as part of the
settlement. And I think that is a fascinating issue
and one that would perhaps garner bipartisan support
to look at how this is done, which organizations are
being given these monies, who makes these decisions, and how the money is actually spent by these organizations when they get it.

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

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

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

Yes. Where do we go from there?

COMMISSIONER HERIOT: I think that's a good question because I think you are right that the numbers are not really going to reveal everything we have to know. And, in fact, that is the point. The very point is that with disciplinary cases, to look at cold numbers and say, gee, you know, the percentages
should be equal across races, that doesn't tell the whole story.

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

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

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

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

VICE CHAIR THERNSTROM: And how are we...
going to get into those schools and talk to teachers?
I mean, having been on a state board of education for 11 years, I know the difficulty of getting --

COMMISSIONER HERIOT: We've got subpoena power.

VICE CHAIR THERNSTROM: -- of getting in --

COMMISSIONER HERIOT: We should use it.
VICE CHAIR THERNSTROM: -- into schools.
COMMISSIONER TAYLOR: Well, let me ask you --

VICE CHAIR THERNSTROM: Yes?
COMMISSIONER TAYLOR: What is the basis of the Department's mandate?

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

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

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

COMMISSIONER TAYLOR: -- enables them to draw a conclusion?
COMMISSIONER HERIOT: Yes. I think to be fair to them, they would say that they recognize that, you know, different situations call for different actions. But they're creating a presumption.

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

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

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

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

COMMISSIONER HERIOT: That's my fear.
VICE CHAIR THERNSTROM: Well, for --

COMMISSIONER HERIOT: I don't know if --

VICE CHAIR THERNSTROM: -- came along.

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

COMMISSIONER HERIOT: My point exactly.

VICE CHAIR THERNSTROM: -- and so forth.

I mean, you walk into most inner city public schools and they are chaotic nightmares. Okay?

COMMISSIONER HERIOT: But my biggest fear is federal enforcement.

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

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

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

COMMISSIONER HERIOT: We're just trying to
prevent the federal government from making it worse.
And I think it is one of the central education issues
that exists today, the discipline issue generally.

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

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

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

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

You have got a lot of students that are
struggling to do well in school. And it's not easy
when the other students in the class are being
disruptive.
And I don't think Secretary Duncan has done anybody any favor by making it more difficult to enforce discipline. And that is what I would like to look into.

CHAIRMAN REYNOLDS: Okay.

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

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

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

CHAIRMAN REYNOLDS: Which one?

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

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

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

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

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

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

The second is that it really be -- by the way, on that first point, it may be true that that kind of racial violence is very important and this Commission can look into it. Maybe this Commission
should look into it. But it can't look into it as the federal enforcement, part of the federal enforcement report, unless we know there is a real federal enforcement angle.

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

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

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

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

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

COMMISSIONER MELENDEZ: Yes. I would support the Philadelphia, the number one. I think
that if it's a hot topic, I think that we ought to look at it. And we need more information from the Justice Department or whoever is enforcement. I would support looking at that.

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

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

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

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

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

CHAIRMAN REYNOLDS: So it would be expanded, then?

VICE CHAIR THERNSTROM: Well, we would
like to look at other incidents.

CHAIRMAN REYNOLDS: Well, I'm just --

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Okay.

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

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

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

CHAIRMAN REYNOLDS: These are --

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

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

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: -- in terms of --

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

CHAIRMAN REYNOLDS: Okay.

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

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

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

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

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

VICE CHAIR THERNSTROM: Well --

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

VICE CHAIR THERNSTROM: No. I have no
reason to think they are doing a good or not good job.

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

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

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

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

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

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

VICE CHAIR THERNSTROM: They may be trying the issue --
COMMISSIONER GAZIANO: -- a very strong factual basis to decide to devote the Commission's resources --

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

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

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

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

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

VICE CHAIR THERNSTROM: I agree it could become moot.

CHAIRMAN REYNOLDS: And we would be investigating. We would be investigating them while their investigation is not only ongoing but when no
preliminary determinations have been made.

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

CHAIRMAN REYNOLDS: Well, we'll know --

COMMISSIONER GAZIANO: As soon as we vote on it.

CHAIRMAN REYNOLDS: I'm trying to --

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

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

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

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

But at this point -- Commissioner Yaki, I will get to you. But at this point, I am not sure
what the focus will be.

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

CHAIRMAN REYNOLDS: Okay.

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

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki, are you a lawyer?

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

The question, I think what I like about Commissioner Heriot -- I should say Commissioner Thernstrom's proposal has to do with the fact that I think this is the tip of a very large iceberg.
And part of the -- I think that we are being hung up on the word "enforcement" because I think where the Commission has done some of its greatest work is in identifying where there are holes in the law that could or should have an impact on enforcement of civil rights issues in certain areas.

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

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

CHAIRMAN REYNOLDS: Okay. Vice Chair
Thernstrom?

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

And it's not confined to Philadelphia, again.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

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

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

COMMISSIONER KIRSANOW: -- to DOJ --

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

VICE CHAIR THERNSTROM: We need more women, obviously.

COMMISSIONER KIRSANOW: -- DOJ, what appears to be the practice or policy, which my understanding is it has been going on for quite some time from data of this particular administration
directing certain settlement monies to different groups.

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

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

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

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

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

VICE CHAIR THERNSTROM: And what's the
timetable here?

CHAIRMAN REYNOLDS: At the next business meeting.

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

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

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

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

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

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

VICE CHAIR THERNSTROM: No, none of them.

COMMISSIONER HERIOT: No?

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

COMMISSIONER HERIOT: You haven't been on one?

VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Why not?

CHAIRMAN REYNOLDS: Okay. Let's not go
COMMISSIONER HERIOT: Hold on. Why not?

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

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

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

CHAIRMAN REYNOLDS: Yes.

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

CHAIRMAN REYNOLDS: Yes.

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

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

STAFF DIRECTOR DANNENFELSER: September
24th is the next scheduled in-person meeting.

VICE CHAIR THERNSTROM: All right.

CHAIRMAN REYNOLDS: When is the next telephonic?

STAFF DIRECTOR DANNENFELSER: August 27th.

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

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

COMMISSIONER HERIOT: Which day are we talking about?

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

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

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

VICE CHAIR THERNSTROM: Pardon me?

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

VICE CHAIR THERNSTROM: You know, I really
do because if I'm on a vacation, I'm preoccupied.

CHAIRMAN REYNOLDS: Okay.

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

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

CHAIRMAN REYNOLDS: Okay. Let's --

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

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

VICE CHAIR THERNSTROM: Anyway --

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

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

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

COMMISSIONER HERIOT: That's fine.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: September 10th.

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

CHAIRMAN REYNOLDS: Yes. Okay. During our April 16th and May 28th business meetings,
commissioners considered how to proceed with the completion of our health care disparities report. While part A was approved by commissioners on May 28th, there has been some confusion about how commissioners agreed to proceed with findings and recommendations as well as their statements and rebuttals.

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

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

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

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

COMMISSIONER TAYLOR: I don't know.
(Laughter.)

VICE CHAIR THERNSTROM: An honest man.

CHAIRMAN REYNOLDS: That is not what I expected.

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

CHAIRMAN REYNOLDS: Okay.

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

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

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

COMMISSIONER TAYLOR: Can you?

VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: Let us proceed with --

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

CHAIRMAN REYNOLDS: Let's proceed with Commissioner Taylor's initial recommendation. Let's do our statements, distribute them, and see if we can form a consensus as to the findings and
recommendations. What do you think?

COMMISSIONER HERIOT: I have two problems.

One is if we're talking about the timeline here, I am working on my statement on STEM. Then we're going to have the national conference. I don't see how I can get anything done by September the 27th.

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

CHAIRMAN REYNOLDS: Okay. How about this?

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

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

COMMISSIONER TAYLOR: That is --

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

COMMISSIONER TAYLOR: From my purpose --

CHAIRMAN REYNOLDS: Put this to bed.

COMMISSIONER TAYLOR: -- in terms of getting it out the door to the extent points want to be emphasized, people can do so in their individual statements.
COMMISSIONER HERIOT: There's no --

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

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

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

COMMISSIONER TAYLOR: Right.

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

COMMISSIONER TAYLOR: Let me make this recommendation. I could draft my statement, which would include proposed findings and recommendations that others could perhaps join, I could move the process along that way. That wouldn't bind us as a body on the findings and recommendations, but we can still have some out there if people concur in that statement.
CHAIRMAN REYNOLDS: Commissioner Yaki, how do you feel about that approach?

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

CHAIRMAN REYNOLDS: There would be a proposal.

COMMISSIONER HERIOT: There might be if --

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

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

CHAIRMAN REYNOLDS: Anything you propose?

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

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

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

COMMISSIONER TAYLOR: I guess let me move them up, then, in my own time.
COMMISSIONER GAZIANO: But you proposed them for the rest of --

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

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

COMMISSIONER TAYLOR: Yes.

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

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Because --

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Let's stop.

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

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

But yes, I will circulate those early in the process.
COMMISSIONER HERIOT: Because I agree with your concerns about getting this done --

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

CHAIRMAN REYNOLDS: Yes.

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

CHAIRMAN REYNOLDS: He does that from time to time.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Okay. We have a process.

- UPDATE ON THE NATIONAL CONFERENCE

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

As you know, the event will take place on Tuesday, September 14th at the National Press Club. William Raspberry, the Pulitzer Prize-winning writer, has graciously agreed to be our keynote speaker.
We have assembled an impressive list of accomplished panelists from a variety of perspectives, which will ensure a fascinating discussion that day. Two-thirds of our speakers have committed at this time. And we are waiting for the remaining invites by next week.

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

I encourage commissioners and staff members who plan to attend to register on the website. We need to account for everyone in order to have an accurate account for the Press Club.

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

Commissioners who have previously indicated that they intend to participate in the event
will serve as moderators. The subject matter of the panels reflects that which was agreed upon when our concept paper for the event was adopted with the addition of one panel that focuses on education and education reform issues.

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

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

CHAIRMAN REYNOLDS: Next week.

Commissioner Yaki?

COMMISSIONER YAKI: Who are our conference planners?

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

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

CHAIRMAN REYNOLDS: Does anybody know?

MS. TOLHURST: Project special events group, Bethesda.

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

COMMISSIONER YAKI: Can you simply really to them I find it very amusing that my invitation came at least a week and a half before other people got
their invitations to the point where people were asking me questions and I didn't know.

VICE CHAIR THERNSTROM: After other people got theirs.

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

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

COMMISSIONER YAKI: Thank you.

CHAIRMAN REYNOLDS: Commissioner Heriot?

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

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

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

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

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

(No response.)

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

COMMISSIONER MELENDEZ: Yes.

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

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

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

VICE CHAIR THERNSTROM: It's yes.

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

VICE CHAIR THERNSTROM: It's yes, but I
didn't say it. It is yes.

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

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

CHAIRMAN REYNOLDS: Okay.

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

CHAIRMAN REYNOLDS: Okay. All right.

Vice Chair Ternstrom?

VICE CHAIR THERNSTROM: I'm sorry. What?

CHAIRMAN REYNOLDS: Did you say something?

VICE CHAIR THERNSTROM: No.

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

CHAIRMAN REYNOLDS: Snarky?

COMMISSIONER YAKI: Snarky.

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

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

CHAIRMAN REYNOLDS: The next item is the approval of the minutes.
COMMISSIONER YAKI: It's twice in one meeting.

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

CHAIRMAN REYNOLDS: Are you going to respond?

COMMISSIONER GAZIANO: You're welcome.

(Laughter.)

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

(Laughter.)

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

COMMISSIONER TAYLOR: I could not stand it.

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

IV. APPROVAL OF MINUTES OF JULY 30 MEETING

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

I move that these minutes be approved. Is there a second?
COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Vice Chair Ternstrom, I heard an "Aye"?

VICE CHAIR TERNSTROM: Yes, you did.

CHAIRMAN REYNOLDS: All objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

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

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: It was approved unanimously.

V. ANNOUNCEMENTS

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

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

CHAIRMAN REYNOLDS: Okay.

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

CHAIRMAN REYNOLDS: Okay. Thank you.

VICE CHAIR THERNSTROM: That is a major failing.

CHAIRMAN REYNOLDS: Thank you for that clarification.

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

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

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

Echoing the language of the 15th Amendment, the act prohibits states from imposing any
"voter qualification or prerequisite to voting or standard practice or procedure to deny or abridge the right of any citizen of the United States to vote on account of race or color."

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

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

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

STAFF DIRECTOR DANNENFELSER: Ninetieth.

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

-- the 90th anniversary of the ratification of the 19th amendment. August 18th marks the 90th anniversary of the ratification of the 19th amendment to the Constitution, which prohibits states and the federal government from denying citizens the
right to vote because of their sex. We commemorate
those who worked for the recognition of this right and
look forward to celebrating its 90th anniversary next
week.

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

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

CHAIRMAN REYNOLDS: I'm sorry.

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

CHAIRMAN REYNOLDS: I don't recall.

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

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

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

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

COMMISSIONER YAKI: Thank you.
CHAIRMAN REYNOLDS: Mr. Staff Director?

VI. STAFF DIRECTOR’S REPORT

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

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

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

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

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

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

STAFF DIRECTOR DANNENFELSER: We will do
that, as we have done that in the past. We will get
similar reports out to commissioners to help with that
process.

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

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

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

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

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

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

STAFF DIRECTOR DANNENFELSER: They gave us
a new point of contact when the one individual was
transferred to a different position in the Department.

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

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

COMMISSIONER YAKI: Who is this?

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

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

STAFF DIRECTOR DANNENFELSER: January.

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

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

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


CHAIRMAN REYNOLDS: Nine.

COMMISSIONER HERIOT: Two thousand and
nine. Okay. So we have been in contact since January, and we haven't gotten any response on this?

STAFF DIRECTOR DANNENFELSER: No.

COMMISSIONER HERIOT: Oh, my.

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

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

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

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

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

CHAIRMAN REYNOLDS: Okay. At this point, let's send a formal letter, get a sense of why cooperation has ceased.
COMMISSIONER HERIOT: It should perhaps be more assertive than "get a sense of why," but, you know, request that cooperation occur.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: You know?

(Laughter.)

COMMISSIONER HERIOT: We've got a right to this. I think this is very central to our function of being a civil rights watchdog. We need to find out what has actually happened to the Department of Justice.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: And this is very serious.

CHAIRMAN REYNOLDS: Commissioner Yaki, did you --

COMMISSIONER YAKI: Yes?

CHAIRMAN REYNOLDS: -- suggest that we issue a subpoena?

COMMISSIONER YAKI: No. I am simply saying I'm sure the flow of information will resume shortly.

VICE CHAIR THERNSTROM: I have a question on a completely different subject for the Staff Director.
CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: So I stared at those numbers on the --

CHAIRMAN REYNOLDS: Thanks for reminding me.

VICE CHAIR THERNSTROM: Pardon me?

CHAIRMAN REYNOLDS: Oh, no, no. You have just reminded me of the topic.

VICE CHAIR THERNSTROM: -- on the amount of time, resources devoted to the New Black Panther Party project. And I just wondered what the process was by which you arrive at such numbers, which looked implausibly low to me, frankly.

It is my impression that we've got -- I mean, this is an old problem of the Commission. I'm not looking at you and saying it's a problem that's occurred under your watch. It's my impression that we don't have a really good way, an accounting system that really does enable us to count up exactly what the hours are that people spend on various projects -- but I would be glad to be corrected on this -- and, therefore, arrive at really accurate information.

CHAIRMAN REYNOLDS: And I would like to add -- well, I guess it's a question -- when folks submit time, is there a breakout of what they are
actually working on?

STAFF DIRECTOR DANNENFELSER: There is a project code for this particular report. And the people who are working on the report when they submit their time sheets every two weeks are supposed to allocate how many hours they devoted to that particular project. So that's what it's based on.

CHAIRMAN REYNOLDS: So we have a system in place. And the only issue is whether the code is being used.

VICE CHAIR THERNSTROM: Whether the self-reporting is accurate.

CHAIRMAN REYNOLDS: Yes.

STAFF DIRECTOR DANNENFELSER: But it's primarily been in the Office of General Counsel is really where the time has been allocated. But I think they have pretty good experience at reporting the time.

Now, if someone works above and beyond their 40 hours, I guess we have no way of capturing that, but basically when people are reporting their time, they are supposed to make a good faith estimate of how many hours they devoted to that particular project.

Now, we have had -- the other expense, of
course, has been out-of-pocket expenses. And those have actually been less than what was originally projected because we had not had as many trips to Philadelphia as were budgeted for originally, although we do still have some substantial costs that will come particularly relating to the printing of the report. We will have to have the cover design, the printing of the report. And we will also probably need the services of a copy editor, copy editor, for a period of time, particularly with the numerous links that we hope to establish for the report.

CHAIRMAN REYNOLDS: And it's also important to note that the investigation -- this number is being compared against projects that have been completed. This one is ongoing. So it's going to be a larger number.

VICE CHAIR THERNSTROM: It looks implausibly small to me, frankly, as I said.

CHAIRMAN REYNOLDS: I guess are these numbers, this type of analysis -- I guess I question how much information -- well, I'm not sure what we get from these numbers. And I'm not sure -- I mean, most of the costs are fixed. They're salaries. And so the dollar is going to be paid regardless.

VICE CHAIR THERNSTROM: Right.
CHAIRMAN REYNOLDS: In any event, the information was requested by --

COMMISSIONER GAZIANO: Mr. Chairman, just because one or two points -- I just wanted to pose this partially as a question, but also it is my understanding that the figure for similar means through last year's mortgage crisis report was 211,000, actually closer to 212,000 dollars, which is about $115,000 more than we spent so far on the New Black Panther case.

And one of the things that makes me think that the amount that we had spent has been very economically done -- and I commend the General Counsel's office, obviously, for shouldering so much work on this with a reduced staff that he is currently laboring under -- is that this investigation, as opposed to the mortgage crisis, involved several trips to Philadelphia to take depositions. It involved three hearings of this Commission, rather than one briefing in the mortgage crisis.

So I assume that whether the cost accounting is perfectly accurate or not, I assume that it is consistent. And this suggests to me that: a) the New Black Panther investigation has been undertaken in a rather economical way. And b) what it
also suggests to me is that there are only a few people who -- on our reduced staff size who have been asked to shoulder a very heavy load.

And I would like to commend all of them, particularly all of the attorneys in the General Counsel's Office, who worked on this report so hard.

STAFF DIRECTOR DANNENFELSER: One of the reasons the cost is a little bit less than we projected as well is that we have done these hearings in Washington, D.C., in this office. So we haven't had the travel expenses and hotels and other things that we projected might be the case if we had several hearings in Philadelphia.

CHAIRMAN REYNOLDS: Okay, folks. We have reached the end of the agenda. The meeting is adjourned.

(Whereupon, the foregoing matter was concluded at 12:00 p.m.)
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