

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

+ + + + +

Friday, January 11, 2002

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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 8:30 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

- MARY FRANCES BERRY, Chairperson
- CRUZ REYNOSO, Vice Chairperson
- JENNIFER C. BRACERAS, Commissioner
- CHRISTOPHER EDLEY, JR., Commissioner
- ELSIE M. MEEKS, Commissioner
- ABIGAIL THERNSTROM, Commissioner
- VICTORIA WILSON, Commissioner
- LESLIE R. JIN, Staff Director



STAFF PRESENT:

MANUEL ALBO
KIMBERLEY ALTON
DAVID ARONSON
DEBRA CARR, ESQ., Deputy General Counsel
IVY DAVIS,
BARBARA DELAVIEZ
TERRY DICKERSON
PAMELA A. DUNSTON
RACHAEL GOLDFARB
GEORGE M. HARBISON
SOCK-FOON-MACDOUGALL
PAMELA MOYE
KIM NORRIS
JENNY PARK
MARC PENTINO
KIRK PERRY
BERNARD QUARTERMAN
PETER REILLY, Parliamentarian
KWANA ROYAL
JOYCE SMITH
MARCIA TYLER
AUDREY WIGGINS
DAVID WONG
AUDREY WRIGHT
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA
LAURA BATIE
PATRICK DUFFY
KRISHNA TOOLSIE
KIMBERLY SCHULD

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

(8:39 a.m.)

1
2
3 CHAIRPERSON BERRY: Good morning. Good
4 morning again.

5 VICE CHAIRPERSON REYNOSO: Good morning.

6 CHAIRPERSON BERRY: Since our last meeting
7 a great deal has happened. Instead of sitting down
8 with our lawyers as I had hoped to reach some
9 accommodation, the administration has filed suit
10 against Commissioner Victoria Wilson.

11 Today we have a business meeting which is
12 very brief, and then we have a hearing on
13 environmental justice, which is a part of a two-part
14 hearing. Today we'll be hearing from advocates who
15 are concerned about toxic waste and pollution and the
16 impact on the health of communities of poor people,
17 people of color, and women. We will also be hearing
18 from industry representatives who will express their
19 points of view on the subject.

20 And next month we will be hearing from
21 government officials and the federal agencies who have
22 responsibilities for these issues.

23 We will also today be discussing in a
24 documents hearing, materials that we're collecting for
25 an education accountability hearing, for grades K

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1 through 12, which we will be holding in the near
2 future.

3 But in any case, as I said, the
4 administration has filed suit against Commissioner
5 Wilson.

6 Also our Staff Director, Les Jin,
7 following up on the position of the Commission that
8 we're already legally constituted with Ms. Wilson
9 present and that our statute means her term has not
10 expired, asked outside counsel to intervene in the
11 case.

12 The Justice Department, instead of
13 recusing itself and asking both parties to get outside
14 counsel, decided to weigh in on the side of the
15 administration.

16 Having done that, there was no alternative
17 except for the Commission to represent its own
18 position in court.

19 The only point I want to make about it
20 today is that we've also received letters. We
21 received another letter from our oversight
22 subcommittee chairman in the House, Congressman
23 Chabot, which has been responded to by the Ranking
24 Minority Member of that full Judiciary Committee, Mr.
25 Conyers and Mr. Nadler, complaining. Mr. Chabot was

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1 complaining about our motion to intervene and about
2 our hiring of outside counsel.

3 But that has been fully responded to by
4 the Ranking Member of the Judiciary Committee, who has
5 been there for more years than anybody can remember.
6 I can't even remember.

7 The only point I want to make about this
8 litigation which is in process, and the courts will
9 decide the issue, is that the horse race of who sits
10 on the Commission may be very interesting to the
11 public and to the media, but it doesn't matter who
12 sits on the Commission. The most important issue here
13 is how the court decides whether the Commission can go
14 to court when it has a conflict with the Justice
15 Department and the White House.

16 The way that issue is decided will either
17 cripple the Commission entirely and make it impossible
18 to carry out its functions, or it may reinforce its
19 ability to carry out its functions.

20 I talk a lot about the independence of the
21 Commission, and people ask me what does that mean.
22 Put simply, today the issue is: how do we interpret
23 our own statute on the matter of appointments?

24 Tomorrow the issue may be, as it has been
25 in the past: suppose we decide to have a hearing and

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1 we subpoena witnesses. Under our statute the Justice
2 Department is supposed to assist us if witnesses won't
3 come by going to court to enforce our subpoenas.
4 That's the way the statute works.

5 Suppose the Justice Department decides,
6 and the White House, that they don't like us having a
7 hearing about voting in Florida or environmental
8 justice or any other issue and they let the word go
9 forth to people that they're not going to enforce any
10 subpoenas from the Civil Rights Commission.

11 We subpoena everyone who comes before us,
12 and we do that even though some people are willing.
13 We don't want to make distinctions. Others aren't
14 willing. They're scared, and they want the cover of
15 saying, "I've been subpoenaed and I have to go."

16 So in the history of the Commission, the
17 Commission has always subpoenaed all witnesses. If
18 the Justice Department decides not to enforce the
19 subpoena, it would effectively put the Commission out
20 of the business of conducting hearing, and if we were
21 not able to go to court on our own to enforce our own
22 subpoena, then there would be no more independent
23 Civil Rights Commission.

24 And so I think that the issue of how the
25 court decides that subject is much more important than

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1 who sits on the Commission or who doesn't sit on the
2 Commission or the horse race, as much as I may be fond
3 of some people or whatever. It doesn't matter who
4 sits here. Our role as the watchdog over civil rights
5 enforcement, with the ability to set our own agenda,
6 would be completely controverted.

7 We sent a letter to the President asking
8 him to change the mind of the administration on this
9 issue of opposing our motion to intervene for
10 precisely the reason I just gave you, hoping that the
11 President would do what President John Kennedy did in
12 the 1960s when the Civil Rights Commission wanted to
13 go to Mississippi to hold hearings and the Justice
14 Department didn't want them to and the administration
15 didn't want them to and said, "You're interfering with
16 what we're doing. We don't want you there."

17 And the Commission said, "We've got all of
18 these voting rights complaints from people, and they
19 want us to come there, and it's our responsibility to
20 do so."

21 And they were told not to go by the
22 Justice Department. And President Kennedy was asked
23 at a press conference whether or not he would make the
24 Civil Rights Commission stay at home and not go to
25 Mississippi, and President Kennedy answered by saying,

1 "The Civil Rights Commission is independent. I can't
2 tell them what to do. I wish they wouldn't, but, hey,
3 I can't tell them what to do. They're independent."

4 And so our hope was that the White House
5 would do the same on this occasion. A response has
6 come from the White House in the negative.

7 So we will simply wait and abide by the
8 decision of the courts on this matter, and of course,
9 we will do whatever the court requires us to do.

10 So far we have already protected our
11 independence by insisting that we will not cave in to
12 the White House just because it interprets our statute
13 differently, and that we will attempt to protect the
14 Commission's integrity and independence.

15 The first item on the agenda for today's
16 meeting is the approval of the agenda. Could I get a
17 motion to approve the agenda?

18 COMMISSIONER BRACERAS: May I make a point
19 of order, Madame Chair?

20 CHAIRPERSON BERRY: Yes, yes.

21 VICE CHAIRPERSON REYNOSO: Madame Chair,
22 I'd like to actually ask that we discuss the issue of
23 the propriety of our intervention right after Roman
24 numeral two, the approval of minutes because I've
25 received correspondence from a Commissioner, and I've

1 seen the correspondence from Congressman Chabot.

2 It's been responded to, but I think I'm
3 concerned, and I think we should discuss that, and in
4 my view affirm the propriety of the Staff Director's
5 actions.

6 CHAIRPERSON BERRY: Okay. Is there an
7 objection to adding that?

8 COMMISSIONER BRACERAS: Point of order.

9 COMMISSIONER THERNSTROM: No.

10 CHAIRPERSON BERRY: Let me hear the point
11 of order, and then we will take up adding that.

12 COMMISSIONER BRACERAS: The point of order
13 is that despite your opening statement, this
14 Commission continues to not be properly constituted in
15 that Commissioner Kirsanow is here and eager to
16 participate in our hearing today on environmental
17 justice, and Ms. Wilson continues to sit at the table
18 participating as a Commissioner.

19 Now, I understand that this is a genuine
20 legal dispute, which will be decided by a court of law
21 and that it is pending before the U.S. District Court
22 right now, but given that this is a live legal
23 dispute, I would ask that Commissioner Kirsanow be
24 allowed to participate provisionally in these
25 proceedings so that if it turns out that your

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1 interpretation of the statute is incorrect, there will
2 be a clean record upon which the court can take
3 whatever action is necessary to go back and change
4 anything that might need to be changed. So I --

5 CHAIRPERSON BERRY: Is that your motion?
6 Is that the motion?

7 COMMISSIONER BRACERAS: It is a point of
8 order that -- excuse me. A point of order takes
9 precedence over other things, and the point of order
10 is that the Commission is not properly constituted.

11 CHAIRPERSON BERRY: I would rule that the
12 Commission is properly constituted and ask the
13 Commission to vote whether or not or the
14 parliamentarian to tell me whether my ruling is
15 correct.

16 COMMISSIONER BRACERAS: Well, if that's
17 your ruling, that's your ruling. But I would like to
18 request -- I would like to move that Commissioner
19 Kirsanow be allowed to participate provisionally so
20 that when the court makes its ruling, whichever way it
21 rules, there will be a clean record as to how Ms.
22 Wilson voted on matters, how Commissioner Kirsanow
23 voted on the matters, and that way the record will be
24 clean both for the public and the court at the time a
25 ruling is made.

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1 It's a very reasonable request.

2 CHAIRPERSON BERRY: Just a second.
3 Parliamentarian, I have ruled against the point of
4 order. Should there be a motion to overturn my ruling
5 or how should we proceed?

6 MR. REILLY: I guess I don't understand
7 what Commissioner Braceras has said, if that
8 constitutes a motion of renewal. Is this --

9 COMMISSIONER BRACERAS: It is not a motion
10 of renewal. It is simply a motion to allow him to
11 participate provisionally.

12 My point of order was that the Commission
13 was not properly constituted. You have now --

14 CHAIRPERSON BERRY: Ruled.

15 COMMISSIONER BRACERAS: -- object to that.

16 CHAIRPERSON BERRY: And do you want to
17 make a motion to overturn my ruling?

18 COMMISSIONER BRACERAS: I'm making a
19 motion to ask -- I'm making a motion to have
20 Commissioner Kirsanow participate provisionally.

21 CHAIRPERSON BERRY: I understand that.
22 But I'm asking: are you first asking for a motion to
23 overturn my ruling?

24 COMMISSIONER BRACERAS: No, I'm not.

25 CHAIRPERSON BERRY: Okay. I just wanted

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1 to know.

2 COMMISSIONER BRACERAS: I'm simply moving
3 that he be allowed to participate provisionally.

4 CHAIRPERSON BERRY: So you're moving. So
5 your motion now, you have a second motion. I mean you
6 have a motion after the point of order.

7 COMMISSIONER BRACERAS: Right.

8 CHAIRPERSON BERRY: You do not want to
9 move to overturn the point of order. I'm just trying
10 to get clear.

11 COMMISSIONER BRACERAS: I would simply
12 like to move that he be allowed to participate
13 provisionally so that we have a clean record for the
14 public and for the courts.

15 CHAIRPERSON BERRY: So what we have,
16 Parliamentarian, if I understand now, is she is not
17 challenging the point of order. Is that your
18 understanding?

19 MR. REILLY: Yes.

20 CHAIRPERSON BERRY: And now you're simply
21 --

22 COMMISSIONER BRACERAS: I don't think you
23 need to rephrase and put words in my mouth. I have a
24 very clean motion on the table.

25 CHAIRPERSON BERRY: And you now have a

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1 motion.

2 COMMISSIONER BRACERAS: Correct.

3 CHAIRPERSON BERRY: But it is not to
4 overturn the point of -- my ruling on your order.

5 COMMISSIONER BRACERAS: Since you
6 apparently don't understand what the motion is, I will
7 repeat it again. The motion is to have Commissioner
8 Peter Kirsanow participate in these proceedings
9 provisionally so that there is a clean record for the
10 court. If it turns out that the opinion of the
11 Justice Department and of the career attorneys in the
12 Office of Legal Counsel and the independent
13 Congressional Research Service is wrong, if all of
14 those independent opinions are wrong and Commissioner
15 Kirsanow does not have a right to sit at this table,
16 then fine.

17 But there's no harm in recording his votes
18 and in recording his participation. They don't need
19 to be counted if it turns out that we're wrong.

20 CHAIRPERSON BERRY: So that's your --

21 COMMISSIONER BRACERAS: If it turns out
22 that you're wrong --

23 CHAIRPERSON BERRY: Is that your entire
24 motion or the entire thing, your motion? No.

25 Is there a second to the motion?

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1 COMMISSIONER THERNSTROM: I'll second it.
2 Does anyone want to speak to the motion? Yes.

3 VICE CHAIRPERSON REYNOSO: Madame Chair, I
4 speak in opposition to the motion, but I'd like to
5 note that regrettably the point of order was not a
6 point of order; that the motion at this time is
7 inappropriate, but to get rid of it, I suggest that we
8 go on and vote on it.

9 I regret that my distinguished
10 Commissioner doesn't know about the rules of order.
11 Apparently she hasn't educated herself since that
12 time. So --

13 COMMISSIONER BRACERAS: I am aware of my
14 rights under Robert's Rules of Order, and my right to
15 make a point of order about whether or not --

16 CHAIRPERSON BERRY: Commissioner Braceras,
17 you are not recognized.

18 COMMISSIONER BRACERAS: Well, I would like
19 to be recognized. My intention --

20 CHAIRPERSON BERRY: I have not yet
21 recognized you. The Vice Chair is speaking.

22 VICE CHAIRPERSON REYNOSO: May I finish?

23 CHAIRPERSON BERRY: Could he please finish
24 his statement -- colleagues, may we try once more?
25 Please be in order. Please speak when you're

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1 recognized. That's for all of you. Please respect
2 your colleagues, and when they're making a statement
3 whether you agree with it or disagree, please let them
4 finish.

5 COMMISSIONER BRACERAS: Look. All of that
6 --

7 CHAIRPERSON BERRY: Commissioner Braceras,
8 you are not --

9 COMMISSIONER BRACERAS: -- is fine, but
10 when somebody personally attacks me at this meeting, I
11 am going to speak up.

12 CHAIRPERSON BERRY: Will the Commission
13 please be in order?

14 Vice Chair, have you concluded your
15 statement?

16 VICE CHAIRPERSON REYNOSO: No.

17 CHAIRPERSON BERRY: Please continue.

18 VICE CHAIRPERSON REYNOSO: Therefore, even
19 though the motion is out of order, I suggest that we
20 go on and vote on the motion.

21 CHAIRPERSON BERRY: All right. Now, let
22 me just point out factually, to refresh the
23 recollection of the Commissioners, that at the last
24 meeting we stated and agreed that we would take note
25 of the votes of everyone, including Commissioner

1 Wilson, if there were any matters on which
2 Commissioner Wilson voted, that the Court in its
3 decision decided should not have been taken, and her
4 vote was substantive in the outcome, we would review
5 those matters and change it.

6 In looking at the agenda, the actions of
7 the Commission last time, there wasn't anything that
8 would have changed whether or not she voted, but in
9 any case, we have already agreed to do that. So
10 there's no necessity for us and there's nothing that
11 we're doing that is, in fact; giving anybody any money
12 or doing anything that would require us to accept the
13 White House and the Justice Department's position
14 before the court decides.

15 And so I simply suggest that we wait until
16 the litigation is settled.

17 Yes, Commissioner Edley.

18 COMMISSIONER EDLEY: Call the previous
19 question, please, so that we can get onto something.

20 CHAIRPERSON BERRY: Okay. All in favor
21 indicate -- the question has been called. All those
22 in favor of the motion of Commissioner Braceras
23 indicate by saying aye.

24 (Chorus of ayes.)

25 CHAIRPERSON BERRY: Those opposed?

1 (Chorus of ayes.)

2 COMMISSIONER BRACERAS: Roll call vote,
3 please.

4 CHAIRPERSON BERRY: Give me the roll call.
5 The motion is the motion of Commissioner
6 Braceras.

7 Berry, no.

8 Braceras?

9 COMMISSIONER BRACERAS: No, and Kirsanow
10 no.

11 I'm sorry. Braceras yes and Kirsanow yes.

12 COMMISSIONER EDLEY: I'm sorry. This is the
13 motion to call the previous question. So an
14 affirmative vote means we end debate and vote on the
15 motion.

16 CHAIRPERSON BERRY: What is wrong with the
17 -- Pam, could you fix the microphone system? I can't
18 hear.

19 COMMISSIONER THERNSTROM: Can we clarify
20 this matter as to --

21 CHAIRPERSON BERRY: We will as soon as she
22 fixes the thing. Okay, Commissioner Thernstrom? I
23 can't stand all of this buzzing in my ear. I don't
24 know if anybody else can.

25 Is it fixed, Pam?

1 Okay. Edley, repeat your motion.

2 COMMISSIONER EDLEY: I just moved the
3 previous question.

4 CHAIRPERSON BERRY: Okay. And
5 Commissioner Thernstrom wanted you to explain what --

6 COMMISSIONER THERNSTROM: Explain what is
7 the motion now on the floor

8 COMMISSIONER EDLEY: So that an
9 affirmative vote --

10 COMMISSIONER THERNSTROM: So that people
11 can know how they're voting.

12 COMMISSIONER EDLEY: An affirmative vote
13 would end debate, and we would then immediately vote
14 on Commissioner Braceras' motion.

15 CHAIRPERSON BERRY: Okay. All those in
16 favor of ending debate and voting on Commissioner
17 Braceras' motion, indicate by saying aye.

18 (Chorus of ayes.)

19 CHAIRPERSON BERRY: All those opposed
20 indicate by saying nay.

21 (Chorus of nays.)

22 CHAIRPERSON BERRY: Berry is in favor of
23 ending debate. How about if we do it that way?

24 Braceras is?

25 COMMISSIONER BRACERAS: Braceras is

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1 against ending debate, and Commissioner Kirsanow is
2 also against ending the debate.

3 CHAIRPERSON BERRY: Edley?

4 COMMISSIONER EDLEY: Yes.

5 CHAIRPERSON BERRY: Meeks.

6 COMMISSIONER MEEKS: Against it.

7 CHAIRPERSON BERRY: You're for ending
8 debate or against?

9 COMMISSIONER MEEKS: No, I'm not for it.

10 (Laughter.)

11 CHAIRPERSON BERRY: Reynoso?

12 VICE CHAIRPERSON REYNOSO: Yes.

13 CHAIRPERSON BERRY: Thernstrom?

14 COMMISSIONER THERNSTROM: No.

15 CHAIRPERSON BERRY: Wilson?

16 COMMISSIONER WILSON: Yes.

17 CHAIRPERSON BERRY: Okay. Five to two.

18 So the debate is ended. Now we will vote
19 on the motion of Commissioner Braceras. All those in
20 favor of Commissioner Braceras' motion, indicate by
21 saying aye.

22 (Chorus of ayes.)

23 CHAIRPERSON BERRY: Those opposed indicate
24 by say no?

25 (Chorus of noes.)

1 COMMISSIONER THERNSTROM: But I want a
2 roll call vote.

3 CHAIRPERSON BERRY: Okay. All those in
4 favor of the motion, that's the first, Commissioner
5 Braceras' motion: Berry is against it.

6 Braceras?

7 COMMISSIONER BRACERAS: Is in favor of it
8 and Commissioner Kirsanow is in favor of --

9 CHAIRPERSON BERRY: Edley is?

10 COMMISSIONER EDLEY: Against.

11 CHAIRPERSON BERRY: Meeks?

12 COMMISSIONER MEEKS: Against.

13 CHAIRPERSON BERRY: Redenbaugh.

14 COMMISSIONER EDLEY: Absent.

15 COMMISSIONER EDLEY: Absent.

16 CHAIRPERSON BERRY: Oh, that's right.

17 Redenbaugh is not.

18 Reynoso?

19 VICE CHAIRPERSON REYNOSO: No.

20 CHAIRPERSON BERRY: Thernstrom?

21 COMMISSIONER THERNSTROM: Yes.

22 CHAIRPERSON BERRY: Wilson?

23 COMMISSIONER WILSON: No.

24 CHAIRPERSON BERRY: One, two, three, four,
25 five. Five to two.

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I. Approval of the Agenda

Okay. Now, the, Vice Chair, has something you wanted to add to the agenda.

VICE CHAIRPERSON REYNOSO: Yes, we never got to the agenda. I thought that we should have a -- since the Commission intervened in the litigation since the last meeting, I thought it was appropriate for us, though in my view -- what the Staff Director has done is perfectly appropriate. I thought it was proper for us to take that matter up and affirm that what he did was proper.

So I was suggesting that that be an agenda item after Roman numeral two and before Roman numeral three.

CHAIRPERSON BERRY: Okay. After Roman numeral two.

The only other thing I would like to add is the Supreme Court decision on disability rights -- Commissioner Edley, I thought you suggested that we add that at this meeting. Have you forgotten your suggestion?

COMMISSIONER EDLEY: No. That will be fine.

CHAIRPERSON BERRY: And what we would like to do is that.

1 Yes.

2 VICE CHAIRPERSON REYNOSO: Madame Chair, I
3 do have a suggestion that we have a communication with
4 the President. Can I just do an announcement?

5 CHAIRPERSON BERRY: Why don't we have
6 that?

7 VICE CHAIRPERSON REYNOSO: Okay.

8 CHAIRPERSON BERRY: So there will be a
9 communication with the President.

10 (Pause in proceedings.)

11 COMMISSIONER THERNSTROM: I'm terribly
12 sorry. I covered the microphone.

13 CHAIRPERSON BERRY: We will add a
14 communication to the President that the Vice Chair
15 wants to add to the meeting.

16 So with the addition of those items, can I
17 get a second? Could someone second the motion?

18 COMMISSIONER EDLEY: Second.

19 CHAIRPERSON BERRY: To approve the agenda
20 with those items. All in favor indicate by saying
21 aye.

22 (Chorus of ayes.)

23 CHAIRPERSON BERRY: Opposed?

24 (No response.)

25 CHAIRPERSON BERRY: Okay. So ordered.

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II. Approval of Minutes, 12/7/01 Meeting

1 The next item is the approval of the
2 minutes of December 7th, 2001. Could I get a motion
3 to approve the agenda?
4

5 PARTICIPANT: Minutes.

6 CHAIRPERSON BERRY: Could I get a second?

7 COMMISSIONER BRACERAS: Second.

8 CHAIRPERSON BERRY: The minutes. I'm
9 sorry.

10 All in favor indicate by saying aye.

11 (Chorus of ayes.)

12 CHAIRPERSON BERRY: Opposed?

13 (No response.)

14 CHAIRPERSON BERRY: So ordered.

III. Discussion of Staff Director's Actions

15 CHAIRPERSON BERRY: There are no
16 announcements, but we agreed to discuss the Staff
17 Director and the motion to intervene. Vice Chair, do
18 you have a motion or do you want to make a statement
19 or what?
20

21 VICE CHAIRPERSON REYNOSO: I just have a
22 motion, Madame Chair, and a short statement.

23 I've received correspondence questioning
24 the propriety of what the Staff Director did in
25 intervening in the litigation on behalf of the

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1 Commission. I believe what he did was proper.

2 I now make a motion that we affirm that
3 what he did was proper on behalf of the Commission.

4 COMMISSIONER EDLEY: Second.

5 CHAIRPERSON BERRY: Okay.

6 COMMISSIONER BRACERAS: Can we have -- can
7 we open this up to debate, please?

8 CHAIRPERSON BERRY: As soon as we have a
9 second we will, if you don't mind, Commissioner
10 Braceras, please.

11 COMMISSIONER EDLEY: Second.

12 CHAIRPERSON BERRY: You seconded, Edley?
13 Okay.

14 Discussion by Commissioners. Okay.
15 Commissioner Braceras.

16 COMMISSIONER BRACERAS: I'd like to start
17 by saying that I am unaware of any authority under
18 which the Staff Director could hire outside counsel
19 for this Commission on this or any other matter. And
20 if either the Staff Director or any of the other
21 Commissioners could enlighten me on that point, I'd
22 like to hear what that statutory authority is.

23 CHAIRPERSON BERRY: The Staff Director --
24 do you want to describe your authority to hire and
25 fire people or would you like someone else?

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1 COMMISSIONER BRACERAS: Counsel.

2 CHAIRPERSON BERRY: Anyone.

3 COMMISSIONER BRACERAS: Counsel.

4 CHAIRPERSON BERRY: Do you want --
5 including counsel.

6 COMMISSIONER BRACERAS: That's my
7 question. My question is: under what authority can
8 the Staff Director hire --

9 CHAIRPERSON BERRY: We heard the question.
10 The Staff Director will answer.

11 COMMISSIONER BRACERAS: -- outside
12 counsel?

13 CHAIRPERSON BERRY: The Staff Director,
14 would you give your answer?

15 MR. JIN: My answer is very brief. I have
16 responsibility for running the Commission on a day-to-
17 day basis, and in executing that authority and
18 responsibility I routinely hire people. I enter into
19 agreements. I enter into contracts on a variety of
20 matters, and so to me this is part of that.

21 COMMISSIONER BRACERAS: Well, specifically
22 would you address the question of outside counsel
23 because it is the opinion of a number of legal
24 scholars and government attorneys that this Commission
25 is not entitled to hire outside counsel, that that is

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1 why it has an Office of General Counsel, and you have
2 very able attorneys working in that department.

3 So my question for you is not under what
4 authority you may make contracts, but under what
5 authority you may hire legal counsel outside of -- to
6 advise you other than your own staff.

7 CHAIRPERSON BERRY: Before you answer,
8 Staff Director, let me point out that before you even
9 came to the Commission, the Commission has hired
10 outside counsel in the past -- it had nothing to do
11 with you because you weren't here -- to work on
12 projects, to work with the General Counsel, to work
13 with the Staff Director.

14 It has happened over and over over the
15 years. There's no -- in fact, we discussed here in
16 the meeting one time hiring some outside counsel to
17 help us on one of the reports. Somebody mentioned it,
18 and the Staff Director, whoever it was then -- I don't
19 think you were here. It was somebody else -- hired
20 some outside law firm to do that.

21 Also, the letter that you know we have,
22 Congressmen Conyers and Nadler point out that the
23 Commission can hire outside counsel so long as --
24 there's no restriction in the statute, and there
25 isn't, whoever the Commission decides to hire to do

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1 whatever the Commission decides to have them do.

2 I just thought I'd point out that
3 happened, but you can --

4 COMMISSIONER BRACERAS: Well, may I point
5 --

6 CHAIRPERSON BERRY: -- answer for
7 yourself.

8 COMMISSIONER BRACERAS: -- something out
9 before --

10 CHAIRPERSON BERRY: Just a moment. You
11 asked him a question. He's going to answer.

12 COMMISSIONER BRACERAS: Well, since you've
13 distracted from that question, I would like to clarify
14 what --

15 CHAIRPERSON BERRY: Commissioner Braceras
16 --

17 COMMISSIONER BRACERAS: -- my question is.

18 CHAIRPERSON BERRY: -- I will let the
19 Staff Director speak, and then I will recognize you.

20 MR. JIN: I just want to add, build on
21 what the Chair said, which is that I've been in the
22 federal government in one way or another for the last
23 15 years with, I think, four different agencies, and
24 so forth, and it's not extraordinarily for agencies
25 and departments to hire lawyers for different things.

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1 And so I consulted with the Office of
2 General Counsel. I thought this was the prudent thing
3 to do, and they concurred that I had the legal
4 authority to do it. So that's the basis of my
5 decision.

6 CHAIRPERSON BERRY: Do you have a motion
7 to introduce, ma'am? Because we cannot proceed with
8 this discussion in the absence of a motion because it
9 would become dilatory at some point.

10 If you have a motion you'd like to make to
11 speak to, that would be fine, or are you speaking to
12 this motion, or could someone, please, at some point
13 if this proceeds, introduce a motion to take up the
14 question of the motion, I would appreciate that.

15 But anyway, I'll recognize Commissioner
16 Thernstrom who had her hand up, and then I will
17 recognize you.

18 COMMISSIONER BRACERAS: I'm sorry, but you
19 said you were going to recognize me after the Staff
20 Director spoke, and I would ask that Commissioner
21 Thernstrom defer to me then if you are --

22 CHAIRPERSON BERRY: Will you defer --

23 COMMISSIONER BRACERAS: -- going to refuse
24 to --

25 COMMISSIONER BERRY: -- Commissioner

1 Thernstrom?

2 COMMISSIONER BRACERAS: -- recognize me.

3 CHAIRPERSON BERRY: Will you defer,
4 Commissioner Thernstrom?

5 COMMISSIONER THERNSTROM: I will defer.

6 CHAIRPERSON BERRY: All right.

7 COMMISSIONER THERNSTROM: But I would also
8 like to be recognized.

9 CHAIRPERSON BERRY: You'd like to speak.
10 Yes, okay.

11 Go ahead, Commissioner Braceras.

12 COMMISSIONER BRACERAS: I don't think my
13 question is an unreasonable one. I am concerned about
14 the expenditure of taxpayer funds on a very expensive
15 private outside law firm, and if there's statutory
16 authority for that and I am mistaken, then so be it.

17 I'm simply trying to ascertain what that
18 authority may be.

19 Now, the fact that it's been done in the
20 past or that it's been done by other agencies is
21 completely nonresponsive to the question. The
22 question is: what is the authority to hire outside
23 counsel?

24 And the second part of my question is:
25 how much is that law firm being paid?

1 And I think that it's important for not
2 only Commissioners to have the answers to those
3 questions, but for the public to know how their tax
4 dollars are being spent.

5 If it is a lawful expenditure of taxpayer
6 dollars, that's fine. I'm just trying to find out
7 whether it is or not.

8 CHAIRPERSON BERRY: Commissioner
9 Thernstrom.

10 COMMISSIONER THERNSTROM: Yeah, I mean,
11 the precise question here is the authority of the
12 Staff Director to hire outside counsel to represent
13 the Commission in litigation, and I believe that 18
14 U.S. Code, Section 516 prohibits agencies and
15 officers of the United States from hiring outside
16 counsel to litigate.

17 If the Staff Director thinks that that is
18 mistaken, I would very much like to see some sort of
19 memo and summary of precedent, of law and precedent in
20 this regard.

21 Also, let me say one other point. I don't
22 understand, and it's a related question; I don't
23 understand the statutory basis for either accepting
24 pro bono the work of Paul Weiss or, as I understand we
25 no longer are, or for paying them. And that is

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1 obviously a related question, but it is very
2 important.

3 CHAIRPERSON BERRY: I'm going to recognize
4 others who have their hands up, but let me just say
5 that the precise matter that these Commissioners are
6 asking about is being litigated in the court. I for
7 one -- I don't know about the rest of you -- rather
8 than engaging in this discussion which the judge is
9 going to decide, I would simply wait until the judge
10 decides it. It is the precise matter that is being
11 disputed. There's no sense in us sitting around here
12 arguing about whether this is legal or that is legal
13 or --

14 COMMISSIONER BRACERAS: It was you who put
15 it on the agenda, Madame Chair.

16 CHAIRPERSON BERRY: I would appreciate it
17 if you would let me finish. Thank you.

18 COMMISSIONER BRACERAS: But for you to
19 turn it around and say --

20 CHAIRPERSON BERRY: And you are not
21 recognized.

22 COMMISSIONER BRACERAS: -- put on the
23 agenda is ludicrous.

24 CHAIRPERSON BERRY: Commissioner Braceras,
25 you are not recognized. Others have their hands up,

1 and I am speaking. Please.

2 The matter is being litigated in the
3 courts. I would hope that Commissioners would not get
4 into trying to make a legal argument, being their own
5 lawyers, about the legalities or whatever.

6 And the Staff Director has already
7 answered in terms of what he sees as his authority.
8 The court will decide it.

9 But I will recognize Commissioner Edley
10 and then the Vice Chair.

11 COMMISSIONER EDLEY: Well, I'm wondering,
12 Madame Chair, if it wouldn't be appropriate -- let me
13 say my thought and then try to turn it into a motion.
14 I think I want to make a motion.

15 VICE CHAIRPERSON REYNOSO: There's a
16 pending motion.

17 COMMISSIONER THERNSTROM: I think there's
18 a pending motion.

19 CHAIRPERSON BERRY: There's a motion on
20 the floor.

21 COMMISSIONER EDLEY: Oh, there is?

22 CHAIRPERSON BERRY: The motion on the
23 floor, which we do need someone to move to get back
24 to, and someone can do that if they wish by moving the
25 previous question, is the motion that is on the floor.

1 If someone would do that, we can get to the motion

2 COMMISSIONER THERNSTROM: Can you repeat
3 the motion?

4 CHAIRPERSON BERRY: You move the previous
5 question? Thank you very much.

6 PARTICIPANT: May I call for the question?

7 CHAIRPERSON BERRY: Yes, please. The
8 question has been called for.

9 All those in favor of Vice Chair Reynoso's
10 motion indicate by saying aye.

11 (Chorus of ayes.)

12 CHAIRPERSON BERRY: Opposed?

13 COMMISSIONER BRACERAS: Nay.

14 CHAIRPERSON BERRY: Opposed?

15 COMMISSIONER THERNSTROM: I'm opposed to
16 it. I would like the motion precisely restated. I'm
17 sorry.

18 VICE CHAIRPERSON REYNOSO: The motion is
19 to reaffirm the propriety of the Staff Director having
20 retained counsel to represent this Commission in
21 litigation.

22 COMMISSIONER THERNSTROM: That's the
23 entire motion.

24 CHAIRPERSON BERRY: Are you opposed?

25 COMMISSIONER THERNSTROM: I am opposed,

1 and --

2 CHAIRPERSON BERRY: The question has been
3 called.

4 COMMISSIONER THERNSTROM: -- Commissioner
5 Kirsanow is opposed.

6 CHAIRPERSON BERRY: Okay. The motion is
7 approved.

8 Now, do you have another motion,
9 Commissioner Edley?

10 COMMISSIONER EDLEY: Yes. It's that the
11 Staff Director arrange for a briefing, whether in
12 person or by conference call, with interested
13 Commissioners to discuss the legal issues and the
14 posture of the litigation.

15 CHAIRPERSON BERRY: If people wish to do
16 that.

17 COMMISSIONER EDLEY: If people wish to do
18 that.

19 CHAIRPERSON BERRY: Well, we can --

20 COMMISSIONER EDLEY: I'm basically just
21 trying to create an opportunity for Commissioners that
22 are interested in pursuing what Commissioner Braceras
23 has raised to be able to have a conversation about it
24 with the attorneys and to better understand the
25 arguments that are being made in court.

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1 COMMISSIONER THERNSTROM: Well, I would --
2 I'm sorry.

3 CHAIRPERSON BERRY: We can agree to do
4 that even without a motion, but fine. If you want to
5 move that.

6 COMMISSIONER EDLEY: Well, I guess I want
7 to make it a motion because then if people want to
8 keep talking about this, I'd like to be out of order.

9 (Laughter.

10 CHAIRPERSON BERRY: Okay.

11 PARTICIPANT: Second.

12 CHAIRPERSON BERRY: Okay.

13 COMMISSIONER EDLEY: Because I'd really
14 like to get to the substance of the agenda, of the
15 meeting.

16 CHAIRPERSON BERRY: Okay. All right.

17 COMMISSIONER EDLEY: So I make the motion.

18 CHAIRPERSON BERRY: Do you second it?

19 Okay.

20 Anyone want to speak to that motion?

21 COMMISSIONER THERNSTROM: Yes, I do.

22 CHAIRPERSON BERRY: Commissioner
23 Thernstrom.

24 COMMISSIONER THERNSTROM: I'd be glad to
25 have conversations, but I would like some

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1 documentation, a piece of paper from which we are
2 talking so that the position of the Staff Director is
3 clearly spelled out, including the statutory basis and
4 any relevant precedent.

5 CHAIRPERSON BERRY: Which is the court
6 papers.

7 MR. JIN: Exactly

8 CHAIRPERSON BERRY: So he can send those
9 around to everybody so that they can see the argument
10 that the lawyers are making, which is the argument
11 he's making.

12 Anyone else want to speak to the question?
13 I mean to the motion.

14 (No response.)

15 CHAIRPERSON BERRY: Okay.
16 Parliamentarian, if we pass this motion and if the
17 Commission does have such a briefing or conference
18 call, which will only happen if people want it, can it
19 be done in closed session since it's about litigation?

20 MR. REILLY: I believe so, Madame Chair.

21 CHAIRPERSON BERRY: If it happens
22 hypothetically.

23 MR. REILLY: Right. I mean I just want to
24 state for the record that we fully adhere to the
25 Sunshine Act, and there are ten reasons for which you

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1 could have a closed session, and that falls within one
2 of those reasons.

3 CHAIRPERSON BERRY: Okay. Thank you. I
4 appreciate that.

5 All in favor of the motion, indicate by
6 saying aye:

7 (Chorus of ayes.)

8 CHAIRPERSON BERRY: Opposed.

9 COMMISSIONER REYNOSO: No.

10 CHAIRPERSON BERRY: Okay. The motion
11 passes. Thank you very much.

12 **IV. Discussion of Supreme Court's Disability**

13 **Rights Decision**

14 CHAIRPERSON BERRY: The second item that
15 was added was the disability rights decision of the
16 U.S. Supreme Court. The U.S. Supreme Court decided a
17 case on Wednesday involving the Americans with
18 Disabilities Act, and the Commission has done a lot of
19 work on the ADA, including a report we did recently
20 called "Sharing the Dream, Is the ADA Accommodating
21 All?" And it was very critical of the recent Supreme
22 Court decisions on restricting ADA's coverage.

23 And this case that they decided, which
24 involves a Kentucky woman's suit against Toyota which
25 denied her request for different duties because she

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1 suffered from carpel tunnel syndrome, the Court
2 rejected her claim saying that because she could
3 perform a range of tasks central to daily life,
4 including brushing her teeth, she was not disabled
5 under the ADA.

6 And this decision makes it harder for
7 workers with job related physical impairments to claim
8 protection under the ADA. New reports say or some
9 folks are saying this is sweeping, is a great victory,
10 and there are millions of people with a range of
11 injuries who will find it more difficult to get relief
12 under federal law.

13 And I would hope that we would re affirm
14 our support of a broad interpretation of the ADA and
15 ask the Congress to revisit the ADA to clarify the
16 language or to pass new laws to protect injured
17 workers who have just lost key provisions, protections
18 intended by the ADA.

19 So I would like to suggest or have
20 somebody move that we do that. Commissioner Edley,
21 since it was your idea, do you want to move that we do
22 that?

23 COMMISSIONER EDLEY: I think I've changed
24 my mind.

25 CHAIRPERSON BERRY: Changed your mind?

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1 You don't want to? Okay.

2 COMMISSIONER EDLEY: Yeah, and here's what
3 I'm thinking. If you could refresh my recollection, I
4 had raised earlier the possibility of the Commission
5 taking a more comprehensive look at a series of what I
6 consider to be restrictive Supreme Court rulings on
7 the various civil rights statutes over the last few
8 years with an eye towards developing a considered
9 Commission recommendation to the Congress about
10 adopting legislation to reverse some of those Supreme
11 Court cases.

12 It seems to me that this recent decision
13 of the Supreme Court could and should be part of such
14 an analysis, but there are several others that we
15 might consider. For example, I think in particular of
16 last April's ruling in the Sandoval case involving
17 implied private rights of action under Title VI of the
18 Civil Rights Act.

19 So just thinking about how can the
20 Commission be most useful to the general public and to
21 the Congress, I think it's less by adopting some kind
22 of a resolution with three or four paragraphs in the
23 manner of a newspaper editorial decrying what the
24 Supreme Court did because, while I agree with that, in
25 content, something that I think is more elaborate and

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1 more thoughtful and perhaps more comprehensive about a
2 range of recent Supreme Court decisions would, in
3 fact, be of more service to people in Congress who are
4 looking at these matters.

5 So I guess what I would say is if you've
6 just acknowledged orally that the Supreme Court has
7 taken this step and at least a few of us are concerned
8 about it, my motion would be that we endeavor in the
9 not too distant future --

10 CHAIRPERSON BERRY: How distant?

11 COMMISSIONER EDLEY: Well, I'd say before
12 the summer break.

13 CHAIRPERSON BERRY: Okay.

14 COMMISSIONER EDLEY: -- to have a
15 Commission discussion with appropriate briefings, if
16 necessary, toward preparing a document for the
17 Congress concerning our recommendations about the
18 desirability of legislation to reverse or -- excuse me
19 -- to address this and other recent Supreme Court
20 cases.

21 CHAIRPERSON BERRY: Okay. Could I get a
22 second to that?

23 COMMISSIONER MEEKS: Second.

24 CHAIRPERSON BERRY: Second. Okay.

25 Any discussion? All right. Yes,

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1 Commissioner Braceras.

2 COMMISSIONER BRACERAS: Well, I guess my
3 only point would be I agree with Commissioner Edley
4 that we really should have this be in writing, and all
5 of the Commissioners should have an opportunity to
6 examine whatever proposed language the staff comes up
7 with.

8 I don't want to vote on anything off the
9 cuff here today about what we are suggesting Congress
10 do. I think it is important that we have a written
11 document and that the Commissioners have a chance to
12 review the document and that we have a chance to
13 discuss and comment and revise whatever document we
14 are proposing to Congress.

15 So I wouldn't want to just bring it here
16 to the Commission for an up or down vote. You know,
17 I'd prefer to have the give-and-take where we can
18 refine language and fine tune what our proposals are
19 before we send them up to the Hill.

20 And so that would be my only suggestion.

21 CHAIRPERSON BERRY: Commissioner
22 Thernstrom?

23 COMMISSIONER THERNSTROM: Well, I hope
24 that what Commissioner Edley was suggesting was
25 something broader than that; that we have an actual

1 discussion and perhaps invite some outside witnesses
2 to discuss the substance of these decisions so that we
3 can have some real back-and-forth, exactly what the
4 Supreme Court said and what the arguments for and
5 against those decisions are so that this debate has
6 some intellectual integrity and some real substance.

7 CHAIRPERSON BERRY: Anybody else have a
8 comment?

9 (No response.)

10 CHAIRPERSON BERRY: All right. Well, all
11 in favor, indicate by saying aye.

12 (Chorus of ayes.)

13 CHAIRPERSON BERRY: Opposed?

14 VICE CHAIRPERSON REYNOSO: Aye.

15 CHAIRPERSON BERRY: You said "aye"?

16 VICE CHAIRPERSON REYNOSO: I said "aye" to
17 oppose it. I should have said no.

18 CHAIRPERSON BERRY: Oh, oh.

19 COMMISSIONER BRACERAS: I'm sorry. Can I
20 just have some clarification?

21 CHAIRPERSON BERRY: On what the motion is?

22 COMMISSIONER BRACERAS: Yes. I mean now
23 we're voting on whether or not we should --

24 CHAIRPERSON BERRY: The motion is that we
25 are going to have -- I was going to restate to the

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1 Staff Director what he's supposed to do

2 COMMISSIONER BRACERAS: Okay.

3 CHAIRPERSON BERRY: What we're supposed to
4 do is get some folks to come in here who know about
5 these subjects to talk to us about what the Supreme
6 Court has done on these civil rights issues, not just
7 disability, but some of the other ones, Title VI and
8 so on; and that we will have a briefing, which means
9 that we will talk to them in public.

10 And then we will have a summary of the
11 briefing, which is what we do, and then we will either
12 make some kind of statement about it or reach some
13 kind of conclusions, or we won't.

14 COMMISSIONER BRACERAS: But I guess my
15 question is will the Commissioners themselves have a
16 chance to have a give-and-take with each other on what
17 exactly we want to recommend to Congress or will we be
18 presented with a document that we are then asked to
19 vote up or down on?

20 Because that I would be opposed to.

21 CHAIRPERSON BERRY: Both. When you have
22 the briefing we will have discussions among ourselves
23 and at meetings discussions among ourselves.

24 COMMISSIONER BRACERAS: I know, but what I
25 would like to see after those briefings is a document

1 that we can then go over and, for example,
2 Commissioner Meeks could say, "I don't like
3 Recommendation No. 2," and we could have a discussion
4 and maybe delete it.

5 CHAIRPERSON BERRY: That's what we do.

6 COMMISSIONER BRACERAS: Okay.

7 CHAIRPERSON BERRY: We do that all the
8 time.

9 COMMISSIONER BRACERAS: Well, I'm just
10 clarifying since obviously --

11 CHAIRPERSON BERRY: Yes, that's the
12 procedure.

13 COMMISSIONER BRACERAS: Thank you.

14 CHAIRPERSON BERRY: And, in fact, the
15 procedure, I've often tried to get people to sit here
16 all day and go over the report line by line and decide
17 what they think about it, but it hasn't worked. But
18 maybe it will work. Maybe you'll be somebody who will
19 encourage us to do that.

20 Okay. So we will proceed in that way.
21 The third one was the one the Vice Chair raised about
22 the food stamps. I think it's the food stamp issue.

23 **V. Discussion of Food Stamp Restrictions**

24 VICE CHAIRPERSON REYNOSO: Yes, Madame
25 Chair. In 1996, Congress passed a series of

1 restrictions on benefits that immigrants, lawful
2 immigrants, could receive in this country, and this
3 Commission expressed concerns about treating lawful
4 immigrants differently than citizens.

5 And the administration has recently
6 suggested that the 1996 law be amended to permit
7 lawful poor immigrants who have lived legally for at
8 least five years to be allowed to be eligible to
9 collect food stamps, restoring the loss of what was
10 before 1996.

11 I believe that it's appropriate for us to
12 send a letter to the President commending the
13 President for making this suggestion to Congress.

14 CHAIRPERSON BERRY: Is that a motion?

15 VICE CHAIRPERSON REYNOSO: Yes, that is.

16 CHAIRPERSON BERRY: Could I get a second
17 on the motion?

18 COMMISSIONER MEEKS: Second.

19 CHAIRPERSON BERRY: Any discussion of
20 whether we should do this or not? Yes, Commissioner
21 Edley.

22 COMMISSIONER EDLEY: I guess while I'm
23 very pleased that the President and the administration
24 have taken the position that they do, I guess I would
25 oppose sending a letter simply because they are

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1 following Congress' lead on this rather than having
2 sui sponte decided that this was a good thing to do.

3 So while I welcome it, I guess I'm not
4 prepared to stand up and applaud for it. So I'm going
5 to oppose the motion. Plus he opposed my last motion,
6 and I --

7 (Laughter.)

8 CHAIRPERSON BERRY: Commissioner Meeks?

9 COMMISSIONER MEEKS: But I do think that
10 if we write a letter talking about this issue,
11 although I may vote against it, too --

12 CHAIRPERSON BERRY: How about trying to
13 figure out a way --

14 COMMISSIONER MEEKS: I don't know if it --
15 some sort of a press release that brings this issue to
16 light again.

17 CHAIRPERSON BERRY: As I understand
18 Commissioner Edley's problem with this, it's that he
19 feels that members of Congress have exercised
20 leadership on the subject. Why don't we commend the
21 members of Congress who have exercised leadership and
22 the people in the administration?

23 COMMISSIONER EDLEY: That I would support.

24 CHAIRPERSON BERRY: If we were to do that,
25 would you support it?

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1 COMMISSIONER EDLEY: Yes, ma'am.

2 CHAIRPERSON BERRY: I mean we want to
3 support, commend people when they do good things
4 rather than just criticizing them when they do bad
5 things. So let's just figure out who the appropriate
6 people are in Congress who took the leadership on this
7 issue.

8 VICE CHAIRPERSON REYNOSO: I accept the
9 amendment.

10 CHAIRPERSON BERRY: Would you accept that
11 amendment to your motion?

12 VICE CHAIRPERSON REYNOSO: Yes, ma'am.
13 How about my seconding it?

14 CHAIRPERSON BERRY: Would you accept that
15 amendment to the motion?

16 All right. Is there any further
17 discussion of the motion? All right. Yes, Vice
18 Chair.

19 VICE CHAIRPERSON REYNOSO: I just want to
20 repeat that these actions are in conformity with what
21 we had urged earlier as a Commission. So it would be
22 appropriate to speak to this.

23 CHAIRPERSON BERRY: Right, and so what we
24 should do is say we had earlier urged this and say
25 where we urged it, along with other people who urged

1 it, and now we are pleased that it has come to pass.

2 All right. All those in favor of the
3 motion, indicate by saying aye.

4 (Chorus of ayes.)

5 CHAIRPERSON BERRY: Opposed?

6 (No response.)

7 CHAIRPERSON BERRY: Okay. So ordered.

8 **VI. Staff Director's Report**

9 CHAIRPERSON BERRY: The next item on the
10 agenda is announcements, and there aren't any beyond
11 what we've already announced, and so the next item on
12 the agenda after that is the Staff Director's report.

13 Does anyone have anything else to ask the
14 Staff Director beyond what we've already asked the
15 Staff Director about the work of the Commission or
16 anything that's in the Staff Director's report? Does
17 any Commissioner have anything else to ask the Staff
18 Director?

19 Yes, Commissioner Thernstrom.

20 COMMISSIONER THERNSTROM: We got the
21 transcript of the last meeting awfully late, and I
22 wonder two things. One, obviously it would be good to
23 have it earlier, but also I continue to be bewildered
24 by why we cannot receive in the year 2001 not only --

25 COMMISSIONER BRACERAS: Two.

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1 COMMISSIONER THERNSTROM: Two. I'm sorry.

2 -- 2002 these transcripts electronically.

3 They are available immediately, and on one occasion
4 when I really needed it, I did receive it immediately.

5 You know, I don't understand why, in
6 general, there is so much communication that I receive
7 in a broken down fax machine when I've got perfectly
8 good E-mail. I feel as if I'm living in, you know,
9 1950 in this place.

10 COMMISSIONER WILSON: There were no fax
11 machines in 1950.

12 (Laughter.)

13 COMMISSIONER THERNSTROM: Whatever.

14 CHAIRPERSON BERRY: Mimeograph machines.

15 COMMISSIONER THERNSTROM: Mimeograph
16 machines, whatever. I mean, these communications by
17 fax and my inability to get a transcript in electronic
18 form, I don't want all of this paper, and to receive
19 it in a timely way. It just bewilders me.

20 CHAIRPERSON BERRY: Staff Director, do you
21 want to speak to Commissioner Thernstrom's concerns?

22 MR. JIN: Just very briefly and I'll turn
23 it back to the Commissioners.

24 In the 15 months or so since I've been
25 here, this is the first time where we probably haven't

1 gotten it to the Commissioners the transcript within
2 two weeks or so, and you know, I think there's a
3 number of things, but the holidays certainly played
4 into it, and so it took a little longer this time.

5 But it's up to the Commissioners to decide
6 how you want me to prioritize my resources in that
7 regard.

8 COMMISSIONER THERNSTROM: But I have sent
9 three memos now requesting transcripts in electronic
10 form. All you have to do is punch a button, and it
11 goes to my hard drive. I mean, this is just not
12 rocket science. I don't understand.

13 COMMISSIONER WILSON: But somebody has to
14 enter it.

15 COMMISSIONER THERNSTROM: Pardon me?

16 COMMISSIONER WILSON: It has to be
17 entered. It's not just --

18 COMMISSIONER THERNSTROM: It comes in
19 electronic form. I got it that way.

20 CHAIRPERSON BERRY: Let's not all talk at
21 the same time.

22 Commissioner Wilson, I did not recognize
23 you. Commissioner Braceras, I didn't recognize you.
24 Commissioner Thernstrom was speaking.

25 COMMISSIONER THERNSTROM: I have on the

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1 one occasion which I knew; I got it in electronic form
2 immediately. It is available in electronic form
3 immediately. I don't understand why it can't be made
4 available to Commissioners.

5 We're wasting trees in this place.

6 CHAIRPERSON BERRY: Do the Commissioners
7 have any desire to instruct the Staff Director on this
8 subject? Don't send it to me by electronic transfer.
9 I don't want all of that stuff on my computer.

10 Yes, Vice Chair, and then Commissioner --

11 VICE CHAIRPERSON REYNOSO: I was just
12 going to suggest that we ask the staff to check into
13 the facility of doing it that way for the
14 Commissioners that want it that way.

15 CHAIRPERSON BERRY: Okay. Commissioner
16 Wilson.

17 COMMISSIONER WILSON: Yes. Thank you,
18 Madame Chair.

19 I would like to say that if you send it
20 through E-mail, do not send to me that way even though
21 as a vice president and associate publisher and senior
22 editor at a major publishing house, manuscripts are
23 sent by disk and electronically, I still request that
24 all and every one of my authors send manuscripts, hard
25 copy.

1 So I am very old fashioned and prefer to
2 read on the paper and not on the screen.

3 CHAIRPERSON BERRY: Why don't we decide to
4 instruct the Staff Director -- I hate instructing you
5 -- ask the Staff Director? Please, Staff Director,
6 could you please send the transcript electronically to
7 people who want them electronically, and people who
8 don't, don't send them to them.

9 Yes?

10 COMMISSIONER THERNSTROM: It's a larger
11 issue. Every time the Staff Director's office wants
12 to send me a fax, somebody has to call me and say,
13 "Commissioner Thernstrom, set up your fax so that you
14 can receive it," et cetera.

15 I don't happen to have a system. Every
16 memo can be sent to me electronically, and I can
17 respond electronically. You know, this is a broader
18 question than simply --

19 CHAIRPERSON BERRY: Commissioner
20 Thernstrom, may I make one suggestion that might be
21 useful to the Staff Director and you?

22 COMMISSIONER THERNSTROM: Get a new fax
23 machine?

24 CHAIRPERSON BERRY: Let the Commission pay
25 for you to have a dedicated fax line and a machine so

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1 that when they wish to -- we should have done this
2 before -- so that when -- other people have done it --
3 so that when they have a fax to send you, especially
4 if it's something that they didn't get electronically
5 or that they're trying to -- they don't have to scan
6 it or do anything. They can just fax it to you, and
7 you won't have to worry about that they can -- you
8 know. How would that be?

9 COMMISSIONER THERNSTROM: I would accept
10 that, but there are -- memos certainly have been typed
11 into a computer. They could be sent to me
12 electronically, but I will accept your very generous
13 offer.

14 CHAIRPERSON BERRY: So off the record
15 could you do that so that --

16 MR. JIN: We can do that.

17 CHAIRPERSON BERRY: -- when you have
18 things that you need to fax you'll be able to fax them
19 without calling up Commissioner Thernstrom, and then
20 she won't have this problem and we won't have to
21 discuss it again maybe? All right?

22 MR. JIN: Certainly.

23 CHAIRPERSON BERRY: Okay. Thank you very
24 much.

25 Anybody want to ask the Staff Director

1 about anything else that they need?

2 (No response.)

3 **VII. Discussion of SAC Appointments**

4 CHAIRPERSON BERRY: Okay. The next item
5 is the SAC appointments. And what I -- yes, Vice
6 Chair.

7 VICE CHAIRPERSON REYNOSO: Madame Chair,
8 I'd like to move that we postpone considering these
9 SAC appointments until the next meeting and ask the
10 staff to review the various categories of these state
11 staffs. In going through it, for example, I noticed
12 that the D.C. Advisory Committee suggestions includes
13 nobody under 40, and we had discussed some time ago
14 the necessity of having young people, quote, unquote,
15 under 40, be on the Advisory Committee.

16 I notice also sadly that there are no
17 Hispanics in the D.C. Advisory Committee. I notice,
18 too, that in Maryland though Hispanics represent a
19 substantial portion of the population, there's only
20 one on the committee.

21 So I'd just like to have the staff take a
22 second look at the breakdown of the Advisory
23 Committees.

24 CHAIRPERSON BERRY: Yes, the State
25 Advisory Committees are, of course, very important

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1 because they are volunteers. They're our eyes and
2 ears on the ground, and the regional directors are
3 responsible with the Staff Director's office and the
4 Regional Coordinator, Ivy Davis, for bringing these
5 appointments to us.

6 But we have indicated in the past certain
7 guidelines and certain things we'll be looking for in
8 terms of the diversity of appointments, so that we can
9 get the best eyes and ears on the ground for what we
10 need to do.

11 So I personally would be in favor of doing
12 what the Vice Chair said, simply not considering them
13 and sending them back and telling them that they have
14 to do it. So why don't we make that as a motion so
15 that they will understand this time that we don't
16 intend to pass them unless they do what we ask?

17 COMMISSIONER WILSON: Second.

18 CHAIRPERSON BERRY: All right. It's a
19 motion, and it's seconded by Commissioner Wilson.

20 All those in favor of this, indicate by
21 saying aye.

22 (Chorus of ayes.)

23 CHAIRPERSON BERRY: Opposed?

24 (No response.)

25 CHAIRPERSON BERRY: So ordered. Okay.

1 VICE CHAIRPERSON REYNOSO: Madame Chair,
2 I'd like to note that that was a unanimous vote.

3 COMMISSIONER WILSON: Well, Commissioner
4 Edley was not in the room. So --

5 CHAIRPERSON BERRY: Well, that's all
6 right. He would have voted for it had he been here.

7 COMMISSIONER WILSON: Well, you never
8 know.

9 (Laughter.)

10 CHAIRPERSON BERRY: The next item on the
11 agenda, does anybody have anything that they want to
12 suggest?

13 Well, somebody is pointing out to me that
14 it's necessary on vital documents and memos that
15 signatures be affixed. Anyone can E-transfer in
16 someone else's name.

17 Why don't you figure that out, Staff
18 Director? I don't understand what they're talking
19 about. Okay. We'll let you deal with that.

20 Does anyone want to add anything before we
21 conclude this part of the meeting and go on to the
22 hearings which are scheduled to begin at 9:30?

23 (No response.)

24 CHAIRPERSON BERRY: All right. With that
25 the business part of this meeting is concluded, and we

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1 will take a five-minute break.

2 Thank you very much, if there are no
3 objections. No objections?

4 (No response.)

5 CHAIRPERSON BERRY: So ordered.

6 (Whereupon, at 9:34 a.m., the Commission
7 meeting was concluded, to reconvene at 9:30 a.m. in
8 the document production hearing.)
9
10