

## U.S. COMMISSION ON CIVIL RIGHTS

## COMMISSION MEETING

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U.S. COMMISSION ON CIVIL RIGHTS

Friday, April 14, 2000

Washington, D.C.

The Commission convened at 9:35 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  
 VICTORIA WILSON, COMMISSIONER  
 RUBY G. MOY, STAFF DIRECTOR

STAFF PRESENT:

KIMBERLEY ALTON  
 DAVID ARONSON  
 KI-TAEK CHUN  
 BARBARA de la VIEZ  
 PAMELA A. DUNSTON  
 BETTY EDMISTON  
 MICHAEL FOREMAN  
 M. CATHERINE GATES  
 EDWARD A. HAILES, Acting General Counsel  
 MYRNA HERNANDEZ  
 TRICIA JEFFERSON  
 LISA M. KELLY  
 TINALOUISE MARTIN  
 JOSEPH MANALILI  
 JENNY KIM PARK  
 MARC PENTINO  
 BERNARD QUARTERMAN

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STAFF PRESENT: (CONT.)

PETER REILLY, Parliamentarian  
KWANA ROYAL  
DAWN SWEET  
MARCIA TYLER  
AUDREY WRIGHT  
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

PATRICK DUFFY  
CHARLOTTE PONTICELLI  
NAOMI SODETINA  
KRISHNA TOOLSIE  
EFFIE TURNBULL

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

1  
2 CHAIRPERSON BERRY: The meeting will come to  
3 order.

## I. APPROVAL OF AGENDA

4  
5 The first item is the approval of the  
6 agenda. Even though we know that we are not -- you have  
7 never received the draft of the Police Practices Report,  
8 because there isn't any, and you were informed of that,  
9 and this was put on the agenda because we have to notice  
10 the agenda some time ahead of the meeting and as often  
11 has happened in the history of the Commission, the staff  
12 isn't able to finish something in time for us to consider  
13 it and that item is put off. We do want to discuss at  
14 some point how we release that item, but I think we  
15 should approve the agenda with a modification that we  
16 will not be considering the draft of that report because  
17 we don't have a draft of that report, and it will be  
18 considered at some other time.

19 With that, could I get a motion to approve  
20 the agenda?

21 VICE CHAIRPERSON REYNOSO: So moved, with  
22 that amendment.

23 CHAIRPERSON BERRY: Could I get a second?

24 COMMISSIONER LEE: Second.

25 CHAIRPERSON BERRY: All in favor, indicate

1 by saying "aye."

2 (Ayes.)

3 CHAIRPERSON BERRY: Opposed?

4 (No response.)

5 II. APPROVAL OF MINUTES OF MARCH 3, 2000 MEETING

6 CHAIRPERSON BERRY: The next item is the  
7 approval of the minutes of the March 3, 2000 meeting.

8 VICE CHAIRPERSON REYNOSO: So moved.

9 CHAIRPERSON BERRY: Could I get a second?

10 COMMISSIONER MEEKS: Second.

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

13 (Ayes.)

14 CHAIRPERSON BERRY: Opposed?

15 (No response.)

16 So ordered.

17 III. ANNOUNCEMENTS

18 CHAIRPERSON BERRY: Then there are  
19 announcements. We have four new attorney-advisors in  
20 OGC, is that right, Staff Director?

21 STAFF DIRECTOR MOY: Yes.

22 CHAIRPERSON BERRY: Are they here?

23 STAFF DIRECTOR MOY: They are here.

24 CHAIRPERSON BERRY: Could you stand up so we  
25 can see your bright and shining faces? This is Michael

1 Foreman, Jenny Kim Park, Barbara de la Viez, and Bernard  
2 Quarterman. Welcome to the Commission, we're glad to  
3 have you with us, we need all the help we can get.

4 VICE CHAIRPERSON REYNOSO: Very glad.

5 CHAIRPERSON BERRY: The other item I wanted  
6 to mention is that one of our former Commissioners and  
7 who was Vice Chair of the Commission for a number of  
8 years, Morris Abram, who was a distinguished American who  
9 served as president of Brandeis University and had other  
10 distinguished contributions to this country on various  
11 threshold commissions and was Vice Chair of this  
12 Commission during the Reagan Administration, passed on  
13 March 16, 2000. Morris' picture is up there somewhere on  
14 the wall. We are all enshrined there forever -- there he  
15 is, right behind Elsie Meeks, on the wall. So, we want  
16 to note that.

17 The other is that I and Commissioner Meeks  
18 and Regional Director Melvin Jenkins met with the  
19 Governor of Nebraska, Governor Johanns, to discuss issues  
20 concerning Whiteclay, Nebraska, on March 21. This was a  
21 followup on our forum in Rapid City concerning the  
22 problems with the Indian deaths, the unexplained Indian  
23 deaths in South Dakota, and one of the issues to come up  
24 was the alcohol trading post in Whiteclay, right across  
25 the border, which seemed to exist for no purpose except

1 to sell alcohol to the Indians.

2 And so one of the outcomes of the SAC report  
3 was that we wanted to talk with the Governor of Nebraska  
4 about what he might do to better educate the people in  
5 Nebraska about the Indian problem, and also what they  
6 might do in terms of perhaps setting up some kind of  
7 detox center or other measures that might take place in  
8 Whiteclay to reduce the impact of that trading post.

9 So, I went out there, Commissioner Meeks  
10 came over, and Melvin Jenkins, and the Chair of the  
11 Nebraska SAC, and we met with him. There was some  
12 followup to that meeting that was promised -- the  
13 Governor promised that he would look at his budget and  
14 figure out whether within the Human Resources -- I think  
15 it was the Human Resources part of the budget, or some  
16 part of the budget -- whether they could allocate some  
17 money for an educational strategy, a public education  
18 strategy, within Nebraska, which seemed to be essential  
19 if you ever wanted to get some legislation or some kind  
20 of policy that will address the issue, and he told us  
21 that within ten days -- he promised that within ten days  
22 he would get us a report on that.

23 His Special Assistant called my Assistant to  
24 say that that report is delayed but it is on its way --  
25 and we know how these things are -- but that he is

1 planning to respond, and he will respond and will tell  
2 us. So, that's very good.

3 The other thing that happened is that there  
4 was -- I guess the Governor of South Dakota was not too  
5 happy with our report. I guess that's the way -- I mean,  
6 that's putting it mildly, I guess.

7 I had a long talk with the Governor of South  
8 Dakota on the telephone about it, and asked to meet with  
9 him and my request to meet with him is being pursued by  
10 our Regional Director, John Foster Dulles, and I have  
11 asked the Staff Director to tell John to continue to  
12 pursue that because I think that Elsie and I and others  
13 should meet with the Governor about this report, even  
14 though the Governor, in our phone conversation, was not  
15 willing to meet and was unhappy, to say the least, and  
16 there must have been some fallout in Nebraska.

17 I did tell the Governor that if nothing else  
18 happened as a result of this report, I was going to ask  
19 this Commission to agree that we should do a project with  
20 the Bureau of Justice Statistics, looking at the alleged  
21 disparities in the way the law is applied in the criminal  
22 justice system in South Dakota, in two of the counties --  
23 in Roberts County and the one with the "W" -- the other  
24 county -- the two prosecutors who came --

25 COMMISSIONER MEEKS: Walworth County.



1 CHAIRPERSON BERRY: -- Walworth County and  
2 Roberts County -- but that I would do that even if the  
3 Governor doesn't want to meet and even if the Governor  
4 doesn't want to do anything else.

5 So, Elsie, is there anything you'd like to  
6 add to explorations in South Dakota?

7 COMMISSIONER MEEKS: No, I think that's  
8 really important that -- I mean, to me, the whole report  
9 was that, you know, with people's perceptions we were  
10 dealing with, and that was by and large what the  
11 testimony was about. And so the study, to me, is the  
12 most important recommendation -- I mean, I think the  
13 federal sentencing guidelines that the federal task force  
14 set forth. So, you know, if South Dakota isn't willing  
15 to -- the State of South Dakota isn't willing to come to  
16 the table on this, I think we should.

17 Now, I talked to the Director, and he  
18 volunteered for me to talk with the South Dakota  
19 Community Foundation to apply for some funding for this  
20 type of study, and I thought that was good.

21 CHAIRPERSON BERRY: I have had, as you know  
22 -- and you have had with me -- some conversations with  
23 people at Justice about these issues, and I've had some  
24 conversations with the Attorney General about them. I do  
25 intend to pursue the matter of a task force with her, but

1 she's a little busy right now, and so I'm going to wait a  
2 few days to talk to her about it again. She is very  
3 interested in these issues. So, we will pursue that.

4 And now we are just making reports, but I  
5 would like to ask the Commissioners to agree -- and maybe  
6 we can talk about it under the Staff Director's report,  
7 which is next after we finish Announcements -- whether  
8 you would agree that we ought to pursue this idea of a  
9 study of the disparities in criminal justice.

10 I think that's all I have on announcements  
11 anyway, so we can go to the Staff Director's report,  
12 unless somebody else has an announcement they'd like to  
13 make.

#### 14 IV. STAFF DIRECTOR'S REPORT

15 Doing that, let me then mention as a first  
16 item under that, would the Commissioners think that it is  
17 a good idea -- and we've discussed this before in  
18 connection with South Dakota -- that we pursue the study  
19 of disparities, alleged disparities -- the people at the  
20 forum said that there were disparities -- in the criminal  
21 justice system in South Dakota in those two counties --  
22 in South Dakota at least, those two counties at least --  
23 and the prosecutors, as you will recall, from those two  
24 counties were present at the forum. And one of them --  
25 I've forgotten which one -- welcomed such a study and

1 said that he has information but he hasn't analyzed it  
2 and he doesn't know, and that anybody who wants to come  
3 to look it may. And I think I may have reported to you -  
4 - and maybe I didn't -- that the Director of the Bureau  
5 of Justice Statistics has said he is agreeable to joining  
6 with us to do such a study. He also had talked to the  
7 South Dakota Attorney General, I think, or the South  
8 Dakota -- yes, the Attorney General -- about the  
9 possibility of them doing such a study, and they weren't  
10 interested in doing it.

11 So, what I would like to know is if you  
12 would like the Staff Director to pursue the idea with  
13 staff joining us together with the Bureau of Justice  
14 Statistics in doing an analysis of that issue as a  
15 contribution we can make, no matter whether anybody else  
16 does anything or not, in South Dakota.

17 VICE CHAIRPERSON REYNOSO: Well, I must say,  
18 from being at the hearings and hearing all the testimony,  
19 I would think that it would be a very good idea. The  
20 impression I got from the local prosecutor was that he  
21 did not have the background or expertise to do it. He  
22 felt rather confident that it would not show a disparity,  
23 but I think in light of the sense of division that exists  
24 in the state, the Indians and non-Indians, it would be  
25 very good to simply come with the facts, and if they show

1 there is disparity there and the local prosecutor is  
2 willing to take that into account in how he utilizes his  
3 prosecutorial discretion I think would be good.

4 COMMISSIONER EDLEY: Madam Chairman.

5 CHAIRPERSON BERRY: Yes, Commissioner Edley.

6 COMMISSIONER EDLEY: I like the idea of  
7 doing a study, but I'd like to raise two cautions, maybe  
8 three. One is I think it could prove to be very  
9 methodologically difficult because of the problems of  
10 categorizing and because of the numbers of cases  
11 involved, small and big, as it were.

12 Number two, I think that not to come out  
13 whether the right focus is a couple of counties or some  
14 broader area, and I think that's something that should be  
15 thought through pretty carefully in the design of the  
16 effort.

17 And, number three, I would much prefer that  
18 we participate by contracting out, perhaps, or providing  
19 an honorarium or something to an academic who would  
20 conduct a study to be in conjunction with the BGS or NIJ  
21 or whoever would be doing it from the Justice Department,  
22 rather than allocating internal staff resources, given  
23 the huge list of projects that we are juggling now and  
24 into the foreseeable future.

25 CHAIRPERSON BERRY: I think that we would

1 have to consider timing, and that would be something for  
2 the Staff Director and the staff to figure out. All we  
3 would be doing today is asking them to -- saying in  
4 general that we think such a study of some aspect of the  
5 criminal justice system in South Dakota is warranted, and  
6 that we would like to do so, but the Staff Director would  
7 be responsible, with the staff, for figuring out what is  
8 the best way to do that and recommending it to us and  
9 telling us. And taking into account the comments that  
10 you've made and that others might make, I would like,  
11 along with when they consider this, to ask the question  
12 of whether we should do it with anybody else or not.

13 Even though BGS has volunteered, we don't do  
14 studies with other government agencies, we do them with  
15 ourselves -- you know, because, in a sense, we monitor  
16 what BGS does. So from that standpoint, we -- it would  
17 be good if they want to do such a study and use their  
18 resources to do it, and we could look at it and see what  
19 we thought of it. That might be interesting, too.

20 But for now -- and I'm always in favor of  
21 having academics receive honoraria to do studies, I think  
22 that's really terrific, either in your university or  
23 mine, Chris, or anybody else's, it's always a good idea.

24 COMMISSIONER EDLEY: Either one would do a  
25 great job.

1 (Laughter.)

2 CHAIRPERSON BERRY: For now, though, why  
3 don't we, if there is consensus, ask the Staff Director  
4 to propose such a thing to us and to work out the way it  
5 might be done, and we can discuss it again, but there is  
6 a general sense that we would like to do such a study of  
7 some type on disparities, alleged disparities, in the  
8 criminal justice system.

9 COMMISSIONER ANDERSON: Madam Chair.

10 CHAIRPERSON BERRY: Yes, Commissioner  
11 Anderson.

12 COMMISSIONER ANDERSON: In general, I'm in  
13 favor of moving forward on this, however, I have to say  
14 that I tend to be opposed to any new project until we get  
15 the Americans With Disabilities Act study that I think  
16 has been characterized as "languishing" on some kind of a  
17 time frame and schedule that looks realistic, and we can  
18 understand is going to be completed sometime in the  
19 millennium. So, that would be my concern here.

20 I would like to hear from the Staff Director  
21 when we are going to move forward on that. Commissioner  
22 Redenbaugh is not here, and so I feel a little bit of an  
23 obligation to raise that point because I think he might  
24 if he were here.

25 CHAIRPERSON BERRY: Staff Director, do you

1 have any idea, or do you want the General Counsel to  
2 speak to that, or what would you like?

3 STAFF DIRECTOR MOY: Well, since we have new  
4 additions to the General Counsel's office, I know he has  
5 assigned the project to one of the new Attorney Advisors.  
6 So, Mr. Hailes?

7 MR. HAILES: Good morning, Commissioners.  
8 Actually, Commissioner Anderson, if you review the MIS  
9 materials that were submitted, there is very detailed  
10 information about both the status and the expectation of  
11 a completion date, which suggests that by September the  
12 ADA project will be completed.

13 CHAIRPERSON BERRY: And you are having your  
14 new attorneys making that possible.

15 MR. HAILES: It is a valuable and great  
16 addition.

17 CHAIRPERSON BERRY: And I guess we would  
18 have to figure out, Mr. Anderson, as the Staff Director  
19 figures out whether we can do this sort of thing, is  
20 which office would do it, whether it would be OGC or OCRE  
21 or what, you know, how she thinks it would be. But, for  
22 now, I would like her to take into account all the  
23 comments that everyone makes, and any others that anyone  
24 would like to make, and then come back to us and tell us  
25 how, why, when, whether.

1                   COMMISSIONER ANDERSON: Well, Madam Chair, I  
2 think it's fair to ask that whatever the allocation of  
3 resources are, the time frame for this new study we're  
4 contemplating would not affect the ADA schedule?

5                   CHAIRPERSON BERRY: Well, she can answer  
6 that, too. It may very well be that she will propose  
7 that we not do it this year but in the next year or  
8 something, or in an outyear. Whenever we do it, the  
9 point is -- I don't think the problem is going to be  
10 solved in South Dakota immediately, and my whole point is  
11 that we should -- this Commission should be committed to  
12 doing at least one thing about the issues that were  
13 raised in South Dakota whereas 20 years ago, or whatever  
14 time it was the other report was done, insofar as we're  
15 able to tell, no one followed up to do anything at all,  
16 so that even if we did it two years from now, at least we  
17 would be doing something.

18                   So, I'm not suggesting that we do it  
19 immediately, I'm just suggesting that the Staff Director  
20 can tell us how it can be factored into either what we do  
21 now or in some outyear, but I'm just asking for a  
22 consensus that it is something that ought to be done in  
23 response to the report.

24                   COMMISSIONER ANDERSON: I agree with that.

25                   CHAIRPERSON BERRY: Okay. Now, anybody have



1 anything else under the Staff Director's report? Yes,  
2 Commissioner Lee?

3 COMMISSIONER LEE: Madam Chair, on page 4 of  
4 the Staff Director's report, regarding the Budget  
5 Director's meeting with Omega, I think this is an ongoing  
6 issue causing a couple of Commissioners here some  
7 problems. I would like to renew my recommendation to the  
8 Budget Director through the Staff Director that we've had  
9 complaints from the Commissioners regarding dealings with  
10 Omega. They are related to the Budget Director so he  
11 knows of the problems, so he knows of the problems as  
12 late as last week.

13 CHAIRPERSON BERRY: What is the status of  
14 this arrangement with Omega, and what's going on, because  
15 the people -- everyone seems to be -- or many people seem  
16 to be making complaints about the relationship.

17 STAFF DIRECTOR MOY: The Omega contract --  
18 the complaints have to be in writing so that we can have  
19 some sort of background information to give to the Omega  
20 people. It's under contract. Unfortunately, George  
21 Harbison, who is away on a family emergency, is not here  
22 to explain the whole process, but it is my understanding  
23 that if there are complaints, that you should submit it  
24 to us in writing so that we can go forward with the Omega  
25 folks because, as I understand it, you have Omega Travel

1 Offices in the West Coast and also on the East Coast. We  
2 don't have a problem here, but I know that a lot of the  
3 problems have been on the West Coast.

4 COMMISSIONER LEE: We deal with the  
5 Washington Office, which is local, figuring all of that  
6 was part of them.

7 I think that I just want to mention briefly  
8 the experience that I had last week. Under the strong  
9 recommendation of the Staff Director, I went back to  
10 Omega to make the travel arrangement, and I was given the  
11 runaround for the entire week. And even when the staff  
12 got on the phone, the information that she gave me was  
13 not the information that they gave her. So, it was just  
14 confusing, and I felt that given our time having to deal  
15 with other things, unless Omega really straightened out,  
16 it's really difficult for us to have this mayhem on a  
17 monthly basis.

18 VICE CHAIRPERSON REYNOSO: It just might  
19 indicate that the staff can take a portion of this  
20 transcript as a complaint. I don't see why this has to  
21 be as a formal memo from an individual saying "I hereby  
22 complain and petition the government to do this." I  
23 mean, it seems to me that we're being overly formalistic  
24 within this Commission about how to bring complaints to  
25 Omega.

1           And I just want to add for the record that  
2 I've had similar experiences, that it takes forever in  
3 terms of the time that we put into dealing with impolite  
4 and incompetent people who don't know what they are doing  
5 and who sometimes don't get tickets to us on time. In my  
6 view, dealing with Omega has been an absolute disaster,  
7 and I think that it might be helpful to the Commission,  
8 in indicating the unhappy state of affairs that some of  
9 us have, to simply take a portion of this transcript and  
10 indicate to them the extreme unhappiness that at least  
11 two Commissioners have and several staff people,  
12 including unanimously every staff person I have had, in  
13 dealing with Omega. The time it takes, their  
14 incompetence, their discourtesies, they never seem to  
15 know what the best way to get from A to B is. Other than  
16 that, they are a terrific organization.

17                           (Laughter.)

18           CHAIRPERSON BERRY: Is that all right, Staff  
19 Director, will you do that --

20           STAFF DIRECTOR MOY: Yes, I think that would  
21 be a good idea.

22           CHAIRPERSON BERRY: -- so they should know  
23 of our discontent.

24                           Does anybody have anything else on the Staff  
25 Director's report?

1 COMMISSIONER EDLEY: Madam Chair.

2 CHAIRPERSON BERRY: Yes, Commissioner Edley.

3 COMMISSIONER EDLEY: I do have a cousin who  
4 is a travel agent also.

5 (Laughter.)

6 I wanted to raise a question and make a  
7 comment about the press leaks. I don't know at what  
8 point to do it --

9 CHAIRPERSON BERRY: You can do it here  
10 because this is a matter of ongoing -- how we behave in  
11 an ongoing fashion in terms of our operations, which we  
12 usually discuss them in the Staff Director's report,  
13 anything to do with operations.

14 COMMISSIONER EDLEY: First, I think that  
15 there have been substantial and important "leaks" -- is  
16 the best way to characterize them -- of uncompleted  
17 Commission work, discussions of Commission activities, to  
18 the press in connection with the percentage plan  
19 statement and with the forthcoming New York report. And  
20 I guess I was very dismayed and, I must say, angered to  
21 read these reports, in part, because it seems quite  
22 political. It certainly tends to undermine the work of  
23 the Commission, and the standing of the Commission, and  
24 the perception of the Commission by the public -- and I'm  
25 not a newcomer, by any means, to the ways of Washington,

1 so I understand that leaks happen -- but that said, I  
2 find it deeply objectionable and wanted to express that.

3 And I don't know the source of the leaks, I don't know  
4 whether it's the Commissioners or whether it's people on  
5 the staff, but it certainly disserves the institution.  
6 That is point number one.

7 Point number two is, I think that aside from  
8 the general issues of politicization and undermining the  
9 work of the Commission, I think that in some  
10 circumstances leaks of the sort that we've experienced  
11 over the last couple of weeks have serious potential to  
12 do damage to other people. Some of the work that the  
13 Commission does, particularly in connection with formal  
14 hearings, if there's premature disclosure or circulation  
15 to the public, to the media, I think could be quite  
16 problematic. I don't know what will be in the draft of  
17 the New York City report when it finally gets to us, but  
18 I also know that it's entirely possible that there will  
19 be things that the staff might draft or things that might  
20 be excerpted from transcripts or something that could do  
21 damage to people's reputations, that could lead to  
22 hysteria, kind of anticipatory hysteria over things that  
23 actually will never see the light of day or never be  
24 presented, much less endorsed by the Commission in a  
25 formal way, and meanwhile the damage to reputations, the

1 misunderstanding and confusion that could be sewed, is  
2 really quite substantial, which leads to my third point,  
3 which is, in light of all these concerns, particularly  
4 the concerns about the possible damage to people outside  
5 the Commission, I would like to know whether there are  
6 regulations or statutes that are applicable to this kind  
7 of unauthorized release of information. And I know  
8 everybody has First Amendment rights and the like, and  
9 we're not exactly dealing with national security matters,  
10 but on the other hand if there are ethics rules, or  
11 anything of the sort, that bear on this as a formal  
12 matter, I'd like to understand that.

13 And I would also like to know under what  
14 circumstances, if any, the unauthorized disclosure of  
15 information, whether by staff or by Commissioners, is an  
16 appropriate matter for referral to an ethics office or to  
17 an Inspector General?

18 CHAIRPERSON BERRY: Well, let me say, and  
19 then maybe the Staff Director will want to say something  
20 about what actually happened, but let me say a word about  
21 what actually happened insofar as I know.

22 You mentioned two projects, but the first  
23 one in recent months that has been leaked to the press  
24 ahead of our consideration was the gender and mathematics  
25 report. I got a call from a television network which had

1 the report in hand, and wanted to -- said they had been  
2 told by whoever gave it to them, that they ought to do a  
3 program -- a thing on it, because it was a horrendous  
4 report that did all sorts of horrible things about  
5 wanting girls to learn advanced math, and that they were  
6 not going to do it because they thought that that was  
7 stupid because girls needed to learn advanced math, but  
8 they just wanted me to know that they had been given the  
9 report. Then after -- that's the first in recent memory  
10 that it's happened. The second is the -- and it's hard  
11 to trace where that came from because that report was in  
12 the hands, in its final form, of a lot of people before  
13 we considered it.

14 The one on percentage plans, the version  
15 that was leaked to the press, was in the hands only of  
16 the Commissioners, their assistants, and the people in  
17 the Staff Director's office -- two special assistants and  
18 the Staff Director, the Commissioners, and their  
19 assistants. They were the only people who had that last  
20 copy, which means that somebody in that group leaked it.  
21 That narrows the circle a little bit.

22 So, one can just sort of figure out to whose  
23 advantage it was in terms of how it was played and that  
24 it was leaked, to figure out who did it.

25 The third one is on New York -- this has all

1       been very interesting to me because I have not seen a  
2       draft of the New York report, yet I keep reading in the  
3       media that there is a draft of the New York report. The  
4       reporters keep calling up, talking about a draft of the  
5       New York report, and I've never seen one. I know the  
6       Commissioners were not -- were any of you sent a draft of  
7       the New York report?

8                       COMMISSIONER ANDERSON: We haven't even seen  
9       a transcript of the hearing yet.

10                      CHAIRPERSON BERRY: I haven't either. I  
11       haven't seen any of it. So, I don't know what they are  
12       talking about, yet they keep writing in the press that  
13       there's a draft. I also think that there's some  
14       misunderstanding -- someone on our staff gave a  
15       misunderstanding to the press because the Associated  
16       Press is particularly confused about this -- they thought  
17       that the reason why we weren't considering the report  
18       today was because of some story that somebody wrote about  
19       me when, in fact, we are not considering it because we  
20       don't have the draft to consider and it is not finished.  
21       And they don't understand that we put things on the  
22       agenda and we often don't consider them if we don't have  
23       them. But I am told by reporters that someone on our  
24       staff told them that, which means we've got people on our  
25       staff who are telling -- and I don't think the reporters



1 are -- I used to be a reporter, they don't just make  
2 things up out of whole cloth. I mean, they have their  
3 own interests and biases and so on, but they usually  
4 don't make stuff up like that just, you know, off the  
5 street.

6 So, somebody on our staff has a reason for  
7 putting out this kind of information. Now, my concern  
8 about it is -- and then on the last one, you've got, of  
9 course, this brouhaha with people responding to what they  
10 think is something we have and did, when none of us knows  
11 anything about what it is and we haven't seen it, and  
12 people keep calling up, asking us to respond to it. It's  
13 very weird.

14 So, I don't know the answer, Christopher,  
15 because I know that, from my time being in government and  
16 on the fringes of it, there's always been leaks, and you  
17 know this, too, and usually you can't find out who did  
18 it. When the circle is narrow and you know how many  
19 people have something, you can figure out that one of  
20 them did it, and you figure out what their interest was  
21 in doing it, but most of the time, you can't. But I  
22 think your question about whether it ought to be referred  
23 to the Inspector General for an investigation is an  
24 interesting one.

25 Commissioner Wilson.

1                   COMMISSIONER WILSON:     Thank you, Madam  
2 Chair. I'd just like to add as sort of an annotation to  
3 your comment, that in terms of -- I mean, I was called by  
4 a television station, called to respond to the report  
5 and, fortunately, I just had the presence of mind to say  
6 "I know nothing," which I did. And then, furthermore, to  
7 respond to the report in the New York Times, which  
8 unfortunately I had not a chance to read the paper that  
9 day, however, that night I did see that the Commissioner  
10 of Police had called a press conference in response to  
11 this report, the said report, and more to the point, the  
12 Mayor had already put a spin on it in terms of the  
13 senatorial campaign.

14                   And it seems to me that it does a major  
15 disservice to the hard work of this Commission that there  
16 is a political spin that's put on this when people are  
17 working very hard to put forth a report, and many people  
18 have been hurt in the wake of what it is we're  
19 investigating. So, I think it's very damaging and very  
20 serious.

21                   COMMISSIONER ANDERSON: Madam Chair.

22                   CHAIRPERSON BERRY: I'll recognize you in  
23 just one second, Carl, Commissioner Meeks had her hand  
24 up. Commissioner Meeks.

25                   COMMISSIONER MEEKS: Well, you know, it

1 really raises that when the draft does get finished --  
2 you know -- I mean, it's my understanding that the  
3 Commission reviews the draft and doesn't -- and then it  
4 goes for agency comment, and then the final report is  
5 voted on and released, is that right?

6 So, I mean, it really -- in fairness to  
7 anyone that commented in the report, you know, I just  
8 think we need to be very careful about the leak when the  
9 draft finally does come.

10 CHAIRPERSON BERRY: Yes, Carl.

11 COMMISSIONER ANDERSON: Well, I have two  
12 comments. The first is, I don't know what's in the New  
13 York report, I have not see a draft of it. But according  
14 to what I read in the paper, Reverend Al Sharpton does,  
15 he told them you have the report, and so we find out it's  
16 Reverend Sharpton. That's my first comment.

17 My second comment is, on April 6th, I  
18 received -- I think we all received -- a memorandum from  
19 the Staff Director which said the following -- and it's  
20 only three sentences, so I would like to read: "Please  
21 set aside time in your schedule early next week to read  
22 the New York report before the next Commission meeting.  
23 Unfortunately, it is not available for this mailout, and  
24 I know you have been urgently waiting for it. It will be  
25 sent to you in a few days."

1                   Now, at least the Staff Director, my  
2 interpretation of this memorandum would be, thought the  
3 report was completed. So, if the report is not done, I  
4 find that interesting. Apparently, on April 6, the Staff  
5 Director thought it was done or it would be done in the  
6 next day or two, but that does not explain why, if, in  
7 fact, the report had not been sent for comment to the  
8 Police Department or the Mayor's office. So, I think  
9 that is maybe a question we ought to raise here, too,  
10 while we're talking about the report.

11                   CHAIRPERSON BERRY: I'll let the Staff  
12 Director comment in a minute, but just to be clear for  
13 the new Commissioners so they will understand this, when  
14 we consider a report here, that doesn't mean it's ready  
15 to be published. Very often when we consider a report  
16 here, it's either out already for what we call "affected  
17 agency review," which means agencies that have testified  
18 get to comment, or we send it out after we -- depending  
19 on what the timing is and what we're doing -- after we're  
20 generally satisfied with it, to get comments, and  
21 sometimes we put their comments in an appendix -- like,  
22 if they send a letter back saying blah, blah, blah, blah,  
23 blah, blah -- we just put all the letters in an appendix  
24 so people will have them when the report is published.

25                   If they say anything that challenges the

1 factual accuracy of some point that's made and the staff  
2 believes that that is correct, then they will change  
3 whatever it is. But when we consider it here, that  
4 doesn't mean that's the end of the process. That was the  
5 other confusion that people had who were looking at the  
6 agenda. They thought that if we voted on this report, it  
7 somehow meant we were going to publish it like that.  
8 And, clearly, part of the process -- and it's always been  
9 part of the -- not always been, but in the last 15 years  
10 it's been part of the process -- that affected agencies  
11 are called, get to comment on reports that we do before  
12 we finally publish them.

13 And we can ask the General Counsel and Staff  
14 Director to affirm this, but I am clear, from my  
15 conversations with folks in New York when we did the  
16 hearing, that they knew that they would get to comment on  
17 this report before it was issued, that there was affected  
18 agency review, and that they would get to comment on it,  
19 which is the other reason why I was puzzled when there  
20 was all this stuff about -- apparently, someone told that  
21 if we voted on it today, if we had it and voted on it,  
22 that we weren't going to let them comment on it before it  
23 got out. Maybe that was what the confusion was, I don't  
24 know.

25 Staff Director, do you or General Counsel

1 have any comments on any of this at this point, any  
2 further comments?

3 STAFF DIRECTOR MOY: Thank you. We sent the  
4 report out to the Editorial Board for review and, based  
5 on comments there, staff here had asked for an extension.

6 CHAIRPERSON BERRY: That was why you sent  
7 that other memo?

8 STAFF DIRECTOR MOY: Right. We thought it  
9 would be done by then, but staff here had asked for an  
10 extension and I granted it, and I don't know if Eddie  
11 wants to add to that.

12 MR. HAILES: That's accurate and, in fact,  
13 we are revising the report. We expect it to be completed  
14 very soon. We will follow all of the procedures that  
15 this Commission has always followed in terms of affected  
16 agency review. We were very concerned about the news  
17 report, which appeared to be nothing more than an acute  
18 case of "overreactionitis," but at the same time we are  
19 continuing to do the sound legal work we've always done  
20 and making certain that every line in the report is  
21 accurate, based on facts, based on testimony, and  
22 analysis of all of the documents that we received.

23 COMMISSIONER ANDERSON: Madam Chair, I have  
24 two questions.

25 CHAIRPERSON BERRY: Yes, Commissioner

1 Anderson.

2 COMMISSIONER ANDERSON: First is, just so  
3 we're clear here, when do the affected agencies get a  
4 chance to comment, before we vote on it, or after?

5 CHAIRPERSON BERRY: We're going to discuss  
6 this right now because, normally -- and I'll let them  
7 answer -- if my answer is wrong, you guys tell me and you  
8 can answer. We have, in the past, let affected agencies  
9 comment either before we approved it at a meeting, or  
10 afterward, or at the same time, depending on the timing  
11 on it. We've done it all those different ways.

12 The main thing we've done is we've not ever  
13 published a report before we got the responses from the  
14 affected agencies and considered them. So, we've done it  
15 those three different ways.

16 What I want to ask this Commission now --  
17 and since we're discussing this, we might as well discuss  
18 it -- is what we should do, given the fact that there are  
19 all these leaks, given the fact that there's all this  
20 misinformation that's running all around in the press  
21 about what we're doing and what we're not doing, and  
22 given the leaks, how are we going to protect this report  
23 from being leaked by Commissioners and their special  
24 assistants, when we give it to the Commissioners? Based  
25 on what has happened to date, somebody among the

1 Commissioners and their special assistants is likely to  
2 leak this report. And if it's leaked, then the question  
3 is -- it will be in the press before we get a chance to  
4 even say anything, do anything -- I mean, that is clear,  
5 given the attention here -- and we've got to consider  
6 among ourselves -- it's unfortunate that we have to, but  
7 we do -- what do we do? If we give it to affected  
8 agencies, they will leak it with their spin on it because  
9 the groundwork is already laid, with all the  
10 misinformation in the press about who is doing what to  
11 whom -- I mean, that's clear --

12 COMMISSIONER ANDERSON: And why.

13 CHAIRPERSON BERRY: -- and why, and all the  
14 rationales out there about who is doing what to whom and  
15 why they're doing it to whom. So, I think that we need  
16 to really consider what we want to do. I mean, one  
17 option would be to release the draft when the staff gets  
18 it, to us and to the affected agencies and to the press,  
19 all at the same time, and tell them it's a draft and  
20 we're waiting to get stuff back from the affected  
21 agencies, we're waiting to read it ourselves, and here it  
22 is world, everybody have at it. That's one way to do it.

23 I mean, you could argue that that's a good  
24 way to do it because everybody's got it and everybody  
25 gets it at the same time, and you don't have to worry



1 about somebody leaking it to somebody, to get some kind  
2 of what they think is advantage and undermining the work  
3 of the staff.

4 I guess the opposite argument would be that  
5 you shouldn't do that because the affected agencies  
6 should get a chance to respond first, but given the  
7 environment we've got and knowing what's going to happen,  
8 that doesn't make it -- we can't trust ourselves and we  
9 can't trust anybody else. So, that's unfortunate, but  
10 it's true. So, what do we do? Yes, Vice Chair?

11 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
12 think there is a solution to one-half of the problem. I  
13 don't know what solution we can have to, if the press  
14 reports are correct, having a Commissioner indicate  
15 what's going to be in the New York report and putting a  
16 political spin on it so none of us know what's in there,  
17 anybody can say anything, and I very much regret that  
18 that happened, but since we don't even have the report, I  
19 don't know of any way that we can prevent that from  
20 happening except folks using, hopefully, good judgment.

21 We can, however, do something about draft  
22 reports. I felt very disadvantaged to get phone calls  
23 from reporters from Florida, asking me to comment on the  
24 percentage report when, as I understood it -- and I  
25 checked with the Chair on this -- the policy was not to

1 comment on reports until they had been officially issued  
2 by this Commission, and yet those reporters had a draft -  
3 - and I saw a letter from the Governor of the State  
4 indicating that he had a draft, and the reporter was  
5 saying, "Well, Commissioner Reynoso, what do you have to  
6 say about it," and I had to say, "Well, my understanding  
7 is that I can't comment on it." Then I get a rash of  
8 phone calls from New York, saying, "You've got this  
9 report now, what do you have to say? Somebody is saying  
10 that you're after Giuliani, and somebody is saying that  
11 that is what this report says," and I don't say, "One, I  
12 don't have the report but, two, if I had it, policy is I  
13 can't say anything about it."

14 The second part I don't think we can take  
15 care of, the first part I think we can. While not  
16 necessarily with reports, but in many areas of government  
17 activity, including judicial opinions by trial court  
18 judges, tentative rulings where drafts are issued  
19 publicly, and that way everybody understands that it's a  
20 draft, subject to change, subject even to change 100  
21 percent, as happens with tentative opinions sometimes.

22 So, my suggestion would be that at least as  
23 to draft reports, that when they are released to the  
24 Commissioners they are made available to the public and  
25 the press, and that way, when they call and say, "Well,

1 Commissioner So-and-So says that this is a political  
2 attack on So-and-So," then one can at least point out  
3 that the report is very complimentary about that  
4 particular office, so that at least that half of it I  
5 think we can do something about.

6 CHAIRPERSON BERRY: So you would support the  
7 release to the world at the same time that you give it to  
8 us and to everybody, as I was suggesting, you would  
9 support that?

10 VICE CHAIRPERSON REYNOSO: Very much so.

11 CHAIRPERSON BERRY: I'll get you in just a  
12 second, Christopher. Commissioner Lee.

13 COMMISSIONER LEE: Madam Chair, I find it  
14 sort of tragic that we've spent the last half an hour  
15 talking about an issue when I think that we should talk  
16 about more relevant issues, that's why I got on this  
17 Commission. But that being said, I do think that if we  
18 have strongly recommended to other folks who came before  
19 us that they would be afforded all kinds of courtesy, all  
20 kinds of confidentiality, that they would have the  
21 opportunity to review those reports, and we, on the other  
22 hand, violate kind of a trust, is something that we need  
23 to really look at very seriously.

24 I think that, of course, in the long-term,  
25 we can agree on releasing a draft report so that

1 everybody will get it at the same time, including the  
2 press, so that all the accurate information could be sent  
3 out, but I do think that our credibility right now is at  
4 risk because people may not feel comfortable coming  
5 before us because if they think that whatever they said,  
6 they may not have a chance to review it, yet somehow the  
7 press got a hold of it and afforded certain comments that  
8 they had actually not even reviewed, so I think that we  
9 really need to address this issue very, very carefully.

10 CHAIRPERSON BERRY: Well, see, Yvonne, you  
11 have hit on and reinforced the reason why we had the  
12 policy before, that when we got it, we would read it and  
13 we would come and discuss it. If we hadn't gotten the  
14 comments from affected agencies, we all understood we  
15 were waiting to get the comments, and no one would talk  
16 about or do anything until it was finished, until we got  
17 those and people had a chance to get back. But when we  
18 can't trust ourselves and we're going to go give it to  
19 the press before hand, then the question is, do we give  
20 it selectively or just simply give it to everybody. And  
21 you're right, it does say to witnesses who come before  
22 us, "Commissioners are going to give all your stuff to  
23 people before you have a chance to see it," it's really  
24 quite distressing. I don't know what to do about it.

25 Commissioner Edley?

1                   COMMISSIONER EDLEY:  There's a problem with,  
2                   I think, what Cruz has suggested, which is once the draft  
3                   is circulated and then the final is different, you have  
4                   then another round of stories about what were the  
5                   politics of why the final was different from the draft,  
6                   and who pressured whom to do what, and why, and it also  
7                   puts us in a position of having to react to media flurry  
8                   based on the draft.  I mean, suppose we put out a draft  
9                   and some party in New York is upset about something in  
10                  the draft and holds a press conference to talk about.  
11                  Then what are we supposed to do?  Are we supposed to  
12                  respond in the press to their concerns?  Are we supposed  
13                  to just stand mute and take the hits, even if they are  
14                  distortions or even if the Commission has no intention of  
15                  moving in the direction suggested by the comments, or  
16                  even suggested by whatever passages they are quoting from  
17                  the report.

18                         I guess I want to come back -- so I don't  
19                         know the way out of that box at all, but I would like if  
20                         there's any guidance available from you or Counsel on  
21                         this question of whether an Inspector General has a role  
22                         or could have a role in all this.

23                         CHAIRPERSON BERRY:  I'm going to let there  
24                         be a response to this but, Commissioner Anderson, what do  
25                         you think about how we do this?

1                   COMMISSIONER ANDERSON: I think we have to  
2 keep focused on one item here, and that is the problem  
3 with our procedure with this percentage plan statement.  
4 The fact of the matter is that this statement was never  
5 discussed in a public meeting of the Commission. It was  
6 voted on in secret by a poll vote, the specifics of  
7 which, as far as I know, have never been released to the  
8 public. And if you proceed with a statement like this,  
9 is this the kind of fashion -- and I don't believe there  
10 was ever even one word changed on this statement --  
11 you've got to expect that it is going to cause certain  
12 problems. There were no witnesses, that I understand,  
13 were used in formulating the percentage plan statement.  
14 So the problem, hypothetical problem, that maybe somebody  
15 can't trust our process here I don't think is applicable  
16 to this issue of the percentage plan.

17                   Now, where you have a procedure where a  
18 draft is publicly discussed at a Commission meeting, the  
19 Commissioners are able to raise concerns about draft  
20 language, draft recommendations, draft findings. It's  
21 all on the public record, and there are members of the  
22 news media present in our meeting. Obviously, it's now  
23 in the public domain. They follow up with Commissioners  
24 after the meeting with questions, and that's an open way  
25 of proceeding. And, generally, when we proceed in that

1 manner, we don't run into this kind of problem.

2 So, I think in trying to talk about whether  
3 an Inspector General is going to come in and investigate  
4 and have some kind of a witch hunt over a few leaks, that  
5 would be fine, but the real issue, as far as I can see,  
6 is that we have rushed to judgment on this and we've gone  
7 outside of our normal procedures. If we had stuck with  
8 our normal procedures -- for example, I'm not even aware  
9 that there is a legal sufficiency review of the  
10 percentage plan statement. Certainly, the affected  
11 agency -- Governor Bush apparently indicated he had no  
12 opportunity to comment on it before we were able to vote  
13 on it.

14 So, I think if we go back to our normal,  
15 usual procedures, we're not going to run into this kind  
16 of problem in the future.

17 COMMISSIONER EDLEY: Madam Chair.

18 CHAIRPERSON BERRY: Yes.

19 COMMISSIONER EDLEY: I just disagree sharply  
20 with Commissioner Anderson. I don't understand why -- it  
21 does not seem to me --

22 CHAIRPERSON BERRY: Christopher.

23 COMMISSIONER EDLEY: I thought you  
24 recognized me.

25 CHAIRPERSON BERRY: Christopher.

1 Christopher? Christopher?

2 COMMISSIONER EDLEY: I'm here.

3 CHAIRPERSON BERRY: Hold just one second.

4 COMMISSIONER EDLEY: I'll try.

5 CHAIRPERSON BERRY: I want to correct a  
6 factual thing.

7 COMMISSIONER EDLEY: Right.

8 CHAIRPERSON BERRY: Commissioner Anderson,  
9 you've been on this Commission for a long time, not as  
10 long as I have but a long time. And you know that  
11 hearing procedures are very different from research and  
12 analysis reports. For hearings, there are specific  
13 procedures that are in a handbook, that are in the  
14 regulations, that are everywhere, that we follow. And  
15 one of those is the affected agency review.

16 When we do a research and analysis report,  
17 it is not the same thing as a hearing, and the procedures  
18 are not the same, that's the first thing.

19 The second thing is, the Commissioners were  
20 asked whether they would like to vote on the percentage  
21 plan report by a poll vote. The Commissioners voted to  
22 vote on it by a poll vote which, as I understand from  
23 General Counsel, that is perfectly legal proper, it is a  
24 decision the Commissioners can make, and the decision to  
25 take the vote was made by the Commissioners.



1           The fact that you lost on the vote -- I used  
2           to be 6 to 2 for years on this Commission, and lost every  
3           vote, including some poll votes and including some votes  
4           on whether to take a poll vote -- but the fact of the  
5           matter is that the Commissioners voted to do this, and it  
6           was research and analysis, and it was not a hearing in  
7           which there was some testimony by somebody that they got  
8           to look at, and that includes Gray Davis, the Governor of  
9           Texas, the Governor of Florida, and so it is not the same  
10          thing, and it was not some willy-nilly sort of process  
11          that was done without the Commissioners agreeing that  
12          this is what they wanted to do. I just wanted to correct  
13          that factual part in terms of how hearings are done, and  
14          procedures and how the reports -- now, Commissioner  
15          Edley, I will recognize you if you have now -- if you  
16          still remember what you wanted to say.

17                    COMMISSIONER EDLEY: I do. And I have  
18                    calmed down a little bit, so thank you. I do not believe  
19                    that an individual Commissioner's objection to a process  
20                    that was used provided it was a process that could be  
21                    accepted by a majority of the Commission -- I don't  
22                    believe that an individual Commissioner's objection to  
23                    that process gives that Commissioner license to do what  
24                    has happened in these cases, to leak and to then attempt  
25                    to undercut the work of the Commission. I reject that

1 proposition.

2 But I still want to know whether, apart from  
3 my climbing on my high horse and objecting to the  
4 proposition, whether there is any applicable law here, or  
5 whether there could be applicable law on this matter.

6 CHAIRPERSON BERRY: Does anyone know the  
7 answer to that, or is it something the staff would have  
8 to look up?

9 STAFF DIRECTOR MOY: Madam Chair.

10 CHAIRPERSON BERRY: Staff Director wants to  
11 say something.

12 STAFF DIRECTOR MOY: Of course, our staff  
13 has been dismayed about what has happened this past week  
14 on both of the -- or all of the articles that we've seen  
15 in the newspapers, but in trying to do some research to  
16 see what we can do -- there are Standards of Official  
17 Conduct, plus the Code of Government Ethics, plus each  
18 individual's own integrity, and also for the good of the  
19 agency, so I am continuing to look at these things, and  
20 there are these rules and regulations out there, and they  
21 also affect all government employees, whether they are  
22 full-time or part-time.

23 CHAIRPERSON BERRY: So you will be informing  
24 us after the staff has explored this further, as to the  
25 answer to Commissioner Edley's question?

1                   STAFF DIRECTOR MOY:     Yes, including the  
2 answer to the Inspector General --

3                   CHAIRPERSON BERRY:   Including the question  
4 about the Inspector General?

5                   STAFF DIRECTOR MOY:   Right.

6                   COMMISSIONER EDLEY:   May I ask, would it be  
7 inappropriate to also just -- and then the staff try to  
8 sort this out -- that you touch base with the Inspector  
9 General at the Agriculture Department, and ask their view  
10 about what the options are from their perspective,  
11 because I just -- well --

12                  CHAIRPERSON BERRY:   You're dismayed, right,  
13 Christopher?

14                  COMMISSIONER EDLEY:   And then some.   I'm  
15 looking through my thesaurus right now.

16                                       (Laughter.)

17                  CHAIRPERSON BERRY:   If there's no objection,  
18 we'll ask that the Staff Director, as she pursues this,  
19 also ask the Inspector General what the options are. Did  
20 someone else want to say anything else about this?  
21 Commissioner Wilson.

22                  COMMISSIONER WILSON:   Thank you, Madam  
23 Chair. Just go back to the original question you had  
24 posed, Commissioner Edley, I understand what you are  
25 saying in terms of the release of drafts and then having

1 to respond to those drafts, even though they are not  
2 final, and statements that may be made in them that, of  
3 course, then may be taken back or changed or modified.

4 At this point, we are responding to reports  
5 that don't even exist. And in terms of witch hunts --  
6 because I come from New York, I've been in New York, and  
7 I will say that the statements made about the United  
8 States Commission on Civil Rights in the New York papers  
9 and from the Commissioner of Police and the Mayor, it  
10 seems to me to be the beginning of a witch hunt.

11 And, you know, I think it's a very serious  
12 situation, but it seems to me that the only way to deal  
13 with it -- which is an unfortunate way, particularly in  
14 light of what Commissioner Lee has observed and commented  
15 on -- is to release statements and the report to  
16 everybody at the same time, until we can solve this  
17 problem or fix it or change it or understand a way to  
18 really deal with it.

19 CHAIRPERSON BERRY: It is clear, of course,  
20 as we should know, all probably know, that there are  
21 various versions of this report, not a draft report,  
22 because a draft is what we did, technically, when we did  
23 it. But the staff cannot help but have versions of what  
24 they are writing, which means that somebody or other is  
25 telling various reporters about some version of something

1 they saw that somebody suggested or wrote, or this, or  
2 that, or the other, in order to put their own spin on it.

3 If there is a draft report -- there can't be  
4 one because it would be what we would be considering, and  
5 we don't have anything to consider -- but having that  
6 already been done just with versions, we can imagine what  
7 will happen when the actual draft report is available.

8 And so we really don't have that many  
9 options. If we don't release it, Christopher, somebody  
10 is going to release it anyway, and we'll all be asked  
11 about it, and all the questions that you just said would  
12 be asked of us anyway.

13 So, I am interested in knowing, Commissioner  
14 Anderson, would you support the idea of our releasing the  
15 drafts at the same time we give them to Commissioners,  
16 and give them to the affected agency, so that everybody  
17 gets it all at the same time, clearly stated to the  
18 public that this is a draft which will be changed, or may  
19 be changed, after we receive these comments and after the  
20 Commissioners review it? Would you be opposed to that?

21 COMMISSIONER ANDERSON: I don't think I'm  
22 opposed to that.

23 CHAIRPERSON BERRY: You don't think you're  
24 opposed to it?

25 COMMISSIONER ANDERSON: No. I think it's a

1 reasonable way of proceeding. I mean, we might want to  
2 reflect a little bit on it, but I think that's one option  
3 we ought to seriously consider.

4 CHAIRPERSON BERRY: Christopher, do you want  
5 to say something else?

6 COMMISSIONER EDLEY: Just that I think what  
7 you and Vicky have just said I find it unpersuasive in  
8 the case of this New York report because so much damage  
9 has already been done. But I'd like to reserve judgment  
10 about what our procedure ought to be in the future, and  
11 to make that judgment about the future in light of the  
12 further analysis and consideration by the staff and the  
13 consultation with the Inspector General. Do you see what  
14 I'm saying?

15 CHAIRPERSON BERRY: I understand.

16 COMMISSIONER ANDERSON: Madam Chair.

17 CHAIRPERSON BERRY: Commissioner Anderson.

18 COMMISSIONER ANDERSON: I think one way we  
19 might want to proceed on this is to bring the transcript  
20 to a position where we can review it, particularly the  
21 new members of the Commission. I think they ought to  
22 have the opportunity to review parts of the hearing  
23 transcripts before they see the report. And I think  
24 there's so much controversy around this, we might even  
25 want to think about not considering it until November.

1 Then we can look at it calmly, put a little distance  
2 between the controversy and the report, and maybe we can  
3 consider it calmly and the public can receive it calmly.

4 CHAIRPERSON BERRY: I wouldn't do that. The  
5 Commission, in its history, has never caved in to  
6 political pressure, and the Commission has always issued  
7 reports when they were finished and done, without fear or  
8 favor, and no matter who objected, and no matter what the  
9 consequences were to individual Commissioners.  
10 Commissioners have, in fact, been threatened with arrest  
11 and jail, and some of them have been harassed and  
12 assaulted in the history of this agency, over their  
13 desire to release a report that was ready when it was  
14 ready, in a political environment they were told by  
15 politicians was too dicey for them to issue. We would  
16 break faith with those who served before us on this  
17 Commission, and with the mission of it. And so I,  
18 myself, no matter how embattled, no matter how  
19 criticized, no matter what happens, if a report is ready,  
20 as far as I'm concerned, we are going to issue it.

21 This report on New York -- I mean, I've had  
22 people asking me, "Is this about the senatorial  
23 election," which is just B.S. You all know we started  
24 this hearing way back before anybody was running for the  
25 Senate. "Is this about trying to get Giuliani?" If his

1 name -- as I told the New York Times, if his name was  
2 Santa Claus, we would still be writing this report. I  
3 mean, it's just that he happens to hold the office of  
4 Mayor of New York. And so as far as I'm concerned, to  
5 put this off after November would be "us" saying our  
6 report is political and therefore we don't want to affect  
7 -- we issue reports when they are done. Civil rights  
8 business doesn't stop because there is an election  
9 anywhere in this country. That's my view. Others may  
10 differ with me. And if you start down that road, you'll  
11 be putting your finger in the wind every time there is  
12 something this Commission ought to do or there is an  
13 issue, trying to see what political way, or who is going  
14 to attack you, or who is going to say what. Of course,  
15 we'll be attacked. There are people who want to  
16 undermine our work. There are people who are afraid that  
17 this report is going to come out and make some beneficial  
18 suggestions or say something, and as well it may, even  
19 though I haven't seen it -- I don't know what you guys  
20 are putting together, but I trust you. So, therefore, I  
21 am against that. If the rest of you want to do that, you  
22 can vote to do that, but I am against it, unalterably.

23 COMMISSIONER ANDERSON: Madam Chair.

24 CHAIRPERSON BERRY: Yes.

25 COMMISSIONER ANDERSON: I think the record



1 will show that last fall when we discussed this report,  
2 we had an agreement that it would be completed by  
3 December and we would vote on it, to keep it out of this  
4 campaign controversy. So, please don't interpret my  
5 suggestion as caving in to political pressure because I  
6 voted in favor of moving forward on this report on the  
7 condition that we would keep it out of this campaign  
8 season, and that's what I thought we were going to do.  
9 And that's why I relied on the representation that this  
10 report would be done last December. And I think the  
11 record will show that.

12 CHAIRPERSON BERRY: Well, somebody can pull  
13 the record and look at it, but you and I both know that  
14 the staff finishes reports when they can. I mean, the  
15 last time something was finished when they said they were  
16 going to finish it -- and this is really remarkable that  
17 this is getting finished within a year of the hearing.  
18 It's the first time I've seen a hearing report get  
19 finished that fast since I've been here. But I repeat,  
20 for myself, I don't care about the election, or about  
21 what anybody might say about the election or anything  
22 else. If people disagree, that's fine. I only have one  
23 vote.

24 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
25 agree with your position, and I'm sure the report, when

1 it comes out, will show what some of the witnesses said,  
2 mainly, that these are the types of issues they've been  
3 dealing with. I recall one witness, a religious leader,  
4 saying that he had been dealing with these issues I think  
5 he said for 20 or 30 years, that it wasn't new. And I'm  
6 sure the report will reflect that. I personally reject  
7 out-of-hand the notion this may be a political report.

8 Madam Chair, I know that at least two  
9 Commissioners have expressed some qualms about the notion  
10 of distributing the reports when they are in draft form,  
11 but I suppose out of this experience, my feelings are  
12 sufficiently strong that I'd like to motion that we do  
13 so, and then if -- we can always reconsider it in the  
14 near future, if it is not working, and change our minds.

15 But, certainly, I am convinced, based on my experience,  
16 that it would work better to proceed in that fashion.  
17 So, I'd like to make that motion.

18 CHAIRPERSON BERRY: You can make that  
19 motion, but let me just say this. Staff handed me a note  
20 to say they had called the Mayor's office again to  
21 reconfirm that, one, there is no draft report, and, two,  
22 that of course they and affected agencies will, as they  
23 told them before, have an opportunity to review the  
24 portions of the report dealing with them before it is  
25 published and say whatever they want to say about it, and

1 that's because I got this letter from the Mayor's office  
2 -- which was released to the press before I got it,  
3 obviously -- the other day saying, "Why aren't you going  
4 to let us look at this report, blah, blah, blah", which  
5 in fact we know.

6 The other thing I would say to Commissioner  
7 Anderson, that the reason why we don't have to worry  
8 about the Mayor having his say, or the politics of his  
9 campaign or whatever, he will be able to have his say.  
10 He gets to comment, say whatever he wants to say about  
11 this report when it is out. And the proof of the pudding  
12 in terms of whether this report is some kind of political  
13 attack on the Mayor, will be in the report, which the  
14 staff is writing, and I trust them, and I know that they  
15 will be fair. So, I'm not that concerned about it.

16 Also, staff asked me to point out that  
17 verified transcripts have already been given to some  
18 Commissioners who asked. So there are some Commissioners  
19 who have -- is that right?

20 STAFF DIRECTOR MOY: Yes.

21 CHAIRPERSON BERRY: -- copies of the  
22 transcript now, as we sit here in this room. If there  
23 are other Commissioners who would like to have copies,  
24 then they can have it. Does Commissioner Anderson have  
25 one?

1 STAFF DIRECTOR MOY: I don't know.

2 COMMISSIONER ANDERSON: No, I don't. I've  
3 requested it for weeks now. I'd be interested to know  
4 whether Commissioner Redenbaugh has been given a  
5 transcript.

6 CHAIRPERSON BERRY: Did you give transcripts  
7 to their assistants?

8 STAFF DIRECTOR MOY: I okayed it and --  
9 Eddie, can you tell me if it was delivered?

10 MR. HAILES: Full copies of verified  
11 transcript were just made, and they were transmitted to a  
12 special assistant this morning. So they are now  
13 available, and we can make additional copies if any other  
14 Commissioner or special assistant has such a need.

15 CHAIRPERSON BERRY: Commissioner Wilson and  
16 Cruz.

17 VICE CHAIRPERSON REYNOSO: Madam Chair, I am  
18 grateful for being reminded that, indeed, it would seem -  
19 - of what our procedure is, and it would seem to me  
20 unfair to be changing the procedures midstream in terms  
21 of any hearings that we're having. I think we should  
22 proceed in a principled way -- by principled, I mean  
23 under our procedures -- I still think my idea is good,  
24 but I can change my motion to deal with future hearings  
25 and future reports, not those that are already in

1 process.

2 CHAIRPERSON BERRY: Yes, Commissioner  
3 Wilson.

4 COMMISSIONER WILSON: Two things. If we all  
5 see transcripts, does that assume that they will not be  
6 leaked as well?

7 CHAIRPERSON BERRY: No, it doesn't. We have  
8 to assume that everything will be leaked. From now on,  
9 assume -- just assume, as you walk around in your daily  
10 life, that anything having to do with this Commission  
11 will be leaked.

12 COMMISSIONER WILSON: Okay. Well, that's  
13 something for us to consider in light of what we've just  
14 spent quite a good deal of time discussing. My second  
15 point is, do we want to issue a small press releases  
16 stating the way in which we proceed -- that is, when  
17 there is a draft or a report that the agency being  
18 discussed in the report gets a chance to see it and  
19 comment on it. The Mayor has issued statements saying  
20 that he hasn't seen it.

21 CHAIRPERSON BERRY: I was quoted as saying  
22 that -- in the New York Times story this morning -- I did  
23 talk to the New York Times yesterday, and the Mayor's  
24 office knows that. But if we decide to proceed in this  
25 way of releasing it, I will have a press briefing on the

1 day that it is released, and will answer any questions  
2 the press has, and will tell them exactly what the  
3 procedure is, and remind all of them again, so that they  
4 will know that the Mayor has got it, everybody has got it  
5 who is an affected agency. They are all going to respond.

6 We are going to take that into account and we are going  
7 to finalize it. This is a draft, folks, treat it like it  
8 is -- a draft. I mean, that's what I would do, and let  
9 the word go forth that that's what this is. And after  
10 that, I'm still not -- well, I guess if there is  
11 consensus that people -- you know, I'm not absolutely  
12 certain that this is the right thing to do, I don't  
13 really know how to do this either, I've never been in  
14 this fix before. I always thought there was nothing new  
15 under the sun, but I guess there is. So, why don't we do  
16 that this way. Cruz, could you restate your motion?

17 VICE CHAIRPERSON REYNOSO: Well, I felt,  
18 based on the note that the staff had given you, that it  
19 would be unfair to the Mayor and others, to release a  
20 draft report, if we have given them assurances that draft  
21 reports are not released until they get a chance to  
22 comment. So, I was changing my motion to exclude from  
23 the motion any hearings and reports that are presently in  
24 progress, and applying my motion only to future reports  
25 where the rules would then be when we have a draft report

1 it would go out to everybody even before we have comments  
2 from the affected agencies.

3 CHAIRPERSON BERRY: Well, I don't want to  
4 further -- I hate to protract this discussion further,  
5 but the point you've made -- expect, folks, that if we  
6 decide to release the draft to the world, including all  
7 the affected agencies, that it is likely that we will be  
8 attacked -- in other words, we're damned if we do and  
9 damned if we don't -- by folks who will say, "Even though  
10 you released it to us, you should wait until we comment  
11 before you release it to the world." If we don't release  
12 it to the world and give it to them, they will leak it  
13 and put their spin on it before we have a chance to. So,  
14 no matter what we do, we are going to be attacked  
15 because, to some people, their political interest in this  
16 is so great that they feel like what they need to do is  
17 attack us. So, you have to keep that in mind.

18 So, I guess what we have to do is figure out  
19 what has the most integrity, and the more I think about  
20 it, I guess I'm going to change my mind because, if we  
21 follow our procedures, which is that you let people  
22 respond before you put out the final report and that we  
23 don't issue drafts, we're just going to have to trust our  
24 Commissioners and then let's be prepared to all comment  
25 and be assailed on the day the draft comes out, by people

1 who call up and say Commissioner So-and-So gave me a copy  
2 of this, or Special Assistant So-and-So gave me a copy of  
3 this, or civil servant So-and-So got it and gave me a  
4 copy. And then we'll just be assailed for what the  
5 report says, even though it's in draft and even though  
6 people have a right to comment, that that's just going to  
7 happen to us if we follow our procedures. If we don't,  
8 we're going to be attacked for not following our  
9 procedures.

10 Yes, Christopher.

11 COMMISSIONER EDLEY: You articulated where I  
12 am on this, which is why I think this publication of  
13 draft work should be done in the New York City case and  
14 at least for the moment treat it as an exceptional  
15 situation because of the damage that's already been done.

16 But if at all possible, I'd like to construct things so  
17 that we don't have to do it this way in the future.

18 CHAIRPERSON BERRY: But are you -- in terms  
19 of damned if we do and damned if we don't, are you more  
20 comfortable being damned for not following our procedure  
21 in this case, or would you be more comfortable being  
22 damned for following our procedures and having somebody  
23 leak it and have people call us up and say all kinds of  
24 nasty things?

25 COMMISSIONER EDLEY: I think that under the



1 circumstances, we do less damage to all the relevant  
2 interests by circulating the draft, but I think that we  
3 should not expect, and we certainly should do everything  
4 we can to avoid in the future, with guidance from the  
5 Inspector General and so forth, and we won't be  
6 hemorrhaging like this as a general matter.

7 And while I'm at it, let me also say that I  
8 think that while we didn't hit the December deadline for  
9 getting this thing out, I think the Commission and the  
10 staff proceeded in good faith in trying to get this thing  
11 done quickly, to minimize the risk that it would get  
12 caught up in election politics.

13 That said, our first duty is do a good job,  
14 and our second duty, it seems to me, is to do something  
15 that is timely that responds to the controversy and the  
16 problems in New York and around the country. We did not  
17 choose the timing of these unfortunate deaths, and the  
18 controversy itself in New York City. We didn't choose  
19 it. And it doesn't seem to me that we should turn our  
20 eye away from it because it happens -- because we've  
21 gotten into an even numbered year.

22 CHAIRPERSON BERRY: Okay. I'm going to close  
23 this down. I'm going to listen to Yvonne's comment, then  
24 I'm going to close this down. Commissioner Anderson,  
25 were you saying something?

1                   COMMISSIONER ANDERSON:    I'd like to be  
2 recognized, too.

3                   CHAIRPERSON BERRY:       Okay, as soon as  
4 Commissioner Lee.

5                   COMMISSIONER LEE:       Before I do, I just  
6 wanted to recognize a guest in the audience, Ruby Lam,  
7 the Deputy Director of the White House Initiative on  
8 Asian Americans and Pacific Islanders.

9                   CHAIRPERSON BERRY:    Welcome to our meeting.

10                  COMMISSIONER LEE:    I would like to comment  
11 that I would reluctantly support the Vice Chair's  
12 original motion, which is to release the draft report on  
13 the New York report because, as Commissioner Edley said,  
14 the damage has been done. But I am going to object to  
15 the practice of releasing draft reports for future  
16 projects because I think that the integrity of this  
17 Commission is at stake. We will not have any -- we would  
18 not have many witnesses who are willing to come forward  
19 to testify, to share with us their knowledge, their  
20 insights, if they know that whatever they say without  
21 them checking it off to make sure that it is sufficient,  
22 it's accurate, we will be releasing it to the public, and  
23 I don't think that's fair to future witnesses, and I  
24 again want to stress that I don't want to go down that  
25 road. I do think that we have a major problem dealing

1 with potential situations like that, that we can deal  
2 with it in other arenas that I certainly would not want  
3 to give the public this impression, that whatever you  
4 say, anyone will get a hold of it and you won't even have  
5 a chance to correct it beforehand. I just don't think  
6 that's fair to our future witnesses.

7 CHAIRPERSON BERRY: Commissioner Anderson.

8 COMMISSIONER ANDERSON: I'm not quite sure  
9 what the status of Commissioner Reynoso's recommendation  
10 is, but --

11 VICE CHAIRPERSON REYNOSO: It hasn't been  
12 seconded, so it hasn't gone anyplace.

13 COMMISSIONER ANDERSON: Well, if you have to  
14 second it so we can discuss it, but it seems to me that  
15 when you have -- if you want to go back to the Ellsberg  
16 paper, and Nixon and everything, all the things,  
17 essentially, that begin to happen when people don't trust  
18 the process.

19 And I think the best way to proceed is to  
20 re-establish trust and confidence in the way we proceed  
21 in the consideration of our reports, and the way to do  
22 that, in my mind, is from now on to make sure that  
23 affected agencies, affected individuals, get an  
24 opportunity to comment before we consider it, where we  
25 can take into consideration their comments. That will

1 give them the assurance that their views, their facts,  
2 will be taken into consideration by all of us. And that,  
3 I think, will minimize the feeling on their part that  
4 they are needed, or that is the only way to get their  
5 side of the story before the public. We may feel we have  
6 to vote to tackle controversial issues by poll vote,  
7 without public discussion, without the light of day. I  
8 hope we don't do it again.

9 I think that leads to the impression that  
10 people cannot get their views heard without proceeding in  
11 that way; other Commissioners may feel differently. But  
12 I think if we go back and we proceed deliberately, we can  
13 assure that we get input from all affected parties in a  
14 timely manner so that we can consider it. I don't know  
15 whether that's covered by Commissioner Reynoso's motion  
16 or not, but that's how I would proceed. And whether we  
17 make the draft reports available to everybody at the same  
18 time is not as important to me as getting it to all the  
19 affected parties, whether we're doing statements or  
20 whether we're doing hearings or whether we have the right  
21 not to send that copy or seek their comments, I think the  
22 appropriate thing to do is when we've affected somebody,  
23 we give them an opportunity to comment on the report so  
24 all of us can take into account those comments. I think  
25 if we do that in the future, this problem will largely

1 disappear. We can have policy differences, but we'll  
2 have confidence that we're proceeding fairly.

3 CHAIRPERSON BERRY: Commissioner Anderson,  
4 we will proceed according to the procedures that have  
5 been long established. Depending on what kind of report  
6 it is, we will have the people respond who are supposed  
7 to respond. This is nothing new with this Commission,  
8 with me as Chair and the Vice Chair as Vice Chair. I  
9 have been on here long enough to know what procedures  
10 have been followed throughout the history of this  
11 Commission, at least for the years that I've been on  
12 here, which is too many, and that policy has been  
13 followed.

14 When the Commission, for example, issues a  
15 statement, which it has done, analyzing a legal case or  
16 whatever, and takes a position on it, it doesn't go out  
17 and ask people what they think about it, or even people  
18 who are mentioned in it. I've voted against such  
19 reports, and lost, but in fact it depends on what kind of  
20 report it is. Here, we are talking about a hearing, and  
21 our real problem is not the people out in the public who  
22 are taking positions, it is Commissioners who are leaking  
23 things, or staff who are leaking things, or people --  
24 it's us. We are the problem.

25 So, I guess here we are. Do we -- first, I

1 would like a motion to release all of the drafts of this  
2 New York -- release the draft of the New York report to  
3 both public, affected agencies and Commissioners at the  
4 same time, so that I can see if everyone is in agreement  
5 with that. So, could somebody move that so we can see?

6 COMMISSIONER WILSON: I'll move it.

7 CHAIRPERSON BERRY: Would anybody second  
8 that?

9 VICE CHAIRPERSON REYNOSO: I'll second it.

10 CHAIRPERSON BERRY: Any further debate?

11 VICE CHAIRPERSON REYNOSO: I just want to  
12 mention that I had proceeded with that motion originally,  
13 thinking that probably that was a good solution. The  
14 problem, I've heard a lot of discussion that now makes me  
15 wonder whether, in fact, there is that view, and I don't  
16 know whether it's wise to change our procedures without  
17 sort of a unanimous notion that it is proper to change  
18 the procedures, so I'm having qualms about it. I  
19 seconded it so we could discuss it further, but I confess  
20 that I have qualms now that I didn't have half an hour  
21 ago when folk, I think, expressed quite logical concerns  
22 about it.

23 CHAIRPERSON BERRY: Unfortunately, there are  
24 always at least two sides to every question. The more  
25 you talk about it, the more sides you think of. Even

1       though I was supporting such a motion and, in fact,  
2       suggested it at the beginning, I have the same qualms you  
3       do. In a sense, the principle part of me that loves to  
4       be punished, loves to be embattled and criticized, would  
5       rather stand on principle and say our procedures are that  
6       we have drafts, we don't release reports until they are  
7       in final form and voted on and we've gotten responses,  
8       and if some Commissioner or their special assistant or  
9       somebody wants to leak it to somebody and put a spin, we  
10      just deal with the firestorm. That's principled, because  
11      then we're following our procedures even if others don't  
12      behave the way they are supposed to. And in a sense, I  
13      have this sort of quirky feeling that it might be the  
14      better part of valor, but how would I respond if one of  
15      the affected agencies says to me, "Well, your procedure  
16      is that we are supposed to get to respond first," and  
17      even though they leaked it themselves, or a Commissioner  
18      did it, they say, "Well, that's part of the ballgame, but  
19      you're supposed to follow your own procedures."

20                        So, could I ask the Commissioners, now that  
21      I have these qualms, do you have enough of a qualm about  
22      it, too, Cruz?

23                        VICE CHAIRPERSON REYNOSO: Yes.

24                        CHAIRPERSON BERRY: Do you have enough  
25      qualms about it, Yvonne, you've been here the longest?

1 COMMISSIONER LEE: Yes.

2 CHAIRPERSON BERRY: Why don't we withdraw  
3 the motions and why don't we just let the chips fall  
4 where they may and follow our procedures?

5 VICE CHAIRPERSON REYNOSO: But I didn't make  
6 the motion now, so --

7 CHAIRPERSON BERRY: Can I get you to do  
8 that, Vicky? Just withdraw it. Let's let the chips -- I  
9 know you're in New York, and you've got to suffer the  
10 slings of arrows of outrageous fortune.

11 COMMISSIONER WILSON: When you say, Madam  
12 Chair, let the chips fall where they may --

13 CHAIRPERSON BERRY: What do you mean?

14 COMMISSIONER WILSON: I know where the chips  
15 will fall.

16 (Laughter.)

17 COMMISSIONER WILSON: I think before I  
18 retract the motion, I would like to say that in this  
19 particular instance we release all the reports to  
20 everybody simultaneously, and then we take it on a case-  
21 by-case.

22 CHAIRPERSON BERRY: So you're speaking in  
23 favor of the motion, which is still on the floor.

24 COMMISSIONER WILSON: If I'm voted down, I  
25 won't take it personally.



1 CHAIRPERSON BERRY: Does anyone else want to  
2 speak in favor or against the motion?

3 COMMISSIONER EDLEY: I do.

4 CHAIRPERSON BERRY: Who said something?

5 COMMISSIONER EDLEY: Edley did. I guess I  
6 still find myself persuaded by Vicky's logic.

7 CHAIRPERSON BERRY: All right. If there are  
8 no further questions, we're going to vote on this motion.

9 All those in favor of the motion to release all of these  
10 at the same time to the affected agencies, to the public,  
11 to Commissioners, and all -- whenever we get this draft  
12 report from the staff, indicate by saying "aye."

13 COMMISSIONER LEE: This is only on New York.

14 CHAIRPERSON BERRY: Only on New York, that's  
15 all we're voting on. Indicate by saying "aye."

16 (Ayes.)

17 CHAIRPERSON BERRY: We're going to have to  
18 call names. Commissioner Wilson, how did you vote?

19 COMMISSIONER WILSON: Aye.

20 CHAIRPERSON BERRY: Who else said "aye?"

21 COMMISSIONER EDLEY: Edley.

22 CHAIRPERSON BERRY: Edley said "aye." Any  
23 other ayes?

24 (No response.)

25 All those against the motion, indicate by

1 saying "no."

2 (Noes.)

3 CHAIRPERSON BERRY: You have to say your  
4 name and say your vote because we're writing it down.

5 COMMISSIONER ANDERSON: Anderson, no.

6 CHAIRPERSON BERRY: Anderson, no.

7 COMMISSIONER LEE: Lee, no.

8 CHAIRPERSON BERRY: Lee, no.

9 VICE CHAIRPERSON REYNOSO: Reynoso, no.

10 CHAIRPERSON BERRY: Where do you stand,  
11 Meeks?

12 COMMISSIONER MEEKS: Aye.

13 CHAIRPERSON BERRY: Meeks said "aye." So  
14 what is the count now?

15 COMMISSIONER EDLEY: Three-three.

16 CHAIRPERSON BERRY: So that means I have to  
17 vote.

18 COMMISSIONER EDLEY: Yes.

19 CHAIRPERSON BERRY: Hmm.

20 (Laughter.)

21 COMMISSIONER EDLEY: We should have just let  
22 you decide.

23 (Laughter.)

24 CHAIRPERSON BERRY: Hmm. Since I'm the one  
25 who asked it. Well.

1 COMMISSIONER EDLEY: And you're going to be  
2 the point with the press, so this is very appropriate  
3 that --

4 CHAIRPERSON BERRY: Oh, damn.

5 COMMISSIONER WILSON: Before you do this,  
6 I'd just like to quote my mother, who always used to say  
7 to me and my sister, "Girls, there's going to be tears."

8 (Laughter.)

9 COMMISSIONER EDLEY: That's why you get the  
10 big bucks, Mary.

11 CHAIRPERSON BERRY: I could abstain.

12 COMMISSIONER EDLEY: Oh, no. If you  
13 abstain, the motion fails, right?

14 CHAIRPERSON BERRY: Right. Damn. Okay.  
15 I'll vote -- I'll vote --

16 (Simultaneous discussion.)

17 COMMISSIONER EDLEY: Mary, can I make a --  
18 I'm sorry, I know the debate is closed, but there's one  
19 other concern which is contrary to my vote, and that is,  
20 forget the Commission, forget Giuliani, and just ask  
21 yourself, what is in the best interest of the observing  
22 public.

23 CHAIRPERSON BERRY: In other words, the  
24 observing public after all that has happened, like if  
25 nothing had happened, then there would be one answer, but

1 since all this stuff has happened, then there is another  
2 answer.

3 COMMISSIONER EDLEY: Right, so for the  
4 observing public who are trying to make heads or tails  
5 out of all this mess.

6 CHAIRPERSON BERRY: Okay. I'll say "yes"  
7 then because then we'll have -- I'll just have to argue  
8 with -- you know -- I mean, I have to argue with somebody  
9 anyway. Okay. I say "aye."

10 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
11 just would suggest that we communicate this vote now to  
12 the affected agencies so they know what's going to  
13 happen.

14 COMMISSIONER EDLEY: Good idea.

15 CHAIRPERSON BERRY: Right. So we should  
16 call them and tell them this, and tell them why this is  
17 happening. It's because of what has happened, so that  
18 they can have a press conference and denounce us, and  
19 then the reporters can call me and then I can try to  
20 explain it. Well, thank you. This has been a very  
21 interesting debate, and we will get answers about what we  
22 do.

23

24 V. STATE ADVISORY COMMITTEE REPORTS

25 Before you go, Edley, we need to vote on the

1 Sonoma County and the Hispanic Students in Oklahoma City  
2 Public Schools Project, so stay there just for a minute.

3 Can I get a motion? I need a motion.

4 VICE CHAIRPERSON REYNOSO: I move that they  
5 both be approved -- not approved, but accepted.

6 CHAIRPERSON BERRY: Could I get a second?

7 COMMISSIONER LEE: Second.

8 CHAIRPERSON BERRY: All those in favor,  
9 indicate by saying "aye."

10 (Ayes.)

11 CHAIRPERSON BERRY: Opposed?

12 (No response.)

13 VI. HAWAIIAN CIVIL RIGHTS ISSUES

14 And we need to vote also, Edley, on the --  
15 we need your vote -- we're going to discuss Hawaiian  
16 Civil Rights Issues next, and we're going to have some  
17 discussion, but the end result of it is that the Hawaii  
18 SAC would like us to have -- they'd like to have a forum  
19 out there and have some of us come, at least like we did  
20 in South Dakota -- is that right, Commissioner Lee -- and  
21 so the end result is that we want the Commission to  
22 express its sense that such a forum, if they hold it, we  
23 would be willing, some of us, to go and participate in  
24 it.

25 COMMISSIONER EDLEY: I would support that,

1 and I thought the reading was fascinating, but let me  
2 just say that before we go, or whoever goes, I think it  
3 would also be useful to get a little background from the  
4 staff, just some sort of comparisons with Native American  
5 tribal issues because that analogy which kind of runs  
6 through the cases, I'd just like a better understanding  
7 of what that background is.

8 CHAIRPERSON BERRY: Yes. In reading the  
9 case and discussing it yesterday with the Staff Director,  
10 it seems to me that the opinion in the case is  
11 particularly egregious, and the principal part of it that  
12 is egregious is the implication that one could deny the  
13 rights of American Indians by using the same analogy, you  
14 know, that there's no rationale for any kind of -- or  
15 Alaskan Natives -- that there's no rationale for any kind  
16 of benefits to remedy the harm that's been done, and the  
17 language in there that leaves open that possibility as a  
18 further root -- and in a way, it sort of invites someone  
19 to bring a suit like that, as if to say, "Come on, guys,  
20 we'd like to consider this issue," I think is  
21 particularly outrageous.

22 I think it's also particularly outrageous  
23 given the history of Hawaii and what happened to the  
24 Hawaiian monarchy. And when I was in undergraduate  
25 school, I took this course and wrote a paper on the

1 history of the fall of the monarchy in Hawaii, and am  
2 particularly fond of Queen Liliuokalani, who was the last  
3 queen of Hawaii. And knowing the abuse that the Hawaiian  
4 people took, and for the State to pass a law to try to  
5 remedy that, this court's opposition to remedies for harm  
6 done to people is particularly outrageous. So, for the  
7 majority of the court, it is a decision that comes easily  
8 because it is consistent with their other decisions where  
9 they outlaw remedies for discrimination against folks who  
10 have been harmed in the past. But for Hawaiians, I can  
11 understand why they are upset, and not just the Native  
12 Hawaiians, but other people, I understand, out there  
13 also, is that right, Commissioner Lee?

14 COMMISSIONER LEE: I do apologize, I was  
15 trying to get the brief by the Alaskan Natives and the  
16 Native American Coalition, and I think that will outline  
17 very clearly why the issue of indigenous people's  
18 treatment in this country will be addressed, and I think  
19 that the public forum will give it a really good airing  
20 as to why people think the Rice decision is not just  
21 Native Hawaiians, that it deals with indigenous people's  
22 treatment and also deals with political relationship  
23 between the U.S. Government and the various indigenous  
24 groups, and also on the self-determination issue. So, I  
25 think that the public forum will not be just on Hawaii,

1 but the overall broad question.

2 VICE CHAIRPERSON REYNOSO: It was an  
3 interesting opinion because even though it was  
4 constitutionally based, part of the constitutional basis  
5 appear to be based on the fact that the majority felt  
6 that Congress had not acted in certain respects. So, it  
7 seems to leave a little bit of a gray area indicating  
8 that maybe there is some room for Congress to act. So,  
9 I'd be interested in seeing what those who have examined  
10 the opinion in light of the briefs think about that sort  
11 of gray area in the opinion.

12 CHAIRPERSON BERRY: Do we know whether there  
13 are any discussions going on involving advocates for  
14 Native Americans and the folks who are particularly  
15 concerned about this Hawaii case about strategies to  
16 respond to this?

17 COMMISSIONER LEE: My understanding is about  
18 a month ago a group of tribal judges were in Hawaii  
19 meeting with the community to talk about joining -- not  
20 joining forces -- but sharing some common concerns  
21 because they do expect future challenges on their  
22 political relationship with the U.S. Government. So I  
23 think that the Native American community is also looking  
24 at this very, very closely, and they are working with the  
25 Native Hawaiian community very closely. Even though the



1 tribal judges could not speak on behalf of other tribes,  
2 the fact that they are actively working with the  
3 community shows the urgency.

4 COMMISSIONER EDLEY: Mary, I'm sorry, I've  
5 got a class.

6 CHAIRPERSON BERRY: Yes. You're late,  
7 Christopher.

8 COMMISSIONER EDLEY: Yes, I know. Goodbye,  
9 everybody, I'm sorry.

10 CHAIRPERSON BERRY: You only get a ten-  
11 minute break because you're a professor, but you've got  
12 to be there.

13 COMMISSIONER MEEKS: What I say is just  
14 completely redundant to what everyone else said, but, I  
15 mean, I just think that this is definitely -- you know,  
16 could be an attack on the American right, and there is  
17 that gray area that can be defined one way or the other,  
18 and this is going to be very important. So, I agree with  
19 us taking this up.

20 CHAIRPERSON BERRY: Yes, Vice Chair.

21 VICE CHAIRPERSON REYNOSO: But there is the  
22 area for a clear enunciation by Congress that they've  
23 meant what they've said in times past with respect to  
24 Native Americans, and there's also the gray area that  
25 says -- that may say "in light of the Supreme Court

1 opinion, whatever power we have as Congress that we  
2 thought we were ceding to the State, we now take back,"  
3 so it's just an interesting -- that aspect of it is  
4 interesting.

5 CHAIRPERSON BERRY: Well, we don't know when  
6 they are planning to have this forum, and what shape it  
7 would take. I also think that if we end up having it, or  
8 if they end up having it -- well, we first have to know  
9 what shape it's going to take and get a proposal from  
10 them, Staff Director, but then, of course, some of us  
11 will try to go. They should have it in the summer so  
12 that people won't think we're going there on a junket, so  
13 make sure it's really hot in Hawaii when we go there, as  
14 opposed to going in the wintertime.

15 Okay. Are there any --

16 COMMISSIONER LEE: Madam Chair.

17 CHAIRPERSON BERRY: Yes.

18 COMMISSIONER LEE: I just want to clarify, I  
19 think the request from the Hawaiian SAC is for the  
20 Commission to hold a public forum with them, so it's not  
21 a SAC activity per se, but it will be a joint activity.  
22 I think they requested a joint activity because there is  
23 this great need that the general public really needs to  
24 know the compelling history. It is really evident when  
25 you read the majority decision that the Justices really -

1 - either they dismissed the history, or they really have  
2 no idea -- when they talk about immigration to Hawaii,  
3 they mention all the different groups, but they neglected  
4 to mention whites, who were among the first immigrants  
5 there. So, I think the Hawaii SAC members felt that it  
6 is really imperative that this public forum needs to be  
7 supported and met by this Commission.

8 CHAIRPERSON BERRY: So it would be a joint -  
9 - and whereas we don't have an activity that is  
10 specifically called a "forum", that doesn't mean  
11 anything. The only difference between a forum and a  
12 briefing is that you hear from people as opposed to just  
13 having experts talk. So, Staff Director, what we would be  
14 doing is working up a proposal for us to join with them  
15 in sponsoring such a program, and those of us who could  
16 go, would go.

17 Could we get some idea -- Staff Director, I  
18 know you don't know exactly, so we don't want to be  
19 nailed down to it -- could we get some idea from the  
20 staff as to when they think they might possibly have a  
21 draft of the New York report, so that we can sort of plan  
22 our lives a little bit around -- you know, is it like  
23 another week, or another ten days, and why don't we agree  
24 that we will actually vote on it at the next meeting --  
25 that is actually vote ourselves, us Commissioners, on the

1 report at the next meeting -- but when does the staff  
2 think it might possibly have a draft so we can plan our  
3 lives and be ready to try to read it when it comes?

4 MR. HAILES: I'm going to try to be as  
5 precise as possible. I would say between five and 14  
6 days, five and ten business days from today.

7 CHAIRPERSON BERRY: Fourteen days, at the  
8 outset, including Saturdays and Sundays. Okay. Which  
9 would give us then sufficient time for everybody to  
10 respond, discuss, gyrate, do whatever they want to do,  
11 before the meeting that we would vote on it. Okay. All  
12 right. So you can plan your schedules accordingly. And  
13 you can also head for the bunkers accordingly on the day,  
14 or go on a long trip somewhere.

15 Is there anything else that should come  
16 before us that I have forgotten, Staff Director?

17 STAFF DIRECTOR MOY: No.

18 CHAIRPERSON BERRY: I haven't forgotten  
19 anything?

20 STAFF DIRECTOR MOY: I think that covers it.

## 21 VII. FUTURE AGENDA ITEMS

22 CHAIRPERSON BERRY: Are there any future  
23 agenda items or other matters that any of the  
24 Commissioners would like to do? If not, we have done a  
25 good job today and finished in record time.

1                   Could I get a motion that we then adjourn?

2                   VICE CHAIRPERSON REYNOSO:  So moved.

3                   CHAIRPERSON BERRY:  A second?

4                   COMMISSIONER WILSON:  Second.

5                   CHAIRPERSON BERRY:  It's non-debatable.  All  
6 in favor, indicate by saying "aye."

7                   (Ayes.)

8                   CHAIRPERSON BERRY:  Opposed?

9                   (No response.)

10                  So ordered.

11                  (Whereupon, at 11:15 a.m., the proceedings  
12 were concluded.)

13