

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY

APRIL 13, 2001

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WASHINGTON, D.C.

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The Commission convened at 9:28 a.m., in

Hearing Room 540 at 624 9th Street, N.W., Washington,

D.C., Mary Frances Berry, Chairperson, presiding.

PRESENT

MARY FRANCES BERRY	Chairperson
CRUZ REYNOSO	Vice Chairperson
YVONNE Y. LEE	Commissioner
ELSIE M. MEEKS	Commissioner
RUSSELL G. REDENBAUGH	Commissioner
ABIGAIL THERNSTROM	Commissioner
VICTORIA WILSON	Commissioner
LESLIE R. JIN	Staff Director

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STAFF PRESENT:

KIMBERLEY ALTON
DAVID ARONSON
KI TAEK CHUN
TERRI DICKERSON
PAMELA A. DUNSTON
BETTY EDMISTON
M. CATHERINE GATES
GEORGE HARBISON
EDWARD HAILES, General Counsel
MYRNA HERNANDEZ
PETER REILLY, Parliamentarian
KWANA ROYAL
DAWN SWEET
MARCIA TYLER
AUDREY WRIGHT
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA
PATRICK DUFFY
ELIZABETH OUYANG
CHARLOTTE PONTICELLI
SCOTT SCHREIBER
EFFIE TURNBULL

A-G-E-N-D-A

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(9:28 a.m.)

CHAIRPERSON BERRY: I am Mary Frances Berry, Chairperson of the U.S. Commission on Civil Rights, and the Geraldine R. Segal Professor at the University of Pennsylvania.

I. Approval of Agenda

This meeting, the first item is the approval of the agenda. Could I get a motion to approve the agenda?

COMMISSIONER WILSON: Motion.

COMMISSIONER REDENBAUGH: Second.

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

II. Approval of Minutes of March 9, 2001 Meeting

The next item is the approval of the minutes of the March 9, 2001, meeting. Could I get a motion on that?

VICE CHAIRPERSON REYNOSO: Motion.

CHAIRPERSON BERRY: Second?

COMMISSIONER LEE: Second.

CHAIRPERSON BERRY: Any discussions, changes? All in favor, indicate by saying aye.

III. Announcements

Then I have a list of announcements. The budget of the Administration was released on Monday, April 9. It recommends level funding for the Commission, with an amount for pay raises, I assume, that's what that is for. So the funding is level. It is lower than the \$11 million requests that were made by the last administration, but it is the amount that we had last year appropriated, plus the pay raise

1 increase for the staff.

2 The other is that all Commissioners and their special assistants are
3 reminded to file their public financial disclosure reports for the 2000 calendar year. The
4 report is due on May 1, 2001. Anyone who files more than 30 days after May 15 or
5 more than 30 days following the last day of any filing extension period will be subject to
6 a \$200 late filing fee, which the staff director will pay for us, right?

7 If you have any questions about public financial disclosure or your
8 requirement to file an annual report, please feel free to contact the Alternate Designated
9 Agency Ethics Officer, who is called the DAEO, Joyce Smith in the Office of General
10 Counsel, at 376-8351.

11 The third announcement is that the Housing and Urban
12 Development Department held a ceremony on April 11 to commemorate its 33rd
13 anniversary of the signing of the Fair Housing Act of 1968, which as you probably
14 recall, was passed in the aftermath of the assassination of the Reverend Martin Luther
15 King, Jr., and some other events of that period.

16 We also would like to welcome Melanie Penny from Stanford
17 University, who is an intern. Hello, Melanie Penny. Working in our Office of Civil
18 Rights Evaluation.

19 The other point I would like to make is that the Commissioners are
20 reminded that at the next meeting, we plan to have a briefing on environmental justice.
21 Because this meeting is only what, three weeks or something away, somehow we ended
22 up with three weeks instead of four weeks, probably because of schedule problems.

23 Commissioners need to submit any names that they would like to
24 submit to be selected or considered for that briefing by next Wednesday, April 18th.

25 We announced at the last meeting that we would have a briefing in

1 May, so perhaps you have been thinking about it. But anyway, it is necessary to make
2 this short period in which you can submit names because of the fact that it is three
3 weeks away from today.

4 Does anyone else have any announcements? Yes, Commissioner
5 Meeks?

6 COMMISSIONER MEEKS: Yes. The U.S. Sentencing
7 Commission is going to be holding a public hearing in Rapid City, South Dakota, on
8 June 19th. It is to discuss the impact of the Federal Sentencing Guidelines on Native
9 Americans in South Dakota. The hearing is held in response to the South Dakota SAC
10 report that was issued last year.

11 CHAIRPERSON BERRY: Oh absolutely, that's wonderful. So we
12 continue to see some movement on these issues on the part of various agencies and
13 officials. So we continue to believe that the work that we did there at least helped a
14 little bit, we think, to move people off the dime somewhat.

15 Does anyone else have an announcement? Yes.

16 COMMISSIONER THERNSTROM: I don't have an
17 announcement. I have a question on the environmental justice hearings. Do we have --
18 is it possible to get a more specific description of the scope of the hearing so that we
19 know something about the questions that are going to be addressed? It is obviously a
20 huge topic.

21 CHAIRPERSON BERRY: The hearing that the Commissioners
22 came up with, that the staff director, I'll try to answer it, just to consider the civil rights
23 implications of the enforcement of environmental regulations, Federal environmental
24 regulations.

25 We had a hearing once before -- not a hearing, this is going to be a

1 briefing not a hearing. We had a State Advisory report from Louisiana about toxic
2 waste dumps. We may have had some other State Advisory Committee briefings. It
3 was Commissioner Wilson who asked for the briefing. I assume that the scope of it,
4 from the discussion we had, was to look at the civil rights implications of these issues,
5 not just to look at whether there ought to be environmental regulations or something like
6 that, or what do the experts say.

7 Is that what you had in mind?

8 COMMISSIONER WILSON: That was correct. Thank you.

9 CHAIRPERSON BERRY: So does that help you some?

10 COMMISSIONER THERNSTROM: It does. Federal civil rights
11 implications. Good, thank you.

12 CHAIRPERSON BERRY: Okay. Anyone else have an
13 announcement or a question?

14 **IV. Staff Director's Report**

15 Okay. Let's go to the staff director's report. I have three comments I
16 want to make on the staff director's report before we open up the discussion.

17 The first is there has been some concern on the part of some
18 Commissioners expressed about various matters about the way in which the staff
19 director's office operates and the way we relate to the staff director. So I want to just
20 repeat some things that some of you heard already before. Just bear with me.

21 The first is that the Commissioners only have two -- one employee
22 as individual Commissioners. That one employee is your assistant, if you have one. We
23 collectively have one employee that we supervise. That is the Staff Director. The
24 Commissioners collectively do not supervise the staff. The Staff Director supervises the
25 staff, but we supervise the Staff Director collectively, not one by one.

1 What that means is that the Staff Director is not responsible for
2 responding to any individual Commissioner's direction. The Staff Director will of
3 course respond to factual inquiries on matters made by Commissioners, but the Staff
4 Director does not routinely -- does not take direction from any individual Commissioner.
5 The Staff Director does take direction from the Commission as a whole. That is the
6 way the statute is set up. That is the way the regulations are set up.

7 The Staff Director does have a close working relationship with the
8 Chair of the Commission, whoever that is, primarily because the Chair of the
9 Commission is responsible for setting the Commission's agenda each month, and has to
10 determine whether or not, for example, materials are ready to go on the agenda, the
11 status of issues, and whether or not things should go forward. The Commissioners have
12 expressed orally in meetings and in other ways that that is the way they understand the
13 relationship to go.

14 The Staff Director has not routinely responded in writing to
15 inquiries from individual Commissioners. First of all, it would be too time consuming.
16 Secondly, the Staff Director does not report to any individual Commissioner, but to the
17 Commission as a whole.

18 Although the Staff Director or his assistant will respond orally to
19 anything anybody wants to know -- any Commissioner wants to know, to their special
20 assistant if they have one. If not, to them if they prefer.

21 The other thing to point out, there have been some issues raised
22 about when Commissioners and their assistants can review materials concerning things
23 like hearings and other matters. The way we operate on that is that if any individual
24 Commissioner wishes to be briefed on any matter having to do with the ongoing work of
25 the Commission, whether it is a hearing or a project that the staff is working on, that

1 Commissioner can ask the Staff Director to meet with them and any relevant staff to go
2 over whatever it is they are interested in discussing. If there are materials or documents
3 they should identify what they are, and then specifically they can sit down.

4 As far as individual, the hearing is concerned, this is true of the ones
5 we had in Florida as well as other hearings, the Commissioners will of course be given
6 the report before they obviously vote on it. If Commissioners at that time wish to sit
7 down with the Staff Director and any relevant staff to go over some aspect of that, they
8 can do that before they vote even, if they wish to do so.

9 They can, for example, say the staff has concluded hypothetically
10 that no election took place in Florida. I made that up hypothetically. On some page in
11 the report, and it has five footnotes from documents, and they would like to meet with
12 the staff, see the five documents, reach their own conclusion about whether or not they
13 agree or disagree. So all of that is the way in which the responses will have been going
14 forward in the past and the way we expect them to go forward in the future.

15 If a Commissioner is not satisfied with the Staff Director, they
16 should inform me, and then I will put a consideration of that relationship on the agenda
17 for the Commissioners to discuss at a meeting in an Executive Session so that we can
18 sort it all out. So you should let me know if you have some problem operating with the
19 Staff Director. I would hope that you don't, and that we would move on.

20 The other point that I wanted to make, the last one about
21 relationships within the agency, is the relationships, the protocol between
22 Commissioners and assistants. Assistants to Commissioners are not Commissioners,
23 which means that assistants to Commissioners, and in that I include my own assistant,
24 do not tell Commissioners what to do or comment to Commissioners on Commissioners'
25 behavior or make criticisms of Commissioners or intervene when Commissioners are

1 trying to have a discussion among themselves about an issue.

2 It is not up to a Special Assistant to a Commissioner to pass
3 judgement to a Commissioner on what a Commissioner is doing or not doing. If they
4 wish to do that, they should tell their principal, and their Commissioner can have some
5 conversation with the other Commissioner. That's just a matter of protocol.

6 Now does anyone want to say anything about any of that before we
7 ask if there are other questions about a Staff Director's report? Yes, Commissioner
8 Redenbaugh?

9 COMMISSIONER REDENBAUGH: Yes. I am glad that you
10 raised this issue because I am unclear, and I think your producing that is something
11 useful for me. The whole question of the relationship between getting factual things
12 from the Staff Director. I understand the point you are making about policy being set by
13 the Commission.

14 For example, not this Staff Director, but a prior Staff Director
15 wouldn't give me a copy of a transcript of a hearing. I had to use the Freedom of
16 Information Act request, a FOIA, to get it. Clearly that was inappropriate for that prior
17 Staff Director to decline that request.

18 That is the kind of request we can and should be able to make to a
19 Staff Director?

20 CHAIRPERSON BERRY: Well I would assume, yes. I would
21 assume you could make that request. It would be a matter of timing.

22 In the case of transcripts, what the Commission has done in the past,
23 and I don't know the facts concerning that previous -- I don't remember the facts, if I
24 ever knew them. I probably did. Is that we used to say that Commissioners didn't get
25 the transcript until it was verified. Isn't that right?

1 Ed, is that correct? He is saying yes.

2 That used to be the case, that in the days when things weren't
3 leaked, and in the days when it might not be on television or made public, for the benefit
4 of the witnesses who had testified and who had a right to verify their own testimony, we
5 used to not give the transcripts to Commissioners even until verification.

6 COMMISSIONER REDENBAUGH: Yes, well this was post-
7 verification.

8 CHAIRPERSON BERRY: Yes. Then after verification, then of
9 course anyone who wanted them in the Commission could look at them.

10 COMMISSIONER REDENBAUGH: Yes.

11 CHAIRPERSON BERRY: I would assume that if you asked the
12 Staff Director for a transcript, if it had been public, because it was a public hearing and
13 people were there and it was on t.v. or something, you could have it. But if
14 understanding it's not verified --

15 COMMISSIONER REDENBAUGH: Yes. No, this had been
16 verified. But that is the kind of information request?

17 CHAIRPERSON BERRY: Those are information requests.

18 COMMISSIONER REDENBAUGH: Right. Those are appropriate
19 when will something be available, kinds of requests?

20 CHAIRPERSON BERRY: Right.

21 COMMISSIONER REDENBAUGH: Non-policy.

22 CHAIRPERSON BERRY: Right, and it doesn't require the Staff
23 Director to write you a memo. He can just say yes, you can have that, or no, and it
24 doesn't require that kind of formality.

25 COMMISSIONER REDENBAUGH: Right.

1 CHAIRPERSON BERRY: Yes, Commissioner Thernstrom?

2 COMMISSIONER THERNSTROM: Well I also thank you for
3 reviewing this. I am confused by the first point that you made, which is that
4 Commissioners have one employee, that is their special assistant, and that the Staff
5 Director works for us collectively.

6 Now I am not sure what the distinction is. That is, my
7 understanding, perhaps erroneously before this, was that the Staff Director worked for
8 the Commissioners. That is, each and every one of us. The alternative seems to me that
9 the Staff Director works for the Chair. I wouldn't think that as Staff Director of the
10 entire Commission that the Staff Director would simply work for the Chair, but would
11 work for all of the Commissioners.

12 So I would appreciate just a further clarification on that matter.

13 CHAIRPERSON BERRY: The Staff Director is delegated
14 authority by the Commission, which means the majority of the Commission, to run the
15 day-to-day affairs of the Commission. That delegation flows from the Commission as a
16 body. Okay?

17 Which means the Staff Director runs the agency by his own rights,
18 that is, however he thinks he should run it and run the staff. As we can supervise him in
19 the sense that if we collectively decide that we don't like what he is doing, we can either
20 take back the delegation, we can take back part of the delegation, but so long as he is
21 delegated the authority to run it -- or we can review him or discuss him or whatever we
22 want to do.

23 But so long as we have delegated the authority to him to run it, he
24 has the authority to run it. Okay? He does not get day-to-day supervision by anybody.
25 Okay? We supervise him in the sense that collectively as a body we can make a

1 judgement about what we think.

2 His working closely with the Chair, whoever the Chair is, is because
3 the Chair has about two responsibilities more than other Commissioners. They are very
4 you know, unimportant, but there are responsibilities, like setting the agenda for the
5 meeting and deciding what should go out and whether things are ready to go on the
6 agenda, which requires the Chair to be in close touch with the Staff Director.

7 That doesn't mean the Chair is bossing the Staff Director, if that's
8 what your point is. That means that the Staff Director and the Chair have a consultative
9 relationship. Okay? Which is why I guess the Chair is supposed to, under the statute,
10 work no more than 150 days or some doggone thing, 125 -- what is it, George? -- And
11 other Commissioners less days than that. It's understood that at least that would take
12 some energy.

13 So there are matters that the Chair has to do which requires more
14 consultation, but that is not a supervisor-employee relationship. That is the point.

15 COMMISSIONER THERNSTROM: I was not thinking of any of
16 us being in a supervisory relationship. I guess my analogy is for instance I'm on a State
17 Board of Education. We do have a Commissioner of Education in the State that is
18 appointed by the State Board of Education.

19 Now the Commissioner who is in effect the Chief of Staff is
20 available to each and every member of the State Board for answering questions,
21 discussions, consultations. What you are saying, I'm not talking about supervision at all
22 -- what you are saying is that that is not the case?

23 CHAIRPERSON BERRY: I didn't say that, ma'am.

24 COMMISSIONER THERNSTROM: Okay. Then I'm just again
25 trying to clarify.

1 CHAIRPERSON BERRY: I think I need to go and learn the
2 English language. Let me try again.

3 There is a consultative relationship between the Staff Director and
4 the Chair. Commissioners may make an appointment or a call to the Staff Director
5 about anything they wish to call the Staff Director about. They may go and meet with
6 the Staff Director and any staff who they wish to discuss a matter.

7 The point is that the Staff Director does not take direction from any
8 Commissioner on their own because that isn't who he works for.

9 COMMISSIONER THERNSTROM: No, of course not.

10 CHAIRPERSON BERRY: That is my only point.

11 COMMISSIONER THERNSTROM: That was understood from
12 the beginning.

13 VICE CHAIRPERSON REYNOSO: Madam Chair?

14 CHAIRPERSON BERRY: Help me out here.

15 VICE CHAIRPERSON REYNOSO: I just want to share an element
16 of some frustration, but not that much, that's a little bit different in this Commission as
17 compared to other commissions that I have been on. That is, that we have a practice that
18 even inquiries of the staff and so on should go through the Staff Director, or if we are
19 going to meet with staff, we should let the Staff Director know and presumably he can
20 be there to know what is going on. That has to do with the reality that one, we are part-
21 time, and two, the Staff Director needs to know what is going on.

22 So in other commissions, I will just call a staff person directly and
23 get the information. We have the practice here that we always go through the Staff
24 Director. So I did want to clarify that aspect that is a little bit different than other
25 commissions.

1 CHAIRPERSON BERRY: Right. Just so everyone understands
2 this, this is not some rule that Berry made. This has been the consistent policy and
3 practice of the Commission, and was explained to me by a grand old man, Arthur
4 Fleming, who was Chair of the Commission when I came on. He explained all these
5 things to me in my new detail. I came to understand over the years, even when I was
6 frustrated, because I thought I should be able to tell somebody what to do or get them to
7 do this and that, that he probably was right.

8 But these are not Berry rules. These are things that have been going
9 on a long time.

10 Does anyone else have any? Of course if the Commission wishes to
11 change it, it could have a policy discussion and decide that it wants to change working
12 relationships in another way if that pleases the Commission.

13 Yes, Commissioner Wilson?

14 COMMISSIONER WILSON: Thanks, Madam Chair. Perhaps
15 Commissioner Thernstrom could elaborate on what it is that she was trying to get at
16 with your question? What it is that you want from the Staff Director that you are not
17 getting?

18 COMMISSIONER THERNSTROM: Well, sure. I did pose a
19 number of questions to the Staff Director and didn't -- I certainly wasn't trying to direct
20 the Staff Director, to supervise the Staff Director or anything like that. I wouldn't
21 presume to do so. But was a little frustrated.

22 But I am not sure that this is the forum in which --

23 CHAIRPERSON BERRY: I would hope so. Thank you.

24 COMMISSIONER THERNSTROM: -- to sort this out.

25 CHAIRPERSON BERRY: It was not just Commissioner

1 Thernstrom who had a question, so I do not want to personalize this. That is why I
2 made the general discussion about how we relate, and hope we can just move on in a
3 collegial fashion.

4 I said that one time at a Commission meeting when I first came on,
5 that I thought it was a collegial body. One Commissioner, who I won't name, laughed
6 out loud and said he didn't know this was a college. But anyway, I just meant as
7 colleagues.

8 Okay. Does anybody have anything they want to ask about the Staff
9 Director's report? Yes, Commissioner Redenbaugh?

10 COMMISSIONER REDENBAUGH: Do we have a project plan for
11 the Florida voting project? If we don't, when might we?

12 CHAIRPERSON BERRY: Do you want me to answer that or do
13 you want to answer? He wants me to answer.

14 COMMISSIONER REDENBAUGH: All right. I was directing it to
15 the Staff Director.

16 CHAIRPERSON BERRY: You can get the same answer. You can
17 go ahead and answer.

18 STAFF DIRECTOR JIN: Yes, Commissioner Redenbaugh. My
19 understanding was that, and you know I think I have it right, but if I don't I'll certainly be
20 happy to stand corrected. The impression I got was in December when the
21 Commissioners voted seven to nothing to proceed with the examination of Florida, that
22 the Commissioners kind of put us on a fairly clear and expeditious timeline for the
23 hearings, as well as for the generation of the report.

24 In fact, of course every meeting since then has been either almost
25 exclusively or certainly significantly involved with the hearings, with the Florida

1 situation, whether it be the hearings or discussions and stuff like that.

2 So my impression was that that superseded anything that was
3 required in writing in terms of project plan. I think that it seemed like that was much
4 more detailed and specific and a more alive document or alive information than the
5 traditional project plan. So that was my understanding.

6 CHAIRPERSON BERRY: So in other words, we gave you the
7 timelines?

8 STAFF DIRECTOR JIN: Yes. That was my understanding.

9 CHAIRPERSON BERRY: So you figured that that's what we were
10 operating on.

11 STAFF DIRECTOR JIN: Right.

12 COMMISSIONER REDENBAUGH: Well, I can see why you
13 could have that understanding. I would think though that the project planning drill has
14 two purposes. One is to keep us informed. Perhaps the more important purpose is
15 particularly on important and high velocity projects, that the project can be better
16 managed using the project planning tools.

17 So I would think it would be even more of a benefit in using those in
18 this case because it is a short timeline and high intensity project.

19 So what you are saying is you haven't used those project
20 management tools. How are we doing against the schedule that you think we gave you?

21 STAFF DIRECTOR JIN: I think the understanding that I think I
22 and the General Counsel and the staff took from the December meeting was that we
23 should work expeditious as we possibly could have to have one or more hearings down
24 in Florida, and that we should try to get a finished report by the summer, hopefully by
25 June. We of course have had two hearings in Florida, the first one within a month after

1 the December 8 meeting, and the second one the following month. We are on target to
2 have that report done I believe in June.

3 COMMISSIONER REDENBAUGH: Okay.

4 CHAIRPERSON BERRY: Are you finished, Russ?

5 COMMISSIONER REDENBAUGH: Yes.

6 CHAIRPERSON BERRY: Okay. Commissioner Thernstrom?

7 COMMISSIONER THERNSTROM: I am also confused on this
8 question because as I understood it, we were going to actually by today have a draft of
9 an interim report. Then I understood that in fact such a draft did exist. I have of course
10 not seen it. Maybe other Commissioners have. But in any case, what happened to that
11 timeline? Does such a report, interim report in draft form now exist?

12 STAFF DIRECTOR JIN: Maybe I would like to have the General
13 Counsel, Eddie Hailes, perhaps speak to that. Is that okay?

14 VICE CHAIRPERSON REYNOSO: I have one question in that
15 regard.

16 CHAIRPERSON BERRY: About the same subject?

17 VICE CHAIRPERSON REYNOSO: The timeline, yes. About the
18 same subject. After an original vote, we voted at the last meeting to have another
19 hearing in Florida. I just wondered how that affected the time schedule?

20 CHAIRPERSON BERRY: We said we would do it after they
21 finished.

22 VICE CHAIRPERSON REYNOSO: Right. We hadn't planned to
23 do that originally. So I just want to maybe -- we can be advised as to that, because I
24 would think that that might affect the time schedule.

25 STAFF DIRECTOR JIN: I don't believe so. My understanding was

1 that the Commissioners voted to have a follow-up hearing down in Florida, not in
2 anticipation of the report but after the report was finished. The purpose of that report, I
3 mean the purpose of that hearing was to find out what Florida did in terms of the
4 legislative session.

5 VICE CHAIRPERSON REYNOSO: Okay.

6 STAFF DIRECTOR JIN: So that would not interfere with or
7 impede the report.

8 CHAIRPERSON BERRY: Well, Eddie is going to give a report.
9 When he starts doing the discussion of Florida, he is going to -- he is on the agenda
10 under number five, when we finish this. Could we let him answer these questions about
11 that and finish the Staff Director's report first?

12 COMMISSIONER THERNSTROM: Of course.

13 CHAIRPERSON BERRY: So when you come up to do that, Eddie,
14 you can answer any questions anybody has. All right?

15 COMMISSIONER THERNSTROM: That's fine.

16 CHAIRPERSON BERRY: Okay. Under the Staff Director's report
17 too, we have some unfinished business. Last time, and we always put unfinished
18 business that was taken up under the Staff Director's report under that for the next time.

19 We had, since the last time, this issue of the Native American Indian
20 names and the mascot issue. Commissioner Thernstrom produced a draft which she
21 circulated. Then an edited version of that, a slightly edited version of that, which she
22 circulated.

23 Commissioner Meeks had originally submitted a draft and in the
24 end, in looking at the draft statement that Commissioner Thernstrom submitted and the
25 one that Commissioner Meeks submitted, this last statement that you received was a

1 distillation, as it were, of that statement with the addition of some language concerning
2 the First Amendment.

3 I became very concerned that it be clear to the public that the
4 Commission was not proposing to try to oppress anyone or keep people from expressing
5 themselves in violation of the First Amendment, even though we as a Government
6 agency have no enforcement power and could not make anybody do anything anyway.
7 So I wanted to make sure that there was some language in here that disavowed any
8 intention to direct people to do anything, but to merely express our views about what
9 would be good civil rights policy. That is why you received that.

10 Commissioner Meeks is seeking recognition. Yes?

11 COMMISSIONER MEEKS: Yes, Madam Chair. Thanks. Yes, I
12 would ask that the Commissioners adopt this statement that has been revised. I thank all
13 of you for your input, and thank you, Commissioner Thornstrom for your input also.

14 You know, I want to make some comments about some of the I
15 guess comments that were made last time.

16 CHAIRPERSON BERRY: Could we see if your motion gets
17 seconded before you make the comments?

18 COMMISSIONER MEEKS: Sure.

19 COMMISSIONER LEE: Second.

20 CHAIRPERSON BERRY: Okay. That motion was seconded. So
21 please, proceed.

22 COMMISSIONER MEEKS: Okay, thanks. To some of the I guess
23 reaction and response to my issuing this statement. One is that you know, I think most
24 people here know that I am from Pine Ridge, South Dakota, and am an enrolled member
25 of the Ogala Lakota Tribe. That Pine Ridge over the last 20 years has been the poorest

1 county in the Nation. This isn't just rhetoric when I say it has been the poorest county in
2 the Nation. It was according to the Census. Actually, we're now number two. We're
3 only the second poorest county in the Nation.

4 So that, you know, I have a really good idea about the problems that
5 face Native Americans, you know, poverty, unemployment, shortage of housing and
6 poor health. I mean I have been working on these issues myself in my community and
7 now across the Nation, helping create businesses and jobs.

8 So you know, my move to eliminate Indian team names and images
9 as sports symbols is – you know, I understand this is only one front of a larger battle to
10 remove obstacles that confront Indians. But I do believe that the removal of this, and for
11 people to come to an understanding that Native Americans want these removed, that it
12 would help them learn the true and historical experiences of Native Americans.

13 You know, since one of the claims last time last month was that
14 there wasn't support for this on the grassroots level. Well, because we happened to be
15 on C-SPAN that day, which was on a Friday, by Saturday I was getting phone calls. I
16 think today, I mean we've had well over 300 letters and emails and phone calls, I mean
17 they have been really hard to manage in fact. It has been from people from all across the
18 United States, Indian Reservations as well as not. I mean it's really gone on and on.

19 The last thing I want to say about this is that this wasn't the first time
20 this issue was brought before the Commission. In fact, 13 years ago Susan Harjo
21 brought this before the Commission, and asked that they weigh in on this issue, the
22 removal of the mascots as sports images, and Indian mascots. She has been fighting
23 ever since to get this done, as well as have many others.

24 I don't think that I or this Commission is a leader on this issue. I
25 think we can be supporters in this issue. That is what I want this statement to portray.

1 So I hope we can adopt this statement. Thank you.

2 CHAIRPERSON BERRY: Okay. All right.

3 Are we ready for the question or is there further -- yes?

4 COMMISSIONER REDENBAUGH: I would like to say
5 something. Elsie, I say this respectfully. I don't think the country has shown any greater
6 indifference to any problem that we have than the country has shown both historically
7 and currently to that Native American problem. You are right when you identify the
8 problems of economic opportunity and healthcare and unemployment as just
9 unacceptable to be ignored. They are such serious problems.

10 To me, this issue seems orders of magnitude less important.
11 Perhaps I'm just insufficiently sensitive, but it seems to put attention really in the wrong
12 place.

13 I do not want to associate myself with the statement, but I very
14 much associate myself with the concern that you have and the concern that we all should
15 have for the civil rights and economic opportunity issues for Native Americans.

16 CHAIRPERSON BERRY: Commissioner Thernstrom?

17 COMMISSIONER THERNSTROM: Elsie, I really want to second
18 what Commissioner Redenbaugh just said. I am extremely concerned about the status of
19 American Indians, precisely the problems that you named: the high unemployment rate,
20 the continuing poverty, the low academic performance on the average of Indian
21 students, health problems, housing problems. Indeed, I would like to see the
22 Commission address those very important issues.

23 But the statement as it now reads for me is still too sweeping. That
24 is, it is better focused on schools so that you know, it is less legitimate to say well wait a
25 minute, how about the Apache helicopters, how about the names of states, the names of

1 cities, the Dodge Dakota, whatever, names of various professional sports teams. You
2 have got only one reference now to that.

3 But it is still to me too sweeping and the correlation that it makes
4 specifically within schools. Low academic performance of Indian students is obviously
5 a very, very complicated problem. I do not believe that at the heart of it is, or even
6 important to it, is this question of the names of the local athletic teams. You can make a
7 correlation. I don't think you can make a causal statement there.

8 I just would like us to take this issue very seriously, but I am
9 bothered for the reasons Russell stated and the additional ones I just stated, still by the
10 statement.

11 My effort in an alternative draft was to avoid some of the pitfalls,
12 while acknowledging the very, very serious issues that I think, as Russell said, this
13 country ignores at its peril.

14 CHAIRPERSON BERRY: Any further discussion?

15 VICE CHAIRPERSON REYNOSO: Madam Chair, I just want to
16 comment that manifestly we try to deal with issues that we think are manageable. So we
17 had hearings for example, the administration of justice in terms of Indians and Native
18 Americans in the Dakotas. Now we're dealing with this issue. Hopefully we'll be
19 dealing with issues of education and unemployment and so on in the future time.

20 But we do have a responsibility, it seems to me, to face this issue. It
21 seems to me that the language that has been proposed to me seems manifestly
22 appropriate to deal with this issue.

23 CHAIRPERSON BERRY: Question. All in favor indicate by
24 saying aye.

25 Opposed?

1 Two noes, the rest aye. The motion passes. The motion in general,
2 I'm not going to read it, it will be on our website. In general disavows any intention to
3 interfere with the First Amendment, but says that the Commission believes that and
4 encourages people not to use these names and mascots that are offensive to not only
5 American Indians, but to people who also believe they are, even if they are not
6 American Indians.

7 I would point out that the Commission has made similar statements
8 concerning Asian Americans in the past, concerning African Americans, concerning
9 people with disabilities, and that in none of those cases did the Commission believe that
10 that was the only thing we should do about the major problems that those communities
11 have, but felt that it was important to encourage people not to use such stereotypes.

12 **V. Alleged Voting Irregularities in Florida:**

13 **Discussion of Outline of The Final Document**

14 Okay. We will go onto the item number five, the alleged voting
15 irregularities in Florida, a discussion of the outline of the final document.

16 Eddie, when you come up, could you please address the question
17 that Commissioner Thernstrom asked? I'm sure she will remind you if you forget. Do
18 you remember?

19 MR. HAILES: I believe I remember the question. I will say that the
20 staff has prepared a working draft in progress that we are satisfied that a lot of progress
21 has been made towards the final completion of the report. But of course there is much
22 work to be done. We are still conducting a systematic review of the numerous
23 documents we subpoenaed and received. There are approximately 118,000 pages,
24 including information on CD-ROM and a number of diskettes that we have received.

25 So we don't have a final report yet, but we certainly have made a lot

1 of progress. We believe it's important not to confuse the public with the release of a
2 document that is still in a preliminary phase with what will ultimately be a final report.

3 But we certainly are confident that we are on target towards
4 completing this report within the timeframes established by Commissioners.

5 We have sent to the Commissioners a draft outline of those items we
6 believe should be addressed in the final report based on our preliminary review of the
7 testimony and the documents that we have received and we have reviewed. Of course
8 this draft outline is subject to change based on our continued review of those documents
9 and the discussion that the Commissioners will have today.

10 If I can just direct your attention to that outline, and in summary
11 form tell you what we hope to present under each item identified in the outline, I think
12 that my objective will be satisfied this morning.

13 We do intend in the very beginning to present a full description of
14 all of the allegations of voting irregularities in Florida arising out of the 2000
15 Presidential election, and to describe with specificity the authority of the Commission to
16 investigate these allegations.

17 We intend to identify all of the witnesses and to summarize their
18 testimony, and to point out specifically what the clear objectives of our investigation
19 will be. That will be of course in the beginning of the report.

20 We hope to have a chapter that will probably be called "Voting
21 System Controls and Failures." In that chapter, as you see in your outline, we will begin
22 to discuss evidence of voter disenfranchisement and how this disenfranchisement
23 affected the rights of people of color to be heard in the 2000 Presidential election.

24 We want to move from that chapter and a discussion of the Voting
25 Rights Act of 1965 and voter dilution claims, looking again specifically at the spoiled

1 ballots and state-sponsored purging practices, and talk about the firsthand accounts we
2 heard of voter disenfranchisement. In that chapter, we will provide summaries of the
3 testimony of people who witnessed what occurred at the polling places on November 7,
4 and actually those persons who told us under oath that they simply were not afforded
5 their right to participate in the election and have their voices heard.

6 We will move from that chapter and talk about responsibility and
7 accountability. This will focus on state election accountability and responsibility issues,
8 including a discussion of who has the ultimate authority for ensuring full participation in
9 the Florida election process. This chapter also discussed requirements, and list
10 maintenance responsibilities.

11 The next chapter will talk about resource allocation and will
12 examine the following election topics: financial election resources for the State of
13 Florida; the State's allocation of financial resources; counties' allocation of financial
14 resources; the State's efforts to establish election uniformity throughout Florida;
15 Election Day preparations, and Election Day resources.

16 Then we will have a discussion, again unless we find something
17 different in our continued systematic review of the documents, what we will call list
18 maintenance in reality. We'll talk about how the Florida list maintenance obligations
19 were implemented and how these impacted the voters.

20 We'll move from there to talk about accessibility issues. There, we
21 will discuss directly the special needs assistance and how individuals with disabilities
22 and those with language needs were impacted during the November 7 election.

23 Following that, we'll move to all of the authorized means of casting
24 ballots. There was a lot of discussion during both hearings about the lack of authority to
25 use provisional ballots during the election.

1 We'll talk about Florida election law procedures for voting in two
2 broad categories, the use of affidavits to resolve problems arising at the polling place,
3 and the use of absentee ballots.

4 Then we will talk about the machinery of elections. This will be a
5 full discussion on the types of equipment used on Election Day, the effectiveness of this
6 voting machinery, the contextual framework for election technology improvements, and
7 the impact of voting technology on specific communities.

8 Following that discussion, we will present the findings and
9 recommendations for the approval of the Commission.

10 That's basically a summary of what we expect at this point to be
11 presented in a final report.

12 CHAIRPERSON BERRY: I'll recognize other Commissioners. But
13 I only had just one quick question. Where in here will you discuss some kind of
14 statistical analysis that will help us to figure out in one of these chapters whether there
15 was discrimination or not? We know of course that even if there wasn't discrimination,
16 that still there can be concerns. But I just wondered if there's a chapter or something?

17 MR. HAILES: Yes. We will begin that discussion in the voting
18 systems controls and failures. We'll talk about the voter dilution claims. We will be
19 using a complete review of the record and employing the appropriate statistical analysis,
20 attempt to determine whether looking at the spoiled ballots and looking at the way in
21 which former offenders were removed from the voting rolls, in addition to those persons
22 who were not former offenders being removed from the voting rolls at a specific and
23 disproportionate impact on certain communities.

24 So it will begin in that chapter. Then near the last chapter, where
25 we talk about the machinery of elections, there will be an additional discussion, the

1 impact of voter technology on specific communities.

2 VICE CHAIRPERSON REYNOSO: Madam Chair, I received and
3 went over the report of the Governor's Select Task Force on the Election, the
4 recommendations. I found it very impressive. It includes, among other things, a
5 suggestion that Florida have provisional ballots, which I think would take care of many
6 of the problems. It suggests the legislature take a second look at the law that prohibits
7 folk who have served their time in prison from voting, among many other suggestions.

8 So I am just suggesting that we take a careful look at that report for
9 the final chapter of the recommendations. I'm sure you have.

10 MR. HAILES: We have.

11 VICE CHAIRPERSON REYNOSO: I thought it was a good report.

12 CHAIRPERSON BERRY: And someone has introduced a bill in
13 the Florida legislature in this session to have provisional ballots. But I understand it is
14 still in the committee, so I don't know whether it is going to pass or not.

15 Do other Commissioners have comments or questions? Yes,
16 Commissioner Thernstrom?

17 COMMISSIONER THERNSTROM: I thank you very much for
18 this outline.

19 MR. HAILES: You're welcome.

20 COMMISSIONER THERNSTROM: It seems to me that in the
21 wording of it, that there are some kind of very straight-forward headings, responsibilities
22 of States and county officials, Voting Rights Act of 1965, vote dilution claims, and
23 national registration and so forth. But there are some that are in effect, that could be
24 more neutrally stated. So that, for instance, I would have a preference, at least instead of
25 lack of accurate registration lists, posing it as a question. Were registration lists

1 accurate? You know, was there an opportunity to appeal? So that at a number of points
2 though, it's not the majority of -- this does not -- I do not refer to the majority of
3 headings. It seems to me you could state the question in more neutral fashion.

4 Two other points. I am interested in what the scope of the record
5 will be upon which the final report relies. Also, under A, coworkers confirm
6 widespread voter disenfranchisement. Again, I prefer to see it more neutrally stated, and
7 then to have the evidence under it.

8 I would like to also cover the question of voter fraud, if indeed we
9 have any evidence on that issue.

10 CHAIRPERSON BERRY: Okay. Other comments? Questions?

11 Eddie, I see no reason why you can't under chapter 3, the two
12 headings that Ms. Thernstrom, Commissioner Thernstrom referred to, simply say
13 accuracy of registration lists.

14 COMMISSIONER THERNSTROM: That would be fine.

15 CHAIRPERSON BERRY: -- polling places.

16 COMMISSIONER THERNSTROM: That would be fine.

17 MR. HAILES: We can certainly do that.

18 CHAIRPERSON BERRY: Yes. Okay. Anybody else have a
19 question about -- yes? No questions? Okay.

20 All right then, Eddie, thank you very much.

21 Yes?

22 VICE CHAIRPERSON REYNOSO: I am encouraged by the Staff
23 Director's report that we seem to be on time on this report because we emphasized that
24 this really is a time important report. So I hope that as the staff continues to work on it,
25 that report doesn't change.

1 MR. HAILES: I certainly would like to commend the staff working
2 with me and our staff director. We have met on a weekly basis. Everybody is very
3 excited about the project and working very hard to complete it on time.

4 CHAIRPERSON BERRY: Commissioner Redenbaugh?

5 COMMISSIONER REDENBAUGH: When do you think you will
6 have a draft for us then? Do you have some sense of that now?

7 MR. HAILES: For the Commission, it will be no later than the first
8 week of June.

9 CHAIRPERSON BERRY: When is our meeting in June? Does
10 anybody know?

11 COMMISSIONER THERNSTROM: Madam Chair, ~~one question~~
12 you did not answer which was the scope of the record being relied upon.

13 MR. HAILES: Sure. It will be the testimony presented before the
14 Commissioners and the documents that we have subpoenaed. Additionally, research
15 that has been performed by the staff and the statistical analysis that will be performed.

16 COMMISSIONER THERNSTROM: Will we have access to the
17 documents upon which the research was based or at least citations or you know
18 something to have some sense of -- because that was a huge topic in there, potentially,
19 you could, you know.

20 MR. HAILES: At the appropriate time, access will be given, yes.

21 CHAIRPERSON BERRY: Do you want me to repeat the same
22 thing I said earlier about access?

23 If Commissioners wish to see specific documents in connection with
24 their review, they can tell the Staff Director and the documents will be cited in the
25 footnotes that you get. You may see the documents. You can come to the Staff

1 Director, have your assistants, sit down, look at these documents, and do anything you
2 wish at that point. Because at that point, the staff will be finished, ostensibly. So the
3 answer to the question is yes. If you identify what it is you wish to see or what topics
4 you wish to discuss.

5 COMMISSIONER THERNSTROM: My question was really, and I
6 guess it's answered by the footnotes, will there be built into the report very clear
7 indications of the material external to the hearings and to the subpoenaed materials that
8 have been relied upon.

9 CHAIRPERSON BERRY: Absolutely. Remind people in terms of
10 the process to remind you when the report is finished, it is given to affected agencies
11 and people. That means the Governor of Florida, the Secretary of State, all of those
12 people, supervisors, all of them will review the document before you are asked to
13 approve it. They will be given opportunity to submit whatever they would like to
14 submit.

15 In fact, isn't it right, General Counsel, they can if they want to have
16 something attached to the back of the report or whatever, they can do that?

17 MR. HAILES: With the approval of the Commission.

18 CHAIRPERSON BERRY: Right. So it's not that we are going to
19 approve the document without anybody ever seeing it or anything like that. So I just
20 want to be clear that everybody understands that.

21 Yes, Commissioner Redenbaugh?

22 COMMISSIONER REDENBAUGH: The June meeting, I just
23 didn't hear what you said the date is.

24 CHAIRPERSON BERRY: When is the June meeting?

25 STAFF DIRECTOR JIN: June 8th, I think.

1 CHAIRPERSON BERRY: So, Eddie, we have to have that at some
2 point before then if we are going to act on it at the June meeting.

3 MR. HAILES: Yes.

4 CHAIRPERSON BERRY: Okay. Enough time.

5 All right. Does anybody have any other questions about this
6 subject? Okay, thank you very much, General Counsel.

7 MR. HAILES: Very welcome.

8 **V. State Advisory Committee Report**

9 CHAIRPERSON BERRY: The next item is a State Advisory
10 Committee report, Reconciliation at a Crossroads: The Implications of Rice v. Cayetano
11 on Programs for Native Hawaiians.

12 Rice v. Cayetano was a forum held by the Hawaii SAC to which
13 Commissioner Lee, Commissioner Meeks, and the Vice Chair Reynoso went. You
14 attended that. As a result of that, this advisory committee came up with this report.

15 It has been before us before. I forgot what we did with it last time. I
16 guess we sent it to have -- oh, what happened the last time?

17 STAFF DIRECTOR JIN: Yes, Madam Chair. A couple things
18 happened. One was I think the main thing that happened was that it was decided that the
19 report could be fortified to include the 1998 forum to have more discussion of 1998
20 forum that the Hawaii SAC had. I think the couple of SAC members working with the
21 rest of the members in Hawaii wanted a little more opportunity to put their own
22 handprints on the document. That has been happening since the last time, which they
23 have done.

24 Madam Chair, if I just may for a quick second, particularly
25 congratulate I think several people: including Charles Maxwell, the Chair of the Hawaii

1 SAC; David Foreman, one of his SAC members who have put in a lot of work, well
2 beyond what I think normally is expected of SAC members in terms of buttressing this
3 report; as well as Tom Pilla of our Western Regional Office; Mireille Zieseniss of our
4 Office of Rights Evaluation; and Dawn Sweet of the Regional Programs Coordination.
5 They have all put in an incredible amount of time in this. I just want to congratulate
6 them.

7 CHAIRPERSON BERRY: Yes, Commissioner Meeks?

8 COMMISSIONER MEEKS: I also would like to really recognize
9 their efforts. It was so impressive to see that SAC at work and the kind of thought and
10 care they put into this whole report and to the whole issue. So I am happy to vote for
11 this report.

12 CHAIRPERSON BERRY: Yes. We have, the Commission has
13 advisory committees in every state and the District of Columbia, which consists of
14 citizens who are willing to volunteer their time working on these issues. We are very
15 grateful for the work that they do.

16 The role of the Commission is to accept or reject endorsing their
17 report. We don't really have to agree with it. We either accept it or we reject it. If there
18 are things in their report that require us to get in touch with other Federal agencies to
19 respond, then we are expected to do that. But it's the report of the SAC.

20 Can I get a motion to approve the report?

21 COMMISSIONER LEE: So moved.

22 CHAIRPERSON BERRY: Yes, Commissioner Lee.

23 Could I get a second?

24 COMMISSIONER MEEKS: Second.

25 CHAIRPERSON BERRY: Commissioner Meeks.

1 Is there any discussion? Yes, Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: My understanding is that this
3 is a joint project.

4 CHAIRPERSON BERRY: No.

5 COMMISSIONER REDENBAUGH: It's not a joint project?

6 CHAIRPERSON BERRY: It's not.

7 STAFF DIRECTOR JIN: No, it's not. My understanding is it's a
8 SAC report, but there was assistance from the Office of Rights Evaluation. But it's still
9 nevertheless a SAC report, a State Advisory Committee Report.

10 COMMISSIONER REDENBAUGH: Okay. So it's -- have we
11 done this -- Sonoma County was the same thing or was it joint?

12 STAFF DIRECTOR JIN: I'm not sure about Sonoma County -- yes,
13 it was a SAC report.

14 COMMISSIONER REDENBAUGH: So it's the same thing?

15 STAFF DIRECTOR JIN: Yes.

16 COMMISSIONER REDENBAUGH: Okay. All right. I plan to
17 vote to not accept this report, but do ask to provide a separate statement for inclusion
18 with it.

19 CHAIRPERSON BERRY: Commissioner Redenbaugh, as you
20 know, Commissioners do not make statements about SAC reports in SAC reports. It has
21 never been done. These are their reports to us about what they think, which they have a
22 right to think, and whether we agree with it or not, and it's not our report. So therefore,
23 we will indicate in the press release going with the report your objections, and that you
24 didn't vote for it, but we have never had a SAC Commission members making
25 statements about SAC reports.

1 COMMISSIONER REDENBAUGH: What did we do in the
2 Sonoma report?

3 COMMISSIONER THERNSTROM: I have the Sonoma report in
4 my hand. It seems to me, looking at it, that there are separate statements by
5 Commissioners Lee and the Vice Chair, so that --

6 CHAIRPERSON BERRY: I think their statements are about having
7 been at the forum. Isn't that what they are about? They went to the SAC forum.

8 COMMISSIONER THERNSTROM: Well, but I believe that
9 Commissioner Horner on the Los Angeles report again, issued an additional statement
10 and was not there. I think we ought to straighten the precedent.

11 CHAIRPERSON BERRY: What Los Angeles report are you
12 referring to?

13 COMMISSIONER REDENBAUGH: Los Angeles police hearing.

14 CHAIRPERSON BERRY: That was a Commission report.

15 COMMISSIONER REDENBAUGH: I am a little confused. I
16 remember what we did with Commissioner Horner. But the Sonoma report does have
17 separate statements.

18 CHAIRPERSON BERRY: Of people who went to the forum. Isn't
19 that right? You guys went to the forum?

20 COMMISSIONER REDENBAUGH: But it is commenting on the
21 report.

22 COMMISSIONER LEE: No.

23 CHAIRPERSON BERRY: No, it's not. Commissioner Lee wants
24 to comment. She is one of the persons who was included.

25 I recognize you, Commissioner Lee.

1 COMMISSIONER LEE: Thank you, Madam Chair.

2 I think the difference between the Sonoma report and what
3 Commissioner Redenbaugh had asked for is very different. Both the Vice Chair and --

4 COMMISSIONER THERNSTROM: Could you speak into your
5 microphone? I'm terribly sorry.

6 COMMISSIONER LEE: I think the Vice Chair and I went to the
7 Sonoma County hearing as invited guests of the SAC Committee members. As
8 observers of the long forum, we made several observations. We were asked if we
9 wanted to share that observation.

10 So when you read that statement, we were not making any
11 statements on whether we supported the report or we did not support the report. My
12 statement was purely on my observation as a member of the Commission attending that
13 forum.

14 VICE CHAIRPERSON REYNOSO: Madam Chair, we were
15 specifically asked by the Advisory Committee if we would make a separate comment,
16 and so we accommodated the SAC.

17 COMMISSIONER REDENBAUGH: So that my statements will be
18 included in the press release?

19 CHAIRPERSON BERRY: Absolutely.

20 COMMISSIONER REDENBAUGH: Okay, thank you.

21 COMMISSIONER THERNSTROM: And the actual report itself
22 will not say the U.S. Commission on Civil Rights, and it will not indicate any kind of
23 joint?

24 CHAIRPERSON BERRY: It does not. It's the SAC report. It will
25 say the State Advisory Committee.

1 COMMISSIONER THERNSTROM: Okay.

2 CHAIRPERSON BERRY: There's a format for that. I have
3 forgotten what it says, something about the State Advisory Committee and X State said
4 blah, blah, whatever it is they said.

5 Normally, we don't -- I'm not even sure we even put into the report
6 in the past what the Commissioners did. We just said that it's their report.

7 COMMISSIONER THERNSTROM: So I was curious why then is
8 it, if it's not a joint, why isn't it just their -- obviously I am new to the Commission. Why
9 isn't it simply their report? Why are we discussing it?

10 CHAIRPERSON BERRY: That is a good question. We shouldn't
11 Because as Commissioner Redenbaugh explained to you, there is a long history of
12 everything. He was on a committee and we had some things. We had some discussion
13 about this because there were some Commissioners who believed that since it was their
14 report, why were we doing anything about it. Why don't we just let them do their report
15 and acknowledge that it was received here, and simply issue the press release.

16 COMMISSIONER THERNSTROM: Right.

17 CHAIRPERSON BERRY: But there was a desire on the part of
18 other Commissioners to review it and to decide whether we accepted. So the resolution
19 of that long discussion, which I won't bore everybody with, was that we ended up with
20 the position that we would accept their report, but it is still their report, and we don't
21 have anything, any ownership of it because it's not ours.

22 Quite frankly, SAC members would not serve on the SAC if they
23 thought that we were going to simply make a judgement about whether they could have
24 a certain report, since they are supposed to be our eyes and ears out there. They feel that
25 they ought to be able to, as volunteers, tell us what, call them as they see them, not as we

1 .see them.

2 So therefore, it was sort of a compromise. There's a great deal of
3 concern about SAC members now about us even having that much attempted influence
4 over what they do.

5 COMMISSIONER THERNSTROM: I mean I think there is, as you
6 describe it, an inherent conflict between voting to accept the report, on the other hand
7 not allowing separate statements, and that this is a very -- the procedural waters as it
8 were, have been muddied here.

9 CHAIRPERSON BERRY: When we get a new head of that office
10 that reports to the Staff Director that coordinates regional programs, and he has been
11 recruiting, it is a civil service position, maybe we can get some kind of recommendation.

12 There are a whole bunch of issues related to the SACs that are still
13 on the table for resolution. So maybe you can add that one.

14 STAFF DIRECTOR JIN: That sounds like a good idea.

15 CHAIRPERSON BERRY: To the list of things that ought to be
16 reviewed. But for now, it is their report. It's not our report. We just acknowledge that it
17 came here. Our voting is -- if all of us voted to reject it or to say we don't accept it, not
18 reject it, we don't accept it, then it would be out there in limbo.

19 That happened one time, and the SACs proceeded to publish it
20 themselves.

21 COMMISSIONER THERNSTROM: I was going to say why
22 couldn't they publish it?

23 CHAIRPERSON BERRY: They just took it out and printed it
24 themselves. But it is for our information. It is to inform us and to tell us what they
25 think. I, myself, personally am very grateful to them for their work. I look forward to a

1 recommendation from the Staff Director about this whole range of issues.

2 Yes, Commissioner Lee?

3 COMMISSIONER LEE: Madam Chair, can I have a clarification?
4 When Commissioner Redenbaugh asked to have the statement included in the press
5 release, you said it was okay for a statement to be included?

6 CHAIRPERSON BERRY: Well, it occurred to me that if he
7 wanted -- we need to look at the press releases to see what they say. I don't mean we
8 need to look at them this moment, on the SACs. Because it has been my impression in
9 the past that all they do is say that the State Advisory Committee did X, Y, Z.

10 If that is the case, Russell, then we wouldn't include any statements
11 from anybody. It would just be their report.

12 Can we leave it at that? That if the consistent practice is to simply
13 issue the statement saying that they have this report, we would do that. If the practice
14 has been that it says something about the Commission and its views on it, we would ask
15 you for a statement.

16 COMMISSIONER REDENBAUGH: I would like to raise a
17 different issue that's adjacent. That is, I accept what you just said as it pertains to what I
18 consider the normal and customary SAC reports. My understanding, it's only based on
19 memory, is that this one was different because of the way and the extent and the
20 magnitude in which the Commission participated in the conduct of the event and in
21 preparation of the report. I think that was indicated also in the Staff Director's
22 acknowledgement and appreciation for the staff who worked on this report.

23 So this strikes me as a different kind of report, and therefore
24 different treatment than a normal SAC report. That issue I would like clarified. We
25 may not be able to resolve that in just a moment.

1 CHAIRPERSON BERRY: I don't think we can resolve it here.

2 COMMISSIONER REDENBAUGH: All right.

3 CHAIRPERSON BERRY: But we'll look for the Staff Director to
4 give us some information about SACs and SAC reports.

5 COMMISSIONER REDENBAUGH: I think we should look to the
6 transcript of what we discussed as we set up and discussed this report as well.

7 CHAIRPERSON BERRY: Yes. So why don't you do that. But for
8 now, the report has been accepted. They can be informed of that.

9 STAFF DIRECTOR JIN: Okay. Madam Chair, we can look at a lot
10 of those issues.

11 Commissioner Redenbaugh, like you said, even if it's how we've
12 done it in the past, we can always look to do it better. We are not wedded to just that.
13 So we will be looking at all those issues and making recommendations.

14 COMMISSIONER REDENBAUGH: The specific issue I want to
15 address is is this a different report, and why do we say it either is or isn't.

16 I am fine with us leaving in place the practices for now anyway that
17 we have followed in the normal reports. Of course we can review that when you fill that
18 position.

19 CHAIRPERSON BERRY: But I believe one of your points is that
20 in reviewing the record with respect to this report, that perhaps in fact it would be
21 appropriate to attach separate statements of Commissioners?

22 COMMISSIONER REDENBAUGH: It does strike me that way.

23 CHAIRPERSON BERRY: We are saying that we don't recall that.
24 Commissioner Lee doesn't recall that, who was the person who suggested this whole
25 thing to begin with in terms of accepting the invitation for people to go there.

1 COMMISSIONER REDENBAUGH: If we would just review the
2 transcript.

3 CHAIRPERSON BERRY: We can't answer any of this.

4 COMMISSIONER THERNSTROM: If we could review the
5 transcript, it would be great.

6 CHAIRPERSON BERRY: Since we can't address it today, there is
7 no sense --

8 Yes, Commissioner Wilson?

9 COMMISSIONER WILSON: My memory very distinctly, as there
10 were many conversations with Commissioner Lee saying that the SAC was having a
11 hearing and basically imploring Commissioners to attend, but it was definitely their
12 hearing. There were a number, I think it was maybe two months or maybe three months
13 that there were specific requests on Commissioner Lee's part that we attend. It was
14 definitely their hearing.

15 CHAIRPERSON BERRY: Commissioner Meeks?

16 COMMISSIONER MEEKS: Yes, I mean really there was no
17 difference in my recollection from the forum that was held in South Dakota. In August,
18 prior to us, the U.S. Commission even talking about it, I went to a SAC meeting in
19 South Dakota that they said they wanted to have a forum. Then the U.S.
20 Commissioners, at least some of them, agreed to go or wanted to go. The same thing
21 happened in Hawaii. But it was still a state report.

22 COMMISSIONER LEE: I think originally it started off as the SAC
23 wanted us to hold the hearing. The Commissioners rejected that, so the SAC decided
24 that they would hold the forum, and they wanted us to go there to observe. That is why
25 three of us went.

1 CHAIRPERSON BERRY: Yes, which sounds like what we did in
2 South Dakota.

3 Okay. Well you can check all that out, Staff Director, and tell us
4 next time.

5 The next item is the civil rights issues --

6 STAFF DIRECTOR JIN: Have you voted on this yet?

7 CHAIRPERSON BERRY: Yes, we did. We voted. Didn't we
8 vote?

9 COMMISSIONER REDENBAUGH: I don't think so.

10 CHAIRPERSON BERRY: I call for the question. I'm sure we
11 voted, because there were two noes. I wrote them down.

12 COMMISSIONER THERNSTROM: Yes, I thought we did too.

13 COMMISSIONER WILSON: No, we didn't vote on this.

14 CHAIRPERSON BERRY: Yes, we did. We voted on this because
15 Thernstrom and Redenbaugh voted no, which is how we got into the discussion of the
16 statement. I don't remember everything, but I --

17 STAFF DIRECTOR JIN: I do remember there was a vote and I
18 can't remember what else we would have voted on.

19 COMMISSIONER REDENBAUGH: I thought the vote was on the
20 Native Americans.

21 CHAIRPERSON BERRY: Okay. All right. Call for the question.

22 All in favor indicate by saying aye.

23 Opposed?

24 COMMISSIONER WILSON: Now you have your two noes.

25 STAFF DIRECTOR JIN: Madam Chair, may I quickly make a

1 comment for the record, if I may?

2 CHAIRPERSON BERRY: Sure.

3 STAFF DIRECTOR JIN: When I was giving out recognition, I
4 neglected to mention two lawyers from Office of General Counsel, I think deserve
5 mention also, Debra Reid and Kim Ball.

6 CHAIRPERSON BERRY: So that everybody understands, the
7 General Counsel's office always does legal sufficiency because at one time we had a lot
8 of staff. There were lawyers in the regional office who worked on these things, but we
9 don't have those now.

10 Okay. Civil rights issues facing Arab Americans in Michigan.
11 Could I have a motion?

12 COMMISSIONER LEE: So moved.

13 CHAIRPERSON BERRY: Could I have a second?

14 COMMISSIONER MEEKS: Second.

15 CHAIRPERSON BERRY: Any discussion? All those in favor,
16 indicate by saying aye.

17 Opposed?

18 So ordered.

19 COMMISSIONER THERNSTROM: We are -- two of us are
20 abstaining.

21 CHAIRPERSON BERRY: Two abstentions. Okay. So ordered.

22 VII. Future Agenda Items

23 Under future agenda items, one issue I want to raise myself is the
24 matter of the police community relations in Cincinnati. As the Commissioners no doubt
25 know, there have been some disturbances in Cincinnati related to a shooting that took

1 place there. The Commission has just recently finished a report which hasn't been -- I
2 guess they didn't print it yet or it's been made available to the press a long time ago on
3 what's the name of the report?

4 STAFF DIRECTOR JIN: I'm not sure I know the full technical title.
5 It's the Police Practices Report.

6 CHAIRPERSON BERRY: Revisiting Who is Guarding the
7 Guardians. Who is Guarding the Guardians is the 1982 report that the Civil Rights
8 Commission did after hearings around the country on police practices.

9 This most recent report tries to give advice to communities on how
10 to improve police-community relations, and points out best practices in communities
11 where these problems seem to be better resolved than they are elsewhere.

12 In Cincinnati, there has been a history, as in other places around the
13 country, of police-community relations that in some ways are problematic. In the 1982
14 report, Cincinnati was one of the places that the Commission went to to hold a series of
15 public hearings. The members of the State Advisory Committee in Cincinnati, our State
16 Advisory Committee, have over the years on numerous occasions held forums and other
17 kinds of events to discuss these issues in Cincinnati.

18 So I would like to ask the Staff Director, if he has not already done
19 so, to ask the regional director to give us an update or give him an update, which he can
20 share with us, on what is going on there that we don't read in the paper, and how she is
21 relating to CRS, the Community Relations Service, which is a small agency like we are,
22 under-funded, which has some people on the ground there to try to conciliate matters.

23 I know the ACLU brought a lawsuit against the city or the
24 department. I read that in the paper. To see whether any of the kinds of things that we
25 are knowledgeable about or the staff is about police-community relations, can be

1 inputted either through the CRS people or if there's some other role that they should be
2 playing, and that that is an appropriate role for the regional director. So I would ask that
3 that be done.

4 STAFF DIRECTOR JIN: We will do that, Madam Chair.

5 CHAIRPERSON BERRY: Unless there is an objection to it being
6 done.

7 Does anybody have any other future agenda items? Hearing none,
8 we will recess this part of the meeting so that we can start the briefing.

9 If the panelists are here, we will take a five minute break and start
10 early, five minutes early, and have the panelists for the first session come forward.

11 (Whereupon, the foregoing matter went off the record at 10:43 a.m.
12 and went back on the record at 10:55 a.m.)

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