



U.S. COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING

Friday, January 14, 2000

Washington, D.C.

The Commission convened in Room 540, YWCA Building, 624 9th Street, N.W., Washington, D.C., at 9:39 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  
VICTORIA WILSON, COMMISSIONER  
RUBY G. MOY, STAFF DIRECTOR

STAFF PRESENT:

KIMBERLEY ALTON  
LAURA R. ANECKSTEIN  
ROBERT ANTHONY  
DAVID ARONSON  
KI-TAEK CHUN  
PAMELA A. DUNSTON  
BETTY EDMISTON  
EDWARD A. HAILES, JR., ACTING GENERAL COUNSEL  
GEORGE M. HARBISON  
CAROL-LEE HURLEY  
LISA M. KELLY  
REBECCA KRAUS  
JOSEPH MANALILI  
PETER REILLY, PARLIAMENTARIAN  
KWANA ROYAL  
MARCIA TYLER  
AUDREY WRIGHT  
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

PATRICK DUFFY  
CHARLOTTE PONTICELLI  
KRISHNA TOOLSIE  
EFFIE TURNBULL  
MICHELLE YOSHITA

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P R O C E E D I N G S

CHAIRPERSON BERRY: The meeting will come to order.

The first item on the agenda is to say Happy New Year to everybody and to point out that we have a new commissioner with us this morning to fill the vacancy which existed on the Commission. She is Victoria Wilson, who is from New York and is vice president and associate publisher at Alpha Knoff Publishers. She has had long involvement not only in the publishing industry, but with issues of civil liberties and rights insofar as they concern writers and editors and other people and on various other rights issues. She knows something about the work of the Commission, I understand, and was in fact at our New York hearing that we had on police. She was one of the people who was there.

So I want to welcome her to the Commission, and I am glad we finally got a member and happy to have somebody from New York, a world-class city, right, Cruz?

VICE CHAIRPERSON REYNOSO: Yes, absolutely.

I just want to report that our new member goes by an alias of "Vicki."

CHAIRPERSON BERRY: An alias? Oh, okay.

[Laughter.]

CHAIRPERSON BERRY: All right. Thank you very much, and welcome, Commissioner Wilson.

**I. Approval of the Agenda**

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

3 COMMISSIONER LEE: So moved.

4 VICE CHAIRPERSON REYNOSO: Second.

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

7 [Chorus of ayes.]

8 **II. Approval of Minutes of December 10, 1999, Meeting**

9 CHAIRPERSON BERRY: The second item was to approve the  
10 minutes of the December 10th, 1999, meeting. Could I get a motion?

11 COMMISSIONER LEE: So moved.

12 VICE CHAIRPERSON REYNOSO: Second.

13 CHAIRPERSON BERRY: It has been moved and seconded. All  
14 those in favor, indicate by saying aye.

15 [Chorus of ayes.]

16 CHAIRPERSON BERRY: Opposed?

17 [No response.]

18 CHAIRPERSON BERRY: So ordered.

19 **III. Announcements**

20 CHAIRPERSON BERRY: Then we have the section on  
21 announcements.

22 We, of course, did not have any Y2K problems, and if we did,  
23 we do not know that we did.

24 VICE CHAIRPERSON REYNOSO: We do not use computers, do we?

25 [Laughter.]

1           CHAIRPERSON BERRY: That is right. That is one reason why  
2 we didn't.

3           Some items can wait until the Staff Director's report. They  
4 are not items that need to be mentioned here, but Eric Brown who was  
5 the union president here at the agency and a member of the General  
6 Counsel staff and who worked very hard on the New York report, the ADA  
7 report, and various other reports that we had over the years and did  
8 very important work for us has now, after some time like everybody  
9 else, left the agency and has gone on to be assistant counsel with the  
10 National Treasury Employees Union. This is a promotional opportunity  
11 for him, and we appreciated his work here and wish him good luck.

12           The other announcement I would make is that we do have a  
13 supplemental budget request which seems to be in the works, and we have  
14 been included in the supplemental or will be included in the  
15 supplemental as it goes forward. It may have to go with all of the  
16 ranting and raving some of us did about our budget. Let's hope ranting  
17 and raving works sometimes.

18           Is Commissioner Anderson on the phone?

19           COMMISSIONER ANDERSON: Yes.

20           CHAIRPERSON BERRY: Good morning, Carl. I knew I did not  
21 see your smiling face here. Don't freeze to death if you are on the  
22 East Coast somewhere.

23           So we will have to see what happens with that, but the idea  
24 was to include us in the supplemental since we did not get any budget  
25 increase, and we have done great work which has been the subject of

1 favorable comment from all quarters. There are a number of reports and  
2 items that we need to finish that it would be very helpful in the  
3 process of trying to finish them if we were able to obtain some  
4 additional resources. So I would report on that.

5 Does anyone else have any announcements before I go to the  
6 Staff Director's report?

7 [No response.]

#### 8 IV. Staff Director's Report

9 CHAIRPERSON BERRY: Under the Staff Director's report, I  
10 said that I would mention several things that I think belong there.

11 The Staff Director has informed us that there are some new  
12 attorneys. On our attorney staff, some people went on to various  
13 promotional opportunities, as they do when they pass through here, and  
14 we like to see them do that, but it did mean that the staff was  
15 somewhat decimated for a time. So a number of new attorney advisors  
16 have been recruited and will be joining the staff soon to pick up the  
17 work there.

18 As you know, we contracted out the New York Police report,  
19 and the initial draft has been given to the Office of General Counsel,  
20 it is my understanding, and the OGC staff is reviewing it. The plan  
21 still is to get it done before a year from the hearing. We announced  
22 at the time that we did the hearing, or at least I announced without  
23 anybody telling me to or supporting me, that I thought that we would  
24 try to get the report done within a year when we did the work, and that  
25 I think it is very reasonable for the Commission to try to set itself a

1 schedule to have hearing reports done.

2 As you know, in the past we have not been able to get them  
3 done within a year of the hearing. Sometimes we had gotten them done 3  
4 years or so after the hearing. So the idea was to try to get this one  
5 done, and it looks like we will get it done at some point before May,  
6 which is when we had the hearing, and maybe perhaps as early as next  
7 month and if not then the month after that. So that is on schedule.

8 On the project planning, what is it I am supposed to  
9 announce about that? What is this about, Ruby? Do you want to  
10 announce it since I do not know what it is? It is on my announcements,  
11 but I do not have any idea what I am announcing.

12 STAFF DIRECTOR MOY: In the original mail-out, the  
13 Commissioners received the first version of the Expanded Economic  
14 Opportunities Project Plan. So the one that was subsequently faxed,  
15 that is the version that we are supposed to look at today.

16 CHAIRPERSON BERRY: So we can ferret that out when we get  
17 ready to do the project plan, right?

18 STAFF DIRECTOR MOY: Right.

19 CHAIRPERSON BERRY: So I do not really need to announce that  
20 right now.

21 STAFF DIRECTOR MOY: Okay.

22 CHAIRPERSON BERRY: The Midwest Regional director, Connie  
23 Davis, was asked after the Commission discussed the subject whether the  
24 SAC in Illinois wanted to do a project on the Decatur high school  
25 problem where there was an altercation and Reverend Jackson had asked



1 us to get involved and I responded to press inquiries by saying that I  
2 would ask our Commissioners, and we discussed it here and agreed that  
3 we would ask the SAC if they wanted to do it. Connie Davis did ask  
4 them, and they decided that they do not want to do anything about the  
5 Decatur issue.

6 It is being litigated. That is one thing. The other is--  
7 what did they say? What was their answer, Ruby, the reason why?

8 STAFF DIRECTOR MOY: Well, they are not supposed to give a  
9 reason why publicly.

10 CHAIRPERSON BERRY: Well, I just asked you. So give it to  
11 us. We would like to know.

12 STAFF DIRECTOR MOY: Well, part of it was in litigation, and  
13 part of it was that they felt that it was not what they wanted to do at  
14 this time.

15 CHAIRPERSON BERRY: Well, that is obvious.

16 [Laughter.]

17 CHAIRPERSON BERRY: I thought it was something about it  
18 being a national issue. I think I read that somewhere in a press clip  
19 that she told a reporter or somebody that it was a national issue which  
20 we ought to take up nationally.

21 STAFF DIRECTOR MOY: Right.

22 CHAIRPERSON BERRY: That it was not just a local issue,  
23 anything like that.

24 STAFF DIRECTOR MOY: Right. Let me check my notes.

25 CHAIRPERSON BERRY: You do not have to tell me precisely,

1 but does that sound right?

2 STAFF DIRECTOR MOY: Yes. Because it is a national issue,  
3 she felt that the folks at the headquarters staff should be doing this.

4 CHAIRPERSON BERRY: We have already agreed to have a  
5 proceeding, which we call a briefing, on zero tolerance. I was talking  
6 to Commissioner Lee about this and some other things the other day, and  
7 in the discussion, she said, and I agreed with her, that one of the  
8 good things about a forum instead of a briefing is that the public can  
9 come in and make public comments. If you have a briefing, the experts  
10 or the advocates or whoever we invite come in and they tell us about  
11 the issue, and then we are briefed on it and then we decide whether we  
12 would like to have some further proceeding, but a forum, as you know,  
13 like the one we did in South Dakota and other forums that we have done,  
14 usually SACs do them. There is no reason why we cannot do them if we  
15 want to.

16 You have advocates come in and people who have information,  
17 and then there is a public comment period. The public can comment.

18 Commissioner Redenbaugh?

19 COMMISSIONER REDENBAUGH: Yes. I just wanted to ask if you  
20 could explain to me again the difference between a briefing and a  
21 consultation.

22 CHAIRPERSON BERRY: Yes, sir. I would be happy to. Let's  
23 see. Now, you have been on the Commission almost as long as I have.

24 [Laughter.]

25 COMMISSIONER EDLEY: Can we get a plastic card that we could

1 keep in our wallets with "forum" or something like that?

2 COMMISSIONER REDENBAUGH: These terms of art are a little  
3 snippy.

4 CHAIRPERSON BERRY: All right.

5 COMMISSIONER REDENBAUGH: Thank you.

6 CHAIRPERSON BERRY: All of these things, I think, are in the  
7 Administrative Instructions, which is this big book that you can read  
8 at your leisure or sometime.

9 A forum is something that was established in the early  
10 1980's during the tenure of my dear departed colleague, Clarence Penny  
11 Rendleton, and the idea of the forum was that the State Advisory  
12 Committees did not have enough staff after some budget cuts to engage  
13 in investigation, which is what they used to do years ago when they had  
14 money. They had investigators in the regions, and they would go out  
15 and investigate stuff. They would do SAC reports based on the  
16 investigations and some research, and that was the typical way. They  
17 might have a proceeding in which people came in to talk about the  
18 research or the investigation, and that was the end of it.

19 But they decided that since the resources were not there, a  
20 forum where you would invite people to come to give testimony  
21 willingly, because the SACs do not have subpoena power as we do, would  
22 be better because it would not cost as much and you did not have to  
23 have investigators and all the rest of it. These people would come in  
24 and talk about the issues, and then they would have an open public  
25 session to let the public come in to make comment. They just simply

1 decided to do that as a cost-effective way to grapple with an issue and  
2 to do it in a timely fashion. So the SACs all started doing forums,  
3 and then they started reporting on the forums.

4 Briefings, the idea is that an issue before the public. We  
5 are interested in it. We do not know that much about it. We would  
6 like to know more about it. We do not know whether we want to have a  
7 hearing, or we do not know whether we want to ask OCRE to do a big  
8 research project and we are not sure what we want to do, but we know  
9 that the issue is an important one or at least it seems to be and we  
10 are getting lots of e-mails or letters or phone calls and complaints  
11 about it. It has been called to our attention.

12 So we decided to ask some advocates and experts to come in  
13 to tell us more about this issue, and hopefully, they will have some  
14 facts. Usually, they just have opinions. Even when they say they have  
15 facts, they usually come and all they have is opinions, but they come  
16 to tell us about the issue. Then, when they finish telling us, we have  
17 a transcript available if anybody wants to read it, a transcript of  
18 what went on. Then, based on that discussion, we can decide that we  
19 have aired the issue, we do not think we should do anything else  
20 because, while it was interesting, let's move on, or we decide we would  
21 like to do something else with it.

22 Briefings are managed by the Public Affairs Office. They  
23 are the ones who put those together, with help from other people.  
24 Forums are done by the State Advisory Committee staff and the regions,  
25 with a little help from headquarters if it is a special sort of thing

1 that we are involved in, and we get involved because we want to, if we  
2 decide to go to a forum or something.

3 COMMISSIONER EDLEY: I'm sorry. You said briefings are  
4 handled by the Public Affairs staff?

5 CHAIRPERSON BERRY: Right.

6 The consultation is under the General Counsel's office, and  
7 they identify experts on topics, and the experts are invited to write  
8 papers about these topics. They come to the Commission with these  
9 papers. They make a presentation. We ask them questions here, and  
10 then the papers are published along with the transcript of what was  
11 said at the consultation.

12 VICE CHAIRPERSON REYNOSO: We will also pay the consultants.

13 CHAIRPERSON BERRY: We pay them. They get paid to write  
14 these papers.

15 This procedure has been in the Commission's portfolio  
16 forever. "The memory of man runneth not to the contrary." Mary  
17 Berry's memory runneth not to the contrary.

18 Anyway, that is consultations, and then we have others, but  
19 you did not ask me about the whole list. So I will not tell you every  
20 proceeding we do.

21 VICE CHAIRPERSON REYNOSO: You will have to get that out on  
22 the card that you will get later.

23 COMMISSIONER EDLEY: A CD-ROM would be okay.

24 CHAIRPERSON BERRY: What we are suggesting now, Russell, is  
25 that maybe we want to have forums, we being us Commissioners, sometimes

1 instead of just having briefings.

2 COMMISSIONER REDENBAUGH: Right.

3 CHAIRPERSON BERRY: The only thing we would add is there  
4 would be public comment.

5 COMMISSIONER REDENBAUGH: We have done that.

6 CHAIRPERSON BERRY: I mean right here, here.

7 COMMISSIONER REDENBAUGH: Yes, or somewhere.

8 CHAIRPERSON BERRY: Or somewhere else we might be.

9 COMMISSIONER REDENBAUGH: We have done that before?

10 CHAIRPERSON BERRY: We have not. We have had hearings where  
11 we had public comment, obviously.

12 COMMISSIONER REDENBAUGH: The Mount Pleasant was a hearing?

13 CHAIRPERSON BERRY: That was a hearing.

14 COMMISSIONER REDENBAUGH: Okay.

15 CHAIRPERSON BERRY: So the question is do we want to have  
16 public comment at our briefings. I guess that is the way I would put  
17 it. It would be a forum for the public.

18 Before we answer that question, let's talk about logistics a  
19 little bit. When you have forums, it is better to have them in the  
20 afternoon or the evening. The reason for that is that more of the  
21 public somehow seems to be able to come in the evening rather than in  
22 the middle of the day or early in the morning. I guess statistically  
23 more people still work day hours than work evening hours. We could ask  
24 the Labor Department, but I think that is true.

25 Russell, you should know that. Does that seem right?

1 COMMISSIONER REDENBAUGH: It does seem right.

2 CHAIRPERSON BERRY: So, if you want the public to come, you  
3 should have it at a time when the public is more likely to be able to  
4 come. That makes sense. That would mean that Commissioners instead of  
5 meeting in the daytime as we have done, we would do it the night before  
6 our meeting, the evening before our meeting. We would run it like the  
7 SACs run their forums, or we could have the experts come in the  
8 afternoon and then as we get towards the end of the day have it open to  
9 the public.

10 After that, on zero tolerance and civil rights, much of the  
11 information that we have been sent by people and lots of e-mails and  
12 stuff go to the question of prevention. More people are interested in  
13 how do you keep kids from getting in situations where they end up doing  
14 things before they end up getting kicked out of school. I have not  
15 received an e-mail from anyone who said kids ought to be able to take  
16 guns to school, that is great. No one says that, or it is all right if  
17 they bite the teacher. What they want us to do is to discuss things  
18 like prevention in addition to incidents that might occur and how you  
19 respond to them. That is just an aside, but what about this idea of  
20 forum briefing on this subject? Let's take it as the subject for this  
21 one first.

22 COMMISSIONER REDENBAUGH: This is the zero tolerance?

23 CHAIRPERSON BERRY: Yes. That is just because that is the  
24 next one we have.

25 COMMISSIONER REDENBAUGH: That is fine.

1 CHAIRPERSON BERRY: Does anyone have any views about this?  
2 Or, we can have it on Friday and have it go into the evening.

3 My point is it just seems to me you would have to have it at  
4 5:00 or 6:00 as a time for people to come in.

5 Yes, Christopher.

6 COMMISSIONER EDLEY: I hate to sound anti-democratic. I am  
7 clear that it is not the way I would prefer to use my time. I feel as  
8 though some of these issues are sufficiently complicated. I want to  
9 get more information from people who have studied the problem and who  
10 have, as you suggested, enough data, who have formulated views about it  
11 based upon extensive experience, not simply their personal experience,  
12 but more extensive and considered experience.

13 That is simply a better way for me to learn. If I have my  
14 druthers, I would like extensive opportunity to interact with these so-  
15 called experts.

16 CHAIRPERSON BERRY: If we have them, they will be real  
17 experts, not so-called experts.

18 COMMISSIONER EDLEY: Right.

19 Having said that, it is certainly clear that I learned a lot  
20 in the trip that we did out to Pine Ridge. I suppose the answer is it  
21 needs to be balanced.

22 CHAIRPERSON BERRY: If you think about it, that was a  
23 different exercise.

24 COMMISSIONER EDLEY: It was a different exercise.

25 CHAIRPERSON BERRY: That exercise was designed to hear from



1 people who had problems and folks who were supposed to be responding to  
2 a specific set of problems, which is what forums do for SACs. That is  
3 how they usually do it and then to have us listen and learn something  
4 and see what kind of recommendations come out of that for dealing with  
5 those specific problems.

6 That would be if there was some incident that occurred in a  
7 school somewhere or a series of incidents and we were listening about  
8 those incidents and who was supposed to respond to them and what the  
9 folks there thought about all of this.

10 COMMISSIONER EDLEY: Frankly, I do not think I would find it  
11 that helpful for me personally to be hearing from some parent about  
12 what happened to their 12-year-old and how the guidance counselor did  
13 this or the assistant principal did that because in a way it kind of  
14 distorts the deliberations. You have no sense of whether that is a  
15 representative example of what has occurred at a particular school,  
16 much less what has occurred in American education more generally.

17 Well, I guess I have made my point.

18 CHAIRPERSON BERRY: Does anyone else have a point?

19 VICE CHAIRPERSON REYNOSO: Yes.

20 CHAIRPERSON BERRY: You have to wait because you are the  
21 Vice Chair.

22 VICE CHAIRPERSON REYNOSO: Well, Yvonne is the person who  
23 suggested it. She should have gone first.

24 [Laughter.]

25 COMMISSIONER LEE: I think it is true that we do need to

1 strike a balance there. It is really important to get the experts'  
2 perspectives, but at the same time we do have a responsibility to keep  
3 the public informed on our deliberations.

4 There is a frustration that I have while serving on this  
5 Commission. The staff has done excellent work. Many of the reports  
6 that have been conducted are very valuable. However, outside of policy  
7 folks and Government folks, very few people in the community actually  
8 understands what we do. Sometimes the impact gets lessened when they  
9 really do not know what the U.S. Commission on Civil Rights have done  
10 on concerns that they have.

11 The reason why I really like the forum format is it allows  
12 the public to not air their grievances. It is really important in  
13 South Dakota that they have that opportunity because, other than us  
14 going there, they really didn't, and the same thing with Sonoma when we  
15 went up there to talk about the administration of justice issues. I  
16 think the more important thing is we also get an opportunity to hear  
17 from the community directly.

18 CHAIRPERSON BERRY: Excuse me just a minute. What is that  
19 noise, Pam?

20 MS. DUNSTON: Static.

21 [Laughter.]

22 CHAIRPERSON BERRY: Everyone is so full of good cheer.

23 MS. DUNSTON: Sometimes it is the noise feedback, if your  
24 breathing is coming in. I do not know if it is the phone from  
25 Commissioner Anderson's connection. It could be a number of things.

1 CHAIRPERSON BERRY: Maybe it will stop. Stop breathing.

2 Carl, are you breathing?

3 [No response.]

4 [Laughter.]

5 CHAIRPERSON BERRY: Maybe there is something wrong with this  
6 phone. We will check it out.

7 Anyway, go ahead, Yvonne.

8 COMMISSIONER LEE: The forum allows us to hear directly from  
9 those members of the community not only of the grievances, but also  
10 with their recommendations, how they see the problem and how they  
11 perceive the situation can be addressed, and that is something that is  
12 missing from just listening from the academics and what have you.  
13 Sometimes the academics have one aspect of the view, and I just think  
14 that the public's view needs to be included in our deliberation. That  
15 is how I see it.

16 CHAIRPERSON BERRY: Vice Chair, and then I will go to you,  
17 Russell.

18 VICE CHAIRPERSON REYNOSO: Thanks.

19 I have been very impressed by the forums that I have  
20 attended, South Dakota and a couple of them in California, but I think  
21 that they work better, Yvonne, in a regional area when you go there to  
22 hear from the people.

23 I am not anti-beltway, but I am not sure that we would have  
24 the same sort of representation of the public if we had a forum here in  
25 Washington. I think that is what we are talking about. So I have some

1 qualms about having forums here in Washington unless it deals with an  
2 issue peculiar to this geographic area. I have some qualms about it,  
3 whether or not we would get the same sort of results here that we have  
4 gotten, such as the forum I went to in Los Angeles several years ago or  
5 the forum that you and I went to in Santa Rosa.

6 COMMISSIONER LEE: I think the forum has to take place at  
7 the location where the immediate problem is.

8 VICE CHAIRPERSON REYNOSO: Yes.

9 COMMISSIONER LEE: Otherwise, people are not going to travel  
10 to different places just to deal with us for 15 minutes, but I still  
11 believe that there has to be a balance. We need to have expert  
12 witness, but at the same time, we cannot neglect the public's point of  
13 view.

14 CHAIRPERSON BERRY: Yes, Russell. Go ahead.

15 COMMISSIONER REDENBAUGH: I think we can make a distinction  
16 that separates these out.

17 In large part, I want to associate myself with the anti-  
18 Democrat comments of my colleague in the following way.

19 COMMISSIONER EDLEY: It is a small "d," a small "d."

20 COMMISSIONER REDENBAUGH: Oh, was that it? It is a small  
21 "d," yes. I am very bad in punctuation, grammar, and spelling. I was  
22 a math major.

23 I think when there is a policy question involved, which I  
24 believe that is what this is, a policy question, and the facts are not  
25 in dispute, then a briefing of experts--and experts do and can be

1 chosen in a way to represent public opinion--is appropriate and what we  
2 ought to do, and I think that is what we have in this case.

3 In cases where it is not a policy question, what we are  
4 trying to find out is are people following the rules, like Mount  
5 Pleasant. The police-community relations is always a good example of  
6 that, or what the Commission did in St. Petersburg.

7 I think it is very important to then include public opinion  
8 because we want to find out what people's experiences and opinions are,  
9 and you cannot get that by talking to the police chief, at least not  
10 always.

11 So, if the issue is policy and not a dispute over facts,  
12 then I think the public comment is not particularly additive, but it is  
13 essential in the example that you gave, Yvonne, the Sonoma incident  
14 where the facts are not clear.

15 CHAIRPERSON BERRY: So it may very well be that if the  
16 Illinois SAC, for example, had decided they wanted to do a forum on  
17 zero tolerance or race relations indicator or something related to this  
18 issue and some Commissioners who were interested went out there and  
19 they held a forum, then you could discuss zero tolerance on the ground  
20 and it would be like these other forums that we have had.

21 So, in the absence of that, I guess it would be too sterile  
22 to put it that way and too much inside beltway to have it right here in  
23 Washington, unless there was a zero tolerance issue that came up right  
24 here, and expect the public even to come out.

25 You could get advocates for one policy position or another

1 who simply will come in to try to persuade us in the hope that whatever  
2 we came up with would tend toward their point of view, but we can get  
3 advocates in a briefing.

4 VICE CHAIRPERSON REYNOSO: There is something to say that  
5 even if the local SAC is not interested in having a briefing, we could  
6 have a forum ourselves.

7 CHAIRPERSON BERRY: That is right. We could.

8 VICE CHAIRPERSON REYNOSO: I guess that would be sort of  
9 getting into their bailiwick, maybe. I do not know.

10 CHAIRPERSON BERRY: Actually, that is a good point, Cruz.  
11 If there is a time when we think it makes sense to go somewhere to have  
12 a forum when something has happened, we can ask the SAC to join us and  
13 go there anyway. I did not particularly think we should go to Decatur  
14 myself.

15 VICE CHAIRPERSON REYNOSO: We have talked about having the  
16 Commission have a quicker response to public issues that come up. It  
17 used to be that we could use the technique of a forum, and we have  
18 found that experts are responsive to our request very often. So it can  
19 be a combination of experts who are responsive to us, because we do not  
20 have subpoena power in a forum, and then have the public also come. So  
21 I am just suggesting that is a technique we ought to keep in mind when  
22 these issues come up.

23 CHAIRPERSON BERRY: I like that idea. We can use that.  
24 That way, we are not beholding to the SAC deciding that they either  
25 want to do it or not do it.

1 VICE CHAIRPERSON REYNOSO: Right.

2 CHAIRPERSON BERRY: We will just leave this as a zero  
3 tolerance briefing that we will hold here on this particular issue,  
4 keeping in reserve the notion that we can go anywhere we want to, to  
5 hold a forum, if we feel like it, on an issue.

6 Yes.

7 COMMISSIONER EDLEY: Now that I have been reeducated by the  
8 Commission--

9 CHAIRPERSON BERRY: Now you are going to change your mind.  
10 Christopher, please.

11 COMMISSIONER EDLEY: I want to raise a question of whether  
12 it should be a consultation rather than a briefing.

13 CHAIRPERSON BERRY: Well, if you have a consultation, that  
14 is a good question.

15 COMMISSIONER EDLEY: In other words, at least some of the  
16 people that I have been thinking that it would be great to hear from,  
17 and I have mentioned a couple to you, these are people who I would  
18 want, I would hope, and it certainly would be easy for them to produce  
19 a 20-page paper. They are going to have written testimony, in essence.  
20 I do not want them to just come and mouth off. I want something that  
21 is well prepared and I want some footnotes and I want some tables  
22 attached and so forth. So does that turn it into a consultation?

23 Some of these people, at least the people I have been  
24 thinking about, would not expect or require that they be paid for it.

25 CHAIRPERSON BERRY: We do not accept volunteer services. We

1 could give them a dollar. It is under the statute.

2 VICE CHAIRPERSON REYNOSO: It is in the statute.

3 CHAIRPERSON BERRY: That is why we bid out the projects for  
4 the law firms. That is why when people ask us if they can do stuff for  
5 us, and that has a very good historical reason, legislatively.

6 COMMISSIONER EDLEY: I am totally with you.

7 CHAIRPERSON BERRY: But we could give them a dollar. They  
8 would be paid, those who do not want any money. We do not have any  
9 money, anyway.

10 Let me give you one other factoid that may help you on this.

11 COMMISSIONER EDLEY: Okay.

12 CHAIRPERSON BERRY: Usually, the folks who come to brief us  
13 when they are scholars, they usually have papers. They usually bring  
14 papers.

15 COMMISSIONER EDLEY: But we have not asked for them?

16 CHAIRPERSON BERRY: They usually turn them in, and they are  
17 told that if they have a paper, and it would be nice if they did, if  
18 they have one, they can turn it in and we would be happy to accept it,  
19 but we are not asking them to write a paper.

20 COMMISSIONER EDLEY: So the basic distinction is that if it  
21 is a consultation, we have basically given them an assignment.

22 CHAIRPERSON BERRY: Right, and we give them time to do the  
23 assignment, like it would be 6 months or a year from now before they  
24 were actually able to finish the paper.

25 COMMISSIONER EDLEY: I am with you.



1           CHAIRPERSON BERRY: Unless they were Edley. Then he would  
2 finish the paper overnight.

3           COMMISSIONER EDLEY: Right, and you get what you expect.

4           COMMISSIONER REDENBAUGH: If you want velocity, you have got  
5 to go with the briefing.

6           COMMISSIONER EDLEY: All right, I see. That is helpful.  
7 Thank you.

8           CHAIRPERSON BERRY: So we will do that. So it will be a  
9 briefing in February on zero tolerance and civil rights, and some  
10 Commissioners have turned in names that the staff is working on.

11           Now I have to mention something that will be unpleasant. I  
12 always like to discuss pleasant things, but sometimes--the way the  
13 Commission generally operates is that we have a report and we discuss  
14 the report and we read the report, and you find that the staff has  
15 miscited information or they have the wrong page or there is a citation  
16 problem or there are typographical errors or there are things that you  
17 think need to be edited. You can either raise them in the meeting or  
18 you can simply say, "I have a number of changes that do not affect the  
19 substance of what is there," and you can hand them in to the staff and  
20 the staff will then go make the changes. The staff is not committed to  
21 miscitation of works or putting in things that are not true. If they  
22 do that, they just made a mistake. So, when you read it and you see a  
23 mistake, just like if you see a typo or a grammatical error, just note  
24 it and then give it to them and they will make the changes. It is not  
25 a big deal.

1           If there are matters of substance, you should raise them  
2 here at the Commission with your colleagues to see if you can get your  
3 colleagues to agree with you because sometimes they might agree with  
4 you, and if they do, then we can change whatever it is to try to meet  
5 whatever objection you have.

6           If you do not care to do that, either before the meeting or  
7 at some other time you may tell us what it is before we vote on it so  
8 we can see whether we agree with you and if we are willing to make  
9 changes.

10           If you have substantive problems and the disagreements are  
11 so serious that not only do you want to vote against the report, but  
12 you want to write your own statement, of course, you can do that, but  
13 it is not considered a good process to include in your statement  
14 citation errors and editing errors and transcription errors and typos  
15 when you have never told the staff that they made these mistakes. That  
16 is considered sort of unfair.

17           So, if you want to write a dissent, please keep it  
18 restricted to substantive matters unless you turn in the changes and  
19 you say that word is misspelled and the citation is wrong and the staff  
20 says, "We don't care. We are keeping it in there," then put it in your  
21 dissent, "I have tried to tell these people they do not know how to  
22 spell, and they refuse," but, please, I think in the interest of  
23 fairness, do that. Keep our disagreements on matters of substance and  
24 not on other matters.

25           Now, on matters of process, an issue was raised after last

1 month's meeting about whether we should have been voting on the gender  
2 equity report and whether the Commission staff should have revised it.  
3 That question was not raised in the meeting. It was raised after the  
4 meeting by those objecting to the report.

5           First of all, such questions ought to be raised in the  
6 meeting. The agenda is prepared by me which is one of the few  
7 responsibilities and opportunities to do anything I get to do, but if  
8 you do not like the agenda, if you do not want something on there, you  
9 should say so when there is an item on the agenda that says Approval of  
10 the Agenda. If you do not want something on the agenda, please say, "I  
11 do not want that on the agenda," and see if you can get enough of your  
12 colleagues to agree with you, or if you have items you would like to  
13 add to the agenda, if you tell me ahead of time, I will add them,  
14 unless there is some reason not to. If you cannot think of it ahead of  
15 time or you do not care to, just tell us at the meeting.

16           Once we have approved the agenda, the understanding is that  
17 all of the Commissioners or at least a majority of them agree that this  
18 agenda includes the items they wish to consider at the meeting. It  
19 seems to me that is just an understanding that we all should have.

20           It is then not considered fair to afterwards complain that  
21 something on the agenda was acted on when you were present, had every  
22 opportunity to raise the issue, did not raise the issue, and in fact  
23 voted for the agenda. It does not make any sense. That is on these  
24 procedural matters.

25           As for the issue of the gender equity report, we had a

1 Parliamentarian's ruling sometime ago that the Commission, like other  
2 bodies that operate according to Robert's Rules, can consider reports  
3 on other items at any time that they are put on the agenda and as many  
4 times as they are put on the agenda, just as, for example, Congress may  
5 have a bill before it this session which does not pass and then next  
6 session somebody else introduces it or later in the session somebody  
7 introduces it. That is fine. If they can get the votes, fine. The  
8 Parliamentarian made that ruling earlier.

9           Also, my understanding is that if the staff wishes to ask me  
10 to put something on the agenda, even if it is something that has been  
11 on the agenda before, they have now revised it, I can put it on the  
12 agenda and it is up to the Commissioners as to whether or not they wish  
13 to consider it, wish to vote for it, or wish to even have it on the  
14 agenda.

15           Is that correct, parliamentarily, Peter Reilly, who is the  
16 Parliamentarian?

17           MR. REILLY: Yes, it is.

18           CHAIRPERSON BERRY: Have I stated it correctly?

19           MR. REILLY: Yes.

20           CHAIRPERSON BERRY: Okay. So what we are doing here is from  
21 time to time there may be a report that did not pass and the staff may  
22 go back, after listening to the Commissioners, and rewrite it or do  
23 something else to it or jiggle it here or there or try to make us  
24 believe that we were wrong and ask us to consider it, and it can be put  
25 on the agenda according to the Parliamentarian. The Commission can

1 either vote to take it off the agenda or leave it on the agenda and  
2 vote for it or do whatever the Commission chooses to do with it,  
3 whatever disposition they care to make.

4 MR. REILLY: That is correct.

5 CHAIRPERSON BERRY: All right. So I just wanted to point  
6 that out.

7 Also, I will point out one other thing, and if there is no  
8 objection, we will do it this way. If Commissioners do not abide by  
9 these policies and if Commissioners, for example, write statements,  
10 whether it is an additional statement, a dissent--it does not matter  
11 what kind of statement it is--which includes such things as the staff  
12 has miscited information when the staff has never known or did not  
13 notice it and have not been told, then the staff will be given an  
14 opportunity to know this and change the citations before the report is  
15 published because we do not want to publish something with  
16 miscitations. The dissenters or additional statement-writers will be  
17 given an opportunity to change their statement so they will not be  
18 sitting out there saying that something is miscited when it is not  
19 because that is stupid, in my view, and if they refuse to do so, we  
20 will just put in an editorial comment saying the miscitations noted by  
21 Commissioner Meeks--I am just making it up, Elsie--have been changed by  
22 the staff, and you will find them on pages blah, blah, blah, blah.

23 Is all of that fair? Does anybody see anything unfair about  
24 it or nonsensical about anything that I have said?

25 Yes, Commissioner Redenbaugh.

1 COMMISSIONER REDENBAUGH: I think it is fair, and I think  
2 you have handled a sensitive subject with skill and tact. Thank you.

3 CHAIRPERSON BERRY: Wow, we do not often get that, those  
4 from Russell. Now I am worried.

5 There was an editorial in The Wall Street Journal years ago  
6 that praised me for something that I had done. You know what I did,  
7 Russell?

8 COMMISSIONER REDENBAUGH: What?

9 CHAIRPERSON BERRY: I went home and I was up all night  
10 praying, trying to figure out what I had done wrong. I knew I had done  
11 something wrong. I did not know what it was. They said, "Great job,  
12 Mary Berry." Wow, I did figure it out.

13 COMMISSIONER REDENBAUGH: Perhaps that was a satirical  
14 comment.

15 [Laughter.]

16 COMMISSIONER REDENBAUGH: That was not one of mine.

17 CHAIRPERSON BERRY: Satire is always very useful.

18 Are there other items under the Staff Director's Report?

19 COMMISSIONER REDENBAUGH: Yes.

20 CHAIRPERSON BERRY: Yes, Commissioner Redenbaugh. You had  
21 one?

22 COMMISSIONER REDENBAUGH: I had a question that I just  
23 wanted some clarification about. Our former General Counsel is no  
24 longer on staff or is detailed someplace? Am I correct in this  
25 information, Staff Director? How does that work? I do not understand

1 that. It is a managerial issue here.

2 STAFF DIRECTOR MOY: Madam Chair, if we get into a personnel  
3 issue, then we will have to go into executive session, I believe.

4 CHAIRPERSON BERRY: Did you hear what she said, Russell?

5 COMMISSIONER REDENBAUGH: Yes. I did not think this was a  
6 sensitive personnel issue, but perhaps there is something here that I  
7 am unaware of.

8 CHAIRPERSON BERRY: I don't know.

9 Is this a sensitive personnel issue to answer the question  
10 that has been posed to the Staff Director, Parliamentarian?

11 MS. REILLY: I do not know the answer to the question.

12 CHAIRPERSON BERRY: I don't either.

13 COMMISSIONER REDENBAUGH: Let me say the answer to my  
14 question is administrative.

15 CHAIRPERSON BERRY: You do not want to discuss personalities  
16 or anything like that.

17 COMMISSIONER REDENBAUGH: I do not. It is an administrative  
18 and operational question, the answer to which, however, may be an  
19 unanticipated sensitive personnel issue.

20 CHAIRPERSON BERRY: Why don't I try this. Instead of  
21 letting the Staff Director answer it, let me answer an administrative  
22 matter. Let me answer what I know about it, and if that is not enough,  
23 then we will see, okay?

24 I will try to articulate this in terms that does not raise  
25 any issues because I do not know what issues to raise. So I do not

1 know what we are doing here. Anyway, my information is that the  
2 General Counsel has been detailed to the Department of Education where  
3 she is working on some projects and that the General Counsel is not  
4 expected to return to the Commission and is also involved in pursuing  
5 other opportunities outside the Government or somewhere else in the  
6 Government, but before that happens is going to finish up these  
7 particular projects. That is what I was told.

8 So I do not know if that answers your question.

9 COMMISSIONER REDENBAUGH: Then the question really is a  
10 question of cost. When we detail someone like that, who has the  
11 employment cost?

12 STAFF DIRECTOR MOY: It is for a short period of time, and  
13 it can be withdrawn if that becomes a problem.

14 COMMISSIONER REDENBAUGH: Yes. My question did not go to  
15 the duration, but to the cost.

16 Why I ask it, the schedule and the production of projects  
17 that we have is slowed, I think, as you mentioned earlier, by  
18 insufficient staff and staff turnover, particularly in the area of  
19 lawyers.

20 STAFF DIRECTOR MOY: That is being taken care of right now  
21 because of the resumés that we have gotten, and I believe Mr. Hailes is  
22 on top of that and we will have some people shortly.

23 COMMISSIONER REDENBAUGH: Okay. Then the only question I  
24 have remaining is who bears the cost of the detail.

25 STAFF DIRECTOR MOY: At this time, we do.



1 COMMISSIONER REDENBAUGH: We do. What is our policy on  
2 that? I am sure it must be covered like everything in the AIs.

3 STAFF DIRECTOR MOY: I think in this case, it is a case-by-  
4 case basis, and in this case, it was a management decision for the good  
5 of the agency.

6 COMMISSIONER REDENBAUGH: And your anticipated duration of  
7 the detail?

8 STAFF DIRECTOR MOY: It is very short.

9 COMMISSIONER REDENBAUGH: Well, it sounds like further  
10 questions would take us into this incident of personnel.

11 STAFF DIRECTOR MOY: I am not an attorney.

12 COMMISSIONER REDENBAUGH: I have got to admit, I am not  
13 either.

14 CHAIRPERSON BERRY: Commissioner Redenbaugh, since I  
15 actually do not want to know any more about this myself, would it be  
16 acceptable to you for you to speak with the Staff Director yourself  
17 aside from this forum? Then, if you have questions after you have  
18 spoken to her and discussed it further with her that you want to raise  
19 before the Commission, you could do that.

20 COMMISSIONER REDENBAUGH: That is a very good idea.

21 CHAIRPERSON BERRY: Is that okay?

22 COMMISSIONER REDENBAUGH: It is fine with me.

23 CHAIRPERSON BERRY: I do not want to have an Executive  
24 Session on this.

25 COMMISSIONER REDENBAUGH: I would prefer not.

1 STAFF DIRECTOR MOY: That is fine.

2 COMMISSIONER REDENBAUGH: Thank you.

3 CHAIRPERSON BERRY: Maybe by the time you have the  
4 discussion, the detail will be over. Then it will not even be a  
5 question.

6 COMMISSIONER EDLEY: At lunch.

7 [Laughter.]

8 COMMISSIONER REDENBAUGH: I will try and get it scheduled--  
9 --in the fullness of time.

10 CHAIRPERSON BERRY: In the fullness of time, yes.

11 COMMISSIONER REDENBAUGH: Yes.

12 CHAIRPERSON BERRY: The other thing, Monday is Martin Luther  
13 King, Jr.'s birthday, the official holiday, and usually the Commission  
14 every year issues a statement on important civil rights anniversaries  
15 and days in advance of the day, if anybody remembers to do it. So the  
16 staff has prepared a brief statement for the Commission to issue as a  
17 matter of record on Martin Luther King's birthday.

18 It is very short. Can David come and read it? I guess  
19 David wrote it.

20 Did you write this statement, David?

21 MR. ARONSON: Yes, I did.

22 CHAIRPERSON BERRY: Could you come read it so we can see if  
23 we want you to issue it? Do you have it?

24 MR. ARONSON: I actually gave up all of my copies.

25 CHAIRPERSON BERRY: Here, you can have mine.

1 This is David Aronson from the Press Office.

2 COMMISSIONER REDENBAUGH: It is nice to have a reading by  
3 the author.

4 CHAIRPERSON BERRY: Let's have a reading by the author.

5 MR. ARONSON: I feel like an actor here.

6 I thought it was going to be released on Monday.

7 CHAIRPERSON BERRY: But we are here today.

8 VICE CHAIRPERSON REYNOSO: The actual birthday is tomorrow,  
9 I believe.

10 MR. ARONSON: Right.

11 VICE CHAIRPERSON REYNOSO: So it would be appropriate to  
12 release it then.

13 MR. ARONSON: The title is "Statement by the U.S. Commission  
14 on Civil Rights on the Anniversary of the Birth of Dr. Martin Luther  
15 King, Jr."

16 Today, our Nation commemorates the seventy-first birthday of  
17 Dr. Martin Luther King, Jr., and celebrates the ideals for which he  
18 fought. Thanks to no small part to his inspiring leadership, the  
19 Nation has made extraordinary progress in eradicating discrimination  
20 based on race, religion, national origin, sex, disability, and age, but  
21 as we take this occasion to reflect upon the meaning of Dr. King's life  
22 and teachings, we must recognize that discrimination, poverty, and  
23 inequality persists. Some Americans still prefer to judge others by  
24 the color of their skin rather than by the content of their character.  
25 Racial hatred still claims lives. Poverty and unequal opportunity

1 still leave countless citizens without the full chance to participate  
2 in the American dream. By rededicating ourselves to the task of  
3 eliminating prejudice and furthering opportunity, we honor Dr. King's  
4 legacy and help move this Nation closer to its truest ideals. The  
5 United States Commission on Civil Rights calls upon our fellow citizens  
6 and government at every level to join with us in helping to make Dr.  
7 King's dream a reality for it is, after all, the promise of America.

8 VICE CHAIRPERSON REYNOSO: Very good.

9 CHAIRPERSON BERRY: I guess I would call them not just "our  
10 fellow citizens," but anybody who is in--

11 COMMISSIONER REDENBAUGH: All Americans.

12 CHAIRPERSON BERRY: It is not a legal distinction, I guess.  
13 They are not the same: We do not want people who are residents to join  
14 in. We just want the citizens to join in. That is not what we mean,  
15 right?

16 COMMISSIONER REDENBAUGH: Small "c."

17 CHAIRPERSON BERRY: The other is that while it is a good  
18 statement--and it is a good statement--I guess Martin Luther King's  
19 life and teachings were--I mean, the whole edifice of the civil rights  
20 movement and the civil rights of everyone within the jurisdiction of  
21 this Commission is based primarily and evolves from the work of the  
22 civil rights movement of King, not just race, but all the rest of it.  
23 So, next time, David, if you are around, if you could like in terms of  
24 tone and tenor--it is not just racial hatred, but it is all kinds of  
25 problems that affect people without regard to race. It is ethnicity

1 and disability and all sorts of hate crimes that relate to other  
2 things. So maybe a tone of that next time, unless they are all solved  
3 by next time, would be a good way to do that.

4 MR. ARONSON: I can fiddle with that, too.

5 COMMISSIONER EDLEY: I was just going to suggest rather than  
6 "truest ideals," maybe "highest."

7 MR. ARONSON: Okay.

8 COMMISSIONER EDLEY: I was not quite sure what "truest  
9 ideals" means, or "tallest ideals" or "widest ideals."

10 [Laughter.]

11 CHAIRPERSON BERRY: All right. Any objections?

12 [No response.]

13 CHAIRPERSON BERRY: We will issue it.

14 Does anybody have any other questions about the Staff  
15 Director's Report?

16 I have a question I would like for Carol-Lee, if she can,  
17 Staff Director, to just tell us, because some Commissioners have asked,  
18 how persons who are nominees for State Advisory Committees, who selects  
19 them and how they are brought before the Commission. Some of the new  
20 Commissioners have asked me this question.

21 Carol-Lee is the coordinator of Regional Programs.

22 MS. HURLEY: I will try to make this quite short.

23 CHAIRPERSON BERRY: Just so they can understand it.

24 MS. HURLEY: Basically, the Commission has set forth certain  
25 requirements for the composition of State Advisory Committees. The

1 first requirement is that individuals to be appointed should have a  
2 record or interest in civil rights issues.

3 As we have gone to younger persons, having a record is a  
4 little more difficult because a 20-year-old or a 25-year-old does not  
5 have much of a record of accomplishment in this area.

6 We also would like at least some of the members of the  
7 committee to be persons of some influence in their community or State.

8 Once those considerations are met, then the staff looks at  
9 age, race, ethnicity, gender, political party, and religion, as well as  
10 geographic representation. We do not want everyone in the Florida SAC,  
11 for example, to come from Miami, or the California SAC to come from Los  
12 Angeles.

13 It is quite difficult for the staff members to put a  
14 balanced committee together, and most of the time, they succeed quite  
15 amazingly.

16 .Oh, I forgot one other characteristic which is not shown in  
17 the charts. We do try to have diversity in occupations. We do not  
18 want the committee to be all lawyers or all teachers or all Government  
19 officials or elected officials, that sort of thing.

20 When a committee comes up for reappointment, the staff sends  
21 a letter to every serving member who has been attending meetings,  
22 asking if they are interested in continuing on the committee. Once  
23 those letters are received and the staff knows who will be departing,  
24 then they initiate recruitment in the areas where replacement or where  
25 representation is needed.

1            Say, if a committee was appointed 2 years ago, the  
2 Commission at that time was not so particular about having younger  
3 persons represented. So the recruitment the next time would focus on  
4 the age issue. If the only member from the western part of Nebraska  
5 had left, the staff would write to organizations in that part of  
6 Nebraska or talk to people they knew to try to find individuals  
7 interested in serving.

8            Generally speaking, the staff does not send out a flood of  
9 letters to every organization of every type in the State because that  
10 would raise expectations for appointments that could not be met, given  
11 that we do not have a policy of limiting terms on the Commission for  
12 people who wish to continue serving.

13           The turnover has been fairly substantial. I do not have the  
14 figures in my head, but I did look at how long people have been serving  
15 on the SACs, and on the majority of SACs, most members have not been on  
16 for more than 8 years and many for significantly less than that. So we  
17 are getting an infusion of new members.

18           Once the staff in the region has put together a committee  
19 they consider satisfactory, they send it forward to the Staff Director.

20           If there is an individual on the committee who wishes to be  
21 reappointed, but the staff has decided for any number of reasons the  
22 person really did not participate very much or the staff needs to keep  
23 the committee small because it is a State with low population and they  
24 need more representation from women or from Democrats or Republicans,  
25 whatever, they may decide not to reappoint a given individual. So they

1 send a letter to that person saying that their name is not being  
2 submitted for reappointment, and if they wish to write to the  
3 Commission explaining why they think they should be reappointed, they  
4 can send the letter to the Staff Director who will then forward it to  
5 you.

6 The Staff Director reviews the package and, if necessary,  
7 asks for changes, different representation, whatever, and then it comes  
8 forward to you a month before the appointments are to be made.

9 Can I answer any questions?

10 CHAIRPERSON BERRY: Commissioner Meeks?

11 COMMISSIONER MEEKS: Is there a minimum requirement of State  
12 Advisory Committees?

13 MS. HURLEY: Members?

14 COMMISSIONER MEEKS: No, not of members. Just of what they  
15 are supposed to do. I noticed that in some of the States, there is  
16 hardly any activity at all.

17 MS. HURLEY: There is not a legal minimum. We try to have  
18 two meetings a year, but with limited staffing, that does not always  
19 happen.

20 We could have a meeting for every SAC every year or two  
21 meetings, but it is a toss-up whether you have a meeting with the SAC  
22 and they want to do something, but you do not have the staff to support  
23 it.

24 In at least one region, the pattern has been to focus on  
25 about half of the States at a time so that we have three to five



1 meetings or six meetings over a 3-year period while they are working on  
2 a specific project and other SACs in that region might meet once or not  
3 at all.

4 Does that answer it?

5 CHAIRPERSON BERRY: Maybe you could explain what limits the  
6 opportunity to meet, that is, procedurally, in addition to when you say  
7 resources, somebody who does not know. I mean, I know what you are  
8 talking about.

9 MS. HURLEY: Under the Federal Advisory Committee Act, a  
10 State Advisory Committee, which is a Federal Advisory Committee, cannot  
11 meet without a designated Federal officer present. So there must be a  
12 staff member present at the meeting. It can be done by  
13 teleconferencing, but that is kind of tricky.

14 COMMISSIONER EDLEY: Why? Does it have to be an employee of  
15 the Civil Rights Commission?

16 MS. HURLEY: Yes, it does.

17 COMMISSIONER EDLEY: By statute, it has to be a Commission  
18 member?

19 MS. HURLEY: No, but we are not allowed to accept volunteer  
20 help.

21 COMMISSIONER EDLEY: But I am saying it could be another  
22 Federal employee of some other agency that shows up at a meeting and  
23 covers it for us.

24 MS. HURLEY: Well, that is possible.

25 COMMISSIONER EDLEY: Somebody from a regional office, an

1 EEOC, or the Air Force.

2 CHAIRPERSON BERRY: Commissioner Edley, you interrupted  
3 Commissioner Meeks.

4 COMMISSIONER EDLEY: I apologize.

5 CHAIRPERSON BERRY: And you are not recognized.

6 [Laughter.]

7 COMMISSIONER MEEKS: Seldom do I get the floor ahead of you.

8 CHAIRPERSON BERRY: Elsie, you have the floor.

9 COMMISSIONER MEEKS: So I am assuming that in most cases, it  
10 is the regional director that is the Federal employee.

11 MS. HURLEY: That is correct.

12 COMMISSIONER MEEKS: So I am correct if I say limited by  
13 staff--what did you say?

14 MS. HURLEY: Availability.

15 COMMISSIONER MEEKS: Right. It depends on how much energy  
16 one staff might have over another.

17 MS. HURLEY: Well, that is part of it, but it is not just  
18 having the meeting. You have to prepare for the meeting. If it is not  
19 to be anything more than just chatting, you want a meeting to achieve  
20 something. You want to plan your project. The staff has to perhaps  
21 come up with some ideas, but even if they do not, if the committee  
22 gives them things to do and asks them to write a project proposal or  
23 research several ideas, their time has to be available. The time is  
24 just very limited.

25 COMMISSIONER MEEKS: I relinquish the floor.

1           CHAIRPERSON BERRY: I recognize Commissioner Edley.

2           COMMISSIONER EDLEY: I am very--"troubled" is not the right  
3 word, but I am very concerned that we are not getting as much from the  
4 SACs as I think we could be and should be.

5           I am also very concerned now, after having been on for a  
6 couple of months and seeing many of the slates come through for  
7 approval, that I have not got a clue as to whether these folks are  
8 good. I have barely a clue as to whether or not the SACs have been  
9 effective over the preceding couple of years and what the standard  
10 ought to be for their effectiveness and indeed whether there is  
11 anything that these proposed appointees would plan to do to make things  
12 better over the next couple of years.

13           So, Madam Chair, I guess I wanted to suggest that the issue  
14 of the SACs and their composition and the process and what our  
15 expectations are for their performance be as a subject for a discussion  
16 at a Commission meeting in the near future. Do we just make it an  
17 agenda item and maybe do a little schmoozing among ourselves beforehand  
18 about how to structure that discussion of the SACs? I think a little  
19 brainstorming about whether there is some other strategies for really  
20 seeing to it that we get the most out of the SAC structure might be  
21 appropriate, unless you all did this 3 years ago. I do not want to  
22 reinvent the wheel, but it just seems to me that it might make sense  
23 periodically certainly for the Commission to revisit the issue of  
24 structure and process.

25           CHAIRPERSON BERRY: Vice Chair?

1           VICE CHAIRPERSON REYNOSO: I think this is a very good idea.  
2 I do not know whether a formal meeting is the best way to do that  
3 because it seems to me that should be done with some regional people  
4 present and even some Advisory Committee members present so we can have  
5 a good discussion about how they view their role, how they can be more  
6 effective even without the resources. I do not know that we have  
7 explored enough, for example, whether some of the SACs themselves have  
8 members who have membership that includes university professors and so  
9 on who themselves might be willing to do the work that the staff  
10 normally would do, et cetera, et cetera. I just do not know that we  
11 have explored those type of possibilities enough.

12           I am sure that we have discussed it. We have had those  
13 discussions certainly in passing, but I do not know that we have ever  
14 done it in depth.

15           CHAIRPERSON BERRY: There is going to be a meeting of the  
16 regional directors in March. Are they coming at the time of the  
17 Commission meeting?

18           STAFF DIRECTOR MOY: We hope so.

19           CHAIRPERSON BERRY: So maybe that would be the time to have  
20 this discussion.

21           VICE CHAIRPERSON REYNOSO: yes.

22           CHAIRPERSON BERRY: But a page of history is sometimes worth  
23 something. So let me try this.

24           On numerous occasions, the Commission has discussed this  
25 issue. We have discussed it at some points when Russell has been here.

1 He has probably forgotten, but that does not matter.

2 [Laughter.]

3 CHAIRPERSON BERRY: We have discussed it over and over, and  
4 I have had what I thought were good ideas in the past that have been  
5 sort of hooted down about how we make the SACs more effective.

6 For example, at one point, we discussed having the staff  
7 service the SACs from the Central Office, rather than having service in  
8 the Regional Offices, and then using a lot of teleconferencing so that  
9 the SACs could meet more often, so that there would be a body who could  
10 be visible to whatever SAC it was, wherever it was meeting. If they  
11 scheduled them, there would always be somebody through teleconferencing  
12 who could be there.

13 The other idea was to have a lot of the work done centrally  
14 for all of the SACs, just have folks who write the reports in a central  
15 location who wrote reports for SACs, people who prepared stuff for  
16 SACs. We need regional directors because we need people in the regions  
17 who are our representatives who keep their eyes on what is going on and  
18 so on. We need at least a person out there, I would think.

19 At one point, I thought we did not, but I think we need  
20 somebody out there to represent us to go to places and do things and so  
21 on, but the idea of getting maximum utility out of SACs, I thought we  
22 could use technology to do a lot of it.

23 One time, I had this idea of having the SAC chairs hooked up  
24 to us by e-mail, and if we ever get a local area network or something,  
25 maybe we can do that. So we can just talk to them all the time or they

1 could talk to us.

2           The idea of using the classes, like professors and so on,  
3 among the SACs, making sure that the professors will write even if they  
4 do not want to, they could help to write up a lot of staff as SAC  
5 members. The SAC members are volunteers, anyway. They do not get  
6 paid. So whatever work they do, they can do as individuals. That is  
7 an exception. It is not like we are hiring them or anything.

8           So I think there are ways using technology that would make  
9 us able to maximize because, if I were a SAC chair, to be perfectly  
10 blunt about it, I imagine what I would do is I would probably have a  
11 forum every month at least about something that was going on in my  
12 region somewhere in some State because there is always something going  
13 on somewhere, somewhere in the region. Even if I only went myself and  
14 anybody else who felt like going and advertised it, I would do that,  
15 and then I would have the transcript of the meeting, even if I did not  
16 have anything else, and I would ask for help in writing up a summary of  
17 it. I would think that the SACs could be more visible if they were  
18 constantly doing things and if SAC chairs were activists who wanted to  
19 accomplish stuff with limited resources.

20           Saying all that, we are grateful to the SAC members for the  
21 work that they do. We should make that clear. We do not want them to  
22 think that we do not appreciate them.

23           We also need to have a meeting here of the SAC chairs. The  
24 last time we had one was as long time ago. They can all come together  
25 to talk to us about their interests and their concerns.

1           So, having said that, Russell, did you want to say  
2 something?

3           COMMISSIONER REDENBAUGH: Yes.

4           CHAIRPERSON BERRY: Yes, Commissioner Redenbaugh.

5           COMMISSIONER REDENBAUGH: I wanted to agree with you that  
6 although there are gaps in my memory, it still does reach back to  
7 antiquity, but prior to that, I defer to you.

8           [Laughter.]

9           CHAIRPERSON BERRY: So that technology might be a way.

10          COMMISSIONER REDENBAUGH: I think so, but I want to support  
11 Commissioner Edley's proposal. The way I understood the proposal, it  
12 is not to decide how to do more, but to begin with what can and should  
13 we do. It is what the mission or what is the strategy, what is the  
14 what.

15          Then, Mary, your comments, with which I am very sympathetic,  
16 they go to the how do we do it. I think we need to have Commissioner  
17 Edley's discussion and resolution first because the "how we do it" will  
18 be different depending on which "what" we come up with.

19          VICE CHAIRPERSON REYNOSO: When was that meeting of the  
20 regional directors?

21          CHAIRPERSON BERRY: March.

22          VICE CHAIRPERSON REYNOSO: March 2nd?

23          CHAIRPERSON BERRY: This coming March, right?

24          STAFF DIRECTOR MOY: Yes.

25          COMMISSIONER REDENBAUGH: I think you both are in the right

1 direction, particularly once we have either rearticulated the strategy  
2 we have or come to a new strategy. There are a great many ways that we  
3 could improve the implementation of that strategy.

4 In my long tenure on the Commission, I think the SAC work  
5 product and its quality and timeliness have improved tremendously,  
6 particularly if you adjust for the resource deprivation that we have  
7 arraigned on them or that has been arraigned on them.

8 So none of what I say here is in any way critical of what  
9 they have been accomplishing. I think it is a lot and has improved a  
10 lot, and it would be, I think, a good time to rethink, okay, good, now  
11 what do we want to do.

12 CHAIRPERSON BERRY: In what we have been saying, Carol-Lee,  
13 because you have been doing this a long time, is there anything you  
14 could add about how the SACs work or what they do? We could have a  
15 discussion later, but just while it is fresh in your mind, the  
16 discussion we just had, the limited discussion, is there anything that  
17 you think would be responsive by the SACs themselves or the regional  
18 directors would say about what we just said, the points we just made,  
19 if they were here?

20 MS. HURLEY: I am sure they are willing to look at new ways  
21 of doing things. There has been a lot of discussion with some of the  
22 regional directors about ways that we can increase the visibility of  
23 the SACs, the type of products we can put out and do not take so many  
24 resources. I am sure you will find them very responsive.

25 Some of them will tell you that some things have been tried



1 in the past and have not worked. One point that you should bear in  
2 mind is that our SAC handbook says that the SAC chairperson and no  
3 member can speak on a subject for the SAC unless the SAC has studied  
4 it. We do not let the SAC chairperson work as an individual entity, so  
5 to speak. Perhaps that certainly can be changed because we wrote the  
6 rules, and there is nothing, to my knowledge, in FACA that would affect  
7 that. Whether it would be a good idea is another matter.

8           The limitations of FACA are primarily technical and focus on  
9 public access, and one of those limitations is the notice in the  
10 Federal Register, 15 days before the meeting, and it takes at least 5  
11 days to get that notice published. So you have to plan a month in  
12 advance at least for a SAC activity.

13           CHAIRPERSON BERRY: I guess studies can be done in a lot of  
14 different ways, right?

15           MS. HURLEY: Of course.

16           CHAIRPERSON BERRY: Forums are studies, right?

17           MS. HURLEY: Yes. In themselves, at least on some  
18 occasions, a committee forum produces a positive response, apart from  
19 simply bringing attention to an issue. It can generate a specific  
20 change. Even a briefing can do that.

21           That occurred in, I believe it was, one of the New England  
22 States. The SAC had a briefing on police-community relations, and  
23 according to the minutes of the next meeting, the deputy police chief  
24 had attended that meeting. I think this was Bridgeport, Connecticut.  
25 He went to every roll call following the meeting and stressed the

1 importance of treating people courteously and without regard to race  
2 and so on. That, to me, is a benefit you cannot value. It is great.  
3 If we could have that effect with everything, it would be wonderful,  
4 but, of course, we do not.

5           CHAIRPERSON BERRY: One of the things that Commissioners  
6 should keep in mind, particularly the new ones and the ones who have  
7 been here, we should remind ourselves, is that almost every proceeding  
8 of the Commission that takes place around the country does lead to some  
9 change just by virtue of having the proceeding. That has been my  
10 experience.

11           We sometimes get locked into thinking, "Well, gee, when we  
12 do the report, then there will be an impact." My experience has been  
13 after all this time, if there is an urgent issue of public concern and  
14 we go and we have a hearing about it, a briefing about it--it does not  
15 matter what we have--the mere fact that we do that changes behavior.  
16 It changes behavior either because people are trying to keep us from  
17 finding that they did something wrong or giving them bad publicity or  
18 some people are simply alerted that there is a problem, even if they  
19 did not think there was one before, and they start trying to do  
20 something about the problem.

21           Take our Wall Street report, which is one example, and the  
22 immigration report. We were so focused on, gee, we have got to get the  
23 report done, we have got to get the report done, how long is it going  
24 to take to get the report done, my information and knowledge from the  
25 people who were involved and the firms was that when we first started



1 a consultation or a briefing or a SAC forum or whatever it is we decide  
2 to do, there is an immediate impact. We may think we are just this  
3 puny little Civil Rights Commission with this puny little budget, but  
4 the impact is there.

5 I do not remember who had their hand up next.

6 VICE CHAIRPERSON REYNOSO: Perhaps we are having a  
7 discussion that we had agreed we might have later, but I do want to  
8 comment that there is a protocol that the SACs follow in terms of what  
9 sort of written report they will issue, and that requires a great deal  
10 of staff time. After the Santa Rosa hearings of nearly 2 years ago  
11 now, for example, no report has been issued, and I know they have been  
12 working on the report because I get calls from time to time on it, but  
13 the reality is, as you mentioned, if we are going to talk about impact,  
14 at least 95 percent of the impact already took place in light of the  
15 officials putting together the figures they needed to put together and  
16 report which they did so voluntarily and the thinking the community  
17 groups and religious groups did about their relationship with the  
18 police department before the hearings and, of course, during the  
19 hearings.

20 So it might even be worth talking about protocol and have  
21 different types of reports. We might have Report A that goes into  
22 details and all that and Report D that might be a three-page report  
23 after the hearing, so that it does not take 2 years of staff time, for  
24 example.

25 CHAIRPERSON BERRY: Maybe we ought to start making

1 statements after we have the public proceedings to the extent that we  
2 can agree about anything, which are interim reactions to whatever  
3 happened.

4 Yes, Commissioner Edley.

5 COMMISSIONER EDLEY: At the risk of sounding too academic, I  
6 just want to throw out a suggestion for Carol-Lee and the Staff  
7 Director that it might be helpful as preparation for whenever the  
8 Commission does have this discussion to have one or two concept papers.

9 For example, I can think we might have one concept paper  
10 that is about the mission of the SACs that would say here are four  
11 different models of what we would expect, of what one might  
12 conceptualize as the role of SACs, and then we might have a separate  
13 concept paper that says here are 15 ideas about how procedures or  
14 instruments might be changed. Obviously, the desirability of those  
15 would depend on what you decide coming out of the first option paper,  
16 but I am just thinking it would help structure our discussion so that  
17 it would be as productive as possible. I think it might be helpful, as  
18 it would be if we ever do our strategic planning today.

19 I am not just kidding. I think to have some pieces of paper  
20 and to have asked the staff in consultation with the regions and the  
21 SACs to maybe think through a few of these ideas, pre-digest a few  
22 ideas for us.

23 COMMISSIONER REDENBAUGH: That would narrow that  
24 conversation.

25 COMMISSIONER EDLEY: Yes.

1 CHAIRPERSON BERRY: All right. We will do that, and we will  
2 have that conversation.

3 Does anybody have anything else on the Staff Director's  
4 Report?

5 [No response.]

6 V. State Advisory Committee Appointments for  
7 Alabama, Florida, Illinois, Indiana, Minnesota (Interim),  
8 and Nebraska

9 CHAIRPERSON BERRY: Hearing none, we will go over Item No.  
10 V, which is the State Advisory Committee Appointments for Alabama,  
11 Florida Illinois, Indiana, Minnesota (Interim), and Nebraska.

12 Could I get a motion?

13 VICE CHAIRPERSON REYNOSO: So moved.

14 CHAIRPERSON BERRY: On something, either on one or the  
15 other.

16 VICE CHAIRPERSON REYNOSO: Unless it is inappropriate, I  
17 would like to move that they all be approved. I went over them, and  
18 they all seem appropriate to me.

19 CHAIRPERSON BERRY: Okay.

20 VICE CHAIRPERSON REYNOSO: Sometimes we have gone one by  
21 one, but I saw no problem with any of them.

22 COMMISSIONER REDENBAUGH: Second.

23 CHAIRPERSON BERRY: All right. Any discussion?

24 [No response.]

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

1 [Chorus of ayes.]

2 CHAIRPERSON BERRY: Opposed?

3 COMMISSIONER EDLEY: Abstention?

4 CHAIRPERSON BERRY: Oh, abstention.

5 COMMISSIONER EDLEY: We can do that, right? I am present.

6 CHAIRPERSON BERRY: Oh, that is right. You said you had not

7 a clue. All right, okay. Commissioner Edley abstains because he--

8 COMMISSIONER EDLEY: Because he is clueless.

9 [Laughter.]

10 CHAIRPERSON BERRY: We are now going to go to program

11 planning. \* \*

12 VII. Future Agenda Items

13 CHAIRPERSON BERRY: Well, first, are there any future agenda  
14 items for the official part of the Commission meeting?

15 [No response.]

16 CHAIRPERSON BERRY: Hearing none, then we will leave the  
17 part of the meeting that is the official meeting to consider action  
18 items to go to the program planning. We will be here during what is  
19 the lunch time for most people. Is it your pleasure to order something  
20 that the staff can bring in, I believe I would pay for it, or is it  
21 your pleasure to break for lunch? What is your pleasure?

22 COMMISSIONER REDENBAUGH: I would have an order-in  
23 preference.

24 CHAIRPERSON BERRY: I beg your pardon?

25 COMMISSIONER REDENBAUGH: I would have a preference for

1 ordering in.

2 CHAIRPERSON BERRY: Is there anyone who disagrees with that?

3 [No response.]

4 CHAIRPERSON BERRY: Did you hand out pieces of paper or  
5 something?

6 STAFF DIRECTOR MOY: Yes.

7 CHAIRPERSON BERRY: They handed out pieces of paper of which  
8 you should mark with whatever you want and turn them in to Audrey, and  
9 Audrey will go out to get whatever it is and bring it back at lunch  
10 time. I want her to do it for Commissioners and for Assistants. I  
11 will buy their lunch, too.

12 COMMISSIONER EDLEY: Thank you, Mary.

13 CHAIRPERSON BERRY: This is not going to happen again.

14 [Laughter.]

15 COMMISSIONER EDLEY: Unless the stock market continues to  
16 rise.

17 Can we order lettuce and tomato, too?

18 CHAIRPERSON BERRY: Yes, you can.

19 [Laughter.]

20 CHAIRPERSON BERRY: I want to take a 2-minute break.

21 [Recess taken from 11:04 a.m. to 11:14 a.m.]

22 **VI. Program Planning**

23 CHAIRPERSON BERRY: Program Planning, Item No. VI.

24 One of the major problems that we have when we do program  
25 planning, project planning, usually is that Commissioners are most of



1 the time unwilling to actually reject a staff proposal. Commissioners  
2 in their great generosity and humanity and so on are reluctant to  
3 simply say to the staff that proposal does not make any sense or we  
4 cannot do it or there are too many or whatever.

5 So what we do is talk through proposals, and then we usually  
6 end up at the end with too many. We approve all of them somehow, and  
7 we never really come to grips with how much we can do.

8 Luckily, we are about caught up with projects that we had in  
9 the pipeline. If you noticed for the management information system  
10 that we have in the Staff Director's Report and the pace of the work  
11 here at the Commission, we are at a point that if we continue at this  
12 pace, we will no longer be behind all the time.

13 We made a commitment, those of us who were here before, that  
14 we would never try to take on things that we knew we could not do,  
15 again, so that we would end up being behind again. So you should keep  
16 that in mind, and maybe what we ought to do is to discuss these  
17 proposals, but then try to exercise some judgment and some discretion  
18 about priorities and come to some consensus about the items that are  
19 here as well as things that Commissioners have been thinking about that  
20 are not here. We are not limited to the proposals that the staff has  
21 before us.

22 Before I do that, let me point out in case you did not  
23 notice in response to what happened at the last meeting, some of the  
24 requests, Commissioners were sent some information, including the  
25 Military Racial Attitude Survey, which was asked for.

1 COMMISSIONER EDLEY: Yes, thank you very much.

2 CHAIRPERSON BERRY: It was sent. The hate crime legislation  
3 information that was asked for the last time was given to us. So that,  
4 the staff has been responsive to those concerns.

5 Getting back to project planning, do you want to say  
6 anything about this to open the discussion, Staff Director, and are the  
7 staff here prepared to discuss the proposals?

8 STAFF DIRECTOR MOY: Yes. We have representatives from OCRE  
9 and also OGC.

10 The difference that we spoke about earlier this morning on  
11 the two versions of the expanding economic project, the fax version  
12 includes the new information on recent technological advances and  
13 minorities, inability to take advantage of these new technologies.  
14 That is the difference.

15 CHAIRPERSON BERRY: So we have got beginning in FY2000--you  
16 mean these are already underway, right, or not? What does this mean,  
17 beginning in FY2000.

18 STAFF DIRECTOR MOY: Section I, these have the statutory  
19 report on fair employment in law enforcement. The report of the EEOC  
20 has been scheduled.

21 May I just take a minute's recess, Commissioner?

22 COMMISSIONER EDLEY: No, okay. Now, I understand what you  
23 are doing, I think.

24 CHAIRPERSON BERRY: Are you still confused, Edley?

25 COMMISSIONER EDLEY: Well, it is a permanent state, but I am

1 coping. I am coping.

2 COMMISSIONER REDENBAUGH: I take it, we are at page 1 of Tab  
3 6, right?

4 CHAIRPERSON BERRY: Are you on board, Russell, with where we  
5 are here, what we are talking about?

6 COMMISSIONER REDENBAUGH: Not at all. I think the question,  
7 though, is are these projects committed and launched.

8 CHAIRPERSON BERRY: Right. That is what I am trying to find  
9 out.

10 COMMISSIONER REDENBAUGH: I understand the question.

11 CHAIRPERSON BERRY: The Fair Employment Project is well  
12 underway, Staff Director?

13 STAFF DIRECTOR MOY: Yes.

14 COMMISSIONER REDENBAUGH: Excuse me. And that is the  
15 statutory report for 2000?

16 STAFF DIRECTOR MOY: Correct.

17 CHAIRPERSON BERRY: Which will be due before the end of this  
18 fiscal year.

19 STAFF DIRECTOR MOY: Correct.

20 CHAIRPERSON BERRY: Right.

21 COMMISSIONER REDENBAUGH: So we have a completion date  
22 before that, Staff Director?

23 STAFF DIRECTOR MOY: The initial draft, as I understand it,  
24 should be ready by March. So, yes, we are on target.

25 COMMISSIONER REDENBAUGH: Since this is the statutory and

1 more important than other reports--

2 STAFF DIRECTOR MOY: Is it when will the Commissioners get  
3 it?

4 COMMISSIONER REDENBAUGH: No. I think we get them all.

5 So we have a completion date that allows for the normal and  
6 customary slippages such that we can have this actually published  
7 before the end of the fiscal year?

8 STAFF DIRECTOR MOY: Yes.

9 COMMISSIONER REDENBAUGH: That date would be?

10 STAFF DIRECTOR MOY: September 30th.

11 COMMISSIONER REDENBAUGH: September 30th, okay.

12 CHAIRPERSON BERRY: So that one is okay.

13 Expanding Economic Opportunities.

14 COMMISSIONER REDENBAUGH: Wait a minute. September 30th is  
15 the completion date.

16 CHAIRPERSON BERRY: That is the day we are supposed to have  
17 it finished.

18 VICE CHAIRPERSON REYNOSO: It has got to be published by  
19 that time, right?

20 STAFF DIRECTOR MOY: No. We have to be finished.

21 CHAIRPERSON BERRY: I thought it had to be submitted to  
22 Congress by September 30th.

23 STAFF DIRECTOR MOY: On the 30th.

24 COMMISSIONER REDENBAUGH: That is what I thought.

25 CHAIRPERSON BERRY: So are we on board to submit it to

1 Congress by September 30th?

2 STAFF DIRECTOR MOY: Yes.

3 CHAIRPERSON BERRY: On or before September 30th?

4 STAFF DIRECTOR MOY: Yes.

5 CHAIRPERSON BERRY: How about before September 30th?

6 COMMISSIONER REDENBAUGH: But your completion date is also  
7 that date? That just looks like there is not much--

8 STAFF DIRECTOR MOY: No, on or before. The deadline date is  
9 September 30th.

10 CHAIRPERSON BERRY: When do we expect to have the  
11 Commissioners get this thing?

12 STAFF DIRECTOR MOY: Mireille?

13 CHAIRPERSON BERRY: Mireille, you have to talk into a  
14 microphone, and you have to say who you are.

15 VICE CHAIRPERSON REYNOSO: Otherwise, you do not get static.

16 MS. ZIESENISS? Mireille Zieseniss with OCRE.

17 We have it scheduled in the milestones to have it submitted  
18 to OGC for their sufficiency review in April, and then it is submitted  
19 to the Commissioners in June for a vote in the July meeting. Pending  
20 approval, it will allow us the 2 months to make editorial revisions, et  
21 cetera, and then submit it for publication to be released end of  
22 September.

23 COMMISSIONER REDENBAUGH: Then there is slippage in the  
24 schedule. If any slippage occurs, then we will miss the date.

25 STAFF DIRECTOR MOY: I doubt if we will have any slippage.

1 We have not had any in the last 2 years on our statutory reports.

2 COMMISSIONER REDENBAUGH: All right, keeping in mind we have  
3 no meeting in August, also.

4 STAFF DIRECTOR MOY: Right, and we did not last year.

5 COMMISSIONER REDENBAUGH: All right, good.

6 CHAIRPERSON BERRY: Mireille, remind us. This report was  
7 supposed to cover Justice and the EEOC in the first place, right, and  
8 then we split it?

9 MS. ZIESENISS: Originally, right. Then it was split into  
10 two reports so that for fiscal year 2000, it would be just looking at  
11 the EEOC, and for 2001, DOJ.

12 CHAIRPERSON BERRY: Okay, but according to the schedule that  
13 is in the MIS and the schedule that you are working with, which is the  
14 same as the schedule in the MIS, I hope, it is all on schedule.

15 MS, ZIESENISS: We are on schedule.

16 VICE CHAIRPERSON REYNOSO: Excuse me. The suggestion that  
17 Russell has, I take it, is that if it would at all be possible to  
18 change the schedule and have the report come to the Commissioners a  
19 month earlier, then it would allow for more lead time in case there are  
20 these serious concerns by the Commissioners that would be more than  
21 editorial changes. He did not quite put it that way, but I take it,  
22 that is the concern that Russell has.

23 COMMISSIONER REDENBAUGH: That is very well said. Thank  
24 you.

25 VICE CHAIRPERSON REYNOSO: So I guess I would raise that

1 question whether in terms of the progress of your work, something of  
2 that sort, since some revision of that sort could take place.

3 CHAIRPERSON BERRY: When are you submitting it for legal  
4 sufficiency?

5 MS. ZIESENISS: We had it scheduled for April 15th.

6 CHAIRPERSON BERRY: I have not looked, but I will just ask  
7 you because you know. When is it projected to go to OSD?

8 MS. ZIESENISS: I believe that we usually allow about a  
9 month for legal sufficiency.

10 CHAIRPERSON BERRY: So that would be May.

11 MS. ZIESENISS: So it would be May.

12 CHAIRPERSON BERRY: So that, if we could step up the OSD  
13 consideration, then OSD could give it to us in June. We could have it  
14 in June if OSD took less time than whatever time is in the thing. I am  
15 just trying to figure out a way to get more time.

16 MS. ZIESENISS: Generally, I think from last year's  
17 experience, at the time it goes to OSD, we simultaneously do agency  
18 review.

19 CHAIRPERSON BERRY: Right.

20 MS. ZIESENISS: So maybe we could have it submitted to the  
21 Commissioners while it is doing the agency review.

22 CHAIRPERSON BERRY: About how long is this report going to  
23 be this year? How many pages are we going to have to read?

24 MS. ZIESENISS: It is not going to be two volumes, like last  
25 year's.

1 CHAIRPERSON BERRY: I know that, yes.

2 MS. ZIESENISS: I think it will be considerably less  
3 lengthy.

4 CHAIRPERSON BERRY: It will be one volume?

5 MS. ZIESENISS: Yes.

6 VICE CHAIRPERSON REYNOSO: 300 pages, maybe?

7 MS. ZIESENISS: I'm sorry?

8 VICE CHAIRPERSON REYNOSO: 300 pages, maybe?

9 MS. ZIESENISS: That is probably a good guesstimate.

10 CHAIRPERSON BERRY: Commissioner Edley?

11 COMMISSIONER EDLEY: What is this legal sufficiency thing?  
12 It is not checking the footnotes, right?

13 CHAIRPERSON BERRY: Let's ask General Counsel. We do not  
14 need to ask Mireille.

15 Thank you very much.

16 VICE CHAIRPERSON REYNOSO: Yes, explain yourself.

17 [Laughter.]

18 MR. HAILES: The legal sufficiency review does involve a  
19 complete review of all legal citations both in the text and in the  
20 footnotes and a defame-and-degrade analysis, and it is pretty thorough  
21 and time consuming, with the complete cooperation of OCRE in the past,  
22 and we presume in this April or May.

23 CHAIRPERSON BERRY: And defame-and-degrade is required by  
24 statute?

25 COMMISSIONER EDLEY: Right. Well, I am against defamation.



1 The other, I am a little uncertain about the other.

2 With respect to this timing issue and Commissioner  
3 Redenbaugh's point, I do not like this project description.

4 CHAIRPERSON BERRY: Which one?

5 COMMISSIONER EDLEY: The description of what this thing is,  
6 the Fair Employment Law Enforcement Project thing, because it just  
7 reads to me like something that is very diffused and it is going to be  
8 very hard to find a bottom line that is likely to have an impact.

9 So I guess what I am trying to signal is I am sort of in a  
10 mood to promise that I am going to give you a hard time. So I want to  
11 associate myself with Commissioner Redenbaugh's comments to figure out  
12 if there is any way--I do not know what the answer is.

13 Maybe the answer is as Mary was suggesting. Maybe the  
14 answer is that interested Commissioners could be briefed on the general  
15 content and focus of the thing at the same time it is given to OGC, but  
16 I think we are in a mode really of trying to make sure. We double our  
17 efforts to make sure that our written reports have an impact, and  
18 especially if we are trying to get more money from the Congress. So  
19 the 300 pages of stuff that a typical reader would view as fulfilling a  
20 statutory requirement, but not making much of a difference to the  
21 agency or to Congress--well, I have said my piece, but you see the  
22 point that I am making.

23 CHAIRPERSON BERRY: The time is now, Christopher. The first  
24 time is now, okay? That is one of the things we do in planning.

25 COMMISSIONER EDLEY: Okay.

1           CHAIRPERSON BERRY:  If you have concerns, anybody has  
2 concerns or wants to revisit the concept or give any advice to the  
3 staff on things that they are already working on, the time to do that  
4 is now.  If now is not the time for you to do it, if you could tell  
5 them, any Commissioner, where you have some concerns, that is what they  
6 want to hear in the proposal that they are working on right now.

7           If you want to have them brief us--and we have done this in  
8 the past--on what they are doing with the report and where they are on  
9 it, they can do that, and then you can raise questions with them, both  
10 now and again at another time if you wish to do that, but they would  
11 like to hear.

12           Then if in the end when you get the draft you still have  
13 concerns and there are points you want to raise, then you raise it then  
14 again, but I think it would be useful if you can give some indication  
15 of your concerns or if anybody else can to tell the staff that while  
16 they are working, maybe there is something they can do.

17           Keep in mind, and keep this in mind as we go through the  
18 proposals, the Commission approves the proposals.  The staff did not  
19 just go away and write this proposal by themselves.  The Commission  
20 approved it, and they have been writing a report based on the proposal  
21 that the Commission approved.

22           COMMISSIONER EDLEY:  A year ago.

23           CHAIRPERSON BERRY:  So our first job when we consider the  
24 new ones is to make sure that we do a good job of saying, hey, you  
25 either should do that or you shouldn't do that or we don't like that or

1 change that or whatever. They are only doing what we ask them to do.  
2 That is what they are trying to do.

3 Because you are new to it, if you see something that people  
4 did not see before or people did not do such a good job at giving  
5 guidance before, that is why we look at the ones that they are working  
6 on before we start looking at new ones.

7 COMMISSIONER EDLEY: I guess I misunderstood what the point  
8 of the outline was because when I read "Commission-approved project  
9 scheduled to begin in FY2000," I guess I interpreted that as meaning  
10 that it had not already started, and I am pleased to know that it is  
11 already well underway since it has to be done by September 30th, but  
12 rather than relitigate the content of the two-page description of the  
13 scope of work for the thing formally, why don't I just give you and the  
14 staff informally some of my concerns and suggestions.

15 CHAIRPERSON BERRY: You can do that, or you can come and  
16 meet with the Staff Director and the staff and talk to them about what  
17 your points are.

18 COMMISSIONER EDLEY: Great. Thank you.

19 CHAIRPERSON BERRY: Anybody can do that. Or, they can brief  
20 us specifically on this proposal and on what they are writing and tell  
21 you where they are headed. Then you can ask questions, whatever is  
22 your pleasure.

23 VICE CHAIRPERSON REYNOSO: Madam Chair, two things.

24 One, it seems to me that some of these processes, if this is  
25 going to be ready to send beyond the office that actually puts it

1 together even in a couple of months, I will bet it is practically there  
2 already. So it seems to me that there is an incongruity in having some  
3 of these processes go on simultaneously. So, as soon as it leaves  
4 their office and goes to the General Counsel's office or whatever,  
5 since this is all still internal, it may be that we could get it even  
6 that early so we have 2 or 3 months to look it over.

7           Secondly, this project was approved. Let's put it this way.  
8 We have three new members since this project was approved. I think it  
9 would be very good if maybe next month, we have a report from the staff  
10 and folks who have been working on this report giving us sort of a  
11 formal report on by that time where they have been because I think it  
12 will be pretty well done.

13           COMMISSIONER EDLEY: If I could just add, I agree with  
14 everything that Cruz said. My anxiety level about this was raised when  
15 you talked about the supplemental, and I think if moving into the  
16 spring, we are going to be in the position of Congress really looking  
17 at the work of the Commission to see whether or not we deserve the  
18 additional resources, I think we need to have a very high level of  
19 confidence that this particular statutory report that is on the agenda  
20 right now is moving along well and that it has a shape and a content  
21 that we have a lot of confidence in. I think it is all to the good.

22           I hate to be a trouble-maker, but--

23           CHAIRPERSON BERRY: That is not trouble. That is what you  
24 are supposed to do.

25           Are you in a position to discuss what you actually are doing

1 with the report?

2 STAFF DIRECTOR MOY: Yes.

3 CHAIRPERSON BERRY: They can do that right now. That is  
4 what you do at planning, and we have plenty of time. So why don't we  
5 let them come, and if this is not sufficient, we can do it again, but  
6 at least to hear more about what they are doing than you have already  
7 heard and reading the two pages, okay?

8 COMMISSIONER EDLEY: Okay.

9 CHAIRPERSON BERRY: So why don't we do that, just go ahead  
10 and introduce yourselves and say what you are doing.

11 Yes, Commissioner Redenbaugh.

12 COMMISSIONER REDENBAUGH: What they are doing in terms of?

13 CHAIRPERSON BERRY: The report.

14 COMMISSIONER REDENBAUGH: Right, I had followed that, but  
15 like the main claims, not the procedural issues?

16 CHAIRPERSON BERRY: Right, what is it substantively.

17 COMMISSIONER REDENBAUGH: Yes, okay.

18 CHAIRPERSON BERRY: Right.

19 COMMISSIONER EDLEY: Although it is still in process, I am  
20 interested in the issue with whom you have consulted, if you have had  
21 conversations with Hill staff or OMB in addition to the people that you  
22 mentioned, advocacy groups and political--

23 CHAIRPERSON BERRY: They would not talk to Hill staff. The  
24 Congressional Office would. I mean, they would not do that on their  
25 own.

1           Go ahead and tell us what you are doing.

2           First of all, let me just say that this report is a  
3 monitoring report, which means that the purpose of it is to analyze the  
4 activities of a Government agency in a specific area of civil rights  
5 enforcement. That is the whole purpose of the report, to tell us how  
6 that agency engages in its enforcement efforts so that we can  
7 understand what they do, and to make some assessment of how effective  
8 they are in carrying out their statutory mandate and to make  
9 recommendations, if possible, for how we believe they might become more  
10 effective. That is the whole purpose of the report. That is what they  
11 are doing, and this one is on EEOC and Fair Employment.

12           So go ahead and proceed in whatever way you would like.

13           MS. ZIESENISS: Okay. I guess I will go ahead and take the  
14 lead on this.

15           From the proposal, we are not looking at the ADA this time  
16 because that was just done in 1998. So we are looking at Age  
17 Discrimination and Employment Act, the Equal Pay Act, and Title VII.

18           Just to kind of give you a brief overview, the format of  
19 this report, as we envision it now, is not going to be terribly  
20 different from past reports. We are still looking at the organization  
21 and structure and administration of the agency to determine if it is  
22 sufficient for it to carry out its missions. So that will be one  
23 chapter we are looking at, at budgeting staffing patterns, oversight.  
24 Since they have undergone some changes in administration, they have a  
25 new chairperson as of '98.

1           Then we will also have a chapter on policy development where  
2 we are looking at whether or not the development and dissemination of  
3 EEOC policy is sufficient, whether it adequately addresses the areas  
4 that are necessary, whether it in a timely manner follows developments  
5 in case law.

6           We are not going to do a point-by-point analysis of EEOC  
7 policy just because there are so many. We are just kind of doing an  
8 overview to look at where they are lacking policies, any areas where  
9 they are currently developing policies that are new and innovative, to  
10 look at that.

11           We are looking at the user friendliness of their policies.  
12 They post them on the Web site. We tried to assess whether or not  
13 their policies are usable.

14           Just as an aside from speaking to so-called experts in the  
15 field, we had a pretty broad agreement that in EEOC, that is one area  
16 where they do a good job, is policy development. So we do not want to  
17 nitpick word for word their hundreds of policies.

18           Then we will have a chapter on their enforcement efforts,  
19 and this chapter, we are hoping to be the meat of the report, where we  
20 look at how they are handling charges. Their backlog has declined  
21 dramatically since the early '90s. They do not even call it "backlog"  
22 anymore. They call it "inventory management" or "inventory control."

23           We want to look at how their charge-handling procedures have  
24 changed since 1996 when they implemented the priority charge handling  
25 procedures where they started categorizing charges as A, B, or C

1 charges.

2 Just briefly, A charges are those charges that are most  
3 likely to result in cause-finding or potential litigation vehicles. B  
4 charges are charges that require more further investigation, and C  
5 charges are those charges that will most likely be dropped or  
6 dismissed. So we want to look at that.

7 Do you have a question?

8 COMMISSIONER REDENBAUGH: Yes. May I?

9 You are looking at those from the perspective of are there  
10 civil rights implications?

11 MS. ZIESENISS: Right. We have obtained the charge data  
12 system from the EEOC. We are going to rely on this extensively to do  
13 some analyses of if there are certain types of cases that are more  
14 likely to be dismissed, if there are certain types of cases that will  
15 proceed for a further or more detailed investigation or those types of  
16 cases that are more potentially classified as litigation vehicles. We  
17 want to look to see if there are any disparities there. That is one  
18 way we hope to get at that.

19 COMMISSIONER REDENBAUGH: Okay.

20 MS. ZIESENISS: Then, of course, we are looking at the  
21 agency's technical assistance and outreach efforts and what they are  
22 doing to inform employers of their responsibilities and potential  
23 charging parties of their rights.

24 So that is kind of in a nutshell where we are taking this.

25 CHAIRPERSON BERRY: Since I already know this because we



1 have been doing this a long time, but new Commissioners will not, tell  
2 them about the data that you use. Tell them how you get the  
3 information, where you are getting the information from.

4 MS. ZIESENISS: First, as I mentioned, the charge data  
5 system from EEOC, we had some back-and-forth negotiations with them.  
6 We supplied them with all of the fields and all of the types of queries  
7 that we wanted to be able to run, and they have provided us with their  
8 data set. So that is going to be a primary area where we have seen  
9 information.

10 Secondly, we are interviewing EEOC staff, not just at  
11 headquarters, but also in district offices, and we selected several  
12 district offices that we will do interviews with the directors, the  
13 attorneys, the investigators, the intake specialists, the technical  
14 assistance and outreach people, mediators. We are trying to get at  
15 least one or two people from each of the various job functions in the  
16 district offices.

17 We have already gone out and interviewed the Baltimore  
18 office as a preliminary to kind of get our feet wet and see exactly  
19 what they are doing, and because of the proximity, that was an easy one  
20 to pick.

21 At the end of this month and in February, we will be  
22 interviewing staff at the St. Louis, Birmingham, L.A., and Dallas  
23 offices, and then we have planned telephone interviews with Chicago,  
24 Philadelphia, New York--I am forgetting one--another district office.  
25 So we tried to select offices from various geographic regions that we

1 had some past knowledge that were either doing an either exceptional  
2 job or maybe not such a good job. So we will be interviewing EEOC  
3 staff.

4 We have also expanded our outreach attempts with this  
5 particular report, something that has not been done on past reports.  
6 We have developed questionnaires to be posted on the Commission's Web  
7 site, and actually, those OMB packages are getting ready to be sent out  
8 in the next couple of days, but we have developed a questionnaire for  
9 respondents or employers. We have developed a questionnaire for past  
10 charging parties, people who have actually gone through the system and  
11 had a charge processed. ◆ ◆

12 We have developed a questionnaire for attorneys and  
13 mediators who specialize in employment issues, and the fourth  
14 questionnaire is for organizations, experts, and advocacy groups to  
15 respond to. These questionnaires are about 50 questions, and we also  
16 offer room for their comment.

17 To get people to respond to that, we have been making  
18 contact with groups such as the National Employment Lawyers  
19 Associations, with various advocacy groups that represent  
20 constituencies, to get them to get their members and their constituents  
21 to respond to our questionnaire.

22 Another question, Commissioner Redenbaugh?

23 COMMISSIONER REDENBAUGH: I am the one who said I was not  
24 going to go into process.

25 Will you be able to examine the data by region?

1 MS. ZIESENISS: Hopefully, yes. If they do not want to  
2 supply us with their address, we do ask for zip code.

3 COMMISSIONER REDENBAUGH: For example, if there is a problem  
4 in the Dallas region, it does not show up at the aggregate level.

5 MS. ZIESENISS: We are hoping. To the extent that they will  
6 provide us this information, some of it with the complainants, past  
7 charging parties, it is sensitive, but we do ask them which office  
8 handled their complaints.

9 COMMISSIONER REDENBAUGH: Okay.

10 MS. ZIESENISS: So we are hoping that will lead to some sort  
11 of--

12 COMMISSIONER REDENBAUGH: Then what level of statistical  
13 expertise do you need for this? Because this looks like a  
14 sophisticated undertaking.

15 MS. ZIESENISS: Well, we do have a statistician on staff,  
16 and I cannot answer the exact process because I personally do not know,  
17 but from the queries, from the charge data system from the EEOC, our  
18 statistician has already put together some. She has done a lot of  
19 preliminary research on what fields and how to run the analysis. She  
20 is going to be using SBSS and Access to be doing that, to do that  
21 analysis.

22 COMMISSIONER REDENBAUGH: Good. Thank you.

23 CHAIRPERSON BERRY: Commissioner Edley?

24 COMMISSIONER EDLEY: If I can just follow up on the  
25 questionnaires posted on the Web site and so forth, I do not understand

1 how that can be a scientific sample that one should have a particular  
2 confidence in whatever you find out. You might get a lot of comments.  
3 The respondents might be skewed towards people who have an ax to grind-  
4 -

5 MS. ZIESENISS: Right.

6 COMMISSIONER EDLEY: --or who have a political agenda or  
7 whatever. So, just as you describe it, I am sufficiently skeptical  
8 about the methodology, but I am wondering why it is worth the effort.  
9 We cannot resolve that in the discussion, but I guess I just wanted to  
10 flag that.

11 MS. ZIESENISS: Right. We have thought about that, and we  
12 have definitely come to an agreement, like what you are saying, that  
13 chances are, particularly the complainants, the individuals that are  
14 more likely to respond are probably those that have a grievance that  
15 they want to voice and probably were dissatisfied. So that would be  
16 skewed.

17 To answer your question, I guess we just have to be very  
18 careful if we should rely, if we should even get any usable data from  
19 this questionnaire. We have to be very careful how we frame our  
20 findings based on it.

21 We did do a preliminary set of questions to test this out  
22 where we solicited responses from complainants who had actually been  
23 referred to the EEOC from the Commission, and we received some feedback  
24 on that. What we did find was we did get pages and pages of rambling,  
25 complaints about the EEOC and this, that, and the other.

1           Some of it was very good. Some of it, we had to question  
2 and step back, but we did find some themes. One theme, for example,  
3 that we found was just lack of communication. A lot of people were  
4 very discouraged because they just did not know that their problem was  
5 not within the jurisdiction of the EEOC. So, had they been told that  
6 right up front, perhaps they would not have felt so much that they had  
7 been given the runaround. So those are the kinds of things that we  
8 hope to get from it.

9           CHAIRPERSON BERRY: Let me speak to that point that  
10 Commissioner Edley raised. It would seem to me, so long as you report  
11 the data as being based on these random comments, that it will have  
12 some informational uses. We will find out, first of all, if it is  
13 correct that all the people who complain are complainants. Two, we  
14 will find out how many people bothered to answer or even respond to the  
15 questionnaire being on the Commission's Web site, which tells us what  
16 kind of responsiveness there is there.

17           I guess information of that kind, so long as it is clearly  
18 identified as not being based on any kind of statistical sample, is  
19 okay to look at, as long as you do not mislead people about what it is.  
20 Sometimes random impressions do give you some--

21           COMMISSIONER REDENBAUGH: But those are not random.

22           COMMISSIONER EDLEY: Yes.

23           CHAIRPERSON BERRY: They are random in the sense that--I do  
24 not mean that they are statistically random as in a random sample.

25 That is not what I mean.

1           What I mean is comments that are made. So I will not use  
2 the word "random" because I am not talking about statistical analysis,  
3 but people who care to answer.

4           One thing you have told me which I find very valuable is  
5 from now on when I get people sending me e-mails complaining about  
6 something that I have done or not done, I will just ignore them because  
7 they are not statistically significant. Then I will not pay any  
8 attention to them at all. They are just people who like to gripe, who  
9 like to send e-mails. So I thank you. That is very useful.

10           Other comments?

11           Vice Chair?

12           VICE CHAIRPERSON REYNOSO: I would be interested in some  
13 ancillary matters actually pertaining to representation of those folk  
14 who need to get to court.

15           I have heard said--I have not checked it out--that each of  
16 the Federal districts--for example, judicial districts are supposed to  
17 have a panel of volunteers, but that many districts have not set up  
18 those panels. I would be interested in what happens to those cases  
19 that the Commission cannot resolve.

20           I do not know whether you would consider that within your  
21 purview or not, but I think that would be of interest.

22           CHAIRPERSON BERRY: It sounds very thorough, what you are  
23 doing, and it is the usual way in which these reports have been done, I  
24 think, and for Commissioners who are new, the statute requires  
25 Government agencies to cooperate with us. So they are required to give

1 us information, not because they want to. Most of them are very  
2 cooperative.

3 Has that told us enough to say that they should either  
4 proceed until we raise additional questions, or would you like to have  
5 yet another briefing about this or pursue the opportunity that I said  
6 people have, which is to talk to the staff director and meet with the  
7 staff if you have other questions?

8 Yes, Commissioner Redenbaugh.

9 COMMISSIONER REDENBAUGH: It is really very enlightening.  
10 All we have heard, I think, went to the methodology and not to the  
11 claims, which is where the rub comes, when they end up deciding if we  
12 support or not, connected to the claims, rarely to the methodology.

13 CHAIRPERSON BERRY: You do not know yet what you are going  
14 to conclude, do you?

15 MS. ZIESENISS: No, what we are going to conclude, but I  
16 think we have some idea as to where our evaluation is headed, just  
17 based on our preliminary interviews with the agency itself.

18 There are some issues that I think are going to be key  
19 themes in this report, one of which is being headquarters oversight of  
20 district offices and the contracting FEPAs. That is one area that we  
21 are looking at where we have not seen that there is a whole lot of  
22 monitoring or oversight.

23 The degree of whether or not that is necessary is certainly  
24 up for debate, but we have seen that there has been a push in the past  
25 couple of years to give the district offices a lot of latitude with how

1 they actually carry out their charge-handling processes.

2           Some offices obviously are doing better jobs than others.  
3 So one of our findings--and preliminarily, I do not want to say this  
4 definitively, but one of our findings may be that the offices that are  
5 successful, that are doing a good job should maybe be offering guidance  
6 or headquarters needs to look at those offices and then maybe implement  
7 those procedures in the offices that are not as successful in resolving  
8 charges. Those are the kinds of things.

9           COMMISSIONER REDENBAUGH: That is a managerial issue, not a  
10 civil rights issue.

11           CHAIRPERSON BERRY: Let me interject before I recognize or  
12 permit you to answer that--

13           COMMISSIONER REDENBAUGH: Oh, I'm sorry.

14           CHAIRPERSON BERRY: --and just say that the usual disputes  
15 that we have about OCRE reports, monitoring reports, are not about the  
16 kinds of things we have been discussing here. They usually are not  
17 disputes in the end about how you went about doing the report and what  
18 you got from people and so on.

19           The disputes usually are about things like should that  
20 specific civil rights law be a law, anyway, and be policy, or should we  
21 recommend that it be changed, issues like that.

22           Usually, what OCRE does is to describe the legal terrain.  
23 In other words, in order to do a monitoring report, the idea is not  
24 that OCRE will decide that the law should not be there or that they do  
25 not like that law or maybe there should be a different law or a



1 different policy, but OCRE is only trying to analyze the enforcement of  
2 the law as it stands to the extent that they can figure out what the  
3 law is, with OGC reviewing it for legal sufficiency, and is the agency  
4 doing a good job in enforcing the law for which they have  
5 responsibility. That is the precise question they are asking.

6           That is the way the votes usually turn out. We get into a  
7 discussion about whether that law is valid anymore, should it be  
8 changed, is it working out, should we be trying to do this, and those  
9 are policy matters that OCRE usually does not recommend anything about.  
10 They may recommend that in order to implement this law better, EEOC  
11 ought to do A, B, C, D, E, F, but OCRE is not supposed to say, given  
12 their mission, there should not be a law, Civil Rights Act of 1994, or  
13 there should not be a Title VII or there should not be a Title II or  
14 there should not be a Title IX or whatever it is. That is not what  
15 OCRE is doing in this specific kind of report, which is a monitoring  
16 evaluation.

17           But Russell is correct that our debates--and the Commission  
18 is permitted to debate anything it wants to, making any decisions it  
19 wants to make--are usually about whether it makes any sense to do this  
20 or not do it or should we propose something else. So I do not know how  
21 you can answer that.

22           Having said that, does anybody want to say something?

23           VICE CHAIRPERSON REYNOSO: I just want to say that in terms  
24 of the quality of the reports, I have had uniform praise by academics  
25 about bringing forth a new factual situation, good analysis, well

1 written and so on. So the reports take a long time, but they  
2 invariably are the type that bring forth new information that certainly  
3 academics find of value and we often get from the agencies themselves a  
4 good response to some of our recommendations. So this is one of the  
5 more valuable parts of the work that this Commission does, in my view.

6 CHAIRPERSON BERRY: Commissioner Redenbaugh?

7 COMMISSIONER REDENBAUGH: Here is the concern that I have.  
8 I am not qualified to say whether or not EEOC should centralize or  
9 decentralize how it administers itself, and I suspect most of my  
10 colleagues probably are not either. So I am just uneasy in associating  
11 myself with reports that recommend managerial changes. Although they  
12 may be very good ones, it is outside of my scope. So that is the  
13 concern I have, if there is much of that in this report.

14 I think that is really all I can say about that.

15 VICE CHAIRPERSON REYNOSO: Madam Chair, we are analyzing the  
16 effectiveness of these agencies. If there are some administrative  
17 matters that make them less efficient or some that have really made  
18 them very efficient or they are able to respond to their congressional  
19 mandate well, it seems to me perfectly appropriate for us to make those  
20 observations and maybe make recommendations pursuant to our  
21 observations.

22 COMMISSIONER REDENBAUGH: That may be so, Cruz, but our own  
23 record in this area is not sterling. It is outside the expertise we  
24 have inside the agency.

25 COMMISSIONER EDLEY: We could say it is broken, but going

1 the next step of prescribing how it ought to be fixed.

2 COMMISSIONER REDENBAUGH: Exactly, and we say it is broken  
3 and systematically discriminates, perhaps unintentionally, against this  
4 class of complainants, this is not acceptable, but the prescription on  
5 how to fix it is beyond my competence, certainly.

6 COMMISSIONER MEEKS: Right. The evaluation can be made, and  
7 how they correct it could be left unsaid how they correct it.

8 CHAIRPERSON BERRY: Just so Commissioners know, the reason  
9 why this mandate was put into the statute was because the Commission  
10 has since 1960 or something done enforcement reports on Government  
11 agencies. The Commission has in its libraries volume after volume of  
12 reports done analyzing the work of civil rights agencies, and when the  
13 Commission in flush times, in the Nixon administration and earlier, had  
14 lots of money comparatively, the Commission had an OCRE of what was  
15 OCRE or evaluation at that time. That was before my time, but I know  
16 about it. It had staff members who had agencies as their beat, so to  
17 speak, like newspaper beats, and they would monitor everything the  
18 agency did all the time and talk to the people, and there would be  
19 little reports at every Commission meeting on what they thought that  
20 agency was doing.

21 They would send them up to the Oversight Committee, and they  
22 worked hand in hand with trying to make sure that these agencies were  
23 maximizing their effectiveness in spending the public's money in the  
24 most efficient way.

25 Those reports came to an end with the Commission's budget

1 cuts that happened in the early '80s because the staff was decimated,  
2 and almost three-quarters of the people, a whole bunch of people, were  
3 let go. So the office was decimated, but the Congress then decided  
4 that even if the Commission could not do all of those reports, it could  
5 at least do one agency a year, or some agency, and that the matrix, the  
6 context for this, is all of those other reports that have been done on  
7 the EEOC forever about how to do things at the EEOC and how they turned  
8 out and did not turn out and what worked and what did not work--I mean  
9 managerially and I am not talking about the substance of what EEOC  
10 does--and what other agencies did, that is, for example, little things  
11 like we know that if you do not respond to complaints, people will stop  
12 complaining to you. That is one of the consistent findings of the  
13 Commission reports over the years. If you track how many complaints  
14 there are to an agency, if the agency does not respond, the numbers of  
15 complaints go down. That is just any agency. We know that.

16 So, if you looked at non-responsiveness and EEOC--and I am  
17 not saying they are being non-responsive--we could conclude based on  
18 years of Commission reports and analyses which were based on managerial  
19 studies done of all kinds of other things that the number of complaints  
20 will go down. Almost invariably, we would be right.

21 To the extent that you do respond to complaints, you get  
22 more complaints. That is one of the consistent findings of all of the  
23 reports.

24 There is also a consistent finding about decentralization as  
25 opposed to centralization, and the agencies have gone back and forth on

1 this for the last 25, 30 years.

2 Sometimes they centralize. Sometimes they decentralize.  
3 Sometimes they just feel like the staff needs a kick in the pants. So  
4 they just change everything all the way around so that people will  
5 start getting fired up and do it differently.

6 Almost invariably when they have a problem with  
7 responsiveness, the kick in the pants and the changing to do it the  
8 other way works for a time.

9 If you go up to the Commission library and read all those  
10 enforcement reports from the years past or the recommendations in them,  
11 which tracked year by year every single agency, you will find that that  
12 is the basis on which the OCRE operates, not just sitting down by the  
13 seat of your pants and deciding that this is the case.

14 Yes, Commissioner Edley.

15 COMMISSIONER EDLEY: It strikes me in that vein that while  
16 there might be a plethora of administrative issues, management issues  
17 that any agency is grappling with, that a narrow focus on just a couple  
18 of the major management/administrative challenges that are facing those  
19 that speak to the issue, that really speak to the core of is this then  
20 functioning the way it needs to be functioning, it would be a service I  
21 think for us to address those in a statutory report. I understand  
22 there is ample historical precedent for that.

23 But having said that, I think because of our comparative  
24 expertise, when we do that, I think a lot of careful conversations with  
25 OCRE, with people who are management experts and people who can speak

1 with authority about what the administrative options are, maybe our  
2 obligation, Commissioner Redenbaugh, would be that at least as to those  
3 really high-priority management issues, through the staff and then  
4 directly in what we study, our obligation is to become better informed  
5 so that we can offer an intelligent view on some of these critical  
6 issues, as long as we are selective and that we do not try to be an  
7 all-purpose, soup-to-nuts management consultant, but that we be  
8 targeted.

9 I had a couple of particular suggestions that I would put on  
10 the table, if that is appropriate.

11 CHAIRPERSON BERRY: Please do.

12 COMMISSIONER EDLEY: I would say, number one; I would  
13 respectfully disagree, I think, with what our chairwoman was suggesting  
14 on the sample survey analysis because I am just nervous that it does  
15 raise sort of the junk science question.

16 It is kind of like in a court when some expert testimony or  
17 a DNA test or something like that is offered and the judge has to make  
18 a decision about whether it is sufficiently reliable to even give it to  
19 the jury in the first place, even with the caveats. You do not let in  
20 just any old thing and then warn the jury, by the way, this may be  
21 junk, because you realize that there is always some risk that the junk  
22 science is going to be relied upon too heavily by the audience.

23 So, to have a passage in which you say we sent out this  
24 survey and it is not all that reliable and it may be biased, but  
25 nevertheless 26 percent said X and 38 percent said Y, I think you can

1 predict that most readers are not going to pay a whole lot of attention  
2 to the caveats. They are going to pay attention to the hard numbers  
3 that are there because of just the narrative power that a number has.

4           So I think we really need to be cautious, also cautious  
5 politically because I think that some readers will look at that, will  
6 have the same kinds of questions about the methodologies that I do and  
7 will say what is this Commission doing, why are they serving this up as  
8 science. So that is just a caution, and obviously I would leave it to  
9 the staff experts to sort it out. There is kind of like a social  
10 science sufficiency review that needs to be undergone as well as a  
11 legal review.

12           The second thing is I think it is important here that we  
13 have a lot of confidence going in about the process, the consultation  
14 process, to make sure that you really have identified those key things  
15 that are in the policy environment, where what the observers of the  
16 agency have been thinking about as possible problems and possible  
17 innovations, et cetera.

18           So I do think if you haven't, that talking with Hill staff,  
19 somebody talking with Hill staff, talking with OMB, with GAO would be  
20 useful just at least so you know what the handful of ideas are that  
21 they have been thinking about so that we are in a position to either  
22 ignore that or address that as being ideas that are in the discourse,  
23 that are in the environment, the kinds of issues that have been raised  
24 in oversight hearings on the EEOC and the appropriations hearings on  
25 the EEOC over the last couple of years.

1 I would hope that you would have in your minds that  
2 inventory of concerns not just from the advocacy and the litigation  
3 community and the immediate clients, but also from the observers of the  
4 agency around town.

5 Third--

6 CHAIRPERSON BERRY: I thought there were two points.

7 COMMISSIONER EDLEY: I am sorry.

8 Third, under GPRA, the Government Performance and Results  
9 Act, I assume that the EEOC has been struggling itself to try to define  
10 how it should measure its success and its failures and so forth. It  
11 might be interesting to have our commentary on whether we think they  
12 are doing a good job of setting up the systems to do their own internal  
13 ongoing assessments about their effectiveness.

14 For example, are they surveying their users, doing sample  
15 surveys of their users on an ongoing basis? But if you could maybe  
16 indicate for us whether they are doing a good job or bad job, let me  
17 draw a line there and maybe continue the conversation with you because  
18 there are some substantive things that I am interested in, like whether  
19 the ADR system is screwing people--I think that is the technical term--  
20 or whether they are being sufficiently proactive in setting their  
21 investigation and policy development agenda, things of that sort that I  
22 just want to know if you are poking around at, but we can do that  
23 offline.

24 CHAIRPERSON BERRY: I assume that you already are aware of  
25 the congressional testimony and things that EEOC has been asked to do



1 or not doing or any problems that relate to their enforcement, issues  
2 that have been raised and so on.

3 MS. ZIESENISS: Yes.

4 CHAIRPERSON BERRY: You usually do look at those, right?

5 COMMISSIONER EDLEY: I only mentioned it because it was not  
6 on the two pages. That is why I asked it.

7 MS. ZIESENISS: Yes. We had, I guess, in our preliminary  
8 research last summer selected testimonies, GAO reports, all those, and  
9 had summarized those to be incorporated.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER EDLEY: At least for my purposes, it is most  
12 often not going to be testimony so much as it is going to be the  
13 hostile questions that come up in the Q&A.

14 CHAIRPERSON BERRY: Yes, whatever they have been asked  
15 about.

16 I will leave it to the staff to work on this first question  
17 about the validity of the Web site stuff. Historians, when they are  
18 being humanists, care about individual stories. When they are being  
19 social scientist, they only care about statistically significant  
20 stories. So, being both a humanist and a social scientists and a  
21 lawyer--and as a lawyer, I care about the evidentiary questions. So I  
22 will just leave it to you guys to figure out what to do with this. You  
23 have heard the discussion. So you know what the debate is here.

24 Anything further on this project?

25 [No response.]

1 CHAIRPERSON BERRY: Thank you very much.

2 You did not introduce yourself.

3 MS. KRAUS: I am Rebecca Kraus, and I also work at OCRE.

4 CHAIRPERSON BERRY: Thank you.

5 Expanding the economic opportunities of African American,  
6 Asian American and Pacific Islander, Latino and Native American youth,  
7 which is also an FY2000 project, does anyone have any concerns or  
8 anything you would like to raise about that project before we go to the  
9 ones beginning the next year?

10 Vice Chair?

11 VICE CHAIRPERSON REYNOSO: Madam Chair, what is the status  
12 report of that project?

13 STAFF DIRECTOR MOY: Madam Chair?

14 CHAIRPERSON BERRY: Yes.

15 STAFF DIRECTOR MOY: Both OCRE and OGC will begin the  
16 preliminary research on this project in FY2000.

17 CHAIRPERSON BERRY: Okay.

18 STAFF DIRECTOR MOY: So, as soon as OCRE finishes fair  
19 employment, they will start into this probably--

20 CHAIRPERSON BERRY: In other words, they are going to start  
21 it this year.

22 STAFF DIRECTOR MOY: Right.

23 CHAIRPERSON BERRY: Okay.

24 VICE CHAIRPERSON REYNOSO: So that follows the fair  
25 employment project. Is that correct?

1 CHAIRPERSON BERRY: It is two offices.

2 STAFF DIRECTOR MOY: Correct.

3 CHAIRPERSON BERRY: Both of the offices have it.

4 STAFF DIRECTOR MOY: Two offices.

5 CHAIRPERSON BERRY: OGC and OCRE.

6 VICE CHAIRPERSON REYNOSO: Oh, this is OGC?

7 CHAIRPERSON BERRY: Both.

8 STAFF DIRECTOR MOY: Both.

9 CHAIRPERSON BERRY: Together, they are both going to do it.

10 VICE CHAIRPERSON REYNOSO: Oh, I see.

11 CHAIRPERSON BERRY: On page 4 where it says methodology.

12 VICE CHAIRPERSON REYNOSO: Yes.

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER EDLEY: Of course, I have a question.

15 CHAIRPERSON BERRY: Of course.

16 COMMISSIONER EDLEY: Look, I care an enormous amount about  
17 this problem, and there is no more important component in my  
18 professional life than this set of issues, but I honestly feel that it  
19 is written in a way that strikes me as either inappropriate or  
20 undesirable for the Commission to be doing.

21 Let me give my three concerns. One is we are a Commission  
22 on Civil Rights. We are not a commission on poverty or disadvantage or  
23 economic opportunity, and notwithstanding the fact that many people,  
24 myself included, speak of a new civil rights agenda as much more  
25 directly confronting issues of economic opportunity, I think that for

1 statutory reasons, but also for comparative advantage reasons, this  
2 Commission's activities should be something narrower than the most  
3 capacious definition of "civil rights" that one could imagine.

4           In other words, if you could visualize a smaller core of  
5 concerns that speak directly to the traditional anti-discrimination  
6 agenda and then, much farther out, a broader orbit of concerns that  
7 speak to opportunity and social justice, I think that our appropriate  
8 mission lies somewhere in between, but this project reads as though it  
9 is really quite far towards the outer boundary and that gives me pause,  
10 number one, as a legal matter in terms of our statutory mandate and,  
11 number two, it gives me pause in terms of an expertise in competence  
12 matter and, number three, it gives me pause as a resource allocation  
13 matter.

14           On all of these opportunity issues--and this is just the  
15 first and I guess there are a couple of others where I have a similar  
16 concern, although not quite as powerful as I do over this specific  
17 proposal--I think there are aspects of the project that are closer to  
18 what our central mission and competence is, and let me give you an  
19 example.

20           I think it is nuts for the Commission on Civil Rights to get  
21 into any kind of discussion, much less an extended discussion, about  
22 something like empowerment zones or hub zones or youth job training  
23 programs or the quality of fourth-grade reading curricula to extend the  
24 example. There are a zillion people around town. There are a bunch of  
25 agencies around town who have that much closer to their core mission,

1 period, paragraph.

2 On the other hand, I think there are civil rights, the  
3 aspect of this challenge, that go sorely unattended, and that is what  
4 we ought to focus on, I believe.

5 CHAIRPERSON BERRY: For example?

6 COMMISSIONER EDLEY: In the newly enacted financial  
7 modernization legislation, there are provisions in the Community  
8 Reinvestment Act and otherwise that have to be implemented.

9 The question of how financial behemoths treat poor and  
10 especially minority communities and how can this new legislation be  
11 implemented in a way that advances rather than retreats from effective  
12 enforcement of anti-discrimination principles effective opening up of  
13 opportunity to groups who historically had trouble getting into the  
14 financial system, that is something that as far as I know virtually  
15 nobody is thinking about. We ought to be thinking about it, and what  
16 we might opine on that subject I think would have an audience, but for  
17 us to speak in more abstract ways about the way capital markets affect  
18 inner cities, I think runs the risk of making us either silly or  
19 irrelevant. It would take an enormous investment for the Commission  
20 and its staff to climb up the learning curve far enough to actually  
21 have something useful to say on that subject.

22 As a footnote, again, this is stuff that I have thought  
23 about and worried about my entire professional career, through two  
24 stints in the White House, in much of my academic writing and stuff. I  
25 have worked on these issues. It is tough, and it is not for amateurs.

1 It is not for amateurs.

2 Another example would be let's think about the subtle forms  
3 and not so subtle forms of discrimination that are occurring against  
4 immigrant populations, particularly in connection with enforcement of  
5 sort of the tightened immigration laws.

6 Now, there is an aspect of economic opportunity, of job  
7 opportunity, that has not been adequately studied, and I would much  
8 rather see us invest our resources and try to understand that  
9 particular aspect of the problem rather than trying to develop  
10 expertise and opining about unemployment generally or about job  
11 training programs generally.

12 So I guess this is perhaps a little bit incoherent in my  
13 critique, but what I am basically making a plea for is an effort to  
14 trim back at least one giant step and refocus this proposal and some of  
15 the other proposals towards things where we have not only more of a  
16 comparative advantage in institutional terms, but where there really is  
17 much more of a vacuum in terms of public discussion and information.

18 I will subside.

19 CHAIRPERSON BERRY: Before I recognize whoever wants to be  
20 recognize, let me just note here that you have made two new proposals,  
21 one of financial institutions, the new legislation modernization, the  
22 Gramm, et al., bill that was passed, and the CRA implementation. The  
23 other is on immigration and opportunity. You have suggested two new  
24 ideas, and you have then commented on the idea that is before us.

25 In your comments on the idea that is before us, the legal

1 sufficiency of the project was determined before the project was  
2 approved by the Commission, which was sometime before, sometime ago.

3 Also, the Commission has in the past--none of this has to do  
4 with whether we should approve it or not. I am just pointing it out.

5 COMMISSIONER EDLEY: No, that is okay.

6 CHAIRPERSON BERRY: In the past, the Commission has done  
7 reports on economic opportunity. In the 1980's, the Commission did a  
8 whole series of reports on economic opportunity for black men, the  
9 economic opportunity for women, economic opportunity for--I have  
10 forgotten. There were a whole bunch of economic opportunity reports  
11 that the Commission did which were contracted out, not done in-house,  
12 that were reported and were considered to be jurisdictional and were  
13 quite important because the purpose of those reports was to show the  
14 minimal effect of discrimination on the opportunities that people had  
15 and that their opportunities were limited more by human capital  
16 concerns unrelated to discrimination than they were toward  
17 discrimination. The Commission did those reports in the early 1980's.

18 So I think that the question of jurisdiction would probably  
19 be answered by saying it has been answered, although we can get another  
20 answer, based on so long as we are looking at the role that  
21 discrimination might play, race or ethnicity or national origin or sex  
22 or anything that is within our jurisdiction, on the particular life  
23 opportunities of people. We can look at a variety of things,  
24 jurisdiction broadly.

25 Whether or not we should do this, some members of this

1 Commission have been very much concerned about the relationship between  
2 economic development issues, human capital and economic development  
3 issues and opportunity, and I think this report came out of those  
4 discussions. So I am only telling you that for context for those who  
5 were not around, and then we will see what others think about the idea.

6 COMMISSIONER EDLEY: May I try to clarify my statement?

7 CHAIRPERSON BERRY: Yes.

8 COMMISSIONER EDLEY: Again, I apologize that this is not as  
9 articulate as it ought to be since I am raising a rather large  
10 objection.

11 Here is an example of the problem, it seems to me, is not  
12 wrestled with adequately. We are concerned about improving economic  
13 opportunities available to youth, and there are, for example, very  
14 interesting programs around transportation systems and reverse  
15 commuting in metropolitan areas where the notion is simply to reverse  
16 commuting and so forth to get people in neighborhoods where there are  
17 not jobs, better ways of getting access out to employers in the suburbs  
18 and the edge of the cities where the jobs are, and that frequently  
19 transportation systems are not designed in a way to flow in that  
20 direction.

21 I think our role, my preference would be that our role has  
22 less to do with a general public policy discussion about transportation  
23 systems and more to do with the question of is color getting in the way  
24 of the effective design and operation of transportation systems. Is  
25 there reason to think or worry that when transportation boards sit



1 around and make their decisions about in what direction the busses are  
2 going to flow and are we going to spend a zillion dollars on subways  
3 that white commuters use or are we going to put the money into buses  
4 that poor and minority people use, is there a set of issues there where  
5 our concern is that color is getting in the way of crafting appropriate  
6 opportunity strategies, opportunity policies? That is what I would  
7 like to see the focus of my work being.

8           As another example, people whine about the fact that grocery  
9 stores do not locate in inner cities. Well, that is fine, but I am  
10 less interested frankly in the Commission trying to write studies about  
11 whether tax incentives or jaw-boning are the right way to induce  
12 grocery stores to move into the inner city than I am in asking the  
13 question is there any subtle role that race or discrimination or  
14 stereotypes are playing in the way in which businesses make their  
15 investment decisions, is there a subtle kind of red-lining that is  
16 going on that leads these business leaders to misperceive, misapprehend  
17 the profit-making opportunities.

18           It is the discussion that rather than the comparative  
19 efficacy of tax incentives versus jaw-boning versus deductions, et  
20 cetera, that we ought to be trying to do.

21           CHAIRPERSON BERRY: Well, Christopher, what we have here is  
22 a miscommunication, I think, and maybe it is the way the thing is  
23 written because my interpretation was that the purpose of these  
24 analyses was to do precisely what you said.

25           Obviously, one would have to describe a reverse

1 transportation proposal in a report for those who did not know what it  
2 was before one analyzed whether it was discriminatory or not. Its  
3 existence or nonexistence was discriminatory.

4           Obviously, one would have to describe any of these things,  
5 tax transfers or credits or whatever, because while you know what they  
6 are and some of us may know what they are, the people who read the  
7 report may not know what they are. So you would obviously have to  
8 describe all of these different options before you could talk about  
9 what impact they have on Asian-American youth or what impact they have  
10 on opportunities for Hispanic youth and the like.

11           That is my understanding. The report would describe all of  
12 these things and how they work, and then it would talk about what  
13 impact it has or might have on alleviating discrimination and promoting  
14 opportunity because the end result of wanting to end discrimination, as  
15 I understand what this Commission does, is because we want people to  
16 have opportunity.

17           I mean, we do not want them to be discriminated against  
18 because we want them to be able to on a basis of fairness have the  
19 opportunity to get jobs, have economic development, or whatever it is,  
20 or get health care or whatever it is. We do not want discrimination to  
21 stand in the way.

22           So we have to first describe whatever it is, what policy,  
23 what project, what theme, what animal we are talking about and then  
24 talk about how it impacts on them and how we think it might impact  
25 differently.

1           Now, we may disagree about whether the particular things  
2 that the proposal purports to look at are the right things or whether  
3 the report is done properly or proposed to be done in a way that is  
4 likely to achieve the result of analysis that I am talking about, and I  
5 am agreeing with you, but I think the issue of whether we ought to  
6 first describe it--obviously, we need to describe it for people who do  
7 not know--and, two, whether we should keep our focus on the opportunity  
8 discrimination matrix, I do not think that would be disputed by most  
9 people here.

10           Russell, by the way, and I will recognize him, is the one  
11 who would most often in this Commission argued the case to the  
12 Commission as it is presently constituted for looking at issues of  
13 economic opportunity and development as ways to overcome  
14 discrimination, but I think that is the intent, if it is not clear  
15 here, and maybe some of it needs to be rejiggered.

16           Anyway, did you want to say something, Russell?

17           COMMISSIONER REDENBAUGH: Yes, I really do because I  
18 definitely want to concur fully with Commissioner Edley and from a very  
19 similar posture, which is I think this whole economic opportunity is  
20 the big piece of civil rights problem, the big unfinished business. I  
21 do not think there is a bigger piece of unfinished business if you  
22 include educational opportunity.

23           COMMISSIONER EDLEY: Right.

24           COMMISSIONER REDENBAUGH: The two of those together are the  
25 unfinished, maybe even unbegun part of the civil rights agenda, from my

1 point of view.

2           What I am struck by in what you said, Christopher, is the  
3 point about our comparative advantage, what we have not only the  
4 competence to undertake, but the standing to be taken seriously about.

5           Pronouncements of a macroeconomic type and of a top-down  
6 variety coming from this Commission are not going to be taken seriously  
7 even if they are very good ideas.

8           This is an area that is difficult and not work for amateurs.  
9 I like that characterization.

10           Inside of that, there are, I am sure, a thicket of civil  
11 rights-specific issues that if addressed would contribute well to an  
12 overall improvement, any one of which would constitute only probably a  
13 modest gain.

14           For example, you mentioned CRA. I cannot recall the  
15 statute, but there is a bank regulation--and maybe it is not even a  
16 statute, maybe it is a Fed reg--that now requires the reporting to the  
17 Fed of even modest cash transfers outside the U.S.

18           The intent of this was to make life difficult for the drug  
19 dealers, but I do not think they use modest cash transfers. The  
20 consequence of this is to make it very difficult for people working in  
21 the U.S. to send money back home outside the U.S. So there is an issue  
22 where I think we have the unintended consequence here.

23           There is, I think, something like 30 million Americans that  
24 are unbanked that need and would benefit and would desire to have bank  
25 services. CRA gets at that somewhat. So I think there is a whole set

1 of issues here, regulatory requirements that have as their consequence  
2 the exclusion of minority entrepreneurs.

3 That may have in fact been there intentionally, but those  
4 are the kind of retail issues that we are very qualified in terms of  
5 our capability and can be taken very seriously in terms of our standing  
6 to take on.

7 If this project is doing that, I am all for it. If it is  
8 off in the enterprise zones and the big issues, then I am not for it  
9 because I think we are not going to get a good return on the investment  
10 in talking about enterprise zones.

11 CHAIRPERSON BERRY: So what is your pleasure, ladies and  
12 gentlemen? Should we do this report? Should we have the proposal?  
13 They have not started it yet, even though they were supposed to start  
14 it this year. Are we ready?

15 Elsie, and then Yvonne.

16 COMMISSIONER MEEKS: I agree with Chris completely. I mean,  
17 I think it is too broad of an area that we are going to do justice to  
18 it.

19 When you look at the purpose that is stated in here, the  
20 study will examine the barriers that impede the economic opportunities  
21 of minority youth living in poor areas and the strategies for  
22 overcoming these barriers. So I assume that we are just going to  
23 examine what the barriers are and examine the strategies.

24 Chris mentioned CRA. Some of the legislation that has been  
25 drafted around CRA lately really has excluded at least rural

1 communities, and I think those are some real specific things that we  
2 could make firm recommendations on as far as legislation. This is a  
3 huge topic, and I myself would probably go for being a little more  
4 specific. There can be some value coming out of studying it. We would  
5 learn a lot, but I really think we would end up learning what are the  
6 specifics that we really need to examine, if that makes sense at all.

7 CHAIRPERSON BERRY: Yvonne?

8 COMMISSIONER LEE: I think the first paragraph is sort of  
9 misleading, expanding economic opportunities in a new economy.  
10 Unfortunately, I think a lot of the youth who really are struggling,  
11 they cannot even get into the old economy. So it sets a different  
12 tone.

13 I originally supported this project very strongly, and I  
14 continue to support it. I agree with everything that was said so far,  
15 but my perception of this project is if economic rights equals civil  
16 rights, we need to examine whether our youth population is prepared to  
17 compete in equal economic opportunities in the future. That includes  
18 education, especially in light of all that is coming down, impacting  
19 higher ed and K through 12, the preparedness perception on minority  
20 youth.

21 It is time to take my medication. So I am losing my mind.

22 I think that we also need to examine what are the existing  
23 opportunities, what are the programs. It does touch on the civil  
24 rights aspect if they do not have equal access to these programs. So I  
25 do think that we need to have the staff rework this project proposal to

1 be closer aligned with all the discussions that we have had so far.

2 I do think that it is a civil rights project. Economic  
3 opportunities for the kids to me is a civil rights priority, but given  
4 what is written right now, I agree it seems like they are just dealing  
5 with different programs which was not my original intent of supporting  
6 this. I would like to see a report on where are the barriers, if there  
7 are, how do we overcome the barriers, are there programs, are there  
8 private/public initiatives. We need to address CRA because that has  
9 been touted as the one thing that could rid the poverty cycle.

10 Many of our neighborhoods do not even know what CRA is  
11 because it has not even got any in those neighborhoods.

12 So I still would support it, but with a significant fine-  
13 tuning of this project proposal to tailor what has been said today.

14 CHAIRPERSON BERRY: If I were a staff member and I was  
15 trying to figure out what to do after this discussion, as I would  
16 understand it, I am supposed to go back, rewrite this proposal, have it  
17 still be about economic opportunities for the groups of youth that are  
18 listed here, but I am supposed to discuss CRA and something having to  
19 do with immigration, and I am supposed to discuss--

20 COMMISSIONER EDLEY: And grocery stores. Do not forget  
21 grocery stores.

22 CHAIRPERSON BERRY: Grocery stores and reverse  
23 transportation. I am supposed to avoid mentioning a lot of programs,  
24 and I am not sure what I am supposed to do.

25 First of all, do we still want a project on expanding

1 economic opportunity for Asian American, Native American, African  
2 American, Latino youth? That would be the first question, any kind of  
3 project.

4 Yes, Russell.

5 COMMISSIONER REDENBAUGH: There are organizations that have  
6 the kind of public policy and economic expertise for the project we  
7 have specified here.

8 CHAIRPERSON BERRY: Right.

9 COMMISSIONER REDENBAUGH: But I do not think we are there.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER REDENBAUGH: I mean, we are right to have this.  
12 This is a pressing concern, but I think we, myself probably most of  
13 all, have been swept along by my concern for economic development,  
14 without coming back or without ever addressing Commissioner Edley's  
15 concern which is what is our comparative advantage.

16 This would be a great project for the Rand Corporation or an  
17 economist.

18 CHAIRPERSON BERRY: Staff wants to say something.

19 MR. HAILES: We just hope it has not escaped the attention  
20 of the Commissioners that we proposed a consultation made up of experts  
21 who would advise us on those precise issues that would both be within  
22 the jurisdiction of the Commission and also would help to direct us as  
23 to the intersection between civil rights and economic opportunities.

24 COMMISSIONER REDENBAUGH: That did escape my attention.

25 Thank you.



1           CHAIRPERSON BERRY: So what would happen, Eddie, is that  
2 there would be--oh, here it is on this last page. A 2-day consultation  
3 of experts, academics and all the rest, papers and strategies, or we  
4 could contract it out, I guess. It has been done in the past.

5           Yes, Vice Chair.

6           VICE CHAIRPERSON REYNOSO: Madam Chair, this is,  
7 economically speaking, one of the more ambitious programs that has been  
8 put together, and I think that the economic ambition speaks to the  
9 ambition of the project itself.

10           As I read the summary, it is an effort by the staff to  
11 respond to the broader general concerns that several Commissioners,  
12 particularly Commissioner Redenbaugh has expressed in the past, but  
13 with which many of us have joined, as sort of summarized by  
14 Commissioner Lee's notation that economic development is so tied to  
15 civil rights.

16           I think that the staff has recognized that these are indeed  
17 difficult issues, but that they need to be looked at from the point of  
18 view of civil rights, that is, what it is doing in terms of  
19 opportunities for these young people.

20           Perhaps it is difficult to isolate out the issue of economic  
21 opportunity for young people because there is more doubt associated  
22 with the economic opportunity for non-young people, but in terms of  
23 many of the issues that have evolved pertaining to civil rights,  
24 including civil rights unrest, it has been tied to young people. We  
25 see the unemployment rates even in minority groups being greatly

1 elevated percentage-wise among young people as compared to older  
2 people.

3           So I agree with all of the difficulties that have been  
4 mentioned by my colleagues. I do not see that the staff has been  
5 unmindful of those difficulties. So they include a broader push to it,  
6 the literature review, community roundtable conferences, consultations,  
7 to try to get a hold of this issue in the broader sense in part because  
8 of our certainly governmental and private efforts that have looked at  
9 it, box by box, has not quite done the job. So I think this is meant  
10 to be a thinking paper going beyond specific projects.

11           So I would just say, look, this is what is happening, but we  
12 ought to think about this or that. I would not be surprised to have  
13 them conclude that the economic opportunities that are so tightly tied  
14 into educational opportunities, to funding opportunities, to all kinds  
15 of other matters, that end up bearing upon economic opportunity.

16           To me, the question is do we want to expend these sort of  
17 resources to think big about these issues. I am convinced that the  
18 issues are sufficiently serious that the answer is yes.

19           CHAIRPERSON BERRY: Commissioner Edley?

20           COMMISSIONER EDLEY: Here is the model that I would use if I  
21 were doing this. It has three steps.

22           Step number one--

23           VICE CHAIRPERSON REYNOSO: Not a fourth, now.

24           COMMISSIONER EDLEY: Not a fourth, I swear.

25           Number one, what are the disparities? What are the

1 disparities?

2           Number two, what role does color play in causing the  
3 disparities? Whether it is playing a role through things that fall  
4 within a legal definition of discrimination or whether it is something  
5 more subtle, but something, in other words, that is traceable to  
6 America's psychosis over color, like the American dilemma. That is  
7 number two, what role does color play in causing the disparities.

8           Number three, what could be done about it? On number three,  
9 I would focus specifically on ways of getting at the color causation as  
10 opposed to let's fix the tax system or let's reform the WTO. I try to  
11 bring it back to numbers.

12           So those would be my three steps: what are the disparities,  
13 what role, if any, does color play, and then number three--

14           CHAIRPERSON BERRY: It could be language.

15           COMMISSIONER EDLEY: It could be language?

16           CHAIRPERSON BERRY: Yes.

17           VICE CHAIRPERSON REYNOSO: In addition to color.

18           COMMISSIONER EDLEY: Yes, I'm sorry. Right.

19           So that is the model, just thinking off the top of my head,  
20 that I would use.

21           In contrast, on page 2 of the proposal, under purpose, what  
22 the staff has told us they are interested in doing, not what Mary has  
23 said she is interested in doing, but what the staff has told us they  
24 are interested in doing, what they say the purpose of this is, first,  
25 the study will examine the barriers that impede the economic

1 opportunities of minority youth living in poor areas and the strategies  
2 for overcoming these barriers. They are going to examine barriers, not  
3 what kind of barriers. Any kind of barriers, not barriers that are  
4 somehow traceable to color or language, but any kind of barriers. So  
5 that is the first thing that gives me pause.

6           The strategies for overcoming these barriers, that sweeps in  
7 three-quarters of domestic policy and one-eighth of international  
8 economic policy.

9           This project has two goals; one, to document how minorities  
10 who live in poor communities are denied opportunities to realize their  
11 full potential. Again, I am interested in understanding the  
12 disparities, just what the nature of the disparities are. I want to  
13 hesitate. I mean, "denial" implies a wilfulness. It could be  
14 institutional. It could have nothing whatsoever to do with color. It  
15 could have to do with all manner of things. So, again, that strikes me  
16 as being overly broad, and there is a need to trim it in and refine  
17 more carefully what the focus should be. Finally, subparagraph two,  
18 this project's second goal is to identify and evaluate private and  
19 public initiatives that empower minority youth, encourage minority  
20 entrepreneurship, investment, savings, and expand economic  
21 opportunities, dot, dot, dot.

22           It is just mind-bogglingly sweeping. It really is, as  
23 somebody who has worked on Presidential campaigns, putting together  
24 comprehensive policies. This is everything. This is everything. Even  
25 if you start out in a preliminary way to do research on everything, you

1 end up doing research on nothing.

2           Lastly, and then I swear I will shut up--I will even leave--  
3 but I think when Mary said you have added two more projects, that is  
4 not what I meant to be doing. What I meant to be suggesting is that  
5 there are discrete subelements here.

6           I viewed the CRA thing or worrying about grocery stores or  
7 worrying about whatever as more discrete, more well-defined subelements  
8 of a project of this sort. I did not mean to be adding a new project.  
9 I meant to be trying to flesh out subelements of what might, in the  
10 fullness of time, be investigated.

11           I do not have any particular brief for focussing on youth as  
12 opposed to focussing on geography or focussing on whatever.

13           CHAIRPERSON BERRY: This report came as a proposal because  
14 we had done the report or approved the report on the crisis among young  
15 African-American men in cities, and a discussion was held in the  
16 Commission about the broader problems of youth from other communities  
17 of color. This project was supposed to--that is why it says youth--  
18 address youth across that range. That is where it all came from.

19           COMMISSIONER EDLEY: Okay.

20           CHAIRPERSON BERRY: The other thing is that what we are  
21 doing here is giving guidance to the staff. It turns out the more we  
22 listen to the discussion, the problem is the way the staff has  
23 described what they are doing, and that is often the problem. At this  
24 stage, it is up to us to help them figure out how to describe it.

25           It means that the project can be done, a project can be done

1 if we choose to do it, if we keep in mind where the focus is, and the  
2 focus is on how these youth are treated compared to others, disparities  
3 as you put it, and when you look to see how they are treated and the  
4 kinds of economic opportunities that are available, then how much does  
5 discrimination play a role of trying to figure that out, which means  
6 you also have to figure out how much discrimination does not play a  
7 role.

8 COMMISSIONER EDLEY: I understand.

9 CHAIRPERSON BERRY: Then we have to come up with some  
10 recommendations about what we might do, but the way the staff has gone  
11 about this, realizing that they do not have the expertise, is to do a  
12 literature review, have some community roundtables, to elicit people,  
13 and then get some experts to come in and talk, write papers actually.

14 So maybe if the staff refines the proposal along the lines  
15 that we have been discussing so that the focus is much better, then  
16 they would be able to go about doing it procedurally in this way and  
17 come up with a result.

18 That still does not answer one question: Do we think it is  
19 worth us doing this? My own view, as I listen to everybody, is that,  
20 yes, Cruz is right. While there are a lot of people doing work on  
21 these issues, there is no one who is actually trying to pull together  
22 in some ways systematically the civil rights impact of all these things  
23 in the way that these papers would do it, and the people who would come  
24 would be people who are working on these issues. They are the ones who  
25 would be presenting the papers, and we would be packaging it in terms

1 of civil rights implications.

2           So it just depends on whether we think there is an advantage  
3 in doing that. The other question is one way to do it is not to do it  
4 the way the staff has suggested, but to do the topic and to contract it  
5 out to some researchers to go do the research and write a report and  
6 give it back to us so we can look at the recommendations and approve  
7 it. I mean, that happens, too.

8           So, if we think it is worth doing, but we would rather not  
9 have consultation papers and roundtables, then we can do it the other  
10 way, but, first, we have to decide whether we think it is worth doing.

11           COMMISSIONER EDLEY: There is a third way, too, which is to  
12 take pieces, go at it seriatim. I mean, this is asking us to eat the  
13 whole smorgasbord kind of in one 900-page report or series or something  
14 like that.

15           We could pick two subpieces of it. For example, we could  
16 talk about crime-related stuff, and we could talk about school-to-work  
17 transitions and go at those two issues and ask about disparity and ask  
18 about what is the role of race, ask about what could be done. Do you  
19 see what I mean? Rather than trying to do all the social policy here,  
20 because there is at least a phrase here that alludes to almost every  
21 piece of social policy there is, we could--

22           CHAIRPERSON BERRY: Just a minute, Cruz. Russell had his  
23 hand up, first.

24           Russell?

25           COMMISSIONER REDENBAUGH: I like the approach of seriatim

1 because then we can adjust and correct methodology as we go along.

2 The concern I have about experts, especially in the  
3 economic-social policy area, and keeping in mind I am a semi-skilled  
4 economist, is that we can find experts.

5 VICE CHAIRPERSON REYNOSO: You are not a lawyer?

6 COMMISSIONER REDENBAUGH: In my next life.

7 We can find expert economic opinion on not only every point  
8 of view, but even--well, let me give you an example. We live in a  
9 world where, whether we like it or not, the national borders are open  
10 to nearly the free-flow of capital and the free-flow of goods. They  
11 are not open to the free-flow of labor.

12 What that means is that the gap between the unskilled or  
13 low-skilled labor in this country will never narrow, but continue to  
14 widen, because that unskilled labor now has to compete with unskilled  
15 labor--

16 CHAIRPERSON BERRY: From the whole world.

17 COMMISSIONER REDENBAUGH: --from the whole world. Yes.  
18 There are no super powers, just supermarkets. So this rich-poor gap  
19 will get worse a long time before it gets better.

20 There is a group of economists who I would never associate  
21 myself with, but who say this problem is so simple, just close the  
22 borders, allow no imports, and then you will eliminate this unfair  
23 foreign competition. Then there are some that offer that prescription  
24 in different flavors.

25 So that is where I am uneasy with this notion that we will



1 find experts. I am not sure that we will be satisfied with many of the  
2 ones we might find who really are experts, but in this area of  
3 economics, it is so much less clear than in the not-already-very-clear  
4 area of civil rights.

5 COMMISSIONER ANDERSON: Madam Chair?

6 CHAIRPERSON BERRY: Yes. I will recognize you in just one  
7 second, Carl. Cruz was next, and then I will recognize you.

8 VICE CHAIRPERSON REYNOSO: My own reaction is that all of  
9 the comments and all of the questions and all of the qualms are well  
10 taken, but I see this project as sort of a thinking project. I would  
11 be shocked in terms of my experience with these reports if by the end  
12 of the project, the report is dealing with all of these macro issues,  
13 but to know which policies, which programs have the greatest impact,  
14 negatively or affirmatively, on the youth that are mentioned in the  
15 proposal, it seems to me that the staff needs to hear from all these  
16 folk and see all of the broad issues, then start narrowing it to those  
17 issues that are more related to civil rights. I am not sure how we can  
18 do that if we take it seriatim.

19 If we take it seriatim, we will already have decided which  
20 issues we think are most related to the detriment or to the benefit of  
21 these youth. So, from my point of view, as I said, we are dealing with  
22 tough, tough issues that many of these programs have had some success,  
23 others have failed and so on, and this is sort of a broad analytical  
24 approach to all of these issues, and the staff asking itself the  
25 question what is going on, what is not going on, what has worked, what

1 has not worked, what new ideas do we have of things that may work, and  
2 that takes a long process which, I take it, is one of the reasons why  
3 this is an expensive project.

4 You have first the literature review to answer many of the  
5 questions I just raised. Then you have the community roundtable  
6 conferences to hear new ideas, presumably from non-experts, also. Then  
7 you have the ideas expressed by experts. The staff will all the time  
8 be thinking how does this relate to civil rights, how does it relate to  
9 discrimination, how does it relate to improving the lives of these  
10 young people.

11 If the staff has a very different notion of how this would  
12 go, I would like to hear it, but that is what I would see happening  
13 here. So, in some ways, it has to be a global approach that invariably  
14 will become narrow the more they know and study it.

15 CHAIRPERSON BERRY: I see.

16 Commissioner Anderson and then Commissioner Wilson.

17 COMMISSIONER ANDERSON: Thank you.

18 I have to say I have a great deal of sympathy to what  
19 Commissioner Edley has been saying in the last few minutes.

20 In my own mind, I have not resolved the issue whether it  
21 should be a global-type report or a narrow report. I think I am  
22 leaning toward a more narrow report, but whether it is global or  
23 whether it is narrow, I think we have to have a report on this issue.

24 I made my mind up on this a long time ago, and it occurred  
25 during a meeting in which we were discussing the effect of Minister

1 Farrakahn on African-American youth. This was a number of years ago.  
2 Coming out of that meeting when we were discussing it, I think maybe,  
3 Mary, it was you and I discussing this, but somebody made the comment  
4 that there is a whole generation of African-American youth to whom only  
5 Minister Farrakahn and his people seem to hit a resonating cord.

6 CHAIRPERSON BERRY: Right.

7 COMMISSIONER ANDERSON: At that moment, I decided we have to  
8 say something about the situation, and we have to say something  
9 positively to improve the situation.

10 When Commissioner Higginbotham was on the Commission, I know  
11 this was a topic that we discussed a number of times for African-  
12 American youth. We broadened it, but I do believe we have to say  
13 something, and whether we take this core narrow issue that Commissioner  
14 Edley has spoken about, the transition of education to work, or a bunch  
15 of broader issues, I think we have got to do something. I think the  
16 sooner we do it, the better, because if we do not have anything to say  
17 on this general topic, I do not see why we are in business. We cannot  
18 say we have not the expertise to do it. So I think we have to do  
19 something, and I think our own Commission staff should do it.

20 CHAIRPERSON BERRY: Thanks, Carl.

21 Commissioner Wilson?

22 COMMISSIONER WILSON: Thank you, Madam Chairperson.

23 First of all, I would like to say that I am not a lawyer.

24 VICE CHAIRPERSON REYNOSO: Congratulations. It balances the  
25 Commission better.

1           COMMISSIONER WILSON: As somebody who is a Commissioner of 5  
2 hours, I would like to say listening to all of this has been very  
3 interesting.

4           I have not obviously been here for the previous discussion,  
5 but in listening to this, I would say that the Commission really owes  
6 it to the country to have this study, but I also agree with  
7 Commissioner Edley in that I would narrow it.

8           I would narrow the studies not thinking about the studies,  
9 but thinking about what the results would be and try and focus on  
10 studies that are not being done elsewhere. What I think might be  
11 useful while we are here is to come up with maybe four or five topics  
12 and try and go in that direction. Also, my question would be if we  
13 were to do that because this is an extremely expensive study, my  
14 assumption would be it would cost less. I think that would be a major  
15 concern because this is a huge amount of money we would be spending on  
16 this, and what would we end up with that would be revelatory and  
17 illuminating?

18           CHAIRPERSON BERRY: But you think we do need to do something  
19 on such a topic?

20           COMMISSIONER WILSON: I would narrow it down. We could use  
21 this time to discuss it. Let's say if we picked four topics and then  
22 we voted and discussed and decided we just wanted to use three, what  
23 they would be. I think we could come up with a short list.

24           CHAIRPERSON BERRY: Cruz is saying that if we decide to pick  
25 some aspect of economic development, either programs or activities or

1 something, that we would be privileging those activities by having  
2 picked them first. To pick two topics, we would be necessarily  
3 implying that we think those are the most important two--that is his  
4 argument--and that the staff ought to be permitted to look at the lay  
5 of the land, at least in the literature review, to try to figure out  
6 which ones would be the most important ones.

7 COMMISSIONER EDLEY: I have a compromise to suggest.

8 CHAIRPERSON BERRY: Okay.

9 Vicky is saying we ought to get three, four, five, get a  
10 short list, and is pointing out the time expenditure as well as the  
11 monetary expenditure to it.

12 Yes, Christopher.

13 COMMISSIONER EDLEY: How about if we ask the staff to do  
14 their phase one, that having listened to this discussion and having  
15 listened to a variety of anxieties and so forth that they read some  
16 literature and have some chats with various people and that they come  
17 back to us with some options or with their thoughts? If you go narrow  
18 here, here is a menu of possibilities that makes sense to us, but if  
19 you go broad, here is the way we would have it. A couple of months  
20 from now, we could have this discussion again, because it is such a  
21 substantial investment in terms of staff time and money that it is  
22 worth doing it right. So maybe we should let the staff do a little  
23 more thinking and then give us a reconsidered recommendation.

24 CHAIRPERSON BERRY: Commissioner Wilson?

25 COMMISSIONER WILSON: I just want to clarify a point that I

1 feel, anyway, and that is in our narrowing-down of the category, it is  
2 not to say that one is more important than the other, but it is to make  
3 a decision that our findings would be more useful and more  
4 illuminating, and that the money would be better spent on that, on  
5 studying those people issues.

6 CHAIRPERSON BERRY: But to avoid the privileging notion, if  
7 we followed this advice and this compromise, we would let the staff  
8 look at all the issues first and figure out which two or three or  
9 whatever, rather than us deciding today that we think these two are  
10 more important than those two because that way we are privileging. It  
11 is just our sort of visceral response to what we think is really  
12 important.

13 Commissioner Meeks?

14 COMMISSIONER MEEKS: No, that is okay.

15 CHAIRPERSON BERRY: Commissioner Lee? Cruz?

16 VICE CHAIRPERSON REYNOSO: I would like to hear from the  
17 staff whether the suggested compromise works in terms of the way they  
18 normally do their work or the way that they change their work.

19 One approach that comes to my mind is that I assume that  
20 quite a bit of the expense will go into the consultations to see  
21 experts, and you say you can think about it and write about it. I  
22 wonder if whether it would make sense to have the literature review and  
23 the community roundtable conferences first and then conclude that and  
24 the consultations--well, one, have the staff tell us whether the  
25 suggested compromise makes sense first; two, if it does, does it make

1 sense to have part of it, the literature review and the roundtable  
2 conferences take place before we make that cut in emphasis for the  
3 reports. Perhaps by that time, we will have identified it. They will  
4 have identified three, four, or five issues that are particularly of  
5 importance.

6 I cannot concede that this process will not, as I said  
7 earlier, narrow down. It may be that that will be a sufficient  
8 opportunity to narrow it down and then ask for the consultations on  
9 those specific issues. I am just thinking out loud with you because I  
10 do like the compromise from the point of view that we want to educate  
11 ourselves. Again, these are tough, tough issues. So we are not going  
12 to be able to rely, I do not think, just on the literature, but this  
13 will be a thinking paper. I think the staff will have to do a lot of  
14 thinking about this issue.

15 CHAIRPERSON BERRY: Staff Director, what is the answer to  
16 the Vice Chair's query?

17 STAFF DIRECTOR MOY: I have both Eddie Hailes and the OCRE  
18 staff who are here that will be working on it. Could they come up and  
19 answer your question?

20 VICE CHAIRPERSON REYNOSO: By all means.

21 CHAIRPERSON BERRY: Do you understand the question? The  
22 question is the way you do your work, would it make sense in terms of  
23 practicality to do the literature review first and then to make some  
24 judgments about narrowing this project to maybe two or three topics or  
25 items. You could tell us at that point, and then we would say yea or

1    nay, probably yea, or would it make sense to do the literature review  
2    and then to do the roundtable and then to make that judgment, or after  
3    listening to us talk about this, what do you think? You can tell us  
4    what you think.

5            COMMISSIONER EDLEY: Focussing may be a little more neutral  
6    than narrowing.

7            CHAIRPERSON BERRY: Focussing, broadening and focussing.

8            COMMISSIONER EDLEY: The question of narrowing, I guess, is  
9    still on the table as to whether that is desirable, once we know more--

10           CHAIRPERSON BERRY: Yes.

11           COMMISSIONER EDLEY: --but certainly focussing.

12           CHAIRPERSON BERRY: So what do you guys think?

13           MS. KRAUS: Certainly, we could do a focussed community  
14    roundtable once we have identified some of the issues.

15           One of the costs identifying the issues is not only doing a  
16    literature review, but also going out and talking to people. One way  
17    we would do that would be certainly contracting organizations,  
18    advocation groups. One way we have included it in our proposed budget  
19    would be to actually go to conferences and talk to experts in the  
20    fields. So that, I would recommend that we do first, and then after we  
21    do those types of fact-finding things, we could do a more focused  
22    community roundtable where we say these are the issues we want to focus  
23    on, we have identified them through our fact-finding, and now we will  
24    look at these particular issues. I think that would make sense. It  
25    would save us money because our community roundtables would not be as



1 wide-ranging, then.

2 CHAIRPERSON BERRY: Eddie?

3 MR. HAILES: That is fairly consistent with the approach  
4 that we would take, and through our literature review, we would begin  
5 to identify the experts. So, during that process, we begin to see if  
6 we are able to narrow down or focus on specific issues that would also  
7 help us to narrow our focus on specific consultants.

8 CHAIRPERSON BERRY: Commissioner Meeks?

9 COMMISSIONER MEEKS: When we started out, I think it seemed  
10 to us that the intent of this was really developing strategies for  
11 economic opportunities almost. Which is it? I am not sure. I have  
12 been working on that in reservation, but it is a huge issue.

13 Now it has become more of a study that we want to learn, we  
14 want to educate ourselves about. So I think that it becomes a  
15 different kind of report, then.

16 CHAIRPERSON BERRY: Vice Chair?

17 VICE CHAIRPERSON REYNOSO: I just have a different  
18 description. I think we have to educate ourselves first to then come  
19 up with a strategy. I was just concerned that we not jump over the  
20 "educating ourselves first" before working on the strategy. So I just  
21 want to disagree from the point of view that I think that the report  
22 would include strategies, but to get there, you have got to educate  
23 yourself. That is the way I would look at it.

24 COMMISSIONER MEEKS: Yes. I think we would have to educate  
25 ourselves a lot.

1           CHAIRPERSON BERRY: All right. Can we have some consensus?  
2 Shall we go forward in this way? Are there objections to having us  
3 proceed by having the staff do a literature review, start with the idea  
4 that they are going to focus this project in a less expensive way, but  
5 a more effective way, and have, to the extent they need to, roundtables  
6 and then come back to us and tell us what the topics are and that that  
7 is how we would proceed? Is there any objection to proceeding in this  
8 way?

9           Yes, Commissioner Lee.

10          COMMISSIONER LEE: There is no objection. I just want to  
11 get a clarification.

12          Originally, I thought we were going to divide up this report  
13 into--

14          CHAIRPERSON BERRY: Sections.

15          COMMISSIONER LEE: --sections. Are we still proceeding on  
16 that end, or are we now consolidating all the groups together as one?

17          MS. KRAUS: The way it is currently written in the proposal  
18 is that we would do two reports. The first report would look at Native  
19 Americans and Asian Americans and Pacific Islanders, and the second  
20 report would look at Hispanics and African Americans.

21          CHAIRPERSON BERRY: So whatever topics we would pick, we  
22 would still do it that way because we had decided that, unless we  
23 change our minds, unless we want to do Native Americans by themselves,  
24 Asian Americans by themselves, Hispanics by themselves.

25          Christopher, if you pick this up, I am going to have Robbie

1 George put back on the Commission, so that you guys can argue and we  
2 can all have seminars here

3 [Laughter.]

4 COMMISSIONER EDLEY: I just do not understand how you can  
5 make that decision until you have done some--

6 CHAIRPERSON BERRY: What decision?

7 COMMISSIONER EDLEY: The decision about what volumes are.  
8 It may make more sense to have a volume on crime.

9 CHAIRPERSON BERRY: Yes, Christopher. Christopher, I have  
10 just said we would reserve judgment on that. I have to see what they  
11 come back with.

12 COMMISSIONER EDLEY: And similarly on the community forums,  
13 I think that your caveat about to have forums to the extent desirable  
14 and necessary is important. It may be that the staff would see the  
15 wisdom in getting more guidance from the Commission before launching  
16 off into a set of forums.

17 CHAIRPERSON BERRY: So we will have you talk to us as you  
18 proceed with the literature review and then as you proceed to go down  
19 the road to the roundtable. So the idea is that we do want to do  
20 something on this topic, but we have to refine what it is we are going  
21 to do. Do you get that?

22 COMMISSIONER EDLEY: Yes.

23 CHAIRPERSON BERRY: Okay. So, if there is no objection, so  
24 ordered. Thank you.

25 To go to the projects for FY2001, the first one is the same

1 kind of report we have heard discussed on the EEOC earlier when we got  
2 the little briefing, but this time done on the Department of Justice  
3 and what it does in the area of fair employment. The report would  
4 proceed in the same way. The way OCRE does the reports, they use the  
5 same kind of processes, asking for data, all that stuff that you heard  
6 described earlier.

7 Yes, Commissioner Redenbaugh.

8 COMMISSIONER REDENBAUGH: This is statutory?

9 CHAIRPERSON BERRY: Yes.

10 COMMISSIONER REDENBAUGH: Okay, I got it.

11 CHAIRPERSON BERRY: That will be the next year's statutory  
12 report.

13 COMMISSIONER REDENBAUGH: Right.

14 CHAIRPERSON BERRY: Then you have continuation of the  
15 expanding economic opportunities report that we have just finished  
16 discussing, which will be revised as we go along, depending on what we  
17 get back as we keep talking to the staff as we go along. It is the  
18 same project.

19 Then we have measuring discrimination in America which you  
20 might want to have some discussion about. That is already on the books  
21 for 2001.

22 VICE CHAIRPERSON REYNOSO: I keep getting lost between the  
23 original report that we got and the supplemental report. What are you  
24 looking at now, Mary?

25 CHAIRPERSON BERRY: I am just looking at whatever I--

1 VICE CHAIRPERSON REYNOSO: January 7th. Okay, that is the  
2 original.

3 CHAIRPERSON BERRY: Do I have originals, or do I have the  
4 newest ones?

5 MS. KRAUS: You have originals, and then the newest ones  
6 have been placed there.

7 VICE CHAIRPERSON REYNOSO: Okay, but you are just looking at  
8 the memo now.

9 CHAIRPERSON BERRY: I was just looking at the memo--

10 VICE CHAIRPERSON REYNOSO: Yes, okay.

11 CHAIRPERSON BERRY: --which has the list. The list did not  
12 change, right?

13 VICE CHAIRPERSON REYNOSO: Right, right. Not, it is not.

14 CHAIRPERSON BERRY: So measuring discrimination, any  
15 discussion or comment on that project?

16 VICE CHAIRPERSON REYNOSO: We are not discussing priorities  
17 here?

18 CHAIRPERSON BERRY: Not yet, and these were already approved  
19 for 2001.

20 VICE CHAIRPERSON REYNOSO: Yes.

21 CHAIRPERSON BERRY: So the only query before we go to the  
22 new ones is the ones in the next two sections are ones that we can  
23 prioritize.

24 These, we would either drop them, even though we approved  
25 them before, which is possible. So I am simply asking whether someone

1 would like to drop anything under number two. We approved those to  
2 start with for FY2001 last year and in the process this year.

3 There is supposed to be an interagency--or there was  
4 proposed an interagency study on measuring discrimination which did not  
5 get funded. That was my latest information, unless it changed last  
6 night. Did it change last night, Christopher?

7 COMMISSIONER EDLEY: No, not that I know of. My  
8 understanding is that the folks that OMB and the White House are trying  
9 to figure out whether to order the agencies to do it, anyway, eating  
10 out of their otherwise undesignated available research monies. Do you  
11 know what I mean? In other words, they did not get a specific  
12 appropriation to do it, and the question is whether to compel them to  
13 do it. I think it would be terrific if you wrote a letter on behalf of  
14 the Commission to the director of OMB encouraging the Executive Branch  
15 to proceed with it, anyway. So it would really help lay the groundwork  
16 for whatever it is.

17 CHAIRPERSON BERRY: Even though they do not have any money.

18 COMMISSIONER EDLEY: Yes.

19 CHAIRPERSON BERRY: And tell them how important we think it  
20 is.

21 COMMISSIONER EDLEY: Yes.

22 CHAIRPERSON BERRY: Does anybody object to that?

23 COMMISSIONER EDLEY: If they do it, then we would not have  
24 to do this ourselves. We could just watch.

25 CHAIRPERSON BERRY: If they did it, we could monitor it--

1 COMMISSIONER EDLEY: Right.

2 CHAIRPERSON BERRY: --which is always a good thing. If they  
3 do not do it, then we have to do it.

4 Is there any objection to my writing a letter to OMB urging  
5 them to get the agencies to do it? They have more money than we do,  
6 anyway, most of them do.

7 COMMISSIONER EDLEY: Exactly.

8 CHAIRPERSON BERRY: Okay, I will do that, then.

9 Staff Director, I need a letter doing that to the OMB.

10 COMMISSIONER EDLEY: Do I get any credit, by the way? Does  
11 that help offset some of my long-windedness? What is the accounting  
12 system here?

13 CHAIRPERSON BERRY: No, no, no. It does not bother me  
14 because, as an academic, I love nothing better than sitting here all  
15 day debating.

16 COMMISSIONER EDLEY: All right, all right.

17 CHAIRPERSON BERRY: So you are not bothering me a bit.

18 COMMISSIONER REDENBAUGH: I will take that as a no.

19 CHAIRPERSON BERRY: What did you say, Russell?

20 COMMISSIONER REDENBAUGH: I will take that as a no.

21 [Laughter.]

22 VICE CHAIRPERSON REYNOSO: This is our annual seminar,  
23 anyway.

24 CHAIRPERSON BERRY: Native American civil rights issues.

25 COMMISSIONER LEE: Madam Chair?

1 CHAIRPERSON BERRY: Yes.

2 COMMISSIONER LEE: I wonder if this is the appropriate time  
3 before we go into the specific projects. I would like to have a  
4 discussion among ourselves on the direction that we want to see the  
5 Commission to go to this year in terms of shifting gears, whether we  
6 are going to continue to do reports or are we going to reallocate  
7 resources to address other or immediate civil rights concerns that may  
8 come out because we have always caught ourselves. There are certain  
9 things that people expect us to pay attention to, and we wind up with  
10 no staff time. I wonder if it is appropriate for us to just have a  
11 general discussion whether we feel that should be part of our priority  
12 before we commit that time to doing the specifics.

13 CHAIRPERSON BERRY: That is a good point. That is good  
14 timing.

15 Commissioner Redenbaugh?

16 COMMISSIONER REDENBAUGH: I was going to propose a way to  
17 have that conversation, which it looks like we are going to have it.  
18 It is that we include on the project proposal list a project that would  
19 be reserved for the class of things that Commissioner Lee refers to.

20 CHAIRPERSON BERRY: Whenever we try to do that, George, the  
21 budget guy--

22 COMMISSIONER REDENBAUGH: Oh, right. I forgot about that.

23 CHAIRPERSON BERRY: --starts antsing around in his chair.

24 COMMISSIONER REDENBAUGH: Right.

25 CHAIRPERSON BERRY: Then he gives us--



1 COMMISSIONER REDENBAUGH: Policy is always set by that.

2 CHAIRPERSON BERRY: --some kind of answer about the OMB  
3 something, whatever.

4 COMMISSIONER REDENBAUGH: Comptroller, right.

5 CHAIRPERSON BERRY: When you said that, I looked out of the  
6 corner of my eye, and guess what? George started wiggling around in  
7 his chair, like he does, and I think it had something to do before when  
8 this came up with you have to when you present the budget relate the  
9 budget to some specific something or another, and that that is  
10 somebody's rule. I do not know whose rule it is.

11 VICE CHAIRPERSON REYNOSO: Evan's rule.

12 CHAIRPERSON BERRY: Maybe, Russell, we are onto something  
13 this time because the last time we suggested this, we just said let's  
14 just leave a blank space here.

15 COMMISSIONER REDENBAUGH: Right.

16 CHAIRPERSON BERRY: Now that we know George needs things to  
17 be put into the blank spaces--

18 COMMISSIONER REDENBAUGH: It is a project whose purpose is  
19 to be determined.

20 CHAIRPERSON BERRY: It can be determined or--

21 COMMISSIONER REDENBAUGH: To be determined, but whose budget  
22 is defined.

23 CHAIRPERSON BERRY: We need a name for it.

24 COMMISSIONER MEEKS: Are we thinking of things like forums?

25 CHAIRPERSON BERRY: Anything that happens. We do not know

1 what is going to happen.

2 COMMISSIONER REDENBAUGH: Something will.

3 CHAIRPERSON BERRY: Every year, something happens.

4 COMMISSIONER MEEKS: Can we say something like we think we  
5 will have three forums, three regional forums?

6 CHAIRPERSON BERRY: How about emerging issues?

7 STAFF DIRECTOR MOY: Madam Chair, I brought that up before  
8 with the OMB folks, and it does not work.

9 VICE CHAIRPERSON REYNOSO: It does not work?

10 CHAIRPERSON BERRY: Maybe George can give us an idea of what  
11 to do.

12 COMMISSIONER WILSON: How about emergency issues?

13 CHAIRPERSON BERRY: Emergency issues.

14 Christopher, what we are discussing here, as an old OMB  
15 hand, you might be able to help us.

16 COMMISSIONER EDLEY: Sure.

17 VICE CHAIRPERSON REYNOSO: This is not rationality. This is  
18 governmental regulation.

19 CHAIRPERSON BERRY: This is governmental-ese. We need to  
20 have, Commissioner Lee and Commissioner Redenbaugh were just reminding  
21 us, somehow in the budget to propose or leave space for emerging issues  
22 because every single year something happens and we have to devote our  
23 attention to it and it is not listed in our projects because we did not  
24 know it was about to happen, but we know that that happens every year.  
25 In fact, the Commission pays considerable attention to whatever it is,

1 last year like police practices in New York. Then we had the Indian  
2 problem in South Dakota, but every year, there is something.

3 How do we put in the budget, or do we, some category that  
4 would be reserved for things like that? That is what the question is,  
5 and George who is the budget director was about to say something. So  
6 we will let him say it, and you can think about it.

7 Yes, George.

8 MR. HARBISON: I was going to offer a compromise position.

9 CHAIRPERSON BERRY: Okay.

10 VICE CHAIRPERSON REYNOSO: Oh, good.

11 MR. HARBISON: It would be that rather than us saying  
12 specifically what it is we are going to do with this, let me try and  
13 work with the Office of Management and Budget to see what we can do.

14 CHAIRPERSON BERRY: Okay. What is your answer, though,  
15 Christopher, if you were still over at OMB and I asked you that  
16 question?

17 COMMISSIONER EDLEY: We would work it out because it is  
18 obviously central to the mission of the organization, and I am not  
19 going to let some budget examiner who has got a sharp pencil and really  
20 wants to understand things get in the way of you accomplishing your  
21 mission.

22 So what George just said is exactly what I was going to say,  
23 which is I would be happy to have a conversation with my folks at OMB,  
24 old friends at OMB, but if George wants to handle it himself, that is  
25 fine, or I can help him. I think we could just work out what the right

1 rubric is to characterize it and have the right two paragraphs of  
2 narrative explaining what the purpose of the fund is, so long as it  
3 does not bulk huge as a proportion of the resources. It is really hard  
4 for me to imagine that we could not work it out.

5 CHAIRPERSON BERRY: We also have some history, some budget  
6 history--

7 COMMISSIONER EDLEY: Right.

8 CHAIRPERSON BERRY: --because we know in the past about how  
9 much every year we end up spending on things that happened that are  
10 emergencies because it happens every year.

11 What did you say, emergencies?

12 COMMISSIONER WILSON: Emergencies, or contingencies.

13 CHAIRPERSON BERRY: Contingencies.

14 COMMISSIONER EDLEY: "Contingencies" is better.  
15 "Emergencies" is a term of art.

16 CHAIRPERSON BERRY: Contingencies.

17 COMMISSIONER WILSON: "Emergency" in all fairness came from  
18 "emerging."

19 CHAIRPERSON BERRY: Well, contingency. Why don't we say,  
20 then, that we will as we go through here and prioritize keep in mind  
21 that we have to leave something in reserve to take care of these  
22 problems.

23 Native American civil rights issues. There is a project  
24 proposal which has to do, in the alternative, I guess, housing, and  
25 then there is something on Indian whaling as another topic.

1 COMMISSIONER EDLEY: This was in the supplemental package,  
2 right, as opposed to the original mailing?

3 CHAIRPERSON BERRY: The whaling?

4 COMMISSIONER EDLEY: The write-up of the Native American.

5 CHAIRPERSON BERRY: Do you have that?

6 COMMISSIONER EDLEY: Yes.

7 VICE CHAIRPERSON REYNOSO: This is in part two?

8 STAFF DIRECTOR MOY: Yes. This was the one that wa faxed.

9 CHAIRPERSON BERRY: Any comments or any discussion on the  
10 Native American?

11 We had talked about housing before as the issue, but now  
12 they have added the notion of looking at whaling issues.

13 Yes, Commissioner Redenbaugh.

14 COMMISSIONER REDENBAUGH: I am very much in favor of this.  
15 Any study on Native American issues is, I think, long overdue, and when  
16 Commissioner Anderson proposed this, I was very supportive of it.

17 Our notion of broadening it, I do not think we intended it  
18 to extend out to whaling. I think that is probably, although an  
19 important issue, some--

20 VICE CHAIRPERSON REYNOSO: Seals maybe, but not whales.

21 COMMISSIONER REDENBAUGH: Of all the civil rights issues of  
22 Native Americans, it would seem to me that this problem would deal with  
23 only a small number of folk. It is not a general issue. So that might  
24 be a little more focussed than I would prefer.

25 COMMISSIONER MEEKS: Unless it extends to the other hunting

1 and--

2 COMMISSIONER EDLEY: Right, fishing.

3 COMMISSIONER MEEKS: Fishing.

4 CHAIRPERSON BERRY: They say in their proposal that they  
5 drafted the whaling one based on a discussion at the October Commission  
6 meeting, pages 31 and 32. I do not remember the discussion, but,  
7 apparently, somebody must have mentioned whales or whaling.

8 COMMISSIONER REDENBAUGH: That must have been submerged.

9 COMMISSIONER MEEKS: At any rate, I still think I would  
10 agree with Commissioner Redenbaugh. I think there are some other  
11 issues. I may be wrong. I have been wrong before, but I think the  
12 justice issues in Indian Country extend nationally. I think that is  
13 really an issue that I would like to recommend taking on.

14 CHAIRPERSON BERRY: So you think that following up on our  
15 experience with the South Dakota issues that looking at similar kinds  
16 of justice issue or justice issues elsewhere in Indian Country--

17 COMMISSIONER MEEKS: Right. I was on this radio talk show,  
18 a national one, and it was just astounding how many calls we got from  
19 all over, from Washington to Arizona and New Mexico. It was just the  
20 same kind of stuff we heard. So I really think that is an issue that  
21 extends across the board.

22 We might be able to have some very good recommendations.  
23 The hunting and fishing issues are important. I think they are being  
24 dealt with. Maybe we can make some kind of statement about that if we  
25 decide to do that.

1           CHAIRPERSON BERRY: If you had to choose what you prefer  
2 doing more, the justice issues as opposed to the housing issues, let me  
3 ask you that.

4           COMMISSIONER MEEKS: I would, and it says so in this report.  
5 When you talk about the housing issues, a lot of the changes that we  
6 are going to have to recommend--and it will not hurt us to recommend  
7 these--are changes that are going to have to be made within the tribal  
8 government itself. Tribal governments are sovereign. We can make good  
9 recommendations. I have a lot of recommendations to make. The justice  
10 issues, this is something that we can have some impact on, or we can  
11 have some good recommendations about, specific ones.

12           CHAIRPERSON BERRY: Any other comments?

13           Cruz?

14           VICE CHAIRPERSON REYNOSO: Madam Chair, in going through  
15 this, I had an element of nervousness about it. The whaling may have  
16 been included. It was probably I who raised it because I have been  
17 involved in the whaling issue.

18           Nonetheless, in terms of overall civil rights issues, I am  
19 not sure how the whaling issue ranks with other issues. It is related  
20 to the sovereignty issue which in turn is related to the civil rights  
21 issue, but I guess I felt a little bit about this project the way I  
22 felt about the economic opportunity for minority youth in inner cities  
23 where I felt there that they needed the resources to think through what  
24 narrower issues they would be involved with. I just had the sense in  
25 this project that issues that we have seen in the headlines or that we

1 had talked about before, like housing, were issues that were  
2 incorporated into the project.

3 I am not sure that I have a sense of confidence right now,  
4 and maybe I am wrong, that the staff has done a survey of literature  
5 and talk to Native American leaders and others to sort of have a sense  
6 of confidence of which issues are higher in the priority list.

7 The administration of justice issue, I agree is very high.  
8 Economic development in general--what you do with it is a different  
9 matter--is very high, and it has always been high. The issue of urban  
10 Indians is a really serious issue, I know, in California. So I do not  
11 know whether these are the best issues to attack, and I did not have a  
12 sense of confidence. Maybe in my lack of sense of confidence, it was  
13 ill-placed, but I just did not have a sense of confidence in reading  
14 the memo that we had gone through that sort of analytical and thinking  
15 process. If we have, I would like to hear from the staff. I would be  
16 happy to hear from them, but I just did not have a sense of confidence  
17 in going over it.

18 CHAIRPERSON BERRY: I think it is probably fair to say--and  
19 we do not even have to ask them--that the staff did not do the kind of  
20 literature search and review and all that because it would be cited  
21 here. There is some stuff here, but a systematic way or approach that  
22 they would take if they were actually working on the project.

23 I would take under advisement Elsie's suggestion because I  
24 think in terms of Indian Country, she probably knows more about Indian  
25 Country than I do or the rest of us, or at least she knows what goes on



1 in South Dakota, but I would not reach a conclusion about what to do.  
2 I would simply say that we want to do a Native American project. That  
3 is clear. Is there anyone who does not want to do one?

4 [No response.]

5 CHAIRPERSON BERRY: Everybody thinks we should do a project.

6 COMMISSIONER EDLEY: I want to do two.

7 CHAIRPERSON BERRY: You want to do something.

8 COMMISSIONER EDLEY: I want to do two.

9 CHAIRPERSON BERRY: You want to do two projects.

10 COMMISSIONER EDLEY: I do not think it ought to be  
11 either/or. I would like to at least tackle the Federal piece of the  
12 housing problem. The question in my mind, have HUD and DOJ and  
13 Interior done everything within their authority to try to facilitate a  
14 solution to this problem, working with Fannie Mae, et cetera, even if  
15 we cannot get into what the tribes would do? I do not see why we have  
16 to necessarily choose. We could have two on the table.

17 CHAIRPERSON BERRY: We could either say we want to do both  
18 of those, or we could simply say we want to do a project or two and we  
19 want the staff to go back and do some more searching about whether  
20 these two make sense or some other two and do what Cruz said, talk to  
21 people and advocacy groups, the leadership, talk to a bunch of people  
22 and find out whether they agree with Elsie that it ought to be justice  
23 or think it ought to be housing and justice or thinking it ought to be  
24 whatever, but that we all agree that we want to do projects on these  
25 issues. That is one way.

1           The other say is simply just to say we want to do housing  
2 and justice, and at some point, we can stop the process if after they  
3 do the literature review it looks to us like this is not going where we  
4 think it is, or when they begin the project, however they begin it, we  
5 want to revisit it.

6           COMMISSIONER EDLEY: Can I offer something for just a  
7 second?

8           CHAIRPERSON BERRY: No, you cannot because I just recognized  
9 Commissioner Lee.

10          COMMISSIONER EDLEY: Oh, I am sorry.

11          CHAIRPERSON BERRY: Commissioner Lee? .

12          COMMISSIONER LEE: I still would like to keep not just the  
13 Indian whaling issue as one of the areas. Maybe this could be a forum  
14 or briefing.

15                 I think there is a broader civil rights concern impact on  
16 private property rights versus rights--

17          COMMISSIONER EDLEY: Right.

18          COMMISSIONER LEE: --that has very broad civil rights  
19 implications.

20          CHAIRPERSON BERRY: And hunting, too.

21          COMMISSIONER LEE: The hunting, yes.

22          COMMISSIONER EDLEY: Sure.

23          COMMISSIONER LEE: I think that instead of just the  
24 implications on Indian whaling, we should include all that. At the  
25 very least, I would like to have a forum on this issue if there is no

1 objection.

2 CHAIRPERSON BERRY: I guess that is important in a lot of  
3 parts in the country, the hunting and fishing rights and the Indians  
4 coming in conflict, which are sovereignty issues, really.

5 COMMISSIONER EDLEY: Yes.

6 CHAIRPERSON BERRY: That is what we are talking about here.  
7 Yes, Commissioner.

8 COMMISSIONER EDLEY: And add sacred sites to the list.

9 COMMISSIONER LEE: Right.

10 COMMISSIONER EDLEY: Yvonne said pretty much what I was  
11 going to say. \* \*

12 A different way of looking at this is what is the set of  
13 issues that is not really about what happens on the res and creating  
14 opportunity on the res, but what is the list of things that are sources  
15 of real friction or tension between the Native American--

16 COMMISSIONER ANDERSON: Excuse me. Madam Chair?

17 CHAIRPERSON BERRY: Yes.

18 COMMISSIONER ANDERSON: I think something has happened to  
19 the Commissioner's microphone.

20 COMMISSIONER EDLEY: I'm sorry.

21 CHAIRPERSON BERRY: Oh, Edley's fell off. He is so  
22 agitated, he could not figure it out.

23 Say something, Edley, and let's see if Anderson can hear.

24 COMMISSIONER EDLEY: How are you, Carl?

25 COMMISSIONER ANDERSON: You are back, and I am fine. Okay.

1           COMMISSIONER EDLEY: A, add sacred sites to the hunting and  
2 fishing rights issues, same kind of property rights problem.

3           My second point was that another lens to look at this is the  
4 question of not what needs to happen on the reservation in Indian  
5 Country, but rather what is the list of things including these property  
6 rights issues, what is the list of things that are the sources of  
7 tension or friction between Native American communities and their non-  
8 Native neighbors.

9           This is in the vein that part of our mission is to try to  
10 figure out racial reconciliation kinds of stuff. So we might actually  
11 go at it that way as well.

12           CHAIRPERSON BERRY: Yes.

13           VICE CHAIRPERSON REYNOSO: Madam Chair, the suggestion seems  
14 to be made that we should be reluctant to recommend changes or to make  
15 observations of how the tribes themselves are responding to these  
16 issues, and I guess if that is the suggestion, I am not sure I agree  
17 with it.

18           For example, if the administrative of justice systems we see  
19 some serious matters like lack of professionalism of the police force,  
20 I do not see anything wrong with our making that observation and  
21 suggesting that this is one of the matters that needs to be taken care  
22 of. I do not think that we as a Commission need to be reluctant to  
23 speak to any civil rights issues that we see within or without the  
24 reservation. That is my own view.

25           I could be persuaded otherwise, but I just do not think we

1 should be reluctant to share whatever views we have in that department.

2 CHAIRPERSON BERRY: Yes, Commissioner Meeks.

3 COMMISSIONER MEEKS: No, I am not reluctant to do that  
4 either, but I think that we need to make sure that what recommendations  
5 we make are recommendations that will affect Federal policy, for one  
6 thing, where we do have--

7 VICE CHAIRPERSON REYNOSO: More authority.

8 COMMISSIONER MEEKS: --more authority.

9 COMMISSIONER EDLEY: It is--

10 CHAIRPERSON BERRY: Just a minute, Christopher. She was not  
11 finished.

12 COMMISSIONER EDLEY: Excuse me. I thought she was. I  
13 thought she was.

14 CHAIRPERSON BERRY: It is cultural dissidence. Watch the  
15 body language.

16 COMMISSIONER MEEKS: I will relinquish.

17 CHAIRPERSON BERRY: That is okay. You do not have to.

18 COMMISSIONER MEEKS: No, that is okay. I want to hear what  
19 he says.

20 CHAIRPERSON BERRY: Don't let him push you around.

21 [Laughter.]

22 COMMISSIONER MEEKS: I won't.

23 COMMISSIONER EDLEY: It is a weird sovereignty. It is the  
24 nation-to-nation relationship. It is not like the relationship of the  
25 Federal Government to States where, of course, we opine about what they

1 should or should not do, but I would urge some delicacy, some caution  
2 about our opining about what tribes should do. We do not opine about  
3 what Canada ought to do.

4 The nature of the sovereignty, I think, is complicated, and  
5 we should tread carefully.

6 COMMISSIONER MEEKS: Yes, if we want to tread carefully, and  
7 the truth is I do not think it is going to hurt anything to make some  
8 strong recommendations about what we find as far as, for instance,  
9 Indian policing issues. It is somewhat delicate, and we have to make  
10 that kind of decision, but maybe we do not want to be delicate. I  
11 don't know. \* \*

12 CHAIRPERSON BERRY: The Commission did, as you know--

13 COMMISSIONER MEEKS: Right, and got in trouble.

14 CHAIRPERSON BERRY: --all those reports before on the Indian  
15 Tribal Courts. The Commission did a whole series of hearings in Indian  
16 Country and then made recommendations about whether the Tribal Courts  
17 were fair, what changes needed to be made in the Tribal Courts, and  
18 some of the recommendations were enacted into law. So the Commission  
19 had no trepidation at all about going out there and saying "hey, guys,"  
20 and the call came up before the Commission. There were a couple who  
21 did not want to, and they claimed sovereignty or something. That was  
22 all worked out, and the recommendations were implemented to improve  
23 tribal justice because lots of people were claiming that they were  
24 being treated unfairly by the Tribal Courts.

25 Some of what we heard when we were in South Dakota was that

1 some people believed that the tribal police do not treat them fairly.  
2 There are people who believe that who came to tell us that. If we did  
3 an investigation, that would not be my priority to go after tribal  
4 police, if I had to pick between the justice system in its entirety and  
5 how it treats Native American Indians and how the tribal police on some  
6 res were doing. I would not go after them deliberately, but if we  
7 found that there were problems, I would think we would not hesitate to  
8 make recommendations, even though there are these sovereignty issues,  
9 because Indians do have civil rights under the Indian Civil Rights Act,  
10 in addition to having the issue of sovereignty, and I know these are  
11 all ticklish.

12 What do you think, Elsie?

13 COMMISSIONER MEEKS: Except our tribe never adopted.

14 CHAIRPERSON BERRY: Your tribe never adopted the Civil  
15 Rights Act.

16 COMMISSIONER MEEKS: That is what the testimony was about.

17 CHAIRPERSON BERRY: That is what a woman told us when we  
18 were out there in the forum, remember?

19 COMMISSIONER MEEKS: I think we need to be really informed  
20 if we are going to do that because it is a systemic problem, but I  
21 agree with all these issues. I would not say it is one or the other.  
22 I am of the mind that the more of them that are examined, the better.  
23 The Indian hunting and fishing issues, private land, all of those  
24 things are important, but the justice issues, I think, are fairly  
25 large.

1           CHAIRPERSON BERRY: Could it be that we need a project--and  
2 we talked about this before, Carl, when you first raised it--maybe we  
3 need a project where we hear about a whole range of issues and discuss  
4 them and then pick one or two, rather than trying to figure out which  
5 ones from among all these issues we would like to do. Hunting and  
6 fishing. We can also hold forums on some of these issues in some of  
7 the places where they are issues.

8           I know in the Midwest, there are a lot of places where  
9 hunting rights and fishing rights are major problems. Upstate New  
10 York, I think there are some issues involving Indians and their  
11 sovereignty and their rights.

12           Maybe what we should do is redefine the project to not talk  
13 about one thing, or have two projects, one that focusses on a specific  
14 issues, say housing or what the Federal Government is doing about  
15 housing, which is a discrete concern, and then another project that  
16 looks at what are the issues where the contention exists, hunting,  
17 fishing, justice issues and so on, in a whole variety of places, either  
18 have a consultation here, have a forum someplace, have some hearing  
19 somewhere or something, and have the staff propose work products  
20 addressed to that.

21           Yes, Commissioner.

22           COMMISSIONER MEEKS: I do not want us to forget that there  
23 is being a report compiled now about the South Dakota forum. They are  
24 justice issues. I think those need to be included.

25           CHAIRPERSON BERRY: All right.



1 VICE CHAIRPERSON REYNOSO: I like your dual approach. I  
2 think, though, Elsie seems to feel that the justice issues are the more  
3 serious ones. So I think I would be in favor of justice issues and the  
4 study instead of housing and the study.

5 CHAIRPERSON BERRY: Okay.

6 COMMISSIONER ANDERSON: Madam Chair?

7 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

8 COMMISSIONER ANDERSON: I would agree, unless Elsie felt  
9 strongly to the contrary, because I hear her about two or three times  
10 coming back to justice. That would be my inclination as well. So I  
11 would be for designating justice issues as one report and then  
12 determining we do a second report or leaving the option open to do a  
13 second report and then we could determine what the subjects of that  
14 would be at a later time.

15 CHAIRPERSON BERRY: Okay. Housing might be thrown into that  
16 pot to look at.

17 COMMISSIONER ANDERSON: Yes.

18 CHAIRPERSON BERRY: Okay. So can we get agreement that this  
19 is what we will have in terms of revisions of how we will proceed with  
20 the Native American projects? Is there a disagreement? Do we have  
21 consensus? Is there someone who objects now to our doing it this way?

22 VICE CHAIRPERSON REYNOSO: No. I just have one question.  
23 We had chatted about it informally earlier, and I know that normally we  
24 just approve a whole group of projects, but should we have priorities  
25 or how many resources and therefore how many projects can we do to get

1 them out quickly, the discussion now, or should we just keep going and  
2 approve these and have that discussion at the end?

3 Frankly, just in terms of looking at FY2001, I have a couple  
4 of suggestions myself that I doubt we could do, but already we have  
5 approved three projects, I guess. How many do we think we could get  
6 done?

7 CHAIRPERSON BERRY: For 2001, we approved these projects  
8 already at the last meeting.

9 VICE CHAIRPERSON REYNOSO: Yes.

10 CHAIRPERSON BERRY: They were included in the budget for  
11 2001.

12 VICE CHAIRPERSON REYNOSO: Yes.

13 CHAIRPERSON BERRY: So the query for us now on these would  
14 be if we do not get the money we ask for in the budget for this set,  
15 which ones here would we jump at and how would we prioritize them?

16 So, as soon as we finish looking to see if anybody wants to  
17 raise a question about any of these, then we will prioritize these and  
18 say depending on how much money we get, this is how we will go. Then  
19 we will go to the next ones for 2002 and do the same thing, okay?

20 VICE CHAIRPERSON REYNOSO: Okay.

21 CHAIRPERSON BERRY: Does anyone have any questions about  
22 voting rights, the voting rights project?

23 [No response.]

24 CHAIRPERSON BERRY: The voting rights project which was  
25 approved before, in my view, the staff ought to keep in mind the

1 necessity for making recommendations for what might be done. Russell  
2 and I were talking about even analyzing cumulative voting as a  
3 possibility as one way to deal with voting rights. There are other  
4 ideas.

5           The voting rights proposal, the idea, does everyone agree  
6 that we still need a voting rights proposal? That would be the first  
7 question. If so, it would be a one-day consultation after a literature  
8 review.

9           Does anybody know when the Voting Rights Act is reauthorized  
10 again? Did somebody say they did not know or did somebody say they did  
11 know?

12           COMMISSIONER EDLEY: I do not know.

13           CHAIRPERSON BERRY: Staff Director, we need to have a list  
14 of when major pieces of civil rights and opportunity legislation are up  
15 for reauthorization so that whatever we do in terms of timeliness we  
16 can make recommendations to get into the cycle of the reauthorization.

17           When this report came up, Leon Higginbotham was very  
18 concerned about this. He had done a lot of work on voting rights  
19 cases, and since this proposal was written, the Supreme Court has just  
20 recently handed down some other decisions modifying the sort of line  
21 that they were on in Shelby-Reno and its progeny, but not  
22 substantially. There have been some changes in the approach that they  
23 are taking now.

24           The question is--I guess we cannot answer the question  
25 because I do not know when the Voting Rights Act is up for

1 reauthorization.

2 In other words, is it timely for us to be doing a voting  
3 rights project at this time?

4 COMMISSIONER LEE: If I am not mistaken, at least the  
5 bilingual voting assistance part of the Voting Rights Act is going to  
6 be expiring in 2003.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER LEE: So there is a time-sensitivity issue  
9 here, regardless. Then my question is: Do we want to wait until the  
10 2000 redistricting is done because it is going to be done in a very  
11 different way because of all the recent court decisions, or do we want  
12 to hold a consultation before or during the redistricting process so  
13 that we can have some interaction? I would like to have a discussion  
14 on that.

15 CHAIRPERSON BERRY: Or, do we want to do it after the  
16 redistricting.

17 COMMISSIONER LEE: Yes, after everything is done.

18 CHAIRPERSON BERRY: Yes.

19 Vice Chair?

20 VICE CHAIRPERSON REYNOSO: Or, do we just want to do a  
21 briefing so we can have it earlier. Again, a lot of these folk would  
22 be governmental officials and non-governmental officials who are very  
23 involved in these concerns. So I have a sense that probably all of the  
24 folk that we would want would come to a briefing, and then we could do  
25 that far more quickly and far less expensive.

1 CHAIRPERSON BERRY: Yes, Christopher.

2 COMMISSIONER EDLEY: I have the following questions. One,  
3 is the Department of Justice getting geared up appropriately, preparing  
4 itself in terms of staff resources, et cetera, to do an effective job  
5 of enforcing voting rights in the post-2000 cycle?

6 CHAIRPERSON BERRY: No.

7 COMMISSIONER EDLEY: Number two, do State legislators  
8 understand what their obligations are under the law, in light of recent  
9 court cases, et cetera, as they go through the redistricting process?  
10 Do they know? Do they not know? If they do not know, what steps are  
11 being taken by the Justice Department to inform them so that they do  
12 know.

13 Number three, do the community groups and so forth who are  
14 going to be advocates participating in redistricting have tools  
15 available to them so that they know how to wrestle with the combination  
16 of new legal developments on the one hand and often dramatically  
17 demographic developments on the other, black/brown conflicts and all  
18 the rest of it? Do the community groups have the tools of the  
19 information they need in order to effectuate their rights going into  
20 the cycle?

21 Those would my three questions, and maybe a briefing on  
22 those directed at those three questions or some similar set of three,  
23 as long as there are only three, it would help us.

24 I start from the proposition of if we are going to do a  
25 voting rights project, I want it to be something that is actually

1 helpful to people as they go into the redistricting effort, and I am  
2 not quite sure what it is that we could write that would in fact be  
3 helpful.

4 This description does not grab me as producing a report that  
5 would actually be helpful to any of the actors I have described.

6 CHAIRPERSON BERRY: The other and a quite different kind of  
7 report in a way would be a report on what modifications would be made  
8 in the Voting Rights Act when it comes up for reauthorization.

9 COMMISSIONER EDLEY: If we find out the date, yes.

10 CHAIRPERSON BERRY: But that would be different than what we  
11 are talking about here related to redistricting.

12 COMMISSIONER EDLEY: If the reauthorization comes in 2003 or  
13 something, anything we wrote about that effort now would be overtaken  
14 by events because obviously a 2003 reauthorization would have to be  
15 informed by the various crises and confusion that developed in 2001 as  
16 State legislatures go through all of this.

17 CHAIRPERSON BERRY: Commissioner Lee?

18 COMMISSIONER LEE: I would love to see a briefing probably  
19 within the next few months before the census is actually going to take  
20 place.

21 I would like to add to the equation on how the multiracial  
22 category is going to impact voting rights and redistricting as part of  
23 the briefing.

24 CHAIRPERSON BERRY: Oh, thank you, Yvonne.

25 COMMISSIONER LEE: I know people do not want to hear that.

1 COMMISSIONER EDLEY: It is just that it is too hard.

2 CHAIRPERSON BERRY: OMB does not want to hear it.

3 Commissioner Meeks?

4 COMMISSIONER MEEKS: No.

5 CHAIRPERSON BERRY: So why don't we have a briefing on these  
6 voting rights issues, and why don't we defer revising our voting rights  
7 - project after we have had this briefing and consider doing a voting  
8 rights project. I am already prioritizing, pushing it forward.

9 Let's look at financial aid for higher education. This  
10 project was first proposed in my memory in 1981, and we have not done  
11 it yet. It has been proposed over and over and revised and pushed and  
12 everything else.

13 One of the people who do research on issues related to  
14 higher education opportunity report that there are several reasons why  
15 there are several kinds of barriers to opportunity questions.

16 One is money, both money to attend the institutions and  
17 students who do not have the financial resources to deal with family  
18 problems and attending the institution, having to go home or something,  
19 because they come from very poor families and there are issues related  
20 to that, as well as issues about paying for their own expenses while  
21 they are on the campus.

22 In fact, the study we did or somebody did that I read at  
23 Penn for our committee a few years ago showed that for undergraduates,  
24 the number-one reason when they left was financial and not, as I said,  
25 just money to pay your tuition and living expenses, but the whole

1 panoply of financial problems in dealing with their families and where  
2 they came from and nobody was solving it. Principal on the list was  
3 aid for themselves and supporting themselves related to all that.

4           There are other issues. There are issues about the fairness  
5 of existing policies on student financial aid.

6           Does anyone have any comments about the financial aid issue?

7           Yes, Commissioner Meeks.

8           COMMISSIONER MEEKS: When we had the whole discussion about  
9 economic development, economic opportunities, part of the whole issue  
10 is preferred-ness. We talk and talk about it, but we continually  
11 undercapitalize economic opportunities and obviously education  
12 opportunities. I think it is key. It is key if these communities that  
13 we are talking about are going to move forward. So I do not understand  
14 why it has not been taken on.

15           VICE CHAIRPERSON REYNOSO: Human assets.

16           CHAIRPERSON BERRY: Something else would happen and then you  
17 would go do something else.

18           COMMISSIONER MEEKS: This might be one way to look at those  
19 issues for economic opportunities.

20           CHAIRPERSON BERRY: What the staff proposes, they propose  
21 hearings. Are hearings the best way to deal with this?

22           Hearings we have because we are trying to get at facts,  
23 correct facts, and very often from people who do not want to give them  
24 to us or who would be reluctant to do so or where we worry about the  
25 facts that we get. So we wonder if they would show up.



1           Would we have this kind of problem with this project--

2           VICE CHAIRPERSON REYNOSO: No.

3           CHAIRPERSON BERRY: --in terms of accessing the data?

4           VICE CHAIRPERSON REYNOSO: No.

5           CHAIRPERSON BERRY: A lot of it would be data that the  
6 Department of Education had, and then colleges and universities,  
7 administrators and people like that would be, I think, likely to  
8 cooperate in terms of telling us about their own experiences on their  
9 campuses.

10          COMMISSIONER LEE: Foundations also, private foundations.

11          CHAIRPERSON BERRY: Foundations.

12          COMMISSIONER LEE: I just do not think we are going to have  
13 any problem in getting cooperation. That is why I just do not rank  
14 this project high as a major project. I think that we can access this  
15 information relatively easily. I just do not see the rationale of  
16 having to have hearings--I mean two hearings for us to get at the scope  
17 of the project.

18          CHAIRPERSON BERRY: Yes.

19          VICE CHAIRPERSON REYNOSO: Two hearings or 2 days of  
20 hearings?

21          COMMISSIONER LEE: Two hearings.

22          CHAIRPERSON BERRY: Two days of hearings.

23          CHAIRPERSON BERRY: Edley?

24          COMMISSIONER EDLEY: I think you need a hearing for  
25 adjudicative facts. That is not what this is about. I think it should

1 have commissioned and papers should suffice.

2 My broader substantive comment, however, is that it is not  
3 news that poor people have more difficult time having access to higher  
4 education than middle-class people. It is not news that people of  
5 color are disproportionately poor. It is also not unique or a  
6 contribution to write a report which simply contributes to the vast  
7 literature and hot air on the need to do something to help poor people  
8 get access to higher education. So I am unenthusiastic about most of  
9 what is written here as something for the Commission to do.

10 What I think does need explanation is the narrower question  
11 of whether there is a disparate impact--whether financial aid policies  
12 and practices, public policies and university practices, whether those  
13 financial aid practices have a disparate impact on historically  
14 excluded groups independent of class--independent of class.

15 For example, I have heard it hypothesized that there are  
16 different views toward borrowing and indebtedness among certain  
17 minority groups, and therefore, the structure of financial aid programs  
18 is not as helpful in providing access to certain minority groups as to  
19 the broader population.

20 I have also heard it suggested that differences about family  
21 structure or about the obligations to contribute to family income may  
22 differ in important ways by ethnic group, and that that is not  
23 reflected in the structure of policy.

24 So I guess what I am saying is to me, the interesting new  
25 kinds of information and analysis that we could contribute would be to

1 suggest how the ways in which apart from class and poverty effects,  
2 historically disadvantaged communities have particular needs that have  
3 to be addressed within the broader context of changing higher ed  
4 admissions and higher-ed stuff.

5 CHAIRPERSON BERRY: Even beyond that, I think the even  
6 narrower question that was proposed when we first proposed this study  
7 was we wanted to see whether the financial aid policies in the  
8 Department of Education and the way they implement it still ended up  
9 discriminating against people of color, despite all the changes that  
10 have been made.

11 I, of course, ran those programs at one time in my life, or  
12 at least supervised people who ran them, and know about the changes  
13 that were made then, but I have not followed what has happened since.  
14 That is what we wanted to know. We wanted to know whether you could  
15 argue that the policies had been so changed that there was no longer an  
16 issue about discrimination in these policies.

17 I would still be interested in that as well as are there  
18 things that could be changed in the policies to address the two points  
19 you made as well as other issues that may be policy-relevant in terms  
20 of these particular groups of folk.

21 COMMISSIONER EDLEY: If you just draw a line there and think  
22 about another set of very related issues, that goes to the question of  
23 particularly race-conscious, color-conscious financial aid practices  
24 adopted voluntarily by either public or private institutions in the  
25 wake of Hopwood, in light of the reverse discrimination litigation and

1 the like, what are the current legal constraints to the extent to which  
2 colleges who want to address these access problems by having special  
3 scholarships for this group or that group.

4 Bill Gates, Microsoft. My understanding is that Microsoft  
5 is getting geared up because they anticipate being sued.

6 CHAIRPERSON BERRY: Yes, they have just announced.

7 COMMISSIONER EDLEY: The fact that they have created this  
8 scholarship program, a privately funded scholarship program that is  
9 race-conscious. That is another set of issues related to financial aid  
10 and the civil rights dimensions that we might want to take a look at.

11 CHAIRPERSON BERRY: What I would like to see is a research  
12 report. This could be done as an OCRE report, I would think, without  
13 it being a major hearing, looking at the Department of Ed. They know  
14 how to get information from the Department about all the things they  
15 are doing and what the policies show and so on. Then we can look at  
16 these issues that we have just been talking about here.

17 To the extent that there are legal problems--OGC--it could  
18 be a joint project and they could look at any kind of legal analyses  
19 that were necessary to do it, but I do not think we need to have  
20 hearings. I just do not.

21 COMMISSIONER EDLEY: There is a Title VI guidance on this  
22 financial aid, a Title VI guidance that OCRE put out on this issue. Is  
23 it working?

24 CHAIRPERSON BERRY: Okay. Unless somebody objects, why  
25 don't we leave that at that.

1           Now let's prioritize these. How much money did we ask for  
2 2001? What year are we in now? We are in 2000.

3           Yes, Commissioner Lee.

4           COMMISSIONER LEE: On this revisionment, we still have a  
5 couple.

6           CHAIRPERSON BERRY: Did I miss something?

7           COMMISSIONER EDLEY: Yes.

8           CHAIRPERSON BERRY: What did I miss? The 2001. I'm sorry.  
9 Did I finish? I have them all. I am just looking at 2001,  
10 Commissioner Lee. I have not gone to the new ones yet or 2002.

11           COMMISSIONER LEE: Well, I would like to have a discussion  
12 on the other project concepts, even though they have no dates, but some  
13 of these are date-sensitive.

14           COMMISSIONER EDLEY: Yes.

15           COMMISSIONER LEE: You may want to include them.

16           CHAIRPERSON BERRY: You mean you may want to push them back.

17           COMMISSIONER LEE: Push them up.

18           COMMISSIONER EDLEY: Sooner.

19           CHAIRPERSON BERRY: Closer. Okay. Well, we can do that,  
20 then.

21           All right. Let's go on, then. The expanding opportunities  
22 one that we have already talked about would still be going on by that  
23 time as it was originally conceived, and we are reserving judgment on  
24 how to modify it.

25           Then we have the one evaluating civil rights enforcement as

1 a statutory report for 2002, and that one is about looking to see how  
2 agencies dealt with the recommendations that we made in all of these  
3 enforcement reports so that we can see what kind of feedback we have on  
4 the work that we have done.

5 When they used to do those reports every year on all the  
6 Federal agencies, each year's report would say what they had done with  
7 the recommendations from last year. So you could just track it year to  
8 year to year to year. Now we do not do that anymore. So now what we  
9 would be doing is looking at these and trying to figure out what has  
10 happened to the recommendations, which I think is very useful.

11 Then we have block grants for 2000, preliminary research.  
12 Does anyone want to discuss either the evaluation or the Federal  
13 agencies' block grants before I go on to the other issues?

14 Yes, Commissioner Lee.

15 COMMISSIONER LEE: On the evaluation one, I remember at the  
16 last meeting a couple of ones. Were you the one who mentioned that  
17 maybe we should just invite the different Departments to give us an  
18 update on how they have been implementing?

19 CHAIRPERSON BERRY: And we agreed we would do that.

20 COMMISSIONER LEE: Maybe we should just save the statutory  
21 report on something else and just try the concept of having the  
22 Departments come in and give us a report on that.

23 CHAIRPERSON BERRY: Commissioner Redenbaugh?

24 COMMISSIONER REDENBAUGH: I like that idea, and in fact, I  
25 was thinking of the possible statutory report substitute, which is the

1 study of housing on the reservations, the Federal portion of that.

2 CHAIRPERSON BERRY: Look at HUD.

3 COMMISSIONER REDENBAUGH: HUD, yes.

4 COMMISSIONER EDLEY: The Indian Housing Authority.

5 COMMISSIONER REDENBAUGH: Yes.

6 CHAIRPERSON BERRY: The Indian Housing Authority--

7 COMMISSIONER REDENBAUGH: Yes.

8 CHAIRPERSON BERRY: --and how they implement Federal housing  
9 as an enforcement.

10 COMMISSIONER REDENBAUGH: Yes.

11 CHAIRPERSON BERRY: Let's deal with it. Let's divide the  
12 question.

13 First of all, do we think it would work just as well--and if  
14 staff wants to say something, they can--to have agency heads related to  
15 specific reports since 1992 come in to tell us what they have done and  
16 then to just keep track of that which would be in the nature of a  
17 briefing? Although unless we subpoenaed them, we might not be able to  
18 get the actual--the Cabinet Secretary may not want to come. They will  
19 just send Paul to come over and tell us--Paul is not there anymore--to  
20 tell us how they did not give him any money, which is true, and maybe  
21 Donna would not show up. That is a problem.

22 Or, would we think we should just have the agency heads come  
23 in to tell us what they have done about our recommendations? Would  
24 that be just as good as having our staff go do the kind of work they do  
25 really analyzing from top to bottom what they have done about the

1 recommendations?

2 COMMISSIONER WILSON: There is no question about that.

3 CHAIRPERSON BERRY: Because the person who heads the agency  
4 would come in and give us a nice speech about how much they appreciated  
5 our recommendations and how they have been valuable in their enterprise  
6 and they have done this, this, and this, and we would never know unless  
7 we sent the staff over to talk to the little civil servants down at the  
8 agency, way down there somewhere, what in fact they told them to do,  
9 not that I am suspicious of anyone, or whether the people down in the  
10 bowels of the agency are really doing what the guys up there told them  
11 to do, which they do find out in these enforcement reports now because  
12 they talk to people down at ground level and report on what they said.

13 Yes, Commissioner Wilson.

14 COMMISSIONER WILSON: It might be useful to have both happen  
15 and have the staff do the research first so that we have the  
16 information available to ask questions.

17 CHAIRPERSON BERRY: Yes, Edley.

18 COMMISSIONER EDLEY: But I guess what I would do is have the  
19 staff do the research and kind of have a modestly defined grant as in  
20 read some documents and interview 20 people and write a bench memo, a  
21 briefing memo, in anticipating of having the Secretary or Deputy  
22 Secretary come do a written presentation.

23 In other words, I am saying the staff work would be  
24 significantly short of a statutory report, but yet it would not be just  
25 left to listening to the PR.



1           CHAIRPERSON BERRY: Yes, Cruz.

2           VICE CHAIRPERSON REYNOSO: Madam Chair, as you know, we have  
3 found it helpful from time to time to go speak to the tops of the  
4 agencies with respect to specific matters, and invariably, by the time  
5 we meet with them, they have been well briefed by their staff and so  
6 on.

7           .           We need to think this through carefully because we do not  
8 want to waste their time, but I cannot think of a more effective way of  
9 making sure that the very head of the agency is educated on civil  
10 rights issues within his or her agency than to have that person come  
11 and report at which time he or she would have required reports  
12 internally and so on.

13           Unfortunately, there is the danger that you mentioned, it  
14 will be a puff job that we will get, but by combining both, I think we  
15 might be able to get both the facts and an education to the head of the  
16 agency about the civil rights issues.

17           When we met with the Secretary of Agriculture, he said,  
18 "Even though I have been involved in agriculture all my life, I had not  
19 heard about the issue of black farmers in the South until I became  
20 Secretary." It is amazing that he would have been involved  
21 agricultural issues, but, of course, he was involved with agricultural  
22 issues as known in the Midwest or some other place. So I think if we  
23 can do both, it would be tremendous.

24           CHAIRPERSON BERRY: And if it becomes known that we are in  
25 fact having the staff put together a briefing based on their talking to

1 everybody in the agency or some number of people, then the person who  
2 comes before us knows that and is even more likely to have themselves  
3 prepared--

4 VICE CHAIRPERSON REYNOSO: Yes.

5 CHAIRPERSON BERRY: --to say something substantive, not  
6 wanting to be embarrassed.

7 Do we keep this, though, as a statutory report or not?  
8 Because the way we have talked about it now, it could still be  
9 statutory reports because the briefing memos, as you are calling them,  
10 that they would put together would be an analysis of what the agency  
11 has done about our recommendations, and they could put it together as a  
12 report and we could also schedule between now and when we have to  
13 finish it, the agency heads from various places to come in and have  
14 them come one by one for those agencies.

15 VICE CHAIRPERSON REYNOSO: That is fine.

16 CHAIRPERSON BERRY: Maybe we could combine that and have it  
17 end up being a statutory report. There is no reason not to do that.  
18 It may be interesting and exciting, or at least not drop it for now and  
19 just leave it and see what we--

20 COMMISSIONER EDLEY: I just want to be clear about what I  
21 had in mind. What I had in mind is that somebody would basically spend  
22 the equivalent of one staffer working full time for a week, read a  
23 couple documents, have meetings or phone conversations with 20 people,  
24 write up a 10-page piece of paper. It might not be comprehensive of  
25 everything that has ever been recommended to HHS for the past decade.

1 It might focus on a few highlights.

2 CHAIRPERSON BERRY: No, no, no, Christopher. This is 1992  
3 to 2000. We had not done reports on every Federal agency between 1992  
4 and 2000. That is number one.

5 COMMISSIONER EDLEY: What have you all been doing? Sorry.

6 CHAIRPERSON BERRY: Wait a minute.

7 COMMISSIONER EDLEY: Having seminars.

8 CHAIRPERSON BERRY: Yes, we hold seminars.

9 There is a discrete number of agencies on which we have done  
10 reports. We are not talking about the whole Federal shebang, okay?

11 And we are saying that someone would look at the  
12 recommendations that were made for change in the agency in the reports  
13 that were done, and then they would go talk to some people in the  
14 agency who were at some of the same jobs where the folks were talked to  
15 before and ask the agency what has happened on X policy and X  
16 recommendation. Then they would do this briefing memo that you are  
17 talking about.

18 I would suspect between 1992 and 2000 that it is eight  
19 reports. So there would be eight max, eight agencies, and in fact, a  
20 couple of years, they were the same agency. So am I right? Is it  
21 eight or seven? The staff knows.

22 MS. KRAUS: I believe it is seven, but that also includes  
23 the Title VI report.

24 CHAIRPERSON BERRY: Right. So it is about seven agencies or  
25 eight that we are talking about here. So we are talking about looking

1 at the recommendation, one report a year. Remember, we have only done  
2 one statutory report a year for 8 years--7 years--and we are saying  
3 look at the recommendations in that statutory report. Go talk to  
4 people in that agency, come back and tell us, give us a briefing memo,  
5 which would be a chapter, that we have the agency head come here. We  
6 are briefed on the information we read.

7 COMMISSIONER EDLEY: Then we have a draft analysis.

8 CHAIRPERSON BERRY: Right, and we talk to them.

9 COMMISSIONER EDLEY: Sure.

10 CHAIRPERSON BERRY: Then the staff can finish the chapter  
11 based on our talking to them after the draft.

12 COMMISSIONER EDLEY: That is more than a week.

13 CHAIRPERSON BERRY: But it is a week, maybe 10 days,  
14 depending on how long it takes the staff, to do the briefing memo on  
15 that one agency's recommendations, which is all they are doing is the  
16 recommendations, not everything that was described.

17 Let's ask them how that sounds.

18 COMMISSIONER EDLEY: Can I ask are we also just limiting  
19 this to the statutory reports, or is it also other reports that have  
20 included recommendations affecting Federal agencies?

21 CHAIRPERSON BERRY: Let's ask them, but I assumed they were  
22 talking about the recommendations they had made. They are nodding  
23 their heads.

24 Yes, Rebecca.

25 MS. KRAUS: We have actually identified approximately 13

1 reports in a proposal. I think that does not include the health care  
2 report which we might want to put in there, because that is through  
3 2000, and it would also include all five volumes of education reports.  
4 There is a lot of reports to be covered.

5 To even pull together all the recommendations and make sure  
6 we understand how they fit together from the various reports,  
7 especially when you consider the Title VI report which covered several  
8 agencies. So we are looking at HUD from the Fair Housing Report, plus  
9 from the Title VI report.

10 So it would take a while for staff to get up to speed on  
11 understanding what these recommendations were and to make sense of that  
12 so that we can go talk to the agencies and explain to them these are  
13 the recommendations that came from different reports, this is where we  
14 were coming from with those recommendations and where do you stand on  
15 that. That probably would take a while to pull all that together.

16 CHAIRPERSON BERRY: What do you mean by a while? Because  
17 the statutory report, you usually do that in a year or 18 months. So  
18 what do you mean by that?

19 MS. KRAUS: I envisioned it as a group of two to three staff  
20 persons per agency, and I would say at least a month to get the  
21 recommendations together, to set up appointments, to explain to the  
22 staff and the other agencies and also to get their responses back.

23 There are hundreds and hundreds of recommendations in  
24 several of the more recent reports. For example, for EEOC to pull that  
25 together and respond to every one or even to respond generally, that

1 would probably take them at least a month to respond back to us.

2 CHAIRPERSON BERRY: So, after about 3 months after you  
3 started this, we would be ready to have enough information ourselves  
4 that when the person came here we could ask questions?

5 MS. KRAUS: We would try to do that, yes.

6 CHAIRPERSON BERRY: Or, we can start the process.

7 MS. KRAUS: Yes. We can start it within then, yes, 3  
8 months, and then we could start getting the agencies to come here.

9 CHAIRPERSON BERRY: Yes. We might have a couple each time  
10 or something.

11 You are planning to finish the thing in a year, anyway,  
12 right?

13 MS. KRAUS: Exactly, yes. Yes.

14 CHAIRPERSON BERRY: Yes.

15 VICE CHAIRPERSON REYNOSO: May I ask a question? Even  
16 though we are talking about FY2002, don't you start those studies  
17 earlier sometimes, depending on your staff, or are you usually rushing  
18 so much to get the last one done?

19 MS. KRAUS: For the past year, everybody on the staff, which  
20 is about 11 of us right now, we will spend the whole year working on  
21 the one report.

22 In the summer months when we are going through the final  
23 reviews and we are waiting for comments from the Commissioners, we will  
24 have time to start working on the next year's projects.

25 VICE CHAIRPERSON REYNOSO: So you actually have a little bit

1 of leeway for some of your staff. It is not completely tied up in the  
2 old report.

3 MS. KRAUS: Two to 3 months lead time.

4 CHAIRPERSON BERRY: So that means like October or something,  
5 September or October, we would be able to bring the first agency-head  
6 person or somebody, maybe, to come and talk about their Department.

7 MS. KRAUS: At least one agency, yes.

8 CHAIRPERSON BERRY: And then after that, so to schedule  
9 them?

10 MS. KRAUS: Yes, I think we could handle that.

11 CHAIRPERSON BERRY: Okay. Don't let me press you to think  
12 you could handle something you cannot because we will always come back  
13 and ask you again, "Why did you say you could do that if you could  
14 not?"

15 MS. KRAUS: Certainly, if we are in the mode we are in where  
16 we are working on one, maybe two projects at a time, we can handle  
17 that.

18 CHAIRPERSON BERRY: All right. Then, the block grants,  
19 let's talk about that. This is preliminary research for the 2003  
20 statutory report, and it is the civil rights implications of block  
21 grants.

22 VICE CHAIRPERSON REYNOSO: We have discussed this several  
23 times before, and we have agreed that it would be something very  
24 important for us to do, but we needed to allow enough time for the  
25 current legislation in terms of block grants to be in effect because

1 they have become so much more in their scope. It seems to me that by  
2 that time, we will have had enough time to see what is happening with  
3 block grants and whether or not the local jurisdictions are indeed  
4 enforcing the Federal civil rights laws. So I would think that that  
5 would have a high priority at that time.

6 CHAIRPERSON BERRY: The Title VI report, as I recall,  
7 indicated there were major problems with some of these block grants.

8 VICE CHAIRPERSON REYNOSO: Yes.

9 CHAIRPERSON BERRY: HHS is a principal culprit, although  
10 other Departments have similar problems.

11 In Tennessee, they passed a State statute to require the  
12 State to enforce vigorously the provisions in Title VI as a matter of  
13 State law.

14 VICE CHAIRPERSON REYNOSO: That is interesting.

15 CHAIRPERSON BERRY: They are now fighting about whether the  
16 Human Rights Commission should be given authority, which agency to do  
17 it or should there be a new agency, but as a result of our Title VI  
18 report which cited the Tennessee Nursing Home case, some legislators  
19 down there got a bill passed in the State legislature. It was actually  
20 passed.

21 VICE CHAIRPERSON REYNOSO: What happens if the Tennessee  
22 courts interpret it differently than the Federal courts and they are  
23 talking about the same statute?

24 CHAIRPERSON BERRY: I do not know what that would do, but  
25 they said, "Hey, we want Title VI enforcement down here. So we are



1 going to make sure that we enforce it."

2 VICE CHAIRPERSON REYNOSO: Well, good.

3 CHAIRPERSON BERRY: So do you think block grants are  
4 ubiquitous enough or important enough or serious enough an issue and  
5 worrying about whether or not services are actually delivered without  
6 discrimination as something we ought to still concern ourselves with  
7 and that we should have a project?

8 This would be a statutory report for next year if we do it,  
9 and the staff has proposed.

10 I sense no strong feelings one way or the other.

11 Yes, Commissioner Edley.

12 COMMISSIONER EDLEY: I think this is very hard to do, and  
13 the data problems are going to be gargantuan, and I would like to  
14 suggest that the staff consider getting somebody to do some analysis  
15 now. Some of this was done, I guess, in the Title VI report about the  
16 extent to which data are being collected, whether there is sufficient  
17 monitoring in some of these block grants so that we would get around to  
18 doing the statutory report. There will actually be some information to  
19 use. We are not in the position of having to go out and commission  
20 original data collection of all sorts of research.

21 It may be that a small investment now in producing a 30-page  
22 paper and some sort of message for most of the agencies about here is  
23 what you ought to be doing to collect data.

24 I know that on many of these programs, there is a little bit  
25 of an ethos of we do not want to collect information because we do not

1 want to know what is going on out there, and especially given the  
2 influence of the civil rights conservatives, there is a resistance to  
3 collecting data about race and ethnicity.

4 So a little front-end action here might be called for.

5 CHAIRPERSON BERRY: Yes, Cruz.

6 VICE CHAIRPERSON REYNOSO: Madam Chair, if that is possible,  
7 I think that would be fine. I think we already know that whenever this  
8 report will be made, one of the principal recommendations will be that  
9 data be gathered because we have already seen no resistance to  
10 gathering the data, and that in itself I think is going to raise  
11 serious, serious problems about enforcement of the law, when there is a  
12 conscious effort to not know whether the laws we enforced or not--we  
13 are just talking about projects now. If, by chance, what has been  
14 suggested can be done and fitted in earlier, I think it would be very  
15 good.

16 My sense is that the big civil rights issue when this report  
17 is done will be the lack of data and the lack of local agency  
18 implementation of the type of data that the Federal Government has  
19 collected, purposefully not wanting to get that data. I see that  
20 happening in California already, and in California, I assume it may be  
21 a more responsive State to its Federal requirements, but even there, I  
22 see that happening already. I can imagine other States are more  
23 antagonistic to Federal civil rights legislation.

24 CHAIRPERSON BERRY: It may also be that as the staff works  
25 on this, it will be determined that they ought to look at one or two

1 block grants as opposed to trying to look at all the block grants.  
2 That may be something that would come out of the discussions, and we  
3 ought to have them be aware. I see the heads nodding that that would  
4 be the case. Whereas, this is proposed to look at all of the--there  
5 are a lot of block grants.

6 So maybe we should just leave it at that for the time being  
7 as opposed to a statutory report.

8 Yes, Commissioner Redenbaugh.

9 COMMISSIONER REDENBAUGH: No. When you have completed the  
10 block grants, I want to say something.

11 CHAIRPERSON BERRY: So that is where we will leave it on  
12 block grants, unless there is some objection.

13 Then what we have before we start prioritizing is there are  
14 a bunch of new projects, K through 12 school integration, racial  
15 profiling, environmental justice, CHIP, the link of children's health  
16 insurance program, the link between portrayal of the poor and support  
17 for public assistance.

18 On this list, we do not have the affirmative action and  
19 higher education or some kind of higher education like that thing that  
20 we have discussed which was a Leon Higginbotham original, and we do not  
21 have anything except the K through 12 school integration idea that  
22 relates to the Elementary Secondary Education Act which is being  
23 reauthorized, and we do not have any immigration proposal of the kind  
24 that Christopher said he was not proposing a proposal, but I thought it  
25 was, about the problems of immigration that you raised earlier. You

1 also raised anything about CRA in the context of the other project, the  
2 financial modifications proposal.

3 Commissioner Redenbaugh?

4 COMMISSIONER REDENBAUGH: There is also something that I see  
5 missing that I would add, and that is K through 12 education more  
6 broadly defined than merely integration. I do not know what to call  
7 it, but I would include inequality. A related issue is education of  
8 choice, K through 12.

9 CHAIRPERSON BERRY: Yes.

10 COMMISSIONER REDENBAUGH: As I said earlier, the two big  
11 pieces of unfinished or even unstarted civil rights business or  
12 economic opportunity and quality education.

13 CHAIRPERSON BERRY: I have a particular interest in doing  
14 something on K through 12 that is broader than the school integration  
15 discussion.

16 COMMISSIONER REDENBAUGH: Yes.

17 CHAIRPERSON BERRY: I have confessed on many occasions to  
18 being one of the last integrationists in America as far as public  
19 schools are concerned, but the way I talk about the issue is making  
20 sure the children have an equal opportunity to learn.

21 I know the Elementary Secondary Education Act is up for  
22 reauthorization. I do not know if they will in fact reauthorize it  
23 this year or how they will go about doing it, but the whole issue of  
24 choice and vouchers and integration and all these issues, high-stakes  
25 testing, are all issues that relate to equal opportunity to learn,

1 whether it exists.

2           So maybe what we should do is have a project that in some  
3 way could include a discussion of these various issues, and I do not  
4 mean an in-depth 25-year project or even a 3-year project, but some  
5 short-term project that includes work product whether it is a statement  
6 the Commission makes with examples or whether it is sort of a chapter  
7 about each one of these issues based on some research, maybe talking to  
8 a few people in a meeting at a roundtable or something to actually deal  
9 with each one of these, the whole integration/desegregation thing, the  
10 choice, is that an answer, the high-stakes testing, is that an answer,  
11 any other answers anybody has on what to do about effective schools and  
12 effective schooling for all children.

13           So that is the idea, and that is not really on the list, but  
14 I would subsume the integration one under there.

15           COMMISSIONER REDENBAUGH: Yes. I would put all of that  
16 together.

17           CHAIRPERSON BERRY: Does anyone have any reactions? How can  
18 we do a short-term project, something that would not take forever?

19           VICE CHAIRPERSON REYNOSO: Briefings?

20           CHAIRPERSON BERRY: Briefings, that would be one.

21           Christopher?

22           COMMISSIONER EDLEY: He said what I was going to say, and I  
23 would urge that we do a series of short reports, not a magnum opus with  
24 multiple charts, that we think of this as sort of an umbrella project  
25 that has several pillars underneath of it, that there ought to be one

1 on high-stakes test, there ought to be one on choice and vouchers, et  
2 cetera, there ought to be one on integration, and I would like a dotted  
3 line between the one on integration and raising at some point the issue  
4 of the integration ethic in other contexts, housing specifically.

5 I think certainly on choice and on high-stakes testing,  
6 where I think of the question as what are the civil rights  
7 implications, both promise and risks, in alternative strategies for  
8 school improvement, where again I think our real expertise is not to  
9 say choice is a better idea than something else, but rather say from  
10 the perspective of the civil rights concerns what are the likely  
11 consequences of pursuing this strategy rather than another strategy.

12 I think it would be very easily to very quickly put together  
13 a consultation on that and certainly very easily to put together a  
14 consultation on high-stakes testing.

15 I just had a big argument with our friend, Abigail  
16 Thurnstrom, last night on C-SPAN about that.

17 CHAIRPERSON BERRY: You call her--oh, I'm sorry. I did not  
18 realize you had become friends, but anyway--maybe the discussion last  
19 night contributed to the atmosphere of amity and good--the era of good  
20 feeling--feelings.

21 Is this an issue where we need to hear from the public,  
22 though? Is this the kind of issue where we ought to go somewhere and  
23 have forums and let people come up and talk about it, or is this the  
24 kind of issue that--and we will not ask Russell and Chris because they  
25 are anti-democratic. They have already told us, but for the rest of

1 us, is this the kind of issue where we want to hear from the experts,  
2 but we also want to hear from places like Baltimore or Birmingham or  
3 Peoria and have a forum or something and have people come up and tell  
4 us what they think about this issue? Or, would it be sufficient, given  
5 the time and the resource constraints, that we could have briefings on  
6 each one or papers, briefing and papers, and then have the chapters and  
7 then make a statement ourselves at the end about what we think about  
8 what we as Commissioners think about these issues?

9 So is this one where we want to get the public in or not?  
10 Not to Russell and not to Christopher.

11 COMMISSIONER EDLEY: We will talk among ourselves.

12 [Laughter.]

13 CHAIRPERSON BERRY: Elsie?

14 COMMISSIONER MEEKS: I just want to stick my neck out, I  
15 guess.

16 This is an area obviously where academics have long  
17 discussions, and yet, it affects the grass-roots people so much.

18 I would like to hear from the public on this.

19 CHAIRPERSON BERRY: Before I ask Vicky, a middle way would  
20 be to have--and if Russell is going to leave, I need to know his  
21 priorities.

22 COMMISSIONER REDENBAUGH: My views on this topic are well  
23 known.

24 CHAIRPERSON BERRY: Let me interrupt because I want to get  
25 your views.

1           Let us do this and then we will come back to this as a  
2 specific topic because we have listed all the topics. If you had to  
3 choose between the topics that we have been discussing today, Russell,  
4 and there were budget constraints--

5           COMMISSIONER REDENBAUGH: Right.

6           CHAIRPERSON BERRY: I will just read them all real fast  
7 again.

8           COMMISSIONER REDENBAUGH: Okay.

9           CHAIRPERSON BERRY: Fair employment, law enforcement, DOJ,  
10 expanding economic opportunities, measuring discrimination, Native  
11 American issues, voting rights, financial aid, higher education, block  
12 grants, getting people before us to talk about what they did with our  
13 recommendations, the K through 12 host of issues, racial profiling in a  
14 lot of contexts, not just driving, environmental justice, children's  
15 health insurance, and the link between portrayal of the poor and  
16 support of public assistance. What would be at the top of the list?

17           COMMISSIONER REDENBAUGH: I would put at the top economic  
18 opportunity and K through 12.

19           CHAIRPERSON BERRY: Okay.

20           COMMISSIONER REDENBAUGH: I would put toward the bottom the  
21 voting rights, block grants, and the agency oversight.

22           CHAIRPERSON BERRY: All right, and then the others somewhere  
23 in the middle.

24           COMMISSIONER REDENBAUGH: Yes. Above the midpoint, I would  
25 put the Native American project.



1 CHAIRPERSON BERRY: All right, good.

2 COMMISSIONER REDENBAUGH: Okay?

3 CHAIRPERSON BERRY: Thanks.

4 Vicky, what were you going to say about the hear-from-the-  
5 people question?

6 COMMISSIONER WILSON: First of all, I am for the democratic  
7 process, and I would say that hearing from people would be interesting,  
8 but I do not know how informative it would be. I think we would  
9 already know the stories that we would hear. I just do not know if it  
10 would be the best way to use the time.

11 CHAIRPERSON BERRY: Okay. Cruz?

12 VICE CHAIRPERSON REYNOSO: If time permits, time and money,  
13 this might be a good situation to have both a briefing in Washington  
14 followed by a couple of forums.

15 CHAIRPERSON BERRY: Chris?

16 COMMISSIONER EDLEY: I have another compromise to suggest.

17 CHAIRPERSON BERRY: Okay.

18 COMMISSIONER EDLEY: I actually have a student right now who  
19 is in my civil rights seminar doing a paper on high-stakes testing, the  
20 guts of which is going to be a series of case studies on controversies  
21 around high-stakes testing in a couple of states, a couple of  
22 communities. What I really want to get from her is a rich story about  
23 what was the policy that was proposed, what are the legal  
24 considerations, what do various folks in the community argue about, how  
25 is it covered in the press, what do the education establishments say

1 about it, just do a full analysis of a proposal for, let's say, ending  
2 social promotion or a graduation test or something like that.

3           So one thing we might consider is that it might be quite  
4 cost effective for us rather than going to Troy, New York, to hold a  
5 hearing about whatever the fight has been in Troy, New York, on high-  
6 stakes testing to commission a case study by somebody, to spend a  
7 couple thousand bucks, which would be cheaper than our doing a forum  
8 and flying everybody out there, and try to have in the course of doing  
9 a case study lots of people in the community consulted and we get a  
10 narrative and we would have a rich analytical story about what  
11 happened, which I think would be at least one way of systematically  
12 informing ourselves about what some of these controversies have been  
13 like, while perhaps saving some money and some time. That is just one  
14 possibility.

15           CHAIRPERSON BERRY: So we will not have public forums,  
16 Elsie. You and I will go out and find out what people think.

17           COMMISSIONER MEEKS: Okay.

18           COMMISSIONER EDLEY: I will settle for hearsay.

19           [Laughter.]

20           CHAIRPERSON BERRY: Now what we need to do is to rank these  
21 or rank as best we can.

22           Yes.

23           VICE CHAIRPERSON REYNOSO: Madam Chair, I just want to  
24 mention a couple of other matters that we have talked about in times  
25 past. One, again, was time-deferred. We talked about doing a review

1 of the effects of 209, now the State of Washington also, proscription  
2 on affirmative action and how that has affected a practice in policy of  
3 those jurisdictions.

4 We had said we wanted to wait a couple of years to see what  
5 the effect had been before we did those, and now it has been a couple  
6 of years. So I just want to put that on the table.

7 Then, a long time ago, we had a forum within U.S.  
8 implementation of our international human rights responsibilities, the  
9 treaties we have signed and so on. I thought it was a very helpful  
10 session that we had, but I would like to just put on the table that one  
11 of these days we ought to have hearings on that and maybe even a series  
12 of two or three 1-day hearings in different parts of the country on  
13 that issue.

14 CHAIRPERSON BERRY: Of the treaties?

15 VICE CHAIRPERSON REYNOSO: Yes. All of the protocols and  
16 treaties and so on that we have that the Senate has approved that have  
17 to do with human rights which is what the interview community calls  
18 civil rights, what we call civil rights, that all too often, even  
19 though they are the law of the land, are being ignored by governmental  
20 and private agencies.

21 CHAIRPERSON BERRY: The next UN conference on human rights,  
22 the big one, is going to be on race. When is it? Next year or the  
23 year after? 2001? 2001. The working groups are working on it now,  
24 and people from the Government agencies are working on it.

25 We have been advised and kept up to date on what the State

1 Department and the other Government agencies are doing. Most of them  
2 contributed some resources to getting the papers done and all that. We  
3 did not because we were not asked to because we do not have any  
4 resources. In fact, that is what they said at the White House: "One,  
5 we would not ask you because you are an independent agency, and, two,  
6 we know you do not have any resources. So, until we get you some, we  
7 would not ask you." But that is the next big one, and we have to think  
8 at some point about what participation you might want to have in that,  
9 either in our own individual private capacities with the NGOs that we  
10 are involved in or whether there is something we want to do as part of  
11 the official response. \*

12 My own view--this is just personal view--I would rather do  
13 something in my own private individual NGO capacity so that I am not  
14 responsible for anything that the Government might be doing, but that  
15 is up to us.

16 Yes.

17 COMMISSIONER EDLEY: There is another thing going on which  
18 is that the United States has overdue a report to the UN in compliance  
19 with one of these treaties, a report on civil rights and human rights  
20 issues in the United States.

21 CHAIRPERSON BERRY: Right.

22 VICE CHAIRPERSON REYNOSO: We are always late.

23 COMMISSIONER EDLEY: Right. It is a couple years late. My  
24 understanding is it is nearing completion. It is bouncing around  
25 between the State Department and Justice Department and the White

1 House. So another opportunity to follow up on the Vice Chair's idea  
2 here is that we could--actually, it would be pretty dramatic if we  
3 commented on the official report that is developed by the State  
4 Department and to offer our rejoinder to it that said that is not the  
5 way things look to us.

6 In fact, we might even ask if we could comment on the draft  
7 before it is finalized.

8 CHAIRPERSON BERRY: They already agreed about 2 years or 2-  
9 1/2 years ago. First, when John Shaddegg was there, and then since  
10 after he left and whoever the person is that is there, they already  
11 sent over the guy. I forget is name.

12 COMMISSIONER EDLEY: Harold Coe?

13 CHAIRPERSON BERRY: He came to talk to me, and they agreed  
14 that they will give it to us to read before they send it to wherever it  
15 is going. It is just taking too long, and the White House staff people  
16 have also agreed that we would get to read it before it goes anywhere.  
17 We can follow up on that.

18 Ruby, would you please follow up on that?

19 That was a promise that they made for precisely the reasons  
20 that you have given.

21 STAFF DIRECTOR MOY: Right.

22 CHAIRPERSON BERRY: The one on affirmative action, Leon's  
23 assistant, Adderson Francoise, was already working on, when Leon died,  
24 and has been working on a memo for us. He has given us some stuff we  
25 looked at earlier on these whole issues of affirmative action and

1 higher education, with the idea that we might have a hearing or  
2 something.

3 I understand that at the end of January, I understand from  
4 the Staff Director, he expects to give us his work product. He will be  
5 finished with it and onto other things, but I think that it probably  
6 should be expanded, and I hope his memo does that, to the post-Hopwood,  
7 post-209 kinds of issues, including what has happened out there since  
8 then and then looking at these percentage plans in Florida and in Texas  
9 and the one that is a joke in California, your 4-percent plan--

10 VICE CHAIRPERSON REYNOSO: Yes, yes.

11 CHAIRPERSON BERRY: --and trying to come up with something  
12 on what the Commission should do.

13 So we should have this down as a project because we already  
14 know that we plan to do something on the subject. So that should be a  
15 project, too.

16 Should we put down the CRA and the immigration as projects?  
17 Were you proposing those as projects, Christopher?

18 COMMISSIONER EDLEY: I have a different idea on immigration.  
19 CRA, I am uncertain. I really mentioned CRA in the spirit of a way to  
20 tackle the economic development issue that would be more focussed on  
21 the civil rights slice through it as opposed to just the broad economic  
22 opportunity theme. Somebody ought to be watching what is going to  
23 happen to CRA under this thing. I do not know whether we have the  
24 resources to do so, but somebody ought to be--I don't know.

25 CHAIRPERSON BERRY: Why don't we do it this way. Why don't

1 we just have the staff in the same way that they got us the information  
2 about the military report and about some of these other things, find  
3 out what is going on with it--that is number one--and then just sort of  
4 keep us briefed on what is going on with it, instead of making it a  
5 project, and then see if we want to make it a project at some point.

6 . They will also be looking at it when they look at expanding  
7 opportunities and try to figure out how they are going to refine that.

8 Immigration. What was your take on that?

9 COMMISSIONER EDLEY: There is a growing anxiety, I think,  
10 about the allegedly oppressive enforcement posture of INS, particularly  
11 in the so-called interior enforcement operations. That is the  
12 descending of SWAT teams on a meat-packing plant in Iowa and cross-  
13 examining, interrogating everybody who is brown.

14 There is also, I think, lingering unresolved questions  
15 whether or not in response to the employer sanction provisions the last  
16 immigration bill. There has been a rise in private employer  
17 discrimination against immigrants. I do not know whether that is true  
18 or not. I think it is worth looking into.

19 I suppose there are sort of language discrimination issues,  
20 and I do not know when the last time the Commission took a look at  
21 language discrimination issues would have been.

22 So it strikes me that, again, in light of all of our  
23 diversity and in light of the fact that these issues often get left off  
24 of the political agenda, shining our spotlight, however flickering it  
25 may be, on this set of issues might really be a good thing for us to

1 do.

2 CHAIRPERSON BERRY: The last time anything came out on  
3 immigration was the section in the Wall Street report, which was  
4 updated after that, and one of the recommendations we have made, we  
5 meaning the Commission, not me, is that over the years employer  
6 sanctions should be strengthened, and that employer sanctions should be  
7 strengthened because what always happens with INS is they come down on  
8 the employees, the immigrants, the documented workers. Whereas, the  
9 employer just gets some more and abuses them and exploits them and move  
10 on. That has always been the Commission's position. So that, the  
11 Commission has consistently called for more serious attention to the  
12 employer.

13 I do not know whether what you are suggesting, while that  
14 may sound good, that an effect of that may be something bad happen to  
15 the employees. I am not sure.

16 COMMISSIONER EDLEY: Yes. It has always been a concern in  
17 the Hispanic and the APA communities that the unintended consequence  
18 might be that employers fearful of these sanctions would stop hiring  
19 people who appeared to be immigrants, even if they were documented. So  
20 it would be nice to find out has that happened, and I just do not know  
21 the answer to it, but it seems to me to be part and parcel of this  
22 problem of complaints that LaRaza and other groups have started to  
23 sound about oppressive INS enforcement strategies. Of course, there is  
24 a dotted line to profiling, the whole profiling issue as well.

25 CHAIRPERSON BERRY: Yvonne?



1           COMMISSIONER LEE: I was going to bring up a project  
2 proposal dealing with immigrants and civil rights protections because  
3 there seems to be a great divide whether existing civil rights laws  
4 actually apply to all Americans. Even if they explicitly said that it  
5 applies to them, in actuality new Americans often do not get the same  
6 treatment.

7           I was trying to squeeze it into the racial profiling project  
8 because we are already talking about over 10 projects. Many of the  
9 things that you talked about should be included in racial profiling,  
10 the employment rates, voting, intimidating in the voting, and what have  
11 you.

12           I do think that we need to have a very honest discussion.  
13 Maybe it is not a project. Maybe it is a forum to talk about existing  
14 civil rights, the laws and policies that were created before this large  
15 influx of immigration. Many of the existing laws that we have no  
16 longer apply.

17           For instance, there are existing Federal Government laws  
18 that say if you have a member of your family who is not a citizen, even  
19 though you may be American-born, second or third generation, you are  
20 not entitled to a lot of the governmental programs.

21           Many of these things are well hidden until some individuals  
22 get hit with it, but these are the things that maybe this Commission  
23 can examine not through a hearing, but at least through a forum or a  
24 briefing because the population has changed. The civil rights laws may  
25 need to be amended to meet these changes.

1           CHAIRPERSON BERRY: Do you think the laws may need to be  
2 amended or they may need to be interpreted in such a way as to apply to  
3 these things? What do you think? Or, do you want to just look at  
4 whether--

5           COMMISSIONER LEE: We need to look at every--not every, but  
6 not just INS Department. A lot of these Departments, there exists laws  
7 how do you treat non-citizens in the workplace. Those are the things  
8 that we assume they are protected by civil rights laws, but by the time  
9 they get into these nuclear labs and what have you, then you find out  
10 there are two sets of civil rights protections. We may be able to play  
11 a leadership role in trying to guide a new direction in this.

12           CHAIRPERSON BERRY: Do you think that these would fit under  
13 racial profiling, these subjects, or not?

14           COMMISSIONER LEE: We have to prioritize. I have a feeling  
15 that immigration may not make it to the top five. So I just think that  
16 one way or another, we need to get the discussion on immigrants,  
17 immigration, and civil rights, existing civil rights with regard to  
18 immigrants and immigration, whether it is documented or undocumented.

19           CHAIRPERSON BERRY: Why don't we agree that in our limit  
20 list of number of briefings, which can take place at every meeting,  
21 that we would have one on immigration and civil rights issues to talk  
22 about all of these issues, first of all, and get a handle on which ones  
23 we should do and not right now have a project as such.

24           COMMISSIONER LEE: Yes.

25           CHAIRPERSON BERRY: But we would include the things that go

1 under racial profiling under racial profiling.

2 Now what we need to do is to prioritize, and what we are  
3 trying to do first of all is to see how many of the things that are  
4 under 2001 we would drop altogether or we would consider as the highest  
5 priority and then see if there is something--or we can start at the end  
6 and see if there is something under 2003, new projects that we want to  
7 push to do sooner, and then maybe that way we can figure out what to do  
8 with the rest of them.

9 Keep in mind, though, that I think we have agreed that we  
10 will keep some space in the budget for these contingencies. So that is  
11 understood already so that each year we have space when something  
12 happens. Then we will have to figure out how much money there is, and  
13 George and the Staff Director can negotiate and I will talk to her  
14 about that.

15 Does anybody see anything, 3 years from now, that they think  
16 we ought to be doing either this year or next year? That is the first  
17 thing, any of these things we have talked about, whether it is the ones  
18 we have added or the ones that are already listed here.

19 Yes, Christopher.

20 COMMISSIONER EDLEY: I would like to do some K through 12  
21 things tomorrow if people are available, and I think we ought to do a  
22 short thing on racial profiling. Actually, what I would like is sort  
23 of something that is half consultation and half hearing on racial  
24 profiling, where my particular goal was focused on what the Federal  
25 agencies should be doing. So I would nominate those two to be moved to

1 the first page and then juggled with the other things on the first  
2 page.

3 CHAIRPERSON BERRY: That report, Eddie, that you read on  
4 racial profiling, what agencies did that have to do with? Was it INS,  
5 or what was it?

6 MR. HAILES: INS and Justice.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER EDLEY: We did not get the Treasury ones yet?

9 MR. HAILES: No.

10 COMMISSIONER EDLEY: Because I think they exist. My wife  
11 will not share them with me, but I think they exist.

12 CHAIRPERSON BERRY: That is because you do not get them in  
13 your capacity as the husband of your wife--

14 COMMISSIONER EDLEY: Right.

15 CHAIRPERSON BERRY: --but once we get them, we will let you  
16 know.

17 COMMISSIONER EDLEY: Thank you.

18 CHAIRPERSON BERRY: Stop asking your wife inappropriate--no.

19 [Laughter.]

20 COMMISSIONER EDLEY: Or, I will have a fourth marriage.

21 CHAIRPERSON BERRY: This has got to stop somewhere,  
22 Christopher. It is embarrassing to me.

23 So K through 12 and profiling by Federal agencies. Does  
24 anybody else see anything on the later list that they think we ought to  
25 be doing? We did not talk about environmental justice. I asked if

1 anyone had any questions and no one said anything.

2 Yes.

3 COMMISSIONER MEEKS: What was that about?

4 CHAIRPERSON BERRY: What is environmental justice?

5 COMMISSIONER MEEKS: I did not see anything written on that.

6 Was there?

7 Oh, it is in here. Okay.

8 CHAIRPERSON BERRY: Environmental justice.

9 COMMISSIONER MEEKS: I forgot. It is very confusing. Maybe  
10 I tried to read it and could not.

11 CHAIRPERSON BERRY: By the way, the racial profiling ones  
12 proposes a briefing and a hearing, two hearings, but we can sort of  
13 scale it down somehow and do something sooner rather than later.

14 Environmental justice--I cannot find mine.

15 COMMISSIONER MEEKS: It is toward the back of the original  
16 set.

17 CHAIRPERSON BERRY: Here it is.

18 COMMISSIONER MEEKS: The original mailing. It is towards  
19 the back.

20 STAFF DIRECTOR MOY: It is before CHIP.

21 CHAIRPERSON BERRY: It is before CHIP? That does not tell  
22 me anything. I do not see it.

23 COMMISSIONER EDLEY: It is in the original binder sort of  
24 very close to the back of the original, not the fax.

25 CHAIRPERSON BERRY: Well, environmental justice issues have

1 been around for quite a while now. That does not mean anything, but  
2 this would be a statutory report. This would be--

3 COMMISSIONER LEE: 2003.

4 CHAIRPERSON BERRY: What year?

5 COMMISSIONER LEE: 2003.

6 CHAIRPERSON BERRY: 2003. Address minority communities  
7 encounter and attempting to redress environmental inequities. Of  
8 course, we have the balance between communities that want environmental  
9 degradation and who have jobs, that whole issue, which is both an  
10 international and a national issue, the communities that complain when  
11 someone tries to stop the pollution because people need the jobs and  
12 communities where people are trying to get rid of the pollution.

13 We had a State Advisory Committee report on--

14 VICE CHAIRPERSON REYNOSO: Louisiana.

15 CHAIRPERSON BERRY: It was some kind of alley it is called.

16 VICE CHAIRPERSON REYNOSO: Cancer Alley.

17 CHAIRPERSON BERRY: Cancer Alley. This tried to balance  
18 that particular concern. So this would be a literature review, field  
19 interviews, documents, and a statutory enforcement report.

20 Does anyone have any strong feelings about environmental  
21 justice sooner rather than later?

22 Yes, Commissioner Wilson.

23 COMMISSIONER WILSON: Commission Wilson does have strong  
24 feelings about it sooner rather than later.

25 COMMISSIONER EDLEY: Memo to file?

1 [Laughter.]

2 COMMISSIONER WILSON: No need.

3 CHAIRPERSON BERRY: Okay. We have heard one person who  
4 would like that pushed back earlier.

5 Does anyone have any feelings about CHIP, the Children's  
6 Health Insurance Program?

7 VICE CHAIRPERSON REYNOSO: In terms of pushing it earlier?

8 CHAIRPERSON BERRY: Yes, or whether we should just leave it  
9 as it is and then see what happens.

10 What do we think about this proposal about the link between  
11 portrayal of the poor and support for public assistance?

12 COMMISSIONER LEE: I do not understand.

13 CHAIRPERSON BERRY: In other words, is the public assistance  
14 battle over, anyway?

15 VICE CHAIRPERSON REYNOSO: No. I do not think it is over.

16 CHAIRPERSON BERRY: Is that battle over? We have got  
17 consensus in the political parties, not that all of us agree, but there  
18 is consensus in the political parties that public assistance--

19 VICE CHAIRPERSON REYNOSO: Ends poverty.

20 CHAIRPERSON BERRY: --was supposed to be a good thing, and  
21 that it ends poverty somehow, although factually that is not correct.  
22 People are still poor.

23 COMMISSIONER EDLEY: Well, you just have not given the  
24 legislation enough time to work.

25 CHAIRPERSON BERRY: I see.

1           COMMISSIONER EDLEY: I think if we are going to do something  
2 on this kind of a problem of images and portrayals, I would rather see  
3 something emerging in this vein out of the media broadcasting stuff  
4 that we are pursuing than on this welfare issue.

5           CHAIRPERSON BERRY: Which is one I did not mention. So I  
6 did not update you guys on the media thing. We have met with the  
7 president of--ABC?

8           STAFF DIRECTOR MOY: ABC.

9           CHAIRPERSON BERRY: --and read the memorandum of  
10 understanding between them and the NAACP, and they are still having  
11 meetings with the Asian-American groups and the Hispanic groups.

12           We talked about all the issues of diversity including  
13 religious diversity with them. We are receiving materials from the  
14 other networks, and we will be having meetings with their heads.

15           The general posture we are taking right now is that given  
16 resource constraints and the fact that they are making these agreements  
17 that we want data and information from them so that we can analyze it,  
18 but that we would then after that monitor what they do and then in 9  
19 months or so or a year come back to look to see what kind of changes  
20 have taken place.

21           We did make very clear to them that we are interested in who  
22 is in front of the camera and behind the camera, but we are also  
23 interested in what they put on the air in terms of how they depict  
24 people and depict the diversity that exists in this country.

25           We are also concerned about their new shows in terms of how



1 they go about deciding who should be the people to talk on the Sunday  
2 talk shows and how do they decide who should be the people who are the  
3 pundits or whatever these people are who are getting paid to sit there  
4 to be on these talk shows and what is the ethnicity and racial makeup  
5 and all the rest with the genders and how do they go about making these  
6 decisions.

7           We are not so much concerned about trying to tell them what  
8 is news. Maybe they can figure out what is news, but when it comes to  
9 "Dateline" and magazine shows like that, the ones that come on, on  
10 Sunday, the talk shows--for example, one of the things we said to them  
11 is that there are people who do not fit their pigeonholes who know  
12 something about issues, that it is not necessary to only have people of  
13 color when you are talking about people of color, and it is not  
14 necessary to only have white women when you are talking about women  
15 talk about "women's issues" and not to have men, but there are people  
16 who know all sorts of things and maybe they should figure out who knows  
17 something rather than going around filling all of these little boxes.

18           They try to shove part of the problem off on the production  
19 companies with the idea that they do not really do anything. They just  
20 buy stuff from the production companies. So one of the things we need  
21 to do is talk to the production companies.

22           I must tell you, though, that just as we have hearings and  
23 engage in other activities, we see change occur before we do reports.  
24 The activities of the coalition and the activities we are engaged in,  
25 in engaging them, once they found out we had subpoena power, much of

1 what you see on the air right before your very eyes is either changing  
2 or will be changing. No one will ever say anything, but people are  
3 very sensitized to all these issues, and there will be change. So it  
4 is worth it.

5 That project, by the way, is not listed anywhere in any of  
6 these projects. This is something that Commissioner Lee raised, and we  
7 have been working on it, just as the South Dakota project was not  
8 something we had written down somewhere. It was one of those  
9 contingencies.

10 I do not think we need to write in the media thing as a  
11 project. We just know we are doing it. We are funding it, and we will  
12 see where it is headed and where it goes. If any of you would like to  
13 come to any of the meetings that we have with these people in the  
14 networks, tell us that and we will let you know and you can come if you  
15 want to.

16 Pushing forward, should we drop the public assistance and  
17 the portrayal of the poor?

18 Yes.

19 VICE CHAIRPERSON REYNOSO: At least we are, of course,  
20 talking way in the future. I think we should leave it because I think  
21 the issue of public assistance, when the reality sinks in that many of  
22 these programs are not working, the issues will resurface in a public  
23 way. So I think for now, we should leave it in. Obviously, we will  
24 review it again next year.

25 CHAIRPERSON BERRY: Okay. Any others aside from the

1 environmental justice that Vicky mentioned that somebody else thinks,  
2 and racial profiling that Christopher mentioned and K through 12?

3 We need to do something on K through 12 in the next 6  
4 months. We need a product that comes out. So staff needs to think  
5 about that.

6 COMMISSIONER LEE: Madam Chair, I would just like to suggest  
7 moving the voting rights project that is a part of it up.

8 CHAIRPERSON BERRY: So we would move the part that has to do  
9 with the census and redistricting.

10 COMMISSIONER LEE: Yes.

11 CHAIRPERSON BERRY: How about if we push the rest of it off  
12 even further because the Voting Rights Act expires in 2007, I am just  
13 told? It was just reauthorized, and we were supposed to be doing  
14 something before and we did not.

15 So why don't we push the Voting Rights Act, the  
16 reauthorization forward into time, and the part that relates to census  
17 and redistricting, keep that earlier.

18 Why don't we put it this way. How soon should we be trying  
19 to do something on the higher education, affirmative action, fallout  
20 from affirmative action, percentage plans, all that? Where should we  
21 have that?

22 COMMISSIONER EDLEY: I think part of the problem here is I  
23 do not understand how the budget constraint works. If, for example,  
24 the higher ed thing, Prop 209, et cetera, can be structured in a way  
25 that it involves minimal staff time and it is a matter of commissioning

1 a couple of papers, that is quite different from if we are talking  
2 about something that really is very staff-intensive and it involves  
3 hearings and all the like.

4 There is also the possibility that you could define a higher  
5 ed thing and let's collect some data and see what happens because you  
6 hear all kinds of numbers about what has actually happened to  
7 enrollments and admissions figures.

8 So I think we ought to do something.

9 CHAIRPERSON BERRY: Hold on, Christopher. Wait just a  
10 second.

11 VICE CHAIRPERSON REYNOSO: If you will excuse us while we  
12 untangle modern communication systems.

13 CHAIRPERSON BERRY: Okay, go ahead.

14 COMMISSIONER EDLEY: I strongly feel that we ought to do  
15 something in the near term, but I think it would suffice if it were  
16 limited. Does that make sense? Do you see what I am saying? We do  
17 not have to do the whole shebang in this particular year, but I think  
18 we need to get our toes in the water if necessary in a way that really  
19 involves just commissioning stuff rather than having five staffers tied  
20 up for a year.

21 CHAIRPERSON BERRY: The most I think we ought to do is--I do  
22 not really think we are going to be able to sit here and put numbers on  
23 each one of these and say if the budget is X, I want to do this, and if  
24 it is Y, I want to do that. I think the most we can do is give the  
25 staff some sense of what we really think is important, which is what we

1 are doing, and how to slice some of these things to get part of it done  
2 now because we think it is really important and to leave the rest of  
3 it.

4 They are going to have to go off and rewrite some of these  
5 proposals and concept papers based on the discussion here, and then  
6 they are going to have to put together another list to give to us, but  
7 they can take the sense of what we have done here to start planning the  
8 budget, which is what George is wanting to do. Then, when we look at  
9 it again, we can make changes as we go along. This is going to be a  
10 while.

11 After the staff figures out how long it is going to take to  
12 do some of this stuff, if they do it as a shortened project, is it  
13 going to be 2 weeks, 3 weeks, or a month or whatever, they have not had  
14 an opportunity to do that because they did not know what we would say  
15 today. So they have to go up and talk about it.

16 So why don't we just give them a sense, and we have.  
17 Financial aid for higher education, do we think that is more or less  
18 important than doing something about the fallout of all of these plans,  
19 what is happening on affirmative action and so on, or should we somehow  
20 connect it to it? That would be one thing.

21 COMMISSIONER EDLEY: Less.

22 CHAIRPERSON BERRY: Or, if they had to do one or the other,  
23 which one would they do?

24 COMMISSIONER EDLEY: To my mind, the civil rights crisis in  
25 higher education right now, the immediate problem is that in light of

1 209 and Hopwood and the reverse discrimination lawsuits, many people  
2 believe that there are lots of institutions that are sua sponte, just  
3 out of the blue, starting to dismantle or cut back on their affirmative  
4 action efforts because they are uncertain about the extent to which the  
5 law permits them to use race-conscious affirmative action or because  
6 they are politically uncomfortable with the affirmative action issue.  
7 So there is a sense that there may be a growing rollback of that sort.

8           If that is the thing we want to tackle, what is going on, is  
9 it good, is it bad, what does the law really mean, then you would  
10 actually, it seems to me, bring the race-conscious financial aid  
11 policies into that same thing because the same body of law governs and  
12 the same kind of political shakiness is operating on boards of trustees  
13 and the like.

14           CHAIRPERSON BERRY: So it is really addressing the crisis  
15 over opportunity in higher education for people of color, Hispanics and  
16 blacks mainly, and under there, we have got the race-conscious  
17 financial aid, we have got the attack on affirmative action and the  
18 percentage plans and all those things.

19           COMMISSIONER EDLEY: How are fights over varying  
20 interpretations of Title VI affecting the admissions and financial aid  
21 practices of colleges and universities, and what can we as a Commission  
22 do to illuminate and clarify the public discussion of those  
23 difficulties.

24           CHAIRPERSON BERRY: Okay. That gives enough guidance for  
25 them to figure out what to do.

1           We have told them what to do about immigration. Well, they  
2 will go through the transcript and figure out what to do with all of  
3 this stuff.

4           Is there anything else we need to do with these projects or  
5 anything else we need to do in the way of planning, Staff Director?

6           Commissioner Meeks?

7           COMMISSIONER MEEKS: I guess I am still not clear, then,  
8 where we put the Native American issues.

9           CHAIRPERSON BERRY: We left them for 2001, and we said that  
10 we are going to do justice as our project and then we would have a  
11 briefing or something about the issues in general to try to sort out,  
12 talk about hunting and fishing, talk about all the housing and all the  
13 other issues, but that the primary project would be that we would have  
14 the justice issue and we would figure out more where that would be, how  
15 that would be and so on.

16           COMMISSIONER MEEKS: But we will make recommendations on the  
17 State report that is coming out.

18           CHAIRPERSON BERRY: Oh, the South Dakota report that we are  
19 doing will be done on time as promised. Is that right? And the State  
20 Advisory Committee will be making recommendations to us, and then I  
21 will be talking to you about it. We will have a response, and then I  
22 and anyone else who wants to will go to South Dakota to release the  
23 report and to talk to people there. That is going to happen when it is  
24 supposed to happen, which is March.

25           VICE CHAIRPERSON REYNOSO: That is aside from the 2001

1 study.

2 CHAIRPERSON BERRY: The other one is the big justice report  
3 will look at other places in Indian Country, other issues other than  
4 the South Dakota one.

5 COMMISSIONER MEEKS: I was just thinking of some  
6 recommendations that I would have coming out of that. It is how we  
7 could look at some of the State courts randomly. Is that something  
8 that would come out of the State Advisory Commission?

9 CHAIRPERSON BERRY: You mean if we decide that one of the  
10 things we ought to do is look at how State courts treat these issues?

11 COMMISSIONER MEEKS: Look at the numbers if we can.

12 CHAIRPERSON BERRY: I am expecting the SAC to recommend to  
13 us that in the case of South Dakota, we ask that that be done. We  
14 could either do it ourselves or we ask Justice to do it. I am  
15 expecting them to do that.

16 One of the things we might do on our own as the justice  
17 issue, the big justice issue you proposed, if need be, is to have that  
18 project be looking at State courts and how they treat Native-American  
19 issues. That would be a Justice project, pick two or three of them in  
20 Indian Country, or maybe go to the ones in South Dakota, those two  
21 State courts where the prosecutors were there.

22 So how that all fits together is the South Dakota report  
23 will be about things that need to be done in South Dakota and Nebraska.  
24 We are working now very hard to get the answers on the data questions  
25 from the FBI. I have called the Deputy Attorney General, and we have



1 been talking about--to get the stuff they promised us.

2 We have gone back to the Civil Rights Division, and they  
3 expect to give us next week sometime the answers to those questions.

4 I will tell you, again, Ruby, that the regional director for  
5 Nebraska--I need to figure out how to handle the issue of getting  
6 Nebraska to set up a detox center in--what is the name of that town?

7 STAFF DIRECTOR MOY: White Clay.

8 CHAIRPERSON BERRY: White Clay.

9 But then we can broaden it, but you already think, you are  
10 saying based on what you have heard, that we ought to be looking at the  
11 State courts.

12 COMMISSIONER MEEKS: I think that would settle a lot of  
13 issues.

14 CHAIRPERSON BERRY: All right. So that is how that all  
15 fits.

16 COMMISSIONER ANDERSON: Madam Chair?

17 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

18 COMMISSIONER ANDERSON: Could I ask whether your attention  
19 on the briefing on the other Indian issues--whether we would be holding  
20 that this year or we would be waiting until 2001?

21 CHAIRPERSON BERRY: Well, given all of the time we have to  
22 do briefings and all of the things we have decided to do briefings on--  
23 and this is supposed to be a 2001 project--I would say that if we have  
24 time during this year, we could do it. If not, it probably would be  
25 early in 2001. When I say time, I mean space.

1 COMMISSIONER ANDERSON: I think if we could do that briefing  
2 toward the end of 2000, that would be good.

3 CHAIRPERSON BERRY: All right. So let's put that as  
4 something we will try to do before the end of 2000.

5 All right. Any other points we need to look at?

6 Yes, Christopher.

7 COMMISSIONER EDLEY: I guess I am following on the same  
8 vein. I am sorry I had to step out for a minute. It is just when I  
9 look at this list and see what is under FY2000, it just looks like 2001  
10 is going to be a lot more fun. We have six or seven meetings left in  
11 2000.

12 CHAIRPERSON BERRY: Let me tell you what else is happening  
13 in 2000. We have zero tolerance. We have the New York police  
14 practices report. After the New York police practices report, we have  
15 the big report revising the national police practices report, "Who Is  
16 Guarding The Guardians?" All of that, plus the Mississippi racial and  
17 ethnic tensions report, is coming between now and this summer. So, if  
18 you are worried that there is not anything--plus, I forgot the equal  
19 opportunities report.

20 VICE CHAIRPERSON REYNOSO: What briefings do we have?

21 CHAIRPERSON BERRY: We have zero tolerance. I do not  
22 remember what we decided to do the next time after that.

23 COMMISSIONER LEE: Voting rights.

24 CHAIRPERSON BERRY: I beg your pardon?

25 COMMISSIONER LEE: Did we agree on voting rights in the year

1 2000?

2 CHAIRPERSON BERRY: Oh, we have to start doing--no, no, no.  
3 Education. The education one that I said we needed to do within the  
4 next 6 months, the briefings that we are going to have are going to be  
5 about those issues.

6 COMMISSIONER EDLEY: Just to generalize from Cruz's point,  
7 it does seem to me--maybe I am mistaken, but I am assuming that at  
8 least putting together a briefing is comparatively speaking a less  
9 burdensome staff activity than generating a report on policing  
10 practices, national, et cetera. I think it would be very helpful to  
11 get some sense over the next 7 months during FY2000, which all of these  
12 very subjects we have been discussing today, are we going to start to  
13 build up our intellectual capital by at least having a briefing.

14 CHAIRPERSON BERRY: Let me repeat, in order to do the  
15 education, K through 12, report that we are talking about having in  
16 some form in the next 6 months, 6 months starting today, the briefings,  
17 most of them are going to have to be directed at those issues, whether  
18 it is choice or whether it is any of these issues, because the briefing  
19 is where we are going to get the bulk of the information that we are  
20 going to use to put together what we are going to put together.

21 Given that it is January now, we have got February, March,  
22 and we have zero tolerance, 6 months will pass very quickly, and we  
23 only meet once a month. So, if we plan to have briefings that will go  
24 into this report on K through 12, then we will have to devote our  
25 attention to that.

1           At the same time that you will be reading, you  
2 Commissioners, the police practices incident report from New York--and  
3 we will have to have a press briefing of some kind in New York when we  
4 do it, when we release it--we will have the zero tolerance. You have  
5 got to read stuff on that, and you have got to think about it. You  
6 will have to read Mississippi and think about that, and then you will  
7 have to read the national report. You will have to read all of these  
8 things and think about them.

9           Then, when we do the K through 12 briefings, you will have  
10 to read the stuff there and think about it because you will have to  
11 think about what we are going to put in these short quick reports, and  
12 the staff will be busy because they will be doing all of this work in  
13 trying to get it finished in addition to the OCRE staff trying to  
14 finish their statutory report.

15           STAFF DIRECTOR MOY: That is the agency review.

16           CHAIRPERSON BERRY: Yes.

17           So I do not think you have to worry about not being busy,  
18 but if you mean the excitement, now that I have named those things,  
19 there were things that were not listed here.

20           The media thing, we will be having meetings about that  
21 still, and staff will be analyzing the data on that, too, even though  
22 it is not listed here, and then there are the SAC reports that you will  
23 have to read. There will be SAC reports coming right along every  
24 meeting.

25           What we can do is have the Staff Director summarize all of

1 this and see where it plugs in, in terms of dates, and then we can see  
2 where we are and see what else we can plug in so we do not have to just  
3 sit here and talk about it and blue sky and not be clear, but I think  
4 that is important to do because we may be able to plug in some other  
5 briefings if there is time to do them.

6 COMMISSIONER LEE: Madam Chair, I am still not clear where  
7 the first part of the voting rights project fit in.

8 CHAIRPERSON BERRY: The first part of the voting rights  
9 project will have to be done before the end of this year.

10 COMMISSIONER LEE: Okay.

11 CHAIRPERSON BERRY: The first part. The other part, next  
12 year. That is because we moved that up. All of the things we moved  
13 up, we are going to try to look at in some way before the end of the  
14 year.

15 We may very well end up having to have more meetings that go  
16 on all day rather than lasting for 2 hours in the morning.

17 Are you making a face, Commissioner Wilson?

18 COMMISSIONER WILSON: Not one that was voluntary.

19 [Laughter.]

20 CHAIRPERSON BERRY: What did you say, Yvonne?

21 COMMISSIONER LEE: So, for the racial profiling project--

22 CHAIRPERSON BERRY: Yes.

23 COMMISSIONER LEE: --that has been moved up.

24 CHAIRPERSON BERRY: Part of it.

25 COMMISSIONER LEE: Part of it.

1           CHAIRPERSON BERRY: The part of it which deals with trying  
2 to look to see what the Federal agencies are doing, and there already  
3 is a report that internally in the administration or some reports in  
4 response to an order the President gave them about what some of these  
5 agencies are doing, and we have part of it here.

6           Staff says: Is there any project to be completely  
7 eliminated? Did we completely eliminate any project?

8           COMMISSIONER EDLEY: We tried the measuring discrimination.  
9 We were going to explore seeing whether we could get the rest of the  
10 Government to do that instead of us, as one tiny one.

11          CHAIRPERSON BERRY: Did we cut out anything else? Portrayal  
12 of the poor? No, because Cruz said since it is there for a later time.

13          VICE CHAIRPERSON REYNOSO: Yes. We will review it again.  
14 That is down for 2003, I think.

15          COMMISSIONER EDLEY: We talked about trying to make the  
16 economic opportunities one more manageable.

17          CHAIRPERSON BERRY: Yes, we did.

18          COMMISSIONER EDLEY: That was a little bit of help, wasn't  
19 it?

20          CHAIRPERSON BERRY: So we downsized that.

21          CHIP, we did not do anything. We just left it.

22          VICE CHAIRPERSON REYNOSO: Any of the matters that have to  
23 be done this year, a considerable number of them will have to be in  
24 terms of forums or something of that sort. Otherwise, they just will  
25 not get done.

1 CHAIRPERSON BERRY: Yes. They will be briefings and  
2 research reports, some of which will be done by people outside the  
3 agency, case studies.

4 Okay. Could I get an overall motion--

5 COMMISSIONER EDLEY: For a drink.

6 CHAIRPERSON BERRY: --for the Commissioners to agree that in  
7 overall terms the staff should follow the guidance as we expressed in  
8 our responses to the various matters that were on the agenda at the  
9 project planning meeting today as they go forward with their planning?

10 COMMISSIONER EDLEY: So moved.

11 CHAIRPERSON BERRY: Can I get a second?

12 COMMISSIONER MEEKS: Second.

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

14 [Chorus of ayes.]

15 CHAIRPERSON BERRY: Opposed?

16 [No response.]

17 CHAIRPERSON BERRY: So ordered.

18 Is there anything else we need to do, Staff Director?

19 STAFF DIRECTOR MOY: I just wanted to ask the project folks  
20 who came up if you had any questions or if you needed clarification on  
21 any questions.

22 CHAIRPERSON BERRY: Do you folks have any other questions at  
23 this moment? You may have some at another time.

24 [No response.]

25 STAFF DIRECTOR MOY: Okay.

1           CHAIRPERSON BERRY: All right. In that case, thank you very  
2 much, and that is the end of the project planning meeting and the  
3 meeting of the Commission.

4           We are adjourned.

5           [Whereupon, at 3:25 p.m., the Commission meeting concluded.]  
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