

U.S. COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING

Friday, December 8, 2000
Washington, D.C.

The Commission convened at 9:42 a.m., in Room 540, YWCA Building, 624 Ninth Street, N.W., Washington, D.C. 20425, Chairperson Mary Frances Berry, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON

CRUZ REYNOSO, VICE CHAIRPERSON

CHRISTOPHER EDLEY, JR., COMMISSIONER

YVONNE Y. LEE, COMMISSIONER

ELSIE M. MEEKS, COMMISSIONER

RUSSELL G. REDENBAUGH, COMMISSIONER (via telephone)

VICTORIA WILSON, COMMISSIONER

LESLIE R. JIN, STAFF DIRECTOR

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Staff Present:

KIMBERLEY ALTON
DAVID ARONSON
KIM BALL
MARGARET BUTLER
KI-TAEK CHUN
MONIQUE DENNIS
TERRI DICKERSON
PAMELA A. DUNSTON
MICHAEL FOREMAN
GEORGE HARBISON
EDWARD HAILES, Acting General Counsel
MYRNA HERNANDEZ
WANDA JOHNSON
JENNY PARK
MARC PENTINO
BERNARD QUARTERMAN
PETER REILLY, Parliamentarian
JOYCE SMITH
KWANA ROYAL
MARCIA TYLER
AUDREY WIGGINS
AUDREY WRIGHT
MIREILLE ZIESENISS

Commissioner Assistants Present:

PATRICK DUFFY
CHARLOTTE PONTICELLI
SCOTT SCHREIBER
KRISHNA TOOLSIE
EFFIE TURNBULL

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P R O C E E D I N G S

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3 CHAIRPERSON BERRY: The meeting will come to order. This is
4 a meeting of the United States Commission on Civil Rights, which is an
5 independent bipartisan commission in the Federal Government which has a
6 responsibility for monitoring the enforcement of the nation's civil
7 rights laws and making recommendations to the public and to the
8 Congress and the President concerning how we may meet the goal of equal
9 opportunity for all in our national life.

10 The members of the Commission, half of them have been
11 appointed by the Congress of the United States and half by the
12 President of the United States. The Commission has eight members. We
13 now have one vacancy. Four of the members of the Commission at this
14 present time happen to be Democrats, and three of them are political
15 independents, and as I said, there is a vacancy on the Commission.

16 I. Approval of Agenda

17 CHAIRPERSON BERRY: We will proceed with the meeting agenda.
18 The first item is the approval of the agenda. Can I get a motion to
19 approve the agenda?

20 COMMISSIONER MEEKS: So moved.

21 CHAIRPERSON BERRY: Can I get a second?

22 COMMISSIONER EDLEY: Second.

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

24 [A chorus of ayes.]

1 II. Approval of Minutes

2

3 CHAIRPERSON BERRY: The second item is to approve the
4 minutes of the November 3, 2000, meeting. Could I get a motion to
5 approve the minutes?

6 COMMISSIONER MEEKS: I will move.

7 COMMISSIONER LEE: Second.

8 CHAIRPERSON BERRY: Does anyone have any corrections,
9 changes, or any other matters concerning the minutes of the meeting?

10 [No response.]

11 CHAIRPERSON BERRY: Hearing none, all in favor of the
12 approval of the minutes, indicate by saying aye.

13 [A chorus of ayes.]

14 CHAIRPERSON BERRY: Opposed?

15 [No response.]

16 CHAIRPERSON BERRY: So ordered.

17 III. Announcements

18 CHAIRPERSON BERRY: The next item is announcements. As has
19 been noted in the news, of course, Josea Williams, who was a giant in
20 the field of civil rights and who was known to many of us over the
21 years, and was a top assistant to Martin Luther King, Jr., has passed
22 away since our last meeting, and he will be sorely missed, with all of
23 his abundant fervor which remained undiminished over the years. Time
24 marches on, I guess.

1 The next announcement is that the Commission is still
2 operating under a Continuing Resolution, as is much of the Federal
3 Government, and the latest Continuing Resolution we understand expires
4 at midnight tonight, unless something has happened that we don't know
5 about.

6 The other announcement is that we take note of the fact that
7 our former Alternate Ethics Officer, Joseph Manalili, who was known to
8 all of us and we worked with him, has left the Commission, as attorneys
9 do after a while, and taken a job with the U.S. Department of Commerce
10 in the Patent and Trademark Office. Now attorney Joyce Smith will be
11 our new Alternate Ethics Officer.

12 Does anyone else have an announcement or anything that they
13 would like to make at this time?

14 [No response.]

15 IV. Staff Director's Report

16 CHAIRPERSON BERRY: All right. Hearing none, we move to the
17 Staff Director's Report, which is Item IV on your agenda. I had a
18 question, while others see if they have any, Les.

19 Have we set a date yet for when we would be able to release
20 the Mississippi Delta Report? I know I said that I would go to
21 Mississippi to actually release it, and with any Commissioners who
22 would like to go, but I have forgotten whether we actually set a time
23 for that or if we know when that can happen.

24 STAFF DIRECTOR JIN: No, we haven't set a date for that yet.

1 We're still in kind of the later stages of the editing and formatting
2 of that report, so it's not quite ready yet in that regard.

3 CHAIRPERSON BERRY: Do we have any idea when it might
4 possibly be ready, so that I can start thinking about a schedule and
5 Commissioners can start working on a schedule if they wish to go?

6 STAFF DIRECTOR JIN: Yes. I think, my best guess is it will
7 probably be ready in maybe three weeks or so. What we're trying to do
8 is, we're working on the final formatting and editing of that report
9 kind of in parallel with the Police Practices Report, so we can kind of
10 try to get both of them done.

11 CHAIRPERSON BERRY: So some time in January?

12 STAFF DIRECTOR JIN: Yes, I believe that's true.

13 CHAIRPERSON BERRY: Which means that February, which is the
14 cruelest month--

15 [Laughter.]

16 STAFF DIRECTOR JIN: Not in Mississippi.

17 CHAIRPERSON BERRY: I guess not in Mississippi. I guess it
18 depends on where in Mississippi we had the release. So we can start
19 thinking about what our schedules are in February. We don't have to
20 set a date now, but let's think about that for Mississippi.

21 And the report is important enough, and the issues of the
22 economy, unemployment and education in Mississippi, and equal
23 opportunity issues, are so significant that someone ought to really go
24 there. So I'm willing to go there to release it, and I would like

1 others, if they can, anyone who can to go with me, and have the
2 Regional Director there at that time, too, and the State Advisory
3 Committee Chair from Mississippi.

4 Does anyone else have a question on the Staff Director's
5 Report? Yes, Commissioner Meeks?

6 COMMISSIONER MEEKS: I notice that some of the reports for
7 the SACs are being held up because of lack of staff. Do you have any
8 idea when those staff positions will be filled?

9 STAFF DIRECTOR JIN: We've got staff positions being
10 advertised for the Eastern Regional Office as well as the Chicago
11 Regional Office at this point. They are kind of on a rolling basis,
12 where it's kind of like being advertised to fill. So periodically what
13 we're doing is, we're taking a look at applications to see if, you
14 know, we've got a group that's qualified, and then we would do
15 interviews.

16 We've kind of changed the description of the Civil Rights
17 Analyst just a little bit, because after consulting with various
18 people, including the heads of the regional offices, we thought that
19 maybe that will improve the targeting. But at this point it's not like
20 we've got a set number of applicants we're definitely interviewing now.

21 I haven't talked to the Chicago Regional Office Director for
22 a little bit on this, but here a few weeks ago she was kind of
23 optimistic that maybe something was going to materialize, and I don't
24 know if that fell through or not.

1 CHAIRPERSON BERRY: So as a short answer, we don't know?

2 STAFF DIRECTOR JIN: No.

3 CHAIRPERSON BERRY: So, is that the short answer?

4 STAFF DIRECTOR JIN: Yes. I mean, right.

5 CHAIRPERSON BERRY: Impossible. But you are working
6 diligently to fill those vacancies?

7 STAFF DIRECTOR JIN: Right, right.

8 CHAIRPERSON BERRY: All right. Anybody else have a question
9 on the--

10 VICE CHAIRPERSON REYNOSO: I just have some timing
11 questions, also, on projecting times we will see the Supreme Court
12 Project Report and the Administration Report.

13 STAFF DIRECTOR JIN: We expect fully that both will be ready
14 for the January meeting.

15 VICE CHAIRPERSON REYNOSO: Oh, good.

16 CHAIRPERSON BERRY: The Supreme Court Project Report, for
17 those who don't remember what it is, or who weren't here when we
18 discussed it, is a report which analyzes the decisions of the U.S.
19 Supreme Court in the area of civil rights over the last--how many years
20 is it? I've forgotten.

21 STAFF DIRECTOR JIN: Over the last six years, I believe.

22 CHAIRPERSON BERRY: Over the last six years, and compares
23 them with the positions the United States Commission on Civil Rights
24 has taken on civil rights issues, and then will do an assessment and an

1 analysis of where we think the Supreme Court has been and may be headed
2 on civil rights issues.

3 And what was the other one?

4 STAFF DIRECTOR JIN: It's the Clinton Administration Report,
5 how they've done on civil rights.

6 CHAIRPERSON BERRY: Oh, yes. It's a report on how the
7 Clinton Administration has done on civil rights, how it has done or not
8 done in the area of civil rights. So those are the two reports that
9 the Vice Chair is talking about.

10 Okay, is there anything else on the Staff Director's Report?

11 [No response.]

12 V. Alleged Voting Improprieties

13 During the Presidential Election

14 CHAIRPERSON BERRY: Okay, we go to the next item on the
15 agenda, which is Alleged Voting Improprieties During the Presidential
16 Election. This item is on the agenda because, as anyone is aware who
17 has paid any attention to what is going on in the country, there is an
18 election or the aftermath of an election or whatever's going on.

19 And there have been many allegations from various people
20 that there have been improprieties during the election. Some of these
21 have come to our attention through complaints made directly to us, and
22 some of them have come to our attention through complaints made by
23 people at the hearings that the NAACP and People for American the Way
24 and the Advancement Project and the Lawyers Committee for Civil Rights

1 Under Law had in Miami.

2 And others have come to our attention as a result of a
3 couple of our staff attorneys and our Acting General Counsel going down
4 to Florida just to take an informal look, once we were apprised that
5 there were complaints being made, at what was going on on the ground.
6 The General Counsel--Les, would you mind letting the General Counsel
7 open this discussion by briefly discussing these matters with us?

8 STAFF DIRECTOR JIN: I think that would be an excellent
9 idea.

10 CHAIRPERSON BERRY: Okay. Eddie Hailes, who is Acting
11 General Counsel of the Commission. The Vice Chair will let you borrow
12 his microphone.

13 ACTING GENERAL COUNSEL HAILES: This is a priceless
14 discussion. Priceless.

15 Madam Chairperson, Vice Chair, and Commissioners, I would
16 like to report on the observations that I made, along with two attorney
17 advisors who went to Florida within days of the recent presidential
18 election.

19 I would start off by saying that the Commission's authority
20 to investigate voting irregularities is very broad. When the
21 Commission was established in 1957, the Commission was given direct
22 authority to investigate voting rights irregularities that related to
23 African-Americans and discriminatory issues in the context of voting
24 rights.

1 In the Civil Rights Act of 1964, Title V, I believe, the
2 authority of the Commission was expanded to investigate voting
3 irregularities, practices and procedures more broadly. And apparently
4 the legislative history shows that there was much discussion in
5 Congress after the closeness of the presidential election in 1960, and
6 it was believed that there are matters relating to voting rights that
7 are not of a discriminatory nature, that in fact have an impact on the
8 election, and the Commission should have the authority to investigate
9 those procedures and those practices that impact the right to vote and
10 to have votes counted. And it is in the authority of the Commission to
11 investigate and, under certain circumstances, the Commission is duty-
12 bound to investigate voting irregularities that are based on written,
13 sworn affidavits.

14 When I went, along with two of our attorney advisors to the
15 State of Florida, specifically in Miami-Dade County, we did hear
16 disturbing accounts from numerous persons who made presentations before
17 an NAACP hearing. We talked to ministers, we talked to a rabbi, we
18 talked to public officials, we talked to teachers, voting rights
19 experts, voting rights advocates.

20 We spoke to a number of persons, including many lawyers,
21 about some of the specific allegations of irregularities in Florida
22 during the presidential election, not just in Miami-Dade County, but we
23 heard from students in Tallahassee who had registered to vote on line,
24 received confirmation that they were registered, went to the polls and

1 were not allowed to vote. Many first-time voters who said they were on
2 the rolls, had voter registration cards, and were denied the right to
3 vote.

4 We heard experienced persons, elderly registered, eligible
5 persons who went to the polls and were told they had to stand in long
6 lines, and after standing in long lines to get confirmation that they
7 could vote at that particular precinct, were not allowed to vote
8 because the polls closed. We heard of persons who said their names
9 were purged from the voting rolls because they were believed to have
10 felony convictions, and they were not convicted felons.

11 We heard testimony from persons who said they went to their
12 polling place, in one place, I believe it was Broward County, at
13 Plantation Elementary School, where a person says she went to her
14 polling place and it had been demolished three weeks before, and that
15 no notice had gone out. We heard testimony from Haitian Americans,
16 many first-time voters, who went to the polls and sought some
17 assistance and were denied assistance, and were not able to vote. We
18 heard persons talking about the intimidating presence of police at
19 certain precinct places.

20 And I'm giving you a fairly long litany of allegations, and
21 I could probably give you a break-out by county, but I must say that
22 they were widespread allegations of voting irregularities throughout
23 the State, reported by persons who were willing to make statements and
24 sworn affidavits.

1 We talked to a person who said there was a visually impaired
2 registered voter who was not given assistance at the poll and did not
3 vote. We were told, though we did not see it, but we were told of
4 another sworn affidavit by an African American woman who arrived at the
5 poll approximately 10 minutes to 7:00, with the polling place closing
6 at 7 o'clock, and she was told it was too late to vote, and she said
7 she saw, in her affidavit, according to this person, a white individual
8 go into the poll after she was denied entry into the polling place, and
9 it was her belief that this person voted.

10 And throughout the day, and in our subsequent conversations
11 with different people, we heard numerous claims of voting
12 irregularities in Florida on November 7, 2000.

13 CHAIRPERSON BERRY: Well, the difference between what you
14 heard and what the Commission might hear if it were to undertake an
15 investigation formally in Florida, is that we would be looking at sworn
16 allegations--

17 ACTING GENERAL COUNSEL HAILES: Exactly.

18 CHAIRPERSON BERRY: --under penalty of perjury, and we would
19 also be looking at sworn responses of public officials as to whether or
20 not these events did occur, what did they do about them, and the like.
21 Is that the idea?

22 ACTING GENERAL COUNSEL HAILES: That's correct.

23 CHAIRPERSON BERRY: And so what you were doing was simply an
24 informal sort of look at what was going on.

1 ACTING GENERAL COUNSEL HAILES: That's right.

2 CHAIRPERSON BERRY: I think it's important in this
3 connection that our statutory authority should be clear to everyone who
4 wonders what we are doing, and therefore I think, if I understand it
5 correctly, the provisions you were talking about are under the section
6 called "Duties of the Commission"; is that correct?

7 ACTING GENERAL COUNSEL HAILES: That's correct.

8 CHAIRPERSON BERRY: Is that the statute?

9 ACTING GENERAL COUNSEL HAILES: Yes.

10 CHAIRPERSON BERRY: And under Section 1, and you can tell me
11 if I'm not reading the right place, it says "The Commission shall
12 investigate allegations in writing under oath or affirmation that
13 certain citizens of the United States are being deprived of their right
14 to vote and have that vote counted, by reason of their color, race,
15 religion, sex, age, handicap, or national origin, which writing under
16 oath or affirmation shall set forth the facts upon which such belief or
17 beliefs are based."

18 There is also our general authority, which is to study and
19 collect information concerning legal developments constituting
20 discrimination or denial of equal protection of the laws under the
21 Constitution generally, because of race, color, handicap, and the like.
22 So we have the authority to do it, even if we didn't have the authority
23 under voting rights.

24 Section 5 is relevant, also, of this statute, under

1 "Duties"; is that correct?

2 ACTING GENERAL COUNSEL HAILES: That's correct.

3 CHAIRPERSON BERRY: Because it states that "The Commission
4 shall"--not the Commission may, but the Commission shall--"investigate
5 allegations made in writing and under oath or affirmation that citizens
6 of the United States are unlawfully being accorded or denied the right
7 to vote or to have their votes properly counted in any election of the
8 presidential electors, members of the United States Senate or the House
9 of Representatives, as a result of any patterns or practice of fraud or
10 discrimination in the conduct of such election."

11 Now, counsel, is the provision concerning patterns or
12 practices of fraud separate from the one that says patterns or
13 practices of fraud or discrimination? Are those two different things?

14 ACTING GENERAL COUNSEL HAILES: As I read it, the answer is
15 yes.

16 CHAIRPERSON BERRY: So that if we found, and if we were to
17 investigate that there were patterns or practices of fraud, whether or
18 not there was race, national origin, sex discrimination and the like,
19 we still would be empowered to investigate it?

20 ACTING GENERAL COUNSEL HAILES: That is exactly how I
21 interpret those provisions.

22 CHAIRPERSON BERRY: So that we then have broad authority and
23 have a responsibility, because it says the Commission shall--it doesn't
24 say when--investigate allegations made in writing under oath or

1 affirmation that citizens are unlawfully being accorded or denied the
2 right to vote or to have their votes properly counted in any election
3 of the presidential electors, and so on. Okay, so that gives us the
4 legal context for what we are here to discuss.

5 COMMISSIONER EDLEY: Madam Chair?

6 CHAIRPERSON BERRY: Yes, Commissioner?

7 COMMISSIONER EDLEY: Just a brief question on the meaning of
8 "fraud." Is that narrower than misconduct, narrower than--I'm a little
9 uncertain about the reach of the term "fraud," and also a little bit--
10 secondly, if you could comment, either of you, on how much credit of
11 fraud, how much suspicion do we have to have in order to move, going
12 forward?

13 CHAIRPERSON BERRY: I'll let counsel answer the more
14 technical question, but as I read this section that I just read, it
15 said "investigate allegations made in writing under oath," so they
16 don't have to be--all you need is allegations under oath or
17 affirmation. And if we were to take testimony from people or they were
18 to file affidavits under oath alleging fraud--

19 COMMISSIONER EDLEY: So presumably some modest credibility
20 standard?

21 CHAIRPERSON BERRY: Right, right. Counsel?

22 ACTING GENERAL COUNSEL HAILES: And it's as a result of a
23 practice or pattern of alleged fraud. And again, and I don't have the
24 specific citations to legislative history, we're looking at that now,

1 but what we are told is that, again, there was great discussion in
2 Congress following the 1960 election, and there were allegations of
3 fraud arising out of a Midwestern city in Illinois, and that as a
4 result of that it--

5 VICE CHAIRPERSON REYNOSO: What are the initials of that
6 city?

7 [Laughter.]

8 ACTING GENERAL COUNSEL HAILES: C-H-I.

9 [Laughter.]

10 ACTING GENERAL COUNSEL HAILES: And as a result of that
11 discussion, it was believed the Commission needed to be empowered to
12 look more broadly at practices and patterns that may result in voting
13 rights violations.

14 CHAIRPERSON BERRY: And a former long-time staff director
15 here at the Commission, who is still heavily engaged in the cause, was
16 the one who alerted us to that and told us the story. And he says that
17 it was a Congressman from Florida who introduced this bill, this
18 amendment to our statute, because he wanted to make sure that if there
19 were ever allegations again of fraud or discrimination in a
20 presidential election, that somebody would be empowered to go in and
21 set the record straight, and clear it up, and put the facts on top of
22 the table, and he therefore put that provision in our statute. One
23 never knows what will happen, does one?

24 COMMISSIONER EDLEY: I can't resist asking, was it by any

1 chance a Republican Congressman?

2 CHAIRPERSON BERRY: I don't remember, but he said that it
3 was somebody who was adamant that, if this ever happens again, by
4 golly, we need somebody to get in there and put the facts on top of the
5 table. Anyway, other comments from--

6 COMMISSIONER REDENBAUGH: Madam Chair?

7 CHAIRPERSON BERRY: Yes, Commissioner Redenbaugh?

8 COMMISSIONER REDENBAUGH: I agree with you and the Staff
9 Director that our jurisdiction here is not only clear and unambiguous,
10 but fundamental in that there can be no faith in the democratic process
11 if there is not some reasonable sense of fairness and equity in the
12 election process, so I encourage our efforts in this area.

13 CHAIRPERSON BERRY: Okay. That was Commissioner Redenbaugh.
14 Anybody else have any comments? I guess we need to talk about what we
15 might do, if anything, because there are several different approaches
16 that we could take. Vice Chair, did you--

17 VICE CHAIRPERSON REYNOSO: Madam Chair, it seems to me that
18 the responsibility that we have is an important and grave one, and we
19 should begin to take the proper preliminary steps that should lead, I
20 would hope, to some hearings in Florida or other places where there may
21 be complaints of the sort we have heard in Florida.

22 But before then we should have the staff go down and indeed
23 see if the folk provide us the affidavits pertaining to the allegations
24 of fraud or other misconduct. And I think we need to be careful to be

1 sure that we investigate these matters broadly, so that if we need to
2 have hearings in more than one or two sites in the State, I think we
3 ought to, because it seems to me that we won't get the full story
4 without--I would be surprised if we get the full story without our
5 subpoena power, and so we have to have geographic areas where we can
6 use our subpoena power.

7 So I just would suggest that our staff start doing the type
8 of work that appears to be required by the statute, to prepare us to do
9 that. I don't know of any other independent governmental entity
10 besides this Commission that can do the type of work that is required
11 under these circumstances.

12 CHAIRPERSON BERRY: Staff Director, did you seek
13 recognition?

14 STAFF DIRECTOR JIN: No, I did not.

15 CHAIRPERSON BERRY: Oh, I thought I saw your hand out of the
16 corner of my eye.

17 Commissioner Meeks?

18 COMMISSIONER MEEKS: I would have to agree completely with
19 the Vice Chair. I mean, I think this is a case where a forum is not
20 going to be adequate, and that it is such a grave situation that unless
21 we do a full hearing--my only argument with that is that it will take
22 some time to set that up. Given what the weather is going to be in
23 South Dakota next week, I had hoped that we could go immediately.

24 [Laughter.]

1 COMMISSIONER REDENBAUGH: Madam Chair?

2 CHAIRPERSON BERRY: Yes, but Commissioner Edley first.

3 COMMISSIONER REDENBAUGH: Of course.

4 COMMISSIONER EDLEY: I understand that we have jurisdiction
5 and responsibility here that's independent of the Justice Department's
6 responsibility, since we have no enforcement authority. But still, in
7 shaping what we might do, I'm curious as to what our understanding now
8 is about what the Justice Department has in mind, if anything. I have
9 to say that I've been, at least as I've followed the press accounts,
10 I've been very, very disheartened by what struck me as an
11 extraordinarily slow pace at the Justice Department, given the
12 importance of this to the communities in Florida, around the country.

13 It just seemed to me to say, "We'll get around to looking at
14 this eventually," is not exactly the right message to send to people
15 who have a tenuous connection to the electoral process, many of whom
16 were trying to participate for the first time. It strikes me that
17 their government ought to be sending a message that, yes, we think that
18 it's vitally important to take aggressive measures quickly to ensure
19 that people's voting rights are protected.

20 So it seemed kind of like a "wait and see" approach, as I
21 saw it, perhaps for fear of becoming a political lightning rod, but of
22 course that view itself is playing politics with the problem. So does
23 anyone have current information about what the Justice Department
24 contemplates and why their pace has been as slow as it seems to have

1 been?

2 CHAIRPERSON BERRY: Well, Christopher, you know when you ask
3 this question that I have had conversations with people at the Justice
4 Department, including the Attorney General, and I do not--what the
5 Attorney General does and the Justice Department does, does not affect
6 what we do, of course.

7 COMMISSIONER EDLEY: Right.

8 CHAIRPERSON BERRY: And we can't tell them what to do, and
9 they can't tell us what to do. But my impression is that they thought
10 that matters would be worse if they got involved, as opposed to being
11 better, and that this was all so politically fraught with tension.

12 See, what's going on here, I mean, I teach legal history,
13 you know, at Penn, and so I have the historian's perspective on all
14 these things, too, as I watch them. And on the one hand what is going
15 on here in the culture is the idea that one doesn't want to do anything
16 that in the end, when reality occurs and somebody becomes President,
17 whoever that is, that we can somehow, you know, bind up the nation's
18 wounds and heal, that everybody will be fine and everybody will pretend
19 that everything was okay, and maybe in six months we'll forget anything
20 happened and life will go on, and there is sort of a wish that this
21 would be so.

22 On the other hand, there is the problem that if you don't do
23 anything and there is a problem and there are issues, they will simply
24 fester, and they need to be attended to. So different people have

1 different points of view about this. The short answer is that the
2 Justice Department has been reluctant--and they have stated this
3 publicly, so I'm not telling tales out of conversations-- that they
4 have been reluctant to get involved, and more recently they have just
5 said that they sent some lawyers there or something, informally. We
6 will have to relate to the Justice Department.

7 What I suspect and what I am going to propose is that we do
8 have hearings. I think that having hearings is the best way to do
9 this, because when we have hearings, as you all know, we subpoena all
10 the witnesses and we subpoena documents. And we subpoena witnesses not
11 because we think the witnesses won't cooperate. You all know this. We
12 subpoena witnesses because in the history of the Commission, that's
13 what we do.

14 There are some witnesses who like to be subpoenaed so that
15 they can explain to people why they testified, or they are afraid to
16 testify, or they have considerations. And if they are subpoenaed, and
17 if everybody is subpoenaed, then they're all in the same bag and no one
18 can go around trying to find out, you know, why somebody did this,
19 that, or the other.

20 And also we subpoena them because we want them to make sure
21 they testify, and we want to make sure that they come and testify under
22 oath. And we subpoena documents so that we can make sure that we get
23 all of the documents and materials that are relevant to whatever the
24 issue is that can be analyzed.

1 So I think that if we are going to do this post mortem, as
2 it were, which is what it may turn out to be, on what happened to
3 people's rights, or were there some improprieties or not, and what are
4 their remedies that can be made, we ought to do it in the best way
5 possible, the most efficient way, the way that we are more likely to
6 get the information we need. We know that from experience. And it
7 will require us to have hearings.

8 I think before we--in addition to having hearings in Florida
9 in various sites, as soon as they can be arranged, I would hope the
10 Commission would agree to have hearings on a timetable that the staff
11 would set up, having the first one as quickly as they can, and that we
12 would also ask the staff--this is another suggestion--to review what
13 happened in the other 49 States and the District of Columbia in this
14 election.

15 We don't have information from other States that rises to
16 the level where we could today say we ought to go have hearings in, you
17 know, all the States or something. We just don't have that kind of
18 level of information available to us, but it's important to know what
19 happened elsewhere.

20 And so I think we should ask the Staff Director to have the
21 staff and the Regional Offices collect information and give us a report
22 on what happened in the other 49 States and the District of Columbia,
23 what their procedures and practices are, whether there were any issues
24 that arose during the elections that rise to the level of these

1 allegations, that ought to be investigated, and so that we can then
2 make a decision about whether there are other places we should go to
3 take a look.

4 And then we can, at the end of the day, after all is said
5 and done, come up with a report which will say, "Here's what happened,
6 here are what the problems were, and here is what we think should be
7 done about it."

8 COMMISSIONER EDLEY: Lessons for the next cycle.

9 CHAIRPERSON BERRY: Right, lessons for the next cycle. And
10 if there are people who engaged in fraud or violated the laws, we would
11 hand them over for prosecution, based on the testimony we get and the
12 investigative record that we get.

13 What we will need from the Justice Department, as you know,
14 if we undertake these proceedings, is when we subpoena witnesses, if
15 the witnesses do not come or resist, the Justice Department will have
16 to help us to enforce the subpoenas. We have never had a problem, in
17 the history of the Commission, with the Justice Department exercising
18 its statutory responsibility to do that, and I would not expect, I have
19 no reason to believe that the Justice Department in the future would
20 refuse to do that. But that's the only real connection we have to the
21 Justice Department.

22 Russell was seeking recognition, and then--I know you don't
23 see him. He's on the phone, Vicki. And then I'll recognize you,
24 Vicki. Russell, are you still seeking recognition?

1 COMMISSIONER REDENBAUGH: Yes, I am.

2 CHAIRPERSON BERRY: I was pointing at you, Russell.

3 [Laughter.]

4 VICE CHAIRPERSON REYNOSO: I mean, I think what we are
5 seeing here is very important to establish the rhetoric and the context
6 for going forward, and I think it's clear--I associate myself with
7 particularly the whole series of comments that began, that was started
8 by Cruz. This is something we need to do. It does rise to the level
9 of requiring a hearing or hearings, to have sworn testimony.

10 And you know, our unique institutional position is that
11 although we can't produce a remedy for any particular outcome, we can
12 have a tremendous influence on the process in the future. So I want to
13 associate myself with the comments encouraging us to do this in a way
14 that's both timely and rigorous, and of course with sworn testimony.

15 And I particularly concur with what you said a moment ago
16 about the need to take a look at what happened in the other States and
17 the District. You're right, it doesn't appear to rise to the level of
18 concern that one should have over Florida. There was, I believe, a
19 statement in the short report that we got, that I want to make a mild
20 objection to.

21 If I understand it correctly, it suggested that we should
22 look at Florida and not the other States because Florida, the outcome
23 of the Florida election determines the presidency. And, you know, that
24 may suggest that voting rights in a State like my former State, Utah,

1 since they didn't matter in terms of the outcome of the presidency, we
2 wouldn't care about that, and I don't think that's really the intention
3 of the writer and certainly not the intention of the Commission.

4 CHAIRPERSON BERRY: Right. I'm sure that that's the case.
5 Yes, Staff Director?

6 STAFF DIRECTOR JIN: Commissioner Redenbaugh, yes, I'd like
7 to clarify that. This is Staff Director Les Jin. The intent there was
8 just to simply say that most of our examples seem to be coming from
9 Florida because that's where the national spotlight was.

10 COMMISSIONER REDENBAUGH: Yes.

11 STAFF DIRECTOR JIN: And it was not to indicate that, you
12 know, that's where we should be focusing energy on just because it may
13 be determinative of the outcome of this election.

14 COMMISSIONER REDENBAUGH: Yes. I think we should certainly
15 focus there, and look around elsewhere as well.

16 CHAIRPERSON BERRY: Okay. Commissioner Wilson?

17 COMMISSIONER WILSON: Thank you, Madam Chair. I just want
18 to concur that I'm very heartened that we are about to or are
19 considering embarking on hearings. I'm slightly dismayed that we seem
20 to be the only governmental institution that's undertaking this or
21 considering undertaking this, considering the allegations and all of
22 the reports that have come out of Florida.

23 I'm also heartened to hear that we will or we are
24 considering looking at other States, because there have been a lot of

1 reports from other States, and this is not just about Florida,
2 unfortunately. And I would hope that once the other States are
3 involved, that officials from those States would be subpoenaed if we
4 find that it's necessary, and would come in and testify as well.

5 CHAIRPERSON BERRY: Well, if we--yes, Commissioner Lee, and
6 then Vice Chair. Commissioner Lee?

7 COMMISSIONER LEE: I think there is no more fundamental
8 civil right than the right to vote and to have one's vote counted, so I
9 completely concur with everything that has been said here today, and I
10 am also glad to hear the Staff Director mentioning the staff will be
11 looking at other areas of alleged irregularities.

12 I would add that the staff would look into the allegations
13 of language assistance denials. After the census, next year I think
14 the language assistance provision of the Voting Rights Act will add on
15 new jurisdictions, meaning new Americans will be able to be involved
16 with the political process. And I think it would be important for us
17 to look at, when we go through these hearings and look at these
18 different States, what happened to the language assistance area, to
19 make sure that the lessons learned will apply for the next cycle, so
20 that people will have faith and they will be able to really, fully
21 participate.

22 CHAIRPERSON BERRY: Vice Chair?

23 VICE CHAIRPERSON REYNOSO: Madam Chair, I'm of course from
24 California, and I heard of at least several incidents in California of

1 people having difficulty voting. My sense is that Florida just happens
2 to be unfortunate in having had such a close election. If practically
3 any other State would have had an equally close election, I have a
4 sense that practically every other State would be in the same
5 embarrassing situation that the election officials find themselves in
6 in Florida. So I think it is important that we take a look at
7 practices.

8 Secondly, our laws seem to be very defective in finding a
9 remedy for a person whose most important civil right, the right to vote
10 and have the vote counted, as Commissioner Lee indicated, has a remedy.
11 The remedy seems to be that you punish the official who did something
12 wrong. The remedy seems to be that you look only toward the next
13 election to see if you can correct things. But how about that
14 individual person or those individual persons or that group that has
15 already lost the vote? And I think that we need to give some thought
16 to the issue of making recommendations to Congress and the State
17 legislatures about a way of giving a remedy to that individual.

18 Perhaps, too, we might take a look at the broader issue of
19 those practices that prevent Americans from voting. The last I read,
20 only about 50 percent of all Americans who could have voted, had they
21 registered and so on, in fact voted. It may even be less. It may be
22 that only 50 percent are registered to vote.

23 So we have a great deal of work to do to have this be a
24 democracy where all voices are heard, and there are many practices, the

1 practices that take away the right of those who have been convicted of
2 a felony to vote, even if the felony had nothing to do with fraud or
3 election laws. Thirteen States, I believe, have such laws.

4 Other States require registration many, many weeks ahead of
5 the vote, of the actual vote, yet the studies I've read indicate that
6 most citizens focus on the election the last two weeks before the
7 election. That seems to prevent a lot of people from voting. I think
8 we need to take a look at how we can make this democracy a better
9 democracy, a more fully participatory democracy.

10 CHAIRPERSON BERRY: I think it's amazing to me, and I only
11 thought about this as you were speaking, Cruz, that there isn't some
12 procedure whereby if you--say, for example, you are purged, and
13 somebody says you're a felon and you're not.

14 Why can't you go to some office someplace or something,
15 before the election results are actually announced, or have someone on
16 your behalf check the records, some government official, to see whether
17 you in fact are, and then they make provision for you to actually have
18 your vote cast immediately, and enjoin them from actually counting the
19 votes until you--in other words, to expedite process, so that if
20 there's somebody who is denied language assistance and they can't vote,
21 have some system set up where you immediately are diverted someplace
22 where you make that complaint, somebody responds, and then you are
23 given the assistance and you vote, rather than simply having all of
24 these people not be able to vote, if that's what happened, and then

1 close the door, and then say later on, "Well, if anybody did anything
2 wrong, we'll punish them."

3 VICE CHAIRPERSON REYNOSO: We have the capability of setting
4 up the mechanisms, it seems to me, to do precisely that. And yet the
5 States, as far as I can see, more often than not do not, or they have
6 mechanisms in place that seem to work rather imperfectly.

7 I read one report in Florida that the officials indeed
8 tried. They had a number to call, a telephone number, but the number
9 was busy all the time. And then I read one report of one official who
10 called and was left holding the phone for half an hour, but she had
11 other work to do, so she finally had to hang up.

12 And there are reports of folk who showed up, who said that
13 they in fact did vote at the last election, they were registered. They
14 were told, "We're sorry, but you're not on the roll," and they weren't
15 able to certify whether they were or were not voters before the end of
16 the voting day.

17 But we can have mechanisms, it seems to me, that can cure
18 those defects, and I think we should think hard and ask the officials,
19 I'm sure some of whom are frustrated themselves, what their suggestions
20 would be about our best recommendation to the legislative bodies about
21 how to make sure that in fact those rights to vote are protected.

22 CHAIRPERSON BERRY: And to distinguish between those
23 processes and procedures that are designed to have a negative effect on
24 people, a chilling effect, and those that are just a matter of

1 inefficiency, which is one of the things you have to sort out.

2 Yes, Commissioner Edley?

3 COMMISSIONER REDENBAUGH: Madam Chair?

4 CHAIRPERSON BERRY: I'll recognize you after Edley.

5 COMMISSIONER EDLEY: I was just going to mention that the
6 other thing in Florida that was in place, by State law, is the ability
7 to file an affidavit ballot, so that if you're not on the list or if
8 there's some other problem, you could--at least under State law you're
9 supposed to be able to fill out a ballot and accompany it with an
10 affidavit attesting to the fact that you are a duly registered voter.
11 But a lot of voters either were denied the option, reportedly were
12 denied the option of filing an affidavit ballot, or weren't informed of
13 this possibility.

14 Some people have alleged that the availability of these
15 affidavit ballots was hit-or-miss, and perhaps in a discriminatory way.
16 But putting aside the discrimination issue, I certainly hope that the
17 staff will look into this question of whether the telephone and the
18 affidavit ballots, as two very low-tech ways of getting at what the
19 Vice Chairman is talking about, why they don't seem to have worked very
20 well, and whether there is more successful experience in other States
21 that should be emulated.

22 CHAIRPERSON BERRY: Commissioner Redenbaugh?

23 COMMISSIONER REDENBAUGH: Yes, I very much like what you
24 said, Madam Chair, about distinguishing between the problems that are

1 discriminatory in intent or consequence, and those that are procedural
2 and based on inefficiency or bureaucracy. I would encourage the staff
3 to divide--well, if the report shows up this way, to look and
4 distinguish those two areas.

5 And in the area where it's procedural, it seems, it appears
6 from the public accounts that we accept a much lower standard of
7 procedural efficiency in the election process than we would tolerate
8 even from the Department of Motor Vehicles, which is not known for its
9 efficiency or effectiveness in many States. And I think the lowest
10 standard we should ever expect ought to be equal to or greater than the
11 Department of Motor Vehicles.

12 CHAIRPERSON BERRY: Well, one of the things we have
13 discovered in the history of this Commission is that usually--you are
14 correct about lower standards being accepted, but we have found that
15 there is usually a correlation between lower standards of efficiency in
16 terms of what is available and what people of color have available to
17 them.

18 COMMISSIONER REDENBAUGH: I am not at all surprised.

19 CHAIRPERSON BERRY: There seems to be some kind of
20 connection between what you have available to you, which is that
21 interesting question about the machines and the equipment in Florida.
22 It will be interesting to see whether that's really true about the
23 availability of equipment in certain areas and why it's not available
24 in others, and in other States, whether it is the case that--

1 COMMISSIONER REDENBAUGH: And when was that availability or
2 allocation decision made, and by whom?

3 CHAIRPERSON BERRY: Right. We need to get whoever made that
4 decision up before us, sworn in, and find out, you know, "How did you
5 guys go about making these decisions, if that's what happened?" We've
6 got to first establish that yes, it happened.

7 COMMISSIONER REDENBAUGH: Right. I think that is an
8 incredibly rich area for investigation.

9 CHAIRPERSON BERRY: Yes. `Commissioner Wilson?

10 COMMISSIONER WILSON: I fully appreciate Commissioner
11 Redenbaugh's comparison. I hadn't thought of it, and I thought it was
12 quite apt. But I would like to put forth that I wonder if the whole
13 expectation of voting in this country, per se, is in any way connected
14 to the machinery that is there to take our vote for everybody,
15 regardless of your color, because the machines are so outdated and the
16 whole way in which the polling, the experience, the voting experience
17 is, it is just about comparable to standing on line at the Bureau of
18 Motor Vehicles.

19 CHAIRPERSON BERRY: Yes, which is--

20 COMMISSIONER EDLEY: A decade ago.

21 COMMISSIONER WILSON: But that's not right. It is a decade
22 ago. And, you know, does it have anything to do with the way people
23 feel in this country about just the voting, the whole voting process in
24 general, and the expectation that people will go out and vote or that

1 they think that they won't go out and vote?

2 CHAIRPERSON BERRY: Any others?

3 [No response.]

4 CHAIRPERSON BERRY: I think what we should do is agree,
5 first of all, if we do agree, to a motion, and after we agree to the
6 motions--one or two motions, one, I think--then we should have a
7 further discussion so that the staff understands what it is they're
8 supposed to be doing. There are some other points I would like to
9 raise, so they would know how to proceed with this. What we have said
10 already is helpful, but we need to say a bit more about how we would
11 like this all to shape up in the end, so that they know when they start
12 out what we are expecting.

13 And the motion that I would like, if someone wishes to
14 introduce, based on this discussion, would be that the Commission would
15 hold hearings in Florida as soon as they can be arranged, on a
16 timetable that the staff will develop as quickly as possible; and that
17 we would also ask the Staff Director to have the staff begin
18 immediately collecting information concerning the conduct of the
19 election in the other States and the District of Columbia, and to
20 provide this information to us so that we can make a decision about
21 whether or not to hold hearings in other States. That basically is the
22 outline of the motion.

23 VICE CHAIRPERSON REYNOSO: So moved.

24 COMMISSIONER REDENBAUGH: Second.

1 CHAIRPERSON BERRY: All right. Is there, first, any further
2 discussion? We're going to discuss after the motion about how this
3 goes forward. Yes, Commissioner Edley?

4 COMMISSIONER EDLEY: I just want to clarify. I think that,
5 in terms of the other States, that we ought to delegate to the Chair
6 the authority to make a decision to add on additional States, so that
7 we don't have to wait and come back and discuss that all in January.

8 CHAIRPERSON BERRY: You mean if the staff comes back and
9 says --

10 COMMISSIONER EDLEY: We need to look at Wisconsin and New
11 York, or whatever, that you could just do that.

12 CHAIRPERSON BERRY: I just tell you guys that it looks like
13 we ought to go there, too?

14 COMMISSIONER EDLEY: Right, so we can move forward.

15 CHAIRPERSON BERRY: Is that the point?

16 ACTING GENERAL COUNSEL HAILES: The Commissioners have to
17 approve by a majority each hearing site that you go to.

18 CHAIRPERSON BERRY: Yes.

19 COMMISSIONER EDLEY: But if the hearings are hearings to
20 look into the conduct of the past election on kind of a blanket
21 authority to conduct multiple hearings in appropriate venues, surely
22 that's sufficient formal action by the Commission.

23 CHAIRPERSON BERRY: The way we could modify the motion to
24 make it meet the counsel's objection, I think, is to simply say

1 hearings in Florida, on a timetable to be suggested by the staff as
2 quickly as possible, and in any other venues in the 50, whatever
3 number, 49 States and D.C., that it appears from the research done by
4 staff that we ought to pursue, something like that. Wouldn't that do
5 it?

6 ACTING GENERAL COUNSEL HAILES: I would support that.

7 CHAIRPERSON BERRY: Counsel is comfortable with that.

8 COMMISSIONER EDLEY: Great.

9 CHAIRPERSON BERRY: And the understanding would be that of
10 course the timetable, once the staff figures out when they can do it,
11 would be checked with the Commissioners, obviously. The other is that
12 I would consult with the Staff Director about the research as it goes
13 along, and figure out the details of all this, and keep you informed,
14 as we do. So we would have those understandings, and you would know
15 the timetable and all that.

16 But the point of doing it this way is so that we don't have
17 to have a meeting each time to decide that the date is going to be, you
18 know, the 9th as opposed to the 10th or the 15th or whenever it's
19 supposed to be, and it's going to be in Tallahassee and not in
20 whatever. You know, we know we're going to go two or three places in
21 Florida. The staff gets a chance to work this up, and we can have all
22 this decided and get it all done, and maybe we can have a hearing, I
23 don't know, sometime as soon as--I guess they're counting votes or
24 something in the Congress, after the Congress meets in January or

1 something, the 5th or something, I read in the paper.

2 COMMISSIONER REDENBAUGH: The 6th, I think.

3 CHAIRPERSON BERRY: Sometime after that. So anytime after
4 that we could have the first hearing. Maybe we'll see what the staff
5 comes up with as a timetable.

6 Does the maker of the motion, who was you, Vice Chair,
7 accept these modifications to the motion?

8 VICE CHAIRPERSON REYNOSO: I do.

9 COMMISSIONER REDENBAUGH: As does the seconder.

10 CHAIRPERSON BERRY: All right. Well, then, any further
11 discussion of the actual motion? Which I hope somebody wrote down.
12 Oh, the transcriber wrote it down.

13 [No response.]

14 CHAIRPERSON BERRY: Then all in favor of the motion,
15 indicate by saying aye.

16 [A chorus of ayes.]

17 CHAIRPERSON BERRY: Opposed?

18 [No response.]

19 CHAIRPERSON BERRY: So ordered. It's unanimous.

20 Now, the discussion that I would like to have, we have a
21 little time to do this, so that the staff will know precisely what
22 they're doing. It is my view, and then we'll see what others think,
23 that the staff ought to--the OGC, for these hearings, should look at
24 every single allegation that has been made in a public forum or made to

1 us directly or made to the staff when they were down there.

2 That means the allegations concerning machines and where
3 they are. That means allegations concerning purging from the rolls.
4 That means the allegations concerning people who showed up with IDs but
5 weren't on the list. That means allegations concerning language
6 assistance. Every single allegation should be systematically pursued.

7 It also means that public officials, both the local
8 canvassing people and the State elections officials who are responsible
9 for this, and you of course will analyze who is directly responsible
10 for what, should be brought before us to hear. We should also hear
11 from experts where they are needed to explain to us further issues.
12 You know, if there is some disagreement about whether there really is
13 some difference between the machines or something. I don't know if
14 that's going to happen. Then, if there is somebody who knows about
15 that, then they can come and tell us about that.

16 But it is primarily--and we will hear from the people who
17 are, of course, making the allegations. We will hear from them, and
18 they will all be sworn. That basically
19 --and that the format of this report that we're talking about, the way
20 I envision it, the second report that the staff will do on all the
21 other States will start out with here is what the Constitution says
22 about how elections are supposed to be done, the U.S. Constitution.
23 Here is what each State constitution says, if it says anything that is
24 relevant to that.

1 Here is what that State, each State, there are 49 and D.C.,
2 here is what that State's procedures and practices are concerning
3 elections. Here is the equipment they use. And, to the extent that we
4 can find out, this is how the equipment is dispersed throughout the
5 State generally. And here is what they say happened on election day.
6 There are some people who say that this happened or that happened or
7 the other thing happened, or everybody in the State says everything was
8 fine and dandy, or whatever they said.

9 And this sounds to me like a job--I don't tell you this,
10 Staff Director, but I think I will tell you. I think it's a job for
11 OCRE. I think it's a job for the Research and Evaluation. So, Terri,
12 that's your bailiwick, and you will of course have to work with the
13 Regional Directors and the SACs, and the Staff Director of course will
14 have to see that all this gets done, but my view is that's how it
15 would. And you ought to be able to get good information from SAC
16 members about their States. It's a research job. It's a legal job.

17 Yes, Commissioner Redenbaugh?

18 COMMISSIONER REDENBAUGH: I'm sorry. I just wanted to get--
19 can I go now?

20 CHAIRPERSON BERRY: You may go.

21 COMMISSIONER REDENBAUGH: Or did you want to finish? I'm
22 sorry.

23 CHAIRPERSON BERRY: I was about at the end. I was simply
24 trying to conceptualize so that the staff would know what it is we're--

1 COMMISSIONER REDENBAUGH: What you said satisfies that there
2 are two fundamental areas of inquiry. One is what happened, you know,
3 allegations of this or that misconduct, and I think your list was very
4 good and probably complete. So, you know, one is what happened.

5 And then the other area is what is the process by which--
6 what is the process and who are the players by which the procedures
7 were set? Like, for example, how is it determined in some counties to
8 have this kind of balloting and in others, some other kind? So that's
9 very much a process question rather than, you know, who did what in
10 this election.

11 And since really what we're after is systemic change in the
12 process, that part of the investigation is very important, and probably
13 less interesting in a--probably less fun to do, but in terms of
14 producing a change in how things work, I would say a very important
15 area of investigation, analysis, and recommendations. Because, for
16 example, I don't know, I have no idea in Florida if these decisions are
17 made centrally or local autonomy or any idea who that works, and I
18 think that would be very important, to have an understanding.

19 CHAIRPERSON BERRY: Okay.

20 COMMISSIONER REDENBAUGH: Does that make--

21 CHAIRPERSON BERRY: That makes sense, I think, and it's
22 consistent with what I said, and it elaborates--

23 COMMISSIONER REDENBAUGH: Yes, yes.

24 CHAIRPERSON BERRY: Because most people won't know who was

1 responsible, either. I mean, part of this is public education, and
2 most people, including my own students in my History of American Law
3 course, have no idea about the most fundamental things. So I think
4 that telling people, here is the way it's supposed to be, and here is
5 who's responsible--

6 COMMISSIONER REDENBAUGH: Well, and not only who, like a
7 person, but their role, what is the role of the county canvassing board
8 to--

9 CHAIRPERSON BERRY: Or the State board--

10 COMMISSIONER REDENBAUGH: Yes, or whatever it is. They are
11 the ones who make these determinations. Here is how that process
12 works, and the consequence of that is to systematically disenfranchise
13 these groups, you know, like that.

14 CHAIRPERSON BERRY: The only--and it's just, we'll see what
15 the staff comes up with--the only difference between what you said and
16 I said is, the way I think they might do it is to explain the context
17 first, that is, how is it supposed to happen, and who is responsible
18 for it, and what are the procedures and practices.

19 COMMISSIONER REDENBAUGH: Yes. I--

20 CHAIRPERSON BERRY: What happened this time, and what impact
21 did it have on people, according to what they say?

22 COMMISSIONER REDENBAUGH: Yes. No, I--yes, there's nothing
23 that you said with which I would disagree. I was--

24 CHAIRPERSON BERRY: Okay. That's very helpful.

1 COMMISSIONER REDENBAUGH: --the two areas, sort of the how
2 and the what.

3 CHAIRPERSON BERRY: Okay. Commissioner Meeks?

4 COMMISSIONER MEEKS: Well, we've already voted on the
5 motion, but on the issue of having, of the possibility of having
6 hearings in other States, I mean, the level of allegations in Florida
7 have been--it's been very high, and I don't know that, you know, that
8 is going to happen in the other States, or if we need to have a
9 baseline level of allegations before we consider having a hearing.

10 I just want to make that point because, I mean, the motion
11 does include hearings in other States and, I mean, I think--I mean, I
12 haven't heard from the press that there has been this high level of
13 allegations in other States, so there's a possibility that we may not
14 have hearings in other States.

15 CHAIRPERSON BERRY: Right. You are absolutely correct.
16 There is a possibility--what the motion leaves open is the possibility
17 that we will or the possibility that we won't, and that it depends on
18 what is unearthed because, as we sit here today, at this time there is
19 no reason for us to believe that while there have been some
20 allegations, that the level of them--that they rise to the same level.

21 Although, as the Vice Chair pointed out and as Commissioner
22 Wilson I think pointed out, it may just be that people are focusing on
23 Florida because of the closeness, and if you put some other place under
24 the same microscope, perhaps you might find something similar. We

1 don't know the answer to that. There may be circumstances peculiar to
2 Florida, politically and otherwise. But right now the focus is to
3 begin with Florida on one track with OGC, while OCRE is working on the
4 research about what happened in the other States, and then we will make
5 another decision if we want to go somewhere else.

6 Yes?

7 COMMISSIONER REDENBAUGH: Madam Chair?

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

10 COMMISSIONER EDLEY: I, too, am a little bit concerned that
11 there was an encyclopedic quality to, Madam Chair, the way you first
12 set out OCRE's research task. And since our fancy conference tables
13 are covered with formica rather than mahogany and gold, we do have--

14 [Laughter.]

15 COMMISSIONER EDLEY: --these type of constraints. And I
16 hope that, I think as the staff goes forward, you know, that there will
17 be some way to tier not only the hearings but also the level of depth
18 and specificity and detail for all the jurisdictions around the nation.

19 The more general point is, I wanted to offer a further
20 refinement on Commissioner Redenbaugh's comments to you. What I have
21 in mind is sort of a three by two matrix, where we are looking at how
22 is the process designed and set up, that is, who has which authorities
23 and so forth, that Russell was talking about and that you talked about,
24 so that's first. How is it designed and set up? Then, what happened?

1 And then, third, what should be done prospectively so that the
2 recommendations--and then the columns, if you will, are looking at it
3 through the discrimination lens and then looking at it through just the
4 good government lens, if you will.

5 So I think with respect to each of these we ought to be
6 looking to see what are the implications in terms of the anti-
7 discrimination statutes and paradigm, as well as with the good
8 government, but that's at least the way I have it in my--

9 CHAIRPERSON BERRY: But you left out fraud. Can fraud be
10 another level of inquiry, once you lay it out?

11 COMMISSIONER REDENBAUGH: Would that be under good
12 government?

13 COMMISSIONER EDLEY: Yes, that's the way I--

14 CHAIRPERSON BERRY: Would you think that under good
15 government--

16 COMMISSIONER EDLEY: Yes, right. I mean problems other than
17 problems of discrimination.

18 CHAIRPERSON BERRY: Okay, so we put fraud under good
19 government, because fraud would be--

20 COMMISSIONER REDENBAUGH: That's not too much to expect of
21 government, is it, Mary?

22 CHAIRPERSON BERRY: Right. Fraud would be bad government.

23 COMMISSIONER EDLEY: Bad government.

24 CHAIRPERSON BERRY: Vice Chair?

1 VICE CHAIRPERSON REYNOSO: Two observations, Madam Chair.
2 One is that there has been some discussion on Capitol Hill of having
3 hearings, particularly looking toward the view of providing some
4 financial assistance, as I have read, to the local communities and
5 States to update their mechanisms. So that just reminds me that it may
6 be that some of the congressional committees have in fact put a lot of
7 this data together, and maybe we can get it from them. I don't know
8 what they have done.

9 The other is just a reminder that we'll need to review the
10 other work we've had, we've asked the staff to do, and sort of
11 rearrange that, because clearly this has priority, and so we have to be
12 realistic that some of that other work won't get done right away.

13 CHAIRPERSON BERRY: Okay. I will--

14 COMMISSIONER REDENBAUGH: Madam Chair?

15 CHAIRPERSON BERRY: Yes, Commissioner Redenbaugh?

16 COMMISSIONER REDENBAUGH: Reflecting back on what Cruz said,
17 that the level of complaints from other States may not have risen to a
18 high level because they have been--say in California, for example, the
19 election was not close, that suggests the possibility that in a State
20 like that or others, that we maybe don't investigate the "what
21 happened" but do spend some resources developing, well, what's the
22 process, you know, the "how," and is that process consistent with these
23 principles of good government and anti-discrimination?

24 CHAIRPERSON BERRY: Okay. All right. That's a possibility.

1 COMMISSIONER REDENBAUGH: Okay.

2 CHAIRPERSON BERRY: What I would like to do is, I'm going to
3 recognize Commissioner Lee, and then after I do that, I'm going to try
4 to close off this part of the discussion and move on, because before we
5 start "Crossing Borders" I want us to have at least a five-minute
6 break.

7 Yes, Commissioner Lee?

8 COMMISSIONER LEE: I may be a bit naive, but besides all
9 the--

10 CHAIRPERSON BERRY: You are not naive.

11 [Laughter.]

12 COMMISSIONER LEE: In the areas of lessons learned and
13 recommendations, I'd like to recommend to the staff to look at best
14 practices, if there is such a thing, in the areas of voting. There are
15 counties where they have very diverse populations that may not have
16 problems, and they might have put into--different policies that we may
17 want to look at. So as we make our recommendations, I'd like to see if
18 there were any good practices that we can compare. You may not find
19 any, but that's what I mean, if I'm naive.

20 CHAIRPERSON BERRY: Yes, and we can either do that in the
21 OCRE part--and at the end all of this will come together, because the
22 information that's in the OCRE report will be useful for the
23 recommendations that we make, so at the end it will all come together.
24 And I do realize I was being a bit expansive in what I was asking OCRE

1 to do, Chris.

2 Okay. Are there any future agenda items?

3 [No response.]

4 CHAIRPERSON BERRY: Hearing no future agenda items, I will
5 declare a five-minute--or what is it, eight minutes, or whatever it is
6 on the clock--recess until we start the "Crossing Borders." Okay? So
7 we are in recess until then.

8 COMMISSIONER REDENBAUGH: Madam Chairman?

9 CHAIRPERSON BERRY: Yes.

10 COMMISSIONER REDENBAUGH: I'll be leaving the call now.

11 CHAIRPERSON BERRY: Okay. Thank you, Russ.

12 COMMISSIONER REDENBAUGH: Thank you.

13 [Whereupon, at 10:52 a.m., the proceedings were recessed.]

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