

U.S. COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING

Friday, March 3, 2000

Washington, D.C.



The Commission convened at 9:32 a.m., in Room 546, YWCA Building, .624 Ninth Street, N.W., Washington, D.C. 20425, Chairperson Mary Frances Berry presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON

CRUZ REYNOSO, VICE CHAIRPERSON

CARL A. ANDERSON, COMMISSIONER, (via telephone)

CHRISTOPHER EDLEY, JR., COMMISSIONER, (via telephone)

YVONNE Y. LEE, COMMISSIONER

ELSIE M. MEEKS, COMMISSIONER

RUSSELL G. REDENBAUGH, COMMISSIONER, (via telephone)

VICTORIA WILSON, COMMISSIONER

RUBY G. MOY, STAFF DIRECTOR

STAFF PRESENT:

KIMBERLEY ALTON
DAVID ARONSON
KI-TAEK CHUN
CONSTANCE DAVIS
BOBBY DOCTOR
JOHN DULLES
PAMELA A. DUNSTON
BETTY EDMISTON
M. CATHERINE GATES
EDWARD A. HAILES, Acting General Counsel
GEORGE M. HARBISON
MYRNA HERNANDEZ
CAROL-LEE HURLEY
TRICIA JEFFERSON
MELVIN JENKINS
LISA M. KELLY
TINA LOUISE MARTIN
JOSEPH MANALILI
PAMELA MOYA
PHILIP MONTEZ
KIRK PERRY
PETER REILLY, Parliamentarian
JESSICA ROFF
KWANA ROYAL
MARCIA TYLER
AUDREY WRIGHT
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

PATRICK DUFFY
CHARLOTTE PONTICELLI
KRISHNA TOOLSIE
EFFIE TURNBULL

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P R O C E E D I N G S

CHAIRPERSON BERRY: The meeting will come to order.

I. Approval of Agenda

The first item is the approval of the agenda. Commissioner Anderson has requested that the subject of the OPM Audit be on the agenda, which without objection, we will add; and Commissioner Lee has requested that the subject of the Supreme Court decision involving Hawaiian nationals, which is called Weiss [ph.] something, which was decided a week or so ago on the issue of whether only Hawaiian nationals could vote in an election there be put on the agenda for discussion.

Without objection, we will add both of those items to the agenda.

Could I get a motion to approve the agenda with the addition of those two items?

COMMISSIONER REDENBAUGH: So moved.

CHAIRPERSON BERRY: A second?

COMMISSIONER EDLEY: Second.

CHAIRPERSON BERRY: All in favor indicate by saying aye.

[A chorus of ayes.]

CHAIRPERSON BERRY: Opposed?

[No response.]

CHAIRPERSON BERRY: So ordered.

Approval of Minutes of February 18, 2000 Meeting

The next item is the approval of the minutes of February

1 18th, 2000.

2 Could I get a motion?

3 COMMISSIONER WILSON: So moved.

4 COMMISSIONER REYNOSO: Second.

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

6 [A chorus of ayes.]

7 CHAIRPERSON BERRY: Opposed?

8 [No response.]

9 CHAIRPERSON BERRY: So ordered.

10 **II. Announcements**

11 The next item is Announcements. The first thing we need to
12 do in terms of announcements is to announce that we promised the good
13 people of South Dakota when we were out there that we would issue the
14 report on the forum in South Dakota within 90 days of the forum. That
15 90 days is up in March, and while we may not do it exactly on the date,
16 given holidays, counting those and everything else, we should issue
17 this report if at all possible in March, as we promised.

18 In order for us to do that, the SAC has just given us the
19 report for consideration. Normally, we would have a month or two--a
20 month--to read the report, think about it and decide whether we would
21 accept it. I would like to ask in this case for the Commissioners to
22 agree that the report, which was Express Mailed to the Commissioners--
23 you probably did not get it, or it was on the way when you were coming
24 here, or something, but you should have it in your offices--that the--
25 that the Commissioners read it--and you may get copies here, those of

1 you who are here, if you wish to read it on the way home.

2 It is a short report, and I would ask if the Commissioners
3 would agree that they would read it right away instead of delaying it,
4 so we can at least try to be on time, and then vote by poll vote
5 sometime within the next 10 days on whether or not they agree to accept
6 it so we can then set up a press conference in South Dakota for any
7 Commissioners who want to go, and issue the report there as we promised
8 people we would do.

9 That's the idea, and I am putting it under announcements
10 because I did not know where else to put it. I guess I could have put
11 it under the Staff Director's report.

12 Yes, Commissioner Meeks?

13 COMMISSIONER MEEKS: Do we need a motion?

14 CHAIRPERSON BERRY: I would need a motion in order to do
15 that. We would waive the rules and would read it immediately, and
16 Commissioners would respond to the Staff Director's office at a time
17 certain within the next 10 days, or by a time certain, as to whether
18 they agree to accept it. That would be the motion.

19 COMMISSIONER MEEKS: I would so move.

20 COMMISSIONER REDENBAUGH: Second.

21 CHAIRPERSON BERRY: Discussion?

22 [No response.]

23 CHAIRPERSON BERRY: All right. Now let's set a date and a
24 time so there is no confusion about when Commissioners would turn in
25 their--today is the 3rd. It is a short report. Could we say by close

1 of business on Monday, the 13th? That gives another weekend and a
2 week. Would people be willing to say that you would call in to the
3 Staff Director's office--you, or your assistant, or someone--by close
4 of business on the 13th, as to your agreement or disagreement with
5 accepting the report?

6 COMMISSIONER REDENBAUGH: I have no problem with that.

7 CHAIRPERSON BERRY: Does anybody have a problem?

8 [No response.]

9 CHAIRPERSON BERRY: Okay. So on Monday, March 13th by close
10 of business.

11 Can we then provisionally--"provisionally" means assuming we
12 get acceptance--pick a couple of dates for a press conference for those
13 who wish to go? It turns out that the only days that I can go to South
14 Dakota in March are the 20th or 21st, one of those days, or the 28th
15 and 29th. Would either of those days, provisionally, be possible for
16 Commissioners, with the understanding that we aren't going to announce
17 any press conference until after we find out if we have people voting
18 to accept the report. I am just trying to get dates on people's
19 calendars so that people will be aware of the dates.

20 Would any of those days work for you, Elsie?

21 COMMISSIONER MEEKS: Yes.

22 Christopher, are you on?

23 COMMISSIONER EDLEY: Yes. I've got a technical problem. I
24 need a phone number that I can call back in.

25 CHAIRPERSON BERRY: Pam, could you go and do something to

1 help Commissioner Edley, please?

2 COMMISSIONER EDLEY: Sorry. The phone in my office is not
3 working.

4 CHAIRPERSON BERRY: Okay. She needs a phone number for you
5 where she can call you right now and give it to you.

6 COMMISSIONER EDLEY: 495-9710.

7 CHAIRPERSON BERRY: She's going to call you right now.

8 COMMISSIONER EDLEY: Thank you.

9 CHAIRPERSON BERRY: Is that okay with people, to consider
10 those dates, and would one or the other set work better? How about the
11 later set? Does anybody have any objection? That gives us more time.

12 VICE CHAIRPERSON REYNOSO: I have more of a chance of making
13 the second set of dates. The first set, I can't make.

14 CHAIRPERSON BERRY: Okay. Why don't we pick the second set,
15 then, since I can make those, for anyone who wants to go. Okay. So it
16 will either be on the 28th or the 29th.

17 We had some discussion, Elsie and I, about where to have it,
18 and the understanding we have is to have it in Sioux Falls instead of
19 in Rapid City. Since we had the forum in Rapid City, and the SAC
20 believes it should be in Sioux Falls because the Native Americans from
21 that side of the State have to go to Rapid City. So the idea is that
22 the ones from Rapid City can now go to the other side of the State--
23 fair exchange, no robbery.

24 Elsie seemed to think that that was okay. Commissioner
25 Meeks, is that all right?

1 COMMISSIONER MEEKS: I think it doesn't really matter where
2 we have the press meeting.

3 CHAIRPERSON BERRY: Okay. So it will be in Sioux Falls.

4 COMMISSIONER REDENBAUGH: Mary?

5 CHAIRPERSON BERRY: Yes, Commissioner Redenbaugh.

6 COMMISSIONER REDENBAUGH: Thank you.

7 I have a very limited time available today, so I would ask
8 if possible to take up Commissioner Anderson's addition to the agenda
9 early.

10 CHAIRPERSON BERRY: Okay. We'll take up that one and the
11 one from Commissioner Lee right after I finish the announcements.

12 COMMISSIONER REDENBAUGH: Okay, thank you.

13 CHAIRPERSON BERRY: The Public Affairs staff has prepared a
14 draft press release that they were asked for last time about the
15 Presidential campaign tactics that Commissioner Lee raised last time.

16 Let me say that when Commissioners who are on the phone
17 speak, you have to identify yourselves, since there are three of you,
18 and the recorder needs to be able to say who is talking.

19 This press release, which we think, or the staff believes,
20 responds to the concerns, says "USCCR Concern Over Use of Racial Slurs
21 in Presidential Campaign." It is very short. This is the staff draft.

22 "The U.S. Commission on Civil Rights is profoundly concerned
23 about the state of race relations and signs of racial and religious
24 division in the Nation. As a result, it is deeply troubled by Arizona
25 Senator and Presidential candidate John McCain's use of a racial slur

1 to describe some of the captors who imprisoned him in North Vietnam for
2 five and a half years as prisoner of war."

3 "The Commission respectfully reminds the candidates that a
4 Presidential campaign significantly affects the Nation's perception of
5 the Government and can set the tone for racial and religious relations
6 for years."

7 "Senator McCain has since apologized and renounced 'all
8 language that is bigoted and offensive.' The Commission urges all the
9 candidates to use the visibility afforded them as Presidential
10 contenders to pledge that they will repudiate the use of any racially
11 slurs or terms. Failing to do so can fan the flames of division and
12 distrust, foster intolerance, and inadvertently encourage acts of
13 prejudice and violence."

14 That is the staff draft. Did I read it slowly enough for
15 those of you on the phone to get the drift, at least, of what it says?

16 COMMISSIONER REDENBAUGH: Yes.

17 COMMISSIONER ANDERSON: Yes.

18 CHAIRPERSON BERRY: Could we have some discussion of this
19 matter? Is this what we want to say, or do we want to say anything--or
20 what?

21 Yes, Commissioner Lee.

22 COMMISSIONER LEE: I think there needs to be some
23 explanation for why the Senator's use of the racial slur on someone who
24 is supposedly overseas, who is not part of this country, is offensive
25 to Americans. Otherwise, they will be thinking what's wrong with

1 calling someone who is not an American--there are people who may think
2 that way, but I do think we need to have some explanation of how
3 certain Americans have been perceived as foreigners and by using
4 certain terms, even though those terms are being used to describe
5 certain foreigners, there are some in the public who may not be able to
6 differentiate between foreigners and Americans--something to that
7 effect.

8 CHAIRPERSON BERRY: Do you mean something like: When public
9 figures make racial slurs against Asians, they lend an aura of
10 legitimacy to anti-Asian attitudes held by many of the public, and they
11 directly encourage anti-Asian sentiment and activity.

12 COMMISSIONER LEE: Yes.

13 CHAIRPERSON BERRY: So that would be to explain why the
14 particular term that was used, although it describes somebody in
15 Vietnam during the war, was offensive.

16 Yes, Vice Chair?

17 VICE CHAIRPERSON REYNOSO: Madam Chair, I think it is
18 appropriate for us to issue a statement like this, although it is
19 always hard--

20 COMMISSIONER EDLEY: I'm back, Madam Chair.

21 CHAIRPERSON BERRY: Okay, Chris. We're talking about the
22 racial slurs in Presidential campaigns statement.

23 COMMISSIONER EDLEY: Okay.

24 CHAIRPERSON BERRY: Yes?

25 VICE CHAIRPERSON REYNOSO: I was just saying that I think a

1 statement of this sort is appropriate for us to issue, but I find it
2 difficult to be writing it at this point, and I do want to point out
3 that the issue of religious intolerance has also come up in this
4 campaign, and I wonder if that should be included in an expression of
5 concern by us.

6 So I guess my suggestion is that maybe the staff could give
7 another shot at drafting this, and maybe if we can't do it by the end
8 of the working day today, it can just be faxed to us so we can get back
9 to the staff and try to work it out in the next couple of days. I
10 think it should be issued while the campaign is going on so it can have
11 some influence.

12 CHAIRPERSON BERRY: Yes, while there are candidates out
13 there involved in the campaign.

14 VICE CHAIRPERSON REYNOSO: Yes.

15 CHAIRPERSON BERRY: The staff tried its hand at a draft
16 thinking that someone might mention religion--

17 VICE CHAIRPERSON REYNOSO: Good for them.

18 CHAIRPERSON BERRY: --and I'll read what that one says.

19 "USCCR is concerned over the emergence of racial and
20 religious tension in current Presidential campaigns." The statement
21 again says we are "profoundly concerned about the state of race
22 relations and signs of increasing racial and religious division in the
23 Nation. As a result, it is deeply troubled by allegations that
24 candidates for the Nation's highest office are exploiting racial and
25 religious tensions for partisan political purposes during the current

1 campaign."

2 "The Commission calls for candidates of both parties to
3 pledge that they will avoid even the appearance of exploiting racial or
4 religious tension. The Commission respectfully reminds candidates that
5 a Presidential campaign significantly affects the Nation's perception
6 of the Government and can set the tone for racial and religious
7 relations for years."

8 "The use of inflammatory rhetoric and the refusal to stand
9 against intolerance can fan the flames of division and distrust,
10 exacerbating social problems and making governance more difficult at
11 all levels. There have been an alarming number of incidents provoking
12 racial and religious tension during this year's campaign. Among the
13 incidents, Republican candidate and former POW John McCain using the
14 word 'gook' to refer to at least some of his Vietnamese captors;
15 Republican candidate George W. Bush visiting Bob Jones University and
16 failing to distance himself from the school's leaders' anti-Catholic
17 rhetoric, and the school's ban on interracial dating; Democratic
18 candidates Al Gore and Bill Bradley soliciting support from the
19 Reverend Al Sharpton and refusing to denounce the African American
20 leader for what many view as his racial demagoguery; numerous
21 accusations by supporters and staff of the various candidates alleging
22 racial or religious bigotry on the part of other candidates."

23 "The Commission urges the candidates to use the strong moral
24 authority of their offices and the visibility afforded them as
25 Presidential contenders to repudiate the use of any appeal to racial or

1 religious bias and to avoid the appearance of countenancing or
2 overlooking such bias in the pursuit of political advantage. Clearly,
3 to do so will inevitably lend an aura of legitimacy to those who
4 practice the politics of division and may inadvertently encourage
5 racism, religious bigotry, and ultimately, violence."

6 Is that the sort of thing you had in mind?

7 VICE CHAIRPERSON REYNOSO: It is indeed.

8 COMMISSIONER LEE: Yes.

9 CHAIRPERSON BERRY: What do people think about that
10 statement?

11 Yes, Commissioner Wilson?

12 COMMISSIONER WILSON: I have just heard this read for the
13 first time, and I may be confusing it, but it seems to me that the
14 statement has confused a number of issues.

15 The first is I think there is--and again I want to state
16 emphatically that I am not a lawyer, so I am not presenting this with
17 any legal awareness in what I am about to say--but it seems to me that
18 there is a difference between calling people "gooks" and using religion
19 in the way that religion has been used in this particular campaign.

20 I don't think the candidates were denouncing Catholics, and
21 it seems to me that it impinges on free speech to denounce the way that
22 has been used.

23 And the third thing is on the denunciation of Al Sharpton.
24 It seems to me again that that would be a mistake to--or, I would be
25 opposed to including that and saying that somebody has to denounce Al

1 Sharpton. If I interpreted that correctly, we are endorsing in a sense
2 a denouncement of Al Sharpton because of his--

3 CHAIRPERSON BERRY: Yes. "Democratic candidates Al Gore and
4 Bill Bradley soliciting support from the Reverend Al Sharpton and
5 refusing to denounce the African American leader for what many view
6 as"--and so on.

7 COMMISSIONER WILSON: Well, it seems to me they have a right
8 to endorse Al Sharpton if they so choose. I mean, I don't see why we
9 have a right to tell them that they have to denounce Al Sharpton--and I
10 am neither a supporter of Al Sharpton nor a denouncer of Al Sharpton,
11 but I think the principle is what we're talking about.

12 CHAIRPERSON BERRY: Well, I was reminded by the staff that I
13 made a statement in a debate on the same subject of what happens during
14 campaigns during the last, the 1992 campaign, when the Commission was
15 considering a statement, and The Washington Post did an editorial in
16 which they commended the statement that I made, which I have forgotten
17 that I made. But the whole point of the statement was that you have to
18 be very careful in drawing a line to make sure that you are not
19 interfering with freedom of expression at the same time that you are
20 telling people not to use slurs or use offensive language or call
21 people names. And because race is an issue as religion is in American
22 life, you cannot tell people not to discuss it or not to discuss their
23 religious convictions or their position on race or anything else. Even
24 if they are ideas that you hate, and you don't like what they say, it
25 is still part of their freedom of expression.

1 So the Commission, especially as a Government agency--even
2 though we don't have any enforcement power, and we can't actually chill
3 anybody's right to do anything, and we don't give anybody any money so
4 we can't really do anything to anybody, except in the court of public
5 opinion--has to be very careful in terms of line-drawing.

6 So I myself have done things outside the official actions of
7 the Commission to denounce all sorts of people for what I have
8 considered as bigotry, but I don't know whether we ought to distinguish
9 between slurs that people use and people stating their views about
10 things.

11 Having said that, Commissioner Anderson?

12 COMMISSIONER ANDERSON: Thank you.

13 I have given some thought to this issue since we discussed
14 it at the last meeting, and I must say that in terms of the two
15 versions of the statements that I have heard today, I like the second
16 version, but I don't think it is a perfect version yet, and I guess I
17 would give you my opinion of where we should come down on this.

18 My recollection is that in 1988, or in the second campaign
19 with President Bush, there was a large concern about the Willie Horton
20 ad. Many people were offended by that, and I think the Commission had
21 a statement or at least a discussion which was directed toward that ad.
22 As I recall, we did not have a racial slur, but it was in my opinion
23 perhaps even more dangerous because it was more sophisticated.

24 Therefore, I think that where I would come from on this
25 issue is to suggest a strong statement that religion or race not be

1 used as an occasion of divisiveness in this campaign. You can use it
2 in a crass way in terms of a racial or ethnic slur by a campaign--and I
3 think we have an example of that; and you can use it in a more
4 sophisticated way in terms of the Willie Horton ad. And I don't know
5 how many of my colleagues watched the Republican debate, but Alan Keyes
6 came out very strongly regarding Donna Brazil's comment about General
7 Colin Powell and J.C. Watts, and I suspect that there are some people
8 who find that that is a more sophisticated use of racial division
9 interjected into a campaign.

10 So there are a number of things that I think we ought to be
11 cognizant of, and I'm not sure that it helps so much to start
12 specifying a speech at Bob Jones or an appearance at Bob Jones or
13 meeting with Reverend Sharpton and being quiet about statements that
14 Sharpton has made in the past or that Bob Jones has made in the past.
15 I think that I would prefer a statement that raises this in more of a
16 general context. I think everybody has a pretty good idea of what
17 we're talking about, but I think it would be good if we addressed it in
18 a broader way so that we cover not only the more crass interventions
19 but also the more sophisticated ones as well.

20 CHAIRPERSON BERRY: To remind us--and staff did a good job
21 of reminding the Staff Director of what we did in 1991 and 1992--what
22 we did in 1992 was that we had a draft letter to President Bush and Dan
23 Quayle as President of the Senate, explaining our concern over the use
24 of racial issues and talking about the campaign, and some of the
25 statements in what I just read to you about the use of inflammatory

1 rhetoric and so on came from that letter. The letter was debated by
2 the Commission on more than one occasion, and we were not able to reach
3 any agreement, and we finally tabled the draft. And when we tabled it,
4 that's when this editorial was written about how that was the right
5 thing for the Commission to do because there was too much fear that the
6 Commission would be seen as trying to keep people from discussing the
7 issues as opposed to slurs.

8 That's what happened then. We never did ultimately agree--
9 and that is what they found by going back into the transcripts--we
10 never did agree on a statement. We debated it, and we debated it, and
11 we argued about it, and there was a letter, but we never did actually
12 send one. But the mere discussion of it had a salutary effect, most
13 people believed from the media accounts, because they thought that the
14 campaigns were reminded of our concern, without us actually admonishing
15 them.

16 We might circulate this earlier letter to you if you are
17 interested in seeing it and the draft that I just read to you and ask
18 the staff to do yet another draft which will not give all the different
19 incidents that occurred but simply say that we are concerned.

20 There is a general one that they wrote which does not use
21 any examples but just--well, let me do this real fast, Commissioner,
22 and then I'll recognize you.

23 In this one, we are concerned over the emergence of racial
24 and religious tensions in Presidential campaigns, and it does not list
25 any incident but just says that we are "profoundly concerned about the

1 state of race relations and signs of increasing racial and religious
2 division in the Nation. As a result, we are deeply troubled by signs
3 of increasing racial and religious division during the current
4 Presidential campaign. The Commission respectfully reminds the
5 candidates that a campaign significantly affects the Nation's
6 perception of the Government and can set the tone for racial and
7 religious relations for years. The Commission urges all the candidates
8 to use the moral authority of their offices and the visibility afforded
9 them as Presidential contenders to repudiate the use of any racially-
10 offensive term and take an uncompromising stand against racial and
11 religious bigotry. Failing to do so can fan the flames of division and
12 distrust, foster intolerance, and inadvertently encourage acts of
13 prejudice and violence."

14 Who was seeking recognition on the phone?

15 COMMISSIONER REDENBAUGH: Commissioner Redenbaugh.

16 CHAIRPERSON BERRY: All right. I'll recognize you and then
17 Commissioner Wilson.

18 COMMISSIONER REDENBAUGH: Thank you.

19 I must say I like the third example.

20 CHAIRPERSON BERRY: The one I just read?

21 COMMISSIONER REDENBAUGH: Yes.

22 My view on these sort of homiletic statements is that they
23 probably do no harm; it is doubtful they do much good, in my view. We
24 probably have some obligation to do something.

25 My problem with the second statement is that it seems to

1 kind of condescend to the American voter, and the political process
2 looks like it is doing a very good job of pointing out these
3 inappropriate or unpleasant comments. The candidates seem to be
4 policing one another fairly well. It seems to be working.

5 So I don't know that there is a need to do much other than
6 something like the third one that you just read.

7 CHAIRPERSON BERRY: Okay.

8 Commissioner Wilson?

9 COMMISSIONER WILSON: I agree with Commissioner Redenbaugh.
10 I think the third draft is perfectly acceptable.

11 CHAIRPERSON BERRY: And then, if we were to pass that,
12 individual Commissioners who have a particular concern could then,
13 speaking off that draft, say that we have denounced all these things
14 and had discussions of whatever the thing was that concerned them. If
15 we could get a unanimous vote to do this, I think it would at least go
16 a long way toward alleviating any concern without seeming to interfere
17 with people's right to discuss whatever it is they wish to discuss.

18 Yes, Vice Chair?

19 VICE CHAIRPERSON REYNOSO: Madam Chair, I am a lawyer. I
20 just want to emphasize the difference between the right to speak and
21 the propriety of speaking. We can't interfere with anybody's First
22 Amendment rights. They can denounce Catholics, they can denounce black
23 people--they have a right to do that. Should they? We are about
24 answering the question should they. So I don't think that out of
25 deference to the First Amendment, we ought not issue a statement. So I

1 am still in favor of issuing the statement--the character and wording
2 is a different matter--I just want to indicate that we ought not to say
3 that just because they have First Amendment rights, we should not issue
4 it.

5 CHAIRPERSON BERRY: Precisely. Agreed.

6 If someone wants to move this statement--the last one--I'd
7 be happy to entertain such a motion.

8 VICE CHAIRPERSON REYNOSO: Madam Chair--I'm sorry--could you
9 read it again?

10 CHAIRPERSON BERRY: I'd be happy to.

11 "The U.S. Commission on Civil Rights is profoundly concerned
12 about the state of race relations and signs of increasing racial"--I
13 would just say "signs of"--"racial and religious division in the
14 Nation. As a result, it is deeply troubled by signs of increasing
15 racial and religious division during the current Presidential
16 campaign."

17 "The Commission respectfully reminds the candidates that a
18 campaign significantly affects the Nation's perception of the
19 Government and can set the tone for racial and religious relations for
20 years."

21 "The Commission urges all the candidates to use the moral
22 authority of their office and the visibility afforded them as
23 Presidential contenders to repudiate the use of any racially-offensive
24 term and take an uncompromising stand against racial and religious
25 bigotry. Failing to do so can fan the flames of division and distrust,

1 foster intolerance, and inadvertently encourage acts of prejudice and
2 violence."

3 In the last paragraph I just read, I would say: "The
4 Commission urges all the candidates to use the visibility afforded
5 them," not "the moral authority of their offices," because some of them
6 don't have any offices that I've noticed. They can "use the visibility
7 afforded them as Presidential contenders to repudiate the use of any
8 racially-offense term and take an uncompromising stand against racial
9 and religious bigotry. Failing to do so can fan the flames of division
10 and distrust, foster intolerance, and inadvertently encourage acts of
11 prejudice and violence."

12 VICE CHAIRPERSON REYNOSO: That's fine.

13 CHAIRPERSON BERRY: Okay. Could I get somebody to move
14 that?

15 VICE CHAIRPERSON REYNOSO: So moved.

16 CHAIRPERSON BERRY: A second?

17 COMMISSIONER WILSON: Second.

18 CHAIRPERSON BERRY: Is there any further discussion?

19 [No response.]

20 CHAIRPERSON BERRY: All those in favor indicate by saying
21 aye.

22 [A chorus of ayes.]

23 CHAIRPERSON BERRY: Opposed?

24 [No response.]

25 CHAIRPERSON BERRY: So ordered. Thank you very much, David

1 Aronson and Ruby and all the staff, Kim and everybody.

2 The next announcement is that there will be ceremonies held
3 in Selma, Alabama, on Sunday to commemorate the 35th anniversary of the
4 Selma Voting Rights March. The President is going down. As you will
5 recall, during that March 7 march, it became known as "Bloody Sunday"--
6 it was before the Voting Rights Act was passed. Some marchers were
7 injured, including John Lewis--there is a famous picture of him being
8 bashed in the head--who is now a Congressman from Georgia. And there
9 was a second march from Selma to Montgomery in support of voting
10 rights.

11 That is occurring on Sunday, and excuse us for the late
12 notice, but if any Commissioners are interested in going, of course,
13 you would be welcome to do so, and further details will be provided to
14 anybody who wants to go. I myself am not able to go, but anyone who
15 wishes to, please inform me.

16 Due to the short turnaround time between Commission
17 meetings, the Staff Director informs us that there is no Staff
18 Director's report or MIS report this cycle.

19 **IV. OPM Audit**

20 Now, we will go to the item concerning the OPM which
21 Commissioner Anderson asked for, unless somebody else has an
22 announcement.

23 [No response.]

24 CHAIRPERSON BERRY: Hearing none, we will proceed to this
25 item.

1 Commissioner Anderson asked that the item concerning the OPM
2 Audit be put on the agenda, and it is on the agenda.

3 Is there any discussion of this item?

4 COMMISSIONER ANDERSON: Madam Chair.

5 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

6 COMMISSIONER ANDERSON: I guess I should begin.

7 I believe everyone has received a copy of my memorandum of
8 February 25, and then there was a response to that by the Staff
9 Director dated the 28th.

10 I must say I find a few of the items not responded to, but I
11 don't want to prolong this discussion tremendously. I think we have
12 had discussions in the past about Commissioner accountability and
13 review of management decisions, I think, by the Staff Director and
14 others, and we have also had discussion of the kind of flow of
15 information to Commissioners.

16 So at one level, I see this matter as an issue of
17 Commissioner accountability and supervision and an issue of the flow of
18 information to Commissioners. I think that that is an issue that
19 especially our newly-appointed Commissioners ought to reflect upon.
20 Whether we want to discuss that today, I leave to their discretion.
21 But I just raise it as a point because I think that they certainly will
22 be on the Commission a longer time than I will, and they will have to
23 deal, I believe, in the future with issues like this, so I think this
24 is an opportunity to think about that for them.

25 In terms of the substance of this, the most pressing point,

1 it seems to me, that I raised in my memorandum and I would like some
2 further discussion on is the third bulleted item, where the OPM survey
3 found that 59 percent of our employees, compared to about 25 percent of
4 employees Government-wide, or a third of employees Government-wide,
5 indicated that they did not feel free to expose waste, fraud and abuse
6 without fear of reprisal. Knowing something about how other
7 departments and agencies work, I know that if that number gets to 10,
8 15 percent--not 59 percent, but 15 percent--managers get very, very
9 concerned and begin taking quick action.

10 So I'd like the Staff Director to address what precisely is
11 being done on this issue, because I think it is a matter of a lot of
12 concern to all of us, or should be.

13 CHAIRPERSON BERRY: What issue? She didn't hear you; that's
14 why I'm asking.

15 COMMISSIONER ANDERSON: The finding by OPM that 59 percent
16 of our employees do not feel free to expose waste, fraud or abuse
17 without fear of reprisal.

18 STAFF DIRECTOR MOY: Well, Commissioner Anderson, I can't
19 answer for all the employees here because the survey was done on a
20 basis that the survey was sent to each staff employee, and they
21 responded without signing their names, which they didn't have to. That
22 is how the survey was done, so I was not privy to those kinds of
23 answers that they gave, but I responded back to your memo, which I
24 received this week, and I really feel that this is an important issue
25 as well, and it is a management issue, so I wanted to be sure that not

1 only you but all the other Commissioners were aware of my concerns that
2 you raised.

3 So again, I would like to reiterate what was said in my memo
4 to you, that the 1999 OPM report was decidedly favorable, especially
5 compared to the 1996 report. In the 1996 report, they found major
6 problems with Human Resources division's--staffing, actions and
7 grievance systems--and as a result, OPM at that time requested that
8 numerous corrective actions be taken. The 1999 report did not require
9 the Commission to undertake corrective actions because there weren't
10 any. They were simply recommendations. And in fact, the October 1999
11 letter--and I am quoting--states: "Overall, we found that CCR's Human
12 Resources Management Program complies with the Merit System principles.
13 We draw your attention to the report's discussion of your successful
14 merit staffing efforts, your excellent record in maintaining a diverse
15 work force, and the work being done to carry out the mission of the CCR
16 in this time of uncertainty."

17 And then, during the November 1999 Commission meeting here,
18 I announced that the Commission would receive the OPM report, and
19 Commissioners could request copies. At that time and up until the
20 February 2000 meeting, no Commissioner responded to my comment or
21 initiated any further discussion of the issue.

22 The Human Resources staff here has worked to resolve many of
23 the issues, and they will continue to look at the OPM's recommended
24 actions. In fact, a lot of these have been moved forward in a positive
25 way, and it was only because OPM suggested these recommended actions

1 that we wanted to do this in a helpful way.

2 There are problems that were noted in a 1996 report and
3 again cited in the 1999 audit report, which were mostly employee morale
4 problems. However, morale is affected by many factors, including the
5 rejection of reports by Commissioners and their criticisms of
6 typographical errors and limited discussion of the substance of the
7 reports. Undoubtedly, these actions are demoralizing to staff, who
8 have worked tirelessly to prepare and submit quality reports to the
9 Commission. But lack of sufficient resources also contributes to the
10 level of employees' morale, as the 1999 OPM report notes, and the
11 Commission's inability to obtain updated equipment and services due to
12 limited funds further exacerbates the employee morale issues. In fact,
13 the Regional Directors indicated yesterday that some of their computer
14 equipment--and mine, too--has frozen when you are trying to prepare
15 statements or reports or whatever.

16 So I appreciate everyone's interest in the Human Resources
17 Division and their operations and functions, and it is my hope that
18 each of you will continue to assist and support this agency as we
19 strive to proceed and fulfill our mission with severely limited human
20 and monetary resources.

21 CHAIRPERSON BERRY: Staff Director, I appreciate your
22 responding to the memorandum by sharing with us and for the record your
23 response, but I would like to ask you, are there any examples of
24 reprisals taken against people who have reported fraud, waste, or
25 abuse? Has anyone reported fraud, waste, or abuse? Are you aware of

1 any such reprisals? Would you mind letting the Director of Human
2 Resources come to the table to answer this question and also have the
3 Director of Human Resources or whoever has the information answer what
4 a staff member would do if they had some example of fraud, waste, and
5 abuse? Do you mind if the Director of Human Resources comes forward?

6 STAFF DIRECTOR MOY: No. This is Cathy Gates.

7 CHAIRPERSON BERRY: You'll need to get a microphone to
8 answer, please, Ms. Gates. Did you understand my question? I am just
9 trying to figure out, first of all, have there been any examples that
10 you are aware of staff members reporting fraud, waste, and abuse and
11 then having reprisals; and then I am going to ask whomever handles the
12 grievance procedures--is that you or somebody else--

13 MS. GATES: That is someone else.

14 CHAIRPERSON BERRY: --that is someone else--and then,
15 secondly, I want to know what would a staff member do if they had an
16 example of fraud, waste, and abuse, insofar as you know; and how did
17 you guys respond to OPM's concerns about that issue.

18 MS. GATES: Okay. The first thing is that we sent out a
19 memo, and the memo goes out to all employees, regarding fraud, waste,
20 and abuse and the number that they can call. There is a hotline that
21 they can call. The hotline calls are totally anonymous, so they can
22 feel free to report any incidents that they feel fall into that
23 category.

24 The second thing is that, no, we have not received any
25 reports during my tenure here of reprisals based on fraud, waste, and

1 abuse.

2 CHAIRPERSON BERRY: Okay. But the main thing is there is a
3 hotline.

4 MS. GATES: There is a hotline; it is a 1-800 number, and it
5 is 24 hours, and it is totally anonymous, so when the information would
6 come back to the Commission, the Commission would not know who reported
7 that.

8 CHAIRPERSON BERRY: All right. Are there any other
9 questions about this that anybody would like to ask Ms. Gates about
10 this issue?

11 Yes, Vice Chair?

12 VICE CHAIRPERSON REYNOSO: I have a question. In light of
13 the facility of reporting fraud, waste, and abuse, what is your notion
14 of why such a high percentage would have checked off, I guess, a
15 questionnaire saying they don't feel free to report that? You must
16 worry about those things.

17 MS. GATES: Well, my only guess is that maybe they didn't
18 receive the memo, or they didn't read the memo, or they may not feel
19 that there is fraud, waste, and abuse.

20 CHAIRPERSON BERRY: Okay, but you have no specific
21 knowledge.

22 MS. GATES: No.

23 CHAIRPERSON BERRY: All you can tell us is that there is a
24 hotline; the memo has been sent out--

25 MS. GATES: Yes, and it is sent out annually.

1 CHAIRPERSON BERRY: Okay. Well, maybe you could send it out
2 every week or something like that.

3 COMMISSIONER ANDERSON: Madam Chair.

4 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

5 COMMISSIONER ANDERSON: Is this Cathy Gates?

6 CHAIRPERSON BERRY: Yes, the head of the Human Resources
7 offices.

8 COMMISSIONER ANDERSON: Great. Well, let me just say that I
9 think she has done a wonderful job. I think if we have a mostly
10 favorable or partially favorable or favorable OPM report, it is due in
11 some large measure to what Ms. Gates has been able to accomplish. So

12 I am not here being critical of what she has been able to do, but
13 my question is--and it is somewhat like Cruz' question, but I direct it
14 to the Staff Director--it seems to me--and I don't think this is Monday
15 morning quarterbacking--but it is simply not sufficient to say what
16 everybody already knows. I would think there is almost no employee in
17 the Federal Government who doesn't know there is a hotline to report
18 waste, fraud, and abuse.

19 But if I received a survey that said that 59 percent of my
20 employees felt afraid to use that hotline when the Government average
21 is somewhere around 25 percent--and even that is too high; if it's the
22 average, then a lot of departments have to be much lower than 25
23 percent--I think I would do one of two things.

24 First of all, I would try to determine whether or not the
25 survey has some credibility to it, and if this is the type of survey

1 that OPM always uses, I think maybe you have to have a supposition that
2 it is credible. And if that is the case, I think I would begin to sit
3 down with my top managers and ask what is going on here. And once I
4 had done that, I would tell them very pointedly: You go to your people
5 and let them know that we have a clear policy, and they should not be
6 afraid to do this, and we are going to enforce this so that that number
7 comes down.

8 And I don't see that sending out a memo every year about
9 something everybody else knows is doing the job. And if people are
10 telling you that they're afraid to report, the fact that we don't have
11 any reports isn't proof that we don't have a problem.

12 So I can't believe, really, that I'm in the same meeting; I
13 would have thought this would have been the kind of serious problem
14 that would have been investigated--and I don't think necessarily it's
15 the result of Cathy Gates' work.

16 CHAIRPERSON BERRY: Does any other Commissioner have any
17 questions or comments about this matter?

18 Ms. Gates wants to say something, and I am interested in
19 Commissioner Anderson's question, because I am interested in how staff,
20 who know about a hotline and know that it is anonymous, and know that
21 you called, and nobody ever found out that you called--why would they
22 tell someone who is doing a survey on staff morale and attitudes that
23 they are concerned about something which specifically, the factual
24 evidence is that there should be no concern?

25 Is this a matter of their general lack of morale and

1 demoralization, so they would answer that way, or is there some other
2 thing that you know of as a human resources expert that might be at
3 play here? If not, then, I guess you don't know, but what is it you
4 wanted to say, Ms. Gates?

5 MS. GATES: First of all, thank you, Commissioner Anderson,
6 for the compliment on our side. Also, I want to go on record that a
7 lot of the improvements that have been made have been also with Tina
8 Martin and Myrna Hernandez.

9 But more importantly, a lot of the Federal agencies have
10 inspector general offices right there on location, by us being a small
11 agency, we do not have an inspector general office as such; therefore,
12 we have to use outside sources. So that could be one of the reasons.
13 If you go to agencies like the Department of Commerce or the Department
14 of Treasury, they have inspector general offices that would go in and
15 investigate these cases right away, and they also have them on the
16 premises; we do not. So that may be a large part of it.

17 CHAIRPERSON BERRY: So maybe they would like to see that we
18 have the resources for an IG for this agency right on the premises,
19 which might give them a greater feeling of security, if I am following
20 your answer.

21 MS. GATES: That is my answer, yes.

22 CHAIRPERSON BERRY: That is a great idea. We should ask for
23 resources from the Congress to set up an IG's office. We had this
24 discussion before--every discussion that happens has happened before
25 with different people, except for me--we did have this discussion once

1 before, I remember, about the IG in Agriculture or somewhere and not
2 having an IG and why we didn't, because we are a small agency and so
3 on. So maybe that would be a confidence-building kind of thing.

4 Anybody else? Commissioner Meeks, and then Commissioner
5 Wilson.

6 COMMISSIONER MEEKS: I guess my comment isn't so much for
7 Cathy Gates, but I would like to offer a couple reasons why staff
8 morale might--one thing is that it is a small agency, so people might
9 not feel like they are as anonymous as they would in a larger agency.
10 That might be one reason for their responses.

11 The other thing, I noticed that in the report, a lot of why
12 staff morale was low was because of lack of resources, specifically,
13 technology. Now, we request a certain budget, and it doesn't seem to
14 get funded--at least, that's what I have been reading--and I do not
15 know--and this is a comment I made last time, too--if the Commissioners
16 then sat down and readjust the budget and ask what are our priorities
17 for this given that we weren't given the resources in time.

18 I know that in my organization, the better equipment we have
19 and all those sorts of things, the more employees feel like they are
20 valued. So if that is a priority, I think that we should adjust the
21 budget and make sure that that is one of the first things on the budget
22 that gets funded is new technology and computer software and hardware.

23 CHAIRPERSON BERRY: Thank you.

24 Commissioner Wilson?

25 COMMISSIONER WILSON: Thank you, Commissioner Berry.

1 My first question, before I get to my larger point, is I
2 would be curious to know--and now I am speaking as an editor and
3 publisher of 25 years--

4 VICE CHAIRPERSON REYNOSO: But not as a lawyer.

5 [Laughter.]

6 COMMISSIONER WILSON: --that's right, not as a lawyer--I
7 never thought I would apologize for not being a lawyer--how the
8 question is worded to come to this, or how the question was worded in
9 terms of disclosing waste, fraud, and abuse without fear of reprisal.
10 Is the question put, "Are you afraid," or do you know how that question
11 was worded?

12 MS. GATES: No--I think they ask, Do you know what to do to
13 report, and then, are you afraid. I think that was somewhere in there,
14 yes.

15 COMMISSIONER WILSON: I'd be curious to know--

16 COMMISSIONER MEEKS: It's phrased in the OPM report.

17 COMMISSIONER WILSON: Oh, is it? Okay.

18 CHAIRPERSON BERRY: Yes, but did it ask, "When you have seen
19 fraud, waste, and abuse in your agency, have you felt able to report
20 it?" No, it didn't say that, I'm sure.

21 COMMISSIONER WILSON: Well, I would like to know how it is
22 worded.

23 CHAIRPERSON BERRY: Yes. It is important to know what it
24 says.

25 COMMISSIONER WILSON: But more to the point, I think the

1 interesting thing which is really the larger issue when it comes to the
2 way the Commission works is the point that you make, Commissioner
3 Anderson, that you highlighted, the first part of your first point,
4 which is that 59 percent of employees concerned, compared to about a
5 quarter, and so on, indicated that their job did not make good use of
6 their skills and abilities and that they were not satisfied with their
7 jobs. That seems to me to be the real issue here, and why is that,
8 rather than looking at the waste and fraud and fear of reprisal,
9 because it could be that one leads to another, that is, if people don't
10 feel happy in their job, they feel afraid to complain about it only
11 because they are fearful. The two seem to me to be totally connected.

12 And more to the point, if there isn't the money, and
13 therefore, the freedom to expand your job in terms of what you are
14 responsible for in terms of undertaking projects or whatever--if the
15 money isn't there, then it can be very emotionally debilitating. And
16 it seems to me that having people feel fulfilled in their job is more
17 the issue here.

18 CHAIRPERSON BERRY: Okay. Are there any other questions for
19 Ms. Gates, or anything else that anybody would like to say on this?

20 [No response.]

21 CHAIRPERSON BERRY: Cathy, I don't hear any more questions
22 for you. Thank you very much for all that you do, you and your staff.
23 We appreciate you very much.

24 Okay. We have aired this issue and discussed it. The point
25 that you made, Elsie, about technology--keep in mind that from the

1 perspective of the staff, yes--and the 1999 OPM report emphasizes this-
2 -that one of the major problems with morale is the lack of updated
3 technology and all the rest--but if we were to divert resources from
4 staffing to use it to buy computers and so on, that would mean that
5 certain positions wouldn't be filled, there wouldn't be any money for
6 awards--in other words, George, if we were to do that, it would mean
7 that money would have to be taken from somewhere else, right, since
8 there is no money out there that we can reach to get.

9 MR. HARBISON: Yes.

10 CHAIRPERSON BERRY: So it may well be that we need to sit
11 down or that George needs to sit down, Staff Director, with you and
12 figure out what the implications of doing that would be, because it is
13 a major issue. And we have made that budget request over and over
14 again.

15 It would seem to me that no matter what we have done about
16 our budget, everyone should see the need for us to have updated
17 software and hardware for people to work with. I mean, I don't see how
18 that could be a political issue unless one believes that there is too
19 much staff here, so therefore we ought to get rid of people and buy
20 computers; I don't know.

21 But I would hope that you would sit down and do that, and I
22 would hope also that we would be mindful of Commissioner Anderson's
23 points about the hotline and the morale questions and the IG issue that
24 Ms. Gates raised and discuss all those to see if those remaining issues
25 in the OPM audit can be addressed, and then tell us in Staff Director's

1 reports. And even if we don't ask you questions, maybe you should
2 emphasize for us, because we may not be paying careful attention, or we
3 may just not ask the questions, but that you are responding to concerns
4 that were raised, and here is what is happening on this aspect. I
5 would ask you to do that.

6 STAFF DIRECTOR MOY: Yes, I will.

7 V. Discussion of Hawaiian Nationals Issue

8 CHAIRPERSON BERRY: Okay. We will go on, if there is no
9 objection, to the Hawaiian nationals issue that Commissioner Lee has
10 asked us to discuss.

11 COMMISSIONER LEE: Thank you, Madam Chair.

12 COMMISSIONER REDENBAUGH: Excuse me. I apologize, but I
13 must make a call now. Thank you.

14 CHAIRPERSON BERRY: Thank you, Russell.

15 COMMISSIONER LEE: Back in 1978, voters in Hawaii voted for
16 an amendment to the Hawaiian Constitution that created the Office of
17 Hawaiian Affairs, or OHA. The purpose of OHA is to hold land in trust
18 which is about one-third of Hawaii's total land mass, for Native
19 Hawaiians whose ancestors had the lands taken away basically by this
20 country.

21 The voters approved the OHA, because the OHA's duty is to
22 manage the trust, to administer the assets that come from this land
23 income. They are also required to administer and manage programs that
24 benefit Native Hawaiians and Hawaiians. Native Hawaiians are the folks
25 who have direct linkage to people who were living in Hawaii in 1778,

1 which is when Captain Cook traveled to Hawaii.

2 "Hawaiian" is a broader term that describes anyone who could
3 make a connection to having any ancestor who resided in Hawaii in 1778.

4 They also called for the OHA to be managed by nine trustees.
5 These trustees would be Native Hawaiians or Hawaiians, and they would
6 be elected by Hawaiians and Native Hawaiians, because after all, OHA's
7 service and purpose is to protect the rights of Hawaiians and Native
8 Hawaiians.

9 Back in 1976, Mr. Harold Weiss , who is a rancher in Hawaii
10 whose family had settled in Hawaii in the 1800s, wanted to be able to
11 vote in the OHA trustee elections, and he was turned away because he
12 did not fit the eligibility requirements to vote. He filed a lawsuit,
13 and he lost in both the State court and the Court of Appeals. He filed
14 an appeal with the U.S. Supreme Court, and last week, the U.S. Supreme
15 Court ruled that the way the OHA elections have been conducted violated
16 Mr. Rice's 15th Amendment right--that is the Amendment that guarantees
17 that all persons will have the right to vote regardless of race.

18 This is not a matter of a voting rights issue. Obviously,
19 the Asian American and Hawaiian community is very, very disappointed
20 and concerned with this ruling, because the way they interpreted it was
21 that the Supreme Court has not looked at the issue of sovereignty; they
22 did not look at the issue of the special and unique history that
23 Hawaiians and Native Hawaiians have and the reason for the creation of
24 OHA.

25 They are also concerned, and I am too, on the impact it is

1 going to have on Hawaiians' civil rights protections, because it is
2 going to impact on how OHA's programs will be managed, how they will be
3 presented, who will benefit from these programs. Right now, OHA has an
4 asset of over \$500 million that goes to educational programs and
5 housing programs that benefit Native Hawaiians.

6 The community really wants this issue to brought on a
7 national level. It is not just a Hawaiian issue because of the way the
8 Supreme Court has ruled on past discrimination and on the issue of
9 sovereignty. And currently, there are over 150 special laws on Native
10 Americans that include Hawaiians, so they are concerned that this
11 interpretation will impact more than just Hawaiians and OHA.

12 I really feel that there is a great urgency involved with
13 this issue, because right now, people are scrambling around, wondering
14 what is going to happen to Native Americans, especially now that we
15 have a separate category on the Census that will be coming up next
16 month.

17 So I would like to not only have a discussion but also ask
18 whether it is appropriate for this Commission to hold at least a
19 national forum to bring national attention to this issue, perhaps
20 working in conjunction with the Hawaii staff, because I am sure this is
21 a major, major issue in Hawaii right now. Everybody is talking about
22 what's going to happen to the 200,000 Hawaiians and also, eventually,
23 what is going to happen to the sovereignty issue that will definitely
24 come up because of this.

25 CHAIRPERSON BERRY: So the sovereignty issue is important

1 for Native Americans generally, and what you said, if I understood you
2 clearly--and I have not really focused on this--is that many of the
3 statutes which involve Native Americans include Hawaiians in the
4 statute.

5 COMMISSIONER LEE: Right.

6 CHAIRPERSON BERRY: I thought, when I read the announcement
7 of the opinion--and I haven't read the whole opinion yet--that it
8 seemed to me that it affected sovereignty issues concerning Native
9 American Indians also, or ultimately could if someone decided that
10 there was something else they could take away from the Indians, if they
11 had anything left, and that therefore, one ought to be concerned about
12 it, since the history of what happened to the Native Hawaiians is a
13 gory, distressing, oppressive history, as anyone knows who knows that
14 history--and if you don't, I would recommend you read it--and what
15 happened, finally, to Queen Liliuokalani and the Native Hawaiians who
16 were trying to maintain their identity in the same way that Native
17 American Indians here on the mainland were treated. It is a sad
18 chapter in American history.

19 So I can see your point, and I had not really focused on it
20 as much as I should, but the question is what should we do. Should we
21 have a forum to consider the implication of all these issues here?
22 Should we have something in Hawaii with the Hawaii SAC, and some of us
23 go out there and talk about it and try to do something? What exactly
24 should we do about it?

25 I think the most we could do is some kind of forum on it. I

1 don't know--Phil, that's your region. What do you think?

2 MR. MONTEZ: It's the biggest region in the world.

3 CHAIRPERSON BERRY: Did you hear Commissioner Lee talking
4 about the Rice case and the Native Hawaiians?

5 MR. MONTEZ: Not quite all of it, but I think we have
6 scheduled a meeting in Hawaii for March 30th, and maybe we can talk and
7 see what the Advisory Committee wants to do about it. I don't know.
8 I'll have to get more details on this issue, but I'll talk with you
9 before I leave.

10 CHAIRPERSON BERRY: Okay. Why don't we do this. My view
11 would be--and let's see what others think--my view is that it is
12 something that needs to be done. It has much broader implications than
13 just for the Native Hawaiians. It would be important even if it only
14 concerned them, but it does have broader implications, so that at the
15 very least, I think we might consider some kind of forum and to look at
16 the impact on all the programs, the general impact of the sovereignty
17 issue. The Supreme Court as I understand it decided that Native
18 Hawaiians were not Native Americans; is that fundamentally what they
19 decided?

20 COMMISSIONER LEE: Yes. That was the majority decision.

21 CHAIRPERSON BERRY: Yes, Commissioner Meeks?

22 COMMISSIONER MEEKS: Well, I would most definitely think we
23 should have something that includes Native Americans and make it a
24 national forum. I mean, this is just one more chink out of the
25 structure that has long been attempted to be destroyed.

1 So I really think that--and I don't know that a lot of
2 Native Americans are aware that this is taking place--but I think it
3 has very broad implications.

4 CHAIRPERSON BERRY: Vice Chair--Mr. Justice?

5 VICE CHAIRPERSON REYNOSO: I haven't read the opinion--I
6 have just read the news accounts of it--but certainly, the Supreme
7 Court was aware of all these arguments, because there was a dissent,
8 where the dissent points to these arguments. So it is not a matter of
9 ignorance. I think it is a matter of--in my personal opinion--the U.S.
10 Supreme Court, as it has so often in recent years, has issued opinions
11 that I think this Commission would consider anti-civil rights.

12 We haven't gotten into those--Judge Higgenbotham was
13 suggesting that we study and maybe issue some statements on the Court's
14 opinions pertaining to the gerrymandering cases, so we would begin to
15 think about what we should do with respect to U.S. Supreme Court
16 opinions, but normally, we haven't commented more on U.S. Supreme Court
17 opinions, but in my view, they have been very, very detrimental to the
18 advancement of civil rights in the last many years, so it seems to me
19 that it is proper to look at those opinions and comment on them.

20 The impression I had from the reports was that the Supreme
21 Court had actually differentiated Native American rights from Hawaiian
22 rights I assume under the theory that that relationship has long been
23 established between the Federal Government and the Native Americans,
24 and this was done independently by a State, and does the State have the
25 same power that the U.S. Government has. I think that was--that is

1 sort of reading between the lines; I haven't read the opinion yet. So
2 I'm not sure that it is going to end up having the same implications
3 for Native Americans in the 48 States. But I think that the
4 implications for civil rights is still very, very important, and I
5 agree with the chair that we should either have a forum or consult with
6 the Advisory Commission to see if something can be done there so that
7 the general public is more aware of the implications of this, and
8 frankly, other U.S. Supreme Court decisions in terms of how they impact
9 the people of this Nation.

10 CHAIRPERSON BERRY: What I would like to do on this one,
11 Commissioner Lee, is to have, as the Vice Chair says, you and the Staff
12 Director and Phil Montez talk about it and get a recommendation from
13 the SAC, since they are going to meet on March 30th, about what they
14 want us to do, and then you can come back and tell us, and we can
15 proceed.

16 But on the broader issue that the Vice Chair raises, the
17 Commission has historically, in recent memory, made all kinds of
18 comments about Supreme Court decisions. My colleagues in the 1980s
19 issued statements printed by the Commission on what they believed about
20 a particular Supreme Court decision or a set of Supreme Court
21 decisions--there was one called, "Tort and Understanding of Stotts" .
22 I can remember all of them--I remember all the dissents I wrote in all
23 of these cases--where they thought this Supreme Court decision is great
24 for the cause of civil rights, and it is going to move us ahead. So
25 the precedent has been established.

1 At the time they did it, I was somewhat befuddled about the
2 Supreme Court doing such a thing, but they thought it was a great idea,
3 and they did it--that was when the Republicans controlled the
4 Commission.

5 So I think that we have precedent, and if we wish to do
6 this, there is no one who can object to our doing it, unless they think
7 that we can't do something that has been done before--and there were no
8 objections to their doing it.

9 I think that it is a great idea, and I would like the Staff
10 Director to talk to OGC, which is trying to beef up its legal staff yet
11 again, and I would like us to do a report on the civil rights decisions
12 of the Supreme Court during the last--how far back should we do--and
13 analyze them in terms of whether they promote or detract from the cause
14 of civil rights as we understand it to be in this country. And I would
15 like to get out such a report in the next 3 or 4 months if at all
16 possible. I think that would be a wonderful thing for this Commission
17 to do--and no one else is going to do it, so I think we have a duty to
18 do it.

19 So, Staff Director, would you consult--is there objection to
20 doing this? What do Commissioners think?

21 COMMISSIONER EDLEY: Madam Chair.

22 CHAIRPERSON BERRY: Yes, Commissioner Edley.

23 COMMISSIONER EDLEY: I think it's a great idea.

24 Specifically on the OHA issue, I want to indicate that I'd like an
25 opportunity to be better informed by some legal experts on the opinion,

1 on the sovereignty issues, on the relationship with Native American
2 sovereignty issues, and the like. I think immediately, for example of
3 Warren Matsuda [ph.], a professor at Georgetown.

4 So my impulse runs less toward the forum than toward a panel
5 doing a briefing for us. But failing that, if there are useful
6 readings that the staff could assemble, I would find that helpful.

7 CHAIRPERSON BERRY: We could do both, Christopher. We could
8 have some local law professors come over and tell us what the opinion
9 means. We could even get a memo from OGC analyzing the opinion and
10 just telling us what is in it. We could do that in short order. But
11 we could get some legal experts on the issues--we need some people who
12 know about sovereignty issues and about Native Hawaiians and about
13 Native Americans who can put it in a frame. The staff, I am sure, and
14 PAU, David, could help pick out three or four people and have them come
15 one day to tell us about the legal issues, discuss those. And then, if
16 we still want to have a forum after Phil and Yvonne and Ruby talk about
17 it, and they want to recommend that, either in Hawaii or here, where
18 people can talk about it, that might be something that we would want to
19 do, and we can wait for their view on that.

20 But I think that getting three or four law professors in or
21 legal experts on these questions is something we could do in fairly
22 short order.

23 COMMISSIONER EDLEY: I think we might want to play with
24 doing things a little bit more formally. For example, I can imagine us
25 having a couple of experts on the legal issues and experts on what the

1 programs are in Hawaii coming in and meeting with staff and
2 Commissioners--and Commissioners who could not attend but want to
3 participate could listen in by speaker phone. I guess what I'm saying
4 is there is a way to get us engaged and get a spark and have a
5 conversation about it without necessarily having it be a formal
6 Commission meeting as such. That's just a thought.

7 CHAIRPERSON BERRY: If all of us are on the phone at the
8 same time, it's a meeting, so whatever we call it, unless we do it one
9 by one, or two or three of us or something like that--it's just easier
10 logistically if you can, without a lot of formality, just ask some
11 folks if they would be willing to come over and sit down at a meeting
12 and take a couple of hours to talk about it. That way, it is legal,
13 and you don't violate any kind of procedural rule or anything.

14 What do you think of that idea, Commissioner Lee?

15 COMMISSIONER LEE: I would just like to add that because the
16 decision just came down last week, I haven't looked at it. I was just
17 briefed by a couple of members in Hawaii. I understand that a group of
18 attorneys in Hawaii right now are preparing an analysis, both a legal
19 and social impact analysis, of this decision for the public. In fact,
20 two of the members are Hawaii SAC members who are working on this.

21 What I would like to suggest because of the timing issue,
22 because of the emotional uproar that this has caused, as you can
23 imagine, in Hawaii right now, I think I would like to have us look at
24 the material that is being prepared right now. My understanding is
25 that it is going to be available very, very soon, possibly within the

1 next week. I want to make sure that each one of us gets a copy of
2 that, that we look at that, and depending on what staff wants to do--I
3 would hate to wait another month for a discussion and then decide on
4 whether we would have a forum or a briefing.

5 I would not be inclined to go for a briefing, because I
6 think--information, we can have--people are so involved in this issue
7 right now in Hawaii that information will be available to us, a whole
8 range of information on sovereignty, on Native American versus Native
9 Hawaiian interpretation. So I would like to suggest that we look at
10 other materials, and then, by the time we get together at the next
11 meeting, decide whether we should have a national forum or something
12 sponsored by the SAC.

13 CHAIRPERSON BERRY: Okay, so you will be responsible for
14 working with the Staff Director to make sure we get the information,
15 and then you will talk with Phil and the Staff Director. So we will
16 await your guidance on this, if there is no objection.

17 COMMISSIONER ANDERSON: Madam Chair.

18 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

19 COMMISSIONER ANDERSON: If in that material, you could
20 include a copy of the Supreme Court opinion, that would be useful for
21 us.

22 COMMISSIONER LEE: Yes.

23 CHAIRPERSON BERRY: Yes, that would be good.

24 COMMISSIONER ANDERSON: I don't generally presume to speak
25 on behalf of another Commissioner, but I feel compelled, since

1 Commissioner Redenbaugh left. Given the fact that he circulated a
2 memo, I believe, March 1st to the other Commissioners, in which he
3 exhibited a pretty strong concern over the continued slippage of the
4 ADA report, I think that, really, this issue ought to be raised in this
5 context.

6 Personally, I have no objection to proceeding with the
7 Hawaiian issue, and I have no objection to proceeding with an analysis
8 of Supreme Court decisions affecting civil rights. But I do think that
9 some thought ought to be given to how this is going to impact the
10 conclusion of the ADA hearing report.

11 I know that many of us come with our own expertise and our
12 own slate of concerns and priorities as members of this Commission, and
13 I think at least the Hawaiian concern perhaps reflects that, but I must
14 say--and maybe it is easier to say this when Commissioner Redenbaugh is
15 not with us--that he has been rather long-suffering in terms of trying
16 to get the ADA report finished and out of here. And I think we owe it
17 to the work that has already been done on the report to make sure that
18 the time line doesn't slip any more than it has. We were looking at a
19 date of December 1999, and now we are looking at a date of January
20 2000.

21 I am assuming that OGC, which is maybe somewhat
22 understaffed, is going to take the lead on both the Hawaii issue, or a
23 major contribution to the Hawaii issue, and also the Supreme Court
24 review. But I think we need to discuss how this impacts the ADA
25 report, and I think we can't let that slip too much more.

1 CHAIRPERSON BERRY: Well, I think several things. First of
2 all, it is up to the Staff Director to decide how to allocate resources
3 to projects. But having said that--and we can hold the Staff Director
4 responsible--having said that, we have a concern about this, and my
5 understanding from the discussion is that OGC would not be doing the
6 Hawaiian thing. It was about a briefing which PAU does; it was about
7 Phil Montez and Yvonne and Ruby talking about a forum which OGC would
8 not do--it would be done by the regional office. That is how we do
9 forums. And then Commissioner Lee came back and said that she would
10 provide from other sources information to us on the legal issue so that
11 it wouldn't have to be done. So that takes that part off the table
12 except for getting us the Supreme Court opinion, which somebody can get
13 us.

14 The Supreme Court issue which we raised would validly be
15 something that came within the province of OGC, and if you want the
16 Staff Director to answer--if she knows now--how she would plan to
17 manage that, since we just suggested it, I will let her do that.

18 Staff Director?

19 STAFF DIRECTOR MOY: Madam Chair, I don't know the scope of
20 the method that would be needed; I don't have a crystal ball.

21 CHAIRPERSON BERRY: But the idea is that--you sent us a memo
22 about ADA which pointed out that the team leader had left, which is the
23 main reason--I think his name is Erik Brown--

24 STAFF DIRECTOR MOY: Right.

25 CHAIRPERSON BERRY: --took another job or got a promotion,

1 and then half the team left for better jobs--lawyers do that all the
2 time--and they are being restaffed, which is one reason why the ADA
3 thing is behind. Is that right, Acting General Counsel?

4 MR. HAILES: Yes.

5 COMMISSIONER EDLEY: Madam Chair, I'm sorry. I've got to go
6 teach.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER EDLEY: Thank you all, and I support Yvonne's
9 formulation.

10 CHAIRPERSON BERRY: And you support doing the Supreme Court
11 analysis.

12 COMMISSIONER EDLEY: Yes, I do indeed.

13 CHAIRPERSON BERRY: Thank you.

14 So why don't we just admonish the Staff Director,
15 Commissioner Anderson, that we do not want to see further slippage in
16 the ADA report while she figures out how to do these other things. Is
17 that okay?

18 COMMISSIONER ANDERSON: Well, I think it's okay, but I
19 really think that we need to polish up that crystal ball, if we can
20 find it, and get a schedule on the ADA.

21 CHAIRPERSON BERRY: Okay. So we're asking you to give us a
22 schedule on the ADA.

23 **VI. State Advisory Committee Appointments**
24 **for Colorado, Georgia and Tennessee**

25 The next item on the agenda is State Advisory Committee

1 Appointments for Colorado, Georgia and Tennessee. Could I get a motion
2 concerning those appointments?

3 VICE CHAIRPERSON REYNOSO: So moved.

4 COMMISSIONER LEE: Second.

5 CHAIRPERSON BERRY: Is there any discussion?

6 [No response.]

7 CHAIRPERSON BERRY: All those in favor indicate by saying
8 aye.

9 [A chorus of ayes.]

10 CHAIRPERSON BERRY: Opposed?

11 [No response.]

12 CHAIRPERSON BERRY: So ordered.

13 **VII. Discussion on Diversity Issues**

14 **in Network Television**

15 The next item is discussion on diversity issues in network
16 television. You have been given, I think, copies of memoranda of
17 understanding that were executed between the networks and a coalition
18 of civil rights groups as a result of complaints about the diversity
19 issues.

20 We had expressed some time ago in a letter to the networks,
21 approved by you guys here in the Commission, our concerns about issues
22 of race and religious diversity in terms of how the issues were treated
23 and what goes on the air. We received--since last night, we got the
24 latest letter--some new letters from the networks, again reminding us
25 that they have given us these memoranda of understanding and talking

1 about their accomplishments to date and what a good job they are doing
2 on these issues and their willingness to work with us to continue as
3 they try to implement the memoranda of understanding.

4 I wanted you to discuss this issue because I had a meeting
5 with one of the networks--I have forgotten which one--and then there
6 were other meetings that were supposed to be scheduled, and the staff
7 has been talking to them. At first, there was general agreement that
8 the networks would give us data and information on their employees and
9 how they go about selecting guests for shows and how they go about
10 deciding how to treat issues of religion and race in the various
11 programs and that they would give us information about how they go
12 about doing all these things, as well as data on their employees.

13 In the discussions that the staff had with them, after a
14 while it became apparent that they really did not intend to give us
15 data insofar as we could understand it and that they wanted to
16 substitute for giving us anything copies of these memoranda and have us
17 rely on those and rely on monitoring whether they did what they
18 promised in these MOUs, with that being the basis of our assessment.

19 The MOUs do not address the issues of religion. They also,
20 in my view, do not provide any data as a baseline for us to look at to
21 decide whether they are doing a good job, a bad job, or what they are
22 doing--although I guess we could tell if they promise to hire a vice
23 president for something whether they in fact hire a vice president for
24 whatever that is, or if they promise to put so many people on the board
25 of directors, if they end up putting them on the board of directors,

1 and I guess we could have staff look at the TV shows and see what kind
2 of people are on them and what they are doing and how they deal with
3 issues and come up with our own report.

4 They were concerned not so much, as I understand it, about
5 issues of freedom of expression or whether we were somehow interfering
6 with that; they were concerned with whether we were requiring them to
7 do something that the FCC does not require them to do since the FCC,
8 after a case that was decided on religious broadcasters--the name of
9 which escapes me right now--they were told by the FCC that many of the
10 data requirements are now voluntary, so they really did not see, one,
11 why we needed the data, and two, why they should provide it, and three,
12 that it might make them vulnerable to other people who thought they
13 should not be collected for some reason or another.

14 So I brought it to you because we seem to be at an impasse
15 here, and the real question is whether we want to permit them to simply
16 proceed with these memoranda and then see what they do; whether we want
17 to say to them that we are willing to watch what you do and make a
18 decision now that you ought to give us the data we want, and we want
19 the staff to negotiate with you about how we get it--but if you don't
20 give it to us by a certain time, we are going to be compelled to ask
21 you for it in a hearing, which means we can subpoena it. We don't want
22 to do that, and we said that at the outset, but if, after a certain
23 period of time you do not, we hold out the option of doing that--or to
24 simply use any other option anybody can think of.

25 But I brought it to you so that you would know where we

1 were, what was going on, and so that you would be able to see these
2 memoranda and be able to make some kind of judgment or give some kind
3 of advice to me and to the staff as to how you would like to proceed.
4 That is why it is on the agenda.

5 Vice Chair?

6 VICE CHAIRPERSON REYNOSO: Well, Madam Chair, as I
7 understand the background, initially, there was an indication that they
8 would indeed provide the data that we would need to know whether there
9 has been any progress. I appreciate good intentions and all that, but
10 frankly, we have been dealing with these folk--I know this was a major
11 subject of our discussion at the L.A. hearings a few months after I was
12 first appointed over 6 years ago. So I hope that they aren't offended
13 if I indicate that I would like to have data, not just broad promises.

14 So it seems to me that if we are serious about knowing
15 whether there is progress, we need the data. Therefore, it seems to me
16 it is appropriate to indicate to them that--if my fellow Commissioners
17 agree--that they provide us the data that we know they have, and if
18 they don't, I think we should vote to have a hearing, probably a very
19 limited hearing, a one-day hearing, where we subpoena the appropriate
20 officials of these companies and the data they have pertaining to the
21 statistics on the personnel.

22 CHAIRPERSON BERRY: Commissioner Lee?

23 COMMISSIONER LEE: I think it is a good start that the
24 coalition has been able to get different agreements from the major
25 networks; but when you look at the MOUs, there are lots of promises and

1 lots of proposed action plans, but it still doesn't give me a clear
2 picture of where they are at this time--where do they need to go; how
3 far do they have to go? Without the data, I have no idea. When they
4 talk about that they would provide one minority internship--compared to
5 what? How is that measured in terms of progress?

6 So I agree with the chair that it is wonderful that they
7 have promised to do all these wonderful things--

8 CHAIRPERSON BERRY: You agree with the Vice Chair.

9 COMMISSIONER LEE: --yes, yes, with the Vice Chair--but at
10 the same time, without accurate data to give me an accurate picture of
11 where they are, it still doesn't answer my question as to where these
12 networks are in terms of diversity and work force diversity.

13 CHAIRPERSON BERRY: Commissioner Anderson, are you still
14 there?

15 COMMISSIONER ANDERSON: Yes.

16 CHAIRPERSON BERRY: Do you have any reaction to all this?

17 COMMISSIONER ANDERSON: Well, yes, I do. I think that there
18 are actually some of the completion dates of these memoranda; there are
19 benchmarks at the end of February, there are benchmarks in June. I
20 think we could ask for data now. We could have a hearing sometime in
21 June or July, or maybe in early fall, and see to what extent they have
22 made good on the benchmarks that they indicated they were going to do.
23 That might be a sufficient follow-up, and bring the signatories into
24 some of these agreements and just see how happy they are and what kind
25 of progress has been made in line with that. If we really want to

1 oversee the implementation of this, that would be one way of doing it.

2 CHAIRPERSON BERRY: Okay.

3 Vice Chair?

4 VICE CHAIRPERSON REYNOSO: Madam Chair, I think that that is
5 a good suggestion, because if we don't have the hearing, say, until
6 about June, by that time, one, it will put pressure on them to actually
7 do some of the things they have said they are going to do, and
8 presumably, we will be interested in what progress they have made, but
9 we can't assess progress without knowing where they started. So I
10 think the suggestion is a very good one, because it hits several
11 purposes.

12 CHAIRPERSON BERRY: Okay.

13 Does any other Commissioner have a comment on this?

14 [No response.]

15 CHAIRPERSON BERRY: All right. As I sense what
16 Commissioners have said, there is consensus that we will inform the
17 networks that the Commission will probably hold a hearing in, I would
18 say, early fall to be realistic, and see how they are accomplishing the
19 benchmarks that they set out in these memoranda, have the signatories
20 in to see what is going on. We will ask them for some data in
21 connection with that hearing, and if they provide it to us before then,
22 so much the better--we don't have to do the hearing if we have all the
23 information--but if they don't, we will have to have a hearing to
24 proceed, and we will follow up in that way.

25 All right. Thank you very much for that.

1 VIII. Discussion of Zero Tolerance Briefing

2 The next item is on the zero tolerance briefing we had and
3 whether there is any follow-up that we want to do. Since the zero
4 tolerance briefing that we had and entirely unrelated to it, kids seem
5 to be shooting each other some more, and they seem to be getting
6 younger. So at least the guns part of this stuff is--but as you know,
7 we were focusing on the whole range of issues related to zero
8 tolerance.

9 I suppose we have some options here. One is to do nothing
10 more and say it was great, we had a good meeting, and we talked at the
11 end last time about the need to do something, and most of the people
12 who were here at that point thought we should do something but we
13 weren't sure what.

14 We could have a forum, and we could ask a couple of SACs to
15 do a forum on all the issues--we are talking about disability as well
16 as race and national origin issues--and have a couple of the
17 Commissioners, or as many who wanted to, go.

18 We could have a hearing at a particular school district and
19 look at the data in the district, look at what is going on at ground
20 level on all the issues that we are concerned about.

21 So there are many different possibilities of things we could
22 do, and the question is how should we proceed. That is the question
23 before us.

24 Does anyone have any particular preference? Do thing--do
25 something--do various things. No one has any preference--yes,

1 Commissioner Lee?

2 COMMISSIONER LEE: Thank you. I think that we definitely
3 need to do something. My concern is that I would like to see something
4 done before the school year is over, so that whatever findings we may
5 have will hopefully have some positive impact for the new school year
6 for the school districts and what-have-you.

7 I like the idea of holding a hearing in a particular
8 district, but my concern is who is going to select the district and
9 what criteria they are going to use in selecting that district, and
10 would that district be truly representative of all the concerns that
11 the community may have.

12 CHAIRPERSON BERRY: If we were to pick a district and do a
13 hearing, we would have to have a proposal from the staff, which would
14 require some research as to where we should go, what would make sense.
15 We could get recommendations from the Regional Directors, and we could
16 then make some kind of decision or have some options about where to go.
17 That would be one thing that we would have to do, clearly.

18 Yes, Commissioner Wilson.

19 COMMISSIONER WILSON: Thank you, Madam Chairperson.

20 I feel strongly that we should have a hearing. My concern
21 is that if we pick a local district that we will be limiting ourselves,
22 because how can we get--maybe we can--but how can we get all the
23 different elements at play in one district? I think this is a very
24 large issue and a complicated issue, and I think it should be on a
25 national level.

1 CHAIRPERSON BERRY: So would you have some kind of national-
2 -gosh--we could have a national hearing here.

3 Yes, Vice Chair.

4 VICE CHAIRPERSON REYNOSO: I just wanted to comment, though,
5 that hearings, at least the way the Commission does them, take a long
6 time. You do pre-interviews, and we would have to deal with General
7 Counsel, which is generally in charge of hearings. My experience has
8 been, to summarize, that it takes a long time--one, to get it done;
9 two, to get the reports issued--we have just heard about some of the
10 other reports.

11 So that surely, in terms of having quick impact, it would
12 not do that. In my experience, hearings are a major undertaking--
13 unless we do a very limited hearing like the one we are talking about
14 with the television companies. So I am not objecting to a hearing, it
15 is just that I think it would have to fit in with the other work that
16 General Counsel is doing. Frankly, I would be surprised if we could
17 issue a report within a year.

18 CHAIRPERSON BERRY: Yes. We have already decided, though,
19 that we are not doing hearings unless we can promise to produce the
20 report within one year after the hearing.

21 VICE CHAIRPERSON REYNOSO: Right. I think it would take a
22 year to have the hearing and then another year to produce it. That has
23 been my experience so far.

24 If we want to do something more quickly, I think it would
25 have to be a forum or something like that.

1 CHAIRPERSON BERRY: We also have to at some point do
2 something--I have suggested this several times, Staff Director--to go
3 over the handbook for hearings, which is ancient, and try to figure out
4 if there is some way to cut the time that it takes. There are certain
5 legal requirements, but there must be some way that we could cut the
6 time from the way it used to be when the Commission had five times the
7 staff and all the rest of it--or three times the staff or whatever--to
8 do a hearing than to do all the steps that it takes now, which take so
9 long to do. It may not be possible, but at least it ought to be an
10 item that ought to be reviewed.

11 So a hearing will take too long--although the issue probably
12 is not going to go away.

13 Yes, Commissioner Wilson?

14 COMMISSIONER WILSON: Thank you.

15 I appreciate what Commissioner Reynoso has said, but I want
16 to say that in a certain way, circumstances are against us in that as
17 these shootings continue, whatever the conditions are under zero
18 tolerance that are questionable, both good and bad, will be
19 intensified. And I do appreciate the fact that hearings will take a
20 long time, and that's fine, but I think we should do something on a
21 larger level that would be effective and where there would be a report
22 that could be issued sooner rather than later.

23 CHAIRPERSON BERRY: Well, the options are that we could have
24 a national forum of the kinds of forums that the SACs have as a
25 national one, with witnesses coming in who are not subpoenaed to give

1 testimony and the public speaking. That is one thing that could be
2 done, and we would have a record--it would be sort of like what we did
3 in South Dakota and what we did on church fires.

4 But the problem there is that it is not fact-finding in the
5 sense that you can use the facts in evidence other than as opinions
6 about certain things--but they are easier to do. And in terms of
7 maximizing resources, it may be something that we ought to do, because
8 you do get the bang for the buck in terms of paying attention to the
9 issue, and you get a lot of people to talk about the issue, and you get
10 experts to come.

11 With a briefing, you don't have the public comment period.
12 With a consultation, we could have papers written, but I'm not sure
13 that that would get us any further along than we were with people
14 coming in to brief us.

15 It is just very difficult to figure out--if it were possible
16 to do some kind of slimmed down hearing, it would make more sense.
17 OGC has on its plate the New York report and Mississippi still hanging
18 out there; we have ADA; we are now talking about a hearing for the
19 networks that we may have to do if they don't cooperate. So we are
20 talking about--it would not be possible to do it until after that.

21 So it sounds like a forum--yes, Commissioner Meeks?

22 COMMISSIONER MEEKS: At a forum, we would still have access
23 to the same kind of data--and I think it would be willingly shared--
24 that we would at a hearing. And our purpose here is to educate
25 ourselves and make recommendations, but to also educate the public and

1 make sure that all the information is presented and shared with the
2 public. Is that right?

3 CHAIRPERSON BERRY: Yes.

4 What about the idea of getting a couple of SACs to hold
5 forums in their States and some of us go, rather than doing it here in
6 Washington?

7 Yes, Commissioner Wilson?

8 COMMISSIONER WILSON: A question. When we hold forums, or
9 when the SACs hold forums, do people come in and testify in the same
10 way that they do when there are hearings?

11 CHAIRPERSON BERRY: Yes, except that they are not sworn.

12 VICE CHAIRPERSON REYNOSO: And they are not subpoenaed, so
13 you don't subpoena documentation and all that. But very often, they
14 are experts who have a lot of the data.

15 COMMISSIONER WILSON: As long as they don't come with
16 cuticle scissors.

17 CHAIRPERSON BERRY: Yes--no cuticle scissors.

18 So why don't we consider--do you have any advice on this,
19 Staff Director?

20 STAFF DIRECTOR MOY: Maybe that might be one of the
21 questions we can pose to the Regional Directors when they come up.

22 CHAIRPERSON BERRY: Okay. We can ask them about SACs.

23 But we are decided--why don't we decide this, that we will
24 have either a national forum or we will have some forums at SACs, or
25 both, on this issue of zero tolerance. Can we get consensus around

1 that--okay, all right--and that we won't hold a hearing as such at this
2 time. All right.

3 The next item on the agenda is the discussion with the
4 Regional Directors, and while they come forward, we'll take a 2-minute
5 break.

6 [Recess.]

7 **IX. Discussion with Regional Directors**

8 CHAIRPERSON BERRY: We will proceed now with the discussion
9 with Regional Directors. We want to welcome our Regional Directors.
10 There was a time at the Commission when I first started here that
11 Regional Directors would come to the Commission meetings. After that,
12 with various budget cuts and changes and whatever, at least one
13 Regional Director would come to the Commission meetings. Since that
14 time, with further budget cuts and various things, no Regional
15 Directors come to the meetings. So I have been here when things were
16 fat, and I have been here when they were skinny and lean.

17 Then we had--I have forgotten when it was; maybe two years
18 ago or so--the idea that if Regional Directors wanted to be on the
19 telephone to listen in, they could, but that was the only provision
20 that was made.

21 I want to thank the Regional Directors for all the work they
22 do with limited resources. It is not easy, especially when you were at
23 the Commission at a time when it had some funds, and then to be at a
24 time when it doesn't and to have to have the small staffs that you have
25 and the large regions that you have to cover. But we have been able to

1 get SAC reports out; you have been able to do that, and you have been
2 able to make a difference with the forums--and even the forums, as
3 those of you who have been around for a long time know, are a recent
4 phenomenon, because there was a time when regions had attorneys and
5 writers and could go out and make investigations--and even if you
6 weren't around as a Regional Director then, it did happen in those--
7 "back in the day," as my nephew always says. I don't know what he
8 means by "back in the day," but he is always telling me: "Back in the
9 day, I know you did so and so, but we don't do that anymore."

10 So we want to welcome you. How are we to proceed with this,
11 Madam Staff Director? What are the procedural instructions you have
12 given? Is this a pre-forum? Is somebody going to present? What is
13 happening?

14 STAFF DIRECTOR MOY: Each of the Regional Directors will
15 identify themselves and their regions and speak for a few minutes, and
16 then you can open up for questions and answers.

17 CHAIRPERSON BERRY: Okay.

18 Please go ahead.

19 STAFF DIRECTOR MOY: John Dulles. We'll go left to right.

20 CHAIRPERSON BERRY: Oh, you are starting with the way they
21 are seated at the table, left to right. Okay. So they chose that
22 themselves--all right.

23 MR. DULLES: One thing I would like to do is be able to
24 answer any questions that the Commissioners might have. I know we have
25 some new Commissioners, and I know that Carol-Lee has put together kind

1 of a background briefing paper that we shared with the Commissioners.

2 Sometimes, I think there is almost a disconnect because the
3 folks at the Commission aren't always aware of what we are doing and
4 how hard we work and how few resources we have, so we do appreciate
5 your support.

6 I think that the recent collaborative effort between the
7 Commissioners and the South Dakota Advisory Committee was a very
8 fruitful and productive exercise, and I think it responds to some sense
9 of urgency and a real basic crisis in confidence in the administration
10 of justice process, and I think that is a very, very important
11 contribution. So I wish to thank all the members of the Commission who
12 participated and worked on that endeavor.

13 I am particularly pleased, Dr. Berry, that we actually beat
14 the 90-day deadline; in fact, we now have a report, and the Advisory
15 Committee worked very hard since they received the transcript, and of
16 course, I helped them, and have put together what I think is a very,
17 very forceful statement of concerns, conclusions and recommendations
18 which you all will be reviewing in the next few days.

19 We look forward to working with you in ensuring that there
20 is a meaningful response to the affected community, because clearly,
21 there are expectations. I was a little nervous and concerned, but I
22 think there are some productive results that can come of that exercise.

23 Just last week, of course, the Attorney General addressed
24 the National Congress of American Indians at their meeting and talked
25 about the President's new initiative, which of course calls for over

1 \$173 million exclusively for law enforcement and judicial improvements
2 in Indian country.

3 So I think there are some opportunities for what this
4 Commission and our Advisory Committee are doing to dovetail and in fact
5 potentially influence the direction--assuming, of course, these funds
6 are made available, but they are part of the administration's budget.

7 I was interested to see that it goes beyond some of the
8 traditional items. There is money for Tribal detention facilities;
9 there is money for alcohol diversion programs, for Tribal Court
10 enhancement, and there is also \$6 million for Tribal criminal and civil
11 legal assistance. I was talking to some folks at the Justice
12 Department, and I think there might be an opportunity to help develop
13 some mechanisms at the Tribal level to assist people who are victims of
14 discrimination.

15 So I am excited about the potential, and therefore I feel
16 very good about the work that you as Commissioners have done and that
17 we have done in our Regional Office and with our Advisory Committee.

18 I also just received a letter last week from Walter McDonald
19 at the ACLU in Atlanta, where they have just filed a major lawsuit
20 against the State of South Dakota, based on the Voting Rights Act,
21 based on the reconstruction--basically, the destruction--of a House
22 District which had been set up to provide for meaningful electoral
23 representation for the Cheyenne River Sioux and the Standing Rock, but
24 as a matter of fact, the compact district that had been established to
25 encourage Native American electoral participation was in fact

1 abandoned, destroyed, and put back into an at-large structure, which
2 will make it much more difficult for Indians to have electoral success.

3 I have reason to believe--I am not certain--but the Voting
4 Rights section of the Justice Department may join in this. But the
5 reason I mention it is that there is very little civil rights
6 enforcement in my Region--and I think I brought this up the last time I
7 was here in November of 1997. Victims of discrimination really don't
8 feel that they have adequate redress for their grievances. They don't
9 believe anybody is listening, and furthermore, they don't believe
10 anybody will do anything about it. There is a sense of futility and
11 hopelessness, and it extends beyond Indian country. I think it is
12 because our region is so sparsely populated, so rural, and I think
13 folks just feel left behind and don't in fact feel that the Federal
14 Government is going to enforce its civil rights. They have very little
15 confidence in the Federal civil rights enforcement structure. That is
16 a major concern in States and localities that don't take it upon
17 themselves to aggressively enforce State civil rights legislation, if
18 indeed they have it.

19 So that is one of the great concerns in my region, that I
20 can't necessarily refer them to an effective State or local human
21 rights commission or even to an advocacy organization or a legal
22 organization, because they don't exist in many of these States, and I
23 am responsible for Utah, Montana, Wyoming, North and South Dakota, and
24 Colorado.

25 Denver is a little different; it is a little bit of an

1 oasis. We do have some resources, as you well know. But once you get
2 about 30 or 40 miles outside Denver, even in the State of Colorado, you
3 find tremendous rural isolation, and I think we have a responsibility
4 to reach out, and that is what we want to do.

5 I think I would rather yield some of my time. I would be
6 happy to let you know what is going on in the five other States--we do
7 have States besides South Dakota, and if at any time you are interested
8 in our activities in those other States, I would be happy to answer any
9 questions. But I particularly want to let you know that we feel very
10 strongly and very positively about the work in South Dakota and
11 certainly appreciate Commissioner Meeks' presence on the Commission. I
12 think that demonstrated that if you have Native American representation
13 at the table, there is going to be a greater Federal response to civil
14 rights issues.

15 So I am extremely pleased, and we will work with you in any
16 way we can. I'd be prepared to answer questions that you might have.

17 Thank you.

18 CHAIRPERSON BERRY: Thank you, John. I had conversations
19 with the Attorney General about the budget items that you have talked
20 about, particularly the alcohol treatment facility needs and other
21 enforcement needs in Indian country. She was very interested in what
22 we have done in South Dakota and what we have found out, and she has a
23 long interest in Native American issues--she pointed out to me that her
24 mother was named an Indian princess by the tribes down in Florida--and
25 she promised me that she would see to it that there were funds

1 available, and with the kind of emphasis that you have talked about.
2 She has already told the Congress of American Indians, because I was
3 going to announce in South Dakota as part of what we do the
4 availability of these funds or these programs. People have heard about
5 that already. They have also been very cooperative in trying to help
6 us get answers to some of the enforcement issues that were raised while
7 we were in South Dakota. It's not perfect, but at least there have
8 been some responses.

9 Our forum made lots of people more sensitive and more aware
10 of the need to do something out there, so we thank you again for the
11 work that you did.

12 Mr. Doctor, please.

13 MR. DOCTOR: Yes, ma'am. Madam Chair, ladies and gentlemen
14 of the Commission, staff members, I am indeed very pleased to be here
15 with you. I bring greetings from the South, a region that continues to
16 be plagued by racial tension, needless to say. Obviously, you have
17 heard a great deal about what is going on in South Carolina as it
18 relates to the Confederate Flag. That issue is beginning to move South
19 into the State of Georgia, a State which also flies on its State Flag a
20 Confederate Flag emblem.

21 As you have also heard, I am sure, racial tensions are
22 obviously adversely impacted by what is going on from an affirmative
23 action standpoint in the State of Florida. I think it is very, very
24 clear that Mr. Connolly and his forces, namely including as his chief
25 supporters in that State the general contractors, who interestingly

1 enough are receiving somewhere in the neighborhood of 95 percent of all
2 the contracts that are being let at the State level and certainly,
3 perhaps even more than that, at local levels, with the possible
4 exception of Miami and that southern Broward area. But obviously,
5 there is a tremendous assault on affirmative action in the State of
6 Florida.

7 I think the forces that be, who obviously are opposed to
8 affirmative action in the country, have been reinforced by the gains
9 and the successes that they have had in California and, certainly in the
10 State of Washington.

11 I am troubled, to be honest with you, about what is going on
12 in the country from a civil rights standpoint. In my region, there is
13 widespread non-enforcement of Title VI of the 1964 Civil Rights Act,
14 which clearly suggests that there can be no discrimination in
15 federally-assisted programs. It amazes me that the Federal Government
16 did not move against the State of California when there were
17 preliminary discussions about Proposition 209. I think that
18 Proposition 209 opened the floodgates to challenges not only against
19 affirmative action, but I think the hidden agenda behind the organizers
20 of that particular effort is to in effect render the civil rights laws
21 and regulations of this country totally ineffective. I think they are
22 moving in that direction, to be honest with you, and they are moving in
23 that direction with a great deal of vigor and success.

24 I have some other concerns, Madam Chair, that we talked
25 about yesterday with the Vice Chair of the Commission. I might add

1 that I had a very lively and passionate discussion with him, and he has
2 agreed to discuss with you all a lot of what we talked about in that
3 particular meeting, so I don't know that I need to reiterate some of
4 the concerns that I have put on the table.

5 But I have a lot of concerns, to be honest with you. I
6 think we are in for some very, very difficult days. I say that because
7 I don't see Federal civil rights laws and regulations being vigorously-
8 -vigorously--enforced. If you were to go from State to State in the
9 Southern Region, you would find again that in many State contracts that
10 are let, minorities are still receiving somewhere less than one percent
11 of those contracts in most of those contracts. Even in the State of
12 Tennessee--your native State, Madam Chair--a State that has,
13 interestingly enough, passed a Title VI law, which is, I think--I think
14 it is the only State; maybe there is one other State--that has such a
15 law. I would like to think that we had a lot to do with that, and I
16 think that that argument can certainly be made.

17 But the bottom line is that even in the State of Tennessee
18 with the law, minorities continue to receive somewhere less than 2
19 percent of the contracts. That is true in practical every major city
20 in the South.

21 But again, the forces who are opposed to affirmative action
22 continue to argue that somehow or other, white males are adversely
23 impacted by these affirmative action laws, in spite of the fact that,
24 again I say, they receive somewhere in the neighborhood of 95 percent
25 of all the contracts that are let.

1 It is an amazing argument. There are some in my region who
2 would challenge that argument by suggesting that there is not just
3 concern on their part about affirmative action, but underlying their
4 efforts is the question of greed; that it is not enough to have 95
5 percent, and the argument could be made that they want all of it. And
6 in past years and in past eras, they have had all of it, but obviously,
7 those days are hopefully behind us.

8 But I do see some retrogression. In fact, I see a lot of
9 retrogression. I see the hate groups, for example, in our region
10 beginning to feel their oats, beginning to have more of an impact,
11 especially given this age of technology, beginning to have more, I
12 think, influence on young people in the region, and that is troubling
13 for me.

14 I think that clearly, we are in the grip of a lack of
15 leadership in the country as it relates to civil rights, both in the
16 public sector and in the private sector. I am troubled by the
17 eradication of the welfare program--we talked with Cruz about that
18 yesterday--a welfare program that obviously benefitted thousands and
19 thousands of children, and the children, interestingly enough, were the
20 majority of the recipients of welfare in this country, in spite of what
21 you may have heard. I certainly don't argue with the need to have
22 every able-bodied citizen in the country work, but at the same time
23 that we were wiping out the welfare program for poor people in this
24 country, we were, interestingly enough, giving what might be aptly
25 described as "welfare" to corporate America, some \$104 billion--that's

1 "billion" with a "b". If you are opposed to welfare, it appears to me
2 that you ought to be consistently opposed to welfare; and if in fact
3 you are opposed to welfare for poor people, you certainly ought to be
4 opposed to welfare for those who in some instances are given Federal
5 consideration and Federal moneys to advertise their products abroad, as
6 if there is that need.

7 So I have these concerns, Madam Chair. I have been with the
8 Commission for going on 33 years now, and I have seen it all. I have
9 had the opportunity to work with SCLC. I have had the opportunity to
10 work with the Virginia Council on Human Relations. I was a student
11 sit-in organizer. In fact, our college, South Carolina State College
12 at that particular time, organized the second major sit-in in the
13 country. We were second to the kids in Greensboro, Jim Clyburn and I--
14 Jim Clyburn who is now Chair of the Black Congressional Caucus and
15 several of the other young people from South Carolina State.

16 I think it is interesting to note that, as the chair has
17 indicated, I have seen the fat times, and obviously, I am witnessing
18 the lean times and perhaps the mean times, because I do think there is
19 a mean spirit out there. There are a lot of people who are hellbent on
20 redefining civil rights in America. Civil rights has all of a sudden
21 become a colorblind society. We have never had a colorblind society,
22 we don't have one now, and I don't anticipate that we are going to have
23 one any time soon. So we might as well get on with the business of
24 recognizing our differences in a positive sense.

25 I have also been giving speeches in my region--a lot of

1 folks prefer to think this is a melting pot that we have in America,
2 but I would prefer to look at it as a salad and that we all bring
3 something to the salad. If you leave out the tomatoes, the salad is
4 not as good. If you leave out the dressing, it is not as good.
5 Certainly if you leave out the lettuce, it is not as good. So we are
6 in effect a salad that I think deserves a great deal of attention to
7 our differences. We don't need to hide the differences; we need to
8 accentuate those differences and make sure that everybody gets a fair
9 shot at what this society has to offer.

10 On that note, I'd be happy to entertain any questions you
11 may have.

12 CHAIRPERSON BERRY: Thank you.

13 Ms. Connie Davis.

14 MS. DAVIS: Well, I don't remember the fat times.

15 [Laughter.]

16 MS. DAVIS: I wasn't here.

17 CHAIRPERSON BERRY: She was a baby.

18 MS. DAVIS: Thanks.

19 [Laughter.]

20 MS. DAVIS: I have only known the lean times.

21 I'd like to focus on my region. Yesterday, Commissioner
22 Reynoso asked a question about timeliness of projects, and I think
23 that's probably the reason why the Regional Directors are here today is
24 because of the Decatur situation, when the Commissioners asked that the
25 Illinois SAC take on the issue of Decatur and zero tolerance.

1 You know that the SAC rejected it, but you are perhaps not
2 aware of the particular reasons. One was that it was in the courts,
3 being litigated. Two, the Department of Education had staff down there
4 already, and the Department of Justice Community Relations Service also
5 was down there. So the SAC decided that we didn't want to trip over
6 each other, that we would be talking to the same people that those
7 other organizations would be talking to.

8 So they rejected the request--one abstention, two for
9 approval, and nine rejections. We did have a couple of SAC members--
10 one wrote in the reason why, and it hinged upon Commissioner Wilson's
11 statement that zero tolerance is a national issue, and they thought the
12 Commission should take it up as a hearing. So you might want to read
13 that statement that was in the package that Nancy Chen wrote about the
14 necessity of doing it on a national level.

15 We have had another prominent issue in racial profiling in
16 Highland Park, Illinois. The City Council has taken up the issue, and
17 we think that we, the SAC, don't really need to go in there, because
18 Juanita Jordan, the wife of Michael Jordan, who are residents there, is
19 leading the charge on that, so we figure we don't have to spin our
20 wheels to do that.

21 I was telling Commissioner Reynoso yesterday that you know
22 what we don't do because we don't have the resources, but I would like
23 to let you know what we do do in the regions.

24 I'm the new kid on the block. Since program year 1992
25 through June 30th of this year, we will have completed 28 reports with

1 three people in the office. It is difficult, and we could do a better
2 job if we had more resources. To give you an indication, with three
3 people in the office, aside from the work, if I am off on leave, or if
4 I have to go to the bathroom and my staff is not there, we have to put
5 the telephones on hold. If Alyce is not there--he is a male--and my
6 secretary has gone to the ladies' room, you have to be careful whom you
7 let in the door. I personally had the experience of having people just
8 come in, and it was a little frightening. So when we are talking about
9 lack of resources, I would like you to consider those types of personal
10 things, that we are not necessarily 100 percent safe, and we do, I
11 think, produce, and I don't know how much more we can do.

12 I would, of course, be willing to take any questions later.
13 Thank you.

14 CHAIRPERSON BERRY: Thank you very much.

15 Ki-Taek, please.

16 MR. CHUN: Thank you for the opportunity.

17 As far as the region-wide update is concerned, I think it is
18 going to take more than the 4 or 5 minutes allocated for 14 States--but
19 more than that, every month, we report on what individual SACs are
20 doing and try to capture the major civil rights developments as they
21 appear on our regional radar screens.

22 But rather than doing that, I'd just like to give you some
23 uplifting information in terms of what one of our SACs is doing. In
24 Vermont, thanks to your special exception for processing and approving
25 the report last year, about 12 months ago--it was on an expedited

1 track, as you recall--we released it, and since then, we have been
2 inundated with requests amounting to almost 2,000 copies from advocacy
3 institutions. This has been gathering momentum that one of the State
4 legislators was persuaded by the arguments and findings in the report
5 and introduced a bill, and about a month ago, they scheduled a hearing.
6 They reserved a small hearing room with a capacity of at maximum 20 or
7 so persons. And it so happened that there appeared over 100 persons,
8 citizens. That in itself was a message to the committee and to the
9 State legislature that this is indeed a real issue and a big issue that
10 the citizens of Vermont are concerned about.

11 What that says to me is that in spite of our limited
12 resources, the SAC is capable and has in some instances been doing
13 something worthwhile. That is something not to be forgotten. I just
14 wish that we could do more of that.

15 Perhaps because they picked up wind of that, one of the
16 staff persons in one of the Congressman's district offices called our
17 office asking for a copy. That reminded me that perhaps as individual
18 SACs release their reports, on release of the SAC, perhaps a delegation
19 of SAC members could visit district offices of members of the
20 Congressional delegation as a way of disseminating and informing them.
21 Perhaps that might as a whole, put together, serve as a reminder to
22 some Members of Congress that the Commission after all is doing
23 something at the local as well as the national level.

24 So that is a bit of uplifting news that I can share with
25 you.

1 Yesterday, I think we spent more than 2 hours discussing
2 various aspects of regional operations, and sometimes we pleaded
3 passionately for some of the changes that we would like to see. You
4 can get a more effective summary or rendition of those points from the
5 Vice Chair and the Staff Director, so I will not deal with that.

6 Rather, let me use my remaining minutes to give one thought
7 or recommendation that perhaps I can make for your consideration. That
8 thought or recommendation stems from the observation that I am sure
9 many of you would agree with. I think the Civil Rights Commission has
10 lost over the past 20 years, unfortunately, that glory and prestige
11 that it once had. I know you have been trying very hard to restore
12 that, and people may disagree on whether we have attained the earlier
13 stage of eminence or not. In my personal opinion, I think we still
14 have some way to go, and I know we are trying very hard.

15 As a solution or as a possible means of achieving that, I
16 would like to suggest one possibility. It is a two-part effort. You
17 recall, Chairperson Berry, among others, that almost 20 years ago, we
18 used to have an annual report called "Status of Civil Rights." It was
19 quickly put together, very accessible, and very readable. I don't
20 think we did it for more than 3 or 4 years, because the leadership
21 changed.

22 I remember I was a project director for one of those, and we
23 used to get quite a bit of publicity and compliments about it, because
24 it was widely available and very accessible. You could pick it up, and
25 by spending an hour or two, you could really get an overall view of

1 what had happened across the Nation over the period that it covered.
2 We selected four or five substantive areas, and we just provided
3 coverage in an accessible and informal context of discussion of the
4 major issues and developments and what was being done.

5 I think the Commission could do that--I remember I had a
6 staff of two or three persons--without much expenditure of human
7 resources, but my suggestion has to do with a counterpart of that--you
8 will remember that I said two parts. While the headquarters offices
9 embark on something like that, as a parallel effort, I think one could
10 conceive of a State-level or local-level or national annual reports of
11 the state of civil rights. Considering the limited resources we have
12 and also being reminded of the delays that many of you are concerned
13 about--and we were reminded of that yesterday by the Vice Chair--maybe
14 one solution might be that we now have a 2-year staggered appointment
15 system by the committees. Assume that individual committees would then
16 embark on a 2-year endeavor--briefings by invited guests, sometimes
17 forums, and so on, briefings and consultations and so on--that would
18 culminate in a fairly well-publicized and orchestrated community forum
19 which serves as an opportunity to gather information as well as being
20 updated by public officials and prominent advocates and so on.

21 Then, the totality of the earlier summaries or briefings
22 prepared by the committee, if any, but at least the transcript of that
23 forum, can be forwarded to the headquarters office.

24 Since they are staggered biannually, in a given year, you
25 will have about half of the States falling into the expiration cycle.

1 It is conceivable that in a given year for one annual report on the
2 state of civil rights from the State or local perspective, you could
3 have headquarters say, or regional staff--perhaps Carol-Lee's office
4 equivalent--produce, with a staff of two persons, I would say, let's
5 say 20-plus-or-minus pages of summary of the state of civil rights in a
6 given State, and then you would have a compilation easily of 20-some
7 States.

8 That is a local accompaniment to the national report, and
9 the next year, it would be the remaining 20-some States that would be
10 covered. So at least in a 2-year cycle, you cover every State--
11 theoretically speaking, that is.

12 If we succeed in doing that and repeat that cycling two or
13 maybe three times, I'd like to think that we would be making an
14 indelible impression on the national landscape, because as of now,
15 except for the Commission on Civil Rights, there is no annual report as
16 such, no annual monitoring. There are reports that some State human
17 rights commissions, the ACLU, and some prominent organizations put out,
18 but they are largely local, and they are more limited to their primary,
19 substantive areas of concern. There is not really State-wide
20 monitoring as such, or nationwide.

21 So there is a huge void, and the citizens, particularly the
22 young generation, who are not, shall we say, scarred or experienced
23 through years of civil rights struggle, do need an access--a readily
24 available, easily understandable access--that they can turn to and
25 learn about what is happening in their States or in their regions--

1 these are the issues--legislative developments, legal developments,
2 major issues in education and so on.

3 As you talk to, say, people who are involved in teaching at
4 high schools and colleges, they beg for teaching materials that are
5 accessible--not the legalese field documents. I think that sometimes
6 that is why some of the reports that SACs produce become best-sellers.

7 So my suggestion to you is that as a way of searching for
8 solutions to be again preeminent, something like that could be
9 considered seriously. Now, given the current resources at the regional
10 offices--I cannot speak for other regions, but for my region where we
11 have 14 States--I like to think that in a given year, between five to
12 seven SACs would be able to hold the necessary preliminary activities,
13 meetings and so on, and then have the culminating events, like
14 community forums, and be able to forward the individual packets for
15 individual States to the headquarters office, if only so the program
16 coordinating unit or some equivalent can put together in a sexy format,
17 in readily understandable language--I think we can do that if we have
18 two or three competent writers. The benefit of such an endeavor would
19 be that it would relieve the regional office, or at least the Eastern
20 Regional Office, from the writing phase, and it would bring about the
21 benefit of immediate visibility and payoff, because within a year, as
22 part of a national report, you have State input. That State input can
23 be stated separately, and individual SACs can promote, disseminate,
24 maybe reach their Congressional delegations.

25 This is what we have done. We wish we could do more, but it

1 is all we can do under the given limitations. That may make it
2 possible for different parts to come together, and together, we might
3 be able to make some small impact.

4 Let me stop there.

5 CHAIRPERSON BERRY: Thank you, Ki-Taek.

6 Phil Montez, please.

7 MR. MONTEZ: I can't say much more about the limited
8 resources. We in the West cover 10 States, all the way from the State
9 of Washington to Texas, as far east as New Mexico, Arizona, Nevada, and
10 of course, including Hawaii and Alaska. Those two States alone take 2
11 days' travel just to get there and back--that is if you want to come
12 home. So it makes it quite difficult.

13 We have four staff people who cover the field. That
14 includes myself, and we have a secretary and an assistant secretary
15 position. Right now, we have a vacancy--we need to hire another civil
16 rights analyst--so I am covering five States myself, and I must say
17 that I'm doing a lousy job, because of the extensive travel and the
18 budget problems.

19 The other thing that we have not been able to do is to
20 provide timeliness of reports, not only to the communities where we
21 hold the forums, but to the State Advisory Committees. The problem is
22 twofold. It is on our end, getting the reports out, and it is on the
23 Washington end, getting the process to go through what they must go
24 through in Washington, such as legal sufficiency--the Commission takes
25 60 days to review a report--and other implications, so that

1 consequently, the timeliness--by the time you get the report out
2 publicly, you have failed a lot in the impact you could make because of
3 the current situation that you should have had it out faster. It is at
4 our end and at the Washington end. I think that that can be improved.
5 I really think it can be improved at the Washington end as well as at
6 our end--I don't know how yet, but I would like to work on it..

7 The other problem we have is that each individual State
8 Advisory Committee feels that they are the only people we serve. If
9 you have 10, they all feel that way. Somebody calls and asks, "What
10 are we doing in Idaho?" and I say "Nothing." Well, that doesn't
11 impress anybody. But to be honest, I have to say that, because we are
12 doing something in Arizona, Hawaii, California, Washington, and Alaska,
13 and with four people, you can't do much more. They can't even go there
14 at the same time.

15 Those are really key problems that we face, and I am forever
16 having to massage SAC chairs. As you know, the problems in California
17 alone would take the whole staff of the Commission; the police problems
18 in Los Angeles that have been exposed--the Commission was there, and
19 you knew it before they did. We have known for 32 years that police
20 have been beating people up, that they have been shooting people, that
21 they have been setting them up, laying the gun on them, you know, and
22 saying--we recently had a killing of a young black man in Clairmont,
23 California, and the police said, "He shot at us." When they got the
24 gun, there were no fingerprints on the gun, they had no evidence of
25 anything, and they found out that the gun belonged to the ex-Chief of

1 Ontario, California. So it was a set-up, and the district attorney
2 refused to take any action.

3 We have recently prepared a letter for the State chair of
4 the State Advisory Committee to send to all elected officials, to the
5 U.S. Attorney and to the FBI on all the statements and recommendations
6 which this Commission made in your last report on Los Angeles. I think
7 they have got to know that we were there raising cane before anybody
8 else.

9 The recent problem where it was recently revealed that the
10 FBI and the Los Angeles Police Department were having the Immigration
11 Department deport people who were witnesses to some of their brutality-
12 -rather than have them testify, there is collusion between the groups.
13 Consequently, the chair has asked me to set up a meeting with the
14 Department of Immigration to see what the problem has been there. We
15 know what the problem is. They work very close together--they are part
16 of the system, and it is a system which is set up to protect each
17 other.

18 Recently, I was elected chairman of the Federal Executive
19 Board. I am working very closely with the new head of the FBI to see
20 what is going on. He is interested in being appointed to a position in
21 the Federal Executive Board, and my position is that he can have it,
22 but we have got to find out what he is going to give us. And I think I
23 have got to have cooperation from him in this kind of thing that they
24 have been doing with the police department.

25 The last thing I want to mention is that recently, in the

1 Federal Civil Rights Digest that we put out, there was a very
2 impressive article on the changing face of America--demographics--how
3 the United States is changing. It discusses that by the year 2030, 75
4 percent of all white people in America will be 65 and older. It is a
5 very interesting article. Several of the State advisory members have
6 asked if several States could get together and do a joint project. In
7 California, we have every ethnic group there is. The project they
8 would like to do is the implications of the changing face of America.

9 Bobby mentioned the hate groups. Ethnic groups do not get
10 along well--and I'm talking about this group doesn't like this group
11 and so on. We need to have some forums, and the Commission might want
12 to get involved. In the past, you know, we were always on the
13 forefront; we were always at the horizon, letting people know what we
14 perceived was going to happen. And now, as Bobby said yesterday very
15 eloquently, we are reacting to things rather than being proactive.

16 So I think that with this project, if we can get it off the
17 ground, we could bring in experts on what the future is with ethnic
18 groups trying to get along. We have tremendous problems just in Los
19 Angeles trying to convince people that they have to learn to live
20 together. There are several groups that are working together.

21 I think that will make a tremendous contribution in the area of
22 civil rights.

23 Other than that, I want to say that the State Advisory
24 Committee in California had great appreciation for the appearance of
25 Commissioner Reynoso and Commissioner Lee at our Sonoma hearing. It

1 gave it much more impact in that forum. I think the report is here in
2 Washington awaiting review by the Commissioners, and we are hoping that
3 we can get it out as fast as--

4 CHAIRPERSON BERRY: We just approved it.

5 MR. MONTEZ: Pardon?

6 CHAIRPERSON BERRY: We just approved it.

7 MR. MONTEZ: Oh. Very good.

8 CHAIRPERSON BERRY: Didn't we approve it--we have it, but we
9 haven't--

10 MR. MONTEZ: Well, if you could expedite it, like you did
11 the one earlier, of John Dulles--only because--

12 CHAIRPERSON BERRY: We actually should, because it has been
13 too long, Phil. We should, and we should set a deadline and do that.
14 I thought we had already approved it. That has been hanging around
15 here forever.

16 MR. MONTEZ: That's all right. As long as you believe it,
17 I'll believe it, too.

18 [Laughter.]

19 MR. MONTEZ: We are getting a lot of heat from Sonoma. The
20 Congresswoman keeps calling.

21 CHAIRPERSON BERRY: Yes, we understand.

22 MR. MONTEZ: It's a stall; we've got to stall. So if you
23 could expedite it, we would really appreciate it. We would like to
24 release it as soon as possible.

25 But I really appreciate it, and I want Commissioner Reynoso

1 and Commissioner Lee to know how much everybody appreciated their
2 presence. It was quite a forum. It was the most exciting one that we
3 have done in a lot of years. We had a room for 200 people, and 600
4 people showed up. In a small community like Sonoma, when the police
5 are shooting everybody, it really made an impact. And I hope that your
6 discussion about Hawaii will also make an impact. I'd like to see the
7 whole Commission go over there, simply because Hawaii is a different
8 place, you know--I still don't understand it, and I have been here for
9 32 years. Bobby Doctor is the only one who was born in the Commission.

10 That's all I have to say.

11 CHAIRPERSON BERRY: Okay, Phil.

12 Melvin Jenkins.

13 MR. JENKINS: Very briefly, Bob is 30-some years, and I am
14 in the class of 1973 along with Carol-Lee, our colleague who is
15 retiring, and I want to make that known for the Regional Directors.

16 MR. DULLES: I am 1973, also.

17 MR. JENKINS: That's right. So we will be riding that horse
18 out in a few more years or sooner if things don't change.

19 Let me be very brief and talk about a couple of key issues.
20 We talk in terms of being on the cutting edge of civil rights. There
21 are still the old, traditional issue of affirmative action, school
22 desegregation, fair housing, and those issues, but there are some
23 cutting-edge issues which we have brought to the table for the
24 Commission.

25 Environmental justice is still one of those issues that we

1 are pursuing in the State of Louisiana. Some years ago, I had the
2 privilege of coming before the Commissioners to defend a report that
3 really shook the chemical industry--

4 CHAIRPERSON BERRY: "Cancer Alley."

5 MR. JENKINS: --exactly--and we are revisiting "Cancer
6 Alley" in a fact-finding meeting in about 2 months. We held a
7 subcommittee meeting last week in Baton Rouge where over 150 persons
8 showed up for a subcommittee meeting on this particular issue.

9 So we have to be ahead of the curve on many issues; -
10 environmental justice is just one of them. We have been in contact
11 with officials from EPA at the headquarters level, and they are
12 chomping at the bit to come down to Louisiana so that they can have
13 some visibility.

14 What I am finding out through a couple of hearings and
15 community forums that we have conducted is that many of the Federal
16 civil rights enforcement agencies do not have the visibility of going
17 out into the local communities. We have been asked--in the recent
18 venture in Waterloo, Iowa, we were asked by the Regional Director for
19 HUD, the Secretary's representative for HUD, to hold a community forum
20 for HUD in that community and introduce persons from the Fair Housing
21 Division of HUD to Waterloo, Iowa. Now, that's ironic. That agency
22 has more money, more personnel, but instead they come to the little,
23 old Civil Rights Commission, the Central Regional Office, asking us.

24 On Monday, I met with eight Federal civil rights officials
25 in the Kansas City region. They in turn again asked that my office

1 hold a series of meetings throughout the four-State area--Iowa, Kansas,
2 Missouri and Nebraska--so they again can go out and meet with the
3 people.

4 What is happening to civil rights enforcement? When you
5 take up the theme that Bobby talked about, and Connie, there is little
6 or no effort being put forth by these Federal civil rights enforcement
7 agencies--and as you well know, there are over 20 separate Federal
8 civil rights enforcement agencies out there, many charged with the
9 responsibilities of Title VI, but they don't have an entre to the
10 community.

11 When you finally introduce these persons to the community,
12 the community wants to sit with them so that they in turn can file a
13 complaint. So what we do as a service to the Federal agencies is to
14 provide a regional guide which includes copies of sample complaints,
15 how citizens can file complaints.

16 When we do that and hold these forums, usually, after the
17 forum, we spend another hour or two for these civil rights agencies
18 sitting with the local citizens. Again, that's an entre, and that's a
19 way of being on the cutting edge of civil rights right now. We don't
20 have to try to reinvent the wheel. Let's take the themes that we have
21 and carry forth and provide an avenue for citizens to file complaints,
22 because without citizens being aware of their civil rights, you aren't
23 going to put any pressure on these Federal civil rights enforcement
24 agencies.

25 It is the same thing with EEOC. One of the primary things

1 that we noted back in the seventies and eighties was that EEOC did not
2 go out into the community, and they still don't go out into the
3 community. Therefore, it is up to us to provide that entre.

4 So that is what we are trying to do, is to stay ahead of the
5 cutting edge in my region.

6 Thank you.

7 CHAIRPERSON BERRY: I'll see what Commissioners have to say,
8 but first, I want to make a few comments in response to what you said.
9 Usually, I wait and let everybody else talk first, but before I forget
10 it--first of all, the regional offices and the SACs--the SACs are
11 volunteers, as we all know; they are doing this out of the goodness of
12 their hearts and out of their own hides, and we should have a lot of
13 respect for them for doing that--but the SACs and the regional offices
14 are a resource in many ways that you have talked about, but one, I
15 wanted to clear up.

16 I have discovered in my time at the Commission that it
17 doesn't matter who is already out there, what agency, whether CRS or
18 whatever--it doesn't matter who it is out there, they all have
19 different functions--the SACs perform a very useful role in having
20 these forums or having a proceeding where people can come and speak,
21 where the agencies can come--even some of the agencies that are out
22 there that don't have the same kind of access to the communities. We
23 found that in South Dakota, we found that when we did the meetings on
24 church fires--we find that everywhere we go. So I don't think any SAC-
25 -and I'm not picking on anyone in particular--but I don't think any SAC

1 should believe that because somebody else is out there already that
2 that is a good reason for them not to do something. The role is very
3 different. The Commission has the ability, and sometimes, because we
4 are in such a small agency, and we have all these resource problems
5 that pain us greatly, we forget--we, Commissioners, we, the staff,
6 everybody here--how potent and important a role like that can be if you
7 use it.

8 The folks who are against civil rights know how potent it
9 is, which is why they would like to control the agency. But if you use
10 the power that you do have effectively, you can bring visibility to
11 issues in a way that nobody else can.

12 Also, it is important for Commissioners to go out to places,
13 because when Commissioners do come, it is not like walking around here
14 in Washington. When you go to wherever it is out there, to whatever is
15 happening, people are impressed with your interest and who you are--the
16 eagle arriving--and they are also impressed that you took the time and
17 that you will come back and air their concerns. You find more
18 cooperation from local officials and everything else. We all know
19 that.

20 So I would hope that the SACs and the Regional Directors
21 would continue to understand that, and when we on the Commission ask
22 you if you are willing to take up something, it is because we perceive
23 that it is an appropriate role out there, that you are the place that
24 could air it, and we have demonstrated, I think, even with limited
25 resources, that the staff and the Staff Director here at headquarters

1 are willing to help on some kind of emergency basis to try to switch
2 priorities or do something on important issues.

3 So while we complain about resources, we should keep that in
4 mind.

5 The other thing I wanted to say is on behalf of Commissioner
6 Edley, who is teaching a class--that is why he had to get off the
7 phone; they make him teach for his salary up there at the university--

8 VICE CHAIRPERSON REYNOSO: Very unfair.

9 CHAIRPERSON BERRY: --yes--he was very concerned about how
10 SACs are appointed and had some concerns about the tenure of some of
11 the people on the SACs who seemed to have been on there for a long time
12 and whether there were attempts to try to get new people, how this
13 process worked, and whether Regional Directors were mindful of all the
14 concerns about who should be on the SAC.

15 I explained to him that you were mindful and that part of it
16 is that SAC members are volunteers and that, first of all, not
17 everybody wants to be on a SAC, and secondly, people who have
18 experience sometimes can be very valuable even though they have been on
19 there for a long time.

20 But I did want to express on his behalf the concerns about
21 making sure that SAC members are people who might be at the cutting
22 edge of whatever is going on in their States so they would be able to
23 reflect that in the meetings.

24 Do any of you have any reaction to that concern of his?

25 Yes?

1 MR. JENKINS: I do, and we are very mindful of that. To
2 give you an example about experience, we are getting ready to
3 reappoint--we have a packet coming to you from Oklahoma, where we asked
4 four or five people to serve as chair--but I am going back to Dr. Earl
5 Mitchell, who has served as chair for a number of years. Because of
6 his valued experience, we want to bring him back. We tried to solicit
7 other people to take over the chair, but most of them said, "No, I
8 don't have the time." Dr. Mitchell has been there since the sixties, I
9 believe, but he is a very valued person.

10 We are conscious of what we have to do in terms of
11 recruiting members for the SAC. That is why we have to go through a
12 checklist and all of that. But we are finding that it is very
13 difficult to recruit particularly younger persons. One, they are
14 trying to build their careers; they are trying to build families--
15 things of that nature which impinge on the time that we want them to
16 devote to the Advisory Committee process. Therefore, we sometime have
17 to go to another venue to find people to serve on the Advisory
18 Committees.

19 That has been my experience, and Oklahoma is a very vivid
20 one that stands out in my mind with Dr. Earl Mitchell.

21 CHAIRPERSON BERRY: Thank you.

22 Yes, John?

23 MR. DULLES: I have a concern about the policy requiring
24 what I refer to as a right of appeal. In Colorado, when the Colorado
25 Civil Rights Commission replaces people or gets new members, they hold

1 a ceremony and honor the outgoing member and might give them a plaque,
2 recognizing their contributions, and then they appoint new people.

3 We cannot do that. If I have a SAC member who has been on
4 for 20 or 30 years--and maybe contributed very valuable services--but
5 it is time to re-energize our committees and get some new young people
6 on--because I think it is important to bring young people into the
7 civil rights movement who have had little experience and weren't around
8 in the sixties, as I was and as some of us were, not all of us. But I
9 also find it very offensive to have a requirement that someone who has
10 served maybe 20 or 30 years and has been a faithful member--I don't
11 want to send him or her a letter saying: We are proposing that you no
12 longer serve on the Committee, and if you disagree, file an appeal
13 with the U.S. Commission on Civil Rights.

14 I won't do that, Dr. Berry, and therefore, it is proving
15 difficult in some of my States to bring in new people, because people
16 who have served for 20 or 30 years and maybe longer, I would never
17 subject them to that kind of treatment. I would give them a plaque and
18 honor them, but I'm not going to send them a letter giving them the
19 right to appeal their proposed replacement on the Committee.

20 I think that at some point in time, maybe the Commission
21 should reconsider that policy. I know why it is there. I was in
22 California with Phil, so I am familiar with some of the problems that
23 it may have brought about. But I think it may be time for this
24 Commission to reexamine that policy.

25 MR. MONTEZ: But there are also some members who are

1 ineffective, who aren't doing anything, and when you tell them that you
2 are no longer going to recommend their reappointment, they get very
3 belligerent and say, "I am going to appeal to the Commission." And
4 they haven't done anything. So that is a problem. I don't agree with
5 the appeal process either.

6 CHAIRPERSON BERRY: Are there any of you who think it should
7 be retained?

8 MR. MONTEZ: Pardon?

9 CHAIRPERSON BERRY: Do any of you believe it is a good
10 procedure and should be retained--because the Commissioners who don't
11 know this know that this procedure hasn't been around for a long time,
12 and it came up as a result of some people who complained that they
13 wanted to stay on the Commission but were being kicked off because of
14 their views about something or another--I have forgotten what it was,
15 about civil rights or about a report or about something--and the
16 Commissioners passed this policy.

17 I happen to think it is a bad policy, too, personally. I
18 think that if people want to appeal, they can write a letter to us and
19 appeal anyway and tell us that there was something wrong with what
20 happened. But the idea of simply telling people, instead of thanking
21 them for their service, that "You have a right to appeal," as if there
22 is somehow some idea that you have a right to be on the Civil Rights
23 State Advisory Committee forever and ever, doesn't make any sense.

24 So I think we ought to say that we are going to revisit the
25 issue, and we ought to revisit it at some point and have a discussion

1 of it when we can get copies from the Staff Director of what the
2 policies are, what the issues are, so people can read it themselves and
3 think about it. So we will do that.

4 Yes, Ki-Taek?

5 MR. CHUN: Just a couple of reactions in response to that.
6 I can well appreciate Commissioner Edley's reminder that, perhaps
7 ideally, we would like members to be persons of some stature and
8 prominence--and that is very true. A good example is in Vermont. The
9 State Advisory Committee chairperson is a former Attorney General, so
10 he has lots of leverage and connections and networks, and he can sort
11 of push the button. Indeed, in another State, because we believe in
12 that, we are trying to recruit a former Governor in one of our SACs.

13 While that is going on, we also find out--this is the other
14 side of the coin--that some of the good people that we would like to
15 recruit are so good that they begin to ask you, "If I were to agree,
16 what would my commitment be?" and they ask how often do we meet, what
17 kind of resources are there that we can count on, and you have to be
18 factual and honest. You say, well, I think the mandate now is once a
19 year, and we try to meet twice a year--sometimes we succeed in doing
20 that; sometimes it is three times, but if we meet twice a year, I think
21 we are doing fine. And the staff resources are about 10 weeks per--and
22 then they know what is coming, and oftentimes, they turn us down.

23 I have just had a very painful experience in Connecticut,
24 where I had been trying so hard because of the racial violence. The
25 Asian American person--I finally found a very prominent attorney, and I

1 thought he was persuaded, but just yesterday or the day ago, I received
2 a call saying consider him maybe the next time around but not this
3 time. I think what he meant was that it was not worth his time, to be
4 honest with you.

5 What this says is that as the stature of the Advisory
6 Committees in terms of activities and the committee members as a whole
7 rises, then it will become easier proportionately for us to recruit
8 people of the same caliber and reputation. But until we can do
9 something so that we can ratchet up the reputation and the prestige of
10 the committees as a whole, I think we are just succumbing to this.

11 On the other point about the sort of eternal tenure and so
12 on, I do remember that once or twice, Carol-Lee's office submitted,
13 perhaps in connection with the subcommittee deliberation that
14 Commissioner Redenbaugh chaired, a memorandum which suggested that we
15 consider term appointments--that is, 6 years, 8 years, whatever your
16 pleasure--rather than open-ended, implying an open tenure.

17 What John is saying and what some of us are saying is that
18 there is a problem. There is that ingrained expectation, and it is an
19 insult and kind of shows--when you write that letter of appeal to the
20 departing or about-to-depart member, it shows that we have internal
21 problems, and that is why we are resorting to this process. It is very
22 awkward, to say the least, let alone embarrassing.

23 So I recommend that the Commission revisit and reconsider
24 this issue of term appointment as well as of appeal process--retention
25 of that.

1 CHAIRPERSON BERRY: Okay. The other thing I want to say
2 before I recognize others is that, Phil, when you mentioned the Los
3 Angeles report, it is clear from the media accounts of the Los Angeles
4 Police Department that the media has bought the argument that they
5 didn't know that all of these problems existed before in the police
6 department--with the report the police put out the other day. And as
7 you pointed out, we made many of those recommendations and highlighted
8 the same problems, in particular with the undocumented and what they
9 were doing with the INS and what they are doing on all those issues,
10 and made recommendations when we issued that report last year.

11 And you may recall that the L.A. Times reported that the
12 police said that the problems had all been solved, and that the ones
13 that we cited were stale issues, because the report was already out-of-
14 date, and that they had already solved these problems, and that they
15 didn't know what we were talking about.

16 And the L.A. Times did an editorial, as I recall, saying
17 that our recommendation for the special prosecutor was not necessary
18 because the regular prosecutor was doing everything, and everything was
19 fine and dandy.

20 So I think it is correct to have the SAC chair do what you
21 suggest, but I also think you may need to--and I'd be willing to come
22 out if you want me to and have a press briefing to simply tell them
23 that--release what your SAC chair is sending, and simply say to the
24 public in Los Angeles that the police department is alleging that they
25 didn't know anything about all this, and now they are acknowledging it,

1 and they are going to take care of it. They have known about this from
2 the Christopher report, from the stuff that we did--you should say
3 that--from all of these reports, and their current acknowledgment is
4 less believable since they are telling us they didn't know, and we
5 already knew they knew. So I think we ought to do that and highlight
6 that.

7 MR. MONTEZ: Do you remember the case in the O.J. Simpson
8 trial where the police officer said they had beat up a bunch of people
9 in East Los Angeles?

10 CHAIRPERSON BERRY: Yes--Furman.

11 MR. MONTEZ: I remember that case. The lawyer called me. I
12 went directly to the U.S. Attorney, who at that time said she could not
13 do anything. Then, later on, they said that's been going on for years.
14 Elected officials know it has been going on. But the Los Angeles
15 Police Department, and I would suspect a lot of other police
16 departments, always manage to get something on elected officials, which
17 tends to keep them quiet.

18 I know one elected official who finally had to--

19 CHAIRPERSON BERRY: No, no. Let's not call the names.

20 MR. MONTEZ: No--I'm just telling you. We have to be honest
21 about this thing.

22 CHAIRPERSON BERRY: That's okay. Don't call out the names.

23 MR. MONTEZ: I've got all these lawyers here at the table
24 with me.

25 [Laughter.]

1 MR. MONTEZ: But my lawyer up there, Mr. Reynoso, said go
2 ahead.

3 [Laughter.]

4 VICE CHAIRPERSON REYNOSO: No. He was very careful.

5 CHAIRPERSON BERRY: All right. Okay. Before I see what
6 others have to say about this, there is another informational piece
7 that the Commissioners all know. Somebody mentioned the Citizens
8 Committee on Civil Rights--I think it was Ki-Taek who mentioned it when
9 he was talking about the annual reports that he thinks we ought to do.

10 The Commission did used to, in the days when it had
11 resources years ago--"back in the day"--used to do annual reports not
12 only on the state of civil rights, but enforcement reports analyzing
13 every Federal agency, every year, to see what they were doing. They
14 stopped doing that for lack of resources, and now we only do one.

15 The Citizens Committee on Civil Rights was established and
16 funded by foundations because they believed that in the 1980s, the
17 Civil Rights Commission stopped doing the kind of work that was
18 necessary on civil rights--that was their belief, whoever funded them.
19 And the Citizens Committee held out the promise that they would do
20 annual reports on the agencies and on the state of civil rights, which
21 they do. The Citizens Committee consists of former Federal civil
22 rights officials who then, once they no longer have a term, join the
23 Citizens Committee as volunteers, which has a small staff and gets pro
24 bono work done by law firms to analyze the agencies, and their reports
25 are very influential among those people who are involved in civil

1 rights. But they can't substitute for the Commission, because they
2 don't have the kind of powers we do, and they don't have the scope, and
3 they don't have the staff. But at least they do those reports every
4 year.

5 I want to also say before we go any further that this is
6 Carol-Lee Hurley's last meeting, and I cannot believe it. I was about
7 to say that if it were within my power--and of course, it isn't--I
8 would say that you can't retire, that it is impossible to do so.

9 But Carol-Lee, who has served here long and faithfully--how
10 many years, Carol-Lee--

11 MS. HURLEY: Twenty-eight.

12 CHAIRPERSON BERRY: --28--not as long as Bobby and Phil--but
13 has served faithfully and well, in good and bad times, administration
14 in and administration out, is a real professional. When I think about--
15 --and I don't say this about too many people--when I think about what it
16 means to be a civil servant in the finest definition of the term,
17 Carol-Lee's behavior has been exemplary. She is the role model, in my
18 view, for how people ought to carry out the different responsibilities
19 that they have in the Federal Government.

20 [Applause.]

21 CHAIRPERSON BERRY: We will miss you and are sorry to see
22 you go.

23 MS. HURLEY: Thank you.

24 CHAIRPERSON BERRY: Yes, Phil?

25 MR. MONTEZ: I just want to remind you of the Sonoma report.

1 I don't know what procedure you have to do, but--

2 CHAIRPERSON BERRY: I understand, and we will. They say it
3 is on the agenda for April, and we're trying to see if we can move it
4 up, but it is on the agenda to be voted on in April.

5 Do any other Commissioners want to make comments or ask
6 questions of the Regional Directors?

7 Yes, Commissioner Meeks?

8 COMMISSIONER MEEKS: Yes, I do. I want to publicly commend
9 John Dulles for the work he did on the Rocky Mountain SAC. It is the
10 region I live in, so it's the one I have the most knowledge of. But I
11 also want to thank you for your report. I think every one of you
12 really points out what the Civil Rights Commission is about and what
13 the Commission should be doing.

14 I assumed when I came on to the Commission that these were
15 exactly the issues we would be dealing with and addressing. It is a
16 bit frustrating, I must say, that I realize that there is really sort
17 of a move to not get these things done--not by the Commissioners as a
18 whole, but by the leadership and by putting budget constraints on us so
19 that we can't get the job done that you all have talked about. But I
20 really want to commend you all for being out there; it is exactly what
21 the Commission should be.

22 MR. DULLES: Thank you very much.

23 CHAIRPERSON BERRY: Commissioner Wilson?

24 COMMISSIONER WILSON: I would also like to express, as
25 Commissioner Meeks did, my gratitude for all of you coming. I want to

1 say that I am the class of January 2000, so that is how long I have
2 been serving as a Commissioner.

3 I want to say that I have been very inspired by what you all
4 have said, and it makes me want to, of course, ask the very naive
5 question: Is there any other way for us to get money for the
6 Commission other than applying to the Federal Government. But I have
7 been very inspired by what you all have had to say, and I also want to
8 say that I like the idea of annual reports and biannual reports. I
9 think it is very important for younger people to have access to this
10 material so that they know what is going on in the country and what
11 isn't going on. And I agree with you that I think that if you haven't
12 been through the wars or witnessed it, the awareness of what is going
13 on right now is very low, and I think we have an obligation to raise
14 that awareness. I think that if we could make these reports accessible
15 and sexy, we would really have a good leadership, and people would find
16 it very useful.

17 CHAIRPERSON BERRY: Yes, Commissioner Lee?

18 COMMISSIONER LEE: I have visited several of your offices,
19 so I really appreciate the difficulties that all of you have to work
20 under, internally because of the budget constraints, and externally
21 because of the attack on the civil rights front. So I really
22 appreciate your work and the SAC members' involvement and commitment.

23 A couple of things. The resource question comes up every
24 time you guys are here, and it seems like you always go back with no
25 resolution. One of the things that I worked on in California was to

1 utilize--free labor--free and effective support from students who are
2 in public policy schools, law schools and so on, who for whatever
3 reason either want to or need to get involved with organizations like
4 yours. They could spend a year doing research for you on a specific
5 project, and they could really help alleviate some of the pressure that
6 all of you work under.

7 Within the last two years, I have been really impressed with
8 the turnaround time that all of you have had on the SAC reports. Not
9 only is the quality excellent, but the time that you have spent on the
10 turnaround. When I first got here, some of the SAC reports took 7 or 8
11 years, and now they are taking less than 2 years. That is really
12 amazing, and I just hope that your efforts get adequately covered in
13 your local press, because one issue that you talked about was that
14 people don't know who we are. A lot of the reports that you have done,
15 I don't know how you make them available. Maybe the office here can
16 help you develop some kind of a press package or something so that you
17 can get some coverage of all the work you do, because that could
18 certainly motivate existing members and also inspire potential members
19 to join you.

20 My final thought is that there is one issue that has really
21 been bugging me for a long time, and because of budget constraints
22 here, I don't think we will be able to deal with, which is voting
23 rights issues in general and particularly impacting new Americans. I
24 am talking about new Americans who are Hispanics, Asian Americans, who
25 are getting involved with the electoral process during the last decade.

1 I have been hearing stories in both California and Arizona that there
2 are certain areas where new Americans who want to vote have been
3 intimidated and had to go under extra scrutiny to prove that they were
4 actually eligible voters.

5 A couple of years ago, a couple of the regions--I think you,
6 John, and Phil--did work on the immigration report on the borders.
7 That has been very effective, and I would like to bring that up as a
8 suggestion, that maybe some of you can get together and talk about
9 possibilities, so that at least you can share the very limited
10 resources on something that impacts many of your regional areas,
11 because it is one area that I think, if you are talking about the
12 cutting edge, no one is talking about because no one cares about these
13 new Americans yet, until they get to political power. That's why they
14 want to keep them down. But it is something that I know is going to
15 happen for the next couple of elections, and it is a cutting-edge issue
16 that some of you may want to look into.

17 Again, I really want to express my appreciation for
18 everything you guys have done. It is difficult. I would pledge
19 whatever I can do to talk about the good work that you have done. Just
20 keep up the good work.

21 CHAIRPERSON BERRY: Thank you, Commissioner Lee.

22 If you want to call greater attention to the report when you
23 issue them--whenever that is, when they are finished--if you think it
24 would be helpful to have Commissioners, or a Commissioner, or me, or
25 somebody come to wherever it is that you are releasing it, when you do

1 that, we might promise you that we would do that if that is going to be
2 of any help to you in terms of getting coverage of it. I would pledge
3 to do that, and I think others might; there are enough of us that we
4 might be able to figure out how to do that if the timing is
5 coordinated.

6 The other thing is on the funding. We have an internship
7 program here at headquarters, and I understand that one of the issues
8 that you raised yesterday was expanding that internship program so that
9 you might be able to use people in the way that Commissioner Lee was
10 talking about. So I think, Staff Director, the idea is that that can
11 be done and that it ought to be done so that you can have that as a
12 resource.

13 The other thing, though, is that the statute precludes us
14 from accepting volunteer services. And I haven't done the history of
15 that, but somebody told me when I first came on the Commission--maybe
16 you guys know why--that it had to do with us not letting organizations
17 that might have a particular point of view do reports for us or
18 something. And that is a valid concern--who would do that? Anyway, it
19 may be that if there were some way found to get resources and to have
20 that interpreted in such a way as to permit it that there is no reason
21 why the Commission couldn't raise funds from foundations and other
22 people in order to maximize the kind of work we do, to get some
23 underwriting. It would have to be handled very carefully. Maybe that
24 is something that we ought to look at.

25 There was a proposal once in the Congress that we might get

1 volunteer help or details or ask other civil rights agencies to help
2 us--that doesn't make any sense, because we have to monitor them, and
3 you cannot let somebody you are monitoring come and help you do the
4 work on that. It doesn't make any sense in terms of our mission.

5 So that is something we can think about. And the
6 internships I think is something that should be advanced right way. I
7 understand there was some discussion at your meeting about having more
8 retreats. We used to have a Commission retreat every year for the
9 planning meeting. We would go away somewhere, to a hotel or someplace,
10 and spend a couple days together. Maybe we should have that again and
11 have the staff and the Regional Directors and managers come and talk
12 about the agenda. We stopped doing that, but even though it costs
13 money, I think it is probably worth it to do it to try to hammer out
14 some kind of agenda and have people feel like they are involved and
15 included and not separated from the process. So maybe that is
16 something we ought to start figuring out how to do next time.

17 Another thing--I don't know if it was mentioned yesterday--
18 is the SAC chairs. We had them here once--I have forgotten when it
19 was--quite a while ago, and we said at that time that we would try to
20 have them here every year, and we didn't. So we need to start again,
21 and maybe we can have the SAC chairs come somehow in tandem with the
22 planning or sometime before that or something and talk with them. At
23 least within the available resources that we have, we should try to
24 figure out some way that we can do those two things because they are
25 really important.

1 And then, on the computers in the region as well as here, we
2 have got to figure out some way--even if nobody funds us, we have got
3 to figure out some way. Maybe we could get somebody to agree to let us
4 accept computers or software given to us by somebody. Maybe we could
5 go and talk to the committee and see if we could get some of these
6 computer folks to give us something. I don't know if they would accept
7 that. If they don't want to fund us to do it, we'll have to do
8 something--although if we don't have computers, and we can't type
9 anything, I guess we can't do any reports--it would be impossible.

10 Yes, Commissioner Wilson?

11 COMMISSIONER WILSON: I think it would be great, if we could
12 get computers from companies, as long as it doesn't preclude that we
13 look at those companies for civil rights violations.

14 CHAIRPERSON BERRY: Right. That's what the problem is, and
15 that's why we need our appropriations so that we can maintain our
16 independence. The Commission has two things that are very valuable,
17 and the most important thing is its independence. If you erode the
18 independence, it doesn't matter what we try to do or what we try to
19 say. But the only way you can maintain that and do something effective
20 is to be funded. You can independently starve to death. So we are all
21 aware of that, and we hope this will happen.

22 Okay. Is there anything else that Commissioners or anyone
23 else would like to discuss at this time?

24 Yes, Vice Chair?

25 VICE CHAIRPERSON REYNOSO: Madam Chair, I just want to say

1 that I very much appreciated the discussion that I had with the
2 Regional Directors. To me, perhaps the most salient point that was
3 made by all of them was that we really need to think hard about the
4 evolution of civil rights issues and identify those issues that we
5 believe are coming up in a year or two or three and deal with them
6 early on--in some ways, that's what we did with the portion that deal
7 with the police report in Los Angeles--but that we continually look at
8 those things so we aren't just reacting to something at the SAC. I
9 think that was a very apt reminder to all of us, and that is what I
10 think we should try to do.

11 CHAIRPERSON BERRY: All right. Thank you very much, all of
12 you. Let's go forth and continue to do good work.

13 **X. Future Agenda Items**

14 The next item on the agenda is future agenda items. Does
15 anyone have any at this time to suggest?

16 Yes, Commissioner Meeks?

17 COMMISSIONER MEEKS: I don't know if it's a future agenda
18 item, but Commissioner Lee pointed out to me that on page 21 of the
19 Request for Appropriations--it is not on the agenda, but maybe I should
20 have mentioned it earlier--under "Plans for fiscal year 2001," it says
21 "Native American housing issues and access to funding for housing
22 development."

23 Do you remember that we changed that to "Justice issues"?

24 CHAIRPERSON BERRY: Yes. Did this get done before--

25 MS. KELLY: The Commission never officially voted on those

1 projects. We weren't sure from reading the transcript which project it
2 was that was going to happen, so we didn't want to delete it per se, so
3 there is still that project.

4 CHAIRPERSON BERRY: Please go to the microphone.

5 MS. KELLY: At the end, there was no official vote on which
6 exact projects they were going to be. Toward the end, these were the
7 projects we are going to do, but no vote on this is the exact project
8 or we are going to move projects around--it wasn't definite as to is it
9 a justice project, or is it a housing project--it went on and on. So
10 that was a project that had been previously approved, so that was one
11 that we kept. That is not to say that it can't be changed, that it is
12 written in stone. It's up to the Commission to decide.

13 CHAIRPERSON BERRY: Well, that was an oversight. I didn't
14 review this, and no one asked me, but I think that you are correct,
15 Commissioner Meeks, that we did decide after we all talked. The way we
16 did that was we didn't vote--I said "Without objection, we're going to
17 do...", "blah, blah, blah, and we sort of summarized it.

18 So I think that what we should do is simply--we can either
19 leave it in--I think the amount of funding is about the same--and then
20 we can modify it after we don't get the money and say that what we're
21 going to do instead is adjust this as we pare down the projects and do
22 them anyway, and talk about what we're going to do in reality. We
23 could do that, or we can simply say at this point--we can point out to
24 the committee that that was substituted for that. That's one way to do
25 it, but it is not written in stone, as Lisa said. That doesn't mean

1 that that's what we have to do. We can always change projects anyway.
2 All right. But next time, we have to make sure there is a more
3 careful--I said at some point during the planning did we want to be
4 more formal, like every time we said something, vote on it. But we
5 just sort of summarized them, and we went along, and I didn't realize
6 that that wasn't clear.

7 Yes, Commissioner Wilson.

8 COMMISSIONER WILSON: Thank you.

9 Is the issue of money now a dead issue for this period, or
10 do we want to discuss it on the next agenda?

11 CHAIRPERSON BERRY: Money is not a dead issue. In fact,
12 what should happen, I would hope, is that Commissioners to the extent
13 they are able and can--we are not supposed to "lobby," quote-unquote--
14 but to the extent that Commissioners want to educate their own
15 representatives about the Commission's budget and about the resource
16 needs and about what the Commission does, they should do that, for
17 Members of Congress so that they are aware. And if there are local
18 people in your community who want to educate Members of Congress about
19 the Commission's budget, they are perfectly free to do that--because we
20 have to make sure people understand what it is we are trying to do.

21 It is not a dead issue yet. The cycles will continue. I
22 don't know what the timing is--do we know when the appropriators and
23 all those folks are going to act? We don't know yet, do we?

24 STAFF DIRECTOR MOY: They are still meeting with the
25 agencies that come under their jurisdiction.

1 CHAIRPERSON BERRY: Okay. And usually, they don't have us
2 up for hearings because we are too small. Occasionally, they will on
3 the House side, but it's very rare. They will talk staff-to-staff up
4 there. Kim is supposed to be for the Staff Director handling our
5 Congressional contacts, and the Congressional staffers know that,
6 right--

7 STAFF DIRECTOR MOY: Yes.

8 CHAIRPERSON BERRY: --she has been introduced to them, and
9 they have exchanged information. So they should be talking, if they
10 have any questions. But beyond that process, we have to make sure that
11 Members of Congress are aware of us and what we do and all the rest of
12 it, without "lobbying," quote-unquote.

13 Yes?

14 COMMISSIONER WILSON: Does lobbying include having, for
15 instance, a series of articles or interviews or profiles on a) the
16 Commission or b) the Chairperson of the Commission?

17 CHAIRPERSON BERRY: No, that's not lobbying.

18 COMMISSIONER WILSON: Well, that might be something to
19 consider--to get out into the public's mind what the Commission is
20 doing and the point of view of the Commission represented by the
21 Chairperson and the struggles that we are undergoing and all the work
22 that is necessary.

23 CHAIRPERSON BERRY: Okay. So that's something that PAU
24 could work on doing.

25 We will also have some opportunities for public visibility

1 about our work, because we will have the New York report before the
2 budget cycle is completed, and that should call attention to the work
3 that we did, just as the hearing did when we had the hearing.

4 So that's not lobbying. Lobbying means going up and talking
5 about a specific issue and saying we want you to do this or we want you
6 to do that--and we're not supposed to do that.

7 Is that right, Peter?

8 MR. REILLY: That's right.

9 CHAIRPERSON BERRY: Peter is the expert here on this
10 question. Have I defined carefully the difference between lobbying and
11 education?

12 MR. REILLY: I'd say so.

13 CHAIRPERSON BERRY: Okay. Thank you very much.

14 There is a press release that, every time there is a month
15 like Black History Month and all the different themes--it is Women's
16 History Month this month, and the staff has put together a press
17 release which I would like to read briefly that they would like to put
18 out in commemoration. As Commissioner Redenbaugh said earlier, we
19 don't know how good these things do. They are picked up by people in
20 the specific groups and the things they do who are interested in it,
21 and we note that.

22 "The Commission on Civil Rights joins President Clinton and
23 the Nation in celebrating March 2000 as Women's History Month. We
24 take the time this month to honor the momentous strides in freedom and
25 equality achieved by women in the past, to celebrate the extraordinary

1 achievements of women in the present, and to acknowledge the still
2 unfinished task of gaining full equality of opportunity for women in
3 the future,' said Berry."

4 "When this Nation's Founding Fathers wrote that all men are
5 created equal, they did not endorse equality of rights for women,'
6 noted Berry. 'The history of women in the United States offers some
7 inspiring stories of how a subordinated group struggled to achieve its
8 political and social rights and thereby help this country live up to
9 its creed.'"

10 Today I don't know how that could be the case if they didn't
11 endorse--well, anyway.

12 "Today, women contribute prominently in fields ranging from
13 athletics to space exploration, yet there remains a substantial agenda
14 to achieve full equality. We must continue to work for equal pay, an
15 end to the glass ceiling, and for educational opportunities,' said
16 Berry."

17 "The exciting history of women, past and present, an
18 inspire us to reach the goals that we set for tomorrow.'"

19 VICE CHAIRPERSON REYNOSO: You've said a lot there.

20 [Laughter.]

21 COMMISSIONER LEE: Madam Chair, can I recommend that we add,
22 in addition to the glass ceiling issues and so on, family leave, which
23 is a major issue for women workers? Is that appropriate?

24 CHAIRPERSON BERRY: "We must continue to work for equal pay,
25 an end to the glass ceiling"--

1 COMMISSIONER LEE: Family leave protection--not protection,
2 but coverage.

3 CHAIRPERSON BERRY: Family leave--what is that called,
4 officially? Does anybody know? It is the Family and Medical Leave
5 Act. You mean add that Act--add full implementation--

6 COMMISSIONER LEE: Yes, because it is still not being--

7 CHAIRPERSON BERRY: --"full implementation of family and
8 medical leave polices" or "provisions."

9 COMMISSIONER LEE: "Provisions."

10 CHAIRPERSON BERRY: Yes, Commissioner Wilson?

11 COMMISSIONER WILSON: Ever the editor--thank you.

12 It seems to me--doesn't that also apply to men?

13 CHAIRPERSON BERRY: Yes, it does.

14 COMMISSIONER WILSON: So it seems that it would be diluting
15 it, but I don't want to--

16 CHAIRPERSON BERRY: That's right. I, who wrote "The
17 Politics of Parenthood"--yes, you are right.

18 [Laughter.]

19 CHAIRPERSON BERRY: Because this is gender-neutral; family
20 and medical leave is gender-neutral.

21 COMMISSIONER LEE: It should be, but it--

22 CHAIRPERSON BERRY: That's one of the issues, that's one of
23 the issues, but that's right, we can't--because we then privilege it
24 and make it only a problem for women, and we want dads to engage in
25 taking care of their kids, too, because dads are important. Kids love

1 their dads--or they should--or should love them--we hope.

2 COMMISSIONER WILSON: That could be our next release.

3 CHAIRPERSON BERRY: What did you say, Commissioner Wilson?

4 COMMISSIONER WILSON: I said that could be our next release--
5 -"Children Need their Dads."

6 CHAIRPERSON BERRY: Children need dads; yes, they do.

7 VICE CHAIRPERSON REYNOSO: But that would imply that they
8 don't want their mothers--

9 CHAIRPERSON BERRY: Okay. Without objection, with the
10 changes, we will proceed.

11 Does anyone have any other thing they need to bring before
12 us at this time, or any other thing to discuss?

13 [No response.]

14 CHAIRPERSON BERRY: Okay. Hearing none, can I get a motion
15 to adjourn?

16 VICE CHAIRPERSON REYNOSO: So moved.

17 COMMISSIONER WILSON: Second.

18 CHAIRPERSON BERRY: It is non-debatable. All in favor
19 indicate by saying aye.

20 [A chorus of ayes.]

21 CHAIRPERSON BERRY: Opposed?

22 [No response.]

23 CHAIRPERSON BERRY: So ordered.

24 Thanks, Carl. Bye.

25 COMMISSIONER ANDERSON: Bye.

1 [Whereupon, at 12:58 p.m., the proceedings were concluded.]

2