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U. S. COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING

Friday, February 18, 2000

Washington, D.C. 20425

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U.S. COMMISSION ON CIVIL RIGHTS

The Commission convened at 9:39 a.m. in Room 540, YWCA Building, 624 Ninth Street, N.W., Washington, D.C., Chairperson Mary Frances Berry, presiding

MEMBERS PRESENT

- Mary Frances Berry, Chairperson
- Cruz Reynoso, Vice Chairperson
- Carl A. Anderson, Commissioner (via telephone)
- Christopher Edley, Jr., Commissioner
- Yvonne Y. Lee, Commissioner (via telephone)
- Elsie M. Meeks, Commissioner
- Victoria Wilson, Commissioner
- Ruby G. Moy, Staff Director

STAFF PRESENT

- Kimberley Alton
- David Aronson
- Ki-Taek Chun
- Pamela A. Dunston
- Betty Edmiston
- Edward A. Hailes, Jr., Acting General Counsel
- George M. Harbison
- Carol-Lee Hurley
- Lisa M. Kelly

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- Rebecca Kraus
- Carolita Little
- Marc Pentino
- 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

Approval of Agenda

1  
2  
3 CHAIRPERSON BERRY: The meeting will come to order. The  
4 first item is the approval of the agenda. Could I get a motion to  
5 approve the agenda?

6 VICE CHAIRPERSON REYNOSO: So moved.

7 COMMISSIONER EDLEY: Second.

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

9 [Chorus of ayes.]

10 CHAIRPERSON BERRY: Opposed?

11 [No response.]

12 CHAIRPERSON BERRY: Good morning, Commissioner Lee.

13 COMMISSIONER LEE: Good morning. Can we have a discussion  
14 on whether the Commission could send a letter to Presidential  
15 candidates regarding usage of certain racially charged terms?

16 CHAIRPERSON BERRY: Okay; we will add that.

17 Does anyone want to add anything else? We will do that  
18 after the GPRA.

19 COMMISSIONER LEE: Thanks.

20 CHAIRPERSON BERRY: Good morning, Commissioner Anderson, out  
21 there in the world.

22 COMMISSIONER ANDERSON: Good morning.

23 CHAIRPERSON BERRY: We will add that right after the GPRA.  
24 With that change, can I get agreement that the agenda--does anyone else  
25 have anything to add?

1 All in favor indicate by saying aye.

2 [Chorus of ayes.]

3 CHAIRPERSON BERRY: Opposed?

4 [No response.]

5 CHAIRPERSON BERRY: So ordered.

6 Approval of Minutes of January 14, 2000 Meeting

7 CHAIRPERSON BERRY: Now, we have the approval of the January  
8 14 meeting. Could I get a motion.

9 COMMISSIONER MEEKS: I so move.

10 COMMISSIONER EDLEY: Second.

11 CHAIRPERSON BERRY: Any discussion? All those in favor  
12 indicate by saying aye.

13 [Chorus of ayes.]

14 CHAIRPERSON BERRY: Opposed?

15 [No response.]

16 CHAIRPERSON BERRY: So ordered.

17 Announcements

18 CHAIRPERSON BERRY: Announcements. The only announcement I  
19 can think of, and let's see if anybody else has any, is that the  
20 majority on the House Judiciary Committee did the same thing this year  
21 that they have been doing every other year, which is to recommend that  
22 we not get a budget increase. This is not new. It happens every year.

23 The Minority on the House Judiciary Budget Committee will  
24 file their own separate statement recommending that we receive a \$2.1  
25 million increase over our appropriation as recommended by the

1 President. This is not unusual. It is what happens every year. So it  
2 is not surprising, but I just thought I would tell you that, in fact,  
3 had happened.

4 They are forwarding these recommendations to the House  
5 Budget Committee for consideration. We will continue to work on issues  
6 related to the budget, but we don't have any hope that the majority of  
7 the Committee, as it is presently constituted, will ever give us a  
8 budget increase.

9 I just thought I would tell you that--unless we should sort  
10 of change the way we do things around here and change our approach to  
11 some of the issues.

12 Do you have an announcement to make, Madame Staff Director?

13 STAFF DIRECTOR MOY: Today, with the winter storm, there is  
14 in effect a federal unscheduled leave policy which means that federal  
15 workers do not have to come in today. So I just wanted to thank all  
16 the staff who made it, particularly those who assisted with today's  
17 briefing. So, thank you to all heros and heroines.

18 COMMISSIONER EDLEY: Here, here.

19 CHAIRPERSON BERRY: The weather isn't all that bad.

20 STAFF DIRECTOR MOY: I know. We all made it.

21 CHAIRPERSON BERRY: I know I was late, but that wasn't why I  
22 was late. I was late because I was jogging and I forgot what time it  
23 was. It had nothing to do with the weather. The streets are clear.  
24 They are supposed to freeze later. I don't know when that is going to  
25 happen.

1 I am impressed that the people from out of town are here.

2 COMMISSIONER MEEKS: It is worse here than it is in South  
3 Dakota.

4 COMMISSIONER ANDERSON: Relating to your announcement about  
5 the House Judiciary Committee's consideration of our budget request, I  
6 guess I heard one or two things subsequent to the meeting about the  
7 Chairman not receiving a letter and, perhaps, something to do with the  
8 OPM report that wasn't quite as laudatory, maybe, as we or some had  
9 considered.

10 Do you know anything about those matters?

11 CHAIRPERSON BERRY: Yes. I know everything about those  
12 matters that there is to know. Every year, the House Judiciary  
13 Committee finds a reason not to give us a budget increase. One year,  
14 it was because they had the GAO do an audit of the Commission, and the  
15 GAO--and you can read the audit report for yourself, if you are  
16 interested in it--found that the Commission had major management  
17 difficulties, which is not unusual with GAO audits of federal agencies.

18 It is all political because when the Democrats were in  
19 office, they would audit agencies and find things wrong with them. It  
20 happens in Washington. It is not personal. The Republicans are in  
21 office so they audit agencies and find things wrong with them and call  
22 you up and have you come and tell them about all the things that are  
23 wrong with you.

24 The GAO audit found several so-called management  
25 deficiencies, most of which were things that were not remedied by the

1 previous Republican administration which ran this agency, such as not  
2 rewriting the Administration Instructions since 1978--it was 1978 or  
3 something that they had not rewritten the Administration Instructions.

4 But they told us we should have rewritten the Administration  
5 Instructions. There were various other things. We should have a  
6 management information system which we now have and nobody reads--a lot  
7 of different things which you can read, yourself.

8 Commissioner Higgenbotham, who was a member at that time,  
9 was adamant that we should not permit them to get away with just doing  
10 this, that we ought to respond. My impression, since I have been  
11 around this town a long time and know that it is just politics, was  
12 that we should have just not said anything and just let them go ahead  
13 and lambaste us, which is what you are supposed to do, is put your head  
14 down and get beaten over the head and keep moving.

15 Anyway, we did respond and pointed out such matters as that  
16 these folks never did these things either. I happen to have been here  
17 so I knew they didn't do them because they didn't want to spend time on  
18 them because it took a whole lot of time away from the work of the  
19 agency and didn't make that much difference in how the agency ran,  
20 anyway.

21 I remember the discussions. I was here. So, anyway, they  
22 had a hearing, an oversight hearing, and discussed these among other  
23 matters, which you can read for yourself in the record, and then  
24 recommended that we not get a budget increase.

25 I agreed at the hearing, which is what you are supposed to



1 do, and the Staff Director, that we would remedy all these  
2 deficiencies, even though it was all political. And we, in fact, spent  
3 a lot of staff time--the staff, here did--doing their work, sitting up  
4 here writing all these Administration Instructions. All the stuff that  
5 Clarence Pendleton and Linda Chavez refused to do, we did.

6 I also took to the hearing with me a report written by the  
7 Democrats, the GAO under the Democrats, which said the same thing about  
8 them; management deficiencies, management in disarray. I was here. I  
9 knew what had happened, the same thing with some of the same things  
10 cited as not being done, which they cited was us not doing.

11 And then they added a few other bells and whistles, which is  
12 what they do. The long and short of it is that the agency responded by  
13 doing all of this list of things. The Citizens Committee on Civil  
14 Rights, which is an NGO, non-governmental organization, which has  
15 former Civil Rights officials on it who are no longer appointees and  
16 who looks at government agencies and civil rights every year to see  
17 what they are doing, they wrote in their report that we had done a good  
18 job in doing all these things.

19 We had to catch up on a lot of reports that were behind, and  
20 we did that. They put in their report that year that they didn't want  
21 to give us any money because of the management disarray. One other  
22 year, it was something else. I forget. This year's reason was, one,  
23 the GAO audit, which I have just referred to, said we had management  
24 deficiencies. That was the first item.

25 The Democrats on the Committee pointed out to them that we

1 had already remedied that and that was old, old news. But that didn't  
2 matter. Then they came to new news which was that the OPM, which did  
3 an audit of the agency, had found major deficiencies. The Democrats  
4 introduced the letter from OPM that they sent us after they did the  
5 audit into the record so that everyone can read it for himself, or  
6 herself.

7 The letter, 85 percent of it said, "Your work is excellent.  
8 We want to commend the Human Resources Department for whatever they  
9 have been doing." And then there is one line in it that says, "But you  
10 could do "X" a little better." I forget what the "X" was. And they  
11 took the line that said, "You could do "X" a little better," and put  
12 that in the report.

13 This is the reason why, this year. Then they put in there  
14 the discussion we had the last time about the question that was raised  
15 the last time about the detail, the short-term detail, of the general  
16 counsel who is working on the project in Higher Education, as she  
17 transitions to a new job. And then they stuck that in there and that,  
18 at the last meeting, at which you were present, that the Chair showed  
19 disinterest, public disinterest in the subject.

20 You were here and you know that what really happened was we  
21 were having a Planning Meeting and questions were raised. We discussed  
22 it and said we would discuss it outside the meeting and didn't want to  
23 have an Executive Commission meeting.

24 So those were this-year's reasons for not giving us a budget  
25 increase. Next year, if the Republicans still control the House and

1 Senate, there will be other reasons for not giving us-- long after the  
2 detail is over, long after anything with OPM, there may well be another  
3 something or other.

4 So don't get upset about it when you hear. You may read  
5 this material for yourself so that you can determine whether you  
6 believe my characterization of them is accurate. But that is the long  
7 and short of it.

8 COMMISSIONER ANDERSON: Madame Chair, my understanding was  
9 that the OPM report is somewhat more than just minimally critical of  
10 the agency. I haven't yet seen a copy. I don't know whether other  
11 members of the Commission have a copy of that report. Do other members  
12 have a copy of that report?

13 CHAIRPERSON BERRY: They probably don't because it is a  
14 staff matter having to do with the internal operations of the  
15 Commission. But, if anybody would like to see a report, they can.  
16 And, if anyone would like a copy of the letter that OPM sent to the  
17 Commission, they can see it. As I stated in my remarks, one does not  
18 have to accept my characterization of them. One may read the documents  
19 for himself or herself and we would be happy to provide them and they  
20 will be introduced into the record of the hearing.

21 COMMISSIONER ANDERSON: So we will be getting copies of  
22 those?

23 CHAIRPERSON BERRY: If you wish to have a copy, you may have  
24 a copy. Those who wish to do so may have them. You have expressed an  
25 interest in getting one, and you will.

1           COMMISSIONER ANDERSON: The other matter--of course, this is  
2 second-hand for me, but I was informed that Congressman Watt had a  
3 letter from the Staff Director that he read addressed to the Chair but  
4 that the Chair had not received that letter yet. Is that true, do you  
5 know?

6           CHAIRPERSON BERRY: That is not true.

7           STAFF DIRECTOR MOY: Copies were delivered.

8           COMMISSIONER ANDERSON: So, apparently, the Chair said he  
9 had not received the letter but that was not true?

10          CHAIRPERSON BERRY: Maybe his staff received it and didn't  
11 give it to him. That happens on the Hill, you know.

12          STAFF DIRECTOR MOY: The letter was addressed to Chairman  
13 Canady.

14          CHAIRPERSON BERRY: It was addressed to Chairman Canady who  
15 is the Chairman of our Subcommittee. Is that the Chairman you are  
16 referring to?

17          COMMISSIONER ANDERSON: Sure.

18          CHAIRPERSON BERRY: I didn't know whether you were talking  
19 about Chairman Hyde or Chairman Canady.

20          COMMISSIONER ANDERSON: He indicated he had not received the  
21 letter.

22          CHAIRPERSON BERRY: Perhaps it had not been actually handed  
23 to him.

24          COMMISSIONER ANDERSON: What did we do, put it in the mail,  
25 give it to a staff member?

1 CHAIRPERSON BERRY: Ruby, would you mind answering the  
2 question. I wasn't there.

3 STAFF DIRECTOR MOY: It was hand-delivered up to the Hill.

4 COMMISSIONER ANDERSON: Hand-delivered up to the Hill?

5 STAFF DIRECTOR MOY: To the staff.

6 COMMISSIONER EDLEY: To his office.

7 COMMISSIONER ANDERSON: Who did you give it to?

8 STAFF DIRECTOR MOY: To the staff.

9 COMMISSIONER ANDERSON: May I ask you whether our staff  
10 person hand delivered it, or was it a courier, or--

11 CHAIRPERSON BERRY: Would you mind answering the question,  
12 please, Ruby?

13 STAFF DIRECTOR MOY: It was hand-delivered to Chairman  
14 Canady's staff person by a staff person here.

15 COMMISSIONER ANDERSON: So we know that he received it  
16 before the markup, or the same day of the markup, or--I don't even know  
17 the date of the letter.

18 CHAIRPERSON BERRY: May I point out one other thing? Answer  
19 the question, but when did we receive the information that they were  
20 going to say this about us and that they were going to pass this  
21 information on to our Budget Committee? When did you receive this  
22 information?

23 STAFF DIRECTOR MOY: It was really, really late in the day  
24 through another source.

25 CHAIRPERSON BERRY: Which day? How close to the hearing?

1           STAFF DIRECTOR MOY: The hearing was Tuesday morning. It  
2 was really, really late in the day, through another source.

3           CHAIRPERSON BERRY: On which day? How close to the hearing?

4           STAFF DIRECTOR MOY: The hearing was Tuesday morning.  
5 Monday, late in the afternoon, when everybody was gone--

6           CHAIRPERSON BERRY: They do that every year, too. And the  
7 Democrats used to do it, too, so it is bipartisan. It is bipartisan  
8 guerrilla warfare. So they gave the information--I received this  
9 information from the Staff Director orally about 7 o'clock in the  
10 evening the night before the hearing which was, of course, too late to  
11 find any staff member--which is done by design--too late, by both  
12 parties, to call up any members from the other side, too late to do  
13 anything except lie down and take your medicine and have no response or  
14 nothing to say or nothing to correct the record or no information.

15           Did they inquire of you, Madame Staff Director, or your  
16 staff--did they query you concerning this information to see if the  
17 information was accurate or if there was anything you had to add, or  
18 were there staff-to-staff contacts discussing whether you had anything  
19 to add to any of this?

20           STAFF DIRECTOR MOY: No; this was totally unannounced. In  
21 fact, I had placed calls hoping that some people were working up on the  
22 Hill and did not get a response back. Even the person who was--  
23 Congressman Mel Watt's person wasn't even informed, had not gotten the  
24 information that I had received.

25           CHAIRPERSON BERRY: He is the Ranking Member of the

1 Subcommittee, Mr. Watt is.

2 COMMISSIONER ANDERSON: I am sorry to prolong this, but I  
3 just want to get it clear. You are saying that Monday evening, prior  
4 to the Tuesday morning markup, was the first time we understood that  
5 there would be a markup on our budget request?

6 STAFF DIRECTOR MOY: Yes; because I had been monitoring the  
7 publications that come from the Hill, like CQ and Congressional  
8 Monitor. Nothing was listed that there would be any sort of budget  
9 other than some bills for the House Judiciary.

10 COMMISSIONER ANDERSON: We used to have a Congressional  
11 liaison. Kim Cunningham used to be doing that. We don't have anybody  
12 doing that now?

13 STAFF DIRECTOR MOY: We have, in a sense. Both Kim Alton  
14 and myself, who have had Hill experience and we have our own network up  
15 there. Luckily, just in passing conversation, I just happened to find  
16 this out at the last minute.

17 But, also, knowing that we should have had some information  
18 from the other Subcommittee side, they weren't even informed of it.

19 CHAIRPERSON BERRY: I might point out that even when Kim  
20 Cunningham ran Congressional liaison, he did not know either. Any  
21 information that we had last year, we got through either me talking to  
22 somebody on the Hill or Ruby talking to somebody on the Hill, because  
23 the staff did not share this information ahead of time with Kim  
24 Cunningham and they did not share it ahead of the time last year with  
25 the staff of the Ranking Minority who, at the eleventh hour, found out

1 that it was happening.

2 This is not unusual. We can spend time on it, but I am not  
3 surprised by it or disturbed by it. I am just explaining it to the  
4 Commissioners who don't understand that this happens all the time. If  
5 the Democrats took over the Congress and the Republicans controlled a  
6 majority on this Commission, they would do the same thing if the  
7 Commission didn't do whatever they wanted to do. That is just the way  
8 the game is played in Washington.

9 COMMISSIONER EDLEY: I just would like to point out that the  
10 budget process is a long thing on the Hill. This is the first and, far  
11 and away, the least important step. The reviews letter that is sent  
12 from the Judiciary Committee to the Budget Committee has minimal impact  
13 on what the Budget Committee says, and what the Budget Committee says  
14 will have minimal impact on what the Appropriations Subcommittee  
15 actually decides.

16 So, while I don't expect the ultimate outcome to be markedly  
17 different from this simply because of who is running the House, there  
18 are many other steps and many other audiences for clarifying what this  
19 agency is up to and what its plans are for the future.

20 CHAIRPERSON BERRY: We will clarify this, but I have to tell  
21 you, Commissioner Edley, that your analysis is incorrect as it relates  
22 to this agency. Throughout the budget process, the same thing we have  
23 already heard, will be told back to us as the reason why we can't get a  
24 budget increase.

25 The Operations Committee will tell us, "Your Oversight



1 Committee said blah, blah, blah." They do it every year, so I am used  
2 to it. If it weren't an election year, they would have an oversight  
3 hearing and bring us up there and try to smear us all over the place  
4 for public consumption.

5 But, since it is an election year, I don't know if they will  
6 or not. I guess it depends on how much time they have and whether they  
7 think it is more fun and games to do that or, given the fact that we  
8 have done some things that the public finds interesting and  
9 significant, that they may think that if we do come up there, we might  
10 talk about those things, or try to talk about them and get some  
11 attention to them.

12 So we will have to see. But I am telling you that the  
13 warning shot is, again, fired. We will hear this over and over and  
14 over again, whether or not it is true, whether or not it is anything,  
15 and we will have to answer to it.

16 The only hope we have of getting any funds from that  
17 Committee, or from the Appropriations Committee, is if the  
18 Administration is able to negotiate something from the hill for us.  
19 But we should just not take all of this too seriously.

20 We have spent, probably, too much time on it.

21 COMMISSIONER ANDERSON: Madame Chair, I just have two things  
22 I want to say here. The first is this; in my opinion, the oversight  
23 review by OPM should have been shared as soon as we received it with  
24 the Commissioners so that we could have reviewed it and, if there were  
25 deficiencies found by OPM, it could have been brought to the

1 Commission's attention and the Commission, at a regular meeting, could  
2 have discussed it with the Staff Director on how to bring about any  
3 kind of change in management to comply with the OPM report.

4 So, the first thing I would like to do is say that I think  
5 that report ought to be scheduled on the agenda of the next meeting or  
6 the meeting subsequent to our next meeting so that we can discuss it.  
7 That is my first point.

8 My second point is I was in Washington for some time. I  
9 think I know how the Congress works to a certain extent. I have been  
10 on this Commission for a while. I have seen how the Democratic  
11 Chairman of our Subcommittee with Oversight dealt with your Republican  
12 predecessor as well as the Republican Chairman had dealt with us.

13 I think, at this point, I need to publicly disassociate  
14 myself from your comment the we are being smeared by the majority on  
15 that Subcommittee. If that is your opinion, fine. I must tell you  
16 though that, in my dealings with members of Congress on both sides of  
17 the aisle, I try not to use that type of rhetoric even though I have a  
18 strong policy disagreement with them.

19 So, I think that is unfortunate and I don't think that it is  
20 necessarily politics as usual. That may be your opinion of it, but I  
21 don't think the position is served by taking that kind of a response to  
22 our Oversight Committee.

23 CHAIRPERSON BERRY: I don't think we have been served by  
24 taking a congenial response to our Oversight Committee. We haven't  
25 gotten a dime out of our Oversight Committee. If you noted carefully

1 what I said, and I was very careful about what I said, it is an equal-  
2 opportunity smearing. It happens on both sides of the aisle by  
3 different parties and it was not directed at any particular person who  
4 happens to be serving in the House of Representatives at this time.

5 So you misunderstood my remarks if you thought I was  
6 characterizing particular people.

7 COMMISSIONER ANDERSON: No. I must say, Madame Chair,  
8 whether it is the Democrats or Republicans, I think that kind of  
9 language is inappropriate. I don't think that the Democrats have  
10 smeared this Commission when it was chaired by a Republican and I don't  
11 think the Republicans are doing that now that it is being chaired by  
12 you.

13 I just don't think that type of rhetoric accurately  
14 characterizes the concern of either Former Chair Edwards or the current  
15 Chair, Canady. It may be politics as usual at GAO, but I don't  
16 understand politics as usual at OPM when it is the same Administration  
17 that has appointed both the Director of OPM as well as the Chair of  
18 this Commission, how that can be characterized as politics as usual if  
19 they are submitting a report that is critical of us.

20 CHAIRPERSON BERRY: We are talking about matters that you do  
21 not have in evidence, so there is no sense in me debating with you what  
22 the OPM report says when it is not before us. I have characterized it.  
23 You have characterized it. People can read it for themselves and see  
24 what they think, but I am not inclined to schedule it for a meeting  
25 because it is a management issue which involves things like how the

1 personnel office is run and should they be X, Y or Z.

2 This Commission is constituted to consider matters of  
3 policy. It is up to the Staff Director to consider matters of  
4 management. If you want to have a meeting to discuss the work of the  
5 Staff Director, that is another whole subject, since the Staff Director  
6 is our employee who works for us to carry out our policies.

7 But if you want to go into the details of how the Office of  
8 Personnel Management assessed the office, you may have the report. You  
9 may read the letter. You may reach your own conclusions. But I am not  
10 going to schedule a meeting unless the Commissioners disagree with me  
11 by a majority to go over the details of how the Personnel Office  
12 operates because most of us don't know how it operates, anyway, and  
13 what a TNN is and a KSA and the KSI and all the rest of it and it  
14 really isn't our business to know.

15 COMMISSIONER ANDERSON: Madame Chair, let me just be clear  
16 on what I have requested which is to put the report as an element of  
17 the agenda for the next meeting so that it can be discussed.

18 As far as I can tell by my service on this Commission, a  
19 Commissioner's request to have something added to the agenda has never  
20 been turned down by the Chair. If that is your decision, so be it.  
21 However, the Commissioners can read the report if they get it. If they  
22 think it is worth talking about, I think, apparently, the impact of the  
23 budget consideration, we do, I think, have a responsibility for the  
24 budget and, therefore, I think it is a perfect request to discuss the  
25 terms of how our Congressional relations are moving forward,

1 particularly as it impacts on the budget.

2 CHAIRPERSON BERRY: The way items are added to the agenda,  
3 and you know this Commissioner Anderson, as well as I do, is for  
4 Commissioners to introduce a motion, which must be seconded and agreed  
5 to by the Commission, to add something to the agenda. That is the  
6 normal way it is done.

7 But, knowing what I know about how Washington operates, and  
8 knowing that you have the ability to get the Oversight Committee to  
9 intervene in how we even handle motions--knowing that as I do, and to  
10 raise that as another issue, I am going to say, yes, we can put it on  
11 the agenda.

12 I just don't believe that we ought to discuss internal  
13 management. If the rest of the Commissioners want to, they can. So I  
14 am going to leave that issue out so there is not something else they  
15 can add so that they can write some footnote to the appropriations  
16 language saying every time Commission Anderson suggests something, or a  
17 Commissioner, it has to be added to the agenda even if people don't  
18 vote on it.

19 Yes; I will add it. You can read it. If people want to  
20 discuss it, they can.

21 STAFF DIRECTOR MOY: Madame Chair, I agree; this is a  
22 management issue. But when the OPM sent their report, they sent it in  
23 a favorable, positive image of the Human Resources Department plus they  
24 allowed us sixty days in which to respond, which we did. And we are  
25 waiting for them to respond back to our comments.

1           COMMISSIONER EDLEY: Madame Chair, I am sorry but I object  
2 to putting the report on the agenda.

3           CHAIRPERSON BERRY: You want them to have another item to  
4 add when I got up there to the Committee that they can smear me with.

5           COMMISSIONER EDLEY: Commissioner Anderson has not even read  
6 the report and he wants to take our time discussing it in the agenda.  
7 I object to that.

8           CHAIRPERSON BERRY: It was discussed today.

9           COMMISSIONER EDLEY: I object to that. I might feel  
10 differently about it if he had actually read it and had a strong view  
11 that there was something in there worth our time to discuss, but he  
12 hasn't even read it. We have wasted, what, twenty minutes, half an  
13 hour, on this subject already? I would like to get on with our  
14 important work.

15           CHAIRPERSON BERRY: One of the special assistants to the  
16 Staff Director just pointed out that, in a Commission meeting--I don't  
17 remember this, but she says it is in the transcript of the meeting,  
18 that the Staff Director announced to the Commissioners that the report  
19 from OPM had been received in the Staff Director's report and that she  
20 had gotten a very favorable view by OPM, right here in this room, to  
21 the Commissioners and that, at that time, no one said, "We want to read  
22 it. Give it to us."

23           So this is not a surprise that came to the Commission. The  
24 special assistant tells us that, if you want to verify that, you can  
25 read the transcript and you will see that it was announced right here

1 in this room.

2           What is your pleasure, because I would like to move on if  
3 people have some view about what they want to do. Commissioner  
4 Anderson wants this on the agenda even though he has never read it.

5           COMMISSIONER ANDERSON: You could send me a copy of the  
6 report, if you would. At the next meeting, after reading it, I will  
7 move to have it put on the agenda. Other Commissioners can second it  
8 or they can object to having it on.

9           CHAIRPERSON BERRY: Or you might be willing to write a note  
10 to your fellow Commissioners after you have read it, before the  
11 meeting, saying, "I have read this thing and I think it really ought to  
12 be on the agenda," so that they would know that, if that is your view,  
13 or to me. I would be happy if you read it. If you think that there  
14 are substantive matters of policy that we really need to discuss, I  
15 would be eager to put it on the agenda.

16           But, in my reading of it, and of the letter, I didn't see  
17 anything, at the time that it was announced, that rose to that level.

18           But, if you find something, let us know before the meeting  
19 and I would be happy to put it on on that basis. I don't want to fight  
20 with you about policy matters. I just don't want to put things on that  
21 are not policy matters.

22           COMMISSIONER ANDERSON: I want to tell you, that is my view  
23 as well. I would also indicate to you, just for the record, I have had  
24 no contact with the Subcommittee. I had no idea that this markup was  
25 being scheduled. In fact, I wasn't in the country when it was

1 scheduled. This is all news to me.

2 But, in my opinion, rather than just chalking this up to  
3 politics as usual, I think the more appropriate proceeding would be to  
4 consider this and make a more orderly response. But that is a  
5 difference that you and I have in terms of how to proceed with the  
6 Committee. That's all.

7 CHAIRPERSON BERRY: We have already responded. The letter  
8 the Staff Director sent up hurriedly on Tuesday morning, which she had  
9 to be hand carried it to the staff of the Subcommittee and to members  
10 who were there, the letter did respond. It included a copy of the OPM  
11 letter so that people could see what OPM had actually said as opposed  
12 to what they read in the report.

13 It included a copy of the earlier letter that the Staff  
14 Director had sent to Chairman Canady explaining how we had complied  
15 with all of the GAO audit and also referred to the detail and explained  
16 that.

17 That was given to them that morning, so we did respond. My  
18 comments here about politics as usual were done for purposes of  
19 briefing our new Commissioners whose eyebrows were somewhat raised when  
20 they heard that our Oversight Committee, of all people, would be  
21 recommending that we do not get any money.

22 Maybe if you had been able to be here and had seen the body  
23 language, you would have understood that that is why I was doing what I  
24 did, not because we are not going to respond. We always respond as  
25 quickly as we can.



1 I think your letter said that if they needed any additional  
2 information, you would be happy to give it to them. Is that what you  
3 said?

4 STAFF DIRECTOR MOY: Yes.

5 COMMISSIONER ANDERSON: Just one more question. I don't  
6 seem to find that. Was that faxed to the other Commissioners?

7 CHAIRPERSON BERRY: Find what?

8 COMMISSIONER ANDERSON: I haven't seen any of our response.  
9 I haven't seen the letter. Maybe that might have avoided some of this.  
10 Was that faxed to the Commissioners?

11 CHAIRPERSON BERRY: I am asking the Staff Director.

12 STAFF DIRECTOR MOY: I believe so, Commissioner Anderson.  
13 It was dated January 29, 1999.

14 CHAIRPERSON BERRY: If you don't have a copy, we would be  
15 happy to send one to you.

16 Will you send Commissioner Anderson a copy of the whole  
17 thing so he can see what you said?

18 STAFF DIRECTOR MOY: Yes.

19 CHAIRPERSON BERRY: Let's go on to the Staff Director's  
20 Report, if that is okay.

21 Staff Director's Report

22 CHAIRPERSON BERRY: Has anyone got anything on the Staff  
23 Director's Report beyond what we have been doing here? Having nothing,  
24 we will move on to the next item.

25 Oh; I would say, under the Staff Director's Report, the

1 South Dakota SAC has drafted the--haven't they, Staff Director--

2 STAFF DIRECTOR MOY: Yes.

3 CHAIRPERSON BERRY: Tell us the status of that. They  
4 drafted that.

5 STAFF DIRECTOR MOY: They have done the initial draft of the  
6 report for South Dakota and they are meeting with the Chair of the SAC  
7 before they send out the information to the members of the Advisory  
8 Committee. So we are on an early schedule.

9 CHAIRPERSON BERRY: We have had a number of problems in that  
10 comments were made to the press by staff members about our  
11 relationships with the FBI out there that lead the FBI to be upset.  
12 They are upset, generally, because we criticize them.

13 So, Director Freeh has asked that I talk to him about,  
14 generally, what the FBI is doing out there before we respond to this  
15 report. I plan to do that. I have already talked to the Attorney  
16 General about our criticisms of the Civil Rights Division, which they  
17 are very eager to try to figure out what to do about that.

18 Both of these overtures are in connection with trying to  
19 make sure that we don't, I guess, lambaste these folks too much and  
20 have some understanding of what they are doing when we respond to the  
21 report.

22 We are still hoping that, sometime in March, Commissioner  
23 Meeks, that we will be able to release something, as we had planned.  
24 So we will see how the timing goes on it, but the SAC is working on  
25 their recommendations to us.

1 Anything else in the Staff Director's Report?

2 State Advisory Committee Report: Unequal Justice

3 African Americans in the Virginia

4 Criminal Justice System (Virginia)

5 CHAIRPERSON BERRY: State Advisory Commission Report,  
6 Unequal Justice, African Americans in the Virginia Criminal Justice  
7 System (Virginia) is Item No. V on the agenda. Could I get a motion to  
8 approve this?

9 VICE CHAIRPERSON REYNOSO: So moved.

10 COMMISSIONER WILSON: Second.

11 CHAIRPERSON BERRY: Any discussion?

12 VICE CHAIRPERSON REYNOSO: Madame Chair, maybe because of my  
13 background, I was particularly struck by the maximum permitted by law  
14 to defense attorneys who are providing criminal defense for the  
15 litigants, for the accused. That is found on Pages 11 and 12.

16 I consider that so serious, and it is a recurring issue in  
17 many states, I don't know whether we should do something more about it  
18 because we keep hearing reports that many states have maximums, as  
19 apparently Virginia does. For example, the maximum that a lawyer can  
20 receive in representing a defendant in a felony case where the accused  
21 could be sent to prison for twenty years is \$882.

22 Assume the lawyer charges \$100, \$150 an hour, it is only a  
23 few hours. How a lawyer can do a half decent job, I don't understand.

24 CHAIRPERSON BERRY: As you say, Vice Chair, that is a  
25 problem in many states. I know that the United Nations is having a

1 conference on race, an international conference on race, in South  
2 Africa in about two years and there are pre-conferences leading up to  
3 it.

4 It is one of those huge international meetings like the  
5 Beijing Conference on Women, and so on. Its focus will be on race this  
6 time. One of the major issues that I think NGOs are taking there from  
7 the United States is the lack of due process in the American criminal-  
8 justice system, up and down the line.

9 One of the sub-issues there is the system of the fees that  
10 we pay for representation and whether people really can get proper  
11 representation in cases of this kind. There is going to be increasing  
12 discussion of what people allege are racial disparities in the  
13 criminal-justice system including this kind of unfairness.

14 So it may be that we would like to have a discussion  
15 sometime of some kind, a forum, a briefing, or something about this  
16 whole matter or even get a little report from the staff about what are  
17 the fee requirements in all the different states. Maybe the regional  
18 directors can tell us in their own states what they are and then we  
19 could put them together.

20 Maybe they could tell us that by the next time when they  
21 come to the meeting. Then we could get some kind of view of whether  
22 there is some kind of statement we ought to make about this or  
23 something else we might do.

24 VICE CHAIRPERSON REYNOSO: I just think it is such a serious  
25 issue that maybe we should consider issuing a statement bringing that

1 to the attention of the American people.

2 CHAIRPERSON BERRY: Why don't we get the information--when  
3 the regional directors come next week, maybe they can bring us that.  
4 What do you think about that idea--in their specific states. And then  
5 we can consider what we would like to say.

6 If they get that information before the meeting, it could be  
7 given to us in memo form for us to read before we come.

8 With that, does anyone have any other questions or comments  
9 about this report? If not, I would call for the question. All in  
10 favor indicate by saying aye.

11 [Chorus of ayes.]

12 CHAIRPERSON BERRY: Opposed?

13 [No response.]

14 CHAIRPERSON BERRY: So ordered.

15 **Review of the GPRA Draft Report**

16 CHAIRPERSON BERRY: The review of the GPRA Draft Report is  
17 Item No. VII on the agenda. Madame Staff Director, do you have  
18 anything to say by way of introduction?

19 STAFF DIRECTOR MOY: Yes. Thank you, Madame Chair. Both  
20 OMB and Congress want to know if we have accomplished what we have said  
21 we would do in our annual GPRA Plan with the monies given. Under the  
22 GPRA Plan, every major federal agency must include the agency's  
23 mission, goals and how we will achieve them, measuring performance and  
24 how we use that information to make improvements.

25 The bottom line is results. Each of you has read and

1 passed, from our budget submissions--the back of the publication that  
2 indicates the Strategic Plans, our previous budgets. This March, the  
3 first GPRA Plan will be the Fiscal Year 1999 OMB budget estimate which  
4 will be mandatory for all agencies.

5 It is precedent setting. There is no style yet and there  
6 will be, probably, a lot of revisions. The people I have spoken to  
7 have indicated that it may be three years down the road before there  
8 will be some sort of pattern in which every agency is to do the GPRA.

9 So it is mandatory each year starting this March. Each  
10 manager here was tasked to review their own annual program operations  
11 and compare their performance to the goals and objectives as set forth  
12 in the GPRA Plan.

13 So, in the Commissioners' mail-out, there is this draft  
14 which I wanted to share with you. Also, if you take note, on Page 5,  
15 there was a change since this was a draft. There was an error in the  
16 fifth paragraph starting with, "a summary of the proceedings combined  
17 with the transcript," should be, "a summary of the proceedings combined  
18 with the transcript will be made available to anyone requesting a  
19 copy."

20 And then the rest of the paragraph remains the same.

21 CHAIRPERSON BERRY: In other words, we don't publish  
22 briefings. I wondered about that because we don't publish those. We  
23 just make them available. So this was a mistake.

24 STAFF DIRECTOR MOY: Right. It is a draft.

25 CHAIRPERSON BERRY: It is good you caught it in the draft.

1 Does anyone have any comments or any discussion of the GPRA?

2 VICE CHAIRPERSON REYNOSO: Madame Chair, I thought it was a  
3 very nice summary of what the agency had done, very readable. I  
4 thought, in general, it is a good job. If all the other agencies have  
5 as clear and as succinct a summary, this might, in fact, be a good  
6 proceeding.

7 STAFF DIRECTOR MOY: Thank you.

8 CHAIRPERSON BERRY: I was wondering, do we need to explain--  
9 maybe the process doesn't require that--but do we need to explain what  
10 all these various work products of the Commission are or is it clear to  
11 somebody who looks at it what it is, whoever is looking at this.

12 In other words, we do reports. We have gone over this  
13 before. We do briefings. We do all these things. Do we need to say  
14 what they are somewhere or do we just assume everybody knows what they  
15 are? Or is that not part of the process? Or did it strike anyone that  
16 we needed to do that or was it sort of clear from the descriptions?

17 If we say we did a briefing, does everybody know what that  
18 is? I guess they know what reports are. I guess whoever is reviewing  
19 them will ask us if they don't understand, since they do it every year.

20 COMMISSIONER WILSON: I think it would be useful.

21 COMMISSIONER MEEKS: I thought it was very interesting, for  
22 one thing, and it gave me some updates about what has happened prior to  
23 my coming. It was very interesting and some good work.

24 The only other comment I have is where we didn't meet the  
25 goals--it said because of resources we were not able to meet this goal.

1 I just wonder was that a motion by Commission to say we are not going  
2 to do this?

3 CHAIRPERSON BERRY: What page are you on?

4 COMMISSIONER MEEKS: Well, Page 4, for instance, at the  
5 bottom of the page. There were a few places like that.

6 CHAIRPERSON BERRY: No; we never discussed this. It was in  
7 our budget. When we got the budget, there were sections in there that  
8 tell us what we are going to be using money for and the money was cut  
9 down for that. But we didn't actually discuss it and say, "Oh; the  
10 money was cut down for that. Is that a good idea?"

11 So, if that is the question, no; we didn't. Do you think we  
12 should because that could be a matter of policy. It was budget policy,  
13 do we want to, like, shift resources from one thing to another thing or  
14 do we think it is important that we do these things on Page 4. Are  
15 they more important than something else or is that a judgment we can  
16 make?

17 COMMISSIONER MEEKS: I am not quite sure. I was kind of  
18 reading this as an outsider in some ways because a lot of this work was  
19 done prior to my coming. So, when I saw that, because of lack of  
20 resources we were not able to meet this goal, if this is for other  
21 people's viewing, which I am sure it is, it looks like maybe we just  
22 didn't do it so lack of resources was a good reason to say we didn't do  
23 it.

24 CHAIRPERSON BERRY: Maybe it should be better explained,  
25 like the Commission's budget was not increased from X, and with the



1 cost-of-living increase for staff--

2 COMMISSIONER MEEKS: But if we know what our budget is going  
3 to be for that year, then we reshuffle what our goals are, and be  
4 really clear about that. Maybe this is a big deal I am making.

5 CHAIRPERSON BERRY: Wait a minute, Elsie. It is not. Don't  
6 back off. What we usually do when we have the budget and we find out  
7 what we will have as opposed to what we requested is we look at the  
8 projects that we are doing and try to figure out if we can still do  
9 them.

10 COMMISSIONER MEEKS: I would rather, I guess, have seen,  
11 "The Commissioners made a decision not to because of priorities."

12 CHAIRPERSON BERRY: So what we could do is, instead of just  
13 making a decision about the projects, which is what we do all the time,  
14 saying, "Oh, we didn't get the money, so, therefore, we can't do this  
15 project; we have got to do this, and what do you want to do about  
16 them?" we can also, at that time, go over all the other items that we  
17 have been doing and make a decision about--say, for example, if we want  
18 to not do a project and have more resources put into going to national  
19 meetings and that, rather than just having the projects.

20 Historically, and traditionally, the Commission has simply  
21 looked at the projects. What you are suggesting and maybe what we  
22 should do is look at the other things, too. That sounds to me like a  
23 sound idea, just as we decided that we would keep some play in the  
24 budget for discretionary matters, like a contingency that arises, which  
25 was new this year.

1           Maybe what we want to do is talk about different functions  
2 and does it make more sense to do this function as opposed to that  
3 function.

4           COMMISSIONER MEEKS: Especially in the purposes of this  
5 report which I do think is a good report. I think it would really  
6 clarify.

7           CHAIRPERSON BERRY: Okay. So, what we will do is, as a  
8 Commission--do we want to do that this time or do we want to do it next  
9 time?

10           You have to turn this in; right?

11           STAFF DIRECTOR MOY: Right.

12           CHAIRPERSON BERRY: So we can't do it right now.

13           STAFF DIRECTOR MOY: Since it is precedent setting and there  
14 is really no set pattern, maybe they will have other comments for us to  
15 revise, GAO and the Congress and so forth, the people who look at these  
16 things.

17           CHAIRPERSON BERRY: But the next time we go through this  
18 process, the budget process, somebody who will be here will take note  
19 of this.

20           Where is George? George, the next time we go through the  
21 budget process, because you will still be here and, if I live, I will  
22 still be here, and the rest of us, God willing, we want to look at--  
23 and, remind us if we don't, and remind the Staff Director, that we want  
24 to look at all of these functions and not just the projects when we  
25 review actual budget as opposed to proposed budget.

1 Does that make any sense, George?

2 MR. HARBISON: I think what I am hearing you saying is that  
3 you really want to plan the entire budget as opposed to looking at  
4 segments?

5 CHAIRPERSON BERRY: What I am saying is when we find out  
6 what the actual appropriation is going to be and we start trying to  
7 figure out what we need to drop--projects is usually what we are  
8 talking about--that, instead of just doing that at that point, what we  
9 would do is look at all the different functions and we would also, in  
10 the planning process--that is a good idea--again, not just look at the  
11 projects, which is what we do now, but that we might look at all of the  
12 functions.

13 MR. HARBINSON: We can do that.

14 CHAIRPERSON BERRY: It has just never been done but it is a  
15 good idea. I know you were talking about this, specifically, but we  
16 might as well look at all the functions while we are doing it because  
17 budget is policy and that is one time when you really should look at  
18 everything.

19 So, next time, we will be prepared to look not just at  
20 projects but everything related to the dollars.

21 Anything else on GPRA? Do you need a motion to approve  
22 this?

23 STAFF DIRECTOR MOY: No; I don't. It was informational, but  
24 if the Commission--

25 CHAIRPERSON BERRY: That's all right. This is a staff

1 activity and this was given to us for our information and discussion.

2 Do we have to review the final--do we have to vote on that?

3 STAFF DIRECTOR MOY: This would be it. I just made the  
4 corrections.

5 CHAIRPERSON BERRY: So there is consensus, or no objection,  
6 to your going forward with it. You are asking us--and having us read  
7 it was a very good idea.

8 Future Agenda Items

9 Are there any future agenda items?

10 VICE CHAIRPERSON REYNOSO: I think you had added something.

11 CHAIRPERSON BERRY: Oh, yes; Presidential statements by  
12 Presidential candidates that Commissioner Lee raised. Yvonne, could  
13 you explain to us more what it is you wish to discuss so we can discuss  
14 it?

15 COMMISSIONER LEE: Sure. I think the Commission has issued  
16 fact-finding--we conducted briefings whereby experts testified before  
17 us on the role that comments, racially insensitive or stereotypical  
18 comments, can play in actual perception or misperception of certain  
19 groups and communities and how it impacts relations.

20 I think that this being an election year, we have a lot of  
21 public attention on candidates, what they say, what they do, policies  
22 and their impact on these relations. Recently, the National Agency for  
23 the American Asian Consortium issued their annual hate-crimes report  
24 and cited several victims of hate violence.

25 They were called terms that were used by one of the

1 Presidential candidates before they were attacked. I just feel that  
2 because the public officials have such a high visibility, whatever they  
3 say, their comments really negatively or positively impact race  
4 relations in this country.

5 I would like to see whether it is appropriate for this  
6 Commission to issue a statement urging all candidates, sending a letter  
7 to all candidates, to cease using terms and statements that communities  
8 may find offensive. This statement should be phrased in a positive  
9 light, in a very bipartisan manner, so that, as a duty of the  
10 Commission, this would inform them what we learned from our experts who  
11 have testified before us on why people should refrain from using terms  
12 that we may not find offensive but other communities do.

13 CHAIRPERSON BERRY: For informational purposes, for those  
14 who are new, the Commission has issued such a statement in the past  
15 concerning campaigns. I don't remember whether it was in response to  
16 somebody making a comment and then a general sort of admonition to the  
17 people who were campaigning to be careful about it or whether it was  
18 some statement that we made.

19 But we have in the past made statements about politicians  
20 and their use of language. Do we have any examples? I must confess I  
21 have not followed as closely as the rest of you the various speeches  
22 and comments made by all these people who are out campaigning.

23 Do we have any examples that anyone can call their attention  
24 to at present, or is it just that what we are trying to do is  
25 prevention and reminders?

1           COMMISSIONER LEE: I think earlier yesterday, or today,  
2 perhaps, Senator McCain was using a term that Vietnamese Americans and  
3 Asian-Americans find extremely offensive. Apparently, he felt that he  
4 was only using it to describe his Vietnamese capture, not Vietnamese-  
5 Americans. However, in this country, we actually learned from the  
6 Campaign Finance briefing, people do not make a distinction between  
7 Asians and Asian-Americans.

8           So when he used that offensive term, people take it very,  
9 very personally. The community takes it very personally. The fact  
10 that the Senator refused to acknowledge that this has any impact on the  
11 Asian-American community, I just feel that we may want to issue a  
12 statement--we could talk about how these terms really impact the entire  
13 community.

14           Again, I am not saying that we should do this just to the  
15 Senator, but I just feel, when that all Presidential candidates are  
16 making statements in the future, I do want to share with them what the  
17 Commissioners have learned, the importance of using terms that  
18 communities may find offensive.

19           We may not, but communities do. So it has happened.

20           VICE CHAIRPERSON REYNOSO: I am just looking at an article  
21 dated today, February 18, in the Washington Post, Page A6, dealing with  
22 the--it is entitled, "Racial issues Dog GOP Foes; McCain Won't Fire  
23 Aide. Bush Pressed on Bob Jones, Flag." And then part of it has to do  
24 with McCain's use of the term "gook" to describe the North Vietnamese.

25           He is quoted as saying, "I will continue to refer to them

1 probably in language that might offend some people here. I hated the  
2 gooks and will continue to hate them as long as I live," all of which  
3 is understandable but, as indicated by Commissioner Lee, that  
4 terminology is then translated by some, perhaps not by the Senator, but  
5 by some, to Southeast Asians who live in this country.

6 CHAIRPERSON BERRY: Given the anti-Asian-American biases  
7 expressed during the Campaign Finance--or anti-Asian biases--that we  
8 heard about and the hate-crimes reports and the other kinds of  
9 incidents that have been occurring recently, it seems to make sense  
10 that we would issue a statement.

11 Should we cite this or do you just want us to make a general  
12 statement about the need to--

13 COMMISSIONER LEE: I think we should cite this as an  
14 example, just not a blanket, generic statement.

15 CHAIRPERSON BERRY: Will we name Senator McCain or will we  
16 pretend like we don't know who said it in order to not be using direct  
17 strong language. Since you raised it, Yvonne, I am asking you. Shall  
18 we just draft up something, ask David and Marcia to draft up something  
19 for us to see?

20 COMMISSIONER LEE: I hesitate to specifically mention the  
21 Senator so people will think that it is just the Senator. I want to  
22 make sure that all of the major candidates adhere by our  
23 recommendation. So I would recommend that we cite the terms used. I  
24 think people know who said that.

25 CHAIRPERSON BERRY: So that is an example of how things may

1 be taken, however, the speaker intends them, just like the Committee  
2 might think I am saying they smear us even though I said everybody did.

3 David, have you heard enough to be able to draft up  
4 something?

5 MR. ARONSON: Yes; I have.

6 CHAIRPERSON BERRY: We will draft up something for us to  
7 look at on this.

8 COMMISSIONER ANDERSON: Madame Chair, may I ask, are we  
9 going to have a vote on the text? How do you plan to proceed?

10 CHAIRPERSON BERRY: What I am going to do is if he will go  
11 draft up something now and bring it back to us in a little while, at  
12 some point in the briefing or when we take a break, we will circulate  
13 it and read it to each other. If we like it, we will pass it. If we  
14 don't like it, we will tell him to go away and write something else.

15 And then we will circulate it after this meeting and poll  
16 people and ask people to send in their comments or whether they think  
17 it is okay.

18 COMMISSIONER ANDERSON: Okay; I voted the last time we sent  
19 this letter, or a similar letter, in favor. But I have to say, given  
20 the history of this--and I have not seen the press accounts on it--of  
21 Senator McCain's unique experience in this regard, I understand where  
22 Commissioner Lee is coming from on this, but I have to say I hesitate  
23 to write the letter (inaudible).

24 CHAIRPERSON BERRY: So you remember the last time we sent a  
25 letter, too. So that is not a faulty recollection on my part.



1 COMMISSIONER ANDERSON: No; I believe it was--

2 CHAIRPERSON BERRY: Sometime or other.

3 COMMISSIONER ANDERSON: Yes.

4 COMMISSIONER WILSON: I was simply going to say that if the  
5 only word we are going to refer to is "gook," it seems to me you have  
6 to mention Senator McCain or you have to get a couple of other examples  
7 if you are not going to mention Senator McCain, which I would probably  
8 do the latter.

9 CHAIRPERSON BERRY: You would do which?

10 COMMISSIONER WILSON: I would try to get a couple of other  
11 examples so that Senator McCain is not--and then it will possibly  
12 neutralize the situation because of McCain's experience.

13 CHAIRPERSON BERRY: Commissioner Edley?

14 COMMISSIONER EDLEY: That is what I was going to say.

15 CHAIRPERSON BERRY: So we should get a couple of other  
16 examples. If we can't find another couple of examples easily--

17 COMMISSIONER EDLEY: In this cycle, but maybe the letter  
18 should take more of a longer-term perspective with respect to the  
19 political process than previous cycles.

20 CHAIRPERSON BERRY: David, maybe you could find the letter  
21 from the last time that we did and refer to our past admonitions on  
22 this subjection. Then you can do a quick Lexus and see if you can find  
23 some other people having said something. If not, then just make the  
24 general--although, I must say, for myself, I am not willing to give a  
25 pass to Senator McCain because of his experiences.

1 COMMISSIONER EDLEY: That does not give him license.

2 CHAIRPERSON BERRY: If you do that, you would say that  
3 everybody, who has an experience which is horrendous, has the right to  
4 use language forever more calling people names. I am personally not  
5 willing to give him a pass on it. I just thought I would tell you  
6 that. I am not willing to give anybody a pass because of their  
7 experiences over time, although I think his experiences--of course,  
8 everybody praises him being a war hero and he had a horrendous time.

9 But I think that you have got enough guidance now. I want  
10 you to go back and bring back a statement in about an hour. Thank you.

11 The other thing is that I am reminded now by a voice at my  
12 elbow that maybe we should vote on the GPRA. Our trusty special  
13 assistant finds out from the record that we did the last time. So  
14 let's do it this time.

15 All those in favor of sending the GPRA forward as discussed  
16 and changed indicate by saying aye.

17 [Chorus of ayes.]

18 CHAIRPERSON BERRY: Opposed?

19 [No response.]

20 CHAIRPERSON BERRY: Okay. So ordered.

21 COMMISSIONER ANDERSON: Madame Chair, because of the  
22 reference there to the OPM report which I haven't seen yet, I am going  
23 to abstain.

24 CHAIRPERSON BERRY: Commissioner Anderson abstains.

25 STAFF DIRECTOR MOY: So noted.

1                   CHAIRPERSON BERRY:   Now, we go to the briefing.  We didn't  
2  run too far over here, for the people who have kindly come and are here  
3  already.

5           CHAIRPERSON BERRY: I want to thank the panel but I am going  
6 to do something that I would not do otherwise. Your testimony will be  
7 included in the record, but we are about to lose a quorum and we have  
8 some actions that we have to take so I want to make sure that we get to  
9 take them.

10                           Commission Discussion and Action

11           I will ask briefly is there anyone who has a burning  
12 question that they need to ask the panel? Or should we take the action  
13 and then--we need to take an action on this particular discussion. We  
14 need to decide what to do before we lose a quorum.

15           COMMISSIONER EDLEY: Do we have time?

16           CHAIRPERSON BERRY: We may, depending on what people decide  
17 they want to do. At least we need to pose the question whether people  
18 want to have discussion at another time, whether they want to consider  
19 having an additional proceeding on this matter, without describing what  
20 that proceeding would be, or whether they feel that today's briefing  
21 has sufficiently satisfied our interest in the subject for the time  
22 being.

23           That is what the press will ask. So we need to know at  
24 least that.

25           COMMISSIONER WILSON: Since I am half of the quorum, or half

1 of the half, or the quarter, that is about to leave, let me just say  
2 that I feel that this, in no way, satisfied my need to know about the  
3 subject and I would suggest that we hold further meetings.

4 . Again, since I am the newest person, I am not exactly sure  
5 what our choices are but I would say that we hold further hearings on  
6 this.

7 CHAIRPERSON BERRY: Is Commission Lee still on the phone?

8 COMMISSIONER LEE: I am still here.

9 CHAIRPERSON BERRY: Commissioner Anderson.

10 TELEPHONE VOICE: Commissioner Anderson just had to step out  
11 for a few moments.

12 CHAIRPERSON BERRY: Commissioner Lee, are you going to be  
13 able to stay with us?

14 COMMISSIONER LEE: Yes.

15 CHAIRPERSON BERRY: Then we will have a quorum.

16 We have heard your view about this, Commissioner Wilson. We  
17 will consider that and take it into account. Commissioner  
18 Meeks?

19 COMMISSIONER MEEKS: I do think we need to do something  
20 formal on this issue. It has been demonstrated very loudly.

21 CHAIRPERSON BERRY: Are you going to have to leave, too?

22 COMMISSIONER MEEKS: Yes.

23 CHAIRPERSON BERRY: Oh; well, then, we won't have a quorum.  
24 Let's proceed.

25 VICE CHAIRPERSON REYNOSO: Our options are various. I don't

1 know that we have time now to consider them. I think it should go on  
2 our agenda next meeting, it seems to me, to decide which of various  
3 avenues we will take. The issue, obviously, is very important.

4 CHAIRPERSON BERRY: Perhaps we could at least decide whether  
5 we think we need to decide whether to do something else.

6 COMMISSIONER MEEKS: I move that we decide at the next--

7 CHAIRPERSON BERRY: Could you move that we do not rule out  
8 further proceedings on this matter.

9 COMMISSIONER MEEKS: I would move.

10 CHAIRPERSON BERRY: And you would second?

11 COMMISSIONER WILSON: Definitely.

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

13 [Chorus of ayes.]

14 CHAIRPERSON BERRY: Opposed?

15 [No response.]

16 CHAIRPERSON BERRY: So ordered.

17 The other thing I wanted to do before everyone left, and  
18 this has nothing to do with this--it will only take a second--is to  
19 point out that this morning when I said that Commissioner Edley was  
20 wrong about the budget process, I did not mean that Commissioner Edley  
21 was wrong about how the budget process goes. I simply meant that the  
22 history of what has happened at this Commission was not the same as  
23 what he has described.

24 I wanted to say that so you would hear it.

25 See you, guys.

1           COMMISSIONER WILSON: I have one question having to do with  
2 the statement on candidates, do you need--

3           CHAIRPERSON BERRY: Yes. Let me read it.

4           Elsie, could you wait for this. It is very short.

5           "The U.S. Commission on Civil Rights is deeply concerned that  
6 candidates avoid the use of racial slurs in the current Presidential  
7 campaign. Commissioner Berry said, 'We believe that the use of such  
8 language by those who run for election to the nation's highest office  
9 is particularly objectionable when it occurs. Racial slurs can  
10 inadvertently exacerbate racial tensions and undermine racial harmony.  
11 The Commission has consistently called upon political leaders to avoid  
12 using racial and ethnic epithets and it has been nonpartisan in  
13 reminding candidates of its importance.'"

14           That is all it says.

15           CHAIRPERSON BERRY: That's fine.

16           CHAIRPERSON BERRY: Does that mean anything or should we  
17 flesh it out more and pass it around for you to read?

18           COMMISSIONER WILSON: I would suggest we pass it around.

19           COMMISSIONER LEE: I agree.

20           CHAIRPERSON BERRY: We will put some substance in it. What  
21 about the tone and tenor of what he has written.

22           COMMISSIONER WILSON: That's fine.

23           COMMISSIONER EDLEY: It is innocuous enough that it won't  
24 cause a ripple. I think that is what is problematic about it. If we  
25 are going to fire a shot across somebody's bow, it shouldn't be a

1 blank.

2 CHAIRPERSON BERRY: He wrote another draft in which he  
3 directly said we should tell--reminded by Senator's McCain's behavior,  
4 we take this occasion to make this statement.

5 COMMISSIONER WILSON: Maybe what would be helpful is to read  
6 both of those--pass both of those around and let each of them read them  
7 and compare them.

8 COMMISSIONER EDLEY: Maybe the bland one and then a muscular  
9 alternative.

10 CHAIRPERSON BERRY: More substance about what we have done  
11 in the past in the context. We will pass it around. There is no hurry  
12 about it. The campaign is going to go on for a while.

13 [Commissioners Wilson and Meeks leave the Commission  
14 Meeting.]



22

**Further Business**

23

**CHAIRPERSON BERRY:** Before we leave, I have one other matter

24

that I want to inform the Commissioners about. We have been having

25

discussions with some of the networks about their programs and

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1 activities as they relate to the inclusion of people of color.

2 We asked the networks voluntarily for some data. The first  
3 response was that--I guess I should wait because Commissioner Edley  
4 doesn't know this--

5 COMMISSIONER EDLEY: I am listening; go ahead.

6 CHAIRPERSON BERRY: Their first response was that they would  
7 give us the data and they would give it to us voluntarily. We had a  
8 meeting here with one of the networks and their officials where they  
9 went into details about giving us the data.

10 Now, they have decided that they do not want to give us data  
11 but they want to continue having meetings with us. They also have  
12 given us memorandums that they signed with the NAACP and the other  
13 civil-rights groups.

14 My own view is that having meetings to just chum it up and  
15 talk is not what I am interested in, that the Commission is interested  
16 in some baseline data so that we will be able to analyze and monitor  
17 what they are doing.

18 The memoranda of understanding do not include giving any  
19 baseline data. So, therefore, the groups will not have any baseline  
20 data with which to determine any progress. Also, some of our interests  
21 are not covered in the MOUs such as our interest in who gets to be on  
22 the air in these news shows and how do they portray issues of race and  
23 religion and the like on the shows.

24 So I don't know whether their reluctance stems from--I don't  
25 know where it comes from. One thing they expressed was that if they

1 gave us data that someone might use it to sue them. It was  
2 explained to them, I think, that so long as information is being used  
3 by the staff here, it is exempt under the Freedom of Information Act  
4 from being disclosed, particular information, to them and that,  
5 secondly, if we were to have a hearing and subpoena the information,  
6 they would have to give it to us because it is employment data and data  
7 about activities.

8 We did not ask, so that everybody is clear, for scripts as  
9 in the flap over the Drug Policy Act, to either preclear or anything  
10 else. As a matter of fact, we told them that the staff could look at  
11 the network programming and tape it and see what was on the news shows  
12 and they didn't need to tell us that.

13 So what I said is that I am not personally interested in  
14 having meetings just to talk and that I would like the Commission to  
15 discuss how we might go about getting some data from them and then,  
16 once I had that discussion with Commissioners, I would get back to  
17 them.

18 I am not trying to have the discussion today. I am simply  
19 alerting you so that if you hear something about this that that is what  
20 happened. So the volunteer effort seems to have broken down and now we  
21 are in a position of having to figure out how we want to get this data  
22 or whether we actually need it.

23 My own view is that we need it. Otherwise, we might as well  
24 not do anything.

25 COMMISSIONER LEE: Madame Chair, I agree with you in that

1 more meetings will not resolve what the Commission really, really  
2 wanted to get to the bottom of, what is the representation of people of  
3 color in the entertainment industry.

4           What I would suggest is you can get the various MOUs, that  
5 would be fine, by the various parties, give it to us between now and  
6 the next meeting, and put the matter on the next agenda so that we can  
7 have a meaningful discussion before you decide whether we should  
8 proceed with the pre--or any other action can be taken.

9           CHAIRPERSON BERRY: Thank you.

10           COMMISSIONER EDLEY: I would also suggest that you or  
11 somebody on the staff chat with a couple of researchers in this field  
12 who might be able to offer some very good suggestions about what  
13 precisely kind of data might be most helpful for us to try to get a  
14 hold of; obviously, people at the Annenberg School, but I'll bet there  
15 are some other people who have done content analyses and looked at the  
16 issue generally so that when we do talk about this at a subsequent  
17 meeting, we have some ideas about what we can do beyond getting  
18 employment data.

19           VICE CHAIRPERSON REYNOSO: Madame Chair, we have spoken in  
20 times past, I think for the last couple of years, about being able to  
21 have a quick response to issues that come up or doing matters in a way  
22 that does not take quite as long as matters have taken in the past.

23           For example, if our main purpose here would be to get that  
24 data, we will discuss this more in our next meeting, obviously, but as  
25 was suggested by Commissioner Lee, we might authorize a full hearing

1 but the full hearing might be only half a day, where we have the  
2 witnesses come in, but subpoena all the documentation we need and we  
3 have accomplished what we wanted to do instead of having three days of  
4 hearing or whatever.

5 That, hopefully, our counsel could do more quickly and could  
6 expedite that. So all those things we need to explore. But I think we  
7 should keep an open mind to do whatever we need to do as expeditiously  
8 as possible and get it done.

9 COMMISSIONER EDLEY: Can we only subpoena in connection with  
10 a hearing?

11 CHAIRPERSON BERRY: Right.

12 COMMISSIONER LEE: We can have meeting hearings.

13 CHAIRPERSON BERRY: We can and we have had a full-blown  
14 hearing and not everyone has to be there. It is better to have a full-  
15 blown one since we have this--if you have a minihearing, you have to  
16 have one Republican and one person who is not. If you have a full-  
17 blown hearing, it doesn't matter so long as you have a quorum.

18 If we have any hearings, we are going to have just a regular  
19 hearing and those who can come can come, so long as we have a quorum, I  
20 guess, unless we can be assured that Commissioner Anderson is going to  
21 show up.

22 But I think it is a good idea. What we will do is we can  
23 get Kim to talk to--since she is the lead person on this--the people,  
24 the researchers, who can help. I will talk with her about identifying  
25 who they are. If I need to talk to everybody, I will. We will send

1 you the MOUs and then we will discuss it at the next meeting.

2 But, in the interim, I am not arranging a schedule of  
3 meetings with them because the meetings, unless they result in  
4 something, we are simply just sitting around chatting, which is a waste  
5 of my time and theirs, chatting about how they have concluded this MOU  
6 and isn't that wonderful, and all the rest.

7 I can read the MOU. I don't have time for gestures on this.  
8 I don't mean to be impolite, but it is just a waste of everybody's  
9 time.

10 So we will do that for the next meeting.

11 COMMISSIONER EDLEY: Can I ask--we did zero tolerance today.  
12 What is on the horizon? Is there a subject-matter focus for the next  
13 two meetings? I know we had an impressive lineup for the year as a  
14 whole, but I just wondered--

15 CHAIRPERSON BERRY: We are waiting for the New York report.  
16 Eddie thinks that--what do you think, now, April? You will give it to  
17 us sometime in March. Is that what you are thinking?

18 MR. HAILES: Yes.

19 CHAIRPERSON BERRY: And we will act on it, you think, at the  
20 April meeting?

21 MR. HAILES: I don't remember the April date for the  
22 meeting.

23 CHAIRPERSON BERRY: That is the idea. So that is the  
24 biggie. We have that one. The regional directors are coming in in  
25 March to talk about their regions with us which has not been done since

1 you have been on the Commission.

2 We have the South Dakota report sometime in March. Those  
3 who want to go to South Dakota, again. I am going--to release the  
4 report and to give our recommendations. We will have to consider, at  
5 the next meeting, what responses we want to make to the recommendations  
6 made by the SAC.

7 COMMISSIONER EDLEY: So that is on the agenda for two weeks  
8 from now?

9 CHAIRPERSON BERRY: That will be two weeks from now. We  
10 hope it will be on two weeks from now. If it is not on two weeks from  
11 now, we will have to do it in between meetings by circulating the  
12 document and getting feedback because we promised that, by the end of  
13 March, we would have it out. And it will be finished except for what  
14 we have to do.

15 COMMISSIONER EDLEY: We were going to have a discussion at  
16 some point about--sort of a strategic discussion about the SACs,  
17 thinking more about their roles and how those people get appointed and  
18 our expectations.

19 CHAIRPERSON BERRY: Why don't we do that next time with the  
20 regional directors here.

21 COMMISSIONER EDLEY: They will be at the meeting in two  
22 weeks?

23 CHAIRPERSON BERRY: They will be at the meeting.

24 COMMISSIONER EDLEY: Oh; great.

25 CHAIRPERSON BERRY: They are the ones who recommend the

1 people, so it is appropriate to talk to them about it.

2 We still have in the pipeline the Mississippi report. Eddie  
3 is hiring staff and he has not gotten enough lawyers yet. We have that  
4 in the pipeline to do.

5 What did we do with ADA? Remind me.

6 MR. HAILES: I have recommended that we establish new time  
7 lines with new staff.

8 CHAIRPERSON BERRY: And we didn't say no, so we are waiting  
9 for the new staff. So those are the next things. And, remember, we  
10 have, also, after the New York Police report, we are going to have a  
11 briefing or something where we bring in experts to add recommendations  
12 and revise and update the National Police Practices Report. That will  
13 happen, probably, in May, with the hope that sometime in the summer, we  
14 can release the Police Practices National all over again.

15 But we hope to release the New York report after the April  
16 meeting. There has been considerable interest in the New York report,  
17 as you can imagine. By then, we will know what is happening with the  
18 Diallo case. Maybe we already know what is happening in the Diallo  
19 case.

20 COMMISSIONER EDLEY: Just one other thought. At one point,  
21 we had a discussion about the idea of, at some meetings if not at every  
22 meeting, having somebody from one of the civil-rights enforcement  
23 agencies come in and do a song and dance for us about what they are  
24 doing, what their priorities are, what their budget issues are,  
25 whatever, something of that sort.



1           CHAIRPERSON BERRY: I am wondering if we should do that now  
2 with the campaign and with the winding down of the administration, or  
3 if should wait until the next crew because people are leaving all of  
4 the government. If they are not leaving, they are focused on their  
5 resumes.

6           So we probably need to wait for the new crew, now.

7           COMMISSIONER EDLEY: Fair enough.

8           CHAIRPERSON BERRY: Thank you very much. We are adjourned,  
9 without objection.

10           [Whereupon, at 3:49 p.m., the Commission Meeting was  
11 adjourned.]  
12