

U.S. COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING

LIBRARY

U.S. COMMISSION ON CIVIL RIGHTS

Friday, November 5, 1999

Washington, D.C.

The Commission convened at 9:36 a.m., in Room 546,
YWCA Building, 624 Ninth Street, N.W., Washington, D.C.
20425, Chairperson Mary Frances Berry, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON
CRUZ REYNOSO, VICE CHAIRPERSON
CARL A. ANDERSON, COMMISSIONER (Via Telephone)
CHRISTOPHER EDLEY, JR., COMMISSIONER
YVONNE Y. LEE, COMMISSIONER
ELSIE M. MEEKS, COMMISSIONER
RUBY G. MOY, STAFF DIRECTOR

STAFF PRESENT:

KIMBERLEY ALTON
DAVID ARONSON
KI-TAEK CHUN
PAMELA A. DUNSTON
BETTY EDMISTON
M. CATHERINE GATES
EDWARD A. HAILES, JR.
GEORGE M. HARBISON
MYRNA HERNANDEZ
CAROL-LEE HURLEY
FREDERICK D. ISLER
STEPHANIE Y. MOORE, General Counsel
PETER REILLY, Parliamentarian
KWANA ROYAL
MARCIA TYLER
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

PATRICK DUFFY
CHARLOTTE PONTICELLI
KRISHNA TOOLSIE
EFFIE TURNBULL

A G E N D A

I.	Approval of Agenda.....	4
II.	Approval of Minutes of September 17 and October 1, 1999 Meetings.....	9
III.	Announcements.....	10
IV.	Staff Director's Report.....	28
V.	Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume VII: The Mississippi Delta Report.....	75
VI.	State Advisory Committee Report Employment Opportunities for Minorities in Montgomery County, Ohio (Ohio).....	82
VII.	State Advisory Committee Appointment for Kentucky.....	84
VIII.	Future Agenda Items.....	85

P R O C E E D I N G S

CHAIRPERSON BERRY: The meeting will come to order.

I. Approval of Agenda

The first item on the agenda is to approve the agenda, and I would like to suggest in approving the agenda that one of the commissioners has asked--although I don't see her, but Commissioner Lee is the one who asked--that we defer consideration of the California SAC appointments until a later time. She has asked that they be reviewed again. This is not about the issue of one person who was recommended for reappointment who is complaining, although that issue might be taken up, but she just thinks that the appointments in general need to be reviewed again before there is some Commission action and has simply asked that we defer it.

I would be willing to strike the California appointments from the agenda for the time being if there is no objection from any of the commissioners.

VICE CHAIRPERSON REYNOSO: Madam Chair, I just have a question. I take it there would be no impediment to the continued work of the Advisory Committee if we postpone it.

CHAIRPERSON BERRY: No. They will just continue on as they are until such time as we in fact approve appointments.

VICE CHAIRPERSON REYNOSO: Okay.

CHAIRPERSON BERRY: So if there is no objection--yes, Commissioner Edley?

1 COMMISSIONER EDLEY: I have no objection on the agenda item,
2 but I would say that I would appreciate getting a little more
3 information about the activities of the California Commission, because
4 what I saw looked extraordinarily thin given the number and importance
5 of the issues that I know are facing the State of California.

6 So I was hoping that there was actually more that could be
7 described about what is going on in California than we had.

8 CHAIRPERSON BERRY: Okay. Could we then get--

9 COMMISSIONER EDLEY: The reason I say that, Madam Chair, is
10 I just--if they are doing as little as what is there, then it seems
11 like maybe a substantial change in the membership of the committee
12 should be in order. So I'd like to know what else is going on. That's
13 all.

14 CHAIRPERSON BERRY: Yes. One of the things that we had
15 suggested, I think, or someone had suggested at one point, was that the
16 Staff Director have a review done of all of the SACs, members, and the
17 work of the SACs, keeping in mind the resources that are available, to
18 see how long everybody has been on there, what they have been doing
19 over the years, and whether there is a need for making some changes on
20 all of them, without regard to whether appointments are up at a
21 particular time--just to take a look and see what the SACs--a review of
22 the SACs.

23 I think that that is something that we ought to do, but in
24 the case of California, when we take it up again, we will have a more
25 extended discussion and ask the Staff Director to provide additional

1 information on whatever this SAC has been doing.

2 Yes?

3 VICE CHAIRPERSON REYNOSO: Madam Chair, just a couple of
4 comments. I noticed, actually, that we have quite a change recommended
5 in the membership of the Commission, or of the Advisory Committee, this
6 time, so it will be bringing in new blood. But I also want to comment
7 that from the members in California, the main constraint that I
8 understand they have had is that they only meet twice a year. And I
9 think that that is true actually of the advisory committees in other
10 States, and a query--how much can they do and plan, meeting twice a
11 year--and that has to do with the issue of resources.

12 In a place like California, where so many things are
13 happening in the civil rights areas--and I want to speak to one of them
14 later on--we could get a lot of gain from a very active State Advisory
15 Committee. But thus far, the way it has been structured in terms of
16 regional personnel to help them with writing reports and all that, and
17 their meeting just twice a year, it has been very difficult.

18 I notice, for example, that only now are they finishing up
19 the report of the hearings we had in Santa Rosa, now how long ago--
20 nearly two years ago--and I am sure that that has to do just with the
21 issue of personnel.

22 So I think that has been one of the principal issues that
23 we have had to deal with.

24 CHAIRPERSON BERRY: And one of the things we need to look at
25 when we have the planning meeting in January is to review resource

1 allocation again to see whether there is some way to have more
2 resources allocated to the SACs so that they can have more frequent
3 meetings and so that they can get their reports done, and to have
4 another discussion that we have had before about how to get SAC reports
5 written. Now they are written by people in the regions, and the
6 regional offices all have very small staffs, and there was a suggestion
7 made once, I have forgotten by whom, that the SAC reports might be
8 written centrally--that is, that there might be a team of folks who
9 write reports--and that this might be a way to expedite getting them
10 done. I don't remember why we didn't do that or what the discussion
11 was about, but on the overall question of how do you get maximum
12 utility out of the SACs, how do you get work done, when we have had
13 very hot issues where the Commission has gotten involved, we have had
14 reports written centrally with some help from the SAC, as in the church
15 fires, when we went down and did all those forums in the State--you
16 will remember that, Carl--

17 COMMISSIONER ANDERSON: Yes, I do.

18 CHAIRPERSON BERRY: --Carl was with me in some of the most
19 heated ones, that's why, and Yvonne was there, I remember--that I think
20 somebody in the Staff Director's office did a lot of the work on
21 getting the reports out so we could get them out quickly, because we
22 had promised people they would be out in a certain deadline. It was a
23 really hot kind of issue, as everyone will remember.

24 So we need to, at the planning meeting in January, have a
25 big discussion about what to do about the SACs. Many of the SAC

1 members are unhappy because they aren't able to do as much as they
2 would like to do and that the regional offices aren't able to give them
3 the support that they think they should get.

4 There was a time also that the Congress--and I have
5 forgotten when this was--had stipulated that a certain percentage of
6 the Commission's resources had to go into SACs, and there were earmarks
7 and things like that, but those were taken away. It is just something
8 we need to discuss.

9 But I think that for now, what we need to do is to--Yvonne,
10 I was mentioning that you would like the California SAC appointments
11 deferred; that is what we are discussing, and I was saying that without
12 objection, we would simply take those off the agenda for now, and then
13 we got into a discussion of what SACs do and how much they have done
14 and whether they do anything. So that's where we are.

15 All right. Yes, Vice Chair.

16 VICE CHAIRPERSON REYNOSO: Madam Chair, on the agenda, I
17 just want to discuss someplace--maybe it is proper under Announcements--
18 -to raise the issue that we have discussed a long, long time ago about
19 affirmative action in California. We had decided maybe a couple of
20 years ago that it would be more effective to wait until the anti-
21 affirmative action had been in place for a couple of years to then go
22 in and examine to see what the actual effect had been. And my sense is
23 that it may be about time to do that, so I just want to raise that
24 sometime during the morning--I don't know--maybe under Roman III.

1 CHAIRPERSON BERRY: Okay.

2 VICE CHAIRPERSON REYNOSO: At least just raise it. I'm not
3 sure that it will be an action item, but I want to raise the issue so
4 that we can discuss it maybe in January.

5 CHAIRPERSON BERRY: Okay. We can discuss it there, or we
6 can discuss it under the Staff Director's Report, since it is an
7 ongoing--

8 VICE CHAIRPERSON REYNOSO: Okay. Item IV would be fine.

9 CHAIRPERSON BERRY: Why don't we do it under IV?

10 VICE CHAIRPERSON REYNOSO: Thank you, Madam Chair.

11 CHAIRPERSON BERRY: Yes, Commissioner Meeks.

12 COMMISSIONER MEEKS: I guess I would like to add discussion
13 again of the Native American issues in South Dakota that keep compiling
14 themselves.

15 CHAIRPERSON BERRY: All right. We will put that also under
16 Item IV, the Staff Director's Report, since it is an ongoing discussion
17 that we have had before and not a new item.

18 COMMISSIONER MEEKS: Thank you.

19 II. Approval of Minutes

20 CHAIRPERSON BERRY: All right. The next item is to approve
21 the minutes of September 17th and the October 1st meeting. Could I get
22 a motion, please?

23 VICE CHAIRPERSON REYNOSO: So moved--odd minutes for October
24 1, but so moved.

1 CHAIRPERSON BERRY: Second?

2 COMMISSIONER EDLEY: Second.

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

4 [A chorus of ayes.]

5 CHAIRPERSON BERRY: Opposed?

6 [No response.]

7 CHAIRPERSON BERRY: So ordered.

8 **III. Announcements**

9 CHAIRPERSON BERRY: Announcements. The first announcement
10 that I would make is that I want to make sure that everyone is aware
11 that Daisy Bates' death has been announced in the paper this morning
12 and on the wires.

13 Daisy Bates was 84 years old, and she was head of the NAACP
14 in Arkansas in 1957 and was the person who shepherded the black
15 students, including my good buddy, Ernie Green, who were known as the
16 Little Rock Nine, in the integration of Central High School in that
17 great conflict which occurred during the history of the civil rights
18 movement.

19 She was a wonderful, courageous person who believed in
20 nonviolence and worked actively in the cause of civil rights for her
21 entire life. So I think it is entirely appropriate that we here at the
22 Civil Rights Commission publicly acknowledge her service and
23 acknowledge her passing.

24 COMMISSIONER EDLEY: Madam Chair, could I suggest if you
25 were to do a paragraph to send to her family for their memorial

1 service, I would like to have an opportunity to associate myself with
2 it.

3 CHAIRPERSON BERRY: Okay. All right. May I do that on
4 behalf of the Commission? Is there any objection to my doing so?

5 [No response.]

6 CHAIRPERSON BERRY: All right. It will be--it won't be
7 ideological; it will just be a commemorative.

8 COMMISSIONER EDLEY: What you just said was lovely.

9 CHAIRPERSON BERRY: And I will do that.

10 Okay. The other announcement that I want to make is that we
11 are in our third continuing resolution until midnight tonight, and we
12 assume there will be another continuing resolution. I remember the
13 first time there was a continuing resolution in my memory since I have
14 been around the Commission, everybody in the Government, including
15 here, spent hours trying to figure out what to do, and closing down
16 procedures, and all kinds of things, because people thought seriously
17 they would have to do all this stuff. And that happened several times,
18 and then, of course, there was the close-down. We don't expect any
19 close-down, and we assume there will be a continuing resolution.

20 We do know already what the numbers are for our budget--it
21 is level funding; right, Staff Director--

22 STAFF DIRECTOR MOY: Yes.

23 CHAIRPERSON BERRY: --but there are still negotiations going
24 on on the Hill. The President vetoed the Commerce, State, Justice bill;
25 right?

1 STAFF DIRECTOR MOY: Right.

2 CHAIRPERSON BERRY: And so there are negotiations going on,
3 and we don't know what the outcome of those will be and whether some
4 light will somehow fall on us in that process, either by indirection or
5 otherwise, but that is where matters stand.

6 The September transcript--fortunately, we talked about
7 security issues here at the Commission--was distributed to staff at
8 headquarters and regional offices. There have been a lot of security
9 concerns.

10 The other thing I want to announce is that we are losing
11 Fred Isler. Fred has been at the Commission--how long, Fred--

12 MR. ISLER: Nine years.

13 CHAIRPERSON BERRY: --nine years--I have been here longer
14 than you have, but anyway, I have been here longer than a lot of
15 people--anyway, Fred has been around for much of my time being
16 associated with the Commission, and he has moved up through the ranks
17 and has done a great job as Director of OCRE under the same resource
18 constraints that everybody else faces here at the Commission. He is
19 getting a promotion, well-deserved, and is going to the Department of
20 Agriculture as Deputy Director of Programs in the Office of Civil
21 Rights. I think his experience could be utilized over there--they've
22 got major problems with black farmers and everything else under the
23 sun, and more headaches.

24 So we will miss you, Fred, and want to thank you for your
25 work at the Commission and your dedication for these years, and I am

1 sure you will have great luck over there, and I wish you great luck on
2 behalf of the Commission.

3 VICE CHAIRPERSON REYNOSO: Madam Chair.

4 CHAIRPERSON BERRY: Yes.

5 VICE CHAIRPERSON REYNOSO: I'd just like to add that I am in
6 contact, as some of us are, with the academic world, and that I have
7 received really quite laudatory remarks about the quality of the
8 research and the writing of the reports that come out of this
9 Commission, and I am sure that that is due in large part to the
10 professionals who work here but also to the leadership. So I just
11 wanted to add that, that we continue to make an important contribution
12 in that light.

13 Thank you.

14 CHAIRPERSON BERRY: The other--I don't know what this is
15 about, Ruby, so maybe you had better announce it--we will discuss under
16 the Staff Director's Report Fred's proposal about changing the Fair
17 Employment Project to a one-year project, Fred, so when we get to the
18 Staff Director's Report, we will do that--but I don't know what this is
19 about, so you should announce it.

20 STAFF DIRECTOR MOY: Okay.

21 CHAIRPERSON BERRY: Or maybe I do know what it's about.

22 STAFF DIRECTOR MOY: Special thanks--well, before I go into
23 that, on behalf of staff, I also want to echo your sentiments about
24 Frederick Isler, because when I started here, he continued to advise
25 me, and he has done it well, and I'll miss him, as well as staff. So

1 thank you, Fred.

2 On the other item, during the spring of this year,
3 Commissioners were informed that the agency would be undergoing two
4 audits, one by OPM and Security. These back-to-back audits focused on
5 our Human Resources programs and personnel, security and suitability.

6 We have received a draft on the Security audit, and they
7 have indicated that the agency is right on track. Human Resources is
8 drafting final comments to be included in the final Security report.

9 On the other audit, our Human Resources Management is also a
10 good report. In addition to the report, Human Resources staff has
11 received verbal compliments on the filing system which made OPM's
12 investigation easier. Human Resources is in the process now of closing
13 out this report.

14 So when both reports are finalized, Commissioners will be
15 given copies. And I want to personally thank Cathy Gates and Myrna
16 Hernandez and Tina Louise-Martin for the timely work that they did on
17 these two audits.

18 Thank you.

19 CHAIRPERSON BERRY: All right.

20 STAFF DIRECTOR MOY: That was it.

21 CHAIRPERSON BERRY: Okay. Let us, then--does anyone else
22 have any announcements?

23 COMMISSIONER LEE: Madam Chair, can I make a couple of
24 announcements?

1 CHAIRPERSON BERRY: Just one second. Staff Director, could
2 you ask the PAU to begin drafting something for the Daisy Bates
3 commemorative statement so that it can go out today?

4 STAFF DIRECTOR MOY: Yes.

5 CHAIRPERSON BERRY: Yes?

6 COMMISSIONER LEE: If I can make a couple of announcements,
7 the first one is that as you know, on October 10th, Joseph Ileta, a 39-
8 year-old Filipino-American postal worker in Los Angeles was shot to
9 death by a perpetrator who was shooting up the Jewish community center
10 in Los Angeles. During that time, both the family and the community
11 received a lot of letters and phone calls of concern from various
12 agencies, and there was some concern why they didn't hear anything from
13 us.

14 CHAIRPERSON BERRY: She can't hear--they want you to put
15 your mike up closer to your mouth; slide it up some. Okay.

16 COMMISSIONER LEE: So I went to meet with the family early
17 in October, and I extended the Commission's condolences to the family--
18 I hope it was okay with the rest of the Commissioners--and they were
19 very appreciative, and they asked whether the Commission will be
20 monitoring the case, and I told them that we will definitely let the
21 regional office know.

22 The family was very upset, so to speak, because early
23 reports had only mentioned him as a casualty--that, oh, by the way,
24 besides the children being shot up, this postal worker was also killed--
25 -so instead of really mentioning him as the victim of a hate crime,

1 which by all indications by the perpetrator and the police report, he
2 was killed purely because of the color of his skin, so the family was
3 very concerned that the media really was not making that case as a hate
4 crime against Asian Americans. So they really wanted me to relay to
5 the Commission that they would hope that through our continued work, we
6 would remind folks that his death was a death because of hate crimes,
7 and they really want us to remember him for that.

8 VICE CHAIRPERSON REYNOSO: There have been several
9 commemorative ceremonies on behalf of that incident pertaining to him,
10 and of course, pertaining to the children. To me, it is just a
11 reminder that so often when we have hate crimes, it is on the part of
12 individuals who seem to hate everybody whom they see as different.
13 Here, it was a matter of hate crimes against Jewish children and an
14 Asian Pacific American--and it could have been a black American or a
15 Latino insofar as we know from that individual.

16 So those sorts of crimes and those sorts of thoughts I think
17 clearly are of great interest to this Commission.

18 COMMISSIONER LEE: Yes. The family has established a
19 memorial fund, not to solicit any support for themselves but to use the
20 opportunity to advocate against hate, and it took a lot of courage for
21 the family because only two months prior to his death, the father also
22 died. So right now, the family of the mother, the brother, and the two
23 sisters have been traveling around the country speaking out against
24 hate violence. So they need to be commended.

1 The second thing I'd like to report is that on October 5th,
2 the Congressional Asian Pacific American Caucus held a briefing to
3 gather information on how the Chinese espionage allegation has impacted
4 the Asian Pacific American community, specifically, the Asian Pacific
5 American employees working at Government labs. And I was invited to
6 testify, and some of the Congressional members asked whether the
7 Commission will be holding a hearing. I told them that if we had
8 money, we would, but because of budgetary constraints--unfortunately,
9 they were not sitting on the appropriate committee, but hopefully, they
10 will get the message across to their colleagues.

11 I also told the House Members that our staff will be
12 monitoring the case, and if need be, we will definitely be holding some
13 kind of fact-finding meetings.

14 VICE CHAIRPERSON REYNOSO: Yvonne has become very
15 politically sensitive.

16 CHAIRPERSON BERRY: Yes, indeed.

17 [Laughter.]

18 CHAIRPERSON BERRY: The matters that you raise; Commissioner
19 Lee, remind me of another discussion that we have had and that we have
20 got to have again at planning time, and I guess I am saying these
21 things--I am not taking note of what I am saying myself, because I
22 expect somebody to remember, so that when we go through the planning
23 process, these issues will be part of what is on the agenda--but
24 anyway--and we have talked about this before, Commissioner Anderson--
25 when something happens, we always feel like we should do something, but

1 the question is what should we do. And every time an event occurs, we
2 might think, gee, we could issue a statement denouncing whatever has
3 happened, but then, it seems like something keeps happening all the
4 time, so we would be denouncing after the fact incidents that occur
5 seriatim, and what's the pattern, and what is the question, or is it
6 just that we need to have in the computer or word processor someplace a
7 denunciation of hate crimes and then plug in whom it happened to and
8 when it happened. It seems so routinized and really doesn't have any
9 impact, we believe--although there are constituencies who expect us to
10 be responsive when things happen and who will ask, why didn't you guys
11 say anything about XYZ or ABC that happened. And we have also talked
12 about the need for staff, PAU, to track events that occurred or to even
13 do things--like I have asked at least 20 times, and other Commissioners
14 have, why PAU doesn't track even dates of recognition that occur, like
15 when the Civil Rights Act of 1964 was passed, so that ahead of time,
16 somebody puts out a press statement if they are going to put one out,
17 saying that we call attention to this anniversary, rather than, as
18 always happens, somebody notices it the day after, and then they say:
19 Why don't we put out a press statement--but by then, why? I mean,
20 what's the whole purpose?

21 So one could argue, and I have had it argued with me by
22 people around the country in various meetings I have been at, that when
23 there is a hate crime or some event happens that has civil rights
24 implications, some of us ought to show up--like, why wasn't somebody
25 from the Civil Rights Commission there in the aftermath of the shooting

1 incident, wherever it is? Why is it--we've got eight Commissioners--
2 why doesn't somebody show up? Or, if you're the chair, why don't you
3 go around and show up--or somebody--and not just the regional director--
4 -and even they should show up.

5 I don't know what the answer to that is, or whether we
6 should put out statements or what.

7 Do you have any views, Carl? You have been around here a
8 long time.

9 COMMISSIONER ANDERSON: Well, thank you. I think it is--
10 this is something that we have grappled with for a long time, and I
11 think it is really a question of balancing a number of issues. But
12 maybe the primary issue is how do we see ourselves. If we go back
13 maybe 15 years, when the Commission was funded at a much higher level,
14 it could implement the broad statutory scope that the Commission has.
15 Our funding has been obviously drastically cut. The legislative scope
16 has remained the same. So you have this expectation that the
17 Commission today should function in the fullblown capacity that it
18 functioned 15 or so years ago.

19 I don't think we have the economic resources to do that
20 effectively. So the question becomes in my mind whether we try to live
21 up to that earlier expectation and do so not very well, or whether we
22 narrow our functional scope--I'm not talking about our statutory scope,
23 but our actual functional scope--into doing a more limited number of
24 things very well.

1 That was my rationale, at least, behind a series of hearings
2 we did on racial tension in American communities. It seemed to me that
3 if we narrowed our focus and tried over a period of years to accomplish
4 one general task well, that suited our resources better.

5 Now, when something happens like the Los Angeles riots, one
6 has to make an exception. I think if we look at the situation of
7 Native Americans, we could probably argue that it does not have the
8 same national scope. On the other hand, we have done so little in the
9 past for Native Americans that I think it is reasonable to say that
10 even though the question may not have the national scope, it is time we
11 do something in a significant way there.

12 So I don't know if that helps, but that's the kind of
13 balancing that I undertake when I try to make a decision as to a
14 particular, concrete--should we send somebody out to California for
15 this circumstance where the Filipino American was killed? Should we
16 send somebody to St. Petersburg for the disturbances or riots that were
17 there, the church burnings?

18 I think it is a balancing, but for myself, I would rather
19 see us with a narrow function of scope, trying to do a limited number
20 of things very well.

21 CHAIRPERSON BERRY: Okay.

22 Commissioner Meeks?

23 COMMISSIONER MEEKS: Well, since this sort of feeds, and
24 since Carl mentioned--that's what we have been struggling with is
25 whether the events that have been taking place in South Dakota, of

1 which there are numerous--are those the kinds of things that we should
2 focus on, or should we focus on something that has national impact that
3 we actually might be able to affect?

4 I would argue that the Native American issues do have a
5 regional scope. I mean, there are Native Americans across the country--
6 -but at the same time, because there are so many issues in South
7 Dakota--and I don't know the answer to that necessarily, and I think it
8 is something that we have to decide how we want to--there just happens
9 to be a lot of Native Americans in South Dakota, so there are a lot of
10 issues in South Dakota--

11 CHAIRPERSON BERRY: As you say, there are Native Americans
12 almost everywhere, I guess--

13 COMMISSIONER MEEKS: Sure, there are.

14 CHAIRPERSON BERRY: --some who just found out they were
15 Native Americans and others who are finding out every day.

16 Yes, we are going to discuss the South Dakota situation
17 imminently under the Staff Director's Report. I guess this whole topic
18 is a topic, again, that we should discuss at the planning meeting and
19 try to come up with some ideas about how we do it. For now, I guess
20 it's just sort of hit-and-miss, and we'll have to make a decision as
21 issues arise about whether we think we should go out and do something
22 about X, Y, or Z, and whether we can use State Advisory Committees more
23 on some of these issues, which relates to their resource questions and
24 how we review them. So we will discuss all of this.

1 Yes?

2 VICE CHAIRPERSON REYNOSO: Madam Chair, just one
3 observation, and that is that I have heard the argument that when the
4 U.S. Commission on Civil Rights was first formed, there were not other
5 Federal governmental agencies looking at civil rights. Now there are
6 many--they are, in fact, in each major department--so the argument is
7 raised that maybe this Commission isn't needed anymore. And I just want
8 to observe that in my experience, it becomes even more important to
9 have an independent Commission monitoring and seeing what is happening
10 with other agencies and the issues that come up in the communities.

11 So my own view is that, if anything, at times like this it
12 becomes even more important to have a completely independent
13 Commission.

14 CHAIRPERSON BERRY: And that is related to the question of
15 how the Commission gets the other agencies to do the right thing. I
16 mean, the reports that have come out of OCRE and this Commission quite
17 clearly show the deficiencies in the agencies, and this is without
18 regard to politics. Almost every administration has failed to do
19 certain things, like have an effective Office of Civil Rights in the
20 Department of HHS. And the question is when we do these reports, and
21 we announce them--and that is related to how we get the message out,
22 how we do it, and so on, and whether we can lean on the President or
23 whomever it is--but quite clearly, the reports show the need for
24 someone to monitor what they do. And quite clearly, the activities of
25 the Commission even around the church burnings, which put a lot of

1 pressure on the Federal agencies, just the mere fact that we did all
2 that makes it clear that an independent commission can be effective can
3 nudge people--even the hearing we did in New York, which was--we
4 haven't even gotten the report yet--has been very helpful in what the
5 U.S. Attorneys and everybody else have been trying to do up there.

6 So the real question is how do we maximize effectively
7 getting people to do something and the kind of follow-up we do. Our
8 rules require us to follow up on our reports to see if people did what
9 we told them to do and then to report whether they did or not. We
10 haven't been doing that.

11 Anyway, Commissioner Edley?

12 COMMISSIONER EDLEY: Just on the narrow point about the
13 Federal agencies and how to help them identify their priorities and so
14 forth--maybe we want to come back to this in the planning discussion in
15 January--but I have been thinking for a couple of months now that it
16 might make sense to have as a regular agenda item for the Commission
17 meetings a briefing by/discussion with one or two heads of Federal
18 civil rights enforcement agencies and just cycle through them, so that
19 we would expect to hear from each of them once a year or once every 18
20 months or something like that--what are your priorities, what is your
21 strategic plan, what is your focus, what is your agenda, what are you
22 doing right, what are you doing wrong. They have oversight hearings on
23 the Hill every now and again, but those are rarely very constructive.

24 Anyway, it's just a thought--and it might be a systematic
25 way, for example, to get information from them about what they are

1 doing, to follow up on the accumulated set of recommendations made over
2 many years by this Commission about what particular agencies ought to
3 be doing as well as asking them what are they doing in response to
4 breaking events, whether it is in South Dakota or in Los Angeles or
5 things identified by the research community.

6 'Again, it's not an action item kind of a thing; it's more of
7 a discussion about what is the agenda, and what should the agendas be,
8 and it might help us inform what our own agenda should be to be hearing
9 more about what they're up to.

10 CHAIRPERSON BERRY: I like that idea, and I like it so much,
11 and it seems so eminently sane--which means there must be something
12 wrong with it--so that if no one thinks it's a bad idea, I think
13 without any big, long, extended discussion, it is something that we
14 ought to do.

15 For example, I could see us very well starting out in
16 December asking HHS folks to come and tell us what they are doing about
17 the stuff that was in the health care report that we issued last month--
18 -

19 COMMISSIONER EDLEY: Exactly.

20 CHAIRPERSON BERRY: --because we didn't have a press
21 conference on it, because the timing didn't seem right--we could have
22 had a press conference and bludgeoned them in the media, because health
23 care is a hot, burning issue now, about their deficiencies and their
24 failure to do whatever they are supposed to do--on a bipartisan basis,
25 because no office over there has ever done what it is supposed to do.

1 But maybe what we ought to do in December is have a briefing
2 and ask the HHS folks--I have forgotten who is doing that in HHS now;
3 they change--

4 COMMISSIONER EDLEY: It used to be Dennis, but--

5 CHAIRPERSON BERRY: --Dennis isn't there now--

6 VICE CHAIRPERSON REYNOSO: Every year, we'll hear from a
7 different head, no doubt.

8 CHAIRPERSON BERRY: It is--what is his name--

9 COMMISSIONER EDLEY: Tom Perez.

10 CHAIRPERSON BERRY: --but we also need to get someone from
11 the HHS muckety-mucks to whom he reports, because a lot of the problem,
12 he is going to tell us, is that he can't do "X" because--and our report
13 says, I think, if I recall correctly, that a lot of the problem is the
14 failure on the part of the higher bureaucracy in HHS--political
15 bureaucracy--over time to give the kind of support to that office that
16 they ought to be giving and to have everybody else in the Department
17 work with them and do all of these coordination kinds of things.

18 So we probably need to get whomever he reports to to come,
19 too. So I like that idea.

20 Is there anybody who thinks that that's a crummy idea?

21 VICE CHAIRPERSON REYNOSO: It's a good idea.

22 CHAIRPERSON BERRY: It's sort of cost-free.

23 And then, on a systematic basis, what I like about the idea,
24 too, is that we would accumulate--have OCRE staff put together a memo
25 which has the findings in all the kinds of reports we have done on that

1 agency--

2 COMMISSIONER LEE: That's a good idea.

3 CHAIRPERSON BERRY: --and then, when that person comes, or
4 those persons, ask them about what they are doing about all these
5 different things as a way to nudge them. And we then can, if we wish,
6 if they are recalcitrant or if they come and say they aren't doing
7 anything, or they don't cooperate, we can publicize their lack of
8 cooperation, which I think would get the attention of their bosses.

9 Yes, Commissioner Anderson? I heard you sigh.

10 COMMISSIONER ANDERSON: Well, actually, I was inhaling.

11 CHAIRPERSON BERRY: Oh.

12 [Laughter.]

13 COMMISSIONER ANDERSON: Thank you for the recognition,
14 though.

15 I wonder whether, if we start off with HHS in December,
16 they're simply going to tell us that they haven't had time, really, to
17 analyze our report and run it up the bureaucratic ladder.

18 So we may want to have--I think it's a very good idea to do
19 this--we may want to have a fallback agency
20 in place for December and start with HHS in January, possibly. But if
21 they're prepared to talk in a meaningful way on what our report said,
22 that's great, December, but if all we're going to hear is, "We haven't
23 really been able to study it," et cetera, then maybe we should do
24 something else in December with another agency and come back to HHS in
25 January or February.

1 CHAIRPERSON BERRY: Why don't we do this--that is an added
2 idea--but why don't we do the following, which will encourage the
3 agencies to show up. Why don't we have a couple of organizations that
4 are involved with the clients of the agency, who are served by them and
5 who have issues with them and who would like to air those, and who have
6 done so in some of the stuff we have in our reports--invite them to
7 come, or tell the agency that folks who are dealing with them might
8 want to come to discuss what they are doing or not doing, and would
9 they like to come first to tell us all the things that they are doing
10 so that they have some encouragement, because they don't want to just
11 have us hear from people who don't like what they are doing, but they
12 would like to tell us what they are doing.

13 Or we could in the alternative simply invite HHS, and if
14 they say, "No, we don't have time," as you are suggesting, Carl, then
15 we just invite somebody else and invite them at a later time. Okay.

16 Yes?

17 COMMISSIONER EDLEY: I would certainly defer to you and the
18 Staff Director to figure out what the most productive way to structure
19 the session would be, whether it's HHS alone or with complementary
20 voices, whatever.

21 I agree with Carl that we should do it if and when it would
22 be a useful discussion, and if HHS is too busy to focus on this, that
23 would be very unfortunate and telling in itself. But doing it a month
24 later wouldn't be the end of the world.

1 I wanted to mention that I thought that we also, back in
2 June or July, talked about racial profiling and the Justice Department
3 and what the Justice Department was doing and thinking and the
4 President's executive whisper--excuse me--executive order on the
5 subject. And we were going to circle back around at some point to try
6 to hear from the Justice Department on the state of their work on that
7 issue.

8 CHAIRPERSON BERRY: So we could do that.

9 COMMISSIONER EDLEY: So that's another one that we could do
10 in the relatively near term.

11 CHAIRPERSON BERRY: Okay, so it's a good start, at least.
12 Great ideas. Great ideas this morning.

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

14 CHAIRPERSON BERRY: Then we go to the Staff Director's
15 Report. First of all, does anybody have any overall questions about
16 anything that's in the Staff Director's Report before we go to these
17 specific issues?

18 [No response.]

19 CHAIRPERSON BERRY: On specific issues, Fred has a Fair
20 Employment project which is a two-year project, and he wants to change
21 it from looking at EEOC and the Justice Department to look at EEOC in
22 the year 2000, and then do Justice in the year 2001.

23 Staff Director, what is the rationale for this change?

24 STAFF DIRECTOR MOY: Since this is Frederick's last
25 Commission meeting, I am going to invite him to come up and explain it.

1 Frederick, while he is coming up, also reminded me that the health
2 report was just published and sent out, and the Office sent a follow-up
3 letter to them. They have six months to do follow-ups on our findings
4 and recommendations. So if we were going to do--

5 CHAIRPERSON BERRY: We can't do it now.

6 STAFF DIRECTOR MOY: --right.

7 CHAIRPERSON BERRY: Okay. So maybe we should do the Justice
8 thing.

9 STAFF DIRECTOR MOY: Okay.

10 CHAIRPERSON BERRY: Fred, could you explain all this to us?

11 MR. ISLER: Yes. Originally, when we designed the Fair
12 Employment Law Enforcement Project, we designed it to be an 18-month to
13 two-year project under the assumption also that we would get \$11
14 million in our budget. We did not get that \$11 million. We got--we
15 assume we are going to get \$8.9 million. So therefore, when we
16 developed our milestones using the management information system, it
17 was determined that we did not have sufficient staff or resources to do
18 a comprehensive evaluation of both EEOC and DOJ.

19 In addition, we have lost two key staff members in the
20 meantime who were very experienced, and it has taken us a while to
21 replace them.

22 So we came up with options to submit to the Staff Director,
23 and we are well on the way to evaluating EEOC, and we are just
24 beginning to evaluate DOJ. So I am proposing that what the Commission
25 do is complete the evaluation of EEOC and issue a report for fiscal

1 year 2000 and then, six months later, issue a report on DOJ
2 enforcement.

3 That would also help us in the year 2001, because we have a
4 project that requires us to do a comprehensive review of all the
5 findings and recommendations for a 10-year period, but that's based on
6 the assumption that we would get almost something like \$13 million in
7 budget. That project was developed based on that assumption. I don't
8 think we are going to get that amount of money. So that would also
9 help us--give us more time to complete the evaluation of the 10-year
10 reports that we have issued. And then we could issue that report in
11 the year 2002, and we would have a statutory report in both 2000 and
12 2001.

13 CHAIRPERSON BERRY: So that in the planning process that
14 occurs in January, long after you are gone, one of the things we ought
15 to make sure we do is to figure out what we are going to do if we don't
16 get the appropriation that we are getting. The process heretofore has
17 included projections about what we are going to do based on the amount
18 of money we are requesting, so what we need to do is to not only do
19 that, but to identify exactly what we would do if we didn't get that
20 amount, so we won't have to go through this process every time--because
21 the point about staff leaving--as you know, there is always somebody
22 leaving and coming and going--so in the projections that managers make
23 for their programs, they have to include in the back of their minds the
24 idea that somebody might leave, and then there will be somebody else,
25 because that happens--or somebody might get sick, or they might--

1 whatever.

2 So you made a very good point, and we perhaps should have
3 required proposals in the first place as to, Fred, what will you do
4 with this project if you get \$8.9 million as opposed to \$11 million.

5 So now I understand why you want to propose this.

6 Does any Commissioner have any objection to the Staff
7 Director's recommendation that we accept Fred's recommendation?

8 VICE CHAIRPERSON REYNOSO: It makes sense to me, Madam
9 Chair.

10 CHAIRPERSON BERRY: Under the circumstances. Okay.

11 All right, Fred. Thanks a lot.

12 MR. ISLER: Thank you.

13 CHAIRPERSON BERRY: The other item we want to discuss here
14 is the Native American situation in South Dakota. It is quite clear
15 that there have been administration of justice problems which are under
16 the purview of the Commission--administration of injustice--that has
17 occurred, or allegations that this has occurred, not only in South
18 Dakota but in other places in Indian country, because there was a
19 report done by, I think, the Justice Department a few months ago about
20 the number of Native American Indians who had been shot, or something
21 had happened to them in encounters, so that this would not be simply an
22 issue that has occurred around the Native American population in South
23 Dakota.

24 However, the attention of the Commission has been
25 concentrated and focused on the events in South Dakota. As I

1 understand it, Commissioner Meeks, you at first were--we had talked
2 about holding a State Advisory Committee forum in South Dakota or
3 Nebraska, a joint one, and we had also talked about the possibility of
4 Commissioners, myself and other Commissioners who could go to South
5 Dakota. But since the last meeting, your first advice to us was--which
6 I was going to bring to this meeting--that perhaps we defer, because
7 the U.S. Attorney and the FBI and various people are involved in the
8 issue.

9 What I was going to say about that at this meeting, before I
10 turn it over to you for further comments, was that I would not be
11 persuaded, because every time we have wanted to get involved in
12 anything that is happening anywhere, we are always told that the FBI
13 and the U.S. Attorney have it under control, and they are
14 investigating, and what we should do is wait a couple years, and these
15 guys will get it all turned around. And what we have discovered in our
16 history is that when we do get involved, it urges the U.S. Attorney
17 and the FBI and whomever else to expeditiously do whatever it is they
18 are trying to do, because sunlight is, of course, a good disinfectant
19 as well as a way to get attention paid to something.

20 So I was going to say that you, but I understand that you
21 now have later advice to us and information, so could you please
22 proceed?

23 COMMISSIONER MEEKS: Sure. And I think you are absolutely
24 right--my limited experience, but now I can see that we should have--I
25 don't think it's a bad thing if we decide to do something at this

1 point, or when we decide to do something at this point, because there
2 has been another incident that's just so unbelievable that--I think we
3 need to prepare a good memo outlining all the different incidences that
4 have happened and then decide how we should design the forum so that it
5 will be the most effective--sort of in all corners of the State, the
6 different issues.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER MEEKS: So we need to figure out what would be
9 the best thing to do logistically, and the right issues to--I think
10 there are really four major issues, so I don't know--I think we should
11 prepare a memo to you.

12 Then, as far as national issues, you know, we have spent
13 some time really connecting to all the Native American--the
14 organizations that are working on a national level and trying to come
15 to some understanding of, you know, if we are going to do a full-
16 fledged hearing at some point, what would be the right issue to bring
17 up at least this first time. And there are a number of issues that I
18 think we should write a memo to the Commission and talk about during
19 the planning session.

20 CHAIRPERSON BERRY: Okay. Now, as for South Dakota, we
21 would then have a State Advisory Committee forum, and the details of
22 the issues that would be covered and how it would be done would be
23 worked out. But we need to set a date for that, because Commissioners
24 have calendars. And what it would involve is those Commissioners who
25 are able to go and are willing to go would go--I would go--and we would

1 make some visits. We would go out and meet with various people before
2 the forum, and after we did that, the forum would take place, probably
3 in the evening, because that's when people can come, more people--even
4 though there are people who work in the evening, I think more can come
5 in the evening, we have found out, than any other time, and the SACs.
6 And then we would promise people that within a reasonable time after
7 that, we would have a report on the forum. And I would think we should
8 do it as we did the church fires--regional staff can write it, and if
9 national staff need to help them, they could--and so within 90 days, we
10 could have a report on the forum.

11 So we need a date on which as many people as possible who
12 are interested and have the time can go to South Dakota. Has it snowed
13 there yet?

14 COMMISSIONER EDLEY: I was just thinking that.

15 COMMISSIONER MEEKS: It's 75 degrees there right now.

16 CHAIRPERSON BERRY: You've got to be kidding.

17 [Laughter.]

18 CHAIRPERSON BERRY: I just want to be able to fly in; that's
19 the only reason. One time, I was supposed to go there to make a speech
20 or something, and it snowed so much we couldn't land. So that's why I
21 asked.

22 What, in terms of people's calendars--Krishna, could I see
23 my own calendar--can we pick out a good time? It's going to take at
24 least a couple weeks for them to figure out the forum and to announce
25 it. I didn't know I was going there--this is all very interesting. So

1 today is the 5th, and it's going to take at least a couple weeks to
2 outline the forum and get people--mainly it is getting the
3 Commissioners there and outlining the forum and getting the notices out
4 so that people will know--and I guess the media will help us to get the
5 notices out so the people will know that there is a forum and that
6 there will be public witnesses as well as officials. I'm talking about
7 sheriffs and FBI and the U.S. Attorney and everybody else.

8 Yes?

9 COMMISSIONER EDLEY: Are we talking about a day, a day and a
10 half?

11 CHAIRPERSON BERRY: Yes. We're talking about perhaps coming
12 in one night, depending on flights, and being there all day the next
13 day and having the forum that evening--or, we can get up earlier that
14 morning, depending on what the schedules are like, and fly in and spend
15 the day. We're talking about a day there de minimis--

16 COMMISSIONER ANDERSON: Madam Chair.

17 CHAIRPERSON BERRY: Yes?

18 COMMISSIONER ANDERSON: We're thinking about holding this on
19 the Pine Ridge Reservation?

20 CHAIRPERSON BERRY: No, no, no.

21 COMMISSIONER MEEKS: No.

22 CHAIRPERSON BERRY: We're thinking about holding it--

23 COMMISSIONER MEEKS: Even Sioux Falls might be fine.

24 CHAIRPERSON BERRY: --maybe Sioux Falls. It doesn't have to
25 be on the--no, we don't want it on the reservation.

1 COMMISSIONER ANDERSON: So, Sioux Falls rather than Rapid
2 City?

3 COMMISSIONER MEEKS: I think that would make sense.

4 CHAIRPERSON BERRY: Which one is the closest to the
5 reservation?

6 COMMISSIONER MEEKS: Well, you know--

7 COMMISSIONER EDLEY: Rapid City, but--

8 COMMISSIONER MEEKS: --to the Pine Ridge incidents.

9 However, I think that the Mobridge and the Sisseton--I still think
10 Sioux Falls would be the best, because anybody from Pine Ridge--I mean,
11 the FBI--that can testify about what's happening there can come to
12 Sioux Falls.

13 CHAIRPERSON BERRY: And the key to where we have it--
14 explain. Explain to us why Sioux Falls is best. The key to where we
15 have it is what, just so we understand?

16 COMMISSIONER MEEKS: Well, it would be easier for the
17 Commissioners to come to, and it's sort of a gathering point. It could
18 be--it makes sense to me.

19 MR. DUFFY: Simply accessibility for Commissioners and for
20 people who really want to attend.

21 COMMISSIONER EDLEY: And the media?

22 MR. DUFFY: Yes.

23 COMMISSIONER MEEKS: Yes.

24 CHAIRPERSON BERRY: If we make the site visit, if we go
25 around the day before if we want to look at places where things

1 happened or go to meet with people, where would we be going?

2 COMMISSIONER MEEKS: Mobridge and Sisseton.

3 CHAIRPERSON BERRY: And how far is that from where we would
4 fly into?

5 COMMISSIONER MEEKS: Where is Mobridge from--

6 MR. DUFFY: Sisseton from Sioux Falls is roughly 100 miles.
7 Mobridge would be roughly 250.

8 COMMISSIONER MEEKS: A short distance.

9 CHAIRPERSON BERRY: I see. But in South Dakota, you see,
10 those are short distances.

11 COMMISSIONER MEEKS: There are airports into the other small
12 towns.

13 CHAIRPERSON BERRY: There are airports?

14 COMMISSIONER MEEKS: Well, small airports.

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER MEEKS: The major airports are Sioux Falls and
17 Rapid City, and from there, it's--we could do it in Pierre, but--

18 CHAIRPERSON BERRY: So is it unrealistic for us, then, to
19 think that we will go around to visit various places, and the best idea
20 is for us to be available for meetings all day before the forum for
21 people to come and talk to us, or what is the best idea?

22 COMMISSIONER EDLEY: Could we visit places the day before,
23 for those of us--for example, if we did it on Sunday/Monday, I would
24 love a chance to fly in early Sunday and maybe visit some places on
25 Sunday and then spend Monday in meetings and the forum in Sioux Falls,

1 if that were feasible.

2 CHAIRPERSON BERRY: Would that be feasible, geographically
3 and otherwise? That way, we would fly to what--either Rapid City or
4 Sioux Falls--and we would have to, what, drive around places, or what
5 would we have to do?

6 MR. DUFFY: No matter where you fly into, you're going to
7 have to drive no less than 100 miles.

8 CHAIRPERSON BERRY: To go anywhere.

9 MR. DUFFY: To go anywhere.

10 CHAIRPERSON BERRY: So we're talking two hours.

11 MR. DUFFY: Yes.

12 CHAIRPERSON BERRY: Are these two-lane roads or highways?

13 MR. DUFFY: Highways.

14 CHAIRPERSON BERRY: So we're talking two hours unless you
15 speed--I guess it's 70 miles an hour, so it's not two hours.

16 So if we were to come in and spend the Sunday going to
17 various places and then the Monday being in Sioux Falls, where would we
18 go on Sunday?

19 COMMISSIONER MEEKS: I would think that Sunday, we would go
20 to Mobridge, talk to people there. Can we make it back to Sisseton
21 then, in the afternoon--be back to Sisseton by 2, 3 o'clock.

22 COMMISSIONER EDLEY: How far is Pine Ridge from Rapid City?

23 COMMISSIONER MEEKS: From Rapid City, it's only 100 miles.

24 COMMISSIONER EDLEY: Okay. The only reason I'm asking this
25 is because the other possibility would be on Sunday to fly to Rapid

1 City and--

2 CHAIRPERSON BERRY: Go to Pine Ridge.

3 COMMISSIONER EDLEY: --go to Pine Ridge and then fly from
4 Rapid City to Sioux Falls for Tuesday. We don't need to resolve this
5 now, but if the idea of a Sunday/Monday makes sense, then--

6 CHAIRPERSON BERRY: Then we'd be coming back late Monday
7 night or Tuesday morning to wherever people were willing--and maybe go
8 to Rapid City--I want to hear more from you about whether this makes
9 any sense--go to Pine Ridge, come back, get on the plane again, go to
10 Sioux Falls, and then, depending on what time you get there, maybe go
11 to Mobridge or Sisseton or something, and then be in Sioux Falls that
12 next afternoon to talk to people and listen to people, and then have
13 the forum in the evening.

14 What is the reason again for going to Pine Ridge?

15 COMMISSIONER MEEKS: Well, the issues around the two men
16 that were murdered--and at this point--actually, it has been a month
17 since I've talked to anybody about it--but I had been told that the FBI
18 is under great pressure to get those solved. I don't know what has
19 happened in the last month, to tell you the truth. There have been
20 other issues that have come up, and I have been--so I am just not sure
21 whether it makes sense to go to Pine Ridge or not at this point.

22 CHAIRPERSON BERRY: Okay.

23 COMMISSIONER MEEKS: That's why I think we need to do a memo
24 and really figure this out.

1 CHAIRPERSON BERRY: Okay. So why don't we say that--yes,
2 Carl?

3 COMMISSIONER ANDERSON: I was going to say, if you do a
4 Friday--

5 CHAIRPERSON BERRY: I am so sensitive to my Commissioners, I
6 can tell when they want to intervene without their even saying
7 anything.

8 [Laughter.]

9 COMMISSIONER ANDERSON: I thought you had a little video
10 there.

11 CHAIRPERSON BERRY: No.

12 [Laughter.]

13 COMMISSIONER ANDERSON: Anyway, if we were to come out
14 Thursday night, or Thursday afternoon, and do the hearing Friday, then
15 it would leave Saturday/Sunday to do whatever kinds of trips somebody
16 could do. That flips it around. Maybe we should try to do the trips
17 first.

18 CHAIRPERSON BERRY: So Thursday/Friday is one option, with
19 people going on site visits on Saturday. Another option is to have
20 Sunday and then Monday.

21 COMMISSIONER MEEKS: Do the site visits first and then the--

22 CHAIRPERSON BERRY: Okay, we need to get some date here when
23 people might possibly be able to come. And in a couple of weeks, it
24 will be--is that Thanksgiving?

1 COMMISSIONER MEEKS: Yes.

2 COMMISSIONER EDLEY: Yes. So we're talking about after
3 Thanksgiving.

4 CHAIRPERSON BERRY: We're talking about after Thanksgiving.

5 COMMISSIONER EDLEY: Just for the--I teach on Thursday until
6 6 p.m. until December 9th.

7 CHAIRPERSON BERRY: The professors.

8 COMMISSIONER MEEKS: And then the 10th, we have a meeting
9 here.

10 VICE CHAIRPERSON REYNOSO: I teach Monday, Tuesday, and
11 Wednesday.

12 CHAIRPERSON BERRY: Until when?

13 CHAIRPERSON BERRY: Until December 1.

14 CHAIRPERSON BERRY: Okay. So you said December 9--is that
15 what you said?

16 COMMISSIONER EDLEY: Right.

17 CHAIRPERSON BERRY: So that means that--and we have another
18 Commission meeting on the 10th.

19 COMMISSIONER EDLEY: Okay, so that wipes that out.

20 VICE CHAIRPERSON REYNOSO: Maybe we can have the Commission
21 meeting there.

22 CHAIRPERSON BERRY: That's a thought.

23 COMMISSIONER EDLEY: Ah--well, it depends on how many people
24 were planning to come; right?

1 CHAIRPERSON BERRY: And whether they can get there.

2 COMMISSIONER EDLEY: And you have the cost of staff
3 transportation.

4 STAFF DIRECTOR MOY: Hopefully, we're out of CR.

5 CHAIRPERSON BERRY: Yeah.

6 COMMISSIONER EDLEY: It's a nice idea, though.

7 CHAIRPERSON BERRY: It's a good idea, but I don't--let us
8 see--we'll either talk about doing this one of two times--either on
9 the--and if we get too close to Christmas, we can't do it, either--
10 either on the 12th and 13th, if it's going to be a Sunday/Monday, or
11 the 16th/17th, if it's going to be a Thursday/Friday; one or the other.
12 How does that fit in with people's schedules?

13 VICE CHAIRPERSON REYNOSO: I can do the first one; I'm not
14 sure I can do the 16th/17th.

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER EDLEY: I'm sorry--the first one you mentioned
17 was--

18 CHAIRPERSON BERRY: The weekend after the Commission
19 meeting--the 12th and 13th, which is Sunday/Monday--you know, Sunday,
20 Monday, Tuesday.

21 COMMISSIONER EDLEY: Yes.

22 CHAIRPERSON BERRY: Or I had said the end of the week,
23 Thursday/Friday, because Carl had talked about that. The next week is
24 Christmas, so we obviously aren't going to do it then.

1 COMMISSIONER EDLEY: Well, if it's 75 degrees, that's not so
2 bad.

3 [Laughter.]

4 CHAIRPERSON BERRY: So that looks like the earliest time.

5 COMMISSIONER LEE: How about December 5th and 6th; is that
6 open--Sunday/Monday.

7 CHAIRPERSON BERRY: The 5th and 6th, Sunday/Monday--that's
8 an idea. Even though you have class--you don't have class on Sunday
9 and Monday, do you?

10 COMMISSIONER EDLEY: I don't, but--

11 VICE CHAIRPERSON REYNOSO: No, I don't, either. That would
12 work for me.

13 COMMISSIONER EDLEY: That would be great.

14 CHAIRPERSON BERRY: Would that work for--even though you
15 said Thursday and Friday, though--would that possibly work for you,
16 Carl, without committing yourself? Is there any possibility that that
17 might be something you could consider?

18 COMMISSIONER ANDERSON: Sorry--what day was that, again?

19 CHAIRPERSON BERRY: Is there any possibility that you might
20 consider the 5th and 6th of December as a possibility even?

21 COMMISSIONER ANDERSON: Yes.

22 CHAIRPERSON BERRY: Okay.

23 Yes?

24 COMMISSIONER MEEKS: If Chris can go, and you--

1 CHAIRPERSON BERRY: And Cruz.

2 COMMISSIONER MEEKS: --and Yvonne said she could, and then
3 myself, that would be five; and Carl would be six.

4 CHAIRPERSON BERRY: So we're doing pretty well.

5 COMMISSIONER EDLEY: That would be fabulous.

6 CHAIRPERSON BERRY: That would be terrific if we can get it
7 done.

8 So we're talking here hold the dates the 5th and the 6th--
9 and the 6th is through the evening, because that's when the forum is,
10 in the evening--possibly going into Sioux Falls, maybe going to Rapid
11 City on Sunday, depending on what the memo that Elsie is getting for us
12 says--

13 COMMISSIONER MEEKS: Right.

14 CHAIRPERSON BERRY: --and we will hear more about it. And
15 we will have a State Advisory Committee forum, and we will have a site
16 visit, and we will hear from public officials and from the public, and
17 then we will do a report after that. Okay.

18 COMMISSIONER MEEKS: Thank you.

19 CHAIRPERSON BERRY: Okay.

20 Now, are there any other matters relating to the Staff
21 Director's Report?

22 COMMISSIONER MEEKS: Not at all.

23 VICE CHAIRPERSON REYNOSO: Madam Chair, I just wanted to
24 discuss briefly the events in California pertaining to affirmative
25 action--and again, my suggestions were discussed in January, but I did

1 want to say that we have now had a couple of years of experience, and
2 my sense is the public is not getting proper information about the
3 effects of affirmative action. So I think that we should have a
4 discussion in January, but I should also share my own view that as soon
5 as we can do it, it would be time to pick up on that idea we discussed
6 a couple of years ago to go in and have some hearings about the effect
7 of the lack of affirmative action.

8 CHAIRPERSON BERRY: We had a--Aderson is still working on a
9 memo for us about the affirmative action issues. He unfortunately had
10 an accident and is physically injured and has had various surgeries and
11 has had all kinds of problems, so he has not been able to finish it.
12 But he is hoping to be able to finish it sometime by the end of
13 December. And then we have to consider whether we want to hold a
14 hearing or what we want to do about affirmative action and whether we
15 want to do one here, or whether we want to somehow incorporate the
16 California idea, or what we wish to do. But that memo is supposed to
17 be being prepared for us.

18 Yes, Christopher?

19 COMMISSIONER EDLEY: I'm sure this is not how you have
20 handled these things in the past, but I am wondering if even as a
21 prelude to the Commission discussing it, if it would be possible--I
22 know it would be possible--but if it would be desirable for the
23 Commission officially to ask a handful of people to send us letters
24 giving their assessment of what the facts are and what their
25 perspective is on what has happened in California. I would imagine

1 that various members of the Commission might have suggestions for what
2 individuals might be solicited for that, but I know, for example, there
3 are several academics who have been trying to track what has been going
4 on, and I think it would just be interesting to get letters from them
5 giving their sense-- the president of the UC System or members of the
6 Regents. I think there are lots of folks--it would be easy just to
7 informally start to build a little record, which of course the staff
8 could then digest in its own memo to us, but I think it would be--at
9 least I know I would benefit from being able to read some of the
10 original sources, so to speak.

11 CHAIRPERSON BERRY: Okay.

12 Commissioner Lee?

13 COMMISSIONER LEE: Madam Chair, if we could expand it to
14 include Washington State, even though they are a couple of years behind
15 California in terms of 209's implementation, it may serve those States
16 and other States well to look at what those States are dealing with,
17 the impact. Washington State would definitely want to hear about the
18 California experience, because they are now following the footsteps of
19 California.

20 So if I can expand the hearing or report to include
21 Washington State--

22 VICE CHAIRPERSON REYNOSO: The only concern--I think that
23 would be proper, except the concern that I have is that as I have
24 assessed the situation, neither those who advance the idea that we
25 should not have affirmative action, or the institutions who have had

1 affirmative action but now suffer from a lack of affirmative action
2 have been interested in publicizing what has happened. So in my view,
3 in California, there is sort of an unstated cooperation among both
4 those who allegedly were for affirmative action and those who were
5 against affirmative action to say nothing, so that those who were
6 against affirmative action have been preaching the gospel that nothing
7 has happened, and everything is hunky-dory.

8 Those who are in charge of institutions, be they labor
9 institutions, education institutions, contractual institutions, want to
10 have the public believe that they are really doing a great job, and
11 therefore, nothing has happened, when I hear from the troops that
12 terrible things are happening from a civil rights point of view, but I
13 don't see that coming out.

14 Example--the University of California will issue a press
15 release about the great number of people that they have been admitted
16 to the university who are ethnic and racial minorities. Only a
17 fraction of them will actually enroll because of affirmative action,
18 but the enrollment figures will not be publicized in like manner.

19 Then, when you ask what is the complexion, look, of the
20 students, we see a great diminution in numbers of minorities, but that
21 is not publicized by the institution, so the public just sees the first
22 press release that gives the impression that everything is just great
23 and never gets the true, factual reality that compared to where we were
24 when we had affirmative action--and even then, we needed a lot of
25 improvement--but we are now a lot worse. And we already see the effect

1 of that from one year to another.

2 I'll just give you an example. At the UCLA Law School--I
3 know something about UCLA--we used to admit 18, 19, 20 percent Latinos
4 in the first year. The first year after affirmative action was
5 proscribed, we went down to 12 percent; the next year, we went down to
6 6 percent. African Americans, we used to admit 7, 8, 9, 10 percent.
7 The first year, it went down to 6 percent; the second year, it went
8 down to 3 percent; this year, we have a grand total of two African
9 American females in our incoming class out of a class of over 300
10 incoming students.

11 Who has heard about that in the whole country? Nobody. And
12 there is no interest in the leadership of the university or among those
13 who are opposed to affirmative action to let people know what is
14 happening.

15 Can you imagine, at UCLA, in the middle of Los Angeles, we
16 have two African Americans in the incoming class, and yet insofar as
17 the public is concerned, everything is great.

18 COMMISSIONER ANDERSON: Madam Chair.

19 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

20 COMMISSIONER ANDERSON: Can I ask, are we able now to track-
21 -let's take the example of "x" percent or "x" number admitted, "x"
22 number actually enrolled--are we able to track what happened to the
23 differential? Can we determine that? Can we determine whether they
24 are not going to school, they are going to Ivy League schools, or they
25 are going to private schools because these schools have given them much

1 greater financial incentives? Are we able to come to that kind of
2 conclusion, or are we simply going to be able to say that 18 percent
3 were admitted, 12 percent or 8 percent enrolled? Do we ever look
4 beyond the figures?

5 VICE CHAIRPERSON REYNOSO: Well, I don't believe that the
6 schools, for example, or labor unions keep those sorts of statistics,
7 but I think we know enough about those institutions to see what has
8 been happening.

9 For example, at a place like UCLA, it would be clear that
10 anybody we admitted would no doubt end up in some other school because
11 they have very high grades and LSATs and so on. So the issue is
12 somewhat different for a school like UCLA, the issue being is the
13 school as good a school when it doesn't have that type of diversity,
14 and are non-minorities helping, coming in contact with minority
15 students to know something about those ethnic and racial groups? Are
16 we having good education for the students at UCLA?

17 As you go down the national standards of law schools, then
18 you go more into the issue of if the students didn't get into this
19 school, have they gotten into any school, and very often the answer is
20 no. Even at UCLA, we have the reality that we are admitting far fewer
21 now than we used to admit because we don't have affirmative action, and
22 the ones whom we are admitting now are the same people being recruited
23 heavily by Yale and Harvard and Stanford and Berkeley and so on; they
24 are all competing for the very few people who have the highest paper
25 credentials. And then you get into the issue of whether paper

1 credentials alone tell you who are going to be the best leaders in
2 their communities and the best lawyers.

3 So it varies by institution. One of the articles that
4 disturbed me a great deal was a New York Times article that then got
5 reprinted all over the country, saying, hey, what's the deal in
6 California--why should we be concerned about affirmative action? Look--
7 -most of the folks of color who applied got into an institution of
8 higher education within the university system.

9 In fact, that is true, because until now, the UC System has
10 been able to admit--and incidentally, that may change in a year or two
11 because the applications keep going up--but up until now, the UC System
12 has been able to admit every undergraduate--underline, undergraduate--
13 who applies for admission, even though they could not go to the campus
14 of their choice, so a great many of them have ended up at the campuses
15 that are not as prestigious as the others. The implication of that
16 article was: So what's the difference? Aren't the other schools
17 perfectly good?

18 And in many ways, they are. On the other hand, when you
19 track what has happened to graduates of UCLA or Berkeley as compared to
20 some of the other campuses, invariably you will see that 20 years from
21 now, 30 years from now, a disproportionately large number of the
22 leaders of this country have come from those more prestigious
23 institutions, and minorities are being excluded from them in large
24 numbers.

1 So I think that that was a very false picture presented in
2 terms of what is happening with affirmative action. Note that that
3 article relates to the issue of graduate school, where the leadership
4 of this country, both politically and particularly scientifically and
5 educationally, depends, and what has been happening there. And sad to
6 say, for example, at UCLA, the undergraduate schools that provide the
7 greatest number of students at the law school happen to be UCLA and
8 Berkeley--precisely the schools where the number of minorities is going
9 down, and that portends not well for what is going to happen at UCLA.

10 So you have to take a look at what is happening in different
11 gradations and what is happening in different institutions. It is a
12 sophisticated view of what is happening, but overall in my view, from
13 what I have heard--and I am associated with several educational groups--
14 -it has been a disastrous result, all of which we have sugarcoated with
15 articles like the one coming out of the New York Times.

16 COMMISSIONER ANDERSON: Well, Cruz, I don't know whether we
17 need to debate this issue now in terms of the substance, but for me,
18 what would be primary would be to find how this affects people--

19 VICE CHAIRPERSON REYNOSO: Right. I agree.

20 COMMISSIONER ANDERSON: --which is to say are these people
21 who are not going to UCLA going to good schools, are they graduating,
22 are they passing the bar, are they being employed, are they moving into
23 the kind of standard of living that one expects they should be doing.
24 And the issue as to whether the educational experience of people going
25 to UCLA is diminished because there are two African American female

1 students rather than 10 in every class, I think is a very secondary
2 issue.

3 Now, if we're going to say that because the numbers are down
4 at UCLA, that's a disastrous effect, well, then, we can all admit that,
5 because it's pretty clear the numbers are down. But I'm not sure it's
6 a disastrous effect for the people if the people are still getting a
7 good education, passing the bar, getting good jobs. If it's a question
8 of how many are going to move into the most elite circles, well, then,
9 that's another question.

10 CHAIRPERSON BERRY: Christopher?

11 COMMISSIONER EDLEY: I guess I disagree quite strongly with
12 Carl's argument. Certainly as a legal matter, the consequences of the
13 decline in diversity for the excellence of the educational mission of
14 the institution is central to the Fourteenth Amendment analysis. I
15 agree certainly that the impact on individuals is important, but I
16 would not say it is secondary. I would say that there are several
17 dimensions to this. We have been talking about two or three. I think
18 there are several dimensions to it that ought to be explored.

19 COMMISSIONER ANDERSON: Are you saying it's primary, that
20 the effect on the educational mission of the institution is primary to
21 affirmative action?

22 COMMISSIONER EDLEY: Well, I don't know why there can only
23 be one thing that is paramount. What I am saying is that the reason
24 that institutions undertake affirmative action--that is to say, higher
25 education institutions undertake affirmative action--does have to do

1 primarily with their conception of how to build a world class
2 institution and the kind of intellectual environment that is provided
3 for everyone. It also has to do certainly with providing opportunity
4 to individuals, and it has to do with providing the society at-large
5 with a diverse set of talent and leaders. It is at least those three
6 things, and the interplay of them, I think different people would
7 probably rank them differently. But as a legal matter, the one that
8 matters most for purposes of constitutional analysis is the impact on
9 the educational mission, not whether or not any individual has suffered
10 because instead of going to UCLA, they have had to go to a second- or
11 third-tier law school. That's an important social policy consideration
12 and deserves a lot of discussion, but I think there are others as well.

13 I must say that I agree whole-heartedly with what the Vice
14 Chairman was saying and wonder, really, whether we shouldn't be moving
15 to have some kind of a formal Commission report that digests what facts
16 are known and what facts aren't known, including answers to the
17 questions that Carl raised, which to the extent those answers are
18 gettable, we ought to try to get.

19 I guess I am trying to be a little bit more ambitious than
20 simply having a Commission discussion of the issue. I'd like it to be
21 a Commission--I'd like to move to the point where we could be trying to
22 put out something that would be an authoritative description for the
23 country about where things stand and our assessment of it.

24 CHAIRPERSON BERRY: I would think--did you want to say
25 something else?

1 VICE CHAIRPERSON REYNOSO: Madam Chair, I just want to
2 emphasize that my interest, really, is in just getting the facts out,
3 because I think that they have been hidden; and then folk can run their
4 own conclusions as to what is good or bad. But I just don't think that
5 that has even gotten out, and that's why with hearings and subpoena
6 power, we can at least get the facts out before the people.

7 COMMISSIONER EDLEY: May I just add--what I am troubled by
8 on this also is that one just cannot rely on what you read in the
9 newspapers. I think we have all had this experience of knowing when
10 you read a newspaper story that's about a subject you know, you see how
11 riddled with errors the story is, and I think that has been
12 particularly true on affirmative action, and I see it all the time in
13 the reporting on what's going on in California. So you combine that
14 distortion with kind of the politics of PR on this issue that Cruz was
15 discussing earlier. I think we can really play an important role here
16 in producing a document that has some authoritative evidence.

17 CHAIRPERSON BERRY: And I think that what we need to do is
18 to have a research report. We don't need to have--the more I listen to
19 this, it's not a subject that we particularly need to have hearings so
20 we can have fact-finding about X, Y, and Z. The information is
21 available if someone researches it. It is not that we need to subpoena
22 somebody to come and tell us how many students are at UCLA or whatever--
23 -maybe I'm wrong about that, and we can discuss it--or maybe we need to
24 have a hearing and have some kind of research report. And maybe what
25 we ought to do is what the Commission did years ago when it did its big

1 affirmative action report called "Dismantling the Process for
2 Discrimination," which I happen to think was a very good report--it was
3 right when I was coming on--once the report was done, it was sent out
4 for public discussion and for people to comment before the report was
5 finalized, which I thought was very good, and then it came back and
6 went out and was very definitive, and also, we had some meetings to
7 have people come in and comment on the discussion that came in from the
8 public discussion. And it came out and was regarded by most people as--
9 -some people may not have liked the report, but most people regarded it
10 as pretty well-done.

11 So maybe we ought to do that. In the affirmative action
12 debate, what is most disturbing about it from my perspective first of
13 all--the facts, as you say, don't get out--is that many of us are
14 required to pretend we don't know what we know and to ignore facts that
15 we see around us all the time. For example, what Christopher said
16 about the mission of the university--we all know that highly-selective
17 universities, at least in the private sector, like the one I teach at
18 and the one that Christopher is at, believe that part of their mission
19 requires them to have a diverse student population to achieve the kind
20 of intellectual environment that they want to offer students. But
21 instead of people accepting that as the expert opinion of the people
22 who run the universities, there are arguments about, well, do they
23 really need to do that, and can it really be an important part of their
24 mission. And we all know who teach at such places that it is really a
25 part. And if you are in a public university, of course, it becomes

1 more of a problem because you've got the politicians meddling into
2 whatever else you are doing, which to a large degree, the private
3 institutions have to date, although it may change, been insulated from.

4 The other thing that we are required to do is to pretend
5 that we don't know that the effort to achieve diversity, however weak
6 it has been, has been important in that there have been many people who
7 have gone through the institutions where we teach who are doing very
8 well, who by measures like SATs and GREs and LSATs and all that kind of
9 stuff may or may not have had very high scores, just like there are
10 many students who are not minorities who didn't have very high scores
11 and have done very well.

12 So we are always sort of asked to pretend that we don't know
13 what we know. The other thing we are really asked to pretend and we
14 don't know, and that really bothers me, is that most of the people who
15 have influential positions in American societies in various sectors
16 went to elite or highly selective institutions. We all know this
17 because we know almost everybody in the circles we travel in, and we
18 know where people went to school. And we also know why parents send
19 their children to these schools and pay tuition for them to go, because
20 everybody knows this. But we are supposed to pretend we don't know this
21 and that people can go to school anywhere. And of course, we can give
22 random examples--John Doe graduated from high school, didn't go to
23 college and became a businessman and made a multi-million-dollar
24 fortune. Yes, there are examples of such John Does, but by and large,
25 whether it is in the public sector or the private sector, the most

1 influential people who have the most power are people who went to these
2 selective institutions, and the people of color who are in these
3 circles and have the most power--most of them; not all of them; we can
4 cite examples of those who did not--went to these selective
5 institutions.

6 It is just something that--not that this should be the case,
7 but it is. So we have to be concerned about whether people have access
8 to these institutions.

9 The other thing that always bothers me about these stories
10 is that the students who are asked in these stories don't know this--
11 what I just said to you. The reporter doesn't say to them: "Do you
12 know that most of the people who get to do these things come from
13 selective places, and you aren't getting to go to one?"

14 They ask them how they like going to--

15 COMMISSIONER EDLEY: Riverside. UC Riverside.

16 CHAIRPERSON BERRY: --UC Riverside--"Do you like it?"

17 "Oh, yes. I'm having a good time. Everyone likes me." They
18 never say to them, "Do you realize the impact that has on your life
19 chances, and what do you think about that and how much harder it's
20 going to be for you?" .

21 Anyway, I do think that there is some room for fact-
22 gathering and accumulation, and we may not all agree, and we probably
23 won't, but I think that's an area where we should do some work, so
24 let's agree that we should do it.

1 Now, on the letters, I lost the point--you said we should
2 send out letters to ask people.

3 COMMISSIONER EDLEY: Well, let me withdraw that. I don't
4 want to attempt to micro-manage how the fact-gathering is done. But
5 let me just state it more generally. I think this is a situation in
6 which there is an enormous opportunity for the staff to leverage the
7 interest and the activity of a bunch of researchers in the field as
8 well as various official and unofficial folks by simply soliciting
9 their sense of what the numbers and the implications are of those
10 numbers. I think there are several institutional researchers out at
11 the University of California and other academics around the country who
12 have been trying their best to track this, and given the limits on our
13 resources, I think the more that we could do to get them to do a little
14 bit of the work for us in developing some of this evidence, the better.

15 CHAIRPERSON BERRY: And we'll just make sure we have
16 involvement like that and that Commissioners have an opportunity to
17 suggest different people who they think should be involved, as we have
18 done in the past.

19 Okay--yes?

20 COMMISSIONER ANDERSON: Madam Chair, I don't want to be too
21 cynical about this, but I think it is really a very easy process for us
22 to do, because we know the numbers are going to be down, and we know by
23 definition that that's a bad thing and it's going to hurt the
24 educational mission of these institutions. So to me it sounds very
25 much like a nonstarter.

1 CHAIRPERSON BERRY: Well, maybe it's not a nonstarter,
2 though, because--you are probably correct about the two points you just
3 made, based on what we know now--but getting some kind of analysis
4 about this out to the public and some perspective on it, I really think
5 is important.

6 The reason why I think this is important is not because of
7 my interest in trying to increase access for people or opportunity,
8 although that's important and that's what I believe in, because I
9 really think--not to sound too high-minded--it is important for the
10 country. I think the future of the country itself depends on making
11 sure that we have inclusion, making sure that given the demographics
12 and what our population is and the contention that goes on in society,
13 that we have people at all levels who are involved in decisionmaking
14 and who feel that political systems are valid, the economic system is
15 valid, who have had access, who have had a chance to interact with
16 other people to the extent we can promote that, and that sort of
17 closing our eyes or pretending we don't know or not having access to
18 facts, which a lot of people don't have access to, about the impact of
19 this whole affirmative action thing or anything else on this process of
20 inclusion over time is just not healthy for the country--long after I
21 am dead and gone. I just don't think it is good for the country, and I
22 think people ought to know what they are doing when they do it, and
23 that we have some responsibility to put the facts out there in a way
24 that they are there, and they focus people's attention so they can
25 think about it. They may conclude after they think about it that,

1 well, you know, in my scheme of values, it really doesn't make much
2 difference to me. But at least what we'd be doing is forcing them to
3 focus on the problem. I don't think it will take a lot of time and
4 energy because I think most of the facts can be easily gathered, and I
5 think most of the researchers, wherever they stand on this issue, would
6 be willing to become engaged, and they would find it intellectually
7 interesting and useful to be engaged if they know the end result is
8 going to be a report that can be widely used.

9 So I just think it's worthwhile for us to at least try to
10 focus people's attention--and who knows--somebody may come up with a
11 better idea.

12 VICE CHAIRPERSON REYNOSO: Fact-finding may not be quite as
13 easy as we think, because the last administration in California
14 terminated the programs of fact-finding within the State, saying that
15 it violated 209. It manifestly, in my view, does not violate 209, but
16 they said, well, any type of fact-finding on race and ethnicity, et
17 cetera, would be violative.

18 And sad to say, there was a bill to reinstitute that, and if
19 I remember correctly, even our current Governor vetoed that bill, so
20 facts that we had before, at least when those figures stopped being
21 gathered by the State, we may have to get them from other folks.

22 So that one of the issues is whether it is good to have
23 facts, and some politicians think it is not.

24 CHAIRPERSON BERRY: So maybe what we ought to do as we
25 consider what the Commission is going to do with itself over the next

1 year is to think about this whole area of the impact of ending
2 affirmative action on opportunity and the fabric of American society.
3 Maybe this is something that we ought to do, and we ought to think some
4 more about how we do it and take all these ideas in mind, and when the
5 staff has drafted proposals for us to look at, they can take this in
6 mind.

7 Now, let us turn to schools and religion. All of you
8 received a statement which was a proposed statement and a draft when we
9 were discussing the Schools and Religion draft. And we are discussing
10 it under the Staff Director's Report because it is an ongoing item.

11 Now, what I'd like to do is to find out whether you agree in
12 general with the tone and tenor of this as something to be added to the
13 transcript of the hearings on schools and religion; do you think it
14 needs more work?

15 There was a word in here somewhere--"schemes"--on page 3,
16 which caught my eye. It says something about "schemes"--the word
17 "scheme" is in here somewhere--

18 STAFF DIRECTOR MOY: The second line from the top.

19 CHAIRPERSON BERRY: --the second line from the top--I think
20 that that should be changed, because it is very British, and in
21 American parlance, when you say "scheme," people think of it as doing
22 something--you know, they are "scheming"--

23 COMMISSIONER EDLEY: Something nefarious.

24 CHAIRPERSON BERRY: --and all that "scheme" means is just a
25 proposal, an idea, laying something out. So we should probably say

1 "proposals" or something. That may seem minor, but it isn't.

2 Does anyone have any thoughts about this statement?

3 VICE CHAIRPERSON REYNOSO: I went over the statement, and I
4 thought it was a good statement. It places the context of public
5 schools in American life, I thought, in its proper perspective.

6 CHAIRPERSON BERRY: And it did, I think, most of what we
7 asked. It notes Commissioner George's statement; it put in the
8 business about selective institutions often being more diverse, which
9 Commissioner Redenbaugh had raised the last time. So I don't know--
10 what is your pleasure, ladies and gentlemen?

11 Yes, Carl?

12 COMMISSIONER ANDERSON: I guess I should say I'm going to
13 have an independent statement.

14 CHAIRPERSON BERRY: All right.

15 COMMISSIONER ANDERSON: There is much that I agree with, but
16 frankly, I cannot agree with Justice Brennan's analysis here of the
17 proper role of the public schools and then the discussion of charter
18 schools and vouchers and tuition tax credits.

19 I think the country is moving in a different direction, and
20 I think that there has to be greater accommodation of our religious
21 heritage, and that accommodation has to occur in the public school
22 sector as well, and simply to say that our heritage is patriotic and
23 civic is not true--it simply is not true. And that kind of mind-set
24 seems to me to lead to precisely why it is necessary to have the Equal
25 Access Act and to have a Statement of Principles that this

1 administration, which I supported, has promoted.

2 But it is, to me, the Brennan mentality, if I can put it in
3 those terms, that is precisely much of the current problem. So I find
4 the statement to be incongruous from that standpoint--although I can
5 agree with it up until Justice Brennan's view of public education.

6 CHAIRPERSON BERRY: Okay.

7 Commissioner Edley and then the Vice Chair.

8 COMMISSIONER EDLEY: I actually think that there is a--and I
9 agree with Carl to a certain extent--I guess the way I would put it,
10 however, is that there is a reading of Justice Brennan, and in
11 particular of this passage, which suggests that our civic and patriotic
12 heritage is inconsistent with the kind of tolerance and expression
13 represented by the Equal Access Act and the Statement of Principles. I
14 don't think that that is the necessary reading of this passage or of
15 Justice Brennan's judicial philosophy. I think that the opposition
16 here is between a theistic approach to education, to public education,
17 versus one that emphasizes tolerance of others and freedom of
18 expression.

19 So I was looking for a sentence of some sort following the
20 Brennan quote that would make clear that the point is not that all of
21 our civil life and indeed, public education, must be bled dry of any
22 religious expression, but rather that that expression and--but rather,
23 that tolerance of religious expression and diversity is central to the
24 civic and patriotic traditions.

1 Really, I think that without that kind of transitional
2 sentence, the Brennan language is a bit jarring, so I would suggest an
3 amendment of that sort. I'll try to be a little bit more articulate
4 about precisely what kind of change--

5 CHAIRPERSON BERRY: While you try to do this, let me ask
6 Carl this question.

7 Commissioner Anderson, if we were to excise Justice
8 Brennan's quote, beginning with "The late Justice Brennan," all the way
9 down to the end of the quote, and then just simply say we are concerned
10 about some of the currents within our Nation's public schools today,
11 including the racial isolation--and just go on--are there other matters
12 that you object to in the statement--because while I like Justice
13 Brennan--he's dead now; I still like him--but it seems to me that if
14 what I had hoped would be a sort of balanced presentation that we could
15 all agree to is jarring to you because of that, even without
16 Christopher or someone suggesting an amendment, that we might suggest
17 that we do that; also, the part at the bottom about charters and all
18 the rest of it doesn't take any position on whether people should have
19 them, not have them or whatever. It just points--

20 COMMISSIONER EDLEY: It just says there's a danger, and we
21 have to be vigilant.

22 CHAIRPERSON BERRY: --it just points out that we should make
23 sure, and also just points out that private schools have more
24 diversity, a lot of them do.

1 So the idea was not to take a position on those. I happen
2 to believe, personally--and I may be totally wrong, as usual--that
3 there is an increased tendency toward having charter schools and all
4 sorts of things as options because people are dissatisfied in some
5 places with public schools. And I think that that has to run its
6 course just like anything else does. We go from--we change in America
7 on policy terms, and we embrace policies that we wouldn't have embraced
8 before--we try them out, we see how they work out, and then, if they
9 work, we use them.

10 So in my view, the statement didn't take any particular
11 position on that subject of the charters and their tax credits and so
12 on--it just pointed out that we should be mindful about the diversity
13 issue.

14 So if we wanted to take this out, would that still be a
15 major problem for you?

16 COMMISSIONER ANDERSON: Maybe I could just look at that
17 paragraph and maybe suggest a sentence or two.

18 COMMISSIONER EDLEY: Great.

19 COMMISSIONER ANDERSON: Do we have to pass it this meeting?

20 CHAIRPERSON BERRY: Well, we should--when is the printing of
21 the--does anybody know? November 17th, I think we were told before, it
22 should go out to be printed, or would be ready to go out to be printed.
23 That was the last time we were told. Is it ready to be printed, or
24 what's happening?

1 MS. HURLEY: It's not quite ready, but the editor is working
2 very hard.

3 CHAIRPERSON BERRY: Okay, it's not quite ready. We had
4 thought by November 17th that it would be ready to go to the printers,
5 and we were simply trying to get this done.

6 COMMISSIONER EDLEY: Is there a procedure, Madam Chair, to
7 circulate a slightly revised thing and have it approved before our next
8 meeting?

9 CHAIRPERSON BERRY: Well, I was about to suggest that if
10 people--if Carl wanted to do that, that we might do that.

11 Would you find it possible in the next week to try to do
12 that, Carl?

13 COMMISSIONER ANDERSON: Yes.

14 CHAIRPERSON BERRY: Okay. And I'm saying that either we
15 keep the Brennan quote, and you put something else in or take it out or
16 whatever, and fiddle with the other paragraph in some way so that the
17 idea is that we are not trying to take a position on charters or
18 vouchers or whatever--that's not the point. The point is just to make
19 sure that everybody understands that we're for inclusion and diversity
20 and making sure that insofar as possible, we have people in contact
21 with each other in terms of human relations and that kind of thing.

22 VICE CHAIRPERSON REYNOSO: Madam Chair, while I don't
23 interpret the Justice Brennan quote the way Carl does, I still would
24 agree to cut it out if that will get us all together.

1 COMMISSIONER ANDERSON: Well, if it's agreeable, maybe I
2 could try my hand at something and then, if that's agreeable, great,
3 and if not, we'll try something else.

4 VICE CHAIRPERSON REYNOSO: That's fine.

5 COMMISSIONER EDLEY: Carl, there may be a--if you find as
6 you are looking at it you want something there, some kind of quote
7 there, I'm sure there might be something good in the Statement of
8 Principles itself that might work. That's another possibility.

9 COMMISSIONER ANDERSON: That might work; yes. That's a good
10 idea.

11 CHAIRPERSON BERRY: So if you could promise us by what time
12 that you will have something back to us?

13 COMMISSIONER ANDERSON: Mid-week next week?

14 CHAIRPERSON BERRY: Okay. Why don't we say that by the end
15 of next week--which means close of business Friday--you will send a
16 copy of whatever you've got--why don't you send it to the Staff
17 Director's office and let them do the legwork of sending it around to
18 everybody; okay?

19 COMMISSIONER ANDERSON: Sure. That would be great.

20 CHAIRPERSON BERRY: That way, they can keep track of it.
21 And then we will read it, and if we have further changes, we will all
22 respond in the next two or three days, and if not, we'll just respond
23 by all saying "Fine."

24 COMMISSIONER ANDERSON: Okay.

1 CHAIRPERSON BERRY: Okay.

2 COMMISSIONER ANDERSON: Good. Thank you.

3 CHAIRPERSON BERRY: Sure.

4 Now let us go to our calendar for the year 2000 Commission
5 meetings. You were sent a proposed calendar, which you probably don't
6 know where it is, asking whether you could meet on the dates. Carl, do
7 you happen to have a copy of it, or do you need me to read it?

8 COMMISSIONER ANDERSON: I'm looking for my copy right now.

9 CHAIRPERSON BERRY: Okay, because I am happy to read it if
10 you don't have it.

11 COMMISSIONER ANDERSON: I guess it would be helpful to me if
12 you could read it.

13 CHAIRPERSON BERRY: All right. And those of you who can't
14 meet on a certain date, just say so; okay?

15 Friday, January 14th would be the planning meeting, which
16 means--I think the way it sounds now, you should plan on being
17 available for the entire day--not getting out by lunch time; okay? So
18 if your schedule won't permit that--maybe we'll even serve lunch here;
19 I'll buy sandwiches or something, so that we can spend the whole day
20 talking about all this stuff we have been laying on the table here this
21 morning.

22 So, January 14th. Is there anybody who can't do it on
23 January 14th? Charlie, do you have Russell's schedule? We'll just go
24 through it, and when you come back, you can tell us.

1 Friday, February the 18th--oh, wait a minute. You're back
2 to January.

3 COMMISSIONER EDLEY: I just want to ask a general question,
4 because my teaching schedule for this academic year was set before this
5 wonderful opportunity to serve came my way, so I do teach on Thursdays
6 and Fridays in the spring, and I'm not--I gather there is a tradition
7 of doing Fridays?

8 CHAIRPERSON BERRY: Do you teach every Friday?

9 COMMISSIONER EDLEY: In the spring, I will teach every
10 Friday, but I will not make that mistake again for the next academic
11 year. All right. That said, I'll just try to figure out a way to now
12 and then reschedule classes or something.

13 CHAIRPERSON BERRY: Are you teaching in the morning?

14 COMMISSIONER EDLEY: Yes, in the morning.

15 CHAIRPERSON BERRY: How could he do this to us?

16 COMMISSIONER EDLEY: That's all right. I'll figure out
17 something. That's okay.

18 CHAIRPERSON BERRY: What you will have to do--are you
19 actually occupied in the classroom for the entire morning?

20 COMMISSIONER EDLEY: To the dismay of the students.

21 CHAIRPERSON BERRY: It's a lecture. Okay.

22 COMMISSIONER EDLEY: It's 11 to 1.

23 CHAIRPERSON BERRY: What I'm suggesting--

24 COMMISSIONER EDLEY: I will endeavor to try to reschedule at
25 least one or two of these sessions in the spring, and--

1 CHAIRPERSON BERRY: And then maybe for the ones you can't
2 reschedule--

3 COMMISSIONER EDLEY: If there are voting items, we could do
4 them early in the morning--

5 CHAIRPERSON BERRY: --by 9:30, we could start, and then by
6 10:30, you could go and do whatever you're doing, or by 10:15.

7 COMMISSIONER EDLEY: Right.

8 CHAIRPERSON BERRY: Okay?

9 COMMISSIONER EDLEY: Okay.

10 CHAIRPERSON BERRY: And promise to do that.

11 But on the 14th--

12 VICE CHAIRPERSON REYNOSO: Maybe we could even start those
13 meetings at 9 and make sure we have time--

14 CHAIRPERSON BERRY: Depending on the schedule.

15 VICE CHAIRPERSON REYNOSO: Yes.

16 CHAIRPERSON BERRY: Okay.

17 Now, on January 14th, you will need to be here--

18 COMMISSIONER EDLEY: That's set. I'm fine.

19 CHAIRPERSON BERRY: --for the planning meeting,

20 all Commissioners to the extent that it is possible.

21 COMMISSIONER EDLEY: Right.

22 CHAIRPERSON BERRY: And if you think you can't be here,
23 let's have the planning meeting another day, because as you noted at
24 the beginning of this discussion, there are a lot of very substantive
25 decisions to be made about what we're going to do with ourselves, so

1 you will need to be here. And you will also need to read all the
2 materials that you are sent for that meeting so that we can have a good
3 discussion about them. Okay.

4 February 18th--we know the answer from Christopher.

5 March 17th.

6 VICE CHAIRPERSON REYNOSO: I have a conflict, but I think I
7 can--I'll just set it aside.

8 CHAIRPERSON BERRY: Okay. Anyone else?

9 [No response.]

10 CHAIRPERSON BERRY: April 14th.

11 April 14th--Carl?

12 COMMISSIONER ANDERSON: I think that's okay.

13 CHAIRPERSON BERRY: May 12th.

14 [No response.]

15 CHAIRPERSON BERRY: June 16th. And your classes will be
16 over by then, won't they, Christopher?

17 COMMISSIONER EDLEY: Amen.

18 CHAIRPERSON BERRY: Okay.

19 July 21st.

20 [No response.]

21 CHAIRPERSON BERRY: And we do not meet in August.

22 September 15th.

23 [No response.]

24 CHAIRPERSON BERRY: October 13th.

1 [No response.]

2 CHAIRPERSON BERRY: November 17th--and Yvonne, you had a
3 . conflict.

4 COMMISSIONER LEE: Yes, I do.

5 CHAIRPERSON BERRY: So we need to change the November 17th
6 meeting. What days--let me see, November the 17th--we don't want to
7 have it--we try to have them about a month apart if we can, so it's
8 either going later or earlier.

9 VICE CHAIRPERSON REYNOSO: Why don't we just put it the 10th
10 and then move out the December meeting by a week, also?

11 CHAIRPERSON BERRY: This is a year 2000 calendar. Let's
12 see--November 17th--make it what date?

13 VICE CHAIRPERSON REYNOSO: The 10th.

14 STAFF DIRECTOR MOY: The 10th would be a holiday because of-

15 -

16 CHAIRPERSON BERRY: It's Veterans' Day or something.

17 STAFF DIRECTOR MOY: --on the 11th.

18 CHAIRPERSON BERRY: What do we do with November 17th?

19 STAFF DIRECTOR MOY: Commissioner Lee is not available.

20 CHAIRPERSON BERRY: Right.

21 November 10th is a--okay. That's a problem.

22 You can't be on the phone, either, Yvonne?

23 COMMISSIONER LEE: No, because I'll be out the country.

24 CHAIRPERSON BERRY: Okay. What shall we do? What is your
25 pleasure? Any other--

1 COMMISSIONER LEE: How about the 3rd? Can we meet on the
2 3rd?

3 CHAIRPERSON BERRY: November the 3rd.

4 COMMISSIONER MEEKS: The 13th would be the last one, then
5 the 3rd. That wouldn't be too bad.

6 CHAIRPERSON BERRY: That would be a short cycle, but is
7 November 3rd possible?

8 COMMISSIONER EDLEY: It's fine with me.

9 CHAIRPERSON BERRY: Carl?

10 COMMISSIONER ANDERSON: Yes, it's okay with me.

11 CHAIRPERSON BERRY: Okay. So instead of November 17th,
12 November the 3rd.

13 VICE CHAIRPERSON REYNOSO: Okay.

14 December 15th.

15 COMMISSIONER MEEKS: Let's move that back.

16 COMMISSIONER EDLEY: Yes.

17 CHAIRPERSON BERRY: And then we could move December 15th
18 back--which means Charlie has to find out again from Russell whether he
19 can be here.

20 December the 15th would be moved back to, say, December the
21 8th.

22 COMMISSIONER MEEKS: Right.

23 COMMISSIONER EDLEY: That's fine.

24 CHAIRPERSON BERRY: Okay.

1 Charlie, we've changed December 5th to December the 8th, and
2 we've changed November the 17th to November 3rd. Okay.

3 Now, were there problems with any of the rest of these?

4 Do you know any alternative dates that he has, or is it any
5 other time during those months? We're talking about Russell's schedule
6 here, Carl. Russell can't meet on February the 18th and would prefer
7 to meet on--

8 COMMISSIONER ANDERSON: I'm going to be out on the 11th.

9 CHAIRPERSON BERRY: Okay. Why don't we do this. Why don't
10 we keep these dates for the moment, and then at the next meeting go
11 over them again, because you have to get back again to find out, and
12 see if there are changes that are possible based on what you know about
13 when Russell will be available, because if we change the to dates, and
14 then he is not available on those dates, either, then we've got a
15 problem. So for now, we'll leave these, and then we'll review it again
16 on that day. Okay.

17 Yes?

18 COMMISSIONER EDLEY: I'm sorry, Madam Chair. I would really
19 urge that if the staff could try to sort this out well before the next
20 meeting, because I'm afraid that February is going to get complicated
21 very soon, with speeches and so forth. So we need to get that nailed
22 down.

23 CHAIRPERSON BERRY: Thank you for reminding me.

24 Why don't we, then, before the next meeting, sometime in the
25 next week, review these, and if there is a proposal for alternative

1 dates, send out to everybody what they are and see if people can do
2 them on those days. It may very well be that it's not possible to
3 change some of them, but if it is, we'll do it.

4 V. Racial and Ethnic Tensions in American Communities:

5 Poverty, Inequality, and Discrimination, Volume VII:

6 The Mississippi Delta Report

7 Okay. Now let's go on to the Mississippi Delta Report,
8 which is the next item.

9 There has been a response from--we sent a letter to the
10 television executives, networks--

11 COMMISSIONER EDLEY: An excellent letter.

12 CHAIRPERSON BERRY: --about this whole business of
13 diversity--remember--and the lobbyists for the National Association of
14 Broadcasters, Mr. Podesta, has gotten in touch with us and the lawyers
15 for some of the other people, and they have asked to have a meeting to
16 discuss their response to the letter.

17 I have arranged for such a meeting next Tuesday at 11
18 o'clock, with myself and some of the staff--if any of you are around
19 and want to come, fine--to talk about this. And I think we should make
20 clear to them at that time that we intend to follow up, and also our
21 concern about content, because as Carl pointed out, we don't enforce
22 anything, so we're not chilling anybody's First Amendment Rights--is
23 that right, Carl, or am I misquoting you?

24 COMMISSIONER ANDERSON: That's a direct quote, I think.

1 CHAIRPERSON BERRY: Okay. And we are concerned about race,
2 ethnicity, religion, all these things that are in the letter. So we'll
3 be having a meeting with them next week. They apparently take
4 seriously our ability to publicize whatever it is they are doing or not
5 doing, so--

6 COMMISSIONER LEE: Madam Chair, are we still proceeding on a
7 briefing next spring?

8 CHAIRPERSON BERRY: I think it depends on how these
9 discussions go, and at some point we'll have one, but the question is
10 whether we have them come in and tell us what they didn't do as follow-
11 up, or tell us what they are planning to do and have the results of
12 what they didn't do. Do you see what I mean? But yes, we should have
13 a briefing at some point on this.

14 All right. "Racial and Ethnic Tensions in American
15 Communities: Poverty, Inequality, and Discrimination, Volume VII: The
16 Mississippi Delta Report."

17 Before we do this, I just want to say that I think we should
18 go back to an idea we had before, which we then abandoned at some
19 point, which is that once we have approved all the "Racial and Ethnic
20 Tensions" reports, we should have experts come in and talk to us about
21 what this all means and then do some kind of summary statement which we
22 issue about the meaning of all these various things. We had said we
23 were going to do that before, and then we didn't. Okay.

24 Now, the Mississippi Delta Report. Could I get a motion to
25 pass it so that we can get it on the floor for discussion?

1 VICE CHAIRPERSON REYNOSO: So moved.

2 COMMISSIONER LEE: Second.

3 CHAIRPERSON BERRY: Okay. Discussion?

4 VICE CHAIRPERSON REYNOSO: I just want to mention that I
5 sent a memo to the staff through Ruby on some suggested changes, and we
6 are working with the staff on that. We don't want to delay the
7 issuance of the report, but we had a few relatively minor suggestions
8 for changes.

9 CHAIRPERSON BERRY: Okay.

10 Yes, Commissioner Lee?

11 COMMISSIONER LEE: Madam Chair, I wonder if the Vice Chair
12 already has that in his memo. The only thing I would suggest is on
13 page 170, under Chapter 3, Finding and Recommendations, Sampling, staff
14 put in a new paragraph on why sampling is being recommended instead of-
15 -

16 STAFF DIRECTOR MOY: What page is it?

17 COMMISSIONER LEE: --170, on the Census undercount--

18 COMMISSIONER EDLEY: The recommendation simply says
19 "sampling," and there is no elaboration.

20 COMMISSIONER LEE: Yes. There needs to be a paragraph on
21 that.

22 COMMISSIONER EDLEY: An explanation.

23 CHAIRPERSON BERRY: Are there any other Commissioner
24 comments before I say something?

1 Yes, Commissioner Edley.

2 COMMISSIONER EDLEY: Well, it depends on what you're going
3 to say.

4 [Laughter.]

5 CHAIRPERSON BERRY: Go ahead, comment. I was going to call
6 for the question. Anyway, go ahead.

7 COMMISSIONER EDLEY: It's obviously a very impressive piece
8 of work, but I have to say as a policy wonk and sometime political
9 hack, the recommendations and findings--

10 CHAIRPERSON BERRY: As a person interested in politics and
11 recognizing the importance of politics.

12 [Laughter.]

13 COMMISSIONER EDLEY: --that I was disappointed with the
14 findings and the recommendations in that I read them and had the
15 feeling that I thought they were unlikely to have much impact. It
16 seemed to me that they are written in a way that is calculated to be
17 unobjectionable rather than pointed, when in fact pointed communication
18 is often the only way to spur people to action and to respond, even if
19 it comes at the cost of perhaps roiling the waters a bit.

20 And I really don't know, Madam Chair, what to do about that,
21 and I think left to my own devices, I would--well, let me say that I
22 know what I would do if I were in government or something--

23 CHAIRPERSON BERRY: Okay. What would you do?

24 COMMISSIONER EDLEY: What I would do if I were in
25 government, knowing something about this, is that I would--I would do

1 a--I would go through these and make them sharper, both with respect to
2 findings--less of the "We heard testimony that X and Y"; more of "We
3 find that X and Y".

4 I think I would try to make sure that I was offering
5 recommendations wherever possible about things that were controversial,
6 because that's where the confusion is and that's where the public
7 education is most needed, namely, on matters that are controversial and
8 that are controverted.

9 And too, many of the recommendations had a feel to me of
10 essentially exhorting people to do the right thing, and without, of
11 course, having stated the factual predicate that people are currently
12 doing the wrong thing. It was more kind of we are worried that some
13 people may perhaps, we heard, it is rumored are doing the wrong thing.

14 And another way to think about this is if I am a journalist
15 and I got this package of recommendations and findings, would I find
16 anything here really worth writing about other than the fact that the
17 Commission issued a report; if I were a public official receiving this,
18 would I feel challenged, or would I feel perfectly capable of shrugging
19 it off without any fear?

20 Anyway, to get back to the question of what would I do, I
21 would want to--so number one is I would try to rewrite the
22 recommendations and findings with an eye toward that perspective. And
23 I would probably want to vet this a little bit with observers from a
24 variety of perspectives and try to reassure myself that they thought
25 that the most important issues really were joined by these

1 recommendations.

2 CHAIRPERSON BERRY: So that basically is what you would do.

3 Well, there are two points to be made. First of all, I
4 asked the Staff Director some time ago to give us or to give the
5 Commissioners an opportunity to review the procedures that are used by
6 the Office of General Counsel in generating reports, because I think
7 that the Commissioners may believe that some of them should be changed.
8 And I suspect, based on a description of how things must be done,
9 according to a manual that they have or something, that some of the
10 stuff is done in such a way that needs to be revised in order to make
11 things happen faster around here and also to make us end up with
12 sharper recommendations and findings.

13 But that's just an overarching concern, not just about this
14 report. But I also think that your idea that the issue be vetted by
15 folk is not something that is part of the procedure; I think that's
16 probably not part of the procedure and that the procedure is to do the
17 hearings and do the testimony and to base the findings on the testimony
18 and the recommendations on that, without consulting with people other
19 than people who are called as witnesses during the hearing.

20 I like the idea, but what I would like to propose we do on
21 this one--and let us understand what we plan to do with this report.
22 What we plan to do with this report is to go to Mississippi and have a
23 press conference about the findings and recommendations in the report
24 and then to probably meet with some political people down there,
25 including the Governor and others, about whether or not they plan to do

1 something about some of the things that are there.

2 Now, it may well be that sharper recommendations and
3 findings would help that process so that there is something. In other
4 words, we can emphasize it through the press conferences and through
5 going down there and so on, and not just the bald report itself.

6 So why don't we do this--why don't we say that Commissioners
7 who feel that the findings and recommendations should be sharpened and
8 would like to think about it and would like to propose how it should be
9 done and consult with whomever they wish to give them that advice ought
10 to do that and put some kind of time limit on it. And I myself would
11 be quite willing to work with the staff on getting it done once we get
12 any recommendations and then take a look at it again, but the body of
13 the report--that is, everything except the findings and
14 recommendations--with the changes that the Vice Chair has proposed
15 before and the change that Commissioner Lee proposed substantively, we
16 think the body of the report is okay, that it's a question of the
17 findings and recommendations, and then we would go forward on that
18 basis.

19 How would that be?

20 VICE CHAIRPERSON REYNOSO: Fine.

21 COMMISSIONER EDLEY: Good.

22 CHAIRPERSON BERRY: And then we need a deadline. So that
23 means that we would--should we vote on the report subject to the
24 findings and recommendations being revised, or should we simply defer
25 voting on it until after we--

1 VICE CHAIRPERSON REYNOSO: Whatever will expedite it.

2 COMMISSIONER ANDERSON: Madam Chair.

3 CHAIRPERSON BERRY: Yes?

4 COMMISSIONER ANDERSON: I don't think it's going to make a
5 big difference on the outcome, but it might make sense to vote all at
6 the same time.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER EDLEY: I would feel more comfortable with
9 that, also.

10 CHAIRPERSON BERRY: All right.

11 Now we need a deadline. What deadline would those of you
12 who think you might have some responses think is fair for you to
13 respond by? Two what--fingers or weeks?

14 VICE CHAIRPERSON REYNOSO: Weeks. Two weeks is fine.

15 CHAIRPERSON BERRY: Two weeks from today. Okay. And we
16 will look for responses from anyone who has some to make, and then
17 we'll look at the findings and recommendations again. Okay.

18 VI. State Advisory Committee Report

19 Employment Opportunities for Minorities

20 in Montgomery County, Ohio (Ohio)

21 CHAIRPERSON BERRY: Now let's go on to the SAC Committee
22 Report, Employment Opportunities for Minorities in Montgomery County,
23 Ohio.

24 Could I get a motion to approve that report?

1 VICE CHAIRPERSON REYNOSO: So moved.

2 CHAIRPERSON BERRY: Is there a second?

3 COMMISSIONER EDLEY: Second.

4 CHAIRPERSON BERRY: Discussion?

5 VICE CHAIRPERSON REYNOSO: Madam Chair, I thought it was a
6 good report, but somehow I missed one part of it that Effie called to
7 my attention. That is at page 38, the report refers to--the second
8 full paragraph says, "One of the criteria we used when determining Tier
9 1 schools is the minority population of the students who are there,
10 including Historically Black Colleges and Historically Hispanic
11 Colleges and Universities."

12 In this country, we really don't have Historically Hispanic
13 Colleges. There is an Association of Hispanic Colleges, where any
14 university that has over 25 percent of the population is considered
15 Hispanic for the purpose of that organization. So they might want to
16 amend that paragraph just to keep it historically accurate.

17 CHAIRPERSON BERRY: Right. That definitely needs to be
18 changed.

19 COMMISSIONER EDLEY: Hispanic-Serving Institutions, HSI, I
20 think is more common.

21 VICE CHAIRPERSON REYNOSO: Yes.

22 CHAIRPERSON BERRY: Hispanic-Serving Institutions.

23 STAFF DIRECTOR MOY: Would you repeat the page, please?

24 CHAIRPERSON BERRY: Page 38. It is "Hispanic-Serving
25 Institutions." There aren't any Hispanic--whatever.

1 Okay. The footnote--is there a footnote? Oh. They're
2 going to put a footnote in because they say that this came from the
3 transcript--somebody said this--and then you can put a "[sic]" because
4 it is not accurate. People say all sorts of things--you know, somebody
5 in the transcript said "The sky is gray" or green or yellow, and it
6 isn't--anyway. Okay.

7 Are there any other changes or any other discussion?

8 Yes, Commissioner Lee?

9 COMMISSIONER LEE: I just want to comment that I want to
10 commend SAC and the staff for putting together this report in a very
11 timely manner. I think this is the first SAC report that I have
12 received that falls within the 18 months, so I really appreciate it,
13 and I thank the staff for really doing a good job on that.

14 CHAIRPERSON BERRY: They really need to be commended, then.

15 Okay. All in favor indicate by saying aye.

16 [A chorus of ayes.]

17 CHAIRPERSON BERRY: Opposed?

18 [No response.]

19 CHAIRPERSON BERRY: So ordered.

20 VII. State Advisory Committee

21 Appointment for Kentucky

22 CHAIRPERSON BERRY: Now we have the SAC committee
23 appointment for Kentucky.

24 Could I get a motion?

1 VICE CHAIRPERSON REYNOSO: So moved.

2 COMMISSIONER LEE: Second.

3 CHAIRPERSON BERRY: Okay. Any discussion?

4 VICE CHAIRPERSON REYNOSO: Madam Chair, I just again want to
5 comment favorably that the staff clearly has been looking at the age
6 criteria that we had mentioned some time back, and I think the staff
7 has been quite diligent at looking at that.

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

10 [A chorus of ayes.]

11 CHAIRPERSON BERRY: Opposed?

12 [No response.]

13 CHAIRPERSON BERRY: So ordered.

14 VIII. Future Agenda Items

15 CHAIRPERSON BERRY: Does anyone have any other future agenda
16 items that we have not discussed while we were not supposed to be
17 discussing future items that haven't been raised already that they
18 would like to lay on the table to the Commissioners?

19 Yes, Commissioner Edley.

20 COMMISSIONER EDLEY: Is there much recent history of the
21 Commission looking at the issue of K through 12 school integration and
22 the trends in increasing racial isolation of public schools, because
23 there is an enormous amount of court activity in the field. I think
24 everyone's expectation is that within the next year or two, the Supreme
25 Court will be considering the question of the appropriate scope of

1 voluntary measures to promote racial integration--when are race-
2 conscious pupil assignment practices constitutionally permissible on a
3 voluntary basis--at the same time that district courts are increasingly
4 declaring unitary status in those districts that have long been under
5 court-supervised desegregation.

6 I also think there is some developing scholarship related to
7 the question of whether racial integration should be considered a
8 compelling interest in terms of the educational and social
9 consequences, which of course actually relates back at the conversation
10 that we had earlier about higher education and affirmative action in
11 California, but I am talking about in the K through 12 context now.

12 So between those three things, it seems to me it is a very
13 rich possible area for attention by the Commission if you haven't
14 looked at it recently.

15 CHAIRPERSON BERRY: Yes?

16 VICE CHAIRPERSON REYNOSO: All of the reports that we read
17 seem to indicate that we are headed for a re-segregation of our public
18 schools, and there is a debate going on now as to whether that is good
19 or bad--

20 COMMISSIONER EDLEY: Exactly.

21 VICE CHAIRPERSON REYNOSO: --the re-segregation being de
22 facto rather than de jure, having to do manifestly with the housing
23 patterns. That is clearly an important civil rights issue, and we
24 really haven't had that discussion in this Commission for some time.

1 I know that we are getting overloaded on suggestions that--
2 on issues that we hear in this Commission, but that seems to me to be a
3 very important one. I have been dealing with issues pertaining to the
4 Los Angeles School District--and I guess I'm not shocked because I keep
5 reading the statistics all the time--but how predominantly one race or
6 one ethnic group schooling that we are developing in Los Angeles and
7 elsewhere is still shocking in light of our national pronouncements
8 that we think integration when possible is good. And of course, that
9 often conflicts with the notion of neighborhood schools. But for a
10 variety of reasons, we are clearly re-segregating our public schools,
11 and I think that that is a subject that we ought to discuss.

12 CHAIRPERSON BERRY: Carl?

13 COMMISSIONER ANDERSON: Madam Chair, for our planning
14 meeting in January, are we going to have the opportunity for the type
15 of free-ranging conversation on subjects, or are we in a position that
16 by the time we get to January, whatever will be on the table ought to
17 have been developed prior to that time?

18 CHAIRPERSON BERRY: I think there are two answers to your
19 question. The first answer is that I would hope that the staff would
20 develop proposals around the topics that we have sort of laid out, at
21 least tentative proposals; and the second answer is that by saying that
22 everyone should be there all day, I am hoping that we can have the kind
23 of free-ranging discussion, either flowing from the proposals or just
24 in general, about anything that anybody wants to discuss and engage
25 each other in the discussion. That's what I am hoping will happen.

1 COMMISSIONER ANDERSON: Well, I think this is a good issue
2 that ought to be on the agenda for January.

3 CHAIRPERSON BERRY: Okay.

4 COMMISSIONER ANDERSON: And I was just wondering whether
5 this is the time now that we need to get all of this on the table or
6 whether we're going to have an opportunity next month and in January.

7 CHAIRPERSON BERRY: Well, I think it would be good, since we
8 do have a few minutes here, to hear a little bit more about it if
9 anyone wants to say anything, and staff may sketch out something for
10 us. But it's not something that we're going to settle by discussion in
11 the next 10, 15 minutes--I can tell you that.

12 VICE CHAIRPERSON REYNOSO: My recollection--I'm sorry.

13 CHAIRPERSON BERRY: Just a minute--Commissioner Anderson?

14 COMMISSIONER ANDERSON: If I could just say I have to leave
15 now--are we going to take any more votes?

16 CHAIRPERSON BERRY: There will be no more votes.

17 COMMISSIONER ANDERSON: All right. If I could just go on
18 the record as supporting this concept and that we ought to discuss it
19 in January.

20 CHAIRPERSON BERRY: Okay, thank you.

21 VICE CHAIRPERSON REYNOSO: Thank you.

22 CHAIRPERSON BERRY: Thank you very much.

23 COMMISSIONER EDLEY: So long, Carl.

24 CHAIRPERSON BERRY: Now, you guys know that the Commission--
25 or, you may not know--that the Commission years and years ago in the

1 seventies sometime spend lots and lots of time on school desegregation
2 issues, and there was one period in which--this was before I was on the
3 Commission--there was a time when I wasn't on the Commission--the
4 Boston school issues and all that stuff, Los Angeles, all over the
5 country, if you go and look in the library of any university, because
6 they all had Commission reports, or our library up here, you will find
7 all these reports that the Commission did when Arthur Fleming was the
8 Chair all over this country, pounding home on school desegregation and
9 busing and all that stuff that was happening during that time. Lots of
10 hearings--Carol-Lee was here, so she knows--isn't that right--I'm not
11 making this up, right?

12 MS. HURLEY: No, you're not making it up at all.

13 CHAIRPERSON BERRY: And the Commission made it a major focus
14 of its efforts in the aftermath of the political changes that occurred
15 and the fact that we began to lose the battle despite all the work that
16 had been put into it. People started in the eighties talking about we
17 should devote our time and attention to other things; maybe we could
18 find some places where we agreed--even not doing much about affirmative
19 action--and on this K through 12, the issues that are coming to the
20 court, as you said, Christopher, a lot of them are simply the same
21 issue that has been raised in higher education. They are just raising
22 it in K through 12. It's not a different issue.

23 COMMISSIONER EDLEY: Exactly.

24 CHAIRPERSON BERRY: So the question is whether the
25 Commission should go back to doing something about school desegregation

1 and the lack thereof in the name of how important it is to the
2 educational process or to the country and its future, with the added
3 bell and whistle of talking about the increasing diversification of the
4 American population and people of color, whereas before, it was mostly
5 about blacks and whites, Euro-ethnics, whites, and so on--whether we
6 ought to do that or whether we, like everybody else, ought to assume
7 that nobody is going to desegregate the schools anyway, so why should
8 we waste our time--or is it like affirmative action when we say we
9 really want to put the facts out and let people really understand what
10 is happening.

11 Now, Gary Orfield puts out facts, other people--scholars--
12 put out facts, Orfield mainly. But the point is does the imprimatur
13 and the work of this Commission need to be in some way put on the line
14 here.

15 Yes, Commissioner Meeks.

16 COMMISSIONER MEEKS: Well, I think that brings up the
17 subject of the voucher system and the charter schools. I mean, there
18 hasn't been a great move toward those yet, but it's a pretty good move,
19 and we've had discussion about that.

20 I think in some ways we had better--and I think that policy
21 is going to move toward that--and maybe I'm wrong; maybe I don't know
22 anything--but I think we should be on the cutting edge, setting some
23 policy or at least recommending policy before there is a lot of policy
24 toward those.

1 CHAIRPERSON BERRY: Well, you are right that if we take it
2 up, it is going to involve us saying something about school diversions
3 from the public school--whether we call them diversions or people going
4 elsewhere or whatever options--and the impact they have on all that,
5 too, not as the central focus of what we were talking about, but the
6 impact.

7 Yes?

8 VICE CHAIRPERSON REYNOSO: Well, it will also get us, but I
9 think properly, into a discussion of assets. That is, I have heard
10 many people say, including many minority folks, that it really doesn't
11 matter if we have integration or not as long as we have good quality.

12 But I think these discussions will take us into an
13 examination of whether or not, politically speaking, that can happen--
14 that is, can you have minority schools that end up having the same
15 quality as non-minority schools, and maybe even come up with examples
16 where the answer is yes and see what has happened there. Sad to say, I
17 think that more often than not, we'll come up with examples where the
18 answer is no, and then we know what the result is.

19 So it will include many different issues, but as you say, we
20 really haven't looked at it with any great intensity for two decades,
21 and maybe it is time--we're talking about really crucial issues for
22 civil rights. It seems to me that this is really a crucial issue. And
23 a lot of it has to do, I think, even there, with--I don't know whether
24 it is fact-gathering, but fact-publicizing, because Gary, as you say,
25 has continued to do those studies, and I read some article by somebody,

1 saying: Gee, who's this guy Orfield still gathering those statistics?
2 He's living back in the sixties. Doesn't he know that we've gone way
3 beyond that, and we don't care whether there is factual segregation or
4 not?

5 Many people feel that way, but folk who feel that way ought
6 to know what the result of that is, and I'm not sure that the results
7 have been part of the public discussion recently, and if we can, we
8 should try to make that part of the public discussion.

9 CHAIRPERSON BERRY: Yes?

10 COMMISSIONER EDLEY: I also want to say that I think that if
11 we had a hearing on this subject and covered a variety of different
12 aspects of it--what are the facts about developing patterns of
13 increased segregation; what do we know about the educational and social
14 consequences of it; should we care, and if we do care, what kinds of
15 tools ought to be available to do something; and what's the legal
16 framework for all of this, and how much scope do officials have or
17 should they have, constitutionally, to undertake voluntary measures to
18 act on this if they care about it, and just reinterpreting all of these
19 issues in light of the changing nature of the diversity that we have--I
20 think if we put together a hearing like that, actually, a conference on
21 that subject styled as a hearing, with various people coming and making
22 presentations, we could have a packed house. It would get a lot of
23 attention, because I think there are a lot of folks who recognize that
24 this is a pressing issue in the courts and in school boards around the
25 country and are not clear how to deal with it. They aren't clear what

1 the facts are, they aren't clear what the law is, they aren't clear
2 what the normative framework is.

3 So I think we could really help spur something along.

4 CHAIRPERSON BERRY: Okay.

5 VICE CHAIRPERSON REYNOSO: Although I think that in January,
6 we ought to--my recollection is that very often, we get a series of
7 recommendations from staff, particularly for big projects, research
8 projects and hearings--I think we ought to be talking about briefings
9 or short Commission meetings or any other approach that we want to take
10 to bring these matters to the front.

11 CHAIRPERSON BERRY: Because keep in mind, if we have a
12 briefing, as we did on the campaign finance issues, and we invite
13 people and they come, all the people who should be coming, and we
14 announce it, we don't have to go through the formal procedures that we
15 use for a hearing.

16 The main reason to have a hearing is, one, we think there
17 should be fact-finding; two, we think people won't come unless we
18 subpoena them--because with a briefing, you can't subpoena them. So we
19 have to make judgments about whether we should use subpoena power.

20 You can get just as much bang for the buck out of having a
21 briefing--the public doesn't know the difference between a briefing, a
22 forum--they know it's a public meeting--

23 COMMISSIONER EDLEY: Neither does this Commissioner.

24 [Laughter.]

1 CHAIRPERSON BERRY: I could tell that. A hearing is where
2 you legally have people come who give sworn testimony and who are
3 subpoenaed to give you the facts in the parlance of this Commission;
4 okay?

5 COMMISSIONER EDLEY: Gotcha.

6 CHAIRPERSON BERRY: And then you get fact-finding, which is
7 why that Mississippi report says, "Based on the testimony, we
8 found...", "blah, blah, blah, blah.

9 A briefing is a meeting of this Commission where we invite
10 people to come to discuss a certain issue, and they come, but we don't
11 subpoena them, and we don't have to go through the formalities, but if
12 we think there is any chance they won't come, then we think about
13 having a hearing. But if it's the kind of thing where people are going
14 to come anyway, we can take a whole day and have various sessions--they
15 will be covered by CSPAN, they will be covered by everything--and they
16 will come--and we have done this before, which is why we came up with
17 the idea of briefings. They are faster to put together--because
18 hearings take forever to put together--the amount of money that you
19 spend. And in the end, what the Commission does with it is we release
20 the transcripts, and if we want to make statements about what we heard,
21 we can make a statement about what we heard.

22 There are in-between ways that we call consultations, where
23 we ask people to write a paper about "X", and they come and give the
24 paper about "X", and then we publish all the papers. We call those
25 consultations. And we may or may not draw conclusions about it.

1 And then, forums are where people come to talk about
2 things, and the public too gets to talk at some point in the
3 discussion, and then we publish a report on what they said. And that's
4 what the State Advisory Committees usually do, and that's what we're
5 talking about doing--and the State Advisory Committees can't hold
6 hearings. Only we can hold hearings. You have got to have two
7 Commissioners at least somewhere before you can have a hearing. And we
8 can subpoena, for your information, anyone, including the President if
9 we want to. And our statute, the reason why we think Federal agency
10 heads will come even if we ask them to come to a briefing is they are
11 required to cooperate with us--all Federal officials are--by law. So
12 it's not that they can just say, "You guys asked us to come, and we're
13 not coming."

14 So we have all of these options available, so we need to
15 discuss and have the staff propose to us--maybe something can be done
16 in a briefing, which would be faster, and if the people are coming--and
17 researchers would be happy to come and talk about their issues, and we
18 could publicize it and make some decisions. Okay.

19 All right. So we will lay all these items on the table for
20 discussion--yes, Christopher?

21 COMMISSIONER EDLEY: May I make a suggestion for the
22 December meeting--we do have a December meeting; right?

23 CHAIRPERSON BERRY: December, yes, we do. Yes, we do,
24 Christopher. What day is the meeting? Remind Christopher.

1 [Laughter.]

2 CHAIRPERSON BERRY: There is a meeting on December the 10th-
3 -you, too, Yvonne--there is a meeting on December the 10th of this
4 Commission in this very room.

5 COMMISSIONER EDLEY: Where are we, again--never mind.

6 [Laughter.]

7 COMMISSIONER EDLEY: I think to give us all a chance to look
8 at a tentative agenda for the planning meeting--there are supposed to
9 be 11 substantive topics that we are going to discuss, or something
10 like that--so we can have it in more minds and think about--it will
11 have these two ideas that are missing or whatever--I mean, in the
12 fullness of time, it would be great to have a one-pager about each of
13 the 12 substantive ideas so that we have a notion of what the proposal
14 is, content-wise.

15 CHAIRPERSON BERRY: That may be possible, because we could
16 take it from the transcript.

17 COMMISSIONER EDLEY: Exactly. But at least for December, if
18 we could just see what the list is, and if not the one-pagers, at least
19 see what the list is, that would be great.

20 CHAIRPERSON BERRY: Okay. All right.

21 Any other matters?

22 [No response.]

23 CHAIRPERSON BERRY: I will entertain a motion that we
24 adjourn.

1 VICE CHAIRPERSON REYNOSO: So moved.

2 COMMISSIONER MEEKS: Second.

3 CHAIRPERSON BERRY: It is not debatable.

4 All in favor indicate by saying aye.

5 [A chorus of ayes.]

6 CHAIRPERSON BERRY: We are adjourned.

7 Thank you very much.

8 [Whereupon, at 12 o'clock p.m., the proceedings were

9 concluded.]

10

LIBRARY
U.S. COMMISSION ON CIVIL RIGHTS