

COMMISSION MEETING
U.S. Commission on Civil Rights
Friday, August 18, 2006
624 Ninth Street, N.W., Rm. 540
Washington, D.C. 20425
9:30 a.m.

MEETING AGENDA

- I. Approval of Agenda
- II. Approval of Minutes of July 28, Meeting
- III. Announcements
- IV. Staff Director's Report
- V. Program Planning
 - Record Items for the Briefing on Benefits of Diversity in Elementary and Secondary Education
 - Outline and Discovery Plan for FY 2007 Statutory Enforcement Report on Elementary and Secondary School Desegregation
 - Anti-Semitism Brochure
- VI. Management and Operations
 - Strategic Plan Performance Measures
 - Memorandum of Understanding with Thurgood Marshall Library
- VII. State Advisory Committee Issues
 - Acting Chair for Maine State Advisory Committee
 - Re-Charter Package for California State Advisory Committee
 - Re-Charter Package for Georgia State Advisory Committee
- VIII. Closed Meeting to Discuss Personnel Matters
- IX. Future Agenda Items
- X. Adjourn

- **Motion to Amend the Agenda**

I move to amend the agenda to replace the subitem labeled “Record Items for the Briefing on Benefits of Diversity in Elementary and Secondary Education” under Program Planning with a subitem labeled “Motion to Keep the Record Open for the Briefing on Affirmative Action in American Law Schools.”

- **Motion to Amend the Agenda**

I move to amend the agenda to replace the subitem labeled “Outline and Discovery Plan for FY 2007 Statutory Enforcement Report on Elementary and Secondary School Desegregation” under Program Planning with a subitem labeled “Outline, Discovery Plan, and amended Concept Paper for FY 2007 Statutory Enforcement Report on Elementary and Secondary School Desegregation.”

- **Motion to Amend the Agenda**

I move to amend the agenda to add the subitem labeled “Report by Inspector General” under the item labeled Program Planning.

(FOR OFFICIAL USE ONLY UNTIL APPROVED)

U.S. COMMISSION ON CIVIL RIGHTS

MINUTES

July 28, 2006

The monthly meeting of the U.S. Commission on Civil Rights was convened at 12:00 p.m., EDT in Room 540 of 624 Ninth Street, N.W., Washington, D.C., Chairman Gerald A. Reynolds presiding. Also present were Vice Chairman Abigail Thernstrom, Commissioners Ashley L. Taylor, Jr., Peter Kirsanow, and Michael Yaki. Commissioner Jennifer Bracer was present for part of the meeting via telephone.

Staff in attendance were: Staff Director Kenneth L. Marcus, David Blackwood, Teresa Brooks, Christopher Byrnes, Debra Carr, Derek Horne, Tina Louise Martin, Sock-Foon McDougall, Emma Monroig, Audrey Wright, Ranita Carter, Ivy Davis and Patricia Jackson.

Commissioner Assistants in attendance included: Christopher Jennings, Lisa Neuder, Kimberly Schuld, and Richard Schmechel.

APPROVAL OF THE AGENDA

The Agenda was approved by a unanimous vote.

APPROVAL OF THE MINUTES

The July 5, 2006 minutes were approved unanimously.

STAFF DIRECTOR'S REPORT

The Staff Director supplemented his written Staff Director's Report with statements regarding new developments at the Commission. The Staff Director noted the hiring of a new General Counsel, David Blackwood; a new Director of Human Resources, Tyro Beatty; and a new Attorney-Advisor in the Office of General Counsel, Maha Jweied. In addition to staff hires, the Staff Director noted the temporary detail of Fatima Johnson from the Department of Housing and Urban Development to the Commission, and her work on the Strategic Plan and Benefits of Diversity in Elementary and Secondary Education briefing. The Staff Director also mentioned the valuable contributions of the summer interns: Eric Daleo, Bridget Fay, Ryan Pardue, Adam Evans, James Chiu and Ryan Kinder. Next, the Staff Director stated that Williams and Adley had provided the Commission with a first full-scale audit and that the Commission was able to move forward to get ready for a second full scale audit. The Staff Director also stated that thanks to the work of Pam Dunston, the Commission was much more advanced in terms of getting the procurement done quickly. The Staff Director also said that in February the Commission contracted with Walker and Company to perform a full scale audit of the Commission's financial statements; and that Walker and Company is a full service financial and

advisory firm with clients such as: the Federal Transit Administration, the U.S. Department of Housing and Urban Development, and various Washington D.C. law firms. The Staff Director subsequently discussed the OPM audit, noting that it was routine and that all federal agencies must undergo the audit every few years. Regarding the OPM audit, the Staff Director stated that in the Commission's assessment, the number of required and recommended changes the Commission had to undergo were not unusual relative to other agencies, particularly with its size. Also, the Staff Director stated that the Commission is responding to the recommended and required action items in the OPM Audit and that the Commission has developed a plan to address all of them. With respect to the FY 06 budget, the Staff Director noted that due to staff departures and late hires, the Commission is in a sound financial position at this point in the current fiscal year. Therefore, the Commission is in a position to make some additional equipment purchases, provide for additional training, and is prioritizing both State Advisory Committee Travel and travel by Regional staff for staff recruitment. Finally, the Staff Director discussed implementation of the new AI 1-6 which will help ensure objectivity of National office work products. The Staff Director stated that AI 1-6, responds to comments made in the GAO audit by creating criteria for the Staff Director to use when incorporating Commissioner comments into the draft report.

PROGRAM PLANNING

The Commission unanimously (5-0) passed a substitute motion, offered by Commissioner Taylor, to replace an original motion, offered by Chairman Reynolds, to conduct a briefing in Annapolis on the United States Naval Academy's use of religious and racial preferences in placement of cadets with local sponsors, as soon as feasible, in 2007. The substitute motion offered by Commissioner Taylor directs Commission staff to gather information regarding the use of racial and religious preferences by other academies with similar programs in anticipation of a potential briefing on the subject. The Commission passed (4-0), with Chairman Reynolds abstaining, a motion offered by Commissioner Taylor to approve the publication of the Commission's campus anti-Semitism briefing report, together with any concurring or dissenting statements received within two weeks of today's business meeting. The Commission unanimously (6-0) passed a motion offered by Chairman Reynolds to approve a proposed Anti-Semitism poster for use in the Commission's public campaign against anti-Semitism. At the urging of Vice-Chairman Thernstrom, the language of the poster was revised during the discussion to state that "Silence is an ally of hate". Commissioner Braceras participated in this vote by telephone but was otherwise unavailable due to technical difficulties.

MANAGEMENT AND OPERATIONS

The Commission unanimously (5-0) passed a motion by Chairman Reynolds to table discussion of the recharter of the California State Advisory Committee until August. The Commission unanimously passed (5-0) a motion by Vice Chairman Thernstrom to approve the Commission's 2008 Budget Request to OMB. The Commission unanimously (5-0) passed a motion by Chairman Reynolds to approve, preliminary, the proposed strategic goals and objectives that were distributed to Commissioners on July 20th. The Commission unanimously (5-0) passed a motion by Chairman Reynolds to establish a policy for Commissioner review of national office projects pursuant to the most recent set of GAO recommendations. The Commission unanimously (5-0)

rejected a motion by Chairman Reynolds to adopt a policy of peer review for national office reports. The Commission unanimously (5-0) passed a motion by Chairman Reynolds to publish in the federal register for notice and comment proposed regulations that would 1.) require employees of the Commission to obtain prior approval before engaging in outside employment and 2.) remove the Commission's existing conduct regulation which is inconsistent with OGE's standard and replace it with a reference to the current OGE standard. The Commission unanimously (5-0) passed a motion by by Vice-Chairman Thernstrom to hold a business meeting at its headquarters in Washington, D.C., on August 18, 2006.

STATE ADVISORY COMMITTEE ISSUES

The Commission passed a motion (4-0) with Commissioner Kirsanow abstaining, moved by Chairman Reynolds, to recharter the Connecticut State Advisory Committee and to appoint the following members to the Committee, with [name] to serve as Chair. The Commission passed a motion (4-1), moved by Chairman Reynolds, to keep the Briefing on the Benefits of Diversity in Elementary and Secondary Education record open for 30 days. Chairman Reynolds and Commissioners Thernstrom, Taylor and Kirsanow voted in favor. Commissioner Yaki voted against.

FUTURE AGENDA ITEMS

The meeting was recessed at 12:56 p.m., EDT.

Motion for the 08/18/06 Commission Meeting

- Motion to Amend Scope of the FY 2007 Statutory Report

At the Commission meeting held on May 13, 2005, Commissioners voted to approve the FY2007 statutory report project concept on "Review of Elementary and Secondary School Desegregation." Staff proposes a revised concept paper to ensure the completion of the Commissioners' approved statutory report within the time prescribed by law. This revised concept paper, distributed to Commissioners on August 11, 2006, eliminates the review of the Department of Education, Office for Civil Rights' (OCR) enforcement of 441(b) desegregation plans and replaces it with a review of the Department of Justice, Civil Rights Division, Educational Opportunities Section's (EOS) participation in federal desegregation litigation. Staff, in consultation with the Staff Director, determined that due to timing constraints, a lack of resources, and a better understanding of the information available through OCR and EOS, review of the enforcement powers of the latter is more feasible than a review of those of the former. I move that the scope of this report be clarified to reflect the scope contained in the concept paper distributed to Commissioners on August 11, 2006.

Motion for the 8/16/06 Commission Meeting

- Motion to Approve Outline and Discovery Plan for FY 2007 Statutory Enforcement Report on Elementary and Secondary School Desegregation

I move that the Commission approve the outline and discovery plan for the FY 2007 Statutory Enforcement Report on Elementary and Secondary School Desegregation.

Motion for the 8/16/06 Commission Meeting

- Motion to Approve Anti-Semitism Brochure

I move that the Commission authorize the Staff Director to work with GPO to create a proposed brochure for use in the Commission's public education campaign on campus anti-Semitism.

Motion for the 8/16/06 Commission Meeting

- Motion to Approve Commission's Memorandum of Understanding with the Thurgood Marshall Library

I move that the Commission approve the Memorandum of Understanding reached between the Commission and the Thurgood Marshall Library regarding publication of Commission works on the library's website.

Motion for the 8/16/06 Commission Meeting

- Motion to Appoint Acting Chair for Maine State Advisory Committee

I move that the Commission appoint Rachel Talbot Ross acting chair for the Maine State Advisory Committee.

August 11, 2006

MEMORANDUM FOR: KENNETH L. MARCUS
Staff Director

FROM: DAVID P. BLACKWOOD
General Counsel

SUBJECT: Discovery Plan "Review of Elementary and Secondary School
Desegregation" Project

As required by the Commission's Administrative Instruction 1-6, Section 8, the Office of the General Counsel (OGC) submits this Discovery Plan for the Commission's project entitled "Review of Elementary and Secondary School Desegregation."

During the period of September 1, 2006 through December 15, 2006, the OGC will seek information through the following ways:

1. Formal and informal meetings with Department of Justice (DOJ) liaison(s) to inquire about the methods and processes used in managing DOJ's desegregation case-docket.
2. Formal and informal meetings with Department of Education (ED) liaison(s) to inquire into the experience of ED in elementary and secondary school desegregation matters, as well as the nature and type of information maintained by the agency concerning how schools achieve unitary status.
3. The issuance of interrogatories and document requests to DOJ requesting information on (i) the organization and budget of the unit charged with litigating desegregation cases, (ii) data collected on various school districts under court order, (iii) information and data on the standards applied to determine if a school

district has achieved unitary status and/or should be released from any pending court order; (iv) information and data on the process whereby DOJ determines whether a district has achieved unitary status and/or should be released from any pending court order; (v) information on the impediments districts have faced in achieving unitary status; and (vi) litigation documents for desegregation court cases in which DOJ has participated. It is possible that the OGC will issue more than one set of interrogatories and document requests depending on whether additional questions are raised through the answers provided by DOJ to the first set of each. The OGC will minimize the burden of its requests on DOJ by accessing publicly available data before issuing any interrogatories or document requests.

4. In order to collect relevant information on school districts under federal court order, it is anticipated that the OGC will issue interrogatories and document requests to ED requesting data collected on various school districts, such as racial composition. It is possible that the OGC will issue more than one set of interrogatories and document requests depending on whether additional questions are raised through the answers provided by ED to the first set of each. The OGC will minimize the burden of its requests on ED by accessing publicly available data before issuing any interrogatories or document requests.
5. The OGC, in conjunction with one or more of the State Advisory Committees, may seek information from specific school districts concerning why the school districts have or have not achieved unitary status. In addition to requests for documents concerning the status and statistics relevant to the school district's

desegregation status, OGC and/or SAC members may interview school officials to inquire into reasons why the districts have not been granted unitary status, including reasons why the districts have not pursued unitary status, if applicable.

August 11, 2006

MEMORANDUM FOR: KENNETH L. MARCUS
Staff Director

FROM: DAVID P. BLACKWOOD
General Counsel

SUBJECT: Project Outline for "Review of Elementary and Secondary School
Desegregation" Project

As required by the Commission's Administrative Instruction 1-6, Section 7, the Office of the General Counsel (OGC) submits this Project Outline for the Commission's project entitled "Review of Elementary and Secondary School Desegregation."

A. SUMMARY OF RESEARCH

Initial background research for this project included review of numerous law review articles, scholarly journals, news articles, and federal court decisions related to desegregation, previous Commission publications, and web-based statistics provided by academics, state and federal government agencies, and school districts. Of particular interest, the Educational Opportunities Section of the Department of Justice Civil Rights Division provided their current desegregation docket list and the Commission's Southern Regional Office (SRO) has provided advance copies of their reports on the desegregation of South Carolina Public Schools and Florida Public Schools. OGC staff members have made a concerted effort to obtain all representative viewpoints with respect to current desegregation issues.

It has been determined that there is no comprehensive list of school districts under court order. Thus, the SRO has been conducting research to determine the legal status of school

districts (*i.e.*, whether they have officially achieved unitary status, are under court order, or have never been subject to judicial review) in North Carolina, South Carolina, Georgia, Kentucky, Tennessee, and Florida. This determination is made by obtaining information on each school district in each of these states from the following sources: (1) U.S. Department of Education; (2) U.S. Department of Justice; (3) public information databases; (4) Lexis search; (5) State Department of Education; and (6) Legal Defense Fund of NAACP. Once an assessment is made as to the status of a district, an individual letter request is sent to the district to confirm the assessment.

For each of the aforementioned states, the SRO has also tested whether there is a significant difference in school-level racial integration between school districts with unitary status and other school districts by analyzing whether one particular racial/ethnic group is distributed across schools in a district in the same way as another group. The general methodology being used involves the computation of an Index of Dissimilarity for each school district limited to regular elementary schools, with the analysis limited to white and black students. Charter schools, school districts with three or less regular elementary schools, middle schools, and high schools are not included within the sample.

B. STATEMENT OF SCOPE AND DIRECTION OF PROJECT

In *Green v. New Kent County School Board*, 391 U.S. 430 (1968), the United States Supreme Court ruled that in assessing whether a school district had eliminated the vestiges of *de jure* segregation, federal courts must, to the extent practicable, look at every facet of school operations. The Court then identified six factors that should be examined: (1) student assignment, (2) faculty assignment, (3) staff assignment, (4) transportation, (5) extracurricular activities, and (6) facilities. In addition, the Supreme Court for the first time used the term

“unitary status” to describe a school system that has transitioned from segregated or a “racially dual” system to a desegregated or “unitary” system. Under the *Green* decision, for any school district to receive a declaration of “unitary status” from the courts, the school district is required to present to the court persuasive evidence that all vestiges of segregation for each *Green* factor had been eliminated and were unlikely to be resurrected.

The process developed by the courts to determine “unitary status” and thereby release districts from their desegregation orders, allows for districts to remain under court supervision indefinitely. In the early 1990s, however, the Supreme Court revisited the general standards for “unitary status” in two cases: *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237 (1991) and *Freeman v. Pitts*, 503 U.S. 467 (1992). In *Dowell*, the Court ruled that a declaration of unitary status is appropriate after a school district demonstrates, by way of the *Green* factors, that (1) it has complied with the desegregation order of the court for a reasonable period of time and (2) it has exhibited a good faith commitment to the Constitutional rights that predicated the initial judicial intervention.¹ In *Freeman*, the Court extended *Dowell* and held that a school district need not have achieved unitary status as to all *Green* factors to be partially released from court supervision. Thus, should a district be able to demonstrate that it has complied with the *Dowell* standard as to a particular *Green* factor, the district might be deemed “unitary” as to that particular factor.

It is unclear, however, as to whether the standard described in *Dowell* has been applied uniformly by the courts or the Department of Justice in determining whether a school district has achieved unitary status. For example, courts have looked at racial balance not only in school districts, but in individual schools and even individual classrooms. Others have examined such

issues as schools' current employment practices, the number of minority members in school administration, and whether communities have supported school bonds. At the same time, some courts seem to have failed to take into consideration demographic changes in residential patterns, immigration, and differential birth rates.² As a result, federal courts remain active in overseeing the nations' elementary and secondary schools.

The situation has been described as follows:

When the federal courts began supervising the desegregation of public schools in the latter half of the twentieth century, no one intended this regulation to continue for an indefinite period of time. The expectation was that the courts would return schools to local control after the districts had complied with their federal desegregation orders. In the year 2001, however, over 400 school districts were still under federal court supervision, making the federal bench the largest school district in the country.³

The extent of judicial oversight is particularly curious given that “the nation’s schools are going through an astonishing transformation since the 1960s, changing from a country where more than four of every five students were white, to one with just 58 percent white enrollment nationwide and changing slightly every year.”⁴

¹ See National School Boards Association, *Practical Guide to Issues Related to Unitary Status*, 1997.

² See Monika L. Moore, “Unclear Standards Create an Unclear Future: Developing a Better Definition of Unitary Status,” 112 *Yale L. J.* 311, 316 (Nov. 2002); see also Gary Orfield and Chungmei Lee, “Racial Transformation and the Changing Nature of Segregation,” The Civil Rights Project Harvard University (Jan. 2006).

³ See Moore, *supra* note 2, at 311 (internal citation omitted).

⁴ See Orfield, *supra* note 2; see also Stephan Thernstrom and Abigail Thernstrom, *America in Black and White*, 336-40 (1997).

The purpose of this study, then, is to:

1. Provide an overview of school desegregation law as developed by the United States Supreme Court in cases such as *Green*, *Dowell*, and *Freeman* and the concept of “unitary status” through evolving jurisprudence.
2. Determine the manner and method by which the Department of Justice determines whether unitary status has been achieved.⁵
3. Provide an accurate survey of school districts under court order, likely limited to states with the appropriate critical mass as defined below.
4. Provide an analysis as to whether there is a significant difference in racial integration between school districts that have achieved unitary status and other schools.⁶
5. Analyze the standard courts use in determining whether a school district is unitary.
6. Analyze whether school districts are capable of achieving all six *Green* factors and to what extent any impediments exist to achieving these factors and why certain school districts have or have not achieved unitary status and been released from court supervision.

⁵ The concept paper for this project included a review of the Department of Education, Office of Civil Rights 441(b) desegregation plans. Currently there is a motion pending before the Commission to alter the concept paper and scope of this project by excluding this review and including the review of the Department of Justice, Civil Rights Division, Educational Opportunities Section.

⁶ To make a reasonable comparison, this analysis must involve only those states with a critical mass of school districts under federal court order with Department of Justice participation. Through discussions with the Regional Director of the SRO, it appears that the necessary critical mass needed to make a relevant statistical comparison is 15%. Although subject to change, it is currently believed that the states of Alabama, Georgia, North Carolina, South Carolina, and Florida have the critical mass necessary for the proposed analysis.

C. PROPOSED METHODOLOGY

I. Executive Summary

- A. Introduction of Problems
 - 1. Background on History of Segregation
 - 2. Background on History of *Brown* and Subsequent Court Decisions
 - 3. The Absence of a Comprehensive Database of Open Desegregation Cases
 - 4. The Abundance of School Districts Remaining Under Court Orders
- B. Explanation of Methodology
 - 1. Department of Justice (DOJ) Docket List
 - 2. Creation of a Unitary Status Template
 - 3. Data Collection
 - 4. Data Analysis
- C. Explanation of Findings
 - 1. Districts in Unitary Status, but under Court Order
 - 2. Districts in Partial Unitary Status
 - 3. Districts Failing to Comply
 - 4. Factors Placing Districts in Each Category
- D. Summary of Recommendations

II. Introduction/Background

- A. History of Segregation
- B. *Brown* and the Courts
- C. Federal Enforcement Efforts
 - 1. What are the roles and responsibilities of the DOJ headquarters and field offices in reviewing school districts under court order?
 - a) Identify DOJ units in headquarters and field offices involved in review of such school districts.
 - b) Discuss roles and responsibilities of these units.
 - c) Analyze longitudinal staffing, budget, and workload patterns in these units.
 - d) Prepare an organizational chart showing current direct and indirect reporting relationships between these units to the Attorney General.
- D. Current Status of Desegregation Efforts

Methodology: Survey of law. Formal and informal meetings with DOJ liaisons. Interrogatories and document requests to DOJ as detailed in discovery plan. Formal and informal meetings with and issuance of interrogatories and document requests to Department of Education, Office for Civil Rights (OCR) to gather information on school districts, as detailed in discovery plan. Current status of desegregation efforts to be assessed through survey of secondary legal resources, information obtained by DOJ, information obtained by OCR, and potentially some of the sources as described under section V of the outline below.

III. Standard: The Doctrine of Unitary Status

A. Unitary Status Broadly Defined

1. *Green*

B. Evolving Factors Under *Green*

1. Additional Considerations Used by Various Circuits

C. Partial Unitary Status Factors as Developed in *Dowell* and *Freeman*

1. Full and Satisfactory Compliance with Aspects of Decree to be Withdrawn

2. Whether Control is Required to Affect Other Aspects of Decree

3. Whether a Good Faith Commitment to Eliminating Vestiges of Discrimination has been Demonstrated

Methodology: Survey of law, including analysis of Supreme Court decisions and interpretation of this case law by different Circuits. Survey of secondary legal sources on “unitary status.”

IV. Data: School Districts Under Court Supervision Where DOJ is a Party (366 cases)

A. Unitary Status Analysis Using Department of Education’s Common Core of Data Regarding Racial Composition of Students in School Districts in States with Critical Mass of Court Supervised School Districts

1. Anticipated States to be Reviewed: Alabama, Georgia, North Carolina, South Carolina, and Florida

Methodology: General methodology to be followed is that developed by the Southern Regional Office as described in Part A above.

V. Application and Analysis

A. Districts that have Achieved Unitary Status, but still under Court Order

1. Possible Identification of Some Districts in this Category

a) May Include Information Gathered through SAC Hearings

2. Reasons for Delay in Terminating Court Supervision

a) May Include Information Gathered through SAC Hearings

B. Districts in Partial Unitary Status

1. Possible Identification of Some Districts in this Category

a) May Include Information Gathered through SAC Hearings

2. Reasons for Inability to Achieve Full Unitary Status

a) May Include Information Gathered through SAC Hearings

C. Districts Failing to Comply

1. Possible Identification of Some Districts in this Category

a) May Include Information Gathered through SAC Hearings

2. Reasons for Failure to Comply

a) May Include Information Gathered through SAC Hearings

Methodology: The OGC, in conjunction with one or more of the State Advisory Committees for the states reviewed at section IV above, may seek information from specific school districts concerning why the school districts have or have not achieved unitary status. In addition to requests for documents concerning the data collected on the school districts desegregation status and statistics relevant to the school district’s desegregation status, OGC and/or SAC members may interview school officials and other stakeholders to inquire into reasons why the districts have not been granted unitary status, including reasons why the districts have not pursued unitary status, if applicable. It is anticipated that the most relevant information gathered in this regard

will be anecdotal by way of an unofficial survey of school district officials for the reasons their district has or has not achieved unitary status.



D. PROPOSED TIMELINE

Stage One – Background and Planning

08/11/2006 – Detailed Project Outline and Discovery Plan Submitted to Commission

08/18/2006 – Commission votes on Detailed Project Outline and Discovery Plan

Stage Two – Discovery, SAC Hearings, and Commission Briefing

09/2006-12/2006 – Communications with Department of Justice (DOJ) and Department of Education (ED)

09/2006-12/2006 – Interrogatories and Document Requests Issued to DOJ and ED

10/2006-11/2006 – SAC Meetings

12/14/2006 – Briefing on Review of Elementary and Secondary School Desegregation

Stage Three – First Draft Report

12/31/2006 – First Draft Report Submitted to Staff Director

01/15/2006 – Staff Director's Comments Due

01/31/2006 – Staff Revision Based on Staff Director's Comments Completed and Resubmitted to Staff Director

02/01/2007 – Revised First Draft Report Submitted to Commissioners

03/01/2007 – Commissioner Comments Due

03/15/2007 – Staff Edits Complete

03/15/2007 – Draft Report Submitted to OSD for Editorial Review, Legal Sufficiency Review, and Defame & Degrade Review (if necessary)

03/26/2007 – Editorial Review, Legal Sufficiency Review, and Defame & Degrade Review (if necessary) Comments Due

03/29/2007 – Editorial Board Meeting to Discuss Comments

Stage Four – Second Draft Report

04/01/2007 – Relevant Sections Submitted to DOJ for Affected Agency Review

05/01/2007 – Affected Agency Review Comments Due (determine if second Legal Sufficiency Review is required)

05/07/2007 – Second Draft Submitted to Staff Director with Section I of National Office Report Checklist Completed

05/14/2007 – Staff Director's Comments Due

05/21/2007 – Staff Revision Based on Staff Director's Comments Completed and Resubmitted to Staff Director

05/22/2007 – Revised Second Draft Report Submitted to Commissioners

05/29/2007 – Commissioner Comments Due

Stage Five – Final Report

06/07/2007 – Final Draft Report Submitted to Staff Director

06/15/2007 – Final Draft Report Submitted to Commissioners

06/21/2007 – Commission Votes on Report

06/28/2007 – Staff Copy Edits & Necessary Revisions Complete

06/28/2007 – Final Report Submitted to Staff Director

07/05/2007 – Concurring and Dissenting Opinions Due to Staff Director

Stage Six – Publication

07/12/2007 – Final Report Submitted for Publication

09/12/2007 – Final Report Published and Distributed

Stage Seven – Follow-Up

07/12/2008 – Follow-Up Plans Submitted to OSD

09/12/2008 – Follow-Up Initiated

MEMORANDUM OF UNDERSTANDING BETWEEN
THE UNITED STATES GOVERNMENT PRINTING OFFICE,
UNIVERSITY OF MARYLAND SCHOOL OF LAW, THURGOOD
MARSHALL LAW LIBRARY AND
THE UNITED STATES COMMISSION
ON CIVIL RIGHTS

This Memorandum of Understanding (MOU or agreement) constitutes and outlines an agreement between the United States Government Printing Office (GPO), the University of Maryland School of Law, Thurgood Marshall Law Library (TMLL), and the United States Commission on Civil Rights (USCCR) for permanent public access to content in the electronic collection of Historical Publications of the United States Commission on Civil Rights (USCCR project) of the TMLL.

I. BACKGROUND

GPO administers the Federal Depository Library Program (FDLP), authorized under Title 44 Chapter, 19 of the U.S. Code. The FDLP provides no-fee permanent public access to U.S. Government publications in all formats.

TMLL has developed an electronic collection of historical publications of the United States Commission on Civil Rights, accessible at <http://www.law.umaryland.edu/marshall/usCCR/index.asp>, which provides no-fee access to a digital collection of United States Commission on Civil Rights publications.

As part of its mission, the USCCR studies and serves as a national clearinghouse for information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

II. PURPOSE

The purpose of this MOU is to set forth the terms and conditions under which the GPO, TMLL, and the USCCR will partner to provide permanent public access to content in the USCCR project, for the benefit of the FDLP, its participants, the University of Maryland, Baltimore community, and the general public.

III. SCOPE

This agreement applies to Historical Publications of the United States Commission on Civil Rights from the USCCR project. This MOU defines key parameters, including:

- Responsibility for maintaining the digital content for public access.
- Providing the content without copyright restrictions.

- Responsibility for metadata and cataloging.
- Responsibility for project expenses.
- Responsible parties in each institution.
- Establishes a mechanism for modifying, extending, or terminating the MOU.

IV. TERMS OF AGREEMENT

A. Specific Partner Requirements

1. TMLL shall:

- a. Be responsible for coordination, maintenance, and further development of the USCCR project.
- b. Continue to digitize the USCCR collection resources. Selection of the resources will be at TMLL's discretion, though TMLL shall attempt to maintain balance in the selection and placement of resources not authored by the Commission. For materials authored by the Commission, TMLL shall only place on the website those formal reports, staff reports, and legal and policy analyses that have received a majority vote of the Commissioners. The only exceptions to this restriction shall be State Advisory Committee Reports published after January 1, 2006 and documents previously in the public domain that were removed from the Commission's website following a vote of the Commissioners. The search page for the USCCR project shall contain a disclaimer for State Advisory Committee reports stating that:

This site contains reports that are the product of State Advisory Committees to the U.S. Commission on Civil Rights. The views expressed in these reports, and the findings and recommendations contained therein are those of a majority of the members of the respective State Advisory Committee and do not necessarily represent the views of the Commission, its individual members, or the policies of the United States Government.

The search page for the USCCR project shall contain the following notice for documents previously in the public domain that were removed from the Commission's website following a vote of the Commissioners:

This site contains draft documents previously disseminated to the public. These documents failed to pass by a majority of the Commission. These reports are not recommended for citation.

Each document previously in the public domain that was removed from the Commission's website following a vote of the Commissioners shall contain the following notice on the front page of the individual document:

This is a draft document which was previously disseminated to the public. It failed to pass by a majority of the Commission. 'X' (number of) Commissioners voted in favor of the report. 'X' (number of) Commissioners voted against the report. The report is not recommended for citation.

- c. The specifications for preservation digitization in effect on the signing date of the MOU and established in GPO's *FDsys Operational Specification for Converted Content (Version 3.2)* will serve as a guideline for the creation of any digital master files. (See Appendix) These specifications are also available at http://www.gpoaccess.gov/legacy/registry/fdsysspec_converted_content3.2.pdf
- d. Preserve any resulting digital master files on a secure site. If TMLL should terminate the agreement to maintain, preserve, and provide electronic public access to the records, TMLL will transfer the access and preservation files for digitized FDLR publications, associated metadata records, and project documentation to GPO for the National Collection of U.S. Government Publications.
- e. Agree that documents in the public domain prior to digitization will remain in the public domain following digitization of the USCCR publications, and TMLL will not assert copyright protection or other restrictions on re-use over government publications, releases, or documents distributed through the FDLR.
- f. Make electronic copies of the resulting digital access files available for no-fee access on a publicly-accessible web site.
- g. Assure that under normal operating conditions USCCR publications will be available for remote public access at least ninety-five percent (95%) of the time, excluding scheduled downtime.
- h. Consult with GPO and USCCR staff on any plans to migrate, reconstitute, or otherwise significantly modify the structure of the information content other than routine refreshing of the resource. Any modification to or migration of USCCR files must not undermine or limit access to the material in the USCCR project.
- i. Register the USCCR project digitization activities in GPO's digitization registry available at <http://www.gpoaccess.gov/legacy/registry/index.html>.

- j. Notify GPO when new titles have been added to the USCCR project Web site by using the Internet Information Product Notification Form available at http://www.access.gpo.gov/su_docs/forms/epubs/index.html so bibliographic records may be created for the new publications.
- k. Compile and report usage statistics and other performance measures to GPO and the USCCR annually or upon the request of GPO, including, but not limited to: Commission documents added, number of hits, number of downloads, and staff time devoted to the partnership.
- l. Cite GPO and the USCCR as “digital preservation partners” and display the FDLP logo and the USCCR logo on Web pages associated with the USCCR project.
- m. Provide links to *GPO Access* and the USCCR Web site from the USCCR project Web page.
- n. Notify GPO and USCCR in the event TMLL can no longer perform its responsibilities under the terms of this memorandum at least one hundred eighty (180) days before termination of their responsibilities so that GPO can arrange for an alternative method of access.

2. GPO shall:

- a. Function as the coordinator for all remotely accessible electronic FDLP services, including federal government information in the USCCR, providing administrative coordination and oversight of electronic government information products shared among FDLP partner institutions.
- b. Provide Internet pointers and other locator mechanisms on *GPO Access* to identify and direct users to the USCCR project.
- c. Provide a notice on *GPO Access* acknowledging the partnership between GPO, TMLL and the USCCR to provide permanent public access to the federal government information in the USCCR project.
- d. Create or update bibliographic records in the Catalog of U.S. Government Publications and the OCLC WorldCat database including the uniform resource locator (URL) or PURL for publications identified as in scope of the FDLP.
- e. If TMLL can no longer perform their responsibilities under the terms of this memorandum, GPO will manage any digital master files in the National Collection of U.S. Government Publications dark archive(s) to ensure their long-term preservation by storing and managing them under preservation conditions required by the GPO agreement with the National Archives and Records Administration (NARA) that established an affiliate relationship between GPO and NARA.
- f. If TMLL can no longer perform its responsibilities under the

terms of this memorandum, GPO will make the access copies available for no-fee access, directly or through an alternative partner.

- g. Notify TMLL and USCCR at least one hundred eighty (180) days before withdrawing from this agreement.

3. USCCR shall:

- a. Assist TMLL in identifying and locating missing publications so the TMLL project site can be current and comprehensive.
- b. Deliver via electronic form, within thirty days of publication, all formal reports, staff reports, and legal and policy analyses that have received a majority vote of the Commissioners and all State Advisory Committee reports that have been printed by the Commission.
- c. All State Advisory Committee reports published after January 1, 2006 will contain a cover page that includes the following disclaimer.

This report is the product of the _____ State Advisory Committee to the U.S. Commission on Civil Rights. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the members of the _____ State Advisory Committee and do not necessarily represent the views of the Commission, its individual members, or the policies of the United States Government.

- d. Provide a list of those documents previously in the public domain that were removed from the Commission's website following a vote of the Commissioners, including for each document the number of Commissioners voting for and against.
- e. Recognize TMLL's USCCR project as an official source of USCCR publications and provide a link to the TMLL USCCR project from the USCCR Web site.
- f. Acknowledge on the USCCR Web site that USCCR is working in partnership with GPO and TMLL to provide permanent public access to the USCCR historic publications through the FDLP.
- g. Notify GPO and TMLL at least one hundred eighty (180) days before withdrawing from this agreement.

V. FINANCIAL TERMS AND PAYMENT

No funds are to be exchanged between GPO, TMLL, and the USCCR in connection with the provisions of this agreement.

VI. CONTACTS:

GPO: Janet Scheitle
Director, Office of Library Planning and Development,
Library Services
U.S. Government Printing Office
202-512-0140
jscheitle@gpo.gov

TMLL: Bill Sleeman
Assistant Director, Technical Services
Thurgood Marshall Law Library
University of Maryland School of Law
410-706-0783
bsleeman@law.umaryland.edu

USCCR: Kenneth L. Marcus
Staff Director
U.S. Commission on Civil Rights
624 9th St. N.W.
Washington, D.C. 20425
202-376-7700
kmarcus@usccr.gov

VII. EFFECTIVE DATE/DURATION/AMENDMENTS

This agreement is effective as of the date of signature by all authorized representatives indicated below and shall last until terminated in accordance with the specific partner requirements. The MOU may be amended by mutual agreement of the parties. Any party may withdraw from this agreement upon one hundred eighty (180) days written notice to the other parties.

VIII. ACCEPTANCE BY:

_____ date _____
Judith C. Russell
Managing Director, Information Dissemination
(Superintendent of Documents)
U.S. Government Printing Office

date _____

Allison Brown
Controller, Information Dissemination
U.S. Government Printing Office

date _____

Barbara Gontrum
Assistant Dean, Thurgood Marshall Law Library
University Maryland School of Law

date _____

Kenneth L. Marcus
Staff Director, United States Commission on Civil Rights

DRAFT

APPENDIX

Image Capture Benchmarks for Preservation Masters

Image Types	Bit Depth	Color Mode	Resolution (ppi/spi)	Scale	File Format	Compression
Reflective						
<i>B&W Text Only</i>	1-bit	B&W (bitonal)	600 ppi/spi	100% (1:1)	TIFF	CCITT Group 4
<i>B&W Text with Illustrations (charts, artwork, graphs, photos)</i>	8-bit	Grayscale	400 ppi/spi		TIFF	None
<i>Color Photos & Illustrations with Text</i>	24-bit	RGB	400 ppi/spi		TIFF	None

Transmissive						
16mm	36-48 / 16 bit	Color / Grayscale	5000 ppi/spi	1600% (16:1)	TIFF	None
36-48 / 16 bit	Color / Grayscale	3400 ppi/spi	850% (8.5:1)			
36-48 / 16 bit	Color / Grayscale	1800 ppi/spi	450% (4.5:1)			
24-48 / 8-16 bit	Color / Grayscale	800 ppi/spi	200% (2:1)			
24-48 / 8-16 bit	Color / Grayscale	400 ppi/spi	100% (1:1)			

* Scanning resolutions for images over 11 x 16" (300 ppi for 8-bit grayscale and 300 ppi for 24-bit RGB color)

Motion for the 08/18/06 Commission Meeting

- Motion to Approve the Rechartering of the Georgia State Advisory Committee

I move that the Commission recharter the Georgia State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director:

- Charles B. Tanksley
- Tony K. Boatwright
- Alvin Arch Culbreth
- Julius Wayne Dudley
- Herbert W. Garrett
- Shannon L. Goessling
- William H. Jordan
- Ann L. Kasun
- Luis J. Perez-Eguiarte
- Arch Y. Stokes
- Pamela White-Colbert

These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paper work for the appointment. I also move that the Commission appoint the Honorable Charles B. Tanksley as Chair of the newly rechartered Georgia State Advisory Committee.

Motion for the 07/28/06 Commission Meeting

- Motion to Approve the Rechartering of the California State Advisory Committee

August 10, 2006

MEMORANDUM FOR GERALD REYNOLDS, CHAIRMAN
ABIGAIL THERNSTROM, VICE CHAIRMAN
COMMISSIONERS

FROM: KENNETH L. MARCUS
Staff Director

SUBJECT: GEORGIA RE-CHARTER PACKAGE

Please find attached to this memorandum a recommended appointment package for the Georgia Advisory Committee to the U.S. Commission on Civil Rights. This appointment package is submitted for your approval. All individuals being recommended for membership were interviewed about their interest in serving, per Administrative Instruction (AI) 5-9, Section 6.

The Georgia Advisory Committee was last re-chartered in 2002 with 13 members. This package recommends an advisory committee of 11 members in compliance with AI 5-9, Section 2.01. Of the 13 previously appointed members of this Committee, one resigned and five were not eligible for reappointment. Consistent with AI 5-9, Section 5, all seven remaining members were asked about their interest in reappointment and all responded to the invitation to re-apply for membership. These seven are being recommended for reappointment. Of the four new members, Charles B. Tanksley is recommended as chair. We have included evaluations of the members recommended for reappointment in this recommended charter package.

Recommended advisory committee members were selected in compliance with the State Advisory Committee Membership Selection Guidelines specified in AI 5-9, Section 7. Staff developed this recommended advisory committee so as to establish vigorous debate and full exploration of the issues, per AI 5-9, Section 2.02. Staff also gave consideration to a cross-section of those directly affected by the advisory committee, per AI 5-9, Section 2.03. Finally, staff constructed this recommended advisory committee so as to be fairly balanced in terms of points of view represented and functions to be performed, per AI 5-9, Section 2.04.

Attachments
CCR Forms 16-A and 16-B

I move that the Commission recharter the California State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director:

- Gail L. Heriot
- Luis A. Alejo
- James A. Bolton
- Sharon L. Browne
- Jack Citrin
- John L. Dodd
- Marc L. Dollinger
- Percy Duran
- Thomas J. Gray
- Lance T. Izumi
- Manuel S. Klausner
- Sanford A. Lakoff
- J. Al Latham, Jr.
- Leonard Mitchell
- Velma Montoya
- Matthew A. Rosenthal

These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paper work for the appointment. I also move that the Commission appoint Gail Heriot as Chair of the newly rechartered California State Advisory Committee.

Motion for the 08/18/06 Commission Meeting

- Motion to Amend the Agenda

I move to amend the agenda to add a subitem labeled "Motion to Keep the Record

Open for the Briefing on Affirmative Action in American Law Schools." immediately

following the discussion of the “Motion to Place Items in the Record for the Briefing on Benefits of Diversity in Elementary and Secondary Education” under Program Planning.

Motion for the 08/18/06 Commission Meeting

- Motion to Keep the Record Open for the Briefing on Affirmative Action in American Law Schools

I move that the Commission keep open the record from the June 16, 2006, briefing on affirmative action in American law schools for thirty days from today’s date.

Motion for the 08/18/06 Commission Meeting

- Motion to Amend the Agenda

I move to amend the agenda to add a subitem labeled “Follow-Up on Impact of Racial Preferences in American Law Schools” immediately following the discussion of the item labeled “Outline and Discovery Plan for FY 2007 Statutory Enforcement Report on Elementary and Secondary School Desegregation” under Program Planning.