

+ + + + +

COMMISSION MEETING

+ + + + +

FRIDAY,

MARCH 9, 2001

+ + + + +

WASHINGTON, D.C.

+ + + + +

The Commission convened at 9:30 a.m., in Room 540, 624 Ninth Street, N.W., Washington, D.C., 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
RUSSELL G. REDENBAUGH, COMMISSIONER
(via telephone)
ABIGAIL THERNSTROM, COMMISSIONER
VICTORIA WILSON, COMMISSIONER

LESLIE R. JIN, STAFF DIRECTOR

STAFF PRESENT:

KIMBERLEY ALTON
 DAVID ARONSON
 BARBARA DELAVIEZ
 TERRI DICKERSON
 PAMELA A. DUNSTON
 MICHAEL FOREMAN
 M. CATHERINE GATES
 GEORGE HARBISON
 EDWARD HAILES, Acting General Counsel
 MARC PENTINO
 PETER REILLY, Parliamentarian
 KWANA ROYAL
 DAWN SWEET
 MARCIA TYLER
 AUDREY WRIGHT
 MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

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

I. Approval of Agenda4

II. Approval of Minutes of5
February 16, 2001 Meeting

III. Announcements6

IV. Staff Director's Report7

V. Project Planning111

VI. Status Report on Voting Rights Issues24

IX. Native American Mascot Issue159

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

(9:45 a.m.)

CHAIRPERSON BERRY: The meeting will come to order. This meeting of the U.S. Commission on Civil Rights will come to order.

I. Approval of Agenda

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

COMMISSIONER WILSON: So moved.

CHAIRPERSON BERRY: Could I get a second?

COMMISSIONER MEEKS: Second.

CHAIRPERSON BERRY: Okay. Without objection, so ordered.

Yes?

COMMISSIONER MEEKS: I'd like to make one -- or ask to -- for one thing to be added to the agenda.

CHAIRPERSON BERRY: Okay.

COMMISSIONER MEEKS: Sorry. I hope that all of the Commissioners got the statement on the use of Native American images for sports teams.

CHAIRPERSON BERRY: Yes, the mascot issue. You sent that out, right?

STAFF DIRECTOR JIN: Yes, I did.

CHAIRPERSON BERRY: Yes.

1 COMMISSIONER MEEKS: And I would like that to
2 be considered on this agenda.

3 CHAIRPERSON BERRY: Okay. Is there any
4 objection to adding the Native American mascot issue to the
5 agenda? Without objection.

6 Commissioner Redenbaugh, were you saying
7 something?

8 COMMISSIONER REDENBAUGH: Yes, thank you.
9 I'm constrained as to time, and I wondered if -- I don't
10 know where the discussion of the Florida hearings comes on
11 the agenda, but I wonder if we might move that as early as
12 possible.

13 CHAIRPERSON BERRY: Right. We will. Okay?

14 COMMISSIONER REDENBAUGH: Thank you.

15 CHAIRPERSON BERRY: Now, with that, all in
16 favor indicate by saying aye.

17 (Chorus of ayes.)

18 CHAIRPERSON BERRY: Opposed?

19 (No response.)

20 So ordered.

21 **II. Approval of Minutes of**

22 **February 16, 2001 Meeting**

23 CHAIRPERSON BERRY: The next item is the
24 approval of the minutes of the February 16, 2001 meeting.
25 Could I get a motion to approve the minutes?

1 COMMISSIONER MEEKS: So moved.

2 COMMISSIONER THERNSTROM: Second.

3 CHAIRPERSON BERRY: Any discussion? Any
4 changes? Any problems? All in favor indicate by saying
5 aye.

6 (Chorus of ayes.)

7 Opposed? So ordered.

8 **III. Announcements**

9 CHAIRPERSON BERRY: Announcements. The first
10 announcement that I would make is that March, of course,
11 which we're into, is Women's History Month, and our
12 Planning Committee is organizing various programs for this
13 month. And I hope people will participate in the programs.

14 The other announcement is that Jesse Ratley,
15 who is a vital and active -- was a vital and active member
16 of our Virginia State Advisory Committee for a number of
17 years passed on Friday, March 2, 2001. While she was on
18 the SAC, the State Advisory Committee, she served two terms
19 as Chairperson.

20 Her energy and knowledge of civil rights
21 guided the committee through several important projects and
22 reports, including the committee's recent publication of
23 "Unequal Justice: African-Americans in the Virginia
24 Criminal Justice System." So we would like to express our
25 condolences to the Ratley family and acknowledge her long

1 service to the Commission.

2 We would also like to introduce and welcome
3 Commissioner Thernstrom's assistant, Kristina Arriaga, who
4 is somewhere. There she is. Stand -- there. Thank you.
5 We're happy to welcome you to the Commission.

6 We also would like to introduce and welcome
7 the new interns we have working with us at this time in our
8 Public Affairs Unit -- Tiffanie Drayton from Buena Vista
9 University, Tamica Gilbert -- are you guys here, or did
10 they let you in?

11 Tamica Gilbert from the University of South
12 Florida, Nicole Medolla from Montclair State University,
13 Myrna Rodriguez from San Diego State University.

14 And we also have from our Office of Civil
15 Rights Evaluation some interns -- Auliya Yasuda from the
16 University of California-Santa Barbara, and Sheldon Fuller
17 -- Sheldon over here -- from the University of
18 Pennsylvania, that small university in the city of
19 Philadelphia.

20 Welcome, all of you, to the Commission, and
21 we are so pleased to have you working with us.

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

23 CHAIRPERSON BERRY: The next item on the
24 agenda is the Staff Director's Report. Does anyone have
25 any questions or comments or items you'd like to discuss

1 under the Staff Director's Report? I will entertain them.

2 Commissioner Edley?

3 COMMISSIONER EDLEY: Thank you, Madam Chair.

4 I wanted to raise two things that I thought might be
5 appropriate for the staff to work up on. The one concerns
6 racial profiling, and the other is the recent announcement
7 that the Attorney General intends to create a special unit
8 to work on voting rights enforcement.

9 On the first, racial profiling, the President
10 made a statement about it in his State of the Union, which
11 seemed to suggest that he was directing the Attorney
12 General to take action against racial profiling or propose
13 legislation or something of that sort. It seemed like a --
14 frankly, like a strong step forward relative to what the
15 Clinton administration had been unable to do during its
16 term. And I was quite pleased.

17 But in the subsequent days it sounds as
18 though the directive to the Attorney General was actually
19 to do more study of the extent, if any, of racial profiling
20 by federal law enforcement officers, and to consult with
21 state and local law enforcement officers about whether
22 there's a problem or the extent of the problem, and what,
23 if anything, might be done through legislation.

24 I guess I'm glad that the administration is
25 focusing on the issue, and I mean that sincerely. But I'm

1 a little bit troubled in that it doesn't seem to be a step
2 beyond where the Clinton administration was, which was the
3 President -- I think it was in the spring of '98 --
4 directed the Justice Department to do a study, just get
5 some numbers.

6 And I was disappointed then that the
7 President didn't go farther and disappointed that we didn't
8 get a report from the Justice Department by the end of the
9 Clinton administration. But now it sounds as though the
10 Bush administration is simply going to do the study all
11 over again.

12 So my request would be that the staff try to
13 figure out, which I can't from the news reports, exactly
14 what it is that the Justice Department has in mind to do,
15 whether it is, in fact, significantly different from the
16 report that supposedly has already been done somewhere in
17 the bowels of the Justice Department.

18 And I had sort of wanted to make a comment on
19 what the Justice Department is doing, but I've really come
20 to the conclusion I can't figure out what they're doing,
21 and, therefore, can't really comment on it. So if the
22 staff would look into it and come back and tell us what it
23 is that they're up to, and then we could perhaps have a
24 short conversation about whether it's adequate.

25 CHAIRPERSON BERRY: Okay. Perhaps

1 Commissioner Thernstrom knows what they're doing.

2 COMMISSIONER THERNSTROM: I wish I did
3 know --

4 (Laughter.)

5 -- what they're doing.

6 CHAIRPERSON BERRY: Do you want to try me on
7 that or take a different --

8 COMMISSIONER THERNSTROM: No, no, I'm coming
9 on that.

10 Commissioner Edley, it seems to me you made
11 two contradictory statements -- one, that you were
12 disappointed the Clinton administration had not, in fact,
13 to the best of your knowledge, done a study, but, two, that
14 since it did a study we should be using that work. If the
15 Clinton administration, in fact, did not do a study, and
16 I'm sure we would have heard about it had it done so --

17 CHAIRPERSON BERRY: Point of information,
18 ma'am. They did a study.

19 COMMISSIONER THERNSTROM: You are sure of
20 that, because --

21 CHAIRPERSON BERRY: We know that.

22 COMMISSIONER THERNSTROM: Commissioner Edley
23 suggested otherwise.

24 CHAIRPERSON BERRY: They did a study. They
25 did a study. I thought what Christopher said was that he

1 was disappointed they didn't do more than that.

2 COMMISSIONER EDLEY: Yes. And they haven't
3 -- as far as -- I haven't seen any publication of the study
4 or anything. But my understanding is that they completed
5 it late in the administration but didn't get it out, didn't
6 get -- the White House didn't get it out.

7 COMMISSIONER THERNSTROM: All right. Then
8 I'm -- then I misunderstood what you said.

9 COMMISSIONER EDLEY: That's something, I
10 don't know what they have, and the question is, are they
11 really taking a serious next step forward, or is it a baby
12 step? And then, we obviously ought to be encouraging --

13 CHAIRPERSON BERRY: Why don't we, unless
14 someone objects, simply have the staff find out where the
15 study is --

16 COMMISSIONER EDLEY: Right.

17 CHAIRPERSON BERRY: -- where the study is
18 that the Clinton guys did and where the one is -- what it
19 is they propose to do in the Justice Department, and make
20 that inquiry and see if we get -- what answer we get, and
21 then we can decide what we'd like to do about it.

22 COMMISSIONER EDLEY: Can I just say
23 specifically one problem here --

24 CHAIRPERSON BERRY: Sure.

25 COMMISSIONER EDLEY: -- is that I think that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the deficiency in the Clinton directive, from my point of
2 view, was that it stopped at saying, "Let's collect data
3 from federal enforcement." It did not even say, "Let's
4 halt the practice in federal law enforcement."

5 So it sort of had a research component, but
6 it had no normative component, except a rhetorical one.
7 And so one of the things I'm interested in finding out is
8 whether the Bush Justice Department is going farther, or
9 the Bush -- President Bush is going farther than simply
10 collecting data.

11 CHAIRPERSON BERRY: And we had, well, more
12 information. Ashcroft has asked Congress for authorization
13 to allow the Justice Department to do a study, that that
14 technically is what has happened. And if Congress does not
15 grant authorization for the study, he will direct Justice
16 to do it anyway, according to a letter from him.

17 So, anyway, we had already expressed
18 disappointment with Clinton for not doing more than a study
19 and for being so mush-mouth and fuzzy-minded about it. And
20 so -- but we were happy that he acknowledged that racial
21 profiling was a problem, since we've already done work on
22 it and we know it's a problem.

23 And so I think that -- and I had already
24 publicly said that I thought it was great that George Bush
25 and Mr. Ashcroft both had said that they thought racial

1 profiling was a major problem and issue.

2 So the question is, how do we get beyond
3 that? Yes, Commissioner Wilson?

4 COMMISSIONER WILSON: Thank you, Madam Chair.

5 Well, one thing I was going to suggest is that we might in
6 our -- if you are sending a note to the Justice Department,
7 you might want to include the reports that we have done.

8 CHAIRPERSON BERRY: Right.

9 COMMISSIONER WILSON: That might save them
10 some effort.

11 CHAIRPERSON BERRY: Right.

12 COMMISSIONER WILSON: And some expense.

13 CHAIRPERSON BERRY: Hey, that's a great idea.

14 So we'll share with them, and first it will be an oral
15 inquiry, an offer to share. And then, if we need to do
16 something like to -- if we don't get any response, then we
17 will formally make the request.

18 As you know, all federal agencies are
19 required under the law to cooperate with us. So they
20 always have in the past, so we assume that they will
21 cooperate now. And so we'll move forward on that and let
22 you know what the results are. Does anyone have anything
23 else under the -- yes?

24 COMMISSIONER EDLEY: I had a voting -- the
25 voting rights issue.

1 CHAIRPERSON BERRY: That's right.

2 COMMISSIONER EDLEY: This --

3 CHAIRPERSON BERRY: We have an item on voting
4 rights issues on the agenda. But is this another --

5 COMMISSIONER EDLEY: Well, this is another
6 Justice Department --

7 CHAIRPERSON BERRY: Oh, okay. Go ahead.

8 COMMISSIONER EDLEY: -- and this is --

9 CHAIRPERSON BERRY: The voting rights are --

10 COMMISSIONER EDLEY: -- not about Florida.

11 CHAIRPERSON BERRY: Okay.

12 COMMISSIONER EDLEY: Again, as I understand
13 it from news accounts, Attorney General Ashcroft has
14 announced the creation of a senior official within the
15 Civil Rights Division to focus -- make a concerted focus on
16 some voting rights enforcement issues, including the kinds
17 of things that were alleged in Florida.

18 It sounds great, and I basically wanted to --
19 if anybody else knew about this, or had read about it, I
20 mean, my inclination is to -- is to ask the staff to look
21 into it and to -- to move that the Chair write a letter
22 commending the Attorney General for this initiative.

23 If it pans out as described in the press, you
24 can't always believe what you read in the press. But I
25 guess --

1 CHAIRPERSON BERRY: I always --

2 COMMISSIONER EDLEY: Oh, I guess I should --

3 CHAIRPERSON BERRY: Christopher, let me
4 interrupt. General Counsel has shared with us the complete
5 -- he just handed to me the complete press conference of
6 Mr. Ashcroft. And one of the questions he was asked was
7 whether he, unlike Attorney General Reno -- and we
8 discussed all of this before -- was actually investigating,
9 in Florida, for example, and he said no, he's doing the
10 same thing that she was doing, which is looking into
11 things. Remember how Janet put it; she was looking into
12 stuff, but she wasn't really doing an investigation.

13 But we do have the information from the press
14 conference, and we will have the staff look at it and
15 assess whether there's something in there to commend. And
16 we'll give you a little -- we'll give you the information
17 and figure out what to do about it, and we'll draft up
18 something and share it.

19 But we will commend, if we need to commend.

20 COMMISSIONER EDLEY: Okay.

21 CHAIRPERSON BERRY: And if we don't, then we
22 won't, and we'll tell you why. Okay? Thanks.

23 Anything else on the Staff Director's report?

24

25 Let me just point out here the Clinton

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 record, the record of the Clinton administration on civil
2 rights, which we have had before us a couple of times, and
3 Commissioners have made comments on it, and we all have had
4 an opportunity to read it, but we haven't yet voted on it.

5 What I would like to do, since we keep
6 dragging this out and we don't meet again until five weeks
7 -- about five weeks, is that right?

8 STAFF DIRECTOR JIN: That's correct.

9 CHAIRPERSON BERRY: Unless we change the date
10 of the meeting, which happens to be on Good Friday, and I
11 can't figure out why we're meeting on Good Friday. No one
12 can tell me why that is.

13 But anyway, the point is that I would like to
14 have the Clinton record report out and off our plates, if
15 that is possible. So since we've had it for quite some
16 time, could we approve it in between the meeting or have --
17 I know we don't always do this, but it's been hanging
18 around too long. And in April we expect to have the draft
19 of the voting rights in Florida, the actual draft, in front
20 of us.

21 So there will be too much going on, and we
22 may have a briefing on education in the April meeting. So
23 is it possible for us, having had the Clinton record before
24 us over and over again, to simply say that if Commissioners
25 disagree with what's in it and don't agree with it, and

1 think that it shouldn't go out, that you would let us know
2 by a date certain.

3 And if we don't hear from you by that date,
4 then we will go ahead and issue it accordingly. And if we
5 do hear from anybody who doesn't want it to go out, we'll
6 just delay it and put it on the agenda and have it again
7 and discuss it in another meeting. How does that sound?
8 Anybody object to that? Yes?

9 COMMISSIONER THERNSTROM: Well, there are two
10 different questions. One, the report going out, and, two,
11 the question of Commissioners writing separate statements
12 on the matters in the report with which they disagree. And
13 so one can sign off on it going out with the caveat,
14 obviously, that -- for instance, in my case, I will sign a
15 separate statement.

16 CHAIRPERSON BERRY: Okay. Well, if you plan
17 to dissent from the report, and you know it, then we will
18 set a deadline for dissents.

19 COMMISSIONER THERNSTROM: Good. Thank you.

20 CHAIRPERSON BERRY: Which is what we always
21 do. So if we set a deadline for people for -- why don't we
22 do this. Everyone should indicate their assent or their
23 dissent, one or the other, from the Clinton report by --
24 today is the 9th.

25 Why don't we have everyone indicate about 10

1 days from now, because we've already had it. I mean, it's
2 not like it's a new report -- your assent. So that would
3 be -- is that a weekday? I'm always -- anybody got a
4 calendar? If it's a weekday, about 10 days from now.

5 Good morning, Mr. Vice Chair.

6 VICE CHAIRPERSON REYNOSO: Good morning.

7 CHAIRPERSON BERRY: If that's not enough
8 time, then I can give you more time. Yes?

9 COMMISSIONER THERNSTROM: I'm not clear why
10 we aren't simply voting on the preliminary matter today.

11 CHAIRPERSON BERRY: Which preliminary mater?

12 COMMISSIONER THERNSTROM: Sending out the
13 report, and then as a separate matter, if people want to --
14 to dissent, why can't we just settle the matter today?

15 CHAIRPERSON BERRY: The staff is probably --
16 are you finished with it? You're finishing --

17 STAFF DIRECTOR JIN: We're probably about
18 four or five days from being finished.

19 COMMISSIONER THERNSTROM: I see.

20 CHAIRPERSON BERRY: And so what we're going
21 to do is send it to you one more time.

22 COMMISSIONER THERNSTROM: I see.

23 CHAIRPERSON BERRY: And then we're going to
24 give you 10 days or something, or seven days or whatever --

25 COMMISSIONER THERNSTROM: Right.

1 CHAIRPERSON BERRY: -- to say I yes or no.

2 COMMISSIONER THERNSTROM: Okay.

3 CHAIRPERSON BERRY: And this next -- last
4 round is consistent with the changes people turned in, they
5 wanted to see made.

6 COMMISSIONER THERNSTROM: I see. Okay.

7 CHAIRPERSON BERRY: Okay. And then you'll
8 get seven days or something after that to come in and say
9 -- you know, call in and say I yes or no, call, fax, e-
10 mail, or whatever.

11 COMMISSIONER THERNSTROM: All right.

12 CHAIRPERSON BERRY: And then after that we'll
13 set a deadline for separate statements.

14 Yes?

15 COMMISSIONER WILSON: And then you'll send it
16 out again, and then we'll all vote on it.

17 CHAIRPERSON BERRY: No. No, no, no. Vicky,
18 the keeper of the calendar, what did you just say?

19 COMMISSIONER WILSON: I think I said the
20 28th.

21 CHAIRPERSON BERRY: Which is what?

22 COMMISSIONER WILSON: The 28th is the 10
23 days.

24 CHAIRPERSON BERRY: Is that a weekday?

25 COMMISSIONER WILSON: Well, actually, no, it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be the 19th is 10 days.

2 CHAIRPERSON BERRY: Is it a weekday, though?

3 That was my question.

4 COMMISSIONER WILSON: Monday.

5 CHAIRPERSON BERRY: Monday? Okay.

6 The staff will send you -- send the report
7 out to you again in --

8 STAFF DIRECTOR JIN: By the middle of next
9 week.

10 CHAIRPERSON BERRY: By the middle of next
11 week.

12 STAFF DIRECTOR JIN: The 14th or the 15th.

13 CHAIRPERSON BERRY: The 14th. And so you'll
14 have by the 20-something or other, 25th, 24th, to -- you'll
15 have seven days after that to say whether you agree or
16 disagree, and then you'll have another 10 days to write
17 your dissent or whatever it is you'd like to write.

18 So give me some dates, Staff Director.

19 STAFF DIRECTOR JIN: How about the 14th?
20 We'll send it out by the 14th, so you should get it by the
21 15th. And then vote by the 22nd, and sent in by -- did you
22 say 10 days, Madam Chair, or --

23 CHAIRPERSON BERRY: Yes, 10.

24 STAFF DIRECTOR JIN: Okay. Then it would be
25 April 2nd.

1 CHAIRPERSON BERRY: April 2nd. Okay. All
2 right. Is there any objection? Without objection, so
3 ordered.

4 Now, we're supposed to have project planning
5 next, but the project planning issues -- we've already had
6 project planning twice. So are there a lot of issues, so I
7 can decide whether we should do the voting rights thing
8 first?

9 STAFF DIRECTOR JIN: Madam Chair, like you
10 said, we have done project planning a couple of times, but
11 -- so that's very helpful. The main thing today is we need
12 to identify the projects for 2003, so that the staff can
13 begin putting meat on the proposals and to getting numbers,
14 resources, budget, and so forth, so that by June/July we
15 can present you with something that you can look at to
16 decide if, you know, whether the resources we're allocating
17 is what you desire.

18 CHAIRPERSON BERRY: Well, do you have
19 discreet questions to ask us? I mean, like specific
20 questions to ask us?

21 STAFF DIRECTOR JIN: Yes. Well --

22 CHAIRPERSON BERRY: That you need answers to,
23 or do you just need us to have a discussion?

24 STAFF DIRECTOR JIN: We need you to identify
25 the number of projects -- five, six, seven, or whatever --

1 for 2003 that -- with sufficient specificity so that the
2 staff can go forward and try to, you know, propose a plan
3 so that you can look at it in June or July.

4 And so it probably -- you know, in terms of
5 -- it will take just -- it will take a little time I think.

6 CHAIRPERSON BERRY: Okay. Well, in that
7 case --

8 STAFF DIRECTOR JIN: If you could hold that
9 off.

10 CHAIRPERSON BERRY: -- then, why don't we in
11 the -- in order to accommodate Russell's calendar and
12 schedule, why don't we do the status report on the voting
13 rights issues first.

14 STAFF DIRECTOR JIN: Okay.

15 CHAIRPERSON BERRY: And then we'll do the
16 project planning. Does anybody object to that? Russell
17 says he has -- what is that noise? Russell says he has to
18 leave, and he'd like us to do this first. Was that right,
19 Russell? Is Russell there?

20 COMMISSIONER REDENBAUGH: Yes, I'm here.

21 CHAIRPERSON BERRY: Okay.

22 COMMISSIONER REDENBAUGH: Yes, that would
23 work for me. Thank you.

24 CHAIRPERSON BERRY: Yes.

25 COMMISSIONER WILSON: Madam Chair, can I just

1 ask, while we're talking about scheduling, I just would
2 like to just discuss for one second -- we were going to
3 have something about environmental justice that was going
4 to follow education and --

5 CHAIRPERSON BERRY: Right.

6 COMMISSIONER WILSON: -- briefing. I just
7 want to make sure that that's still in the works.

8 CHAIRPERSON BERRY: Yes. After education.

9 COMMISSIONER WILSON: After education.

10 CHAIRPERSON BERRY: Right.

11 COMMISSIONER WILSON: Yes, I understand that.

12 CHAIRPERSON BERRY: We were planning to have
13 education this time, but we -- the staff wasn't able to get
14 it --

15 COMMISSIONER WILSON: Okay.

16 CHAIRPERSON BERRY: -- together, so we're
17 going to do it next time. Okay.

18 COMMISSIONER REDENBAUGH: Mary, while we're
19 on this --

20 CHAIRPERSON BERRY: Yes.

21 COMMISSIONER REDENBAUGH: -- calendaring
22 issue, are you going to discuss changing the meeting date?

23 CHAIRPERSON BERRY: Do you mean the April
24 meeting?

25 COMMISSIONER REDENBAUGH: The April meeting,

1 yes.

2 CHAIRPERSON BERRY: Well, the April meeting
3 is scheduled for --

4 STAFF DIRECTOR JIN: The 13th.

5 CHAIRPERSON BERRY: -- the 13th, Friday, the
6 13th. And I recall that we scheduled it that day because
7 other -- some people couldn't come -- we kept going through
8 days and --

9 COMMISSIONER REDENBAUGH: Oh, okay.

10 CHAIRPERSON BERRY: -- people couldn't come.

11 But I am asking if people want to reconsider that day, and
12 is there some reason to reconsider it. And I'm fine with
13 it, personally, but I just wanted to point out that it is,
14 for those who care about it, it is Good Friday. Some of
15 the staff people have said that to us, did we know this was
16 Good Friday?

17 So if we'll just leave it there, because I
18 know people's calendars are probably already made out. Is
19 there any reason to change it? I'm only asking.

20 Okay. Well, if there's no reason to change
21 it, then we'll leave it, Russell.

22 COMMISSIONER REDENBAUGH: All right.

23 **VI. Status Report on Voting Rights Issues**

24 CHAIRPERSON BERRY: Now we'll go to the
25 Status Report on Voting Rights Issues, and I want to do two

1 things. I, first, want to read a statement, and then see
2 if there's any action on it, and then I want to, for your
3 information, discuss a letter and then we will have a
4 presentation from one of our staff members.

5 The statement -- do you have copies to give
6 to the Commissioners while I'm reading? Or have they
7 already got them?

8 The statement --

9 COMMISSIONER THERNSTROM: Madam Chair, can I
10 raise a point of order on the statement?

11 CHAIRPERSON BERRY: Yes.

12 COMMISSIONER THERNSTROM: I really do object
13 to issuing a statement. The Commissioners have just
14 learned of it. I, you know, as you know, still don't have
15 a copy, despite the fact that you did issue a press release
16 yesterday through McKinney-McDowell.

17 My special assistant, having heard of this
18 through the press, contacted the press office, contacted
19 your special assistant, Ann McKinney. Couldn't obtain a
20 copy.

21 It seems to me, therefore, this is a personal
22 statement.

23 CHAIRPERSON BERRY: It is. It is.

24 COMMISSIONER THERNSTROM: And not a
25 Commission statement.

1 CHAIRPERSON BERRY: It is, which I am going
2 to read as my statement. And if others want to join it,
3 they can. It is my statement. Okay? All right? Which I
4 am going to read. And you are going to get copies of it.
5 And if you'd like to join in it, you can. And if you
6 don't, then you don't have to.

7 The statement is being given to you. Okay.
8 The statement is, "The Commission has undertaken a formal
9 investigation into allegations by Floridians of voting
10 irregularities arising out of the November 7, 2000,
11 Presidential election. The Commission has held two fact-
12 finding hearings in Florida to examine whether eligible
13 voters faced avoidable barriers that undermined their
14 ability to cast ballots and have their ballots counted in
15 this closely-contested election.

16 "The probe is intended to uncover, for
17 example, who made the critical decisions regarding resource
18 allocations for Election Day activities, why were these
19 decisions made, and what specific impact these decisions
20 had on distinct communities.

21 "Voter disenfranchisement appears to be at
22 the heart of the issue. It is not a question of a recount
23 or even an accurate count, but, more pointedly, the issue
24 is those whose exclusion from the right to vote amounted to
25 a no count.

1 "The voting technology reforms and assurances
2 that uniform and accurate standards for counting and
3 recounting ballots shall be implemented are encouraging and
4 significant. These measures standing alone, however, are
5 insufficient to address the significant and distressing
6 issues and barriers that prevented qualified voters from
7 participating in the Presidential election.

8 "It is my hope that Florida officials, as
9 well as officials in other jurisdictions, will promptly
10 resolve these major problems which they allowed to occur,
11 instead of hoping with the passage of time the public will
12 forget.

13 "In total, over 100 witnesses testified under
14 oath before the Commission, including approximately 65
15 selected witnesses, scheduled witnesses, who were selected
16 for the two hearings due to their knowledge of and/or
17 experience with issues under investigation.

18 "The Commission heard testimony from top
19 elected and appointed state officials, including the
20 Governor, the Secretary of State, the Attorney General, the
21 Director of the Florida Division of Elections, and other
22 Florida state and county officials.

23 "A representative of database technologies,
24 Choicepoint, a firm involved in the controversial state-
25 sponsored removal of felons from the voter registration

1 rolls also testified under oath.

2 "We also heard the sworn testimony of
3 registered voters and experts on election reform issues,
4 election laws, and procedures and voting rights.
5 Additionally, the Chair and Executive Director -- the Co-
6 Chair and Executive Director of the Select Task Force on
7 Election Reforms established by Governor Jeb Bush testified
8 before the Commission.

9 "Testimony was also received from the
10 supervisors of elections for several counties, County
11 Commission officials, law enforcement personnel, and a
12 state's attorney. In addition to the scheduled witnesses,
13 the Commission extended an opportunity for concerned
14 persons, including members of Congress and members of the
15 Florida state legislature, to submit testimony under oath
16 that was germane to the issues under investigation.

17 "Significantly, the Commission subpoenaed
18 scores of relevant documents to assist with this
19 investigation. The evidence points to an array of
20 problems, including those in the following categories. Key
21 officials anticipated, before Election Day, that there
22 would be an increase in levels of voter turnout based upon
23 new voter registration figures, but did not ensure that the
24 precincts in all counties received adequate resources to
25 meet their needs.

1 "At least one unauthorized law enforcement
2 checkpoint was set up on Election Day, resulting in
3 complaints that were investigated by the Florida Highway
4 Patrol and the Florida Attorney General. Non-felons were
5 removed from voter registration rolls based upon unreliable
6 information collected in connection with sweeping state-
7 sponsored felony 'purge policies.

8 "Many African-Americans did not cast ballots
9 because they were assigned to polling sites that did not
10 have adequate resources to confirm voting eligibility
11 status. College students and others who submitted voter
12 registration applications on a timely basis, to persons and
13 agencies responsible for transmitting the applications to
14 the proper officials, but in many instances these
15 applications were not processed in a timely or proper
16 manner under the National Voter Registration Act, the Motor
17 Voter Law.

18 "Many Jewish and elderly voters received
19 defective and complicated ballots that may have produced
20 overvotes and undervotes. Some polling places were closed
21 early, and some polling places were moved without notice.
22 And at least one polling place was in a gated community,
23 with the gates closed at 6:15, so that people could not
24 even enter to access the polling place.

25 "Old and defective election equipment was

1 found in poor precincts, many of those disproportionately
2 people of color. Many Haitian-Americans and Puerto-Rican
3 voters were not provided language assistance when required
4 and requested.

5 "Persons with disabilities faced
6 accessibility difficulties at certain polling sites. Too
7 few poll workers' were adequately trained, and too few funds
8 were committed to voter education.

9 "The Commission's probe has proceeded under
10 the statutory duty and authority of the Commission to
11 investigate allegations in writing, under oath or
12 affirmation, relating to deprivations of the rights of
13 citizens of the United States to have votes -- to vote or
14 have votes counted.

15 "The investigation was also conducted
16 pursuant to our statute, which requires the Commission to
17 investigate allegations" -- and I say it requires the
18 Commission to investigate allegations -- "that citizens of
19 the United States are being deprived of their right to vote
20 and have that vote counted by reason of their color, race,
21 religion, sex, age, handicap, or national origin.

22 "In the investigation, the Commission uses as
23 its standard the requirements of Section 2 of the Voting
24 Rights Act of 1965, as amended, for determining whether
25 disparate impact or disparate treatment" -- and this is

1 really important -- "amounting to disenfranchisement has
2 occurred.

3 "I understand clearly that violations of the
4 Voting Rights Act do not require proof of deliberate or
5 intentional discrimination against citizens,
6 if differential results, disfranchising those who the
7 statute was designed to protect, are the result."

8 This was all hammered out in a Supreme Court
9 decision in 1982, and amendments to the Voting Rights Act
10 after that, which pointed out clearly that one doesn't need
11 intent to have a violation of the Voting Rights Act.

12 "Practices can be illegal when they have the
13 effect of restricting opportunities for people of color,
14 language minorities, persons with disabilities, and the
15 elderly, to participate fully in the political process and
16 to elect candidates of their choice.

17 "The Voting Rights Act was aimed at subtle,
18 as well as obvious, state regulations and practices that
19 had the effect of denying citizens their right to vote
20 because of their race. Perhaps the most invidious barriers
21 to the right to vote were the seemingly neutral
22 restrictions developed by states that had debilitating and
23 devastating results on black voter registration.

24 "Congress has enacted additional measures to
25 further protect the voting rights of persons of color,

1 immigrants, the elderly, and those with disabilities, from
2 invidious discrimination."

3 And I'm not going to read all the statutes.

4 But, "For example, an amendment to the Voting Rights Act in
5 1975 permanently restricted the use of tests and devices
6 for voter registration nationwide that had the impact of
7 discriminating.

8 "The 1975 amendments also include rights for
9 language minorities, mandating bilingual ballots and oral
10 assistance with voting." And, in 1983, as I said, the Act
11 was amended to clarify that intent is not required.

12 "Congress also enacted the National Voter
13 Registration Act after finding that discriminatory and
14 unfair registration laws and procedures can have a direct
15 and damaging effect on voter participation and elections
16 for federal office, and disproportionately harm voter
17 participation by various groups, including racial
18 minorities. And there have been several other laws
19 concerning the accessibility by persons with disabilities.

20 "I am deeply troubled by our preliminary
21 review, which points to differences in resource
22 allocations, including voting technology and in voting
23 procedures that may have operated so that protected groups
24 may have had less of an opportunity to have their votes
25 counted.

1 "The staff is conducting complete disparate
2 impact and treatment analysis, and these will be done
3 before the final report is completed. And the Commission's
4 final conclusion will take into account the results of
5 these analyses.

6 "However, it appears to me that at this phase
7 of the investigation the evidence may ultimately support
8 findings of prohibited discrimination. Two particular
9 sources of fruitful inquiry are the questionable uses of
10 Choicepoint data and resource allocation issues.

11 "We are attempting to document whether, and,
12 if so, how long state, county, and local officials knew
13 that these differences might impact more harshly African-
14 Americans and members of other protected groups. And that
15 way we can determine whether it was intentional or whether
16 it simply had the effect.

17 "The staff is continuing their analysis of
18 the voluminous testimony and documentary evidence compiled.

19 Ultimately, we will determine whether each of the problems
20 identified resulted from deliberate or harmful, yet not
21 deliberate, discrimination, or were caused by neither.

22 "I emphasize that the implementation of
23 voting technology reforms and uniform and accurate
24 standards for counting and recounting ballots would be
25 encouraging and significant." Say that again. "These

1 measures standing alone, however, will not address the
2 significant and distressing issues and barriers that
3 prevented qualified voters from participating in the
4 Presidential election.

5 "In the final analysis, new recounts of old
6 ballots may be important, but they are an academic exercise
7 at this stage. 'Voting is the language of our democracy.
8 And, regrettably, when it mattered most on Election Day,
9 real people lost real opportunities to speak through the
10 power at the ballot box.

11 "This must never occur again if we can do
12 anything to stop it. As Dr. Martin Luther King, Jr. once
13 stated, 'Social justice shall not roll in on wheels of
14 inevitability.' It is our hope that Florida officials, as
15 well as those in other jurisdictions where barriers
16 existed, will promptly resolve these major problems" --
17 that's my hope -- "that occurred on their watch."

18 This is my statement that I have made on this
19 subject.

20 COMMISSIONER EDLEY: Madam Chair?

21 CHAIRPERSON BERRY: Yes.

22 COMMISSIONER EDLEY: If you'd permit, I'd
23 like to join in the statement. I think it's --

24 CHAIRPERSON BERRY: All right.

25 COMMISSIONER EDLEY: -- just extremely well

1 done. And just a technical question on the reference to
2 Puerto Rican voters. We might want to doublecheck with
3 staff, because I would have assumed that these same issues
4 of language assistance were also a problem for naturalized
5 immigrants from Latin America.

6 CHAIRPERSON BERRY: Okay. Yes, Commissioner?
7 Commissioner Lee?

8 COMMISSIONER LEE: I think Commissioner
9 Redenbaugh was second.

10 CHAIRPERSON BERRY: You were? Okay. Go
11 ahead.

12 COMMISSIONER LEE: I'd also like to join in
13 with your statement. I think it truly reflects what we
14 heard from the two days of hearings. I just wanted to
15 emphasize a little bit more about the language rights issue
16 because that came out loud and clear. I'd like to join
17 with this. It really is a good statement.

18 CHAIRPERSON BERRY: Okay.

19 COMMISSIONER REDENBAUGH: Madam Chair?

20 CHAIRPERSON BERRY: Yes, Commissioner
21 Redenbaugh?

22 COMMISSIONER REDENBAUGH: Yes. I have a
23 number of questions. If this is a personal statement, is
24 it appropriate to have -- to have had it developed with
25 outside contractors?

1 CHAIRPERSON BERRY: I don't understand what
2 you mean.

3 COMMISSIONER REDENBAUGH: Well, what is it
4 that makes this a personal statement as opposed to a
5 Commission statement?

6 CHAIRPERSON BERRY: Having it written on my
7 computer. That's what makes it a personal statement.

8 COMMISSIONER REDENBAUGH: Well --

9 CHAIRPERSON BERRY: On my hard drive. That's
10 what makes it a personal statement. Out of my brain.
11 That's what makes it a personal statement.

12 COMMISSIONER REDENBAUGH: So --

13 CHAIRPERSON BERRY: And my fingers. That's
14 what makes it a personal statement. And it's a statement
15 that I am presenting to the Commission to ask the
16 Commission to adopt it. You may write a statement and
17 present it to the Commission and ask them to adopt it, if
18 you wish. Anyone may do that.

19 COMMISSIONER REDENBAUGH: I may, although I
20 -- it's unlikely. Well, I find this more than troubling in
21 that the language of it is, for the most part, the language
22 of conclusions and findings. And it's the kind of language
23 that I think is very appropriate in a completed report, but
24 we haven't completed or even -- we haven't completed the
25 extensive analysis of the documents that we subpoenaed.

1 CHAIRPERSON BERRY: Right.

2 COMMISSIONER REDENBAUGH: And I believe that
3 our subpoena was probably -- was scoped properly and that
4 we need to examine those documents.

5 CHAIRPERSON BERRY: We are examining them.
6 The staff is examining them.

7 COMMISSIONER REDENBAUGH: As I think they
8 will and should. But I think this statement isn't
9 supported by the examination of the documents.

10 CHAIRPERSON BERRY: Well, it is -- the
11 statement states that it is a preliminary assessment. The
12 statement is based, as I said in the statement, on all of
13 the testimony that we heard, as well as the documents that
14 you've already seen, some of which we've seen because they
15 were passed around to us.

16 COMMISSIONER REDENBAUGH: Right.

17 CHAIRPERSON BERRY: And it is my preliminary
18 assessment of what happened there, and if you want to know
19 why I'm making it at this time it's because time is
20 passing, there's no initiative, in my view, on these
21 issues, and I believe that it's important for us to depart
22 from what we usually do, which is to wait until we finish
23 the report way down the line somewhere when the issue is
24 dead and over with, to tell people what we think of all of
25 that stuff we heard down there in Florida, and what we

1 conclude from it. And some things are very clear.

2 We had some testimony at the hearing, sworn
3 testimony, from the people from Choicepoint, for example,
4 about the fact that they knew they were turning in
5 information that was erroneous when they turned it in.

6 And they did that under oath, and that they
7 turned it in knowing that it was going to pick up people
8 who would be called felons when they weren't, but that the
9 state didn't ask them to do anything any different from
10 that, and that's why they did it. And they got paid \$4
11 point something million in order to do it.

12 So I think that we have a duty, given the way
13 the debate is going, to make some -- I believe that I have
14 a duty, and the rest of you who believe you have may share
15 that, a duty to tell people what our preliminary view based
16 on what we heard and what we read and what we saw is, as
17 long as we make clear that we will not reach any final
18 conclusions until after all of the evidence is assessed,
19 which is what I said in the statement, by the staff and the
20 analyses are done.

21 But at this stage, it seems to me that, quite
22 clearly, some discrimination occurred, whether it was
23 intentional or whether it was harmful --

24 COMMISSIONER REDENBAUGH: Well --

25 CHAIRPERSON BERRY: -- or unintentional.

1 COMMISSIONER REDENBAUGH: -- I -- I -- you
2 picked an example with Choicepoint, which I -- I'm inclined
3 to -- from hearing the testimony to agree with your
4 conclusion. But I think that I don't agree -- I mean, I
5 think we have a responsibility to follow procedure to use
6 rules of evidence to examine our subpoena documents.

7 Many of the charges you make here are very
8 serious and speak to a pattern and practice issue which we
9 haven't yet substantiated.

10 CHAIRPERSON BERRY: Well, that may be your
11 view.

12 COMMISSIONER REDENBAUGH: It is.

13 CHAIRPERSON BERRY: And others may speak.

14 COMMISSIONER WILSON: May I say something?

15 CHAIRPERSON BERRY: Yes, Commissioner Wilson?

16 COMMISSIONER WILSON: Thank you. It seems to
17 me that looking at this statement, particularly on page 2,
18 I was in Florida for both of those days, and I heard -- I
19 don't know whether it was 20 hours worth of testimony --

20 CHAIRPERSON BERRY: Thirty.

21 COMMISSIONER WILSON: Thirty hours. Okay.
22 No wonder I was so exhausted. But it seems to me that
23 these points in a certain way are the most superficial
24 aspects of what we heard, and that we heard people
25 testifying on every one of these points. That key

1 officials anticipated before Election Day that there would
2 be an increase in levels of voter turnout, that at least
3 one unauthorized law enforcement checkpoint was set up on
4 Election Day, that non-felons were removed from voter
5 registration rolls.

6 This was just testimony that we heard. We
7 heard that many African-Americans did not cast ballots
8 because they were assigned to polling sites that didn't
9 have adequate resources. That college students and others
10 submitted voter registration applications on a timely basis
11 and then never received their registration cards.

12 That many Jewish and elderly voters received
13 defective and complicated ballots. In fact, I looked at
14 one of those ballots and thought that it was a flyer,
15 because it was so complicated had I gone into a ballot --
16 had I gone into a booth to look at that, I would have just
17 thrown up my hands and walked away, and that was not the
18 butterfly ballot.

19 Going down every one of these points, it
20 seems to me what this -- I mean, I haven't seen -- I
21 haven't gone through the subpoenaed material, but I know
22 the staff is doing it. And it seems to me that what --
23 that this is the -- this is everything that we've heard and
24 not at all based on statements that go any further than
25 that.

1 And if anything, you know, the fact that --
2 that the Secretary of State fired the person who knew
3 everything about the -- everything about the voting laws in
4 the State of Florida when she was -- right after she was
5 hired, to me is more telling than anything else. So that
6 nobody -- the supervisor said they had nobody to turn to,
7 because nobody understood the law.

8 I mean, what we heard in the testimony is --
9 is reflected in these points that you bring up. And it
10 will be interesting to see what the subpoenaed papers will
11 show and how they will deepen the story or change the
12 narrative. I would be surprised, but I would certainly be
13 interested in seeing that. And so I would like to join
14 this statement.

15 CHAIRPERSON BERRY: The most interesting
16 thing about the testimony was that none of the public
17 officials controverted the testimony of the witnesses who
18 claimed that they were abused. No public official told us
19 that there were adequate resources in the precincts where
20 there were large numbers of black voters. They all told us
21 that there weren't. That's in the testimony.

22 None of them -- no one controverted that the
23 felon purge picked up a whole bunch of people who weren't
24 felons. I mean, I'm talking about the public officials.
25 I'm not talking about the people who complained.

1 If we had a situation where you had on the
2 one hand people who complained, and on the other hand
3 public officials who said, "It's not true. There was no
4 felon purge, or it didn't pick up people who were felons,
5 or there were resources, or they couldn't get through,"
6 then I would be reluctant to reach any conclusion.

7 But' having sat there and heard for 30 hours
8 people who testified that I went up to a gated community
9 where there was a polling place, and I got off work and
10 went there to vote, and the gates were locked and I
11 couldn't get in, and to have public officials concede,
12 "Well, yes, you know, we don't know why that happened, but
13 whatever. It was, you know -- sorry."

14 But to have people not controvert this, to
15 have public officials say, "Yes, we don't know how, why --
16 or why ballots didn't get from the Department of Motor
17 Vehicles to the County Board of Supervisors before the
18 election."

19 So we don't have a situation where there's
20 conflict in the testimony about whether these things
21 happened. If we did, all we really have is mostly
22 agreement by people who give different reasons why it might
23 have happened. "Well, it happened because, you know, I --
24 we don't know why it happened." Or, "Well, if it happened,
25 we're sorry. But, you know, whatever." So it's not a

1 conflict.

2 And also, the staff materials I suppose, as
3 you say, Commissioner Wilson, my view is that when they
4 analyze them, they will help us to categorize where to put
5 these claims, which ones are intentional, which ones are
6 not intentional but harmful, and so on.

7 But I don't know how the subpoenaed documents
8 are going to tell us what the officials have already
9 conceded, something different from what they've already
10 conceded, which is, "Yes, these things happen." But the
11 question is, who is responsible? And we're sorry.

12 Vice Chair?

13 VICE CHAIRPERSON REYNOSO: Madam Chair, I was
14 very impressed by the couple of people we heard testify who
15 were on the Commission named by Governor Bush, in terms of
16 their recommendations.

17 For example, his co-chair testified that he
18 was sure -- now I haven't seen the report, but he felt sure
19 that they would recommend a provisional ballot, which I
20 think would take care of many of these options, many of the
21 problems that we saw in Florida.

22 And Florida has a local option where each
23 county decides whether or not to send sample ballots or
24 not. Clearly, those who receive sample ballots presumably
25 will be able to vote better than those that do not.

1 That type of, piece of testimony, I must say
2 bothered me, but I -- but I was hopeful that the Commission
3 would make the reports that preliminarily we were told
4 probably would be made. And I hope they have been made.
5 As I say, I haven't seen that report yet.

6 At the same time, however, I heard a radio
7 interview with the gentleman who heads up the lower house
8 in Florida, in which he indicated that he saw no problems
9 with the election, except maybe making some mechanical
10 changes with the equipment.

11 And then I read a newspaper report that when
12 Secretary Harris appeared before the local election
13 officials, she received a standing ovation by them, and
14 she, in turn, complimented the state -- local officials for
15 an exceptionally good job done at the election.

16 So my question -- so those -- that has raised
17 questions in my mind as to whether or not the changes that
18 need to be made really will be made, and so I think it's
19 important to speak to what we heard and -- we are, as I
20 understood from Florida, the only agency investigating
21 these matters. The Governor has the power under Florida
22 law to investigate any problems with voting, but he said he
23 was not.

24 He was not exercising that power, because he
25 said there were other agencies, including the U.S. Justice

1 Department, the State Attorney General, and we are
2 investigating. The State Attorney General came before us
3 and said he was not investigating. So far as we know, I
4 haven't heard that the Justice Department is investigating
5 anything.

6 CHAIRPERSON BERRY: They said in the press
7 conference that they're not.

8 VICE CHAIRPERSON REYNOSO: Okay. So it
9 leaves this agency as the only federal agency to bring
10 these matters to the attention of the Florida legislature,
11 or the Florida officials, and if there are problems in
12 other parts of the country, to those officials also. I
13 think it's very important that we act in a timely fashion.
14

15 So I commend your statement what I consider
16 very moderate and modest statement here to bring this to
17 their attention, and hope that we, in fact, do have real
18 electoral reform in Florida, so we don't have in the future
19 what happened this last election.

20 CHAIRPERSON BERRY: Commission Thernstrom?

21 COMMISSIONER THERNSTROM: Madam Chair, I
22 still don't understand the distinction between a personal
23 statement and preliminary findings and conclusions by the
24 Commission itself. The press release that was issued,
25 Status Report on Probe of Election Practices in Florida

1 During the 2000 Presidential Election, U.S. Commission of
2 Civil Rights, it continues -- throughout the document, the
3 pronoun "we" rather than "I" as a personal statement is
4 used. We emphasize that voting technology reforms,
5 etcetera.

6 And along with Commissioner Redenbaugh, I do
7 object to findings of Commission -- findings and
8 conclusions by the Commission itself at this point.

9 The Chair several times during the hearings,
10 throughout the Florida proceedings, said that the hearing
11 record was to remain open for 60 days to allow any
12 interested parties the chance to submit additional
13 information. This is a hasty issuance of a Commission
14 statement. And it contravenes, it seems to me, the verbal
15 contract with the public.

16 Again, as Commissioner Redenbaugh suggested,
17 we have subpoenaed thousands of documents from Florida
18 state officials and other witnesses. I don't see how we
19 can issue a statement, let alone a future interim report,
20 without a thorough review of those documents.

21 It seems to me, in general, that procedures
22 must be followed, certain procedures must be followed, in
23 order to ensure total fairness to all parties involved, and
24 that, indeed, this comes very close to -- if it does not
25 directly violate our safeguards regarding the defamation

1 and procedures protecting from defame and degrade.

2 These are old safeguards, firmly established,
3 and no -- no report on the Florida hearings and no
4 preliminary statement, it seems to me, should be issued
5 unless and until the Governor and other officials who
6 testified have the chance to properly respond. This is
7 really jumping the gun.

8 CHAIRPERSON BERRY: General Counsel, could
9 you address Commissioner Thernstrom's claim that our
10 considering this statement violates some rule or procedure
11 of the Commission, including defame and degrade, and the
12 opportunity for people to respond?

13 MR. HAILES: Actually, responding directly to
14 your inquiry, Madam Chair, and to Commissioners, without
15 having the statement directly in front of me, hearing you
16 read it, I don't see in any case, in any statement that you
17 made, that there is any violation of our defame and degrade
18 procedures.

19 That it's not even treading on the brink of a
20 violation because no names were specifically mentioned, and
21 we do have procedures along the way when we actually issue
22 a report to provide protection under our defame and degrade
23 standards.

24 CHAIRPERSON BERRY: Let me ask also, the
25 hearing record for the Tallahassee hearing is open until

1 when?

2 MR. HAILES: For the Tallahassee hearing,
3 it's closed.

4 CHAIRPERSON BERRY: Which means that the
5 Governor has already had plenty of opportunity to respond
6 to the Tallahassee hearing and knew that the hearing record
7 was to close, because we announced when it was to close and
8 it is already closed. Is that correct?

9 MR. HAILES: Let me make a statement. I
10 believe it may be open just a few more days.

11 CHAIRPERSON BERRY: What date?

12 MR. HAILES: Yes, I said closed. It may be
13 open just a few more days for Tallahassee. And we -- and
14 it's open, in fact, because there are additional documents
15 we have yet to receive from the Governor's office that were
16 subpoenaed. We have been in communication with his
17 attorneys, and these documents are forthcoming. So there
18 are just a few more days for that record to --

19 CHAIRPERSON BERRY: Counsel, as you noted in
20 the statement that I made, I said, one, this was a
21 preliminary conclusion; and, two, that there would be
22 findings and conclusions after you received the
23 information, and that these were my preliminary
24 impressions. Is there anything in my making that statement
25 that violates any rules and procedures of the Commission?

1 MR. HAILES: Not under the rules as I
2 interpret them.

3 CHAIRPERSON BERRY: All right. Thank you.

4 If we could proceed in the following way --
5 and then I'll recognize others -- I would like the
6 Commission to decide whether it wishes to endorse this
7 statement as the statement of the Commission, if I could
8 have a formal motion to that --

9 COMMISSIONER EDLEY: So moved.

10 CHAIRPERSON BERRY: And could I get a second?

11 COMMISSIONER WILSON: Second.

12 CHAIRPERSON BERRY: Then we will have further
13 discussion. Did you wish to say something, Commissioner
14 Edley?

15 COMMISSIONER EDLEY: Well, I wanted to make
16 that very motion.

17 CHAIRPERSON BERRY: Oh, okay.

18 COMMISSIONER EDLEY: As to discussion, I just
19 wanted to emphasize that I listened and read quite
20 carefully, and my strong view is that the statement is
21 drafted in a very lawyerly way to emphasize that the
22 conclusions are, indeed, only preliminary and tentative.

23 And I think it leaves -- it leaves us ample
24 room to modify our judgment if other information develops.

25 So I just disagree -- I disagree quite strongly with

1 Commissioners Thernstrom and Redenbaugh on that score.
2 It's drafted in a very lawyerly way. I think it's
3 perfectly adequate.

4 CHAIRPERSON BERRY: Thank you.

5 Commissioner Meeks?

6 COMMISSIONER MEEKS: Yes. I just want to say
7 the same thing, that, I mean, there's really not one thing
8 in here that anybody couldn't have summed up had they
9 attended the hearings. And I also want to say, you know,
10 in response to that it's a status report and it's got U.S.
11 Commission on Civil Rights.

12 I mean, I just -- I also asked to be on the
13 agenda to introduce a statement of the U.S. Commission, and
14 it's my statement but I would like the U.S. Commission to
15 sign off on it. So there's really not much difference in
16 either one, and so --

17 CHAIRPERSON BERRY: So with yours, I'm going
18 to ask you to read yours, and then we're going to endorse
19 it, I hope, or discuss it, so -- we do this all the time,
20 so there's nothing new about it, except that it happens to
21 be about Florida and voting rights.

22 For people who don't understand that, they'll
23 think we're doing something totally different from what
24 we've ever done before. We always -- Commissioners are
25 always bringing in statements and reading them and then

1 asking the rest of us to agree with them.

2 Commissioner Lee, and then the Vice Chair.

3 COMMISSIONER LEE: I think that the wording
4 of this statement is very carefully drafted. It did not
5 draw any conclusions. All it said was reflecting on the
6 two days of hearings that we had, two or three days.

7 And at the same time, everything that you had
8 mentioned in this report -- in this statement, the public
9 officials either did not deny it or they agree with it.
10 For instance, when you mentioned about resource
11 allocations, we had the Secretary who basically said, yes,
12 she knew there was going to be a large turnout, yet she
13 admitted she did not do anything to address this issue.

14 So I don't think this statement is far-
15 reaching. I think it is very tame, and I think that anyone
16 who watched the proceedings on C-SPAN drew the same
17 conclusion. And I have no problem with this statement, and
18 I think that this statement should be sent out as the
19 official U.S. Commission on Civil Rights statement.

20 CHAIRPERSON BERRY: Okay. Vice Chair?

21 VICE CHAIRPERSON REYNOSO: The violation of
22 the Voting Rights Act, as the statement indicates, is based
23 on effect, not on intent. And I believe many of the
24 officials that we heard from were indeed very well
25 intentioned.

1 We heard from many of the local officials who
2 tried mightily to do the job. Some of them testified that
3 they called the Secretary of State's office when a recount
4 was ordered and asked what procedure they should use, and
5 the Secretary of State declined to give them any guidance.

6 They were trying to do their job. We heard
7 from one local official who went out and got money from
8 foundations and other private groups to help educate the
9 voters in his county. So we heard from some very -- really
10 very fine public officials.

11 And the matter of intent, of folks saying,
12 "Hey, we don't want to have these black voters vote," it's
13 not part of the Voting Rights Act. It's simply, "Was there
14 an effect?" And it's -- and we heard testimony I think
15 practically uniformly from the local officials that, sad to
16 say, the practices that were followed had a
17 disproportionately ill effect on the poor and minorities.

18 And it seems to me unless the documentation
19 that we receive complements the testimony that we heard, it
20 seems to me that one can logically reach a conclusion that
21 there was discrimination in violation of the Voting Rights
22 Act because the effect was there.

23 This is not to say that the officials,
24 particularly local officials, were discriminatory, and so
25 on, in an intentional way, but that in the whole scheme of

1 the way the voting takes place in Florida, with a great
2 local option, with each county having its own ballot -- I
3 was interested in hearing former President Jimmy Carter say
4 that he has certain standards, seeing the folk he has
5 worked with in foreign countries, when they're asked to
6 monitor those elections, and that he had -- if he had been
7 asked to monitor Florida, he would have declined because
8 Florida doesn't meet those minimum standards.

9 That bothers me. It seems to me the
10 legislature has a duty to overcome those defects, whether
11 there was any intention or not, because the effect was
12 there on the basis of the three days of testimony we heard.

13 So I consider, frankly, the statement rather
14 mild in terms of the testimony that I heard from the
15 officials and from the citizens.

16 So I do endorse it, and I'll be very
17 interested -- I'd be taken aback if any of the documents we
18 received go contrary to the testimony we received from all
19 of these officials, and I'll be interested to see what that
20 shows further, I must say, but this statement I consider
21 very mild.

22 And I must say, Madam Chair -- I nearly said
23 Your Honor --

24 (Laughter.)

25 -- because I was going to tell you that

1 judges often issue tentative opinions, and then follow up
2 on that. So that portion of a private statement on your
3 part I don't consider extraordinary.

4 But it's important to advise the legislature,
5 particularly in Florida, while it's meeting -- I understand
6 that the session is rather short, and it's this time that
7 they will act or 'not act, and they're entitled to know what
8 our conclusions, tentative though they may be, were of
9 those hearings, since we seem to be the only body looking
10 into these matters.

11 CHAIRPERSON BERRY: Well, what I'm going to
12 do is address that last point by the second action I'm
13 going to ask you to take. But first I want to recognize
14 Commissioner Thernstrom, and when people are finished
15 speaking I want to call the question on this one and then
16 move to the next action. Yes, Commissioner Thernstrom?

17 COMMISSIONER THERNSTROM: Madam Chair, I was
18 also, obviously, in Florida, in Tallahassee, and I can't
19 possibly come to the conclusions that you have already
20 embraced, and evidently many of the Commissioners will
21 embrace.

22 We had a lot of anecdotal information. Many
23 of the conclusions that you have drawn were, in fact,
24 disputed by witnesses. As the Governor himself said, there
25 was an average increase in registration, there was no

1 difference than in previous years.

2 Senator McCain this week had hearings in
3 which the Secretary of State of Georgia said, "Look, the
4 situation in Georgia was, in fact, you know, messier" -- I
5 can't remember his exact language -- "than in Florida." So
6 we are, you know, focusing on Florida without looking at a
7 larger picture.

8 And as Commissioner Redenbaugh said, that the
9 rules of evidence simply have not been properly followed
10 here. We have not established yet a pattern and practice
11 of disfranchisement. I do not understand rushing to
12 judgment over a very complicated matter when not even all
13 of the documents have been reviewed.

14 CHAIRPERSON BERRY: Commissioner Wilson?

15 COMMISSIONER WILSON: Thank you. First of
16 all, thank you, Madam Chair. I'd like to say that as --
17 since you corrected me and we were there for 30 hours --

18 CHAIRPERSON BERRY: There were 30 hours of
19 testimony. You were there longer than that.

20 COMMISSIONER WILSON: In the room. In the
21 room, looking down at those people testifying. We were
22 there for 30 hours. And in the many -- many of the
23 allegations were not disputed by witnesses. I beg to
24 differ with Commissioner Thernstrom.

25 CHAIRPERSON BERRY: The people who saw it on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 C-SPAN can reach their own conclusions. And we will have a
2 transcript, by the way, of all of the testimony.

3 COMMISSIONER WILSON: But there is an issue I
4 would like to address just as an aside in terms -- this
5 comes under the heading of "rush to judgment." And that is
6 -- which Commissioner Thernstrom has just mentioned about
7 the Commission.

8 I became aware -- I have to say I'm extremely
9 distressed and puzzled by this, and I should wait until
10 you're technically set up, Commissioner Thernstrom, to ask
11 you this question. And that is, in the Boston Globe, on
12 March 5th, which was just a few days ago, I read a
13 statement which I just find extremely distressing and
14 puzzling.

15 And as I say, it comes under the brackets of
16 "rush to judgment," where you say -- in this article it
17 says, "United States Commission on Civil Rights is
18 investigating allegations that black voters were
19 disenfranchised, spurring complaints from the Commission's
20 conservative members" -- I suppose that's you -- "that the
21 investigation is partisan."

22 And here's my question to you. Your quote
23 is, "I think the Commission has written its report and is
24 now holding these so-called hearings to support its claim,
25 said Abigail Thernstrom, the conservative author on the

1 Commission, from her home in Lexington, Massachusetts."

2 Now, I take this very personally myself,
3 since I have entered into the obligation of being a
4 Commissioner very seriously. My first question is: did
5 you actually make the statement? Because I know -- excuse
6 all the press in the room -- I know how the press sometimes
7 can get things --

8 COMMISSIONER THERNSTROM: I don't remember
9 precisely what I said to that reporter, but I stand by the
10 statement, so it doesn't really --

11 COMMISSIONER WILSON: Okay. So you --

12 COMMISSIONER THERNSTROM: I will assume that
13 I said it.

14 COMMISSIONER WILSON: All right. Well, in
15 your very words, I think that's a very serious charge that
16 you're making.

17 CHAIRPERSON BERRY: Commissioner Thernstrom,
18 what is your evidence that the Commission has already
19 written "the report"? Where is it?

20 COMMISSIONER THERNSTROM: It seems to me it
21 is.

22 CHAIRPERSON BERRY: At the time you made the
23 statement, which was on March -- what date is that
24 newspaper article?

25 COMMISSIONER THERNSTROM: Well, it may be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 March 5th, but the fact is you were referring, I assume, to
2 the hearings that were taking place.

3 CHAIRPERSON BERRY: But March 5th is --- today
4 is the 9th.

5 COMMISSIONER THERNSTROM: Right. Madam
6 Chair, there were statements --

7 CHAIRPERSON BERRY: On March 5th, what was
8 your evidence that we had written a report?

9 COMMISSIONER THERNSTROM: There was -- Madam
10 Chair?

11 CHAIRPERSON BERRY: I'm only asking you that.

12 COMMISSIONER THERNSTROM: Yes. Madam Chair,
13 there were statements that you yourself made at the time
14 about the Tallahassee and Florida hearings, as well as
15 other Commissioners, that made me think that -- and I would
16 be delighted to be proven wrong. But this morning does not
17 suggest I am being proven wrong on this -- that made me
18 believe you had already drawn, much too hastily --

19 CHAIRPERSON BERRY: Commissioner --

20 COMMISSIONER THERNSTROM: -- conclusions
21 about --

22 CHAIRPERSON BERRY: Commissioner Thernstrom,
23 the statement that Commissioner Wilson read that you made,
24 and you said you made, said that we had "written" the
25 report. You are a scholar. You know what it means to

1 write something.

2 COMMISSIONER THERNSTROM: All right.

3 CHAIRPERSON BERRY: What is your evidence
4 that we had written the entire Florida report on March 5th?

5 COMMISSIONER THERNSTROM: I simply meant
6 written in your heads. I did not literally --

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER THERNSTROM: -- mean written.

9 CHAIRPERSON BERRY: Well, then, could we move
10 on?

11 COMMISSIONER WILSON: No, I don't want to
12 move on.

13 CHAIRPERSON BERRY: Do you mind?

14 COMMISSIONER WILSON: No, I don't want to
15 move on yet, because you are a writer and I am an editor.

16 (Laughter.)

17 And you know full well that when you say to a
18 press somebody -- a member of the press that the report has
19 been written, and in the next paragraph you say, "But I
20 want evidence," you know full well that to say that is
21 actually an irresponsible statement.

22 COMMISSIONER THERNSTROM: Well, look --

23 CHAIRPERSON BERRY: Could we move on? I mean
24 --

25 COMMISSIONER THERNSTROM: Look, you know, if

1 you are going to take such statements written --

2 COMMISSIONER WILSON: Of course I'm going to
3 take such statements -- excuse me a minute.

4 CHAIRPERSON BERRY: Excuse me, please.
5 Please. Please. Could I have order, please? Order.
6 Order. Order. The facts show uncontroverted -- again, we
7 get to what's uncontroverted -- that the press reported
8 that Commissioner Thernstrom said we had "written" the
9 report, as early as March 5th that she made such a
10 statement.

11 Commissioner Thernstrom said she did, indeed,
12 make the statement. What we are disputing over here on
13 this side is what she meant by that, and we may continue
14 this if you want me to indulge you. But the fact remains
15 that I would like to have, if Commissioner Thernstrom has
16 it, the evidence that we had, in fact, written -- when I
17 say I've written something, I mean I've written it, as the
18 editor has stated, on a piece of paper. If you have such
19 evidence, please present it. And if not, then we'll just
20 move on.

21 COMMISSIONER THERNSTROM: Well, I used the
22 word "written" slightly differently than that. I think the
23 meaning was very clear, that you had jumped to conclusions
24 before the evidence was in, and I stand by that statement.

25 CHAIRPERSON BERRY: Would Commissioner Wilson

1 be satisfied to let us move on, if Commissioner Thernstrom
2 agrees that she will be more careful in her choice of words
3 when she characterizes the work of the Commission in the
4 future?

5 COMMISSIONER THERNSTROM: I would be
6 delighted to be more careful. But if I had been more
7 careful, I would have simply said, "In their heads, the
8 statement is already" --

9 CHAIRPERSON BERRY: Okay. Well --

10 COMMISSIONER THERNSTROM: -- "seems already
11 to have been written."

12 CHAIRPERSON BERRY: All right. Well, can we
13 move on? Because I don't think that we're educating each
14 other very much by this, unless people insist that we don't
15 move on.

16 COMMISSIONER EDLEY: This is more than a
17 matter of polatesque because I think it's important for the
18 public to understand that what Commissioner Thernstrom
19 said, literally, was not true. The report has not been
20 written, and I don't want to disabuse anybody in the
21 audience, in the public audience from thinking that somehow
22 the Commission or the staff had already --

23 CHAIRPERSON BERRY: Well, let's ask the
24 staff.

25 COMMISSIONER EDLEY: -- has --

1 COMMISSIONER THERNSTROM: Excuse me.

2 COMMISSIONER EDLEY: -- has, in fact,
3 produced a report.

4 CHAIRPERSON BERRY: Shall we ask --

5 COMMISSIONER THERNSTROM: I have already said
6 that that was not my literal allegation.

7 CHAIRPERSON BERRY: Okay. I have --

8 COMMISSIONER THERNSTROM: So there is no use
9 checking with the staff. I did not believe it was my --

10 CHAIRPERSON BERRY: I am going to recognize
11 one more person, and then I'm through. I want to get a
12 call for the question and move on. It's been established
13 that the statement was false. We did not, in fact, have a
14 piece of paper, a bunch of papers, with written down a
15 report that we could hand to someone.

16 COMMISSIONER THERNSTROM: That's misleading.

17 CHAIRPERSON BERRY: Yes. I'm misleading?

18 COMMISSIONER THERNSTROM: No. The statement
19 was perhaps misleading, but false I -- you know, whatever.

20 CHAIRPERSON BERRY: Can we just leave it at
21 that, then, that Commissioner Thernstrom agrees that she
22 will try to more carefully characterize the work of the
23 Commission in the future? And let's leave it at that and
24 take it that since she's a new Commissioner she is not
25 accustomed to the notion that we don't like to criticize

1 each other or characterize things in ways that put the
2 Commission in a light that is not, you know, circumspect,
3 and attribute it to her newness.

4 COMMISSIONER WILSON: That's not accurate.

5 CHAIRPERSON BERRY: Attribute it to her
6 newness on the Commission. And then we will see if we have
7 future incidents of such matters, and then we will take
8 longer to discuss them if it should recur. Can we agree on
9 that, and then just move on? All right. Without
10 objection.

11 Can I call for the question on this matter
12 and move on to the next vote? I am calling for the
13 question on the Commission's support of the statement that
14 I read, which would then be a statement of this Commission.

15 All those in favor indicate by saying aye.

16 (Chorus of nays.)

17 Opposed?

18 (Nays.)

19 CHAIRPERSON BERRY: The vote is six to two.

20 Now, on the second matter that I wish to call
21 to your attention, I wrote a letter to Governor Bush
22 yesterday in which I -- I wrote the letter because I noted
23 that the Florida legislature is in session for eight weeks,
24 and that the Florida legislature was told by the Governor
25 after he received this task force report, according to

1 press accounts and the website of the Governor's, that his
2 priority insofar as the elections were concerned, the only
3 thing he has as a priority was making reforms in voting
4 technology -- optical scan devices, for example.

5 And then I read further and elicited some of
6 the information that the Vice Chair referred to, and when
7 members of the legislature didn't seem to think anything
8 needed to be done about the voting.

9 And so I was deeply disturbed, so I wrote a
10 letter to Governor Bush which I faxed to his office
11 yesterday, so that he would not be unaware. And I said, "I
12 am writing to express my deep disappointment with your
13 statement of priorities that was presented during the
14 opening of the Florida legislative session in which you did
15 not address the most serious problems that occurred in
16 Florida during the 2000 elections.

17 "My disappointment is based upon my
18 preliminary assessment that these problems would not be
19 resolved even if the legislature approved your request that
20 new technology for recording votes be acquired and put into
21 place. Voting technology reforms are necessary, and your
22 support of them is a step in the right direction.

23 "These measures, standing alone, however, are
24 insufficient to address the significant and distressing
25 issues and barriers that prevented qualified voters from

1 participating in the recent Presidential election. As you
2 know, the Commission has undertaken a formal investigation
3 into allegations by Floridians of voting irregularities
4 arising out of the election."

5 And then I described the hearings that took
6 place in the way that I did in the statement, so I won't
7 read those two paragraphs about what we heard, and so on.

8 And I say, "The evidence points to an array
9 of problems. These problems cry out for solutions. For
10 example, a process for ensuring the equitable allocation of
11 resources to ensure that poor and/or people of color areas
12 are not disproportionately affected.

13 "They also include a need for a better
14 process for identifying felons who are ineligible to vote,
15 ensuring coordination between the Department of Motor
16 Vehicles and the election boards, to make sure
17 registrations are actually filed on a timely basis, funds
18 for better training of poll workers, improved and updated
19 communication systems, funds for voter education, and
20 clarifications in the law to permit provisional ballots to
21 be cast when appropriate."

22 And I say, "As you know, counties have uneven
23 funding bases and priorities. Because I believe the need
24 to address these problems is serious, I have determined
25 that the Commission should hold additional hearings in

1 Florida after the conclusion of the legislative session to
2 bring state and local officials before us to assess what
3 changes have been legislated or enacted at the state and
4 local level, and to report to the public on what progress
5 has been made."

6 And I say, "I expect the Commission to
7 formally endorse these new hearings at our meeting on March
8 9th, and we intend to keep a steady focus on these
9 developments to ensure that the voting rights of all
10 eligible persons are protected."

11 I have told you why I sent the letter and to
12 address why Florida. I want to give Commissioner
13 Thernstrom an opportunity to correct something she said a
14 few minutes ago in the interest of the last conversation we
15 had.

16 She said that the Georgia election official
17 testified in the Commerce Committee hearing that the
18 problems in Georgia were much worse than they were in
19 Florida. I do not think the election official said that,
20 because the election official doesn't know what happened in
21 Florida.

22 But if she did, then I want us to inquire
23 from her as to where she got her information from, so I
24 just want her to attest that this person presented evidence
25 that Georgia had -- we know Georgia had problems. We're

1 going to hear about those in a few minutes. But that this
2 person, indeed, said that they had done an investigation or
3 assessed the conditions in Florida, and had compared them
4 with those in Georgia, and had concluded that Georgia was
5 much worse, so that we can go talk to that person.

6 COMMISSIONER THERNSTROM: Well, I am -- I
7 have here the testimony of The Honorable Cathy Cox, who is
8 the Georgia Secretary of State, in which she says, "The
9 truth is that the Presidential margin had been razor thin
10 in Georgia, and if our election systems had undergone the
11 same microscopic scrutiny that Florida endured, we would
12 have fared no better, and perhaps we would have fared even
13 worse."

14 All right. I didn't remember the "perhaps."
15 I remembered "fared even worse." But the point is still
16 the same.

17 She goes on to say that it is an undervote
18 percentage of three point --

19 CHAIRPERSON BERRY: But that wasn't my point,
20 Commissioner Thernstrom, and I don't want to take up the
21 time of the Commission. My point was, and you are a new
22 Commissioner, that when we quote or we say that people said
23 things, we have to be very careful to include exactly what
24 they said. Otherwise, you'll have other Commissioners
25 being all upset when they go find out the person didn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 really say that --

2 COMMISSIONER THERNSTROM: Okay.

3 CHAIRPERSON BERRY: -- they said something
4 else.

5 COMMISSIONER THERNSTROM: I did say -- I did
6 not remember --

7 CHAIRPERSON BERRY: Perhaps.

8 COMMISSIONER THERNSTROM: -- the precise
9 words. Perhaps that I did -- but I now have them in front
10 of me. And by the way, I now remember what I said to that
11 Globe reporter. I said, "In effect, the Commission has
12 written a report." That is quite a different statement
13 than "written a report." I now remember the conversation.

14 CHAIRPERSON BERRY: Okay. So you were --

15 COMMISSIONER THERNSTROM: And, you know, that
16 was --

17 CHAIRPERSON BERRY: You were abused by the
18 reporter.

19 COMMISSIONER THERNSTROM: I stand by that
20 statement.

21 CHAIRPERSON BERRY: Okay. Well, then, you
22 were abused by the press. And so we will hope that the
23 press doesn't abuse you again.

24 Now, let me --

25 COMMISSIONER EDLEY: I'd like to move for

1 condemnation of the Boston Globe for their --

2 (Laughter.)

3 CHAIRPERSON BERRY: So what I would like to
4 have us do is to -- if someone would move the idea of
5 having hearings. Here's my point. It seems to me that if
6 -- if they were put on notice in Florida, which is ground
7 zero, that we -- after our report is actually finished by
8 the staff, so that we can see if there's anything in it
9 that's any different from what we heard at the hearings.

10 That we would come back down there at the end
11 of the legislative session to see what changes they made,
12 because there are elections coming up in the fall. There
13 are elections happening all the time. And it just seems
14 that it's absolutely essential that somebody take seriously
15 these problems, that if they knew we were coming back that
16 perhaps they might take them a little more seriously. That
17 at least is a fond hope of mine.

18 And so I would like the Commissioners to
19 agree that we would do that, if you wish to do so.

20 VICE CHAIRPERSON REYNOSO: So moved.

21 CHAIRPERSON BERRY: Could I get a second?

22 COMMISSIONER THERNSTROM: Second.

23 CHAIRPERSON BERRY: All right.

24 COMMISSIONER THERNSTROM: Approximately what
25 date?

1 CHAIRPERSON BERRY: Sometime after the
2 legislative session is finished and when we have voted on
3 our final report.

4 COMMISSIONER THERNSTROM: And the legislative
5 --

6 CHAIRPERSON BERRY: It's eight weeks.

7 COMMISSIONER THERNSTROM: Eight weeks.

8 CHAIRPERSON BERRY: And we expect to have the
9 report -- we expect to have the report before us, the draft
10 report in April and the final report no later than the
11 first week in June, right?

12 STAFF DIRECTOR JIN: Yes, that's about right.

13 CHAIRPERSON BERRY: Okay. So we would go --
14 this would be good timing, because we could go after that
15 and have people come in and tell us, you know, what they
16 did.

17 COMMISSIONER EDLEY: I also think it will be
18 good timing because providing an assessment of what Florida
19 has or has not accomplished will be of interest to the U.S.
20 Congress. I do have some concern that a lot of the -- a
21 lot of the motion or commotion on Capitol Hill in this area
22 is similarly quite limited in focus.

23 And so I think if we focus on what Florida is
24 able to do it will help inform the congressional
25 deliberation.

1 CHAIRPERSON BERRY: Okay.

2 COMMISSIONER EDLEY: Thank you.

3 CHAIRPERSON BERRY: Yes, Vice Chair?

4 VICE CHAIRPERSON REYNOSO: Madam Chair, I
5 believe that all of the states have some problems, and
6 probably any state would have had problems if there were
7 only a few hundred votes dividing an election.

8 But we've had these hearings in Florida, and
9 we ran into problems that Florida has that seem to be far
10 more exaggerated than most states. For example, the
11 absence of a provisional ballot. Florida, we heard, has
12 his complicated system where they will drop people from the
13 voting rolls even though the person may then show up to
14 vote and the person will then be declared eligible if
15 they're able to get through to the central office.

16 But we heard about the countless efforts by
17 local officials and the frustration to get the central
18 office, and they couldn't do so.

19 So to have a provisional ballot, which
20 Florida does not have, would have at least provided the
21 voter the opportunity to vote, and then the officials later
22 could check to see whether or not the person was eligible
23 to vote or not.

24 My whole approach to these hearings, Madam
25 Chair, has been to look after how we can protect the right

1 of each individual to vote, and then to have that vote
2 counted, irrespective of how it comes out. Sad to say, we
3 don't see the techniques, the legal techniques in place in
4 Florida that many states have, to guarantee that individual
5 vote.

6 And so if the Florida legislature doesn't
7 respond to that, I confess that I'll be very disappointed
8 and will have concluded that they will not have done what
9 they should do to guarantee every single individual the
10 right to vote.

11 So I think it's very important to see what
12 the legislature indeed will have done at the end of their
13 session.

14 CHAIRPERSON BERRY: Commissioner Thernstrom?

15 COMMISSIONER THERNSTROM: Well, we all agree
16 that every individual should have the -- should be able to
17 cast a ballot and have their vote properly counted.
18 There's certainly no dissent on this Commission on that
19 matter.

20 I am -- Madam Chair, I'm not sure why we are
21 going to Florida after the final report is written. It
22 seems to me if you are planning to come out with some kind
23 of preliminary interim reports that it would be more
24 appropriate to hear from the Florida -- those who like to
25 respond in Florida before the final report is written, so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that that final report has more credibility.

2 CHAIRPERSON BERRY: We've already heard from
3 them. We will monitor what they're doing during the
4 legislative session. If they wish to respond to us by
5 giving us information, they can respond to us. They have
6 every opportunity to do so.

7 The point is that we've already heard from
8 them. The issue is whether they are planning to take
9 action. And if they take action, fine. If they don't take
10 action, we should go. And even if they do take it, we
11 should go and find out what they did and how they think it
12 will all work out.

13 So the idea is to find out from them what, in
14 fact, has happened not to go there. We've already been
15 there, so we don't need to go there to hear from them.
16 We've already heard. And if they have any information to
17 provide us, we'd be happy to receive it all during the
18 legislative session.

19 COMMISSIONER REDENBAUGH: Madam Chair?

20 CHAIRPERSON BERRY: Yes.

21 COMMISSIONER REDENBAUGH: Yes. I have a --
22 just ask for clarification. If in our report we find
23 violations of the Voting Rights Act, then we'll recommend
24 enforcement from the Justice Department? Is that the
25 procedure?

1 CHAIRPERSON BERRY: It depends on what we
2 find.

3 COMMISSIONER REDENBAUGH: Okay.

4 CHAIRPERSON BERRY: And we would recommend --
5 if we find these violations, we would recommend, depending
6 on what the violations were, whether we thought they were,
7 and how we categorize them, we would ask the Justice
8 Department, yes, to enforce them.

9 COMMISSIONER REDENBAUGH: Okay. And --

10 CHAIRPERSON BERRY: And we would have
11 recommendations directed at the state --

12 COMMISSIONER REDENBAUGH: Yes.

13 CHAIRPERSON BERRY: -- asking them to remedy
14 the problems.

15 COMMISSIONER REDENBAUGH: Yes. But those
16 would, I presume, be very specific as -- as we've done in
17 the past. Okay? No, I just wanted a point of
18 clarification.

19 CHAIRPERSON BERRY: Okay. All right. Yes?

20 COMMISSIONER EDLEY: Will there be -- once
21 the thing is -- will there be affected agency review of
22 this?

23 CHAIRPERSON BERRY: Yes.

24 COMMISSIONER EDLEY: By Florida. So speaking
25 to Commissioner Thernstrom's point --

1 CHAIRPERSON BERRY: Oh, that's right.

2 COMMISSIONER EDLEY: -- there will be that --

3 CHAIRPERSON BERRY: The public doesn't know
4 that. There is -- we have a process called affected agency
5 review. Once the document is written, before we publish
6 it, we send it to the agencies who have testified for them
7 to comment on it before we publish it. That's one of the
8 steps that we take in the process.

9 So it's not simply a question of them giving
10 us -- they can tell us anything any time they want to, as I
11 said. But they also get a formal opportunity to comment.
12 And, in fact, if they comment in writing and wish their
13 comments to be included in the report, we put them in the
14 report.

15 And the other thing that the public should
16 know is that once we've concluded this report, the
17 information we have available, including the documents and
18 the transcripts and everything else, will be available to
19 the public. So that we're not the only persons who get to
20 see whatever it is we have constructed this report from if
21 people are interested.

22 So there's nothing about the process that's
23 some kind of, you know, closed decisionmaking. And there's
24 plenty of opportunity at every stage for people to respond.

25 COMMISSIONER THERNSTROM: Well, a point of

1 information, will we have gathered those responses in their
2 totality before we write the final report?

3 CHAIRPERSON BERRY: Yes. The steps require
4 -- the other thing is, I -- and I'm not trying to be -- I
5 can't think of the word.

6 VICE CHAIRPERSON REYNOSO: Pedantic.

7 CHAIRPERSON BERRY: Pedantic. Good word.
8 But in the Commissioner's handbook that every Commissioner
9 gets when they're appointed, it describes the processes and
10 procedures that we follow. And the procedures that we
11 follow indicate what we do and how we do it.

12 And so, yes, we have a hearing procedure, and
13 part of the hearing procedure is that there is affected
14 agency review, which must take -- you know, we include that
15 in the final report. And if agencies want to have their
16 comments published, we put them in the report at the end.
17 "Here is what the agency said about what we said." So the
18 hearing process, under the law, and under our regulation,
19 requires all of these steps.

20 The only thing we're doing differently is I
21 took it upon myself, because I'm upset about the way this
22 stuff is going and that nothing is happening, to make a
23 statement ahead of time to try to get some movement on
24 these issues based on what we heard. And the rest of the
25 folks who agreed with it agreed that that's what they

1 heard. Rather than waiting all the way until the end when
2 the legislative session was over and there wasn't another
3 one until next year to even tell the public what we heard,
4 and that's the only difference here.

5 Could we get a vote on the idea of the
6 hearing, then, at a date to be set by the staff based on
7 how this goes, but when the legislative session is over and
8 the report is finished?

9 All those in favor indicate by saying aye.

10 (Chorus of ayes.)

11 Opposed?

12 (No response.)

13 Okay. Then it was unanimous, then.

14 COMMISSIONER REDENBAUGH: Madam Chair, I need
15 to leave the call.

16 CHAIRPERSON BERRY: All right. Thank you.

17 COMMISSIONER REDENBAUGH: Thank you for
18 taking this matter early.

19 CHAIRPERSON BERRY: All right. Thank you,
20 Commissioner.

21 COMMISSIONER REDENBAUGH: Okay.

22 CHAIRPERSON BERRY: See you next time.

23 COMMISSIONER REDENBAUGH: Yes, I'll be there.

24 CHAIRPERSON BERRY: Okay. Let us now have --
25 we asked the staff to prepare a briefing for us on what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 happened nationwide during the election for the purpose of
2 our figuring out whether we thought we needed to go
3 somewhere else other than Florida. You will recall that
4 discussion.

5 And so we asked the staff if they would check
6 with the Regional Directors and the -- our State Advisory
7 Committees, of which we have State Advisory Committees in
8 every state and the District of Columbia, of nice people,
9 citizens who are committed who serve on our committees, and
10 who are our eyes and ears out there in the -- across the
11 nation, find out from them whether they thought the
12 problems in their state rose to a level that this
13 Commission ought to go there so we could make a judgment
14 about that.

15 The staff has completed that survey. It's
16 not really an investigation, like a hearing. They were
17 just out there trying to find out from us whether we ought
18 to go there, and is prepared to tell us what they found
19 out.

20 Is that right, Staff Director?

21 STAFF DIRECTOR JIN: That is correct, Madam
22 Chair.

23 CHAIRPERSON BERRY: So could you proceed with
24 that briefing for us, so we can figure out what we do about
25 that?

1 STAFF DIRECTOR JIN: Thank you, Madam Chair.
2 The Commission remembers the Office of Civil Rights
3 Evaluation was tasked with taking the lead on that. And
4 Terri Dickerson, the Chief of that unit, is prepared to
5 make a presentation here this morning.

6 CHAIRPERSON BERRY: Okay.

7 MS. DICKERSON: Good morning. I'm from the
8 Office of Civil Rights Evaluation, and my name is Terri
9 Dickerson. At its December 8th meeting, the Commission
10 asked OCRE to review procedures nationwide and to kind of
11 summarize what the literature was saying about those
12 procedures. And that is what we've done, and I want to go
13 over that review that we performed and give you some
14 information on what we found.

15 If I use the words "what we found," I don't
16 mean in a conclusory way. I just mean that it was
17 something that we read or came across in our summary of the
18 internet, of documents that we received, of state documents
19 that we requested.

20 Performing the review along with us, was, of
21 course, the OCRE staff, and I want to thank my colleagues
22 Margaret Butler, Monique Dennis, Latrice Foshee, Wanda
23 Johnson, Rebecca Kraus, Kirk Perry, Eileen Rudert, Ilona
24 Turner, Mireille Zieseniss, and our interns, Sheldon Fuller
25 and Auliya Yasuda, for helping. As well, performing part

1 of the regional evaluation or the entire regional
2 evaluation were the six regional offices of the Commission
3 headed by Melvin Jenkins, Bobby Doctor, John Dulles, Philip
4 Montez, Constance Davis, and Ki-taek Chun.

5 Our purpose was to survey voting procedures
6 nationwide, and we were asked to give context to the
7 Commission's examination of voting rights in general and to
8 assist -- it was hoped that this would assist the
9 Commission in determining what future action might be
10 required.

11 We also, for our own information, reviewed
12 the Voting Rights Act, and we looked at laws that have
13 since been put in place to really protect the right of
14 citizens to vote. And that gave us great context. It was
15 mighty helpful to us in creating context for the rest of
16 our review.

17 I'm going to talk a little bit about what we
18 found, and I apologize that there's a lot of information on
19 this slide. One of the things that we looked at nationwide
20 was -- and we were asked by the Commissioners to look at
21 was felon disenfranchisement laws.

22 What this table really shows you is that in
23 49 states -- I'm going to use this pointer to help a little
24 bit since it's so far away -- that in 49 states prisoners
25 -- people who are prisoners may not vote. In 29 states,

1 which is here, people who are on probation cannot vote. In
2 32 states, those who are on parole cannot vote. And in 14
3 states, those who are ex-felons cannot vote.

4 There are some modifications -- for Arizona,
5 for instance, and for Maryland -- that pertain to the
6 second felony. For Delaware, it pertains to five years
7 after the time is served, and for Tennessee it only
8 pertains to people pre-1986, and in Washington pre-1984.

9 We also looked at the administration of
10 elections. We looked at the role of the federal
11 government, the role of state and local government in the
12 administration of elections, and the role of organizations
13 and state officials in developing election standards.

14 One point that was very interesting is that
15 there are no federal elections in the United States, only
16 local elections for federal officials. The FEC is a
17 national clearinghouse, and its role is really advisory.
18 The Department of Justice's voting rights section ensures
19 compliance with laws that remedy denials and abridgements
20 to the right to vote.

21 Fifty different state codes specify how
22 elections are to be administered, so there isn't one
23 national standard anywhere. If you go to the code, you
24 will determine -- the code determines what is done in
25 particular elections. The Governor has ultimate

1 responsibility for compliance, and that's in every state.

2 In 28 states, there is a Secretary of State who is the
3 chief election officer. In eight other states, the
4 Secretary has a major role in election administration.

5 Some election role or responsibility is
6 delegated to the local governments -- counties, cities,
7 towns, and townships. That's in every state, that the
8 local government has some type of role.

9 I'm sorry that you can't see this, so I'll
10 summarize it for you.

11 With respect to the Secretary of State, we
12 found that there are three models, and this is the first
13 model. That is where the Secretary of State has sole
14 responsibility; that person is the chief elections
15 authority.

16 There's a second model in which there's a
17 Secretary of State in addition to a state elections office
18 and a county elections office. So the Secretary of State
19 has specific duties and other state and county offices have
20 separate duties as well.

21 And in model three the Secretary of State is
22 completely uninvolved with elections. So there are three
23 distinct models, and all 50 states and the District of
24 Columbia fall into one of those models.

25 Okay. First of all, nine of the secretaries

1 of state are appointed, and 41 are elected. The District
2 of Columbia has no Secretary of State. Looking at the
3 chart this way, those -- among those that have -- in which
4 the Secretary of State has sole or the only responsibility
5 for elections, there are 28 states in that model. Those
6 states are listed here.

7 As far as the shared duties, there are eight
8 states in which the Secretary of State has some
9 responsibility. And there are 15 states in which the
10 Secretary of State has no responsibility at all for
11 elections.

12 In 20 states, local election officials have a
13 major role in the election process. Their responsibilities
14 might include enforcing the rules and regulations,
15 supervising election officials, receiving and certifying
16 returns, carrying out registration, purging rolls,
17 certifying equipment, etcetera. That occurs in 20 states.

18 In 30 states, the remainder of states, local
19 election officials only have a minor role, and it's very
20 noteworthy that these officials convene only for elections
21 or on Election Day. And that is the case in 30 states.

22 Given all that diversity, how is any
23 uniformity at all achieved one wonders. The answer is
24 through organizations of state officials. One is the
25 National Association of Secretaries of State, and the other

1 is the National Association of State Election Directors.

2 These organizations have proposed optional
3 standards for secretaries of state to adopt in order that
4 there might be some type of national standard that all
5 states follow.

6 Okay. We also looked at what the deadlines
7 are for voter registration, and it ranges from zero days,
8 no days, which is in North Dakota -- anyone in North Dakota
9 can vote without registering in advance -- to 10 to 15
10 days. That's in six states, these states here, 10 to 15
11 days; 16 to 28 days in 13 states, those are these 13
12 states; and anywhere from 29 to 31 days, and that's in 25
13 states, and those are listed here. So the range is all
14 over the board.

15 Okay. We also reviewed types of voter
16 registration requirements imposed by states, and I think
17 the most interesting information we found is that most
18 states require at least these requirements: citizenship,
19 age requirements, state and local residency requirements.
20 Other states, in addition to that, may require a clean
21 conviction or imprisonment record. They may require mental
22 competency. They may require absence of registration or
23 legal residence elsewhere.

24 We looked at polling hours, and this showed
25 that for the most part polls closed between -- opened

1 between 6:00 and 7:00 a.m. and closed between 7:00 and
2 8:00. There are some states that include more than one
3 time zone, it's important to say as we're looking at this
4 information.

5 Credentials. In the case of 20 states, right
6 here, these states, the voter's signature is acquired but
7 not verified. In 16 states, those states are listed here,
8 the voter's signature is required and is verified when they
9 present themselves to vote.

10 In most states -- 30 to be exact -- let's
11 see, 30 states, these here -- they don't require
12 identification in the polls at all. So in those states
13 nothing has to be presented in order to -- nothing should
14 have to be presented in order to vote -- cast a vote on
15 Election Day.

16 COMMISSIONER EDLEY: Excuse me, Terri. I
17 don't understand. What -- how -- at the top of the no
18 column, how is it that the voter's signature can be
19 required to be verified, but no identification is required?
20 I'm not --

21 MS. DICKERSON: The signature -- oh, I see,
22 required but not verified.

23 COMMISSIONER EDLEY: Do you have to show a
24 credit card with your signature on it or something but no
25 -- I'm not sure --

1 MS. DICKERSON: Okay. Here's one of my
2 colleagues who can answer that question.

3 MS. ZIESENISS: I think that's referring
4 strictly to voter -- I'm sorry, photo identification. No
5 photo identification.

6 COMMISSIONER EDLEY: Oh, no photo
7 identification.

8 VICE CHAIRPERSON REYNOSO: Well, I'm
9 California, and you just sign in when you go to vote.
10 That's what -- you don't have to show an identification.

11 MS. DICKERSON: And I think the signature
12 that is -- that is intended here is the signature that is
13 actually on the rolls when you go to the poll, and it's
14 whether or not that signature has to be compared with
15 another -- whether or not you have to sign again next to
16 that signature in order to verify that you are the same
17 person.

18 COMMISSIONER EDLEY: Hmm. Okay.

19 MS. DICKERSON: This is my colleague Mireille
20 Zieseniss, and I'm going to, I believe, have to call on
21 her.

22 COMMISSIONER EDLEY: And I'll save my
23 questions --

24 CHAIRPERSON BERRY: That's okay. That's fine
25 if you do that. That's fine. Go ahead, please.

1 MS. DICKERSON: All right. The 2000
2 elections used an estimated 1.4 million poll workers. Poll
3 workers are difficult to recruit because the work involves
4 long hours and low pay. I think we've all read about that
5 during the election. Poll workers are usually required to
6 have some training, but the amount or frequency of it may
7 vary by state.

8 Some receive none at all. Some may receive
9 just a manual -- some have the manual posted on the
10 internet, so it really varies. Some have a few days of
11 orientation.

12 We looked at the voting systems that are
13 used. They fall into essentially five categories. One is
14 the hand-counted paper ballot; two, the punch card; three,
15 the optical scan ballot; four, the lever machine; and,
16 fifth, the electronic machine, known as the direct
17 recording electronic. And that's really more colloquially
18 known I guess as the ATM technology.

19 There are advantages and disadvantages with
20 each. Just some examples, hand-counted ballots are very
21 slow and tedious to count, and it isn't always even from a
22 hand-counted ballot possible to know what the intent of the
23 person who cast the ballot was.

24 Lever machines aren't manufactured any
25 longer, so obviously updating the equipment is a problem.

1 I'm just going to go over a few features or
2 the desirable voting features by equipment type. And
3 across the top here I have those five technologies -- the
4 hand-counted ballot, the punch cards, the optical scan,
5 lever machine, and this is the ATM.

6 In terms of cost, the hand-counted -- let's
7 see, in terms of the low cost, the hand-counted paper
8 ballot, punch card, and optical scan are low cost. The
9 lever machines, because of the upkeep, is not a low cost --
10 considered a low cost alternative. Neither is the
11 computerized ATM style technology.

12 In terms of the ballot that is used in each
13 of these, the lever machine and the direct -- the ATM type
14 of technology are the most cost efficient, because,
15 obviously, there is only one ballot and the equipment is
16 what the voter uses, the same ballot over and over. It's
17 only the equipment that is manipulated in order to
18 determine -- let the voter determine who they want to cast
19 a vote for.

20 In terms of counting, quick and easy counting
21 is achieved used punch card and optical scan, as well as
22 the lever machine and the ATM, but certainly not hand-
23 counted paper ballot, as I mentioned before.

24 The problem with the ATM and the lever
25 machine is that there is no audit trail. If something is

1 -- someone is concerned about the machine malfunctioning or
2 when the breakdown occurred, that record is not available
3 from these technologies.

4 In terms of tampering, there is some
5 protection against tampering, both in the lever machine and
6 the ATM style machine. And in terms of guards against
7 overvoting, the best technology really is the lever machine
8 and the ATM, because they will not allow you to overvote,
9 even if you want to.

10 In terms of accessibility for visual
11 impairments, the ATM machine has modifications for visually
12 impaired. As well, most technologies have modifications
13 that are available for people who have -- need access by a
14 wheelchair.

15 Seven states and the District of Columbia use
16 the same basic type of system throughout the state. Nine
17 states have a mixed voting system. And many states don't
18 use certain kinds of equipment because in some cases there
19 are local prohibitions against it.

20 By far, the largest percentage of voters use
21 punch cards -- 34 percent. And I'm going to go to a chart
22 of that in just a minute. The largest percentage of
23 counties use the optical scan systems, and I'm just talking
24 about the raw number of counties themselves, not the voters
25 that are represented in those counties.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Counties with large minority populations are
2 most likely to use the optical scan system, and I'll talk
3 about that a little bit more in just a minute, followed by
4 the lever machine. All white counties are most likely to
5 use optical scan, and their secondary alternative is really
6 the punch card system. Many of the nation's most populous
7 counties use the punch card system.

8 This goes over kind of the history from 1988
9 to 1999 of the equipment that has been used, and I think
10 what's most interesting here is that the use of the punch
11 card has decreased -- while it has decreased
12 proportionately, it is the most used technology currently.

13 The lever machine, as you can see, is really
14 phasing out, from 33 percent back in 1988 to only 18
15 percent in use today. The optical scan has seen the
16 biggest gain, from only 7.5 percent usage back in 1988 to
17 27 percent usage today, so it's growing at the fastest
18 rate.

19 The use of the ATM is increasing, although
20 not at the same rate. And declining as well is the hand-
21 counted ballot.

22 I apologize for this, but this really shows
23 that a county with a predominantly minority population --
24 and that would be these counties here -- are really more
25 likely to use the optical scan. And the only information

1 we had in order to put this chart together was county
2 information, so it really includes all voters whether they
3 are of voting age or not. We're talking about the counties
4 themselves.

5 So the rank of use within counties --
6 counties tend to choose, if they have a predominantly
7 minority -- 50 percent or more population -- they tend to
8 choose the optical scan equipment followed by the lever
9 machine.

10 And I'm just going to jump down to the all --
11 predominantly white counties. If they are more than 90
12 percent white population, they tend to use the optical
13 scan, and the second is the punch card machine.

14 And the reason that this chart is pertinent
15 is that the counties really are the -- that's the entity
16 that determines what equipment is going to be used. So in
17 terms of who the decisionmakers are, this is what they're
18 choosing.

19 COMMISSIONER WILSON: Is it the supervisors,
20 or is it the -- who's making the decisions?

21 MS. DICKERSON: Well, sometimes it's a
22 commission or a board. But it depends. It really varies
23 from state to state, but it is a -- the county board or
24 commission is the one that makes that decision.

25 COMMISSIONER WILSON: Did you -- I mean, this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 work is amazing, but did you by any chance do it county by
2 county in terms of the -- when you say "white populations,"
3 but did you do it in terms of the affluence of the
4 counties? You know, depending upon how rich a county was?

5 MS. DICKERSON: No, we didn't do that. We
6 weren't able to get that data done in time for this.

7 COMMISSIONER WILSON: Might that be something
8 that would be interesting to do.

9 COMMISSIONER EDLEY: You could just do it
10 selectively. You could take, you know, the 30 highest
11 income counties in the country and look at that list and
12 see what they use and compare it with -- just so we could,
13 impressionistically, if there are any class/income
14 correlations with the choice of technology. That would be
15 very interesting.

16 MS. DICKERSON: We'd be very happy to --

17 COMMISSIONER WILSON: Or economically. I
18 mean, if they're making choices based on how much money
19 they have or don't have.

20 MS. DICKERSON: We'd be very happy to proceed
21 in that regard.

22 One thing that this does not show, because
23 the data is not captured -- I know that in Florida, which
24 the Commission has studied very closely, voters do have the
25 option to indicate their race on their voter -- at the time

1 of their voter registration. But that is not required or
2 not even an option in many, many places.

3 And so what this doesn't show is what
4 minorities vote on. This is what whites vote on. It only
5 shows what the counties select.

6 COMMISSIONER EDLEY: On this same track, if
7 there was any way to get a handle on counties with large
8 language minority populations, if counties that have large
9 language minority populations tend to choose certain
10 technologies over other technologies, that would also be
11 interesting.

12 MS. DICKERSON: Yes, sir.

13 The six regional offices reviewed complaints
14 within their jurisdictions, and they provided memoranda
15 listing their complaints and issues pertinent to the
16 election. Of the six regional offices, no complaints or
17 concerns were found in 18 states, and they are listed here,
18 as well as the District of Columbia.

19 Thirty-two states had at least some issues or
20 concerns, and those really ranged from -- anywhere from --
21 a lot of it was -- seemed to be fraud-related, and some
22 seemed to be, you know, it -- there were some equipment
23 concerns.

24 COMMISSIONER WILSON: Were these people who
25 had called into the office, or were they -- did you go out

1 and find that research?

2 MS. DICKERSON: Yes. The regional directors
3 conducted this survey by polling their SAC chairs, and, as
4 well, they contacted some Secretary of State's offices and
5 some counties for information. And then they summarized
6 that information in a memo to Mr. Jin, which was given to
7 us to kind of just summarize in terms of how many states
8 had problems.

9 COMMISSIONER WILSON: And what kind of fraud?

10 MS. DICKERSON: Oh, from tampering with
11 equipment perhaps, or -- it really just ranged. There was
12 a wide range of -- I can -- I would be happy to go over
13 some of them, but I --

14 COMMISSIONER WILSON: Okay.

15 MS. DICKERSON: -- it's not on the front of
16 my brain right now. I don't have them with me.

17 COMMISSIONER LEE: Could you go back to the
18 previous slide? Did I see California?

19 MS. DICKERSON: Yes.

20 COMMISSIONER LEE: Saying that there was no
21 problems, no complaints?

22 MS. DICKERSON: That's correct.

23 (Laughter.)

24 COMMISSIONER LEE: Okay. Because I know that
25 there were a couple of formal complaints filed regarding

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 manual assistance being denied. And new voters were asked
2 to show their citizenship. So I'd like you to follow up on
3 that. Maybe you can check on the other states, too.

4 MS. DICKERSON: Okay. I have Mr. Montez's
5 memorandum here, and that was not one of the states that he
6 indicated that there had been any complaints received. But
7 I'll doublecheck.

8 COMMISSIONER LEE: Thank you.

9 COMMISSIONER WILSON: You might want to check
10 with Vice Chairman Reynoso, because I think he would
11 discuss knowing about that.

12 MS. DICKERSON: Okay. We will do that.

13 Okay. And we went over that. We looked at
14 other worthwhile possible reviews that the Commission might
15 ask us to go into, and some of them were -- number one, the
16 analysis of uncounted votes.

17 In that, we thought that it might be
18 effective to examine the level of undervoting and
19 overvoting, to the degree that we could, and determine if
20 there is a disparity in the number of uncounted votes
21 perhaps between minority and non-minority jurisdictions.

22 If so, we could identify some of the possible
23 reasons for the disparity, such as poor management or poor
24 finances, or improper procedures. We just really don't
25 know. But that would be something that perhaps would lead

1 to perhaps the Commission making some recommendations for
2 preventing any recurrence of that in future elections.

3 As far as expanding participation, we thought
4 it could include other things, a review of policies, that
5 might induce more Americans to vote, and that might make
6 voting easier.

7 For instance, internet voting or expanding
8 polling hours, creating uniform closing times, Election Day
9 as a national holiday. All of these have been written
10 about, and it seems like they would be worthy of looking
11 into to see if perhaps they make sense from a national
12 standpoint.

13 As far as eliminating barriers, the
14 Commission could address this concern really in many ways.

15 For example, careful examination of poll worker training
16 programs in each state, assess whether they adequately
17 prepare individuals to really do that job. They really
18 have the power to facilitate or deny a vote, and it's not
19 really evident that they receive training that is
20 commensurate with that power.

21 In terms of reform initiatives, numerous
22 national, state, local task forces, and working groups have
23 begun to examine really every component of the voting
24 system. And the Commission might want to consider
25 monitoring the efforts of these groups and tracking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 recommendations that may have resulted from their studies
2 and adding a voice to the reform dialogue to ensure that
3 the Commission's priorities are appropriately reflected.

4 Also, last, states don't appear to have
5 established systems or procedures for internally monitoring
6 and documenting voter irregularities, nor do state or
7 county entities appear to have well-established procedures
8 /to track complaints.

9 It's unclear, really, based on our
10 preliminary analysis, which entity or administrator is
11 really responsible for investigating allegations or
12 complaints, really nationwide, and the Commission might
13 want to determine whether there is a disconnect between
14 responsibility and practice and make recommendations for
15 state standards with respect to handling complaints.

16 COMMISSIONER WILSON: It sounds like a good
17 point.

18 COMMISSIONER EDLEY: Elsie was just saying
19 earlier that -- on this point about California and other
20 states, no indication of their being irregularities --
21 well, that's what we heard from the Florida Secretary of
22 State also, that there were no problems. So I think this
23 --

24 MS. DICKERSON: In Florida, right.

25 COMMISSIONER EDLEY: In Florida. So --

1 COMMISSIONER MEEKS: Even in the election
2 offices. So where, you know -- I don't know where the
3 regional director saw it, I mean, who they asked if there
4 were complaints. I mean, you know, the Attorney General
5 has that -- yet the Secretary of State wasn't aware of any,
6 and neither were, you know, some of the other offices that
7 should have had -- like the DA's office.

8 CHAIRPERSON BERRY: But it would seem to me
9 -- why don't we let, if you could, let Terri finish. Are
10 you almost finished, Terri?

11 MS. DICKERSON: There was only one more point
12 I wanted to make.

13 CHAIRPERSON BERRY: And then we'll -- can you
14 do that?

15 MS. DICKERSON: I've got one --

16 CHAIRPERSON BERRY: I beg your pardon?

17 COMMISSIONER MEEKS: We've been discussing it
18 as the points come up.

19 CHAIRPERSON BERRY: I know.

20 COMMISSIONER MEEKS: But I will defer.

21 COMMISSIONER EDLEY: We were having more fun
22 when you were out of the room.

23 (Laughter.)

24 CHAIRPERSON BERRY: When the cat's away --
25 no, go ahead.

1 MS. DICKERSON: There is just one more point
2 I wanted to make sure that I expressed, and that was the
3 regional offices -- really, all six -- indicated that
4 nothing needs to be done in their jurisdictions in terms of
5 taking further actions or investigating. And I'll just
6 leave it there.

7 CHAIRPERSON BERRY: Okay. And we can turn
8 the lights on, so we can see each other. All right.
9 Somebody switch the light. No, not that light.

10 Okay. Thank you very much, Terri.

11 MS. DICKERSON: Thank you.

12 CHAIRPERSON BERRY: Wonderful presentation.

13 The issue for us, the reason why we asked
14 Terri to do this, was to figure out whether we thought at
15 this point we needed to go to some other states. That was
16 the reason why we had this done, remember?

17 And you just said at the end, so softly that
18 I almost didn't hear you, that the regional directors
19 recommended -- they said that they really didn't think we
20 needed to go -- come to their states now. Is that what you
21 said?

22 MS. DICKERSON: That's correct. All six
23 indicated that.

24 CHAIRPERSON BERRY: Okay. So we have to
25 decide whether we want to decide -- whether we wish to go

1 now, or whether we wish to defer and wait until later. And
2 I have a suggestion to make in that regard. The suggestion
3 is that we might have the staff draft up letters to the
4 governors of the states in which there were problems, and
5 simply point out to them that our regional offices and SACs
6 told us that there were some issues and problems in their
7 state, and we would like to know, one, do they believe
8 there are problems, and, two, what they are doing about it,
9 and see what kind of information we get, you know, from
10 them.

11 That might be one, you know, possibility, and
12 that information might help us to decide, if we decide not
13 to go now, but that in any event that I think that that
14 might be something that would be promising in terms of the
15 results. But let's just have a discussion now about what
16 we think. Yes? Are you cold, Commissioner Wilson?

17 (Laughter.)

18 COMMISSIONER WILSON: No, I just wear
19 mittens. Thank you, Madam Chair.

20 (Laughter.)

21 I wear mittens when it's very comfortable in
22 the room and --

23 (Laughter.)

24 I don't need these. Thank you.

25 However, I would like to say that one thing

1 that -- thank you very much for that because that was a
2 huge amount of work that you obviously put into that.

3 CHAIRPERSON BERRY: Yes, and the staff.

4 MS. DICKERSON: Thank you.

5 COMMISSIONER WILSON: And the last point that
6 Ms. Dickerson had made was something that leads me to think
7 that -- which was that these states -- once complaints are
8 made, there isn't an apparatus that's set up state by state
9 to deal with the complaints and then investigate the
10 complaints.

11 And I'm wondering if maybe we want to have
12 some kind of a briefing here where we can have further
13 discussion of that, so that we can come up with some
14 suggestions to put -- to help the states set that up.

15 CHAIRPERSON BERRY: Commissioner Edley?

16 COMMISSIONER EDLEY: I had exactly the same
17 thought. It reminded me of the situation with the police
18 departments 30 years ago before the widespread advent of
19 civilian review boards, and the like, where you could go to
20 most any police department and say, "Have you had any
21 complaints about police abuses?" and, of course, the answer
22 was always no, because there is both the combination of
23 self-interest in not declaring that there had been
24 problems, but also no mechanism for collecting what
25 dissatisfaction there might be.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I think if at some point -- and maybe for our
2 final report -- we were able to opine on useful mechanisms
3 that states could adopt to more reliably detect
4 difficulties and report those, make those known to the
5 public, I think that would be a very useful service for the
6 Commission.

7 In the meantime, however, I was going to ask
8 Ms. Dickerson whether -- I don't quite understand what it
9 is that the regional -- our regional directors did. Was
10 there a particular protocol that they followed to determine
11 whether or not there were problems within the states in
12 their regions?

13 MS. DICKERSON: There wasn't. They --

14 COMMISSIONER EDLEY: Because we might think
15 about that as something to happen over the next couple of
16 months. For example, you could ask regional directors to
17 contact some community-based organizations or civil rights
18 organizations rather than just the most obvious senior
19 state officials, to see if there's something bubbling
20 beneath the surface.

21 STAFF DIRECTOR JIN: Can I clarify just a
22 little bit? And certainly some follow up could be
23 appropriate. We encourage the regional directors to work
24 with their staff, as the Commissioners suggested in
25 December. But we gave them some leeway in terms of what

1 else to do, and some of them did contact various civil
2 rights organizations, and some contacted their officials.

3 So, yes, I mean, I don't want to give the
4 impression they all did uniformly, very aggressively, but
5 some of them did. Different regional directors used
6 different methods.

7 CHAIRPERSON BERRY: Yes, Commissioner Lee?

8 COMMISSIONER LEE: I'd like to see the
9 comparison for the folks who contacted civil rights groups.

10 Did they come up with more problems? And some of the
11 regional offices -- just contact, you know, one or two of
12 the senior officials -- whether they came out so-called
13 clean.

14 COMMISSIONER EDLEY: And maybe find out the
15 answer to Vicky's -- I mean, maybe if the regional
16 directors or the SACs or somebody could also try to find
17 out in each state what kind of mechanisms they have for
18 collecting complaints, for identifying whether complaints
19 exist, because if we can find -- if we can identify some
20 best practices around the country for detecting whether
21 there are difficulties, that we could hold those up as
22 models.

23 CHAIRPERSON BERRY: Maybe if we could ask --
24 if we write these letters to the governors, maybe we could
25 ask them and the secretaries of state to give us the

1 information from each one of those states.

2 And then, if we need to have a briefing, as
3 Vicky suggested, we could call in people to have them talk
4 about it. But maybe we should, first, just write the
5 letters and ask them to give us the information.

6 Yes?

7 COMMISSIONER MEEKS: Wouldn't you say the
8 secretaries of state would be the best place to --

9 CHAIRPERSON BERRY: In the states where -- it
10 depends on how she did this -- how did she do this. But I
11 think the governors -- the reason why I think the governors
12 need to be written to about the fact that there are
13 problems in their state is like the State of Florida, which
14 we spent so much time on.

15 In every state, whatever function is carried
16 out in the state, the governor has the responsibility,
17 under the state constitution, to see to it that all of the
18 laws are faithfully executed. And as we pointed out to the
19 Governor in Florida, that includes the voting laws.

20 Even though you have a Secretary of State, if
21 you had a problem in the area of agriculture, ultimately --
22 people may ask the Secretary of Agriculture in the state,
23 or whatever, but ultimately people want to know what the
24 governor is doing about that. The governor is supposed to
25 be the fountain of all wisdom and responsibility in their

1 state.

2 So if you start with the governor, then the
3 governor -- he can ask anybody he wants, or she -- we have
4 women governors, too, I understand -- can ask the secretary
5 of X, Y, and Z, or he can even copy the secretary of X, Y,
6 and Z. But I think that governors have to be held
7 accountable and not let them just, you know, slip off the
8 hook until they want to do something for PR purposes, and
9 then they say, "I'm responsible." But otherwise they say,
10 "I'm not."

11 Yes, Commissioner Wilson?

12 COMMISSIONER WILSON: One other thing I'd
13 like to suggest is that each of the Commissioners be given
14 a copy of Ms. Dickerson's report. And that maybe --

15 CHAIRPERSON BERRY: It's not a report. It's
16 a briefing paper that's in progress.

17 COMMISSIONER WILSON: A briefing paper. A
18 briefing paper that's in progress. Briefing hyphen paper
19 that hyphen is in progress. Hyphens in between all of
20 those words.

21 And because we had -- each of -- number of
22 the Commissioners had spoken out of order while the
23 Chairperson was out of the room. And we were commenting on
24 certain points that had been raised and made certain
25 suggestions about possibly doing further research. And

1 maybe what we could do is look at it and see if we have any
2 more suggestions.

3 CHAIRPERSON BERRY: Maybe she could give you
4 a copy of the transparencies, the set of transparencies.
5 How's that?

6 COMMISSIONER WILSON: Transparencies.

7 CHAIRPERSON BERRY: The things you were
8 looking at?

9 COMMISSIONER WILSON: Oh, yes, that's what
10 I'm saying.

11 CHAIRPERSON BERRY: Okay.

12 COMMISSIONER WILSON: That's all I'm saying.
13 I don't want photographs.

14 MS. DICKERSON: Oh, okay. I understand that
15 there are copies of the tables that I used.

16 CHAIRPERSON BERRY: That's right. The stuff
17 that you put up on the --

18 COMMISSIONER WILSON: Just what you put up
19 there.

20 MS. DICKERSON: Yes, it's already printed
21 out.

22 CHAIRPERSON BERRY: Okay.

23 MS. DICKERSON: You did ask a question while
24 the Chairman was out of the room, and I did want to -- I
25 found it in my notes, and if I could just for one moment

1 answer your --

2 COMMISSIONER WILSON: Sure.

3 MS. DICKERSON: -- question about fraud and
4 tampering. There were persons who had recently moved who
5 voted twice because -- and this was reported in New
6 Hampshire, because their change of addresses were not
7 verified. In New Jersey, there were as many as -- well,
8 thousands of voters who were deceased, people who were
9 still on the rolls. But nonetheless, a vote was cast under
10 those persons' names. That occurred in New Jersey. And
11 there was -- in Tennessee, pages of registered votes were
12 missing from the whole list.

13 CHAIRPERSON BERRY: And this information came
14 from?

15 MS. DICKERSON: This came from those
16 respective regions.

17 CHAIRPERSON BERRY: The regional offices?

18 MS. DICKERSON: The regional offices, yes.

19 CHAIRPERSON BERRY: So it's not information
20 that has been verified as we do in the hearing process, but
21 it is the information that they gave you.

22 MS. DICKERSON: That's correct.

23 CHAIRPERSON BERRY: Okay.

24 MS. DICKERSON: She asked me specifically
25 with regard to fraud, whether they indicated it could have

1 been fraudulent, and those were the examples that they
2 indicated in the various regions.

3 CHAIRPERSON BERRY: Yes, Commissioner Lee?

4 COMMISSIONER LEE: I was out of the room for
5 a couple of seconds. I don't know if you have touched on
6 this issue on the language assistance area. I'm interested
7 to know whether there was any complaint that you had found
8 on the application of it.

9 Also, if you have contacted the DOJ, whether
10 there was any uniform standard that they had required local
11 jurisdictions to implement, because after the year 2000
12 census there will be a lot more jurisdictions that will
13 fall under 203. And it would be really timely where we can
14 come up with some good practices that you found for some
15 problem areas that you can alert other jurisdictions.

16 MS. DICKERSON: Yes.

17 COMMISSIONER LEE: So if you could look into
18 that, that would be great.

19 MS. DICKERSON: In answer to your question,
20 no, we did not contact DOJ in that regard, but we will be
21 happy to -- very happy to if the Commission would like us
22 to.

23 COMMISSIONER LEE: Thank you.

24 CHAIRPERSON BERRY: Yes, Commissioner Wilson?

25 COMMISSIONER WILSON: The two states that I

1 had read about reports of problems were in Missouri and
2 Illinois. Now, in your findings, did you come up with
3 anything that seemed to be pronounced in those states?

4 MS. DICKERSON: I apologize that I don't have
5 it configured that way, and I should have, in anticipation
6 of your questions. What I have in my notes is the --
7 perhaps the problem of maintaining rolls, and then I have a
8 list of, you know, instances in which that problem, you
9 know, would have occurred in some states. So I couldn't
10 say definitively --

11 COMMISSIONER WILSON: Okay.

12 MS. DICKERSON: -- that I didn't. So I
13 apologize.

14 COMMISSIONER WILSON: That's all right.

15 MS. DICKERSON: It would take me a long time
16 to pick it out of this document.

17 COMMISSIONER WILSON: All right. That's
18 fine.

19 MS. DICKERSON: But I can summarize that if
20 you'd like.

21 CHAIRPERSON BERRY: What do we think about
22 the issue of whether we should send letters, whether we
23 should go somewhere? What conclusion do you -- the
24 regional directors say we don't need to go anywhere now.
25 Is there any reason for us to decide that we should anyway,

1 despite the fact that they -- yes? -- at this time,
2 although we could reconsider it later. Yes, Commissioner
3 Edley?

4 COMMISSIONER EDLEY: I don't think we, at
5 this point, need to go anywhere. But I do think that we've
6 identified a number of followup questions for the regional
7 directors and SACs that -- I don't want to overwhelm the
8 staff with -- with new tasks.

9 I don't want them to spend the entire year on
10 this specific -- particular project, but I think if you and
11 the Staff Director could do -- perhaps do a little triage
12 on our suggestions, and some reasonable follow up to this
13 briefing, I think it would really inform our final report.

14 STAFF DIRECTOR JIN: We certainly will do
15 that.

16 CHAIRPERSON BERRY: And do you like the idea
17 of writing to the governors and the officials, getting more
18 information and telling them we'd like follow up? Okay.
19 We will do that, then.

20 All right. That will -- yes, Commissioner
21 Lee?

22 COMMISSIONER LEE: I would also suggest
23 writing to the attorney general's office also, because, you
24 know, they're looking at this huge voting rights issue, and
25 they certainly could benefit from this information.

1 CHAIRPERSON BERRY: Okay. All right. Well,
2 that is what we will do. And with that, we will thank you
3 very much --

4 MS. DICKERSON: Thank you.

5 CHAIRPERSON BERRY: -- Terri, for this
6 wonderful job that you and your staff did on such short
7 notice.

8 **V. Project Planning**

9 CHAIRPERSON BERRY: The next item on the
10 agenda is the Project Planning. We have to do project
11 planning and make these decisions for the Staff Director,
12 so that he will know what we intend for him to do. So can
13 we figure out a way to do this as expeditiously as
14 possible?

15 STAFF DIRECTOR JIN: With the caveat that the
16 Commissioners could decide they don't want to pursue any of
17 them. These are just suggestions that were raised in
18 different contexts, but I think that provides a starting
19 point for the Commissioners.

20 CHAIRPERSON BERRY: This is 2003?

21 STAFF DIRECTOR JIN: Fiscal year 2003.

22 CHAIRPERSON BERRY: Okay.

23 STAFF DIRECTOR JIN: The first two reports,
24 or the first two potential projects I'd like to mention,
25 one is the media's role in civil rights. That one was

1 suggested by an Office of Rights evaluation. There is a
2 description of that under section 1, under kind of the
3 Appendix I. So that is located in there.

4 The second project I want to mention is
5 consumer racism and sexism. That project was suggested by
6 an Office of General Counsel. Again, that one is described
7 a little bit more in detail under Section 1 also.

8 Now the next five projects that I mention are
9 projects that I think in the last year, year and a half or
10 so, when we culled through the materials, that the
11 Commission has considered over that time that seemed like
12 the Commission has had an interest in it, but has not
13 specifically identified a particular year to review it.

14 Again, the first three are also in Section 1
15 of the document. The last two projects I will mention are
16 in Section 2.

17 The first one is Federal block grants. That
18 could also serve as a statutory report.

19 The second one is measuring discrimination in
20 America.

21 The third one is environmental justice.

22 The last two, which are found in Section 2,
23 are racial profiling and financial aid.

24 CHAIRPERSON BERRY: This is for 2003?

25 STAFF DIRECTOR JIN: These are all for 2003,

1 potential projects.

2 CHAIRPERSON BERRY: Refresh our recollection.

3 What do we have for 2002?

4 STAFF DIRECTOR JIN: Okay.

5 CHAIRPERSON BERRY: Just so we know.

6 STAFF DIRECTOR JIN: For 2002, we have the
7 statutory report. It is going to be the 10-year follow-up
8 on Commission of Civil Rights reports, how effectively have
9 agencies responded to Commission of Civil Rights
10 recommendations.

11 The second one is expanding economic
12 opportunities for minority youth. Now that one we are
13 going to -- actually, that one OCRE has already done some
14 preliminary work. They are going to do some more work in
15 the summer. So a briefing paper will be provided.

16 Then what's going to have to happen in 2002
17 is that there are roundtables being scheduled that OCRE
18 will take charge of. As it now stands, the Office of
19 General Counsel is responsible for consultation.

20 The third project is crossing borders.
21 Again, that will be a continuation of what we have already
22 started. Again, how much work has to be done on that will
23 depend on how much progress is made during the summer. But
24 we expect that that will be mostly in 2002, report writing.

25 The fourth project is Native Americans. This

1 is a project on I'm going to show you some justice. Again,
2 this project, we will begin in 2001 in the summer, but we
3 don't expect to finish it then. We're not quite sure on
4 that one, what will be done in 2001 and what will be done
5 in 2002.

6 The next project which will be started in
7 2002 and hopefully finished in 2002 are gender disparities,
8 employment, economic development, and healthcare issues.
9 That will include both hearings and report writing.

10 Then finally, civil rights implications of
11 various education issues. That's the topic that we talked
12 about the last couple months. We'll expect to have a
13 briefing on next month. But in terms of again, hearings
14 and actual report writing, that will be we assume a 2002
15 project.

16 CHAIRPERSON BERRY: Is that it?

17 STAFF DIRECTOR JIN: Yes. I was just going
18 to comment frankly, this is kind of a full plate, but it
19 doesn't leave much room for emerging new issues and stuff
20 like that. If that happens, there might have to be some
21 tradeoffs.

22 CHAIRPERSON BERRY: But these projects for
23 2002 were approved based on the budget that we submitted.
24 Right? Which we didn't get, obviously.

25 STAFF DIRECTOR JIN: Correct.

1 CHAIRPERSON BERRY: Which means that we
2 obviously can't do all these projects. Isn't that right?

3 STAFF DIRECTOR JIN: Yes. I think that's
4 correct.

5 CHAIRPERSON BERRY: So that means that some
6 of these 2002 ones have to be knocked out or pushed ahead
7 or dropped.

8 STAFF DIRECTOR JIN: I think realistically
9 that's the case.

10 CHAIRPERSON BERRY: Because they are not
11 going to give us the money that we need, especially if we
12 keep doing things like going to Florida and beating up on
13 the Governor, you know, in their view, and all that sort of
14 stuff, and working on emerging civil rights issues.

15 So this is a lot, even if we had the money,
16 this seems like a lot to do. I am only asking because I
17 know we want to do crossing borders. As soon as we finish
18 the Florida report, we need to go somewhere to visit some
19 of these centers and we need to start working hard on these
20 immigration issues.

21 VICE CHAIRPERSON REYNOSO: Yes. We had
22 agreed that that would be the next matter.

23 CHAIRPERSON BERRY: We had agreed to do that.
24 That's the next thing.

25 The Native American project, we agreed to

1 start it this year. So we know that those two are
2 priorities. We also, the economic opportunity for minority
3 youth has been around since Heck was a pup. We said we
4 would do it. The gender disparities, because we haven't
5 done anything on gender per se in a long time, but that's a
6 lot of stuff.

7 We know we want to do Native Americans,
8 crossing borders, and we have a statutory report. I'm not
9 sure -- you say a lot of work has already been done on the
10 economic opportunity. Is that right?

11 STAFF DIRECTOR JIN: Yes. I mean it's all
12 relative of course, but the Office of Civil Rights
13 Evaluation has done a fair amount of preliminary work on
14 economic opportunities.

15 Terri, do you want to add anything to that?

16 MS. DICKERSON: We've done some work.

17 STAFF DIRECTOR JIN: Let me ask. I don't
18 want to be mis-speaking.

19 MS. DICKERSON: No. That's correct. At this
20 point, it is a briefing paper. We have done some work
21 because I think we were asked to go back and just indicate
22 what it is we would actually look into in sort of briefing
23 form. Then I think the decision was thought was to be
24 made, that there was going to be more clarification from
25 the Commission about what the project would reflect.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 So we have done some work on the briefing
2 paper, yes.

3 STAFF DIRECTOR JIN: I think that's a very
4 good point. Let me just kind of maybe put this in context.

5 It is reasonable to distinguish between briefing paper and
6 the follow-up, the roundtables and the consultation. I
7 mean I think it's reasonable to decide that the briefing
8 paper is very helpful, but that perhaps consultations are
9 needed are roundtables and needed, or that perhaps the way
10 to do some of that could be different than originally
11 proposed, if you take the resources.

12 CHAIRPERSON BERRY: I really think -- let's
13 think about this, guys. At the time that, economic
14 opportunity thing was proposed, it was a hot front-burner
15 issue in terms of minority youth and there are still
16 problems. But it envisioned a massive project, roundtables
17 and research things and hearings, and all sorts of stuff,
18 that at this point it's still an important project, but I'm
19 not sure we ought to do all of that on that project
20 compared to all the other stuff that we have to do.

21 Immigration is going to take a lot of time
22 and resources. Maybe we ought to compress the economic
23 opportunity minority youth project into either a research
24 paper and maybe some roundtables, but not have hearings,
25 roundtables, and research papers. That would get us some

1 mileage, some room for something else. I don't know.

2 Vicki, did you want to say something about
3 that?

4 COMMISSIONER WILSON: You are probably not
5 going to like what I have to say.

6 CHAIRPERSON BERRY: You are going to say that
7 we should do it anyway. Okay.

8 COMMISSIONER WILSON: No. I am not going to
9 say that. I am going to say something completely
10 different, but that I've been saying. I keep hearing
11 myself say this. That is, that I was sure, because I know
12 I raised this point before, that in 2002, not in 2003, we
13 were going to bring up this poor ignored subject called
14 environmental justice.

15 CHAIRPERSON BERRY: We are going to have a
16 briefing on it the month after next.

17 COMMISSIONER WILSON: That is correct. But
18 that we were going to have a discussion of it in 2002.

19 CHAIRPERSON BERRY: In the project.

20 COMMISSIONER WILSON: Yes.

21 COMMISSIONER MEEKS: That can't be true,
22 because by the time you joined the Commission, we were
23 already I think set for projects for 2001 and 2002, so that
24 would have fallen into 2002.

25 COMMISSIONER WILSON: At my very first

1 meeting here, we were having a -- it was a planning
2 meeting. The question arose about certain projects that we
3 wanted to push forward. This was one of them. I, in my
4 ignorance and naivete, raised my hand and said that I would
5 like this to be one of them.

6 CHAIRPERSON BERRY: And you know what we did
7 in response to your -- I remember now.

8 COMMISSIONER WILSON: Ignored me.

9 CHAIRPERSON BERRY: No. In response to your
10 comment, we said why don't we do a briefing on it this
11 year, Commissioner Wilson.

12 COMMISSIONER WILSON: And then discuss.

13 CHAIRPERSON BERRY: And then discuss it,
14 which is why we put it on for a briefing. But we didn't
15 actually change the thing from three to two. We just said
16 we'd do the briefing and then discuss it. That's what we
17 said.

18 So it is open. It's up for grabs in terms of
19 the discussion. But what I was about to ask the
20 Commissioners is one, do you believe we ought to keep this
21 2002 list the way it is, or should we push some of the
22 stuff that's in 2003 back into 2002, and get rid of
23 something that we said we'd do for 2002?

24 We know we want crossing borders and Native
25 American administration of justice. These, yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON REYNOSO: Madam Chair, I
2 think we'd be lucky, frankly, in 2002 to get to do crossing
3 borders and Native Americans. I suggest that we think
4 about expanding the role that we've given briefing papers
5 in the past, because we've had briefings. Because we've
6 had excellent briefings, but I haven't seen -- maybe I just
7 haven't noticed that we actually issued a report on those.

8 CHAIRPERSON BERRY: No, we didn't.

9 VICE CHAIRPERSON REYNOSO: On those briefs in
10 such a way that the public can also understand the things
11 that we've learned.

12 The expanding opportunities for minors, for
13 minority youth, is still very important. I would suggest
14 that we proceed with the briefing. I am suggesting maybe
15 we have a briefing, but maybe think of publishing something
16 based on that briefing.

17 I have always thought that environmental
18 justice is very important. Whether or not we could do that
19 even for the environmental justice briefing, I don't know.

20 But I remember some years back, we had a briefing on the
21 issue of civil rights and legal services programs, which I
22 thought was an excellent one. I really had hoped that we
23 could have put something like that in black and white to
24 let Congress and other folk know of that relationship.

25 So I am just suggesting that maybe we ought

1 to do somewhat more with the briefings, which I think have
2 been generally excellent.

3 CHAIRPERSON BERRY: Yes, Commissioner Edley?

4 COMMISSIONER EDLEY: My recommendation is
5 that gender disparities be a briefing. That is to say that
6 we just ask some researchers from agencies and from
7 academic institutions to come brief us on gender
8 disparities in several different sectors, and that we ask
9 them for some different testimony. Unless something
10 emerges from that briefing that is surprising, I think that
11 that's it. I think it is period.

12 Second, I think that the expanding economic
13 opportunity for minority youth I would favor doing nothing
14 on that subject, given our limited resources and the
15 opportunity costs.

16 From the beginning, when I first heard about
17 this, I had thought that as important as it is in terms of
18 social and economic policy, it is not as central to the
19 mission of this Commission as many of the other problems
20 that we have on our plate.

21 Frankly, I would not even -- I would like to
22 see the paper that OCRE has just about completed. But
23 otherwise, I would be strongly inclined to table that
24 subject in light of others. I think certainly the
25 environmental justice is a higher priority for us to get to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 than either of the two things I just mentioned.

2 I have a mixed view about the 10-year report
3 on civil rights reports. On the one hand, I think as a
4 matter of our own institution building, as a matter of our
5 struggle to try to be more effective and to get more
6 resources from the Congress for our work, somehow we need
7 to sit back and try to figure out what's been going on, and
8 how could the Commission be more effective.

9 In part, I view this as a way to do that, as
10 well as a way to try to recall agencies to focus on some
11 problems that have been highlighted for them in the past.

12 So I suppose what I would be in favor of is
13 trying to strike a balance here, is conceptualizing this
14 10-year report on civil rights as a staged thing, the first
15 of which requires very little labor on our part. That is
16 simply to write to the agencies and say here is what we
17 told you over the past decade, what have you done? And ask
18 for something back from them.

19 Then, after the staff takes a look at that,
20 make a judgement as to whether we need to do anything more
21 elaborate than that. So I'm suggesting really shifting
22 that to a real second tier kind of an agenda item, as
23 opposed to necessarily a big labor-intensive investment on
24 the staff's part.

25 Finally, and then I'll subside, is on the

1 civil rights implications of education issues, I mean
2 folks, I have got to tell you there's stuff going on in K-
3 12 school reform that has enormous implications for the
4 civil rights acts, Title VI, Protection Clause, equity in
5 resource allocation, all of these issues of accountability
6 and high stakes testing, and bilingual education and the
7 like.

8 We are going to have a briefing on those, I
9 understand, later in the spring, but given the pace of
10 change in the policy realm, and all the litigation that's
11 going on around the country on issues like resource equity
12 and testing, we need to be I think aggressively in the mix
13 on this. Congress right now, they are just about to go to
14 the Senate floor on major Federal legislation on this
15 issue, and it's being considered in state capitals around
16 the country.

17 I think -- I really feel as though the
18 Commission has a duty to speak to policymakers and to
19 communities and say here's what the civil rights stake is
20 in the legislation that you are considering. It's on the
21 radar screen the way it should be.

22 So I think that after we have this briefing,
23 we are going to want to jump into this with both feet
24 because there is so much going on around the country that
25 has such important implications for children and families.

1 So I would like to put a couple of asterisks next to that
2 one, and urge, recommend the motions on what I mentioned
3 earlier.

4 CHAIRPERSON BERRY: Okay. Yes, Commissioner
5 Lee?

6 COMMISSIONER LEE: Thank you, Madam Chair. I
7 think that the immigration project and the Native American
8 project has been a top priority and remains the top
9 priority. Looking at all the other projects, I really
10 can't see how we can fulfill all of them and still leave
11 room to deal with emergency matters that are bound to come
12 up, like this previous year.

13 So my recommendation is the expanding
14 economic opportunity project came out because at that time,
15 there were challenges on different fronts such as
16 affirmative action affecting higher ed, changes in the
17 Community Reinvestment Act that would really impact youth
18 in minority communities. So I still believe that it is an
19 important project, maybe to be scaled down to be like
20 either a consultation or briefing, because even if it's a
21 briefing, we can at least issue the report and have some
22 sort of findings of recommendations. So I would strongly
23 support keeping the opportunity project in some shape or
24 form.

25 One final thing about the 10-year report. I

1 remember, I think it was you, who suggested that different
2 department secretaries would come and appear before us and
3 tell us what they've done. Then maybe we should just do it
4 in a simple report form to address that one.

5 Finally, on the -- one thing that always
6 bothered me was on the staff director's report, we have
7 always mentioned putting on hold on this one particular
8 project. I thought we just threw it out the door many
9 years ago, which was the discrimination in professional
10 sports.

11 Maybe once and for all, we should look at the
12 project of the staff that's been given directions on
13 working. Even though they are on hold, maybe we should
14 just vote once and for all, just to take them off the plate
15 forever to free up some staff time to deal with more urgent
16 matters.

17 CHAIRPERSON BERRY: Can we agree and have
18 consensus that we for the moment drop discrimination in
19 sports as an issue, just for the moment? Not that it's not
20 an important issue. Can we have consensus on that so we
21 don't have to -- we can discuss all the others?

22 Is there somebody who feels strongly that
23 they want to devote the Commission's resources to this
24 issue at this time? No one feels strongly, so without
25 objection, we don't even have to discuss that one. You can

1 drop it from your reports, Staff Director.

2 The query about the statutory report, what
3 the agencies have done. As you know, our statute requires
4 us to do one monitoring report every year, at least one,
5 one enforcement report, which talks about how a particular
6 agency or set of agencies are enforcing the civil rights
7 laws.

8 As I understand it, the statutory report,
9 which we refer to that as a statutory report because the
10 statute requires it, for next year was going to be that
11 report. Do I understand that correctly?

12 STAFF DIRECTOR JIN: That's correct.

13 CHAIRPERSON BERRY: So the question is how
14 much work has the staff already done on that report?

15 STAFF DIRECTOR JIN: On the 10-year report?

16 CHAIRPERSON BERRY: Yes.

17 STAFF DIRECTOR JIN: Not on the 10-year
18 report.

19 CHAIRPERSON BERRY: They haven't done any
20 work on that report yet, which means it's up for grabs in
21 terms of how we want to respond, to whether we want them to
22 still do it or whether we want them to do something else.

23 Now we can have them do it in a slimmed down
24 fashion we discussed before, having these statutory reports
25 not be humongous, multi-volumed whatever, so that OCRE that

1 has responsibility for it is free to do all these little
2 things that we keep coming up with all the time that we
3 look to OCRE to do for us.

4 Maybe it would fit in with what you said,
5 Christopher, and what others said, if we simply kept it as
6 a statutory report, but with the understanding that they
7 were to go about it in the way that was described, and it's
8 not one of these humongous spending the whole year doing
9 nothing instead of six volumes of whatever. And that that
10 might serve our purpose.

11 COMMISSIONER EDLEY: That's certainly an
12 option, Madam Chair, but Commissioner Lee was just noting
13 that we could do a similar thing with the education issue.

14 I think a chunk of the education issue could be framed as
15 taking yet another look at what OCR, the Office for Civil
16 Rights, Department of Education does, by way of looking at
17 the issues of test abuse and resource allocation, and how
18 they implement Title VI and the Bilingual Ed Act and the
19 various statutes affecting disability rights and gender
20 rights and so forth.

21 I would certainly view that as being a piece
22 of the broader thing that we'd be doing on education. So
23 that would also discharge our obligation to do a statutory
24 report. So you could do it either way.

25 If there is a resource crunch -- let me back

1 up and just be crystal clear here. Who is our audience?
2 For the 10-year report, it seems to me we have got three
3 goals. One is to do what we can to remind Federal agencies
4 that we have given some important suggestions over the past
5 10 years, and especially with all these new appointees,
6 they ought to take a look at them and figure out a work
7 plan to address them.

8 Second, it is to give us ideas about how we
9 could be more effective over time in our interactions with
10 agencies.

11 Third, it's to try to show Congress that
12 look, there's a body of work here that's worth
13 investigating in the years ahead.

14 I think we could probably achieve all three
15 of those objectives without putting five person years of
16 work into producing a tome.

17 Now look at education. With respect to
18 education, there is a huge audience of people who are
19 making education policy choices at the Federal, state, and
20 local level with dramatically important implications for
21 these various protected communities. For the most part,
22 they are making these policy choices without having civil
23 rights concerns central to their understanding of what is
24 at stake in these policy debates.

25 I think we are the people to remind them

1 about that. So I would not like to give short shrift to
2 that agenda, given the immediacy and the pace of change in
3 the education arena.

4 CHAIRPERSON BERRY: I'll recognize you in
5 just a moment. Thirty seconds.

6 The point I would make also that we should
7 consider, it is my view, based on being here during the
8 last 10 years and more, and watching everything that goes
9 on, that when Terri does the statutory report on what's
10 happened with our recommendations in the last 10 years,
11 most of the recommendations that the Commission made about
12 better ways for agencies to do things or that they ought to
13 do, they did it.

14 Most of the recommendations that OCRE made
15 about you ought to look at this or that, because these are
16 very operational nuts and bolts kinds of things, they did
17 it.

18 COMMISSIONER EDLEY: That's a good story.

19 CHAIRPERSON BERRY: So it would be good to do
20 the report to tell that story, even though I already know
21 that in most cases that is what happened. But that is not
22 the end of the discussion.

23 I mean the discussion, where you are reaching
24 to on the education thing, is that even if they did do most
25 of what we said, there are all these issues that they

1 haven't dealt with, and that we need them to deal with not
2 only in K-12 that you mentioned, but at higher education
3 too, where OCR, has failed to come to grips in the Clinton
4 Administration -- I don't know what they are going to do in
5 the Bush Administration -- with a whole lot of these
6 issues.

7 The issues are front-burner issues that
8 everybody in the country is concerned about. So it could
9 be very well that we either don't tell the first story for
10 now, it's a resource problem, and switch to the education
11 one because that's really a front-burner thing now, which I
12 would find interesting and acceptable.

13 I would only point out that for most of those
14 nuts and bolts things, you are going to find out that if we
15 said you could process this better if you did that or if
16 you issued this thing, you could do that or that guidance,
17 they did something on it.

18 Commissioner Thernstrom?

19 COMMISSIONER THERNSTROM: I am a little
20 puzzled by something, and I apologize for being out of the
21 room and I may have missed the answer to this. But I agree
22 that there are many civil rights-related educational
23 issues, both in the K-12 years and in higher education, and
24 that they should be explored by this Commission. I think
25 it is a good topic.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 But I also think that full economic
2 opportunity is a basic civil rights issue. I am not sure
3 why the distinction is being made on grounds of expertise
4 between the two issues. That is, both of them require a
5 certain social science sophistication in order to
6 investigate properly. It seems to me that if we have the
7 expertise in the one area, that is the educational area, we
8 also have the expertise to look into the question of
9 expanding economic opportunity when we still have, for
10 instance, about a quarter of black families in this country
11 below the poverty line.

12 CHAIRPERSON BERRY: Commissioner Edley?

13 COMMISSIONER EDLEY: I obviously think the
14 problem is important as a social and economic problem. I
15 know you don't mean to suggest otherwise. I think I am
16 just saying that not as a formal matter, but as a
17 prudential matter, in those policy arenas in which there
18 are civil rights statutes that provide a purchase for
19 addressing the underlying social and economic problems, I
20 think that's where our claim to institutional expertise and
21 mission are great.

22 So there obviously is, for example, with
23 respect to employment discrimination or the Community
24 Reinvestment Act, or the Equal Opportunity in Lending Act,
25 Equal Credit Opportunity Act, there are some statutes that

1 bear on economic opportunity. But this is framed
2 specifically as equal opportunity for youth. I think by
3 comparison, the number of statutory authorities and the
4 traditional understanding of the role of the anti-
5 discrimination paradigm in the education setting is just a
6 lot stronger.

7 I would not, for example, with respect to
8 education opportunities, say that we ought to go off, the
9 Commission, a whole lot of research about the adequacy of
10 college loan programs, because as important as it is, and
11 indeed even as important as it is in creating minority
12 opportunity, it's not as central I think to the law
13 enforcement issues which are not exclusive, but certainly I
14 think the core of what the Commission has historically
15 focused on.

16 COMMISSIONER THERNSTROM: I didn't want to
17 suggest it was one or the other. I am suggesting that both
18 are extremely important.

19 COMMISSIONER EDLEY: Then it's a resource
20 question.

21 COMMISSIONER THERNSTROM: I don't like to see
22 the question of economic opportunity, which is so
23 fundamental to the quality of life in this country, for
24 those who are disproportionately at the bottom of the
25 economic ladder, I don't want to see that simply shoved

1 aside. I think it's such an essential question.

2 CHAIRPERSON BERRY: The juxtaposition, and I
3 understood it was not between economic opportunity and
4 civil rights in education. The juxtaposition was between
5 the statutory report of 10 years on what the Commission has
6 done and how people have responded to it as a statutory
7 report, our monitoring report, with civil rights in
8 education being interpreted as a monitoring report, and
9 whether we should ask OCRE to instead of doing the 10-year
10 statutory report, which has certain benefits as you
11 described them, Edley, we should ask them to do a chunk of
12 the education thing as a civil rights.

13 Then as a separate issue, was the question of
14 whether we ought to do the economic opportunity for
15 minority youth. If we did do it, how would we do it, and
16 what are the resource constraints?

17 Could we divide the issues by first saying
18 whether we think OCRE, which hasn't started on either one
19 of them, should do the statutory report on the 10 years,
20 you know last 10 years, what did we recommend, that we, but
21 the Commission, and what did you guys do in these agencies
22 in your enforcement offices about these things, which will
23 show a certain record? Or should we have them, since the
24 education thing is so important and so front-burner, use
25 those resources to do a chunk of it in terms of what the

1 enforcement picture looks like on these issues?

2 So why don't we just do that first? Then if
3 we can be clear about that.

4 As I state the issue myself, having stated
5 it, although I'd like to beat our chests and toot our horns
6 and whatever, I sort of like having them do the education
7 piece. Maybe we should ask them what they think.

8 What is your off-the-top-of-your-head answer
9 to that question, Terri? I know you didn't know it would
10 be asked, so you may plead that you wish not to discuss it,
11 but that's all right. It will be okay.

12 MS. DICKERSON: As you said, we haven't
13 started either one of them, so we don't really have a
14 preference at all.

15 CHAIRPERSON BERRY: You don't really have a
16 preference? Okay.

17 COMMISSIONER EDLEY: Madam Chair, if you
18 followed my recommendation about just asking the agencies
19 first for their view, that would be a very low cost way of
20 getting started on the 10-year report. You could kind of
21 make a judgement based upon what came back as to how much
22 further to invest. You know what I mean?

23 CHAIRPERSON BERRY: I understand. So Staff
24 Director, why don't we, if there's no reason not to, why
25 don't we do that. On the statutory report side, just send

1 out inquiries or let them talk to the folks they talk to in
2 these agencies, to find out what the answer is, you know,
3 what they want to tell us. Then have them do the piece on
4 the statutory report about the enforcement of education,
5 civil rights enforcement in education in these hot button
6 areas that we are identifying both on the K-12 side and on
7 the -- and they will come back to us with a little
8 description of what they plan to do.

9 COMMISSIONER EDLEY: And our briefing later
10 in the Spring will help shape that.

11 CHAIRPERSON BERRY: Will help inform that
12 discussion. So why don't we do that?

13 STAFF DIRECTOR JIN: One possibility is the
14 potential follow-up on what the agencies give you could
15 then become the foundation for statutory report for the
16 following year.

17 CHAIRPERSON BERRY: Yes, it could, if it
18 warrants it. We'll see if it warrants it. Or if it just
19 warrants us, you know, sort of even tooting our own horn or
20 not, if I'm wrong, and moving on, we'll be able to see.

21 Okay. Now having done that, that's for 2002.
22 The crossing borders, we still have left, the Native
23 Americans. Now we have to decide what we want to in fact
24 do with the minority youth project. I think if we do
25 Native Americans and crossing borders and the civil rights

1 stuff, that is plenty.

2 VICE CHAIRPERSON REYNOSO: Yes.

3 CHAIRPERSON BERRY: To ask the staff to do.
4 So maybe what we ought to do is to have a briefing on the
5 minority youth and education, economic opportunity project,
6 and get the folks in, the experts, to talk about that, and
7 use that as a basis for discussing it and figuring out what
8 we want to do rather than pretending that we are going to
9 do it when in fact we know we don't have the resources to
10 do a major project.

11 Now that takes care of 2002.

12 STAFF DIRECTOR JIN: I'm sorry, Madam Chair.
13 What did we decide on gender disparities?

14 CHAIRPERSON BERRY: Gender disparities, we
15 will have a briefing also, unless somebody objects. I
16 thought that was a good idea. And then make a further
17 decision. These are both during 2002.

18 Now 2003, having disposed of those. Your
19 question, Staff Director, consumer racism and sexism. A
20 few years ago we did a briefing on that at a time when
21 there was this Eddie Bauer something else incident. We had
22 a bunch of people come in.

23 One of the amazing things I heard was about
24 dry cleaners and how they charged more for women's blouses
25 than they do for men's shirts. I thought that was truly

1 amazing.

2 COMMISSIONER LEE: They still do that.

3 CHAIRPERSON BERRY: Do they still do that?

4 Oh. How could I pretend that my blouse was a man's shirt?

5 Could I write on it, "Man's shirt," throw it in, and get
6 it for cheap? I don't know.

7 COMMISSIONER WILSON: Just walk in with a
8 mustache.

9 CHAIRPERSON BERRY: Mustache. I'll get a
10 false mustache.

11 But in any case, I think this suggestion came
12 from that briefing. Does OGC think this is a still a hot-
13 button issue, Staff Director?

14 STAFF DIRECTOR JIN: Mr. Hailes, do you want
15 to comment on that?

16 MR. HAILES: No comment.

17 CHAIRPERSON BERRY: He doesn't want to make
18 any comment. You want to let us decide it all by
19 ourselves?

20 MR. HAILES: I think that would be good.

21 CHAIRPERSON BERRY: Commissioner Edley?

22 COMMISSIONER EDLEY: I know a little bit
23 about this. In my view, the most interesting, perhaps this
24 is overly academic, but the most interesting aspect of this
25 problem for study purposes is how you measure it. How much

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of it goes on, and how you measure it. I really view this
2 as a piece of the broader measurement of discrimination
3 effort.

4 So that is to say if we were going to
5 undertake the bigger project of how you measure
6 discrimination and how one would create social indicators
7 of the extent of discrimination, one should probably I
8 think be selective in which sectors do we want to try to
9 work on the problem of measuring discrimination. I would
10 include this consumer and retail discrimination as one of
11 those sectors.

12 CHAIRPERSON BERRY: Do we know what happened
13 to the project that was supposed to be started in the
14 agencies or at NAS or some place to work on measuring
15 discrimination? I lost track. There was some talk about
16 starting up a project somewhere else, and then I never
17 heard anything else about whether that project ever got
18 started.

19 Do you know if it got started, Terri?

20 MS. DICKERSON: We made some calls to ask
21 about that. There was supposed to be an inter-agency task
22 force forum to look at measuring discrimination, and made a
23 lot of calls to determine if that had happened, and it had
24 not occurred.

25 CHAIRPERSON BERRY: Okay. Well maybe in

1 terms of how many projects we can do, maybe what we ought
2 to do is take the suggestion of folding into measuring
3 discrimination something on this retail issue.

4 Yes? Were you saying something, Edley?

5 COMMISSIONER EDLEY: No. I wasn't.

6 COMMISSIONER MEEKS: Actually I did.

7 COMMISSIONER EDLEY: I'm not always at fault.

8 COMMISSIONER MEEKS: I can get him in trouble
9 though. No actually I was just remarking or commenting to
10 him how you gather the data. You know, there's probably
11 more outright discrimination in these areas than anywhere,
12 but you know how you do a study and gather the data, I mean
13 that would be a tremendous undertaking. I mean in South
14 Dakota alone, I can say if we did a study, and I don't know
15 how it would be done, that Indians get asked for IDs when
16 cashing checks way more than non-Indians do. I mean I
17 don't look that much Indian. My husband does. He gets
18 ID'd all the time.

19 But to try to do a study and gather that kind
20 of data --

21 VICE CHAIRPERSON REYNOSO: You shouldn't have
22 married an 18-year-old.

23 (LAUGHTER)

24 CHAIRPERSON BERRY: Maybe testers.

25 COMMISSIONER EDLEY: That's the question.

1 CHAIRPERSON BERRY: When I have a \$100 bill
2 and go into some place to try to buy something with it,
3 this actually happened to me, they asked me for my ID. I
4 said, "I didn't know you had to have an ID to spend money."
5 "But it's a \$100 bill. Where did you get a \$100 bill?"
6 Anyway.

7 Yes, Commissioner?

8 COMMISSIONER WILSON: Speaking as a tester, I
9 would also like to say, when I made the comment because I
10 wasn't paying attention really about the differentiation in
11 the price for a woman's shirt versus a man's shirt.

12 Are you aware, and if you're not I am going
13 to tell you, that when you have clothes and you go into a
14 store and you buy a pair of pants or a coat or anything and
15 you are in a women's store and you get charged for whatever
16 it is that they do with the repairs, not the repairs but
17 the alterations. If you are in a men's store, and I very
18 frequently buy men's suits because I like the way they look
19 on me, they will remake the entire suit for me for nothing.

20 And that they make men's repairs in stores and department
21 stores and large and small stores for no money.

22 CHAIRPERSON BERRY: And did you also know
23 that if you go into the children's department in the shoe
24 store and buy large enough shoes to wear, and I do that
25 sometimes for athletic shoes in the boy's department, they

1 are cheaper than the ones in the women's department. They
2 still fit me.

3 But anyway --

4 COMMISSIONER WILSON: I guess we're ready to
5 write our report.

6 CHAIRPERSON BERRY: This is what we call
7 anecdotal evidence. So we would need to have some testers
8 to go out.

9 Commissioner Thernstrom?

10 COMMISSIONER THERNSTROM: I was about to say
11 we can go on with the anecdotal evidence for a long time,
12 but it isn't in my view as a social scientist worth much.
13 Look, there is a huge social science literature on
14 measuring discrimination. It is an enormously complicated
15 question. It can't be resolved by this Commission or by
16 any social scientist, since there is fundamental
17 disagreements about how you read data, about the use of
18 testers, and indeed, whether they provide valuable
19 information. If so, in what context.

20 Talk about questions, the limits of our
21 expertise. It seems to me we're really into it here.

22 CHAIRPERSON BERRY: Yes, Vice Chair?

23 VICE CHAIRPERSON REYNOSO: Madam Chair, I do
24 think that we need to take a look at environmental justice.
25 So I think that should be pretty near the top.

1 As indicated, measuring discrimination in
2 America, if we try to do that, I think it would be a very
3 intensive piece of study. I'm not sure that I agree that
4 it's not worth doing because I still recall historically I
5 saw the different approaches by the state agencies that
6 dealt with discrimination in employment. None of them
7 wanted to get into a description of what it really was.
8 They try to mediate. I'm speaking particularly of New York
9 and California in its early experience. When the EEOC was
10 formed, the commissions determined that they were going to
11 try to come down with legal descriptions and measurements
12 about what was discrimination in employment.

13 I think that ultimately and historically the
14 EEOC approach turned out to be far more effective than the
15 state approach. So if we were able to come up with a
16 description of how to measure discrimination, that then we
17 could share with agencies and so on, I think it would be a
18 very valuable tool.

19 I am not sure that we could succeed, but I
20 think that at least in the employment area, I saw the EEOC
21 approach to be so much more effective than the state
22 approach that I would be in favor of tackling measuring
23 discrimination. But I think it would take most of the
24 resources for that year to try to do it.

25 CHAIRPERSON BERRY: Edley?

1 COMMISSIONER EDLEY: Look, I am also quite
2 familiar with the literature on measuring discrimination.
3 It is large. But there are also significant gaps in it and
4 uncertainties in it. I think that the Commission doing
5 what it can to try to push the frontiers of knowledge
6 forward by getting researchers and agencies to focus on the
7 question would be an important contribution. That's point
8 number one.

9 Point number two is this is not something
10 that I think we should expect the staff to go out and
11 create the methodologies or announce sort of ex cathedra
12 here is the way in which you measure discrimination.

13 Rather, it's one where we would make
14 extensive use of people at the National Research Council,
15 at the National Academy of Sciences, who have been working
16 on this problem. We would call in the best experts we
17 could and try to discern to what extent is there a
18 reasonable consensus within the expert community about
19 appropriate methodologies.

20 If there isn't consensus, how does one choose
21 as among alternative methodologies for measuring
22 discrimination? I think after we are informed, we could
23 opine on that subject. That's point number two.

24 Point number three is here's the context.
25 Politically there is a battle about how serious is the

1 problem of discrimination in America, with some people
2 thinking it's just about over. Those days are gone. And
3 other people thinking discrimination is alive and well and
4 disabling.

5 I think you can answer that question with a
6 lot of rhetoric and a lot of ideological posturing, or you
7 can try to answer it by doing some investigation. If you
8 are going to try to do it by doing some investigation, then
9 there ought to be some effort at getting at a sense of what
10 counts as a sound methodology for answering the question.
11 If we can do anything to try to promote a consensus on
12 that, I think would be a great service.

13 Fourth point. The other part of the context
14 is I think the Government Performance and Results Act,
15 GPRA, which now for a number of years has been pressure on
16 Federal agencies to try to measure outcomes. What is the
17 effectiveness of the programs that they are charged with
18 administering?

19 For the most part, civil rights enforcement
20 agencies have implemented their responsibilities under GPRA
21 just by counting number of cases of complaints filed and
22 whether or not they were dispensed with, and what's going
23 on in backlogs, instead of doing what would certainly be
24 better, is to ask a question as to what extent are the
25 statutes and are agencies activities having any impact on

1 the underlying problem.

2 If you're a teacher, you try to look at how a
3 kid is getting smarter. You don't just look at attendance.

4 You don't just count beans. You try to measure the
5 outcomes in terms of the quality of the learning.

6 I think similarly, if we and many agencies
7 have an overall mission of trying to reduce the incidence
8 of discrimination, the question is how do you measure
9 whether or not you are doing a good job. So I think that
10 doing what we can to try to be part of or try to impel, try
11 to promote an effort at developing sound social indicators
12 will do a lot to help America do a report card on itself.
13 How are we doing in this march, in this struggle to combat
14 discrimination? We've got to measure it. It's not clear
15 how you do it. I'd like to see us try.

16 CHAIRPERSON BERRY: Commissioner Wilson?

17 COMMISSIONER WILSON: Yes. I would just like
18 to say, listening to this, I am not a social scientist and
19 I don't know, nor certainly am I an expert in this field.
20 But my hunch would be that if you called in experts and
21 they discussed methodology, it would seem to me that
22 somewhere along the line the bottom line of figuring out
23 discrimination of any sort would have to be anecdotal.
24 Because if people aren't telling their stories about how
25 they have experienced discrimination, I don't know where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you begin.

2 It seems to me that when I go into a tailor,
3 when I go into Paul Stewart and I'm told that taking apart
4 a camel hair coat will cost me nothing, and I go into
5 Bergdorf-Goodman and I'm told that it will cost me \$300 in
6 the women's department, that's discrimination. That is
7 where a social scientist has to begin, whether it's talking
8 about my skin color, my religion, my sex, whatever it is.
9 If you don't have an anecdote, where the hell do you begin?

10 CHAIRPERSON BERRY: Do you want to address
11 that?

12 VICE CHAIRPERSON REYNOSO: Yes, I do.

13 CHAIRPERSON BERRY: Precisely?

14 VICE CHAIRPERSON REYNOSO: Yes.

15 CHAIRPERSON BERRY: Go right ahead.

16 VICE CHAIRPERSON REYNOSO: I think my
17 colleague is precisely wrong. It is not the anecdote. It
18 is investigating aside from intent, whether they are
19 selling shoes for \$25 to children and selling the same
20 shoes for \$50 to women. That is discrimination, whether
21 they meant to discriminate or not, whether it was based on
22 economic factors. So I think you go to the figures. I
23 mean that's the way -- I think that is far more important
24 in knowing what's going on in society than the anecdotal
25 revelations that would deal -- very often, they deal more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with intentional discrimination.

2 COMMISSIONER EDLEY: The anecdote is what
3 told you where to look.

4 VICE CHAIRPERSON REYNOSO: I don't disagree
5 with that.

6 COMMISSIONER WILSON: You start with the
7 anecdote.

8 COMMISSIONER MEEKS: Just to add more to this
9 argument. How then can you conclude that that's
10 discrimination? I mean because it's market driven, if
11 women will pay that. I mean the same thing goes with
12 agencies that charge the Government more. I mean I may be
13 ending this whole conversation, but --

14 CHAIRPERSON BERRY: Isn't it the case that in
15 many -- I know many people I know don't know that the shoes
16 are cheaper. They don't know that if you go to the boy's
17 department you can buy the same running shoe for less money
18 than the women's. I only found it out by accident, by
19 wandering through the boy's department and looking and
20 saying hey, that shoe \$ 25 -- you know, hey, from now on
21 I'm buying my running shoes in here. So now we've told
22 everybody else so now they can go do it.

23 Yes, Commissioner Thernstrom?

24 COMMISSIONER THERNSTROM: Well, look. I
25 agree with Commission Edley that stories alert one to

1 possible problems. They are the beginning of a
2 conversation, however. But at the end of the day
3 discrimination is a matter of data.

4 But I want to react to something Commissioner
5 Edley said before, that there are some people who think in
6 this country that discrimination is just about over. I
7 believe those were your precise words. I suspect that you
8 have me in mind.

9 COMMISSIONER EDLEY: That's not true.

10 COMMISSIONER THERNSTROM: Good. I'm glad to
11 hear it.

12 COMMISSIONER EDLEY: In debates you at least
13 state that that's not your view.

14 COMMISSIONER THERNSTROM: Because I actually
15 don't know anybody who thinks -- who is blase about
16 discrimination and ongoing discrimination in this country.

17 What the disagreement is, well, I don't happen to know
18 them, but whatever, that's anecdotal too.

19 The disagreement is over a very serious
20 question. That is, for instance, whether
21 disproportionately high levels of poverty among black
22 families or the black-white test score gap is fundamentally
23 -- and you can name a number of issues -- whether those are
24 fundamentally at this point questions of discrimination or
25 whether they have become much more complicated than they

1 were even a decade ago.

2 So, you know, that is the area of
3 disagreement, it seems to me. But not whether this country
4 is racially or ethnically squeaky clean, because of course
5 it's not.

6 CHAIRPERSON BERRY: The point I would make
7 about the discussion, and for Vikki, this is for you too,
8 that the reason why when I tell stories about things that
9 happened and books that I write or about cases that I know
10 about and legal stuff, that I also do a random sample of
11 all the cases to see whether what I am finding in the
12 stories represents what the cases show.

13 Social scientists won't say Mary Berry just
14 told these stories that she just picked out of thin air
15 that she liked about what happened. The whole purpose of
16 doing the random sample and having it verified and having
17 people attest to its validity, so that what happened to
18 you, what the social scientists would say and what happened
19 to me, that we need to have how many examples of that do
20 happen, what happens in all the different cases, and then
21 come up with something.

22 But we already know that even social
23 scientists are not entirely unbiased, so that when we reach
24 our conclusions --

25 COMMISSIONER THERNSTROM: Absolutely.

1 CHAIRPERSON BERRY: We are often, you know,
2 we sort of tend in one direction of it. But I still think
3 the discussion is worth having.

4 I think the mere fact that we're having this
5 discussion shows that, and the country is interested in the
6 discussion of what is discrimination and what isn't, and
7 when they hear people talking about it and trying to figure
8 it out and all that. The agencies, as Christopher said,
9 really need to know. They need to be informed even if
10 there are different points of view so that having the
11 Commission try to come up with something that will include
12 the role of anecdote, the role of all these other
13 instances, and how you go about measuring it, and when you
14 figure out whether it's discrimination plus something else
15 or not, is an important question.

16 So then it comes to resources. Yes,
17 Commissioner Wilson?

18 COMMISSIONER WILSON: Thank you, Madam Chair.
19 To say that something is market-driven seems to me to be
20 the second tier. We're just having this discussion now.
21 To say that something is market-driven seems to me to be
22 the second tier of looking at the issue because the fact is
23 women don't know any better or whatever, but they are
24 willing to pay for it.

25 So the sort of comparable example would be

1 that to say that people were willing to sit at the back of
2 the bus doesn't mean that discrimination wasn't going on.
3 It's just that they were willing to do it until they
4 weren't willing to do it any more.

5 I think that what my whole point about
6 anecdote is, that it is at the start of investigation. It
7 isn't the final step or the second step or the third step.

8 But it has to be at the start, because there is no other
9 place to begin but human experience.

10 CHAIRPERSON BERRY: Right. We agree with
11 that.

12 So shall we do measuring discrimination or
13 not?

14 COMMISSIONER EDLEY: Yes.

15 CHAIRPERSON BERRY: No matter what we end up,
16 we don't know where we would end up. But at least we can
17 have the discussion. All right. So we will do that as a
18 project.

19 Did you hear that, Staff Director?

20 STAFF DIRECTOR JIN: Got it.

21 CHAIRPERSON BERRY: And figure out how we're
22 going to go about doing it. Shall we make consumer racism
23 and sexism and measuring that part of it?

24 COMMISSIONER WILSON: Yes.

25 CHAIRPERSON BERRY: Or should we try to do

1 some separate thing on consumer racism sexism?

2 COMMISSIONER MEEKS: I think it should be
3 part of it.

4 CHAIRPERSON BERRY: Part of it, as well as
5 other kinds of issues.

6 What about we do think we should do
7 environmental justice for 2003. That will be important.

8 What about the media role in civil rights?
9 You will recall that the Commission decided last year
10 sometime or other that we would send letters to the network
11 executives about the depiction of people and the issues
12 that they dealt with and their employment patterns in the
13 television industry. We did do that. I had some meetings
14 with some folks from the industry.

15 We lost track of all of that. They submitted
16 some data to us for the staff to analyze on their
17 employment. We were all supposed to get back to each other
18 and we never did.

19 So the question is -- a lot of other things
20 happened. Do we want, and they pleaded that they needed to
21 wait, and we had some new staff and moved onto something
22 else. So we're revisiting this idea of the media role, I
23 guess.

24 The Commission did a report years ago called
25 "Window Dressing on the Set," which was one of the most

1 criticized reports the Commission ever did because people
2 said you are trying to interfere with the right of freedom
3 of expression. Most of the people who complained were
4 people who were in the freedom of expression business, like
5 newspapers and various kinds of media.

6 What would this project consist of? Has
7 anyone done any work on it already?

8 STAFF DIRECTOR JIN: Maybe I can have Terri.
9 Can you explain the project a little more in terms of what
10 you are thinking?

11 MS. DICKERSON: I mentioned some, I believe
12 some research was mentioned that had already been done by
13 American Society of Newspaper Editors and the broadcast
14 groups as well in terms of not only the representation of
15 minorities and women in the media but also their
16 representation in employment ranks and ownership ranks, and
17 whether or not -- I guess one of the questions would be
18 whether or not there is a nexus between ownership and
19 depiction or characterization of women and minorities.

20 The media being such a powerful industry,
21 that really has such an influence, I believe its
22 penetration is in more than 90 percent of households,
23 probably rivals the telephone, it really does have an
24 impact on social ideas that people develop at a very early
25 age and continue to form throughout their lives.

1 So that it would go beyond just the
2 employment and looking at the representation in ownership
3 ranks, but look at therefore do those numbers have any
4 nexus between what the viewer eventually sees on the
5 television.

6 So that was kind of the idea behind it.
7 There are some studies that have been done. We would
8 review that literature. Advertising, print and broadcast
9 media. I guess we would look at motion pictures, film, and
10 video as well.

11 CHAIRPERSON BERRY: Does anyone feel strongly
12 about this or would people be willing to let us proceed by
13 reestablishing the communication with the folks, networks
14 and all those people, and then having some kind of briefing
15 or something, given that we just said we would do measuring
16 and environmental justice.

17 I am about to ask if we plan to do racial
18 profiling or block grants. So we've got to rank stuff. We
19 can't do all of these things.

20 COMMISSIONER WILSON: I think it would be
21 good to get in touch with the networks.

22 CHAIRPERSON BERRY: So reestablish. Anyone
23 else think any differently about that? So that's what
24 we'll do with that project.

25 What about the Federal block grants? Do

1 people feel that we need to look at how block grants
2 operate in terms of civil rights or not? Block grants?

3 VICE CHAIRPERSON REYNOSO: Madam Chair, I may
4 have raised that because the Federal Government in the
5 second Clinton Administration now has been going more and
6 more into block grants, with very little attention in terms
7 of how that money is now being spent by the states, will
8 still be attentive to the civil rights laws, Federal laws.
9 So I think it is very important.

10 But I don't have a strong feeling it needs to
11 be on 2003, because we need to allow a little bit of time
12 to go by. It's like affirmative action. Then take a look
13 at it and see what's happening.

14 CHAIRPERSON BERRY: Okay.

15 Yes, Christopher?

16 COMMISSIONER EDLEY: My sense is it depends
17 on how this thing is defined. Here is what I believe the
18 issue is. I wasn't one who initially proposed this, and
19 never been wildly enthusiastic about it, but I think for me
20 the issue is not the general one of when you block grant
21 things, does that result in fewer resources going to
22 communities of color or to rural communities and the like.
23 I think that issue of distributional equity is again,
24 while very important to me personally, I think it's
25 ancillary to the mission of the Commission.

1 The narrower question that is relevant for us
2 relates to the enforcement or the enforceability of Title
3 VI, which prohibits discrimination by Federal grantees.
4 There, particularly because of the budget stringency during
5 the 1990s, the Federal effort to actually police
6 discrimination by its grantees suffered mightily, just
7 because of the lack of resources.

8 So I think in a way, the question was with
9 growing block grant activity, what are the added risks that
10 there may be civil rights violations by the Federal
11 grantees? What needs to be done, either administratively
12 or in the statutes to build in civil rights safeguards.

13 I think that could be shaped as a very narrow
14 field of investigation. If we do it, it's not a high
15 priority, but if we do it, I would really urge that it be
16 shaped as a quite narrow one, to look at the Title VI
17 enforcement machinery in various agencies, and whether it
18 can be streamlined and resources beefed up, and the
19 efficacy of private rights of action and so forth.

20 CHAIRPERSON BERRY: Maybe we could look at it
21 as -- why don't we just defer it and say that we'll look at
22 it. We can always just at the drop of a hat do briefings
23 if we want to, as you know.

24 COMMISSIONER THERNSTROM: I have a point,
25 Madam Chair. I wonder, given the fact that we've got quite

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a bit still on our table and the clock is ticking, whether
2 we could submit when we're talking now about projects down
3 to FY 2003, projects quite far down the road, whether we
4 could submit in written suggestions, written --

5 CHAIRPERSON BERRY: I would love to do that,
6 but we can't because the timing is that the staff -- we
7 only have one more to do.

8 COMMISSIONER THERNSTROM: Oh, okay.

9 CHAIRPERSON BERRY: Then we have one other
10 issue to vote on and we're finished.

11 COMMISSIONER THERNSTROM: Okay. All right.
12 Good.

13 CHAIRPERSON BERRY: The staff needs to know
14 as the Staff Director told us. They need to know the
15 answers, so that's why we are doing this.

16 COMMISSIONER THERNSTROM: Okay.

17 CHAIRPERSON BERRY: The last one -- so we'll
18 just defer that. The last one is whether -- do you have
19 racial profiling on there?

20 STAFF DIRECTOR JIN: I have racial profiling
21 and financial aid.

22 CHAIRPERSON BERRY: Financial aid has been on
23 for higher education, has been on the books for quite a
24 while as something we should do. At some point we should
25 do it because there was just a recent study that shows that

1 Pell grants now and poor kids, many of whom are kids of
2 color, Hispanics and African-Americans especially and some
3 communities of Asian-Americans and Native Americans, who
4 want to go to college aren't being able to get the kind of
5 money that they need. So we had that on the books so that
6 we could look at that equity issue. We haven't done it
7 yet.

8 It has been on the books for quite a while.
9 It isn't going to go away, but I happen to think that we
10 probably, given what else we've decided to do, can't do it.

11 So we ought to leave that too for the possibility of an
12 outyear doing it, unless somebody has got another
13 suggestion, and if something happens that is really hot and
14 bothered on it, we'll squeeze it in, just as we do other
15 things that happen.

16 STAFF DIRECTOR JIN: Madam Chair, the only
17 caveat is that I think we're still looking for room for our
18 statutory report.

19 CHAIRPERSON BERRY: Why wouldn't measuring
20 discrimination be a statutory report? It could be framed
21 in one, or any of these could be framed, take a piece of it
22 as a statutory report.

23 Racial profiling, we talked about doing
24 earlier. My own view is that given the developments that
25 are taking place, we probably shouldn't decide that we want

1 to do anything on that right now. We will be considering
2 it when we do administration of justice for Native
3 Americans, for example, and some of these other issues. So
4 my view would be that we would just simply defer that one
5 too.

6 So do you have the ones for -- and the staff
7 can shape one of these in terms of having it be a statutory
8 report. I leave open the possibility if you can not,
9 listen, Commissioners, that you might -- I know you'll be
10 able to shape the block grant one to do it, even though
11 we've deferred it, but I think you should be able to shape
12 one of these others to have a piece in it that would be a
13 monitoring report. Okay? So try to do that.

14 So that gives you guidance so that you can
15 move onto the work. We will not have the State Advisory
16 Committee report, Rice v. Cayetano, because the regional
17 office and the State -- is that right -- Advisory Committee
18 are still discussing it.

19 STAFF DIRECTOR JIN: We are still waiting for
20 the State Advisory Committee. Actually has been very good
21 about being involved in this. They are just not quite
22 finished.

23 IX. Native American Mascot Issue

24 CHAIRPERSON BERRY: And the last one is the
25 Native American mascot issue that Commissioner Meeks

1 raised. That's the last item that we're discussing today.

2 Commissioner Meeks?

3 Oh, I'm sorry. Could I get a motion to
4 approve the Indiana State Advisory Committee report?

5 VICE CHAIRPERSON REYNOSO: So moved.

6 CHAIRPERSON BERRY: Could I get a second?

7 COMMISSIONER MEEKS: Second.

8 CHAIRPERSON BERRY: All in favor of the case,
9 by saying aye.

10 Thanks to the Indiana SAC, so ordered.

11 Commissioner Meeks?

12 COMMISSIONER MEEKS: Yes. I had hoped that
13 this, this statement had reached all the other
14 Commissioners. But if you'd like to see it --

15 STAFF DIRECTOR JIN: It was sent. It was
16 sent out.

17 COMMISSIONER MEEKS: Should I read it?

18 CHAIRPERSON BERRY: Did everyone get this
19 statement?

20 COMMISSIONER THERNSTROM: I was going to say
21 no, I didn't sign on to approving that. I don't want to
22 sign on.

23 CHAIRPERSON BERRY: We haven't approved it.
24 We are asking whether you got it.

25 COMMISSIONER THERNSTROM: Right. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON BERRY: That is all we are
2 asking.

3 COMMISSIONER THERNSTROM: All right. I've
4 got it. You are talking about --

5 CHAIRPERSON BERRY: Native American mascot.

6 COMMISSIONER THERNSTROM: No, no. I'm back
7 to Indiana.

8 CHAIRPERSON BERRY: Oh, I had already voted
9 on that. Are you opposed to that?

10 COMMISSIONER THERNSTROM: Yes, I am.

11 CHAIRPERSON BERRY: Okay.

12 COMMISSIONER THERNSTROM: Thank you.

13 CHAIRPERSON BERRY: Then it passes with
14 Commissioner Thernstrom being opposed.

15 Now did everyone get the Native American
16 mascot thing?

17 COMMISSIONER WILSON: I didn't get it.

18 COMMISSIONER MEEKS: Can I read it and would
19 that be sufficient?

20 CHAIRPERSON BERRY: Go ahead.

21 COMMISSIONER MEEKS: Okay. This is a rework
22 of a statement that I submitted last summer in a dialogue
23 on the use of Native American imagery as sports mascots.
24 The statement does not address the use of Indian mascots as
25 used by professional sports teams just because there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 currently isn't any serious consideration by any of those
2 teams to even discuss it.

3 But the issue is very live in the educational
4 setting right now. In fact, in the last few weeks, there's
5 been a number of articles written concerning this.
6 Hundreds of schools have ended the use, and hundreds more
7 are considering it. So I think that if we could consider
8 it at this time, it might have an impact for those other
9 schools that are considering it.

10 So the statement reads as this. The U.S.
11 Commission on Civil Rights calls for an end to the use of
12 the Native American images and team names by non-Native
13 schools. These references, whether mascots and their
14 performances, logos, or names, are disrespectful and
15 offensive to American Indians.

16 They are particularly inappropriate and
17 insensitive in light of the long history of forced
18 assimilation that American Indian people have endured in
19 this country.

20 Efforts to eliminate racially offensive
21 symbols began with the civil rights movement of the 1960s.

22 Because this movement was led largely by African-
23 Americans, symbols and imagery offensive to African-
24 Americans have been widely eliminated. However, thousands
25 of secondary schools, over 60 post-secondary institutions,

1 and at least six professional sports teams continue to use
2 Native American nicknames and imageries.

3 Since the 1970s, American Indian leaders and
4 organizations have vigorously voiced their opposition to
5 these mascot and team names because they mock and
6 trivialize Native American religion and culture.

7 It 'is particularly disturbing that Native
8 American references are still to be found in educational
9 institutions, whether elementary, secondary, or post-
10 secondary. Schools are places where diverse groups of
11 people come together to learn not only the three Rs, but
12 also how to interact respectfully with people from
13 different cultures. The use of stereotypical images of
14 Native Americans by educational institutions has the
15 potential to create a racially hostile educational
16 environment that may be intimidating to Indian students.

17 American Indians have the lowest high school
18 graduation rates in the Nation, and even lower college
19 attendance and graduation rates. The perpetuation of
20 harmful stereotypes exacerbates these problems.
21 Stereotypes of American Indians, when promoted by our
22 educational institutions teach all students that
23 stereotyping of minority groups is acceptable, a dangerous
24 lesson in a diverse society.

25 Schools have a responsibility to educate

1 their students. They should not use their influence to
2 perpetuate misrepresentations of any culture or people.
3 Children at the elementary and secondary level usually have
4 no choice about which school they attend.

5 Further, the assumption that a college
6 student may freely choose another educational institution
7 if she feels uncomfortable around Indian-based imagery is a
8 false one. Many factors, from educational programs to
9 financial aid, to proximity to home limit a college
10 student's choices. It is particularly onerous if the
11 student must also consider whether or not the institution
12 is maintaining a racially hostile environment for Indian
13 students.

14 The use of Native American images and teams
15 may violate Title VI of the 1964 Civil Rights Act in the
16 Department of Education's implementation rules, which
17 prohibit discrimination on the basis of race, color, or
18 national origin in any program or activity receiving
19 Federal financial assistance.

20 In addition, culturally insensitive displays
21 may also violate Title II of the Civil Rights Act, which
22 provide that all peoples are entitled to a full and equal
23 enjoyment in places of public accommodation.

24 However, our educational institutions have
25 failed in their primary mission if as a nation, we must

1 resort to the civil rights law for the elimination of
2 culturally insensitive practices in our schools.

3 Schools that continue to use Indian imagery
4 and references claim that their use stimulates interest in
5 Native American culture and honors Native Americans. These
6 institutions have simply failed to listen to the Native
7 groups, religious leaders, and civil rights organizations
8 that oppose these symbols.

9 These Indian-based symbols and team names are
10 not accurate representations of Native Americans. Even
11 those that purport to be positive are romantic stereotypes
12 that give a distorted view of the past. These false
13 portrayals prevent non-Native Americans from understanding
14 the true historical, and cultural experiences of American
15 Indians. Sadly, they also encourage biases and prejudice
16 that have a negative effect on contemporary Indian people.

17 These references may encourage interest in
18 mythical Indians created by the dominant culture, but they
19 block genuine understanding of the contemporary Native
20 people as fellow-Americans.

21 Traditions, no matter how popular, must end
22 when they are offensive, harmful, or dehumanizing. We
23 applaud those who are leading the fight to educate the
24 public and the institutions that have voluntarily
25 discontinued the use of insulting mascots. Dialogue and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 education are the roads to understanding.

2 The use of American Indian mascots is not a
3 trivial matter. The Commission has a firm understanding of
4 the problems of poverty, education, housing, and healthcare
5 that face Native Americans. The fight to eliminate Indian
6 nicknames and images in sports is only one front of the
7 larger battle to eliminate obstacles that confront American
8 Indians.

9 Racist images in our educational institutions
10 provide an underpinning for discrimination against American
11 Indian people. The elimination of Native American
12 nicknames and images as sports mascots benefits not only
13 Native Americans, but all Americans. The elimination of
14 stereotypes will make room for education about real Indian
15 people, current Native American issues, and the rich
16 variety of American Indian cultures in our country.

17 I hope that the Commission can support this.

18 Thank you.

19 CHAIRPERSON BERRY: Any discussion? Yes,
20 Commissioner Lee?

21 COMMISSIONER LEE: I definitely will support
22 it, but I would just like to ask Commissioner Meeks whether
23 you are open to include professional sports teams as a
24 matter of policy? That you know, if we are going to ask
25 that educational institutions, why can't we urge

1 professional sports teams to do the same? They won't do
2 it, but --

3 COMMISSIONER MEEKS: Actually I think that's
4 a good point. I don't know that that excluded -- I mean
5 this did focus on -- but I think you have a point, that it
6 should be.

7 CHAIRPERSON BERRY: Commissioner Wilson?

8 COMMISSIONER WILSON: Thank you, Madam Chair.
9 I would support the statement. My only suggestion is that
10 you include examples of some of the phraseology that you
11 are talking about, because I think it will be more powerful
12 if you put it, instead of seeming to hide from it.

13 CHAIRPERSON BERRY: Yes, Commissioner
14 Thernstrom?

15 COMMISSIONER THERNSTROM: Well, I am opposed.
16 I am as opposed as anyone else to group stereotyping, but
17 this seems to me another issue in which we are long on
18 rhetoric and short on facts. Among the facts we need here
19 are polling data to provide evidence as to how ordinary
20 Native American citizens perceive many of the names, the
21 images, what have you that you are talking about.

22 There is also an assertion here that racial
23 stereotyping is a causal factor in disproportionately low
24 graduation rates among Native Americans. That is another
25 assertion that needs to be supported by social science

1 evidence.

2 So I am not happy at all without taking this
3 issue much more seriously than we have, with simply signing
4 on to this statement.

5 CHAIRPERSON BERRY: Commissioner Meeks,
6 according to what you know, is there evidence that Native
7 American Indians find such use of names offensive?

8 COMMISSIONER MEEKS: You know, there has not
9 been a study, but I live among ordinary people. I am not
10 an Indian from D.C. I can tell you by and large that there
11 are very few Indians that do not object to this use.

12 COMMISSIONER THERNSTROM: I would just like
13 high data, because I think that that creates legitimacy to
14 what the Commission says.

15 CHAIRPERSON BERRY: Do you want to say
16 anything else at this point?

17 COMMISSIONER MEEKS: I think that nearly
18 every Indian rights organization, I mean almost across the
19 board, agrees with this statement and has lobbied hard for
20 that use to end. I don't understand what your argument is,
21 really I don't.

22 CHAIRPERSON BERRY: Commissioner Meeks, do
23 you think that there is among the Lakota Sioux, where you
24 live, do you believe that your community understands the
25 lack of self-esteem and other problems that are too

1 numerous to name on the res with kids going to school and
2 so on, that this kind of stereotyping helps to exacerbate
3 the problem?

4 COMMISSIONER MEEKS: Well, you know when -- I
5 mean the use -- it's more a matter of self-representation.

6 I mean when we go to another school, and there's instances
7 in border towns where they are, and it has been -- I mean
8 we have talked to students there. There have been many
9 instances where they have really resented that. The
10 homecoming parades that are designed around the mascot use,
11 I mean are very demeaning.

12 CHAIRPERSON BERRY: Would we want to do a
13 poll to find out whether -- I'm just asking -- whether most
14 African-Americans would resent whites calling them the N
15 word before we would denounce someone who used the N word
16 in public discourse? I am asking Commissioner Meeks
17 whether she thinks that her situation is similar or
18 different. I haven't reached any conclusion. I am still
19 thinking about it. I'm thinking out loud.

20 COMMISSIONER MEEKS: Should we do a poll?

21 CHAIRPERSON BERRY: Do you think we would be
22 better off as a Commission, should that happen, if we --
23 and we had a situation before with Asian-Americans, where
24 there was stereotyping going on. Do you remember that,
25 Yvonne? I wonder if we did polls to find out what people

1 thought about it before we accepted it. I'm not saying we
2 should accept it.

3 It may be that in order to give greater
4 credence to it, that maybe we should ask that you present
5 the information from the Indian rights organizations rather
6 than taking your word for it, that they are all against it,
7 and that they found these effects to buttress the claim.
8 But I myself was just assuming that since you are a Lakota
9 Sioux, and you do live in the res, that you might be
10 familiar with, and you are a very active person, that you
11 might know what the Indian rights groups think.

12 But it may be that the community would be
13 better off if we were to get some kind of scientific survey
14 that said Indians don't like being called whatever it is
15 people call them.

16 COMMISSIONER WILSON: Elsie, and Commissioner
17 Meeks, I just wonder, would you give us just right now a
18 sampling of these names?

19 COMMISSIONER MEEKS: Let me say I mean the
20 National Coalition on Racism in Sports and Media has a
21 website if anyone cares to go. I mean I could supply
22 documentation. I mean this statement really came because I
23 have had so many groups approach me.

24 COMMISSIONER WILSON: But what I would like
25 you -- the reason why I want to do it, I mean I'm curious

1 because when you say -- what is it? I mean just give us
2 the words that they -- how they describe Indians or Native
3 Americans in terms of what you are objecting to. I am just
4 curious if you could give me --

5 COMMISSIONER MEEKS: For instance, the
6 Washington Redskins. Now I don't know any Indian that --
7 we never refer to ourselves as a redskin. Yet what's the
8 picture of, I mean this redskin obviously refers to an
9 Indian.

10 COMMISSIONER WILSON: Okay. What's the
11 picture?

12 COMMISSIONER MEEKS: It is of an Indian with
13 --

14 COMMISSIONER THERNSTROM: They don't adopt a
15 name that connotes an image that's not positive. That's
16 not in the interest of the team. The image obviously is of
17 bravery, of courage.

18 CHAIRPERSON BERRY: Commissioner Thernstrom,
19 how do you know how the Indians regard the image?

20 COMMISSIONER THERNSTROM: I don't, but I
21 think --

22 CHAIRPERSON BERRY: Why are you disagreeing
23 with Commissioner Meeks, who is an Indian, presumptively,
24 who tells you that it is offensive to her and you are
25 saying that it's not offensive.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER THERNSTROM: Of course it may.
2 I am not saying it's not offensive. I am just saying look,
3 this is an instance in which a team has adopted an image
4 that the team regards as positive.

5 CHAIRPERSON BERRY: That's the team.

6 COMMISSIONER THERNSTROM: Well, and I would
7 also make a distinction between the voice of Indian rights
8 organizations and that of ordinary citizens, because that
9 is with all groups an important distinction.

10 CHAIRPERSON BERRY: Just calm down just a
11 minute. Can we also draw a distinction between the views
12 of ordinary Indians, Indian rights groups, and people who
13 are not Indians who are telling us what they think Indians
14 ought to think?

15 COMMISSIONER THERNSTROM: Absolutely.

16 CHAIRPERSON BERRY: Okay? Which includes
17 members of this Commission who are not Indians.

18 COMMISSIONER THERNSTROM: Absolutely.

19 CHAIRPERSON BERRY: So at least let's not try
20 to tell this Indian what she ought to think.

21 COMMISSIONER THERNSTROM: I did not.

22 CHAIRPERSON BERRY: Or what you think other
23 Indians, any of us I mean, not just you personally, but
24 let's not --

25 COMMISSIONER THERNSTROM: That was not my

1 intention.

2 CHAIRPERSON BERRY: If she wants to assert
3 what she as an Indian thinks and what her community thinks,
4 then I am perfectly willing to let her represent her
5 community and say that. That's different from saying you
6 need a survey and polling data to make it scientifically
7 accurate, which we're still discussing.

8 Commissioner Wilson?

9 COMMISSIONER WILSON: Thank you, Madam Chair.
10 Let's just take the term "redskin." That seems to me to
11 be -- I mean you may be correct in that the symbol of the
12 team may be one that to them embodies courage or bravery or
13 strength or agility, but redskin to me is not an
14 appropriate name. I mean I think that is -- you know, I
15 can't make the analogy of I'm Jewish. I can't make the
16 analogy -- they of course never have called a baseball team
17 a "the Kikeskins," so I can't make the analogy, because as
18 we know, Jews don't play baseball.

19 But the fact is, that you could take the same
20 kind of stereotypical images that have been used all the
21 time about Jews and are still used very frequently, and it
22 seems to me it's the same issue. It's just that Jews were
23 so much more ostracized that nobody would think of naming a
24 baseball team after them. The Kikeskins. Maybe it's an
25 idea. Maybe we should start something.

1 But I do think it is a derogatory word. I'm
2 sorry, Redskins.

3 COMMISSIONER MEEKS: This may be one of those
4 issues that probably most minorities have felt, that unless
5 you are the one that has internalized it, there may be no
6 understanding without a study. I ask for support on this.

7 If we want to make it a project later to do a study that
8 actually backs the statement, I think that I have actually
9 no hesitation to say that I'm sure that we would have
10 plenty of poll data that would support that.

11 CHAIRPERSON BERRY: Okay. Vice Chair?

12 VICE CHAIRPERSON REYNOSO: Madam Chair, two
13 or three comments. One, I happen to agree with the
14 statement. I have a few editorial changes that I'm sure
15 would be acceptable.

16 Two, we have seen the impact of being able to
17 sensitize others. I remember we used to have a restaurant
18 chain called Sambos. The chain became convinced that that
19 really wasn't a proper word, and that some important
20 elements in this country were offended by the name of that
21 restaurant. I am sure that organizations have continued
22 under different names.

23 Then it's my impression that it hasn't been
24 just Indian rights groups. My impression is from reading
25 reports, that many tribal groups, tribal governments have

1 issued or have passed resolutions dealing with this issue.

2 Finally, I do want to suggest that as much as
3 possible, we ought to try to proceed on the basis of
4 consensus. One of the Commissioners would like to see what
5 has been the amount of support, if you will, from I assume
6 Indian tribes and so on for this type of statement. I
7 think it might be worth having our staff give us a report
8 back in a couple of weeks or whatever on what has happened
9 in that regard.

10 Just based on my own interest in this matter,
11 my sense is that there have been many such statements and
12 so on. Maybe we can get a unanimous vote. Maybe we can't,
13 but I'd like to be able to try because I think as much as
14 we can work by consensus, the better off we are.

15 CHAIRPERSON BERRY: Yes, Commissioner Lee?

16 COMMISSIONER LEE: I grew up in San
17 Francisco, just a half an hour away from a very prestigious
18 university, Stanford University. I grew up going to the
19 football games. They used to have a very good football
20 team. At that time, they were called Stanford Indians. I
21 didn't know, I was so young, that it was very offensive.

22 During halftime, they would have all these
23 Indians running around. I'm glad that when I grew up, the
24 Asian-American community, the African-American community,
25 and the Latino community joined with the American Indian

1 students for massive protests. Eventually, the Stanford
2 team is now called the Stanford Cardinals.

3 I think that it's not only offensive to
4 American Indians, but it's very damaging to Americans,
5 whether you are young, old, or whatever, to see these
6 stereotypes being exhibited in schools, and every Sunday or
7 every baseball season. So I don't think we need to have
8 any studies to find out how offensive they are to American
9 Indians. This certainly was offensive to me after I got
10 educated. I think that this is a good educational tool,
11 which is part of the Commission's mission, to educate the
12 public.

13 CHAIRPERSON BERRY: Did you have anything?

14 VICE CHAIRPERSON REYNOSO: Yes. I was just
15 going to comment that I think most of us who do belong to
16 minority groups are rather conscious of many of these
17 issues, whereas the public has not been. But I think that
18 a recommendation from this Commission is more effective,
19 particularly influencing non-minorities, those folk who
20 haven't been sensitive to that, and that's why I have
21 underscored if by chance getting the staff to put some of
22 this material together leads us to a unanimous or
23 consensus, then I just think the public will respond more
24 affirmatively.

25 CHAIRPERSON BERRY: Let me ask Commissioner

1 Thernstrom this, and then you may say whatever you like, so
2 that can determine whether we need to vote now or whether
3 we need to wait to see if we can get consensus or
4 unanimity. We have consensus.

5 If we were to collect polling data that shows
6 that Native American Indians do not like being represented
7 in this way, would that be persuasive to you? I am just
8 trying to find out what would persuade you.

9 COMMISSIONER THERNSTROM: Of course that
10 would be very important to me. If we took the time to look
11 at the precise wording here and made sure that it was very
12 carefully stated, I think there are possible grounds for a
13 consensus.

14 Look, I wouldn't pick myself the name
15 Washington Redskins. I would be happy to see it go. But
16 the question is, or one of the questions -- well, I have
17 raised a number of questions, including that of attitudinal
18 data. But the question is also is there an analogy here to
19 the Sambo image, which of course is extremely derogatory.
20 This is supposed to be, as I said before, complimentary, an
21 image of bravery, of courage, of winning force, et cetera.

22 But I would be delighted to try to find
23 consensus by going ahead with the staff coming back to us
24 with some of the data that I would like to see. If I had a
25 chance to look at the precise wording and think about it,

1 and we'll see whether it could be teased in such a way.
2 Because I am certainly opposed to all racial and ethnic
3 stereotyping.

4 CHAIRPERSON BERRY: Yes, Vice Chair?

5 VICE CHAIRPERSON REYNOSO: Just a reminder
6 that normally when folk present a letter to us, say to send
7 to the Attorney General, which has happened several times,
8 the author is very amenable to changes. I have some
9 changes actually myself that I am going to suggest. So any
10 suggestions that are made, I'm sure the author will be very
11 amenable to taking a look at them.

12 CHAIRPERSON BERRY: Well on this occasion,
13 Elsie, if you will indulge me, I think if we were to vote
14 on it, it would pass. But let me defer and not have a vote
15 on it.

16 Here is what I would like to do. We tried
17 this once before, Cruz, and it didn't work.

18 VICE CHAIRPERSON REYNOSO: I know.

19 CHAIRPERSON BERRY: But I am going to try it
20 this time again. First of all, I am going to ask
21 Commissioner Thernstrom to take the statement and look at
22 it, and work on it, and give back to us what she would find
23 acceptable, if anything, and ask her to do that sometime in
24 the next 20 days, if possible.

25 If she submits anything to us, we'll look at

1 it.

2 COMMISSIONER THERNSTROM: Thank you.

3 CHAIRPERSON BERRY: Last time we tried that,
4 we had agreement to do it, and nothing ever showed up.

5 COMMISSIONER THERNSTROM: I promise. I thank
6 you very much.

7 CHAIRPERSON BERRY: Then we will see if it's
8 possible to get some kind of consensus. We will also ask
9 that you collect -- we'll get Patrick and the staff can do
10 it however, the positions of these groups that you were
11 talking about, which we know are as you say, but just get
12 them. And look to see if there is any polling data on this
13 question already. We are not going to pay for a poll, but
14 if there is any polling data on it. Then in 20 days time,
15 we will look.

16 If Commissioner Thernstrom turns in nothing,
17 or if she turns in something saying I tried but I can't
18 hack it, I can't go for it, then we will revisit the issue
19 and decide to vote on it.

20 In the meanwhile, people who have any changes
21 in the statement that you have there as the Vice Chair did,
22 should give them to the staff.

23 Will that work or not?

24 COMMISSIONER WILSON: I have a question.

25 CHAIRPERSON BERRY: All right. You want me

1 to let Vicki ask her question or not?

2 COMMISSIONER MEEKS: Go ahead.

3 CHAIRPERSON BERRY: Yes. Go ahead.

4 COMMISSIONER WILSON: Once we wait 20 days
5 and then we pass the statement then, how long -- will it be
6 released right away or do we have to wait another cycle?
7 Because I think it should be released, particularly given
8 what you are objecting to. I think it should be released
9 along with spring training and the opening of the baseball
10 season. I think it's a good time.

11 CHAIRPERSON BERRY: When is that?

12 COMMISSIONER WILSON: I don't know, but
13 sometime in the spring. I don't know.

14 CHAIRPERSON BERRY: What's your pleasure? I
15 can do it however you want it.

16 COMMISSIONER MEEKS: I'm fine with coming
17 back to it again, but I didn't even suppose that we would
18 get a unanimous vote on this issue. So now supposing with
19 Commissioner Thernstrom's version of it, that we probably
20 wouldn't get a unanimous vote then either. I mean I'm not
21 sure, but I guess if we like Commissioner Thernstrom's
22 version of it better, and I'm certainly glad to follow-up
23 with letters of support from any number of --

24 CHAIRPERSON BERRY: Let me be clear about
25 what I'm saying, Elsie, because I'm not sure that I

1 communicated correctly.

2 We will let Commissioner Thernstrom, if we do
3 it this way, have a try at it. Because she said that she's
4 opposed to stereotyping and so on, but she has some
5 problems with doing it this way. If she can come up with
6 something that does what you need to have done or what you
7 feel is what needs to be done, but then we can all agree to
8 it, that would be great.

9 If she does not, then I for one am willing to
10 agree to what you already have with some changes to it. I
11 am not going to vote on it today if we do it this way.

12 If we were to vote today, it would pass.
13 That is my reading of the table. But it would be better if
14 we could give every opportunity for those who feel
15 differently to come up with something. Let's see if we can
16 find a way to do this. If we can't then we will just
17 simply go ahead. If you are still dissatisfied and there
18 is no middle ground here, then we'll just go ahead with it.

19 Okay?

20 COMMISSIONER MEEKS: Okay. Thank you very
21 much.

22 CHAIRPERSON BERRY: All right.

23 Now is there anything else that I am
24 forgetting to do today or something else we should be doing
25 that I don't remember? Since I don't remember and no one

1 else does, there's no way for me to do it. So let me thank
2 everyone.

3 Can I get a motion to adjourn?

4 VICE CHAIRPERSON REYNOSO: So moved.

5 CHAIRPERSON BERRY: Second?

6 COMMISSIONER MEEKS: Second.

7 CHAIRPERSON BERRY: It's non-debatable. All

8 in favor say aye.

9 Opposed? So ordered. Meeting adjourned.

10 (Whereupon, at 1:29 p.m., the proceedings

11 were concluded.)