

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, July 12, 1996

The Commission convened in Room 540,
YWCA Building, 624 Ninth Street, NW, Washington, D.C.,
20425, at 9:30 a.m., Mary Frances Berry, Chairperson,
presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON

CRUZ REYNOSO, VICE CHAIRPERSON (via telephone)

CARL A. ANDERSON, COMMISSIONER

ROBERT P. GEORGE, COMMISSIONER

A. LEON HIGGINBOTHAM, JR., COMMISSIONER (via telephone)

CONSTANCE HORNER, COMMISSIONER

YVONNE LEE, COMMISSIONER

RUSSELL REDENBAUGH, COMMISSIONER

MARY K. MATHEWS, STAFF DIRECTOR

STAFF PRESENT:

BARBARA BROOKS

KI TAEK CHUN

JAMES S. CUNNINGHAM

PAMELA A. DUNSTON

ORIGINAL

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STAFF PRESENT: (Continued)

BETTY EDMISTON

GEORGE HARBISON

CAROL-LEE HURLEY

JACQUELINE L. JOHNSON

FREDERICK ISLER

STEPHANIE Y. MOORE, General Counsel

VERONIQUE PLUVIOUS-FENTON

CHARLES RIVERA

MIGUEL SAPP, Parliamentarian

ANTHONY K. WELLS, SR.

AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

DEEANA L. JANG

CHARLOTTE PONTICELLI

WILLIAM SAUNDERS, JR.

KRISHNA TOOLSIE

CYNTHIA VALENZUELA

1 opposition to some of these recommendations.

2 I think maybe we should consider those
3 comments.

4 CHAIRPERSON BERRY: Okay. Do you,
5 Commissioner Higginbotham and Vice Chair Reynoso, have
6 a copy of this with you?

7 COMMISSIONER HIGGINBOTHAM: I'm having
8 trouble hearing you.

9 CHAIRPERSON BERRY: Do you have these SAC
10 appointment process recommendations before you?

11 COMMISSIONER HIGGINBOTHAM: I don't have them
12 before me because they were in my Washington office,
13 and I planned to, you know, be there, but because of
14 the plane problem, I'm stuck here in the hotel.

15 I have read those. So, I think I have a
16 recollection.

17 CHAIRPERSON BERRY: Okay. He's in the hotel.

18 VICE CHAIR REYNOSO: This is Commissioner
19 Reynoso. I do have a copy.

20 CHAIRPERSON BERRY: You do?

21 VICE CHAIR REYNOSO: Yeah.

22 CHAIRPERSON BERRY: Okay. Well, the -- the --
23 -- basically what they do, Commissioner Higginbotham, --
24 can you hear me now?

25 COMMISSIONER HIGGINBOTHAM: Yes, I can.

1 CHAIRPERSON BERRY: What they do is to say
2 that we want to verify that clear standards or criteria
3 have been established and are being followed for
4 assessing the SAC member packages.

5 This -- we're talking about the -- the -- the
6 appointments to the state advisory committee, and the
7 -- I'm trying to find my copy. I don't want that. I
8 want the actual -- this one -- the actual report.

9 COMMISSIONER HIGGINBOTHAM: While you're
10 looking at it, if I may, I had one or two concerns, and
11 I guess it was a concern suggested, but it's sort of
12 almost a presumption that because someone has served,
13 that they will be reappointed.

14 CHAIRPERSON BERRY: Oh, yeah.

15 COMMISSIONER HIGGINBOTHAM: Am I correct?

16 CHAIRPERSON BERRY: Right. That there is --
17 we have a policy that people who are serving, if
18 they're not reappointed, they can appeal. If they
19 object to not being reappointed, they can appeal to the
20 Commission. That's -- and I had some concerns about
21 that, too. I know it's a policy, and it's -- it's --
22 the recommendation is to continue that, but -- and I
23 know it was put in in the first place, I recall the
24 discussion, to see to it that people were not removed
25 from SACs for political or ideological or some personal

1 pique reasons, but it has resulted in some people
2 staying on the SAC who -- whose contributions, if I
3 might put it politely, are de minimis, but who still
4 stay there, and if there are efforts made to get rid of
5 them, then they, you know, feel like they have a right
6 to be there, an entitlement, as it were, and, so, I
7 don't know what the balance is, and whether we can do
8 anything about that, making sure that people aren't put
9 off for pernicious reasons, at the same time that we're
10 able to have more flexibility.

11 But I do know the point, and Commissioner
12 Horner wants to address it.

13 COMMISSIONER HORNER: I think perhaps one way
14 to resolve the question is to make it clear that the
15 policy is that we do not presume reappointment, but
16 that if an individual very much wants to be reappointed
17 and isn't, there is a -- a -- a channel of
18 communication open to explain why to the Commission.

19 I think it's just a matter of a sentence or
20 two, and we really could overcome an unacceptable
21 presumption and still keep the channel open.

22 CHAIRPERSON BERRY: So, we would -- how would
23 that be, if we addressed it that way? Simply made it
24 clear that there's no presumption? Commissioner
25 Higginbotham, can you hear me?

1 COMMISSIONER HIGGINBOTHAM: That's no
2 problem.

3 CHAIRPERSON BERRY: Okay. That would be
4 helpful.

5 The -- so, these recommendations. One is
6 verify the clear standards or criteria have been
7 established and are being followed for assessing SAC
8 member packages, and the -- the staff director and
9 the -- the regional directors, their only comment on
10 that, and I'm only doing this because you don't have
11 the materials with you, I think others have them, --

12 COMMISSIONER HIGGINBOTHAM: Then please
13 don't.

14 COMMISSIONER REDENBAUGH: No. I think it's
15 very helpful to me, too.

16 CHAIRPERSON BERRY: It's helpful to
17 Commissioner Redenbaugh, even though he knows all the
18 recommendations. He doesn't know the comments, I
19 guess.

20 The recommendation can be implemented, they
21 say, the regional directors and the staff director, by
22 ensuring that the AIs, the instructions, reflect the
23 standards that are already there in the state advisory
24 committee handbook, and, so, they think that that's --
25 they don't really have any objections to that.

1 The second one is ensure that commissioners
2 are provided with a specific listing of all agencies
3 polled for suggestions of new SAC members and with
4 responses from those agencies.

5 Right now, we are supposed to do that, but
6 the committee believed that the information was too
7 sketchy in terms of making sure that all sorts of
8 sources were polled for suggestions. So, they are
9 making sure that we want to have a specific list of all
10 the places that they called or talked to or whatever to
11 get these names.

12 The staff director and the regional directors
13 say that this is problematic. They don't much like
14 this recommendation in that it's not always possible to
15 know what the results of a recruitment effort are
16 because the forms arrive with no indication of who
17 asked the person to send it in. Further, recruitment
18 is often targeted to the needs of the committee.

19 For example, if they need to increase a --
20 particular ethnic group or some particular
21 representational factor, and, so, they don't seem to
22 much like that recommendation. If -- I'm not sure it's
23 responsive, but -- yes, Commissioner Horner?

24 COMMISSIONER HORNER: Madam Chair, I think
25 that if there is a need to recruit from a particular

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1 ethnic group, that it's perfectly okay to express that
2 desire and to list the groups consulted nonetheless,
3 list them, and in order to prevent anyone's sense that
4 only -- that it's unbalanced -- an unbalanced
5 consultation, simply explain why the consultation
6 appears to be unbalanced but isn't.

7 I don't understand the process. What are
8 CCR-16 forms?

9 CHAIRPERSON BERRY: Staff director, do you
10 know what a CCR-16 is?

11 STAFF DIRECTOR MATHEWS: When a new
12 appointment package is given to the commissioners,
13 there is this form summarizing the bio of the
14 individual recommended SAC member, and then usually
15 following that, or most often, I should say, there's a
16 resume, but there's this form that is a summary.

17 COMMISSIONER HORNER: Well, then why -- it
18 says it would be a problem to list the sources of
19 recruitment because the forms arrive with no indication
20 of who asked the person to send it in.

21 Am I to understand that a name would simply
22 come in over the transom, a self-volunteered self-
23 nomination? Is that what you're talking about?

24 STAFF DIRECTOR MATHEWS: Occasionally, that
25 happens. People express interest.

1 COMMISSIONER HORNER: But surely we would
2 consult with additional organizations, even in that
3 circumstance, wouldn't we?

4 STAFF DIRECTOR MATHEWS: Okay. Commissioner
5 Horner, the -- the forms themselves do not have an
6 indication of which organization may have stimulated
7 this form to be submitted, and that's really the point,
8 that the regional directors cannot always -- sometimes
9 they can, but they cannot always relate their outreach
10 phone calls to organizations and what actually comes
11 in.

12 Sometimes yes, sometimes no. So, that is the
13 point trying to be made here by the comment on this
14 recommendation.

15 COMMISSIONER HORNER: Well, I don't see that
16 there would be any problem in saying we don't know
17 whether this person has a sponsoring organization and
18 no one has.

19 STAFF DIRECTOR MATHEWS: Right.

20 COMMISSIONER HORNER: I mean, in other words,
21 it's just transparency we're after here.

22 STAFF DIRECTOR MATHEWS: Yeah.

23 CHAIRPERSON BERRY: So, it's what -- what
24 is -- it's two separate issues. Inform the Commission
25 what organizations were polled, and then if the person,

1 the nominee, came from a specific organizational
2 sponsor, then you can say that, if you know it, and if
3 you don't, say, well, I don't know whether this came
4 from there or wherever. So, it's two separate
5 questions, I guess.

6 COMMISSIONER HORNER: Right.

7 CHAIRPERSON BERRY: Yes, Commissioner -- yes,
8 Commissioner Lee?

9 COMMISSIONER LEE: I think the committee
10 brought this up as a courtesy to the organizations or
11 individuals who make these recommendations because
12 often they don't hear from the commissioners of the
13 status of the nominees.

14 So, this is just a courtesy to let them know
15 how the process has been moving on these particular
16 individuals or whatever. So, it's more or less a
17 courtesy call and also to remind the -- the -- the
18 regional office to -- when they're doing the
19 recruitment effort, to be more broad based, and that
20 was the purpose of this recommendation.

21 CHAIRPERSON BERRY: Yes, Commissioner George?

22 COMMISSIONER GEORGE: I believe it is still
23 the case that when we recharter a SAC, the materials
24 that are provided by the staff director include a list
25 of the organizations that have been consulted to get

1 nominations for that particular SAC, right? So, we'll
2 see that Alabama is being rechartered, and the -- I
3 don't know -- the NAACP, the Catholic Archdiocese, so
4 forth and so on, are listed there as people that have
5 been concerned.

6 Now, we don't know which of the individuals
7 being put forward for us comes from which of those
8 organizations. That would be useful to know, but I
9 take it we wouldn't be changing anything about the
10 reporting of which organizations were consulted in the
11 first place, that it would still have that reporting.

12 CHAIRPERSON BERRY: The more you ask the
13 question, the more I'm wondering about why we have the
14 recommendation, because we already have on the form,
15 you just said that, and I remember that, it lists
16 organizations that were consulted. There's somewhere
17 on the form.

18 COMMISSIONER GEORGE: And I believe it's
19 not -- that's not exemplary. It's exhaustive.

20 CHAIRPERSON BERRY: Right.

21 COMMISSIONER GEORGE: We're told everybody
22 who was consulted.

23 CHAIRPERSON BERRY: So, maybe what the
24 recommendation is, is that we're -- that the committee
25 believes that they need to list everybody who was

1 consulted, and the committee believes that they didn't.
2 Is that what the point is or what? Want me to do that
3 again?

4 COMMISSIONER REDENBAUGH: No, no. I don't
5 think it will help me focus. I think this is one of
6 the recommendations that -- that we are recommending,
7 that it's already -- already in place, and we're only
8 recommending that it be followed.

9 CHAIRPERSON BERRY: Oh, I see.

10 COMMISSIONER REDENBAUGH: Is that not the
11 case?

12 CHAIRPERSON BERRY: Oh, that's what you mean
13 by ensure. Ensure. Oh, I see. You're saying please
14 do what you're supposed to be doing already.

15 COMMISSIONER REDENBAUGH: Hm-hmm.

16 CHAIRPERSON BERRY: Oh, okay. All right.

17 COMMISSIONER REDENBAUGH: So, we can discuss
18 not doing that which we've already agreed to do.

19 CHAIRPERSON BERRY: No, no, no, no, no, no.

20 COMMISSIONER REDENBAUGH: But --

21 CHAIRPERSON BERRY: All right. So, this is
22 just to reiterate that we're supposed to do this.

23 COMMISSIONER GEORGE: I think the key thing -
24 - I -- I have just been reminded by Commissioner
25 Redenbaugh's assistant, the key thing here would be

1 that the list be exhaustive rather than exemplary.

2 So, instead of saying organizations such as
3 and then a few examples, just a list of all the
4 organizations that were in fact consulted. That might
5 be the change.

6 CHAIRPERSON BERRY: Well, could we -- could
7 we say that -- that -- actually, what it is, we're
8 supposed to give a specific listing already, and we do
9 sometimes have them.

10 COMMISSIONER GEORGE: Sometimes.

11 CHAIRPERSON BERRY: So, maybe what we should
12 do is just say ensure that the policy of providing us
13 with the specific listing of all agencies polled is
14 followed, rather than making this -- I thought you were
15 proposing some new -- is followed. Okay. We're making
16 sure that it's followed.

17 Yes?

18 STAFF DIRECTOR MATHEWS: The aspect of this,
19 that the regional directors were particularly honing in
20 on, is this last sentence in the recommendation, which
21 says, "The packages should also state clearly whether
22 or not those contacts have in fact yielded any actual
23 recommendations."

24 Now, that is not something that has been
25 routinely done.

1 CHAIRPERSON BERRY: The last sentence in the
2 recommendation.

3 STAFF DIRECTOR MATHEWS: In the
4 recommendation. You have my comment.

5 CHAIRPERSON BERRY: The recommendation.

6 STAFF DIRECTOR MATHEWS: I'm looking at the
7 recommendations from the task force.

8 COMMISSIONER HORNER: Madam Chair, --

9 CHAIRPERSON BERRY: Yes, Commissioner Horner?

10 COMMISSIONER HORNER: -- I think the purpose
11 of this is to permit the commissioners to know if a
12 particular group or collection of groups were
13 recommending candidates who were rejected by the staff.

14 We want to know, for instance, if some
15 organization in some state of some consequence in the
16 civil rights arena is proposing a candidate, and the
17 staff is selecting an alternative candidate.

18 In other words, it's information that allows
19 us to understand what's going on. So, we can --

20 STAFF DIRECTOR MATHEWS: That in my mind is a
21 different aspect of the process.

22 CHAIRPERSON BERRY: In other words, it's that
23 if the Catholic Archdiocese was contacted, and they
24 didn't suggest anybody, --

25 COMMISSIONER HORNER: We should know that,

1 and if they did suggest somebody, --

2 CHAIRPERSON BERRY: -- they would say no
3 recommendation suggested.

4 COMMISSIONER HORNER: And if they did suggest
5 anybody, we should know that, too.

6 CHAIRPERSON BERRY: Right.

7 STAFF DIRECTOR MATHEWS: But that is not on
8 here.

9 COMMISSIONER HORNER: What does that --

10 STAFF DIRECTOR MATHEWS: At least that is not
11 my interpretation. Okay. So, I -- this is very
12 helpful clarification, if that's what was intended.

13 COMMISSIONER GEORGE: Okay. The sentence
14 says, "The packages should also state clearly whether
15 or not those contacts, NAACP, Catholic Archdiocese,
16 have in fact yielded any actual recommendations for
17 prospective members", but I -- I think I see what the
18 staff director's problem is.

19 It's one thing to know whether the NAACP in
20 Alabama made the recommendation. We also need to know
21 whether -- okay. Now we know a recommendation was
22 made. We need to know, all right, who is the
23 recommendee coming from that organization, and have
24 they in fact been proposed to us for selection? Yeah?
25 Right?

1 COMMISSIONER HORNER: I -- I don't know
2 whether we need to know the name of the person or
3 whether we need only to know that such a recommendation
4 was made.

5 CHAIRPERSON BERRY: I don't think we need to
6 know the second. I think if we know all the rest of
7 it, --

8 COMMISSIONER HORNER: I think that's --

9 CHAIRPERSON BERRY: -- I think that's
10 sufficient.

11 COMMISSIONER HORNER: If we know, if we know
12 that the NAACP of Alabama has made a recommendation,
13 and the staff has chosen instead the recommendation of
14 some other organization or no organization, --

15 COMMISSIONER GEORGE: That somebody else --

16 COMMISSIONER HORNER: -- we then know, if
17 we're concerned that the NAACP not be ignored or over-
18 looked, we have the opportunity of checking then and
19 saying then, well, who was the person.

20 COMMISSIONER GEORGE: Okay. Let me see if I
21 have this right then. We -- we need to know whether
22 the group made a recommendation, and we need to know
23 whether the recommendation has been accepted. We don't
24 need to know who the person is.

25 CHAIRPERSON BERRY: Well, we will know

1 whether if the NAACP of Alabama made a recommendation,
2 and the person who's being suggested is not associated
3 with them. We'll know that because this form will
4 say --

5 COMMISSIONER HORNER: Right.

6 CHAIRPERSON BERRY: -- all kinds of things,
7 but we won't have any --

8 COMMISSIONER HORNER: We won't deal with this
9 until there is a recommendation for an appointment, and
10 as part of dealing with the recommendation for
11 appointment, we need to know what organizations were
12 polled, and what organizations made recommendations
13 which were obviously rejected since we're dealing with
14 the appointment which survived.

15 CHAIRPERSON BERRY: Which we can figure out
16 for ourselves --

17 COMMISSIONER HORNER: Yeah.

18 CHAIRPERSON BERRY: -- from looking at the
19 form.

20 COMMISSIONER HORNER: Inference.

21 COMMISSIONER GEORGE: I'll trust you guys.

22 CHAIRPERSON BERRY: So, with that
23 clarification, this is the existing policy, but we're
24 saying please follow it.

25 Now, staff director, do you understand the

1 policy?

2 STAFF DIRECTOR MATHEWS: I understand the
3 conversation. I am not sure this is the current
4 policy.

5 CHAIRPERSON BERRY: It's -- it's that listed
6 on the form as they do now in the packages, where this
7 nominee -- the nominees' associations. There's a space
8 for that on the form.

9 But they also put on there what organizations
10 were contacted, and did they recommend. It will say
11 Catholic Diocese contacted, zero or one or whatever,
12 two recommendations. NAACP of Alabama contacted, you
13 know, five recommendations and zero recommendations,
14 and that's what will -- does that -- I mean if that
15 what people are saying?

16 COMMISSIONER HORNER: And if that isn't the
17 policy, why don't we just make that the policy?

18 CHAIRPERSON BERRY: And if for some reason
19 they can't do that, then I mean that's what this
20 recommendation, I think, is saying.

21 COMMISSIONER GEORGE: Okay.

22 CHAIRPERSON BERRY: Unless I've misunderstood
23 it.

24 COMMISSIONER GEORGE: I think we are making a
25 new policy, and I think it's a good one.

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1 STAFF DIRECTOR MATHEWS: Yes, this is a new
2 policy.

3 CHAIRPERSON BERRY: So that to the extent
4 possible, this is what they would be doing.

5 Now -- okay. So, that's now the
6 recommendation. That's what we understand to be the
7 recommendation.

8 Now, the next one -- recommendation is that
9 the staff director must ensure that commissioners are
10 given the final SAC package one month before the next
11 scheduled meeting. That is current policy. We're
12 saying make sure that that happens. That's already the
13 policy.

14 COMMISSIONER GEORGE: Yeah.

15 CHAIRPERSON BERRY: People are looking
16 puzzled. It is the policy.

17 Now we get to new recommendations, although
18 one of these we just discussed turns out to be a new
19 recommendation. Require of the staff director to --
20 provide commissioners with a status report regarding
21 their recommendations for prospective SAC appointees.

22 The idea is if commissioners recommend
23 someone to be approved and appointed to the SAC, give
24 the commissioners status reports on what is happening
25 to theirs, and that this would be done either oral or

1 written within one month of receiving the
2 recommendations.

3 Now, what did they say? They said, regional
4 directors and the staff director, they're concerned
5 about this strict one-month requirement for contacting
6 commissioner recommendations.

7 COMMISSIONER GEORGE: This is Recommendation
8 5? ---

9 CHAIRPERSON BERRY: 5. And because they --
10 they're saying that to give them only a month to make
11 sure that they do contact these people, consider them,
12 interview them and so on, might interfere with their
13 staff's regular programming duties.

14 COMMISSIONER HORNER: Madam Chair? That's
15 not how I -- that's not how I read this, and maybe I
16 better -- I read it that it's simply a requirement for
17 a status report. The report might be I have not yet
18 had time to contact this individual.

19 In other words, it's not that we're
20 requesting that the process be accomplished in one
21 month, simply that after one month has passed, the
22 recommender be apprised of whether any action has been
23 taken or not, and what that action is, and if the staff
24 hasn't had time, no -- you know, so be it.

25 CHAIRPERSON BERRY: So that the staff,

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1 though, interpreted it in their statement to mean that
2 they had to contact the person.

3 COMMISSIONER REDENBAUGH: No, that was not
4 our intention.

5 CHAIRPERSON BERRY: So, it's not the
6 intention of the committee, and the intention of the
7 committee is only that they get a status report on
8 either nothing's happened, something's happened, or
9 whatever.

10 Recommendation Number 6. Require the staff
11 director to provide commissioners with an accurate
12 statement of the authorized size of the state advisory
13 committee under consideration, and it points out in the
14 last meetings we have considered the size of state
15 advisory committees, and that the sizes seem to be all
16 over the map, and the question is, how do we figure out
17 what size -- what is the authorized size of a SAC, and
18 that the staff director would tell us that.

19 Now, their response is what? This procedure
20 can be implemented and incorporated into the
21 administrative instruction. Okay.

22 So, Recommendation 7. Whenever a SAC
23 increase is proposed, require the staff director to
24 ensure that the package under consideration contains
25 sufficient explanation as to why an increase in size is

1 necessary, and it points out that when we were
2 considering the Mississippi SAC, we had this question
3 about the size, and we were told sometimes it's to
4 create a better balance, and we go what balance, and
5 what areas, and the staff says the reasons
6 necessitating an increase in SAC membership should be
7 reviewed. Explanations for changes can be incorporated
8 into the SAC package.

9 So, I take it you don't object to that? That
10 is what this says?

11 STAFF DIRECTOR MATHEWS: I do not object to
12 that. I would just want to draw out here the
13 consideration of what appears to me to be retaining all
14 active, interested current SAC members. That seems to
15 be the way the process has -- is currently being
16 implemented, and then adding for consideration a
17 balance which could be some younger members. It could
18 be members of a different ethnic group.

19 But the difficulty becomes the SAC --
20 retaining all of those characteristics and
21 considerations within the previously-approved SAC size,
22 and what I hear quite frequently from regional
23 directors is that in order to balance all those
24 variables out, there's a need to increase the SAC size
25 or to eliminate some of the current active, interested

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1 SAC members.

2 So, it's a very difficult position that they
3 are in, and I really wanted to -- to -- to put that on
4 the table.

5 CHAIRPERSON BERRY: So, in other words, we
6 have created a very difficult position for them when we
7 tell them on the one hand keep people, and they're
8 worried about if they throw somebody off, we will be
9 upset, and the person will appeal, and they'll be told
10 you shouldn't have done that, but then we say add some
11 younger members, add this, and then they say, well, how
12 will we do this? We'll just increase the size. And,
13 so, that we've now given them a very difficult
14 balancing act here.

15 COMMISSIONER REDENBAUGH: Could I -- I don't
16 think we have said retain people. In fact, we said
17 earlier there is not a presumption of reappointment.
18 So, I think we ought to speak to that issue.

19 What do we want to do? I don't -- I don't
20 have a -- a preference to retain people.

21 CHAIRPERSON BERRY: Okay. Commissioner Lee?

22 COMMISSIONER LEE: I think for this
23 recommendation, we -- we merely wanted to have some
24 kind of an understanding when you're increasing the
25 SAC, let's say a state like Wyoming, what is the

1 explanation of them having this equal number of members
2 compared to a state, say, California? What -- what is
3 the rationale? What are the financial considerations
4 that we all need to better understand before we approve
5 the expansion of the SACs?

6 Merely just because you want to bring more
7 people, eventually you may have 30-40 people who are
8 really eager and interested in serving on a SAC, but
9 there has got to be some kind of uniform policy of how
10 do you expand the SAC, that you can apply uniform --

11 COMMISSIONER HIGGINBOTHAM: Commissioner Lee,
12 could you please keep your voice up?

13 COMMISSIONER LEE: Oh, I just finished
14 talking. So.

15 CHAIRPERSON BERRY: Well, she just said that
16 she's concerned about when we might increase it up to
17 30 or 40 members, unless we have some kind of more
18 reasoned elaboration of the -- of the rationale.

19 Commissioner George?

20 COMMISSIONER GEORGE: There are costs and
21 benefits to any policy. I for what it's worth have a
22 very strong view about this, and I'm strongly in favor
23 of the bias that we do have in the program toward re-
24 appointing people, unless they haven't been showing up
25 for meetings or they've been, you know, not -- not --

1 not pulling their fair share of the load, and -- and so
2 forth.

3 I -- my -- my experience on the Commission
4 leads me to worry about retaliation against SAC
5 members, that -- that that's inappropriate, and
6 therefore I'll be more comfortable, and I think there
7 will be less cause for a lot of our fussing here at the
8 Commission over SAC appointments if we leave the
9 situation pretty much the way it is, where there is a
10 de facto presumption of -- of reappointment but not a
11 legal -- a legal entitlement.

12 I -- I realize that that does come with the
13 cost that the Chairman has pointed out, but there's no
14 perfect system here. Some things have to be traded
15 against others, and my experience is that the prudent
16 course here is to -- to keep things the way they are.

17 CHAIRPERSON BERRY: Now, we earlier said, I
18 think it was Commissioner Horner who suggested this,
19 and we all went ah-ah-ah-yes, that there should be no
20 presumption that people are reappointed. However, they
21 do have the right to appeal if they are not
22 reappointed, and they feel that they should be, and,
23 so, what we need to do is to send clearly to the
24 regional directors, if we expect them to implement
25 this, a signal as to what exactly we expect, and if we

1 are going to say go ahead and keep the size as it is so
2 that we don't have problems about who was -- I mean if
3 you worry that somebody's going to complain, and then
4 when you have to fill in some of these other variables,
5 we will understand when you add more people. That's
6 one thing, up to some certain number or something. I
7 don't know.

8 Or the presumption is you will reappoint, but
9 just make sure you can show it was not for some, you
10 know, reason that shouldn't have been done, some
11 reason, then we won't complain about that either. They
12 need to know what it is we want them to do.

13 Yes?

14 COMMISSIONER GEORGE: I interpreted
15 Commissioner Horner's suggestion as suggesting that we
16 make clear that there's not a de jure, a legal
17 presumption of reappointment, but as a matter of fact,
18 for as long as I've been on the Commission, there has
19 been a bias in favor of reappointment in the sense that
20 we are not starting from scratch.

21 When it's time to recharter a SAC, we know
22 that most people will be reappointed. Some -- some
23 won't be, some won't want to be reappointed, some will
24 have never shown up for a meeting, and so forth, but
25 the majority will be reappointed, and I -- I would --

1 I'm suggesting that we keep that de facto presumption,
2 but I agree with Commissioner Horner that it shouldn't
3 be a de juri presumption that the person has a legal
4 vested right and is going to litigate with us about.

5 COMMISSIONER HORNER: That is the distinction
6 I intended, and I was not clear.

7 COMMISSIONER GEORGE: Yeah. Okay.

8 CHAIRPERSON BERRY: Commissioner Anderson,
9 and then Commissioner Redenbaugh.

10 COMMISSIONER ANDERSON: Well, we could look
11 at it in the other way, and that is to say that one of
12 the real benefits of the SAC system is two things.
13 It's (1) to give citizens who are not professional
14 government employees a term of service and experience
15 on this SAC so that then they can go back into their
16 community in whatever leadership role they have with a
17 leadership ability that has been augmented because of
18 their service and experience on the SAC.

19 The second thing it does is it brings in
20 leaders from the community on to the SAC, and, so, you
21 could argue that what we really ought to be thinking
22 about in the SAC is a complete turnover --

23 CHAIRPERSON BERRY: Every time.

24 COMMISSIONER ANDERSON: -- every time,
25 bringing all new people in, creating, you know, wave

1 after wave, maybe wave is too dramatic, but group after
2 group of leaders who are going to go back, and at the
3 same point, same time, give all these organizations the
4 reasonable expectation that when we do have a
5 reauthorization, we're not just looking for two people,
6 and therefore, you know, they're one of 30
7 organizations being asked to recommend for two slots,
8 but they're now being asked to recommend for 12 slots.
9 So, the recommendation really may result in new people
10 coming on board.

11 What I don't want to see happen is for people
12 who -- well, let me put it this way. I think the SACs
13 must have a free and open exchange, and you want
14 diversity, and you want people to speak their mind, and
15 you don't want people looking over their shoulder
16 wondering whether I'm not going to be reappointed if I
17 say this or I vote this way or I do that, and that's
18 probably an exaggerated fear where it exists, but
19 nonetheless I think the idea that people, under our
20 current system, they must have the ability to write in
21 and say, look, I feel I've been unfairly treated or
22 whatever, just so we have that safeguard.

23 But if you move in the other direction, say,
24 look, everybody's going off, and all new people are
25 coming on, you don't have that problem. I hope that

1 people understand they're one-termers, and they just do
2 the best they can.

3 CHAIRPERSON BERRY: And the attractiveness of
4 that proposal -- that -- that -- that borders on genius
5 there, Commissioner Anderson. The attractiveness of it
6 is that commissioners who are concerned about
7 representation from certain organizations or certain
8 positions can then look not at the individual who's
9 sitting there, but to make sure that somebody from that
10 particular vantage point is there, and you get that
11 kind of turnover rather than, you know, Joe Blow has
12 got to be there every single time, and, so, it makes
13 for an entire -- and it gives us a different mix of
14 people to interact.

15 I mean I like it, and having gone out there
16 now to some of these SACs, and when you go out there
17 next week, you may think your proposal is even more
18 attractive.

19 Do our -- do our friends on the phone have
20 any comments on this? Is that the last recommendation?
21 No, that's not the last one.

22 The last one is ensure that commissioners are
23 given the opportunity to conduct a more thorough review
24 of SAC appointment issues while addressing the need to
25 meet SAC rechartering deadlines.

1 What this is about is making sure that we
2 have time to consider the -- the -- the rechartering
3 and the appointments, and, so, this is a new procedure
4 where we would get the package for review at least
5 three months before the rechartering date, not a month
6 before, but three months before rechartering. Oh,
7 three months before rechartering. This has nothing to
8 do with appointments one month before, and we could
9 raise any questions.

10 Now, the regional directors say that this
11 would impact their workload, and that they don't think
12 this requirement is needed. If all of the other
13 recommendations are implemented, they don't see why
14 we'd need this one. That basically is their answer.

15 STAFF DIRECTOR MATHEWS: Madam Chair, --

16 CHAIRPERSON BERRY: Yes?

17 STAFF DIRECTOR MATHEWS: -- of all the
18 recommendations, the one -- this is the one the
19 regional directors felt the strongest about and
20 expressing their concern. They stressed to me the
21 three-month time frame and how difficult that would be
22 for them to implement.

23 CHAIRPERSON BERRY: Commissioner Redenbaugh?

24 COMMISSIONER REDENBAUGH: As now, it's one
25 month?

1 STAFF DIRECTOR MATHEWS: It's one month for
2 commissioner review, yes.

3 COMMISSIONER REDENBAUGH: Well, I guess if we
4 haven't reviewed it to our satisfaction, we can hold it
5 over.

6 STAFF DIRECTOR MATHEWS: Right.

7 CHAIRPERSON BERRY: We can always do that.

8 STAFF DIRECTOR MATHEWS: Right. ==

9 COMMISSIONER GEORGE: We have done that.

10 CHAIRPERSON BERRY: We have done that in the
11 past, yes.

12 COMMISSIONER HORNER: It would require an
13 affirmative vote to hold it over or it requires an
14 affirmative vote to --

15 COMMISSIONER REDENBAUGH: To accept.

16 COMMISSIONER HORNER: -- to accept the
17 recharter? Yeah.

18 CHAIRPERSON BERRY: It would require an
19 affirmative vote to accept the recharter. --

20 COMMISSIONER REDENBAUGH: No, I'm -- that problem
21 can be solved without a regulation.

22 CHAIRPERSON BERRY: Okay. Then we don't need
23 Recommendation 8 at all.

24 COMMISSIONER REDENBAUGH: No. Let's delete
25 that.

1 CHAIRPERSON BERRY: Recommendation 7, based
2 on the discussion here, commissioners are not clear,
3 and -- and -- and I mean they're not clear about how
4 they want to solve this problem.

5 COMMISSIONER REDENBAUGH: I think there are
6 two problems.

7 CHAIRPERSON BERRY: Excuse me. Commissioner
8 Redenbaugh was speaking, and then I'll recognize you,
9 Judge.

10 Commissioner Redenbaugh?

11 COMMISSIONER REDENBAUGH: I -- I -- I think
12 there are two issues that are separate. Recommendation
13 7 requires disclosure. It doesn't require or prohibit
14 an increase in the SAC size, but disclosure and --
15 and -- and justification.

16 So, I -- I think 7 doesn't necessarily begin
17 to get at the problem raised by Anderson and George.
18 It goes in a different direction. So, I mean we
19 could -- we could agree with 7 and still not solve this
20 -- this problem, and I'm -- I kind of like the idea of
21 the more rapid turnover --

22 CHAIRPERSON BERRY: Hm-hmm.

23 COMMISSIONER REDENBAUGH: -- for the -- you
24 know, for the reasons, you know, argued by Commissioner
25 Anderson. So, anyway, that's -- I just wanted to make

1 clear that this -- this is a reporting requirement, not
2 a size limitation.

3 CHAIRPERSON BERRY: Okay. Judge
4 Higginbotham?

5 COMMISSIONER HIGGINBOTHAM: Well, on this
6 whole question of de facto or de juri, I think that
7 we've got to be very careful of concertizing people
8 into positions. When you look at state which has
9 three-four million citizens, I find it very, very
10 difficult to come up with a rational explanation as to
11 why anyone who has served a term, even having served it
12 honorably, should have any presumptions in his or her
13 favor.

14 I think there's a great advantage of
15 pluralism. Organizations change over periods of time.
16 The assigners of values change in terms of what
17 organizations are doing.

18 So, I just prefer substantial flexibility for
19 all this whole approach, giving someone the right to --
20 to complain if they feel as if that -- that there's
21 something unfair in their not being reappointed. But
22 outside of having some alternative remedy, I just think
23 we should be very, very careful suggesting even a de
24 facto.

25 I mean why should there be a de facto

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1 presumption of appointment in a state where there are
2 five million citizens, and you say that this individual
3 is supposed to come ahead of 4,900,000 others?

4 CHAIRPERSON BERRY: Well, there may be, as
5 Commissioner Anderson suggested, and the comment that I
6 made afterwards, there may be a presumption that there
7 ought to be someone with that perspective and/or even
8 recommended by that kind of organization on the-- on
9 the body.

10 COMMISSIONER HIGGINBOTHAM: Well, I'm not
11 arguing with the perspective. I'm talking about the
12 person.

13 CHAIRPERSON BERRY: Right. The particular
14 individual.

15 COMMISSIONER HIGGINBOTHAM: The pluralism and
16 diversity on the board then -- I mean on the -- on the
17 committees, but I'm not for guaranteeing an individual
18 the right to be the spokesperson.

19 CHAIRPERSON BERRY: Okay. I'm going to
20 recognize Commissioner Horner, and then we're going to
21 wrap this up because we have our briefing, and we -- I
22 want to assure those who have been willing to come that
23 this will not take long, and we don't expect you to sit
24 out there and wait while we finish up this business.
25 Was that what you were going to say?

1 COMMISSIONER HORNER: I was going to say
2 that, and -- and also just to suggest that one of the
3 concerns I think some people are feeling that we need
4 to think about for the time when we do discuss this and
5 decide on it, is that there's some concern that if the
6 staff doesn't like a point of view of an individual,
7 that the staff will selectively not wish to reappoint
8 that individual simply because they will view that
9 individual as not helpful to the cause at hand, and I
10 think one of the underlying concerns here is that we
11 prevent that from happening, but I agree, we need to
12 discuss this another day.

13 CHAIRPERSON BERRY: Okay. And we can discuss
14 it, keeping in mind the ideas that have been suggested
15 here.

16 It sounds, Commissioner Redenbaugh, like most
17 of the recommendations are agreeable to the
18 commissioners.

19 COMMISSIONER REDENBAUGH: I'd like to put
20 this in the form of a motion, that we adopt all but 8.

21 CHAIRPERSON BERRY: All but 8?

22 COMMISSIONER REDENBAUGH: I think 8 was the
23 one we deleted.

24 CHAIRPERSON BERRY: Right.

25 COMMISSIONER REDENBAUGH: And that 7 be

1 understood to be a reporting requirement, not a
2 limitation.

3 COMMISSIONER HORNER: Second.

4 COMMISSIONER ANDERSON: Point of information.

5 CHAIRPERSON BERRY: Yes, Commissioner
6 Anderson?

7 COMMISSIONER ANDERSON: That, I take it,
8 would include Recommendation 3 as amended by the Chair.

9 CHAIRPERSON BERRY: Which now is a new
10 recommendation.

11 COMMISSIONER REDENBAUGH: Yeah. Yeah. Yes,
12 I think, is the answer, and I also anticipate that we'd
13 come back to this question of basically term limits
14 another day.

15 CHAIRPERSON BERRY: And we would discuss that
16 another day.

17 COMMISSIONER REDENBAUGH: Discuss that
18 another day, and because I'm -- I'm very interested in
19 the notion of term limits as applied to everybody but
20 myself.

21 CHAIRPERSON BERRY: Commissioner George?

22 COMMISSIONER GEORGE: Just to clarify. My
23 understanding is that the amendment of Recommendation
24 3 is to the effect that the commissioners will be
25 informed as to which organizations were consulted, and

1 whether those organizations made recommendations, and,
2 if so, how many recommendations. We will then infer
3 whether or not the recommendations -- any of the
4 recommendations of a particular organization have been
5 accepted. Have I got that right now?

6 CHAIRPERSON BERRY: That's basically it.

7 COMMISSIONER GEORGE: Yeah. Okay. Mary, is
8 that your understanding, too?

9 STAFF DIRECTOR MATHEWS: With -- with the
10 additional statement that the regional directors and I
11 may not always know which recommendations trace back to
12 which organizations were originally contacted.

13 COMMISSIONER GEORGE: But we will be told
14 when you don't know?

15 STAFF DIRECTOR MATHEWS: To the extent we do
16 know.

17 COMMISSIONER GEORGE: But -- but if you don't
18 know, there will be an indication that we don't know
19 where this --

20 STAFF DIRECTOR MATHEWS: Right, right. As
21 long as we have that understanding, it's fine.

22 COMMISSIONER GEORGE: Okay.

23 CHAIRPERSON BERRY: Okay. Ready for the
24 question. All in favor, indicate by saying aye.

25 (Chorus of ayes)

1 CHAIRPERSON BERRY: Opposed?

2 (No response)

3 CHAIRPERSON BERRY: The -- it's approved
4 unanimately.

5 The only other item we had on the agenda was
6 the SAC report from Indiana. Is that SAC report a
7 routine enough matter or does somebody have debating
8 points to make?

9 COMMISSIONER GEORGE: Routine.

10 CHAIRPERSON BERRY: Okay. Then can I get a
11 motion to approve?

12 COMMISSIONER GEORGE: So moved.

13 COMMISSIONER HORNER: Second.

14 CHAIRPERSON BERRY: All right. All in favor
15 of approving the Indiana SAC report, indicate by saying
16 aye.

17 (Chorus of ayes)

18 CHAIRPERSON BERRY: Opposed?

19 (No response)

20 CHAIRPERSON BERRY: Thank you. So ordered.
21 Any future agenda items?

22 (No response)

23 CHAIRPERSON BERRY: With that, then I move --
24 I'll entertain a motion that we adjourn this part of
25 the meeting. I guess we recess. That's what we do.

1 We recess to go to the briefing.

2 COMMISSIONER REDENBAUGH: Or do we adjourn?

3 CHAIRPERSON BERRY: Do we adjourn? Adjourn
4 or recess? Somebody tell me.

5 STAFF DIRECTOR MATHEWS: We adjourn, if
6 you're done with the meeting.

7 CHAIRPERSON BERRY: Okay. We're done with
8 the meeting. So, we adjourn. Motion to adjourn.

9 COMMISSIONER ANDERSON: So moved.

10 COMMISSIONER HORNER: Second.

11 CHAIRPERSON BERRY: It's not debatable. So,
12 we adjourn the meeting.

13 (Whereupon, the meeting was adjourned.)

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1 Briefing on Three Strikes and You're Out - Mandatory
2 Life Sentences After Three Felony Convictions

3 CHAIRPERSON BERRY: Okay. We'll go to the
4 briefing. We would ask the invited guests who were so
5 agreeable to come to this briefing on the first panel
6 to please come forward, and we apologize for delaying
7 you for a few minutes.

8 COMMISSIONER HIGGINBOTHAM: Madam Chair?

9 CHAIRPERSON BERRY: Yes, Judge?

10 COMMISSIONER HIGGINBOTHAM: On the briefing,
11 I presume that we will have the tapes available?

12 CHAIRPERSON BERRY: Yes, yes, Judge
13 Higginbotham.

14 COMMISSIONER HIGGINBOTHAM: Yeah. If I have
15 to cut off just because we've finished the official
16 business, I want to see if I can get a plane out of
17 here, I'll just go through the tapes, and I'm most
18 appreciative for this session, and I'll review the
19 materials carefully.

20 CHAIRPERSON BERRY: All right. Thank you
21 very much.

22 COMMISSIONER HIGGINBOTHAM: Okay. Thank you.

23 CHAIRPERSON BERRY: Let me just say that on
24 behalf of the commissioners, I welcome all of the
25 panelists to this Briefing on Civil Rights Implications