

UNITED STATES OF AMERICA

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COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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U.S. COMMISSION ON CIVIL RIGHTS

Friday, April 16, 1999

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The meeting was held in the Congressional Room, Holiday Inn on the Hill, 451 New Jersey Avenue, N.W., Washington, D.C., at 8:30 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, Chairperson

CRUZ REYNOSO, Vice Chairperson

CARL A. ANDERSON, Commissioner (via telephone)

YVONNE Y. LEE, Commissioner

RUBY G. MOY, Staff Director

## STAFF PRESENT:

KIMBERLY ALTON

DAVID ARONSON

SICILIA CHINN, Parliamentarian

KI-TAEK CHUN

PAMELA A. DUNSTON

BETTY EDMISTON

FREDERICK D. ISLER

TRICIA JEFFERSON

EDWARD HAILES, JR.

CAROL-LEE HURLEY

LISA KELLY

JOSEPH MANALILI

DEBORAH REID

PETER REILLY

JESSICA ROFF

MARCIA TYLER

JEANENE WAITE

AUDREY WRIGHT

CHRISTOPHER YIANILOS

COMMISSIONER ASSISTANTS PRESENT:

CHARLOTTE PONTICELLI

KRISHNA TOOLSIE

EFFIE TURNBULL

MICHELLE YOSHIDA

C-O-N-T-E-N-T-S

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

(8:48 a.m.)

**Approval of Agenda**

CHAIRPERSON BERRY: The first item is approval of the agenda.

VICE CHAIRPERSON REYNOSO: So moved.

COMMISSIONER LEE: Second.

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

(Chorus of ayes.)

**Approval of March 5, 1999 Meeting Minutes**

CHAIRPERSON BERRY: Approval of the minutes of the March 5th meeting, could I get a motion?

VICE CHAIRPERSON REYNOSO: So moved.

COMMISSIONER LEE: Second.

CHAIRPERSON BERRY: Any discussion or changes?

(No response.)

CHAIRPERSON BERRY: All in favor indicate by say aye.

(Chorus of ayes.)

1 CHAIRPERSON BERRY: So ordered.

2 **Announcements**

3 CHAIRPERSON BERRY: We have announcements  
4 next, and somewhere there are announcements.

5 The first announcement I want to make is  
6 that we have a new Commissioner appointed by Senator  
7 Tom Daschle yesterday, whose name is Ms. Elsie Meeks,  
8 M-e-e-k-s, who is the first appointee we can remember  
9 -- I don't remember anybody from South Dakota before.

10 She is an American Indian from the Ogala-Sioux-  
11 Lakota. She has been head of the Lakota Fund, is on  
12 the board of that fund, but primarily her family are  
13 ranchers in South Dakota and business people, and she  
14 was very instrumental in getting the empowerment zone,  
15 one of them, put into place out there in Indian  
16 Country and is very much involved in that, and she's  
17 very much interested in issues of economic  
18 development.

19 She also is the co-owner of a store in the  
20 town near there, and so she is a person who very much  
21 -- her emphasis is on economic development, and so we  
22 think that she will be at the next meeting, and we

1 look forward to having her join us.

2 The other announcement is that the  
3 memorial service that had been scheduled for A. Leon  
4 Higginbottom, Jr., has been postponed. They have  
5 decided to hold a service during the Congressional  
6 Black Caucus weekend in September. That's why you  
7 haven't heard anything else about that.

8 The other is that the consultation that we  
9 are conducting on African American men is being  
10 videotaped and will be broadcasted on our Web site.  
11 We have also had some press coverage of this event. A  
12 number of members of the press were here yesterday,  
13 and we assume that there will be more or have heard  
14 that there will be more here today.

15 The New York hearing team for the police  
16 hearing in New York, Eddie Hailes is handling that and  
17 Eric Brown will be the team leader for the hearing,  
18 and we can talk more about it on the Staff Director's  
19 report if anyone wants to.

20 The Staff Director has sent out a notice  
21 to the employees that they don't have to come to work  
22 on April 23rd because there is the NATO 50th

1 anniversary celebration, and OPM has said that if  
2 people want to take off, they can have a day of  
3 administrative leave since they are in that area, and  
4 there is some security concern, I guess, and some  
5 concern about congestion.

6 There may be some people in the office  
7 that day, but they are not required to be there on  
8 that day and can take administrative leave to do so.

9 Okay. I think I announced everything that  
10 was supposed to be announced.

11 Oh, the L.A. press conference, a reminder.

12 It will be on May 7th at ten o'clock in the morning  
13 in Los Angeles. So we have to make sure that Phil  
14 Montez is informed and can prepare for that, to  
15 release that report.

16 Okay. Anybody else have any  
17 announcements?

18 (No response.)

19 **Staff Director's Report**

20 CHAIRPERSON BERRY: The Staff Director's  
21 Report.

22 Under the Staff Director's report, we were

1 given last night -- at least I was given last night,  
2 so I assume you were given last night -- a memo  
3 concerning the New York Hearing. I have had several  
4 memos from Commissioner Anderson, and others have  
5 suggested various people they thought should be  
6 witnesses in the New York hearing.

7 The staff came up with a memo which I hope  
8 you've seen. Did you at least get it, Carl? Carl?

9 COMMISSIONER ANDERSON: Yes, I did, Mary.

10 Thank you.

11 CHAIRPERSON BERRY: You at least got it?

12 COMMISSIONER ANDERSON: Yes.

13 CHAIRPERSON BERRY: Okay. So you got it  
14 about the same time the rest of us got it.

15 It was a near thing, but the idea in that  
16 memo is to have the hearing be one day, have all of  
17 the officials, then to have community groups, I guess,  
18 and organizations and maybe some local political  
19 people in a limited way; to start early in the  
20 morning, and to have it someplace where we can go on  
21 into the night so that there would be a public forum  
22 to go on for however long people want to have the

1 public forum.

2           There was some other hearing we had. I've  
3 forgotten what it was about, where the public forum  
4 went on forever and ever and ever. You may recall  
5 that, Carl. I don't know what it was about. It was  
6 when Art Fletcher was the chair.

7           But we think that there will still be a  
8 lot of interest in this subject unless they solve the  
9 problem by May 26th once and for all.

10           And the other idea that's in there is that  
11 the people that we've all suggested to come as  
12 experts, that instead of having them come as experts  
13 to testify because there's no time in a one-day  
14 hearing, is to have them read the transcripts of the  
15 hearing and be consultants for a consultation and to  
16 do presentations for us much like we've had here of  
17 maybe not two days. It depends on, you know, how many  
18 we have, and then to use that as part of what we do  
19 with the report as we go along.

20           So I think that's the key part that we may  
21 want to have some discussion of. I think the rest of  
22 it we pretty much assumed that this was how it would

1 go.

2 Does anyone have any comments or any  
3 discussion about that aspect of it?

4 VICE CHAIRPERSON REYNOSO: Madame Chair, I  
5 just want to say that in light of the shortness of  
6 time, probably the idea of having the experts do a  
7 consultation sounds to me like a good way of getting  
8 all the information that we need and yet being able to  
9 contain that hearing to one day.

10 CHAIRPERSON BERRY: Carl, do you have any  
11 feelings about that?

12 COMMISSIONER ANDERSON: Well, yes, I do.

13 Let me say first I'm picking up a lot of  
14 background noise. So it's getting hard for me to hear  
15 what's being said. I can hear you, Mary, pretty well,  
16 but the other Commissioners poorly.

17 As I understand the discussion, reviewing  
18 the memorandum, that looks like a good approach to me.

19 The danger, of course, is to run too specifically  
20 into a particular investigation that's going on,  
21 getting into the merits of those investigations. So  
22 we need to be careful there.

1           The question I have is from the list of  
2 potential witnesses that I submitted, and I'll give  
3 you an example. If this is something that you want to  
4 postpone the discussion until later in the meeting,  
5 just let me know.

6           CHAIRPERSON BERRY: No, go ahead. Let's  
7 do it now.

8           COMMISSIONER ANDERSON: Yeah. For  
9 example, I had recommended someone from 100 Blacks in  
10 Law Enforcement, which is a New York Police Department  
11 subset, I guess. Now, would those people be  
12 considered, would that organization be considered an  
13 expert and deferred to the briefing, or is that  
14 somebody who ought to be speaking to us in New York?

15           The same thing about a representative from  
16 the VERA Institute for Justice, which of course has  
17 produced the report on the NYPD. Are they an expert  
18 or would they be somebody who would come under the  
19 community or investigation panel for New York?

20           That would be one question I had. I think  
21 it's pretty clear, for example, that the Patrolmen's  
22 Benevolent Association may be in the hearing, as far

1 as I could tell, but some of these other groups, the  
2 Mayor's Task Force on Police-Community Relations, it  
3 would seem to me those kinds of people ought to be in  
4 our hearing and not later on in our briefing.

5           Whereas some of the professors of  
6 criminology that I've recommended, they might very  
7 well be postponed until the briefing. Do you have a  
8 comment on that?

9           CHAIRPERSON BERRY: Well, my own view, and  
10 I'll see what others think, is that I would have  
11 sorted it out that the 100 -- what was the  
12 organization? -- 100 Black Policemen or whatever you  
13 said, that that's an organization that would be  
14 considered as an organization among those that might  
15 testify at the hearing.

16           COMMISSIONER ANDERSON: Yeah.

17           CHAIRPERSON BERRY: That they wouldn't be  
18 like the consultants and experts.

19           That the VERA Institute is a little  
20 ambiguous because, on the one hand, they're a  
21 research, you know, institute, and so I'd have to  
22 puzzle over that one, but the task force I would think

1 would be in the hearing.

2 So I would sort of sort it out like who  
3 are the kinds of folks who we might invite to do a  
4 consultation paper and to come as an expert or to just  
5 come and brief us, you know, as an expert, as opposed  
6 to somebody like the guy, Wolcott I think his name is,  
7 at the Urban League that you recommended, and others  
8 did, too? Is that his name?

9 COMMISSIONER ANDERSON: Yes.

10 CHAIRPERSON BERRY: That he's not an  
11 expert in the sense of those professors, you know,  
12 That's an organization. I mean the Urban League is.  
13 So that people like that or like some organizations  
14 that have been very much involved in this would be at  
15 the hearing I would think. So, I mean, I guess I  
16 would sort of -- VERA Institute I'd have to puzzle  
17 over a little bit. My viscera tells me that maybe  
18 they are a research organization, and maybe even  
19 though they've done a report, maybe they ought to be  
20 in the consultation part as opposed to these  
21 organizations and community leaders and police subsets  
22 that ought to be in the hearing.

1 VICE CHAIRPERSON REYNOSO: Madame Chair.

2 CHAIRPERSON BERRY: Yes.

3 VICE CHAIRPERSON REYNOSO: One of the  
4 reasons why I indicate --

5 CHAIRPERSON BERRY: Can you hear him,  
6 Carl?

7 COMMISSIONER ANDERSON: Yes.

8 VICE CHAIRPERSON REYNOSO: Okay. This is  
9 Cruz.

10 One of the reasons that I indicated I  
11 thought that was a good way to proceed was that I had  
12 seen all the organizations and people who logically  
13 should testify, and it seemed to me rather impossible  
14 to do it in one day. So I thought this was a good way  
15 of hearing from the various folk that we ought to hear  
16 from, and I assume that some of the people could fall  
17 either into logically testifying before us at the  
18 hearing or at the consultation, and I guess staff will  
19 consider that in terms of the time that we have for  
20 the hearing.

21 CHAIRPERSON BERRY: Do you have any  
22 reactions to that? Is that fine? Is that pretty

1 clear guidance, you think, for the staff or should we  
2 say more about this point, Carl? Carl, Mr. Anderson,  
3 Commissioner Anderson?

4 COMMISSIONER ANDERSON: I think that  
5 that's pretty clear guidance as far as I can tell.

6 CHAIRPERSON BERRY: Okay.

7 COMMISSIONER ANDERSON: I mean, I think I  
8 understand where we're moving.

9 CHAIRPERSON BERRY: Okay, all right. And  
10 then if anyone has other names or so, and we will, of  
11 course, get a list, as soon as the staff has a chance  
12 to put things together, but I think this memo does  
13 give us a sort of look at what's going on and makes  
14 clear that they will try to steer away from, and we  
15 should steer away; we must steer away from getting  
16 involved with those folks who do investigations.

17 Does anybody have anything else under the  
18 Staff Director's report about something that's ongoing  
19 or whatever?

20 (No response.)

21 CHAIRPERSON BERRY: The only other items  
22 that we have on the agenda are action items, and it

1 does not appear to me that we have a quorum because,  
2 unless I can't count, we're supposed to have five  
3 people. Is that right, Sicilia? I mean, and I don't  
4 see or hear five people. I guess I could pretend like  
5 maybe Russell is on the phone and he's lost or  
6 something, but it does seem to me that there are only  
7 four of us here.

8 Do we announce we don't have a quorum or  
9 does someone call for a quorum or do we proceed or  
10 what do we do, Parliamentarian?

11 VICE CHAIRPERSON REYNOSO: Madame Chair, I  
12 guess I have a question. I assume we have a General  
13 Counsel's opinion saying that we need five  
14 Commissioners. Does the statute say we need a quorum  
15 of the total number of seats rather than the total  
16 number of incumbents?

17 If it does say that, it's a rather odd  
18 law, I must say, but maybe it does say that.

19 CHAIRPERSON BERRY: I turn my attention to  
20 our Parliamentarian and counsel, Sicilia Chinn. You  
21 are recognized to give us wisdom on this subject.

22 MS. CHINN: Thank you, Madame Chair.

1                   Our statute does say that we need a quorum  
2 of five.

3                   VICE CHAIRPERSON REYNOSO: What says that?

4                   MS. CHINN: Our regulations actually.

5                   VICE CHAIRPERSON REYNOSO: Our  
6 regulations. Ah, so we need to change the  
7 regulations. It doesn't so state in the statute. Is  
8 there a provision for waiving the regulations? That's  
9 something we set. The legislature didn't say it.

10                   It's just that's a very odd regulation, I  
11 must say. I've never heard of that regulation in any  
12 other organization or governmental institution with  
13 which I've been associated.

14                   CHAIRPERSON BERRY: And Ms. Chinn, of  
15 course, is not responsible for the regulations.

16                   VICE CHAIRPERSON REYNOSO: Right.

17                   CHAIRPERSON BERRY: Is it possible for us,  
18 as the Vice Chair said, to waive, ourselves to waive  
19 that part of the regulation should we desire or not?  
20 I don't know.

21                   MS. CHINN: There's no provisions in the  
22 regulations to waive that.

1 CHAIRPERSON BERRY: Okay.

2 VICE CHAIRPERSON REYNOSO: Madame Chair,  
3 well, maybe it's improper, but I'd like to make a  
4 motion that we receive a report from the staff on how  
5 that regulation should be changed, what the procedure  
6 we should go through to change that regulation.

7 CHAIRPERSON BERRY: So that we would have  
8 a majority of the Commissioners that are seated?

9 VICE CHAIRPERSON REYNOSO: That would be  
10 my hope, but I don't want to tell the staff what the  
11 memo should have. I just want to know how to go about  
12 changing the regulation so we can consider that at the  
13 next meeting.

14 CHAIRPERSON BERRY: Okay. Yes,  
15 Commissioner Anderson.

16 And it also, if I may, just 30 seconds, it  
17 also is interesting to analyze that alongside another  
18 provision, which says that something about the work of  
19 the Commission shall not be impeded in any way. I've  
20 forgotten what it is, and delayed by such matters as  
21 appointments and the like.

22 It's hard to not delay it if you don't

1 have a majority.

2 VICE CHAIRPERSON REYNOSO: Madame Chair,  
3 I'm not sure that regulation comports with the  
4 statute. I'm not sure that it's an illegal  
5 regulation, frankly, but --

6 CHAIRPERSON BERRY: Let me -- yes, yes,  
7 Vice Chair. I'll get back to you in just a second. I  
8 had recognized Commissioner Anderson, and I'll turn to  
9 you again.

10 VICE CHAIRPERSON REYNOSO: I'm sorry.

11 CHAIRPERSON BERRY: Commissioner Anderson.

12 COMMISSIONER ANDERSON: Thank you.

13 I've only been on the Commission since  
14 1990, but I think this is the first time I recall us  
15 not having a quorum for a Commission meeting. I know  
16 earlier than 1990 sometimes there were quorum  
17 difficulties in the middle of a meeting when  
18 Commissioners would leave, but this is the first I'm  
19 aware of it.

20 I have no problem with looking at what we  
21 want to consider to be a quorum, but we just did pass  
22 these regulations, and I guess this got by us, this

1 issue.

2 If I could ask Cruz, what do you have in  
3 mind as a quorum if we were to change it?

4 VICE CHAIRPERSON REYNOSO: Yes, thank you.

5 No, I assume that it's simply a majority  
6 of those who are seated and are incumbent in that  
7 organization. So right now we have five members,  
8 three would be quorum. When we have six members,  
9 which we shortly will, then four would be a quorum, it  
10 seems to me. If we have seven, then a majority,  
11 whatever the majority is.

12 CHAIRPERSON BERRY: Sicilia, Ms. Chinn?

13 MS. CHINN: I just spoke with the Deputy  
14 General Counsel since I did not bring the statute with  
15 me, and apparently the quorum of five is in our  
16 statute so that the statute would have to be changed.

17 VICE CHAIRPERSON REYNOSO: So it is in the  
18 statute?

19 MS. CHINN: Correct.

20 VICE CHAIRPERSON REYNOSO: Oh, okay.  
21 Well, then if it's in the statute, we can't do  
22 anything about it, but if it's a regulation we could.

1                   CHAIRPERSON BERRY:     I think we should  
2 check this.     There's no sense in us sitting here  
3 puzzling over it when we don't have it with us.

4                   VICE CHAIRPERSON REYNOSO:   Yeah.

5                   CHAIRPERSON BERRY:     But I think what we  
6 should do is be given the section of the statute, the  
7 section of the reg., not for a whole lot of work, and  
8 just -- we already know how to change a reg.   You have  
9 to rewrite and then you --

10                  VICE CHAIRPERSON REYNOSO:   Yeah.

11                  CHAIRPERSON BERRY:     Well, we just did one.  
12     You send it -- we approve it, and it goes off  
13 someplace where it stays in the closet for months, and  
14 then they send it somewhere.

15                  But could you just highlight for us,  
16 although we could read it ourselves, the part of the  
17 statute, the part of the reg. that applies, as well as  
18 that portion that I'm stumbling over about the work of  
19 the Commission not being impeded, blah, blah, blah,  
20 and how that relates to it.

21                  Because it may very well be that our  
22 legislators might be willing to change it if that's

1 what the problem is. I remember saying something like  
2 a majority of the Commission, and so the question is  
3 do you mean by "Commission" the full body or do you  
4 mean by "Commission" whoever happens to be seated at  
5 that time, and it may be a question of interpretation.

6 So with that, let's just leave it, but for  
7 now the ruling of the Parliamentarian, the advice of  
8 the Parliamentarian, which I accept, is that we don't  
9 have a quorum.

10 I wonder. What I wanted to ask her is if  
11 I had not said we did not have a quorum, could we have  
12 continued to proceed unless someone made a quorum  
13 call?

14 MS. CHINN: Basically all of the actions  
15 would have been invalid.

16 CHAIRPERSON BERRY: Invalid? Okay.

17 MS. CHINN: Unless it was later ratified  
18 by a meeting in which there was a quorum.

19 CHAIRPERSON BERRY: Unless it was later  
20 ratified at a meeting in which there was a quorum.

21 So we can do either. We can either not  
22 act on these items or we can act on them and then

1 ratify them again when Ms. Meeks is here next month or  
2 when Commissioner Redenbaugh next month, one or the  
3 other, or we can discuss them if we want to, too, and  
4 not do anything; is that right?

5 MS. CHINN: You could, although usually  
6 actions taken in the absence of a quorum are usually  
7 generally pressing emergency' actions that can expect  
8 to be later ratified.

9 CHAIRPERSON BERRY: Okay. Can we discuss  
10 these if we want to?

11 MS. CHINN: I don't think there's anything  
12 prohibiting a discussion. Most meetings are generally  
13 not held in the absence of a quorum.

14 CHAIRPERSON BERRY: Okay, all right. So I  
15 would think that what we would do, especially since  
16 it's time to start the -- is it time to start or am I  
17 looking at the wrong calendar again? Is it time to  
18 start or not? What time are we supposed to? We have  
19 until 9:15.

20 Would we like to discuss these so that we  
21 don't or at least say whether we need to discuss them  
22 so that we can save time for next time when we are on

1 these matters?

2 **Discussion of State Advisory Committee Reports**

3 CHAIRPERSON BERRY: On the State Advisory  
4 Committee reports, is there any discussion that  
5 members need to have about these two, the one from  
6 Illinois on issues facing the blind and visually  
7 impaired and the one from Illinois on police  
8 protection of the African American community in  
9 Chicago?

10 Are there any major issues around these  
11 two reports that need discussion, or are we generally  
12 in agreement that the SAC has done a good job and has  
13 recommended them to us, and we're likely to go ahead  
14 and just approve them?

15 VICE CHAIRPERSON REYNOSO: Madame chair.

16 CHAIRPERSON BERRY: Yes.

17 VICE CHAIRPERSON REYNOSO: They look fine  
18 to me, though I must say we're going to have a new  
19 Commissioner presumably. Particularly in her first  
20 meeting we ought to open it up for discussion at that  
21 time again.

22 CHAIRPERSON BERRY: Okay. All right.

1 Well, then there's no need for us to pursue this.

2 Are there any other matters that  
3 Commissioners would like to discuss? Yes.

4 COMMISSIONER LEE: Madame Chair.

5 CHAIRPERSON BERRY: Commissioner Lee.

6 COMMISSIONER LEE: I just wanted to bring  
7 to the Commission's attention on an ongoing case that  
8 may come up to the Commission at a later time. It  
9 involves a Chinese American scientist who was fired at  
10 the Los Alamos Lab in New Mexico.

11 After this case was reported in the media,  
12 my office has received numerous concerned calls from  
13 the Asian American community asking whether the  
14 Commission should or could monitor the investigation.

15 Because of the way this incident is being  
16 reported as an alleged Chinese spy case, the Asian  
17 American community felt that, again, the community is  
18 being viewed as the foreigner, trying to take away  
19 what America has to offer, and this goes back to the  
20 hearing that we held in 1996 in response to the  
21 community's request for a hearing on the campaign  
22 finance controversy.

1           At this time, the community is not asking  
2 the Commission to conduct any formal hearings or  
3 whatever, but as an investigative body, they had  
4 expressed to my office that they would want the  
5 Commission to monitor the ongoing investigation to  
6 make sure that the civil rights of the individuals  
7 involved and also the Asian American community would  
8 be monitored by this Commission.

9           So I decided to bring this to the  
10 attention of the Commission and ask specifically the  
11 staff in New Mexico to keep us informed if they have  
12 heard any other developments involving this and other  
13 potential cases.

14           CHAIRPERSON BERRY: This seems to be a  
15 particular time of focus being on the Chinese American  
16 community for various reasons, including, I guess, the  
17 tensions in U.S.-China relations, I guess. At least  
18 my impression from just watching the news and  
19 listening and following it and having no information  
20 in particular about any of this, that the overall  
21 tensions in the relationship have had some impact on  
22 the Chinese American community, and certain things

1 have happened and how people have responded to them.

2 Is that your impression, too, or what is  
3 going on?

4 COMMISSIONER LEE: Right, and also because  
5 of the fact that Asian Americans are represented in  
6 the high tech industry, and right now there is great  
7 tension between this country and China, and also  
8 because of the historical fact that, you know, Asian  
9 Americans have perpetually been viewed as not  
10 Americans, being foreigners.

11 Any time there is tension with Asian  
12 countries, the Asian Americans in this country bear  
13 the brunt of the attack and other stereotypical  
14 attacks.

15 So in this case, it's not an isolated  
16 case. It's an ongoing atmosphere that the community  
17 has been feeling, and they just want to make sure that  
18 the Commission is on top of that.

19 CHAIRPERSON BERRY: Okay, all right.  
20 Well, we will -- I won't say we'll look forward to  
21 hearing that there is a problem, but if there is one,  
22 we then will react.

1                   Okay. Is there anything else that anyone  
2 wishes to raise?

3                   (No response.)

4                   CHAIRPERSON BERRY: Okay. Well, then  
5 hearing none, we will adjourn this meeting and then go  
6 into the consultation.

7                   Thank you very much.

8                   (Whereupon, at 9:10 a.m., the Commission  
9 meeting was adjourned.)

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