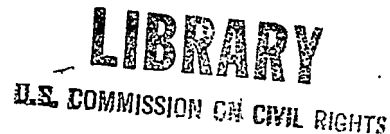


U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, July 9, 1999

The Commission convened in Room 540, YWCA Building, 624 9th Street, NW, Washington, D.C., 20425, at 9:32 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON

CRUZ REYNOSO, VICE CHAIRPERSON

CARL A. ANDERSON, COMMISSIONER

CHRISTOPHER EDLEY, JR., COMMISSIONER (Via Telephone)

YVONNE Y. LEE, COMMISSIONER

ELSIE M. MEEKS, COMMISSIONER

RUSSELL G. REDENBAUGH, COMMISSIONER

RUBY G. MOY, STAFF DIRECTOR

1 STAFF PRESENT:

2 LAURA A. ANECKSTEIN

3 KIMBERLEY ALTON

4 DAVID ARONSON

5 MARGARET BUTLER

6 DAVID CHAMBERS

7 KI TAEK CHUN

8 BETTY EDMISTON

9 M. CATHERINE GATES

10 EDWARD A. HAILES, JR.

11 GEORGE M. HARBISON

12 MYRNA HERNANDEZ

13 CAROL-LEE HURLEY

14 FREDERICK D. ISLER

15 LISA M. KELLY

16 REBECCA KRAUS

17 STEPHANIE Y. MOORE, General Counsel

18 PETER REILLY, Parliamentarian

19 JESSICA ROFF

20 EILEEN RUDERT

21 FERNANDO A. SERPA

1 STAFF PRESENT: (Continued)

2 MARCIA TYLER

3 JEANENE WAITE

4 AUDREY WRIGHT

5 MIREILLE ZIESENISS

6 COMMISSIONER ASSISTANTS PRESENT:

7 CHARLOTTE PONTICELLI

8 KRISHNA TOOLSIE

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P R O C E E D I N G S

9:32 a.m.

CHAIRPERSON BERRY: The meeting will come to order.
The first item on the agenda is the approval of the agenda.

VICE CHAIRPERSON REYNOSO: So moved.

CHAIRPERSON BERRY: Could I get a second?

COMMISSIONER LEE: Second.

CHAIRPERSON BERRY: Any discussion?

(No response.)

CHAIRPERSON BERRY: All in favor indicate by saying
aye.

(Chorus of ayes.)

CHAIRPERSON BERRY: Opposed, no?

(No response.)

CHAIRPERSON BERRY: So ordered.

The next item is the approval of the minutes of
June 18th, 1999.

VICE CHAIRPERSON REYNOSO: So moved.

CHAIRPERSON BERRY: Second?

COMMISSIONER MEEKS: Second.

CHAIRPERSON BERRY: Any discussion, any changes, or
anything anybody would like to see in the minutes?

1 (No response.)

2 CHAIRPERSON BERRY: Okay. All in favor indicate by
3 saying aye.

4 (Chorus of ayes.)

5 CHAIRPERSON BERRY: Opposed?

6 (No response.)

7 CHAIRPERSON BERRY: So ordered.

8 The next item is announcements. The only
9 announcement is that Friday, July 2nd, when we were not
10 meeting, was, of course, the 35th anniversary of the Civil
11 Rights Act of 1964, which this Commission knows was a major
12 piece of legislation that changed so many things in America,
13 as far as the law is concerned, abolishing racial
14 segregation, and -- and on institutions receiving federal
15 funds -- at least the law says that is the case -- and made
16 permanent to the extent that there's anything permanent, the
17 U.S. Commission on Civil Rights.

18 It didn't really make it permanent, but -- and
19 that, of course, is widely regarded as the most wide-ranging,
20 systematic civil rights legislation passed in the 20th
21 Century. So we'll just note that.

1 Now, we'll go the Staff Director's report. Are
2 there any questions, or is there any discussion on the Staff
3 Director's report?

4 (No response.)

5 CHAIRPERSON BERRY: We have a letter which -- has
6 this letter been sent around? You should hand it out to the
7 Commissioners. We have a letter that -- I guess I could have
8 added it to the agenda, but we'll just do it under the staff
9 director's report -- that Commissioner Meeks had sent to me
10 and I had given to the staff director for us to look at to
11 see if we want to approve it at this meeting.

12 Don't you have a copy?

13 It is a letter which she can explain, but I'll read
14 what's in it, and then we can decide if we want to change it.
15 I think it will be a routine approval. I can't see any
16 reason why anybody would disapprove it.

17 It is a letter concerning the killing of two
18 American Indians or Native Americans who are from the same
19 nation that she is from, and who are South Dakotans. I'll
20 read the letter, and then we can see if we can have
21 discussion, and let Elsie say to us whatever she --
22 Commissioner Meeks will say to us whatever she wishes to

1 about the letter.

2 It would be to Attorney General Reno, and it says,
3 "In the wake of two recent suspicious killings" -- shall I
4 wait until it comes? Where is it? Are there copies for the
5 Commissioners?

6 (Pause.)

7 CHAIRPERSON BERRY: "In the wake of two recent
8 suspicious killings and the subsequent series of rallies and
9 protests along the South Dakota and Nebraska border, I am
10 writing to request that the FBI immediately utilize all of
11 the financial and human resources necessary to solve these
12 killings, and aggressively investigate the questionable
13 deaths that have occurred on the Pine Ridge Reservation.

14 "As you know, last month two men from the Pine
15 Ridge Indian Reservation were found dead in a field off the
16 road connecting Pine Ridge Village and nearby White Clay,
17 Nebraska. The FBI has confirmed that the deaths of Wilson
18 Black Elk, Jr., and Ronald Hard Heart were homicides, but has
19 not disclosed the autopsy reports or the manners of death,
20 citing a need to protect their joint investigation with the
21 Oglala" -- it's spelled wrong.

1 COMMISSIONER MEEKS: No, it's right.

2 CHAIRPERSON BERRY: Is it right?

3 COMMISSIONER MEEKS: Yes.

4 CHAIRPERSON BERRY: Okay. -- "Sioux Public Safety
5 Commission. Subsequently, there have been widespread rumors
6 that Nebraska law enforcement officials or Nebraska business
7 operators from White Clay were responsible for the deaths.
8 Although the need to conceal many of the details of the
9 current investigation may be standard practice and routine,
10 the significant lack of information from local officials has
11 given rise to the perception among Pine Ridge residents that
12 there has not been a concentrated effort to solve these
13 crimes. This perception exists despite the combined offer
14 from the FBI tribal police of a \$15,000 reward for
15 information.

16 "In addition, the community's resentment over
17 alleged past and present discriminatory treatment of Native
18 Americans by local officials has further exacerbated
19 tensions. In an effort to call attention to their concerns,
20 Pine Ridge residents have staged two protests. It is
21 imperative for the people of Pine Ridge to know that the
22 federal government, particularly the FBI, is concentrating

1 its efforts and resources on solving these crimes. To this
2 end, I respectfully request that you direct the FBI to
3 immediately devote all necessary resources toward the
4 investigation of these tragic deaths."

5 That is the letter. Commissioner Meeks sent a
6 letter to me, which she then subsequently released to the
7 press, asking that the Commission consider sending a letter
8 to the Attorney General.

9 I would ask for a motion, and then we can talk
10 about whether you want changes in it or what you want to do.

11 Can I get a motion to approve this?

12 VICE CHAIRPERSON REYNOSO: So moved.

13 CHAIRPERSON BERRY: Can I get a second?

14 COMMISSION LEE: Second.

15 CHAIRPERSON BERRY: Discussion? Commissioner
16 Meeks, would you like to say something else about this?

17 COMMISSIONER MEEKS: Well, my reason for writing
18 the letter to Chairman Berry was that my people at home are
19 feeling a very, very high level of frustration, because,
20 number one, just the report of the deaths, I mean there was
21 no media on it. I found it on the Internet by accident, and
22 there was just like no information given whatsoever.

1 I talked to one of the U.S. attorneys, and he said
2 this wasn't just the typical sort of bar killing or whatever
3 you want -- you know, people were really feeling like
4 there -- this lack of information made people feel like there
5 was some sort of conspiracy or coverup.

6 I'm sure on one hand -- I know the FBI are
7 involved, but I don't think people feel at all like there's
8 been focused attention to this. I mean there's been other
9 killings in the past that have never been solved, like -- 19
10 was the number I was given, 19 killings.

11 I think people feel like if it was someone other
12 than Native Americans, this would have gotten great
13 attention. So in part this was -- I want people to feel like
14 there is some attention being paid to this, and that
15 something will be done about it.

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER MEEKS: Hopefully, this will help to
18 do that. I don't know how things will play out over the next
19 few months, but I could ask the Commissioners to at least
20 consider -- and, again, this is a little bit premature right
21 now, but -- that maybe we can do something more, like have a
22 forum between the Nebraska and the South Dakota law

1 enforcement, and whatever will make people, you know, feel
2 like -- and produce results as far as a --

3 CHAIRPERSON BERRY: Thank you. Any comments from
4 any Commissioners?

5 Yes, Vice Chair?

6 VICE CHAIRPERSON REYNOSO: I think the letter is an
7 appropriate letter. My sense is that folk of all racial and
8 ethnic groups need to feel that the same attention is being
9 given to the homicide of a member of that particular ethnic
10 or racial group as any other, and here -- in civil rights
11 matters, particularly, perception is important.

12 I just gave a talk a couple of days ago on the
13 perception of bias in the legal system and the courts, and I
14 quoted an ABA, for example, the journal report on the sense
15 of black and white lawyers, about bias in the legal system,
16 and some huge percentage of blacks think there's bias and a
17 tiny percentage of whites think there's bias, serious bias.

18 Then I quoted some other surveys from state and
19 federal studies on bias in the court on the basis of gender,
20 and again you see perceptions being so different.

21 Perceptions are important, particularly in terms of
22 ethnic tensions that we've been dealing with for the last

1 several years. So a sense here that there's not the same
2 care when there's a homicide of Indians or Native Americans
3 is something that we as a Commission should worry about.

4 And assurance to the folk that the FBI and the
5 Justice Department is looking into these matters -- in fact,
6 I understood that there is already some involvement, but an
7 assurance that the involvement is a high-level involvement
8 seems to me is an important step forward.

9 CHAIRPERSON BERRY: Okay. Thank you.

10 Commissioner Redenbaugh.

11 COMMISSIONER REDENBAUGH: I think the letter is
12 carefully and well written, and I would support it for the
13 reasons mentioned.

14 CHAIRPERSON BERRY: Okay. All right. Let us deal
15 with the letter first, and then let's deal with the other
16 suggestion that Commissioner Meeks made about a forum.

17 All those in favor of sending a letter indicate by
18 saying aye.

19 (Chorus of ayes.)

20 CHAIRPERSON BERRY: Opposed?

21 (No response.)

1 CHAIRPERSON BERRY: So ordered.

2 The suggestion that there might be a forum, we've
3 done this in the past when there were urgent issues in
4 communities, church fires, all sorts of issues, where the
5 state advisory committees have held forums either at their
6 own initiation or because the Commissioners suggested that it
7 might be a good idea. So is it your wish and desire that we
8 look into the possibility of a joint forum between the
9 Nebraska and the South Dakota SAC, or have the staff look
10 into that?

11 Would you, Commissioner Meeks, be interested in
12 having them consider the shootings in general, or other kinds
13 of issues, too, or administration of justice in hate crimes,
14 possibly, or what other kinds of -- alleged abuses of the
15 Indian population, or would you like it to have a broader
16 scope, or do you want to think about it some more?

17 COMMISSIONER MEEKS: Well, I think I'd like to
18 think about it a little bit more. I mean there's been a lot
19 of tension between the Nebraska border towns and the
20 reservation, obviously, but I guess I would like to see how
21 things shape up over the next month.

1 There's been some of the more prominent activists
2 getting involved in this, and depending on how these are
3 solved, or if they're solved, I mean I think it could be that
4 some really potentially explosive situations come out of
5 this.

6 I think we should -- I just hope the Commission
7 will just keep an open mind about this, and that in September
8 I think would be -- over this next month, August, I think
9 I'll know more. I do think, though, in the long run, that
10 we're going to need to have a forum.

11 CHAIRPERSON BERRY: All right.

12 Commissioner Redenbaugh?

13 COMMISSIONER REDENBAUGH: I want to ask you,
14 Commissioner Meeks: Is it your sense that the situation is
15 tense enough that a forum sooner rather than later would be
16 invaluable, as we did in the St. Petersburg area?

17 COMMISSIONER MEEKS: Well, it is possible.
18 Truthfully, I had hoped to get to meet with some of the key
19 people involved on Wednesday, but it just actually became
20 impossible with the President's visit. We were all held up a
21 lot more than I thought we would be. So I haven't gotten a
22 chance to talk to them.

1 That very well could be. Like I say, I think
2 September would be soon enough, if we just have this sort of
3 on our plates.

4 COMMISSIONER REDENBAUGH: Well, of course, we need
5 to decide before September if we're going to do something in
6 September. We don't have an August meeting, so then it's
7 November if we postpone discussion.

8 COMMISSIONER MEEKS: Well, I'm certainly agreeable
9 to that. I mean that does make sense.

10 CHAIRPERSON BERRY: When is the staff meeting?

11 COMMISSIONER MEEKS: August 6th, I believe.

12 CHAIRPERSON BERRY: August 6th?

13 COMMISSIONER MEEKS: Yes, the South Dakota staff
14 meeting.

15 CHAIRPERSON BERRY: So maybe the SAC can talk about
16 this at their -- whether they want to do something, that SAC
17 can, and then I don't know when the other SAC --

18 COMMISSIONER MEEKS: No, but South Dakota has been
19 scheduled.

20 CHAIRPERSON BERRY: Maybe somebody could talk to
21 the -- the staff could talk to the regional director of the
22 Nebraska SAC, which I think is different from the regional --

1 COMMISSIONER MEEKS: Right, it is. I have talked
2 to John Dulles --

3 CHAIRPERSON BERRY: Right.

4 COMMISSIONER MEEKS: -- about that very issue, so
5 he said he would talk to --

6 CHAIRPERSON BERRY: Why don't we do this? Why
7 don't we have the South Dakota SAC talk about it at their
8 August -- since they have a meeting? And then, I guess it's
9 Mel Jenkin's --

10 MS. MOY: Correct.

11 CHAIRPERSON BERRY: -- region, Nebraska, is that
12 right?

13 MS. MOY: Right.

14 CHAIRPERSON BERRY: The Staff Director ought to
15 talk to Mel about whether his Nebraska SAC might want to do
16 something and explore that. Then, as far as the
17 Commissioners are concerned, maybe what we ought to say is:
18 If it looks like they want to do something together, which
19 the SACs can decide without us telling them -- as a matter of
20 fact, they can do an SAC activity, if that's what they want
21 to do -- that we would look favorably upon their involvement,
22 and some of us would be willing to participate if it is at a

1 time convenient that we would be able to do so.

2 How about that? We would just go that way, and
3 keep an eye on it, as you say, with the idea that we will do
4 something if we need to do so, and you will be able to report
5 that back to the folks in your community.

6 Yes, Vice Chair?

7 VICE CHAIRPERSON REYNOSO: I have just a couple of
8 other related suggestions. The staff might look into just a
9 forum. The advisory committee in California had a very
10 successful hearing in Santa Rosa, so the staff might look at
11 the possibility of having a hearing.

12 Finally, the staff might take a look at the
13 possibility of having -- what it would cost and whether it's
14 practical to have us Commissioners meet in the area.

15 CHAIRPERSON BERRY: In other words, have the
16 Commission meeting --

17 VICE CHAIRPERSON REYNOSO: Yes.

18 CHAIRPERSON BERRY: -- out there?

19 VICE CHAIRPERSON REYNOSO: Yes, and maybe have this
20 as part of the agenda item. If the staff could just look at
21 those possibilities, they can report back to us what they
22 think makes sense.

1 CHAIRPERSON BERRY: Yes. I guess there's no reason
2 why the Commission has to meet here. It's just that we
3 always do. I guess we'd have to figure out -- the staff
4 would have to tell us how much it would cost and all that,
5 and we'd have to figure out logistics and whether we could or
6 not, but that might work, too. So those are all good ideas.

7 Yes, Commissioner Anderson?

8 COMMISSIONER ANDERSON: Well, I would have two
9 comments, after I say I support the letter. I think, number
10 one, we have a whole escalating level of responses here.
11 First is the letter. I think we might consider a meeting
12 over at the Department of Justice.

13 Now, generally, when we ask the Department what
14 they are doing on an investigation, they tell us they can't
15 tell us anything. But I remember seven or eight years ago,
16 we met on the whole question on police brutality and response
17 to various demonstrators in Los Angeles, and that had been
18 part of an ongoing investigation for some time.

19 So I think there is a way we can sit down with
20 officials at the Department and get some sense as to their
21 reading of how this investigation is going without betraying
22 any kind of investigatory secrets.

1 The other thing I think we ought to ask them,
2 several of us, so we don't all have to go -- you and the
3 Chair, and maybe one or two others -- to get a sense of what
4 their reading is of enforcement on the local level on these
5 kinds of matters, going back five, six, seven years, if you'd
6 like; and then the other kind of escalated responses that we
7 have been talking about are also possible.

8 The other point I would make is: I think we've
9 backed into the whole issue of "What ought we be doing about
10 Native American issues?" And given the priorities of the
11 Commission, I would think, for myself, that we ought to do
12 something very substantial, but we're not going to have too
13 many bites of the apple in this area.

14 So maybe this is the bite we want to take, but it
15 seems to me that it might be profitable for us at some point,
16 whether it's this meeting, or at least for you to give some
17 thought to a more strategic approach over the next year or
18 two on how we want to raise Native American issues and how we
19 want to respond to them.

20 And maybe law enforcement is the most pressing
21 issue, and so maybe this is the one that we want to open with
22 and use it to develop what we do.

1 Maybe there's another issue or two other issues,
2 but I think we ought to look at it more strategically, or
3 globally, if you like, and measure our response in those
4 terms as well. Those are my two comments.

5 CHAIRPERSON BERRY: Well, I think those are very
6 good points.

7 COMMISSIONER MEEKS: Right, and that was sort of my
8 hesitation in saying exactly what we should do, because I'm
9 not quite --

10 CHAIRPERSON BERRY: Sure yet?

11 COMMISSIONER MEEKS: Right.

12 CHAIRPERSON BERRY: Well, why don't we do this?
13 Why don't we then -- we'll send the letter. Why don't I then
14 ask the staff to follow-up? And then I'll see if we want to
15 have a meeting with the AG, or the Civil Rights Division, or
16 the associate attorney general, whoever the right person is,
17 and then at a time that you can come back and then go over
18 there and meet with them, and other Commissioners, if they
19 are available, and get a briefing, an update, and just keep
20 the heat on about the killings. And then in the meanwhile
21 you can give some more thought to what you think ought to be
22 the focus more globally.

1 We do have a project in the budget which we're
2 going to consider in a few minutes, I think, unless I'm
3 mistaken, unless I forgot the whole thing. But I think those
4 are good ideas, so why don't we just proceed in that way?
5 Okay. So we'll send the letter, and we'll proceed in that
6 way.

7 The other point I wanted to ask under the staff
8 director's report is: Everybody who knows anything at all
9 knows about how hot it has been, and everybody knows also
10 about the shooting by this gunman who killed himself, the
11 folks, the Jews, Asian-Americans, and African-Americans, the
12 attacks on them by this guy, wherever he's from, Church of
13 the Creator, or whatever it is.

14 Their point is: Do we want to say anything about
15 that? The guy shot himself, I guess. I know he shot
16 himself. I read it in the news. He killed himself, right?

17 VICE CHAIRPERSON REYNOSO: Yes.

18 CHAIRPERSON BERRY: So the point is that the staff
19 drafted up this statement, if there's any desire to say
20 anything about this on behalf of the Commission. If they had
21 not found the guy or if he had not shot himself, we would be
22 here urging them to find out who did it, right? That would

1 be a logical response. I will read what the staff drafted
2 up.

3 "The USCCR today strongly condemned the apparent
4 hate-inspired attack on" -- and then should we say what,
5 "Asian-Americans," and then Pacific Islanders, or -- isn't
6 that right. --

7 COMMISSIONER LEE: Asian-Americans.

8 CHAIRPERSON BERRY: -- Yvonne?

9 COMMISSIONER LEE: Yes.

10 CHAIRPERSON BERRY: -- "Jews, and African-Americans
11 by a lone gunman last week. One black man and one" -- we're
12 not talking about Asians from Asia, are we?

13 COMMISSIONER LEE: Asian-Americans.

14 CHAIRPERSON BERRY: Was he Asian, the guy who was
15 shot, the one who was --

16 COMMISSIONER LEE: He was Asian-American. So I
17 think the correct term should be "Asian-American."

18 CHAIRPERSON BERRY: Okay. But the guy who was
19 killed, he was Korean, wasn't he?

20 COMMISSIONER LEE: Yes. That's Asian.

21 VICE CHAIRPERSON REYNOSO: Was he a Korean
22 National?

1 CHAIRPERSON BERRY: "Asian and one Korean" -- he
2 was Korean, right --

3 COMMISSIONER LEE: Yes.

4 CHAIRPERSON BERRY: -- "man were killed in the
5 shooting spree, and several other people were injured. The
6 gunman, who committed suicide as law enforcement closed in on
7 him, was associated with a well-known Mid-Western white
8 supremacist group known as the Church of the Creator," and
9 then there's a quote, "'Although this shooting spree appears
10 to be an individual act, the seeds of hate were sown by
11 groups fomenting intolerance,' said Commission Chairperson
12 Mary Frances Berry. 'This incident reminds us once again of
13 the continuing threat posed by extremist groups, and of the
14 necessity of standing up to hatred whenever and wherever it
15 appears.' The Commission has noted a disturbing rise in the
16 number of hate-inspired attacks, with well-publicized cases
17 in Jasper, Texas, rural Alabama, Laramie, Wyoming, all
18 occurring in the last year. 'Once again we are forced to
19 conclude that hate is turning lethal with alarming
20 frequency,' said Chairperson Berry."

21 As far as the facts are concerned on hate crimes,
22 it is indeed true that hate crimes have increased. So that

1 part of it is factual, as I read it. But do we want to say
2 anything and do we want to say anything like this, or do we
3 want to say nothing? Could I get some reaction from the
4 Commission?

5 VICE CHAIRPERSON REYNOSO: Well, I think a
6 statement is --

7 CHAIRPERSON BERRY: Why don't I get a motion to
8 consider it or a motion to do it, so that we can discuss it?

9 VICE CHAIRPERSON REYNOSO: So moved.

10 CHAIRPERSON BERRY: Can I get a second?

11 COMMISSIONER ANDERSON: Second it.

12 CHAIRPERSON BERRY: Okay. Discussion? Yes?

13 VICE CHAIRPERSON REYNOSO: Something like this is
14 appropriate. I just don't know whether the media would --
15 the only question is whether or not it would get any
16 coverage, because the issue already took place.

17 I must say that I recall reading just recently the
18 annual report from the Los Angeles County Human Rights
19 Commission, and they report an increase in hate crimes, also,
20 so I don't know if we are just getting more sophisticated on
21 reporting those crimes or whether they're actually going up.

1 I just don't know.

2 It seems like an anomaly that they would be going
3 up the way they are, but the press release strikes me as an
4 appropriate one.

5 CHAIRPERSON BERRY: The numbers, according to the
6 Justice Department, the report they do, although all police
7 departments don't submit the data, indicate that they are
8 going up. I don't remember by how much, but the headline
9 said up instead of down.

10 Any comments from any other Commissioners?

11 (No response.)

12 CHAIRPERSON BERRY: So that means I don't know what
13 anybody else thinks, if people think we should do something
14 or not do something.

15 Yes, Commissioner Lee and then Commissioner
16 Redenbaugh.

17 COMMISSIONER LEE: I definitely think that we need
18 to send a statement. My question is whether this statement
19 is strong enough. We have conducted reports or hearings that
20 the issue of hate crimes and hate violence have been brought
21 up in different communities; and it may be appropriate for
22 us, as far as this issue and this statement, to add on what

1 the Commission has been doing and the reports that we have
2 conducted or upcoming reports we will be doing, so that
3 people know that we are -- not on top of the issue, but that
4 this issue is a top priority for the Commission, so that
5 people know what we are doing on this.

6 Also, it may be helpful, too, for the staff to
7 contact groups like LCCR or the Asian Pacific-American Legal
8 Consortium, who have done annual or biannual reports and
9 studies on prospective areas, so that we can get some updated
10 information, not only for the press, but also for us on
11 staff, too.

12 CHAIRPERSON BERRY: Any other suggestions?

13 (No response.)

14 CHAIRPERSON BERRY: I think that's a great
15 suggestion, and I would think that if we're going to approve
16 doing this, we would do what Commissioner Lee said, which is
17 ask the staff to write another release which would summarize
18 the kinds of activities the Commission has been engaged in on
19 this subject, and that the lead on it would not be the
20 shooting that occurred, except to say that in the wake of
21 that shooting we want to point out that this still remains a
22 problem, the kind of language that's here, but then say the

1 Commission has long been involved in these matters, and say
2 what we've done, as she said, and then talk about any plans,
3 if the state advisory committees or somebody who is working
4 on this, stuff that we're doing, and then putting it out
5 means that while it would not be picked up by the mainstream
6 media, the minority media would pick it up, if it's sent to
7 them, because people want to know what's going on, and they
8 would pick it up, because it told them what was going on, and
9 not just that we condemned it.

10 So if it's okay to proceed in that way -- without
11 objection? Any objections?

12 VICE CHAIRPERSON REYNOSO: No. I just want to say
13 that I think it's a very good suggestion, because that does
14 give the media something new, so I think we'd have a greater
15 likelihood that it would be picked up.

16 CHAIRPERSON BERRY: Yes.

17 Commissioner Redenbaugh.

18 COMMISSIONER REDENBAUGH: Commissioner Lee's
19 recommendation redeemed the idea for me, because -- well,
20 these exhortations to goodness I think leave most people
21 unnerved. Certainly, me.

1 It's not surprising that we would -- that that's
2 the stand that the Civil Rights Commission would take, but
3 with what Commissioner Lee has recommended, I think it
4 changes the thing very differently.

5 CHAIRPERSON BERRY: Right. It becomes
6 informational, and not just --

7 COMMISSIONER REDENBAUGH: Exactly.

8 CHAIRPERSON BERRY: -- "We're good people."

9 COMMISSIONER REDENBAUGH: There's the evidence of
10 goodness.

11 CHAIRPERSON BERRY: Right. Although we are good,
12 especially you, Mr. Redenbaugh.

13 COMMISSIONER REDENBAUGH: So moved.

14 (Laughter.)

15 CHAIRPERSON BERRY: Okay. All in favor of
16 proceeding in the way that has been described by Commissioner
17 Lee, and further described in the conversation, indicate by
18 saying aye.

19 (Chorus of ayes.)

20 CHAIRPERSON BERRY: Opposed?

21 (No response.)

1 CHAIRPERSON BERRY: Okay. So ordered.

2 Anything else on the staff director's report?

3 (No response.)

4 CHAIRPERSON BERRY: Okay. We'll go to these
5 reports then. The first one is the Racial and Ethnic
6 Tensions in American Communities: Poverty, Inequality, and
7 Discrimination, what is called the New York report. Could I
8 get a motion to approve it?

9 VICE CHAIRPERSON REYNOSO: So moved.

10 CHAIRPERSON BERRY: Could I get a second?

11 COMMISSIONER MEEKS: Second.

12 CHAIRPERSON BERRY: Discussion?

13 VICE CHAIRPERSON REYNOSO: I think it's a very good
14 report, and I appreciate the way the staff has done research
15 and then has incorporated that research, census data, and so
16 on, with the testimony that we received in such a way that it
17 makes it a quite readable and, I think, persuasive report.

18 I do have some suggestions that perhaps are
19 editorial. I will just mention a couple of them. The report
20 starts out using the term "undocumented alien," which I think
21 is the proper term, but then it quite prominently, at page
22 eight, uses the terms "legal" and "illegal," and many folk

1 consider it demeaning to describe somebody as illegal, as if
2 they're non-persons.

3 So I would suggest that we follow the terminology
4 that the report begins with at pages four and seven, and that
5 is "undocumented."

6 CHAIRPERSON BERRY: So that would be editorial.

7 VICE CHAIRPERSON REYNOSO: Yes.

8 CHAIRPERSON BERRY: Are there others that you have
9 editorially?

10 VICE CHAIRPERSON REYNOSO: Just -- there are a
11 couple of references to the Louima incident in New York,
12 which is not up to date, and I don't know whether our
13 practice is to then bring these up to date. It says
14 "allegedly was attacked," and that sort of thing, and now, of
15 course, it's clear that he was attacked.

16 CHAIRPERSON BERRY: They would have to modify that,
17 update it.

18 VICE CHAIRPERSON REYNOSO: Yes. If that can be
19 brought up to date, it would be good. Then most of the
20 others, I think, are either minor questions or editorial.

21 CHAIRPERSON BERRY: Okay. Any other comments on
22 the report?

1 Yes, Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: I'm going to vote against
3 the report. I think that the language, for example, in the
4 beginning, it characterizes New York as on the verge of a
5 race war. I don't think our hearing results would support
6 that.

7 In terms of section two, I think that the data
8 are -- the conclusions are inconsistent with the data, and I
9 think the data set that we had to work with, from what we now
10 understand, was incomplete and insufficient to support the
11 work we needed to do; and that we only discovered that, I
12 think, quite recently is embarrassing and unfortunate.

13 So those are the examples of why I'm going to vote
14 against the report.

15 CHAIRPERSON BERRY: Yes, Vice Chair?

16 VICE CHAIRPERSON REYNOSO: Well, two things: One,
17 we have discussed being careful, and in going through it, I
18 thought we had, and the language we used, where the
19 statistics weren't supportive of conclusions, to that extent,
20 it has somewhat weakened the report, but was more true to the
21 data. So I thought we had taken care of the second part of
22 your concern.

1 On the first part, I must say that if we describe
2 New York in the terms that you've just summarized, I'd have
3 some qualms about it, and I would suggest that we change the
4 language. I didn't pick that up, I must say.

5 COMMISSIONER REDENBAUGH: The first paragraph?

6 CHAIRPERSON BERRY: The point that you made,
7 Commissioner Redenbaugh -- or other Commissioners, before I
8 say something. Any other Commissioners?

9 (No response.)

10 CHAIRPERSON BERRY: The point that you just made
11 about the first page, I was going to suggest that the staff
12 change it, because at the time that this was written,
13 earlier, when we -- I think this was written probably after
14 we did the hearing -- when these various things were
15 occurring, maybe one could describe it that way, and there
16 are certainly racial tensions in New York City --

17 COMMISSIONER REDENBAUGH: There certainly are.

18 CHAIRPERSON BERRY: -- but I think that the
19 language, "a race war," is a little overheated, so I would
20 suggest that that be changed on the first page, and then some
21 other language less tense than that.

1 As far as the data is concerned, I agree with the
2 Vice Chair that the report is weakened by not being able to
3 conclude whether or not there's discrimination, but the
4 report does conclude that we can't conclude that there is
5 discrimination.

6 And I think given the work that went into it, and
7 the time that has passed, and the further work that has gone
8 into it, the staff has done the best they could with what
9 they had in order to complete the report, and I think they
10 were careful everywhere to say that the data did not admit a
11 conclusion of discrimination.

12 I think we should also, if we approve this report,
13 ask the firms -- I know they commented on the report -- to
14 give us data for what their qualified pool is, and inform
15 them that if they do that, we would recalculate the
16 information that is in the report so that we could then draw
17 inferences about whether there is discrimination.

18 We can't do that now, because we don't have the
19 qualified pool data, and we don't have the job description
20 data sufficiently, as I read the report.

21 So I think we should invite them to give us the
22 additional data, if they wish, so that the staff could

1 calculate those numbers; otherwise, I think we should just
2 leave it as it is, with the caveats that are in it everywhere
3 about how we can't conclude this, and be guided in the future
4 in terms of the kind of data we collect as to what we can do
5 and what we have.

6 Do any other Commissioners have any comments?

7 Yes, Commissioner Lee?

8 COMMISSIONER LEE: Just a minor editorial comment:

9 Even though I wasn't at the hearings, the report was very
10 well written, so I wanted to thank the staff for that.

11 Just one minor thing: The report mentioned Asians
12 or Asian-Americans throughout the report, so I think as a
13 suggestion for consistency to put it as Asian-Americans,
14 instead of just Asians, especially now with all the attention
15 on questioning Asian-Americans' loyalty to this country. I
16 think that may be well-served if we just use the term "Asian-
17 Americans" throughout the report.

18 CHAIRPERSON BERRY: Okay. Are there any other
19 comments from Commissioners?

20 Yes, Commissioner Meeks?

21 COMMISSIONER MEEKS: Well, the only comment I have
22 is in really the only area that I have any expertise in, I

1 guess, or experience, when it was talking about availability
2 of deposit facilities and services in low-income areas, and
3 mainly that's come about because of the many mergers.

4 And I just thought the report was really right on
5 where that was concerned, that the things that the banks can
6 do and are doing to -- working with non-profit financial
7 organizations. I thought that was very well done.

8 CHAIRPERSON BERRY: Okay. Further discussion?

9 Yes, Commissioner Anderson?

10 COMMISSIONER ANDERSON: Well, I must say, I tend to
11 agree with Commissioner Redenbaugh on this. My sense of the
12 report is that the first chapter overstates, in a way, in the
13 rhetoric the situation, in an attempt to carry forward an
14 argument regarding bias and racial tension that the
15 statistics in the later part of the report don't support, but
16 that's my suspicion on reading the report.

17 The Vice Chair pointed out the one example about
18 Abner Louima. I, too, had that paragraph marked. I think I
19 marked it for a little bit different reason, and I go into it
20 because it's been a perennial kind of objection I've had to
21 the way we write our reports. And I'm, of course, in the
22 minority on this, but I continue to insist on my view and

1 remain in the minority, but let me just give you the example
2 of what I'm talking about.

3 VICE CHAIRPERSON REYNOSO: What page?

4 COMMISSIONER ANDERSON: It's 29.

5 VICE CHAIRPERSON REYNOSO: Yes, okay. That's -- I
6 had that marked.

7 COMMISSIONER ANDERSON: "Abner Louima had been
8 arrested following a scuffle," et cetera. "Tensions were
9 aroused even further when Mr. Louima was quoted in the press
10 as having claimed that during the police assault one or more
11 officers had shouted, 'It's Guiliani time.' Subsequent
12 street demonstrations followed, which were led by residents,"
13 et cetera. Then there's a footnote there to "It's Guiliani
14 time." The footnote reads, "Mr. Louima later was reported to
15 have retracted the claim, that the officers who brutalized
16 him had stated, 'It's Louima time,' citing the New York
17 Times."

18 Well, my understanding is that Mr. Louima retracted
19 that under oath in court.

20 VICE CHAIRPERSON REYNOSO: Well, that's why I had
21 it marked, because that just is a newspaper report, but
22 actually it was retracted, as I understand it, in court, so

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1 that would be one of the updatings I had in mind.

2 COMMISSIONER ANDERSON: See, my point of raising it
3 is, the way it is written, it is a very phenomonological
4 approach to our report writing, which we do all the time,
5 which is relate a perception or an allegation without them
6 going behind it to make an assessment as to whether or not
7 it's accurate.

8 This is more than simply reported or alleged. It
9 actually occurred. He retracted it. It's more than the
10 officers were alleged to have done this. One of them
11 admitted it. It should say that.

12 Now, in a way, part of it is a function of time --

13 VICE CHAIRPERSON REYNOSO: Yes.

14 COMMISSIONER ANDERSON: -- but I think part of it
15 is a function that we are content to repeat allegations,
16 perceptions -- and sometimes perceptions are important -- but
17 we repeat these without attempting to determine whether or
18 not it's true. And I find that this first chapter does a lot
19 of that, and frankly, I just don't think it is helpful in
20 convincing people who we want to convince. It convinces
21 people who don't need convincing, and the other people it
22 does not convince.

1 Now, if you'd turn to the part on the statistical
2 analysis of the securities industry, you'll find -- and I
3 think we're probably looking at the same quotes, where it
4 says on page 231, "It is difficult to extrapolate much from
5 these numbers, and they may or may not represent bias," but
6 the inference throughout the report is that it does reflect a
7 bias.

8 The question of immigration and minorities coming
9 into New York, page 108, "At a minimum, the data suggests
10 that these firms do not adequately recruit or hire minorities
11 in relation to their numbers in the applicant pool."

12 I don't think so. I think the data suggests that
13 there is a wide differential, but whether that differential
14 is a result of adequate recruitment or not, or adequately
15 hiring qualified minorities, or inadequately hiring qualified
16 minorities, is not demonstrated by these statistics, but
17 there's the inference there.

18 CHAIRPERSON BERRY: What page are you on?

19 COMMISSIONER ANDERSON: Page 108.

20 CHAIRPERSON BERRY: Okay.

21 COMMISSIONER ANDERSON: Again, on page 104, "Asian-
22 Pacific Islanders and Hispanics are immigrating to the city

1 and possibly bringing about similar changes in the qualified
2 workforce available to the finance industry."

3 Well, if we really think that recent Hispanic
4 immigrants to New York City significantly increase the
5 available qualified pool of managers and professionals for
6 the securities industry, then we ought to have some evidence
7 of that in the report, and not just say that "Possibly
8 because we have X numbers of immigrants that this would have
9 increased the pool." It's those kinds of things.

10 So in my opinion, our reach overreaches our grasp
11 on a number of these things, and I don't find it a
12 particularly helpful report to move us where we want to be,
13 and I think where we all want to be is a non-biased hiring
14 and representation in every industry where there's qualified
15 people. I don't think we've made the case within this
16 report, but I know others have a different opinion.

17 CHAIRPERSON BERRY: Well, I don't think we've made
18 the case that there's discrimination in the securities
19 industry, and my impression in reading the report is that the
20 staff made clear that they couldn't say that there was
21 discrimination. You've shown some places where it sounds
22 like they're saying that.

1 So my vote to approve this will be that they need
2 to go through it again and make sure that there are not
3 places that they say this, because my suggestion about asking
4 the firms about the pool and then trying to compute, if they
5 could, was made for that reason.

6 I think we are between a rock and a hard place. We
7 have a lot of data on the securities industry and the banks,
8 which is descriptive. We also have updates that they have
9 done themselves, that they have given us, and the progress
10 that they've made since.

11 We know that there are differences, but we don't
12 know that these differences are caused by bias, and the
13 report, the parts that I remember, there are all these
14 caveats, and there are places where you pointed out where
15 it's not clear that the caveats exist; and they need to go
16 through it again and make sure that that's the case.

17 I don't think we could not publish the report or
18 any report simply because we have some data which is useful
19 which the taxpayers paid for, which is here in the form that
20 we ought to at least make it available.

21 And so, you know, if I had my druthers, and the
22 taxpayers hadn't paid for it, I might say, "Gee, unless you

1 can go back and find the data, then maybe we shouldn't do
2 anything," but I don't think we have the -- I think it does
3 have some information in it that will be useful to people.

4 Yes? Question?

5 VICE CHAIRPERSON REYNOSO: Well, I think the data
6 is very -- the data that the hearings and the staff have come
7 up with is actually very important, and would be important to
8 the general public and, I should think, would be particularly
9 important to the industry. It does show under-
10 representation.

11 Now, how you define the applicant pool, whether
12 enough is being done to bring people into the applicant
13 pool -- and we've seen examples in history of an applicant
14 pool that can be expanded by what the industry does, et
15 cetera -- we don't have answers to all of that, but I think
16 the data is very important.

17 I would think that we have a duty to publish this
18 for the sake of letting people know what the reality is in
19 terms of the data, and as I say, I think helpful to the
20 industry.

21 I would like to say that because the sentence that
22 says, "Vivid image of a city on the verge of a race war" was

1 footnoted, I had thought that we were referring to another
2 statement there, that is a statement made by some others.
3 Apparently, we're not; and if we're not, I think I would
4 share in the view that that sentence should be rewritten,
5 because I thought chapter one, the introduction, was
6 particularly important to set the tone, so I went over that
7 with particular care, and I guess unlike Russell, I thought
8 it was very, very well done.

9 I felt very complimentary of the staff, in terms of
10 how they had been able to integrate, as I mentioned earlier,
11 the studies that are readily available with the hearings that
12 we had. But I agree with Russell that if that's our own
13 statement, then I think it's an exaggeration, in light of the
14 hearing.

15 CHAIRPERSON BERRY: The staff might go through the
16 rest of the chapter to see if there is any hyperbole or
17 overly florid comments about matters of that kind.

18 Yes, Commissioner Meeks?

19 COMMISSIONER MEEKS: I mean I think the data speaks
20 for itself a lot, and most of what I read, I mean I think
21 there were some areas where some inferences were drawn that
22 you necessarily couldn't get -- or couldn't necessarily get,

1 but I think a lot of the data speaks for itself, and needs to
2 be published.

3 VICE CHAIRPERSON REYNOSO: But I just want to
4 indicate that my own suggestions and I think the suggestions
5 we've heard here, do not, in my view, speak negatively about
6 the value of the report.

7 I think it's a very good report, and I think,
8 because there's so much data here that's not available other
9 places, that this will be a very valuable and very good
10 report, and the staff did a good job on it.

11 CHAIRPERSON BERRY: Now, the use of the term
12 "under-representation," as I call for a vote on this, as I
13 understand it in reading it, we cannot technically say there
14 is under-representation, because the only way you can say
15 there's under-representation is if you know what the pool is,
16 and you know what the qualifications are, and you know that
17 they've not drawn enough -- what we have here is an example
18 of, "We know that there is not much representation" --

19 VICE CHAIRPERSON REYNOSO: Right.

20 CHAIRPERSON BERRY: -- "of people from those
21 communities in the various jobs," but the data we're asking
22 them to give us, if they wish, is data that would permit us

1 to reach that conclusion.

2 So the data shows us how few people there are in
3 certain categories, but it does not technically, in a
4 statistical sort of sense, show under-representation, if I've
5 got that right. And I see Eddie nodding his head, so I got
6 it right.

7 VICE CHAIRPERSON REYNOSO: But Madam Chair, I
8 always think of an example given by Vice Chair of a large
9 airplane-producing company in Southern California, and he was
10 telling about an experience they had during the Second World
11 War, when they needed typists, so they advertised, "Anybody
12 who had ever been a typist, please come in and apply," and a
13 lot of women, particularly, applied.

14 Most of them hadn't typed for ten or twenty years,
15 and they would take this test and they would fail. So they
16 were all unqualified. They were not within the pool, right,
17 but they needed them.

18 So he said, "Don't go away. Come over here; we've
19 got a special setup for you. You can practice your typing,"
20 and so on.

21 Then they would type for an hour or two, or a day
22 or two, or a week or two. Then finally they would become

1 qualified. Then they would be part of the pool. Then they'd
2 say, "Okay. Now, we'll hire you."

3 I mean there are different ways of creating the
4 pool, and our facts here don't tell us whether that is being
5 done, whether it's not being done, et cetera. But it does
6 tell us that the figures are what they are, and I think that
7 leads to -- that should lead the industry to some concerns,
8 and they know more about it than we, and they know perhaps
9 what should be done. So I think the facts themselves are
10 valuable.

11 CHAIRPERSON BERRY: And the report also tells us
12 that they're already doing some of it --

13 VICE CHAIRPERSON REYNOSO: Yes, and that's good.

14 CHAIRPERSON BERRY: -- because they recognize that
15 they want to be more inclusive.

16 VICE CHAIRPERSON REYNOSO: Well, then what I hear
17 informally is that even the hearings and this report have
18 already engendered more discussion and more activity in the
19 industry, and that's to the good.

20 CHAIRPERSON BERRY: Okay.

21 Yes, Commissioner Redenbaugh? COMMISSIONER

22 REDENBAUGH: I think that, Cruz, you overstate the goodness

1 of people in general, and that industry, in particular, and
2 our influence on them.

3 I suspect, and I don't have data for this, but I
4 suspect that the expanded efforts that they've undertaken in
5 the area you suggest have to do with the acute labor shortage
6 in the skilled areas, not as a consequence of our hearing or
7 their goodness.

8 The labor shortage is a wonderful thing for opening
9 up opportunities and for expanding the pool, and I'd like to
10 continue to rely on that theory rather than appealing to
11 people's goodness.

12 VICE CHAIRPERSON REYNOSO: The example I gave of
13 the Second World War obviously had to do with that
14 phenomena --

15 COMMISSIONER REDENBAUGH: Exactly.

16 VICE CHAIRPERSON REYNOSO: -- that is, the need for
17 workers. But there are also other pressures, sometimes Title
18 VII pressures, and so on, on industries, and you're right
19 that most people don't do things just out of the goodness of
20 their hearts. But this provides the data that then may also
21 provide a concern to the agencies that have more enforcement
22 power than we do.

1 CHAIRPERSON BERRY: Do people always respond to
2 economic incentives, Russell?

3 COMMISSIONER REDENBAUGH: No. No. There are
4 market case failures, but they are far less frequent than you
5 believe, probably.

6 (Laughter.)

7 CHAIRPERSON BERRY: Well, I remember when -- what's
8 his name -- Mr. Angel, from Bear-Sterns --

9 COMMISSIONER REDENBAUGH: Yes, Angel.

10 CHAIRPERSON BERRY: -- came and testified before us
11 at this particular hearing, and he was giving us examples of
12 how he didn't understand how folks didn't respond to the
13 incentive of being more inclusive, and bringing people in,
14 and all kinds of ideas about making money, that it was a
15 puzzle to him, and I remember him saying that. So there are
16 some people who don't respond to economic incentives, right?

17 VICE CHAIRPERSON REYNOSO: Yes, after they've lost
18 their money, then -- because it transfers to those who do --

19 CHAIRPERSON BERRY: Right.

20 VICE CHAIRPERSON REYNOSO: Right.

21 COMMISSIONER REDENBAUGH: Well, there are
22 marketplace failures, clearly.

1 VICE CHAIRPERSON REYNOSO: We have just so many
2 examples in our country and throughout the world where there
3 are other pressures than economic ones. I'm just reading
4 Colin Powell's autobiography, and he speaks about his
5 experiences during the Jim Crow days, going up to a hamburger
6 stand and asking for a hamburger, and they wouldn't sell him
7 one.

8 Presumably, they'd make a profit if they would sell
9 the hamburger, right, but he was black, and the custom was
10 then not to serve blacks, so they didn't. So there, the
11 custom of discrimination meant more than money. So, you
12 know, we have those examples.

13 COMMISSIONER REDENBAUGH: It's an interesting case,
14 and we probably ought to --

15 CHAIRPERSON BERRY: We're having a seminar.

16 COMMISSIONER REDENBAUGH: -- do what I love to do.
17 Jim Crow is interesting, because the economic incentives had
18 to be blocked by the police power of the state. It was even
19 more pernicious and worse than your example suggests.

20 CHAIRPERSON BERRY: Oh, I see.

21 COMMISSIONER REDENBAUGH: Well, that's my view,
22 that these were enforced by police powers.

1 CHAIRPERSON BERRY: You mean the not selling the
2 hamburger?

3 COMMISSIONER REDENBAUGH: Yes.

4 CHAIRPERSON BERRY: Or the perception that other
5 customers would not buy if they saw you sell Colin Powell a
6 hamburger, in those days. Now, Colin Powell now would have
7 been okay, but Colin Powell then, they might not buy your
8 hamburger; I mean that was the perception.

9 Anyway, all right. Okay. Shall we call for the
10 question on this? All those in favor of approving this
11 report with the staff making the changes, et cetera, and if
12 anyone else has editorial changes, to give them to the staff,
13 indicate by saying aye.

14 (Chorus of ayes.)

15 CHAIRPERSON BERRY: Opposed?

16 COMMISSIONER REDENBAUGH: No.

17 COMMISSIONER ANDERSON: No.

18 CHAIRPERSON BERRY: Okay. So it's five/two. Okay.

19 All right. So ordered.

20 The next item is the health care challenge,
21 Acknowledging Disparity, Confronting Discrimination and
22 Ensuring Equality: The Role of Governmental and Private

1 Health Care Programs Initiatives, and the Role of Federal
2 Civil Rights Enforcement Efforts.

3 This is the enforcement report for this particular
4 year, which must be approved, if it is to be approved, at
5 this meeting, so that it can be turned in on time, since we
6 do not meet in August.

7 Could I get a motion to approve it?

8 VICE CHAIRPERSON REYNOSO: So moved.

9 CHAIRPERSON BERRY: Second?

10 COMMISSIONER MEEKS: Second.

11 CHAIRPERSON BERRY: Seconded.

12 Discussion, Commissioners?

13 VICE CHAIRPERSON REYNOSO: Well, Madam Chair, I
14 guess I didn't find any hyperbole here; at least I didn't.
15 And I thought, again, the staff did a very good job of
16 putting together the various studies, the reports that we
17 have done, and the reports that other agencies have done to
18 put together the statistics that they have, which present a
19 compelling story that government can do more to bring about
20 equity in the provision of health care, and, indeed, that the
21 statutes and regulations require presently the agencies to do
22 more, and they should do more, both as a matter of policy and

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1 perhaps with greater resources going through those efforts.

2 So I thought it was a good report.

3 CHAIRPERSON BERRY: Okay. Other comments?

4 Yes, Commissioner Lee?

5 COMMISSIONER LEE: I wanted to thank the staff for
6 making my tennis elbow worse by giving us this report.

7 (Laughter.)

8 COMMISSIONER LEE: I agree with the Vice Chair. I
9 do have a couple of suggestions.

10 Number one, editorially --

11 VICE CHAIRPERSON REYNOSO: What page?

12 COMMISSIONER LEE: Just throughout the report,
13 using the term "Asian-Americans" and "Pacific Islanders"
14 throughout.

15 Secondly, on part one, chapter three, I think that
16 that needs to be so mentioned, when they talk about health
17 care finance, to include the new program, child care
18 insurance plan.

19 VICE CHAIRPERSON REYNOSO: Yes.

20 COMMISSIONER LEE: So that needs to be put in, and
21 I hope that they can put some paragraph in there.

1 Another minor point, they mention about minorities
2 being uninsured for a variety of reasons. Maybe one reason
3 you might want to put in is the fact that many minorities are
4 small business owners, and they cannot afford to purchase
5 private insurance, and they're not eligible for public
6 insurance. So that could be one of the causes. So you could
7 put that into the chapter. That would be great.

8 CHAIRPERSON BERRY: Okay. Do other Commissioners
9 have comments on the report?

10 (No response.)

11 CHAIRPERSON BERRY: Okay. All in favor of
12 approving the report indicate by saying aye.

13 (Chorus of ayes.)

14 CHAIRPERSON BERRY: Opposed?

15 COMMISSIONER REDENBAUGH: No.

16 COMMISSIONER ANDERSON: No.

17 CHAIRPERSON BERRY: Okay. Anderson and Redenbaugh,
18 for reasons that they do not care to tell us --

19 VICE CHAIRPERSON REYNOSO: I don't mean to be
20 intrusive, but Russell indicated some objections to the last
21 report, and I appreciated hearing the objections. I just
22 wonder what the objections are to this report, because unless

1 I missed it, again, I did not read any hyperbole and so on in
2 here. Maybe it's hidden or inferential.

3 CHAIRPERSON BERRY: The Commissioners do not have
4 to tell us, if they do not wish to let us know.

5 COMMISSIONER REDENBAUGH: I would make a general
6 comment, which is that I think there are two reports here.
7 There's an enforcement report, which deals with the question
8 of "Is HH" -- whoever they are --

9 CHAIRPERSON BERRY: HHS.

10 COMMISSIONER REDENBAUGH: -- that one -- "enforcing
11 the laws and regs that we have, and how well are they doing
12 that?"

13 VICE CHAIRPERSON REYNOSO: Right.

14 COMMISSIONER REDENBAUGH: That is a good statutory
15 enforcement report. The report then takes off from that, and
16 is very prescriptive, and that's where I have an objection to
17 it. It goes far beyond that, and in a direction that I
18 wouldn't endorse sort of generally and specifically,
19 because -- well, that I wouldn't endorse. Maybe that says
20 enough.

21 CHAIRPERSON BERRY: Okay. All right.

1 Commissioner Anderson, the staff tells me that they
2 want to make sure how you voted on the New York report. They
3 didn't hear you.

4 COMMISSIONER ANDERSON: No.

5 CHAIRPERSON BERRY: I said no, and they said they
6 didn't hear you, so they wanted to make sure that I was not
7 maligning you or something.

8 COMMISSIONER ANDERSON: I heard you say the vote
9 was five to two, so I assumed that people knew who the two
10 votes were.

11 CHAIRPERSON BERRY: Yes.

12 COMMISSIONER ANDERSON: Actually, I was looking for
13 a quote here from the report, which I am unable to find,
14 quoting or describing Secretary Shalala's attitude to civil
15 rights enforcement at the agency, which I would have
16 described as hyperbole, but since I can't seem to find the
17 exact quote, that's what happened when we had the vote. So I
18 was looking for that.

19 But it had something to do with the fact that her
20 lack of commitment to civil rights enforcement at the agency
21 was related to the inability or her unwillingness to meet
22 with our staff for an interview.

1 I don't have the exact language in the report, but
2 it seemed to me that that was the kind of hyperbole that
3 struck me as -- well, at least I would not make, fearing a
4 partisan characterization of such a comment.

5 Having worked at HHS myself, at a level at which a
6 number of years ago I did have interaction with OCR on civil
7 rights matters, particularly, the question of discrimination
8 in health care services to handicapped children, and
9 particularly children suffering with Downs Syndrome, leads me
10 to give a lot of credence to the criticism of OCR in the
11 report. I think it's a long-standing problem.

12 So in one aspect, I believe the report is an
13 important report, as it relates to OCR, and I would, I think,
14 be happy to vote for that part of the report.

15 Unfortunately, there's other things in the report
16 that I cannot support, the notion in the recommendation
17 section which, in my opinion, is sort of the thinly veiled
18 endorsement of universal health care, national health care;
19 also what I consider to be a rather strange notion of
20 insisting that research monies be equally divided between
21 women researchers and men researchers.

1 It seems to me also that the issue we raise
2 regarding bias in granting out of HHS and NIH, I think, is a
3 rather serious allegation, and I think it's not sufficient to
4 simply quote the surgeon general. He may have a particular
5 view of it, but having worked with surgeon generals in the
6 past, I know that their view is not always 100 percent
7 accurate on such matters.

8 So that's another issue that I think might have
9 been more carefully explored; although, I do think the whole
10 issue of funding research, and what the goal of research is,
11 and what the goal of funding is, is an important issue, and
12 one we could have discussed, I think, in the report in a more
13 nuanced way.

14 So those are some of my objections. I think that
15 the report really is too long to go page by page and try to
16 nuance the various things. I hope that there will be some
17 benefit coming to OCR, in terms of our analysis of it. I
18 don't believe the answer is the creation of a new agency.

19 As long as I have had something to do with HHS, and
20 I know the Chair at one time had something to do with that
21 agency, there are always recommendations that the agency be
22 dismembered into a number of agencies, and they would still

1 probably be larger than a number of cabinet departments that
2 are in existence at this time, but nonetheless, I don't think
3 that's a good way to go in this area.

4 I think the problem with OCR really is a problem
5 of -- candidly, one of giving the mission a higher priority
6 and demanding that whoever is in that office apply high
7 managerial standards and high levels of commitment.

8 And as far as I've known, that has not been the
9 case, and people have tolerated that for various reasons; but
10 I think, for my own view, it should not be tolerated, and we
11 should really insist on a very strong management performance
12 at OCR and HHS.

13 Anyway, those are my reasons.

14 VICE CHAIRPERSON REYNOSO: I appreciate it. Thank
15 you.

16 CHAIRPERSON BERRY: Well, that's very helpful, and
17 I think that the staff, as they go through this making
18 editorial changes and other kinds of changes that don't
19 really change the substance beyond what was voted on, ought
20 to keep those in mind, because my own view in the end is
21 pretty much like yours. But I think a lot of it is politics,
22 I mean, on why HHS and OCR are the way they are.

1 And I think it's because the programs and the
2 financial resources that are going out to hospitals, and
3 individuals, and things like that are so politically
4 sensitive, and every politician has his own view about what
5 should be done, and their constituent interests, and there
6 are all kinds of interconnecting networks, that it's very
7 difficult to aggressively enforce civil rights in that area,
8 whatever one's perception of civil rights happens to be,
9 because most people who are in the hospitals, and people who
10 are service providers, and the individuals who receive money,
11 and so on, see the civil rights function as sort of ancillary
12 to what is going on there.

13 VICE CHAIRPERSON REYNOSO: Sometimes intrusive.

14 CHAIRPERSON BERRY: Right. And cabinet secretaries
15 know this, if they're smart cabinet secretaries, and most of
16 them have been. And so you just don't want to tip your foot
17 into that water too far.

18 So it has been kept, in my view, small, under-
19 resourced. Everybody knows that that office can't do what
20 its mandate is aggressively with the amount of resources,
21 given how big the agency is. They can't even do compliance
22 reviews or go out and look at enough people to see if there

1 is a problem, and you had a succession of managers who have
2 been frustrated and have done the best job they could, given
3 their skills.

4 Some haven't had the right skills, but that was
5 okay, because no one intended for them to do much anyway, to
6 put it that way, but that's not the kind of thing -- I can
7 say that, but I guess that's not the kind of thing you would
8 put in the report.

9 I think the report for the careful reader, the
10 careful reader will reach such a conclusion anyway, and I
11 think that until the day I die, OCR and HHS will still have
12 the same problem. They had it when I came to Washington, and
13 they will have it when I leave Washington.

14 VICE CHAIRPERSON REYNOSO: But, again, it's our
15 role to point that out. As you were talking, I'm looking at
16 chapter two, "Organization and Administration of Department
17 of Health and Human Services." "Summary: The organization
18 and administration of the civil rights component of HHS
19 betray a subtle contempt for Congress's legislative mandate
20 of ensuring equal participation in HHS's funding programs in
21 general, and in health care programs in particular."

1 I think that's a very soft way of saying what you
2 just said, that I think we have a duty to say it and point to
3 that reality.

4 CHAIRPERSON BERRY: Okay. So we got a little post-
5 mortem here on what happened with it.

6 Now, we go to item number seven, which is the FY
7 2001 OMB estimate, which we do every year at this time, so
8 that we can send the papers off to the government, to
9 wherever they go.

10 Are there any things that are in the budget that
11 the Commissioners at this time would like to, in general,
12 reconsider? It's under item number seven.

13 We've seen this before, and we voted on priorities
14 and all that, and now George has put it together, and it's
15 going off to OMB.

16 Yes, Mr. Redenbaugh?

17 COMMISSIONER REDENBAUGH: I have a question, which
18 is: How is it that our now non-discretionary spending level
19 is higher than our now total?

20 CHAIRPERSON BERRY: Higher than our now what?

21 COMMISSIONER REDENBAUGH: Our now total. I'm
22 sorry. In the budget document you have, our

1 non-discretionary is described as being roughly \$9 million,
2 if I recall.

3 CHAIRPERSON BERRY: \$9,491,185.

4 COMMISSIONER REDENBAUGH: That precision is
5 important. And that's higher than our now total budget.

6 CHAIRPERSON BERRY: All right.

7 COMMISSIONER REDENBAUGH: What would our
8 discretionary budget be now?

9 CHAIRPERSON BERRY: Okay. What's our discretionary
10 budget now? Is it in here somewhere? What's the number?

11 Staff director, do you know the number?

12 MS. MOY: No, I don't.

13 CHAIRPERSON BERRY: Is the number lower than -- I
14 guess it's lower than --

15 COMMISSIONER REDENBAUGH: Well, it has to be lower
16 than our budget, or equal to.

17 CHAIRPERSON BERRY: It can't be the entire budget,
18 because the entire budget is not non-discretionary.

19 COMMISSIONER REDENBAUGH: I was thinking that.

20 CHAIRPERSON BERRY: So do you want George to answer
21 this?

1 MS. MOY: Yes, please.

2 CHAIRPERSON BERRY: George, wire yourself up there.

3 MR. HARBISON: The non-discretionary costs that you
4 are saying that are higher include all those elements -- this
5 is the FY 2001 estimate; and if we approve it at that level,
6 that's why the non-discretionary costs would be higher. It
7 includes the projected salaries and all the other things that
8 we assume to be --

9 COMMISSIONER REDENBAUGH: Oh, I see. If we sized
10 to that --

11 MR. HARBISON: Exactly..

12 COMMISSIONER REDENBAUGH: Okay. That makes sense.
13 I misinterpreted it. I thought that was something else, but
14 that was our non-discretionary anyway. Okay.

15 CHAIRPERSON BERRY: So if we got this money, then
16 it would go up to that amount of --

17 COMMISSIONER REDENBAUGH: It would get allocated --
18 right.

19 CHAIRPERSON BERRY: That way --

20 COMMISSIONER REDENBAUGH: Right. What's the total
21 there that we're --

1 CHAIRPERSON BERRY: The total is what, George?

2 MS. MOY: 13.7.

3 MR. HARBISON: 13.7.

4 CHAIRPERSON BERRY: If we got 13.7, then
5 \$9,491,185 --

6 COMMISSIONER REDENBAUGH: Right. That one.

7 CHAIRPERSON BERRY: -- would go to that number.

8 MS. MOY: Correct.

9 CHAIRPERSON BERRY: That's the argument.

10 COMMISSIONER REDENBAUGH: Yes. Makes sense.

11 Thanks, George.

12 CHAIRPERSON BERRY: Is there anything that
13 Commissioners see here that we discussed before that now, in
14 the heat of summer, they decided it's not something we ought
15 to do, or that we ought to do something else, or they want to
16 revisit?

17 Yes, Commissioner Lee and then Commissioner Meeks,
18 and then whomever.

19 COMMISSIONER LEE: I have a question for the staff
20 director. You mentioned the numbers of new hires projected
21 for the new fiscal year. I remember at the last meeting --

1 CHAIRPERSON BERRY: Where are you looking?

2 COMMISSIONER LEE: Just the new hires.

3 CHAIRPERSON BERRY: Oh, new hires.

4 COMMISSIONER LEE: Yes. Ten new hires have been
5 proposed. I remember at the last meeting the staff director
6 responded to my question why SAC members were writing the
7 report in the western region, you mentioned it was because of
8 the staff shortage. So if that was the case, shouldn't you
9 include a new hire for the western region in addition to the
10 other proposed new hires?

11 MS. MOY: This is for fiscal year 2001, and those
12 FTEs that we wanted were included in fiscal year 2000. So
13 this is 2001.

14 CHAIRPERSON BERRY: In other words, they're in the
15 budget --

16 MS. MOY: Right.

17 CHAIRPERSON BERRY: -- that's before the Congress
18 right now.

19 MS. MOY: Right.

20 COMMISSIONER LEE: So you don't anticipate the
21 western region will need one more person ever after this?
22 Okay.

1 CHAIRPERSON BERRY: How many people do they have in
2 this year's budget, I mean the proposal, for the western
3 region, how many regional people?

4 COMMISSIONER LEE: Six.

5 CHAIRPERSON BERRY: Six? Six regional people --

6 COMMISSIONER LEE: Six.

7 CHAIRPERSON BERRY: -- for all the region, to be
8 spread out?

9 COMMISSIONER LEE: Right; one for each.

10 CHAIRPERSON BERRY: Okay. One for each region.

11 MR. HARBISON: The western region has two vacant
12 positions.

13 CHAIRPERSON BERRY: Oh. So they have two
14 vacancies.

15 COMMISSIONER LEE: That's why they sent members out
16 to do the report.

17 CHAIRPERSON BERRY: No wonder they can't do
18 anything, if they have two vacancies. My goodness.

19 Okay. Now, Commissioner Redenbaugh will comment on
20 the time it takes to fill vacancies.

21

1 COMMISSIONER REDENBAUGH: It's the labor --

2 CHAIRPERSON BERRY: Come on --

3 COMMISSIONER REDENBAUGH: -- shortage.

4 CHAIRPERSON BERRY: -- Russell.

5 COMMISSIONER REDENBAUGH: No. I have no comment.

6 CHAIRPERSON BERRY: It's the labor shortage.

7 COMMISSIONER REDENBAUGH: It must be.

8 CHAIRPERSON BERRY: It probably is. We need the
9 economy to go into the tank.

10 COMMISSIONER REDENBAUGH: Oh, we'll all be so much
11 better off.

12 (Laughter.)

13 CHAIRPERSON BERRY: We'll be able to hire workers.

14 COMMISSIONER REDENBAUGH: We need the Chair, not
15 just -- the Chair put that economy right over.

16 (Laughter.)

17 CHAIRPERSON BERRY: Yes, Commissioner Lee?

18 COMMISSIONER LEE: I do want to open the
19 discussion, now that we have two new members on the
20 Commission, and I wonder if this is an appropriate time for
21 us to revisit some of the projects that we had approved prior
22 to them coming on board, but projects we have not begun, to

1 see if these projects are still germane, or whether we want
2 to scrap it and move on to other projects that the
3 Commissioners feel that we should proceed on now.

4 CHAIRPERSON BERRY: Well, we could do that, which
5 is why I said if, in the heat of summer, people had decided
6 there was something else they wanted to do.

7 This would create for the staff a logistical
8 nightmare, which should not stop us because they'll just have
9 to work it through, but it means that we will have to do
10 proposals again, and then we would have to agree to them, and
11 then we would have to recapitulate it, but that is not
12 something that can't be done.

13 So I think it's quite right. The projects are on
14 page two. They're listed there.

15 Commissioner Meeks?

16 COMMISSIONER MEEKS: In the 2000 budget then, I
17 mean, since the Native American issues didn't seem to be on
18 the table at that point --

19 CHAIRPERSON BERRY: Now, there is one, I think, in
20 the 2000 budget. What's the name of it?

21 COMMISSIONER MEEKS: Okay. I didn't --

1 MS. MOY: Economic opportunities.

2 CHAIRPERSON BERRY: Economic opportunities.

3 COMMISSIONER LEE: For minority youths.

4 CHAIRPERSON MEEKS: Okay.

5 CHAIRPERSON BERRY: And Native Americans. There's
6 another one, too. Isn't there one of them on housing? Am I
7 confused? What year was that? Somebody tell me. Wasn't
8 there a project -- what happened to the project on housing
9 issues? Reservations, or something like that.

10 MS. MOY: For 2000, we have, "Round Tables:
11 Expanding the Economic Opportunities of African Americans-
12 Asian Americans and Latino Youth," which we also included the
13 Native Americans in that one, and then we also had --

14 CHAIRPERSON BERRY: But there's a -- what happened
15 to the project on the housing? Am I going crazy here? Does
16 anybody remember what I'm talking about?

17 COMMISSIONER LEE: I thought there was a SAC --

18 CHAIRPERSON BERRY: Oh, that's right. We decided
19 to wait until you came.

20 COMMISSIONER LEE: Yes.

21 CHAIRPERSON BERRY: There was a proposal that we do
22 a project on housing issues for Indians on reservations, or

1 Native Americans on reservations, and somebody proposed that,
2 and we discussed it, and then we decided we would wait until
3 you came.

4 Now, we're going to go to the forum that
5 Commissioner Anderson and others have talked about. We are
6 going to do the economic opportunity. So the query is:
7 Should we add something else now to 2001? We can always
8 change it, too, I mean even if we get the budget approved,
9 and if we got \$13 million -- and I have a bridge I'd like to
10 sell you in Manhattan.

11 But anyway, we can change it and do something else,
12 if we all decided we wanted to do something else, because it
13 was an emergency or something.

14 COMMISSIONER ANDERSON: In 2001, we're speaking?

15 CHAIRPERSON BERRY: I'm saying that if in 2000 we
16 decided we wanted to do something else, we could, if we had a
17 reason for that, all of us. So the query is: Does anyone
18 want to change anything on this list today?

19 COMMISSIONER EDLEY: Madam Chairperson?

20 CHAIRPERSON BERRY: Yes.

21 COMMISSIONER EDLEY: I don't --

1 CHAIRPERSON BERRY: Okay.

2 COMMISSIONER EDLEY: -- because I -- this is not
3 legally binding. We're not fixed in concrete, and if we have
4 changes, make adjustments, so --

5 CHAIRPERSON BERRY: Okay. All right.

6 Commissioner Anderson?

7 COMMISSIONER ANDERSON: Well, I would say we ought
8 to take a look at that OGC project for 2001, Native American
9 civil rights, which we have a little over a quarter of \$1
10 million designated in the 2001 budget, and consider moving
11 that up to begin in 2000. Hold that option open. We may get
12 money; we may not.

13 But it would seem to me if we would back that
14 project three, four, five months into 2000, that might give
15 us the jump start on it, if we felt we wanted to do that. We
16 may decide in a month or two we don't want to do it, but it
17 would seem to me that would be an easy way of beginning on
18 the Native American issue more specifically, if we wanted to.

19 CHAIRPERSON BERRY: Now, let me start over again.
20 I started out by saying that I thought there was a project in
21 2001, and that I thought it had to do with housing --

1 COMMISSIONER MEEKS: In the year 2000?

2 CHAIRPERSON BERRY: -- and no one said anything.

3 No. 2001. So now what I'm asking is this project on Native
4 American civil rights, is that the housing project or not?
5 Does anyone know: Is this the housing project that I keep
6 asking about?

7 STAFF DIRECTOR MOY: Yes.

8 CHAIRPERSON BERRY: It is? Okay. It is the
9 housing project, so we did decide to put it in, and we didn't
10 decide to wait for you to come. That's what I thought in the
11 first place, but no one said anything when I asked.

12 So the question then is -- there are two questions:
13 In addition to doing the projects that are listed there, do
14 we want to shift any of them? Commissioner Anderson is
15 saying we might want to shift the Native Americans' civil
16 rights one, which is housing, as it is presently constituted,
17 to 2000.

18 Is there anyone who wants to drop altogether any of
19 these projects listed here now, even though as Chris Edley,
20 Jr., said, it is tentative, because we can made adjustments
21 as we go along anyway, and none of it is locked in concrete;
22 or should we just leave it as it is, and move on, and then if

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1 we need to make some adjustments in the fall, we can, and
2 we'll know more by that time?

3 Yes?

4 COMMISSIONER MEEKS: Well, obviously, I'm not going
5 to be opposed to Commissioner Anderson's recommendation. I
6 mean the housing issues are important, and I don't know,
7 maybe the language of this doesn't -- but the civil rights
8 issues, I think, are going to be more prominent at this
9 point. They are more important to address.

10 CHAIRPERSON BERRY: So what we should do then is to
11 say that the civil rights project may not be a housing
12 project, but it will be a Native American civil rights
13 project --

14 COMMISSIONER MEEKS: Right.

15 CHAIRPERSON BERRY: -- and we will just for now
16 have a plug-in, as they say, to leave the description as it
17 is for the time being, but understand that that project may
18 be more than, different than, and that if we get money into
19 2000 we might shift it to 2000. Okay?

20 COMMISSIONER ANDERSON: Sure. So it would not be
21 completed in 2000, but it might be produced --

1 CHAIRPERSON BERRY: Right. Right.

2 COMMISSIONER ANDERSON: -- in 2000.

3 CHAIRPERSON BERRY: Yes.

4 Commissioner Redenbaugh?

5 COMMISSIONER REDENBAUGH: When is the economic
6 opportunity Native American project?

7 CHAIRPERSON BERRY: It's economic opportunity of
8 Native American, Asian-American youth, Latino youth, and it's
9 for the year 2001.

10 COMMISSIONER REDENBAUGH: Okay.

11 MS. MOY: Madam Chair --

12 COMMISSIONER REDENBAUGH: I just wanted to make
13 sure we had that.

14 MS. MOY: That is going to begin in fiscal year
15 2000, and the focus will be on Native Americans.

16 CHAIRPERSON BERRY: It's going to start in 2000,
17 although this money here, it goes into 2001.

18 COMMISSIONER REDENBAUGH: It's a two-year or
19 more --

20 CHAIRPERSON BERRY: Right.

21 COMMISSIONER REDENBAUGH: -- project.

1 CHAIRPERSON BERRY: Right.

2 COMMISSIONER REDENBAUGH: Okay. Is it the staff
3 director's thought that we'll do this in segments --

4 MS. MOY: I believe so.

5 COMMISSIONER REDENBAUGH: -- so that we don't wait
6 until we have one big report after --

7 MS. MOY: Yes.

8 COMMISSIONER REDENBAUGH: -- we're all dead? I
9 mean after I've retired from the Commission. But we'll do
10 these in sections.

11 MS. MOY: Since it comes under OCRE, yes, we're
12 going to recognize Frederick Isler.

13 MR. ISLER: It is an OCRE and OGC project,
14 combined. The purpose is -- about maybe eight or nine months
15 ago, I think the Commission had decided that we needed to
16 focus on Native Americans, so that it was agreed that we
17 would start the economic opportunity project in the year
18 2000, and the focus, the primary focus to that would be on
19 Native Americans first, and in the year 2001 we would do it
20 with the other minority groups.

21 CHAIRPERSON BERRY: But we also had made a --

1 COMMISSIONER REDENBAUGH: Thanks for refreshing my
2 memory on that, Fred.

3 CHAIRPERSON BERRY: Yes, Mr. Isler.

4 COMMISSIONER ANDERSON: I just wanted to ask: Are
5 we going to see, for example, a chapter on Native Americans,
6 and a chapter on Asian-Americans, and a chapter on African-
7 American? Are we going to see chapters of subjects, then all
8 the data for those groups within the chapter on that subject,
9 education, criminal law, whatever?

10 MR. ISLER: It was agreed that we would do a report
11 at a time after each consultation, and we would do one on
12 Native Americans, African-Americans, Asian-Americans, and
13 then at the end we would combine all of the reports into one.

14 CHAIRPERSON BERRY: I think what we should do is
15 release them as we get them, and I also think -- what I was
16 going to point out is that we had discussed at previous
17 meetings the idea that reports should come out no later than
18 a year after we have a proceeding, like a consultation or
19 hearing, no longer than a year after we do it, that that
20 should be factored into what the staff is doing; and when
21 they set it up, when they decided to do it, the understanding
22 is that we expect to have a report within a year, which I

1 think is reasonable, and that they ought to figure that out
2 ahead of time when they're starting, so that we don't have to
3 wait until we all die before we can get a report.

4 Okay. So the Native American part will be done
5 first. All right.

6 All in favor of approving --

7 COMMISSIONER LEE: Madam Chair?

8 CHAIRPERSON BERRY: Yes?

9 COMMISSIONER LEE: I do want to open the discussion
10 on a couple of the projects that I have questions with.

11 CHAIRPERSON BERRY: Okay.

12 COMMISSIONER LEE: One is the discrimination in
13 professional sports. I think that we had a discussion. At
14 least I don't recall staff providing us the estimate, the
15 cost estimate of doing this project.

16 So when I look at this project costing us half-a-
17 million dollars, I do have some question whether we can
18 revisit the whys that we decided on this project, because I
19 think this came up when we were doing the education project
20 on disparities between boys and girls, but then it got
21 escalated to discrimination in professional sports.

1 At the time, I did support this proposal, but I
2 didn't know it was going to be a half-a-million-dollars
3 endeavor.

4 Right now that I'm looking at it, just looking at:
5 Are there other more pressing civil rights issues that we can
6 study that may cover a broader spectrum of public interest
7 than discrimination in professional sports? I don't know.
8 I'd just like to have a discussion.

9 CHAIRPERSON BERRY: Commissioner Redenbaugh?

10 COMMISSIONER REDENBAUGH: Yvonne, I'm glad you went
11 first on that one. Just sign me up right behind everything
12 you said.

13 CHAIRPERSON BERRY: Is that all?

14 COMMISSIONER REDENBAUGH: Well, don't you think
15 that's enough? It was well said. I could only waste more
16 time, if I repeated what had already been said so well.

17 CHAIRPERSON BERRY: Yes?

18 VICE CHAIRPERSON REYNOSO: Well, Madam Chair, this
19 has been sort of a high-visibility issue of discrimination,
20 but when it comes down to it, I would consider some of the
21 other matters more substantively important, so when we come
22 to the matter of which ones we actually will go forward to, I

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1 would be prepared to put that one near the bottom.

2 CHAIRPERSON BERRY: Okay.

3 Yes, Commissioner Anderson?

4 COMMISSIONER ANDERSON: I guess this means we're
5 not getting the season tickets.

6 (Laughter.)

7 CHAIRPERSON LEE: We have the soccer game tomorrow.

8 (Laughter.)

9 COMMISSIONER ANDERSON: Perhaps I may be
10 responsible for part of this. My concern when we first
11 discussed this was: We're taking on a very large, visible
12 industry in a very visible way, and we're talking about a lot
13 of dollars here --

14 CHAIRPERSON BERRY: Right.

15 COMMISSIONER ANDERSON: -- and, therefore, my
16 concern was, if we are to do this, we better commit the
17 necessary resources to do it well and do it in a way that's
18 going to be credible, given the level of response that we may
19 engender in this project. Therefore, if we proceed, then we
20 need to allocate sufficient resources.

21 I can't tell you whether half-a-million dollars is
22 sufficient, or not sufficient, or more than sufficient, but

1 that was my concern, and that may have pumped up the figures.

2 Now, if this is what it actually takes to make an
3 adequate and defensible study of the problem, then we ought
4 to make a decision whether we want to commit that amount for
5 this subject and not commit it somewhere else.

6 I'm not advocating we commit this much to this
7 topic, but I think it's very important that we got the sense
8 from the staff as to what they think it would take to really
9 do this in a way that would withstand the national
10 baseball --

11 VICE CHAIRPERSON REYNOSO: I remember the
12 discussion very well, and we all agreed that if we were to do
13 it, because it is such a high-visibility one, we'd better
14 take the time and resources to do it right, and I don't
15 disagree with that.

16 But as indicated by Chris, none of these are
17 binding on us, and the time will come when we make the
18 decision, and at that point we'll decide, "Well, is this a
19 high enough priority for us?"

20 CHAIRPERSON BERRY: It is true that Commissioner
21 Anderson was the culprit. I do remember that. I remember
22 that.

1 Yes, Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: That's the first time
3 I've associated Carl with the desire to spend more money.

4 (Laughter.)

5 COMMISSIONER ANDERSON: A lapse of some sort, I'm
6 sure.

7 (Laughter.)

8 COMMISSIONER ANDERSON: Although these things are
9 not binding, Cruz, I think they do collect constituents and
10 momentum of their own, both inside and outside, so there's
11 some danger in leaving something on, that then taking it off
12 becomes a political act.

13 The Post reports that today the Commission just
14 voted to not do something that they had previously voted to
15 do, and that's because of some sinister -- so that's the
16 concern I've got.

17 CHAIRPERSON BERRY: And Anderson was heard to
18 mention season tickets in this regard.

19 (Laughter.)

20 COMMISSIONER ANDERSON: Which weren't forthcoming.

21 VICE CHAIRPERSON REYNOSO: The reality is that if
22 we do it, we would have less of a chance of getting the

1 season tickets, because one of the focuses was going to be on
2 administration, right?

3 COMMISSIONER ANDERSON: We're all going to be on
4 long waiting lists.

5 (Laughter.)

6 COMMISSIONER ANDERSON: I think that the chances of
7 us getting 13.7 is pretty slim; and, therefore, if there's an
8 informal sense that this might be the first to go, I don't
9 see how it hurts us to leave it on.

10 VICE CHAIRPERSON REYNOSO: My sense is that we
11 voted to put it on, the staff has done a lot of work on "How
12 can we do it really right?", and so it came up with the high
13 figures. I'd just as soon wait. If by chance we get \$13
14 million, then I might be quite prepared to go forward. I
15 won't hold my breath.

16 VICE CHAIRPERSON REYNOSO: If we get \$13 million, I
17 will have other proposals.

18 COMMISSIONER ANDERSON: And you will like them
19 better, Cruz.

20 CHAIRPERSON BERRY: Why don't we do the following?

21 COMMISSIONER EDLEY: Madam Chair?

1 CHAIRPERSON BERRY: Yes?

2 COMMISSIONER EDLEY: I'm trying to get on --

3 CHAIRPERSON BERRY: Commissioner Edley.

4 COMMISSIONER EDLEY: -- is that all right?

5 CHAIRPERSON BERRY: Yes, that's fine.

6 VICE CHAIRPERSON REYNOSO: Do you want to take a
7 vote?

8 CHAIRPERSON BERRY: Do you want to take a vote in
9 favor of the budget?

10 COMMISSIONER EDLEY: I do.

11 CHAIRPERSON BERRY: Okay. Why don't we take a
12 vote?

13 COMMISSIONER EDLEY: I'm sure it's not going to be
14 that close.

15 (Laughter.)

16 CHAIRPERSON BERRY: Okay. But you're on record as
17 saying we should just go forward with it and make adjustments
18 as we come back, right?

19 COMMISSIONER EDLEY: Yes. That's correct.

20 CHAIRPERSON BERRY: Okay. Commissioner Edley, you
21 promise us on the record that you will review your schedule
22 to make sure that you are available for Commission meetings

1 in the future --

2 COMMISSIONER EDLEY: Absolutely. Actually, this
3 doesn't count as available?

4 CHAIRPERSON BERRY: Well, I mean so that we might
5 see your smiling face.

6 (Laughter.)

7 COMMISSIONER EDLEY: I hoped you explained to
8 everybody that I'm at a BODA meeting.

9 CHAIRPERSON BERRY: We know this. We know this,
10 and you're forgiven. Okay?

11 (Laughter.)

12 COMMISSIONER EDLEY: Take care, everyone.

13 CHAIRPERSON BERRY: All right. See you. Goodbye.

14 COMMISSIONER EDLEY: Have a good summer.

15 CHAIRPERSON BERRY: Okay. You, too.

16 Why don't we say that we will do what everyone here
17 has said, or most people, which is understand that the
18 discrimination in professional sports is the first candidate
19 to be reevaluated and excised, probably, assuming that we do
20 not get the resources that we have asked for, and that even
21 if we do, we wish to reevaluate whether or not we want to go
22 forward with that, so that it's not a question of taking it

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1 off? We've already said we probably -- we're just leaving it
2 there as a plug for now.

3 Yes?

4 STAFF DIRECTOR. MOY: Madam Chair, would it be
5 helpful -- in January of this year we submitted a memorandum
6 for the Commissioners on project planning. Would it help if
7 I refreshed everyone's memory about what we had there?

8 CHAIRPERSON BERRY: Do you mean in professional
9 sports?

10 STAFF DIRECTOR. MOY: Well, the project concepts
11 that we had.

12 CHAIRPERSON BERRY: We had professional sports --

13 STAFF DIRECTOR MOY: Right.

14 CHAIRPERSON BERRY: -- that's the point. We had
15 these, the same ones here, right?

16 STAFF DIRECTOR MOY: Yes. And it goes over to the
17 next page.

18 CHAIRPERSON BERRY: Do you mean all the ones we
19 looked at and rejected --

20 STAFF DIRECTOR MOY: Right. Yes.

21 CHAIRPERSON BERRY: -- the ones that we didn't do?

1 STAFF DIRECTOR MOY: Right.

2 CHAIRPERSON BERRY: See, the other problem is that
3 we were comparing a list of projects and picking the ones
4 that we would go with and rejecting the ones that we didn't
5 want; that's what we did. So we don't know whether there is
6 something someone has thought of since then --

7 MS. MOY: Correct.

8 CHAIRPERSON BERRY: -- that could be added, because
9 we had a list and we said, "Okay. In terms of priorities,
10 what's your first priority, second, third?", and these were
11 the ones that came out in rank order, ones that people would
12 be willing to do. There are a lot of others that are not on
13 here.

14 So why don't we just leave it at that? People can
15 review this document on their own before September --

16 MS. MOY: Okay.

17 CHAIRPERSON BERRY: -- and if in September you're
18 prepared to make some changes, we can do that, and we can do
19 it anywhere in the process as we go along, before OMB has
20 approved our budget. So why don't we just proceed in that
21 way?

1 Is there another one that you would like us to
2 consider as a candidate for reevaluation, Yvonne, or anyone
3 else?

4 COMMISSIONER LEE: No. That's it.

5 CHAIRPERSON BERRY: That's it?

6 COMMISSIONER LEE: Yes.

7 CHAIRPERSON BERRY: Are there any that other
8 Commissioners would like to look at as a candidate for
9 reevaluation?

10 (No response.)

11 CHAIRPERSON BERRY: Okay. Well, then all in favor
12 of sending the budget forward, indicate by saying aye.

13 (Chorus of ayes.)

14 CHAIRPERSON BERRY: Opposed?

15 COMMISSIONER ANDERSON: No.

16 COMMISSIONER REDENBAUGH: No.

17 CHAIRPERSON BERRY: Did you say no, Russell?

18 COMMISSIONER REDENBAUGH: I did.

19 CHAIRPERSON BERRY: Okay. What would you like to
20 do to the budget so that you can vote to send it forward?

21 COMMISSIONER REDENBAUGH: Nothing.

1 COMMISSIONER ANDERSON: Well, if I may address it,
2 it goes back to just the difference of philosophy on what's
3 the best way to present our case --

4 CHAIRPERSON BERRY: The -- yes.

5 COMMISSIONER ANDERSON: -- which is my view that we
6 ought to go in with a lower figure and fight hard for things
7 that we think are absolutely necessary, rather than going
8 with a higher figure. But we've had this discussion before,
9 so --

10 CHAIRPERSON BERRY: We don't mind having it again.
11 I don't. So if you were to do that, what figure would you
12 think would be a reasonable figure to go in with? We're at
13 8.9-something-or-other now. Just off the top of your head,
14 what would you consider in terms of numbers to be a
15 reasonable number?

16 Commissioner Redenbaugh?

17 COMMISSIONER REDENBAUGH: What do you think we're
18 going to have for 2000?

19 CHAIRPERSON BERRY: It depends on how the budget
20 process goes. If the budget process is -- results in an
21 appropriations bill signed for each appropriations bill
22 before the end of the fiscal year, then we are likely to be

1 where we are now. That would be my guess.

2 COMMISSIONER REDENBAUGH: Roughly, 8.9?

3 CHAIRPERSON BERRY: Yes. If the budget process
4 goes into some negotiation at the end, which is referred to
5 in some circles in Washington as a train wreck, then we're
6 likely to get an increase. That would be my guess. And if
7 we were to get an increase, it would be probably in the
8 range -- and I'm just guessing -- of no more than, say,
9 \$1 million-and-a-half, or something.

10 COMMISSIONER REDENBAUGH: So this is something in
11 favor of a train wreck.

12 CHAIRPERSON BERRY: I didn't -- that's your
13 conclusion, not mine. So if you were thinking along those
14 lines, what would you consider to be a reasonable amount of
15 increase that you could, under those circumstances, say did
16 not -- that did pass the visibility test?

17 COMMISSIONER ANDERSON: I don't want to avoid an
18 answer. It's hard to give a figure. What I would be more --
19 what I think would be a better strategy would be to
20 prioritize our projects as to what we think is important,
21 also looking as to what might also garner support on the
22 Hill, closer to a majority support, and then see what those

1 numbers came out to be, and go up and fight hard for those --

2 CHAIRPERSON BERRY: Okay.

3 COMMISSIONER ANDERSON: -- but we're a little bit
4 far along in the process this year to do that. We might
5 think about it for next time around, but I think we ought to
6 just move forward with this.

7 CHAIRPERSON BERRY: Well, we can do that, but I
8 would be willing to entertain -- we have a few minutes --
9 what you think would be a good strategy. To me this is not a
10 matter of ideology; it's a matter of trying to get some money
11 so that the staff can get raises, and people can function and
12 do what they need to do.

13 So are there any projects on this list that you
14 think are things that one might get consensus, and then have
15 some numbers associated with those, because we can reevaluate
16 how we want to ask for it, if we feel like it?

17 I'm not bound to any -- if you think there are one
18 or two things here that folks would not find offensive and
19 there would be some consensus about, these are issues that
20 people might want to -- think it's okay to work on, and that
21 you would be willing to support as ideas that the Commission
22 should be working on, projects that we should be working on,

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1 I'd be willing to entertain that, and whatever budget figure
2 you thought was reasonable, associated with that.

3 I don't mean to put you on the spot, but I'm just
4 saying that I'm open to that.

5 Yes, Commissioner Redenbaugh?

6 COMMISSIONER REDENBAUGH: Well, Carl, while you
7 think on that, "What's the level?", I think this is going to
8 end up being a question for you, George, which is: What's
9 the level of funding that we would need to fill the vacancies
10 we have and bring the staff pay up, but not -- sort of catch
11 us up, but not yet move us forward? So that may be as the
12 baseline, is the way I'm thinking about.

13 To close the gap, we need to get to "X." Then
14 above "X," that would then imply these other interesting
15 projects, which we would take on and do.

16 So I would argue that we could think about it in
17 two pieces, the piece for these projects, and the piece to
18 sort of get us up to our rated capacity.

19 CHAIRPERSON BERRY: Staff director, do you want to
20 answer that, or do you want George to answer it? What do you
21 want to do?

1 STAFF DIRECTOR MOY: George can.

2 CHAIRPERSON BERRY: George, do you have any
3 information, or Kathy, or whoever?

4 MR. HARBISON: That figure would be approximately
5 \$7.5 million to \$8 million in salaries and benefits.

6 CHAIRPERSON BERRY: You mean if we didn't do any
7 projects.

8 MR. HARBISON: You can't say --

9 CHAIRPERSON BERRY: I know; I can't answer it that
10 way.

11 COMMISSIONER REDENBAUGH: Yes.

12 CHAIRPERSON BERRY: But his question is that if you
13 took the budget we have right now, the one we have --

14 COMMISSIONER REDENBAUGH: The \$8.9 million.

15 CHAIRPERSON BERRY: -- right -- and you said,
16 "We're going to fill all the vacancies, and we're going to
17 give all the staff the promotions that they would be able to
18 get," if they're on a career ladder or not on a career
19 ladder, say if somebody is an SES-1 and it's time for them to
20 be an SES-2, and they've done a good job, fill all the
21 vacancies, give people all the increases, whether they're
22 married, or cost of living, or whatever, pay for all the

1 other stuff that we have, and have the projects that we're
2 already doing, continue to do them, that go into the next
3 fiscal year, above \$8.95 million, about how much money should
4 we at least be asking for before we ask for new project
5 money?

6 MR. HARBISON: That's a tough question, but if I
7 were going to venture a figure on it, I would say at least \$1
8 million.

9 CHAIRPERSON BERRY: So it would take at least \$1
10 million to do that. So that gives us one answer, which is
11 what I thought he was going to say. So that would be that
12 you'd be asking for \$9.95 million, which rounds off to \$10
13 million.

14 COMMISSIONER REDENBAUGH: Yes.

15 CHAIRPERSON BERRY: And then you'd have to go from
16 there to see whether any of these projects -- and we have
17 numbers down here alongside the projects, so you could go
18 through here and figure out whether there are some here that
19 you thought there would be consensus on, and starting with a
20 base of \$10 million, or \$9.95 million, pick the ones that you
21 think somebody would be willing to support.

1 COMMISSIONER REDENBAUGH: Does this approach make
2 sense, that is, that we need to get a baseline of roughly \$10
3 million to get us up to the commitments we've made, both
4 externally and internally, and then above that, we can think
5 about additional projects?

6 COMMISSIONER ANDERSON: So if I could ask the --
7 the bottom line figure here we have, which is \$13.7 million,
8 includes that \$1 million that you're talking about.

9 CHAIRPERSON BERRY: Well, I did those. The one
10 we've got right now, right, George?

11 (No verbal response.)

12 VICE CHAIRPERSON REYNOSO: Madam Chair, what
13 Commissioner Redenbaugh suggests makes a lot of sense
14 rationally. As I understand the process, it's irrational, so
15 I'm not -- that's what bothers me.

16 I understand that this is all very preliminary,
17 which will go to the administrative part of government first
18 before getting to Congress, which will actually do the
19 budgeting for us.

20 To come up with a realistic number when we go to
21 Congress might make sense, but if we go with that number,
22 administratively, at least our experience has been that will

1 be cut down, and then we'll end up with an unrealistically
2 lower figure going to Congress.

3 Since the process is not rational, at least in the
4 sense that Russell is proposing, that's the conflict that I
5 have.

6 COMMISSIONER REDENBAUGH: Yes. Well, I think it's
7 a valid one.

8 CHAIRPERSON BERRY: In other words, the process
9 doesn't let you ask for exactly what you think will come
10 out --

11 VICE CHAIRPERSON REYNOSO: Right. Right.

12 CHAIRPERSON BERRY: -- at the end of the process.

13 VICE CHAIRPERSON REYNOSO: Right.

14 CHAIRPERSON BERRY: Well, at least if we could have
15 an understanding among ourselves that as we go forward with
16 this budget -- which I think we voted -- didn't we vote on
17 the --

18 COMMISSIONER REDENBAUGH: Yes. It wasn't close.

19 CHAIRPERSON BERRY: -- right -- that even the folks
20 who voted against the budget would be of a mind to think that
21 if we ended up after OMB did whatever their deeds are, with
22 \$10 million, that that would not be an outrageous sum of

1 money for the Commission to ask the Congress to give us --

2 COMMISSIONER REDENBAUGH: And fight for.

3 CHAIRPERSON BERRY: -- and fight for, just for the
4 reasons that we've given here. So as we go forward, let's
5 leave it at that, that all of us agree with that much at
6 least --

7 COMMISSIONER REDENBAUGH: Yes. That makes sense.

8 CHAIRPERSON BERRY: -- and we'll see where we come
9 out at the end.

10 Yes, Commissioner Redenbaugh?

11 COMMISSIONER REDENBAUGH: We've disposed of this,
12 right?

13 CHAIRPERSON BERRY: Right.

14 COMMISSIONER REDENBAUGH: I have a new issue, which
15 is not on the agenda, I don't think --

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER REDENBAUGH: -- and that is the AIs.

18 CHAIRPERSON BERRY: Okay.

19 COMMISSIONER REDENBAUGH: Did we discuss --

20 CHAIRPERSON BERRY: Yes, that was -- we'll go back
21 to the staff director's report --

1 COMMISSIONER REDENBAUGH: Right. I --

2 CHAIRPERSON BERRY: That's all right.

3 COMMISSIONER REDENBAUGH: -- must have dozed
4 through that part. There are a couple of things. One is,
5 these AIs are signed by the staff director --

6 CHAIRPERSON BERRY: Right.

7 COMMISSIONER REDENBAUGH: -- as a delegation of
8 authority from and to the staff director. In the past the
9 AIs have been signed by the Chair, which seems to be a
10 practice which is consistent with, I think, our statute and
11 certainly our long-standing practices, is that there is this
12 presumption of delegation of administrative responsibility
13 from the eight of us.

14 So I think this is just a small procedural point,
15 but I think, unless there's been a change, which I don't
16 think we've discussed, we ought to stick with the practice
17 we've had in the past.

18 CHAIRPERSON BERRY: Does anyone have -- there's a
19 list we have of whoever is -- Peter, do you know the answer
20 to this?

21 MR. REILLY: I'm trying to find it right now.

1 CHAIRPERSON BERRY: Peter is finding the answer to
2 this question.

3 COMMISSIONER REDENBAUGH: All right.

4 CHAIRPERSON BERRY: While he's finding it, I
5 thought the AIs were signed by the staff director, and that
6 they covered the staff. Were you saying something? Can
7 Carol-Lee speak? Carol-Lee wants to say something.

8 MS. HURLEY: It's my understanding that the AIs
9 have been signed by the staff director, and in some cases a
10 delegation from the staff director to the director of
11 management has been made -- that was in the last 20 years or
12 so -- and that during Chairman Pendleton's Chairmanship, he
13 signed one AI. I don't remember which one it was, but that
14 was the only one he signed. I believe that's correct. I
15 could be wrong.

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER REDENBAUGH: But we've done it both
18 ways.

19 CHAIRPERSON BERRY: Do you want -- staff director,
20 are you guys having a consultation here?

21 MS. MOORE: There's a --

1 CHAIRPERSON BERRY: General counsel?

2 MS. MOORE: This is acting solicitor, actually,
3 here. There's always one AI that is signed by the
4 Chairperson for the Commissioners, delegating the
5 responsibility to the staff director to produce the remaining
6 AIs.

7 CHAIRPERSON BERRY: And that's the way it's always
8 been?

9 MS. MOORE: That's the way it's always been.

10 CHAIRPERSON BERRY: Was it done this way this time,
11 or do we know? I guess it was. You signed them all.

12 STAFF DIRECTOR MOY: Yes.

13 CHAIRPERSON BERRY: So that the AIs -- and the AIs
14 legally cover the administration of the agency, is that
15 right, the day-to-day administration of the agency --

16 COMMISSIONER REDENBAUGH: Yes.

17 CHAIRPERSON BERRY: -- is that correct?

18 COMMISSIONER REDENBAUGH: That's my understanding.

19 CHAIRPERSON BERRY: So, therefore, that's why the
20 staff director signs them, since the staff director has the
21 day-to-day responsibility for the agency.

1 COMMISSIONER REDENBAUGH: Okay.

2 CHAIRPERSON BERRY: Okay?

3 COMMISSIONER REDENBAUGH: Yes.

4 CHAIRPERSON BERRY: All right.

5 COMMISSIONER REDENBAUGH: Now I have a substantive
6 question. Having not reviewed all these, my comments are
7 pretty short, but -- well, first of all, when we discussed
8 this before, did we intend for the Commissioners to review
9 these before they were implemented?

10 CHAIRPERSON BERRY: No.

11 COMMISSIONER REDENBAUGH: We did not.

12 CHAIRPERSON BERRY: No. The reason why we didn't
13 is because our understanding was that they were the staff
14 director's function, and that if anyone complained about
15 them, you know, somewhere down the road, like some staff
16 member, or somebody said, "We don't believe this covers
17 whatever, and we don't like this," then we would ask the
18 staff director about it, and consider whether she had gone
19 outside her scope of authority in some way when that
20 happened, but that we were just going to leave it to the
21 staff director to be responsible for that for the time being,
22 because it's the day-to-day management end of stuff.

1 COMMISSIONER REDENBAUGH: Now I have one that I
2 think is maybe either over that or on the line -- I'm not
3 sure -- and that is the one on the AI dealing with public
4 affairs.

5 CHAIRPERSON BERRY: Okay.

6 COMMISSIONER REDENBAUGH: The prior AI said, in
7 terms of policy, who could speak for the Commission or the
8 Commissioners. I can't get exactly the one I'm thinking
9 about, but -- and additionally enumerated several staff
10 members. The current one says who can speak on policy is
11 only the Chair.

12 I can't recall the second part of it, but I want to
13 ask, what does this mean? What's policy here?

14 CHAIRPERSON BERRY: My understanding -- and I
15 haven't read that AI recently. I haven't read it. My
16 understanding, as long as I've been on the Commission, is
17 that the Chair of the Commission speaks for the Commission as
18 a body.

19 That is, when the Commission has a policy on
20 something, and the policies are things that the Commission
21 has voted on, or acted on, or has reports about, or has taken
22 an official position on, that the Chairperson of the

1 Commission is the spokesperson for the Commission on matters
2 where the Commission has taken a policy position.

3 That does not mean that Commissioners cannot say
4 whatever they want to say about those policies, and I have in
5 the past, when I've not been the Chair, said whatever I felt
6 like saying about whatever I wanted to.

7 COMMISSIONER REDENBAUGH: I actually remember that.

8 CHAIRPERSON BERRY: But all it means is that when I
9 spoke, I was not necessarily uttering Commission policy,
10 because I was not bound by the idea that I was the Chair, and
11 I was supposed to be uttering Commission policy.

12 Now, we have had Chairs in the past who have made
13 statements that were not Commission policy. In fact, in the
14 past there was a Commission meeting at which there was a big
15 discussion about that particular Chair uttering things that
16 were not policy and people thinking that it was policy.

17 At that meeting, as I recall, the conclusion was
18 that in his capacity as Chair, when he said, "The Civil
19 Rights Commission has done 'X,' or believes 'X,' or thinks
20 'X,' or whatever," it should be related to some, you know,
21 either a report, or some document, or some action that the
22 Commission had taken which was consistent with what he said,

1 but that if he spoke as an individual, although identified as
2 Chair, he could say whatever he wanted to say, too.

3 So the short answer is that the Chairperson of the
4 Commission is supposed to express matters of policy, like if
5 the Commission has a report on education and Title IX, say,
6 that it voted, the Chairperson of the Commission can make a
7 statement saying the Commissioners believe XYZ, ABC about
8 Title IX and education. Okay? Any other Commissioner can
9 say anything they feel like, but they cannot say that they
10 are expressing the viewpoint of the Commission, unless it is
11 the viewpoint of the Commission. Do you see what I mean?

12 COMMISSIONER REDENBAUGH: I do.

13 CHAIRPERSON BERRY: All right.

14 Yes?

15 COMMISSIONER ANDERSON: I just, today, looking at
16 AI that I think Commissioner Redenbaugh is referring to --
17 and I know it's a little bit difficult without having the
18 text -- but just seeing it, at least my initial reaction, the
19 new one says the Commission Chair is the spokesperson for the
20 Commission.

21 The staff director and other staff may speak on
22 behalf of the Commission concerning approved activities, and

1 I think that's fine with me, in terms of statement of policy.

2 The old one says the Commissioners, staff director,
3 assistant staff director for congressional public affairs,
4 and the present communications division speak with equal
5 authority on Commission policy: "The authority can be
6 delegated by any of the above to specified individuals,
7 either on a case-by-case basis or on a permanent basis."

8 Now, in my own view, we may have some problems with
9 it, but if you shrink that statement down to the following,
10 that the Commissioners speak with equal authority on
11 Commission policy, that, in my view, is probably a good
12 statement of our policy and is not mutually exclusive to
13 saying that the Commission Chair is the spokesperson for the
14 Commission, because I do think all of us, if we are accurate
15 in talking about what the Commission has done and what
16 Commission policy is, have equal authority to do that. We
17 can't represent ourselves as the spokesperson for the
18 Commission, because I think myself that that is the function
19 of the Chair.

20 What I would think ought to be done is for both of
21 those principles to be incorporated in the public information
22 function, because I do think that one without the other is

1 perhaps misleading.

2 The point I would draw from this is that maybe
3 there are some of these AIs that we ought to be looking at.
4 I don't have any interest in looking at all of them, but
5 maybe there are some that actually refer to what
6 Commissioners are doing and the relationship between
7 Commissioners and the staff, or among ourselves, that we
8 ought to have a look at. That would just be my comment.

9 I do think that the delegation of authority to the
10 staff director, the most recent one was signed by the staff
11 director, not signed by the Chair.

12 So I hear what you're saying, Commissioner
13 Redenbaugh.

14 I sort of think that maybe there ought to be a
15 little more Commissioner input into these AIs generally, but
16 I'm not going to have to live under them as long as some of
17 the new Commissioners, so that may be something we want to
18 reflect on a little bit in September, or whatever.

19 CHAIRPERSON BERRY: Do the other Commissioners have
20 comments before I say something?

21 (No response.)

1 CHAIRPERSON BERRY: I was going to suggest that
2 Commissioners may look at the AI in question to see if they
3 have any concerns about it. If they have concerns, we can
4 discuss them.

5 If Commissioners want to see all of the AIs, they
6 can have the staff give them some, and they can read them, or
7 the whole thing; and if they have any concerns about them,
8 they should express them. If the delegation of authority --
9 and we can check; I don't even remember the delegation of
10 authority -- needs to be signed in some way that it's not,
11 I'm perfectly happy to do that.

12 So I think that what we should do is look at the --
13 rather than debating the issues that Commissioner Anderson
14 has raised, since we don't have it before us and we haven't
15 read it and we're not prepared to discuss it, Commissioners
16 ought to get a copy, if they're interested, of that AI or
17 others, and then we will discuss it when Commissioners are
18 ready to do so.

19 COMMISSIONER REDENBAUGH: Good.

20 CHAIRPERSON BERRY: Okay. The next item on the
21 agenda is the state advisory committee reports. We have
22 "Race Relations in Springfield, Missouri" and "Equal Housing

1 Opportunities in New York" as the two reports. Could I get a
2 motion to approve the first one, "Race Relations in
3 Springfield, Missouri"?

4 VICE CHAIRPERSON REYNOSO: So move.

5 COMMISSIONER REDENBAUGH: Second.

6 CHAIRPERSON BERRY: Okay. Any discussion on the
7 "Race Relations in Springfield, Missouri"? It's a summary
8 report on the civil rights empowerment forum held in
9 Springfield on August 13, 1997, to get information from
10 various governmental agencies about how Springfield residents
11 could gain access to and navigate the processes for filing
12 discrimination complaints. Any discussion?

13 (No response.)

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

16 (Chorus of ayes.)

17 CHAIRPERSON BERRY: Opposed?

18 (No response.)

19 CHAIRPERSON BERRY: So ordered.

20 The second one is on the housing in New York.
21 Could I get a motion to approve it?

1 COMMISSIONER LEE: So move.

2 VICE CHAIRPERSON REYNOSO: Second.

3 CHAIRPERSON BERRY: Discussion? This is an
4 evaluation of Section A, housing programs in Buffalo,
5 Rochester, and Syracuse, and based on three fact-finding
6 meetings held in those cities, with representatives from HUD,
7 local public housing agencies, Fair Housing advocacy groups,
8 community representatives, landlords, and Section 8
9 recipients. Any discussion?

10 (No response.)

11 CHAIRPERSON BERRY: All those in favor of approving
12 the report, or accepting the report, indicate by saying aye.

13 (Chorus of ayes.)

14 CHAIRPERSON BERRY: Opposed?

15 (No response.)

16 CHAIRPERSON BERRY: So ordered. Okay.

17 There are some appendices missing from the Missouri
18 report, is that correct? So we'll assume that they will be
19 added, the appendices? Okay.

20 Future agenda items? Does anyone have any future
21 agenda items?

1 Yes, staff director?

2 MS. MOY: I would like to remind the Commissioners
3 before they all go on vacation that between now and the end
4 of the fiscal year, September 30th, we would like to have an
5 estimate of what your expenses might be, so that we can do
6 our closeout.

7 CHAIRPERSON BERRY: You need it by when?

8 MS. MOY: September.

9 CHAIRPERSON BERRY: When did you need it by? The
10 first week in September. Expenses for this fiscal year, so
11 that you can do a closeout.

12 MS. MOY: Correct.

13 CHAIRPERSON BERRY: Okay. We appreciate that.

14 MS. MOY: Thank you.

15 CHAIRPERSON BERRY: Can I get a motion to adjourn?

16 MS. MOY: I have one more.

17 CHAIRPERSON BERRY: You have another one? Okay.
18 Could I please do what?

19 MS. MOY: Could you please --

20 CHAIRPERSON BERRY: Oh. If Commissioners want to
21 see any particular AI or all of the AIs, could they please
22 let the staff director know directly, or have their

1 assistants inform -- who, Kim or --

2 MS. MOY: Kim or Lisa.

3 CHAIRPERSON BERRY: Kim or Lisa. So that's what
4 you need to do if you need to have -- if you want some AIs.
5 Okay.

6 Could I get a motion to adjourn?

7 VICE CHAIRPERSON REYNOSO: So moved.

8 CHAIRPERSON BERRY: Second?

9 COMMISSIONER REDENBAUGH: Second.

10 CHAIRPERSON BERRY: So ordered. Thank you very
11 much.

12 (Thereupon, at 11:32 a.m., the meeting
13 was adjourned.)

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