

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, July 13, 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

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

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U.S. COMMISSION ON CIVIL RIGHTS

STAFF PRESENT:

LUTHER ADAMS
 MANUEL ALBU
 KIMBERLEY ALTON
 DAVID ARONSON
 ✓ TAMMY CHU
 KI-TAEK CHUN
 ✓ CARA CIUFFANI
 IVY DAVIS
 BARBARA DELAVIEZ
 TERRY DICKERSON
 ✓ GRETCHEN DOUHOLUK
 PAMELA A. DUNSTON
 MICHAEL FOREMAN
 EDWARD A. HAILES, JR., General Counsel
 GEORGE M. HARBISON
 ✓ YILOC LAI
 JENNY PARK
 KIRK PERRY
 PETER REILLY, Parliamentarian
 KWANA ROYAL
 ✓ PETER SPANN
 ✓ BRIAN TAYLOR
 ✓ AMY THORPE
 VICTORIA TUNG
 MARCIA TYLER
 AUDREY WIGGINS
 AUDREY WRIGHT
 MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA
 PATRICK DUFFY
 ELIZABETH OUYANG
 CHARLOTTE PONTICELLI
 KRISHNA TOOLSIE
 EFFIE TURNBULL

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

(9:33 a.m.)

CHAIRPERSON BERRY: The meeting will come to order.

Does anyone know if Commissioner Redenbaugh is on the phone?

COMMISSIONER THERNSTROM: No, he's coming, I believe.

CHAIRPERSON BERRY: Oh, okay.

COMMISSIONER THERNSTROM: I think it's --

CHAIRPERSON BERRY: That's all right. I just wanted to know if --

COMMISSIONER THERNSTROM: -- coming by train and should be here momentarily.

CHAIRPERSON BERRY: Okay. All right.

I. Approval of Agenda

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

COMMISSIONER THERNSTROM: So moved.

CHAIRPERSON BERRY: Second, anyone?

COMMISSIONER EDLEY: Second.

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

(Chorus of ayes.)

1 So ordered.

2 II. Approval of Minutes of
3 June 8, 2001 Meeting

4 CHAIRPERSON BERRY: The second item on
5 the agenda is the approval of the minutes of the June
6 8, 2001 meeting. Could I get a motion?

7 COMMISSIONER LEE: So moved.

8 COMMISSIONER EDLEY: Second.

9 CHAIRPERSON BERRY: Does anyone have any
10 changes in the minutes or anything they'd like to call
11 to our attention? If not, all in favor indicate by
12 saying aye.

13 (Chorus of ayes.)

14 Opposed?

15 (No response.)

16 So ordered.

17 III. Announcements

18 CHAIRPERSON BERRY: The next item on the
19 agenda is announcements. First of all, do you want to
20 introduce -- yes? Oh, Commissioner Thernstrom?

21 COMMISSIONER THERNSTROM: Madam Chair, I
22 have a short personal statement to make, and I
23 wondered when it would be appropriate on procedure,
24 and I wonder when it would be appropriate to make it.

25 CHAIRPERSON BERRY: Is it something that

1 relates to anything that the Commission has already
2 discussed at a previous meeting?

3 COMMISSIONER THERNSTROM: Already
4 discussed at a previous meeting.

5 CHAIRPERSON BERRY: In other words,
6 something that we have debated, discussed, an ongoing
7 issue as opposed to a new issue. If it's an ongoing
8 issue --

9 COMMISSIONER THERNSTROM: It's partly
10 new. It's partly on the Florida --

11 CHAIRPERSON BERRY: Is it on Florida?

12 COMMISSIONER THERNSTROM: Partly, and
13 partly on, you know, some suggestions of what I would
14 like to -- the direction I'd like to see the
15 Commission take. It's both.

16 CHAIRPERSON BERRY: Well, why don't we do
17 it under the beginning of the Staff Director's Report,
18 because there's --

19 COMMISSIONER THERNSTROM: Good. Thank
20 you very much.

21 CHAIRPERSON BERRY: -- some other items
22 like that.

23 Okay. Staff Director, do you want to
24 announce the new people?

25 STAFF DIRECTOR JIN: Yes. Thank you,

1 Madam Chair. I would like to introduce, and I take
2 great pleasure in doing so, the new Director of our
3 Regional Programs Unit, Ivy Davis. Ivy just started
4 with us this week.

5 She comes to us after six years with the
6 Housing and Urban Development, HUD, where she has been
7 a manager during that time. Her last job was as
8 Director of the Fair Housing and Equal Opportunity
9 Office, and Ivy, prior to that, had many years of
10 experience in the civil rights arena.

11 Already from talking to her and so forth,
12 I know she is going to be a great asset to our
13 Regional Programs Unit, so I am very pleased to have
14 her aboard.

15 Would the Chair like me to announce the
16 students also? Also, last time when we met,
17 Commissioners may remember that we introduced a number
18 of interns. And we're fortunate this summer to have
19 actually a very full load, and they are very valuable
20 to us. They help us a lot in different ways, and we
21 have five or six more who have joined us since the
22 last meeting.

23 I'd like to introduce them, and if they
24 could stand or wave or something, I'd appreciate it.
25 We have -- excuse me?

1 CHAIRPERSON BERRY: Are they here?

2 STAFF DIRECTOR JIN: Some of them are
3 here.

4 CHAIRPERSON BERRY: Okay.

5 STAFF DIRECTOR JIN: Cara Ciuffani and
6 Peter Spann from the American University work in the
7 Office of General Counsel. And Amy Thorpe, who is a
8 graduate from the University of Louisville, and Yiloc
9 Lai, a student from UCLA, both working with our
10 Eastern Regional Office. And then Brian Taylor, who
11 is a senior at Our Savior Lutheran High School in
12 Bronx, New York, and he is working with our Office of
13 Civil Rights Evaluation.

14 I just walked in with Brian, so I know
15 Brian is here. Brian is a little shy.

16 (Laughter.)

17 So, anyway, thank you, Madam Chair.

18 CHAIRPERSON BERRY: Okay. All right.

19 Then, does anyone else have any
20 announcements of anything? Okay.

21 **IV. Staff Director's Report**

22 CHAIRPERSON BERRY: Then we go to the
23 Staff Director's Report. And, first, we will ask if
24 anyone has any questions about the items that are
25 discussed in the Staff Director's Report for the Staff

1 Director.

2 Yes, Commissioner Lee?

3 COMMISSIONER LEE: Thank you, Madam
4 Chair.

5 I have a question for the Staff Director.
6 Under page 20, the Western Region's report, I notice,
7 three, SAC projects, has been discontinued. I'd like
8 to know the reason why for Arizona, California, and
9 Idaho.

10 Particularly for the California project,
11 I remember reading about the fact-finding forum that
12 was held in Orange County about three, four years ago.

13 It received really broad and favorable coverage, so
14 it seems like it was a really good project at the
15 time. I just wanted to know why that project, along
16 with the other two, were being discontinued.

17 STAFF DIRECTOR JIN: Thank you,
18 Commissioner Lee. I apologize. I must admit, I
19 didn't recognize until late that there had been a
20 change in status in those projects since the last
21 Commission meeting. I've had an exchange of phone
22 calls with the regional director, and I have a partial
23 answer but will have to -- I'll have to have further
24 conversations with him.

25 The partial answer I got was that there

1 was, at least in California and Arizona -- I think the
2 Arizona project was -- had gone to a certain point and
3 had some actual results, and the question was whether
4 additional activities would occur before totally
5 completing it.

6 And the impression I got was somewhere
7 between Western Regional Office and the SAC they
8 decided to go to other projects instead. But, again,
9 I will follow up and find -- you know, find a more
10 complete answer on that.

11 On the California one, again, I don't
12 have personal knowledge, but my understanding is that
13 that project was at a much earlier stage. Again,
14 somewhere along the line, California decided to pursue
15 another project. But, again, I'll give you a more
16 complete answer certainly by the next meeting at the
17 latest.

18 CHAIRPERSON BERRY: There is -- you are
19 asking about the SACs. I wanted to reinforce and
20 point out, Staff Director, we've had a lot of
21 discussions about the regions and the SACs from time
22 to time. And we're so pleased that you now have a
23 coordinator of regional programs, and hope that she
24 understands that this job entails looking from top to
25 bottom at the SACs and how they are appointed and how

1 they are organized and who they are.

2 And that the Commission -- and there is
3 some detail in the transcripts of our meetings -- is
4 very, very much concerned about revitalizing,
5 strengthening, and in whatever way we can -- even
6 given the absence of resources -- the SACs, so that
7 they can be what they were intended to be way back in
8 the beginning -- strong State Advisory Committees that
9 play a significant and major role.

10 And some of them have, despite the
11 resource constraints, but we would like them
12 strengthened. And so I hope that Ivy Davis has been
13 told what a big job this is and what a priority it is
14 for the Commission, Mr. Staff Director.

15 STAFF DIRECTOR JIN: Yes, Madam Chair.
16 Ms. Davis and I have had some of those conversations,
17 and I think I can safely say that she and I share what
18 we understand to be the Commission's view on that. We
19 have reviewed some of that transcripts, and I think
20 that we are in full accord with those goals.

21 CHAIRPERSON BERRY: Because as soon as
22 she gets her feet wet and has some time to work on
23 this, we are likely to ask you and her where we're
24 headed on this, and what can we look forward to in
25 terms of improvements.

1 STAFF DIRECTOR JIN: We look forward to
2 that challenge.

3 CHAIRPERSON BERRY: Okay.

4 STAFF DIRECTOR JIN: We really do.

5 CHAIRPERSON BERRY: All right. Anyone
6 else have any questions on the details in the Staff
7 Director's Report? Yes, Commissioner Meeks?

8 COMMISSIONER MEEKS: I don't have any
9 details, but I would just like to add it will probably
10 be in next month's -- or September's staff report. I
11 think I made an announcement a month or so ago that
12 said that the U.S. Sentencing Commission was coming to
13 Rapid City to hold a hearing because of the South
14 Dakota SAC report that was -- came out because of that
15 forum.

16 And they did hold it, and there was -- it
17 was very well attended. A number of people testified,
18 including tribal leaders, chief federal judge for the
19 District, a U.S. Attorney, federal public defenders,
20 and some SAC members and private attorneys and others.

21 And I am encouraged that there will be some positive
22 change.

23 The Sentencing Commission is considering,
24 and I am inclined to believe it will happen, form an
25 advisory group to study the impacts of the guidelines

1 of Native Americans. And in the Argus Leader, the
2 Sioux Falls newspaper did a poll recently, and they --
3 for whatever it's worth, 61 percent of the people felt
4 like that the federal sentencing guidelines were too
5 harsh and weren't fair to Native Americans.

6 CHAIRPERSON BERRY: Oh. Sixty-one
7 percent.

8 COMMISSIONER MEEKS: Yes.

9 STAFF DIRECTOR JIN: Madam Chair, if I
10 may, Commissioner, you're right. The way we do our
11 Staff Director's Report, I think there is probably
12 about a three-week lag. I tell you, I have not only
13 spoken with Regional Director Dulles on it, he sent me
14 some press clippings and he was very effusive in terms
15 of commenting about how well that went and also your
16 role in it.

17 So I think that was -- the impression I
18 got was that was very, very successful, and that will
19 be reported in the next Staff Director's Report.

20 COMMISSIONER MEEKS: Yes. One thing I
21 want to say is, I mean, they came to South Dakota, but
22 they made it very clear that this was not just a South
23 Dakota issue; this was, you know, a national issue
24 that affected Native Americans, and that they weren't,
25 you know, focusing just on South Dakota. So --

1 CHAIRPERSON BERRY: Don't we have a
2 project on administration of justice, Native
3 Americans?

4 STAFF DIRECTOR JIN: We do.

5 CHAIRPERSON BERRY: Yes. Okay. All
6 right. You were talking about press clippings.
7 Somebody said press clippings. Oh. You're talking
8 about the Argus Leader. It reminded me that there was
9 an article in the -- I think it was in The Post.
10 Maybe it was in The Times. I'm sure it was in every
11 paper -- this week about a survey that was done on
12 people's -- the perception of whites about the status
13 and condition of African Americans. And I've
14 forgotten which foundation did it.

15 COMMISSIONER THERNSTROM: It was Kaiser
16 Foundation.

17 CHAIRPERSON BERRY: Yes. I hope that
18 people looked at the article, and maybe the staff
19 could get us the actual data so that we can -- the
20 survey so we can read it.

21 Yes, Commissioner Thernstrom?

22 COMMISSIONER THERNSTROM: Actually, the
23 actual survey, which is 36 pages, is on The Washington
24 Post website, and, therefore, readily available. And
25 it's very interesting because it contains a lot of

1 information that the article itself, the summary
2 article, did not touch on. So, in fact, that is a
3 very useful survey for all members of the Commission
4 to look at.

5 CHAIRPERSON BERRY: Yes. So if you
6 missed it, you might want to take a look at it. This
7 would be the place to also tell you that the Alaska
8 SAC is holding a forum on August 23rd and 24th to
9 consider the Native American issues that were raised
10 here, and that we discussed, and that we talked about
11 whether we could get some funding from the Senate or
12 the Committee on Appropriations or something, to have
13 a hearing. And there was some discussion of that.

14 The Native American advocates group had
15 met, and I had met with Senator Stevens about this.
16 We haven't heard anything about any funding. But as
17 we said then, the SAC could go ahead and have a forum
18 if they wanted to, which they have decided to do, and
19 they're having one on August 23rd and 24th, and there
20 is hope that as many Commissioners as possible would
21 be able to attend.

22 Now, I understand, Cruz, that you think
23 you will be able to attend part of it or --

24 VICE CHAIRPERSON REYNOSO: Yes, I will be
25 able to.

1 CHAIRPERSON BERRY: You will be able to.
2 That's good. I will not be able to.

3 And, Commissioner Lee, you will be able
4 to --

5 COMMISSIONER LEE: Probably for one day.

6 CHAIRPERSON BERRY: And Commissioner
7 Meeks?

8 COMMISSIONER MEEKS: On the 23rd I can.

9 CHAIRPERSON BERRY: Right. And if any of
10 the rest of you can go, it would be great if you
11 could. Yes, Commissioner Thernstrom?

12 COMMISSIONER THERNSTROM: Can we get a
13 transcript? Will there be a transcript available, so
14 that the rest of us can at least read the proceedings?

15 CHAIRPERSON BERRY: Right. That's what
16 they do. They have a -- they'll do a transcript of
17 the meeting and then a little report.

18 COMMISSIONER THERNSTROM: And it can be
19 made available to us. Good.

20 CHAIRPERSON BERRY: It will be, yes.

21 Okay. The other thing to mention is that
22 we have not heard anything from the Attorney General's
23 Office about my request to meet with him, but the
24 other day when there was some press discussion of it
25 someone from this office called and had a conversation

1 here with staff about it. There has to be some
2 followup, and it hasn't been set up.

3 But they -- they said they hadn't
4 received the letter, so we had to send it back over
5 again. So at least there is that much movement on
6 that. We'll see how it turns out.

7 The Secretary of Energy -- we were asked
8 at the last meeting, Commissioner Lee I think asked,
9 that we pursue setting up a meeting to discuss the
10 racial profiling issue with DOE and the unanswered
11 questions about the Wen Ho Lee matter, as she put it.

12 The staff has called the Secretary of
13 Energy to try to set up such a meeting. There was
14 some back and forth. It hasn't been set up yet, but I
15 wanted you to know that there is that followup on
16 that.

17 The other thing is Commissioner Lee had
18 asked that we consider moving the December meeting
19 from the 7th to earlier in the week. Is there any --
20 does anyone have any -- you meant earlier in --
21 instead of having it on Friday, have it another day?

22 COMMISSIONER LEE: Yes, I did.

23 CHAIRPERSON BERRY: Which would be -- I
24 don't know what people's calendars are. I think
25 school -- classes are still in session. So if they

1 are, are they -- I would not be able to meet on
2 Tuesday or Thursday. But I could meet either Monday
3 or Wednesday, if anyone else can. But I'm sure there
4 are other people who have classes --

5 COMMISSIONER EDLEY: Monday and Tuesday.

6 CHAIRPERSON BERRY: -- Monday and
7 Tuesday. Hmm. Perhaps it would be helpful,
8 Commissioner Lee, if -- yes? Yes? How about
9 Wednesday? Do you have class on Wednesday?

10 Maybe if we had -- I know you had a
11 particular concern about any briefing that we might
12 have or a hearing or anything else on the immigration
13 issues. Perhaps if we say that if we decided to do
14 that we wouldn't do it that week. Would that be
15 helpful?

16 COMMISSIONER LEE: That's fine.

17 CHAIRPERSON BERRY: Okay. We'll leave it
18 as it is. It's too hard to change calendars. So
19 we'll just leave it at that. And try to remember,
20 Staff Director --

21 STAFF DIRECTOR JIN: Okay.

22 CHAIRPERSON BERRY: -- that should that
23 subject come up, not to do it that week. Okay.

24 Now, the other thing is that the
25 environmental justice briefing is scheduled now for

1 September, the September meeting.

2 V. Recommendations to Congress
3 for National Electoral Reform

4 CHAIRPERSON BERRY: The other thing is
5 that Commissioner Wilson, at the last meeting of the
6 Commission, had sought recognition from me to comment
7 on the Florida report, which although she voted for
8 had a lot of problems with.

9 And I failed to follow through on my
10 recognition of her, and she never got to make the
11 statement. So what I want to do now is permit her to
12 do that, with deep apologies for -- and I understand
13 that she is concurring with the statement rather than
14 -- although she voted for it.

15 So, Commissioner Wilson, I would
16 recognize you.

17 And I still have you on the list,
18 Commissioner Thernstrom. Don't worry.

19 Commissioner Wilson?

20 COMMISSIONER THERNSTROM: I wasn't
21 worried.

22 COMMISSIONER WILSON: Thank you, Madam
23 Chair.

24 I can't say that I had a lot of problems.
25 I actually applaud the report, but I did have several

1 points that I wanted to make. So with your
2 permission, I have a statement that I would like to
3 read.

4 CHAIRPERSON BERRY: Okay.

5 COMMISSIONER WILSON: I'm delighted to
6 vote in support of the United States Commission on
7 Civil Rights report "Voting Irregularities During the
8 2000 Presidential Election." It is a report that
9 shows grasp and reflects a profound belief in one of
10 the basic principles of American democracy: that
11 wrongs can be looked at and identified and spoken
12 about, and that there is the hope that these wrongs
13 can be corrected.

14 I applaud the staff of the Commission for
15 so quickly analyzing and giving shape and coherence to
16 the 118,000 pages of documentary evidence and the 30
17 hours worth of testimony from the 100 witnesses who
18 came before the Commission to testify under oath.

19 The United States Commission on Civil
20 Rights has been underfunded for 13 years. There have
21 been no increases to meet either rising standard costs
22 or the increasing demands placed upon the Commission's
23 services.

24 In fact, the funding for the Commission
25 during this decade or so has consistently been cut

1 year after year, yet in times of crisis it is to the
2 United States Commission on Civil Rights that people
3 have turned, and it is the Commission that has risen
4 above the general state of fear, inertia, and
5 politics, and has willingly moved toward the
6 flashpoint in an effort to sort out truth from
7 distortion.

8 While I am in agreement with most of the
9 Commission's findings on the Florida voting
10 irregularities, I should like to comment on the issue
11 of conspiracy, which the Commission report does not
12 even discuss.

13 Conspiracy is defined by Black's Law
14 Dictionary as an agreement by two or more persons to
15 commit an unlawful act. Was there a conspiracy in the
16 2000 Presidential election in Florida? Not provable
17 as of today.

18 But from the many hours of disparate
19 testimony that I heard in both Tallahassee and Miami
20 regarding the November 2000 election process in
21 Florida, there emerges an interesting confluence of
22 circumstances, a confluence of circumstances that
23 indicates intimidation and harassment of the Florida
24 voters and that was set in motion long before the
25 November election.

1 I listen as a profession. I listen to
2 writers, historians, scientists, journalists,
3 biographers, playwrights, essayists, psychologists,
4 scholars, and novelists. I listen to them tell
5 stories, true and imagined, and I read narratives.
6 That's what I do to earn a living.

7 In Florida, I listened to many hours of
8 testimony, as did the other Commissioners and the
9 staff. I listened to a great many narratives, and the
10 disparate details that come together to provide an
11 unsettling account of what led up to the events of
12 November 7, 2000.

13 It begins almost 18 months before
14 November 2000 with the election of a new Secretary of
15 State and her taking office in January 1998. To quote
16 from one of the supervisors who testified before the
17 Commission in Tallahassee, "Florida's new Secretary of
18 State soon 'cleaned out the institutional memory, to a
19 large degree, of the Division of Elections.'"

20 The Elections Division Director of
21 Florida and the Assistant Division Director, both of
22 whom had served for many years as key officials of the
23 Division, left their positions. Both former
24 officials, who were acquainted with the voting
25 regulations for each of the 67 counties of Florida,

1 were replaced by a new director who was inexperienced
2 and was not familiar with the ways that voting
3 problems and procedures had been resolved in the past.

4 In a letter dated January 3, 2001, from
5 the Office of General Counsel Charles T. Canady, of
6 the Governor's Office of the State of Florida,
7 addressed to Edward A. Hailes, Jr., Acting General
8 Counsel of the United States Commission on Civil
9 Rights, Mr. Canady wrote, regarding the "statutory
10 responsibility over election and voter-related
11 issues," that it is the Secretary of State that has
12 been entrusted by the legislature with the
13 comprehensive obligation to "obtain and maintain
14 uniformity in the application, operation, and
15 interpretation of the election laws."

16 Yet the individual supervisors
17 representing the 67 counties of Florida "knew enough
18 not to depend on that office this year because surely
19 they -- the Division of Elections officials -- were
20 too new. We -- the election supervisors -- knew more
21 about the process in some cases than they did.

22 In addition, there was the testimony of a
23 former Florida Secretary of State who served from 1979
24 to 1986, and whose "number one priority" during his
25 term in office was "election reform." Jim Smith

1 testified at the Commission's hearing that the
2 Division of Elections "shrank over a four-year period
3 from 65 officials down to 37," making "the ability to
4 supervise and give direction very, very difficult."

5 Mr. Smith went on to suggest "that that
6 should be looked into." Jim Smith also served as the
7 Attorney General for the State of Florida and was most
8 recently co-chair of Governor Jeb Bush's Task Force on
9 Election Procedures, Technology, and Process.

10 Officials knew months in advance that the
11 election was going to be complex. There was an
12 unusually large number of presidential candidates on a
13 ballot that would be confusing to even the most
14 experienced of voters. It was also known that tens of
15 thousands of voters, newly registered, would be voting
16 for the first time.

17 The Secretary of State testified that
18 \$100,000 was requested for voter education in her
19 budget, but that the request for those funds was
20 turned down. However, the Governor of the State of
21 Florida testified that there had been no request of
22 \$100,000 in the budget for voter education.

23 \$51,000 was spent for billboards that
24 warned about voter fraud, and a pamphlet on the same
25 subject was sent out to all Florida voters. But there

1 were no instructions about the ballot itself or sample
2 ballots of each county that would show the voter what
3 the ballot actually looked like -- this in an election
4 where there were 12 candidates for President on the
5 Florida ballot.

6 During the hearing, I, along with other
7 Commissioners, was shown a sample Florida ballot that
8 had no consistency of layout regarding type, no
9 clarity of design within the row of candidates, and a
10 row of names of Presidential candidates that continued
11 on the back of the sample ballot.

12 There has been much written about the
13 lack of clarity in the design of the butterfly ballot.

14 But the sample ballot I saw from Duval County made
15 the butterfly ballot seem, by comparison, a snap to
16 navigate. The Duval ballot looked more like a takeout
17 menu from a delicatessen than a ballot designed to
18 make it easy for an American to vote. Its design was
19 more a dare than a design that would enable a voter to
20 make a clear, knowing, choice of candidates.

21 Had I seen the ballot for the first time
22 on Election Day in a voting booth, under pressure of
23 time, with people in line outside of the booth waiting
24 for their turn, I would have looked at the jumble of
25 names in different type faces and the maze of columns,

1 and thrown up my hands and left without voting at all.

2 Voter inexperience would not have been the cause of
3 my blank ballot. I have voted in eight Presidential
4 elections and consider myself an experienced voter.

5 Election supervisors testified before the
6 Commission that they knew there was no money for voter
7 education to be carried out in the weeks and months
8 before the November election. Many of the supervisors
9 testified to their helplessness and frustration in the
10 face of what they knew in advance would be a large
11 voter turnout. They knew that they were on their own,
12 without help or resources from the Office of the
13 Division of Elections.

14 One supervisor from Leon County spoke of
15 his efforts to circumvent what he knew could easily
16 evolve into a state of chaos on November 7th, and
17 valiantly tried to head it off by raising funds for
18 voter education on his own, knowing no help would be
19 forthcoming from the Division of Elections, "this in a
20 state that in the past has spent more than \$35 million
21 in one year telling Floridians how to play the
22 lottery."

23 This supervisor "personally raised money
24 from teachers, lawyers, and individuals of Leon
25 County, so that Leon County could spend a radio and

1 television advertising budget that was totally
2 separate from what the county had given me because the
3 county did not provide much in that area as well, in
4 order to meet some of the needs that we saw coming
5 down the road."

6 His plan worked. Leon County had less
7 than one percent of spoiled ballots, one of the lowest
8 -- one of the two lowest counties in the state. But
9 in many of the other counties, where no additional
10 funds were raised to help the voters, chaos and
11 confusion indeed prevailed.

12 More than 600,000 people were registered
13 by a system called motor-voter when they registered
14 for a driver's license months in advance of November
15 2000. They were told their voting registration cards
16 would be forthcoming. But by November 7th, the names
17 of too many motor-voter registrants inexplicably did
18 not appear on registration lists at their polling
19 place; and, therefore, those citizens were not allowed
20 to vote.

21 The State of Florida spent more than
22 \$3 million of taxpayer money to hire a company, Data
23 Base Technologies, whose mandate was to compile the
24 names of former or present convicted felons who, under
25 Florida law, had forfeited their civil rights and

1 would not be eligible to vote.

2 Election supervisors heard in advance
3 that the Data Base Technologies lists were inaccurate
4 and should not be relied upon. Many of the polling
5 workers who did use the Data Base lists unwittingly --
6 were unwittingly contributing to a state of chaos and
7 confusion and intimidation, where many law-abiding
8 Americans, anticipating the casting of their vote for
9 the 43rd President of the United states, were told by
10 an election staffer, "Sorry. Step this way. You need
11 to talk to a supervisor. There's a problem." And
12 were subsequently told something along the lines of,
13 "Sorry, but you can't vote. Your name is on this list
14 of convicted felons. Your civil rights have been
15 revoked."

16 In sum, an interesting confluence of
17 circumstances. A Division of Elections whose key
18 officials -- election officials of many years, who
19 knew about the complexities of the voting law in each
20 of the 67 counties, left their positions and were
21 replaced by a new Secretary of State and an
22 inexperienced Elections Division who knew less than
23 the local election supervisors.

24 No money allocated by the Secretary of
25 State to help the voters in an election that was going

1 to be complicated and with extremely heavy voter
2 turnout, and with tens of thousands of first-time
3 voters.

4 A motor-voter registration glitch in
5 which 600,000 voters registered for the first time
6 months in advance, many of whom on their arrival at
7 the polling place did not find their names on the
8 registration lists and were, therefore, not allowed to
9 vote.

10 A database company hired by the State of
11 Florida at a cost to the taxpayers of millions of
12 dollars to compile a list of convicted felons, who by
13 law were prohibited from voting, but that, in
14 addition, erroneously listed thousands of names of
15 law-abiding Americans who, at their voting place,
16 either were forced to argue their standing in the
17 community or, if too intimidated and disheartened to
18 rally to their own defense, were denied their most
19 fundamental, inalienable right: to vote as citizens
20 and taxpayers of this country.

21 As my colleague, Commissioner Thernstrom,
22 said in her testimony before the Committee on Rules
23 and Administration of the United States Senate,
24 "Process matters. But when the process is corrupt,
25 the conclusions themselves -- current and future --

1 are deeply suspect."

2 Commissioner Thernstrom also stated at
3 the same hearing that Dr. Allan Lichtman, the
4 historian who conducted the statistical analysis used
5 in the Commission's Report on Florida's Voting
6 Irregularities, had "close ties to Albert Gore, Jr."
7 as an example of the "perfectly obvious partisan
8 passions that not only destroyed the credibility of
9 the Commission's report but informed the entire
10 process that led up to the final draft."

11 According to Dr. Lichtman, his alleged
12 close ties to Albert Gore, Jr. were nothing more than
13 a few memos written by him six years ago when Albert
14 Gore, Jr. was serving as the Vice President of the
15 United States.

16 Here is a how-de-do. If Dr. Lichtman's
17 preparation of a few memos for the then Vice
18 President, who undoubtedly received thousands of memos
19 during his eight-year term in office, is to be
20 construed as having "close ties" to a candidate six
21 years later, and is considered an example of partisan
22 judgment, and, therefore, suspect, then what are we to
23 make of other close ties to a candidate, ties that may
24 have affected crucial decisions months before the
25 Florida elections took place?

1 The ties implicit in the fact that
2 Florida's Secretary of State, the chief election
3 officer of the state, whose responsibilities and
4 duties included "the obligation to obtain and maintain
5 uniformity in the application, operation, and
6 interpretation of election laws," was at the same time
7 the co-chairwoman of George Bush's Presidential
8 election campaign for the State of Florida.

9 Or the close ties of the governor of this
10 same state, whose emotional bond to the same
11 Presidential candidate couldn't possibly have been any
12 closer or run any deeper.

13 In an article in The New York Times,
14 June 4, 2001, regarding the leaking of the
15 Commission's report, long before most of the
16 Commissioners, including myself, had even received
17 their copies, Commissioner Redenbaugh incorrectly
18 attributes the leak to Chairwoman Berry.

19 Commissioner Redenbaugh is quoted in the
20 same article as saying, "Sometimes people who believe
21 that their cause is the correct one lose sight of the
22 procedural violations and believe that the means they
23 pursue are justified by the goodness of the ends they
24 desire" -- an apt description of the confluence of
25 circumstances I have outlined here, that explains the

1 disenfranchisement of one out of every eight African-
2 American voters in Florida in the November 2000
3 Presidential election.

4 Thank you, Madam Chair, for allowing me
5 to read that.

6 CHAIRPERSON BERRY: Wow. That is a
7 powerful statement. And sometimes I still wish I was
8 a dissenter back in the Reagan years when it was six-
9 two for 12, 13, 14, almost 15 years, when Bambi
10 Ramirez and I were the only two appointees of the
11 Democrats.

12 It really amuses me when the press is
13 always talking now about, why is it that there are
14 only two people? We were here the entire Reagan-Bush
15 administration -- 12, let's see -- 8, 9, 10, 11, 12
16 years. And we followed the procedures. We did what
17 we were supposed to do. We did our jobs, and it was
18 not an issue. Now it becomes an issue.

19 But, anyway, sometimes I wish I was back
20 then with no responsibility to be Chair of anything
21 and could be totally irresponsible and say what I want
22 to say, but I won't. It was a powerful statement,
23 Commissioner Wilson, and I should have let you read it
24 before, and I'm sorry that I didn't.

25 COMMISSIONER WILSON: Well, I hadn't

1 written it before, so -- thank you.

2 CHAIRPERSON BERRY: Do you have any
3 comments on her --

4 VICE CHAIRPERSON REYNOSO: Madam Chair, I
5 want to pick up on --

6 CHAIRPERSON BERRY: Does anyone want to
7 comment at all on what Vickie just said, first, before
8 I go to the next issue? Because I think --

9 VICE CHAIRPERSON REYNOSO: Madam Chair, I
10 want to pick up on some of the latter thoughts
11 expressed by Commissioner, and I have some questions
12 in relation to what she said but going beyond. And
13 this also relates to the comments that you just made,
14 Madam Chair.

15 The two questions I have basically are
16 these. What standard of veracity should we expect
17 from our fellow Commissioners? And the next question
18 I have is: what level of respect and civility toward
19 our staff is expected from each of our Commissioners?

20 And please stay with me, because it will
21 take me a couple of minutes, more than that, to
22 express my concerns. My basic concern began when I
23 received a copy of a memo dated June 20, 2001, from
24 Commissioner Thernstrom to our Staff Director, Les
25 Jin. And I want the record to be complete, so I'm

1 going to read it.

2 It was a memo that disturbed me a great
3 deal. It reads, "I was puzzled by your memorandum
4 dated June 19, 2001." I'm sorry. I've asked that
5 copies of these memos be distributed, so people can
6 follow me.

7 "I was puzzled by your memorandum dated
8 June 19, 2001, in which you state, 'Circumventing this
9 organizational structure can only create confusion and
10 disorder within the agency.' You 'urged me to contact
11 you.' However, my attempts to direct questions to you
12 so far have proved most unsuccessful (see several
13 memoranda in April regarding access to materials), and
14 you have refused to respond in writing to my
15 memoranda.

16 "Guidelines about the relationship
17 between individual Commissioners and the Staff
18 Director are indeed confusing. Last time I asked for
19 information you said my question addressed policy
20 issues and that I had to ask the Chair. Furthermore,
21 you indicated you work for the Commission as a body
22 and not for the individual Commissioners.

23 "Take the Lichtman information request
24 for example. As of June 8th, you and your staff knew
25 that I would be writing a dissent and should have

1 understood that I would need" -- and the following is
2 underlined -- "the machine-readable data that Lichtman
3 used to run his correlations and regressions."

4 "That is what I have requested. But
5 instead of immediately providing it, you provided,
6 after a five-day delay, some woefully incomplete
7 information in the form of hard copy only that it took
8 my assistant 10 minutes to photocopy. Bear in mind I
9 have 20 days to respond to a study it took the entire
10 Commission six months and almost 100 employees to
11 draft.

12 "As of last Friday, June 15th, at
13 1:30 p.m., the information I received from your office
14 was that OGC did not have the disk with the machine-
15 readable data Lichtman used. My special assistant
16 called your office and asked if she needed to file an
17 FOIA request in order to get the essential disks that
18 contained taxpayer-funded information that should be
19 in the public domain.

20 "Ms. Alton replied that to invoke FOIA
21 was not appropriate, since I merely wanted the same
22 information I had requested in a different form. My
23 assistant explained that it was not a matter of
24 convenience, but this was simply what was needed to
25 run the statistical analysis. She waited all weekend

1 and all day Monday for the courtesy of a reply to her
2 request for the disks and Professor Lichtman's contact
3 information.

4 "At 3:00 p.m on Tuesday, June 19th, she
5 again called your office. Kim Alton said again that
6 OGC did not have a disk.

7 "Responsible scholars routinely make
8 other data available in the machine-readable form in
9 which they used it. I have never before encountered
10 any resistance to the request I am now making. In
11 addition, under FOIA, I am entitled to receive the
12 information in any form that I ask for it. As you may
13 know, FOIA was amended in 1996 to include a section
14 requiring agencies to provide information 'in any form
15 or format requested,' including electronic form.

16 "I agree with you that it is sad that I
17 had to file an FOIA request to receive the information
18 I needed and am entitled to have. But I waited 10
19 days before doing so. As to my contacting Professor
20 Lichtman, any Commissioner should be free to contact
21 any expert in their field of professional
22 consultation. This is particularly true in the case
23 of an academic who serves 'in an expert position under
24 agency personnel procedures' and who will be reviewing
25 the statistical analysis in my dissent.

1 "Dr. Lichtman sent me an e-mail saying he
2 was forwarding the disks to you today. My assistant
3 will pick them up this afternoon." And copies are
4 shown to all the Commissioners.

5 I received a copy, strangely, from the
6 Public Affairs Office. Incidentally, I thereafter --

7 CHAIRPERSON BERRY: From the Public
8 Affairs Office?

9 VICE CHAIRPERSON REYNOSO: Public
10 Affairs --

11 CHAIRPERSON BERRY: Of the Commission?

12 VICE CHAIRPERSON REYNOSO: Yes.

13 CHAIRPERSON BERRY: Okay.

14 VICE CHAIRPERSON REYNOSO: Now, let me
15 say that I was very disturbed by this memo. It seemed
16 to me that the Commissioner was not being well served,
17 that the staff was not responding to her request, and
18 that she was entitled to all of this material.

19 I was very disturbed that the staff would
20 respond in this fashion, so I called the Chair. The
21 Chair indicated that, in fact, all of the materials
22 that she had requested, the Commissioner had
23 requested, had, in fact, been provided, and there were
24 memos in the file that confirmed that.

25 I asked for those memos. In interpreted

1 this memo to tell us that Dr. Lichtman had developed
2 and used disks. Further, the staff had lied when it
3 told Commissioner Thernstrom that no such disks
4 existed. I was very concerned, as I indicated, about
5 the ill-advised, ill-activity on the part of the
6 staff.

7 Then, I did get those memos. I received
8 a memo dated June 19th from Edward A. Hailes, Jr.,
9 General Counsel, to Les R. Jin, Staff Director,
10 memorandum to Abigail Thernstrom. And, again, please
11 stay with me because I want to read this into the
12 record.

13 As I say, this memo is dated June 19,
14 2000. Subject: Data of Lichtman Study. "This is in
15 response to your request for 'a copy of the disk (or
16 disks) containing any data Professor Allan J. Lichtman
17 used to issue his report on the Florida election.' I
18 understand that you were correctly informed that the
19 Office of General Counsel does not possess any disk or
20 disks that you have been seeking.

21 "In attempting to comply with your
22 request, however, the staff promptly contacted
23 Professor Lichtman to ask him to release to us any
24 disk or disks containing the data he used to issue his
25 report.

1 "Professor Lichtman told us that he did
2 not and does not possess any disk or disks containing
3 data that he used to prepare his report. The
4 publicly-available sources of data that he used to
5 prepare his analysis are cited throughout the report,
6 a copy of which has been provided to you.

7 "Apart from your specific request, there
8 is a copy of a disk containing data that was used by
9 former Commission staff member Dr. Rebecca Crouse, who
10 briefly provided assistance to our office until she
11 left the agency for a promotional opportunity. The
12 disk was forwarded to Professor Lichtman.

13 "He possesses it, but he did not use
14 these data to issue his report. I will make the disk
15 available to your assistant, if you believe that it
16 would be helpful.

17 "You have also requested 'a copy of the
18 contract (or contracts) issued to hire Professor
19 Lichtman or any other statistician, social scientist,
20 or professional associated with the Florida report.'
21 Professor Lichtman was not hired under a contract for
22 his services.

23 "He was appointed to serve in an expert
24 position under agency personnel procedure. He is an
25 intermittent appointee of the Commission. No other

1 statistician, social scientist, or other professional
2 has been hired to assist with this project. Thus,
3 there are no existing contracts to provide pursuant to
4 your request.

5 "If you need further information or
6 assistance, please direct your inquiry to the Staff
7 Director." Copies to all the Commissioners. I
8 confess, I did not receive a copy until I asked the
9 Chair for this -- for a copy.

10 Then there is a memorandum dated June 20,
11 2000, again from the General Counsel through the Staff
12 Director, to Commissioner Thernstrom. Subject: Data
13 from Lichtman Study. "Today, Professor Lichtman
14 provided a copy of the disk containing data that was
15 used by former Commissioner staff member, Dr. Rebecca
16 Crouse.

17 "I referred to this same disk in my
18 memorandum to you on yesterday. I was told that
19 Professor Lichtman informed you that he would pass
20 this disk back to the staff with the understanding
21 that it would be passed on to you.

22 "Just so it is abundantly clear, I am
23 reminding you that Professor Lichtman indicated to the
24 staff that he did not use the data to issue his
25 report. Pursuant to your request, however, the disk

1 is available for your special assistant to pick up
2 today. Please let me know if you need further
3 information or assistance."

4 Now, Madam Chair --

5 CHAIRPERSON BERRY: I might add, before
6 you go on, that the documents that I entered into the
7 record when I testified before the Senate ought to be
8 included in the record at this point, just to make the
9 record fuller of this meeting, if there is no
10 objection.

11 Secondly, that the statement made by
12 Professor Lichtman at the hearing when he was asked
13 about the disk -- I think there's a question where he
14 affirmed orally that he had no machine-readable disks
15 that he used. So I think that should probably go in
16 just to make the record fuller. We don't need to read
17 all of it, but at least to complete the record.

18 But go on.

19 VICE CHAIRPERSON REYNOSO: But does that
20 indicate these memos? That would --

21 CHAIRPERSON BERRY: Yes, and others.

22 VICE CHAIRPERSON REYNOSO: That would be
23 helpful, yes.

24 The memos from our General Counsel make
25 clear that Dr. Lichtman had prepared no disks. Now,

1 keep that memo in mind, because I want to reread
2 portions of Dr. Thernstrom's memo of the 20th. And
3 this is what she said. Now, keep --

4 COMMISSIONER THERNSTROM: Are you going
5 to read the subsequent memos?

6 CHAIRPERSON BERRY: You are not
7 recognized, Commissioner Thernstrom.

8 COMMISSIONER THERNSTROM: I'm sorry.

9 CHAIRPERSON BERRY: When you seek
10 recognition, please raise your hand.

11 COMMISSIONER THERNSTROM: I'm sorry. I
12 apologize.

13 CHAIRPERSON BERRY: And I will -- you
14 know, and if --

15 VICE CHAIRPERSON REYNOSO: In light of
16 the memos from the General Counsel, I want to reread
17 two paragraphs from Commissioner Thernstrom's memo of
18 June 20th, presumably after she had received those
19 memos, where she said, "Responsible scholars routinely
20 make all of their data available in the machine-
21 readable form in which they used it. I have never
22 before encountered any resistance to the request I am
23 now making.

24 "In addition, under FOIA, I am entitled
25 to receive the information in any form that I ask for.

1 As you may know, FOIA was amended in 1996 to include
2 a section requiring agencies to provide information
3 "in any form or format requested," including
4 electronic form." That's one paragraph.

5 The other paragraph I want to read to you
6 is this. "Dr. Lichtman sent me an e-mail saying he
7 was forwarding the disks to you today. My assistant
8 will pick them up this afternoon."

9 Madam Chair, I felt completely misled by
10 Commissioner Thernstrom's memo. I believe any fair-
11 minded person would have reacted with great concern
12 upon reading her memo of June 20th, as I was, that she
13 was not being well served.

14 Unless the General Counsel is being
15 untruthful, Commissioner Thernstrom knew when she
16 wrote that memo that Professor Lichtman had prepared
17 no disks, and yet the memo gave me -- and I believe
18 any reasonable reader -- the impression that he had
19 produced the disks, that the staff denied their
20 existence and refused to produce them, and that
21 Professor Lichtman, in fact, had produced those disks
22 and was forwarding them to the staff.

23 I feel completely deflated and betrayed
24 by Commissioner Thernstrom's memo. I had trusted the
25 memo. I was outraged at what the staff was doing.

1 And unless the General Counsel has been lying -- and
2 I've been working with them for seven years. He not
3 only is our General Counsel, he's a pastor. I've
4 never known him to be untruthful.

5 So I had that very strong reaction, I
6 must say. And so I raise the first issue: what
7 standards can we expect from a Commissioner in terms
8 of veracity? That's the question that I am posing,
9 and I hope we'll have a discussion on it.

10 My second question is this: what level
11 of respect and civility toward our staff is expected
12 from each Commissioner?

13 I refer now to a memo from Staff Director
14 Les Jin, dated June 19, 2001, to Commissioner
15 Thernstrom. And I'll just read the first couple of
16 sentences. "I recently learned of your Freedom of
17 Information Act request for data pertaining to the
18 Florida report. Frankly, the request surprised me.

19 "I do recognize the times of the essence
20 as it pertains to this matter, and that is why the
21 staff responded by providing you with the materials
22 you requested on June 11th correspondence as soon as
23 each item was available.

24 "We spoke with your assistant -- with
25 your special assistant shortly after we received your

1 correspondence and provided materials on June 12th and
2 13th. Note that the request was on the 11th; material
3 was provided on the 12th and 13th, explaining why the
4 materials provided on the 13th were not available on
5 the 12th."

6 Unless, again, that memo is untruthful,
7 it shows me that the staff was indeed trying to
8 cooperate with the Commissioner in every way possible.

9 And to have this memo indicate that the staff is
10 uncooperative, untruthful, and in no way helpful to
11 the Commissioner, seems to me to show great disrespect
12 for the staff. I think it's insulting to the staff.
13 And I think it's a process that ought not to be
14 tolerated.

15 So my question is: what level of respect
16 and civility toward our staff is expected from each
17 Commissioner? Those are my two questions, Madam
18 Chair.

19 CHAIRPERSON BERRY: I can try to answer
20 them by my own likes, which means that instead of
21 answering the questions, then I'll let the discussion
22 proceed and I will recognize anyone, including
23 Commissioner Thernstrom, who cares to be recognized.

24 Let me just say this, which may be
25 helpful. There is a lot of -- there is some clarity I

1 think. Some of you have heard me say all this before,
2 but I will say it again, because I think it's
3 important to say it. First of all, remember that we
4 are a commission. We are a study commission, which is
5 a particular species and variety in public
6 administration.

7 And as a study commission, not an
8 enforcement commission, not a court or an adjudicatory
9 agency, we are a study commission. And we are a study
10 commission with part-time Commissioners who all have
11 other jobs, we hope, and other pursuits and sources of
12 income.

13 We are a study commission with a staff,
14 and the staff works for the entire commission as a
15 body. That is the way the statute is written. If you
16 have not, you ought to some time read the history of
17 this commission. There are some very good histories
18 of it written. I learned my history by reading it and
19 by sitting at the knee of Arthur Flemming, but -- who
20 was there at the creation of it.

21 So it's a study commission, part-time
22 Commissioners who are not here. Each Commissioner has
23 a personal assistant, a special assistant, and that's
24 the only employee the Commissioners get to pick.
25 That's the way the statute reads.

1 The Staff Director works for the
2 Commission. The Staff Director and the staff work for
3 the Commission. We have no minority and majority, as
4 they do in the Congress, where there's a minority
5 leader and a majority leader, and there is a minority
6 report and a minority staff. This is not that kind of
7 an animal, not that kind of a creature.

8 When the staff does work, Commissioners
9 -- any Commissioner can, at any time, call up the
10 Staff Director and say, "I know we approved the
11 project to do X, Y, and Z. What are you guys doing on
12 it? I need to come over and sit down with the staff
13 to figure out what methodology they're using, how
14 they're going about this, and to see what I think
15 about it."

16 Staff Director will respond by doing
17 that. And if the Commissioner doesn't like what
18 they're doing and says, "Well, you guys shouldn't be
19 doing it that way. I happen to be an expert, and I
20 don't think it should be done that way," and the Staff
21 Director refuses, the Commissioner can come here to
22 the Commission meeting and say, "I tried to get them
23 to do X, and they wouldn't do it. Let's discuss it."

24
25 And if we decide to change it, we can

1 direct -- the Commission can direct the Staff Director
2 to go change it. That's the way we operate, which
3 means that when Commissioners -- when a report is
4 approved, it becomes the report of the Commission.
5 It's not the report of the people who voted for it.

6 And the majority and minority on this
7 Commission may change every time there's a different
8 report, depending on what the votes are, which means
9 that the staff should be respected as the staff of the
10 Commission, respect them as the staff of all of us.
11 Of course, the Chair of the Commission has a
12 particular relationship with the Staff Director.
13 We've talked about that before.

14 The chairperson has one vote like
15 everybody else, and no real powers except to preside,
16 but has to be in touch with the Staff Director on a
17 continuing, routine basis, because there are such
18 matters as agendas and seeing how things are going.

19 But the Chairperson of this Commission,
20 historically and at now, has a number of other things
21 to do besides the Commission, too. So it's not the
22 Chairperson. Sometimes the public thinks I'm here all
23 day. People call up and say, "Well, why isn't she
24 there?" You know? "We want to have a meeting." And
25 it has to be explained to them that the Staff Director

1 runs the Commission; I don't run the Commission.

2 In any case, what this means is that when
3 there is a report, it's our report that the staff has
4 produced. I remember a reporter asked me when I told
5 him that the staff wrote the report, he said, "Well,
6 then, what's the good of being a Commissioner if the
7 staff is going to write the report?" They didn't
8 understand either what a study commission was, and it
9 was explained to them.

10 And there have been many study
11 commissions -- the commission on immigration reform
12 that you were on. They littered the landscape. This
13 is not unusual. And when we have a report and
14 Commissioners want to write a statement on the report,
15 whether it's a dissent or concurrence or whatever they
16 want to write, the understanding is that they are
17 commenting on what is in the report, giving their
18 personal views about what is in the report, not that
19 they are writing a new report, because that's not --
20 they had their shot way back when they met with the
21 Staff Director, talked about it, they didn't like it,
22 brought it to the Commission, and the Commission
23 didn't agree, so they can say in their dissent, "I
24 don't agree, and I tried to explain to them that they
25 ought to do it this way instead of that way, and they

1 said no."

2 The other thing I'd point out is that,
3 historically, this Commission has not contained
4 experts on civil rights issues as such. In fact, you
5 don't need to be an expert on civil rights issues to
6 be a member of this Commission. In fact, I sometimes
7 think it would be better if you weren't an expert on
8 civil rights issues.

9 When I first was appointed to this
10 Commission, it was because I had been a chancellor of
11 a university and had run federal education programs,
12 not because I knew anything about civil rights. I've
13 learned some things over the years, and I write some
14 things.

15 Commissioner Redenbaugh -- if you don't
16 mind me calling out your name -- for example, was not
17 known before as an expert on civil rights to my
18 knowledge. But he --

19 COMMISSIONER REDENBAUGH: That's correct.

20 CHAIRPERSON BERRY: -- is a respected
21 individual who has a professional and who has a view
22 that the public may share or can respect -- can
23 reflect some segment of the public's views about these
24 matters, although I'm sure in the years he has been
25 here he has become sort of an expert.

1 Commissioner Wilson -- I would say the
2 same, others of you. So the point is: there may be
3 people on here who are civil rights experts, but you
4 don't need to be a civil rights expert to be here.

5 Now, having said all of that, it would
6 make sense for us to respect the staff. I don't know
7 what degree and level of respect. We are a collegial
8 body. I have said that many times. The plan of the
9 Commission is for it to be a collegial body.

10 Now, we could -- the Congress could
11 change the statute and turn us into some other animal
12 that had a majority and a minority and a staff, and
13 they could appropriate more money and do that. That
14 would be -- you know, if that's what they wish to do.

15 But that is not the situation.

16 But we don't have any way to sanction
17 people who violate principles of collegiality. I
18 mean, you say, what can we do? What level of respect
19 can we expect? What can we expect? Nothing. Each
20 Commissioner is sort of on their own.

21 None of us can do anything about what any
22 other Commissioner does. That's between them and
23 their conscience, I would suspect, unless others of
24 you can think of some way that we can get people to be
25 more respectful, even in terms of veracity. Whether

1 or not one tells the truth depends on the individual.

2 We can't -- I think the statute says
3 Commissioners can be removed for some reasons or
4 other, but we're not the people who remove anybody.
5 So that wouldn't do any good. So there are no
6 sanctions. All we can do is ask for respect, ask that
7 people do whatever it is, in my view.

8 Now, I've had my say. Now, does anybody
9 else have any comments on what the Vice Chair is
10 concerned about? Yes?

11 VICE CHAIRPERSON REYNOSO: Madam Chair, I
12 wonder whether if a lack of veracity reaches a certain
13 point we ought not to appoint a distinguished panel of
14 retired judges to look at it, and if they agree that
15 it has reached a certain point that's unacceptable, at
16 least report that to the appointing power. I mean,
17 surely we ought not to tolerate a complete lack of
18 veracity in this Commission.

19 CHAIRPERSON BERRY: Commissioner
20 Redenbaugh, did you have your hand up?

21 COMMISSIONER REDENBAUGH: I did. I
22 wanted to ask something, and I think I want to direct
23 my question to you, because it's a more general
24 question, Mary. And that is, you know, this issue of
25 the memos that Cruz has brought up turns on the

1 question of whether or not disks were or were not
2 made. And I have a couple of questions.

3 When someone is appointed as a temporary
4 employee of the Commission, who owns the work product?

5 CHAIRPERSON BERRY: Who owns the work
6 product?

7 COMMISSIONER REDENBAUGH: Yes.

8 CHAIRPERSON BERRY: I suppose we do. Is
9 that right, counsel? Whoever they do the work for
10 owns the work product.

11 COMMISSIONER REDENBAUGH: And, clearly,
12 in order to do a regression analysis, the data must be
13 in machine-readable form somewhere.

14 CHAIRPERSON BERRY: Commissioner
15 Redenbaugh, Mr. Lichtman stated at the Senate hearing
16 -- and he may have stated it here, I don't remember --
17 but he has stated, and he stated to the counsel's
18 office, that he used this material, drawing it down,
19 and that he had several different computers.

20 Is that right? That he has stuff on,
21 that if we wanted him to go out and create disks, if
22 that was a project the Commission wanted him to do,
23 which he was not asked to do, that that project is
24 possible, but that he didn't need to create any in
25 order to do the work that he did.

1 COMMISSIONER REDENBAUGH: But --

2 CHAIRPERSON BERRY: And the Commission
3 did not specifically, in the agreement to hire him,
4 ask him to do any disks -- you know, floppy disks or
5 whatever they're called.

6 COMMISSIONER REDENBAUGH: Right. Well, I
7 understand about the floppy disks. Keeping in mind
8 that I have experience in both statistics and computer
9 science, in order to do the calculations the data are
10 on -- somewhere on a hard disk.

11 CHAIRPERSON BERRY: I would assume so.

12 COMMISSIONER REDENBAUGH: Unless you use
13 a manual calculator, which seems very unlikely in a
14 multiple regression. Then, the data are available in
15 machine-readable form. It appears they are the
16 property of the Commission, and it -- and I accept the
17 point that they aren't in or on a particular floppy
18 disk.

19 But it seems that the issue here is not,
20 are they on a floppy disk or a hard disk, but are they
21 made available to the Commission and to other
22 Commissioners?

23 CHAIRPERSON BERRY: Well, that's not the
24 issue, if I may respectfully respond to you. The
25 issue is that the staff were asked a question. They

1 answered it. They asked the employee the question.
2 He answered it, and they gave the answer to the
3 Commissioner who asked it.

4 If the question was, "Can you create for
5 us, though you did not use any machine-readable disk
6 that you can pass on to us, off your six computers,
7 and whatever time that takes, turn in your time and
8 you'll get paid for it?" that's a different question.

9 No one ever asked that question.

10 COMMISSIONER REDENBAUGH: Your response
11 is very lawyerly, but it doesn't go to the concern,
12 which is that the data are on hard disk someplace.

13 CHAIRPERSON BERRY: That's not the
14 concern that the Vice Chair has. I'll let him express
15 his own concern.

16 VICE CHAIRPERSON REYNOSO: Madam Chair,
17 my concern was more straightforward. I was very
18 disturbed that the staff apparently, from the
19 Commissioner's memo, had misled and been uncooperative
20 with the Commissioner, and had basically lied to her
21 according to the memo.

22 When I got the memo from the staff, it
23 turned out that it was not true and that the memo was
24 written by the Commissioner knowing that it was not
25 true. That's my concern.

1 CHAIRPERSON BERRY: If I pick up my
2 computer at home that has a hard drive on it, and
3 bring it over here and give it to you, that's one
4 thing. Okay?

5 Or if I have six computers at home, and I
6 have bits and pieces of data, as I do -- I don't have
7 six, but I have more than one -- of them that I use
8 for various purposes when I need them, and if you ask
9 me, do I have a disk that I can hand you with these
10 bits and pieces all on them, the answer is no.

11 If you tell me you would like me to take
12 all those notes off, the rest of them, and create
13 something for you, then I'd be happy to do that.

14 COMMISSIONER REDENBAUGH: Yes. No, I
15 understand the purpose of asking the right question.
16 And I find, in this case, that although the right
17 question wasn't precisely asked, it appears to me that
18 Dr. Lichtman's response is not very cooperative in
19 that he has produced conclusions based on data which
20 he hasn't been willing to share.

21 CHAIRPERSON BERRY: Do you wish to answer
22 this? My understanding from him was that any of the
23 stuff that he used is easily gotten from public
24 sources, and that anyone can sit down and draw them
25 from those same sources, just like he did, which goes

1 to another thing which -- that's what he said at
2 least.

3 COMMISSIONER REDENBAUGH: Yes. No, I
4 don't --

5 CHAIRPERSON BERRY: I don't know, because
6 I don't know anything about, you know, the sources, to
7 be blunt. But that's what he attested to.

8 COMMISSIONER REDENBAUGH: I do remember
9 him saying that.

10 CHAIRPERSON BERRY: Yes. Now, whether
11 that's true or not, I don't know. But if it is true,
12 then I don't understand why one would not be able to
13 do that.

14 Yes, Commissioner Thernstrom?

15 COMMISSIONER THERNSTROM: Well, I think
16 it's time to read my statement, because it does
17 precisely address some of the concerns that --

18 CHAIRPERSON BERRY: Go right ahead. Read
19 it.

20 COMMISSIONER THERNSTROM: -- the Vice
21 Chair -- but before I read it, let me say -- too
22 obvious to say, it seems to me, I have no disrespect
23 for the staff, nor have I violated any principles of
24 collegiality. And I have been entirely truthful all
25 along.

1 But the multiple regressions and the
2 machine-readable data that were used in them have not
3 been made available to me. Obviously, in referring to
4 disks in my early memo, I was -- as Commissioner
5 Redenbaugh suggested just now, I was simply talking
6 about the regressions and the data on Dr. Lichtman's
7 hard drive, which could easily be put on disks.

8 In my later memos, which you have not
9 read, I did not ask for disks, but simply the
10 regressions and the machine-readable data that were
11 used in those regressions. Without the regressions
12 themselves, you cannot tell exactly what data was
13 used, the variables that were put into them, and you
14 cannot tell precisely what Dr. Lichtman has done.

15 That is what I asked for. I have not
16 seen a single regression. He promised those
17 regressions would be available, and they have not
18 been. But let me read my statement.

19 I have the deepest respect for the
20 principles on which this Commission was founded. And,
21 like the Vice Chair has said in the past, I, too, wish
22 that every statement and report of the Commission
23 could be adopted by consensus, or that, at the very
24 least, we participate in a debate of ideas in a
25 collegial fashion.

1 I was looking at a history of the
2 Commission's early years, and a description of the
3 first report, which was described as reflecting the
4 difficulties of trying to reach a "consensus among
5 members." And, thus, it contained "many compromises,"
6 but the end result was "a moderate balanced" report.
7 "And this was its inherent strength," the author
8 writes.

9 A report such as this one, it seems to
10 me, has become impossible today, since there is no
11 procedure by which we can hammer out such a balanced
12 document.

13 I cannot respond to a report and discuss
14 it with the staff when I got it two and a half days
15 prior to the meeting on which we vote on it.

16 Anyway, I disagree with the majority's
17 report on the Florida voting rights, not because I am
18 unconcerned with the issues of disfranchisement. I
19 care very deeply about them. And I did my own
20 research, not out of disrespect for the Commission's
21 staff, but I believe I was asked to serve on this
22 Commission to search for answers. And I believe
23 passionately in the value of healthy, rigorous,
24 respectful debate as a means of exploring complex
25 social and political issues.

1 And I very much welcomed this morning
2 Commissioner Wilson's statement, as it seems to me it
3 has contributed to a rigorous debate on the specific
4 point of Dr. Lichtman's political affiliation, his
5 link to the Vice President. I got that at the time
6 off his website. He later clarified his relationship
7 to the Vice Chair -- to the Vice President.

8 The Staff Director, in a memo that the
9 Vice Chair did not read just now, has stated that it
10 is "neither envisioned nor proper for individual
11 Commissioners to research or write reports." And he
12 further says that the Commission does not envision any
13 Commissioner engaging "in a complete reanalysis of the
14 staff's work."

15 Well, with all due respect, in fact,
16 there is no statutory or regulatory limitation on the
17 right of individual Commissioners to conduct
18 independent research. And as Commissioners, it is our
19 job to search for the truth. We were appointed, some
20 of us, because we are experts on certain topics. I
21 think every Commissioner brings real strength to this
22 Commission.

23 It is unthinkable, in my view, that we
24 would be forbidden from using our own expertise in
25 assessing a Commission's report. Indeed, it is

1 impossible to write a worthwhile dissent without
2 reanalyzing the quantitative and other evidence upon
3 which the staff's conclusions were based.

4 Now, much has been made -- and it has
5 been made again this morning -- of my request of
6 Professor Lichtman's data and the Commission's refusal
7 to share it with me. My request, as I have said, was
8 routine. I never imagined it was -- it would be
9 denied.

10 I have received several requests for the
11 machine-readable data that I used in our dissent, and
12 I have already shared it with other scholars. Indeed,
13 I have been exchanging ideas, methodological and
14 substantive, with a scholar on the political left, who
15 is doing interesting work on Florida, work that
16 includes multiple regressions based on machine-
17 readable data that he is making publicly available.

18 There is other work being done.
19 Professor Richard -- not Professor -- Professor and
20 Judge Richard Posner has just come out with a book on
21 the elections, including a chapter on data. His
22 regressions are available, both in machine-readable
23 form and in the book itself.

24 According to the Staff Director's memo
25 that I recently received, there is no machine-readable

1 data available, and I just more or less heard that
2 this morning, although I now hear it is available on a
3 variety of hard drives, but whatever. If so -- if
4 this machine-readable data -- I mean, obviously, it's
5 available. Otherwise, there is no evidence for the
6 serious conclusions contained in the Commission's
7 majority report.

8 Dr. Lichtman, in his report, refers to
9 the multiple regressions upon which he based his
10 conclusions. And I understand these multiple
11 regressions and the machine-readable data that were
12 used in them do not exist. And, if so, on what basis
13 did he draw his conclusions? Obviously, they do
14 exist. I have yet to see a regression.

15 As for the statements that Commissioner
16 Redenbaugh and I did not request information from the
17 Staff Director, nothing could be further from the
18 truth. Both of us, in a memorandum through our
19 special assistants, repeatedly requested information
20 on the Florida project. And, of course, I have copies
21 of those memos.

22 There has been talk of a -- by the Chair
23 of an initiative to investigate the leak of the
24 Commission's report to three newspapers. It was,
25 frankly, infuriating to receive the report more than

1 24 hours after The New York Times called me for a
2 comment. It had already received a copy. I had to
3 read the Executive Summary on The Washington Post
4 website.

5 In a supplementary statement to the Rules
6 Committee, the Chair indicated that it appeared the
7 report was leaked at the same time it was sent to
8 Commissioners. That was not the case, or not the case
9 for me. Three newspapers had access to the report for
10 almost an entire day before it was sent out. I didn't
11 receive it until June 5th. It was hand-delivered to
12 Commissioner Redenbaugh's assistant at 11:00 p.m. the
13 night before; again, long after the media had it.

14 The Chair has proposed that we look into
15 voting irregularities in other states. But I -- my
16 question is: what will happen to the other projects
17 to which we have committed ourselves, and to the
18 budgets assigned to those projects?

19 As the moral conscience of the nation,
20 and I believe this Commission still has that role to
21 play, we should be turning our attention, in my view,
22 to issues more in need of additional study, since
23 people all over the country are studying these
24 election issues.

25 For instance, we should be looking

1 further, I agree, at the numerous problems that
2 immigrants face. We should be revisiting the
3 underachievement of black and Hispanic students in
4 schools that are serving them so horribly. We should
5 examine economic disincentives for minority business
6 owners. We should look at the very serious range of
7 issues that Native Americans face. I would really
8 welcome that.

9 These are issues of great importance to
10 this agency, which is dedicated to eradicating
11 inequality.

12 Thank you very much, Madam Chair, for the
13 time.

14 CHAIRPERSON BERRY: Commissioner
15 Thernstrom, the statement you have just made is likely
16 to infuriate the Vice Chair further.

17 COMMISSIONER THERNSTROM: Well, I'm
18 sorry, but --

19 CHAIRPERSON BERRY: May I finish, please?

20 COMMISSIONER THERNSTROM: Yes.

21 CHAIRPERSON BERRY: It is replete with
22 inaccuracies that are documentably false. In fact,
23 you are going to force us to have to read into the
24 record previous transcripts of these meetings.

25 For example, on the question of whether

1 you got responses to memos, we had a discussion in
2 this Commission meeting -- and it's in the transcripts
3 that I submitted to the Senate, and will be in the
4 record of this -- and we can read it here, if you wish
5 us to read it here -- where we discussed this very
6 question. And you were told and understood that they
7 answered those memos orally.

8 Is that right, Staff Director, we had
9 that discussion?

10 STAFF DIRECTOR JIN: That is correct,
11 Madam Chair.

12 CHAIRPERSON BERRY: Right here in this
13 room we had this discussion. It's in the transcript.

14 And, in fact, that the Staff Director
15 would not -- and the Commissioners did not object, and
16 they were in agreement -- have to answer each memo
17 that you sent him about something in writing, that he
18 could have someone call your special assistant, he
19 could answer it orally.

20 And so to imply, as this statement does,
21 that, in fact, there were no responses is documentably
22 not true.

23 Secondly, you say about meeting with the
24 staff, there is no record of you ever -- or
25 Commissioner Redenbaugh -- asking the Staff Director

1 to sit down with the staff to discuss the Florida
2 report while it was being written. We had a
3 discussion in this meeting, and there is a transcript
4 of it again.

5 I sometimes think that this is designed
6 to try to raise people's blood pressure. That if you
7 should go ask the Staff Director -- none of you have
8 ever asked me for anything. I have received no
9 inquiries, no complaints from you, nothing about not
10 being able to talk to people.

11 As for the date on which the Commission
12 was given the report, we discussed that in this
13 meeting, and it is documentable. These are not things
14 that somebody made up. They are in the -- now, you
15 may not agree, and if a Commissioner doesn't agree,
16 just say you don't agree that we should do it this
17 way.

18 Maybe you think all of the memos should
19 be answered in writing. Maybe you think that X should
20 have happened instead of Y. Then, bring it here.
21 We'll discuss it.

22 And then even in leading what I said at
23 the hearing about the leak, in your own statement you
24 say I said that it appeared that the report was
25 leaked. I don't know when it was leaked or why it was

1 leaked, and we are going to discuss that next in here
2 right now, the question of leaks.

3 But I would hope also on the issues of
4 what we don't do, we have a project on Native American
5 issues. Is that right, Commissioner Meeks?

6 COMMISSIONER MEEKS: That's right.

7 CHAIRPERSON BERRY: And we discussed in
8 this meeting --

9 COMMISSIONER MEEKS: Right.

10 CHAIRPERSON BERRY: -- the Commission
11 discussed what we should do on Native American issues
12 right here. It wasn't that we were ignoring Native
13 American issues, and we concluded with the
14 recommendation of Commissioner Meeks and others, is
15 that right, that we would do administration of
16 justice. Am I correct or not?

17 COMMISSIONER MEEKS: Yes, you are
18 correct.

19 CHAIRPERSON BERRY: So it's not that
20 we're ignoring the very serious range of issues that
21 -- this is what infuriates your colleagues -- when the
22 implication is that we are ignoring something that
23 we're not. We have looked before at economic
24 disincentives, minority business owners, at the
25 suggestion of Commissioner Redenbaugh.

1 We had a whole project on economic
2 impacts and things having to do with discrimination.
3 I've forgotten what the title of that whole big thing
4 we did for a whole year -- the staff will know the
5 name of it. Racial and something -- social and
6 economic aspects of discrimination or something.

7 We can, of course, look at these issues
8 again. And we have looked at underachievement of
9 black and Hispanic students, and we'll revisit it
10 again. I think someone has a suggestion for a project
11 where we will do a hearing on that question.

12 So it's not that we're not looking at it.

13 Anyway, the Chair proposed to look into voting
14 irregularities. The Chair proposed -- unless the
15 Commission agrees to do it, we won't do it. I don't
16 -- anyone may propose anything they wish.

17 So that all I am saying here is -- and if
18 you wish us to read all of these transcripts and
19 things here in the record, so that it is clear that
20 I'm not making it up, and they are in the Senate
21 documents that will be in the transcript of this
22 meeting.

23 I won't take the time, but I will read
24 them if you persist in acting as if the Staff Director
25 has somehow not, you know, responded to something, or

1 that we somehow have done something in this way.

2 Commissioner Wilson?

3 COMMISSIONER WILSON: Thank you, Madam
4 Chair. I would just like to say, once and for all, as
5 far -- I know we are going to discuss leaks next. But
6 in terms of this particular report, the article in
7 which you and Commissioner Redenbaugh are quoted as
8 the only two Commissioners representing this
9 Commission, appeared in The New York Times, I believe,
10 June 5th. When I read that article --

11 CHAIRPERSON BERRY: June 4th or 5th?
12 4th. June 4th.

13 COMMISSIONER WILSON: Okay. Well, when I
14 read that article, I had not even received a copy of
15 the Commission's report.

16 COMMISSIONER THERNSTROM: Neither had I.

17 COMMISSIONER WILSON: Well, somehow you
18 were quoted extensively discussing it.

19 COMMISSIONER THERNSTROM: No.

20 COMMISSIONER WILSON: Let me finish,
21 please. You were. You were saying it was scandalous
22 and you -- or maybe perhaps Russell was talking about
23 the contents of it. I don't know. But I had not seen
24 it. It had not appeared at my house. When I had left
25 my house, I said to my doorman, "Is there something

1 for me?" "No, there is not."

2 I went on my merry way to work. And the
3 notion that you are being victimized in this
4 particular -- just in this particular case, that you
5 are being victimized by the Commission is just totally
6 false and nothing but obfuscation. And I am not going
7 to sit here and just say, okay, well, you -- the
8 Commission did this to you.

9 This was done -- I don't know. We could
10 go around the table, and we can say on what date each
11 Commissioner did or did not receive this report. It
12 was discussed in the prior meeting. I myself thought,
13 oh, great, I have, you know, all of 24 hours to absorb
14 this information, or 48 hours, or whatever it was.

15 I had exactly the same amount of time.
16 Perhaps you had more. I don't know, but I can tell
17 you this much. Had The Times called me and said to
18 me, "What do you think about this report?" I would
19 say, "I don't know what the hell you're talking about,
20 because I haven't seen it."

21 COMMISSIONER THERNSTROM: May I answer
22 that?

23 CHAIRPERSON BERRY: You may, if you know
24 the answer.

25 COMMISSIONER THERNSTROM: Well, I would

1 like to say that all I said to The New York Times
2 reporter was that I regarded it as a procedural
3 travesty, that The New York Times had the report
4 before I had laid eyes on it. I did -- and I said
5 specifically, "I cannot address the contents of that
6 report, since I have not seen it."

7 I never said I was victimized. I never
8 said that other Commissioners had the report. I
9 simply said The New York Times had the report, and,
10 obviously, The Washington Post had the report, and
11 subsequently I learned The L.A. Times had the report.

12 I never addressed any substantive issues. I didn't
13 have the report. The media had it before we did.
14 That should obviously not happen.

15 I have also, Madam Chair, not said in my
16 statement that these are issues -- the Native
17 American, immigration, etcetera -- that the Commission
18 is ignoring entirely, but simply that, obviously, we
19 have to set some priorities here. You know that as
20 well as I do.

21 I'm not -- this is not arguing with you,
22 but I am concerned that with limited staff time and a
23 limited budget that we might want to go back to these
24 other issues rather than go on to further explore the
25 voting right question. That was my only point.

1 This was no disrespect. It was -- I was
2 not forgetting that the Commission has been looking
3 into other issues. Anyway --

4 CHAIRPERSON BERRY: I think we should
5 segue into -- since no one has an answer for your
6 question, Cruz, as to how we make Commissioners
7 respect the staff or each other or what we do about
8 it, and no one has taken up your suggestion that we
9 get retired judges to evaluate the behavior of
10 particular Commissioners, if, in fact, there is a need
11 to do that, maybe we should just talk about the leaks.

12 VICE CHAIRPERSON REYNOSO: I just want to
13 mention, that idea just came to me because I once had
14 a position where I was much in the news. And a report
15 had been issued by a high public official in our state
16 accusing us of the most outrageous crimes and
17 misjudgments, and so on.

18 And to resolve the matter, the President
19 of the United States appointed a Commission of retired
20 conservative judges, who looked into the matter and
21 found that every single accusation was false and
22 baseless. And that had some impact on the public. In
23 fact, the issue was finally resolved in our favor, I
24 think in large part based on those findings.

25 I just think that a time comes when

1 matters are such that we need an impartial body to be
2 looking at this, because one can say, yes, it's true,
3 no, it's not true. I read some newspaper reports, for
4 example, about the leak that said something to the
5 effect that the minority members have not gotten the
6 report. Of course, that's true.

7 Implication -- the majority, if there is
8 such a thing as minority and majority, which there
9 isn't, had gotten the report. I confess that I was
10 more than a little bit disturbed by some of those
11 newspaper articles, but that's why I raise the
12 suggestion.

13 COMMISSIONER THERNSTROM: But, obviously,
14 we're not responsible for what newspaper reporters --

15 CHAIRPERSON BERRY: When you ask to
16 speak, as other Commissioners do, I --

17 COMMISSIONER THERNSTROM: I'm sorry. I
18 got a nod from the Vice Chair, and I shouldn't have --
19 I need to --

20 CHAIRPERSON BERRY: Other Commissioners
21 seek recognition when they wish to speak.

22 COMMISSIONER THERNSTROM: I'm sorry. I
23 thought that was recognition when the Vice Chair --

24 CHAIRPERSON BERRY: Is the Vice Chair
25 chairing the meeting?

1 COMMISSIONER THERNSTROM: No, he is not.

2 CHAIRPERSON BERRY: Do I look like a
3 potted plant?

4 (Laughter.)

5 COMMISSIONER THERNSTROM: You do not. I
6 was simply looking at him and --

7 CHAIRPERSON BERRY: I understand.

8 COMMISSIONER THERNSTROM: -- I raised my
9 hand and --

10 CHAIRPERSON BERRY: Please proceed,
11 Commissioner Thernstrom.

12 COMMISSIONER THERNSTROM: Obviously, none
13 of us are responsible for what reporters say, and
14 nobody quoted me as indicating that I thought that I
15 alone, or Commissioner Redenbaugh and I alone did not
16 get the report. You know, I can't control what
17 reporters write.

18 CHAIRPERSON BERRY: Commissioner Wilson,
19 were you seeking recognition?

20 COMMISSIONER WILSON: Yes, I was. In
21 fact, I think it would be -- well, first of all, I
22 just want to make this statement. I think it is a
23 tragedy that we are spending an hour and a half
24 discussing this instead of, as you suggest, the real
25 and important issues that we, as Commissioners, are

1 here to address.

2 And this is not -- we are going to spend
3 a lot more time addressing this. These are crucial
4 issues, but we are not really doing the work of the
5 Commission now. We are attending to a state of chaos,
6 is really what we're doing.

7 So I think that it would be useful to get
8 that New York Times article, because I read that
9 article and it seemed to me, in my memory of it, since
10 I don't have it in front of me, that it definitely --
11 the implication was that the others -- the other
12 members of the Commission had received the report, and
13 that you, Commissioner Thernstrom, and Commissioner
14 Redenbaugh had not, and were at a distinct
15 disadvantage because of that.

16 Now, perhaps I read that into --

17 CHAIRPERSON BERRY: Well, we should
18 not --

19 COMMISSIONER WILSON: -- the report --

20 CHAIRPERSON BERRY: Yes. Commissioner
21 Redenbaugh is seeking recognition.

22 COMMISSIONER REDENBAUGH: Well, I think
23 that may have been the implication. But it wasn't --
24 that isn't what I implied. And I'll stand by my
25 quotes. But I -- I can't be -- I'm not responsible

1 for if that was their implication.

2 I think it's -- my complaint was that
3 they had it before I did, not that you had it before I
4 did.

5 CHAIRPERSON BERRY: But that the paper
6 did.

7 COMMISSIONER REDENBAUGH: The paper. The
8 papers.

9 CHAIRPERSON BERRY: And it turned out, if
10 someone will refresh my recollection about this --
11 maybe staff will know -- isn't it the case that the
12 report, as it appeared on The Post website, was not
13 the report we received? Or am I confused?

14 VICE CHAIRPERSON REYNOSO: No, that's
15 correct. Apparently, the leak was, I assume, by a
16 staff person. Because it was an earlier draft, as I
17 understand it --

18 CHAIRPERSON BERRY: Than the one we got.

19 VICE CHAIRPERSON REYNOSO: -- than the
20 one we got. So I have assumed that it was no
21 Commissioner, that it was a staff person. I assume,
22 further, there's a staff person who is unsympathetic
23 to civil rights and wanted to sabotage the report.

24 The implications that I read in some of
25 the news accounts was that somehow it was those who

1 were in favor of the report that had leaked it.

2 CHAIRPERSON BERRY: Why would we do it?

3 Yes, Commissioner Wilson.

4 COMMISSIONER WILSON: Okay. Well, let's
5 talk about this for a second, because this is
6 interesting. It's true -- part of the impression of
7 what I said is totally based on the way this article
8 is framed.

9 The second paragraph -- well, the first
10 part says that it's a broadside against Florida
11 officials over last year's Presidential election,
12 calling them grossly derelict and saying that "lack of
13 leadership led to the disenfranchisement," blah, blah,
14 blah.

15 But not all members of the Commission
16 have been involved in putting together the report,
17 thereby assuming that all the Commissioners have been
18 involved in putting together the report. And you know
19 that none of the Commissioners were involved.

20 COMMISSIONER THERNSTROM: Is that a quote
21 from me? You're looking at me. Is it --

22 COMMISSIONER WILSON: I am. I am looking
23 at you.

24 COMMISSIONER THERNSTROM: I didn't say
25 that.

1 (Laughter.)

2 COMMISSIONER WILSON: Let me --

3 COMMISSIONER THERNSTROM: Is that quote
4 from me?

5 COMMISSIONER WILSON: She -- this woman
6 got the information from somebody. Do I -- I'm not
7 finished. Excuse me.

8 CHAIRPERSON BERRY: Go right ahead,
9 Commissioner Wilson.

10 COMMISSIONER WILSON: I would then like
11 to say, okay, the two Republican appointees who serve
12 -- all right. So it's already set up, Republicans
13 versus Democrats. The two --

14 CHAIRPERSON BERRY: I'm not a Democrat,
15 thank you.

16 COMMISSIONER WILSON: The Republicans
17 versus the rest of us.

18 CHAIRPERSON BERRY: You're not either.

19 COMMISSIONER WILSON: Okay? The
20 Republicans versus the rest of us. I am not a
21 Democrat either. I'm an Independent.

22 The two Republican appointees who serve
23 on the eight-member Commission said they had not been
24 consulted. The report --

25 CHAIRPERSON BERRY: It said they had not

1 been consulted. Okay.

2 COMMISSIONER WILSON: -- said they had
3 not been consulted and suggested that with the report
4 being obtained early by the news media today, the
5 report itself could well be overshadowed in making it
6 -- blah, blah, blah. Okay.

7 Now, one of the two Republican
8 appointees, Russell G. Redenbaugh, said the report's
9 conclusions of discrimination were not supported by
10 the evidence. Mr. Redenbaugh said the early release
11 of the report was intended to further --

12 CHAIRPERSON BERRY: But he said the
13 conclusions were not supported by the evidence.

14 COMMISSIONER REDENBAUGH: I did say that.

15 COMMISSIONER WILSON: And he also said
16 the early release of the report was intended to
17 further the political agenda of the Chairwoman, Mary
18 Frances Berry.

19 CHAIRPERSON BERRY: And on what did you
20 base that? Talking about personal privilege.

21 Commissioner Redenbaugh, what is your
22 evidence that the release of the report was designed
23 to serve? What did you just say? I hadn't even
24 noticed that.

25 COMMISSIONER WILSON: Said the early

1 release of the report was intended to -- let me just
2 finish the sentence for one second. Was intended to
3 further the political agenda of the Chairwoman, Mary
4 Frances Berry, who supported former Vice President Al
5 Gore.

6 CHAIRPERSON BERRY: Now, what is the
7 evidence for that statement, Russell? I had never
8 even noticed that before. What is your evidence for
9 that statement that you impugned me in the press in
10 this way? Based on what facts?

11 COMMISSIONER REDENBAUGH: I am not really
12 prepared to respond to that.

13 CHAIRPERSON BERRY: Okay. Because I
14 hadn't even noticed that before.

15 COMMISSIONER WILSON: Okay. And that --

16 CHAIRPERSON BERRY: Because I don't know
17 what partisan political release of it would be anyway.
18 That just struck me. I'm sorry. I'd better go take
19 a chill pill.

20 (Laughter.)

21 I hadn't even read that part.

22 COMMISSIONER REDENBAUGH: I thought you
23 were more thorough in your reading.

24 CHAIRPERSON BERRY: Oh, okay. Well, go
25 ahead, Vickie.

1 COMMISSIONER WILSON: Okay.

2 CHAIRPERSON BERRY: Are you finished or

3 --

4 COMMISSIONER WILSON: No, I am not.

5 Mr. Redenbaugh said there are a number of
6 people who are so displeased with the outcome of the
7 election that they would do almost anything to cast a
8 cloud over the legitimacy of the election and the
9 legitimacy of this administration.

10 And to quote you once again, "Sometimes
11 people who believe that their cause is the correct one
12 lose sight of the procedural violations and believe
13 that the means they pursue are justified by the
14 goodness of the ends they desire."

15 Now, that whole column -- and I can
16 happily go on and read the other two columns and
17 analyze them -- is set up to make us believe what is
18 -- what anybody reading this would come away thinking.

19 First of all, I don't believe -- I mean, if somebody
20 were to say to me, "How do you think that report got
21 out?" I would have an answer. I definitely would have
22 an answer.

23 CHAIRPERSON BERRY: Now, now, Vickie.

24 COMMISSIONER WILSON: And I --

25 CHAIRPERSON BERRY: Don't you start

1 making statements without evidence.

2 COMMISSIONER WILSON: I said I would have
3 an answer, but I didn't say I'd say it.

4 CHAIRPERSON BERRY: I caution you,
5 Commissioner Wilson.

6 (Laughter.)

7 COMMISSIONER WILSON: I didn't say I
8 would say it.

9 CHAIRPERSON BERRY: Don't make statements
10 without evidence.

11 COMMISSIONER WILSON: And I can go on,
12 but instead of taking up --

13 CHAIRPERSON BERRY: Be respectful of your
14 fellow Commissioners.

15 (Laughter.)

16 COMMISSIONER WILSON: I do respect my
17 fellow Commissioners.

18 CHAIRPERSON BERRY: The people on this
19 side want to get in on this discussion.

20 COMMISSIONER MEEKS: No, I do not want to
21 get in on this discussion.

22 (Laughter.)

23 CHAIRPERSON BERRY: Commissioner Lee?

24 COMMISSIONER LEE: Thank you, Madam
25 Chair. Some of us have to travel a long way to attend

1 these monthly meetings. And I have to say to you
2 today is one of the lowest points of my experience on
3 this Commission.

4 I got to this Commission thinking that we
5 were going to be here to talk about critical civil
6 rights issues affecting this country. This report is
7 a wonderful report, regardless of my being a Democrat,
8 a proud Democrat, but I'm a proud civil rights
9 advocate.

10 And this report points -- only points to
11 what we heard. It did not point to my personal views,
12 your personal view, or anyone -- most of the
13 Commissioners' personal views. And the fact that I
14 have to sit here for the last hour and possibly for
15 the rest of the day talking about personal
16 Commissioners' conduct is very disturbing to me.

17 I was very much looking forward to a very
18 fruitful discussion on our recommendations to Congress
19 on electoral reform, based on what we learned from
20 Florida, based on what we have learned since. And it
21 doesn't seem like we're going to go there.

22 And I also want to put in the record that
23 when my assistant told me about The New York Times
24 article, I was furious. I woke up, I think it was
25 Tuesday or Wednesday morning, to the L.A. Times

1 article. I read the article, and I called the Staff
2 Director and said, "Something is funny here. The L.A.
3 Times is reporting on this report, and I haven't
4 gotten the report."

5 And the Staff Director called me back and
6 mentioned that we were all going to get that report
7 that day or -- that day, because of these -- the zip
8 code for my package was wrong, I got -- I was the last
9 person on this Commission to get the report. I got it
10 one day after most of you did.

11 And I think that we talked about leaks
12 last year. I don't know how we can address the leaks.

13 But what disturbed me was the indication that somehow
14 there is a conspiracy between certain people's view of
15 the majority trying to prevent the two Commissioners
16 of getting the report.

17 And that's why I was furious about The
18 New York Times article. That whether you said it or
19 not, the implication was six people got it first, and
20 two didn't get it. And no one bothered to get the
21 fact that all eight of us did not get it.

22 And I think that I really would prefer
23 not to keep this bickering among us, because I really
24 want to spend my precious time talking about things
25 that I can be proud of serving on this Commission.

1 And one thing that I agree with the Chair -- with the
2 Vice Chair is that all of these memos that were sent,
3 it could be -- it could be interpreted as truth or
4 half-truth. But the bottom line was it was sent with
5 the intent to create an impression that there is a
6 conspiracy against certain people.

7 And when I first got on this Commission,
8 it was a four-four split. And let me assure you, I
9 never felt there was a conspiracy against me, or I was
10 part of any conspiracy. So the very fact that we have
11 to spend this whole day talking about all these things
12 is very, very upsetting.

13 And I just want to hope that we can move
14 once and for all, that if people feel that they have
15 been shortchanged, then they should come right out and
16 say it instead of saying it to -- outside of this
17 Commission. And I hope that we won't spend any more
18 time, so that we can have a discussion on these two
19 projects.

20 CHAIRPERSON BERRY: Commissioner Meeks?

21 COMMISSIONER MEEKS: Well, to begin with,
22 I completely commend and agree with what Commissioner
23 Lee has said. In fact, she summed it up very well,
24 and I won't have to go into all that.

25 You know, I mean, I think it's important

1 that we bring these up. You know, I think we have to
2 move past them, and I think we cannot lose sight of
3 the fact that this really is about the Florida report.

4 And that, you know, in my view it's a balanced
5 report. You know, it said very clearly that we
6 couldn't prove intent or that intent could be found.

7 But, still, there was problems. I think
8 that's the truth that no one can deny. There was an
9 effect from those problems, and on one can deny that.

10 And, thirdly, it said someone has to be held
11 responsible for that.

12 I know in my organization we have
13 programs, and if things go wrong with the programs,
14 even though we have program directors, it's I, the
15 Executive Director, or the Chair and the Vice Chair,
16 that get held responsible. And in my view, this is
17 all this report said.

18 And to make this a Democratic or a
19 Republican issue -- I mean, I've heard comments that
20 said, "Well, you know, it was Democrats that were the
21 election officials." Well, big deal. The fact is
22 people -- I don't care if they were martians. The
23 fact is: people were denied their right to vote --
24 denied that their vote counted, and that's what I'm
25 concerned about.

1 And I think that this report addresses
2 that, and, you know, so I'm I guess -- after the fact
3 -- still endorsing that report, and wishing that we
4 could get back to the recommendations to Congress for
5 national electoral reform, which I think many -- most
6 people that I know are in agreement that there should
7 be national electoral reform.

8 CHAIRPERSON BERRY: Okay. Yes,
9 Commissioner Thernstrom?

10 COMMISSIONER THERNSTROM: I do not
11 believe in conspiracies. I am not accusing anybody of
12 any conspiracy. I don't believe of them in Florida or
13 on this Commission. I'm not a conspiratorial type.

14 And, again, I did not say or imply that
15 the six Commissioners had the report before I did, and
16 I did not comment in The New York Times on the
17 substance. In fact, the reporter says explicitly,
18 "Ms. Thernstrom said she could not comment on the
19 substance of the report, because she had not seen it."

20 Now, if we are going to, Madam Chair, I
21 would welcome putting the record of the memos, putting
22 into our official record the chronology of the memos,
23 and I would like to, of course, have -- be able to
24 explain my account and the reason that I made the
25 statements that I did, and my understanding of that

1 chronology.

2 I agree that this is really a pity.

3 CHAIRPERSON BERRY: Why don't you do
4 that, Commissioner Thernstrom.

5 COMMISSIONER THERNSTROM: Okay. I would
6 be delighted to. And I agree that this is --

7 CHAIRPERSON BERRY: No. Why don't you
8 say now why you --

9 COMMISSIONER THERNSTROM: Because I want
10 to have all of them in front of me and the exact
11 dates.

12 CHAIRPERSON BERRY: Well, why don't you
13 do it at the next meeting then.

14 COMMISSIONER THERNSTROM: That is just
15 fine. I'd be delighted to do that at the September
16 meeting.

17 CHAIRPERSON BERRY: Now, we have to
18 discuss a legal problem that we have with the dissent.

19 There is a statute, which the staff will -- the Staff
20 Director and the General Counsel pointed out to us
21 that we have a legal problem. There is a statute of
22 the Commission which everybody is supposed to know the
23 statute. It's in the briefing book you were given.

24 And if I could find the right section of
25 it, because we've discussed it before -- where is it?

1 Somebody? The statute states that the Commission
2 shall not accept or use the services of voluntary or
3 uncompensated persons. This limitation shall apply
4 with respect to services of members of the Commission.

5 COMMISSIONER REDENBAUGH: Madam Chair?
6 Would you start that again, please?

7 CHAIRPERSON BERRY: Okay. It says,
8 "Voluntary or uncompensated personnel. The Commission
9 shall not accept or use the services of voluntary or
10 uncompensated persons. This limitation shall apply
11 with respect to services of members of the Commission,
12 as it does with respect to services by other persons."

13 The staff tells me -- and if I get this
14 wrong, tell me I'm wrong -- that there is another
15 statute that permits us to have interns, which is why
16 we can have these interns running around here, who
17 don't get paid apparently.

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

20 CHAIRPERSON BERRY: But that the
21 Commission shall not accept or use the services of
22 voluntary or uncompensated persons, which, as I
23 understand it, means that the dissent, which contains
24 statements and information and a report attendant by
25 an uncompensated person, could not legally be

1 published in the Commission report. Is that right,
2 counsel?

3 MR. HAILES: Yes.

4 CHAIRPERSON BERRY: So the question for
5 the Commission is: what would the Commission like to
6 do about this? Yes, Commissioner Redenbaugh?

7 COMMISSIONER REDENBAUGH: I don't read
8 the statute quite that way. Is there any case law on
9 this?

10 CHAIRPERSON BERRY: I don't know. All I
11 know is that -- and I'll let counsel answer in a
12 minute. In the years that I've been on the
13 Commission, I hadn't even thought about this, but
14 years ago I was told quite summarily that I could not
15 permit someone who I knew was an expert to help me in
16 writing something, because that person had not been
17 hired by the staff, and that I couldn't hire anybody
18 except my special assistant, and that the Commission
19 legally -- I could do whatever I wanted, but the
20 Commission could not use such services, which meant
21 that the Commission would not be able to put in any of
22 its materials anything that I got as a result of that.
23 I do know that, and that's in the Commission's
24 records.

25 COMMISSIONER REDENBAUGH: But you may

1 have been told that inaccurately.

2 CHAIRPERSON BERRY: I may have been told
3 that inaccurately.

4 Counsel, do you want to comment?

5 MR. HAILES: Commissioner Redenbaugh, I
6 haven't been asked to look for any case law. In fact,
7 I'm not real certain of all of the facts, in terms of
8 the extent to which uncompensated voluntary persons
9 were used in connection with the preparation of the
10 dissent.

11 I do know that the language, both in our
12 statute and the administrative instructions of the
13 Commission, plainly, clearly, directly prohibit the
14 use of voluntary and uncompensated personnel. In
15 fact, that has been in our statute since the
16 Commission began in 1957.

17 There is very clear legislative history
18 where members of Congress pointed out that it would be
19 a travesty to allow persons to work on behalf of the
20 Commission or Commissioners, and that it was clearly
21 outlawed, not only for the Commission but there is
22 government-wide prohibitions on the use of voluntary
23 and uncompensated services. The emphasis is on
24 services.

25 CHAIRPERSON BERRY: Yes, Commissioner

1 Redenbaugh? You had your hand up?

2 COMMISSIONER REDENBAUGH: Yes. No, I
3 understand it is government-wide, the anti-deficiency
4 statutes. That's why I think there must be case law
5 on this point, because I think it's -- it's clear in
6 the way I read the statute that it would restrict the
7 Commission from having volunteers, except in the
8 exceptions that you noted with interns and SAC
9 members.

10 MR. HAILES: Yes. I have -- I'm sorry.

11 COMMISSIONER REDENBAUGH: But it's not
12 clear that that would apply in this case -- it's not
13 clear to me -- to the preparation of a dissent, which
14 is a Commissioner's statement. It seems that it's
15 ambiguous.

16 CHAIRPERSON BERRY: Why would it not
17 apply to the Commission's use of the services by
18 publishing this material, as I was told, in a
19 Commission report, which is a report of the
20 Commission? It's not a thing that belongs to an
21 individual Commissioner. Once it's published in the
22 Commission report, it becomes the work of the
23 Commission.

24 COMMISSIONER REDENBAUGH: I understand.
25 I'm not prepared to make the case. I'm only saying

1 that I think it's very ambiguous, and I'd like to see
2 case law on this.

3 CHAIRPERSON BERRY: Commissioner
4 Thernstrom?

5 COMMISSIONER THERNSTROM: I mean, here
6 we're really raising the question of whether
7 Commissioners can consult with experts. And it was my
8 understanding beforehand that Commissioners consulted
9 with experts all the time, as they should do if we are
10 on a search for truth at this Commission.

11 There are often issues that experts know
12 more about than we do, and we legitimately turn to
13 them. So it seems to me this is questionable, both on
14 that ground and on the ground that if we are committed
15 as a body to having the kind of vigorous debate and,
16 you know, laying our views, exploring the issues,
17 etcetera, laying our views on the table, exploring the
18 issues in a rigorous manner, that we want people to
19 simply -- to ask experts -- in this case, I asked an
20 expert to look at data, get -- you know, did the
21 Commission pay every expert that it cites in its
22 report?

23 I mean, you know, I just -- I don't think
24 we want to go down this road, because I think we're on
25 a search for truth.

1 CHAIRPERSON BERRY: The answer is yes,
2 the Commission did.

3 Yes, Commissioner Edley?

4 COMMISSIONER EDLEY: I have some sympathy
5 with -- excuse my voice. I have some sympathy with
6 what Commissioner Thernstrom just said, but it does
7 seem to me to be important to draw a distinction
8 between my getting on the phone and calling some
9 expert or having a meeting with some expert, or,
10 indeed, my opening up my mail and getting a paper that
11 somebody has prepared independently and not solicited
12 by me, that bears on what the Commission is
13 considering.

14 Versus on the other hand my going even to
15 my own staff at Harvard and saying, "I'd like you to
16 do an analysis of X, Y, and Z, and produce a research
17 document for me that I will then use and incorporate
18 into the official work of the Commission."

19 Maybe it's a matter of degree, but it
20 does strike me that -- would I be interested in any
21 case law that -- that asking Dr. Lott to analyze data
22 and produce a study, if it was uncompensated, and so
23 forth, violates the plain letter of the statute and is
24 quite problematic.

25 Let me just say two more things. One is

1 that, as an academic, I find this provision somewhat
2 bizarre. I mean, it strikes me as nuts that I'm not
3 able to take advantage of the various resources
4 available to me as a professor at Harvard. But on
5 reflection, I can see why Congress might have wanted
6 it to be the case.

7 There is, as Commissioner Redenbaugh
8 observed, the general policies reflected in the Anti-
9 Deficiency Act -- namely, Congress, through the
10 appropriations process, has an interest in
11 constraining, calibrating, the level of activity and
12 energy and effort, and so forth, of this Commission.

13 But I think, more importantly, there is
14 an ideological issue. As I understand, the
15 legislative history has been tutored by our General
16 Counsel on this. Congress was a little bit concerned
17 that members of the Commission would go out and rally
18 masses of resources on one of the other ideological
19 side of the great debates on civil rights, and that
20 all of that work would come into the Commission's
21 deliberations unfiltered by the ethical and quality
22 constraints that are imposed by statute and
23 regulations on the operations of the Commission staff.

24 We don't have, for example, financial
25 disclosure information from Dr. Lott. But we do have

1 that from Professor Lichtman, because he was hired as
2 a temporary employee. We don't know anything about
3 his bona fides. And I don't mean to cast aspersions
4 on him.

5 I'm just saying that in the abstract I
6 can see the prophylactic reasons for wanting to ensure
7 that people like me not be able to -- not be left to
8 our own devices to augment the resources appropriated
9 by Congress in order to help me to proceed to do my
10 job.

11 Again, I want to underscore that I find
12 it very uncomfortable, because I would like to be able
13 to take advantage of these other resources, and I feel
14 somewhat constrained in not being able to do so.

15 I guess the last -- third and final point
16 I want to make here is that if, indeed, it does
17 violate the statute, I am at a bit of a quandary as to
18 how to proceed. I mean, I wonder if we do have, as a
19 formal legal matter -- can we just wink at this and
20 say, "Well, you know, it's a misdemeanor, and, you
21 know, we'll just accept it this time," and go forward?

22 Or would that basically implicate all of us in the
23 violation of the statute and get us into trouble with
24 the oversight committees?

25 CHAIRPERSON BERRY: Probably not in the

1 House.

2 (Laughter.)

3 Perhaps in the Senate.

4 Yes? Are you -- go ahead and finish,
5 Christopher.

6 COMMISSIONER EDLEY: No, I am done, and I
7 -- well, let me just draw a dotted line, if I may,
8 back to what Cruz said in terms of this panel of
9 retired judges or retired whomevers. If we were going
10 to -- and I have some sympathy with that idea. You
11 know, less to conduct a witch hunt than to perhaps
12 advise the Commission on how it might operate more
13 constructively.

14 If we do go down that route, I think it
15 would be interesting to get some advice from some wise
16 outside people about whether we should revisit this
17 issue of the resources that are available to people
18 who have a mind to dissent from a direction which a
19 majority of the Commission, or the Commission staff,
20 is headed.

21 I don't know how Mary survived all those
22 years being consistently outvoted six to two. I don't
23 have that particular kind of stamina, I think. But if
24 I were in that position, and did feel that I was
25 unable to really discharge my responsibilities

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1 effectively, I think it would be a serious problem.

2 So maybe it all bears reexamination. I
3 don't know.

4 CHAIRPERSON BERRY: Commissioner Edley --
5 and then I'll recognize others -- everything that you
6 have said -- I'm trying to be polite in this -- seems
7 to have been stated --

8 COMMISSIONER EDLEY: Please.

9 CHAIRPERSON BERRY: -- with complete --
10 being completely oblivious to everything I said about
11 how the Commission has operated and is supposed to
12 operate under the law. Maybe I didn't understand what
13 you said.

14 COMMISSIONER EDLEY: No, you didn't. I
15 understood everything that you said, Madam Chairman.
16 All I'm saying is --

17 CHAIRPERSON BERRY: Maybe we should
18 change it.

19 COMMISSIONER EDLEY: Exactly. That just
20 because it's been done that way in the past, and I
21 respect that it's been done that way in the past, and
22 I -- and I absolutely understand that, for example,
23 Commissioners Thernstrom and Redenbaugh had it
24 available to them, the option of meeting with the
25 Staff Director while the Florida report was being

1 conducted.

2 As, for example, I met with the staff --
3 at your suggestion, I met with the staff in connection
4 with one or two of the statutory reports that were
5 going on, because I have concerns about what
6 methodology would be used, and I had a chance to offer
7 my advice, and so forth. And that was -- so I have
8 availed myself of precisely the process you described.

9 All I'm saying is that if we -- I -- it
10 -- particularly because the resources of the
11 Commission have been so limited --

12 CHAIRPERSON BERRY: Right. Christopher,
13 maybe it would be helpful for me to tell you what I
14 meant, and then I'll --

15 COMMISSIONER EDLEY: Okay.

16 CHAIRPERSON BERRY: -- I will recognize
17 others, but this is important. And I realize,
18 Commissioner Lee, that all of this procedural matter
19 is a problem, but we have to discuss this. I'm sorry.

20 If we imagine that -- now you are
21 imagining in the remarks that are being made a
22 situation where there's a permanent six-two majority-
23 minority on every issue, okay -- and, therefore, you
24 could allocate resources somehow and you could do
25 that, or you could allocate the staff, divide it up,

1 and give each Commissioner so many staff members.

2 First of all, you should think about what
3 that would mean in terms of a study commission and
4 trying to do its work. And, secondly, does one want
5 to -- even if -- we could propose this as a change in
6 the statute. Do we want to have a situation where
7 each individual Commissioner writes a report or writes
8 whatever they're going to write, and then you bring it
9 in and try to meld it together, or not?

10 So one has to think about that. I mean,
11 even beyond the legalities of the situation. And I
12 accept that I was Director of Resources, in a sense,
13 not Director of Resources, it's just that they didn't
14 agree with me. That's what it fundamentally comes
15 down to.

16 If someone doesn't agree with you, and
17 you've had a chance to explain your position, say what
18 you have to say, whether it's a method or not, and you
19 lose, do you accept the fact that you lost, comment on
20 whatever you think, or do you think it's your duty to
21 go out and write a whole new report, which you can
22 then proffer, to show that here is how it really
23 should have been done?

24 And it really means it's a matter of
25 style. It's never been done before in the history of

1 the Commission, that we've had people asserting that.

2 I mean, not that it's never been done. Doesn't mean
3 it could be done.

4 I also think that on the question of the
5 law this seems to me to be a clear -- it's not that
6 this law is complicated or ambiguous. In particular,
7 on the matter of the Commission, and if you -- on the
8 matter of what individual Commissioners do, one may
9 argue that they can do whatever they want.

10 But it is clear that the Commission is
11 not supposed to use the services of -- and the
12 Commission is, by definition, whatever -- the entity
13 of the Commission, which means a report is a report of
14 the Commission. It's not a report of a Commissioner.

15 So that -- I don't care what any case
16 said about something else. There are no cases about
17 the Commission itself. We know what all of the cases
18 are in the federal courts that the Commission was
19 involved in. We can name them. And there is no case
20 about this as it concerns the Commission.

21 As it concerns this Commission, a report
22 of the Commission cannot use the services of voluntary
23 or uncompensated persons, in my opinion.

24 COMMISSIONER EDLEY: May I ask a
25 clarification?

1 CHAIRPERSON BERRY: Yes.

2 COMMISSIONER EDLEY: Just a clarification
3 -- if I can use Abigail and Dr. Lott here. So, where
4 do you draw the line? There is -- I understand that
5 the Commission can't now publish --

6 CHAIRPERSON BERRY: Right.

7 COMMISSIONER EDLEY: -- Dr. Lott's
8 analysis, even as an appendix to the -- okay. That
9 position I -- there's a middle position, which is
10 publishing a dissent that makes reference to a report
11 but does not incorporate the report. You know, it
12 cites a report that is on some website somewhere.

13 CHAIRPERSON BERRY: Right.

14 COMMISSIONER EDLEY: There's a second
15 position.

16 CHAIRPERSON BERRY: Right.

17 COMMISSIONER EDLEY: And there's a third
18 position that says the dissent can't even reference a
19 report that the dissenters procured without
20 compensation. Are you saying the third thing or the
21 second --

22 CHAIRPERSON BERRY: I'm saying that if
23 the dissenters ask for, procured, the services of
24 someone -- uncompensated and voluntary -- and said so
25 in the statement, "I procured the services to produce

1 this." Then, the Commission, in my view, could not
2 include that in the Commission report with that
3 language in there, because the language quite clearly
4 says that the -- it goes to the whole Commission, not
5 just -- because it's part of the Commission report.
6 It's printed by the Commission. It's put out by the
7 Commission.

8 I think that the better part of valor
9 would be the second thing you said, which is that the
10 person referred to a report, whether they asked
11 somebody to do it or not, that cited someplace, and
12 analyzed whatever they did.

13 I don't see that the Commission would be
14 implicated if that happened, but I do think the
15 Commission would be implicated as a body if we
16 published something that says in our printed material,
17 that we printed and paid for, that this person did
18 this, and that a Commissioner asked them to do it, and
19 we are, therefore, approving it.

20 Although the Commission may decide
21 whatever it wants about these subjects. I think that
22 even though the law is clear, if the Commissioners
23 wish to vote to say, "We ought to include it anyway,
24 and forget it," the Commissioners can vote to do that.

25 If the Commissioners vote to say, "We should ask that

1 it be sanitized so that the offending language is
2 removed," cite it to something else, the Commissioners
3 can do that.

4 The Commission can do whatever it wants,
5 because the Commission can interpret its own powers.
6 But I think that as far as the law is concerned it is
7 pretty clear.

8 Yes, Commissioner Redenbaugh?

9 COMMISSIONER REDENBAUGH: Thank you.

10 Three points I would make. One, I
11 realize now that I have violated the 57 statute, at
12 least the letter of it, as now interpreted here,
13 repeatedly. And I suspect other Commissioners may
14 have done that as well, because I have repeatedly --
15 because my assistant is here in Washington, and I'm in
16 Philadelphia. My Philadelphia staff was not
17 compensated by the Commission, handles correspondence
18 and communication and reading and lots of things that
19 would clearly violate the letter of the statute.

20 And I suspect that any of you who, from
21 time to time don't have special assistants, and whose
22 staff support your Commission work, are in violation
23 of this. That may not be the case.

24 CHAIRPERSON BERRY: Well, I don't think
25 so. I think you have misinterpreted what was said.

1 COMMISSIONER REDENBAUGH: Oh, okay.

2 CHAIRPERSON BERRY: What was said was
3 that the Commissioners can do whatever they want. But
4 when it -- from reading this statute --

5 COMMISSIONER REDENBAUGH: All right.

6 CHAIRPERSON BERRY: -- unless there are
7 some other things somewhere. But the Commission, the
8 body of the entity of the Commission, there are
9 certain things that it cannot do. So that the
10 Commission, when it publishes a report that says the
11 "United States Commission on Civil Rights Report on
12 X," that's the Commission acting.

13 COMMISSIONER REDENBAUGH: Right.

14 CHAIRPERSON BERRY: That's not any
15 individual Commissioner doing anything.

16 As to whether what you described violates
17 it or not, I never thought that it did and don't know
18 whether it does, but that's not what this says.

19 COMMISSIONER REDENBAUGH: All right.
20 Well, my second point is that the Commission's Florida
21 report relies very heavily on the statistical analysis
22 done by Dr. Lichtman for I think what is -- is the
23 important point in conclusion.

24 The statistical methods used by the
25 doctor are beyond the capabilities of the average

1 person and probably beyond the capabilities of --
2 certainly beyond the capabilities to understand of
3 this Commissioner. I think in order to make an
4 appropriate response to the statistics and the
5 methodology used, we would -- Dr. Thernstrom and I had
6 to have some expert advice.

7 Now we come to the more difficult
8 question. Our principal concern about -- well, my
9 principal concern about the report, I'll speak for
10 myself, goes to the question of the statistical
11 methodology. If we can't use our expert, we can't
12 make an effective response.

13 CHAIRPERSON BERRY: First of all,
14 Russell, think about this. What if you and
15 Commissioner Thernstrom had gone to see the Staff
16 Director as this process was going on and said, "How
17 are you doing this report? Give us a briefing." And
18 they said, "We're doing X, Y, and Z, and we're going
19 to do a thing on statistics, and we're going to have
20 an expert," and you asked who it was.

21 You would have been told by them, I'm
22 sure, and you had said, well, you know, either I don't
23 like that, I do like that, or I want to know more
24 about that, or have this expert explain it to me, or I
25 want to come to some more meetings and get briefed as

1 we go along, I want my assistant to, or whatever you
2 wanted --

3 COMMISSIONER REDENBAUGH: Yes.

4 CHAIRPERSON BERRY: -- you would have had
5 a shot at -- even you could have suggested to them
6 that I think you ought to, Staff Director, hire X
7 person, along with Y person, to do this. You would
8 have had a shot at making all of those suggestions as
9 the report went along. It's not that you are
10 completely disabled from doing anything.

11 COMMISSIONER REDENBAUGH: You know, I
12 think that's right.

13 CHAIRPERSON BERRY: So that, by the end,
14 you wouldn't have even had a question about whether
15 you liked it, didn't like it, or wanted to do
16 something with it.

17 COMMISSIONER REDENBAUGH: You know,
18 you're right, I didn't do any of that. But I suspect,
19 had I, that I wouldn't have the -- wouldn't have
20 discovered the concern that I now have, because I
21 don't know enough about ecological regressions to have
22 understand what I should have been worried about until
23 we got to the end of the process, which is where we
24 got when I --

25 CHAIRPERSON BERRY: Which would mean,

1 then, that if we were to say that this was okay to do,
2 and put it in a report, every Commissioner could get
3 uncompensated services of folks to do work on every
4 report we have for their statement that they wanted to
5 make about it, and include whatever report they got
6 from them in the report.

7 COMMISSIONER REDENBAUGH: Well, here's
8 the concern I've got in this case. That through this
9 whole process it's been my feeling that it's been very
10 difficult for the point of view that I have, or for me
11 to be involved in the process. We couldn't get the
12 witness list in Florida until an hour before the
13 hearing.

14 There was a big issue of -- Commissioner
15 Thernstrom and I were not -- somebody didn't want us
16 to sit together, didn't want to rearrange the podium
17 to accommodate, so there's this whole pattern -- you
18 know, my memos asking when is this thing going to be
19 given to us, went unresponded to.

20 So I really feel like, yes, I could have
21 done all of those things, and that would come down to
22 where an important aspect of the dissent we're making
23 can't be included because of the statute. So I'm
24 concerned about that.

25 Why don't we -- could we hire Dr. Lott

1 for a dollar?

2 CHAIRPERSON BERRY: Before I have
3 somebody answer that, let me just respond to the
4 complaints you've made. First of all, none of you
5 ever said to me that you were having any problem with
6 the staff on any of those issues you just raised. As
7 far as the seating arrangement was concerned, it was
8 changed.

9 COMMISSIONER REDENBAUGH: That's correct.

10 CHAIRPERSON BERRY: And as far as the
11 timing on getting the report, we discussed that here
12 in a Commission meeting. There was a transcript. But
13 I have not had one conversation with either of you or
14 any -- any of you about complaints with the staff not
15 doing X, Y, and Z, since this process started.

16 And here in the Commission meetings there
17 have not been a discussion about the staff not doing
18 X, Y, and Z, which is an opportunity every
19 Commissioner has to say, "Look, I'm having trouble
20 with the staff."

21 I don't want to delay this too much. The
22 Commissioners need to decide what we wish to do about
23 this, and so we can, in fact, talk about national
24 recommendations and Terrie's statutory report.

25 COMMISSIONER EDLEY: Who had the dollar

1 idea, to hire Lott?

2 VICE CHAIRPERSON REYNOSO: Madam Chair,
3 these matters may seem complicated, but I think I've
4 had more than my share of experience in reading
5 statutes, and I think the statute is clear. This
6 report is illegal and should not be published by this
7 Commission. That's my opinion.

8 I have other opinions about the dissent,
9 which I will express in a couple of minutes. But in
10 terms of whether or not this can be published,
11 further, we do have practices -- and, frankly, I'm
12 taken aback that Commissioner Redenbaugh would join in
13 this separate statement, because he knows the
14 practices of this Commission.

15 I would suggest that the last 10 separate
16 statements, going back as far as one can go, be looked
17 at by those filing a separate statement and comport to
18 that. He knows the practices. Practices of a
19 commission are important. This is asking us to change
20 completely our procedures.

21 If we're going to change our procedures,
22 we ought to talk about it, we ought to discuss it, and
23 then we ought to change it for the future, not
24 retroactively. I consider this an outrage.

25 CHAIRPERSON BERRY: Counsel, were you

1 trying to tell us something?

2 MR. HAILES: Well, just directly in
3 response to Commissioner Redenbaugh's last question
4 about the hiring of Dr. Lott. There are very specific
5 procedures to follow that are outlined in our AIs, and
6 there are forms to be filled out, ethical
7 considerations.

8 And there is actually a baseline salary
9 that is paid to a person who qualifies as an expert,
10 and it would, I'm sure, the amount of time that he
11 probably spent in preparing this, exceed the dollar
12 amount.

13 CHAIRPERSON BERRY: Who determines the
14 qualifications of the expert?

15 MR. HAILES: It's a --

16 CHAIRPERSON BERRY: The staff or --

17 MR. HAILES: It is a staff decision.

18 CHAIRPERSON BERRY: Yes, Commissioner
19 Wilson?

20 COMMISSIONER WILSON: Thank you, Madam
21 Chair. Just a couple of comments. It seems to me
22 that the thinking behind all of this, it was quite
23 interesting. And it seems to me that one of the ideas
24 was when Commissioner Thernstrom referred to this
25 earlier, I think that was very -- a hint. And that

1 was that in the first report these people struggled to
2 come to a consensus.

3 And it seems to me that the idea of the
4 Commission is not that everybody agrees with
5 everybody, but that we act as a body. The whole
6 Commission is set up as -- to act as a company and not
7 with individuals.

8 But I can understand, and, in fact, I
9 support the thinking of this present law or statute,
10 because, I mean, you know, as associate publisher at
11 Alfred Knopf, you -- for instance, Commissioner Edley
12 could call upon people at Harvard, whoever -- I mean,
13 I could call upon an entire -- as they say, the finest
14 minds of the world, not just of our country, because
15 Knopf is probably the best publishing house in the
16 country and --

17 CHAIRPERSON BERRY: You're not biased,
18 are you?

19 COMMISSIONER WILSON: No, I'm not at all
20 biased.

21 (Laughter.)

22 And, certainly, the people who are on
23 that list are experts in their field, wide-ranging
24 experts, who are not just experts in their field but
25 they are highly accomplished thinkers. And I could

1 easily and would be delighted to call upon many of
2 them.

3 But I think that the -- I mean, the
4 thinking is that in terms of even the staff having to
5 decide who is qualified -- again, it's really -- it's
6 a decision. It's not about individual decisions.
7 It's about the larger group.

8 And I just want to finish, and then I
9 will be quiet. And the point is once -- and so that
10 if somebody comes with an expert, the fact that that
11 expert even has to come out in the open and be decided
12 upon by the staff is part of this rigorous process,
13 which I think is very valuable.

14 And then, more to the point, if we were
15 all to get experts, whether you're in the majority or
16 the minority, what do we do with all of these experts
17 and their opinions? We've got eight different
18 experts, assuming that nobody will agree with anybody
19 else, and so then where are we? We're nowhere,
20 because the point is for it to come back on us.

21 CHAIRPERSON BERRY: And I have tried to
22 get this Commission to sit here and go over reports
23 page by page, line by line, to reach consensus on
24 what's on the pages, and no one has the patience,
25 except me, to sit here and do it.

1 Yes, Vice Chair?

2 VICE CHAIRPERSON REYNOSO: Madam Chair,
3 I'd like to make a motion.

4 CHAIRPERSON BERRY: All right.

5 VICE CHAIRPERSON REYNOSO: Before making
6 the motion, I would like to add some comments on the
7 dissent. I had not read what was designated as a
8 dissent, but which should be designated as a separate
9 statement by Commissioner Abigail Thernstrom and
10 Commissioner Russell G. Redenbaugh.

11 My statement is that I find this dissent
12 insulting to me personally, to the Commissioners, and
13 to the staff, including Dr. Lichtman. I find it
14 unprofessional in tone and replete with falsehoods.

15 I refer particularly to the first two
16 pages of the report, which is somewhat of an
17 introduction, entitled the Unfair and Politicized
18 Attacks Against Florida Public Officials and
19 particularly to Section 8 referring to procedural
20 irregularities of the U.S. Commission of Civil Rights.

21 I think, perhaps, I don't know whether
22 legally or not, that I have been defamed and degraded
23 by this separate statement. My motion is the
24 following, that this separate statement not be
25 published by this Commission, that those wanting to

1 write separate statements review the last 10 or dozen
2 separate statements and write a separate statement in
3 conformity with the practices of this Commission.

4 CHAIRPERSON BERRY: Your motion needs a
5 second if we're going to discuss it.

6 COMMISSIONER LEE: Second.

7 CHAIRPERSON BERRY: And we'll open it for
8 discussion, but I will tell you and I know that I
9 upset you, our Vice Chair, and I am upset that if this
10 motion is approved it will fall into a trap set by the
11 dissenters. They will characterize it as suppressing
12 their freedom of expression, that they had all these
13 wonderfully important things to say in the dissent
14 which never got out, which would be a lie because it's
15 been on the website and has been talked about and
16 dissented, but that would not keep them from saying
17 so, even if it were a lie. And they would, I am
18 telling you what I think will happen based on
19 experience, and that you will be characterized as
20 someone who hates the first amendment and is trying to
21 keep Commissioners who have valid things to say about
22 the Florida Report and how deficient it is from being
23 able to say them, even though, as you point out, Vice
24 Chair, the pages you refer to, the one that talks
25 about how badly we treated Governor Bush when the

1 Commissioner knows that, in fact, Governor Bush
2 couldn't meet, couldn't come and cut off his time to
3 come and agreed -- they agreed that he wouldn't make
4 an opening statement makes it sound like we decided to
5 do that.

6 Other such matters that I won't go into,
7 but I am warning you that should this motion pass, it
8 will be characterized in the press as not an effort
9 for us to try to follow procedures or in light of what
10 we've done here at the Commission and how we want to
11 behave in the future toward each other and what's
12 clear and just and right and legal, but that somehow
13 these people had important things to say that are
14 being suppressed on first amendment grounds. That
15 will be the response.

16 VICE CHAIRPERSON REYNOSO: Madam Chair,
17 I've been on several Study Commissions as this is. I
18 think I know the process. I think I know why the
19 practices of this Commission have arisen the way they
20 have. This is a complete departure from that
21 tradition. I think Commissioner Redenbaugh knows
22 that. I'd like to hear from him, why he went along
23 with this. And to have us accept this separate
24 statement which violates other practices of this
25 Commission, violates the law, a time comes when I

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1 think we've got to do the right thing, no matter how
2 it's represented to the press. That's my motion.

3 CHAIRPERSON BERRY: Yes, Commissioner
4 Redenbaugh, you had your hand up.

5 COMMISSIONER REDENBAUGH: Cruz, I'm not
6 going to respond specifically to your question at this
7 time.

8 VICE CHAIRPERSON REYNOSO: I'd like to
9 have you respond, Russell. I agree with Commissioner
10 Lee, that this is the lowest experience that I've had
11 on this Commission and I'd like to set the ground
12 rules for the future. That's why I've brought these
13 matters up. So I'd like to have you respond.

14 COMMISSIONER REDENBAUGH: I don't think
15 that my responding in this meeting would set the
16 ground rules for the future and I share your view that
17 this is the lowest point in my history on the
18 Commission as well.

19 Bur Cruz, I wanted to say something that
20 actually is in support of your motion in a rather
21 narrow way and that is I don't see any first amendment
22 issue in your motion. The Commission certainly has
23 the right to determine what it will publish and
24 there's no absolute right that I see, for any
25 Commissioner to have his views published by the

1 Commission or not published by the Commission. So I
2 won't be making any claim of first amendment
3 infringement.

4 CHAIRPERSON BERRY: Does anyone want to
5 speak to this motion or should we just vote on it?

6 Yes, Commissioner Lee?

7 COMMISSIONER LEE: I don't think the Vice
8 Chair was suggesting that we would suppress anyone's
9 view by his motion. My understanding is that he wants
10 to make sure that his conforms with the law and the
11 practices of this Commission. And former Commissioner
12 Higgenbottom was sitting right here in this chair
13 arguing eloquently for three or four hours one time
14 trying to change some procedures and his motion was
15 voted down because it was the view of the Commission
16 at that time for the Commissioners that they did not
17 want to divert from the normal practices of the
18 Commission.

19 So I'm not afraid to vote for this motion
20 because people may accuse us of trying to suppress
21 because that's not the issue. The issue is this in
22 conformance with current practices and does it comply
23 with our statutory requirement. And he's not saying
24 we're going to reject this. All he's saying is my
25 understanding is conform this dissent in accordance to

1 all the other dissents that's been submitted and
2 published. So I just think that we should just go for
3 the vote and go from there.

4 CHAIRPERSON BERRY: Commissioner
5 Thernstrom.

6 COMMISSIONER THERNSTROM: I did not write
7 a whole new report. I wrote a dissent. I'd be very
8 interested in the Vice Chair or anybody else's
9 definition of what a dissent is because that's all I
10 wrote.

11 Now you take it from here. You don't
12 want to publish my dissent, don't publish it.

13 CHAIRPERSON BERRY: Commissioner Edley?

14 COMMISSIONER EDLEY: I am not going to
15 vote for the motion. I would vote for a motion that
16 would defer publication until such time as the General
17 Counsel indicates that the dissent is in conformity
18 with the statute. But I am uncomfortable saying that
19 dissents as to form have to track some general
20 unspecific characterization of the tradition of
21 dissents.

22 I think that if I want to write a dissent
23 that's a paragraph, it should be published by the
24 Commission. I think if I want to write a dissent
25 that's 50 pages, it should be published by the

1 Commission. I think I was appointed to the Commission
2 to give voice to my considered view of matters and I
3 shouldn't be censured. It doesn't have to do with the
4 first amendment. I think it has to do with our
5 statutory responsibilities to each other.

6 And so I guess I would oppose the motion
7 as currently framed, but if it is defeated, as I hope
8 it will be, I would offer a motion saying that
9 publication should be deferred until the General
10 Counsel agrees that it or a revision of it is
11 consistent with the statute.

12 CHAIRPERSON BERRY: Would the maker of
13 the motion accept, and the seconder, accept the
14 modification of the motion to conform with what Edley
15 said because if it were determined that it, at some
16 point, in some form met the legal requirement, then I
17 don't think the Vice Chair would have the concerns
18 that he had. It is that in the present form it does
19 not conform with the legal requirements, because I
20 too, believe that so long as you conform with the
21 legal requirements, one might effusively write or in
22 short order write and one may choose all kinds of
23 literary ways in which to do it, but so long as
24 there's no statutory violation, although practice may
25 be somewhat entrenched upon, that that may be

1 someone's style.

2 So would the Vice Chair be willing to
3 accept a modification in the motion that would be
4 along the lines that Edley stated?

5 VICE CHAIRPERSON REYNOSO: No.

6 CHAIRPERSON BERRY: The Vice Chair says
7 no.

8 VICE CHAIRPERSON REYNOSO: Let me explain
9 why.

10 CHAIRPERSON BERRY: Please do.

11 VICE CHAIRPERSON REYNOSO: This will be a
12 change in our practices. I think it would be an
13 important change. I think the change will take place
14 and I actually agree with the motion, except that I
15 think the change should take place after we have a
16 full discussion about that change because this would
17 mean, according to this modification, that one could
18 have a 200-page dissent which I characterize as a
19 separate statement, that would all go into the report.

20 I don't think that's the way the Commission has done
21 it in the past. The Commission in the past has
22 accepted a two or three or four or five page statement
23 by -- a separate statement saying I think there's a
24 weakness here, I suggest this, etcetera, etcetera.
25 That's my recollection. I think that comports with

1 the spirit of the statute. If we're going to have now
2 a policy that says a Commissioner can write anything
3 that he or she wants where they are not dependent on a
4 third party scholar to help them, but they can refer
5 to anything, they can do anything they want, I think
6 that's a very serious change in our procedure and it
7 happens that I probably would be in favor of that. I
8 think I'd put a limit on it of say 50 pages, but I
9 think it's a very serious procedural change in the way
10 this Commission functions since the day it was
11 founded. I may be in favor of it after we discuss it
12 fully, but I believe it's unwise in a motion to make
13 such a drastic change without further discussion.

14 CHAIRPERSON BERRY: Edley?

15 COMMISSIONER EDLEY: Is this procedure a
16 custom that you describe codified anywhere?

17 CHAIRPERSON BERRY: No.

18 VICE CHAIRPERSON REYNOSO: Not that I
19 know of.

20 COMMISSIONER EDLEY: So it's common law?

21 VICE CHAIRPERSON REYNOSO: Yes.

22 COMMISSIONER EDLEY: If it's common law,
23 then we ought to be allowed to on a case by case basis
24 let the practice evolve.

25 VICE CHAIRPERSON REYNOSO: I agree, but

1 it ought to be done with discussion.

2 COMMISSIONER EDLEY: This is a
3 discussion.

4 CHAIRPERSON BERRY: No.

5 COMMISSIONER EDLEY: I think, in other
6 words, what I'm saying is the objection that I
7 obviously object to some of the tone in the dissent.
8 I agree with you on that. But I don't believe it's
9 appropriate for the Commission as a body to censor the
10 intemperate comments of a dissenter. I think that's
11 on them and let the public judge whether they think
12 it's appropriate, any more than I think it would have
13 been appropriate for somebody to want to make
14 revisions to the transcript of the Chairwoman's
15 comments about some witness in Florida. So let's put
16 that to one side.

17 I don't object to the length of the
18 dissent because after all, the report is long and it's
19 a complicated problem and there are lots of issues. I
20 don't object to the dissent containing analysis except
21 insofar as it may have violated the law. But if it
22 didn't violate the law, then I don't see a reason to
23 prevent it from being published, admitting that it is
24 a departure from the past. But again, since it seems
25 the past procedure is not codified, then it seems to

1 me this is more in the nature of case by case common
2 law jurisdiction with which the Vice Chair is
3 thoroughly familiar and I guess I wouldn't -- it
4 doesn't seem to me there is, in principle, a problem
5 of amending our practice by accepting the dissenting
6 provided it conforms with law, which by the way I
7 don't think it does. But if I did --

8 CHAIRPERSON BERRY: You don't think what
9 does what?

10 COMMISSIONER EDLEY: I'm really troubled,
11 I am troubled with our associating ourselves with a
12 breach of the statute, that's what concerns me. So
13 what I'm hoping is that the General Counsel and
14 Abigail will have a -- Commissioner Thernstrom, will
15 have a conversation to figure out a way to repair what
16 seems to me to be a statutory violation and whether
17 it's kind of an after-the-fact contract or whether
18 it's sort of making it a reference to a paper that's
19 not -- there's got to be a way to fix the violations
20 of the statute, otherwise it seems to me we are in
21 trouble institutionally and so that does concern me a
22 lot. With that said, I'll subside.

23 CHAIRPERSON BERRY: Commissioner Meeks?

24 COMMISSIONER MEEKS: My only fear is I'm
25 not sure -- I do not want to vote for a report that

1 does violate the statute and so I want to make sure
2 that this motion is really clear, because I may not
3 understand it. And I agree what Commissioner Edley
4 says completely.

5 COMMISSIONER REDENBAUGH: Madam Chair?

6 CHAIRPERSON BERRY: I will recognize you
7 --

8 COMMISSIONER MEEKS: But I do not want to
9 vote if this violates the statute.

10 CHAIRPERSON BERRY: One of the things --
11 and I'll recognize you in a second, Russell -- I said
12 at the outset of this discussion that one option was
13 to ask the makers of the dissent to sanitize it, if
14 need be, in a way that it would not breach the
15 statute. All that Edley is adding to that is that if
16 the General Counsel determines that it does violate
17 the statute and I was alerted by the staff that they
18 thought it had, then some way be found in discussions
19 between the dissenters and the General Counsel to --
20 if I can use the word sanitize -- it sufficiently so
21 that it could be published. That was an option I
22 suggested at the beginning. It seems that if that
23 were done it wouldn't violate the statute and it
24 wouldn't violate policies and wouldn't violate
25 equities and it would be a clear signal to everybody

1 from now on how they are to behave at least on that
2 issue.

3 We're left with this issue of how to do
4 the dissent based on past practice which is an
5 important issue, but we can either vote on your
6 motion, Cruz, which my sense at the table is we'd vote
7 it down, and then we can have another motion to do
8 some combination of what I said about the revision and
9 what Edley said and it sounds like even you would vote
10 for that and then we can move on. And then outside
11 this room, Redenbaugh and Thernstrom and the General
12 Counsel can figure out some way to fix this thing and
13 if all parties are willing to try to get it in the --
14 to publish it and we can move on. If parties aren't
15 willing, I mean they don't want to meet or they don't
16 want to try or people are just obdurate about it, then
17 we've done, we've gone as far as we can.

18 So shall we just simply -- so I think if
19 you want to vote for the motion, I think it's going to
20 fail.

21 VICE CHAIRPERSON REYNOSO: Yes.

22 CHAIRPERSON BERRY: Or you can withdraw
23 it, however you feel.

24 VICE CHAIRPERSON REYNOSO: I'd like a
25 vote on my motion because I think it's a better

1 motion. If it fails, then I would indeed vote for the
2 suggested changes. I think my motion is a better
3 motion because this is a drastic change on the way we
4 have operated before.

5 CHAIRPERSON BERRY: Yes, Commissioner?

6 COMMISSIONER MEEKS: There are not two
7 motions on the floor?

8 CHAIRPERSON BERRY: No, no, no. Just the
9 one now and then we're going to have another one,
10 depending on the fate of this one that will come after
11 it.

12 All those in favor of the motion to not
13 publish this dissent on the grounds that it violates
14 both the law and practice --

15 VICE CHAIRPERSON REYNOSO: But that the
16 motion also said that those writing the separate
17 statements should review the last 10 or 12 separate
18 statements and comport this statement to roughly how
19 those statements have been written, at least in terms
20 of spirit.

21 CHAIRPERSON BERRY: All those --

22 VICE CHAIRPERSON REYNOSO: That's my
23 motion.

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

1 (Ayes.)

2 CHAIRPERSON BERRY: Those opposed,
3 indicate by saying no.

4 (Nos.)

5 VICE CHAIRPERSON REYNOSO: Roll call,
6 please.

7 CHAIRPERSON BERRY: I knew you were going
8 to do that.

9 Commissioner Edley?

10 COMMISSIONER EDLEY: No.

11 CHAIRPERSON BERRY: Commissioner Lee?

12 COMMISSIONER LEE: Yes.

13 CHAIRPERSON BERRY: Commissioner Meeks?

14 COMMISSIONER MEEKS: No.

15 CHAIRPERSON BERRY: Commissioner
16 Redenbaugh?

17 COMMISSIONER REDENBAUGH: No.

18 CHAIRPERSON BERRY: Vice Chair Reynoso?

19 VICE CHAIRPERSON REYNOSO: Yes.

20 CHAIRPERSON BERRY: Commissioner
21 Thernstrom?

22 COMMISSIONER THERNSTROM: No.

23 CHAIRPERSON BERRY: Commissioner Wilson?

24 COMMISSIONER WILSON: Yes.

25 CHAIRPERSON BERRY: The motion is not

1 passed. Okay?

2 Now you were going to introduce another
3 motion. Could I do it, please?

4 The motion, as I understand it, since we
5 have Christopher Edley with laryngitis and he's unable
6 to speak which is unusual for both Edleys and
7 Christopher Edley, the motion, as I understand it, is
8 that the dissenters or their representatives, however
9 this is to be done, meaning the assistants, will meet
10 with the General Counsel and the General Counsel will
11 determine (1) how it violates the statute, if it does;
12 and they will together discuss any revisions that are
13 necessary in order to make it conform to the statute,
14 so that the dissent could then be published, if all
15 parties are willing to engage in such discussions and
16 go forward with the ideas contained in the motion. Is
17 that basically it?

18 COMMISSIONER EDLEY: Yes.

19 CHAIRPERSON BERRY: Could we get a second
20 on the motion?

21 COMMISSIONER EDLEY: Second.

22 CHAIRPERSON BERRY: Any further
23 discussion? Yes, Commissioner Thernstrom?

24 COMMISSIONER THERNSTROM: I will vote for
25 this motion, actually, but I do want -- and I'm

1 delighted to meet with the General Counsel and discuss
2 this.

3 We are -- just one comment. We're
4 involved in a very complicated line drawing problem
5 here that does need clarifying. I mean Professor Lott
6 in this case was already working on Florida and had
7 published a paper on the Florida panhandle votes. If
8 he had simply continued to work without my having
9 dialed the phone to him, then as I understand the
10 discussion here, I could have legitimately simply
11 referred to his work, but on the other hand, if I had
12 called up on the phone -- I mean this seems to me,
13 getting into an arena in which you really do not want
14 to have one size fits all rules that we're going to be
15 sorry about. That's my problem. I will vote for the
16 motion.

17 CHAIRPERSON BERRY: Commissioner
18 Thernstrom, in all fairness to those who do not know,
19 the dissent has attached to it a report --

20 COMMISSIONER THERNSTROM: No, I
21 understand --

22 CHAIRPERSON BERRY: To the Commissioner
23 from Mr. Lott, so that people will be aware that it's
24 not simply just information that is contained in the
25 dissent, but there's a report from Mr. Lott and that

1 Mr. Lott was characterized by the Commissioner
2 publicly at the Senate hearing as her expert who she
3 had brought along. So it's not simply a matter of
4 having picked up the phone, talked to somebody,
5 consulted with them, cited something that they used.
6 It is more than that and I only point that out because
7 so people can understand why some Commissioners are
8 upset. They wouldn't be upset if you talked to
9 somebody on the phone or did any of that or if any of
10 us did that.

11 Yes, Commissioner Thernstrom?

12 COMMISSIONER THERNSTROM: Well, no, I
13 talked to him on the phone. I asked him if he would
14 be willing to look at data that he was, in fact,
15 heading in the direction of anyway, but the only point
16 and you can not publish his separate analysis, that's
17 fine. The only point of having it is that readers, it
18 more fully informs readers who may have questions
19 about my dissent in the same way that it is really
20 necessary to have Dr. Lichtman's regressions if people
21 are going to completely understand the Commission's
22 Report. The more information you give readers, the
23 better off it is, but readers can instead simply ask
24 Dr. Lott for the report, if that's what you wish.

25 CHAIRPERSON BERRY: We're going to --

1 VICE CHAIRPERSON REYNOSO: I have a
2 question on the motion. I take it that what's
3 happened in times past from time to time that there
4 can be a response to the separate opinion will still
5 be our practice. I certainly want to respond to this
6 separate opinion.

7 CHAIRPERSON BERRY: If you wish.
8 However, also, we had that issue laying on the table
9 of Lichtman analyzing the dissent, but that will
10 depend upon how the dissent turns out once these
11 discussions have gone forward and time is of the
12 essence and we would like these discussions to go
13 forward some time in the next week, if possible, to at
14 least begin the discussion, because we'd like to print
15 the reports, so we're not talking about next year or
16 some time like that. That should be the understanding
17 that everybody has.

18 Yes, Commissioner Wilson? Commissioner
19 Wilson first and then the General Counsel.

20 COMMISSIONER WILSON: Thank you, Madam
21 Chair. I'd like to ask Commissioner Reynoso to
22 explain this for my understanding what it is about the
23 motion on the floor now that -- the ramifications of
24 that motion?

25 VICE CHAIRPERSON REYNOSO: The

1 ramifications of this motion is that if this dissent
2 stands the way it does, it, in my view, is
3 intemperate, it's unprofessional, it includes
4 falsehoods, all of which I think need to be responded
5 to and it will be an extended dissent or separate
6 statement, the type of which we've never had in this
7 Commission, including all kinds, not just a personal
8 statement of disagreement, but all kinds of allegedly
9 scientific data and so on. It's like a separate
10 study. This is a study group. The staff does the
11 study. We, as Commissioners, from time to time
12 disagree with certain aspects of it and in a short few
13 pages we indicate we disagree. We don't do a
14 completely new study. That's a complete new concept
15 that the motion that we just passed accepts, and I
16 voted for it under the circumstances that were faced
17 where I think the Chair is right, that we would be
18 accused of the things that Russell fortunately says he
19 would not accuse us of doing.

20 So under the pressure of this separate
21 statement, I've agreed to this, but I think it has
22 great ramifications for the future, which I think are
23 unwise for this Commission. I will want to write a
24 50-page response to this dissent. I assume the
25 Commission might also separately. It's only fair. I

1 don't want my first amendment rights dissipated and I
2 think that would be an unwise and in my experience not
3 done by any other Study Commission on which I have
4 sat. I believe this is bad policy and I'm accepting
5 it for this purpose, but I will vigorously oppose it
6 when we discuss this matter, I hope in the next
7 meeting or two.

8 CHAIRPERSON BERRY: Does that answer --
9 yes, Commissioner Edley?

10 COMMISSIONER EDLEY: Let me just say that
11 I would -- I think it would be fine if we want to
12 craft a Commission rule about correct form of
13 dissents, just like the House of Representatives can
14 have a rule about dissents in Committee Reports and
15 the like. But my point was in the absence of such a
16 rule, giving advanced notice to dissenters of what
17 will or will not be acceptable, I think that even a
18 dissent that I consider inaccurate and intemperate
19 should be published provided it's legal, so I would
20 welcome -- I'd be happy to work with the Vice Chair in
21 trying to craft a rule as to the correct form of
22 dissents.

23 VICE CHAIRPERSON REYNOSO: Madam Chair, I
24 agree with that. I just lament that we've reached the
25 point based on this report where we have to now put

1 that in our regulations and so on. I think we now
2 must so that we all know where we stand because we
3 have now a gross violation, an intemperate, an
4 insulting violation of our past practices.

5 That's my moderate statement.

6 CHAIRPERSON BERRY: We haven't actually
7 voted, but we will.

8 Yes, General Counsel?

9 MR. HAILES: I just want some direction
10 from the Commissioners in terms of my responsibility
11 because I know Commissioner Thernstrom has said that
12 in addition to Dr. Lott, other persons assisted with
13 the preparation of this separate statement.

14 Am I to only engage in discussions
15 regarding Dr. Lott's report or --

16 CHAIRPERSON BERRY: No. You are to make
17 a determination whether any aspects of this, in your
18 view, violate the statute and then have discussions
19 with them about those places and what can we done
20 about them and see if we can come to some agreement.

21 Yes, Commissioner --

22 COMMISSIONER EDLEY: May I urge the
23 General Counsel focus on violations of substance and
24 not things that are trivial and --

25 CHAIRPERSON BERRY: I would ask, as we

1 vote on this, yes, Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: I'm sorry --

3 CHAIRPERSON BERRY: You're not ready to
4 vote?

5 COMMISSIONER REDENBAUGH: No. I just
6 want to say one thing. I'm very favorable to the
7 motion and furthermore, I would presume that the
8 General Counsel has even, absent the motion, a
9 responsibility to make sure that what the Commission
10 does conforms to the statute and I have no doubt that
11 he will fulfill that responsibility, even absent the
12 motion.

13 CHAIRPERSON BERRY: Okay. Well, if we
14 didn't have the motion, we wouldn't have the part
15 about revising it.

16 COMMISSIONER REDENBAUGH: No, I'm going
17 to support the motion. I think it's consistent with -
18 -

19 CHAIRPERSON BERRY: What they ought to be
20 doing.

21 COMMISSIONER REDENBAUGH: What we ought
22 to be doing, exactly. Thank you.

23 CHAIRPERSON BERRY: Commissioner Lee?

24 COMMISSIONER LEE: If I vote on the
25 motion can I be completely clear so that there would

1 be no confusion in the future, that there will be an
2 opportunity for Commissioners to respond to the
3 dissent, which is normal practice?

4 CHAIRPERSON BERRY: We don't really, no,
5 this is another deviation from practice. What we're
6 being forced to do is to deviate from all kinds of
7 practices that we followed in the past and that
8 everyone understood.

9 I happen to agree with the Vice Chair
10 that it is a mistake, but we're pressed into doing it
11 because these are time tested rules and they were put
12 in for good reasons and they worked. But you can't
13 have them work if you don't have collegiality. It's
14 just --

15 VICE CHAIRPERSON REYNOSO: That's what
16 we're lacking.

17 CHAIRPERSON BERRY: That's the problem
18 toward each other. Normally, we don't respond to
19 dissents and people can make an additional statement
20 if they want to, but we don't go back and respond.

21 But this time we have said and if there's
22 no objection, there will be an opportunity, which is
23 different from -- this is all different -- to respond,
24 yes.

25 VICE CHAIRPERSON REYNOSO: Madam Chair,

1 there have been response by the Commission, that is by
2 the non-separate writing Commissioners and it may be
3 that that will take care of this because I'm sure that
4 other Commissioners will have the same reaction that
5 I've had once they -- some Commissioners have not read
6 this draft, as I understand.

7 I just got it last night. I was up late
8 being furious, reading this separate opinion.

9 CHAIRPERSON BERRY: Yes, Commissioner
10 Thernstrom?

11 COMMISSIONER THERNSTROM: The decision to
12 give Dr. Lichtman an opportunity to respond was
13 decided before I had written my dissent and you said
14 Commissioner Thernstrom can respond to his until the
15 cows come home. We can go back and forth, but that
16 was decided before I had written my dissent.

17 CHAIRPERSON BERRY: Which had to do with
18 the statistical stuff. And we still don't know if
19 Lichtman will respond. We don't know what the
20 dissenting is going to turn out to be.

21 Why don't we vote on this and then we're
22 going to have a motion to have the staff come back to
23 us in September with guidelines for dissents including
24 numbers of pages, what kind of remarks can be made
25 personally about staff and Commissioners, and what

1 documentation is necessary when people make statements
2 about what people have done personally or not done
3 personally and then people can state their views,
4 however, they want to, but we'll ask them to do that.

5 Now I'm ready to take a vote and I will
6 do it -- first, I'll ask all in favor indicate by
7 saying aye.

8 (Ayes.)

9 Opposed?

10 (No.)

11 Commissioner Wilson is a no. So the
12 motion passes.

13 Now a motion, could I get a motion that
14 we have the staff prepare these guidelines for our
15 approval on dissents and separate statements?

16 VICE CHAIRPERSON REYNOSO: So moved.

17 COMMISSIONER EDLEY: Second.

18 CHAIRPERSON BERRY: All right, all in
19 favor, indicate by saying aye.

20 (Ayes.)

21 Opposed?

22 (No response.)

23 So ordered. As far as leaks are
24 concerned, the last thing we would say, since we took
25 all this time to discuss this, is you have in your

1 minutes the fact that they were discussed before.
2 Staff Director, do you have any proposals for things
3 you might do this time or not?

4 STAFF DIRECTOR JIN: Madam Chair, I
5 really don't and if I may take two minutes or so,
6 maybe that will be worthwhile.

7 I think as I stated at the last meeting I
8 believe that the Florida Report is a quality piece of
9 work and therefore any time there's any diversion
10 discussion that draws away from the report, I'm not
11 very happy, and so that's exactly obvious to the leaks
12 and the discussion has done, so of course, I'm not
13 happy with that and I think we all agree that
14 premature leaks of reports should not be taken
15 lightly. That having been said, since this is my
16 first experience with the leak of this significance,
17 one of the first things I did was to talk to various
18 people about the problem and how to deal with it and
19 as Commissioner Lee noted and I think others noted
20 also, I learned that over a little over a year ago
21 that there were a number of leaks over the report and
22 that the Commissioners directed the individual who was
23 my predecessor, the Staff Director at that time, to
24 conduct a comprehensive study, an examination into the
25 leak problems and to attempt to identify the source of

1 those leaks and she formed a committee and from what I
2 can tell a very comprehensive examination ensued. The
3 staff asked for advice from a number of authorities,
4 including the Office of Management and Budget, the
5 Office of Personnel Management, Office of Government
6 Ethics and the Inspector General for the U.S.
7 Department of Agriculture, who does our IG work, and
8 once some suggestions were made to improve the
9 security overall the conclusion was that it was very
10 hard to stop leaks and that it was even harder to
11 identify the individuals responsible. The Staff
12 Director and her committee were not able to identify
13 any of the culprits at that time of the Denver
14 Reports. Since last year, we have made some efforts
15 to decrease the likelihood of leaks occurring,
16 however, on a project, I think like the Florida Voting
17 Rights Project where a large number of people,
18 Commissioners, staff, outside people, all have parts
19 or all of the report at various times it's virtually
20 impossible to stop all leaks or to identify
21 individuals responsible. And as we know from last
22 year to even the Department of State and CIA who
23 obviously have a much higher premium on secrecy and
24 stopping leaks, even they have problems with espionage
25 and guaranteeing that leaks don't occur. So there's

1 really no way to guarantee that leaks don't occur.

2 And for the Commission, we're different,
3 in that we cannot really operate effectively with the
4 level of secrecy tolerated by some of these other
5 agencies and a certain amount of openness is essential
6 to our process and therefore, the preventing of leaks
7 becomes even harder.

8 Moreover, and I don't always want to go
9 back to the lack of resource issue, but any Commission
10 decision to very aggressively address the leak problem
11 needs to be measured in context of our resources.

12 As a result, taking all that into
13 consideration, after evaluating all the facts, I did
14 tentatively conclude that further efforts to identify
15 those responsible for the leak of the report are not
16 likely to be successful, however, I am examining some
17 options to perhaps decrease that possibility in the
18 future.

19 I'm certainly eager to have any thoughts
20 you might have on that. I mean we could form another
21 committee, a task force, somewhat like you asked my
22 predecessor to form, but I'm not really optimistic at
23 this time that we're going to learn anything new. We
24 could institute tighter security controls which would
25 decrease, but not eliminate the possibility of leaks,

1 however, I think the price would be a much less
2 collegial workforce, plus decreased efficiencies and I
3 could perhaps issue a strongly worded memo which I
4 suspect would not have dramatic effect.

5 I hope I'm not giving the impression that
6 we should throw up our hands and say we can't do
7 anything. As I said, there are some options that I
8 think that I can think about to explore, but I don't
9 have a specific proposal at this time and I'd be
10 happy, like I said, take any thoughts you might have
11 into account and provide a further report, if you
12 want, in September.

13 CHAIRPERSON BERRY: The trial balloon
14 that I threw up about trying to put out pieces of the
15 stuff on the web as the staff was working on it were
16 met by general hoots and jeers from the staff and
17 everybody else, so I don't have any great ideas at
18 this point. Yes, Commissioner Wilson?

19 COMMISSIONER WILSON: Well --

20 CHAIRPERSON BERRY: How do you stop leaks
21 at your publishing company? Do you keep people from
22 leaking anything?

23 COMMISSIONER WILSON: We pay people to
24 leak.

25 (Laughter.)

1 COMMISSIONER WILSON: Well, I think
2 rather than paying people to leak, I think we could
3 either now or at a later meeting go back to a motion
4 that I had made where when the Commissioners sent
5 their reports, one would hope that they would be sent
6 their reports before they're reading articles about it
7 in the New York Times, but at that point articles --
8 the reports would be shown to the press, rather than
9 waiting. It would all go out at the same time. That
10 was defeated.

11 CHAIRPERSON BERRY: Except that wouldn't
12 have helped this time because if I understand it
13 correctly, whatever it is the press had, wasn't the
14 same thing that we got, so at some point, other than
15 that we would have had to -- I'm not trying to throw
16 cold water.

17 COMMISSIONER WILSON: No, no, that's
18 true.

 CHAIRPERSON BERRY: Edley?

19 COMMISSIONER EDLEY: I was sympathetic to
20 Commissioner Wilson's idea back then and I remain
21 sympathetic to it. I think, in part, that whatever we
22 could do to make sure that -- try to see that the
23 public, the media understand the difference between a
24 staff draft and a document that's been approved by the
25 Commission. I mean it's a substantial one, the

1 analogy in the regulatory process is between a draft
2 rule and a final rule or even better between a rule
3 that's been recommended to the decision maker versus
4 one that's been adopted by the decision maker. And
5 given the inevitability in our controversial work of
6 these leaks, I think that more information, rather
7 than less is probably the way to -- the way to reduce
8 our anxieties or at least that we ought to experiment
9 with that mode, once or twice, since we obviously
10 haven't enjoyed the other way of going and doing our
11 business.

12 CHAIRPERSON BERRY: I would probably vote
13 for such a motion now and not equivocate as I did the
14 last time, going back and forth and try it out, just
15 to see if it helps.

16 Yes, Commissioner Redenbaugh?

17 COMMISSIONER REDENBAUGH: I'd like to ask
18 the Staff Director if you have a position or a
19 preference on what might become a motion, that is the
20 simultaneous release of a draft to the Commissioners
21 and the press. I mean if you don't have a concern
22 about that, I'm favorably inclined to it.

23 MR. JIN: Commissioner Redenbaugh,
24 actually, I'm not quite prepared to be definitive
25 about that, but I must admit as I looked at this issue

1 and one of the thoughts that comes to my mind is that
2 while leaks are bad, at least it indicates that
3 there's interest. If we weren't doing stuff that was
4 interesting, people wouldn't care and so part of the
5 thing that I want to try to do is see if there's a way
6 we can make our rules conform with that interest out
7 there in a way that doesn't prejudice either you as
8 Commissioners or the Commission in terms of providing
9 a quality product in a fair way and so actually,
10 truthfully, I am interested in an idea. I know it was
11 raised before. I wanted to think about -- one of the
12 things I definitely wanted to think about was how I
13 could perhaps frame that rule in a way that addresses
14 the concerns that were raised before, but allow us to
15 perhaps get this out a little faster.

16 CHAIRPERSON BERRY: Commissioner Wilson?

17 COMMISSIONER WILSON: Perhaps we're
18 thinking about this all wrong. Perhaps we should
19 think about it in that we should just assume that the
20 press be sent everything first and that we leak the
21 reports of the Commissioners.

22 (Laughter.)

23 Therefore, people will go and take
24 material off of other people's desks and
25 surreptitiously send it to us.

1 (Laughter.)

2 CHAIRPERSON BERRY: Rather than to the
3 public. Very funny, Victoria.

4 Commissioner Thernstrom?

5 COMMISSIONER THERNSTROM: Actually,
6 putting out sections of draft report as it develops
7 would have a great advantage because then there would
8 be a basis upon which individual Commissioners could
9 meet with the Staff Director and say I've got the
10 following concerns. As it was, I did not even know
11 Dr. Lichtman's work and that there was going to be
12 such a statistical analysis until I saw the report
13 itself, so that I like the Chair's suggestion very
14 much.

15 I just have a point of curiosity here. I
16 was thinking as I listened to the Chair saying well,
17 we know that the newspapers got an earlier draft, how
18 do we know that? Did they send to us the document
19 that they got? All I saw was the Executive Summary on
20 the website and I didn't compare that to --

21 CHAIRPERSON BERRY: Earlier I asked in
22 this meeting, the staff, whether it was their
23 impression that what the Washington Post was
24 discussing in the paper was an earlier draft and they
25 said yes. That's why I said this time, let me be

1 clear, that's why I repeated and said insofar as what
2 I recollect, that they did. I may be wrong about
3 that, but that was my recollection from what the staff
4 said.

5 COMMISSIONER EDLEY: They said it was the
6 wrong number of pages, for example.

7 CHAIRPERSON BERRY: They said it was
8 wrong or something.

9 COMMISSIONER THERNSTROM: I see.

10 COMMISSIONER EDLEY: Wrong number of
11 papers of the document.

12 CHAIRPERSON BERRY: So I don't know that
13 for a fact, I'm just basing it on what they said.

14 COMMISSIONER THERNSTROM: Anyway, I
15 support your idea.

16 CHAIRPERSON BERRY: But if you do,
17 Commissioner Thernstrom, you ought to look at your
18 dissent because you attack me for suggesting it in
19 your dissent.

20 COMMISSIONER THERNSTROM: I don't think
21 so.

22 CHAIRPERSON BERRY: Yes, you do.

23 COMMISSIONER THERNSTROM: Well, you
24 pointed out to me and I will --

25 CHAIRPERSON BERRY: You said the Chair

1 had the temerity to suggest that we might give out
2 earlier pieces to people, even before the
3 Commissioners have approved them.

4 COMMISSIONER THERNSTROM: I will go back
5 to my dissent.

6 CHAIRPERSON BERRY: Okay, please.

7 (Laughter.)

8 That's why I said I was met with hoots
9 and jeers.

10 COMMISSIONER THERNSTROM: And I will be
11 delighted to go back and look at the definition of
12 temerity.

13 (Laughter.)

14 I will be delighted. I may not have
15 understood your proposal.

16 With all due respect, I need to leave.

17 CHAIRPERSON BERRY: We need to decide
18 what we are here going to do. We have to approve,
19 listen to and approve Terrie's Employment
20 Discrimination Report because it's our statutory
21 report and there's a deadline by which we have to turn
22 it in. And we try to meet our deadlines.

23 We are supposed to have a discussion of
24 electoral reform which I was hoping today we would
25 have a preliminary discussion and come up with a

1 couple of ideas and revisit it again in September when
2 we do the State, looking at the different States. But
3 we definitely have to consider Terrie's report on
4 employment discrimination.

5 Yes, Commissioner Wilson?

6 COMMISSIONER WILSON: A question. Are we
7 going to come back to this issue of -- because I'm
8 opposed, dreadfully opposed to the notion of releasing
9 bits and pieces of work.

10 It's like saying okay, I'm going to give
11 -- or any of us would give a portion of their
12 manuscript to the press while we're working on it.

13 CHAIRPERSON BERRY: We will revisit it in
14 September. We don't have any reports to release right
15 now, right at this moment. So we've got a little time
16 and then we'll have this employment report which is a
17 very important one, but it's not the kind of topic
18 that I think people are going to be leaking all over
19 the -- maybe I'm wrong.

20 (Laughter.)

21 It's an important report, so let us
22 consider Terrie's report and you must be patient here
23 and why don't we go to that? Does anyone have any
24 objections about going to that?

25 No one objected. Please, let's do your

1 report on employment discrimination.

2 We don't want to lose a quorum. And we
3 also at some point need to discuss Edley's idea, which
4 is that the Commission should meet all day.

5 COMMISSIONER EDLEY: Not today.

6 (Laughter.)

7 CHAIRPERSON BERRY: No, but we used to,
8 with a break at lunch time or bring in a sandwich so
9 that we would have plenty of time to get all these
10 things done.

11 Go right ahead.

12 VI. "Federal Efforts to Eradicate Employment
13 Discrimination in State and Local Governments" Report

14 MS. DICKERSON: Good afternoon,
15 everybody, Chair, Vice Chair, Commissioners, Staff
16 Director. We're very happy. I thought of offering to
17 skip this, but since it really is a real segue from
18 the past discussion that you were just having I would
19 like to give some context to the Fair Employment
20 Report that we conducted this year.

21 For the Fiscal Year 2001, OCRE studied
22 fair employment specifically, federal efforts to
23 eradicate employment discrimination, State and local
24 governments. The core team that carried out the work
25 on this study was led by Wanda Johnson and on the team

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1 were Marie Smith, Kirk Perry and Eileen Ruder. Others
2 on the staff also gave assistance, Manuel Ali,
3 Margaret Butler, Monique Dennis Elmer, Ilona Turner
4 and Latric Fochay and the report was also reviewed by
5 Kim Ball in the Office of General Counsel, as well as
6 Melvin Jenkins and Ki-Taek Chun and the Regional
7 Offices and Betty Edmonstron and our Office of
8 Administration here.

9 Our purpose of the study was to evaluate
10 employment litigation section or ELS and their
11 enforcement efforts to eliminate employment
12 discrimination in State and local governments, to
13 review ELS priorities, case selection, procedures,
14 workload, performance and management.

15 To accomplish this, we relied on several
16 things, primary among them, interviews with the ELS
17 staff and Justice officials as well and some
18 employment experts.

19 We also did some analysis of ELS' case
20 management system and the data therein and we also
21 reviewed documents like HUD submissions and the case
22 dockets, significant activities reports, their GPRA
23 reports, etcetera.

24 What we did not review was data beyond
25 the case management system because we found that other

1 data was inconsistent coming from ELS and unreliable
2 and that it actually did make it into some of our
3 recommendations.

4 We also couldn't rely on major studies of
5 ELS because unlike other agencies that we studied in
6 the past, there really were no major studies of ELS at
7 all. So this was our methodology therefore.

8 For the section itself, in terms of their
9 mission and responsibilities, they enforce primarily
10 Title VII of State and local government employment and
11 defending federal agencies against challenges to
12 Affirmative Action programs. They have, of course,
13 other responsibilities like defending enforcement
14 efforts to Executive Order 11246 covered in the
15 report, but these are just the main responsibilities
16 that I'm going over here.

17 On the whole, we found them to be a very
18 strong staff and excellent at what they do which is
19 litigation and we were very impressed with their
20 record.

21 We also, I should mention, we uphold for
22 this particular report, not to over write or write at
23 length and so we attempted to do that in this case.
24 This is the first time the staff attempted this.

25 To give just some context to the section

1 we reviewed as noted, I guess in past Commission
2 reports and reinforced in this one, budget increases
3 in past years have been very modest for the ELS.
4 Their FY 2000 budget was \$6.5 million and CRD's
5 overall budget is \$82.2 million so they got, I guess,
6 a little less than 8 percent of the total CRD budget.
7 CRD has 10 sections including ELS.

8 The staff levels have remained consistent
9 at approximately 60, the majority of which are
10 attorneys and we found that it was significant that
11 many of the staff members have had a long tenure with
12 ELS, so they're a very stable work force.

13 The ELS enforcement program, in general
14 terms, is primarily their enforcement mechanism is
15 litigation and litigation related activities, as well
16 EEOC referrals, also known as Section 06 which are
17 complaints against State and local employers for which
18 EEOC has found reasonable cause and conciliation has
19 failed and as well ELS initiated pattern or practice
20 cases, although known as Section 707.

21 For the enforcement program, the majority
22 of ELS' workload comes from its 706 authority which is
23 the EEOC referrals. Of the 138 investigations
24 initiated in the 5-year period that we were primarily
25 looking at, 106 were from EEOC referrals. Of the 69

1 lawsuits filed during the period, 51 were based on
2 EEOC referrals. So you can see it was a big part of
3 their workload.

4 Among their stated priorities and I
5 should say the first of which has been priority for
6 the last 20 or 30 years that the Commission has been
7 writing about the Department of Justice and ELS
8 specifically, pattern or practice cases have been a
9 stated priority, yet it was interesting to note that
10 there isn't really any strategic plan in terms of how
11 they carry out their pattern or practice enforcement.

12 Law enforcement entities and Departments
13 of Corrections receive higher priority; pre-employment
14 testing and other selection devices, as well as
15 disparities in recruitment and hiring of women and
16 people of color.

17 We looked quite a bit at how they measure
18 their performance and we really had to hold to this
19 because as I stated before there weren't any previous
20 full scale studies or not many articles really about
21 the ELS.

22 What we found with planning and measuring
23 performance are not really high priorities of the
24 section, nor are they strengths.

25 Post GPRA performance measures have

1 become more sophisticated and the workload is
2 primarily measured in terms of input and output. We
3 found that they were lacking in appropriate measures
4 of work, impact and goals.

5 One of the things we kept talking about
6 as a staff as we continue to look at ELS was how they
7 kind of look at what they do as sort of litigation and
8 not as that they are trying to eliminate
9 discrimination on a global basis and they talk about
10 their work in terms of the day to day work that they
11 do and not in terms of having an overall plan or
12 master plan or goal or vision for eradicating
13 discrimination in public sector.

14 As some examples of that, I guess I won't
15 go over all of these in the interest of time, but for
16 example, one thing they currently measure, seem to
17 measure a lot is the number of things and the quantity
18 of things that they do and not really give context to
19 the significance of those things or the impact. For
20 instance, they count the number of outreach activities
21 that they perform, but not necessarily the numbers of
22 employers and employees that they reach through their
23 outreach efforts which I think is really a more
24 significant determination of their effectiveness.
25 They count the number of victims who receive direct

1 relief and not necessarily the number of employees or
2 employers who are potentially affected by a policy
3 change or some type of injunctive relief. There are
4 sometimes county corrections facilities that they
5 happen to change their policies and it really affects
6 the entire State and they really don't express that at
7 all as part of their goals or as part of the things
8 that they measure.

9 They count the number of right to sue
10 letters that they issue, but not really the ones that
11 result in a private lawsuit, so we thought that they
12 could do a much better job in terms of expressing what
13 they do and that some of those expressions would
14 really lead to that overall sense of a master plan for
15 eradicating discrimination, rather than basing what
16 they do mostly on what they had done the period
17 before.

18 I want to talk about their EEOC referral
19 workload for just a second. The referrals have
20 increased each year. They have gone from 133
21 referrals in 1995 to 756 in 2000, so they have had
22 significantly more work to do. They commence more
23 than 20 and 30 investigations a year and they generate
24 an average of 8 lawsuits each year which is
25 approximately 2.5 percent of all referrals. These are

1 not investigations, we're talking about lawsuits.

2 As for pattern or practice cases are
3 identified thorough statistical targeting, that's done
4 by an in-house statistician that they have on staff.
5 They commenced an average of about five investigations
6 per year and they file three lawsuits every year.

7 As for the sense of work, the work load
8 peaked in the years following Adarand and they receive
9 an average of nine new matter cases per year. There
10 are 19 matters on the average pending at any given
11 time.

12 As for the other activities, they also
13 perform compliance monitoring with consent decrees and
14 settlement agreements. They issue right to sue
15 letters, as I mentioned before. They respond to
16 congressional inquiries and they perform outreach and
17 technical assistance to the public sector, to
18 employees, to employers, to EEOC District Offices,
19 that type of thing.

20 To give you an idea of how well they do,
21 as far as cases and matters resolved, approximately 80
22 percent are settled prior to trial. Of those that go
23 to trial, 85 to 90 percent result in an entry of
24 favorable judgment and ELS, close to 100 percent of
25 the time, we found, obtained both monetary and

1. nonmonetary relief on behalf of victims. So they have
2 a very impressive record we found.

3 I'm just going to summarize some things
4 that are summarized in the report. Overall, they do a
5 very good job of selecting cases and have a high
6 success rate with it. The staff, as I mentioned
7 before, are very well qualified, have a high level of
8 expertise. We were very impressed with it.

9 We did find that very little is written
10 down. It's often an over reliance on institutional
11 knowledge and senior staff. They do have the luxury
12 of having staff, have been around a long time, but I
13 think that has caused them to not write things down
14 and from an enforcement perspective you look at
15 succession in years hence and you hope that they will
16 be able to maintain that stability, but if several
17 people were to leave at the same time, there might be
18 a vacuum created that would be a problem for them.

19 They have had budget and staff
20 limitations and we've noted that in previous reports
21 and these have had a negative impact on their
22 workload. Their workload has increased, but their
23 funding has remained just about even, if you account
24 for inflation.

25 A significant amount of resources are

1 consumed by consent decree monitoring and defensive
2 work and that detracts from the money they have to do
3 other things.

4 We thought there ought to be allocated
5 more money to carry out their enforcement
6 responsibilities. They have important work to do and
7 they really don't have the money to carry it out. The
8 employment performance measures that they have, as I
9 mentioned, don't really track the true impact of their
10 work and they really should become more adept at
11 identifying measures that are appropriately going to
12 be based, not just on what they did the last period,
13 but what they're trying to do on the whole in terms of
14 discrimination. Their priorities have remained pretty
15 consistent, but they really should engage in a lot
16 more strategic planning to establish what their
17 priorities are. We really couldn't get a handle on
18 that, except by conducting many, many interviews and
19 many people aren't going to have the initiative or the
20 time to sit down and talk to them about their
21 priorities and they're really not expressed or written
22 down so we think that they ought to really establish
23 that overall vision and master plan for what they
24 really are all about.

25 New priorities and guidelines are

1 committed to writing and there's not really a
2 strategic litigation plan. We found that they should
3 produce written enforcement guidelines and operating
4 procedures. For example, written criteria for how to
5 handle investigations, rather than really relying on
6 someone who has done it before, to tell them how to do
7 it. It ought to be open so that people -- they can be
8 more accountable.

9 Generally, the docket reflected stated
10 priorities. However, the small number of pattern or
11 practice cases really isn't equivalent with how they
12 espouse it as a priority.

13 They've made attempts to diversify their
14 documents and in recent years have taken on at least
15 one case in new industries and new areas such as
16 national origin and religious discrimination, but
17 really sex discrimination cases and sexual harassment
18 cases dominate their docket.

19 ELS should explain its pattern or
20 practice program to include other areas of enforcement
21 that merit changes in the workforce is what we were
22 recommending.

23 Something very important that we found is
24 that the process for investigating complaints is
25 hindered by their lack of subpoena power. Without it,

1 they really have responsibility, but they really don't
2 have the commensurate power to bring about compliance
3 and to force employers to really cooperate with them,
4 so we think they should be given subpoena power. ELS
5 has greatly improved its right to sue outreach program
6 in recent years. Impressively, 100 percent of the
7 notices that are issued are issued in less than 30
8 days and I think they're down to about two weeks now.

9 This is really significant because for a very long
10 time, the last time the Commission studied them, they
11 had a severe backlog and we did recommend that they
12 take steps to modify that and they have. And so they
13 have really turned that program around.

14 ELS should continue its commitment to
15 outreach and technical assistance and improve
16 coordination with other enforcement agencies. They
17 have responsibilities to work with other agencies and
18 like the EEOC and Labor and HUD and some of them are
19 similarly situated offices and they could learn a lot
20 if they did a little bit more coordination with those
21 other enforcement entities.

22 In the report, we said that ELS should
23 strive to improve efficiency by creating designated
24 and investigative positions which they don't currently
25 have and by contracting out some compliance monitoring

1 activities and test development, establishing an
2 attorney referral program to help assist them with
3 their workload and by improving interaction with EEOC
4 District Offices.

5 We received comments yesterday, in fact,
6 from the ELS after they had an opportunity to review
7 the report and the majority of the comments were
8 editorial in nature and we were very pleased to get
9 those because we do want to make those corrections,
10 but I did want to make you aware of the following
11 points which aren't reflected in the draft that I sent
12 you because they asked us to change these, yet when we
13 got the memorandum from them yesterday. First of all,
14 they requested that we further give more detailed
15 acknowledgement of their responsibilities for
16 defending challenges to the Department of Labor's
17 enforcement of Executive Order 11246 and other laws
18 pertaining to employment by federal contractors. So
19 we have -- we can certainly address that concern very
20 recently.

21 The role of the paralegals and Civil
22 Rights analysts in monitoring consent decrees are
23 needed to be more detailed and made more accurate. I
24 guess there were a couple of places where we didn't
25 quite express appropriately what the Civil Rights

1 analysts and paralegals did with regard to that, so we
2 can easily make that change as well.

3 Their role in pre-employment test
4 development and their use of external test development
5 experts needed to be explained more clearly. For
6 example, they don't develop tests and I believe we
7 said they did in the report, but they do a lot of
8 monitoring test development and we suggested that they
9 use outside contractors and they indicated in their
10 reply that they do use some expert consultants. So we
11 would have to modify that particular recommendation.

12 The responsibility for drafting Supreme
13 Court briefs and the Andarand case is going to be
14 prepared by the Solicitor General. They clarify that
15 ELS will have the opportunity to review it and to
16 provide input, but that they don't have the first hand
17 involvement. I think we expressed that incorrectly in
18 the report.

19 And then there were definitions in our
20 glossary which was with an attachment to the report
21 and the terms needed to be tailored to ELS work in
22 terms of what they actually do.

23 So if you've read the report and I'm sure
24 you must have, we've had other recommendations.
25 They're in the report that you received and I'm just

1 going to end here. Thank you very much for the
2 opportunity to summarize this and to study this
3 particular entity. It was very informative for all of
4 us and we'll be happy to respond to any questions or
5 concerns that you might have.

6 CHAIRPERSON BERRY: Thank you very much,
7 Terrie. We did all read the report and it's a
8 wonderful workmanlike, workpersonlike job and so I
9 need a motion to accept it, approve it, with the
10 understanding that the staff will make the changes and
11 response to the effective agency review as indicated
12 by Terrie.

13 Could I get a motion to that effect?

14 COMMISSIONER EDLEY: So moved.

15 COMMISSIONER WILSON: Second.

16 CHAIRPERSON BERRY: And then is there any
17 further discussion of the report before we approve it?

18 Yes, Commissioner Meeks?

19 COMMISSIONER MEEKS: Not really, except
20 to say that I thought it was really well written and
21 that the findings are all familiar, that they're doing
22 as good a job as they can, given the resources that
23 they have and that's --

24 CHAIRPERSON BERRY: That's what it sounds
25 like, right?

1 Commissioner Lee?

2 COMMISSIONER LEE: I want to thank the
3 staff for preparing a statutory report that doesn't
4 weigh 10 pounds. I appreciate that very much.

5 I also want to ask whether other
6 interested agencies such as the Association of Latino
7 State and Local Officials, Association of API, Mayors,
8 Governors, other organizations, are they going to be
9 reviewing this report, otherwise they should?

10 MS. DICKERSON: We will ask them if they
11 are currently.

12 CHAIRPERSON BERRY: Any other discussion?
13 If not, could I get a vote on approving the report?
14 All those in favor, indicate by saying aye.

15 (Ayes.)

16 Opposed?

17 (No response.)

18 **Future Agenda Items**

19 So ordered. Before you go, on the
20 national recommendations briefing memo that was given
21 to you by Terrie, I think we should discuss this whole
22 topic further at the -- I see the people are ready to
23 dart from their seats.

24 (Laughter.)

25 So I can see that you're not willing to

1 be here all day. I can see that now.

2 COMMISSIONER EDLEY: Not without notice.

3 CHAIRPERSON BERRY: Why don't we -- first
4 of all, can we agree, should we discuss these
5 recommendations next time when we discuss the State
6 recommendations? Or should we given the lateness of
7 the hour, even attempt to do anything about them
8 today? What is your wish? Next time. What do we
9 think is the timing? We do have time, don't we?

10 Nothing is going to happen legislatively
11 between now and September. When are the
12 recommendations of the Carter-Ford Commission coming
13 out, Commissioner Edley? Do you know?

14 COMMISSIONER EDLEY: Yes.

15 CHAIRPERSON BERRY: And are you at
16 liberty to say?

17 COMMISSIONER EDLEY: No. I'm not at
18 liberty to say.

19 CHAIRPERSON BERRY: Do you think they'll
20 come out before September?

21 COMMISSIONER EDLEY: Oh yes.

22 CHAIRPERSON BERRY: That's what I wanted
23 to know.

24 COMMISSIONER EDLEY: I think that will be
25 useful because it will hone in on the discussion of

1 this Commission. What's our date in September?

2 CHAIRPERSON BERRY: While they're looking
3 --

4 COMMISSIONER EDLEY: There will be plenty
5 of time. They will not be -- it would be miraculous
6 if either the Senate or the House has moved to mark up
7 before mid-September.

8 CHAIRPERSON BERRY: They won't. So what
9 we will do -- just a second, Commissioner Wilson
10 because I want to say this before Commissioner Meeks
11 leaves. Can we agree that -- I hope we don't need a
12 lot of discussion on this that -- are Commissioners
13 willing to meet for longer than half a day?

14 COMMISSIONER REDENBAUGH: Yes.

15 CHAIRPERSON BERRY: And could we agree
16 that we would set aside Friday for the meeting,
17 Fridays for the meeting and not feel like we have to
18 finish by 12 o'clock, 12:30, 1 o'clock because we have
19 a lot that we have to do. And so could I please ask
20 you to do that and to expect that the agenda will take
21 most of the day. We may have a break at lunch time so
22 people can get a sandwich or something, depending on
23 what the agenda is, but we have a lot to do and so
24 it's really hard to try to get it done by 12 o'clock,
25 12:30. So please do that if there's no objection to

1 doing that.

2 Terrie, what you would do, then I'll
3 recognize you, is you would take into account these
4 other ideas and materials that come in and revise your
5 memo a little bit and Staff Director, send it back to
6 us and we would have this discussion, along with the
7 discussion about States and State by State discussion
8 in September. And we also have the environmental
9 briefing in September.

10 Commissioner Wilson?

11 COMMISSIONER WILSON: Yes, the first
12 point, the first question is when you say all day, how
13 do we define all day?

14 CHAIRPERSON BERRY: All day means a work
15 day, like until hopefully 4, 5 o'clock.

16 COMMISSIONER WILSON: Because I was going
17 to say that we do have a lot. We are postponing a lot
18 of discussion until that meeting and I would not want
19 to see the --

20 CHAIRPERSON BERRY: That's what I'm
21 saying and thereafter, just count on, you may have to
22 -- the meeting will just go on longer. We won't be as
23 pressured. And if for some reason we finish earlier,
24 then that will be a boon to everyone.

25 Yes, Commissioner Lee?

1 COMMISSIONER LEE: Can I ask the staff
2 because we won't meet for another two months, and I'd
3 like to get some background information, can I ask the
4 staff to include a section on electoral reform for new
5 Americans. We touched on issues of naturalization and
6 other issues.

7 CHAIRPERSON BERRY: Electoral reform as
8 it affects new Americans?

9 COMMISSIONER LEE: Yes.

10 CHAIRPERSON BERRY: Such as
11 naturalization?

12 COMMISSIONER LEE: Yes.

13 CHAIRPERSON BERRY: Okay, they heard
14 that. All right, could I get a motion to adjourn?

15 COMMISSIONER WILSON: So moved.

16 COMMISSIONER LEE: Second.

17 CHAIRPERSON BERRY: Nondebatable. All
18 indicate by saying aye.

19 (Aye.)

20 So ordered. Thank you very much.

21 (Whereupon, at 1:00 p.m., the meeting was
22 concluded.)

23

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