Before The
INDIANA CIVIL RIGHTS COMMISSION
Indiana Government Center North
Indianapolis IN 46206-6015

IN THE MATTER OF

JANUARY 27, 2006 MONTHLY COMMISSION MEETING

(Including Oral Argument in The Matter of
JAMES NGUYEN versus DELPHI CORPORATION)

Transcript of proceedings at a public
meeting of the Commission held on January 27, 2006 at
Conference Room C, Indiana Government Center South,
Indianapolis, Indiana, Alpha Blackburn, Chairman, presiding.

ACCURATE REPORTING OF INDIANA
12922 Brighton Avenue
Carmel IN 46022
PERSONS PRESENT:

ALPHA BLACKBURN, Chairman
David C. Carter
Stephen A. Ramos
Barry Baynard
Gregory Kellam Scott
Christine Cde Baca
Robert Lange
Eric Chandler
Debra Bluitt
Da Mica O'Bryant
Stephen M. Tilden
Amy Mendoza
Ryan Marques
Ryan Marques
Barbara Dobbins

And during the argument in James Nguyen versus Delphi Corporation these persons were also present:

James Nguyen
Richard L. Darst
Jane Ann Himsel
ARGUMENT ON OBJECTIONS TO ALJ'S PROPOSED FINDINGS

MS BLACKBURN: Good afternoon. The Indiana civil Rights Commission is now in session.

As a result of objections filed by complainant to the proposed Findings of Facts and Conclusions of Law and Order, we're here to hold oral argument on said objection.

The case is James Nguyen, complainant, versus Delphi, respondent.

Let the record show that in attendance at this hearing are Commissioners Carter, Baynard, Ramos, and I am Alpha Blackburn, chair of the Commission.

For the record also, would anyone participating this morning in this hearing please introduce yourself for the record?

MR. DARST: My name is Richard Darst, and I represent James Nguyen, who is here today.


MS BLACKBURN: Your name, again, is--

MS HIMSEL: Jane Ann Himsel, H-I-M-S-E-L.

MS BLACKBURN: Thank you.

If we can agree on the groundrules as we proceed, we'd like to allow fifteen minutes for--let's--excuse me--twenty minutes for your presentation of your arguments,
and five minutes each for rebuttal. We would like to allow ten minutes at the end, approximately, for commissioners to ask questions of the parties as well as the attorneys, or counsel, relating to the issues raised by the objections. Is that agreeable to both of you?

MR. DARST: Yes.

MS HIMSEL: Yes.

MS BLACKBURN: All right. We'll proceed then with you, Mr. Darst.

MR. DARST: Thank you, Madam Chairperson and members of the Commission; Ms Himsel; staff.

Thank you for taking the time to hear this matter. I think everyone appreciates it.

The issue in this appeal is whether a federal court decision on federal law prevents or stops the administrative commission—the administrative law judge from proceeding to enforce state law in administrative proceedings. And we argue that the answer is no. The federal court decision on federal law cannot prevent the Commission from enforcing state law, especially in administrative proceedings.

What is the reason for that? The bottom-line reason is that the proceedings are different. Proceedings of the Commission are different than the proceedings of courts, either the trial court, state court, or the federal court, where the proceedings are just different, and they're
different than administrative proceedings.

This is-- The history of the case is that James
Nguyen filed, without an attorney at first, his complaint
with the Indiana Civil Rights Commission. The Commission
then issued a finding of probable cause in his favor. And
then Jim filed a--with me as his attorney, filed a proceeding
in federal court, on the federal law, to proceed there to get
relief for him under the federal law. The state law
proceeding continued in the Commission before Judge Lange.
And the parties and the judge stayed--the judge actually
stayed the administrative proceedings until further
proceedings on the federal side, which makes sense because
the parties may get together, may resolve the matter, may not
need hearings all the time before the Indiana Civil Rights
Commission or the administrative law judge.

However, after a couple of years of it pending in
the federal court on the federal law and the state court on
the--or not state court--state administrative commission on
the state side, the--let's see, the federal court issued a
summary judgment on the federal law, and the administrative
law judge stayed the proceedings I believe for a year,
pending appeal. And then Delphi, the employer, filed
bankruptcy proceedings for Chapter XI reorganization to
reorganize their debts and hopefully get out of
reorganization and continue in their business.
So the bankruptcy court issued, automatically, a stay of the court proceedings, which stayed the federal court proceedings in the federal court of appeal. And just before the last status conference, which I think was set in probably December of last year, just a month or two ago, the administrative judge issued an order on the state side, saying that he understood from case law that federal orders staying a court proceeding do not apply to an administrative proceeding because an administrative proceeding has different interests than a court proceeding. The different interests of the administrative proceeding is that the Commission has an interest in enforcement, an enforcement interest, which is not an interest that a federal court has. A federal court just says Yes/no, yes/no, something like that.

So the law recognizes that the Commission is different than a court. Different than either the state court or the federal court. The law recognizes that the Commission follows different rules. It not only follows different rules for enforcement proceedings, but also on the admission of evidence and things like that. So that is the difference between the Commission proceedings and the court proceedings.

Now, answering a hypothetical question, I think if the parties had chosen to go to the state court and taken the Commission out of the picture, then that would be a different
situation, because there is law stating that a federal court summary judgment applies as res judicata to a state court proceeding. However, we did not take, neither one of us took the matter out of the Commission, and kept the matter before the Commission. And so the Commission is different than either a state court or a federal court because the Commission has the enforcement obligation, enforcement duty and responsibility, and that's what the federal cases have recognized when they say that a federal bankruptcy proceeding, and an order staying all other proceedings, does not affect the Commission, because the Commission has enforcement responsibility.

Now there is a possible argument that could be raised, which I would like to address before it is raised, that this is not a proceeding captioned as The Commission versus Delphi; it's captioned as the complainant versus Delphi, the respondent. I don't think that makes any difference, because that's the normal caption of any proceeding before the Commission, as far as I understand it, so this is an enforcement proceeding.

In the event that it is not an administrative enforcement proceeding, then the stay should apply to this proceeding just as it applied to the courts. But the stay, the judge ruled, does not apply to this proceeding. I believe the reason is that it's an enforcement proceeding.
And because it's an enforcement proceeding, it's a different type of proceeding than a court proceeding.

Now some of the evidence or indications that show how different it is are the federal court's summary judgment that the respondent submitted to the Commission with its brief in response to our objections. And when you look at that, it just totally disregarded what the Commission had done.

Now, if the federal court judgment was res judicata against the Commission, then the Commission judgment or finding should be res judicata against the federal court and the state court. If it's not res judicata—which is a tough issue to wrestle around—the federal court should at least give it consideration. The federal court should at least give a finding of the Commission of probable cause consideration when the federal court decides whether there's probable cause to proceed.

As a matter of fact, we don't even have to prove probable cause in the federal court; all we have to prove is just that there is a reason for a trial, that there is enough evidence for a trial. It's not even probable cause.

But instead of the federal court saying, "Yes, the Commission found probable cause, and therefore we are going to have a trial," the federal court really just ignored the finding of the Commission, ignored the evidence of the
Commission, and they submitted the evidence and the finding, and the evidence was backed up—or the finding was backed up by evidence of statements taken by the Commission of several employees at Delphi, who supported James Nguyen's statements of the fact that he was discriminated against because of his national origin, which is Vietnamese. His father supported the United States troops during the Viet Nam war and then was brought over to the United States, and Jim has spent most of his life here in the United States. But he suffered discrimination because of his national origin and has been called names like "Gook", and all kinds of names at Delphi. And the Commission took statements from other employees, who verified that that happened and supported Jim.

And so the Commission's finding was not only just a paper finding; it was a finding that was backed up by statements taken by the investigators, supporting Jim. Even supported by written evidence which was left on his tool wagon. And also on his work station. It says here, "If you don't read Japanese, tilt your head to the right."

And Jim was trying to do a good job, and they were calling him names and they were taking his tools. It even got so bad that he had to take a medical leave and was placed in the hospital for a heart condition. Now we can argue about whether it was a heart attack or a coronary attack or whatever, but it was a heart condition that he was placed in
the hospital for.

This is the kind of stuff that--excuse me; I'm tilting my head the wrong way-- You know, to some people, Japanese, Asian, Vietnamese is all the same. And so when you tilt your head this way, it says something that would be pretty offensive to an Asian person. And it indicated that--the oral statements that were made to him in his workplace.

And he was given the hard jobs, he was not given assistance, he was discriminated against for a long period of time. And the federal court just ignored what the Commission did. And how can they do that? As I said, they ignored the statements of the co-employees and said, "Oh, well, you know, to"--I don't know what they said, but they just basically ignored the statements. And how can that happen? I think the federal courts would say, "Well, because we're the federal court; we're different." And that is the heart of the matter. The Commission is different than the federal court.

Now, we have some practical problems. I would say that a simple solution is that the--as soon as Delphi gets out of reorganization and the federal appeal will proceed, either the state proceeding before the Commission, the enforcement proceeding will be stayed--for practical purposes, not for legal purposes--or it will proceed. And the practical questions arise that, if the law were such
that--and we are all trying to figure out what to do and what
the best thing to do is. And you certainly have the public
responsibility, and I certainly--we all certainly appreciate
that. But all of us are still trying to figure out what to
do also.

If any complainant from the ICRC goes to federal
court and the federal court does what it does here, it really
just basically ignores the ICRC finding and the evidence and
the co-employee statements and goes off on its own, what does
that-- And if that would stop the administrative law judge,
stop the Commission from enforcing the law against
discrimination under the state law and trying to change the
employer for the better, what would that mean as a practical
matter? Would all of us complainants have to insist upon a
hearing before the Commission in every case before we went to
federal court? I don't think that's a good practical
solution either.

So the-- Oh, I would like to address some of the
authorities. The authorities that the defendant cited apply
to courts--one court vis-a-vis another court--do not apply to
a commission that has enforcement powers and enforcement
responsibilities and different procedures, which are
recognized by, for instance, the federal bankruptcy order,
which does not stop the Commission.

And the respondent employer cited Wright and Miller
Section 4422 for--in support of its position. I thought, really, that this section supported us more than it did them. For instance, the first footnote recognizes problems in applying issue preclusion when you have varying burdens. And here we not only have just varying burdens; we have varying evidence, varying procedural rules, and varying standards of evidence.

To make a long story short on the Wright and Miller section, footnote 23 at the end--it's just about the last one near the end--recognizes in the Seventh Circuit case--which is the circuit that covers our state in the federal court--recognizes that there was a difference between the trial to a jury and a trial to the judge--which we call it a court--difference between a court trial and a jury trial in the same case, because there is a different standard for the admission of evidence. That's footnote 23. And the case is Snider versus Consolidation Coal Company. And that did not even involve an administrative commission that is enforcing--has enforcement responsibilities administratively, but rather a court, and it recognizes that when there are different standards for the admission of evidence, the one proceeding does not stop the other proceeding because they are different.

Thank you.

MS BLACKBURN: Thank you very much.
And now, if you, Miss Himsel, would like to provide rebuttal first? Or your case?

MS HIMSEL: I can do the two together.

MS BLACKBURN: All right.

MS HIMSEL: This is about the legal doctrine of collateral estoppel. I am not aware--I'm sorry, I don't--I mean res judicata, of which collateral estoppel is a part. I have not seen--and I am not telling you there is not, because I certainly have not read every case in the country, but I have researched this issue very thoroughly, and I have not seen a single bit of legal precedent that would support the argument Mr. Darst just made, that this legal doctrine--which he admits, if he had chosen to proceed in state court and then gone to the federal court and the federal court had made its decision earlier, the state court would indeed be estopped from proceeding, but he says it's different because it's a commission.

That doesn't make sense. And the reason it doesn't make sense is because this doctrine has a very particular purpose that's crystal clear from Indiana case law. And the purpose is to prevent parties from relitigating the same dispute. It doesn't matter whether you're doing it twice in state court or in state court and then in federal court, or in federal court and then to the Commission; you don't get a second bite at the apple. You choose your forum, you
litigate your matter, and if it's the same claim and the
issues are decided in the federal court, that decision bars
the action of the state court or a state commission. That's
the basis of the legal doctrine.

Now let me differentiate for you between "claim
preclusion" and "issue preclusion", which is also called
"collateral estoppel". And I'm going to try very, very hard
not to say "collateral estoppel" again, but if I do, forgive
me. We're talking about claim preclusion and issue
preclusion.

Claim preclusion applies if the following four
factors are met. And this is what Judge Lange said. A court
of competent jurisdiction has entered a final judgment. That
final judgment was on the merits. If the same claim or a
claim that could have been raised in this situation, it's the
same claim; the same parties, or those in privy to them.
Here we have the same parties: Mr. Nguyen and his former
employer, Delphi. If those four things are in place, claim
preclusion applies and prevents the parties from relitigating
the same matter in a different forum, whatever that forum is.
So let's look at it piece by piece.

No question that the federal district court was a
court of competent jurisdiction to decide issues of
employment discrimination; no question about that.

There's a summary judgment that's been issued on
the merits. That's a final decision. And Indiana case law teaches us that the pendency of an appeal doesn't make any difference until—if and until it's reversed. What you have to look at is where the law is right now. And right now you have a final judgment from the federal district court. The fact that it's pending on appeal is not even pertinent to this discussion; it's final until something else happens. And you have every right, and indeed you should act on the judgment as it stands right now. I believe that all of you have been given copies of my brief, and I cite a good bit of case law, state and federal, supporting that point.

This was unquestionably—prong number three—the same claim: He raised national origin discrimination with the Commission, with harassment as an element of that; he went to the federal court, and he claimed national origin discrimination, harassment based on national origin, as part of that discrimination allegation.

Contrary to what Mr. Darst is telling you, the federal court did indeed look at what happened in this commission. He says that he looked at the statement that Mr. Nguyen submitted to this commission. I believe that's on page 1. About page 9, he goes through and sets out all the elements of what Mr. Nguyen's charge was before the Commission. The federal court knew what they were. He accepted affidavits of a good many of the people who
testified before this Commission. In the federal court record, a certified copy of everything that happened in this commission, your entire record was submitted; it was there before the District Court. I can't tell you any more than what's in the District Court's opinion about whether he considered it, but it was there.

Competent court; final judgment; same claim; same parties. That's it. The summary judgment standard doesn't matter, different damages don't matter. Final judgment has been enforced; you're not allowed to litigate the same claims again. That's claim preclusion. It's just that simple. And there is no law suggesting that it doesn't apply to this commission. Any more than--any different than--that it would apply here any differently here than it would apply in a state court. There's no logic in that at all, and no law to support it.

The other piece of res judicata is issue preclusion. It's something different than claim preclusion. Issue preclusion is when you are talking about a particular issue that, again, has been ruled on in a different forum, and the purpose of the doctrine is to prevent its relitigation in a subsequent forum. Okay.

Here we have the strange, and sort of I think unique situation, where the issues and claims are more or less the same; in other words, the same—you have got the
exact same claims; the issues that arise under those claims
are the same. So I think issue preclusion applies here too.

Mr. Darst would argue to you that the summary
judgment standards are different in state and federal courts,
the summary judgment standards are different here than
they're--here in this commission, were Judge Lange to grant a
summary judgment with this commission's approval, that
summary judgment would be granted on state court grounds, not
federal court grounds; the state standard would apply, not
the federal court standards would apply. We don't argue with
that.

In Tom versus Voida--and this case I think is very
important--the Indiana Court of Appeals rejected the argument
that Mr. Darst is making here in a situation where what was
being argued was issue preclusion. I think it's an easy case
to look at; the facts are pretty clear. In Tom, the
plaintiff was the mother of an individual who had
unfortunately been killed by a police officer in a chase.
She filed a civil rights action in the federal court, with
pendent state law claims. The federal court determined a
number of issues in that action. Some of the issues included
whether the officer had used the appropriate level of force;
whether the officer, at what stage of the proceedings she had
the right to use her gun--a whole lot of issues, issues that
would clearly be pertinent to the state claims as well as the
federal claims. But all the federal court decided was the 
federal claim; it dismissed the state claims and refused to 
exercise pendent jurisdiction. So the state claims went back 
to the state court. And the defendant said, with regard to 
all those issues of fact and law that the federal court 
decided when resolving the federal claim, that claims 
preclusion applied. And the plaintiff argued, "No, wait a 
minute! It was a different burden! It was a summary judgment 
proceeding, a different burden on all these issues."
Probably relied on Wright and Miller; I don't know that. 
Different burden applied; different burden. And the Indiana 
Court of Appeals said, "Huh-uh. No, it doesn't matter."
What matters, here, in their opinion, is that the plaintiff 
chose to proceed in the federal forum, received a judgment 
from the federal court first.

That's exactly what happened here: Mr. Darst 
started this case here; he had every right to continue here 
if he wanted to; he had every right to go to state court if 
wanted to. He chose, after the probable cause finding, to go 
on to federal court. The federal court issued a forty-one 
page summary judgment on all the same issues, on all the same 
claims, finding in favor of Delphi, and both claims 
preclusion and issue preclusion, the entire doctrine applies.

There is nothing for this commission to decide at 
this point. There is nothing to decide; it's been decided by
I'll be happy to take any questions if you'd like me to do that.

MS BLACKBURN: We will reserve that to the end--

MS HIMSEL: Fine.

MS BLACKBURN: --if you don't mind, and give the complainant the chance for any surrebuttal.

MR. DARST: Thank you.

Taking the last point first, Tom versus Voida was first of all--Miss Himsel is correct--a case in two courts, which does not involve an administrative enforcement proceeding before an administrative commission.

Secondly, Tom versus Voida involved the same claim, and that was basically an excessive force claim that was brought in federal court, and then the same excessive force claim brought in the state court. And the Court said there is a difference between a burden of proof on summary judgment in federal court and state court, but not enough to make it different on that kind of claim. So that did not involve a claim on a federal statute and then a state statute. That was on the federal--believe it was a 1983--section 1983, 42 United States Code, Section 1983 claim, where the complainant or plaintiff was trying to bring the same claim in one court and in another court, which we do not have here.

And in addition to that difference of the burden--
different burden of proof on summary judgment, we also have
the differences of the enforcement responsibility of the
Commission and the enforcement proceeding. We also have the
difference in the admission of evidence, which in the Seventh
Circuit case of Snider versus Consolidated Coal, which Wright
and Miller spoke to, which is pretty well recognized, that if
there is a different standard for the admission of evidence
in one proceeding it does not prevent another proceeding.

Somewhat similar to that is the example that I raised in the
objections, that when someone is acquitted in a criminal
case, that he can still be sued in a civil case on the same
thing. And they always claim that that's unfair, but that's
permitted by law because the standards are different.

And here we have several different standards that
are different: The admission of evidence, the procedures,
the burden of proof, and the enforcement obligation or
responsibility of the Commission. So all of those are
different.

We also have-- These are not the same claims; they
are different, and under different statutes. And the
respondent had asked us to look at the summary judgment of
the District Court. And I did scan pages 1 and 9, which she
had referred to. And I believe what the District Court did
was say that the complainant filed a complaint--I'm not even
sure that it mentioned the Commission, but did file an
administrative complaint, and did have other people, other
employees who were speaking on his behalf. But I don't think
there was even any place that I could find in the summary
judgment that even said the word "finding of probable cause",
or even referred in other words to the finding of probable
cause of the Commission, or referred to the statements taken
by the Commission, or the evidence.

Now the summary judgment did attack additional
affidavits that we submitted, just on making general, broad
statements, saying, well, basically the employees didn't know
what they were talking about. But I think that's something
that the Commission does not ignore. When other employees do
see what's happening to an employee, it's very important to
the Commission, I believe, to see if it's verified by other
employees or if it's just one person who is making this
claim, whether he's making it up or imagining it or whatever.
If other employees-- And these were not Vietnamese
employees, of course, coming forward and saying, "Yes, this
was happening to James."

And his name is pronounced--he asked his employees,
other employees to pronounce it "Win". I guess it's
"Nu-win", and shortened, Americanized, he pronounces it
"Win". So the other employees said, "Yes, Jimmy Win's, you
know, being discriminated against and being harassed. I
mean, my gosh, his tools were taken."
The federal court said, "Well, he didn't say that he couldn't ask other people for tools." But that's not nondiscrimination. Jimmy Nguyen did go around--James Nguyen did go around-- And perhaps "Jimmy" is a diminutive term, so I shouldn't use that, but other employees have used that-- James Nguyen went around and did try to do his job the best he could by borrowing tools from other employees, but the harassment finally caused him to have to take medical leave, which he did, and so it was a serious problem. But the federal court did not recognize the evidence. And they said they're different. And that's the whole reason why the Commission can proceed and is not bound by the federal court.

If that were the case, if both were--if there was no difference, then a decision by the Commission would bind the federal court. And if we went and did that with the federal court, the Court would say, "Oh, but the Commission's different!" Well, you know, that's our point here: It is; there is a difference.

So either-- And the respondent has said, the employer has said, "Well, there shouldn't be two bites at the apple." Well, does that mean that, if we prevailed at the Commission, that the employer cannot get a second bite with the federal court? Now, that has not been accepted, because both have said it's different. And that's the whole reason why the complainant should be able to proceed and not be
stopped by something that happened in the federal court.

The employer also said that the fact that there's an appeal does not make a difference. I think that would be legally true if they were not--there was not a difference in the different proceedings. For instance, if res judicata actually did apply, then it wouldn't matter if something was on appeal. But it does matter as a practical matter, because what are we going to do--you know, if and when the Court of Appeals reverses, are we going to come back and start all over again? That's not a good proceeding. And then what do we do in the next case, and the next case, and the next hundred cases? Are we going to have to say, "I can't go to federal court on the federal remedies yet, because I have to have all of my hearings before the Commission, the administrative judge; otherwise the judge will be stopped, or the employer will claim the judge is stopped by the federal court."

So there is a difference. I think that the Seventh Circuit decision of Snider shows that there's a difference; I think that the federal order staying all court proceedings but not staying the enforcement proceedings shows that there's a difference. And so the federal court proceedings would not stop the Commission proceedings. Thank you.

MS BLACKBURN: Thank you very much.

I'll give you another five minutes, Miss Himsel.
MS HIMSEL: It's Friday afternoon, and I don't think I'll take my full five minutes.

We haven't heard a single--about a single case; I am not aware of a single case that would suggest that the legal doctrine of res judicata in a federal court decision does not apply to the decisions of this commission. There is no support for that argument. The case he cites has absolutely nothing to do with an administrative action of any kind. Mr. Nguyen could have gone on in this forum; he could have gone to the state court. He chose to go to federal court. He fully and fairly litigated his claims. The Court ruled against him. We are not here to reargue the facts, to decide whether or not Judge Tinder was right. The only question is whether the doctrine of res judicata applies, and all of the pertinent authority would suggest very strongly that it does. Judge Lange was right, and I would ask you to enter his order and dismiss this matter at this time.

MS BLACKBURN: Thank you very much.

Is there any questions that remain, Commissioners, that you would like to pose to either party?

[There was no audible response.]

MS BLACKBURN: Hearing none, I want to thank you for participating in this hearing. You'll be apprised of the decision of the Commission.

[The meeting was recessed at 2:55 p.m.]
[January 27, 2006. After recess, at 3:16 p.m.]

COMMISSION MEETING

MS BLACKBURN: Good afternoon.

The Indiana Civil Rights Commission is now in session.

I would like a motion to adopt the minutes from October.

MR. CARTER: So moved.

MR. BAYNARD: Second.

MS BLACKBURN: All in favor?

Anyone opposed?

Thank you.

Next I'd like Judge Scott to please introduce our next presenter.

MR. SCOTT: Yes.

Chair and commission, the next presenter is actually a new member of the staff, Eric Chandler. And Eric is a graduate from IUPUI. He has roots here in the community. And we are very pleased to have him on board. He replaces Ed Hess, who left us about three months ago to take on adventures with the installation at Fort Ben Harrison. And that gave us an opportunity. We are very pleased to have Eric.

And he will give very short financial report today because he has only been on board a short period of time, but
I would like for him to be able to at least make a statement to you regarding the financial condition of the Commission.

MS BLACKBURN: Welcome.

MR. CHANDLER: Thank you.

First of all, let me say I am glad to be here, and honored to be here today.

As far as the financial management for the Civil Rights Commission, I have met with Zachary Jackson, who is our auditor, last week with regards to our accounts and books. We have done some reconciliation with regards to our SDO account, which is reconciled and what not. He's looked through the books and things and talked things over with me, and has no immediate concerns on anything, and he's satisfied with the shape and condition that our accounts and books are currently in.

I have gone through earlier today and put together a financial packet and what-not with regards to the information and balances and what-not on account, and those I would guess we will be distributing to everybody at the February meeting. I have copy for everybody, so that they can review them if there's any questions with regards to them. And that's pretty much about it.

MS BLACKBURN: Thank you very much.

MR. CHANDLER: You're welcome.

MS BLACKBURN: Next on our agenda is New Business.
And I'd like to introduce to the Commissioners and staff assembled the executive director of the Commission on Hispanic and Latino Affairs, Miss Amy Mendoza.

MS MENDOZA: Thank you.

And I wanted to start off by first of all thanking all of you for having me here. It's certainly a pleasure to be with you. I see some familiar faces, and some that I don't know. I look forward to working with you this year and establishing a greater--greater work between the Hispanic/Latino Commission and the Civil Rights Commission. I also wanted to thank Judge Scott and Christine for inviting me to be here. They are on my commission and serve that commission very well.

What I am here to talk to you about today is the Indiana Commission on Hispanic and Latino Affairs. And what Ryan, my assistant, is going to do is pass out to you some brochures about our commission, which will give you a pretty good overview on who we are and when we were established, and what we plan to do in this year and upcoming years.

Basically, our commission was established in 2003 by Executive Order. And there were previous interim commissions that reported to the Governor and to the Legislature in previous years.

We have three main duties as a commission. The first is to identify and research issues affecting the
Hispanic/Latino communities, and we do that through public forums that we have around the state. This past year we had about ten forums, which are town-hall style meetings in which we present the community an overview of the Commission in English and Spanish, and we also take time for the community to inform us about what the issues are in their local area.

So that's one of the ways that we do our first charge.

Our second charge, as you will see in the brochure here, is to promote understanding and cooperation between different communities and States. And how do we do that? Well, through education. Very, very important to the Commission.

One of the current programs that we're doing, that we started last year and that we continue to do every year, is the Commission's Hispanic/Latino History Project, which consists of a timeline, a pictorial display of firsts throughout the state for the Hispanic/Latino community. And every year that project is updated and travels around the different counties during Hispanic Heritage Month. So that's one of the ways that we have been doing our second charge.

Another way that we do that is through making presentations to different commissions, as yourself. Also participating in different state-wide conferences and events to show people that we are working together with different
The third charge is to report to the Governor and to the Legislature on different issues concerning the Hispanic/Latino community. We do have a statute which details what issues we are to report on, and it's basically any issue that is of any interest in the community, in Indiana. That's any community in Indiana. And we do that through annual reports to the Governor and to the Legislature. This year, hopefully it will be finished by the beginning of February, and that will be the Commission's first annual report, which will have our findings, recommendations, and hard data and hard facts about the Hispanic/Latino community in the state.

We do keep up with legislation, federal and State. Our commissioners are pretty well informed of the issues going on at that level. And I wanted to point out some bills to you. We have, also, our chart of bills that we're keeping abreast of this session, and if you want copies, they are available in the back. But there are a lot of bills that are introduced every session that would specifically target the Hispanic/Latino community, directly or indirectly. So those kinds of bills we are keeping an eye on. And there are some bills in this chart that we are establishing great importance of, because they do have a negative impact on the Hispanic/Latino community. And one of them will be 1383. And
I believe you all have a copy of your own bills that you're keeping an eye on, and it is in there also. I'm not sure what page.

But 1383 does have another bill in the Senate that is just like it, and basically what this does is, it restricts public assistance to illegal aliens. And the issue with that bill is the language, how they word that. They would do checks on individuals that they suspect to be illegally in State of Indiana or in the country. And it doesn't really define how a person would suspect that or validate that. So bills like that, the Commission is keeping an eye on.

There are some several driver certificate bills that have been introduced in this session but that have not gone through and have failed. So in particular the driver's license issue is of great importance to the Commission, because it is one of the--the top issue that we hear as we travel around the state. So what we have done about the driver's license issue is that last year we wrote a report to the Governor and to the Legislature with some solutions on how to resolve the issue. And we have examined it from both sides; the opponents and the proponents of the issue have a balance in the report. We just finished the report this morning, the second report to the Governor and to the Legislature, and the Commission will vote on it next week.
And that also—what that report does is, it addresses the current political and state climate regarding the driver's license issue, and it puts more recommendations on how to solve the issue in the State of Indiana.

If you are not aware of it, basically the issue is that of documentation. A lot of people cannot obtain a visa with a passport and an I-94 stamp and also a Social Security number. And it's not just immigrants who are here illegally, but also legal immigrants who, because of their status, cannot obtain certain documents that are needed for a driver's licence. So that's one of the hot issues that we are targeting, but it's certainly not the only issue.

As a commission, of course we do recognize that the Hispanic/Latino community is very, very diverse. Not all immigrants are third and fourth generation, like myself, speak different languages, are professionals, and some of them are not professionals; and education levels differ. All of that will be addressed in our annual report, which will come out this year. So you can see a lot of information in that report, and of course if you all just want a copy of that, feel free to contact me for that.

Also, another thing that I wanted to bring to your attention is that the Hispanic/Latino Commission is working very well with the Civil Rights Commission. We have been thinking of ways to address another hot issue that we see in
the community all the time. And that's the issue of tensions between the Hispanic/Latino community and the African-American community. And I think in recent years, from my experience, I can say that it has been unspoken, untouched for a while. And I'm not saying by the State, but by the communities themselves. A lot of regional communities have diversity commissions, have minority commissions or groups, but they haven't been as active as they could be. So what we have done is that we have met a little bit, along with Juana Watson and Tony Kirkland, to discuss how we can come up with some kind of program or state-wide initiative to address this issue. And although nothing is finalized yet, what we did come up with is to have regional discussions, or implement some kind of regional program which would eventually become a State program on how to promote understanding between those communities. We thought the best way to do it, at least so far, would be through regional discussions between groups. And of course the first step is to identify the issue in its entirety first. And also identify those groups that have already been working on this issue for a little while, because we do want to have their participation.

So that's the Commission. We are addressing a lot of different issues, but I don't want to take up too much time from your meeting. And I wanted to thank you for having
me here today. If you have any questions, please feel free
to ask.

MS BLACKBURN: Does anybody have questions for Miss
Mendoza?

MR. RAMOS: I would definitely like to see the
report when it comes out; that would be of interest.

And on the black and Hispanics, are there some best
practices out there that you have worked out, that—within
the State of Indiana or other states?

MS MENDOZA: In terms of best practices, we are
looking at model programs in the state, that different
communities have, and there are quite a few that we've
identified. And those will be in our annual report also.

There are a few programs in Goshen and Lake County and here
in Indianapolis that have been very effective, not only in
their success but how they have measured their success. And
those will be discussed in the report also.

MS BLACKBURN: I didn't hear when the report is to
be issued. Do you have a guesstimate?

MS MENDOZA: Yes. We are working very hard on it,
so that we want it to be perfect. But it will be issued in
February, at our commission meeting.

MS BLACKBURN: All right. Thank you very much.

You may remain, if you'd like, for the rest of the
meeting, or feel free to leave if you want to.
Next we have some consent— No, we don't have consent agreements this month. But we do have some findings of fact, conclusions of law and order for vote and approval.

I would ask that I have a motion to approve the findings of fact listed in our agenda today. They are Crittendon versus Mary Sprigler and Lockwood Apartments; Santos versus Precision Properties, LLC, Paul Primavera & Associates, Inc., and Bennett Built, Inc.; Miller and Miller versus Elkhart Mobile Home Park, Richard Walker, and Jeff Makimaa; FHC versus Precision Properties, LLC, Paul Primavera & Associates, Inc., and Bennett Built, Inc.; Stewart versus Gerhard Odenthal Realty.

A motion to approve the findings of fact.

MR. BAYNARD: So moved.

MR. CARTER: Second.

MS BLACKBURN: All in favor?

Anyone opposed?

Thank you.

Other Orders: We did hear oral argument today in the case of Nguyen versus Delphi. Nguyen spells his name N-G-U-Y-E-N.

What is your recommendation with regards to that case?

MR. CARTER: Madam Chair, I move that we continue the case until the other Commissioners have an opportunity to
review it before we vote on it.

    MS BLACKBURN: All right. And do I hear a second
to that recommendation?

    MR. RAMOS: Second.

    MS BLACKBURN: And all in favor?

    Thank you very much.

    There are a number of cases that the director
and/or deputy director have decided are no probable cause
cases. There are thirty-three of them, and they have been
dismissed.

    We have eleven cases that we recommend be dismissed
due to lack of jurisdiction. May I have motion to approve
those?

    MR. CARTER: So moved.

    MR. BAYNARD: Second.

    MS BLACKBURN: All in favor?

    Anyone opposed?

    And a failure to cooperate or to locate in two
cases. May I have a motion to dismiss those?

    MR. BAYNARD: So moved.

    MR. RAMOS: Second.

    MS BLACKBURN: All in favor?

    Anyone opposed?

    And cases withdrawn due to settlement, consent
agreement, or mediation agreement number seventeen. May I
have a motion to dismiss those?

    MR. RAMOS: So move.

    MR. CARTER: Second.

    MS BLACKBURN: All in favor?

    Anyone opposed?

    Thank you.

    It's hereby moved that the finding of probable cause in the following cases be approved: They are Jessie versus ReMax Leaders; Richards versus Muncie, Indiana; Wilkerson versus ReMax Leaders. May I have a motion to approve those?

    MR. RAMOS: So moved.

    MR. CARTER: Second.

    MS BLACKBURN: All in favor?

    Anyone opposed?

    Next we will have reports from commissioners on complaint appeals. And we'll start with Commissioner Baynard.

    MR. BAYNARD: Yes, Madam Chair.

    In the case of Raves versus Miller Carpet, I would recommend to the Commission that we uphold the director's finding of no probable cause.

    MS BLACKBURN: May I have a motion to accept that recommendation?

    MR. CARTER: So moved.
MS BLACKBURN: And a second.

MR. RAMOS: Second.

MS BLACKBURN: All in favor?

Anyone opposed?

Thank you.

Commissioner Carter.

MR. CARTER: In the cases of Egwunyenga versus Carrier Corporation and Hammonds versus AMA Property Management, I recommend we sustain the no probable cause finding of the director.

MS BLACKBURN: May I have a motion to accept that recommendation?

MR. BAYNARD: So moved.

MR. RAMOS: Second.

MS BLACKBURN: All in favor?

Anyone opposed?

Next, Commissioner Garcia. Do we have a report?

MS DOBBINS: No.

MS BLACKBURN: Not yet.

I will then assign to commissioners cases to review on appeal.

Commissioner Baynard, Miller versus German Township Water District.

Carter, Kouroupis versus Indy Office Solutions, LLC.
Commissioner Ramos, Czanderna versus Terre Haute Housing Authority.

And I will review Hoffman versus Cunningham Optical, Hoffman versus Lenscrafters.

Next on our agenda we will have an administrative update and the director's report.

MR. SCOTT: Thank you, Chair Blackburn.

As you know, we had the Martin Luther King, Jr. Indiana Holiday Celebration on January 12, and we had a very well-attended program. We had approximately eight hundred to a thousand individuals in attendance in the rotunda of the State Capitol. And it was really just a wonderful program.

And what has already been distributed to the Commissioners are reports that appear in the local media regarding that program. We were very pleased. The Governor and Lt. Governor both were in attendance. We also had a number of guests from throughout the community who attended. And we were very, very pleased with the turnout.

And in fact I recall walking into the rotunda around eleven o'clock with Debra and seeing this sea of chairs and remarking to her, "If half of them are full by the time the program starts, I will be happy." Well, amazingly, all of the chairs were occupied at that point in time, and so it really was a good program.

But more important than a good program was the
opportunity to discuss, remember, recall, and acknowledge the legacy that Dr. King has provided for this nation.

So that was a very good program.

And according to members of the staff, it was the highest-attended program that the Commission and the Martin Luther King, Jr. Indiana Holiday Commission have sponsored.

And then also I just wanted to report that I had the wonderful occasion of traveling to Terre Haute and giving a keynote address during the holiday luncheon by which they observed the King Holiday. There was a very good turnout, and a lot of people expressed an interest in the Commission and passing their regards to the Commission, and hoping that they have an opportunity to either attend a meeting here or discuss other matters.

And I think that would cover my report. I believe the deputy director has a report as well.

MS Cde BACA: Regarding the case processing and statistical report, you have that in your packet. We had--We currently have pending actually four hundred and ninety-seven cases as of the case inventory, which is a discrepancy from the database inventory that you have on your report. That has four hundred and eighty-six as the cases, the number of open cases that we have. There are eleven additions that have not yet been added to that database. So I will make sure that on next month's report that is rectified.
With regard to the ADR units, out of the eleven cases that were mediated during the month of December we had eight successful settlements, and during the year 2005 we had eighty-five complaints that were settled through mediation.

That is it for my report.

MS BLACKBURN: Excellent.

I want to make note of something that came to our attention in the second session. And that is the reduction in the number of appeals that probably has resulted from a more extensive response to complainants in explaining adequately to them the reasons why their cases have not risen to the level that this Agency can seek probable cause for them and defend probable cause for them. And I want to compliment all who have contributed to that eventuality, because I think that it speaks well of our high level of diligence in communicating with the public.

So thanks very much for that.

I want to ask if there are any announcements prior to closing the meeting.

We are adjourned.

[The meeting was adjourned at 3:40 p.m.]
STATE OF INDIANA ]
] SS:
COUNTY OF MARION ]

CERTIFICATE:

I, DAVID R. OESTERREICH, the undersigned Court
Reporter and Notary Public residing and maintaining offices
in the City of Indianapolis, Indiana, do hereby certify:

That at the time and place described above in this
transcript, I reported to the best of my ability in machine
shorthand all of the words spoken by all parties in
attendance during the course of the subject proceedings,
including objections, if any, made by all counsel present;

That I later reduced my shorthand notes into the
foregoing typewritten transcript form, which typewritten
transcript is a true record of the testimony and/or
statements given by those individuals indicated herein;

That I am not a relative or employee or attorney or
counsel of any of the parties, nor am I a relative or an
employee of such attorney or counsel, and that I am not
financially interested in this action.

IN WITNESS WHEREOF I have affixed my Notarial Seal
and subscribed my signature below on this 31st day of

[Seal]

David R. Oesterreich
Notary Public
County of Residence: Marion
My Commission expires on August 28, 2008