

U.S. COMMISSION ON CIVIL RIGHTS

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HEARING ON THE
 DEPARTMENT OF JUSTICE'S ACTIONS RELATED TO
 THE NEW BLACK PANTHER PARTY LITIGATION
 AND ITS ENFORCEMENT OF
 SECTION 11(b) OF THE VOTING RIGHTS ACT

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FRIDAY, APRIL 23, 2010

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

PRESENT:

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

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
 TERESA BROOKS
 CHRISTOPHER BYRNES, Director, RPCU
 DEMITRIA DEAS
 LILLIAN DUNLAP
 PAMELA A. DUNSTON, Chief, ASCD
 HANNAH GEYER, Legal Intern
 MAHA JWEIED
 TINALOUISE MARTIN, Director, OM
 LENORE OSTROWSKY
 JOHN RATCLIFFE, Chief, Budget and Finance
 KIMBERLY TOLHURST
 VANESSA WILLIAMSON
 AUDREY WRIGHT

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MICHELE YORKMAN-RAMEY

COMMISSIONER ASSISTANTS PRESENT:

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

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

(9:35 a.m.)

I. INTRODUCTION BY CHAIR

CHAIRPERSON REYNOLDS: Ladies and gentlemen, this hearing of the United States Commission on Civil Rights will come to order. Our purpose today is to collect facts and information regarding the Department of Justice's actions related to the New Black Panther Party litigation and its enforcement of Section 11(b) of the Voting Rights Act.

The Commission began its investigation of this matter almost a year ago, in June of 2009. This hearing is an outgrowth of that project. Notice regarding the time, place and content of this hearing appeared in the Federal Register on March 18th, 2010, pursuant to the Commission's regulations.

Since its inception, the US Commission on Civil Rights has had a special mandate over issues of voting and voting rights. In fact, one of the Commission's first official projects upon its establishment by the Civil Rights Act of 1957, the same act that created the Civil Rights Division at the Department of Justice, was to convene hearings in Alabama to look for evidence of racial discrimination in voting there.

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1 Witness after witness testified of efforts
2 to interfere with their right to vote, whether by
3 threats, intimidation, coercion, trickery, or the
4 erection of legal or other impediments. The data
5 gathered by the Commission formed the basis for the
6 Voting Rights Act of 1965, which is unequivocal in its
7 command that no person, whether acting under color of
8 law or otherwise, shall intimidate, threaten, coerce,
9 or attempt to intimidate, threaten or coerce anyone
10 from voting or attempting to vote, or from aiding a
11 voter.

12 Investigating such claims, and bringing
13 them to the attention of enforcement entities, such as
14 the Department of Justice, remains a -- remains an
15 essential part of the Commission's statutory mission
16 to this day.

17 Our mandate also includes investigating
18 and reporting to the President and Congress on how
19 well federal agencies are enforcing the nation's civil
20 rights laws. Since 1961, the Commission has adopted
21 12 statutory enforcement reports, and have -- has
22 produced over 30 publications on the subject of voting
23 and voting rights.

24 The right to vote freely without
25 interference, discrimination or intimidation is

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1 fundamental and indeed at the heart of our work here
2 at the Commission. In the nation's mind, voting
3 rights are regarded as sacred and, by extension, the
4 area surrounding our polling stations.

5 We treat these areas with a high level of
6 sensitivity and care befitting the heady process that
7 unfolds there. It is with great concern, then, that
8 we turn to the events of Election Day in 2008 at a
9 polling place in Philadelphia.

10 On November 4th, 2008, two members of the
11 New Black Panther Party appeared at a polling station
12 in Philadelphia, Pennsylvania. The allegations
13 against these two members include standing in front of
14 the entrance to the polling station, wearing
15 paramilitary style uniforms and black combat boots.

16 One of these individuals was armed with a
17 nightstick. These members of the New Black Panther
18 Party are alleged to have cursed at various poll
19 watchers, and to have acted in a threatening manner.

20 Based on the allegations of voter
21 intimidation, the Department of Justice interviewed
22 numerous witnesses and, on January 7th, 2009, filed a
23 civil complaint pursuant to Section 11(b) of the
24 Voting Rights Act of 1965.

25 The suit named as defendants the party

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1 members at the polling station, King Samir Shabazz and
2 Jerry Jackson, as well as the New Black Panther Party
3 and its head, Malik Zulu Shabazz. The lawsuit sought
4 a permanent injunction against each of these
5 defendants from in part engaging in coercing,
6 threatening or intimidating behavior at polling
7 locations during elections.

8 The record reveals that each of the
9 defendants was served with a complaint; however, none
10 of them contested the charges, and a default was
11 entered against them. As a matter of law, that meant
12 that none of the factual allegations contained in the
13 complaint were contested by the defendants.

14 All that remained for the Department of
15 Justice -- all that -- all that remained was for the -
16 - for the Department of Justice to request the entry
17 of a default judgment, and entry of an effective
18 injunction to stop future acts of intimidation. Yet,
19 that did not happen.

20 The Court had set a deadline of May 1st,
21 2009, for the Department to request the default
22 judgment. On May 1st, however, the Department instead
23 requested a continuance until May 15th, 2009.

24 Press reports indicate that, at this
25 stage, the experienced career line attorneys who were

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1 responsible for the case were put under intense
2 pressure to justify the lawsuit against the New Black
3 Panther Party. In addition, press reports indicate
4 that although the lawsuit was uncontested, the Acting
5 Assistant Attorney General of the Civil Rights
6 Division sought a review of the matter by the
7 division's appellate section.

8 Although the memorandum written by the
9 chief of the appellate section of the Civil Rights
10 Division supported pursuing a default judgment as to
11 each of the four defendants, the Department dropped
12 its claim against three of the defendants: Jerry
13 Jackson, Malik Zulu Shabazz and the New Black Panther
14 Party itself.

15 As to the final defendant, King Samir
16 Shabazz, the Department greatly reduced the injunctive
17 relief it was seeking. Whereas the original complaint
18 sought an unlimited injunction, prohibiting acts of
19 intimidation anywhere in the United States, the final
20 relief sought by the Department was limited solely to
21 the City of Philadelphia, and was only to last through
22 November of 2012.

23 If the press reports are to be believed,
24 these dismissals, as well as the reduction of the
25 release -- relief sought against the final defendant,

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1 occurred only after Loretta King, the Acting Head of
2 the Civil Rights Division, acting with the approval of
3 her politically-appointed supervisors, explicitly
4 overread the career-line attorneys handling the case,
5 the Chief and the Deputy Chief of the Voting Rights
6 Section, and the Chief of the Civil Rights Appellate
7 Section, who reviewed the matter.

8 The Commission began its inquiry under
9 this matter by writing a letter dated June 6th, 2009,
10 to the Department requesting information with regard
11 to the lawsuit; additional letters seeking information
12 about the case was -- were then sent on August 10th and
13 September 30th of 2009. When the Department was
14 unresponsive, the Commission served subpoenas on the
15 Department's officials on November 10th, 2009 in an
16 effort to determine what had occurred.

17 The Department refused to allow these
18 individuals, these officials, to testify. Due to this
19 refusal, on December 8th, 2009, the Commission directly
20 subpoenaed the Justice Department, serving it with
21 both a set of interrogatories and a request for
22 production of documents.

23 Up until very recently, the Department
24 provided little information about the New Black
25 Panther Party litigation, other than providing copies

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1 of pleadings and despite -- and this is despite
2 repeated requests. The correspondence between the
3 Commission and the Department is posted on our
4 website.

5 Perhaps in recognition of its prior lack
6 of cooperation and its pattern of delay, just last
7 Friday, the Department turned over many heavily
8 redacted documents for the first time that relate to
9 the investigation relating to the New Black Panther
10 litigation.

11 While it is disappointing that this
12 information was not provided eight or nine months ago
13 before this hearing, the Commission thanks the
14 Department for its belated efforts. Because of the
15 Department's lack of cooperation, the scope of today's
16 hearing necessarily is limited.

17 Nevertheless, we examine the following.
18 First, we will examine video evidence that provides
19 some background on the New Black Panther Party, as
20 well as the events of November 4th, 2008. Second, we
21 will hear from three witnesses who were present at the
22 polling place on Election Day: Mike -- Mike Mauro,
23 Chris Hill and Bartle Bull.

24 Then, depending on when Chris -- Frank
25 Wolf arrives, we will likely hear testimony next from

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1 Gregory Katsas, who has served in many senior
2 positions in the Department of Justice, including
3 Senior Attorney General for the Civil Division, and
4 Acting Associate Attorney General, regarding the
5 procedures and channels of Department and White House
6 review that would normally apply to the Department's
7 actions in a case like this one.

8 Finally, we will hear from Congressman
9 Frank Wolf, who has shared the Commission's concerns
10 relating to the New Black Panther Party litigation, as
11 well -- as well as the Department of Justice's failure
12 to provide information to him, the Commission and
13 other members of Congress with oversight
14 responsibility for the Department.

15 Before we begin the actual presentation of
16 evidence, each of the Commissioners has two minutes in
17 which to make an opening statement if they wish. I
18 would request that each Commissioner adhere to this
19 firm time limit. We will proceed in order of
20 seniority. Thank you, Commissioners. At this point,
21 I turn matters over to our General Counsel, Mr. David
22 Blackwood.

23 MR. BLACKWOOD: Their statements?

24 CHAIRPERSON REYNOLDS: Forgive me. Vice
25 Chair Thernstrom.

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II. REMARKS BY COMMISSIONERS

1
2 VICE CHAIR THERNSTROM: Thank you very
3 much, Mr. Chairman. I hope my mic is working here.
4 Let me switch glasses as well. I am Abigail
5 Thernstrom, and I thank the witnesses for appearing
6 today.

7 In addition to being the Vice Chair, I'm
8 an adjunct scholar at the American Enterprise
9 Institute. I am the only non-lawyer on the
10 Commission. I hold a Ph.D. from the Department of
11 Government at Harvard University. I am a Republican
12 appointee to this Commission, and I have served on it
13 now for more than nine years.

14 As the author of two books on the Voting
15 Rights Act, one of which won multiple awards,
16 including one from the American Bar Association, I
17 have a particularly strong interest in the vigorous
18 protection of voting rights. But, as much as I abhor
19 the New Black Panther Party, it is nothing in my view
20 but a lunatic fringe group, a few of whose members
21 showed up at one polling place in a largely black,
22 safe Democratic precinct. The Philadelphia incident
23 was an isolated one off. There is no analogy to
24 racist whites stopping blacks from voting throughout
25 the Jim Crow south.

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1 My colleagues assert that our purpose
2 today is not to prove that voter intimidation did or
3 did not occur. Our aim, they say, is to examine why
4 the Justice Department handled the case as it did, and
5 indeed, I too am interested in the answer to that
6 question.

7 But we are very unlikely, I am heartened
8 to hear, that we've now got a pile of document dumped,
9 but we -- nevertheless, I remain skeptical that we are
10 likely to get the evidence needed to answer that
11 question. We could have chosen, in my view, a much
12 more fruitful topic of national importance for our
13 annual statutory report, the most important report
14 that we issue in the course of a year.

15 I do not think that this inquiry has
16 served the interests of the Commission as being a
17 bipartisan watchdog for important civil rights
18 violations, and I do not believe it has served well
19 the party to which I belong. Thank you very much.

20 CHAIRPERSON REYNOLDS: Thank you, Vice
21 Chair Thernstrom. Commissioner Kirsanow?

22 COMMISSIONER KIRSANOW: Mr. Chair, I'd
23 waive opening statement, other than to thank the
24 witnesses for being here today.

25 CHAIRPERSON REYNOLDS: Okay, next up would

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1 be Commissioner Taylor.

2 COMMISSIONER TAYLOR: Thank you, Mr.
3 Chairman. My name is Ashley Taylor, and I've been on
4 this Commission now about five years, and I am focused
5 on frankly one issue, and that is the rule of law
6 because the rule of law is our nation's cornerstone,
7 and the Declaration and the Constitution created it,
8 and the Civil Rights and Voting Rights affirmed it.

9 All persons are created equal. They stand
10 equal before the law, and they are entitled to be
11 protected equally by the law. When government treats
12 people differently, it owes an explanation. And when
13 government declines to enforce the law, it is
14 obligated to justify its decision.

15 The history of Section 11(b) of the Voting
16 Rights Act, and DOJ's longstanding position, are
17 clear: Proof of intent to intimidate or an actual
18 intimidating effect is not necessary to prosecute
19 voter intimidation.

20 It's enough to show that the conduct would
21 have threatened, intimidated or coerced a reasonable
22 voter. In the past decade, DOJ has prosecuted
23 criminals who jammed phone lines and slashed van tires
24 in an effort to prevent voters from reaching the
25 voting place.

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1 Now, we have before us the case of two men
2 clad in paramilitary uniforms, openly carrying a
3 weapon, literally standing at the doorway of a voting
4 place in Philadelphia, and the case was not
5 aggressively pursued.

6 Today, we will view the video that will
7 very clearly show the defendants acting in a
8 threatening manner. We will also hear from witnesses
9 and put documents in the record to shed further light
10 on the intimidation felt by the people who were
11 present that very day.

12 What we don't have, and what we won't get
13 today, is an explanation. In 2008, the head of DOJ's
14 Voting Rights Section told this Commission that one of
15 DOJ's priorities would be to monitor polling places
16 where racial slurs or other insensitive behaviors
17 could be anticipated.

18 Here we have a record incident of just
19 such behavior, but DOJ's decision to drop charges
20 indicates that its priorities have changed. And we
21 simply ask what accounts for the difference?

22 I hope that at some point DOJ will answer
23 these questions. In the meantime, the selective
24 enforcement of our laws and the appearance of
25 selective enforcement, more importantly, will erode

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1 the faith and confidence in the impartial
2 administration of justice, and will undermine the rule
3 of law in our society. Thank you, Mr. Chairman.

4 CHAIRPERSON REYNOLDS: Thank you,
5 Commissioner Taylor. Commissioner Yaki?

6 COMMISSIONER YAKI: Thank you, very much,
7 Mr. Chair. It is with, as you know, great reluctance
8 that I am here today. I do not believe that this
9 Commission should be involved in essentially
10 relitigating and reprosecuting a decision, a single
11 decision, made by the Department of Justice.

12 It strikes me as somewhat rather pious and
13 sanctimonious to talk about the rule of law and
14 equality, and how we are here to protect voting
15 rights. Of course we are. But that is not what this
16 proceeding is about. That is not what the proceeding
17 has ever been about.

18 If that were the case, we would be talking
19 about a legion of cases that have been -- that have
20 been put before the Department of Justice over the
21 last 10 to 15 years, involving clear cases and
22 patterns and practice of voter intimidation. But that
23 has never been and not been the scope of this
24 particular hearing.

25 No, this hearing alone, comprising the

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1 National Enforcement Report for this Commission, an
2 enormous expenditure of time and resources, is in my -
3 - is to me just simply one thing. It's about partisan
4 payback. That's all it is. Because we're -- because
5 there is nothing about this inquiry that talks about
6 how this really goes to a broader question for civil
7 rights enforcement.

8 There's nothing in the scope of this
9 hearing; there's been nothing in the scope of
10 discovery that talks about a broader scope and
11 application to this country. No. Instead we're going
12 to extrapolate from one single incident on one single
13 precinct in one single city, and one single charging
14 decision by the Department of Justice, and from that,
15 create national -- recommend national policy. That is
16 absurd.

17 Any scientist, any social science, any
18 Congressional committee would laugh that out of the
19 ballpark. But no, we are spending enormous time and
20 effort here doing just that. And I just want to say
21 that that -- this is not a defense of the Black
22 Panthers.

23 This is not to -- to belittle anything
24 that any of the witnesses saw or heard, but it is
25 about the greater issue of what this Commission is

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1 really all about, and a mission that we have been
2 sorely lacking for the last five years that I have
3 been on the Commission: a mission that we have
4 advocated time and again until suddenly in this one
5 instance, we see the light on voter intimidation, and
6 that to me is hypocrisy in its highest form. Thank
7 you.

8 CHAIRPERSON REYNOLDS: Thank you,
9 Commissioner Yaki. Commissioner Melendez?

10 COMMISSIONER MELENDEZ: Good morning, Mr.
11 Chairman, to our audience here this morning. My name
12 is Arlan Melendez. I'm in my fifth year as a
13 Commissioner here with the US Commission on Civil
14 Rights. My other responsibility is I'm a tribal
15 chairman of a federally recognized Indian tribe
16 located in Reno, Nevada: Washoe, Paiute, Shoshone
17 People. I'm glad to be here today and welcome you
18 again.

19 My remarks are going to be brief because I
20 think far too much of our time has been consumed on
21 this seemingly unnecessary investigation. Citizens
22 should be able to vote without intimidation, and it is
23 our Commission's duty to investigate complaints from
24 citizens that their voting rights have been infringed.

25 In this case, however, no citizen has even

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1 alleged that he or she was intimidated from voting at
2 the Fairmount Avenue Polling Station in 2008. This
3 absence of voter intimidation was clear to the Justice
4 Department last spring, which is why they took the
5 course of action that they did.

6 This absence of voter intimidation was
7 clear to the members of this Commission as well, or at
8 least it should've been. Our investigation has been
9 going on now for the better part of a year. We have
10 wasted a good deal of our staff's time, and the
11 taxpayers' money.

12 In addition to that, we have also consumed
13 a considerable amount of the Justice Department's
14 resources, forcing them to devote attention to a case
15 that they had long ago concluded was meritless.

16 I hope that we can quickly conclude this
17 hearing, and conclude this investigation. This
18 Commission needs to get back to seriously addressing
19 civil rights issues, and stop chasing conspiracy
20 theories and pursuing partisan fishing expeditions.
21 So, thank you very much.

22 CHAIRPERSON REYNOLDS: Thank you,
23 Commissioner Melendez. Commissioner Heriot?

24 COMMISSIONER HERIOT: Thank you, Mr.
25 Chairman. I don't think I will need the full two

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1 minutes. I just want to -- want to state that no one
2 is on trial here. Not the members of the New Black
3 Panther Party, not the witnesses to the incident, not
4 the DOJ lawyers who initially filed this civil
5 lawsuit, and not the DOJ officials who ultimately
6 decided to terminate the lawsuit, except in a very
7 minor -- minor aspect.

8 The Commission on Civil Rights,
9 nevertheless, has a duty to investigate matters
10 exactly like the one that we are investigating today.
11 We are specifically charged with investigating the
12 enforcement of civil rights laws, and the voting
13 rights in particular, and that's what this hearing is
14 about.

15 CHAIRPERSON REYNOLDS: Thank you,
16 Commissioner Heriot. Commissioner Gaziano?

17 COMMISSIONER GAZIANO: Thank you. I won't
18 respond to the false claims that our investigation is
19 unnecessarily narrow, except to say that the record of
20 our scope of investigation is in our concept paper,
21 which is available, which shows that we very much
22 sought every single report of voter intimidation in
23 evidence of how the Department treated those, compared
24 with the current surprising action, and it was those
25 requests for other investigations that were part of

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1 the overall pattern of stonewalling.

2 So, I hope that Commissioner Yaki will
3 continue to help us get all of that evidence, which he
4 claims that he is really interested in. But with this
5 hearing, I believe we are entering the third phase of
6 our investigation, and I hope that places it in
7 context.

8 When we began more than ten months ago, we
9 had high hopes that the Department of Justice would
10 admit its error, and reverse course. But that didn't
11 happen. Phase one was the Department's insistence
12 that there was nothing to investigate, and then making
13 matters much worse by asserting, without any credible
14 explanation, that the intimidating events viewed by
15 countless thousands on YouTube did not warrant further
16 action.

17 This may encourage other hate groups to
18 engage in their own coordinated campaigns of voter
19 intimidation. That's why this particular incident is
20 important. Phase two was the more than 300 days of
21 excuses, stonewalling, forwarding our lawful
22 subpoenas, refusal to give the evidence that
23 Commissioner Yaki and the rest of us want, in the
24 creation of non-existent privileges and aid thereof.

25 Phase three begins with these hearings,

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1 which will expose the facts and place evidence on the
2 record for the entire world to see. I sincerely hope
3 that phase four will be the Department of Justice's
4 complete cooperation to our -- as our federal statute
5 unambiguously requires the enforcement of our
6 subpoenas to talk to people who we -- who were
7 actually involved in the decision-making, rather than
8 an assistant attorney general who came much later, and
9 the production of all the evidence we have asked for,
10 rather than that which the Department suggests we
11 should be content with.

12 Phase five will be our issuance of our
13 statutory enforcement report, in which we will make
14 our own findings of fact, conclusions regarding legal
15 authorities, and our recommendations to Congress and
16 the President for further action.

17 But unless the DOJ changes its posture,
18 our preliminary report due in September should not end
19 our review. No entity should believe it can run out
20 the clock on our examination of serious voting rights
21 enforcement problems.

22 We rightfully earned the reputation as the
23 conscience of the nation for our refusal to be
24 intimidated when southern officials tried to thwart
25 the Commission's early investigations into voting

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1 rights violations. We should be no less vigilant in
2 our pursuit of the truth today.

3 CHAIRPERSON REYNOLDS: Thank you.

4 COMMISSIONER KIRSANOW: Mr. Chair, if I
5 may invoke a privilege to make a brief rebuttal to
6 some of the comments that were made? I initially
7 waived my right to make an opening statement, but I've
8 heard that this Commission is engaged in a waste of
9 time and resources, and that this is an unnecessary
10 endeavor; that this incident is isolated and one offs,
11 and does not merit any kind of consideration.

12 I would note that it is the specific
13 charter of this Commission to address matters related
14 to voting rights, and deprivation of voting rights.
15 About three years ago, I testified in a Senate
16 Judiciary Committee hearing on a bill called the Voter
17 Intimidation and Deceptive Practices Act.

18 The Senate has a number of charters, but
19 is not solely devoted to the protection of voting
20 rights. Nonetheless, they wasted, apparently, a
21 significant amount of time and resources. They
22 devoted a considerable amount of attention to a matter
23 pertaining to voting rights. Not a specific incident.
24 Nothing had happened. Nothing had triggered this
25 specifically.

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1 Nonetheless, the entire Senate Judiciary
2 Committee and the entire Senate decided to take this
3 matter up. Apparently, they wasted their resources
4 because scores of staff members were involved in
5 adducing evidence pertaining to that. A number of
6 senators also testified during that hearing. In fact,
7 one of the sponsors of that particular bill testified
8 at that hearing, and indicated that this was a serious
9 problem worthy of national attention.

10 Much more time and resources were devoted
11 in that hearing than I would argue even comes close to
12 what's going to be devoted in this particular hearing.
13 The senator who sponsored that bill was someone by the
14 name of Barack Obama.

15 I think that this is a worthy endeavor. I
16 think this falls squarely within our charter, and I
17 look forward to the testimony of the witnesses.

18 CHAIRPERSON REYNOLDS: Thank you,
19 Commissioner Kirsanow.

20 VICE CHAIR THERNSTROM: Can I just make --
21 say one sentence? It's in response to Commissioner
22 Kirsanow.

23 CHAIRPERSON REYNOLDS: I think that we
24 need to stick with the structure that we planned.

25 VICE CHAIR THERNSTROM: That's fine. This

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1 is up to you.

2 CHAIRPERSON REYNOLDS: Okay. All right,
3 at this point, I'd like to turn it over to our General
4 Counsel, Mr. Blackwood.

5 **III. REMARKS BY GENERAL COUNSEL**

6 MR. BLACKWOOD: Thank you, Mr. Chairman.
7 What we're going to show in this next segment are
8 three video clips that the Commission has obtained.
9 The first -- and they will run one right after the
10 other. The first is from the National Geographic
11 Channel's documentary on the New Black Panther Party,
12 which was obtained by subpoena.

13 The documentary was produced in 2008,
14 before the election. It has background as to the New
15 Black Panther Party. It shows clips of statements
16 from Malik Zulu Shabazz, who is head of the party, and
17 has footage and comments from the New Black Panther
18 Party members who were at the Fairmount Street Polling
19 Place: Minister King Samir Shabazz and Jerry Jackson.

20 I think it's appropriate at this time to
21 note that both Mr. Jackson and Minister King Samir
22 Shabazz are present today, along with several other
23 members of the New Black Panther Party. The segment
24 that we're going to show is edited rather abruptly,
25 but it's -- the purpose was to keep the video clips as

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1 short as possible. So, it will start mid scene, but
2 it is meant to be edited in such a way that it is
3 focused simply on the party -- New Black Panther Party
4 for Self Defense, and the individuals I mentioned.

5 Immediately thereafter, the video will go
6 to two video clips from YouTube that many people have
7 already seen. This was video taken at the Fairmount
8 Street polling location. It's disjointed the audio
9 was poor. But nonetheless, it is the only realtime
10 depiction of the scene at the time, showing King Samir
11 Shabazz and Jerry Jackson.

12 Lastly, there will be a third clip, which
13 contains an interview with Malik Zulu Shabazz that --
14 the head of the New Black Panther Party, that took
15 place on November 7, 2008. One of the people doing
16 most of the interviewing is Rick Leventhal, a reporter
17 who was also at the scene on Fairmount Street. This
18 was obtained by subpoena.

19 The whole video segment shall last about
20 20 minutes. I would ask that it start.

21 **IV: VIDEO EVIDENCE**

22 (Whereupon, a series of videos were
23 played)

24 MR. BLACKWOOD: Thank you.

25 CHAIRPERSON REYNOLDS: Okay, please

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1 continue, Mr. Blackwood.

2 MR. BLACKWOOD: At this point, Mr.
3 Chairman, I'd like to introduce evidence, and have it
4 accepted into the record.

5 **V: SUBMISSION OF EVIDENCE**

6 MR. BLACKWOOD: As you all are aware, the
7 Commission has been conducting a great deal of
8 discovery over the last several months. But this is
9 the first time that we've been able to formally
10 introduce it into the record.

11 I'd like to introduce the following, all
12 of which materials are here, directly behind you, and
13 all of which have been provided to each of the
14 Commissioners previously. First are the subpoenas,
15 discovery requests and deposition transcripts of the
16 following: First, Jerry Jackson and King Samir
17 Shabazz. These are the New Black Panther Party
18 members who were at Fairmount Street, who are here
19 today, and who, when deposed, asserted their fifth
20 amendment right against self incrimination.

21 Second, we have several depositions and
22 information from a variety of poll watchers, Ronald
23 Vann, who is a Democratic poll watcher, as well as
24 Larry Counts and Angela Counts, who although are
25 registered Democrats, were working for the Republicans

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1 as poll watchers that day.

2 Third, we have the deposition of Kristen
3 Clarke. Fourth, we have a subpoena and related
4 discovery request to the head of the New Black Panther
5 Party, Malik Zulu Shabazz. Unfortunately, he did not
6 appear for his deposition. There is now currently
7 pending in the United States District Court for the
8 District of Columbia an action to compel him to appear
9 before the Commission. As I say, that is pending
10 before the court.

11 Next is the document request and responses
12 from and to the Department of Justice. This includes
13 a subpoena, interrogatories, discovery requests, their
14 written responses from the Department, as well as a
15 large volume of documents. I will refer to them as
16 the -- for purposes of introducing them into the
17 record as three disks of information, dated January
18 11, 2010, February 26th, 2010 and April 6th, 2010.

19 Lastly, we have subpoenas -- video
20 information, which has -- was subpoenaed, some of
21 which you just saw, all of which has been provided to
22 you previously; the National Geographic Program in its
23 entirety, the Strategy Room interview in its entirety,
24 a guest segment on the O'Reilly Factor, in which
25 witness Bartle Bull appeared, and finally two video

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1 clips from Rick Leventhal, who reported from the scene
2 at Fairmount Street.

3 And I would ask at this time, Mr. Chair,
4 that all that evidence be admitted into the record.

5 CHAIRPERSON REYNOLDS: Thank you, Mr.
6 Blackwood. The aforementioned items have been entered
7 into the record.

8 MR. BLACKWOOD: I would indicate to -- all
9 right, in abundance of caution, I evidently failed to
10 mention Larry Counts and Angela Counts as Republican
11 poll watchers. Oh, Coates. I'm sorry. Pardon me, I
12 did forget that. We had Notices of Deposition to two
13 employees/officials at the Department of Justice,
14 Christopher Coates and J. Christian Adams. They were
15 -- as has been reported, the Department declined to
16 allow them to testify. I would also add that into the
17 record.

18 CHAIRPERSON REYNOLDS: Okay, those items
19 are added to the record as well.

20 MR. BLACKWOOD: For purposes of
21 clarification, since I was asked earlier this morning,
22 Commissioners now may refer to those documents, and
23 the materials within them in their questioning today,
24 or in their statements. At this time, Mr. Chairman,
25 I'd like to proceed with the examination of the three

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1 witnesses that we have here today. The procedure is
2 I'm going to ask questions, one in a row, first Mr.
3 Mauro, then Mr. Hill, then Mr. Bull.

4 At that point, the testimony and
5 examination will be thrown open to all the
6 Commissioners of all the panelists.

7 CHAIRPERSON REYNOLDS: Okay.

8 **VI: TESTIMONY OF WITNESSES**

9 MR. BLACKWOOD: I would like to proceed.

10 CHAIRPERSON REYNOLDS: Please proceed.

11 MR. BLACKWOOD: Mr. Mauro, would you
12 please state your name, full name, and profession for
13 the record?

14 MR. MAURO: Michael Mauro.

15 MR. BLACKWOOD: I'm sorry. We need to
16 swear you in. Mr. Chairman, would you swear them in?

17 CHAIRPERSON REYNOLDS: Okay, please raise
18 your right hand.

19 MR. BLACKWOOD: All of them. Yes, please.

20 CHAIRPERSON REYNOLDS: Do you swear or
21 affirm under penalty of perjury that the testimony
22 you're about to give will be the truth, the whole
23 truth, and nothing but the truth?

24 MR. MAURO: I do.

25 MR. BULL: I do.

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1 MR. HILL: I do.

2 CHAIRPERSON REYNOLDS: Thank you. Mr.
3 Blackwood, the floor is yours.

4 MR. BLACKWOOD: Thank you. Mr. Mauro, I'm
5 sorry.

6 MR. MAURO: Sure. My name is Michael
7 Mauro, and I'm an attorney.

8 MR. BLACKWOOD: Mr. Mauro, did there come
9 a time that you appeared -- that you were in
10 Philadelphia for Election Day 2008?

11 MR. MAURO: Yes.

12 MR. BLACKWOOD: And what was the purpose
13 of that?

14 MR. MAURO: I was a volunteer poll watcher
15 for the Republican Party.

16 MR. BLACKWOOD: Did you receive any
17 training?

18 MR. MAURO: Yes, I did.

19 MR. BLACKWOOD: And what did that training
20 consist of?

21 MR. MAURO: It was an informational
22 session, where we were told that we were given
23 procedures to follow. When we were at the polls, if
24 someone had complained that they were being denied an
25 ability to vote, to call it in, and then that an

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1 injunction action needed to be instituted then that
2 would -- the process would start.

3 MR. BLACKWOOD: Were you paid for your
4 work?

5 MR. MAURO: No, I -- no, I was not.

6 MR. BLACKWOOD: Did there come a time when
7 you went to the polling place at 1221 Fairmount Street
8 on Election Day?

9 MR. MAURO: Yes.

10 MR. BLACKWOOD: Could you tell the
11 Commissioners why you went to that location?

12 MR. MAURO: Sure. I was a part of a
13 three-person team called a Roving Watching Patrol with
14 Mr. Hill and another individual. We had received a
15 call from what I would characterize as our
16 headquarters in Philadelphia, that there was a report
17 of voter intimidation and harassment at the Fairmount
18 polling facility, and that my car that I was in I
19 suppose was close enough to respond. And at that
20 point, we drove on over to the polling station.

21 MR. BLACKWOOD: Around what time of the
22 day was that?

23 MR. MAURO: It was before noon perhaps,
24 maybe 10:00-11:00 in the morning maybe.

25 MR. BLACKWOOD: When you arrived at the

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1 scene, what did you observe?

2 MR. MAURO: When we arrived, we actually
3 drove by the -- from what you could see from that --
4 from that polling station, there was a circular
5 driveway in the front, but we drove past the circular
6 driveway first to see what was going on. When we
7 drove past the circle, we could see the two
8 individuals of the New Black Panther Party standing at
9 the front of the entrance to the building.

10 MR. BLACKWOOD: How were they positioned?

11 MR. MAURO: They were standing shoulder to
12 shoulder, or close to shoulder to shoulder.

13 MR. BLACKWOOD: Can you identify those
14 individuals today?

15 MR. MAURO: I suppose I could.

16 MR. BLACKWOOD: Would you look behind you
17 and see if you can identify them?

18 MR. MAURO: This gentleman right here.

19 MR. BLACKWOOD: That's in the second row?

20 MR. MAURO: Yes, the second row, the third
21 in. And I -- I don't know if I'm -- if I see the
22 second one. I'm not really sure if I see him.

23 MR. BLACKWOOD: How were they dressed?

24 MR. MAURO: Not unlike they're dressed
25 right now, with a black paramilitary outfit on, with

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1 berets and military-style boots.

2 MR. BLACKWOOD: Was anybody carrying
3 anything?

4 MR. MAURO: Yes. One of the individuals
5 was carrying a billy club.

6 MR. BLACKWOOD: And how was he handling
7 that?

8 MR. MAURO: I believe it was in his --
9 perhaps his right hand. It may have been his left
10 hand, and he was -- at times, it was to his side.
11 Other times, it was being put into his hand like a
12 banging fashion. And I -- that's what I recall.

13 MR. BLACKWOOD: Did he point it at
14 anybody?

15 MR. MAURO: I don't particularly recall
16 him pointing at anybody with it.

17 MR. BLACKWOOD: At any time --
18 approximately how long were you there?

19 MR. MAURO: I was there for approximately
20 45 minutes to an hour, maybe a little less than that.

21 MR. BLACKWOOD: On the first video clip
22 that we watched of the YouTube videos, were you in
23 that scene?

24 MR. MAURO: Yes, I was.

25 MR. BLACKWOOD: Can you basically describe

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1 what you were wearing that day?

2 MR. MAURO: I probably was wearing the
3 same suit. It was a blue suit and a white shirt is
4 what I was wearing.

5 MR. BLACKWOOD: Okay, so you were off to
6 the left-hand side of the original scene?

7 MR. MAURO: That's correct, yes.

8 MR. BLACKWOOD: It was only -- were both
9 panthers carrying night sticks?

10 MR. MAURO: No, only one was.

11 MR. BLACKWOOD: Was that the shorter one,
12 or the taller one?

13 MR. MAURO: I believe it was the shorter
14 one.

15 MR. BLACKWOOD: At any time that you were
16 there during that 45 minutes, did you move away from
17 the polling place?

18 MR. MAURO: I purposely stood away from --
19 from where they were standing, and kind of off to the
20 side. If you can see, I had my hands in my pockets
21 because I -- I wasn't there to confront either of
22 these two men. That's not my purpose in being there.
23 I'm not a law enforcement officer. That was it.

24 So, I purposely took a non-confrontational
25 pose, and in fact, I didn't even engage them in any

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1 kind of a discussion at all. It was the -- I believe
2 he was a UPenn journalism student who was filming
3 that. He was doing all of the speaking.

4 MR. BLACKWOOD: Did he come after you had
5 arrived?

6 MR. MAURO: He did come after, yes.

7 MR. BLACKWOOD: About how long? Do you
8 recall?

9 MR. MAURO: Probably within ten of 15 minutes of us
10 being there.

11 MR. BLACKWOOD: Okay. During the entire
12 time that you were there, did you see the two Panther
13 members ever move apart?

14 MR. MAURO: No, I did not. I do recall
15 that when Mr. Hill approached the entrance of the
16 polling facility, they actually moved closer to each
17 other. What it appeared to me is almost be more
18 striking a confrontational pose to obstruct Mr. Hill's
19 entrance into the polling facility, which he had an
20 ability to be there, or a right to be there, actually.

21 MR. BLACKWOOD: Did they ever move away
22 from the entrance to the polling place?

23 MR. MAURO: No, they did not. Not -- no.
24 Only from what I observed, it was when the police had
25 ordered them to speak with them where their cars were

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1 parked.

2 MR. BLACKWOOD: Approximately how far away
3 were you from the two Black Panthers during that time?

4 MR. MAURO: I was probably ten to 12 feet
5 away at the time.

6 MR. BLACKWOOD: At any time, did you hear
7 the taller Black Panther direct the younger -- or the
8 smaller Black Panther to put away the night stick?

9 MR. MAURO: No. I did not hear anyone
10 give any instructions to the individual holding the
11 night stick.

12 MR. BLACKWOOD: Did anyone else come to
13 the smaller gentleman, and say, "You need to put the
14 night stick away?"

15 MR. MAURO: No, I did not see anything
16 like that.

17 MR. BLACKWOOD: Did anybody say anything?

18 MR. MAURO: The -- when the journalism
19 student approached and engaged them in a conversation,
20 that's when I did hear the members -- the New Black
21 Panther Party speak. Mostly, it was -- the shorter of
22 the individuals, he had engaged in -- as you can see
23 from the YouTube video, there was a -- there was a
24 little bit of a back and forth about what constitutes
25 a weapon; whether the billy club was a weapon, whether

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1 the camera that the journalism student was holding was
2 a weapon.

3 So, at that point, the -- I also heard the
4 -- the gentleman, Mr. Shabazz, I believe. It was
5 something to the effect of, you know, he had a right
6 to be there, and that -- somehow that we didn't have a
7 right to be there, from what I recall him saying.

8 MR. BLACKWOOD: Did -- at any time, did he
9 make any racial comments?

10 MR. MAURO: I believe the term, "White
11 devil." He said the term white devil at some point.

12 MR. BLACKWOOD: Did he say that to you, or
13 to others?

14 MR. MAURO: He didn't say it to me. He --
15 that came in the process of his conversation with that
16 -- with the journalism student.

17 MR. BLACKWOOD: Did you talk to any of the
18 poll workers that day?

19 MR. MAURO: I didn't speak with the poll
20 workers, no.

21 MR. BLACKWOOD: Did your credentials allow
22 you inside the polling place?

23 MR. MAURO: They did not.

24 MR. BLACKWOOD: Okay. You saw a minute
25 ago comments made by Malik Zulu Shabazz, who is the

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1 head of the Black Panther Party that Skinheads, Aryan
2 Nation members and Nazi Party members were at the
3 site. Did you see any such people?

4 MR. MAURO: No, I did not.

5 MR. BLACKWOOD: This is a rather open
6 location, is it not?

7 MR. MAURO: It is.

8 MR. BLACKWOOD: There's parking lots on
9 both sides of the driveway?

10 MR. MAURO: Yes, it is.

11 MR. BLACKWOOD: So, if there were Aryan --
12 members of the Aryan Nation, or Nazi Party there, do
13 you think you would've seen them?

14 MR. MAURO: I would have seen them. I
15 didn't see them. I saw these two individuals standing
16 at the front of that polling facility. I do --
17 actually, I recall a comment that was made by I
18 believe Mr. Shabazz. He yelled it out to Mr. Hill.
19 He said, "How's it gonna feel to be ruled by a black
20 man?"

21 And Mr. Hill, who is a veteran, actually
22 said, "So long as he is elected fairly, I'll get up
23 tomorrow and salute." That's what I remember.

24 MR. BLACKWOOD: Did he -- did Mr. Shabazz
25 say anything in response?

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1 MR. MAURO: He said, "Whatever, cracker."

2 MR. BLACKWOOD: Did any of the panther
3 members, while you were there, mention anything about
4 Nazis or Skinheads, and that they were there to
5 protect people against them?

6 MR. MAURO: No. I did not hear that.

7 MR. BLACKWOOD: And you were there
8 approximately 45 minutes. Did there come a time when
9 the police came?

10 MR. MAURO: Yes. I was there when the
11 police arrived, and I witnessed the police approach
12 the two individuals, and ask them to remove themselves
13 from where they were standing, and speak with the
14 police officers at their police cars.

15 MR. BLACKWOOD: Do you know what happened
16 to the night club?

17 MR. MAURO: They confiscated the night
18 club, from what I understand.

19 MR. BLACKWOOD: I'm sorry, the billy club
20 I should say.

21 MR. MAURO: The billy club, right. I
22 believe that was confiscated, and I don't believe any
23 arrests were made that day.

24 MR. BLACKWOOD: From your observation, how
25 were third parties, other people, reacting to the

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1 presence and the actions of the Black Panthers?

2 MR. MAURO: While I was standing there, I
3 did notice that when -- what I would -- what would
4 appear to be people coming to vote, when they entered
5 into that circle area, they would stop and they would
6 congregate and speak to each other, and wait a little
7 bit, and then proceed on in to vote.

8 So, it wasn't like they were coming right
9 in and walking straight in to vote. They actually
10 stopped for a little bit, and then eventually vote.
11 So, that -- that's what I witnessed. Probably I would
12 say at least six to eight people I saw that that had
13 happened. And then as far as other third parties, you
14 can see from that YouTube video, there was a young
15 lady standing behind the two individuals from the
16 Black Panther Party.

17 From what I understand, and I don't know
18 for a fact whether it makes sense that she was what I
19 would consider what my counterpart would be for I
20 guess the Democratic Party, and she was on the phone
21 calling in a -- an incident of harassment at the
22 voting place, the Fairmount Polling Center, that a
23 couple of white guys in suits were intimidating
24 voters.

25 Since I was the only white guy in a suit

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1 around there, I assumed she was talking about me, and
2 I was not talking to anybody. So, obviously that
3 disturbed me greatly. And in addition, she said that
4 as she was standing behind the two individuals.

5 MR. BLACKWOOD: Specifically, with regard
6 to that woman, did you ever hear her talk to the
7 Panther members?

8 MR. MAURO: I did not, no. As you can see
9 in the YouTube video, you'll see where she's standing,
10 and you actually can hear her a little bit.

11 MR. BLACKWOOD: The 40-foot -- the whole
12 time that you were there, was she there the whole time
13 as well?

14 MR. MAURO: Yes, the whole time.

15 MR. BLACKWOOD: Standing directly behind
16 the Panthers?

17 MR. MAURO: She wasn't standing directly
18 behind them the entire time, but for a period she was,
19 yes. Otherwise, she was off to the side.

20 MR. BLACKWOOD: Did the police ask you any
21 questions?

22 MR. MAURO: They did not.

23 MR. BLACKWOOD: Did there come a time when
24 you talked to anybody from the Department of Justice?

25 MR. MAURO: Yes. Sometime within the next

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1 maybe two hours or so, or three hours. I guess DOJ
2 had some roving attorneys out in cars, and we met with
3 two attorneys. They must've had a rental car, and we
4 rendezvoused with them in a parking lot, and --

5 MR. BLACKWOOD: That was you and Mr. Hill?

6 MR. MAURO: Yes, and the third individual
7 who was with us, and the three of us got in the back
8 of the car with the DOJ attorneys, and we had given
9 statements that were handwritten by the attorneys. I
10 was not given a copy of the statement.

11 MR. BLACKWOOD: Were you allowed to look
12 at the statement?

13 MR. MAURO: No. And I didn't ask, so.

14 MR. BLACKWOOD: Did you get the name of
15 the DOJ attorneys that you were interviewed by?

16 MR. MAURO: I did not. I can't recall. It
17 was two young females.

18 MR. BLACKWOOD: Did there come a time --
19 did you talk to anybody else from the Department?

20 MR. MAURO: Yes. I was contacted by I
21 believe Christopher Coates, who is an attorney at the
22 DOJ, and he had wanted to arrange to meet with me to
23 take a statement. They were investigating whether
24 they were going to bring an action in District Court.

25 I agreed. I met with him, and Jay

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1 Spencer. I can't recall his last name right now.

2 MR. BLACKWOOD: Fischer?

3 MR. MAURO: Fischer, yes. And I met with
4 them, and I gave my statement to them. And then
5 probably a few months later, I met them again, and I
6 gave an affidavit, which I -- which I signed, which I
7 believed was going to be used as part of the
8 injunctive relief that was being filed in Federal
9 Court.

10 MR. BLACKWOOD: Okay. Did you ever -- did
11 you keep a copy of that statement?

12 MR. MAURO: No. I did not get a copy.

13 MR. BLACKWOOD: Okay. At this time, I'd
14 like to direct my questions to Mr. Hill. I'm
15 basically going to ask the same questions, but if you
16 could, let's start -- if you could, give your name and
17 profession.

18 MR. HILL: Chris Hill, Senior Registrar
19 for the Hospital University of Pennsylvania
20 Dermatology.

21 MR. BLACKWOOD: And you were in
22 Philadelphia for Election Day 2008?

23 MR. HILL: I was.

24 MR. BLACKWOOD: And you're a Citizen of
25 Philadelphia?

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1 MR. HILL: I am indeed.

2 MR. BLACKWOOD: So, you had -- were you
3 credentialed to go into polling places?

4 MR. HILL: I was.

5 MR. BLACKWOOD: What was your purpose as
6 serving as an election officer?

7 MR. HILL: According to my training, they
8 did several nights of training with us because we'd be
9 entering polling places, and we were told that we were
10 there to protect voting rights and provide assistance
11 to voters of either party, as needed.

12 MR. BLACKWOOD: And did there come a time
13 on Election Day that you went to the Fairmount Street
14 location?

15 MR. HILL: Yes, we did.

16 MR. BLACKWOOD: Why? What was the purpose
17 of your going there?

18 MR. HILL: We were at I guess our third or
19 fourth polling location of the morning, and we
20 received a -- I received a phone call from the head of
21 the Poll Watchers in Philadelphia, and he said that
22 the poll watcher on site had been threatened, and we
23 were initially -- I was initially told there were
24 three Black Panthers there, and he asked if we could
25 swing by and see if that were the case.

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1 MR. BLACKWOOD: About what time did you
2 arrive at the site?

3 MR. HILL: Morning, some time between
4 10:00-11:00. Somewhere in that time. We started
5 early in the morning.

6 MR. BLACKWOOD: Could you tell the
7 Commissioners what you observed when you got there?

8 MR. HILL: I was driving. I was in my
9 Jeep. And as we came down the street, I passed in
10 front of the circular driveway. I could clearly see
11 two members of the New Black Panther Party out --
12 outfitted in their paramilitary garb, directly in
13 front of the doors. So, we went down the street to
14 the first available parking spot, jumped out, and
15 walked back over to the polling spot.

16 MR. BLACKWOOD: Could you describe what
17 they looked like?

18 MR. HILL: Two African-American males, one
19 taller, one shorter, both dressed in black BDU style
20 paramilitary garb, berets, black combat boots, patches
21 with, "New Black Panther Party."

22 MR. BLACKWOOD: Can you identify those
23 individuals here today?

24 MR. HILL: Mr. Shabazz is the third one in
25 on the second row. That's -- Mr. Shabazz I can

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1 recognize --

2 MR. BLACKWOOD: Okay.

3 MR. HILL: -- for sure.

4 MR. BLACKWOOD: Was anybody carrying
5 anything?

6 MR. HILL: Mr. Shabazz was carrying a
7 night stick.

8 MR. BLACKWOOD: And how was he carrying
9 it?

10 MR. HILL: He had a lanyard wrapped around
11 his hand, and as I approached the door, he was
12 slapping it into the palm of his other hand.

13 MR. BLACKWOOD: Did he say anything to
14 you?

15 MR. HILL: Immediately started with, "What
16 are you doing here, Cracker?" And he and Mr. Jackson
17 attempted to close ranks. I went straight between
18 them through the door to find our poll watcher, who
19 was inside the building at the time.

20 MR. BLACKWOOD: And who -- do you recall
21 the name of that person inside?

22 MR. HILL: No, I do not. He was -- he was
23 pretty shaken up, and I wasn't really too concerned
24 about finding out what his name was. You know, he was
25 -- he was visibly upset.

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1 MR. BLACKWOOD: What did he tell you?

2 MR. HILL: He was told he was called a
3 race traitor for being a poll watcher, credentialed
4 poll watcher for the Republican Party as a black man,
5 and that he was threatened if he stepped outside of
6 the building, there would be hell to pay.

7 MR. BLACKWOOD: And he said he was told
8 that -- or he relayed that he was told that by the two
9 Black Panthers you saw outside?

10 MR. HILL: He did.

11 MR. BLACKWOOD: Did that poll watcher, the
12 Republican poll watcher, ask you to do anything?

13 MR. HILL: He asked me what we were going
14 to do, and I said, "I have two attorneys with us.
15 We've already called back to headquarters. I'm
16 certain by now the police have been called. If they
17 haven't, we will call them as soon as I get back
18 outside."

19 I asked if he was okay for the moment, and
20 he said as long as he didn't have to go out of the
21 building.

22 MR. BLACKWOOD: Did you make a call to the
23 police?

24 MR. HILL: I did.

25 MR. BLACKWOOD: Did -- were there anymore

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1 comments from the individuals outside, the Panther
2 members?

3 MR. HILL: Cracker on more than several
4 occasions from Mr. Shabazz. I never heard Mr. Jackson
5 say anything. He did say something to Mr. Shabazz
6 that I didn't catch, but I was called a cracker, white
7 devil. Told that I was going to be ruled by a black
8 man on the next day, and I would have to get used to
9 being under his boot. Similar things to that.

10 MR. BLACKWOOD: Okay. How long
11 approximately were you both at the polling place?

12 MR. HILL: Forty-five minutes to an hour
13 sounds accurate to me.

14 MR. BLACKWOOD: Same question I asked
15 before: Did you ever see the two Panther members
16 separate by more than a few feet?

17 MR. HILL: Never.

18 MR. BLACKWOOD: Did they ever --

19 MR. HILL: They were within arm's length
20 of each other the entire time.

21 MR. BLACKWOOD: Did they ever move away
22 from the entrance to the polling place?

23 MR. HILL: Not until the police physically
24 ordered them to.

25 MR. BLACKWOOD: If someone wanted to enter

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1 the polling place, how close would they have to pass
2 from the Panther members?

3 MR. HILL: Arm's length on either side.
4 They were directly in front of the doors, no more than
5 five feet in front of the door. And in order to get
6 to that double door, you'd have had to walk right next
7 to them.

8 MR. BLACKWOOD: Did you ever hear Mr.
9 Jackson, or anyone else, ask Mr. Shabazz to put away
10 the night stick?

11 MR. HILL: No.

12 MR. BLACKWOOD: How were third parties
13 reacting to the presence and the actions of the
14 Panther members?

15 MR. HILL: People were put off when --
16 there were a couple of people that walked up, couple
17 of people that drove up, and they would come to a
18 screeching halt because it's not something you expect
19 to see in front of a polling place. As I was standing
20 on the corner, I had two older ladies and an older
21 gentleman stop right next to me, ask what was going
22 on.

23 I said, "Truthfully, we don't really know.
24 All we know is there's two Black Panthers here." And
25 the lady said, "Well, we'll just come back." And so,

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1 they walked away. I didn't see anybody other than
2 them leave, but I did see those three leave.

3 MR. BLACKWOOD: You saw the comments made
4 on the video by Malik Zulu Shabazz about Skinheads and
5 people from the Aryan Nation, and Nazis. Did you see
6 any members of those organizations there?

7 MR. HILL: Absolutely not.

8 MR. BLACKWOOD: And again, this is an open
9 area, correct?

10 MR. HILL: Indeed. And we were the first
11 ones on the scene. There was -- there were no one
12 there but them when we got there.

13 MR. BLACKWOOD: And did any of the Panther
14 members say that they had seen Nazis or Aryans or
15 Skinheads?

16 MR. HILL: No. I never heard that until I
17 saw that particular clip.

18 MR. BLACKWOOD: Did you talk to the
19 police, other than calling in the --

20 MR. HILL: I did not.

21 MR. BLACKWOOD: Did you talk to anybody
22 from the Department of Justice?

23 MR. HILL: A couple hours later, two
24 female attorneys met us in a parking lot, as Mike
25 said, and we got in the car with them. They asked us

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1 what happened. They took notes, and then we went on
2 our way because we were responding to polling places
3 all day long. So, you know.

4 MR. BLACKWOOD: Did you get a copy of the
5 statement?

6 MR. HILL: No, I did not, but once again,
7 I didn't ask for one either.

8 MR. BLACKWOOD: Were you ever asked to
9 testify at a hearing or a trial?

10 MR. HILL: No. I was deposed. I mean
11 Department -- DOJ came to my house. Well, met me at a
12 coffee shop in Philadelphia twice; took a statement.
13 The first time, I gave them a handwritten -- a typed
14 statement. Second time they came back with the
15 statement, asked me to read over it and sign it, that
16 it was as I had relayed it.

17 MR. BLACKWOOD: Did you keep a copy of
18 either statement?

19 MR. HILL: I did not.

20 MR. BLACKWOOD: Both you and Mr. Mauro
21 mentioned that you were accompanied by a third
22 individual. Do you know who that person was?

23 MR. HILL: He was another attorney from
24 New York. I don't remember his name, though.

25 MR. BLACKWOOD: With regard to the woman

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1 in the video, standing -- that Mr. Mauro testified
2 about, did you have any interaction with her?

3 MR. HILL: I did not. She -- when I went
4 through into the polling place itself, she was coming
5 around the side. So, that's when she's making the
6 phone call. And all I heard her say was, "The white
7 guys in suits are trying to stop people from voting."
8 Or something to that effect. I was a little
9 incredulous by that, but I was concerned about our
10 poll watcher inside. So, I didn't bother with it.

11 MR. BLACKWOOD: Was she there the whole
12 time that you were there?

13 MR. HILL: She was.

14 MR. BLACKWOOD: At this time, Mr.
15 Chairman, I'd like to switch to Mr. Bull.

16 CHAIRPERSON REYNOLDS: Please proceed.

17 MR. BLACKWOOD: Again, Mr. Bull, roughly
18 the same questions. But if you could, tell us your
19 name and profession, please.

20 MR. BULL: Thank you. My name is Bartle
21 Bull. I'm a retired lawyer. I'm a former publisher
22 of the Village Voice in New York. I've written for
23 all five New York newspapers, and for many magazines.
24 And I have six books throughout now. So, at the
25 present time, I'm a full time writer, but a former

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1 lawyer.

2 MR. BLACKWOOD: Could you detail for the
3 Commission your experience in Civil Rights matters and
4 politics?

5 MR. BULL: Yes, sir. Briefly, I've done
6 it all my life as a Democrat. In 1956, I was a
7 freshman at Harvard College, where I coordinated
8 Students for Adlai Stevenson. Then in -- in 1970 --
9 1968, I was Robert Kennedy's New York State Campaign
10 Manager when he ran for president of the country, the
11 following year or two.

12 In the early '70s, I went down to
13 Mississippi, and worked in the campaign to elect
14 Charles Evers as Governor of Mississippi. I ran
15 security and poll watching in his home county of
16 Fayette, in towns like Red Lick, Mississippi and
17 Midnight, Mississippi, where I saw nooses hung over
18 the branches of trees.

19 In 1972, I was chairman in New York State,
20 Democrats for Governor Shriver. In 1976, I was Jimmy
21 Carter's New York State campaign manager. In 1980, I
22 was chairman of New York Democrats for Edward Kennedy
23 when he ran for President, and I did the same thing in
24 campaigns for Mario Cuomo, Hugh Carey. I also worked
25 for Ramsey Clark when he ran for the Senate, and I've

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1 worked in campaigns in New Hampshire, Massachusetts,
2 New York, South Carolina, where I worked against Strom
3 Thurmond, also in Florida and in Mississippi.

4 So, I've done this all my life, always
5 unpaid as a volunteer, and often organizing poll
6 watchers.

7 MR. BLACKWOOD: Now, you're in
8 Philadelphia on Election Day 2008. Why are you there?

9 MR. BULL: Well, I had been serving in New
10 York State, my second Republican candidate, as
11 Chairman of Democrats for McCain in New York State. I
12 knew we were going to lose New York. I thought
13 perhaps I could help in Philadelphia. So, I took the
14 train down there at 5:00 in the morning, and spent a
15 day there, troubleshooting on Election Day for the
16 McCain Campaign.

17 MR. BLACKWOOD: And did there come a time
18 that you went to the Fairmount Street polling place?

19 MR. BULL: Yes. I was in a car, driven by
20 a young volunteer, with another volunteer from New
21 York. And we were receiving cell phone messages,
22 saying that in many, many polling places, there was
23 intimidation. Not so much of voters, Mr. Melendez,
24 but intimidation of poll watchers. A very important
25 point, sir, if I may say.

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1 And that was what was going on. Our poll
2 watchers were driven out of the polls in five or six
3 places I went to. And while we were examining those
4 situations, we had a call on the radio -- on the cell
5 phone, excuse me, saying that on -- on -- at Fairmount
6 Street, there were two Black Panthers intimidating
7 voters and poll watchers, as you just heard.

8 So, we drove there, and there indeed we
9 saw the two Black Panthers, blocking the door to a
10 polling place, one of them armed with a weapon. I may
11 say in my many years as a Civil Rights lawyer -- I
12 didn't mention that. You asked me that question, I'm
13 sorry. I also worked for a group called the Lawyer's
14 Committee for Civil Rights Under Law in Mississippi.

15 In 1966, I took my summer vacation as a
16 lawyer; went down to Hattiesburg and other towns in
17 Mississippi, and worked as a Civil Rights lawyer
18 there. And even there, I never saw armed people
19 blocking the doors to a polling place.

20 MR. BLACKWOOD: When you arrived at the
21 Fairmount Street location, what did -- what did you
22 actually see?

23 MR. BULL: Well, these two gentlemen I
24 believe were there already. They were a bit off to
25 one side from the entrance. There were two Black

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1 Panthers, one of them was armed, standing very close
2 to each other, directly blocking the door to the
3 polling places.

4 One of them was waving a baton like that,
5 slapping against his hand, pointing at people. And
6 several people -- I was more or less at the end of the
7 driveway, and several people began to walk up the
8 driveways, saw these guys, and then went back and
9 didn't go on to vote.

10 MR. BLACKWOOD: All right. Did the
11 individuals that you saw turn around, those were
12 people that you believed were coming to vote?

13 MR. BULL: Oh, yes, yes. That's the only
14 reason you walk along that long block on the pavement,
15 and then go in the long driveway. And several walked
16 in, saw this at the door, and walked back out the
17 drive.

18 MR. BLACKWOOD: Can you identify the
19 individuals, the Black Panthers that were there that
20 day?

21 MR. BULL: I will try to. Yes, sir. The
22 second row, the third gentleman in, he was the one
23 with the baton, with the weapon, the club in his hand.

24 MR. BLACKWOOD: Did either of those
25 members make any comments while you were there?

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1 MR. BULL: Yes, sir. After the police
2 arrived, and did not take the club away, by the way,
3 and they asked the gentleman with the club to get away
4 from the polling place. And as he walked by me, I was
5 standing by a car at the end of the driveway with my
6 two companions, he pointed the billy club at me and
7 said, "Now you will see what it means to be ruled by
8 the black man, Cracker." And the reason I recall that
9 very well is because it struck me as ironic that
10 having worked as a Civil Rights lawyer and being
11 threatened in Mississippi, I was now being threatened
12 in this way here, and being called a cracker, frankly.

13 MR. BLACKWOOD: About how long were you at
14 the polling place?

15 MR. BULL: About 45 minutes, maybe.

16 MR. BLACKWOOD: Okay, and the whole time
17 that you were there, did you see either of the Panther
18 members separate from each other?

19 MR. BULL: No. Only when they left. Only
20 on leaving.

21 MR. BLACKWOOD: Up to that point in time,
22 they stayed in front of the polling place?

23 MR. BULL: They were shoulder to shoulder.
24 They were -- they were clearly -- they had this
25 paramilitary presentation.

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1 MR. BLACKWOOD: Other than the -- you
2 mentioned that -- you indicated that you saw some
3 voters turn away. Was that a single incident, or did
4 you see it multiple times?

5 MR. BULL: No more than two or three
6 times, I would say.

7 MR. BLACKWOOD: Okay. Did you talk to the
8 Republican poll watchers inside the polling place?

9 MR. BULL: No, no. I didn't have access
10 to the polling place.

11 MR. BLACKWOOD: Again, the same question
12 that I've asked the others: did you see any Skinheads
13 or Aryans or Nazi members during the time at the
14 polling place?

15 MR. BULL: Absolutely not, and no
16 reference to any such thing.

17 MR. BLACKWOOD: And did you hear any of
18 the Panther members make any reference to Nazis or
19 Aryan Nation folks?

20 MR. BULL: Absolutely not.

21 MR. BLACKWOOD: Did you talk to anybody
22 from the Department of Justice?

23 MR. BULL: Not on -- not on that occasion.
24 Not that day. But some -- some weeks later, I
25 received a call in New York from the Department of

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1 Justice, saying would I be prepared to sign an
2 affidavit to what I have just told you, and I said
3 yes, provided you guys don't drop the lawsuit. And
4 they said, "Well, we should warn you that this is a
5 dangerous group; they injured several New York
6 policemen at a rally in New York." And I said, "I
7 don't care about that. I will do this as long as you
8 continue with the lawsuit."

9 That's why I was so shocked when it was
10 dropped, frankly.

11 MR. BLACKWOOD: Mr. Chairman, I am through
12 my examination of the witnesses. I would point out
13 that Congressman Frank Wolf is here, and has some
14 urgency about --

15 CONGRESSMAN WOLF: I'm okay.

16 COMMISSIONER YAKI: I think as a personal
17 privilege, we should reserve questioning until
18 Congressman Wolf --

19 CHAIRPERSON REYNOLDS: Yes. Okay, we are
20 going to change our proceedings a bit. The original
21 plan called for us to question the witnesses at this
22 point. Since Congressman Wolf is here, we will at
23 this point listen to the testimony that Congressman
24 Wolf has to -- has to put in for the record.

25 So, Gentlemen, please stick around.

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1 Congressman Wolf, would you please move to the table?

2 **VII. TESTIMONY OF CONGRESSMAN FRANK WOLF**

3 CHAIRPERSON REYNOLDS: Okay, we are
4 honored to have with us today Representative Frank
5 Wolf of Virginia. Thank you for carving out time in
6 your busy schedule to join us. Congressman Wolf,
7 please raise your right hand. Do you swear and affirm
8 that the information you're about to provide is true
9 and accurate to the best of your knowledge and belief?

10 CONGRESSMAN WOLF: I do.

11 CHAIRPERSON REYNOLDS: Very good. You may
12 proceed, Congressman Wolf.

13 CONGRESSMAN WOLF: Thank you very much.
14 Mr. Chairman and Members of the Commission, I want to
15 personally thank you for the opportunity to testify
16 today.

17 I've several documents I'd like to submit
18 for the Commission's record as part of my testimony.
19 As a former chairman and current ranking member on the
20 House Commerce Justice Science Appropriations
21 Subcommittee, with jurisdiction over the US Commission
22 on Civil Rights, I'm very familiar with the
23 Commission's essential role in ensuring the integrity
24 of our nation's civil and voting rights laws.

25 As you know, the Commission has an

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1 important, special statutory responsibility to
2 investigate voting rights deprivation, and make
3 appraisals of federal policies to enforce federal
4 voting rights laws.

5 Congress instilled the independent
6 overnight responsibility on the Commission in statute,
7 where it said, "All federal agencies shall fully
8 cooperate with the Commission to the end that it may
9 effectively carry out its functions and duties." And
10 I remind the Attorney General that this includes the
11 Commission's authority to subpoena witnesses.

12 I appreciate your efforts to investigate
13 this unexplained dismissal of the US versus New Black
14 Panther Party Case, which is serious and dangerous
15 consequences for future voter intimidation
16 enforcement. I am a strong supporter of the Voting
17 Rights Act, which is why I was so deeply troubled by
18 Justice's questionable dismissal of such an important
19 voter intimidation case in Philadelphia, where I grew
20 up and my father was a Philadelphia policeman.

21 My commitment to voting rights is
22 unquestioned. In 1981, I was the only member,
23 Republican or Democrat, of the Virginia Delegation in
24 the House of Representatives to vote for the Voting
25 Rights Act, and was harshly criticized then by the

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1 editorial page of the Richmond Times Dispatch, the
2 State's leading newspaper.

3 I was again criticized in a number of
4 editorials in 2006, by another newspaper in my
5 district, when I supported the Act's reauthorization.
6 From beginning, I have asked the question: Why did the
7 Department dismiss this serious case?

8 Looking at the facts, if this is not a
9 clear case of voter intimidation, I do not know what
10 is. The public can view a video of the incident, as
11 well as other examples of the party's intimidation,
12 and a clip from National Geographic Channel
13 documentary, entitled, "Coming To a Polling Place Near
14 You." Posted on the website at
15 www.ElectionJournal.org.

16 My concerns have only been compounded over
17 the last year in light of the Department's obstruction
18 of oversight investigations by the Congress and this
19 Commission. The action of the Attorney General to
20 allow the Department's obstruction of this
21 Commission's investigation are puzzling.

22 I believe he is undermining in some
23 respects the federal oversight of the Justice
24 Department. For nearly a year, I've been urging the
25 Department to release all the documents surrounding

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1 this case, and to make a genuine attempt to answer the
2 questions asked by members of Congress and by this
3 Commission.

4 The requests have been rebuffed at each
5 turn. Earlier this year, I introduced a resolution of
6 inquiry that would've compelled the Attorney General
7 to release all requested documents to the Congress.
8 It was defeated in a party line vote in the House
9 Judiciary Committee.

10 I've urged the Department's Inspector
11 General, Glenn Fine, on multiple occasions, to open an
12 investigation into whether improper political
13 influence contributed to dismissal of this case.
14 Unfortunately, Mr. Fine continues to maintain that
15 ignorance, which I believe is an unacceptable
16 abdication of his responsibility because the IG's
17 office is supposed to look at these things in the
18 Justice Department, and we fully fund the IG to give
19 them the resources to do so.

20 Mr. Fine's lack of action, I believe,
21 deserves the scrutiny of the Council of Inspector
22 Generals on Integrity Efficiency, called the CIGIE,
23 and I'll be requesting that the Council look into its
24 failure with regard to this matter.

25 What should be a bipartisan support for

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1 robust voting rights enforcement has become I think a
2 bad example of the types of partisan obstruction that
3 undermine our nation's Civil Rights laws. While some
4 are the Washington Times, and it's been somewhat
5 troubling some papers have covered this, and others
6 have just almost ignored it.

7 The Philadelphia Inquirer, the last
8 remaining paper, major paper, in the City of
9 Philadelphia -- I used to deliver the Philadelphia
10 Bulletin, but in Philadelphia, nearly everyone reads
11 the Inquirer. The Inquirer has almost pretended that
12 this has not even -- even -- even taken -- taken
13 place.

14 Last summer, the Washington Times reported
15 that the Department's voter intimidation case against
16 the New Black Panther Party was dismissed over the
17 objections of career attorneys. And again, all this
18 has been initiated by career people.

19 I was a -- used to work for the Department
20 of Interior before I served in Congress, but all of
21 the activity has all been with regard to the decisions
22 on moving ahead have been made by career people. And
23 this was dismissed over the objections of career
24 attorneys on the trial team, as well as the Chief of
25 the Division, Appellant Division.

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1 According to the Appellant Division, memos
2 first disclosed in the Times articles, Appellant
3 Chief, Diana K. Flynn, said, "The appropriate action
4 was to pursue the default judgment." And that justice
5 had made, "A reasonable argument in favor of default
6 related against all defendants."

7 Flynn's opinion was shared by a second
8 Appellant Division official, Marie K. McElderry, who
9 stated, "The Government's predominant interest in
10 preventing intimidation, threats and coercion against
11 voters or persons urging or aiding persons to vote or
12 to attempt to vote."

13 Given these troubling disclosures, I have
14 repeatedly called on the Attorney General to refile
15 the civil suit, and to allow a ruling from the judge
16 based on the merits of the case. Not political
17 expediency, but solely on the merits of the case.

18 The career trial team should be allowed to
19 bring the case again, per the guidance I obtained from
20 the Congressional Research Services, American Law
21 Division, in its July 30 memo, "To allow our nation's
22 justice system to work as it was intended:
23 impartially, and without bias."

24 Sources within the Department stated that
25 the Associate Attorney General, Thomas Perrelli, a

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1 political appointee, in conjunction with the Acting
2 Assistant Attorney General for Civil Rights, Ms.
3 Loretta King and her deputy, Mr. Steven Rosenbaum,
4 overruled the career attorneys in the voting rights
5 section.

6 Earlier this week, the Department finally
7 acknowledged that the Attorney General was made aware
8 on multiple occasions of the steps being taken to
9 dismiss this case. Why would the Department's
10 political leadership overrule the unanimous opinion of
11 the career attorneys on the trial team, and the
12 Appellate Division?

13 Why would the Department's political
14 leadership not seek a default judgment to secure the
15 maximum enforcement of the Voting Rights Act?

16 The Justice Department is responsible for
17 the vigorous enforcement of Civil Rights statutes. It
18 is my understanding that the career attorneys, who
19 originally brought this case, continued to stand by
20 its -- by its merit.

21 These are again career people who have
22 dedicated their life and their career, and had been
23 very courageous to be pushing this ahead, and knowing
24 that their careers could be impacted by the political
25 people who run the Department.

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1 The politicization of the Justice
2 Department against career employees is absolutely
3 wrong, and both the Congress and the Commission have
4 to get to the bottom of this.

5 I want to leave you with one last thought.
6 It is my understanding that the Career Voting Section
7 Chief, Chris Coates, offered a vigorous defense of the
8 New Black Panther Party Case at his going away
9 luncheon earlier this year. According to one report,
10 "At the end of the luncheon in his honor, the
11 attendees were startled when Coates pulled out a
12 binder and began reciting a written defense of his
13 decision to file the New Black Panther case."

14 Coates reportedly stated, "I did my best
15 to enforce all of our voting statutes for all
16 Americans, and I leave here with my soul rested that I
17 did the right thing to the best of my ability."

18 Although the Attorney General will not
19 allow the career attorneys to testify before this
20 Commission, I believe this anecdote helps to convey
21 the ardent opposition of the Department's career
22 attorneys to the dismissal of this voting rights case.

23 I call again on the Attorney General to
24 comply with the Commission's subpoena, and to allow
25 the career attorneys to testify. This Commission and

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1 the American people should be concerned that the
2 Justice Department and the Attorney General would only
3 agree to allow Tom Perez, a political appointee, who
4 really wasn't even employed at the Department at the
5 time of the dismissal to testify.

6 I believe and I believe the American
7 people would agree that it's imperative that we
8 protect the right of every American to vote a
9 sacrosanct and inalienable right of any democracy.

10 The career attorneys in the Appellate
11 Division within the Department sought to demonstrate
12 the federal government's commitment to protecting this
13 right by vigorously prosecuting any individual or
14 group who seeks to undermine this right. The American
15 people deserve the kind of impartial leadership at the
16 Justice Department that will allow this case to go
17 forward again, not to counter political leadership
18 that has tilted the scales of justice.

19 And again, I want to thank you for having
20 the hearing, and thank you for giving me the
21 opportunity to -- to testify.

22 CHAIRPERSON REYNOLDS: Thank you,
23 Congressman Wolf. Rest assured that the information
24 that you provided today will be entered into the
25 record. At this time, Mr. Blackwood, do you have any

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1 questions?

2 MR. BLACKWOOD: No, I do not.

3 CHAIRPERSON REYNOLDS: Okay, Vice Chair
4 Thernstrom?

5 VICE CHAIR THERNSTROM: And are we now
6 questioning just Congressman Wolf?

7 CHAIRPERSON REYNOLDS: That is correct.

8 VICE CHAIR THERNSTROM: Okay, Congressman
9 Wolf, welcome. And I should mention that I am one of
10 your constituents. I live in McLean --

11 CONGRESSMAN WOLF: Yes, ma'am.

12 VICE CHAIR THERNSTROM: -- Virginia. A
13 couple of questions. First, you described the DOJ
14 dismissal as possibly having serious and dangerous
15 consequences, and I wondered what specific
16 consequences you had in mind? Do you think that the
17 New Black Panther Party intimidation is a nationwide
18 alarming phenomenon, or doesn't it matter if it's
19 nationwide? Is it sufficient that it was at this one
20 polling place on this specific day?

21 CONGRESSMAN WOLF: I think it's sufficient
22 that it took place there, but to have bullies like
23 this intimidating people? If these were three white
24 men standing outside a polling booth in Clinton,
25 Mississippi, and I went to school for a year in

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1 Mississippi back in the mid-'50s, and saw the
2 intimidation and the segregation and what went on.
3 And to have three white men standing outside a polling
4 booth to intimidate African-Americans who were coming
5 in would be totally unacceptable.

6 And Bartle Bull, I think makes the case
7 better than anyone. No one can question his -- his
8 record. And the fact that it took place in my former
9 home town, to see that people could be intimidated by
10 people standing there and do this? No one should live
11 in fear in this nation with regard to be intimidating
12 for anything, but particularly for the right to vote.

13 Thirdly, we see some of these fringe
14 groups moving around, and allow them to crack down and
15 say they're going to keep people from doing it is a
16 wrong thing. And I just thought it was almost a no-
17 brainer for the Justice Department. And again, I have
18 great respect for career people.

19 A large number of federal employees, as
20 you know if you live in my district, live in my -- my
21 congressional district. I have been a champion for --
22 I used to be a federal employee. I still am a federal
23 employee. My wife was a federal employee when she put
24 me through law school.

25 The -- to see that federal employees can

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1 be intimidated, can sort of be kind of cut off and
2 blocked? I used to work for a cabinet secretary,
3 Roger C. B. Morton, and the political involvement of
4 pushing back on career people I think can be very,
5 very dangerous.

6 So, I think it's really both, both of the
7 questions that you asked.

8 VICE CHAIR THERNSTROM: Well, let -- let
9 me just pick up on something you said. I wondered --
10 in the first place, we're not in Mississippi in the
11 1950's. I know that history extremely well, and by
12 the way, you weren't here for my opening statement,
13 but I have written two -- two books on the Voting
14 Rights Act, and Section 11(b) is the most minor
15 provision in the entire Act.

16 It has -- there have been three Civil
17 Rights -- civil lawsuits, as you know, before this
18 one, based on it. But the -- and I fully support
19 robust voting rights enforcement, obviously, and I am
20 a Republican appointee, by the way, to the Commission.

21 But surely, the jury is out as to whether
22 the DOJ has in fact been delinquent in this respect,
23 since we don't have the inside story. You don't have
24 it. And in fact, Chris Coates did not have the inside
25 story. I know Chris Adams very well, and he doesn't

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1 know why the decision was made, which was the question
2 before -- that we were supposed to be addressing at
3 this Commission.

4 So, you know, I have no idea what the
5 reasoning of DOJ was, and I don't think that -- I
6 don't think that any of us do, and I don't think we're
7 going to get the answer to that question. And
8 finally, let me say that I'm not wild about the idea
9 of career attorneys being hauled before hearings like
10 this. I do think that -- and I base this on some
11 experience that -- that if you're trying to do your
12 job in an administration as -- as the career attorneys
13 in the Civil Rights Division, of the voting rights
14 section of the Civil Rights Division are trying to do
15 their job, that to have to constantly think, "If I
16 have the following conversation, or make the following
17 decision, or write the following email, it may become
18 public information." I don't think people can do
19 their job properly.

20 And so, I -- with all due respect, I would
21 not have liked to have seen them forced to appear
22 here. But let's go back to my first question, how do
23 you define voter intimidation under 11(b)? As I said,
24 there have been three cases prior -- prior to this
25 one. Only one before the Bush -- before the Bush

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1 Administration -- two under the Bush Administration.

2 CONGRESSMAN WOLF: I don't know that I
3 would define it, and I think that -- excuse me. I
4 don't know that I would define it, and I think the
5 career people there have -- had defined it, and I
6 think what I saw, and after talking to people that
7 were there, and after talking to Bartle Bull, I think
8 that that is. But the point is, the case should've
9 gone forward, and it didn't go forward.

10 VICE CHAIR THERNSTROM: But we don't know
11 that without knowing more.

12 CONGRESSMAN WOLF: But you don't get any
13 cooperation from the Justice Department to tell you
14 why. You don't know who they met with. You don't
15 know why the decision was --

16 VICE CHAIR THERNSTROM: That's why we
17 don't know.

18 CHAIRPERSON REYNOLDS: Okay, at this
19 point, Commissioner Kirsanow, do you have any
20 questions?

21 COMMISSIONER KIRSANOW: I do. Thank you.
22 Welcome, Congressman Wolf. Thank you for appearing
23 today. Following up on something Commissioner
24 Thernstrom said, she indicated that we don't know the
25 reason why Justice made the decision to dismiss this

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1 case.

2 Given all the extent evidence that we
3 have; you were not here for the video that we saw. We
4 have adduced evidence through the Justice Department,
5 supplying us with certain documentation, and obviously
6 you've received a lot of documentation. Given what we
7 do know, can you articulate a plausible reason why
8 Justice would dismiss this case under 11(b)?

9 CONGRESSMAN WOLF: I think that's
10 something you'll have to look at. I have talked to
11 career people over there, and I do have personal views
12 on it, but I think -- I think they could better answer
13 that question.

14 COMMISSIONER KIRSANOW: Okay. Second, at
15 the Civil Rights Commission, we've got finite
16 resources. But as a member of Congress, do you think
17 -- do you have an opinion as to whether or not we are
18 wasting our resources in investigating the dismissal
19 of this particular matter today?

20 CONGRESSMAN WOLF: No, I do not. I don't
21 think -- in fact, if you didn't do this, I think you'd
22 be neglecting your -- your responsibility. And I
23 think maybe the whole credibility of the Commission
24 would be gone.

25 COMMISSIONER KIRSANOW: And would your

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1 answer be --

2 CONGRESSMAN WOLF: And if you lived in
3 that neighborhood, and you were there, and they were
4 standing in front of you and intimidating you from
5 voting, you would feel the same way.

6 COMMISSIONER KIRSANOW: Yes. And is your
7 answer any different because this is a single
8 incident, as opposed to there being maybe a couple of
9 incidents or ten incidents?

10 CONGRESSMAN WOLF: Any incident.

11 COMMISSIONER KIRSANOW: Okay. How many
12 times have you been in touch with staff or members of
13 the Department of Justice in order to obtain
14 information related to this particular matter?

15 CONGRESSMAN WOLF: A number of times I've
16 spoken to people. Many times.

17 COMMISSIONER KIRSANOW: And are you
18 satisfied with the adequacy of the response of DOJ?

19 CONGRESSMAN WOLF: No.

20 COMMISSIONER KIRSANOW: What have they
21 done or not done to satisfy your --

22 CONGRESSMAN WOLF: They almost never
23 answer a letter.

24 COMMISSIONER KIRSANOW: What would you say
25 to individuals who would say that the Commission's

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1 inquiry here today, or your inquiry, is motivated by
2 partisan reasons?

3 CONGRESSMAN WOLF: I think that's
4 ridiculous.

5 COMMISSIONER KIRSANOW: Would your actions
6 related to this particular matter be at all different
7 if in fact this was -- this dismissal was done under a
8 different administration?

9 CONGRESSMAN WOLF: No, it wouldn't, and I
10 see the line that you're going on. I have been in
11 Congress for 30 years. My best friend in Congress is
12 a Democratic member of Congress, Congressman Tony
13 Hall, who has actually contributed to my campaign.

14 If you go call Congressman Hoyer and ask
15 him if I'm a partisan person, he'll tell you that I'm
16 not. I was the author of the Iraq study group, which
17 questioned the whole operation of the Iraq War when
18 the Congress had failed to have aggressive oversight.

19 I have the most bipartisan bill in
20 Congress with regard to dealing with the debt and the
21 deficit, Jim Cooper and I. So, I approach these
22 things based on what I believe is an important issue
23 with regard to is it right or wrong, and I have not
24 been reluctant to speak out and criticize Republican
25 administrations, as well as Democrat administrations.

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1 So, the answer to your question is no.

2 COMMISSIONER KIRSANOW: Do you believe
3 that the incident that we are reviewing here today,
4 and I think the scope of this inquiry is really into
5 the adequacy of your response, although obviously
6 we've got to get to the underlying predicate. But do
7 you think that the incident that is the reason why
8 we're here today is any less serious because it
9 occurred in a black neighborhood, or that the alleged
10 intimidators are black?

11 CONGRESSMAN WOLF: I think it's serious no
12 matter what the case may be. For anyone to intimidate
13 people from voting would be serious, no matter what
14 their race were.

15 COMMISSIONER KIRSANOW: And does that also
16 include party? In other words, would it be less
17 serious --

18 CONGRESSMAN WOLF: Yes, absolutely.

19 COMMISSIONER KIRSANOW: -- if this --

20 CONGRESSMAN WOLF: No, Republican or
21 Democrat.

22 COMMISSIONER KIRSANOW: Okay. Thank you,
23 Mr. Chairman.

24 CHAIRPERSON REYNOLDS: Thank you.
25 Commission Taylor?

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1 COMMISSIONER TAYLOR: I'm going to pass
2 for the moment, Mr. Chairman.

3 CHAIRPERSON REYNOLDS: Commissioner Yaki?

4 COMMISSIONER YAKI: Thank you very much,
5 Mr. Chair. Thank you very much for appearing,
6 Congressman Wolf. On a personal note, I used to be a
7 senior aide to a young congresswoman named Nancy
8 Pelosi, and we had very good relations with your
9 office on appropriations, and you and your staff was
10 always very accommodating. So thank you.

11 CONGRESSMAN WOLF: And we still do.

12 COMMISSIONER YAKI: I know you do. And I
13 also -- and I also used to be a constituent of yours
14 when I used to live in Great Falls. In fact, when you
15 were first elected in 1980, I think.

16 CONGRESSMAN WOLF: Correct, yes.

17 COMMISSIONER YAKI: So, the -- I wanted to
18 ask a couple questions, and first I wanted to say that
19 I do commend you for the bipartisan work that you have
20 done on issues. One in particular was the -- your
21 role in questioning the interrogation memos that --
22 regarding now Judge Bybee and John Yoo, and the fact
23 that at that time you initiated a request for the
24 Office of Professional Responsibility in Justice to
25 take a look at that, if I recall correctly.

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1 My question has to do with this. You've
2 talked a lot about some of the different offices
3 within DOJ, but OPR certainly has been -- perhaps I'm
4 characterizing wrong, but perhaps in your opinion it
5 has been a very good fact-finding and independent
6 watchdog within Justice.

7 Is it -- isn't it -- why -- why is it that
8 you are not satisfied that OPR has opened an
9 investigation into this matter?

10 CONGRESSMAN WOLF: It's gone on for so
11 long, and -- and other potential political reasons,
12 but it's gone on for so long, and every time we send a
13 letter over there, we almost get no response back. I
14 think the appropriate place to look at this is really
15 the Inspector General.

16 COMMISSIONER YAKI: In the -- in the case
17 of the torture memos, why would -- why were you
18 satisfied at OPR versus inspector general for its --

19 CONGRESSMAN WOLF: Well, we've gone on on
20 this thing over and over. We've talked to Bartle
21 Bull. We've also looked at other things. And I've
22 also talked to career people over at the Department.
23 Many times, I've talked to them off the record, and I
24 think this is a fairly open and shut case that ought
25 to be proceeding and moving ahead, and I -- I -- did

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1 you just watch the film?

2 I don't think anybody here would want to
3 go vote next November and have anyone standing outside
4 of your polling place with that type of intimidation,
5 and the obvious nature of that. We have the right to
6 vote, the right to be able to take a decision, the
7 right to kind of go down.

8 I mean I've seen as we travel around the
9 world and see the intimidation of people in other
10 areas; I just think it's just inappropriate. And the
11 career people I think have made a pretty compelling
12 case, and the Justice Department is moving ahead. And
13 something happened, and we're not sure what happened
14 for the political people to intercede and change that.

15 COMMISSIONER YAKI: Let me just get --
16 I'll get back to career people in just one second, but
17 based on what you had said to Commissioner Kirsanow, I
18 take it that if -- if you had been informed that cases
19 equally egregious on the facts as this had been
20 brought to the Justice Department in 2002 and 2004 and
21 2006, and had not been referred for 11(b) prosecution,
22 you would be as concerned about that as you were about
23 this case, correct?

24 CONGRESSMAN WOLF: I would hope so.

25 COMMISSIONER YAKI: I mean if someone was

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1 -- if someone was standing at a voting booth with an -
2 - with an open weapon, and asking only certain types
3 of voters, "Why are you here? Are you really
4 registered to vote?" That'd be the kind of thing that
5 would probably upset you.

6 CONGRESSMAN WOLF: Well, I would -- I
7 would hope so. I'm the co-chairman of the Tom Lantos
8 Human Rights Caucus, which the speaker has set up.
9 And whenever we see activity in places that whether it
10 is -- whoever is involved in it, we hope we speak out.
11 So, I would hope so.

12 COMMISSIONER YAKI: I agree, and that's
13 certainly been your record in Congress. In fact, I
14 also forgot how much work we did together in the China
15 issue during the -- during the early '90s.

16 The last question I have -- I have for you
17 has to do with the -- I know that you place a lot of
18 faith in career, and I think that as a matter of
19 practice in the federal government, we tend to look at
20 career people as having a little more insulation, or
21 expertise and professionalism in their job.

22 The question I have to ask though is this
23 concerns a department within the -- within the Justice
24 Department that the Office of Professional
25 Responsibility cited as having extreme politicization

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1 in the hiring and firing of folks. And I just want --
2 I just would like to, A, put that on the record, and
3 B, ask you whether or not the fact that if any of the
4 individuals involved were part of that, or had been
5 referenced in that report, or in other citations with
6 regard to the politicization, would that change your -
7 - change your opinion about whether or not as career
8 people, qua career people, their opinion is as sound
9 as, say, someone who had been there 20 or 30 years?

10 CONGRESSMAN WOLF: Well, I think there's a
11 rebuttable presumption, and the career people are --
12 are -- almost have been removed for whatever case --
13 case may be. My staff just gave me a note saying that
14 Chris Coates was hired by the Clinton Administration.

15 COMMISSIONER YAKI: I understand.

16 CONGRESSMAN WOLF: But --

17 COMMISSIONER YAKI: But Chris Coates was
18 also --

19 CONGRESSMAN WOLF: Let me answer your
20 question. Back in I forget what year it was, the
21 Congress brought up a proposal to -- to amend or to
22 drastically change the Hatch Act. Since having been a
23 federal employee, I was the only member that
24 represented a large number of federal employees to
25 vote against that because I remember during the Nixon

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1 Administration there was a politicizing of the career.

2 At that time, I was working for a cabinet
3 secretary, and I felt that the Hatch Act provided a
4 protection for career people in the following way:
5 that if someone could come by and say, "Well, we're
6 having a political event and you got to donate," or,
7 "We're going to be out flyering cars next week at the
8 shopping centers, and we want you," the fact that the
9 Hatch Act was there provided a protection for the
10 federal employee where he could say, or she could say,
11 "Well, that's against the law. I really can't do
12 that."

13 So, I have always kind of leaned in with
14 regard to protecting the career -- you see in other
15 governments around the world the politicizing and
16 manipulation. So, I think the career process has been
17 very good, and I have always gone the extra mile,
18 including voting in a way that probably many people
19 thought I should not have of -- of not repealing the
20 change in the Hatch Act as a way to protect --

21 COMMISSIONER YAKI: And I agree. No one
22 is impugning your integrity. And I would just say --

23 CHAIRPERSON REYNOLDS: Commissioner Yaki,
24 I just wanted to let you know you've run out of time.

25 COMMISSIONER YAKI: Just to finish really

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1 quickly, I assume that the OPR report about the
2 conduct of Mr. Schlozman in DOJ must've had some
3 concern to you with regard to politicization of the
4 Civil Rights Division, and I would just simply say
5 that yes, I understand that Mr. Coates has been -- has
6 been there for quite some time. There have been some
7 allegations, whether they're true or not, that he was
8 a subject of a memo by Mr. Schlozman saying that he's
9 now part of our team, but those are the kinds of --

10 CONGRESSMAN WOLF: I don't know.

11 COMMISSIONER YAKI: I understand, but
12 those are the kinds of things that -- that do concern
13 me.

14 CHAIRPERSON REYNOLDS: Thank you,
15 Commissioner Yaki.

16 CONGRESSMAN WOLF: Where do you live now?

17 COMMISSIONER YAKI: San Francisco.

18 CHAIRPERSON REYNOLDS: Mr. Melendez?

19 COMMISSIONER MELENDEZ: No further
20 questions.

21 CHAIRPERSON REYNOLDS: Okay, Commissioner
22 Heriot?

23 COMMISSIONER HERIOT: I have no questions.

24 CHAIRPERSON REYNOLDS: Commissioner
25 Gaziano?

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1 COMMISSIONER GAZIANO: Thank you,
2 Congressman Wolf. I would like to think, and I feel
3 confident we would've been investigating this matter
4 had it not been for your prior work, but your prior
5 work has certainly been very helpful and drew a lot of
6 attention to this issue. And I have two lines of
7 questioning that I hope won't take very long, but
8 there were some Commissioners in their opening
9 statements, and one in their questions to you,
10 suggested that since this was a single incident, it
11 wasn't worth our examination.

12 You responded to Commissioner Kirsanow in
13 saying that you certainly felt we would be derelict,
14 and I'll go back to your words that it might undermine
15 the credibility of the Commission if we didn't. Let
16 me -- let me just tell you one other reason for my
17 concern.

18 Would you agree with me that it sends a
19 stronger signal, good or bad, depending on what the
20 decision is, to dismiss a suit if you're on the verge
21 of winning, than not filing charges?

22 CONGRESSMAN WOLF: I would because then
23 that would just send a message. I -- I would.
24 Sometimes when you respond -- when a -- when a
25 teacher, when a third grade teacher goes to the

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1 defense of the most defenseless in the class -- as a
2 young boy, I was a stutterer. I still stutter now.
3 When a -- when a teacher would come to the defense of
4 the person having the most difficult time, that sends
5 a message to the whole class. "You're not going to do
6 that."

7 And I think by doing precisely what you
8 said sends a message, and we're not going to allow
9 voter intimidation anywhere, period.

10 COMMISSIONER GAZIANO: Right, and of
11 course if you -- does it send a stronger signal to
12 dismiss a claim that has received national attention,
13 and that most reasonable people who've seen this
14 YouTube that was repeated on Fox News, that it would
15 send a wrong -- a larger negative symbol, than another
16 case which perhaps should've been brought where the
17 evidence is less clear?

18 CONGRESSMAN WOLF: I agree because if the
19 third grade teacher allows the young stutterer to be
20 harassed, and pushed around, and beaten up, then that
21 sends a message to the rest of the class that you can
22 do it to anybody. So, I think it absolutely does.

23 COMMISSIONER GAZIANO: Yes. And let me
24 tell you one -- one final reason that I tried to
25 articulate in my opening statement why I think this is

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1 utterly -- by the way, we and you I think too, but
2 certainly we in the scope of our investigation
3 requested evidence on every single investigation the
4 Justice Department has done under 11(b) because we
5 want to compare that response.

6 I might agree with Commissioner Yaki and
7 others that some of those prior responses are
8 questionable. Some of them are inadequate, but I very
9 much want all of that information. And as you know,
10 as I think your experience reflects, we've been
11 stonewalled, delayed, and -- and only last week, we
12 had -- well, let me -- one of the new privileges that
13 doesn't exist, and I used to work in the Department of
14 Justice's Office of Legal Counsel, responding to
15 congressional requests from the president's side.

16 This is, to me, the most flagrant. They
17 said that they would have to deny us some material
18 last January. "The Department is constrained by the
19 need to protect against disclosures that otherwise
20 would undermine its ability to carry out its mission."

21 The statute that Congress has conferred
22 upon us requires every federal agency to comply fully
23 with our requests. And so, last Friday, we finally
24 got some dribbling out of documents, which I hope you
25 also have. And among them, I'm going to ask this

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1 panel of witnesses to maybe identify what their
2 statement was. Because prior to last Friday, we got
3 none of the witnesses statements.

4 For ten months, they deemed that either
5 not relevant, or -- so, let me ask in their words.
6 So, do you think that supplying you and other members
7 of Congress, and supplying the Commission with the
8 witnesses statements prior to last Friday would,
9 "Undermine the ability of the Department to carry out
10 its mission?"

11 CONGRESSMAN WOLF: No, I don't think it
12 would undermine it.

13 COMMISSIONER GAZIANO: Okay. So, what we
14 got last Friday, and this is our continuing problem,
15 has redactions that seem to me ridiculous. I'm going
16 to try to ask the witnesses who -- because the names
17 of the witnesses are redacted.

18 I have declaration of redacted. Now comes
19 defendant, redacted. Do you not think it's maybe
20 relevant to our investigation to know which witness
21 said which statement?

22 CONGRESSMAN WOLF: Sure. Of course.

23 COMMISSIONER GAZIANO: Please. I thank
24 you for your effort to get the information for your
25 own benefit, and to help the Commission get the

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1 information so that we can come to these conclusions
2 that Vice Chairman Thernstrom says that we don't have
3 sufficient information.

4 I think we've got sufficient information
5 to conclude that this case shouldn't have been
6 dropped. We may or may not ever get sufficient
7 information to conclude why, but I think it's
8 incumbent upon the Department to explain why it
9 dropped the suit.

10 I think we have sufficient evidence to
11 know that it should not have been.

12 CHAIRPERSON REYNOLDS: Thank you,
13 Commissioner Gaziano. Would you care to respond?

14 CONGRESSMAN WOLF: Oh, I would just tell
15 the Commission I'm going to stay with this issue until
16 it's resolved.

17 CHAIRPERSON REYNOLDS: Commissioner
18 Taylor?

19 COMMISSIONER TAYLOR: Congressman Wolf, my
20 name is Ashley Taylor, and I'm actually a resident of
21 the Commonwealth, not in your district. I live in
22 Richmond. But thank you for coming, and I want to
23 thank you for the manner in which you've gone about
24 this process, the respectful tone, my sense of you
25 working hard to ensure that it's not drawn into a

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1 political fight; that you can discuss the issue in a
2 way that actually advances the substantive issues I
3 think that are important here.

4 I wanted you to know personally I have
5 reserved judgment on this matter. I think it's
6 important to try to keep an open mind, and to try to
7 do nothing more at this point than try to draw out the
8 facts and ask questions. I want you to comment in
9 that regard on two things: one is the message that you
10 mentioned before that either the lack of aggressive
11 prosecution sends, or aggressive prosecution sends in
12 a neighborhood.

13 I'd like you to comment on that in the
14 context in my view of the longstanding refusal to
15 value incidents in the black community on the same
16 plane that incidents in the white community are
17 valued. Also, I'd like you to comment on the lack of
18 transparency that I sense, which I think causes a lot
19 of people concern and makes it more difficult to trust
20 decisions made by governmental entities when they
21 refuse to answer questions, or hide behind privileges.

22 So, with that, I want to again thank you
23 and ask you to comment on those two points.

24 CONGRESSMAN WOLF: Well, I think the
25 transparency and the trust issue is important because

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1 you saw the -- the Pew Foundation study that came out
2 last -- I guess it was earlier this week or last week.
3 Last week, excuse me. Seventy-eight percent of the
4 people in the United States have lost confidence in
5 their government, and I think accountability and
6 transparency.

7 I'm the author of this bill with
8 Congressman Cooper, a Democrat, to set up a bipartisan
9 commission to deal with the economic situation of
10 where we are, and we -- in our bill, we require that
11 there be public hearings and transparency around the
12 country to develop the confidence by the American
13 people in whatever decision is -- is done. Very tough
14 things are going to have to be done to deal with that.

15 So, I think the transparency, to build the
16 confidence up, because the Pew Foundation -- and I saw
17 one of the reports saying that the Pew -- the Pew
18 Foundation did that poll four times because the first
19 time they came back, they found the numbers were so
20 startling that they didn't really believe it was
21 possible, and they went back and they validated it
22 three additional times.

23 Lastly, I think that the enforcement --
24 justice, justice. You know, I just think there's some
25 things that have to be done, no matter where they take

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1 you and whatever they do. And I think you have to
2 restore the confidence. Obviously, somebody -- that
3 was if you go back and look at the Richmond Times
4 Dispatch editorial that criticized me in 1981.

5 I remember I was there, and some of my
6 colleagues said, "What are you doing?" And they
7 really took me to task. If you were an African-
8 American that lived in the south during that period of
9 time, and I always tried to put myself in the same
10 position of how I would feel if I were an African-
11 American and were driving down from Philadelphia to
12 Ole Miss, and couldn't stop at a restaurant to have a
13 burger, or stop -- or have young kids who have to go
14 to the bathroom. How would I feel?

15 And that's why I voted for the Voting
16 Rights Act. And so, I think there ought to be a
17 transparency, and there ought to be an openness, and
18 there ought to be -- fundamentally, everyone should
19 have the confidence to the best of the ability to
20 address their government. And -- and I think to have
21 people standing in front of the polling booth doing
22 that, and -- and it did strike me to come in from
23 Philadelphia, I was born and raised in south
24 Philadelphia.

25 I went to high school in John Bartram High

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1 School. To see this taking place in the city that I
2 have a warm sort of fuzzy feeling for because I was
3 born there, a lot of my life experiences have been
4 there, I just said, "This is not good." This is --
5 there's just some things you see, and you know they're
6 not right. And I saw this, and I said, "This is not
7 right."

8 COMMISSIONER TAYLOR: Thank you.

9 CHAIRPERSON REYNOLDS: Okay, thank you,
10 Congressman Wolf. At this point, I would like to
11 bring Mr. Hill, Bull and Mauro back to the table.

12 CONGRESSMAN WOLF: Am I dismissed?

13 CHAIRPERSON REYNOLDS: Yes. And on behalf
14 of the Commission, thank you very much.

15 CONGRESSMAN WOLF: Thank you.

16 MR. BLACKWOOD: If I might, Mr.
17 Commissioner, before we proceed with the questioning
18 of these witnesses, just some formalities. One, I
19 would like to move the documents that Congressman Wolf
20 submitted formally into the record?

21 CHAIRPERSON REYNOLDS: Sure.

22 MR. BLACKWOOD: And secondly, before I
23 ended my -- my questioning of Bartle Bull, I forgot to
24 ask one question. Mr. Bull, did you bring with you a
25 copy of your declaration that you gave to the

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1 Department of Justice?

2 MR. BULL: My affidavit?

3 MR. BLACKWOOD: Yes.

4 MR. BULL: Yes, I have an affidavit here.

5 MR. BLACKWOOD: And I would like to move
6 that into evidence as well.

7 MR. BULL: Yes. I'll leave it here.

8 COMMISSIONER GAZIANO: May I ask the
9 general counsel did we receive Mr. Bull's affidavit
10 from the Department?

11 MR. BLACKWOOD: The only document we
12 received from the Department is heavily redacted. Mr.
13 Bull has his full statement. The other witnesses do
14 not have copies of their statements.

15 COMMISSIONER GAZIANO: Did we receive
16 even, to your knowledge, a partially redacted --

17 MR. BLACKWOOD: Yes.

18 COMMISSIONER GAZIANO: -- version? Was
19 his name blacked out?

20 MR. BLACKWOOD: Absolutely.

21 COMMISSIONER GAZIANO: Okay.

22 MR. BULL: What are they afraid of?

23 VICE CHAIR THERNSTROM: You.

24 CHAIRPERSON REYNOLDS: Anything else?

25 COMMISSIONER GAZIANO: No, I'm through.

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1 Thank you. So, that was admitted into evidence?

2 **VIII: QUESTIONING OF WITNESSES BY COMMISSIONERS**

3 CHAIRPERSON REYNOLDS: Yes. Okay, at this
4 point, we will continue. We were -- before we made
5 our little detour, we were about to question the
6 witnesses. Vice Chair Thernstrom?

7 VICE CHAIR THERNSTROM: Thank you very
8 much, Mr. Chairman. One opening comment here. I'm
9 having a little trouble distinguishing a line of
10 questioning that seems like an effort to establish the
11 fact that the New Black Panther Party is exactly as
12 they describe themselves, which is -- now, it's not a
13 pretty picture.

14 Now, distinguishing that from the line of
15 inquiry that informs -- and that line of inquiry
16 informs of simply of what we already know.
17 Distinguishing that from the questions that address
18 the issue of clear intimidation. And neither line of
19 questioning, it seems to me, really get to the matter
20 of the internal DOJ decision to dismiss this lawsuit.

21 But I wondered on the matter of clear
22 intimidation. I've already asked Congressman Wolf
23 what he thought was the definition of intimidation
24 under 11(b), and in fact there is no settled
25 definition. But did you see -- you saw two women

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1 arriving at the polling place, and saying they'll come
2 back later. They were uncomfortable with what they
3 saw.

4 But otherwise, did you see anybody at the
5 polling place who obviously intended to vote, and
6 didn't end up voting because of the presence of the
7 New Black Panther Party members?

8 MR. HILL: It was two women and a
9 gentleman.

10 VICE CHAIR THERNSTROM: Two women and a
11 gentleman? These were the people in the car that you
12 mentioned?

13 MR. HILL: No. They stopped at the
14 corner. They came walking down Fairmount.

15 VICE CHAIR THERNSTROM: Okay, okay. I
16 misunderstood.

17 MR. HILL: They stopped right at the
18 corner of the driveway, circular drive, where I was
19 standing on the phone, and they said, "What's going
20 on?" Truthfully, I didn't really have a good answer
21 for them.

22 VICE CHAIR THERNSTROM: And they said
23 they'd come back later, which they may or may not have
24 come?

25 MR. HILL: They may or may not have, yes.

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1 VICE CHAIR THERNSTROM: Yes, I understand.

2 MR. HILL: But at that exact moment in
3 time, those people were not going near that doorway,
4 and ma'am, I'm not as well versed as you are in these
5 Civil Rights issues, but they were intimidated.

6 VICE CHAIR THERNSTROM: They were
7 intimidated, okay. Do we have -- I mean I take
8 seriously when anybody is intimidated, and I'm not
9 dismissing that experience of theirs. But yet, we
10 don't seem to have any evidence other than these three
11 people. Three people are three people, I agree with
12 you, but nevertheless, it seems to me the case of the
13 New Black Panther Party actually blocking people from
14 voting would be stronger if there were more than three
15 people that we're talking about here.

16 MR. HILL: Indeed that's true, but I
17 proudly wore the uniform of the United States Army
18 Infantry, and it wasn't so that anybody could be
19 stopped. One person is way too many, and not on my
20 watch, ma'am. I was standing there. I saw these
21 guys. They attempted to intimidate me. I'm Army
22 Infantry. I don't intimidate, but they did stop those
23 three people from voting at that second.

24 Whether or not they voted later, none of
25 us can tell because I don't have their names. We

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1 can't check the rolls. But at that exact moment when
2 those three people walked up, I was disgusted that
3 those guys were standing there, and they weren't able
4 to access the polling place.

5 MR. BULL: May I respond too, ma'am?

6 VICE CHAIR THERNSTROM: Yes, sure.

7 MR. BULL: Thank you. I don't know if the
8 individuals I saw were the same ones that he
9 mentioned. I was standing by our parked car near the
10 end of the driveway, and I only saw again I would say
11 three people, but it doesn't sound to me it was
12 exactly the same one.

13 It was an elderly couple who started
14 walking down the drive, and then they just thought --
15 I don't know what they thought, but they left. And
16 then one individual later. But I want to say most of
17 us are lawyers at this table, and we know almost every
18 single system of justice, from the Magna Carta to
19 Brown versus Board of Education, comes down to one
20 incident, and one individual. Every time.

21 These aren't mass trials of 100 incidents.

22 VICE CHAIR THERNSTROM: Well, not --

23 MR. BULL: If you study the history of
24 justice, it comes down to normally one individual and
25 one case.

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1 VICE CHAIR THERNSTROM: Not really. Well,
2 wait a minute. I mean Brown versus Board, we're
3 talking about --

4 MR. BULL: No, but there's a point I'm
5 making. The -- the nature of our system lends itself
6 to an individual person being involved in a
7 proceeding.

8 VICE CHAIR THERNSTROM: Yes, I know, but
9 the whole Voting Rights Act was, for instance, built
10 on years and years --

11 MR. BULL: Of course.

12 VICE CHAIR THERNSTROM: -- of experience
13 and testimony and frustration on the part of the
14 Justice Department --

15 MR. BULL: Absolutely right.

16 VICE CHAIR THERNSTROM: -- and so forth.
17 And this is really a little different. Look, I mean I
18 guess in part I ask this, because I've got a rather --
19 okay, let me just finish this sentence. I've got a
20 rather cynical view of elections that elections are
21 messy. They're never - across the country in various
22 iterations. There are voting problems.

23 We can't make them perfect. We've got
24 three people here who seem to have been intimidated by
25 guys. I don't like the way they were standing around

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1 there. I don't like the way they look, and I don't
2 like their voice, but -- and by the way, I would not
3 have been opposed to a briefing on this subject. My -
4 - my opposition in my opening statement was to having
5 made this a statutory report.

6 CHAIRPERSON REYNOLDS: Okay. At this
7 point, I'll turn to Commissioner Kirsanow.

8 COMMISSIONER KIRSANOW: Thank you, Mr.
9 Chairman. This is to each one of you. You each gave
10 statements to the Department of Justice, correct?

11 MR. MAURO: Yes.

12 MR. HILL: Yes, sir.

13 MR. BULL: Yes.

14 COMMISSIONER KIRSANOW: When did you give
15 those statements to the Department of Justice, if you
16 recall?

17 MR. MAURO: I can only tell you what it is
18 in relation to the time the complaint was filed. So,
19 it was probably a few months, two to three months,
20 prior to that. I just don't recall when the complaint
21 was filed. I think it's the Eastern District in
22 Philadelphia.

23 COMMISSIONER KIRSANOW: Okay. Mr. Hill,
24 do you recall?

25 MR. HILL: Would've been early spring

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1 2009. I gave the formal statement. Then they brought
2 it back to me and had me sign it.

3 COMMISSIONER KIRSANOW: And that was
4 before the complaint was filed, to your knowledge?

5 MR. HILL: To the best of my knowledge,
6 yes.

7 COMMISSIONER KIRSANOW: Mr. Bull, do you
8 recall when you --

9 MR. BULL: I think it was January.

10 COMMISSIONER KIRSANOW: January of 2009?

11 MR. BULL: I believe so. Yes, sir.

12 COMMISSIONER KIRSANOW: Okay. Now, as
13 you're all aware, Department of Justice decided to
14 dismiss this effort, a default having been entered
15 already, and that dismissal was in, Mr. General
16 Counsel, May of 2009?

17 MR. BLACKWOOD: Yes.

18 COMMISSIONER KIRSANOW: The dismissal. At
19 any time in or about May of 2009, did you give any
20 further statements to the Department of Justice?

21 MR. MAURO: I did not, no.

22 MR. BULL: No, sir.

23 COMMISSIONER KIRSANOW: Did Department of
24 Justice follow up with you in any regard prior to the
25 dismissal of this particular lawsuit?

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1 MR. MAURO: I have no contacts.

2 MR. HILL: They called me on a couple of
3 different occasions to clarify comments in my -- my
4 statement, and also because there's another clip that
5 we didn't see, where I was actually interviewed
6 onsite, and they wanted to clarify something.

7 COMMISSIONER KIRSANOW: Do you recall
8 approximately when that was?

9 MR. HILL: I was in short sleeves outside.
10 I met them at a coffee shop. So, it wasn't cold. So,
11 it would've had to have been late March, early April,
12 I guess.

13 COMMISSIONER KIRSANOW: Mr. Bull, do you
14 know?

15 MR. BULL: I don't think I talked to them
16 again after I signed my affidavit. I don't think so.

17 COMMISSIONER KIRSANOW: Were any of you
18 advised by the Department of Justice of their intent
19 to dismiss this lawsuit?

20 MR. BULL: No. Oh, no.

21 MR. MAURO: No.

22 MR. HILL: Absolutely not.

23 COMMISSIONER KIRSANOW: All right. I
24 think Mr. Mauro -- strike that. Mr. Bull, you
25 testified, I believe, that on this -- on that Election

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1 Day in 2008, you'd had a report of several poll
2 watchers being driven from the polls?

3 MR. BULL: Yes, I could give you the
4 addresses of polling places. I took notes on filing
5 cards at each polling place. One was in West
6 Philadelphia, 5501 Market Street, Community Center.
7 We had trouble here earlier. Our poll watcher left
8 intimidated. I wrote that down in quotes. Another
9 one in West Philadelphia, 56th and Christian Street, a
10 woman left hysterically after being intimidated.

11 We had these going on all over these
12 neighborhoods.

13 COMMISSIONER KIRSANOW: Do you have any
14 more detail to that? I mean how were they intimidated
15 and by whom?

16 MR. BULL: I don't know because I wasn't
17 there at the time. We would get a call, saying,
18 "There's trouble here. Will you go there?" I'd go
19 there and try to collect the evidence, see if we could
20 help, and they'd say that the poll watcher left
21 already. You know, they'd been driven out. And so, I
22 couldn't get their statement.

23 COMMISSIONER KIRSANOW: Okay, Mr. Bull,
24 did you get involved in poll watching because you
25 thought it was permissible to allow one or two people

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1 to be intimidated, but only if there were more than
2 one or two was it time for Justice Department to step
3 in and --

4 MR. BULL: Well, I didn't get involved for
5 either A or B on your question. I got involved in
6 this, as I have been, in perhaps 20 Democratic
7 campaigns because I think that we should make this as
8 civil and Democratic society as possible. I'm not
9 getting involved in anticipation of the Department of
10 Justice doing something.

11 COMMISSIONER KIRSANOW: Mr. Hill, you were
12 about to say something.

13 MR. HILL: I'd like to reiterate Mr.
14 Bull's comment. We went to at least half a dozen
15 polling places where poll watchers had been expelled
16 from the building.

17 MR. BULL: Yes.

18 MR. HILL: And I personally got both the
19 Obama and the McCain poll watchers back into three
20 polling places by just not refusing to leave. I had
21 the two attorneys with me, who gave me legal
22 background on things, and then my Irish stubbornness
23 just kept me there until I got those guys back in the
24 building.

25 This is more to me than just, you know,

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1 two guys standing outside a polling place. This is
2 the fundamental right of the United States, and as I
3 said in my statement about serving in the Army,
4 everybody should get to participate. And it just
5 drives me nuts that Department of Justice doesn't take
6 this as seriously as I think they should.

7 MR. BULL: Absolutely.

8 COMMISSIONER KIRSANOW: And this is to
9 maybe Mr. Mauro, could you please -- just a specific
10 technical question. Could you please describe the
11 duties of an elections observer poll watcher? Is it -
12 - more specifically, in your experience, do poll
13 watchers, regardless of for which party they're
14 working, do they stand outside of an election or a
15 polling place and simply stand there? Or, how do they
16 normally comport themselves?

17 MR. MAURO: The role is to be, as my role
18 was, to be an observer, which is to observe. What is
19 going on? What am I seeing? What am I hearing? Is
20 anyone -- I can also receive a complaint that someone
21 has been denied access to voting or have a question
22 about where they should vote.

23 That's what the role is, and if there is
24 some kind of impropriety, or some kind of
25 inappropriate conduct, some kind of electioneering

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1 that's going on that violates some federal statute,
2 it's my obligation as an observer to call it into what
3 I characterized earlier as headquarters, and say,
4 "Hey, there's an issue here. There's a problem. We
5 may need to take action here."

6 And action meaning do we need to have
7 further investigation, do we need to start the process
8 of moving for an injunction? That is what the process
9 is. It's really on those legal procedures.

10 COMMISSIONER KIRSANOW: Thank you, Mr.
11 Chairman.

12 CHAIRPERSON REYNOLDS: Thank you.
13 Commissioner Taylor?

14 COMMISSIONER TAYLOR: Mr. Hill, you
15 mentioned the possible intimidation of a poll watcher.

16 MR. HILL: It wasn't possible
17 intimidation, Mr. Commissioner.

18 COMMISSIONER TAYLOR: Well, that's what
19 I'd like you to expand upon because I have -- I have
20 served as counsel in a number of statewide elections,
21 and I appreciate the importance of having poll
22 watchers from both parties at every poll.

23 MR. HILL: Right.

24 COMMISSIONER TAYLOR: To ensure a level
25 and balanced playing field.

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1 MR. HILL: Right on.

2 COMMISSIONER TAYLOR: Two advocates
3 aggressively arguing their point; you tend to get the
4 right result.

5 MR. HILL: Right.

6 COMMISSIONER TAYLOR: So, I want to hear
7 more about the poll watcher in particular at this
8 precinct that you observed, what you observed, and
9 what you reported about that aspect of this incident
10 to the Department of Justice.

11 MR. HILL: Initially, they said that the
12 Black Panthers -- I was told on the phone that the
13 Black Panthers had threatened him personally. They
14 said they were standing outside. They didn't mention
15 at the initial phone call any voter intimidation. It
16 was just that they had threatened the poll watcher.

17 So, I had -- that's why I headed straight
18 into the building, and didn't waste any time in the
19 parking lot with him. When I found him, he wasn't
20 quite cowering, but he was definitely shook up.

21 COMMISSIONER TAYLOR: How old was this
22 poll watcher?

23 MR. HILL: I would say mid-`50s.

24 COMMISSIONER TAYLOR: Was he African-
25 American?

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1 MR. HILL: He was.

2 COMMISSIONER TAYLOR: He was the
3 Republican poll watcher?

4 MR. HILL: He was. And he told me that he
5 was called a race traitor by Mr. Shabazz, and was told
6 he better not walk outside into the parking lot while
7 they were there. And I said, "Well, I'm going back
8 out into the parking lot." I mean that got my Irish
9 up -- you know, like I said, that's not what this is
10 supposed to be about.

11 And he said, "Are you going to call the
12 police?" I said, "Yes." When I got outside, I called
13 the police. I dialed 911. They said, "We've already
14 received three phone calls. The police are on the
15 way."

16 COMMISSIONER TAYLOR: Did you report this
17 to the Department of Justice?

18 MR. HILL: I did. I did.

19 COMMISSIONER TAYLOR: Was this part of the
20 affidavit you submitted?

21 MR. HILL: I don't --

22 COMMISSIONER TAYLOR: This aspect of the
23 incident, specifically with respect to the poll
24 watcher?

25 MR. HILL: I -- I thought that I mentioned

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1 that, but with the redacted part in there, I'm not
2 certain that it's actually in that statement.

3 COMMISSIONER TAYLOR: Okay. As part of
4 your organizing efforts, did you all assign poll
5 watchers? In a lot of these statewide elections,
6 you'll have a master list, and you'll say, "Poll
7 watcher X, you go here."

8 MR. HILL: Right.

9 COMMISSIONER TAYLOR: Did you all keep a
10 list of that nature so we could perhaps find this poll
11 watcher?

12 MR. HILL: I do not have a copy of that,
13 but I know who does.

14 COMMISSIONER TAYLOR: Okay, all right.
15 Thank you.

16 CHAIRPERSON REYNOLDS: Commissioner Yaki.

17 COMMISSIONER TAYLOR: Who has that list?
18 I'm sorry.

19 MR. HILL: His name is Joseph J. DeFelice.

20 MR. BLACKWOOD: We already have that
21 information.

22 COMMISSIONER TAYLOR: Okay, that's what I
23 was going to ask. Wanted to make sure you had all
24 that information. Great.

25 CHAIRPERSON REYNOLDS: Okay, great.

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1 Commissioner Yaki?

2 COMMISSIONER YAKI: Yes, thank you very
3 much all of you for -- for being here today. I'm
4 opening up to each one. I'm just going to go down
5 each line because I have questions. Mr. Hill, did you
6 -- did you witness the defendants -- well, forget
7 that. The fact of the matter is that -- is that I am
8 not as -- I am not as concerned about whether or not -
9 - relitigating the issue whether there was
10 intimidation or not. In my opinion, there was
11 intimidation.

12 MR. BULL: There was.

13 COMMISSIONER YAKI: There was
14 intimidation. And in fact, what sort of bothers me
15 about this entire proceeding has been the fact we keep
16 on saying that Justice dropped the charges, when in
17 fact for Mr. Shabazz, the one with the -- one with the
18 billy club, the charges were not dropped, and that a
19 judgment was entered against him.

20 And he is enjoined from being within 100
21 feet of any polling location in any election, in any
22 place in the City of Philadelphia, through the --
23 through the presidential election of 2012.

24 So, for the record, it is important to
25 note that that person who you've identified in this

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1 room today does have a civil injunction against him,
2 keeping him from engaging in voter intimidation, and
3 it's thanks to your affidavits that did it.

4 So, I don't want -- I don't want to get
5 into that. But what I do want to get into is just a
6 little bit about sort of what was going -- some of the
7 other stuff that was going on. Because the greater
8 allegation that seems to be being made is that there
9 was some sort of concerted nationwide attempt, or
10 whatever, by this -- by -- as Commissioner Thernstrom
11 described it, a fringe group.

12 So, with regard to you, Mr. Hill, and the
13 other locations that you went to in which there were
14 allegations that poll watchers were intimidated or
15 thrown out, was there any indication from anyone that
16 you spoke to at any of those other locations that it
17 was a result of any action by people associated with
18 the New Black Panther Party?

19 MR. HILL: At the other locations? No.

20 COMMISSIONER YAKI: Mr. Bull, same
21 question.

22 MR. BULL: Not to my knowledge, no, sir.

23 COMMISSIONER YAKI: And Mr. Mauro?

24 MR. MAURO: Correct. The answer is no.

25 COMMISSIONER YAKI: Hypothetically

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1 speaking -- hypothetically speaking, I would just note
2 for the record that what you've told us here today
3 differs slightly from the affidavits that we've seen
4 here, just in one critical area, and that is the --
5 the notion that -- the fact -- the facts as you saw
6 them, and I have no reason to doubt them, that people
7 -- as you say, one person is enough were turned away.

8 I would just note that for whatever
9 reason, they're not in the affidavits and they
10 probably should've been. But the -- the question that
11 I have goes to -- so, you were -- you were -- you're
12 volunteering for the Republican Party. You're
13 volunteering for -- I'm sorry, Mr. Hill, you were --
14 Mr. Mauro, you were a volunteer for the Republican
15 Party?

16 MR. MAURO: Correct.

17 COMMISSIONER YAKI: Where do you live?

18 MR. MAURO: I live in New York --
19 Connecticut.

20 COMMISSIONER YAKI: So, you drove down,
21 drove up. My geography is so bad. To volunteer in
22 the --

23 MR. MAURO: Right.

24 COMMISSIONER YAKI: Mr. Hill, you actually
25 live in the Philadelphia -- well, in the Pennsylvania

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1 area?

2 MR. HILL: Nine blocks from that polling
3 station.

4 COMMISSIONER YAKI: Okay, Mr. Bull, you --

5 MR. BULL: I live in Amenia, New York,
6 which is mid-state New York, about an hour from the
7 City.

8 COMMISSIONER YAKI: Now, were you there
9 for the McCain Campaign or the Republican campaign?

10 MR. BULL: As I said in my statement, I
11 was there -- I'm a democrat, but I was chairman of
12 Democrats for McCain in New York State. Almost every
13 state has one of those for the other party.

14 COMMISSIONER YAKI: Right, sure.

15 MR. BULL: But this was the first time in
16 a presidential campaign I'd ever worked for a
17 Republican. And I thought we were going to lose New
18 York, so --

19 COMMISSIONER YAKI: Hopefully it'll be the
20 last.

21 MR. BULL: Well, we'll see. It depends on
22 this kind of matter. But no, I'm -- when the
23 Department of Justice enforces a law, and the
24 president is sworn in, he says, "I will enforce the
25 laws of the United States." The Voting Rights Act

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1 says people should not be intimidated. So, let's have
2 it enforced.

3 COMMISSIONER YAKI: So, were you --

4 MR. BULL: That's why I'm doing it.

5 COMMISSIONER YAKI: So, were you there for
6 the McCain Campaign, or the Republican Party?

7 MR. BULL: McCain party. I don't care
8 much about the Republican Party in that sense.

9 COMMISSIONER YAKI: So, knowing that -- so
10 the question I have for you is the person who was the
11 most, I believe, culpable in terms of certainly when
12 you identified has an injunction and for -- in place
13 against correct. So, then what -- what then --

14 MR. BULL: For one election, or just the
15 next election?

16 COMMISSIONER YAKI: No, it's through all
17 elections up through the presidential of 2012.

18 MR. BULL: Which essentially means two
19 days?

20 COMMISSIONER YAKI: No, not at all.
21 There's city elections. There are district elections.

22 MR. BULL: Okay.

23 COMMISSIONER YAKI: There's state
24 elections. There's a number of elections. One might
25 argue, and -- and -- and this is not the time or place

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1 to do it. How long? Should it be forever? Whatever.
2 We might -- we might want to -- but the one question -
3 - one statement that kind of startled me about what
4 you said is you said this is the worst kind of voter
5 intimidation you've ever seen.

6 MR. BULL: Yes. I've never seen -- I've
7 never seen the entrance of a polling place blocked by
8 uniformed men with a weapon, and there is -- but may I
9 answer the question? It really is, because even when
10 I was in Mississippi, particularly in a little town
11 called Midnight, Mississippi, and there were truly
12 nooses across the tree, and I thought this really is
13 the end. And I stopped the voting there until they
14 took them down.

15 But -- but even then, you -- you could go
16 in and cast your vote. Here you had to go, as he
17 said, within arm's length of -- of an armed man. And
18 I think that's really egregious. And my own point of
19 view, just to put it in a sentence, is that Martin
20 Luther King and Robert Kennedy did not die to have
21 armed thugs in uniforms block the door to a polling
22 place.

23 COMMISSIONER YAKI: I understand, but let
24 me ask this.

25 MR. BULL: That's an important point.

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1 COMMISSIONER YAKI: That is an important
2 point, but let me ask you this. I'm sorry.

3 CHAIRPERSON REYNOLDS: Commission Yaki,
4 you've run out of time.

5 COMMISSIONER YAKI: Well, I was in the
6 middle of asking a question, and he wanted to --

7 CHAIRPERSON REYNOLDS: You ran out of time
8 during your last --

9 COMMISSIONER YAKI: So, the question I
10 have, though, is -- yes, I -- I really appreciate what
11 it is you're saying, but certainly you can't mean that
12 this is the worst form of voter intimidation.
13 Certainly, Selma, certainly the three --

14 MR. BULL: I have never seen what --
15 you're giving me an answer. You're telling me that I
16 certainly can't mean what I mean? Is that what you're
17 saying?

18 COMMISSIONER YAKI: No, I'm saying --

19 MR. BULL: You just said, "You certainly
20 cannot mean what you mean." Is that a question?

21 COMMISSIONER YAKI: You know what? You
22 certainly -- I'm going to ask you that. Do you really
23 mean it's the worst example ever?

24 MR. BULL: No. I didn't say ever. I
25 said, "I've seen." I have never in my lifetime, and

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1 I've worked in seven states in elections, seen an
2 armed person blocking a door to a polling place.

3 COMMISSIONER YAKI: And the people --

4 CHAIRPERSON REYNOLDS: Okay, Commissioner.

5 COMMISSIONER YAKI: Did you still see
6 people going in there and voting?

7 CHAIRPERSON REYNOLDS: Commissioner Yaki,
8 you -- Mr. Yaki, you have run out of time.

9 COMMISSIONER YAKI: Okay.

10 CHAIRPERSON REYNOLDS: Commissioner
11 Melendez.

12 COMMISSIONER YAKI: I'm sorry. As a point
13 of order, I was watching the red dot for some of the
14 other Commissioners continue on for quite some time.
15 I actually have my watch going right here, and I have
16 not come anywhere close to where some of those red
17 dots were at the point that it was over.

18 CHAIRPERSON REYNOLDS: Commissioner Yaki,
19 I have been lenient. Commissioner Yaki --

20 COMMISSIONER YAKI: What I would do -- we
21 are -- we are allowed for the second round, and I
22 reserve for the second round.

23 CHAIRPERSON REYNOLDS: Okay, very good.
24 Commissioner Melendez.

25 COMMISSIONER MELENDEZ: You're telling --

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1 this is for all three of you. You've said that the --
2 that you saw people approach the polling place and
3 that they were turned away. Did you actually tell
4 that to the Department of Justice?

5 MR. HILL: Yes, I did.

6 MR. BULL: I didn't say they were turned
7 away. You said that; not me. I said they walked up
8 the drive and turned around. I didn't say they were
9 turned away.

10 COMMISSIONER MELENDEZ: Okay.

11 MR. BULL: You changed the language, sir.

12 COMMISSIONER MELENDEZ: Yes, I didn't say
13 that. Okay, thank you. That's the only question I
14 have.

15 VICE CHAIR THERNSTROM: Why don't you
16 yield the rest of your time to Commissioner Yaki so he
17 can finish.

18 COMMISSIONER YAKI: Yeah, could you?

19 COMMISSIONER MELENDEZ: Okay.

20 CHAIRPERSON REYNOLDS: That's fine.

21 COMMISSIONER YAKI: Very quickly, part of
22 this case deals with the fact that, as I said before,
23 there was a concerted effort elsewhere to deal with
24 this, but it's clear that you're testifying only --
25 only is concerned with this one precinct in this one

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1 city of Philadelphia.

2 So, again, I ask you, in any other -- in
3 your voter poll watching protection roles that you
4 had, aside from this one precinct, did you hear of any
5 other incidents involving the New Black Panther Party
6 intimidating poll watchers, or voters?

7 MR. MAURO: I did not.

8 MR. HILL: No, I did not.

9 MR. BULL: No, I did not.

10 COMMISSIONER YAKI: Thank you.

11 CHAIRPERSON REYNOLDS: Okay, Commissioner
12 Heriot?

13 COMMISSIONER HERIOT: I just have -- have
14 one question, I think, and that is with regard to the
15 other precincts where -- where poll watchers may have
16 been intimidated. Have the harassing parties, or were
17 the harassing parties in those situations ever
18 identified to your knowledge?

19 MR. HILL: Not to my knowledge. I want to
20 make it clear that it wasn't always malfeasance at
21 those polling places. It was on a few occasions.
22 Some of it was just poor information. The Citywide
23 Accreditation --

24 COMMISSIONER HERIOT: What do you mean?
25 What do you mean on that?

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1 MR. HILL: The Citywide Accreditation
2 allowed certified poll watchers to go into any poll
3 anywhere in the city, whether they were Democrat or
4 Republican. At some of the polling places, whomever
5 was in charge would make the argument that only if the
6 -- your documentation said their physical address
7 could you get into their polling place.

8 So, it wasn't always intimidation. I
9 don't want to make it sound like it was bigger than it
10 was, because it wasn't. And I had Mike with me for
11 the legal background, and we were able to get the
12 statute and get guys back into those places fairly
13 quickly.

14 In the places where there were
15 intimidation, which would've been two or three more
16 places, we just explained that we're not going
17 anywhere until these people get back into the
18 building.

19 COMMISSIONER HERIOT: Who was doing the
20 intimidating?

21 MR. HILL: Committeemen for the most part,
22 or self identified committeemen. I don't know if they
23 were necessarily committeemen. In a couple of cases,
24 the poll watchers were 20-21 years old, and weren't
25 really sure of themselves. And the one in particular,

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1 who we actually eventually developed a pretty decent
2 rapport with, was a large guy, and he was bodying up
3 on them, and attempting to be intimidating to keep
4 them out of the building.

5 And then once Mike explained the statute,
6 and I said, "Well, I'm not going anywhere until they
7 get inside," eventually, it was just easier to agree
8 with us and get rid of us, and let them in the
9 building than to have us stay around all day.

10 COMMISSIONER HERIOT: Did you hear about
11 any other cases?

12 MR. HILL: Oh, dozens during the course of
13 the day. They were related back and forth. Because
14 of our particular situation, we were sent to some of
15 the rougher neighborhoods, and that was part of the
16 deal.

17 They told me at the beginning. They said,
18 "6:30 in the morning." They said, "Be expected you're
19 going to go to bad neighborhoods, and it's going to be
20 tough all day long." Okay, cool.

21 MR. BULL: That's right.

22 MR. HILL: So, there were at least -- I'd
23 say at least a dozen came back to us while we were
24 driving around at those sorts of things, and then
25 anecdotally, later when we got back to -- to the

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1 headquarters to turn in the paperwork and all that,
2 there were several dozen, I would say.

3 COMMISSIONER HERIOT: Any name-calling?

4 MR. HILL: Yes, there was name-calling.
5 There was name-calling. It seemed to go both ways,
6 apparently. It was a pretty contentious election.
7 And so, it did seem to go both ways. Nobody held
8 complete sway on being the bad guy. So, there seemed
9 to be a lot of bad actors acting out I guess is the
10 best word.

11 COMMISSIONER HERIOT: Okay.

12 MR. BULL: One of the background reasons
13 for this, we were told, is that there had been a lot
14 of press before the election; that there was an
15 enormous number of illegally registered voters,
16 perhaps the largest in history.

17 The New York Times, on October 27th, eight
18 days before the election, said that there were
19 1,300,000 voters registered nationally by ACORN, of
20 which it said 30 percent were fraudulent. That meant
21 there were 400,000 illegal voters just from that
22 source alone. And of course, that organization was
23 active in Chicago and Philadelphia.

24 So, there was a huge effort to protect
25 voters who might be challenged, and a big effort to

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1 identify the voters who should be challenged, and that
2 made these incidents more contentious. You could see
3 a pattern. That's why it's more than one place. Do
4 you see what I mean?

5 COMMISSIONER HERIOT: Yes.

6 MR. HILL: There was also a lot of
7 question with absentee ballots that day. We ran
8 across that on a number of occasions. Just literally
9 boxes full of absentee ballots when the voting
10 machines were working, and they said, "Well, they
11 weren't working an hour ago. They're working now,
12 though."

13 So, it was -- there was a lot going on in
14 Philadelphia that day. And I grew up in New Orleans,
15 so I'm used to a little skullduggery on Election Day.
16 But there was a lot going on on Election Day in
17 Philadelphia.

18 COMMISSIONER HERIOT: Thank you.

19 CHAIRPERSON REYNOLDS: Commissioner
20 Gaziano?

21 COMMISSIONER GAZIANO: Wish I didn't have
22 to take up my question time with this, but I observed
23 the defendant, King Samir Shabazz, taking a picture of
24 you all. And from someone who -- who has said that
25 black people should kill white people, I want to know

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1 that I have -- I have some concern about that, and I -
2 - I -- there are perfectly legitimate reasons to take
3 pictures, but I wondered if any of you saw that?

4 MR. BULL: You mean just now here?

5 COMMISSIONER GAZIANO: Just --

6 MR. BULL: I wasn't aware of that, no.

7 COMMISSIONER HERIOT: He's doing it right
8 now.

9 MR. HILL: Yes, I did notice it.

10 COMMISSIONER GAZIANO: You did notice it?
11 It seems to me he stood here with a purpose so that
12 you could see that he was taking your picture. Well,
13 let me move on. We can -- we can think about that
14 later.

15 VICE CHAIR THERNSTROM: Not taking the
16 pictures of the rest of us?

17 MR. BULL: You're not witnesses.

18 COMMISSIONER GAZIANO: I may ask a
19 different version of this --

20 CHAIRPERSON REYNOLDS: Folks, folks --
21 Commissioner Gaziano, please continue.

22 COMMISSIONER GAZIANO: Please give me an
23 extra 30 seconds for that. I may ask a different
24 version of this question to the former Justice
25 Department official, but I want to ask particularly

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1 the writer and publisher of this. Certainly, there
2 was large concern about the wrongs of the Jim Crow
3 era, but many writers have said that one of the
4 turning points was the national TV pictures of Bull
5 Connor turning dogs and hoses on -- on the Civil
6 Rights marchers. And that properly led to some of the
7 -- the great Civil Rights reform.

8 MR. BULL: Yes. It educated the public
9 about the evils of the problems.

10 COMMISSIONER GAZIANO: Yes. After that
11 national viewing, though, Americans who wanted to
12 believe it wasn't as bad as it was, could no longer
13 deny it. But if there had not been action after that,
14 do you think that the heartache and the despair would
15 have been worse for those who wanted Civil Rights?

16 MR. BULL: The problem would've gone on
17 longer, and it would've been worse. It's essential to
18 educate the public about these evils. That's part of
19 our job.

20 COMMISSIONER GAZIANO: So, the fact that
21 the YouTube was viewed by tens of thousands, and on --
22 then broadcast on national TV, raised the awareness of
23 this issue. So, that -- would you agree with me that
24 the dismissal is a bigger problem than non-filing
25 where the evidence is ambiguous?

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1 MR. BULL: Of course, because the message
2 is that you are allowed to intimidate people as long
3 as it's only caught in one place at a time.

4 COMMISSIONER GAZIANO: Okay, I'd like to
5 follow up with one other comment you made earlier.
6 11(b) of the Voting Rights Act prohibits intimidating
7 either voters or poll watchers.

8 MR. BULL: Yes.

9 COMMISSIONER GAZIANO: You seem to imply
10 that that was important. Can you tell me why you
11 think that's important?

12 MR. BULL: Well, it depends on the
13 setting. But if you are in a district like the
14 district we were in, it's not so much the voters that
15 one side is worried about as the poll watchers who
16 were challenging their fraudulent voters. And as I
17 said, it was even in The New York Times that there
18 were 400,000 from just one organization.

19 So, of course it's more important. The
20 poll watcher is the central point of democratic
21 efficiency at the election place.

22 COMMISSIONER GAZIANO: And they're there
23 also to make the voters feel comfortable?

24 MR. BULL: Yes.

25 COMMISSIONER GAZIANO: Prevent future

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1 possible intimidation?

2 MR. BULL: Yes, but also to challenge
3 dishonest voting.

4 COMMISSIONER GAZIANO: There's been a lot
5 of back and forth about this -- this -- this
6 injunction against one of the defendants that seems to
7 me to have been extremely awkwardly written to -- to
8 just cover City of Philadelphia. Is there any reason
9 in your mind to -- by the way, the injunction as I
10 read it doesn't prevent him from standing with ten of
11 his friends in uniform with his arms out like this.
12 Do -- do you think --

13 MR. BULL: Or the organization they claim
14 in the six cities they claim.

15 COMMISSIONER GAZIANO: Yes. As a -- as a
16 lawyer, does this seem like a broad injunction, or a
17 rather narrow injunction?

18 MR. BULL: It's what we would call
19 minimalist.

20 COMMISSIONER GAZIANO: And is there any
21 reason in any of your minds that the case should've
22 been dropped against the person who seemed to be
23 acting in concert with the man with the billy club?

24 MR. BULL: Gentlemen?

25 MR. HILL: No.

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1 COMMISSIONER GAZIANO: To you, did the
2 fact that they were together add to the intimidation?

3 MR. HILL: They were a team. They were
4 acting in concert. They moved together.

5 MR. BULL: They were uniformed.

6 MR. HILL: Mr. Jackson took direction from
7 Mr. Shabazz constantly. When he moved, Mr. Jackson
8 moved, and it was a definite pattern. I don't know if
9 they worked it out ahead of time, but they were
10 definitely moving in concert.

11 COMMISSIONER GAZIANO: Okay. And do you
12 know if some of these problems with poll watchers
13 being intimidated, do you know whether that may or may
14 not have involved -- oh, let me go back to correcting,
15 clarifying one other part of the record. The
16 complaint was filed on January 7th, I believe. So, I
17 know you all seem to have given statements before it
18 to the -- sounds like female employees of the
19 Department.

20 If you gave statements after January 7th,
21 is it possible that it would be in furtherance of the
22 case that was already filed?

23 MR. HILL: Yes. I would say yes.

24 COMMISSIONER GAZIANO: I just wanted to
25 see if that clarified your record. I'll yield.

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1 CHAIRPERSON REYNOLDS: Okay. Gentlemen,
2 thank you. Second round, okay. Vice Chair
3 Thernstrom?

4 VICE CHAIR THERNSTROM: I'll save my time
5 to Commissioner Yaki. He's got something on his mind.

6 CHAIRPERSON REYNOLDS: Well, no. He will
7 -- he will have any opportunity to ask questions. You
8 could give him ten minutes if you'd like.

9 VICE CHAIR THERNSTROM: All right.
10 Actually, I disagree with something that Commissioner
11 Yaki said, that this is a clear instance of
12 intimidation, because I don't have a clear definition
13 of what voter intimidation, specifically under 11(b)
14 is. I mean not simply by my own common sense, but
15 there's a legal question here, and it seems to me
16 because 11(b) has been so seldom used, once before the
17 Bush Administration, twice during the years of the
18 Bush Administration, we are left without a legally
19 clear definition of what voter intimidation amounts
20 to.

21 But I'm going to go back for a second.
22 I'm really not going to take substantial time here. I
23 don't like the New Black Panther Party. Huey Newton
24 didn't like the New Black Panther Party. You know,
25 all sorts of stalwart Civil Rights spokespersons don't

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1 like the New Black Panther Party.

2 But we cannot pretend that elections are
3 clean of racial and ethnic tension across the country.
4 There's not only black-white tension, there is tension
5 involving Asians, involving Hispanics. There is group
6 friction wherever we look in America, and it affects
7 elections.

8 And had we turned -- had we had a
9 statutory report, that subject I would have been all
10 for it. But it does remain a problem for me that we
11 have so narrowly focused on this one incident, and I
12 have also, and this is going to be my last statement,
13 I also have a real problem with making any analogy to
14 the Jim Crow South. I know that history very, very
15 well.

16 I am old enough to feel it was just
17 yesterday. If my daughter had not been born in the
18 summer of 1964, I would've been in Mississippi, and
19 it's -- I think it does a disservice to -- to the --
20 to -- to this country to suggest in any way that we
21 have not made the most enormous progress in terms of
22 race relations.

23 MR. BULL: None of us suggested that.

24 VICE CHAIR THERNSTROM: Right, but the
25 analogies to the Jim Crow South are, for that reason,

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1 troubling to me. I'll just leave it there.

2 CHAIRPERSON REYNOLDS: Commissioner
3 Kirsanow?

4 COMMISSIONER KIRSANOW: No questions.

5 CHAIRPERSON REYNOLDS: Okay, going down
6 the list. Commissioner Taylor?

7 COMMISSIONER TAYLOR: None.

8 CHAIRPERSON REYNOLDS: Commissioner Yaki?

9 COMMISSIONER YAKI: Yes, thank you very
10 much. One more quick question to clean up the record.
11 Aside from what you -- what you witnessed in this
12 precinct in Philadelphia, do any of you have any
13 personal knowledge that the New Black Panther Party
14 engaged in any similar tactics in any other cities?

15 MR. MAURO: I do not.

16 MR. HILL: Mr. Shabazz -- Mr. Shabazz said
17 they were, but I didn't see any. No. But if it had
18 happened in Rittenhouse Square, I bet you we'd have a
19 different result right now.

20 MR. BULL: Only that the Department of
21 Justice lawyer warned me that they had injured New
22 York policemen.

23 COMMISSIONER YAKI: Do you know when? Did
24 they say when?

25 MR. BULL: No, no.

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1 COMMISSIONER YAKI: Any time frame?

2 MR. BULL: As I recall, it was two or
3 three years before when he talked to me.

4 COMMISSIONER YAKI: But not -- but not
5 with regard to this particular --

6 MR. BULL: Oh, no, sir. Absolutely not.

7 COMMISSIONER YAKI: One other thing that -
8 - that I just wanted to follow up on something that
9 you said, and it follows up on something that
10 Commissioner Gaziano said, when you talked about the
11 limited nature of the injunction against Mr. Shabazz.

12 Are you -- if -- if Mr. Shabazz and Mr.
13 Jackson did not have a night stick with them, they'd
14 merely been standing there at the polls, would that
15 have made a difference in how -- in how you viewed
16 whether they were intimidating or not?

17 MR. BULL: Well, obviously, carrying a
18 weapon makes you more intimidating than if you're not
19 carrying a weapon. Is that what you mean?

20 COMMISSIONER YAKI: Well, I'm just saying.
21 Would -- absent the weapon, would you consider them to
22 be intimidating?

23 MR. BULL: In uniform and calling people
24 crackers and so on? Yes. But not as intimidating.
25 Obviously a weapon, carrying a club, is more

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1 intimidating.

2 COMMISSIONER YAKI: What about the uniform
3 was it that made them intimidating?

4 MR. BULL: Well, it has a history. For
5 example, this is the way paramilitaries dressed in
6 fascist Italy and Nazi Germany, did they not, before
7 those governments took over. They wore jackboots like
8 these gentlemen. They wore caps like these gentlemen.
9 They wore uniforms with their own regalia like these
10 gentlemen.

11 So, this is a pattern and culture that
12 they're very aware of.

13 COMMISSIONER YAKI: Okay, Mr. Hill?

14 MR. HILL: Yes, without a doubt. I mean -
15 -

16 COMMISSIONER YAKI: Without a doubt?

17 MR. HILL: Without a doubt it's
18 intimidating. You know, like I said, to me? No. But
19 if I'm an older lady or an older gentleman walking up
20 to the door? Yes. I mean --

21 COMMISSIONER YAKI: Sure. Let me ask the
22 question --

23 MR. BULL: They were called Black Shirts
24 in former times.

25 COMMISSIONER YAKI: Let me -- let me flip

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1 the question around. Let's say you went to some place
2 in mainline Philadelphia. Say it's like 90 some
3 percent white suburb. What -- what if -- scratch
4 that. That's the wrong example.

5 Let's go, for example, to Phoenix,
6 Arizona. Okay, and you have a precinct out in Western
7 Phoenix, which is 80 percent Latino. If you saw -- if
8 you were there as a poll watcher, and there were two
9 guys, dark suits, dark glasses, with a video camera
10 and a clipboard, taping and -- taping every single
11 Latino voter who was going to the polls, would you
12 call that intimidation or not?

13 MR. HILL: Yes.

14 COMMISSIONER YAKI: Mr. Bull?

15 MR. BULL: I'd have to know more about the
16 circumstances. I mean are suits you're suggesting
17 intimidating, such as your dark suit?

18 COMMISSIONER YAKI: I'm just saying dark
19 suits, dark glasses.

20 MR. BULL: Dark suits and dark glasses?

21 COMMISSIONER YAKI: Dark suits and dark
22 glasses, holding video cameras, and clipboards, and
23 taping people who were only Latino voters, walking by
24 them?

25 MR. BULL: I'm really not sure. I'd have

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1 to see that. I think it could be seen as
2 intimidating, but wearing sunglasses in Arizona is not
3 an unusual manner, and wearing dark suits is not an
4 unusual manner, and actually --

5 COMMISSIONER YAKI: Actually, dark suit in
6 the mid day of Arizona would be unusual.

7 MR. BULL: Yes, but dark suits essentially
8 could come out -- they could be lawyers or whatever.
9 Who knows?

10 COMMISSIONER YAKI: Now, do you -- do you
11 -- let me take a third example. And this actually
12 happened in Philadelphia. Dark suits, dark glasses,
13 dark van, blacked out vans, patrolling black
14 neighborhoods. The people were Caucasian. They would
15 be aggressively questioning people whether they were
16 registered to vote, or the circumstances of their
17 voting, intimidated or not? And they had no
18 identifying, other than --

19 MR. BULL: I don't understand the nature
20 of these hypotheticals.

21 COMMISSIONER YAKI: It's not a
22 hypothetical. It actually happened in Philadelphia.

23 MR. BULL: Yes, but in this room it's a
24 hypothetical.

25 COMMISSIONER YAKI: No.

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1 MR. BULL: You're saying if. What is if
2 but a hypothetical? I mean it's hypothetical. That's
3 the point of the word.

4 COMMISSIONER YAKI: Well, but you just
5 answered with a hypothetical yourself. You said --

6 MR. BULL: I'm trying to be courteous, but
7 you're pursuing an artificial line of questioning.

8 COMMISSIONER YAKI: No, because you said,
9 Mr. Bull, with all due respect, you said if there were
10 ten members of the Black Panther Party locked arm in
11 arm, you would consider that --

12 MR. BULL: No. That was him. I did not
13 say that. I never used -- the ten was not directed to
14 me.

15 COMMISSIONER YAKI: Well, then you --

16 MR. BULL: You're confusing your
17 witnesses.

18 COMMISSIONER YAKI: But you did say that
19 two would?

20 MR. BULL: I did say what?

21 COMMISSIONER YAKI: If they -- if they
22 were there without a night stick, you said they would
23 still be intimidating?

24 MR. BULL: Yes, but much less so, I would
25 say. Wouldn't you agree?

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1 COMMISSIONER YAKI: I don't know.

2 MR. MAURO: Commissioner Yaki, I would
3 only add this, only because I have a little bit of
4 familiarity with I think an analogist statute here,
5 the National Labor Relations Act.

6 COMMISSIONER YAKI: Yes?

7 MR. MAURO: Under the Act, there are so
8 many instances of conduct that can be -- that is
9 construed as intimidation during the voting process
10 when the people vote, and whether they want a union or
11 not.

12 COMMISSIONER YAKI: Sure.

13 MR. MAURO: Many of the items that you've
14 been -- you've been providing by way of illustration
15 would be considered violating Section 8(a)(1) of the
16 National Labor Relations Act.

17 COMMISSIONER YAKI: Sure.

18 MR. MAURO: And this also goes to
19 Commissioner Thernstrom's concerns about what is
20 intimidation under 11(b). Well, I think what is
21 illuminative is looking at what intimidation is under
22 the National Labor Relations Act, and it's fair to say
23 that you can draw an analogy because you're talking
24 about the right to vote, and whether it's to be part
25 of a union, or not to be part of a union, or to vote

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1 for whatever candidate is on the ballot.

2 COMMISSIONER YAKI: Sure. No, I
3 appreciate that. I was just -- it wasn't mean to -- I
4 just was asking.

5 CHAIRPERSON REYNOLDS: Commissioner Yaki,
6 thank you very much. Okay, Commissioner Melendez.

7 COMMISSIONER MELENDEZ: Yes. Thank you,
8 Mr. Chairman. Just one comment or anybody can add to
9 this. I know that the comment that we weren't really
10 talking about intimidation of a voter because we're
11 not really specific. We don't have a witness here of
12 a voter that's saying he was intimidated against. But
13 then even going to the poll watcher, of which Mr. Bull
14 talked about, we don't even have that person here, who
15 would speak for himself.

16 I've heard other people speak on his
17 behalf that he was shaking in his boots or whatever,
18 but it would be -- it would've been great if we
19 would've had that person here testifying on his own
20 behalf, since he was the person that was intimidated
21 against.

22 MR. HILL: My understanding is he lives in
23 that district.

24 COMMISSIONER MELENDEZ: Right.

25 MR. HILL: And testifying in front of this

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1 Commission when he lives in that district just didn't
2 seem to be in his best interests. Now, I don't know
3 if that's necessarily the case, but that's how it was
4 conveyed to me.

5 COMMISSIONER MELENDEZ: Unfortunately, in
6 courts, whether or not you are there to testify really
7 has a lot to do with whether or not --

8 MR. HILL: Sure.

9 COMMISSIONER MELENDEZ: With this whole
10 case. So, I just wanted to close with that. Thank
11 you.

12 CHAIRPERSON REYNOLDS: Okay, Commissioner
13 Heriot?

14 COMMISSIONER HERIOT: Mr. Hill, I just
15 wanted to clarify with regard to the Phoenix
16 hypothetical that Commissioner Yaki used.

17 MR. HILL: Right.

18 COMMISSIONER HERIOT: Do you regard it as
19 being equally intimidating to be in a suit with a
20 camera, as with in a paramilitary outfit with a --

21 MR. HILL: No. And that's what's --

22 COMMISSIONER HERIOT: Expand on that a
23 little.

24 MR. HILL: Well, yes, obviously I'm
25 sitting in a suit right now.

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1 VICE CHAIR THERNSTROM: And you look
2 intimidating to me.

3 MR. HILL: Yes, right.

4 COMMISSIONER HERIOT: But not to me.

5 MR. HILL: Army Infantry, ma'am. So,
6 absolutely not. The way the hypothetical was set up
7 though, I could see someone being intimidated, and
8 agree that yes, that could potentially be
9 intimidating.

10 COMMISSIONER HERIOT: So, there may be
11 circumstances.

12 MR. HILL: Right. Could be. What was not
13 a hypothetical is the fact that two men, standing
14 outside of a polling place in Philadelphia, wearing
15 paramilitary garb, one of them armed with a weapon
16 directly in front of a door that people have to pass
17 by to get into is intimidating to a lot of people.
18 And I mean we witnessed it personally.

19 COMMISSIONER HERIOT: Thank you.

20 CHAIRPERSON REYNOLDS: Commissioner
21 Gaziano?

22 COMMISSIONER GAZIANO: I want to thank the
23 witnesses again for your patience in testifying and
24 coming down today. And I will state for the record
25 that both Commissioner Yaki and I are also in dark

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1 suits, and we sometimes say things to each other that
2 aren't the most friendly. But I hope I don't
3 intimidate him. And whether he tries or not, he
4 doesn't intimidate me.

5 COMMISSIONER YAKI: You have never
6 intimidated me, Mr. Gaziano.

7 COMMISSIONER GAZIANO: Okay, thank you.
8 Now, may I ask for a point of personal privilege if we
9 could take a five minute break before the next
10 witness?

11 CHAIRPERSON REYNOLDS: Yes. That's the --
12 you've concluded your questions? Okay, gentlemen,
13 thank you very much. Your testimony is quite
14 important. We'll take a five-minute break.

15 (Whereupon, the above-entitled matter went
16 off the record at 12:25 p.m., and resumed at 12:39
17 p.m.)

18 **IX: TESTIMONY OF MR. KATSAS**

19 CHAIRPERSON REYNOLDS: Okay, we're back
20 from the break. We are pleased to have with us today
21 Gregory Katsas, who is the former Assistant Attorney
22 General at the Department of Justice. Mr. Katsas,
23 please raise your right hand. Do you swear and affirm
24 that the information you're about to provide is true,
25 and accurate to the best of your knowledge and belief?

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1 MR. KATSAS: I do.

2 CHAIRPERSON REYNOLDS: Very good. You may
3 proceed.

4 MR. KATSAS: Thank you, Mr. Chairman. My
5 name is Gregory Katsas. I'm a partner at the law firm
6 Jones Day. I served in the Justice Department between
7 2001 and 2009. As relevant to this proceeding, I
8 think my most relevant experience was at serving as
9 Principal Deputy Associate Attorney General, the top
10 advisor to the Associate Attorney General, for about
11 20 months, and for about eight months, I was the
12 Acting Associate Attorney General of the United
13 States.

14 I was not in the Associate's office during
15 any of the deliberations about this case. So, my
16 testimony doesn't implicate any privilege issues that
17 some of my successors might have. I've submitted
18 written testimony to you. I won't belabor that.

19 Just to summarize my conclusions, I was
20 asked by Chairman Reynolds to opine on the decision
21 making processes within DOJ, and the level within DOJ
22 that decisions to file or change course in this case
23 would've been made.

24 My conclusion was that the decision to
25 file the case and to change course could not have been

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1 made below the rank of Assistant Attorney General for
2 the Civil Rights Division, and would have been made
3 with at least consultation by one of the Department
4 leadership officers, most likely the Associate
5 Attorney General, if not someone higher up the chain
6 than that.

7 With respect to the merits of the case, I
8 was asked to evaluate the complaint and give an
9 opinion on the strength of the case, both in terms of
10 the decision to file at the outset, and in terms of
11 the decision to abandon most of the government's
12 claims in the case and narrow the requested
13 injunction, notwithstanding the default.

14 I did not have any independent knowledge
15 of facts of the case in the written testimony that I
16 gave you. I was asked to assume the truth of the
17 allegations in the complaint, which I did, and my
18 conclusions were that the complaint stated a strong
19 case of voter intimidation against all the defendants,
20 and that the decision to file was fully justified, and
21 that the decision to abandon most of the claims in the
22 case and narrow the requested injunction was not
23 justified.

24 I have -- I was asked to attend the entire
25 hearing and watch the evidentiary presentation that

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1 you all had heard. Based on that submission, my
2 opinions remain the same. Indeed, they are
3 reinforced. I think the evidence that you've adduced
4 today tends to confirm both the intimidating nature of
5 the conduct that took place in Philadelphia, and the
6 connection between the Philadelphia conduct and the
7 national party, and I'm happy to answer any questions.

8

9 CHAIRPERSON REYNOLDS: Thank you. Vice
10 Chair Thernstrom?

11 VICE CHAIR THERNSTROM: I'd like to pass
12 for the moment, but reserve the right to come back.

13 CHAIRPERSON REYNOLDS: Very well.
14 Commissioner Kirsanow?

15 COMMISSIONER KIRSANOW: Thank you, Mr.
16 Chairman. Mr. Katsas, is there a de minimis level of
17 voter intimidation or a number of intimidated voters
18 below which intimidation becomes acceptable under
19 11(b)?

20 MR. KATSAS: No.

21 COMMISSIONER KIRSANOW: Is there any
22 difference, in your mind, in terms of whether or not
23 there may be an actionable case of voter intimidation
24 under 11(b) if a defendant brandishes a weapon? In
25 other words, is a -- is a predicate to 11(b) violation

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1 a brandishing of a weapon?

2 MR. KATSAS: I think brandishing a weapon
3 would be certainly sufficient to establish
4 intimidation, but not necessary.

5 COMMISSIONER KIRSANOW: Okay. Is there a
6 heightened standard at all? There may not be any case
7 law with respect to this, but in terms of the manner
8 in which Justice would assess bringing a complaint
9 under 11(b) differ if one of the alleged defendants
10 was a credentialed poll watcher? Is he held to a
11 heightened standard?

12 MR. KATSAS: I -- my instinct is that if -
13 - I don't think that makes any difference on the law
14 in terms of Justice assessing the seriousness of the
15 violation. If it makes any difference at all, my
16 instinct is it would make it worse. Because here's --
17 on your question, here is someone charged with
18 furthering the integrity of the process who is
19 betraying that charge.

20 COMMISSIONER KIRSANOW: In this particular
21 case, DOJ decided not to pursue the case any further
22 and indeed dismissed the charges after there was a
23 default entered. If there is a default entered, is
24 there anything to preclude DOJ from nonetheless
25 proceeding forward in discovery, and maybe then filing

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1 under Rule 56, or for going for a full blown trial?

2 MR. KATSAS: I don't think so, but I think
3 the ordinary course would be to do exactly what the
4 Department did with respect to Minister Shabazz, which
5 is seek a default judgment on the ground that there's
6 a facially valid complaint, and the defendants have
7 chosen not to contest it. But I think as a lesser
8 alternative to that, I think they could pursue the
9 other options that you mentioned.

10 COMMISSIONER KIRSANOW: And just as a
11 final matter, this should not be held against Mr.
12 Katsas, but for Mr. Katsas' argument at the DC
13 Circuit, I probably would not be sitting here today.

14 MR. KATSAS: Brings back some fond
15 memories.

16 CHAIRPERSON REYNOLDS: Mr. Taylor?

17 COMMISSIONER TAYLOR: Mr. Katsas, my
18 questions relate to your view of the Commission and
19 the types of questions we have asked of this process.
20 As a former prosecutor, you have an appreciation of
21 the fact that the public will often ask questions
22 about prosecutorial discretion, internal process, et
23 cetera.

24 We have a unique roll to play, obviously,
25 but I'd like you to comment, if you could, on the

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1 types of questions we have asked. Putting yourself
2 back inside the Department for a moment, and try to
3 shed some light on both the process and our role in it
4 if you would.

5 MR. KATSAS: I guess I'm not frankly an
6 expert on the charge and role of this Commission, but
7 let me -- if it's responsive, let me --

8 COMMISSIONER TAYLOR: Or generally would
9 be fine.

10 MR. KATSAS: Let me try to sort of address
11 how I think the questions would have played out within
12 the Department for people who were charged with
13 enforcing this statute.

14 Okay, so the first question obviously is
15 is this a meritorious case or not? And it seems to me
16 the answer to that question, either based on the
17 allegations in the complaint or based on the evidence
18 that you saw today, would be yes. And then the
19 question would be, well, is there some discretionary
20 reason not to bring this case?

21 I would think the answer to that question
22 would be no. This seems like a particularly -- it
23 seems like a fairly clear case of intimidation. It
24 seems like a case that is plausibly linked up to the
25 broader agenda of a national entity.

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1 I don't know of any other cases that the
2 Civil Rights Division would have had to forego in
3 order to bring this case. So, there doesn't seem to
4 be an issue of scarce resources. The complaint -- the
5 investment of resources was pretty limited. It's a
6 nine-page complaint. It seems like it would have been
7 a fairly easy case to prosecute.

8 So, for all of those reasons, I think the
9 decision to go forward at the outset was perfectly
10 justified. Now, let's talk about what I view as the
11 very different decision whether to abandon the case,
12 or large parts of the case, mid-course.

13 I think there is a strong tradition within
14 the Justice Department recognized by career employees
15 and responsible political appointees of both sides,
16 both parties, that there is a sort of tradition of
17 stare decisis within the Department as it were, of not
18 changing course in the middle of a case.

19 The decision to abandon a case that was
20 filed should be a harder one than the decision to
21 bring the case in the first instance. I can't think
22 of anything that would have made the case weaker and
23 indeed this was a default. So, it's not a situation
24 where the government brings a claim in good faith, and
25 then the litigation goes badly, and the position

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1 erodes, and they abandon a claim for that reason.

2 I would think the case for the government
3 was no weaker when they abandoned it, where the only
4 intervening event was a default of the defendants,
5 than it was at the outset of the case.

6 So, there is no good reason apparent to me
7 for why the case would've been abandoned.

8 COMMISSIONER KIRSANOW: Did you -- one
9 final question. Could --

10 MR. KATSAS: Abandoned in substantial
11 part.

12 COMMISSIONER TAYLOR: Could you shed some
13 light on the lack of cases brought under 11(b)? We've
14 heard the fact that there are only a couple of cases
15 brought under that section. Could you shed some light
16 on that?

17 MR. KATSAS: I really think the short
18 answer is no. I was struck in just doing some very
19 quick research in preparing for my testimony at how
20 few cases there are.

21 I would think that the absence of a lot of
22 prior enforcement, if it affected this decision one
23 way or the other, would have cut in favor of enforcing
24 because the voter intimidation is presumably a serious
25 concern of the Department, and here was a pretty clear

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1 case of it that's caught on videotape.

2 I would think that this is a pretty good
3 case where you would want to ramp up enforcement.

4 COMMISSIONER TAYLOR: Thank you.

5 CHAIRPERSON REYNOLDS: Commissioner Yaki?

6 COMMISSIONER YAKI: Thank you. I'm
7 getting the hang of this round-by-round thing. I'm
8 only asking one question, and then I'll just keep on
9 going through the rounds. You said that this would --
10 just based on your thinking of this, this would not
11 have been an issue of scarce resources. This was
12 relatively easy to deal with.

13 MR. KATSAS: Right.

14 COMMISSIONER YAKI: Why would you ever
15 abandon course? You were at the Justice Department
16 for a long time, eight years.

17 MR. KATSAS: Yes.

18 COMMISSIONER YAKI: Approximately,
19 correct?

20 MR. KATSAS: Yes.

21 COMMISSIONER YAKI: Can you give -- can
22 you tell me were there not instances during that time
23 period where Justice Department abandoned litigation
24 in major civil cases during that period of time?

25 MR. KATSAS: I can't think of a single

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1 case where we did. Now, let me -- let me be clear
2 about something. My initial five or six years were on
3 the appellate staff of the Civil Division. So, until
4 2006, I would have had scant knowledge of anything
5 outside that --

6 COMMISSIONER YAKI: Okay.

7 MR. KATSAS: Within that universe, I can
8 tell you that -- and I would've been the official
9 responsible for defining the government position. I
10 can tell you with confidence that at the beginning of
11 the Bush Administration, I never once reversed a
12 position in a pending case taken by the prior
13 administration.

14 COMMISSIONER YAKI: Sure. But you were in
15 the appellate division, correct?

16 MR. KATSAS: Correct.

17 COMMISSIONER YAKI: The reason I ask is
18 that -- is that I seem to recall on more than one
19 occasion that there were pending investigations,
20 pending -- many sort of ongoing proceedings in which
21 the Bush Administration did reverse course from the
22 Clinton Administration. Not at the appellate level,
23 but everything is kind of cooked. I would agree at
24 that point.

25 But in -- but in the ground war litigation

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1 phase, I do seem to recall that, and that's actually
2 more applicable, wouldn't you say, than what you're
3 talking about at the appellate level?

4 MR. KATSAS: Now, when I say change in a
5 pending case, with respect in my experience at civil
6 appellant, what I mean is there's an appeal pending
7 the day I come in the door.

8 COMMISSIONER YAKI: Sure.

9 MR. KATSAS: I reach a judgment that, gee,
10 this isn't the position I would've taken, and I go to
11 the appellate court and say basically, "Never mind."

12 COMMISSIONER YAKI: Right.

13 MR. KATSAS: That seems to me analogous to
14 what we have here. It's different from the case where
15 a prior administration takes a position in a trial
16 court, loses and then the new administration has to
17 make a decision whether or not to take an appeal. I
18 think a new administration --

19 COMMISSIONER YAKI: On the other hand,
20 wouldn't you also say that in a default judgment,
21 there is no -- at that point, there really is no
22 investigation, no discovery, no reexamination of facts
23 that might've gone at that point? And wouldn't you
24 say that that's a slightly different situation than a
25 fully litigated and cooked appeal that you're talking

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1 about?

2 MR. KATSAS: Sure. But to me, the default
3 nature of this case cuts even more strongly against
4 changing course because the government, I assume, did
5 what every ethical lawyer plaintiff side has to do,
6 which is establish a factual basis for the allegations
7 made in the complaint when they made them, and nothing
8 would have happened. There's no action-forcing event
9 like adversary litigation to have the government
10 reassess that position.

11 COMMISSIONER YAKI: And you find that more
12 egregious than, say, an expenditure of millions of
13 dollars of government discovery and time on a case,
14 and then abruptly dropping it?

15 MR. KATSAS: Not saying it's -- I'm saying
16 it's unusual. More egregious? They're different
17 situations.

18 COMMISSIONER YAKI: Sure.

19 MR. KATSAS: In -- in your hypothetical
20 case, the concern would be on the one hand it might be
21 a worse case because the government has invested a lot
22 more resources. On the other hand, it might be a less
23 bad case because in the course of adversary testing,
24 the government's initial position might have been
25 eroded with further factual developments.

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1 So, it just strikes me that there are
2 different considerations in the two kinds of cases.

3 COMMISSIONER YAKI: Well, I'm going to let
4 go, but we'll follow up on that.

5 MR. KATSAS: Okay.

6 CHAIRPERSON REYNOLDS: Okay, Commissioner
7 Melendez?

8 COMMISSIONER MELENDEZ: Thank you, Mr.
9 Katsas. Just one question. What's your opinion as
10 far as the -- there were four parts to this that --

11 MR. KATSAS: Four defendants?

12 COMMISSIONER MELENDEZ: Four defendants,
13 and only one was basically upheld.

14 MR. KATSAS: One was pursued.

15 COMMISSIONER MELENDEZ: Is that because in
16 your opinion it's because there was a weapon used?
17 The night stick.

18 MR. KATSAS: I don't know what the
19 reasoning of DOJ was. That's the most plausible
20 explanation. To me, it is not -- it is not a very
21 convincing ground for distinguishing between the two
22 defendants who were on the scene.

23 COMMISSIONER MELENDEZ: So, but if there
24 was not a weapon used, then it would -- it would seem
25 that all four would've been the same situation, since

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1 there were two basically that were -- two people that
2 were at the polling place. So, I can't differentiate
3 between those two people as far as one having the
4 weapon, the night stick, and the other not, it just
5 seemed to most ordinary people that if it wasn't for
6 the night stick, everybody would've been basically
7 dismissed.

8 MR. KATSAS: That's probably right if
9 you're asking me for --

10 COMMISSIONER MELENDEZ: Just your opinion.

11 MR. KATSAS: -- DOJ -- I mean my opinion
12 is that the night stick shouldn't make a difference in
13 the treatment of the defendants for two reasons. One,
14 the sum total of the acts of the two defendants, minus
15 the night stick, still would have amounted to an
16 actionable case of intimidation. That's my first
17 point.

18 My second point is that the two defendants
19 at the scene were acting in concert together, so, it
20 is perfectly fair to attribute the acts of the one to
21 the other.

22 COMMISSIONER MELENDEZ: Okay, thank you.

23 CHAIRPERSON REYNOLDS: Vice Chair
24 Thernstrom?

25 COMMISSIONER GAZIANO: No, no.

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1 VICE CHAIR THERNSTROM: I pass.

2 CHAIRPERSON REYNOLDS: I told Vice Chair
3 Thernstrom that she would go after Commissioner
4 Melendez. There is no harm.

5 COMMISSIONER GAZIANO: There is, but I'll
6 yield.

7 CHAIRPERSON REYNOLDS: Thank you very
8 much, Vice Chair Thernstrom.

9 VICE CHAIR THERNSTROM: And I thank you
10 also. By the way, a good pal of mine, who I've worked
11 with closely on voting rights issues, is at Jones Day,
12 and somebody I'm recently very much in touch with over
13 the Kinston case, Mike Carvin.

14 MR. KATSAS: Pal of mine, too.

15 VICE CHAIR THERNSTROM: Yes, I'm sure.
16 Look, two things. One, I've focused here. I don't
17 know, have you been here all morning?

18 MR. KATSAS: Yes.

19 VICE CHAIR THERNSTROM: Okay, I've focused
20 here somewhat on the question of the legal definition
21 of 11(b), in part because I arrived at the Commission
22 just in time for the 2001 hearings in Florida. The
23 question of black disfranchisement in Florida in the
24 2000 elections.

25 And there were many charges of voter

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1 intimidation that were floated at the time that were
2 contested. I mean there were differing views on
3 whether it amounted to what happened that police cars
4 had parked at certain spots not far from a polling
5 place, and so forth, whether amounted to voter
6 intimidation. And there's nothing unique about
7 Florida. I mean this conversation occurs repeatedly
8 across the country because there's this huge spectrum
9 of events that one can label voter intimidation or
10 not.

11 And so, I am a bit troubled by -- by the
12 absence of a typed definition, legal definition,
13 rather than a common sense one here, and I wondered if
14 you had any thoughts. And the other question I have:
15 again, do you have any thoughts? This sparse record
16 of the enforcement of -- of 11(b) has meant it is a
17 most minor provision of the Voting Rights Act. I mean
18 I've written two books on this statute, and I haven't
19 mentioned 11(b) in either one of them because it's
20 played such a small role under Democratic and
21 Republican administrations.

22 I mean one case before the Bush
23 Administration, two during the Bush years. Got any
24 thoughts on that? So, two questions. Got any
25 thoughts on?

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1 MR. KATSAS: I'll try my best. On the
2 question of standards, the case law is sparse, but it
3 is not entirely without guidance. There are cases
4 that say the provision should be construed broadly
5 rather than narrowly. There are cases that say you
6 don't need a subjective intent on the part of the
7 perpetrator.

8 There are cases that say consistent with
9 that, you measure intimidation by the response of a
10 reasonable voter or poll watcher. And there is a
11 general legal principle that if you have -- you have a
12 somewhat open ended standard, you don't necessarily
13 need a precedent on all fours with the facts of your
14 case in order to figure out whether the standard
15 applies.

16 Now, I have no doubt that there are many
17 debatable cases, whether something would or would not
18 constitute voter intimidation, and I have no doubt
19 that in a close and debatable case, there could be a
20 proper exercise of enforcement discretion to say,
21 "It's a close case. We haven't enforced this statute
22 very much. There's kind of a rule of lenity
23 principle, even in a civil injunction context."

24 That would be a responsible decision.
25 This, I have to say, does not strike me as a close

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1 case for all of the reasons that -- that you heard
2 before.

3 On the question -- on your second question
4 about the relationship of Section 11(b) to the Voting
5 Rights Act more broadly, and DOJ's enforcement
6 history, I'm not sure I can shed much light on that.
7 I haven't looked at that in preparation for being
8 here. Just for what it's worth, I will give my gut
9 reaction that Section 11(b), whatever its enforcement
10 history in the past, seems to be directed at a fairly
11 serious problem, which is voter intimidation.

12 I don't think anyone would deny that
13 that's a minor problem, and that is the evil against
14 which this statute is directed.

15 CHAIRPERSON REYNOLDS: Okay, Commissioner
16 Heriot?

17 COMMISSIONER HERIOT: I think I pass.

18 CHAIRPERSON REYNOLDS: Commissioner
19 Gaziano.

20 COMMISSIONER GAZIANO: I may -- if it's
21 all right with you -- first of all, thank you for your
22 written and oral testimony. Your written testimony is
23 very well done, and I think very helpful to the
24 Commission. I hope you can remain with us for a round
25 or two because I have a few -- I don't know where to

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1 begin exactly.

2 I don't know if you're aware, so tell me
3 if you are aware, that there is a criminal provision,
4 18 USC Section 245(b), that makes it a crime to,
5 "Interfere or intimidate or interfere." And that's --
6 I'll paraphrase. A voter or a poll watcher. Are you
7 aware of that criminal provision?

8 MR. KATSAS: I'm aware that there are
9 parallel criminal provisions. I'm not aware with the
10 specific cites and exact statutes.

11 COMMISSIONER GAZIANO: You may or may not.
12 You don't have to trust me on my quote. But entered
13 into evidence today were the depositions or attempted
14 depositions of Mr. King Samir Shabazz and Jerry
15 Jackson, in which they pled the Fifth Amendment to --
16 to refuse to answer our questions.

17 Given your knowledge of the Fifth
18 Amendment right, can you assert the Fifth Amendment
19 right merely to avoid answering questions of a federal
20 agency in a civil matter? Can you invoke the Fifth in
21 a civil action?

22 MR. KATSAS: You can invoke the Fifth in a
23 civil action, but only --

24 COMMISSIONER GAZIANO: But only out of
25 fear?

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1 MR. KATSAS: But only out of fear of
2 criminal exposure.

3 COMMISSIONER GAZIANO: So, rightfully
4 invoke the Fifth? These defendants, and maybe they
5 didn't understand this, but to rightfully invoke the
6 Fifth, they believe that their answers in our
7 investigation or that the facts that we're
8 investigating might give rise to criminal liability.

9 MR. KATSAS: I think that's right.

10 COMMISSIONER GAZIANO: Okay, separate,
11 same line. Viewing the YouTube and the other facts,
12 do you think that there was at least possible grounds
13 on the facts of this case for the Department to have
14 at least considered a criminal investigation?

15 MR. KATSAS: Can you read the statute back
16 to me?

17 COMMISSIONER GAZIANO: It is a crime to --
18 and I only have a portion of it. I don't have it with
19 me. Quote, "Intimidate or interfere with." End
20 quote, and that's the only portion I have. "A person
21 attempting to vote or a poll watcher."

22 MR. KATSAS: I would think that -- I would
23 think that they faced the possibility of criminal
24 exposure.

25 COMMISSIONER GAZIANO: Yes. So, that's

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1 why I seem to agree with you. I don't know what all
2 this talk is of -- of 11(b) not being often invoked.
3 This was a rather outrageous factual pattern, wouldn't
4 you agree?

5 MR. KATSAS: Yes.

6 COMMISSIONER GAZIANO: Okay, now, with --

7 VICE CHAIR THERNSTROM: But the Justice
8 Department --

9 COMMISSIONER GAZIANO: I'm in my first
10 round. I'd like to concentrate on some of the points
11 in your written statement regarding the dismissal.
12 You said Office of Associate Attorney General would
13 have definitely had to play a bigger role. Here's one
14 quote. Speaking of the dismissal, you said, "They
15 amounted to nothing less than a decision by DOJ,
16 following a change in presidential administrations to
17 reverse legal positions asserted in a pending case."

18 "Such reversals are extremely rare, and
19 for good reason. They inevitably undermine DOJ's
20 credibility with the courts, and they inevitably raise
21 suspicion that DOJ's litigating position may be
22 influenced by political considerations."

23 That kind of speaks for itself, but do you
24 have any elaboration on whether that factor was an
25 additional reason not to dismiss the suit from the

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1 Department's Institutional standpoint?

2 MR. KATSAS: At a minimum, I think those
3 considerations would counsel the Department to be very
4 careful before it dismissed the suit. And if it were
5 going to dismiss the suit, to have a pretty plausible
6 non-political explanation that it was willing and able
7 to publicly articulate and stand behind.

8 COMMISSIONER GAZIANO: And if they didn't
9 articulate a plausible and credible explanation, do
10 you think reasonable people would draw the negative
11 inference that -- that you're saying is at risk?

12 MR. KATSAS: I think many people would.
13 I'm not prepared to reach that conclusion myself. But
14 when you serve in a leadership office like the
15 Associate Attorney General's, part of your job is to
16 avoid political messes for your department and your
17 administration.

18 I would think that they should've been
19 pretty careful with this one.

20 COMMISSIONER GAZIANO: Right. You also
21 point out in your written testimony, "Moreover," I'm
22 quoting you now. "Moreover, the New Black Panther
23 Party had endorsed President Obama in the 2008
24 Election, and Mr. Jackson, during the events at issue,
25 apparently was a registered poll watcher for the

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1 Democratic Party." Why is that relevant?

2 CHAIRPERSON REYNOLDS: Last question.

3 COMMISSIONER GAZIANO: Okay. Why is that
4 relevant?

5 MR. KATSAS: From a Department -- from the
6 Department's perspective, it's relevant because it
7 would have been quite foreseeable to them, given
8 everything that happened, and given the politics that
9 if they changed course, there would be the kind of
10 controversy that followed. And when you're in a
11 situation like that, you want to be very careful to
12 make sure that all of your decisions are fully
13 justified on fair, neutral grounds.

14 COMMISSIONER GAZIANO: Thank you.

15 CHAIRPERSON REYNOLDS: Okay. Vice Chair
16 Thernstrom?

17 VICE CHAIR THERNSTROM: Commissioner
18 Gaziano, just -- I'm slightly puzzled by your -- you
19 said, well, you're puzzled why it has been repeatedly
20 noted, especially by me, that 11(b) has so far
21 involved only three cases, and not four decades of --
22 since the passage of the Voting Rights Act.

23 But there was a criminal potential basis
24 for bringing criminal charges, but the Justice
25 Department did not bring criminal charges, so that

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1 issue is not before us, it seems to me. For whatever
2 reasons, that criminal statute, that criminal
3 provision, was not -- was not used. And that's
4 another question we'll never get the answer to, you
5 know, the why question, but I think it's irrelevant to
6 our inquiry.

7 CHAIRPERSON REYNOLDS: Commissioner
8 Gaziano?

9 COMMISSIONER GAZIANO: If the facts of the
10 case would give rise to a former official like this,
11 and to -- to us; potential criminal violations it
12 seems to me, potentially more important to maintain
13 the lesser suit than an ambiguous close case under
14 11(b) alone.

15 VICE CHAIR THERNSTROM: Well, but this is
16 the Obama Justice Department, and it didn't bring a
17 criminal -- it didn't bring criminal charges.

18 COMMISSIONER GAZIANO: I understand, but I
19 think it's -- the egregiousness of the conduct should
20 certainly affect the decision to maintain the civil
21 action. And if -- and if the Department has two
22 slings in its quiver, or two arrows in its quiver, and
23 it -- and it said that, you know, "Trust us. We could
24 use both, but we're going to use one." It's more --
25 it undermines respect for the rule of law even more

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1 that it doesn't use either of those arrows.

2 VICE CHAIR THERNSTROM: I don't see the
3 logic, but that's all right.

4 CHAIRPERSON REYNOLDS: Commission
5 Kirsanow?

6 COMMISSIONER KIRSANOW: One question. You
7 may have seen, if you were here, in the video, that
8 police had arrived on the scene. Apparently they
9 declined to either remove the individuals from the
10 polling place, or to arrest them. Is that in any
11 respect relevant to the decision to DOJ not to file --
12 or not to pursue default judgment in a civil action of
13 11(b)?

14 MR. KATSAS: I don't think so because the
15 police -- the local police would not have been charged
16 with enforcing this federal statute, and whatever
17 state and local laws they were enforcing would've
18 raised separate issues.

19 COMMISSIONER KIRSANOW: Thank you. No
20 further questions, Mr. Chairman.

21 CHAIRPERSON REYNOLDS: Commissioner
22 Taylor?

23 COMMISSIONER TAYLOR: None.

24 CHAIRPERSON REYNOLDS: Commissioner Yaki?

25 COMMISSIONER YAKI: Yes. Next question,

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1 round two. You were, again, at the Justice Department
2 a very long time. I'm wondering if you're at liberty
3 to comment on -- on Attorney General Mukasey's
4 referral to OPR of the US Attorney and Civil Rights
5 Division politicization issues?

6 MR. KATSAS: I'm just not familiar with
7 those issues. I didn't work on them in the
8 Department. So, I don't --

9 COMMISSIONER YAKI: You're unfamiliar with
10 the findings of -- of the report?

11 MR. KATSAS: I'm generally familiar. I
12 had no official-capacity involvement.

13 COMMISSIONER YAKI: Would it -- would it
14 have -- well, let me ask you this question. Given the
15 findings regarding the report that there was
16 substantial politicization in the hiring and
17 assignment of attorneys within the Civil Rights
18 Division of the Justice Department during the certain
19 portion of the -- of the Bush Administration, does
20 that not give you some pause as to whether or not the
21 incoming administration had a right to review
22 decisions made by that previous Civil Rights Division?

23 MR. KATSAS: Well, they had a right. I
24 guess -- I mean I start with -- I start with the case,
25 and I see what seems on the face of it a strong

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1 complaint. We've heard here evidence that tends to
2 corroborate the allegations in the complaint. I would
3 think that the Justice Department had at least some of
4 that evidence in its files.

5 COMMISSIONER YAKI: But let me ask you
6 this. To me, the evidence that has been presented
7 today, such as it is, and someone said we weren't
8 relitigating this, and I tend to disagree because
9 that's exactly what we've been doing all day today,
10 goes I think very strongly against Mr. Shabazz.

11 Mr. Jackson, I'm not prepared to make a
12 comment one way or the other, but clearly in terms of
13 some of the conduct and statements, Mr. Shabazz was --
14 was out there. But this -- this case was not simply
15 about Mr. Shabazz and Mr. Jackson. It was also about
16 a national organization by a -- by a national
17 defendant based in another city.

18 So, my question -- my question really -- I
19 mean are you telling me that -- that if you were -- if
20 you went into a department that you -- that a neutral
21 body, OPR, had said was rife with politicization that
22 hires and assignments had been made based on political
23 loyalty, your -- your willingness to be on their team
24 or not with regard to your political and ideological
25 viewpoints, that you -- it would not cross your mind

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1 perhaps to take a look at some of the petitions that
2 they had made if you were incoming?

3 Forget if it's left or right. Just say
4 you're the new guy coming in, Assistant Attorney
5 General Katsas, into a situation where you know this
6 department has had an OPR review that goes, "Things
7 were not going on very well in this department.
8 Decisions were being made that had nothing to do with
9 merit; had nothing to do with the integrity of the
10 division." Are you saying to me it would still be
11 hands off entirely on -- on this case or any other
12 case?

13 MR. KATSAS: No. I mean look, it's never
14 hands off entirely. In terms of the significance of
15 the OPR report, with respect to this case, I would
16 think there -- there may be -- now he's after me.

17 Look, if OPR reached an adverse conclusion
18 about the competence or integrity of the specific
19 lawyers on that case, maybe it would have relevance
20 and counsel the kind of fresh look you're suggesting.
21 To my knowledge, OPR did not make such findings.

22 So, if you're suggesting that based on
23 either generalized concerns about politicization, or
24 findings about other employees in the Department,
25 would that strongly support a de novo consideration of

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1 this issue? I think the answer to that question is
2 no.

3 COMMISSIONER YAKI: Okay, I'll follow up.
4 My time is up.

5 CHAIRPERSON REYNOLDS: Okay, Commissioner
6 Melendez?

7 COMMISSIONER MELENDEZ: I didn't have
8 anything.

9 CHAIRPERSON REYNOLDS: All right. That
10 was our second round?

11 COMMISSIONER YAKI: No. Commissioner
12 Heriot.

13 CHAIRPERSON REYNOLDS: Please don't take
14 it personally. I apologize. Commissioner Heriot?

15 COMMISSIONER HERIOT: It's okay because I
16 am going to pass anyway. I do, however, just want to
17 clarify the record. There are going to be stray
18 statements about some creature. There's a housefly
19 that is overly friendly. So, anyone reading this
20 transcript in the future will understand that.

21 COMMISSIONER YAKI: May I correct? It is
22 a large housefly. It's the 747 of houseflies flying
23 around.

24 CHAIRPERSON REYNOLDS: Thank you for that
25 clarification. Commissioner Gaziano?

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1 COMMISSIONER GAZIANO: Yes. This may help
2 pick up the line of questioning I was on. It seems to
3 me American people, or citizens of any nations respect
4 for the rule of law has to be cultivated by a long
5 train of proper enforcement of -- of the law by public
6 officials. But would you agree with me that it could
7 be undermined more rapidly by perhaps even a single,
8 wrongful but notorious action?

9 MR. KATSAS: Sure.

10 COMMISSIONER GAZIANO: So, it's -- so,
11 individual actions that are -- that are open notorious
12 well known have a greater impact. The implications of
13 them are -- are broader than even a train of rightful
14 conduct.

15 MR. KATSAS: Other things equal, yes.

16 COMMISSIONER GAZIANO: Okay. So, is it
17 worse -- if -- if you think the suit should not have
18 been dismissed, and that's been your written and oral
19 testimony, is it worse for the government to have
20 said, "Well, these were 11(b) violations by all four
21 defendants. But we just don't want to spend any more
22 money on them, and it's cheaper if we just get a
23 judgment against the most flagrant of them."

24 Or, is it worse for them to maintain to
25 the public and to the Commission and to members of

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1 Congress that, "No, those three other defendants did
2 not violate 11(b). We could not -- it was improper to
3 maintain a case against them."

4 MR. KATSAS: I think the latter position
5 is untenable.

6 COMMISSIONER GAZIANO: And why is that?

7 MR. KATSAS: Well, for the reasons I've
8 said. I mean you saw -- you saw the video tapes. The
9 two defendants at the scene in Philadelphia were
10 acting in concert, wearing military uniforms,
11 stationed right in front of the entrance, within arm's
12 length of people who had to enter, hurling racial
13 insults at people, and one of the two had a weapon.
14 That seems like a pretty clear case.

15 COMMISSIONER GAZIANO: So, it's --

16 MR. KATSAS: And as to the -- as to the
17 national party, some of the videotape evidence that
18 you presented suggests that these defendants were
19 acting pursuant to the national party and consistent
20 with its broader agenda of racial antagonism.

21 COMMISSIONER GAZIANO: So -- and I'll get
22 to that. I'm glad you mentioned it. But I just want
23 to talk about this one point. So, it's bad enough for
24 the Department to take a wrongful dismissal with all
25 these political overtones that you've mentioned, and

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1 give no reason, or to give a reason that it didn't
2 want to spend any more money, but that it's more
3 harmful to the public's respect for the rule of law if
4 it maintains wrongfully that the law cannot reach
5 those individuals?

6 MR. KATSAS: I suppose. I think none of
7 those are ideal.

8 COMMISSIONER GAZIANO: Certainly. Let me
9 ask you about the First Amendment defense that seems
10 to be raised in some of the responses from the
11 Department of Justice. You -- in your written
12 testimony, you said that a First Amendment defense
13 would not have been able to be invoked on behalf --
14 can you explain that?

15 MR. KATSAS: Sure. I have two basic
16 reasons for that conclusion. One is that there's no
17 First Amendment right to intimidate people anywhere at
18 any time. And two, particularly with respect to
19 polling places on Election Day, the government
20 interests in ensuring easy access to the polls and
21 preventing voter intimidation are so strong that the
22 Supreme Court upheld a statute prohibiting all
23 election related speech within a 100-foot area of a --
24 of a polling place.

25 So, here, you have both conduct that is

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1 intimidating and the particularly sensitive time and
2 place of the entrance to the polling place on Election
3 Day. To say that there's a First Amendment right to
4 intimidate voters at that time and place seems to me -
5 -

6 COMMISSIONER GAZIANO: Well, let me just
7 ask a quick question. My -- so, for these
8 individuals, if you -- who wore the paramilitary
9 uniform and engaged in racial slurs, and one of them
10 had a billy club, the original injunction that was
11 dropped that included a prohibition that they not
12 appear at the polls, at least these individuals who
13 violated the Voting Rights Act, not appear at the
14 polls wearing the paramilitary uniform.

15 Do you think that that part of the
16 original injunction would've or could've been
17 sustained?

18 CHAIRPERSON REYNOLDS: Last question.

19 COMMISSIONER GAZIANO: Yes.

20 MR. KATSAS: I think it could've been
21 sustained because the original injunction spoke of
22 wearing uniforms, but in the course of a deployment.

23 COMMISSIONER GAZIANO: Sure.

24 MR. KATSAS: And I think the word
25 deployment sort of captures the idea of going to the

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1 polling station, and in concert standing guard as if
2 in military display. That seems to be -- that seems
3 to be clearly defensible and quite different from an
4 injunction that would've just -- just prohibited
5 nothing more than wearing particular clothes.

6 COMMISSIONER GAZIANO: Thank you.

7 CHAIRPERSON REYNOLDS: Thank you.

8 Commissioners, do we need another round?

9 COMMISSIONER KIRSANOW: Yes.

10 CHAIRPERSON REYNOLDS: Okay, Vice Chair
11 Thernstrom?

12 VICE CHAIR THERNSTROM: No, I'm taking a
13 pass.

14 CHAIRPERSON REYNOLDS: A pass, okay.
15 Commissioner Kirsanow?

16 COMMISSIONER KIRSANOW: Yes, Mr. Katsas,
17 there is ongoing an OPR investigation related to the
18 disposition of this matter. At the outset of the
19 Commission's investigation of this matter, and also
20 that of Congressman Wolf, DOJ responded to inquiries
21 by indicating that there was an ongoing OPR
22 investigation.

23 At the conclusion of such investigation,
24 are you aware of any privileges that would attach to
25 any of the evidence that was considered or adduced

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1 during the course of such investigation, and if so,
2 that would preclude the release of any information
3 related to the investigation? And if so, what are
4 those privileges, and who has the privilege?

5 MR. KATSAS: All right, the evidence
6 submitted to OPR?

7 COMMISSIONER KIRSANOW: Yes, the evidence
8 and the -- the deliberative process that OPR engages
9 in.

10 MR. KATSAS: Yes. I don't think that the
11 mere fact of submission to OPR would itself create a
12 privilege that would extend past the life of the OPR
13 investigation. I do think that much of the evidence
14 likely to have been submitted to OPR would have
15 involved internal deliberations within the Department,
16 and that evidence probably would be subject to some
17 form of DOJ's deliberative process privilege.

18 I assume -- correct me if I'm wrong, I
19 assume that you all stand on the same footing vis a
20 vis the Department as Congress. And if that's true,
21 then there would presumably have to be some process of
22 negotiation to work out the competing claims of
23 deliberative process on the one hand. And I agree
24 with what Commissioner Thernstrom said earlier: that
25 those are important, but to balance those deliberative

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1 process claims on the one hand with your statutory
2 authority to investigate on the other hand.

3 COMMISSIONER KIRSANOW: Who within DOJ, or
4 is it the client, the President of the United States,
5 or who would invoke the privilege?

6 MR. KATSAS: Probably not the President
7 because there's a distinction in the law between the
8 presidential communications privilege for the
9 President and his immediate advisors and deliberative
10 process, which is typically the less absolute
11 privilege that governs those of us who served in
12 agencies in lower ranking positions.

13 On the question of who invokes it, I don't
14 know. Probably officially the attorney general, but
15 my instinct is that the authority to invoke it would
16 be delegable, and probably has been delegated.

17 COMMISSIONER KIRSANOW: Aside from the
18 deliberative process privilege, would then any other
19 privilege be the executive privilege?

20 MR. KATSAS: Deliberative process is a
21 subspecies of executive privilege.

22 COMMISSIONER KIRSANOW: Is there an over-
23 arching executive privilege that could be invoked at
24 the conclusion of this, outside of the deliberative
25 process?

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1 MR. KATSAS: If there is -- executive
2 privilege has two components. Deliberative process
3 privilege, which would cover internal deliberations
4 within DOJ and a presidential communications
5 privilege, which would cover any possible
6 communications about this matter involving either the
7 President or the President's immediate advisors
8 soliciting information on his behalf.

9 COMMISSIONER KIRSANOW: Thank you. No
10 further questions.

11 CHAIRPERSON REYNOLDS: Okay, Commissioner
12 Taylor?

13 COMMISSIONER TAYLOR: I have no further
14 questions?

15 CHAIRPERSON REYNOLDS: Commissioner Yaki?

16 COMMISSIONER YAKI: Ding round three. Mr.
17 Katsas, would it be fair to say that your knowledge of
18 the Civil Rights Division during your tenure at
19 Justice is pretty thin?

20 MR. KATSAS: It would be fair to say that
21 my knowledge of the Civil Rights Division was acquired
22 primarily during my year-and-a-half plus in the
23 Associate Attorney General's office, and the -- and
24 that the degree of intensiveness of review that one
25 can conduct from the associate's office about what a

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1 litigating division is doing is limited.

2 COMMISSIONER YAKI: So, it's pretty thin?

3 MR. KATSAS: That has a pejorative
4 connotation that I -- I might want to resist.

5 COMMISSIONER YAKI: Well, the reason I'm
6 asking --

7 MR. KATSAS: It's less extensive than,
8 say, an Assistant Attorney General for the Civil
9 Division -- for the Civil Rights Division.

10 COMMISSIONER YAKI: But for example, you
11 would not -- you would not know for example whether or
12 why Civil Rights Division decided to turn down
13 potential 11(b) cases, and you would never -- it would
14 never cross your desk?

15 MR. KATSAS: It may have. In theory, it
16 could've come up to the associate's office while I was
17 in the associate's office. But in fact, it didn't.

18 COMMISSIONER YAKI: But only during that
19 time period?

20 MR. KATSAS: Yes.

21 COMMISSIONER YAKI: And what time period
22 was that again?

23 MR. KATSAS: Let's see. August of 2006
24 until April of 2008, plus or minus a month.

25 COMMISSIONER YAKI: The reason I ask you

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1 that is the statement by one of the Commissioners was
2 kind of startling in terms of talking about how a
3 single instance can -- can be in an of itself
4 galvanizing. Although, I think to myself that this is
5 hardly -- hardly rise to the level of an Adam Walsh or
6 and Amber Hagerman in terms of its importance.

7 But nevertheless, that being -- that being
8 the case, I know of at least three different -- three
9 different incidents that were -- four that were
10 brought up to the -- to the -- to the Justice
11 Department and for which we have yet to hear anything
12 with regard to why or what their disposition was.

13 One involved two instances during the 2006
14 national election cycle, where one congressional
15 candidate in Orange County sent out a letter to 14,000
16 registered Latino voters. Perhaps you're familiar
17 with that case?

18 MR. KATSAS: Only in very general terms.
19 I'm familiar with the allegations.

20 COMMISSIONER YAKI: And -- and then there
21 was the -- then during also that election, there were
22 allegations in Tucson, Arizona, involving people who
23 wore dark clothing, their own hand made badges, not
24 unlike other people who may wear handmade -- or design
25 their emblem with an open handgun in a holster, asking

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1 only Latino voters personal information and
2 videotaping them.

3 You don't recall that coming up to you for
4 -- for decision or review, do you?

5 MR. KATSAS: No.

6 COMMISSIONER YAKI: All right. In 2008,
7 do you recall whether or not it was referred to you
8 that a private investigator in New Mexico was visiting
9 the homes of newly registered Latino voters, telling
10 them that they could not vote; that they were here
11 illegally and he would report them to the INS. Did
12 that ever come up to your attention?

13 MR. KATSAS: Not that I recall.

14 COMMISSIONER YAKI: And certainly when you
15 were in the appellate division, you wouldn't have been
16 aware of -- during the mayoral election in
17 Philadelphia in 2003, that there was many reports
18 about folks in dark suits and dark vans and
19 clipboards, driving around in predominantly African-
20 American neighborhoods, telling people that they had
21 to have all sorts of ID with which to vote, and if
22 they didn't, they would go to jail.

23 MR. KATSAS: That would've been outside
24 the purview of the Civil -- I mean, look, you're
25 describing cases that --

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1 COMMISSIONER YAKI: I'm describing cases
2 that Justice never took, and some of them are -- to
3 me, are more egregious in that it involved serious
4 intimidation with threats of jail time and other sorts
5 of things, but apparently that is not enough for some
6 Commissioners in which to say it is a national issue,
7 but --

8 MR. KATSAS: I mean I can't speak to cases
9 that I haven't looked at.

10 COMMISSIONER YAKI: I understand. So,
11 that ends my next round. I have one more round left
12 to go.

13 CHAIRPERSON REYNOLDS: Commissioner
14 Melendez?

15 COMMISSIONER MELENDEZ: I'll pass.

16 CHAIRPERSON REYNOLDS: Commissioner
17 Heriot?

18 COMMISSIONER HERIOT: I'll pass.

19 COMMISSIONER GAZIANO: I may run out
20 before Commissioner Yaki, but in one of -- in your
21 written statement, you -- regarding the kind of
22 communications that were allowed under the then
23 Mukasey Memo, which we understand Attorney General
24 Holder has said he's keeping in place, but I'm asking
25 under the -- under your experience, you say, "Under

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1 these rules, I think it is unlikely that DOJ would
2 have consulted the White House regarding whether to
3 reverse course in the New Black Panther Litigation."

4 Your answer, first of all, is regarding
5 the kind of officials and the policy as you think it
6 should be implemented. Is that correct?

7 MR. KATSAS: It's based on my
8 understanding of the guidelines in the Mukasey memo.

9 COMMISSIONER GAZIANO: Sure. So, you
10 don't know one way or the other whether either Bush
11 Administration officials or Obama Administration
12 officials in the Department of Justice did in fact
13 communicate at either the filing stage or the
14 dismissal stage?

15 MR. KATSAS: With respect to Bush
16 Administration officials, I have a vague recollection
17 in some of the papers that I reviewed that there was a
18 communication telling I think it was the press office
19 of the White House that the complaint had been filed.

20 COMMISSIONER GAZIANO: Okay, then that
21 gets me to my next question. Do you think it would
22 have been likely appropriate or either for the Obama
23 Administration to have alerted the White House that
24 they were going to dismiss the case?

25 MR. KATSAS: I think under the Mukasey

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1 guidelines, it would have been quite appropriate and
2 indeed I think affirmatively good for the Department
3 to alert the White House that, "This is a decision we
4 have made. It's high profile. It's controversial.
5 You might be hearing about it. This is what we did."

6 COMMISSIONER GAZIANO: Okay.

7 MR. KATSAS: But that sort of informing
8 them of a decision already made, which seems to me
9 entirely appropriate and unproblematic is very
10 different from what the Mukasey memo is designed to
11 get at, which is the prior -- the deliberations about
12 what the decision should be.

13 COMMISSIONER GAZIANO: I understand. And
14 you think -- based on your testimony, I'm inferring
15 you think it's more likely, more appropriate that the
16 White House -- if the White House was alerted when the
17 case was filed, it's even more likely that the White
18 House should've been alerted when they were
19 considering dismissing it?

20 MR. KATSAS: Let me -- let me answer it
21 this way. If I were Acting Associate or Associate
22 Attorney General during the time of the dismissal
23 deliberations, I would not have contacted the White
24 House while the decision was ongoing, and that's
25 partly to protect the perception of impartiality, and

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1 it's also frankly partly to protect the White House
2 from any perception or misperception of political
3 interference.

4 COMMISSIONER GAZIANO: Okay. But you --

5 MR. KATSAS: But I would have -- after the
6 decision was made, I think I would have made a call,
7 saying, "This is what we've done. You may hear about
8 it."

9 COMMISSIONER GAZIANO: After the
10 dismissal, right before the dismissal?

11 MR. KATSAS: At a point in the process
12 where no one could misunderstand the communication to
13 be seeking advice with a nod and a wink.

14 COMMISSIONER GAZIANO: Okay, that's very
15 helpful just for our record of what you think the
16 proper procedure should've been. We may or may not
17 ever find out what happened in this case. But now, I
18 want to contrast that with communications to the
19 Attorney General.

20 Obviously, the Civil Rights Division was
21 supposed to raise significant matters with the
22 associate's office, you said generally once a week.

23 MR. KATSAS: Right.

24 COMMISSIONER GAZIANO: And obviously, you
25 were not a potted plant. So, anything that you were

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1 interested in, you could've inquired about further,
2 right?

3 MR. KATSAS: As the associate?

4 COMMISSIONER GAZIANO: Yes.

5 MR. KATSAS: Sure.

6 COMMISSIONER GAZIANO: And we have now
7 supplemental interrogatory answers just received last
8 week that we should've received ten months ago saying,
9 "The Attorney General was made generally aware." I
10 think it's not an exact quote, but pretty close, of
11 the dismissal -- Attorney General Holder was made
12 generally aware of -- of the consideration of
13 dismissal.

14 He could have made inquiries if he thought
15 that that raised concerns. Is that correct? He's not
16 a potted plant in other words.

17 MR. KATSAS: No, no.

18 COMMISSIONER GAZIANO: He has authority to
19 overrule.

20 MR. KATSAS: He has authority. He has
21 every prerogative to do that. The question for him
22 would be whether he wants to use his very limited time
23 to drill down into a case like that.

24 COMMISSIONER GAZIANO: Correct, but you
25 would not --

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1 CHAIRPERSON REYNOLDS: Next round. Vice
2 Chair Thernstrom?

3 VICE CHAIR THERNSTROM: No, but if -- I'm
4 happy to -- I'll just say no.

5 CHAIRPERSON REYNOLDS: Okay, Commissioner
6 Kirsanow.

7 COMMISSIONER KIRSANOW: No questions.

8 CHAIRPERSON REYNOLDS: Commissioner
9 Taylor?

10 COMMISSIONER TAYLOR: No questions.

11 CHAIRPERSON REYNOLDS: Commissioner Yaki?

12 COMMISSIONER YAKI: Yes. I was -- I was
13 curious about a statement that you made in your
14 statement, in which you say New Black Panther Party
15 endorsed President Obama for President. Where did you
16 get that information from?

17 MR. KATSAS: I don't recall the source. I
18 did some general quick and dirty -- quick and dirty
19 internet research in the course of preparing.

20 COMMISSIONER YAKI: Could you provide that
21 source? Because I'm not familiar with that?

22 MR. KATSAS: I'll look through my notes.

23 COMMISSIONER YAKI: And secondly, this --
24 there's some -- there's some -- there's a tautology
25 here, which I'm not quite getting. And maybe it's

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1 simply if you say it enough, it'll become true. Why
2 would you consider this particular case, which at most
3 involved two, maybe three individuals, of a pretty
4 small organization, that apparently only manifested
5 itself in one precinct in Philadelphia, despite
6 declarations, "I was going to try and do this a lot of
7 other places?"

8 Why would you consider this high-profile?

9 MR. KATSAS: High-profile because the
10 conduct was recorded on the videotapes that you saw,
11 and played in the national media immediately --

12 COMMISSIONER YAKI: So, absent YouTube,
13 you're saying this -- yes, that's okay. It would not
14 have been high-profile? I mean is that the definition
15 of high-profile? It's not how many people were
16 involved? It's not how many voters -- voters were
17 affected? It's not how many -- how many voters may
18 have been impacted? It's simply because it was on
19 YouTube? That's what makes it high-profile?

20 MR. KATSAS: All of those considerations
21 are relevant to the question whether or not you bring
22 the case.

23 COMMISSIONER YAKI: Well, let's leave
24 aside YouTube. You've heard the testimony today of
25 these two individuals behaving badly. I think -- I

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1 think engaging in 11(b) type behavior. Witnesses who
2 were there saw only two or three people actually turn
3 away. Testimony from inside -- deposition witnesses -
4 - deponents who were inside said people were kind of
5 chatting about it and joking about it in some ways,
6 but no one seemed to be overly concerned about it.

7 So, absent -- absent YouTube, how -- how
8 high-profile is this? Two people, one precinct, three
9 people maybe turned away.

10 MR. KATSAS: Look, I --

11 COMMISSIONER YAKI: We have no evidence
12 saying that turnout was affected one way or another;
13 if it was down or if it was up. Yes, it's an 11(b) as
14 to those individuals, but how does it become high-
15 profile other than the fact that someone was there
16 with a camcorder?

17 MR. KATSAS: The question -- maybe we're
18 quibbling about the term high-profile. To me, the
19 term high-profile means was there widespread general
20 knowledge about this incident, and that question does
21 turn on do the -- is it known on a nationwide basis,
22 or just in terms of the people who were there?

23 I don't think that's the same -- I don't
24 think that it is or should be a driver in the decision
25 whether or not to bring the case.

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1 COMMISSIONER YAKI: Well, I would hope
2 not. I would hope not. I would -- I would hope that
3 parts -- that to bring the case would depend on the
4 severity of the incident.

5 MR. KATSAS: Yes, absolutely.

6 COMMISSIONER YAKI: Certainly the number
7 of people who were affected.

8 MR. KATSAS: No question -- no question
9 about that. But I was asked which -- which way the
10 high-profile nature of the incident cuts.

11 COMMISSIONER YAKI: No, I understand.

12 MR. KATSAS: Okay.

13 COMMISSIONER YAKI: Yes, you can have I
14 don't know how many hits on YouTube, but if it's in
15 the paper with a circulation of 400,000-500,000, is
16 that high profile? I don't know.

17 MR. KATSAS: The other -- let me just make
18 one related point on the video. It seems to me it may
19 be relevant for the reasons Commissioner Gaziano
20 suggested. Not a driver but a consideration. It's
21 also relevant for another reason, which is it seems to
22 me in terms of the decision whether or not to pursue
23 the case, one obvious consideration the Department
24 would -- would always consider is is this going to be
25 an easy case or a hard case to prove. And that video,

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1 in my judgment makes it frankly an open and shut case
2 to prove, with no investment of Department resources.

3 So, I think it's relevant for that reason
4 as well.

5 COMMISSIONER YAKI: But then we could
6 argue that that's the easy way out --

7 CHAIRPERSON REYNOLDS: Last question.

8 COMMISSIONER YAKI: -- in determining
9 whether there's 11(b) violation because the fact of
10 the matter is there are a number of -- of cases that
11 were not brought under 11(b) that probably should've
12 by the Justice Department during this period of time
13 that had a much more egregious effect on many more
14 thousands -- hundreds and thousands of people than
15 these particular idiots with their baton.

16 MR. KATSAS: I can't speak to other cases
17 that I haven't looked at. All I can tell you is that
18 this case strikes me as a clear -- the clear violation
19 of law, linked up to the agenda of the national party,
20 and widely --

21 COMMISSIONER YAKI: So, this is policy by
22 --

23 CHAIRPERSON REYNOLDS: Commissioner,
24 Commissioner Yaki --

25 MR. KATSAS: No.

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1 COMMISSIONER YAKI: Sounds like it.
2 Sounds like what you're saying.

3 CHAIRPERSON REYNOLDS: Commissioner
4 Melendez?

5 COMMISSIONER MELENDEZ: I didn't have
6 anything.

7 CHAIRPERSON REYNOLDS: All right,
8 Commissioner Heriot?

9 COMMISSIONER HERIOT: Mr. Katsas, I assume
10 that you would agree that -- that one of the reasons
11 for laws like this, and one of the reasons that the
12 Department of Justice might undertake such an action
13 is to general deterrence: sending the message out to
14 people generally that intimidating voters is a bad
15 thing.

16 MR. KATSAS: Sure.

17 COMMISSIONER HERIOT: Am I also right that
18 the issue of general deterrence is linked up with is
19 it a high profile issue. And by that, I mean I think
20 what you mean as well.

21 MR. KATSAS: Yes.

22 COMMISSIONER HERIOT: You know, that a lot
23 of people know about it.

24 MR. KATSAS: And that's why I think that
25 is a fair and relevant consideration. I think in the

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1 last round of questioning, I was just resisting a
2 suggestion that you bring a prosecution for no other
3 reason than --

4 COMMISSIONER HERIOT: No other reason.
5 But it's --

6 MR. KATSAS: -- there's a video.

7 COMMISSIONER HERIOT: -- perfectly
8 appropriate to consider it in the bringing of the
9 case?

10 MR. KATSAS: Of course.

11 COMMISSIONER HERIOT: Okay.

12 CHAIRPERSON REYNOLDS: Let's finish up the
13 order. Commissioner Gaziano?

14 COMMISSIONER GAZIANO: Yes. This -- this
15 actually helps as a prelude to my final question to
16 you. Since the Justice Department in their
17 supplemental interrogatory answers, which we should've
18 gotten ten months ago, has admitted the Attorney
19 General was made generally aware of the -- the
20 dismissal notions, did you raise things to the
21 Attorney General level, or suggest things be raised to
22 the Attorney General level that were insignificant or
23 low profile?

24 MR. KATSAS: No.

25 COMMISSIONER GAZIANO: Okay, so what does

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1 it tell you about the Obama-Holder Justice Department
2 that this was raised to the Attorney General's level?

3 MR. KATSAS: I think it tends to confirm
4 what I said in my written testimony, which was that my
5 sense is that the decision to abandon most of this
6 litigation, given everything that we knew about it,
7 would have been a pretty sensitive one within DOJ.

8 COMMISSIONER GAZIANO: Certainly. Okay,
9 since you were very helpful on explaining some of the
10 permutations of executive privilege, I -- I can't
11 spend a lot of time, but you heard this morning that
12 we just got the witness statements that we've been
13 asking for for ten months.

14 And even now, they're redacted as to their
15 name. But I think the witnesses are going to
16 volunteer to tell us whose was whose. Is there --
17 does it raise any clear, deliberative process issue to
18 -- to have the witness statements that were on file?

19 MR. KATSAS: I wouldn't think so. Just
20 let me make sure I understand. These are statements
21 that DOJ took in the course of working up the case?

22 COMMISSIONER GAZIANO: Correct. Now, they
23 may implicate work product, which doesn't apply.
24 Which doesn't apply. So, does this --

25 MR. KATSAS: They wouldn't have been

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1 deliberative process by definition because they
2 involved a communication with someone outside the
3 Department. They may have -- they may have involved
4 something akin to a law enforcement-like privilege
5 while the case was pending, but I would think that
6 wouldn't apply after the case was over.

7 COMMISSIONER GAZIANO: We began our
8 investigation after the dismissal.

9 MR. KATSAS: Yes.

10 COMMISSIONER GAZIANO: And do you think
11 even to this day there's any justification for the
12 White House to have -- or the administration to have
13 redacted -- tried to keep from us the names of which
14 witnesses made which statements?

15 MR. KATSAS: I can't think of one.

16 COMMISSIONER GAZIANO: Thank you.

17 CHAIRPERSON REYNOLDS: I want to yield
18 half of my time to Vice Chair Thernstrom.

19 VICE CHAIR THERNSTROM: I just want to
20 push you a minute on this high-profile definition. I
21 mean there was hope on this Commission that this would
22 become a high-profile issue, but it seems to me
23 indisputably it has not become one. That is, yes, the
24 Washington Times, which is a paper nobody reads, is --
25 has been carrying stories on it, and Fox News did pick

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1 up from the Washington Times at one point. But in
2 terms of mainstream media?

3 COMMISSIONER GAZIANO: The Washington Post
4 is Twittering this very hearing.

5 VICE CHAIR THERNSTROM: Okay, today. But
6 up to now, this has not been -- maybe it will be as a
7 consequence of today, but up to now, it has not been a
8 high-profile issue. I just -- I mean I think that's
9 important to establish.

10 MR. KATSAS: Those are fair observations.
11 It has not been as high-profile as it might. But in
12 the context of a strong meritorious case, it does seem
13 to me fair for the reasons that we just discussed
14 about general deterrence for the Department to take
15 into consideration the dissemination of that
16 information.

17 I don't think that should be a driver, but
18 --

19 VICE CHAIR THERNSTROM: Look, I don't
20 think the Department should shrug its shoulders, but I
21 think given how low-profile it has been, what I would
22 expect is for the Department to say, "Ah, who's paying
23 attention?"

24 MR. KATSAS: I don't know. I would think
25 that most incidents like this are not captured on a

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1 video, put on the internet, and made the subject of
2 discussion on a national network.

3 VICE CHAIR THERNSTROM: And by the way,
4 I've talked to the Chairman about this, my last
5 sentence. The members of the New Black Panther Party
6 who were here before asked me if the Commission, at
7 some other time obviously, could see the section of
8 that YouTube video, which preceded what we do see.
9 And I think --

10 MR. BLACKWOOD: If I might, we saw the
11 complete YouTube video.

12 VICE CHAIR THERNSTROM: They think there
13 is something that --

14 MR. BLACKWOOD: I had that conversation
15 out in the hallway. I can tell you that's the
16 complete YouTube video we have seen.

17 CHAIRPERSON REYNOLDS: Okay, so to the
18 extent there's additional, we don't have it?

19 MR. BLACKWOOD: We do not have it.

20 COMMISSIONER GAZIANO: If they want to
21 supply it to us, I would like to see it.

22 VICE CHAIR THERNSTROM: Well, exactly.
23 If there is more, I'd like to see it.

24 CHAIRPERSON REYNOLDS: Okay. Any other
25 questions? Okay, hold on a moment. Other than

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1 Commissioner Yaki, do we have additional questions?

2 COMMISSIONER HERIOT: I have just one
3 question.

4 CHAIRPERSON REYNOLDS: Okay, Commissioner
5 Yaki?

6 COMMISSIONER YAKI: I'm just going to make
7 one little follow up on the high-profile issue. Would
8 it -- would it have been proper course to advise the
9 Attorney General, regardless of whether you thought it
10 was high-profile or not? But if you were reversing a
11 decision of a prior administration, would that be
12 something that you would advise the Attorney General's
13 office that is was action you were taking?

14 MR. KATSAS: Yes, probably.

15 COMMISSIONER YAKI: That's all. Thank
16 you.

17 MR. KATSAS: Because of the sensitivity of
18 that kind of decision.

19 COMMISSIONER YAKI: Exactly, yes.

20 MR. KATSAS: Yes.

21 CHAIRPERSON REYNOLDS: Commissioner
22 Heriot?

23 COMMISSIONER HERIOT: I just want to
24 establish that we understand that high-profile is a
25 matter of degree. Do you know of any other incident

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1 at a precinct during that election that was any higher
2 profile than this one?

3 MR. KATSAS: I'm not an expert, but no.

4 COMMISSIONER YAKI: I do.

5 CHAIRPERSON REYNOLDS: Okay.

6 COMMISSIONER YAKI: It depends on how you
7 define high-profile. It depends on the number of
8 people who were --

9 CHAIRPERSON REYNOLDS: Okay, we're going
10 to direct our questions to the witnesses. Folks, this
11 concludes our hearing for today. We will adjourn
12 until May 14th, 2010, at which time we will hear
13 testimony in the New Black Panther Party litigation
14 matter from Assistant Attorney General Thomas Perez,
15 and possibly a few other witnesses.

16 We will hold the record open for
17 additional evidence pursuant to 45 CFR Section 702.8.
18 Individuals who wish to submit items for consideration
19 to be included in the record may do so by sending them
20 to the General Counsel, David Blackwood, at the US
21 Commission on Civil Rights, at 624 9th Street
22 Northwest, Washington, D.C. 20425. Mr. Katsas, thank
23 you very much.

24 MR. KATSAS: Thank you.

25 (Whereupon, the above-entitled matter went

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1 off the record at 1:56 p.m.)

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