

U.S. COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING



Friday, July 21, 2000

Washington, D.C.

The Commission convened at 9:40 a.m., in Room 546,
YWCA Building, 624 Ninth Street, N.W., Washington, D.C.
20425, Chairperson Mary Frances Berry, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON

CRUZ REYNOSO, VICE CHAIRPERSON

CARL A. ANDERSON, COMMISSIONER (Via Telephone)

CHRISTOPHER EDLEY, JR., COMMISSIONER

YVONNE Y. LEE, COMMISSIONER

ELSIE M. MEEKS, COMMISSIONER

RUSSELL G. REDENBAUGH, COMMISSIONER (Via Telephone)

VICTORIA WILSON, COMMISSIONER

RUBY G. MOY, STAFF DIRECTOR

STAFF PRESENT:

KIMBERLY ALTON
 DAVID ARONSON
 MARGARET BUTLER
 MONIQUE DENNIS
 TERRI DICKERSON
 SUSAN DOBERT
 PAMELA A. DUNSTON
 BETTY EDMISTON
 MICHAEL FOREMAN
 LATRICE FOSHEE
 M. CATHERINE GATES
 EDWARD HAILES, Acting General Counsel
 GEORGE M. HARBISON
 MYRNA HERNANDEZ
 BETH JOHNSON
 WANDA JOHNSON
 ALEXIS KELLY
 LaSHAWN MERRIWEATHER
 ZOE MOULTON
 MAHAAK NAYYAR
 JENESSE NELSON
 VERONICA NELSON
 PANOREA NIKOLOPOULOU
 MARC PENTINO
 KIRK PERRY
 BERNARD QUARTERMAN
 PETER REILLY, PARLIAMENTARIAN
 KWANA ROYAL
 EILEEN RUDERT
 JOYCE SMITH
 MARCIA TYLER
 AUDREY WIGGINS
 AUDREY WRIGHT
 MIREILLE ZIESENIS

WANTED
 STAFF USE NO TELEPHONE

COMMISSIONER ASSISTANTS PRESENT:

PATRICK DUFFY
 CHARLOTTE PONTICELLI
 SCOTT SCHREIBER
 KRISHNA TOOLSIE
 EFFIE TURNBULL

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P R O C E E D I N G S

CHAIRPERSON BERRY: The meeting will come to order.

I. Approval of Agenda

CHAIRPERSON BERRY: The first item on the agenda is the approval of the agenda. Could I have a motion to approve the agenda?

COMMISSIONER WILSON: Motion.

COMMISSIONER ANDERSON: Madam Chair.

CHAIRPERSON BERRY: Yes.

COMMISSIONER ANDERSON: I second the motion, but with a request that we perhaps change the order of the agenda to accommodate the commissioner who may have to leave early.

CHAIRPERSON BERRY: Okay. How would you like to change it?

COMMISSIONER ANDERSON: Well, I would defer to Commissioner Redenbaugh.

COMMISSIONER REDENBAUGH: If we could move the discussion of the statutory report to the top of the list. The difficulty I've got, Mary, is I need to start moving towards the train station at 10:15. I can switch to my cell phone, but I don't have much confidence that will be satisfactory.

CHAIRPERSON BERRY: Okay. Well, we're starting late because the court reporter was late, but we will move the Fair Employment Report to right after the approval of the minutes if that's--

COMMISSIONER REDENBAUGH: That would be fine with me. Thank you.

CHAIRPERSON BERRY: Okay. Any other changes? All right.

1 Could I hear--does the maker of the motion approve the change in them?

2 Yeah. Could I have a second of the motion as it stands?

3 COMMISSIONER ANDERSON: Second.

4 CHAIRPERSON BERRY: All in favor, indicate by saying aye.

5 [Chorus of ayes.]

6 CHAIRPERSON BERRY: Opposed?

7 [No response.]

8 CHAIRPERSON BERRY: So ordered.

9 **II. Approval of Minutes**

10 CHAIRPERSON BERRY: The next item is the approval of the
11 minutes of the June 16, 2000 meeting.

12 COMMISSIONER ANDERSON: So moved.

13 CHAIRPERSON BERRY: All right.

14 VICE CHAIRPERSON REYNOSO: Second.

15 CHAIRPERSON BERRY: Any discussion? All in favor, indicate
16 by saying aye.

17 [Chorus of ayes.]

18 CHAIRPERSON BERRY: Opposed?

19 [No response.]

20 CHAIRPERSON BERRY: So ordered.

21 **III. "Fair Employment Enforcement Efforts:**

22 **Overcoming the Past, Focusing on the Future:**

23 **An Assessment of EEOC'S Enforcement Efforts" Report**

24 CHAIRPERSON BERRY: All right. We can go to the discussion

25 since you have to leave and then I'll make the announcements and the

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1 rest of it afterwards.

2 COMMISSIONER REDENBAUGH: Thank you.

3 CHAIRPERSON BERRY: Okay. The report is "Fair Employment
4 Enforcement Efforts: Overcoming the Past, Focusing on the Future: An
5 Assessment of EEOC's Enforcement Efforts" Report. Staff Director, do
6 you want to introduce the report or do you want the Assistant Staff
7 Director to do it? How do you wish to proceed?

8 COMMISSIONER EDLEY: Do you want a motion?

9 CHAIRPERSON BERRY: Oh, yeah, let's have a motion. Thank
10 you, Christopher.

11 COMMISSIONER EDLEY: I move approval of the report.

12 COMMISSIONER LEE: Second.

13 CHAIRPERSON BERRY: Okay. Discussion. Now we're at
14 discussion.

15 STAFF DIRECTOR MOY: Thank you.

16 CHAIRPERSON BERRY: Now how would you like to proceed?

17 STAFF DIRECTOR MOY: Madam Chair, I would like to introduce
18 our newest employee here, Terri Dickerson, who is Assistant Staff
19 Director for the Office of Civil Rights Evaluation, who has done a
20 tremendous job in catching up on our statutory report, and she has with
21 her Mireille Zieseniss, who has been the project leader.

22 CHAIRPERSON BERRY: Okay. You want me to recognize her?

23 STAFF DIRECTOR MOY: Yes, please.

24 CHAIRPERSON BERRY: Ms. Dickerson, please proceed.

25 MS. DICKERSON: Good morning.

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1 CHAIRPERSON BERRY: Good morning.

2 VICE CHAIRPERSON REYNOSO: Good morning.

3 MS. DICKERSON: I'm Terri Dickerson and as Mrs. Moy said,
4 I'm Assistant Staff Director for the OCRE, and this is Mireille
5 Zieseniss with me and Mireille is going to summarize the report and
6 then we'll just have a couple of comments to make. Mireille.

7 MS. ZIESENISS: Okay. We've prepared a few slides here to
8 follow along if everybody is so inclined.

9 [Slide presentation.]

10 MS. ZIESENISS: And what I am going to do here is just give
11 you a real brief overview of the project. I know you have all had time
12 to review it and think about it and absorb the report. So I will try
13 to be brief. Can you hear me okay?

14 MS. DICKERSON: While we're waiting for that, the team--

15 CHAIRPERSON BERRY: Can you hear, Commissioners Anderson and
16 Redenbaugh?

17 COMMISSIONER REDENBAUGH: Yes.

18 COMMISSIONER ANDERSON: Yes.

19 MS. DICKERSON: The team that worked on the report is seated
20 in the audience as well.

21 CHAIRPERSON BERRY: Okay.

22 MS. ZIESENISS: Okay. A general overview of the report, the
23 scope, as you all are aware, of this project was to look at Title VII,
24 the Equal Pay Act, and the Age Discrimination and Employment Act in the
25 private sector. So we were not focusing for the purpose of this report

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1 on the Americans with Disabilities Act, nor were we focusing on federal
2 sector issues, two areas which EEOC has done a lot of work in but which
3 has been addressed in previous commission reports.

4 The general areas that we wanted to look at were the overall
5 organization and structure of the agency, their efforts at policy
6 development and dissemination, basically whether they've addressed the
7 critical areas, followed case law effectively and efficiently, as it
8 has developed, and whether it's been disseminated adequately to the
9 public.

10 The second area which is the main focus of our report is the
11 agency's charge handling procedures. The agency has undergone a lot of
12 changes over the past few years under the most recent few
13 administrations and we wanted to look at whether their charge
14 prioritization procedures, their investigative procedures have been
15 effective at reducing the case backlog, and whether they've succeeded
16 in reducing charge processing time. And we also wanted to look at
17 mediation, which there has been a big push in the agency in recent
18 years to mediate charges of discrimination, so we took a look at that
19 area as well, as well as litigation efforts.

20 We also dedicated a portion of the report to looking at the
21 state and local agencies and Tribal Employment Rights offices. We
22 weren't evaluating those agencies, the effectiveness of those agencies
23 at handling charges as much as we were looking at EEOC's oversight of
24 those agencies.

25 And then we wanted to look at technical assistance and

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1 outreach because this is a very important function that the agency has,
2 keeping the public, both potential respondents and potential charging
3 parties, aware of their rights and their responsibilities and how to go
4 about filing charges.

5 And again, as I mentioned, the objectives of this report--
6 basically, the main objective of this report is the same as all of our
7 statutory reports, that we wanted to evaluate the civil rights
8 enforcement efforts of the EEOC. As everybody is, I'm sure, aware, the
9 EEOC has had a past reputation to overcome: large backlogs, slow
10 processing time, a history of perceived poor customer service.

11 So we wanted to evaluate their progress in recent years at
12 overcoming that reputation. We wanted to look at some of the new
13 initiatives that the agency has put in place such as the priority
14 charge handling procedures, as I've already mentioned, national and
15 local enforcement plans, where they've really prioritized the areas
16 that they want to focus their enforcement efforts on, and under the new
17 chairwoman, the Comprehensive Enforcement Program, which sort of pulls
18 all of these things together as their approach for kind of creating a
19 sort of more comprehensive look at civil rights enforcement.

20 Our methodology for this report--and I won't spend a lot of
21 time on this issue--but we used both qualitative and quantitative
22 methods. We began with the literature review and background research.
23 We reviewed documents from both EEOC headquarters and the field
24 offices. We conducted interviews with--we conducted overall about 140
25 interviews with visits to district offices. We visited five in person

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1 and did interviews with three others via telephone, via conference
2 call, and we interviewed advocacy group representatives, experts. We
3 interviewed numerous employers who have been respondents to EEOC
4 charges. We also spoke to charging parties to sort of give a balanced
5 perspective of how the agency is doing.

6 We did primary data collection with our web site surveys
7 that I'm sure you've all seen on the commission's web site, which we
8 used primarily for anecdotal evidence, and we did secondary data
9 analysis by reviewing EEOC's, analyzing EEOC's charge data system,
10 which is their data system in which they track all of their charges.

11 And generally, our findings, we found both areas where
12 improvement is needed and we found areas where the EEOC seems to be
13 doing a pretty good job. The agency seems to be better focused than in
14 the past. It seems to definitely have its priorities in line out there
15 and they know where they're headed. Their charge prioritization
16 procedures have proven effective at reducing the backlogs to some
17 degree although that is still going to require some years of monitoring
18 and evaluation.

19 They have taken a leadership role in litigating cases,
20 particularly as they move toward pattern and practice in systemic
21 charges, to sort of have a broader impact on discrimination practices
22 or policies that could affect large numbers of people, and mediation
23 has proven to be effective. It's a good way of getting all parties
24 involved in the resolution of charges and being able to resolve charges
25 quickly.

1 There were some areas, though, that raised concern for us
2 that we thought could use improvement, one of which is--the first two,
3 I guess kind of go hand-in-hand--lack of headquarters oversight and
4 inconsistency across district offices. And what we found was that
5 while there are procedures in place for how to do things such as
6 conducting investigations or prioritizing charges, district offices
7 have been given a lot of discretion to formulate their programs
8 according to how they see fit. And that's not necessarily a bad thing.

9 Our concern is that the outcomes also differ across offices
10 and that's one of the things that we tried to point out was that while
11 it is necessary to develop your programs to meet the needs of your
12 specific communities or the dynamics of your staff, it's also important
13 that you don't have some offices that do really well and other offices
14 that don't do as well. So we think that there needs to be a sort of
15 greater oversight of the office, particularly those offices that don't
16 have the best track records.

17 Customer service is another big area and the agency has
18 recently recognized that there is a need for improved customer service
19 in the Comprehensive Enforcement Program. They have identified
20 customer service as an important, but in all of our discussions with
21 people on both the respondent and charging party side, there is a
22 definite consensus that there's lack of communication with EEOC staff,
23 there's lack of--just a general lack of interaction, and so we think
24 that that's one area that definitely needs improvement.

25 And finally, the last two. Self assessment measures--we

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1 think the agency needs to do some more internal evaluation, needs to
2 possibly produce its own customer satisfaction surveys to kind of track
3 how they're doing to see where there might be problem areas, and, of
4 course, hand in hand with that also is staff training. Staff need more
5 training. And, of course, we recognize fully that that is contingent
6 on resources.

7 And finally, our recommendations. Of course, the big one is
8 always additional resources, but for the purpose of this report, what
9 we did was try to identify some areas where we felt the agency could
10 most benefit from additional resources. That would be for the
11 mediation program so that they can contract out with contract
12 mediators; the technical assistance and outreach program to reach
13 underserved communities; more money obviously, as I mentioned, for
14 staff training; also that they can have more contracts with state and
15 local fair employment practices agencies and Tribal Employment Rights
16 offices that could shoulder a lot of the burden of EEOC. And, of
17 course, so that they can do more internal research, trends analysis
18 research with their EEO-1 data and Census data.

19 We also recommend heightening the use of mediation,
20 enhancing services available to charging parties. For example,
21 expanding office hours. We found one district office that had sent
22 staff out to the field periodically or on a regular basis, I should
23 say, every couple of months, to actually take charges out in rural
24 communities that couldn't come into EEOC. So there are a lot of
25 methods out there that are working and we think that they need to build

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1 on those to enhance services to charging parties and employers.
2 Expanding outreach to underserved communities kind of goes along with
3 that. They need travel funds. They need money to produce more
4 materials that they can get out there.

5 Expand involvement of advocacy groups and community-based
6 organizations and along with this, we would include the private bar.
7 There are a lot of resources external to the agency that we think the
8 agency could really tap into, given their limited resources. And
9 finally, of course, provide assistance to the business community. The
10 agency has instituted a small business initiative which we commend and
11 we would like to see some more of that, some more of that happening.
12 So that's just kind of a quick overview or maybe not so quick.

13 MS. DICKERSON: Well, that's a summary of our report. We
14 received a number of comments from EEOC and we are working with those
15 and responding to those right now.

16 CHAIRPERSON BERRY: Could you turn the light on now if we're
17 finished? You're finished.

18 MS. DICKERSON: Yes, we are.

19 CHAIRPERSON BERRY: Thank you.

20 MS. DICKERSON: There won't be a problem to incorporate the
21 changes/the comments that the EEOC has made and there really wasn't any
22 significant impact on the recommendations or the findings from the
23 response from the agency.

24 CHAIRPERSON BERRY: Okay. Thank you very much. Is there
25 any discussion or any questions anyone has of the staff about this?

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1 VICE CHAIRPERSON REYNOSO: Did you run into one issue that
2 has been brought to my attention? And that is there is apparently a
3 regulation encouraging Federal district courts to set up panels of
4 volunteers to help litigants who file EEOC complaints, but that many of
5 the district courts--

6 CHAIRPERSON BERRY: Put on your microphone, please. They
7 can't hear you. Go ahead, Cruz.

8 VICE CHAIRPERSON REYNOSO: Some litigants have brought to my
9 attention that there is apparently regulation issued by a court system,
10 federal court system, that encourages district courts to have panels of
11 attorneys to represent--volunteer attorneys to represent litigants on a
12 pro bono basis. And apparently some district courts have set up such
13 panels and others have not. Did you run into that at all?

14 MS. ZIESENISS: We did find that the district offices are in
15 the process of putting together referral lists of employment attorneys,
16 local attorneys, who would be willing to assist with individual cases
17 maybe that the agency couldn't handle. So there have been efforts in
18 that area.

19 VICE CHAIRPERSON REYNOSO: Thank you.

20 CHAIRPERSON BERRY: Does anyone else have any discussion or
21 comments or questions on the report?

22 COMMISSIONER REDENBAUGH: Yes, Madam Chair.

23 CHAIRPERSON BERRY: You're recognized.

24 COMMISSIONER REDENBAUGH: Thank you. I think really three.

25 One is I would say what I consider the enforcement portion of the

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1 report, I do think it is done consistent with our standards, but I
2 think the report moves beyond that with a change in scope to make
3 policy change recommendations, and I thought that from discussion we
4 had in the meeting that this report would not do that. Did we make
5 that change or am I misinterpreting what we've done?

6 CHAIRPERSON BERRY: Where are the--could you give us an
7 example or ask the staff to comment on something or would you--do you
8 understand?

9 COMMISSIONER REDENBAUGH: I don't have a cite here
10 unfortunately, but I'm thinking of the recommendation for additional
11 legislation.

12 CHAIRPERSON BERRY: Staff, are you able to--

13 MS. ZIESENISS: Are you referring specifically to the
14 recommendation about the Fair Pay Act or similar legislation? Is that
15 what you're referring to?

16 COMMISSIONER REDENBAUGH: I think I am.

17 MS. ZIESENISS: Okay. Our recommendation in that was--

18 CHAIRPERSON BERRY: It's very risky to answer a question if
19 you don't know what the question is. I was taught that early on.

20 COMMISSIONER REDENBAUGH: I meant the question in a general
21 way.

22 COMMISSIONER EDLEY: It gives you more flexibility though.

23 CHAIRPERSON BERRY: I was taught that by Arthur Fleming when
24 I first came to Washington. And he was a very wise man.

25 COMMISSIONER REDENBAUGH: Well, is the scope of this report

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1 broader as it seems to me to be than our traditional and typical
2 statutory reports?

3 MS. DICKERSON: That wasn't our intent.

4 MS. ZIESENISS: No, and I think what you're referring to
5 would be our recommendation in the background chapter and that chapter
6 specifically is set up to provide sort of contextual basis for our
7 analysis to sort of examine some of the issues in employment
8 discrimination that either are emerging or that currently exist. And
9 so that's where that recommendation stems from.

10 COMMISSIONER REDENBAUGH: Okay.

11 MS. ZIESENISS: So, in a sense, it is separate from our
12 enforcement section but just sort of provides a context.

13 COMMISSIONER REDENBAUGH: All right.

14 CHAIRPERSON BERRY: Where is this? Somebody guide me to--I
15 mean where is the section, I mean the recommendation you're referring
16 to?

17 MS. ZIESENISS: Chapter two recommendations begin on page
18 four.

19 CHAIRPERSON BERRY: Unless everybody knows besides me.

20 STAFF DIRECTOR MOY: Page four, chapter two.

21 MS. ZIESENISS: I'm looking for that specific one.

22 CHAIRPERSON BERRY: Vicki, are you familiar with this?

23 MS. ZIESENISS: Page eight.

24 COMMISSIONER WILSON: I'm aware of the report.

25 CHAIRPERSON BERRY: Page eight?

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1 MS. ZIESENISS: Page eight of chapter eight,
2 Recommendations.

3 COMMISSIONER EDLEY: Chapter eight?

4 CHAIRPERSON BERRY: Chapter eight. Oh, I thought you said
5 chapter two. Eight, page--if this is indeed the one he is referring
6 to, which it may or may not be.

7 COMMISSIONER REDENBAUGH: I'm making my question very
8 poorly. Perhaps I should go on to another one.

9 CHAIRPERSON BERRY: Okay. But I think we need to deal with--
10 --now that you've raised it, I'm not sure--

11 COMMISSIONER EDLEY: Well, there is support for the
12 paycheck--I'm sorry--support for the Paycheck Fairness Act,
13 strengthening the Equal Pay Act, and then--

14 CHAIRPERSON BERRY: Narrowing the pay--so that EEOC can
15 address such issues. Oh, yeah, I remember it now.

16 COMMISSIONER REDENBAUGH: So advocacy of legislation; is
17 that what this is?

18 MS. ZIESENISS: I suppose it is.

19 CHAIRPERSON BERRY: Commissioner Edley, are you seeking
20 recognition?

21 COMMISSIONER EDLEY: Yeah, it certainly seems like it's
22 that, but I've only been on the commission a year. Is there some
23 proscription against suggesting to the public and to Congress that laws
24 be strengthened?

25 VICE CHAIRPERSON REYNOSO: Well, I confess that I don't
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1 recall any such proscription. I thought we were free to make any
2 recommendation that seemed logical to us, particularly since we report
3 both to the executive and the legislative branches. So, Russell, I
4 guess I may have missed that discussion, but I don't remember any such
5 proscription.

6 COMMISSIONER REDENBAUGH: I don't know that it's a
7 proscription. I think it's a practice for enforcement reports to not
8 be quite so broad and let me go further to my concern because I don't
9 believe that there is a proscription. There was commissioner testimony
10 in the transcript, which, of course, I also can't cite, which led me to
11 think that the scope of this would be other than it is. The concern
12 I've got is that the report supports legislation without evidence--
13 we're supporting legislation that overturns the notion of marketplace
14 for setting prices and wages without sufficiently, from my point of
15 view, developing the argument that there is a marketplace failure here
16 and accepts as prima facie evidence of marketplace failure apparent
17 differences in gender pay.

18 And where I'm particularly concerned is where it goes on to
19 try and define the notion of comparable worth or comparable work
20 because it then transfers from the marketplace for making that decision
21 to either legislators or actually regulators and it's an important
22 shift and I don't think we've developed that case very well.

23 CHAIRPERSON BERRY: Yes, go ahead, Christopher.

24 COMMISSIONER EDLEY: I guess I disagree substantively. It
25 does seem to me that a wage disparity of the sort that Russell has

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1 described is evidence. It's not proof, but it's certainly evidence
2 that would warrant further examination, and I think that's certainly
3 well established in the law, both under the Equal Pay Act and in other
4 areas of anti-discrimination law. I didn't read anything in the report
5 as suggesting that these gender disparities are themselves proof of
6 discrimination.

7 And I also think that it's the nature of discrimination that
8 people in--that the market evidences disparities and disparate
9 treatment that are irrational and that we're by statute and by
10 regulation attempting to combat. So simply saying that because it
11 exists in the market, it must be okay, that certainly doesn't work.

12 COMMISSIONER REDENBAUGH: No, or the other side.

13 COMMISSIONER EDLEY: Exactly.

14 COMMISSIONER REDENBAUGH: Because it must be wrong. I would
15 think, though, if there were these market substantial discrimination
16 differences in cost and wages, that there would also be examples of
17 folks who don't have that prejudice who have been able to exploit those
18 advantages and capture excess return.

19 CHAIRPERSON BERRY: May I intervene to just make one comment
20 that may be helpful in moving the seminar discussion?

21 COMMISSIONER REDENBAUGH: No. I'm sorry. I just got into
22 that and I--

23 CHAIRPERSON BERRY: No, no, no, no. We should have the
24 seminar discussion. I find it very interesting, but this
25 recommendation that is described on page eight does none of what you

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1 and Christopher are talking about. What the recommendation does quite-

2 -

3 COMMISSIONER REDENBAUGH: Well, then we're having a
4 different seminar.

5 CHAIRPERSON BERRY: Right. What the recommendation does--
6 and I want to engage the one that you're having. It's more
7 interesting. But the recommendation simply says, and reading the text
8 of the chapter, and reminding, refreshing my recollection of it, that
9 after analyzing how the EEOC goes about enforcing pay issues, they
10 conclude that EEOC needs an enhanced ability to implement these
11 existing laws.

12 COMMISSIONER REDENBAUGH: Right.

13 CHAIRPERSON BERRY: And therefore it might help them to have
14 clarification and that what the Paycheck Fairness Act and Equal Pay Act
15 do, in their view, is to help the EEOC in trying to sort out how it
16 goes about implementing this. So the bootstrap, the connection between
17 enforcement and this recommendation, is not just some recommendation
18 standing on its own--

19 COMMISSIONER REDENBAUGH: Yes, okay.

20 CHAIRPERSON BERRY: --but that it's connected to trying to
21 help EEOC. Now to move from there to the discussion you guys are
22 having, which is more interesting, I said--

23 COMMISSIONER REDENBAUGH: I know, but I--

24 CHAIRPERSON BERRY: --is the comparable worth discussion I
25 find much more interesting. But anyway I thought I would clarify that

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1 point.

2 COMMISSIONER REDENBAUGH: No. That is good.

3 COMMISSIONER ANDERSON: Madam Chair.

4 CHAIRPERSON BERRY: Yes, well, I want to let Russell finish
5 his sentence and then I will recognize you, Carl.

6 COMMISSIONER ANDERSON: Thank you.

7 CHAIRPERSON BERRY: Commissioner Redenbaugh.

8 COMMISSIONER REDENBAUGH: I think it is a great seminar
9 topic and I'd like to have it over coffee and not now because I need to
10 move quickly toward my train. I have one other concern that I'll voice
11 and then a number of small ones that I won't. And that is it appears
12 to me the report is political in that there is a recommendation to fill
13 vacancies in the agency prior to the election.

14 CHAIRPERSON BERRY: Which vacancies are you referring?
15 Where is filling vacancies?

16 COMMISSIONER REDENBAUGH: Well, I'm--

17 CHAIRPERSON BERRY: No, I'm asking the staff.

18 COMMISSIONER REDENBAUGH: Okay.

19 CHAIRPERSON BERRY: I'm not asking you.

20 COMMISSIONER REDENBAUGH: You know what I mean I think
21 that's always a good idea for an outgoing administration to do that. I
22 mean so there is a certain facticity to this. I just don't know if the
23 Civil Rights Commission should be imprinted on that.

24 MS. DICKERSON: Top of page 12 is the one.

25 CHAIRPERSON BERRY: Top of page 12 in the same chapter?

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1 VICE CHAIRPERSON REYNOSO: What chapter?

2 MS. DICKERSON: Bottom of page 11 in the same chapter.

3 COMMISSIONER WILSON: Is this chapter eight?

4 MS. ZIESENISS: And if I could speak to that?

5 MS. DICKERSON: It really starts at the bottom of page 11.

6 CHAIRPERSON BERRY: Wait, wait, wait, wait just one minute.

7 COMMISSIONER EDLEY: These are not political appointees
8 you're talking about.

9 CHAIRPERSON BERRY: What it says here is that when there are
10 vacancies in an agency, the president and the Congress should strive to
11 reach agreement as quickly as possible so that agencies are not without
12 top leadership for extended periods. I absolutely agree with that.

13 COMMISSIONER EDLEY: These are civil service positions that
14 we're talking about.

15 CHAIRPERSON BERRY: It is a general--no, this is--first of
16 all, it's a general. There are two recommendations here. One is that
17 when there is a vacancy in a presidential appointment that the hope is
18 that the president and Congress will reach quick agreement so that you
19 don't go for long periods no matter what administration it is with
20 agencies with no leadership at the top.

21 COMMISSIONER REDENBAUGH: Right.

22 CHAIRPERSON BERRY: Which happened at EEOC for years.

23 COMMISSIONER REDENBAUGH: Uh-huh.

24 CHAIRPERSON BERRY: And it's not about anybody filling any
25 positions now, Russell. It's a general recommendation about what the

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1 agency needs in order to function.

2 COMMISSIONER REDENBAUGH: And the agency needs us to tell
3 them that?

4 CHAIRPERSON BERRY: No, it's a recommendation to the
5 Congress and to the president.

6 COMMISSIONER REDENBAUGH: I got it. Okay.

7 CHAIRPERSON BERRY: That they ought to with an eye out to--

8 COMMISSIONER REDENBAUGH: Well, I know they need us to tell
9 them that.

10 CHAIRPERSON BERRY: Right. They need us to urge them to do
11 that because they haven't done it.

12 COMMISSIONER REDENBAUGH: Right.

13 CHAIRPERSON BERRY: And you've had long periods in which the
14 EEOC hasn't had anybody who is supposed to be--

15 COMMISSIONER REDENBAUGH: Okay. So the timing of the
16 election is not even referenced here?

17 CHAIRPERSON BERRY: It has nothing to do with it.

18 COMMISSIONER EDLEY: No, but in fairness, I think the real
19 point of the recommendation is the next sentence--

20 CHAIRPERSON BERRY: Which is about--

21 COMMISSIONER EDLEY: Which talks about on an immediate level
22 the EEOC must make efforts to ensure that management in field offices
23 remains stable. And those are not political appointees. Those are
24 just regular career civil service positions which obviously shouldn't
25 have to wait for an election to be filled.

1 CHAIRPERSON BERRY: And the recommendation, Russell, which I
2 find--I mean I think it's very much needed, is that they shouldn't go
3 for long, long periods over there and then when they have a review, an
4 oversight, they always say, well, we couldn't get rid of the backlog.
5 One, we don't have any people. And two, we don't--

6 COMMISSIONER REDENBAUGH: We don't have enough money.

7 CHAIRPERSON BERRY: Right. Both.

8 COMMISSIONER REDENBAUGH: Same thing we say.

9 CHAIRPERSON BERRY: Yeah. Which is true.

10 [Laughter.]

11 CHAIRPERSON BERRY: Do you have another you'd like to--

12 COMMISSIONER REDENBAUGH: Not really.

13 CHAIRPERSON BERRY: Okay.

14 COMMISSIONER REDENBAUGH: I really need to move to the
15 train. I ask that an accommodation of my vote, my no vote, be recorded
16 at the time that the voting occurs.

17 CHAIRPERSON BERRY: Okay.

18 COMMISSIONER REDENBAUGH: Anybody do that?

19 CHAIRPERSON BERRY: Without objection since he is here and
20 even though we aren't taking the vote yet.

21 COMMISSIONER REDENBAUGH: All right.

22 CHAIRPERSON BERRY: All right. Commissioner Anderson.

23 COMMISSIONER ANDERSON: Well, I guess I feel a little bit
24 more strongly about some of these matters than my colleague,
25 Commissioner Redenbaugh, indicated. I think the endorsement of the--

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1 COMMISSIONER REDENBAUGH: I need to leave. Thank you.

2 CHAIRPERSON BERRY: Okay.

3 VICE CHAIRPERSON REYNOSO: Bye, Russell.

4 COMMISSIONER REDENBAUGH: Bye. Bye, Carl.

5 COMMISSIONER ANDERSON: Bye. Bye, Russell. I think I have
6 two major difficulties with the report. The first difficulty is that
7 what should be a statutory enforcement report has become a legislation
8 endorsement report and I think the endorsement of the Paycheck Fairness
9 Act, the Fair Pay Act, and the Equal Pay Initiative, although that's
10 not legislation, is a backdooring of comparable worth into the system.
11 So I think that the seminar on comparable worth that was taking place a
12 couple of minutes ago is very much on point and we should have had a
13 larger discussion of those issues in the context of both the Paycheck
14 Fairness Act and the Fair Pay Act if it is the intention of the
15 commission to actually endorse those legislative proposals.

16 I don't think we're barred by our statute from taking a
17 position on legislation, but I think we should do it, if we are going
18 to do it, in a more straightforward and analytical process than burying
19 the endorsement within the text of the report. So that would be my
20 first objection, which is to say I would vote against endorsement of
21 these proposals and, therefore, since they are contained within the
22 report, I'm going to vote against the report.

23 Therefore, I guess I align myself with the 1984 position of
24 the commission when it voted to reject endorsement of comparable worth.
25 Now, that would be my first problem with the report.

1 My second problem I think is not quite as comprehensive or
2 perhaps profound, which is to say that I believe the report makes a
3 number of good recommendations regarding accountability, priority
4 setting, fiscal responsibility, improving customer service, moving to
5 reduce the backlog inventory, and, therefore, I would endorse many of
6 the recommendations that are in the report.

7 Where I have an objection is that the EEOC just having had
8 in 1999 its largest budgetary increase, our report again focuses on the
9 urgency of increasing the budget by even a much larger amount as a way
10 of making these kind of improvements. And I would say that we're
11 putting the cart before the horse, that we should be insisting on many
12 of these improvements at the current budget levels, and then looking to
13 future budget needs once some of this problem has been resolved, which
14 leads to a third issue, which is that if we do, in fact, because of our
15 endorsement enact Fair Pay Act, Paycheck Fairness Act, Equal Pay
16 Initiative, I don't believe for a minute that that is going to assist
17 the commission in reducing its workload. I think it is going to propel
18 a huge increase in the workload because of the ambiguities contained in
19 those legislative proposals, and I believe the EEOC, if we follow the
20 recommendation with the commission on this legislation, is never going
21 to catch up to reduce its backlog. So I would say as concisely as I
22 can that is my objection to what's in the report and that's why I
23 intend to vote no on it.

24 CHAIRPERSON BERRY: Okay. Any other comments from any other
25 commissioners? Yes, Commissioner Meeks.

1 COMMISSIONER MEEKS: Well, one, I thought it was a good
2 report, but I wanted to talk a little bit about chapter six which
3 endorses the Tribal Employment Rights. And just offer a little bit of
4 information or clarification. I know it's hard to get good information
5 and that you worked hard to get what you do have, but chapter six
6 discusses the Tribal Employment Rights Office and the Indian hiring
7 preference. I think it's important to include the history of how the
8 Indian hiring preference came to be. It's also important to let the
9 reader know that this preference does not extend beyond tribal
10 governments, the BIA or the IHS. And the Indian hiring preference is
11 grounded in the Indian Reorganization Act of 1934.

12 It was challenged as unconstitutional in the mid-1970s in
13 the case of Morton v. Mancari. In that case, the Supreme Court upheld
14 the preference holding for, one, Indian self government; two, trust
15 obligation; and three, the negative effect of non-Indian administration
16 as the guiding principles in its decisions. So the purpose of the
17 Indian hiring preference is distinguished from programs such as
18 affirmative action, in that it is meant to further self-government as
19 opposed to the encouragement of diversity or even the remediation of
20 past wrongs somewhat. We can give you some more information on this,
21 if you'd like, in the next couple of weeks.

22 MS. DICKERSON: Thank you.

23 CHAIRPERSON BERRY: So we will take those comments into
24 account and make sure that the section as you revise for publication
25 includes the clarifications. Any other? Yes, Vice Chair.

1 VICE CHAIRPERSON REYNOSO: I appreciate Carl's concern which
2 we've already seen historically that Congress has placed greater and
3 greater responsibility on the EEOC without increasing its budget and
4 that's been one of the problems that the EEOC has had in terms of its
5 increased backlog, and I think Carl is probably right, that insofar as
6 the laws are clarified and EEOC has a direct role, that its enforcement
7 power will even be increased and, therefore, they may have more
8 complaints and without resources may even have a greater problem with a
9 backlog.

10 Nonetheless, insofar as the substance of the recommendations
11 are concerned in the report with respect to that legislation, I think
12 it's very much needed. I think clarifications are needed. Ambiguity
13 is the worst thing that we can have in the law, it seems to me, so I
14 support the recommendations and the report.

15 Further, the EEOC has fallen so far behind in terms of its
16 needs with respect to resources that I find it not incongruous to be
17 realistic at this point and say, look, boys and girls, this is really
18 what we need if the EEOC is going to do what Congress wants it to do.
19 So often we have in the legislative process great promises but few
20 resources and then the legislators go back to their constituents and
21 say look at these great things we did, but, in fact, nothing can happen
22 because the resources aren't there.

23 And one of the strengths of this commission is it's
24 independent and it can call on things as it sees them. I'm reminded of
25 a commission I served on with the LA School District, where they need

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1 new construction, and they now have \$800 million. That sounds like so
2 much money that they dare not go back to the legislature to ask for
3 more money, but before our commission, they indicated they actually
4 needed \$2.4 billion to do the construction of new schools because
5 they've fallen so far behind, but politically speaking, they think they
6 can't go to Sacramento and ask for that money.

7 Well, we're independent. We can say if the EEOC is going to
8 do the job that, Congress, you asked it to do, it needs these
9 resources. And I think that's our job. Politically speaking, then
10 Congress can do what it wants. The president can do what he wants, but
11 we have the duty to be truthful about it, and I think that's what this
12 report is doing. That's my mini-sermon for the day.

13 CHAIRPERSON BERRY: Absolutely.

14 [Laughter.]

15 CHAIRPERSON BERRY: Let the church say amen. I just want--
16 yes, Commissioner Lee, please.

17 COMMISSIONER LEE: Thank you. I think that the report
18 overall is very well done. I commend the staff for that. I just have
19 a couple of suggestions. Number one, I do have some minor editorial
20 changes that I would like to submit if you can give me the deadline to
21 submit. And even though I know that the report concentrates on the
22 private sector, that federal-employees are a big employee pool, and
23 maybe for chapter one, you may want to include a paragraph explaining
24 why you are not covering the federal employee segment, talking about
25 why--not why, but explaining that Congress really does not support

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1 that. However, my limited understanding is they do handle appeals for
2 federal employees. So maybe there needs to be some explanation for the
3 public to understand.

4 And throughout the report, you mentioned the difficulty
5 between the employees and the employer community of understanding
6 EEOC's workings despite the great efforts by EEOC to try to outreach to
7 different communities, and I thought that it may be beneficial for the
8 public if we can issue an executive summary of this report because you
9 have a lot of great information and great recommendations there that
10 the public would be well served if they get a copy of it. And I doubt
11 that the average person would want to read the whole thing. So if you
12 have time to do that, that would be very, very beneficial.

13 CHAIRPERSON BERRY: Okay. Any other commissioner have any
14 comments? Okay. All right. With that, then I'll call for the
15 question. All those in favor of approving the report indicate by
16 saying aye.

17 [Chorus of ayes.]

18 CHAIRPERSON BERRY: Opposed?

19 COMMISSIONER ANDERSON: Nay.

20 CHAIRPERSON BERRY: Commissioner Anderson is opposed.
21 Commissioner Redenbaugh is opposed. The other commissioners all voted
22 aye. So that the report passes. And thank you very much, staff. We
23 will rely on you to make the changes that are necessary as you go
24 toward printing, the printing of this report. And thank you for your
25 work.

1 MS. DICKERSON: Thank you.

2 MS. ZIESENISS: Thank you.

3 COMMISSIONER LEE: Madam Chair.

4 COMMISSIONER ANDERSON: Madam Chair.

5 CHAIRPERSON BERRY: Yes. Commissioner Lee and then
6 Commissioner Anderson.

7 COMMISSIONER LEE: When do you need those changes?

8 CHAIRPERSON BERRY: Oh, yeah, we have to always say that.

9 When will you--well, we need them as soon as possible. And we also
10 need for people who wish to write opinions a deadline for them. Do we
11 know, Staff Director--well, why don't we say--what's the date of--today
12 is the--

13 STAFF DIRECTOR MOY: 21st.

14 CHAIRPERSON BERRY: 21st. Why don't we--can we get it back
15 in about two weeks? Would that be good for everybody? Is that okay?

16 MS. DICKERSON: Yes.

17 CHAIRPERSON BERRY: All right. Two weeks from today, close
18 of business, two weeks from today.

19 COMMISSIONER ANDERSON: That would include concurring
20 opinions or dissenting opinions?

21 CHAIRPERSON BERRY: It would include opinions that people
22 care to write, too, if possible. Is that date okay or do you need more
23 time than that?

24 COMMISSIONER ANDERSON: Well, generally people do take a few
25 vacation days in August.

1 CHAIRPERSON BERRY: Ah, vacation.

2 COMMISSIONER ANDERSON: Right.

3 CHAIRPERSON BERRY: Why don't we say three weeks? Is that
4 better?

5 COMMISSIONER ANDERSON: That would be great.

6 STAFF DIRECTOR MOY: Madam Chair, there is a problem. We
7 will have a problem then because the GPO will need it before, at least,
8 by mid-August and in order for us to have it to them by mid-August, we
9 have to give it to our editorial people, Dawn Sweet, to prepare.

10 CHAIRPERSON BERRY: Well, three weeks from now is what?
11 Somebody who has a calendar?

12 COMMISSIONER ANDERSON: August 3.

13 COMMISSIONER LEE: No, August 11.

14 CHAIRPERSON BERRY: August 11.

15 COMMISSIONER ANDERSON: Well, the concurring opinion should
16 not require much editorial work from the staff, I would think.

17 CHAIRPERSON BERRY: August 11.

18 MS. DICKERSON: It's not editorial. It's really formatting
19 and production.

20 CHAIRPERSON BERRY: The Staff Director asked if it's at all
21 possible to do it by the third, Commissioner Anderson? We'll say the
22 third.

23 COMMISSIONER ANDERSON: Okay. We'll try.

24 CHAIRPERSON BERRY: Okay. August 3. August 3. That's
25 right. We've had it for six weeks. That's right. Okay. Let me,

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1 having passed this and thanking the staff for the work, let me just
2 make a couple of comments about this process and then I'll go on with
3 the rest. I hadn't planned to say anything, having read the 38 Psalms,
4 I think it is, this morning, the 38, I think it is, where I hold my
5 tongue with a bridle and I speak not as my tongue grows hot in my
6 mouth, or words to that effect.

7 But in the name of my dear departed colleague, Winn Newman,
8 who was one of the best equal employment/sex discrimination attorneys
9 whoever lived in this country, and whose heart was broken when this
10 commission voted in 1984 to oppose comparable worth and then had that
11 opinion of the commission cited in the Court of Appeals case it cited
12 in which comparable worth was sunk for once and all.

13 He was a broken man after that. He had spent his entire
14 life working on this issue and he died. So in his name--I don't know
15 whether there any connection between the two, but in my mind there will
16 always be a connection. I think one of the most dastardly things this
17 commission ever did was to go about systematically the way it did it in
18 the 1980s to kill comparable worth. I was here. And it did it in a
19 nefarious malignant way. I can't think of words too extreme to
20 describe how it did it. It did it by having a series of consultations
21 in which people were invited to give papers and scholars came and some
22 who came supported comparable worth.

23 But they thought the commission was going to have a fair
24 procedure and listen and hear them out and have a debate, but I knew
25 from the beginning because I had been told that the idea was to kill

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1 it. That was a time when our chairman at that time, Mr. Pendleton, who
2 is also departed, made a statement that comparable worth was the
3 looniest idea since "Looney Tunes" came to the land and went all over
4 the country saying that.

5 And because we were the Civil Rights Commission, and when
6 people heard Civil Rights Commission, they thought, well, they must be
7 for civil rights, and the Civil Rights Commission said it was opposed
8 to the idea that people who perform work that requires similar skill
9 and ability should receive similar pay, which is what comparable worth
10 is, that if you have a job that, in fact, requires the same skill and
11 ability as amount of skill and ability as some other job, you ought to
12 get paid. That is you're a nurse and you're a woman, or a man, and
13 there's a janitor at the hospital, and your job requires just as much
14 skill and ability as a janitor, you ought to get paid as much as a
15 janitor. Just that simple.

16 And the killing of that idea came about with the idea that
17 women took jobs where they got paid less because they wanted to,
18 because they had families, and they didn't want to have jobs where they
19 got paid equally, and that this was just the gender, the effect of
20 gender, and the marketplace was simply responding to that.

21 So comparable worth, which was being supported by a lot of
22 people--there were debates about it in Congress and so on--the
23 Commission put the nail in the coffin, as it were. So I would like
24 this commission to revisit the issue of comparable worth because I
25 would not like to have the record show only that this commission in

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1 1984 voted against the idea. And it's time for a revisiting. Canada
2 has a comparable worth law and everything I've read about it indicates
3 that it works very well and effectively.

4 So I would like to ask, if there is no objection, the Civil
5 Rights and Evaluation staff, once they have a little moment to do so,
6 to investigate that particular piece of legislation in Canada and to
7 propose to us a series of proceedings in which we can take a fair look
8 at this issue and see if the commission would like to come up with
9 either a new position or keep the one it has or what it wishes to do.
10 I would not like to leave this commission, whenever that is, with the
11 record showing that that is what the Commission on Civil Rights had to
12 say on this issue.

13 Now, I have said that anyway, but then the next Psalms right
14 after that, I'm forgiven for having spoken heatedly in this way and I
15 incline my ear unto the Lord and he heard my cry. Okay. Is there
16 anybody who would object to our proceeding in this way?

17 COMMISSIONER ANDERSON: Madam Chair?

18 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

19 COMMISSIONER ANDERSON: Reserving the right to object, I
20 think one member of the commission should not be able to veto the
21 commission moving forward on an issue so I'm not going to object. But
22 I do think that if we proceed in this manner, I would not object based
23 on--well, let me put it this way. I feel strongly to object if the
24 reason for further study of comparable worth is based upon the
25 conclusion that in the 1980s--and I know you feel strongly about this--

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1 that the commission proceeded in an unfair, malignant manner. That may
2 be your view, but I don't think it serves the purposes of the
3 commission's institutional autonomy or independence to feel then we
4 have to characterize the past work of the commission when we disagree
5 with it in those terms.

6 CHAIRPERSON BERRY: Well, you don't have to characterize it.
7 No other commissioner has to. I have characterized it in the way that
8 I choose to characterize it, which is my right in terms of free speech.
9 That is the way I characterize it. I was here. And that's how I see
10 it. You weren't here. None of the rest of you were. And I am not
11 asking the commission to support comparable worth. I am simply saying
12 that I think the issue ought to be revised and revisited in a fair
13 manner. The commission may conclude after revisiting it that the 1984
14 decision was a correct one. The commission may conclude after
15 revisiting it that it was not or that there should be some
16 modification.

17 I expressed my personal view because I felt like it and made
18 clear that it was very personal. And so, therefore, the staff would be
19 the ones who would put this together and the commission would make its
20 own conclusion. I am only asking whether people are interested in
21 pursuing the issue. If people are, then we can pursue it. If they're
22 not, we don't need to. Yes, Commissioner Wilson.

23 COMMISSIONER WILSON: I was not here in the 1980s, but I
24 would like to say that despite your reference to the Psalm, I applaud
25 your suggestion, and I would be very excited and gratified to be here

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1 to review this issue.

2 CHAIRPERSON BERRY: Okay. Commissioner Lee and then
3 Commissioner Edley.

4 COMMISSIONER LEE: I also support the suggestion. I also
5 want to make another suggestion. That is before the staff comes back
6 with their recommendation, I'd like to recommend that for our September
7 meeting, we hold a briefing on this issue. Bring in the experts so
8 that we and the public get a chance to look at comparable worth in a
9 very fair and objective manner. And I don't think we have anything
10 scheduled for September. Because I would really like to see that
11 moved.

12 CHAIRPERSON BERRY: Commissioner Edley.

13 COMMISSIONER EDLEY: Procedural question. What--is this
14 something we should just take a vote on putting it on the agenda? I
15 mean I'm going to make perhaps a controversial agenda proposal later
16 on, and I'm actually in favor of talking about things that are
17 controversial. So I'd be happy to set a precedent of having a divided
18 vote to put something on the agenda.

19 CHAIRPERSON BERRY: All I'm really asking, Christopher, is
20 that we would proceed first by having the staff do a small paper for us
21 looking at what's happening with the Canadian bill or just tell us in
22 some way so we have some background and perhaps looking at who the
23 experts are and who could come to talk to us about it. And we may be
24 able to do that for September and if not, as soon as we can. I mean--

25 COMMISSIONER EDLEY: Well, let me be--I'm for going ahead.

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1 I'm for going ahead with this. I'm probably even more for going ahead
2 with it if one or two of our commissioners would rather not. I just
3 want to be clear I think it's important that we go ahead and do it.
4 But also the staff might be able to find an article on the Canadian
5 system in the library rather than having to write their own.

6 CHAIRPERSON BERRY: Right. They could find something for us
7 to--yeah--give us a little background and then look at who might come
8 to speak to us about this. And then we can analyze it and see if we
9 want to take--and give us the information on what the commission did
10 before. That's important. So that people can see what was said and
11 what was done for themselves rather than hearing it from me. And that
12 would be useful I think.

13 So if we could pull together a package with the stuff that
14 was done before and various press accounts at that time of what the
15 commission was doing. And then if we could then have, if there's an
16 article or something that gives a context that the commissioners could
17 read, that would be useful and we could talk about who to bring in,
18 whether it's to bring in experts or how to proceed to resolve it so
19 that we can then make another decision. Yes, Commissioner Wilson. Oh,
20 I'm sorry. Commissioner--no, no, you weren't seeking recognition.
21 Commissioner Wilson.

22 COMMISSIONER WILSON: Is it possible to include the
23 discussion that the commission had that led them to that vote?

24 CHAIRPERSON BERRY: Yes, that's what I meant. To give you
25 the--

1 COMMISSIONER WILSON: I'd be curious.

2 CHAIRPERSON BERRY: Oh, I see, you would like to have the
3 transcript so you can see what they said. That's good. That's public
4 information and we can, of course, see it.

5 COMMISSIONER WILSON: Well, if you're pulling together the
6 information, I'd like to see how they evaluated it and how they came to
7 the decision they came to.

8 CHAIRPERSON BERRY: Okay. All right. That would be good.
9 And that in itself, all of that put together will give us enough to be
10 able to make some judgments, and I think reading some of the papers
11 that were printed in the commission report at that time will be useful
12 to you. Okay.

13 COMMISSIONER ANDERSON: Madam Chair.

14 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

15 COMMISSIONER ANDERSON: So are we going to defer the
16 question of a briefing past September? It would be helpful to me if I
17 knew what you really had in mind. Are you looking for a statement on
18 comparable worth, a report or some other kind of--

19 COMMISSIONER WILSON: We're looking on the state, the state
20 of comparable worth.

21 CHAIRPERSON BERRY: The state of comparable worth. Yeah.
22 What we're doing here is, first, the commissioners are going to inform
23 themselves about the issue by looking at what the commission did
24 before, how it did it, and then to look at what has been going on with
25 comparable worth since then in Canada and other places and here, and

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1 then to have a recommendation which will tell us that we should either
2 have a briefing, as Commissioner Lee suggests, and I don't know if this
3 will be September or not--it depends on how fast all this can be done--
4 with experts to come in and talk to us and then we would take a
5 position if we felt comfortable taking one or if we at that point
6 decide that we don't see any need to do anything else and everybody is
7 happy with the position that was already taken except me, because I
8 remember it, then we wouldn't do anything. We'd just go on and work on
9 something else.

10 Or we might have a briefing or we might have some other
11 proceeding or have a research report on which we could make a judgment
12 and issue something on comparable worth.

13 COMMISSIONER ANDERSON: Well, my own opinion is it will take
14 us a little bit of time to digest this material. The briefing that was
15 held circa '84 by the commission might take some time to review. I
16 think it's probably printed. It's referred to in the report we just
17 adopted. So I think we should discuss this issue in September and then
18 decide where we want to go with it, if we want a briefing or hearing or
19 a report, how we want to proceed at that point. But maybe just
20 schedule a discussion in September.

21 CHAIRPERSON BERRY: Commissioner Edley.

22 COMMISSIONER EDLEY: Well, I want to speak candidly. I
23 don't think, I'm not interested--I would like to chart a way that gets
24 us to a substantive discussion of this issue without what I perceive a
25 dilatory effort to keep us from talking about the subject. So I hope

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1 that the chair will not indulge that kind of procedural dancing around.
2 Let's just move forward, get the information, think about, decide how
3 to move forward, and if there are dissents on moving forward, so be it.

4 COMMISSIONER ANDERSON: Well, Madam Chair.

5 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

6 COMMISSIONER ANDERSON: I would hate to think that my
7 colleague has suggested that what I just said is a dilatory tactic to
8 postpone consideration by the commission on this issue.

9 COMMISSIONER EDLEY: Yeah, I do. But that's okay. We can
10 disagree. We can disagree.

11 COMMISSIONER ANDERSON: To push over discussion of it for
12 one meeting?

13 COMMISSIONER EDLEY: I can elaborate--

14 COMMISSIONER ANDERSON: So we can discuss it at the next
15 meeting.

16 COMMISSIONER EDLEY: Discuss whether to have a discussion?

17 COMMISSIONER ANDERSON: And have a briefing next meeting.
18 It doesn't bother me in the least.

19 COMMISSIONER EDLEY: Great.

20 COMMISSIONER ANDERSON: I think that if you want to proceed
21 in a deliberate considered way, that it is not dilatory to review this
22 material over August and come in and discuss it. -- Now, -- we've heard the
23 chairman a few minutes ago say that in 1984 the entire process was
24 unfair because everybody knew where the commission was coming out on
25 the issue prior to any of the procedure and any of the briefings taking

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1 place.

2 Now, I suggest to you if we want to be candid, that
3 precisely the same thing is happening now. So don't even bother
4 further consideration; let's just vote to endorse comparable worth
5 today.

6 COMMISSIONER EDLEY: Let me be clear. My view is that I
7 think the staff should put together a package of relevant, appropriate,
8 useful material for commissioners to review and that we should have a
9 substantive discussion, begin a substantive discussion of comparable
10 worth at the earliest possible date.

11 COMMISSIONER ANDERSON: Well, do you mean by that a
12 conference call or our next scheduled meeting? I anticipated that to
13 be in our next scheduled meeting. If there is urgency to have a
14 conference call, then let's set a time.

15 COMMISSIONER EDLEY: No, I think the next scheduled meeting
16 would be fine, but I want it to be a substantive discussion, and not a
17 protracted procedural thing of whether we should or shouldn't. Let's
18 just get into it and see and test the waters and then move on.

19 CHAIRPERSON BERRY: The statement you made--I'll recognize
20 you in a minute, Commissioner Wilson--Commissioner Anderson, I made in
21 1984. I said--or whatever year that was--why don't you guys just go
22 ahead and vote now, the same thing you said, and the argument was, you
23 know, if you're going to vote, you need to have a record to vote on
24 anyway.

25 Commissioner Wilson.

1 COMMISSIONER WILSON: A question. Does comparable worth not
2 exist right now in this country?

3 CHAIRPERSON BERRY: No, we don't have it. What happened was
4 that we have equal pay for equal work, but we don't have--which means
5 if you're doing the same job that someone is doing, the exact same job
6 to janitors, to nurses, whatever, but the concept of comparable worth
7 was that you had sex segregated, female dominated jobs for years in
8 which women who had higher levels, skills and abilities, and the best
9 example was the nurse in the hospital and the engineer in the hospital.
10 And I know this because I used to work in hospitals for years and years
11 and years in an earlier part of my life, and I know that the engineer
12 made more than the chief nurse, and he had no more education, training
13 or anything else. But the idea was he had a family and he had to take
14 care of his family and that sort of thing.

15 But anyway so the idea was that you if you had as much skill
16 and educational background and responsibility in your job, which could
17 be weighed by experts, and there are experts who assess jobs--they tell
18 you what factors--and someone else has a different job with a different
19 label, but it does not require any more skill, effort or
20 responsibility, you should not be paid less just because it's gendered.
21 I mean that was the argument and that the likelihood was given the
22 tradition and history of these jobs that they were gendered. And so
23 the effort was in comparable worth to have a statute passed first that
24 would require studies of jobs to see how much domination, and that even
25 the studies were killed in the Congress on these arguments that it's

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1 the marketplace and it's women who don't want jobs that pay more and
2 they take these other jobs and it's their choice, and you shouldn't
3 assess skill, effort and responsibility. It's hard to measure even
4 though there were experts who told you.

5 So you will see all of this in the materials that you will
6 get and so we ended up with the idea being killed. So I think that--
7 but that's different from equal pay for equal work and, as I say, I
8 think Canada has a statute that has comparable worth. So we'll see how
9 theirs has worked out. There were also arguments that horrors would
10 take place in the marketplace if you did this and the economy would be,
11 you know, destroyed and employers wouldn't be able to function. I mean
12 all kinds of, you know, economic arguments, but you'll review those and
13 you'll see those when you see the materials.

14 Okay. So where we are is we're going to review the
15 materials. And we will at the September meeting have a discussion
16 which may include a briefing, depending on how fast they can get this
17 together, with experts to come in and we will all have the next weeks
18 to read the materials and ask questions and satisfy ourselves
19 concerning this subject. The only hurry to make a decision is because
20 it's an important issue and there ought to be one, and the thing has
21 been laying out there since '84.

22 All right. Thank you very much. I will go back to the
23 agenda and make announcements now.

24 IV. Announcements

25 CHAIRPERSON BERRY: The ADA, The Americans with Disabilities

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1 Act, which President Bush signed in July 26, 1990, the anniversary of
2 it is coming up. And there are various agencies planning observances
3 including Transportation and so on and this agency.

4 We usually discuss the commission's budget at this meeting,
5 the budget for the next fiscal year, but because this is a presidential
6 election year, like other presidential election years, when a president
7 is going out of office and is not running again, the FY 2002 budget
8 will be submitted by the next president, whoever that is, and OMB will
9 prepare a transition budget they call it, and so we're not required to
10 submit budget estimates in September, as we normally do, and there will
11 be no formal budget hearings at OMB in the fall and so we will consider
12 our budget or we'll talk about it some at the October agenda. But the
13 schedule is off because of the presidential election year.

14 Commissioners should submit your expenses in order to close
15 out the fiscal year. It is very important that you do this. Some of
16 you are laggards in turning in your expense statements which makes it
17 very difficult for the administrative offices here at the commission.
18 So we'd like to urge you to please do this so we can close out for the
19 fiscal year.

20 The Central Regional Office under the supervision of Mel
21 Jenkins is under consideration for the 100 Best Practices Awards from
22 the Department of Housing and Urban Development, which will be given at
23 their annual Best Practices and Technical Assistance Symposium August
24 7-10 here in Washington.

25 Phil Montez, the Western Regional Director, received a
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1 plaque from the Office of Personnel Management's Recognition of
2 Selection of Chairperson of the Federal Executive Board for Los
3 Angeles. And so we offer congratulations to both of them.

4 We have summer interns assigned to the Office of Civil
5 Rights Evaluation and Public Affairs. Are they here, Ruby?

6 STAFF DIRECTOR MOY: Yes.

7 CHAIRPERSON BERRY: So as I call your name, you could please
8 stand so people can see you. Zoe Moulton from Arizona State
9 University. Mahaak Nayyar from the University of Maryland. Nora
10 Nikolopoulou who is working on a second law degree in international law
11 and visiting us from Greece. Alexis Kelly interning through the Urban
12 League and attends Friendly High in Fort Washington, Maryland. Suzie
13 Doherty from the University of South Florida. LaShawn Merriweather from
14 Cardozo High. Okay. Beth Johnson from the University of Iowa, Iowa
15 City. Jenny Nelson from Ohio University in Athens, Ohio. Welcome to
16 you. Do you ever go to the Hamburger Inn, Beth? Do you know where
17 that is?

18 MS. JOHNSON: It's very good.

19 CHAIRPERSON BERRY: Yeah. Okay. All of us know that each
20 of you contributes a lot and also we want to point out that Jenny
21 Nelson from Ohio University in Athens was instrumental in getting
22 Vanessa Williams, the singer/actress, to tape our PSA, our Public
23 Service Announcement. So we welcome all of you and appreciate your
24 help.

25 Also, we want to welcome Scott Schreiber, a new Special

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1 Assistant at the commission. Stand up, Scott. Scott is a Penn
2 graduate from that esteemed institution up in Philadelphia and we
3 welcome him and expect him to work very hard. Audrey Wiggins joined
4 the OGC staff this week as an attorney advisor. Welcome to you.
5 Welcome, welcome, one and all. Okay.

6 Now, does anyone else have any announcements to make? Okay.
7 There I do. In Philadelphia this week, we had a--or this past week, we
8 had an incident of the police beating a suspect who they had
9 apprehended which was videotaped. I assume some of you have heard
10 about this unless you've been in the North Pole or someplace or
11 Martha's Vineyard. Anyway, I was asked, of course, by the media to
12 comment on this. I have talked to people in the Mayor's Office and to
13 people at Justice Department including Bill Lee and others over there
14 about this issue.

15 I talked about it on TV on "Good Morning, America" one
16 morning and to some other reporters. And the basic--they asked because
17 we had done this report on New York, and because if you look at the
18 commission's Police Practices and Civil Rights Report of the 1980s,
19 which we are updating, a large part of it was instigated by things that
20 had happened in Philadelphia. It was Mayor--not--Police Chief Rizzo, I
21 think his name was, and Philadelphia that was in a running battle with
22 the Justice Department, and the Justice Department in those days did
23 not have pattern and practice authority, which they got in the '90s, to
24 go after police departments, and the department refused to cooperate.

25 It was when Drew Days was Assistant Attorney General for Civil Rights,

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1 and there's a case, U.S. v. Rizzo, which is the case which--

2 COMMISSIONER EDLEY: Rizzo v. Goode.

3 CHAIRPERSON BERRY: I beg your pardon?

4 COMMISSIONER EDLEY: Rizzo v. Goode, I think is the name of
5 it.

6 CHAIRPERSON BERRY: Rizzo v. Goode.

7 COMMISSIONER EDLEY: Was the name. In the Supreme Court the
8 name was Rizzo v. Goode.

9 CHAIRPERSON BERRY: Okay. Started out--okay--Rizzo v.
10 Goode. What's the citation, Chris?

11 [Laughter.]

12 COMMISSIONER EDLEY: It was a bad case.

13 CHAIRPERSON BERRY: Yeah, right. Which decided that Justice
14 didn't have the authority. We at the commission or they at the
15 commission--I wasn't here--I came right after, as the report was being
16 approved--was involved in a battle with them over getting documents and
17 other stuff, and there were hearings involved in this. And a lot of
18 this is in the police practices report. So we're very familiar with
19 what has gone on in the past. And Philadelphia had thought it had
20 overcome its bad old days with the police department with some of the
21 new folks.

22 Basically, what I said was that the tape, videotape, showed
23 a lack of professionalism on the part of police, that what we are
24 interested in in our reports is that police should behave
25 professionally, that police officers work hard, they don't get paid

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1 enough, and most of them don't have good training. That's what they
2 tell us when they come before us. And we have to respect them because
3 it's a tough job, but when you're under stress--the time when you can
4 tell whether you're truly professional is when you're under great
5 stress. And that I did not know of any manuals or instructions given
6 in training to police officers which indicated they should all gather
7 around and kick somebody when they're on the ground. And that I
8 considered this to be unprofessional and that they should worry about
9 it.

10 I also pointed out that the commission does have the
11 authority to independently investigate police departments as we did in
12 New York, but that we would not, I would not suggest that we use our
13 resources to investigate Philadelphia until after we see what the two
14 investigations that are ongoing. Justice is investigating and so is
15 the department and the mayor. They're investigating themselves.

16 There was some talk in the media about whether this could be
17 racially motivated because some of the folks who were doing the
18 kicking, beating, stomping were black, I think. Yes, they were. And
19 my answer to that was that it didn't make any difference. I mean one
20 of the studies that the commission has done and our own experience and
21 research has shown that when Latino, black, Asian American, people of
22 color become police officers, one of the things they do is try to
23 behave like everybody else in the department so that people will trust
24 them as being just like everybody else and that if there is a culture
25 in which people behave unprofessionally, they're likely to be involved

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1 in that culture, too.

2 So that what you have to worry about is the professionalism
3 of the department and its balancing the need to enforce order against
4 protection of civil rights. So I would suggest that we wait until we
5 see what happens with these other two investigations before we decide
6 whether we want to do anything. And daily, there are other incidents.
7 The same day there was someplace in Georgia where somebody videotaped
8 some police doing something to somebody or other. Yes, Commissioner
9 Wilson.

10 COMMISSIONER WILSON: There was a case, even though some us
11 were on Martha's Vineyard, there was the case in New Jersey, I believe.
12 Now it may have happened awhile ago, but a court decision came down
13 where there was a police chase, a 15-mile police chase. The car was
14 finally trapped and I don't know--it was videotaped--I don't know how
15 many policemen there were who stood outside of the car shooting. And I
16 don't know if anybody heard about this, but it was quite horrifying to
17 see. Killed the man, of course. I mean he was completely surrounded
18 by policemen who all just shot into the car.

19 Now, as far as I can see, from the news, the report came
20 down that the case was not going to be investigated any further. The
21 family is suing civilly, which, of course, is their only option, but I
22 was wondering if perhaps it was something that we wanted to look into
23 or add to this case because it was quite--it was pretty shocking.

24 CHAIRPERSON BERRY: Maybe we can ask the regional director
25 to look into that and give us some information on it. These things are

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1 happening almost everyday. Yes, Commissioner Edley.

2 COMMISSIONER EDLEY: The Wen Ho Lee case and the concerns
3 that have been raised by a number of people that this is a form of
4 racial profiling mixed with selective prosecution. He's being singled
5 out in a way that former CIA Director John Deutch has not been for
6 criminal prosecution. There is nothing that we can do at this stage
7 and I gather that there is a court proceeding I think today in which
8 the prosecutors are supposedly submitting classified information to the
9 court to try and defend themselves against the charge that this
10 involves racial profiling. But I'd just ask the staff to keep an eye
11 on it because I've heard from a lot of people in the civil rights
12 community--I was out in San Francisco speaking to the Chinese for
13 affirmative action and this is just way at the top of the agenda. So
14 I'd just like us to keep an eye on it.

15 CHAIRPERSON BERRY: Yeah. Yvonne had brought it to our
16 attention before and continues to bring it to our attention. And would
17 you like to bring it to our attention again? I was going to suggest
18 something we might do about it.

19 COMMISSIONER LEE: I think the staff was directed to monitor
20 the case. The regional director was asked. I think that we're also
21 going to have the racial profiling project that would include not only
22 what happened to Dr. Lee, but possible racial profiling affecting Asian
23 American lab employees at the national labs.

24 COMMISSIONER EDLEY: More generally. Great.

25 COMMISSIONER LEE: Because the issue is broader than one

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1 individual. It's very unfortunate that it took such a tragic incident
2 involving this scientist, but what happened was the public eventually
3 got to know the lab culture. Many Asian American scientists work in
4 these labs and they are now coming out informing us that there are
5 racial profiling situations occurring, and that was included in the
6 racial profiling project that hopefully we will have next year.

7 CHAIRPERSON BERRY: Yeah. This issue of the labs, there was
8 a story in some paper--I've forgotten--recently, a big story--either
9 the Post or the Times, Washington Post, not New York Post--about the
10 impact on the labs and Asian American scientists not wanting to work
11 there because of all these different procedures. And so we need to
12 look generally. Racial profiling as an issue I mean cuts across. I
13 mean it happens to people of color generally and so maybe some project
14 which just deals with all the ways in which racial profiling has
15 affected people might be a useful one.

16 Just when we think we can move on to new generation civil
17 rights issues, you know, from old generation civil rights, we find out
18 the same issues are occurring that occurred in the past. And that's
19 unfortunate. Yes, Commissioner Wilson.

20 COMMISSIONER WILSON: Here's a question. I haven't heard
21 this discussed before, and maybe it isn't something that this
22 commission takes up, but I was very struck by--now, it's a complicated
23 issue because it involves the Army, but the soldier who was white, who
24 was homosexual, who was beaten to death or bludgeoned to death. I'm
25 assuming that the person who committed the murder was tried and sent to

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1 prison. I'm not sure about that. But the larger issue was the issue
2 of homophobia in the Army and, of course--well, I don't know. I say
3 "of course." It's perhaps they haven't handed down their findings, but
4 I think they did hand down their findings.

5 CHAIRPERSON BERRY: Yeah. They said that they don't--

6 COMMISSIONER WILSON: And that they cited that there was no
7 homophobia. Now, it seems to me that that's something that we might
8 want to look at, but I don't know if it comes under the jurisdiction.

9 CHAIRPERSON BERRY: Well, one of the ways we could do it,
10 counsel, is to look at issues concerning sexual orientation under our
11 administration of justice authority, and we have done that in the past,
12 the Commission has, and I've been thinking that it's high time we had a
13 project. There are a whole array of issues where people seem to have
14 been denied administration of fair practice or due process. I mean if
15 you kill somebody without them having any kind of adjudication, then I
16 think that's sort of unfair. And--

17 COMMISSIONER WILSON: Maybe we should discuss this.

18 CHAIRPERSON BERRY: I think most people would think that was
19 unfair; right? So they're a whole range of issues that we could look
20 at. There have been some cases recently where people have been
21 arrested and having their personal activities widely publicized so that
22 they lose jobs and things like that, and then the charges are dropped
23 after all that happens, which I think is kind of unfair. Some of those
24 have been in the media.

25 So maybe there are whole set of issues including the ones in

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1 the military that involve administration of justice that we could have
2 some kind of project about. Yes?

3 VICE CHAIRPERSON REYNOSO: Well, that same issue, of course,
4 has come up in the border with the apparent citizen's arrest of
5 undocumented with no legal authority for those arrests. That has
6 become quite a volatile issue in the Southwest. So it comes up in many
7 different forms.

8 CHAIRPERSON BERRY: Yes. So we need to look under
9 administration of justice, counsel, at an array of issues of this type
10 to see where we should go on them. I did want to make another comment
11 that I forgot to make after the employment discrimination discussion,
12 after you made your comments about the EEOC. One of the reasons why
13 the EEOC got the budget increase that it got was because this
14 commission--

15 VICE CHAIRPERSON REYNOSO: Right.

16 CHAIRPERSON BERRY: --on the inadequacy of federal resources
17 for enforcement and we had a press conference here, and I remember I
18 said that the EEOC was a swamp because it didn't have any money and it
19 had all this backlog, and they got mad at me at EEOC for calling them a
20 swamp. But it worked. And then ended up--and I remember the president
21 started saying after that over and over again, all the time, how he was
22 going to give more money for EEOC and for CRD, and he did, in fact,
23 fight and go to the mat and they made some agreements with Congress at
24 EEOC, in particular about the arbitration and mediation, that resulted
25 in additional resources.

1 But it is absolutely true that one of the dirty little
2 secrets in Washington or to the public across the country is how badly
3 funded the civil rights agencies are. And I don't just mean Justice
4 and EEOC, I mean the OCRs in all the departments and we've had before
5 us so many times HHS, the Office of Civil Rights, and here there is
6 this huge department with all these billions of dollars and nursing
7 homes and all these places, and here is this poor guy sitting here with
8 this measly budget where he can't possibly do anything and the whole
9 idea is to keep him from doing anything. And yet he doesn't get the
10 money to do what he needs to do.

11 And these, what the public doesn't understand, and we try
12 very hard to make the public understand this, is that it's not even
13 about hot button issues like affirmative action or something like that.
14 It's about your garden variety, somebody who can't get in a nursing
15 home or put out of it because of race or whatever. They don't have the
16 money and they can't do the compliance and education.

17 All these issues like zero tolerance and other kinds of
18 issues that come up or whether it's schools and religion or whatever it
19 is, that the Congress repeatedly, and under different leadership in the
20 Congress. I'm not--this is not--I'm totally bipartisan in this view--
21 has never given the agencies in my time the money that they need to do
22 what they need to do.

23 And what they do is nickel and dime them, sit there in
24 hearings and talk about how you ought to be more efficient doing this
25 and this and this when--and now we have a budget surplus apparently.

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1 According to somebody there is a surplus in the budget. And even now
2 we cannot get the president and the Congress together make a priority
3 funding these agencies the way they should be funded. Okay.

4 **V. Staff Director's Report**

5 CHAIRPERSON BERRY: Let's go to the Staff Director's
6 Report. Does anyone have any questions before I raise a couple of
7 issues about projects that we have? Does anyone have any questions on
8 the Staff Director's Report? Yes, Commissioner Edley.

9 COMMISSIONER EDLEY: Yes, I do, but let me first comment on
10 what you just said about the budget. Is there nothing that we could do
11 in September in the way of a public statement and a press event to cast
12 a spotlight on the--how can I say this--the nonfeasance of the
13 executive and legislative branches on these budgetary problems over the
14 last several years, the missed opportunities, the importance of trying
15 to focus now on fixing that?

16 I mean it seems to me it's worth pulling together. It
17 should not be that difficult to pull together two or three charts and a
18 five-page statement and send somebody telegenic like our chair in front
19 of some cameras to say something about it.

20 CHAIRPERSON BERRY: Well, I am absolutely in favor of doing
21 that. I'm absolutely in favor of doing something because I think it's
22 our duty. And I think that it's worth it and, as you point out, it
23 can't be that hard to do. It's not like we're talking about--I mean
24 the budget information is public information. I mean what was
25 requested, what people got, what it was supposed to be used for and

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1 what it's not, you know, things that aren't getting done because of it.

2 Yes, Commissioner Wilson.

3 COMMISSIONER WILSON: This might be an off-the-wall
4 suggestion, but supposing we got, we enlisted the help of leaders from
5 the outside who would appear on a video or to appear before whatever
6 the proper body is to talk about the importance of additional funding.

7 CHAIRPERSON BERRY: Or to come to a press conference.

8 COMMISSIONER WILSON: Or to come to a press conference.

9 COMMISSIONER EDLEY: Right. A combination.

10 COMMISSIONER WILSON: In other words, I think the operative
11 phrase here is that it's a dirty little secret and why not bring it out
12 into the open and have it spoken about?

13 CHAIRPERSON BERRY: Anybody else think that's a good or bad
14 idea?

15 VICE CHAIRPERSON REYNOSO: I think we should do it. I think
16 that's part of what the report was that we just heard about, but I
17 think that we're talking about making it a more crystal clear fashion.
18 I think the more we can do that, the more we should because, as you
19 indicate, that's really what the commission was set up to do.

20 CHAIRPERSON BERRY: Commissioner Meeks.

21 COMMISSIONER MEEKS: Yeah. I mean in the EEOC report as
22 well as, you-know, the other reports, it's almost unfair to do an
23 evaluation and hold them up against their charge when they've never
24 been funded and aren't now and to not say that very loudly and clearly
25 that that's the primary issue, I think that's very important we do

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1 that.

2 CHAIRPERSON BERRY: Commissioner Edley.

3 COMMISSIONER EDLEY: I want to be clear that I think it's a
4 pox on both their houses here because it is--I have not detected in the
5 last several years a strong commitment on the part of the
6 administration to defend its own budget requests when it gets down to
7 the wire in these appropriation negotiations nor have I seen that kind
8 of strong commitment on the part of leaders on the minority side of the
9 aisle in the House and the Senate. So this is not at all just I think
10 a set of observations we should make with respect to the majority in
11 the House and Senate. I think we just need to tell the truth as we see
12 it and be clear about it.

13 Let me just add that I think doing this in September to try
14 to keep the question of the civil rights budgets from being lost in the
15 blur would I think be a valuable public service.

16 So--

17 CHAIRPERSON BERRY: Anybody object? Carl, I'm waiting for
18 you to object.

19 COMMISSIONER ANDERSON: I hate to disappoint you.

20 [Laughter.]

21 CHAIRPERSON BERRY: Okay. Well, then, yes, Commissioner
22 Edley.

23 COMMISSIONER EDLEY: Well, I was going to go to my comment
24 on the Staff Director's Report.

25 CHAIRPERSON BERRY: Well, let me just say, without

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1 objection, then we will, in fact, ask the staff to prepare a chart and
2 analysis and talk about the pox on both their houses, whatever, the
3 president and the Congress and these budgets for the civil rights
4 groups sometime in September. I mean civil rights agencies. I'm
5 sorry. And to the extent possible see if there are folks in the public
6 who would like to be supportive or say something about it or be
7 informed about it at least.

8 We will not--we can't lobby so we're not going to ask
9 anybody to lobby this. We just give out information. Okay.
10 Commissioner Edley.

11 COMMISSIONER EDLEY: I did something which I confess that I
12 don't do regularly which is to read carefully the regional reports in
13 the Staff Director's written submission.

14 CHAIRPERSON BERRY: Does that have anything to do with
15 Maria? Oh, I'm sorry. Go ahead.

16 COMMISSIONER EDLEY: Being away, yes. And I must say that I
17 was just deeply disheartened.

18 CHAIRPERSON BERRY: You were.

19 COMMISSIONER EDLEY: By what strikes me as continuing very,
20 very, very modest level of activity by the SACs around the country. If
21 one looks at the projects that are underway or have been underway
22 recently, the dates for the most recent SAC meetings, it just cries out
23 for a really probing examination of why the SAC system is not living up
24 to, it seems to me, any standard of ambition, of activism, that I think
25 any of us would define.

1 Now, I don't know what the explanation could be. It's
2 probably a combination of several things. One thinks first of maybe
3 we've got the wrong people on some of these SACs. Another possibility
4 is that the mission of SACs or our expectations for what they ought to
5 accomplish is not sufficiently defined. A third possibility is the
6 mission is defined but it's not being--the execution isn't there. That
7 they're not being coached or prodded or compelled to do what it is that
8 they're supposed to be doing.

9 I guess a fourth possibility is that we're structured in a
10 way by statute, by regulation, by custom, in which the SACs can't do
11 anything unless they get substantial support from the regional staff
12 and the regional staff is inadequate to the task because of resources,
13 because of imagination, whatever. And there are probably a couple of
14 other possible explanations I haven't thought of. But what I would
15 very much like to do is get to the bottom of what is the explanation
16 and what can be done to turn the situation around because this is
17 embarrassing. This is embarrassing.

18 I mean I look at states where I know there are important
19 civil rights challenges and the SACs have met, you know, once in the
20 last 18 months. It makes no sense to me at all. And I guess we're
21 going to discuss later the question of procedures for nominations of
22 SAC members and the like, but as a general matter, I just want to raise
23 the possibility of having a discussion of this, perhaps in executive
24 session in September. I say executive session because if it involves
25 naming names and discussing personnel issues, I'd like to hear it, but

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1 I really want to understand what is required, whether it's a resource
2 reallocation, whether it's changes in personnel, whether it's
3 redefining missions, whether it's regulatory changes, whatever, so that
4 the commission and the country could get the most out of this network
5 of what should be an invaluable set of resources, thoughtful civic
6 leaders in each of the states, period.

7 CHAIRPERSON BERRY: Commissioner Wilson.

8 COMMISSIONER WILSON: Okay. My uninformed response to your
9 comment is--

10 COMMISSIONER EDLEY: To my uninformed criticisms.

11 [Laughter.]

12 COMMISSIONER WILSON: They sounded fairly informed to me so
13 I wouldn't classify them that way, but it seemed to me that when the
14 regional directors were here, what we heard from the regional directors
15 was the same thing over and over and over again that--I mean it was
16 basically a lack of money, a lack of staff, and that there would be one
17 regional director who--I found all the regional directors to be quite
18 inspiring, you know--who would be spread so thin, it was impossible for
19 them to accomplish very much. And that it seems to me it probably, the
20 fault probably lies with this commission itself and then trickles down.

21 But it seems to me that it all comes down to money. I mean
22 remember I prefaced that by saying it was uninformed.

23 VICE CHAIRPERSON REYNOSO: Indeed that's what the --I'm
24 most acquainted with the California Commission and they always have a
25 half a dozen projects they'd like to be involved in, but literally meet

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1 twice a year, and how much an advisory committee can do when it meets
2 twice a year and doesn't have resources for travel and all that is a
3 question.

4 Perhaps we should indeed review our policies that presently
5 do require a great deal of staff involvement and liberate the
6 committees maybe to do more independent work aside from the staff.
7 There are some dangers in that, of course, but I think that discussion
8 may be worth having because right now, at least the way it's structured
9 with a requirement of staff involvement and with the lack of resources
10 for travel and so on, the advisory committees are quite restricted.

11 Clearly, whether they can volunteer their time as I
12 understand we commissioners are not supposed to, et cetera, I don't
13 know the answer to those questions. But I think a review of what is
14 required statutorily and what is policy might be very worthwhile
15 because I know they feel that frustration. We've had that expressed
16 with some vigor on the part of the advisory committee in Hawaii in
17 terms of the discussions we've had the last couple of meetings and
18 their great desire to have a function there focusing on the current
19 issues of Native Hawaiians and the concern that the Western Regional
20 Office had had about resources and being able to staff such a function.

21 So it's very much tied into resources right now. Whether or
22 not we can liberate the committee somewhat from that, I'm not sure. I
23 think that might be worth a good discussion.

24 CHAIRPERSON BERRY: Commissioner Lee.

25 COMMISSIONER LEE: When I first got here, I was told that

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1 the SACs served as our eyes and ears and I remember growing up going to
2 college and they were our eyes and ears. I learned a lot from our
3 California SAC on civil rights issues, and I've been trying to recruit
4 people to serve on these committees, but nine times out of ten, the
5 civil rights leaders in all these communities say you're no longer
6 relevant because you don't do anything anymore.

7 The SACs don't even have hearings or they weren't even
8 involved in relevant issues. And I'm not blaming it on any
9 individuals. This is not on any personnel issues. Resource is a
10 problem, but given the reality that we are going to have very limited
11 resources, we do have to address SAC's function. We can't just say
12 there's no resources; therefore, let's have them limp along.

13 I would rather have, as I suggested, one major project and
14 people doing things like let's have something on, you know, whatever
15 because that's the only project we can do under these tight budgets.
16 The Hawaii SAC really reminded me and, you know, other members of the
17 frustration. They were told that, hey, we don't have any money so they
18 have not met in two and a half years, and during the last two and a
19 half years, the major civil rights issue impacting the entire Native
20 Hawaiian community was exploding right in their face. Everyone was
21 looking at the SAC and saying what are you going to do? They could not
22 do anything because they were--their hands were tied because they were
23 told they have no money.

24 Now, I do think that we need to look at the whole SAC
25 structure. I know that we have to expand to include to be more diverse

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1 and what have you, but as a result, regional directors are telling me
2 because now they have more members, they have less money. So they have
3 more members, but because of that they have to do less. Instead of two
4 meetings a year, now they have one meeting.

5 So maybe we do need to take a really harsh look on how to
6 restructure the SACs because it is embarrassing when people tell you
7 that I don't want to serve on your SACs because you don't do anything.
8 On the other hand, we have people saying, oh, you only meet once every
9 two years, I'm there, you know. So it's very frustrating for me
10 because I hear from several SACs' members who have devoted the time,
11 who have been there for a long time, they experienced the glory days,
12 and now they see issues they cannot do anything.

13 COMMISSIONER WILSON: Madam Chair.

14 CHAIRPERSON BERRY: Yes. Commissioner Wilson.

15 COMMISSIONER WILSON: Thank you. Maybe one of the things,
16 because it sounds like there are a couple of issues here, one of them
17 is that people who perhaps have grown tired or sort of beaten down, but
18 then there are those instances where it sounds like people really want
19 to do a lot and don't have the resources. Maybe one thing that would
20 be interesting, particularly in terms of preparing budgets and things
21 of that sort, is to have the different SACs draw up a wish list of the
22 projects that they're interested in. -- You know forget--about the fact
23 that they don't have the money or the people. What are the concerns
24 they have now that they would like to do if this were the best of all
25 possible worlds? And then we can see the kinds of ideas people have

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1 and also perhaps there is something that we can work towards if we lay
2 out this whole program of what the SACs are doing.

3 And if they're sort of sleepy, then you have an idea, well,
4 it's time to--but it seems to me if you had a list of, you know, in the
5 best of all possible worlds, these are the five major things we're
6 going to do, this is how many times we want to meet, et cetera, then we
7 have a sense of what everybody is doing.

8 CHAIRPERSON BERRY: Did you want to give us some
9 information?

10 STAFF DIRECTOR MOY: Yes.

11 CHAIRPERSON BERRY: Just a second.

12 STAFF DIRECTOR MOY: I think all the criticisms that I've
13 been hearing about the SACs and also the regional directors and their
14 offices are very helpful in trying to rethink and relook at the
15 structure that the SACs have been initially--what do you call it--
16 initially organized to help be the eyes and ears of the commission.
17 And since I've been here, I've always enjoyed the knowledge and
18 pleasure of knowing that they were out there being our eyes and ears
19 and making recommendations and proposals to headquarters and to pursue
20 the reports that they're doing.

21 But I agree with you that the reports that they've been
22 doing either are too long in coming and I made a wish list myself of a
23 lot of things that I wanted to take care of this summer and talk with
24 the regional directors. I know there are problems with their
25 resources, either staffing or with people or funding. And I know that

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1 in some of our regional offices where we had three folks handling eight
2 states, that's pretty much to ask for all of them to get reports out in
3 a short period of time.

4 I'm also looking at options here at headquarters where we
5 could possibly utilize a writer and assign them to the regional offices
6 to assist them when possible. I mean that's not to say that they
7 shouldn't be doing the bulk of the work, but where we could assist, we
8 could also do that.

9 As to making some suggestions about civil rights issues and
10 proposals, I would also say that a lot of the SAC chairs have to have
11 some sort of vision when they are proposed as SAC chairs and to let us
12 know what they intend to do in the two-year period that they've been
13 charged.

14 I mean I would also like to look at the term rather than
15 just say that they're there for two years or maybe we might think about
16 staggering members so that we have some sort of continuity because one
17 of the requests that commissioners asked for was young people to be
18 placed on the SAC. And sometimes you can't get young people because
19 this didn't happen in their lifetime. I mean we're talking about '64
20 and a lot of folks who are here as our interns weren't even born then.
21 And it's nice to have interns here.

22 VICE CHAIRPERSON REYNOSO: That would make them 36 years old
23 if they were born in '64. Most of them are in college; right?

24 STAFF DIRECTOR MOY: So it's nice to know that they have
25 the--

1 VICE CHAIRPERSON REYNOSO: 36. I'm sorry. 36 years old.

2 STAFF DIRECTOR MOY: It's nice to know that they have the
3 interest to volunteer their services here for the summer, but I mean
4 there are all these things that I'm looking into now and that I will be
5 in discussions with the various regional directors about.

6 CHAIRPERSON BERRY: Vice chair.

7 VICE CHAIRPERSON REYNOSO: I just - since we're raising the
8 problems, I just want to remind us that the SACs have indeed done great
9 work. I can think of the environmental justice report a few years ago
10 on Louisiana.

11 CHAIRPERSON BERRY: Louisiana.

12 VICE CHAIRPERSON REYNOSO: The border report, that joint
13 report by four SACs in the Southwest. More recently the South Dakota
14 hearings. That was a joint effort.

15 CHAIRPERSON BERRY: The church fires.

16 VICE CHAIRPERSON REYNOSO: And the Santa Rosa hearings and
17 the church fires. So I just, our concerns are all logical, but I just
18 don't want us to lose track of the really fine work that the SACs have
19 been doing also.

20 CHAIRPERSON BERRY: Yes, Commissioner Lee.

21 COMMISSIONER EDLEY: So it can be done.

22 CHAIRPERSON BERRY: It can be done.

23 VICE CHAIRPERSON REYNOSO: Yes.

24 CHAIRPERSON BERRY: But I'm going to have some comments in a
25 minute on how it was done when it was done. Yes, go ahead,

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1 Commissioner Lee.

2 COMMISSIONER LEE: I think the vice chair pointed to a very
3 critical piece which is all these great works were done when they were
4 right there at the right time. Because of the statutory requirements,
5 when the SACs recommended the project, they had to go through a series
6 of check and balances so by the time they get approval from
7 headquarters, usually the issue is no longer relevant. That's why some
8 of these issues, they might have been important when they were first
9 proposed, but now that the report is done, the attention is gone. And
10 also of those projects that the vice chair has mentioned, they were
11 there. The attention and the enthusiasm was there. You see it from
12 the committee members.

13 They were there and maybe that's how they should move. You
14 know there are certain issues that come up--let's just say in
15 Philadelphia on this situation--get a forum together because you don't
16 have to do a report. Forum is just as informative. The most important
17 thing the SAC does is to get the public involved, not to do a report
18 that is sent to us and no one knows about it. And that's why learning
19 from the Hawaii experience and all those other projects that you had
20 mentioned, that's what gets the community involved. That's how the
21 community gets to know the SAC's activities and that's what builds up
22 the excitement, if you will, of the committee members and also that
23 gives--I don't know--revitalization, so to speak, of the very tired,
24 overworked regional staff.

25 CHAIRPERSON BERRY: Did you have your hand up again, Vicki?

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1 The comment I wanted to make is that the discussion is very useful
2 because the first problem is that many of our regional directors who
3 have been at the commission a long time were here when there was more
4 money. They were here like a lot of the staff who have now retired,
5 senior staff who have retired recently, in the days when the commission
6 had enough money to actually deploy people in various regions across
7 the country. We had more regions. There was one in Seattle and so on
8 and New York and so on.

9 And they remember that. And they know how the commission
10 operated then and what it did. They were here when the commission's
11 budget was slashed, the decimation that took place. And lots of people
12 were let go. Lots of things happened that were very traumatic. And
13 they've been traumatized ever since because they know what they had in
14 the way of resources to do the job and, to them, for people to ask them
15 to do something without giving them the resources is just silly and
16 stupid, and their response is if you want us to do the job, give us the
17 resources.

18 So I understand that response. So you've got people who are
19 in that mode. They're good people, but they just know that it takes
20 this much to do that and that's the way we did it and that's what you
21 gave us and we never had enough, but we had a heck of a lot--we had
22 twice what we have now, and you should give us some money. And that
23 the commissioners ought to work to get the money. And if we don't do
24 it, then that's our failure and we shouldn't be asking them.

25 Then there is another point. The instances where the

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1 commission, the commission itself has had to adjust to the changing
2 realities of what is required to be on top of issues when issues occur.
3 We've had to adjust. We have to respond. We've learned how to have
4 short-term responses to things when they're going on, and when they're
5 going on, we found out that the public pays more attention to our job
6 of educating folks, and if we're too late with something, we might as
7 well not do it.

8 We learned that. The regions aren't there yet. They're
9 still in the mode, like Yvonne said, they're still in the mode of doing
10 things when they do them and the examples that you gave, Cruz, and that
11 Yvonne reinforced are instances when that didn't happen.

12 VICE CHAIRPERSON REYNOSO: Yes.

13 CHAIRPERSON BERRY: So what we have to do is to figure out a
14 way to get the regional offices to say, okay, we don't have the money,
15 we're not likely to get it, and to the extent that we do anything
16 really good, we're less likely to get it because it will be
17 controversial and those who don't like it won't give us any money.

18 But we have to have the--I can't think of a word. We have
19 to have the energy to try to do something anyway, just as we're here at
20 the commission and commissioners--we try to do something anyway. We
21 try to make silk purses out of sow's ears and we do it all the time.
22 So we have to ask them to do that. And we have to find chairs of these
23 committees who are willing to do that. And we have to use technology
24 more and we have had so many discussions about whether it's possible to
25 have the staff present electronically at a commission meeting rather

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1 than being present in person, and the answer is, yes, it is possible
2 and, yes, it would not violate any requirements. But the regions have
3 resisted that because they want it done the old way.

4 And certainly it's better for someone to be face to face and
5 shake your hand, if they can, but if you want to maximize the work that
6 you do, then you may have to do it that way. It's just like using e-
7 mail or whatever. I mean you have to use and so maybe we ought to ask
8 them to do that. Then there could be more meetings. Maybe we ought to
9 ask for SAC chairs who have ideas and vision, as somebody said, and who
10 can tell us what they want to do and then are able to at the margins
11 use their own energies and resources.

12 I don't mean technically as a volunteer, but I mean a few
13 phone calls here and there or an e-mail which is free to get people
14 together or have a conversation about an issue and come up with
15 something and to immediately, if I were SAC chair in Pennsylvania, I
16 would have already organized a forum in Philadelphia and called the
17 commission region to see, you know, could I do it, can we do it, can
18 you be present either electronically or some other way, so that we can
19 do it? I would be asking. I wouldn't wait for us at the commission to
20 call me up and say do you want to do this?

21 And so we need SAC chairs who operate in that mode and we
22 need to have the regions operate in that mode, too. Even if you just
23 get a transcript of the forum, as we did in some instances, it can be
24 very effective. So now having said, I've said this before, and I've
25 said it at least five times before, what I just said, and nothing

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1 happened.

2 [Laughter.]

3 CHAIRPERSON BERRY: So how do we get something to happen?
4 That's what the issue is. Yes, Commissioner Meeks.

5 COMMISSIONER MEEKS: Well, it's saying the same thing that
6 everybody said. You know the SAC chairs need vision. I mean it is the
7 chairs that are going to activate the commission, and I know, I mean at
8 least speaking to the South Dakota chair, and he didn't say this, but I
9 think the SACs feel a little removed from the U.S. Commission. And we
10 would do very well by them to just have one meeting with them, with all
11 the chairs, which would be a big order, to help give them some vision,
12 to help them understand what their role really is. And I think that's
13 really important. I mean if I was the chair, I would benefit from
14 that, I know.

15 VICE CHAIRPERSON REYNOSO: I think that's a good idea.

16 CHAIRPERSON BERRY: Okay. We've talked about that before
17 and we should do it.

18 COMMISSIONER EDLEY: Biennially. Every other year, getting
19 people together.

20 CHAIRPERSON BERRY: We should have a meeting--I mean it
21 would be worth the expenditure.

22 COMMISSIONER EDLEY: Biennial retreat.

23 CHAIRPERSON BERRY: What I'd like to do in terms of money,
24 because we don't have any money, is if we would reduce the amount of
25 money we spend for these, you know, face to face, the meetings they

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1 have to, you know, those meetings they have every two years or whatever
2 it is, and they have somebody there electronically, a staff person, so
3 that the chair could function, we might be able to use some of the
4 money to bring the chairs together in some place so that we could--and
5 figure out what would be the least expensive way to do it--so that we
6 could talk to them and actually see what they can do.

7 Or we might want to segment it like in different regions
8 have commissioners who are around go to some place where a group of
9 them can meet from time to time to talk to them about issues. What
10 we're going to do is get them charged up and fired up to be responsive
11 to things when they happen. Yes, Vicki.

12 COMMISSIONER WILSON: I don't know how much it would cost to
13 equip it with--I mean not every SAC needs to have a camera, but the
14 cameras could be sent there. But I mean I've seen so many
15 organizations sort of travel all around by just having a camera here
16 and a camera wherever and a monitor, and you know maybe we should--it's
17 something to think about. I mean it's also possible that we should
18 have a camera here for our meetings and that they should be sent by
19 videotape to each of the SACs.

20 COMMISSIONER EDLEY: Internet, over the internet. You
21 stream it over the internet and people can watch it.

22 CHAIRPERSON BERRY: Put it on the Web site, on the internet.

23 COMMISSIONER EDLEY: Not that we're all that entertaining,
24 but sometimes we don't do too badly sometimes.

25 COMMISSIONER WILSON: The other possibility, to sort of take
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1 off where Commissioner Meeks left off, is perhaps on a--we did this at
2 PEN for the PEN branches who also felt very disengaged from us.

3 CHAIRPERSON BERRY: As in P-E-N, not P-E-N-N?

4 COMMISSIONER WILSON: Right, PEN, a writers' organization in
5 New York, where I served on the board and then the treasurer, which was
6 a revelatory moment in my experience. But speaking of having no money.

7 [Laughter.]

8 COMMISSIONER WILSON: And one of the things we did is we
9 just rotated having the, you know, the different heads or sometimes the
10 regional boards come in. I don't know if there is some kind of a rule
11 against our doing that for this, but rather than having them all come,
12 just sort of rotate it and just have it, you know, do that for a couple
13 of years.

14 CHAIRPERSON BERRY: Uh-huh. We might do that. That might
15 make more sense, have some kind of schedule. But the main thing, I
16 guess, is to figure out how to have some of what we've been discussing
17 actually happen as opposed to, you know, six months from now having the
18 same discussion about how we ought to do something.

19 COMMISSIONER WILSON: Well, that kind of thing is easy
20 enough. We can just call them and make out a schedule and have them
21 come, and this is when you come, and then we could--I mean it's
22 possible. The other thing that might be possible is that for each part
23 of our meetings that a certain part of the meeting be taken up with
24 discussing what, you know, that particular SAC's--

25 CHAIRPERSON BERRY: Have those, the ones who come, you mean?

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1 COMMISSIONER WILSON: Right.

2 CHAIRPERSON BERRY: Or we could like agree like since we
3 meet usually for a half a day, unless it's a briefing or something,
4 have it go longer and have either us meet with them or have them say
5 something in the meeting or something, but have the day spent with SAC
6 or maybe have dinner with them or something or work out some kind of
7 schedule where we might be able to do that. Yes, Commissioner Lee.

8 COMMISSIONER LEE: Hopefully one more question. I never had
9 this question answered. I asked several times why is it the
10 chairperson at the SAC was a recommendation from the regional director
11 and not an election among all the SAC members? Because you talk about,
12 you know, you need chair people who are visionaries, who are proactive,
13 but it seems like you also need somebody who could really work well
14 with the other SAC members who could really energize them. And for
15 some reason I was told that it is the regional director's
16 responsibility to recommend a chair, and we vote on the chair and the
17 rest of the state on the SAC members.

18 But it seems like if the SAC members have their prerogative
19 to vote on whoever, it's going to lead the staff that may--I don't
20 know. They may inject some energy into it.

21 CHAIRPERSON BERRY: In point of staff, the Staff Director
22 recommends to us after reviewing the regional director's recommendation
23 and--I mean technically--that's how it goes. But it only goes that way
24 because that is a procedure that we have approved or let the Staff
25 Director-- previous staff directors establish. That doesn't mean that

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1 we can't change it if we want to. Yes, Commissioner Edley.

2 COMMISSIONER EDLEY: This is really a burr--what's it--burr
3 under my saddle, bee in my bonnet, whatever, bat in my belfry.

4 CHAIRPERSON BERRY: Both.

5 COMMISSIONER EDLEY: Yeah, I'm all of the above.

6 COMMISSIONER WILSON: A run in your stocking.

7 COMMISSIONER EDLEY: Thank you. And I, in fact, was the
8 instigator for the discussion with the regional directors.

9 Unfortunately, it was then held at a meeting that conflicted with my
10 teaching schedule so I would like to volunteer to work with the Staff
11 Director to formulate a list of options for getting all of this done
12 and I mean I'd like a chance to brainstorm with the staff and collect
13 suggestions from interested commissioners and work with the Staff
14 Director to bring them back to this group. Do what can be done, just
15 do it, but for things that seem to deserve or require additional
16 conversation, bring it back to the group in September. So I'd like to
17 volunteer to take on that.

18 CHAIRPERSON BERRY: Does anyone want to oppose Chris as a
19 volunteer or help Chris?

20 COMMISSIONER WILSON: I'd be happy to help.

21 COMMISSIONER EDLEY: Great.

22 CHAIRPERSON BERRY: Okay. Anybody else want to help?
23 Yvonne, did you say you would help?

24 COMMISSIONER LEE: Yeah.

25 COMMISSIONER EDLEY: Great. So we'll set up a brainstorming

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1 conference call with Ruby and--

2 CHAIRPERSON BERRY: Anyone who would like to help can help.
3 And then you will bring back something that we can use to have
4 something actually happen?

5 COMMISSIONER EDLEY: Right. We'll bring back--

6 COMMISSIONER WILSON: This will be a test case.

7 [Laughter.]

8 COMMISSIONER EDLEY: We'll bring back an implementation plan
9 and some items to discuss/decide.

10 CHAIRPERSON BERRY: Okay.

11 STAFF DIRECTOR MOY: Madam Chair, I can share with the task
12 force--I'll call them the task force--the information that I've already
13 gathered.

14 CHAIRPERSON BERRY: Sure.

15 COMMISSIONER EDLEY: Great.

16 CHAIRPERSON BERRY: Okay. And any contact you have with
17 staff will go through the Staff Director's office.

18 COMMISSIONER EDLEY: Of course.

19 CHAIRPERSON BERRY: The other point under Staff Director--we
20 have two issues. One is the Hawaiian conference forum which is
21 supposed to be being organized for September 29. Is that right?

22 STAFF DIRECTOR MOY: Yes, that's correct.

23 CHAIRPERSON BERRY: Now I teach on Thursday. You do, too,
24 don't you, Cruz? What days do you teach, Edley?

25 COMMISSIONER EDLEY: Well, it was Thursday, Friday, but I've
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1 switched it to Monday, Tuesday for the coming year. .

2 CHAIRPERSON BERRY: Okay. How many commissioners think
3 they'll be able to go to Hawaii for this forum?

4 COMMISSIONER WILSON: May I just ask a question?

5 CHAIRPERSON BERRY: Yes.

6 COMMISSIONER WILSON: The form--

7 CHAIRPERSON BERRY: You will, Elsie. You think you'll be
8 able to go?

9 COMMISSIONER MEEKS: Yeah, my schedule is--

10 CHAIRPERSON BERRY: Okay.

11 VICE CHAIRPERSON REYNOSO: It's a one day function?

12 CHAIRPERSON BERRY: Okay. So it's the 29th and we were
13 looking at the 29th. There's an issue about whether there is some site
14 visit connected to it and whether that can all happen in the same day,
15 which we're going to discuss in a minute. But at the very least, the
16 29th.

17 COMMISSIONER WILSON: So that means how many days of
18 traveling? Is that just one day of traveling or two?

19 CHAIRPERSON BERRY: Commissioner Wilson, how long does it
20 take--I don't know. Anybody know how long it takes to get to Hawaii
21 from here?

22 STAFF DIRECTOR MOY: Yes.

23 COMMISSIONER LEE: You save six hours.

24 CHAIRPERSON BERRY: You know. 12 hours from the east coast.

25 COMMISSIONER MEEKS: But you save six hours.

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1 STAFF DIRECTOR MOY: By going out of Newark.

2 COMMISSIONER LEE: No, I mean timewise because they have a
3 different time zone.

4 COMMISSIONER EDLEY: Your body doesn't save it, but your
5 watch saves it.

6 CHAIRPERSON BERRY: Keep in mind for those who are
7 concerned, Rosh Hashanah starts at sundown on the 29th, which means
8 that we should conclude whatever we're going to do by sundown.

9 COMMISSIONER WILSON: So I can celebrate on the plane going
10 back.

11 [Laughter.]

12 CHAIRPERSON BERRY: Unless you plan to stay--

13 COMMISSIONER LEE: Celebrate there.

14 CHAIRPERSON BERRY: But I thought I would point that out so
15 that people would know that it's Rosh Hashanah.

16 COMMISSIONER LEE: Is it going to be a one day thing?

17 CHAIRPERSON BERRY: The idea was to have a one day. We had
18 talked first about going on Thursday like we did in South Dakota and
19 having a show and tell. But I teach on Thursday and you do, too, don't
20 you, Cruz? But I don't know whether others could go and be there on
21 Thursday for a site visit or not.

22 CHAIRPERSON BERRY: You can't, Yvonne?

23 COMMISSIONER LEE: No.

24 CHAIRPERSON BERRY: Could you, Christopher?

25 COMMISSIONER EDLEY: So this would mean to be there on
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1 Thursday means--

2 CHAIRPERSON BERRY: Say like in the afternoon or something.

3 COMMISSIONER EDLEY: Right.

4 COMMISSIONER MEEKS: You'd have to fly on Wednesday.

5 CHAIRPERSON BERRY: Or should we try to have--see the
6 problem with it being Rosh Hashanah is that we need to conclude by
7 sundown. We can't go into the evening. There is--I guess we could
8 start Thursday evening, but I don't know--how long does it take you
9 from California to get to Hawaii?

10 COMMISSIONER LEE: Five hours.

11 CHAIRPERSON BERRY: Only five hours?

12 COMMISSIONER LEE: Yes.

13 CHAIRPERSON BERRY: My gosh, how lucky you are.

14 COMMISSIONER LEE: But you get there in two time wise.

15 CHAIRPERSON BERRY: So what is the earliest you could get
16 there?

17 VICE CHAIRPERSON REYNOSO: I don't know--I haven't checked
18 schedules at all. I finish teaching at one o'clock.

19 CHAIRPERSON BERRY: Okay.

20 COMMISSIONER LEE: There is a four o'clock there that gets
21 you at seven.

22 CHAIRPERSON BERRY: Another suggestion was to have it--well,
23 Saturday, that wouldn't do it. That's still Rosh Hashanah. You can't
24 do it on Saturday. Why are we doing it this day? Why are we doing it
25 this day, the 29th? And that's because it's right at the end of the

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1 fiscal year or something?

2 STAFF DIRECTOR MOY: Right.

3 CHAIRPERSON BERRY: Explain that to me again.

4 STAFF DIRECTOR MOY: That was--

5 CHAIRPERSON BERRY: We want to get it done before the fiscal
6 year--

7 STAFF DIRECTOR MOY: Right.

8 CHAIRPERSON BERRY: --ends or something. They wanted us to
9 come in September. They wanted us to come before that, but at the very
10 latest September.

11 COMMISSIONER LEE: What's the purpose of doing the site
12 visit because I think that you don't need to do a site visit. You'll
13 get a sense. You'll know what the issues are because the people will
14 tell you. So--

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER WILSON: What about the following weekend?

17 CHAIRPERSON BERRY: The one after that? That would be in
18 next fiscal year.

19 STAFF DIRECTOR MOY: We may be in an omnibus bill.

20 CHAIRPERSON BERRY: There is what?

21 STAFF DIRECTOR MOY: We may be in an omnibus bill.

22 CHAIRPERSON BERRY: We may be in a CR or--I mean Continuing
23 Resolution or something. That's right. I forgot. Every year we have
24 a train wreck.

25 COMMISSIONER EDLEY: You mean somebody might get stuck out

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1 there.

2 CHAIRPERSON BERRY: Yeah.

3 COMMISSIONER EDLEY: Well, what's wrong with that?

4 CHAIRPERSON BERRY: And have to stay in Hawaii for the next
5 six months.

6 [Laughter.]

7 CHAIRPERSON BERRY: So why don't we say that--I agree with
8 Yvonne that we don't really need the kind of site visit we had in South
9 Dakota. It's a whole different ball of wax and that we should just
10 have the forum that day like start early in the morning and go--and
11 then is there anybody here who observes Rosh Hashanah? Do you observe
12 Rosh--

13 COMMISSIONER WILSON: I do occasionally.

14 CHAIRPERSON BERRY: You do occasionally.

15 COMMISSIONER WILSON: But I don't do it seriously. I mean
16 if it went over--

17 CHAIRPERSON BERRY: So if the forum--

18 COMMISSIONER WILSON: If it went over sundown, I mean I
19 don't feel as if it would be like the end of my spiritual--

20 CHAIRPERSON BERRY: Okay. All right. I just wanted to make
21 sure that--

22 COMMISSIONER WILSON: I'm more historically Jewish anyway.

23 CHAIRPERSON BERRY: Right. Okay.

24 COMMISSIONER EDLEY: If you suddenly moved, we could find an
25 appropriate place in Hawaii.

1 COMMISSIONER WILSON: Perhaps we could all join in.

2 CHAIRPERSON BERRY: Yeah.

3 [Laughter.]

4 CHAIRPERSON BERRY: We could. And I just meant in terms of
5 the people who will be at the forum, if somebody runs over or--because
6 it will be a very tense situation that I wouldn't want to have to like,
7 say, okay, you know, shut up or whatever. All right. So we will do it
8 on that day and we'll start early in the morning, which means we'll
9 have to leave--well--

10 STAFF DIRECTOR MOY: Thursday.

11 CHAIRPERSON BERRY: Thursday. Okay.

12 COMMISSIONER WILSON: Yvonne, I come from New York so I
13 don't save six hours.

14 COMMISSIONER LEE: No, but by the time you get there, you're
15 six hours ahead.

16 COMMISSIONER WILSON: By the time I got there, I'm dead. So
17 I go on Wednesday. I don't know about the rest of you.

18 CHAIRPERSON BERRY: Okay. The other thing I want to discuss
19 is the transition report or conference or briefing or whatever it is,
20 the proceeding that we want to have in November, where agency heads are
21 present to discuss their activities during the Clinton administration.
22 The idea, as I understand it, or understood it, from the discussion was
23 to have perhaps some documentary materials in advance on such matters
24 as the budget and mission and other things that our Office for Civil
25 Rights Evaluation has available about these agencies. And we've done

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1 studies, of course, most of them repeatedly.

2 And as I think about it, our Office of Civil Rights
3 Evaluation should be a repository of a lot of information about what
4 these folks should be doing or have been doing. The Office of General
5 Counsel can play a role in the preparation of the actual proceeding.
6 Maybe they can do it jointly. And then we would have each agency head
7 come before us to talk about what they wanted to do when they got
8 there, what they thought they were supposed to do, what they did, and
9 what they have left to do that they haven't done. That was the idea, I
10 thought.

11 And then we would make an assessment of that and make some
12 recommendations about the transition and whoever comes in in office in
13 January is facing, which might be helpful. It would be both an
14 assessment of the Clinton administration's enforcement effort or its
15 effort in the area of civil rights generally and forward looking for
16 the group that's coming in. That's what I understood it to be. Did I
17 understand that clearly? I'm raising it again so that the staff is
18 guided appropriately in knowing what they're supposed to be doing.
19 Yes?

20 VICE CHAIRPERSON REYNOSO: Well, I just--I think that's
21 correct, but I would hope it would go a step or two further. That is,
22 for example, what have been the implications for civil rights on the
23 criminal justice policies of this administration that has had a
24 tendency to incarcerate so many people? What would have been the
25 result in California in terms of 209 if the administration had issued a

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1 ruling on whether or not 209 violates Title VI, which they've never
2 done? I mean so much of what has--of the problem in terms of civil
3 rights in the last years, I think, has been nonaction. So we want to
4 get, it seems to me, not only analysis of what has happened, but also
5 what has not happened, and I just hope that that can be caught.

6 CHAIRPERSON BERRY: So they can be asked--

7 VICE CHAIRPERSON REYNOSO: Yes.

8 CHAIRPERSON BERRY: --why they have not. Or, for example,
9 why the racial profiling thing that the administration issued, all they
10 did was issue something asking for a study--

11 COMMISSIONER EDLEY: For data, for collection of data.

12 CHAIRPERSON BERRY: --for data rather than asking for
13 something that--so the query is in these areas why did you agency head,
14 whoever the agency head is, do this and not this and why didn't you do
15 this, that and the other? Is that the idea?

16 VICE CHAIRPERSON REYNOSO: Right.

17 CHAIRPERSON BERRY: Yeah. And then there was some
18 discussion by you and the transcript of record, Edley, about bringing
19 in other people other than agency head people to talk about this. What
20 kind of people did you have in mind? And what sorts of folk did you
21 have in mind, categories? Or do you recall this?

22 COMMISSIONER EDLEY: Yes, I do recall it. I think I regret
23 it. But I think that if there are outside particular researchers,
24 academic researchers, who could, who are familiar with the details of
25 what these agencies have done or not done, that either having the staff

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1 work with them to help the commission prepare for its analysis, or if
2 appropriate having them appear before the commission, as well, could be
3 valuable. I think it's important, however, that we not create sort of
4 a forum for just having a lot of ideological debate and so I'm
5 principally interested in hearing from the agencies and then doing
6 whatever we need to do principally by relying on the staff to be
7 ourselves informed enough to ask good questions and make our judgments.

8 CHAIRPERSON BERRY: And so if we were to have outside
9 people, we would need people who had some experience, training or
10 research capability or some track record in evaluating the agency's
11 implementation of their work.

12 COMMISSIONER EDLEY: Yeah, that would be my judgment and
13 frankly if I were going to put two--from my point of view, the ideal
14 thing would be if we had a couple of outside folks who would, number
15 one, talk with the staff beforehand to give us through the staff
16 suggestions about the kinds of questions and the areas that we ought to
17 be probing.

18 And number two, who might come and listen to what these
19 agencies say to us, and then offer us their written comments on what
20 the agencies have said to us afterwards. I think that would actually
21 be the most valuable from my point of view.

22 VICE-CHAIRPERSON REYNOSO: But again I hope the staff
23 doesn't forget, one, the criminal justice system, and, two, the
24 immigration system, particularly the legislative changes that put many
25 long-time residents at peril because of deportation because of the

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1 changes that were made. So I consider those important civil rights
2 issues that sometimes get gobbled up as immigration issues or criminal
3 justice issues but, in fact, they have serious implications in civil
4 rights, it seems to me.

5 CHAIRPERSON BERRY: Okay. So we would have INS, of course,
6 and people like that to talk. Does anyone else have any comments that
7 will illuminate for the staff what it is we expect them to do or we
8 think that's sufficient? Okay.

9 COMMISSIONER EDLEY: Well--

10 CHAIRPERSON BERRY: First, I said anyone else.

11 [Laughter.]

12 CHAIRPERSON BERRY: I'm kidding. I'm kidding, Christopher.
13 Go right ahead.

14 COMMISSIONER EDLEY: Well, I thought of a third way, of
15 course.

16 CHAIRPERSON BERRY: I'm teasing you.

17 COMMISSIONER EDLEY: Yes, I know you were.

18 CHAIRPERSON BERRY: You only gave two points. You need a
19 third one.

20 COMMISSIONER EDLEY: Right. So there was always the third.

21 It might be interesting to invite some people to give us a written
22 statement about, in general terms, what they think the civil rights
23 agenda of the next administration ought to be. And again, I'm not all
24 that interested really in staging theater for these purposes, but if
25 they're thoughtful people, right, left, middle, up, down, whatever, who

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1 would be interested in sending us their comments to help us, I think it
2 would be interesting to read and presumably would help us shape
3 whatever we write.

4 CHAIRPERSON BERRY: Uh-huh. Okay. So at the proceeding,
5 then, you're not looking for fireworks, I mean the public proceeding?

6 COMMISSIONER EDLEY: I would--yeah, let's think about some
7 fireworks when we have something to release.

8 CHAIRPERSON BERRY: At the release. Okay.

9 COMMISSIONER EDLEY: Let's get our analysis straight. Let's
10 learn what we need to learn and then let's have a high visibility
11 release of whatever we come up with because after all, it's our
12 conclusions I think that we want to make sure get substantial amount of
13 public visibility.

14 CHAIRPERSON BERRY: Okay. I think that's clear. Now, Staff
15 Director is that clear for the staff? Eddie, Terri, is that pretty
16 clear?

17 STAFF DIRECTOR MOY: Yes.

18 CHAIRPERSON BERRY: Okay. The other--you mentioned
19 immigration, Cruz, and it has occurred to me on the issue of
20 immigration and on refugees that we haven't done anything about these
21 issues in a long time. And there are all these issues concerning
22 refugees who are in detention. Some of them--I saw some film the other
23 day about the guy who has been in an airport somewhere for about five
24 years.

25 VICE CHAIRPERSON REYNOSO: There is some recent court

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1 opinion, I think, Court of Appeal opinion saying that the government
2 can't continue to hold them in prison forever. Some have been in
3 prison for ten years or longer, as I understand it, and these are
4 people who have been ordered deported, but their host country has
5 declined to accept them. And so the INS says, well, even though we
6 can't deport them and there is no order for further imprisonment, they
7 haven't known what to do with them. So they just keep them in prison.

8 CHAIRPERSON BERRY: Well, I think we need a project--staff
9 might think about it--in the medium term, a project that involves
10 immigration, refugees, deportation, detention, all of these issues,
11 because they cry out for us to look at their civil rights aspects.
12 Okay.

13 VI. State Advisory Committee Appointments for
14 Arkansas and Oklahoma

15 CHAIRPERSON BERRY: Let us go to the next item which
16 is the State Advisory Committee Appointments for Arkansas and Oklahoma.
17 Could I get a motion on these appointments so we can discuss them?

18 COMMISSIONER LEE: I'll motion.

19 CHAIRPERSON BERRY: Okay. Could I get a second?

20 COMMISSIONER WILSON: Second.

21 CHAIRPERSON BERRY: Okay. Discussion. The issue for me is
22 whether we should approve these appointments or whether we should send
23 them back to the regions and ask them, ask the regional director to
24 give us a real vision statement and a workplan or some ideas from the
25 chair about what are the issues in your state. If you could do

1 whatever you wanted to over the next two years, what would you do?

2 And tell us all that because, you know, as Vicki or somebody
3 said earlier, it would be possible, or at least whatever you said made
4 me think this, it would be possible for us if we knew this to direct
5 the Staff Director to reallocate some resources to go to "x" state
6 because they seem to have a good idea or two as opposed to going
7 somewhere they don't seem to have a good idea or two. I mean that's
8 possible even within the resources that are available. Yes,
9 Christopher?

10 COMMISSIONER EDLEY: I strongly agree with that and I think
11 it's particularly--because I'm struck by just the record in these two
12 SACs. For whatever variety of reasons I mean this has not been--this
13 doesn't knock your socks off, and it's almost entirely reappointments
14 with one or two exceptions here and there. So it's the same bunch of
15 people--excuse me--the same distinguished group of people who for
16 whatever set of reasons. There's a fair amount has been happening or
17 you could imagine having had a fair number of projects and initiatives
18 and so forth in Arkansas and Oklahoma and I would just like to raise
19 the bar.

20 CHAIRPERSON BERRY: Okay. Yes.

21 VICE CHAIRPERSON REYNOSO: I guess I have somewhat the
22 reaction that I've had other times, -not always the same, but on this
23 occasion I do have the sense that I hate to sort of change the rules in
24 the middle of the game. I think I'd rather, if we think that they're
25 appropriate appointments, go on and confirm them so they are in place,

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1 but ask them within 30 days to give us a report or something of that
2 sort. That is I just sort of hate to change the rules without having
3 forewarned folk of our change of ideas.

4 CHAIRPERSON BERRY: Commissioner Edley.

5 COMMISSIONER EDLEY: Well, then I have to be more pointed.
6 I guess my view is on the state of this record, I don't see that these
7 are appropriate appointments. And the reason I say that is because
8 it's the people who have been there and the record that they have
9 amassed in the last two years is unimpressive, and so before I would be
10 prepared to support their appointment, I would want to know either
11 what's going to be different or with some specificity why so little has
12 been accomplished in the past two years.

13 I might feel differently if it were a completely different
14 slate of folks who didn't have a record of quite modest activity, but
15 since it's the same group of folks I don't think this record is
16 sufficient.

17 CHAIRPERSON BERRY: I'm going to ask the indulgence of the
18 commissioners, including you, Christopher. My heart is with you, but
19 my mind is with the vice chair, because he admonishes us quite
20 correctly that these appointees didn't know we were about to change the
21 way we were planning to do things. And it's probably not fair to these
22 two particular people for us to turn them down because the standard now
23 is different or we expect it to be different, and we're going to get
24 this report from you and your task force in September and it's going to
25 involve changing a lot of things, and we've already asked for this

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1 vision statement. From now on we need a workplan, we need a vision
2 statement, we need--we have different standards in place. So my heart
3 is entirely with you, Christopher.

4 But my mind tells me that the vice chair is quite correct
5 and that this would be seen by the people who were involved as us
6 without any notice to them simply going around changing the rules
7 they've been following.

8 COMMISSIONER EDLEY: Even a deferral of decision? Table
9 this until September?

10 CHAIRPERSON BERRY: You mean table it to see if these people
11 meet the new standards? Or to ask them for--

12 COMMISSIONER WILSON: Well, we don't know what the new
13 standards. I mean--

14 CHAIRPERSON BERRY: Ask them for a workplan?

15 COMMISSIONER MEEKS: We just want to know what are they
16 going to do.

17 STAFF DIRECTOR MOY: They would have to reconfigure--the
18 regional directors would have to reconfigure the whole package and go
19 through a lot of processes again. They normally interview new
20 appointees, et cetera, and so a lot of time and effort has gone into
21 each reappointment package, and if we delay it, then we're going to
22 delay whatever proposal they're supposedly undertaking.

23 CHAIRPERSON BERRY: Let me ask the vice chair. Would you
24 think that deferring it and asking the folks to come up with a
25 statement for us to look at about what they propose to do, if they

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1 could do whatever they wanted to over the next two years, would be an
2 unfair way to approach it given the circumstances?

3 VICE CHAIRPERSON REYNOSO: Not particularly, though I think
4 that they would be happy to do that even if we approved them today and
5 asked them to submit it to us within 30 days. I've talked to regional
6 directors who have told me, gee, I wish I had more time to work with
7 the advisory committee of this state.. They've been wanting me to do
8 so, but I just haven't had time because we've been working with these
9 others. These states and this commission may be among those who have
10 been asking the regional director to come and help them do A, B and C,
11 and the staff has not been able to respond.

12 So I hate to jump to any conclusions until the task force--
13 and I hope to work with Chris on the task force also--makes a report,
14 sets down new guidelines, and says, hey, boys and girls, let's proceed
15 in this fashion.

16 CHAIRPERSON BERRY: So what Cruz is saying, if I hear him
17 right, is that there is a connection between or there may be a
18 connection between resolving the kinds of issues--

19 VICE CHAIRPERSON REYNOSO: Yes, very much so.

20 CHAIRPERSON BERRY: --we plan to resolve and the failure to
21 get the kind of information we want from chairs and the failure of them
22 to be able to do or to think about doing this or the kind of people
23 that we get, and that he thinks that it would be more appropriate to
24 resolve that and to do them both at the same time. I guess that's what
25 I'm hearing you're saying.

1 VICE CHAIRPERSON REYNOSO: Yes, to separate the two.

2 CHAIRPERSON BERRY: But does that mean, though, that our
3 telling these two nominees that we're simply deferring or should we
4 pass them and then ask them to send something in 30 days?

5 VICE CHAIRPERSON REYNOSO: My own view would be that we
6 should approve it and then ask them, as we would ask the others, to
7 send in their plans at the proper time. If we vote on a plan in
8 September, we would ask them to maybe report to us by October or
9 November and these folks, I'm sure, would be very happy to respond. In
10 fact, I think they would be enthusiastic about the proposals that this
11 task force is going to have because they themselves have been somewhat
12 frustrated, i.e., the advisory committee members.

13 CHAIRPERSON BERRY: Commissioner Meeks and then Wilson.

14 COMMISSIONER MEEKS: Well, I'm sort of putting myself in the
15 place of the regional directors, which may not be the right place to
16 be, but you know the regional directors, really they get applications
17 from the same SAC members every time. This is what I've heard. And
18 sometimes they don't necessarily think that it's the best
19 reappointment, but because they hate to go against that, you know, I
20 think the stronger stand we take on this, really the more strength it's
21 going to give the regional directors to say that this is what the U.S.
22 Commission is looking at.

23 Now I'm kind of ambivalent whether we go forward with this
24 or not, but I think at least from this point forward, we need to make a
25 pretty strong statement to the regional directors that this is what

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1 we're looking for.

2 VICE CHAIRPERSON REYNOSO: Yeah.

3 COMMISSIONER MEEKS: In the SACs.

4 CHAIRPERSON BERRY: Uh-huh. Vicki, will you--yes.

5 COMMISSIONER WILSON: One thing that I was going to say is
6 once we approve these people, then they are there.

7 CHAIRPERSON BERRY: Two years.

8 COMMISSIONER WILSON: We're trying to change. We're trying
9 to--you're the one, Madam Chair, who said you had the same conversation
10 six months ago, if I'm not mistaken, and it seems to me that it would
11 make more practical sense to defer it. Also, I don't want to speak for
12 you, Commissioner Edley, but it seems to me you have this reaction
13 about these two reappointments before we even had this conversation.
14 So you were basing this, not on the conversation of how things were
15 going to change, but rather than on the information that was before
16 you.

17 COMMISSIONER EDLEY: Did we get anything from? Have there
18 been any conversations with this--with?

19 STAFF DIRECTOR MOY: No, I was in the midst of setting up a
20 meeting with RDs, but because of their schedules and mine, too, I'm
21 doing it next week after this commission meeting when I'll have a
22 little bit more free time.

23 COMMISSIONER EDLEY: I'm sorry, but did you or the RD have
24 any conversation with the proposed chairs for these two SACs?

25 STAFF DIRECTOR MOY: No. If after having received it and I
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1 don't see anything that's not out of balance, then I send it forward to
2 you.

3 CHAIRPERSON BERRY: Yes, Commissioner Lee.

4 COMMISSIONER LEE: I think we've deferred approving SAC
5 members before. My understanding is it doesn't stop them from
6 operating. It's just that they're still going to proceed and I do
7 think that since we are going to come up with recommendations,
8 hopefully by September, it would make sense for us to put everything on
9 hold because, yeah, it makes no sense for us to put these folks
10 together--yeah--and then they're going to have a two-year delay because
11 they may not fit into what our vision of a new SAC may be.

12 So I would just move that we postpone this until further
13 discussion.

14 CHAIRPERSON BERRY: So we would just simply then say table
15 this and say we're going to discuss it again in September?

16 COMMISSIONER LEE: Or October.

17 CHAIRPERSON BERRY: Is that okay?

18 VICE CHAIRPERSON REYNOSO: Unless--I don't know--are there
19 new members involved here?

20 STAFF DIRECTOR MOY: Yes.

21 VICE CHAIRPERSON REYNOSO: If--

22 STAFF DIRECTOR MOY: Yes. In the first one, there was--

23 VICE CHAIRPERSON REYNOSO: If they're new members, it seems
24 to me--well, it just seems to me that the response should come from all
25 of them. Well, I know they could continue to function. If they're new

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1 members, they simply won't be able to become members until such time as
2 we approve them, and I assume that if we're going to ask them to
3 respond to a policy that we issue in September, we're really talking
4 about probably certainly October or November before they would be
5 approved and whether or not that presents any problem with respect to
6 the new proposed members I don't know. The established members simply
7 could continue to function so that would be no problem with them. I
8 don't know.

9 STAFF DIRECTOR MOY: In answer to your question, on the
10 first one, Arkansas, there are three new members and on the second one,
11 there's one new member. But during the summer months, once these are
12 approved, during the summer months is when SACs like to meet because
13 they know that at the end of the fiscal year that we have a problem
14 with their meeting because we might be in a Continuing Resolution. So
15 they probably wouldn't have their first meeting until after probably
16 January.

17 VICE CHAIRPERSON REYNOSO: They would not have their--well--

18 STAFF DIRECTOR MOY: Well, if we delay it.

19 VICE CHAIRPERSON REYNOSO: Then it seems to me that there's
20 really very little problem in postponing it.

21 STAFF DIRECTOR MOY: Well, if the commission approves it
22 today, then I think they can move forward if there is something on
23 their table to start a meeting.

24 CHAIRPERSON BERRY: Well, we can look in here to see when
25 they project to meet. Arkansas and draft report, last SAC meeting

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1 9/21/99. They got a draft report that the regional director has and
2 it's not anything with it. It doesn't say anything about any--Oklahoma
3 doesn't have anything.

4 COMMISSIONER EDLEY: I mean I went through this. I thought
5 they were barely functional from the record. The record made it look
6 like they were--the resumes were pretty good, better than pretty good.
7 I mean I thought these looked like the kinds of people that ought to be
8 on the SAC. On the other hand, the record of what they've been doing
9 and so forth looked like it was barely functional. So my immediate
10 sense was they look like fine people. So I'm happy to go along with
11 this if I knew what it was they planned to do.

12 So all I would be looking for in September, just speaking
13 for myself, all I'd be looking for in September is not some sworn
14 statement that they're going to live by whatever new principles we
15 adopt, but just a letter, a thoughtful letter from the chair saying
16 here are the kinds of things we think we might want to be looking at
17 over the next two years if we have adequate resources, something to
18 suggest some entrepreneurialism.

19 CHAIRPERSON BERRY: Yes, Commissioner Meeks.

20 COMMISSIONER MEEKS: I'm no longer ambivalent. I can't see
21 why it would hurt to defer this till the next meeting and to tell--and
22 to send the message to the regional directors that we want that sort of
23 statement.

24 VICE CHAIRPERSON REYNOSO: If they're not going to meet till
25 January, then I think that's fine.

1 CHAIRPERSON BERRY: We, the Staff Director talked to the
2 regional director after I conveyed to her my notion that we ought to
3 know that the commissioners were going to ask what these people planned
4 to do. And the regional director did send back in the case of
5 Arkansas--I don't know if this makes it better or worse--a memo which
6 says on behalf of the Arkansas Advisory Committee and its chair for the
7 past two years, and prospective chair--this is Arkansas --we will
8 forward to you for your information consideration of the report
9 detailing the need for a state's civil rights enforcement agency.
10 That's what's in the staff director's report.

11 After holding a forum, the committee is also well aware of
12 the need to hold more forums with proper budget support including
13 additional staff. We are planning to hold several meetings around the
14 state so that citizens can become aware of their civil rights and the
15 proper channels for redress. After the report noted above is approved
16 for publication, the committee will hold several forums around the
17 state to discuss the report's findings. The committee will also meet
18 with the government to brief him on the committee's findings. That's
19 Arkansas.

20 Oklahoma. Greetings. I'm a long-standing member of the
21 committee. I have been a chair in the past. I accept this challenge
22 with a deep sense of commitment to civil rights, not only in Oklahoma
23 but the nation. It is against this backdrop that the advisory
24 committee will conduct follow-up activities to its report "Equal
25 Educational Opportunity for Hispanic Students in the Oklahoma City

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1 Public Schools." We are really concerned about the large number of
2 student suspensions at both the elementary and secondary level in the
3 school district.

4 We intend to hold community forums in several locations
5 around the state to collect additional information on school
6 suspensions and bilingual education. With additional budget support
7 from the commission, we want to provide avenues for citizens to learn
8 more about how to get their civil rights enforced through appropriate
9 federal, state and local agencies. Over the years, we have found many
10 persons not knowing about how to file a discrimination complaint.
11 Since many federal agencies do not have outreach services, this is a
12 void that can and should be filled by the advisory committee.

13 COMMISSIONER MEEKS: We didn't have that information.

14 CHAIRPERSON BERRY: Uh?

15 COMMISSIONER MEEKS: I said we didn't have that information
16 till just now.

17 CHAIRPERSON BERRY: Yes, Commissioner Edley.

18 COMMISSIONER EDLEY: I'm not sure whether that helps or
19 hurts because it certainly--

20 CHAIRPERSON BERRY: I was about to ask.

21 COMMISSIONER EDLEY: --because it certainly--

22 COMMISSIONER WILSON: It's not very persuasive.

23 COMMISSIONER EDLEY: It's not--thank you for giving--I mean
24 it doesn't make me feel as though, wow, the next two years are going to
25 be exciting in Oklahoma. And I --

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1 COMMISSIONER WILSON: Oh, I don't know about that.

2 VICE CHAIRPERSON REYNOSO: It's hard to judge--

3 COMMISSIONER EDLEY: Yeah.

4 VICE CHAIRPERSON REYNOSO: --without our having made a
5 statement ourselves of what we hope the advisory committees will do.

6 COMMISSIONER WILSON: I think that if we--I think in all
7 fairness to each of these SAC members, I think it would be fair if we
8 said put together a wish list of what you would really love to do in
9 the best of all possible worlds and then we can see what people come up
10 with because this letter is sort of bare bones.

11 CHAIRPERSON BERRY: Well, I think that that's probably--if
12 the vice chair agrees. I'm only using him as my touchstone on this
13 issue because I respect his maturity and his wise judgment, not that
14 the rest of you don't have it. You don't have his maturity.

15 COMMISSIONER WILSON: As opposed to our immaturity.

16 [Laughter.]

17 CHAIRPERSON BERRY: You don't have his maturity.

18 COMMISSIONER WILSON: And lack of judgment.

19 CHAIRPERSON BERRY: Right. You have judgment but not his
20 maturity.

21 COMMISSIONER WILSON: That's true. I'll defer.

22 CHAIRPERSON BERRY: I think we should ask them to elaborate,
23 tell them that we got these letters and read them, you know. We
24 understood what they said and we would like them to elaborate in the
25 way that Vicki said. Tell us, you know, if you could do whatever you

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1 wanted to do over the next two years in the state of Oklahoma, what are
2 the issues, what would you do, and give us some view? Don't worry
3 about putting the line in if "I had the adequate budget resources."

4 COMMISSIONER WILSON: Assume that you have adequate--assume
5 that you have all the money in the world.

6 CHAIRPERSON BERRY: And that we will then act on these in
7 September.

8 VICE CHAIRPERSON REYNOSO: Fine.

9 CHAIRPERSON BERRY: Okay.

10 COMMISSIONER ANDERSON: Madam Chair.

11 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

12 COMMISSIONER ANDERSON: I think in fairness to the
13 individual from Oklahoma whose letter we read into the record, we might
14 just note that it's possible the individual considered this letter to
15 be a pro forma expression of willingness to serve; therefore, did not
16 put the time or attention into it detailing an agenda that--

17 CHAIRPERSON BERRY: Right and that would--

18 COMMISSIONER ANDERSON: --which would have been done had
19 they realized that's what we expected from them. It may be that there
20 are no ideas there, but it may also be that this was something not
21 expected to be publicly discussed.

22 COMMISSIONER WILSON: Do you want to remove it from the
23 record?

24 CHAIRPERSON BERRY: No. I think that--I appreciate your
25 comment, Commissioner Anderson, and I don't know what was conveyed to

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1 them, but the letter, in fact, is addressed to all of us so--whether
2 they knew we were going to read it or not, but they knew--did they
3 know, Staff Director, that this was in connection with their being
4 appointed or that the purpose of it was to consider their appointment?
5 They knew that; did they not?

6 STAFF DIRECTOR MOY: Well, I mentioned to them that there
7 were these concerns that the commission had been having in the past,
8 and that I wouldn't put it past the commissioners at this time that
9 there might be a discussion on it.

10 [Laughter.]

11 STAFF DIRECTOR MOY: This is my crystal ball, Commissioner
12 Anderson. That there might be a discussion on it and so to help me
13 along for them to give me an idea of their vision and what they intend
14 to do as SAC chairs.

15 CHAIRPERSON BERRY: So let's keep in mind that they may not
16 have known, as Commissioner Anderson said, that the exploration would
17 go to this extent and be used in this way and that they were merely
18 making a pro forma statement and that they would probably welcome us
19 coming back to them to ask that we want to seriously consider this
20 matter and we would like to know what they wish if they were to blue
21 sky about what they would do over the next two years. Does that
22 satisfy, Commissioner Anderson?

23 COMMISSIONER ANDERSON: Yes. Yes, I'm not saying that we
24 were inappropriate to discuss this or read the letter. I'm just making
25 that caveat and I support the process we're going through now.

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1 CHAIRPERSON BERRY: Okay. Thanks.

2 VICE CHAIRPERSON REYNOSO: Good.

3 CHAIRPERSON BERRY: Commissioner Edley.

4 COMMISSIONER EDLEY: If I can maybe just offer a little bit
5 of gratuitous coaching on this without the benefit of the September
6 discussion we'll have more extensively. When I think about the kind of
7 person that I would like to see as the chair of the SAC, it's somebody
8 in the state who has, if not broad familiarity with a variety of civil
9 rights issues, at least significant familiarity with what the civil
10 rights issues are in that state, and who has sort of some imagination,
11 enthusiasm about what the SAC could do to try to help address that
12 range of problems.

13 So a wonderful letter, a persuasive letter, for me would be
14 something that gives evidence of those two things, that I understand
15 what is going on in my state in a broad way and that I've got some
16 ideas, some excitement about engaging that agenda. So that's what is
17 in my mind.

18 CHAIRPERSON BERRY: Okay. That's helpful. Okay. We will
19 then defer these until next time without objection.

20 VII. Future Agenda Items

21 CHAIRPERSON BERRY: Are there any further agenda items that
22 anyone would like to bring to our attention at this time beyond what
23 we've already talked about as future agenda items without it being
24 under future agenda items? Okay. Hearing none, I would entertain a
25 motion that we adjourn.

1 COMMISSIONER EDLEY: So moved.

2 CHAIRPERSON BERRY: Second?

3 COMMISSIONER WILSON: Second.

4 CHAIRPERSON BERRY: Not debatable. All in favor, indicate
5 by saying aye.

6 [Chorus of ayes.]

7 CHAIRPERSON BERRY: We're adjourned. Thank you. Thank
8 you, Commissioner Anderson.

9 [Whereupon, at 12:20 p.m., the commission was adjourned.]
10