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
MICHELE YORKMAN-RAMEY

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH
KIMBERLY SCHULD
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(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.
Witness after witness testified of efforts to interfere with their right to vote, whether by threats, intimidation, coercion, trickery, or the erection of legal or other impediments. The data gathered by the Commission formed the basis for the Voting Rights Act of 1965, which is unequivocal in its command that no person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce anyone from voting or attempting to vote, or from aiding a voter.

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

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

The right to vote freely without interference, discrimination or intimidation is
fundamental and indeed at the heart of our work here at the Commission. In the nation’s mind, voting rights are regarded as sacred and, by extension, the area surrounding our polling stations.

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

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

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

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

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

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

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

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

Press reports indicate that, at this stage, the experienced career line attorneys who were
responsible for the case were put under intense pressure to justify the lawsuit against the New Black Panther Party. In addition, press reports indicate that although the lawsuit was uncontested, the Acting Assistant Attorney General of the Civil Rights Division sought a review of the matter by the division's appellate section.

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

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

If the press reports are to be believed, these dismissals, as well as the reduction of the release -- relief sought against the final defendant,
occurred only after Loretta King, the Acting Head of the Civil Rights Division, acting with the approval of her politically-appointed supervisors, explicitly overread the career-line attorneys handling the case, the Chief and the Deputy Chief of the Voting Rights Section, and the Chief of the Civil Rights Appellate Section, who reviewed the matter.

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

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

Up until very recently, the Department provided little information about the New Black Panther Party litigation, other than providing copies
of pleadings and despite -- and this is despite repeated requests. The correspondence between the Commission and the Department is posted on our website.

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

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

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

Then, depending on when Chris -- Frank Wolf arrives, we will likely hear testimony next from
Gregory Katsas, who has served in many senior positions in the Department of Justice, including Senior Attorney General for the Civil Division, and Acting Associate Attorney General, regarding the procedures and channels of Department and White House review that would normally apply to the Department's actions in a case like this one.

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

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

MR. BLACKWOOD: Their statements?

CHAIRPERSON REYNOLDS: Forgive me. Vice Chair Thernstrom.
II. REMARKS BY COMMISSIONERS

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

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

As the author of two books on the Voting Rights Act, one of which won multiple awards, including one from the American Bar Association, I have a particularly strong interest in the vigorous protection of voting rights. But, as much as I abhor the New Black Panther Party, it is nothing in my view but a lunatic fringe group, a few of whose members showed up at one polling place in a largely black, safe Democratic precinct. The Philadelphia incident was an isolated one off. There is no analogy to racist whites stopping blacks from voting throughout the Jim Crow south.
My colleagues assert that our purpose today is not to prove that voter intimidation did or did not occur. Our aim, they say, is to examine why the Justice Department handled the case as it did, and indeed, I too am interested in the answer to that question.

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

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

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

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

CHAIRPERSON REYNOLDS: Okay, next up would
be Commissioner Taylor.

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

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

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

It's enough to show that the conduct would have threatened, intimidated or coerced a reasonable voter. In the past decade, DOJ has prosecuted criminals who jammed phone lines and slashed van tires in an effort to prevent voters from reaching the voting place.
Now, we have before us the case of two men clad in paramilitary uniforms, openly carrying a weapon, literally standing at the doorway of a voting place in Philadelphia, and the case was not aggressively pursued.

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

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

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

I hope that at some point DOJ will answer these questions. In the meantime, the selective enforcement of our laws and the appearance of selective enforcement, more importantly, will erode
the faith and confidence in the impartial administration of justice, and will undermine the rule of law in our society. Thank you, Mr. Chairman.

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

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

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

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

No, this hearing alone, comprising the
National Enforcement Report for this Commission, an enormous expenditure of time and resources, is in my -- is to me just simply one thing. It's about partisan payback. That's all it is. Because we're -- because there is nothing about this inquiry that talks about how this really goes to a broader question for civil rights enforcement.

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

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

This is not to -- to belittle anything that any of the witnesses saw or heard, but it is about the greater issue of what this Commission is
really all about, and a mission that we have been sorely lacking for the last five years that I have been on the Commission: a mission that we have advocated time and again until suddenly in this one instance, we see the light on voter intimidation, and that to me is hypocrisy in its highest form. Thank you.

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

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

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

In this case, however, no citizen has even
alleged that he or she was intimidated from voting at the Fairmount Avenue Polling Station in 2008. This absence of voter intimidation was clear to the Justice Department last spring, which is why they took the course of action that they did.

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

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

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

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

COMMISSIONER HERIOT: Thank you, Mr. Chairman. I don't think I will need the full two
minutes. I just want to -- want to state that no one is on trial here. Not the members of the New Black Panther Party, not the witnesses to the incident, not the DOJ lawyers who initially filed this civil lawsuit, and not the DOJ officials who ultimately decided to terminate the lawsuit, except in a very minor -- minor aspect.

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

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

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

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

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

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

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

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

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

We rightfully earned the reputation as the conscience of the nation for our refusal to be intimidated when southern officials tried to thwart the Commission's early investigations into voting
rights violations. We should be no less vigilant in our pursuit of the truth today.

CHAIRPERSON REYNOLDS: Thank you.

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

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

The Senate has a number of charters, but is not solely devoted to the protection of voting rights. Nonetheless, they wasted, apparently, a significant amount of time and resources. They devoted a considerable amount of attention to a matter pertaining to voting rights. Not a specific incident. Nothing had happened. Nothing had triggered this specifically.
Nonetheless, the entire Senate Judiciary Committee and the entire Senate decided to take this matter up. Apparently, they wasted their resources because scores of staff members were involved in adducing evidence pertaining to that. A number of senators also testified during that hearing. In fact, one of the sponsors of that particular bill testified at that hearing, and indicated that this was a serious problem worthy of national attention.

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

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

CHAIRPERSON REYNOLDS: Thank you, Commissioner Kirsanow.

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

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

VICE CHAIR THERNSTROM: That's fine. This
is up to you.

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

III. REMARKS BY GENERAL COUNSEL

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

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

I think it's appropriate at this time to note that both Mr. Jackson and Minister King Samir Shabazz are present today, along with several other members of the New Black Panther Party. The segment that we're going to show is edited rather abruptly, but it's -- the purpose was to keep the video clips as
short as possible. So, it will start mid scene, but it is meant to be edited in such a way that it is focused simply on the party -- New Black Panther Party for Self Defense, and the individuals I mentioned.

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

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

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

IV: VIDEO EVIDENCE

(Whereupon, a series of videos were played)

MR. BLACKWOOD: Thank you.

CHAIRPERSON REYNOLDS: Okay, please
continue, Mr. Blackwood.

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

V: SUBMISSION OF EVIDENCE

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

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

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

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

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

Lastly, we have subpoenas -- video information, which has -- was subpoenaed, some of which you just saw, all of which has been provided to you previously; the National Geographic Program in its entirety, the Strategy Room interview in its entirety, a guest segment on the O'Reilly Factor, in which witness Bartle Bull appeared, and finally two video
clips from Rick Leventhal, who reported from the scene at Fairmount Street.

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

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

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

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

MR. BLACKWOOD: For purposes of clarification, since I was asked earlier this morning, Commissioners now may refer to those documents, and the materials within them in their questioning today, or in their statements. At this time, Mr. Chairman, I'd like to proceed with the examination of the three
witnesses that we have here today. The procedure is
I'm going to ask questions, one in a row, first Mr.
Mauro, then Mr. Hill, then Mr. Bull.

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

CHAIRPERSON REYNOLDS: Okay.

VI: TESTIMONY OF WITNESSES

MR. BLACKWOOD: I would like to proceed.

CHAIRPERSON REYNOLDS: Please proceed.

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

MR. MAURO: Michael Mauro.

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

CHAIRPERSON REYNOLDS: Okay, please raise
your right hand.

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

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

MR. MAURO: I do.

MR. BULL: I do.
MR. HILL: I do.

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

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

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

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

MR. MAURO: Yes.

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

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

MR. BLACKWOOD: Did you receive any training?

MR. MAURO: Yes, I did.

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

MR. MAURO: It was an informational session, where we were told that we were given procedures to follow. When we were at the polls, if someone had complained that they were being denied an ability to vote, to call it in, and then that an
injunction action needed to be instituted then that
would -- the process would start.

MR. BLACKWOOD: Were you paid for your
work?

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

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

MR. MAURO: Yes.

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

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

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

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

MR. BLACKWOOD: When you arrived at the
scene, what did you observe?

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

MR. BLACKWOOD: How were they positioned?

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

MR. BLACKWOOD: Can you identify those individuals today?

MR. MAURO: I suppose I could.

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

MR. MAURO: This gentleman right here.

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

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

MR. BLACKWOOD: How were they dressed?

MR. MAURO: Not unlike they're dressed right now, with a black paramilitary outfit on, with
berets and military-style boots.

MR. BLACKWOOD: Was anybody carrying anything?

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

MR. BLACKWOOD: And how was he handling that?

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

MR. BLACKWOOD: Did he point it at anybody?

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

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

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

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

MR. MAURO: Yes, I was.

MR. BLACKWOOD: Can you basically describe
what you were wearing that day?

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

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

    MR. MAURO: That's correct, yes.

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

    MR. MAURO: No, only one was.

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

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

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

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

    So, I purposely took a non-confrontational
pose, and in fact, I didn't even engage them in any
kind of a discussion at all. It was the -- I believe he was a UPenn journalism student who was filming that. He was doing all of the speaking.

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

MR. MAURO: He did come after, yes.

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

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

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

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

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

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

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

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

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

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

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

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

MR. BLACKWOOD: Did anybody say anything?

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

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

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

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

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

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

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

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

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

MR. MAURO: They did not.

MR. BLACKWOOD: Okay. You saw a minute ago comments made by Malik Zulu Shabazz, who is the
head of the Black Panther Party that Skinheads, Aryan Nation members and Nazi Party members were at the site. Did you see any such people?

MR. MAURO: No, I did not.

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

MR. MAURO: It is.

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

MR. MAURO: Yes, it is.

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

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

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

MR. BLACKWOOD: Did he -- did Mr. Shabazz say anything in response?
MR. MAURO: He said, "Whatever, cracker."

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

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

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

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

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

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

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

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

MR. BLACKWOOD: From your observation, how were third parties, other people, reacting to the
Mr. Mauro: While I was standing there, I did notice that when -- what I would -- what would appear to be people coming to vote, when they entered into that circle area, they would stop and they would congregate and speak to each other, and wait a little bit, and then proceed on in to vote.

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

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

Since I was the only white guy in a suit...
around there, I assumed she was talking about me, and I was not talking to anybody. So, obviously that disturbed me greatly. And in addition, she said that as she was standing behind the two individuals.

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

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

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

MR. MAURO: Yes, the whole time.

MR. BLACKWOOD: Standing directly behind the Panthers?

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

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

MR. MAURO: They did not.

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

MR. MAURO: Yes. Sometime within the next
maybe two hours or so, or three hours. I guess DOJ
had some roving attorneys out in cars, and we met with
two attorneys. They must've had a rental car, and we
rendezvoused with them in a parking lot, and--

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

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

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

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

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

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

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

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

I agreed. I met with him, and Jay
Spencer. I can't recall his last name right now.

MR. BLACKWOOD: Fischer?

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

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

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

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

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

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

MR. HILL: I was.

MR. BLACKWOOD: And you're a Citizen of Philadelphia?
MR. HILL: I am indeed.

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

MR. HILL: I was.

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

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

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

MR. HILL: Yes, we did.

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

MR. HILL: We were at I guess our third or fourth polling location of the morning, and we received a -- I received a phone call from the head of the Poll Watchers in Philadelphia, and he said that the poll watcher on site had been threatened, and we were initially -- I was initially told there were three Black Panthers there, and he asked if we could swing by and see if that were the case.
MR. BLACKWOOD: About what time did you arrive at the site?

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

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

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

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

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

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

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

MR. BLACKWOOD: Okay.

MR. HILL: -- for sure.

MR. BLACKWOOD: Was anybody carrying anything?

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

MR. BLACKWOOD: And how was he carrying it?

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

MR. BLACKWOOD: Did he say anything to you?

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

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

MR. HILL: No, I do not. He was -- he was pretty shaken up, and I wasn't really too concerned about finding out what his name was. You know, he was -- he was visibly upset.
MR. BLACKWOOD: What did he tell you?

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

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

MR. HILL: He did.

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

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

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

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

MR. HILL: I did.

MR. BLACKWOOD: Did -- were there anymore
comments from the individuals outside, the Panther members?

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

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

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

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

MR. HILL: Never.

MR. BLACKWOOD: Did they ever --

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

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

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

MR. BLACKWOOD: If someone wanted to enter
the polling place, how close would they have to pass from the Panther members?

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

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

MR. HILL: No.

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

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

I said, "Truthfully, we don't really know. All we know is there's two Black Panthers here." And the lady said, "Well, we'll just come back." And so,
they walked away. I didn't see anybody other than them leave, but I did see those three leave.

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

MR. HILL: Absolutely not.

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

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

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

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

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

MR. HILL: I did not.

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

MR. HILL: A couple hours later, two female attorneys met us in a parking lot, as Mike said, and we got in the car with them. They asked us
what happened. They took notes, and then we went on our way because we were responding to polling places all day long. So, you know.

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

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

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

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

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

MR. HILL: I did not.

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

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

MR. BLACKWOOD: With regard to the woman
in the video, standing -- that Mr. Mauro testified about, did you have any interaction with her?

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

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

MR. HILL: She was.

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

CHAIRPERSON REYNOLDS: Please proceed.

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

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

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

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

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

In 1972, I was chairman in New York State, Democrats for Governor Shriver. In 1976, I was Jimmy Carter's New York State campaign manager. In 1980, I was chairman of New York Democrats for Edward Kennedy when he ran for President, and I did the same thing in campaigns for Mario Cuomo, Hugh Carey. I also worked for Ramsey Clark when he ran for the Senate, and I've
worked in campaigns in New Hampshire, Massachusetts, New York, South Carolina, where I worked against Strom Thurmond, also in Florida and in Mississippi.

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

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

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

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

MR. BULL: Yes. I was in a car, driven by a young volunteer, with another volunteer from New York. And we were receiving cell phone messages, saying that in many, many polling places, there was intimidation. Not so much of voters, Mr. Melendez, but intimidation of poll watchers. A very important point, sir, if I may say.
And that was what was going on. Our poll watchers were driven out of the polls in five or six places I went to. And while we were examining those situations, we had a call on the radio -- on the cell phone, excuse me, saying that on -- on -- at Fairmount Street, there were two Black Panthers intimidating voters and poll watchers, as you just heard.

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

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

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

MR. BULL: Well, these two gentlemen I believe were there already. They were a bit off to one side from the entrance. There were two Black
Panthers, one of them was armed, standing very close
to each other, directly blocking the door to the
polling places.

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

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

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

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

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

MR. BLACKWOOD: Did either of those
members make any comments while you were there?
MR. BULL: Yes, sir. After the police arrived, and did not take the club away, by the way, and they asked the gentleman with the club to get away from the polling place. And as he walked by me, I was standing by a car at the end of the driveway with my two companions, he pointed the billy club at me and said, "Now you will see what it means to be ruled by the black man, Cracker." And the reason I recall that very well is because it struck me as ironic that having worked as a Civil Rights lawyer and being threatened in Mississippi, I was now being threatened in this way here, and being called a cracker, frankly.

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

MR. BULL: About 45 minutes, maybe.

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

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

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

MR. BULL: They were shoulder to shoulder. They were -- they were clearly -- they had this paramilitary presentation.
MR. BLACKWOOD: Other than the -- you mentioned that -- you indicated that you saw some voters turn away. Was that a single incident, or did you see it multiple times?

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

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

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

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

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

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

MR. BULL: Absolutely not.

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

MR. BULL: Not on -- not on that occasion. Not that day. But some -- some weeks later, I received a call in New York from the Department of
Justice, saying would I be prepared to sign an affidavit to what I have just told you, and I said yes, provided you guys don't drop the lawsuit. And they said, "Well, we should warn you that this is a dangerous group; they injured several New York policemen at a rally in New York." And I said, "I don't care about that. I will do this as long as you continue with the lawsuit."

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

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

CONGRESSMAN WOLF: I'm okay.

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

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

So, Gentlemen, please stick around.
Congressman Wolf, would you please move to the table?

VII. TESTIMONY OF CONGRESSMAN FRANK WOLF

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

CONGRESSMAN WOLF: I do.

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

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

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

As you know, the Commission has an
important, special statutory responsibility to investigate voting rights deprivation, and make appraisals of federal policies to enforce federal voting rights laws.

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

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

My commitment to voting rights is unquestioned. In 1981, I was the only member, Republican or Democrat, of the Virginia Delegation in the House of Representatives to vote for the Voting Rights Act, and was harshly criticized then by the
editorial page of the Richmond Times Dispatch, the State's leading newspaper.

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

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

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

I believe he is undermining in some respects the federal oversight of the Justice Department. For nearly a year, I've been urging the Department to release all the documents surrounding
this case, and to make a genuine attempt to answer the questions asked by members of Congress and by this Commission.

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

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

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

What should be a bipartisan support for
robust voting rights enforcement has become I think a bad example of the types of partisan obstruction that undermine our nation's Civil Rights laws. While some are the Washington Times, and it's been somewhat troubling some papers have covered this, and others have just almost ignored it.

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

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

I was a -- used to work for the Department of Interior before I served in Congress, but all of the activity has all been with regard to the decisions on moving ahead have been made by career people. And this was dismissed over the objections of career attorneys on the trial team, as well as the Chief of the Division, Appellant Division.
According to the Appellant Division, memos first disclosed in the Times articles, Appellant Chief, Diana K. Flynn, said, "The appropriate action was to pursue the default judgment." And that justice had made, "A reasonable argument in favor of default related against all defendants."

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

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

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

Sources within the Department stated that the Associate Attorney General, Thomas Perrelli, a
political appointee, in conjunction with the Acting Assistant Attorney General for Civil Rights, Ms. Loretta King and her deputy, Mr. Steven Rosenbaum, overruled the career attorneys in the voting rights section.

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

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

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

These are again career people who have dedicated their life and their career, and had been very courageous to be pushing this ahead, and knowing that their careers could be impacted by the political people who run the Department.
The politicization of the Justice Department against career employees is absolutely wrong, and both the Congress and the Commission have to get to the bottom of this.

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

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

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

I call again on the Attorney General to comply with the Commission's subpoena, and to allow the career attorneys to testify. This Commission and
the American people should be concerned that the Justice Department and the Attorney General would only agree to allow Tom Perez, a political appointee, who really wasn't even employed at the Department at the time of the dismissal to testify.

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

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

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

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

MR. BLACKWOOD: No, I do not.

CHAIRPERSON REYNOLDS: Okay, Vice Chair Thernstrom?

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

CHAIRPERSON REYNOLDS: That is correct.

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

CONGRESSMAN WOLF: Yes, ma'am.

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

CONGRESSMAN WOLF: I think it's sufficient that it took place there, but to have bullies like this intimidating people? If these were three white men standing outside a polling booth in Clinton, Mississippi, and I went to school for a year in
Mississippi back in the mid-`50s, and saw the intimidation and the segregation and what went on. And to have three white men standing outside a polling booth to intimidate African-Americans who were coming in would be totally unacceptable.

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

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

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

The -- to see that federal employees can
be intimidated, can sort of be kind of cut off and blocked? I used to work for a cabinet secretary, Roger C. B. Morton, and the political involvement of pushing back on career people I think can be very, very dangerous.

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

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

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

But surely, the jury is out as to whether the DOJ has in fact been delinquent in this respect, since we don't have the inside story. You don't have it. And in fact, Chris Coates did not have the inside story. I know Chris Adams very well, and he doesn't
know why the decision was made, which was the question before -- that we were supposed to be addressing at this Commission.

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

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

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

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

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

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

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

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

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

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

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

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

COMMISSIONER KIRSANOW: And would your
answer be --

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

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

CONGRESSMAN WOLF: Any incident.

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

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

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

CONGRESSMAN WOLF: No.

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

CONGRESSMAN WOLF: They almost never answer a letter.

COMMISSIONER KIRSANOW: What would you say to individuals who would say that the Commission's
inquiry here today, or your inquiry, is motivated by partisan reasons?

CONGRESSMAN WOLF: I think that's ridiculous.

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

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

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

I have the most bipartisan bill in Congress with regard to dealing with the debt and the deficit, Jim Cooper and I. So, I approach these things based on what I believe is an important issue with regard to is it right or wrong, and I have not been reluctant to speak out and criticize Republican administrations, as well as Democrat administrations.
So, the answer to your question is no.

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

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

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

CONGRESSMAN WOLF: Yes, absolutely.

COMMISSIONER KIRSANOW: -- if this --

CONGRESSMAN WOLF: No, Republican or Democrat.

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

CHAIRPERSON REYNOLDS: Thank you.

Commission Taylor?
COMMISSIONER TAYLOR: I'm going to pass for the moment, Mr. Chairman.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

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

CONGRESSMAN WOLF: And we still do.

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

CONGRESSMAN WOLF: Correct, yes.

COMMISSIONER YAKI: So, the -- I wanted to ask a couple questions, and first I wanted to say that I do commend you for the bipartisan work that you have done on issues. One in particular was the -- your role in questioning the interrogation memos that -- regarding now Judge Bybee and John Yoo, and the fact that at that time you initiated a request for the Office of Professional Responsibility in Justice to take a look at that, if I recall correctly.
My question has to do with this. You've talked a lot about some of the different offices within DOJ, but OPR certainly has been -- perhaps I'm characterizing wrong, but perhaps in your opinion it has been a very good fact-finding and independent watchdog within Justice.

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

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

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

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

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

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

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

CONGRESSMAN WOLF: I would hope so.

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

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

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

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

The question I have to ask though is this concerns a department within the -- within the Justice Department that the Office of Professional Responsibility cited as having extreme politicization
in the hiring and firing of folks. And I just want --
I just would like to, A, put that on the record, and
B, ask you whether or not the fact that if any of the
individuals involved were part of that, or had been
referenced in that report, or in other citations with
regard to the politicization, would that change your --
change your opinion about whether or not as career
people, qua career people, their opinion is as sound
as, say, someone who had been there 20 or 30 years?

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

COMMISSIONER YAKI: I understand.

CONGRESSMAN WOLF: But --

COMMISSIONER YAKI: But Chris Coates was
also --

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

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

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

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

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

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

CONGRESSMAN WOLF: I don't know.

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

CHAIRPERSON REYNOLDS: Thank you,
Commissioner Yaki.

CONGRESSMAN WOLF: Where do you live now?

COMMISSIONER YAKI: San Francisco.

CHAIRPERSON REYNOLDS: Mr. Melendez?

COMMISSIONER MELENDEZ: No further 
questions.

CHAIRPERSON REYNOLDS: Okay, Commissioner 
Heriot?

COMMISSIONER HERIOT: I have no questions.

CHAIRPERSON REYNOLDS: Commissioner 
Gaziano?

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

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

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

CONGRESSMAN WOLF: I would because then that would just send a message. I -- I would. Sometimes when you respond -- when a -- when a teacher, when a third grade teacher goes to the
defense of the most defenseless in the class -- as a young boy, I was a stutterer. I still stutter now. When a -- when a teacher would come to the defense of the person having the most difficult time, that sends a message to the whole class. "You're not going to do that."

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

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

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

COMMISSIONER GAZIANO: Yes. And let me tell you one -- one final reason that I tried to articulate in my opening statement why I think this is
utterly -- by the way, we and you I think too, but certainly we in the scope of our investigation requested evidence on every single investigation the Justice Department has done under 11(b) because we want to compare that response.

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

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

The statute that Congress has conferred upon us requires every federal agency to comply fully with our requests. And so, last Friday, we finally got some dribbling out of documents, which I hope you also have. And among them, I'm going to ask this
panel of witnesses to maybe identify what their statement was. Because prior to last Friday, we got none of the witnesses statements.

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

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

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

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

CONGRESSMAN WOLF: Sure. Of course.

COMMISSIONER GAZIANO: Please. I thank you for your effort to get the information for your own benefit, and to help the Commission get the
information so that we can come to these conclusions that Vice Chairman Thernstrom says that we don't have sufficient information.

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

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

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

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

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Congressman Wolf, my name is Ashley Taylor, and I'm actually a resident of the Commonwealth, not in your district. I live in Richmond. But thank you for coming, and I want to thank you for the manner in which you've gone about this process, the respectful tone, my sense of you working hard to ensure that it's not drawn into a
political fight; that you can discuss the issue in a way that actually advances the substantive issues I think that are important here.

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

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

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

CONGRESSMAN WOLF: Well, I think the transparency and the trust issue is important because
you saw the -- the Pew Foundation study that came out last -- I guess it was earlier this week or last week. Last week, excuse me. Seventy-eight percent of the people in the United States have lost confidence in their government, and I think accountability and transparency.

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

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

Lastly, I think that the enforcement -- justice, justice. You know, I just think there's some things that have to be done, no matter where they take
you and whatever they do. And I think you have to restore the confidence. Obviously, somebody -- that was if you go back and look at the Richmond Times Dispatch editorial that criticized me in 1981.

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

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

I went to high school in John Bartram High
School. To see this taking place in the city that I have a warm sort of fuzzy feeling for because I was born there, a lot of my life experiences have been there, I just said, "This is not good." This is -- there's just some things you see, and you know they're not right. And I saw this, and I said, "This is not right."

COMMISSIONER TAYLOR: Thank you.

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

CONGRESSMAN WOLF: Am I dismissed?

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

CONGRESSMAN WOLF: Thank you.

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

CHAIRPERSON REYNOLDS: Sure.

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

MR. BULL: My affidavit?

MR. BLACKWOOD: Yes.

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

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

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

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

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

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

MR. BLACKWOOD: Yes.

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

MR. BLACKWOOD: Absolutely.

COMMISSIONER GAZIANO: Okay.

MR. BULL: What are they afraid of?

VICE CHAIR THERNSTROM: You.

CHAIRPERSON REYNOLDS: Anything else?

COMMISSIONER GAZIANO: No, I'm through.
Thank you. So, that was admitted into evidence?

**VIII: QUESTIONING OF WITNESSES BY COMMISSIONERS**

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

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

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

But I wondered on the matter of clear intimidation. I've already asked Congressman Wolf what he thought was the definition of intimidation under 11(b), and in fact there is no settled definition. But did you see -- you saw two women
arriving at the polling place, and saying they'll come back later. They were uncomfortable with what they saw.

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

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

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

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

VICE CHAIR THERNSTROM: Okay, okay. I misunderstood.

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

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

MR. HILL: They may or may not have, yes.
VICE CHAIR THERNSTROM: Yes, I understand.

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

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

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

Whether or not they voted later, none of us can tell because I don't have their names. We
can't check the rolls. But at that exact moment when those three people walked up, I was disgusted that those guys were standing there, and they weren't able to access the polling place.

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

VICE CHAIR THERNSTROM: Yes, sure.

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

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

These aren't mass trials of 100 incidents.

VICE CHAIR THERNSTROM: Well, not --

MR. BULL: If you study the history of justice, it comes down to normally one individual and one case.
VICE CHAIR THERNSTROM: Not really. Well, wait a minute. I mean Brown versus Board, we're talking about --

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

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

MR. BULL: Of course.

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

MR. BULL: Absolutely right.

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

We can't make them perfect. We've got three people here who seem to have been intimidated by guys. I don't like the way they were standing around
there. I don't like the way they look, and I don't
like their voice, but -- and by the way, I would not
have been opposed to a briefing on this subject. My --
- my opposition in my opening statement was to having
made this a statutory report.

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

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

MR. MAURO: Yes.

MR. HILL: Yes, sir.

MR. BULL: Yes.

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

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

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

MR. HILL: Would've been early spring
2009. I gave the formal statement. Then they brought it back to me and had me sign it.

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

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

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

MR. BULL: I think it was January.

COMMISSIONER KIRSANOW: January of 2009?

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

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

MR. BLACKWOOD: Yes.

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

MR. MAURO: I did not, no.

MR. BULL: No, sir.

COMMISSIONER KIRSANOW: Did Department of Justice follow up with you in any regard prior to the dismissal of this particular lawsuit?
MR. MAURO: I have no contacts.

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

COMMISSIONER KIRSANOW: Do you recall approximately when that was?

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

COMMISSIONER KIRSANOW: Mr. Bull, do you know?

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

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

MR. BULL: No. Oh, no.

MR. MAURO: No.

MR. HILL: Absolutely not.

COMMISSIONER KIRSANOW: All right. I think Mr. Mauro -- strike that. Mr. Bull, you testified, I believe, that on this -- on that Election
Day in 2008, you'd had a report of several poll
watchers being driven from the polls?

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

We had these going on all over these
neighborhoods.

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

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

COMMISSIONER KIRSANOW: Okay, Mr. Bull,
did you get involved in poll watching because you
thought it was permissible to allow one or two people
to be intimidated, but only if there were more than one or two was it time for Justice Department to step in and --

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

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

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

MR. BULL: Yes.

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

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

MR. BULL: Absolutely.

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

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

That's what the role is, and if there is some kind of impropriety, or some kind of inappropriate conduct, some kind of electioneering
that's going on that violates some federal statute, it's my obligation as an observer to call it into what I characterized earlier as headquarters, and say, "Hey, there's an issue here. There's a problem. We may need to take action here."

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

COMMISSIONER KIRSANOW: Thank you, Mr. Chairman.

CHAIRPERSON REYNOLDS: Thank you. Commissioner Taylor?

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

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

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

MR. HILL: Right.

COMMISSIONER TAYLOR: To ensure a level and balanced playing field.
MR. HILL: Right on.

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

MR. HILL: Right.

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

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

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

COMMISSIONER TAYLOR: How old was this poll watcher?

MR. HILL: I would say mid-'50s.

COMMISSIONER TAYLOR: Was he African- American?
MR. HILL: He was.

COMMISSIONER TAYLOR: He was the Republican poll watcher?

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

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

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

MR. HILL: I did. I did.

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

MR. HILL: I don't --

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

MR. HILL: I -- I thought that I mentioned
that, but with the redacted part in there, I'm not certain that it's actually in that statement.

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

MR. HILL: Right.

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

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

COMMISSIONER TAYLOR: Okay, all right. Thank you.

CHAIRPERSON REYNOLDS: Commissioner Yaki.

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

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

MR. BLACKWOOD: We already have that information.

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

CHAIRPERSON REYNOLDS: Okay, great.
Commissioner Yaki?

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

MR. BULL: There was.

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

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

So, for the record, it is important to note that that person who you've identified in this
room today does have a civil injunction against him, keeping him from engaging in voter intimidation, and it's thanks to your affidavits that did it.

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

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

MR. HILL: At the other locations? No.

COMMISSIONER YAKI: Mr. Bull, same question.

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

COMMISSIONER YAKI: And Mr. Mauro?

MR. MAURO: Correct. The answer is no.

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

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

MR. MAURO: Correct.

COMMISSIONER YAKI: Where do you live?


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

MR. MAURO: Right.

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

MR. HILL: Nine blocks from that polling station.

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

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

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

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

COMMISSIONER YAKI: Right, sure.

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

COMMISSIONER YAKI: Hopefully it'll be the last.

MR. BULL: Well, we'll see. It depends on this kind of matter. But no, I'm -- when the Department of Justice enforces a law, and the president is sworn in, he says, "I will enforce the laws of the United States." The Voting Rights Act
says people should not be intimidated. So, let's have it enforced.

COMMISSIONER YAKI: So, were you --

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

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

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

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

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

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

MR. BULL: Which essentially means two days?

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

MR. BULL: Okay.

COMMISSIONER YAKI: There's state elections. There's a number of elections. One might argue, and -- and -- and this is not the time or place
to do it. How long? Should it be forever? Whatever. We might -- we might want to -- but the one question -- one statement that kind of startled me about what you said is you said this is the worst kind of voter intimidation you've ever seen.

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

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

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

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

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

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

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

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

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

COMMISSIONER YAKI: No, I'm saying --

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

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

MR. BULL: No. I didn't say ever. I said, "I've seen." I have never in my lifetime, and
I've worked in seven states in elections, seen an armed person blocking a door to a polling place.

COMMISSIONER YAKI: And the people --

CHAIRPERSON REYNOLDS: Okay, Commissioner.

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

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

COMMISSIONER YAKI: Okay.

CHAIRPERSON REYNOLDS: Commissioner Melendez.

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

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

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

CHAIRPERSON REYNOLDS: Okay, very good.

Commissioner Melendez.

COMMISSIONER MELENDEZ: You're telling --
this is for all three of you. You've said that the --
that you saw people approach the polling place and
that they were turned away. Did you actually tell
that to the Department of Justice?

MR. HILL: Yes, I did.

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

COMMISSIONER MELENDEZ: Okay.

MR. BULL: You changed the language, sir.

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

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

COMMISSIONER YAKI: Yeah, could you?

COMMISSIONER MELENDEZ: Okay.

CHAIRPERSON REYNOLDS: That's fine.

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

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

MR. MAURO: I did not.

MR. HILL: No, I did not.

MR. BULL: No, I did not.

COMMISSIONER YAKI: Thank you.

CHAIRPERSON REYNOLDS: Okay, Commissioner Heriot?

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

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

COMMISSIONER HERIOT: What do you mean?

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

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

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

COMMISSIONER HERIOT: Who was doing the intimidating?

MR. HILL: Committeemen for the most part, or self identified committeemen. I don't know if they were necessarily committeemen. In a couple of cases, the poll watchers were 20-21 years old, and weren't really sure of themselves. And the one in particular,
who we actually eventually developed a pretty decent rapport with, was a large guy, and he was bodying up on them, and attempting to be intimidating to keep them out of the building.

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

COMMISSIONER HERIOT: Did you hear about any other cases?

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

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

MR. BULL: That's right.

MR. HILL: So, there were at least -- I'd say at least a dozen came back to us while we were driving around at those sorts of things, and then anecdotally, later when we got back to -- to the
headquarters to turn in the paperwork and all that, there were several dozen, I would say.

COMMISSIONER HERIOT: Any name-calling?

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

COMMISSIONER HERIOT: Okay.

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

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

So, there was a huge effort to protect voters who might be challenged, and a big effort to
identify the voters who should be challenged, and that
made these incidents more contentious. You could see
a pattern. That's why it's more than one place. Do
you see what I mean?

COMMISSIONER HERIOT: Yes.

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

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

COMMISSIONER HERIOT: Thank you.

CHAIRPERSON REYNOLDS: Commissioner
Gaziano?

COMMISSIONER GAZIANO: Wish I didn't have
to take up my question time with this, but I observed
the defendant, King Samir Shabazz, taking a picture of
you all. And from someone who -- who has said that
black people should kill white people, I want to know
that I have -- I have some concern about that, and I -- I -- there are perfectly legitimate reasons to take pictures, but I wondered if any of you saw that?

MR. BULL: You mean just now here?

COMMISSIONER GAZIANO: Just --

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

COMMISSIONER HERIOT: He's doing it right now.

MR. HILL: Yes, I did notice it.

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

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

MR. BULL: You're not witnesses.

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

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

COMMISSIONER GAZIANO: Please give me an extra 30 seconds for that. I may ask a different version of this question to the former Justice Department official, but I want to ask particularly
the writer and publisher of this. Certainly, there was large concern about the wrongs of the Jim Crow era, but many writers have said that one of the turning points was the national TV pictures of Bull Connor turning dogs and hoses on -- on the Civil Rights marchers. And that properly led to some of the -- the great Civil Rights reform.

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

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

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

COMMISSIONER GAZIANO: So, the fact that the YouTube was viewed by tens of thousands, and on -- then broadcast on national TV, raised the awareness of this issue. So, that -- would you agree with me that the dismissal is a bigger problem than non-filing where the evidence is ambiguous?
MR. BULL: Of course, because the message is that you are allowed to intimidate people as long as it's only caught in one place at a time.

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

MR. BULL: Yes.

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

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

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

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

MR. BULL: Yes.

COMMISSIONER GAZIANO: Prevent future
possible intimidation?

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

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

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

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

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

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

MR. BULL: Gentlemen?

MR. HILL: No.
COMMISSIONER GAZIANO: To you, did the fact that they were together add to the intimidation?

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

MR. BULL: They were uniformed.

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

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

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

MR. HILL: Yes. I would say yes.

COMMISSIONER GAZIANO: I just wanted to see if that clarified your record. I'll yield.
CHAIRPERSON REYNOLDS: Okay. Gentlemen, thank you. Second round, okay. Vice Chair Thernstrom?

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

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

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

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

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

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

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

MR. BULL: None of us suggested that.

VICE CHAIR THERNSTROM: Right, but the analogies to the Jim Crow South are, for that reason,
troubling to me. I'll just leave it there.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No questions.

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

COMMISSIONER TAYLOR: None.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

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

MR. MAURO: I do not.

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

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

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

MR. BULL: No, no.
COMMISSIONER YAKI: Any time frame?

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

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

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

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

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

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

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

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

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

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

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

COMMISSIONER YAKI: Okay, Mr. Hill?

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

COMMISSIONER YAKI: Without a doubt?

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

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

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

COMMISSIONER YAKI: Let me -- let me flip
the question around. Let's say you went to some place in mainline Philadelphia. Say it's like 90 some percent white suburb. What -- what if -- scratch that. That's the wrong example.

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

MR. HILL: Yes.

COMMISSIONER YAKI: Mr. Bull?

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

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

MR. BULL: Dark suits and dark glasses?

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

MR. BULL: I'm really not sure. I'd have
to see that. I think it could be seen as intimidating, but wearing sunglasses in Arizona is not an unusual manner, and wearing dark suits is not an unusual manner, and actually --

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

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

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

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

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

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

COMMISSIONER YAKI: No.
MR. BULL: You're saying if. What is if but a hypothetical? I mean it's hypothetical. That's the point of the word.

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

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

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

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

COMMISSIONER YAKI: Well, then you --

MR. BULL: You're confusing your witnesses.

COMMISSIONER YAKI: But you did say that two would?

MR. BULL: I did say what?

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

MR. BULL: Yes, but much less so, I would say. Wouldn't you agree?
COMMISSIONER YAKI: I don't know.

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

COMMISSIONER YAKI: Yes?

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

COMMISSIONER YAKI: Sure.

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

COMMISSIONER YAKI: Sure.

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

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

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

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

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

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

COMMISSIONER MELENDEZ: Right.

MR. HILL: And testifying in front of this
Commission when he lives in that district just didn't seem to be in his best interests. Now, I don't know if that's necessarily the case, but that's how it was conveyed to me.

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

MR. HILL: Sure.

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

CHAIRPERSON REYNOLDS: Okay, Commissioner Heriot?

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

MR. HILL: Right.

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

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

COMMISSIONER HERIOT: Expand on that a little.

MR. HILL: Well, yes, obviously I'm sitting in a suit right now.
VICE CHAIR THERNSTROM: And you look intimidating to me.

MR. HILL: Yes, right.

COMMISSIONER HERIOT: But not to me.

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

COMMISSIONER HERIOT: So, there may be circumstances.

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

COMMISSIONER HERIOT: Thank you.

CHAIRPERSON REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: I want to thank the witnesses again for your patience in testifying and coming down today. And I will state for the record that both Commissioner Yaki and I are also in dark
suits, and we sometimes say things to each other that aren't the most friendly. But I hope I don't intimidate him. And whether he tries or not, he doesn't intimidate me.

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

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

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

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

IX: TESTIMONY OF MR. KATSAS

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

CHAIRPERSON REYNOLDS: Very good. You may proceed.

MR. KATSAS: Thank you, Mr. Chairman. My name is Gregory Katsas. I'm a partner at the law firm Jones Day. I served in the Justice Department between 2001 and 2009. As relevant to this proceeding, I think my most relevant experience was at serving as Principal Deputy Associate Attorney General, the top advisor to the Associate Attorney General, for about 20 months, and for about eight months, I was the Acting Associate Attorney General of the United States.

I was not in the Associate's office during any of the deliberations about this case. So, my testimony doesn't implicate any privilege issues that some of my successors might have. I've submitted written testimony to you. I won't belabor that.

Just to summarize my conclusions, I was asked by Chairman Reynolds to opine on the decision making processes within DOJ, and the level within DOJ that decisions to file or change course in this case would've been made.

My conclusion was that the decision to file the case and to change course could not have been
made below the rank of Assistant Attorney General for the Civil Rights Division, and would have been made with at least consultation by one of the Department leadership officers, most likely the Associate Attorney General, if not someone higher up the chain than that.

With respect to the merits of the case, I was asked to evaluate the complaint and give an opinion on the strength of the case, both in terms of the decision to file at the outset, and in terms of the decision to abandon most of the government's claims in the case and narrow the requested injunction, notwithstanding the default.

I did not have any independent knowledge of facts of the case in the written testimony that I gave you. I was asked to assume the truth of the allegations in the complaint, which I did, and my conclusions were that the complaint stated a strong case of voter intimidation against all the defendants, and that the decision to file was fully justified, and that the decision to abandon most of the claims in the case and narrow the requested injunction was not justified.

I have -- I was asked to attend the entire hearing and watch the evidentiary presentation that
you all had heard. Based on that submission, my opinions remain the same. Indeed, they are reinforced. I think the evidence that you've adduced today tends to confirm both the intimidating nature of the conduct that took place in Philadelphia, and the connection between the Philadelphia conduct and the national party, and I'm happy to answer any questions.

CHAIRPERSON REYNOLDS: Thank you. Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I'd like to pass for the moment, but reserve the right to come back.

CHAIRPERSON REYNOLDS: Very well. Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thank you, Mr. Chairman. Mr. Katsas, is there a de minimis level of voter intimidation or a number of intimidated voters below which intimidation becomes acceptable under 11(b)?

MR. KATSAS: No.

COMMISSIONER KIRSANOW: Is there any difference, in your mind, in terms of whether or not there may be an actionable case of voter intimidation under 11(b) if a defendant brandishes a weapon? In other words, is a -- is a predicate to 11(b) violation
a brandishing of a weapon?

MR. KATSAS: I think brandishing a weapon would be certainly sufficient to establish intimidation, but not necessary.

COMMISSIONER KIRSANOW: Okay. Is there a heightened standard at all? There may not be any case law with respect to this, but in terms of the manner in which Justice would assess bringing a complaint under 11(b) differ if one of the alleged defendants was a credentialed poll watcher? Is he held to a heightened standard?

MR. KATSAS: I -- my instinct is that if -- I don't think that makes any difference on the law in terms of Justice assessing the seriousness of the violation. If it makes any difference at all, my instinct is it would make it worse. Because here's -- on your question, here is someone charged with furthering the integrity of the process who is betraying that charge.

COMMISSIONER KIRSANOW: In this particular case, DOJ decided not to pursue the case any further and indeed dismissed the charges after there was a default entered. If there is a default entered, is there anything to preclude DOJ from nonetheless proceeding forward in discovery, and maybe then filing...
under Rule 56, or for going for a full blown trial?

MR. KATSAS: I don't think so, but I think the ordinary course would be to do exactly what the Department did with respect to Minister Shabazz, which is seek a default judgment on the ground that there's a facially valid complaint, and the defendants have chosen not to contest it. But I think as a lesser alternative to that, I think they could pursue the other options that you mentioned.

COMMISSIONER KIRSANOW: And just as a final matter, this should not be held against Mr. Katsas, but for Mr. Katsas' argument at the DC Circuit, I probably would not be sitting here today.

MR. KATSAS: Brings back some fond memories.

CHAIRPERSON REYNOLDS: Mr. Taylor?

COMMISSIONER TAYLOR: Mr. Katsas, my questions relate to your view of the Commission and the types of questions we have asked of this process. As a former prosecutor, you have an appreciation of the fact that the public will often ask questions about prosecutorial discretion, internal process, et cetera.

We have a unique roll to play, obviously, but I'd like you to comment, if you could, on the
types of questions we have asked. Putting yourself back inside the Department for a moment, and try to shed some light on both the process and our role in it if you would.

MR. KATSAS: I guess I'm not frankly an expert on the charge and role of this Commission, but let me -- if it's responsive, let me --

COMMISSIONER TAYLOR: Or generally would be fine.

MR. KATSAS: Let me try to sort of address how I think the questions would have played out within the Department for people who were charged with enforcing this statute.

Okay, so the first question obviously is is this a meritorious case or not? And it seems to me the answer to that question, either based on the allegations in the complaint or based on the evidence that you saw today, would be yes. And then the question would be, well, is there some discretionary reason not to bring this case?

I would think the answer to that question would be no. This seems like a particularly -- it seems like a fairly clear case of intimidation. It seems like a case that is plausibly linked up to the broader agenda of a national entity.
I don't know of any other cases that the Civil Rights Division would have had to forego in order to bring this case. So, there doesn't seem to be an issue of scarce resources. The complaint -- the investment of resources was pretty limited. It's a nine-page complaint. It seems like it would have been a fairly easy case to prosecute.

So, for all of those reasons, I think the decision to go forward at the outset was perfectly justified. Now, let's talk about what I view as the very different decision whether to abandon the case, or large parts of the case, mid-course.

I think there is a strong tradition within the Justice Department recognized by career employees and responsible political appointees of both sides, both parties, that there is a sort of tradition of stare decisis within the Department as it were, of not changing course in the middle of a case.

The decision to abandon a case that was filed should be a harder one than the decision to bring the case in the first instance. I can't think of anything that would have made the case weaker and indeed this was a default. So, it's not a situation where the government brings a claim in good faith, and then the litigation goes badly, and the position
erodes, and they abandon a claim for that reason.

I would think the case for the government was no weaker when they abandoned it, where the only intervening event was a default of the defendants, than it was at the outset of the case.

So, there is no good reason apparent to me for why the case would've been abandoned.

COMMISSIONER KIRSANOW: Did you -- one final question. Could --

MR. KATSAS: Abandoned in substantial part.

COMMISSIONER TAYLOR: Could you shed some light on the lack of cases brought under 11(b)? We've heard the fact that there are only a couple of cases brought under that section. Could you shed some light on that?

MR. KATSAS: I really think the short answer is no. I was struck in just doing some very quick research in preparing for my testimony at how few cases there are.

I would think that the absence of a lot of prior enforcement, if it affected this decision one way or the other, would have cut in favor of enforcing because the voter intimidation is presumably a serious concern of the Department, and here was a pretty clear
case of it that's caught on videotape.

I would think that this is a pretty good case where you would want to ramp up enforcement.

COMMISSIONER TAYLOR: Thank you.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Thank you. I'm getting the hang of this round-by-round thing. I'm only asking one question, and then I'll just keep on going through the rounds. You said that this would -- just based on your thinking of this, this would not have been an issue of scarce resources. This was relatively easy to deal with.

MR. KATSAS: Right.

COMMISSIONER YAKI: Why would you ever abandon course? You were at the Justice Department for a long time, eight years.

MR. KATSAS: Yes.

COMMISSIONER YAKI: Approximately, correct?

MR. KATSAS: Yes.

COMMISSIONER YAKI: Can you give -- can you tell me were there not instances during that time period where Justice Department abandoned litigation in major civil cases during that period of time?

MR. KATSAS: I can't think of a single
case where we did. Now, let me -- let me be clear about something. My initial five or six years were on the appellate staff of the Civil Division. So, until 2006, I would have had scant knowledge of anything outside that --

COMMISSIONER YAKI: Okay.

MR. KATSAS: Within that universe, I can tell you that -- and I would've been the official responsible for defining the government position. I can tell you with confidence that at the beginning of the Bush Administration, I never once reversed a position in a pending case taken by the prior administration.

COMMISSIONER YAKI: Sure. But you were in the appellate division, correct?

MR. KATSAS: Correct.

COMMISSIONER YAKI: The reason I ask is that -- is that I seem to recall on more than one occasion that there were pending investigations, pending -- many sort of ongoing proceedings in which the Bush Administration did reverse course from the Clinton Administration. Not at the appellate level, but everything is kind of cooked. I would agree at that point.

But in -- but in the ground war litigation
phase, I do seem to recall that, and that's actually more applicable, wouldn't you say, than what you're talking about at the appellate level?

MR. KATSAS: Now, when I say change in a pending case, with respect in my experience at civil appellant, what I mean is there's an appeal pending the day I come in the door.

COMMISSIONER YAKI: Sure.

MR. KATSAS: I reach a judgment that, gee, this isn't the position I would've taken, and I go to the appellate court and say basically, "Never mind."

COMMISSIONER YAKI: Right.

MR. KATSAS: That seems to me analogous to what we have here. It's different from the case where a prior administration takes a position in a trial court, loses and then the new administration has to make a decision whether or not to take an appeal. I think a new administration --

COMMISSIONER YAKI: On the other hand, wouldn't you also say that in a default judgment, there is no -- at that point, there really is no investigation, no discovery, no reexamination of facts that might've gone at that point? And wouldn't you say that that's a slightly different situation than a fully litigated and cooked appeal that you're talking
about?

MR. KATSAS: Sure. But to me, the default nature of this case cuts even more strongly against changing course because the government, I assume, did what every ethical lawyer plaintiff side has to do, which is establish a factual basis for the allegations made in the complaint when they made them, and nothing would have happened. There's no action-forcing event like adversary litigation to have the government reassess that position.

COMMISSIONER YAKI: And you find that more egregious than, say, an expenditure of millions of dollars of government discovery and time on a case, and then abruptly dropping it?

MR. KATSAS: Not saying it's -- I'm saying it's unusual. More egregious? They're different situations.

COMMISSIONER YAKI: Sure.

MR. KATSAS: In -- in your hypothetical case, the concern would be on the one hand it might be a worse case because the government has invested a lot more resources. On the other hand, it might be a less bad case because in the course of adversary testing, the government's initial position might have been eroded with further factual developments.
So, it just strikes me that there are
different considerations in the two kinds of cases.

COMMISSIONER YAKI: Well, I'm going to let
go, but we'll follow up on that.

MR. KATSAS: Okay.

CHAIRPERSON REYNOLDS: Okay, Commissioner Melendez?

COMMISSIONER MELENDEZ: Thank you, Mr. Katsas. Just one question. What's your opinion as far as the -- there were four parts to this that --

MR. KATSAS: Four defendants?

COMMISSIONER MELENDEZ: Four defendants, and only one was basically upheld.

MR. KATSAS: One was pursued.

COMMISSIONER MELENDEZ: Is that because in your opinion it's because there was a weapon used? The night stick.

MR. KATSAS: I don't know what the reasoning of DOJ was. That's the most plausible explanation. To me, it is not -- it is not a very convincing ground for distinguishing between the two defendants who were on the scene.

COMMISSIONER MELENDEZ: So, but if there was not a weapon used, then it would -- it would seem that all four would've been the same situation, since
there were two basically that were -- two people that were at the polling place. So, I can't differentiate between those two people as far as one having the weapon, the night stick, and the other not, it just seemed to most ordinary people that if it wasn't for the night stick, everybody would've been basically dismissed.

MR. KATSAS: That's probably right if you're asking me for --

COMMISSIONER MELENDEZ: Just your opinion.

MR. KATSAS: -- DOJ -- I mean my opinion is that the night stick shouldn't make a difference in the treatment of the defendants for two reasons. One, the sum total of the acts of the two defendants, minus the night stick, still would have amounted to an actionable case of intimidation. That's my first point.

My second point is that the two defendants at the scene were acting in concert together, so, it is perfectly fair to attribute the acts of the one to the other.

COMMISSIONER MELENDEZ: Okay, thank you.

CHAIRPERSON REYNOLDS: Vice Chair Thernstrom?

COMMISSIONER GAZIANO: No, no.
VICE CHAIR THERNSTROM: I pass.

CHAIRPERSON REYNOLDS: I told Vice Chair Ternstrom that she would go after Commissioner Melendez. There is no harm.

COMMISSIONER GAZIANO: There is, but I'll yield.

CHAIRPERSON REYNOLDS: Thank you very much, Vice Chair Ternstrom.

VICE CHAIR THERNSTROM: And I thank you also. By the way, a good pal of mine, who I've worked with closely on voting rights issues, is at Jones Day, and somebody I'm recently very much in touch with over the Kinston case, Mike Carvin.

MR. KATSAS: Pal of mine, too.

VICE CHAIR THERNSTROM: Yes, I'm sure.

Look, two things. One, I've focused here. I don't know, have you been here all morning?

MR. KATSAS: Yes.

VICE CHAIR THERNSTROM: Okay, I've focused here somewhat on the question of the legal definition of 11(b), in part because I arrived at the Commission just in time for the 2001 hearings in Florida. The question of black disfranchisement in Florida in the 2000 elections.

And there were many charges of voter
intimidation that were floated at the time that were contested. I mean there were differing views on whether it amounted to what happened that police cars had parked at certain spots not far from a polling place, and so forth, whether amounted to voter intimidation. And there's nothing unique about Florida. I mean this conversation occurs repeatedly across the country because there's this huge spectrum of events that one can label voter intimidation or not.

And so, I am a bit troubled by -- by the absence of a typed definition, legal definition, rather than a common sense one here, and I wondered if you had any thoughts. And the other question I have: again, do you have any thoughts? This sparse record of the enforcement of -- of 11(b) has meant it is a most minor provision of the Voting Rights Act. I mean I've written two books on this statute, and I haven't mentioned 11(b) in either one of them because it's played such a small role under Democratic and Republican administrations.

I mean one case before the Bush Administration, two during the Bush years. Got any thoughts on that? So, two questions. Got any thoughts on?
MR. KATSAS: I'll try my best. On the question of standards, the case law is sparse, but it is not entirely without guidance. There are cases that say the provision should be construed broadly rather than narrowly. There are cases that say you don't need a subjective intent on the part of the perpetrator.

There are cases that say consistent with that, you measure intimidation by the response of a reasonable voter or poll watcher. And there is a general legal principle that if you have -- you have a somewhat open ended standard, you don't necessarily need a precedent on all fours with the facts of your case in order to figure out whether the standard applies.

Now, I have no doubt that there are many debatable cases, whether something would or would not constitute voter intimidation, and I have no doubt that in a close and debatable case, there could be a proper exercise of enforcement discretion to say, "It's a close case. We haven't enforced this statute very much. There's kind of a rule of lenity principle, even in a civil injunction context."

That would be a responsible decision. This, I have to say, does not strike me as a close
case for all of the reasons that -- that you heard before.

On the question -- on your second question about the relationship of Section 11(b) to the Voting Rights Act more broadly, and DOJ's enforcement history, I'm not sure I can shed much light on that. I haven't looked at that in preparation for being here. Just for what it's worth, I will give my gut reaction that Section 11(b), whatever its enforcement history in the past, seems to be directed at a fairly serious problem, which is voter intimidation. I don't think anyone would deny that that's a minor problem, and that is the evil against which this statute is directed.

CHAIRPERSON REYNOLDS: Okay, Commissioner Heriot?

COMMISSIONER HERIOT: I think I pass.

CHAIRPERSON REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: I may -- if it's all right with you -- first of all, thank you for your written and oral testimony. Your written testimony is very well done, and I think very helpful to the Commission. I hope you can remain with us for a round or two because I have a few -- I don't know where to
begin exactly.

I don't know if you're aware, so tell me if you are aware, that there is a criminal provision, 18 USC Section 245(b), that makes it a crime to, "Interfere or intimidate or interfere." And that's -- I'll paraphrase. A voter or a poll watcher. Are you aware of that criminal provision?

MR. KATSAS: I'm aware that there are parallel criminal provisions. I'm not aware with the specific cites and exact statutes.

COMMISSIONER GAZIANO: You may or may not. You don't have to trust me on my quote. But entered into evidence today were the depositions or attempted depositions of Mr. King Samir Shabazz and Jerry Jackson, in which they pled the Fifth Amendment to -- to refuse to answer our questions.

Given your knowledge of the Fifth Amendment right, can you assert the Fifth Amendment right merely to avoid answering questions of a federal agency in a civil matter? Can you invoke the Fifth in a civil action?

MR. KATSAS: You can invoke the Fifth in a civil action, but only --

COMMISSIONER GAZIANO: But only out of fear?
MR. KATSAS: But only out of fear of criminal exposure.

COMMISSIONER GAZIANO: So, rightfully invoke the Fifth? These defendants, and maybe they didn't understand this, but to rightfully invoke the Fifth, they believe that their answers in our investigation or that the facts that we're investigating might give rise to criminal liability.

MR. KATSAS: I think that's right.

COMMISSIONER GAZIANO: Okay, separate, same line. Viewing the YouTube and the other facts, do you think that there was at least possible grounds on the facts of this case for the Department to have at least considered a criminal investigation?

MR. KATSAS: Can you read the statute back to me?

COMMISSIONER GAZIANO: It is a crime to -- and I only have a portion of it. I don't have it with me. Quote, "Intimidate or interfere with." End quote, and that's the only portion I have. "A person attempting to vote or a poll watcher."

MR. KATSAS: I would think that -- I would think that they faced the possibility of criminal exposure.

COMMISSIONER GAZIANO: Yes. So, that's
why I seem to agree with you. I don't know what all this talk is of -- of 11(b) not being often invoked.

This was a rather outrageous factual pattern, wouldn't you agree?

MR. KATSAS: Yes.

COMMISSIONER GAZIANO: Okay, now, with --

VICE CHAIR THERNSTROM: But the Justice Department --

COMMISSIONER GAZIANO: I'm in my first round. I'd like to concentrate on some of the points in your written statement regarding the dismissal. You said Office of Associate Attorney General would have definitely had to play a bigger role. Here's one quote. Speaking of the dismissal, you said, "They amounted to nothing less than a decision by DOJ, following a change in presidential administrations to reverse legal positions asserted in a pending case."

"Such reversals are extremely rare, and for good reason. They inevitably undermine DOJ's credibility with the courts, and they inevitably raise suspicion that DOJ's litigating position may be influenced by political considerations."

That kind of speaks for itself, but do you have any elaboration on whether that factor was an additional reason not to dismiss the suit from the
Department's Institutional standpoint?

MR. KATSAS: At a minimum, I think those considerations would counsel the Department to be very careful before it dismissed the suit. And if it were going to dismiss the suit, to have a pretty plausible non-political explanation that it was willing and able to publicly articulate and stand behind.

COMMISSIONER GAZIANO: And if they didn't articulate a plausible and credible explanation, do you think reasonable people would draw the negative inference that -- that you're saying is at risk?

MR. KATSAS: I think many people would. I'm not prepared to reach that conclusion myself. But when you serve in a leadership office like the Associate Attorney General's, part of your job is to avoid political messes for your department and your administration.

I would think that they should've been pretty careful with this one.

COMMISSIONER GAZIANO: Right. You also point out in your written testimony, "Moreover," I'm quoting you now. "Moreover, the New Black Panther Party had endorsed President Obama in the 2008 Election, and Mr. Jackson, during the events at issue, apparently was a registered poll watcher for the
Democratic Party." Why is that relevant?

CHAIRPERSON REYNOLDS: Last question.

COMMISSIONER GAZIANO: Okay. Why is that relevant?

MR. KATSAS: From a Department -- from the Department's perspective, it's relevant because it would have been quite foreseeable to them, given everything that happened, and given the politics that if they changed course, there would be the kind of controversy that followed. And when you're in a situation like that, you want to be very careful to make sure that all of your decisions are fully justified on fair, neutral grounds.

COMMISSIONER GAZIANO: Thank you.

CHAIRPERSON REYNOLDS: Okay. Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Commissioner Gaziano, just -- I'm slightly puzzled by your -- you said, well, you're puzzled why it has been repeatedly noted, especially by me, that 11(b) has so far involved only three cases, and not four decades of -- since the passage of the Voting Rights Act.

But there was a criminal potential basis for bringing criminal charges, but the Justice Department did not bring criminal charges, so that
issue is not before us, it seems to me. For whatever reasons, that criminal statute, that criminal provision, was not -- was not used. And that's another question we'll never get the answer to, you know, the why question, but I think it's irrelevant to our inquiry.

CHAIRPERSON REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: If the facts of the case would give rise to a former official like this, and to -- to us; potential criminal violations it seems to me, potentially more important to maintain the lesser suit than an ambiguous close case under 11(b) alone.

VICE CHAIR THERNSTROM: Well, but this is the Obama Justice Department, and it didn't bring a criminal -- it didn't bring criminal charges.

COMMISSIONER GAZIANO: I understand, but I think it's -- the egregiousness of the conduct should certainly affect the decision to maintain the civil action. And if -- and if the Department has two slings in its quiver, or two arrows in its quiver, and it -- and it said that, you know, "Trust us. We could use both, but we're going to use one." It's more -- it undermines respect for the rule of law even more
that it doesn't use either of those arrows.

VICE CHAIR THERNSTROM: I don't see the logic, but that's all right.

CHAIRPERSON REYNOLDS: Commission Kirsanow?

COMMISSIONER KIRSANOW: One question. You may have seen, if you were here, in the video, that police had arrived on the scene. Apparently they declined to either remove the individuals from the polling place, or to arrest them. Is that in any respect relevant to the decision to DOJ not to file -- or not to pursue default judgment in a civil action of 11(b)?

MR. KATSAS: I don't think so because the police -- the local police would not have been charged with enforcing this federal statute, and whatever state and local laws they were enforcing would've raised separate issues.

COMMISSIONER KIRSANOW: Thank you. No further questions, Mr. Chairman.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: None.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes. Next question,
round two. You were, again, at the Justice Department a very long time. I'm wondering if you're at liberty to comment on -- on Attorney General Mukasey's referral to OPR of the US Attorney and Civil Rights Division politicization issues?

MR. KATSAS: I'm just not familiar with those issues. I didn't work on them in the Department. So, I don't --

COMMISSIONER YAKI: You're unfamiliar with the findings of -- of the report?

MR. KATSAS: I'm generally familiar. I had no official-capacity involvement.

COMMISSIONER YAKI: Would it -- would it have -- well, let me ask you this question. Given the findings regarding the report that there was substantial politicization in the hiring and assignment of attorneys within the Civil Rights Division of the Justice Department during the certain portion of the -- of the Bush Administration, does that not give you some pause as to whether or not the incoming administration had a right to review decisions made by that previous Civil Rights Division?

MR. KATSAS: Well, they had a right. I guess -- I mean I start with -- I start with the case, and I see what seems on the face of it a strong
complaint. We've heard here evidence that tends to corroborate the allegations in the complaint. I would think that the Justice Department had at least some of that evidence in its files.

COMMISSIONER YAKI: But let me ask you this. To me, the evidence that has been presented today, such as it is, and someone said we weren't relitigating this, and I tend to disagree because that's exactly what we've been doing all day today, goes I think very strongly against Mr. Shabazz.

Mr. Jackson, I'm not prepared to make a comment one way or the other, but clearly in terms of some of the conduct and statements, Mr. Shabazz was -- was out there. But this -- this case was not simply about Mr. Shabazz and Mr. Jackson. It was also about a national organization by a -- by a national defendant based in another city.

So, my question -- my question really -- I mean are you telling me that -- that if you were -- if you went into a department that you -- that a neutral body, OPR, had said was rife with politicization that hires and assignments had been made based on political loyalty, your -- your willingness to be on their team or not with regard to your political and ideological viewpoints, that you -- it would not cross your mind
perhaps to take a look at some of the petitions that they had made if you were incoming?

    Forget if it's left or right. Just say you're the new guy coming in, Assistant Attorney General Katsas, into a situation where you know this department has had an OPR review that goes, "Things were not going on very well in this department. Decisions were being made that had nothing to do with merit; had nothing to do with the integrity of the division." Are you saying to me it would still be hands off entirely on -- on this case or any other case?

    MR. KATSAS: No. I mean look, it's never hands off entirely. In terms of the significance of the OPR report, with respect to this case, I would think there -- there may be -- now he's after me.

    Look, if OPR reached an adverse conclusion about the competence or integrity of the specific lawyers on that case, maybe it would have relevance and counsel the kind of fresh look you're suggesting. To my knowledge, OPR did not make such findings.

    So, if you're suggesting that based on either generalized concerns about politicization, or findings about other employees in the Department, would that strongly support a de novo consideration of
this issue? I think the answer to that question is no.

COMMISSIONER YAKI: Okay, I'll follow up.

My time is up.

CHAIRPERSON REYNOLDS: Okay, Commissioner Melendez?

COMMISSIONER MELENDEZ: I didn't have anything.

CHAIRPERSON REYNOLDS: All right. That was our second round?

COMMISSIONER YAKI: No. Commissioner Heriot.

CHAIRPERSON REYNOLDS: Please don't take it personally. I apologize. Commissioner Heriot?

COMMISSIONER HERIOT: It's okay because I am going to pass anyway. I do, however, just want to clarify the record. There are going to be stray statements about some creature. There's a housefly that is overly friendly. So, anyone reading this transcript in the future will understand that.

COMMISSIONER YAKI: May I correct? It is a large housefly. It's the 747 of houseflies flying around.

CHAIRPERSON REYNOLDS: Thank you for that clarification. Commissioner Gaziano?
COMMISSIONER GAZIANO: Yes. This may help pick up the line of questioning I was on. It seems to me American people, or citizens of any nations respect for the rule of law has to be cultivated by a long train of proper enforcement of -- of the law by public officials. But would you agree with me that it could be undermined more rapidly by perhaps even a single, wrongful but notorious action?

MR. KATSAS: Sure.

COMMISSIONER GAZIANO: So, it's -- so, individual actions that are -- that are open notorious well known have a greater impact. The implications of them are -- are broader than even a train of rightful conduct.

MR. KATSAS: Other things equal, yes.

COMMISSIONER GAZIANO: Okay. So, is it worse -- if -- if you think the suit should not have been dismissed, and that's been your written and oral testimony, is it worse for the government to have said, "Well, these were 11(b) violations by all four defendants. But we just don't want to spend any more money on them, and it's cheaper if we just get a judgment against the most flagrant of them."

Or, is it worse for them to maintain to the public and to the Commission and to members of
Congress that, "No, those three other defendants did not violate 11(b). We could not -- it was improper to maintain a case against them."

MR. KATSAS: I think the latter position is untenable.

COMMISSIONER GAZIANO: And why is that?

MR. KATSAS: Well, for the reasons I've said. I mean you saw -- you saw the video tapes. The two defendants at the scene in Philadelphia were acting in concert, wearing military uniforms, stationed right in front of the entrance, within arm's length of people who had to enter, hurling racial insults at people, and one of the two had a weapon. That seems like a pretty clear case.

COMMISSIONER GAZIANO: So, it's --

MR. KATSAS: And as to the -- as to the national party, some of the videotape evidence that you presented suggests that these defendants were acting pursuant to the national party and consistent with its broader agenda of racial antagonism.

COMMISSIONER GAZIANO: So -- and I'll get to that. I'm glad you mentioned it. But I just want to talk about this one point. So, it's bad enough for the Department to take a wrongful dismissal with all these political overtones that you've mentioned, and
give no reason, or to give a reason that it didn't want to spend any more money, but that it's more harmful to the public's respect for the rule of law if it maintains wrongfully that the law cannot reach those individuals?

MR. KATSAS: I suppose. I think none of those are ideal.

COMMISSIONER GAZIANO: Certainly. Let me ask you about the First Amendment defense that seems to be raised in some of the responses from the Department of Justice. You -- in your written testimony, you said that a First Amendment defense would not have been able to be invoked on behalf -- can you explain that?

MR. KATSAS: Sure. I have two basic reasons for that conclusion. One is that there's no First Amendment right to intimidate people anywhere at any time. And two, particularly with respect to polling places on Election Day, the government interests in ensuring easy access to the polls and preventing voter intimidation are so strong that the Supreme Court upheld a statute prohibiting all election related speech within a 100-foot area of a -- of a polling place.

So, here, you have both conduct that is
intimidating and the particularly sensitive time and place of the entrance to the polling place on Election Day. To say that there's a First Amendment right to intimidate voters at that time and place seems to me--

COMMISSIONER GAZIANO: Well, let me just ask a quick question. My--so, for these individuals, if you--who wore the paramilitary uniform and engaged in racial slurs, and one of them had a billy club, the original injunction that was dropped that included a prohibition that they not appear at the polls, at least these individuals who violated the Voting Rights Act, not appear at the polls wearing the paramilitary uniform.

Do you think that that part of the original injunction would've or could've been sustained?

CHAIRPERSON REYNOLDS: Last question.

COMMISSIONER GAZIANO: Yes.

MR. KATSAS: I think it could've been sustained because the original injunction spoke of wearing uniforms, but in the course of a deployment.

COMMISSIONER GAZIANO: Sure.

MR. KATSAS: And I think the word deployment sort of captures the idea of going to the
polling station, and in concert standing guard as if in military display. That seems to be -- that seems to be clearly defensible and quite different from an injunction that would've just -- just prohibited nothing more than wearing particular clothes.

COMMISSIONER GAZIANO: Thank you.

CHAIRPERSON REYNOLDS: Thank you.

Commissioners, do we need another round?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Okay, Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: No, I'm taking a pass.

CHAIRPERSON REYNOLDS: A pass, okay.

Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes, Mr. Katsas, there is ongoing an OPR investigation related to the disposition of this matter. At the outset of the Commission's investigation of this matter, and also that of Congressman Wolf, DOJ responded to inquiries by indicating that there was an ongoing OPR investigation.

At the conclusion of such investigation, are you aware of any privileges that would attach to any of the evidence that was considered or adduced
during the course of such investigation, and if so, that would preclude the release of any information related to the investigation? And if so, what are those privileges, and who has the privilege?

MR. KATSAS: All right, the evidence submitted to OPR?

COMMISSIONER KIRSANOW: Yes, the evidence and the -- the deliberative process that OPR engages in.

MR. KATSAS: Yes. I don't think that the mere fact of submission to OPR would itself create a privilege that would extend past the life of the OPR investigation. I do think that much of the evidence likely to have been submitted to OPR would have involved internal deliberations within the Department, and that evidence probably would be subject to some form of DOJ's deliberative process privilege.

I assume -- correct me if I'm wrong, I assume that you all stand on the same footing vis a vis the Department as Congress. And if that's true, then there would presumably have to be some process of negotiation to work out the competing claims of deliberative process on the one hand. And I agree with what Commissioner Thernstrom said earlier: that those are important, but to balance those deliberative
process claims on the one hand with your statutory authority to investigate on the other hand.

COMMISSIONER KIRSANOW: Who within DOJ, or is it the client, the President of the United States, or who would invoke the privilege?

MR. KATSAS: Probably not the President because there's a distinction in the law between the presidential communications privilege for the President and his immediate advisors and deliberative process, which is typically the less absolute privilege that governs those of us who served in agencies in lower ranking positions.

On the question of who invokes it, I don't know. Probably officially the attorney general, but my instinct is that the authority to invoke it would be delegable, and probably has been delegated.

COMMISSIONER KIRSANOW: Aside from the deliberative process privilege, would then any other privilege be the executive privilege?

MR. KATSAS: Deliberative process is a subspecies of executive privilege.

COMMISSIONER KIRSANOW: Is there an overarching executive privilege that could be invoked at the conclusion of this, outside of the deliberative process?
MR. KATSAS: If there is -- executive privilege has two components. Deliberative process privilege, which would cover internal deliberations within DOJ and a presidential communications privilege, which would cover any possible communications about this matter involving either the President or the President's immediate advisors soliciting information on his behalf.

COMMISSIONER KIRSANOW: Thank you. No further questions.

CHAIRPERSON REYNOLDS: Okay, Commissioner Taylor?

COMMISSIONER TAYLOR: I have no further questions?

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Ding round three. Mr. Katsas, would it be fair to say that your knowledge of the Civil Rights Division during your tenure at Justice is pretty thin?

MR. KATSAS: It would be fair to say that my knowledge of the Civil Rights Division was acquired primarily during my year-and-a-half plus in the Associate Attorney General's office, and the -- and that the degree of intensiveness of review that one can conduct from the associate's office about what a
litigating division is doing is limited.

COMMISSIONER YAKI: So, it's pretty thin?

MR. KATSAS: That has a pejorative connotation that I -- I might want to resist.

COMMISSIONER YAKI: Well, the reason I'm asking --

MR. KATSAS: It's less extensive than, say, an Assistant Attorney General for the Civil Division -- for the Civil Rights Division.

COMMISSIONER YAKI: But for example, you would not -- you would not know for example whether or why Civil Rights Division decided to turn down potential 11(b) cases, and you would never -- it would never cross your desk?

MR. KATSAS: It may have. In theory, it could've come up to the associate's office while I was in the associate's office. But in fact, it didn't.

COMMISSIONER YAKI: But only during that time period?

MR. KATSAS: Yes.

COMMISSIONER YAKI: And what time period was that again?

MR. KATSAS: Let's see. August of 2006 until April of 2008, plus or minus a month.

COMMISSIONER YAKI: The reason I ask you
that is the statement by one of the Commissioners was kind of startling in terms of talking about how a single instance can -- can be in an of itself galvanizing. Although, I think to myself that this is hardly -- hardly rise to the level of an Adam Walsh or and Amber Hagerman in terms of its importance.

But nevertheless, that being -- that being the case, I know of at least three different -- three different incidents that were -- four that were brought up to the -- to the -- to the Justice Department and for which we have yet to hear anything with regard to why or what their disposition was.

One involved two instances during the 2006 national election cycle, where one congressional candidate in Orange County sent out a letter to 14,000 registered Latino voters. Perhaps you're familiar with that case?

MR. KATSAS: Only in very general terms. I'm familiar with the allegations.

COMMISSIONER YAKI: And -- and then there was the -- then during also that election, there were allegations in Tucson, Arizona, involving people who wore dark clothing, their own hand made badges, not unlike other people who may wear handmade -- or design their emblem with an open handgun in a holster, asking
only Latino voters personal information and videotaping them.

You don't recall that coming up to you for -- for decision or review, do you?

MR. KATSAS: No.

COMMISSIONER YAKI: All right. In 2008, do you recall whether or not it was referred to you that a private investigator in New Mexico was visiting the homes of newly registered Latino voters, telling them that they could not vote; that they were here illegally and he would report them to the INS. Did that ever come up to your attention?

MR. KATSAS: Not that I recall.

COMMISSIONER YAKI: And certainly when you were in the appellate division, you wouldn't have been aware of -- during the mayoral election in Philadelphia in 2003, that there was many reports about folks in dark suits and dark vans and clipboards, driving around in predominantly African-American neighborhoods, telling people that they had to have all sorts of ID with which to vote, and if they didn't, they would go to jail.

MR. KATSAS: That would've been outside the purview of the Civil -- I mean, look, you're describing cases that --
COMMISSIONER YAKI: I'm describing cases that Justice never took, and some of them are -- to me, are more egregious in that it involved serious intimidation with threats of jail time and other sorts of things, but apparently that is not enough for some Commissioners in which to say it is a national issue, but --

MR. KATSAS: I mean I can't speak to cases that I haven't looked at.

COMMISSIONER YAKI: I understand. So, that ends my next round. I have one more round left to go.

CHAIRPERSON REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: I'll pass.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I'll pass.

COMMISSIONER GAZIANO: I may run out before Commissioner Yaki, but in one of -- in your written statement, you -- regarding the kind of communications that were allowed under the then Mukasey Memo, which we understand Attorney General Holder has said he's keeping in place, but I'm asking under the -- under your experience, you say, "Under
these rules, I think it is unlikely that DOJ would
have consulted the White House regarding whether to
reverse course in the New Black Panther Litigation."

Your answer, first of all, is regarding
the kind of officials and the policy as you think it
should be implemented. Is that correct?

MR. KATSAS: It's based on my
understanding of the guidelines in the Mukasey memo.

COMMISSIONER GAZIANO: Sure. So, you
don't know one way or the other whether either Bush
Administration officials or Obama Administration
officials in the Department of Justice did in fact
communicate at either the filing stage or the
dismissal stage?

MR. KATSAS: With respect to Bush
Administration officials, I have a vague recollection
in some of the papers that I reviewed that there was a
communication telling I think it was the press office
of the White House that the complaint had been filed.

COMMISSIONER GAZIANO: Okay, then that
gets me to my next question. Do you think it would
have been likely appropriate or either for the Obama
Administration to have alerted the White House that
they were going to dismiss the case?

MR. KATSAS: I think under the Mukasey
guidelines, it would have been quite appropriate and indeed I think affirmatively good for the Department to alert the White House that, "This is a decision we have made. It's high profile. It's controversial. You might be hearing about it. This is what we did."

COMMISSIONER GAZIANO: Okay.

MR. KATSAS: But that sort of informing them of a decision already made, which seems to me entirely appropriate and unproblematic is very different from what the Mukasey memo is designed to get at, which is the prior -- the deliberations about what the decision should be.

COMMISSIONER GAZIANO: I understand. And you think -- based on your testimony, I'm inferring you think it's more likely, more appropriate that the White House -- if the White House was alerted when the case was filed, it's even more likely that the White House should've been alerted when they were considering dismissing it?

MR. KATSAS: Let me -- let me answer it this way. If I were Acting Associate or Associate Attorney General during the time of the dismissal deliberations, I would not have contacted the White House while the decision was ongoing, and that's partly to protect the perception of impartiality, and
it's also frankly partly to protect the White House from any perception or misperception of political interference.

COMMISSIONER GAZIANO: Okay. But you --

MR. KATSAS: But I would have -- after the decision was made, I think I would have made a call, saying, "This is what we've done. You may hear about it."

COMMISSIONER GAZIANO: After the dismissal, right before the dismissal?

MR. KATSAS: At a point in the process where no one could misunderstand the communication to be seeking advice with a nod and a wink.

COMMISSIONER GAZIANO: Okay, that's very helpful just for our record of what you think the proper procedure should've been. We may or may not ever find out what happened in this case. But now, I want to contrast that with communications to the Attorney General.

Obviously, the Civil Rights Division was supposed to raise significant matters with the associate's office, you said generally once a week.

MR. KATSAS: Right.

COMMISSIONER GAZIANO: And obviously, you were not a potted plant. So, anything that you were
interested in, you could've inquired about further, right?

MR. KATSAS: As the associate?

COMMISSIONER GAZIANO: Yes.

MR. KATSAS: Sure.

COMMISSIONER GAZIANO: And we have now supplemental interrogatory answers just received last week that we should've received ten months ago saying, "The Attorney General was made generally aware." I think it's not an exact quote, but pretty close, of the dismissal -- Attorney General Holder was made generally aware of -- of the consideration of dismissal.

He could have made inquiries if he thought that that raised concerns. Is that correct? He's not a potted plant in other words.

MR. KATSAS: No, no.

COMMISSIONER GAZIANO: He has authority to overrule.

MR. KATSAS: He has authority. He has every prerogative to do that. The question for him would be whether he wants to use his very limited time to drill down into a case like that.

COMMISSIONER GAZIANO: Correct, but you would not --
CHAIRPERSON REYNOLDS: Next round. Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: No, but if -- I'm happy to -- I'll just say no.

CHAIRPERSON REYNOLDS: Okay, Commissioner Kirsanow.

COMMISSIONER KIRSANOW: No questions.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: No questions.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes. I was -- I was curious about a statement that you made in your statement, in which you say New Black Panther Party endorsed President Obama for President. Where did you get that information from?

MR. KATSAS: I don't recall the source. I did some general quick and dirty -- quick and dirty internet research in the course of preparing.

COMMISSIONER YAKI: Could you provide that source? Because I'm not familiar with that?

MR. KATSAS: I'll look through my notes.

COMMISSIONER YAKI: And secondly, this -- there's some -- there's some -- there's a tautology here, which I'm not quite getting. And maybe it's

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simply if you say it enough, it'll become true. Why would you consider this particular case, which at most involved two, maybe three individuals, of a pretty small organization, that apparently only manifested itself in one precinct in Philadelphia, despite declarations, "I was going to try and do this a lot of other places?"

Why would you consider this high-profile?

MR. KATSAS: High-profile because the conduct was recorded on the videotapes that you saw, and played in the national media immediately --

COMMISSIONER YAKI: So, absent YouTube, you're saying this -- yes, that's okay. It would not have been high-profile? I mean is that the definition of high-profile? It's not how many people were involved? It's not how many voters -- voters were affected? It's not how many -- how many voters may have been impacted? It's simply because it was on YouTube? That's what makes it high-profile?

MR. KATSAS: All of those considerations are relevant to the question whether or not you bring the case.

COMMISSIONER YAKI: Well, let's leave aside YouTube. You've heard the testimony today of these two individuals behaving badly. I think -- I
think engaging in 11(b) type behavior. Witnesses who were there saw only two or three people actually turn away. Testimony from inside -- deposition witnesses -- deponents who were inside said people were kind of chatting about it and joking about it in some ways, but no one seemed to be overly concerned about it.

So, absent -- absent YouTube, how -- how high-profile is this? Two people, one precinct, three people maybe turned away.

MR. KATSAS: Look, I --

COMMISSIONER YAKI: We have no evidence saying that turnout was affected one way or another; if it was down or if it was up. Yes, it's an 11(b) as to those individuals, but how does it become high-profile other than the fact that someone was there with a camcorder?

MR. KATSAS: The question -- maybe we're quibbling about the term high-profile. To me, the term high-profile means was there widespread general knowledge about this incident, and that question does turn on do the -- is it known on a nationwide basis, or just in terms of the people who were there?

I don't think that's the same -- I don't think that it is or should be a driver in the decision whether or not to bring the case.
COMMISSIONER YAKI: Well, I would hope not. I would hope not. I would -- I would hope that parts -- that to bring the case would depend on the severity of the incident.

MR. KATSAS: Yes, absolutely.

COMMISSIONER YAKI: Certainly the number of people who were affected.

MR. KATSAS: No question -- no question about that. But I was asked which -- which way the high-profile nature of the incident cuts.

COMMISSIONER YAKI: No, I understand.

MR. KATSAS: Okay.

COMMISSIONER YAKI: Yes, you can have I don't know how many hits on YouTube, but if it's in the paper with a circulation of 400,000-500,000, is that high profile? I don't know.

MR. KATSAS: The other -- let me just make one related point on the video. It seems to me it may be relevant for the reasons Commissioner Gaziano suggested. Not a driver but a consideration. It's also relevant for another reason, which is it seems to me in terms of the decision whether or not to pursue the case, one obvious consideration the Department would -- would always consider is is this going to be an easy case or a hard case to prove. And that video,
in my judgment makes it frankly an open and shut case to prove, with no investment of Department resources.

So, I think it's relevant for that reason as well.

COMMISSIONER YAKI: But then we could argue that that's the easy way out --

CHAIRPERSON REYNOLDS: Last question.

COMMISSIONER YAKI: -- in determining whether there's 11(b) violation because the fact of the matter is there are a number of -- of cases that were not brought under 11(b) that probably should've by the Justice Department during this period of time that had a much more egregious effect on many more thousands -- hundreds and thousands of people than these particular idiots with their baton.

MR. KATSAS: I can't speak to other cases that I haven't looked at. All I can tell you is that this case strikes me as a clear -- the clear violation of law, linked up to the agenda of the national party, and widely --

COMMISSIONER YAKI: So, this is policy by --

CHAIRPERSON REYNOLDS: Commissioner, Commissioner Yaki --

MR. KATSAS: No.
COMMISSIONER YAKI: Sounds like it.
Sounds like what you're saying.

CHAIRPERSON REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: I didn't have anything.

CHAIRPERSON REYNOLDS: All right, Commissioner Heriot?

COMMISSIONER HERIOT: Mr. Katsas, I assume that you would agree that -- that one of the reasons for laws like this, and one of the reasons that the Department of Justice might undertake such an action is to general deterrence: sending the message out to people generally that intimidating voters is a bad thing.

MR. KATSAS: Sure.

COMMISSIONER HERIOT: Am I also right that the issue of general deterrence is linked up with is it a high profile issue. And by that, I mean I think what you mean as well.

MR. KATSAS: Yes.

COMMISSIONER HERIOT: You know, that a lot of people know about it.

MR. KATSAS: And that's why I think that is a fair and relevant consideration. I think in the
last round of questioning, I was just resisting a
suggestion that you bring a prosecution for no other
reason than --

COMMISSIONER HERIOT: No other reason.

But it's --

MR. KATSAS: -- there's a video.

COMMISSIONER HERIOT: -- perfectly
appropriate to consider it in the bringing of the
case?

MR. KATSAS: Of course.

COMMISSIONER HERIOT: Okay.

CHAIRPERSON REYNOLDS: Let's finish up the
order. Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes. This -- this
actually helps as a prelude to my final question to
you. Since the Justice Department in their
supplemental interrogatory answers, which we should've
gotten ten months ago, has admitted the Attorney
General was made generally aware of the -- the
dismissal notions, did you raise things to the
Attorney General level, or suggest things be raised to
the Attorney General level that were insignificant or
low profile?

MR. KATSAS: No.

COMMISSIONER GAZIANO: Okay, so what does
it tell you about the Obama-Holder Justice Department that this was raised to the Attorney General's level?

MR. KATSAS: I think it tends to confirm what I said in my written testimony, which was that my sense is that the decision to abandon most of this litigation, given everything that we knew about it, would have been a pretty sensitive one within DOJ.

COMMISSIONER GAZIANO: Certainly. Okay, since you were very helpful on explaining some of the permutations of executive privilege, I -- I can't spend a lot of time, but you heard this morning that we just got the witness statements that we've been asking for for ten months.

And even now, they're redacted as to their name. But I think the witnesses are going to volunteer to tell us whose was whose. Is there -- does it raise any clear, deliberative process issue to -- to have the witness statements that were on file?

MR. KATSAS: I wouldn't think so. Just let me make sure I understand. These are statements that DOJ took in the course of working up the case?

COMMISSIONER GAZIANO: Correct. Now, they may implicate work product, which doesn't apply. Which doesn't apply. So, does this --

MR. KATSAS: They wouldn't have been
deliberative process by definition because they involved a communication with someone outside the Department. They may have -- they may have involved something akin to a law enforcement-like privilege while the case was pending, but I would think that wouldn't apply after the case was over.

COMMISSIONER GAZIANO: We began our investigation after the dismissal.

MR. KATSAS: Yes.

COMMISSIONER GAZIANO: And do you think even to this day there's any justification for the White House to have -- or the administration to have redacted -- tried to keep from us the names of which witnesses made which statements?

MR. KATSAS: I can't think of one.

COMMISSIONER GAZIANO: Thank you.

CHAIRPERSON REYNOLDS: I want to yield half of my time to Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: I just want to push you a minute on this high-profile definition. I mean there was hope on this Commission that this would become a high-profile issue, but it seems to me indisputably it has not become one. That is, yes, the Washington Times, which is a paper nobody reads, is -- has been carrying stories on it, and Fox News did pick
up from the Washington Times at one point. But in terms of mainstream media?

COMMISSIONER GAZIANO: The Washington Post is Twittering this very hearing.

VICE CHAIR THERNSTROM: Okay, today. But up to now, this has not been -- maybe it will be as a consequence of today, but up to now, it has not been a high-profile issue. I just -- I mean I think that's important to establish.

MR. KATSAS: Those are fair observations. It has not been as high-profile as it might. But in the context of a strong meritorious case, it does seem to me fair for the reasons that we just discussed about general deterrence for the Department to take into consideration the dissemination of that information.

I don't think that should be a driver, but --

VICE CHAIR THERNSTROM: Look, I don't think the Department should shrug its shoulders, but I think given how low-profile it has been, what I would expect is for the Department to say, "Ah, who's paying attention?"

MR. KATSAS: I don't know. I would think that most incidents like this are not captured on a
video, put on the internet, and made the subject of a national network.

VICE CHAIR THERNSTROM: And by the way, I've talked to the Chairman about this, my last sentence. The members of the New Black Panther Party who were here before asked me if the Commission, at some other time obviously, could see the section of that YouTube video, which preceded what we do see. And I think --

MR. BLACKWOOD: If I might, we saw the complete YouTube video.

VICE CHAIR THERNSTROM: They think there is something that --

MR. BLACKWOOD: I had that conversation out in the hallway. I can tell you that's the complete YouTube video we have seen.

CHAIRPERSON REYNOLDS: Okay, so to the extent there's additional, we don't have it?

MR. BLACKWOOD: We do not have it.

COMMISSIONER GAZIANO: If they want to supply it to us, I would like to see it.

VICE CHAIR THERNSTROM: Well, exactly. If there is more, I'd like to see it.

CHAIRPERSON REYNOLDS: Okay. Any other questions? Okay, hold on a moment. Other than
Commissioner Yaki, do we have additional questions?

COMMISSIONER HERIOT: I have just one question.

CHAIRPERSON REYNOLDS: Okay, Commissioner Yaki?

COMMISSIONER YAKI: I'm just going to make one little follow up on the high-profile issue. Would it -- would it have been proper course to advise the Attorney General, regardless of whether you thought it was high-profile or not? But if you were reversing a decision of a prior administration, would that be something that you would advise the Attorney General's office that is was action you were taking?

MR. KATSAS: Yes, probably.

COMMISSIONER YAKI: That's all. Thank you.

MR. KATSAS: Because of the sensitivity of that kind of decision.

COMMISSIONER YAKI: Exactly, yes.

MR. KATSAS: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I just want to establish that we understand that high-profile is a matter of degree. Do you know of any other incident
at a precinct during that election that was any higher profile than this one?

MR. KATSAS: I'm not an expert, but no.

COMMISSIONER YAKI: I do.

CHAIRPERSON REYNOLDS: Okay.

COMMISSIONER YAKI: It depends on how you define high-profile. It depends on the number of people who were --

CHAIRPERSON REYNOLDS: Okay, we're going to direct our questions to the witnesses. Folks, this concludes our hearing for today. We will adjourn until May 14th, 2010, at which time we will hear testimony in the New Black Panther Party litigation matter from Assistant Attorney General Thomas Perez, and possibly a few other witnesses.

We will hold the record open for additional evidence pursuant to 45 CFR Section 702.8. Individuals who wish to submit items for consideration to be included in the record may do so by sending them to the General Counsel, David Blackwood, at the US Commission on Civil Rights, at 624 9th Street Northwest, Washington, D.C. 20425. Mr. Katsas, thank you very much.

MR. KATSAS: Thank you.

(Whereupon, the above-entitled matter went
off the record at 1:56 p.m.)