

U.S. COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING

Friday, June 16, 2000

Washington, D.C.

The Commission convened in Room 540, YWCA Building, 624 9th Street, N.W., Washington, D.C., at 8:12 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON

CRUZ REYNOSO, VICE CHAIRPERSON

CARL A. ANDERSON, COMMISSIONER (Via Telephone)

CHRISTOPHER EDLEY, JR., COMMISSIONER

YVONNE Y. LEE, COMMISSION (Via Telephone)

ELSIE M. MEEKS, COMMISSIONER

RUSSELL G. REDENBAUGH, COMMISSIONER

VICTORIA WILSON, COMMISSIONER

RUBY G. MOY, STAFF DIRECTOR



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STAFF PRESENT:

KIMBERLEY ALTON
DAVID ARONSON
KIM BALL
TERRI DICKERSON
PAMELA A. DUNSTON
BETTY EDMISTON
MICHAEL FOREMAN
M. CATHERINE GATES
EDWARD HAILES, Acting General Counsel
GEORGE M. HARBISON
MYRNA HERNANDEZ
LISA M. KELLY
CAROLITA LITTLE
EMMA MONROIG
JENESSE NELSON
PETER REILLY, Parliamentarian
KWANA ROYAL
JOYCE SMITH
MARCIA TYLER
AUDREY WRIGHT
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

PATRICK DUFFY
CHARLOTTE PONTICELLI
KRISHNA TOOLSIE
EFFIE TURNBULL

A G E N D A

I.	Approval of Agenda.....	4
II.	Approval of Minutes of May 12, 2000 Meeting.....	5
III.	Announcements.....	5
IV.	Staff Director's Report.....	6
V.	Police Practices and Civil Rights in New York City Report.....	20
VI.	Future Agenda Items.....	31

P R O C E E D I N G S

1
2 CHAIRPERSON BERRY: The meeting will come to order. We have a
3 quorum.

4 I. Approval of Agenda

5 CHAIRPERSON BERRY: The first item on the agenda is the approval
6 of the agenda. Can we get a motion to approve the agenda?

7 VICE CHAIRPERSON REYNOSO: So moved.

8 COMMISSIONER LEE: Madam Chair, can I add an agenda item?

9 CHAIRPERSON BERRY: What is your suggestion?

10 COMMISSIONER LEE: I just wanted to have a discussion on the
11 Hawaii forum matter.

12 CHAIRPERSON BERRY: We're going to have that under the Staff
13 Director's report since it's an issue that we have discussed before,
14 okay?

15 COMMISSIONER LEE: Okay, Madam Chair.

16 CHAIRPERSON BERRY: All right, are there any other --could I get a
17 second? I didn't hear a second.

18 COMMISSIONER WILSON: Second.

19 CHAIRPERSON BERRY: Are there any other suggestions?

20 [No response.]

21 CHAIRPERSON BERRY: All in favor indicate by saying aye.

22 [A chorus of ayes.]

23 CHAIRPERSON BERRY: So ordered.

24 Opposed, no?

1 [No response.]

2 CHAIRPERSON BERRY: So ordered.

3 **II. Approval of Minutes**

4 CHAIRPERSON BERRY: Approval of the minutes of the May 12th
5 meeting. Could I get a motion, please?

6 VICE CHAIRPERSON REYNOSO: So moved.

7 COMMISSIONER LEE: Second.

8 CHAIRPERSON BERRY: Okay. Any discussion?

9 [No response.]

10 CHAIRPERSON BERRY: All in favor indicate by saying aye.

11 [A chorus of ayes.]

12 CHAIRPERSON BERRY: Opposed?

13 [No response.]

14 CHAIRPERSON BERRY: So ordered.

15 **III. Announcements**

16 CHAIRPERSON BERRY: The next item on the agenda is announcements.

17 You probably noticed in the press that the Department of Justice
18 released the results of its investigation in the Martin Luther King,
19 Jr. assassination and announced that they found no reliable evidence
20 that he was killed by conspirators, and that the family is still
21 unhappy about it. I only call it to your attention because we
22 discussed the issue here at the Commission at a time when we had under
23 consideration doing some work on that. So that has happened.

24 The other announcement I wanted to make is that Terri Dickerson,
25 Ms. Terri Dickerson, has joined the Commission as the new assistant

1 staff director -- she's right there -- for the Office of Civil Rights
2 Evaluation, which is the job that Fred Isler had for a number of years.
3 Ms. Dickerson has been involved in civil rights issues for 20 years,
4 most recently at the SBA where she directed a program to help women and
5 minority business owners participate in Federal procurement. She was
6 an executive director and CEO of American Women in Radio/Television.
7 She's a former journalist also, in addition to being a social
8 scientist, and has written in USAToday, the Post, and the usual
9 suspects. Welcome on board, Terri.

10 MS. DICKERSON: Thank you.

11 CHAIRPERSON BERRY: Also we're pleased to have the following
12 interns who have been assigned to the Office of Public Affairs. As I
13 call your name, if they're here, please stand. Susan Dolberg,
14 University of Southern Florida. Are the interns here? They're not.
15 Which one's here. Jen Nelson. Jen Nelson from Ohio University,
16 welcome. That's a beautiful campus out there, Ohio University.
17 Anyway, we appreciate the interns and hope that they will have a
18 wonderful experience working very hard here.

19 Does anyone else have any announcements?

20 [No response.]

21 IV. Staff Director's Report

22 CHAIRPERSON BERRY: Okay, the next item on the agenda is the Staff
23 Director's report.

24 Before we get to the issue of the Hawaii forum, does anyone have
25 any other issues that they would like to discuss under the Staff

1 Director's report?

2 [No response.]

3 CHAIRPERSON BERRY: Okay. Then Commissioner Lee, you wanted to
4 discuss the Hawaii issue?

5 COMMISSIONER LEE: Thank you. I think it's been over a few months
6 that the Hawaii SAC has formally requested that the Commission pick up
7 the issue of the Rice vs. Cayetano Supreme Court decision. They have
8 requested that because the issue was of importance and it impacted not
9 only native Hawaiians but it also impacting the indigenous people, and
10 also the whole issue of race. And they had requested that the
11 Commission go to Hawaii to conduct a public forum. Whether we do it by
12 ourselves or we can conduct the forum jointly with the SAC members. I
13 think that has been a few months and I hope that we can make a final
14 decision today so that we will not leave the issue festering.

15 The Staff Director had faxed over a memo yesterday citing some
16 cost concerns. I think that in this case it's going to be a little bit
17 different from other forums. Number one, it is not a long hearing that
18 we'll have. It's basically a very informative, fact gathering briefing
19 basically. It's just a very long briefing session. So staff time on
20 it should not be as demanding as a New York hearing or what have you.

21 More importantly, because the issue is so critical in Hawaii. The
22 SAC members have been preparing, in the event that we come there,
23 already prepared the outline that we had since last time. They also
24 are in the process of doing all kinds of background, briefings,
25 research into potential panelists. So basically most of the groundwork

1 has been laid by the Hawaii folks, so that we really would not -- I
2 remember last month Commissioner Redenbaugh had expressed concerns that
3 this may delay other projects but I'd like to get from the Staff
4 Director whether that is going to happen because my understanding is
5 most of the work will be done by the Hawaii SAC members. In terms of
6 the cost, of course there will be extra cost for us to go to Hawaii.
7 But the cost should be minimal because it will be just the
8 Commissioners going that are having the meeting in D.C. We will be
9 having the regular meeting in Hawaii and afterwards we would have the
10 forum there.

11 So I really hope that we can make a positive decision today
12 because it is an issue that is really affecting not only the native
13 Hawaiian community but the entire Asian-American community, too.
14 People are looking to us for -- as the civil rights voice, to lead the
15 discussion which is going to be really important, to help guide the
16 different communities.

17 CHAIRPERSON BERRY: Commissioner Lee -- and then I'll recognize
18 you, Commissioner Redenbaugh. First of all, let me say that I'm sorry
19 to hear that you fell ill last night and I hope you're feeling better
20 this morning. I know how much you care about this issue, so we are now
21 -- we have been considering it and we're prepared to continue to
22 discuss it. But we understand your concern about it, and we're all
23 interested and concerned.

24 Commissioner Redenbaugh?

25 COMMISSIONER REDENBAUGH: I believe that the Staff Director has

1 considered the factors that Commissioner Lee has mentioned in terms of
2 what the cost consequences and impact would be in her analysis.
3 Although it is certainly true this would be much less expensive than a
4 full hearing, there is a cost in both time and money. I support the
5 Staff Director's position that we need to improve our infrastructure
6 and our capability, and that if we were to do this something must come
7 out of the budget.

8 I think we're falling -- we may fall into what we fell into
9 several years ago which is we identified far more worthy projects than
10 staff could fulfill given all the other duties they had. Then we kept
11 saying, do this, do this, do this, and we got this enormous backlog
12 that took us -- that we're still clearing.

13 So if we are to change priorities, and I'm certainly willing to do
14 that, we'd need to take something out before we put something in. And
15 I think we need to be mindful not only of the budgetary cost, but also
16 the cost just in the allocation of staff time.

17 CHAIRPERSON BERRY: Any other -- Commissioner Meeks?

18 COMMISSIONER MEEKS: I agree that we need to make sure that we
19 have the time. But we talked at the planning meeting that we wanted to
20 make sure that we reserved time for special occasions or special
21 events, and to try to respond to them in a timely way. So I understand
22 also the budgetary constraints, but I think we left some room there,
23 did we not?

24 CHAIRPERSON BERRY: Yes, Vice -- let me answer your question
25 first. We instructed the budget director and the Staff Director to

1 leave some room for discretion in the budget that was being requested
2 for the next -- not this fiscal year but for the next fiscal year. He
3 said that he would do that, and we talked about it here.

4 But I think Commissioner Lee is suggesting that we do the forum
5 this fiscal year, and the response from the Staff Director has to do
6 with whether there are resources available to do it now. The issue is
7 whether we do it in July, because we had previously discussed this and
8 agreed that we thought it was an important issue and that there might
9 be a state advisory committee forum which we would attend, in the same
10 way that we did in South Dakota and we've done others -- in Sonoma and
11 other forums.

12 But Commissioner Lee, as I understand it, wants us to have it as a
13 Commission activity, and the suggestion was that we have a Commission
14 meeting in July in Hawaii and have a forum connected with that. The
15 Staff Director's response indicates that she thinks that there are
16 resource constraints that would prevent us from doing that, and having
17 a meeting at this time.

18 Vice Chair?

19 VICE CHAIRPERSON REYNOSO: I just wanted to explore whether or not
20 the staff had indeed followed up with the Hawaiian advisory committee
21 on the possibility of the committee having a forum as we did in South
22 Dakota with Commissioners who can attend? I considered our experience
23 in South Dakota, insofar as the aims of the Civil Rights Commission, to
24 have been very successful. So I wonder if that aspect has been
25 explored in detail with the Hawaii staff.

1 CHAIRPERSON BERRY: Staff Director?

2 STAFF DIRECTOR MOY: Vice Chair Reynoso, last night Phil Montez
3 sent me a memo. I have not had a chance to read his document but he
4 gave me the outline that at this juncture that WRO was not equipped to
5 handle --

6 VICE CHAIRPERSON REYNOSO: Who was not equipped?

7 STAFF DIRECTOR MOY: Western Regional Office -- sorry -- to handle
8 -- I'm just gleaning through this right now to handle this type of
9 forum as proposed in the outline that we were given.

10 COMMISSIONER LEE: In terms of budgetary --

11 CHAIRPERSON BERRY: Yes, Commissioner Lee?

12 COMMISSIONER LEE: They can't handle it because of the budget
13 constraints, or personnel, or lack of resource? What is the main
14 reason?

15 STAFF DIRECTOR MOY: May I read the first paragraph?

16 CHAIRPERSON BERRY: I don't know. I don't know what's in it.
17 It's up to you.

18 STAFF DIRECTOR MOY: Madam Chair, may I respond?

19 CHAIRPERSON BERRY: Yes.

20 STAFF DIRECTOR MOY: Just from the first paragraph, Commissioner
21 Lee, Regional Director Phil Montez of the Western Regional Office
22 indicated that the copy of the briefing paper outline which I faxed to
23 him is a very comprehensive outline of a briefing paper and it falls
24 short of being a proposal which would meet the criteria set by the
25 Commission for SAC proposals. Chapters 1 through 5 would require

1 extensive research that the field office is ill-equipped to carry out,
2 and only Chapter 6 approaches what traditionally has been included in
3 regional office project proposals.

4 This outline calls for a highly legalistic, sociological
5 evaluation of the Supreme Court decision in Rice vs. Cayetano, and with
6 the limited resources of the Western Regional Office, the project
7 envisioned would be an impossible task to attempt from the region.

8 COMMISSIONER LEE: Thank you.

9 CHAIRPERSON BERRY: My own view is that we should abide by our
10 earlier conclusion that there should be a forum, or that we would
11 support the idea of a SAC forum in Hawaii, but not in July. And that
12 it would be -- they would have whatever assistance they need from the
13 national office just as we've done with other forums. We've discovered
14 that when SAC members are very interested in something, they're willing
15 to put a lot of time and energy into it themselves in getting it done.

16 Then Commissioners who were able to or could attend, could go.
17 That way we would be supportive of them, and we would be giving them
18 the same kind of response we've given to people who want to have forums
19 in other states, or who have other issues that are sensitive.

20 I do not believe that because the issue is sensitive we shouldn't
21 do it. And I don't believe that because there's been a Supreme Court
22 decision we shouldn't do it. I think that if people in Hawaii, and
23 lots of them are very concerned about this issue, there's no reason for
24 the SAC -- I mean, that's the whole purpose of the State Advisory
25 Committee, to concern itself with issues that people in the state are

1 concerned about, and to let them express their point of view about
2 these issues.

3 So I would support, still support the idea and suggest that the
4 way we resolve it -- Yvonne, I know it's not satisfactory to you that
5 we have -- that you believe we should have the Commission meeting. But
6 I do think that the number of staff people that it would take, and the
7 amount of resources to have an actual meeting in Hawaii, a Commission
8 meeting, would be exorbitant, given the size of our budget, which I
9 forgot to announce has just been flat-lined again by the House of
10 Representatives, although Congressman Serrano, who is the ranking
11 minority member, did introduce a motion to increase the budgets of all
12 the civil rights agencies in the full committee. It was, of course,
13 defeated. But to his credit, Congressman Serrano did do what he said
14 he would do and tried to get some increases in the budget consistent
15 with the President's budget request.

16 So I think that under the circumstances and for all the reasons
17 that Commissioner Redenbaugh discussed, that we unhappily have to say
18 that we can't have the meeting.

19 There also is a logistical concern in consulting with various
20 commissioners. Most of them wouldn't be able to go. That would be the
21 first thing. And if we were going to have the meeting there, we
22 wouldn't want everybody on the telephone, because that wouldn't serve
23 the purposes of the people in Hawaii to have none of us show up at the
24 meeting. So I think that, unhappily, we're going to have to wait to do
25 it after the end of this fiscal year.

1 But I think that whatever kinks there are between the Western
2 Regional Office and the SAC and the staff, that they can be worked out
3 by that time. So with your indulgence and your -- without your
4 objections, I think that should be the way we should handle it.

5 Is there anybody who objects to that and would like to do
6 something else?

7 COMMISSIONER LEE: Can I just make one final point?

8 CHAIRPERSON BERRY: Yes.

9 COMMISSIONER LEE: I think that, number one, I want to really make
10 it clear that this is not going to be a Hawaiian junket. I was there
11 for four days at the invitation of the Hawaiian SAC member they invited
12 me and the vice chair to meet with the community. Believe me it's from
13 7:00 to 10:00 every night meeting with a variety of people. The
14 environment there is very, very tense, and the concerns that people
15 have there is realistic -- it's very real. It is not a matter of I'm
16 going in for a couple of days and then going to the beach. It's not
17 going to be that way.

18 Number two, in terms of whether we can do it after the fiscal
19 year, things are moving very fast. I do remember Commissioner
20 Higginbotham has always mentioned that we as a national civil rights,
21 independent, fact-finding body have a duty to be involved on issues. I
22 do understand that we cannot be involved with every issue that comes
23 before us.

24 In this case I really feel that it really should -- because we're
25 talking about a forum. As I recall, a forum basically is like a

1 briefing; just a longer version of the briefing. In terms of the legal
2 standards and other standards we have to meet, it is much less than
3 that.

4 I do believe that if the SAC members have already put in all the
5 work, I don't know why -- and I still want to hear from the Staff
6 Director how she came up with eight staffers instead of what I would
7 envision, like in South Dakota and in other forums, we did not have
8 five, six, seven, eight, nine staffers there. We had one
9 administrative person, and we may have just one OGC person. So I don't
10 know why the staff allocation is so high in this case.

11 The issue is complicated, but at the same time -- we know most of
12 the work has already been done. I would object if we were going to
13 pick this up after the fiscal year because it's done. Everything will
14 be done and by then we would not be any -- of the debate, and we might
15 as well just save the resources for other emergencies that certainly
16 will come up.

17 We talked about having the SAC raise issues. Now if the Western
18 Region already said they could not do it, are we basically saying,
19 okay, we want the SAC to do it knowing that the SAC and the Western
20 Region is not capable of carrying this out? So are we not going to
21 take this issue up? Because I really believe that if this is just a
22 forum, the cost really is not -- should not be as high as the budget
23 that the Staff Director has prepared. Maybe there are certain things
24 that I don't know, maybe the Staff Director needs to educate me on
25 that.

1 CHAIRPERSON BERRY: Do you want to answer Commissioner Lee's
2 question about why the number of staff you suggested were necessary?

3 STAFF DIRECTOR MOY: I'll attempt to. Thank you, Madam Chair. I
4 ran the proposal by our Office of General Counsel and in discussion
5 with him we talked about the concerns that were listed in the proposal
6 and I asked him how many people he felt would be necessary there
7 because of the comments that I had already had verbally with Phil
8 Montez, that since the proposal dealt with a lot of legal aspects of
9 it, it's an issue that he could not handle legally.

10 So in talking to Eddie Hailes, who's the acting general counsel,
11 he had indicated that possibly, maybe two, maybe three people from the
12 Office of General Counsel. Then we definitely would need three people
13 from the Western Regional Office because, as you know, SAC comes under
14 the jurisdiction of the Regional Director. And two from the
15 administrative services if we were to do it as a Commission in order to
16 set up the logistics and the housing and transportation. Then one from
17 public affairs in order to handle the news media, and then one from the
18 Office of Staff Director. That's how I came up with it.

19 CHAIRPERSON BERRY: Vice Chair?

20 VICE CHAIRPERSON REYNOSO: Madam Chair, I take it that the
21 requirements in terms of staff would be substantially less if it were
22 in fact a SAC forum as it was in South Dakota, and that the figures
23 that are given by our Staff Director deal only if it's a Commission
24 function; is that correct?

25 STAFF DIRECTOR MOY: That's correct.

1 CHAIRPERSON BERRY: So one distinction is the meeting versus the
2 non-meeting staff requirement, Yvonne.

3 Yes, Vice Chair?

4 VICE CHAIRPERSON REYNOSO: I just want to respond to the Chair's
5 suggestion. I think the Chair's suggestion under the circumstance is
6 an appropriate one. I do have a concern that a response be as timely
7 as possible as we've tried to make our response be. But it seems to me
8 that it's appropriate to have a SAC forum.

9 CHAIRPERSON BERRY: Commissioner Wilson?

10 COMMISSIONER WILSON: Thank you, Madam Chair.

11 Commissioner Lee, I have a question for you? Could you explain
12 what you think -- I know that the situation that you've described is
13 very tense, but what do you think would transpire or will transpire
14 between July and when we do have our proposed meeting? What do you
15 think would happen if we didn't go in July and then we went later?

16 COMMISSIONER LEE: My understanding is after the decision of the
17 Supreme Court which was handed down back in February there has been a
18 whole host of activities, both on the state level and the Federal
19 level. On the state level, the state government is trying to enact
20 certain legislation to clarify the rights of native Hawaiians. On the
21 Federal level, of course, folks are looking at Federal laws to better
22 define what is a native Hawaiian.

23 And that also goes into the whole issue of indigenous people.
24 They're trying to clarify the relationship between the Federal
25 Government and indigenous people because this decision also opens the

1 door for that interpretation. There are also concerns over this issue
2 of race, because that was mentioned as a decision.

3 I mentioned about the tension in Hawaii because it basically said
4 to the native Hawaiians, which is only 20 percent of the population.
5 But as you can imagine, this is their land and the Supreme Court
6 basically told them that they have no rights to certain things because
7 of their nativity. So when I mentioned tension is high, that's what I
8 meant.

9 The importance of having a body like ours to go in to facilitate a
10 very informative discussion because right now people, the community
11 sees certain activities as self-serving. The state, of course, are
12 they protecting the state concerns because millions of dollars of
13 resources are at stake. When they look at the Federal Government,
14 Department of Justice, Department of Interior, the Hawaiian
15 Congressional Delegation, they're all doing a variety of activities.
16 They've conducted hearings.

17 They just feel that there needs to be someone who has no direct
18 stake on this, and could bring in a reasonable voice so that there will
19 be a very informative, educated, objective discussion. The forum that
20 the SAC has proposed maybe it sounded more complicated, but actually
21 it's just different panels for folks to come and educate us and the
22 public on what the Rice decision is, a legal analysis, what it means to
23 the native Hawaiians immediately, and what it means to other indigenous
24 groups, and what the proposed action can be. Those are it. That's
25 what that forum is.

1 It is not a full-blown hearing. I think that the SAC members have
2 put it in such a sophisticated outline because they already know what
3 they want to do on a national level. So it is not a SAC proposal, per
4 se. It's basically just a forum to help direct us, because we did, the
5 Commission did ask the SAC to send us an outline of what would be a
6 public forum that could be beneficial.

7 So in my conversation with them, it's not going to be a full-blown
8 hearing. It's going to be like no more than 10, 12 people coming in
9 who are experts in their specific areas of expertise to share with us
10 their research or their analysis on the issue at hand. So if we're
11 going to talk about staff time spent on it, I do want to clarify to the
12 Staff Director and to OGC, we're not talking about a very expensive
13 legal analysis because it's going to be done by the panelists. They
14 will be presenting to us or SAC or whoever, their findings. Right now,
15 there is no vehicle to allow that kind of independent institution.

16 The community there is leery of different government bodies
17 because, as I mentioned earlier, the Department of Interior, Department
18 of Justice, the state, they do have certain things at stake over the
19 future. So a body like us, we are fact-finding. That is our duty. We
20 don't have any personal so-called investment. The only investment we
21 have is to get the best, the broadest information out there to help
22 facilitate the very difficult issue around not just the native
23 Hawaiians but in the civil rights community.

24 CHAIRPERSON BERRY: Yvonne, we will -- I think the consensus is
25 that we would, or at least what I hear from no objections, that we

1 would try to organize a proceeding; for now we're talking about a
2 forum.

3 I think that the issue is not going to go away, based even on what
4 you said. It hasn't gone away since February. It's not going to go
5 away. We should do whatever we can as soon as we can, and we will.
6 And we'll have to work out these relationships between WRO, Western
7 Regional Office and the SAC chair who I received a communication, a
8 lengthy communication, and all the parties that are involved. It does
9 involve not just Hawaii, but it may involve indigenous people
10 elsewhere. So we've got to work very hard on this and be very careful
11 about it. But I don't think the issue will go away.

12 But we appreciate very much your concerns. Now I think, with your
13 indulgence, we have to move on to the next item on the agenda.

14 V. Police Practices and Civil Rights

15 in New York City Report

16 CHAIRPERSON BERRY: The next item on the agenda is police
17 practices and civil rights in New York. I would like to introduce the
18 subject myself by simply saying that the Commissioners discussed this
19 report at the last meeting, and we went over it section by section,
20 page by page, to see whether people had any concerns, objections, and
21 the staff took note of those. We decided to wait until today to vote
22 on the report because we wanted to wait and give every opportunity for
23 the City of New York and other affected agencies to submit their
24 comments.

25 The comments from the New York Police Department and the Mayor, I

1 guess, were put up on their Web site, I'm told. I haven't read it.
2 And we got copies of it, and the staff has gone over it. We always
3 have affected agency review we call it. And our staff has provided a
4 point-by-point response to every point that was made by the New York
5 Police concerning the report, and are satisfied with what they have
6 done.

7 The Commissioners have received that point-by-point analysis with
8 page numbers so that they can go back through their draft and see where
9 any changes were made. There were very few changes made, and where
10 they were it didn't make any difference in the substance of the report.

11 By way of introducing it, I am going to read from the executive
12 summary, which the Commissioners have been given, to approve along with
13 the report -- some parts of it; not the whole thing. This is
14 essentially what's in the report.

15 In the world-class city of New York, the twin fears of street
16 crimes and ugly episodes of police misconduct have created an uneasy
17 tension between a police force compelled to lower crime rates and a
18 concerned community that openly questions the fairness of aggressive
19 police strategies. This Commission has a long history of examining
20 police practice and civil rights, and this commitment has involved a
21 meaningful discourse on the duty of law enforcement to enforce the laws
22 while respecting civil rights of individuals. This discourse has
23 produced a solid set of recommendations to meet the challenges posed by
24 these two objectives.

25 We've done a number of reports on police, not just in New York but

1 in other places around the country, including Los Angeles and Chicago
2 and a number of local county areas. The Commission is utilizing the
3 information that we're continuing to gather, both about New York and
4 other places, to revise our 1981 report called, Who is Guarding the
5 Guardians? A report on Police Practices and Civil Rights. When this
6 meeting is concluded we will have a briefing this morning from experts
7 who will help us to figure out how to revise Who is Guarding the
8 Guardians?

9 On New York, the Commission conducted a day-and-evening-long
10 hearing in the city about a year ago, almost a year ago, and received
11 hundreds of pages of sworn testimony from officials and from community
12 people and advocates. Over the last year the Commission, staff and
13 contractors have analyzed these with about 32,000 pages of other
14 supporting document secured by subpoena from the agencies that
15 testified.

16 There are all sorts of documents. Some from the internal affairs
17 bureau of the police department, the Civilian Review Board, documents
18 concerning training, documents concerning stop and frisk training
19 guides, and manuals used at all levels in the department.
20 Additionally, thousands of individual UF-250 forms, which are used to
21 record descriptions of stop and frisk encounters were reviewed. The
22 staff has also received more information from city representatives
23 since the hearing.

24 The report makes a number of important findings. One is that the
25 NYPD has not involved affected communities sufficiently in the planning

1 and the implementation of strategies which could reduce tensions while
2 controlling crime. Another important recommendation is that the city
3 should establish an independent monitor to monitor the police in New
4 York City. It takes note of the fact that there is a proposal that was
5 passed by the city council that is under legal challenge at this time.
6 Another one is that there should be an independent prosecutor who would
7 be appointed to handle high profile cases involving allegations that
8 deadly force has been used inappropriately.

9 In the area of recruitment, the report points out that the NYPD
10 continues to be largely unrepresentative of the diverse population of
11 New York City. In fact since 1994 African-American hires have
12 decreased. From recruitment to application there are major problems.

13 Also, Civilian Complaint Review Board data show that police with
14 less than an associate's degree are more likely to have substantiated
15 misconduct complaints. The department ought to require new officers to
16 have a degree, or give officers time off to work on college credits to
17 help professionalize the police force. In fact the promotion process
18 needs to be reevaluated from top to bottom to address the paucity of
19 high-ranking officers of color.

20 On training, the report finds that the diversity training offered
21 by the department reinforces stereotypes instead of undermining them.
22 There's controversy about whether diversity training works we know, but
23 we do know that bad training cannot work. Also high level officials do
24 not involve themselves sufficiently in the diversity training.

25 Police community relations, the report finds that the NYPD seems

1 to have avoided learning from the experiences in San Diego and Boston
2 and in other places where officials employ approaches to policing that
3 reduce crime and minimize racial tensions. Community involvement seems
4 to be a key, and much of this expertise and best practices that exist
5 everywhere seems to have been ignored in the city.

6 The Civilian Complaint Review Board has much improved in the last
7 two years, in staffing and in resources, but is given little credit
8 because it still needs a lot of work and there are crises that keep
9 occurring. The report makes a number of recommendations for how it can
10 be improved.

11 On stop and frisk, the report finds that New Yorkers have stronger
12 legal protection under state law against an unlawful stop and frisk
13 than is available under the federal Constitution as interpreted by the
14 Supreme Court. That is, technically they have this protection.

15 This protection is not abrogated because the police use a special
16 unit such as a street crime unit or a drug crime unit. The NYPD policy
17 is that a UF-250 should be filed when a person is stopped and the form
18 is submitted to a desk officer. There's some controversy about when
19 this form was first introduced, but testimony at the Commission hearing
20 indicates that it was mandated as a rigorously enforced priority by the
21 present police commissioner in 1997.

22 We had testimony at the hearing that perhaps only one out of 30
23 stop and frisk encounters resulted in a filed UF-250. This criticism
24 was echoed recently in a preliminary report by the Civilian Complaint
25 Review Board whose investigators have determined, based on a study of

1 instances in which people had been stopped and frisked, that the NYPD
2 routinely fails to file the required paperwork after stopping and
3 frisking people on the streets of the city.

4 The UF-250s examined by the Commission were for the year 1998.
5 There were 139,409 forms completed that were examined. Everywhere
6 African-Americans were stopped far out of their proportion in any of
7 the communities policed. So were Latinos, but at somewhat reduced
8 levels. Whites and Asian-Americans were stopped at far below their
9 representation of the population in each area policed.

10 While the mayor and the police commissioner attributed these
11 disparities to suspects' profiles as reported by crime victims, this
12 claim is belied by police testimony that the street crime unit and
13 other specialized units root out crime by scouring neighborhoods and
14 making stops with no complaints and no victim. They simply stop who
15 they think they should stop.

16 The NYPD needs to be careful not to engage in racial profiling of
17 this sort, whether in regular or specialized units. It not only
18 violates the law but undermines respect for the police and can cause
19 deadly altercations as in the tragic and unnecessary police shooting of
20 Amadou Diallo. The City of New York must maintain a world-class police
21 force that provides protection against illegal activities, including
22 civil rights violations by its own officers for all of its diverse
23 populations.

24 I would like to entertain a motion to approve the report.

25 COMMISSIONER REDENBAUGH: So moved.

1 CHAIRPERSON BERRY: Is there a second?

2 COMMISSIONER EDLEY: Second.

3 CHAIRPERSON BERRY: Is there a discussion?

4 VICE CHAIRPERSON REYNOSO: Madam Chair, I just want to mention
5 that I spent some time on the report, and of course, I was at the
6 hearing, and I thought it was a very balanced and accurate
7 representation of the testimony and a very well-balanced review of
8 that, and the materials that were obtained by the Commission, and that
9 the recommendations were moderate and sensible.

10 CHAIRPERSON BERRY: All right, are you ready for -- yes,
11 Commissioner Redenbaugh?

12 COMMISSIONER REDENBAUGH: I wanted to say that I was surprised, in
13 a hearing as necessarily short as this was -- a day and an evening -- I
14 think we would expect to get less than a fully complete picture. Given
15 that, I was surprised that so few of the NYPD's responses, which I
16 think ran some 250 pages, had any impact on what we had previously
17 concluded and written.

18 One small thing, and it sounds like a quibble but it's indicative
19 of my concern, is in the acting general counsel's report, his first
20 point he says that the New York Police say there are no more instances
21 of excessive force than other police -- than other major cities. But
22 they make a claim that's very different from that in the material
23 they've sent us. Some which claim are they making, that they're
24 substantially better or that they're no worse?

25 CHAIRPERSON BERRY: As I recall, Commissioner, the document which

1 we prepared in response to the NYPD -- and I am going to suggest, if
2 Commissioners do not object, that it be placed on our Web site so that
3 people can read it, since the NYPD put theirs on their Web site, so
4 that everyone can see what our responses were to the points that they
5 made. If there's no objection, we'll ask the staff to do that.

6 The staff included the exact language that the NYPD preferred to
7 describe their experience with deadly force in the report. We're
8 putting it in there. Is that right, general counsel? Their complaint
9 that they don't have any more incidences of deadly force than others,
10 and you guys changed the language to read exactly as they wished,
11 because it doesn't change the substance of the report.

12 MR. HAILES: We use language that they put in their response. As
13 Commissioners will recall, there was agreement to include the entire
14 response with the final report.

15 CHAIRPERSON BERRY: Right.

16 MR. HAILES: So there will be references to that response in the
17 record of the -- or the final publication of our report. So it's fully
18 covered.

19 COMMISSIONER REDENBAUGH: Our publication will include their
20 responses? Is that what I understood you to say?

21 MR. HAILES: Yes, the response which, Commissioner Redenbaugh, was
22 closer to 125 pages than 250 pages. But yes, the Commissioners agreed
23 to include the entire New York Police Department response with our
24 report as an attachment, or an appendix.

25 COMMISSIONER REDENBAUGH: Okay, thank you.

1 CHAIRPERSON BERRY: Which means we should put our response to
2 their response. But in the meanwhile, we put it on the web site so
3 people can read it. Because there's is on their web site, so people
4 can compare it if they like.

5 Okay, any other points anyone would like to make?

6 [No response.]

7 CHAIRPERSON BERRY: All right. If not, ready for the question.

8 All in favor indicate by saying aye.

9 COMMISSIONER ANDERSON: Madam Chair?

10 CHAIRPERSON BERRY: Yes, Commissioner Anderson?

11 COMMISSIONER ANDERSON: Maybe we can go ahead and have a roll call
12 vote on this?

13 CHAIRPERSON BERRY: Sure. Commissioner Anderson?

14 COMMISSIONER ANDERSON: No.

15 CHAIRPERSON BERRY: Commissioner Edley?

16 COMMISSIONER EDLEY: Yes.

17 CHAIRPERSON BERRY: Commissioner Lee?

18 COMMISSIONER LEE: Yes.

19 CHAIRPERSON BERRY: Commissioner Meeks?

20 COMMISSIONER MEEKS: Yes.

21 CHAIRPERSON BERRY: Commissioner Redenbaugh?

22 COMMISSIONER REDENBAUGH: No.

23 CHAIRPERSON BERRY: Vice Chair Reynoso?

24 VICE CHAIRPERSON REYNOSO: Yes.

25 CHAIRPERSON BERRY: Commissioner Wilson?

1 COMMISSIONER WILSON: Yes.

2 CHAIRPERSON BERRY: Commissioner Berry, yes.

3 There are one, two, three, four, five, six yeses, and two nos.

4 The motion carries.

5 This motion includes the report. I hope everyone understood that
6 I said that in the beginning -- and the executive summary, which is
7 part of the report. Everybody understood that or you want a separate
8 vote on that?

9 [No response.]

10 CHAIRPERSON BERRY: Okay, everybody understood that.

11 Yes, Commissioner, did I hear someone say something?

12 COMMISSIONER ANDERSON: Just to be clear then, we're going to
13 publish the NYPD response to the report as an appendix to the report?

14 CHAIRPERSON BERRY: And our response to the NYPD response as an
15 appendix, so, yes.

16 COMMISSIONER EDLEY: But their response is going to be in very,
17 very tiny print, right?

18 CHAIRPERSON BERRY: Right. We're not going to --

19 [Laughter.]

20 CHAIRPERSON BERRY: Because we don't want to spend too much --
21 both of them, both responses. We usually don't -- for the information
22 of the audience, we usually do not publish detailed responses of this
23 kind to reports. But given the sensitivity of this issue, we will
24 publish it at the end, and our response to their response, too.

25 Okay. Now we're going to take -- are there any future agenda

1 items before I give us a little break before we do the briefing?

2 COMMISSIONER ANDERSON: If I could ask one more question regarding
3 the response?

4 CHAIRPERSON BERRY: Yes.

5 COMMISSIONER ANDERSON: What is our timeframe for filing a
6 dissent? I don't want to delay the publication of the report. On the
7 other hand, it might take a little time to draft.

8 CHAIRPERSON BERRY: I think that we should give -- what is the
9 date? Today is the 16th, right? How about the 30th?

10 COMMISSIONER ANDERSON: I think that's agreeable to me if it would
11 be to my colleague, Commissioner Redenbaugh.

12 COMMISSIONER REDENBAUGH: Yes, it is.

13 CHAIRPERSON BERRY: Is that agreeable to you?

14 COMMISSIONER REDENBAUGH: Yes, especially if you do all the work,
15 Carl.

16 [Laughter.]

17 CHAIRPERSON BERRY: Okay, it will be expected by close of business
18 on the 30th.

19 Now which gives me another pause for another -- normally the
20 Commission does not -- the way we have done things is to -- dissents
21 are filed and they're simply published. Due to some concerns I have
22 about dissents lately, I'm wondering if we want to adhere to that
23 policy. I don't think we have time to discuss it today. I'll wait
24 until next time, or maybe in between the meeting I will raise the issue
25 with you again. But I do have some concerns about the content of

1 dissents insofar as they make allegations about Commissioners or --

2 And I also want to remind you that if you have factual matters
3 that you wish to have included in the report, or you see corrections,
4 or you see editing problems, or you see typos even at this late date
5 you should point them out to the staff and you should not include them
6 in either a concurring statement or an additional statement or a
7 dissent. I mean, the staff is not in the business of trying to make
8 typos and editing errors just for the hell of it -- I mean, I'm sorry,
9 for the heck of it.

10 So if you would please, those kinds of mistakes are not the
11 substance of what dissents are. If the page number is wrong, or if
12 you've got a question about the citation, please hand those over to the
13 staff. Don't waste time in a statement writing about how the page --
14 it's like writing a book review saying, on page so and so they spelled
15 a word wrong, or they cited the wrong book, or whatever. So I wish you
16 would please be reminded of that.

17 **VI. Future Agenda Items**

18 CHAIRPERSON BERRY: Okay. Any other -- yes, Commissioner Edley?

19 COMMISSIONER EDLEY: This is on the new business, future business.

20 CHAIRPERSON BERRY: Yes.

21 COMMISSIONER EDLEY: I wanted to just present for Commissioners to
22 think about -- no?

23 CHAIRPERSON BERRY: I was talking to her. Sorry.

24 COMMISSIONER EDLEY: Present for Commissioners an idea for an
25 activity. It seemed to me that it would be very helpful for the public

1 at large if we were to undertake to do a pretty serious
2 conference/hearing in November after the election in which we analyzed
3 the civil rights enforcement record of the Clinton Administration, last
4 eight years. And on the basis of that hearing do a report for the
5 benefit of the next President and the next Congress providing our
6 thoughts about what the experience, recent experience has been, and
7 what priorities would make sense.

8 It strikes me first of all, that doing this after the election
9 would help minimize the politicization of the exercise. And the kind
10 of session that I envision would be at least a day, would involve
11 hearing from several of the agencies themselves, but also hearing from
12 outside folks. Perhaps some people from Capitol Hill, certainly some
13 researchers, other interested members of the public. And that we need
14 to endeavor to try to put together a tight -- not massive, but a fairly
15 tight 20, 30-page document for the incoming administration and the
16 incoming congressional leadership trying to distill and offer our
17 suggestions about priorities.

18 But I thought it would be a good occasion for everybody to take
19 their breath, take stock of where we are and offer the Commission's
20 independent view about future directions.

21 CHAIRPERSON BERRY: Any support for such idea? Yes, Commissioner
22 Redenbaugh?

23 COMMISSIONER REDENBAUGH: Yes, very supportive of it. It goes
24 right to, I think, one of the things we can do well, which is comment
25 and seek to influence policy. I think it's a very worthwhile and

1 appropriate project and I would support it.

2 CHAIRPERSON BERRY: Okay. Any objections to the idea? You object
3 to the idea, Commissioner? You just proposed it.

4 COMMISSIONER EDLEY: I just wanted to clarify that it seems to me
5 -- the reason that I suggested that our gloss on this, our synthesis be
6 short, is because it seems to me it would be desirable to get it done
7 by January, so that incoming appointees would have the benefit of it.
8 I think that if we decided to do this and got it underway quickly that
9 it would be an opportunity to get some thoughtful pieces contributed by
10 outsiders so that we'd be able to really put together a compendium of
11 analyses, not just our own thoughts but a compendium of analyses from a
12 variety of viewpoints about the effectiveness of the last eight years
13 in various areas.

14 CHAIRPERSON BERRY: Okay. Commissioner Anderson?

15 COMMISSIONER ANDERSON: I was going to ask, what do you think the
16 timeframe is for the initiation for the project?

17 COMMISSIONER EDLEY: To the extent that want to get academics to
18 do some of the analysis -- and I think we should -- the sooner the
19 better, because summer is upon us and the three best things about
20 teaching are June, July, and August.

21 [Laughter.]

22 COMMISSIONER EDLEY: So getting some academics who might have more
23 flexibility to do the work in the summer I think would be ideal, if we
24 can decide today or within the next week or two to launch it.

25 CHAIRPERSON BERRY: Pointy-head academics.

1 COMMISSIONER EDLEY: Yes, those folks.

2 CHAIRPERSON BERRY: So if there are no objections to -- you're not
3 objecting, are you, Commissioner Anderson?

4 COMMISSIONER ANDERSON: No, I just -- I think that I would support
5 the idea. I think it probably would be valuable if whatever drafts or
6 discussion or whatever were not prepared until after the election. So
7 if we start the process soon, that's fine with me, but I think it just
8 would be best for us if we were not circulating drafts or draft reports
9 in October.

10 COMMISSIONER EDLEY: Agreed.

11 COMMISSIONER ANDERSON: I think the reason is obvious. But if we
12 had something maybe the end of November we're looking at or early
13 December, that would be great.

14 CHAIRPERSON BERRY: So maybe what we could do is identify some
15 types and Commissioners could make suggestions of what -- and remember,
16 we want, to the extent that we can get them, not people who are
17 associated with think tanks that have a particular political edge and
18 everybody knows it. But if academics, people who are out there in the
19 groves of academia who are supposed to be experts on policy matters, it
20 would be good. Unless we want to identify think tanks and say, this
21 one is identified as this kind of place, and this is that kind of
22 place, and here's what they all have to say. That's one way to do it
23 and then just simply be very up front about it.

24 Otherwise, try to get professor types who make a specialty of
25 studying policy and who may have some political edge, but that's not

1 their strong suit. Like they're very out front with it; I'm only
2 trying to make recommendations to achieve X objective. So I don't
3 know.

4 Yes, Commissioner Redenbaugh?

5 COMMISSIONER REDENBAUGH: You softened a bit. My objection, which
6 was to go to the question of the presumed objectivity of academic
7 types. I wouldn't -- I mean, I think this is an issue of advocacy
8 around which really honest and sincere people can have different points
9 of view about strategy and how to accomplish goals. I wouldn't rule
10 out think tanks on either side who probably have refined their
11 arguments much more than someone who hasn't done that.

12 CHAIRPERSON BERRY: I'm not going to debate that here, which is
13 the reason why I softened it is because I didn't want to get into a
14 debate about whether academics are objective, having had that tiresome,
15 worrisome debate too many times.

16 But I don't mind having people from think tanks. But I discovered
17 in the proceedings we've had over the years, if you know that they have
18 a particular position, their organization does and they're representing
19 that, then even in questioning them you're never going to get anywhere
20 except the same thing back, back, back. You don't even get the kind of
21 intellectual exchange that I, for one, find quite pleasurable. But
22 that's just my own pointy-headed intellectual preference.

23 So let's just think about people from think tanks, even if we know
24 what their points of view are. Academic, try to think about who we
25 would ask, and then give them some -- indicate to them that they will

1 be asked, and then they can be thinking about and writing about it this
2 summer, the ones that are off this summer. Then we won't exchange any
3 papers or anything until afterwards, as Carl has said. But at least
4 they'll be working on and thinking about what they intend to do.

5 COMMISSIONER ANDERSON: Madam Chair?

6 CHAIRPERSON BERRY: Yes.

7 COMMISSIONER ANDERSON: Having been involved in one or two
8 transitions -- and I think this is what we're looking at. We're
9 looking at -- unless I misunderstand Commissioner Edley -- this will
10 have a value for a transitional administration. Normally what happens
11 is the individuals involved in planning the transition have a very
12 clear philosophical position from which they're working in a
13 transition. What they don't have very much of, at least it's been my
14 experience, is the very practical and concrete specific facts of what
15 has been going on in the various departments or agencies or divisions
16 which they're -- are looking to have responsibility for.

17 I think if whatever documents we produce is weighted toward very
18 specific factual, this is what's happened in the last eight years, this
19 is what has not happened, I think that has a great deal of value for
20 whoever is going to make the decision as to what will then happen in
21 the future.

22 Is that Commissioner Edley had more in mind or --

23 CHAIRPERSON BERRY: I don't know. Edley, what did you have in
24 mind?

25 COMMISSIONER EDLEY: I agree completely with what Carl just said.

1 I think you're right on the money.

2 CHAIRPERSON BERRY: So what we need also is to have written up by
3 -- probably staff can do that. And we have some reports that we've
4 done on agencies over the last few years about what's going on in the
5 various civil rights agencies. In the old days when the Commission had
6 lots of money, it used to do these reports every year, and it would do
7 one when a new administration was coming, on the enforcement effort for
8 the last eight years or something. That had all kinds of data in it.

9 I don't think we can do anything that extensive. But to the
10 extent that something can be gleaned from the reports that we have
11 about what is actually going on, that would be good too.

12 COMMISSIONER EDLEY: If I can just summarize. I think we want
13 thoughtfulness, we want analysis, we want utility. We don't want
14 canned ideological cant. Of course, implementing that is harder than
15 saying it.

16 CHAIRPERSON BERRY: Okay, so without objection we will begin
17 working on that. If you have any names that you would like to suggest
18 for the staff to review and see if they're interested, you ought to
19 turn those in sometime in the next 30 days.

20 All right, if there are no other items on the agenda, we will go
21 on from this part of the official meeting to the briefing on national
22 police practices and civil rights.

23 We would ask the participants to come to the table because I know
24 some of them have time constraints. So we need to do this right away.

25 COMMISSIONER LEE: Madam Chair, for health reasons I need to leave.

1
2 CHAIRPERSON BERRY: I understand. We usually don't have folks on
3 the phone for briefings anyway - so that's fine, Yvonne.

4 We will take a five-minute break while they are doing that.

5 [Whereupon, 9:13 a.m., the proceedings were concluded.]

6