

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY

JANUARY 12, 2001

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TALLAHASSEE, FLORIDA

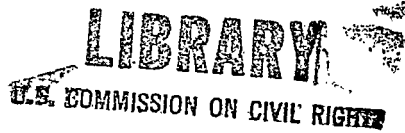
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The Commission convened at 8:05 a.m., in the Capital Ballroom, Holiday Inn Select, 316 W. Tennessee Street, Tallahassee, Florida, Chairperson Mary Frances Berry, presiding.

PRESENT:

- MARY FRANCES BERRY, CHAIRPERSON
- CRUZ REYNOSO, VICE CHAIRPERSON
- CHRISTOPHER EDLEY, JR., COMMISSIONER
- YVONNE Y. LEE, COMMISSIONER
- ELSIE M. MEEKS, COMMISSIONER
- ABIGAIL THERNSTROM, COMMISSIONER
- VICTORIA WILSON, COMMISSIONER

- LESLIE R. JIN, STAFF DIRECTOR



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Staff Present:

KIMBERLEY ALTON
DAVID ARONSON
TERRI DICKERSON
BOBBY DOCTOR
PAMELA A. DUNSTON
MICHAEL FOREMAN
GEORGE HARBISON
EDWARD HAILES, Acting General Counsel
JENNY PARK
BERNARD QUARTERMAN
PETER REILLY, Parliamentarian
KWANA ROYAL
JOYCE SMITH
AUDREY WIGGINS
AUDREY WRIGHT

Commissioner Assistants Present:

PATRICK DUFFY
ELIZABETH OUYANG
CHARLOTTE PONTICELLI
SCOTT SCHREIBER
KRISHNA TOOLSIE
EFFIE TURNBULL

A-G-E-N-D-A

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P-R-O-C-E-E-D-I-N-G-S

CHAIRPERSON BERRY: The meeting of the Commission will come to order.

I. Approval of Agenda

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

COMMISSIONER MEEKS: So move.

CHAIRPERSON BERRY: Can I get a second?

COMMISSIONER WILSON: Second.

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

(A chorus of ayes.)

CHAIRPERSON BERRY: Opposed.

(No response.)

CHAIRPERSON BERRY: So ordered.

II. Approval of Minutes

CHAIRPERSON BERRY: The next item is the approval of the minutes of the December 8, 2000 meeting. Could I get a motion to approve the minutes?

COMMISSIONER MEEKS: I'll move.

COMMISSIONER LEE: Second.

CHAIRPERSON BERRY: All in favor indicate by saying aye.

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1 (A chorus of ayes.)

2 CHAIRPERSON BERRY: Opposed?

3 (No response.)

4 CHAIRPERSON BERRY: So ordered.

5 **III. Announcements**

6 CHAIRPERSON BERRY: The only
7 announcement is to remind people of course that it's
8 Martin Luther King's birthday -- holiday. His
9 birthday is on Monday. It comes every year. And to
10 acknowledge that. That's the only one that I have.

11 We have a new commissioner, Commissioner
12 Thernstrom, who has -- was here yesterday. So she's
13 not quite as new as she was yesterday.

14 (Laughter.)

15 COMMISSIONER THERNSTROM: Still feeling
16 pretty new.

17 CHAIRPERSON BERRY: Right. Who has
18 joined us today.

19 Does anyone else have any -- Staff
20 Director, do you have any announcements or does
21 anybody else have any announcements?

22 STAFF DIRECTOR JIN: No, I don't.

23 CHAIRPERSON BERRY: All right, thank
24 you. With that --

25 COMMISSIONER LEE: Madam Chair?

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1 CHAIRPERSON BERRY: Yes.

2 COMMISSIONER LEE: In light of Sheriff
3 Brown's ambush, shooting death in Georgia, I request
4 that this Commission submit a letter of inquiry to
5 the Department of Justice to find out the nature of
6 his death because of his position on police reform,
7 an issue that we have been following. I would like
8 to have the Commission send a letter of inquiry to
9 the DOJ.

10 CHAIRPERSON BERRY: There were news
11 accounts, of course, of the event since the last
12 meeting -- it came in between the meeting -- and
13 Commissioner Lee had spoken to me about it in the
14 interim. I don't know what the Justice Department
15 is doing, if anything, whether they have any
16 inquiry. The news story said that the FBI was
17 helping with the investigation.

18 I don't know whether the FBI considers
19 itself part of the Justice Department or not, but I
20 think that it is appropriate for us to ask. And so,
21 if there's no objection to doing so, we will send a
22 letter of inquiry to the Justice Department asking.

23 Shall we ask them to investigate or simply ask the
24 status of the investigation, Commissioner Lee? Is
25 that what you have in mind? What do you have in

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1 mind?

2 COMMISSIONER LEE: I would like to
3 request an investigation but I don't know what the
4 formal procedure is.

5 CHAIRPERSON BERRY: Why don't we have
6 staff call over to Civil Rights Division and find
7 out what they're doing and if they're not doing
8 anything, we'll write the letter depending on what
9 they say they're doing, okay.

10 COMMISSIONER LEE: Thank you.

11 CHAIRPERSON BERRY: All right, no
12 objection.

13 **IV. Staff Director's Report**

14 COMMISSIONER EDLEY: Madam Chair, I have
15 a question about the U.N. conference. I don't know
16 whether I should raise that now.

17 CHAIRPERSON BERRY: Yes, you should.

18 COMMISSIONER EDLEY: Well, I guess what
19 I want to do is ask you to just explain to everybody
20 what it is since you've been very much involved in
21 it. The general question I want to raise --

22 CHAIRPERSON BERRY: I have. Cruz went
23 to the prep com.

24 COMMISSIONER EDLEY: Right. And I guess
25 I want to -- I thought it might be useful just to

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1 hear a couple of sentences about what the prep com
2 was like and the sense that you and Cruz have of the
3 way the United States, both governmental and NGO,
4 activity is developing and whether there's any role
5 for the Commission, or should be any role for the
6 Commission as that develops. I'm a little skeptical
7 myself, but I just wanted to put it on the table.

8 CHAIRPERSON BERRY: Well maybe we should
9 tell -- Cruz, why don't you explain it because you
10 went to the prep com.

11 COMMISSIONER THERNSTROM: Please, I'm
12 having a little bit of a hard time hearing you, if
13 you could just speak slightly louder.

14 CHAIRPERSON BERRY: All right. Cruz,
15 could you tell the -- could you hear Commissioner
16 Edley?

17 VICE CHAIRPERSON REYNOSO: Yes.

18 COMMISSIONER THERNSTROM: I was having a
19 hard time hearing it.

20 CHAIRPERSON BERRY: Oh, Edley, okay.

21 Perhaps, Vice Chair, you could tell --
22 you could describe what the U.N. Conference is, for
23 those who may not know, that Commissioner Edley is
24 referring to and then tell us a little bit about it
25 since you went to the preparatory commission.

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1 VICE CHAIRPERSON REYNOSO: Commissioner
2 Edley has raised the issue as to whether or not we
3 should inquire as to whether or not this Commission
4 should have a role in the following. There's going
5 to be this year now, an international conference on
6 racism and other prejudices, by which is meant
7 mostly religious prejudices. It'll take place in
8 South Africa. This is akin to a couple of other
9 world conferences that have taken place of issues of
10 human rights.

11 The U.N. follows a procedure of
12 preparatory conferences to try to agree on the
13 agenda and so on. I was invited to be part of the
14 U.S. delegation that met in Geneva for a week in one
15 of those preparatory conferences where we dealt a
16 great deal with the issues that are before the world
17 as it comes up in different countries and each
18 nation.

19 The plan was that there would be
20 meetings in the U.S. with groups interested in human
21 rights of great variety, and eventually the U.S.
22 will send a delegation to that conference, as will
23 other nations. The question has been raised whether
24 since that conference has to do with human rights,
25 which in this country we normally refer to as civil

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1 rights, whether this Commission should have a role
2 in that. We have had no formal role in it. I was
3 invited more as an individual to be part of a U.S.
4 delegation. I assume that Commissioner Edley is
5 raising the question as to whether or not we in turn
6 should be in touch with the White House and the
7 State Department as to whether or not we should have
8 a more formal role.

9 CHAIRPERSON BERRY: I went to the Geneva
10 Human Rights Commission and Committee to Eliminate
11 All Forms of Racial Discrimination meeting in my
12 private capacity as a scholar with some non-
13 governmental organizations and I have been invited
14 to go to the meeting in South Africa in connection
15 with one of the numerous non-profit boards that I
16 serve on.

17 But the Commission itself, we have
18 received the documents -- the reports that have been
19 prepared, or the staff has, for comment and have
20 been kept abreast of what has been going on, but I'm
21 not sure whether the Commission ought to play a role
22 in it or not as a formal matter.

23 There is some rule that was established
24 sometime other -- I don't know when it happened --
25 back, what is it, before the -- at a time when the

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1 memory of man runneth not to country or whatever --
2 that the Commissioners do not get to go to
3 international meetings or something, or the
4 Commission's activities are not international. I
5 don't know where that came from. I've never seen
6 anybody write it down.

7 Also the fact that we are an independent
8 agency and a watchdog commission would mean that we
9 would not go representing any administration. So
10 that any role that we would have, we would have
11 independently of that. So we might want to think
12 about it, whether we want someone to go or whether
13 we want people to go. I'm sure that the people at
14 this table can, if they want to, go as part of some
15 non-governmental organization. We don't have to go
16 as members of the Commission.

17 Edley, what did you have in mind?

18 COMMISSIONER EDLEY: Well frankly,
19 rather than adding to my frequent flier miles, what
20 I was mostly thinking about was -- as the Chair
21 knows, for over a year, I've been a little bit
22 concerned that the documents that -- the official
23 documents that might be produced by the United
24 States government seeking to characterize for the
25 world the state of civil rights in the United

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1 States, might -- how do I -- how can I put this?
2 Might have some controversial elements in them or
3 might have characterizations of the state of affairs
4 that --

5 CHAIRPERSON BERRY: Might embellish the
6 amount of progress.

7 COMMISSIONER EDLEY: Or something like
8 that. I mean, it could happen. Who knows? And
9 obviously this is the sort of thing that would
10 happen regardless of who the Administration is.
11 It's sort of what the State Department is in
12 business to do. So in light of that, I think really
13 the question is whether institutionally it would be
14 useful to the overall enterprise for the Commission
15 formally.

16 Not just the staff but for the
17 Commission formally to (A) comment on whatever
18 documents are being prepared by the United States
19 Government -- commented to the United States
20 Government in the drafting process. And (B) perhaps
21 more ambitiously, once those documents are
22 finalized, publish a reaction to those documents
23 that would then be available to participants of the
24 U.N. conference and to the Congress and the general
25 public. I'm not talking about something ambitious,

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1 I'm talking about, you know, a five, ten, fifteen
2 page thing. And we obviously don't have to resolve
3 this today. I just wanted to raise it maybe for
4 people to think about until we can resolve it at a
5 future meeting.

6 CHAIRPERSON BERRY: Yes, Vice Chair.

7 VICE CHAIRPERSON REYNOSO: One of the
8 problems has been that the State Department is in
9 charge of preparing the documents pertaining to the
10 status of civil rights in this country --

11 COMMISSIONER EDLEY: And they know
12 nothing.

13 VICE CHAIRPERSON REYNOSO: Let me put it
14 this way, they're not experts on civil rights in
15 this country.

16 COMMISSIONER EDLEY: You're so
17 diplomatic.

18 VICE CHAIRPERSON REYNOSO: And sometimes
19 for PR purposes have a tendency to not notice
20 matters that are going on in this country. So I
21 think the suggestion is that maybe since this is an
22 official document from the U.S. government and since
23 we are the Civil Rights Commission, we at least
24 ought to have an opportunity to review and make
25 observations on whatever draft is put together. I

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1 think that's probably a good suggestion and it would
2 be a very limited role for us.

3 CHAIRPERSON BERRY: Well we have -- what
4 I -- to say again, we have done that informally.
5 What you're suggesting -- or made that insistence
6 informally, and have even been asked informally what
7 we thought about X, Y or Z or A, B or C. Nothing
8 comprehensive. So what you're suggesting is
9 something formal. But what I would like from among
10 the suggestions -- what seems to make sense and
11 would be most useful, I think, is for us not only to
12 talk about commenting, which with the State
13 Department usually doesn't get anywhere, I've
14 noticed, on these kinds of documents, but to prepare
15 our own document in response and circulate it to the
16 members of the U.N. Commission through either CERD
17 or the Human Rights Commission or directly to the
18 U.N. We can figure out how to do that. So I like
19 the idea of having our own document.

20 COMMISSIONER EDLEY: I think -- and just
21 to keep the staff from going apoplectic, the U.N.
22 conference is not until next September, I believe.

23 CHAIRPERSON BERRY: I think it's August.

24 COMMISSIONER EDLEY: Is it now in
25 August?

1 CHAIRPERSON BERRY: Uh-huh.

2 COMMISSIONER EDLEY: So this is not
3 imminent, but it's some months -- it's some months
4 hence, so it's not --

5 CHAIRPERSON BERRY: All right. So we
6 will -- is there any objection to that idea?

7 (No response.)

8 CHAIRPERSON BERRY: All right, we will
9 then proceed to see how we can work out moving with
10 that idea when the report -- we'll be in touch with
11 the same people and make sure we get the stuff that
12 they have. They will be different people probably,
13 although the civil service over there will be the
14 same, the people working down in the bowels of the
15 Administration on this stuff. And then we'll see
16 about getting a document together.

17 Is there anything else under the --

18 COMMISSIONER THERNSTROM: Can I ask just
19 one question about that? At what point would you
20 expect to be able to see the State Department
21 document to which we would be responding?

22 CHAIRPERSON BERRY: Well we will -- you
23 will be informed of that as we go along with
24 meetings and when we get information. Right now, we
25 don't know. The staff will have to find out is the

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1 short answer, what their time table is and all of
2 that business.

3 Yes, Commissioner Meeks.

4 COMMISSIONER MEEKS: This is moving off
5 on a different subject.

6 CHAIRPERSON BERRY: Okay.

7 COMMISSIONER MEEKS: And I think we'll
8 probably touch on this during the planning. But I
9 think that the Commission -- I would like for them
10 to write a letter to the Attorney General in South
11 Dakota. You know, he has said he will do a study on
12 the justice system and how it affects Indians, or
13 what -- actually on sentencing. And so we've heard
14 a couple of different stories coming out of his
15 office, that first he was going to do it and then
16 he's not. Actually we heard that from DOJ. But I
17 just think that if we wrote a letter directly to him
18 asking him if he's going to do it and what company
19 he's going to use, I mean what his methodology will
20 be for doing it. Just so we can get some
21 clarification whether he's -- and who's paying for
22 it.

23 CHAIRPERSON BERRY: This is follow-up on
24 the South Dakota -- a forum we had on Native
25 American issues and the administration of justice

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1 and the killings out there. And the follow-up on it
2 and the report that we did, the State Advisory
3 Committee report that was done and the discussions
4 with officials that Elsie and others have had in
5 South Dakota and the idea that the state attorney
6 general had said that he would do a study if he had
7 the resources.

8 Because we raised the issue of doing a
9 study of the criminal justice system in some
10 particular locale or somewhere in the state to try
11 to figure out whether all these complaints about how
12 people were treated made any sense. He said he
13 would, and the Justice Department -- Bureau of
14 Justice Statistics offered some money to pay for it.

15 It was first publicly announced that the study
16 would be done and then it was announced that it
17 wouldn't be done and then it was announced it would
18 be done, and so what -- and that Justice wouldn't
19 give them the money. Then we got a letter from
20 Justice saying that they would give them the money.

21
22 So Commissioner Meeks is suggesting that
23 we might send a letter to the attorney general
24 simply asking -- of South Dakota -- are you doing
25 the study or aren't you. I see no reason for us not

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1 to do that since it's just follow-up on what we've
2 been doing. So I would be happy to send such a
3 letter.

4 Is there anything else under the Staff
5 Director's report?

6 (No response.)

7 **VI. Proposed Hearing in Miami, Florida**

8 CHAIRPERSON BERRY: Okay. We will --
9 this is the right place to mention, since it is
10 ongoing activity, that the staff, as I understand
11 it, is prepared for us to go to Miami next month for
12 a one-day hearing. We had left it in the motion
13 that we passed and the notices that were given to
14 the staff to identify when they could do hearings
15 and where we should do them. And so that would mean
16 that at next month's meeting date, whatever date
17 that is --

18 COMMISSIONER EDLEY: It's the 16th.

19 CHAIRPERSON BERRY: -- we would have a
20 one-day hearing in Miami, which would have -- they
21 have concluded that we at least need to go to Miami.

22 They haven't concluded that we need to go anywhere
23 else yet. And that would mean that we would be
24 listening to the county supervisors and people who
25 have allegations of abuses and advocates. There

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1 will probably be a large number of people with
2 allegations there, so you should be prepared to
3 listen to them. The public forum will probably go
4 on for quite awhile that Friday. So in terms of you
5 making your preparations for how you would be, what
6 you will do when you get there -- so that would be
7 next month in Miami.

8 Okay, let's go to the --

9 COMMISSIONER THERNSTROM: I'm sorry,
10 would that be a one or a two-day meeting?

11 CHAIRPERSON BERRY: We're talking about
12 a one-day hearing.

13 COMMISSIONER THERNSTROM: A one-day
14 hearing?

15 CHAIRPERSON BERRY: Which means that we
16 would do the meeting we had in the morning and we'll
17 have to figure out the timing. Depending on how
18 many witnesses the general counsel decides he needs,
19 we may be able to meet for two hours instead of one,
20 as we're doing now, but we'll tell you about that
21 later. But it would be -- you'll probably need to
22 get in on Thursday night.

23 Is that all right, Vice Chair?

24 VICE CHAIRPERSON REYNOSO: To have the -
25 - to have the meeting, do we still have to go to a

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1 30-day notice for that meeting?

2 CHAIRPERSON BERRY: No, because we --

3 VICE CHAIRPERSON REYNOSO: Okay. That
4 was included, okay.

5 CHAIRPERSON BERRY: -- in the notice --
6 in the notice that the staff put out, they included
7 language that made it possible for them to do so.

8 VICE CHAIRPERSON REYNOSO: Okay.

9 CHAIRPERSON BERRY: They were pressing
10 it.

11 VICE CHAIRPERSON REYNOSO: Good.

12 CHAIRPERSON BERRY: Okay. They may have
13 put out some further notice further identifying or
14 something. I don't know how that would be
15 described, but they did cover it.

16 **V. 2001 Planning Meeting**

17 Okay, now the planning meeting for 2001
18 is a -- this is the beginning of it, and a
19 preliminary discussion, which will be truncated
20 because of the time that we have for the meeting,
21 but also, my understanding is that there aren't that
22 many issues for us to decide. The reason there
23 aren't that many issues for us to decide is because
24 we don't have any money and the reason why we don't
25 have any money is because the Commission's budget

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1 has not been increased in how many years,
2 Christopher?

3 COMMISSIONER EDLEY: (No response.)

4 CHAIRPERSON BERRY: The Commission has
5 had absolutely no budget increase, even though the
6 President has requested one every year, since at
7 least 19 -- what was it, 1994?

8 COMMISSIONER EDLEY: The '95 budget.

9 CHAIRPERSON BERRY: And, in fact, our
10 budget has been decreased. So the more we do, the
11 less money we get. So the reason why we don't have
12 a lot to plan is because we don't have a lot to pay
13 for. Is that succinctly put Staff Director?

14 STAFF DIRECTOR JIN: And it's put
15 nicely.

16 CHAIRPERSON BERRY: So everything that
17 Commissioners can do to figure out what we can do is
18 appreciated. We made a decision, as you will
19 recall, at the last meeting that we would -- that we
20 would put off the projects that the staff would at
21 this very hour -- not this hour but later on in the
22 day -- be working on, because we wanted to do these
23 hearings and work on this project related to voting
24 rights, which none of us knew would happen. I mean,
25 nobody expected this, so it wasn't in our planning,

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1 right, Staff Director?

2 STAFF DIRECTOR JIN: Yes, that's
3 correct.

4 CHAIRPERSON BERRY: So maybe you want to
5 explain this. Do you want to say something in
6 summary form about the plans?

7 STAFF DIRECTOR JIN: Just very briefly,
8 Madam Chair. We provided a document for the
9 Commissioners last week and what we tried to do --
10 it's a little different format than perhaps in the
11 past and what we tried to do is, in a memo, give
12 them more information that we hope would help you
13 with your analysis and your decision making process.

14 Give you a little more background in
15 terms of what the staff is working on this fiscal
16 year, as well as just giving you projects as to what
17 you might consider for two fiscal years down the
18 road. And as we indicated in that memo, I think
19 especially for the next four to six months, both the
20 Office of Civil Rights Evaluation and Office of
21 General Counsel are going to be very, very busy
22 primarily with the voting rights project. But also
23 with the statutory report for the Office of Civil
24 Rights Evaluation, and also the Office of General
25 Counsel continues to work on the Crossing Borders

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1 matter -- prepared to continue work on Crossing
2 Borders matters. Those three projects take up the
3 great bulk of the time. So I think perhaps with
4 that introduction, I will just turn it back over to
5 you, Madam Chair.

6 CHAIRPERSON BERRY: Okay. I just want
7 to say one other thing and then I'll recognize
8 Commissioners. We decided we had two major
9 priorities to get the staff to -- one was this
10 priority of the voting rights project. We also
11 decided we would do some more work on the
12 immigration project which we're calling Crossing
13 Borders. We revised the Native American project,
14 which was first about housing and we revised it to
15 change it to Administration of Justice, if I recall
16 correctly. Is that right, Commissioner Meeks?

17 COMMISSIONER MEEKS: That's right.

18 CHAIRPERSON BERRY: And then we still
19 have the Expanding Economic Opportunities for
20 Minority Youth project, and so, the point is that we
21 would have the staff finish the voting rights
22 project sometime in the near term, like summer, and
23 then that staff could be devoted to -- part of it,
24 at least, working on the immigration project and the
25 others working on the civil rights -- Native

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1 American civil rights project. And the OCRE staff,
2 which is working on the voting -- their part of the
3 voting project and their statutory report, if I've
4 got that right?

5 STAFF DIRECTOR JIN: That's correct.

6 CHAIRPERSON BERRY: Would then be able
7 to do some work on -- more work on expanding
8 economic opportunity. But essentially what we're
9 doing is moving those things forward, deferring as
10 it were, while we have the staff devoted to these
11 other new projects, is that right?

12 STAFF DIRECTOR JIN: That's correct,
13 Madam Chair. The Expanding Economic Opportunities
14 Project has two components for the Office of Civil
15 Rights Evaluation. One is a briefing paper and the
16 second is conducting round tables. I think by the
17 summer that they should be able to do the briefing
18 paper. The round tables, I think perhaps there
19 should be some further discussions as to whether
20 that can be crunched into this fiscal year or
21 perhaps should be delayed or reformatted or
22 something like that.

23 The General Counsel's office also has a
24 role -- as now conceived -- regarding the Expanding
25 Economic Opportunities, Project, and that is to

1 provide a consultation. I think realistically
2 probably that will not come until after the briefing
3 paper is done anyway.

4 CHAIRPERSON BERRY: And you made one
5 other point -- big point in this paper, and that was
6 to remind us that new projects always emerge during
7 the year. We've already acknowledged that in our
8 discussions at the last meeting when we talked about
9 the budget, that there's -- and this project we're
10 doing here is an example of a new project. So we
11 expect new projects to emerge and then we have to
12 make adjustments to take care of them.

13 With that, I'll recognize -- you had
14 your hand up, didn't you?

15 COMMISSIONER WILSON: Yes, thank you.
16 Thank you, Madam Chair. In between the onslaught of
17 unexpected projects, one thing I would like to push
18 up, if possible, is the issue on the subject of
19 environmental justice. I think with this new
20 administration and what's going on, I think it's a
21 topic that unfortunately is something that we should
22 be addressing. I think it's obviously having very
23 far reaching consequences, even with what's going on
24 in California, just having to do with the electrical
25 company. I understand that we can't really begin to

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1 do a huge amount of work until 2002, but I was
2 wondering if we could hold a briefing?

3 CHAIRPERSON BERRY: Sure, we can do that
4 at the -- Commissioners may suggest at any time
5 briefings and then we figure out, you know, when to
6 -- when to schedule them. And so, we can put down
7 one for environmental justice, which makes sense. I
8 don't recall -- and that would give us something on
9 the subject and a lead into it before we actually go
10 to the major project. That's not a problem.

11 Anybody -- yes, Commissioner Edley.

12 COMMISSIONER EDLEY: I would like to
13 wholeheartedly endorse the idea of deferring work on
14 the Expanding Economic Opportunities for Minority
15 Youth Project. I think that -- as some of you may
16 recall, I've been a little skeptical about this
17 particular undertaking from the beginning, worrying
18 that it -- that any reasonable treatment of it would
19 take us into fields of social policy as to which
20 we're not particularly expert.

21 At least we may be individually expert
22 but institutionally we're not particularly expert.
23 So I guess I would just say that I -- that I would
24 bet very, very little that what would actually come
25 out of a major undertaking by us in this area is

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1 going to advance the ball a whole lot, as important
2 as this subject is. So I think we have many higher
3 priorities given our limited resources and I think
4 that anything that can be done to defer that and to
5 downsize it would be -- would be -- would be very
6 important.

7 The second -- the second thing I wanted
8 to do is is voice a concern again about the
9 statutory report. I think the Commission has now, a
10 couple of times, urged the staff to make sure that
11 the statutory reports have an appropriate scale and
12 ambition, and that producing multi hundred-page
13 tomes is probably not a good use of our limited
14 resources.

15 So I was concerned to get the sense from
16 the material in our package that this is a major
17 thing for OCRE, which makes me worry that indeed
18 tons of staff resources are being invested in this
19 that may be out of proportion to, I think, the
20 guidance that the Commission has given to the staff
21 about -- about the appropriate scale and scope of
22 the statutory report.

23 And third and finally, just by -- just
24 to underscore this, my own sense is that one of the
25 most important civil rights things that is

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1 percolating, and that's going to move to a full boil
2 I think in the next year, are the civil rights
3 implications of the standards based accountability
4 movement in K through 12 education and with the --
5 with the steadily growing use of high stakes testing
6 and the increasing concern of civil rights
7 organizations that these tests are being adopted in
8 ways that violate Title VI of the Civil Rights Act.
9 We had a briefing, I believe, on this subject some
10 time ago --

11 CHAIRPERSON BERRY: We had a briefing
12 paper. Did we have a briefing or just a paper?

13 COMMISSIONER EDLEY: I thought we had a
14 couple of speakers. I thought we had a couple of --
15 I can't remember.

16 CHAIRPERSON BERRY: I know we had a
17 paper.

18 VOICE: It was a briefing paper.

19 COMMISSIONER EDLEY: It was only a
20 paper, okay.

21 So I think we're missing something.
22 We're missing something there that is of consequence
23 in thousands of school districts. It's going to be
24 a major issue in congressional action reauthorizing
25 the Elementary and Secondary Education Act. We have

1 a new commissioner who is a nationally recognized
2 principal figure in these discussions about
3 standards-based accountability in Dr. Thernstrom and
4 I think we ought to get into it. It's more
5 important, I think, than the statutory report or the
6 advancing minority opportunities thing, and it's
7 right in the core of what the Commission is about,
8 Title VI.

9 CHAIRPERSON BERRY: Do you want to say
10 something?

11 STAFF DIRECTOR JIN: Thank you, Madam
12 Chair.

13 Commissioner Edley, in terms of the
14 question about the resource allocation for the
15 statutory report, actually Terri Dickerson, who is,
16 of course, the head of our Office of Civil Rights
17 Evaluation, and I have had a number of conversations
18 about that. I think she and I are not only in
19 accord with your comments, but we fully recognize
20 that the Commission has over a number of months made
21 that clear.

22 I think that -- and again, Ms. Dickerson
23 can correct or add to this if I'm off base, but I
24 think once upon a time not that many years ago, the
25 statutory report probably took up -- if not

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1 virtually all of the time of the Office of Civil
2 Rights Evaluation, but certainly was the dominant
3 project, and now it still is a significant project.
4 We would have to call it a major project, but I
5 think in going over, you know, kind of staff
6 allocation with Ms. Dickerson, it's probably --
7 maybe it has -- maybe half as much as it was just a
8 couple of years ago.

9 And so, at this point, I think that --
10 again, because it is a statutory report, I think
11 that we definitely have to figure out a way to
12 provide, even if it's much more narrow in scope, a
13 report that's appropriate. But it is much reduced
14 and, of course, if there's a feeling that, you know,
15 we should even take further looks at reducing it, we
16 will respond accordingly.

17 In terms of the K to 12 project, I just
18 want to note that next fiscal year the Commission is
19 scheduled to work on a K through 12 project. It's a
20 different project, but one possibility if the
21 Commission is looking for a way to fit it in time-
22 wise, is to, you know, look as to how that project
23 might be adjusted if the priorities have changed.
24 That's just one suggestion.

25 COMMISSIONER THERNSTROM: I have a

1 question about that.

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER THERNSTROM: What is the
4 project that is now scheduled on K through 12? What
5 is the topic?

6 STAFF DIRECTOR JIN: It's an integration
7 project.

8 COMMISSIONER EDLEY: Integration?

9 STAFF DIRECTOR JIN: Yes.

10 COMMISSIONER THERNSTROM: Integration
11 project?

12 STAFF DIRECTOR JIN: Integration,
13 racial.

14 COMMISSIONER THERNSTROM: Well, I would
15 second Commissioner Edley's view that the question
16 of high stakes testing and accountability should at
17 this point take priority over an integration
18 project. That is the issue on the table in every
19 state in the nation, that is high stakes testing and
20 accountability, and I do think it is of greater
21 importance. So I'm in agreement with you on that.

22 CHAIRPERSON BERRY: Let me try to --

23 COMMISSIONER THERNSTROM: You're looking
24 at me skeptically. I'm agreeing with you.

25 (Laughter.)

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1 COMMISSIONER EDLEY: No, I -- well, it
2 gives me -- it worries me a little, but I --

3 (Laughter.)

4 COMMISSIONER EDLEY: I mean, I -- I
5 mean, I feel the anguish of the Staff Director and
6 the Chairman. I mean, I don't know how you squeeze
7 it in given our limited resources and whether
8 there's a way to define something, yeah.

9 CHAIRPERSON BERRY: I know the feeling,
10 Christopher. One time the Wall Street Journal
11 published an editorial saying I had done something
12 right. I stayed up all night praying to try to
13 figure out what I had done wrong.

14 (Laughter.)

15 CHAIRPERSON BERRY: At 8:00 a.m., I
16 figured it out.

17 (Laughter.)

18 CHAIRPERSON BERRY: Let me just say that
19 there are some ways to deal with this. First of
20 all, the statutory report came about because some of
21 the civil rights groups were upset that the
22 Commission some years ago stopped doing monitoring
23 of the federal government -- years ago. There was a
24 decision made by some new commissioners that they
25 wouldn't monitor or watchdog anything that the

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1 federal government was doing anymore because they
2 agreed with everything the federal government was
3 doing.

4 So this provision was put in our statute
5 to insist that the Commission monitor and to have at
6 least one monitoring report. Since that time that's
7 no longer an issue because the Commission monitors
8 all the time. And all we do -- I mean a lot of what
9 we do in various briefings and other kinds of
10 reports is to monitor. I think it's still
11 important.

12 Years ago when the Commission had lots
13 of money -- in the Nixon administration sometime --
14 they decided they would do monitoring reports of
15 every agency in the federal government every year,
16 little ones, not big ones, saying what they've done,
17 what they should be doing. The sort of thing that
18 the Citizens Commission does now but in larger
19 compass, which is why the Citizens Commission
20 started doing it. So now the idea is that yes,
21 there should be a monitoring report because it's
22 important to have at least one that's called that,
23 and pick some agency and do a thorough job. But it
24 had gotten out of hand. I mean, it had gotten to be
25 so huge that not only was it a large investment of

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1 resources, it was not user-friendly.

2 COMMISSIONER EDLEY: Yeah, exactly.

3 CHAIRPERSON BERRY: It was so thick and
4 so big and so detailed that it was hard for anybody
5 to figure out what to do with it. So that is why we
6 decided, collectively, that the staff should do
7 these reports, make them user-friendly for the
8 agencies that have to use them, and the public, but
9 not spend the whole year in OCRE doing nothing
10 except, quote, working on the monitoring report.
11 And OCRE, since Terri has been there, has been
12 monitoring all sorts of things. I mean, we've had
13 briefing papers and she's had the staff do what the
14 staff used to do at OCRE, which is to keep track of
15 what's going on, and to give us briefing papers
16 about things. We've gotten large numbers of them,
17 and even one on testing.

18 My suggestion is yes, we stick to the
19 smaller in size, more user-friendly statutory report
20 and continue to do them. Let's have a briefing on
21 standardized testing, too, high stakes testing. We
22 need to have one. We had a briefing paper. It can
23 be sent around to us again in case people don't have
24 it, or weren't here or whatever. And have PAU put
25 together a briefing for us to get right away.

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1 That's the quick way for us to get into the issue,
2 and then figure out what kind of project, if
3 anything, we want to do. But that'll get us into it
4 right away.

5 COMMISSIONER EDLEY: I have a specific
6 suggestion. Can I suggest that between the briefing
7 paper that's already been done and some -- and a
8 briefing and further discussion that might take
9 place in March or so --

10 CHAIRPERSON BERRY: Or April.

11 COMMISSIONER EDLEY: -- or April, that
12 we tentatively aim towards trying to produce a
13 short, 15-page, Commission statement on the issue
14 with the goal of really giving some advice to the
15 Congress about civil rights issues that may arise as
16 the Congress considers federal statutes regarding
17 standardized -- not standardized, but testing and
18 accountability. In other words, let's -- I think
19 that that would be something manageable. I think if
20 we produced something like that, it would also serve
21 the purpose of providing some guidance to state
22 legislatures and state boards of education that are
23 struggling with these same issues.

24 But I think if we could get out
25 something -- if we could get out something in the

1 July time frame, then it would be useful to people
2 in Congress who are going to be struggling over this
3 -- these -- struggling over these reauthorizations
4 in the coming year. And something short, like 15
5 pages, will probably be just as useful as something
6 that's 100 pages.

7 CHAIRPERSON BERRY: Well, what I would
8 have in mind would be something that's short.

9 COMMISSIONER EDLEY: Right.

10 CHAIRPERSON BERRY: Short is better than
11 long.

12 COMMISSIONER EDLEY: Yeah.

13 CHAIRPERSON BERRY: But I'm wondering if
14 what we ought not do is first take the briefing
15 paper, which I was able to reach conclusions just by
16 reading the briefing paper and from what I already
17 knew. I'm not an expert on high stakes testing, but
18 I used to run federal education programs in the
19 Carter Administration, as you know, and have
20 followed this subject. And used to work -- was on
21 the advisory board to ETS, you know, so I have some
22 experience with these matters. And I was able to
23 read Terri's briefing paper and reach some
24 conclusions, maybe others can.

25 But I would think that having a briefing

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1 and having some experts come in and then say we will
2 produce this thing right after that would be the
3 best way to go about it. So why don't we try to do
4 it that way if there's no objection to trying to do
5 it that way? All right -- and try to get it done
6 before it's too late. So we'll work out a briefing
7 schedule. Environmental justice we've got on the
8 list.

9 COMMISSIONER EDLEY: Right.

10 CHAIRPERSON BERRY: We've got a briefing
11 on the subject of Terri's paper about the voting
12 rights stuff to consider and then this one of high
13 stakes testing.

14 STAFF DIRECTOR JIN: Right. The -- one
15 thing to note, if we were to do any -- you know, any
16 -- or especially all of these briefings in D.C. in
17 the next four or five months, then --

18 CHAIRPERSON BERRY: We could do one
19 every month.

20 STAFF DIRECTOR JIN: Right, but we're
21 not going to be in D.C. every month. I guess that's
22 the other point.

23 CHAIRPERSON BERRY: Well, we'll be -- we
24 won't be there next month.

25 STAFF DIRECTOR JIN: Right.

1 CHAIRPERSON BERRY: And that's February.

2 STAFF DIRECTOR JIN: Right.

3 CHAIRPERSON BERRY: We'll see what
4 happens after that.

5 Okay, anything else on the planning
6 document? Yes, Commissioner Wilson.

7 COMMISSIONER WILSON: I have a question.

8 Thank you, Madam Chair. I don't know if it would
9 be useful or if it would just be a waste of time,
10 but I just -- I was passing by and saw this
11 catalogue of publications and I wondered if either
12 it isn't -- it's too expensive or it's not worth the
13 effort, but if we've ever put together a sort of
14 anthology of -- a sort of best of the Commission's
15 work?

16 CHAIRPERSON BERRY: Or the most asked
17 for, because everyone would consider their part the
18 best.

19 (Laughter.)

20 COMMISSIONER WILSON: Perhaps there
21 would be an objective subcommittee that could come
22 up with that and that would -- I mean, could do it
23 any number of ways. It would be a sort of history
24 of the Commission, or it would be, you know, the
25 most popular, America's favorites or -- and that you

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1 would write an introduction.

2 CHAIRPERSON BERRY: Greatest hits?

3 COMMISSIONER WILSON: Yeah.

4 CHAIRPERSON BERRY: That's a good idea.

5 Why don't we see -- Staff Director, why don't you

6 talk to the PAU folks and see what you come up with.

7 STAFF DIRECTOR JIN: That sounds like a

8 very good idea.

9 CHAIRPERSON BERRY: Okay. Anybody else

10 -- anything on this planning business before we go

11 to the next item?

12 (No response.)

13 **VII. Report Card for Clinton Administration**

14 CHAIRPERSON BERRY: We have the final

15 report card for the civil rights performance of the

16 Clinton administration.

17 Yes, Vice Chair.

18 VICE CHAIRPERSON REYNOSO: Well, Madam

19 Chair --

20 CHAIRPERSON BERRY: Did I misstep?

21 VICE CHAIRPERSON REYNOSO: I beg your

22 pardon?

23 CHAIRPERSON BERRY: Did I misstep?

24 VICE CHAIRPERSON REYNOSO: No. No, I

25 just wondered whether we need to act on this at this

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1 meeting. I didn't get a chance to go over it with
2 the care that I wanted to and I don't notice a
3 discussion here, at least in the table of contents
4 in my going through the administration of justice
5 section and the writ of habeas corpus that I had a
6 particular interest in.

7 CHAIRPERSON BERRY: The writ of habeas
8 corpus?

9 VICE CHAIRPERSON REYNOSO: Yes, ma'am.

10 CHAIRPERSON BERRY: What is your
11 pleasure, ladies and gentlemen, this report of the
12 civil rights performance of the Clinton
13 administration? We can either agree to it today --
14 in one sense, it makes sense to either pass it or
15 not because the Clinton administration is coming to
16 an end, and in another sense, it doesn't make any
17 difference because the Clinton administration is
18 coming to an end.

19 The assessments and reassessments will
20 go on and on and I'm sure that whenever we do it, an
21 assessment will be useful. And I think it's
22 important to evaluate the performance -- this is
23 another monitoring we do -- of any administration,
24 but I don't know if you wish to approve it here or
25 if you wish to make suggestions of things you would

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1 like to add, as Cruz has said, with the habeas
2 corpus process he would like to add.

3 Yes, Commissioner Meeks.

4 COMMISSIONER MEEKS: I mean, I think the
5 value of the report is just -- it's for the record
6 and I don't know that delaying it is going to hurt
7 anything. I think it's a well written report, but,
8 I mean, there's things that, you know, I would like
9 to add to it and have a fuller discussion on it than
10 we have time for today.

11 CHAIRPERSON BERRY: Yes, Commissioner.
12 Wilson.

13 COMMISSIONER WILSON: I think if -- I
14 mean, of course, next month we're going to be
15 meeting in Miami, so it'll have to be postponed, I
16 guess, until March unless we want to take up the
17 hour in Miami discussing it. But I would agree that
18 it should be tabled. And also, I would -- I mean,
19 maybe that was -- it's forthcoming, but I would also
20 suggest, particularly with a report like this, that
21 there be a summary chart or a breakdown very fast --

22 CHAIRPERSON BERRY: Of the issues and --

23 COMMISSIONER WILSON: Yes. So someone
24 can look at this very quickly and see what he's done
25 and what he hasn't done.

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1 CHAIRPERSON BERRY: But not grades.

2 COMMISSIONER WILSON: No. You didn't
3 hear that word come from my mouth.

4 CHAIRPERSON BERRY: Edley, were you
5 seeking recognition?

6 COMMISSIONER EDLEY: No. I agree with
7 what everyone has just -- has already said. I want
8 to commend the staff for getting it this close to
9 the goal line in such a short period of time. This
10 was a last-minute task that the Commission dreamed
11 up and --

12 CHAIRPERSON BERRY: Terri has done a
13 fantastic job. Let's hear it for Terri.

14 (Applause.)

15 CHAIRPERSON BERRY: Terri had done a
16 fantastic job.

17 COMMISSIONER EDLEY: I think if we -- if
18 we can all undertake to give some -- provide some
19 comments between now and the time the Commission
20 gets it that would help. You know, we could just
21 stamp this statutory report and call this the
22 statutory report.

23 CHAIRPERSON BERRY: We could do that but
24 we can't because we would have two statutory
25 reports. We could, because we could make whatever

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1 we want the statutory report. This is a very fine
2 one.

3 Why don't we say if Commissioners have
4 any comments on this report, they get them in in the
5 next 15 days to the Staff Director, and we will
6 attempt to act on this report in February. We'll
7 work out the schedule. But if you've read it and we
8 have it on the agenda, you should be able to -- we
9 should be able to get it out next time in view of
10 the work that's been done.

11 **VIII. State Advisory Committee Report**

12 CHAIRPERSON BERRY: The next item is the
13 state advisory committee report, Who Is Enforcing
14 Civil Rights in Arkansas? A Need for a State Civil
15 Rights Agency.

16 Do you want to say anything about this
17 one, Staff Director?

18 STAFF DIRECTOR JIN: Not a whole lot. I
19 had a talk with the regional director in charge of
20 Arkansas, Melvin Jenkins, awhile back and he urged
21 upon me the importance of getting this approved
22 because the State Advisory Committee is meeting, I
23 think, early next week and they want to be able to
24 kind of organize, coordinate and try to convince the
25 state legislature to move forward with this project.

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1 They feel that it's a very important project. So
2 time flies. This is a very opportune time.

3 CHAIRPERSON BERRY: Arkansas is one of
4 what is it, two states, that do not have human
5 rights agencies. I think it's two or three. Most
6 states have human rights agencies of some sort. A
7 state human rights committee or commission or
8 something, but Arkansas does not. So this is the
9 relevance of that report.

10 Can I get a motion to approve the
11 report?

12 VICE CHAIRPERSON REYNOSO: So move.

13 CHAIRPERSON BERRY: Could I get a
14 second?

15 COMMISSIONER WILSON: Second.

16 CHAIRPERSON BERRY: Any discussion?

17 (No response.)

18 CHAIRPERSON BERRY: All in favor
19 indicate by saying aye.

20 (A chorus of ayes.)

21 **IX. FUTURE AGENDA ITEMS**

22 CHAIRPERSON BERRY: Does anyone have any
23 other items that they wish to discuss in this part
24 of the meeting at this time?

25 (No response.)

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1 CHAIRPERSON BERRY: If no one does, then
2 we will recess for ten minutes -- according to my
3 watch eight minutes, and then we will start the
4 Commission hearing.

5 (Whereupon, at 8:52 a.m., the
6 proceedings were recessed.)

7