

TO: Library

U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

COMMISSION MEETING

+ + + + +

FRIDAY,

DECEMBER 7, 2001

+ + + + +

WASHINGTON, D.C.

+ + + + +

The Commission convened at 9:30 a.m., in Room 540, 624 Ninth Street, Northwest, Washington, D.C., Chairperson Mary Frances Berry, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON
CRUZ REYNOSO, VICE CHAIRPERSON
JENNIFER C. BRACERAS, COMMISSIONER
CHRISTOPHER EDLEY, JR., COMMISSIONER
ELSIE M. MEEKS, COMMISSIONER
RUSSELL G. REDENBAUGH, COMMISSIONER
ABIGAIL THERNSTROM, COMMISSIONER
VICTORIA WILSON, COMMISSIONER

LESLIE R. JIN, STAFF DIRECTOR

U.S. COMMISSION ON CIVIL RIGHTS

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

STAFF PRESENT:

KIMBERLEY ALTON
DEBRA CARR, Deputy General Counsel
KI-TAEK CHUN
IVY DAVIS
BARBARA DELAVIEZ
TERRI DICKERSON
PAMELA A. DUNSTON
MICHAEL FOREMAN
LATRICE FOSHEE
RACHAEL GOLDFARB
GEORGE M. HARBISON
ALEXANDRA HARRIS
MYRNA HERNANDEZ
CAROLITA LITTLE
PAMELA MOYE
JENNY PARK
MARC PENTINO
PETER REILLY, Parliamentarian
KWANA ROYAL
AUDREY WIGGINS
DAVID WONG
AUDREY WRIGHT
MIREILLE ZIESENIS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA
LAURA BATIE
SETH GROSSMAN
KRISHNA TOOLSIE

I. Discussion Concerning Terms of Members of the Commission 7

II. Approval of Agenda 16

III. Approval of Minutes of November 9, 2001 Meeting 30

IV. Announcements 32

V. Staff Director's Report 33

VI. State Advisory Committee Appointments 57

VII. Program Planning 64

VIII. Future Agenda Items 143

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

(9:38 a.m.)

1
2
3 CHAIRPERSON BERRY: The meeting will come
4 to order.

5 COMMISSIONER THERNSTROM: Madam Chair,
6 point of order.

7 CHAIRPERSON BERRY: Yes, Commissioner
8 Thernstrom.

9 COMMISSIONER THERNSTROM: The Commission
10 is not properly constituted. I'd like to introduce to
11 my colleagues a new member of the Commission, Mr.
12 Peter Kirsanow.

13 CHAIRPERSON BERRY: You're out of order,
14 Ms. Thernstrom.

15 COMMISSIONER THERNSTROM: I believe that
16 this is a point of order.

17 CHAIRPERSON BERRY: The Chair rules that
18 you're -- Parliamentarian, I rule that the point that
19 she made is out of order. We'd like to vote on the
20 point. How do we go about doing that, on whether the
21 Commission agrees with her point of order?

22 MR. REILLY: The Chair can just call for a
23 vote and a vote can be taken.

24 CHAIRPERSON BERRY: Okay. Would the
25 Commission like to -- do I need a motion or simply

NEAL R. GROSS

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

1 call the vote?

2 MR. REILLY: A motion and a second is
3 required.

4 CHAIRPERSON BERRY: Okay. Could I get a
5 motion that Commissioner Thernstrom is out of order in
6 trying to raise this issue at this time in the
7 proceedings?

8 MR. REILLY: The motion has to be to
9 overrule you.

10 COMMISSIONER EDLEY: Yes.

11 CHAIRPERSON BERRY: Okay. I rule that
12 she's out of order.

13 VICE CHAIRPERSON REYNOSO: Yes. Madam
14 Chair, with --

15 CHAIRPERSON BERRY: On the question of
16 whether the Commission is properly constituted, it
17 seems to me that is a point of order.

18 VICE CHAIRPERSON REYNOSO: Madam Chair,
19 you ruled her out of order. A motion has to be made
20 to override your ruling.

21 CHAIRPERSON BERRY: Okay.

22 VICE CHAIRPERSON REYNOSO: And it has to
23 be by a majority vote.

24 CHAIRPERSON BERRY: Okay.

25 COMMISSIONER THERNSTROM: I rule that your

NEAL R. GROSS

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

1 order is --

2 CHAIRPERSON BERRY: You move that I --

3 COMMISSIONER THERNSTROM: I move that --
4 I'm sorry. I move that your -- sorry about that --

5 CHAIRPERSON BERRY: That my ruling was out
6 of order.

7 COMMISSIONER THERNSTROM: -- that your
8 ruling is out of order, Madam Chair.

9 COMMISSIONER BRACERAS: Second.

10 CHAIRPERSON BERRY: All right. There's
11 been a motion and a second that my ruling is
12 inappropriate or out of order. Is there any
13 discussion, or are you ready for the vote?

14 COMMISSIONER REDENBAUGH: It's non-
15 debatable.

16 CHAIRPERSON BERRY: It's non-debatable.
17 That's right. All those in favor of the motion that
18 my ruling is out of order, indicate by saying aye.

19 (Chorus of ayes.)

20 CHAIRPERSON BERRY: Did you vote,
21 Commissioner Redenbaugh?

22 COMMISSIONER REDENBAUGH: I did, but I
23 also ask for a roll call vote.

24 CHAIRPERSON BERRY: Okay. You said aye?
25 All those opposed to the ruling, indicate by saying

1 nay.

2 (Chorus of nays.)

3 CHAIRPERSON BERRY: Okay. The nays have
4 it. The motion is --

5 COMMISSIONER BRACERAS: Madam Chair?

6 CHAIRPERSON BERRY: After I make a
7 statement, you can be heard. Okay? After I make a
8 statement, you can be heard.

9 But, first, we need to record the ayes and
10 nays. The ayes are Commissioner Redenbaugh,
11 Commissioner Thernstrom, Commissioner Braceras.

12 COMMISSIONER THERNSTROM: And Commissioner
13 Kirsanow as well.

14 CHAIRPERSON BERRY: The nays are
15 Commissioner Edley, Commissioner Meeks, Commissioner
16 Wilson, and Vice Chair Reynoso.

17 **I. Discussion Concerning Terms**
18 **of Members of the Commission**

19 CHAIRPERSON BERRY: Now, I have a
20 statement to make, and then I'll recognize you.

21 I'm Mary Frances Berry, Chairperson of the
22 U.S. Commission on Civil Rights, and the Geraldine R.
23 Segal Professor of Legal History at the University of
24 Pennsylvania.

25 Issues have been raised about the terms of

1 members of this Commission. The administration's view
2 -- that is, the White House and the Justice Department
3 -- is different from that that our Commission staff
4 has followed, with the advice of counsel, as the
5 correct view. This issue will have to be decided
6 ultimately by neither the administration nor us, but
7 by the courts.

8 The issue turns on several things. One,
9 it turns on the dispute about what the Commission
10 statute means.

11 The 1983 statute of the Commission, which
12 we are going to show to you with a visual, I hope,
13 that will be here in a minute -- okay. Would you put
14 up the 1983 language?

15 STAFF DIRECTOR JIN: It's not projecting.
16 No, it's not projecting.

17 CHAIRPERSON BERRY: The camera light has
18 to go off.

19 (Brief pause while the video projector is
20 being set up.)

21 CHAIRPERSON BERRY: Could somebody turn
22 the lights back on until they finish getting this to
23 work, and then I'll show it when they show it, and
24 I'll continue making the statement I was making.

25 Could we have order in the room, please?

1 Could the Commission be in order, please?

2 The administration's view of the
3 Commission's appointments is different from that of
4 our staff and that our staff has followed with the
5 advice of counsel as the correct one.

6 We have copies of the 1983 statute and the
7 1994 statute in the back for the press if anyone would
8 like to have one. We will show them as soon as the
9 equipment will work.

10 The issue is whether or not the 1994
11 language that simply says, "The term of office of each
12 member of the Commission shall be six years" applies.

13 As you can see, in 1983 --

14 COMMISSIONER THERNSTROM: Turn the lights
15 off.

16 CHAIRPERSON BERRY: -- in 1983, the
17 Commission language says, "The term of office of each
18 member of the Commission shall be six years, except
19 that members first taking office shall serve as
20 designated by the President, subject to the provisions
21 of paragraph 3, for terms of three years, and any
22 member appointed to fill a vacancy shall serve for the
23 remainder of the term for which his predecessor was
24 appointed." The language is there in black and white,
25 and there are copies available that anyone can have.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And the key language is at the end, "Any
2 member appointed to fill a vacancy shall serve for the
3 remainder of the term for which his predecessor was
4 appointed." That's the 1983 language.

5 Now, that language was repealed by the
6 Congress, and instead the Congress put some different
7 language -- if you could put it up -- in 1994. And
8 the language in 1994 has one sentence about this
9 issue. It says, "The term of office of each member of
10 the Commission shall be six years." That's what it
11 says.

12 This dispute is about whether this 1994
13 statute, which is the one we operate under, applies to
14 the position that is occupied by Commissioner Victoria
15 Wilson.

16 You may now turn the lights back on.

17 This issue is about something else, and
18 it's a subject which is very familiar to me. It's
19 about a piece of paper. It's about the meaning of a
20 piece of paper that Commissioner Wilson has on her
21 wall, which is a certificate showing her appointment
22 supposedly, and a piece of paper which is a commission
23 -- which says what our term of office is that is
24 supposed to be in her possession.

25 The reason why this issue is familiar to

1 me is because, in 1983, in a case decided in the
2 Federal District Court called Berry v. Reagan, the
3 same issue was decided by the courts. At that time,
4 President Reagan fired me and other Commissioners from
5 this very same Commission for criticizing his civil
6 rights policies. He told the press that I served at
7 his pleasure and I wasn't giving him any pleasure.

8 And the certificate that I had hanging on
9 my wall said, "You serve at the pleasure of the
10 President," so they fired us. Bambi Ramirez and I,
11 two Commissioners, sued the President in Federal
12 District Court.

13 And by the way, when we sued and when he
14 fired us, we were ordered by the Reagan-appointed
15 Commissioners here not to even enter the Commission
16 Building. We were barred from the building and told
17 that we could not even come to the public meetings in
18 the building.

19 Anyway, we went to court, and the Federal
20 District Court said that, "Listen to the arguments,"
21 and the argument that was made by the Justice
22 Department is the same argument they're making about
23 Commissioner Wilson. That our appointments were
24 covered by the piece of paper that we had on the wall
25 and by the piece of paper that we had as a commission,

1 and it clearly said we served at the pleasure of the
2 President, so he could fire us any time he felt like
3 it.

4 And you know what the Court said about
5 that? The Court said, after listening to it, that
6 everybody knows since Marbury against Madison, if they
7 ever took a civics course or a political science
8 course, that the commission is conclusive evidence of
9 the appointment only and not of the tenure of the
10 official, the scope and limit of the President's
11 power. That your appointment is covered by the law,
12 not by the piece of paper that you happen to get. All
13 kinds of pieces of paper can be given to people.

14 One example that came up in that case was
15 suppose a judge was appointed -- a Federal Judge --
16 and the Court made out a Commission and said, "You
17 don't serve more than five years." Would this person
18 in fact have to leave after five years? Clearly, the
19 law says that they serve for life. So that's what
20 this issue is in part about.

21 Now, to go on from there -- and it will
22 have to be resolved, but that's what it's about.

23 Suggestions have been made that we should
24 abide by the view of the White House and by the
25 Justice Department on this matter. And we've been

1 asked why we're not doing that. We're not because it
2 would threaten the very independence of this
3 Commission, which I fought for all of my public life.

4 This independence has been respected for the most
5 part without objection, by Democrats, Republicans,
6 Independents, since Dwight Eisenhower proposed this
7 Commission in 1957.

8 When it has not been respected,
9 Commissioners have taken action to ensure that it
10 would be respected. Our independence depends in part
11 on the Commission's ability to interpret its own law
12 without interference from the Executive Branch,
13 including the White House and the Justice Department,
14 whose functions we monitor under the law, under our
15 watchdog responsibility.

16 If we must defer to decisions made by the
17 White House and the Justice Department, concerning the
18 meaning of our law that we operate under, we lose our
19 independence and we will be incapable of exercising
20 our proper functions.

21 There have been White Houses that haven't
22 wanted the Commission to investigate certain matters.

23 There have been White Houses that have not wanted the
24 Commission to subpoena certain officials or to do
25 certain reports. And the Commission has never

1 deferred to the interpretation of the White House or
2 to any administration, and I've been here through five
3 administrations -- Republicans and Democrats -- when
4 it comes to how we exercise our functions.

5 We will continue to work on this while
6 it's being decided. And if the courts should decide
7 that our interpretation of the appointments clause of
8 our statute is wrong, then we will, of course, abide
9 by judicial instructions.

10 In the meantime, we will continue to
11 operate. We will vote on issues, and we will record
12 Ms. Wilson's vote on any matter that comes before us
13 and take note of it. And this would mean that if the
14 courts should decide that she is no longer a
15 Commissioner and that we were wrong, we can rescind
16 any decisions that we are instructed to rescind.

17 And in the meanwhile, our counsel, Paul
18 Weiss, Rifkind, who is the outside counsel working
19 with our counsel, will seek meetings with the counsel
20 at the White House and the Justice Department to try
21 to resolve this matter expeditiously. And if not,
22 then they will have to be in court to try to resolve
23 it in court.

24 And we hope that the White House and the
25 Justice Department would join with us in seeking a

1 resolution and an interpretation from the courts.

2 The reason why we don't stop what we're
3 doing -- and we're going to continue to try to do our
4 work, and we won't stand down until these matters are
5 resolved, although the White House Counsel suggested
6 to us last night that we ought to cancel this meeting,
7 which is another example of the White House trying to
8 tell us what to do.

9 It is because of the urgency of addressing
10 civil rights problems that we will not cancel this
11 meeting, and we will continue to try to function as
12 best we can. The opponents of civil rights will not
13 stop their activities, and the people we are sworn to
14 protect who come to us seeking succor and asking us to
15 help them and give them a hearing will not stand down.

16 And so, therefore, we will not stand down, and we
17 will try to continue our work.

18 I want to announce that we have a new
19 Commissioner with us today, Jennifer C. Braceras, who
20 is assuming a position on this Commission. There's a
21 vacancy occasioned by the expiration of the six-year
22 term of Commissioner Yvonne Lee.

23 Ms. Braceras, or Commissioner Braceras,
24 currently serves as a John M. Olin fellow in law at
25 Harvard University Law School, and she was previously

1 a Charles Hamilton Houston fellow, and she is a
2 graduate of the University of Massachusetts and
3 Harvard Law School.

4 I want to welcome you to the Commission --

5 COMMISSIONER BRACERAS: Thank you. It's a
6 pleasure to be here.

7 CHAIRPERSON BERRY: -- Ms. Braceras. You
8 were seeking recognition, so what I should do at this
9 point is ask for a motion to approve the agenda, and
10 then recognize you, because we're in a meeting.

11 **II. Approval of Agenda**

12 CHAIRPERSON BERRY: Could I get a motion
13 to approve the agenda?

14 VICE CHAIRPERSON REYNOSO: So moved.

15 CHAIRPERSON BERRY: Okay. Could I get a
16 second?

17 COMMISSIONER EDLEY: Second.

18 CHAIRPERSON BERRY: Okay. Any discussion
19 of the agenda? All in favor -- oh, discussion?

20 COMMISSIONER REDENBAUGH: Discussion.

21 CHAIRPERSON BERRY: Yes, Commissioner
22 Redenbaugh.

23 COMMISSIONER REDENBAUGH: Yes. I ask that
24 we defer the -- I'm going to vote against this motion
25 because my understanding is it would include the

1 discussion of the 2002 agenda, which both by practice
2 and by administrative instructions we've taken up in
3 January.

4 Now, and the background of that is my
5 notion that we will have resolved the credentials
6 issue of the two Commissioners in question, and we'll
7 constitute a -- possibly a different body in January.

8 CHAIRPERSON BERRY: The Staff Director, as
9 I understand it, the reason why we -- and the
10 Commissioners were notified of this, and no one
11 responded negatively -- we would discuss the project
12 planning here because the Commission staff needed more
13 time to get ready for the hearing that they were
14 supposed to do at this meeting. So we were going to
15 have a wise and best use of our time by doing this.
16 Is that right, or am I wrong?

17 STAFF DIRECTOR JIN: That's correct, Madam
18 Chair.

19 CHAIRPERSON BERRY: So that was the reason
20 why we decided to have the project planning now. And
21 the Commissioners were notified.

22 STAFF DIRECTOR JIN: Yes, Madam Chair.

23 COMMISSIONER BRACERAS: May I speak to
24 that issue?

25 CHAIRPERSON BERRY: Yes, I will let you in

1 just a second.

2 Did any Commissioner respond to you by
3 saying that they didn't want us to do it now?

4 STAFF DIRECTOR JIN: I didn't hear
5 anything from any Commissioner, Madam Chair.

6 CHAIRPERSON BERRY: Okay. You want to
7 speak to that?

8 COMMISSIONER BRACERAS: Yes, please.

9 CHAIRPERSON BERRY: Yes, Commissioner
10 Braceras.

11 COMMISSIONER BRACERAS: I obviously was
12 not a Commissioner at the time and didn't have an
13 opportunity to respond to that issue. But it does
14 appear to me, Madam Chair, that since there is a
15 genuine legal dispute as to the makeup of this
16 Commission, and I firmly believe that Commissioner
17 Kirsanow should be participating in the votes of this
18 Commission and in the agenda-setting function of this
19 Commission, that we at least adjourn, and I will move
20 to adjourn, until we can get a ruling from a court of
21 law.

22 And, of course, I'm happy to abide by
23 whatever that ruling may be. But it seems to me that
24 to go forward and adopt a substantive agenda for the
25 year to come, without resolution as to the legal

1 question at hand as to which members constitute this
2 Commission, would be foolhardy.

3 CHAIRPERSON BERRY: Does anyone want to
4 speak to that? Yes, Commissioner Edley wants to, and
5 then the Vice Chair.

6 COMMISSIONER EDLEY: Well, I just -- my
7 concern is simply that it may take a considerable
8 amount of time to get a definitive ruling from a
9 court. Six months would be lucky. It could easily
10 stretch to a year, not including appeals. And --

11 COMMISSIONER BRACERAS: I'm sure -- in my
12 experience, when you make an emergency motion to a
13 judge, they -- they act on that quickly.

14 COMMISSIONER EDLEY: Well, in my
15 experience, the question is going to turn on whether
16 either side is able to persuade the judge about a
17 likelihood of prevailing on the merits. And, frankly,
18 I think our position is stronger than the government's
19 position.

20 But be that as it may, the reality is that
21 we may or may not be able to get a ruling quickly, and
22 we certainly should, in my view, adopt a posture that
23 says the Commission is going to -- the Commission's
24 work is not going to grind to a halt until there's a
25 definitive resolution in the courts.

1 COMMISSIONER BRACERAS: Since I believe
2 there are no facts in dispute, and this is strictly a
3 legal question --

4 COMMISSIONER EDLEY: Right.

5 COMMISSIONER BRACERAS: -- for a judge to
6 decide, I believe that if both sides of this dispute
7 came to the court and agreed upon the facts, and asked
8 for an emergency ruling, that a judge would be able to
9 act within a matter of days.

10 COMMISSIONER EDLEY: I think that's very
11 -- I think that is possible, but, as yet, since we
12 have not had discussions with the Justice Department
13 or the White House about a litigation schedule, we'd
14 have no reason to think that or to have confidence
15 that they would agree to that kind of an expedited --

16 COMMISSIONER BRACERAS: Well, certainly --

17 CHAIRPERSON BERRY: Pardon me,
18 Commissioners, both of you. This is a fruitless
19 engagement here, because neither one of you knows how
20 long a court would take or whatever. And for the two
21 of you, a Harvard law professor and a Harvard law
22 fellow, to argue about what the court will do --

23 (Laughter.)

24 -- or will not do may be nice, you know,
25 in an academic discussion. But in point of fact, I

1 think, Judge Reynoso, I'll ask you --

2 (Laughter.)

3 COMMISSIONER BRACERAS: I would simply
4 like to move --

5 COMMISSIONER BRACERAS: Well, I would like
6 to make a motion, Madam Chair. I would simply like to
7 move that this Commission adjourn for a week until
8 discussions can be undertaken with the Justice
9 Department and whatever legal proceedings --

10 CHAIRPERSON BERRY: For a week?

11 COMMISSIONER BRACERAS: For one week.

12 COMMISSIONER THERNSTROM: Until the next
13 meeting.

14 COMMISSIONER BRACERAS: One week until --
15 until the attorneys on both sides can -- can sit down,
16 have a discussion, and take it before a judge. And
17 within a week, we should know -- at least we should
18 know better what the timeframe will be.

19 CHAIRPERSON BERRY: And your motion
20 includes if we do not know within a week. Your motion
21 includes what, that the Commission does not meet until
22 we get this resolved or what is your motion?

23 COMMISSIONER BRACERAS: My motion is that
24 we would reconvene in a week or two, whatever you
25 suggest, but some short period of time, and see where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we are at that point.

2 CHAIRPERSON BERRY: Does "see where we
3 are" include proceeding with the Commission's
4 business? Or does it include simply adjourning again
5 if there's no decision?

6 COMMISSIONER BRACERAS: Well, again, as
7 you said, this is all very hypothetical.

8 CHAIRPERSON BERRY: I understand.

9 COMMISSIONER BRACERAS: I think we have to
10 see. By then, a court may have ruled. By then, a
11 settlement may have been reached. I think -- I think
12 that we need to pause, and before we enact a
13 substantive agenda, without the President's duly
14 appointed Commissioner, I think we need to pause and
15 -- and see what the definitive legal ruling is.

16 CHAIRPERSON BERRY: First of all, so that
17 everyone will understand this, whatever agenda the
18 Commission adopts is not a permanent agenda. What
19 project planning involves is not setting in concrete
20 what the Commission is going to do for the next few
21 years.

22 What it means is talking about what we've
23 already done, evaluating that and talking with the
24 staff about it, and talking about blue sky ideas that
25 somebody has about what we might do, and most of the

1 time we don't do that because something happens and we
2 have to go off and do that.

3 COMMISSIONER BRACERAS: I object --

4 CHAIRPERSON BERRY: So these are not set-
5 in-concrete decisions as Commissioners who have been
6 here already know. I know you don't know, but that's
7 fine. I'm just explaining, for purposes of the
8 audience who may not know, who may think that we're
9 talking about setting some rigid schedule that could
10 never change.

11 And I have already explained that we would
12 record Commissioner Wilson's votes. And if anything
13 changed, we'd be happy to go back and change it. And
14 we're not the kind of agency that gives out money that
15 we'd have to get back make some kind of ruling on
16 enforcement that creates something. It's a study
17 commission. So it's perfectly possible to do that and
18 to do our work.

19 I, for one, am a little bit reluctant --
20 and I'm going to recognize the Vice Chair, who was
21 seeking recognition before you and Christopher -- that
22 I'm reluctant to say that we're going to not do any
23 work, come back and discuss where we are, when this
24 matter can be handled legally and we can continue our
25 discussions.

1 Vice Chair, I recognize you.

2 VICE CHAIRPERSON REYNOSO: Yes. Madam
3 Chair, two or three things. One, I'm more than well
4 acquainted with writs after decisions by trial courts,
5 and I can assure you that the notion that we can't
6 tell how long it'll be is a perfectly good notion.

7 Secondly, I am surprised that the new
8 Commissioner is being so aggressive on this matter.
9 Apparently, she wasn't advised, as you just did, that
10 this is a broad planning meeting for the next year or
11 two, that invariably those things change. They could
12 change next meeting.

13 COMMISSIONER BRACERAS: I understand that.

14 VICE CHAIRPERSON REYNOSO: Please don't
15 interrupt me.

16 CHAIRPERSON BERRY: Please the way the
17 Commission behaves, just so that people start getting
18 in each other's way unnecessarily is that people seek
19 recognition, and then I recognize Commissioners.

20 COMMISSIONER BRACERAS: That's fine. I
21 just don't want anybody to speak to my understanding.

22 CHAIRPERSON BERRY: So could you please
23 ask for recognition?

24 COMMISSIONER BRACERAS: Sure. I'd like to
25 be recognized as soon as the Vice Chair is finished.

1 CHAIRPERSON BERRY: Well, then, you will
2 -- and the way we seek recognition is to motion that
3 we'd like to, -- so that we don't all talk at the same
4 time.

5 COMMISSIONER BRACERAS: I understand.

6 CHAIRPERSON BERRY: That's how we do it,
7 please. Is that too much to ask?

8 COMMISSIONER BRACERAS: Oh, not at all.

9 CHAIRPERSON BERRY: Okay. Please
10 continue, Vice Chair.

11 VICE CHAIRPERSON REYNOSO: So these are
12 broad plans that can be changed, not that are changed,
13 and so, as I understand it, we need to have these
14 broad plans for purposes of budget requests, and so
15 on.

16 We've always recognized that, in fact,
17 these matters are subject to change, and invariably
18 they are changed, one, because we don't have the money
19 to do all of the things we had hoped to do; two,
20 because emergencies come up, new matters come up that
21 we need to look at; and, three, because our own
22 thinking changes in the -- during the -- as time goes
23 by in terms of what are more important matters to
24 receive immediate attention from this Commission.

25 So there's nothing set in concrete in

1 terms of any decisions that would be made by this
2 Commission at this time. So I see -- I see no reason
3 to curtail the normal activity of this Commission
4 because the White House has taken a position that we
5 ought not to act.

6 CHAIRPERSON BERRY: And we also, by the
7 way, have on our agenda, as we usually do every month,
8 hearing from the Staff Director and reading about what
9 the staff has been doing, which we do when we come
10 here every month, since we're all part-time
11 Commissioners.

12 And I would be reluctant not to be able to
13 hear what they are doing and to go away -- which
14 doesn't require any decisions. It just requires
15 hearing what the staff has been doing, and that's what
16 they have an expectation that we do.

17 COMMISSIONER BRACERAS: May I be heard?

18 CHAIRPERSON BERRY: Commissioner Braceras?

19 COMMISSIONER BRACERAS: I would like to
20 propose that, since you have agreed to record Ms.
21 Wilson's votes, votes which are in dispute as to
22 whether she's legally entitled to cast them, that the
23 record also reflect the votes of Commissioner
24 Kirsanow, so that if this ever does come before a
25 judge the record will be clear as to how both

1 individuals voted.

2 CHAIRPERSON BERRY: We do not accept the
3 notion that Ms. Wilson's tenure is in dispute. That
4 is for others to argue. If you want to vote on that,
5 we'd be happy to have one.

6 COMMISSIONER EDLEY: Point of order.

7 COMMISSIONER BRACERAS: I'm sorry. A vote
8 on?

9 CHAIRPERSON BERRY: On whatever you were
10 suggesting.

11 Yes, Commissioner Edley.

12 COMMISSIONER EDLEY: Excuse me. We have
13 two motions pending now, a motion to adjourn and a
14 motion on the agenda. I think the motion to adjourn
15 is non-debatable. Can we just get that out of the
16 way --

17 COMMISSIONER BRACERAS: Sure.

18 COMMISSIONER EDLEY: -- and then -- and
19 then return to the motion to approve the agenda and to
20 deal with Commissioner Redenbaugh's objection?

21 CHAIRPERSON BERRY: Okay.

22 COMMISSIONER BRACERAS: Okay. So I move
23 that we adjourn for one week and reconvene at that
24 time to go forward with Commission business.

25 COMMISSIONER EDLEY: I'll second it, so we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 can vote. It doesn't need to be --

2 MR. REILLY: Yes, actually it does need to
3 be seconded.

4 CHAIRPERSON BERRY: Well, it doesn't have
5 to be if he --

6 COMMISSIONER BRACERAS: Well, it's been
7 seconded.

8 COMMISSIONER EDLEY: So we can just vote
9 and go -- let's move forward.

10 CHAIRPERSON BERRY: Okay. All in favor of
11 the motion to adjourn, indicate by saying aye.

12 (Chorus of ayes.)

13 Opposed?

14 (Chorus of nays.)

15 COMMISSIONER BRACERAS: I would like to
16 request a roll call vote.

17 CHAIRPERSON BERRY: All right. Fine. The
18 nays are -- Commissioner Redenbaugh, did you vote no?

19 COMMISSIONER REDENBAUGH: No.

20 CHAIRPERSON BERRY: How did you vote,
21 Commissioner Redenbaugh?

22 COMMISSIONER REDENBAUGH: This is a motion
23 to adjourn.

24 CHAIRPERSON BERRY: Yes, on the
25 adjournment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER REDENBAUGH: I voted to
2 adjourn.

3 CHAIRPERSON BERRY: Okay.

4 COMMISSIONER REDENBAUGH: I voted for the
5 motion.

6 CHAIRPERSON BERRY: Yes.

7 Commissioner Thernstrom?

8 COMMISSIONER THERNSTROM: I voted to
9 adjourn.

10 CHAIRPERSON BERRY: Yes.

11 Commissioner Braceras?

12 COMMISSIONER BRACERAS: I voted to adjourn
13 as did Commissioner Kirsanow. I'd like the record to
14 reflect that.

15 CHAIRPERSON BERRY: Commissioner Edley?

16 COMMISSIONER EDLEY: No.

17 CHAIRPERSON BERRY: Edley, no.

18 Meeks?

19 COMMISSIONER MEEKS: No.

20 CHAIRPERSON BERRY: Wilson?

21 COMMISSIONER WILSON: No.

22 CHAIRPERSON BERRY: Reynoso?

23 VICE CHAIRPERSON REYNOSO: No.

24 CHAIRPERSON BERRY: Okay. The motion dies
25 for want of a majority. We will then go on with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 approval of the agenda.

2 III. Approval of Minutes of
3 November 9, 2001 Meeting

4 CHAIRPERSON BERRY: Now, approval of the
5 minutes of November 9th, 2001 meeting.

6 COMMISSIONER BRACERAS: I'm sorry, Madam
7 Chair, I had a second motion on the table that was --

8 CHAIRPERSON BERRY: I am recognizing
9 Commissioner Redenbaugh.

10 COMMISSIONER REDENBAUGH: Mine was the
11 same point. I'm confused as to what motions are still
12 pending and where we are.

13 COMMISSIONER BRACERAS: My second motion
14 was if we're to go forward, which we've now decided
15 not to adjourn, at least by your tally, my -- my
16 second motion is to ensure that Commissioner
17 Kirsanow's votes are recorded for the record. Whether
18 you abide by them or not is your decision, but I'd
19 like the vote recorded.

20 CHAIRPERSON BERRY: Is there a second to
21 the motion?

22 COMMISSIONER THERNSTROM: Second.

23 CHAIRPERSON BERRY: All those in favor of
24 the motion, indicate by saying aye.

25 (Chorus of ayes.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Opposed?

(Chorus of nays.)

COMMISSIONER BRACERAS: Roll call, please.

CHAIRPERSON BERRY: Redenbaugh, aye.

COMMISSIONER REDENBAUGH: Aye.

CHAIRPERSON BERRY: Thernstrom, aye.

Braceras, aye.

COMMISSIONER BRACERAS: And Kirsanow aye.

CHAIRPERSON BERRY: Edley, nay. Meeks,
nay. Wilson, nay. Reynoso, nay.

The motion dies.

Now, we go on to approval of minutes of
the November 9th, 2001 meeting. Could I get a motion
to approve the minutes?

COMMISSIONER WILSON: So moved.

CHAIRPERSON BERRY: Could I get a second?

COMMISSIONER MEEKS: Second.

CHAIRPERSON BERRY: Are there any changes
in the minutes that anybody wants to make? All those
in favor of the minutes approval, indicate by saying
aye.

(Chorus of ayes.)

Opposed to the minutes?

(No response.)

I don't hear any, so --

1 COMMISSIONER REDENBAUGH: I have no
2 opposition.

3 CHAIRPERSON BERRY: -- the minutes are
4 approved.

5 Did you say you're opposed, Russell?

6 COMMISSIONER REDENBAUGH: No, I said I
7 have no opposition.

8 CHAIRPERSON BERRY: Oh, okay.

9 **IV. Announcements**

10 CHAIRPERSON BERRY: The next item on the
11 agenda is announcements. Do I have other
12 announcements besides the one that you just gave me,
13 Give me some announcements.

14 COMMISSIONER BRACERAS: Madam Chair?

15 CHAIRPERSON BERRY: The Commission finally
16 has --

17 COMMISSIONER BRACERAS: Can I be
18 recognized for a moment?

19 CHAIRPERSON BERRY: -- signed an
20 appropriations bill. The FY2002 appropriation for the
21 Commission on Civil Rights is \$9,096,000. We would
22 like to introduce and welcome Debra Carr, our new
23 Deputy General Counsel. Debra worked at the
24 Department of Justice in the Civil Rights Division for
25 eight years before coming here -- she's a civil

1 servant that was in competition for this job -- to the
2 Commission.

3 However, for most of the past one and one-
4 half years she worked at the White House as Chair of
5 the White House Interagency Task Force. Debra has had
6 many years of experience in the civil rights arena,
7 and we know she will be a great asset to the
8 Commission.

9 Also, we would like to say farewell to
10 Michael Foreman, our Acting Deputy General Counsel for
11 the past several months, and a valued senior attorney
12 with OGC before that. He has worked on a variety of
13 critical projects during his time with us. Michael
14 has taken a position with the Lawyers Committee for
15 Civil Rights. We wish Michael the best in his future
16 endeavors.

17 We would also like to introduce and
18 welcome Alexandra Harris. An intern working in the
19 Office of Civil Rights Evaluation. Alexandra is from
20 Ithaca College, which I was just visiting recently to
21 speak, and I loved the people there. I had a great
22 time. Welcome, and I hope you enjoy your tenure with
23 us.

24 **V. Staff Director's Report**

25 CHAIRPERSON BERRY: The next item is the

1 Staff Director's Report.

2 COMMISSIONER BRACERAS: Madam Chair, may I
3 be heard, please?

4 CHAIRPERSON BERRY: Yes. Commissioner
5 Redenbaugh had his hand up before you. Commissioner
6 Redenbaugh?

7 COMMISSIONER REDENBAUGH: Did we dispose
8 of the motion to approve the agenda?

9 CHAIRPERSON BERRY: I thought we did.

10 COMMISSIONER REDENBAUGH: That's one of
11 the issues on which I became confused.

12 CHAIRPERSON BERRY: I thought we did
13 before we did the minutes. Did we do it?

14 COMMISSIONER EDLEY: No.

15 CHAIRPERSON BERRY: We didn't actually
16 vote?

17 COMMISSIONER EDLEY: No.

18 CHAIRPERSON BERRY: Oh, gosh. We have to
19 vote.

20 COMMISSIONER EDLEY: We voted on the
21 adjournment, so we should vote on the -- on the --

22 COMMISSIONER BRACERAS: Before we go
23 forward --

24 CHAIRPERSON BERRY: Okay. All right.

25 COMMISSIONER BRACERAS: -- with the

1 agenda, may I be heard?

2 CHAIRPERSON BERRY: The motion was on the
3 floor, and I missed it with all the going back and
4 forth. So all in favor of the agenda, indicate by
5 saying aye.

6 COMMISSIONER BRACERAS: May I -- excuse
7 me, Madam Chair. May I --

8 (Chorus of ayes.)

9 CHAIRPERSON BERRY: I will recognize you
10 in just a minute.

11 Opposed?

12 COMMISSIONER REDENBAUGH: No.

13 CHAIRPERSON BERRY: Okay. All right. So
14 the agenda -- do you want a roll call vote?

15 COMMISSIONER THERNSTROM: Yes, please.

16 CHAIRPERSON BERRY: Okay. All those
17 against the agenda, indicate by saying no.

18 (Chorus of nays.)

19 Did you say no, Commissioner Thernstrom?

20 COMMISSIONER THERNSTROM: I did say no.

21 CHAIRPERSON BERRY: Did you say no,
22 Commissioner Braceras?

23 COMMISSIONER BRACERAS: Yes, as did
24 Commissioner Kirsanow.

25 CHAIRPERSON BERRY: Commissioner Edley?

1 COMMISSIONER EDLEY: Yes.

2 CHAIRPERSON BERRY: Commissioner Meeks?

3 COMMISSIONER MEEKS: Yes.

4 CHAIRPERSON BERRY: Commissioner Wilson?

5 COMMISSIONER WILSON: Yes.

6 CHAIRPERSON BERRY: Vice Chair?

7 VICE CHAIRPERSON REYNOSO: Yes.

8 CHAIRPERSON BERRY: Berry, yes. Yes.

9 Staff Director's Report? Now --

10 COMMISSIONER BRACERAS: Excuse me.

11 CHAIRPERSON BERRY: -- did you want to be
12 recognized again, Russell, before I go to Commissioner
13 Braceras? Or was that your question?

14 COMMISSIONER REDENBAUGH: That was my only
15 one.

16 CHAIRPERSON BERRY: Okay. Commissioner
17 Braceras?

18 COMMISSIONER REDENBAUGH: Thank you.

19 COMMISSIONER BRACERAS: If I'm not
20 mistaken, you previously indicated that I could be
21 heard on the question of Commissioner Kirsanow's
22 appointment, which is what -- the discussion we had
23 when we began this meeting, before you presented us
24 with the history lesson. And I haven't had an
25 opportunity to address that, so I'd like to do so now

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 if possible.

2 CHAIRPERSON BERRY: You may say anything
3 you wish.

4 COMMISSIONER BRACERAS: Okay. Great.
5 Well, I believe that Commissioner Kirsanow is ready,
6 willing, and able to perform his duties here as a
7 Commissioner. He was duly sworn in last night as a
8 Commissioner, and he is prepared to present his
9 credentials to you at this time.

10 So I would like to introduce Commissioner
11 Kirsanow and ask him to rise and present his
12 credentials to you.

13 CHAIRPERSON BERRY: No. You're out of
14 order, Commissioner. Mr. Kirsanow, we are proceeding
15 with the meeting, and you are out of order.

16 MR. KIRSANOW: I think the motion is on
17 the floor to --

18 CHAIRPERSON BERRY: First of all, it
19 hasn't been seconded. It hasn't been voted on. It's
20 a motion -- it's a motion, sir. Could you wait until
21 we vote on it?

22 MR. KIRSANOW: I'll wait.

23 CHAIRPERSON BERRY: All right.

24 COMMISSIONER THERNSTROM: I don't believe
25 it's a motion.

1 CHAIRPERSON BERRY: Did you make a motion?

2 COMMISSIONER THERNSTROM: I don't believe
3 it's a motion.

4 CHAIRPERSON BERRY: Was it a motion?

5 COMMISSIONER BRACERAS: It was a statement
6 that he is ready, willing, and --

7 CHAIRPERSON BERRY: Is it a motion? Is it
8 a motion that we -- that we recognize him?

9 COMMISSIONER BRACERAS: It is a statement
10 that Commissioner Kirsanow is ready, willing, and able
11 to --

12 CHAIRPERSON BERRY: I heard your
13 statement, but are you making a motion?

14 COMMISSIONER BRACERAS: -- perform his
15 duties under law.

16 CHAIRPERSON BERRY: Are you making a
17 motion that we hear from him?

18 COMMISSIONER BRACERAS: I am making a
19 statement. I am making a statement that he is ready,
20 willing, and able to serve --

21 CHAIRPERSON BERRY: There is no motion on
22 the floor.

23 COMMISSIONER BRACERAS: -- and that he has
24 his credentials prepared to present to you.

25 CHAIRPERSON BERRY: I heard your

1 statement, Commissioner Braceras. Is there a motion
2 on the floor? Does someone have a motion?

3 COMMISSIONER THERNSTROM: This is not --

4 CHAIRPERSON BERRY: I do not hear a
5 motion.

6 COMMISSIONER THERNSTROM: -- appropriate
7 for a motion.

8 COMMISSIONER BRACERAS: This is not
9 appropriate for --

10 CHAIRPERSON BERRY: I rule that a motion
11 must be on the floor.

12 COMMISSIONER EDLEY: Point of order.

13 CHAIRPERSON BERRY: Thank you,
14 Commissioner Edley.

15 COMMISSIONER EDLEY: Point of order. I --
16 it -- point of information I should say. It doesn't
17 seem to me it's appropriate for Commissioners to
18 simply invite members of the audience to stand up and
19 make speeches.

20 CHAIRPERSON BERRY: We never do that.

21 COMMISSIONER EDLEY: Am I mistaken?

22 CHAIRPERSON BERRY: That's out of order.

23 COMMISSIONER BRACERAS: I was simply
24 asking that his credentials be --

25 CHAIRPERSON BERRY: Could you please --

1 COMMISSIONER BRACERAS: Nobody took a vote
2 on the presentation of --

3 CHAIRPERSON BERRY: I have not recognized
4 you, Commissioner Braceras. You did not seek
5 recognition. I was speaking with Commissioner Edley.

6 Commissioner Edley, the point is that we
7 never recognize members of the audience to speak in
8 the meetings, if that is your question.

9 COMMISSIONER EDLEY: Yes. I mean, I
10 recall there have been a couple of occasions, but --

11 CHAIRPERSON BERRY: Is that --
12 Parliamentary, is that the rule?

13 MR. REILLY: That's correct, Madam Chair.

14 CHAIRPERSON BERRY: Yes. We do not
15 recognize -- but if there is a motion on the part of
16 the Commission --

17 MR. REILLY: Right. That's what I --

18 CHAIRPERSON BERRY: -- and there has been
19 one in the past at a meeting --

20 MR. REILLY: Right.

21 CHAIRPERSON BERRY: -- that someone wanted
22 a member of the audience to rise and speak, and we
23 discussed the motion, and we voted on it.

24 MR. REILLY: Right.

25 CHAIRPERSON BERRY: So if anyone --

1 COMMISSIONER BRACERAS: He's not a member
2 of the audience. He's a --

3 CHAIRPERSON BERRY: -- wishes to make a
4 motion --

5 COMMISSIONER BRACERAS: He's a sworn-in
6 Commissioner.

7 CHAIRPERSON BERRY: -- we will hear it,
8 otherwise we will proceed with our business.

9 VICE CHAIRPERSON REYNOSO: Madam Chair, I
10 don't know how I --

11 CHAIRPERSON BERRY: Please be calm.

12 VICE CHAIRPERSON REYNOSO: I just want to
13 emphasize that we have certain procedures here that
14 folk be recognized, and they ought to be recognized
15 before they speak. I confess -- I'll calm down. I
16 confess that we have tried very hard in this
17 Commission to deal with one another in a collegial and
18 respectful manner.

19 I'm really quite disturbed by the first
20 few minutes of this meeting where I have seen an
21 attitude and a procedure that's quite contrary to the
22 traditions of this Commission, which I believe have
23 served the people of this country well. So I just
24 hope that we return to a notion of collegiality and a
25 notion of respect for the Chair and for the procedures

1 of this Commission.

2 CHAIRPERSON BERRY: If there are no
3 motions on the floor, we will proceed with the
4 discussion of the Staff Director's Report. And if
5 anyone has any questions of the Staff Director, as we
6 normally do, they should raise them.

7 And the only thing that I would like to
8 reassert at this point, if it's all right with you,
9 Mr. Staff Director, is that the staff has planned this
10 hearing on environmental justice for January. And you
11 will recall that in September we discussed
12 environmental justice.

13 There's a lot of concern about the issues
14 that have been raised during this administration
15 concerning the environment and how they impact people
16 in low income and minority communities, among others.

17 And so we had planned a briefing, remember? I'm just
18 reminding you. And then we didn't have it, and we
19 decided to use that work that had been done by the
20 staff to have a hearing.

21 And so the staff is preparing that
22 hearing, and I'm reminding you and notifying you that
23 that is what we have on the table for January, to see
24 if anyone has any comments, suggestions, and to make
25 sure you remember -- that's the main reason why I'm

1 doing it -- that we, in fact, decided that we would do
2 that. Is that -- would I need to do a --

3 STAFF DIRECTOR JIN: That's correct, Madam
4 Chair, unless the Commissioners --

5 COMMISSIONER THERNSTROM: No, we did not.

6 STAFF DIRECTOR JIN: -- in January on
7 environmental justice.

8 CHAIRPERSON BERRY: Okay. So we needed to
9 get that accomplished. Is there something else that I
10 need to accomplish under your report before we go to
11 the next item?

12 STAFF DIRECTOR JIN: No, Madam Chair.

13 CHAIRPERSON BERRY: So if there's no
14 questions -- yes, Commissioner Thernstrom.

15 COMMISSIONER THERNSTROM: Well, I do have
16 a problem with calling Commissioner Kirsanow a member
17 of the audience. And the point of presenting his
18 credentials is for it to be very clear that he has
19 been sworn in as a Commissioner, is not simply a
20 member of the audience.

21 And as you said yourself, Madam Chair,
22 this is a matter to be resolved by the courts, but he
23 has been duly sworn in and is, therefore, a member of
24 this Commission until courts rule otherwise. So that
25 I would respectfully ask that you accept his

1 credentials and that the record show that there are,
2 at the moment, nine members who -- and eight seats and
3 we have -- and the situation is exactly as you
4 initially described it.

5 So I would ask, once again, that you allow
6 him to present his credentials. He has been sworn in.

7 He is a Commissioner, whether -- who will ultimately
8 sit as a Commissioner has yet, obviously, to be
9 resolved.

10 CHAIRPERSON BERRY: Yes, Commissioner
11 Meeks?

12 COMMISSIONER MEEKS: You know, we had this
13 discussion earlier. And we voted on -- on the agenda,
14 and, for one thing, the SAC appointments are next. I
15 think they're very important that we move forward with
16 them.

17 And since I'm one of the few members of
18 this Commission who actually is not an attorney, you
19 know, on the issue of the two Commissioners, you know,
20 I would like or need absolute clarification from the
21 legal system regarding this, whether a letter rules or
22 whether the statute rules.

23 And so, you know, I don't think that any
24 of us want to compromise the integrity of this
25 Commission. And so I just ask that we do not discuss

1 that issue and we let the courts rule -- move forward
2 with this agenda as it has been approved.

3 Thank you.

4 CHAIRPERSON BERRY: The Commission has
5 already voted on the suggestion made by Commissioner
6 Thernstrom this morning. We also voted on the earlier
7 motion that the Commission is not duly constituted,
8 and the motion was voted down, which answers the same
9 question that she has just raised in a different form.

10 However, if she would like to repeat the
11 motion, we can vote on it again. But I would rather
12 you did not, because we would like to go to the next
13 item on the agenda. But the motion was voted down as
14 it was originally made.

15 If there is no motion, let's go to the SAC
16 appointments. Yes?

17 STAFF DIRECTOR JIN: Madam Chair, could I
18 say one more thing under Staff Director's Report?

19 CHAIRPERSON BERRY: Yes.

20 STAFF DIRECTOR JIN: Just to make sure
21 everything is really clear. Commissioners might
22 remember that over the last few months there has been
23 some suggestions about the Regional Directors coming
24 in with some of the SAC members. And the date January
25 might even be mentioned specifically, but I just

1 wanted to inform the Commissioners that if everything
2 works out well we would like to bring them in then so
3 we can move forward on --

4 CHAIRPERSON BERRY: It's absolutely
5 essential that we bring the Regional Directors, who
6 are out there in the field, and some of the SAC Chairs
7 -- the State Advisory Committees are very important to
8 this Commission, because we have one in every state
9 and the District of Columbia, and they are people who
10 serve as volunteers without pay, and they're our eyes
11 and ears out there in the states.

12 And we haven't had them back here as a
13 group in a long time to discuss things where -- that
14 they see and that they know. We get reports all the
15 time. And our Regional Directors need to come. We
16 haven't been able to financially do what we should do
17 with them.

18 But I'm looking forward to having them
19 come here and maybe an agenda for them, maybe in
20 February or something, if we could get that done.

21 STAFF DIRECTOR JIN: You're looking for
22 February?

23 CHAIRPERSON BERRY: Yes, I think February,
24 if we can figure out how to do it, I think that would
25 be great.

1 Okay. Do others think that that would be
2 important to do? Do others of you think that's
3 important? You don't? You do?

4 COMMISSIONER THERNSTROM: No, I still -- I
5 think that the last --

6 CHAIRPERSON BERRY: Do you want to speak
7 to our State Advisory Committees and how important
8 they are?

9 COMMISSIONER THERNSTROM: No. I would --
10 (Laughter.)

11 -- like to say one last sentence on the
12 last discussion, which is that no one voted on the
13 credentials of Commissioner Kirsanow. I don't think
14 the matter of credentials is a -- is something to be
15 voted on. We have got Commissioner Kirsanow sitting
16 here. He has been sworn in as a Commissioner. This
17 is not a matter of a vote. I think those credentials
18 should be accepted by the Chair.

19 CHAIRPERSON BERRY: No one has introduced
20 a motion, so I don't know why we're discussing this.

21 COMMISSIONER THERNSTROM: Well --

22 CHAIRPERSON BERRY: Go ahead, Commissioner
23 Edley, if you insist. Go ahead.

24 COMMISSIONER EDLEY: Well, I just -- I
25 have to say that my own view is -- is that there is no

1 vacancy. I believe that's what the statute says. I
2 believe that -- I'm not quite sure what "accepting
3 credentials" means. I don't recall any ceremony with
4 broad sword when I started my service on the
5 Commission, but I could have been so excited about the
6 moment that it just --

7 (Laughter.)

8 But were there such a formality involved,
9 frankly, I think it would be illegal for you to accept
10 credentials from somebody creating the impression that
11 they now had the legal standing of a Commissioner. I
12 think that's what we have a judicial system to
13 resolve.

14 And I -- I'd like to, since I have the
15 floor and this isn't going away, I want to -- I hadn't
16 planned on doing this, but I would like to read a
17 letter that I sent yesterday to Congressman Richard
18 Gephardt, the Democratic Minority Leader in the House.

19 I wrote to him because he is the person who appointed
20 me to the Commission.

21 "Dear Mr. Leader: I write as your
22 appointee to the United States Commission on Civil
23 Rights to alert you to worrisome developments
24 threatening the integrity and statutory independence
25 of the Commission. When Commissioner Leon

1 Higginbotham died, President Clinton appointed
2 Victoria Wilson to the Commission.

3 "The Bush administration believes that
4 Commissioner Wilson's appointment was limited to Judge
5 Higginbotham's unexpired term, which would have ended
6 a few days ago. On advice of the civil servants
7 serving in the Commission's Office of General Counsel,
8 a majority of the Commission members are of the firm
9 view that our authorizing statute, as amended, makes
10 all appointments to the Commission for a full term of
11 six years.

12 "Members of the Congress who author the
13 relevant statutory provisions have confirmed this view
14 informally. White House Counsel Gonzales has released
15 a misleading statement to the media and informed the
16 Chair that President Bush will appoint a replacement
17 for Commissioner Wilson, Peter Kirsanow, and instruct
18 him to appear and commence his service as early as our
19 meeting on Friday, December 7th.

20 "I hope and expect that a majority of the
21 Commission members will follow the statute as we
22 interpret it and on advice of counsel, rather than
23 bend to what I can only characterize as a White House
24 impulse to ignore the law for political purposes. A
25 confrontation seems imminent in full media view. It

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 seems certain to involve litigation. It may even
2 involve police or federal marshals if the White House
3 seeks to disrupt the Commission's work rather than go
4 to court.

5 "As you will recall, I have taught
6 administrative law at Harvard for 20 years. I have
7 served on the White House staff in two administrations
8 where I saw many delicate issues involving relations
9 with independent agencies and issues of disputed
10 statutory interpretation.

11 "While there is some room for argument, I
12 firmly believe that the Commission's construction of
13 the statute is far superior and clearly so. The
14 confrontational approach announced by the White House
15 Counsel and confirmed by the White House press
16 spokesman amounts to reckless disregard of the statute
17 and an astonishing lack of minimal respect for an
18 independent watchdog body.

19 "The only explanation I can imagine is
20 that this is retribution for the Commission's recent
21 work. Admittedly, in doing our job, we have perhaps
22 been an irritant to some in the administration or its
23 allies. We knew there were risks to investigating
24 police abuses in New York City, the maladministration
25 of justice in Indian country, and election

1 irregularities in Florida.

2 "We knew there were risks, too, in raising
3 questions about racial profiling and detention
4 practices in the domestic war against terrorism. We
5 expected, however, that these risks would be deflected
6 by the rule of law. Time will tell. Warm regards,
7 Christopher Edley, Jr., Professor of Law."

8 Madam Chair, I think that the notion that
9 lawyers should work with the White House and the
10 Justice Department to try to seek a swift, amicable
11 resolution of the dispute makes a great deal of sense.

12 But in the meantime, I really believe that the work
13 of the Commission is too important to be derailed by
14 obstructionist tactics, and exaggerated parliamentary
15 maneuvering.

16 I think that most of us traveled here in
17 order to try to do the work of the Commission, not to
18 posture. It is wonderful to have so many of the media
19 here. I wish they had been here last month when we
20 talked about terrorism, racial profiling, and the
21 like. I wish they had been here the month before that
22 when we talked about recommendations to the Congress
23 concerning election reform.

24 I hope you will be back in January when we
25 discuss environmental justice or in February when we

1 talk about school reform and civil rights threats to
2 children across the nation. But you may be busy with
3 the World Wrestling Federation or some other --

4 (Laughter.)

5 -- event.

6 Thank you, Madam Chair.

7 CHAIRPERSON BERRY: Yes, Christopher.

8 Yes, thank you, Commissioner Edley.

9 Yes, Commissioner Braceras?

10 COMMISSIONER BRACERAS: Since Commissioner
11 Edley has opened the floor to a substantive discussion
12 of the legal issues here, I would just like to take a
13 moment to say that I concur wholeheartedly with
14 Commissioner Edley in his sentiment that we are all
15 here to do the work of the Commission, and that that
16 substantive work is important.

17 However, I had hoped that today we would
18 be able to begin a constructive dialogue with a truly
19 bipartisan Commission composed of duly sworn in
20 Commissioners, including the President's appointee,
21 Commissioner Kirsanow. And I had hoped that with my
22 own appointment, and with Commissioner Kirsanow's
23 appointment, we could begin a new era of dialogue on
24 these very important issues which we are all committed
25 to.

1 However, it appears to me that it is you,
2 Madam Chair, who have chosen to thwart the work of the
3 Commission by refusing to seat a duly-appointed
4 Commissioner. And I would say that the independent
5 career attorneys at the Department of Justice have
6 come to a very different conclusion than you and your
7 legal staff.

8 They have concluded that the statute
9 provides very clearly for six-year staggered terms,
10 that those staggered terms are instrumental to
11 preserving the integrity and the independence of this
12 Commission, for without them, indeed, Commissioners of
13 one party could all resign at the expiration of a
14 President's term, allowing that President to make four
15 new appointments and thereby control the ideological
16 makeup of the Commission well into his successor's
17 administration and beyond.

18 So the regime of staggered terms, of six-
19 year staggered terms, is integral to maintaining the
20 independence of the statute. It is -- of the
21 Commission, excuse me. It is integral to the statute.

22 You, in your presentation on the statute,
23 neglected to put up all of the statutory language.
24 You put up only a portion of the statutory language,
25 leaving out the language that makes clear the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 statutory scheme, which is that Commissioners should
2 serve six-year staggered terms.

3 And I agree with you that this may seem to
4 some people to be a thorny question of statutory
5 interpretation and administrative law, which is
6 precisely why I previously moved that this body
7 adjourn, so that we could have a neutral judge make a
8 determination as to whose interpretation is the
9 correct one.

10 I do not think that moving forward in any
11 way from here serves the interest of this Commission.

12 I think it is the interest -- in the interest of this
13 Commission to move forward in the spirit of
14 bipartisanship with Commissioners of all who reflect
15 different viewpoints and who are appointed by
16 different parties and different -- different branches
17 of government as the statute contemplates.

18 And that we should engage in a dialogue on
19 the important issues facing the country, but we cannot
20 do that unless this is a truly bipartisan Commission
21 and unless this Commissioner is seated.

22 CHAIRPERSON BERRY: For those who may be
23 listening and aren't aware of it, the Commission is
24 already bipartisan. We have two people who are
25 Independents. I'm an Independent, and I am truly

1 Independent. If you don't believe me, ask some people
2 who have dealt with me. Three are Republicans, at
3 least three people who say they're Republicans. And
4 three people who say they're Democrats.

5 So, first of all, the Commission is
6 already bipartisan. Secondly, the language that I put
7 up was the language. There is a provision in the 1994
8 statute which says that terms shall remain staggered
9 as to the people who were on the Commission up until
10 September 30th, 1994.

11 I have a letter from Congressman John
12 Conyers and Congressman Nadler based on what people
13 know who were there who wrote the legislation, which
14 says that they specifically repealed the early
15 language, which one can see by reading it, which had
16 staggered the terms forevermore.

17 Beyond that, I will point out, for those
18 who don't know, that I served on this Commission for
19 12 years during the Reagan-Bush years, and there were
20 only two of us, who were an Independent and a
21 Democrat. All the rest of the people -- it was a six
22 to two vote, and they voted together all the time on
23 everything.

24 We wrote so many dissents that, you know,
25 my hand got tired of writing dissents. For 12 years.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So if the idea is that that can't happen, it happened.
2 For 12 years it happened. And even when Clinton
3 became President, there was no majority that shifted
4 on the Commission for two or three years after that.
5 I just thought that I'd point that out.

6 And, finally, there are some very fine
7 lawyers in the Justice Department, career attorneys.
8 We just hired one to come over here to be our Deputy
9 General Counsel. But I remember that the Justice
10 Department is not always right on these issues. They
11 weren't right in Berry v. Reagan.

12 They weren't right when they told Bill
13 Clinton that he could surely appoint an Acting Staff
14 Director of this Commission without the Commissioners
15 voting on it, and it was perfectly legal and perfectly
16 fine. And he went ahead and did that and got sued,
17 and the Court said, "That's ridiculous. They don't
18 know what they're talking about. You can't do that."

19 So they're not always right. That's the first thing.

20 But that's not even the point. The point
21 is the one that I made at the beginning of the
22 discussion. The independence of this Commission
23 depends on our ability to interpret our own statute,
24 unless courts tell us something to the contrary, in
25 ways that will permit us to do our work and not to

1 have the White House or the Justice Department, who
2 are the people we monitor, the whole administration,
3 tell us what we can't do, what we can do, and to
4 interpret our statute.

5 **VI. State Advisory Committee Appointments**

6 CHAIRPERSON BERRY: But I have heard the
7 discussion, and I want to have a motion to approve the
8 State Advisory Committee Appointments.

9 COMMISSIONER MEEKS: I move.

10 CHAIRPERSON BERRY: Could I get a second?

11 COMMISSIONER WILSON: Second.

12 CHAIRPERSON BERRY: All right. We have --

13 COMMISSIONER THERNSTROM: I'm sorry. I
14 missed the motion. I'm sorry.

15 CHAIRPERSON BERRY: The State Advisory
16 Committee appointments. There's a motion to approve
17 them, and it has been seconded duly by Commissioners.

18 Is there any discussion, Staff Director?

19 STAFF DIRECTOR JIN: Yes, thank you, Madam
20 Chair, just a minute, just to -- just to highlight a
21 few things. We have 10 packages ready for this
22 meeting. Additionally, the Commissioners need to
23 approve one additional member for the Pennsylvania
24 Advisory Committee, which was rechartered two months
25 ago by your vote. At that time, the Commissioners

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 agreed to allow Commissioner Redenbaugh to make one
2 additional nomination, and information on that
3 nominee, Richard Max Bockol, was forwarded to you
4 earlier.

5 As for the other 10 packets, the
6 Commissioner requested the staff provide summaries of
7 each of the prospective chair's assessment of their
8 civil rights concerns for his or her state. You
9 received those summaries earlier this week. However,
10 you will note that we do not have statements for two
11 states, one is Mississippi and the other one is
12 Washington.

13 For the State of Washington, the reason is
14 that the prospective Chair had to step down recently
15 for personal reasons, and thus we recommend that the
16 Commissioners recharter Washington and await the new
17 nominee for Chair.

18 For Mississippi, we just haven't been able
19 to get a statement from the prospective Chair,
20 although -- despite the best efforts of our Regional
21 Programs Coordinator, as well as our Regional
22 Director.

23 Again, our recommendation would be to
24 approve that State Advisory Committee for rechartering
25 while giving us another month to see if we can get the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 information requested of her, or come up with an
2 alternative. But we certainly understand that her
3 failure to respond more expeditiously is certainly not
4 a particularly good sign.

5 CHAIRPERSON BERRY: So we would approve,
6 if we vote to approve, Alaska, California, Iowa, New
7 Jersey, Nevada, North Carolina, Pennsylvania, South
8 Carolina, and Vermont,, with the Chairs as designated
9 in the packages. Is that correct?

10 STAFF DIRECTOR JIN: Yes, correct.
11 Correct.

12 CHAIRPERSON BERRY: And we would approve
13 Mississippi and Washington as rechartered Advisory
14 Committees but without the Chairs that are in the
15 packages, and you would submit new Chairs to us. Is
16 that correct?

17 STAFF DIRECTOR JIN: Well, for Washington,
18 we would definitely submit a new Chair. For
19 Mississippi, our intent is to give the nominee one
20 more month. But if the Commissioners say we should
21 look for another Chair, of course we can do that.

22 The only caveat I would say is
23 Pennsylvania actually has already been rechartered.
24 We just need to approve --

25 CHAIRPERSON BERRY: Approve the Chairs.

1 STAFF DIRECTOR JIN: No, approve Mr.
2 Bockol, who is an additional nominee from Commissioner
3 Redenbaugh.

4 CHAIRPERSON BERRY: Okay. So I'll restate
5 it. We would approve Alaska, California, Iowa, New
6 Jersey, Nevada, North Carolina, South Carolina, and
7 Vermont, the Chairs and the rechartering.

8 STAFF DIRECTOR JIN: That's correct.

9 CHAIRPERSON BERRY: We would approve the
10 new appointee in Pennsylvania.

11 STAFF DIRECTOR JIN: That's correct.

12 CHAIRPERSON BERRY: We would approve the
13 rechartering of Mississippi and Washington, with the
14 understanding that a new Chair would be sought in the
15 State of Washington.

16 STAFF DIRECTOR JIN: That's correct.

17 CHAIRPERSON BERRY: And you will recommend
18 that to us. And that in the State of Mississippi you
19 would decide whether to seek a new Chair --

20 STAFF DIRECTOR JIN: That's correct.

21 CHAIRPERSON BERRY: -- or to give some
22 time to this other one, but we're not approving the
23 Chair.

24 STAFF DIRECTOR JIN: That's correct.

25 CHAIRPERSON BERRY: Okay. Is that clear

1 to the maker of the motion? Does the maker accept
2 that?

3 COMMISSIONER MEEKS: Yes.

4 CHAIRPERSON BERRY: Does the seconder
5 accept that? Okay. Is there any discussion of the
6 State Advisory Committee, recharterings and the
7 members of the State Advisory Committees, of that
8 issue only? Is there any discussion of that? Yes,
9 Commissioner Edley.

10 COMMISSIONER EDLEY: I want to say that
11 looking to the future, the -- I found that the summary
12 of the views on civil rights priorities of the
13 nominees for Chair to be very uneven and not
14 particularly -- not as helpful as I would have
15 expected.

16 I'm going to go ahead and support the --
17 support the motion, so that we can keep going. I've
18 been I think a source of a little bit of bottleneck in
19 terms of the processing of these SAC appointments, so
20 I certainly don't want to be obstructionist on this.

21 But can I just make a suggestion that
22 looking to the future that perhaps at least if you
23 make available the full statements from these Chairs,
24 as opposed to the staff's summary of those, that it
25 might be a little -- I think I'd find it easier to get

1 really a sense of whether these individuals have a
2 solid and broad-ranging grasp of a full range of
3 issues and the like. And I can't quite tell how much
4 might be getting lost in the translation.

5 CHAIRPERSON BERRY: Staff Director, what
6 do you think about that?

7 STAFF DIRECTOR JIN: Sure. The -- at the
8 last meeting, the Commissioners -- well, we discussed
9 the fact that Ivy Davis, our Regional Program
10 Coordinator, had actually written and we had asked for
11 like basically responses in five different categories,
12 including affirmation to make the Committee a high
13 priority in the life of the person who chairs the next
14 couple of years.

15 But in terms of what we were providing, it
16 was focused on the Chair's -- prospective Chair's
17 priorities in terms of civil rights concerns. Maybe
18 what we could do is we can make sure that -- that that
19 part is totally excerpted, so that you get a full
20 flavor. Would that be satisfactory? Or would you want
21 the whole thing?

22 COMMISSIONER EDLEY: I'd leave it to you.
23 I mean, if you just want to maybe just attach the
24 letters as an appendix to this kind of summary
25 document, that would be fine. I'm not trying to make

1 a lot of staff work.

2 STAFF DIRECTOR JIN: Okay.

3 COMMISSIONER EDLEY: I just want to -- I
4 would just --

5 STAFF DIRECTOR JIN: You feel that this is
6 more --

7 COMMISSIONER EDLEY: -- more comfort
8 level --

9 STAFF DIRECTOR JIN: -- just cursory.

10 COMMISSIONER EDLEY: Right. I mean, you
11 know --

12 STAFF DIRECTOR JIN: Okay. We'll make
13 sure that gets directed.

14 CHAIRPERSON BERRY: Okay. As you know,
15 Staff Director, we are trying to get a feel for --

16 STAFF DIRECTOR JIN: Right.

17 CHAIRPERSON BERRY: -- what the SAC Chair
18 proposes to do in their state, and how much leadership
19 they will exercise in the state.

20 STAFF DIRECTOR JIN: Okay.

21 CHAIRPERSON BERRY: That's the purpose of
22 the exercise. Okay.

23 Are you ready for the question? All in
24 favor, indicate by saying aye.

25 (Chorus of ayes.)

1 Opposed? Anyone opposed to the SAC?

2 (No response.)

3 COMMISSIONER THERNSTROM: You can't
4 believe it? Nobody is opposed.

5 (Laughter.)

6 CHAIRPERSON BERRY: I was waiting.

7 (Laughter.)

8 So ordered.

9 **VII. Program Planning**

10 CHAIRPERSON BERRY: On program planning,
11 why don't we do this, Staff Director. Why don't you
12 tell us, give us a little, you know, brief overview
13 and tell us what's important for us to do here.

14 COMMISSIONER THERNSTROM: Madam Chair, can
15 I just say one last thing before we go into that?

16 CHAIRPERSON BERRY: Yes.

17 COMMISSIONER THERNSTROM: I wonder if you
18 would permit Commissioner Kirsanow to submit for the
19 record a statement and --

20 CHAIRPERSON BERRY: No, I would not. We
21 don't accept statements from -- is that right? We
22 don't accept statements from members of the audience?
23 Have we done that --

24 COMMISSIONER THERNSTROM: Well, again, he
25 is a duly sworn in Commissioner.

1 CHAIRPERSON BERRY: To your knowledge,
2 yes, all right. To my knowledge, it has not either.
3 So unless you have a motion -- if you have a motion,
4 you may introduce it and get it appropriately
5 seconded, and we will vote on it.

6 COMMISSIONER THERNSTROM: Well, I do move
7 that Commissioner Kirsanow, as a duly sworn in
8 Commissioner, be allowed to submit to the record a
9 statement.

10 CHAIRPERSON BERRY: Second? Who seconded?

11 COMMISSIONER BRACERAS: Second.

12 CHAIRPERSON BERRY: Discussion?

13 COMMISSIONER EDLEY: Yes, I would --

14 MR. REILLY: Point of order, just for one
15 minute, please. A motion has been made. I just want
16 to say that a motion was made initially at the
17 beginning of this meeting that the Commissioners who
18 sit around the table constitute the Commission, and a
19 motion has been put forward that a -- that an
20 individual who is not sitting around the table is a
21 Commissioner. And such a motion has to be made by a
22 member of the prevailing party of that initial vote.
23 So --

24 CHAIRPERSON BERRY: Would you please let
25 the Parliamentarian finish, and then I'll recognize

1 you.

2 Are you finished, Peter?

3 MR. REILLY: Yes.

4 CHAIRPERSON BERRY: So what --

5 MR. REILLY: So in other words, members
6 who voted on the initial vote whether Mr. Kirsanow is
7 a Commissioner, or anybody who is on that -- who is a
8 member of that prevailing party, can make this motion.

9 CHAIRPERSON BERRY: Otherwise it's out of
10 order?

11 MR. REILLY: Exactly.

12 CHAIRPERSON BERRY: Okay. Your motion is
13 out of order, Commissioner, based on the
14 Parliamentarian's rule.

15 COMMISSIONER EDLEY: Madam Chair?

16 CHAIRPERSON BERRY: Yes.

17 COMMISSIONER EDLEY: Then, I -- can I make
18 a motion, then, please?

19 CHAIRPERSON BERRY: Oh, please do.

20 COMMISSIONER EDLEY: I'd like to make a
21 motion that I be permitted to introduce, at a later
22 time for this -- for the record, a statement prepared
23 by Mr. Kirsanow concerning his views on the agenda and
24 priorities of the Commission.

25 CHAIRPERSON BERRY: Okay. Could there be

1 a second?

2 COMMISSIONER THERNSTROM: I second that.

3 CHAIRPERSON BERRY: All right. Any
4 discussion? The motion is that Commissioner Edley
5 will -- if Mr. Kirsanow will prepare such a proposal,
6 and we have taken things from public citizens when the
7 Commissioners have requested them and there's a vote
8 to do so, then Commissioner Edley would introduce
9 whatever it is that he gives on his views concerning
10 the --

11 COMMISSIONER EDLEY: This item of the
12 agenda.

13 CHAIRPERSON BERRY: -- the agenda item on
14 program planning for the Commission going forward to
15 the year 2004, and what the Commission ought to be
16 doing. Right? That's the motion?

17 COMMISSIONER EDLEY: Correct.

18 CHAIRPERSON BERRY: It's not on any other
19 subject. It's on that subject.

20 COMMISSIONER EDLEY: Right.

21 CHAIRPERSON BERRY: What if it --
22 something is submitted that's not on that subject,
23 just so I understand the motion.

24 COMMISSIONER EDLEY: It's not covered by
25 the motion, and it may be that Mr. Kirsanow decides

1 that he doesn't want to accept the invitation to give
2 us -- to give us such a statement. But --

3 CHAIRPERSON BERRY: So if he gives it to
4 you, and you look at it and it's on program planning,
5 you will submit it --

6 COMMISSIONER EDLEY: Submit it to the
7 record.

8 CHAIRPERSON BERRY: -- submit it for the
9 record. Okay.

10 COMMISSIONER BRACERAS: May I ask a
11 clarification, please?

12 CHAIRPERSON BERRY: Yes, you could speak
13 to the motion.

14 COMMISSIONER BRACERAS: I'm sorry. It was
15 my understanding that Commissioner Kirsanow wanted to
16 submit a statement for the record regarding his
17 appointment to this Commission, and I -- I think -- I
18 think it's only fair that -- that at least the record
19 reflect his view on that matter.

20 CHAIRPERSON BERRY: Well, that motion was
21 ruled out of order, and the motion now from
22 Commissioner Edley is a different motion, which is to
23 invite him to give him his views on the program plans
24 going forward, what the Commission should be doing.

25 COMMISSIONER EDLEY: Right. I think

1 it's --

2 CHAIRPERSON BERRY: And that Commissioner
3 Edley would be happy to introduce that to the record.
4 That's Commissioner Edley's motion. That's the motion
5 that's on the floor. The previous motion was ruled
6 out of order. So now we have to vote on that motion.

7 COMMISSIONER BRACERAS: Why was it -- I'm
8 sorry. Can you just explain, why was it ruled out of
9 order?

10 CHAIRPERSON BERRY: The Parliamentarian
11 ruled it out of order.

12 MR. REILLY: Yes. If I could state
13 again --

14 COMMISSIONER BRACERAS: I'm sorry.

15 MR. REILLY: The motion --

16 COMMISSIONER BRACERAS: I'm seeking
17 clarification, Madam Chair.

18 CHAIRPERSON BERRY: Okay.

19 MR. REILLY: The first motion of the day
20 was regarding the matter of what is a duly-constituted
21 Commission. It was voted on that the individuals
22 sitting around the table constitute the Commission.
23 So any -- so a motion, then, was made which -- which
24 spoke to reconsidering that matter.

25 So Commissioner Edley's motion was fine,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 but -- and that motion was fine, but it has to be made
2 by somebody who is a member of the prevailing party on
3 that initial vote.

4 COMMISSIONER BRACERAS: I think there's a
5 misunderstanding here.

6 MR. REILLY: Okay.

7 COMMISSIONER BRACERAS: I don't think that
8 Commissioner Thernstrom moved to reconsider that
9 issue. I think Commissioner Thernstrom, if I'm not
10 mistaken, moved to allow Peter Kirsanow to submit a
11 statement for the record, irrespective of what this
12 body decided --

13 MR. REILLY: Okay. I guess it's --

14 COMMISSIONER BRACERAS: -- who would --

15 MR. REILLY: Okay.

16 CHAIRPERSON BERRY: We could have the
17 motion read back, but the motion concerned letting
18 "Commissioner Kirsanow" --

19 MR. REILLY: Right. That's why I --

20 CHAIRPERSON BERRY: -- address his -- his
21 appointment and his credentials or matters of --

22 COMMISSIONER BRACERAS: So it --

23 MR. REILLY: The reason I responded --

24 CHAIRPERSON BERRY: -- which related to
25 the previous motion -- please, let's talk one at a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 time.

2 MR. REILLY: The reason I -- oh, I'm
3 sorry. Go ahead.

4 CHAIRPERSON BERRY: And my understanding
5 is that you said that that motion was, in substance,
6 the same as the previous motion. Therefore, those of
7 us who voted for it and were in the majority on it,
8 needed to introduce --

9 MR. REILLY: Right. Exactly.

10 CHAIRPERSON BERRY: -- the new motion.

11 MR. REILLY: Exactly. Just because --

12 COMMISSIONER BRACERAS: But that's a
13 misunderstanding of what Commissioner Thernstrom's
14 motion was.

15 CHAIRPERSON BERRY: Well, the
16 Parliamentarian has ruled, Commissioner Braceras.

17 COMMISSIONER THERNSTROM: I'd like to make
18 a new motion.

19 MR. REILLY: There's a motion on the
20 table.

21 CHAIRPERSON BERRY: Well, there's a motion
22 on the floor, please.

23 COMMISSIONER BRACERAS: Well, I think we
24 should let --

25 CHAIRPERSON BERRY: There is a motion on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the floor --

2 COMMISSIONER BRACERAS: -- speak as to
3 what her motion was.

4 CHAIRPERSON BERRY: Please, ma'am. Would
5 you please be in order? I realize that these are very
6 interesting matters, and we're all concerned about
7 them. But could we please behave with decorum and
8 respect our colleagues --

9 COMMISSIONER BRACERAS: Absolutely.

10 CHAIRPERSON BERRY: -- when they are
11 speaking, and seek recognition when we wish to speak.
12 I mean, for all of you. I'm not just addressing you.
13 And please, let's all try to be calm, and let's go
14 through this. Okay?

15 Now, there is a motion on the floor. Are
16 you ready for the question on the motion? Yes. I'm
17 calling the question.

18 All those in favor of Commissioner Edley's
19 motion, indicate by saying aye.

20 (Chorus of ayes.)

21 Those opposed to Commissioner Edley's
22 motion, indicate by saying no. I'm waiting.

23 (No response.)

24 The motion passed.

25 All right. Now, we are discussing program

1 planning, which is the agenda item that we are
2 discussing.

3 COMMISSIONER BRACERAS: May I be heard,
4 Madam Chair?

5 CHAIRPERSON BERRY: Does anyone have a
6 motion related to program planning? Please.

7 COMMISSIONER BRACERAS: May I --

8 CHAIRPERSON BERRY: Commissioner Braceras?

9 COMMISSIONER BRACERAS: With all due
10 respect, Madam Chair, I am trying to proceed in an
11 orderly fashion, but if I -- if I keep getting
12 interrupted, I need to speak up. So if you may let me
13 say what I was trying to say before, Commissioner
14 Thernstrom did not make a motion related to an earlier
15 motion. She made a separate and independent motion,
16 which should be voted on by the entire body.

17 If you don't -- if you don't see it that
18 way, or if you misinterpreted her motion, then I will
19 make a motion and rephrase it, so that it is clear.

20 CHAIRPERSON BERRY: We accept the ruling
21 of the Parliamentarian on the motion.

22 COMMISSIONER BRACERAS: Fine.

23 CHAIRPERSON BERRY: If you have a new
24 motion --

25 COMMISSIONER BRACERAS: I will make a new

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 motion.

2 CHAIRPERSON BERRY: -- please make it.

3 COMMISSIONER BRACERAS: Yes. Fine. I
4 move that Peter Kirsanow be permitted to submit a
5 statement to the record at this time.

6 CHAIRPERSON BERRY: We have already
7 decided that he can submit a statement to the record.

8 COMMISSIONER BRACERAS: A statement on
9 whatever he chooses to say. He -- I move that Peter
10 Kirsanow be able to submit a statement of his choosing
11 to the record at this time. That is the motion.

12 CHAIRPERSON BERRY: The seconder is?

13 COMMISSIONER THERNSTROM: I will second
14 that.

15 CHAIRPERSON BERRY: The discussion is the
16 earlier motion was that Commissioner Edley, who is a
17 duly-constituted member of this Commission, would take
18 from Mr. Kirsanow anything he wished to give to him on
19 program planning, and Commissioner Edley would review
20 it and submit it.

21 The Commission does not take submissions
22 from members of the audience or anyone directly to go
23 into the record, unless they are part of a Commission
24 proceeding. That has never happened. That's not what
25 we do. So I am going to rule that the motion is out

1 of order procedurally, because that's not in our
2 procedure.

3 COMMISSIONER BRACERAS: May I rephrase?

4 CHAIRPERSON BERRY: And I will ask if
5 someone wishes to override my decision, all you have
6 to do is move that it be overridden and we will vote
7 on it.

8 Yes, Commissioner?

9 COMMISSIONER BRACERAS: I move that I
10 would like to submit a written statement to the -- for
11 the record.

12 CHAIRPERSON BERRY: All right. Let's get
13 a second, and let's vote on it. What is the statement
14 that you wish to -- would you describe the statement,
15 just as Commissioner Edley described the one that he
16 would submit?

17 COMMISSIONER BRACERAS: I would like to
18 submit for the record a statement on behalf of myself,
19 Commissioner Thernstrom, and Commissioner Redenbaugh
20 about the appointment of Commissioner Kirsanow, and I
21 would also like to submit for the record at the same
22 time a statement written by Commissioner Kirsanow
23 himself.

24 And I will not take up this Commission's
25 time right now, but I would just like to hand them off

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to the Reporter and have them recorded for the record.

2 CHAIRPERSON BERRY: And the part of your
3 motion that is -- Parliamentarian, is that motion that
4 "Commissioner" Kirsanow should submit this thing to
5 her and she should submit it, is that part of the
6 motion procedurally different from the other --

7 MR. REILLY: I will simply say that I have
8 made it clear on the record that there was an initial
9 motion on who duly constitutes this Commission, and it
10 was voted five to three, and I don't -- I don't see a
11 problem procedurally with this motion. But as
12 Commissioner Thernstrom phrased it earlier, using the
13 words "Commissioner Kirsanow, quote/unquote," I
14 thought that that made it reconsideration of an
15 earlier motion that had failed.

16 So just for the record, I think this
17 motion is fine.

18 CHAIRPERSON BERRY: But she referred to
19 him as Commissioner Kirsanow also.

20 COMMISSIONER BRACERAS: I did not. I
21 referred to him as Peter Kirsanow.

22 CHAIRPERSON BERRY: We can have it read
23 back, but you did.

24 COMMISSIONER BRACERAS: I did not.

25 MR. REILLY: Okay.

1 CHAIRPERSON BERRY: Do you want it read
2 back?

3 COMMISSIONER BRACERAS: Yes, please.

4 CHAIRPERSON BERRY: Reporter, could you
5 read back Ms. Braceras' statement, the last statement
6 she made?

7 COMMISSIONER BRACERAS: My motion.

8 (Whereupon, the proceedings in the
9 foregoing matter went off the record from
10 10:52 a.m. until 10:55 a.m. while the
11 requested portion was played back by the
12 Court Reporter.)

13 CHAIRPERSON BERRY: The question I asked
14 was whether -- the question I asked -- first of all,
15 Parliamentarian, now that you have heard the motion --

16 MR. REILLY: Madam Chair, now that I've
17 heard the motion, I still think that this addresses
18 what I spoke to earlier, and that is any Commissioner
19 can make any motion he or she wishes.

20 However, if it begins to address what was
21 voted on earlier, which is who constitutes -- who duly
22 constitutes the body of the Commission, then I -- then
23 such a motion can only be made by somebody who is a
24 member of that initial -- that initial vote, a member
25 of the prevailing party, the five individuals who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 voted for that motion.

2 So just by using the word "Commissioner,"
3 I think that it does begin to become a reconsideration
4 of something that was voted on previously.

5 COMMISSIONER BRACERAS: If this is just a
6 question of semantics --

7 CHAIRPERSON BERRY: I'm going to --

8 COMMISSIONER BRACERAS: -- I'm happy to
9 rephrase.

10 CHAIRPERSON BERRY: Commissioner, I am
11 going to rule that you've had enough time on this
12 motion. You've tried it several different ways, and
13 the argument is that you want to discuss the
14 appointment again.

15 COMMISSIONER BRACERAS: No, I do not.

16 CHAIRPERSON BERRY: Or you want to have
17 something submitted to us. So I'm going to ask that
18 we continue with program planning, which is what we
19 are discussing.

20 COMMISSIONER BRACERAS: Excuse me, Madam
21 Chair. A point of order.

22 CHAIRPERSON BERRY: And I am going to --
23 yes, I rule --

24 COMMISSIONER BRACERAS: Point of order.

25 CHAIRPERSON BERRY: Yes, make your point

1 of order.

2 COMMISSIONER BRACERAS: I apologize if the
3 language I used was not correct. I would like an
4 opportunity to rephrase the motion so that it may be
5 heard.

6 CHAIRPERSON BERRY: I deny your
7 opportunity. You have had three chances to do it, and
8 whatever motion you're making --

9 COMMISSIONER BRACERAS: So --

10 CHAIRPERSON BERRY: -- goes back to the
11 question of who is duly constituted here as a
12 Commission.

13 COMMISSIONER BRACERAS: So let me --

14 CHAIRPERSON BERRY: And we have already
15 ruled --

16 COMMISSIONER BRACERAS: -- be clear for
17 the record.

18 CHAIRPERSON BERRY: -- and the
19 Parliamentarian has already ruled that the motion must
20 be made by people who were on the prevailing side.
21 That didn't happen.

22 COMMISSIONER BRACERAS: So I --

23 CHAIRPERSON BERRY: There's a matter of
24 parliamentary procedure. We will have plenty of
25 opportunity, I'm sure, to continue to discuss this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issue over time, and the courts I hope will have
2 plenty of opportunity to discuss it. We need to
3 discuss program planning.

4 COMMISSIONER BRACERAS: That's fine. I
5 would just --

6 CHAIRPERSON BERRY: We're being stymied in
7 the discussion --

8 COMMISSIONER BRACERAS: No. I would --

9 CHAIRPERSON BERRY: -- that we need to --

10 COMMISSIONER BRACERAS: Excuse me, Madam
11 Chair.

12 CHAIRPERSON BERRY: -- make here. I am
13 ruling --

14 COMMISSIONER BRACERAS: I would like a
15 clarification on the record --

16 CHAIRPERSON BERRY: I am ruling --

17 COMMISSIONER BRACERAS: -- that you're not
18 allowing me to submit a statement --

19 CHAIRPERSON BERRY: I am ruling -- I am
20 ruling --

21 COMMISSIONER BRACERAS: -- of my own.

22 CHAIRPERSON BERRY: I am ruling that we
23 are moving on to program planning. We only voted on
24 one kind of statement being submitted for the record,
25 and that was one concerning program planning.

1 COMMISSIONER BRACERAS: So I am not
2 allowed to submit a statement.

3 CHAIRPERSON BERRY: We are discussing
4 program planning, and we will continue to discuss
5 program planning.

6 Staff Director, could you please tell us
7 what you need us to decide.

8 STAFF DIRECTOR JIN: Thank you, Madam
9 Chair.

10 CHAIRPERSON BERRY: So we can decide it.

11 STAFF DIRECTOR JIN: Program planning or
12 project planning is something the Commission does
13 undergo on an annual basis. As noted before, it often
14 occurs in January, but it happens either earlier or
15 later, too, as circumstances warrant it. For example,
16 last year, because we were down in Tallahassee doing
17 work on Florida voting issues, that was -- it was done
18 a little later last year.

19 This year, we thought it made sense for a
20 variety of reasons to do it here in December rather
21 than do it in January. And like it was mentioned
22 before also, program planning is not -- does not etch
23 in stone our decisions. The primary purpose of
24 project planning is really to make tentative decisions
25 for several years down the road.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So the main focus for today is really
2 fiscal year 2004. We think that the memo we gave you
3 last week regarding program planning is in most ways
4 hopefully fairly self-explanatory, and we tried to
5 give you a wide range of projects and large numbers to
6 consider.

7 I just want to highlight two issues before
8 I give up the floor. One is that, as we have decided
9 to proceed with a number of new issues over this last
10 year -- for example, the education accountability
11 initiative is a new project. We did decide to move
12 the 2003 environmental justice to 2002. We did some
13 work on boundaries of justice a few months ago.

14 We do recommend that the Commissioners
15 seriously consider moving the Native American project
16 either back to fiscal year 2003 or make clear that the
17 project may be begun in 2002 but the report won't be
18 finished until 2003.

19 The second thing that I want to raise is
20 -- has to do with crossing borders and boundaries of
21 justice. Crossing borders, as you may remember, was
22 something that we did a briefing on December of last
23 year, and at that time I think it was envisioned that
24 we would also perhaps visit -- the Commissioners would
25 visit some detention sites as well as eventually

1 perhaps have a hearing.

2 Boundaries of justice is a somewhat new
3 project, and it has been reported as a new project.
4 In many respects, those issues kind of merge. So I
5 think it would help the staff if the Commissioners
6 were to decide whether to officially merge those
7 projects, so give us as much guidance as possible on
8 how to proceed, with the understanding, of course, as
9 new issues continue to evolve on a weekly basis on
10 immigration issues that, you know, it's not something
11 that that's going to be etched in stone either.

12 And with that, I -- I'd just say that I'm
13 available to answer questions, as well as the program
14 managers who were the ones that really put these
15 proposals together.

16 Thank you, Madam Chair.

17 CHAIRPERSON BERRY: Now, the ones that we
18 are dealing with on crossing borders, we had the
19 briefing. Now, in 2002, we also had in October the --
20 was that October? The briefing from INS about
21 detention. And there are a lot of issues related to
22 anti-terrorism. You're calling that boundaries of
23 justice.

24 STAFF DIRECTOR JIN: Correct.

25 CHAIRPERSON BERRY: So what's the next

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 project on that?

2 STAFF DIRECTOR JIN: There's nothing
3 specifically decided at this point. It's just that in
4 terms of crossing borders, it was -- it was never
5 decided that we wouldn't visit detention centers. It
6 was never decided we wouldn't have a hearing. It
7 seems to me that at the very least maybe any hearing
8 between crossing borders and boundaries of justice
9 could be merged.

10 CHAIRPERSON BERRY: Now, we -- what we
11 really need to decide is that we think that the
12 hearing on Native Americans and administration of
13 justice can be deferred until when?

14 STAFF DIRECTOR JIN: Well, it would either
15 -- just because of workload -- I mean, our
16 recommendation would be to defer it to fiscal year
17 2003, but we understand that, you know, there's always
18 a concern that if we defer to 2003 then it, you know,
19 it may -- it may slip, you know, so -- so one
20 alternative is to say that we need to start -- start
21 it in 2002 and conclude it in 2003. The report could
22 be concluded in 2003.

23 CHAIRPERSON BERRY: Commissioner Meeks?

24 COMMISSIONER MEEKS: Yes. That would be a
25 concern of mine, that is -- if we defer it, it's going

1 to keep getting deferred as has several others. And,
2 you know, this Commission really has not done any work
3 on Native American issues since 1980. I mean, we
4 participated in a SAC meeting, a couple of them, but,
5 you know, it hasn't done -- undertaken any
6 comprehensive work.

7 And so, you know, I -- I mean, I
8 understand the workload here, and, you know, I -- I
9 can agree to deferring it to the end of 2002. But I
10 would object very strongly having it deferred longer
11 than that. I mean, I have -- also have constituents
12 to answer to, and this is an important issue.

13 CHAIRPERSON BERRY: So why don't we have a
14 firm date on it. What, 2002? 3?

15 STAFF DIRECTOR JIN: We could -- we could
16 schedule that to have a hearing sometime in fiscal
17 2002, with the understanding it would probably be very
18 late in fiscal 2002. That way, at least we would have
19 a benchmark for work after that, and then the report
20 would come in 2003.

21 CHAIRPERSON BERRY: Okay. Commissioner
22 Redenbaugh?

23 COMMISSIONER REDENBAUGH: Yes. I want to
24 associate myself with the remarks of Commissioner
25 Meeks and -- and say that I share your concern that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this will slip and slip. And it's so far overdue
2 already that -- is there anything we could do to not
3 -- what would the consequences be for other programs,
4 and which ones, if we didn't allow this to slip?

5 STAFF DIRECTOR JIN: Well, we have -- as
6 the Commissioners had mentioned before, we have an
7 environmental justice hearing coming up in January.
8 We have an educational accountability hearing
9 scheduled for -- for February.

10 CHAIRPERSON BERRY: And we agreed already
11 that we were going back to Florida some time --

12 STAFF DIRECTOR JIN: That's correct.

13 CHAIRPERSON BERRY: -- before the
14 September 2002 election. And I repeated the last time
15 -- I mean, I said the last time, and we discussed it,
16 but I'll do it again here, that the idea there, Staff
17 Director, was that we would send a letter to the
18 Governor of Florida sometime before the legislative
19 session starts asking how the implementation of the
20 reform is going, and then ask him to give us an
21 update, and then we would go sometime after that,
22 giving them more time to work on it, maybe in the
23 summer. So that's another hearing.

24 So that's three, right?

25 STAFF DIRECTOR JIN: That's correct, Madam

1 Chair. And, again, I know the Commissioners -- most,
2 if not all, of the Commissioners know this, but we're
3 not -- we're not talking about the work of the entire
4 Commission. And when we're talking about hearings, of
5 course, we're talking about the work of the Office of
6 General Counsel. So these are just projects now we're
7 talking about that are the General Counsel's projects.

8 CHAIRPERSON BERRY: Why don't we agree to
9 do it -- if there's no objection, why don't we agree
10 to do it late in 2002, with the report -- with a firm
11 commitment to do it late in 2002. We'll go to
12 someplace when it's snowing out in the mountains. No.

13 And get the report in 2003, as early as possible in
14 2003. Could we get a motion to do that? Do you want
15 to move that?

16 COMMISSIONER MEEKS: I'll make a motion we
17 do that.

18 CHAIRPERSON BERRY: Okay. Could anybody
19 second it?

20 COMMISSIONER EDLEY: Second.

21 CHAIRPERSON BERRY: All right. Any more
22 discussion of that?

23 COMMISSIONER EDLEY: I'm sorry. What's
24 the "it"?

25 CHAIRPERSON BERRY: The Indian --

NEAL R. GROSS

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

1 administration of -- it's on administration of justice
2 in Indian country.

3 COMMISSIONER MEEKS: Is this number 5 or
4 is it --

5 CHAIRPERSON BERRY: What number is it,
6 Staff Director?

7 STAFF DIRECTOR JIN: No, there's no number
8 on this, because this is --

9 COMMISSIONER MEEKS: Oh, I'm looking at
10 something that --

11 STAFF DIRECTOR JIN: -- an existing
12 project. This is not a new --

13 CHAIRPERSON BERRY: It's one we're already
14 doing, and we've been deferring it forever and never
15 doing it.

16 COMMISSIONER WILSON: Madam Chair?

17 CHAIRPERSON BERRY: So now the question
18 is, can we commit ourselves to actually get it done?
19 Yes, Commissioner Wilson?

20 COMMISSIONER WILSON: Thank you, Madam
21 Chair. It's my memory -- I may be mistaken -- I
22 thought we were going to -- were thinking of going to
23 Florida in February or March.

24 CHAIRPERSON BERRY: But then we had a
25 discussion about the need for them to have longer to

1 work on election reform, which seems to be, from the
2 media accounts, a lot of problems with it.

3 COMMISSIONER WILSON: Okay.

4 CHAIRPERSON BERRY: With the new law, and
5 the fact that we have to do environmental justice in
6 January, and we still haven't done the education
7 hearing, which we're going to do in February. So that
8 was the reason why we --

9 COMMISSIONER WILSON: Okay.

10 CHAIRPERSON BERRY: -- stretched it out.
11 Is there some objection to that now at this point, to
12 that stretching out, and people who think we should
13 junk what we're doing in January and February and
14 start again and go in January?

15 COMMISSIONER WILSON: Please, let's not.

16 CHAIRPERSON BERRY: Okay. Let's not,
17 then.

18 Did you have your hand up, Russell?

19 COMMISSIONER REDENBAUGH: I did.

20 CHAIRPERSON BERRY: Okay.

21 COMMISSIONER REDENBAUGH: I just wanted to
22 -- Commissioner Meeks, is this motion satisfactory to
23 you?

24 COMMISSIONER MEEKS: Yes, that's fine.

25 COMMISSIONER REDENBAUGH: Okay.

(NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON BERRY: Okay. Well, then, all
2 in favor of doing the administration of justice in
3 Indian territory in late 2002, with a firm commitment
4 to doing it then, with a report in early 2003, as soon
5 as possible, indicate by saying aye.

6 (Chorus of ayes.)

7 Opposed? I'm waiting.

8 (No response.)

9 So ordered.

10 Yes, Commissioner Redenbaugh?

11 COMMISSIONER REDENBAUGH: I have sort of
12 an administrative issue to raise. May I do so now?

13 CHAIRPERSON BERRY: Please, if you --

14 COMMISSIONER REDENBAUGH: It's not
15 political.

16 CHAIRPERSON BERRY: Okay.

17 (Laughter.)

18 Oh, it's not?

19 COMMISSIONER REDENBAUGH: No.

20 CHAIRPERSON BERRY: How sad.

21 COMMISSIONER EDLEY: Let us be the judge
22 of that.

23 CHAIRPERSON BERRY: How sad.

24 (Laughter.)

25 COMMISSIONER REDENBAUGH: Well, in that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 case, to a hammer everything looks like a --

2 (Laughter.)

3 .CHAIRPERSON BERRY: Russell?

4 COMMISSIONER REDENBAUGH: I'm going to ask
5 if there's a way that the staff and the Staff Director
6 can do the impossible, and that is to help the eight
7 or so of us Commissioners be somewhat less
8 undisciplined. And this is not a staff problem. I
9 see this as a problem of the Commissioners.

10 We all the time agree to do things without
11 ever asking the question, what will -- to the staff,
12 what will the consequences of us now having our -- our
13 new hot thing -- what consequences will that have on
14 the programs to which we've already committed and
15 which we may be, in fact, quite late and behind on?

16 And we, I think, keep making a problem for
17 our -- for the staff and for ourselves. So I don't
18 have a solution, but I have a -- an invitation to the
19 Staff Director to see if there's some way he can
20 remind us more frequently of the limitations of
21 resources and constraints and the consequences when we
22 elevate something to the topic of the month. So that
23 we don't -- so we have less impact on these long-
24 deferred and serious but perhaps less timely or less
25 urgent projects.

1 CHAIRPERSON BERRY: Staff Director, you're
2 invited to discipline us and to find ways to do that.

3 STAFF DIRECTOR JIN: Let me just say,
4 Commissioner Redenbaugh, I think -- I will keep in
5 mind what you say. I believe I did bring that up
6 today, that the issue of the Native American project
7 was -- I was concerned that if I didn't bring it up
8 that there would be problems. And so I do try to do
9 that already.

10 COMMISSIONER REDENBAUGH: Yes.

11 STAFF DIRECTOR JIN: The staff probably
12 thinks that I should --

13 COMMISSIONER REDENBAUGH: Thank you.

14 STAFF DIRECTOR JIN: -- do a little more,
15 because I know many times they work very hard, but we
16 -- we'll try to continue to balance this, so that, you
17 know, the staff can do what they need to do, but at
18 the same time the Commissioners can make sure that its
19 priorities get addressed also.

20 COMMISSIONER REDENBAUGH: Yes. If you'd
21 just keep -- do more of what you've been doing around
22 bringing up these consequences.

23 CHAIRPERSON BERRY: Now, we have got these
24 new proposals to agree to or to junk preliminarily.
25 And they start with the Office of Civil Rights

1 Evaluation. These are ones proposed by the staff, and
2 one of them is to look at election reform in 2003 to
3 see if it really happened. With all of the talk about
4 election reform and all of the problems in reform,
5 that's one project that they think we should do.

6 The other one is to -- I'm just reading
7 these out -- evaluate the civil rights record of the
8 Bush administration, just as we evaluated the civil
9 right records of the Clinton administration, which Mr.
10 Clinton, by the way, didn't much appreciate our
11 evaluation of his civil rights record. He tells
12 people that he thinks he should get, you know, an A,
13 and I keep saying he should get a C minus.

14 So the idea of the staff is that what we
15 should do is to, just as a routine practice, evaluate
16 the civil rights record of administration. And the
17 Commission used to do that years ago when there were a
18 lot of resources. That's one project.

19 The other one is to look at welfare reform
20 eight years later and see how much workforce
21 integration there is.

22 Another one is to do some work on the
23 death penalty demographics, and the conflicts between
24 the various reports that have come out on whether
25 there is discrimination in the death penalty.

1 And one is to look at the issue of Native
2 Americans and the U.S. Census and the fact that there
3 is a persistent undercount of Native Americans in the
4 Census and what impact did that have. Let me just
5 read these and then I'll recognize you.

6 The other one is to look at the assessment
7 -- the effectiveness of the Bureau of Indian Affairs.

8 The Office of Civil Rights Evaluation every year does
9 at least one monitoring report on an agency, and they
10 would make looking at the Bureau of Indian Affairs and
11 all of these issues about how they administer the
12 money that belongs to the Indians, Native Americans'
13 monies and enforcement, and to see if they should
14 look into that. And I'd be very interested in what
15 people think about all of these.

16 Another one is how people who are -- have
17 language limitations, language barriers, new
18 Americans, how they negotiate civil rights assistance.

19 And then there is one that's been on the
20 books for years. We've never done it, but we've had
21 it approved for a number of years, on effects of
22 technological change on minority, elderly, and poor
23 Americans. Do you remember that one, Russell? That
24 was years ago, right?

25 COMMISSIONER REDENBAUGH: My memory almost

1 reaches back that far.

2 CHAIRPERSON BERRY: Right. And then there
3 is one that the staff -- the staff has been doing a
4 review project for next year's thing on how our
5 recommendations have been seen. Where's Terri? Seen
6 by the -- maybe she couldn't get in here.

7 COMMISSIONER EDLEY: No, she's in back.

8 CHAIRPERSON BERRY: Is that right, Terri?
9 You're already doing a project this year. For next
10 year, your project is on how our recommendations have
11 been viewed by federal agencies. Is that right? And
12 what this one is, is complaint processing
13 responsibilities in the federal agencies and looking
14 over a 10-year time, is that right?

15 STAFF DIRECTOR JIN: Terri, do you want to
16 come up? And in the meantime maybe I'll just say
17 that, if I remember correctly, that this year the
18 Office of Rights Evaluation, they're basically getting
19 information from the various agencies, and there's 10
20 or 11 of them, to help them assess whether there is --
21 well, to begin to assess whether there's compliance.

22 But I think in the last project planning
23 meeting it was decided to not specifically go forward
24 with any of the assessments. I think one of the
25 proposals here today is that Office of Rights

1 Evaluation suggests the possibility of taking at least
2 the Department of Transportation, Department of Labor,
3 and Department of Justice, and begin the assessment
4 there.

5 And if -- you know, and if we're to do
6 that, then -- then the next two years we would look at
7 some of the other agencies.

8 CHAIRPERSON BERRY: So while Terri is up
9 here, you may say whatever you'd like, and then if
10 people have questions about any of these projects,
11 including that one, they could ask Terri.

12 STAFF DIRECTOR JIN: This is Terri
13 Dickerson, and I know most of the Commissioners know
14 Terri. She's the Director of the Office of Rights
15 Evaluation. Commissioner Braceras probably hasn't met
16 her before.

17 COMMISSIONER BRACERAS: Nice to meet you.

18 CHAIRPERSON BERRY: Terri, is there
19 anything you want to say? Or you just want to ask a
20 question?

21 MS. DICKERSON: Well, to just dovetail on
22 what the Staff Director just said, we began reviewing
23 the background of the 10-year -- looking at the
24 Commission's recommendations over the last 10 years.
25 And what we have done thus far is to identify the

1 issues that the Commission has seemed to care about
2 and has spoken on in the last 10 years.

3 And we would like to make that perhaps a
4 review in itself for this year. But one of the
5 proposals was to -- to take the analysis even further,
6 if the Commissioners would like to do so, and the
7 proposal here is for studying three or four agencies
8 at a time over the next three years, so that we could
9 give some detail in terms of the extent to which the
10 recommendations have been implemented by those
11 agencies. And so that's what the 2003 and 4 proposals
12 -- that's what they reflect.

13 The other thing is that since the office
14 was also charged to look at education initiatives this
15 year, and being that the Office of General Counsel is
16 -- has a stepped up role with regard to that
17 particular issue, I believe the Staff Director was --
18 also in this report was proposing that the Office of
19 Civil Rights Evaluation perhaps assist, provide some
20 assistance to the Office of General Counsel, but that
21 our focus would be on the 10-year review this year
22 instead and not on education initiatives necessarily.

23 CHAIRPERSON BERRY: Okay. Proceed, if you
24 still have something else to --

25 COMMISSIONER THERNSTROM: I'm sorry. I'm

1 a little confused about what you just said. So that
2 we would not have -- we would not have the education
3 briefing that we had planned.

4 MS. DICKERSON: Oh, no. I'm sorry.

5 OCRE --

6 COMMISSIONER THERNSTROM: It's my
7 confusion, I'm sure.

8 MS. DICKERSON: No. Our office, in March,
9 was charged by the Commission -- we're the Office of
10 Evaluation -- to do our -- a statutory report on
11 education initiatives. But I believe the current
12 proposal by the Staff Director is that since the
13 Office of General Counsel, a different office, has a
14 stepped up role with regard to education and hearings,
15 that it might be duplicative in some ways for our
16 office to proceed with an education review, an in-
17 depth education review, and perhaps our resources
18 could be utilized on something else for the
19 Commission.

20 COMMISSIONER THERNSTROM: Thank you.

21 CHAIRPERSON BERRY: Okay. Does anyone
22 have any questions about the list of priorities from
23 the -- or do you have priorities on the list or other
24 things you want OCRE to do? Yes, Commissioner Wilson?

25 COMMISSIONER WILSON: I have a priority.

1 Thank you, Madam Chair.

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER WILSON: In this list of 15
4 different possibilities, the one that I'm drawn to is
5 the old war chestnut, which is number 8, the one that
6 you can barely remember.

7 CHAIRPERSON BERRY: The effects of
8 technological --

9 COMMISSIONER WILSON: Yes.

10 CHAIRPERSON BERRY: -- change on minority,
11 elderly, and poor Americans?

12 COMMISSIONER WILSON: Yes. I'm not saying
13 that it interests me the most just to be perverse.
14 But I -- it seems to me that it is -- I don't know
15 when it was put on the list, but it seems to me it is
16 a pervasive problem, and that by the time we get to it
17 in 2003 or 2004 it will be even more serious and
18 insidious. And I really think it's something we
19 should push up.

20 CHAIRPERSON BERRY: Okay. So the number 8
21 for you is a priority.

22 Does anyone have any priorities on this
23 list or other things that you think they ought to do?

24 And, remember, this is not the last word, but this is
25 for planning purposes. Yes, Commissioner Edley?

1 COMMISSIONER EDLEY: First, just to try to
2 earn a little bit of goodwill, I'd like to suggest
3 removing something from the current work list.

4 CHAIRPERSON BERRY: Okay.

5 COMMISSIONER EDLEY: Which is the
6 measuring discrimination.

7 CHAIRPERSON BERRY: Yes. I don't know why
8 that's still --

9 COMMISSIONER EDLEY: Which is now moved
10 to --

11 CHAIRPERSON BERRY: -- there.

12 COMMISSIONER EDLEY: Yes. I --

13 CHAIRPERSON BERRY: I thought we got rid
14 of that a long time ago.

15 COMMISSIONER EDLEY: Well, it was actually
16 originally my idea.

17 CHAIRPERSON BERRY: I know, but that's why
18 I thought we got rid -- no.

19 (Laughter.)

20 COMMISSIONER EDLEY: Let me just say that
21 I think that, since we haven't exactly been fleet
22 afoot pursuing this --

23 (Laughter.)

24 -- in the meantime -- in the meantime, the
25 National Academy of Sciences has launched an effort to

1 look at this problem through a Committee of the
2 National Research Council. And what I would ask is
3 that the staff closely monitor the work at the
4 National Academy of Sciences on this issue -- the
5 measurement of discrimination.

6 This goes to the methodologies, the
7 variety of methodologies that one might use in order
8 to try to discern the extent of discrimination in
9 various sectors of society. And then it's a very
10 important topic.

11 I think it's terrific that the National
12 Academy of Sciences is taking it on. But if the staff
13 could undertake to just watch that closely and report
14 to us from time to time about what kind of progress
15 that they're making, and if at some point in their
16 deliberations they reach a place where some policy
17 input from this Commission would be helpful to them,
18 to just give us a heads up. But otherwise, to remove
19 it from our workload.

20 CHAIRPERSON BERRY: Well, if there is no
21 objection, we will excise it permanently from our
22 list, and we'll instruct the staff to do precisely
23 what Commissioner Edley said, which is to monitor and
24 report to us from time to time on what's going on.

25 Are there -- do I hear objections?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER EDLEY: I had a second
2 suggestion.

3 CHAIRPERSON BERRY: Well, just -- I want
4 to see if anyone wants to object.

5 COMMISSIONER REDENBAUGH: No objection on
6 my part.

7 CHAIRPERSON BERRY: No objections. So
8 without objection, so ordered.

9 Now, what was the second suggestion, and
10 then I'll recognize you, Russell. Yes?

11 COMMISSIONER EDLEY: I want to -- I want
12 to -- I want to restate my -- my oft expressed anxiety
13 about the Commission pursuing issues of social and
14 economic policy that -- that are at some distance from
15 the core anti-discrimination mission of the
16 Commission, as I understand -- as I perceive it.

17 My concern, obviously, is that if we
18 become a commission about everything, then we become a
19 commission about nothing. And there are many policy
20 issues that have -- that have implications for
21 protected groups; that is to say, the groups that are
22 recognized in federal anti-discrimination -- in the
23 federal civil rights laws.

24 But I don't think that that means that we
25 should, with scarce resources, putting aside the

1 question of statutory authority, with scarce resources
2 wander off and pursue any policy issue that has any
3 impact on minority groups, on disability, people with
4 -- persons with disabilities, and the like.

5 So I worry about something like looking at
6 welfare reform, as important as I believe it is. I
7 worry, frankly, about the one that Commissioner Wilson
8 cares a lot about, the technological change issue.
9 These are very important issues, but I don't find them
10 being very close either to the core of our expertise
11 or, frankly, the core of our mission. So --

12 CHAIRPERSON BERRY: I'd like to respond to
13 that, Christopher.

14 COMMISSIONER EDLEY: Yes. I just think
15 we've got so much other work to do.

16 CHAIRPERSON BERRY: Well, I think that
17 it's -- the question of resources and whether we
18 should do this as a priority is a very valid question.

19 I think a question of whether -- whether
20 discrimination in implementing welfare reform
21 disadvantages certain people of color, whether they're
22 Latinos or African-Americans, or the like, whether we
23 can address it or not is an entirely valid civil
24 rights question.

25 COMMISSIONER EDLEY: Clarification -- I

1 agree completely with that. And if that's what
2 number 3 said, addressing issues of discrimination in
3 the implementation of welfare reform, I would be all
4 for it. But that -- I don't --

5 CHAIRPERSON BERRY: Well, it --

6 COMMISSIONER EDLEY: It seems to me to be
7 phrased in a much more open-ended way. And I -- the
8 point of my caution, I think, is that if we're going
9 to pursue some of these broadly-framed initiatives,
10 that we really make an effort with the staff to
11 tighten their focus in a way that speaks to our
12 expertise and -- and I think can readily be seen to be
13 -- be close to the core of the mission of the
14 Commission. That's really --

15 CHAIRPERSON BERRY: And I would -- I'm
16 going to recognize you, Commissioner Wilson, but I
17 would say the same thing about that technological
18 change one. Were it rephrased to talk about how
19 discrimination in either resources, access, or
20 anything else impacts in terms of the use of new
21 technology and these particular groups, then it could
22 be a valid proposal. Whether or not we wanted to do
23 it is a different question.

24 Commissioner Wilson?

25 COMMISSIONER WILSON: Yes. I'd just like

1 to respond to Commissioner Edley in that when our
2 mission was originally shaped, this electronic world
3 did not exist. And it is -- has -- I think it will
4 have profound and is having profound effects on a
5 whole portion of our population.

6 And I -- I think it would be useful to
7 have a briefing on the --

8 CHAIRPERSON BERRY: On this subject.

9 COMMISSIONER WILSON: Yes.

10 CHAIRPERSON BERRY: Why don't we do this,
11 why don't we -- we have already talked at one point
12 about having a briefing on the discrimination issues
13 as they relate to welfare reform. And I think we
14 should have one, and we should have it in a timely
15 fashion, since the law is being reauthorized, if we
16 can squeeze it into something, I don't know when.

17 I think the issues of the relationship
18 between discrimination and the adjustment to
19 technological change for older Americans, as it is
20 characterized here, and people of color and the poor,
21 is a valid inquiry. But your suggestion is that we --
22 if we're going to do that project ever, maybe we ought
23 to do a briefing on it or something and see where we
24 are before we commit more resources.

25 I don't know whether OCRE was proposing --

1 I guess I would know if I read the proposal carefully,
2 which I did, but -- but I don't know whether a
3 briefing would be consistent.

4 Commissioner Thernstrom?

5 COMMISSIONER THERNSTROM: I have another
6 problem with the effects of technological change.
7 That is, I do know a bit about that subject. I'm not
8 an expert on it, but I have looked into it some. And
9 the problem is a paucity of data, and I -- as a social
10 scientist, I'm very reluctant to see this Commission
11 wading in anecdotes as opposed to some hard evidence
12 that we can really stand behind. So that I think it's
13 a problematic topic from that point of view.

14 I would also like to ask Commissioner
15 Edley, you know, it would be nice to have a -- a
16 definition in his -- from his perspective of what is
17 an appropriate topic. For instance, we can look at
18 the question of expanding economic opportunities of
19 African-American, Asian-American, Pacific Islanders,
20 Latino, and Native American youth.

21 And I think in the past you have raised
22 objections about that, but the argument on the other
23 side is that there are statutory impediments to
24 economic opportunity that have a particular impact
25 upon disadvantaged groups. And I'm just -- it's not

1 clear to me where you draw the line between an
2 appropriate and an inappropriate topic.

3 CHAIRPERSON BERRY: Edley, do you want to
4 engage this? Go right ahead, Edley. Let's have a
5 seminar here.

6 COMMISSIONER EDLEY: This is good.

7 COMMISSIONER THERNSTROM: Well, it's
8 pertinent, it seems to me.

9 CHAIRPERSON BERRY: No, no, no, it's fine.
10 It's fine. I'm teasing you.

11 COMMISSIONER EDLEY: It is obviously very
12 difficult to draw the line, and to the extent your
13 subtext is what about disparate impacts, I strongly
14 believe in disparate impact --

15 COMMISSIONER THERNSTROM: No, no, no, that
16 isn't my subtext.

17 COMMISSIONER EDLEY: All right. So it's
18 very hard to draw the line, but let me give you a
19 pointed example. I do -- I think that people
20 concerned with social justice, including, say, racial
21 justice, have a stake in tax policy.

22 But I don't think that that means that
23 this Commission should spend its time educating itself
24 and opining on various tax reform proposals. I view
25 that as being -- as not having a sufficiently close

1 nexus to the central anti-discrimination mission of
2 the agency. So that -- so let me put that as --
3 suggest that as one end of the spectrum.

4 So then the question is whether or not
5 something like technological change or job
6 opportunities is more like tax policy or more like
7 church burnings. And I think as a procedural matter,
8 what I favor is discussing that and making a
9 collective decision about where we think it is but in
10 light of our resources.

11 My own view is that, as I've said, I --
12 for me, with what we have on the record, technology
13 doesn't pass my own threshold as being a high enough
14 priority, nor do the general open-ended descriptions
15 of -- of looking at economic opportunity and
16 disparities in economic opportunity, because I just
17 see so much more immediate business, whether we're
18 talking about the issues in Indian country or
19 environmental justice or -- or the K through 12 issues
20 that we're going to have a hearing on, or election
21 reform. I just see us having so much to do without
22 wandering off into all issues of social and economic
23 policy that have an impact on justice but are not
24 central.

25 CHAIRPERSON BERRY: Commissioner

1 Redenbaugh?

2 COMMISSIONER REDENBAUGH: Thank you.

3 Commissioner Edley, I -- two things I'd
4 point out. I think, if memory serves, that I am the
5 sponsor of this technology project.

6 CHAIRPERSON BERRY: And the expanding
7 economic opportunity one.

8 COMMISSIONER REDENBAUGH: Right. Yes. I
9 do remember that part. I'm also, I think, the only
10 Commissioner who -- who holds two patents or any
11 patents. So I have perhaps more of a connection to
12 the technology world than -- than the rest of my
13 colleagues.

14 And I -- but I agree completely with what
15 you've said about it being more like tax policy than
16 justice in Indian country, or more like tax policy
17 than church burnings. And I think we are -- my own
18 view is -- matches yours. We have higher priorities
19 and less capability in the technology area than in
20 many, many other areas.

21 And in many of these other areas, people
22 are actually doing things that are wrong. And in
23 technology, that's not yet clearly the case. I mean,
24 technology is happening, and there are disparate
25 impacts and consequences. But I don't have any

1 evidence, even anecdotal, that there are people who
2 are doing wrong things intentionally.

3 CHAIRPERSON BERRY: Yes, Commissioner
4 Edley?

5 COMMISSIONER EDLEY: I will say, here's an
6 example of how I think technology would be relevant.
7 I think it is relevant through Title VI in the
8 education context. If, for example, there are sharp
9 disparities in the access to technology that's
10 provided to school children, that obviously
11 foreseeably we'll have the kind of -- of social and
12 economic impacts to which Commissioner Wilson --

13 COMMISSIONER REDENBAUGH: Right. Then it
14 becomes --

15 COMMISSIONER EDLEY: -- years ago. Then,
16 it seems to me it becomes an anti-discrimination issue
17 under Title VI that is -- that does get close to --
18 that's very close -- that's very close to our central
19 mission, and I would certainly support favoring it in
20 that context. But --

21 CHAIRPERSON BERRY: Okay. Just a moment,
22 please.

23 COMMISSIONER REDENBAUGH: But just broad
24 issues of technological literacy, for example, I think
25 are a little far afield.

1 CHAIRPERSON BERRY: Just a moment.
2 Commissioner Wilson is seeking recognition. Yes?

3 COMMISSIONER WILSON: Thanks, Madam Chair.
4 Well, a couple of points. I think that Commissioner
5 Thernstrom's point is very interesting. What you said
6 I think was that there's a paucity of data on this
7 subject, which leads me to believe that we should be
8 going down this path all the more, because it means to
9 me that the issue has been ignored, and that perhaps
10 our going into it will make people begin to study the
11 issue.

12 And also, in terms of what Commissioner
13 Redenbaugh said about that -- I agree with you that
14 it's -- it's possible that this discrimination isn't
15 being done intentionally, but discrimination doesn't
16 have to be done intentionally. It can still be
17 discrimination.

18 And I also think that there's an important
19 issue if -- if we are pushing or going to be
20 suggesting -- that is, we as a country -- that people
21 vote, as an example, electronically, I mean, there is
22 the issue in terms of school children, but there's
23 also the issue in terms of the elderly who really
24 don't have a voice. And I -- I mean, I'm not pushing
25 that this -- I'm suggesting that this particular topic

1 be put in front of everything, but I think it be put
2 in a -- on the list where it can be discussed within,
3 you know, sometime in 2004.

4 CHAIRPERSON BERRY: Well, yes,
5 Commissioner Redenbaugh was first, and then you,
6 Commissioner Thernstrom. Were you -- you asked
7 before. Have you decided you don't -- you're
8 finished, Russell? I'll recognize --

9 COMMISSIONER REDENBAUGH: I could never be
10 finished.

11 CHAIRPERSON BERRY: Okay.

12 (Laughter.)

13 COMMISSIONER REDENBAUGH: Well, clearly, I
14 don't think we have a -- a focused or a clear
15 conception or a consensus about what the technology
16 project is or isn't. Clearly, there are technological
17 issues that are part of -- of other projects, like
18 education and like voting rights, in which in that
19 context they probably should be addressed as part of
20 those other projects.

21 I think it needs to be narrowed
22 tremendously in order for us to truly hope to have
23 anything useful or meaningful to say about it.

24 CHAIRPERSON BERRY: Commissioner
25 Thernstrom?

1 COMMISSIONER THERNSTROM: Just to pick up
2 on what Commissioner Edley said. With respect to
3 access to technology on the part of school children,
4 that is the one area in which there are data, and the
5 data shows social class differences rather than
6 differences tied to race or ethnicity per se.

7 And so that way once again -- and I do
8 know that literature very well -- and that, once
9 again, allays your question about whether we are
10 wandering a bit afield.

11 CHAIRPERSON BERRY: It is important, I
12 think, to focus on, Terri, what the staff actually
13 proposed here, not in the abstract.

14 COMMISSIONER EDLEY: Right.

15 CHAIRPERSON BERRY: What the staff
16 actually proposes, which is on page 19, is that there
17 are trends that have a detrimental effect on some
18 groups. I'm reading the third paragraph.
19 "Minorities, older Americans, and the poor are losing
20 the accessibility of the telephone that they've had in
21 the past. There's a study that shows that with the
22 advent of cell phones, pay phones are being
23 eliminated. Another that pay phones are being
24 disproportionately disconnected in areas with high
25 concentrations of minorities.

1 "Those who do not have home phones need
2 pay phones to access social services. Those less
3 likely to have home phones include minorities, older
4 Americans, those with low income households, urban
5 poor, and rural households, thus the reduced
6 accessibility of phone services, limiting their access
7 to social services and other assistance to which all
8 Americans are entitled, creating discriminatory
9 barriers.

10 "In a study, the Commission would examine
11 the FCC, Department of Commerce Technology Agency, and
12 other agencies, study their civil rights
13 jurisdictions, policies, and activities to ensure that
14 these groups have fair access to telephone service and
15 other technology necessary to obtaining government
16 assistance, information, and services.

17 "There would be fact-finding with regard
18 to the many social services these groups receive that
19 might be discriminatorily impaired and would make
20 recommendations to the federal agencies and the
21 providers to help overcome these barriers."

22 So it's a very limited kind of project,
23 which is not like the broad one we talked about years
24 ago where we're going to do everything in the world
25 about the impact of technology. It's just a small

1 item that came up on their radar screen that they
2 would like to look at concerning these groups.

3 Commissioner Wilson?

4 COMMISSIONER WILSON: Well, reading that,
5 I would then say we could date when this originally
6 was put on the list. I mean, it was before the
7 internet existed, because --

8 CHAIRPERSON BERRY: Well, the internet
9 is --

10 (Laughter.)

11 COMMISSIONER WILSON: I mean, we're
12 talking about telephone booths here, and I would like
13 us to --

14 CHAIRPERSON BERRY: Internet access is in
15 here, too. And it says they don't have --

16 COMMISSIONER WILSON: I know. But as a
17 sort of aside -- and I think that what we're talking
18 about really has to be, you know, reconsidered. It
19 doesn't have to be expanded to include the global, you
20 know, e-world, but I think that we're talking about
21 other things other than, you know, pay phones.

22 CHAIRPERSON BERRY: Okay. Anybody else
23 have a comment on this? Is it your wish that the
24 staff be told not to do this, or is it your wish that
25 in its modified version the staff may propose that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 do this, or should we do a briefing about it, or would
2 you like to forget about it altogether? Yes,
3 Commissioner Edley?

4 COMMISSIONER EDLEY: Well, my suggestion
5 would be that before there's any significant
6 investment of staff resources that they give us a -- a
7 redefined --

8 CHAIRPERSON BERRY: Okay. All right.
9 Redefined proposal. Yes, Commissioner Thernstrom?

10 COMMISSIONER THERNSTROM: Well, I mean,
11 the answer to that question depends, it seems to me,
12 on what our priorities are, and at the end of the day
13 we need to say that following --

14 CHAIRPERSON BERRY: That's what we'll do.

15 COMMISSIONER THERNSTROM: Yes. And so I
16 don't think we can answer that without deciding where
17 it is in order of importance.

18 CHAIRPERSON BERRY: Okay. But if we are
19 to do it, let's just stick a pin in it. It would be a
20 redefined --

21 COMMISSIONER THERNSTROM: Yes.

22 CHAIRPERSON BERRY: -- proposal. Let's
23 just leave it at that for the moment.

24 Yes, Commissioner -- I mean, I'm sorry.
25 Yes, Terri?

1 MS. DICKERSON: On page 8, there's a list
2 of all proposals, I believe, that are included in
3 packet, and the first nine were some that OCRE had
4 generated.

5 CHAIRPERSON BERRY: What are your
6 priorities in that list?

7 MS. DICKERSON: Oh, thank you. I -- being
8 that OCRE realistically does end up working on a lot
9 of real-time issues and present-day concerns, I would
10 think that it would be reasonable to select a
11 statutory report perhaps and one other report, and
12 then to know that we are going to utilize other time
13 on present-day issues in 2004.

14 CHAIRPERSON BERRY: And which are the
15 statutory ones on here?

16 MS. DICKERSON: To my mind, the 10-year
17 review is definitely one that meets the definition of
18 a statutory report as well as the -- I guess the
19 effectiveness of the Bureau of Indian Affairs.

20 CHAIRPERSON BERRY: So there are two
21 statutory reports, which means those are the annual
22 monitoring reports that we have to present by statute,
23 monitoring an agency --

24 MS. DICKERSON: That's right.

25 CHAIRPERSON BERRY: -- to choose from for

1 this list, and then you said we should pick one other
2 one from this list of things realistically.

3 MS. DICKERSON: I would think that would
4 be realistic.

5 CHAIRPERSON BERRY: For OCRE to do, and
6 that that should be the end. Yes, Commissioner
7 Braceras, and then Commissioner Meeks.

8 COMMISSIONER BRACERAS: I'd just like to
9 make a suggestion for what the other -- what the third
10 project might be. I'm very interested in number 7,
11 the civil rights assistance for Americans facing
12 language barriers.

13 I, obviously, have not been here in the
14 past and don't know what the discussions were leading
15 up to this project. But I just wanted to let you all
16 know that that is something I'm very interested in
17 seeing the Commission work on, and I'd be interested
18 in hearing from other Commissioners on their views on
19 that.

20 CHAIRPERSON BERRY: Okay. Commissioner
21 Meeks, what do you think of this -- any of these, but
22 the BIA one, too.

23 COMMISSIONER MEEKS: Particularly that. I
24 mean, you know, of course I like the idea of examining
25 how civil rights of American Indians get protected.

NEAL R. GROSS

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

1 But it might seem strange to people, but in some ways,
2 I mean, the BIA is at this time the only advocate that
3 tribes have.

4 CHAIRPERSON BERRY: That's all you've got.

5 COMMISSIONER MEEKS: And there's been a
6 lot of reform in the BIA, which is not to say that
7 there's not many problems with the trust issues, which
8 is a huge giant that I doubt we're going to take on.
9 And it's being taken on effectively right now, or at
10 least hopefully effectively.

11 So, I mean, I -- I would just like to
12 offer a little different approach, and to review the
13 effectiveness of the protection of civil rights of
14 Native Americans, not only by the BIA but of other
15 agencies such as the Department of Ag, Department of
16 Justice.

17 You know, there used to be the Indian
18 Rights Section and the Civil Rights and the Justice's
19 Civil Rights Division, and that's been done away with.

20 And especially this -- I mean, this is just a
21 suggestion -- but a review to see where the Federal
22 Government has succeeded and failed in its trust
23 responsibility to Indian tribes.

24 Not just in the trust monies but in return
25 for vast succession of lands and resources, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Federal Government promised to provide in perpetuity
2 the Indian tribes services such as education, health
3 care, and housing.

4 And so we -- if we could compare and
5 analyze the federal funding for Indian health care and
6 veterans' health care, for instance, to see how those
7 two compare. And, I mean, it wouldn't -- it could be
8 done on a per capita sort of basis. I think things
9 like that would be very interesting and very
10 revealing, because, you know, for instance, I can give
11 you just one real brief analogy.

12 The BIA I think nationally is funded at
13 about not quite \$2 billion. I think this is right.

14 COMMISSIONER EDLEY: Billion. \$2 billion.

15 COMMISSIONER MEEKS: \$2 billion. Sorry,
16 \$2 billion a year nationally. For instance, USDA's
17 farm subsidies in South Dakota alone are almost
18 \$2 billion -- \$1 billion, excuse me. So, I mean,
19 that's -- I think that's just an analogy that could
20 be, you know, looked at.

21 CHAIRPERSON BERRY: So that your idea is
22 that you should rework any proposal having to do with
23 Native Americans along the lines -- and that would be
24 brought back to us to do. But that would mean --
25 Elsie, do you think that if we do administration of

NEAL R. GROSS

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

1 justice in 2002, like we said, like we promised, to 3,
2 should we try to -- as between this one -- I know you
3 can't -- and the 10-year review, which are the two --
4 I know you can't do it. Forget the question.

5 Please, you weren't finished. I'm sorry.
6 Go ahead.

7 COMMISSIONER MEEKS: I probably am
8 finished. Maybe I'm like Russell and I never get
9 really finished, but --

10 (Laughter.)

11 MS. DICKERSON: If I could, there might be
12 a way to accomplish more than one, because you just
13 about eliminated our 2003 statutory report, which was
14 measuring discrimination. So we -- I guess I would
15 want to be clear from a staff standpoint, in terms of
16 what our 2003 assignment would, therefore, be, that --
17 since measuring discrimination was just canceled. So
18 there's the opportunity to --

19 CHAIRPERSON BERRY: How about if we move
20 the 10-year review to 2003? It's just a suggestion.
21 Or move the Indian proposal -- these are the two
22 statutory ones that are on here. Or do you have some
23 other idea, Terri?

24 MS. DICKERSON: The 10-year review has a
25 component in 2003 as well. It's proposed currently as

1 a project that would be completed in 2004.

2 CHAIRPERSON BERRY: So which one do you
3 think -- so if we did the Native American one for the
4 statutory report and you revised it and brought it
5 back to us to look, but preliminarily we said that
6 that was okay, that would be your statutory report.

7 MS. DICKERSON: Yes.

8 CHAIRPERSON BERRY: Is that right, or are
9 you saying --

10 MS. DICKERSON: Yes.

11 CHAIRPERSON BERRY: -- I'm
12 misunderstanding you?

13 MS. DICKERSON: I guess I would be
14 assuming, then, that we wouldn't do the 10-year review
15 in three years -- in three-year phases. We would have
16 to revise that somehow as well.

17 CHAIRPERSON BERRY: Well, wait, Terri. I
18 don't want to do that. Are you saying that you
19 already have a statutory report, if we just let you
20 continue with the 10-year review and do it in phases?

21 MS. DICKERSON: Yes, we would have one
22 through 2004.

23 CHAIRPERSON BERRY: Okay. Well, then, if
24 we leave it like that, then that takes care of the
25 statutory part.

1 MS. DICKERSON: Yes, it does.

2 CHAIRPERSON BERRY: But we still would
3 have you bring back the Native American one to us --

4 MS. DICKERSON: Sure.

5 CHAIRPERSON BERRY: -- after it's
6 rewritten.

7 MS. DICKERSON: Yes.

8 CHAIRPERSON BERRY: To see how -- where we
9 would place that.

10 MS. DICKERSON: Yes. And --

11 CHAIRPERSON BERRY: And then, what we do
12 -- need to do now is to talk about, what about the
13 other projects? We have one suggestion from
14 Commissioner Braceras on civil rights assistance for
15 Americans facing language barriers.

16 Commissioner Wilson?

17 COMMISSIONER WILSON: I'd be interested in
18 finding out how all the other Commissioners feel about
19 this, which is number 10, and that is revisiting the
20 Anti-Terrorism Act of 2001.

21 CHAIRPERSON BERRY: Now, is that OGC, or
22 is that -- that's OGC. So we'll wait for a minute
23 until we get --

24 COMMISSIONER WILSON: Okay.

25 CHAIRPERSON BERRY: -- Debra up here.

1 We'll just go through 9.

2 MS. BRACERAS: I'm sorry. Just a point of
3 clarification. Which of these are OGC, and which --

4 CHAIRPERSON BERRY: All the way through 9
5 are OCRE, and then the rest are OGC.

6 MS. DICKERSON: Thank you.

7 CHAIRPERSON BERRY: Does anybody else have
8 another idea for the -- yes, Commissioner Edley?

9 COMMISSIONER EDLEY: I think that
10 number 7, the civil rights assistance for Americans
11 facing language barriers, that also interests me a
12 great deal. And it's going to be a growing problem,
13 and so I would like to add my asterisk to -- to that
14 one.

15 I have to say, frankly, that the -- that
16 the 10-year review project on complaints processing
17 doesn't -- here's my concern about the reviews and
18 complaint processing and some of the work that's been
19 done in statutory reports over the years that have
20 gone at this issue.

21 There is a -- I don't feel that they
22 advanced the bar very far. They document facts that
23 we sort of knew before we got started -- namely, there
24 are lots of complaints, there are delays, sometimes
25 things are getting a little bit better, sometimes

1 things are getting a little bit worse. And we end
2 with a ritual call for increased resources to do
3 complaint processing.

4 So I don't -- I don't find that that is
5 really complete and all for -- to the nation's
6 understanding or to Congress' understanding of a
7 problem. We're focusing people on -- on action.
8 That's point number one.

9 Point number two is a lot of the kind of
10 number collecting aspect of it, and compiling a
11 definitive record, could also be done by GAO. And if
12 we had people on the Hill who were interested in this
13 issue, we could get them to ask GAO to do the number-
14 crunching and do all the intensive -- labor-intensive
15 collection of the resources, and then we could simply
16 piggyback that with -- with the policy clause on what
17 we think the implications of it are rather than
18 devoting precious OCRE -- very precious OCRE resources
19 to doing that. That's sort of number two.

20 And then, number three is I think the bar
21 that needs to be advanced is asking the question,
22 which we usually do not do, of what kinds of
23 structural changes -- what kinds of structural changes
24 in the way these programs are designed would make it
25 more practical to deal with the problems of retail

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 civil rights compliance around the country?

2 There will never be enough resources
3 appropriated to these various agencies to deal with
4 the caseloads that are out there. There will never be
5 enough. And to do report after report after report
6 that says, "There's not enough, there's not enough," I
7 -- just doesn't excite me very much.

8 So if people feel like we've got to do it
9 because somebody has got to do it, I understand. I'd
10 rather figure out a way to make GAO do it and let us,
11 with our very meager resources, focus on problems that
12 simply can't be studied by any -- by anyone else.

13 CHAIRPERSON BERRY: Well, let me address
14 two things that you've said during this discussion,
15 Christopher, that I disagree with.

16 COMMISSIONER EDLEY: Don't feel that you
17 have to.

18 (Laughter.)

19 CHAIRPERSON BERRY: I disagree with your
20 point that you made when you were talking about
21 technological change about the staff not doing things
22 and interpreting narrowly what our ability to do
23 certain projects is, so -- those points you made.

24 The Commission has always interpreted
25 broadly its ability to do whatever projects it feels

1 like doing if there's some discrimination link. If
2 it's discrimination against the elderly, if it's
3 discrimination against --

4 (Whereupon, approximately three minutes of
5 the proceedings were lost when a member of
6 the press inadvertently unplugged a
7 cable.)

8 CHAIRPERSON BERRY: We're just about
9 finished.

10 Christopher, people had thought these
11 things are really important. I think in terms of
12 priorities, that if we can't do one thing, we have to
13 do something else, then you're probably right. If we
14 can figure out a way to get GAO to do this stuff, and
15 then we would add something to it, that would be nice,
16 and we should have staff work on trying to get that
17 done.

18 But as for the projects themselves -- now,
19 here's where we are. I believe we should do the civil
20 rights assistance for Americans facing language
21 barriers. Leave that on as a project. Is there an
22 objection to doing that? Okay. Without objection.

23 That we should -- we've already decided
24 that these are the priorities. We'll do civil rights
25 assistance for Americans facing language barriers as a

1 priority on this list.

2 That we should also consider if there's
3 some way we should do the evaluation of the civil
4 rights record of this administration because we should
5 do every administration, and just make that a common
6 practice that that's what the Commission does, just as
7 we did Clinton, and we do Bush, and then we go on and
8 do all these administrations, unless something happens
9 that we can't.

10 And that our statutory reports, we do the
11 Indian Affairs one and we let -- I mean, we do the
12 Indian project that Elsie has redefined in the
13 outyears, but you continue with the project you're
14 already working on which you said has many parts for
15 your next year's statutory report, so that you don't
16 have to change in mid-stride. And all of that is
17 explained here.

18 So those would be the priorities on the
19 OCRE part of the list. Does anyone have objections to
20 that as I have described it? If so, please state.
21 Yes, Commissioner Edley?

22 COMMISSIONER EDLEY: I'm sorry, but I -- I
23 just want to make a placeholder that after our
24 education hearing, in March I guess, my guess is that
25 we would --

1 CHAIRPERSON BERRY: February.

2 COMMISSIONER EDLEY: In February. I think
3 that we will have identified a number of very
4 important issues that OCRE will have to track,
5 particularly as regards implementation by the states
6 of -- well, I hope by then we will have new federal
7 legislation. The consequences of the possibilities
8 for discriminatory adverse impacts will -- I think
9 will prove quite substantial.

10 So I just want to put a marker there that
11 we may want to revisit --

12 CHAIRPERSON BERRY: Right.

13 COMMISSIONER EDLEY: -- this after --
14 after February.

15 CHAIRPERSON BERRY: And we will revisit
16 this list sometime next year. All right? Now, that's
17 the OCRE part.

18 Now we're going to do the OGC part. And,
19 Debra, do you want to go over there where Terri is?
20 We have one, two, three, four, five, six projects.
21 Financial aid for higher education has been on the
22 list as long as I can remember, and we've never done
23 it. It's been an issue, and there are disparities in
24 financial aid. Well, why don't you go over it.

25 MS. CARR: Well, with the permission of

1 the Chair, I would like to actually have Michael
2 Foreman address in specific detail --

3 CHAIRPERSON BERRY: Is Michael still here?
4 Where is he?

5 MS. CARR: -- because he oversaw the
6 planning for the programs --

7 CHAIRPERSON BERRY: Okay.

8 MS. CARR: -- on the agenda concerning --

9 CHAIRPERSON BERRY: Okay. Michael, as one
10 of your last deeds here, you can sit there, and if
11 there's anything that -- what does OGC see on this
12 list as its priorities?

13 STAFF DIRECTOR JIN: Excuse me, Madam
14 Chair. If I may just for a second --

15 CHAIRPERSON BERRY: Yes.

16 STAFF DIRECTOR JIN: -- note that actually
17 projects 14 and 15 are projects that our Regional
18 Programs Coordinator, Ivy Davis, worked on.

19 CHAIRPERSON BERRY: Okay. One, two,
20 three, four OGC projects. Of these four, which ones
21 do you guys think are really -- or you think you can
22 do all of them in 2004?

23 MR. FOREMAN: Actually, OGC -- we listed
24 them in sort of priority --

25 CHAIRPERSON BERRY: Oh, you did.

1 MR. FOREMAN: -- order here. We would
2 start off 10, 11, 12, 13. Realistically, given that
3 we also work in real time and have to be responsive to
4 what's happening, I would -- I would hope for two, at
5 most three, to be completed.

6 CHAIRPERSON BERRY: So the first one is to
7 revisit the Patriot -- is it called the Patriot Act?
8 The Anti-Terrorism Act --

9 MR. FOREMAN: Correct.

10 CHAIRPERSON BERRY: -- of 2001 and to see
11 what happened as a result of that and to report on it.
12 Is that right?

13 MR. FOREMAN: That's exactly it.

14 CHAIRPERSON BERRY: Have a hearing and
15 have a report.

16 MR. FOREMAN: And we've been hearing a lot
17 about it recently, and one of the things we heard in
18 the testimony yesterday from Attorney General Ashcroft
19 was, "Trust us. Wait and see." It's going to be
20 probably implemented. Our intent is to then look back
21 and see how, in fact, was it implemented and what were
22 the civil rights implications of that.

23 CHAIRPERSON BERRY: Which I think is of
24 major importance.

25 The judicial limitations on civil rights

NEAL R. GROSS

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

1 is the one where we look at the court decisions that
2 are handed down and see what they have to say about
3 civil rights issues and how they affect the rights
4 that are on the books. Is that right?

5 MR. FOREMAN: That is a critical analysis
6 of civil rights cases rendered by the Supreme Court,
7 particularly those ones that are perceived by civil
8 rights organizations that have retrenched, well-
9 established gains, and it will be a critical analysis
10 and what would need to be done to deal with those
11 issues. And we would view those as the two
12 priority --

13 CHAIRPERSON BERRY: Okay.

14 MR. FOREMAN: -- projects.

15 CHAIRPERSON BERRY: And higher education
16 of block grants have been on the list for a long time,
17 and that's why they're still there, because they keep
18 getting deferred year after year after year.

19 Does anyone on the -- of the Commissioners
20 have a priority among these four, or would you stick
21 with the OGC priorities? Does anybody object to the
22 OGC priorities for two projects under this list?

23 Yes, Commissioner Thernstrom?

24 COMMISSIONER THERNSTROM: Well, I am
25 interested in -- very interested in the Title VI

1 review.

2 CHAIRPERSON BERRY: No. That's 14 and 15.

3 We're discussing --

4 COMMISSIONER THERNSTROM: I thought you
5 were talking about -- you were --

6 CHAIRPERSON BERRY: No, we're talking
7 about 10, 11, 12, and 13.

8 COMMISSIONER THERNSTROM: Okay. I'm
9 sorry. I thought you were starting --

10 CHAIRPERSON BERRY: We're going to do that
11 in a minute.

12 COMMISSIONER THERNSTROM: -- with 10 and
13 then the next four. I'm sorry. Okay.

14 CHAIRPERSON BERRY: So anyone have any --
15 yes, you have an objection.

16 COMMISSIONER EDLEY: I'd just like to make
17 clear, I think that number 11, the judicial
18 limitations on civil rights, I think time is of the
19 essence. I think there's likely to be some
20 legislative discussions next year, next calendar year,
21 say starting in the spring, about the possibility of
22 legislative action addressing some of these court
23 decisions.

24 And I think Congress could benefit from
25 the views of the Commission as to whether or not, in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fact, legislation is called for. So I would just ask
2 you to keep your eye on the clock as you tackle that
3 project.

4 CHAIRPERSON BERRY: But this is for 2004,
5 so it's too late.

6 COMMISSIONER EDLEY: Oh, geez.

7 CHAIRPERSON BERRY: So my own view -- my
8 own view -- I don't know why it's 2004, but my own
9 view -- I guess it's because there's too much on the
10 plate for the next year or two. Unless we could do a
11 hearing on judicial limitations in the next year,
12 2002, then it would be too late.

13 And it's also a fast-moving target to keep
14 trying to track these, and our experience with trying
15 to get OGC to be able to, because of all its work, do
16 the report on the Supreme Court the last time, taught
17 us that it's hard to keep up with this.

18 It's also one where there are a lot of
19 other people who look at the issue of judicial
20 limitations on civil rights. And so my own view would
21 be that we shouldn't tackle that one.

22 Yes, Commissioner Thernstrom?

23 COMMISSIONER THERNSTROM: I'm in agreement
24 with you.

25 PARTICIPANT: That's another first.

1 (Laughter.)

2 COMMISSIONER EDLEY: Well, strike it.

3 COMMISSIONER THERNSTROM: No, actually,
4 this Commission has done a lot of I think -- we often
5 -- we often work together across party lines. There
6 are a lot of players on that issue, it seems to me,
7 and a lot of watchdogs. And there are things we can
8 distinctively do, but that -- that isn't one that, you
9 know, it's not we who -- so I'm in agreement with the
10 Chair on that.

11 CHAIRPERSON BERRY: Yes, Commissioner --

12 COMMISSIONER EDLEY: I think that's about
13 200 percent wrong. But I also think that if it's in
14 2004, it's irrelevant. So I suggest striking it from
15 the list.

16 CHAIRPERSON BERRY: And I would prefer to
17 use -- do higher education, and I'll tell you why.
18 Because the sketchy information I have -- I haven't
19 studied it recently -- is that in the higher education
20 programs, the student financial aid -- so our
21 complaints about the skewing away from students who
22 used to be the object of trying to increase
23 educational opportunity, and there has been a lot of
24 discussion of that. I don't know if it's true or not
25 true, but it certainly is worth exploring.

1 And higher education opportunity is
2 certainly an important issue. So my own view would be
3 that we would put that one up with the Anti-Terrorism
4 Act and ask OGC to make that a priority.

5 Are there people who would object to that?
6 Anyone object? All right.

7 Well, if there is no objection, then we
8 order that, and then we go on to the last two items,
9 which is -- Ivy Davis, do you want to come over and --
10 Ivy Davis is our Regional Programs Coordinator. And
11 she is -- and thank you, Michael, for all your work.
12 And we wish you well in your new responsibilities.

13 MR. FOREMAN: Thank you, and I enjoyed my
14 tenure here.

15 CHAIRPERSON BERRY: Here, here. Okay.

16 These are a Title VI review. Ivy, as I
17 said, coordinates the regional programs, and for the
18 SACs, the State Advisory Committees, are serviced by
19 the regional offices, and these would be projects that
20 would be jointly done between the regional offices
21 and, what, OCRE?

22 MS. DAVIS: No. The language in there is
23 to simply indicate that in designing these projects
24 what we were asked to do was provide a project
25 concept. It's rather sketchy. But in designing the

1 project, we would work with OCRE and OGC to make sure
2 that the methodology for the particular reviews would
3 meet the Commission standards.

4 CHAIRPERSON BERRY: And so the idea is to
5 see what is happening with Title VI out there --

6 MS. DAVIS: Right.

7 CHAIRPERSON BERRY: -- national origins,
8 and the like, anti-discrimination.

9 MS. DAVIS: Yes. As I understand the
10 statutory reviews that the Commission has done over
11 the years, it has looked at what the federal agencies
12 are doing with respect to Title VI, and there has not
13 been a look at what the state agencies which receive
14 federal assistance are doing. So this would be the
15 focus of our review.

16 CHAIRPERSON BERRY: Okay. And the
17 employment and housing discrimination --

18 MS. DAVIS: Well, having come from the
19 Fair Housing Office at HUD, and having worked with the
20 Fair Housing Assistance Program, I know that roughly
21 three-quarters of the fair housing complaints are
22 handled by state and local human rights commissions,
23 not done by the federal agencies.

24 And to my knowledge there hasn't been a
25 review of the kind of work that those agencies do,

1 both with respect to backlog -- I think it's easier
2 probably to do a kind of backlog analysis for HUD
3 because -- and Fair Housing because HUD has an
4 automated reporting system that captures all of the
5 complaints that are handled by state and local
6 agencies.

7 I don't know to what degree that's true
8 for EEOC. But, actually, in listening to Commissioner
9 Edley's point this morning about the statutory reviews
10 that the Commission has done, I think that both of
11 these reviews would be very informed by your comments
12 in terms of coming up with -- the ultimate goal would
13 be for both to make suggestions about structural
14 changes that might be necessary in order to carry out
15 these mandates more effectively.

16 CHAIRPERSON BERRY: Can your regional
17 programs handle both of these in 2004? Are you
18 suggesting that we --

19 MS. DAVIS: I was sitting back there and
20 thinking, do I have to pick one or the other? I guess
21 what I would like to do is talk to the regional
22 directors about whether we should pick one or the
23 other or whether it's possible to do both. I mean, my
24 inclination is I think both are important to do.

25 So if I can defer that decision, indicate

1 to them that you are interested in both, and if we can
2 do both then go forward with both, or if we had to
3 decide on one or the other get a recommendation from
4 them as to which, that would be my recommendation.

5 CHAIRPERSON BERRY: Now, with that, let us
6 see what the Commissioners are interested in.

7 MS. DAVIS: Okay.

8 CHAIRPERSON BERRY: One as opposed to the
9 other or both or neither? And would like you to go
10 propose something else? Yes, Commissioner Redenbaugh?

11 COMMISSIONER REDENBAUGH: Didn't we do
12 something as it relates to fair housing half a dozen
13 years ago that -- very similar to this? It would have
14 been when you were on the Hill.

15 CHAIRPERSON BERRY: We did a big, fat
16 report on the federal agencies here in Washington, and
17 what they were doing about fair housing. It was a big
18 -- it was when Fred was head of OCRE, and it was a
19 big, fat thing. Big, thick book. I think it was two
20 big, thick books. Yes. But she is proposing doing
21 something with the local -- the state

22 MS. DAVIS: Local agencies that do --
23 really do the enforcement. For example, under the
24 Fair Housing Act, if a state or local government has
25 passed a law that the Department of Housing and Urban

1 Development has determined is substantially equivalent
2 to the Fair Housing Act, then those complaints are
3 referred to the state or local agency to enforce. The
4 feds don't get involved in it at all.

5 COMMISSIONER REDENBAUGH: Well, my
6 recollection of the report of which I think I'm
7 thinking is that it had a large or significant state
8 enforcement component.

9 MS. DAVIS: Okay.

10 COMMISSIONER REDENBAUGH: But I -- my --

11 CHAIRPERSON BERRY: One of them --

12 COMMISSIONER REDENBAUGH: -- could be
13 remembering something else.

14 CHAIRPERSON BERRY: One of them had some
15 information about the relationship between the office
16 over at HUD that handles them and those people -- you
17 know, the structural relationships between them and
18 resources and issues like that related to them.

19 I don't recall it being how the state
20 agencies -- although there was some information about
21 it -- it's my recollection, which is not entirely
22 clear, is different from yours, and mine may be wrong
23 entirely, maybe we should ask Ivy to go back and look
24 at that and see if she wants to modify that or propose
25 that and have us look at it again.

1 COMMISSIONER REDENBAUGH: I think there is
2 something that I'm recalling about this --

3 MS. DAVIS: I think I've been staying away
4 from the thick books, so I will go back and --

5 COMMISSIONER REDENBAUGH: That's normally
6 wise.

7 MS. DAVIS: Yes.

8 (Laughter.)

9 CHAIRPERSON BERRY: Do Commissioners have
10 any -- subject to revision, do Commissioners have any
11 particular disinterest in both of these? Or a
12 concern? These are things that the staff thinks are
13 very important. And should we ask Ivy, then, to go
14 and resubmit this and with a preliminary sort of
15 positive attitude toward the proposals, or should we
16 just, you know -- yes, Commissioner Braceras?

17 COMMISSIONER BRACERAS: I guess my only
18 comment would be that if it turns out that we've
19 already done an exhaustive review on the housing
20 question, that it would still be useful to go forward
21 on the employment question and take a comprehensive
22 look at how state agencies are handling those claims,
23 because my experience and practice was also that a
24 large number of those get resolved in the state
25 agencies, and I think -- I think this would be a very

1 worthwhile project.

2 CHAIRPERSON BERRY: Okay. Anyone else
3 have any view different from that? Okay. Ivy, so
4 your instructions are that you are to revise -- go
5 look at the thick books, see what was done, and if, in
6 fact, the housing part was done, focus on the
7 employment part, and on the Title VI one, and then
8 revisit this with us, but preliminarily we're saying
9 that you could go forward.

10 MS. DAVIS: Okay. Great.

11 CHAIRPERSON BERRY: Without objection,
12 then so ordered.

13 Does -- have we done all the work you
14 wanted us to do on this, Staff Director?

15 STAFF DIRECTOR JIN: Yes, Madam Chair. I
16 think the only thing is I -- if it's okay with the
17 Commissioners, we -- I would try to combine the -- we
18 will try to combine the crossing borders and the
19 boundaries of justice and make them one. Is that
20 okay?

21 CHAIRPERSON BERRY: Does anyone object to
22 the Staff Director combining the crossing borders and
23 boundaries of justice, which are about the same
24 issues, detention and -- and deportation as one
25 project and submitting it to us for us to look at, and

1 moving forward? No objection?

2 STAFF DIRECTOR JIN: Thank you.

3 CHAIRPERSON BERRY: So ordered.

4 **VIII. Future Agenda Items**

5 CHAIRPERSON BERRY: Does anyone have
6 anything else to add, a future item for the agenda or
7 anything that they would like to add to the agenda at
8 this time? If not, then I will entertain a motion
9 that we adjourn.

10 COMMISSIONER EDLEY: So moved.

11 COMMISSIONER MEEKS: Second.

12 CHAIRPERSON BERRY: It's non-debatable.

13 All in favor, indicate by saying aye.

14 (Chorus of ayes.)

15 Opposed?

16 (No response.)

17 So ordered. See, I told you, Commissioner
18 Thernstrom, we were almost finished.

19 (Whereupon, at 12:09 p.m., the proceedings
20 in the foregoing matter were adjourned.)

21

22

23

24

LIBRARY

U.S. COMMISSION ON CIVIL RIGHTS