

## U.S. COMMISSION ON CIVIL RIGHTS

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## HEARING:

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, SEPTEMBER 24, 2010

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The Commission convened in Room  
540 at 624 Ninth Street, Northwest,  
Washington, D.C. at 10:00 a.m., GERALD A.  
REYNOLDS, Chairperson, presiding.

## PRESENT:

GERALD A. REYNOLDS, Chairperson  
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  
PAMELA A. DUNSTON, Chief, ASCD  
LATRICE FOSHEE  
LENORE OSTROWSKY  
EILEEN RUDERT  
KIMBERLY TOLHURST  
AUDREY WRIGHT

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## COMMISSIONER ASSISTANTS PRESENT:

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

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

(9:51 a.m.)

I. INTRODUCTION BY CHAIR

CHAIRMAN REYNOLDS: This hearing is called to order. Today we continue the hearing first initiated on April 23rd, 2010. At our April hearing, we took the testimony of fact witnesses who were present at the scene in Philadelphia on Election Day 2008 and also heard from former DOJ official Greg Katsas and the honorable Frank Wolf, congressman from Virginia.

On May 14th, 2010, Assistant Attorney General for Civil Rights Thomas Perez appeared before the Commission, testifying that after a review of the facts and the law, the Department of Justice concluded that they did not support the charges against three of the four original defendants, nor the remedy originally sought by DOJ.

He also testified this decision was made by two career attorneys. "This is a case about career people disagreeing with career people," he testified.

On July 6th, 2010, the Commission heard testimony from former Voting Section employee and member of the *Black Panther* trial team Christian

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1 Adams. Mr. Adams had been under a Commission subpoena  
2 to testify but had been directed by the Department not  
3 to comply. He resigned and fulfilled his obligation  
4 to appear before the Commission, alleging essentially  
5 that the decision to change course in the *New Black*  
6 *Panther Party* was but one symptom of a larger problem  
7 at the Civil Rights Division.

8 A culture of hostility to the race-neutral  
9 enforcement of the nation's civil rights laws, he  
10 provided examples of this alleged culture and  
11 repeatedly asserted that, if Christopher Coates,  
12 former Chief of the Voting Rights Section, were  
13 allowed to testify, he could support Adams'  
14 allegations.

15 Since Mr. Adams' testimony, a lawsuit by a  
16 private organization for the Justice Department to  
17 produce a log of privileged communications related to  
18 the Department's reversal in the *New Black Panther*  
19 *Party* case, a log which the Commission had previously  
20 requested from DOJ but which the Department refused to  
21 provide, that log reveals the existence of extensive  
22 communications at high levels within the Department on  
23 the status of the *New Black Panther Party* case,  
24 including e-mails by the number three official at the  
25 Justice Department, Thomas Perrelli, one of which

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1 discusses the thoughts of the office of the number two  
2 official at DOJ, the Deputy Attorney General on the  
3 case.

4 DOJ's Office of the Inspector General  
5 declined to investigate the *New Black Panther Party*  
6 case dismissal, citing limits on its jurisdiction. On  
7 September 13th, IG Glenn Fine sent a letter to  
8 Representatives Smith and Wolf, stating his intention  
9 to initiate a review of the enforcement of civil  
10 rights laws by the Voting Rights Section.

11 The Office of Professional Responsibility  
12 at DOJ continues its own investigation of the  
13 circumstances surrounding the dismissal of the New  
14 Black Panther Party case.

15 Late Wednesday, I received a letter from  
16 Mr. Coates asking for the opportunity to fulfill his  
17 obligations under the Commission's subpoena to  
18 testify. The Department has refused to allow him to  
19 testify, despite repeated requests from this  
20 Commission. He appears here at great personal risk to  
21 himself. I would like to thank Mr. Coates for his  
22 courage in appearing today.

23 We will proceed as follows. Mr. Coates  
24 will give his opening statement. Our General Counsel,  
25 Mr. Blackwood, will initiate questioning. Following

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1 Mr. Blackwood, each commissioner will have five  
2 minutes each to question the witness. I will lead off  
3 the questioning, followed by the Vice Chair and then  
4 the remaining commissioners in order of seniority.  
5 Commissioners may, of course, yield their time to one  
6 another. I will allow additional rounds of  
7 questioning as needed.

8 Mr. Coates, please raise your right hand.

9 Whereupon,

10 CHRISTOPHER COATES

11 was called as a witness by the U.S. Commission on  
12 Civil Rights and, having been first duly sworn, was  
13 examined and testified as follows:

14 CHAIRMAN REYNOLDS: Thank you.

15 Mr. Coates, after you retrieve your mike,  
16 please proceed.

17 II. TESTIMONY OF CHRISTOPHER COATES,  
18 DEPARTMENT OF JUSTICE ATTORNEY  
19 FORMERLY IN THE VOTING RIGHTS SECTION

20 MR. COATES: Good morning, Chairman  
21 Reynolds, Madam Vice Chairman Thernstrom, and other  
22 members of the Commission. I am here today to testify  
23 about the Department of Justice's final disposition of  
24 the *New Black Panther Party* case and the hostility in  
25 the Civil Rights Division and the Voting Section

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1 towards the equal enforcement of some of the federal  
2 voting laws.

3 This Commission served me with a subpoena  
4 in December 2009 to testify in its investigation.  
5 Since service of that subpoena, I have been instructed  
6 by DOJ officials not to comply with it.

7 I have communicated with these officials,  
8 including the Assistant Attorney General for Civil  
9 Rights, Thomas Perez, and expressed my view that I  
10 should be allowed to testify concerning this important  
11 civil rights enforcement issue. I have pointed out  
12 that I have personal knowledge that is relevant to  
13 your investigation, personal knowledge that Mr. Perez  
14 does not have because he was not serving as the  
15 Assistant Attorney General for Civil Rights at the  
16 time of the final disposition of the Panther case.

17 My requests to be allowed to testify and  
18 your repeated requests to the DOJ for me to be allowed  
19 to respond to your lawfully issued subpoena have all  
20 been denied.

21 Furthermore, I have reviewed the written  
22 statements and the testimony of Mr. Perez and others  
23 from the DOJ given to this Commission and to Congress  
24 concerning the Division's enforcement activities,

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1 including its enforcement activities in the Panther  
2 case.

3 In addition, I have reviewed Mr. Perez's  
4 August 11th letter to the Chairman, in which he again  
5 denied your request that I be allowed to testify and  
6 in which he made various representations concerning  
7 the Department's enforcement practices.

8 Based upon my own personal knowledge of  
9 the events surrounding the Division's actions in the  
10 *Panther* case, and the atmosphere that has existed and  
11 continues to exist in the Division and in the Voting  
12 Section against fair enforcement of certain federal  
13 voting laws, I do not believe these representations to  
14 this Commission accurately reflect what occurred in  
15 the Panther case and do not reflect the hostile  
16 atmosphere that has existed within the Division for a  
17 long time against race-neutral enforcement of the  
18 Voting Rights Act.

19 In giving this testimony, I do not claim  
20 that Mr. Perez has knowingly given false testimony to  
21 either this Commission or to Congress. Indeed, as I  
22 have previously indicated, Mr. Perez was not present  
23 in the Division at the time the decisions were made in  
24 the *Panther* case, and he may not be fully aware of the  
25 long-term hostility to race-neutral enforcement of the

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1 Voting Rights Act in either the Division or the in the  
2 Voting Section. Instead, my testimony claims that the  
3 DOJ's public representations to this Commission and  
4 other entities do not accurately reflect what caused  
5 the dismissals of the three defendants in the Panther  
6 case and the very limited injunctive relief we were  
7 instructed to obtain against the remaining defendant.  
8 And those representations do not accurately describe  
9 the longstanding opposition to the Division and in the  
10 Voting Section to the equal enforcement of the  
11 provisions of the Voting Rights Act.

12 I do not lightly decide to comply with  
13 your subpoena in contradiction to the DOJ's directives  
14 to me not to testify. I had hoped that this  
15 controversy would not come to this point. However, I  
16 have determined that I will not fail to respond to  
17 your subpoena and thereby fail to give this Commission  
18 accurate information pertinent to your investigation.

19 Quite simply, if incorrect representations  
20 are going to successfully thwart inquiry into the  
21 systemic problems regarding race-neutral enforcement  
22 of the Voting Rights Act by the Civil Rights Division,  
23 problems that were manifested in the DOJ's disposition  
24 of the *New Black Panther Party* case, that end is not  
25 going to be furthered or accomplished by my sitting

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1 idly or silently by at the direction of my supervisors  
2 while incorrect information is provided.

3 I do not believe that I am professionally,  
4 ethically, legally, much less morally bound to allow  
5 such a result to occur. In addition, in giving this  
6 testimony, I am claiming the protections of all  
7 applicable whistleblower statutes.

8 On the other hand, in giving the  
9 testimony, I will not answer questions which will  
10 require me to disclose communications in the Panther  
11 case that are protected by the deliberative process  
12 privilege.

13 That privilege that the DOJ has asserted  
14 in this matter can, in my opinion, be protected, while  
15 at the same time I can provide you information that  
16 you need to conduct your investigation; indeed,  
17 firsthand information that you will not have if I do  
18 not testify, that also respects the privilege.

19 To understand what occurred in the Panther  
20 case, those actions must be placed in the context of  
21 *United States v. Ike Brown*. Prior to the filing of  
22 the *Brown* case in 2005, the Civil Rights Division had  
23 never filed a single case under the Voting Rights Act  
24 in which it claimed that white voters had been  
25 subjected to racial discrimination by defendants who

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1 were African American or members of other minority  
2 groups.

3           Moreover, the Division and the Section had  
4 never objected to any change under the pre-clearance  
5 requirements of Section 5 of the Voting Rights Act on  
6 the ground that the voting change had a racially  
7 discriminatory purpose or effect on white voters. No  
8 such objection, even in jurisdictions that have  
9 majority-minority populations, has been interposed to  
10 date.

11           I am very familiar with the reaction of  
12 many employees, both the line and management attorneys  
13 and support staff in both the Division and the Voting  
14 Section, to the *Ike Brown* investigation and the filing  
15 of that case, because I was the attorney who initiated  
16 and led the investigation in that matter and I was the  
17 lead attorney throughout the case in the trial court.

18           Opposition within the Voting Section was  
19 widespread to taking actions under the Voting Rights  
20 Act on behalf of white voters in Noxubee County,  
21 Mississippi, the jurisdiction in which Ike Brown is  
22 and was the Chairman of the local Democratic Executive  
23 Committee.

24           In 2003, white voters and white candidates  
25 complained to the Voting Section of the Civil Rights

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1 Division that elections had been administered in a  
2 racially discriminatory manner and asked that federal  
3 observers be sent to the primary run-off elections.  
4 Career attorneys in the Voting Section recommended  
5 that we not even go to Noxubee County for the primary  
6 run-off to do election coverage, but that opposition  
7 to going to Noxubee was overridden by the Bush  
8 administration's Civil Rights Division.

9 I went on coverage and, while traveling to  
10 Mississippi, the Deputy Chief from the Voting Section,  
11 who was leading that election coverage, asked me, "Can  
12 you believe we are going to Mississippi to protect  
13 white voters?"

14 What I observed on election coverage in  
15 Noxubee County was some of the most outrageous and  
16 blatant racially discriminatory behavior at the polls  
17 committed by Ike Brown and his allies that I have seen  
18 or had reported to me in my 33 years plus as a voting  
19 rights litigator.

20 A description of this wrongdoing is  
21 well-summarized in Judge Tom Lee's opinion in that  
22 case and in the Fifth Circuit Court of Appeals'  
23 opinion affirming the judgment and the injunctive  
24 relief against Mr. Brown and the local Democratic  
25 Executive Committee.

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1           Some time, as best I recall, in the Winter  
2 of 2003 or 2004, after I returned from election  
3 coverage in Noxubee County, I wrote a preliminary  
4 memorandum summarizing the evidence that we had to  
5 that point and made a recommendation as to what action  
6 to take in Noxubee County. In that memorandum, I  
7 recommended that the Voting Section go forward with  
8 an investigation under the Voting Rights Act and  
9 argued that a civil injunction against Ike Brown and  
10 the local Democratic Committee was the most effective  
11 way of stopping the pattern of voting discrimination  
12 that I had observed.

13           I forwarded this memorandum to Joe Rich,  
14 who was Chief of the Voting Section at that time. I  
15 later found out that Mr. Rich had forwarded the  
16 memorandum to the Division front office, but he had  
17 omitted the portion of the memorandum in which I  
18 discussed why it was best to seek a civil injunction  
19 in the *Brown* case.

20           Because I am aware that Mr. Rich and Mr.  
21 Hans von Spakovsky have filed conflicting affidavits  
22 on this point with this Commission, I believe that I  
23 am at liberty to address this issue without violating  
24 DOJ privileges.

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1 I want to underscore that my memorandum in  
2 which Mr. Rich omitted portions was not the subsequent  
3 justification memorandum that sought approval to file  
4 the case in Noxubee County, but was a preliminary  
5 memorandum that sought permission to go forward with  
6 the investigation.

7 Nevertheless, it is my clear recollection  
8 that Mr. Rich omitted a portion of my memorandum, a  
9 highly unusual act, and that I was later informed by  
10 the Division front office that Mr. Rich had stated  
11 that the omission was because he did not agree with my  
12 recommendation that the investigation needed to go  
13 forward or that a civil injunction should be sought.  
14 Nevertheless, approval to go forward with the  
15 investigation was obtained from the Bush  
16 administration Civil Rights Division front office in  
17 2004.

18 Once the full investigation into Brown's  
19 practices commenced, opposition to it by career  
20 personnel in the Voting Section was widespread.  
21 Several examples will suffice.

22 I talked with one career attorney with  
23 whom I had previously worked successfully in a voting  
24 case and asked him whether he might be interested in  
25 working on the *Ike Brown* case. He informed me in no

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1 uncertain terms that he had not come to the Voting  
2 Section to sue African-American defendants.

3 One of the social scientists who worked in  
4 the Voting Section and whose responsibility it was to  
5 do past and present research into a local  
6 jurisdiction's history flatly refused to participate  
7 in the investigation.

8 On another occasion, a Voting Section  
9 career attorney informed me that he was opposed to  
10 bringing voting rights cases against African-American  
11 defendants, such as in the *Ike Brown* case, until we  
12 reached the day when the socioeconomic status of  
13 blacks in Mississippi was the same as the  
14 socioeconomic status of whites living there.

15 Of course, there is nothing in the  
16 statutory language of the Voting Rights Act that  
17 indicates that DOJ lawyers can decide not to enforce  
18 the race-neutral prohibitions in Section 2 of the Act  
19 against racial discrimination or in 11(b) of the Act,  
20 the anti-intimidation prohibitions, until  
21 socioeconomic parity is achieved between blacks and  
22 whites in the jurisdictions in which the cases arise.

23 But with the help of one attorney and one  
24 paralegal, who was new to the Voting Section, and with

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1 the support of the Division front office, I was able  
2 to investigate and bring suit.

3 By the time the case went into discovery  
4 and then into trial in 2007, the Bush administration  
5 had hired some attorneys, such as Christian Adams and  
6 Joshua Rogers, who did not oppose working on lawsuits  
7 of this kind. They and I were able to complete  
8 discovery and to try the case and win and obtain  
9 meaningful injunctive relief, including the removal of  
10 Ike Brown from his position as superintendent of the  
11 Democratic primary elections in Noxubee County.

12 However, I have no doubt that this  
13 investigation and case would not have gone forward if  
14 the decision had been ultimately made by the career  
15 managers in the Voting Section when the case was first  
16 approved for investigation and then filed.

17 A regrettable incident occurred during the  
18 trial in the *Brown* case. A young African American  
19 working in the Voting Section as a paralegal  
20 volunteered to work on the *Ike Brown* case, and he  
21 later volunteered to work on the *Panther* case.  
22 Because of his participation in the *Ike Brown* case, he  
23 and his mother, who was an employee in another section  
24 of the Civil Rights Division, were harassed by an  
25 attorney in that other section and by an

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1 administrative employee and a paralegal in the Voting  
2 Section. I reported this to the Bush administration  
3 Division front office, and the harassment was  
4 addressed.

5 But even after the favorable ruling in the  
6 *Ike Brown* case, opposition to it continued. At a  
7 meeting with Division management in 2008 concerning  
8 preparations for the general election that year, I  
9 pointed to the ruling in *Brown* as precedent supporting  
10 race-neutral enforcement of the Voting Rights Act.  
11 Mark Kappelhoff, then Chief of the Division's Criminal  
12 Section, complained that the *Brown* case had caused the  
13 Division, the Civil Rights Division, problems in its  
14 relation with civil rights groups.

15 Mr. Kappelhoff is correct in claiming that  
16 a number of these groups are opposed to the  
17 race-neutral enforcement of the Voting Rights Act,  
18 that they only want the Act to be enforced for the  
19 benefit of racial minorities and that they had  
20 complained bitterly to the Division about the *Ike*  
21 *Brown* case. But, of course, what Mr. Kappelhoff had  
22 not factored in his criticism of the *Brown* case was  
23 that the primary role of the Civil Rights Division is  
24 to enforce the civil rights laws enacted by Congress,

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1 not to serve as a crowd pleaser for many of the civil  
2 rights groups.

3 Many of those groups on the issue of  
4 race-neutral enforcement of the Voting Rights Act,  
5 frankly, have not pursued the goal of equal protection  
6 of the law for all people. Instead, many of these  
7 groups act, as they did in response to the *Brown* case,  
8 not as civil rights groups but as special interest  
9 lobbies for racial and ethnic minorities and demand  
10 not equal treatment but enforcement of the Voting  
11 Rights Act only for racial and language minorities.  
12 Such a claim of unequal treatment is the ultimate  
13 demand for preferential racial treatment.

14 When I was Chief of the Voting Section in  
15 2008, and because I had experienced, as I have  
16 described, employees in the Voting Section refusing to  
17 work on the *Ike Brown* case, I began to ask applicants  
18 for trial attorney positions in their job interviews  
19 whether they would be willing to work on cases that  
20 involved claims of racial discrimination against white  
21 voters as well as cases that involved claims of racial  
22 discrimination against minority voters. For obvious  
23 reasons, I did not want to hire people who were  
24 politically or ideologically opposed to the equal

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1 enforcement of the voting statutes the Voting Section  
2 is charged with enforcing.

3 The asking of this question in job  
4 interviews did not ever to my knowledge cause any  
5 problems with applicants to whom I asked that question  
6 and, in fact, every applicant to whom I asked the  
7 question responded that he or she would have no  
8 problem working on a case involving white victims,  
9 such as the *Ike Brown* case.

10 However, word that I was asking applicants  
11 that question got back to Loretta King. In the Spring  
12 of 2009, Ms. King, who had by then been appointed the  
13 Acting Assistant Attorney General for Civil Rights by  
14 the Obama administration, called me to her office and  
15 specifically instructed me that I was not to ask any  
16 other applicants whether they would be willing to, in  
17 effect, race-neutrally enforce the Voting Rights Act.

18 Ms. King took offense that I was asking  
19 such a question of job applicants and directed me not  
20 to ask it because I do not believe she supports equal  
21 enforcement of the provisions of the Voting Rights Act  
22 and she has been highly critical of the filing and the  
23 civil prosecution of the *Ike Brown* case.

24 From Ms. King's view, why should I ask  
25 that question when a response that an applicant would

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1 not be willing to work on a case against a minority  
2 election official would not in any way, in her  
3 opinion, I believe, weigh against hiring that  
4 applicant to work in the Voting Section.

5 The election of President Obama brought to  
6 positions of influence and power within the Civil  
7 Rights Division many of the very people who had  
8 demonstrated hostility to the concept of equal  
9 enforcement of the Voting Rights Act.

10 For example, Mr. Kappelhoff, who had  
11 complained in 2008 that the *Brown* case had caused  
12 problems with the Civil Rights Division, was appointed  
13 the Acting Chief of Staff for the entire Civil Rights  
14 Division by the Obama administration. And Loretta  
15 King, the person who forbade me to ask any applicants  
16 for a Voting Section position whether he or she would  
17 be willing to enforce the Voting Rights Act in a  
18 race-neutral manner, was appointed Acting Assistant  
19 Attorney General for Civil Rights.

20 Furthermore, one of the groups that had  
21 opposed the Civil Rights Division's prosecution of the  
22 *Ike Brown* case most adamantly was the NAACP Legal  
23 Defense Fund, through its Director of Political  
24 Participation, Kristen Clarke. Ms. Clarke has spent a

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1 considerable amount of time attacking the Division's  
2 decision to file and prosecute the *Ike Brown* case.

3 Grace Chung Becker, the Acting AAG for  
4 Civil Rights during the last year of the Bush  
5 administration, and I were involved in a meeting in  
6 the Fall of 2008 with a number of representatives of  
7 civil rights organizations concerning the Division's  
8 preparations for the 2008 general election.

9 At this meeting, Ms. Clarke spent a  
10 considerable amount of time criticizing the Division  
11 and the Voting Section for bringing the *Brown* case  
12 when, in fact, the district court had already ruled in  
13 the case.

14 Indeed, it was reported to me that Ms.  
15 Clarke approached an African-American attorney who had  
16 been working in the Voting Section for only a short  
17 period of time in the Winter of 2009, before the  
18 dismissals in the *Panther* case, and asked that  
19 attorney when the *New Black Panther Party* case was  
20 going to be dismissed. The Voting Section attorney to  
21 whom I refer was not even involved in the *Panther*  
22 case.

23 This reported incident led me to believe  
24 in 2009 that the Legal Defense Fund Political  
25 Participation Director, Ms. Clarke, was lobbying for

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1 the dismissal of the *New Black Panther Party* case  
2 before it was dismissed.

3 It was within this atmosphere, with these  
4 managers at the Division level and with pressure being  
5 applied by an organization, the NAACP Legal Defense  
6 Fund, that is close to the Obama administration's  
7 Civil Rights Division management group, that the  
8 decision to gut the *New Black Panther Party* case was  
9 made.

10 Although there have been recent reports  
11 that indicate that senior political appointees at high  
12 levels in the Department were involved in the *Panther*  
13 case, it was Ms. King, along with her deputy, Steve  
14 Rosenbaum, whom the Justice Department has claimed  
15 made the decision to dismiss three of the  
16 party-defendants in that case and ordered the  
17 limitation on the broader injunctive relief  
18 recommended by both Voting Section and Appellate  
19 Section attorneys against the one remaining defendant.

20 It is my opinion that the disposition of  
21 the *Panther* case was ordered because the people  
22 calling the shots in May 2009 were angry at the filing  
23 of the *Brown* case and angry at the filing of the  
24 *Panther* case. That anger was the result of their  
25 deep-seated opposition to the equal enforcement of the

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1 Voting Rights Act against racial minorities and for  
2 the protection of white voters who had been  
3 discriminated against.

4 Ms. King, Mr. Rosenbaum, Mr. Kappelhoff,  
5 Ms. Clarke, a large number of the people working in  
6 the Voting Section and in the Civil Rights Division  
7 and many of the liberal product groups at work in the  
8 civil rights field, believe incorrectly but vehemently  
9 that enforcement of the protections of the Voting  
10 Rights Act should not be extended to white voters but  
11 should be extended only to protecting racial, ethnic,  
12 and language minorities.

13 The final disposition of the *Panther* case,  
14 even in the face of a default by the defendants, was  
15 caused by this incorrect view of civil rights  
16 enforcement, and it was intended to send a direct  
17 message, in my opinion, to people inside and outside  
18 the Civil Rights Division. That message is that the  
19 filing of voting cases like the *Ike Brown* case and the  
20 *New Black Panther Party* case would not continue in the  
21 Obama administration.

22 The disposition of the *Panther* case was  
23 not required by the facts developed during the case or  
24 the applicable case law, as has been claimed, but was  
25 because of this incorrect view of civil rights

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1 enforcement that is at war with the statutory language  
2 of the Voting Rights Act, which is written in a  
3 race-neutral manner, and at war with racially fair  
4 enforcement of federal law.

5 If anyone doubts that the Civil Rights  
6 Division and the Voting Section have failed to enforce  
7 the Voting Rights Act in a race-neutral manner, one  
8 only has to look at the enforcement of Section 5's  
9 pre-clearance requirements.

10 The statutory language of Section 5 speaks  
11 in terms of protecting all voters from racial  
12 discrimination. But the Voting Section has never  
13 interposed an objection under Section 5 to a voting  
14 change on the ground that it discriminated against  
15 white voters in the 45-year history of the Act.

16 This failure includes no objections in the  
17 many majority-minority jurisdictions in the covered  
18 states. Indeed, the personnel in the Voting Section's  
19 unit which handles Section 5 submissions are  
20 instructed only to see if the voting change  
21 discriminates against racial, ethnic, and language  
22 minority voters.

23 This practice of not enforcing Section 5's  
24 protections for white voters includes jurisdictions,  
25 such as Noxubee County, Mississippi, where the *Ike*

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1 *Brown* case arose, where white voters are in the racial  
2 minority. It is in those jurisdictions that the  
3 Voting Section's failure to apply Section 5's  
4 protections for white minority voters is particularly,  
5 in my opinion, problematic.

6 On two occasions while I was Chief of the  
7 Voting Section, I tried to persuade officials at the  
8 Division level to change this policy so that white  
9 voters would be protected by Section 5 in appropriate  
10 circumstances, but to no avail. I believe that  
11 present management at both the Division and the  
12 Section are opposed to the race-neutral enforcement of  
13 Section 5 and continue to enforce those provisions in  
14 a racially selective manner.

15 As I have indicated, I am not going to  
16 testify about the statements made during my meetings  
17 with Ms. King and Mr. Rosenbaum because of the DOJ's  
18 assertion of the deliberative process privilege.  
19 However, the DOJ and Mr. Perez have publicly  
20 articulated reasons for the disposition of the Panther  
21 case. And I will, therefore, address here several of  
22 those publicly stated reasons for dismissal of three  
23 defendants and the limitations on injunctive relief.

24 The primary reason cited by the Division  
25 for not obtaining injunctive relief against Black

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1 Panther Jerry Jackson, who stood at the Philadelphia  
2 polling place in uniform with his fellow Panther King  
3 Samir Shabazz but without a weapon, was that a  
4 Philadelphia police officer came to the polling place,  
5 made the determination that King Samir Shabazz had to  
6 leave the polling place, but that Black Panther  
7 Jackson could stay because he was a certified  
8 Democratic poll watcher.

9           During my 13 and a half years in the  
10 Voting Section, I cannot remember another situation  
11 where a decision not to file a Voting Rights Act case,  
12 much less to dismiss pending claims and parties, as  
13 happened in the *New Black Panther Party* case, was  
14 made, in whole or in part, on a determination of a  
15 local police officer.

16           In my experience, officials in the Voting  
17 Section and the Civil Rights Division always reserved  
18 for themselves, and correctly so, the determination as  
19 to what behavior constitutes a violation of federal  
20 law and what does not. One of the reasons for this  
21 federal preemption of the determination of what  
22 constitutes a Voting Rights Act violation is that  
23 local police officers are normally not trained in what  
24 constitutes a Voting Rights Act violation.

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1           In addition, in the Philadelphia police  
2 incident report provided to this Commission by the  
3 DOJ, the Philadelphia police officer who came to the  
4 polling place did not determine that Black Panther  
5 Jackson's actions were not intimidating. Instead, he  
6 simply reported that Jackson was certified by the  
7 Democratic Party to be a poll watcher at the polling  
8 place and was allowed to remain.

9           Further, as the history underlying the  
10 enactment and the extension of the Voting Rights Act  
11 shows, local police have on occasion had sympathy for  
12 persons who were involved in behavior that adversely  
13 affected the right to vote or violated the protections  
14 of the Voting Rights Act.

15           In this case, however, the fact that one  
16 Philadelphia police officer did not require Black  
17 Panther Jackson to leave the area became such a  
18 compelling piece of evidence that it was cited by the  
19 Assistant Attorney General in his May 14, 2010 written  
20 statement to this Commission. There Mr. Perez stated  
21 that, "The Department placed significant weight on the  
22 responses of the law enforcement first responder to  
23 the Philadelphia polling place" in allowing Black  
24 Panther Jackson to escape default judgment and escape

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1 the entry of injunctive relief against his future  
2 actions.

3 Based upon my experience, this reasoning  
4 is extraordinarily strange and an unpersuasive basis  
5 to support the Division's disposition of the *Panther*  
6 case.

7 Another publicly stated reason by the DOJ  
8 was in a June [sic.] 13th, 2009 letter to Congressmen  
9 Frank Wolf and Lamar Smith that pointed out that  
10 Panther Jackson lived at the apartment building whose  
11 lower level was being used as the polling place. This  
12 reason was later abandoned by the Division, but the  
13 fact that it was asserted shortly after the dismissal  
14 in the case strongly suggests that it was a reason  
15 asserted at some point close to the time of the  
16 dismissals.

17 Regarding the location of Panther  
18 Jackson's residence, our investigation determined that  
19 Jackson's claim that he was a resident of the  
20 apartment building was not true. However, even if it  
21 was true that Panther Jackson resided there, it should  
22 be quite clear to all that such a fact would not have  
23 provided a legal basis for intimidating voters.

24 To understand the rationale of these  
25 articulated reasons for gutting this case, the *Panther*

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1 case, one only has to state the facts in the racial  
2 reverse. Assume that two members of the Ku Klux Klan,  
3 one of which lived in an apartment building that was  
4 being used as a polling place, showed up at the  
5 entrance in KKK regalia and that one of the Klansmen  
6 was carrying a billy stick. Further assume that the  
7 two Klansmen were yelling racial slurs at black  
8 voters, who were a minority of the people registered  
9 to vote at that particular polling place and that the  
10 Klansman was blocking ingress to the polling place.  
11 Assume further that a local policeman came on the  
12 scene and determined that the Klan with the billy club  
13 must leave but that the other Klansman could stay  
14 because he was a certified poll watcher for a local  
15 political party.

16 In those circumstances, ladies and  
17 gentlemen, does anyone seriously believe that the  
18 Assistant Attorney General for Civil Rights would  
19 contend that, on the basis of the facts and the law,  
20 the Civil Rights Division did not have a case under  
21 the Voting Rights Act against the hypothetical  
22 Klansman that I described because he resided in the  
23 apartment building where the polling place was located  
24 or because he was allowed to stay at the polling place

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1 by a local police officer because he was a poll  
2 watcher?

3 I certainly hope that Mr. Perez would not  
4 find that hypothetical case lacking in merit, and I  
5 will guarantee you, on the basis of my working with  
6 them, that Ms. King, Mr. Rosenbaum, Mr. Kappelhoff,  
7 and Ms. Clarke would not either.

8 However, such reasons are a part of the  
9 publicly articulated grounds for the Division's  
10 decision to instruct me to dismiss a significant  
11 portion of the *Panther* case.

12 Based on my own personal knowledge of the  
13 events surrounding the Panther case and the atmosphere  
14 that existed in the Division in the Voting Section  
15 against racially fair enforcement of certain federal  
16 voting laws, I do not believe these publicly stated  
17 representations to the Commission and other entities  
18 accurately reflect what occurred in the *Panther* case.  
19 They do not acknowledge the hostile atmosphere that  
20 has existed within the Division against the  
21 race-neutral enforcement of the Voting Rights Act.

22 In the Summer of 2009, Julie Fernandes was  
23 appointed as Deputy Assistant Attorney General for  
24 Civil Rights by the Obama administration. One of her  
25 responsibilities is to oversee voting.

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1 Ms. Fernandes and I worked together in the  
2 Voting Section during the Clinton administration. She  
3 had spent years working for civil rights groups, such  
4 as, since our Clinton administration days, mainly with  
5 the Leadership Conference for Civil Rights, but I  
6 hoped that she might have an enforcement approach  
7 different than Ms. King's and Mr. Rosenbaum's. I was  
8 to be disappointed.

9 Ms. Fernandes began scheduling luncheons  
10 in the conference room of the Voting Section at which  
11 the various statutes the Voting Section has the  
12 responsibility for enforcing were discussed as well as  
13 other enforcement activities.

14 In September 2009, Ms. Fernandes held a  
15 meeting to discuss enforcement of the  
16 anti-discrimination provisions of Section 2 of the  
17 Voting Rights Act. At this meeting, one of the Voting  
18 Section trial attorneys asked Ms. Fernandes what  
19 criteria would be used to determine what type of  
20 Section 2 cases the Division front office would be  
21 interested in pursuing.

22 Ms. Fernandes responded by telling the  
23 gathering there that the Obama administration was only  
24 interested in bringing traditional types of Section 2  
25 cases that would provide equality for racial and

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1 language minority voters. And then she went on to say  
2 that this is what we are all about or words to that  
3 effect.

4 When Ms. Fernandes made that statement,  
5 everyone in the room, talking about the conference  
6 room on the seventh floor, where the Voting Section is  
7 located, understood exactly what she meant: no more  
8 cases like *Ike Brown* and no more cases like the *New*  
9 *Black Panther Party* case.

10 Ms. Fernandes reiterated that directive in  
11 another meeting held in December 2009 on the subject  
12 of federal observer election coverage, in which she  
13 stated to the entire group in attendance that the  
14 Voting Section's goal was to ensure equal access for  
15 voters of color or language minority.

16 In November 2009, a similar lunch was held  
17 by Ms. Fernandes, probably more accurately described a  
18 brown bag lunch, at which people would bring their  
19 lunches and meet in the conference room.

20 That meeting was held on the subject of  
21 the National Voter Registration Act. Two provisions  
22 of the NVRA are found in Section 8 of that Act. They  
23 require states to ensure that voter registration list  
24 maintenance be conducted so that registration lists do  
25 not have the names of persons who were no longer

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1 eligible to vote in the jurisdiction. Further,  
2 Section 8 also provides that certain notice  
3 requirements are to be followed in order to legally  
4 remove persons from a voter registration list.

5 In discussions specifically addressing the  
6 list maintenance provision of Section 8 of the  
7 National Voter Registration Act, Ms. Fernandes stated  
8 list maintenance had to do with the administration of  
9 elections.

10 She went on to say that the Obama  
11 administration was not interested in that type of  
12 issue but, instead, interested in issues that  
13 pertained to voter access.

14 During the Bush administration, the Voting  
15 Section began filing cases under the list maintenance  
16 provisions of Section 8 to compel states and local  
17 registration officials to remove ineligibles from the  
18 list. These suits were very unpopular with a number  
19 of the groups that work in the area of voting rights  
20 or voter registration.

21 When Ms. Fernandes told the Voting Section  
22 that the Obama administration was not interested in  
23 the Section 8 list maintenance enforcement activity,  
24 everyone in the room understood exactly what she  
25 meant. We understood that she was not talking about

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1 Section 8 cases in which there is a claim that the  
2 removal procedures of Section 8 were not complied  
3 with. Instead, she was talking about the type of  
4 cases that the Voting Section filed during the Bush  
5 administration whose purpose was to compel the states  
6 to comply with the Section 8 directive that they do  
7 this maintenance by removing ineligibles from the  
8 list.

9 In June 2009, the Election Assistance  
10 Commission issued a biannual report concerning what  
11 states appeared not to be in compliance with Section  
12 8's list maintenance requirements.

13 The report identified eight states that  
14 appeared to be the worst in terms of their  
15 noncompliance with the list maintenance requirement of  
16 Section 8.

17 These were states that reported that no  
18 voters had been removed from any of their voters'  
19 lists in the last two years. Obviously this is a good  
20 indication that something is not right with the list  
21 maintenance practices in a state.

22 As Chief of the Voting Section, I assigned  
23 attorneys to work on this matter. And in September  
24 2009, I forwarded a memo to the Division front office

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1 asking for approval to go forward with the Section 8  
2 list maintenance investigations in these states.

3           During the time that I was Chief, no  
4 approval was given to this project. And it is my  
5 understanding that approval has never been given for  
6 that Section 8 list maintenance project to date. That  
7 means that we have entered the 2010 election cycle  
8 with eight states appearing to be in major  
9 noncompliance with list maintenance requirements of  
10 Section 8 of the NVRA. And, yet, the Voting Section,  
11 which has the responsibility to enforce that law, has  
12 yet to take any action.

13           From these circumstances, I believe that  
14 Ms. Fernandes's statement to the Voting Section in  
15 November 2009 not to, in effect, initiate Section 8  
16 list maintenance enforcement activities has been  
17 complied with.

18           In Mr. Perez's letter to this Commission  
19 on August 11th, 2010, he stated that the Division  
20 currently has active matters under the NVRA,  
21 "including investigations under Section 8." In making  
22 the statement, I do not believe Mr. Perez was  
23 referring to Section 8 list maintenance cases, the  
24 kind of cases Ms. Fernandes was referring to when she  
25 talked about no interest in enforcing Section 8,

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1 because I do not believe that the Voting Section has  
2 recently been involved in any list maintenance  
3 enforcement during the Obama administration.

4 Furthermore, it should be noted not to  
5 enforce the list maintenance provisions of Section 8  
6 is likely to have a partisan consequence as well. A  
7 number of the jurisdictions that have bloated voter  
8 registration lists are where there are sizeable  
9 minority populations that are Democratic strongholds.

10 For example, at the time of the trial in  
11 the *Ike Brown* case, the Noxubee County Election  
12 Commission had not purged its list, as required by  
13 Mississippi law and Section 8 of the NVRA, so that the  
14 number of persons on the voter registration list was  
15 approximately 130 percent of the number of people in  
16 that county who were 18 years of age or older.

17 As Congress recognized in enacting the  
18 list maintenance provisions of Section 8, a bloated  
19 voter registration list increases the risk of voter  
20 fraud.

21 Finally, let me just respectfully submit  
22 that equal enforcement of the Voting Rights Act is  
23 absolutely essential for a number of reasons. First,  
24 it is required by the statutory language of the Act.

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1 Congress did not use statutory language  
2 that speaks in terms of discrimination against racial  
3 or language minorities but in terms of discrimination  
4 on the basis of race or color. In extending and  
5 amending Section 5 of the Act in 2006, Congress used  
6 the term "any voter," not "racial or ethnic voters."

7 Further, the statutory construction given  
8 the Voting Rights Act by the courts supports the fact  
9 that the Act is written in race-neutral terms and is  
10 intended for the protection of all.

11 When we go to work with the Department, we  
12 take an oath faithfully to enforce the laws of the  
13 United States. Enforcing the Voting Rights Act in a  
14 racially selective manner or choosing not to enforce  
15 certain provisions of the federal voting law, such as  
16 the list maintenance provisions of Section 8 of the  
17 Act, is not in compliance with the oath we have taken.

18 Second, when the Voting Rights Act was  
19 originally enacted in 1965, it probably did not make a  
20 great deal of difference as a practical matter.  
21 Whether its prohibitions against racial discrimination  
22 and intimidation were enforced against minority  
23 wrongdoers as well as white wrongdoers, during that  
24 time period, sadly, there were few minority election  
25 officials in the overwhelming majority of

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1 jurisdictions. And in a number of jurisdictions,  
2 there were no election, minority election, officials.

3 However, during the last 45 years, the  
4 United States has changed for the better. Large  
5 numbers of minority persons now serve as election and  
6 poll officials in hundreds of jurisdictions throughout  
7 America.

8 In such a multiracial and multicultural  
9 country, not one of Bull Connor or Ross Barnett but  
10 the country in which an African American serves as  
11 President of the United States and as Attorney General  
12 of the United States, it is absolutely essential that  
13 the Voting Rights Act be enforced against all racial  
14 and ethnic groups.

15 During my years in the Voting Section and  
16 particularly during the time I served in a management  
17 capacity, I became acutely aware, based upon  
18 complaints and conducting investigations, that a  
19 sizeable number of voting illegalities are committed  
20 by members of racial and ethnic minorities.

21 Noxubee County, Mississippi is a prime  
22 example. Noxubee was not, as some critics have  
23 claimed, a mere aberration. Let me give you several  
24 other examples.

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1           During the time I was Chief in the Voting  
2 Section, we conducted a prolonged investigation in  
3 Wilkinson County, Mississippi, another majority black  
4 county in the southwestern portion of the state.

5           There a long battle between an all-black  
6 faction and a racially integrated faction had been  
7 going on for a substantial period of time in that  
8 county. Relations between the two factions had  
9 reached the point where the all-black faction would  
10 not allow members of the racially integrated faction  
11 to play a role in the conduct of local elections,  
12 including the counting of absentee ballots or the  
13 choosing of persons to work at the polls.

14           After a local election in Wilkinson County  
15 in 2007, the home of a white candidate for local  
16 office was burned. No one was ever prosecuted for  
17 this burning, and the burning of this candidate's home  
18 never received any national attention.

19           The Voting Section, in the end, did not  
20 file a Voting Rights Act suit in Wilkinson County for  
21 a number of good reasons, including the pendency of  
22 multiple election contests in state courts during the  
23 time our investigation was going on. And the fear  
24 that the filing of the suit by the Department of

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1 Justice under those circumstances would suggest we  
2 were taking sides in election disputes.

3 Parenthetically, in Noxubee County, we  
4 waited until all of the election contests were over  
5 before we filed the suit involving Mr. Brown.

6 We did send federal observers to elections  
7 in Wilkinson County, including the 2008 elections. I  
8 came away from the Wilkinson County investigation with  
9 the clear impression that some African-American  
10 officials were involved in voting-related acts of  
11 racial discrimination against whites there.

12 In addition, in 2005, I conducted an  
13 investigation in Hale and Perry Counties, Alabama, two  
14 other majority black counties. Again, there were  
15 political factions in those counties with one faction  
16 all black and another, a racially integrated faction.

17 There were multiple claims by the racially  
18 integrated faction that absentee ballots and other  
19 types of voting fraud was being perpetrated by the  
20 all-black faction in these counties.

21 While investigating Hale County, I learned  
22 that there had been a highly contentious election.  
23 And on the night of that election, election materials,  
24 including the absentee ballots, were placed for  
25 safekeeping in a local bank vault so that those

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1 materials could be reviewed the next morning by  
2 election officials. Overnight that bank was also set  
3 on fire. No one has ever been prosecuted for that  
4 burning.

5 Again, the Voting Section did not end up  
6 filing a Voting Rights Act case in either of these  
7 Alabama counties for good reasons, including an  
8 ongoing voter fraud investigation by the Alabama State  
9 Attorney General's office in those counties.

10 I have recently learned that several  
11 African-American political officials have been  
12 convicted of absentee ballot fraud in Hale County.  
13 Again, I came away from the Hale and Perry County  
14 investigations with the clear impression that some  
15 African Americans there in those counties were  
16 involved in acts of racial discrimination against  
17 whites.

18 In pointing out these examples, I am not  
19 suggesting, I am not suggesting that minority election  
20 and poll officials or minority political activists are  
21 more likely to commit voting law violations than their  
22 white counterparts. What I am pointing out is that I  
23 believe that some minorities are just as likely to  
24 resort to lawlessness in the voting area as are some  
25 wrongdoing whites.

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1           For the Civil Rights Division and the  
2 Voting Section to pursue enforcement practices that  
3 ignore Voting Rights Act violations by members of  
4 minority groups will encourage lawlessness in the  
5 voting area because those people who are inclined to  
6 commit acts of voting illegality, black or white, will  
7 have no fear that the federal government will enforce  
8 the federal law against them.

9           And when minority election officials who  
10 are inclined to participate in lawless acts learn that  
11 the federal government will not enforce the law  
12 against them, it will increase lawlessness. In our  
13 increasingly multiethnic society, that is a clear  
14 recipe to undermine the public's confidence in the  
15 legitimacy of our electoral process.

16           I have heard some argue that prosecutors,  
17 both criminal and civil, have prosecutorial discretion  
18 that gives attorneys in the Division and the Voting  
19 Section the authority to bring Voting Rights Act  
20 lawsuits against minority wrongdoers.

21           It is certainly true that prosecutors have  
22 discretion to decide what cases to bring based upon  
23 resources and other legal considerations. But we do  
24 not have the discretion to decide to enforce the law  
25 based upon the race of the perpetrator or the race of

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1 the victim of the wrongdoing. Those discretionary  
2 decisions cannot constitutionally be based upon race.

3 In conclusion, I thank you for the time  
4 you have given me to testify on these important  
5 enforcement civil rights issues. I commend the Civil  
6 Rights Commission for making inquiry into these areas.

7 Individuals of good will, regardless of  
8 their race, ethnicity, or language-minority status,  
9 should be concerned about the Division not enforcing  
10 laws in a race-neutral manner.

11 As important as the mandate in the Voting  
12 Rights Act is to protect minority voters, white voters  
13 also have an interest in being able to go to the polls  
14 without having race-haters such as Blank Panther King  
15 Samir Shabazz, whose public rhetoric includes such  
16 statements as, "Kill cracker babies," "Kill cracker  
17 babies," standing at the entrance of a polling place  
18 with a billy club in his hand hurling racial slurs at  
19 voters.

20 Given this outrageous conduct, it was a  
21 travesty of justice for the Department of Justice not  
22 to allow the attorneys in the Voting Section to obtain  
23 nationwide injunctive relief against all four of these  
24 defendants.

25 Thank you, sir.

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1 CHAIRMAN REYNOLDS: Thank you, Mr. Coates.  
2 Mr. Blackwood, please proceed.

3 MR. BLACKWOOD: Thank you, Mr. Coates.

4 If I could, before getting into the merits  
5 of some of what you have testified to today, I would  
6 like to ask you a little bit about your background.  
7 You were hired at the Department of Justice in 1996.  
8 Is that correct?

9 MR. COATES: That's correct, hired in 1996  
10 as a trial attorney, worked in that capacity until --  
11 it was '99 or 2000. It was during the Clinton  
12 administration. I was promoted to special litigation  
13 counsel, served in that position until 2005, at which  
14 time I was appointed principal Deputy Chief of the  
15 Voting Section.

16 In December of 2007, I was appointed  
17 Acting Chief and then appointed permanent Chief in May  
18 of 2008, served as Chief of the Voting Section until  
19 the end of December of 2009.

20 MR. BLACKWOOD: So you had promotions both  
21 during the Clinton administration and during the Bush  
22 administration?

23 MR. COATES: Yes, sir.

24 MR. BLACKWOOD: Prior to your work at DOJ,  
25 where did you work?

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1 MR. COATES: I first wanted to do voting  
2 cases. I took a job with the Voting Rights Project of  
3 the American Civil Liberties Union in Atlanta,  
4 Georgia. It was then known as the Southern regional  
5 office of the ACLU. I commenced my employment there  
6 in May of 1976 and served in that capacity from May of  
7 '76 as a staff attorney through 1985.

8 So I have been there about eight and a  
9 half years, in which time I litigated a number of  
10 cases on behalf of African-American clients,  
11 particularly challenging at-large election procedures  
12 used at the city, county, and school board level.

13 MR. BLACKWOOD: At one point you argued a  
14 case before the Supreme Court. Is that correct?

15 MR. COATES: That's correct. In 1993, I  
16 argued on behalf of six African-American citizens and  
17 the local NAACP chapter in Bleckley County, Georgia.  
18 The case was *Holder v. Hall*. And so that is what I  
19 argued before the Supreme Court.

20 MR. BLACKWOOD: And before you came to the  
21 Department, as well, you won some awards. Is that  
22 correct?

23 MR. COATES: I did. In 1991, I was  
24 awarded the Thurgood Marshall Decade Award by the

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1 Georgia Conference of the NAACP for work in civil  
2 rights.

3 And I was awarded a ~~prestigious~~ procedure  
4 award from the Georgia Environmental Association that  
5 was awarded on the basis of my representation of seven  
6 clients who all resided in Hancock County, Georgia.

7 Hancock County is the county in Georgia  
8 that has the largest African-American population. And  
9 a garbage dump company was in the process of trying to  
10 put the third largest landfill in the United States in  
11 that county. And the award was for successful  
12 representation in that case.

13 MR. BLACKWOOD: You also have won a  
14 significant award while at the Department. Is that  
15 also accurate?

16 MR. COATES: Yes. In 2007, I received the  
17 award given by the Civil Rights Division for effective  
18 advocacy. It's the second highest award. The Hubble  
19 Award is the second highest award given by the Civil  
20 Rights Division.

21 MR. BLACKWOOD: I want to make sure I am  
22 accurate in this. Other than the *Ike Brown* case and  
23 the *New Black Panther Party* case, you have spent your  
24 whole time at the Department representing minorities.  
25 Is that correct?

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1 MR. COATES: Those are the only two cases  
2 in my 13 and a half years in the Voting Section that  
3 involved white victims, if you will. All the other  
4 Voting Rights Act cases that I participated in the  
5 Department while I was with the Department involved  
6 claims that minority voters were being discriminated  
7 against.

8 There were other cases brought under the  
9 NVRA, UOCAVA, other statutes, not race-based statutes,  
10 like the Voting Rights Act, that there would have been  
11 both black and white victims of illegality. But under  
12 the Voting Rights Act, the *New Black Panther Party*  
13 case and the *Ike Brown* case were the only two.

14 MR. BLACKWOOD: When Mr. Adams was here  
15 and testified, he indicated that, after the election,  
16 when President Obama was elected, you were rather  
17 closely supervised. Could you describe what happened  
18 after the election?

19 MR. COATES: The relationships, the  
20 relationship, between Ms. King and Mr. Rosenbaum and I  
21 were not good. That relationship was not good.

22 And as the -- as I continued to serve in  
23 the capacity as the Chief of the Voting Section, my --  
24 the responsibilities and powers that a section chief  
25 in the Civil Rights Division normally has, such as

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1 assigning particular lawyers to cases, assigning the  
2 particular deputies to supervise cases, things of that  
3 sort, that those powers were taken away as the months  
4 went by in 2009, after the Obama administration came  
5 to power in January of 2009.

6 MR. BLACKWOOD: Did anyone indicate to you  
7 that this leaching away of your authority was a result  
8 of the *Black Panther* case or the *Ike Brown* case?

9 MR. COATES: No, they did not make direct  
10 statements to that effect.

11 MR. BLACKWOOD: You talked about Kristen  
12 Clarke and her attempt to contact the Department.  
13 There's been prior testimony that Ms. Clarke  
14 approached a DOJ attorney, Laura Coates, and indicated  
15 interest in asking when the *Black Panther* case would  
16 be dismissed. Do you know when that occurred? Was it  
17 after the suit got filed obviously?

18 MR. COATES: I think it was after the suit  
19 got filed and before -- I think that contact occurred  
20 after the suit was filed and before it was dismissed.

21 MR. BLACKWOOD: It was filed, the suit was  
22 filed, on January 7th?

23 MR. COATES: That's correct.

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1 MR. BLACKWOOD: And it was dismissed on  
2 May 15th. So it was sometime between then? You're  
3 not sure?

4 MR. COATES: My understanding is that  
5 that's when the contact occurred.

6 MR. BLACKWOOD: My understanding is that  
7 Mr. Rosenbaum first raised objections to the *New Black*  
8 *Panther* case on April 29th, the day before the default  
9 was supposed to be entered, which was May 1st. Does  
10 that sound accurate?

11 MR. COATES: I don't remember the exact  
12 dates. It was some time in the latter part of April  
13 that I recall first receiving any indication from Mr.  
14 Rosenbaum that there might be any trouble with the  
15 case from the Division front office perspective.

16 MR. BLACKWOOD: Going back to the Kristen  
17 Clarke issue, did the comment Ms. Clarke made to Laura  
18 Coates occur before you heard of any objections from  
19 Mr. Rosenbaum?

20 MR. COATES: I think that it was reported  
21 to me that that conversation occurred prior to the  
22 time that I was contacted by Mr. Rosenbaum.

23 MR. BLACKWOOD: Did you take any further  
24 steps? Did you notify anybody about Ms. Clarke's  
25 approach to Ms. Coates?

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1 MR. COATES: No. Ms. Coates, very fine  
2 lawyer and I would be proud if she was related to me,  
3 but she's not. She's not a family member. I wanted  
4 to make that point.

5 She had just started in the Fall of 2008,  
6 is my recollection. I had been a person who  
7 recommended that Ms. Coates be employed by the Voting  
8 Section because I thought she would make a fine  
9 attorney there. And this matter came up within, I  
10 think, six months after she started. I did not want  
11 to get her embroiled in a controversy of that nature  
12 right within the first couple of months.

13 She had not been an attorney in the *New*  
14 *Black Panther Party* case. And so I did not go to the  
15 front office and tell them about it.

16 MR. BLACKWOOD: I understand you wanted to  
17 respect the deliberative process privilege, but I  
18 would ask if you could see the three memos, internal  
19 memos, marked A, B, and C in the upper right-hand  
20 corner, the first being the j-memo marked December  
21 22nd, 2008.

22 MR. COATES: Right.

23 MR. BLACKWOOD: Can you identify the  
24 document?

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1 MR. COATES: As I understand it, these  
2 documents have been previously provided to the  
3 Commission by the Department of Justice.

4 MR. BLACKWOOD: No, they have not been  
5 provided by the Department. They were provided by  
6 other means.

7 MR. COATES: Well, in that case, I do not  
8 want to identify or not identify documents that are  
9 covered by the deliberative process privilege. And so  
10 I decline to answer your question, sir.

11 MR. BLACKWOOD: Okay. Let me just walk  
12 you through some events, then. My understanding is,  
13 as of the time that the decision was made to dismiss  
14 the case as to three of the defendants and reduce the  
15 remedy as to the fourth, yourself, Robert Popper,  
16 Christian Adams, and Spencer Fisher all supported  
17 proceeding with the case as it was originally filed.  
18 Is that accurate?

19 MR. COATES: Yes.

20 MR. BLACKWOOD: And you were also joined  
21 by the Appellate Section members Diana Flynn and Ms.  
22 McElderry. Is that also correct?

23 MR. COATES: That's correct.

24 MR. BLACKWOOD: When the Appellate Section  
25 undertook a review of a case that had already been in

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1 a default status, have you ever heard of such a review  
2 in your time at DOJ?

3 MR. COATES: No, I have not, but that does  
4 not mean that it has not occurred before. But I had  
5 never heard of the Appellate Section reviewing any  
6 case that I had been involved in.

7 MR. BLACKWOOD: The documents that, or the  
8 analysis that came back from the Appellate Section, is  
9 dated May 13th. Now, the default judgment or default  
10 time for the filing of default judgment is May 15th.  
11 Did you see a copy of the Appellate Section analysis?

12 MR. COATES: Yes.

13 MR. BLACKWOOD: Were you told any reason  
14 why the trial team and the Appellate Section team, a  
15 total of six career attorneys, were overruled?

16 MR. COATES: Well, if you're talking about  
17 conversations that occurred between Ms. King, Mr.  
18 Rosenbaum, and I --

19 MR. BLACKWOOD: Yes.

20 MR. COATES: -- I respectfully refuse to  
21 answer that question because the Department has  
22 asserted deliberative process privilege.

23 MR. BLACKWOOD: Were you told whether any  
24 individuals other than Ms. King and Mr. Rosenbaum,

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1 specifically political appointees, weighed in,  
2 consulted, made decisions about the case?

3 MR. COATES: I can answer that this way.  
4 I am familiar with the *Judicial Watch* lawsuit and the  
5 documents that have been provided within the last  
6 week.

7 And I see that there were a number of  
8 people outside the Division who those documents that  
9 have been publicly released by the Department indicate  
10 were contacted, such as Mr. Hirsh and other people at  
11 the Department level. And that is the first time that  
12 I have received any information that people outside  
13 the Division played a role in the decision concerning  
14 the *New Black Panther Party* case.

15 MR. BLACKWOOD: You mentioned the lawsuit  
16 by *Judicial Watch*. An index of documents was  
17 released, as you say, earlier this week. Let me ask  
18 you about one entry. And I understand that you were  
19 not part of the documents produced, but I am asking  
20 about the information.

21 Item number 50 in that log shows an e-mail  
22 from Steve Rosenbaum to Sam Hirsh, and it's summarized  
23 as follows, "DAAG," D-A-A-G -- that's Mr. Rosenbaum --  
24 "provides OASG in charge of CRT" -- and that would be  
25 Mr. Hirsh -- "with requested follow-up information and

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1 confirmation that additional actions would be  
2 conducted by Criminal Section Chief per his request."

3 Did you ever hear of the Criminal Section  
4 also being involved in the decision-making in the  
5 *Black Panther* case?

6 MR. COATES: No.

7 MR. BLACKWOOD: Before he testified before  
8 the Commission, which was on May 4th of this year, Mr.  
9 Perez had a meeting with you and Mr. Adams and Mr.  
10 Popper. Is that correct?

11 MR. COATES: Those would be discussions --  
12 well, I can affirm that there was a meeting, yes.

13 MR. BLACKWOOD: Yes. Your hesitancy, are  
14 you not going to tell us what occurred during that  
15 meeting?

16 MR. COATES: No, because of the  
17 deliberative process privilege that has been asserted  
18 by the Department.

19 MR. BLACKWOOD: In a magazine article  
20 about the *New Black Panther* case, it was alleged that  
21 there was two days of yelling as arising out of the  
22 time that the case got continued. Can you tell us  
23 anything about that?

24 MR. COATES: Well, in terms of the -- I  
25 won't tell you what the discussions were. I will tell

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1 you that I became so frustrated with the process that  
2 I did use profanity. It wasn't the first time that  
3 I've ever used profanity, but it was not my customary  
4 way of speaking to my supervisors at the Division  
5 level. And I used the "bs" word that Mr. Adams  
6 identified in his testimony. And so, to that extent,  
7 that yelling went on.

8 MR. BLACKWOOD: Aside from use of  
9 profanity or not, did that arise out of the fact that  
10 it appeared that Mr. Rosenbaum had not been reading  
11 the background materials supplied by the trial team  
12 for his review?

13 MR. COATES: No. It arose because the  
14 accusation had been -- was made against me and Mr.  
15 Popper that wasn't true.

16 MR. BLACKWOOD: Can you tell us what that  
17 accusation was?

18 MR. COATES: No, I can't.

19 MR. BLACKWOOD: At any time during the  
20 discussions about what to do with the case or how it  
21 should proceed, did anyone accuse you or any member of  
22 the trial team of violating rule 11 of the Federal  
23 Rules of Civil Procedure?

24 MR. COATES: There were accusations made.  
25 I think Mr. Perez has mentioned and I think in

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1 testimony before Congress has mentioned a rule 11  
2 concern.

3           And we're not talking about 11(b) here,  
4 the section of the Voting Rights Act that prohibits  
5 intimidation, threats, coercion. We're talking about  
6 the -- as you well know, Mr. Blackwood, the rule 11 of  
7 the Federal Rules of Civil Procedure, that would  
8 subject plaintiffs who bring a lawsuit to awards of  
9 money against them because there was no basis in law  
10 or in fact for bringing the lawsuit.

11           And I have always been flabbergasted that  
12 anyone would make such a claim regarding the *New Black*  
13 *Panther* case. People can have differences about a  
14 number of things, but we had eyewitness testimony.

15           We had videotape that there were two  
16 people standing in uniform in front of a polling place  
17 in violation of the distance required by Pennsylvania  
18 law, as I recall, for people to be away from the  
19 polling place. One of them had a weapon.

20           They were hurling racial slurs, including  
21 to white voters, "How do you think you're going to  
22 feel with a black man ruling over you?" at the voters.  
23 They were standing in close proximity to each other to  
24 block the ingress into the polling place.

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1           The 11(b) of the Voting Rights Act  
2 prohibits attempts to intimidate or coerce or  
3 threaten. It doesn't even require that the actual  
4 intimidation or coercion or threat occurred. It  
5 requires that no number of people be intimidated but  
6 just that there was an attempt in intimidation.

7           And I've never been able to understand how  
8 anyone could accuse us of not having a basis in law  
9 and fact for bringing a straightforward 11(b) claim in  
10 circumstances where the evidence was so compelling.

11           MR. BLACKWOOD: In the three memos that  
12 you have before you, A, B, and C, specifically the  
13 original j-memo, -- then there's the remedial memo,  
14 which is addressing demands by Ms. King and Mr.  
15 Rosenbaum -- for additional information; and, finally,  
16 the Appellate Section review, there is absolutely no  
17 distinction between liability between Mr. Jackson and  
18 King Samir Shabazz. When did that first arise, that  
19 issue? Were you ever asked to analyze it?

20           MR. COATES: I don't remember any public  
21 discussions prior to the dismissal of the three  
22 defendants and the limitations on injunctive relief.  
23 I don't remember any public discussions of  
24 distinguishing between Mr. Jackson and Mr. Shabazz.

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1                   And I am not going to answer the question  
2 about whether or not we had any internal deliberative  
3 process discussions about that.

4                   MR. BLACKWOOD:   Okay.   But as far as the  
5 remedial memo, the purpose of the remedial memo was to  
6 address existing concerns of King and Rosenbaum,  
7 correct?

8                   MR. COATES:     Well, you can draw that  
9 inference.   And I can see how you would logically draw  
10 that inference, but I am not going to be able to  
11 confirm that.

12                  MR. BLACKWOOD:   In looking at the record,  
13 there is a reference and also at the log provided by  
14 the *Judicial Watch* litigation.   It appeared that there  
15 was an extensive substantive memo, either April 29th  
16 or May 1st, around that time addressing concerns by  
17 Mr. Rosenbaum.   Are you aware of that?   I mean, can  
18 you confirm that?

19                  MR. COATES:   Written by whom?

20                  MR. BLACKWOOD:   Evidently by the trial  
21 team.   It shows an e-mail by you to Mr. Rosenbaum.

22                  MR. COATES:   Okay.   Well, if there is a  
23 document to that effect, you would be logical in  
24 reaching the conclusions that you speak of.

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1 MR. BLACKWOOD: Well, when Mr. Adams was  
2 here, he testified about the trial team at one point  
3 having to pull an all-nighter to address concerns by  
4 Mr. Rosenbaum.

5 MR. COATES: Yes.

6 MR. BLACKWOOD: Does that sound accurate?

7 MR. COATES: I remember one night when --  
8 I didn't stay up all night, but I remember that Mr.  
9 Popper and I think Mr. Adams did, in terms of  
10 completing their memorandum.

11 When I came in the next morning, they  
12 looked sleepy. And they told me that they had been  
13 there a goodly portion of the night. So that's the  
14 information that I have in that regard.

15 MR. BLACKWOOD: Just a final question.

16 COMMISSIONER YAKI: I'm sorry. It's a  
17 point of order. And it's for the benefit of the  
18 witness. Mr. Chair and Mr. Legal Counsel, I was a  
19 little uncomfortable about the last exchange about the  
20 e-mail on two reasons.

21 One, it's very clear that Mr. Coates wants  
22 to steer very clear on the side of the deliberative  
23 process privilege. And if you're making  
24 representations to him about what an e-mail may or may  
25 not say, I think he would be more comfortable having

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1 the document in hand to know whether or not it  
2 actually was a Vaughn index log of the e-mail or the  
3 actual e-mail itself because I was unclear as exactly  
4 what it was.

5 And I think that in terms of for the  
6 benefit of the witness to ensure his compliance with  
7 his desire to be on the side of the deliberative  
8 process privilege, it would probably be in our  
9 interest for him to make sure that he sees a document  
10 before he testifies about it so he doesn't make any  
11 assumptions about the --

12 MR. BLACKWOOD: So the record is clear,  
13 the document was not in front of you. I was reading  
14 off of an index that was provided as part of the  
15 *Judicial Watch* litigation against the Department.

16 And, for the record, the Commission has  
17 also asked for such an index as well as the underlying  
18 documents. And we have yet to receive them.

19 But a final question, if I could in my  
20 time --

21 CHAIRMAN REYNOLDS: Before you go on, Mr.  
22 Coates, if there is any question that you feel  
23 uncomfortable with, please raise your hand and let us  
24 know if we are bringing you into an area where you  
25 feel uncomfortable. We appreciate the fact that you

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1 have put yourself at risk by coming here to testify.  
2 I have no desire to bring you to an area that is going  
3 to increase the risk to you.

4 MR. COATES: Thank you, sir.

5 MR. BLACKWOOD: You gave a going-away  
6 speech on or about January 12th of this year. I'm  
7 sorry. It was earlier in January.

8 MR. COATES: I think it was January the  
9 5th.

10 MR. BLACKWOOD: And you made a long  
11 statement, it's reported, before members of the Civil  
12 Rights Division and the Voting Section. Is that  
13 right?

14 MR. COATES: Just Ms. Fernandes was there,  
15 and Mr. Perez was there for part of the meeting. He  
16 had to leave prior to my remarks. There were a couple  
17 people from outside the Section there. Most of the  
18 people there were from the Voting Section. Some  
19 family members were there and people from other -- a  
20 couple of people from other sections in the Division.

21 MR. BLACKWOOD: Do you have a written copy  
22 of what was said that day?

23 MR. COATES: No.

24 MR. BLACKWOOD: Have you ever seen a  
25 version of what you allegedly said that day on

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1 National Review Online? There is a version of  
2 purportedly what you said that day. Have you ever  
3 seen that?

4 MR. COATES: I remember that Mr. Hans von  
5 Spakovsky published an article that said that it was  
6 not a verbatim statement, but it was based upon  
7 interviews that he had had with people who were  
8 present.

9 MR. BLACKWOOD: Did you ever have a chance  
10 to read it?

11 MR. COATES: I did.

12 MR. BLACKWOOD: And, although not a  
13 verbatim transcript, did it accurately reflect what  
14 you said that day?

15 MR. COATES: It was an accurate reflection  
16 of the points that I made in my going-away speech.

17 MR. BLACKWOOD: Finally, you transferred  
18 to the U.S. Attorney's Office in South Carolina. Is  
19 that correct?

20 MR. COATES: Yes. I am presently employed  
21 as Assistant U.S. Attorney for the District of South  
22 Carolina. I'm on detail there from the Civil Rights  
23 Division. And the detail is for 18 months.

24 MR. BLACKWOOD: Was the decision to  
25 transfer voluntary?

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1 MR. COATES: Well, it's -- let me explain  
2 it this way. And I don't mean to -- it's not a  
3 question that I think can be accurately answered by  
4 "Yes" or "No."

5 During the year of 2009, I had  
6 considerable conflict with Ms. King, Mr. Rosenbaum.  
7 And then I saw that Ms. Fernandes's, as I've  
8 described, management style was going to be in some  
9 ways similar to theirs. My relationship with her was  
10 a little better than with Ms. King and Mr. Rosenbaum.  
11 Julie and I have been knowing each other for a long  
12 time. And so I got along better with her.

13 But my powers to run the Section, to  
14 assign cases, to assign deputies, was being  
15 substantially reduced to where I believe that, by the  
16 late Fall of 2009, that I was serving as Chief only in  
17 name and that the decisions were being made by other  
18 management people in the Section and at the Division  
19 level.

20 And, of course, as a manager who has --  
21 who is blamed when things go wrong, you don't want to  
22 be in a situation where you're supposed to be running  
23 a section when, in fact, you're not. And so I took  
24 that into consideration.

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1 I took into consideration I knew that a  
2 number of people in the Section did -- in the  
3 Division, I mean, the managers in the Division, some  
4 of them, did not want me as the Chief, including Ms.  
5 King, quite frankly, Mr. Rosenbaum, quite frankly.

6 And there were a number of the people in  
7 the civil rights groups who did not want me as Chief  
8 of the Voting Section. And some of those groups, as I  
9 have described, have significant influence, I believe,  
10 in the Obama administration.

11 So I just thought that it was a situation  
12 where I was not going to be able to manage the  
13 Section. And if you're not going to be able to do  
14 that, then why pursue a course of action that you had  
15 really no chance of winning?

16 I have family in Charleston, South  
17 Carolina. My daughter and son-in-law and two  
18 grandchildren live there. And so I talked with Mr.  
19 Perez about working out a situation where I would  
20 voluntarily leave the position as Chief of the Voting  
21 Section and transfer down to South Carolina for a  
22 period of time on detail. And that is what we were  
23 able to accomplish.

24 If circumstances had been differently, I  
25 guess one of the ways I could describe that, if

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1 Senator McCain had won the election and he had left me  
2 in and his people had left me in as Chief of the  
3 Voting Section and there had been good relations  
4 between us, then I would have stayed on as Chief of  
5 the Voting Section for a while longer. It is the most  
6 important job I have ever had. And so, therefore, you  
7 don't give something up like that easily.

8 But under the circumstances, I asked for  
9 the transfer. But I asked it in the circumstances  
10 that I have described.

11 MR. BLACKWOOD: One final question. Who  
12 was the party, who was responsible for taking away  
13 your authority, --

14 MR. COATES: Well --

15 MR. BLACKWOOD: -- diminishing your  
16 authority?

17 MR. COATES: Okay. Ms. King was involved  
18 in that. Mr. Rosenbaum was involved in that. Ms.  
19 Fernandes was involved in that. The type of  
20 limitations they put on my ability to make decisions  
21 in the management of the Voting Section, I believe,  
22 were not the kind of limitations that were placed on  
23 other Chiefs in the Civil Rights Division.

24 I'm not saying I'm not -- I'm not the only  
25 person who had those kind of limitations because I'm

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1 not the only Chief who has had conflicts with the  
2 Division management. But it was unusual in comparison  
3 with how other Chiefs that they liked better were  
4 treated.

5 CHAIRMAN REYNOLDS: Okay. At this point,  
6 I will yield my time to Commissioner Gaziano.

7 COMMISSIONER GAZIANO: Thank you very  
8 much, Mr. Chairman. And thank you very much, Mr.  
9 Coates. I think this is a morally right and morally  
10 courageous thing you're doing coming forward today.

11 And I thank the Chairman for yielding to  
12 me because I initially proposed this investigation.  
13 With their indulgence, I may have three or four rounds  
14 of five-minute questioning. But I am going to begin  
15 with, I hope, some simple questions and answers that I  
16 never got from Assistant Attorney General Perez.

17 I am very saddened by the detail that you  
18 and Mr. Adams testified to regarding the hostility and  
19 the harassment that you and your team had when you  
20 tried to enforce the voting rights laws in a  
21 race-neutral way.

22 But this isn't the first time I heard  
23 about that. I asked Mr. Perez about articles that  
24 were published in February 2009 that recounted this  
25 hostility, this culture of hostility, to the

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1 race-neutral enforcement of the Voting Rights Act.  
2 And he was the transition director for the Obama  
3 administration. Surely he was aware of these  
4 articles.

5 I asked him whether he did any  
6 investigation regarding that. And I got a non-answer.  
7 So I'm asking you. I have like three or four in the  
8 series.

9 Did Rosenbaum or King or Fernandes or  
10 Perez, when he was confirmed, begin an investigation,  
11 to your knowledge, toward hostility that existed in  
12 the Section or hostility that existed in the Civil  
13 Rights Division toward the race-neutral enforcement of  
14 the voting laws?

15 MR. COATES: Not to my knowledge. And I  
16 would think that, since I would have been one of the  
17 primary persons, having been the lead attorney in the  
18 *Ike Brown* case and having been the Chief and  
19 intimately involved in the *New Black Panther* case,  
20 that if one was going to do an investigation to  
21 determine whether or not people who had been involved  
22 in nontraditional Voting Rights Act cases on behalf of  
23 white victims, if such an investigation was going to  
24 be conducted, is that I would have been one of the  
25 first persons contacted and --

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1 COMMISSIONER GAZIANO: I absolutely --

2 MR. COATES: And I don't know of any  
3 investigation that was specifically done for that  
4 reason.

5 COMMISSIONER GAZIANO: Okay. Well, let me  
6 get to a few other incidents. There were news stories  
7 in the late spring and summer after the dismissal of  
8 the New Black Panther story where one of the news  
9 organizations had sources that the reason for the  
10 dismissal was hostility to the race-neutral  
11 enforcement of the voting rights laws.

12 And I pointed out to Mr. Perez that his  
13 confirmation was upheld, delayed because of those  
14 stories and the requests of members of Congress that  
15 were not being fulfilled for information on that. So,  
16 surely, he read that.

17 So I asked him whether, when he came in  
18 office, there was any investigation regarding those  
19 allegations in those news stories. And I take it your  
20 answer would be the same. You were aware during the  
21 Summer of 2009 of no investigation whether that was  
22 true.

23 MR. COATES: I don't know of any such  
24 investigation.

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1 COMMISSIONER GAZIANO: Okay. Then I'm  
2 going to get back maybe in another round of  
3 questioning to the September 2009 lunch meeting with  
4 Fernandes. That shocks me for a different reason.

5 But you have previously testified in  
6 response to Mr. Blackwood's questions that the  
7 paraphrase of your farewell remarks in January of 2010  
8 published in the National Review was accurate. In  
9 that statement, that paraphrase, you decry the  
10 hostility to race-neutral enforcement of the voting  
11 rights laws.

12 And I asked Mr. Perrelli. I said, did you  
13 -- Mr. Perez. I asked Mr. Perez, did you contact your  
14 former Voting Section Chief, Mr. Coates, and say,  
15 "Chris, why do you believe that?" And I got the  
16 typical non-answer, evasive non-answer.

17 Did he contact you?

18 MR. COATES: No. After he -- because of a  
19 prior engagement, he had to leave. So he did not  
20 hear.

21 COMMISSIONER GAZIANO: I understand he  
22 didn't hear it but, afterward, did he or Julie  
23 Fernandes or King or Rosenbaum or anyone above you  
24 say, "Chris, why do you believe that?"

25 MR. COATES: No.

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1 COMMISSIONER GAZIANO: No?

2 MR. COATES: I was not contacted by  
3 anybody with the Department concerning why I had  
4 stated on January the 5th that I believed that there  
5 was an atmosphere of hostility toward race-neutral  
6 enforcement in two of those cases.

7 COMMISSIONER GAZIANO: And one reason --

8 CHAIRMAN REYNOLDS: Commissioner Gaziano  
9 --

10 COMMISSIONER GAZIANO: One concluding  
11 question?

12 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
13 you'll have to take care of that on follow-up.

14 Vice Chair Thernstrom?

15 VICE CHAIR THERNSTROM: And I am yielding  
16 my time to Commissioner Yaki.

17 COMMISSIONER YAKI: Thank you very much.  
18 Thank you very much, Mr. Coates, for coming here to  
19 testify. And thank you, Vice Chair, for yielding your  
20 time.

21 MR. COATES: Thank you for having me.

22 COMMISSIONER YAKI: There are some  
23 questions I have about the j-memo, but I have a  
24 feeling that, because you were unaware that this was  
25 not produced at the request of the Department of

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1 Justice, that you really can't comment on any of the  
2 specifics about the j-memo, but I have some questions  
3 about what -- could you define what a j-memo is?

4 MR. COATES: Well, "j" stands for  
5 justification memorandum.

6 COMMISSIONER YAKI: Right.

7 MR. COATES: And it is the last memorandum  
8 that puts together the evidence to date and the  
9 applicable laws that the attorneys write to justify  
10 and try to get -- try to convince the people at the  
11 division level that a notice letter should be sent  
12 out. And in the notice letter, a letter goes out  
13 saying, "We investigated. We believe that you are in  
14 violation of the law."

15 COMMISSIONER YAKI: Thank you. You said  
16 it's the last memorandum. Are there other memoranda  
17 that initiate the investigation?

18 In other words, let's take a hypothetical  
19 example of two individuals in front of a polling place  
20 somewhere who allegedly may be involved in voter  
21 intimidation. I don't know if you can talk about this  
22 specifically or if, because of the j-memo's existence,  
23 we are going to talk about a hypothetical, whichever  
24 is most convenient to you for your own protection.

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1           Let's start with a hypothetical. If you  
2 want to make it real, we can do that.

3           Information comes to you. Does it comes  
4 to you as the Section Chief? Does it come to  
5 attorneys underneath you who bring it to your  
6 attention? How does the investigation begin?

7           MR. COATES: It can commence a number of  
8 different ways. If it came to the Section Chief  
9 directly, then what a Section Chief would do if he or  
10 she felt that the complaint had a reasonable  
11 possibility of being meritorious, attorneys would be  
12 assigned to investigate.

13           And those attorneys would then work on the  
14 investigation. A deputy would be assigned to  
15 supervise the investigation. And after the  
16 investigation was completed, then a j-memo,  
17 memorandum, would be written by the attorneys, passed  
18 up through the supervising deputy, and then to the  
19 Chief, and then to the Civil Rights Division front  
20 office.

21           COMMISSIONER YAKI: So the number of  
22 people who would have access to the justification memo  
23 would be the investigating attorneys, their immediate  
24 supervisors, principal deputy, you, and then your  
25 immediate --

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1 MR. COATES: It would not necessarily go  
2 through principal deputy --

3 COMMISSIONER YAKI: Yes.

4 MR. COATES: -- but would go to the chief.

5 COMMISSIONER YAKI: It would go to you?  
6 So you would have received a j-memo on the New Black  
7 Panther Party if --

8 MR. COATES: Under the normal consensus,  
9 yes.

10 COMMISSIONER YAKI: But you can't testify  
11 whether or not you actually received it or not?

12 MR. COATES: No. I think I can testify  
13 that I received a justification memorandum in the *New*  
14 *Black Panther Party* case. Because of the deliberative  
15 process, I would rather not identify a particular  
16 document as being the justification in the *Panther*  
17 case.

18 COMMISSIONER YAKI: Can you testify as to  
19 how the *New Black Panther* case came to your attention  
20 or to the Section's attention?

21 MR. COATES: Yes. The first -- I've  
22 checked my e-mails on that. The first person to call  
23 me was a young man who used to work in the Voting  
24 Section and at that time was working in the Criminal  
25 Section of the Civil Rights Division by the name of

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1 James or Jim Walsh. And he was monitoring on Election  
2 Day 2008. He was monitoring complaints in the  
3 Criminal Section just like we were monitoring --

4 COMMISSIONER YAKI: Right.

5 MR. COATES: -- complaints in the Voting  
6 Section. And I think that Jim sent me an e-mail  
7 alerting me to the fact that he had heard about the  
8 complaint.

9 And then subsequently I received an e-mail  
10 from the -- I think it was the Chairman of the  
11 Pennsylvania Republican Party making the same  
12 complaint.

13 COMMISSIONER YAKI: And did you --

14 MR. COATES: That's my best recollection  
15 of how I first learned about it.

16 COMMISSIONER YAKI: At that point did you  
17 assign Christian Adams to be one of the investigators  
18 on this?

19 MR. COATES: No. That assignment would  
20 not have been at that time. I spoke with what I --  
21 the action that I took that day was to speak with --  
22 we had poll observers in Philadelphia.

23 And I spoke with the people that we had up  
24 there. And I asked them to go by the polling place

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1 and gave them the location to see if they could find  
2 out what was going on.

3 COMMISSIONER YAKI: Okay. And then the  
4 next step is --

5 CHAIRMAN REYNOLDS: Last question.

6 COMMISSIONER YAKI: Okay. The next step  
7 is prior to the justification memorandum developing  
8 the case. Who did you assign to start actually  
9 developing the case to present a j-memorandum to the  
10 New Black Panther Party?

11 MR. COATES: The deputy that I assigned  
12 was Bob Popper. I think that Bob was on the  
13 Philadelphia coverage. I think that he was up there  
14 that day.

15 COMMISSIONER YAKI: Okay.

16 MR. COATES: And then the two line  
17 attorneys that were eventually assigned, one was  
18 Christian Adams. And one was Spencer Fisher.

19 COMMISSIONER YAKI: Thank you very much,  
20 Mr. Chair. I am going to continue this when my  
21 regular round comes around.

22 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

23 COMMISSIONER KIRSANOW: Thank you, Mr.  
24 Chairman.

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1           And thank you also, Mr. Coates, for coming  
2 forward today. When your former colleague Christian  
3 Adams testified, as I said, that was probably the most  
4 profound or extraordinary testimony I had heard in my  
5 eight years on the Commission. I see Mr. Adams is in  
6 the audience. You've been trumped.

7           You have appeared today with some degree  
8 of peril to your own career. It's always difficult to  
9 defy the wishes of your employer. In that regard, I  
10 would like to read into the record a letter that was  
11 delivered yesterday from Congressman Wolf to Attorney  
12 General Holder, who says, "I write to strongly support  
13 Mr. Christopher Coates' decision to comply with a  
14 federal subpoena to appear before the U.S. Commission  
15 on Civil Rights.

16           "I also wanted to make you aware that  
17 prior to appearing before the Commission, Mr. Coates  
18 contacted me to share similar information related to  
19 the equal enforcement of federal voting laws. Coates  
20 has every right to bring information to a member of  
21 Congress as well as a responsibility to comply with  
22 the Commission's subpoena, despite the Department's  
23 obstruction.

24           "I trust that Mr. Coates will face no  
25 repercussions for his decision and expect you to

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1 influence political and career supervisors to respect  
2 his decision.

3 "As you are aware, a 1912 anti-gag  
4 legislation and whistleblower protection laws for  
5 federal employees guaranteed that 'the right of any  
6 persons employed in Civil Service to petition Congress  
7 or any member thereof or to furnish information to  
8 either house of Congress or to any committee or member  
9 thereof shall not be denied or interfered with.'

10 "Additionally, you should be aware that  
11 federal officials who deny or interfere with an  
12 employee's right to furnish information to Congress  
13 are not entitled to have their salaries paid by the  
14 taxpayers.

15 "As ranking member of the House Commerce,  
16 Justice, Science Appropriations Subcommittee, I assure  
17 you that I take this statute very seriously and will  
18 do everything in power to enforce it should any  
19 negative consequences be taken against Mr. Coates as a  
20 result of his decision to contact Congress and appear  
21 before the Commission.

22 "And a copy of this letter and Mr. Coates'  
23 testimony before the Commission will be submitted to  
24 the Congressional Record for public review."

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1 I have probably taken up half of my time  
2 just saying that. I am going to, due to the  
3 limitations of time, ask a series of questions that I  
4 think are capable of maybe "Yes" or "No" answers, but  
5 feel free to elaborate if you believe they are not.

6 Mr. Adams testified in the line. I just  
7 wanted to confirm and perfect the record, make it very  
8 clear what the testimony has been.

9 Do you agree with Mr. Adams that the DOJ's  
10 Voting Section has a racially motivated policy of not  
11 enforcing Section 8 of the National Voter Registration  
12 Act?

13 MR. COATES: I do not make the claim that  
14 it is racially motivated, but I do think --

15 COMMISSIONER KIRSANOW: It's the policy.

16 MR. COATES: -- we have received  
17 instructions from the Deputy Assistant Attorney  
18 General. And I heard them. I was in the room when  
19 they were stated. And Mr. Adams was in the room. And  
20 a number of other people in the Voting Section were in  
21 the room, in which she said there was no interest in  
22 enforcing the list maintenance requirements of Section  
23 8 of the NVRA. I heard Ms. Fernandes say that.

24 COMMISSIONER KIRSANOW: Thank you.

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1 Do you agree with Mr. Adams that the  
2 Voting Section of DOJ has a policy or practice of not  
3 enforcing voting laws against minority violators?

4 MR. COATES: I think that it had a  
5 practice, a pattern and practice, of doing that until  
6 the *Brown* case was filed in 2005. And I had hoped  
7 that that pattern had been amended and changed with  
8 the bringing of the *Brown* case and the success of that  
9 *Brown* case.

10 But two things have caused me great  
11 concern about whether or not that pattern of  
12 nonenforcement, of selective enforcement of the Voting  
13 Rights Act, has been reestablished. And that is the  
14 dismissals and the limitation on injunctive relief in  
15 the *Panther* case and the instructions that Ms.  
16 Fernandes gave us in the meetings in September and  
17 December of 2009.

18 When the Deputy Assistant Attorney General  
19 comes down to the Voting Section and says the kind of  
20 things that she said in terms of what you are  
21 interested in and what you are not interested in, it  
22 has tremendous impact because she is speaking for the  
23 AAG, the Assistant Attorney General, for Civil Rights  
24 and ultimately for the Attorney General.

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1 COMMISSIONER KIRSANOW: I've got one more  
2 question in this round. Do you agree with Mr. Adams  
3 that there is a culture in the Voting Section, or in  
4 the Civil Rights Division broadly, hostile to the  
5 enforcement of voting laws on behalf of white victims?

6 MR. COATES: Yes. I believe that it -- I  
7 don't think that it exists to the same degree with  
8 every employee in the Voting Section. And there are  
9 some employees in the Voting Section who do not agree,  
10 but that generally there has been that pattern of  
11 hostility that is reflective also of the point of view  
12 of some of the major civil rights groups in this  
13 country.

14 COMMISSIONER KIRSANOW: Thank you, Mr.  
15 Coates. Thank you, Mr. Chairman.

16 CHAIRMAN REYNOLDS: Commissioner Taylor?

17 COMMISSIONER TAYLOR: Thank you. And  
18 thank you for appearing today.

19 MR. COATES: Thank you, sir.

20 COMMISSIONER TAYLOR: I was struck by --  
21 my notes have strained relationship between you, King,  
22 and Rosenbaum. That struck me, given your history  
23 starting in 1976 with a regional office of the ACLU  
24 and being hired in the Clinton administration and then  
25 promoted under two administrations, both Clinton and

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1 the Bush administration. So I thought I would ask you  
2 directly.

3 In your view, what was the cause of the  
4 strained relationship specifically?

5 MR. COATES: I think that -- I mean, it  
6 may be that they just don't like me. And, you know,  
7 that happens to you sometimes.

8 I think that they were of the group of  
9 people in management positions in the Civil Rights  
10 Division -- Ms. King and Mr. Rosenbaum have been there  
11 for a long time. And they are of the group of people  
12 who, if it had been their choice, they would not have  
13 filed the *Ike Brown* case and they would not have filed  
14 the *New Black Panther* case.

15 Perhaps they would not have sent federal  
16 observers to places like Wilkinson County,  
17 Mississippi. And so I think that those views are  
18 strongly held by some of the career management, as  
19 they are held by people in the civil rights  
20 organizations. And when people disagree sometimes on  
21 ideological legal-type issues is that hostility comes  
22 to the surface. And I think that that was probably  
23 part of the rough times that the three of us had.

24 COMMISSIONER TAYLOR: When you were  
25 promoted to the position of Chief in 2008, you

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1 indicated that you started to ask applicants for trial  
2 attorney positions what again to me seemed like an odd  
3 question to ask.

4 To summarize it, would you be willing --  
5 this was the question. I want to make sure I am  
6 getting it properly on the table. "Would you be  
7 willing," you would say to the applicant, "to equally  
8 apply the law to all people?" Is that essentially the  
9 new question you began to ask?

10 MR. COATES: Yes.

11 COMMISSIONER TAYLOR: Would you share with  
12 us why you felt compelled to ask that question in the  
13 context of hiring trial attorneys for the Civil Rights  
14 Division?

15 MR. COATES: Because I had a number of  
16 people -- I had a social scientist, who I had worked  
17 with for a number of years -- so I know that his  
18 refusal to work on the investigation in the Noxubee  
19 case wasn't personal. He's a personal friend of mine.  
20 But he would not -- he flat out refused to work on the  
21 investigation.

22 And I had trial attorneys that I had  
23 worked with in cases that were successful and we had  
24 good relationships with. And they told me, one -- the  
25 person that testified told me point blank that he

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1 didn't come to the Voting Section to sue black people,  
2 to sue African-American people.

3 And because of those comments over the  
4 years that the *Brown* case went on, is that I wanted to  
5 make sure when I became the Chief that I did not hire  
6 people who felt that they could not work on cases  
7 involving wrongdoing by minorities because their  
8 political or ideological feelings prohibited them from  
9 not doing it. I wanted to hire people, such as  
10 Christian Adams, for example, who would work on a vote  
11 dilution case on behalf of African Americans and work  
12 on a case against the Black Panthers.

13 And so I didn't like the limitations that  
14 I was finding that people put on what they were  
15 willing to work on. If one has a private practice or  
16 one works with a private group, then one might be able  
17 to make decisions of, "Well, I am not going to do  
18 those types of cases. And we are not going to do this  
19 type of case."

20 But when you are paid by the taxpayer and  
21 you're working for the Department of Justice, I think  
22 it is totally indefensible for employees to take the  
23 position that they're not going to enforce  
24 race-neutral laws in a race-neutral manner.

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1                   So I thought it was completely appropriate  
2 to ask that question.

3                   COMMISSIONER TAYLOR: Did Mrs. King ask  
4 you to stop asking that question?

5                   MR. COATES: She did not ask me. She told  
6 me. She said, "You will not ask that question again."

7                   COMMISSIONER TAYLOR: Was that part of  
8 what caused a strained relationship, in your mind, as  
9 well?

10                  MR. COATES: The strain between Ms. King  
11 and I probably was already there, but that  
12 conversation did not help our relationship.

13                  Of course, I complied with it. And I  
14 didn't argue with her because I felt that, as the  
15 Acting Assistant Attorney General, she had the  
16 authority to give me that directive.

17                  But I thought that the fact that she gave  
18 me that directive speaks to her own view of  
19 race-neutral enforcement of the Voting Rights Act.

20                  CHAIRMAN REYNOLDS: Thank you,  
21 Commissioner Taylor.

22                  Commissioner Yaki?

23                  COMMISSIONER YAKI: Yes. Thank you very  
24 much.

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1                   Mr. Coates, in 2005, you were made the  
2 principal deputy of the Voting Rights Section. Is  
3 that correct?

4                   MR. COATES: That's correct.

5                   COMMISSIONER YAKI: So you would have, is  
6 it fair to say, knowledge of a lot of the issues that  
7 were being brought up or considered for investigation  
8 by the Voting Rights Section, correct?

9                   MR. COATES: Yes, with this caveat, is  
10 that I was still in that position because of my own  
11 choosing and also the way in which the Chief of the  
12 Voting Section at that time chose to assign is that  
13 there would have been a number of things that would  
14 have been occurring after I became principal deputy  
15 that I would not have personal knowledge of but other  
16 things I would.

17                   COMMISSIONER YAKI: And the Chief at the  
18 time was John Tanner, correct?

19                   MR. COATES: That's correct.

20                   COMMISSIONER YAKI: I want to ask for your  
21 recollection based upon your work over the years in  
22 the Voting Rights Section because you talk about some  
23 examples and you've made the indication that the Black  
24 Panthers was an outrageous situation.

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1 I take it that part of the outrageousness  
2 for you was the fact that one of the persons was  
3 carrying a baton. A weapon, I think you called it in  
4 your testimony, correct?

5 MR. COATES: That was one of the factors  
6 but certainly not the only factor.

7 COMMISSIONER YAKI: True. I understand.  
8 I wanted to talk to you about in 2006 the situation in  
9 Pima, Arizona when allegations were made that three  
10 fairly well-known in the community anti-immigrant  
11 advocates affiliated with the Minutemen organization  
12 were filming Latino voters at polling places. One of  
13 them had a gun, had an open-carry gun. There are  
14 allegations that some of them had their own  
15 hand-printed badges on their side.

16 I want to know whether or not the  
17 Department ever opened up any investigation into the  
18 Pima issue or not when you were there.

19 MR. COATES: The -- I've learned about the  
20 Pima, I'm familiar with the Pima, Arizona matter. I  
21 learned about it after it occurred and after it came  
22 to the Department. So I can talk to you more about it  
23 in 2008 than I can in 2006 and 2007.

24 COMMISSIONER YAKI: Okay.

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1 MR. COATES: Okay? But yes, it did -- the  
2 complaint did come to the Voting Section.

3 COMMISSIONER YAKI: Yes.

4 MR. COATES: And my understanding is that  
5 in 2006 it was investigated. In 2008, my recollection  
6 -- and I haven't looked at those files in several  
7 years, but my recollection is that we did send an  
8 attorney to Pima to investigate the matter. And we  
9 did send federal observers to Pima during the 2008  
10 election. And I can't remember if it was primary  
11 election or general election or both.

12 And one of the factors that we relied upon  
13 in sending federal observers to Pima was the incident  
14 that you refer to involving some Minutemen.

15 COMMISSIONER YAKI: Let me just ask you  
16 this, if you can. If you can't, I understand, but  
17 understand, from my point of view just being here on  
18 the Commission, when you see facts of a certain genre,  
19 you tend to think, as you have said, there should be  
20 equal treatment before the law.

21 My question is, why in 2006 -- given these  
22 facts and given the fact that in 2008, it was  
23 important enough to send a federal observer there  
24 because of these allegations. Why wasn't an 11(b)

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1 investigation opened up into this matter? Do you have  
2 any personal knowledge as to that?

3 MR. COATES: I think that an investigation  
4 of the matter was opened. And the information that I  
5 recall being reported to me was that it did involve  
6 three people who were probably associated with the  
7 Minutemen, that Arizona had a -- I can't remember  
8 whether it was 50 feet or 150 feet but that the state  
9 has an area in which you cannot be in --

10 COMMISSIONER YAKI: True.

11 MR. COATES: -- and that the Minutemen  
12 activities took place outside that area, I remember --

13 COMMISSIONER YAKI: But let me ask you  
14 this. I'm sorry to interrupt, but does --

15 CHAIRMAN REYNOLDS: Please let him finish.

16 MR. COATES: I remember seeing --

17 COMMISSIONER YAKI: Sure.

18 MR. COATES: I was going to tell you I  
19 remember seeing a picture.

20 COMMISSIONER YAKI: Right.

21 MR. COATES: We had a picture in the file  
22 of the man. One of the men was wearing a holstered  
23 pistol.

24 COMMISSIONER YAKI: Right.

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1 MR. COATES: And that did give concern.  
2 The investigation, as I recall, determined that he did  
3 not draw the pistol. And, fortunately or  
4 unfortunately, under Arizona law, I think that our  
5 investigation determined that one can wear a holstered  
6 pistol in Arizona.

7 COMMISSIONER YAKI: Well, I'm curious  
8 about that statement because the fact is, I think you  
9 would agree, that voter intimidation takes many forms.  
10 And the mere fact that you have a holstered gun within  
11 50 feet versus 100 feet versus the entrance to the  
12 parking lot of where a team of voters may be coming in  
13 and you're watching them and filming them, I would  
14 think that would be cause for alarm.

15 I guess I am curious as to what the  
16 standard is here. Is it because the Panthers were  
17 within 100 feet that it was also a problem, the fact  
18 that these guys with guns were outside 100 feet? It's  
19 a little unclear to me, if you are intimidating  
20 voters, why it matters whether you're 25 feet, 50  
21 feet, 100 feet, standing next to a parking lot, an  
22 overpass to a highway holding a sign saying, "Don't  
23 vote or we're going to get you. And we're filming."

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1 I mean, there really shouldn't be a  
2 distance in some ways. It's a matter of judgment and  
3 fact and perception, isn't it?

4 MR. COATES: Yes. And I think that all of  
5 those factors -- I think that the Pima situation was  
6 something that needed to be looked into. And during  
7 the time that I was Chief, it was looked into in  
8 making determinations about whether or not federal  
9 statute has been violated, we have to give some  
10 consideration to the countervailing claim by a person  
11 that where the person was and the activity in which  
12 the person was involved in is protected by state law.

13 COMMISSIONER YAKI: Great. Okay. Thank  
14 you.

15 MR. COATES: But that is not a  
16 determination that completely binds the federal  
17 government but is something that we need to look at.

18 COMMISSIONER YAKI: Great. I will follow  
19 up on that later.

20 MR. COATES: Okay. The attorney that was  
21 looking at it did some state law research to find out  
22 that the person was legally entitled to wear a pistol.

23 Now, I think that, if the pistol had been  
24 drawn, then that would be a different set of facts.

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1 And those facts would militate much more in favor of  
2 an 11(b) violation.

3 COMMISSIONER YAKI: I understand. Thank  
4 you.

5 MR. COATES: That is a -- I mean, anything  
6 that happens in a polling place that might keep voters  
7 from voting is a serious, serious matter.

8 COMMISSIONER YAKI: Thank you.

9 CHAIRMAN REYNOLDS: Commissioner Melendez?

10 COMMISSIONER MELENDEZ: First of all, I  
11 want to thank you, Mr. Coates, for being here today.

12 MR. COATES: Thank you, Mr. Melendez.

13 COMMISSIONER MELENDEZ: I know this came  
14 on really sudden. I just received your testimony a  
15 few minutes before this convened. But why have you  
16 decided to come before the Commission now, as opposed  
17 to earlier? Has something changed? Was it the  
18 previous testimony that you wanted to get on record?  
19 I was just wondering.

20 MR. COATES: In looking at the August 11th  
21 letter by Mr. Perez, I was still hoping that there  
22 might be a change by the Department and I would get  
23 permission to testify because I would rather be here  
24 with their permission than without their permission,  
25 as I am.

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1           But, as I previously testified, there were  
2           some statements made by Mr. Perez in his testimony in  
3           May and some statements made in his August 11th letter  
4           to the Chairman that I did not agree with. I don't  
5           think that they are factually correct, though I don't  
6           claim that they are made -- they are perjured.

7           And so the combination of saying over a  
8           period of time the representations by the Department,  
9           knowing that I did not agree with some of them,  
10          knowing that I had personal information concerning  
11          some of them, led me to believe that the correct thing  
12          to do would be to testify.

13                 COMMISSIONER MELENDEZ: Okay. My other  
14          question was, you know, in the reluctance to enforce  
15          race-neutral laws against minorities, is it your  
16          opinion that we're talking about Afro-Americans or are  
17          you saying that Hispanics, Native Americans, Asians,  
18          that you would feel that there would be a reluctance  
19          to move forward, even on those, those cases?

20                 MR. COATES: I think that the philosophy  
21          that some people have that the Voting Rights Act was  
22          intended to benefit people of color and that,  
23          therefore, the federal government should not be  
24          involved in enforcing the provisions against those  
25          minority groups would apply to other racial

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1 minorities. But the particular cases that I have  
2 talked about are cases in which the wrongdoers were  
3 African American.

4 COMMISSIONER MELENDEZ: Okay.

5 MR. COATES: But I think there is a danger  
6 that that same type of reasoning will be applicable if  
7 wrongdoing by an American Indian, by a Hispanic  
8 person, by an Asian person were brought to the  
9 Division, to the Section.

10 COMMISSIONER MELENDEZ: Okay. Thank you.  
11 No other questions.

12 CHAIRMAN REYNOLDS: Okay. Commissioner  
13 Heriot?

14 COMMISSIONER HERIOT: Yes. I guess I want  
15 to join my colleagues first in thanking you for your  
16 testimony.

17 I had just a couple of quick questions, I  
18 think. You told Commissioner Kirsanow that you did  
19 not believe that the policy against enforcing Section  
20 8 list maintenance was racially motivated, but you  
21 didn't say what you thought did motivate it. Could  
22 you comment on that?

23 MR. COATES: The -- I think what motivates  
24 that is the reluctance on the part of the mindset in  
25 the Civil Rights Division and in the Voting Section of

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1 taking people off of the list. They would rather  
2 leave 100 people on who are ineligible, rather than  
3 run the risk to take one person off who was eligible.

4 And I think that that grows out of the  
5 past history when people who were eligible were  
6 unlawfully taken off.

7 COMMISSIONER HERIOT: So I guess another  
8 way of putting that is they disagreed with the  
9 congressional policy.

10 MR. COATES: That's right.

11 COMMISSIONER HERIOT: Okay.

12 MR. COATES: Yes. The consequence -- I  
13 don't claim it's the motivation, but the consequence  
14 of it, I think, is to favor in certain jurisdictions  
15 the Democratic Party and to favor racial minorities  
16 because, in a number of areas, the bloated lists, are  
17 at areas where there are large numbers of minorities.

18 But I don't claim that that is the  
19 motivation for it. So that's why I said I don't think  
20 it's a racially-motivated failure to report Section 8.

21 COMMISSIONER HERIOT: The incident that  
22 actually interested me most was the incident involving  
23 the job interviews, job applicants --

24 MR. COATES: Yes.

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1                   COMMISSIONER HERIOT:    -- that you have  
2 discussed already a little bit with Commissioner  
3 Taylor.    If anything illustrates a culture of  
4 hostility to race-neutral administration of the law,  
5 if anything that we have talked about, I think that  
6 that would be the incident that best illustrates it to  
7 me because, to me, the whole focus of the Civil Rights  
8 Division is to ensure the racially neutral  
9 administration of the law.

10                   And, therefore, in some respects, I would  
11 say the question ought to be mandatory.    But what I  
12 wanted to ask, I know that you are not supposed to ask  
13 a number of questions to applicants for career  
14 positions that would get into their own political  
15 background and such, but are there any written  
16 procedures that you use in the Voting Section, or in  
17 the Civil Rights Division generally, in interviewing  
18 job applicants?    Are there such procedures that we  
19 could take a look at?

20                   MR. COATES:    I think that there were some  
21 in effect at the time that I was doing the  
22 interviewing in 2008.    There were some procedures.  
23 And there have -- since Mr. Perez has become the AAG,  
24 there have been amendments to the hiring procedures.  
25 And some of those amendments may address questions

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1 that can and cannot be asked of applicants, but I am  
2 just not sure.

3 COMMISSIONER HERIOT: Do you remember  
4 anything specific on that --

5 MR. COATES: On questions that --

6 COMMISSIONER HERIOT: -- on amendments?

7 MR. COATES: There were -- it's a matter  
8 of public record at this point, I think. There were  
9 some amendments made to the hiring procedures that set  
10 up committees that interview and delegate power as to  
11 who does the first interview and how many interviews  
12 are conducted and then at what point the matter is  
13 turned over to the political appointees at the  
14 division level and how much power the career attorneys  
15 have.

16 And I believe that that -- those are some  
17 regulations that have been amended since I moved to  
18 Charleston.

19 COMMISSIONER HERIOT: And Ms. King told  
20 you not to do that? Am I correct on that?

21 MR. COATES: Ms. King.

22 COMMISSIONER HERIOT: Ms. King.

23 MR. COATES: Ms. King told --

24 COMMISSIONER HERIOT: And did she tell you  
25 why?

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1 MR. COATES: No. She told me -- she  
2 wanted to know if I had asked the direct question  
3 whether or not they would be willing to work on the  
4 case like *Ike Brown*. I phrased it in several  
5 different ways. "This is what the *Ike Brown* case is  
6 about. Would you be willing to work on this kind of  
7 case as well as a Section 2 vote dilution case on  
8 behalf of Hispanic Americans or African Americans?"

9 I may have asked, "Are you familiar with  
10 the race-neutral prohibitions in Section 2? And would  
11 you be willing to enforce them against all races or"  
12 -- that, that kind of question.

13 And I told her yes, that I had asked. And  
14 I told her why, that I had had problems with people  
15 telling me that they weren't going to work on a case  
16 that had been authorized by the Division front office.  
17 *Ike Brown* was authorized by the Bush Department Civil  
18 Rights Division. The *Black Panther Party* was  
19 authorized by the Bush Department Civil Rights  
20 Division. And that's why I wanted to ask that  
21 question. So she knew in what context I was asking.

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER HERIOT: And, by the way, do  
24 you agree with me that the whole purpose of the Civil  
25 Rights Division --

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1 CHAIRMAN REYNOLDS: Commissioner Heriot?

2 COMMISSIONER HERIOT: -- is to ensure the  
3 race-neutral administration of the law?

4 CHAIRMAN REYNOLDS: Commissioner Heriot,  
5 we're going to have to take care of that question  
6 during the next round.

7 COMMISSIONER HERIOT: Okay.

8 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
9 you're up.

10 COMMISSIONER GAZIANO: Would you like me  
11 to yield back to you or can I proceed?

12 CHAIRMAN REYNOLDS: No. Go ahead.

13 COMMISSIONER GAZIANO: Thank you.

14 Let me get back to where I left off. And  
15 that is that neither Perez nor anyone higher than you  
16 asked you why you believed, as you stated in your  
17 farewell speech, there was hostility to the  
18 race-neutral application of the voting rights law.  
19 And let me suggest one reason. They didn't ask you.  
20 You testified very clearly today that King and  
21 Rosenbaum and Fernandes are themselves hostile to the  
22 race-neutral application of the voting rights law.

23 Maybe they didn't care why you thought  
24 that. Is that possible?

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1 MR. COATES: I not only think it's  
2 possible. I think it's probable.

3 COMMISSIONER GAZIANO: Okay. Now, I then  
4 asked Mr. Perez. By the way, in response to me, he  
5 said he, of course, believes in the race-neutral  
6 application of the voting rights law, but I told him  
7 that I thought actions speak louder than words.

8 And I asked him. I said, "You know, there  
9 were these newspaper articles. There was the -- about  
10 the Noxubee hostility and harassment. There were  
11 newspaper articles that the *Black Panther* suit was  
12 dismissed that held up your confirmation, Mr. Perez.  
13 There was the speech by Chris Coates that he believes  
14 that. If you didn't believe that, Mr. Perez, why  
15 didn't you issue a memo or statement to your staff  
16 saying, 'There are these reports. It is not the  
17 policy of this Department,' and just to clear up this  
18 confusion, 'It is not the policy. It shall not be the  
19 policy. And anyone who said otherwise is going to be  
20 in trouble from me'?"

21 I asked him if he ever issued such a  
22 statement. And he gave me a long-winded kind of  
23 non-answer denial because that wasn't necessary.

24 But did anyone, Perez or anyone, since the  
25 beginning of the Obama administration, say, "These

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1 allegations are not true. And it is not the policy of  
2 this Division to enforce the civil rights laws in a  
3 racially selective way. It is the policy to enforce  
4 them in a race" -- did anyone issue that kind of a  
5 memo or statement or policy?

6 MR. COATES: No, I don't think they have.  
7 I think generalizations have been made that Mr. Perez  
8 has said that we follow the law and follow the facts.

9 Every Acting AAG and every AAG that I have  
10 ever had makes that statement. It is self-serving,  
11 and that kind of statement is made.

12 But what needs to be done, in response to  
13 your question, when you have a Deputy Assistant  
14 Attorney General come down and say that this  
15 administration is not interested in filing Section 8  
16 list maintenance cases or that we only file cases on  
17 behalf of racial minorities under Section 2, what  
18 needs to be done is somebody in a position of  
19 authority at Mr. Perez's level needs not to deal in  
20 cliches.

21 He needs to come to the Voting Section or  
22 go to a meeting where all attorneys are going to be  
23 there and specifically tell them, "I have been  
24 informed that this is what was said and this is not

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1 the policy of this administration." And that has not  
2 been done.

3 What has been done, of course, the last  
4 year and a half that I have heard, is cliches are  
5 used. We're open for business. They're going to  
6 restore the Civil Rights Division.

7 What the press does not tell you is that,  
8 during the Bush administration, more suits were filed  
9 under the Voting Rights Act, more suits were filed  
10 under the Voting Rights Act, than were filed in the  
11 Clinton administration.

12 The idea that the Voting Rights Act was  
13 not actively enforced during the Bush administration  
14 is not true, but what we have heard, rather than the  
15 specifics that you have talked about that need to be  
16 said, are the cliches that we're open for business  
17 again.

18 COMMISSIONER GAZIANO: Since the time is  
19 short, let me just step up a little bit --

20 MR. COATES: Okay.

21 COMMISSIONER GAZIANO: Thank you for that.  
22 It is very valuable.

23 -- to right before the months preceding  
24 Perez's testimony. I understand the week during which  
25 Perez testified, there was a meeting in which some of

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1 the trial team briefed him. And it has been reported  
2 that you participated by conference phone. Is that  
3 right?

4 MR. COATES: Yes.

5 COMMISSIONER GAZIANO: Okay. Now, some of  
6 this may be involved in the --

7 MR. COATES: Deliberative.

8 COMMISSIONER GAZIANO: -- deliberative  
9 process. In another line of questions, I want to hone  
10 in on that. Since the case is already dismissed, I  
11 don't think it would be deliberative to the case.

12 Did you make Perez or anyone else make  
13 Perez aware of the hostility to the race-neutral  
14 application of the voting rights laws in the Noxubee  
15 case?

16 MR. COATES: With regards to my  
17 conversations with Mr. Perez, I don't think that we  
18 have ever discussed Noxubee. And the meeting that you  
19 are talking about was focused on the New Black Panther  
20 Party.

21 COMMISSIONER GAZIANO: Did anyone make him  
22 aware that there is hostility to the race-neutral  
23 application of the law?

24 CHAIRMAN REYNOLDS: I'm sorry,  
25 Commissioner Gaziano. Next round.

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1 I have a few questions for you.

2 MR. COATES: Yes, sir.

3 CHAIRMAN REYNOLDS: You mentioned that  
4 there were several black employees at the Department  
5 of Justice who elected to work on both the Noxubee and  
6 the *New Black Panther Party* case. Is that correct?

7 MR. COATES: It was one employee, and he  
8 worked on both of them.

9 CHAIRMAN REYNOLDS: Okay. Do you believe  
10 that his career would be adversely affected by his  
11 decision to work with you on these cases?

12 MR. COATES: I don't know, but I know that  
13 he was made to feel uncomfortable in the Voting  
14 Section by employees of the Division who unjustly  
15 criticized him.

16 CHAIRMAN REYNOLDS: Okay. And the same  
17 question for his mother. Do you believe that her  
18 career would be adversely affected because of her  
19 son's decision to assist you in these cases?

20 MR. COATES: His mother has been working  
21 for the Division for a long time. She was working in  
22 the Voting Section when I came to work there in 1996.  
23 And I think that she is a very, very treasured  
24 employee. And I think that she weathered that. So I

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1 do not think that her career will be adversely  
2 affected.

3 CHAIRMAN REYNOLDS: Thank you.

4 At this time I would yield some of my time  
5 to Mr. Blackwood.

6 MR. BLACKWOOD: Two questions. I just  
7 want to confirm some statements that occurred in Mr.  
8 Adams' testimony and see if you can verify them.  
9 Robert Kengle, K-e-n-g-l-e, deputy in the Voting  
10 Section, stated to you during a trip to investigate  
11 the *Ike Brown* case, "Can you believe we are being sent  
12 down to Mississippi to help a bunch of white people?"  
13 Did a statement like that occur?

14 MR. COATES: Yes, as I indicated in my  
15 testimony. I just didn't call Mr. Kengle by name.

16 MR. BLACKWOOD: Another deputy in the  
17 section said in the presence of Mr. Coates, "I know  
18 that Ike Brown is crooked and everybody knows that,  
19 but the resources of the Division should not be used  
20 in this way"?

21 MR. COATES: Yes. That statement was made  
22 to me by a deputy chief.

23 MR. BLACKWOOD: Can you identify who that  
24 was?

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1 MR. COATES: She's no longer with the  
2 Department. Her name is Gilda Daniels. And she was a  
3 deputy. And she was indicating to me in a casual  
4 conversation in the Voting Section that Brown's  
5 reputation for lawlessness is well-known in the  
6 African-American community as well, but that she felt  
7 that we should be using our resources in the Voting  
8 Section in other areas.

9 MR. BLACKWOOD: That's all. Thank you.

10 CHAIRMAN REYNOLDS: Okay. If that is the  
11 case, Vice Chair Thernstrom?

12 VICE CHAIR THERNSTROM: I am holding my  
13 questions. I am yielding my time again to  
14 Commissioner Yaki.

15 COMMISSIONER YAKI: Thank you very much,  
16 Madam Vice Chair.

17 Mr. Coates, I am still fascinated by the  
18 inner workings of the Voting Rights Section. So  
19 please bear with me.

20 You were also there in 2005. There were  
21 allegations that investigators for the State of  
22 Mississippi who were armed went into the homes of  
23 elderly minority voters in municipal elections asking  
24 them who they voted for. And generally for them, they  
25 felt very intimidated.

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1 I believe that a complaint was relayed to  
2 the Civil Rights Division. Can you tell me what the  
3 disposition of that complaint was?

4 MR. COATES: Yes. And since Mr. Perez  
5 talked about that in his testimony, I am going to talk  
6 about it, too.

7 COMMISSIONER YAKI: Okay.

8 MR. COATES: I was in charge of that  
9 investigation as a principal deputy. And we  
10 interviewed African-American voters in Panola. The  
11 name of the jurisdiction is Panola County,  
12 Mississippi.

13 We interviewed telephonically witnesses  
14 who had -- some investigators from the Attorney  
15 General's office had come in. They were doing a voter  
16 fraud investigation, but they asked these people they  
17 interviewed for whom they voted. There is a  
18 Mississippi law that prohibits that except in very  
19 special circumstances.

20 Judge Lee, for example, in the *Ike Brown*  
21 case would not let lawyers on either side ask for whom  
22 people voted.

23 COMMISSIONER YAKI: Right.

24 MR. COATES: We did that investigation.  
25 And I recommended that we do a complete investigation

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1 in Panola County because I felt that those questions  
2 were inappropriate and improper and it was not a way  
3 to properly conduct a voting fraud investigation.

4 My recommendation in that regard was not  
5 followed, and the matter was not followed up.

6 COMMISSIONER YAKI: Who did you send that  
7 recommendation to?

8 MR. COATES: Mr. Schlozman.

9 COMMISSIONER YAKI: Okay. I am going to  
10 turn a little bit back to the -- I have so many  
11 questions, but I am going to stick with this for now.

12 On the *New Black Panther* case, I am  
13 fascinated by one aspect of the entire case. And that  
14 is the incident occurred on Election Day 2008. And,  
15 as you said, you assigned Mr. Popper and Mr. Adams as  
16 part of the team. They prepared a j-memo I think,  
17 according to what we have, December 22nd, 2008. The  
18 complaint was filed January 2007.

19 I am going to give you a series of e-mails  
20 that were produced that are not privileged because  
21 they were sent by -- chronologically they go from most  
22 recent to the earliest. I think what I would like to  
23 draw your attention to, in particular, is -- hang on  
24 just one second -- that's what happens when you have  
25 too many papers on your desk.

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1                   Okay. On the very last page --

2                   MR. COATES: Okay.

3                   COMMISSIONER YAKI: This is December 10th,  
4 2008. This is from Christian Adams to redacted,  
5 redacted being for privacy reasons, we won't tell.  
6 "I've got a real problem on this. I'm trying to  
7 figure out who the poll worker was inside that got  
8 harassed. I'm getting about three different versions  
9 of events depending on if I talk to 'blank' or 'the  
10 RNLA guys.' I would like to show a poll worker got  
11 harassed because of his race," but basically if you  
12 read that e-mail and then the one on top, he says in  
13 the one dated December 10th at 4:57 p.m., the last two  
14 lines are "I've tried to seek John Giordano on this,  
15 too, to get some clarity. That 'narrative' can't come  
16 quick enough, as you can imagine."

17                   Listening to what you had talked about in  
18 terms of the other investigations involving possible  
19 voter intimidation, whether it was in Pima or whether  
20 it was in Mississippi, whether it was the two other  
21 instances you referred to in your testimony that, one  
22 you described as prolonged, the other one for various  
23 reasons, Justice did not take any action in those that  
24 you think was justified.

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1 My question as I'm reading this is that  
2 you said --

3 CHAIRMAN REYNOLDS: Commissioner Yaki, you  
4 are out of time.

5 COMMISSIONER YAKI: Okay. Well, I just  
6 want you to understand that. My next question is  
7 going to be about that.

8 CHAIRMAN REYNOLDS: Okay. Commissioner  
9 Kirsanow?

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

12 Mr. Coates, despite the dismissal of the  
13 *New Black Panther* case, it is still your position, I  
14 take it, that both the legal and factual bases behind  
15 bringing the federal government's case against these  
16 defendants was sound, correct?

17 MR. COATES: That's correct.

18 COMMISSIONER KIRSANOW: Okay.

19 MR. COATES: All four defendants and the  
20 injunctive relief that we asked for.

21 COMMISSIONER KIRSANOW: Is it your  
22 position that the dismissal of the *New Black* --  
23 without getting into deliberative process privilege,  
24 is it your position that dismissal of the *New Black*  
25 *Panther* case reflects or is because of the hostility

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1 that you described toward the non-neutral enforcement  
2 of voting rights laws that exist in the Voting Section  
3 or Civil Rights Division broadly?

4 MR. COATES: Yes.

5 COMMISSIONER KIRSANOW: Okay. We  
6 understood that the Justice Department was asserting a  
7 deliberative process privilege with respect to any  
8 testimony that was to be provided by any DOJ employee  
9 and, thus, refused to produce certain trial team  
10 employees. And Mr. Adams resigned his employment and  
11 testified before us but steered clear of deliberative  
12 process privilege, as have you.

13 We then sought an accommodation with the  
14 Justice Department and asked that they produce, among  
15 others, you to testify exclusively about  
16 non-privileged matters. I think we made that  
17 accommodation in mid August.

18 Did anybody from the Department of Justice  
19 contact you with respect to whether or not you would  
20 be testifying on non-privileged matters?

21 MR. COATES: No. The only communication  
22 that I got in that regard is that a copy of the letter  
23 that Mr. Perez sent to the Chairman on August the  
24 11th, a copy of that was sent to me, I think. I may

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1 have gotten it off your website. But, anyway, I have  
2 a copy of the letter.

3 But people from the Department called me  
4 saying, "We've got this request for you to testify,  
5 but you can't talk about deliberative process. Now,  
6 tell us how that would go and how that would be done,"  
7 no, I didn't have any discussions in that regard.

8 COMMISSIONER KIRSANOW: Okay. That was  
9 done, despite the fact that there is a provision in  
10 federal law that requires, among others, the Justice  
11 Department to cooperate with us in our investigations.  
12 And no privileges were asserted by the Department of  
13 Justice to preclude you from testifying.

14 I want to pick up on something  
15 Commissioner Gaziano touched upon regarding the  
16 statements by Ms. Fernandes. To your knowledge, has  
17 Ms. Fernandes at any time repudiated, amended, or  
18 rescinded the comments she made about the  
19 administration not enforcing Section 8 of the Voting  
20 Rights Act, National Voting Registration Act?

21 MR. COATES: Not to my knowledge.

22 COMMISSIONER KIRSANOW: To your knowledge,  
23 has anybody in a supervisory capacity within the  
24 Department of Justice or any political appointee  
25 rescinded, repudiated, or amended the statements made

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1 by Ms. Fernandes regarding the administration's  
2 disinclination to pursue Section 8 cases?

3 MR. COATES: Not to my knowledge. I have  
4 looked for that because I was hoping that it would  
5 come, but there has not been any repudiation of that  
6 stated practice.

7 COMMISSIONER KIRSANOW: And, similarly,  
8 with respect to the statements relating to the  
9 enforcement of the Voting Rights Act in a racially-  
10 neutral fashion, has there been any repudiation,  
11 amendment, or rescission of those statements; that is,  
12 bringing cases against minority violators of the  
13 Voting Rights Act? Has anyone in the supervisory  
14 capacity or Ms. Fernandes, to your knowledge,  
15 repudiated, rescinded, or amended those comments?

16 MR. COATES: No, not to my knowledge.  
17 There has been some general statements by Mr. Perez.  
18 I don't remember whether they've come before or after  
19 Ms. Fernandes's statement since September or November  
20 of 2009, but, as I have testified previously,  
21 generalized cliches is not what we need. We need the  
22 kind of statement that you're talking about, is that  
23 it has been reported to me that Ms. Fernandes had made  
24 such and such statements.

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1           And those are not the policies of the  
2 Obama administration. The Obama administration is in  
3 favor of the race-neutral enforcement of the Voting  
4 Rights Act.

5           That has not been done, to my knowledge.

6           COMMISSIONER KIRSANOW: And, similarly, I  
7 take it that, to your knowledge, there has been no  
8 disciplinary actions, reprimands, or anything of that  
9 nature taken against anyone who may have made any such  
10 statements with respect to either Section 8 of the  
11 NVRA or of the Voting Rights Act in general?

12           MR. COATES: No, but since I have been in  
13 Charleston since the 11th and have not been a manager  
14 in the Voting Section, I would not know about that at  
15 all --

16           COMMISSIONER KIRSANOW: Understood.

17           MR. COATES: -- if disciplinary action had  
18 been taken.

19           COMMISSIONER KIRSANOW: During your 13 and  
20 a half years with respect to voting rights cases in  
21 the Department of Justice, have you been involved in  
22 cases in which --

23           CHAIRMAN REYNOLDS: Commissioner Kirsanow,  
24 we will have to follow up.

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1 COMMISSIONER KIRSANOW: Thank you very  
2 much.

3 CHAIRMAN REYNOLDS: Commissioner Taylor?

4 COMMISSIONER TAYLOR: I would like to ask  
5 you about the lobbying by the traditional civil rights  
6 groups in terms of trying to impact the disposition of  
7 a case.

8 You indicated in your testimony that the  
9 then Chief of the Criminal Section complained that the  
10 *Brown* case had caused his section considerable  
11 problems in that traditional civil rights community.  
12 And then you went on to say that he was correct in  
13 claiming that a number of these groups were opposed to  
14 the race-neutral enforcement of the Voting Rights Act.

15 MR. COATES: Right.

16 COMMISSIONER TAYLOR: Can you expand upon  
17 that statement? And what is the basis of you making  
18 the statement that he is correct that they are, in  
19 fact, opposed to race-neutral application of the law?

20 MR. COATES: I think that the best  
21 indication, that Mr. Kappelhoff raised the subject in  
22 a management meeting at the division level because I  
23 presume he had received a number of complaints from  
24 people in the groups who were asking, "What are you

1 doing suing Ike Brown in Mississippi?" What are you  
2 doing bringing a lawsuit to that effect?"

3 It was common knowledge that a number of  
4 people in leadership positions in a number of the  
5 civil rights groups, such as Ms. Clarke in LDF,  
6 criticized the bringing of the *Brown* case.

7 The meeting that I talked about that took  
8 place in the Fall of 2008 was attended by about 20  
9 representatives of almost, I won't say every civil  
10 rights group, but the major civil rights groups in  
11 this country, whether it be ACLU, Lawyers Committee  
12 for Civil Rights Under Law, LDF, the national NAACP, a  
13 number of others. I'm sorry. The names miss me at  
14 this time. Those organizations were represented.

15 And Ms. Clarke did a criticism of the  
16 *Brown* case. And all of those organizations were in  
17 attendance. And there was not one organization that  
18 at the meeting said, "But, by the way," the MALDEF or  
19 La Raza or NAACP or ACLU, "we think that you all did  
20 right by bringing a case in Noxubee County,  
21 Mississippi." There was no opposition.

22 And I don't remember a single -- I talked  
23 with leaders of civil rights organizations on a fairly  
24 regular basis when I was Chief of the Voting Section.

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1 I think a job of the Chief, if you can, is  
2 to keep up good relations because you can hear about  
3 complaints, good cases that need to be pursued.

4 And I don't remember any person connected  
5 with any civil rights group in the country who  
6 congratulated the Voting Section on bringing the *Brown*  
7 case or the *New Black Panther* case. And that is not  
8 the case when I have been involved in cases on behalf  
9 of racial minorities.

10 So it's that that indicates to me that  
11 many of the people who are in leadership positions  
12 were not in favor of race-neutral enforcement of the  
13 Voting Rights Act.

14 COMMISSIONER TAYLOR: Okay.

15 CHAIRMAN REYNOLDS: Okay. Commissioner  
16 Yaki?

17 COMMISSIONER YAKI: Thank you very much.

18 Let me go back to where we were. It's a  
19 little -- in 2008, December 2008, you still had  
20 authority in the Voting Rights Section, correct? It  
21 wasn't until some time in early 2009 that you say that  
22 your authority started to gradually erode away or  
23 leach away, as some people said it. Is that correct?

24 MR. COATES: That's correct. Yes.

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1                   COMMISSIONER YAKI:    So in December 2008,  
2                   you were still the man in charge, person in charge, so  
3                   to speak?

4                   MR. COATES:    That's right.  I had a good  
5                   relationship with Grace Chung Becker, --

6                   COMMISSIONER YAKI:  Great.

7                   MR. COATES:    -- who was AAG at the time.

8                   COMMISSIONER YAKI:    Well, that e-mail  
9                   trail is just fascinating to me because it shows that  
10                  in the week and a half, two weeks -- week and a half,  
11                  ten days prior to the filing of the j-memo, Mr. Adams  
12                  is calling third parties because he has no facts.  He  
13                  can't find any voters who are intimidated.  He can't  
14                  find any names of any black poll workers who were  
15                  intimidated.  He is trying to find still shots of the  
16                  YouTube video apparently to make the case.

17                  I just say that because that is what those  
18                  e-mails state.  Now --

19                  MR. COATES:  I disagree with that.

20                  COMMISSIONER YAKI:  Well, tell me why.

21                  MR. COATES:    Okay.  Is that we had  
22                  evidence from a number of sources that indicated that  
23                  the intimidation that the lawsuit was based on had  
24                  occurred.  I think that what Mr. Adams is referring to

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1 in these e-mails is tracking down particular witnesses  
2 and particular pieces of evidence.

3 And it's not unusual for attorneys in  
4 investigating a case and investigating it fairly to  
5 express some frustration when they can't find a  
6 particular document or a particular witness that they  
7 are looking at. It does not mean that there is not a  
8 legitimate basis for the bringing of the lawsuit at a  
9 later time.

10 COMMISSIONER YAKI: You know, Mr. Coates,  
11 I understand, but I am just going by the plain words  
12 of what he said. He said, "I've got a real problem on  
13 this. I'm trying to figure out who the poll worker  
14 was inside that got harassed."

15 Obviously you had reports. I understand  
16 that. You assigned investigators who were in the area  
17 to go to that poll. I understand that. You then  
18 assigned attorneys to start looking at developing the  
19 case for that. I understand that.

20 I am just going by what is said here. And  
21 it says, "I've got a real problem on this. I'm trying  
22 to figure out who the poll worker was inside that got  
23 harassed."

24 And then I am puzzled by the statement  
25 "The narrative can't come quick enough, as you can

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1 imagine." The reason I am puzzled by this, Mr.  
2 Coates, is that when you talk to me about Pima, when  
3 you talk to me about the Mississippi state  
4 investigators, when you talk to me about the two  
5 instances, one in Alabama, one of the other ones that  
6 you investigated but chose not to because there were  
7 other competing remedies that you thought were going  
8 on, and even looking at the Noxubee case in terms of  
9 the development of the case there, those seem to be,  
10 at least from my point of view, rather thoughtful,  
11 deliberative processes that took a number of months,  
12 the case of Pima, it took two years for something to  
13 happen. In Noxubee, I think your notes say you  
14 investigated 2003-2004. The complaint was filed in  
15 February 2005. And I'll get into Noxubee on a number  
16 of different fronts later.

17 I'm just curious as to why was Mr. Adams  
18 in a rush because the j-memo comes out December 22,  
19 2008. The complaint is filed January 7th, 2009. That  
20 is about what, 40 days after the alleged incident.

21 I mean, I am puzzled because it seems to  
22 me that you're a much more deliberative person, that  
23 you believe in ascertaining facts. And this thing was  
24 put together in 45 days.

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1 I just want to know why was that. Was it  
2 that easy a case?

3 MR. COATES: Well, it was that simple of a  
4 case and --

5 COMMISSIONER YAKI: Tell me why it was  
6 simple.

7 MR. COATES: One, you have video.

8 COMMISSIONER YAKI: Okay.

9 MR. COATES: In the *Ike Brown* matter, all  
10 of the evidence, nobody had video. So you have to go  
11 down to the county, and you have to interview  
12 witnesses. You have to interview conflicting  
13 witnesses. You have to make a judgment.

14 In the *Panther* case, what makes that a  
15 relatively simple case -- of course, probably no law  
16 case is ever simple. Well, what makes it relatively  
17 simple is that there is a video shot there of the  
18 people --

19 COMMISSIONER YAKI: Right.

20 MR. COATES: -- standing in close  
21 proximity --

22 COMMISSIONER YAKI: Right.

23 MR. COATES: -- to the entrance to the  
24 polling place in uniform with, one of them with, a  
25 weapon in hand.

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1 COMMISSIONER YAKI: Did the video -- we're  
2 going to ask you about that.

3 CHAIRMAN REYNOLDS: You've run out of  
4 time.

5 COMMISSIONER YAKI: Okay.

6 CHAIRMAN REYNOLDS: But I'm exercising the  
7 discretion of the Chair, what little I have. Mr.  
8 Adams is here today. And if you would like to  
9 continue this line of questioning with Mr. Adams, that  
10 would be fine.

11 COMMISSIONER YAKI: I may.

12 CHAIRMAN REYNOLDS: Okay. Mr. Melendez?

13 COMMISSIONER MELENDEZ: I will defer to  
14 Commissioner Yaki.

15 COMMISSIONER YAKI: Thank you.

16 So, to continue on with my questioning,  
17 did you see the video?

18 MR. COATES: Before the j-memo was sent  
19 forward, yes.

20 COMMISSIONER YAKI: In the video, did you  
21 see them accost any voters?

22 MR. COATES: No. The subjects of the --  
23 the two Black Panthers were aware that somebody was  
24 walking up with a video. And so under those  
25 circumstances, their attention was aimed at the

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1 cameraman, not at voters who were coming to the  
2 polling place.

3 COMMISSIONER YAKI: Now, in approving this  
4 case going forward, did it bother you in any way the  
5 absence of any complaints filed by any voters about  
6 this particular precinct?

7 MR. COATES: No.

8 COMMISSIONER YAKI: Okay. Had you ever  
9 filed any previous 11(b) actions where there are not  
10 allegations by actual voters that they were being  
11 intimidated?

12 MR. COATES: The only other 11(b) case  
13 that I had been involved in, there --

14 COMMISSIONER YAKI: Noxubee had 11(b)  
15 charges.

16 MR. COATES: That's right. And whether or  
17 not we had the complaint of a voter at that time or  
18 the description of the wrongdoing -- no, no. As a  
19 matter of fact, we did.

20 COMMISSIONER YAKI: Yes.

21 MR. COATES: Okay. Because the basis of  
22 the 11(b) claim in Noxubee was a newspaper article --

23 COMMISSIONER YAKI: Right.

24 MR. COATES: -- listing 174 whites --

25 COMMISSIONER YAKI: I remember.

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1 MR. COATES: -- Mr. Brown said that he was  
2 not going to allow to vote. And it was after the  
3 lawsuit, after the lawsuit was originally filed but  
4 before we amended to add the 11(b) claim that we found  
5 that witness.

6 COMMISSIONER YAKI: Now, did it --

7 MR. COATES: The witness had testified at  
8 trial.

9 COMMISSIONER YAKI: I understand. So  
10 other than Noxubee, the answer -- I mean, including  
11 Noxubee, the answer is prior to this point, you had  
12 never filed an 11(b) where there were no actual  
13 allegations of voter intimidation.

14 I understand 11(b) covers poll watchers.  
15 But I'm just stating in this case there were no actual  
16 verifiable complaints by voters that you were able to  
17 follow up on, correct?

18 MR. COATES: In Noxubee, I'm saying that I  
19 don't think that we found the witness who testified at  
20 trial, that she didn't come because of the ad that Mr.  
21 Brown ran in the newspaper --

22 COMMISSIONER YAKI: Sure.

23 MR. COATES: -- until after the complaint  
24 had been --

25 COMMISSIONER YAKI: I understand.

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1 MR. COATES: -- and the 11(b) claim had --

2 COMMISSIONER YAKI: I understand. Now,  
3 was there any -- I mean, let's talk about bias here.  
4 I know that you have made some allegations regarding  
5 the special interest groups that you claim, such as  
6 the NAACP Legal Defense Fund, MALDEF, what have you.  
7 Did it give you any pause that the only witnesses  
8 identified coming forward making allegations against  
9 these two individuals were all either members of the  
10 Republican Party or representatives of the McCain  
11 campaign?

12 MR. COATES: If that's -- I don't remember  
13 that to be the case, but if that were the case, then  
14 certainly you always look to try to determine whether  
15 or not the person is credible and has a basis for  
16 testifying or whether or not they are associated with  
17 organizations that might be contrary to what the Black  
18 Panthers were doing. And so certainly you would take  
19 that into account in making some kind of credibility  
20 determination.

21 But in the investigation, we interviewed  
22 the people that you're talking about. And my lawyers  
23 came to the conclusion that they were credible, that  
24 what they were saying occurred at the polling place is  
25 -- was, in fact, true.

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1           And nobody has ever claimed, for example,  
2           the man -- and I can't recall his name now, but the  
3           man who was the chairman of the Robert Kennedy  
4           campaign in New York in 1968, who had been in  
5           Mississippi in 1964, who we interviewed. Nobody has  
6           ever claimed that he -- to my knowledge, he was not  
7           telling the truth about what he observed.

8           COMMISSIONER YAKI:    And, again, I guess  
9           what I'm asking is, there is a depth of investigation  
10          here that I am wondering about because, again, with  
11          all of the other instances that you talk about, there  
12          seemed to be a very well-developed, thoughtful record.

13          Here we have someone who is in a rush to  
14          get a narrative who files this complaint within 45  
15          days after the election, relying solely on one party's  
16          set of poll watchers where the video doesn't show any  
17          actual confrontation except with the people doing the  
18          video, where the policeman, for example --

19          CHAIRMAN    REYNOLDS:        Thank    you,  
20          Commissioner Yaki.

21          COMMISSIONER YAKI:  I'm going.  Thank you.

22          CHAIRMAN REYNOLDS:  Commissioner Heriot?

23          COMMISSIONER HERIOT:  I've just got a  
24          couple of questions here.  One clarification, going  
25          back to your transfer to South Carolina, did you

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1 consider -- maybe you have already said this and I  
2 just didn't pick up on it. But did you consider the  
3 possibility that you might be transferred somewhere  
4 that would be less desirable for your family than  
5 South Carolina? Is that part of why you volunteered  
6 for the transfer that you did take?

7 MR. COATES: That crossed my mind that I  
8 could be transferred to a far less desirable job, the  
9 empty office where you have nothing to do in  
10 Washington, or the Attorney General has the authority  
11 to transfer you to a part of the country such as North  
12 Dakota, where I don't know anybody there. But I  
13 didn't give a lot of consideration to the fact that  
14 they might do that.

15 I did give a lot of consideration to the  
16 fact that they probably at some point in 2010 were  
17 going to remove me from Chief of the Voting Section.  
18 So, therefore, I was not giving up taking a job in  
19 South Carolina. I wasn't giving up a situation where  
20 I was probably going to be extended for a long period  
21 of time as Chief.

22 COMMISSIONER HERIOT: The other question I  
23 wanted to ask you was about the Section 8 list  
24 maintenance cases. My understanding is that there was  
25 a case filed. And I'm sure you or someone has to know

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1 a great deal more about this case than I do, but there  
2 was a case filed concerning Missouri's list  
3 maintenance.

4 MR. COATES: Yes.

5 COMMISSIONER HERIOT: That case has now  
6 been dismissed. Can you tell me a little bit about  
7 that case, when it was filed, what happened to it?  
8 And do you consider this to be evidence for your  
9 belief that there is a policy against bringing such  
10 cases now?

11 MR. COATES: I'm not going to be real good  
12 on this case because the time that it was heavily  
13 litigated was a time when I wasn't the Chief. Mr.  
14 Popper, who was the deputy who worked on that case,  
15 but it was against the state.

16 It involved Section 8 list maintenance, as  
17 you say. There was evidence that large numbers of  
18 counties in Missouri had not done the list  
19 maintenance. The major legal issue was whether or not  
20 the Secretary of State from Missouri, Ms. -- she's  
21 running for Senate now, Carnahan. She was Secretary  
22 of State. She was highly upset that the Department  
23 had taken the position that she at the state level had  
24 this responsibility to make sure that local

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1 investigators were -- local registration officials  
2 were doing the list maintenance.

3 We lost at the District Court on the issue  
4 of who had responsibility: the state or the local  
5 officials. It went up to the Court of Appeals. The  
6 Court of Appeals wrote what appeared to me to be a  
7 somewhat ambiguous opinion about that issue.

8 It came back down. And that's when the  
9 Obama -- just about the time that it came back down,  
10 the Obama administration came in. And they were  
11 interested in dismissing the case. And that is what  
12 was done.

13 And I dealt with Mr. Rosenbaum mostly on  
14 that issue.

15 COMMISSIONER HERIOT: And do you know why  
16 it was dismissed?

17 MR. COATES: The reason given to me, as I  
18 recall, is that it had to do with that their reading  
19 of the Court of Appeals decision pretty much required  
20 that it be dismissed. I didn't necessarily agree with  
21 that reading, but -- and the people on the trial team  
22 didn't either. But that is my recollection of what  
23 was said.

24 And as to your question as to whether or  
25 not I felt that the dismissal of that case indicated

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1 some hostility to Section 8 list maintenance cases,  
2 the answer is yes.

3 COMMISSIONER GAZIANO: I would like to go  
4 back to that September 29 lunch meeting that Julie  
5 Fernandes, who is the politically appointed Deputy  
6 Assistant Attorney General, led.

7 And your testimony about that is as  
8 follows, and I quote, "Ms. Fernandes responded by  
9 telling the gathering that the Obama administration  
10 was only interested in bringing traditional types of  
11 Section 2 cases that would provide political equality  
12 for racial and language minority voters. And she went  
13 on to say that this was what we were all about or  
14 words to that effect."

15 Mr. Adams' testimony a few months ago was  
16 almost exactly the same. And you both drew almost  
17 exactly the same conclusion. Your testimony says you  
18 understood that everyone in the room -- this is your  
19 testimony -- understood exactly what she meant: no  
20 more cases like *Ike Brown* or NBPP.

21 Now, by "no more cases like *Ike Brown* or  
22 NBPP," I don't think you mean with those names. You  
23 mean no more cases where the defendants are black or  
24 minority. Is that what you mean?

25 MR. COATES: Right.

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1                   COMMISSIONER GAZIANO: Now, it is your job  
2 as Chief of the Voting Section at that time to  
3 understand the instruction that is being given. And  
4 it is your job to make sure that people under you  
5 understand what the instruction was.

6                   You had subsequent -- by the way, this  
7 isn't deliberative process. This is an instruction,  
8 an order. You had subsequent conversations, I assume,  
9 with other employees under you. Did anyone come to  
10 any different conclusion about what Ms. Fernandes was  
11 ordering?

12                   MR. COATES: No. The people who came and  
13 talked to me -- I don't remember how many in the  
14 Section, but the people who talked to me after Ms.  
15 Fernandes gave that instruction all construed her  
16 directive in the same way that I did.

17                   COMMISSIONER GAZIANO: Okay. Well, this  
18 is Mr. Adams' understanding of what those exact same  
19 words meant, "Cases are not going to be brought  
20 against black defendants for the benefit of white  
21 victims, that if someone wanted to bring these cases,  
22 it was up to the U.S. Attorney." By the way, U.S.  
23 Attorneys aren't going to bring civil rights cases in  
24 your specialty. But, anyway, "But that the Civil  
25 Rights Division was not going to be bringing it."

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1                   Is that consistent with your understanding  
2 of what she was telling you to do?

3                   MR. COATES: Yes.

4                   COMMISSIONER GAZIANO: And you say no one  
5 in your Section had any different understanding?

6                   MR. COATES: Nobody came to me and said,  
7 "Notwithstanding what Ms. Fernandes said, I think that  
8 if I come across another *Ike Brown* case, I would be  
9 free to investigate."

10                  COMMISSIONER GAZIANO: Well, what is the  
11 likelihood, what is the chance, you think -- is it  
12 slim, moderate, high? -- that you all misunderstood  
13 what she was saying, that her phrase, "traditional  
14 civil rights" --

15                  MR. COATES: "Traditional Section 2."

16                  COMMISSIONER GAZIANO: Let me get the  
17 exact, "traditional types of Section 2 cases that  
18 would provide political equality for racial and  
19 language minority voters" really meant for other types  
20 of voters, too. Is there a possibility -- how likely  
21 is it that you misunderstood what she was trying to  
22 tell you?

23                  MR. COATES: No. I understood it and  
24 everybody else in the room understood it. Because the  
25 history had taken place before the Bush administration

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1 came in, nobody in the Civil Rights Division had filed  
2 the kind of case that we had filed in *Ike Brown* and in  
3 *New Black Panther Party*.

4 A new administration comes in. A woman is  
5 appointed Deputy Assistant Attorney General from the  
6 -- one of the premier civil rights groups in the  
7 country, Leadership for Civil Rights. And she comes  
8 in.

9 And so if she had wanted, if Julie had  
10 wanted to ensure people that if you came across an *Ike*  
11 *Brown* case or *New Black Panther* case, bring it to the  
12 front office and we would be willing to -- they would  
13 be willing to look at it, she would have chosen  
14 different words.

15 She chose the words that I have ascribed  
16 to her and that Mr. Adams had ascribed to her because  
17 she intended to tell people that the kind of cases  
18 that have been brought in Noxubee County and with  
19 regard to the Philadelphia Panthers is not going to  
20 continue.

21 COMMISSIONER GAZIANO: And so your  
22 statement is these may be some sort of code word, but  
23 they weren't subtle code words. Everyone understood  
24 what they meant?

25 MR. COATES: That's right.

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1 COMMISSIONER GAZIANO: Okay. Well, let me  
2 go back now to the question that was --

3 MR. COATES: I'm not sure it was September  
4 29th. It was sometime in September.

5 COMMISSIONER GAZIANO: Okay. September of  
6 2009.

7 MR. COATES: Okay.

8 COMMISSIONER GAZIANO: In that meeting you  
9 had where you were on the conference call with Mr.  
10 Perez right before he testified, did anyone make him  
11 aware of any kind of racial hostility to the  
12 race-neutral enforcement of the Voting Rights Act in  
13 that conversation?

14 MR. COATES: Yes.

15 COMMISSIONER GAZIANO: Okay.

16 CHAIRMAN REYNOLDS: Okay. We're out of  
17 time. At this point we are going to take a break. We  
18 will reconvene at 12:45.

19 (Whereupon, the foregoing matter went off  
20 the record at 12:33 p.m. and went back on the record  
21 at 12:52 p.m.)

22 CHAIRMAN REYNOLDS: We will start off with  
23 Commissioner Gaziano. He has something that he would  
24 like to enter into the record. And after that, we are  
25 going to wind this matter down.

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1 VICE CHAIR THERNSTROM: Mr. Chairman, I  
2 would have personally had a preference for an allotted  
3 amount of time which is split between --

4 COMMISSIONER GAZIANO: No.

5 VICE CHAIR THERNSTROM: -- Mr. Gaziano,  
6 Commissioner Gaziano, and Commissioner Yaki. And I  
7 would say 30 minutes. And then let's get out of here.

8 CHAIRMAN REYNOLDS: Well, we're going to  
9 do better. We're going to finish it up now. We have  
10 gone. We have had several rounds. In fact, both  
11 Commissioners Gaziano and Yaki have had the lion's  
12 share of the time in terms of their ability to  
13 question the witnesses. And I think that we have  
14 reached the point of diminishing returns.

15 COMMISSIONER YAKI: Actually, I would  
16 strongly disagree, Mr. Chair. There is one section  
17 that -- I broke up my questions in different sections.  
18 There is one section left that I believe needs to be  
19 addressed and has not been addressed in the other  
20 questions. And I think it would be a grave disservice  
21 to the fact finding of this panel if I am denied the  
22 ability to answer my questions on this particular  
23 round.

24 I am willing to forego the other sections,  
25 but there is one section of questioning I absolutely

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1 must do in fairness to what has been said here today  
2 and to the facts as they should be put before us.

3 COMMISSIONER GAZIANO: Mr. Chair, can I  
4 offer a compromise maybe?

5 CHAIRMAN REYNOLDS: Commissioner Yaki,  
6 your feelings are shared with an equal amount of  
7 passion by Commissioner Gaziano. And so if you were  
8 denied, he as well will be denied. So I --

9 COMMISSIONER GAZIANO: May I offer a  
10 compromise?

11 CHAIRMAN REYNOLDS: Well, let's listen.  
12 Yes. What do you have to say?

13 COMMISSIONER GAZIANO: I was not going to  
14 -- if it was the ruling of the rest of the  
15 Commissioners and the Chair that we cut off questions,  
16 I was just going to enter the documents into the  
17 record. But since my last round of questioning ended  
18 with a very significant yes that Mr. Perez was  
19 informed, is it possible that Commissioners, like  
20 Commissioner Yaki and I, could submit written  
21 questions to the witness?

22 CHAIRMAN REYNOLDS: Yes.

23 COMMISSIONER GAZIANO: Could we maybe ask  
24 the witness whether he would consider providing  
25 answers to our written questions.

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1 CHAIRMAN REYNOLDS: Mr. Coates, if you  
2 received a set of written questions from  
3 Commissioners, would you be willing to entertain them?

4 MR. COATES: Yes, but I have taken leave  
5 to come up here. And when I go back, I'm going to  
6 have a lot of -- I'm Assistant U.S. Attorney in the  
7 Southern District -- I mean, in the district of South  
8 Carolina. And I have assigned cases. And so I will  
9 be busy with my present job.

10 CHAIRMAN REYNOLDS: Understood.

11 MR. COATES: And I will do the best I can  
12 in terms of responding to the questions.

13 COMMISSIONER HERIOT: Might it be quicker  
14 just to do a three-minute lightning round with  
15 Commissioners Gaziano and --

16 VICE CHAIR THERNSTROM: More than three  
17 minutes. Let the two of them have a little bit more  
18 time. You know, it's --

19 CHAIRMAN REYNOLDS: Entertain the  
20 compromise because, if we don't, I like the idea of  
21 allowing the Commissioners to submit as many  
22 questions, written questions, as they would like for  
23 the witness.

24 COMMISSIONER GAZIANO: Within reason to  
25 the witness.

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1 COMMISSIONER YAKI: I was about to say --

2 COMMISSIONER HERIOT: The problem is it's  
3 got to be reasonable for the witness.

4 COMMISSIONER YAKI: From what I have heard  
5 from the witness, he is taking time here today. He  
6 has made himself available today. When he goes back,  
7 he is an AUSA with lots of responsibilities answering  
8 -- propounding interrogatories, rather than having to  
9 answer ours. All I need, Mr. Chair, is I think ten  
10 minutes. And that will be it for me.

11 CHAIRMAN REYNOLDS: Okay.

12 VICE CHAIR THERNSTROM: Give each of them  
13 ten minutes.

14 CHAIRMAN REYNOLDS: Here's the compromise.  
15 You each have five minutes. Well, let's back up. Do  
16 any of you other Commissioners have questions that you  
17 would like to ask?

18 COMMISSIONER KIRSANOW: I think we all  
19 have questions, but I think that we are at a point of  
20 diminishing returns. I don't have a major objection  
21 to giving each Commissioner Yaki and Gaziano three  
22 minutes apiece or five minutes, as you suggested.

23 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
24 do you have any questions you would like to ask?

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1 VICE CHAIR THERNSTROM: Mine can be held.  
2 And I would like each of them to have ten minutes  
3 because I don't think it's fair to Mr. Coates to ask  
4 him to try to fit into his very busy professional life  
5 once he leaves here answers to what may be complicated  
6 and nuanced questions that, you know --

7 CHAIRMAN REYNOLDS: Okay. The compromise  
8 is that Commissioners Gaziano and Yaki will have seven  
9 minutes apiece.

10 VICE CHAIR THERNSTROM: Okay.

11 CHAIRMAN REYNOLDS: All right.

12 VICE CHAIR THERNSTROM: Can you set that  
13 thing for seven, instead of five?

14 CHAIRMAN REYNOLDS: She is, yes. Very  
15 good.

16 COMMISSIONER GAZIANO: Seniority.

17 CHAIRMAN REYNOLDS: Commissioner Yaki,  
18 begin this last round.

19 COMMISSIONER YAKI: Thank you very much,  
20 Mr. Chair. Thank you very much, Mr. Coates, for  
21 staying here.

22 MR. COATES: Yes, sir.

23 COMMISSIONER YAKI: I am going to shift  
24 gears a little bit and talk about your time at Justice  
25 because I was fascinated by the fact that you felt the

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1 need to engage in questioning on ideology for the  
2 purpose of hiring. Were you aware of the -- you were  
3 there, present, during when the report came out from  
4 the OIG and OPR regarding investigation of the Civil  
5 Rights Division?

6 MR. COATES: First of all, I did not  
7 question on the basis of ideology. The question that  
8 I was asking is whether or not applicants would be  
9 willing to race-neutrally enforce the Voting Rights  
10 Act.

11 COMMISSIONER YAKI: Right. But were you  
12 present when that report came out?

13 MR. COATES: Yes, sir.

14 COMMISSIONER YAKI: And part of the  
15 conclusions of that report was that Mr. Schlozman,  
16 your superior, one of your superiors at the time, had  
17 engaged in ideological and partisan filling of career  
18 Civil Service positions. That was one of the  
19 conclusions of the report, correct?

20 MR. COATES: Yes.

21 COMMISSIONER YAKI: Did you agree with  
22 that? Did you agree with the conclusion of that  
23 report?

24 MR. COATES: I believe that Mr. Schlozman  
25 made a -- Mr. Schlozman found a Civil Rights Division

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1 that was almost totally left liberal in the basis of  
2 the ideology of the people who were working in it and  
3 that he made some concerted effort to diversify the  
4 Division so that conservatives as well as liberals  
5 could find work there.

6 I found the criticism by the career  
7 management in the Civil Rights Division that Mr.  
8 Schlozman had hired on ideological grounds to be akin  
9 to Pete Rose criticizing Willie Nelson for not paying  
10 his federal income tax.

11 (Laughter.)

12 COMMISSIONER YAKI: That may be very  
13 interesting, Mr. Coates, but I am talking about the  
14 conclusions of the Inspector General, the conclusion  
15 that found that he had engaged in political and  
16 ideological affiliations when hiring or taking other  
17 personnel actions related to career attorneys.

18 Are you basically defending Mr.  
19 Schlozman's actions here today? Is that what you're  
20 saying?

21 MR. COATES: No. I think that Mr.  
22 Schlozman made a concerted effort to diversify the  
23 workforce in the Civil Rights Division. And to that  
24 extent, he hired conservative people and liberal  
25 people.

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1           And in terms of him taking into account  
2 ideology in some cases, I think that there is probably  
3 evidence.     There is probably evidence in that  
4 investigation to support that.

5           But the idea that that was the first time  
6 that that had ever occurred in the Civil Rights  
7 Division is not.     Maybe the more appropriate analogy  
8 than the Pete Rose-Willie Nelson analogy would be for  
9 our younger folks, is that to criticize Schlozman for  
10 hiring on the basis of ideology, for the career people  
11 in the Civil Rights Division to do that is like Snooki  
12 on the show "Jersey Shore" to criticize Lady Gaga for  
13 dressing extravagantly.

14                     (Laughter.)

15           COMMISSIONER YAKI:   I'm impressed by your  
16 knowledge of popular culture, but I am asking about an  
17 Inspector General report, which I think you would take  
18 very seriously as a member of the Civil Rights  
19 Division, correct?

20           And they made a finding of this, of the  
21 fact that he acted in this manner.   It sounds to me in  
22 this roundabout way that you're talking that you are  
23 defending him, but we'll leave that to others to  
24 judge.

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1 MR. COATES: I agreed with some of the  
2 findings by the AG, and some of the findings I did  
3 not.

4 COMMISSIONER YAKI: Are you a friend of  
5 Mr. Schlozman?

6 MR. COATES: Yes, I consider him a friend.  
7 Okay. And I --

8 COMMISSIONER YAKI: Did you -- let me.  
9 Did you at one point apply for a position as an  
10 immigration judge?

11 MR. COATES: I did.

12 COMMISSIONER YAKI: And did Mr. Schlozman  
13 make a recommendation for you?

14 MR. COATES: I don't know if he -- I don't  
15 think he wrote a recommendation. He sent an e-mail to  
16 --

17 COMMISSIONER YAKI: Monica Goodling.

18 MR. COATES: -- Monica Goodling.

19 COMMISSIONER YAKI: And so you are the  
20 person referenced in the report, in that e-mail, in  
21 which it says, "Don't be dissuaded by his ACLU work on  
22 voting matters from years ago. This is a very  
23 different man on particularly immigration issues. He  
24 is a true member of the team. That was in reference  
25 to you."

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1 MR. COATES: I think that that is correct.  
2 And one of the reasons I didn't agree with that IG  
3 report is because of that entry. Nobody -- I was  
4 interviewed with regards to the IG report. I don't  
5 remember them asking me any questions about that.

6 In fact, Mr. Schlozman relates to a period  
7 of time in that e-mail when he did not know me. And  
8 some of my conservative views as well as liberal views  
9 were in evidence in the 1980s. So the idea that I  
10 changed ideology completely upon coming to Washington  
11 is not accurate.

12 I think Mr. Schlozman as a friend was  
13 writing that e-mail to try to help me, but the e-mail  
14 is not factually correct.

15 COMMISSIONER YAKI: What do you mean,  
16 "factually correct"? As in, you didn't experience a  
17 conversion or you were not a true member of the team?

18 MR. COATES: That I am more conservative  
19 now than I was 20 years ago.

20 COMMISSIONER YAKI: But his statement that  
21 you were a member of the team is correct?

22 MR. COATES: Well, Mr. Schlozman and I had  
23 some very, very ferocious battles about cases, such as  
24 Panola. So in terms of the team, did Mr. Schlozman  
25 and I always agree? No.

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1           And so if you're reading the term as a  
2 member of the team to mean that I agreed with him in  
3 everything that he did, no. But do I consider him a  
4 friend? Yes, I do.

5           COMMISSIONER YAKI: How about Hans von  
6 Spakovsky? Do you consider him a friend as well?

7           MR. COATES: Yes.

8           COMMISSIONER YAKI: Okay. And both of  
9 those people were your supervisors at the time?

10          MR. COATES: Well, Mr. Schlozman was my  
11 supervisor when he was Acting AAG. He was my  
12 supervisor when he was Deputy AAG. And Mr. von  
13 Spakovsky supervised voting in his position as special  
14 counsel. So most of the time that we worked in the  
15 Division together, I was in a subordinate position to  
16 them on the Division hierarchy.

17          COMMISSIONER YAKI: And just one last  
18 question. When you talk about the meeting in  
19 September '09, when Julie Fernandes said the word,  
20 "traditional," what exactly were the exact words that  
21 she used, to the best of your recollection?

22          MR. COATES: The ones that I have in my  
23 written statement.

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1 COMMISSIONER YAKI: Well, would you refer  
2 specifically to what words you said she specifically  
3 said?

4 MR. COATES: Okay.

5 COMMISSIONER YAKI: I think it's page 13.

6 COMMISSIONER GAZIANO: Bottom of page 13,  
7 top of page 14.

8 MR. COATES: I've got large print.

9 COMMISSIONER YAKI: Mr. Chair, would you  
10 mind if he answered that question?

11 CHAIRMAN REYNOLDS: Yes. You put the  
12 question out before your time expired.

13 COMMISSIONER YAKI: Thank you.

14 MR. COATES: Okay. My recollection is  
15 that she used the term "traditional types" of Section  
16 2 cases and that she used the term "political equality  
17 for racial and language minority groups" and that she  
18 used the term "That is what we are all about."

19 COMMISSIONER YAKI: Okay. Thank you.

20 CHAIRMAN REYNOLDS: Okay. If that is your  
21 answer, Commissioner Gaziano?

22 COMMISSIONER GAZIANO: Thank you again.  
23 Thank the rest of my Commissioners.

24 In the last round of questioning, you  
25 answered "Yes" to my question did anyone at that

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1 meeting where you were participating by conference  
2 phone right before Perez testified to us tell him  
3 about the race-hostile opposition to equal enforcement  
4 of the Voting Rights Act? Were you one of the people  
5 who told him?

6 MR. COATES: Yes.

7 COMMISSIONER GAZIANO: Who else? Did  
8 anyone else?

9 MR. COATES: I don't recall.

10 COMMISSIONER GAZIANO: Okay.

11 MR. COATES: I don't recall. I remember  
12 specifically saying it because I knew about his  
13 testimony for Congress. And I wanted Mr. Perez to  
14 know if there was any question about it that I  
15 strongly felt that the reason that the *New Black*  
16 *Panther* case was disposed of in the way in which it  
17 was was because of the hostility on the part of people  
18 who do not believe in race-neutral enforcement.

19 COMMISSIONER GAZIANO: That's important.  
20 And I respect you that you are going to follow the  
21 Justice Department's claim of deliberative process  
22 privilege.

23 You know I think it hasn't been properly  
24 -- well, I'll just tell you. I don't think it's been  
25 properly invoked. I think that privilege is in

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1 violation of the *United States v. Reynolds* Supreme  
2 Court case, that it is in violation of the  
3 Department's own binding precedent.

4 But I respect that you have to follow --  
5 if there's any argument, you have to follow the  
6 Department's position on what I think is a frivolous  
7 privilege. So you haven't given us the details about  
8 the conversations you have had with Rosenbaum or King  
9 that lead you to the conclusion that they have  
10 hostility to race-neutral application of the voting  
11 rights laws.

12 If the Department of Justice waived the  
13 privilege or if the courts determined that it was not  
14 properly invoked by the President because it's part of  
15 executive privilege or that it doesn't apply to cover  
16 up potential wrongdoing, as I think is the case here,  
17 would you be willing to give us the details behind  
18 your conclusion?

19 MR. COATES: Yes. If the Department  
20 waives a privilege or if a court rules that the  
21 privilege does not apply, then if you subpoenaed me  
22 again and asked me the questions about what was said,  
23 I would give you the answers.

24 COMMISSIONER GAZIANO: Thank you. Now, I  
25 understand that you are not going to tell us the

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1 content of any writings, but were you asked or did you  
2 create any writings that document conversations or  
3 other evidence relating to hostility toward  
4 race-neutral enforcement of the civil rights laws?

5 In a sort of Vaughn Index, we're entitled  
6 to know whether they exist, even if there is a  
7 privilege.

8 MR. COATES: Specifically related to the  
9 *Black Panther* case?

10 COMMISSIONER GAZIANO: Either the *Black*  
11 *Panther* or otherwise.

12 MR. COATES: There are -- I have created  
13 some documents that would address the subject of  
14 whether or not I believe that there is that.

15 COMMISSIONER GAZIANO: Okay. Was there  
16 one in the spring, let's say, April or May, prior to  
17 when Perez testified, that was submitted to people  
18 above your pay grade? Normally in the privilege sort  
19 of situation, we're entitled to know at least, you  
20 know, who it was sent to, what the date was.

21 MR. COATES: No.

22 COMMISSIONER GAZIANO: I'm not trying to  
23 --

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1 MR. COATES: Yeah. The document that I  
2 have in mind right now would have been documents that  
3 I prepared with regards to other investigations --

4 COMMISSIONER GAZIANO: Okay.

5 MR. COATES: -- of the *Black Panther*  
6 matter --

7 COMMISSIONER GAZIANO: Yes.

8 MR. COATES: -- but other --  
9 investigations by other entities.

10 COMMISSIONER GAZIANO: Okay. And I might  
11 ask the Department whether we can get a proper Vaughn  
12 index of those type of documents, but also you did not  
13 identify by name some of the employees who engaged in  
14 the harassment of others who were on your Noxubee team  
15 or New Black Panther team.

16 And I understand why you didn't identify  
17 the lower level of people. You didn't necessarily  
18 want to expose them. And I don't think that we  
19 necessarily need to know their names because that is  
20 uncontroverted testimony. And that uncontroverted  
21 testimony is supported by sworn affidavits filed by  
22 Hans von Spakovsky, Mr. Bowers, and articles by  
23 Asheesh Agarwal and other information from Mark  
24 Corallo and Robert Driscoll. So it all seemed  
25 perfectly corroborated.

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1           But if there is some dispute about all of  
2 these incidents of harassment, would you be willing to  
3 identify these individuals?

4           MR. COATES:     If you have conflicting  
5 testimony and you want to call me back as a witness,  
6 then I would certainly consider honoring your  
7 subpoena.

8           COMMISSIONER GAZIANO:   Okay. Well, as far  
9 as I am concerned, we might not need to because it's  
10 uncontroverted testimony that is supported by all of  
11 these affidavits.

12           At this time I would like to enter into  
13 the record an article, Weekly Standard, by Hans von  
14 Spakovsky, January 23rd, 2009 that disputes the  
15 findings of the IG report, and also an article in  
16 Pajamas Media by Hans von Spakovsky, September 20th of  
17 this year that casts further light that is both  
18 consistent with yours and Mr. Adams' sworn testimony  
19 regarding various misconduct by Mr. Rich.

20           Mr. Chairman, will these be received into  
21 the record?

22           CHAIRMAN REYNOLDS:   Yes, yes.

23           COMMISSIONER GAZIANO:   Thank you.    No  
24 further questions.

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1 MR. COATES: Mr. Chairman, could I say one  
2 further thing with regards to the examination?

3 CHAIRMAN REYNOLDS: Yes, please.

4 MR. COATES: Commissioner Yaki asked me if  
5 I was a friend of Mr. Schlozman's. And one of the  
6 reasons that I am a friend is that Mr. Schlozman,  
7 notwithstanding his conservative leanings, appointed  
8 me, a former ACLU lawyer, to a management position in  
9 the Voting Section. He did not allow my past  
10 activities in the vote dilution areas in my present  
11 activities at a time that he appointed me to keep me  
12 from having an opportunity to be promoted.

13 And because of that, I respect Mr.  
14 Schlozman's judgment in that regard. And I will  
15 always be thankful that he judged me not on the basis  
16 of the fact that I worked with an organization that he  
17 might be at odds with, the ACLU, in the past, but he  
18 is willing to judge me on the work that I was doing in  
19 the Voting Section.

20 CHAIRMAN REYNOLDS: All right. Thank you,  
21 Mr. Coates. You have provided some powerful  
22 testimony. I appreciate and we all appreciate the  
23 fact that you had to make a hard decision. And it  
24 shows the character that you have.

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1 I would also like to tell you that we are  
2 not going to release the subpoena in the event that we  
3 have additional need to question you. At this point,  
4 though, this concludes our hearing for today. We  
5 adjourn this meeting sine die.

6 We will hold the record open for  
7 additional evidence pursuant to 45 CFR Section 702.8.  
8 Individuals who wish to submit items for consideration  
9 to be included in the record may send them to the  
10 General Counsel at the Commission, which is located at  
11 624 9th Street, Northwest, Washington, D.C. 20425.

12 Thank you.

13 MR. COATES: Thank you.

14 (Whereupon, the foregoing matter was  
15 adjourned sine die at 1:13 p.m.)  
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