

## UNITED STATES COMMISSION ON CIVIL RIGHTS

## COMMISSION MEETING

Friday, September 15, 2000  
Washington, D.C. 20425

The Commission convened at 9:37 a.m., in Room 546, YMCA Building, 624 Ninth Street, N.W., Washington, D.C. 20425, Chairperson Mary Frances Berry, presiding.

Present:

MARY FRANCES BERRY, CHAIRPERSON  
CRUZ REYNOSO, VICE CHAIRPERSON  
CHRISTOPHER EDLEY, JR., COMMISSIONER  
YVONNE Y. LEE, COMMISSIONER  
ELSIE M. MEEKS, COMMISSIONER  
VICTORIA WILSON, COMMISSIONER  
RUBY G. MOY, STAFF DIRECTOR

STAFF PRESENT:

KIMBERLEY ALTON  
DAVID ARONSON  
KI-TAEK CHUN  
TERRI DICKERSON  
BARBARA DELAVIEZ  
PAMELA A. DUNSTON  
BETTY EDMISTON  
MICHAEL FOREMAN  
M. CATHERINE GATES  
EDWARD HAILES, Acting General Counsel  
LISA KELLY  
JENNY PARK  
BERNARD QUARTERMAN  
PETER REILLY, Parliamentarian  
KWANA ROYAL  
JOYCE SMITH  
MARCIA TYLER  
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

PATRICK DUFFY  
CHARLOTTE PONTICELLI  
SCOTT SCHREIBER  
KRISHNA TOOLSIE  
EFFIE TURNBULL

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CHAIRPERSON BERRY: The meeting will come to order. The first thing we'd like to do is to approve the agenda, but we will need to have an executive session right at the beginning of the meeting, Peter, to discuss a sensitive personnel matter, so give me the right words to say, so that somebody has to move that we do it, right? I never can remember. We don't do this often enough.

MR. REILLY: Sure; okay.

[Laughter.]

MR. REILLY: So, to close a meeting, one commissioner must call for the vote, and the votes must be recorded.

CHAIRPERSON BERRY: Okay.

MR. REILLY: The meeting will be closed if four commissioners vote for it.

CHAIRPERSON BERRY: Okay; all right.

So could we get a motion to have an executive session to discuss a sensitive personnel matter?

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

VICE CHAIRPERSON REYNOSO: Second.

CHAIRPERSON BERRY: Okay; any discussion?

[No response.]

CHAIRPERSON BERRY: Then, I call for the question, right, Peter?

MR. REILLY: Yes.

CHAIRPERSON BERRY: All those in favor of a brief and -- for

1 the purposes of the audience -- a brief, very brief, executive session  
2 to discuss a sensitive personnel matter, indicate by saying aye.

3 [Chorus of ayes.]

4 CHAIRPERSON BERRY: Opposed?

5 [No response.]

6 CHAIRPERSON BERRY: So ordered.

7 We will have a very brief -- by brief, I mean no more than  
8 about 10 minutes -- executive session, so the room has to be cleared.

9 [Whereupon, at 9:39 a.m., the Commission proceeded in  
10 executive session. Proceedings returned to the record at 9:49 a.m.]

11 I. APPROVAL OF AGENDA

12 CHAIRPERSON BERRY: Okay; we will go on with the agenda as  
13 it is stated.

14 II. APPROVAL OF MINUTES

15 CHAIRPERSON BERRY: I need a motion to approve the minutes  
16 of July 21, 2000.

17 COMMISSIONER MEEKS: So moved.

18 CHAIRPERSON BERRY: Second?

19 VICE CHAIRPERSON REYNOSO: Second.

20 CHAIRPERSON BERRY: Any discussion of the minutes?

21 [No response.]

22 CHAIRPERSON BERRY: On page 2 of the minutes, it says  
23 Chairperson Berry announced there was a recent police shooting in  
24 Philadelphia, and I did not announce that. I said there was a recent  
25 police beating. I didn't say there was a shooting. I was talking

1 about the beating of that guy in Philadelphia. Beating is different  
2 from shooting.

3 COMMISSIONER EDLEY: Sometimes, they do both.

4 CHAIRPERSON BERRY: Yes; okay; so, with that, does anyone  
5 else have any changes in the minutes?

6 [No response.]

7 CHAIRPERSON BERRY: Okay; with that change, all in favor  
8 indicate by saying aye.

9 [Chorus of ayes.]

10 III. ANNOUNCEMENTS

11 CHAIRPERSON BERRY: Announcements is the next item on the  
12 agenda.

13 The first announcement has to do with Vice Chair Cruz  
14 Reynoso, our dear colleague, who has been all over the place getting  
15 recognition that is his due for the long years of work that he has done  
16 and the long years of work people expect him to do -- continue to do.

17 [Laughter.]

18 CHAIRPERSON BERRY: The other night, I was talking to him on  
19 the phone, and I said okay, congratulations again, because I had sent  
20 him several notes congratulating him, but I said okay, now, let's get  
21 back to work.

22 [Laughter.]

23 CHAIRPERSON BERRY: Anyway, Vice Chair Reynoso, of course,  
24 received the Presidential Medal of Freedom, and it was presented at a  
25 White House ceremony in August and was widely covered in the media, and

1 this is really absolutely one of the highest honors that a person can  
2 receive. He also was one of the five honorees to receive a Hispanic  
3 Heritage Award at a ceremony at the Kennedy Center the other day, and  
4 he was in good company with a lot of people, and that was all over the  
5 news, and you've probably seen that as you should have, so we want to  
6 publicly congratulate him.

7 VICE CHAIRPERSON REYNOSO: Thank you very much.

8 CHAIRPERSON BERRY: Urge you to go on to ever greater  
9 things.

10 [Applause.]

11 CHAIRPERSON BERRY: Okay; now, lesser awards but important  
12 ones: the Central Regional Office -- we had pointed this out before  
13 that it would happen -- that's supervised by Melvin Jenkins, got one of  
14 the 100 best practices awards from the Department of Housing and Urban  
15 Development at their annual best practices symposium in August.

16 The other matters have to do with various updates and  
17 information that you may or may not have missed, and I'm sure you  
18 didn't. Wen Ho Lee, of course, is out of jail, and we had discussed  
19 this before, and he apparently is suing -- has a civil suit -- against  
20 the Government for what happened to him. The Commission was asked by  
21 Commissioner Lee some time ago to have the regional office follow up on  
22 what was happening to Mr. Lee, and it may be appropriate for us to  
23 consider some kind of followup at this time, not in the sense of piling  
24 on, because in the media, there's some contention about who is mad  
25 about what and who is blaming whom, but I don't know, Yvonne; do you

1 think it would be appropriate for us to ask the Attorney General to  
2 give us a report?

3 COMMISSIONER LEE: I think the information from the Attorney  
4 General would really help bring a better understanding of what happened  
5 in the whole case, so I would hope that we can send a letter to her.

6 CHAIRPERSON BERRY: Yes, Commissioner Edley?

7 COMMISSIONER EDLEY: I'm wondering whether the Attorney  
8 General will -- she's not exactly a neutral or objective party in this,  
9 and I'm wondering if the Inspector General -- my understanding is there  
10 are going to be Congressional hearings, where, of course, we can expect  
11 a lot of partisan stuff to happen.

12 CHAIRPERSON BERRY: Yes.

13 COMMISSIONER EDLEY: There's going to be a civil suit, but I  
14 gather there might be some complications about access to documents in  
15 the civil suit, because the nature of the plea agreement that was  
16 struck, and I know the FBI is doing its own internal look at this, and  
17 meanwhile, the Attorney General has already said there's nothing to  
18 apologize for.

19 So she's on record as saying she doesn't think anything  
20 wrong happened already. I guess she's already made her decision about  
21 it. So, I mean, it's fine to ask the Attorney General. I'm wondering  
22 if maybe the way to put this is maybe there are other people that we  
23 should ask besides the Attorney General like the Inspectors General at  
24 Justice and Energy.

25 CHAIRPERSON BERRY: I like that better.



1 Is that okay with you, Yvonne?

2 COMMISSIONER LEE: Yes.

3 CHAIRPERSON BERRY: All right.

4 COMMISSIONER LEE: Excuse me; but I do think that on the  
5 record, we've never formally asked the Attorney General to put it in  
6 writing explaining to us the process of keeping Dr. Lee in jail,  
7 incarcerated, in solitary confinement for nine months. So I would like  
8 to, for the record, still put in the request for her. Whether she  
9 responds or not, at least the Commission has made that request in  
10 addition to the request that you just made.

11 CHAIRPERSON BERRY: Well, couldn't we send a copy of the  
12 letter to the IG to the Attorney General and state in the letter that  
13 we have deep concern about why the Attorney General did this.

14 COMMISSIONER LEE: Okay.

15 CHAIRPERSON BERRY: And we have noted her public statements,  
16 which are that she believes that it was handled properly, put all that  
17 in the letter, and therefore, we're asking the IG to investigate the  
18 Department's handling of this. And then, the Attorney General, being  
19 on notice by the copy if she wishes may write us herself and say hey,  
20 here's the deal. And if you would like, we can also have someone call  
21 over there once the letter goes over to remind her that it's there and  
22 that if she wishes to answer it, of course, she can among all the other  
23 things she'll be answering.

24 COMMISSIONER LEE: Yes.

25 CHAIRPERSON BERRY: Including the hearings.

1 Yes, Vice Chair?

2 VICE CHAIRPERSON REYNOSO: Madam Chair, I've been interested  
3 that the press commentary that I have read since the recent happenings  
4 and the comments by the judge have focused on the Justice Department  
5 particularly and the inappropriateness, in the point of view of those  
6 writers, including editorial writers, of what happened in the  
7 situation. But I haven't seen much comment on the reality that the  
8 Justice Department, it seems to me, was responding to expressed  
9 concerns by Congress and Congressional committees about documents being  
10 lost to China, and it made many headlines, and those headlines and  
11 those hearings have, if I recall correctly, also been discredited.

12 So I see this as somewhat of a mini-McCarthy situation in  
13 which much of it was generated first by some inappropriate  
14 Congressional hearings, and then, the Executive, perhaps being  
15 politically sensitive, responded inappropriately itself. So, it's -- I  
16 think in this situation sadly, there's blame that can go to several  
17 branches of Government.

18 CHAIRPERSON BERRY: Well, I absolutely agree with you,  
19 because the first thing that occurred to me when I saw the comments of  
20 various Congressional people about this, since I have this unfortunate  
21 tendency to remember everything and forget nothing, and I remembered  
22 those same people up there jumping up and down all over the place about  
23 secrets lost to China, and why isn't the administration doing  
24 something? And la da da da da, and what they did was to create a  
25 firestorm, and it's documented in the public record.

1           And you can expect, as Christopher said, when the hearings  
2 take place, there will be all this partisan, you know, finger-pointing  
3 and screaming and yelling, and people who want to hang the Attorney  
4 General out to dry will take the opportunity to proceed to do so, and I  
5 think that the -- what it was was one of those cases where -- this is  
6 just my opinion, and I share yours -- where the Executive Branch  
7 responded to all of that criticism and all of that screaming and  
8 yelling, particularly when the Justice Department has been attacked  
9 politically over and over and over and over again for all manner of  
10 things.

11           And so, they decided to go and probably in consultation with  
12 the Energy Department, and I believe that they behaved inappropriately,  
13 and I'm just concluding that from reading the press and how fast they  
14 moved and the fact that the result ends up being the way that it is.

15           VICE CHAIRPERSON REYNOSO: And the Judge's comment that from  
16 the record, he concluded that a decision had been made here in  
17 Washington, not by the agents in New Mexico but here in Washington, to  
18 proceed with the prosecution, so it appears as though there were  
19 political considerations in that decision, and if there were political  
20 considerations, I can't help but think that it was in response to other  
21 political pressures, many of which were coming from Capitol Hill  
22 unfortunately.

23           CHAIRPERSON BERRY: At the time when that was all going on,  
24 I thought -- and I think that now in retrospect -- it was one of those  
25 situations where under fire, heavy fire, the Executive Branch would

1 simply have to just stand up and say no, no matter how heavy the fire;  
2 no matter how much you thunder; unless you really have something to  
3 bring to the table, to just, you know, take the punishment and say no.

4 VICE CHAIRPERSON REYNOSO: It seems to me that that's the  
5 message that this Commission needs to send both to Congress and to the  
6 Executive Branch. After all, we're here to observe what's happening in  
7 the American scene, and here, from my point of view, we had a sad set  
8 of experiences coming from the Legislative Branch then followed by a  
9 similarly sad set of experiences from the Executive Branch, and the  
10 Judicial Branch is not completely innocent either. The judge was too  
11 quick, it seemed to me, to accept all of those statements, and though,  
12 later, the judge said that he was misled, and manifestly, he was,  
13 perhaps he should have approached those hearings with a little greater  
14 vigor.

15 CHAIRPERSON BERRY: So there's shame and a pox on everyone's  
16 house as it were.

17 VICE CHAIRPERSON REYNOSO: That's the way it appears to me.

18 CHAIRPERSON BERRY: If we think that, maybe we ought to  
19 write up a nice little statement and issue that and not only issue it  
20 but send it around to those particular people and say that we, you  
21 know, view this with alarm, and it's an example of how the entire  
22 process can go awry and appear to, at least, interfere with one's  
23 freedoms.

24 VICE CHAIRPERSON REYNOSO: Yes.

25 CHAIRPERSON BERRY: And that this is really in the civil

1 rights of people, and this is really crucial and really important  
2 stuff.

3 VICE CHAIRPERSON REYNOSO: Well, I say that, Madam Chair,  
4 because we've seen that historically happen other times. It happened  
5 during the Japanese-American internment, where a concern was expressed  
6 by one branch there of the Federal Government but then accepted by  
7 another branch of the Federal Government, and we ended up with an  
8 historic disaster in our country, and this, fortunately, was not quite  
9 that serious, but it affected -- it very much affected the individuals  
10 involved, and from what I read, it has had quite a negative effect on  
11 recruitment of personnel; on the work atmosphere in not only Los Alamos  
12 but other Federal research establishments.

13 There are ramifications, ill ramifications when folk for  
14 political purposes respond as I think both Congress and the Executive  
15 responded on this occasion.

16 CHAIRPERSON BERRY: And it's the worst kind of -- or appears  
17 to be the worst kind of profiling, because it's like the folks who get  
18 stopped on the highway, you know.

19 VICE CHAIRPERSON REYNOSO: Sure.

20 CHAIRPERSON BERRY: Somebody copies something off on a hard  
21 disk. Who's that guy who was over in the Defense Department --

22 COMMISSIONER EDLEY: John Deutsch.

23 CHAIRPERSON BERRY: -- or CIA or something --

24 COMMISSIONER EDLEY: Deutsch.

25 CHAIRPERSON BERRY: -- who copied so much stuff it was

1 ridiculous and had it at home?

2           So if X does it, and X happens to have an Asian face, or Y  
3 does it and happens to be black or whatever it is or Hispanic, then,  
4 you go do something to them. If everybody else is doing the same  
5 thing, you don't do anything to them.

6           COMMISSIONER EDLEY: Yes.

7           CHAIRPERSON BERRY: It's the worst kind of targeting of  
8 people, which is basically what they ended up doing to this guy,  
9 apparently from the record.

10          VICE CHAIRPERSON REYNOSO: Which is a civil rights  
11 violation.

12          CHAIRPERSON BERRY: Yvonne and then Christopher.

13          COMMISSIONER LEE: And the Commission is taking on the  
14 project of racial profiling starting next year, I think, and this  
15 cannot be more critical. I think that while all of us are relieved  
16 that Dr. Lee is finally home, and he is going to get his justice, and,  
17 you know, I think a lot of us are hoping that he will be able to sue  
18 the Government or sue somebody to get his civil rights back, but I  
19 think the larger picture is the damage that's been done, and as the  
20 Vice Chair said, on the thousands of Asian-American scientists working  
21 in the labs.

22                 And when I brought up this case last year, it was not just  
23 to monitor Dr. Lee's case; it was to monitor how other Asian-American  
24 scientists will be impacted in light of Congressional and Executive  
25 Branch reaction to this whole spy allegation, and we've had briefings

1 where leaders from the Asian-American community have come before us to  
2 talk about their frustration that Asian-Americans are perceived to be  
3 the perpetual foreigners; you know, the Japanese internment experience,  
4 even though it happened over 40 years ago, is still being practiced  
5 now.

6 And I am concerned that this whole fallout, while the  
7 attention, appropriately, right now is on Dr. Lee's specific case, but  
8 the damage -- there are a lot of policies that have been implemented as  
9 a reaction to the Congressional hearings; the Cox report has really  
10 affected retention and recruitment of Asian-Americans and Pacific  
11 Islanders going to these national labs, and I wonder if because of the  
12 time sensitivity of this matter whether the staff can really start  
13 working on the racial targeting report that would expect to happen next  
14 year to give them some timely information in order to proceed on this,  
15 because everyone's attention right now is on one individual, but  
16 there's a larger problem facing Asian-American scientists and future  
17 scientific researchers, the ones that go into national labs.

18 And they may, you know, there's a record that Asian-American  
19 scientists have made tremendous contributions; yet, because of this,  
20 they're being looked upon as liars, and it's not fair to them, and it's  
21 certainly not fair to the community and the country.

22 CHAIRPERSON BERRY: Edley? Oh; I'm sorry; I didn't mean to  
23 say Edley, because it's just like saying Knight. Apparently you --

24 [Laughter.]

25 CHAIRPERSON BERRY: You can't call people by their last

1 names; I'm sorry.

2 [Laughter.]

3 CHAIRPERSON BERRY: Please don't strangle me or whatever.

4 COMMISSIONER EDLEY: Yes; exactly.

5 [Laughter.]

6 COMMISSIONER EDLEY: Don't strangle me. You've been warned.

7 [Laughter.]

8 COMMISSIONER EDLEY: I'm just really puzzled about what the  
9 best way to proceed on this is. As the discussion has unfolded, I'm  
10 less confident that only sending a letter of inquiry is the right thing  
11 to do. I'm also very much aware that in what we do and what we write,  
12 we make clear the nexus to the Commission's jurisdiction.

13 You know, it's not just abuse of criminal process, over  
14 alleged abuses of criminal process by locking somebody up so that they  
15 will do a plea. So my instinct is to ask the chairperson to work with  
16 the staff and come up with something effective, which might include  
17 those letters but might include more things. I think it just needs  
18 some more thought, especially if we're going to involve looking at what  
19 Congress has done or reacting to what Congress has or hasn't done.

20 CHAIRPERSON BERRY: Timing is everything.

21 COMMISSIONER EDLEY: Yes; and I just don't think we're going  
22 to work -- I doubt that in another 20 minutes of discussion, we're  
23 going to work out really the best way to proceed, so I would urge the  
24 chairperson to work with the staff to do the smart thing for us.

25 CHAIRPERSON BERRY: Okay; and we will get back to you in



1 terms of -- we have guidance, which is a letter,-a press release,  
2 making sure everything is jurisdictional, and we've heard the -- what  
3 is a consensus about your attitude toward what has taken place.  
4 There's not a problem with that. Okay; so we'll go forward with that,  
5 that guidance.

6 COMMISSIONER EDLEY: May I just add one more thing here in  
7 terms of how you or the staff poke around on this? We keep hearing  
8 statements from officials that oh, no, there was no racial targeting or  
9 profiling involved, and if there's a way to ask some questions that  
10 would probe beneath that, well, like that's fine, Attorney General, but  
11 how do you know? Are you just accepting on face value the statements  
12 by your subordinates that of course, they weren't doing this? How do  
13 you know, and how do you judge whether there was or wasn't?

14 CHAIRPERSON BERRY: Yes; it's like that prosecutor out in  
15 South Dakota from that county; I forget what county it was, who kept  
16 saying that he knew there wasn't any profiling going on, and it turned  
17 out he was simply just making a statement, because no one had walked  
18 into him and said we are profiling; he said --

19 COMMISSIONER EDLEY: Right.

20 CHAIRPERSON BERRY: -- oh, there's no profiling. Then, when  
21 you asked him if he's ever examined the data, no; did you ever collect  
22 any data? No. I just sort of feel that there isn't.

23 All right; so we will probe around and take that guidance as  
24 we proceed with this.

25 Again, we've got this -- and I think on the issue of racial

1 profiling in general, whatever we do needs to be done very quickly. I  
2 would think that even based on our New York report and the things that  
3 we -- I'm just moving to the general subject of racial profiling; at  
4 least when it comes to police matters, we have enough experience  
5 already to be able to do something like recommending to the President  
6 that he issue some kind of Executive Order going beyond the one that he  
7 issued, which was to collect data. That was several months ago; and  
8 that he might consider doing something to simply tell people to stop  
9 doing it. I mean, that -- I mean, we already know enough about the  
10 issue to say that we don't think it should happen.

11           We had just this week the death penalty study from the  
12 Justice Department, which there are some, even according to the  
13 Department, disturbing patterns in who gets the death penalty and what  
14 the prosecutors are recommending, which would make it appear that  
15 there's some kind of profiling going on there. I think that we need to  
16 quickly -- and I'll talk to the staff about this -- put together  
17 something on profiling. This is not something we can put off for two  
18 or three years. I mean, by then, the issue will be done to -- I mean,  
19 it will still happen, but the issue will be done to death.

20           It happened this last week to one of the assistants to the  
21 President at the White House, who was racially profiled by police and  
22 had somebody stop him and his wife with -- and they put rifles and --  
23 and about 14 rifles and a whole bunch of tactical squad and took them  
24 out of their vehicle and handcuffed them, on the grounds that they were  
25 looking for an SUV that was involved in something or other that was

1 black.

2 His didn't happen to be black; okay, that's the first thing,  
3 and the guy that they were looking for was 5-foot-1 or something, and  
4 this guy is like, you know, almost six feet. I mean, it was like all  
5 that -- all that mattered was he was a black guy driving a SUV and  
6 happened to be passing through, so they just decided to pull down on  
7 him and his wife. At least when it happened to me, they didn't have  
8 all those rifles and all the rest of it.

9 So that there is a lot of evidence that it happens. No one  
10 is immune from these practices, and the Montgomery County Police  
11 Department, which is where this took place, I think, is already under  
12 order; they already have an agreement with the Justice Department to  
13 improve their procedures. It seems not to be having any impact. So  
14 I'll talk to them -- with the staff about trying to do something.

15 We had the shooting over -- there's a shooting over -- there  
16 are a lot of shootings around various places. We know about those in  
17 Prince George's County, because we happen to be sitting here, those of  
18 us who live here but everywhere.

19 The other announcement: the UN has a committee on the  
20 elimination of all forms of racial discrimination, and the United  
21 States has, for the last five years, been preparing a report. We  
22 talked about crews going to Geneva to the prep con for the World  
23 Conference on Race, which takes place in 2001 in South Africa, and so,  
24 there are a lot of UN activities going on around this question of race.  
25 The United States -- I went to Geneva on my own with some

1 nongovernmental organizations to discuss with the committee, the Human  
2 Rights Commission and the committee on the elimination of all forms of  
3 racial discrimination the United States report, which had not been  
4 submitted. I understand that the United States will be submitting that  
5 report sometime in the next week, and the staff here at the Commission  
6 had the opportunity to comment on the report, as did all of the other  
7 Federal agencies, before it was sent out.

8           Okay; I don't have any other announcements except to say  
9 that during the executive session, the Commissioners agreed to consent  
10 to the President's nomination of Les Jin to be the Staff Director of  
11 the United States Commission on Civil Rights. Les Jin is general  
12 counsel at the U.S. Broadcasting Board of Governors right now and was  
13 general counsel at the agency to which that was the successor, the U.S.  
14 Information Agency.

15           He has worked at the Environmental Protection Agency -- he's  
16 obviously a lawyer -- and as a trial attorney at the EEOC and various  
17 public interest law firms. He is -- has had a long professional career  
18 and brings a wealth of knowledge about issues of civil rights and some  
19 management skills to the position at the Commission on Civil Rights.  
20 Les Jin will not be coming to work here immediately, since it will take  
21 him some time to disengage from the job that he has now, and in the  
22 interim, Ruby will continue as Staff Director until Les is actually  
23 appointed, which will happen when he comes.

24           And Ruby has resigned as Staff Director effective on the  
25 appointment of Les Jin to be Staff Director of the Commission, and now,

1 I would like to give Ruby the opportunity to say something about her  
2 service or anything else she wishes to say here in this meeting.

3 STAFF DIRECTOR MOY: Thank you, Madam Chair.

4 I don't know how one prepares a farewell speech --

5 [Laughter.]

6 STAFF DIRECTOR MOY: -- but this is the only one that I have  
7 had in my long career, because it has usually been when my employers  
8 leave, I leave with them.

9 [Laughter.]

10 STAFF DIRECTOR MOY: So we've never had any parties or  
11 anything like that.

12 So anyway, I've prepared a statement that I would like to  
13 share with all of the people here, and I thank the chair and the  
14 commissioners for your indulgence.

15 I have served in the Federal Government for 35 years. It has  
16 been an honor and a privilege. Throughout those years, it has been a  
17 rewarding and exciting experience. My service with the Commission has  
18 been one of the highlights of my service and career.

19 When I started at the Commission, there was a GAO report,  
20 which said that the Commission was in "disarray." I accepted the  
21 challenge of turning the agency around. With the help of staff, and  
22 the Commissioners, we accomplished the GAO recommendations. In  
23 addition, we have also had other audits on security and personnel,  
24 which have resulted in positive comments from the Office of Personnel  
25 Management. In addition to updating the Administrative Instructions,

1 there is now an Employees' Handbook. We have also started a pilot  
2 Alternate Work Schedule and have granted employees the right to  
3 participate in the new public transit subsidy program. We have taken  
4 the first steps toward a LAN with the purchase of new computers, and  
5 our products are now being put on our Website. Thus, progress has been  
6 made and is being made.

7 Last year, we had a productive year with approximately 12  
8 reports issued, some with major statements. This year, we have  
9 published 16 reports with six more awaiting your approval. In  
10 addition, working conditions have been improved as a result of  
11 establishing more training programs, providing on-the-premise flu  
12 shots, lecturers for specialty months, implementation of the  
13 Commission's policies and other day-to-day matters. To sum it all up,  
14 significant improvements have been made for the Agency and the  
15 employees, and I am sure with additional resources, more can be  
16 accomplished.

17 I want to publicly thank the staff here at headquarters and  
18 in the regions. Thanks also to the managers, Regional Directors and  
19 all State Advisory volunteers and a special thanks to my own staff in  
20 the Office of the Staff Director. We have been through difficult  
21 times; but we should be proud of what we have accomplished as a team.

22 There is a reason and purpose for everything in life. I  
23 started my career in the Federal government during the Kennedy-Johnson  
24 Administration. On July 2, 1964, I was working in the White House for  
25 President Johnson when he signed The Civil Rights Bill. That piece of

1 legislation changed the history of civil rights in our country. Now, I  
2 find myself stepping down as Staff Director of the Commission on Civil  
3 Rights.

4 To this distinguished body of Commissioners: it is my  
5 highest honor to have been appointed by President Clinton, to be voted  
6 unanimously by the bipartisan members of the Commission, and to have  
7 served as your Staff Director.

8 I leave you with this quote from President Johnson: "This  
9 Civil Rights Act is a challenge to all of us to go to work in our  
10 communities and our states, in our homes and in our hearts, to  
11 eliminate the last vestiges of injustice in our beloved country."

12 Thank you, Commissioners for the privilege of working with  
13 you and the staff as your Staff Director. And now, I stand ready to  
14 greet and assist my successor in the transition.

15 Thank you.

16 CHAIRPERSON BERRY: Okay!

17 [Applause.]

18 CHAIRPERSON BERRY: Thank you very much, Ruby, and we very  
19 much appreciate your willingness to help during the transition, and I  
20 know you look forward to continuing to work on all the causes that we  
21 all care about.

22 The next item on the agenda is the Staff Director's report.

23 COMMISSIONER LEE: Madam Chair, can I make some  
24 announcements?

25 CHAIRPERSON BERRY: Yes; oh, you have announcements? Oh, go

1 back to announcements.

2 COMMISSIONER LEE: I just want to add that anyone who has  
3 worked in the Federal Government for 35 years, you deserve to have some  
4 time off for yourself.

5 [Laughter.]

6 COMMISSIONER LEE: And I do want to thank you personally --

7 COMMISSIONER EDLEY: Platinum watch.

8 COMMISSIONER LEE: -- for all the work you've done for the  
9 Commission.

10 STAFF DIRECTOR MOY: Thank you.

11 COMMISSIONER LEE: And I am proud of what you have done.

12 A couple of announcements. Last year, the President,  
13 through his Executive Order, had created the White House Initiative on  
14 Asian-Americans and Pacific Islanders to evaluate and develop  
15 strategies on how to better improve access to Federal programs and  
16 services for Asian-Americans and Pacific Islanders. As part of the  
17 initiatives, two bodies were created. One is the Interagency Working  
18 Group, whereby Federal agencies were working together to look at the  
19 specific programs on how to better serve the API community, and I have  
20 been your representative from the Commission to the IWG, and we've been  
21 working on a couple of projects.

22 The first one we just finished is the Federal inventory plan  
23 that we submitted, and we are also going to look at how each agency can  
24 share best practice programs with each other.

25 The second one is a creation of a 15-member advisory



1 commission. Their task is to bring together community concerns and  
2 suggestions to the President through their town hall meetings and what  
3 have you and to develop programs, suggestions to the Executive Branch.  
4 They held a town hall meeting in LA back in July. Over 500 people  
5 attended and testified on a whole range of issues; in general, the  
6 issue of linguistic and cultural sensitivity needs to be addressed by  
7 all Federal program providers.

8 The second town hall meeting will be held in New York on  
9 Monday the 18th, and Commissioner Wilson, hopefully, you will be able  
10 to join them.

11 They will be presenting a preliminary report at the end of  
12 this year to this President and a final report based on all the town  
13 halls, all the research and everything else will be presented to the  
14 new President next May.

15 CHAIRPERSON BERRY: What's the date that you want  
16 Commissioner Wilson there?

17 COMMISSIONER LEE: September 18; it's a Monday.

18 COMMISSIONER WILSON: Why don't you just tell me where it  
19 is?

20 COMMISSIONER LEE: I've forgotten; it's some university.  
21 I'll get it to you.

22 COMMISSIONER WILSON: In New York City.

23 COMMISSIONER LEE: It's in New York City. It's an all-day  
24 hearing from 9:00 to 7:00 so -- the second announcement I'd like to  
25 make is the President also created Executive Order 13168, which is

1 improving access to services for persons with limited English  
2 proficiency. All Federal agencies, and I assume that includes this  
3 body, are required to submit to the Department of Justice by December  
4 11 a proposal on how to better provide their services and programs to  
5 persons who are limited English proficient. And given this  
6 Commission's experience in this area, our reports on bilingual  
7 education and other areas and also various reports produced by our  
8 different SACs, and I thought that we can make some meaningful  
9 contribution to this as different Federal agencies are struggling to  
10 meet this tight deadline to develop some programs. I wonder if there's  
11 any way that this Commission can lend some awareness through either a  
12 forum or a staff briefing to the Commission so that other departments  
13 can benefit from our experience.

14 So those are my only two announcements.

15 CHAIRPERSON BERRY: Okay; what would you suggest that the  
16 Commission -- that we do here? What would you like us to do again?

17 COMMISSIONER LEE: Well, I hate to always bring up the  
18 request for a briefing, because I know the staff is overwhelmed, but  
19 since the staff will have to put together a strategy anyway as part of  
20 the Executive Order, I wonder if they can do it through a public report  
21 to the Commission, so that other Federal agencies can be invited to  
22 listen to your report to us.

23 CHAIRPERSON BERRY: If the staff were going to do that --  
24 let's see; which office would do that?

25 [Pause.]

1 VICE CHAIRPERSON REYNOSO: A multi-unit effort.

2 STAFF DIRECTOR MOY: Did we even get the notice yet?

3 CHAIRPERSON BERRY: A multi-unit effort. Why don't we --

4 we'll pass this idea on to the --

5 COMMISSIONER EDLEY: And does the Executive Order even apply  
6 to us?

7 COMMISSIONER LEE: It's to all Federal agencies providing  
8 programs that benefit the public. So I assume --

9 COMMISSIONER EDLEY: Because they usually exempt independent  
10 entities like us from executive orders. So maybe that's why it's not  
11 on the staff's radar screen --

12 CHAIRPERSON BERRY: Right.

13 COMMISSIONER EDLEY: -- as yet. OMB might not have  
14 transmitted it even --

15 CHAIRPERSON BERRY: To us.

16 STAFF DIRECTOR MOY: No, I haven't seen it.

17 CHAIRPERSON BERRY: So why don't we check and make sure?

18 And if it doesn't apply to us, what we can do is monitor how it's being  
19 done at the other agencies, Yvonne.

20 COMMISSIONER LEE: Okay.

21 CHAIRPERSON BERRY: Okay?

22 All right; okay; thank you. Any other announcements,

23 Yvonne?

24 COMMISSIONER LEE: No.

25 CHAIRPERSON BERRY: Okay; anyone else have any?

1 [No response.]

2 IV. STAFF DIRECTOR'S REPORT

3 CHAIRPERSON BERRY: Okay; let's go to the Staff Director's  
4 report. One of the things that we had asked the staff to do, and they  
5 did an excellent job, in my opinion, was to put together a packet of  
6 materials on comparable worth, and they did that, and after reading the  
7 materials, it seemed to us, me and the Staff Director, that one, we  
8 didn't have time to get together a briefing for this meeting but that  
9 they have done such a good job that maybe we should read carefully what  
10 they've put here and then come up with some ideas, better ideas about  
11 how we should go forward with this.

12 In particular, for some reason, I had noticed that there  
13 were all these hearings that took place on the issue of fair pay and  
14 that it seemed that instead of there not being enough documentation  
15 that it's just a question of not having enough political support to  
16 gain the passage of this legislation. So what we will do is we won't  
17 give up the idea, but we'll wait until we've had a chance to absorb  
18 these materials that they put together, which are quite extensive, and  
19 then make a decision about how such a briefing might be put together.  
20 So there's that.

21 The other -- I'm sure we have a long list of briefings  
22 somewhere that people have suggested that we do, and I guess we will  
23 need to review those at some time. For -- the only other thing that I  
24 wanted to point out here is that there had been a task force that we  
25 had set up on SACs, State Advisory Committees. It was Commissioner

1 Edley who suggested it, and the staff put together some materials, some  
2 briefing materials, for the group of commissioners who agreed to serve  
3 on the task force to read, and I read those materials too.

4 And in discussing the materials, the Regional Directors had  
5 some concerns and were aware of this, but in discussing the materials,  
6 the conclusion was reached that there really aren't any policy issues  
7 to speak of as they relate to the SACs and the regional staff and  
8 whether the SAC membership is being constituted in a way that is  
9 beneficial and effective and productive and whether the activities of  
10 the SAC are uniformly -- SACs -- are uniformly productive and  
11 beneficial and effective but that they are mainly management issues;  
12 that they are not really policy issues and that they turn on how  
13 effectively the SAC -- the Regional Directors are managed and how  
14 effectively they manage their operations within their specific regions.

15 So that since this is a management issue, what we might do  
16 is dump it in Les Jin's lap as his number one first priority --

17 [Laughter.]

18 CHAIRPERSON BERRY: -- when he comes, to sort out all this  
19 stuff and to make sure, for example, that kind of statements we want  
20 when there are new members; the kind of agendas and the like are  
21 presented to us when we review them and just deal with it as a  
22 management issue instead of proceeding with the task force. So that's  
23 what we've decided to do at this time, and so, we'll hand that to Les  
24 when he comes among other things.

25 COMMISSIONER EDLEY: Congratulations.

1 CHAIRPERSON BERRY: Yes.

2 [Laughter.]

3 CHAIRPERSON BERRY: What other -- anything else under the  
4 staff director's report, if anyone has a question about it or anything?

5 COMMISSIONER LEE: Actually, does the Staff Director have  
6 the latest schedule for the Hawaii SAC forum?

7 CHAIRPERSON BERRY: Yes; thank you for discussing the Hawaii  
8 SAC.

9 COMMISSIONER LEE: We have to make our plans.

10 STAFF DIRECTOR MOY: Things are being finalized right now,  
11 and we'll be sending it out to you probably the end of today or Monday,  
12 okay? We can fax it.

13 CHAIRPERSON BERRY: But the forum is scheduled for September  
14 29, and Commissioner Meeks, I think you're arriving on Thursday as I've  
15 been told that, and are you red-eyeing?

16 COMMISSIONER MEEKS: No, I'm leaving on Wednesday. I'm  
17 arriving on Wednesday.

18 CHAIRPERSON BERRY: Oh, good.

19 COMMISSIONER MEEKS: It would get me in too late.

20 CHAIRPERSON BERRY: Good, good.

21 VICE CHAIRPERSON REYNOSO: No; I'm arriving Thursday. I'm  
22 red-eyeing back, actually.

23 CHAIRPERSON BERRY: Oh, okay.

24 VICE CHAIRPERSON REYNOSO: Because I've got to get back for  
25 Saturday.

1 CHAIRPERSON BERRY: But you're not red-eyeing over there.

2 VICE CHAIRPERSON REYNOSO: Right.

3 CHAIRPERSON BERRY: But you're closer anyway.

4 There was some concern on the part of the SAC members about  
5 having commissioners meet with some of the elders, and I was thinking  
6 that if you were going to be there, perhaps you might be willing to do  
7 that; whoever's there on Thursday could meet with some of the elders in  
8 the Hawaiian community. They thought that that was a respectful thing  
9 to do, the way they handle things in their culture, their tribe; okay.

10 VICE CHAIRPERSON REYNOSO: Excuse me; would that be an  
11 evening meeting or daytime meeting?

12 STAFF DIRECTOR MOY: Yes; thank you, Madam Chair.

13 The SAC proposed to have a meeting to discuss other issues  
14 and have requested any commissioners who are going to be there before  
15 Friday, if they could also meet with the elders. They will probably  
16 start their meeting between 4:00 and 6:00, and then, if Commissioners  
17 are available, they could meet the elders from 6:00 on.

18 VICE CHAIRPERSON REYNOSO: I was just looking at my  
19 schedule. I get in at 5:23.

20 CHAIRPERSON BERRY: Oh, well, you could make part of the  
21 elders. You could make the elders meeting.

22 STAFF DIRECTOR MOY: Great; I'll so inform them.

23 CHAIRPERSON BERRY: Okay; good, great.

24 STAFF DIRECTOR MOY: Thank you.

25 CHAIRPERSON BERRY: Yes.

V. STATE ADVISORY COMMITTEE APPOINTMENTS

FOR ARKANSAS AND OKLAHOMA

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CHAIRPERSON BERRY: The next item on the agenda is the State Advisory Committee appointments for Arkansas and Oklahoma. We had deferred these while we had discussions about, if I recall correctly, while we had discussions about the SACs. And now that we have decided that this is a management issue, then, we can proceed with these two while the overall question is dealt with if we wish to do so. That's where we are on these two appointments.

We were given statements by the SAC chair or proposed SAC chair, right?

STAFF DIRECTOR MOY: And it was read in last --

CHAIRPERSON BERRY: And they were read last time. So the idea is to go ahead with these in terms of grandfathering them in since they were in process before this all happened and then proceed with whatever management initiatives or changes need to be made from this point on is the idea.

So could I get a motion to agree to these two?

COMMISSIONER MEEKS: I'll move.

CHAIRPERSON BERRY: Okay; could I get a second?

COMMISSIONER WILSON: Second.

CHAIRPERSON BERRY: Okay; all in favor, indicate by saying aye.

[Chorus of ayes.]

CHAIRPERSON BERRY: Opposed?



1 [No response.]

2 CHAIRPERSON BERRY: So ordered.

3 COMMISSIONER EDLEY: Abstain.

4 CHAIRPERSON BERRY: Commissioner Edley abstains.

5 VICE CHAIRPERSON REYNOSO: Madam Chair?

6 CHAIRPERSON BERRY: Yes?

7 VICE CHAIRPERSON REYNOSO: While I voted yes, I do want to  
8 point out that for the Oklahoma advisory committee, we have only one  
9 person under 40, and I would hope that we could do a little bit better  
10 than that.

11 CHAIRPERSON BERRY: Okay.

12 Yes?

13 STAFF DIRECTOR MOY: Madam Chair, I have a list of  
14 appointment packages that are somewhere in the pipeline, and I didn't  
15 know how you want to handle that: if we should defer all of them;  
16 grandfather them in --

17 CHAIRPERSON BERRY: I think we should defer them until Les  
18 comes and makes a review and decides how he's going to manage the  
19 process.

20 STAFF DIRECTOR MOY: Okay.

21 CHAIRPERSON BERRY: Unless you tell me that there is some,  
22 you know, some urgency or something that's happening that makes it  
23 necessary to act on some specific one, and then, we would take it up.  
24 Otherwise, we'd wait.

25 STAFF DIRECTOR MOY: Let me inform you later on this after

1 I've had a chance to review the dozen that I have here.

2 CHAIRPERSON BERRY: Okay.

3 STAFF DIRECTOR MOY: Thank you.

4 VI. FUNDING FEDERAL CIVIL RIGHTS ENFORCEMENT

5 CHAIRPERSON BERRY: Okay; all right; the next item is the  
6 Funding Federal Civil Rights Enforcement Report. This report, and I'm  
7 reading from the executive summary, demonstrates that reductions in  
8 funding for Federal civil rights enforcement have occurred  
9 simultaneously with growing work loads. As a result, the nation's  
10 civil rights laws, which protect against invidious discrimination and  
11 aim to ensure equal opportunity to all are undermined, and enforcement  
12 of these laws continues to be threatened.

13 Beginning where the Commission's 1995 report on funding for  
14 civil rights enforcement ended, the study analyzes the budget of six  
15 principal civil rights agencies since FY 1994. It concludes that  
16 inadequate funding and staff levels persist in each of these agencies  
17 and restrain them from sufficiently fulfilling their duties.

18 And then, there are some specifics that we can point out  
19 from the overall report. In the Department of Education, for example,  
20 annual complaints have more than doubled over the last 10 years, but  
21 the budget level, FTE level, the number of staff in FY 1999 was 10  
22 percent below what it was in FY 1994, and the FY 2001 request estimates  
23 that the staff level will drop 12 percent below what it was in 1994.

24 At the EEOC, which received over 10,000 more annual  
25 complaints this decade than it had during the 1980s, the FTE level for

1 2001 is 10 percent below what the actual FTE level was in 1981. In FY  
2 1999, the fiscal year, EEOC had 239 fewer full-time equivalent staff  
3 than they had in 1994. In the Labor Department, the Office of Federal  
4 Contract Compliance had a 7.4 percent decrease in staff levels between  
5 1994 and 1999. In real spending power -- that means correcting for the  
6 -- whatever inflation occurred during that time -- the FY 2001 budget  
7 request is 5 percent lower than it was last year and 2.2 percent lower  
8 than it was in 1994.

9           If you look at the Department of Justice, the 2001 budget  
10 request is 20 percent higher than 1994, and you'd say oh, that's really  
11 great. They're getting more money in the Civil Rights Division.  
12 However, over that same period, the workload and responsibilities of  
13 the Civil Rights Division underwent an enormous growth, and CRD only  
14 experienced slight increases in resources that are documented in this  
15 report. And I also point out that some of the money that the Civil  
16 Rights Division got in terms of increase was reprogrammed out of the  
17 Civil Rights Division and used for other purposes, which means that  
18 they ended up with less money than they had before.

19           For 2001, the Health and Human Services Department -- and  
20 this is a particular bugaboo -- you've got the largest domestic agency  
21 with all of those health programs that affect people all over this  
22 country, and it predicts a rising complaint workload that will be  
23 parallel to the percentage increase every year since 1994. But the  
24 2001 budget request says that they will get an FTE level of 27 above  
25 what they had in 1999 and 47 what they had in 1994. Their actual

1 budget is -- I think it's \$22 million. It was \$22 million 8 years ago;  
2 and it's \$22 million now. That's without correcting it for inflation.

3 And here, they are supposed to monitor; have compliance  
4 reviews and handle complaints from people who complain about, for  
5 example, not being admitted to nursing homes because of their race or  
6 national origin or ethnicity; difficulties in getting all kinds of  
7 health benefits; children who do not get benefits from the Federal  
8 Government; all of these things. And yet, you have this tiny little  
9 civil rights office that people walk around pretending has the capacity  
10 to do something when somebody mentions a question of civil rights.

11 In the Housing and Urban Development Department, the Fair  
12 Housing Office's workload complaint rises every year. It's about 15  
13 percent greater than it was in 1994. Yet, staff levels have decreased  
14 by 22 percent from 1994 to 2000, and real spending power, the budget  
15 request for FHEO has decreased by 25 percent during that period, and  
16 appropriations have fallen by 28 percent.

17 This 1995 report that we did at the Commission on funding  
18 for civil rights enforcement warned that reductions continued to  
19 undermine our national enforcement of civil rights. This current study  
20 concludes that the President and the Congress have continued to retreat  
21 from their obligation to ensure that adequate resources are provided  
22 for civil rights enforcement. As a result, the agencies and the laws  
23 they enforce are increasingly in danger.

24 Unfortunately in this country, fundamental institutions such  
25 as education institutions, housing, nursing homes and so on, where

1 there are still regularly complaints of a denial of access based on  
2 race, color, religion, sex, age, disability and national origin go with  
3 no response. And so, we have the laws, but the agencies -- and the  
4 other point this report makes is that the Civil Rights Division of the  
5 Justice Department is not the only civil rights agency, and so, you've  
6 got these other agencies that are on the front lines of this battle.

7           And the other distressing thing about this is that it has  
8 nothing to do with hot button issues like affirmative action. This has  
9 nothing to do with affirmative action. What it has to do with is plain  
10 old, garden variety enforcement. And so, the Congress talks out of  
11 both sides of its mouth; the President of the United States, none of  
12 them have ever worked hard enough to get the money that these agencies  
13 need, and I think we need to pass this report, and we need to then  
14 publicize it so that we can reinforce, during this appropriations  
15 season, the failure of the Government to adequately fund these  
16 agencies. Workloads -- we document in this report how the workloads  
17 are increasing everywhere.

18           I said to someone that a large part of the workload was  
19 attributed to the increase in the disability, with the disability laws  
20 that were passed, and without thinking, the person said to me well,  
21 maybe if they didn't pass any laws, there wouldn't be anything to  
22 enforce --

23           [Laughter.]

24           CHAIRPERSON BERRY: -- and the workloads wouldn't increase.

25           [Laughter.]

1 COMMISSIONER EDLEY: That's one idea.

2 CHAIRPERSON BERRY: That's one idea.

3 COMMISSIONER EDLEY: Yes.

4 CHAIRPERSON BERRY: It's like when I was in the Department  
5 of Education years ago and discovered that one of the offices had not  
6 distributed information on how people could apply for its programs  
7 under some new provisions. Because we were sitting there discussing  
8 why the -- they had all this money left in this program, and I said  
9 what happened? And they, you know, they looked around, and finally,  
10 they came back and said oh, well, the staff forgot to send out,  
11 disseminate the instructions on how people were to apply, so nobody  
12 knew how to apply, so nobody applied. And the people who did apply  
13 under the old rules were turned down --

14 [Laughter.]

15 CHAIRPERSON BERRY: -- because they weren't following the  
16 right rules.

17 [Laughter.]

18 CHAIRPERSON BERRY: So you had all these people out there  
19 who needed student aid or whatever it was who couldn't get it and  
20 didn't know why they couldn't get it. And I said it's very easy to  
21 keep your money and have a surplus. If you don't send out the  
22 instructions, nobody will apply for it.

23 COMMISSIONER EDLEY: That's a lot smarter than Nixon  
24 impounding things, right?

25 CHAIRPERSON BERRY: Yes.

1 [Laughter.]

2 CHAIRPERSON BERRY: So therefore, I guess, if you didn't  
3 pass any civil rights laws, then, you wouldn't need any money to  
4 enforce them.

5 So I want to thank the staff, by the way, the staff in OCRE  
6 and the staff who -- Commissioner Edley and the other special  
7 assistants and mainly OCRE for -- and the staff in OSD for being able  
8 to get this thing together so quickly.

9 Yes, Vice Chair?

10 VICE CHAIRPERSON REYNOSO: Madam Chair, I think this is one  
11 of the more important reports that have come to us, because it puts  
12 life to what we know, and that is that we have an increasing number of  
13 pieces of legislation that do aim to protect a wider portion of the  
14 American public. But without the enforcement mechanism and  
15 particularly without the enforcement funding for that mechanism, those  
16 promises of equality go for naught.

17 So I consider this a very important report, and I wonder if  
18 we could explore how best to bring it to the attention of the President  
19 and Congress in a more dramatic way that will bring further life to it.  
20 I'm not sure whether we should ask some of the agency heads to come and  
21 speak to us about this. I don't know whether we should maybe talk to  
22 some of the folk who have tried to make reports and haven't succeeded  
23 or who have made reports and haven't gotten any response from the  
24 agencies because they are overwhelmed.

25 I just think that we need to give further life to this

1 report because it affects the lives of people. Those of us who are out  
2 in our communities get complaints from individuals who refer them to  
3 these agencies and then oft times find that the agencies haven't been  
4 able to respond, not because the people are bad people but because they  
5 have so many complaints, so many things to do.

6 CHAIRPERSON BERRY: I guess we could get some people who  
7 have filed complaints and haven't had any responses to come to a press  
8 briefing of some kind or get some of the organizations who represent  
9 such people to come and talk about the difficulties or some of the  
10 school systems, for example, where there are problems, and there  
11 haven't been compliance reviews.

12 For example, if you talk about zero tolerance and other  
13 issues, one of the things that OCR should be doing is in compliance  
14 reviews, when they go out to review the school systems without  
15 complaints being filed, they should be able to figure out problems and  
16 report on them before they become monumental, but they don't have the  
17 staff to do that.

18 COMMISSIONER EDLEY: Yes.

19 CHAIRPERSON BERRY: So, therefore, they can't do it.

20 COMMISSIONER EDLEY: Yes..

21 CHAIRPERSON BERRY: And that's true in every agency, because  
22 compliance reviews are supposed to be used to figure out problems and  
23 to be prophylactic without your having to file a complaint.

24 Yes, Commissioner Edley?

25 COMMISSIONER EDLEY: Also, there are serious problems on the



1 horizon also. I'm left after reading this carefully with a sense that  
2 there could well be a disaster in the spring in the Civil Rights  
3 Division in the voting rights arena with a flood of redistricting that  
4 will occur in every state and local jurisdiction in the country  
5 following the census, and all of the work that the Justice Department  
6 is supposed to do; preclearing redistricting strategies, and without a  
7 substantial increase in resources that I don't see on the horizon,  
8 you're going to have serious compromising of people's voting rights,  
9 and that's particularly true, I think, for Hispanic and Asian Americans  
10 in communities where there have been substantial demographic shifts.

11 I have to also say that as close an observer as I have been  
12 of this administration, particularly in the area of civil rights, I was  
13 under the impression that we had made modest progress in resources for  
14 civil rights enforcement, and I was just deeply mistaken, as evidenced  
15 by this report. So I really was real shocked doesn't overstate it.  
16 This is a record that I think, just to put it bluntly, had it occurred  
17 in a Republican administration, I and a lot of folks in the civil  
18 rights community would have been screaming bloody murder about the  
19 subtle effort to undermine the civil rights of Americans.

20 And I think the administration and people in Congress have  
21 gotten something of a free ride, totally unjustified, under the  
22 circumstances documented by this report.

23 On the question of what to do, I'm far from clear, but it  
24 does seem -- I know that senior officials in the administration and  
25 certainly the leadership on both sides of the aisle on the Congress

1 have never in any year gone to the wall to insist, at the tail end of  
2 the appropriations process, in those midnight discussions when they're  
3 trying to make deals; they have never made the civil rights enforcement  
4 budgets a top priority. There were a couple of years in which it was a  
5 second order priority, but it has never been a top priority.

6 I'm not aware of any circumstance, of any occasion on which,  
7 for example, the President has threatened to veto an appropriations  
8 bill because his extremely modest requests for increases in funding  
9 were not honored by the Appropriations Committee, not one single veto  
10 threat as far as I can tell, as far as I can recall, over the last  
11 seven years.

12 And I don't know whether, in the history of the Commission,  
13 meetings with senior government officials or with people on the Hill  
14 has ever been effective at communicating the Commission's views on  
15 matters. I don't know whether, for example, we perhaps need to do  
16 something to light a hotter fire under the feet of people in the civil  
17 rights community, in the various civil rights organizations and really  
18 chastise them, perhaps, for not doing all they can do to make these  
19 funding issues more visible to the public at large and more politically  
20 salient to elected officials.

21 But I really think especially now in the last year of this  
22 Administration, within weeks of the end of the appropriations season,  
23 we've got the facts. It's a very telling story, and I at least would  
24 volunteer to attend any kind of meetings that the chair thinks might be  
25 helpful, and I'd be happy to help compose some purple prose in some

1 letters or press releases.

2 CHAIRPERSON BERRY: Okay; we will -- yes, Commissioner  
3 Meeks?

4 COMMISSIONER MEEKS: Well, I don't know if there's ever been  
5 a report like this done, a compilation that really examined -- I mean,  
6 to me, it was completely unbelievable, and, you know, what that says to  
7 just the ordinary person on the street that has their civil rights  
8 violated is that forget it; it's not going to -- you know, nothing's  
9 going to happen. And that's the way I feel when I talk to a lot of  
10 people, to people who come to me.

11 But since we have compiled this, I mean, we're the one  
12 agency that really needs to do whatever we can to bring this to light,  
13 and I don't think we should -- we should pull out all the stops to do  
14 it.

15 CHAIRPERSON BERRY: Okay; well, we will try to develop over  
16 the next week a strategy, a week or two. These discussions are going  
17 to be going on on the budget for the next week or two; a way of  
18 dramatizing the information in the report. Large numbers of people in  
19 the public assume that civil rights enforcement is being funded. If  
20 they never had a complaint themselves that they filed anywhere, they  
21 assume that when they hear politicians talking about how they believe  
22 in strong civil rights enforcement that they're probably funding these  
23 things.

24 It never occurs to them that that's just hot air, and they  
25 also -- the people who are in the agencies have not been very vocal, at

1 least for the last eight years, about the fact -- well, they've never  
2 been vocal. The political appointees who run agencies are never very  
3 vocal about how they're getting screwed -- excuse the expression --  
4 because they are, or their constituencies are.

5           And so, and the civil rights groups, as you say, have not  
6 been very activist. They lobby, and they send letters, and they meet  
7 with people, but they don't try to dramatize the issues. So we have to  
8 figure out a way, only when someone files a complaint; when people file  
9 complaints, and they don't get any response, and it disappears in the  
10 swamp somewhere, then, they start, of course, writing to us, and we get  
11 letters from them, and we get them in our complaint files about why the  
12 agencies aren't doing what they're supposed to do and so on and so on  
13 and so on.

14           And then, we start trying to deal with the agencies. But it  
15 just is -- it's one of those things that people assume and that is sort  
16 of below the radar screen. We did not, of course, discuss our own  
17 budget, which suffers from the same problem that HHS and the rest of  
18 them suffer from, since if we did a little chart with the budget of the  
19 Civil Rights Commission, it would show the same stagnation and cuts and  
20 everything else and struggling to try to do a job without attention to  
21 it.

22           There are no champions in the political process, either on  
23 the Hill or in the White House, for civil rights enforcement. There  
24 are people who talk about it, and if you ask them, they say they're in  
25 favor of it, but there's nobody -- as you say, there's nobody who sits

1 down in the budget process and says doggone it, if we don't get money  
2 for that, then, you know, this far and no further. And whenever you  
3 ask, they say, well, it's below the radar screen because it's not  
4 enough money.

5 COMMISSIONER EDLEY: Right.

6 CHAIRPERSON BERRY: You know, you guys, all the agencies  
7 together, the money isn't enough for us to pay attention to. So,  
8 therefore, we forget about it, because we lose that much on the way to  
9 the bathroom, you know.

10 And so, it's really hard to keep putting their feet to the  
11 fire, and I will be, with the staff, trying to figure out some way to  
12 publicize this and dramatize it and will take advantage of the offers  
13 to help.

14 COMMISSIONER EDLEY: Mary, can I just underscore one part  
15 again? I think my friends in the civil rights community are also, I  
16 think, at fault in this, because they've been willing to accept the  
17 Administration saying that it will threaten to veto because the Head  
18 Start increase isn't enough or because the Veterans' health increase  
19 isn't enough, but they haven't been willing to demand that the  
20 Administration also threaten a veto because these few millions of  
21 dollars that are at stake here don't get on the list of first  
22 priorities. And that really is not the kind of advocacy, the kind of  
23 support for civil rights enforcement that we should expect from the  
24 public interest community.

25 CHAIRPERSON BERRY: And we have to ask why that is, too.

1 Well, this is not the place -- this is deteriorating into a seminar  
2 like I have every Tuesday afternoon.

3 COMMISSIONER EDLEY: Right.

4 CHAIRPERSON BERRY: But we have to ask why they don't really  
5 make the point. Maybe it's hard to do. Maybe it's because it's a  
6 bunch of numbers.

7 VICE CHAIRPERSON REYNOSO: You mean it's elevating to a  
8 seminar.

9 CHAIRPERSON BERRY: Oh, it's elevating to a seminar.

10 [Laughter.]

11 CHAIRPERSON BERRY: Not deteriorating to a seminar.

12 [Laughter.]

13 CHAIRPERSON BERRY: I'll ask my policy seminar why this is  
14 the case rather than -- okay; we'll work on it.

15 All right; we have a motion to approve -- did we have a  
16 motion to approve this?

17 COMMISSIONER MEEKS: So moved.

18 CHAIRPERSON BERRY: Okay; a second?

19 VICE CHAIRPERSON REYNOSO: Second.

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

21 [Chorus of ayes.]

22 CHAIRPERSON BERRY: Opposed?

23 [No response.]

24 CHAIRPERSON BERRY: So ordered.

25

## 1 VII. "SHARING THE DREAM: IS ADA ACCOMMODATING ALL?" REPORT

2 CHAIRPERSON BERRY: This segues into the disability report,  
3 "Sharing the Dream," which is the next item, and that is because you  
4 note from the budget report that a large part of the workload of these  
5 agencies has to do with trying to sort out issues related to the  
6 disabled, and this report is timely and significant. It does come on  
7 the eve of the nation's designated month for recognizing individuals  
8 with disabilities. I'm reading from the executive summary of the  
9 report.

10 And as we celebrate the 10-year anniversary of ADA, the  
11 report, as you know, has the historical context with passage, and then,  
12 it describes the law's practical impact on people it is intended to  
13 protect and the agencies. It also reports how the Supreme Court's  
14 recent narrow construction of ADA's coverage obscures the original  
15 vision of its proponents, which was to provide a clear and  
16 comprehensive national mandate for the elimination of discrimination  
17 against individuals with disabilities, and it also addresses several  
18 areas that have generated debate and disagreement as to the proper  
19 coverage of the ADA: issues of substance abuse and the coverage of  
20 psychiatric disabilities.

21 More importantly, the report provides concrete  
22 recommendations, including providing adequate resources, which is why  
23 it segues into the other report -- anyway, there's a connection between  
24 the two; enhancing education for individuals and businesses as to  
25 rights and responsibilities and providing further incentives through

1 the Social Security Administration for individuals with disabilities  
2 and economic incentives for businesses that make facilities accessible  
3 or accommodate individuals with disabilities.

4           The hearing which we held which was the basis of this report  
5 -- it's an OGC report -- was not designed to exhaustively analyze ADA.  
6 The hearing was designed to raise some of the issues. At the time that  
7 we had the hearing, the Supreme Court had given limited direction on  
8 ADA. But in the eight years since its passage, the Supreme Court had  
9 decided only two cases, but since the hearing, the Supreme Court has  
10 decided a number of cases, some directly addressing issues that were  
11 discussed by the panelists.

12           So the report is limited by what was presented at the  
13 hearing, but it's not -- the staff went beyond that and updated it to  
14 discuss the impact of the Supreme Court decisions on the issues  
15 discussed at the hearing. So there are significant problems with the  
16 decisions in terms of the record that was made about what was needed,  
17 but -- and there remains some controversy about ADA and resistance to  
18 it in some quarters and confusion about its extent and what it means.

19           One new departure in the hearing was to look at the coverage  
20 of psychiatric disabilities, because initially, ADA was focused on  
21 people with physical disabilities, and psychiatric disabilities, a  
22 rather complicated area, became the largest source of ADA claims filed  
23 at EEOC, so that we had a great deal of information about that, too, in  
24 the report.

25           The executive summary says, as usual, hindsight is 20:20,



1 and the concerns that were expressed at the hearing about how there  
2 would be all kinds of excesses as a result of the coverage didn't  
3 really turn out to be the case. The psychiatric guidelines provide  
4 useful guidance and examples of how ADA should work for employers.

5 This is an important and a complicated issue, and the report  
6 does give guidance to EEOC, and it also points out areas in which there  
7 should be new policy guidance. The final chapter, of course, has the  
8 recommendations in the report. When the ADA was signed, it was  
9 proclaimed at that Rose Garden ceremony, which I was invited to but  
10 didn't go because I had to teach a class, so I went to go teach a class  
11 -- it was proclaimed: "Together, we must remove the physical barriers  
12 we have created and the social barriers we have accepted, for ours will  
13 never be a truly prosperous nation until all within it prosper."

14 And that's still true, and this report is just one step on  
15 the way to trying to get adequate enforcement of ADA. I want to  
16 commend the staff for completing this, and it's a solid report, and I  
17 would like to have a motion to approve it.

18 COMMISSIONER MEEKS: So moved.

19 VICE CHAIRPERSON REYNOSO: Second.

20 CHAIRPERSON BERRY: Okay; some discussion?

21 VICE CHAIRPERSON REYNOSO: I want to also commend the staff.  
22 I think it's a very good report. And I want to further mention that  
23 I'm very pleased that we really are catching up with ourselves in terms  
24 of the report, because we've been struggling with that for some years,  
25 so I think that we're making very exciting progress in that regard.

1 CHAIRPERSON BERRY: And I want particularly to say that  
2 Eddie Hailes has done an excellent job with his staff as acting general  
3 counsel, and really, we've managed to get a lot of these things out of  
4 the pipeline, and he's got a bunch of new attorneys who are bright-eyed  
5 and still smiling.

6 And let me just ask Eddie, apropos of that: how are we  
7 doing on the pipeline? I know I can look at the -- what is this thing  
8 called we're supposed to look at?

9 STAFF DIRECTOR MOY: MIS.

10 CHAIRPERSON BERRY: MIS and read it myself but let me ask  
11 you: how are you doing on the reports?

12 MR. HAILES: We're doing very well.

13 [Laughter.]

14 MR. HAILES: We're basically caught up with one last report  
15 to go to the Staff Director.

16 CHAIRPERSON BERRY: And then, you'll be caught up; okay;  
17 that's great.

18 COMMISSIONER EDLEY: Congratulations.

19 CHAIRPERSON BERRY: That's great. Hear, hear, hear; hear,  
20 hear, hear.

21 [Applause.]

22 MR. HAILES: It's because of the hard work of the staff that  
23 the Staff Director has allowed me to hire.

24 CHAIRPERSON BERRY: Okay; all right.

25 VICE CHAIRPERSON REYNOSO: We'll have bonuses for all the

1 staff with all the money we're getting from Congress.

2 [Laughter.]

3 COMMISSIONER WILSON: Maybe the secret is that Eddie forgot  
4 to issue the instructions on paying his lawyers, and that's why there's  
5 all that money.

6 CHAIRPERSON BERRY: Aha!

7 [Laughter.]

8 CHAIRPERSON BERRY: Aha!

9 Yes?

10 COMMISSIONER MEEKS: Yes, I just wanted to say also that I  
11 thought the recommendations were really -- I mean, it appeared to me  
12 solid without having to --

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER MEEKS: And they were not vague and sort of  
15 generic. I thought this was a really good report.

16 CHAIRPERSON BERRY: Yes?

17 COMMISSIONER WILSON: I concur.

18 CHAIRPERSON BERRY: You concur?

19 Commissioner Edley?

20 COMMISSIONER EDLEY: I was wondering if we should do some  
21 kind of a forum on the report and the issues raised in it.

22 CHAIRPERSON BERRY: We could do that. We could have the  
23 folks who are -- the organizations who deal with this issue and some of  
24 the experts who deal with it to come in after we've -- to look at the  
25 report, to look and see what their reactions are to it and have a

1 transcript of that and maybe a summary of that.

2 This issue is so important.

3 COMMISSIONER EDLEY: To so many people.

4 CHAIRPERSON BERRY: Right; and it's really up for grabs in  
5 terms of should there be some kind of modifications, or what's going to  
6 happen with the courts and what's happening to people out there.  
7 Somebody gave me that -- I think it was an issue about a child being  
8 put on a ferris wheel or not being put on a ferris wheel in Montgomery  
9 County. It was a blind child who was not allowed to ride a ferris  
10 wheel without an adult at a county fair, and at first glance, everyone  
11 said, well, why shouldn't the child be permitted to ride on the ferris  
12 wheel? Lock the child into the thing, and have the ferris wheel go  
13 around.

14 And then, I guess the ferris wheel operator says, well, but  
15 that's dangerous, and you should have an adult in case something  
16 happens. And the issue is being sorted out, but I guess the parent  
17 says that on other occasions at other places, the child has been on  
18 rides at various places. And, of course, if a child is not permitted  
19 to go on rides with the other children, then, I'm sure the child would  
20 be very unhappy and feel singled out.

21 But if the child can do it with other children, one would  
22 argue that maybe that's okay to do. So, what's the answer? I mean,  
23 it's a complicated issue, and what Commission reports would say is that  
24 you ought to accommodate the spectrum of individual abilities. That  
25 was one of our early reports.

1           VICE CHAIRPERSON REYNOSO: Madam Chair, I've always  
2 considered the ADA a possible guide to other pieces of legislation in  
3 civil rights in terms of seeking accommodation on an individualized  
4 basis, and we've never seen that really explored, because the ADA has  
5 been, I think, very instructive on saying look: we want everybody  
6 treated equally as much as possible. But to bring that equality about,  
7 we need to look at the individual. We have the aim of the legislation.  
8 Let's take a look at the individual.

9           I think some of those precepts could apply in other areas of  
10 civil rights, and we've never, as I say, really explored that. It's  
11 like Title VIII, where Title VIII said, well, it's not enough to say  
12 girls can sign up to play on the college basketball team.

13           CHAIRPERSON BERRY: Title IX, IX.

14           VICE CHAIRPERSON REYNOSO: I mean IX.

15           CHAIRPERSON BERRY: Add one more.

16           [Laughter.]

17           VICE CHAIRPERSON REYNOSO: Yes; my math is bad.

18           [Laughter.]

19           VICE CHAIRPERSON REYNOSO: And Title IX says equality may  
20 mean something different. Equality may mean resources going to girls.  
21 And so, that was also a different approach. So I just -- I'm hopeful  
22 that maybe we can take a look at some of the more recent -- not so  
23 recent now but some of the later legislation -- to sort of reassess  
24 what the 1964 Civil Rights Act has to tell us.

25           CHAIRPERSON BERRY: So the idea has always been that what

1 ADA means is you ought to presume that there is a solution --

2 VICE CHAIRPERSON REYNOSO: Yes.

3 CHAIRPERSON BERRY: -- and try to find it.

4 VICE CHAIRPERSON REYNOSO: Right.

5 CHAIRPERSON BERRY: As opposed to presuming there isn't a  
6 solution --

7 VICE CHAIRPERSON REYNOSO: Right.

8 CHAIRPERSON BERRY: -- and the answer is to say no --

9 VICE CHAIRPERSON REYNOSO: Right.

10 CHAIRPERSON BERRY: -- try to figure out what you can do to  
11 accommodate, and if you can't, then, that's a -- you know, that's  
12 another --

13 VICE CHAIRPERSON REYNOSO: Yes.

14 CHAIRPERSON BERRY: -- story.

15 VICE CHAIRPERSON REYNOSO: But it's been quite effective in  
16 forcing institutions particularly to think about those things.

17 CHAIRPERSON BERRY: Which they didn't before.

18 Okay; all right; shall we vote on this? Everybody ready?

19 [No response.]

20 CHAIRPERSON BERRY: All those in favor of approving the ADA  
21 report, indicate by saying aye.

22 [Chorus of ayes.]

23 CHAIRPERSON BERRY: Opposed?

24 [No response.]

25 CHAIRPERSON BERRY: So ordered.

## VIII. FUTURE AGENDA ITEMS

1  
2 CHAIRPERSON BERRY: The future agenda items; I don't know  
3 what we do about this, but I've been very concerned recently about a  
4 report that came out on vouchers, school vouchers, and somewhere here,  
5 I have an article that was in this morning's New York Times.

6 COMMISSIONER EDLEY: Right; the Mathematica study.

7 CHAIRPERSON BERRY: And a professor from your university --

8 COMMISSIONER EDLEY: Yes.

9 CHAIRPERSON BERRY: -- Commissioner Edley, did a report on  
10 vouchers -- oh, there it is -- which got a lot of play about two weeks  
11 ago, and since it was in the -- in August, which I always call the  
12 silly season in Washington, there was not much on the TV, so he was all  
13 over the TV talking about this report on vouchers. I don't know if any  
14 of you turned on a television, but every time I looked up, here was  
15 this guy talking about how he had proved that vouchers were closing the  
16 test score gap between black kids --

17 COMMISSIONER WILSON: Oh, I saw that.

18 CHAIRPERSON BERRY: He said it didn't work for Hispanics,  
19 for some reasons, but it worked for black kids. And it didn't do  
20 anything for white kids, but for some reason, it worked for black kids,  
21 and this was a powerful argument for voucher programs.

22 So I asked someone to get the report for me, and I read it,  
23 since I saw this guy everywhere, and after I read the report, I  
24 concluded that it was snake oil, and any researcher who read it could  
25 tell right away it was snake oil, because first of all, it said that

1 they were not going to tell us what happened in the schools the kids  
2 attended who had vouchers compared to what happened in the public  
3 schools that they came from. They weren't going to compare any of  
4 those things, right, whether the teacher class sizes were the same; did  
5 they have the same -- we don't have any information on that.

6           Then, they didn't tell us how many of the students who got  
7 the vouchers, which they said was a random sample, how many students  
8 who actually got vouchers actually went to the voucher schools. I  
9 noticed that right away in the paper. And so, the paper was vague and  
10 made all of these statements that lawyers call pounding the table, and  
11 the guy was really getting mileage out of it all over the place. And  
12 so, I just sort of reserved my suspicions and put them in the back of  
13 my mind.

14           And here today comes this article in the New York Times,  
15 from Mathematica Policy Research, Princeton, which, in fact, gathered  
16 the data for the research in New York, one of the three cities studied,  
17 says the gains were overstated by the researcher, and, in fact, the  
18 company says in New York, there was no significant test score  
19 difference between students who attended private school on vouchers and  
20 those who stayed in public school.

21           COMMISSIONER MEEKS: That's right.

22           CHAIRPERSON BERRY: I also -- I think the article is worth  
23 reading, so if you don't have it, we will ask that you be given copies  
24 of it. There will be more fallout from this, and some professor has  
25 made a very good suggestion, which is that the guy ought to give his



1 data to some researchers so that they can see if they can replicate his  
2 study and come up with the same conclusions. And one professor at  
3 Teachers College said the pressure to get something done at election  
4 time was a much more dominant theme than the idea of letting it go  
5 through review.

6 The professor dismissed the criticism, saying his work was  
7 looked at by lots of people lots of times.

8 COMMISSIONER WILSON: But who? The bus driver?

9 CHAIRPERSON BERRY: So this is not the end of this  
10 discussion, and I don't know whether at some point, we ought to do  
11 something about this. We have a lot of things to do things about, but  
12 I am sure -- I mean, if vouchers really did close the test score gap;  
13 that is, if one assumed that the test scores meant anything, but  
14 there's a lot of debate about whether tests really show anything.

15 I don't know if you saw on 60 Minutes this last Sunday; I've  
16 been watching a lot of television for some reason; there was a program  
17 on something called TAAS.

18 COMMISSIONER EDLEY: TAAS.

19 CHAIRPERSON BERRY: TAAS?

20 COMMISSIONER EDLEY: TAAS.

21 CHAIRPERSON BERRY: What's TAAS?

22 COMMISSIONER EDLEY: Texas Assessment of Academic Skills --  
23 Texas Assessment of -- yes, Texas Assessment of Academic Skills. But  
24 it's a standardized statewide test in Texas that's been a very  
25 important part of their school improvement strategy for the past

1 decade.

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER EDLEY: Quite controversial.

4 CHAIRPERSON BERRY: Yes; did you see this program, anyone?

5 Did you see it?

6 COMMISSIONER EDLEY: No, but I've read about it.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER EDLEY: And I knew what was happening.

9 CHAIRPERSON BERRY: It was very interesting. It showed  
10 these people of color -- black people of color -- who were officials in  
11 the school system, like principals and superintendents and things like  
12 that, who were talking about how great this program was and how they  
13 were implementing it and were happy and were gung ho and team spirit  
14 and whatever, and one principal was happy because she got to put a sign  
15 out in front of her school saying exemplary school; big sign.

16 Apparently, if the test scores of your lowest scorers  
17 improve in a certain way, you get to put this sign out in front of your  
18 school. I don't know what else you get, but your sign goes up. And  
19 the -- once they showed how great it all was, and they showed kids in  
20 the class and so on, they had a professor from one of the universities  
21 down there.

22 COMMISSIONER EDLEY: Linda McNeil?

23 CHAIRPERSON BERRY: Maybe; who does research on this stuff  
24 who said that the whole thing was, you know, a crock essentially; that  
25 what they did was to have the students do nothing except learn how to

1 pass this test, and that anything that has nothing to do with the test,  
2 they don't learn. And the test is not given in all subject matter.

3 If you wonder why kids don't know any history -- and I know  
4 that, because they come to me at the university, and they don't know  
5 any, and they're coming out of all kinds of wonderful schools, at least  
6 they're supposed to be wonderful, it's because nobody teaches them any.

7 Anyway, that the kids -- that that's all they know; it's  
8 sort of routinized, you know; you're supposed to learn how to pass this  
9 test. They even have little courses on how to take the test. These  
10 are little kids, you know, and how to underline this and how to do that  
11 and to prepare for it. And then, it showed three wonderful-sounding  
12 teachers who said that, you know, they were not appreciated because no  
13 one cared that they knew a lot and were educated and trained in various  
14 fields, because no one was interested in their fields; they just wanted  
15 them to go there and teach these people how to pass these tests.

16 But the most significant aspect of it from my perspective  
17 was when the professor pointed out that the board of regents of Texas  
18 universities had made an announcement unconnected to this TAAS -- it  
19 had nothing to do with the TAAS -- in the last few months that fewer  
20 Texas high school graduates were attending the University of Texas at  
21 Austin and A&M but that the ones who were attending since they started  
22 this test -- they had the date; it didn't mention the test -- did not  
23 know how to read and that they needed enormous quantities of money for  
24 remediation because the students didn't know anything.

25 So she then tracked that to the date that they started doing

1 this testing business, and it turns out that, of course, there is a  
2 correlation, although there may not be a cause and effect relationship,  
3 but it's suspicious.

4 I use that example in my policy class of how you present  
5 something and what data you look at and what conclusions you reach.  
6 Because if you just looked at TAAS, and you never knew about the  
7 regents' statement, you wouldn't connect it with the people not knowing  
8 how to read.

9 And they also pointed out that some students -- the way  
10 schools were able to get their scores up or whatever was very often not  
11 to let students who they thought would be low scorers take the test.  
12 If the test was taken in the 10th grade, they would simply keep back --  
13 and they were mostly Hispanic and black kids -- in the ninth grade so  
14 that they wouldn't take the test, so that the scores would appear to go  
15 up and that therefore, there was a high dropout rate of Latinos and  
16 African-Americans at that point, when they were put back; the boys,  
17 especially, and not permitted to take the test, because they would make  
18 everybody look bad and that this was supposed to solve the problem.

19 I still think, you know, we were right on target on that  
20 statement we made about percentage plans when we said that most of the  
21 states had totally neglected their constitutional responsibility --  
22 state constitutional responsibility -- for providing education to  
23 people that works. And it is even more egregious because we all know  
24 what you need to provide good education. It's not that we don't know.  
25 There have been so many studies done; ERIC -- what is ERIC? The

1 clearinghouse that --

2 COMMISSIONER EDLEY: Education Research Information  
3 Clearinghouse.

4 CHAIRPERSON BERRY: -- has so much information on what works  
5 for kids and how you can teach them and what you need to do to make  
6 them learn. And yet, we don't do it, and we go around with all these  
7 what I call oat bran solutions. Anyway; end of that speech. It was  
8 time to make a speech, so I decided I would -- I call them oat bran  
9 solutions. Do you know why I call them oat bran solutions?

10 COMMISSIONER EDLEY: We were curious.

11 [Laughter.]

12 COMMISSIONER WILSON: Do we dare ask?

13 CHAIRPERSON BERRY: Remember when there was this fad that  
14 everyone should eat oat bran because it would make your blood pressure  
15 go down or something like that? And I had this friend, this friend  
16 John who was a professor up at Yale who loved to eat barbecue, and his  
17 blood pressure was too high.

18 So whenever he came to visit me, we would go to get  
19 barbecue, and John would sit there, and he would order it, and he'd  
20 take this little bag out of his pocket and sprinkle oat bran on the  
21 barbecue.

22 [Laughter.]

23 CHAIRPERSON BERRY: It was supposed to keep his blood  
24 pressure from going up and his cholesterol and all that sort of stuff;  
25 the oat bran solution.

1 Okay; is there anything else we should do here?

2 Yes, Commissioner Lee?

3 COMMISSIONER LEE: Madam Chair, I'm glad that you have a  
4 wonderful memory so you can help me refresh my memory. I recalled a  
5 while ago, we asked the staff to do a series of analysis of this year's  
6 Supreme Court decisions on its impact on civil rights protections, and  
7 since the ADA report has contained a good portion of that, I wonder if  
8 this is something that I would like to pursue, because there are  
9 certain decisions that came down this year that have caused a lot of  
10 interest.

11 CHAIRPERSON BERRY: And that's being worked on, is it?

12 STAFF DIRECTOR MOY: Yes.

13 CHAIRPERSON BERRY: Didn't we ask that it be done for after  
14 the election so that we would not be in the position of trying to -- or  
15 people thinking that we somehow were trying to do something about the  
16 elections of something?

17 VICE CHAIRPERSON REYNOSO: Yes, and we're also doing a study  
18 on the Executive Branch, are we not?

19 CHAIRPERSON BERRY: Oh, let's talk about that for a minute.  
20 So, the Supreme Court one is being done, right?

21 STAFF DIRECTOR MOY: Yes.

22 CHAIRPERSON BERRY: And it will be ready after the election.

23 MR. HAILES: Well, actually, if I may, Madam Chair, we had  
24 not said with regard to the Supreme Court review that it would be done  
25 after the election, and in fact, in the monthly report, the staff

1 director's report, you will see that our team --

2 COMMISSIONER EDLEY: End of the month, I think.

3 MR. HAILES: -- will have the report concluded by the end of  
4 this month.

5 CHAIRPERSON BERRY: Okay; well, we'll read it and see what  
6 we want to do with it.

7 VICE CHAIRPERSON REYNOSO: Since the Supreme Court is not  
8 elected, it seems to me that that would not be a problem.

9 CHAIRPERSON BERRY: Right; we will be accused of doing that  
10 anyway.

11 VICE CHAIRPERSON REYNOSO: Yes.

12 CHAIRPERSON BERRY: But if it's ready, we'll look at it. I  
13 mean, that's what we usually do.

14 What was the other one?

15 COMMISSIONER EDLEY: The Executive Branch.

16 CHAIRPERSON BERRY: You asked about the Executive agencies?

17 I'm wondering, and we should discuss this, because we have  
18 time, whether we should ask the agency heads to come in, which is what  
19 we talked about, or whether we should instead ask the staff and OCRE to  
20 write an analysis based on talking to people and the materials that  
21 they already have, because they've looked at these agencies over the  
22 years. And I ask that because I wonder how much we will get from the  
23 agency heads even if it's in November; I mean, even if it's after the  
24 election or when they're leaving.

25 I mean, what agency head -- I'm just asking -- will come in

1 and say during the last four years or however long they've been there I  
2 didn't do anything because --

3 [Laughter.]

4 CHAIRPERSON BERRY: -- because, you know --

5 COMMISSIONER WILSON: There was no money.

6 CHAIRPERSON BERRY: One, I didn't do anything because I  
7 didn't have any money; and two, I didn't do anything because I didn't  
8 have the courage; and three, I didn't do anything because, you know,  
9 hey, I was, you know, just punching my ticket.

10 [Laughter.]

11 CHAIRPERSON BERRY: I don't think anyone will say that. Or  
12 I didn't pay any attention to the report that came from OCRE and you  
13 guys had said that I could fix my compliance reviews by doing X, and I  
14 might be more efficient doing my whatever by doing Y. Hey; it was an  
15 interesting report, but who's got time?

16 I just doubt -- or what agency head will come to us and say  
17 in my agency, my problem is that the staff in this particular office  
18 are not very good, and I can't get rid of them so --

19 [Laughter.]

20 CHAIRPERSON BERRY: -- you know, what do I do? And this is  
21 my weakest link, and this is my strongest office; I'm just wondering  
22 how much we will really get from them, and would it be better to have  
23 an analysis done and have us discuss the agencies as opposed to -- or  
24 have an analysis done and discuss the agencies with them here as  
25 opposed to having them present us with the information about



1 themselves.

2 Yes, Vice Chair?

3 VICE CHAIRPERSON REYNOSO: Well, Madam Chair, I would think  
4 that the more effective work would be to have our own staff do the  
5 analysis, but I did want to add that we had talked about an analysis  
6 not just of what the individual agencies had done but specifically what  
7 the President had done, and I commented at that time that we ought not  
8 to forget the effect of the war on drugs; the effect of the new death  
9 penalty and other criminal sanctions have on civil rights.

10 We ought to take a look at the entire record to have a true  
11 picture of what has happened in the field of civil rights.

12 CHAIRPERSON BERRY: Okay; yes, Commissioner Meeks?

13 COMMISSIONER MEEKS: But in some ways, we may be able to set  
14 the agenda if we took recommendations from agency heads as they're  
15 probably going out or, you know, thoughts that they've had about their  
16 management and for the new administration, and it might be helpful in  
17 that perspective.

18 CHAIRPERSON BERRY: So, should we, then, do an analysis  
19 first or have the staff talk to people in their agencies and interview  
20 them and do a little analysis and then talk about that and maybe even  
21 have them come and discuss it with them? Or should we just have them  
22 come and see what we get out of it? Or what do you think? I mean, I  
23 may be too cynical. That's entirely possible.

24 [Laughter.]

25 COMMISSIONER MEEKS: Well, I mean, if you have them do a

1 real review of what they've done -- but if that's all it is, it may  
2 bring about exactly what you said. But if you're trying to get them to  
3 look forward to the things that they think need to be addressed, I  
4 mean, it's taking a little different slant on it, and it might be  
5 something that's very meaningful.

6 CHAIRPERSON BERRY: Yes, Commissioner Wilson?

7 COMMISSIONER WILSON: Thank you, Madam Chair.

8 I don't see what we could possibly lose by having our  
9 analysis, which we've read before, and then having them come. And  
10 then, they can give us their recommendations. And we also have the  
11 benefit of that information to ask them questions.

12 CHAIRPERSON BERRY: Right; we would be knowledgeable with  
13 our own briefing materials as opposed to just having them come and, you  
14 know, sort of fly by the seat of our pants.

15 Commissioner Edley? Is that what you were about to say?

16 COMMISSIONER EDLEY: They're all going to do their  
17 valedictories. They're going to do some kind of farewell address thing  
18 for various audiences, and I'd just like to construct some sort of  
19 thoughtful analysis, critique of that like a judge hearing briefs from  
20 opposing parties or something. So I think we should do both.

21 CHAIRPERSON BERRY: So we could have the agencies that we  
22 cover in the funding study and add CRS, too, which we didn't cover and  
23 then get a paper, have a paper done, and have them come.

24 COMMISSIONER EDLEY: Yes.

25 CHAIRPERSON BERRY: Okay? And we can even share the paper

1 with them so that they -- we're not trying to -- this is not gotcha,  
2 gotcha.

3           COMMISSIONER EDLEY: No; well, where the staff work will  
4 include talking to outside observers who may have views about the  
5 performance of the agencies.

6           CHAIRPERSON BERRY: Let's say that, yes.

7           COMMISSIONER EDLEY: Because I think it's really the outside  
8 folks who are going to say well, yes, this is all well and good, but  
9 here's a whole range of cases that they didn't get into, or here's a  
10 range of kind of, you know, litigation of doctrinal theories that they  
11 were hesitant to pursue because of political pressure; or here's some  
12 stuff that they started to be interested in, but then, they got shouted  
13 down by somebody in the Congress, and they backed off of it, and they  
14 were cowards.

15           I mean, that's the kind of thing that I think only -- the  
16 staff is likely only to be able to uncover if they do a pretty serious  
17 job of interviewing thoughtful observers.

18           CHAIRPERSON BERRY: Yes; I hope that it doesn't become  
19 huggie bear kissy face, you know; the iron triangle gets together and  
20 says let's all go tell them this. But I guess we would have ways of  
21 penetrating that; okay.

22           COMMISSIONER EDLEY: And if the overall tone -- as I recall  
23 from our discussion -- the overall tone was to try to come up with  
24 things that would be helpful for the -- useful for whoever's coming in.

25           CHAIRPERSON BERRY: Right; this will be a memorandum to the

1 next President of the United States on what to do or what we recommend  
2 based on this.

3           Okay; anything else anyone has? How are things out in  
4 Indian Country, at least the part of it in which you live, Elsie, on  
5 the issues in South Dakota? Are you at liberty to say?

6           COMMISSIONER MEEKS: Well, things have been a little quiet  
7 recently, I mean, although Pine Ridge itself has its own set of  
8 problems. I think going forward, you know, the one recommendation that  
9 really has to do with the state on the summit that the Governor  
10 absolutely, you know, refused to do, I think there are some  
11 possibilities that a tribal college and one of the private universities  
12 may take that up. We're sort of just beginning working on that that I  
13 think a lot of people feel excited about.

14           But it really has, I think, you know, the report, opened up  
15 a lot of discussion that hadn't happened for a long time, and, you  
16 know, the danger here is that the recommendations will die out; the  
17 sort of excitement over the report will die out without having really  
18 produced anything. And so, I think that's -- you know, that's one of  
19 my concerns that I want to keep. I want to make sure that we keep  
20 moving forward with positive steps.

21           CHAIRPERSON BERRY: If they have a summit, maybe some of us  
22 should go out there when that happens, or maybe just from time to time,  
23 we can sort of dip in by going out there and join with you in either  
24 talking to people or doing something to just keep it going. And we  
25 have to figure out how to get this study done that we were talking

1 about.

2 COMMISSIONER MEEKS: That's right.

3 CHAIRPERSON BERRY: The study of prosecutions, which is  
4 probably going to have to wait until after the election, when people  
5 can focus again.

6 Okay; all right; well, if there is nothing else, I will  
7 entertain a motion to adjourn.

8 VICE CHAIRPERSON REYNOSO: So moved.

9 CHAIRPERSON BERRY: Okay; second? Second?

10 COMMISSIONER WILSON: Second.

11 CHAIRPERSON BERRY: Nondebateable. So all in favor, please  
12 indicate by saying aye.

13 [Chorus of ayes.]

14 CHAIRPERSON BERRY: We're adjourned.

15 [Whereupon, at 11:32 a.m., the meeting was concluded.]

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