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UNITED STATES OF AMERICA
U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

+ + + + +

Friday, November 9, 2001

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

PRESENT:

MARY FRANCES BERRY, Chairperson
CRUZ REYNOSO, Vice Chairperson (via telephone)
CHRISTOPHER EDLEY, JR., Commissioner
YVONNE Y. LEE, Commissioner
ELSIE M. MEEKS, Commissioner
RUSSELL G. REDENBAUGH, Commissioner
ABIGAIL THERNSTROM, Commissioner
VICTORIA WILSON, Commissioner
LESLIE R. JIN, Staff Director

STAFF PRESENT:

KIMBERLEY ALTON
KI-TAEK CHUN
IVY DAVIS
TERRI DICKERSON
PAMELA A. DUNSTON
BETTY EDMISTON
MICHAEL FOREMAN, Acting Deputy General Counsel
LATRICE FOSHEE
RACHAEL GOLDFARB
GEORGE M. HARBISON
JENNY PARK
PETER REILLY, Parliamentarian
KWANA ROYAL
DAWN SWEET
MARCIA TYLER
DAVID WONG
AUDREY WRIGHT
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA
LAURA BATIE
PATRICK DUFFY
SETH GROSSMAN
ELIZABETH OUYANG (OuYang)
KRISHNA TOOLSIE

A-G-E-N-D-A

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I. APPROVAL OF AGENDA

CHAIRPERSON BERRY: The first item on the agenda is the approval of the agenda. Could I get a motion?

COMMISSIONER MEEKS: So moved.

CHAIRPERSON BERRY: Can I get a second?

COMMISSIONER LEE: Second.

CHAIRPERSON BERRY: All in favor indicate by saying aye.

(A chorus of ayes.)

CHAIRPERSON BERRY: Opposed?

(No response.)

II. APPROVAL OF MINUTES

CHAIRPERSON BERRY: The next item is approval of the minutes of the October 12th, 2001 meeting. Could I get a motion to approve the minutes?

COMMISSIONER MEEKS: So moved.

CHAIRPERSON BERRY: Could I get a second?

COMMISSIONER LEE: Second.

CHAIRPERSON BERRY: Any changes or corrections anyone has on the minutes?

(No response.)

If not, all in favor indicate by saying aye.

1 (A chorus of ayes.)

2 CHAIRPERSON BERRY: Opposed?

3 (No response.)

4 **III. ANNOUNCEMENTS**

5 CHAIRPERSON BERRY: Under announcements,
6 this is American Indian Heritage Month. Is it called
7 American Indian Heritage Month or Native American
8 Month?

9 COMMISSIONER MEEKS: Whatever you want to
10 call it.

11 CHAIRPERSON BERRY: The Planning Committee
12 is coming up with various programs, as they do for the
13 heritage month programs and activities.

14 Congress has enacted a Continuing
15 Resolution, as usual, for appropriations through
16 midnight November 16th, whereupon I am sure they will
17 enact another Continuing Resolution. As usual, the
18 Commission is not authorized to obligate or otherwise
19 commit FY 2002 funds beyond midnight November 16th,
20 2001, until an appropriations bill is passed or
21 another CR.

22 We would also like to introduce and
23 welcome Carolyn Fallen, an intern working in the
24 Office of Civil Rights Evaluation. Is she here?
25 she's not here? Then we can't introduce her.

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1 (Laughter.)

2 But we can say that she's from the
3 University of California at Davis. She's one of
4 yours, Cruz.

5 VICE CHAIRPERSON REYNOSO: Yes, very good.

6 CHAIRPERSON BERRY: Okay. Now the other
7 thing I'd like to take note of is that the Montana SAC
8 members and Commissioner Meeks conducted a workshop
9 last week at the National Indian Education
10 Association's Annual Meeting in Billings.
11 Commissioner Meeks was there. John Dulles, the
12 Regional Director, was there.

13 This workshop focused on the SAC report,
14 "Equal Educational Opportunity for Native American
15 Students in Montana Public Schools." They had a big
16 forum on that and on the mascot issue, and so on.
17 About 3,000 people attended the conference, and about
18 1,400 copies of the SAC report were distributed.

19 I just wanted to tell Commissioner Meeks
20 how much I appreciate her going to the SAC meetings
21 and remind Commissioners that, if you should have the
22 time or the interest, when you see the list of SAC
23 meetings in the Staff Director's report, if they see
24 one they would like to go to, they should talk to the
25 staff about attending a meeting or the Regional

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1 Director. SAC members like for Commissioners to come
2 to their meetings, if they have time to do so.

3 Okay, anybody else have another
4 announcement?

5 (No response.)

6 CHAIRPERSON BERRY: I would also like to
7 say that this is Commissioner Lee's last meeting
8 because her term is expiring, and she will be leaving
9 us. She won't really be leaving us, and we'll
10 continue to see her, as we saw her before she was ever
11 on the Commission, but I just wanted to say how much I
12 appreciate your service on the Commission. You have
13 been a stalwart member, and we will miss your
14 contribution to our activities here on the Commission.

15 VICE CHAIRPERSON REYNOSO: Madam Chair?

16 CHAIRPERSON BERRY: Yes, Vice Chair.

17 VICE CHAIRPERSON REYNOSO: I was very
18 particularly sorry that I couldn't be there today
19 because I wanted to be there to express my own deep
20 appreciate for Commissioner Lee's work on the
21 Commission and her constant efforts on behalf of all
22 Americans in civil rights and her dedication to
23 protecting them. She's done a marvelous job.

24 CHAIRPERSON BERRY: You've prodded us to
25 do all kinds of things. When I think of all the -- I

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1 mean, there are many contributions, the Sonoma report.
2 I mean, you've been there for the constituencies and
3 the people who look to this Commission to help them.
4 You and I have had numerous conversations. You bug me
5 about things. So I really appreciate it. I don't
6 know what I'll do without you, Yvonne. You'll have to
7 continue to do it anyway.

8 COMMISSIONER LEE: Well, I want to thank
9 my colleagues for this honor to have the privilege of
10 serving with all of you for the past six years. I
11 really value your wisdom, your experience, and your
12 perspectives, even though sometimes we don't agree.
13 But I emerge a better person because of you.

14 I want to take this opportunity to thank
15 the staff, the Staff Director, national headquarters
16 staff, the regional staff, and the staff members who
17 have been tremendous, carrying out a very difficult
18 task under very difficult circumstances. Your
19 professionalism and commitment to civil rights is
20 something I will carry with me.

21 I also wanted to take special privilege in
22 acknowledging my Chair and my Co-Chair. Your
23 visionary and courageous leadership has brought the
24 spirit of this Commission during the past six years to
25 this country. You've taken some hits, frontal and

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1 back, but I think that this country is better served,
2 the American public is a better informed public,
3 because of you.

4 The last six years have been a wonderful
5 journey. I emerge a richer person, more resolved,
6 strongly resolved, in carrying out my commitment to
7 public service because of all of you, and I thank you
8 all for that, especially the staff.

9 CHAIRPERSON BERRY: All right, here, here.

10 (Applause.)

11 CHAIRPERSON BERRY: Now that's the end of
12 the meeting -- no.

13 (Laughter.)

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

15 CHAIRPERSON BERRY: The next item on the
16 agenda is the Staff Director's Report. Does anyone
17 have any questions about anything in the sense of the
18 Staff Director's Report?

19 (No response.)

20 CHAIRPERSON BERRY: There were some
21 updates that we had asked for. One was to find out
22 what the followup on the last meeting with the INS and
23 the FAA were doing, and I guess we got some memos
24 about that, didn't we?

25 STAFF DIRECTOR JIN: Yes, Madam Chair, and

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1 I think we got some last-minute information.

2 CHAIRPERSON BERRY: Okay, what's the last-
3 minute information?

4 STAFF DIRECTOR JIN: In terms of INS?

5 CHAIRPERSON BERRY: Yes.

6 STAFF DIRECTOR JIN: Perhaps the Acting
7 Deputy General Counsel could report on that?

8 CHAIRPERSON BERRY: All right.

9 ACTING DEPUTY GENERAL COUNSEL FOREMAN:
10 Thank you. In followup to the last briefing, we had
11 given additional follow-up questions to both the INS
12 and to the Department of Transportation. Normally,
13 when you have a briefing, there is a 30-day period
14 before the record formally closes. So it does not
15 formally close until November 11th, but we were able
16 to receive some responses literally this morning from
17 the INS. The Department of Transportation, we had
18 conversations with them almost immediately after the
19 briefing, followed up with the written questions, and
20 they are compiling responses, but we will not have
21 those until the 11th.

22 The INS responded to most of the questions
23 that we put to them. The two specific questions that
24 were raised in the briefing as to the number of people
25 being held in detention and were represented by

1 counsel, they indicated -- and I literally just got
2 this as I was walking down -- that they will be
3 submitting the answer to that question under a
4 separate cover. So we do not have an answer to that
5 question. There was one additional follow-up
6 question.

7 I can make copies of this and distribute
8 to the Commissioners?

9 CHAIRPERSON BERRY: Are there any answers
10 in it?

11 ACTING DEPUTY GENERAL COUNSEL FOREMAN:
12 There are some answers. In all honesty, I have not
13 had an opportunity to review it because it was
14 literally faxed this morning. Or we picked it up on
15 the fax this morning.

16 CHAIRPERSON BERRY: The questions -- well,
17 I think what I would prefer is if you read it and then
18 tell us whether it said anything we were interested
19 in. If they didn't answer the questions, why should
20 we bother? Why don't you read it and then later on
21 we'll ask you about it, okay?

22 ACTING DEPUTY GENERAL COUNSEL FOREMAN:
23 Okay.

24 CHAIRPERSON BERRY: Take your time. We
25 have time here. Because the first part I read didn't

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1 answer anything. It just said, "See later separate
2 cover," or whatever. I'm not interested in reading
3 that. So see what the answers are. Maybe you can
4 summarize whatever it is and give it to us.

5 Yes, Commissioner Wilson.

6 COMMISSIONER WILSON: Thank you, Madam
7 Chair.

8 How many questions did we pose to them?

9 CHAIRPERSON BERRY: I don't remember.

10 COMMISSIONER WILSON: I mean, I don't need
11 to know the exact number, but were there many
12 questions that we had asked them?

13 CHAIRPERSON BERRY: Do you remember, Mike?

14 COMMISSIONER WILSON: Maybe it would be
15 good for us to see all of the questions that were
16 posed to them.

17 CHAIRPERSON BERRY: Were there like a
18 whole bunch of them or --

19 ACTING DEPUTY GENERAL COUNSEL FOREMAN: As
20 to the INS -- as to DOT, we asked nine specific
21 questions. As to -- I'm sorry -- DOT, nine questions.

22 As to the INS, we asked four specific questions, in
23 addition to the general followup that was raised at
24 the Commission meeting, which were not so much in a
25 question format.

1 COMMISSIONER WILSON: Well, I, myself,
2 asked a number of questions, and I'd be very curious
3 to see the answers to them.

4 CHAIRPERSON BERRY: Yes, to see whether
5 they answered them.

6 COMMISSIONER WILSON: And to see, indeed,
7 if they answered them.

8 CHAIRPERSON BERRY: Why don't we do this,
9 Michael, why don't we go on to the rest of the Staff
10 Director's Report? Why don't you read the memo and
11 why don't you look at your questions, and then we'll
12 call on you again when we finish the rest of it, after
13 you've had a chance to read it. Then you can tell us
14 what it says and whether we want it or not.

15 Yes, Commissioner?

16 COMMISSIONER THERNSTROM: And maybe we
17 could all have the questions at some point as well as
18 the response.

19 CHAIRPERSON BERRY: Right. These were the
20 questions that grew out of the briefing, right?

21 ACTING DEPUTY GENERAL COUNSEL FOREMAN:

22 Yes.

23 COMMISSIONER THERNSTROM: But I would like
24 them in written form so I could read them.

25 COMMISSIONER WILSON: Well, I think he

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1 probably has them in written form.

2 COMMISSIONER THERNSTROM: Pardon me?

3 COMMISSIONER WILSON: I gave them as
4 written, when they were written.

5 COMMISSIONER THERNSTROM: Right, but I
6 would like -- obviously, I think we would all like to
7 see exactly what went out.

8 CHAIRPERSON BERRY: Would you read all
9 that stuff while we're talking about the other? Read
10 the memo, and then I'll call on you again. Then you
11 can summarize for us what you know. Okay?

12 ACTING DEPUTY GENERAL COUNSEL FOREMAN:
13 Okay.

14 CHAIRPERSON BERRY: And I assume you sent
15 letters to the INS and DOT, is that right?

16 ACTING DEPUTY GENERAL COUNSEL FOREMAN:
17 Yes, that is correct.

18 CHAIRPERSON BERRY: Okay. Well, if
19 Commissioners want to see the letters, they can see
20 the letters. So we can have copies of those. Those
21 have the questions, and then you can tell us what the
22 answers were, and what answers you're expecting, just
23 in summary form, and then we can go on.

24 Okay, now, on the other things, Staff
25 Director --

1 STAFF DIRECTOR JIN: Yes, Madam Chair.

2 CHAIRPERSON BERRY: What else?

3 STAFF DIRECTOR JIN: There were two other
4 updates that I think required reporting back today.
5 One was at the last meeting the Commissioners had
6 asked our staff, particularly the Office of Civil
7 Rights Evaluation, to follow up with some of the
8 callers to our hotline to make a determination, to
9 make an assessment of some kinds as to how useful it
10 is and how responsive the agencies we refer these
11 individuals to have been.

12 I think earlier this week the
13 Commissioners got a report, a written report, from our
14 Chief of the Office Civil of Rights Evaluation, Terri
15 Dickerson. I think she's prepared to certainly
16 elaborate on that a little bit this morning.

17 CHAIRPERSON BERRY: Okay. Well, we got
18 the written report. Did everyone get it? Is there
19 anyone who did not get the report?

20 STAFF DIRECTOR JIN: We have extra copies
21 if necessary.

22 CHAIRPERSON BERRY: Does anyone have any
23 questions about it that they want to ask Terri? As I
24 recall, it simply showed that the numbers were large
25 at first and then they dribbled down to nothing, and

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1 that the people who were asked, by and large, were
2 happy or pleased that the Commission had tried to help
3 them.

4 STAFF DIRECTOR JIN: That's correct, Madam
5 Chair.

6 CHAIRPERSON BERRY: It was a memo. Do you
7 want her to describe it, the contents, or do you want
8 to ask her any questions about it, Commissioners? Or
9 are you satisfied with the memo you got?

10 COMMISSIONER WILSON: I'd also like to
11 say, Madam Chair, I thought it was an extremely
12 helpful memo.

13 CHAIRPERSON BERRY: Okay. I thought so,
14 too. I thought it showed that the exercise or the
15 activity had been beneficial for the time period in
16 the immediate aftermath of the event, when there were
17 so many people who had concerns.

18 So, all right, we can just thank the staff
19 for having done this on such short notice and for
20 having carried out this activity successfully and
21 providing this report for us.

22 STAFF DIRECTOR JIN: Yes, Madam Chair, if
23 I may just take a few seconds of privilege, I also
24 would like to add that the staff has worked very hard
25 on putting this together. Additionally, I think

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1 perhaps last time I did not make as clear as I would
2 like to that the staff worked incredibly hard that
3 first month, especially the first several weeks, to
4 really put together an extraordinarily good job of
5 responding. I just wanted to express my personal
6 appreciation to them for that.

7 CHAIRPERSON BERRY: Okay. The only thing
8 I might say in connection with the terrorism and the
9 national security issues is that I had a conversation
10 before the postal workers died, before that time
11 period -- I've forgotten the exact date -- with the
12 Surgeon General because I was concerned about health
13 care delivery to underserved populations, should there
14 be extensive bioterrorism.

15 So he and I had a discussion about a
16 report that was put out in the Clinton Administration
17 about disparities in health care delivery to
18 populations in the United States, in particular, poor
19 people and some groups of people of color. I asked
20 him whether anybody was making any provisions to make
21 sure that, if something really happened -- at that
22 time we didn't know the extent to which the anthrax or
23 anything else was a problem -- that people could get
24 served, and could get served fairly and equitably and
25 receive medication and treatment without class

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1 distinctions and without ignoring people who happen to
2 be poor or people who are language minorities or who
3 didn't speak English or people who were in certain
4 areas of the country where there were no public health
5 clinics.

6 So we went over all of that in the
7 discussion, and he said that they really hadn't sat
8 down and thought about this, but at that time he said,
9 yes, we should, but he said, "You know, I'm somewhat
10 at a disadvantage because I'm on my way out the door
11 in February, and I'm not really the guy, but I'm still
12 here." But he said, "I will have discussions with
13 people because you're right, we really should be
14 looking at this," because we all know that the public
15 health system in this country has for years been in a
16 state of almost disrepair and neglect, because we just
17 haven't funded public health the way we should, and
18 that there are all these people who don't have
19 doctors.

20 I said to him, you know, the announcements
21 in the press keep saying, if you have any symptoms,
22 call your doctor. I said, "What do you do if you
23 don't have a doctor?" In some areas of the country,
24 including where I come from in Tennessee, there are
25 pockets where there are no public health facilities or

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1 no public health nurses; there's nothing.

2 So he said, "We'll look at this whole
3 issue," but you don't need to worry," he said, "because
4 this anthrax thing isn't going anywhere. It doesn't
5 look like anything's going to happen." Of course,
6 some died. They don't really know what was going to
7 happen.

8 So I have been somewhat concerned about
9 that, and I have seen -- and I had planned to have him
10 come and talk to us about it, but before I could
11 arrange to do that, all these other things happened,
12 and the thing sort of mushroomed and snowballed. Now,
13 with the postal workers dying, people did start
14 considering the class considerations and the equity
15 issues around this.

16 I was trying to figure out what role we
17 ought to play in this. My first inclination was that
18 we ought to tell everybody to pay attention to it,
19 which is what I was doing when I called him. But now
20 that everybody has focused on it as an issue, I still
21 have concerns that the health care delivery mechanisms
22 are not in place, and I don't see much movement to get
23 them in place.

24 Nobody knows what's going to happen with
25 bioterrorism, or maybe there's somebody who knows, the

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1 person who's doing it, but none of us know. So maybe
2 the best thing we could do is simply ask the staff to
3 monitor what's going on out in the regions and
4 elsewhere in terms of, do they see any movement to
5 beef up the health care delivery systems? Or what's
6 going on? Or what are the concerns people have?

7 Yes, Commissioner Redenbaugh.

8 COMMISSIONER REDENBAUGH: Oh, I didn't
9 mean to interrupt you.

10 CHAIRPERSON BERRY: That's all right.

11 COMMISSIONER REDENBAUGH: I have an
12 organizational question that someone may know the
13 answer. Who's now responsible, that is, which
14 agencies, and has that changed?

15 CHAIRPERSON BERRY: Responsible for this
16 whole problem of providing the --

17 COMMISSIONER REDENBAUGH: Well, public
18 health in a national emergency or in a bioterrorist
19 situation.

20 CHAIRPERSON BERRY: That's a good
21 question.

22 COMMISSIONER REDENBAUGH: I mean, what I
23 don't know is if any of that authority has been, or
24 should be, transferred to the Office of Home Security.

25 CHAIRPERSON BERRY: Well, we heard the

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1 other day that the Department of Health and Human
2 Services, which is where the Public Health Service is,
3 was organizing itself to deal with these issues and
4 some new kind of command-and-control structure was
5 being put in place.

6 At the time I was talking to the Surgeon
7 General, and then since then I've noticed, they've had
8 teams of people, the guy from the Allergy Institute,
9 Fushee -- I think that's his name; isn't that his
10 name?

11 COMMISSIONER EDLEY: Fosse.

12 CHAIRPERSON BERRY: -- and a couple of
13 other people I've seen who have been around on other
14 major issues like AIDS talking about this.

15 But I'm not really sure. The Public
16 Health Service is in the Department of Health and
17 Human Services. That's where that is. And CDC is,
18 too.

19 COMMISSIONER EDLEY: There's a new
20 Assistant Secretary specifically for bioterrorism and
21 responses, public health responses. At least that's
22 their proposal. I think they may need statutory
23 authority to do it, but they've got somebody who's
24 acting in that capacity now. I think, if I remember
25 the news account correctly, they're going to seek

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1 statutory authority to create an Assistant
2 Secretaryship.

3 COMMISSIONER REDENBAUGH: Is it your sense
4 from an organizational point of view that the --

5 CHAIRPERSON BERRY: That's Commissioner
6 Edley, by the way.

7 COMMISSIONER REDENBAUGH: Yes. But the
8 authority and responsibility will be clearly
9 designated or it's too soon to tell?

10 COMMISSIONER EDLEY: I couldn't tell from
11 the news account that I read.

12 COMMISSIONER REDENBAUGH: Because what I
13 think would be unfortunate is to have a situation
14 that's jurisdictionally murky.

15 COMMISSIONER EDLEY: It's almost
16 inevitably going to be, in part, because so much of
17 the capability is in the Armed Forces. So there's
18 going to be this inescapable problem of working out
19 the articulation between the civilian and military
20 capacities, and who does the stockpiling, who's got
21 responsibility for what distributional channels, and
22 the like.

23 CHAIRPERSON BERRY: Yes, it's a real
24 problem.

25 Yes, Commissioner Wilson.

1 COMMISSIONER WILSON: Thank you, Madam
2 Chair.

3 I'm wondering if maybe what we should do
4 is consider holding a briefing on the issue of the
5 public health systems, because you're concerned about
6 the outlying areas in the country, where in New York
7 the public health system has been, to put it in one
8 word, a joke -- that's actually two words -- where
9 there have been maybe two officials who make up the
10 public health system, the public health officials
11 there.

12 At a certain point at the height of the
13 anthrax scare, I had a conversation with the CDC who
14 gave me two numbers, both of which were supposed to be
15 24-hour hotline numbers. One of them was for the New
16 York Public Health Department, and I called. It was
17 about five o'clock, and they said, "We are now closed.
18 Call back tomorrow."

19 So if that is the case in a city the size
20 of New York at the height of this scare, I think this
21 is a serious issue.

22 CHAIRPERSON BERRY: Well, I think it's
23 definitely serious. What I would like to do first
24 probably is to ask our staff -- here it comes, OCRE,
25 again Terri. They say, if you want a job done, give

1 it to a busy person. So you shouldn't do such good
2 work if you don't want people to ask you to do things.

3 Anyway, what we probably need to do is to
4 find out, follow what they're doing with the
5 structure, the point that Commissioner Edley made and
6 the point that Commissioner Redenbaugh is making about
7 who's supposed to be doing whatever it is. Then we
8 probably should have them monitor and put together
9 something for us on what's going on insofar as they
10 can find out what's going on. We probably need to ask
11 the regional people to try to figure out what's
12 happening in the states, in their regions, and put all
13 that together in OCRE.

14 But, in the meanwhile I would like, I
15 think what I'm going to do, unless somebody -- well,
16 I'll do it anyway, unless you don't want me to do it
17 for you -- is to write a letter to the Homeland guy.
18 What's his name?

19 COMMISSIONER THERNSTROM: Tom Ridge,
20 Governor Ridge.

21 CHAIRPERSON BERRY: And just simply remind
22 him that everybody knows there's an issue, and we hope
23 that he's paying careful attention to it. Isn't he in
24 charge of all this insofar as what I read in the
25 paper?

1 COMMISSIONER THERNSTROM: That's what we
2 don't know.

3 CHAIRPERSON BERRY: Well, why don't I just
4 write it to the President, and then he can figure out
5 who's in charge of it, and just simply say that I'm
6 sure that they're aware these are issues and that we
7 are concerned that adequate health care delivery
8 services be put in place, and just encourage to keep
9 paying attention to this issue.

10 Yes, Commissioner Thernstrom.

11 COMMISSIONER THERNSTROM: Well, there is
12 no doubt that they are aware of it. They have talked
13 about it. Somebody was on CNN this morning talking
14 about it.

15 One of the problems with any kind of
16 investigation on our part is that it is a very fast-
17 moving scene because it has dawned on many officials
18 that, of course, we have not been properly prepared.
19 So I think people are up and running at this point,
20 but it's quite a long road to get to the point of
21 really being where we should be.

22 CHAIRPERSON BERRY: Yes.

23 COMMISSIONER THERNSTROM: But I don't
24 think this is exactly a neglected, at this point, a
25 neglected area.

1 CHAIRPERSON BERRY: Yes, thank you.
2 Commissioner Edley.

3 COMMISSIONER EDLEY: Just a suggestion to
4 the staff that they might check in with OCR at HHS to
5 -- listen to me -- with the Office for Civil rights at
6 HHS to find out whether that office believes that they
7 have any role to play in monitoring the effectiveness
8 of the public health system in this regard.

9 CHAIRPERSON BERRY: They can do that and
10 they should do that, and that's a good idea, but we
11 have to keep in mind also the other reason why they
12 should do that is because that office is so weak.

13 COMMISSIONER EDLEY: Exactly.

14 CHAIRPERSON BERRY: And even in the best
15 of times, it has no money, it can't do anything. I'm
16 so mad at Donna Shalala because she never got them the
17 money for that office. It's in as bad shape as it was
18 when she became Secretary of HHS, and it's been
19 floundering around for years, but it is their
20 responsibility. They are the ones who are supposed
21 to. So maybe what we should do, then, is just lean on
22 them.

23 But I just want to make sure that when the
24 history of this period is written, that it is clear
25 that we, as a civil rights commission, did everything

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1 we could, and that historians won't report that this
2 time out there was a Civil Rights Commission and it
3 didn't do anything about anything or say anything
4 about anything, and might as well not have existed.
5 So I think that we have a responsibility to try to
6 encourage people, not be criticizing people, but at
7 least encouraging them, to monitor them, to let HHS
8 and OCR over there know that we know that they're
9 supposed to be doing this. So that's what I'm hoping
10 we'll do.

11 So, if there is no objection, we will go
12 forward with just monitoring this and admonishing and
13 making sure that people know that we're watching this
14 issue.

15 Yes, Commissioner Wilson.

16 COMMISSIONER WILSON: Thank you. I don't
17 want to just be the spokesperson for New York, but I
18 would like the Commission to monitor what happens to
19 the post office, the large post office, in New York
20 City that has gone to court to close the facilities to
21 have them checked out for anthrax, and to have the
22 facilities cleaned. They've gone to court, the head
23 of the union has gone to court to have the post office
24 closed, and I think we should keep an eye on that.

25 CHAIRPERSON BERRY: Okay, all right. Now

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1 is there anything else?

2 STAFF DIRECTOR JIN: Yes, Madam Chair. I
3 did want to give a report in terms of what some of the
4 Regional Offices are doing.

5 CHAIRPERSON BERRY: On this issue though?

6 STAFF DIRECTOR JIN: Yes. Perhaps after
7 it's done, they could be a vehicle to help implement
8 some of the ideas that have been forwarded today. The
9 Commission may remember at the September 14th meeting
10 the staff was tasked to address a number of things
11 related to the post-September 11th discrimination
12 issues. They included working with our Regional
13 Directors to see whether they could work with
14 Community Relations Service and other entities to
15 address discrimination faced by Arab and Muslim
16 Americans and others perceived to be from those groups
17 in the various states.

18 The Commission also tasked the staff to
19 work with the various Advisory Committees to address
20 not only issues such as threats and violence against
21 Arab and Muslim Americans, but to determine whether
22 there were other civil rights issues that needed
23 examining as a result of the September 11th terrorist
24 attacks.

25 In the past couple of months our Regional

1 Programs Director, Ivy Davis, and I have been working
2 pretty extensively with the Regional Directors, and
3 they in turn with the Advisory Committees and others
4 on these issues. I am pleased to report that the
5 Regional Directors are actively working with CRS staff
6 and other agencies, officials, and groups to promote
7 tolerance and address civil rights issues and
8 concerns.

9 Additionally, over 10 of the State
10 Advisory Committees have committed to projects that in
11 a few cases have already taken place, and in other
12 cases have been planned. For example, a briefing was
13 held in Tampa, Florida last month on discrimination
14 against Arab and Muslim Americans. Ohio will have a
15 half-a-day briefing on the same topic next week, and
16 also next week Alabama will be conducting a briefing
17 in Birmingham, where participants will include city
18 officials, law enforcement representatives, community
19 leaders, human relations experts, and representatives
20 from the Arab American and Muslim American
21 communities. We expect to receive transcripts from
22 those briefings which we could put on our website.

23 Other states are taking somewhat different
24 approaches. For example, the Illinois State Advisory
25 Committee will be conducting a community forum in the

1 greater Chicago area to address civil rights issues
2 facing Arab Americans, including issues arising from
3 the September 11th attacks.

4 The Midwest Regional Director indicated to
5 me that she expects that this will not be along the
6 lines of what the Michigan Advisory Committee did last
7 year. Additionally, California's Advisory Committee
8 will be holding forums in Los Angeles, San Francisco,
9 and the San Diego areas to address not only the most
10 obvious post-September discrimination issues, but also
11 issues such as increased unemployment and layoffs of
12 minorities, and including issues that I think were
13 raised a little bit earlier today, things such as
14 disparities in health care, response to bioterrorism,
15 and things like that.

16 Other states with specific plans to move
17 forward, or at least exploring these issues, include
18 Florida, South Carolina, Colorado, and New Jersey.
19 Additionally, the D.C./Virginia/Maryland Advisory
20 Committees are proceeding with a joint effort.
21 Finally, the Arizona Advisory Committee Chair and the
22 Western Regional Office, the Regional Director will be
23 meeting next week with the Arizona State Attorney
24 General to assess some post-11th hate crimes in that
25 State. Perhaps other states, other Advisory

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1 Committees might be doing more in the upcoming months.

2 Any or all of those states perhaps could help with
3 some of the issues that you have raised today.

4 CHAIRPERSON BERRY: Is it just on the
5 Arab-Muslim harassment stuff or is it just on any
6 issues related to the terrorism, civil rights issues
7 related to --

8 STAFF DIRECTOR JIN: When it started, I
9 think that that was, the first few weeks those were
10 the areas that seemed to be most obvious, and they
11 started looking at those. But I think that as time
12 has evolved there are so many more issues that have
13 come up, and potential issues, and I think that a lot
14 of them are definitely looking at more than that. The
15 ones that have occurred already or about to occur in
16 the next few weeks, I think they were planned very
17 early, and they had to do tentatively with direct
18 discrimination against Arab and Muslim Americans,
19 South Asian Americans.

20 The projects that are being planned for
21 the upcoming months after that are much broader than
22 that, and some of them are still in formation. I
23 think that ideas from the Commission as to areas that
24 they could pursue, especially in the various states, I
25 think would be very helpful.

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1 CHAIRPERSON BERRY: Okay. All right, yes,
2 Commissioner.

3 COMMISSIONER LEE: Madam Chair, I'd like
4 to talk about the Arizona SAC meeting with the State
5 Attorney General. Will they be bringing up the South
6 Asian gas station owner's death as an issue?

7 STAFF DIRECTOR JIN: I'm sure they will.
8 Yes, I'm sure they will.

9 COMMISSIONER LEE: And would they be
10 pressing for a hate crime prosecution? Do you know?

11 STAFF DIRECTOR JIN: That I'm not as sure.
12 I don't know -- we'll talk to them and make sure that
13 they act appropriately in that regard.

14 COMMISSIONER LEE: That would be great.

15 CHAIRPERSON BERRY: Okay. Are you through
16 with the Staff Report?

17 STAFF DIRECTOR JIN: Yes, Madam Chair.

18 **V. SAC APPOINTMENTS**

19 CHAIRPERSON BERRY: The next item is the
20 SAC appointments. As I understand, we did not get any
21 packages. At least I didn't get it.

22 STAFF DIRECTOR JIN: That's correct, Madam
23 Chair.

24 CHAIRPERSON BERRY: They expected these to
25 be ready, but they're not. So that's why we're not at

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1 the moment --

2 STAFF DIRECTOR JIN: That's correct, Madam
3 Chair.

4 CHAIRPERSON BERRY: Okay. So we will have
5 them at the next meeting?

6 STAFF DIRECTOR JIN: Yes, we will have
7 them and 10 others.

8 CHAIRPERSON BERRY: Yes.

9 Commissioner Edley.

10 COMMISSIONER EDLEY: Where do we stand
11 with respect to, for lack of a better word, the SAC
12 reform agenda? We've talked about letters from Chair
13 nominees. We've talked about possibly some role for
14 SAC members in designating who should be put forward
15 as the Chair. That's been Commissioner Lee's repeated
16 suggestion. We've talked about trying to find ways
17 for SACs to meet without a Commission staff member
18 physically present, but instead listening in by
19 speaker phone or finding an employee of some other
20 federal agency to be present. Can we get an update on
21 where all of that is?

22 STAFF DIRECTOR JIN: Sure. Let me answer
23 the part about the Chairs, and then I'm going to ask
24 Ivy to perhaps jump in on some of the other things.

25 We did, after the last meeting, Ivy Davis

1 and I did, one of the things that we did was we wanted
2 to communicate to the prospective Chairs certain
3 expectations of them, and we wanted them to respond to
4 us and to basically address issues we raised for them.

5 Those issues included for them to identify the
6 pressing civil rights issues and why they are pressing
7 in the states that they want to be Chair of, and that
8 they hope to address during the upcoming charter
9 period in which they will be Chair.

10 Second, we wanted them to discuss the
11 leadership skills that they believe they have that
12 would make them strong candidates for Chairperson,
13 because I know that from the various conversations
14 we've had, and then even conversations I know that we
15 had before I became Staff Director, there was concern
16 about making sure that the Chair had the right
17 leadership qualities.

18 We wanted, to the extent that the Chair
19 was asking for reappointment, we wanted them to
20 address the accomplishments that the committee had
21 during their prior term. We wanted them to provide,
22 kind of addressing the entrepreneurial and creative
23 abilities issue. We wanted them to identify examples
24 of creative approaches that they have for moving a
25 civil rights agenda. Fifth, we wanted them to affirm

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1 that they were making commitments to the business of
2 the Advisory Committee a high priority.

3 Those are the things that we asked them to
4 do, and we've gotten some responses, not all. But
5 those are definitely things that we thought that, in
6 light of our assessment, in light of the conversations
7 we've had here before, that we felt that a prospective
8 Chair should address.

9 If I may -- where did she go? Oh, she
10 abandoned me when I needed her the most.

11 (Laughter.)

12 Ivy, do you want to add to that, and then
13 address perhaps any other questions that Commission
14 Edley raised?

15 MS. DAVIS: Thank you. I think you've
16 answered that question quite fully in terms of our
17 effort to get information from the Chair, which is one
18 of the issues that came across very clearly in the
19 last meeting.

20 Commissioner Lee has raised an issue about
21 the selection of the Chairs, which, quite frankly, is
22 set forth in the regulations. The statute is pretty
23 skimpy with respect to the State Advisory Committees
24 other than that there shall be established State
25 Advisory Committees and there shall be one, at least

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1 one, in every state and the District of Columbia.

2 However, our regulations do say that the
3 Chair will be approved by the Commission. So if that
4 were to change, it would have to be done by changing
5 the regulations. You expressed some different
6 concerns about whether that was the most appropriate
7 way to go.

8 COMMISSIONER EDLEY: Well, I'm not sure
9 whether it's the most appropriate to go or not, but
10 certainly it would seem to me to warrant discussion.
11 It sounds like you're asking for interesting things in
12 the letters. Was it the plan that we would get those
13 letters with the package, with the approval package,
14 or was that just going to be for the two of you to
15 look at? Or how do you want to handle that? If
16 anybody's curious, should we ask you for them? I
17 mean, I'd rather have these letters than all those
18 news clippings we get.

19 (Laughter.)

20 CHAIRPERSON BERRY: Now, now, now.

21 COMMISSIONER EDLEY: I'm sorry.

22 CHAIRPERSON BERRY: Some Commissioners
23 like to get them. If you don't want them, just tell
24 the staff you don't want them.

25 COMMISSIONER EDLEY: I'm becoming an

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1 environmentalist in my old age; that's all.

2 CHAIRPERSON BERRY: Some people believe
3 that's the only benefit they get from being on the
4 Commission.

5 (Laughter.)

6 CHAIRPERSON BERRY: I think that the
7 letters, I mean it sounds interesting and it sounds
8 like the sort of thing that Les and Ivy should at the
9 very least read and be able to talk about the Chair's
10 vision when they present the Chair to us. So maybe it
11 would be better -- I don't know what else is in the
12 letters. I don't know.

13 COMMISSIONER EDLEY: Let me just say that
14 I think at least the agenda portion of the letter,
15 where they're setting out --

16 CHAIRPERSON BERRY: What they plan to do.

17 COMMISSIONER EDLEY: I think we could
18 actually learn something from it.

19 CHAIRPERSON BERRY: Right.

20 COMMISSIONER EDLEY: Because it would be a
21 little bit of a canvass of here's what's going on in
22 West Virginia or whatever state it is, it would be
23 interesting.

24 CHAIRPERSON BERRY: Let's hear what others
25 think. Commissioner Meeks and then Commissioner

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1 Redenbaugh.

2 COMMISSIONER MEEKS: Well, I would think,
3 and maybe this is what we're all thinking anyway, or
4 have already said, is that when we get the Staff
5 Director's Report about each SAC, it's sort of state
6 stuff then, what each Chair has written, a summary of
7 it at least.

8 CHAIRPERSON BERRY: So to summarize what
9 they said. The Chair of this SAC proposes blah, blah,
10 blah, blah, and it's this kind of a person perhaps.
11 Let's see what Commissioner Redenbaugh thinks.

12 COMMISSIONER REDENBAUGH: I think these
13 are good and the right kinds of questions, and they
14 may be sufficient, but I think it's very much in the
15 right direction. As sort of an organizational design
16 issue, to ask those questions is a fundamental
17 principle of organizational design and staff
18 selection. So I think you all are off in exactly the
19 right direction.

20 I would ask, and, Ivy, maybe you can
21 answer this, is there any language in the -- not in
22 our statute, but in the Federal Advisory Committee
23 statute that speaks to this issue of Chair
24 appointments? We may not be able to change our regs.
25 even if we were to desire to do so.

1 MS. DAVIS: No. No, I think that where
2 the Commission speaks to a particular issue, the
3 Commission's position would be controlling. Michael,
4 help me out here. So as long as we're not in conflict
5 with FACA, they're read together.

6 CHAIRPERSON BERRY: Yes?

7 COMMISSIONER EDLEY: I think there's a
8 miscommunication. I had always interpreted Yvonne's
9 motion, and certainly the one seems plausible to me,
10 as indicating that the view of the SAC members about
11 who should be Chair would be advisory to us, not
12 decisive.

13 CHAIRPERSON BERRY: Is that what you
14 meant, Commissioner Lee?

15 COMMISSIONER EDLEY: I mean, it should be
16 up to us to decide whether to accept their
17 recommendation.

18 CHAIRPERSON BERRY: We just get their
19 advice?

20 COMMISSIONER EDLEY: Yes.

21 CHAIRPERSON BERRY: Whether they think Joe
22 Blow would be an appropriate Chair for them or
23 somebody else.

24 MS. DAVIS: I think in practice that's
25 kind of how it works. I think the Regional Directors

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1 sort of poll the SAC members to get a sense of whether
2 a particular person who's being put forward is one
3 that they would endorse as Chair. They certainly
4 would be recommending someone that they thought would
5 not be able to work well with the SAC members. It's
6 just that our regulations say that the Commission
7 approves the SAC Chair and as to other officers for
8 the SAC, a Vice Chair or secretary, treasurer --
9 secretary, I guess. That's left up to the SAC members
10 to decide.

11 CHAIRPERSON BERRY: Yes, Commissioner Lee.

12 COMMISSIONER LEE: I don't think that was
13 made clear to us, at least all these years I've been
14 on the Commission.

15 MS. DAVIS: I see.

16 COMMISSIONER LEE: My understanding was
17 somehow the Chairperson was selected by some
18 individual, whether it's the Regional Director or the
19 SAC members. So it would be good to get it clarified.
20 If it's from polling the SAC members, then that
21 serves a purpose.

22 MS. DAVIS: Well, what I'm saying is the
23 package comes to us from the Regional Directors, but
24 the Regional Directors I believe go through a process
25 with the individual SACs, kind of getting a sense of,

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1 is this the person that you would be happy with as a
2 Chair? I don't think that the SAC members do a vote
3 and then submit that name, no. It's the Regional
4 Director that moves the particular individual, but he
5 or she does that because they're confident that the
6 SAC members, the other SAC members would be supportive
7 of that person as Chair.

8 CHAIRPERSON BERRY: Go ahead, Yvonne. Do
9 you have something you want to pursue?

10 COMMISSIONER LEE: I'll take a couple of
11 minutes.

12 COMMISSIONER LEE: Commissioner Edley.

13 COMMISSIONER EDLEY: Oddly, rather than
14 assuring, I find it a little bit worrisome that this
15 is what they're already doing, because whatever it is
16 that they're already doing isn't working. Do you see
17 what I mean?

18 So what I was trying to do was try to come
19 up with things that we might do that would be
20 different from what's been going on in the past.

21 CHAIRPERSON BERRY: Let Elsie.

22 COMMISSIONER MEEKS: Well, I have to say,
23 Commissioner Edley, to say that it's not working, I
24 think that's not quite fair.

25 COMMISSIONER EDLEY: Well, I'm sure it's

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1 working in some places, but I went through with quite
2 a bit of care this meeting, as I do every couple of
3 meetings, the Staff Director's Report, reporting on
4 the SAC activity in the various states. Well, I don't
5 do it every meeting, but every couple of meetings I
6 have insomnia.

7 CHAIRPERSON BERRY: You were on an
8 airplane and you couldn't go anywhere.

9 COMMISSIONER EDLEY: Exactly. Exactly.

10 (Laughter.)

11 I'm sorry, it just strikes me as really,
12 really spotty. This is 500-plus volunteers around the
13 country on these SACs, which is an extraordinary
14 resource, and some combination, it seems to me, of the
15 way in which they're recruited, the way in which
16 they've been managed, the way in which their role is
17 conceptualized, maybe things about our regulations
18 that hamstring their ability to function. I think
19 there are some things that have been getting in the
20 way of our taking maximum advantage of these 500-plus
21 committed individuals around the country. I guess
22 that's what I've really been struggling with.

23 I have no doubt that many of them have
24 been doing very important work, but as I look at the
25 record that we get every month, it remains

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1 disappointing.

2 CHAIRPERSON BERRY: Yes, Commissioner Lee.

3 COMMISSIONER LEE: Thank you. I think I
4 share Commissioner Edley's point. I think the
5 majority of the SACs are doing great work from the
6 reports, from the hearings, from the forums, but
7 there's no uniformity; there's no standards.

8 That's why I kept going back: How are the
9 Chairs selected? Because the leadership really
10 affects the work. Some of the regions come out really
11 strong and some are sort of dormant. You can go
12 through some of the SACs, they haven't met for like
13 three, four years. I do know that there's always
14 going to be financial constraints, but there needs to
15 be some creative way. I just don't know how some SACs
16 have been able to get things done under the same
17 financial constraints. Yet, others are using that as
18 not an excuse, but as a justification that they have
19 determination.

20 That's why I just want to go back to all
21 these members, the SAC members, they are very well
22 qualified. I want to really re-emphasize that. We
23 all appreciate their volunteerism. Yet, their talent
24 is not being utilized. It seems like every time when
25 I read this, it's always the Regional Director will be

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1 meeting with the Chair to talk about upcoming
2 projects.

3 So if the Chair is not an activist, but if
4 the Chair is not really gung-ho about taking on some
5 projects, no matter how good the other 11 members are,
6 that's SAC is going to be dormant. I think that's my
7 frustration. There's no standard; there's no
8 uniformity. That's why I kept asking, who selects the
9 Chair? And when Commissioner Edley suggests that
10 maybe the Chair needs to express his or her vision,
11 maybe that vision needs to be shared with the Regional
12 Director, who seems like it's a person who recommends
13 to the SAC members who their leader should be. Am I
14 getting it wrong?

15 CHAIRPERSON BERRY: Could we try this,
16 Yvonne and Christopher and others, Russell, all of
17 you, could we try to be directional and try the
18 following, which I'm going to formulate as directions
19 to the staff:

20 We've been dealing with this for so many
21 years I'm sick of it, and never getting anywhere. We
22 had a task force once that Russell chaired. We had a
23 thing that --

24 COMMISSIONER REDENBAUGH: Well, that was
25 the one good thing about it.

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1 (Laughter.)

2 CHAIRPERSON BERRY: But nothing has
3 happened. That dealt with some issues, but it didn't
4 deal with all of this stuff. So I'm going to give you
5 some directions, but Ivy's waving her hand.

6 MS. DAVIS: Before you do, can I just
7 indicate to you some of the things that I've suggested
8 to the Regional Directors, since the SACs are now
9 meeting for their planning or organizational meetings?

10 Some of the things that I've suggested to the
11 Regional Directors is that they talk to them about the
12 possibility, for example, of establishing
13 subcommittees, so that those subcommittees could meet
14 in accordance with the new standards about greater
15 flexibility, you know, logging in by computer or by
16 telephone, or whatever.

17 But my understanding is that there had
18 been an attempt in California to have the subcommittee
19 structure, but it was done on a geographic basis. So
20 northern California and southern California were still
21 dealing with the same issues. So that didn't seem to
22 work.

23 So my recommendation was that they
24 organize as committees in Congress do, since that's
25 kind of my background, but they organize on the basis

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1 of expertise, interest, whatever. So this would allow
2 SAC members to get together more frequently, so that
3 there's more activity going on.

4 Les and I have talked about coming up with
5 a better way of capturing all of the things that are
6 done by the SACS, which I think we probably don't get
7 at right now. It's not just a report that's done.
8 There are meetings that take place with the Chair and
9 kind of a delegation of SAC members. It's not always
10 just the Chair.

11 Those are some of the things that I've
12 suggested to them, and I think that might kind of, if
13 I'm anticipating the direction that I'm going to
14 get --

15 CHAIRPERSON BERRY: I won't give you those
16 directions. I'll give you some others.

17 MS. DAVIS: Okay.

18 CHAIRPERSON BERRY: To you and Les.

19 Based on everything we've talked about
20 over and over again and today, in addition to what you
21 are doing, we would like explicitly in the packages a
22 summary of what the SAC Chair says he or she will do,
23 and why they feel capable of doing it during their
24 tenure, and what the issues are in their state as they
25 see them. We know the issues change; they change for

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1 us. We'd like that.

2 The second thing we would like is an
3 assurance that the SAC Chair has -- the question of
4 who is the Chair has been asked of the other SAC
5 members, and that there seems to be a consensus that
6 this person, whoever it is, ought to be the SAC Chair
7 among the SAC Chair people, and that the RDs know that
8 we want SACs, every SAC, to have a project, at least
9 one project every year, at least one. That doesn't
10 mean only one, but some of them go two or three years
11 without any. So that's why I'm saying that, at least
12 one, and preferably one every six months. Change that
13 to one every six months. That's reasonable.

14 The Commissioners then -- we expect this,
15 and they will be evaluated based on whether they are
16 able to perform this, and that they may use whatever
17 technical means they can find --

18 COMMISSIONER EDLEY: Who's "they" will be
19 evaluated?

20 CHAIRPERSON BERRY: The RDs will be
21 evaluated.

22 COMMISSIONER EDLEY: Good.

23 CHAIRPERSON BERRY: Because the volunteers
24 can't be, except if they want to be reappointed.
25 Evaluated on how well they accomplish these

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1 objectives. To the extent that there are constraints
2 on doing so, they can talk you, Ivy, and Les about
3 what to do, and if there's something we can do, we can
4 do it. But that's the word.

5 Because I've been going around the
6 country, when I go around, meeting with SAC Chairs,
7 when I go to places, or members, and what I've heard
8 is uneven. Some of them are very good people, but no
9 one ever gets them to do anything and no one ever
10 meets them. They just feel like this isn't on their
11 agenda because there's nothing ever happening.

12 Then there are others who don't have a
13 clue. Some of the SACs have done great jobs, like
14 Elsie said and Yvonne. Some of them have done
15 terrific jobs. Some of the RDs have done terrific
16 jobs with what they have. So we're not criticizing
17 members.

18 So let's just try that, okay? Does
19 anybody object to any of that?

20 COMMISSIONER EDLEY: It's not an
21 objection, but can I just also say to both Les and to
22 Ivy, please don't -- if an administrative guidance, or
23 whatever you call them, administrative directive or a
24 regulation or something needs to be changed, we can
25 change it. I mean, just come back and say the regs.

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1 won't let us do X or Y, but we can fix it, if it's for
2 a valuable purpose.

3 CHAIRPERSON BERRY: Okay, yes, let us
4 know.

5 That's all, right?

6 STAFF DIRECTOR JIN: Yes, Madam Chair.

7 **VI. ELECTION REFORM RECOMMENDATIONS**

8 CHAIRPERSON BERRY: Now we'll go on to the
9 next item, which is the election reform
10 recommendations, and we're going to have a
11 presentation from Terri, a brief one from Terri, and
12 then we'll discuss the recommendations that she is
13 going to tell us about. Then we will go on from
14 there.

15 And you will clearly tell us what's up
16 there so Russell will know what we're looking at,
17 right? Okay.

18 Let me just say, first, that this is a
19 good time to do this, to come up with these
20 recommendations, because, as we all know, there were
21 elections held across the country the other day for
22 state and local officials. We also know that, despite
23 the fact that the country is concerned about the
24 security issues in the aftermath of September 11th,
25 that the elections remind us that election reform is

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1 still a key national priority.

2 In fact, a year after the incredible 2000
3 presidential elections, this Commission, by doing this
4 today, notes that we are still committed to the idea
5 that genuine election reform needs to take place in
6 order to promote the ideals of American democracy.

7 Someone asked me the other day why we were
8 still working on election reform since there was a
9 national security crisis. Well, it's because we
10 believe that what we saw last year, the Florida
11 election probe, shows something very important, and
12 that is what happens before the election, then on
13 election day, is even more important than what happens
14 afterwards to large numbers of people who are
15 registered and who didn't get to vote.

16 It is absolutely essential that we
17 maintain the integrity of our democracy and our
18 political system, and that's what election reform is
19 all about.

20 So what we want to do is to figure out
21 what recommendations we should make. I would point
22 out that we have already made a commitment to go back
23 to Florida to monitor the implementation of reform in
24 that State, leading to the 2002 elections. We've
25 already said that the staff and the SACs will continue

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1 to monitor election activities in other states.

2 In addition, Terri, I don't know if you're
3 going to talk about it, but didn't you do a -- or
4 somebody did a survey -- I guess OGC did it --

5 MS. DICKERSON: Yes, Ma'am.

6 CHAIRPERSON BERRY: -- of what the
7 witnesses that we had in Florida, some of the
8 witnesses, thought about what's happened since then.

9 Did you send that to the Commissioners?

10 STAFF DIRECTOR JIN: Yes, I did, and if
11 the Commissioners want, I can certainly briefly
12 summarize.

13 CHAIRPERSON BERRY: Basically, as I
14 recall, didn't the bottom line say that most of the
15 people thought we had to wait until another major
16 election cycle.

17 STAFF DIRECTOR JIN: That's correct, Madam
18 Chairman. I think that it's too early to tell. At
19 the same time I think that there were clearly some
20 problems that still needed to be addressed, despite
21 the new legislation.

22 CHAIRPERSON BERRY: Okay. So that was a
23 survey, or not a survey, but getting in touch with
24 people who were there last time.

25 So the purpose of this exercise today,

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1 then, is to come up with recommendations and to try to
2 make clear that we still believe that election reform
3 is absolutely essential.

4 So go ahead. Staff Director, do you want
5 Terri to proceed?

6 STAFF DIRECTOR JIN: Yes, please.

7 MS. DICKERSON: Thank you very much.

8 The memo that I'm going to be referring to
9 was sent to the Commission, and so I'm not going to go
10 into a lot of detail, except to just point out the
11 highlights, and I will go over some recent
12 developments that came out after the memo was sent to
13 the Commission.

14 Almost everyone in OCRE helped with this
15 review, and I want to acknowledge especially the
16 efforts of Mireille Zieseniss, Manuel Alba, Margaret
17 Butler, Eileen Rudert, and Wanda Johnson in putting
18 together this particular memo.

19 It's a good thing that most people have it
20 in front of you. I believe that you may have this
21 presentation. I think it was given out to everyone.

22 What we did in this review was to review
23 national election reform initiatives and studies, as
24 well as legislative proposals that had come out
25 following the 2000 elections. The purpose was just to

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1 continue monitoring in keeping with the Commission's
2 mission to monitor these voting rights. In the end,
3 we proposed 18 recommendations for election reform
4 that I will review at the end of this presentation.

5 As far as legislation, we compared a
6 number of pieces of legislation, but primarily two
7 bills in the Senate, one numbered 565, which was
8 sponsored by Mr. Dodd, and 953, sponsored by Mr.
9 Schumer and McConnell. We compared essentially some
10 of the components of that legislation.

11 Both establish a temporary commission.
12 One is called a Blue Ribbon Study Panel, and the other
13 is called a Commission on Voting Rights. They both
14 are temporary going into the reform.

15 The McConnell bill establishes a permanent
16 Commission, whereas there's not a permanent Commission
17 established in the Dodd bill. It assigns
18 responsibility to existing government agencies.

19 Both provide for a grant program with
20 matching funds from the government. The McConnell
21 would be administered by the new Commission and the
22 Dodd version by an existing agency, the Attorney
23 General. Both provide for matching funds, the Dodd
24 version at 80 to 90 percent and the McConnell version
25 at 75 percent from the federal government.

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1 The Dodd bill calls for unlimited funds as
2 needed, and the McConnell version taps the funds at
3 \$500 million. The Dodd bill establishes requirements
4 in order for states to receive grants. Those
5 requirements are voter error notice -- that's the
6 kickback feature -- for overvotes and undervotes. It
7 also requires audit capacity for ballots. That's a
8 paper trail, and as well it relates to recount
9 procedures. It calls for disability access and access
10 to secret ballots for voters that require assistance
11 from someone else in casting their vote.

12 The Dodd bill also requires language
13 assistance. It also indicates that the FEC will
14 establish acceptable error rates for equipment, a
15 provisional ballot, as well as sample ballots mailed
16 10 days prior to an election and posted at the
17 precinct.

18 There's a similar bill, as we note in the
19 memo, in the House, introduced by Mr. Conyers, and
20 it's very similar to 565 in almost every way. It
21 provides for a grant program to improve states'
22 election systems and ensure nondiscriminatory
23 standards. That's essentially what it does.

24 We reviewed 13 primary organizations that
25 issued reports. Some of them had recommendations, but

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1 not all. I believe the Ford-Carter Commission had
2 recommendations, as well as the CalTech/MIT project.
3 The Constitution Project also had recommendations as
4 well as the National Commission on Election Reform.
5 Others really looked in detail at the election process
6 to determine what had gone wrong.

7 The last report issued is the GAO report,
8 which was not included in our memo, but the GAO report
9 has since been released, and it was a very detailed
10 report that looked at what went wrong in the 2000
11 elections.

12 We also looked at some secondary
13 organizations: League of Women Voters, Organization
14 of Chinese Americans, et cetera. These are
15 organizations that made statements or discussed
16 issues, but didn't necessarily come up with guidance
17 or reform measures. So it was incorporated into the
18 memo, but not outlined in the way that the studies
19 were.

20 There have been some recent developments,
21 as I mentioned. There's a proposal that is
22 anticipated in the House from Stenny Hoyer and Bob
23 Ney, and it's currently in the House Administration
24 Committee, where language is being nailed down, is
25 what I understand.

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1 We understand it's going to call for
2 minimum standards for state and local election
3 administration and requirements for statewide voter
4 registration, revotes, straw ballots, and provisional
5 ballots.

6 That particular proposal is said to seek
7 \$2.5 billion for new equipment and training, and it
8 also established a four-member commission to take over
9 responsibilities that are currently assigned to the
10 FEC.

11 Among other recent developments, we
12 discussed in the memo voting rights, restoration for
13 ex-felons. Since then, there's been a task force put
14 together in Virginia to look at making the process
15 easier of regaining the right to vote in that State.

16 I think we already discussed the
17 Connecticut reform in the memo, and in Florida as well
18 I think most people are familiar with the new
19 executive clemency rules that are established to make
20 the process of getting your right to vote more easily
21 in that State, making it easier in that State.

22 The GAO released a series of reports, and
23 multi-page reports, I might add. They were very
24 detailed and in-depth. They dealt with congressional
25 authority in election administration. The second

1 report addresses challenges to election
2 administration, a third report on accessibility, a
3 fourth on military and overseas voting, a fifth on
4 equipment standards, and sixth on uncounted votes,
5 factors that have affected uncounted votes.

6 Interestingly, that particular report
7 determined that the variance in uncounted votes was
8 due to differences in state procedures, like how many
9 names are on a ballot, whether or not there's a
10 straight party ballot. That counted for the greatest
11 variance, followed by demographic factors, such as the
12 race of the voter, and followed by equipment
13 standards. There also was a seventh report that was a
14 capstone report to all of the rest of the findings.

15 Some of the major findings in the GAO
16 report: 57 percent of jurisdictions reported having
17 major problems in the 2000 election. Despite this,
18 the majority of precincts don't support federal
19 standards or infringement on their autonomy.

20 The GAO did a survey of local election
21 officials, and what they found was that 54 percent
22 support federal funding to subsidize election mailings
23 and 42 percent support help with operational costs; 38
24 percent support funds for voter education. They want
25 the money, but not necessarily the --

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1 CHAIRPERSON BERRY: We call that stump
2 money. Put the money on the stump and run.

3 (Laughter.)

4 MS. DICKERSON: Right. They don't
5 necessarily want to be told how they should spend that
6 money.

7 Less than half of the election
8 jurisdictions collected data on equipment performance
9 in the 2000 election. This is tracking data, and
10 without it we really don't know what happened in the
11 elections, and that was really the problem in
12 November.

13 Also, the GAO found that nearly half of
14 all jurisdictions had problems with voter registration
15 and implementation of the National Voter Registration
16 Act.

17 CHAIRPERSON BERRY: Motor Voter?

18 MS. DICKERSON: The Motor Voter Act,
19 correct.

20 Absentee ballots also presented a problem
21 for many jurisdictions. Those absentee ballots, of
22 those rejected, two-thirds were due to late arrival or
23 incorrect forms. So they really weren't due to the
24 voter filling them out incorrectly. The problem was
25 that either they did not arrive on time or the form

1 that the voter filled out or had been given was not
2 correct.

3 Only 16 percent of polling places were
4 free from potential impediments for people who needed
5 assistance; 28 percent had impediments, but no remedy.

6 For example, they might have had a curb and no ramp.

7 There was an impediment, but there was no overcoming
8 of that impediment to enable people to vote. So I
9 guess what that really says is that 84 percent really
10 had a potential impediment, which is a very high
11 number.

12 Among other recent developments, there was
13 another report released just this week by the
14 Democratic Caucus Special Committee on Election
15 Reform, and it's a 123-page report. This is actually
16 it, and it did make recommendations. Many of them
17 were consistent with the recommendations in other
18 reports as well as the recommendations that we are
19 going to cover.

20 There are areas that this particular
21 report covered or addressed more directly than our
22 recommendations did. One was network coverage of
23 election night. They had guidelines for networks to
24 follow in terms of not releasing election results
25 prematurely.

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1 As well, they spoke a little bit more
2 directly about absentee voting and military and
3 overseas procedures. We really didn't focus our
4 recommendations there. We focused it on the larger
5 voting population.

6 There was, in addition, another -- the
7 same day Common Cause issued a report which was a
8 state-by-state report card, a report card that looked
9 at four different factors and gave grades to states.
10 It compared the changes, the reforms that the states
11 had made a year ago versus this November 7th. It
12 looked at whether or not they had instituted
13 provisional balloting, the registration deadline, how
14 close it was to registration date, and the rate of
15 disenfranchisement, and as well the polling hours. It
16 rated every state on those particular factors. So
17 that, as well, was not included in the memo that was
18 sent because it was only released two days ago.

19 Among our findings and recommendations,
20 what we are suggesting is that since elections are
21 administered in a diverse manner across the country,
22 really the result is an unclear delineation of
23 authority, lack of accountability, and insufficient
24 procedures.

25 What we are proposing is that there be

1 minimum requirements established for a number of
2 things, including equipment, error rates, absentee
3 ballots, sample ballots, voter ID's, maintenance,
4 ballot counting, voter education, ex-felon voting, and
5 state and local responsibilities.

6 We are additionally suggesting that
7 mandatory standards be established for provisional
8 ballots, kickback features, collection of election
9 data, language assistance, and access for disabled
10 population.

11 We also suggested in the paper that there
12 be some voluntary standards. If states and
13 jurisdictions determine that they want to exceed the
14 minimum standards, that should be left to their
15 discretion, for example.

16 We also found in our report that states
17 can't pay for the implementation of new standards.
18 Proposals vary in the amount up to nearly \$6 billion
19 for reform measures. So states cannot carry that
20 burden. They simply do not have the funds. So the
21 federal government must provide sufficient funding in
22 order for reform to take place.

23 Our second finding --

24 CHAIRPERSON BERRY: Congress must provide
25 sufficient funding.

1 MS. DICKERSON: Yes, we already did that.
2 Okay.

3 Our third finding is that there are
4 variable models for election administration
5 characterized really by the level of involvement of
6 the Secretary of State. That seems to be the central
7 person.

8 There is the sole model where the
9 Secretary of State is the chief elections authority
10 for the state. There's the model 2 where the
11 Secretary of State shares duties with state and local
12 offices, and model 3 is the uninvolved model where the
13 Secretary of State really has no election authority.

14 Our recommendation is that the Secretary
15 of States have sole responsibility, which was model 1,
16 with designated staff or offices for the management of
17 data, training, and guidance.

18 COMMISSIONER WILSON: Can I ask a
19 question?

20 CHAIRPERSON BERRY: Sure.

21 COMMISSIONER WILSON: Are we making a
22 recommendation, or have we considered making a
23 recommendation, where if somebody is the Secretary of
24 State, what would the guidelines be for their
25 involvement in the presidential election or in an

1 election?

2 CHAIRPERSON BERRY: In other words, is
3 there anything in there about partisanship or whether
4 the official can be involved as an official in a
5 campaign?

6 MS. DICKERSON: We didn't address that in
7 this part of the recommendation. Others did suggest
8 that there should not be partisanship in this, the
9 selection of the Secretary of State.

10 COMMISSIONER WILSON: Do we want to
11 address it or?

12 CHAIRPERSON BERRY: When we finish and we
13 decide whether we're going to approve these, then you
14 can raise that again, please.

15 COMMISSIONER WILSON: Okay.

16 CHAIRPERSON BERRY: Thank you.

17 MS. DICKERSON: The sole model, it's
18 important to note, is already in most states; 28
19 states have the sole model, which is the one that we
20 are suggesting.

21 Our fourth finding is that existing voting
22 rights legislation is adequate. There are laws that
23 protect voting rights, but they are not strictly
24 enforced. The federal monitoring function should be
25 expanded before, during, and after an election.

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1 Currently, it's only on a request basis, but what we
2 are recommending is that this should be expanded and
3 the states shouldn't only have to -- people shouldn't
4 only have to request involvement of the federal
5 government; in many cases it should be random or it
6 should just be automatically provided.

7 Congress should also provide adequate
8 funds to DOJ to carry out its election enforcement
9 responsibility.

10 We also found that neither state nor
11 county entities have adequate procedures for
12 documenting irregularities or resolving complaints,
13 and these are key to determining what happened before,
14 during, and after an election.

15 So we are suggesting that procedures for
16 filing complaints be improved. Each state should
17 develop procedures, and the process should remain
18 outside of the authority of the Secretary of State or
19 election officials. In other words, those responsible
20 for the problem shouldn't be the same ones responsible
21 for investigating it.

22 The U.S. Attorney's Office should be
23 designated to resolve the complaints, and
24 investigations should be done in a timeframe that
25 really is conducive to counting the particular vote

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1 that's being investigated; else, it will result in
2 someone's voting rights potentially being taken away.

3 We thought that the Department of Justice
4 should provide oversight, and that specifically in all
5 of this that how to file a complaint needs to be
6 publicized and clarified to the voters.

7 We also found that many states don't
8 collect adequate election data, and this impedes the
9 ability of individuals to initiate complaints or take
10 legal action following the results. I mention that
11 the GAO also found this in their study. So we're
12 recommending that election data be uniformly tracked,
13 recorded, and disseminated statewide. Precinct data
14 should include equipment, ballots, communication
15 systems, poll workers' training, polling hours,
16 accessibility measures, and criteria for list-purging.

17 We had a terrible time in December and
18 January obtaining information from jurisdictions
19 because they all reported a different timeframe. That
20 could be days, weeks, months, or not at all. So it's
21 really critical that there be uniform data reporting.

22 Federal standards should really be set and
23 established, and a national data repository
24 established to assist in this.

25 Our seventh was that there are many tasks

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1 involved in election administration, including
2 activities that protect voting rights and ensure
3 smooth operation on election day. It's like anything
4 else, if you want to guarantee to do things, do them
5 right, do them on time. If you write them down or you
6 have an accountability system for them -- we feel that
7 states should develop election lists to ensure that
8 election officials complete the necessary tasks
9 before, during, and after an election.

10 The federal government should develop
11 minimum requirements for standard check lists. This
12 should probably be the first reform that states take:
13 to make a to-do list of who's supposed to do what and
14 when they're supposed to do it. Those are things that
15 states should and could be doing now.

16 We gave a sample list in our memo that was
17 for state election employees, but one for poll
18 workers, also local election officials should also be
19 established. Everyone should have a check list who's
20 involved with the process.

21 There were a lot of errors on registration
22 lists on election day, and yet many state voters are
23 permitted to vote by provisional ballot until
24 eligibility can be proven. A simple feature such as a
25 kickback or a provisional ballot being made available

1 on election day would have really eliminated many of
2 the problems that occurred.

3 Verification should occur immediately
4 after an election, so that votes can be counted or the
5 voter can appeal the decision not to count his or her
6 vote.

7 We also found that many questions about
8 certification and recount procedures and the treatment
9 of special ballots arose in the 2000 election. So we
10 recommended that a 21-day certification period be
11 established. There are other groups that recommended
12 different number of days, but we found that 21 days
13 should be sufficient to certify the election results
14 and allow for the counting of special ballots and
15 resolution of any complaints or disputes.

16 Our tenth finding was that voter
17 registration deadlines vary from state and state, and
18 some being set far in advance of elections and that's
19 impeding participation. So we recommended that voter
20 registration deadlines be set much later, and we
21 recommended a week before the election or less, or as
22 technology allows for real-time registration.

23 Twenty-five states, half of the states,
24 require a month or more for this, and it's really no
25 reason why they need that much time when other states

1 do it much faster.

2 We found that there's a lot of variation
3 of polling hours across the states. Restrictive hours
4 on participation result in unsynchronized poll
5 closings across the country. So we recommend that
6 election day be a holiday with 24-hour voting or, at a
7 minimum, that uniform polling hours be established
8 within states.

9 As far as equipment, there's a great need
10 for improvement in voting equipment, but a
11 standardized system won't meet states' different
12 needs. That's why we suggested that minimum national
13 standards be set for voting equipment, including
14 standards for how a vote is processed and kickback
15 features.

16 Our 13th finding was that states have the
17 discretion to enact voter identification requirements,
18 but often they are implemented unfairly and at the
19 expense of minority voters. Therefore, federal
20 guidelines we recommend that should be set for voter
21 identification requirements to ensure that states
22 don't impose an undue or unfair burden on some voters.

23 We're not suggesting that identification
24 shouldn't be required or should be required, but only
25 that if states say that they are going to require

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1 identification, they will uniformly ask for it.

2 Our 14th finding was that language
3 assistant requirements exist, but efforts to comply
4 are insufficient. So we are recommending that federal
5 language assistance standards be set and monitored for
6 compliance, particularly in light of changing
7 demographics.

8 Voting instructions, technical assistance
9 materials, complaint forms should all be language-
10 appropriate, and states should report to the
11 Department of Justice for language provisions
12 implemented and the utilization rates and outcomes.

13 Our 15th finding is that there seem to be
14 many impediments to the voting process for persons
15 with disabilities, despite the existence of
16 legislative requirements. We are recommending that
17 uniform requirements for disability access be set and
18 monitored for compliance, and that federal funds
19 should be allocated for making voting accessible, and
20 states should be required to report the provisions
21 implemented and the outcomes.

22 We found that millions, specifically 3.9
23 million, Americans lost the right to vote because of
24 felony conviction, and this has had a disproportionate
25 impact on the African American male voter. So we are

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1 recommending that the right to vote be restored to all
2 former felons upon completion of their sentence and
3 parole.

4 Our finding that many voters are not aware
5 of their rights or the voting process itself, that
6 state and local governments don't uniformly engage in
7 voter education or outreach, led to our recommendation
8 that standards for voter education material be
9 developed and include distribution of voting materials
10 and instructions for filing a complaint.

11 Our last finding was that very little
12 attention has been given to encouraging new citizens
13 to vote through targeted outreach and education. So
14 that we were recommending that reform measures must be
15 taken to assist new Americans in exercising the right
16 to vote. Registration should automatically be
17 included in the citizenship process.

18 And those are our recommendations. Thank
19 you.

20 CHAIRPERSON BERRY: Okay, we had
21 Commissioner Wilson's suggestion that we add to the
22 recommendations one concerning the political
23 participation of the election officials in the state,
24 and whether or not they are permitted to have roles
25 and functions in campaigns.

1 Let's see now, so this is not about
2 whether they can vote or whether they can support
3 candidates, or whatever, but whether they should have
4 official positions in the campaign of candidates
5 during the electoral process.

6 Now you say that someone has recommended
7 this?

8 MS. DICKERSON: Yes. The report that was
9 just issued this week has a recommendation. It says,
10 "State and localities must recognize the importance of
11 maintaining fairness and impartiality in the election
12 system. To that end, state and local election
13 officials should be selected on a nonpartisan basis or
14 in a way that ensures bipartisan checks and balances.
15 Election officials should be forbidden from publicly
16 supporting or campaigning for candidates for public
17 office."

18 CHAIRPERSON BERRY: Does anyone else have
19 any -- does anyone have any objection to that specific
20 recommendation? Yes, Commissioner Edley.

21 COMMISSIONER EDLEY: What are the First
22 Amendment implications?

23 CHAIRPERSON BERRY: What are they?

24 COMMISSIONER EDLEY: Well, I think they're
25 serious. That's why I asked. I'm also a little bit

1 troubled about the 10th amendment implications. I
2 mean, the suggestion is there would be federal
3 legislation that prohibits a state from having
4 partisan elections. In other words, it said that the
5 election for Secretary of State must be conducted on a
6 nonpartisan basis or federal legislation that requires
7 that a state adopt a particular kind of ethics code
8 for its elected officials.

9 I'm mostly trying to figure out where the
10 authority is in Article 1 for Congress to legislate on
11 this matter. It's not a matter of interstate
12 commerce. It's not a matter that seems to me to fall
13 within the elections clause of Article 1 because it
14 doesn't seem to me to speak to the time, place, or
15 manner for electing Members of Congress.

16 I guess it could be a condition for the
17 federal grant that a state would have to adopt a
18 certain kind of restriction on the behavior of its
19 elected officials in order to be able to be eligible
20 for the federal money. Okay, so if you did that, then
21 I guess I still worry about the -- I mean, I just
22 don't know. I'm still worried about what the First
23 Amendment implications are.

24 Even at the federal level with the Hatch
25 Act and the like, there's some careful lines drawn

1 about what one does in an official capacity versus
2 what one does privately or what one does at the
3 workplace versus what you do Saturday night.

4 Anyway, I just raise all of those. I
5 should also say that, aside from my legalistic
6 concerns, this was discussed quite a bit in the
7 Carter-Ford Commission, and President Carter argued
8 strongly, as Commissioner Wilson is more forcibly than
9 Commissioner Wilson has yet to argue. I wouldn't put
10 it past her, but she hasn't done it yet. I think it
11 was based on his international experience. It's just
12 that he says we're practically unique in the world in
13 terms of having the very officials who are responsible
14 for wanting free and fair elections are themselves in
15 many cases political operatives, are partisan. He,
16 President Carter, finds that problematic and
17 objectionable.

18 Most of the members of the Commission,
19 both Democrats and Republicans, particularly those who
20 are former politicians, said that they didn't think it
21 was that big a deal, that so long as it was open and
22 there was disclosure about it, and there were checks
23 and balances, and that there's a role for an
24 independent judiciary, and so forth, that abuses could
25 be tamed, but it was as a practical matter the kind of

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1 people -- well, I've said enough.

2 CHAIRPERSON BERRY: But those arguments,
3 Christopher, you had me leaning toward what you were
4 saying until you made the last argument, because the
5 last argument that the opponents to President Carter's
6 proposal made doesn't make any sense. The Secretary
7 of State, if the Secretary of State has sole authority
8 to determine these matters, full and plenary authority
9 in a state, it's difficult to say that the Secretary
10 of State, if the person is partisan, without pointing
11 a finger at any person, partisan in the sense that
12 they wish their party would win the election. That's
13 what I mean; that is, that they're a politician who
14 wants their party to win -- that that person will
15 necessarily always be nonpartisan or that there is a
16 check, because the judiciary is not independent. It
17 may appear to be, but it isn't in any state or any
18 judges of the law. As you know, state court judges
19 are elected.

20 COMMISSIONER EDLEY: But you almost make
21 my point. You almost make my point. I mean, again,
22 the concern of people in this Commission was we have
23 judicial officers who are political elected officials.

24 Not every state requires that they absolutely not
25 engage in any kind of political activity whatsoever.

1 So if that's our attitude toward judges, then on what
2 basis would the Assistant Secretary of State be even
3 purer?

4 CHAIRPERSON BERRY: Well, the attitude is
5 different because the right to vote is supposed to be
6 the most fundamental right on which our political
7 democracy and representative government depends. If
8 you assume that you jeopardize its integrity, then
9 everything else becomes invalid, if you know you're
10 doing that. I'm not saying I favor the proposal one
11 way or the other, but I'm saying that there is a
12 substantial difference between the two things.

13 Now I didn't like all that stuff being
14 read, Terri. That recommendation you just read, it
15 had a bunch of stuff in it that wasn't what Vicky was
16 talking about. The part she was talking about, I
17 think it was the last part, she was talking about the
18 official running the campaign and at the same time
19 being a Secretary of State. Isn't that what you were
20 talking about? I didn't listen to the first half of
21 what you said. What was the part that's just about
22 that?

23 MS. DICKERSON: "Election officials should
24 be forbidden from publicly supporting or campaigning
25 for candidates for public office."

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1 CHAIRPERSON BERRY: Okay. Is that the one
2 you're talking about?

3 COMMISSIONER WILSON: Yes, but I would
4 just like to address what Commissioner Edley said.
5 What was curious to me, that they would -- and I'm not
6 sure that you're quoting them directly -- but that the
7 quote was that it was no big a deal. I would say that
8 this country has been reeling from the fact that it
9 was quite a big deal, and that a lot of our energies
10 have been spent trying to get to the bottom of this
11 big a deal.

12 And the other issue is, you mentioned as
13 long as there are checks and balances in this system
14 involving the Secretary of State, in a situation where
15 there was a question about the election, what were the
16 checks and balances? There were no checks and
17 balances really in place that I'm aware of with regard
18 to the perceived -- I mean, there were ways in which
19 the --

20 CHAIRPERSON BERRY: There were no
21 nonpartisan --

22 COMMISSIONER WILSON: Well, there were
23 ways in which the Secretary of -- there were
24 procedural ways in which the Secretary of State moved
25 along, but each of those were open to interpretation.

1 Also, in the wording in which Terri said,
2 you said I think what the report said, campaigning or
3 -- what was the second word?

4 MS. DICKERSON: Publicly supporting or
5 campaigning for candidates for public office.

6 COMMISSIONER WILSON: Okay. In this
7 particular instance of the Secretary of State, it was
8 more than just campaigning. It was being a key figure
9 in the presidential election.

10 CHAIRPERSON BERRY: Who had a share in the
11 campaign.

12 COMMISSIONER WILSON: Right. So I would
13 have to go back -- I mean, I think that I would
14 strongly go back and support again and agree with what
15 Carter said. Because when I found out about the
16 position of the Secretary of State and the ground that
17 that position held, I was shocked at the ramifications
18 that that person in that position, given that
19 responsibility, also had the latitude to be part of a
20 campaign.

21 VICE CHAIRPERSON REYNOSO: This is Cruz.

22 We often have the anomaly in California
23 that the Secretary of State, while the Secretary of
24 State, runs for higher office.

25 CHAIRPERSON BERRY: Runs for higher

1 office?

2 VICE CHAIRPERSON REYNOSO: Yes, we had a
3 Secretary of State who ran for Governor and won. It
4 was Jerry Brown. We right now have a Secretary of
5 State who's in charge of elections who has announced
6 his candidacy for Governor.

7 CHAIRPERSON BERRY: I see, and he'll be in
8 charge of his own election?

9 VICE CHAIRPERSON REYNOSO: Right.

10 CHAIRPERSON BERRY: I see. I'd love that.

11 (Laughter.)

12 VICE CHAIRPERSON REYNOSO: But I think
13 that has to do with Commissioner Edley's point that
14 the law has tried to make a distinction between these
15 persons, public complications as an officer,
16 participation in the election process during the day
17 or beyond and a person's political activity, has tried
18 to say that we need to separate the two. To the
19 extent that the Secretary of State in Florida was
20 criticized, it had to do with the perception that she
21 had failed to do that.

22 CHAIRPERSON BERRY: Yes. How would we
23 stop that, Cruz? Think about it for a minute.

24 Commissioner Edley.

25 COMMISSIONER EDLEY: Well, exactly, how

1 would we stop that? And I will tell you that one
2 answer that many people have suggested is that the
3 answer to politics is more politics. It's the same as
4 the attitude toward the First Amendment. The answer
5 to that speech is more speech.

6 The second point is that one of my qualms
7 here is that in many states the Secretary of State, as
8 Cruz is suggesting, is a big deal, is a political
9 official. It's a major elective office. Somebody
10 gets to be Secretary of State in many states because
11 they are, in fact, intensely partisan and that's the
12 way in which the state constitution has constructed
13 their government.

14 It is not evident to me that in a
15 situation in which the Secretary of State has umpteen
16 responsibilities, including political responsibilities
17 to their party and within their state, that if a
18 fraction of their responsibilities have to do with
19 supervising this election office -- I'm giving the
20 Katherine Harris defense here, right -- that,
21 therefore, the fact that they have some organizational
22 oversight for a small office that does election
23 oversight should require that the state reinvent its
24 constitution and reinvent its political structure, in
25 which the Secretary of State may be the third in line

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1 in succession to be Governor, whatever.

2 I think that it is more important, and
3 this was really President Carter's point, that the
4 people who have more direct, ongoing line
5 responsibility for administering the elections should
6 be beyond reproach. He was actually more concerned
7 with the county commissioner types than he was with
8 the Secretary of State, because he saw the importance
9 of the Secretary of State in the political
10 constitution of the state, but these local folks that
11 we all saw on television over and over again counting
12 the chads, et cetera, he thought that those ought to
13 be people that everybody viewed as being quasi-
14 judicial, as opposed to political officials.

15 So I come back to the recommendation
16 itself. I'm for having accountability and having a
17 single point, having a person that everybody can turn
18 to and say, Why was there a screwup and why did you do
19 X, Y, and Z?

20 I don't know why it has to be the
21 Secretary of State, particularly if for lots of other
22 reasons the state wants the Secretary of State to be a
23 political official. It could be a quasi-independent,
24 term-appointed, 10-year-term civil servant who runs an
25 office of elections that somehow is housed within the

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1 Office of the Attorney General. I don't know what it
2 is, but if what we you want is, if we want to make
3 sure that election administration is beyond reproach,
4 beyond the reality or the appearance of partisan
5 influence, then I think we ought to state that goal
6 and not necessarily be proscriptive about the
7 alignment of offices and responsibilities.

8 Do you see what I'm saying? Our two
9 goals, it seems to me, are accountability on the one
10 hand and nonpartisan administration and adjudication
11 of election issues.

12 VICE CHAIRPERSON REYNOSO: This is Cruz.

13 It's interesting that in California we've
14 had Secretaries of State, both Republicans and
15 Democrats, who have run for office, but there has
16 never been a charge or an allegation that that
17 partisanship impacted how they ran their office.
18 Probably, politically speaking, in California it would
19 really be a dark mark, political mark, against them if
20 it was shown they had administered their office in a
21 partisan fashion. So to a certain extent it depends
22 on the political ambience of the state.

23 CHAIRPERSON BERRY: Yes. Commissioner
24 Wilson.

25 COMMISSIONER WILSON: Thank you. You

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1 know, I don't know the history that well, but my hunch
2 is that a situation that occurred in Florida regarding
3 the Secretary of State has not happened very
4 frequently, certainly in the recent past. People, I'm
5 sure, were very surprised about the position that the
6 Secretary of State was thrust into.

7 I think that what Edley said in the latter
8 part of his statement is exactly right, particularly
9 in the light of Katherine Harris' testimony before our
10 Commission where she basically deferred all of her
11 answers to her colleague, to whom she had passed most,
12 if not all, of the responsibility of actually
13 administering the election, and that, therefore,
14 perhaps the solution is to not have the Secretary of
15 State be the person who is in charge of the election
16 and to change that, rather than changing the
17 requirement of the way the Secretary of State goes
18 about his or her political alliances, supports, or
19 whatever.

20 CHAIRPERSON BERRY: There are two factual
21 things. One is that, whatever we heard in our hearing
22 in Bush v. Gore, the record of that case, and the case
23 below it, show that the Secretary of State insisted
24 that that official had plenary, full authority and
25 responsibility and knowledge of the election process

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1 and everything else, which is why that person could
2 determine what ballots should be counted, because they
3 were really the key person in all of this.

4 So then what was said in that affidavit
5 and in the record of that case is very different from
6 the kind of defense that Edley was making here.
7 That's the first point to be made.

8 I think most Secretaries of State, at
9 least the ones -- they did a report, the National
10 Secretaries of State, one of the reports that Terri
11 referred in her whole list of reports she put up there
12 on the screen that are in our memo was done by the
13 National Association of -- Secretaries of State or
14 whatever they are. They talk about the ones who have
15 the sole responsibility do have the sole
16 responsibility and knowledge and information about
17 what's going on. They may be lying or maybe they
18 don't really do it, but that's what they do. That's
19 one point to be made.

20 The second point to be made is that,
21 whatever we think sitting here, and no matter how much
22 time has passed, at the time that this all occurred
23 last year, and all the run-up from January, most
24 people who heard that the Secretary of State was also
25 a co-chair of one candidate's presidential campaign

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1 were somewhat surprised, disturbed, puzzled by how
2 this could happen. No matter what side they were on,
3 they said, "Oh, is that what happens all the time,"
4 that the person can co-chair a campaign and also be
5 the person who ultimately tells the court, "We know
6 how to resolve this."

7 So people found it puzzling; large numbers
8 of people did. "Puzzling" I think is a polite word, I
9 think, for some people. A lot of people found it
10 puzzling.

11 I think what we ought to do, based on what
12 we just heard on this point, I would not be in favor
13 of recommending that the person not work in a
14 campaign, or whatever that was you just said, and I
15 would be in favor of encouraging whoever the official
16 is who is responsible for the voting process in the
17 state, whether they're called the Secretary of State
18 or whatever they're called -- I don't care really --
19 that they not give the appearance of being overtly
20 partisan in a particular campaign by holding official
21 positions and actions. It's just a matter referred to
22 them, and if they want to do it, then they can do it,
23 and that doesn't require, that doesn't conflict with
24 the First Amendment. It doesn't conflict with
25 anything, but they just avoid the appearance. Then

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1 they can do whatever they want.

2 I also would be in favor, and I thought
3 about this while you were giving your presentation,
4 Terri, and when I read your memo, we don't have to say
5 that we recommend that the Secretary of State do X, Y,
6 Z. We can say we recommend that the official who is
7 responsible, who has overall responsibility for that
8 process in the state, do X, Y, and Z. There's nothing
9 wrong with the X, Y, and Z's, but they may want to
10 call it "banana" or something or have it be some other
11 person. They don't have to have it be the Secretary
12 of State. So why don't we do that?

13 Yes, Vicky.

14 COMMISSIONER WILSON: Thank you, Madam
15 Chair.

16 Well, I just want a question: What are
17 the ramifications of saying that we recommend that
18 they avoid appearing to be part of a campaign? I'm
19 not quite sure what that --

20 CHAIRPERSON BERRY: They would avoid, the
21 most I would be willing for myself to say, would be
22 that we would encourage whoever this official is, the
23 officials to avoid the appearance that they are
24 officially engaged in the conduct of particular
25 political campaigns, if we were to say that.

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1 But after this discussion that we've just
2 had, I'm beginning to think that we shouldn't even say
3 that, and the reason why we shouldn't say it is
4 because we can't make them do it, and the Congress
5 can't either, or they can try. They can make it a
6 condition of a grant.

7 So maybe Congress, in the things that they
8 ask, if they pass this law giving out money, could
9 say, among the things we encourage is that the person
10 appear to be objective and fair, or whatever. But
11 that doesn't really say anything.

12 COMMISSIONER WILSON: No. No, it doesn't.

13 CHAIRPERSON BERRY: So why don't we just
14 skip it, which is what all these other groups have
15 done.

16 (Laughter.)

17 COMMISSIONER EDLEY: That's why we skipped
18 it. We couldn't figure it out.

19 (Laughter.)

20 CHAIRPERSON BERRY: So what this
21 discussion has told us is that there is good reason to
22 skip it.

23 COMMISSIONER WILSON: Well, I'm not quite
24 so sure that we should just let it go at that. What I
25 would put forward is that we perhaps consult a lawyer

1 or two and discuss what the ramifications are of
2 making a more forceful recommendation, because I think
3 that just not addressing it is in a certain way not
4 looking at what was the central issue in this past
5 election.

6 CHAIRPERSON BERRY: Okay, why don't we do
7 this then -- yes?

8 COMMISSIONER EDLEY: Suppose we said that
9 the official, the chief election official, that there
10 ought to be a chief election official --

11 CHAIRPERSON BERRY: Yes, and everywhere
12 you have "Secretary." So call it "chief of
13 elections."

14 COMMISSIONER EDLEY: -- and that the chief
15 election officials is subject to rules comparable to
16 those applicable to judges of the state's highest
17 court?

18 COMMISSIONER WILSON: Well, I don't know
19 that you're going to -- I mean, look at the Supreme
20 Court in this past situation.

21 COMMISSIONER EDLEY: But that's different.

22 CHAIRPERSON BERRY: That's a good idea,
23 but do you know why we can't do that? Because sitting
24 here at the table, we don't know what those rules are.

25 VICE CHAIRPERSON REYNOSO: And the rules

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1 vary.

2 CHAIRPERSON BERRY: And they vary.

3 VICE CHAIRPERSON REYNOSO: In Texas the
4 Supreme Court Justices run on a partisan basis.

5 CHAIRPERSON BERRY: So what I would prefer
6 is, it's a good idea. There are all good ideas. Why
7 don't we do what Vicky suggested? Why don't we
8 proceed with our consideration and approval or
9 disapproval of all the other recommendations with
10 changes and then reserve this one and ask the lawyers
11 to go look at all these legal questions, and come back
12 and tell us. Then if we want to add a recommendation,
13 and later on make one about that, we can, unless
14 you've got another idea.

15 Elsie?

16 COMMISSIONER MEEKS: Well, all I wanted to
17 say is that in South Dakota they can't run on a
18 partisan basis. I mean, I think everyone knows where
19 they sort of all fall in, but at least it sets a
20 standard, and we won't have a judge actively involved
21 in an election.

22 COMMISSIONER EDLEY: I think the question
23 is less whether they run for office as a member of a
24 political party, Cruz, than whether under the canons
25 people would be upset about a sitting judge becoming

1 what Katherine Harris was in the Bush campaign. Do
2 you see what I mean?

3 VICE CHAIRPERSON REYNOSO: Yes, yes.

4 COMMISSIONER EDLEY: And I can't imagine
5 that there's a state in which people would feel
6 comfortable with the Chief Justice of the State
7 Supreme Court being the co-chair of --

8 VICE CHAIRPERSON REYNOSO: Right.

9 COMMISSIONER EDLEY: -- the Governor's
10 election campaign.

11 VICE CHAIRPERSON REYNOSO: Right.

12 COMMISSIONER EDLEY: I was just looking
13 for some relatively understood set of norms.

14 CHAIRPERSON BERRY: Well, say it again.

15 COMMISSIONER EDLEY: That the chief
16 election official in his or her political activities,,
17 political involvements, would be subject to the same
18 ethical restrictions as are applicable to sitting
19 members of the judiciary in that state.

20 CHAIRPERSON BERRY: The highest judiciary?

21 COMMISSIONER EDLEY: Yes, right, the
22 highest court in the state.

23 CHAIRPERSON BERRY: Sitting members of the
24 highest court in that state.

25 COMMISSIONER EDLEY: Right. So I think

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1 it's --

2 CHAIRPERSON BERRY: Not just your little
3 municipal --

4 COMMISSIONER EDLEY: Yes, that's right.
5 That's a good, a very good distinction. I think that
6 -- well, I don't need to explain the idea more.

7 CHAIRPERSON BERRY: Okay, they wrote it
8 down. So let's debate it and see.

9 First, Vicky, can I let Russell --

10 COMMISSIONER WILSON: Yes.

11 CHAIRPERSON BERRY: Commissioner
12 Redenbaugh.

13 COMMISSIONER REDENBAUGH: Mr. Edley, where
14 are you on the Tenth Amendment application of what
15 you've just suggested?

16 COMMISSIONER EDLEY: Well, certainly we
17 can say it as a correctory statement about what we
18 think states ought to do. If this were to be in
19 federal legislation and it were not a mandate, but
20 simply a condition for receiving federal funds, then
21 there would be no Tenth Amendment issue.

22 COMMISSIONER REDENBAUGH: Right.

23 COMMISSIONER EDLEY: It would be
24 legitimate under the spending clause. States would be
25 free to decline the money. So I think this would

1 strip the Tenth Amendment.

2 CHAIRPERSON BERRY: Commissioner Wilson.

3 COMMISSIONER WILSON: Yes, I just wanted
4 to suggest that I see sitting in the back of the
5 audience the former General Counsel of the Commission.

6 I wondered if he wanted to --

7 MEMBER OF AUDIENCE: No.

8 COMMISSIONER WILSON: Okay, that answers
9 that.

10 (Laughter.)

11 For the record, I'd be curious to know
12 what he had to say, but I abide by your decision.

13 COMMISSIONER EDLEY: Who let him in?

14 (Laughter.)

15 CHAIRPERSON BERRY: I think what we can do
16 is we can either make this a recommendation that says
17 that we encourage this, not that we think that it
18 ought to be required, or we can say that Congress
19 ought to consider encouraging this as part of any
20 grant or any federal funding that would be given to
21 the states. They should consider it, yes.

22 COMMISSIONER EDLEY: For those of you who
23 really care about this, and I'm not really one of
24 those, but if you really care about this, then I think
25 our just encouraging does nothing. Nothing will

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1 happen on this unless Congress pushes, because you've
2 got the forces arrayed behind the status quo in
3 whatever the state is. They've got their independent
4 political logic for whatever construction of power
5 they currently have. I doubt that many states would
6 change without a strong incentive to do so.

7 CHAIRPERSON BERRY: So we could make it
8 part of the -- we could say that Congress ought to
9 consider encouraging --

10 COMMISSIONER EDLEY: As one of the
11 conditions.

12 CHAIRPERSON BERRY: -- as one of the
13 conditions for receipt of federal funds. Okay, so
14 that doesn't give us any legal or constitutional
15 problems.

16 On the other recommendations that are
17 there, the other one that I am concerned about seeing,
18 I think, is that says there ought to be a holiday --
19 what's the one about --

20 MS. DICKERSON: There should be a holiday
21 or, at a minimum, there should be uniform polling
22 hours.

23 COMMISSIONER WILSON: Do you know which
24 number that is?

25 MS. DICKERSON: No. 11.

1 CHAIRPERSON BERRY: What are the pro and
2 con reasons for having a national election holiday?
3 So that people can go shopping at Wal-Mart or go out
4 to lunch and hang out, or is the idea that more people
5 would vote if you had a holiday? Or what's the point?

6 COMMISSIONER WILSON: If it's for buying
7 books, I think it's a great idea.

8 (Laughter.)

9 CHAIRPERSON BERRY: So what --

10 MS. DICKERSON: The point was to
11 accommodate people who had different working hours,
12 that might work an overnight shift or also that there
13 were variable hours that confused voters in the last
14 election. So there was a high voter turnout, but
15 sometimes in some states where they had two different
16 time zones, the polls closed earlier in one locality
17 than they did in another, and voters were confused and
18 sometimes turned away.

19 CHAIRPERSON BERRY: I see. Commissioner
20 Meeks, what would happen in South Dakota if they had a
21 voter holiday? Would that make any difference as far
22 as you know? I mean a holiday for elections.

23 COMMISSIONER MEEKS: Then they would take
24 Monday off and take an extended weekend. No.

25 (Laughter.)

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1 CHAIRPERSON BERRY: Do you think it would
2 encourage people to vote or what do you think?

3 COMMISSIONER MEEKS: I can't believe that
4 it would harm it. I think that the people that are
5 going to vote are going to vote on Tuesday.

6 CHAIRPERSON BERRY: What about you,
7 Commissioner Redenbaugh, what do you think?

8 COMMISSIONER REDENBAUGH: Well, the cost
9 in lost production could be anywhere from a quarter of
10 1 percent to half a percent of GDP. So it's not a
11 trivial cost to drop a holiday on the calendar. Then
12 I think there needs to be an overwhelming benefit that
13 hasn't been articulated here to give up that much lost
14 production.

15 CHAIRPERSON BERRY: Commissioner Lee.

16 COMMISSIONER LEE: I certainly don't
17 advocate for a national holiday for voting. However,
18 when you're looking at a certain segment of a
19 community where there are workers in the service
20 industries or new Americans who are really afraid of
21 losing their job, it is hard for them to go to vote
22 after a 12-hour, a 14-hour day.

23 In some jurisdictions what they have
24 offered is to allow for a two-hour, three-hour, or
25 four-hour break. So it doesn't cut too much into loss

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1 of production, but at the same time allows the worker,
2 who really wants to vote but otherwise, if you compare
3 voting and keeping your job, naturally, people would
4 want to keep their job and not vote.

5 So I would throw out the recommendation, I
6 think; instead of recommending a holiday, suggesting
7 that workers be given time off to go vote, if they're
8 going to vote. Maybe we can tie in that you have to
9 bring back your official ballot stub or whatever, so
10 they don't go off.

11 But I still feel that there are certain
12 segments of a community who can't afford to go vote
13 because of their working schedules.

14 CHAIRPERSON BERRY: Commissioner Edley.

15 COMMISSIONER EDLEY: Again, if I can
16 burden you all by trying to share some of what the
17 Carter-Ford Commission thought about this, there was a
18 lot of debate about it. There are basically two
19 reasons to move in this direction. It is not to
20 increase turnout because the research suggests that
21 the effect on turnout would be probably a wash.
22 People would just take the day off versus the increase
23 in turnout. I think in light of the research, that
24 should just be put to one side. That's not what this
25 is about.

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1 It's primarily about poll workers, so that
2 it would be easier to recruit the 1.6 million people,
3 or something like that, a huge number of people who
4 have to be recruited to actually work at the polls,
5 and it's hard to do, and increasingly hard to do if
6 you are worried about getting people who have language
7 skills -- make it the language skills and all the rest
8 of it.

9 Secondly, to find polling places that will
10 be accessible, because increasingly school officials
11 are not willing to let schools be used for this
12 purpose. Obviously, if it's a holiday, then those two
13 problems become much easier.

14 The Commission came up with a finesse by
15 suggesting that election day be a holiday and that it
16 be Veterans' Day. That is to say, that on even-
17 numbered years it would be --

18 CHAIRPERSON BERRY: Oh, The Wall Street
19 Journal didn't like that.

20 COMMISSIONER EDLEY: Right, but,
21 apparently, the veterans' groups are actually divided,
22 and some of them like just sort of the patriotic
23 symbolism of having people exercising democracy on
24 Veterans' Day. But the notion was that Veterans' Day,
25 which is already a holiday -- this speaks to Russell's

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1 point about the economic impact, which we were very
2 concerned about -- but that Veterans' Day be moved to
3 be this Tuesday.

4 The fallback, if that were not done, was
5 to try to do something in the area of extended and
6 uniform poll closing times across the nation, so that
7 polls would close at -- let me get this straight -- at
8 8:00 p.m. Pacific Time everywhere, meaning 11:00 p.m.
9 in New York, and we agree to ignore Hawaii and Alaska.

10 That would help with this problem of
11 elections being called in a way that may skew turnout,
12 and so forth and so on. It works something of a
13 hardship on poll workers in New York to find the
14 people who will work until 11:00 p.m., and so forth.
15 But that was kind of the fallback.

16 CHAIRPERSON BERRY: Well, I need to know
17 from Russell in terms of the economics and the equity
18 issues. I'll just say that, as I listened, I picked
19 out three -- you, of course, will immediately pick out
20 the economic issues and probably the civil rights
21 laws, too, but I noticed three.

22 One was Yvonne talking about people who
23 were working and couldn't take off for a couple of
24 hours to go vote because they would lose their jobs,
25 many of them being language minorities.

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1 The other one was the need for poll
2 workers that Edley talked about and people to help to
3 give language assistance and how it would be easier,
4 which concerns us, and disabled access to buildings
5 that would be available.

6 But what do you think about both the
7 economics and the equity issues in this, Russell?
8 What's the balance here?

9 COMMISSIONER REDENBAUGH: Well, I think
10 we've identified the issues on both sides, and then
11 before we recommend one solution over another, what
12 Commissioner Edley is doing now I think is very
13 instructive, and that is, what are some of the
14 alternatives, like Veterans' Day? I think you solved
15 the three issues you raised, and you don't have the
16 economic problem.

17 Another solution, and I don't propose
18 this, but speculate this, is that instead of New York
19 closing at 11:00 p.m., they close at whatever their
20 normal and customary time is, but I guess you'd still
21 have the exit polling problem, but you don't have the
22 precinct reporting problem. Maybe there's some way
23 there.

24 Or the other thing that just strikes my
25 mind is do it on a Saturday. I haven't thought

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1 through that. There may be other adverse
2 consequences.

3 CHAIRPERSON BERRY: If you did it on
4 Saturday, is the economic impact of closing on
5 Saturday significantly less than one other day of the
6 week?

7 COMMISSIONER REDENBAUGH: Very much so,
8 because, for example, I don't think this Commission
9 does much - we're not open Saturday.

10 CHAIRPERSON BERRY: Right.

11 COMMISSIONER REDENBAUGH: With so much of
12 the economy being service-based now, those service
13 jobs tend to be five days a week, where the steel
14 mills obviously run 24/7.

15 CHAIRPERSON BERRY: How on Saturday, is
16 that the Sabbath? How many religions have Saturday?
17 I know Seven Day Adventists do. How many religions
18 have -- I think it's the Seven Day Adventists do? Is
19 it in the Jewish religion?

20 COMMISSIONER REDENBAUGH: Yes, sundown
21 Friday to sundown Saturday.

22 CHAIRPERSON BERRY: So you'd have to have
23 voting after sundown on Saturday.

24 COMMISSIONER EDLEY: That shortens the
25 hours, doesn't it?

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1 CHAIRPERSON BERRY: So Saturday wouldn't
2 work.

3 Are there any reasons not to make it
4 Veterans' Day.

5 COMMISSIONER EDLEY: Let me just repeat,
6 remind folks that the composition on that Commission
7 was way across the political spectrum. I mean from me
8 on the extreme left, I'm sure some of you might think,
9 to --

10 CHAIRPERSON BERRY: Well, I don't.

11 COMMISSIONER EDLEY: -- thank you, Mary --
12 to some serious conservative Republicans, several of
13 whom are veterans.

14 CHAIRPERSON BERRY: They supported
15 Veterans' Day.

16 COMMISSIONER EDLEY: Notwithstanding that,
17 it was the unanimous recommendation with Bob Michel,
18 Jerry Ford, both veterans, and several others, who
19 thought it was --

20 CHAIRPERSON BERRY: Are there any veterans
21 on this? Maybe what we should do --

22 COMMISSIONER WILSON: I'm a veteran of
23 life.

24 CHAIRPERSON BERRY: Okay. Maybe we should
25 support Veterans' Day.

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1 Proceed, Commissioner Wilson.

2 COMMISSIONER WILSON: Thank you.

3 Was the recommendation that Veterans' Day
4 be made a Tuesday?

5 COMMISSIONER REDENBAUGH: Yes.

6 COMMISSIONER WILSON: Okay. Well, I would
7 say that in terms of a white collar worker, that what
8 will happen if you do that is that Monday will be
9 taken off, and you have the same problem in terms of
10 you were talking about people not producing. It may
11 not be of the same magnitude, but I would bet that
12 would be what would happen.

13 CHAIRPERSON BERRY: Maybe we should have
14 our recommendation -- yes, Commissioner Redenbaugh.

15 COMMISSIONER REDENBAUGH: I have a
16 different point of view on that, which is that
17 organizations already deal with, manage that problem.

18 That's a voluntary situation, not a mandated one. So
19 the system can much better adjust to that concern, I
20 believe.

21 CHAIRPERSON BERRY: So the recommendation
22 as it exists now says just a national holiday; it
23 doesn't say what day?

24 MS. DICKERSON: It doesn't. It says "or
25 uniform hours."

1 CHAIRPERSON BERRY: And on some of these
2 questions we've been talking about, it's been pointed
3 out to me that some states have early voting that
4 begins a week to ten days before the election. It's
5 not absentee voting. You don't have to say you'll be
6 out of town, but you're allowed to vote earlier, if
7 it's convenient for you. I don't know what states
8 those are.

9 So the issue is then, do we add perhaps
10 Veterans' Day, a national holiday, perhaps Veterans'
11 Day, be whatever your recommendation, whatever it
12 says?

13 COMMISSIONER EDLEY: Let me correct the
14 record a little bit here, because now I'm remembering
15 this horrific debate that we had on this issue in
16 Charlottesville. So let me read you what our
17 Commission said.

18 "Holding national elections on a national
19 holiday will increase availability of poll workers and
20 suitable polling places and might make voting easier
21 for some workers. One approach that this Commission
22 favors would be to specify that in even-numbered years
23 the Veterans' Day national holiday be held on the
24 Tuesday next after the first Monday in November and
25 serve also as our election day."

1 So the recommendation was that Congress
2 should enact legislation to hold presidential and
3 congressional elections on a national holiday, and
4 then it was, and by the way, we think it might be a
5 good idea to use Veterans' Day. So it wasn't a full-
6 throated you ought to use Veterans' Day. It was
7 basically saying, Congress, this seems to us to be a
8 promising --

9 COMMISSIONER WILSON: Possibility.

10 COMMISSIONER EDLEY: -- possibility to
11 pursue.

12 While I have the floor, may I mention one
13 other thing? Which is, on the voter convenience issue
14 and the multiple hours and all the rest of it, just to
15 muddy the water a little bit, if you go the route of
16 an ambitious provisional voting scheme with a
17 statewide list, so that people would be able to walk
18 into any polling place in the state and cast a ballot,
19 that would make an enormous difference convenience-
20 wise to all of us, right, because you could vote near
21 your office, near your place of work, instead of
22 having to schlep back to your neighborhood. So I
23 think that that's another one of the moving pieces
24 that's going on.

25 CHAIRPERSON BERRY: The way that this

1 recommendation now reads, it says, "Election day
2 should be made a national holiday, enabling more
3 voters to cast their ballot. What we're discussing
4 here is whether we should say, "Election day should be
5 made a national holiday," and fudge it like your
6 Commission did and say, "Fool around with Veterans'
7 Day as a way to do it."

8 MS. DICKERSON: Madam Chair, if you have
9 the memo, I believe we have that wording on page 20
10 where we summarize the Ford-Carter Commission.

11 CHAIRPERSON BERRY: Page 20?

12 MS. DICKERSON: Page 20 of the memo at the
13 top under "Election Day Holiday."

14 CHAIRPERSON BERRY: Okay.

15 MS. DICKERSON: "Recommend that in even-
16 numbered years the Veterans' Day national holiday be
17 held on the Tuesday following the first Monday in
18 November and double as election day." It would enable
19 the creation of more polling places and public-
20 accessible buildings, which is schools.

21 CHAIRPERSON BERRY: Yes?

22 COMMISSIONER MEEKS: Did we settle the
23 issue of 24-hour voting?

24 COMMISSIONER EDLEY: That's hard. Again,
25 think about 1.6 million people. I mean, the election

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1 officials that we talked to just blanched at the idea
2 of having to stock polling places with qualified
3 people --

4 COMMISSIONER MEEKS: I can't even imagine
5 making that recommendation.

6 COMMISSIONER EDLEY: -- much less awake
7 qualified people.

8 CHAIRPERSON BERRY: If it were open 24
9 hours, though, people who worked different shifts
10 could vote.

11 COMMISSIONER LEE: We're already having a
12 hard time finding locations and recruiting workers,
13 and that's for 12-hour voting.

14 CHAIRPERSON BERRY: Yes, Commissioner
15 Redenbaugh.

16 COMMISSIONER REDENBAUGH: I just have a
17 trivial question. Veterans' Day is always the 11th of
18 November?

19 CHAIRPERSON BERRY: It used to be. I
20 don't know. Is it now on like some Monday or
21 something? It's one of those things that changed for
22 the government? It's a moving target because it's a
23 government thing, isn't that right or am I wrong?

24 MS. DICKERSON: I know that it's observed
25 by the federal government on a Monday.

1 COMMISSIONER REDENBAUGH: That's not a
2 surprise. This year it is Sunday. So it used to
3 move. Okay.

4 CHAIRPERSON BERRY: So now it's just a
5 Monday, I guess.

6 MS. DICKERSON: Some private sector --

7 CHAIRPERSON BERRY: This recommendation --
8 what did you say, Terri?

9 MS. DICKERSON: I'm sorry. We were
10 finding, when we were doing our research, that there
11 are private sector employees that really don't get
12 that date off anyway.

13 COMMISSIONER WILSON: No. I think even
14 some schools don't get it off.

15 COMMISSIONER REDENBAUGH: I think my kids
16 are in school.

17 CHAIRPERSON BERRY: So having it Veterans'
18 Day wouldn't help, because people don't get off
19 anyway? I don't know anybody in the private sector
20 who gets off on Veterans' Day.

21 COMMISSIONER REDENBAUGH: Are the banks
22 opened or closed? Banks are closed, yes.

23 CHAIRPERSON BERRY: No. 11, this is the
24 one we're talking about, "Uniform nationwide voting
25 hours must be established." Am I reading the right

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1 page or am I reading the wrong page? I'm in the
2 beginning reading the recommendations.

3 MS. DICKERSON: Yes.

4 CHAIRPERSON BERRY: "Election day should
5 be made a national holiday," and then we would strike
6 the recommendation that the poll hours be open for 24
7 hours. That sentence would go, and then we would
8 support the creation of uniform polling hours for 8:00
9 a.m. to 8:00 p.m. or not?

10 COMMISSIONER LEE: I have some problems
11 with that.

12 CHAIRPERSON BERRY: Okay.

13 COMMISSIONER LEE: That means folks in
14 Hawaii will not be able to vote.

15 COMMISSIONER EDLEY: Well, this isn't
16 national. This is --

17 CHAIRPERSON BERRY: Within the state.

18 COMMISSIONER EDLEY: Only within a state?

19 CHAIRPERSON BERRY: It's within a state so
20 the different parts of a state have the same polling
21 hours.

22 COMMISSIONER EDLEY: Oh, okay.

23 COMMISSIONER LEE: We're not entertaining
24 the 8:00 p.m. Pacific Time, right?

25 COMMISSIONER EDLEY: No. I'm sorry, maybe

1 I confused people. The thing that I was talking
2 about, the everybody closing at 8:00 p.m. Pacific
3 Time --

4 CHAIRPERSON BERRY: That's off the table.

5 COMMISSIONER EDLEY: Yes, that was our
6 alternative to the notion of a 24-hour, that was our
7 alternative to having a 24-hour thing, was to mitigate
8 the problem with recruiting poll workers, was, well,
9 let's just make it until 8:00 p.m., and at least for
10 the 48 states you'd be moving the ball forward.

11 CHAIRPERSON BERRY: So the recommendation
12 now would read, "Election day should be made a
13 national holiday to enable more voters to cast their
14 ballots, eliminate the inconvenience of voting in peak
15 hours of day, before and after work. The Commission
16 supports the creation of uniform polling hours, for
17 example, 8:00 a.m. to 8:00 p.m. local time, within
18 states to avoid potential voter confusion and to
19 simplify the task of election administration." That's
20 what it would say.

21 And the reason why it doesn't say just
22 Veteran's Day is because of all these arguments we
23 just heard and about how many people are not at work.

24 It could say, "Election day should be made a national
25 holiday, perhaps Veterans' Day, to enable more voters

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1 to cast a ballot and to eliminate the inconvenience of
2 voting in peak hours of the day before and after
3 work." How about that?

4 COMMISSIONER EDLEY: I like that, except
5 that -- well, let me try to say it this way: It is
6 certainly true that it eliminates some inconvenience
7 for some voters by making it a national holiday. If
8 your goal, however, is to actually increase
9 participation, it doesn't do that. I'm just trying to
10 be very subtle here.

11 So if the reason you care about the
12 inconvenience is because you think it's a barrier to
13 participation, this isn't accomplishing what you
14 really care about accomplishing, or at least the
15 reason you're stating isn't actually applicable.

16 CHAIRPERSON BERRY: Okay, well, then,
17 "Election day should be made a national holiday,
18 perhaps Veterans' Day, to solve logistical problems
19 related to hiring poll workers and obtaining
20 accessible space for voting." Period.

21 COMMISSIONER EDLEY: That's certainly
22 true.

23 CHAIRPERSON BERRY: Okay. So that would
24 be the first sentence. Then the second sentence would
25 be the one about local time, 8:00 a.m. to 8:00 p.m.

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1 within states, and those would be the only two
2 sentences in this section.

3 Yes, Commissioner Wilson.

4 COMMISSIONER WILSON: Well, I'd like to go
5 back to something Commissioner Edley said that I
6 thought was very interesting. That was about that
7 voters would be able to vote within -- can you just
8 repeat that, that they could vote -- basically, that
9 they didn't have to go home to vote or where --

10 COMMISSIONER EDLEY: Well, our
11 recommendation was, first, a statewide voter list.

12 CHAIRPERSON BERRY: That's on another one.
13 That's not on No. 11.

14 COMMISSIONER EDLEY: Okay, right, then I'm
15 with you. Then, second, provisional balloting that
16 would be tied to the statewide list, meaning I can be
17 registered in Philadelphia, but I could be in
18 Pittsburgh on business, but I can walk into the
19 polling place in Pittsburgh, and because there's a
20 statewide list, they can verify that I'm a registered
21 voter; I'm eligible to vote.

22 Then I would be able to cast a ballot in
23 Pittsburgh at least for statewide offices and
24 President. Then, ideally, if you're really using the
25 right technology --

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1 COMMISSIONER WILSON: You would be able to
2 do it for any election.

3 COMMISSIONER EDLEY: I'd actually be able
4 to do it for any election because the computer system
5 will know what should the ballot back in my home
6 precinct include, who's running for dog catcher, and
7 it would be able to flash up on the screen in
8 Pittsburgh.

9 So in the fullness of time, when we move
10 to the touch-screen voting, it would be more like the
11 way you get money from your bank. You don't have to
12 go back to the branch of the bank you opened your
13 account with. You can just go to a machine anywhere
14 and it verifies who you are, and you can do your
15 business.

16 But, at least at a minimum, I think this
17 would be great for people who, faced with a choice
18 between -- so without going all the way to the full
19 technology and at least with respect to being able to
20 cast what's called a limited ballot, at least it would
21 allow workers to have the option of some kind of
22 convenient voting place when they have the kind of
23 hardship that Yvonne's talking about.

24 COMMISSIONER WILSON: Well, my feeling is
25 that, in terms of effectiveness in getting people to

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1 vote, that will be much more --

2 COMMISSIONER EDLEY: Exactly.

3 COMMISSIONER WILSON: -- have much more
4 consequence than a holiday.

5 CHAIRPERSON BERRY: Well, but the holiday
6 will be to get poll workers, which was a major problem
7 we found in Florida, and to get people who are trained
8 who can work, which is why I changed the sentence to
9 say that.

10 Now this section that you're discussing
11 now, the two of you, this is under which
12 recommendation?

13 COMMISSIONER WILSON: I don't know that
14 there is --

15 COMMISSIONER EDLEY: State.

16 CHAIRPERSON BERRY: It's about provisional
17 ballots that you provide to the voters on election
18 day, and our civil rights concern -- that's a civil
19 rights concern, but our further civil rights concern
20 which you are proposing we add is the one about the
21 workers who -- what? -- can't leave work or may not be
22 able to --

23 COMMISSIONER EDLEY: Right. I think it's
24 important that this not be a niggardly provisional
25 ballot thing, right, where you've got to show up at

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1 the right -- some provisional ballot schemes are
2 you've actually got to show up at the right precinct,
3 and you're only getting a provisional ballot because
4 maybe there was some administrative screwup and
5 somehow your name isn't on the list. That's not good
6 enough. That you were erroneously purged from the
7 list because you didn't respond to a postcard,
8 something like that, and we want something that's
9 broader than that.

10 CHAIRPERSON BERRY: Then why don't we just
11 say in the second sentence to that section, Terri,
12 just say that the provisional ballots may be cast at
13 the nearest polling place or in polling places around
14 the state --

15 COMMISSIONER WILSON: But don't you have
16 to specify the election, the kind of election?

17 CHAIRPERSON BERRY: You mean what?

18 COMMISSIONER WILSON: Well, it couldn't be
19 for every election because they don't have the
20 equipment to be able to --

21 COMMISSIONER MEEKS: Like the local races.

22 COMMISSIONER WILSON: Yes, right.

23 CHAIRPERSON BERRY: But everybody should
24 be able to give people a provisional ballot, whatever
25 the election is.

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1 COMMISSIONER WILSON: Oh, right, a
2 provisional ballot.

3 CHAIRPERSON BERRY: So that the
4 provisional ballot would be available at each polling
5 -- so that voters would be able to access the
6 provisional ballot at polling places, any polling
7 place, without regard to the precinct in which they
8 reside. Isn't that basically what we're saying?

9 COMMISSIONER EDLEY: Right. Slade Gordon,
10 former Senator Slade Gordon, Republican, very
11 Republican, of Washington, was very enthusiastic about
12 it. Washington State has this, and you cast a ballot
13 and then the ballot is just sent back to your home
14 jurisdiction and tallied for those offices for which
15 you were eligible to vote.

16 CHAIRPERSON BERRY: Commissioner
17 Redenbaugh.

18 COMMISSIONER REDENBAUGH: I think
19 Commissioner Edley has just answered one of my two
20 questions.

21 CHAIRPERSON BERRY: Okay.

22 COMMISSIONER REDENBAUGH: Does that also,
23 then, Commissioner Edley, take care of the county,
24 only county-wide issues?

25 COMMISSIONER EDLEY: Yes.

1 COMMISSIONER REDENBAUGH: Okay. Then my
2 other concern -- thank you -- is that where there is a
3 clear civil rights issue, as there is with voter
4 participation, the provisional ballots, we're
5 addressing that. It's a clear civil rights concern.

6 If we make a recommendation to have
7 election day made a national holiday, and our argument
8 for that is it would be easier for the states to find
9 poll workers, that's a managerial concern and I think
10 outside our area of competency.

11 CHAIRPERSON BERRY: Well, it's a close
12 question, Russell, and I thought about that, which is
13 why I tried to rephrase why we were doing it. Maybe
14 we ought to talk about it, in light of the discussion
15 we heard of the inability to get competent poll
16 workers who could deal with these voters, that some of
17 the problems that occurred that we found in Florida,
18 occurred for that reason, but that's why we're
19 recommending this.

20 COMMISSIONER REDENBAUGH: Oh, so it's
21 connected to the civil rights issue?

22 CHAIRPERSON BERRY: Right, we connect it,
23 and not just say, as a matter of management, we think
24 that this would be a great thing to do.

25 Yes?

1 COMMISSIONER EDLEY: I don't think that
2 that's -- that's not an attenuated connection either.

3 I mean there really are problems even of having poll
4 workers who will consistently apply in a
5 nondiscriminatory way the various rules, like asking
6 people for their identification or in knowing the
7 answer to whether or not somebody is entitled to get
8 another ballot because they spoiled their first one.
9 Over and over again I think these various commissions
10 have written about the inconsistency in the way in
11 which voters are treated, that at least charitably
12 would be attributed to problems of the training of the
13 poll workers. Less charitably, you'd say there's
14 discrimination going on, and perhaps even a conspiracy
15 going on. So I don't think it's tenuous.

16 Second, of course, there is also the issue
17 of accessible facilities, and that's definitely a
18 civil rights issue.

19 CHAIRPERSON BERRY: Yes, and we have that
20 in here.

21 COMMISSIONER EDLEY: Yes.

22 CHAIRPERSON BERRY: But I just wanted to
23 make sure that on that one, on those two, when you
24 rewrite it, you make clear that it's a civil rights
25 concern, because we're supposed to be a Civil Rights

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1 Commission, not a voting --

2 Now those were the only questions I had.
3 Do others have things that they'd like to have
4 changed, or whatever?

5 VICE CHAIRPERSON REYNOSO: This is Cruz.

6 CHAIRPERSON BERRY: Yes.

7 VICE CHAIRPERSON REYNOSO: I was
8 disconnected for a while. I take it that in going
9 over the report, there weren't any changes in the
10 reporting process, which what I missed?

11 CHAIRPERSON BERRY: No. No, there was
12 not.

13 VICE CHAIRPERSON REYNOSO: Okay, good
14 enough.

15 CHAIRPERSON BERRY: Okay. Yes,
16 Commissioner Lee.

17 COMMISSIONER LEE: I'd like to make a
18 recommendation on page 59 dealing with voting rights
19 of new Americans. I'd like to add a new
20 recommendation. I think Terri has touched on the
21 issue of eligible voters who are not allowed to vote,
22 new citizens. Specifically, legal residents can
23 become citizens, thereby eligible to vote, after three
24 years or five years of legal residency in this
25 country. However, with the INS backlog of

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1 naturalization process, many of them, especially in
2 the year 2000, I know personally in California, they
3 would apply to become citizens, but because the
4 process took such a long time, sometimes 12 months, in
5 many situations where potential new voters reside you
6 have to wait for 20 months.

7 After they get the -- what do they call
8 it? -- tests, citizenship tests, if they pass the
9 test, they officially become a U.S. citizen. But they
10 are not eligible to vote until they get through the
11 swearing-in ceremony, which sometimes takes another
12 six months.

13 So we're looking at a potential voter who
14 should have been eligible to vote long before he or
15 she gets the chance to register to vote. So if that's
16 a problem with INS because of their backlog, and
17 whatever administrative problems that they have, you
18 touch on that, on some of the problems. So what I'd
19 like to do is add on a Recommendation 19, recommending
20 that the INS expedite the naturalization process,
21 maybe through more funding or a more effective
22 streamlining process, or whatever. So that the folks
23 who missed the year 2000 election, some of them also
24 missed this Tuesday's election in California because
25 they're still waiting. So I would like to add that

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1 recommendation, so that INS really needs to look at
2 the naturalization process.

3 CHAIRPERSON BERRY: Okay. Perhaps it
4 could be made part of 18, since "Reform measures must
5 assist new Americans in obtaining the right to vote."

6 Say, addition to those, the INS should expedite the
7 naturalization of voters to make sure that those who
8 are in the United States and who wish to vote, and
9 have been here for a while, perhaps can as soon as
10 possible --

11 COMMISSIONER EDLEY: Why not let them vote
12 as soon as they apply for citizenship?

13 CHAIRPERSON BERRY: That might be a
14 consideration, as soon as they apply, or something
15 like that. But you would make that part of this --

16 COMMISSIONER EDLEY: Or one year after
17 they've applied or --

18 CHAIRPERSON BERRY: Because they can't
19 vote unless they're citizens.

20 COMMISSIONER EDLEY: That's not correct.

21 CHAIRPERSON BERRY: They can't vote unless
22 the state lets them vote.

23 COMMISSIONER EDLEY: Right, but we can
24 regulate manner, place, and time of congressional
25 elections. So we could say that to vote for federal

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1 office, the state must allow you to vote if you have
2 applied for naturalization at least 12 months prior to
3 election day.

4 CHAIRPERSON BERRY: You mean as a
5 condition of getting a grant?

6 COMMISSIONER EDLEY: We could make it a
7 mandate, but as a condition of getting a grant would
8 be fine, too.

9 CHAIRPERSON BERRY: Yes, Commissioner.

10 COMMISSIONER LEE: My understanding is,
11 until you pass that very subjective naturalization
12 test, which I'm sure some of us may not be able to
13 pass because they ask very difficult questions, and
14 sometimes very mundane questions. We had an elderly
15 woman who went through the testing process like nine
16 times, and each time they would ask her silly
17 questions. The last time they asked her to sing "God
18 Bless America." That was before September 11th. So
19 how many people knew how to sing that song then?

20 (Laughter.)

21 So she failed. It's very subjective, and
22 maybe we cannot put it in here, but until you pass a
23 test, until you're sworn in, you cannot vote.

24 Maybe what we can recommend is, after you
25 pass a test, you should automatically be sworn in or

1 you should automatically be eligible to vote, because
2 the swearing-in ceremony takes so long to schedule,
3 for political reasons.

4 CHAIRPERSON BERRY: Yes. So that federal
5 law makes it impossible for you to vote until you
6 actually pass that test and get the federally-
7 protected right to vote?

8 COMMISSIONER EDLEY: No. No, I'm sorry,
9 the state says you don't vote unless you are a
10 citizen, but the federal government says when you
11 become a citizen.

12 CHAIRPERSON BERRY: And you're not a
13 citizen until you pass this test?

14 COMMISSIONER EDLEY: Right, but federal
15 law could tell the states, either through the spending
16 clause or maybe through time, place, and manner, that
17 if they applied to be naturalized more than a year,
18 you've got to let them vote. In other words, if the
19 problem is that we, the INS, are screwing up or the
20 backlog is too big, or whatever, for whatever reason
21 we haven't completed the naturalization process,
22 here's somebody who's been in the country for umpteen
23 years; they've done everything that they're supposed
24 to do in order to qualify to be a citizen. They've
25 indicated by filing for naturalization that they want

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1 to be part of this community. Let them vote.

2 CHAIRPERSON BERRY: Well, actually,
3 without further study, I would not support that
4 because I am not sure what --

5 COMMISSIONER EDLEY: See, I am to the
6 left.

7 CHAIRPERSON BERRY: -- what all the
8 immigration implications are. But I would support a
9 recommendation that says that you think the INS should
10 expedite the naturalization process for people, so
11 that they do not languish in this country for years
12 without being able to vote when they wish to do so,
13 and they've indicated their intention to become
14 citizens, which you would just tack onto that one.

15 Now we need to have a vote before
16 Commissioner Meeks and others, before we lose our
17 quorum, on this report.

18 COMMISSIONER LEE: Can I make a
19 clarification? Can we add onto the fact that, after
20 they pass the test, then they should be eligible to
21 vote. So instead of waiting for the final formality,
22 which is you get your American flag at the swearing-in
23 ceremony, once they pass --

24 CHAIRPERSON BERRY: We'll let them look at
25 how that can be done.

1 COMMISSIONER LEE: Can we do that?

2 CHAIRPERSON BERRY: We'll talk to the
3 lawyers and fashion it as best possible. We
4 understand the spirit of the resolution.

5 COMMISSIONER LEE: Yes.

6 COMMISSIONER EDLEY: I'm sorry, I think
7 this is important. There was something in Terri's
8 presentation earlier about existing civil rights laws
9 related to voting being sufficient. I guess I don't
10 agree with that.

11 And I don't agree with it specifically,
12 substantively, in relation to the language protections
13 because I think the trigger in the current Voting
14 Rights Act is too high, that there ought to be a lower
15 threshold for triggering an obligation to provide
16 language assistance. So I at least would not be one
17 to subscribe to the notion that existing laws are
18 adequate.

19 CHAIRPERSON BERRY: Which place are we
20 talking about here, though?

21 COMMISSIONER EDLEY: Well, I'm not sure
22 where it is in the report.

23 CHAIRPERSON BERRY: No. 15? Did you say
24 15?

25 MS. DICKERSON: I believe that's what

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1 you're referring to.

2 CHAIRPERSON BERRY: That's about
3 language --

4 MS. DICKERSON: That's about
5 accessibility.

6 COMMISSIONER EDLEY: No. 4.

7 CHAIRPERSON BERRY: Which recommendation
8 is it?

9 COMMISSIONER REDENBAUGH: Voting rights
10 legislation is adequate.

11 CHAIRPERSON BERRY: No. 4.

12 COMMISSIONER EDLEY: One of the findings
13 that you mentioned -- I can't remember where it was --
14 in the report itself, but in your PowerPoint
15 presentation one of your findings was that existing
16 laws are adequate; they just need to be enforced
17 better.

18 I certainly agree they need to be enforced
19 better. I would dissent from the first statement.

20 CHAIRPERSON BERRY: Well, first of all,
21 it's not one of the recommendations, but if it's a
22 finding, where is it?

23 COMMISSIONER LEE: Page 55.

24 CHAIRPERSON BERRY: Page 55. It's not in
25 the recommendations because they're summarized in the

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1 beginning of the report. I just finished looking at
2 them. Page 55. Where is it? Anybody know where it
3 is?

4 MS. DICKERSON: It's on page 55 with
5 respect to language specifically.

6 CHAIRPERSON BERRY: Language assistance
7 requirement? What is the paragraph again? Anybody
8 know? Where are we? Did you see it? Where is this
9 thing, Chris, that you're talking about?

10 COMMISSIONER EDLEY: I've said it already.

11 CHAIRPERSON BERRY: No, where is it?

12 COMMISSIONER EDLEY: I could not find it.
13 It was in Terri's presentation, but I don't see a
14 phrase necessarily in the report. So if you could
15 just make sure that it's --

16 CHAIRPERSON BERRY: Let's make sure that
17 you don't say that.

18 COMMISSIONER EDLEY: Because I was
19 surprised, when I --

20 MS. DICKERSON: On the top of page 44 is
21 possibly what you're referring to.

22 CHAIRPERSON BERRY: Top of page 44? Okay.

23 MS. DICKERSON: I'm guessing.

24 CHAIRPERSON BERRY: We don't want it to
25 say that, if it says that. Okay?

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1 MS. DICKERSON: Yes.

2 COMMISSIONER EDLEY: Thank you. Oh, "are
3 adequate to protect the rights of voters." Right, the
4 very first phrase on the top of 44. Yes, that's --

5 CHAIRPERSON BERRY: You can just start,
6 you can take the whole sentence out and just say that
7 the laws that you have listed there --

8 COMMISSIONER EDLEY: Must be enforced
9 judiciously and strictly.

10 CHAIRPERSON BERRY: -- must be enforced,
11 and move on, because it's not in any of the
12 recommendations.

13 Okay, could I get a motion with the
14 changes that we have discussed here to approve these
15 recommendations?

16 COMMISSIONER WILSON: So moved.

17 CHAIRPERSON BERRY: Any further
18 discussion?

19 (No response.)

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

22 (A chorus of ayes.)

23 CHAIRPERSON BERRY: Opposed?

24 COMMISSIONER REDENBAUGH: I'm going to
25 abstain.

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1 CHAIRPERSON BERRY: Okay, Commissioner
2 Redenbaugh abstains. It is approved. The staff will
3 make the changes and modifications to these
4 recommendations, and then they will be forwarded to
5 the appropriate government agencies. They will be put
6 on our website also.

7 Michael thinks that the Acting Deputy
8 General Counsel says that that memo that he read
9 before is not compelling. Do you need to discuss any
10 of it? People are leaving, as you can see.

11 ACTING DEPUTY GENERAL COUNSEL FOREMAN:
12 No. At the present time I don't believe we have any
13 need to cover anything.

14 CHAIRPERSON BERRY: Okay. Well, we'll get
15 an update from you next time.

16 Are there other items that we need to
17 consider at this time?

18 COMMISSIONER WILSON: My question in
19 relation to that is, are we going to, then, write, get
20 in touch with them and ask the questions for answers,
21 or what happens now?

22 CHAIRPERSON BERRY: We'd like to have the
23 questions and the answers.

24 ACTING DEPUTY GENERAL COUNSEL FOREMAN: We
25 will provide both the questions and the answers, and

1 we would have intended followup, to the extent that
2 they did not answer the questions we asked or provide
3 the information, to get that information from INS.

4 COMMISSIONER WILSON: So we will go back
5 and get in touch with them to get that information?

6 ACTING DEPUTY GENERAL COUNSEL FOREMAN:
7 That is correct.

8 CHAIRPERSON BERRY: Okay. If I hear no
9 objection, the meeting is adjourned.

10 (Whereupon, at 12:05 p.m., the meeting was
11 adjourned.)

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