

U.S. COMMISSION ON CIVIL RIGHTS

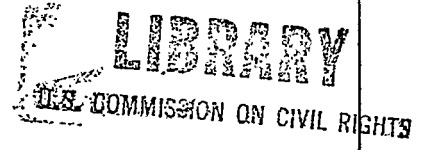
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MEETING

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FRIDAY, MAY 12, 2000

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The Commission convened in Suite 540, YMCA Building, 624 9th Street, N.W., Washington, D.C. 20425 at 9:30 a.m., Mary Frances Berry, Chairperson, presiding.

Present:

- MARY FRANCES BERRY, Chairperson;
- CRUZ REYNOSO, Vice Chairperson
- CARL A. ANDERSON, Commissioner
- CHRISTOPHER EDLEY, JR., Commissioner (Via Telephone)
- YVONNE Y. LEE, Commissioner
- ELSIE M. MEEKS, Commissioner
- RUSSELL G. REDENBAUGH, Commissioner
- VICTORIA WILSON, Commissioner
- RUBY G. MOY, Staff Director

Staff Present:

- KIMBERLEY ALTON
- DAVID ARONSON
- KIM BALL
- KI-TAEK CHUN
- PAMELA A. DUNSTON
- MICHAEL FOREMAN
- M. CATHERINE GATES
- EDWARD HAILES, Acting General Counsel
- GEORGE M. HARBISON
- MYRNA HERNANDEZ
- LISA M. KELLY
- MARC PENTINO
- PETER REILLY, Parliamentarian
- KWANA ROYAL
- JOYCE SMITH
- MARCIA TYLER
- AUDREY WRIGHT

NEAL R. GROSS  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

Commissioner Assistants Present:

CHARLOTTE PONTICELLI  
KRISHNA TOOLSIE  
EFFIE TURNBULL

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

(9:39 a.m.)

CHAIRPERSON BERRY: The meeting will come to order.

**I. APPROVAL OF AGENDA**

CHAIRPERSON BERRY: The first item is the approval of the agenda.

COMMISSIONER EDLEY: Madam Chair?

CHAIRPERSON BERRY: Yes.

COMMISSIONER EDLEY: I'd like to make a motion.

CHAIRPERSON BERRY: Yes.

COMMISSIONER EDLEY: With respect to the discussion of the New York Report, I'd like to propose that the agenda be separated into two pieces, that we first consider any motions that any Commissioners may want to make of a procedural nature. And then we move to discussion of the New York Report.

CHAIRPERSON BERRY: Okay.

COMMISSIONER EDLEY: The reason I'd like to do that is I just think it's in the interest of efficiency and to make sure we get to the substance of the meeting and not have an extended and wide range discussion of it.

CHAIRPERSON BERRY: Okay, with that, if

1 there's no objection when we get to the New York  
2 Report, first, has anyone any motions on procedure  
3 before we get to any motions that anyone has on  
4 substance, unless there's some objection to doing it  
5 that way. Without objection.

6 Is there anything else anyone wants to add  
7 to the agenda?

8 Okay. I need a motion to approve the  
9 agenda.

10 COMMISSIONER REYNOSO: So moved.

11 A second?

12 COMMISSIONER ANDERSON: Second.

13 CHAIRPERSON BERRY: All in favor of the  
14 agenda as slightly modified indicate by saying aye.

15 (Chorus of ayes.)

16 CHAIRPERSON BERRY: Opposed? So ordered.

17 **II. APPROVAL OF MINUTES OF APRIL 14, 2000**

18 **MEETING**

19 CHAIRPERSON BERRY: The next item is the  
20 approval of the minutes of April 14, 2000.

21 Can I get a motion?

22 VICE-CHAIRPERSON REYNOSO: --So moved.

23 CHAIRPERSON BERRY: A second. Discussion.

24 COMMISSIONER MEEKS: Yeah, in the  
25 transcript there was a slight misquote or just

1 something left out. I made a comment --

2 CHAIRPERSON BERRY: (Interrupting) A  
3 comment was made that was left out?

4 COMMISSIONER MEEKS: Yeah, I said Native  
5 American rights when we were talking about the  
6 Hawaiian issue and this says I was worried about the  
7 American right.

8 CHAIRPERSON BERRY: That probably was a  
9 typo. So that should be modified to reflect what  
10 Commissioner Meeks actually said.

11 COMMISSIONER MEEKS: They had the "I mean"  
12 and "you know" in there pretty well.

13 (Laughter.)

14 It could be an attack on the American  
15 right and that is a gray area that can be defined one  
16 way or the other which it should be the Native  
17 American rights. It's on page 73.

18 VICE CHAIRPERSON REYNOSO: I'm sorry, are  
19 you referring to the --

20 COMMISSIONER MEEKS: (Interrupting) The  
21 Hawaiian issue, the one I voted for.

22 VICE CHAIRPERSON REYNOSO: I'm sorry, are  
23 you referring to --

24 COMMISSIONER MEEKS: (Interrupting) The  
25 transcript.

1 VICE CHAIRPERSON REYNOSO: Oh, that's the  
2 transcript.

3 COMMISSIONER MEEKS: The transcript of the  
4 meeting.

5 CHAIRPERSON BERRY: We need to modify the  
6 transcript. Let the record reflect that Commissioner  
7 Meeks' comment in the transcript is in error and that  
8 she indeed said Native Americans rights.

9 Is that correct?

10 COMMISSIONER MEEKS: Yes.

11 CHAIRPERSON BERRY: Any further discussion  
12 of the minutes? All those in favor indicate by saying  
13 aye.

14 (Chorus of ayes.)

15 Opposed? So ordered.

16 **III. ANNOUNCEMENTS**

17 CHAIRPERSON BERRY: We come now to  
18 announcements. The first announcement is that the air  
19 conditioning is out.

20 (Laughter.)

21 Throughout the building, I'm told and the  
22 staff is working on it and hopes to have it working at  
23 any time now, we hope.

24 Yes?

25 VICE CHAIRPERSON REYNOSO: I didn't know

1 that we had staff people who specialized in air  
2 conditioning?

3 (Laughter.)

4 STAFF DIRECTOR MOY: They're multi-  
5 talented.

6 CHAIRPERSON BERRY: The people who work in  
7 the building. The second is that there are two new  
8 attorney-advisors in the Office of General Counsel who  
9 have just come on board, Joyce Smith and Kim Ball.  
10 Are they here? Would you stand up so people can see  
11 you?

12 Which one is Joyce and which one is Kim?  
13 You're Joyce and you're Kim. Welcome to the staff.

14 I'm told that you have a wealth of  
15 knowledge and experience. That's good. I'm glad  
16 you're here.

17 The next announcement is that at the June  
18 meeting we will have a briefing that we talked about  
19 last year when we agreed to do the New York Report.  
20 We said that we would try after that to update the  
21 report the Commissioner did in 1982 which is called  
22 "Who's Guarding the Guardians? Police Practices and  
23 Civil Rights, Our National Report" and that we would  
24 use the New York Report, the L.A. Report and anything  
25 else the Commission has done, a lot of reports we have



1 done on police practices in communities as a basis for  
2 the discussion and that we would have experts,  
3 academic experts come in which means professor-types  
4 from universities, come in to talk to us about police  
5 practices and civil rights and how the New York Report  
6 should be, the national report should be updated so  
7 that we can re-issue a new national report "Who's  
8 Guarding the Guardians?" which would be applicable to  
9 the whole country and this issue of communities and  
10 the police.

11 That briefing is scheduled for next month  
12 so what we would like to have is any recommendations  
13 that any of you have to the Staff Director about who  
14 you'd like to see come to meet the Commission, that  
15 you would turn those in by Wednesday, 5/17, if  
16 possible and if you can't do it by then would you  
17 inform the Staff Director as to when you would be able  
18 to do it, so that panels can be set up. We don't want  
19 to have too many panels, but enough so that we can get  
20 a view of what ought to be in the update.

21 The second announcement that's written on  
22 here, but I don't know why I'm announcing it, I don't  
23 think I'll announce it because I don't know why I'm  
24 announcing it. It says something about the South  
25 Carolina flag, well, anyway, why am I announcing that?

1 STAFF DIRECTOR MOY: It was in the  
2 newspapers today --

3 CHAIRPERSON BERRY: (Interrupting) The  
4 South Carolina House voted Thursday to remove the  
5 Confederate flag from the top of the State House dome.

6 Oh, I see. Way back when Governor Beasley, I think  
7 it was, was Governor of South Carolina, he made some  
8 kind of statement during the church fire controversy  
9 about the Confederate flag and we commended him for  
10 whatever statement he made at that time, so maybe  
11 that's why I'm announcing this, although I don't know  
12 the details of it.

13 Does anybody else have any announcements  
14 about anything? Okay.

15 **IV. STAFF DIRECTOR'S REPORT**

16 CHAIRPERSON BERRY: Now we go to the Staff  
17 Director's Report. The Staff Director's Report --  
18 yes, Vice Chair?

19 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
20 guess I should indicate that I've had some phone calls  
21 from community groups in Santa Rosa pertaining to the  
22 report that the SAC issued on police practices and  
23 killing of civilians there. They've asked me to meet  
24 with some community groups sometime in the near  
25 future.

1           Is that better? I was indicating that I  
2 had received some phone calls from community groups in  
3 the Santa Rosa area of California where we had  
4 hearings a couple of years ago, the SAC hearings with  
5 participation by two of us Commissioners, wanting to  
6 meet as sort of a follow up on that, so I may be  
7 meeting with some groups there shortly. That's all.

8           CHAIRPERSON BERRY: The other thing I  
9 wanted to announced is that Vice Chair Reynoso is part  
10 of the U.S. delegation to the U.N. Convention on Race  
11 which is supposed to take place, the International  
12 Conference in the Year 2001 in South Africa and there  
13 are various Commission Committee meetings that take  
14 place. There was one just in Geneva which he attended  
15 as part of the U.S. delegation, so he would be very  
16 much involved in that.

17           Is there anything you'd like to say about  
18 what happened in Geneva or anything about this at all  
19 to us?

20           VICE CHAIRPERSON REYNOSO: The U.N. has  
21 voted to have an international conference on the issue  
22 of races and related intolerance including religious  
23 intolerance and there's actually a sort of a procedure  
24 that the U.N. follows, I've learned, where once the  
25 U.N. votes to do that they name a person who is

1 generally in charge of the project.

2 They retain experts to start writing some  
3 of the issues that will be coming up and then a series  
4 of meetings takes place. The first meeting that I  
5 attended was in Geneva and it was a week long planning  
6 conference where the International Conference will  
7 take place next year in South Africa.

8 Thereafter, there will be several regional  
9 conferences here in the U.S. where community groups  
10 and governmental entities will be invited to come  
11 speak to the issues they think are important in terms  
12 of racism and religious intolerance and then there  
13 will be a geographic meeting in various continents.  
14 In the Western Hemisphere there was scheduled to be a  
15 meeting in Brazil, but Brazil has decided that they  
16 can't hold that, so probably it will be held in  
17 Argentina or Uruguay, but that's in the process of  
18 being decided.

19 Then after that there will probably be or  
20 at least they voted to have another preparatory  
21 conference like the one that I attended, all that in  
22 preparation for the World Conference, as I say will  
23 take place, if I remember correctly, something like  
24 August, September of 2001 in South Africa and it will  
25 deal with the issues that are faced by many countries

1 pertaining to issues of race, ethnicity, language,  
2 religious issues that we have seen can be so  
3 devastating in many areas of the world.

4 So to me, I must say it is a very  
5 interesting assignment and I think it's manifestly an  
6 important subject matter for the U.N. and for all  
7 countries to take a look at.

8 CHAIRPERSON BERRY: Okay, well, I'm sure  
9 you'll be updating us from time to time and we'll  
10 watch it in the press too as this proceeds.

11 Anybody else have any announcements and  
12 now we are on the Staff Director's Report. Anything  
13 anyone wants to ask under the Staff Director's Report  
14 of the Staff Director or is there anything. The first  
15 thing I guess I need to do is at the last meeting we  
16 had a 4 to 3 vote after a long debate and a lot of  
17 angst, I think it's fair to say, about whether we  
18 would release a draft of the New York Police Report to  
19 the press and that angst, as you will recall and as  
20 reflected in the transcript was caused primarily by  
21 the fact that some other reports of the Commission  
22 that were drafted had been released unauthorized in an  
23 unauthorized manner that we call "leaks" to the press  
24 and before the Commission had had a chance to see them  
25 and there was a lot of concern at the last meeting,

1 among the Commissioners about the effect of that.

2 There was a lot of concern among our staff  
3 too, about -- I mean our Civil Service staff -- about  
4 the problems associated with that. So after a long  
5 debate last time the Commission split 3-3,  
6 Commissioner Redenbaugh not being present to vote and  
7 I ended up having to break the tie, so I finally voted  
8 to deviate somewhat from our procedures in the public  
9 interest to try to get it out there so that everybody  
10 could see it.

11 After that, there were great howls of  
12 protest from some quarters and we thought about it and  
13 reflected on it and I consulted with those who had  
14 voted in favor of the motion who agreed with me that  
15 we probably shouldn't issue it. We should just stick  
16 to our normal procedures up and down the line and on  
17 that basis I issued a press release saying that and at  
18 this meeting we agreed, those of us who talked, that  
19 at this meeting if it were necessary to ratify that  
20 action, we could have a motion for reconsideration for  
21 the record which would then reconsider the action and  
22 vote that it is -- and those that voted for the motion  
23 would be able to vote in that way.

24 So if there is no objection to doing that  
25 I would like for somebody to introduce a motion.

1 COMMISSIONER EDLEY: So moved.

2 CHAIRPERSON BERRY: Thank you very much  
3 Christopher. Could I get somebody to second it?

4 COMMISSIONER MEEKS: I'll second it.

5 CHAIRPERSON BERRY: Okay, is there any  
6 discussion? All those in favor indicate by saying  
7 aye.

8 (Chorus of ayes.)

9 Opposed? So ordered.

10 The Staff Director, the other issue that  
11 you may want -- yes, Commissioner Wilson?

12 COMMISSIONER WILSON: I'm opposed.

13 CHAIRPERSON BERRY: Commissioner Wilson  
14 voted no.

15 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
16 should indicate that I read with interest the memo  
17 filed by two Commissioners objecting to that procedure  
18 and as you know I voted actually against issuing the  
19 report. I thought that the amendment issued by the  
20 two Commissioners dealt with only a part of the  
21 matters that were of concern to the Commission, so I  
22 had hoped -- unfortunately, I wasn't able to have the  
23 time to do so, but I will be sending a responsive memo  
24 indicating what my point of view is in that regard.  
25 So I just want to put folks on notice.

1 CHAIRPERSON BERRY: Thank you. And there  
2 was some discussion at that time about leaks and as I  
3 recall the Staff Director was told to go forth and  
4 make investigations and to figure out what we should  
5 do, if anything, about leaks.

6 Yes, Commissioner Redenbaugh?

7 COMMISSIONER REDENBAUGH: On the topic of  
8 leaks and ethics issues, in general, is that the  
9 instruction of the Staff Director to go forth limited  
10 and narrow or does it include, as I think it should  
11 the question of the allegation that the New York  
12 Report was also leaked?

13 CHAIRPERSON BERRY: It is a broad inquiry  
14 about leaks. No one specified what she was to look  
15 into. She was to look into whether the Commission  
16 could do anything about the leaking of materials.

17 I will say before I -- so it had nothing  
18 to do with any particular report, but leaks in  
19 general, okay?

20 COMMISSIONER REDENBAUGH: Thank you.

21 CHAIRPERSON BERRY: Now the Staff Director  
22 was told to go find out whatever she could about what  
23 we might do if we wanted to do anything about leaks.  
24 I would say before I turn to her to report on that  
25 that in all my time in Washington which has been



1 longer than I care to remember, everybody is always  
2 trying to figure out who leaked something and I was in  
3 a cabinet department once as an Assistant Secretary  
4 and somebody leaked something and the Secretary spent  
5 the whole day going around to everybody's office  
6 asking everybody whether they leaked it.

7 Obviously, everybody said no. And he  
8 never did find out where it came from and I don't  
9 really think people can figure out who leaked things.

10 That's just my own personal conclusion. But anyway,  
11 go ahead Staff Director, what did you find out?

12 STAFF DIRECTOR MOY: Well, Madam Chair,  
13 yes, you're right. It is difficult and in my  
14 investigation and research regarding the leaks of the  
15 Commission material before Commission approval, there  
16 is not much one can do because it is not a criminal  
17 offense and one would have to prove that the person  
18 actually did it.

19 A few of the Commissioners asked whether  
20 or not an Inspector General could be called in to do  
21 an investigation. Because we are such a small agency,  
22 we do not have an IG. --We come under the Department of  
23 Agriculture and in an effort to obtain what measures  
24 can be taken against employees who leak information, I  
25 asked Human Resources to call them. They were

1 referred to the President's Council on Integrity and  
2 Efficiency.

3 That person told me she had to go to her  
4 OMB Examiner who then called me. The examiner said  
5 that there are no references or background experiences  
6 with other agencies and while it does not appear  
7 criminal perhaps we might have some internal  
8 mechanisms set in.

9 Our internal rules here, the  
10 Administrative Instructions (AIs), does not address  
11 the issues of leaks. However, there is the Office of  
12 Government Ethics, which is part of the Standards of  
13 Ethical Conduct for Employees of the Executive Branch.

14 If it can be proved that the person who is  
15 responsible for the leak, he or she would be subject  
16 to disciplinary action and/or fined and/or would lose  
17 their job. This affects all federal employees,  
18 part-time and full-time.

19 In the April 21 Commission press release,  
20 Chairperson Berry spoke about the apparent leak of two  
21 Commission reports. "Apparently," and I'm quoting,  
22 "apparently by someone at the level of Commissioners  
23 and their immediate staff before the reports were even  
24 reviewed by the Commission."

25 Perhaps, the Commissioners and their

1 Special Assistants can agree to something in writing  
2 to acknowledge that leaks are damaging to the work of  
3 the Agency and how to sanction such behavior. While  
4 our AIs indicate that the spokesperson for the Agency  
5 is the Chairperson, it does not preclude the fact that  
6 another Commissioner may also offer comment. However,  
7 what is not clearly stated here is the fact that no  
8 Commissioner should be allowed to comment on the  
9 ongoing work of the Agency whether it is at the  
10 federal or State, meaning SAC, level until the actual  
11 product has been approved by the Commission and  
12 released to the public.

13           Commissioners in the past have commented  
14 on SAC reports before the actual product had been  
15 released. In this instance, deference should be to  
16 the SAC Chair and/or Regional Director as to whether  
17 or not to comment before the release date or scheduled  
18 press conference has taken place.

19           And as Staff Director, I'll be reconvening  
20 the AI Task Force to look at the possibility of  
21 developing a written internal procedure to deal with  
22 leaks. As I stated at the last Commission meeting,  
23 leaks should not happen. It undermines the reputation  
24 of the Agency and it demoralizes the staff." Thank  
25 You.

1                   CHAIRPERSON    BERRY:            Thank    you,  
2   Commissioner Redenbaugh?

3                   COMMISSIONER    REDENBAUGH:        I    have    a  
4   question.   On the April 21 press release it refers the  
5   leaking of two Commission reports.   Could you tell me  
6   which two those are?

7                   CHAIRPERSON    BERRY:        I'm responsible for  
8   the press release so I'll answer the question.   The  
9   first one was the gender equity report on girls and  
10  mathematics.   I was called by a producer for a  
11  television network who shall remain nameless who had  
12  the report in his or her hand and started reading from  
13  it to me before we had even considered the report in  
14  this meeting and I said how did you get that report?  
15  And the answer was well, I got it from somebody who  
16  gave it to me and thought that it would be a good idea  
17  for us to cover it.

18                   So I know for a fact that somebody had it  
19  before the meeting.   I don't know who leaked it, but I  
20  know it was leaked.

21                   COMMISSIONER    REDENBAUGH:        And the second  
22  one?

23                   CHAIRPERSON    BERRY:        The second one is the  
24  percentage plan report.

25                   COMMISSIONER    REDENBAUGH:        Is that a report

1 or a statement?

2 CHAIRPERSON BERRY: It's a statement, but  
3 it's general -- it's in the general category of a  
4 report. That's what press release means. There were  
5 two items.

6 COMMISSIONER REDENBAUGH: So we don't  
7 distinguish between a work product that's -- like the  
8 gender report and a press release or statement?

9 CHAIRPERSON BERRY: We distinguish between  
10 statements and reports technically, but in terms of  
11 focusing on leaks, whatever the thing is that the  
12 Commission has that the Commission has not considered  
13 yet and is planning to consider is inappropriately  
14 given out to the media if it has not yet been  
15 considered by the Commissioners. If it's something  
16 the Commissioners are considering, then obviously --  
17 well, maybe it's not obvious. Maybe Commissioners  
18 should give things to the press when we're considering  
19 them.

20 The Sonoma Report was also leaked, I'm  
21 told, by staff that the press had it and called up and  
22 asked about it before the SAC was able to actually,  
23 before the Commission actually considered it at our  
24 meeting. So that we've had a series of these things  
25 showing up in the media, reporters calling us about

1 them before the Commission has had a chance to sit  
2 down and discuss it.

3 COMMISSIONER REDENBAUGH: Has it been  
4 confirmed in The New York Times has a copy of that New  
5 York Police Report?

6 CHAIRPERSON BERRY: I don't ask media what  
7 they have.

8 COMMISSIONER REDENBAUGH: I'm sorry, they  
9 have made this claim though, I think, am I correct in  
10 my understanding that they have --

11 CHAIRPERSON BERRY: (Interrupting) Have  
12 they made such a claim?

13 COMMISSIONER REDENBAUGH: Made such a  
14 claim.

15 CHAIRPERSON BERRY: Those of you who read  
16 the press?

17 VICE CHAIRPERSON REYNOSO: I read a report  
18 where they said we haven't had the report. In fact, I  
19 think the same day or the day after it was sent out.  
20 This was a New York Times report.

21 CHAIRPERSON BERRY: The information about  
22 the Florida statement came to me in a letter from the  
23 Governor of Florida. He said he had been given the  
24 percentage plan statement, so I was relying on his  
25 statement that he had been given it.

1 COMMISSIONER REDENBAUGH: I have no reason  
2 to doubt his credibility or The New York Times on this  
3 matter.

4 VICE CHAIRPERSON REYNOSO: Well, Madam  
5 Chair, I think that it is proper for us. Apparently,  
6 the policy, governmental policy appears to be clear  
7 that there ought not to be leaks, but I think that the  
8 staff is correct to proceed that maybe put together  
9 some more specific policies for us to issue this  
10 Commission.

11 When we issue a report and it goes --  
12 particularly, a report that needs to go out to the  
13 affected agencies, I assume, without knowing often  
14 it's those agencies that leak the reports and they  
15 want to put their own spin on it and I doubt that we  
16 can do much to control that, but perhaps we ought to  
17 have in our own regulations a provision that says that  
18 that's improper and at least let them know that that's  
19 improper in case any of them don't know about it.

20 But certainly we ought to have provisions  
21 for our own staff, including Commissioners, indicating  
22 one, that it shouldn't be done and two, what will  
23 happen if it is done. For us as Commissioners, about  
24 the only thing that we could do is to relate that to  
25 the appointing power that that is happening, but we

1 ought to think it through because either there's  
2 confusion now or there's willfulness in terms of  
3 leaking of reports before we've acted on them.

4 I really feel, I'm speaking really for  
5 myself, I feel absolutely frustrated. When I started  
6 getting all these phone calls from Florida and from  
7 New York and all over the place saying well, we've got  
8 this report, we're reading it, what's your reaction,  
9 what can you tell us about it and I say and they  
10 think, they can hardly believe it when I say policy is  
11 not to speak to these reports until we've acted on it  
12 and they say oh, come on, you can tell me, we won't  
13 quote you, of course, and this is the background  
14 reporters use and they just want to get your  
15 reactions, and particularly when an inappropriate and,  
16 I believe, wrong spins has been put on those reports  
17 by whoever is leaking it, I feel completely frustrated  
18 and I think it's a serious problem and we ought to do  
19 something about it, if nothing else, slap people on  
20 the hand.

21 (Laughter.)

22 That's my non-emotional response to this  
23 issue.

24 (Laughter.)

25 CHAIRPERSON BERRY: Okay, well, we could



1 have the staff go in the other direction. We could  
2 have the staff come up with a proposal that assumes  
3 they will be leaked and then have some steps as to  
4 what the Commissioner should do. If we assume that  
5 every report or statement or any document that we have  
6 is going to be leaked, what steps should we take to  
7 publicize our own views about our own work and should  
8 we understand that whenever we have a draft of  
9 something that everybody is going to know it and that  
10 we should agree upon what we're going to say about it,  
11 when it's in draft, even before we even read it. Most  
12 of the time we haven't even read it. And so maybe  
13 they ought to come up with some steps that assume that  
14 the thing will be in the public domain and maybe we  
15 ought to change our procedure so that drafts are  
16 issued to the press.

17 COMMISSIONER EDLEY: Madam Chair?

18 CHAIRPERSON BERRY: Yes, I'll recognize  
19 Commissioner Wilson and then Commissioner Redenbaugh  
20 and then Commissioner Edley.

21 COMMISSIONER WILSON: Thank you, Madam  
22 Chair. I was the lone no-vote in our retraction.  
23 Your last suggestions alas brings us full circle to  
24 where we started when you suggested this the last time  
25 and I was only too happy to make a motion, but it

1 seems to me, first of all, I appreciated Commissioner  
2 Reynoso's very personal response to this and his  
3 intense response to these leaks, but my feeling being  
4 a novice and new as a Commissioner is that a slap on  
5 the hand is not really -- I know you were speaking  
6 jokingly, but it seems to me rather than just issue a  
7 statement among the staff and the Commissioners saying  
8 that it's wrong to go ahead and leak reports, there  
9 should be perhaps a much more clarifying statement  
10 other than saying it's wrong and saying -- I don't  
11 know, if there's nothing legally that can be done in  
12 terms of the morality of it, because it seems to me  
13 we're talking about a moral issue here of trust and  
14 ethics.

15           You know, I received the report on the New  
16 York Police one day and the next day before I received  
17 it in my office and before I could even take it home,  
18 there was a huge article in The New York Times which I  
19 feel is -- you know, as I said before, it undermines  
20 the work of the Commission and we haven't even had a  
21 chance to discuss it, let alone read it and I find it  
22 very disheartening because as somebody who, as I say,  
23 is new at this, it seems to me that the point of the  
24 Commission is to get the work done, not to have the  
25 work thwarted.       And so that's a very personal

1 statement on my part and that's all I'd like to say.

2 CHAIRPERSON BERRY: Okay. Commissioner  
3 Redenbaugh?

4 COMMISSIONER REDENBAUGH: I think I too --  
5 two part question. I understand The Times makes the  
6 claim, the date in which they claim they have the  
7 report, precedes when the Commissioners and our  
8 Commissioners' Assistants receive the report which --  
9 I had the same experience, reported by Commissioners  
10 Reynoso and Wilson in that the press wanted me to  
11 comment on something which the press had which none of  
12 us Commissioners or staff had. So that's troubling to  
13 me as well.

14 The other question I have probably is just  
15 a procedural question for the Staff Director and that  
16 is our policy, I presume, to -- material that is  
17 sensitive like a report in progress would be, is  
18 labeled appropriately? And so is it and does that  
19 matter?

20 CHAIRPERSON BERRY: You mean does it have  
21 a label on it?

22 STAFF DIRECTOR MOY: Yes, it has either  
23 "draft" or it has "confidential" or it has -- I don't  
24 have my copy here or "not for public release."

25 COMMISSIONER REDENBAUGH: But statements

1 that would indicate that it's not --

2 STAFF DIRECTOR MOY: (Interrupting)

3 Correct --

4 COMMISSIONER REDENBAUGH: (Interrupting)

5 That it shouldn't be disclosed.

6 STAFF DIRECTOR MOY: Right.

7 COMMISSIONER REDENBAUGH: So that anything  
8 that weren't so labeled we could presume is okay to  
9 disclose?

10 STAFF DIRECTOR MOY: Right, after the  
11 Commission approves.

12 COMMISSIONER REDENBAUGH: That contradicts  
13 what you just said I thought.

14 STAFF DIRECTOR MOY: No, I think the  
15 question was was there any labeling on the copies  
16 going out to Commissioners.

17 COMMISSIONER REDENBAUGH: Right.

18 STAFF DIRECTOR MOY: Yes.

19 COMMISSIONER REDENBAUGH: It is labeled?

20 STAFF DIRECTOR MOY: Yes.

21 COMMISSIONER REDENBAUGH: Okay, good.

22 That's what I wanted to ask, thanks.

23 CHAIRPERSON BERRY: Now we can focus, I  
24 think, in this discussion -- we should focus on, if  
25 we're going to talk about leaks, all the leaks to

1 everybody's chagrin. As the Vice Chair was talking  
2 about the percentage plans thing. I mean we were  
3 sitting at home and reporters called, not only were  
4 reporters calling, there were stories already in the  
5 media to expand on it about what the thing said, that  
6 we were trashing all percentage plans.

7 In fact, we said we liked the one in  
8 Texas. In other words, trashing George Bush. George  
9 Bush isn't even in the report. He didn't even support  
10 the percentage plan in Texas. All of this was in the  
11 media before any of us had a chance to even figure out  
12 what we wanted to say about it.

13 By the time we get called by The New York  
14 Times which has a copy, all these other stories have  
15 already gone out with quotes from people on the staff,  
16 and quotes from Commissioners characterizing what they  
17 think about it and how it should be and letters coming  
18 to us saying Commissioners have told us this, letters  
19 from the Hill saying they told us this before any of  
20 us had a chance to even get our bearings.

21 And on the girls and mathematics, I was  
22 like shocked when this producer called and started  
23 reading the report to me and the comments she made  
24 back to me were -- the same spin on the report was the  
25 same comments that appeared the next day in the press

1 with quotes from some of the people here at the  
2 Commission about the report.

3 So I just think there's a pattern and  
4 practice going on here and I don't know who's engaged  
5 in it, but having said that I would like the staff to  
6 go back and think about is there something they can  
7 do, but I would presume leaks. My starting point with  
8 the staff work, you may do two scenarios. One, what  
9 can we do if we want to stop leaks and keep people  
10 from doing it and protecting the credibility of the  
11 Commission that way. That's one scenario.

12 The other is what can we do if we know  
13 anything is going to be leaked in order to make sure  
14 that our Commissioners have a fair crack at their  
15 views being expressed about whatever it is that we're  
16 doing or that the Commission's view, somehow, gets out  
17 or people are given free reign to go talk and say  
18 whatever they want to say. You can come up with these  
19 different scenarios, but I think the bottom line is  
20 that we'll probably visit and revisit this subject  
21 over and over, but I'm not sanguine about the  
22 prospects of anything happening if you want to know  
23 the truth.

24 Does anybody want to say anything about  
25 the leaks?

1 Yes, I forgot about you Commissioner  
2 Edley. I forgot you. Here's Commissioner Edley.

3 COMMISSIONER EDLEY: Madam Chair, I would  
4 like some public communications about what is the  
5 policy of the Commission and the second is --

6 CHAIRPERSON BERRY: (Interrupting) You  
7 said what, the rule should be?

8 COMMISSIONER EDLEY: The rule should be  
9 about public communication.

10 CHAIRPERSON BERRY: About public  
11 communication.

12 COMMISSIONER EDLEY: About public  
13 communications, comments or documents. Second issue  
14 is what the internal procedure is to try to minimize  
15 the violations. Does that sound legal?

16 CHAIRPERSON BERRY: Yeah, it sounds legal.

17 COMMISSIONER EDLEY: When they're  
18 violated, then what happens? We need to provide as  
19 much guidance as possible on this and to take a  
20 considered view of what other agencies do. I'm not  
21 Pollyanna-ish about this.

22 CHAIRPERSON BERRY: You're not Pollyanna-  
23 ish about this?

24 COMMISSIONER EDLEY: No. I'm hopeful the  
25 Commission can do a better job.

1 CHAIRPERSON BERRY: Okay, so what they  
2 would do then is make sure that they get in touch with  
3 Office of Legal Counsel who will address this and  
4 we're back to the IG again and try to see if we can  
5 come up with something.

6 Commissioner Redenbaugh?

7 COMMISSIONER REDENBAUGH: I just wanted to  
8 add to Commissioner Edley's comments that the views  
9 that we come up with, of course, and perhaps obviously  
10 should also apply to subcontractors because some of  
11 our work product is done other than by full-time staff  
12 or part-time Commissioners.

13 CHAIRPERSON BERRY: Okay.

14 COMMISSIONER EDLEY: And I agree with  
15 that.

16 CHAIRPERSON BERRY: Whatever moves in and  
17 out of season.

18 COMMISSIONER EDLEY: Exactly.

19 CHAIRPERSON BERRY: Yeah, that's of course  
20 not when I do it with somebody I like or believe that  
21 I'm a soul mate with, but am I willing to follow these  
22 rules in season and out of season. Okay, good point.

23 Okay. Commissioner Anderson?

24 COMMISSIONER ANDERSON: I guess I should  
25 speak on this too. I share with the stress, I guess



1 of my fellow Commissioners, especially on the New York  
2 Police Practices Report and we at times writing about  
3 the report before we have even received it or had a  
4 chance to look at it, even weeks earlier, individuals  
5 who have testified at our hearing on police practices  
6 in New York were quoted in the papers saying the  
7 report had everything in it that they wanted or words  
8 to that effect. Obviously copies were floating  
9 around.

10 I think the context is a little bit more  
11 complicated and I'd like the staff and Commissioners  
12 to keep this in mind. Once we get a report and we're  
13 discussing it at a Commission meeting, we're going to  
14 be commenting in public on the record and while the  
15 draft report hasn't been released to the media, I  
16 don't see any way you can prohibit Commissioners from  
17 subsequently responding to inquiries or speaking about  
18 the draft report based on comments they may have made  
19 in a public meeting.

20 So I think once we are discussing it  
21 publicly, concerns about leaks take on a different  
22 character, if I can put it that way.

23 Prior to that, it's obviously different,  
24 but I think we also have to keep in mind that affected  
25 agencies, affected individuals must be given a right

1 to review, but particularly when our reports or  
2 statements are terrifically critical of that agency or  
3 that individual.

4 And I believe in the statements and  
5 reports that are being discussed now in terms of  
6 leaks, it is a lack of confidence of being given the  
7 opportunity to respond, but has generated so much of  
8 this controversy. So I think that much of this  
9 problem is going to disappear if we clearly establish  
10 procedures for comment on affected agencies and we  
11 give those individuals confidence that those  
12 procedures are going to be followed in a fair way and  
13 that their views, their responses is going to be taken  
14 into consideration by this Commission as it moves  
15 forward to deliberate on state and civil reports.

16 I understand Commissioner Reynoso's  
17 feelings on commenting on something he hasn't yet  
18 seen, but put yourself in the position of Mayor  
19 Guiliani or District Attorney Morgenthau who obviously  
20 is having their offices attacked in public by the  
21 media based on leaks from the Commission on documents  
22 they have not yet seen, so I think, and even probably  
23 Governor Bush of Florida fits into that category.

24 So I think the problem with leaks is an  
25 important problem. We can address it, but I believe

1 we must address at the same time a broader context of  
2 our procedures for fair comment by affected officials  
3 and if we do that in a way that's credible, I believe  
4 much of this controversy is simply going to go away.

5 For most of the life of the Commission  
6 that I've served on we've not had a serious problem  
7 with leaks.

8 CHAIRPERSON BERRY: Well, I'm going to  
9 recognize Commissioner Wilson, but I think as we will  
10 discover when the Staff Director introduces the New  
11 York Report and that the procedures have been followed  
12 and that we do have affected agency review and the  
13 Commission has never had problems before, in my time,  
14 people complaining that they didn't have affected  
15 agency review because we do.

16 Secondly, I want to discuss this as we  
17 segue into the procedural questions related to the New  
18 York Report, but I wanted to quickly privilege The New  
19 York Times, we've been privileging the New York Times,  
20 The Washington Times also, apparently, had a copy of  
21 the draft New York Report, so I want to make sure that  
22 everybody knows that it was not just The New York  
23 Times that had the report, somebody gave it to The  
24 Washington Times, if the Washington Times reporter can  
25 be trusted as we trust that of The New York Times

1 stated by some other Commissioners, so they're not  
2 privileged.

3 Yes, Commissioner Wilson.

4 COMMISSIONER WILSON: I just would want to  
5 respond to Commissioner Anderson's statement because  
6 my watching the -- what happened with the New York  
7 Report was quite mind-boggling. When you say that the  
8 agencies involved were not -- felt that they weren't  
9 going to be given a fair chance to comment, the Mayor  
10 was holding a press conference as was the Police  
11 Commissioner responding to the report before the  
12 report had even been finished and before the motion  
13 had been made and seconded to release the report to  
14 all concerned.

15 So their concern about the fact that they  
16 wouldn't have a chance to comment couldn't possibly  
17 have played into this situation since this was the  
18 first time apparently the Commission has voted this  
19 way.

20 So I don't understand.

21 CHAIRPERSON BERRY: You mean they're  
22 already attacking it before it was finished?

23 COMMISSIONER WILSON: Yes, it was two  
24 weeks, 10 days before the report had been finished and  
25 before we had the meeting in which we made the motion

1 to distribute the report to everybody, that the Mayor  
2 of New York and the Police Commissioner, since I am a  
3 New Yorker and watched all this in some dismay, were  
4 already commenting on the fact that the Commission had  
5 released this report to help the Senate race and that  
6 was Guiliani who was saying that. The report wasn't  
7 finished. Nor were we at the point where we had the  
8 meeting where the motion had been made to release the  
9 report to everybody. So I'm confounded by that.

10 CHAIRPERSON BERRY: Okay, why don't we --  
11 if no one else has anything to say about anything  
12 except New York, we can segue into the discussion of  
13 the New York Report and go from the Staff Director's  
14 report.

15 Does anybody have anything else to say  
16 about anything else in the Staff Director's report  
17 before we do that?

18 Could you defer, Carl, and I'll come back  
19 to you.

20 Commissioner Lee?

21 COMMISSIONER LEE: I just wanted to take a  
22 break. Last month we had the discussion on the Hawaii  
23 SAC's request to the Commission to hold a public forum  
24 to discuss post-Rice and I think the discussion ended  
25 with the Commission requesting Hawaii SAC members to

1 submit a general outline for us to look at and I just  
2 received it yesterday from the SAC membership and I  
3 think it's a very well thought out outline and the  
4 last time we were talking about scheduling a forum is  
5 we accept the general outline and I think the SAC  
6 members are eagerly waiting for action from this  
7 Commission so that they can proceed accordingly.

8 CHAIRPERSON BERRY: In other words, they  
9 did what they were asked to do.

10 COMMISSIONER LEE: Right.

11 CHAIRPERSON BERRY: To come up with --  
12 State Advisory Committee conduct a forum on the Rice  
13 v. Kayetano case.

14 COMMISSIONER LEE: Yes. And they foresee  
15 a two day hearing, not hearing, a brief forum that  
16 would include the historic background because it was  
17 pretty obvious from the Supreme Court decision that  
18 there wasn't clear knowledge of the Hawaiians  
19 compelling history.

20 So they would open up with the historical  
21 perspective and issues that dealt with the Hawaii  
22 community and to talk about the Rice position, how it  
23 impacts the community and they would also include  
24 actions after the Rice position.

25 Therefore, these were actions that other

1 people have said we're going to give to you and also  
2 there are state and federal government actions and  
3 they're also going to talk about the area that I think  
4 is also something of interest to this Commission.  
5 They're going to examine the relationship between the  
6 U.S. government and indigenous peoples, not only  
7 Native Hawaiians, but American Indians and Alaskan  
8 Natives because there's a critical gray area that the  
9 Supreme Court decision has mentioned.

10 CHAIRPERSON BERRY: Yvonne, do they  
11 propose to have Native Americans other than Native  
12 Hawaiian experts participate in the forum?

13 COMMISSIONER LEE: Yes. So this forum is  
14 just not on the Native Hawaiians, but it covers a lot  
15 of the other issues that the other Commissioners at  
16 the last meeting had expressed an interest in.

17 So I think this is going to be a good,  
18 very intense, informative forum for the Commission and  
19 I was there for four days of very intense meetings, 14  
20 hour days and the people there regardless of their  
21 position, really wanted the Commission as an  
22 independent body, to go in there and present broad  
23 perspectives on issues that is not on a critical path,  
24 so to speak, regarding Native Hawaiians and also  
25 potentially other indigenous peoples. So I think that

1 the request from the SAC membership is that they  
2 really urge the Commission to approve this and approve  
3 conducting a forum in Hawaii as soon as possible.

4 CHAIRPERSON BERRY: We need a date for  
5 that. Yes, Commissioner Redenbaugh?

6 COMMISSIONER REDENBAUGH: I just need to  
7 be caught up a little bit on this when I think -- the  
8 SAC can have a forum when they want and without our --

9 CHAIRPERSON BERRY: (Interrupting) Right.

10 COMMISSIONER REDENBAUGH: So this is not  
11 merely that.

12 CHAIRPERSON BERRY: They're having one,  
13 but they're inviting Commissioners to come just as we  
14 did for church fires, if we would be willing, some of  
15 us, to go out there. Is that right or wrong?

16 COMMISSIONER REDENBAUGH: Is it  
17 Commissioner attendance or is it --

18 CHAIRPERSON BERRY: (Interrupting) Let's  
19 ask Yvonne, she's going to explain it further.

20 COMMISSIONER LEE: I think because the  
21 issue is broader in scope, I think the Hawaii SAC  
22 members feel that people tend to look at the Hawaii  
23 position as just impacting Native Hawaiians, but when  
24 you look at the broader picture, the legal  
25 ramification is it is not a Native Hawaiian issue. It



1 is an issue that impacts other indigenous peoples in  
2 this country.

3 Therefore, they feel that as much as the  
4 Hawaiian SAC wants to hold a forum, they feel that it  
5 would be more -- and I agree with them -- it would be  
6 more appropriate for a federal body like us to hold a  
7 forum that covers a lot of other national concerns,  
8 joining with sponsoring the forum of the SAC.

9 CHAIRPERSON BERRY: So we'll be off going  
10 to Hawaii to hold a forum for which we don't usually  
11 do. We have briefings, as you know, but the idea  
12 would be that we would go to Hawaii then and stay for  
13 two days at least and hold a briefing expanded to a  
14 forum which means it would be experts talking, but  
15 then there would be time for people to ask questions.

16 That's the idea?

17 COMMISSIONER LEE: Right.

18 COMMISSIONER REDENBAUGH: Okay, so it's  
19 not a request for Commission participation.

20 CHAIRPERSON BERRY: Right.

21 COMMISSIONER REDENBAUGH: But for joint  
22 sponsorship.

23 COMMISSIONER MEEKS: Right. Joint  
24 sponsorship or --

25 COMMISSIONER LEE: I think right now

1 they're just so eager for the Commission to come in  
2 that - -and I don't say it lightly. I think that the  
3 tension there is tremendous. People there are very  
4 angry. They're very worried about the future. So I  
5 think that the community whether they'll support  
6 sovereignty, support status quo, whatever, they feel  
7 there's a need for a federal independent body to come  
8 in to present accurate, present a forum where accurate  
9 information can be shared on the national basis.

10 So if the Commission decides to just do it  
11 on our own, we go in to hold a forum without the SAC,  
12 that's fine, but if we decided to do it jointly,  
13 that's fine with them too. The SAC members do not  
14 want to get caught up with who is doing what. They  
15 just want the U.S. Commission on Civil Rights to go in  
16 there to provide this opportunity.

17 They're having other federal bodies, the  
18 Department of Interior, Department of Justice have  
19 gone into Hawaii to hold conciliation hearings on  
20 Native Hawaiian issues, but the Hawaiian community had  
21 told me that the difference between that one and the  
22 Commission is that the Commission is not a federal  
23 body, so we can explore issues such as how indigenous  
24 peoples' political relationship with the U.S. will be  
25 affected because of Hawaii. These are the things that

1 we have flexibility, whereas other departments don't  
2 have.

3 CHAIRPERSON BERRY: So it's either joint  
4 sponsorship or us having it and they participate as  
5 opposed to them having it and us participate?

6 COMMISSIONER REDENBAUGH: Now I  
7 understand. Okay.

8 CHAIRPERSON BERRY: So we talked before  
9 about being willing to do something in Hawaii and  
10 asked them to come back with a proposal which they've  
11 done, what the issues were. So what we have to do is  
12 decide whether it would be in connection with a  
13 Commission meeting, that is, would we have a  
14 Commission meeting in Hawaii.

15 We talked before about having Commission  
16 meetings somewhere other than here. In terms of  
17 people's calendars, if we had the Commission meeting  
18 and then extended it to have this forum or whether we  
19 want to pick some completely different dates to go to  
20 Hawaii to hold this. Are you all ready? Would you  
21 like to consider this further or what would you like  
22 to do?

23 Yes, Commissioner Redenbaugh?

24 COMMISSIONER REDENBAUGH: Before we get  
25 swept along in this I want to say that -- put my

1 agenda on the table. I'm going to be opposed to  
2 anything which further delays the Americans with  
3 Disabilities Report which has been delayed yet again,  
4 so on that basis against any substantial commitment of  
5 resources, without regard to whatever merit it might  
6 have.

7 Secondly and perhaps more importantly,  
8 this appears to be a substantial undertaking and  
9 appears to be worthwhile as do many of the other  
10 projects on our list. I propose that we consider this  
11 only in light of the resources that we have and the  
12 other projects that we either have committed to,  
13 indeed we may be willing to uncommit to something, but  
14 I think to accept this without that budgetary process  
15 is a very bad idea and something I would strongly  
16 oppose.

17 CHAIRPERSON BERRY: So Yvonne, if the SAC  
18 decided that they wanted to have a forum and they  
19 wanted to invite us, then it would be a completely  
20 different question because it would be their project  
21 that they were having and any of us that wanted to go,  
22 could go. But if it's going to be a Commission forum,  
23 then it raises other questions about other projects  
24 and how will they be scheduled and all that, which we  
25 can answer, but we can't answer it right here at this

1 meeting.

2 All we can do now -- why don't we do this,  
3 say that we still think that this is an important  
4 issue and we still would like to do something on this  
5 issue and are committed to doing something on this  
6 issue, but that we'll take this memo and have the  
7 Staff Director look at whether it's possible to do  
8 something, either in this fiscal year -- the fiscal  
9 year is coming to an end, the next one, by the  
10 Commission, and if not, is there some kind of joint  
11 way it can be done or some other way that it can be  
12 done and then inform us of that, not -- and if she has  
13 an answer to that, tell us before the next meeting,  
14 you know, give us a memo telling us the answer so that  
15 by the next meeting you can decide something.

16 I'll let you comment and then I'll  
17 recognize you.

18 COMMISSIONER LEE: I thought that when we  
19 were going through the budgetary process we had made  
20 it really clear that there will be sufficient  
21 resources, limited resources to deal with emergency  
22 situations like this. --And I think that we do need to  
23 be flexible because we are a civil rights  
24 investigative agency and if this is an issue of such  
25 critical importance and the Hawaiian people really

1 don't look at this as a Hawaiian issue at all, then I  
2 just feel that we're not talking about taking staff  
3 away from one project to work on this because we  
4 should have sufficient resources to deal with these  
5 kind of emergencies such as the church burning, such  
6 as this case, so I ask the Staff Director to look at  
7 it very closely because it is the issue of critical  
8 importance.

9 CHAIRPERSON BERRY: Yvonne, let me just  
10 say that at the suggestion of some Commissioners, I've  
11 forgotten which ones, and I don't know if Commissioner  
12 Redenbaugh was here, we did say for the next budget we  
13 wanted to set aside some discretionary funds to apply  
14 to emergency situations without tying them to any  
15 project because we know that events occur. Remember  
16 that discussion?

17 So that in the next budget cycle, that is  
18 after the beginning of the Fiscal Year, it is  
19 understood that there are other things we will do when  
20 they happen. What we're talking about now is it  
21 possible to do that before the beginning of the next  
22 budget cycle is basically what I'm saying, okay?

23 Commissioner Wilson and then Vice Chair.

24 COMMISSIONER WILSON: Yes, I had a  
25 statement and then a question. It seems to me that if

1 the Hawaiian SAC holds this forum that they're going  
2 -- well, maybe the question is are they going to have  
3 the wherewithal, i.e., the money and the resources to  
4 then write up a report and to do the necessary work to  
5 really have the whole thing be effective and from the  
6 discussion last week or last month, excuse me, it  
7 seemed to me that it started off with an invitation of  
8 some Commissioners attending and then it sort of  
9 winded its way to the point where those people who  
10 would want to come would come, but that it would be a  
11 more formally defined undertaking on our part which  
12 frankly I think I'm for because I think it's an  
13 important issue.

14 CHAIRPERSON BERRY: Okay.

15 COMMISSIONER WILSON: I understand that  
16 there's limited time and limited money, but this issue  
17 is here and I don't think they're going to wait until  
18 whatever the fiscal year is that we can comfortably  
19 undertake this project.

20 CHAIRPERSON BERRY: Vice Chair and then  
21 Commissioner Meeks.

22 VICE CHAIRPERSON -REYNOSO: The calendar  
23 issues are such and the finances are such that I think  
24 that it would make a lot of sense if we have this to  
25 have it jointly with the Commission meeting the way

1 we've done other times so that we can have a very  
2 short Commission meeting, but then to travel we would  
3 have to be undertaking for that trip and maybe we  
4 could have it even be a Friday and Saturday forum and  
5 that way it would take fewer resources and the  
6 scheduling issues that are obviously difficult for us  
7 might be a little bit easier.

8 But I do agree that we've talked about  
9 responding in a timely fashion to issues that come up  
10 and the crisis here, of course, is the U.S. Supreme  
11 Court ruling, so the quicker we can respond to it, the  
12 better. I'm very sympathetic to Commissioner  
13 Redenbaugh's concern, but this is one of those timely  
14 situations where the more quickly we can respond, I  
15 think the better we will be.

16 CHAIRPERSON BERRY: Commissioner Edley?

17 COMMISSIONER MEEKS: I agree that this is  
18 a very important issue and if we had to vote on  
19 whether to do it I would vote to do it, but I  
20 completely agree with Commissioner Redenbaugh, too,  
21 and I think it makes me wonder if we're really  
22 planning right because I think we do have to be  
23 responsive to these emergency issues and to be timely,  
24 but again, I hate to see it -- because of limited  
25 resources at the end of the year, so I just think



1 we're going to have to be very careful when we're  
2 doing our planning up front and what projects we take  
3 on and make sure that we leave a certain portion for -

4 -

5 CHAIRPERSON BERRY: (Interrupting) Right.

6 We did that for the next fiscal year because  
7 Commissioners learn from experience and I think we  
8 dragged George kicking and screaming to the idea that  
9 we might be able, possibly, to do that because we know  
10 from experience that there are these issues that come  
11 up. George is the budget director.

12 There are those issues that come up and  
13 there ought to be some kind of quite explicit  
14 acknowledgement but when we have a project driven  
15 schedule that if things come up that are urgent, the  
16 Commission may decide -- but I guess what Commissioner  
17 Redenbaugh is saying is if we decide to do that it  
18 should be a rationally based decision after evaluating  
19 where we are and where we're going as opposed to us  
20 not doing it.

21 COMMISSIONER REDENBAUGH: Right.

22 CHAIRPERSON BERRY: And we did say that  
23 next, in the next fiscal year we'll make that  
24 available. So here's what we're going to do for the  
25 next time Staff Director and maybe in between if you

1 get an answer to tell us how we might, what we might  
2 do in Hawaii and how soon we can do it and what the  
3 implications are, financially, keeping in mind the  
4 Vice Chair's suggestion that if we did it in  
5 connection with the meeting it might be less expensive  
6 and whether we can do it in this fiscal year or not.

7 Yes, Commissioner Edley?

8 COMMISSIONER EDLEY: Getting back to our  
9 strategic planning discussion, there were several of  
10 us who raised serious concerns that several projects  
11 are delayed or diffused and so far I really haven't  
12 got a sense of what happened with that guidance.

13 CHAIRPERSON BERRY: You mean at the  
14 planning meeting?

15 COMMISSIONER EDLEY: Yeah.

16 CHAIRPERSON BERRY: The assumption is that  
17 the staff will be guided by the discussion and that in  
18 the reports and proposals that we see, based on the  
19 discussion there will be less diffusion and that when  
20 we see them as they come along, we will note that  
21 there's less diffusion and that's been more tightening  
22 and more focus. That's the assumption. Whether that  
23 takes place or not, I don't know. And if it doesn't,  
24 then we need to find some mechanism for making it  
25 happen.

1 COMMISSIONER EDLEY: Just to take a  
2 specific example, the ADA has raised concerns. I  
3 don't know if there is a 5 percent adjustment in the  
4 addition of that project.

5 CHAIRPERSON BERRY: You mean the annual --

6 COMMISSIONER EDLEY: (Interrupting) The 5  
7 percent adjustment.

8 CHAIRPERSON BERRY: Are you talking about  
9 the annual statutory report?

10 COMMISSIONER EDLEY: Yes, just using that  
11 as an example.

12 CHAIRPERSON BERRY: I understood that  
13 staff record, and is it correct, that the size and  
14 dimension and focus of that report had been diminished  
15 as a result of discussion?

16 STAFF DIRECTOR MOY: Yes. I'm proud to  
17 say it has.

18 CHAIRPERSON BERRY: She said yes and that  
19 you will see that when you get the draft of it, that  
20 it's reflected, the discussion is reflected and that  
21 is nothing like as ambitious as it was in the  
22 beginning. So we'll see, if these discussions had any  
23 impact.

24 I don't know who is next. Commissioner  
25 Redenbaugh, I think and then the Vice Chair.

1 COMMISSIONER REDENBAUGH: Just a point of  
2 clarification, Madam Chair, your instruction to the  
3 Staff Director to prepare this sort of impact study or  
4 cost or however one could characterize it, I might  
5 understand that includes -- would also include the  
6 consequences for other projects, the impact on other  
7 projects if we were to take this on.

8 CHAIRPERSON BERRY: I would assume so,  
9 that they would also adjust the MIS accordingly and  
10 make a proposal, keeping that in mind.

11 COMMISSIONER REDENBAUGH: I want to  
12 clarify one thing on my part. I'm certainly willing  
13 if we as Commissioners vote collectively and I'll  
14 support the decision whether I'm the minority or not,  
15 to delay deferral or postpone any project even if I'm  
16 closely associated with it.

17 What I don't want to do is have it happen  
18 again what happened on the ADA last year which is we  
19 as Commissioners voted to not change its priority, but  
20 since process is policy it got bumped, not by us, but  
21 by staff. Then I want the Commissioners to be setting  
22 priorities, not the staff.

23 CHAIRPERSON BERRY: Okay, Vice Chair.

24 VICE CHAIRPERSON REYNOSO: Just a comment  
25 on Commissioner Edley's concern. I think the

1 suggestion that if we do something in Hawaii it would  
2 be a forum, it's a response to that concern because a  
3 forum doesn't require the same amount of staff time  
4 and so on and we can do a long report or a short  
5 report, so I think that's a response to that long  
6 discussion and concern that we've all had.

7 CHAIRPERSON BERRY: The staff had sent  
8 along a note and I don't know who it came from that  
9 says if we get new computers we can finish projects  
10 more swiftly.

11 (Laughter.)

12 Pointing out that there are serious  
13 hardware and software problems that need to be  
14 alleviated and need some more attention.

15 Okay, anything else before we go to --  
16 okay, our next -- I'm going to go on --

17 COMMISSIONER MEEKS: (Interrupting) Are  
18 you moving on off of the staff director's report? I  
19 just wanted to give a quick update about this report.  
20 I'll make it quick.

21 CHAIRPERSON BERRY: Something other than  
22 New York?

23 COMMISSIONER MEEKS: The Governor called a  
24 meeting of the SAC members, I mean the meeting was of  
25 great concern to the SAC chair and also the Regional

1 Director because it did violate FACA, the Federal  
2 Advisory Committee Act. However, most of the SAC  
3 members agreed to do it and it wasn't open to the  
4 public. It was open to the press. The Governor  
5 originally came out and really, without having read  
6 the report called it garbage, but -- and he picked the  
7 report apart. He treated the report and the forum as  
8 a legal proceeding and a legal document.

9 The committee members really, I thought,  
10 for the most part handled it really well and you know  
11 in the end the Governor did agree that there is racial  
12 profiling going on and that there are some big  
13 problems and that he finds it outrageous that no one  
14 has been charged in the death of "Boo" Many Horses,  
15 the FAS person that was found upside down in the  
16 garbage can and so there's a couple of things that we  
17 all agree on and one is that there are problems and  
18 that there is work that needs to be done.

19 So I think -- he didn't argue with those  
20 points at all.

21 CHAIRPERSON BERRY: Good. Well, we got  
22 out this week, we continue to work on issues in South  
23 Dakota and to try to implement. The Governor of  
24 Nebraska's Office has indicated that no response,  
25 which is related to the meeting we had with them will

1 be here, what they can do in Nebraska and that was a  
2 very positive meeting.

3 The Justice Department, I understand, has  
4 a task force looking into ways to get responses to  
5 some of the issues that we had raised and we had  
6 talked here about a project, not in this fiscal year,  
7 to do something to look at a couple of the counties  
8 out there which was one of the SAC recommendations and  
9 the Attorney General in South Dakota came out and  
10 endorsed that recommendation the day before yesterday.

11 COMMISSIONER MEEKS: Right, exactly, that  
12 was the one thing I wanted to add.

13 CHAIRPERSON BERRY: That was an excellent  
14 idea and they would hope that somebody would move on  
15 that. So I think that the ball is moving forward  
16 gradually, but it's moving forward and it's not easy,  
17 but I'm encouraged and so just keep at it out there.

18 Okay, Carl, did you have something you  
19 want to say about something else?

20 COMMISSIONER ANDERSON: Yes, it's about  
21 the New York SAC --

22 CHAIRPERSON-BERRY: --(Interrupting) SAC?

23 COMMISSIONER ANDERSON: Yes. Do you want  
24 to wait on that?

25 CHAIRPERSON BERRY: If it's a SAC and it's

1 not on this report, you go ahead. At the time of this  
2 report I'm going to introduce that item and we'll go  
3 forward.

4 COMMISSIONER ANDERSON: All right. My  
5 question is we have a project under consideration, a  
6 proposal under consideration by the New York SAC on  
7 police community relations and the proposal is being  
8 developed by our staff here or their staff? Maybe you  
9 could address -- the question is we're spending a lot  
10 of time on New York Police community relations. Do we  
11 need to encourage the SAC to do that I guess is my  
12 question.

13 CHAIRPERSON BERRY: Is this some place  
14 other than New York City? Ki Taek is the Regional  
15 Director.

16 MR. CHUN: The simple answer to the  
17 question, Commissioner, is -- I don't think the  
18 committee is interested in duplicating any part of the  
19 effort of the Commission as a whole makes. They are  
20 interested in expanding the interests into small towns  
21 across the State so they currently are trying to stay  
22 away from New York City as such, but rather into  
23 smaller towns where similar problems seem to be  
24 pervasive.

25 And then see what the set up is, what the



1 underlying dynamics might be and what the -- what kind  
2 of solutions may have been contemplated and how  
3 effective they are. It is a follow up and taking the  
4 focus of the Commission inquiry into other parts of  
5 the State.

6 We haven't quite decided on the scope we  
7 could allow and they are contemplating maybe two to  
8 three cities or smaller towns and then end up with  
9 something of a summary report like an edited  
10 transcript and executive summary of why we did, what  
11 we did and what the highlights were. Within a month  
12 or so I think we should be able to send the proposal  
13 to the Staff Director.

14 **V. POLICE PRACTICES AND CIVIL RIGHTS IN**

15 **NEW YORK CITY REPORT**

16 CHAIRPERSON BERRY: Okay. Thanks. Let's  
17 move on to the next item. The next item is the police  
18 practices and civil rights in New York City and first  
19 for purposes of discussion I would like a motion to  
20 approve the report.

21 VICE CHAIRPERSON REYNOSO: So moved.

22 CHAIRPERSON BERRY: And a second.

23 COMMISSIONER LEE: Second.

24 CHAIRPERSON BERRY: I would ask the Staff  
25 Director to introduce the report to us and then we'll

1 see what questions, whatever and do what Edley said  
2 and divide the issues between procedural and -- go  
3 right ahead, Staff Director.

4 STAFF DIRECTOR MOY: Thank you, Madam  
5 Chair. I would like to say something to clarify the  
6 New York Report and then I would like Eddie Hailes to  
7 also comment.

8 CHAIRPERSON BERRY: Eddie Hailes is the --

9 STAFF DIRECTOR MOY: (Interrupting) Is  
10 the Acting General Counsel.

11 CHAIRPERSON BERRY: Okay.

12 STAFF DIRECTOR MOY: The New York Report  
13 was a hearing prepared by staff. It began last March  
14 when Commissioners approved plans to move ahead with  
15 the hearing based on the shootings and allegations of  
16 police brutality in New York City. You wanted a  
17 hearing based on one day in New York with limited  
18 staff.

19 In May of last year, the Commission moved  
20 forward to have this hearing. However, due to the  
21 unexpected departures of many of the OGC staff and  
22 from the time of the hearing until today, it has been  
23 difficult. The draft of the New York report which has  
24 been issued to you and affected agencies has created  
25 some confusion with regards to our procedures.

1                   And now I would like Eddie Hailes to  
2 comment further.

3                   CHAIRPERSON BERRY:    Okay, Eddie, Acting  
4 General Counsel, Eddie Hailes.

5                   MR. HAILES:    Good morning.  I would like  
6 to address the procedures that were involved with the  
7 preparation and the distribution of the hearing report  
8 entitled "Police Practices and Civil Rights in New  
9 York City."  This is a hearing report that is the  
10 product of a careful examination of facts secured from  
11 and after the Commission's hearing held in New York  
12 City on May 26, 1999.

13                   Prior to the hearing, the Commission staff  
14 met with New York City officials to describe the  
15 general parameters of the one day hearing.  At that  
16 time the city officials asked Commission staff to  
17 distribute information to Commissioners about the NYPD  
18 prior to the hearing.  The Commission staff made this  
19 material available to the Commissioners as requested.

20                   At the Commission hearing, the  
21 Commissioners heard sworn testimony from the Mayor,  
22 the Police Commissioner, the chair of the Civilian  
23 Complaint Review Board and other city and state  
24 officials; New York Police Department officers,  
25 religious leaders, representatives of civic and civil

1 rights advocacy groups and persons who described their  
2 personal encounters with NYPD officers also testified  
3 under oath.

4 Following the hearing, OGC followed its  
5 routine verification procedures regarding the  
6 transcript of the hearing. At that time the staff  
7 determined that it could not complete a hearing report  
8 within the time lines established by Commissioners  
9 given the sheer volume of documents submitted in  
10 response to subpoenas issued at the hearing. For that  
11 reason, the Commission engaged the services of a  
12 contractor to assist with the examination of more than  
13 32,000 pages of subpoenaed documents from the NYPD and  
14 other State and local entities.

15 Also, the contractor performed an analysis  
16 of more than 100,000 individual UF-250 report forms  
17 that were stored on CD ROM by the NYPD. The UF-250  
18 report forms contained information related to stop and  
19 frisk encounters by NYPD officers including those in  
20 specialized units.

21 Based on the hearing testimony the  
22 descriptions and analyses of the subpoenaed documents  
23 and other research efforts by the staff, several  
24 preliminary drafts of the hearing report were written  
25 and submitted to the Staff Director as early as

1 December 1999. Pursuant to Agency rules, OGC staff  
2 took steps to ensure that the final draft of the  
3 report was legally sufficient and did not contain  
4 defame and degrade statements.

5 An editorial review board composed of  
6 three of the most experienced members of the  
7 Commission staff provided crucial comments to improve  
8 the draft report. Thus, Agency staff in the draft  
9 report addressed these comments. I examined it again  
10 and determined that statements in the report, including  
11 those that were critical of the NYPD did not rise to  
12 the level of defame and degrade material under the  
13 totality of the circumstances.

14 Some of the statements come under a  
15 category I will call dislike and deny material. In  
16 other words, given an opportunity to review these  
17 statements, public officials may dislike and deny  
18 them. This does not mean that the public officials  
19 have been defamed or degraded.

20 The hearing report was placed on the  
21 agenda for the April Commission meeting. It was taken  
22 off the agenda when staff reported that the draft  
23 needed additional work before it was discussed and  
24 considered by Commissioners. At that meeting, the  
25 Commissioners voted to publicly release the draft

1 report at the same time that OGC staff would send  
2 relevant portions of the draft report to affected  
3 agencies for review and comments.

4 This vote was taken under exigent  
5 circumstances to remedy the difficult dilemma posed by  
6 leaks to the press of internal Commission documents.  
7 It is not standard procedure for draft reports to be  
8 released to the public at the same time that affected  
9 agency reviews are occurring.

10 On the other hand, neither the Commission  
11 statute nor regulations cover affected Agency reviews  
12 and Commission Administrative Instructions do not  
13 prohibit express disclosure of draft reports during  
14 these reviews.

15 Despite the absence of a prohibition,  
16 Chairperson Berry issued a statement on April 21st  
17 declaring that the Commission will not release the  
18 draft reports to the public when the relevant portions  
19 of it were submitted for affected Agency review.

20 In the following week I sent copies of the  
21 relevant portions of the draft report which did not  
22 include conclusions, findings and recommendations to  
23 the affected agencies. The Agency rules expressly  
24 state that findings and conclusions are not to be sent  
25 in conjunction with the affected Agency review.

1           The affected agencies were told to submit  
2 their comments to OGC by May 16,2000, which was 20  
3 days from the date the draft report was received by  
4 representatives for the Mayor, the Police Commissioner  
5 and the CCRB chair. Two copies of the draft report  
6 contained proposed findings and recommendations were  
7 sent to the Staff Director for her review and for  
8 distribution for Commissioners for their review. To  
9 this date, OGC staff has not received comments from  
10 the affect agencies.

11           Representatives of the Mayor, Police  
12 Commissioner and CCRB chair contend that they are  
13 entitled to review the proposed findings and  
14 recommendations of the draft report under the Agency's  
15 defame and degrade procedures and that the 20-day  
16 clock should not begin to run until they receive these  
17 findings and recommendations. They are persuaded by  
18 an article that appeared in The New York Times on  
19 April 26th about the Commission's draft report and  
20 stated that its findings and recommendations fall  
21 under this defame and degrade category.

22           Again, I have determined that any of the  
23 findings and recommendations that the Commissioners  
24 are likely to discuss and consider represents fair  
25 comment and public criticism of high profile

1 officials. The findings and recommendations, if  
2 accepted are fact based and not extreme. They are  
3 unlikely to produce moral outrage. They should be  
4 considered dislike and deny statements, not defame and  
5 degrade statements.

6 If we find from the affected Agency  
7 comments that any of the proposed findings and  
8 recommendations before the Commissioners are based on  
9 portions of the draft report that are in error, we  
10 will swiftly recommend changing or eliminating them  
11 even as we make appropriate revisions to the draft  
12 report.

13 We had advised New York City officials  
14 that we would recommend that the entirety of their  
15 comments that are submitted by the May 16th deadline  
16 should be appended to the Commission's report to the  
17 extent that the comments were made to facts in the  
18 draft report. And Madam Chairperson, I'm going to say  
19 that this morning I received a letter from a  
20 representative of the Mayor, Police Commissioner and  
21 CCRB chair asking that their comments be received with  
22 the understanding that only those comments that relate  
23 directly to the substance of the report could and  
24 would be appended.

25 The Agency staff now waits comments from



1 affected agencies and comments and approval from  
2 Commissioners for purposes of making appropriate  
3 revisions to the draft report before it is offered as  
4 a final publication.

5 CHAIRPERSON BERRY: Thank you, General  
6 Counsel. I just have one question and I don't know if  
7 anybody else has and before we get into the  
8 discussion.

9 Is there any reason to your knowledge that  
10 the Commission should not be considering this report  
11 today? In other words, is it a fact that the affected  
12 Agency comments hadn't been received and may be  
13 received if there are any by Monday, a reason for us  
14 not to discuss the document?

15 MR. HAILES: The document can be discussed  
16 with the understanding that once the staff receives  
17 the comments from the affected Agencies, if we find  
18 factual errors in the report, they would be  
19 appropriately revised.

20 CHAIRPERSON BERRY: Have we ever done this  
21 before with the reports before?

22 MR. HAILES: Yes.

23 CHAIRPERSON BERRY: Okay. I just wanted  
24 to make sure that we weren't doing something that we  
25 hadn't done before.

1           Okay, I'm ready for procedural matters.  
2           If there are any procedural matters on the report that  
3           Commissioners would either make a motion about, if you  
4           have a motion about anything concerning the procedures  
5           on the report and then if you would make the motion  
6           and then we'll speak to the motion so we know what  
7           we're discussing and we're not just making random  
8           comments.

9           Could I ask that we get to the substance.  
10          Does anyone have a motion on the procedures as  
11          described by the General Counsel, keeping in mind  
12          Commissioner Anderson's earlier comment that when the  
13          Staff Director looks at the leak issue, she ought to  
14          keep in mind that we have these affected agency and  
15          other kinds of procedures that may impact on that  
16          question.

17          Does anyone have a procedural motion to  
18          make on this report?

19          Yes.

20          COMMISSIONER ANDERSON:     Well, I would  
21          reserve the right to make a procedural motion, but I  
22          would ask whether it's the Chair's intent to move for  
23          a vote on final adoption of this report today. I have  
24          no objection to considering or discussing it.

25          CHAIRPERSON BERRY:    It would depend -- we

1 have a motion on the floor to approve it which has  
2 been seconded, which was put on the floor for purposes  
3 of the discussion. Normally what we do is after the  
4 discussion if the Commission feels that it is ready to  
5 vote, then we would call the question and we would  
6 have a vote. If the Commission feels it is not ready  
7 to vote, then we would simply defer it until another  
8 time.

9 COMMISSIONER ANDERSON: Okay, then I would  
10 move to postpone final consideration of the report to  
11 a future meeting in order to give Commissioners time  
12 to review the material submitted by the Citizens  
13 Review Board, the police and the Mayor's office.

14 That's my point, speaking for the motion I  
15 would say that future meeting could be as soon as the  
16 June meeting, but I think given the extraordinary  
17 circumstances and the controversy surrounding this, I  
18 think we do ourselves no great service by voting up or  
19 down on this report without having reviewed whatever  
20 material the Mayor, the Citizens Review Board and the  
21 police may wish to send to us in a few days.

22 CHAIRPERSON BERRY: Point of information  
23 before we have a discussion. Is there -- does the  
24 Commission, this is not my recollection that we do  
25 that's why I'm asking the question. My recollection

1 could be in error. Does the Commission usually review  
2 the affected Agency's comments when they come in after  
3 a meeting when we've considered a report? What we  
4 usually do is that the staff gets the comments and  
5 they determine whether there are any factual errors  
6 and they make the factual changes.

7 We leave it for them to do and if there  
8 are any substantive matters that require us to  
9 reconsider, they inform us and then we do it.  
10 Otherwise, we just leave it to the staff. Isn't that  
11 usually how we do it? I'm not saying we should do it  
12 in this case, but I just want to make sure that  
13 everybody understands that the Commission does not  
14 usually distribute affected Agency reviews to all the  
15 Commissioners and then have a discussion of it.

16 This usually is done by the staff. Am I  
17 correct in this statement or not, based on the  
18 experience? I just want people to know because I  
19 don't want people to think we're doing something  
20 different here.

21 VICE CHAIRPERSON REYNOSO: My answer is  
22 yes.

23 CHAIRPERSON BERRY: So normally we --  
24 we've done this time and time again because a lot of  
25 times we don't even get any comments from the affected

1 agencies. They don't send anything. If we waited  
2 around for them we would never get anything done, so  
3 normally what we do is we simply act on the report,  
4 tell the staff if there's anything that changes the  
5 substantive and requires us to come back, let us know  
6 and we'll do it. Otherwise, we'll do it as what  
7 lawyers call subsequent -- is that a subsequent or  
8 precedent, I always get them mixed up.

9 (Laughter.)

10 Anyway, but I'm not saying we should do  
11 that in this case. I'm just saying that the lay of  
12 the land is that there's nothing unusual about what  
13 the General Counsel has said and what has been  
14 proposed.

15 COMMISSIONER ANDERSON: As a point of  
16 information, I thought I might have heard a second to  
17 my motion.

18 CHAIRPERSON BERRY: You did.

19 COMMISSIONER EDLEY: I seconded it so we  
20 could vote.

21 COMMISSIONER ANDERSON: Good, thank you.

22 CHAIRPERSON BERRY: And we're going to  
23 have further discussion if anybody has anything to  
24 say.

25 COMMISSIONER ANDERSON: My memory seems to

1 me that on a number of reports like the Fair Housing  
2 report, affected agency review had been undertaken,  
3 considered and then incorporated before we had  
4 received the report. So oftentimes, I think I'm clear  
5 about this, questions were raised, we got affected  
6 agency review, the answer was yes, it's been  
7 incorporated, then we went to consideration of the  
8 report and voted on it.

9 CHAIRPERSON BERRY: It's happened both  
10 ways, Carl, that was my point.

11 COMMISSIONER ANDERSON: Yes.

12 CHAIRPERSON BERRY: So my point was that  
13 there was no hard and fast rule about how it's done,  
14 not that that should influence what we do here.

15 Yes, Commissioner Redenbaugh.

16 COMMISSIONER REDENBAUGH: Right. I think  
17 you've just answered my point which is is there a  
18 normal pattern?

19 CHAIRPERSON BERRY: I don't think so.

20 COMMISSIONER REDENBAUGH: Okay.

21 CHAIRPERSON BERRY: I think we've done it  
22 both ways. It depends on the timing, what we've got,  
23 if we got anything, and the fact that the Commission  
24 meetings are set and we usually like to do this at a  
25 meeting. That's what the problem is and the staff

1 usually does not coordinate the dates on which  
2 affected agency has done with the schedule, but when  
3 we meet, that kind of thing. Yes, Commissioner  
4 Anderson?

5 COMMISSIONER ANDERSON: Just to be clear,  
6 I think the affected agency review is obtained before  
7 we get a draft report for consideration. I think what  
8 may be new in this case, if I understand it, is that  
9 the Commissioners are going to see the comments and  
10 then we're going to act on final passage of the  
11 report, if my motion carries, after having had the  
12 benefit of the affected agency review ourselves  
13 reviewing it, but normally OGC or some other office  
14 would review comments from the affected agencies  
15 before we see the draft.

16 CHAIRPERSON BERRY: Sometimes here,  
17 sometimes we've been told at the beginning of the  
18 meeting when we consider something, affected agency  
19 comments are not yet in, and then we say you will  
20 incorporate them, make factual changes and if there's  
21 anything substantive come back to us, otherwise we're  
22 acting -- and other times they aren't done. I'm just  
23 saying it's been done all kinds of ways and there's  
24 nothing that precludes it and I'm not saying that  
25 should influence what we do on this one. I'm just

1 trying to clarify what we've done.

2 Yes, Vice Chair?

3 VICE CHAIRPERSON REYNOSO: Madam Chair,  
4 what's happened, if my memory serves correctly, as you  
5 indicated that we have set hearings -- set dates for  
6 our meetings, sometimes the responses will come in and  
7 they are in play before we consider it and sometimes  
8 not.

9 But the import of it is, unless I  
10 misunderstood it, that if there's anything substantive  
11 it will come back to us. And last time I wanted to  
12 stick to our normal procedure, and I think I would  
13 vote to stick to our normal procedure. So, therefore,  
14 I would vote against Commissioner Anderson's motion  
15 because if we were to accept this report, it's with  
16 the understanding that if there's anything substantive  
17 that comes up, then it would be brought back to the  
18 Commission.

19 CHAIRPERSON BERRY: Yeah. Well, I don't  
20 -- just so I'm clear about where I stand on this,  
21 since it's so sensitive, I don't care -- I don't care  
22 whether we vote on it this month or not, personally.  
23 I would like us to vote on it simply because we  
24 promised publicly that we would get the report out,  
25 done, and approved within a year of the hearing. And



1 the hearing was in May.

2 So if we get it done, we will have kept to  
3 the time line, which we've been trying to do lately on  
4 things. That's my only reason. So if we don't vote  
5 on it and have a discussion, but it's clear that we're  
6 going to vote, then it just means that everybody  
7 understands that the only reason why we didn't finish  
8 it in May was because we didn't vote on it, then I  
9 don't have any particular care or concerns.

10 So that mainly is my -- my only reason for  
11 thinking that we -- yes, Commissioner?

12 COMMISSIONER MEEKS: So if we vote not to  
13 -- to vote on this, is that what the motion was?

14 CHAIRPERSON BERRY: Yeah. But the motion  
15 was that after we have our discussion we don't  
16 actually --

17 COMMISSIONER MEEKS: (Interrupting) Okay.  
18 Does that mean, then, that we don't discuss it at  
19 all, this --

20 CHAIRPERSON BERRY: (Interrupting) No.  
21 We discuss it.

22 COMMISSIONER MEEKS: --- any -- anything  
23 that's in it now?

24 CHAIRPERSON BERRY: We discuss it.

25 COMMISSIONER MEEKS: Okay.

1 CHAIRPERSON BERRY: All we'll be doing is  
2 not voting on it, according to his motion?

3 COMMISSIONER MEEKS: Okay.

4 CHAIRPERSON BERRY: Yes, Vicky?

5 COMMISSIONER WILSON: Once we vote on it,  
6 tell me what the procedure is. Is it released right  
7 away?

8 CHAIRPERSON BERRY: No.

9 COMMISSIONER WILSON: Okay. What's the  
10 procedure?

11 CHAIRPERSON BERRY: The general counsel,  
12 you promised the officials as a courtesy that we would  
13 not release it before 30 days had elapsed from the  
14 time they were given it; that's number one, right?

15 MR. HAILES: That's exactly right.

16 CHAIRPERSON BERRY: So it would be  
17 released 30 days, which would be what, May 26th?

18 MR. HAILES: May 26th, yes.

19 CHAIRPERSON BERRY: Right. So the  
20 difference would be it would be released May 26th,  
21 assuming we were going to vote for it, as opposed to  
22 whenever the meeting is. When is the next meeting?

23 STAFF DIRECTOR MOY: June 16th.

24 CHAIRPERSON BERRY: June 16th.

25 COMMISSIONER WILSON: But then it's

1 released a month from June 16th.

2 CHAIRPERSON BERRY: Right.

3 COMMISSIONER WILSON: So it's released in  
4 July?

5 CHAIRPERSON BERRY: No. It would be  
6 released June 16th, assuming we don't come up with  
7 anything today that is defaming or degrading --

8 COMMISSIONER WILSON: (Interrupting) No.  
9 But it's --

10 CHAIRPERSON BERRY: (Interrupting) -- for  
11 which we'd have to -- yes.

12 COMMISSIONER WILSON: I'm sorry to  
13 interrupt. What I'm saying, if we were to postpone  
14 and wait and see what the responses are, that would be  
15 June 16th, is our next meeting. We would then vote on  
16 it, and that it wouldn't be released until a month  
17 from that, or we could just release it right after  
18 that because we would already have received their  
19 responses?

20 CHAIRPERSON BERRY: Any responses are  
21 supposed to come in by Monday.

22 STAFF DIRECTOR MOY: This coming Monday.

23 MR. HAILES: Or Tuesday, I think is the  
24 16th.

25 CHAIRPERSON BERRY: Tuesday?

1 MR. HAILES: The 16th.

2 CHAIRPERSON BERRY: The 16th.

3 COMMISSIONER WILSON: Well, I just want to  
4 clarify this. I don't mean to be an annoyance.

5 CHAIRPERSON BERRY: Go right ahead, be an  
6 annoyance.

7 COMMISSIONER WILSON: The thing is we  
8 can't release the report now anyway, if we vote on it  
9 today, until the 16th?

10 CHAIRPERSON BERRY: No, the 26th.

11 COMMISSIONER WILSON: The 26th. If we  
12 postpone until June 16th, we could release it on the  
13 17th?

14 CHAIRPERSON BERRY: Right. Or let me put  
15 in the alternative, Vicky. If we agree today -- and  
16 we haven't discussed it yet. But we wanted to approve  
17 the report, assuming we agreed on that. We could vote  
18 on the report, if we wanted to, and we could say,  
19 since we're not going to release it anyway until the  
20 26th, that the comments will be in by then anyway.  
21 And anybody who wants to read them can read them.

22 We've already said we would append them to  
23 the report. And if any Commissioner who reads them  
24 sees an urgent need for us to reconsider, they could  
25 e-mail us and we could have a phone meeting and

1 reconsider it, or say we'll put it off and have  
2 another reconsideration at the June meeting, or  
3 something.

4 If people were really, you know, concerned  
5 about the comments and thought the staff wasn't going  
6 to do a job of fixing them up or anything like that,  
7 that's a possibility. That way we wouldn't have to  
8 defer it until June 16th because by then, the thing in  
9 my view becomes rather -- it's been out there already,  
10 a lot of it in draft, and there's a lot of discussion  
11 about what's in it and what's not in it.

12 So you'd be doing that for another month,  
13 which doesn't make any -- you know, it may make sense.

14 I don't know. Anybody else have a comment?  
15 Commissioner Redenbaugh?

16 COMMISSIONER REDENBAUGH: I think I'm  
17 still on the procedure question.

18 CHAIRPERSON BERRY: Yes.

19 COMMISSIONER REDENBAUGH: This obviously  
20 is an important as well as controversial report for  
21 many reasons. I don't need to enumerate. And it's a  
22 report that --- the whole basis of the report is an  
23 examination of the procedures and processes in the New  
24 York Police Department, at bottom.

25 Because we aren't recommending that the

1 laws are insufficient and that new legislation is  
2 needed, which often we do and is appropriate. It's  
3 really that the -- whether the laws as they exist are  
4 followed and to what extent not.

5 I think that -- for that and the first  
6 reason, it's very important that we be very careful in  
7 our procedures and that in any moment when we have a  
8 choice between newer or less rigorous procedure, I'm  
9 going to argue for the newer rigorous procedure  
10 because of the serious and controversial nature of  
11 this report.

12 So that we may have done something  
13 different in the past on a report that was not  
14 controversial, as you said yourself shouldn't limit  
15 what we do on this one. So that's my general comment.  
16 And then I have a specific question about "defame" and  
17 "degrade," which is this is a term of art, obviously.

18 But I'm not sure what the standard is that  
19 the Acting General Counsel is using. And because I'm  
20 not sure what the will-be standard is, I don't know  
21 how to evaluate the claim that there's no defame and  
22 degrade in this report. So I'm uncomfortable, based  
23 on my own ignorance.

24 CHAIRPERSON BERRY: Well, why don't we  
25 have the General Counsel tell us since we at

1 Commission hearings are always having to make sure  
2 that we avoid defame and degrade. That's one of the  
3 things we have to do at all the hearings. And the  
4 counsel always has to tell us when something is going  
5 to defame and degrade.

6 We do it at forums. It's a standard. The  
7 Commission has had to do it from the beginning. So in  
8 Commission, the way we have interpreted this, what do  
9 we mean when something defames or degrades? You said  
10 that if we criticize somebody, and it's deny and --  
11 what did you say, despite --

12 MR. HAILES: (Interrupting) Dislike and

13 --

14 CHAIRPERSON BERRY: -- deny that that's  
15 not defame or degrade.

16 MR. HAILES: Exactly.

17 COMMISSIONER EDLEY: Madam Chair, if I can  
18 get in the queue?

19 CHAIRPERSON BERRY: Okay. You're in the  
20 queue. Counsel, can you tell us what we at the  
21 Commission define, not for purposes of this report but  
22 any report, as "defame" and "degrade," so we can apply  
23 it here?

24 MR. HAILES: Yes, I can. But I feel  
25 obligated to say at the onset that in one sense

1 Commissioners are safeguarded from making a  
2 determination on this because according to our AI's it  
3 is the General Counsel, or in this case the Acting  
4 General Counsel, who is the accountable official for  
5 making that determination.

6 The determination I made was based on the  
7 standard of review that looks at public officials and  
8 determines whether the comments made are -- are  
9 extreme or would produce moral outrage. In some of  
10 the interpretations of this standard as it relates  
11 specifically to high profile officials, to public  
12 officials, points to allegations of -- of  
13 discrimination by these persons that would injure  
14 their reputation in their specific community.

15 And when I look at the definition of  
16 "allegation," I see that it refers to assertions made  
17 with little or no proof. This report that we have  
18 presented to the Commissioners is based on facts, from  
19 sworn testimony, with a statistical overlay that  
20 supports the statements that are in this report, and  
21 takes it out of the defame and degrade category.

22 -CHAIRPERSON BERRY: So that whatever the  
23 statements are, even if they allege discrimination on  
24 the part of some agency or some persons, are fact-  
25 based statements which you don't think -- and they're



1 criticisms, but they don't --

2 MR. HAILES: (Interrupting) They're fair  
3 comment and public criticism.

4 CHAIRPERSON BERRY: Are they the kinds of  
5 statements that we have made -- I mean, we've in the  
6 past, the Commission, even before we -- any of us got  
7 here, has made statements about people being engaging  
8 in discriminatory behavior and agencies engaging in  
9 discriminatory behavior.

10 That must have passed the defame and  
11 degrade test; otherwise, it wouldn't be in the  
12 reports.

13 MR. HAILES: Right.

14 CHAIRPERSON BERRY: So we can say that  
15 someone discriminated or appeared to if it's based on  
16 facts, without it being defamatory.

17 MR. HAILES: And we have not said  
18 directly, specifically in this report that any  
19 individual has engaged in that activity.

20 CHAIRPERSON BERRY: Okay. Yes,  
21 Commissioner?

22 COMMISSIONER REDENBAUGH: A follow-up  
23 question. In the past, and I probably should remember  
24 this myself, have we handled defame and degrade  
25 differently? That is, have we given affected -- not

1 affected, affected persons an opportunity to come in  
2 and rebut?

3 MR. HAILES: Well, we have followed the  
4 Agency rules faithfully. Generally, it's presumed  
5 that entities and public officials will have an  
6 opportunity to respond to statements during their  
7 affected agency reviews.

8 And a memo by a former general counsel,  
9 Helen Stein, points out very clearly that these  
10 affected agency review opportunities are sufficient to  
11 give the individuals and public -- the public  
12 officials opportunities to respond to what may be --

13 CHAIRPERSON BERRY: (Interrupting) But I  
14 think that he's asking a different question.

15 MR. HAILES: I see.

16 CHAIRPERSON BERRY: He's asking whether,  
17 if I understood you Russell, that in the past how have  
18 we handled defame and degrade questions, and have we  
19 handled it the same way in this case. I think that's  
20 what he's asking.

21 COMMISSIONER REDENBAUGH: Yes. That's the  
22 narrow question. Thank you.

23 MR. HAILES: Yes. The answer is yes.  
24 First a determination has to be made whether there are  
25 defame and degrade statements and --

1 CHAIRPERSON BERRY: (Interrupting) I

2 wonder --

3 MR. HAILES: (Interrupting) -- if there

4 are --

5 CHAIRPERSON BERRY: (Interrupting) -- if

6 the staff do that. I know you told us, but repeat.

7 The staff did that when?

8 MR. HAILES: At several points, as I

9 mentioned earlier, we actually prepared several

10 drafts, each time improving it. And most recently,

11 the defame and degrade analysis was performed

12 following the changes to the draft report after our

13 Editorial Review Board.

14 CHAIRPERSON BERRY: And so the issue is,

15 as I understand it, you -- the staff always does this

16 on every report, assures itself that there are no

17 defame and degrade issues?

18 MR. HAILES: Yes.

19 COMMISSIONER REDENBAUGH: And if there

20 were, then what?

21 MR. HAILES: Then that would trigger the

22 defame and degrade process which would require us to

23 submit to the person we believe to have been defamed

24 and degraded an opportunity to prepare and present

25 comments and response to those statements, and to

1 submit them by -- in a verified answer, in other  
2 words, a sworn answer, within 20 days, and give the  
3 assurance to that individual that the -- that the  
4 report containing the statement would not be released  
5 30 days from the time they receive the --

6 COMMISSIONER REDENBAUGH: And to your  
7 knowledge, have we ever done that in the past?

8 MR. HAILES: I can't answer that question.

9 CHAIRPERSON BERRY: We haven't done it in  
10 years, but -- in my memory, but there have been times  
11 in the past when at a hearing someone claimed -- and  
12 it may have been at one of the hearings that -- since  
13 you've been here. Someone claimed that testimony that  
14 was about to be given would be defamatory.

15 And we all huddled with the general  
16 counsel to see whether we were going to let the person  
17 testify. There's a procedure in there that says that  
18 if the testimony is defamatory you can have an  
19 executive session and take the testimony.

20 But I don't recall any -- anybody raising  
21 the issue and saying "I think I'm defamed and  
22 degraded." -- Because face it; we've had nice, polite  
23 sort of exchanges at the Commission for years.  
24 Everything was so routine. Nobody leaked anything.  
25 Commissioners came and went over the reports and

1 everybody, you know, agreed to whatever was there.

2 And it was all very routine and non-  
3 controversial on many of these things. And so when  
4 you get to things that are controversial, you would  
5 expect people to raise the issues.

6 Commissioner Edley was in the queue.

7 COMMISSIONER EDLEY: Two quick questions.

8 CHAIRPERSON BERRY: Okay.

9 COMMISSIONER EDLEY: First, Madam Chair, I  
10 don't think the statements or this is a very  
11 interesting discussion. I actually felt as though it  
12 was out of order because it didn't seem to be directly  
13 linked to the motion. I think it should be attached  
14 to a motion. And we could discuss the procedure for  
15 hours and hours and hours and not get to the substance  
16 of that discussion.

17 CHAIRPERSON BERRY: Okay.

18 COMMISSIONER EDLEY: Number two, I'm  
19 inclined to vote in favor of the motion, and I wanted  
20 to explain why. I don't -- I don't want to be  
21 establishing precedent that might make it more time  
22 constraining and make it more difficult, than less for  
23 us to get the report out.

24 I spoke, for example, that (inaudible) of  
25 function that will readily be, that you or anybody who

1 -- may have a concern about what might speculatively  
2 be and I think whether we're talking about defame or  
3 degrade or (Inaudible due to poor telephone  
4 connection, hereinafter IDTPTC).

5 So as a general matter I would oppose a  
6 principle or a precedent (IDTPTC) that ordinarily the  
7 Commission does not act until all the (IDTPTC) and  
8 evaluate it (IDTPTC) Commission (IDTPTC). I would  
9 propose that it's wrong.

10 I think we need to have (IDTPTC) here  
11 (IDTPTC), Madam Chair, with an eye towards getting  
12 rather than to be (IDTPTC) That said, in this case  
13 (IDTPTC) character of this enterprise requires that we  
14 cross our "t's" and dot our "i's".

15 However ill-conceived or -- or whatever  
16 (IDTPTC), particularly if the (IDTPTC). I think it  
17 would (IDTPTC).

18 Number two, I'm also concerned because I  
19 have a substantive, substantive concern about the word  
20 (IDTPTC) related to (IDTPTC) or racial profiling or  
21 precisely related to the analysis supporting the  
22 conclusion.

23 Though I believe (IDTPTC) way in which I  
24 think it's (IDTPTC) and little bit of (IDTPTC)  
25 challenge. And the Commission (IDTPTC). So I combine

1 those two points in an abundance of caution if  
2 (IDTPTC) substantive concern and difficulty.

3 CHAIRPERSON BERRY: Well, I'm going to  
4 ask, in the interest of time, and for those who didn't  
5 hear what Edley said, basically because he was  
6 whispering --

7 COMMISSIONER EDLEY: (Interrupting) Do  
8 you want me to say it again?

9 CHAIRPERSON BERRY: That's all right,  
10 Edley. Basically, Edley said he was going to vote in  
11 favor of the motion and that this should be -- because  
12 of the controversy, not because he wants to change  
13 Commission procedures, that we ought to dot our "i's"  
14 and cross our "t's" carefully.

15 And that he wanted to get to the substance  
16 of the report, and that he wanted to discuss some of  
17 the recommendations, including the basis for some of  
18 them; and how we might have some revisions that he  
19 thought would fix whatever problems he saw, but that  
20 we ought to discuss them. And for both those reasons,  
21 he was going to support the motion.

22 I'm going to ask Commissioners, even those  
23 who do not want to vote for the motion because they  
24 see it as changing our procedures and are worried  
25 about it, I'm going to ask Commissioners to indulge me

1 and to please vote in favor of the motion so that we  
2 can move to discuss the substance of the report  
3 without further discussion.

4 I see no need for us to protract the  
5 discussion about whether we're going to vote for it  
6 now or next month. And as I said, for me it was only  
7 that if we finished it in May, and we said we'd finish  
8 it in May, and that would be good. But we don't want  
9 to finish it if we have to spend a whole lot of time  
10 discussing whether we should finish it or whatever.

11 So could I just call the question and ask  
12 Commissioners to vote in favor of? And what you're  
13 voting for is we're going to have the discussion, but  
14 we're going to vote on the thing at the beginning of  
15 the June meeting. And we're not going to take time.

16 We're going to discuss it now because we  
17 have a briefing in June and we don't want to delay  
18 that. We have a schedule we want to keep and people  
19 are making commitments to that. So I'm going to call  
20 the question. All of those in favor of voting for the  
21 motion, indicate by saying "aye."

22 (Chorus of ayes.)

23 CHAIRPERSON BERRY: Opposed?

24 (No response.)

25 CHAIRPERSON BERRY: So ordered. Okay.



1 And let's do it this way in terms of the substance.  
2 Let me ask first, is there any Commissioner who has  
3 anything that they wish to have either changed or  
4 discussed within the first 25 pages of this report.  
5 I'm just going to do it that way. I could go page by  
6 page, but I'm not. Yes, Commissioner Redenbaugh?

7 COMMISSIONER REDENBAUGH: I was just  
8 saying yes, I do.

9 CHAIRPERSON BERRY: Oh, yes. Then let's  
10 do it. Point to the pages and let's have the  
11 discussion, and let's see what we do about it.

12 COMMISSIONER REDENBAUGH: On page 16,  
13 there's a statistic that says that from 1994 to '95,  
14 complaints at the Civilian Review Board were up by 56  
15 percent.

16 CHAIRPERSON BERRY: Page 16.

17 COMMISSIONER REDENBAUGH: I'm glad I have  
18 the right report. On page 173 --

19 CHAIRPERSON BERRY: (Interrupting) A  
20 hundred seventy-three.

21 COMMISSIONER REDENBAUGH: -- there is --  
22 now, I admit it's unusual for me to read that far back  
23 in anything. But page 173, there are statistics that  
24 either -- either contradict or clarify, I'm not sure  
25 which, the statistics on page 16. In the way that

1 they would portray to the normal reader, I think a  
2 very different picture if the statistics were taken  
3 together rather than being separated by 160 some odd  
4 pages.

5 CHAIRPERSON BERRY: So what you would like  
6 is that the statistics on pages 173 and 16 would  
7 either be cross-referenced or sit in both places, or  
8 one place?

9 COMMISSIONER REDENBAUGH: Yes. And I --

10 CHAIRPERSON BERRY: (Interrupting) To  
11 have them together?

12 COMMISSIONER REDENBAUGH: Yeah. Under a  
13 category of -- this is an example of where I think  
14 data that are available are not presented in the most  
15 coherent light. Yes, I would -- I would -- the  
16 report, I think, would be improved if these were  
17 combined either -- yeah, combined.

18 CHAIRPERSON BERRY: Yes, Vice-Chair?

19 VICE CHAIRPERSON REYNOSO: Well, perhaps  
20 there can be some clarification. But I didn't see --  
21 I didn't see the reports. The factual data given at  
22 173 simply goes beyond the factual data given at 16,  
23 as I read it.

24 COMMISSIONER REDENBAUGH: Yes. But it  
25 gives a quite different impression. The data on 173

1 produces a much more favorable impression about the  
2 New York Police Department than do the data on 16.

3 CHAIRPERSON BERRY: The data on 173 say  
4 that there was a decrease in allegations of  
5 unnecessary force from 1994 levels, allegations of  
6 discourtesy were down, and allegations of offensive  
7 language decreased. In contrast, allegations of abuse  
8 of authority increased and then abuse of authority  
9 became the most frequent type of allegation raised in  
10 CCRB complaints.

11 The data on page 16 say that the overall  
12 numbers of civilian complaints rose by 56 percent. So  
13 they're not inconsistent. It's just that the second  
14 one clarifies and, depending on your perspective, it  
15 may give a more favorable in some categories.

16 COMMISSIONER REDENBAUGH: Our data -- I --  
17 I don't want to make this kind of stronger, but it  
18 seems to me that the aggregate data presented on 76  
19 suggests that the level of complaints went below the  
20 1994 level, that they went -- in '94 they went up  
21 substantially.

22 And the percentages are -- declined, not  
23 from the peak but it declined from the base period.  
24 So the data are presented in a way that leads to a  
25 conclusion that I think is contrary to one that could

1 be raised if you presented the data in a more normal  
2 way.

3 CHAIRPERSON BERRY: Well, I think Hell --  
4 I mean, Hell lies at the end of us trying to resolve  
5 the more normal way, as long as the data are accurate.

6 But I would accept, if no one has an objection, that  
7 the staff should include both sets of data in both  
8 places so that people can read them and see for  
9 themselves. How's that?

10 COMMISSIONER REDENBAUGH: Thank you.

11 CHAIRPERSON BERRY: Okay. Commissioner  
12 Anderson?

13 COMMISSIONER ANDERSON: Well, perhaps I  
14 would go a step further. If you look at the Civilian  
15 Complaint Review Board statistics from '98 to '99, you  
16 see even a change from '98 to '99, all a downward  
17 trend. Complaints about force down 13 percent; abuse  
18 of authority down 10 percent; discourtesy, 14 percent;  
19 offensive language, 34 percent.

20 So I think our report ought to give the  
21 reader a sense of what time in the history we're  
22 looking at things get worse and what's the general  
23 trend. Is the general trend getting better? Is the  
24 general trend staying the same? Is the general trend  
25 getting worse?

1 I think, as I understand Commissioner  
2 Redenbaugh, what he's saying is looking at page 16 you  
3 get a sense that the general trend is getting worse.  
4 But if you look at the '99 figures you see that  
5 there's significant improvement.

6 Now, that significant improvement may be  
7 limited to certain areas, or whatever. We may need to  
8 put a better context in. But we spread these kinds of  
9 things throughout the report, and I wonder if we  
10 couldn't put it in one place. Then we could take an  
11 accurate shot and convey an accurate sense of actually  
12 where things are going.

13 Because taking just one snapshot of a year  
14 or two years I don't think is accurate either at one  
15 end or the other.

16 CHAIRPERSON BERRY: General Counsel?

17 MR. HAILES: Yes. The staff attempted to  
18 be as thoughtful about that, too. And you need to go  
19 no further than page 17. And your reference to page  
20 16 about the increase, on page 17 at the top of the  
21 page it talks about the increase being possibly  
22 related to the new police tactics. But they declined  
23 beginning in 1997.

24 So I think we do, as carefully as  
25 possible, bring those two realities together.

1           COMMISSIONER ANDERSON: Well, if I could  
2 just follow that without belaboring the point here,  
3 you cited -- you do say that in general language. But  
4 where there's an increase, you show a 56 percent  
5 increase in one year where there's a decrease of 34  
6 percent. You don't specify that kind of a large  
7 decrease in one year.

8           So I'm just trying to get an accurate  
9 portrait of where this thing is headed and whether  
10 certain reforms or revisions of procedures and  
11 practices here are leading to something, or whether  
12 it's not leading to something. And I don't get that  
13 sense reading it.

14           CHAIRPERSON BERRY: We've agreed to put  
15 the two sets of statistics side by side so that people  
16 can read them for themselves. The overall number of  
17 complaints and how they increased, and the different  
18 categories, some went down, some went up, so that  
19 people can see what the factors are.

20           VICE CHAIRPERSON REYNOSO: That's fine.

21           CHAIRPERSON BERRY: Other comments? We're  
22 up to page 25.

23           COMMISSIONER EDLEY: Madam Chair?

24           CHAIRPERSON BERRY: Yes, Christopher?  
25 Commissioner Edley, is that who --

1 COMMISSIONER EDLEY: (Interrupting) Yes.

2 On page 25 there is a quote by Reverend Sharpton  
3 stating that the diversity statistics are (IDTPTC).  
4 And I guess I just wanted a footnote or something  
5 telling me whether based on the staff's research that  
6 statement is correct.

7 And as a general matter, I do worry -- I  
8 do worry about the statement.

9 CHAIRPERSON BERRY: Christopher, did you  
10 notice that there is data elsewhere in the report  
11 right after that which talks about the diversity in  
12 the department. And I take your -- and it even cites  
13 an article which talks about diversity in that  
14 department as compared to other police departments.

15 But I think you're correct that the staff  
16 should put that note right here at page 62 so that  
17 people who read it can see what the facts are, the  
18 rest of the country and make their own -- the person  
19 who spoke is -- can make -- you know, express their  
20 opinion.

21 But I think you're right that it should be  
22 put there so people can see there at that point as  
23 opposed to looking for it somewhere else.

24 COMMISSIONER EDLEY: I'm sorry, I didn't  
25 (IDTPTC) that they are -- I obviously read the part

1 about the data on the NYPD, but (IDTPTC) presentation  
2 on the text of that comparative data and (IDTPTC).  
3 But just something there indicating that (IDTPTC).

4 CHAIRPERSON BERRY: Yeah. Okay. General  
5 Counsel, yes?

6 MR. HAILES: Madam Chair, Commissioners,  
7 you will find throughout the report that we attempted  
8 to reflect the testimony at the hearing because  
9 there's the whole issue of perceptions versus reality.

10 So present the testimony, and then we show the  
11 analysis of the documents.

12 Then we point out whether the documents  
13 support or are against the -- the testimony and the  
14 perceptions. So, clearly, we will put a footnote on  
15 page 25 in response to your request.

16 COMMISSIONER EDLEY: Is there some,  
17 comparative data that I missed?

18 CHAIRPERSON BERRY: There's a news  
19 article, I don't remember what page it's on, about the  
20 NYPD compared to other police departments around the  
21 country. And I don't know what the news article has  
22 in it, but -- because I haven't read it.

23 But I think what he's saying is that he  
24 will accept your comment and make sure that right  
25 there at that spot in the text there's a footnote that



1 says compared to other police departments around the  
2 country, the NYPD has this -- you know, not only is  
3 the data here on what they have, but other police  
4 departments by comparison have X percentage of  
5 minorities and Y percentage. Okay?

6 COMMISSIONER EDLEY: Okay. This strikes  
7 me as a very complicated proposition, empirical, the  
8 basis to compare different jurisdictions given the  
9 difference in demographics. Do you see what I'm  
10 saying?

11 CHAIRPERSON BERRY: Right.

12 COMMISSIONER EDLEY: Are we saying that  
13 NYPD (IDTPTC). So my guess is (IDTPTC) say something  
14 like this is more or less something like that.

15 (IDTPTC)

16 CHAIRPERSON BERRY: Sure.

17 COMMISSIONER EDLEY: There is (IDTPTC)  
18 1990 data. Then there's demographic data. (IDTPTC)  
19 whether all of that is based on the 1990 data or  
20 whether post-1990 (IDTPTC). So I think that would be  
21 helpful.

22 CHAIRPERSON BERRY: Okay.

23 COMMISSIONER EDLEY: (IDTPTC) that  
24 demographics in New York City today are very different  
25 from what they were in 1990. Is there any of it that

1 could be used instead of the 1990 data. I think that  
2 would be helpful.

3 CHAIRPERSON BERRY: Did you use this?

4 MR. HAILES: We did. But we certainly  
5 will carefully re-check the references to the data to  
6 make sure it is the post-'90 estimates.

7 CHAIRPERSON BERRY: See, on page 26,  
8 Christopher, census government population estimates  
9 counting. Do you see that?

10 COMMISSIONER EDLEY: Yeah.

11 CHAIRPERSON BERRY: There are other  
12 estimates throughout.

13 COMMISSIONER EDLEY: (IDTPTC).

14 CHAIRPERSON BERRY: For the data that he  
15 has listed there. But he -- but I think you've taken  
16 the comments that --

17 MR. HAILES: (Interrupting) Yes.

18 CHAIRPERSON BERRY: -- you looked at  
19 estimates everywhere and not just 1990. Okay.

20 COMMISSIONER EDLEY: Do we know what the  
21 data is for the estimates?

22 -CHAIRPERSON BERRY: Oh, the data.

23 COMMISSIONER EDLEY: (IDTPTC) estimate as  
24 of 1993 or 1998, or what is it, that sort of thing?

25 CHAIRPERSON BERRY: Okay. A footnote,

1 then. It says available at -- okay. In other words,  
2 you want to know the data for county estimates?

3 COMMISSIONER EDLEY: Right.

4 CHAIRPERSON BERRY: Okay. Anybody have  
5 anything on the next 25 pages, pages 25 to 50? Pages  
6 25 to 50, any notes you'd like? This doesn't preclude  
7 you from turning in things after the meeting that you  
8 think the staff should editorialize, that the staff  
9 should work on.

10 COMMISSIONER EDLEY: Madam Chair?

11 CHAIRPERSON BERRY: Yes?

12 COMMISSIONER EDLEY: Pages 31 and 32.

13 CHAIRPERSON BERRY: Pages 31 and 32; okay.

14 COMMISSIONER EDLEY: Let me just say  
15 (IDTPTC) with respect to psychological screening, the  
16 rate at which people are (IDTPTC). It didn't seem to  
17 be presented. In other words, (IDTPTC) racial make-up  
18 is of the folks screened out.

19 It has to be compared with how those  
20 portions of people screened out (IDTPTC) with the  
21 proportion of people going through the screening  
22 process. That's point number one. Number two is how  
23 come we didn't get from the NYPD the standards that  
24 they use in doing this screening.

25 We asked and they just said we don't have

1 it here, or we don't want to give it to you, or we'll  
2 send it to you next year. (IDTPTC) pretty curious  
3 (IDTPTC) their selection process.

4 CHAIRPERSON BERRY: What's the answer to  
5 that?

6 MR. HAILES: I don't know the answer off  
7 the top of my head. I will -- I will check. That's  
8 all I can say at this point.

9 COMMISSIONER EDLEY: Okay. If it's --

10 CHAIRPERSON BERRY: (Interrupting) If  
11 it's --

12 COMMISSIONER EDLEY: -- (IDTPTC) again.  
13 And I'm just saying that we ought to just be careful  
14 in the phrasing of that (IDTPTC) don't need the  
15 implication about lack of cooperation or --

16 CHAIRPERSON BERRY: (Interrupting) Unless  
17 it's true.

18 COMMISSIONER EDLEY: Unless it's true.

19 CHAIRPERSON BERRY: Okay. Other pages of  
20 the next -- yes?

21 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
22 just want to point out that the table of contents  
23 don't quite jibe with the report. So I assume that's  
24 probably taken care of.

25 MR. HAILES: Yeah.

1 VICE CHAIRPERSON REYNOSO: Yeah, okay.

2 CHAIRPERSON BERRY: Commissioner Anderson?

3 COMMISSIONER ANDERSON: If I could go back  
4 to the section that Commissioner Edley was addressing  
5 here --

6 CHAIRPERSON BERRY: (Interrupting) The  
7 last one or --

8 COMMISSIONER ANDERSON: Yeah, page 31 and  
9 32.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER ANDERSON: I have a slightly  
12 different concern, and that is we quote a particular  
13 witness and -- who says at the bottom of page 31, the  
14 recruitment and opposition process "is already  
15 constituted and it's already corrupted."

16 Are you implying that there may be an  
17 increase in the number of applicants who will likely  
18 not affect the number of candidates who actually  
19 become officers "because of the biases built into the  
20 process." Now, you go down another couple of lines  
21 and we find, admitting that NYPD did not provide all  
22 the information we thought they should.

23 We say in the report, "The information the  
24 NYPD did provide to the Commissioner, however,  
25 suggests that people of color were not dis-

1 proportionately disqualified for employment to police  
2 officer on the basis of psychological and character  
3 screening in 1997."

4 Now, I think I've made this point on  
5 earlier reports, and so I'll make it again here. If  
6 what this witness is saying is true, then I think we  
7 should very strongly support that allegation. If we  
8 don't have evidence to support it, I don't think we do  
9 a service by simply quoting a witness.

10 We have thousands of paper -- pages of  
11 testimony. We have lots of testimony from the Mayor,  
12 lots of quotes that didn't make it into our report.  
13 Not every comment by a witness needs to be in. But if  
14 it is of this kind of nature, which you might say is  
15 inflammatory or you might say it's accurate; if we  
16 think it's accurate then we should support it. And if  
17 we don't have evidence to support it, then I'm  
18 disturbed by including it.

19 CHAIRPERSON BERRY: I'm not.

20 MR. HAILES: Commissioner Anderson, the  
21 Commissioners decided which witnesses should come  
22 before the Commission for this hearing. And I -- I  
23 believe that this may have been a witness, or at least  
24 the organization that he represents, was recommended  
25 by you.

1 We attempted to be as -- as inclusive as  
2 possible of comments that were made by witnesses that  
3 were recommended by the Commission -- by Commissioners  
4 than to show by an analysis of the data whether their  
5 comments could be supported or not supported.

6 There are obviously persons within the  
7 NYPD that believe there are major problems. Are their  
8 perceptions, are their statements supported by the  
9 data? We viewed that as our responsibility to  
10 determine. So the paragraph you read reflects what  
11 our analysis is and how we characterize his comments.

12 CHAIRPERSON BERRY: Vice Chair?

13 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
14 guess I viewed that in a completely different light.  
15 Those are charges that are often raised with respect  
16 to police departments, including the New York Police  
17 Department. And so it's proper -- it seems to me  
18 anybody that's concerned about police community  
19 relations could raise those issues, at least in my  
20 experience.

21 And so -- so by quoting him would raise an  
22 issue that I think folks reading this report would  
23 expect to be raised. Then -- then we go on to say  
24 that, at least in terms of the data that we have, and  
25 that's what we can go by, actually wasn't supported by

1 -- by the data.

2 So that's in many ways a very favorable  
3 statement in terms of the NYPD. But I think it's a  
4 very legitimate approach by the staff to have quoted  
5 that because that's a common concern, and then go on  
6 and give the data that we have. So I have -- I take a  
7 quite different take on -- on that than -- than you  
8 have expressed.

9 CHAIRPERSON BERRY: It's actually quite  
10 powerful, that here these people are who work in the  
11 police department who have this perception. And it's  
12 a widespread perception, and I think we ought to  
13 report the perceptions that people have. And then we  
14 can come right back and say, you know, let me hear  
15 your perception, but based on what we know, you guys  
16 ought to understand out there that that particular  
17 perception just isn't accurate.

18 VICE CHAIRPERSON REYNOSO: At least not in  
19 that year, because that's the data that we have.

20 CHAIRPERSON BERRY: And then they can  
21 reconcile their own -- you know, how they feel about  
22 it with what the data show. Yes, Commissioner Meeks?

23 COMMISSIONER MEEKS: Well, right after the  
24 quote from Miranda and Butts, it says the New York  
25 Police Department did not provide the Commission with



1 a civil service examination or the standards applied  
2 in connection with the character and psychological  
3 screening. Therefore, it is unable to evaluate these  
4 assertions.

5 CHAIRPERSON BERRY: Right.

6 VICE CHAIRPERSON REYNOSO: Right. Then it  
7 goes on to --

8 CHAIRPERSON BERRY: (Interrupting) We  
9 don't have any evidence.

10 VICE CHAIRPERSON REYNOSO: Then it goes on  
11 to give the statistics that at least indicate that  
12 there hasn't been a disproportion of weeding out.

13 CHAIRPERSON BERRY: The information the  
14 NYPD did provide to the Commissioner, however,  
15 suggests that people of color were not dis-  
16 proportionately disqualified for appointment as a  
17 police officer.

18 COMMISSIONER EDLEY: But that's why-- that  
19 conclusion is not supported by the data. That's the  
20 point I would make, which is to figure out whether  
21 they're disproportionately qualified based on the  
22 screening.

23 CHAIRPERSON BERRY: Right.

24 COMMISSIONER EDLEY: We'd have to look at  
25 the pool of people being screened, being

1 psychologically screened, in (IDTPTC).

2 CHAIRPERSON BERRY: So, basically, what  
3 we're saying, to be clear about it, is that, one, it's  
4 okay to report what people say, because that's what  
5 they think. And they were asked to testify and  
6 whether they are correct or not that we didn't -- some  
7 of the information wasn't given to us to be able to  
8 tell definitively whether it was true.

9 But we do report based on what we saw, or  
10 the staff reported based on what it saw. But  
11 Christopher is adding, with the caveat that they need  
12 to re-analyze the statement to see its limitations.  
13 But it's okay to say what we -- what we saw from  
14 whatever we saw, and leave it at that.

15 And that means that the conclusion that  
16 these two witnesses reached is left there, it may or  
17 may not be correct based on the information we have.

18 COMMISSIONER EDLEY: (IDTPTC) just be  
19 precise here.

20 CHAIRPERSON BERRY: Yes.

21 COMMISSIONER EDLEY: If you look at the  
22 bottom 65 percent of those disqualified were white.  
23 Now, does that mean -- and (IDTPTC) conclusion that  
24 there's no issue of disproportion. Sixty-five percent  
25 -- are we saying that's okay because this 65 percent

1 of the people in New York are white?

2 VICE CHAIRPERSON REYNOSO: No. Of the  
3 candidates.

4 COMMISSIONER EDLEY: Of the people who  
5 applied to be --

6 CHAIRPERSON BERRY: (Interrupting) No.  
7 Of the candidates.

8 COMMISSIONER EDLEY: Sixty-five percent of  
9 the people (IDTPTC) that, therefore, were being  
10 psychologically screened (IDTPTC) if the latter  
11 (IDTPTC)?

12 CHAIRPERSON BERRY: Well, that's the one I  
13 think they're saying.

14 COMMISSIONER EDLEY: That's not clear.

15 CHAIRPERSON BERRY: Isn't that the one  
16 you're saying?

17 MR. HAILES: Well, the candidates. But we  
18 will revisit this, look at it, make sure it's as  
19 accurate as possible.

20 CHAIRPERSON BERRY: And they got your  
21 point. They got your point, Christopher. Did you say  
22 something, Vicky, ~~something~~ that you wanted to say to  
23 us?

24 COMMISSIONER WILSON: No. Let me think  
25 about that.

1 CHAIRPERSON BERRY: Okay. Well, think  
2 about it. Yes, Commissioner Anderson?

3 COMMISSIONER ANDERSON: Well, I guess I go  
4 back to my point. If we conclude from this  
5 information that was submitted to us that 65 percent  
6 of white candidates were disqualified because of the  
7 psychological screening, but only 14 percent of  
8 African American candidates were disqualified because  
9 of the screening, then I -- I think that it is simply  
10 inflammatory to present the kind of a quote that's  
11 going to stay in most people's mind while the  
12 ambiguity over the meaning of what the statistics  
13 mean.

14 I mean, I think if we have enough  
15 information to make a judgment on this issue, we  
16 should make a clear judgment on it. We should say  
17 that regardless of concerns the evidence supports the  
18 fact that the psychological screening has not  
19 disadvantaged African American and Hispanic  
20 candidates.

21 CHAIRPERSON BERRY: Well, first of all,  
22 we're going to --

23 COMMISSIONER ANDERSON: (Interrupting)  
24 It's a stylistic matter, but I think it -- it suggests  
25 what's wrong with the style of this report.

1 CHAIRPERSON BERRY: Well, obviously we're  
2 going to have some disagreement.

3 COMMISSIONER EDLEY: I disagree.

4 CHAIRPERSON BERRY: Did you say you  
5 disagree strongly?

6 COMMISSIONER EDLEY: I disagree strongly.  
7 I agree with what others have said about the -- about  
8 the value of putting out (IDTPTC). (IDTPTC) and then  
9 going off to develop the data to make sure that the  
10 data (IDTPTC) disagree about.

11 CHAIRPERSON BERRY: Okay. All right.  
12 Point made. Other points in that next -- up to page  
13 50? Okay. Then I'm going from 50 to 75. Points  
14 before page 75, or up to page 75? I'm going 25 pages  
15 by 25. If not, then 75 to a hundred.

16 And as I say, this does not preclude you  
17 from turning in your editing changes and other matters  
18 as usual to the staff. Up to page 100? Yes,  
19 Christopher? Did you have something up to page 100?

20 COMMISSIONER EDLEY: Yes, ma'am.

21 CHAIRPERSON BERRY: Okay. What page?

22 COMMISSIONER EDLEY: --Page 92.

23 CHAIRPERSON BERRY: Ninety-two, 92, let's  
24 go to 92.

25 COMMISSIONER EDLEY: I can't -- I guess I

1 feel uncomfortable with these recommendations for  
2 (IDTPTC).

3 CHAIRPERSON BERRY: You mean having people  
4 live in their -- in the borough where they're from, or  
5 the city or whatever?

6 COMMISSIONER EDLEY: Yeah. Because I  
7 actually found the -- the discussions (IDTPTC). It's  
8 extremely well done, and pointing out to a down-side  
9 (IDTPTC). (IDTPTC) myself pretty ambivalent about  
10 (IDTPTC) that the causal connection between residency  
11 and (IDTPTC) the causal connection real enough to  
12 warrant making recommendations.

13 CHAIRPERSON BERRY: Do the others have  
14 ambivalence about that, whether -- the issue of  
15 whether officers should move into the city or live in  
16 the city or live in one of the New York boroughs, the  
17 police officers in New York, I mean, this  
18 recommendation? Does anybody else? Christopher said  
19 he's ambivalent about it. Yes, Commissioner  
20 Redenbaugh?

21 COMMISSIONER REDENBAUGH: I am as well.

22 CHAIRPERSON --BERRY: Does anybody else  
23 believe that the recommendation --

24 VICE CHAIRPERSON REYNOSO: (Interrupting)

25 I'm sorry?

1 CHAIRPERSON BERRY: The recommendation is  
2 at 2.1.

3 VICE CHAIRPERSON REYNOSO: At 2.1.

4 CHAIRPERSON BERRY: That NYPD should  
5 increase its preference points for applicants who are  
6 New York residents, and they have other incentives for  
7 officers to move into the city. And preferably they  
8 should require officers to live in one of the four New  
9 York boroughs. That's the one that he's discussing.

10 COMMISSIONER EDLEY: (IDTPTC) is that we  
11 should (IDTPTC) pointed out quite cogently, I thought,  
12 (IDTPTC) narrow objectives. It was to be directed at  
13 affirmative action.

14 CHAIRPERSON BERRY: In other words, if the  
15 reference is -- the issue is whether we should  
16 consider this recommendation about residency, just  
17 simply asking the Department to do more outreach in  
18 terms of affirmative recruiting methods to increase  
19 their diversity, however they do it and wherever they  
20 get the people from, and wherever they happen to live.

21 COMMISSIONER EDLEY: Well, I almost agree  
22 with you.

23 CHAIRPERSON BERRY: I'm just trying to  
24 figure out what you --

25 COMMISSIONER EDLEY: (IDTPTC)

1 recommendation going directly to effective affirmative  
2 action --

3 CHAIRPERSON BERRY: (Interrupting) Okay.

4 COMMISSIONER EDLEY: -- paragraph.

5 CHAIRPERSON BERRY: Okay.

6 COMMISSIONER EDLEY: (IDTPTC) statement,  
7 however, that it should do more outreach, et cetera.  
8 But I don't have a problem with of all the things that  
9 they're trying. I couldn't think of what else they  
10 should be trying. (IDTPTC) Maybe that's the best  
11 (IDTPTC). But I do (IDTPTC).

12 CHAIRPERSON BERRY: The main --

13 COMMISSIONER EDLEY: (IDTPTC) others to  
14 (IDTPTC).

15 CHAIRPERSON BERRY: The main strategy that  
16 I -- that I didn't see anywhere in here, as we go up  
17 to page 100, relates to your point, Christopher, which  
18 is why I'm raising it, is that the community outreach,  
19 in terms of getting the community to help the  
20 Department to do things, like recruiting, like  
21 whatever the Department is doing seemed to me to be a  
22 major sort of issue here.

23 Like having the community, as they do in  
24 other cities, come in and advise the Department, be  
25 part of the process; help them to do whatever it is



1 they're trying to do; set the goals with them; and all  
2 the rest of it. Maybe that's something that can be  
3 done on the recruiting thing.

4 COMMISSIONER EDLEY: That's all very true,  
5 Mary, but my intuition is that the bottom line here is  
6 that they're having a lot of trouble because there are  
7 so many people in the community that hate the police  
8 department.

9 CHAIRPERSON BERRY: And simply don't want  
10 to be in the police department.

11 COMMISSIONER EDLEY: Yeah. You can put up  
12 all the posters in the world you want, but if you're  
13 trying to (IDTPTC) other huge problem, (IDTPTC).

14 CHAIRPERSON BERRY: Vicky?

15 COMMISSIONER WILSON: The question of  
16 police living in the boroughs, I think that's a good  
17 idea because the concern is the police who don't live  
18 in those areas in some way view themselves -- in some  
19 way this could affect their connectiveness to where  
20 they work.

21 So I would agree to that recommendation.  
22 The recommendation that I find, well, questionable is  
23 that new police recruits have a college degree. That  
24 seems to me to be, given a lot of other issues, asking  
25 for an enormous amount.

1           The second part about it, there's some  
2 suggestion that if they don't have a degree that they  
3 be given time to earn a degree, I think is actually a  
4 really ingenious inducement to get people into the  
5 police department. To start out saying that they have  
6 to have a college degree, I think is problematic.

7           CHAIRPERSON BERRY: How many people -- I  
8 think we need to get some agreement on that because I  
9 feel the same way. That it's okay to say that people  
10 who don't have a degree should be given time or help  
11 to get one. But that having them have a college  
12 degree would reduce too much the pool of people from  
13 which the police department is trying to recruit, and  
14 interfere with some of the other objectives.

15           Is there anybody who would object to our  
16 taking out the part about they must all have a college  
17 degree when they start?

18           COMMISSIONER EDLEY: It might be a Title 7  
19 violation.

20           CHAIRPERSON BERRY: Is there any -- right,  
21 it might be, because it may not be a bona fide  
22 occupational qualification. Is there anybody who  
23 objects to our taking that out? Are you objecting,  
24 Vice Chair?

25           VICE CHAIRPERSON REYNOSO: I don't object.

1 I just wanted to remind us that in the hearing,  
2 subsequent hearing that Commissioner Anderson and I  
3 attended, the police chief who was testifying on that  
4 occasion said that he found that the closest  
5 correlation to get policing, particularly non-  
6 discriminatory policing, was actually level of  
7 education of police officers.

8 So we should encourage that the second  
9 part of it -- I agree that we should remove the  
10 qualification, but the second part we should include.

11 CHAIRPERSON BERRY: Right. Because in our  
12 report, this report, we have that same evidence and  
13 that same testimony from officials about the greater  
14 the level of education the less likely police are to  
15 be accused of abuse and to get into trouble and be the  
16 subject of complaints. So why don't we drop the first  
17 part?

18 VICE CHAIRPERSON REYNOSO: I'm advised by  
19 my colleague that I misspoke. I said the hearing --  
20 the hearing that Commissioner Anderson and I attended  
21 in New York. That was in Los Angeles.

22 CHAIRPERSON BERRY: Los Angeles. So  
23 without objection, we're going to take that out. Now,  
24 what are we going to do about the -- okay, so we are  
25 going to -- what do you want to do about this borough

1 requirement? Do you want to get a sense of how many  
2 people are -- Edley says he's opposed to it, or he's  
3 ambivalent, one or the other.

4 COMMISSIONER EDLEY: Madam Chair?

5 CHAIRPERSON BERRY: Yes?

6 COMMISSIONER EDLEY: I think (IDTPTC) and  
7 people living outside the City were less likely  
8 (IDTPTC) the object of complaints.

9 CHAIRPERSON BERRY: Is that true, Eddie,  
10 do you remember? Was there a correlation between  
11 where folks lived and what they got involved in, or do  
12 you remember?

13 MR. HAILES: I don't. I do remember the  
14 correlation between education and complaints. But  
15 I'll look into it.

16 COMMISSIONER EDLEY: (IDTPTC).

17 CHAIRPERSON BERRY: You didn't manufacture  
18 that, Edley?

19 COMMISSIONER EDLEY: I didn't.

20 CHAIRPERSON BERRY: So -- yes,  
21 Commissioner Lee?

22 COMMISSIONER LEE: I remember virtually  
23 everyone who testified on that panel from the  
24 community had recommended that they recruit from  
25 within the community because they saw that as a very

1 effective tool to rebuild community trust. So I would  
2 urge strongly that we keep this on.

3 Because what we're seeing is you can  
4 either be a resident, or there could be incentive for  
5 them to become residents. So I think that they came  
6 out very loudly from the community panel, and I think  
7 we should keep that in.

8 CHAIRPERSON BERRY: Commissioner Anderson  
9 and then Commissioner Wilson.

10 COMMISSIONER ANDERSON: Thank you. I  
11 think the only solution to these problems ultimately  
12 is going to be a better educated, better trained and  
13 community-based policing. And so if you feel  
14 obstacles to residency requirements, then maybe we  
15 should make those. But I think it ought to remain the  
16 goal.

17 If there are obstacles to university  
18 degrees, college degrees for police officers, well,  
19 acknowledge that. But I don't think we should  
20 relinquish the goal. Because all the evidence I see  
21 says that that's where we've got to move to bring some  
22 real closure to these issues. So I would not be for  
23 abandoning both.

24 CHAIRPERSON BERRY: You would not be  
25 abandoning which ones?

1 COMMISSIONER ANDERSON: Both; the college  
2 degree as a goal and residency and community-based  
3 policing as a goal.

4 CHAIRPERSON BERRY: Okay. Commissioner  
5 Wilson?

6 COMMISSIONER WILSON: Two points. I was  
7 not yet or even thinking about being on the Commission  
8 when I went to the hearing in May. But I do remember  
9 many, many people coming up and testifying. And it  
10 was in the testimony, pleading, that people who are  
11 going to be on the police work within the community.

12 That was something I very specifically  
13 remember. The other thing, though, about college  
14 degrees, I think -- as I said before, I think as an  
15 inducement to be on the police force, the idea of  
16 being able to get your degree is helpful.

17 But I think it -- I think it's going to  
18 present problems and hurdles that people will have --  
19 will be difficult for people to get by. But what I  
20 was very curious to know is is there any hard core  
21 evidence to show in other cities that policemen who  
22 have college degrees show a different kind of  
23 behavior, a different kind of policing attitude.

24 CHAIRPERSON BERRY: Well, Vicky, one  
25 answer is that in New York, as it says in our report,

1 the data showed that in New York City those who have  
2 degrees and who have more education. The more  
3 education you have, the less likely you are to have a  
4 record of anybody filing complaints against you, to  
5 have a good record in terms of your performance as a  
6 police officer. That data is clear.

7 COMMISSIONER WILSON: I'm curious if they  
8 were in other cities.

9 CHAIRPERSON BERRY: I don't know whether  
10 that's true or not, but we could ask experts that when  
11 we have them come to the briefing.

12 COMMISSIONER WILSON: Okay.

13 CHAIRPERSON BERRY: Yes, Commissioner Lee?

14 COMMISSIONER LEE: I'd just like to add  
15 that these were the San Francisco Police Department,  
16 which I --

17 CHAIRPERSON BERRY: (Interrupting) San  
18 Francisco. Good.

19 COMMISSIONER LEE: San Francisco. It is  
20 not a requirement that our officers have to have a  
21 degree, but they have a very aggressive program of  
22 encouraging veteran officers to go back to school, and  
23 what have you. So when you look at officers who have  
24 degrees they may not have more complaints or whatever,  
25 you have to take into account that whether they've

1 been veterans, whether they have gone through regular  
2 on-the-job training.

3 So I think it would be unfair to compare  
4 just because you went to college you have less  
5 complaints. And I do agree that there would be a lot  
6 of problems if we stick to should require that all new  
7 police recruits have a college degree. I think that  
8 would cut off the majority of the pool from certain  
9 communities who are now having problems with the  
10 police.

11 CHAIRPERSON BERRY: As I read the table on  
12 this point about the college degree, almost everyone  
13 is in agreement with the second sentence. I mean,  
14 nobody objects to a policy of trying to figure out how  
15 to help people get degrees if they don't have them and  
16 they're already on the force.

17 There's some dispute and division on the  
18 first point. So how about if we made the  
19 recommendation that the NYPD should consider requiring  
20 all new police recruits to have a college degree. And  
21 then they can figure out what impact that might have  
22 on their police department, and it's one they might  
23 consider.

24 While at the same time, in the  
25 alternative, those who don't have it, give them some



1 paid leave, and so on. Since we -- I think we're  
2 split on it. And so I would hope that people would  
3 accept that as an instead. Yes, Commissioner Wilson?

4 COMMISSIONER WILSON: Instead of saying  
5 "should incur" -- what did you say?

6 CHAIRPERSON BERRY: Should consider.

7 COMMISSIONER WILSON: Should consider  
8 requiring. I would prefer saying "should encourage."

9 CHAIRPERSON BERRY: Okay, "encourage  
10 requiring."

11 COMMISSIONER WILSON: No, not encourage,  
12 requiring.

13 CHAIRPERSON BERRY: We encourage them to  
14 require.

15 COMMISSIONER WILSON: No. Just encourage  
16 them to have a degree, instead of encouraging to --

17 CHAIRPERSON BERRY: Should encourage  
18 recruits. Yes, Edley? And speak up.

19 COMMISSIONER EDLEY: (IDTPTC) to require  
20 that (IDTPTC) a degree (IDTPTC) leading towards  
21 (IDTPTC).

22 CHAIRPERSON BERRY: Okay. But we're  
23 saying "encourage" instead of "absolutely requiring."

24 COMMISSIONER EDLEY: Okay. (IDTPTC).

25 COMMISSIONER WILSON: Christopher, could

1 you speak up when you're mumbling?

2 COMMISSIONER EDLEY: Can you turn up the  
3 volume there? I'm shouting into my handset.

4 CHAIRPERSON BERRY: Okay, we'll try. So  
5 without objection, we'll modify it a little bit to  
6 "encouraging," and leave the second one, or give them  
7 lead time and so on.

8 Now, on the borough issue, I guess we're  
9 just leaving it the way it is. The way I read the  
10 table, there were more people who thought we should  
11 keep it the way it is than there were who thought we  
12 should change it.

13 Now, for the next 50 pages, up to page  
14 150, anyone have a problem or something they want to  
15 discuss up to page 150? I'm sorry, 125. Let's do it  
16 in bites.

17 COMMISSIONER EDLEY: Madam Chair?

18 CHAIRPERSON BERRY: Yes?

19 COMMISSIONER EDLEY: I have one thing  
20 about the (IDTPTC). I believe it's on page 93.

21 CHAIRPERSON BERRY: Page 93. Okay.

22 ---COMMISSIONER EDLEY: (IDTPTC), and I have  
23 a suggestion that someone (IDTPTC) take a look at the  
24 military model, selection for the military and the way  
25 in which -- the way in which that proceeds. In

1 particular, you might want to (IDTPTC), applicability  
2 of their (IDTPTC).

3 (IDTPTC), but I think it's a very, very  
4 determinative analogy. (IDTPTC) I guess we don't have  
5 time (IDTPTC) the notion that (IDTPTC) introduce it as  
6 (IDTPTC). And the military model in which (IDTPTC)  
7 officers (IDTPTC) eligible (IDTPTC) promotion might  
8 have many advantages.

9 Obviously, in the military (IDTPTC).  
10 (IDTPTC). It's unthinkable for a police force to  
11 consider (IDTPTC).

12 CHAIRPERSON BERRY: Okay. So as they try  
13 to beef up Recommendation 2.3, to beef up the  
14 conclusion that's reached there and make some  
15 suggestions, they should look at the military model.  
16 And, Staff Director, you can ask our general counsel  
17 or Edley for further details about the point that he  
18 made in pursuing it.

19 Other points between 100 and 125, 100 and  
20 125? Okay. If not, then 125 to 150, 125 to 150.

21 COMMISSIONER EDLEY: Madam Chair?

22 CHAIRPERSON-BERRY: Yes?

23 COMMISSIONER EDLEY: I'm showing page 115

24 --

25 CHAIRPERSON BERRY: (Interrupting) Oh, I

1 went too fast. Sorry.

2 COMMISSIONER EDLEY: I'm trying not to  
3 talk too much.

4 CHAIRPERSON BERRY: No, no. You should  
5 make the point you have to make.

6 COMMISSIONER EDLEY: One (IDTPTC)  
7 interesting (IDTPTC) in the text earlier (IDTPTC)  
8 community councils and (IDTPTC) mentioned that  
9 (IDTPTC) community councils are very uneven in their  
10 effectiveness. (IDTPTC) that maybe when we get to the  
11 recommendations (IDTPTC) 115, saying something about  
12 the (IDTPTC) and hopefully something (IDTPTC) about  
13 how they might be (IDTPTC) or might be (IDTPTC)  
14 councils would be (IDTPTC).

15 CHAIRPERSON BERRY: Okay. We should have  
16 a recommendation, counsel. I don't think there would  
17 be any objection to that, based on the discussion  
18 about the weaknesses of community councils, about the  
19 need to strengthen them, and any ideas that we have  
20 from elsewhere that might help them to do so.

21 Okay. Up to 150, going to 150. One-fifty  
22 going once, 150 going twice. Okay, 150 to 175. One-  
23 fifty to 175. Okay. We have already on 173 aligned  
24 that with 16. One seventy-five to -- yes?

25 COMMISSIONER ANDERSON: Madam Chair?

1 CHAIRPERSON BERRY: Yes?

2 COMMISSIONER ANDERSON: May I raise a  
3 question on page 167?

4 CHAIRPERSON BERRY: One sixty-seven.

5 COMMISSIONER ANDERSON: About the New York  
6 City DAs and the issue of whatever kind of enforcement  
7 we might have. And it goes to a question earlier.  
8 Before we moved into the substance, we were talking  
9 about procedure, procedure on defame and degrade  
10 judgments.

11 The question I have is, looking at  
12 footnote 645 where we quote somebody testifying, an  
13 issue is prosecution of policemen's conduct. The  
14 quote is, "Records at the Board of Elections show that  
15 all five New York City DAs receive campaign  
16 contributions from the PBA," I suppose that's the  
17 Policemen's Benevolent Association," or other police  
18 organizations during their election campaigns.

19 "The pattern of DAs refusal to indict  
20 criminal police officers reveals their incompetence,  
21 an administration of justice, for addressing the  
22 epidemic of police brutality in New York City." Now,  
23 one question I have is that it does not rise to the  
24 level that tends to defame or degrade.

25 CHAIRPERSON BERRY: Or if it does, it

1 means someone can complain about my campaign  
2 contributions to somebody, make a decision about it,  
3 as some of my fellow Commissioners. It's an  
4 interesting question.

5 (Simultaneous comments.)

6 COMMISSIONER ANDERSON: I would take that  
7 in a different context.

8 CHAIRPERSON BERRY: Okay.

9 COMMISSIONER ANDERSON: Number one,  
10 whoever raised the issue that you've talked about.  
11 But, number two, I think the implication here is the  
12 -- is that because of political contributions from an  
13 association of police officers, the prosecuting  
14 attorney is not doing his duty in the administration  
15 of justice to prosecute criminal violations by police  
16 officers; that there's a quid pro quo here of campaign  
17 contributions for non-enforcement of the law.

18 Now, I think that's different than what  
19 may have been discussed in newspapers about campaign  
20 contributions in general.

21 CHAIRPERSON BERRY: And please make clear,  
22 as you did, Commissioner Anderson, that this is  
23 testimony from a witness, not something that --

24 COMMISSIONER ANDERSON: (Interrupting)  
25 Right. That we're saying. So my question is, does

1 that rise to the level that tends to defame and  
2 degrade. I guess that's my first question. I may  
3 have a second.

4 MR. HAILES: Right. And it's a troubling  
5 statement. And I think if it did identify a specific  
6 DA we would really be concerned. It doesn't. It  
7 mentions contributions to the DAs.

8 COMMISSIONER ANDERSON: To all of them.

9 MR. HAILES: You're quite right. And I  
10 will look at this again to see whether it's critical  
11 to the -- to the text of the -- of the report. But  
12 looking at it initially, I did not think it  
13 specifically identified a specific person, under our  
14 defame and degrade analysis.

15 CHAIRPERSON BERRY: And the analysis, in  
16 the regs, doesn't it state, counsel, that it must  
17 defame and degrade an individual?

18 MR. HAILES: An individual.

19 CHAIRPERSON BERRY: That's specifically  
20 what it says. But this may be five individuals.

21 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
22 just want to indicate a disagreement that this implies  
23 a quid pro quo. I think that the -- it's more like  
24 political contributions. You hope that it will  
25 influence some in some way, but it's not saying we'll

1 contribute this money so long as you don't prosecute  
2 us.

3 I mean, you know, the hope is presumably  
4 that these DAs will be more sympathetic to the police  
5 by making those contributions. Presumably, they're  
6 making contributions to candidates who they think will  
7 be more sympathetic to the police. So I don't view  
8 this at all as a quid pro quo.

9 COMMISSIONER ANDERSON: But wouldn't you  
10 see that as an officer of the court, if somebody made  
11 contributions to judges?

12 VICE CHAIRPERSON REYNOSO: Sad to say in  
13 many states judges run on a partisan basis, on an  
14 elected basis, and people make contributions to them  
15 all the time.

16 COMMISSIONER ANDERSON: Yeah. But they --

17 VICE CHAIRPERSON REYNOSO: And it's not  
18 viewed as quid pro quo. Quid pro quo is "I'll pay you  
19 a thousand dollars, judge, if you rule in my favor."

20 CHAIRPERSON BERRY: Well, I think it's --

21 (Simultaneous comments.)

22 CHAIRPERSON BERRY: -- since Commissioners  
23 feel differently about it. Staff should figure out  
24 whether they need it --

25 (Simultaneous comments.)



1 COMMISSIONER ANDERSON: If you decided  
2 every case in agreement with a particular class of  
3 parties and they had all given you campaign  
4 contributions, and somebody alleged that's why you  
5 decided that way. I mean, I'm not saying that just  
6 because they received the contributions means there's  
7 a quid pro quo.

8 But I think the clear implication here, at  
9 least -- I think a fair interpretation could be. All  
10 right? Now, maybe on a first reading it isn't. But I  
11 find troubling, if you have lots of allegations of  
12 police misconduct and few indictments, I would like to  
13 know the reason.

14 I'd like to know first how many  
15 investigations were there, what kind of evidence, what  
16 kind of police misconduct is prosecuted. I think we  
17 could establish -- in my view, we ought to drop that  
18 and we ought to put more substance into the text of  
19 the report as to exactly what these five DAs have  
20 done.

21 If they've got a pretty good record, or  
22 not a good record, or a fair record, we ought to say  
23 that, but not use that kind of approach. That's my  
24 view.

25 CHAIRPERSON BERRY: I think that's another

1 report, on the DAS. First Edley and then Wilson.

2 COMMISSIONER EDLEY: I disagree strongly  
3 with the proposition that this falls anywhere near the  
4 defame and degrade standard. It has nothing to do  
5 with (IDTPTC). (IDTPTC) today, politicians are quite  
6 used to having reports (IDTPTC). (IDTPTC) campaign  
7 contributions.

8 (IDTPTC) totally, but (IDTPTC).  
9 Therefore, I -- I do not believe that it calls for the  
10 general counsel to go back to the drawing board and  
11 reconsider (IDTPTC), period. On the other hand,  
12 people can obviously have substantive disagreements  
13 about this section and whether evidence cited supports  
14 the conclusions or the (IDTPTC).

15 I think it's fine as it is. But we  
16 shouldn't confuse (IDTPTC) substantive (IDTPTC) with  
17 the technical issues (IDTPTC).

18 CHAIRPERSON BERRY: And I think a word has  
19 been left out. So when you look at it, counsel, an  
20 mull over it, something goes in front of "administer."

21 I don't know what it is. Yes, Commissioner Wilson?

22 COMMISSIONER WILSON: Actually, I would  
23 tend to agree with Commissioner Anderson. And the  
24 reason is it's a footnote. And look at what it's  
25 footnoting. It says, "A huge discrepancy between the

1 rate of indictments of civilian defendants and police  
2 officers raises doubts in New York City that equal  
3 protection under the law."

4 Now, this person who's testifying was  
5 really, it seems to me, making the point about DAS  
6 receiving campaign contributions and made a decision,  
7 or out of -- I don't want to say sloppiness, but  
8 inattention did not finish the sentence in the way the  
9 sentence begins.

10 So I would -- I would -- if I were going  
11 to have something that was going to illustrate that  
12 point I would pick another quote.

13 CHAIRPERSON BERRY: Okay. Well, we'll ask  
14 counsel to review it and see where we are. Okay.  
15 Other pages before we get to 200? Any other page that  
16 anybody has something they'd like to -- before we get  
17 to 200? Okay. I'll wait until you've had a chance to  
18 turn your pages to make sure you're there before we  
19 get there. Up to 200?

20 VICE CHAIRPERSON REYNOSO: Oh, up to 200?

21 CHAIRPERSON BERRY: Yes. I'm going up to  
22 page 200. So if you've got something between where we  
23 are, up to page 200, say something about it. I want  
24 to point out to you that with reference to page 199,  
25 if no one has anything before page 199, we received a

1 letter, or I received a letter. I guess I received  
2 it. From -- did I receive that letter from Mr.  
3 Morgenthau?

4 MR. HAILES: Yes.

5 CHAIRPERSON BERRY: I received a letter  
6 from Mr. Morgenthau who is the -- I want to get his  
7 official title right. What is Mr. -- he's the  
8 Manhattan DA, I guess, District Attorney, County of  
9 New York. I didn't know New York was a County.

10 Anyway, he wrote to me saying that he had  
11 heard or read or something that we were going to  
12 recommend a special prosecutor, and he wanted to say  
13 that he didn't believe we should, or something, that's  
14 the impression I got from his letter, because his  
15 office had, in fact, prosecuted cases involving police  
16 officers.

17 Mr. Hailes wrote back to him telling him  
18 that he couldn't respond to things that just were in  
19 the news without waiting until he read the report, and  
20 giving him the details on our procedure. I point that  
21 out to you because, as you know, this report is not  
22 about any particular Mr. Morgenthau or any particular  
23 official in New York and his particular record.

24 But I just point it out to you that -- and  
25 it's not even anything in the report saying that there

1 haven't been any prosecutions. But I just point it  
2 out to you in connection with this page 199 to remind  
3 you, so that if you have anything you want to say in  
4 view of that, you have an opportunity to say it. I'm  
5 trying to be fair here, Carl, as usual. Thank you.

6 COMMISSIONER ANDERSON: Well, you see, I  
7 think it does. And the reason I say that is  
8 recommendations for a special prosecutor or federal  
9 monitor gained tremendous force if you have no  
10 confidence in the oversight and will of the district  
11 attorney to move forward and investigate and prosecute  
12 cases of policemen's conduct.

13 So by destroying the credibility of the  
14 district attorneys, you lay the foundation to make the  
15 case for the special prosecutor and/or federal  
16 monitor. So I think the issue of the district  
17 attorney's record here is not so much another report.

18 I think it goes right to the heart of our report  
19 because I think at the end of the day two of the large  
20 recommendations that this Commission may attach to  
21 this report, special prosecutor or federal monitor --

22 CHAIRPERSON BERRY: (Interrupting) There  
23 isn't any federal monitor in this report.

24 COMMISSIONER ANDERSON: -- would depend on  
25 whether or not we have confidence in the district

1 attorney offices, in those five district attorney  
2 offices.

3 CHAIRPERSON BERRY: Where is the federal  
4 monitor recommendation in this report? I don't see  
5 one.

6 COMMISSIONER ANDERSON: Well, I guess I --

7 CHAIRPERSON BERRY: (Interrupting) What  
8 page is it on?

9 COMMISSIONER ANDERSON: -- must have seen  
10 it in press reports.

11 CHAIRPERSON BERRY: I haven't seen it  
12 anywhere.

13 COMMISSIONER ANDERSON: I'm not saying  
14 that it's in there. I'm saying that there are two  
15 possible recommendations coming as part of this  
16 report. One is --

17 CHAIRPERSON BERRY: (Interrupting) I'm  
18 only saying that we should not lead the public to  
19 believe that there is such a recommendation in this  
20 report because there's nothing in this report that  
21 I've seen that recommends a federal monitor.

22 ~~Has anyone else seen a recommendation in~~  
23 ~~this report that recommends a federal monitor?~~ I  
24 don't want the word to go forth that we have  
25 recommended a federal monitor when there's nothing in

1 this report that recommends such a thing.

2 COMMISSIONER EDLEY: (IDTPTC) part about  
3 the U.S. Attorney counsel. (IDTPTC).

4 CHAIRPERSON BERRY: But I think it's  
5 important for us as Commissioners to make sure that we  
6 don't reinforce some public misperception.

7 (Simultaneous comments.)

8 CHAIRPERSON BERRY: Thank you.

9 COMMISSIONER ANDERSON: I don't want to  
10 distract the issue, which is the credibility of the  
11 DA --

12 CHAIRPERSON BERRY: (Interrupting) Right.

13 COMMISSIONER ANDERSON: -- is important to  
14 the recommendation of what is going to take the place  
15 of the district attorney.

16 CHAIRPERSON BERRY: Right. Okay. Now,  
17 the recommendation, and I recognize -- the  
18 recommendation does not call for a special prosecutor  
19 in every case involving the police department. That's  
20 the first thing. There is no such recommendation.

21 VICE CHAIRPERSON REYNOSO: Well, that was  
22 my point. That is, I thought the recommendation was  
23 a very moderately structured recommendation. So  
24 simply saying that the cases should be viewed  
25 individually as to whether or not it calls for a

1 special prosecutor. So it doesn't -- it doesn't imply  
2 that there's just wholesale lack of confidence in the  
3 prosecutors.

4 CHAIRPERSON BERRY: Okay. Any on the next  
5 page?

6 COMMISSIONER EDLEY: Madam Chair?

7 CHAIRPERSON BERRY: Yes.

8 COMMISSIONER EDLEY: May I just (IDTPTC)  
9 precedence, or does the city council have authority to  
10 appoint a special prosecutor and is there precedence  
11 for that?

12 CHAIRPERSON BERRY: They have been  
13 considering creating something. Isn't that right,  
14 counsel?

15 MR. HAILES: Yes.

16 COMMISSIONER EDLEY: (IDTPTC).

17 MR. HAILES: I know to investigate, I  
18 believe to prosecute. I believe the legislation was  
19 challenged by the Mayor in court and I believe it was  
20 appealed, and it's under consideration now.

21 CHAIRPERSON BERRY: Now, we recommended a  
22 special prosecutor, if I recall, in the Los Angeles  
23 report, is that right, last year?

24 VICE CHAIRPERSON REYNOSO: Yes...

25 CHAIRPERSON BERRY: (Interrupting) And we



1 were --

2 VICE CHAIRPERSON REYNOSO: For police  
3 brutality cases.

4 CHAIRPERSON BERRY: For police brutality  
5 cases. And we were castigated by the LA Times which  
6 says there -- if I may put it succinctly, there wasn't  
7 any major police problem in Los Angeles. That was  
8 last year.

9 VICE CHAIRPERSON REYNOSO: That was before  
10 Rampart.

11 CHAIRPERSON BERRY: That was before the  
12 very -- and issues we had raised came again to public  
13 consciousness. They were, you know, castigating us:  
14 "Why are you recommending such a thing? There's  
15 nothing going on out here. All the problems have been  
16 solved."

17 So it's not unprecedented for the  
18 Commission to make such a call.

19 COMMISSIONER EDLEY: Okay. I don't mind  
20 waiting (IDTPC) to that controversy. We'll just  
21 double-check to make sure (IDTPC) or constitutional  
22 matter that actually the city council could do it as  
23 opposed to the legislature or whatever.

24 CHAIRPERSON BERRY: Well, let's make sure  
25 we have the right agency, counsel --

1 MR. HAILES: (Interrupting) Yes.

2 CHAIRPERSON BERRY: -- that should in fact  
3 enact it. Okay. The next 25 pages. Oh, you've got  
4 something in those 25? Okay.

5 COMMISSIONER ANDERSON: I would just --  
6 for the record, I didn't think I pulled "federal  
7 monitor" out of the air. But I guess it's in the  
8 Finding section on page 199, where Reverend Sharpton  
9 talks about the need to establish a federal monitor.

10 CHAIRPERSON BERRY: Right. That's his  
11 opinion.

12 COMMISSIONER ANDERSON: That's his  
13 opinion. It's in our findings, but it's not our  
14 recommendation.

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER ANDERSON: But I'd also say  
17 that it -- the recommendation is perhaps not as modest  
18 as it would seem because it says "appoint an  
19 independent prosecutor in cases alleging serious  
20 police misconduct."

21 CHAIRPERSON BERRY: Right. Serious.

22 COMMISSIONER ANDERSON: So I suppose  
23 wherever you have a case of assault or aggravated  
24 assault or homicide or murder, how do those cases move  
25 out of the district attorney's office and move in to a

1 special prosecutor which -- it's not clear where we're  
2 getting the special prosecutor. It wouldn't be a  
3 federal prosecutor, I suppose.

4 CHAIRPERSON BERRY: No.

5 COMMISSIONER ANDERSON: But, you see,  
6 wherever it -- it arises beyond misdemeanor offense,  
7 somehow the district attorney is judged not capable of  
8 doing this, for whatever reason, and we have to have a  
9 special prosecutor. I think that's not as modest a  
10 recommendation as --

11 CHAIRPERSON BERRY: (Interrupting)

12 Counsel, did you --

13 MR. HAILES: (Interrupting) Yes. It's a  
14 fair -- it's fairly nuanced -- actually, it's to --  
15 it's in the section that refers to the CCRB, and we  
16 know that there are substantiated complaints that go  
17 to the police, the NYPD. And in certain cases nothing  
18 happened.

19 So we're talking about the appointment of  
20 a special prosecutor to be involved in an earlier  
21 stage than the district attorney would ever have his  
22 hands involved. So it's a little more nuanced than  
23 simply taking away from the district attorney the  
24 authority to prosecute police misconduct cases.

25 CHAIRPERSON BERRY: And it's also the

1 case, and I may reinforce my own view, and we asserted  
2 this in the Los Angeles report, that the claim is not  
3 that a prosecutor won't do his job so much. The claim  
4 is that there's so much heightened tension over some  
5 of these issues.

6 And the perception on the part of this  
7 public that looks at "Law and Order" on TV, that  
8 television show, and sees how the police work with the  
9 prosecutors and so on, and some of the testimony, that  
10 people are just mistrustful.

11 And so it doesn't make -- it seems to me  
12 that to guard against that, without saying anything  
13 about any specific prosecutor, that would be the  
14 better part of valor to consider that if it's a  
15 serious case and it's gotten all this heightened  
16 public attention, maybe there ought to be some, you  
17 know, independent prosecutor to look at, whether it's  
18 on a pro bono basis or not, to handle it.

19 That the prosecutors themselves ought to  
20 think that this is a good idea.

21 COMMISSIONER ANDERSON: Well, my view is  
22 this, that it appears that this is a way of end-  
23 running the prosecutor's office for whatever  
24 motivation. In my view, we ought to hold their feet  
25 to the fire. We ought to closely examine what they

1 do, and we ought to insist that they do their.

2 Because as I look at the history of what's  
3 going on here, there continues to be layers of  
4 government review of misconduct. And after a period  
5 of time each layer becomes inadequate, and we add  
6 another layer. What we ought to be doing is making  
7 the responsible agencies act responsibly and not  
8 constantly looking for another way of getting around  
9 the fact that certain people are not doing their jobs.

10 That's how I would see that. Now, we have  
11 a philosophical disagreement, but that would be my  
12 view.

13 CHAIRPERSON BERRY: We also -- I think  
14 your last argument was in conflict with your first  
15 argument. But that's okay. Lawyers get to do that.  
16 Because now we have a situation secondarily of  
17 prosecutors who may not be doing their job and we need  
18 to hold their feet to the fire; whereas in the first  
19 instance we had prosecutors who are doing their job  
20 and we shouldn't do anything to undermine them.

21 Assuming that there are prosecutors of  
22 both varieties, I think there are certain cases. And  
23 I don't like special prosecutors just because of the  
24 name, any better than anybody, some of the  
25 experiences. So I would not even call it that. But I

1 do think that there ought to be somebody else to step  
2 in, in some of these serious cases.

3 Does anyone have anything else for the  
4 next 25 pages? Twenty-five pages, up to page 225.

5 COMMISSIONER EDLEY: Two-oh-six.

6 CHAIRPERSON BERRY: Two-oh-six, okay.

7 Yes, sir?

8 COMMISSIONER EDLEY: I am concerned about  
9 the citation of Brown v. Oneonta on pages 205 and 206.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER EDLEY: Because I believe  
12 that it -- it sets an inappropriate standard, (IDTPTC)  
13 of a standard for the use of race, and (IDTPTC) fact  
14 that we're citing it, with approval. On the other  
15 hand, it is (IDTPTC) opinion (IDTPTC) government  
16 controlling authority for the City of New York.

17 CHAIRPERSON BERRY: Whether we like it or  
18 not.

19 COMMISSIONER EDLEY: Whether we like it or  
20 not. Therefore, the real question is not -- do we or  
21 don't we like the constitutional standard, I suppose,  
22 but rather whether we think (IDTPTC) ought to be --  
23 ought to hold themselves to a higher standard and the  
24 constitutional minimum articulated by the 2nd Circuit  
25 on Oneonta.

1           If I (IDTPTC) they should, and I would  
2           urge just to re-word it on page 205 (IDTPTC), 205 or  
3           206 to -- I guess (IDTPTC) 206, to indicate that they  
4           have a responsibility to -- to do better than the  
5           court did in Oneonta.

6           CHAIRPERSON BERRY: We would leave it to  
7           you to draft such a sentence and give it to the Staff  
8           Director.

9           COMMISSIONER EDLEY: Great.

10          CHAIRPERSON BERRY: Okay?

11          COMMISSIONER EDLEY: Further down on the  
12          page, the next to the last line talks about (IDTPTC)  
13          discriminatory impact. It seems to me the word  
14          "discriminatory" ought to be changed to "disparate."

15          CHAIRPERSON BERRY: You're on 205 or 206?

16          COMMISSIONER EDLEY: Two-oh-six.

17          CHAIRPERSON BERRY: The bottom of 206.  
18          Okay.

19          COMMISSIONER EDLEY: Next to the last  
20          line.

21          CHAIRPERSON BERRY: Disparate impact.

22          VICE CHAIRPERSON REYNOSO: I don't find  
23          it.

24          CHAIRPERSON BERRY: Next to the last line  
25          on 206. He wants to say "disparate."

1 COMMISSIONER WILSON: It's used above it  
2 as well. Did he want to change that where it says,  
3 "Evidence of discriminatory impact." Do you want to  
4 change it up there, too?

5 STAFF DIRECTOR MOY: But, it's a quote.

6 CHAIRPERSON BERRY: Oh, that's a quote.  
7 We can't change it.

8 COMMISSIONER WILSON: Oh, it's a quote?  
9 Okay.

10 CHAIRPERSON BERRY: Okay. What else,  
11 Christopher?

12 COMMISSIONER EDLEY: I'd like to change  
13 Washington v. Davis.

14 CHAIRPERSON BERRY: I don't like  
15 Washington v. Davis. Anything else, anyone, in the  
16 pages up to 225? Two twenty-five? Okay.

17 VICE CHAIRPERSON REYNOSO: Let me just add  
18 that there's a recent 9th Circuit opinion going  
19 differently than Oneonta.

20 CHAIRPERSON BERRY: Okay. A 9th Circuit  
21 opinion.

22 COMMISSIONER WILSON: Excuse me. I just  
23 want to go back to that.

24 CHAIRPERSON BERRY: Which one, the Oneonta  
25 case?



1 COMMISSIONER WILSON: No. My --

2 Washington v. Davis.

3 CHAIRPERSON BERRY: Davis? Before the  
4 quote begins, okay, it says, "Including evidence of  
5 discriminatory impact." And then there is the quote.

6 CHAIRPERSON BERRY: Okay. So we can put  
7 "disparate impact" there because that's not a quote.  
8 And then we're going to cite the 9th Circuit case,  
9 even though it's the 9th Circuit and any other  
10 circuits that agree or disagree.

11 Two twenty-five, up to 225? Beyond 225?  
12 Do you have anything beyond 225, anyone? Yes,  
13 Christopher?

14 COMMISSIONER EDLEY: Two thirty-six.

15 CHAIRPERSON BERRY: Thirty-six, okay.

16 COMMISSIONER EDLEY: Look, here's the  
17 problem.

18 CHAIRPERSON BERRY: Okay.

19 COMMISSIONER EDLEY: There's two (IDTPTC).

20 The first is defining what one means by racial  
21 profiling.

22 CHAIRPERSON BERRY: Okay.

23 COMMISSIONER EDLEY: And they kind of get  
24 at it by indirection here, by indicating that race  
25 can't be an exclusive factor (IDTPTC) to use race

1 (IDTPTC) identification (IDTPTC). But there's a  
2 (IDTPTC) and (IDTPTC). So I think (IDTPTC) a little  
3 bit since we have a conclusion that they've been  
4 engaging in racial profiling.

5 (IDTPTC) using race inappropriately and  
6 (IDTPTC) racial profiling (IDTPTC). But there's some  
7 (IDTPTC) on the question of (IDTPTC). Here's my  
8 second point.

9 CHAIRPERSON BERRY: Christopher, before  
10 you go to your second point, we do not conclude in  
11 this draft at least, and we can always change it even  
12 beyond that, we don't conclude the Department has  
13 engaged in racial profiling. We say that --

14 COMMISSIONER EDLEY: (Interrupting) If  
15 they are --

16 CHAIRPERSON BERRY: You say it has  
17 apparently been a factor. And we can change the  
18 language. But I mean the staff draft says it has  
19 apparently been a factor in stop and frisk practices.  
20 That's what it says.

21 COMMISSIONER EDLEY: Are you looking on  
22 page 238?

23 CHAIRPERSON BERRY: Yes.

24 VICE CHAIRPERSON REYNOSO: Can we cite the  
25 Cato Institute which reached the same conclusion?

1 CHAIRPERSON BERRY: Yeah. So we don't  
2 conclude in point of fact that this is the case. But  
3 we do conclude as it stands now, unless we change it  
4 and tell them to do something else, that it apparently  
5 has been a factor.

6 But I also take your idea that there's a  
7 need to strengthen the definition in the interstices  
8 of the two points that you made. But I'll let you go  
9 to your second point.

10 COMMISSIONER EDLEY: Okay. Because I have  
11 (IDTPTC). The second point is that (IDTPTC) the  
12 inference that racial profiling occurs or may be  
13 occurring from the UF-250 data. It strikes me as  
14 reasonable but problematic.

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER EDLEY: And it's problematic  
17 in the quality of the inference that I think ought to  
18 be spelled out.

19 CHAIRPERSON BERRY: Okay.

20 COMMISSIONER EDLEY: And it's problematic  
21 -- it's problematic because of the data problems.  
22 Right? It's -(IDTPTC) -example that could cut either  
23 way, all that sort of stuff. And also, frankly, I was  
24 not completely persuaded by the rebuttal papers  
25 (IDTPTC) argument that there is the (IDTPTC).

1           So I guess I agree with (IDTPTC) fact that  
2 there's a little bit on the one hand. On the other  
3 hand here it would be acknowledged. And by  
4 acknowledging it, I think that the analysis becomes  
5 more compelling. The third thing is that I actually  
6 think that this is a little bit defining to the  
7 recommendation, the findings that are (IDTPTC) that I  
8 myself (IDTPTC) would like to say.

9           It's a little bit -- it's awfully lawyerly  
10 to say, I'm on page 238, that based on the analysis  
11 the data (IDTPTC) racial profiling apparently has been  
12 static. I think (IDTPTC) true. But it seems to me I  
13 would say it's not just UF-250 data, but it's also the  
14 testimony, much of the testimony.

15           CHAIRPERSON BERRY: Right.

16           COMMISSIONER EDLEY: And it's combined.  
17 And what I would think is that (IDTPTC) reasonable. I  
18 think a reasonable (IDTPTC) conclude that racial  
19 profiling has been practiced.

20           CHAIRPERSON BERRY: Okay.

21           COMMISSIONER EDLEY: And that's a stronger  
22 statement. I think it's justified by the record.  
23 It's less (IDTPTC). And I have no doubt that they  
24 (IDTPTC). But I --

25           CHAIRPERSON BERRY: (Interrupting) That's

1 always helpful.

2 COMMISSIONER EDLEY: (IDTPTC) and I prefer  
3 to be --

4 CHAIRPERSON BERRY: (Interrupting) I'm  
5 kidding.

6 COMMISSIONER EDLEY: (IDTPTC) prepared to  
7 (IDTPTC) that (IDTPTC) contrary (IDTPTC) think this is  
8 a reasonable one.

9 CHAIRPERSON BERRY: Okay. So the point  
10 would be that the testimony, and I agree with that,  
11 that the staff should cite not just the UF-250s, but  
12 the testimony and the evidence combined you believe a  
13 reasonable observer could conclude that racial  
14 profiling has been practiced.

15 COMMISSIONER EDLEY: As we do so conclude.

16 CHAIRPERSON BERRY: And we do so, as  
17 reasonable persons, conclude. Right?

18 COMMISSIONER EDLEY: Yes.

19 CHAIRPERSON BERRY: Okay. Yes,  
20 Commissioner Wilson?

21 COMMISSIONER WILSON: Doesn't that -- if  
22 we say from the -- that we conclude from the  
23 testimony, doesn't that leave us open? I mean, there  
24 was plenty of testimony that said racial profiling did  
25 not exist.

1 CHAIRPERSON BERRY: And there was  
2 testimony that said that it did.

3 COMMISSIONER WILSON: That's right. So, I  
4 mean, how do you --

5 CHAIRPERSON BERRY: (Interrupting) Just  
6 like trial judges do.

7 COMMISSIONER WILSON: Well, just like in  
8 real life, he said, she said. I mean, in this  
9 instance we're making a statement based on -- we're  
10 making a statement based on testimony. In a way I  
11 think that the way the -- the way that this document  
12 -- this document is worded, in a way it -- it sort of  
13 -- what do I want to say?

14 It sort of protects the report from sort  
15 of open -- I mean a sort of opening where anybody  
16 could -- like a non-lawyer like me could say, well,  
17 there's plenty of testimony where people said there  
18 wasn't racial -- it wasn't racial profiling.

19 I'm not saying that racial profiling  
20 doesn't exist.

21 CHAIRPERSON BERRY: I understand what  
22 you're saying.

23 COMMISSIONER WILSON: I'm talking about in  
24 terms of preserving --

25 CHAIRPERSON BERRY: (Interrupting) Right.

1 COMMISSIONER WILSON: -- and keeping the  
2 issues that the report makes clear, instead of all  
3 muddied up.

4 CHAIRPERSON BERRY: But, Vicky, that's why  
5 Christopher said the UF-250 data, the testimony and  
6 evidence combined. That's why he said "combined." Is  
7 that why you said "combined," Christopher?

8 COMMISSIONER EDLEY: That's right. And  
9 it's sort of the evidence -- it's like a record of any  
10 other legal standard here. It's (IDTPTC) the record  
11 as a whole, more balanced, more reasonable for a  
12 person to conclude.

13 Just like a jury hears evidence for both  
14 sides, (IDTPTC) one way or the other. We could avoid  
15 coming down one way or the other.

16 CHAIRPERSON BERRY: Well, I'm not  
17 suggesting that we avoid coming down one way or the  
18 other, Christopher. I think you're aware of that.

19 COMMISSIONER EDLEY: I (IDTPTC). I think  
20 it would be -- I think that would be a -- that is  
21 (IDTPTC) identical position to take, that we shouldn't  
22 (IDTPTC).

23 CHAIRPERSON BERRY: No, no, Christopher.

24 COMMISSIONER EDLEY: I think we should.

25 CHAIRPERSON BERRY: Christopher, you're

1 misreading Commissioner Wilson. Commissioner Wilson  
2 is simply suggesting that she thinks it's stronger to  
3 just cite the UF-250 data and to not say anything  
4 about the testimony, because not being a lawyer she  
5 doesn't understand this business, or she understands  
6 it now.

7 But she's saying that in terms of public  
8 consumption that people who are not lawyers, they may  
9 say, well, there was one person or two people who  
10 testified that there wasn't any, you know. And then  
11 there are others that did. And so your statement that  
12 UF-250s plus testimony and evidence, she says she just  
13 likes saying-UF 250s as reaching the same conclusion.

14 COMMISSIONER WILSON: I mean, as somebody  
15 with a Washington background, I can take either/or  
16 position.

17 (Laughter)

18 COMMISSIONER WILSON: And also controversy  
19 is not something that I shy away from. So I don't  
20 think that's the reason why I'm saying that. I just  
21 think that one has a stronger position, I think, if  
22 it's based on -- if it's based on -- on facts or -- or  
23 as much hard core evidence as can be put together  
24 rather than making judgments.

25 So I -- you know, people -- you make



1 judgments all the time and you come to conclusions.  
2 So I suppose it's not -- I mean, maybe there's a way  
3 of wording it in another way. That's my --

4 CHAIRPERSON BERRY: How about combined  
5 with some of the testimony and evidence?

6 COMMISSIONER WILSON: Hey, there you go.

7 CHAIRPERSON BERRY: Okay. She would  
8 accept that, Christopher. The Vice Chair?

9 VICE CHAIRPERSON REYNOSO: Well, the --

10 COMMISSIONER WILSON: Or predominance, if  
11 in fact that is true. If in fact that is true.

12 VICE CHAIRPERSON REYNOSO: Well, the data  
13 to me is actually more than suggestive. So I thought  
14 that the statement strongly suggests -- well, maybe  
15 strongly suggests. It's not definitive, but it's  
16 pretty overwhelming.

17 CHAIRPERSON BERRY: Okay. So we've got  
18 some of the evidence, testimony in evidence; UF-250s  
19 combined with some of the testimony in evidence.  
20 Okay. Anything else on these pages? I think we're at  
21 the end. Yes, Commissioner Redenbaugh?

22 ---CHAIRPERSON BERRY: Maybe I'm wrong. I  
23 think we're at the end. I don't know.

24 COMMISSIONER REDENBAUGH: I was struck by  
25 Commissioner Edley's prior comments that we -- we

1 don't define what is meant by racial profiling. If  
2 that's so, and that's quite unclear, how is it that we  
3 can conclude anything about it?

4 CHAIRPERSON BERRY: Okay. Edley, let me  
5 let you answer for yourself, because I understood that  
6 you didn't say we didn't define. You thought we could  
7 add more to the definition and be clearer about it.  
8 Am I right or wrong?

9 COMMISSIONER EDLEY: You're right.

10 CHAIRPERSON BERRY: And -- okay.

11 COMMISSIONER EDLEY: To repeat, I think  
12 the reader has to sort of get at it through  
13 indirection of what we are simply -- what we actually  
14 mean by it. And I think just the fact -- I think just  
15 a couple of simple (IDTPTC) reasonable ground  
16 (IDTPTC).

17 CHAIRPERSON BERRY: Okay.

18 COMMISSIONER EDLEY: (IDTPTC) eventually  
19 that (IDTPTC) stereotype (IDTPTC).

20 CHAIRPERSON BERRY: Okay. Well, they will  
21 take the transcript language and the discussion and  
22 add some language to this. Yes, Commissioner  
23 Anderson?

24 COMMISSIONER ANDERSON: I think  
25 Commissioner Redenbaugh raises a good point, that

1 holding the police to a standard here, what we don't  
2 want them to do. It seems to me, we ought to be very  
3 clear as to what it is they should not be doing, or  
4 what it is they're doing that we don't like in terms  
5 that they can understand.

6 And I don't know whether that requires a  
7 couple of sentences, a paragraph, or a page, but I  
8 think it would be a useful addition to the draft.

9 CHAIRPERSON BERRY: Well, the staff is  
10 going to listen to the discussion and add whatever  
11 needs to be added. Yes, Commissioner Redenbaugh?

12 COMMISSIONER REDENBAUGH: Continuing my  
13 earlier question, it's not clear to me -- well, we  
14 conclude that there's racial profiling. We do that  
15 based on the data, supplemented by the testimony.  
16 It's not clear to me that people who gave the  
17 testimony have the same meaning about racial profiling  
18 that we do, as we've elaborated it.

19 Then this to me -- my view is the data is  
20 much more important than the testimony in a place  
21 where there's not clarity about a term of art.

22 CHAIRPERSON BERRY: The report, the page  
23 that we're talking about says that, "The Department's  
24 explanation that the ethnic breakdown of UF-250  
25 subjects simply mirrors the racial breakdown of

1 victims descriptions, does not adequately account for  
2 the particularized suspicion required by the  
3 Constitution to effect a stop. "The fourth amendment  
4 specifically" -- I'm only going to read about four of  
5 these sentences -- "specifically mandates that the  
6 justification for a search be supported by a warrant,  
7 particularly describing the persons or things to be  
8 seized."

9 Police officials "indicate that racial  
10 disparities in UF-250 data may be explained by  
11 reference to precinct and city-wide profiles of  
12 violent criminals," and that their explanation that  
13 the "distribution of the subjects reflects the  
14 demographics of known violent crime suspects as  
15 reported by crime victims...may implicitly sanction  
16 racial profiling."

17 And, "stopping an individual based on  
18 statistical probabilities or demographics is  
19 prohibited, individualized suspicion remains the  
20 relevant standard for initiating a legal stop."

21 Now, we had, is it right, counsel,  
22 evidence which is in this report, or testimony at  
23 least, not evidence, testimony in this report that --  
24 from police officers that there were no -- that the  
25 special units did not operate on descriptions. Right?

1 MR. HAILES: Yes.

2 CHAIRPERSON BERRY: That they weren't out  
3 actually looking at people based on descriptions. I  
4 think what is being said here that we should look at  
5 your paragraph and see if you have it clear enough so  
6 that your average person, using average literary  
7 standards, could be able to figure out exactly what it  
8 is they shouldn't do or what they should do.

9 Yes, Commissioner Lee?

10 COMMISSIONER LEE: Madam Chair, I'd just  
11 like to address the recommendation, the final  
12 recommendation which sounded like a whimper. We did  
13 all this report and all it recommended was NYPD should  
14 take steps to ensure that racial profiling does not  
15 occur.

16 I thought I was missing a couple of pages,  
17 since I called the Chair and said, well, was it  
18 intentionally blank pages. I'd like the staff to  
19 tighten it up a little bit because it just sounded so  
20 generic. It did not capture the entire chapter of the  
21 testimonies in the findings.

22 MR. HAILES: If you go back in the report  
23 you'll also see recommendations regarding training to  
24 help prevent racial profilings. So there are other  
25 recommendations that are related to stop and frisk

1 practices throughout the report. But certainly we  
2 can --

3 CHAIRPERSON BERRY: (Interrupting) Is  
4 there --

5 COMMISSIONER EDLEY: Madam Chair?

6 CHAIRPERSON BERRY: Just a second. Are  
7 you finished, Commissioner Lee?

8 COMMISSIONER LEE: Yes.

9 CHAIRPERSON BERRY: Is there a  
10 recommendation in here that, and I didn't see one,  
11 maybe I missed it, that the Department work with -- to  
12 learn from other cities how they handle these matters,  
13 police and community relations? I think you have in  
14 here somewhere that there are other cities that seem  
15 to be successful in dealing with these.

16 But is there some kind of recommendation  
17 that they work with the community that they are  
18 policing on these issues and try to get some  
19 information or advice from other cities where they've  
20 been dealing with these issues?

21 I would like a recommendation like that.  
22 I think it's important for people to look around at  
23 models of success. And not every city is alike,  
24 obviously, and most cities like New York. But at  
25 least where there are cities where they say they are

1 being successful, to look around at some of these  
2 models of police-community relations.

3 And everything from recruitment to  
4 training to diversity training, to advice, to how to  
5 identify suspects, to get community support when they  
6 go out to arrest people. You know, to strengthen all  
7 of these areas. I wonder if the Commission would  
8 support some kind of general do-good recommendation  
9 like that.

10 COMMISSIONER EDLEY: Commissioner?

11 CHAIRPERSON BERRY: Edley spoke first,  
12 Anderson, and I ignored him. Then I'll recognize you.  
13 Yes, go ahead, Edley.

14 COMMISSIONER EDLEY: First of all, I agree  
15 strongly with what you just said. I (IDTPTC)  
16 connection with training, the training issue,  
17 diversity training issue (IDTPTC). (IDTPTC)  
18 situations where (IDTPTC). I don't know (IDTPTC)  
19 seems to me a great deal could be done in several  
20 areas (IDTPTC) racial profiling.

21 Second point is (IDTPTC) final  
22 recommendation (IDTPTC) Commission (IDTPTC). I do  
23 think it's very important to try to have at least a  
24 couple of particulars. (IDTPTC) I think we ought to  
25 say something about (IDTPTC) challenged (IDTPTC)

1 trying to figure out what exactly is going on.

2 And (IDTPTC) UF-250 data (IDTPTC) in the  
3 report (IDTPTC) better way (IDTPTC) accurate picture  
4 (IDTPTC). (IDTPTC) oversight to combat the (IDTPTC)  
5 racial profiling. And I think (IDTPTC) would be  
6 helpful.

7 And, finally, on the issue of (IDTPTC)  
8 existence of racial profiling (IDTPTC) data, here,  
9 too, I think (IDTPTC) the Maryland State Police, the  
10 New Jersey State Police (IDTPTC) would be helpful  
11 (IDTPTC). We should cross-reference (IDTPTC).

12 CHAIRPERSON BERRY: Okay. Commissioner  
13 Anderson?

14 COMMISSIONER ANDERSON: Well, I have two  
15 observations. The first observation is we've talked  
16 before about the Commission looking at model programs  
17 as to what works in getting that out into the public.

18 So some of this is appropriate for our briefing, for  
19 another briefing.

20 Boston has been talked about as a city  
21 that's a good model on some of these issues. That's  
22 what I'd like to see us do. Number two, going back to  
23 the question of profiling, on page 236, the quote that  
24 you read, as I read it, the Mayor and the Police  
25 Commissioner said the data may be explained by



1 reference to precinct and city-wide profiles of  
2 violent criminals.

3 The Commissioner testified racial and  
4 ethnic distribution of the subjects reflect the  
5 demographics of known violent crime suspects, as  
6 reported by crime victims. Now, I think you can read  
7 that and not come to the conclusion that they are  
8 involved in racial profiling, although the language is  
9 ambiguous enough that it could be racial profiling.

10 I think it would be helpful if we actually  
11 saw what some of the profiles were and get some  
12 evidence as to why the racial/ethnic distribution of  
13 the subjects reflect the demographics of known violent  
14 crime suspects as reported by crime victims.

15 Obviously there are descriptions by the  
16 victims. Are they really profiles that are racial  
17 profiling or are they something that we would say is  
18 the appropriate kind of profile that a victim under  
19 stress is able to give.

20 So maybe we should have a more -- a  
21 stronger criticism of racial profiling here, that it  
22 would be helpful to see examples of exactly what it is  
23 we're saying is going on in New York, and then  
24 precisely what's good about it and what's not good  
25 about it. Frankly, I don't know because I haven't

1 seen the profiles they used.

2 CHAIRPERSON BERRY: Well, Eddie, General  
3 Counsel, I think you also might move the paragraph on  
4 page 237 over right after the paragraph on -- we're  
5 disputing. Because this way they're separated. One  
6 can't see the controverted nature. Because the  
7 paragraph on page 232 says that victim identifications  
8 were not the basis of stops by the Street Crime Unit,  
9 at least.

10 So you need to put that paragraph over  
11 where the other paragraph is so that one can see that  
12 while with some units there may be some victim  
13 descriptions that they were looking at. But the  
14 Street Crime Unit that was involved in the stop and  
15 frisks, they weren't getting any victim  
16 identifications.

17 They were just out on the street  
18 patrolling a certain -- if I understood their  
19 testimony, certain areas of the city. Is that true?

20 VICE CHAIRPERSON REYNOSO: Right. That's  
21 my understanding. And further, that most of the  
22 complaints have come with respect to that unit.

23 CHAIRPERSON BERRY: Right. Which has been  
24 disbanded since.

25 VICE CHAIRPERSON REYNOSO: That's correct.

1 CHAIRPERSON BERRY: Yes, Commissioner  
2 Redenbaugh?

3 COMMISSIONER REDENBAUGH: Just one  
4 question. We used outside contractors for their  
5 special expertise or because of capacity constraint?

6 CHAIRPERSON BERRY: Well, we discussed  
7 here in the Commission meeting and agreed at the  
8 Commission meeting that it was appropriate for the  
9 staff to engage a law firm. We discussed that right  
10 in the Commission meeting.

11 COMMISSIONER REDENBAUGH: Did we discuss  
12 who it is?

13 CHAIRPERSON BERRY: And the -- a bid was  
14 put out. It was put out on bid, is that right, Staff  
15 Director?

16 STAFF DIRECTOR MOY: Yes.

17 CHAIRPERSON BERRY: And that's how it was  
18 done.

19 COMMISSIONER REDENBAUGH: Okay. Single  
20 source?

21 STAFF DIRECTOR MOY: No.

22 CHAIRPERSON BERRY: No.

23 COMMISSIONER REDENBAUGH: Competitive bid?

24 STAFF DIRECTOR MOY: Yes.

25 COMMISSIONER REDENBAUGH: Okay. And the

1 law firm?

2 STAFF DIRECTOR MOY: I don't -- Wilmer &  
3 Cutler?

4 MR. HAILES: Yes.

5 VICE CHAIRPERSON REYNOSO: Which one?

6 COMMISSIONER EDLEY: Wilmer, Cutler,  
7 Pickering.

8 CHAIRPERSON BERRY: It was a competitive  
9 bid, right? I don't know why anybody would want to  
10 compete for it, but it was a competitive bid. Okay.  
11 We are at the end of the pages, and so we will leave  
12 it at that. And the staff will inform us if next week  
13 we have any substantive materials that we need to look  
14 at.

15 And we'll go forth and make the changes  
16 that we have discussed here at this meeting and agreed  
17 to based on the discussion.

18 COMMISSIONER EDLEY: Madam Chair?

19 CHAIRPERSON BERRY: Yes, Commissioner  
20 Edley. And Edley will write a sentence down in that  
21 paragraph we talked about, and hand it around. Yes,  
22 Edley?

23 COMMISSIONER EDLEY: You know I've never  
24 said anything in one sentence.

25 CHAIRPERSON BERRY: Oh, okay.

1                   COMMISSIONER EDLEY: I just have to say  
2 that I thought this draft was fabulous. I thought it  
3 was an outstanding piece of work. And I haven't read  
4 anything (IDTPTC) Commission (IDTPTC). I just  
5 personally want to commend that. (IDTPTC) an  
6 excellent piece of work.

7                   CHAIRPERSON BERRY: Yes, Vice Chair?

8                   VICE CHAIRPERSON REYNOSO: And I want to  
9 comment on the timeliness. We've been urging that all  
10 of us work hard to get these reports out on a timely  
11 basis. I'm particularly pleased that we were able to  
12 get this out in the time that we had indicated early  
13 on we were going to do it.

14                   CHAIRPERSON BERRY: Okay. And so we will  
15 have a briefing next month on the National Police  
16 Practices Report and we will have some discussion  
17 there about other models, as Commissioner Anderson  
18 suggested. Are there any -- and you are reminded  
19 again to get your names in, if you have names of  
20 people you would like to be involved in the briefing  
21 for the Staff Director.

22                   Yes, Commissioner Anderson?

23                   COMMISSIONER ANDERSON: Just so we're  
24 clear now on how we move forward on New York, if there  
25 are substantive revisions based on our discussion is

1 it going to be distributed to us so we get a chance to  
2 see them?

3 MR. HAILES: Yes.

4 COMMISSIONER ANDERSON: And then if we get  
5 comments from the Mayor, the police, the Citizens  
6 Review Board, we get to see those comments?

7 CHAIRPERSON BERRY: If you want to see  
8 them. We normally do not. The staff reviews them and  
9 tells us if there is anything substantive. And they  
10 will be appended to the report. But if you want to  
11 read them you can. And we're not going to get into a  
12 debate about the actual wording of changes that the  
13 staff makes.

14 In other words, we're not going to send  
15 them around and have to have everybody agree that the  
16 word ought to be "conduct" as opposed to "conflict" as  
17 opposed to whatever. The staff will reflect the  
18 discussion here. So long as the language they use  
19 reflects the discussion here, we're not going to get  
20 into a debate with them about the precise words that  
21 they use.

22 We've never done that before and I don't  
23 think we should start doing it now. It would be a bad  
24 mistake. We would never be able to get anything done.

25 Yes, Commissioner Wilson?

1 COMMISSIONER WILSON: I would just like to  
2 make it clear that on the additional material that we  
3 do get that it will not be leaked by any of us.

4 CHAIRPERSON BERRY: We hope. We hope. We  
5 hope it will not be leaked. All right.

6  
7 **VI. FUTURE AGENDA ITEMS**

8 CHAIRPERSON BERRY: Any future agenda  
9 items?

10 Yes, Commissioner Lee?

11 COMMISSIONER LEE: I think it was about  
12 two years ago when we had the last briefing on hate  
13 crimes. And since then the Commission has released  
14 press releases every time a hate crime occurred. And  
15 in light of the most recent tragedy that occurred in  
16 Pittsburgh, I'd like to request that we have another  
17 update, a briefing or whatever, zeroing in on  
18 legislation and also any updated information regarding  
19 hate activities.

20 I'm especially concerned with the way the  
21 media is no longer paying too much attention. In the  
22 Pittsburgh killing five people died. They did not  
23 even make it to the front page in Washington, in most  
24 of the major newspapers. So I'd like that to be a  
25 future item.

1 CHAIRPERSON BERRY: Okay. Commissioner  
2 Edley?

3 COMMISSIONER EDLEY: Yes, ma'am.

4 CHAIRPERSON BERRY: I thought you had an  
5 item you wanted to raise concerning a letter.

6 COMMISSIONER EDLEY: Thank you. I wanted  
7 to suggest and recommend that the Chair on behalf of  
8 the Commission at the Office of Civil Rights, at the  
9 Department of Education, whether we have or can  
10 develop data on the (IDTP) certain (IDTP).

11 There have been several (IDTP) country  
12 (IDTP) race conscious, affirmative action programs  
13 and race conscious (IDTP) programs. Some of the  
14 cases specifically involved (IDTP) policy changes  
15 (IDTP).

16 (IDTP) others (IDTP) policies have  
17 involved ending race (IDTP) policies such as  
18 Montgomery County. And I think it would be very  
19 useful to the Commission if (IDTP) find out exactly  
20 what the impact of the policy changes (IDTP) on  
21 racial concentration (IDTP).

22 CHAIRPERSON BERRY: Well, I'd be happy to  
23 write such a letter. I can just write one anyway,  
24 asking for the information for consideration of the  
25 Commission. But it would be nice to have the support



1 in making the inquiry. That way I can write at the  
2 bottom, instead of saying my name, say "for the  
3 Commissioners."

4 Does anybody object to me asking for the  
5 information so we can consider whether we want to do  
6 anything with it or not? No objection. So we'll  
7 proceed. And the final thing I forgot to mention is  
8 that the Staff Director and I were talking about the  
9 staff preparing an executive summary of the New York  
10 report.

11 We've talked many times on this Commission  
12 about having executive summaries of things, and we  
13 never did it. And it seems that it's easy to do. And  
14 so I was wondering if anybody had an objection to them  
15 preparing one to send out to us on this report.

16 No objection? Okay. Without objection.  
17 Can I get a motion that we adjourn?

18 VICE CHAIRPERSON REYNOSO: So moved.

19 CHAIRPERSON BERRY: Can we get a second?

20 COMMISSIONER WILSON: Second.

21 CHAIRPERSON BERRY: Any discussion? It's  
22 non-debatable. All right. The meeting is adjourned.

23 Thank you very much.

24 (Whereupon, the meeting was concluded.)

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