

## U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

## MEETING AND BRIEFING

+ + + + +

Friday, June 18, 1999

+ + + + +

The Commission convened in Suite 540, YMCA Building, 624 9th Street, Northwest, Washington, D.C., at 9:30 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, Chairperson

CRUZ REYNOSO, Vice Chairperson

CARL A. ANDERSON, Commissioner (via telephone)

CHRISTOPHER EDLEY, JR., Commissioner

YVONNE Y. LEE, Commissioner

ELSIE M. MEEKS, Commissioner

RUSSELL G. REDENBAUGH, Commissioner (via telephone)

RUBY G. MOY, Staff Director

STAFF PRESENT:

LAURA ANECKSTEIN

DAVID ARONSON

MARGARET BUTLER

SICILIA CHINN, Parliamentarian

KI-TAEK CHUN

PAMELA A. DUNSTON

BETTY EDMISTON

EDWARD A. HAILES, JR.

GEORGE HARBISON

CAROL-LEE HURLEY

FREDERICK D. ISLER

LISA M. KELLY

STEPHANIE Y. MOORE, General Counsel

JESSICA ROFF

EILEEN RUDERT

MARCIA TYLER

JEANENE WAITE

AUDREY WRIGHT

MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

CHARLOTTE PONTICELLI

EFFIE TURNBULL

<u>Agenda Item</u>	<u>Page</u>
I. Approval of Agenda.....	4
II. Approval of Minutes of May 14, 1999 Meeting.....	4
III. Announcements.....	5
IV. Staff Director's Report.....	21
V. Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination - The New York Report.....	41
VI. State Advisory Committee Report "Alaskan Natives and Other Minorities in the Special Education Program of Four Alaskan Districts" (Alaska).....	57
VII. Future Agenda Items.....	59
Commission Briefing.....	60

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

(9:30 a.m.)

APPROVAL OF AGENDA

CHAIRPERSON BERRY: The first item on the agenda is the approval of the agenda, which includes -  
 - I need a motion to include the briefing that we are going to have, about which I'll say more at the end of the meeting, which is at the end of the meeting, but just to point out that it is part of the proceeding.

VICE CHAIRPERSON REYNOSO: So moved.

CHAIRPERSON BERRY: Can I get a second?

COMMISSIONER EDLEY: Second.

CHAIRPERSON BERRY: All in favor indicate by saying aye.

So ordered.

I'm sorry. Opposed?

COMMISSIONER REDENBAUGH: Opposed.

CHAIRPERSON BERRY: Okay. Who just said opposed?

COMMISSIONER REDENBAUGH: Redenbaugh.

CHAIRPERSON BERRY: Okay. All right.

APPROVAL OF MINUTES OF MAY 14, 1999 MEETING

The next item is approval of the minutes of May 14, 1999. Can I get a motion?

VICE CHAIRPERSON REYNOSO: So moved.

1 COMMISSIONER EDLEY: Second.

2 CHAIRPERSON BERRY: All in favor indicate  
3 by saying aye.

4 ANNOUNCEMENTS

5 CHAIRPERSON BERRY: Okay. Announcements  
6 is the next item on the agenda. Let me first say, let  
7 me go to the question. By mistake the briefing that  
8 we are going to have today was left off the list of  
9 items we are having today.

10 In 1995, I think it was, or 1996, which  
11 was the last time the Commission, or one of the times,  
12 I don't know if it was the last time, but it has been  
13 pointed to me the Commission discussed briefings. We  
14 talked about how they should be flexible. I have a  
15 copy of the transcript of the meeting somewhere.  
16 Anyone who is interested in it should go back and look  
17 at it.

18 Generally, we agreed that we should  
19 maintain flexibility because the purpose of briefings  
20 is to try to respond to things that happened without  
21 having to wait forever, and to respond to them  
22 immediately, which has been one of the concerns here  
23 at the Commission, our inability to respond to things  
24 in a timely fashion.

25 There was some discussion at that meeting.

1 I agreed to generally, and said, and no one objected  
2 which means I guess everybody who was there agreed,  
3 that we would notify Commissioners at least a month in  
4 advance or remind them on briefing topics that might  
5 be on the agenda.

6 But I also stated at that time that there  
7 may be emergencies from time to time, or items that  
8 happened and that Commissioners would be notified when  
9 they occurred. I only say that because I want it to  
10 be clear that in the future, we will try to make sure,  
11 and the staff director will be instructed to make sure  
12 that people know a month in advance if there is a  
13 briefing scheduled already for something. So that if  
14 people have ideas about, Commissioners have ideas  
15 about people who they would like to see talk at the  
16 briefing or present at the briefing, they can so  
17 indicate.

18 Every Commissioner is free to suggest  
19 briefing topics as Commissioners do. But if something  
20 should happen in the future and it is necessary to  
21 respond in a timely fashion even in between a meeting  
22 to agree to have a briefing or to simply suggest one,  
23 I would ask the staff director to inform you as soon  
24 as possible, and so ask people to on a fast track  
25 respond as quickly as possible.

1           So the general rule then, as I understand  
2 it, will be that Commissioners will be notified a  
3 month in advance. If we have a list of briefing  
4 topics, sometimes we have a list because many people  
5 have suggested briefings, maybe we could go over the  
6 list or be reminded of it in the meeting so that  
7 people can do some forward planning. If there is one,  
8 say for the next month, be reminded that there will be  
9 one for the next month. So that is the idea.

10           As for what kind of participants in the  
11 briefing, we had some discussion of that too. Some  
12 Commissioners thought that briefings ought to be  
13 balanced with people having different points of view.

14           Other Commissioners thought that it might be better  
15 to have people who had expertise about issues, small  
16 in number, so that they could present and the  
17 Commissioners would be able to ask them questions.

18           The briefing we have today is a hybrid of  
19 that. We have three people, and I think they all have  
20 different points of view, I'm not sure. But they are  
21 supposed to be at least two of them hold themselves  
22 out as being experts, maybe all of them, on these  
23 subjects. But since there are three of them, we  
24 should have sufficient time to discuss these matters.

25           Does anyone want to say anything about

1 what I have just said about briefings or ask any  
2 questions about it?

3 COMMISSIONER REDENBAUGH: Yes, I would  
4 like to.

5 CHAIRPERSON BERRY: Yes. Go right ahead.

6 COMMISSIONER REDENBAUGH: What would  
7 constitute an emergency?

8 CHAIRPERSON BERRY: If some event occurs  
9 that is in the public debate that is within the scope  
10 and responsibility of the Commission, and it is felt  
11 that we need to consider the issue and be informed  
12 about it so that when we are asked about it, we will  
13 be able to say something, and if it's something on  
14 which we have already done work or issued reports, we  
15 might want to update our views so that we would be  
16 able to respond to media inquiries or the public or  
17 consider whether we want to have a Commission response  
18 to whatever this issue is because it's a matter of  
19 great public interest and urgency.

20 COMMISSIONER REDENBAUGH: Do you believe  
21 that this briefing today rises to the level of an  
22 emergency?

23 CHAIRPERSON BERRY: I am not claiming that  
24 the one today arises to a level of emergency, although  
25 there are some people who might think it does. I am



1 only pointing that out because in the transcript in  
 2 1996, I am actually pointing out two issues. One, the  
 3 transcript clearly indicates that in the normal course  
 4 of events and as a routine matter, Commissioners will  
 5 know a month in advance if there is a briefing, and  
 6 that there will be full opportunity to suggest  
 7 witnesses and the like. I am simply reaffirming that.

8 But I am also pointing out that there may  
 9 in the future, I don't know if there will be an  
 10 emergency, which is the same thing I said in 1996, but  
 11 if there should be one, then it may be necessary to  
 12 have one and discuss it in less than 30 days. That  
 13 may happen. So I am only saying that so that if it  
 14 happens, someone won't say, "Well gee, that was never  
 15 supposed to happen." That is the reason why, Russell.

16 COMMISSIONER REDENBAUGH: Okay. You are  
 17 now talking more about this since we talked on Tuesday  
 18 and since I read the staff paper that was released  
 19 yesterday, the day before. I really object to this,  
 20 not to this briefing. I think this is an essential  
 21 topic on which to have a briefing. I object to this  
 22 happening in such a way that I couldn't be prepared  
 23 and be there, and that we found out about it the week  
 24 that it happened. That is just not acceptable.

25 CHAIRPERSON BERRY: Okay. Point taken.

1 Yes, Mr. Edley?

2 COMMISSIONER EDLEY: I guess I am  
3 obviously sympathetic with the issue of being able to  
4 prepare and to be present for these things. On the  
5 other hand, I take it it's only a briefing and we are  
6 not planning to act or make any decisions, but simply  
7 to try to inform ourselves, which I think is  
8 important.

9 On the other hand, I think that at least  
10 in my mind, this is an "emergency," at least in the  
11 term of art that I think would make sense in this  
12 context. I mean nobody's life is threatened. On the  
13 other hand, the issue has clearly created quite a  
14 public stir. It's rapidly becoming highly  
15 politicized.

16 My understanding is that the Department of  
17 Education is moving ahead on a very fast track to  
18 finalize these efforts while also consulting broadly.

19 The Congress, I think the House Judiciary Committee  
20 is going to have an oversight hearing this coming  
21 Tuesday to discuss the matter. There is some talk of  
22 Congress legislating on this subject as a rider to the  
23 Appropriations bill.

24 Given all of those factors and the things,  
25 the developments that might occur at a fairly rapid

1 rate over the next two to three months, and of course  
2 knowing what the pace is of the Commission's  
3 thoughtful work, if we are going to try to contribute  
4 to the public discussion of these issues in that time  
5 frame, I think time is of the essence.

6 We may well hear the briefing and conclude  
7 that there's really no particular role, no particular  
8 value added that the Commission has to offer. But I  
9 think we at least ought to have the briefing in order  
10 to preserve the option of being part of the public  
11 discussion.

12 CHAIRPERSON BERRY: Yes. Vice Chair?

13 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
14 just think that the summary that you have given in  
15 terms of the ground rules for the briefings comport  
16 with the emphasis we have placed in recent times on  
17 having a timely response by this Commission to the  
18 public issues that are coming up. So I just -- of  
19 course I have been a strong advocate of responding on  
20 a timely fashion. So I hope that is the way we will  
21 treat the summary that you have just given us.

22 COMMISSIONER ANDERSON: Madam Chair?

23 CHAIRPERSON BERRY: Yes, Commissioner  
24 Anderson.

25 COMMISSIONER ANDERSON: Well, I would like

1 to associate myself with the remarks of Commissioner  
2 Redenbaugh. It seems to me I would interpret the  
3 procedures that we discussed a year or two ago  
4 regarding briefings, we did not follow the briefing  
5 procedures in this instance.

6 It is clear that there is a timeliness to  
7 moving ahead with the briefing. In my mind, it does  
8 not rise to the level of "emergency" that would  
9 require us to do it at this meeting rather than the  
10 July meeting. However, since it is scheduled, I think  
11 we should go ahead with it today.

12 But the difficulty is that Commissioners  
13 don't have the ability really on a timely basis to  
14 suggest format in terms of the subjects to be covered  
15 in the briefing, myriad issues to be addressed. I  
16 know we made a recommendation for someone to testify.

17 So those are the kinds of things that are undermined  
18 by moving too quickly. I think those are  
19 considerations that are important.

20 However, if we are going to get back on  
21 track in terms of our procedures, then I think we  
22 should go ahead today. But I do want to say that I am  
23 in sympathetic agreement with Commissioner Redenbaugh.

24 CHAIRPERSON BERRY: Okay. I think that  
25 yes, we will follow those procedures. But I must

1 reiterate that Commissioners must be flexible.

2           Sometimes if something occurs that a  
3 Commissioner or I myself believe requires a timely  
4 response and on a quick track, you may be asked to  
5 prepare yourself for a briefing, and if you have any  
6 witnesses, recommend them or whatever, in a very short  
7 timeframe, simply because I am determined if I can do  
8 nothing else, and I may not even be able to do this  
9 since I can't do anything really here to move things  
10 along the way I would like, that we start responding  
11 more quickly to things that happen, and not have  
12 everything drag on forever and ever and to have us be  
13 irrelevant to the public debate when there are issues  
14 being debated and they are civil rights or may have  
15 civil rights implications, we don't know, but it may  
16 appear to some people that they do, that we're not  
17 present. You know, we're just, you know, not absent  
18 from the debate until it's over. By the time that  
19 happens, you know, it's too late to have anything to  
20 say.

21           So I know that we all are part-timers and  
22 we all have other things to do, and we all have lives,  
23 but I am just saying that you may very often be asked  
24 to respond to something very fast, and I would hope  
25 that you would do that and not feel that people are

1 being unfair or that someone is trying deliberately to  
2 cut off any rights or to be uncollegial.

3 I welcome Commissioners suggesting  
4 briefings, either a month ahead or a few months ahead  
5 or something that you think has happened and that we  
6 ought to be responding to it right away, so that it is  
7 not left up to me to suggest something. But the rest  
8 of you can do that too, if you see something out there  
9 that we need to be responding to.

10 The briefing is something we made up. It  
11 is not part of any procedure that's anywhere in the  
12 Commission procedures, unless it's in the AIs now. As  
13 a matter of fact, I suggested it some years ago in my  
14 effort to try to think of some items, something the  
15 Commission could do that could be done quickly and  
16 didn't take two years or three years, four years.

17 As you know, the staff and the PAU office  
18 is responsible once we decide upon a topic and say  
19 what we are interested in, in figuring out what  
20 aspects of it, who the people should be, managing that  
21 process. We don't do that ourselves.

22 Okay. We will try to keep on track with  
23 that. I appreciate your indulgence.

24 COMMISSIONER ANDERSON: Madam Chair?

25 CHAIRPERSON BERRY: Yes, Commissioner

1 Anderson.

2 COMMISSIONER ANDERSON: Thank you. While  
3 we are talking about flexibility, I too looked back a  
4 little bit into the transcript and found that about a  
5 year ago I proposed a briefing on social and economic  
6 opportunities for Native Americans. Maybe it's  
7 fortuitous that we didn't have the briefing back then,  
8 but now I would like to put that on the agenda again.

9 I don't have a particular month which I would  
10 recommend, but I think if we can move forward with  
11 that briefing sometime in the near future, that would  
12 be good.

13 CHAIRPERSON BERRY: When -- what's his  
14 name, the guy in Colorado?

15 STAFF DIRECTOR MOY: John Dulles.

16 CHAIRPERSON BERRY: John Dulles was here  
17 from Colorado. He suggested some things that we could  
18 do on Native Americans. We sort of decided we  
19 wouldn't do it until we had a member of the Commission  
20 who was an American Indian, especially given all the  
21 complaints made about American Indians not being  
22 included in various policy organizations, if I may put  
23 it that way, that we're developing.

24 But now that we do have, then it would  
25 seem timely that we would move forward on that part of

1 the agenda. I appreciate you reminding us of that,  
2 Commissioner Anderson.

3 Also, Commissioner Redenbaugh had  
4 suggested a briefing on the prison -- I have forgotten  
5 what you called it, the prison industry or something,  
6 or the people, the large numbers of people who are  
7 incarcerated. Remember that?

8 COMMISSIONER REDENBAUGH: Yes.

9 CHAIRPERSON BERRY: What did you call  
10 that? The prison binge or something.

11 COMMISSIONER REDENBAUGH: Yes. I believe  
12 it was prison construction.

13 CHAIRPERSON BERRY: Prison construction?

14 VICE CHAIRPERSON REYNOSO: Prison  
15 industrial complex.

16 CHAIRPERSON BERRY: I don't think that's  
17 what he had in mind.

18 COMMISSIONER REDENBAUGH: No. I wasn't  
19 interested in the administrative aspects of it, but --

20 CHAIRPERSON BERRY: The social and  
21 economic aspects, right?

22 COMMISSIONER REDENBAUGH: Yes. The social  
23 policy of yes, of expanding the prison population so  
24 much more rapidly than the population.

25 CHAIRPERSON BERRY: You mean in the



1 population of the country? Percentage wise you mean,  
2 I hope.

3 Okay. Well, so those two are on our list.

4 If people have others, you don't have to suggest them  
5 all here, but I mean, we'll put those on the list too  
6 and then work them up and have them.

7 The other is, let me see, do I have any  
8 other announcements? The New York hearing, police  
9 hearing, was a great success I think, by all accounts,  
10 people who were involved. The witnesses believed that  
11 it was useful, and they were treated fairly and that  
12 it was insofar as I am able to tell, and they were  
13 very informative. I learned a lot.

14 The staff did a terrific job getting it  
15 ready on short notice, the staff from all the various  
16 offices here at the Commission who were involved.  
17 That includes the people in administrative services  
18 and OGC, PAU, all the offices here at the Commission  
19 who were involved. Now we have of course the hard  
20 part at the Commission, which is getting a report  
21 done.

22 Three of the four remaining defendants in  
23 the Louima trial, as you may know, were acquitted by a  
24 jury at some point following our hearing. Some other  
25 stuff has gone on there.

1           We have summer interns, several here. We  
2 would like to welcome them and thank them for all the  
3 hard work that they do. Where are the summer interns?  
4 Are they in here? There they are, all in a row.  
5 Good. Thank you very much.

6           VICE CHAIRPERSON REYNOSO: Maybe they can  
7 tell us where they are from.

8           CHAIRPERSON BERRY: Yes. Would you like  
9 to tell us where you are from? Starting from left to  
10 right?

11          VICE CHAIRPERSON REYNOSO: Give us your  
12 name and what school you are from.

13          INTERN RAI: I am Pallavi Rai, from George  
14 Washington University Law School.

15          INTERN JEON: I'm Naeli Jeon. I go to  
16 American University Law School.

17          INTERN MENDEZ: I'm Arlene Mendez. I'm  
18 from the University of Puerto Rico.

19          INTERN TERFINKO: I'm Jennifer Terfinko,  
20 from Bloomsburg University in Pennsylvania.

21          INTERN BOND: I'm Alicia Bond from  
22 Washington University in St. Louis.

23          INTERN ELKIN: Ben Elkin, from  
24 Northwestern University.

25          CHAIRPERSON BERRY: Okay, good. All

1 right. Thank you very much. Welcome.

2 You can announce that. I'm not going to  
3 announce it. Do you have anything to announce, Staff  
4 Director?

5 STAFF DIRECTOR MOY: Yes. This week Rosa  
6 Parks was awarded with one of this country's highest  
7 honors, the Congressional Gold Medal, for her life's  
8 dedication to civil rights.

9 CHAIRPERSON BERRY: Okay.

10 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
11 just want to comment further on the New York hearings.

12 It seems to me that the New York hearings comport to  
13 our efforts to respond to issues that come up in a  
14 timely fashion. I want to commend the staff for the  
15 extraordinary work that they did in preparing for  
16 those hearings. I know they did it in a very short  
17 time compared to most hearings.

18 I understand that Eric Brown, the team  
19 leader, particularly worked 24 hours a day for how  
20 many days? It wasn't quite 24 hours a day, but he  
21 worked very hard at it.

22 CHAIRPERSON BERRY: I hope not.

23 VICE CHAIRPERSON REYNOSO: And of course  
24 Eddie Hailes was the person principally in charge. I  
25 understand that he survived. But also the folk that

1 helped run it, George and Betty. I saw that David  
2 Aronson was running around a lot during that time. I  
3 can't understand why, but --

4 CHAIRPERSON BERRY: Marcia Tyler, David  
5 Aronson, Betty, the whole crew here.

6 VICE CHAIRPERSON REYNOSO: And again, I  
7 just particularly want to mention that because a  
8 couple of times during the hearings, particularly one  
9 time when I was --

10 CHAIRPERSON BERRY: And Pam Dunston was  
11 tripping over everybody and doing everything.

12 VICE CHAIRPERSON REYNOSO: Sometimes  
13 things do get a little bit hectic during hearings, but  
14 I think that is bound to happen when we aren't as much  
15 in control as we think we would like to be with the  
16 press and so on there. So I just wanted to comment on  
17 my own sense that this may have been, in my view, the  
18 single most successful hearing that we have had, both  
19 in terms of the quality of testimony and the  
20 timeliness of the issues so that we can indeed, as  
21 indicated in the earlier discussion, have some impact  
22 on the social and civil rights issues that are  
23 churning about us.

24 CHAIRPERSON BERRY: Okay. Thank you.

25 Yes?

1                   STAFF DIRECTOR MOY: Madam Chair, I would  
2 like to just echo what you said earlier about it being  
3 team work, because those that are involved in  
4 briefings or hearings, those people who stayed behind  
5 at headquarters and regional directors, still moved  
6 the agency forward. Without those people as well, we  
7 wouldn't be able to put it all together.

8                   STAFF DIRECTOR'S REPORT

9                   CHAIRPERSON BERRY: Okay. Now we go to  
10 any other announcements? Okay. Staff Director's  
11 report. Does anyone have any questions under the  
12 Staff Director's report? Commissioners, any questions  
13 about the Staff Director's report? Any questions  
14 about the ongoing work of the staff?

15                   I had one -- before we do that, I had one  
16 item to take up under announcements. I meant to take  
17 it up and I didn't. So let me back up a little bit.  
18 It has been suggested that we consider sending a  
19 letter to the President which has one page, so I'll  
20 read it for those of you who are not here, that was  
21 handed to me, a letter to the President about police  
22 community relations. I am going to read the letter.

23                   Then we can take it up under the Staff  
24 Director's report because it's ongoing and it's  
25 related to the New York hearing or the issue of the

1 New York hearing.

2 "On Tuesday, June 8, 1999" -- can you hear  
3 me, Russell?

4 COMMISSIONER REDENBAUGH: Yes.

5 CHAIRPERSON BERRY: Could you give Charlie  
6 a copy of this letter? Okay.

7 "On Tuesday, June 8, 1999" -- this is to  
8 the President -- "you joined with the Attorney General  
9 and others in a discussion of the criminal justice  
10 system. That session was a valuable and commendable  
11 effort to bring important civil rights issues to the  
12 attention of the American public. In particular, the  
13 discussion of racial profiling was a service to the  
14 Nation."

15 "The U.S. Commission on Civil Rights has a  
16 continuing interest in the administration of criminal  
17 justice without invidious discrimination. One of the  
18 issues in our recent New York hearing on police  
19 practices and civil rights included attention to the  
20 subject of alleged racial profiling. The Commission  
21 is especially interested in the question of Federal  
22 leadership on this issue, including the policies and  
23 practices of Federal law enforcement agencies."

24 "In your own statements, we noted a strong  
25 condemnation of racial profiling, but no specific

1 instruction to Federal enforcement officers, apart  
2 from the very important directive to collect data.  
3 Administration officials have characterized that data  
4 directive as a first step. We are curious, however,  
5 as to why neither you nor the responsible cabinet  
6 officers have thus far chosen to combine the data  
7 collection with a statement of policy principles  
8 carrying the force of command, if not the force of  
9 law."

10 "Further, we are interested in exploring  
11 the policy questions regarding the use of race and  
12 ethnicity as factors in frontline enforcement actions,  
13 particularly in the border patrol."

14 "The Commission plans to invite  
15 Administration officials to appear before us at our  
16 meeting of July 9, 1999, to share their present  
17 understanding of Federal policy and practice regarding  
18 racial profiling. Recognizing the shortage of  
19 detailed data, we expect that much of the discussion  
20 will be at the level of general policy, exploring the  
21 competing considerations."

22 "We look forward to hearing from  
23 Administration officials in July, and in view of your  
24 personal interest in the issues, wanted to communicate  
25 our plans."

1           That is the draft letter. This, as you  
2 can tell as I read it, the proposal is that we have a  
3 briefing about this. The letter is more or less  
4 saying that the President was okay to have data  
5 collection, but asking about directives and what the  
6 next steps are. If I were to send this letter, I  
7 would send it for the Commissioners. So I was  
8 wondering if anyone had any reaction to this.

9           Vice Chair?

10           VICE CHAIRPERSON REYNOSO: Well, Madam  
11 Chair --

12           CHAIRPERSON BERRY: Did I read the letter  
13 slowly enough, Carl and Russell?

14           COMMISSIONER REDENBAUGH: Yes.

15           COMMISSIONER ANDERSON: Yes.

16           CHAIRPERSON BERRY: Okay.

17           VICE CHAIRPERSON REYNOSO: Some time ago I  
18 was chatting with the then mayor of Pomona,  
19 California, a gentleman who is of Mexican parentage,  
20 who had a shop, an auto fixing shop. He was driving  
21 home one night in his old pick-up truck. He was  
22 stopped by the border patrol in the vicinity of  
23 Pomona. When the border patrolman stopped him, he got  
24 out and he eventually identified himself as the mayor  
25 of Pomona. The border patrolman was then rather



1 embarrassed and he was sort of angry. So they called  
2 their commander out of Riverside, apparently. He came  
3 right over and got there I guess half an hour later.

4 He said to them, "I know why you stopped  
5 me." He's short and dark-skinned. He says, "You just  
6 saw a short dark-skinned guy driving a beat-up pick-up  
7 truck and you figured I fit the profile." They said,  
8 "Oh no, sir. No, no. Nothing about profiles. We  
9 just thought we had a duty to investigate. We're  
10 very sorry," et cetera.

11 The commander comes by after a while, not  
12 knowing the discussion that had taken place. The  
13 commander said, "Gee, Mr. Mayor, I really apologize.  
14 You know, my men were just doing their job. You know,  
15 they were just following the profile."

16 So it is a very serious problem, but that  
17 story reminds me though of the fact that we have  
18 admissions and denials, and I was impressed by the  
19 letter in terms of it mentioning the collection of  
20 data. I do think that Federal agencies need to  
21 collect that data before they -- as a first step. So  
22 I happen to agree with that. So I am a little bit  
23 conflicted here because I think that regulations ought  
24 to take place. If they take place with the background  
25 of having collected that data, I think it's far more

1 effective.

2 So I think that the Administration ought  
3 to be commended for that. I understand the  
4 Administration also is urging the collection of data  
5 or supporting legislation in Congress that will urge  
6 states to collect that data.

7 So I don't know whether we should go on  
8 and have the briefing now, wait maybe a few months  
9 until we do collect the data. I just want to express  
10 some concerns that we not be acting prematurely,  
11 because other agencies like the Border Patrol will  
12 have one official saying, "What briefing?" Another  
13 one saying, "Oh briefing." I think it would be good  
14 to have if they have written guidelines, to know what  
15 they are. If they don't, but that's the practice,  
16 find out about that and get that information.

17 So my concern is sort of fact gathering,  
18 if you will.

19 CHAIRPERSON BERRY: Okay.

20 Yes, Commissioner Edley?

21 COMMISSIONER EDLEY: I very much support  
22 sending the letter. I, wearing various of my other  
23 hats, I have had a lot of conversations with people in  
24 the Administration on this issue. The timeline, Mr.  
25 Vice Chair, for implementing this data directive is,

1 while it is aggressive, as a practical matter, it is  
2 going to be well over a year before there is any  
3 significant data produced.

4 They are going to be extensive, I think,  
5 internal discussions about how to design the data  
6 collection so that it's not burdensome. Whether to  
7 use sampling techniques, and if so, what kind of  
8 sampling techniques. Which kinds of enforcement  
9 encounters Customs agents or DEA agents or Border  
10 Patrol agents should have been subject to this data  
11 collection. There will be pilot testing, and the  
12 like. There will be social scientists appointed to  
13 try to -- so it's really going to be quite -- I think,  
14 frankly, the problem with only taking one step, this  
15 first step, is that the way they seem to be  
16 proceeding, it might be quite a long time before they  
17 take a second step.

18 I, at least, would be interested in  
19 understanding certainly better than I do what sort of  
20 some of the underlying policies are. I mean let me  
21 just go back to your example about the mayor of  
22 Pomona. It doesn't seem to me you need to collect  
23 data in order to have a general discussion about  
24 whether it is good policy or bad policy, whether it is  
25 consistent with our laws or inconsistent with our laws

1 for Border Patrol agents to do the sort of thing that  
2 you describe.

3 Do we feel as a matter of principle that  
4 if you are brown and you live 50 miles from the border  
5 in Southern California or South Texas, you should be  
6 expected to feel all right about the fact that every  
7 time you go bowling with some of your buddies, you  
8 might get stopped by the Border Patrol and quizzed  
9 about your right to be in the country.

10 I can understand arguments on both sides  
11 of that question. I think it would be useful for the  
12 Commission, but also useful for the country to do what  
13 we could to try to begin to explore some of these  
14 issues.

15 Let me also say that my impression is that  
16 the senior people -- strike that. I know that the  
17 senior people in the Justice Department are themselves  
18 a little bit confused about what is actually going on  
19 in the Border Patrol and other agencies, are uncertain  
20 about even what the statement is of the operational  
21 policies, much less the extent to which line officers  
22 comply with those policies.

23 So my suggestion is I think it would be  
24 useful at least to begin a conversation with a  
25 briefing, not with an eye towards any near-term

1 action.

2 CHAIRPERSON BERRY: Does anyone know what  
3 the prospects are for the bill that's in the Congress  
4 that would require the state and local governments to  
5 collect data? I know that the Congress, the House  
6 especially, is very busy now with the amendments to  
7 the juvenile justice bill that seems to go on and on  
8 and on and on and on. I don't know what else they are  
9 going to get to before they take their various  
10 vacations and breaks.

11 But I just wondered, one, what the  
12 prospects were for that, and whether that made sense  
13 in some strategic sense that I am not aware of,  
14 whether that had been considered. Is that a  
15 consideration?

16 The other is that there is the view of  
17 police and law enforcement officials to take into  
18 account about how this policy should be developed and  
19 what our position to it, if there were an announcement  
20 made that today you are to do X, Y and Z.

21 I have a hunch, I don't know this because  
22 I haven't followed what the Border Patrol and the  
23 various Federal official law enforcement agencies are  
24 doing, but I have a hunch that they would think that  
25 the policy should evolve in a way that they are able

1 to figure out how to carry out their duties, from  
2 their perspective I'm talking about, at the same time  
3 that they respond to any kind of directive, and that  
4 they would have some concerns.

5 I understand the racial profiling issue.  
6 When I was in Romania, I may have told some of you  
7 this, last spring, I was finally told by someone --  
8 Romania, the Romanians, most people of Eastern Europe,  
9 the former Soviet Union are poor. There is lot of  
10 social and economic chaos in the country. Finally  
11 when I got to know one of them rather well, they told  
12 me that thousands of them had migrated to the United  
13 States.

14 I said, "How did that happen?" They said,  
15 "Well, we did it illegally." I said, "Well how did  
16 you do that? How did you get into the United States?"

17 They said, "Oh, well we have these freighters taking  
18 people into the United States. We're going across the  
19 Mexican border. We go across quite easily, and no one  
20 ever stops us. We are instructed how to do it. They  
21 think that because we're white, they think we are  
22 Americans who have just been shopping over in Mexico,  
23 so we have a nice little pipeline going back and  
24 forth."

25 "There they are, stopping all these other

1 people. If they even said anything to us, you know,  
2 most of us they would find out that most of these  
3 people didn't even speak English. But they don't even  
4 say anything to them except wave, you know, 'hi' as  
5 they go by." So they said "We're having quite a  
6 pipeline. We've got whole communities." They told me  
7 where some of them live in California -- I am not  
8 going to disclose that -- so that people can get past  
9 the law as they come into the country.

10 So that is a clear example as in the  
11 examples we have talked about in the drug industry,  
12 where the police are so busy looking at some people,  
13 that they don't notice other people who are selling  
14 drugs. So I am aware that racial profiling all of us,  
15 that it is a problem, and that law enforcement may be  
16 doing some of it. But there is this question about  
17 what kind of information we have.

18 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
19 wonder whether rather than sending a letter like this,  
20 we might not explore informally as we normally do, the  
21 possibility of briefings to get a better sense  
22 ourselves and have some impact maybe in the discussion  
23 that the Administration is going forward on, and go on  
24 and have a briefing. I don't know whether we could do  
25 it by next month, but have some of the officials come

1 and some of the community groups that have been  
2 concerned about these issues come and help educate us  
3 on these issues also.

4 CHAIRPERSON BERRY: Do other Commissioners  
5 have any comments?

6 COMMISSIONER ANDERSON: Madam Chair?

7 CHAIRPERSON BERRY: Yes, Commissioner  
8 Anderson.

9 COMMISSIONER ANDERSON: I have several  
10 comments. The first is I would like to have a  
11 decision on whether or not we are going to have a  
12 briefing on this topic in July. Then I think it's  
13 best on whether there ought to be another and what  
14 ought to be in it.

15 I think a briefing on this topic is -- I  
16 would like to see both the Commissioners coming  
17 prepared themselves as well as some of our colleagues  
18 who have a great deal of expertise in the area. But  
19 also I think it is important that if we are going to  
20 have members of the Administration here with us to  
21 brief us on this, that they have adequate time so that  
22 they can give us thorough and complete answers, not  
23 "it's currently under study" or "I'm not sure about  
24 that," or "we'll have to send you that kind of  
25 information."



1           So if it's urgent that we have it in July,  
2 then let's move forward and do it in July. However, I  
3 would be willing to wait another month or two if by  
4 waiting it means that we get a more thorough  
5 presentation by members of the Department of Justice  
6 and others.

7           But could we move forward first on the  
8 question of whether or not we want to have this  
9 briefing, when, and then we can talk about the  
10 content?

11           CHAIRPERSON BERRY: Okay. Does anybody  
12 else have a comment? Were you trying to say  
13 something, Russell?

14           COMMISSIONER REDENBAUGH: I was, but my  
15 comments may be muted by the discussion, so let's do  
16 that first.

17           CHAIRPERSON BERRY: Why don't you say them  
18 anyway, because --

19           COMMISSIONER REDENBAUGH: Well, all right.

20           CHAIRPERSON BERRY: I like to know what's  
21 going on in your head, or that you are willing to  
22 share.

23           COMMISSIONER REDENBAUGH: The letter, the  
24 tone of the letter implies a complaint. I just wanted  
25 to -- and it's a complaint about an action, a policy.

1 I just wanted to raise the question, do we want to  
2 make that as a complaint.

3 CHAIRPERSON BERRY: Okay. All right.

4 COMMISSIONER REDENBAUGH: Since we haven't  
5 done the briefing on which to inform ourselves.

6 CHAIRPERSON BERRY: I see, okay.

7 VICE CHAIRPERSON REYNOSO: That is one  
8 reason why I said that maybe rather than sending the  
9 letter, we just proceed as we normally do to check it  
10 out, to see whether we can get the officials here.

11 I must say that on profiling, if we can  
12 get them to come, it would be good to have not just  
13 Federal, but state officials too. These issues may be  
14 even more serious with state profiling than with  
15 Federal profiling.

16 CHAIRPERSON BERRY: Yes. Commissioner  
17 Meeks?

18 COMMISSIONER MEEKS: I am glad that  
19 Commissioner Reynoso brought that up because I mean in  
20 most of the states that have reservations, I mean this  
21 complaint is really widespread. I know that because I  
22 live on a reservation. Whenever we drive back and  
23 forth to Rapid City, which is the only highway that  
24 goes to the reservation from that area, it is really a  
25 problem. It's probably the most highly patrolled

1 highway in South Dakota.

2 You know, some may argue that it's because  
3 of public intoxication or whatever, but that's really  
4 not the case, because Rapid City is a major trade area  
5 for our reservation. So it is just normal people  
6 going back and forth doing shopping that get stopped,  
7 you know, very, very frequently.

8 CHAIRPERSON BERRY: Commissioner Lee, I  
9 know you can't talk, but could you do hand signals or  
10 something, smoke signals or something? No, I'm only  
11 kidding. I know you can't say anything.

12 But my sense from listening to the  
13 discussion here is that most of the Commissioners  
14 would like, if we are to do anything, to do a briefing  
15 first before we send out any letter anywhere. Of  
16 course we can do a briefing without sending the  
17 President anything. We're just being nice to him if  
18 we sent him a letter.

19 And that Commissioners also want to hear -  
20 - some Commissioners also point out that they want to  
21 hear something about what's going on in the states or  
22 at least some of the states, and that we may not be  
23 able to do this in July. So therefore, it will have  
24 to be put off to be prepared for, since it is going to  
25 be Federal and state, and may involve White House

1 officials and Justice Department officials.

2 From what Commissioner Edley said, they  
3 are not moving that fast to do anything anyway, if I  
4 understand you correctly, as far as you know.

5 COMMISSIONER EDLEY: It is a little worse  
6 than that, my impression is. I mean I have every  
7 reason to believe of course that they are going to  
8 move quickly and in good faith on the data directive.

9 I think what I sense, however, is a reluctance to  
10 engage the question of principle.

11 CHAIRPERSON BERRY: I see.

12 COMMISSIONER EDLEY: So I think the  
13 difficulty that we are going to have is that when the  
14 Administration officials come -- and the reason they  
15 are reluctant to engage the question of principle I  
16 think are three. There is a sense that you run the  
17 risk of serious political embarrassment when you talk  
18 about this issue, political embarrassment either vis a  
19 vis the law enforcement community or vis a vis the  
20 minority community. So you just shy away from the  
21 issue.

22 Number two, there is reluctance because  
23 they don't, the policy makers don't fully understand  
24 the operational needs of the frontline law enforcement  
25 officials. Right? The Customs agent who is looking

1 at people that -- et cetera. Number three, there is  
2 reluctance because this is really hard to sort out,  
3 the competing values.

4 But whereas I understand all of those  
5 three reasons as perhaps explaining their reluctance  
6 to engage in it, engage the subject forthrightly, I  
7 think those are three reasons why it is very important  
8 for us to engage the subject.

9 May I add a word about the state issue?

10 CHAIRPERSON BERRY: Go right ahead.

11 COMMISSIONER EDLEY: So my point is that  
12 by having a conversation with the Administration  
13 sooner rather than later, I think it will be sort of  
14 therapeutic, because it will help push them along and  
15 forcing them to really discuss these issues.

16 CHAIRPERSON BERRY: I will get to that. I  
17 will get back to you in a minute. Let me just respond  
18 to that. If we go ahead and have a briefing and the  
19 staff starts working on it immediately, they will  
20 already know that we intend to engage them on the  
21 issue.

22 COMMISSIONER EDLEY: And they will think  
23 hard about it. That is very good.

24 CHAIRPERSON BERRY: So even if we have it  
25 three months from now, we will already be arranging

1 it, so they will know that it's happening.

2 COMMISSIONER EDLEY: On the state issue, I  
3 obviously agree completely that it's huge. Certainly  
4 in terms of numbers of people affected it's certainly  
5 more important than what goes on with Federal law  
6 enforcement.

7 I think many people would argue that the  
8 issues are a little bit different because of the  
9 nature of some of the law enforcement missions in the  
10 Federal Government are not strictly analogous to what  
11 most state and local law enforcement is about. So I  
12 would worry about the hearing becoming so big, with so  
13 many different disparate issues that we can't really  
14 bore in on anything in particular.

15 But lastly, there really is an  
16 opportunity. We know in New Jersey and New York and  
17 in other places, there is some state and local ferment  
18 about racial profiling. At the moment, it seems as  
19 though the President and the Administration are trying  
20 to figure out, the Congress, trying to figure out what  
21 Federal leadership ought to be on this subject to help  
22 provide a model for how state law enforcement ought to  
23 work. So I would just hope that we not give short  
24 shrift to the Federal agenda.

25 CHAIRPERSON BERRY: Were you about to say

1 something?

2 VICE CHAIRPERSON REYNOSO: I have a note,  
3 Madam Chair, from our non-speaking Commissioner.

4 CHAIRPERSON BERRY: She has laryngitis,  
5 Commissioner Anderson, Commissioner Lee has -- and  
6 Redenbaugh, she has laryngitis.

7 VICE CHAIRPERSON REYNOSO: Indicating that  
8 there is a study going on and there will be a report  
9 shortly on issues of profiling coming out of Orange  
10 County. So that might be of interest for us to check  
11 out.

12 Secondly, I have a sense that Commissioner  
13 Edley is being overly kind. Sort of between the  
14 lines, I read a sense that he says maybe the  
15 Government is going to study this forever, and because  
16 the issues are tough, never take a position. So it  
17 seems to me that if I am reading him between the lines  
18 correctly, it would be particularly important I think  
19 for us to go on and have a briefing, and maybe make  
20 some recommendations.

21 CHAIRPERSON BERRY: Well then why don't we  
22 do this. Why don't we have a briefing, but not in  
23 July, but the word will go forward that we are having  
24 one, and also do states but maybe not in the same  
25 meeting, and maybe in the second one, depending on how

1 much time we need to do this.

2 COMMISSIONER MEEKS: I would agree with  
3 Commissioner Edley. I don't think that you are going  
4 to do either one justice if you try to combine it.  
5 The issues are similar, but the agencies are so  
6 different. I mean and each state probably is  
7 different than another one. So I agree. I mean I  
8 think we can't do it.

9 CHAIRPERSON BERRY: We will do then one on  
10 the Federal, which the staff will start organizing  
11 for, not July, but sometime after that. But it will  
12 be -- they begin the organizing so people will know  
13 we're doing it. Then another one on states, and  
14 making sure that we keep one of the states in Indian  
15 country, making sure that that is part of it too.  
16 Then figuring out what other states, as the staff  
17 looks at various places and figures out which we  
18 should be doing.

19 Okay. The letter then, we will not send.  
20 My sense is that we won't send the letter, so that  
21 takes care of it, unless my sense is different from  
22 what I have heard.

23 Okay. Now let's go to -- anybody have  
24 anything on the Staff Director's report.

25



## 1 RACIAL AND ETHNIC TENSIONS IN AMERICAN COMMUNITIES

2 CHAIRPERSON BERRY: Okay. Then let's go  
3 to the next item, which is the racial and ethnic  
4 tensions in American communities, poverty, inequality,  
5 and discrimination. The old New York report, I will  
6 categorize it that way, which contains information on  
7 immigration and Wall Street.

8 Commissioner Redenbaugh?

9 COMMISSIONER REDENBAUGH: Can we hold this  
10 until July? What's it's condition now? I want to  
11 reorient myself about this a little bit. It's a draft  
12 report for us, right?

13 CHAIRPERSON BERRY: Right. It's a draft  
14 report for us and it was drafted after we got the  
15 responses from all the firms on the Wall Street part,  
16 and responses from all the affected parties on the  
17 immigration portions and the other portions. In other  
18 words, like we usually do reports.

19 The staff then finished the draft. They  
20 have put it before us for our approval, with  
21 suggestions or disapproval or whatever.

22 COMMISSIONER REDENBAUGH: The findings and  
23 recommendations, I only got this week. Now am I  
24 correct in that or have I --

25 CHAIRPERSON BERRY: Yes. We all only got

1 them this week.

2 COMMISSIONER REDENBAUGH: Okay. I thought  
3 maybe I was remiss. Well, I think our policy of when  
4 possible to allow a month for review on something like  
5 this is a good policy and that would mean we ought to  
6 be able to bring it to a vote on --

7 CHAIRPERSON BERRY: Next time.

8 COMMISSIONER REDENBAUGH: Yes, which would  
9 be my recommendation.

10 CHAIRPERSON BERRY: Okay. Does anyone  
11 object? Without objection, we will just defer it  
12 until July unless somebody objects. It has been quite  
13 a while anyway, so we can wait another month. So we  
14 will do that.

15 Now on the Staff Director's report, no one  
16 asked, but I think we need, although we have it in the  
17 MIS, I would like for the Staff Director to reiterate  
18 to us very quickly what the timelines are on the other  
19 reports that we have outstanding so that we can --  
20 just summarizing what's in the MIS, I assume.

21 COMMISSIONER REDENBAUGH: The MIS was a  
22 little light this month.

23 CHAIRPERSON BERRY: Yes, so if we could  
24 get the Staff Director to do that, I would appreciate  
25 it.

1                   STAFF DIRECTOR MOY: I know, Commissioner  
2 Redenbaugh, that the MIS reports were a little light.

3                   Inadvertently, a memo did not go out to say that the  
4 OGC MIS listing on their projects should have gone out  
5 to indicate that they were unchanged from last  
6 period's reporting. However, the reporting cycle  
7 concluded yesterday, so I have advanced information on  
8 the activities, so I can bring you up-to-date on most  
9 of the reports.

10                   The New York hearing report, you already  
11 have in its entirety for your consideration. The  
12 Mississippi report will be submitted to the  
13 Commissioners' review in the next reporting period.  
14 The schools and religion project --

15                   CHAIRPERSON BERRY: You are going too  
16 fast. Mississippi will be here when?

17                   STAFF DIRECTOR MOY: Will be submitted for  
18 the Commissioners' review in the next reporting  
19 period.

20                   CHAIRPERSON BERRY: What does that mean?

21                   VICE CHAIRPERSON REYNOSO: Is that July?

22                   STAFF DIRECTOR MOY: Yes.

23                   CHAIRPERSON BERRY: You mean we will have  
24 it in July?

25                   STAFF DIRECTOR MOY: Is that correct, yes.

1 CHAIRPERSON BERRY: Okay.

2 VICE CHAIRPERSON REYNOSO: Good.

3 CHAIRPERSON BERRY: Continue, please.

4 STAFF DIRECTOR MOY: The schools and  
5 religion, the final changes to the Executive Summary  
6 are being completed this reporting cycle, and the  
7 Executive Summary and transcript will be submitted to  
8 OSD by June 30th.

9 COMMISSIONER REDENBAUGH: I'm sorry, by  
10 when?

11 STAFF DIRECTOR MOY: June 30th.

12 COMMISSIONER REDENBAUGH: It will be to  
13 Commissioners when?

14 STAFF DIRECTOR MOY: Let's see. Before  
15 the July meeting.

16 COMMISSIONER REDENBAUGH: Just before?

17 STAFF DIRECTOR MOY: Probably just before.

18 COMMISSIONER REDENBAUGH: The meeting is  
19 July 9, as I recall. So if you have it June 30th,  
20 then we are going to have it not in time to -- we  
21 could weigh it, I guess.

22 (Laughter.)

23 VICE CHAIRPERSON REYNOSO: So we'll act on  
24 it in September probably.

25 CHAIRPERSON BERRY: Since we don't meet in

1 August, so we'll have time to read it in August and  
2 we'll act on it --

3 STAFF DIRECTOR MOY: All right, for  
4 September.

5 CHAIRPERSON BERRY: Well we'll have it  
6 before the July meeting?

7 STAFF DIRECTOR MOY: Yes.

8 CHAIRPERSON BERRY: Okay.

9 COMMISSIONER REDENBAUGH: That will be  
10 scheduled for action in September?

11 CHAIRPERSON BERRY: Right. Is that right,  
12 Staff Director?

13 STAFF DIRECTOR MOY: Yes.

14 CHAIRPERSON BERRY: Okay. Go right ahead.

15 STAFF DIRECTOR MOY: The crises of the  
16 young African-American male project, staff continues  
17 verification on the procedures to ensure the accuracy  
18 of the consultation transcript. The project is on  
19 target for completion in the fall of 1999.

20 CHAIRPERSON BERRY: Which means?

21 STAFF DIRECTOR MOY: I think it's the end  
22 of --

23 CHAIRPERSON BERRY: When will the  
24 Commissioners have it for review? When will the OSD  
25 calendar it? Mainly what we are interested in as

1 Commissioners, is when we will have something so we  
2 can plan our lives accordingly.

3 STAFF DIRECTOR MOY: Commissioners,  
4 according to the last tracking, it's scheduled to you  
5 on August 6.

6 CHAIRPERSON BERRY: August 6? So we will  
7 get it on August 6? So that could be up in September  
8 too.

9 STAFF DIRECTOR MOY: Correct.

10 CHAIRPERSON BERRY: I mean also, too as in  
11 also.

12 STAFF DIRECTOR MOY: Correct.

13 CHAIRPERSON BERRY: All right. Does that  
14 take care -- what else?

15 STAFF DIRECTOR MOY: Americans with  
16 Disabilities project is still scheduled for January  
17 2000. That is still on track.

18 CHAIRPERSON BERRY: The Commissioners  
19 would get it in January?

20 STAFF DIRECTOR MOY: Correct.

21 CHAIRPERSON BERRY: Is that correct?

22 MR. HAILES: No, it's not.

23 STAFF DIRECTOR MOY: The Commissioners  
24 will get it according to the MIS in October.

25 COMMISSIONER REDENBAUGH: The MIS can't

1 really make a commitment. So really what I am kind of  
2 looking for is is there somebody on your staff who is  
3 saying yes, we are going to have this done by this  
4 date, and that is supported by this piece of paper  
5 called the MIS output?

6 CHAIRPERSON BERRY: So what date are we  
7 going to have the report to the Commissioners, which  
8 is mainly what the Commissioners are interested in.

9 VICE CHAIRPERSON REYNOSO: On disability.

10 CHAIRPERSON BERRY: On disabilities as far  
11 as you know.

12 STAFF DIRECTOR MOY: Can we ask Eddie,  
13 since he has --

14 MR. HAILES: Good morning, Commissioners.  
15 The Staff Director was first referring to a recent  
16 monthly activity report which notes that the ADA  
17 project or at least the draft report would be  
18 submitted to the Staff Director in January of the year  
19 2000. Previously, the MIS reported that that report  
20 would be submitted to the Staff Director in late  
21 October. So there is a change in the schedule for the  
22 ADA, which was brought about due to pressing  
23 assignments by the ADA team on other projects.

24 CHAIRPERSON BERRY: Now when, and what is  
25 the current schedule for the new New York as opposed

1 to the old New York?

2 MR. HAILES: No specific milestones have  
3 been prepared for the -- or have been approved for the  
4 New York hearing report. There are discussions  
5 underway about those milestones, and we are talking to  
6 the Staff Director about those milestones now.

7 CHAIRPERSON BERRY: Well for myself, and I  
8 would hope I would have the support of the  
9 Commissioners, I would like to direct the Staff  
10 Director to have the new New York hearing report done  
11 by December 1, this year, so that the new New York  
12 report is timely, so that the new New York report  
13 comes out when there is a very high profile report,  
14 and so that it doesn't get involved in the politics of  
15 New York. We don't want to get involved in whatever  
16 they are going to do up there. I don't know what they  
17 are planning to do, but this has nothing to do with  
18 politics, and we should get the report done, get it  
19 finished, get it out, and deal with the issues which  
20 are pressing in New York.

21 So I would like, if I can get the support  
22 of the Commissioners, to have the Staff Director  
23 directed to manage whatever she is managing, but that  
24 this thing ought to be done, get it out of here  
25 before. We don't want it to run over to the year 2000



1 and keep going and going and going and be stale. So I  
2 would like to say December 1, is my deadline. Does  
3 anybody have any objection to that?

4 COMMISSIONER REDENBAUGH: Mary?

5 CHAIRPERSON BERRY: Yes.

6 COMMISSIONER REDENBAUGH: Along with my  
7 normal question about this, and that is, what will the  
8 consequences of that be for the completion of other  
9 reports? Now when we agreed over my objection to do  
10 the New York report, I was assured that it would have  
11 no consequences for anything.

12 CHAIRPERSON BERRY: Well, Russell, as you  
13 have just heard, all the reports have been accounted  
14 for by the discussion we just heard from the Staff  
15 Director and from the Deputy General Counsel. By  
16 September, we will have all the old backlog reports up  
17 to us if this information is correct. We agreed not  
18 to give OGC any more assignments for reports so that  
19 they would have the decks clear so that they could  
20 finish what they have. We haven't given them any more  
21 and we don't intend to. So all they will have is ADA  
22 and the new New York report, period. That's it.

23 COMMISSIONER REDENBAUGH: What is it that  
24 has caused ADA to slip from October to January? I  
25 mean maybe I should write a complaint to the MIS.

1 CHAIRPERSON BERRY: I think you should. I  
2 think you should write to MIS and MIS should be told  
3 urgently to get on the case, Russell. I would be  
4 happy to share. I'll sign with you. Okay?

5 COMMISSIONER REDENBAUGH: Okay.

6 COMMISSIONER ANDERSON: Madam Chair?

7 CHAIRPERSON BERRY: Yes, Commissioner  
8 Anderson.

9 COMMISSIONER ANDERSON: I think  
10 Commissioner Redenbaugh has a point here. Maybe we  
11 should just -- I would agree with you that the New  
12 York report ought to be issued sooner rather than  
13 later for many of the reasons you indicated. So I  
14 think I would support your proposal that it be done  
15 this year.

16 But I would also like to know where those  
17 resources to accomplish that objective are coming  
18 from. Now we have added a briefing today. We have  
19 added a briefing next month. There's September. Now  
20 we are talking about one in October as well. That is  
21 going to require a commitment in some respects on --

22 While we keep adding initiatives here, we  
23 want to be timely, which is all good, if it's all  
24 coming out of the ADA procedure and resources to make  
25 that report timely, then I think Commissioner

1 Redenbaugh has a legitimate issue here that we ought  
2 to address.

3 CHAIRPERSON BERRY: Yes. I will let  
4 others speak, but my own view is that when we cleared  
5 up the decks and didn't give the OGC any more  
6 projects, which we normally would have done, we were  
7 reducing the work load there so that there would only  
8 be these two things, period. Normally, they would  
9 have had three or four reports that they would be  
10 working on.

11 Now all they have is, aside from legal  
12 sufficiencies on State Advisory Committees and other  
13 matters that they deal with, they only have these two  
14 reports. That's it. But I will let others speak.

15 Did you want to say something, Edley?

16 COMMISSIONER EDLEY: I wanted to raise a  
17 question really, which is about whether in the past  
18 the Commission has explored the possibility, in the  
19 recent past has explored the possibility of using the  
20 pro bono or consulting services of for example, major  
21 law firms or major academic research centers that  
22 might be able to work under the direction of OGC to  
23 help expedite some of these projects.

24 I mean it strikes me, for the example with  
25 respect to the new New York project, that it would not

1 be difficult to get a small battalion of first-rate  
2 attorneys and researchers to provide assistance.  
3 There must be some way legally for the Commission to  
4 accept services either on a pro bono basis or as sort  
5 of a nominal consulting fee arrangement essentially to  
6 multiply, to leverage some additional resources and  
7 produce timely product.

8 Is that totally out of the range of  
9 possibility?

10 CHAIRPERSON BERRY: Well, the point is  
11 that the Staff Director, that's up to the Staff  
12 Director, and the Staff Director because that's  
13 operational. The Staff Director can do that. The  
14 Commission can not take pro bono services because we  
15 can't accept volunteer stuff under our statute. But  
16 we could accept something at a reduced rate. That  
17 would be nice. If we give, set a deadline for the  
18 Staff Director, then this may be something that she  
19 wishes to do or to explore. That would be up to her  
20 and the OGC and how they manage the project. So it is  
21 possible.

22 But the thing we need to do is to say what  
23 deadlines we expect. You have given her an idea that  
24 can be utilized within the framework of that.

25 Does anyone -- it is time now to have the

1 briefing, but are there other things that need to be  
2 said about this matter? Are people opposed to my  
3 suggestion that they finish it this year?

4 COMMISSIONER REDENBAUGH: I am not opposed  
5 to that, Mary.

6 CHAIRPERSON BERRY: Okay.

7 COMMISSIONER ANDERSON: Madam Chair?

8 CHAIRPERSON BERRY: Yes.

9 COMMISSIONER REDENBAUGH: I associate  
10 myself with Commissioner Edley's recommendation to  
11 explore additional help.

12 CHAIRPERSON BERRY: Okay.

13 Yes, Commissioner Anderson?

14 COMMISSIONER ANDERSON: I would also say  
15 that I think that is something we ought to look into,  
16 but you see we don't get now an answer to this  
17 question, which is the ADA report was supposed to stay  
18 on schedule. Commissioner Redenbaugh was assured of  
19 that. Now today we find out it has been bumped from  
20 October to January, but we don't have an explanation  
21 as to why, other than people who were involved to  
22 produce it were tasked to other assignments, which  
23 really isn't much of an answer as far as I'm  
24 concerned.

25 So I would like to get the ADA report back

1 on track, push the deadline back to October, and see  
2 what kind of resources would be required to do that.  
3 Maybe that means delaying the briefing to a later  
4 time. I think we ought to consciously make those  
5 decisions and not just be told unfortunately the  
6 schedule slipped because we had other commitments.

7 CHAIRPERSON BERRY: I will let the Staff  
8 Director answer, but we are aware though that OGC --  
9 that PAU does the briefings, not OGC. They are not  
10 involved in those. So that it is a different staff  
11 requirement.

12 Your desire to push the ADA back to  
13 October, maybe that is something, and I'll let the  
14 Staff Director answer, maybe that's something that the  
15 Staff Director can consider doing within the  
16 constraints that we have laid out, and with the advice  
17 that she has been given about other ways to get things  
18 done.

19 Staff Director?

20 STAFF DIRECTOR MOY: Madam Chair, I have  
21 been asked by the General Counsel, Stephanie Moore,  
22 who is in charge of the ADA project, if she could say  
23 a few words.

24 CHAIRPERSON BERRY: Sure.

25 GENERAL COUNSEL MOORE: I would like to

1 first just correct the record in terms of new projects  
2 to OGC. The very project that we are discussing  
3 presently is a new project, the New York police  
4 report. The ADA project has experienced delays due to  
5 the readjustment of the staff due to the New York  
6 police report.

7 Specifically, the team leader for that  
8 project was also the team leader for the ADA project.

9 He previously had a commitment from the agency to  
10 take a substantial leave in July for purposes of  
11 taking the Bar. Since he will be out of the  
12 Commission at that point, he won't be able to  
13 participate either in his part on the ADA or the New  
14 York hearing project.

15 Also, as the Staff Director is aware,  
16 another member of the ADA team has been out on  
17 maternity leave since -- and in fact, was out on bed  
18 rest prior to her pregnancy and is now out on  
19 maternity leave.

20 So those were -- the New York police  
21 hearing, did indeed have a substantial impact on the  
22 assignments in OGC, and is responsible for the delays  
23 or the readjustments in the timelines for ADA.

24 COMMISSIONER REDENBAUGH: Thank you.

25 CHAIRPERSON BERRY: Thank you, Stephanie.

1 Does anybody have any other comments?

2 COMMISSIONER EDLEY: I'm sorry. This is  
3 Edley again. I am very sympathetic with the problem  
4 of delaying the ADA report because of the subject  
5 matter importance. We are really between a rock and a  
6 hard place because on the other hand, I think it would  
7 be very, very unfortunate for the New York report to  
8 be delayed to the point where its issuance really got  
9 in the middle of a Senatorial campaign in New York.  
10 Not to put too fine a point on it, I think we want to  
11 do what we can to keep from needlessly politicizing  
12 what I assume will be a very good and important  
13 Commission product.

14 So I would just really ask that the Staff  
15 Director redouble the efforts and use all means  
16 possible creatively to do the best we can to hit the  
17 original October target for the ADA report.

18 CHAIRPERSON BERRY: The only other factor  
19 we would put into the mix is you may not be aware of  
20 it, but we already did one ADA report last year. It's  
21 not like we haven't done one. This report was  
22 supposed to be on the hearing on the folks who were  
23 affected by it. The Supreme Court, as you probably  
24 know, is handing down three decisions I think on  
25 employment and ADA, which will affect some of the



1 stuff that is in the report. It may be necessary to  
2 wait to see how that plays out before we are able to  
3 say anything definitive.

4 We don't want to say anything about ADA  
5 that is undercut by the fact that they have already  
6 decided this. I mean there is going to be a nice  
7 balance there. I am trying to figure all this out.

8 But I am prepared to leave it that the  
9 Staff Director will, with the advice that has been  
10 given about ways to get things done, try to balance  
11 out all these things. OGC has been given nothing else  
12 to do except the New York report and ADA. Those are  
13 the two projects that are in OGC now. There are no  
14 additional ones. There is no expectation, I  
15 understand, to give additional ones for the time  
16 being. So why don't we just leave it at that, unless  
17 there are other questions. We are running into the  
18 briefing and the panelists are here. So we ought to  
19 do that.

20 STATE ADVISORY COMMITTEE REPORT (ALASKA)

21 CHAIRPERSON BERRY: Are there other  
22 comments that need to be made? Let's do -- we have  
23 one other action item, which is the State Advisory  
24 Committee report on Alaskan Natives, which was held  
25 over from last time because one Commissioner had some

1 inquiries that needed to be made and some questions  
2 off to decide. We reserved it so that that  
3 Commissioner could satisfy himself.

4 Could I get a motion to approve this  
5 report?

6 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
7 was the one that held it up, so I want to move that it  
8 be approved.

9 CHAIRPERSON BERRY: Is that all right,  
10 Russell?

11 COMMISSIONER REDENBAUGH: Absolutely.

12 VICE CHAIRPERSON REYNOSO: I do want to  
13 say that --

14 CHAIRPERSON BERRY: Will you second it,  
15 Russell?

16 COMMISSIONER REDENBAUGH: Of course.

17 VICE CHAIRPERSON REYNOSO: I do want to  
18 say that we have a memo from the Committee. I want to  
19 put on the record that the suggestions that I had with  
20 respect to the report was just to make it more  
21 readable in terms of comparing the various tables that  
22 were involved.

23 Apparently the Committee feels that it  
24 would be too time consuming to do that, and they want  
25 to issue it in a more timely fashion. So I can't

1 disagree with that. So as I say, I move the  
2 acceptance of the report.

3 CHAIRPERSON BERRY: Okay. Any further  
4 discussion? All those in favor, indicate by saying  
5 aye.

6 Opposed?

7 (No response.)

8 FUTURE AGENDA ITEMS

9 CHAIRPERSON BERRY: The only other point I  
10 would make is that when I spoke earlier about the  
11 Romanian migration across the border, I must note that  
12 I am unaware of any specific violation of U.S.  
13 immigration laws, so that I will not be the subject of  
14 an investigation into the specific Romanian migrations  
15 across the border.

16 Are there any other future agenda items  
17 that anyone would like to discuss? If not, then we  
18 will adjourn this part of the meeting and go onto the  
19 briefing, which will start in about three minutes. We  
20 will let the Commissioners stand up, and let the  
21 people get to the table, and then we'll start.

22 COMMISSIONER REDENBAUGH: I'm leaving the  
23 call now. Thank you.

24 CHAIRPERSON BERRY: Thank you,  
25 Commissioner Redenbaugh.

1 (Whereupon, the foregoing matter went off  
2 the record at 10:41 a.m. and went back on  
3 the record at 10:45 a.m.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25