

1 BEFORE THE STATE OF INDIANA
2 CIVIL RIGHTS COMMISSION
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4
5 PUBLIC MEETING OF JANUARY 23, 2015
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9 PROCEEDINGS
10 in the above-captioned matter, before the Indiana
11 Civil Rights Commission, Alpha Blackburn,
12 Chairperson, taken before me, Lindy L. Meyer,
13 Jr., a Notary Public in and for the State of
14 Indiana, County of Shelby, at the Indiana
15 Government Center South, Conference Center,
16 Rooms 1 & 2, 402 West Washington Street,
17 Indianapolis, Indiana, on Friday, January 23,
18 2015 at 1:04 o'clock p.m.
19 - - -
20
21 William F. Daniels, RPR/CP CM d/b/a
22 ACCURATE REPORTING OF INDIANA
23 12922 Brighton Avenue
 Carmel, Indiana 46032
 (317) 848-0088

1 APPEARANCES:

2 COMMISSION MEMBERS:

- 3 Alpha Blackburn, Chairperson
- David C. Carter
- 4 John E. Garcia
- Michelle Gough McKeown
- 5 Ahmed Young

6 INDIANA CIVIL RIGHTS COMMISSION

- 7 By Jamal Smith, Director/Secretary
- Indiana Government Center North
- 8 100 North Senate Avenue, Room N103
- Indianapolis, Indiana 46204
- 9 On behalf of the Commission.

10 OTHER COMMISSION STAFF PRESENT:

- 11 Noell Allen
- 12 Pamela Cook
- Debbie Rincones-Chavez

14 PRESENT FOR ORAL ARGUMENT:

- 15 Frederick S. Bremer
- John S. (Jay) Mercer

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1 1:04 o'clock a.m.
2 January 23, 2015

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3 CHAIRPERSON BLACKBURN: Good
4 afternoon. The Indiana Civil Rights Commission
5 is now called to order, and we have indeed a
6 quorum, and included are two new Commissioners
7 whom I wish to welcome to the Commission today.
8 They are Comm. Michelle McKeown and Ahmed Young.

9 And before we go further, I would love it
10 if the two of you would like to say a word or two
11 about anything you'd like, preferably about your
12 background and your expectations of your new
13 appointment.

14 COMM. YOUNG: Well, I'll keep this
15 brief. A former educator, current practitioner.
16 I practice law in litigation, education law,
17 health care law, and I'm just excited to continue
18 to serve, so --

19 CHAIRPERSON BLACKBURN: Great. And
20 you are from Indiana?

21 COMM. YOUNG: Originally from
22 Washington, D.C., moved to Indiana many moons
23 ago, but I now consider Indiana home, so --

1 CHAIRPERSON BLACKBURN: Excellent.

2 Welcome.

3 COMM. YOUNG: Thank you.

4 CHAIRPERSON BLACKBURN: Michelle?

5 COMM. MCKEOWN: I am the general

6 counsel for the Indiana Charter School Board.

7 So, in addition to being an attorney, I also have

8 a Ph.D. in education policy, and I have done a

9 lot of research and publishing in areas related

10 to disabilities and vulnerable populations. I'm

11 really looking forward to the opportunity to work

12 with you all.

13 CHAIRPERSON BLACKBURN: Great. Well,

14 we all welcome you, and having this stylish

15 decorum, complete with you Commissioners, I want

16 to go to approve the minutes that you received.

17 I would entertain a motion for approval.

18 COMM. CARTER: So moved.

19 COMM. GARCIA: Second.

20 CHAIRPERSON BLACKBURN: All in favor?

21 COMM. YOUNG: Aye.

22 COMM. CARTER: Aye.

23 COMM. MCKEOWN: Aye.

1 COMM. GARCIA: Aye.

2 CHAIRPERSON BLACKBURN: Aye.

3 Anyone opposed?

4 (No response.)

5 CHAIRPERSON BLACKBURN: Thank you.

6 And now, the Executive Director's Report.

7 MR. SMITH: Well, good afternoon,

8 everyone.

9 CHAIRPERSON BLACKBURN: Good

10 afternoon.

11 COMM. GARCIA: Good afternoon.

12 MR. SMITH: That speaker is awesome.

13 That's good enough for everything.

14 I would like to echo our Chairwoman's

15 welcome to our new Commissioners. Excited about

16 having the change in the new year. Happy New

17 Year to everyone. This is the first official

18 Commission meeting for the Indiana Civil Rights

19 Commission in 2015, so Happy New Year to you all,

20 and we have an exciting 2015 planned, so a lot of

21 activity for the agency.

22 Predating this meeting, one of the things

23 that we had, just more of probably an overview

1 for all of the Commissioners, is some new info
2 for the new Commissioners; right? So, the ICRC
3 is underneath that umbrella of our new bulk of
4 Commissions, one of which is the MLK Commission,
5 whose -- who owns the mandate of, among some
6 other things, putting on the state's MLK
7 celebration every year.

8 This year it took place last week, and
9 we're excited to report that that went off very,
10 very well. There was a Youth Summit that was
11 part of the ceremony in the Statehouse, to where
12 we had over 350 kids participate, so we were
13 excited about that. We had kids from all over
14 the state, so we're excited to report that.

15 And they also took part in the celebration
16 in the Statehouse, so east it's always warming to
17 have the young people participate in all of the
18 grown-folk activity that tends to happen that the
19 young folk don't typically get an opportunity to
20 take advantage of, so we're excited about that.

21 We sandwiched that obviously with the Day
22 of Service that we do on Friday, which was held
23 that Friday the 16th on MLK Street here in

1 Indianapolis, in conjunction with Indiana Black
2 Expo, the Indianapolis Recorder, the City of
3 Indianapolis, the city parks, Watkins Park
4 specifically, who houses that, the Flanner House
5 and the MLK revitalization project -- or
6 organization.

7 So, we were excited to pull that off.
8 That was exciting. We had over 50 volunteers.
9 We were able to do quite a few things in the
10 community that morning and afternoon. The
11 Governor came out, Gary Brackett, former player
12 for the Colts, came out to support.

13 So, it was a win-win all of the way
14 around. We were doing some things in the
15 community, as we have been doing for the past few
16 years, and it was highlighted obviously by the
17 ceremony that Thursday, which was in the
18 Statehouse, and we gave some awards away to some
19 folks around the state who have been doing some
20 great work. So, I wanted to report that and make
21 sure that you guys were aware of that as well.

22 I ask if you've had an opportunity to take
23 a look at the Financial Report, which should have

1 been provided in the packet, and if there are any
2 questions, I will entertain those at this time.

3 (No response.)

4 MR. SMITH: Hearing none, I'll just
5 report that we are -- financially, the agency is
6 doing extremely well, actually, as it relates
7 to -- and the Commissioners will hear a lot about
8 this -- our work share agreements with the Feds,
9 those being HUD and EEOC. We are in good shape
10 with both of those projects.

11 In fact, the EEOC contract, which we are
12 actually waiting on them to send them to us, we
13 are more than two-thirds of the way done with
14 that contract, with many, many months to finish,
15 so we're more than excited. And the housing
16 contract, which would end April 30th, if I'm not
17 mistaken -- or June 30th, I'm sorry -- we are
18 more than two-thirds of the way completed with
19 that, and we'll probably finish with 50 percent
20 more than we were contracted to complete for that
21 contract, so we're excited about that as well.

22 So, all cylinders are running well.

23 Forecasting a lot of our outreach, we have coming

1 up, as many of you know, April is Fair Housing
2 Month, so we will be extremely busy in the month
3 of April. Unlike previous years, we will be
4 hosting two Fair Housing Conferences this year,
5 one in Indianapolis, being kind of mandated by
6 the relationship that we have with HUD.

7 The other one we're going to have in
8 Southern Indiana, and we're partnering with some
9 of the housing agencies in Southern Indiana. And
10 so, we will be in French Lick to host that event,
11 and we're excited to have a good chunk of
12 Southern Indiana coming to participate in that as
13 well.

14 At said event in Indianapolis, we will
15 also be unveiling the results from our statewide
16 testing program that we implemented in 2014. I
17 want to re-emphasize the fact that this testing
18 program that we did is unprecedented. And
19 although there are a few testing programs
20 throughout the country, most of which revolve on
21 a local basis, there is not one to date that
22 we've been able to identify that does fair
23 housing or housing -- or testing for housing

1 discrimination on a statewide basis.
2 So, the agency will be the first of its
3 kind to do so, so we're excited about the results
4 that will come out of it. We're also excited
5 about the opportunity to kind of lead the field
6 in that area, and excited about, you know, what
7 the next steps will be.

8 In doing so, as a part of that conference,
9 we want to make sure that we invite a lot of our
10 counterparts in town, so, you know, the states'
11 Commissions in Ohio and Illinois and Michigan, as
12 well as far out as Maryland and Iowa will more
13 than likely be in town, so we encourage all of
14 you guys as Commissioners to carve that out.

15 We'll make sure that we get those dates on
16 your calendars and have someone send that out to
17 you as soon as possible so you can make note of
18 that as well. That will be in April, and that's
19 the one in Indianapolis.

20 So, any questions so far about any of that
21 outreach?

22 CHAIRPERSON BLACKBURN: I am
23 curious --

1 MR. SMITH: Yes, ma'am.

2 CHAIRPERSON BLACKBURN: -- to know
3 what -- on the 15th -- the 16th, when you worked
4 on MLK --

5 MR. SMITH: Yes.

6 CHAIRPERSON BLACKBURN: -- Day, what
7 specifically did you do in the community? You
8 said you were able to do a number of things with
9 the volunteers. What did you do?

10 MR. SMITH: So, a couple of projects.
11 One is -- one of our partners is the Flanner
12 House, which is, if you've been in the area,
13 located just adjacent to Watkins Park, the park
14 there, and we were able to go in and do some
15 painting projects for the Flanner House and going
16 in and helping clean up and do some things
17 inside.

18 We also do some things just outside in the
19 neighborhood there, 29th Street down to, I think,
20 24th Street, and we'll go down the street there,
21 we'll pick up trash. There was no snow this
22 year, so we didn't have to shovel like we've done
23 in previous years. We go back and pick up trash,

1 just cleaning the roadway and the sidewalks and

2 the like, from the park all of the way down the
3 few blocks there.

4 We also went to a few of the elementary
5 schools in that neighborhood, School 42 and 29,
6 if I'm not mistaken, and did some -- they had a
7 food drive and some clothing donations, and we
8 went in and kind of separated the food and the
9 clothing and prepared them for the kids. And
10 then a group of our volunteers actually went in
11 to read to some of the elementary kids that day,
12 so we were excited to do that as well.

13 COMM. YOUNG: Will there be efforts
14 to maintain a presence in the neighborhood after
15 MLK Day and moving forward?

16 MR. SMITH: Say that one more time.

17 COMM. YOUNG: Will there be efforts
18 to that place to maintain a presence?

19 MR. SMITH: Well, maintaining the
20 presence is interesting. We'll -- yes and no.
21 So, yes in the idea that the agency looks to
22 continuously be out, and not just that community,
23 but, you know, keeping in mind we are a state

1 agency, so, you know, we try to get out into
2 communities all around the state.

3 And ideally what we like to do is, in
4 conjunction with those projects, become partners
5 with people that we do the projects for, and so
6 that -- as they have programs and things
7 throughout the year, that they keep us in mind,
8 so that we have an opportunity to then go back
9 and do some additional things throughout the
10 year. So, not necessarily from a branding
11 standpoint, but to have the agency --

12 COMM. YOUNG: Uh-huh.

13 MR. SMITH: -- continuously involved
14 and integrated into that community, then the
15 answer to that is yes.

16 And then I'll note that I've had the
17 opportunity, obviously on behalf of the agency,
18 to staff -- the Governor was over at Gleaners
19 Food Bank, and we did some volunteer work over
20 there that day as well, so that was good.

21 That's all I have on that. Any other
22 questions as it relates to any of that outreach
23 so far?

14

1 (No response.)

2 MR. SMITH: Actually, you should have

3 the event details in your packets, and I want to
4 make note of the Fair Housing Conferences on the
5 13th and the 14th of April, which will be the one
6 held in Indianapolis, and then April 21st
7 and 22nd, which will be, like I said, the one
8 that we will host in Southern Indiana in French
9 Lick, Indiana.

10 And we've built the calendar out. We've
11 got events all throughout the year, and it will
12 continue to grow as time goes along, so I would
13 say keep a really keen eye on the list of events.
14 If it kind of falls into your bag or we're in
15 your part of the state, we encourage you guys, if
16 at all possible and it lends itself to it, to
17 come out and take part.

18 We've got some pretty cool, interesting
19 things, from the Fair Housing Conferences to a
20 partnership we have with the Indianapolis
21 Indians, where we host the Civil Rights Game in
22 August, which is a great opportunity for us to
23 tap into what we consider to be a different

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1 segment of a demographic that we don't normally
2 get a chance to speak to, so we're excited about
3 that as well. So, just keep an eye on that.

4 The other piece is: Always be mindful of
5 the Cultural Commissions, because they as well
6 have a list of initiatives that they put on to
7 further their objectives. One of the examples in
8 April as well will be the Black Barbershop
9 Initiative that is put on by the Social Status of
10 Black Males, and we're excited to have that going
11 into -- I want to say its fifth or sixth year as
12 well.

13 So, a number of opportunities to be in the
14 Indiana community and as part of the Indiana
15 Civil Rights Commission to kind of give back and
16 sow that seed. So, we're excited.

17 Any other questions?

18 CHAIRPERSON BLACKBURN: Any questions
19 or comments?

20 (No response.)

21 CHAIRPERSON BLACKBURN: We're very
22 excited about the work you're doing.

23 MR. SMITH: Thank you much.

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1 CHAIRPERSON BLACKBURN: Great.

2 MR. SMITH: Well, hearing none, I

3 will -- that will conclude the Executive

4 Director's Report.

5 CHAIRPERSON BLACKBURN: Great.

6 We have some old business to take care of.

7 We have oral arguments, and the case is Aleesha

8 Bullock versus Cardinal Ritter High School, Inc.

9 Would the participants in this oral argument

10 today please come forward and introduce

11 yourselves at the microphone?

12 MR. MERCER: Good afternoon. My name

13 is Jay Mercer. I'm an attorney from Mercer

14 Belanger. I'm representing Ritter High School.

15 MR. BREMER: Frederick S. Bremer,

16 staff attorney for the Indiana Civil Rights

17 Commission, here for Aleesha Bullock.

18 CHAIRPERSON BLACKBURN: Okay. Is

19 anyone other than the two of you going to

20 testify --

21 MR. MERCER: No.

22 CHAIRPERSON BLACKBURN: -- or give

23 statements?

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1 MR. BREMER: No.

2 CHAIRPERSON BLACKBURN: No? Then I

3 would like the two of you to agree to 15 minutes

4 for your presentation each, ten minutes for

5 rebuttal, and we'd like to allow a few minutes
6 for Commissioners to pose any questions that
7 still remain in their minds regarding the case.

8 This action is being brought by Cardinal
9 Ritter, then you would like --

10 MR. MERCER: Yeah, a motion for a
11 change of judges.

12 CHAIRPERSON BLACKBURN: The motion is
13 from you, Mr. Mercer; then would you present
14 first?

15 MR. MERCER: I will. Thank you.

16 Members of the Commission, I'm here today
17 to argue a motion for change of judge, but before
18 I do so, I want to review with you the procedural
19 history of this case. It's quite extensive. Six
20 years ago this month, Maureen -- Myrna Bullock
21 filed a civil rights complaint on behalf of her
22 daughter, Aleesha, alleging that Ritter High
23 School discriminated against her because of her

1 race because she was not selected for the girls
2 basketball team at Ritter High School.

3 Ritter responded to the complaint denying
4 the charges, and Deputy Director Joshua Brewster

5 at that time entered a finding that probable
6 cause does not exist to believe that unlawful
7 discrimination occurred.

8 Myrna Bullock then initiated an appeal to
9 the Commission. Ritter was never served with
10 that. Two years later, Ritter received a notice
11 of intent to reverse the Commission's finding --
12 or the Commissioner's finding, and at that time
13 we did receive notice, but we were not aware that
14 an appeal had been initiated at that time.

15 Eventually this matter proceeded to trial, in
16 May of 2012. The hearing was held before
17 Administrative Law Judge Lange, and before he
18 issued a ruling in that case, he retired.

19 Then on July 2nd, 2013, the Commission
20 appointed Judge Allen as ALJ for the Civil Rights
21 Commission. Soon after appointment, that same
22 month just a couple of weeks later, on July 19th,
23 Judge Allen filed proposed findings of fact and

1 conclusions of law and found that Ritter had in
2 fact violated the Civil Rights Act, and at that
3 point in time we then appealed that to Commission
4 and we had oral arguments on that before this
5 Commission.

6 On the -- December 31st of 2013, the
7 Commission adopted Judge Allen's proposed
8 findings of fact, but amended it and reduced the
9 award from \$75,000 down to \$25,000. At that
10 time, Ritter initiated an appeal to the Indiana
11 Court of Appeals, and in its opinion dated
12 September 5th, 2014, the Court of Appeals
13 reversed and remanded the case to the Civil
14 Rights Commission for a new hearing.

15 In its order, it made the following
16 findings: It said that Judge Allen was weighing
17 evidence that she did not hear in determining
18 credibility of the witnesses she had not seen,
19 because she only reviewed the transcript. The
20 Court of Appeals found that Judge Allen
21 erroneously determined that Ritter proffered an
22 explanation that Bullock did not get along with
23 other players as a nondiscriminatory purpose for

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1 cutting Bullock.

2 The Court also found that Judge Allen
3 acted contrary to the Constitutional rights of
4 the parties and without observance of the
5 procedures required by law, primarily hearing the

6 case herself and making those findings. As a
7 result of that, these deficiencies, the Court of
8 Appeals remanded the case for a new trial.

9 At this time, the case has been assigned
10 to Judge Allen as the Administrative Law Judge to
11 hear the case. We have asked for a change of
12 judge, and we've asked for a change of judge
13 under the controlling law, which is Indiana
14 Code 4-21.5-3-8.5(a).

15 The statute provides that an agency may
16 share an administrative law judge with another
17 agency: One, to avoid bias, prejudice, interest
18 in the outcome, or another conflict; or, two, if
19 a party requests a change of administrative law
20 judge; or three, ease of scheduling of
21 difficulties; and four, for any other good cause.

22 That statute does not require that we show
23 any actual bias or prejudice. It only requires

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1 that we ask, or we show other good cause. The
2 statute applies to the Commission by virtue of
3 IC 22-9-1-18, which mandates the application of
4 that statute to the Civil Rights Commission.

5 While the Complainant in her response
6 claims that the statute is totally discretionary,

7 they cite no authority for that, so I'm not
8 really sure where that argument comes from. This
9 is a claim not only supported without citation,
10 but it's just not supported by the statute
11 itself, because the Indiana Code 22-9-1-18
12 requires you to follow that rule.

13 Well, my initial response to the question
14 of should we have a change of judge is: Why not?
15 Shouldn't we have fresh eyes on this evidence?
16 We believe that, you know, everybody has internal
17 bias to be correct in their decision making. If
18 you've made a decision, and then you're told to
19 go back and remake the decision, you have some
20 sense that you want to support your prior
21 decision, and that's why when new trials are
22 recommended and bench trials are had, that's why
23 there's an automatic change of judge in civil

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1 cases.

2 According to Ms. Bullock, she says that if
3 we don't -- if the Commission allows for a change
4 of judge, there's a greater risk of delay. Well,
5 we've been going at it for six years. Frankly,
6 at this point it's not going to require an

7 expedited hearing in any event, because all of
8 the girls who played on that team have graduated
9 from college, they are dispersed around the
10 country, and we're going to have to travel to
11 take deposition testimony anyway. So, I don't
12 see this case going to trial any time for at
13 least eight, 12, maybe 14 months.

14 Second, they suggest that Judge Allen
15 possesses a special expertise in the adjudication
16 of the claims, but she was only on the job less
17 than 19 days when she reviewed the findings of
18 the transcript. I don't know what expertise that
19 she had at that time.

20 The third reason they say that you
21 shouldn't grant a change of judge is Judge Allen
22 has the advantage of hearing -- of already
23 hearing the evidence and exhibits. Well, that's

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1 exactly the reason we're asking for a change of
2 judge is because that she has a potential, not --
3 we don't say she's biased, we're not saying she's
4 prejudiced, but there is a potential of wanting
5 to show that she was right in her first decision.

6 This should be a trial de novo. Ritter
7 believes that her possession of the prior

8 evidence or prior information or preconceived
9 notice of this could in fact bias her final
10 decision.

11 And finally, Ms. Bullock argues that the
12 use of another ALJ risks inconsistency and
13 predictability in the analysis, and I don't
14 understand that at all. If an ALJ is an ALJ is
15 an ALJ, they should all be impartial, and I don't
16 know why there would be a risk of inconsistency
17 or predictability of the analysis if another ALJ
18 would be utilized, but we can let Mr. Bremer tell
19 you what he means by that.

20 We're not here to suggest in any way that
21 Judge Allen is biased against my client. We're
22 just suggesting that common sense and common
23 understanding of how people work is there's a

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1 potential that she'll want to show that she was
2 right in the first instance when she reviewed the
3 evidence, and for that reason, I think new eyes
4 need to be set on it.

5 And in fact, the Commission has its own
6 rules to protect against that. If you'll recall,
7 Deputy Director Brewster initially entered a

8 finding that probable cause did not exist in this
9 case, but then they asked for it to be reviewed
10 by another Commissioner, new eyes on it.

11 At that time, it was transferred to the
12 Commissioner, who reviewed it and recommended
13 that probable cause did exist. So, the whole
14 idea of that process of sending it to a member of
15 the Commission to review it after you've already
16 had that review process is to have fresh eyes on
17 it, and that's exactly what you did, and that's
18 what we suggest should happen here.

19 The last thing is: I don't understand why
20 the Commission would not want to grant this
21 motion for a change of judge when this issue
22 could be entirely avoided of creating an
23 appealable issue, because this will be an

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1 appealable issue in this case, and we can avoid
2 it right now by assigning a new ALJ.

3 Thank you.

4 CHAIRPERSON BLACKBURN: Thank you
5 very much.

6 MR. BREMER: The statutory basis for
7 getting an administrative law judge from an
8 agency is discretionary. The language in the

9 statute is such that it says an agency may share
10 an administrative law judge with another agency
11 to avoid all of these different consequences.
12 "May share" as quantitatively different from
13 "shall share." There is not a mandate in this
14 language.

15 There are five reasons the Complainant
16 opposes having a different administrative law
17 judge appointed in this case. The first has to
18 do with the decision of the Indiana Court of
19 Appeals in looking at this situation, how it was
20 phrased. There was no indication from that Court
21 that -- of any belief that this -- Judge Allen
22 was biased in any form against the Cardinal
23 Ritter High School.

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1 Also, there's no mandate indicated by that
2 decision, no directive that the Commission should
3 consider having a different administrative law
4 judge determine this case.

5 The third reason is that the learning
6 curve, the learning curve as to the substantive
7 law regarding the trial of discrimination cases
8 before the Indiana Civil Rights Commission. We

9 are talking about borrowing people,
10 administrative law judges, from other agencies in
11 the State of Indiana that do not adjudicate the
12 unique issues that are determined by this
13 administrative law judge, Judge Allen, and by --
14 ultimately by this Commission.

15 And also, it's a learning curve as to the
16 substance of the case. It's been indicated here
17 there's been a long history. That's true. Judge
18 Allen has personally reviewed the entire
19 transcript of the original hearing and all of the
20 exhibits. There were testimonial exhibits and
21 depositions that she had to review, so there's a
22 lot of time that's been devoted to this. If you
23 introduce a new administrative law judge into

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1 this process, that individual will have to
2 overcome that learning curve.

3 The final reason is that we have
4 safeguards to take care of the concerns of
5 Cardinal Ritter High School. The concern is that
6 the -- that there won't be fresh eyes, there
7 won't be a fresh perspective. As you know, the
8 recommended decisions of administrative law
9 judge -- judges -- are subject to review by the

10 full Commission upon the filing of objections by
11 either party.

12 In this case, we have discovered today
13 that we're certainly going to have two different
14 Commissioners, who happen to be attorneys, who
15 are going to be involved in -- ultimately in any
16 new decision that would be issued on the
17 recommendation of Judge Allen.

18 As far as saying that there should be a
19 hearing de novo, I think it's certainly strange
20 that whoever the Commission says should retry
21 this case, that that person should operate in
22 total ignorance of sworn testimony that's already
23 been given in this case, and not be able to refer

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1 to that, in addition to the live testimony. The
2 Indiana Court of Appeals was critical of Judge
3 Allen not having the benefit, on credibility
4 issues, of access to actually seeing the people,
5 saying things that would turn on believing one
6 person or another.

7 For all those reasons, the Complainant
8 does ask that the Commission refrain from
9 exercising its discretion to involve an

10 administrative law judge who is not ordinarily
11 involved in the types of issues that are
12 determined by this Commission.

13 CHAIRPERSON BLACKBURN: Would you
14 repeat that last statement, the last reason you
15 gave?

16 MR. BREMER: The last reason is that
17 fresh eyes, dealing with that, we have
18 Commissioners here who ultimately are responsible
19 for reviewing the decision of the administrative
20 law judge, and to make a critical determination
21 on objections that surely Cardinal Ritter would
22 file to any decision that would be favorable to
23 Ms. Bullock.

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1 And what I'm saying is we have two new
2 Commissioners, even who have legal background and
3 could bring to bear, to a great degree, the fresh
4 eyes that counsel is wanting to be sure is
5 involved in this case in the future.

6 CHAIRPERSON BLACKBURN: Okay. Thank
7 you.

8 Mr. Mercer, do you have any --

9 MR. MERCER: Just briefly.

10 CHAIRPERSON BLACKBURN: -- rebuttal

11 statements to make?

12 MR. MERCER: Thank you.

13 Well, the Court of Appeals said we should

14 have a de novo trial, so that's what we need to

15 have, and if a de novo trial means you can

16 consider prior evidence from another case in a

17 decision that the Court has found flawed, and in

18 fact found that it violated my client's

19 Constitutional rights, I think we're going down

20 the wrong path again.

21 The whole idea of a new trial is to have a

22 new trial, and that's what we're going to have to

23 do, and I don't believe any -- sure we'll be

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1 offering the same evidence -- the facts haven't

2 changed -- but the presentation of that evidence

3 is going to be part of that new trial, and using

4 prior knowledge is not part of that and cannot be

5 used as part of that hearing.

6 CHAIRPERSON BLACKBURN: Do you have

7 any further statements to make?

8 MR. BREMER: There's a great deal of

9 latitude in the administrative process of

10 adjudications administratively by agencies such

11 as this. Holding the Commission strictly to
12 having a new trial without any ability to compare
13 even what was said under -- by sworn testimony by
14 the same people who are testifying in this case
15 is something that's -- would seem to be an
16 unusual thing for the administrative context.

17 The standards for review of what an
18 administrative agency can do that is okay are
19 greatly relaxed from what you have in an appeal
20 from a trial court decision.

21 CHAIRPERSON BLACKBURN: Thank you
22 very much.

23 Are there any questions from Commissioners

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1 regarding the decision before you?

2 (No response.)

3 CHAIRPERSON BLACKBURN: Comments?
4 Questions?

5 COMM. MCKEOWN: Does either counsel
6 have case law on point on whether an
7 administrative law judge on a de novo trial may
8 refer to the prior record?

9 MR. BREMER: I have none to offer.

10 MR. MERCER: And I researched that
11 issue and I was not able to find any case law.

12 COMM. MCKEOWN: Thank you.
13 COMM. GARCIA: So, the case has been
14 going on so long, I can't remember my initial
15 thoughts. I think right now I need an executive
16 summary -- and then again, I don't know if I'm
17 allowed to do that -- of what's transpired. And
18 then I'd also like a copy of the Court of Appeals
19 decision, just to have that in hand, and here
20 again, I'm asking that, but I don't know if I'm
21 allowed to even look at that.

22 CHAIRPERSON BLACKBURN: Is there an
23 opinion from staff regarding that request?

32

1 JUDGE ALLEN: A copy of the Court of
2 Appeals decision can be supplied to the
3 Commission, and you can take the matter under
4 advisement and come back with an answer after
5 review of that decision.

6 COMM. YOUNG: Just for my own
7 edification, what is the process for requesting a
8 new ALJ, with turnaround time, and what agencies?
9 Do they request them from each of the state
10 agencies outside of ICRC and go from there?

11 JUDGE ALLEN: This is a very new

12 process by which there are no rules for
13 procedures, if you will, so in anticipation of
14 this, I would gather you would remand the matter
15 back to the Civil Rights Commission.

16 The Deputy Director or General Counsel
17 would put notice out to ALJ's or to the Attorney
18 General's Office, and perhaps even the Attorney
19 General's Office can provide a recommendation for
20 an ALJ to the Civil Rights Commission, and then
21 it would be upon the Commission to actually
22 appoint a special ALJ for this particular case.

23 CHAIRPERSON BLACKBURN: Let me ask

33

1 for clarification. Was your question whether or
2 not an administrative law judge not associated
3 with the ICRC could be or should be appointed?
4 Was that your question?

5 COMM. YOUNG: No, my question was
6 more general; what's the overall process for
7 requesting and receiving a new ALJ?

8 CHAIRPERSON BLACKBURN: Okay. And my
9 response to your comments regarding putting out a
10 call to any ALJ is that I think that's not what
11 we are suggesting or what is suggested by the
12 Complainant here, unless -- I mean the

13 Respondent's attorney -- unless he wants to speak
14 otherwise.

15 My understanding was that your request was
16 that an ALJ other than Ms. Allen be appointed to
17 represent and read the case going forward for its
18 retrial.

19 MR. MERCER: The Court of Appeals has
20 ordered us to have a new trial, so we are asking
21 that a new administrative law judge be appointed
22 to conduct that trial and make the findings of
23 fact and conclusions of law.

34

1 CHAIRPERSON BLACKBURN: Period.

2 MR. MERCER: Period.

3 CHAIRPERSON BLACKBURN: Thank you.

4 COMM. GARCIA: Okay. I've got a
5 question, and both of you can respond to it. New
6 trial. She's heard testimony -- not testimony,
7 but she's read the transcripts. We've read the
8 transcripts. We've heard testimony. We've got
9 the ultimate decision. We get a new judge.

10 I've heard the testimony and I've read the
11 transcripts. I'm supposed to forget that and
12 help with a final decision, but she doesn't have

13 that choice because you don't want her to have

14 that choice? I don't get that.

15 MR. MERCER: Well.

16 COMM. GARCIA: I mean we both looked

17 at the test -- even if we didn't listen to the

18 testimony, we've looked at the transcripts, so

19 here again, in a final decision, I'm supposed to

20 forget all of that and just be objective --

21 MR. MERCER: I think when you --

22 COMM. GARCIA: -- regarding the new

23 trial?

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1 MR. MERCER: I think when you read

2 the Court of Appeals decision, I think it'll

3 become a little bit clearer to you the concerns

4 that they had, and one of them is that they found

5 that the evidence in the record was -- did not

6 support the finding that Ms. Bullock was removed

7 from the team -- well, let me look at the actual

8 language.

9 COMM. YOUNG: Can you provide the

10 citation for the Court of Appeals decision?

11 MR. MERCER: I don't have it with me,

12 but it says, "Judge Allen erroneously determined

13 that Ritter's proffered explanation that Bullock

14 did not get along with other players as a
15 nondiscriminating purpose for cutting Bullock."
16 So, the Court of Appeals looked at the
17 same evidence you looked at and looked at the
18 same evidence that Judge Allen looked at and said
19 you were wrong; okay? So, that's why they're
20 asking for a new hearing, and they're sending it
21 back for a determination of credibility and a
22 review of the evidence, and potentially new
23 evidence that will be brought in this case.

36

1 And certainly now that we know what the
2 Commission at least thought of the case, we have
3 other witnesses, because we're going to bring all
4 of the players in this time, not just two
5 players.

6 CHAIRPERSON BLACKBURN: Thank you
7 very much.

8 Are there any other questions?

9 (No response.)

10 CHAIRPERSON BLACKBURN: There being
11 none, I would ask that the request made by
12 Comm. Garcia be honored, if possible, that being
13 that our staff would prepare an executive summary

14 regarding the case; and two, that we have an
15 opportunity to review the Court of Appeals
16 ruling. Following that discussion and those by
17 these Commissioners, we'll decide whether or not,
18 and who, a new ALJ might be.

19 Are there any questions regarding that?

20 (No response.)

21 CHAIRPERSON BLACKBURN: There being
22 none, I thank you for appearing today, and you'll
23 be apprised of a decision.

37

1 MR. MERCER: Thank you for your
2 concerns.

3 CHAIRPERSON BLACKBURN: The gavel
4 feels good in the hand. We're not concluding our
5 meeting. Don't be confused.

6 Report by Commissioners on Complaint
7 Appeals, we'll start with Comm. Ramos, who's not
8 here.

9 Do you have a report regarding the case
10 which he reviewed?

11 MS. RINCONES-CHAVEZ: No, I do not.

12 CHAIRPERSON BLACKBURN: All right.
13 Thank you.

14 The case which I reviewed, Kyle McGann

15 versus Jasper Engines and Transmissions, I uphold
16 the finding of no probable cause, ask for a
17 motion to approve that recommendation.

18 COMM. CARTER: So moved.

19 COMM. GARCIA: Second.

20 CHAIRPERSON BLACKBURN: All in favor?

21 COMM. YOUNG: Aye.

22 COMM. CARTER: Aye.

23 COMM. MCKEOWN: Aye.

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1 COMM. GARCIA: Aye.

2 CHAIRPERSON BLACKBURN: Aye.

3 Anyone opposed?

4 (No response.)

5 CHAIRPERSON BLACKBURN: Thank you. I

6 want now to assign to Commissioners cases on

7 appeal. Kerri Allen versus Deardorf Properties

8 Management, Comm. Carter; Myekeal Smith versus

9 Prime Distribution Services, Comm. Garcia; and we

10 have two other, and I'm going to break you guys

11 in lightly and assign to Comm. Carter Samantha

12 Buikema versus Meyers Castle; and I'll review the

13 last case, Jackie Moody versus ConAgra Foods.

14 We have before the Commission the petition

15 to change judge in Aleesha Bullock, which I have
16 suggested should be done after Comm. Garcia and
17 the rest of the Commissioners have a chance to
18 adequately review the case.

19 Findings of Fact, there being none, nor
20 any Consent Agreements, are there any Public
21 Comments?

22 (No response.)

23 CHAIRPERSON BLACKBURN: Hearing none,

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1 let's go to Announcements. Are there any
2 announcements?

3 MR. SMITH: I do just want to make
4 note for -- and for the new Commissioners more
5 than anything, to make note of the list of
6 Commission dates for the entire year, and we will
7 always be -- barring some kind of catastrophe,
8 right, we will always be in this room, so this is
9 the official room, and those dates, lock them
10 into your calendar for 2015.

11 COMM. YOUNG: 1:00 p.m. start time?

12 MR. SMITH: 1:00 p.m. start time. We
13 will have an additional training in July?

14 JUDGE ALLEN: I think so.

15 MR. SMITH: In July, which will take

16 place at 11:00 a.m., so that will be similar to
17 today, where the training will begin at 11:00,
18 we'll have lunch, and then the Commission meeting
19 starts, begins at 1:00 p.m. But every other
20 meeting is just the Commission meeting, and that
21 will begin at 1:00.

22 COMM. GARCIA: I'd just like to note
23 that I like this arrangement. It's a lot better

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1 than when we were --

2 MR. SMITH: Thank you.

3 COMM. GARCIA: -- bumping into each
4 other.

5 CHAIRPERSON BLACKBURN: It's lovely
6 to be able to see people's faces. This is great,
7 without my having to do this (gestured).

8 MR. SMITH: It's been a long time --

9 COMM. GARCIA: We have to have more
10 harsh light on her, though.

11 (Laughter.)

12 MR. SMITH: It's been a long time
13 coming, a few changes. Thanks to Judge Allen and
14 Debbie for their assistance in getting all of
15 this done, and the mantra that I've been telling

16 them since we had our big staff meeting, our
17 all-staff meeting. The mantra for 2015 is to get
18 better; right? I'm telling everybody, "Get
19 better. Whatever you're doing, get better." So,
20 we try to take heed to that ourselves, and this
21 is one of those examples. So, thank you for
22 that.

23 COMM. CARTER: Will we have a

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1 seasonal exhibit on this table every time?

2 MR. SMITH: Working on that. We'll
3 get back to you.

4 That was all of the announcements.

5 CHAIRPERSON BLACKBURN: Great. All
6 right. No announcements from Comm. Carter?

7 COMM. CARTER: From me, announcement?

8 CHAIRPERSON BLACKBURN: Yes.

9 COMM. CARTER: Okay. Well, I'd like
10 to thank the staff who signed the get-well card
11 in my absence last month. I appreciated that.

12 CHAIRPERSON BLACKBURN: All right.

13 Great. And it's wonderful to see you up and
14 running again --

15 COMM. CARTER: Well I am.

16 CHAIRPERSON BLACKBURN: -- after your

17 surgery.

18 COMM. CARTER: Rolling, rolling on
19 the river.

20 CHAIRPERSON BLACKBURN: Right.

21 Okay. You have a list of the meetings for
22 the next year, and barring any notice to the
23 contrary, they'll hold firm.

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1 MR. SMITH: That's true.

2 CHAIRPERSON BLACKBURN: And I want to
3 apprise you of the fact that I think I was the
4 first to receive the Spirit of Justice Award.

5 MR. SMITH: The very first one?

6 CHAIRPERSON BLACKBURN: Uh-huh.

7 MR. SMITH: Really?

8 COMM. GARCIA: Congratulations.

9 MR. SMITH: That is awesome.

10 CHAIRPERSON BLACKBURN: I'll bring
11 you the picture.

12 MR. SMITH: I would love to have it.

13 CHAIRPERSON BLACKBURN: Okay. There
14 being no other announcements, the Commission
15 meeting is adjourned.

16 - - -
 Thereupon, the proceedings of

17 January 23, 2015 were concluded
at 1:50 o'clock p.m.

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned

3 Court Reporter and Notary Public residing in the

4 City of Shelbyville, Shelby County, Indiana, do

5 hereby certify that the foregoing is a true and

6 correct transcript of the proceedings taken by me

7 on Friday, January 23, 2015 in this matter and

8 transcribed by me.

9

10

11

Lindy L. Meyer, Jr.,

12

Notary Public in and

13

for the State of Indiana.

14

15 My Commission expires October 27, 2016.

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