

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, NOVEMBER 19, 2010

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The Commission convened in Room 540 at 624
Ninth Street, Northwest, Washington, D.C. at 8:45
a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

ARLAN D. MELENDEZ, Commissioner (via telephone)

MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, Esquire, General Counsel,
OGC

DEMETRIA DEAS

LILLIAN DUNLAP

ALFREDA GREENE

TINALOUISE MARTIN, Director, Office of
Management

LENORE OSTROWSKY

JOHN RATCLIFFE, Chief, Budget and Finance

EILEEN RUDERT

DAVID SNYDER

KIMBERLY TOLHURST

VANESSA WILLIAMSON

AUDREY WRIGHT

MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COULTEN

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SCHMAUCH

KIMBERLY SCHULD

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

2 (8:46 a.m.)

3 CHAIRMAN REYNOLDS: The meeting will come
4 to order. This is a meeting of the U.S. Commission on
5 Civil Rights. It's 8:45 a.m. Eastern Standard Time on
6 November 19th, 2010. I wanted to start on time before
7 my term was up, and I have managed to do so.

8 In any event, commissioners are present at
9 624 9th Street, Northwest, room 540, Washington, D.C.
10 The meeting is -- that is where the meeting is being
11 held.

12 Commissioner Melendez, are you on the
13 line?

14 (No response.)

15 CHAIRMAN REYNOLDS: With the exception of
16 Commissioner Melendez and Vice Chair Thernstrom and
17 Commissioner Kirsanow, all other members are present.
18 Commissioner Kirsanow will be here shortly.

19 I. APPROVAL OF AGENDA

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

23 COMMISSIONER GAZIANO: Second.

24 CHAIRMAN REYNOLDS: Commissioner Melendez?

25 COMMISSIONER MELENDEZ: Yes?

1 CHAIRMAN REYNOLDS: Welcome. Okay.
2 Commissioner Melendez has joined us.

3 COMMISSIONER MELENDEZ: Good morning.

4 CHAIRMAN REYNOLDS: Discussion.

5 (No response.)

6 CHAIRMAN REYNOLDS: Okay. All in favor
7 please say "Aye."

8 (Chorus of ayes.)

9 CHAIRMAN REYNOLDS: Any votes against the
10 motion?

11 COMMISSIONER YAKI: No.

12 CHAIRMAN REYNOLDS: Commissioner Melendez?

13 COMMISSIONER MELENDEZ: Abstain. I didn't
14 hear the motion.

15 CHAIRMAN REYNOLDS: It's a motion to
16 approve the agenda.

17 COMMISSIONER MELENDEZ: I'll abstain.

18 CHAIRMAN REYNOLDS: All right. We have
19 one abstention. The remaining commissioners voted in
20 favor of the motion.

21 II. PROGRAM PLANNING

22 - APPROVAL OF NEW BLACK PANTHER PARTY

23 ENFORCEMENT REPORT

24 CHAIRMAN REYNOLDS: Next up is the
25 approval of the New Black Panther Party enforcement

1 report. Before we vote on the report, I would like
2 Mr. Blackwood to provide the commissioners with an
3 update of recent weeks' events.

4 As the commissioners should be aware, the
5 Department this past week refused to allow for its
6 employees to appear before the Commission to give
7 deposition testimony.

8 Mr. Blackwood, please fill us in on the
9 particulars.

10 MR. BLACKWOOD: Well, as you just
11 mentioned, Chair, there was an exchange of letters
12 over the last couple of days with the Department of
13 Justice with regard to four individuals from the
14 Department that the Commission has subpoenaed:
15 Loretta King, Steve Rosenbaum, Julie Fernandes, and
16 Sam Hirsh.

17 On Friday, we were notified that the
18 Department was putting conditions on the appearance of
19 those individuals, including to vote on the report.

20 We noted an objection on Monday. And on
21 Monday afternoon, early evening, the Department
22 indicated that the depositions were called off unless
23 the parties can come to some agreement in the future.

24 So those depositions have not occurred.
25 And we have not yet had an opportunity to talk with

1 the Department about what it is that they are
2 considering is reasonable.

3 At the same time, we also have some
4 additional pending matter that the Commission is aware
5 of with Malik Zulu Shabazz. We have to get a ruling
6 from the magistrate in regard to his deposition.

7 CHAIRMAN REYNOLDS: Okay. Thank you.

8 Any questions from commissioners?
9 Commissioner Gaziano?

10 COMMISSIONER GAZIANO: Yes. I just want
11 to maybe elaborate and explain that the further
12 disappointment to the Department of Justice continues
13 to obstruct our investigations by not providing the
14 witness, by insisting on unreasonable conditions that
15 it has no right to ask for, that really is an attempt
16 to delay our approval of the interim report.

17 So let me just explain. First of all, the
18 Justice Department refused in the same types of
19 communications, the same time period, that it would
20 provide most of the documents that we indicated that
21 the Commission needed in order to effectively oppose
22 the witnesses.

23 For example, the Department specifically
24 refused to supply the e-mails that Sam Hirsch and the
25 Associate Attorney General's office sent back and

1 forth to both the Civil Rights Division and others in
2 more senior offices in the Justice Department.

3 Recently the Judicial Watch, which is in
4 litigation with the Department of Justice, indicated
5 that those e-mails are particularly relevant not only
6 to its investigation but particularly to ours.

7 The grounds on which the Justice
8 Department is refusing to provide both Judicial Watch
9 and this Commission those e-mails is that they are
10 deliberative. And, yet, how could Sam Hirsch have
11 been involved in deliberations over the dismissal over
12 the New Black Panther lawsuit if, in fact, the
13 Department claims no one higher up than the civil
14 rights acting officials in the Civil Rights Division
15 was involved in that decision to dismiss the suit.

16 So the refusal of the Department to
17 provide that information, the Department also
18 specifically refused to provide the April 26th and May
19 10 memos from Adams and Coates that we not only have
20 reason to believe exist but we have reason to believe
21 are highly relevant to the Department's knowledge
22 before Perez testified to the Commission.

23 The second condition that the Department
24 wanted if it offered these witnesses without documents
25 that would have made their interviews effective was

1 that we had to postpone vote on the report that we're
2 going to vote on today.

3 But, again, they knew or should have known
4 that in three prior meetings, this Commission has
5 limited the information in the report we're going to
6 issue today. It certainly referred to it as an
7 interim report because the only findings and
8 recommendations in that report are that the Department
9 has essentially stonewalled, covered up, obstructed
10 our investigation.

11 And, as a result, we urge Congress to
12 consider giving us some other tools or at least
13 consciously making a decision not to give us those
14 additional tools on going forward when the Department
15 has a conflict of interest like it has and like the
16 Department -- and when the Department refuses to
17 cooperate fully, as our statute indicates.

18 The Department, of course, knows that the
19 existing report which was leaked, which it has already
20 commented on, is not a final report. The Department
21 knew full well that in September, we made a motion
22 only to delay it until the beginning of October, that
23 we have been ready to vote on it since early October.
24 And, yet, the Department pretends somehow that if we
25 postpone this report, that it would begin to

1 cooperate.

2 So, for all of those reasons, I hope the
3 Department does begin its sincere cooperation. I hope
4 it follows our statute, which requires all federal
5 agencies to cooperate fully with the Commission. But
6 obviously that is unrelated to the report we are going
7 to vote on today. But I do hope the Commission
8 continues its investigation and the Department begins
9 sincere cooperation.

10 CHAIRMAN REYNOLDS: Commissioner Yaki?

11 COMMISSIONER YAKI: Thank you very much,
12 Mr. Chair. I was going to not comment on this until
13 the previous speaker.

14 I think it is very misleading to say that
15 the requests of the Department of Justice were
16 unreasonable. When given the fact that some of those
17 requests were as simple as the ability to look at and
18 revise transcripts -- which is something, by the way,
19 that is a courtesy afforded to most people who
20 testified before the afore bodies.

21 When I testify before Congress, I am sent
22 the transcript. I am given a chance to correct errors
23 made in the record. It is something that is done. It
24 doesn't mean that it cannot be noted. It doesn't mean
25 that it cannot be noted for the record or used in a

1 later proceeding. But, nevertheless, it is still a
2 common courtesy in most hearing proceedings and
3 certainly in a lot of the litigation that I have
4 experienced during my time as a lawyer.

5 The second item that just sort of I
6 thought was a little bit off the mark was the -- first
7 of all, there's so many being described, but one of
8 them has to do with the idea that, all of a sudden, in
9 the span of two weeks, this report, which is our 2010
10 enforcement report, which is now badly overdue, is
11 now, all of a sudden, being referred to as an interim
12 report, that somehow we never have voted on the word
13 "interim" ascribed to this.

14 We haven't discussed it amongst ourselves.
15 It simply is something that seemed to come forth full
16 sprung from the previous speaker and from the General
17 Counsel when they talk about the fact that -- and it
18 is important to know the dates we are talking about
19 here for these. We're talking about a set of
20 subpoenas that were noticed for deposition this week.

21 And so the question one has to ask, which
22 is a question that DOJ rightfully asks, is, what is
23 the utility of depositions noticed for the same week
24 that we are voting on the report if those depositions
25 are not to be used in our deliberations and in our

1 discussions regarding this?

2 And I think it is wholly within their
3 right to question what we are -- what exactly we are
4 engaging them if we have noticed depositions for the
5 same week that we are supposed to be taking -- and,
6 remember, these depositions were noticed for this time
7 period after several meetings had or had not been
8 scheduled and rescheduled, what have you.

9 I mean, from any fairness perspective, the
10 idea that someone being asked to testify about
11 something for a report that is going to be voted on
12 that we will probably never have the time to
13 incorporate in that report is ridiculous and goes to
14 the question of relevance. And I think it is
15 something that needs to be said.

16 I mean, these subpoenas were issued quite
17 after the fact. They were noticed for depositions for
18 this particular week. And the idea that there is any
19 reason why they cannot question what kind of fishing
20 expedition we're on when we're supposed to be voting
21 on this report, whatever it is going to be called,
22 interim, final, never-ending, is something that I
23 think they had a right to object to.

24 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

25 COMMISSIONER KIRSANOW: Thank you, Mr.

1 Chair.

2 The designation "interim report" is a
3 reflection of the fact that, despite our best efforts
4 in the course of a year and a half, we have been
5 repeatedly stonewalled. And we have had some
6 incredible resistance in terms of our statutory right
7 to obtain certain evidence in the course of our annual
8 investigatory report.

9 But for the resistance we received over
10 the course of a year and a half, this report would
11 have, should have been concluded in a timely fashion.
12 By that I mean sometime in September, which
13 traditionally is the time when our annual enforcement
14 report issues.

15 Despite the fact that we began a year and
16 a half ago with very reasonable requests for
17 information, for witnesses, and engaging in good faith
18 negotiations with Department of Justice to produce
19 evidence that would satisfy our need to get
20 information to complete this report, we are
21 consistently rebuffed or there were bogus privileges
22 interposed or asserted by the Department of Justice to
23 preclude us from getting the information to which we
24 are rightfully entitled.

25 The interim nature of this report is

1 simply a reflection of the fact that we have a paucity
2 of data that we believe is still out there based on
3 other avenues of information, such as the Judicial
4 Watch lawsuit. And we cannot in good faith come up
5 with a comprehensive report.

6 Does this mean there is going to be a
7 continuing investigation? Probably not. We suspect
8 or -- at least I will speak for myself. I suspect
9 that one of the reasons why we have not been getting
10 this information is because the very fact of the
11 matter is in a couple of weeks, the composition of
12 this Commission is going to change. At that point,
13 there is a fairly good likelihood that this
14 investigation would cease anyway, it is not going to
15 go any further.

16 So it's simply a reflection of the reality
17 that we don't have all the information necessary to
18 complete the report the way we would like to complete
19 the report.

20 Nonetheless, based on the evidence
21 available to us, we can fashion a report that takes
22 into consideration a number of things related to what
23 the original scope of the investigation was; that is,
24 the dismissal of the New Black Panther lawsuit, and
25 then the somewhat expanded scope, which was also a

1 reflection of the fact that certain fairly sterling
2 evidence was presented by a couple of whistle-blowers
3 as to a policy within the Department of Justice that
4 the New Black Panther dismissal was merely a
5 manifestation of.

6 So we are going to be voting on a report
7 today. I believe it's a good report. The fact that
8 it is designated "interim" has nothing to do with what
9 we originally meant to accomplish but is simply a
10 reflection of the reality that, despite a statutory
11 obligation to cooperate with a U.S. Civil Rights
12 investigation, the Department of Justice rebuffed us
13 at numerous turns.

14 CHAIRMAN REYNOLDS: Commissioner Gaziano?

15 COMMISSIONER GAZIANO: Yes. I don't know
16 that we have officially changed the name of it to an
17 "interim report," but perhaps we should do so. But at
18 the August 13, September 24, and October 29 meetings,
19 we referred to it as such. And the reason we did so
20 is because it is an interim report, that if you --
21 there was a version that was leaked.

22 I was hoping when we get to the adoption
23 of the report, that we would consider whether to make
24 an official copy public. When that official copy is
25 made public, whether we call it an "interim report" or

1 not, they will see that that is what it is.

2 Just a quote from the September 24, 2010
3 meeting notes, I moved "to postpone adoption of the
4 interim report" because that is what we had been
5 calling it "and allow the General Counsel essentially
6 ten days to incorporate the new material from today to
7 October." The motion passed unanimously. No one
8 previously has objected to calling it what it is.

9 But I do want to address one of the other
10 points that Commissioner Yaki mentioned. I do hope if
11 and when the Department starts cooperating and they
12 provide witnesses after they produce the relevant
13 documents that would allow us to interview those
14 witnesses, that we would allow them to correct their
15 transcripts. That is not the condition I think any of
16 us found problematic.

17 That is probably our practice, but I
18 certainly would support allowing the deposition
19 witnesses an opportunity to look over -- there are
20 mistakes in our transcripts, and I am sure there might
21 be mistakes in the deposition transcripts.

22 The objection was that the Department is
23 still stonewalling us on the documents, is still --
24 given even if the President had invoked executive
25 privilege, which we know the President has not done so

1 because the Department has told us that, and even if
2 they had a normal right to withhold deliberative
3 materials, as U.S. v. Nixon, the Supreme Court
4 indicated where there is a credible allegation of
5 wrongdoing that goes to the heart of the information
6 the investigative body is looking into, the executive
7 privilege must yield that we somewhat, to the
8 investigative body, who has a right to determine
9 whether the wrongdoing was going on.

10 In this case, the heart of our
11 investigation is what was the reason the New Black
12 Panther case was dismissed. They claim their motives
13 were pure. We've got two whistle-blowers who
14 emphatically say that the reason the case was
15 dismissed was because of hostility to the race-neutral
16 enforcement of the civil rights laws; in other words,
17 hostility to bringing a voting rights claim against
18 defendants who happen to be black.

19 Given that fact, the Department really
20 needs to provide some purchase e-mails, all of the
21 e-mails, all of the memos. And then we can interview
22 the appropriate officials. Until that time, we just
23 need to make the record as clear as we have in the
24 report we're about to vote on and let other people be
25 the judge.

1 CHAIRMAN REYNOLDS: Commissioner Yaki?

2 COMMISSIONER YAKI: I didn't know we were
3 going to be starting to get into the merits of the
4 discussion. And I am not going to other than to say
5 that I find it humorous that the previous speaker
6 would enunciate the U.S. v. Nixon standard because I
7 think the clear word for the purposes of examination
8 has to do with the word "incredible."

9 And we will go into that in the body of
10 discussion of the report, but I will just simply say
11 that I think that there is certainly a distinct -- as
12 much as they may believe there is a credibility issue
13 on the part of Department of Justice, I would say
14 there are equally and if not stronger issues of
15 credibility regarding the allegations made against the
16 Department of Justice, seeing as they are based upon
17 two people's observations that are contravened by what
18 has actually been produced in the record.

19 So I would just state that it is not that
20 easy. And I would just simply say that were I -- and
21 I am not -- in their shoes, I think that this
22 investigation has gone on far too long. As was noted
23 by Commissioner Kirsanow, it changed course in
24 midstream, mainly because I think there was really
25 nothing to the first, original scope of the

1 investigation.

2 It was only until two people came up with
3 their wild allegations about what was or was not
4 happening that we went on an even broader and wilder
5 fishing expedition than is currently going on.

6 And the fact is that if the fact is that
7 if they were to produce people who might produce
8 testimony that they believe could be -- and I'm not
9 saying any notion of what they would or would not say,
10 but if they had people who came in to give testimony
11 that would already be substantially different from
12 what the Commission believes is going on and that
13 testimony was not going to be included in our
14 deliberations or in our report, I would sympathize
15 with them in terms of why should they participate in
16 essentially a foregone conclusion where that anything
17 that they would say would not have any weight or merit
18 in any discussion that we are going to have today?

19 CHAIRMAN REYNOLDS: Any other comments?

20 (No response.)

21 CHAIRMAN REYNOLDS: Okay. On November
22 12th, the General Counsel distributed a revised draft
23 of the 2010 enforcement report that includes
24 additional details relating to internal Department
25 deliberations contained in DOJ's most recent pleading

1 in the Judicial Watch lawsuit.

2 I move that the Commission approve for
3 publication along with any concurring and dissenting
4 statement submitted by any commissioner by December
5 19th, 2010 and any rebuttal by January 19th, 2011 part
6 A of the draft enforcement report produced by staff
7 and reflecting Commission input on enforcing
8 prohibitions against voter intimidation, DOJ, and New
9 Black Panther Party litigation.

10 Part A, as distributed in draft form to
11 commissioners, consists of parts 1 through 5 of the
12 report that is everything but the draft findings and
13 recommendations.

14 Under this motion, if a majority of the
15 Commission votes to adopt part A of the briefing
16 report, the Commission will then open discussion on
17 part B. If it fails to obtain a majority of votes,
18 discussion of part B becomes moot.

19 In light of the fact that an earlier
20 confidential draft of this report was improperly
21 leaked and posted on a blog, I further move that parts
22 A and B of this report, if adopted, be immediately
23 posted to the Commission's website, as amended by our
24 discussion today, within three business days of this
25 vote.

1 Under this motion, commissioner statements
2 and rebuttals should be added to the posted version as
3 they come due. Is there a second?

4 COMMISSIONER GAZIANO: Second.

5 CHAIRMAN REYNOLDS: Discussion?

6 COMMISSIONER HERIOT: I have a procedural
7 question.

8 CHAIRMAN REYNOLDS: Yes?

9 COMMISSIONER HERIOT: I am going to have
10 a motion, too. And I guess procedurally that could be
11 a motion to amend your motion. And I believe that
12 Commissioner Gaziano has a couple of small changes
13 that he is interested in as well. How would you like
14 to proceed on that?

15 CHAIRMAN REYNOLDS: Okay.

16 COMMISSIONER GAZIANO: I thought the
17 motion included potential amendments to it as you read
18 it.

19 CHAIRMAN REYNOLDS: It did, but let's
20 proceed as planned. And we will fold in these
21 amendments as we move along.

22 COMMISSIONER HERIOT: So you want to have
23 a discussion first and then --

24 CHAIRMAN REYNOLDS: Yes.

25 COMMISSIONER HERIOT: But I amend your

1 motion?

2 CHAIRMAN REYNOLDS: Yes.

3 COMMISSIONER HERIOT: Okay. Just let me
4 know when you want to hear it.

5 CHAIRMAN REYNOLDS: Okay. Who would like
6 to go first? Commissioner Gaziano?

7 COMMISSIONER GAZIANO: First I just want
8 to ask you to ask the General Counsel to correct an
9 error on page 88 or 89 of the -- depending on whether
10 it's the redlined or non-redlined copy, there is a
11 reference -- I don't even know you need to do it right
12 now -- to former Bush appointees. And then there is
13 a list.

14 Some of them I know are not Bush
15 appointees but career attorneys. For example, Hans
16 von Spakovsky is a career attorney. So if you would
17 just correct former career attorneys and Bush
18 appointees, something like that. I don't think that
19 requires a vote.

20 Second, I would like to move if there is
21 no objection -- if not, I will ask for a vote -- that
22 part 5, which is a discussion of the 11(b) and the
23 cases, be moved to the appendix. Are other
24 commissioners agreeable to that change?

25 CHAIRMAN REYNOLDS: Commissioner Yaki?

1 COMMISSIONER YAKI: I have a question
2 about Mr. von Spakovsky. When you say he was
3 "career," was he embedded in Justice prior to the Bush
4 administration taking office in the Justice
5 Department?

6 COMMISSIONER GAZIANO: Was he? I'm pretty
7 sure that he was hired during the Bush administration
8 as a career employee.

9 COMMISSIONER YAKI: Who hired him?

10 COMMISSIONER GAZIANO: I don't know
11 specifically.

12 COMMISSIONER YAKI: Bradley Schlozmann?

13 COMMISSIONER GAZIANO: I don't know, but
14 I don't believe so.

15 COMMISSIONER YAKI: You don't believe so.
16 He was hired during the Bush administration?

17 COMMISSIONER GAZIANO: Yes.

18 COMMISSIONER YAKI: He was not a career
19 attorney who was there who was present before the Bush
20 administration?

21 COMMISSIONER GAZIANO: Yes because --

22 COMMISSIONER YAKI: Thank you.

23 By the way, you know, while we're on the
24 subject of Mr. von Spakovsky, I think you did note for
25 the record that a copy was leaked. I did note the

1 other day that there was a blog posted by Mr. von
2 Spakovsky citing this report here today well before
3 anyone else had any information about it. So I would
4 just like to note that for the record as well.

5 COMMISSIONER GAZIANO: I don't believe
6 that was true. I don't believe a blog by Mr. von
7 Spakovsky about the report appeared until yesterday,
8 almost three weeks until others had been reporting on
9 it.

10 CHAIRMAN REYNOLDS: Any other comments?

11 (No response.)

12 CHAIRMAN REYNOLDS: Commissioner Heriot,
13 let's take up the issues that you identified earlier.

14 COMMISSIONER HERIOT: I would like to
15 amend the title of the report. This is actually a
16 title that I suggested earlier on. I don't know why
17 it wasn't incorporated. I would like to amend the
18 report to be titled "Race-Neutral Enforcement of the
19 Law? DOJ and the New Black Panther Party
20 Investigation."

21 STAFF DIRECTOR DANNENFELSER: Redlined.

22 COMMISSIONER HERIOT: "Interim Report."
23 I would like to add that unless interested -- I
24 thought of that just a moment ago to what I had
25 written here because Commissioner Yaki seemed to be

1 concerned that we hadn't designated this as an interim
2 report. So the title would read "Race-Neutral
3 Enforcement of the Law? DOJ and the New Black Panther
4 Party Investigation, an Interim Report."

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER KIRSANOW: Second.

7 CHAIRMAN REYNOLDS: I take that as a
8 friendly amendment. Anything else?

9 COMMISSIONER HERIOT: That's all that I
10 have.

11 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

12 COMMISSIONER YAKI: It's not friendly. I
13 mean, I am not for that.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER YAKI: Are we discussing
16 that?

17 COMMISSIONER HERIOT: You don't have to
18 be.

19 CHAIRMAN REYNOLDS: Would you like to --

20 COMMISSIONER HERIOT: It's friendly to the
21 person who made the motion.

22 CHAIRMAN REYNOLDS: I would prefer not to
23 waste time and not vote on it.

24 COMMISSIONER YAKI: Well, may I state my
25 objection to it?

1 CHAIRMAN REYNOLDS: Yes.

2 COMMISSIONER YAKI: Again, I would just
3 simply say that it assumes a fact not in evidence,
4 which I will discuss later when we discuss the body of
5 the report.

6 CHAIRMAN REYNOLDS: Okay. This is the
7 time to discuss the body of the report. Commissioner
8 Yaki?

9 COMMISSIONER YAKI: I'm not ready yet.

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER YAKI: I asked my staff
12 assistant to get something for me.

13 CHAIRMAN REYNOLDS: All right. Does
14 anyone else have anything to say?

15 COMMISSIONER YAKI: On the body of the
16 report? If no one is going to go, then I will go.
17 Okay. Let me go. Amazing.

18 We have been discussing this. I see an
19 article that I have here from October 21st, 2009,
20 where I had predicted that this was going to be a
21 partisan kangaroo court. And nothing in the year and
22 some since then has done anything to change my mind
23 about this.

24 I think what is very important to note
25 about this report is that the bias that is present in

1 it, the omission of key facts, the suppression of key
2 facts, the diminution of key facts is quite
3 astonishing.

4 I think it starts off from the very
5 beginning, which is that the entire foundation of the
6 piece to this report rests on the actions of two
7 African American men in a single overwhelming black
8 voter precinct, where no allegations of any actions by
9 the men intimidating a single voter exist.

10 And let me underscore that. Nowhere in
11 the testimony can anyone claim that these men
12 approached, spoke with, or made threatening gestures
13 to a single voter.

14 Why is this important? Well, it is true
15 under 11(b) that you don't require actual
16 intimidation. And they're right. It doesn't require
17 a voter to be intimidated. And they're right.

18 But it also means that this media hoopla
19 that is milling around out there actively intimidating
20 voters is 100 percent false. I personally think
21 they're idiots. I think they're racists. I think
22 their ideology is deplorable.

23 But I also must not forget that the one
24 person who had the billy club was brought under
25 charges, does have an injunction against him, and is

1 prohibited from interfering in elections in
2 Philadelphia.

3 But we need to remember how we scale this
4 issue in comparison to others. What other cases of
5 actual voter intimidation do we have out there? Well,
6 we heard testimony in Arizona that members of the
7 Minutemen, at least one, had a holstered gun by his
8 side as they were videotaping and approaching Latino
9 voters. We have sworn testimony about armed agents of
10 the State of Mississippi basically invading people's
11 homes, African American elderly folks, and questioning
12 them who they voted for.

13 We have well-documented in the record
14 about mailers addressed to people in the thousands,
15 addressed to African American households. There isn't
16 even any criminal prosecution, even though if they
17 exercised their right to vote.

18 Another fact that was not addressed at all
19 in the report, how this complaint came to be. The
20 undisputed fact is that, in sharp contrast to
21 everything else the Department has ever done with
22 regard to voter intimidation cases, this case stands
23 alone in the exceptional case which was put together.

24 We have e-mails where one of the star
25 witnesses for the other side, the majority, J.

1 Christian Adams, bemoans the fact that not a single
2 voter complaint was lodged and that two weeks before
3 he prepared the memo, the J-memo, the important memo
4 that justifies why Justice should go forward with this
5 case, he didn't have a single fact to his name. In
6 fact, he was e-mailing people all over the place
7 trying to find something including the videotapes.

8 Yet, we have testimony, sworn testimony,
9 that in other alleged acts of voter intimidation,
10 reports of egregious acts of intimidation, that it
11 took months, in fact, even years to develop. Yet,
12 despite all of that, the Panther case was filed in 45
13 days, a week before President Obama was sworn in, a
14 week before the head of the Voting Rights Section at
15 the time, Mr. Coates, testified that he began to see
16 his duties and powers diminish, which, of course,
17 should have been expected during that time, mainly
18 because, as he admitted during the sworn testimony, he
19 was the "true member of the team" referenced in the
20 Office of Inspector General report that Brad
21 Schlozmann referred to as "Well, he was a former ACLU
22 attorney, but don't hold it against him. He's a true
23 member of our team."

24 Another fact -- and this is something that
25 probably is beating a dead horse, but at the same

1 time, I think it is important to point out. We have
2 seen the tape showing the confrontation between the
3 two African American men and the poll monitors for the
4 Republican party in the McCain for President campaign.
5 That is all we see. We do see that.

6 It is not pretty. It is not something
7 that you want to see. But we don't see them
8 intimidating people. We see people walking by them
9 going into the polls. When a cop car shows up, we see
10 a woman in the background saying to the police
11 "They're not bothering anyone."

12 We never subpoenaed the person who made
13 the tape. Why is that? Is there more tape that we
14 didn't see? We kept on asking that question. In the
15 very beginning, there is reference to the fact that
16 more tape existed, but we never seem to get it.

17 We don't have the tape, the part of the
18 tape that shows that the one with the baton left the
19 area peacefully after the police intervened. We don't
20 have any time stamp that shows that this was all done
21 in the morning, by 11:00 o'clock in the morning. That
22 precinct didn't have anyone else around it at that
23 time.

24 We do see the argumentative behavior
25 between them and the McCain poll monitors. And

1 somehow that gets conflated into a giant image of
2 angry black men trying to intimidate white people.
3 And that is simply a different story than saying
4 they're out there intimidating white voters.

5 One person compared that YouTube image in
6 its importance to that of Bull Connor hosing down
7 demonstrators. My thing, I just wanted to say this
8 for the record, that is a disgrace to the memory of
9 the people in Selma, an example of overblown hype and
10 hysteria generated by this report.

11 Here is another fact. Despite the fact
12 that we have throughout the declamations of the
13 majority in the report that Coates and Adams were
14 brave souls and courageous souls for coming forth to
15 testify about what he saw was wrongdoing in the
16 report, neither, neither of them, seem to see fit
17 during their years as true members of the Schlozmann
18 team to come to Congress and complain that minority
19 voting was not being protected.

20 Again, we had sworn testimony that Coates
21 believed that the Mississippi armed agents who went
22 into people's homes were committing egregious acts of
23 voter intimidation. And Schlozmann killed it.

24 But did you see him up here before this
25 body? Did you see him appear before Congress? No.

1 Well, why not? We can all guess. Was it the
2 recommendation for an immigration judge that
3 Schlozmann gave them? I don't know. But those are
4 the kinds of things that have to be taken into account
5 in terms of the credibility of these two witnesses.

6 When they talked about what happened in
7 Pima, Arizona, they said they had photographs of
8 someone with a gun. They said they had photographs of
9 someone who was carrying a gun but that somehow
10 because it was holstered, it was okay.

11 I'm wondering if the majority would have
12 thought the same thing if that African American
13 entering the poll precinct had his baton by his side.
14 Would that have made a difference? I doubt it.

15 And I doubt it should have made a
16 difference and certainly surely shouldn't have made a
17 difference in the case in Arizona. In that case,
18 despite years of investigation, all that happened was
19 that two years later, no 11(b) charge, no criminal or
20 civil prosecution. They just sent some monitors in to
21 see if they were going to come out and do it again.

22 Fact, Christian Adams -- those were his
23 words, and I've gotten into a dispute with one of the
24 commissioners before, but it's right there in the
25 record -- that Justice would do nothing in response to

1 the Ike Brown filing in Noxubee. Sworn testimony, he
2 thought -- he said that Justice would take a pass and
3 that would be proof, proof of the inability to be
4 race-neutral in the enforcement of the law.

5 Well, he lost that bet. There is no
6 proof. There is ample testimony by Perez and even
7 better documentation in the record that Justice did
8 intervene in July 15th of this year and went above and
9 beyond the scope of what they could have done to
10 essentially take Ike Brown out of the equation in his
11 continued attempts to suppress white voting in
12 Noxubee, Mississippi.

13 What is really fascinating about this
14 report is that Noxubee just kind of disappears, that
15 one immutable fact, the one proof, the one action that
16 you can point to that shows that Justice is, in fact,
17 enforcing the laws in a race-neutral fashion basically
18 takes a dive in this report. It just vanishes in
19 terms of its importance.

20 I could go on and on. There are so many
21 instances where the sworn statements of others, the
22 people who Schlozmann was trying to get rid of, who
23 Coates referred to as left wing in the statements --
24 he referred to them as left wing. Again, that's
25 critical to understanding the bias of that witness.

1 He referred to them as left wing, "those left wing
2 lawyers."

3 Despite the fact that we have sworn
4 testimony rebutting much of the statements made by
5 Coates, by Adams, by a sworn declaration by Hans von
6 Spakovsky, which I think is pretty much irrelevant in
7 this entire proceeding, despite that, all that is
8 relegated to little tiny footnotes, "Someone said
9 this. Someone said that," they even give an unsworn
10 statement by someone more credibility than a sworn
11 statement on the record by some of these ex-Justice
12 former lawyers, Joe Rich and Bob King. What rule of
13 evidence allows you to give more credibility to an
14 unsworn statement, to a news article than a sworn
15 statement into the record?

16 I'm saying it only because when it comes
17 to the sworn statements of Christian Adams and Coates
18 in his immaculate words coming out on high, there is
19 nothing that can be challenged about that. But when
20 it comes to others, they're put in a footnote,
21 disregarded, pretty much ignored.

22 In the end, this -- for the past year, we
23 have spent hundreds of thousands of dollars. I know
24 that we have 173 in hard costs, but we know the costs
25 are much greater than that for a case that is

1 essentially something that only people inside the
2 Beltway make their living off of, which is playing
3 gotcha back and forth with new administrators.

4 I would be the first one to admit that
5 that same game of gotcha was played during the Bush
6 administration with Gonzalez, but I will also say that
7 the investigators at the time for that, which was the
8 House Judiciary Committee and the Senate Judiciary
9 Committee waited for the OIG report and the OPR report
10 to come out before they actually passed any serious
11 judgment on what actually was happening because we can
12 talk stonewalling all we want, we can talk whatever.

13 You know, we all know this is a Beltway
14 game. And by that, I mean this Commission has
15 completely lost its focus. Our job is not to sit
16 around and play gotcha with the Department of Justice.
17 There are people on the Hill who have plenty of time,
18 resources, and money to do that. We have been sitting
19 here for a year navel gazing on this while we have
20 been ignoring what has been happening in the real
21 world.

22 Young gay men and women are being bullied
23 to death because of their sexual orientation. There
24 is still violence going on against people of color, no
25 matter what they look like, how they speak.

1 When we had our meeting of the State
2 Advisory Committees, which is made up of Democrats,
3 Republicans, Independents, they said to us that the
4 thing they saw out there the most that was disturbing
5 to them was how immigration was affecting perceptions
6 of people of color, especially in the Latino
7 community. And we have been sitting here buzzing
8 around, you know, back and forth between here and main
9 Justice, throwing bombs back and forth while this has
10 been going by the wayside.

11 I'm not saying that there's ever a time
12 this wouldn't be legitimate. I am saying that I
13 sincerely believe that this particular inquiry is not
14 legitimate.

15 All I can say is that when we were doing
16 this, because of the hysteria whipped up about this in
17 the mid-term elections, there were groups out there
18 citing the Black Panthers as a giant conspiracy to
19 commit voter fraud in this country. And there are
20 people going out there intimidating Latinos and
21 African American thinking, "We could protect our
22 side." That is wrong.

23 The fact that the Commission is being used
24 by people engaged in active voter intimidation is just
25 wrong. That has been the result of what we have been

1 doing for the past year.

2 This report to me has been and continues
3 to be far blown out of proportion, a waste of
4 Commission resources, much worse in the end. It's not
5 even an indictment of the New Black Panthers. It
6 really reads like a bad script for a Men in Black
7 sequel. That's conspiracy theory, sinister forces at
8 work, tampering with witnesses, innuendo and rumor,
9 but nothing except the one proof that's out there,
10 Noxubee, which they refuse to admit.

11 This has been an irresponsible exercise by
12 this Commission. It's reckless. It's been used for
13 contemptible purposes.

14 I cannot aid and abet this travesty of
15 justice. I will be voting no on this report.

16 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: Just a couple of
18 points. I would simply say for anyone who has the
19 time to please read the report, the characterizations
20 of the report that you may receive from either any of
21 the commissioners here, myself, Commissioner Yaki, or
22 any opponents. Simply read the report. And I urge
23 you to come to your own conclusions.

24 I would also like to -- just a couple of
25 brief points. One has to do with the cost of this

1 particular investigation, \$173,000. That is not
2 notably different from the cost of other enforcement
3 reports during the course of the years.

4 And you have to ask yourself, where do we
5 cap the expenditures as to an investigation of whether
6 the Department of Justice is enforcing the law in a
7 race-neutral fashion?

8 Either you believe that is something that
9 is important or you don't. If you do, \$173,000 is a
10 lot of money, but I think it is sufficient to say that
11 that is not an ungodly amount of money to determine
12 whether or not the lives of the people in the United
13 States are being protected by its Department of
14 Justice, especially when there is uncontroverted,
15 sworn testimony from two whistle-blowers who, at
16 jeopardy to their own careers, came forward and said
17 two very startling things: one, section 8 of the
18 Voting Rights Act is not being enforced by this
19 administration; two, the Department of Justice is not
20 enforcing the Voting Rights Act on behalf of white
21 citizens nor bringing cases against black defendants.
22 Either that is important or it is not. Either that is
23 something to expend \$173,000 to discern whether or not
24 that is, in fact, true or it is not.

25 In terms of evidence about intimidation of

1 the witnesses, we had testimony of individuals sitting
2 right here, including Mr. Bartle Bull that, in fact,
3 there was some intimidation going on. Now, perhaps
4 those words didn't say, "I was intimidated," but we
5 had testimony that voters turned away upon seeing
6 those individuals standing before the polling station.
7 We have testimony that, in fact, there was a black
8 poll watcher who expressed the fact that he was
9 petrified by what he saw.

10 New Black Panther case standing along may
11 not be the most important thing in the world. It may
12 not capture the attention of all the media, but, as I
13 said earlier, what drew the attention of this
14 particular Commission was it appeared to be and has
15 now been confirmed by these two witnesses to be a
16 manifestation of a policy and practice engaged in by
17 the Department of Justice.

18 We are seeing sworn testimony by the head
19 of the Civil Rights Division that, in fact, no
20 political minutia was involved in the dismissal of the
21 New Black Panther case.

22 During the course of the last year and a
23 half, we have sought and I think done so very
24 reasonably to adduce as much evidence as we possibly
25 could to either confirm or refute that fact, that bit

1 of testimony.

2 Upon reasonable requests, we received no
3 documentation from the Department of Justice on that
4 specific issue. It took the Judicial Watch lawsuit
5 and the order of a federal judge to reveal that, in
6 fact, there were numerous e-mails about this
7 particular small little case, tiny little case that
8 shouldn't preoccupy the attentions of the vast
9 Department of Justice for any degree of time, but
10 top-level individuals at the very top of the
11 Department of Justice were heavily engaged in whether
12 or not this particular lawsuit was going to be
13 dismissed or not.

14 We have received at least 50 e-mails.
15 And, again, you have to understand that these e-mails
16 were redacted because they were part of a privilege
17 where the Department of Justice asserted what is known
18 as the deliberative process privilege, which we have
19 testimony that -- well, I'll let you decide whether or
20 not that, in fact, is a legitimate privilege. But in
21 that privilege log, we have a list of e-mails going
22 back and forth between the top three individuals at
23 Department of Justice or at least three of the top
24 four individuals at Department of Justice about this
25 tiny little lawsuit that shouldn't merit the

1 investigation of the Civil Rights Commission or merit
2 the expenditure of \$173,000. But they were engaged in
3 determining whether or not this needed to be
4 dismissed.

5 I will reserve speaking about Noxubee and
6 the testimony of Christian Adams as to what the
7 Department of Justice would or would not have done
8 except to say that Christian Adams if you read the
9 transcript of the testimony didn't say the Department
10 of Justice would do nothing. He gave two to three,
11 actually three, different scenarios as to what the
12 Department of Justice might do. And those reflect the
13 fact that they are not serious about the Noxubee case.

14 Thank you, Mr. Chairman.

15 CHAIRMAN REYNOLDS: Okay. Before we go
16 on, I would just like to point out that last year's
17 enforcement report cost us \$211,000, as compared to
18 173 for the current enforcement report. And, also,
19 it's important to note, it's important to note, that
20 the bulk of these costs are fixed costs. They're the
21 salaries of the employees here at the Commission.

22 Commissioner Gaziano?

23 COMMISSIONER GAZIANO: I might not have
24 addressed some of the kind of misleading comments that
25 Commissioner Yaki made. It sounded very much like a

1 defense attorney for a client trying to raise slight
2 irrelevancies to convince a jury that although his
3 client, there might be evidence of guilt, if the
4 evidence of guilt wasn't beyond a reasonable doubt.
5 But since he called into question -- he said the
6 Commission's investigation was irresponsible, I at
7 least want to correct a few of them.

8 First, he said I think that the two thugs
9 at the polls who were intimidating people, there's no
10 testimony that they actually spoke to voters. Well,
11 I think that might be true, but people who have
12 crossed burned in their yard, people in an earlier era
13 who saw Ku Klux Klan members in white sheets didn't
14 need to have a verbal exchange with them to be
15 frightened.

16 The testimony we had before this
17 Commission was by Bartle Bull, Mike Mauro, and Chris
18 Hill. Two of them, I believe it was Chris Hill and
19 Mike Mauro -- I'm sorry -- Chris Hill and Bartle Bull
20 my able special assistant has reminded me, that they
21 saw voters turn away.

22 And they spoke to the voters. They spoke
23 to the voters. And the voters indicated that they
24 were intimidated because of the presence of the thugs
25 in paramilitary uniforms.

1 COMMISSIONER YAKI: That is such a lie.

2 COMMISSIONER GAZIANO: Commissioner Yaki,
3 I did not --

4 COMMISSIONER YAKI: Give me the
5 transcript. Give me the transcript. Give me the
6 transcript.

7 CHAIRMAN REYNOLDS: Commissioner Yaki.

8 COMMISSIONER YAKI: Give me the
9 transcript.

10 CHAIRMAN REYNOLDS: We listened to you
11 respectfully. Try to do the same.

12 COMMISSIONER YAKI: You know, come on.

13 CHAIRMAN REYNOLDS: Commissioner Yaki, you
14 may have said things that people disagreed with, but
15 you were not interrupted.

16 COMMISSIONER YAKI: That's a bald-faced
17 lie.

18 COMMISSIONER GAZIANO: It is not. People
19 who want to go on our website and look at Hill's
20 testimony will see that what I have said is exactly
21 true, that the witnesses said that they would come
22 back at a later time maybe. And we know maybe they
23 did. Maybe they didn't. But at the time they were
24 sufficiently intimidated by the presence of these
25 thugs that they left.

1 We also know that poll watchers other than
2 those on tape were intimidated. But we also know,
3 more importantly, that Bartle Bull testified that it
4 was the worst case of voter intimidation he had ever
5 witnessed.

6 And this is a person with sterling civil
7 rights credentials who marched in the South, who
8 worked for Robert F. Kennedy's election, who
9 published, former publisher of the Village Voice.

10 So the scene that the Department of
11 Justice was acting on and the scene that this
12 Commission was looking into was not based on snippets
13 of videotape.

14 I don't remember any commissioner
15 objecting to the amount of information that we had
16 that we were proceeding on, but I know the General
17 Counsel and the General Counsel's staff have been very
18 diligent in requesting every millimeter of tape that's
19 available as this investigation goes forward. I would
20 join any other commissioner who wants more
21 information, as I always have.

22 As Commissioner Kirsanow has certainly
23 mentioned, I do urge everyone to read the entire
24 report. But what Christian Adams actually said the
25 Department might do and would not do prove to be 100

1 percent accurate. What Christian Adams said the
2 Department would not do is interpose a section 5
3 objection, which it could have done unilaterally to
4 the county and the request in question, that it has
5 done unilaterally in almost any other case. He said
6 they would not interpose a unilateral section 5
7 objection, that they would go to court and that if
8 they did that, we would know they weren't serious.
9 And, in fact, they did.

10 But what is serious? What is serious are
11 the following facts. This is what we know about
12 Noxubee that Commissioner Yaki did not mention.
13 Several attorneys refused to work on the Ike Brown
14 case according to our two sworn whistle-blowers. At
15 least one attorney stated, "I am not going to work on
16 the case because I didn't join the Voting Section to
17 sue black people." The Department has not confirmed
18 or denied whether that happened.

19 Robert Kengel, Deputy of the Voting
20 Section, allegedly states to Mr. Coates during a trip
21 to investigate the Ike Brown case, "Can you believe we
22 are being sent to Mississippi to help a bunch of white
23 people?"

24 The Department hasn't said whether he said
25 that, but Mr. Kengel has admitted in writing that he

1 made that outrageous statement. He attempts to
2 interpose some lame excuse, which has been refuted.

3 Attorneys in the Civil Rights Division
4 allegedly told Adams, "Until blacks and whites achieve
5 economy parity in Mississippi, we have no business
6 bringing that case."

7 A similar comment was made by a different
8 career attorney to Mr. Coates. So these were the
9 excuses that were given. A non-lawyer minority
10 employee at the Department was "relentlessly harassed"
11 by Voting Section staff for his willingness as a
12 minority to work on the United States versus Ike Brown
13 case. That was the testimony from Adams.

14 Coates further testified that this
15 minority non-lawyer's mother was harassed and
16 intimidated because her son was willing to work on
17 that case, which the Department won and which the
18 Fifth Circuit affirmed and praised the Department.

19 And we also know that there were acts of
20 fraud involved with supervisors in that case trying to
21 prevent the political leadership from bringing that
22 case.

23 So that's the relevant facts from the
24 Noxubee case that the Department refuses to comment
25 on, admit, deny, with letters to us. And that is why

1 this investigation is now about a lot more than just
2 why they dismissed a lawsuit.

3 The evidence, unrefuted, sworn evidence,
4 by the whistle-blowers is that it was dismissed
5 because of hostility to bringing cases against black
6 defendants.

7 And we don't have any serious evidence to
8 dispute that. But the really troubling anecdotes that
9 the Department refuses to respond to ware what is
10 making this matter especially significant at this
11 point.

12 CHAIRMAN REYNOLDS: Commissioner Taylor?

13 COMMISSIONER TAYLOR: Thank you, Mr.
14 Chair.

15 I am going to vote in favor of this report
16 for a number of important reasons. First, I want to
17 support what one of my fellow commissioners has
18 already said this morning. Read the report for
19 yourself and note what the report says and what it
20 does; that is, it gathers information very consistent
21 with our statutory responsibility to provide
22 information to the public and to serve as a watchdog
23 function. And you should not in my view take anyone's
24 word for what the transcripts say. Read the
25 transcripts for yourself and read all of the

1 information for yourself.

2 I certainly don't believe that anything
3 has been suppressed by this body. In fact, we all
4 have a right as commissioners to bring all of this
5 information into the public domain. And we are doing
6 so by way of this report. And we are certainly free
7 to do so as individual commissioners. And I am sure
8 we will.

9 One fact, though, that cannot be refuted
10 is that the complaint was filed. And the complaint
11 included four counts: an allegation of actual
12 intimidation against voters, a claim of attempted
13 intimidation against voters, a claim of actual
14 intimidation against poll watchers, and a claim of
15 attempted intimidation against poll watchers.

16 And those were the claims in the
17 complaint. Those were the claims that received a
18 default by way of the court. And those were the
19 claims for which the court said, "File your motion for
20 a default judgment."

21 And no one has suggested, at least to my
22 knowledge, no one has suggested, that the claims made
23 in that original complaint were brought forward
24 fraudulently or in violation of rule 11; that is, an
25 obligation of an officer of the court to present the

1 court with only credible allegations.

2 As far as I know, no one has ever
3 questioned that. So, as we sit here today, there
4 appears to be no suggestion from anyone that the
5 individuals who brought the complaint forward did so
6 in violation of rule 11, which means there were actual
7 allegations of voter intimidation and actual
8 allegations of intimidation of poll watchers. And at
9 the end of the day, that should trouble everyone. And
10 everyone should be asking the question why the case
11 was not pursued vigorously.

12 Thank you.

13 CHAIRMAN REYNOLDS: Commissioner Heriot?

14 COMMISSIONER HERIOT: I just have a couple
15 of minor points to make here. I think a lot of the
16 points that I wanted to make have already been made by
17 some of my fellow commissioners.

18 I do intend to vote in favor of this
19 report. But I wanted to comment a little bit about
20 why the New Black Panther case was particularly
21 important to me.

22 There have been allegations in the past
23 that the Voting Section of the Civil Rights Division,
24 that some of the attorneys there were hostile to
25 bringing voter intimidation cases against African

1 American defendants hostile to the notion of
2 race-neutral application of the law in this area.

3 But allegations like that -- and they were
4 mainly made in connection with the Noxubee case.
5 Allegations like that are very hard to investigate.
6 It's always possible for any particular case that
7 there was some reason the Department thought that it
8 would be inappropriate to bring the case.

9 Now, sometimes facts are unclear.
10 Sometimes witnesses are unavailable. Sometimes simply
11 the resources of the Department are stretched thin.
12 And, as a result -- but I'll bring a case that
13 otherwise might be meritorious.

14 The New Black Panther case was different
15 because it was brought and it was in default. Because
16 it was in default, it was an easy case. There's no
17 reason to block a case that's in default because of
18 lack of resources.

19 The easiest thing to do in that situation
20 is just go forward and get your judgment. It's really
21 very little work. It's actually more work to dismiss
22 the case. And that's why I thought the New Black
23 Panther case merited our investigation because there
24 were really very few responses the Department could
25 give to why they would drop such a case other than a

1 hostility to race-neutral enforcement of the law.

2 And so that is why I thought it was
3 important to look at the case. That is why I thought
4 and continue to think that it's a kind of case that
5 doesn't come up very often. It really allows you to
6 get some insight into the thinking of the Department
7 that you otherwise wouldn't get. In those cases,
8 you're just not going to get this nice, clean
9 essentially free case to deal with.

10 The other point I wanted to make was to
11 respond to Commissioner Yaki's point that we should be
12 investigating bullying instead. There are lots of
13 issues I think the Commission should look into, but I
14 just want to point out that investigating the
15 Department of Justice is not an unusual thing for the
16 Commission to do. It's actually dead center of what
17 we do.

18 We are required by our statute to do at
19 least one report on the enforcement of civil rights
20 laws. So that means looking at how federal agencies
21 and other enforcement institutions are enforcing the
22 laws.

23 So, rather than being a strange thing for
24 us to investigate, this is something we're actually
25 mandated by Congress to happen.

1 CHAIRMAN REYNOLDS: Okay. Commissioner
2 Yaki?

3 COMMISSIONER YAKI: Two things. One --
4 and let's not get into too much technicalities, but I
5 think we have to. Section 5 of the law requires that
6 the Department interpose its objection unilaterally to
7 the appropriate submitting party.

8 Not to get into too much fine detail here,
9 but the consent decree or the injunction in Noxubee
10 removed power from Ike Brown and his invested, the
11 power to submit plans according to section 5 to I
12 believe a voter registrar of the county.

13 What the Department of Justice did in its
14 intervention on the 15th was to say, "Hey, not only
15 was Ike Brown not the proper party even to raise a
16 section 5 amendment. So why would you interpose a
17 section 5 objection when they can bring it anyway?"

18 They went further and instructed the
19 appropriate party, the voter registrar, through a
20 court order to not even consider anything he ever gave
21 to them as proper for the purposes of any section 5
22 submittal. That would be done.

23 That is important because it goes beyond
24 simply saying that this person has no right to do it.
25 They went beyond it and said, and, furthermore, in

1 perpetuity, if this guy shows up, don't give him the
2 time of day because he is easily trying to intimidate,
3 continuous pattern and practice of too many white
4 voters. And they extended the injunction as well.

5 So the technicality of the section 5
6 unilateral imposition simply was not something
7 procedurally that was available because there had been
8 no submittal by the voter registrar at that time.

9 And then I just want to point out that I
10 do have the transcripts. And I am reading the
11 transcripts. And there is nothing in there that says
12 anything about that those two people were engaged in
13 anything other than getting into a fracas with the
14 McCain and Republican poll watchers.

15 And that, if you read the record seems to
16 be the only thing that might have deterred one or two
17 or three people from voting and saying they would come
18 back and vote at another time, mainly because one of
19 the people involved said to the voters, "Oh. Well,
20 there are Black Panthers here." And God knows what he
21 actually really said to them.

22 We have no other video evidence beyond the
23 fracas. One of them even admitted that his "Irish was
24 up" quotations. So this was not some sort of peaceful
25 sort of "I'm filming you because I think you're an

1 intimidated voter" kind of thing. There is an active
2 confrontation going on between the Republican poll
3 monitors and McCain poll monitors and the two
4 individuals there.

5 That had a spillover effect to some
6 voters. That is unfortunate and something that both
7 parties also share some blame equally. And I would
8 just state, one for my distinguished colleague over
9 here, that let's not forget that the person carrying
10 the nightstick did have a civil case brought against
11 him, did have an injunction placed against him. And
12 that continually seems to be overlooked in the
13 discussions on this.

14 CHAIRMAN REYNOLDS: Commissioner Melendez,
15 do you have any comments?

16 COMMISSIONER MELENDEZ: Yes. I thank you.
17 First of all, I just hope -- can you hear
18 me?

19 CHAIRMAN REYNOLDS: Yes.

20 COMMISSIONER MELENDEZ: Okay. I hope that
21 we can put closure to this. This has gone on a long
22 time. Hopefully now we have all of the witnesses and
23 everything. You know, if we don't have the subpoenas
24 and testimony, hopefully -- and I didn't understand
25 either what "interim" meant, meaning that this report

1 becomes an open-ended report that as you get more
2 testimony or subpoenas and people bring forth, that we
3 add up to this report.

4 I'm not sure what we were saying there as
5 far as the "interim," but on the merits of the case,
6 I remember I was asking at one point whether or not
7 the individual citizen who was the voter, if we ever
8 had testimony that a person would come forth. And at
9 that time I believe the answer that I was given was
10 that the person lived in a neighborhood where the
11 thugs were all around and the person was reluctant to
12 testify.

13 So in civil rights, it's really against
14 the individual person, but I never really heard
15 anybody come forward. It's really looking from the
16 outside in on videos and everything else. So I hope
17 that we could have put more effort to bring somebody
18 forward that was an actual citizen that was
19 intimidated.

20 Also, you know, the degree of punishment,
21 I know that, you know, the main person with a
22 nightstick was actually sanctioned or whatever. So it
23 wasn't as if the primary person wasn't prosecuted.

24 It's like anything else in the judicial
25 system. Everybody disagrees with the maximum amount

1 of punishment that a person receives for the
2 infraction. So, you know, no matter who is in the
3 administration there, nobody is going to ever be happy
4 with whatever punishment is actually given to the
5 person.

6 My main concern is that with the time
7 given of the Commission, that will change hopefully at
8 the end of this year. Maybe there is one more meeting
9 left for some of us, but we put closure on this. And
10 there is an end to this report.

11 You take the witnesses that you have. And
12 you go with it today. And we vote on this but not to
13 keep on going over and over with this vicious attack
14 against the Justice Department and administration. I
15 am just wondering when it will end.

16 That is just my comment. I will submit my
17 statements later to go along with this report, but I
18 just want to thank you for the opportunity to speak
19 this morning.

20 CHAIRMAN REYNOLDS: Okay. At this point
21 I call the question. All in favor please say "Aye."

22 (Chorus of ayes.)

23 CHAIRMAN REYNOLDS: Objections?

24 COMMISSIONER YAKI: No.

25 COMMISSIONER MELENDEZ: Opposed.

1 CHAIRMAN REYNOLDS: Abstentions?

2 (No response.)

3 CHAIRMAN REYNOLDS: Okay. Please let the
4 record reflect that Commissioners Yaki and Melendez
5 voted against the motion. The motion passes.

6 Okay. Part B, as distributed in draft
7 form to commissioners, it contains commissioners'
8 interim findings and recommendations. Under this
9 motion, the Commission will vote individually on each
10 finding and recommendation. Those findings and
11 recommendations receiving the majority vote will be
12 included in the report with a vote tally, a sentence
13 noting any votes in opposition to that item.

14 I move that the Commission approve interim
15 finding 1A, which we just followed. The Commission's
16 organic statute authorizes it to subpoena witnesses
17 and the production of written material in aid of its
18 mission. And it authorizes the Attorney General to
19 enforce the Commission's subpoenas in federal court if
20 any person or entity refuses to comply. It is
21 unclear, however, whether the Commission has legal
22 recourse if the Attorney General refuses to enforce a
23 subpoena directed at the Department of Justice or its
24 employees.

25 The Commission's statute also requires

1 that "All federal agencies shall cooperate fully with
2 the Commission to the end that it may effectively
3 carry out its functions and duties."

4 But it is equally unclear whether the
5 Commission has recourse to seek judicial enforcement
6 of this command absent representation from the
7 Department of Justice.

8 Is there a second?

9 COMMISSIONER GAZIANO: Second.

10 CHAIRMAN REYNOLDS: Discussion?

11 (No response.)

12 CHAIRMAN REYNOLDS: All in -- Commissioner
13 Yaki?

14 COMMISSIONER YAKI: All I can say is that
15 this one, I think that this is an attempt to arrogate
16 to ourselves power exceeding that of Congress and
17 other agencies. It is very unprecedented, number one.
18 And, number two, this goes into the old adage of be
19 careful what you wish for.

20 CHAIRMAN REYNOLDS: Any other comments?

21 (No response.)

22 CHAIRMAN REYNOLDS: All in favor please
23 say "Aye."

24 (Chorus of ayes.)

25 CHAIRMAN REYNOLDS: Objections?

1 COMMISSIONER YAKI: No.

2 COMMISSIONER MELENDEZ: Opposed.

3 CHAIRMAN REYNOLDS: Abstentions?

4 (No response.)

5 CHAIRMAN REYNOLDS: Let the record reflect
6 that Commissioners Yaki and Melendez voted against the
7 motion. The motion passes.

8 Next I move that the Commission approve
9 interim finding 1B, which reads as follows, "Although
10 the U.S. Department of Justice has cooperated with
11 many previous Commission investigations and requests.
12 DOJ has an inherent conflict of interest when it would
13 prefer not to cooperate fully with the Commission's
14 investigations of DOJ's actions.

15 "In the New Black Panther Party
16 investigation that is the subject of this report, the
17 Department of Justice refused to comply with certain
18 Commission requests for information concerning DOJ's
19 enforcement actions. And it instructed its employees
20 not to comply with the Commission's subpoenas for
21 testimony.

22 Moreover, the Department's denial of the
23 Commission's requests for the appointment of a special
24 counsel to help resolve the discovery disputes in
25 federal court was communicated by a career attorney

1 without addressing or acknowledging the Department's
2 conflict of interest and without any indication the
3 Commission's request was ever brought to the attention
4 of the Attorney General.

5 Is there a second?

6 COMMISSIONER GAZIANO: Second.

7 CHAIRMAN REYNOLDS: Discussion?

8 COMMISSIONER YAKI: Hang on a second.

9 (Pause.)

10 COMMISSIONER YAKI: Same objections I made
11 before.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER GAZIANO: Call the question.

14 CHAIRMAN REYNOLDS: One moment.

15 (Pause.)

16 CHAIRMAN REYNOLDS: All in favor please
17 say "Aye."

18 (Chorus of ayes.)

19 CHAIRMAN REYNOLDS: Objections?

20 COMMISSIONER YAKI: No.

21 CHAIRMAN REYNOLDS: Commissioner Melendez?

22 COMMISSIONER MELENDEZ: Abstain.

23 CHAIRMAN REYNOLDS: Any other abstentions?

24 (No response.)

25 CHAIRMAN REYNOLDS: Okay. We have one

1 abstention, by Commissioner Melendez. Commissioner
2 Yaki opposes the motion. The remaining commissioners
3 vote in favor of the motion. The motion passes.

4 I move that the Commission approve the
5 interim recommendation, which reads as follows,
6 "Congress should consider amendments to the
7 Commission's statute to address investigations in
8 which the Attorney General and/or the Department of
9 Justice has a conflict of interest in complying fully
10 with the Commission's request for information.

11 "Options to address a potential conflict
12 of interest might include the following: enactment of
13 a statutory procedure by which the Commission may
14 request the Attorney General to appoint a special
15 counsel with authority to represent it in federal
16 court, which request the Attorney General must
17 personally respond to in writing within the specified
18 period of time.

19 "Another option would be the enactment of
20 a statutory provision to clarify that the Commission
21 may hire its own counsel and proceed independently in
22 federal court if the Attorney General refuses to
23 enforce a subpoena or other lawful request, especially
24 those directed at the Department of Justice or its
25 officer or its employees.

1 "And a third option would be a conscious
2 decision not to alter the Commission's statute or
3 statutory confirmation that the Attorney General and
4 the Department of Justice can act against the
5 Commission's interests without any particular
6 explanation."

7 Is there a second?

8 COMMISSIONER GAZIANO: Second.

9 CHAIRMAN REYNOLDS: Discussion?
10 Commissioner Yaki?

11 COMMISSIONER YAKI: I would just like to
12 point out that, again, we are seeking powers that
13 belong to another agency. In fact, in some ways it
14 exceeds the amount of the Congress' authority in terms
15 of its authority to oversight an investigation over
16 the Executive Branch.

17 The second thing was just a matter of
18 practicality, which, you know, I just raise, not for
19 this but for anything that exists in the future. And
20 that is we are an agency with very limited means.

21 When the Chairman spoke about the relative
22 costs of the project, he did acknowledge that it was
23 high costs in terms of staff work. It did not include
24 the costs of the time that have spent and the number
25 of meetings that we have spent dedicated solely to

1 this endeavor today. It does not account for
2 commissioner time that was spent solely to this
3 endeavor today.

4 Those costs do add up. And in terms of
5 any future commission looking at any special counsel,
6 outside of the fact that I think it is never going to
7 happen, I think the realities are that it would be a
8 very difficult procedure to engage in simply because
9 of our current budgetary constraints in addition to
10 the other duties that we are supposed to be filling at
11 this time.

12 CHAIRMAN REYNOLDS: Commissioner Heriot?

13 COMMISSIONER HERIOT: I am just baffled by
14 Commissioner Yakips belief that we are attempting to
15 arrogate power from ourselves. Actually, the
16 recommendation makes no particular request for power.
17 It simply lays out the options.

18 And one of the options is a conscious
19 decision on the part of Congress here not to alter the
20 statute. What we're asking for is for Congress to
21 decide what to do about this problem. And we're
22 certainly not recommending any particular court of
23 action. That's just silly.

24 CHAIRMAN REYNOLDS: Commissioner Gaziano?

25 COMMISSIONER GAZIANO: Thank you,

1 Commissioner Heriot, for making the first of the two
2 points I wanted to make in respectful disagreement
3 with Commissioner Yaki's suggestion that we were
4 seeking power that exceeded that even of Congress.

5 The first obviously that you just made is
6 that we are simply asking Congress to consider a
7 variety of options, including doing nothing. And if
8 that is their choice, we are just drawing the matter
9 to their attention.

10 Secondly, even if they chose, if Congress
11 in its wisdom chose, the option that would seem to
12 give us the future Commission, not us but a future
13 Commission, a greater degree of independence would be
14 the option to allow the Commission to go to court if
15 the Attorney General refused to enforce our subpoenas.

16 It is not a power that exceeds Congress',
17 far less than Congress. We are an independent agency.
18 We have commissioners appointed by Congress. Congress
19 itself -- in some ways Congress has asked us to do
20 some of this legislative oversight work by reporting
21 to Congress on civil rights statutes and their
22 enforcement.

23 Congress can go independently to court,
24 but Congress can do a lot of things in addition to
25 this Commission, even if Congress were to grant us

1 this Commission, the extreme power, it can hold
2 executive officials in contempt. It can withhold
3 money from departments. It can enforce its subpoenas
4 independently.

5 So the suggestion that Congress might give
6 us independent litigation authority, which, by the
7 way, it does give even some Executive Branch agencies,
8 that that somehow would be unusual or extraordinary.
9 And especially that it would exceed Congress' own
10 authority is clearly wrong.

11 CHAIRMAN REYNOLDS: Okay. All in favor
12 please say "Aye."

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Objections?

15 COMMISSIONER YAKI: No.

16 COMMISSIONER MELENDEZ: Opposed.

17 CHAIRMAN REYNOLDS: Abstentions?

18 (No response.)

19 CHAIRMAN REYNOLDS: Okay. Commissioners
20 Melendez and Yaki voted against the motion. The
21 remaining commissioners voted in favor of the motion.
22 The motion passes.

23 CHAIRMAN REYNOLDS: Okay. Next up is the
24 discussion of the health disparities report.
25 Commissioner Taylor has indicated to me that he has --

1 how do you folks feel about it? Okay. Let's take a
2 five-minute break.

3 COMMISSIONER GAZIANO: Can you really keep
4 it in five minutes?

5 CHAIRMAN REYNOLDS: It is doubtful.

6 (Laughter.)

7 (Whereupon, the foregoing matter went off
8 the record at 10:10 a.m. and resumed at 10:19 a.m.)

9 - MOTION REGARDING HEALTHCARE DISPARITIES REPORT

10 COMMISSIONER STATEMENTS & REBUTTALS

11 CHAIRMAN REYNOLDS: Commissioner Taylor
12 has indicated that he has a motion with respect to
13 finalizing the healthcare disparities report.
14 Commissioners approve for publication part A of the
15 draft briefing report on healthcare disparities on May
16 28th, 2010.

17 Commissioner Taylor?

18 COMMISSIONER TAYLOR: I do. May I present
19 the motion?

20 CHAIRMAN REYNOLDS: Yes, indeed.

21 COMMISSIONER TAYLOR: I move that the
22 healthcare disparities report move forward without any
23 Commission-approved findings and recommendations. The
24 report would consist of part A, which has already been
25 approved; individual commissioner statements; and any

1 rebuttal statements.

2 COMMISSIONER HERIOT: Second.

3 CHAIRMAN REYNOLDS: Okay. Discussion?

4 Actually, do you want to discuss the timetable?

5 COMMISSIONER TAYLOR: The recommendation
6 is going to be that we have commissioner statements
7 due 30 days after the due date for the statements on
8 the New Black Panther report, which would be January
9 19th. And rebuttals would be due 30 days thereafter,
10 February 19th of 2011.

11 CHAIRMAN REYNOLDS: Comments? Concerns?

12 COMMISSIONER GAZIANO: I was going to --

13 COMMISSIONER KIRSANOW: Move approval.

14 CHAIRMAN REYNOLDS: I'm sorry?

15 COMMISSIONER KIRSANOW: Move approval.

16 COMMISSIONER GAZIANO: I was just going to
17 raise the question. And I would like to hear
18 Commissioner Melendez's quick thoughts that whether
19 it's possible to --

20 CHAIRMAN REYNOLDS: Mr. Yaki, is that you?
21 Continue.

22 COMMISSIONER GAZIANO: -- whether
23 commissioners, unanimously or otherwise, want to allow
24 commissioners whose terms may expire to submit
25 statements, even after their term has expired, for

1 reports in which commissioner statements are pending.

2 I understand from at least a couple of
3 commissioners in this room whose terms may expire,
4 they don't need that additional time that they will
5 get their -- they intend to get their comments in
6 prior to their term ending.

7 But since that applies to Commissioner
8 Melendez, I just wanted to raise the issue and see if
9 you had any particular request with regard to that.

10 CHAIRMAN REYNOLDS: Commissioner Melendez?

11 COMMISSIONER MELENDEZ: No, I don't think
12 we can.

13 My question, though, on this healthcare,
14 the one we're voting on now or considering, we had
15 postponed this for what reason again?

16 CHAIRMAN REYNOLDS: I believe that we were
17 trying to fashion some recommendations. Is that
18 right?

19 COMMISSIONER TAYLOR: That is correct.
20 And, Commissioner Melendez, from my perspective,
21 recommendations, findings and recommendations, would
22 not be reason to hold up this report.

23 First of all, you know, there's no federal
24 policy or pending legislation right now for us to
25 comment on. And, in reviewing the transcript, it is

1 clear that the experts are continuing to develop
2 information and research in this area.

3 And so in many ways, I don't want to try
4 to fix recommendations right now when I suspect we
5 will have better research on this issue in 2011, in
6 which case I would like this to be an opportunity for
7 someone to come back, someone on the Commission to
8 come back, and reference the new research.

9 So I just don't think this is a good
10 vehicle right now for findings and recommendations for
11 those reasons.

12 CHAIRMAN REYNOLDS: Commissioner Yaki?

13 COMMISSIONER YAKI: I am going to say
14 something that Commissioner Taylor is not going to
15 like, which is I commend him for his leadership on
16 this issue.

17 COMMISSIONER TAYLOR: I'd love to have
18 that stricken from the --

19 (Laughter.)

20 COMMISSIONER TAYLOR: I cannot stand for
21 that.

22 COMMISSIONER YAKI: -- and thank him for,
23 the course, he is charging on this particular report.

24 The only point I would make -- and this
25 actually goes to -- is a legal point. I think that we

1 should just limit it to commissioner statements simply
2 because the ability for Commissioner Taylor, Reynolds,
3 or Melendez to do a rebuttal would be completely
4 eliminated by this by one simple fact. I believe it
5 is that part of the statute that says that it
6 prohibits us accepting volunteer services.

7 So I think that we should simply enter the
8 Commission statements because they would not be
9 afforded the chance to do any rebuttal.

10 CHAIRMAN REYNOLDS: Well, my view is maybe
11 simplistic. When our term ends, our term ends.

12 COMMISSIONER YAKI: Right.

13 CHAIRMAN REYNOLDS: And our ability to act
14 in the capacity as a commissioner ends on that day.
15 I think that we would be free to submit anything we
16 wanted to provided the statement was open in our
17 capacity as just -- well, as a non-commissioner.

18 COMMISSIONER YAKI: But I guess I question
19 whether it could be published as a rebuttal of a
20 commissioner, --

21 CHAIRMAN REYNOLDS: No.

22 COMMISSIONER YAKI: -- in which case --

23 CHAIRMAN REYNOLDS: No. I don't believe

24 --

25 COMMISSIONER YAKI: -- are we using

1 Commission -- and I'm not trying to stop it. I am
2 just trying to think this through because it is
3 something that has come up before. Okay. If the
4 General Counsel thinks it's okay, I don't care.

5 CHAIRMAN REYNOLDS: I don't believe that
6 that is his position, but --

7 (Laughter.)

8 CHAIRMAN REYNOLDS: Commissioner Heriot?

9 COMMISSIONER HERIOT: I don't have
10 anything definitive to say about how this should be
11 interpreted. I note that we actually have witnesses
12 who are volunteers. We have, you know, public
13 comment.

14 I don't think there's anything wrong with
15 a commissioner, a former commissioner, submitting a
16 statement. There may be, you know, ways in which we
17 want to limit that.

18 I actually think it would be a good
19 practice if those members of the Commission who are
20 rotating off voted on part A and part B of the report.
21 It would be good to give them the opportunity to do
22 both a statement and a rebuttal.

23 How it has to be fashioned I think we
24 could debate. It doesn't seem to be very important
25 right now because nobody is asking for that period to

1 be extended to allow them to do that. But one way to
2 do it is to simply have a practice that a former
3 commissioner who voted on the report would always be
4 permitted to submit a special statement and rebuttal
5 as a member of the public just like a member of the
6 public. You always accept it from someone who is a
7 former commissioner.

8 And I don't think the volunteer thing is
9 really at issue here at all. I think the volunteer
10 issue if it's meant to be that kind of a rule would
11 exclude us from having witnesses, and it doesn't.

12 CHAIRMAN REYNOLDS: Okay. On that note,
13 all in favor?

14 (Chorus of ayes.)

15 CHAIRMAN REYNOLDS: Commissioner Melendez?

16 COMMISSIONER MELENDEZ: I'm in favor.

17 CHAIRMAN REYNOLDS: Any abstentions?

18 (No response.)

19 CHAIRMAN REYNOLDS: We have a unanimous
20 vote.

21 CONSIDERATION OF FINDINGS AND

22 RECOMMENDATIONS FOR BRIEFING REPORT ON

23 ENGLISH-ONLY IN THE WORKPLACE

24 CHAIRMAN REYNOLDS: Next up is a
25 discussion of the findings and recommendations for the

1 English-only in the workplace briefing report.

2 At the October 8th, 2010 business meeting,
3 commissioners approved for publication part A of the
4 draft briefing report on English-only in the
5 workplace.

6 We will now take up as part of B the
7 findings and recommendations proposed by Commissioner
8 Heriot, first distributed in draft form to
9 commissioners on October 22nd via e-mail -- that was
10 sent by her special assistant -- and included in your
11 meeting materials for today.

12 Under this motion, the Commission will
13 vote individually on each finding and recommendation.
14 Those findings and recommendations receiving a
15 majority of the vote will be included in the report
16 with a vote tally and a sentence explaining any
17 opposition vote for that item.

18 Pursuant to this motion and in light of
19 the commissioner statement and rebuttal deadlines for
20 our enforcement report and the health disparities
21 report, commissioner statements will be due by
22 February 1, 2011. And rebuttals will be due by March
23 3rd, 2011.

24 Is there a second?

25 COMMISSIONER TAYLOR: Second.

1 CHAIRMAN REYNOLDS: Discussion?

2 (No response.)

3 CHAIRMAN REYNOLDS: All in favor please --
4 okay. Here we go. I move that the Commission approve
5 finding 1, which reads as follows, "Title VII
6 prohibits employers from discriminating against
7 employees on the basis of national origin as well as
8 race, color, religion, and sex. At the same time,
9 however, it is clear that in passing Title VII,
10 Congress did not intend to disturb the right of
11 employers to control workplace practices except
12 insofar as their activities constituted discrimination
13 based on race, color, religion, sex, or national
14 origin."

15 As Representative William McCullough put
16 it, "Management prerogatives and the union freedoms
17 are to be left undisturbed to the greatest extent
18 possible. Internal affairs of employers and labor
19 organizations must not be interfered with except to
20 the limited extent that correction is required in
21 discrimination practice."

22 That is the motion. Is there a second?

23 COMMISSIONER GAZIANO: Second.

24 COMMISSIONER HERIOT: Second.

25 CHAIRMAN REYNOLDS: Discussion?

1 (No response.)

2 CHAIRMAN REYNOLDS: All in favor please
3 say "Aye."

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: All in opposition?

6 COMMISSIONER MELENDEZ: Opposed.

7 COMMISSIONER YAKI: I oppose.

8 CHAIRMAN REYNOLDS: Any abstentions?

9 (No response.)

10 CHAIRMAN REYNOLDS: Commissioners Melendez
11 and Yaki oppose the motion. The remaining
12 commissioners voted in favor. The motion passes.

13 I move that the Commission approve finding
14 number 2, which reads as follows, "Although Congress
15 consciously withheld the power to issue substantive
16 regulations in connection with Title VII when it
17 created the EEOC, the EEOC has for decades
18 nevertheless issued guidelines that effectively bind
19 those employers that are not in a position to risk
20 litigation."

21 One of these is section 1606.7, which
22 governs what the EEOC refers to as "Speak English only
23 rules." Under that section of the guidelines, the
24 EEOC asserts that it will presume that an English-only
25 rule that applies all the time violates Title VII and

1 closely scrutinizes.

2 An English-only rule that applies only at
3 certain times is permissible under that provision only
4 if it is justified by a business necessity.

5 Is there a second?

6 COMMISSIONER HERIOT: Second.

7 CHAIRMAN REYNOLDS: Discussion?

8 (No response.)

9 CHAIRMAN REYNOLDS: All in favor please
10 say "Aye."

11 (Chorus of ayes.)

12 CHAIRMAN REYNOLDS: All those in
13 opposition?

14 COMMISSIONER YAKI: I oppose.

15 COMMISSIONER MELENDEZ: No.

16 CHAIRMAN REYNOLDS: Any abstentions?

17 (No response.)

18 CHAIRMAN REYNOLDS: Commissioners Yaki and
19 Melendez voted against the motion. The remaining
20 commissioners voted in favor. The motion passes.

21 I move that the Commission approve finding
22 number 3, which reads as follows, "Section 1606.7 does
23 not apply to Spanish only, Japanese only, or other
24 exclusive language rules."

25 Is there a second?

1 COMMISSIONER HERIOT: Second.

2 CHAIRMAN REYNOLDS: Discussion?

3 (No response.)

4 CHAIRMAN REYNOLDS: All of those in favor
5 please say "Aye."

6 (Chorus of ayes.)

7 CHAIRMAN REYNOLDS: Objections?

8 COMMISSIONER MELENDEZ: No.

9 COMMISSIONER YAKI: No.

10 CHAIRMAN REYNOLDS: Abstentions?

11 (No response.)

12 CHAIRMAN REYNOLDS: Once again

13 Commissioners Yaki and Melendez voted against the
14 motion. The remaining commissioners voted in favor.
15 It passes.

16 I move that the Commission approve finding
17 number 4, which reads as follows, "Several courts have
18 explicitly rejected the EEOC guidelines on speak
19 English-only rules. The case -- well, the cases
20 include Garcia v, Spun Steak, Kania v. Archdiocese of
21 Philadelphia, Long versus First Union. Two other
22 courts have deferred to the EEOC in connection with
23 section 1606.7. These cases are EEOC versus
24 Synchro-Start Products and EEOC versus Premier
25 Operator Services.

1 Is there a second?

2 COMMISSIONER TAYLOR: Second.

3 CHAIRMAN REYNOLDS: Discussion?

4 COMMISSIONER HERIOT: I assume the
5 official version is what is written here with --

6 CHAIRMAN REYNOLDS: Yes, yes. Any other
7 comments?

8 (No response.)

9 CHAIRMAN REYNOLDS: All in favor please
10 say "Aye."

11 (Chorus of ayes.)

12 CHAIRMAN REYNOLDS: Those in opposition?

13 COMMISSIONER YAKI: Nay.

14 COMMISSIONER MELENDEZ: No.

15 CHAIRMAN REYNOLDS: Any abstentions?

16 (No response.)

17 CHAIRMAN REYNOLDS: The motion passes with
18 Commissioners Melendez and Yaki voting against the
19 motion.

20 I move that the Commission approve finding
21 number 5, which reads as follows, "There are many good
22 reasons for an employer to adopt an English-only in
23 the workplace policy. Among those good reasons are
24 the need for safety, the need to supervise employees
25 effectively, and generally ensure that they are

1 following the policies, and the need to provide
2 customers and other employees with a friendly and
3 courteous atmosphere in which they need not worry
4 about the possibility that they are being spoken of in
5 a discourteous manner.

6 "While most employers may have no need for
7 such a policy, a significant number do. Section
8 1606.7 operates to chill employers who have a good
9 reason for adopting English-only rules in the
10 workplace."

11 Is there a second?

12 COMMISSIONER GAZIANO: Second.

13 CHAIRMAN REYNOLDS: Discussion?

14 (No response.)

15 CHAIRMAN REYNOLDS: Okay. The section
16 that talks about making employees and customers feel
17 comfortable concerns me. In fact, I don't feel
18 comfortable with that portion of the motion. So I am
19 going to vote for the motion, but please note I am not
20 supporting that particular portion of the motion.

21 If there are no other comments, all those
22 in favor please say "Aye."

23 (Chorus of ayes.)

24 CHAIRMAN REYNOLDS: Objections?

25 COMMISSIONER MELENDEZ: No.

1 CHAIRMAN REYNOLDS: Abstentions?

2 (No response.)

3 CHAIRMAN REYNOLDS: Once again --

4 COMMISSIONER HERIOT: The majority vote
5 voted for the part that you were not comfortable with?

6 CHAIRMAN REYNOLDS: That is correct. And
7 the motion passes with Commissioners Melendez and Yaki
8 voting against it. And I voted against that portion
9 that I referred to earlier.

10 I move that we approve finding number 6,
11 which reads as follows, "On the other hand, those
12 employers who wish to adopt English-only rules just
13 for the purpose of harassing or embarrassing employees
14 on account of their national origin are relatively
15 few. I'm withdrawing section 1606.7. And, instead,
16 advising employers and employees that English-only
17 policies are prohibited only when the employer adopted
18 the policy for the purpose of harassing or
19 embarrassing employees on account of their national
20 origin would improve the guidelines and make them more
21 consistent with the intent of Congress."

22 Is there a second?

23 COMMISSIONER GAZIANO: Second.

24 CHAIRMAN REYNOLDS: Discussion?

25 COMMISSIONER YAKI: Isn't that written

1 more like a recommendation somehow?

2 CHAIRMAN REYNOLDS: That argument has
3 force.

4 COMMISSIONER HERIOT: Do you want to
5 strike the last sentence?

6 COMMISSIONER YAKI: I am going to vote
7 against the whole thing anyway.

8 CHAIRMAN REYNOLDS: All right.

9 COMMISSIONER YAKI: I just wanted to point
10 it out.

11 CHAIRMAN REYNOLDS: All in favor please
12 say "Aye."

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Objections?

15 COMMISSIONER MELENDEZ: No

16 COMMISSIONER REYNOLDS: Abstentions?

17 COMMISSIONER KIRSANOW: Abstain

18 CHAIRMAN REYNOLDS: I'm curious.

19 COMMISSIONER KIRSANOW: Wonder all you
20 want.

21 (Laughter.)

22 CHAIRMAN REYNOLDS: Okay. We have one
23 abstention, Commissioner Kirsanow; two objections,
24 Commissioners Melendez and Yaki. The remaining
25 commissioners voted for it. It passes.

1 Will you tell me afterwards? I had a
2 concern with it myself. And I wanted to see if we're
3 on the same wavelength.

4 COMMISSIONER KIRSANOW: What is the vote
5 on that one?

6 CHAIRMAN REYNOLDS: That was four in
7 favor, one abstention, two objections.

8 Okay. Now we move on to the
9 recommendations. I move that recommendation number
10 one be approved, and it reads as follows, "The EEOC
11 should withdraw section 1606.7. Instead, employers
12 and employees should be informed that English-only
13 policies are prohibited only when it can be shown by
14 a preponderance of evidence that the policy was
15 adopted for the purpose of harassing or embarrassing
16 employees on account of their national origin."

17 Is there a second?

18 COMMISSIONER GAZIANO: Second.

19 CHAIRMAN REYNOLDS: Discussion?

20 (No response.)

21 CHAIRMAN REYNOLDS: Let's let Commissioner
22 Yaki go first this time. Those in opposition?

23 COMMISSIONER YAKI: Me.

24 COMMISSIONER MELENDEZ: No.

25 CHAIRMAN REYNOLDS: Those in favor?

1 (Chorus of ayes.)

2 CHAIRMAN REYNOLDS: Abstentions?

3 (No response.)

4 COMMISSIONER KIRSANOW: Mr. Chairman, I
5 just wanted it noted that my questions will be to us
6 including the language "for the purpose of
7 discriminating" in addition to "harassing or
8 embarrassing."

9 CHAIRMAN REYNOLDS: Okay.

10 COMMISSIONER HERIOT: Let's include that,
11 then.

12 COMMISSIONER GAZIANO: Yes, let's. Would
13 you like to reconsider? Why don't we amend and say,
14 "was adopted for the purpose of" -- are you proposing
15 --

16 COMMISSIONER KIRSANOW: Just insert the
17 word "discriminating."

18 COMMISSIONER GAZIANO: "For the purpose of
19 discriminating."

20 COMMISSIONER HERIOT: "Harassing or
21 embarrassing."

22 COMMISSIONER KIRSANOW: "Discriminating,
23 harassing, or embarrassing."

24 COMMISSIONER GAZIANO: We need the exact
25 language to put in,

1 COMMISSIONER KIRSANOW: "For the purpose
2 of discriminating against, harassing or embarrassing."

3 CHAIRMAN REYNOLDS: Mr. General Counsel,
4 do we need to vote again?

5 COMMISSIONER GAZIANO: Let's go ahead.

6 MR. BLACKWOOD: It would be better.

7 CHAIRMAN REYNOLDS: Commissioner Yaki, you
8 get to vote against it twice. All those in favor
9 please say "Aye."

10 (Chorus of ayes.)

11 CHAIRMAN REYNOLDS: Those in opposition?

12 COMMISSIONER MELENDEZ: No.

13 COMMISSIONER YAKI: Do you think just
14 twice? No.

15 CHAIRMAN REYNOLDS: Okay. The motion
16 passes. We have two votes, Commissioners Yaki and
17 Melendez, against the motion. The motion passes.

18 Second recommendation reads as follows,
19 "Congress should amend Title VII to clarify the
20 meaning of discrimination on the basis of national
21 origin. At minimum, that clarification should make it
22 clear that an English-only policy is prohibited only
23 when it can be shown by a preponderance of the
24 evidence that the policy was adopted for the purpose
25 of harassing or embarrassing employees on account of

1 their national origin."

2 I would like Commissioner Kirsanow to make
3 a friendly amendment.

4 COMMISSIONER KIRSANOW: I would encourage
5 the same amendment; that is, insert the
6 "discriminating against" before "harassing or
7 embarrassing."

8 CHAIRMAN REYNOLDS: Okay. With that
9 modification, is there a second?

10 COMMISSIONER HERIOT: Second.

11 CHAIRMAN REYNOLDS: Discussion?
12 Commissioner Yaki?

13 COMMISSIONER YAKI: Actually, my comments
14 go toward the entirety of the findings and
15 recommendations. As I stated before, I believe that
16 this briefing was extremely unbalanced, but due to
17 perceptions of the Commission that people who would
18 have been extremely valuable to testify chose not to.
19 I hope that will be rectified in the future.

20 I believe that these recommendations are
21 wrong. They do not take into account the reality of
22 what is really going on there, I think, right now with
23 regard to discrimination against people, especially in
24 the Latino community with regard to their ability to
25 communicate and work effectively in their environment.

1 While I am certainly a proponent for the
2 literacy in English for this country and, as anyone
3 is, I think that we have to be very careful in
4 attempting to change those things which were set up to
5 protect many immigrants coming here and not just
6 newcomers from this generation but from generations
7 past from kind of subjugation and discrimination that
8 they suffer.

9 So that's why I opposed all the findings
10 and recommendations in this report and why I oppose
11 the report in its entirety.

12 CHAIRMAN REYNOLDS: Commissioner Yaki,
13 would you feel comfortable if a publisher were to
14 discriminate against all applicants who could not
15 speak and write standard English?

16 COMMISSIONER YAKI: I'm not going to get
17 into hypotheticals here.

18 CHAIRMAN REYNOLDS: That's fine.

19 COMMISSIONER YAKI: So the question -- I
20 mean, the point is that there are reasons why some of
21 these were put together. And I don't think it was an
22 adequate basis of information upon which to act.

23 CHAIRMAN REYNOLDS: Okay. I will address
24 the same question to Commissioner Kirsanow.

25 COMMISSIONER KIRSANOW: I think there is

1 a rational basis for doing just that. There is a
2 rational business purpose for a publisher to want --
3 people who are able to write and who speak standard
4 English well.

5 I think the language of findings and
6 recommendations is fairly specific. And that is why
7 I encouraged including "discriminate against" in the
8 language so that we're not asserting that this should
9 be a blanket authorization or privilege on the part of
10 employers to enclose these provisions if, in fact,
11 they discriminate against or they harass or embarrass
12 individuals who don't necessarily have English as a
13 primary language.

14 I mean, I wouldn't engage in
15 hypotheticals. I mean, if OSHA or some of these types
16 of English-only requirements have a safety component.
17 My father was a steelworker. And, as Commissioner
18 Yaki indicated, in the Cleveland area, there were a
19 number of people who spoke a number of different
20 languages in an environment like that.

21 This is pre-OSHA. And there were at least
22 a couple of occasions in which there were serious
23 injuries and deaths that resulted from a failure of
24 people to understand, no fault of their own, what was
25 going on in the workplace.

1 Now, does something like this cure that?
2 No, absolutely not. But to the degree with which we
3 perpetuate an environment in which there isn't the
4 common language requirement, that is reasonable. And,
5 again, with those exceptions in mind, I think we harm
6 the very individuals that we believe that are
7 purported beneficiaries of the rule that says you
8 can't impose English-only requirement.

9 CHAIRMAN REYNOLDS: Commissioner Gaziano?

10 COMMISSIONER GAZIANO: Yes. Just for the
11 record, I would like to remind fellow commissioners
12 and others that the EEOC was ably represented in this
13 particular hearing. And since the briefing was
14 primarily focused on the EEOC policies, I think that
15 they were certainly adequate to defend their own
16 policies.

17 I certainly would have been happy for
18 others to testify besides those other citizens that we
19 had, but I certainly think that it is not accurate to
20 say that this was not a briefing where the issues were
21 fully discussed and debated by able witnesses.

22 CHAIRMAN REYNOLDS: Commissioner Heriot,
23 did you have something to say? Did you have something
24 else?

25 COMMISSIONER HERIOT: No, not at this

1 time.

2 CHAIRMAN REYNOLDS: All right. All those
3 in favor please say "Aye."

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Objections?

6 COMMISSIONER YAKI: Object.

7 COMMISSIONER MELENDEZ: No.

8 CHAIRMAN REYNOLDS: Abstentions?

9 (No response.)

10 CHAIRMAN REYNOLDS: Commissioners Yaki and
11 Melendez voted against the motion. The motion,
12 however, is supported by the remaining commissioners.
13 The motion passes.

14 UPDATE ON FY 2011 CY PRES

15 ENFORCEMENT REPORT & CONSIDERATION OF

16 PROJECT OUTLINE AND DISCOVERY PLAN

17 CHAIRMAN REYNOLDS: Okay. Next up,

18 discussion of the Cy Pres enforcement report.

19 Included in our meeting materials was a draft project
20 outline and discovery plan on how to proceed on Cy
21 Pres enforcement report project for fiscal year 2011.

22 Do the members of the Subcommittee or any
23 other commissioners care to comment on that draft?

24 Commissioner Heriot?

25 COMMISSIONER HERIOT: I think there are

1 two things that should be done to expand the project.
2 We talked about it at our last attempted meeting,
3 where we didn't have a quorum, about bringing in
4 private class actions given that private class actions
5 are an important enforcement mechanism here.

6 I think that our Cy Pres project should
7 include private class actions in the civil rights
8 area. And it should also include class actions
9 brought by the federal agencies other than the
10 Department of Justice.

11 I believe that the EEOC has been involved
12 in this area as well. I don't know whether other
13 federal agencies might have been, but I think it's
14 probably a good idea to look at all of them, rather
15 than just the Department of Justice.

16 CHAIRMAN REYNOLDS: Okay.

17 COMMISSIONER HERIOT: So I would make a
18 motion on that.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER HERIOT: I move that the Cy
21 Pres project be expanded to include private class
22 actions that involve Cy Pres and also actions brought
23 by other federal agencies that involve civil rights
24 cases and Cy Pres.

25 CHAIRMAN REYNOLDS: Second. Discussion?

1 (No response.)

2 CHAIRMAN REYNOLDS: All those in favor by
3 saying "Aye."

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Objections?

6 COMMISSIONER MELENDEZ: Opposed.

7 COMMISSIONER YAKI: Opposed. But, then
8 again, it's only two weeks' work.

9 (Laughter.)

10 CHAIRMAN REYNOLDS: So did Commissioner
11 Yaki's statement warm your heart?

12 COMMISSIONER MELENDEZ: No.

13 CHAIRMAN REYNOLDS: Okay.

14 COMMISSIONER HERIOT: One other area, the
15 Subcommittee has not yet had a chance to meet on this.
16 So we did not have it into the plan. So the
17 Subcommittee -- I guess I should stop calling it a
18 Subcommittee, shouldn't I? They are committees
19 because we are not a committee. So there has to be a
20 committee before it can have a subcommittee.

21 COMMISSIONER YAKI: Call it a
22 sub-Commission.

23 COMMISSIONER HERIOT: Not a
24 sub-Commission. Anyway, we had been working with
25 Chris Byrnes earlier in the Office of Staff Director

1 on developing the concept paper. And I know that --
2 anyway, we need a staff person that is our contact
3 person. And it makes sense for it to be Mr. Byrnes
4 only because then, you know, commit this to the Office
5 of Staff Director or whatever, but we have to be able
6 to know who we are working with.

7 CHAIRMAN REYNOLDS: Okay. Who is running
8 this? I mean, who is responsible? Which component
9 within the organization is responsible?

10 COMMISSIONER HERIOT: I think that is
11 something that we get to decide.

12 CHAIRMAN REYNOLDS: So at this point it's
13 not decided? Okay.

14 Commissioner Yaki?

15 COMMISSIONER YAKI: No. I was just going
16 to say that if you need somebody to serve on the
17 Subcommittee, I might be willing to do so.

18 CHAIRMAN REYNOLDS: Okay. All right. Why
19 don't you guys make these determinations after
20 December?

21 COMMISSIONER HERIOT: Fine with me. But
22 what we need to do is be able to move it forward. If
23 you want me to make a motion, I will.

24 CHAIRMAN REYNOLDS: I don't believe it's
25 necessary.

1 MR. BLACKWOOD: It would be useful to note
2 who is on the Subcommittee.

3 COMMISSIONER HERIOT: Okay.

4 MR. BLACKWOOD: Is Commissioner Yaki not
5 on it or --

6 COMMISSIONER HERIOT: There are only two
7 on the Subcommittee as of the time we appointed them.

8 CHAIRMAN REYNOLDS: Well, we generally
9 have three. And we generally include --

10 COMMISSIONER HERIOT: We couldn't get one
11 of them to do it before. But if he wants to do it
12 now, that's peachy.

13 CHAIRMAN REYNOLDS: Commissioner Yaki?

14 COMMISSIONER YAKI: Yes?

15 CHAIRMAN REYNOLDS: In those -- I don't
16 know -- 15 seconds that have gone by, is there
17 interest in serving under the sub-Commission, the
18 Subcommittee, the --

19 COMMISSIONER HERIOT: Committee.
20 Committee.

21 CHAIRMAN REYNOLDS: -- Committee? Is it
22 still there?

23 COMMISSIONER YAKI: I like short-term
24 assignments. So yes.

25 CHAIRMAN REYNOLDS: Okay. Very well. So

1 you will participate as a full-fledged member of the
2 whatever for as long as you would like.

3 MR. BLACKWOOD: Who are the other members?

4 CHAIRMAN REYNOLDS: The other members
5 would be Commissioner Kirsanow --

6 COMMISSIONER HERIOT: Same ones we had
7 before.

8 CHAIRMAN REYNOLDS: -- and Commissioner
9 Heriot.

10 COMMISSIONER HERIOT: And we're working
11 with Chris? We're working with him. I move that we
12 commit this to the Office of the Staff Director.

13 CHAIRMAN REYNOLDS: So you want to make
14 the determination now?

15 COMMISSIONER HERIOT: Yes because we need
16 to be able to --

17 CHAIRMAN REYNOLDS: Okay. I asked you
18 that a little earlier. And you said that you would
19 make that determination. At least you suggested that
20 you would make it sometime in the future.

21 COMMISSIONER HERIOT: I thought that we
22 were talking about something different.

23 CHAIRMAN REYNOLDS: Okay.

24 COMMISSIONER HERIOT: What I want to know
25 is who I am working with. Chris worked on the concept

1 paper.

2 CHAIRMAN REYNOLDS: Okay. And the wrinkle
3 -- well, Chris would have to work closely with the --
4 well, to the extent the use of subpoenas are needed,
5 you will have to work closely with the Office of
6 General Counsel.

7 COMMISSIONER HERIOT: That's fine.

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

10 (Chorus of ayes.)

11 COMMISSIONER HERIOT: What are we voting
12 on now?

13 CHAIRMAN REYNOLDS: Your motion.

14 COMMISSIONER HERIOT: Did anybody second
15 it? Did you second it?

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER HERIOT: Okay. Okay. Aye.

18 CHAIRMAN REYNOLDS: Objections?

19 COMMISSIONER YAKI: I am voting no.

20 COMMISSIONER MELENDEZ: No.

21 CHAIRMAN REYNOLDS: But you still are
22 going to serve?

23 COMMISSIONER YAKI: Yes.

24 CHAIRMAN REYNOLDS: Okay. All right. The
25 motion passes. We have two objections. The remaining

1 commissioners voted in favor of it.

2 - CONSIDERATION OF POLICY ON

3 COMMISSIONER STATEMENTS AND REBUTTALS

4 CHAIRMAN REYNOLDS: Next up we are going
5 to discuss a policy on statements and rebuttals. On
6 October 14th and again on November 10th, the Office of
7 Staff Director distributed a proposal by Commissioner
8 Heriot or a policy for commissioner statements and
9 rebuttals for reports.

10 Commissioner Heriot, would you like to
11 discuss your proposal?

12 COMMISSIONER HERIOT: Hold on. I'd
13 forgotten about it until now.

14 COMMISSIONER YAKI: Can we table this?

15 COMMISSIONER HERIOT: I don't think so.

16 COMMISSIONER YAKI: I think we should
17 because I think that the new commissioners should have
18 some input on this.

19 COMMISSIONER HERIOT: They can bring it up
20 themselves.

21 COMMISSIONER YAKI: No? Then we will.

22 COMMISSIONER HERIOT: Okay.

23 COMMISSIONER YAKI: This is wasting our
24 time. Go ahead.

25 COMMISSIONER HERIOT: I think it's fairly

1 self-explanatory here. What I think is important is
2 that we have a written policy on statements and
3 rebuttals, I think following pretty much, although not
4 with the same level of detail that we see here, making
5 sure that everyone has an opportunity to file a
6 statement and a rebuttal.

7 What this adds is a procedure in case of
8 the need for surrebuttal, which I think will be the
9 exception and not the rule.

10 We can not do surrebuttals and have it
11 simply because we haven't had the statements
12 circulated, the rebuttal statements circulated. So
13 sometimes people don't find out whether there would
14 have been a need of surrebuttal until they get --
15 well, actually until never since we don't actually get
16 the reports distributed to us either.

17 So I think it is important to have such a
18 policy. There are a lot of ways to do it. Here is
19 one way to do it. And I would be happy to modify it
20 if someone thinks there is some way it can be made
21 better.

22 CHAIRMAN REYNOLDS: Commissioner Yaki,
23 does that suggest you have something to say?

24 COMMISSIONER YAKI: I do have something to
25 say. I really think this is ridiculous.

1 CHAIRMAN REYNOLDS: Why don't --

2 COMMISSIONER YAKI: I think the idea that
3 there are rebuttals in the first place is ridiculous,
4 but surrebuttals that require three members of the
5 Commission to be valid and on the process is just
6 ridiculous.

7 The fact is that commissioner statements
8 are meant to express a point of view and bring out
9 issues that they wish to use separate in a manual
10 report. The idea of rebuttals is simply to give
11 people a chance to deal.

12 I mean, the fact is that if this were the
13 case, the Supreme Court would never get any opinion
14 out because they would have like 15 rounds of
15 sur-sur-sur-sur-surrerebuttals. We don't have that
16 kind of time. We don't have that kind of money.

17 It delays these reports getting out. It
18 has delayed these reports getting out. It continues
19 to delay these reports going out. And I think this
20 will delay it even further. And I hope that the new
21 Commission will reconsider this entire process from
22 the very get-go.

23 CHAIRMAN REYNOLDS: Commissioner Yaki
24 raises a good point. When does it end?

25 COMMISSIONER HERIOT: I don't think we've

1 had that problem. You know, we have been doing fine.
2 I think Commissioner Yaki's real point is that he
3 likes to put the defamatory matters -- he likes to put
4 false things in the statement.

5 CHAIRMAN REYNOLDS: Okay. Let's forget
6 about Commissioner --

7 COMMISSIONER HERIOT: Of course, he
8 doesn't want a rebuttal.

9 CHAIRMAN REYNOLDS: Let's forget about
10 Commissioner Yaki, and let's forgot about what has
11 gone on in the past. As it is structured, the
12 potential to have --

13 COMMISSIONER YAKI: I am sorry. I have to
14 respond to that. I mean, she just accused me of
15 putting defamatory materials in my rebuttals.

16 Let me just say this. Nothing I put in
17 rebuttal I would not put in a commissioner statement
18 but for the fact that we came up with this crazy
19 system to begin with.

20 I would simply say go back to the original
21 system. Make it streamlined. Get it done. Anything
22 I put in, which is not defamatory, by the way, but
23 perhaps a little on the polemical side, only because
24 sometimes I am frustrated by the processes with which
25 we engage here. No doubt others may voice that same

1 point of view in about six months or so.

2 So I think that, you know, there are a lot
3 of words I would use for this, but I cannot say them
4 in this arena. But I would just simply put it's a lot
5 of wasted time, a lot of wasted resources.

6 CHAIRMAN REYNOLDS: Commissioner Gaziano?

7 COMMISSIONER GAZIANO: As I said, I think,
8 when this was brought up at an earlier meeting, any
9 rule we come up with can be abused. And so any rule
10 we come up with really should be followed with the
11 good faith of all commissioners.

12 But given where we have, I think these are
13 a good set of rules to go by that resolve certain open
14 questions. And so that's why I think we ought to
15 proceed with them.

16 And if there are future improvements by a
17 future Commission, then I'm happy to hear it. But
18 whatever we adopt today or in the future, I think it's
19 incumbent upon all of us to try to exercise our own
20 good faith and restraint to prevent delays and future
21 problems.

22 But I think we should adopt this today
23 until some future Commission comes up with something
24 better.

25 CHAIRMAN REYNOLDS: Okay. All in favor?

1 (Chorus of ayes.)

2 CHAIRMAN REYNOLDS: Objections?

3 COMMISSIONER YAKI: No.

4 COMMISSIONER MELENDEZ: No.

5 CHAIRMAN REYNOLDS: Abstentions?

6 (No response.)

7 CHAIRMAN REYNOLDS: Two objections. The
8 remaining commissioners voted in favor of it. And I
9 voted in favor of it, despite my concerns that this
10 structure lends itself to abuse.

11 COMMISSIONER TAYLOR: May I make one
12 comment, Mr. Chair? I am voting in favor of this
13 because I'm reading into it an element of good faith
14 by all people involved in the process.

15 CHAIRMAN REYNOLDS: What is it about your
16 experience with --

17 (Laughter.)

18 CHAIRMAN REYNOLDS: Never mind. Never
19 mind.

20 COMMISSIONER TAYLOR: I recognize what you
21 were saying.

22 COMMISSIONER YAKI: He is trying to butter
23 me up so I won't say nice things about him anymore.

24 COMMISSIONER TAYLOR: That's true. That's
25 true.

1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER YAKI: Another excellent
3 proposal, Mr. Taylor.

4 COMMISSIONER TAYLOR: Oh, gosh.

5 COMMISSIONER YAKI: Another excellent one.
6 On the record I will say it was an excellent proposal.

7 - DISCUSSION OF POSSIBLE BRIEFING TOPICS FOR FY 2011

8 CHAIRMAN REYNOLDS: Okay. Next up is a
9 discussion of briefing topics, possible briefing
10 topics, for 2011. On Wednesday afternoon
11 Commissioners Heriot and Gaziano circulated a concept
12 paper for a Commission briefing on the alleged wage
13 gap disparity among genders.

14 Commissioner Heriot, should that be sex,
15 I mean, gender/sex.

16 COMMISSIONER HERIOT: Sex and gender are
17 used interchangeably here.

18 CHAIRMAN REYNOLDS: But that's not
19 grammatically correct, is that? Never mind. We'll
20 talk about it later on.

21 Commissioners Heriot and Gaziano, would
22 you like to speak to your proposal?

23 COMMISSIONER GAZIANO: Commissioner
24 Heriot?

25 COMMISSIONER HERIOT: My concern here is

1 that there may be a hiatus during which we don't have
2 a quorum. And it's important to have something to do
3 in January and February just in case the appointments
4 are not made in time, something on the agenda.

5 We have already approved a concept paper
6 for the school discipline topic that I have been
7 worried that it is not just going to be one month that
8 we're down for, maybe three. And it would be good to
9 have some topics in place that we can at least hold a
10 briefing, even if we don't have a quorum.

11 I think the gender gap in wages is an easy
12 briefing to put together. There are experts on this
13 one who would be willing to testify. And it's an
14 interesting topic. And I think that it definitely
15 deserves more discussion than it's gotten -- there has
16 been pending Congress the Paycheck Fairness Act. Is
17 that right, Paycheck Fairness?

18 It was voted down on a procedural matter.
19 I think it was yesterday or the day before. But
20 probably the issue is going to come up again. And
21 during the discussion of that proposal, the wage gap
22 issue came up a lot.

23 And I think that it's our role to enter
24 into that discussion, go down a little deeper than the
25 members of Congress are going down. And I think it

1 would make an excellent topic for a briefing.

2 I would like to vote on it today because
3 I think that it is easier to put together this
4 briefing than it is the school discipline briefing,
5 that if we vote on it today, then we'll have two
6 topics and staff will have some flexibility depending
7 which one they schedule first, you know, which one
8 goes in the January slot, which one goes in the
9 February slot.

10 CHAIRMAN REYNOLDS: Okay. I'll treat that
11 as a motion. And seconded?

12 COMMISSIONER GAZIANO: Sure. I just
13 wanted to speak. I think this is an excellent topic
14 that any future Commission ought to be equally
15 interested in, too. So I think it's a good idea to
16 put some things on our agenda in case there is a
17 hiatus, but I am not saying that I necessarily expect
18 one.

19 I think that given the activity in
20 Congress and given the interest in this subject
21 generally, that any future Commission should welcome
22 qualified witnesses from every perspective to address.

23 So that's why I support the briefing, but
24 I hope that this is something you think could be -- I
25 suppose we can get a briefing later on where we are in

1 the other briefing, but I would hope that this one if
2 we adopt it would be scheduled sometime early in the
3 next year.

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

6 COMMISSIONER YAKI: Discussion? Hello?

7 CHAIRMAN REYNOLDS: Generally you get my
8 attention.

9 COMMISSIONER YAKI: I don't raise paper.

10 CHAIRMAN REYNOLDS: You raise paper.

11 COMMISSIONER YAKI: Sometimes I do raise
12 paper.

13 Mr. Chair?

14 CHAIRMAN REYNOLDS: Yes?

15 COMMISSIONER YAKI: Once again, I would
16 like to point out that while it is admirable that my
17 colleague wishes to constantly participate in filling
18 gaps in time in regard to the restoration of
19 appointment of two other commissioners to this body,
20 I think that, one, I think that it's premature to
21 schedule briefings when others have not had any --
22 but, number two, from a practical perspective, even if
23 this briefing were to go forward, I would request --
24 and, as a matter of practice, I think it will have to
25 be this way -- how this goes forward is going to be

1 much different from the way briefings have gone
2 forward in the past.

3 The Commission is going to be essentially
4 a four/four split in terms of appointees, in terms of
5 past appointees and present appointees. I think that
6 my objections to briefings in the past and a lot of
7 briefings that have occurred have been the imbalance
8 of witnesses how have been called to testify on this.

9 And I would just simply say if there is
10 any suggestion or semblance of any similar imbalance
11 going forward in January, I think that will be changed
12 or canceled or substantially altered, which is why,
13 again, I think it is premature for us to go forward
14 and attempt to do something.

15 When we do have additional commissioners,
16 they are going to want the benefit of it being able to
17 weigh in on this as well. And they will be doing so
18 with only the badge of hindsight, rather than being
19 able to directly hear the testimony of someone.

20 And maybe they would rather choose to
21 focus on something else or it could be that, as was
22 the case when I was first appointed, there was in some
23 ways a more organizational type meeting.

24 You had just come on maybe a month or so
25 before I had. And I think it's one of the first

1 things that we actually got together, to talk about
2 how we are going to proceed going forward.

3 And that, in and of itself, is very useful
4 because for the Board at that time, it helped set a
5 lot of the ground rules on how we work together as a
6 Board. And I think that is something that we should
7 think about not preempting by trying to schedule
8 something in January that there may be substantial
9 disagreement going forward about who they decide and
10 how they may proceed anyway, with or without the
11 additional commissioners and notwithstanding whether
12 or not Commissioners Melendez and myself are
13 reappointed.

14 CHAIRMAN REYNOLDS: Commissioner Heriot?

15 COMMISSIONER HERIOT: I just wanted to
16 point out that when I came on the Commission, all
17 sorts of things were already scheduled; in fact, had
18 been going on for years. We had already picked up the
19 topic for the enforcement report for year one. And
20 then year two, we had done the same thing. And then
21 year three, yet again the same thing. It's actually
22 very common to schedule these things ahead of time.

23 CHAIRMAN REYNOLDS: If I recall, you
24 expressed your displeasure --

25 COMMISSIONER HERIOT: I sure did. After

1 year three, it was getting a little tedious. But I
2 think that, actually, we're doing a good thing by
3 making sure there is some program going on during a
4 period when we may not have commissioners,
5 particularly January, when there is no way in the
6 world we could put together a briefing in 30 seconds.
7 And this way we will have something.

8 On the issue of imbalance, I hope that at
9 this point we will take the opportunity to reorganize
10 the way we do briefings. I have long advocated
11 relying more on commissioners in getting witnesses to
12 briefings.

13 You know, we have the unfortunate
14 procedure now where we rely upon the staff to balance
15 these briefings and hearings. And what happens is
16 some people actually discourage witnesses from coming.

17 And, as a result, the people, like
18 Commissioner Yaki, who says sometimes that he is happy
19 that witnesses are not here --

20 COMMISSIONER YAKI: I have.

21 COMMISSIONER HERIOT: Yes, you said that on
22 the record.

23 COMMISSIONER YAKI: Yes. I have.

24 COMMISSIONER HERIOT: And --

25 COMMISSIONER YAKI: Because they would be

1 the only one versus a --

2 COMMISSIONER HERIOT: That is why I would
3 like it to be the responsibility of commissioners to
4 make sure that if they think some view point is not
5 being represented, they come up with a witness.

6 Note that other institutions that hold
7 briefings, -- take the Congress -- they don't have a
8 so-called neutral staff that comes up with witnesses.
9 They have staff for the majority, staff for the
10 minority. And they come up with their witnesses that
11 way. And that way they get their witnesses, everybody
12 is happy.

13 I think that works a lot better than
14 putting staff members on the spot and having them try
15 to come up with this just so they can be shot at when
16 they are unsuccessful or even when they are
17 successful. Even when the panels are very balanced,
18 somebody is going to say they're not.

19 I think that Mr. Yaki should be in charge
20 of naming the people that he wants to come.

21 CHAIRMAN REYNOLDS: Commissioner Yaki?

22 COMMISSIONER YAKI: Not trying to beat a
23 dead horse, we are not Congress. We are an
24 independent investigative body, appointed by both
25 bodies. We are not here to -- I have to say this with

1 as straight a face as possible. We are not here
2 supposedly to engage in quite the kind of partisan
3 activity that Congress is, by its very nature is
4 engaged in. And that reflects itself in the witness
5 selection and information-gathering process. That is
6 why we have a professional staff. That is why we have
7 the professional Staff Director.

8 And I would just say that the fact of the
9 matter is that, with all due respect to when you came
10 on, Commissioner Heriot, -- and I understand your
11 frustrations -- this is going to be a little bit
12 different. You came on at a time when you were
13 replacing someone that did not really change the
14 dynamics of how the Commission was going to work.

15 That is going to be different with the
16 addition of the two new members. It will change the
17 dynamics of how the Commission works. I think it is
18 incumbent upon us to figure out how we can all try and
19 work together in a way going forward because I do not
20 think that we have done as well in the past.

21 And that is why I do not want to preempt
22 the January meeting for whoever the new Chair is, if
23 there is a Chair appointed by that time, what have
24 you, because we need to -- I think that there are
25 serious questions that need to go forward from a

1 procedural and an organizational standpoint as to how
2 we move forward given that the way the composition is
3 going to in some ways affect the way the Commission
4 does work. I am just trying to be practical.

5 CHAIRMAN REYNOLDS: Commissioner Taylor?

6 COMMISSIONER TAYLOR: What happens if we
7 don't adopt anything and the appointments have not
8 been made?

9 COMMISSIONER YAKI: Well, then we --

10 COMMISSIONER TAYLOR: What happens?

11 COMMISSIONER HERIOT: There is no meeting
12 because we don't have a quorum. You can't conduct
13 business.

14 COMMISSIONER TAYLOR: So everything grinds
15 to a halt?

16 COMMISSIONER HERIOT: It seems like a
17 waste.

18 COMMISSIONER YAKI: I don't think it would
19 grind to a halt. And the fact of the matter is that
20 -- I mean, let's put it this way. I don't think that
21 simply scheduling a briefing to fill the time to make
22 sure we have a January meeting is sufficient in and of
23 itself to go forward.

24 COMMISSIONER TAYLOR: To continue the work
25 of the Commission?

1 COMMISSIONER YAKI: To process this and
2 certainly not in the way that it has gone forward in
3 the past. That's what I'm saying. If it were going
4 to go forward, it has to be done much differently than
5 it has been in the past. And if there is no
6 commitment to doing it that way, then I see no reason
7 we should have a briefing.

8 COMMISSIONER TAYLOR: Actually, I thought
9 that you were very much open to changing the way it
10 was done.

11 COMMISSIONER GAZIANO: I am certainly open
12 to Commissioner Heriot's suggestion of making
13 commissioners more responsible for supplying the
14 witnesses if they believe the viewpoint isn't being
15 represented, but I do think that that is possibly for
16 another day. The issue before us now is whether to
17 have the staff committed to doing the research and
18 putting together this briefing.

19 And I suggest that since we all have
20 confidence that Commissioner Yaki is going to seek and
21 be reappointed, that he could provide the input that
22 he thinks is necessary for the appropriate witnesses
23 as the staff goes forward with this if we approve it.

24 And whether it's January 19 or February or
25 whatever, I think the staff ought to be working on

1 this project and ought to be free to schedule it at
2 one of our regularly scheduled meetings or early next
3 year.

4 CHAIRMAN REYNOLDS: Okay. One other
5 matter that we need to address or at least we should.
6 And that is, who is doing the work?

7 COMMISSIONER HERIOT: I think that we
8 ought to have a committee for all of these things. I
9 move that we have a committee.

10 CHAIRMAN REYNOLDS: OCRE or Staff
11 Director. That's what I have in mind.

12 STAFF DIRECTOR DANNENFELSER: OCRE.

13 CHAIRMAN REYNOLDS: Thank you.

14 COMMISSIONER YAKI: This is an OCRE thing.

15 CHAIRMAN REYNOLDS: Well, it could be the
16 Office of General Counsel as well.

17 COMMISSIONER HERIOT: I think that is
18 right that this is an OCRE kind of thing. And this is
19 numbers. This is quantitative.

20 COMMISSIONER YAKI: We agree. Make it so.

21 CHAIRMAN REYNOLDS: Okay. All right. It
22 makes sense. Although there is a concern, we have to
23 make sure that we find work for the Office of General
24 Counsel projects.

25 COMMISSIONER GAZIANO: I think they have

1 a role in many of these other things, in the Cy Pres,
2 in the --

3 MR. BLACKWOOD: We have no role in Cy
4 Pres.

5 CHAIRMAN REYNOLDS: That is not much work.

6 COMMISSIONER GAZIANO: There is a lot of
7 legal research relating to -- we got a memo yesterday
8 I think on authorities, which I haven't had a chance
9 to read yet, but I think that is an important part of
10 the Cy Pres project.

11 MR. BLACKWOOD: We will forward it to Mr.
12 Byrnes.

13 COMMISSIONER HERIOT: Ready to vote?

14 CHAIRMAN REYNOLDS: And, Commissioner
15 Yaki, are you going to vote from over there?

16 COMMISSIONER YAKI: Yes.

17 CHAIRMAN REYNOLDS: Okay. All those in
18 favor please say "Aye."

19 (Chorus of ayes.)

20 CHAIRMAN REYNOLDS: Commissioners Yaki and
21 Melendez?

22 COMMISSIONER YAKI: Abstain.

23 COMMISSIONER MELENDEZ: No.

24 CHAIRMAN REYNOLDS: Okay. Commissioner
25 Yaki abstains. Commissioner Melendez abstains. I

1 support it, although I think that -- never mind. I
2 support it.

3 COMMISSIONER MELENDEZ: I voted no.

4 CHAIRMAN REYNOLDS: That is correct.

5 UPDATE ON STATUS OF BRIEFING ON

6 DISPARATE IMPACT IN SCHOOL DISCIPLINE POLICIES

7 CHAIRMAN REYNOLDS: Okay. At this point
8 the Staff Director will provide us with an update on
9 the briefing on disparate impact in school discipline
10 policies.

11 STAFF DIRECTOR DANNENFELSER: Thank you,
12 Mr. Chairman.

13 We sent letters to 28 school districts now
14 requesting information relating to school discipline.
15 And these are from the best we can determine the
16 school districts that have been contacted by the
17 Department of Education. We are also in the process
18 of trying to identify teachers and other potential
19 witnesses that could participate in such a briefing.

20 CHAIRMAN REYNOLDS: Once again, who owns
21 this?

22 STAFF DIRECTOR DANNENFELSER: This is in
23 the Office of the Staff Director.

24 CHAIRMAN REYNOLDS: Okay. Questions?
25 Commissioner Heriot?

1 COMMISSIONER HERIOT: Are we at a point
2 where we are talking about discovery here? Because I
3 have learned that the Department of Justice, their
4 Educational Opportunities Office -- I'm not that
5 certain of what that is; I would assume that is part
6 of the Civil Rights Division -- also is bringing cases
7 related to school disciplines. So I think in our
8 discovery request, we need to have something of the
9 Department of Justice as well.

10 CHAIRMAN REYNOLDS: Other comments?
11 Questions?

12 COMMISSIONER GAZIANO: I'm not saying we
13 shouldn't do discovery in aid of our briefing, but, as
14 a matter of fact, it's usually very helpful, but at
15 some point for a briefing we haven't necessarily
16 wanted to exhaust every opportunity.

17 When do you think the staff would be ready
18 on a --

19 STAFF DIRECTOR DANNENFELSER: Well, based
20 on the current format, we were anticipating probably
21 in February.

22 COMMISSIONER GAZIANO: Okay.

23 - UPDATE ON SEX DISCRIMINATION IN
24 LIBERAL ARTS COLLEGE ADMISSIONS

25 CHAIRMAN REYNOLDS: Okay. If there are no

1 other comments or questions, Mr. Staff Director, next
2 up is an update on the sex discrimination in liberal
3 arts college admissions project.

4 STAFF DIRECTOR DANNENFELSER: There was a
5 memo sent around by Mr. Byrnes earlier in the week
6 that provided an update on this topic. So I believe
7 that is probably about the most updated information.
8 There was a conference call, I believe, also on
9 November 12th with one of the colleges involved.

10 CHAIRMAN REYNOLDS: Comments? Questions?

11 (No response.)

12 CHAIRMAN REYNOLDS: Okay. At this point
13 I guess we will have to close the meeting. Mr. Byrnes
14 recommended that the discussion be held in closed
15 session pursuant --

16 COMMISSIONER GAZIANO: Is Mr. Byrnes here?

17 CHAIRMAN REYNOLDS: No, he is not.

18 COMMISSIONER HERIOT: I don't think we
19 need to. I don't think there is anything there.

20 CHAIRMAN REYNOLDS: Okay. Good, good,
21 good. This goes faster.

22 - UPDATE ON CLEARINGHOUSE PROJECT

23 CHAIRMAN REYNOLDS: Next is an update on
24 the clearinghouse project.

25 STAFF DIRECTOR DANNENFELSER: Thank you,

1 Mr. Chairman.

2 At one of the previous meetings, there was
3 concern expressed about the Justice Department has not
4 been responsive to our requests for clearinghouse
5 project information since about January.

6 So a letter went in your name to the
7 Department of Justice reminding them of their mandate
8 to cooperate with the Commission in its work. And we
9 have not received a response to that letter from them.

10 And I have asked the General Counsel if he
11 could follow up with the Department in that he has
12 established a liaison with the Department and if he
13 could work through channels to see if we can try to
14 get a response from the Department to that letter and
15 hopefully perhaps a meeting with the appropriate staff
16 at the Justice Department to determine how they can
17 cooperate with this request.

18 CHAIRMAN REYNOLDS: Questions? Comments?

19 (No response.)

20 III. STATE ADVISORY COMMITTEE ISSUES

21 - KENTUCKY SAC

22 CHAIRMAN REYNOLDS: Okay. Next up is the
23 State Advisory Committee issues. The meeting binder
24 distributed by the Staff Director on October 14th and
25 again on November 10th contained a recommended list of

1 candidates for the Kentucky State Advisory Committee.

2 I move that the Commission recharter the
3 Kentucky State Advisory Committee. Under this motion,
4 the Commission appoints the following individuals to
5 that committee based on recommendations of the Staff
6 Director.

7 COMMISSIONER YAKI: We're discussing the
8 sentences.

9 CHAIRMAN REYNOLDS: That's fine. Why
10 don't you discuss it in the hallway?

11 Under this motion, the Commission appoints
12 the following individuals to that committee based on
13 recommendations of the Staff Director: Rosa Alvarado,
14 Charles Badger, Juliet Banks, Richard Clay, Patrick
15 Delahanty, Betty Griffin, J. Blaine Hudson, Vickie
16 Maley, Linda McCray, Osi Onyekwuluje, William Summers,
17 Christopher Thacker, Eugenia Toma, and Jim Waters.

18 Pursuant to this motion, the Commission
19 reappoints J. Blaine Hudson as Chair of the
20 rechartered Kentucky Advisory Committee. These
21 members will serve as uncompensated government
22 employees. Under the motion, the Commission
23 authorizes the Staff Director to execute the
24 appropriate paperwork.

25 Is there a second?

1 COMMISSIONER GAZIANO: Second.

2 COMMISSIONER TAYLOR: Second.

3 CHAIRMAN REYNOLDS: Discussion?

4 (No response.)

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

7 (Chorus of ayes.)

8 CHAIRMAN REYNOLDS: Objections?

9 COMMISSIONER YAKI: I object.

10 CHAIRMAN REYNOLDS: Abstentions?

11 COMMISSIONER MELENDEZ: One.

12 CHAIRMAN REYNOLDS: Okay. We have three
13 abstentions. I'm sorry. Commissioner Yaki, you
14 abstained?

15 COMMISSIONER KIRSANOW: No. He objected.

16 COMMISSIONER YAKI: I voted no.

17 CHAIRMAN REYNOLDS: Okay. So we have two
18 abstentions.

19 COMMISSIONER KIRSANOW: Mr. Chair, I just
20 wanted to note for the record that my abstention is
21 only due to the fact that I neglected to examine the
22 biographical information to any of the individuals on
23 any of these SACs that we will be voting on today due
24 to my schedule. I apologize for that. So my
25 abstention is not a reflection on the merits or

1 demerits of any particular candidate for appointment
2 to the SAC.

3 CHAIRMAN REYNOLDS: Okay. We have one
4 vote against this slate of candidates. Commissioner
5 Yaki voted against the slate of candidates.
6 Commissioners Melendez and Kirsanow abstained. The
7 remaining commissioners voted in favor of the motion.
8 The motion passes.

9 - MARYLAND SAC

10 CHAIRMAN REYNOLDS: Next up is the great
11 State of Maryland. The binder that was distributed by
12 the Staff Director on October 14th contained a
13 recommended list of candidates for the Maryland State
14 Advisory Committee.

15 I move that the Commission recharter the
16 Maryland State Advisory Committee. Under the motion,
17 the Commission appoints the following individuals to
18 that committee based on recommendations of the Staff
19 Director: Nicolee Ambrose, Jan Berlage, Leonard
20 Haynes, Michael Krauss, George LaNoue, familiar names,
21 Sock-Foon MacDougall --

22 COMMISSIONER YAKI: That's our Sock-Foon.

23 CHAIRMAN REYNOLDS: Yes. Thomas Mackall,
24 Ken Masugi, Pace McConkie, Grace Gonzalez Mooney,
25 Susannah Prucka, Paul Rensted, Tiffany Robinson, Gary

1 Rodwell, Genevieve Segura, Arnold Trebach, and Eric
2 Washington.

3 Pursuant to this motion, the Commission
4 reappoints Thomas Mackall as the Chair of this newly
5 rechartered Maryland Advisory Committee. These
6 members will serve as uncompensated government
7 employees. Under the motion, the Commission
8 authorizes the Staff Director to execute the
9 appropriate paperwork.

10 Is there a second?

11 COMMISSIONER GAZIANO: Second.

12 CHAIRMAN REYNOLDS: Discussion?

13 (No response.)

14 CHAIRMAN REYNOLDS: All in favor.

15 (Chorus of ayes.)

16 CHAIRMAN REYNOLDS: Abstentions?

17 COMMISSIONER YAKI: I abstain.

18 COMMISSIONER KIRSANOW: Abstain.

19 CHAIRMAN REYNOLDS: How about those who
20 oppose?

21 COMMISSIONER MELENDEZ: Opposed.

22 CHAIRMAN REYNOLDS: Okay. Commissioner
23 Melendez opposed the motion. Commissioners Kirsanow
24 and Yaki abstained. The remaining commissioners voted
25 in favor of the motion. The motion passes.

1 - VERMONT SAC

2 CHAIRMAN REYNOLDS: Next up is the Vermont
3 State Advisory Committee. The meeting binder was
4 distributed by the Staff Director on October 14th and
5 November 10th. The binders contained a recommended
6 list of candidates for the Vermont State Advisory
7 Committee.

8 I move that the Commission recharter the
9 Vermont State Advisory Committee. Under the motion,
10 the Commission appoints the following individuals to
11 that committee based on recommendations of the Staff
12 Director: Francine Bazluke, John Bloomer, Luther
13 Brown, Ann Cardinal, Ellen Fallon, Leslie Holman, Gary
14 Kowalski, Terrance Martin, Marion Milne, Cheryl
15 Mitchell, Tara O'Brien, Curtiss Reed, Eric Sakai,
16 Stefanie Sidortsova, Diane Snelling, Tracey Tsugawa,
17 and the Rt. Rev. R. Steward Wood.

18 Pursuant to the -- well, actually, we have
19 a little controversy. Apparently there were some
20 statements made by one of the candidates, Curtiss
21 Reed, that has caused concern with several
22 commissioners.

23 It is my recommendation that we provide
24 Mr. Reed with an opportunity to respond to any
25 concerns that the commissioners have. That is what we

1 have done in the past when we have had issues with
2 candidates. I suggest that we use that same approach.

3 COMMISSIONER HERIOT: So you are saying we
4 should table this until --

5 COMMISSIONER GAZIANO: We should just
6 postpone if the Chairman is --

7 COMMISSIONER HERIOT: "Table" is the wrong
8 word. Yes.

9 COMMISSIONER YAKI: I would move to
10 postpone. I just got a letter from the SACs
11 unanimously recommending Mr. Reed. So I want to read
12 what is going on.

13 CHAIRMAN REYNOLDS: Okay.

14 COMMISSIONER GAZIANO: Yes. And --

15 COMMISSIONER YAKI: It was from the entire
16 SAC until --

17 CHAIRMAN REYNOLDS: Yes, but in the
18 meantime --

19 COMMISSIONER GAZIANO: I agree with that,
20 but, just to be clear, I would ask someone on the
21 staff to direct to Mr. Reed's attention two matters at
22 least that have been brought to my attention: an op.
23 ed. that he wrote titled "Pure Vermont: Is Pure
24 Invalidation?"

25 And then the other is a Vermont Public

1 Radio interview that I have seen a transcript of for
2 April 29, 2008.

3 And just ask him if he has anything to
4 explain. But I would ask the staff to help and send
5 him an excerpt of that Vermont Public Radio. Maybe he
6 thinks it is taken out of context, and I would like to
7 hear from him on that.

8 CHAIRMAN REYNOLDS: Would it be more
9 helpful if specific concerns were forwarded so that --
10 I mean, he knows or should know what he said.

11 COMMISSIONER GAZIANO: I don't know that
12 he knows what he said. I'd rather not in a public
13 meeting.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER GAZIANO: If he has an
16 opportunity to --

17 CHAIRMAN REYNOLDS: But you can voice --

18 COMMISSIONER GAZIANO: Sure. We'll supply
19 the information.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER GAZIANO: But I would like
22 this scheduled for a vote at the next meeting.

23 CHAIRMAN REYNOLDS: Commissioner Heriot?

24 COMMISSIONER HERIOT: That means that we
25 need to request him to respond, I believe, we have our

1 meeting --

2 COMMISSIONER GAZIANO: The Monday before
3 our next meeting.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER GAZIANO: The Monday before
6 our next meeting.

7 CHAIRMAN REYNOLDS: Yes. This individual
8 will have approximately a month.

9 COMMISSIONER GAZIANO: No, not -- the
10 meeting is in early December.

11 COMMISSIONER HERIOT: The meeting is in
12 early December.

13 CHAIRMAN REYNOLDS: Okay. Okay. Okay.
14 I forget.

15 - WISCONSIN SAC

16 CHAIRMAN REYNOLDS: In any event, next up
17 is Wisconsin. Yes?

18 COMMISSIONER YAKI: I think that Wisconsin
19 probably deserves the same treatment as Vermont. I
20 will forward. Without getting into naming names or
21 what have you, there are some concerns about
22 statements and activities of one of the members that
23 may actually have triggered by this time an
24 investigation.

25 So I would like to without revealing the

1 person's name postpone it. I will communicate it to
2 the Staff Director. And they can research what this
3 person might have done.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER GAZIANO: Will you share
6 that?

7 COMMISSIONER YAKI: Sure. Yes, yes.

8 - UPDATE ON STATUS OF REMAINING SACS TO RECHARTER

9 CHAIRMAN REYNOLDS: Okay. In that case,
10 we're going to receive an update on the status of
11 remaining SACs that need to be rechartered. Several
12 months ago the Staff Director distributed a helpful
13 spreadsheet that listed the status of all of our SAC
14 recharterings.

15 I would ask that the Staff Director
16 provide an update of that list, focusing on the
17 remaining SACs to be rechartered, the last
18 rechartering date of those SACs, and when the Staff
19 Director expects to receive the proposed rechartering
20 packages for review from regional offices.

21 STAFF DIRECTOR DANNENFELSER: Thank you,
22 Mr. Chairman.

23 I have received packages for several of
24 these. Right now we have received Alaska, proposed
25 package for Alaska. Proposed package just came in

1 yesterday for North Dakota. I believe it was the day
2 before yesterday. And also Minnesota and Illinois and
3 North Carolina.

4 So those are packages that are being
5 reviewed within the Office of the Staff Director. We
6 have actually reviewed Alaska and North Carolina. At
7 this point we are beginning to review North Dakota,
8 Minnesota, and Illinois.

9 We are also anticipating very shortly the
10 Idaho package.

11 CHAIRMAN REYNOLDS: Okay. You three now
12 since the party has been expanded, pass notes or
13 migrate to the hallway.

14 COMMISSIONER YAKI: But then you might
15 lose the quorum.

16 CHAIRMAN REYNOLDS: Then stand at the edge
17 of the room.

18 (Laughter.)

19 CHAIRMAN REYNOLDS: I'm sorry.

20 STAFF DIRECTOR DANNENFELSER: Okay. Let's
21 see where we were here. I do anticipating receiving
22 Idaho within the next few days. And there's also the
23 Eastern Regional Office is working on Rhode Island and
24 Delaware. So I expect to receive those also perhaps
25 within the next few days.

1 New York and West Virginia will take a
2 little bit longer. And probably one of those will
3 come in, I anticipate receiving one of those, in
4 January. That would potentially make it available for
5 the February meeting and another one in March. That
6 would potentially make it available for an April
7 meeting.

8 I do anticipate receiving Montana earlier
9 than that date, although I don't have a precise
10 timeline on when we might receive Montana. And I
11 would expect that would probably be within the next
12 month.

13 CHAIRMAN REYNOLDS: Is that it?

14 STAFF DIRECTOR DANNENFELSER: Yes.

15 CHAIRMAN REYNOLDS: Okay. Questions for
16 the Staff Director?

17 (No response.)

18 CHAIRMAN REYNOLDS: Okay. Well, next up

19 --

20 COMMISSIONER KIRSANOW: Mr. Chair, before
21 we move on, can I talk about the agenda?

22 CHAIRMAN REYNOLDS: That is correct.

23 COMMISSIONER KIRSANOW: This is a little
24 bit out of order, but it relates back to the approval
25 of the findings and recommendations for the

1 English-only in the workplace rules.

2 It's come to my attention that a few days
3 ago the EEOC had announced that it was planning to
4 issue guidance on the English-only in the workplace
5 rules.

6 So I think it might be a good idea for us
7 to transmit to the EEOC our findings and
8 recommendations so that they have that before them in
9 their deliberations prior to issuance of any guidance.
10 And I would move that we do that as expeditiously as
11 possible.

12 CHAIRMAN REYNOLDS: Okay. I second it.
13 Discussion?

14 (No response.)

15 CHAIRMAN REYNOLDS: All those in favor?

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: The obligatory no?

18 COMMISSIONER YAKI: No.

19 CHAIRMAN REYNOLDS: Commissioner --

20 COMMISSIONER MELENDEZ: Abstain.

21 CHAIRMAN REYNOLDS: Okay. We have one
22 abstention from Commissioner Yaki, one -- I'm sorry --
23 Commissioner Melendez, one objection from Commissioner
24 Yaki. The remaining commissioners support the motion.
25 It passes.

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IV. MANAGEMENT & OPERATIONS

- EXPIRATION OF COMMISSIONER TERMS

CHAIRMAN REYNOLDS: Next up is a discussion of the expiration of commissioner terms. Mr. General Counsel, will you please provide us with an update and discussion of that memo that you prepared?

MR. BLACKWOOD: There is no real update, but I would like to remind people of the various termination dates. For presidential appointees --

CHAIRMAN REYNOLDS: Expiration.

MR. BLACKWOOD: Expiration dates. Sorry.

COMMISSIONER HERIOT: It's all right.

MR. BLACKWOOD: For presidential appointees, it's December 5th. For Senate appointees, it's December 12th. For House appointees, it's December 15th. I'll be glad to address any questions, but that is really the bottom line.

COMMISSIONER HERIOT: I have a feeling, Mr. Chairman, we can properly term it emancipation date.

CHAIRMAN REYNOLDS: Any questions for the General Counsel?

COMMISSIONER TAYLOR: Is there a rebuttal procedure for when the terms expire?

1 CHAIRMAN REYNOLDS: No.

2 COMMISSIONER TAYLOR: Okay.

3 COMMISSIONER GAZIANO: I take it your
4 application is pending with President Obama?

5 COMMISSIONER TAYLOR: It is. And I am
6 seeking recommendations from all current members.

7 V. APPROVAL OF MINUTES OF OCTOBER 8 MEETING

8 CHAIRMAN REYNOLDS: Next and, with any
9 luck, the last item. Okay, folks. Let's keep it
10 together. We're almost done.

11 The next item on the agenda is the
12 approval of the October 8th, 2010 minutes. These
13 minutes were distributed by the Staff Director on
14 October 14th, 2010 and again on November 10th.

15 I move that these minutes be approved. Is
16 there a second?

17 COMMISSIONER GAZIANO: Second.

18 CHAIRMAN REYNOLDS: Discussion?

19 COMMISSIONER TAYLOR: I just wanted to
20 clarify that Kim was not on the line at that meeting.
21 It indicates that she was.

22 CHAIRMAN REYNOLDS: Okay. So, with that
23 correction, let's vote. All those in favor please say
24 "Aye."

25 (Chorus of ayes.)

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CHAIRMAN REYNOLDS: Objections?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN REYNOLDS: Okay. We have one
abstention: Commissioner Kirsanow. The motion
passes.

Folks, we are adjourned.

(Whereupon, the foregoing matter was
concluded at 11:35 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Meeting

Before: US Commission on Civil Rights

Date: 11-19-10

Place: Washington, DC

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