

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, March 8, 2002

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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

JENNIFER C. BRACERAS, Commissioner

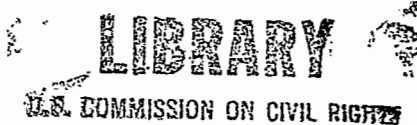
CHRISTOPHER EDLEY, JR., Commissioner

ELSIE M. MEEKS, Commissioner

ABIGAIL THERNSTROM, Commissioner

VICTORIA WILSON, Commissioner

LESLIE R. JIN, Staff Director



STAFF PRESENT:

MANUEL ALBA  
KIMBERLEY ALTON  
MARGRET BUTLER  
DEBRA CARR, Deputy General Counsel  
BARBARA DELAVIEZ  
TERRY DICKERSON  
PAMELA A. DUNSTON  
BETTY EDMISTON  
LATRICE FOSHEE  
GEORGE M. HARBISON  
SOCK-FOON MACDOUGALL  
PAMELA MOYE  
JENNY PARK  
MARC PENTINO  
PETER REILLY, Parliamentarian  
KWANA ROYAL  
JOYCE SMITH  
MARCIA TYLER  
AUDREY WIGGINS  
AUDREY WRIGHT  
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA  
LAURA BATIE  
PATRICK DUFFY  
KIMBERLY SCHULD  
KRISHNA TOOLSIE

	<u>PAGE</u>
I. Approval of Agenda.....	4
II. Approval of Minutes of .....	4
February 8, 2002 Meeting	
III. Announcements.....	5
IV. Staff Director's Report.....	5
V. State Advisory Committee Appointments.....	70
for Nebraska and New Mexico	
VI. Briefing on Bioterrorism and Health.....	73
Care Disparities	
VII. Environmental Protection Agency.....	106
Documents Hearing	
VIII. Future Agenda Items.....	108

CHAIRPERSON BERRY: Meeting will come to order. The first item on the agenda is the approval of the agenda.

**I. APPROVAL OF AGENDA**

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

COMMISSIONER WILSON: So moved.

CHAIRPERSON BERRY: Could I get a second?

VICE CHAIRPERSON REYNOSO: Second.

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

(A chorus of ayes.)

CHAIRPERSON BERRY: Okay. So ordered.

**II. APPROVAL OF MINUTES**

CHAIRPERSON BERRY: The second item on the agenda is approval of the minutes of the February 8, 2002 meeting.

Could I get a motion to approve the minutes?

(No response.)

Could I get a second? Discussion?  
Anybody have anything they want to change or do

1 anything?

2 COMMISSIONER THERNSTROM: Jennifer, the  
3 discussion of the minutes, you raised a question with  
4 me this morning. Okay. All right.

5 CHAIRPERSON BERRY: Okay?

6 All in favor, indicate by saying aye.

7 (A chorus of ayes.)

8 CHAIRPERSON BERRY: Opposed?

9 (No response.)

10 CHAIRPERSON BERRY: So ordered.

11 **III. ANNOUNCEMENTS**

12 CHAIRPERSON BERRY: The next item on the  
13 agenda is announcements. Okay. Well, we don't have  
14 any announcements. Good. I mean, I don't know if  
15 that's good or bad, but we don't have any.

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

17 CHAIRPERSON BERRY: The next item on the  
18 agenda is the staff director's report.

19 Staff Director, do you have anything to  
20 say to us before I see if anybody has anything they'd  
21 like to discuss?

22 STAFF DIRECTOR JIN: Yes, Madam Chair. I  
23 have a couple of items.

24 One is -- and maybe Commissioner Meeks was  
25 planning to speak to this later. But if so, I

1 apologize. At the last meeting, there was some  
2 discussion about a letter to the governor of South  
3 Dakota.

4 Did you want to talk about that,  
5 Commissioner Meeks?

6 COMMISSIONER MEEKS: Yeah. Actually, I'm  
7 glad you brought that up.

8 We had word that the report was done, the  
9 Study of Administration of Justice for Native  
10 Americans, had been completed in October. So I asked  
11 that we write a letter to the governor asking him for  
12 the release of that.

13 So I attended a state advisory committee  
14 meeting in South Dakota a couple of weeks ago. And  
15 the person that's heading the research on that study  
16 did a report for the SAC. And it's not complete.  
17 And, in fact, it sounds like it's turning up some  
18 interesting issues. But it will not be done until  
19 April.

20 I also want to say that he would like to  
21 expand this report to not just include South Dakota,  
22 but he's applying to the National Institute of Justice  
23 for a grant to look at the administration of justice  
24 for Native Americans nationally. So I think that  
25 would be a good --

1 STAFF DIRECTOR JIN: And --

2 COMMISSIONER MEEKS: You know, at this  
3 point, I don't think that we need to write a letter to  
4 the governor.

5 CHAIRPERSON BERRY: Do you think it would  
6 be useful for us to say that we believe that such a  
7 study of the administration of justice in Indian  
8 country would be a very useful and worthwhile study,  
9 based on our own prior work, and that we encourage the  
10 study? Would that help us any, for him in trying to  
11 do whatever he's doing?

12 COMMISSIONER MEEKS: I understand that the  
13 competition for these grants with the National  
14 Institute of Justice is fairly steep. So I think this  
15 would be a good study. And if we could offer some  
16 sort of support, it might help him obtain the grant.

17 CHAIRPERSON BERRY: Well, would anyone  
18 have any objection to us simply saying that -- if he  
19 thinks it's useful, that the Commission has done a lot  
20 of work on this subject, including going to South  
21 Dakota during that time, and that we think that a  
22 study of administration of justice in Indian country  
23 would be quite informative and useful, without any  
24 comments about what he might find? I don't know what  
25 he's going to find.

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1 COMMISSIONER MEEKS: Right. I think it  
 2 would be useful. And he indicated that it would be  
 3 very helpful if the Commission offered some sort of  
 4 support or I guess just a stamp of approval of going  
 5 forward with the report.

6 CHAIRPERSON BERRY: He may be wrong also,  
 7 and it might interfere with his ability to get the  
 8 money. So why don't we just forget it. And we'll  
 9 wait to see -- maybe we can hear more about what he's  
 10 doing next time, and who he is, and what it's like.  
 11 So we'll just leave it at that. But for now, we don't  
 12 need to write a letter to Governor Janklow.

13 COMMISSIONER MEEKS: I would say not. No.

14 CHAIRPERSON BERRY: Okay.

15 STAFF DIRECTOR JIN: Madam Chair, I have  
 16 one more item.

17 The commissioners may remember the  
 18 Educational Accountability Project that was discussed  
 19 last year. At that time, I think the commissioners  
 20 had asked for a hearing on it.

21 CHAIRPERSON BERRY: We had a documents  
 22 hearing.

23 STAFF DIRECTOR JIN: Yes, and we had a  
 24 documents hearing.

25 I have a recommendation regarding the



1 project.

2 As the staff has worked on the project  
3 over the months, I think it's become increasingly  
4 apparent that a commission report, primarily based on  
5 witness' testimony would not allow for a comprehensive  
6 analysis of issues related to educational testing and  
7 accountability. Rather, we now believe that a  
8 deliberate and thoughtful study of the data research  
9 and the relevant literature, as well as interviews,  
10 would enable the staff to more appropriately address  
11 the many complex issues related to educational  
12 accountability and high-stakes testing. This would  
13 allow the report to be more of a policy piece and not  
14 the result of a hearing convened to address an  
15 extremely time-sensitive event.

16 The bottom line is, the staff at this  
17 point has concluded that the amount of time to  
18 administratively structure a hearing is better spent  
19 on the substantive work and research on this  
20 particular issue. Thus, with these proposed changes,  
21 including canceling the witness hearing, we believe  
22 that we can give the commissioners a better product  
23 and save staff time as well. So that's our  
24 recommendation.

25 CHAIRPERSON BERRY: Would you be using the

1 documents that you got?

2 STAFF DIRECTOR JIN: Yes, we'd be using  
3 everything we have. And we can talk to different  
4 witnesses that believe that they might have something  
5 to contribute.

6 CHAIRPERSON BERRY: First, let's see. Can  
7 we get a motion to approve the staff director's  
8 recommendation?

9 VICE CHAIRPERSON REYNOSO: So moved.

10 CHAIRPERSON BERRY: Could I get a second?

11 COMMISSIONER BRACERAS: Second.

12 CHAIRPERSON BERRY: And then discussion.  
13 Okay.

14 Yes, Commissioner Thernstrom?

15 COMMISSIONER THERNSTROM: Well, I'm not  
16 entirely happy about this. Because for one thing,  
17 when it's simply a staff product, at least my past  
18 experience suggests that commissioners have no input,  
19 or no possibility of input -- and some of us never  
20 have any input anyway, but there's always the  
21 possibility of input -- into the kind of expertise  
22 that the Commission draws upon. And that concerns me.

23 I happen to know a great deal about  
24 education. I've been on the state Board of Education  
25 now for six years, and I'm writing on the topic as

1 well. So there's this process that's going to go on  
2 behind closed doors that I will have no way of  
3 participating in. And there are an awful lot of  
4 people out there that I would like to call upon whose  
5 expertise would be very important in any kind of  
6 sifting through the evidence to put together a report.

7 That's one. And then two, what would be  
8 the process? You would have a draft report that would  
9 be circulated. We could once again decide whether we  
10 sign on or write dissenting reports? I mean, we will  
11 not have had a hearing from which to dissent, on the  
12 basis of which to dissent.

13 So there's a general point, and then it's  
14 followed by a question.

15 CHAIRPERSON BERRY: Do you want to  
16 respond?

17 STAFF DIRECTOR JIN: Only to the extent  
18 of, you know, I think what we'll envision is that we  
19 would complete a report, provide it to the  
20 commissioners like we do with all the other reports.  
21 And, of course, if the commissioners believe that the  
22 report needs more work, or it's insufficient, or  
23 something like that, then the commissioners can decide  
24 how to proceed from there, whether it's a rejection  
25 report, or a question, that it be modified, or feeling

1 like at that point something else is needed.

2 COMMISSIONER THERNSTROM: Well, suppose at  
3 the end of the day the report is one that I'm in  
4 disagreement with, do I have an opportunity to write a  
5 dissenting report?

6 STAFF DIRECTOR JIN: That's probably up to  
7 the Commission.

8 CHAIRPERSON BERRY: You can write a  
9 dissent. We don't write dissenting reports, but  
10 people can write whatever they want; it's a free  
11 country.

12 COMMISSIONER THERNSTROM: All right, a  
13 dissent, whatever. Whatever you want to call it. The  
14 same thing.

15 CHAIRPERSON BERRY: Of course, people can  
16 dissent --

17 COMMISSIONER THERNSTROM: No, no. A  
18 dissent -- I mean, you're obviously going to publish a  
19 report --

20 CHAIRPERSON BERRY: Why are you assuming  
21 you're going to dissent? You've never even seen the  
22 report.

23 COMMISSIONER THERNSTROM: I said if -- I'm  
24 not assuming.

25 COMMISSIONER EDLEY: Either she will or I

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1 will.

2 COMMISSIONER THERNSTROM: Exactly.

3 CHAIRPERSON BERRY: All right. Assuming  
4 that someone dissents --

5 COMMISSIONER THERNSTROM: Yes.

6 CHAIRPERSON BERRY: -- yes, they can write  
7 a dissent, if they want to.

8 COMMISSIONER THERNSTROM: That will be  
9 published.

10 CHAIRPERSON BERRY: Of course, we publish  
11 dissents.

12 COMMISSIONER THERNSTROM: Well, no. I  
13 would not say that that's an "of course." The last  
14 one was suppressed.

15 CHAIRPERSON BERRY: Commissioner  
16 Thernstrom, would you please not make misstatements on  
17 this record.

18 COMMISSIONER THERNSTROM: I believe that  
19 is a correct statement.

20 CHAIRPERSON BERRY: Let me say for the  
21 record -- and could someone go get a copy of the  
22 report on Florida so we can look at your dissent in  
23 the back of the report.

24 And I would appreciate it if you would  
25 stop telling the press that this report -- your

1 dissent was unpublished, so that when they go and find  
2 it, they call me back and say, well, yeah, there it  
3 is, back there. Why is she saying it's not in the  
4 report?

5 COMMISSIONER THERNSTROM: It was not  
6 published as a dissent in the final form that I wrote  
7 it, and with a reply to Lichtman, to which I was  
8 entitled, by your own words. And that reply, by the  
9 way, is available. So I regard that as a very  
10 unfortunate history.

11 CHAIRPERSON BERRY: That was a --

12 COMMISSIONER THERNSTROM: I do regard it  
13 as --

14 CHAIRPERSON BERRY: That was an accurate  
15 statement. The first statement you made was totally  
16 inaccurate, as was the statement you made to the  
17 press --

18 COMMISSIONER THERNSTROM: I do not believe  
19 so.

20 CHAIRPERSON BERRY: -- that I am a  
21 book-burner.

22 I would like to know from you,  
23 Commissioner Thernstrom -- my president at my  
24 university asked, when did I burn books, and what were  
25 the books that I burned? Would you please for this

1 record state which book I burned?

2 COMMISSIONER BRACERAS: Why are we getting  
3 into this?

4 CHAIRPERSON BERRY: Point of personal  
5 privilege.

6 COMMISSIONER THERNSTROM: There is --

7 CHAIRPERSON BERRY: It's in the press  
8 quoting you. Is that a misquote?

9 COMMISSIONER THERNSTROM: I  
10 understand -- no, it is not a misquote.

11 CHAIRPERSON BERRY: Oh, it's not.

12 COMMISSIONER THERNSTROM: I understand.  
13 Does the president of your university have that  
14 literal a mind that he or she -- I don't know who the  
15 president is of the University of Pennsylvania -- that  
16 he or she literally has to be shown --

17 CHAIRPERSON BERRY: No, no, no. I'm not  
18 asking you about the president.

19 COMMISSIONER THERNSTROM: -- a fire and  
20 books burning?

21 CHAIRPERSON BERRY: The president of my  
22 university did not say this to me personally.  
23 However, I'm asking you, since I read it in the paper,  
24 and you say it's a correct quote, on which occasion  
25 did I burn a book, and what was the book I burned?

1 COMMISSIONER BRACERAS: It's a figure of  
2 speech.

3 CHAIRPERSON BERRY: I am recognizing,  
4 Commissioner Thernstrom.

5 COMMISSIONER THERNSTROM: I was about to  
6 say, it is a figure of speech.

7 CHAIRPERSON BERRY: What was the name of  
8 the book? --

9 COMMISSIONER THERNSTROM: The name of the  
10 book is --

11 CHAIRPERSON BERRY: That I burned?

12 COMMISSIONER THERNSTROM: -- my Florida  
13 dissent.

14 CHAIRPERSON BERRY: I burned your Florida  
15 dissent?

16 COMMISSIONER THERNSTROM: No, you simply  
17 suppressed it.

18 CHAIRPERSON BERRY: I personally  
19 suppressed it? Let's move on.

20 COMMISSIONER THERNSTROM: You led the  
21 suppression of it.

22 CHAIRPERSON BERRY: Let's move on.

23 Let's move on. I just wanted to know the  
24 name of the book. Okay.

25 Now, Commissioner Braceras?

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1                   COMMISSIONER BRACERAS: Thank you. I just  
2 want to get back to the discussion of the education  
3 report and study.

4                   I strongly believe that this is the most  
5 important civil rights issue facing our country. I  
6 think there are other commissioners that agree with  
7 that. I think that this topic deserves a very  
8 thorough review. I think it should include witnesses.

9                   I think we should hear all perspectives. I think  
10 it's terrific that the Commission is looking into this  
11 area, I really do; but I don't think we should give  
12 it -- I think it needs to be given a significant  
13 amount of time. And if it's a question of  
14 prioritizing and how we should spend our  
15 resources -- I do think our resources and the staff  
16 time is well spent, both doing what you suggested, an  
17 analytical review of the documents and the literature  
18 and analyzing testimony from witnesses. And if that  
19 means that other projects get postponed until later,  
20 than so be it. Because I do believe this is the most  
21 important civil rights issue facing this country.

22                   And I think that I personally would  
23 benefit from hearing experts on all sides of this  
24 issue. And I don't know whether I would be writing a  
25 dissent or joining the majority in such a report, but

1 I do know that I think the public and policymakers can  
2 benefit from a thorough report on this issue that  
3 involves input from the community, experts, parents,  
4 students, and --

5 You know, I know that Commissioner Edley  
6 has done a lot of work on this issue. And I know that  
7 the people he works with, some of them were talked  
8 about as witnesses coming here to testify, and I think  
9 it's important for everybody to hear what they have  
10 to say.

11 So I guess I would just strongly recommend  
12 holding hearings and making this the top priority,  
13 even if that does mean that it's at the expense of  
14 some other projects, because it is a very important  
15 issue.

16 CHAIRPERSON BERRY: Could we --

17 COMMISSIONER EDLEY: I wanted to ask the  
18 staff director -- I'm sorry.

19 Yes. Could we not do a combination of the  
20 staff report that you suggest and a forum rather than  
21 a full hearing?

22 COMMISSIONER THERNSTROM: What's a forum?

23 COMMISSIONER EDLEY: It's more like what  
24 we did on environmental justice-- get a variety of  
25 experts to come and talk about the issues. I mean, I

1 guess I'm -- well, that would be one suggestion.

2 A second suggestion would be that in any  
3 case, the staff -- that the report be prepared in a  
4 process that not only enables the commissioners to  
5 react to a draft. But I think if you would circulate  
6 in advance a list of some of the experts with whom the  
7 staff is going to have conversations in preparing it,  
8 that that would give commissioners an opportunity to  
9 say, well, you also ought to talk to X, Y and Z, in  
10 addition to the people on this list. I think that  
11 that would also be helpful.

12 CHAIRPERSON BERRY: Commissioner Edley, we  
13 already have a process for commissioners to evolve  
14 themselves in the writing of reports if they want to.

15 Commissioners may meet with the staff while the  
16 report is being written. Commissioners may suggest  
17 people that the staff should talk to. We do that  
18 already.

19 COMMISSIONER EDLEY: Yeah. And I'm  
20 suggesting that we change it along the lines that I  
21 just suggested. Right? That if commissioners have  
22 concerns about whether the staff, which admittedly has  
23 relatively little expertise in this area, can't  
24 forthrightly say here's who we're planning to talk to;  
25 do you have any additional suggestions. That's a very

1 modest procedural suggestion that I think the staff  
2 director could accommodate in about 13 minutes, that  
3 would be helpful.

4 CHAIRPERSON BERRY: The process  
5 already --

6 COMMISSIONER EDLEY: But my second  
7 suggestion is that we have a --

8 CHAIRPERSON BERRY: Commissioner Edley,  
9 the process already permits you to do what you just  
10 said.

11 COMMISSIONER EDLEY: Well, that's all he  
12 has to say, Madam Chair; that he will do it because he  
13 always is prepared to do it. That would be  
14 responsive.

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER EDLEY: But my other  
17 suggestion was with respect to a forum rather than a  
18 hearing. I mean, if the problem is the workload of  
19 the staff, a forum is, I take it, substantially easier  
20 to put together. And my impression is that we're not  
21 completely booked from dawn to dusk every month.

22 CHAIRPERSON BERRY: Yes, Vice Chair?

23 VICE CHAIRPERSON REYNOSO: Madam Chair, my  
24 recollection of our instructions to the staff, in  
25 terms of the scope of this report, was not a wide

1 report on all of the issues pertaining to education.  
2 I agree that education may be the most important civil  
3 rights issue facing this country. But it was a more  
4 limited task. And I'm sure the documents that were  
5 subpoenaed have to do with that more limited task.  
6 And it seemed to me, because of the importance of the  
7 issue, that in light of the staff's recommendation,  
8 that we should, one, accept the recommendation. When  
9 the report comes back, then we could pick up on either  
10 of the issues that the report deals with, or on other  
11 issues, and have fora or even hearings if we want to  
12 at that point, sort of pick up at that point. But it  
13 seems to me appropriate, the staff heard what we had  
14 to say. And based on that, they come back and say, we  
15 think we can do a better job doing it this way. So my  
16 suggestion would be that we go along with the staff.

17 CHAIRPERSON BERRY: Commissioner Meeks?

18 COMMISSIONER MEEKS: Maybe we don't  
19 understand the scope of this task, the scope of what  
20 the education will look like, the education report  
21 will look like, will cover.

22 COMMISSIONER BRACERAS: May I be heard?

23 CHAIRPERSON BERRY: I don't know which one  
24 of you had your hand up first.

25 COMMISSIONER BRACERAS: I think that as

1 commissioners, part of our job is to set the scope,  
2 and to provide guidance, and to set priorities. And  
3 so, as I read the proposal, it was suppose to discuss  
4 education accountability, particularly high-stakes  
5 testing, which is a specific topic. The proposal  
6 mentioned a nation-wide survey. Perhaps that is too  
7 broad, and I'm willing to limit it to Maryland and  
8 Virginia, or whatever the staff -- I'm willing to hear  
9 the staff's view on how we can cabinet to make it  
10 doable. But I do think that we should proceed with  
11 the project and hear testimony. And if the scope  
12 needs to be limited in other ways, we can do that.  
13 But part of our job is to set priorities. And if we  
14 believe that this is an extremely important national  
15 civil rights issue, then it's something that deserves  
16 the Commission's full attention, including the taking  
17 of testimony, perhaps in the form that Commissioner  
18 Edley suggested, a forum as opposed to a hearing,  
19 would be fine with me.

20 But I don't think that -- with all due  
21 respect to the staff, I think that we need to provide  
22 some leadership here. And if the commissioners  
23 believe that this is an issue we need to focus on, and  
24 that is should be taking a large portion of the  
25 staff's time as opposed to other issues or other

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1 priorities, then we need to set that priority. And  
2 I'm willing to do that.

3 So looking ahead as far as what else we  
4 have on the agenda, I know we had talked about  
5 possibly going to Florida. But other than that, I  
6 didn't see any other large projects on the horizon  
7 that are as important as this one. So I would hope  
8 that the staff would focus the majority of their  
9 efforts for now on this, and that we could have some  
10 testimony and be able to participate in the writing of  
11 that report.

12 COMMISSIONER EDLEY: Point of privilege,  
13 Madam Chair?

14 CHAIRPERSON BERRY: Yes?

15 COMMISSIONER EDLEY: Can I just clarify?  
16 I said forum. I should have said briefing, earlier.

17 COMMISSIONER BRACERAS: But you meant that  
18 some witnesses would come in.

19 COMMISSIONER EDLEY: Yes, right.

20 COMMISSIONER BRACERAS: And we'd have an  
21 opportunity to recommend witnesses and to ask them  
22 questions.

23 COMMISSIONER EDLEY: Right. I didn't mean  
24 hearing from a hundred members of the general public.  
25 I meant talking to --

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1                   COMMISSIONER BRACERAS:       Right.     I'm  
2 willing to accept that suggestion.   But I don't think  
3 that this should just be a document and literature  
4 review.

5                   CHAIRPERSON BERRY:           Commissioner  
6 Thernstrom?

7                   COMMISSIONER THERNSTROM:       Well, in  
8 response to Commissioner Edley, before you said, well,  
9 we already do that in terms of the staff director  
10 taking suggestions as to experts and so forth. But it  
11 is my conviction that we don't already do that.

12                   I mean, on September 23rd, I sent a  
13 memorandum to the staff director suggesting a name for  
14 the education hearings. Actually, I've got a lot of  
15 names, but I did suggest -- and I said, as I said this  
16 morning, I had a particular interest in this topic. I  
17 offered my assistance. I didn't receive a response.  
18 I didn't get a phone call, an e-mail or memo, thanking  
19 me for my suggestions, taking me up on my offer to  
20 assist the staff.

21                   We then have a poll vote on October 9th on  
22 the Educational Accountability Project. The proposal  
23 included description and the methodology, four phases.

24                   On December 19th, I asked about the status of the  
25 project. Again, I don't receive an answer, formal or

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1 informal. January 17th, I sent another memo  
2 requesting the date for this hearing. I received an  
3 informal response stating that attorneys were going to  
4 look at the documents, then inform us of a date.

5 So, you know, it doesn't seem to me that  
6 we have got a process -- I mean, almost six months  
7 have passed since the staff submitted the methodology  
8 outline. It doesn't seem to me we've got a process  
9 for proper input by all commissioners and a working  
10 relationship with the staff here. And this is not a  
11 unique story, and it is very troubling.

12 CHAIRPERSON BERRY: Commissioner Wilson?

13 COMMISSIONER WILSON: Thank you, Madam  
14 Chair.

15 I'd just like to say that for the  
16 environmental hearings that we just had, to reassure  
17 Commissioner Thernstrom, that I had submitted a list  
18 of probably ten names of people, and I didn't get a  
19 letter saying thank you very much for your wonderful  
20 suggestions, nor did I get a phone call. And, in  
21 fact, when I didn't hear from people, because I  
22 assumed they were busy, I picked up the telephone and  
23 called, and said, okay, now what's happening with this  
24 person, and what's happening with this person, I was  
25 given answers.

1 Most of the people weren't called to be  
2 witnesses, some were, and some couldn't attend. But  
3 the fact is, I chose to call the staff, and I got  
4 answers. But, you know, I just have to say that  
5 everybody's busy, and it's not -- I don't think it  
6 necessarily works in that formal a manner.

7 COMMISSIONER THERNSTROM: It  
8 doesn't -- look, this doesn't have to be formal. It  
9 can be informal. Somebody can -- you have my  
10 assistant, Kristina Arriaga. Somebody can send me an  
11 e-mail. I've never worked with an organization -- I  
12 mean, I don't work with any organization in which  
13 there's no e-mail communication. I cannot understand  
14 why we cannot have some e-mails back and forth on  
15 these matters.

16 This doesn't need to be time-consuming.  
17 Nobody's got less time than I do. But this is -- you  
18 know, I mean this can be fast, it can be easy, it can  
19 be informal, but it can take the form of regular  
20 contact.

21 CHAIRPERSON BERRY: Commissioner Wilson?

22 COMMISSIONER WILSON: I have to say that  
23 nobody has less time than I have, Commissioner  
24 Thernstrom.

25 COMMISSIONER THERNSTROM: Well, we'll have

1 a little --

2 COMMISSIONER BRACERAS: Unless you all  
3 have small kids at home, I don't think you can speak  
4 to the issue of not having enough time.

5 COMMISSIONER THERNSTROM: All right.

6 COMMISSIONER WILSON: Well, in that case,  
7 again, I will have to -- Commissioner Braceras, I have  
8 two small dogs at home. And I'm about to get a small  
9 cat.

10 COMMISSIONER BRACERAS: Touche.

11 COMMISSIONER WILSON: And I also have a  
12 large horse. True, it does not live in my apartment.

13 But nevertheless, I, in fact, have a full-time job as  
14 a major publisher, I'm writing a book, and I serve as  
15 commissioner on this Commission. And I would like to  
16 say --

17 COMMISSIONER BRACERAS: But I was just  
18 teasing.

19 COMMISSIONER WILSON: And so am I.

20 And I would like to just say, I guess,  
21 Commissioner Thernstrom, you've never worked -- you've  
22 worked for more formal organizations than I have.  
23 When I was on the Board of Penn for many years as its  
24 treasurer -- for what seemed to me an interminable  
25 amount of time, like eight years -- no one ever

1       communicated in any formal way. It was always you  
2       picked up the telephone, and you badger people.  
3       Because people are busy, and my request is not of  
4       primary importance. And the truth is, if somebody  
5       doesn't e-mail you, just pick up the telephone.

6                COMMISSIONER THERNSTROM: That takes more  
7       time. It's more badgering.

8                COMMISSIONER WILSON: You're not a shy  
9       person.

10               COMMISSIONER THERNSTROM: That is more  
11       badgering.

12               COMMISSIONER WILSON: And badgering is not  
13       something that seems to bother you.

14               COMMISSIONER THERNSTROM: It definitely  
15       bothers me.

16               COMMISSIONER WILSON: Well, I think you  
17       should move on.

18               CHAIRPERSON BERRY: Well, we have spent  
19       this time. Do you have anything else to say, Staff  
20       Director?

21               STAFF DIRECTOR JIN: I'm just trying to  
22       figure out whether it's important enough to say.  
23       Maybe I'll try to keep it brief. But I will say, just  
24       to make the record clear -- what Commissioner Wilson  
25       said about the -- we do get requests for people to be

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1 on our forums, briefings and hearings, and we try to  
2 accommodate the best we can, but we can't accommodate  
3 everybody. And ultimately, the staff is responsible  
4 for putting together the event to make sure it goes  
5 according to the program. So we do try. We try to  
6 communicate at least in -- I mean, between our special  
7 assistant and your special assistant, if possible; if  
8 not, in writing.

9 And the other thing I just wanted to make  
10 clear, if I didn't make clear in my first statement,  
11 is that we do plan to make sure we get a diversity of  
12 opinion on this project. In fact, I thought that  
13 Commissioner Thernstrom and Commissioner Braceras had  
14 actually provided more than one name for the  
15 Educational Accountability Project.

16 COMMISSIONER THERNSTROM: We may have.  
17 It's long time ago. I can't remember.

18 STAFF DIRECTOR JIN: But certainly we were  
19 going to make sure that we talked to at least a lot of  
20 those people. So I just wanted to assure the  
21 commissioners that we were going to be thorough.

22 CHAIRPERSON BERRY: Commissioner Braceras,  
23 and then Commissioner Wilson, and Commissioner Edley.

24 COMMISSIONER BRACERAS: I think,  
25 basically, we have two issues here. One is process,

1 which is certainly important. But the other is just  
2 substantively whether we're going to make the  
3 Educational Accountability Project a priority. And I  
4 think in order to make it a priority we need to  
5 involve the commissioners publicly in a public  
6 hearing, or forum, or some type of event where we hear  
7 testimony and have an opportunity to ask questions.

8 So I'm just urging everybody to vote to  
9 make this project a priority. And I think we need to  
10 stick to that substantive issue right now.

11 CHAIRPERSON BERRY: Commissioner Wilson  
12 and Commissioner Edley?

13 COMMISSIONER WILSON: Thank you, Madam  
14 Chair.

15 And we should check the record, because I  
16 believe that this commission had a very long  
17 discussion about this. If I'm not mistaken, even  
18 Commissioner Redenbaugh who had said that we shouldn't  
19 spend too much of the staff's resources on this issue.

20 I think it's a very important issue. I  
21 agree with you. We did have witnesses who came in and  
22 who testified.

23 CHAIRPERSON BERRY: No.

24 COMMISSIONER WILSON: They didn't testify?

25 CHAIRPERSON BERRY: You remember the

1 documents thing? So this was suppose to be the next  
2 hearing, which was the witness' hearings. Is that  
3 right? Somebody?

4 But we had a documents hearing, where  
5 people came and brought documents. Remember that?

6 COMMISSIONER WILSON: Yeah, I do. But I  
7 also remember, in fact, having a discussion with --

8 CHAIRPERSON BERRY: Oh, I know what you  
9 mean. We had a briefing already --

10 COMMISSIONER WILSON: Yes.

11 CHAIRPERSON BERRY: -- in which we had  
12 people from everywhere who came in here and talked  
13 about it.

14 COMMISSIONER THERNSTROM: That was before  
15 I was here. I was a witness.

16 COMMISSIONER WILSON: No. Well, maybe.  
17 But you must have channeled yourself here. Because I  
18 remember your asking me a couple of questions about  
19 certain things that various witnesses said. It was  
20 definitely about education. I know I didn't imagine  
21 it.

22 CHAIRPERSON BERRY: Yeah, bilingual  
23 education, testing. We had it here.

24 COMMISSIONER WILSON: You were sitting in  
25 this very chair.

1 COMMISSIONER THERNSTROM: I was?

2 COMMISSIONER WILSON: Yeah. So the point  
3 is --

4 COMMISSIONER THERNSTROM: Oh, yes. Now I  
5 remember, the Milwaukee lady -- I remember -- who  
6 didn't even mention school choice. I remember.

7 CHAIRPERSON BERRY: So we did, in fact,  
8 have a public --

9 COMMISSIONER WILSON: Yes, we did. And  
10 the fact is, we have freedom of choice, and we can  
11 vote to do this all over again. But it seems to me we  
12 did it. And one of the very specific things that was  
13 said was that the staff -- because this Commission is  
14 so underfunded, we don't have the resources to do the  
15 kind of large-scale, really investigation and look  
16 that you're talking about.

17 COMMISSIONER BRACERAS: Well, I'm not  
18 sure -- I mean, I'm talking about very specifically  
19 looking at high-stakes testing in one or two areas,  
20 geographic areas. I'm not talking about a broad  
21 report on education, generally, which would include  
22 choice, and funding, and all that, and disability  
23 issues. I mean, there are a lot of issues surrounding  
24 education.

25 I thought what we had agreed to



1 investigate is high-stakes testing and accountability,  
2 which is a narrow topic.

3 COMMISSIONER THERNSTROM: Sort of.

4 COMMISSIONER BRACERAS: Well, sort of.  
5 But I wasn't here for the earlier briefing. I don't  
6 know what it encompassed. But if it didn't encompass  
7 witnesses that were specific to that topic, I think we  
8 need to do it again.

9 CHAIRPERSON BERRY: I'm going to recognize  
10 Edley, who was next. But just a second, Edley.

11 Let me just say, Vicky is entirely  
12 correct. We had a briefing. And it included  
13 high-stakes testing, it was about bilingual education.

14 All these education issues were discussed here by  
15 people who held themselves out to be experts from  
16 various places who talked. And we have a transcript  
17 of what they said, and we asked questions. And after  
18 that we decided that we would have this hearing. And  
19 we had documents presented from Maryland and Virginia,  
20 which include documents on what they're doing in the  
21 high-stakes testing area. So we have all of that  
22 information. I was just bringing that up to date.

23 And as I understand the staff proposal,  
24 it's saying that having gotten all these documents,  
25 having had the other briefing, that with the

1 opportunity to talk to all kinds of experts again and  
2 write a report, they think that they can do a good job  
3 in doing this without having a "formal hearing" with  
4 witnesses coming in to talk about this. And that's  
5 where we are, I think.

6 But, yes, Commissioner Edley?

7 COMMISSIONER EDLEY: Well, okay. So I'm  
8 wavering now. Let me just say three quick points.

9 One is with respect to process points and  
10 names and so forth. The suggestion that I made, which  
11 you found so irksome, was not Abigail's issue of  
12 suggestions for people to participate in a hearing.  
13 It was a much more limited thing, saying you're doing  
14 the report on a certain topic; I have some suggestions  
15 of people you ought to talk to to help you write your  
16 report, which is a far more limited thing, which I  
17 think would be helpful and which I think should, in a  
18 limited way, address some of the concerns that  
19 Commissioner Thernstrom mentioned earlier.

20 CHAIRPERSON BERRY: You misunderstood my  
21 body language. I did not find that irksome.

22 COMMISSIONER EDLEY: Oh, good. It was  
23 other stuff I was doing that was irksome.

24 CHAIRPERSON BERRY: What I found  
25 was -- what I was saying was that the Commission -- my

1 understanding is the staff is suppose to do that  
2 already, make suggestions. And when you make  
3 suggestions, or anybody does, they're suppose to do  
4 that. I don't know whether they do it, but they're  
5 suppose to.

6 COMMISSIONER EDLEY: Okay. Well, it's  
7 news to me. And I would welcome that the practice be  
8 continued and be transparent, or the transparency of  
9 that increase somewhat. So that's my first point.

10 The second is that I could understand that  
11 the staff might feel that since we've had, then, I  
12 guess at least two discussions over the last two years  
13 in which education issues have been raised, that  
14 another public event might not be time well spent.  
15 However, I will say that we need to be looking for  
16 ways to maximize the effectiveness of our efforts to  
17 educate the public. And this continues to be a raging  
18 debate, this issue of high-stakes testing, the issue  
19 of how to ensure that there is accountability that's  
20 effective for disadvantaged children. And I suppose  
21 like any of the other issues that we try to deal with,  
22 an additional effort to educate the public would not  
23 be wasted energy.

24 The third and last point I want to make is  
25 that I think the situation has changed somewhat from

1 what it was six months ago, or 10 months ago, or  
2 whenever we set off down this path. And it's changed,  
3 primarily because of the passage of the new education  
4 statute, the reauthorization of ESEA and of Title I in  
5 particular, the Leave No Child Behind Act, or whatever  
6 it's called.

7 COMMISSIONER THERNSTROM: Yeah, that's  
8 what it's called. No Child Left Behind.

9 COMMISSIONER EDLEY: Something like that,  
10 No Child Left Behind Act.

11 CHAIRPERSON BERRY: The Children's Defense  
12 Fund.

13 COMMISSIONER EDLEY: Right.

14 And the reason it is -- so we're now in a  
15 situation in which the department, and all the states,  
16 and all 15,000 school districts are going to be  
17 wrestling with the question of how to implement this  
18 statute. And from a civil rights perspective, the  
19 question is, how to implement the statute in a way  
20 that maximizes the potential benefits to these  
21 disadvantaged kids while minimizing the potential  
22 risks created by the statute for these kids.

23 So I guess I just want to urge that, that  
24 a report focused on the high-stakes testing is great.  
25 But it would also be very timely, some time within the

1 next couple of months, to do a briefing that is on  
2 that specific issue but also on the general question  
3 of what are the civil right stakes in the  
4 implementation of the new federal legislation.

5 CHAIRPERSON BERRY: Vice Chair?

6 VICE CHAIRPERSON REYNOSO: Madam Chair,  
7 we're mixing a little bit, it seems to me, some  
8 issues.

9 We had asked the staff to do something.  
10 They have come back and said, we think we can do it  
11 better in a certain way, and quicker, which we would  
12 be interested in. It seems to me that we ought to  
13 abide by that. At the same time, I agree with all of  
14 the comments that have been made here about one, the  
15 importance of education; two, the importance of this  
16 issue; and three, that there's some changes in the  
17 horizon.

18 So I would welcome an agenda item for the  
19 next commission meeting or the following when time  
20 permits, but as quickly as possible, on these issues.

21 But meanwhile, we ought not to stop the staff from  
22 going on and doing what they've indicated to us they  
23 can do better and get that report out.

24 So I guess we can continue to discuss  
25 this. I think I'd like to move the question.

1 COMMISSIONER BRACERAS: I have a question,  
2 actually.

3 COMMISSIONER WILSON: I've had my hand  
4 raised for a while.

5 CHAIRPERSON BERRY: Just a second.

6 We have spent an hour and  
7 10 minutes -- not an hour and ten minutes, 40 minutes  
8 discussing this. We can discuss it a little bit more.

9 The question has been moved:

10 Would you be willing to relent to let two  
11 more -- who else wants to make a comment? Three  
12 people want to make comments.

13 VICE CHAIRPERSON REYNOSO: I'd be happy  
14 to.

15 CHAIRPERSON BERRY: And then we will go on  
16 and vote on this thing, and get it over with.

17 COMMISSIONER BRACERAS: Mine's just a  
18 question, that's all.

19 CHAIRPERSON BERRY: And I don't know who  
20 was first, because I wasn't looking.

21 COMMISSIONER BRACERAS: I defer to the  
22 other two commissioners.

23 CHAIRPERSON BERRY: Commissioner  
24 Thernstrom.

25 COMMISSIONER THERNSTROM: Look, I'm in

1 agreement with Commissioner Braceras, and probably  
2 with Commissioner Edley as well, that this is "the"  
3 civil rights issue of our day. And high-stakes  
4 testing was not covered, if I remember correctly, in  
5 the hearing that we had, or recently had, whatever  
6 it's called. It's an immensely complicated question.

7 Those who disagree with me -- I am a proponent of  
8 high-stakes testing. Those who disagree with me raise  
9 important and legitimate questions. This is not a  
10 simple issue at all, and it's one in which we really  
11 need to listen to one another because it is so  
12 immensely complicated. And because if you're on the  
13 side of kids, you're gonna -- there are -- which I  
14 think we all are, it's not an easy issue.

15 The question of how to implement No Child  
16 Left Behind is especially complicated. In this  
17 legislation is built a mandate for all kids to get up  
18 to the level of "proficiency" in 12 years, proficiency  
19 by that national assessment of educational progress  
20 standard. That is, in my view --

21 COMMISSIONER EDLEY: It will take a  
22 miracle.

23 COMMISSIONER THERNSTROM: Pardon me?

24 COMMISSIONER EDLEY: It's going to take a  
25 miracle.

1 COMMISSIONER THERNSTROM: It's going to  
2 take a miracle. Exactly.

3 As Commissioner Edley has said, the  
4 landscape has changed with the passage of No Child  
5 Left Behind. And it's too early for there to be  
6 literature on the implementation of that act. We  
7 need to hear from people. We need to hear from people  
8 at the Department of Ed. We need to hear from  
9 Education Trust, which is a major player in this town  
10 as an advocacy group for urban students, and other  
11 such voices.

12 I just don't think that behind closed  
13 staff doors is a substitute. It's an important part  
14 of the process, but it is not a substitute for us  
15 hearing from people.

16 CHAIRPERSON BERRY: Commissioner Braceras?

17 COMMISSIONER BRACERAS: I just have a  
18 question, since we are -- I'm sorry. Go ahead.

19 COMMISSIONER WILSON: Thank you.

20 CHAIRPERSON BERRY: I thought you pointed  
21 at her.

22 COMMISSIONER WILSON: No, I pointed at  
23 the --

24 COMMISSIONER BRACERAS: No, that's fine.  
25 I'll wait. It doesn't matter.



1 COMMISSIONER WILSON: Thank you.

2 Well, first of all, I would like to make a  
3 suggestion; that we go back -- instead of talking  
4 about this theoretically, that we go back and look at  
5 the testimony of the people who came.

6 COMMISSIONER BRACERAS: Well, here's the  
7 agenda right here.

8 COMMISSIONER THERNSTROM: No, testimony  
9 she wants.

10 COMMISSIONER WILSON: Testimony I'm  
11 saying.

12 COMMISSIONER BRACERAS: All right. Well,  
13 this is the schedule, though, on what they testified  
14 about.

15 COMMISSIONER WILSON: That doesn't say  
16 what --

17 COMMISSIONER THERNSTROM: She's talking  
18 about the substance, Jennifer.

19 COMMISSIONER BRACERAS: Okay. Well, it  
20 has the topics, but --

21 COMMISSIONER THERNSTROM: No, she's  
22 talking about the substance.

23 COMMISSIONER BRACERAS: Just trying to be  
24 helpful.

25 COMMISSIONER WILSON: Just because it

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1 names people who came, it doesn't in any way say what  
2 they said. So I would --

3 COMMISSIONER BRACERAS: It says the topic  
4 of what they were going to speak on.

5 CHAIRPERSON BERRY: Commissioner Braceras,  
6 could you please let Commissioner Wilson finish her  
7 sentence?

8 COMMISSIONER BRACERAS: Trying to be  
9 helpful.

10 CHAIRPERSON BERRY: I would be happy to  
11 recognize you as soon as she finishes her sentence.  
12 She doesn't talk as fast, but --

13 Go ahead, Commissioner Wilson. Please say  
14 what you are trying to say.

15 COMMISSIONER WILSON: Well, I thought I  
16 was saying it, quite succinctly. I think we should go  
17 back and look at the testimony of the people who came  
18 to testify, regardless of the topic of what they were  
19 speaking about, which is available on a list.

20 CHAIRPERSON BERRY: Which makes sense.

21 COMMISSIONER WILSON: Second of all, I was  
22 about to agree with Commissioner Thernstrom and  
23 Commissioner Edley on looking at this policy of No  
24 Child Left Behind, but you just gave me the argument  
25 of why we shouldn't do it. It's probably -- it's too

1 soon. Unless you can explain to me why it isn't too  
2 soon --

3 CHAIRPERSON BERRY: Please, please,  
4 please, please, please.

5 COMMISSIONER WILSON: -- it seems to me  
6 that nobody really knows what --

7 CHAIRPERSON BERRY: Commissioner Braceras  
8 was next.

9 COMMISSIONER BRACERAS: Well, I'll defer  
10 to Commissioner Edley, because I think he wants to  
11 answer the question posed by Commissioner Wilson.

12 CHAIRPERSON BERRY: Commissioner Edley?

13 COMMISSIONER EDLEY: I think the reason to  
14 try to talk about it now is because everybody's trying  
15 to figure out what to do, how to do it. So, in fact,  
16 we've got this rare opportunity, I think, to try to  
17 stage a discussion in which we figure out how to give  
18 advice to folks about how to implement this in a way  
19 that maximizes the civil right gains -- the equity  
20 gains -- in the implementation process. Do you see  
21 what I mean? As opposed to waiting until the problems  
22 arise, and then just decrying the problems, there's an  
23 opportunity to do a little bit of prevention and sort  
24 of here's what to watch out for and here's some things  
25 that people should keep their eye on.

1           So I think it's very timely as  
2           policymakers both within the department and at the  
3           state level are grappling with this complex set of  
4           issues that the old -- April 13, 2001 was when the  
5           hearing was that you remember. And there were two  
6           panels, one on bilingual, where Kenji Hakuta and David  
7           Ramirez spoke. And the second panel was an equal  
8           educational opportunity, voucher/choice, charters and  
9           high-stakes testing, and that we had Gary Orfield who  
10          talked about disparities mostly and about charter  
11          schools. We had the woman from Milwaukee. And Jay  
12          Hubert from Columbia spoke about high-stakes testing.

13          So we had one person talking about high-stakes  
14          testing at that briefing.

15                       CHAIRPERSON BERRY: Commissioner Wilson?

16                       COMMISSIONER WILSON: Commissioner Edley,  
17          again, given your argument, it would seem -- I mean, I  
18          listened carefully to what you said. Now, if we were  
19          going to advise these people who were coming to  
20          testify, or who were involved in the process of  
21          figuring out how to go about this mission, it would  
22          seem to me that a report would serve them more than  
23          their coming to testify before us.

24                       COMMISSIONER BRACERAS: Well, I think the  
25          point --

1 CHAIRPERSON BERRY: Just,  
2 just -- Commissioner Braceras was seeking recognition.

3 COMMISSIONER BRACERAS: Well, I mainly  
4 have a question. But just to respond to that, I think  
5 the point of having them to come testify before us is  
6 to help educate the public and other people involved  
7 in education who may not be present at the hearing,  
8 but through testimony and press and then our report,  
9 to help educate people, and to try to be constructive,  
10 and perhaps make recommendations of how people in the  
11 heartland can implement the policy. And rather than  
12 just looking backwards and being critics, maybe we can  
13 find some common ground here and work together as a  
14 commission to make some fruitful and constructive  
15 recommendations. That's how I interpret it. And I  
16 support the suggestion by Commissioner Edley fully.

17 But my question is -- and it's for the  
18 staff, since this is really a question of priorities  
19 and how time is going to be used -- if we don't do  
20 this, what will they be focusing on, because I think  
21 that's an important component in terms of how we vote,  
22 if we want to do this or something else.

23 If we don't spend one of our meetings, and  
24 the month leading up to the meetings, preparing for an  
25 education hearing, how is that time going to be spent,

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1 on what projects?

2 CHAIRPERSON BERRY: Somebody else will  
3 answer that. But --

4 COMMISSIONER BRACERAS: Well, I'd like it  
5 answered before we move on because I think it's  
6 important.

7 COMMISSIONER EDLEY: She gave her response  
8 to Vicky. I can answer it.

9 Commissioner Braceras, first of all, I  
10 think we want to be really clear -- and I do know we  
11 understand -- we're not talking about dropping the  
12 project. This project is still going to take quite a  
13 bit of work for a lot of reasons that you all  
14 discussed; it's a complex project. So we do believe  
15 that by this modification it will diminish the work,  
16 but it's certainly going to be still a major endeavor.

17 Second of all, I think it's important we  
18 remember that, while the environmental justice  
19 briefing is finished -- the hearing's finished -- that  
20 doesn't mean the work's finished.

21 COMMISSIONER BRACERAS: Right.

22 COMMISSIONER EDLEY: In some ways it's  
23 just begun. I mean, obviously, a lot of work's  
24 already been done, but a large part of the work still  
25 needs to be done.

1 Not to dark distance into the future, the  
2 commissioners had decided we should do something on  
3 Native Americans. What we're talking about now is the  
4 Office of General Counsel. That's something else  
5 they're doing. And I think if you look over the  
6 history of especially the recent years, the Commission  
7 has -- and I think appropriately so -- wanted to do  
8 emerging issues as they come up. And again, we need  
9 to have some room to do that.

10 COMMISSIONER BRACERAS: Well, this issue  
11 is very urgent.

12 COMMISSIONER EDLEY: But we're doing this  
13 issue. I mean, we're working this issue.

14 COMMISSIONER BRACERAS: No, I understand  
15 that. But if it's a matter of not spending staff time  
16 on preparing for a hearing because you want to leave  
17 room for emerging issues, frankly, I don't think  
18 that's wise. Because this is "the" most important  
19 emerging issues.

20 And, you know, I understand that there's  
21 work to be done to prepare a report on environmental  
22 justice, and that that's going to take a huge amount  
23 of staff resources. But, look, we have at least two,  
24 if not more, commissioners at this table who are  
25 experts in the area of education and the law. I've

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1 written an article on Title VI and high-stakes testing  
2 myself. And I think to the extent that the staff  
3 lacks time to prepare, I'm willing to chip in. I'm  
4 willing to call witnesses. I'm willing to write  
5 briefing points. All of us can be very helpful here,  
6 I think.

7 And so I'm not sure how much time it would  
8 take to make a few phone calls, get four people here  
9 to testify, summarize what their testimony's going to  
10 be about, ask the questions, and incorporate that into  
11 the ultimate report. I don't see that as something  
12 that's not feasible; I really don't.

13 And with respect to the point that the  
14 vice chair made earlier, I understand that the staff  
15 says they're pressed for time and overworked and all  
16 those things. And I'm happy to talk about ways we can  
17 alleviate their burden. But it's not our job to be  
18 taking orders from the staff; it's our job to set  
19 priorities.

20 CHAIRPERSON BERRY: This discussion has  
21 gotten completely out of control.

22 COMMISSIONER BRACERAS: Why is that out of  
23 control?

24 CHAIRPERSON BERRY: It is not -- may I  
25 please finish? Not your comment. But the entire



1 discussion. It takes into no account all the  
2 discussions we had previously when we approved the  
3 project, which was a long and extended discussion.  
4 And it's gotten into how to help the staff do this,  
5 that and the other, and all this detail --

6 COMMISSIONER BRACERAS: No, it's about how  
7 to set priorities, which is our job.

8 CHAIRPERSON BERRY: Commissioner Braceras,  
9 may I please finish? I've let everyone talk. I've  
10 recognized everyone. I am trying to make a statement  
11 about this, please.

12 You may do whatever you wish. I hold no  
13 particular belief about this topic. Everyone here  
14 privileges their own experience and their own  
15 expertise about education. I used to run federal  
16 education programs, and had all of these programs on  
17 my --

18 COMMISSIONER BRACERAS: There you go then.  
19 We have four commissioners who have a lot of --

20 CHAIRPERSON BERRY: And I'm not  
21 privileging my experience, but I think I had about as  
22 much as most of you.

23 But in any case, the point is -- and I  
24 know one thing, which is that the Education Department  
25 hasn't a clue yet about how they're going to implement

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1 anything because it's too soon. And I'd be surprised  
2 if all the other education departments in the whole  
3 country know exactly what they're going to do. That  
4 would shock me if they knew what they were going to  
5 do. And that all you can hear from people at this  
6 point about it is the same thing they said when  
7 welfare reform was passed, about all the bad things  
8 that are going to happen, and this is going to happen,  
9 and that's going to happen. It's the kind of stuff  
10 you get on Lehrer at night when a crisis occurs, and  
11 all the pundits come on to tell you what's going to  
12 happen, and most of it never happens.

13 So at this point, until you get medium  
14 stream where people have started to do something, all  
15 we'll hear is a bunch of speculation. I'm quite  
16 prepared to hear that if that's the wish of this  
17 Commission, to sit and hear people tell us all those  
18 bad things that are going to happen or the good things  
19 they think are going to happen.

20 So all I want now is closure. You may do  
21 whatever you please. There was a call for the  
22 question. We will have the question. As I understand  
23 the staff director saying that this is a project. If  
24 we agree that they will finish it off the way they're  
25 finishing it off -- people may suggest any names of

1 anybody for them to talk to or anything else, which  
2 they will do -- and that if we want to have a forum or  
3 a briefing -- a briefing -- on education after that,  
4 this decision does not preclude doing that since very  
5 often the people who are getting people for briefings  
6 aren't the same people who are getting the people to  
7 do that. So that doesn't preclude you doing any of  
8 that.

9 So the only real question is, whether you  
10 want them to go ahead and finish this off, this phase  
11 of it, the way they're doing it with some input from  
12 anybody who wants any. And when we get the draft  
13 report, if we approve this, then we will do whatever  
14 we wish with it-- either tell them to go do more, or  
15 they didn't talk to this person, or approve it, or say  
16 we want it to be discussed at a forum, or a briefing,  
17 or whatever. But I think we need to vote on this  
18 proposal, and then if there are other proposals, we  
19 can vote on them too.

20 Yes?

21 COMMISSIONER EDLEY: Yes. Point of  
22 information. If you could just state exactly what the  
23 motion is, because I want to find out if it would be  
24 appropriate after voting on this motion to offer a  
25 motion that we have a briefing as opposed to a

1 hearing.

2 COMMISSIONER THERNSTROM: Yeah. And also  
3 have a point of clarification of your point just now.

4 I don't really understand what you were saying just  
5 now; that is, if it's too early or some kind of forum  
6 because nobody in the Department of Education knows  
7 what they're doing -- although, of course they are  
8 bringing together panels to discuss what to do in the  
9 way of implementation and so forth.

10 But if it's too early to have a kind of  
11 hearing on this, then it's too early for the staff to  
12 look at the question. I mean, either it's premature  
13 for the Commission to be looking at the question, or  
14 it's not. But that doesn't seem to me to address the  
15 question of whether to have some sort of hearing or to  
16 have just the staff work on it. I didn't understand  
17 what you said.

18 CHAIRPERSON BERRY: What we're failing to  
19 focus on -- we are failing to focus on -- is what the  
20 staff is planning to do is to look at the documents  
21 they already collected from two states -- Maryland and  
22 Virginia -- on what they're doing and have done, and  
23 do literature reviews, and whatever else they do, and  
24 talking to people, to inform themselves about how to  
25 approach those documents.

1                   And the report, as I understand it, will  
 2 tell us what these folks have been doing, whether it  
 3 made any sense, do people think it makes any sense, do  
 4 we think it makes any sense, and are there any  
 5 findings or recommendations about how to proceed in  
 6 this area, whether it's under No Child Behind -- or  
 7 Marian Wright Elderman's Leave No Child Behind,  
 8 Children Defense Fund; I say that for Marian -- or  
 9 whatever it is, that we would approve some  
 10 recommendations or not, depending on whether we want,  
 11 or we might tell them then, that with this draft  
 12 report, we want to hear because at that point when  
 13 they finish it, there is some more knowledge and  
 14 information about what people are doing about leaving  
 15 no child behind, to inform the discussion before they  
 16 finish the draft, and return it to them for them to  
 17 continue to work on.

18                   But at this stage, we let them finish off  
 19 analyzing Maryland and Virginia and the documents, and  
 20 whatever else, and go on. That's my understanding.

21                   Am I missing it? Is that what you're  
 22 proposing?

23                   STAFF DIRECTOR JIN: No. That's the way  
 24 we intended it, Madam Chair. That's what we're  
 25 proposing.

1 COMMISSIONER BRACERAS: Just to be clear,  
2 a yes vote is a vote to allow them to finish the  
3 report, to prepare the report without oral testimony.

4 CHAIRPERSON BERRY: That's what -- yes.

5 COMMISSIONER BRACERAS: Okay.

6 CHAIRPERSON BERRY: Without having another  
7 hearing, they would finish the report.

8 COMMISSIONER BRACERAS: Okay.

9 CHAIRPERSON BERRY: That's what the motion  
10 was. That's what he suggested.

11 COMMISSIONER BRACERAS: Right. Just  
12 wanted to be clear on what a yes vote meant and a no  
13 vote meant --

14 CHAIRPERSON BERRY: Right.

15 COMMISSIONER BRACERAS: -- and I have that  
16 answer.

17 COMMISSIONER EDLEY: Another procedural  
18 question.

19 So if this motion carries, then an  
20 alternative motion would be for the staff to go ahead  
21 and write a report, but also for us to hold as soon as  
22 possible a briefing?

23 CHAIRPERSON BERRY: First of all --

24 COMMISSIONER EDLEY: Would be out of  
25 order?

1                   CHAIRPERSON BERRY:  -- we don't have to  
2 have a motion to have a briefing.  Procedurally, any  
3 commissioner can suggest a briefing on any topic at  
4 any time.  And it's not part of our -- it's not a  
5 hearing, it's not a forum, it's not a SAC thing.  It's  
6 just people saying, can we get some experts here to  
7 talk about X.  And then we just schedule them as we  
8 can.  And it's a privilege that any commissioner has  
9 to suggest one.  That's the way it's always been.

10                   COMMISSIONER EDLEY:  Then maybe we're not  
11 that far apart on this, Mary.  Because I guess my  
12 concern would be -- I think it would be -- I think  
13 Jennifer's absolutely right.  It really would not be  
14 that hard to identify a handful of people who could  
15 talk to us about the high-stakes testing issue, or,  
16 more broadly, about what are the challenges in  
17 implementing this new piece of legislation in an  
18 advice-giving mode, advice for the federal government,  
19 advice for state governments, from a civil rights  
20 perspective, what are the challenges.  It would not be  
21 that hard to put that together.  I mean, I could do  
22 that this afternoon.

23                   CHAIRPERSON BERRY:  You won't do it this  
24 afternoon.

25                   COMMISSIONER EDLEY:  No.  But I'm

1 saying -- well, actually, I would tell my staff to do  
2 it. And others could do the same. It's not that big  
3 of deal.

4 CHAIRPERSON BERRY: Sure.

5 COMMISSIONER EDLEY: And certainly what  
6 I'm after, and I suspect what a couple of the other  
7 commissioners are after, is both the opportunity to do  
8 more public education about these issues, and along  
9 the way, to actually get smarter ourselves for  
10 purposes of the report that the staff is going to  
11 write.

12 I think it's obviously going to take a  
13 couple of months to write this staff report.

14 CHAIRPERSON BERRY: Longer than that.

15 COMMISSIONER EDLEY: Longer than that. So  
16 I guess I'm prepared to support Les' motion. But I  
17 just want to put you on notice that I'm going to work  
18 very hard to persuade you and Les that we should do a  
19 briefing.

20 CHAIRPERSON BERRY: You don't even have to  
21 do that. All you have do is suggest one.

22 COMMISSIONER EDLEY: Please let's have a  
23 debriefing on these issues.

24 CHAIRPERSON BERRY: I mean, that's not  
25 even worth -- I mean, voting to do this has nothing to

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1 do with whether we have a briefing on whatever topic  
2 you want. If you want a topic on baseball in civil  
3 rights, tell us you want to have it. And when the  
4 schedule permits, we can have a topic on baseball in  
5 civil rights.

6 I hear you loudly and clearly that --

7 COMMISSIONER THERNSTROM: I don't get it.  
8 I'm sorry.

9 CHAIRPERSON BERRY: -- that only  
10 vote -- which is why I said this whole discussion  
11 seemed to me to be somewhat out of control. Because  
12 you had a narrow issue, which is will you let the  
13 staff finish this. If you want to have a briefing,  
14 just say you want to have one. And after we vote on  
15 it one way or the other, we can have one.

16 COMMISSIONER EDLEY: So the gravamen here  
17 of all this is that we're taking a vote to let the  
18 staff off the hook of going through all the falderal  
19 involved in having a formal hearing.

20 So we kill the formal hearing, because  
21 that is very labor intensive. Free them to focus on  
22 writing a report, but at the same time we schedule a  
23 less formal, still very informational --

24 CHAIRPERSON BERRY: A briefing.

25 COMMISSIONER EDLEY: A briefing.

1 COMMISSIONER BRACERAS: But my only caveat  
2 is I'd like the briefing to occur before the report is  
3 issued, and I'd like the report to incorporate some of  
4 the testimony.

5 CHAIRPERSON BERRY: If we want it to. If  
6 we would decide after the --

7 COMMISSIONER THERNSTROM: Why do we have  
8 to decide after? Why can't we decide now?

9 CHAIRPERSON BERRY: Because we don't know  
10 what the testimony is.

11 COMMISSIONER EDLEY: No, you're  
12 not -- you're missing each other.

13 CHAIRPERSON BERRY: We're now doing it  
14 again. There's a simple thing, and it's been moved.  
15 Is the staff going to be permitted to write this  
16 report -- which will take a while to write, believe  
17 me -- or not? That's the question. And then anything  
18 else you want to do, we can do it.

19 All in favor of the motion, indicate by  
20 saying aye.

21 (A chorus of ayes.)

22 CHAIRPERSON BERRY: Opposed?

23 COMMISSIONER BRACERAS: Nay.

24 COMMISSIONER THERNSTROM: No, because I  
25 don't understand it.

1 CHAIRPERSON BERRY: Commissioner Braceras  
2 and Commissioner Thernstrom were in opposition. The  
3 motion passes. The staff will proceed. Also, Staff  
4 Director, put on your list of briefings, one on  
5 education, and the issues that they've been discussing  
6 back and forth here --

7 STAFF DIRECTOR JIN: Okay. Will do.

8 CHAIRPERSON BERRY: -- for us to do a  
9 briefing before the report is finished.

10 STAFF DIRECTOR JIN: Okay. We'll do that.

11 CHAIRPERSON BERRY: All right.

12 Now, anything else in the staff director's  
13 report?

14 STAFF DIRECTOR JIN: No, not in the staff  
15 director's report.

16 CHAIRPERSON BERRY: Maybe if you had  
17 stated it a different way, like --

18 STAFF DIRECTOR JIN: Right. I was  
19 thinking about that.

20 CHAIRPERSON BERRY: -- whatever else you  
21 guys want to do, you can do it, but we want to do  
22 this. Maybe that would have been okay.

23 Yes?

24 COMMISSIONER BRACERAS: I actually have a  
25 question about the briefing for today, and actually

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1 how it came about. Because --

2 CHAIRPERSON BERRY: I'd be happy to tell  
3 you.

4 COMMISSIONER BRACERAS: Okay. Well,  
5 great. Because I had spent some time, actually -- and  
6 my special assistant had spent some time -- preparing  
7 for a briefing on welfare reform and educating  
8 ourselves on that. And I think that this topic that  
9 we have for today is interesting, and I'm pleased to  
10 welcome the witness here today to talk about it. But  
11 in terms of process, I have to say I was a little  
12 concerned about how this came about and the timing of  
13 it, because we did not have time to educate ourselves  
14 about this issue the way we had started to do on  
15 welfare.

16 So from the memorandum that came over my  
17 fax, it indicated that somebody on the staff had, I  
18 guess, fallen ill, and that was the reason for the  
19 change on the welfare briefing. And I was just  
20 wondering if you could tell me who it was -- who on  
21 the staff was responsible for welfare that fell ill  
22 that made it impossible to have that briefing.

23 CHAIRPERSON BERRY: Do you want to name  
24 the person that's --

25 STAFF DIRECTOR JIN: I don't think I

1 would -- unless my counsel tells me, I don't think I  
2 would be appropriate in this kind of forum.

3 COMMISSIONER BRACERAS: Okay. You don't  
4 have to tell me who's ill, but can you tell me who was  
5 responsible for welfare?

6 STAFF DIRECTOR JIN: Well, the way you  
7 phrased the question, I mean, once I say that --

8 COMMISSIONER BRACERAS: Well, there's only  
9 one person who was responsible for the briefing?

10 STAFF DIRECTOR JIN: Well, there's a  
11 person who was responsible for taking the initiative  
12 to do the early work to get it to a second point, and  
13 others would have jumped in and helped.

14 COMMISSIONER BRACERAS: And there was no  
15 one else who could take over when that person fell  
16 ill?

17 STAFF DIRECTOR JIN: And the situation was  
18 that a number of things happened sequentially so  
19 that -- when we were going through it, we thought that  
20 the person would -- we knew there were some major  
21 things, but we didn't think that they would last this  
22 long. And it just kept on piling up.

23 COMMISSIONER BRACERAS: Okay. Well,  
24 that's fine. And I obviously wish the person well.  
25 But my question is more of an institutional one as to

1 why there wasn't somebody who could have taken over  
2 and shepherded the project to completion, since we had  
3 all -- or at least some of us had spent time preparing  
4 for that project?

5 CHAIRPERSON BERRY: Commissioner Braceras,  
6 the staff director, I think he's responded. But let  
7 me respond to how this came about. And I had planned  
8 to do it when we introduced our guest.

9 COMMISSIONER BRACERAS: Well, I'd actually  
10 like the staff director to answer that question.

11 CHAIRPERSON BERRY: He doesn't know; I do.  
12 He knows why it came about, but I had a role to play  
13 in it. So I would like to express what that role is.

14 COMMISSIONER BRACERAS: Great.

15 CHAIRPERSON BERRY: And I had planned to  
16 do it when I introduced our guest, who I'm pleased to  
17 have here. And it's not time to do that yet. But in  
18 any case, we had a discussion in November about  
19 bioterrorism and healthcare issues and underserved  
20 populations and the Office of Homeland Security, which  
21 was just being established.

22 The staff after that -- there were a lot  
23 of questions in our discussion that were unanswered.  
24 And the staff, as they continued to monitor this, I  
25 was speaking with the staff director about the

1 possibility that OCRE might write a memo for us to  
2 read at some point about these issues.

3 And they did that. And then when we came  
4 to set the agenda for this meeting, having time  
5 available, I said, well, you could send a memo out,  
6 and we could just discuss the memo and see where we  
7 are on it. Then I said, well, maybe rather than doing  
8 that, we shouldn't have a briefing. Because the way  
9 we do briefings is we get names, and we do panels, and  
10 we do all of that, and there wasn't time for that.  
11 But that we should just ask someone who is an expert  
12 on public health delivery systems to come in and  
13 briefly talk with us about it. And then if the  
14 commissioners wanted to have a formal briefing after  
15 that in which they invited witnesses or did whatever  
16 they could, and that this was a wise and best use of  
17 our time.

18 So I took it as my responsibility in  
19 setting the agenda, which is one of the two  
20 responsibilities I have to do that. So I'm the one  
21 who --

22 COMMISSIONER BRACERAS: Well, that's all  
23 great. My only question was, why was that now instead  
24 of welfare. And my other question goes to not only  
25 the timing but how we were informed of it. Because in

1 looking over some transcripts from this commission in  
2 the past, I noticed that you had in 1996 promised  
3 Commissioner George that commissioners would always be  
4 given a month's notice before they were going to have  
5 a speaker or a briefing, and that nobody would come  
6 and give testimony to this commission without us  
7 having a chance to prepare. And that commissioners  
8 would know at the meeting before who was coming to  
9 speak at the following meeting. And you reiterated  
10 that in 1999. And that's readily available in the  
11 transcript.

12 So I'm curious to know why that didn't  
13 happen this time. Because like you said, this is an  
14 issue that the Commission has been discussing since  
15 November. It's clearly not an emergency. It could  
16 have been put on the calendar for April, and that  
17 would have given us some time to brief ourselves and  
18 familiarize ourselves with the issues, which I would  
19 like to do before the gentleman speaks so that I can  
20 better understand what he has to say and formulate  
21 some more intelligent questions.

22 So given your previous statements and  
23 assurances that business would not be conducted that  
24 way, I'm wondering why it was.

25 CHAIRPERSON BERRY: The first answer is, I



1 did not state that no speaker would come before the  
2 Commission without this happening. I said there would  
3 not be a briefing without people being given notice.

4 COMMISSIONER BRACERAS: So change the  
5 title of what's been proposed instead of what are the  
6 rules?

7 CHAIRPERSON BERRY: Commissioner Braceras,  
8 you spoke; I'm speaking.

9 May I speak?

10 COMMISSIONER BRACERAS: Feel free.

11 CHAIRPERSON BERRY: Are you in charge?

12 Now, I did not state that no speaker would  
13 ever come to the Commission. I know I didn't say  
14 that, and you know I didn't say it. And I have just  
15 told you --

16 COMMISSIONER BRACERAS: I'm happy to  
17 pull up the transcript.

18 CHAIRPERSON BERRY: The transcript -- read  
19 the transcript. Read where I said no speakers will  
20 come.

21 COMMISSIONER BRACERAS: I don't have it in  
22 front of me, but when I --

23 CHAIRPERSON BERRY: Well, you throw out  
24 these things that are not true.

25 COMMISSIONER BRACERAS: Well, when I go

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1 back to my office, I'll fax it to you.

2 CHAIRPERSON BERRY: Okay. Do that. Do  
3 that. Because I know I didn't say that.

4 Now, the second thing is, I have just told  
5 you this is not a briefing; that we could have just  
6 discussed the memo, since we have time available when  
7 we were going to have welfare reform. This is not an  
8 issue where we're making a decision; we're just having  
9 a discussion. And it seemed entirely reasonable to  
10 have someone who was an expert on short notice come in  
11 and just discuss it with us.

12 Now, if you object --

13 COMMISSIONER BRACERAS: Oh, I don't object  
14 at all. I don't know why -- I actually --

15 CHAIRPERSON BERRY: If commissioners  
16 object, you may move that you object. And the --

17 COMMISSIONER BRACERAS: I don't object at  
18 all.

19 CHAIRPERSON BERRY: -- Commissioners can  
20 vote on it. And we will ask the speaker to leave.

21 COMMISSIONER BRACERAS: And  
22 actually -- no, I'm very interested in hearing this  
23 speaker. But I'm actually baffled as to why you're so  
24 angry about this. Because all I'm asking for as going  
25 forward, a little more notice so that I can have time

1 and other commissioners can have time to educate  
2 themselves --

3 CHAIRPERSON BERRY: Do you --

4 COMMISSIONER BRACERAS: Excuse me.

5 CHAIRPERSON BERRY: -- have a motion,  
6 Commissioner Braceras?

7 COMMISSIONER BRACERAS: No. I'd like to  
8 finish speaking.

9 CHAIRPERSON BERRY: Do you have a motion?

10 COMMISSIONER BRACERAS: I'd like to finish  
11 speaking.

12 CHAIRPERSON BERRY: Do you have a motion?

13 COMMISSIONER BRACERAS: I have a point of  
14 order, which has to do with the way this commission  
15 conducts business. And I would like to request that  
16 in the future commissioners are given better notice  
17 than we've received in this case. And by that, I mean  
18 a month's notice of what is going to happen at the  
19 next meeting so that we can inform ourselves  
20 appropriately.

21 It baffles me that that request angers you  
22 so.

23 CHAIRPERSON BERRY: Do you have a motion  
24 on that? Because our procedure now is not to notify  
25 commissioners a month ahead of what the agenda is for

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1 the meeting. I don't even know what it is a month  
2 ahead. But if you'd like to change the procedure, you  
3 may move to do so.

4 COMMISSIONER BRACERAS: I'm not asking for  
5 a complete agenda. I'm asking, if there's going to be  
6 a speaker or a substantive discussion of a civil  
7 rights issue, to have notice of that so that we may  
8 prepare. The fact that this has angered you so is  
9 really, I think, quite revealing to anybody who's  
10 watched this commission. Because I don't understand  
11 why you would be against commissioners --

12 CHAIRPERSON BERRY: Do you have a motion?

13 COMMISSIONER BRACERAS: -- preparing and  
14 having information.

15 CHAIRPERSON BERRY: Do you have a motion?

16 COMMISSIONER BRACERAS: No. I think I've  
17 said what I need to say.

18 CHAIRPERSON BERRY: Okay.

19 Are we going to proceed or not? Or are  
20 we --

21 COMMISSIONER THERNSTROM: Well, I just  
22 have a question.

23 CHAIRPERSON BERRY: -- simply going to  
24 keep discussing all these procedural questions for the  
25 rest of the day.

1 COMMISSIONER BRACERAS: I'm not.

2 COMMISSIONER THERNSTROM: I just have a  
3 question.

4 I don't really -- there seems to be -- I  
5 don't understand the categories of people coming  
6 before this commission, the categories of events.  
7 That is, there seems to be hearings. Commissioner  
8 Edley referred this morning to a forum, but by that I  
9 think he means the hearings. Then there are  
10 briefings. Then there is another category in which  
11 there are speakers, but I don't know what that  
12 category is; I don't know what the context is.

13 And I just -- I don't understand the  
14 structure of how this commission operates. And I  
15 think we do need to have some understandable rules so  
16 that there isn't -- and some regular structure. I  
17 don't understand what a speaker is. Is a speaker just  
18 somebody who appears? Can they appear at the last  
19 moment, invited at the last moment, and we don't  
20 prepare for it?

21 CHAIRPERSON BERRY: Do the commissioners  
22 wish to hear from Dr. Akhter or not?

23 COMMISSIONER BRACERAS: Yes, we do.

24 COMMISSIONER THERNSTROM: Yes.

25 CHAIRPERSON BERRY: He is here. And I

1 would like to move the agenda so that he may speak.  
2 We asked him to come. He came. He's here. He's  
3 waiting. If you wish not to hear from him, let's so  
4 indicate. And then we can thank him for his having  
5 arrived --

6 COMMISSIONER BRACERAS: I don't think  
7 anybody's indicated that point of view.

8 CHAIRPERSON BERRY: Well, could we please  
9 move the agenda?

10 COMMISSIONER BRACERAS: Yes.

11 CHAIRPERSON BERRY: Let's move the agenda.  
12 And if you have all these questions, ask the staff  
13 director outside the meeting, or we can discuss it  
14 when we don't have a guest.

15 **V. STATE ADVISORY COMMITTEE APPOINTMENTS**

16 The next item on the agenda is the State  
17 Advisory Committee appointments, and then we go to  
18 Dr. Akhter.

19 Yes, Commissioner Wilson?

20 COMMISSIONER WILSON: I would just like  
21 to, for clarification for Commissioner Thernstrom, if  
22 you look in the record, when I first came, there was a  
23 long discussion defining each of those categories that  
24 you mentioned. There is clarity about this. It isn't  
25 just --

1 COMMISSIONER THERNSTROM: Okay. I was  
2 just asking.

3 COMMISSIONER WILSON: -- an attempt to  
4 obfuscate.

5 And finally, I would like to say that I  
6 find the way Commissioner Braceras approached this  
7 issue before this commission is more revealing of her  
8 than it is of the chairperson.

9 CHAIRPERSON BERRY: Thank you.

10 COMMISSIONER BRACERAS: It reveals that  
11 I'd like information.

12 CHAIRPERSON BERRY: Thank you very much,  
13 Commissioner Wilson.

14 COMMISSIONER BRACERAS: And to be  
15 prepared.

16 CHAIRPERSON BERRY: Thank you,  
17 Commissioner Wilson.

18 CHAIRPERSON BERRY: Could we get a motion  
19 to approve the State Advisory Committee appointments  
20 from Nebraska and New Mexico?

21 COMMISSIONER MEEKS: So moved.

22 CHAIRPERSON BERRY: Thank you very much,  
23 Commissioner Meeks.

24 Could I get a second to that, please?

25 COMMISSIONER BRACERAS: Yes. I seconded

1 it.

2 CHAIRPERSON BERRY: Discussion of these  
3 appointments?

4 The only discussion I would make, Staff  
5 Director, is could you please have the staff look at  
6 the way the demographics are described in the states.

7 And check to see if they're using the right census  
8 page, because some of it doesn't add up to 100 percent  
9 or it adds up to more than 100 percent.

10 STAFF DIRECTOR JIN: Okay.

11 CHAIRPERSON BERRY: And I would appreciate  
12 it if you'd do that.

13 CHAIRPERSON BERRY: All those in favor of  
14 these appointments, indicate by saying aye.

15 (A chorus of ayes.)

16 CHAIRPERSON BERRY: Opposed?

17 (No response.)

18 CHAIRPERSON BERRY: So ordered.

19 STAFF DIRECTOR JIN: Madam Chair?

20 CHAIRPERSON BERRY: Yes?

21 STAFF DIRECTOR JIN: I'm sorry. I just  
22 want to make sure I understand. This includes the  
23 approval of the two chairs of those two states?

24 CHAIRPERSON BERRY: Yes, we did.

25 STAFF DIRECTOR JIN: Also. Unfortunately,



1 I was not able to get it to you until by fax  
2 Wednesday. But we also faxed to you the proposed  
3 chair for the D.C., District of Columbia. I don't  
4 know if the commissioners had a chance to look at that  
5 or not. We can push it off to next week -- until next  
6 month.

7 **VI. BRIEFING ON BIOTERRORISM AND**

8 **HEALTH CARE DISPARITIES**

9 CHAIRPERSON BERRY: Okay.

10 All right. Now we have our guest with us.

11 And the staff extended an invitation to the American  
12 Public Health Association and their executive  
13 director, Dr. Mohammad Akhter.

14 Would you please come forward, Dr. Akhter?  
15 And welcome, and thank you very much for coming.

16 Dr. Akhter's biography is in the material  
17 that you were given. But I'll note that he is  
18 executive director of the American Public Health  
19 Association. He previously was a senior advisor at  
20 the U.S. Department of Health and Human Services. And  
21 in addition to his position at the APHA, he is a  
22 physician with board certification in preventive  
23 medicine. He's a clinical professor at Georgetown  
24 University Medical School. He is also an adjunct  
25 professor of International Public Health at George

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1 Washington University, School of Public Health. He  
2 has held many public health leadership positions,  
3 including director of the Missouri State Department of  
4 Health and health commissioner here in the District of  
5 Columbia. And that had to be a tough job.

6 Dr. Akhter, the Commission has long been  
7 concerned about issues of healthcare disparities in  
8 general. And then with the recent issues around  
9 bioterrorism that is perpetrated or might be  
10 perpetrated against the United States, we had some  
11 discussion about the urgency of this problem and about  
12 inadequacies that may be there in our health systems  
13 and whether underserved communities in particular  
14 would be appropriately served if there were a massive  
15 bioterrorist attack.

16 So we're pleased that you were willing to  
17 come and have this brief discussion with us. Then we  
18 will have some questions, perhaps, and some exchanges  
19 as we proceed to try to understand this issue. So  
20 thank you very much for coming.

21 DR. AKHTER: Thank you for inviting me.  
22 Good morning.

23 ALL: Good morning.

24 DR. AKHTER: Indeed, a pleasure to be here  
25 this morning, to be speaking to you all, to provide

1 you with some information and some ideas that might  
2 lead to prevention of potential abuses of the civil  
3 rights for the people.

4 The threat of bioterrorism is real. And I  
5 say this as the information that I have been  
6 discussing with the various government agencies, with  
7 the public health community.

8 I'm a member of a professional  
9 organization. Just like there's an American Bar  
10 Association, American Medical Association, there's a  
11 American Public Health Association, about 55,000  
12 members working in the federal government state  
13 government, and the local government, providing  
14 services to the people to assure that the water that  
15 you drink is clean, that the air you breathe is safe,  
16 and that food you eat is not contaminated, and the  
17 children will go to school and have immunizations  
18 done.

19 And so I speak from very ground-level  
20 information, as well as information from our federal  
21 government agencies. And what we know at the moment  
22 is the threat is real for bioterrorism. There are  
23 several reasons for that.

24 The first one is that we are at war  
25 against the terrorists. And our president tells us

1 it's going to be a long war. And the terrorist can  
2 any time strike back at us. And this is one of their  
3 ways of, really, attacking our population centers.

4 The second reason for the threat being  
5 real is that there are at least 15 or 16 countries  
6 around the world that have, or potentially have, the  
7 access to bioterrorism agents-- former states of  
8 Soviet Union, for one; the Iraqi people. We know for  
9 sure the Iraqi government had tons of Anthrax, and  
10 they weaponize it. And many of those states are not  
11 really keeping a good tab on these weapons or this  
12 Anthrax. And they could just fall into the hands of  
13 the terrorist.

14 The third reason for us being concerned is  
15 the terrorists of today have a lot of money and lot of  
16 connections. And there are 1,000 labs around the  
17 world, about half of them in the United States, the  
18 other half around the world, that are capable of  
19 maintaining and growing these organisms. And there  
20 are very few controls -- checks and balances -- on  
21 those labs and people who work in those labs. And  
22 finally, we have still not caught the culprits who  
23 were responsible for the Anthrax attack. Those folks  
24 are still out there.

25 And so recognizing the threat is real,

1 there's been a bipartisan effort in the United States  
2 government to prepare our nation against any  
3 eventuality that if there is an attack, that we are  
4 fully prepared.

5 And of all other potential disasters that  
6 might happen, the bioterrorism disaster is a very  
7 separate and different kind of category for a variety  
8 of reasons. If there's an earthquake, if there's a  
9 bomb blast, there's a sound, there's smoke, there's  
10 dust, there's lightning. But in a bioterrorist  
11 attack there is none of those. It's a solid attack.  
12 The first time you find out is when somebody gets  
13 sick, and we find out, oh, yes, Anthrax attack.  
14 Because we can't see it; it's invisible.

15 The second thing is that, in any other  
16 attack, attack takes place at one time, and it's over.

17 They hit our buildings September 11th. We knew this  
18 is it. We need to really take care of it. We need to  
19 do what we need to do. In bioterrorist attack, every  
20 single case that takes place is a separate attack. It  
21 keeps taking place from time to time. Where next? We  
22 just don't know. And particularly, if they use an  
23 infectious agent where disease can spread from one  
24 person to another, it then becomes many attacks that  
25 continue to take place time after time. And so that's

1 really a concern.

2           The reason I'm saying this is that for  
3 dealing with bioterrorist attack, you need to have  
4 long-term medical care and follow-up for the folks.  
5 And that's why it becomes so important. And we need  
6 to have it all around the country for all people.  
7 Because bioterrorism, people could attack anywhere,  
8 and they can do anything they may choose. They can  
9 pick the time, they can pick the agent, they can pick  
10 the place. It's up to them, so we need to be  
11 prepared.

12           I'm very pleased to tell you that our  
13 government has done a terrific job since  
14 September 11th, at all levels, in preparing ourselves  
15 and dealing with this eventuality-- the president, the  
16 Congress. The federal agencies have allocated  
17 resources. Our intelligence today is much better. We  
18 have monies going from the federal government to state  
19 and local governments to really prepare themselves and  
20 start developing their plans.

21           But there are some inherent problems  
22 within our system as we enter this new century that we  
23 need to be aware of and need to be careful.

24           The first issue that I want to bring to  
25 your attention is the issue of safety net. There are

1 40 million Americans who are uninsured; there are many  
2 who are underinsured. They don't have access to care.  
3 So we cannot simply say in a bioterrorist attack, go  
4 to your private doctor and get your Cipro. It just  
5 will not happen. And even if you provide them the  
6 Cipro, like the government has planned on  
7 doing -- that we give them the push pack and say,  
8 everybody get a pack of Cipro, and we deliver it to  
9 you, how about if they have a reaction? How if that  
10 Cipro is not good for them? How about if they have  
11 another complication? Where should they go? So we  
12 need to have that mechanism in place.

13 It's not only the issue of not having  
14 health insurance; it's also the issue of not having  
15 services available. There are many areas that our  
16 government has identified them as underserved areas,  
17 many of them in rural America, but many of them in the  
18 inner city areas, where there is no facility  
19 available. Physically there's not many doctors,  
20 private health commissioners in Washington, Nation's  
21 Capitol, not long ago, in '91. For 78,000 children  
22 living East of the River, there were only four  
23 pediatricians who will take Medicaid. Now, how do you  
24 suppose those people will get the service?

25 And so it's the issue of not having the

1 insurance and also not having the access to care. And  
2 I think somewhere we need to prepare for this, because  
3 if they don't have a good safety net today when  
4 there's peace, tranquility, what would happen if, God  
5 forbid, there's a big disaster? That safety net is  
6 going to be torn to shreds because demand on services  
7 will be so great. So that's my first point to you.

8 My second point today deals with our state  
9 and local health -- public health infrastructure.  
10 These are the people at the state and local level.  
11 These are the county health directors, the city health  
12 departments, the state health departments.

13 For many years, the United States has been  
14 a country where we've been very fortunate to have no  
15 epidemic, no major outbreaks, there have been small  
16 outbreaks. So over the period of time, we have sort  
17 of taken the money away from those health departments  
18 to do other things. And so as we turned the century,  
19 we find that we didn't have these shells of health  
20 departments. For example, New York City would have  
21 100 plus public health nurses. You'll find that now  
22 there are a handful of them there because the need  
23 wasn't there. But with a bioterrorist attack and  
24 seeing these consequences, it becomes important that  
25 we rebuild these health departments and really do them

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1 well. We can rebuild them or build what's there  
2 already. But we need to make sure that we do it in  
3 such a way that the people in underserved areas and  
4 minorities living in the inner city get the service.

5 The effectiveness of the health department  
6 is very evident. We have made tremendous progress in  
7 improving the infant morality rate and the death rate  
8 from heart disease and other areas. Our people are  
9 healthier today than they've ever been in their  
10 history of the United States of America. But yet,  
11 because we're a land of immigrants -- there are a lot  
12 of minorities, today 25 percent of all Americans of  
13 are racial and ethnic descent -- by 2030, 40 percent;  
14 and by 2050, half of all Americans are going to be of  
15 racial and ethnic descent-- Asian Americans, Chinese  
16 Americans, African Americans, Hispanic Americans. And  
17 the public health system has not been able to reach to  
18 these people because their experience with disease and  
19 death is very different today. There are disparities  
20 in health status.

21 Infant mortality rate for the African  
22 Americans, for example. If you start to look at it in  
23 one of our best states in the United  
24 States -- Minnesota -- infant mortality rate in that  
25 state for the entire state is the lowest in the

1 nation, very good, but the infant mortality rate for  
2 the African American is the highest in the same state.

3 And similarly, you look at the heart  
4 disease rates, cancer rates, and diabetes rates, they  
5 are all higher among the minority populations. The  
6 lowest infant mortality rate is among the Native  
7 Americans in the United States.

8 Let me just put it the other way. The  
9 life expectancy for Americans is 77 years right now,  
10 as a nation, as a whole. When you come to African  
11 American women, it's five years less. When you come  
12 to African American men, it's eight years less. When  
13 you come to the Native Americans, it's 10 or 12 years  
14 less than the other folks.

15 We live in the same country, we pay the  
16 same taxes, we breathe the same air, and we enjoy the  
17 same food, but here there are these disparities that  
18 exist. And there has been little disconnect between  
19 the public health departments' ability to reach into  
20 these populations with culturally sensitive ways of  
21 providing them the service, how they could live  
22 healthy, how they could grow up to be healthy, what to  
23 do in terms of other services that they need to have  
24 access to. And so we will always have the struggle as  
25 a state health commissioner in Missouri. As a state

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1 health commissioner here in the Nation's Capitol, you  
2 always have the struggle with reaching out to these  
3 folks.

4 In time of emergency, it becomes even more  
5 important that we have an ability to reach out to  
6 these people so that folks don't just simply stay home  
7 and not get the care that they need, that we have the  
8 access to. And I think we need to make sure that as  
9 we build up the capacity of the health department,  
10 that we build up this capacity of outreach, the  
11 ability to be able to communicate with the minority  
12 population so that they will not disproportionately  
13 suffer in viewing the bioterrorist attack.

14 And my last point this morning deals with  
15 the states that are considering now new legislation.  
16 That will give the states the authority to quarantine  
17 people, to take other people's property in time of  
18 bioterrorist attack. This is something that every  
19 state felt that we just need to strengthen our  
20 existing rules and regulations. And therein lies the  
21 ability, how do you balance the need of the state, the  
22 need of the country, and need of the people who will  
23 be quarantined. How do you make that decision which  
24 population to quarantine, which population not to  
25 quarantine?

1                   And our view is, that what we should have,  
2                   Madam Chairmember of the Commission, is that the  
3                   quarantine be the last resort, the option that's  
4                   available, to manage that population, whether it's  
5                   providing treatment to that population, whether it  
6                   deals with vaccinating that population, we should try  
7                   that to contain the disease; that the quarantine be  
8                   the last resort. But if there's nothing else that's  
9                   available -- this is really the only way that we can  
10                  contain the disease -- sure enough we should do that.

11                 And when we provide the treatment to the people, that  
12                 we should not do things differently; that we treat a  
13                 certain group of people differently, or certain people  
14                 have preference over the others, but the management of  
15                 a disaster and the provision of treatment should be  
16                 based upon the needs of the individual, not the  
17                 position or the economic status, or the authority of  
18                 the individual, and that that be really made part of  
19                 their plans.

20                 And I present this to you today because  
21                 every state is now required by the federal government  
22                 to submit a plan, a plan that's medically correct,  
23                 that's administratively sound to deal with the  
24                 terrorism. And that plan will then come to the  
25                 federal government, the federal government will review

1 that plan, and will provide the funding to the states.

2 Every state has been given 20 percent of  
3 their share of the funding for bioterrorism. Eighty  
4 percent will be given to them when they submit their  
5 plan. And as we speak today, the date for submission  
6 of the plan is May 15th, that every state must submit  
7 their plan by that date. And as the federal  
8 government starts to review that plan -- and the  
9 federal government has said that they will make their  
10 decision within 30 days of receiving the plan -- they  
11 must look at not only the expediency and the medical  
12 effectiveness of the plan, but also the potential that  
13 the civil rights of any individual or group are not  
14 violated in the process. Their assurance is that  
15 every effort will be made to really make that happen.

16 And one of the ways to make that happen is to bring  
17 representatives and such people to the table to really  
18 be part of the planning process.

19 Madam Chair, I stop here. And thank you  
20 and members of the Commission for this opportunity  
21 this morning. And if there are any questions or  
22 comments, I'd be delighted to answer them for you.  
23 Thank you again.

24 COMMISSIONER MEEKS: Thank you very much.

25 CHAIRPERSON BERRY: That was wonderful.

1 That was the clearest expression I've heard of these  
2 issues.

3 Commissioner Meeks, and then Commissioner  
4 Edley, and then Commissioner Thernstrom.

5 COMMISSIONER MEEKS: I'm from Pine Ridge  
6 Indian Reservation, so this really brings up a lot of  
7 questions to me. One, the tribes don't usually have a  
8 relationship with the state, and the state doesn't  
9 have jurisdiction over the tribes. It's a  
10 government-to-government relationship which the tribes  
11 have with the federal government.

12 Do you know how the tribes are included in  
13 this plan?

14 DR. AKHTER: At the moment, the way the  
15 resources have been provided, it is the federal  
16 government providing resources to the states. There  
17 are few large cities that the federal government is  
18 giving special attention to. To my knowledge, there's  
19 not a special allocation, if you will, for the tribes  
20 to prepare for this major event.

21 COMMISSIONER MEEKS: Do you know if Indian  
22 Health Services are included in this plan, has been to  
23 the table on this?

24 DR. AKHTER: I'm not aware of the fact,  
25 whether they are on the table or not. I'm sure they

1 are involved at some level, but I don't know what  
2 level. This has been, basically, taking the resources  
3 and giving it to the states, and saying, states, you  
4 prepare the plan for the people in your state.

5 CHAIRPERSON BERRY: Elsie, I read in  
6 the -- just to intervene, I read in the newspaper  
7 somewhere that some of the tribes were complaining  
8 about this, because they didn't think they should have  
9 to go through the state. And somebody was trying to  
10 figure out how to fix it.

11 Commissioner Edley?

12 COMMISSIONER EDLEY: Thank you. Great. I  
13 mean, really. Great.

14 I guess I want to focus on the last sort  
15 of issues that you were talking about, the issues of  
16 treatment, quarantine, et cetera. And here's the  
17 dilemma as I see it.

18 I think from a civil rights perspective,  
19 we're used to the problem that political processes may  
20 not work to protect the interest of minorities and  
21 disadvantaged populations. On the other hand, the  
22 literature is full of studies demonstrating not just  
23 disparities but disparate treatment by medical  
24 professionals of minorities, discrimination.

25 So when an event breaks out, I'm not quite

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1 sure who to trust to make these decisions about who  
2 gets quarantined, or what institution, or how the  
3 shredded safety nets get prepared, and what the  
4 priorities are going to be.

5 Do you see my problem? If you trust the  
6 politics, then you worry about the people with little  
7 political power getting the short end of the stick.  
8 If you trust the health care "professionals," who are  
9 not really accountable to anybody, then you may see in  
10 this crisis situation what the literature tells us  
11 happens in emergency rooms-- namely, minorities  
12 getting the short end of the stick or not getting the  
13 same kind of treatment that middle-class Anglo would  
14 get.

15 So I'm puzzled about how in this time of  
16 crisis one creates a decision-making mechanism in  
17 which we can have confidence from a civil rights  
18 perspective. Because, otherwise, you -- remember all  
19 the suspicions about whether the black postal workers,  
20 because they were minorities, were going to be treated  
21 the same way as the largely white, Capitol Hill staff.

22 COMMISSIONER BRACERAS: Well, they  
23 weren't.

24 COMMISSIONER EDLEY: And there's a  
25 question of whether they will be, and then there's



1 just a question of whether, whatever the facts may be,  
2 whether the public is going to have confidence that  
3 the decision-making is fair.

4 DR. AKHTER: Commissioner Edley, this is  
5 the purpose of the matter. This is a wonderful  
6 question. It is not only whether they are treated,  
7 but also what kind of perception people develop in the  
8 process. And here is what I would recommend or  
9 suggest.

10 There need to be protocols developed in a  
11 very public way. We are never going to be able to  
12 deal with bioterrorist agents if we leave the  
13 decision-making to the politicians, or to the medical  
14 people, or to the public health people, or to the  
15 police, or whoever else. It has to be a great amount  
16 of cooperation and collaboration between the people  
17 and their government in the time of crisis. We need  
18 people to operate, we need public education, we need  
19 to work with the people. We need to bring them at the  
20 table, and it has to be done very transparently.

21 We say, folks if there is an outbreak,  
22 here is a protocol. This is how everybody living in  
23 the city will be notified. And so this same process.  
24 This is how those people where the impact is will be  
25 treated. Here are the protocols. This is where you

1 will go get your medication. It will be the same  
2 medication. So that we make this for our nation a  
3 very transparent way. I need to have this  
4 transparency to be able to get the support of the  
5 people. Without the support of the people, I can have  
6 all the medicine, I can have all the knowledge, I will  
7 not be able to work this thing through. And gaining  
8 the confidence of the people is by having the  
9 transparency, having these protocols, having people's  
10 participation into the process so that everything is  
11 open.

12 The public knows. I think everybody  
13 living in Washington D.C. -- Dr. Walks and I spoke  
14 about this. Everybody should know living in  
15 Washington, D.C. that in case of crisis what will  
16 happen, how will they be notified, where should they  
17 go to get the treatment, and how the follow up will be  
18 done, so that it's the same. We are prepared. It  
19 doesn't matter what color you are, it doesn't matter  
20 what race you are, it doesn't matter what part of the  
21 city you live-- that we have prepared for our city a  
22 plan. We will go down and just sort of implement that  
23 plan.

24 Would we make some mistakes? Yes, sir.  
25 Surely. There always will be. But if we can make

1 this very transparent up front, I think the likelihood  
2 of us making a mistake will be very small.

3 CHAIRPERSON BERRY: Commissioner  
4 Thernstrom?

5 COMMISSIONER THERNSTROM: Well, I doubt  
6 that there's any disagreement on this Commission that  
7 too many people are uninsured in this country. I know  
8 in New York, if you're self-employed, and you want,  
9 not decent, but half-way decent health insurance, you  
10 have to pay more than \$500 a month, which is an  
11 extraordinary amount for most people. And all of us  
12 are concerned, of course, about infant mortality rate  
13 disparities and so forth.

14 But it seems to me that access to health  
15 care and health insurance and so forth is really a  
16 separate question, or largely separate question, in  
17 general, from access in the context of an emergency,  
18 when hospitals will obviously be open to  
19 everybody -- and hospitals are open. I mean, what  
20 Commissioner Edley is suggesting is open hospitals  
21 don't solve the problem because there's disparate  
22 treatment. But, obviously, in an emergency, hospitals  
23 are open to everybody needing emergency care.

24 And if there is discrimination in the -  
25 emergency rooms once people arrive -- and I agree, by

1 the way, that there needs to be plans. And I would  
2 hope that the federal government and the state  
3 governments are engaged in that kind of planning. But  
4 if there is discrimination in the emergency room,  
5 which I hope is not true -- but if it's true, I'm not  
6 sure what the answer to that is in the way of  
7 regulations or anything that is a piece of paper that  
8 doesn't really respond to the problem.

9 DR. AKHTER: Very good question, very  
10 fundamental question.

11 As I said earlier, if the issue was  
12 one-time care you give somebody, you're done with, I  
13 would feel very comfortable saying, oh, yes, you could  
14 go, you could get the care, it's done with. The issue  
15 in bioterrorism is long-term follow up. Even in  
16 Anthrax, a 60-day follow up. People are going to be  
17 taking the Cipro for 60 days. In other infections,  
18 maybe longer. Sometimes the people who have  
19 nightmares and mental health tend to suffer two-years  
20 long follow up.

21 And so the issue for me -- I separate the  
22 issues of having universal coverage in our nation.  
23 But the issue to me is some kind of pronouncement that  
24 tells the population, that tells the healthcare  
25 providers that, "Folks, in the case of an emergency,

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1 somebody's going to pay for it." It will be taken  
2 care of. You go to the hospital emergency room, you  
3 go to a private doctor. If it is related to this  
4 emergency, this disaster, long term it will be paid  
5 for.

6 Hospitals are wonderful institutions.  
7 They would love to serve the people for a day or for  
8 two days. But once you have a long-term commitment  
9 where there's no money coming in, they're also  
10 business institutions. And I've spoken to the  
11 hospitals, spoken to managed-care organizations. If  
12 their institutions are going to be filled with people  
13 who are not going to be paying, then their own  
14 survival is also at stake.

15 So what I'm saying in this is that one of  
16 the ways to maintain and to assure that everybody's  
17 taken care of is to really give these assurances. And  
18 the only people who can do that is the federal  
19 government who says, "Folks, in case of emergency, it  
20 doesn't matter whether you have insurance or not,"  
21 whether you're covered by HMO or by somebody else, you  
22 will be taken care of. And I think that will go along  
23 way in allaying the fears.

24 COMMISSIONER THERNSTROM: So what you're  
25 saying is suppose we have a terrible bioterrorism

1 threat in this country -- Anthrax, whatever, there are  
2 other possibilities, obviously, a whole range of  
3 them -- you could imagine masses of people being  
4 affected by this, and the federal government ignoring  
5 the need to respond by taking care of these people in  
6 a sustained way?

7 DR. AKHTER: Yes, it is very true. As we  
8 speak today, it is true. I'll tell you this. If  
9 there are people who have mental health problems  
10 because of the 9/11 incident, and they don't have  
11 health insurance, who is taking care of them? Who has  
12 provided the insurance, that, yes, it will be paid;  
13 they can go to a mental health professional to get the  
14 service? We know that from our members and from our  
15 leaders. We've spoken with the providers of the  
16 service -- the doctors, the hospitals -- and there is  
17 this concern at the bottom of all of this. They're  
18 willing to serve their community to the best of their  
19 ability. And they will do a great job. But to  
20 sustain providing services without having any way of,  
21 really, up-front assurance that they'll be compensated  
22 is a very important thing.

23 COMMISSIONER THERNSTROM: But mental  
24 health would be very different than a smallpox  
25 epidemic. I mean, surely, nobody would say, we're

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1 going to let smallpox spread throughout the nation. I  
2 mean, it's just not possible.

3 DR. AKHTER: I know. This sort of seems  
4 to you the hypothetical thing that nobody will do -- I  
5 think logically that is very true. But in realistic  
6 terms, if you don't have health insurance, as we speak  
7 today, you are three times less likely to seek care  
8 when you're sick versus if you have health insurance.

9 So if a person doesn't have the health insurance, and  
10 he feels bad, and he has little hives, and he has this  
11 fever coming on, he stays home, spreads the disease to  
12 others.

13 On the other hand, if you have the  
14 assurance -- this is truly -- the issue of this is can  
15 we assure our people and our providers that in case of  
16 disaster that there's a mechanism for which you'll be  
17 taken care of. And I think we need to say that up  
18 front, not leave it in some suspense that maybe  
19 somebody will, maybe somebody won't.

20 CHAIRPERSON BERRY: Vice Chair, and then  
21 Commissioner Meeks.

22 VICE CHAIRPERSON REYNOSO: First of all, I  
23 thought that your suggestion of a protocol is really  
24 very good, because it would bring everybody in to make  
25 those decisions. And somebody would have to at least

1 violate the protocol if they're going to not be  
2 treating people equally.

3 But I have sort of a present type  
4 question. Out in California, we have two crisis right  
5 now in California. One is the closing of emergency  
6 rooms in hospitals, and the other is the lack of  
7 sufficient number of nurses. They've just moved some  
8 legislation to try to increase the number of nurses in  
9 California. But I've seen nothing that's been done in  
10 terms of the emergency rooms. I've just read an  
11 article about all of the emergency rooms that have  
12 closed down for economic reasons in California.

13 To me, emergency rooms and nurses seem to  
14 be such a vital part of what to do in case there's a  
15 bioterrorism attack. So we're concerned about a  
16 bioterrorism attack, and yet, at least for now, at  
17 least as I hear in California, we're allowing some of  
18 the structure that would be necessary to be weakened.

19 Is California exceptional or are those  
20 things happening throughout the country?

21 DR. AKHTER: Commissioner, California is a  
22 little bit ahead than the rest of the country.

23 VICE CHAIRPERSON REYNOSO: Don't tell me  
24 that.

25 DR. AKHTER: But it is happening to some



1 degree in other places too. The emergency rooms are  
2 overcrowded. I mean, we know that we close emergency  
3 rooms many times. We divert patients to the other  
4 places because we're too busy in one place or the  
5 other. But certainly the federal government -- our  
6 president, our Congress -- has done a great job in  
7 making the funds available to create additional  
8 capacity.

9 VICE CHAIRPERSON REYNOSO: To reverse  
10 those trends.

11 DR. AKHTER: To reverse those trends and  
12 say, here is the money to create the hospital  
13 capacity, and we're working with the hospital  
14 association to really look at and say we need to have  
15 the capacity. And that's two types of capacity. One  
16 is the emergency rooms themselves, that you have the  
17 capacity, in a community there's enough capacity to be  
18 expended in time of emergency to be able to take care  
19 of the folks. The second one is inpatient capacity in  
20 the hospital. That's also the same situation, where  
21 people wait in the emergency room because they can't  
22 find a bed up on the floor to be admitted in the  
23 hospital. And so that's in the works. It will be  
24 taken care.

25 CHAIRPERSON BERRY: Commissioner Meeks?

1 COMMISSIONER MEEKS: Your point is well  
2 taken about people that are not insured. In the  
3 public health system they're so understaffed. I can  
4 give you just an example a couple of weeks ago. And  
5 this is a rural area, reservation. She drove 50 miles  
6 to get a pap smear. Got there, they had a shortage of  
7 nurses, and they closed the clinic for the day. So  
8 people really do not go, unless they -- I mean, that's  
9 why the death rate on reservations are so much higher.

10 So how is this going to address this  
11 staffing issue? Are these public health -- I mean,  
12 because that's where people are used to going to if  
13 they don't have insurance.

14 DR. AKHTER: Yes. There are two issues  
15 here. One is having the staff-- nursing shortage, for  
16 example. The president has done a great job putting  
17 money in his budget, saying here is the money, provide  
18 incentive, get more people to become nurses. Let's  
19 start this pipeline going. So one is the creating of  
20 manpower. So that's one issue.

21 But there's another issue that's equally  
22 important. If we want to distribute today in  
23 Washington, D.C. Cipro to the entire city, all the  
24 doctors, all the nurses, all the staff will not be  
25 enough. We need to train volunteers. And that's part

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1 of the process; that we train volunteers who become  
2 the extension from the public, who become the  
3 extension of the public health system so they can go  
4 out and provide the service in case of an emergency.  
5 God forbid, in a major disaster, there will not be  
6 enough people to do the work at a level that we do  
7 today in the hospitals or in the clinics. We will  
8 need to rely on a lot of volunteers to be able to tie  
9 ourselves over.

10 CHAIRPERSON BERRY: Commissioner Wilson?

11 COMMISSIONER WILSON: Thank you, Madam  
12 Chair.

13 First of all, I just want to thank you  
14 very much for your very lucid and thorough talk today.

15 It's been very illuminating. Just a couple of points  
16 before I ask you the actual question.

17 In relation to what Commissioner  
18 Thernstrom was pointing out, what you're really saying  
19 is that it's not just the government that has to have  
20 the structure; it's if people don't have insurance,  
21 they're not going to move towards helping themselves,  
22 which I think is a very important point.

23 My question is, you were just talking  
24 about volunteers. Are these people being trained now?

25 Is there a program to call up volunteers or to enlist

1 the help of volunteers?

2 DR. AKHTER: Many hospitals, many medical  
3 institutions already have volunteers working. If you  
4 go down there, people doing the transport are  
5 volunteers. Sometimes people manning the front desks  
6 are volunteers. There's now money being made  
7 available through the federal government to the states  
8 and the local jurisdictions to formally do public  
9 education and to train volunteers to be able to have  
10 those people available in the community, and that they  
11 be done in such a way that could be identified in time  
12 of disaster, that they have a special cap after the  
13 complete their training or a special jersey they wear  
14 so that we can recognize they're part of the team and  
15 not somebody just going to interrupt the flow. So,  
16 yes, those plans are under works.

17 COMMISSIONER WILSON: Because I'm assuming  
18 that the number of volunteers who are working in  
19 hospitals now wouldn't begin to be effective. I mean,  
20 you would need a massive number of volunteers.

21 DR. AKHTER: This is absolutely correct.

22 COMMISSIONER WILSON: That would seem to  
23 me that a large-scale campaign should be in the works  
24 for that now.

25 DR. AKHTER: Yes.

1                   COMMISSIONER WILSON:     But my central  
2 question that I had was that you passed over this  
3 quickly, and I would like you to talk a little bit  
4 more about it. I was somewhat alarmed at this. When  
5 you were talking about the issue of quarantining and  
6 some states -- I don't know if I heard you  
7 correctly -- taking property.

8                   DR. AKHTER:     Yes.

9                   COMMISSIONER WILSON:     Do you want to  
10 elaborate on that a little bit?

11                  DR. AKHTER:     Yes. We are a nation where  
12 the civil rights have been very much important as our  
13 nation's correcter, saying we just need to maintain  
14 people's civil rights, we need to have really minimum  
15 intrusion into the lives of the people. And the kind  
16 of authority that you have -- for example, I as health  
17 commissioner. I will have the authority to take an  
18 individual who is not taking his or her medication for  
19 tuberculosis and is dangerous to the other people.

20                  I will take them and put them at the D.C.  
21 General Hospital for treatment. But as soon as they  
22 become non-infectious and they're no longer spreading  
23 the disease, which is in a month or six weeks, then I  
24 could not hold them anymore. I need to let them go so  
25 that they could go back in the community, they will

1 not take their medication again. They'll get back on  
2 their other drugs, alcohol, whatever their personal  
3 situation was. Then I will sometimes again take these  
4 people back in again and do that.

5 Now, there are folks in our  
6 society -- homeless people, mentally ill people who  
7 are out there -- where we maintain their rights as  
8 anybody else's rights. And the same is true of the  
9 properties. There may be a danger because something  
10 has happened in their property. We want to keep the  
11 property clean completely and assure that it poses no  
12 threat to the community or to the nation as a whole.

13 And so the states are looking at their  
14 laws, and for the first time strengthening those law  
15 so there's a clear-cut authority; that in a time of  
16 national emergency that the state has a clearly,  
17 defined law to quarantine a group of people or to take  
18 over a property that will be in the best interest of  
19 the people.

20 And I think the issue here is to create a  
21 balance, that there is an appropriate decision-making  
22 process by which you will do this and not be done by  
23 fear, and not be done differently in the state of  
24 Missouri compared with the Nation's Capitol; that we  
25 have a mechanism in place where we do this thing in

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1 some recognized, pre-agreed manner. Let's put it this  
2 way.

3 COMMISSIONER WILSON: But let me ask you  
4 this. If you follow this line of reasoning, that if  
5 people do not have insurance, and for the most part,  
6 then, would not be compelled, or would not feel the  
7 need, or would not feel the entitlement to go and get  
8 help for themselves, those are the people who are  
9 basically poor in this country. And not to say that  
10 those are the people who would have property. But  
11 supposing they did have property, it would seem to me  
12 that those would be the people who would more likely  
13 have their property seized.

14 DR. AKHTER: I don't think the property's  
15 being seized because they're not cooperating. I think  
16 the property's being seized because something has  
17 happened in that building. There's Anthrax exposure  
18 in the building. And right now we don't have such  
19 clearly defined authority that we can take over the  
20 building. The post office building, yes. The  
21 government building, you can shut it down. But if  
22 it's a private building, what do you do? You want to  
23 make sure that it's clean, and you want to make sure  
24 it's safe for the public that is going to be doing  
25 business there, but also for the community.

1 COMMISSIONER WILSON: So once they seize  
2 it, they come in and, basically, decontaminate it.

3 DR. AKHTER: That's correct. So they will  
4 do the cleaning, and have that authority to be able to  
5 do that, without going through a lengthy court  
6 process.

7 CHAIRPERSON BERRY: Commissioner  
8 Thernstrom?

9 COMMISSIONER THERNSTROM: So if you were  
10 to pose these concerns to Tom Ridge, the Homeland  
11 director, to members of his staff, what would he say?  
12 Wouldn't he say, we agree that -- sorry about that.

13 Since the mic was not on, I'll repeat the  
14 question.

15 If you were to pose these  
16 concerns -- articulate these concerns -- to Governor  
17 Ridge, Homeland director, to his staff, wouldn't he  
18 say, we agree that there absolutely has to be plans in  
19 place, and that is precisely what we're doing?

20 I mean, I raised the smallpox before  
21 because, obviously, Anthrax is not an easily  
22 communicable disease, but smallpox is. And if there  
23 wasn't a proper response on the part of government  
24 public authorities as well as physicians and the  
25 health community -- this is a disease that could have



1 devastating effects spreading throughout the  
2 population.

3 Isn't this something that is on Ridge's  
4 plate already? And are you saying, yes, but I don't  
5 really have confidence in this operation?

6 DR. AKHTER: No. I have all the  
7 confidence in Tom Ridge. But his plate is too big.  
8 There are too many things on the plate. The first  
9 thing is survival of our nation on the plate. Okay?  
10 That's the first part of the plate. Then there are  
11 other things as you go along the line-- the port  
12 security, the business security, and other things.  
13 And then finally you get down to it. It is a little  
14 bit further down the plate. And he's not the only one  
15 who really would be responsible. It's the state  
16 governments, the governors, the local governments.

17 And what happens is, that if there are  
18 other people who are watching, we just don't make the  
19 mistakes that we might otherwise make, not  
20 intentionally -- sometimes unintentionally, things  
21 happen -- that we put something together because this  
22 is what it is. So we believe that when these plans  
23 are being developed at the state and local levels,  
24 that if they're done in such a way that's transparent,  
25 there's participation of the people, there are the

1 right protocols, that we will have a much better way  
2 of really protecting all of this. And ultimately, the  
3 plans are reviewed not only in terms of their medical  
4 effectiveness, their administrative efficiency, but  
5 also in terms of their ability to balance the need of  
6 the state or jurisdiction and the need of the people.

7 CHAIRPERSON BERRY: Dr. Akhter, we are  
8 very grateful to you for being here to have this  
9 discussion. And I was most interested in all the  
10 points you made, but one of them, which is that the  
11 bioterrorism issue is a subset of concern about the  
12 access to health care generally-- whether there are  
13 facilities, or the people are served, all those points  
14 you made. Which fits in with the concern the  
15 Commission has had a long time about what is the  
16 reason for disparities in health care-- race, class?  
17 Is it anything? What is it? And maybe we can have at  
18 some point another discussion about the general issue  
19 of healthcare disparities.

20 But I want to very much thank you for  
21 coming and appreciate it very much.

22 DR. AKHTER: My pleasure. Anytime. If  
23 there's any question I could answer for you, I'd be  
24 delighted. Thank you again very much.

25 **VII. ENVIRONMENTAL PROTECTION AGENCY DOCUMENTS HEARING**

1 CHAIRPERSON BERRY: The only other  
2 substantive item we have on the agenda is to receive  
3 some documents from one person, which will just take a  
4 couple of minutes.

5 When we had the environmental justice  
6 hearing, EPA agreed to present some documents to us.  
7 They have those documents. And the procedure is that  
8 you would come forward, Mr. Tony Guidano, who is a  
9 representative at EPA and is providing these documents  
10 to the Commission.

11 Counsel, please proceed in accepting the  
12 documents, so that we may issue them into the record.

13 MR. REILLY: Thank you, Madam Chair.

14 Mr. Guidano, I understand you've already  
15 turned the subpoenaed documents over to Commission  
16 staff; is that correct?

17 MR. GUIDANO: Yes, that's correct.

18 MR. REILLY: Madam Chair, I'd just ask  
19 that these documents be entered into the record.

20 CHAIRPERSON BERRY: All right. Is there  
21 any objection to entering these documents into the  
22 record?

23 (No response.)

24 CHAIRPERSON BERRY: Without objection, so  
25 ordered.

1                   You may be dismissed. And we thank you  
2 very much for taking the time to provide the  
3 Commission with the documents. You are now excused.

4                   MR. GUIDANO: Thank you very much.

5                   **VIII. FUTURE AGENDA ITEMS**

6                   CHAIRPERSON BERRY: The other is, is there  
7 anything else anyone has to say? And if not, then I  
8 will entertain a motion to adjourn.

9                   COMMISSIONER BRACERAS: I have a question  
10 as to what may be coming on the agenda for April.

11                   CHAIRPERSON BERRY: I have no idea.

12                   COMMISSIONER BRACERAS: Well, I'm asking  
13 staff or whoever might know, because, obviously,  
14 somebody's planned something.

15                   CHAIRPERSON BERRY: Do you know yet, Staff  
16 Director?

17                   COMMISSIONER BRACERAS: I hope somebody's  
18 planning something.

19                   STAFF DIRECTOR JIN: Well, I mean --

20                   CHAIRPERSON BERRY: Something will come.  
21 I just don't know what.

22                   STAFF DIRECTOR JIN: I guess I'm kind of  
23 reminded, at the last meeting we were talking about  
24 this meeting. And the chair was saying that we hope  
25 to have welfare reform.

1 COMMISSIONER BRACERAS: Okay, great.

2 STAFF DIRECTOR JIN: No. My point is  
3 this. My point was, like, we try to plan ahead, but  
4 you never know what comes up. Okay?

5 COMMISSIONER BRACERAS: Okay. Well, in a  
6 noncommittal way --

7 STAFF DIRECTOR JIN: No, no. Okay, no --

8 COMMISSIONER BRACERAS: -- can you tell me  
9 what you may be planning --

10 STAFF DIRECTOR JIN: I -- I --

11 COMMISSIONER BRACERAS: Here's why I  
12 ask --

13 STAFF DIRECTOR JIN: I hope to have --

14 COMMISSIONER BRACERAS: Let me just say  
15 something.

16 STAFF DIRECTOR JIN: I hope to have the  
17 Alaska Report up by next month.

18 COMMISSIONER BRACERAS: Okay.

19 STAFF DIRECTOR JIN: I hope to have that.  
20 I'm optimistic, but we'll just have to see.

21 COMMISSIONER BRACERAS: But are there any  
22 briefings, hearings, speakers, anything of that  
23 nature --

24 STAFF DIRECTOR JIN: Well, I mean, what I  
25 will do is --

1 COMMISSIONER BRACERAS: -- planned for  
2 April?

3 STAFF DIRECTOR JIN: At this moment, no.  
4 But I will do is -- I mean, we're always looking at  
5 different things. If certain things come up where I  
6 think there's an opportunity, then I will raise it  
7 with the chair. Because as the chair indicated, she's  
8 the person responsible who determines what goes on the  
9 agenda. And if she feels that it makes sense to come  
10 up, then maybe I can persuade her to do that. If not,  
11 then not.

12 COMMISSIONER BRACERAS: Okay. Well, two  
13 things. If there are going to be any briefings,  
14 speakers or hearings, I would just appreciate as much  
15 notice as possible so I can educate myself on the  
16 issues.

17 The main reason I raise it, frankly, if I  
18 know we've talked about going to Florida, probably not  
19 as early as April. But I know that's been on the  
20 agenda. And just having two toddlers at home, if I'm  
21 going to be making a more lengthy trip or a trip  
22 that's farther away, I need to make arrangements. So  
23 to the extent there were --

24 CHAIRPERSON BERRY: Commissioner Braceras,  
25 we will meet here in April.

1                   COMMISSIONER BRACERAS:    Okay.    I'm just  
2 making sure.

3                   CHAIRPERSON BERRY:    I know that.

4                   COMMISSIONER BRACERAS:    That's fine.    But  
5 I'm just asking the staff to take into consideration  
6 that, obviously, everybody at this table has personal  
7 commitments and personal -- other areas of work and  
8 things in their lives.    So if we're going to Florida  
9 at a scheduled meeting or otherwise, I really would  
10 like four weeks notice to make whatever personal  
11 arrangements I need to make.

12                   And I'm telling you that now, because if  
13 it comes up in July, I don't want to hear about the  
14 trip on July 1st; I'd like to hear about it in May, if  
15 possible.    So I'm just asking for that consideration.

16                   CHAIRPERSON BERRY:    Understood.

17                   COMMISSIONER BRACERAS:    And I think all of  
18 us could use that.

19                   CHAIRPERSON BERRY:    Understood.

20                   Yes, Commissioner Wilson?

21                   COMMISSIONER WILSON:    I just want to  
22 assure Commissioner Braceras that usually we vote on a  
23 date when we're going someplace.

24                   COMMISSIONER BRACERAS:    Okay, great.

25                   COMMISSIONER WILSON:    Way in advance.

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1 CHAIRPERSON BERRY: But we're not going  
2 anywhere in April.

3 COMMISSIONER BRACERAS: All right.

4 CHAIRPERSON BERRY: We'll be here. I  
5 don't know what we're going to do, but we'll be here.

6 COMMISSIONER BRACERAS: I mean, my point  
7 was two-fold, Madam Chair.

8 First of all, assuming we were going to be  
9 here, I wanted to be prepared and informed for  
10 whatever substantive issue we're discussing. And then  
11 the other point was more of a forward-looking point,  
12 that we've had this discussion about going to Florida  
13 for several months now. And to the extent that -- as  
14 soon as this narrows down, I think the commissioners  
15 need to be informed quickly so that we can make those  
16 arrangements, because it may be a longer period of  
17 time than usual, and we need to plan for that in our  
18 personal lives. So that was just a second FYI.

19 CHAIRPERSON BERRY: All right. Anyone  
20 else have anything else?

21 (No response.)

22 CHAIRPERSON BERRY: Can I have a motion to  
23 adjourn?

24 COMMISSIONER MEEKS: So moved.

25 CHAIRPERSON BERRY: Second?



1 COMMISSIONER WILSON: Seconded.

2 CHAIRPERSON BERRY: Non-debatable. All in  
3 favor, indicate by saying aye.

4 (A chorus of ayes.)

5 CHAIRPERSON BERRY: Opposed?

6 (No response.)

7 (Whereupon, the proceedings went off the  
8 record.)

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