

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, May 17, 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

PETER N. KIRSANOW, Commissioner

ELSIE M. MEEKS, Commissioner

ABIGAIL THERNSTROM, Commissioner

LESLIE R. JIN, Staff Director



STAFF PRESENT:

KIMBERLEY ALTON
 DAVID ARONSON
 DEBRA CARR, Deputy General Counsel
 KI-TAEK CHUN
 IVY DAVIS
 TERRY DICKERSON
 PAMELA A. DUNSTON
 BETTY EDMISTON
 GEORGE M. HARBISON
 TINA MARTIN
 MARC PENTINO
 PETER REILLY, Parliamentarian
 KWANA ROYAL
 ALEXANDER SUN
 DAWN SWEET
 MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA
 LAURA BATIE
 PATRICK DUFFY
 JOY FREEMAN
 KIMBERLY SCHULD

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

(9:32 a.m.)

CHAIRPERSON BERRY: The meeting will come to order.

First, let me welcome Mr. Kirsanow. Welcome to you.

COMMISSIONER KIRSANOW: Thanks so much.

CHAIRPERSON BERRY: Sir, thank you.

I. Approval of Agenda

CHAIRPERSON BERRY: The first item is the agenda. Does anyone have any items that they would like to add to the agenda? Does anyone have any additions or things that they would like to add to the agenda? Hearing none -- do I hear any? Hearing none, so ordered. We'll move on to the next item.

II. Approval of Minutes of

April 12, 2002 Meeting

CHAIRPERSON BERRY: The next item is the approval of the minutes of the April 12th, 2002 meeting. Could I get a motion to approve the minutes?

COMMISSIONER MEEKS: So moved.

CHAIRPERSON BERRY: Can I get a second?

VICE CHAIRPERSON REYNOSO: Second.

CHAIRPERSON BERRY: Does anyone have any changes or corrections or anything else to the

1 minutes? Any discussion of the minutes? Yes?

2 COMMISSIONER THERNSTROM: Just one
3 question. It's been wonderful to get the minutes
4 electronically, and there's -- I'm a little confused
5 about what the future plans are with respect to doing
6 that. Do you intend to continue sending them? The
7 Commission made there was some indication they'd go up
8 on the website, but I don't --

9 CHAIRPERSON BERRY: You mean the
10 transcripts.

11 COMMISSIONER THERNSTROM: The transcripts.
12 But, you know, I would like to continue to receive
13 them directly.

14 STAFF DIRECTOR JIN: Electronically.
15 That's fine.

16 COMMISSIONER THERNSTROM: If that would be
17 all right. Thank you very much.

18 CHAIRPERSON BERRY: All right. Yes?

19 COMMISSIONER BRACERAS: I'm sorry. A
20 related question. I understand that the transcripts
21 from the IDEA hearing or briefing are on the web, but
22 I'd -- I actually would still like to receive them
23 myself, either electronically or in hard copy, if
24 that's possible.

25 STAFF DIRECTOR JIN: Sure. General

1 practice with the -- of course, the transcripts for
2 the meetings the Commissioners get routinely on a
3 regular basis. The transcripts for the -- for
4 briefings are not routinely sent.

5 COMMISSIONER BRACERAS: Oh, okay.

6 STAFF DIRECTOR JIN: But if the
7 Commissioners want them -- of course, in fact, in the
8 past, I think you've requested them. I think Dr.
9 Thernstrom has requested them, too, and we've sent
10 those. So in the past, the Commissioners that have
11 been interested in a full transcript, we send them to
12 you --

13 COMMISSIONER BRACERAS: Okay.

14 STAFF DIRECTOR JIN: -- so you can --

15 COMMISSIONER BRACERAS: Well, yes. I'd
16 like a standing request for a full transcript in
17 either form, hard copy, electronic, whatever is
18 easiest, but that would be --

19 STAFF DIRECTOR JIN: Okay.

20 COMMISSIONER BRACERAS: -- a standing
21 request.

22 STAFF DIRECTOR JIN: For the briefing.

23 COMMISSIONER BRACERAS: Correct.

24 CHAIRPERSON BERRY: Okay.

25 VICE CHAIRPERSON REYNOSO: Same here.

1 STAFF DIRECTOR JIN: Okay. We will
2 routinely send them.

3 COMMISSIONER BRACERAS: Thank you.

4 CHAIRPERSON BERRY: Okay. With that, all
5 those in favor of the minutes, indicate by saying aye.

6 (Chorus of ayes.)

7 Which is what we're voting on.

8 **III. Announcements**

9 CHAIRPERSON BERRY: The next item is
10 announcements, and I probably have some somewhere, but
11 I can't find them.

12 First of all, this is May 17th, 2002,
13 which is a significant day and it shall live on. In
14 May 1954, there was a Brown decision in Brown v. Board
15 of Education, which by anybody's account, or most
16 people's accounts, not everybody, was one of the most
17 significant civil rights decisions that was ever made
18 in this country, which changed the whole direction of
19 the juris prudence on the subject of civil rights.
20 And so I just wanted to acknowledge that as having
21 happened.

22 The other thing I want to say is that Vice
23 Chair Reynoso was recognized with a Distinguished
24 Public Service Award at the University of California.

25 VICE CHAIRPERSON REYNOSO: How'd you know?

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(Laughter.)

CHAIRPERSON BERRY: I have my spies.

(Laughter.)

And this is only the latest in awards that he has gotten. Of course, he has a Presidential Medal of Freedom and a number of high awards. But his colleagues at the University of California are responsible for giving him this award for his -- both his scholarly work, his work as a jurist, and his work as a civil rights advocate. So I just want to congratulate you.

VICE CHAIRPERSON REYNOSO: Thank you very much.

COMMISSIONER BRACERAS: Yes, congratulations.

CHAIRPERSON BERRY: They said about you, Cruz, that you are a testament to a deep and enduring commitment to public service, and I think that's right.

The other thing that I wanted to say is -- there are some new people at the Commission. Tina Martin, who has been here a long time, is now the Director of the Commission's Human Resources Department.

Also, David Wong, who was a Special

1 Assistant to the Staff Director left to pursue new
2 opportunities in California. We will miss David, but
3 we're happy to welcome his replacement, who is Alex
4 Sun. Where is Alex? Who joins us from the law firm
5 of Wiley, Rein & Fielding.

6 We would also like to welcome Joy Freeman,
7 who is somewhere, who started this past Monday as
8 Special Assistant to Commissioner Christopher Edley,
9 Jr.

10 Also, a reminder that the annual public
11 financial disclosure reports were due May 15th. And
12 so if you haven't submitted yours, you should do so,
13 or you should call Joyce Smith, the Alternate Ethics
14 Officer, to avoid paying a \$200 fine by getting an
15 extension. So people are duly warned.

16 And the Ethics Office does not have
17 discretion to waive the fine. So don't expect that to
18 happen.

19 (Laughter.)

20 The other is that President Bush signed
21 the Farm Bill of 2002 on May 13th, and some of the
22 provisions in it address findings and recommendations
23 issued by the Commission.

24 The Commission was the first to do a
25 report on the decline of black farming in America in

1 1982, in which it found that civil rights enforcement
2 at the Department of Agriculture was disbursed and
3 lacked clear lines of authority and ability, and we
4 recommended -- we made a number of recommendations
5 back then.

6 And since that time, we have had lots of
7 engagements with various agricultural department
8 people, including Cruz and I went over to meet with
9 one of the secretaries one time and the staff about
10 this issue.

11 And we find that this new farm bill
12 responds to many of our recommendations, creating a
13 high-level position, which we had said somebody should
14 be directly responsible for civil rights over there,
15 and so we're very pleased about that, and we've
16 continued to follow up on this issue, and we'll
17 continue to follow up on it.

18 The other is to note that the farm bill
19 restores food stamp benefits to legal immigrants --
20 which was a position that we supported, and these were
21 people who were made ineligible under TANF or the
22 Welfare Reform Bill of 1996. So it took about 20
23 years to get this stuff done, but it's been done.

24 The other announcement I would make to you
25 is that we agreed before that we were going to Florida

1 to do a -- some kind of review of the enforcement of
2 the new legislation in Florida on the election in
3 response to our report. And the staff has been
4 working very hard on this, and so we are scheduled to
5 go there next month to have a briefing on these
6 issues.

7 Staff has invited a number of people.
8 Isn't that right, Staff Director?

9 STAFF DIRECTOR JIN: Yes.

10 CHAIRPERSON BERRY: This is a briefing and
11 not a hearing, so we don't have to subpoena anybody --
12 and people don't have to come if they don't want to --
13 just to see the lay of the land and to see what's
14 going on on this issue.

15 Commissioner Braceras?

16 COMMISSIONER BRACERAS: I have a
17 procedural concern about the announcement of our trip
18 to Florida, and that is that I expressed very clearly,
19 I believe it was in March, my desire for as much
20 advance notice as possible, so that all of the
21 Commissioners could arrange their personal schedules
22 to be there.

23 This is the first time you are formally
24 informing all of the Commissioners about this trip,
25 although you've sent a letter to Governor Bush that

1 you are coming in June. And you sent that letter in
2 March.

3 And so my concern is that, once again,
4 Commissioners, or at least some Commissioners, learn
5 about these things in the first instance not through
6 you or the Staff Director but through the media or
7 other channels. And, unfortunately, I believe that
8 several -- or at least a couple of Commissioners may
9 not be able to attend the meeting because of not being
10 provided advance notice.

11 And I guess my question to you is why we
12 were not informed in March when you sent the letter to
13 Governor Bush that we would be coming in June.
14 Certainly, if the Governor was put on notice of the
15 date at that time, the Commissioners should have also
16 been put on notice at that time and not today.

17 CHAIRPERSON BERRY: You are aware of the
18 letter in March that --

19 COMMISSIONER BRACERAS: I'm aware today of
20 the letter. I wasn't aware of it --

21 CHAIRPERSON BERRY: You were aware of the
22 letter in March before you came here, because you just
23 mentioned the letter in March. The letter in March
24 stated that we would come in June. We have had many
25 discussions in this Commission since then about when

1 to go, whether to go, would we go, if we went, would
2 it be a hearing, would it be a briefing, how would we
3 do it. And a lot of --

4 COMMISSIONER BRACERAS: No, no. Excuse
5 me.

6 CHAIRPERSON BERRY: -- it was dependent
7 upon the staff deciding when we could go, whether we
8 could go in June, or not.

9 COMMISSIONER BRACERAS: There was a
10 specific letter, I believe, that was sent to the
11 Governor at the end of March stating the Commission
12 was coming in June. That was never told to us, and
13 the press is now reporting the Commission's plans to
14 go down in June.

15 Neither you nor the Staff Director ever
16 informed the entire body, or me or my Special
17 Assistant individually, that we were going in June.
18 This is the first time that that announcement has been
19 made.

20 CHAIRPERSON BERRY: Commissioner Braceras?

21 COMMISSIONER BRACERAS: Excuse me. A
22 point of personal privilege, I'd like to finish what
23 I'm saying. This is a matter of basic respect. And
24 if you knew in March that the Commission is going
25 somewhere in June, it is a matter of common courtesy

1 to inform Commissioners at that time.

2 The fact that you did not do so until
3 today, frankly, is a disgrace. And I want that on the
4 record, and I'd like to know why it was handled in
5 that way.

6 CHAIRPERSON BERRY: All right.
7 Commissioner Meeks?

8 COMMISSIONER MEEKS: Not to disagree, but
9 I think I remembered what you said, that you would
10 like at least a month's notice, and --

11 COMMISSIONER BRACERAS: That's --

12 COMMISSIONER MEEKS: -- because you have
13 little children. This is five weeks, so, I mean --

14 COMMISSIONER BRACERAS: No, no, that's
15 fine. That's not my point. My point is not now --
16 look, I know what I asked for. But the fact of the
17 matter is that she knew and the Staff Director knew in
18 March that we were definitely going in June. And I
19 was not informed of that, my Special Assistant was not
20 informed of that, and neither was Commissioner
21 Thernstrom or her Special Assistant. And that,
22 frankly, is disgraceful.

23 If set plans have been made for this body
24 to go somewhere, we should have been informed. It's
25 quite simple.

1 CHAIRPERSON BERRY: Thank you.

2 COMMISSIONER BRACERAS: And I don't know
3 why anybody would disagree with that.

4 CHAIRPERSON BERRY: Thank you,
5 Commissioner Meeks. Let me read into the record
6 Commissioner Braceras' statement.

7 COMMISSIONER BRACERAS: I know what my
8 statement was.

9 CHAIRPERSON BERRY: Let me -- please --

10 COMMISSIONER BRACERAS: That's not my
11 point.

12 CHAIRPERSON BERRY: -- Commissioner
13 Braceras, I let you speak. May I please speak now?
14 Thank you.

15 "But I'm just asking the staff to take
16 into consideration that, obviously, everybody at this
17 table has personal commitments and personal other
18 areas of work and things in their lives. So if we are
19 going to Florida at a scheduled meeting, or otherwise,
20 I really would like four weeks notice to make whatever
21 personal arrangements I need to make." One.

22 Two, I sent one letter to Governor Bush,
23 and I announced at this Commission that I was sending
24 the letter to Governor Bush and that I had sent the
25 letter to Governor Bush. It's in the transcripts of

1 the meeting.

2 The staff is fully aware of any letters
3 that I, Mary Frances Berry, have sent, and so are the
4 Commissioners, because it was announced publicly in
5 this meeting. In fact, when it was announced, some
6 people complained that we were doing it -- sending a
7 letter to him. And we also decided --

8 COMMISSIONER BRACERAS: No, no, no, no.
9 That's a misrepresentation of the facts.

10 CHAIRPERSON BERRY: I am not finished,
11 Commissioner Braceras. And then you may say whatever
12 you'd like for as long as you'd like.

13 COMMISSIONER BRACERAS: Good. I will.

14 CHAIRPERSON BERRY: Also, I did not send
15 any letter to Governor Bush myself stating anything
16 other than what I've told this Commission. That's
17 first.

18 Secondly, you do have five weeks' notice,
19 as Commissioner Meeks pointed out. And whatever the
20 staff is doing -- and I'll let the Staff Director
21 comment on that -- they were trying to figure out,
22 according to what I know, when we could go, whether it
23 was possible, whether we would, and give us a date.
24 And they finally firmed it up, and that's what my
25 understanding is. Is that your understanding?

1 STAFF DIRECTOR JIN: Yes, Madam Chair.

2 I --

3 COMMISSIONER BRACERAS: I'm sorry. But
4 the Chair said she was going to recognize me when she
5 finished speaking. You just said that.

6 CHAIRPERSON BERRY: You don't want
7 information from the Staff Director? Well, go ahead
8 and speak, then.

9 COMMISSIONER BRACERAS: Go ahead.

10 STAFF DIRECTOR JIN: The other thing I was
11 going to say, Commissioner Braceras, was that I've
12 been working with the staff to determine exactly the
13 parameters of such a trip and whether such a trip was
14 necessary. So we were looking at -- we kept on
15 looking at whether -- we don't want to go just to go.

16 We wanted to make sure if we went it would be a very
17 useful type of trip consistent with the Commission's
18 policies. So we've been examining this all along. No
19 decision was made months ago that we would definitely
20 go.

21 CHAIRPERSON BERRY: Yes. Commissioner
22 Braceras, you may speak as long as you'd like.

23 COMMISSIONER BRACERAS: Well, I have a
24 question, but I also have a statement. And the
25 question I would like the Staff Director to answer is:

1 when did the staff notify Governor Bush that we were
2 definitely coming in June?

3 COMMISSIONER THERNSTROM: June 20th,
4 specifically.

5 COMMISSIONER BRACERAS: Right. When did
6 you notify Governor Bush that that was the date we
7 were coming?

8 STAFF DIRECTOR JIN: I'd like to refer
9 that question to the Deputy General Counsel, who has
10 been doing the work on this.

11 MS. CARR: The staff has been working on
12 looking at issues in Florida for about --

13 COMMISSIONER BRACERAS: I know that. I
14 want a date.

15 MS. CARR: So I believe --

16 COMMISSIONER BRACERAS: When did you
17 inform the Governor?

18 CHAIRPERSON BERRY: I would appreciate it
19 if you would not engage in hostile questioning.

20 COMMISSIONER BRACERAS: It's a simple --
21 it's really a simple answer.

22 CHAIRPERSON BERRY: She's trying to answer
23 the question.

24 COMMISSIONER BRACERAS: Okay.

25 CHAIRPERSON BERRY: Would you please let

1 her? Could someone please --

2 COMMISSIONER BRACERAS: Okay. Go ahead.

3 CHAIRPERSON BERRY: -- help me to keep
4 order here?

5 MS. CARR: And after talking with state
6 and local electeds, with others who are interested in
7 the state of election reform in Florida, and feeling
8 comfortable that there were issues that the Commission
9 could still explore there, we started talking to all
10 those who were interested about potential dates where
11 we could stage such a briefing.

12 The date that started to clarify itself
13 was the date in June, and I believe that invitations
14 to people who had an interest in election reform or
15 who were state and local electeds who we'd like to
16 participate in that briefing, were sent notices of a
17 June 20th date, probably in the last four weeks or so.

18 COMMISSIONER BRACERAS: Well, it may be
19 that participants were sent notices in the last four
20 weeks, but when did this date clarify itself as you
21 say, because I have reason to believe that the
22 Governor's office was sent a letter in March
23 clarifying the June date.

24 CHAIRPERSON BERRY: Commissioner Braceras,
25 do you have a motion?

1 COMMISSIONER BRACERAS: No.

2 CHAIRPERSON BERRY: This has gone on long
3 enough.

4 COMMISSIONER BRACERAS: Oh, no, no, no,
5 no. You said I could speak and I could speak as long
6 as I want.

7 CHAIRPERSON BERRY: The staff asked you --
8 the staff answered your question.

9 COMMISSIONER BRACERAS: Fine. But let me
10 tell you, this is not -- as I said before, this is
11 about common courtesy. Scripps Howard reported that
12 we are going to Florida in June before we were told of
13 the June date. Scripps Howard had the date before I
14 had the date and before Commissioner Thernstrom had
15 the date. That is unacceptable.

16 CHAIRPERSON BERRY: Are we responsible for
17 what Scripps Howard --

18 COMMISSIONER BRACERAS: Excuse me. May I
19 -- well, somebody leaked it to them. Obviously, you
20 knew -- someone knew we were going, or they wouldn't
21 have published it.

22 Secondly, the Governor received a letter
23 on March 29th, 2002, saying that this Commission was
24 coming in June. There is no reason that on
25 March 29th, 2002, we should not also have been

1 informed. That is a fact.

2 CHAIRPERSON BERRY: Commissioner Edley?

3 COMMISSIONER BRACERAS: And if you'd like
4 me to get the Governor's office to fax --

5 CHAIRPERSON BERRY: Commissioner --

6 COMMISSIONER BRACERAS: -- the letter
7 here, I will.

8 CHAIRPERSON BERRY: Commissioner Edley?

9 COMMISSIONER EDLEY: I would just -- I
10 just would like to move on.

11 CHAIRPERSON BERRY: Okay.

12 COMMISSIONER EDLEY: Commissioner Braceras
13 has made her point, and I just don't know how long we
14 have to keep listening to her make her point.

15 COMMISSIONER BRACERAS: Okay. Well, you
16 know what? This is not a small matter, because this
17 goes to the way --

18 COMMISSIONER EDLEY: Then, make a motion,
19 Jennifer. Just make a motion.

20 COMMISSIONER BRACERAS: No. Because I
21 have something to say before the public and this
22 Commission and for the record. And that is that this
23 Commission routinely -- routinely -- neglects to keep
24 all of the Commissioners in the loop, and this is one
25 more example of that pattern. And that is a disgrace.

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1 CHAIRPERSON BERRY: Could I ask the
2 parliamentarian whether, indeed, we can continue to
3 have this --

4 COMMISSIONER BRACERAS: I'm done.

5 CHAIRPERSON BERRY: In the absence of a
6 motion --

7 COMMISSIONER EDLEY: Okay. She said she's
8 done.

9 CHAIRPERSON BERRY: Yes, okay. Well, if
10 you're done, then let's move on, then.

11 Is this on some other issue, Commissioner
12 Thernstrom? Or you still want to pursue this issue?

13 COMMISSIONER THERNSTROM: No, it isn't on
14 another issue. I mean --

15 CHAIRPERSON BERRY: Well, then, I --
16 excuse me. I want to ask the parliamentarian, should
17 this debate go on endlessly without any motion and
18 without moving on to anything else, addressing
19 generally --

20 MR. REILLY: Right. Well, I think that
21 for the debate to continue there should probably be a
22 motion on the floor.

23 CHAIRPERSON BERRY: Could someone move
24 something, whatever it is you'd like to move? Mr.
25 Kirsanow?

1 COMMISSIONER KIRSANOW: I'll move that the
2 -- any Commission hearing or briefing that's currently
3 scheduled for June 20th in Florida be -- instead be
4 scheduled here. It's my understanding from the
5 Scripps Howard reporting -- and I don't know if it's
6 accurate -- that we have two witnesses scheduled.

7 I don't know what type of logistics we
8 have involved with going down to Florida, how many
9 people are going down including staff, what the cost
10 is. When I've been sitting in the back, I've noted a
11 lot of administrations about the cost of doing this,
12 that, and the limited budget of the Commission. If we
13 only have two witnesses, it seems to me that we can
14 probably get this done much more cheaply and
15 efficiently by having the witnesses come up here.

16 CHAIRPERSON BERRY: Second to the motion?

17 COMMISSIONER THERNSTROM: I'll second it.

18 CHAIRPERSON BERRY: Further debate of the
19 motion? Then, we'll call for the question. All those
20 in favor of the motion to have the meeting scheduled
21 in Florida held here instead of in Florida, indicate
22 by saying aye.

23 (Chorus of ayes.)

24 Opposed?

25 (Nays.)

1 CHAIRPERSON BERRY: I'm opposed. So
2 ordered. We will continue to have the meeting in
3 Florida.

4 COMMISSIONER KIRSANOW: Can we have a call
5 of the roll?

6 CHAIRPERSON BERRY: Ms. Thernstrom?

7 COMMISSIONER THERNSTROM: Aye.

8 CHAIRPERSON BERRY: Vice Chair Reynoso?

9 VICE CHAIRPERSON REYNOSO: No.

10 CHAIRPERSON BERRY: Mr. Kirsanow?

11 COMMISSIONER KIRSANOW: Aye.

12 CHAIRPERSON BERRY: Commissioner Meeks?

13 COMMISSIONER MEEKS: No.

14 CHAIRPERSON BERRY: Commissioner Edley?

15 COMMISSIONER EDLEY: No.

16 CHAIRPERSON BERRY: Commissioner Braceras?

17 COMMISSIONER BRACERAS: Aye.

18 CHAIRPERSON BERRY: Berry, no. Okay.

19 Motion fails. Now --

20 COMMISSIONER THERNSTROM: I was going to
21 make a different motion, and I would still like to
22 make it, which is that the Commissioners in general be
23 instantly informed of dates that have been set for
24 trips or other business that requires them to adjust
25 their schedules.

1 I received -- the first I heard of this is
2 I receive a call from the Governor's office saying,
3 "Are you coming down to Florida?" "What date?" "Oh,
4 there's a briefing on June 20th." "There is what?"
5 Again, it's bewildering to me --

6 CHAIRPERSON BERRY: What is the motion,
7 Commissioner Thernstrom?

8 COMMISSIONER THERNSTROM: The motion is
9 that the staff inform Commissioners instantly when
10 dates are set which require Commissioners to arrange
11 their schedule in a way that's different than they
12 anticipated. I anticipated being in Washington those
13 days.

14 CHAIRPERSON BERRY: The second to the
15 motion?

16 COMMISSIONER BRACERAS: Second.

17 CHAIRPERSON BERRY: Discussion of the
18 motion and whether -- what the word "instantly" means.
19 Yes, Commissioner Edley?

20 COMMISSIONER EDLEY: Well, I'd just like
21 to know from the Staff Director if he sees any
22 problems with that.

23 STAFF DIRECTOR JIN: Yes, I do. Well, no,
24 I mean, there's -- there's so much ambiguity there. I
25 mean, again, I --

1 COMMISSIONER BRACERAS: It depends on what
2 the meaning of "is" is, I suppose.

3 (Laughter.)

4 STAFF DIRECTOR JIN: Well, no, it -- and
5 I, frankly, don't understand the debate in the sense
6 that it seems like there's so much clarity on this
7 particular issue. In March of 2001 --

8 COMMISSIONER BRACERAS: The clarity is the
9 Governor got the letter on March 29th.

10 CHAIRPERSON BERRY: Commissioner Braceras,
11 please be in order. Please.

12 STAFF DIRECTOR JIN: In March of 2001, the
13 Commission voted unanimously to go back to Florida.
14 April of that same year, I made a statement here that
15 said, "I understand we're going to Florida after the
16 report comes out," and that was accepted without
17 comment.

18 In December of last year, the Chair talked
19 about going back to Florida in June. There was that
20 discussion that the Chair just read about. I just
21 don't understand in this particular issue why there's
22 even discussion that people are having to change their
23 plans about June. It seems that that was the
24 understanding for now -- for a long, long time.

25 COMMISSIONER BRACERAS: Okay.

1 CHAIRPERSON BERRY: Commissioner Braceras,
2 you are not recognized.

3 COMMISSIONER BRACERAS: Why not?

4 CHAIRPERSON BERRY: Commissioner Meeks,
5 please. Because she had her hand up first.

6 COMMISSIONER MEEKS: Well, I wonder if I
7 could make an alternative motion maybe, that we have
8 at least a set amount of time --

9 CHAIRPERSON BERRY: Thirty days.

10 COMMISSIONER MEEKS: -- or even six weeks.

11 COMMISSIONER THERNSTROM: Well, there is a
12 motion on the table.

13 COMMISSIONER BRACERAS: And I'd like to
14 speak to the pending motion.

15 CHAIRPERSON BERRY: I don't believe --

16 COMMISSIONER MEEKS: I mean, not in this
17 case because it's been set. But in future hearings --

18 CHAIRPERSON BERRY: I don't think that's
19 possible.

20 COMMISSIONER MEEKS: Not six weeks?
21 Thirty days? I mean, just a set amount of time,
22 because instantaneously could mean --

23 CHAIRPERSON BERRY: To know what?

24 COMMISSIONER MEEKS: To know when we would
25 -- we may go out of town. So 30 days is fine with me.

1 CHAIRPERSON BERRY: Thirty days would be
2 -- would be --

3 COMMISSIONER MEEKS: Thirty days would be
4 fine with me.

5 CHAIRPERSON BERRY: Commissioner Braceras,
6 and then Thernstrom, and then Edley, if you had your
7 hand up.

8 COMMISSIONER BRACERAS: With all due
9 respect to Commissioner Meeks, that's not really the
10 issue on the table. The issue on the table is the
11 lack of respect shown to sitting Commissioners by
12 informing the Governor and the press before you
13 informed us. It is not ambiguous to say that you knew
14 at the end of March we were going in June, and that
15 you didn't inform us. Those are facts.

16 And you say that the June date had been
17 bandied around for several months. That is not true.

18 I raised, on a number of occasions, the question of
19 when we might go to Florida, and the answer was
20 always, "We don't know. We're working on it." A
21 number of months were thrown about. Nothing was ever
22 said that we're focusing in on June.

23 And for you to inform the Governor and the
24 press before you informed Commissioners is outrageous,
25 and that is what Commissioner Thernstrom's motion

1 speaks to, not notice, which is a separate, related,
2 also important, issue in terms of timing, but who
3 finds out first. And I support Commissioner
4 Thernstrom's motion 100 percent.

5 CHAIRPERSON BERRY: I think Thernstrom was
6 next.

7 COMMISSIONER THERNSTROM: Well, as I
8 remember, and I would be glad to stand corrected if
9 I'm wrong, we voted to go back in 2001. There never
10 was a vote to go in 2002. And I cannot understand
11 what the down side is of telling Commissioners at the
12 time that the Governor of Florida is told -- is given
13 a date, what the down side is of telling Commissioners
14 and, indeed, sending Commissioners a copy of the
15 letter that was sent to the Governor.

16 If the Governor can be informed at the end
17 of March, surely we can, and there's nothing lost.
18 It's a matter of just basic information. And, indeed,
19 to have more Commissioners there presumably means a
20 more informative briefing.

21 CHAIRPERSON BERRY: Yes. Well,
22 Commissioner -- Vice Chair?

23 VICE CHAIRPERSON REYNOSO: Madam Chair,
24 there seems to be a misunderstanding of the way the
25 staff functions. The implication seems to be that

1 some Commissioners knew about this and others did not.

2 I confess that I did not know about it until now,
3 neither did my staff.

4 It has been the practice of the Commission
5 since I've been here, since '93, that the staff tries
6 to work it out, and even -- a letter may have gone out
7 saying, "This is our anticipated date." I don't know,
8 because I'm not privy to that.

9 COMMISSIONER BRACERAS: You should be.

10 VICE CHAIRPERSON REYNOSO: But I know that
11 long negotiations take place with the folk that the
12 staff hopes will be coming to -- to that type of
13 hearing, and that we may have heard today that it
14 couldn't happen until July, for example.

15 So I -- the long practice has been that we
16 -- that it's announced actually -- it's been the
17 practice, I believe, the meeting before the -- the
18 hearing takes place, particularly when it's associated
19 with a Commission meeting.

20 I actually just have still, as of this
21 minute, have down a Commission meeting on the 21st of
22 June. And so I'll have to make some different
23 arrangements if we're having this meeting on the 20th,
24 but that has been the practice since I've been on the
25 Commission now since '93.

1 So all I'm saying is that that's been the
2 practice. To suggest that there is somehow any cabal
3 or any incompetence on the part of the staff, when
4 this has been the practice, seems to me unknowing of
5 our background. If we want to make a change and the
6 change being -- as being suggested, I think a
7 perfectly proper change that once that negotiations
8 have -- those negotiations have taken place, and the
9 date is firm, that we be -- that we be immediately
10 advised, even if it's before this Commission meeting,
11 I think makes perfect sense.

12 CHAIRPERSON BERRY: In the interest of
13 time, I am going to suggest that we either withdraw or
14 vote down the motion that's on the table and pass a
15 new motion that says when the date is firm and the
16 staff is clear that that's when we're going, they will
17 immediately inform the Commissioners.

18 COMMISSIONER BRACERAS: Or when anyone
19 else is informed.

20 CHAIRPERSON BERRY: Which is about -- no.
21 When the date is firm, so that we know. The date in
22 place is firm, then, indeed, the staff would inform
23 us. We don't need to be informed about potential
24 dates and potential witnesses, and are we going to do
25 this and that and the other. That's the staff's

1 business.

2 So I would like us to either vote this
3 down, have it withdrawn by the maker, and have a new
4 motion that tells the staff directly, which they
5 already probably do anyway, that when the date is firm
6 they should tell us what date it is. And would the
7 maker of the motion be willing to withdraw the motion?

8 COMMISSIONER THERNSTROM: No, I wouldn't,
9 because I don't know what "firm" means. I mean, here
10 we had a letter that went to the Governor of Florida.
11 We didn't get that letter. Why couldn't we get a
12 copy of that letter?

13 Even if the date were subsequently to
14 change, nevertheless, we would have been put on notice
15 that there was a substantial chance that we were going
16 down to Florida for a briefing on June 20th. That
17 would have been of help. I cannot see what the down
18 side is of informing us when a letter goes to the
19 Governor of Florida. And letters have gone to other
20 people -- the Secretary of State, and so -- in
21 Florida, and so forth. Why can't we be told?

22 VICE CHAIRPERSON REYNOSO: I call the
23 question, Madam Chair.

24 CHAIRPERSON BERRY: Okay. The question
25 has been called. All those in favor of the motion,

1 indicate by saying aye.

2 (Chorus of ayes.)

3 COMMISSIONER KIRSANOW: Could the motion
4 be reread into the record?

5 CHAIRPERSON BERRY: Could the Reporter
6 reread the motion?

7 (Whereupon, the proceedings in the
8 foregoing matter went off the record at
9 10:02 a.m. and went back on the record at
10 10:03 a.m.)

11 COMMISSIONER THERNSTROM: I move that
12 Commissioners be informed of any plans that would
13 require an -- or potential plans that would require an
14 adjustment of our existing schedules at the time that
15 others have received notification of possible
16 briefings, hearings, and other events that require
17 those readjustments.

18 CHAIRPERSON BERRY: Okay. The motion has
19 been restated. All those in favor of the motion,
20 indicate by saying aye.

21 (Chorus of ayes.)

22 Opposed?

23 (Nays.)

24 No. So ordered. The -- yes, Cruz?

25 VICE CHAIRPERSON REYNOSO: I'd like to

1 make a motion that whenever there is a firm date that
2 requires or invites the Commissioners to attend that
3 the Commissioners be advised as soon as that happens.

4 CHAIRPERSON BERRY: Okay. So a firm date
5 for this kind of briefing, forum, whatever, the firm
6 date --

7 VICE CHAIRPERSON REYNOSO: Yes.

8 CHAIRPERSON BERRY: -- is the point.
9 Could I get a second?

10 COMMISSIONER EDLEY: Second.

11 CHAIRPERSON BERRY: Any further
12 discussion? Yes?

13 COMMISSIONER KIRSANOW: I'd like to know,
14 what is a firm date? Is that something established by
15 the Staff Director?

16 VICE CHAIRPERSON REYNOSO: Yes. There
17 seems to be a misunderstanding about how the staff
18 functions. There are many potential dates. And if
19 the staff were required to tell us, they practically
20 would have to send us copies of every piece of
21 correspondence that goes out to dozens of people and
22 have dozens of discussions with potential witnesses,
23 and so on.

24 A time comes -- it's been my understanding
25 -- when they finally firm up a date for a hearing or

1 for a forum that they -- they said, "Okay. This is
2 the date that we can have it." They even get a place
3 for us to meet. They enter into a contract with the
4 hotel, etcetera. A time comes when they can say,
5 "Okay. This is the date that we will have it."

6 And at that point, when it's firm, then
7 they should tell us, even if it's more than the 30
8 days.

9 CHAIRPERSON BERRY: To be clear about it
10 is if we hadn't done it this month or next month, they
11 might say, in connection with a month after that, or
12 the connection with the month of that. The Commission
13 schedules the -- approves the schedule of our meetings
14 under the regs.

15 So the Staff Director doesn't approve the
16 schedule of when we meet, but we're talking about
17 whether the staff can do something one month or
18 another month or another month.

19 Further discussion of the resolution?

20 COMMISSIONER THERNSTROM: My understanding
21 was that the letter that went to Governor Jeb Bush did
22 give a firm date of June 20th. I would like a copy of
23 any letter to any Governor or other elected official
24 that gives what looks to them like a firm date.

25 COMMISSIONER BRACERAS: Or even a

1 potential date.

2 COMMISSIONER THERNSTROM: Or even a
3 potential date. I mean, I -- you're not talking about
4 a flood of paper here. The Governor got a letter that
5 said June 20th. That looked like a firm date to him.

6 VICE CHAIRPERSON REYNOSO: Call for the
7 question, Madam Chair.

8 CHAIRPERSON BERRY: Okay. All right.
9 We've had a call for the question. All those in favor
10 of the motion, indicate by saying aye.

11 (Chorus of ayes.)

12 Opposed?

13 (Nays.)

14 The motion passes, and so ordered.

15 The only other announcement that I would
16 like to make is that I am sending a letter to the
17 administration concerning the detention of Haitian
18 refugees. The Commission has a long-standing policy
19 in opposition to the discriminatory -- what we regard
20 and have regarded for years as the discriminatory
21 treatment of Haitian refugees.

22 And we are -- I am, therefore, sending a
23 letter to the administration expressing our policy,
24 and hoping that this issue can be resolved in some
25 way.

1 The first issue I took up when I was
2 appointed to this Commission was an issue with
3 detention of the Haitian refugees. That was back in
4 the Carter administration, and this has been a
5 consistent thing that the Commission has done.

6 And in connection with that letter, since
7 there has been a lot of discussion in these meetings
8 about whether or not the Chair should send letters to
9 people without the Commissioners reading the letters
10 or approving the letters. And the consistent practice
11 since '57 -- 1957 -- has been that the Chair does, on
12 matters of previously existing policy, send letters to
13 whomever and informs the Commissioners.

14 I would simply like you to reiterate that
15 policy in order to avoid any kind of debate or
16 discussion about whether this is the thing. And so
17 what I would like the Commissioners to do is someone
18 to -- since I won't introduce it -- a motion that the
19 Commission reiterates and affirms the long-standing
20 Commission practice, whereby the Chair may issue
21 official correspondence on behalf of the Commission
22 regarding matters relating to Commission policy
23 without the need for prior Commissioner review and
24 approval.

25 COMMISSIONER EDLEY: So moved.

1 VICE CHAIRPERSON REYNOSO: Second.

2 CHAIRPERSON BERRY: Okay. Any discussion?

3 COMMISSIONER BRACERAS: Discussion.

4 CHAIRPERSON BERRY: Yes.

5 COMMISSIONER BRACERAS: First of all, I
6 want to say that the fact that something has always
7 been the practice here doesn't make it a good
8 practice. And somehow this notion that because we
9 raise issues of concern means we don't understand how
10 things have always been done is a little disingenuous
11 to me, because what we should really be concerned with
12 is whether we are operating efficiently, effectively,
13 and honestly, not whether we're continuing business as
14 usual. That should not be the objective of this body.

15 Second of all, with respect to the issue
16 at hand, I've said before and I'll say again that I do
17 not believe the Chairman should be able to send a
18 letter on behalf of the entire body, on any topic,
19 without the body having a chance to look at the
20 letter.

21 And if such a letter is sent, and I or
22 other Commissioners are in disagreement with the
23 substance of the letter, I will certainly feel at
24 liberty to send an alternate letter to the addressee
25 explaining that there are folks on the Commission who

1 disagree and our position is X, Y, or Z, because I
2 certainly do not want the public or any official to
3 have the false impression that just because you say
4 something is so that it is so, and that you speak for
5 all of us when we haven't had a chance to even
6 consider the matter.

7 So I will exercise my First Amendment
8 right to send letters of dissent if that is to be the
9 policy of this Commission. So I oppose your motion,
10 and that is how I will respond.

11 CHAIRPERSON BERRY: And no one opposes
12 your First Amendment right and --

13 COMMISSIONER BRACERAS: Just informing
14 you.

15 CHAIRPERSON BERRY: -- under the
16 regulations of this Commission, the Chairperson is the
17 spokesperson for the Commission. And it's understood
18 that if there are Commissioners who don't like
19 policies or vote against them, or whatever --

20 COMMISSIONER BRACERAS: She's the
21 spokesperson for the policies that have been agreed
22 upon.

23 VICE CHAIRPERSON REYNOSO: Madam Chair
24 has --

25 COMMISSIONER BRACERAS: Not for her own

1 views.

2 VICE CHAIRPERSON REYNOSO: Could we please
3 have quiet for a moment, please? Madam Chair has
4 asked me to try to, in light of my background, to keep
5 order in this meeting. I declare you out of order
6 when you interrupt the Chair. Do you understand me?

7 COMMISSIONER BRACERAS: I understand. But
8 it seems to me --

9 VICE CHAIRPERSON REYNOSO: Okay.

10 COMMISSIONER BRACERAS: Excuse me. Point
11 of privilege. It seems to me --

12 VICE CHAIRPERSON REYNOSO: Please proceed.

13 COMMISSIONER BRACERAS: It seems to me --
14 and I think it's quite obvious to all long-time
15 observers of this Commission -- that the Chair imposes
16 Robert's Rules of Order when she sees fit,
17 haphazardly, and only when it serves her interest to
18 silence debate. And so if I feel that my rights to
19 speak are being abused, yes, I will speak up. So I'm
20 done now, and you can move on.

21 VICE CHAIRPERSON REYNOSO: Thank you very
22 much.

23 COMMISSIONER MEEKS: I call the question.

24 CHAIRPERSON BERRY: All right.

25 VICE CHAIRPERSON REYNOSO: We have the

1 question called.

2 CHAIRPERSON BERRY: All those in favor of
3 the motion to reiterate the current policy, the long-
4 standing policy on this subject of letters, indicate
5 by saying aye.

6 (Chorus of ayes.)

7 Opposed?

8 (Nays.)

9 Okay. The motion passes.

10 The Staff Director's Report?

11 VICE CHAIRPERSON REYNOSO: Madam Chair?

12 CHAIRPERSON BERRY: Yes.

13 VICE CHAIRPERSON REYNOSO: I'm sorry, but
14 we're still on the announcements, believe it or not.

15 CHAIRPERSON BERRY: Yes.

16 VICE CHAIRPERSON REYNOSO: We've been 40
17 minutes at the announcements. But I do want, as a
18 matter of personal privilege, to say two things. One,
19 I was in the military when Brown v. Board of Education
20 came down, and before Brown came down there had been,
21 it's sad to say, a great deal of court rulings and
22 legislation that were contrary to what I thought was
23 right in terms of civil rights.

24 And I was then thinking of becoming a
25 lawyer, and so when Brown v. Board of Education came

1 down, I remember thinking to myself that I had been
2 right all of my then short life to have believed in
3 civil rights and that some important organization like
4 the Supreme Court agreed with me. One statement.

5 The second one has to do with the Farm
6 Bill. I just want to mention that when you and I met
7 with the Secretary of Agriculture, a gentleman who had
8 been involved in agriculture all of his life told us
9 -- he, nonetheless, said he had never heard about the
10 issue of the black farmers until he became Secretary
11 of Agriculture.

12 And so I was just reminded how important
13 the work of this Commission is in educating even folk
14 who have been in that industry all of their lives.
15 End of my --

16 CHAIRPERSON BERRY: Thank you, Vice Chair.

17 VICE CHAIRPERSON REYNOSO: --
18 announcements.

19 CHAIRPERSON BERRY: Okay. Yes?

20 COMMISSIONER KIRSANOW: Madam Chair,
21 before we go on to the Staff Director's Report, I just
22 wanted to note one thing. In terms of being on the
23 subject matter of letters, I want to thank you for the
24 gracious letter you sent to me welcoming me to the
25 Commission.

1 But moving quickly on to business, in that
2 letter it indicated that the Commission is appealing
3 the Court of Appeals decision in U.S. v. Wilson, and
4 I've had a number of questions in that regard.

5 First of all, when was it decided that
6 that appeal would be conducted? And when was that
7 vote conducted?

8 Number two is, who is the counsel
9 representing the Commission? How is he being paid?
10 And by what authority?

11 Number three is, back in December, I
12 believe, a determination was made that there was going
13 to be an intervention -- or possibly in January -- an
14 intervention on the part of the Commission in the case
15 of U.S. -- which became U.S. v. Wilson. That decision
16 was then ratified. Apparently, it was a decision of
17 the Staff Director to do that. That decision was
18 later ratified by a vote of the Commission.

19 In this particular case, we have it on
20 record already that we have a Court of Appeals
21 decision that has gone against the intervenor and Ms.
22 Wilson, yet we've already taken it upon ourselves,
23 apparently, somehow in some amorphous proceeding in
24 which I was not a party, I don't believe any of the
25 Commissioners to my left were a party, where the

1 Commission is going to go forward and appeal this.

2 So I'd like those questions answered,
3 perhaps by the Staff Director. And also, it's my
4 recollection that in January Commissioner Braceras had
5 asked specifically points and authorities regarding
6 the Commission's ability to engage outside counsel and
7 intervene in litigation outside of the jurisdiction or
8 outside of the authority of the Attorney General.

9 The Court of Appeals decision, again, in
10 dicta, made a comment calling into grave question the
11 ability of the Commission to engage in independent
12 litigation on its own behalf.

13 So if the Staff Director could answer
14 those questions, I would appreciate it. And if he's
15 not able to answer those questions, I've got a motion.

16 CHAIRPERSON BERRY: Staff Director's
17 Report is next, and your -- are we through with
18 announcements? Before you answer those questions, I
19 thought you had some things that you wanted to say to
20 us. And so why don't we let him say those things he
21 wants to say, and then we can see if he wants to
22 answer the questions.

23 COMMISSIONER THERNSTROM: Well, if --

24 CHAIRPERSON BERRY: If that's all right
25 with you.

1 COMMISSIONER BRACERAS: If he wants to
2 answer the questions --

3 COMMISSIONER KIRSANOW: That's fine with
4 me. I'm not speaking for the other Commissioners.

5 CHAIRPERSON BERRY: Is that okay with you,
6 Mr. Kirsanow? You're the one who made the inquiry.
7 Do you mind if he makes --

8 COMMISSIONER KIRSANOW: I'm not speaking
9 for Commissioner Thernstrom. It's fine with me.

10 CHAIRPERSON BERRY: All right. Yes,
11 Commissioner Thernstrom?

12 COMMISSIONER THERNSTROM: I just didn't
13 want to close the section on announcements.

14 CHAIRPERSON BERRY: Okay.

15 COMMISSIONER THERNSTROM: The Commission
16 is going to Florida. There have obviously been across
17 the country elections in which many questions have
18 been raised about corrupt procedure. The latest one
19 is in Newark, New Jersey, in the mayoral election just
20 this past week. I personally, if we are looking into
21 elections, would like to go to Newark.

22 CHAIRPERSON BERRY: Well, we can have the
23 staff work up something on Newark and give us a paper
24 on it or recommend to us --

25 COMMISSIONER THERNSTROM: I would like

1 that very much. Thank you.

2 CHAIRPERSON BERRY: We'll take note of
3 them doing that.

4 COMMISSIONER THERNSTROM: Okay. Now,
5 let's move on.

6 CHAIRPERSON BERRY: Staff Director? Okay.

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

8 STAFF DIRECTOR JIN: Okay. Madam Chair, I
9 do have a number of announcements this morning.

10 First, at the last Commission meeting, you
11 tasked the staff with drafting a summary, an analysis
12 to the Supreme Court decision in Hoffman Plastics v.
13 NLRB, and we have just completed that paper. And it
14 will be provided to you today before you leave if you
15 want, but otherwise we'll just send it to the
16 Commissioners on Monday.

17 Additionally, I'll also be sending to you
18 on Monday summaries and analyses of two other cases
19 that we've completed analyzing. One is USAirways v.
20 Barnett, which is another Supreme Court Decision, this
21 one on the Americans With Disabilities Act that came
22 down a couple of weeks ago. And also, a third summary
23 on Grutter v. Bollinger, the Sixth Circuit case
24 decided earlier this week, which held that the
25 University of Michigan law school policy allowing race

1 as one of many factors, that that was constitutional.

2 Also, last month you asked us to provide
3 an opinion as to whether the Commission would have
4 jurisdiction to investigate the civil rights
5 implication of a Florida law which bans gay and
6 lesbian adoptions. We sent that opinion to you last
7 week with the mailout, and we concluded that the
8 Commission does have such authority under the
9 Commission's administration of justice
10 responsibilities.

11 Third, several weeks after the last
12 Commission meeting, we learned that the Senate
13 subcommittee responsible for the Individual
14 Disabilities Education Act reauthorization would be
15 finishing their work by the middle of next month.

16 Before, our best information had been that
17 the subcommittee would not be finished nearly this
18 early. Thus, if the Commission wishes to have an
19 impact on the legislation, it needs to act rather
20 quickly.

21 As a result, we sent you last week some
22 possible recommendations that the Commission may want
23 to consider endorsing to be submitted to the
24 appropriate Congressional subcommittees. And I would
25 ask that the Commission consider adopting some or all

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1 of those recommendations.

2 CHAIRPERSON BERRY: Is there such a motion
3 on the IDEA?

4 COMMISSIONER EDLEY: So moved.

5 CHAIRPERSON BERRY: Okay. Could I get a
6 second?

7 COMMISSIONER THERNSTROM: I'm sorry. What
8 is the motion here?

9 COMMISSIONER BRACERAS: The IDEA letter.

10 CHAIRPERSON BERRY: The thing you received
11 on IDEA.

12 COMMISSIONER THERNSTROM: Oh, right, the
13 letter -- the motion is that the letter be sent?

14 COMMISSIONER BRACERAS: It doesn't say --

15 CHAIRPERSON BERRY: No, it's that we
16 endorse the recommendation. Isn't that the motion?

17 STAFF DIRECTOR JIN: That's right. And
18 allow staff to send it to the appropriate
19 subcommittees.

20 CHAIRPERSON BERRY: Because this is -- who
21 made the motion?

22 COMMISSIONER EDLEY: I made the motion.

23 CHAIRPERSON BERRY: And you seconded it?

24 COMMISSIONER MEEKS: I seconded it.

25 CHAIRPERSON BERRY: Speak to the motion,

1 Edley.

2 COMMISSIONER EDLEY: First of all, I want
3 to commend the staff for pulling together these policy
4 ideas from the briefing and from their research. I
5 did, however, have a serious concern about the second
6 one, which reads, "New monies provided to states
7 should be linked to improvements in special education,
8 such as a reduction in overrepresentation, reduction
9 in overreferral, or improved rates of transition."

10 I certainly -- I wholeheartedly endorse
11 the purpose of that recommendation. However, I think
12 it has always been a matter of substantial debate when
13 it comes to all manner of regulatory enforcement,
14 including civil rights enforcement, as to whether
15 cutting funds in a manner that might injure the
16 intended beneficiaries of the statute was the best way
17 to provide an incentive for recalcitrant
18 bureaucracies. And I think there are good arguments
19 on both sides as to whether that's the appropriate
20 strategy.

21 In this context, however, and particularly
22 because we didn't have an extended opportunity to
23 investigate this, I would recommend -- and perhaps it
24 should be a motion -- that item number 2 be deleted.

25 CHAIRPERSON BERRY: So could -- would you

1 please modify your motion, since it was your motion,
2 to say that you would approve it with the exception of
3 item number 2?

4 COMMISSIONER EDLEY: I'm sorry. I moved
5 -- what did I move?

6 CHAIRPERSON BERRY: You moved the
7 endorsement of the IDEA recommendation.

8 COMMISSIONER EDLEY: So that we could
9 discuss it, right. But now I just want to --

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER EDLEY: -- move an amendment
12 to the -- to it, which would be to strike number 2.
13 And let me just, finally, add that I -- I think I
14 probably, in the briefing, made some extended remarks
15 about the importance of accountability for districts
16 effectively addressing the civil rights problems of
17 overreferral and underservicing.

18 But there are other things on this list of
19 20 that go I think quite directly and effectively to
20 those issues of accounting and eliminating the
21 disparities. And I think that we could strike
22 number 2 and still have the -- that basic policy
23 thrust of improved accountability preserved. So that
24 would be my amendment.

25 CHAIRPERSON BERRY: Okay. Procedurally,

1 we never voted on your first motion, which was
2 seconded, which was to discuss it. So all in favor of
3 discussing it --

4 COMMISSIONER EDLEY: Oh, okay.

5 CHAIRPERSON BERRY: -- indicate by saying
6 aye.

7 (Chorus of ayes.)

8 Opposed?

9 (No response.)

10 So ordered.

11 Now that we're discussing it --

12 COMMISSIONER EDLEY: Okay. I'm sorry.

13 CHAIRPERSON BERRY: -- would you like
14 another motion?

15 COMMISSIONER EDLEY: Well, I guess that
16 would be to amend this by striking item number 2.

17 CHAIRPERSON BERRY: Okay. Could I get a
18 second?

19 COMMISSIONER MEEKS: Second.

20 CHAIRPERSON BERRY: All right. Discussion
21 of the motion? Yes?

22 COMMISSIONER THERNSTROM: Well, I'm sorry,
23 I'm a little bit unclear about the procedure here. I
24 mean, I have many problems with this letter. Is there
25 only -- is the discussion at the moment confined only

1 to the question of deleting item number 2? Are we
2 going to have a chance to talk about the larger issue
3 of --

4 CHAIRPERSON BERRY: As I understood the
5 motion, it was to approve the item before you with the
6 exception of item number 2. That was the motion.

7 COMMISSIONER BRACERAS: So we've all
8 agreed to delete item number 2? I don't --

9 CHAIRPERSON BERRY: We haven't voted yet..

10 COMMISSIONER THERNSTROM: No. Okay. So
11 it's --

12 CHAIRPERSON BERRY: The motion was --

13 COMMISSIONER BRACERAS: I think we need a
14 separate vote on the --

15 CHAIRPERSON BERRY: The motion -- excuse
16 me. The motion was, as I understood it -- you may
17 restate it if you'd like -- was to approve the
18 submission, with the deletion of item number 2. Is
19 that your motion or not? Are you asking for several
20 different motions?

21 COMMISSIONER EDLEY: I'm sorry. Here's
22 what I thought we were doing. I thought that we
23 basically first decided to --

24 CHAIRPERSON BERRY: To discuss it.

25 COMMISSIONER EDLEY: -- to have the

1 discussion on this, and we voted, and we all agreed
2 that we would discuss it. Then, I thought essentially
3 what we were doing was holding a markup of the letter,
4 in which there would be some discussion and people
5 would offer a series of proposed changes to the
6 letter.

7 And so I simply jumped in with all three
8 feet to offer a first amendment, and then sort of by
9 way of markup --

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER EDLEY: -- suggesting that we
12 -- suggesting that we strike number 2.

13 CHAIRPERSON BERRY: So your motion is only
14 to delete item number 2.

15 COMMISSIONER EDLEY: Right.

16 CHAIRPERSON BERRY: And it was seconded.

17 COMMISSIONER EDLEY: Right.

18 CHAIRPERSON BERRY: All those in favor of
19 deleting item number 2, indicate by saying aye.

20 (Chorus 'of ayes.)

21 Those opposed to deleting item number 2,
22 indicate by saying no.

23 (No response.)

24 No one is opposed? Any abstentions? So
25 item number 2 is deleted.

1 Now, can I have a motion to either approve
2 the document with the deletion or not? Could I get
3 such a motion?

4 COMMISSIONER BRACERAS: Can we have
5 further discussion?

6 CHAIRPERSON BERRY: Yes, there will be
7 discussion after the motion.

8 Yes, go right ahead.

9 COMMISSIONER EDLEY: What kind of motion
10 are you trying for?

11 VICE CHAIRPERSON REYNOSO: I'd like to
12 make the motion that we -- that the recommendations
13 prepared by the staff, with the exception of number 2,
14 be approved by this Commission.

15 CHAIRPERSON BERRY: Okay. Second?

16 COMMISSIONER MEEKS: Second.

17 CHAIRPERSON BERRY: Okay. Now discussion.
18 Yes, Commissioner Thernstrom?

19 COMMISSIONER THERNSTROM: I, frankly,
20 don't think we are ready to send such a letter. We
21 had -- IDEA is an immensely complicated piece of
22 legislation. I at one point spent many months of my
23 life working on an article for the Brookings
24 Institution that was later republished in a slightly
25 different form in the public interest on one corner of

1 IDEA, and even getting my arms around that one corner
2 was no easy task.

3 Even the question of funding for IDEA and
4 federal responsibility is very complicated because
5 there's a very arbitrary formula for the -- what a
6 special education student costs, and all special
7 education students, with very few exceptions, cost the
8 same in this formula. And there are real questions
9 about whether you inhibit needed reform by further --
10 by adding further federal funding.

11 This legislation already is all services
12 and rights and not enough of -- not enough attention
13 to educational outcomes. Even though it's the
14 Individual Disability Education Act, we really don't
15 know very much about how much students are learning as
16 a consequence of the additional services.

17 I really do think -- and there is data
18 that we could collect and are missing here. And just
19 to go back for one second to the funding question,
20 there should be distinctions between federal funding
21 for the totally disabled child that, let's say, costs
22 a district \$25,000 a year.

23 I would certainly believe in full federal
24 funding for such children. That's often a budget
25 buster for small districts. There should be

1 distinctions between federal funding for such a child
2 and federal funding for children who have a variety of
3 other disabilities in other categories.

4 In other words, there are a series of very
5 complicated issues here, and I really think we've done
6 a once-over very lightly job on IDEA and should take
7 some more time to do a proper letter, which, by the
8 way, in my experience in dealing with members of
9 Congress, and so -- and other public officials, should
10 be much shorter than this, preferably something of
11 just one page.

12 But in any case, I think this is
13 premature. If we are going to make a statement on
14 IDEA that will have some authority, and will be -- and
15 will garner some attention, I think we need to do more
16 work and do it -- therefore, do it at greater length
17 and with more care, as much as I appreciate the fact
18 that the staff already has put considerable effort
19 into this.

20 CHAIRPERSON BERRY: Commissioner Braceras?

21 COMMISSIONER BRACERAS: Well, I agree with
22 everything Commissioner Thernstrom just said. I also
23 feel that this is an extremely complicated topic,
24 which we chose to handle in a briefing format, which
25 is intentionally a format which doesn't delve deeply

1 into these issues in the way that a hearing does.

2 And because of that, I don't feel
3 personally informed enough on the issue to endorse any
4 recommendations one way or the other. I think it's
5 something that requires very careful study. I
6 understand that the President's Commission on Special
7 Education is about to issue their recommendations in a
8 few weeks on this topic.

9 I would certainly be interested in seeing
10 where they stand and would be interested in looking at
11 the Congressional proposals in detail before we come
12 up with our own recommendations. And so I -- you
13 know, I think it's unfortunate that the timing of all
14 of this may mean that we can't be "out on front" on
15 this issue, but I do believe that it's more important
16 to get it right than to be the first person, you know,
17 out there making a statement about it.

18 And so I don't -- I don't feel that either
19 the Commissioners or the staff has put enough work
20 into this very complicated issue to be able to
21 definitively say, "These are the 20 things that should
22 be done on IDEA." And I realize this must have taken
23 an extraordinary amount of work, but this topic is --
24 needs much more.

25 I think any one of these proposals on this

1 list could be the subject of a briefing in and of
2 itself and could be the subject of at least a full day
3 of discussion of this body. And to come up with this
4 list of 20 items, you know, each of which in and of
5 itself could be an agenda item for discussion, I'll
6 have to vote no on the letter because I -- it -- and
7 I'm not saying I disagree with these proposals one way
8 or the other, but I simply don't feel that any of us
9 have enough information at this point. To put this
10 out here I think would be irresponsible.

11 CHAIRPERSON BERRY: I'm going to recognize
12 Commissioner Edley, but the Commission has a long
13 history of working on these issues, has numerous
14 reports, and plans to do additional work in the
15 future. But we have great experience with -- the
16 staff does, and I have every confidence in them and
17 what they derive from that experience.

18 And we can, of course, send something with
19 the understanding that the Commission will continue to
20 work on these issues, and will continue to make
21 recommendations for improvements as we go along.

22 Edley?

23 COMMISSIONER EDLEY: I don't think we -- I
24 really see no prospect of our really getting consensus
25 on this judgment about how expert we individually, or

1 institutionally for that matter, have to be before we
2 can go ahead and speak to an issue.

3 And in light of Congressional schedule and
4 the like, I think several of us feel as though we
5 ought to move forward, and bearing in mind what the
6 Chair just said about the fact that the Commission is
7 going to be continuing to revisit these issues in the
8 future. So I'd like to call the question.

9 CHAIRPERSON BERRY: All right. The
10 question has been called. All those in favor of the
11 motion to endorse the IDEA recommendations, with the
12 exception of item number 2, indicate by saying aye.

13 (Chorus of ayes.)

14 Opposed?

15 (Nays.)

16 COMMISSIONER BRACERAS: Roll call, please.

17 CHAIRPERSON BERRY: Commissioner
18 Thernstrom?

19 COMMISSIONER THERNSTROM: No.

20 CHAIRPERSON BERRY: Vice Chair Reynoso?

21 VICE CHAIRPERSON REYNOSO: Yes.

22 CHAIRPERSON BERRY: Mr. Kirsanow?

23 COMMISSIONER KIRSANOW: No.

24 CHAIRPERSON BERRY: Ms. Meeks?

25 COMMISSIONER MEEKS: Yes.

1 CHAIRPERSON BERRY: Mr. Edley?

2 COMMISSIONER EDLEY: Yes.

3 CHAIRPERSON BERRY: Ms. Braceras?

4 COMMISSIONER BRACERAS: No.

5 CHAIRPERSON BERRY: Berry, yes. The
6 motion passes.

7 Staff Director, could you finish up with
8 the rest of what you have, and then --

9 STAFF DIRECTOR JIN: Sure.

10 CHAIRPERSON BERRY: -- answer Mr.
11 Kirsanow's questions.

12 STAFF DIRECTOR JIN: Madam Chairman, my
13 next thing is -- actually, it in some way relates to
14 this IDEA discussion, because Mr. Kirsanow, I was
15 trying to figure out how to, with changed
16 circumstances, get a product, quality product, up to
17 the Commission -- give the Commission an opportunity
18 to act in a timely manner.

19 And there were a couple of other things
20 that came up also this period. I realize that perhaps
21 the Commission might consider a more systematic
22 procedure to deal with action in between Commission
23 meetings, if necessary. And I'm fully aware that the
24 Commission has had a -- has taken poll votes in the
25 past, but that's been done on an ad hoc basis.

1 And in terms of ensuring a fair process in
2 terms of ensuring clarity for everyone, I thought that
3 perhaps the Commission might consider a standing
4 procedure on poll voting.

5 So what I've asked the staff to do is to
6 -- was to draft up such a potential resolution for the
7 Commission to consider. And I'll ask them to pass it
8 out as I read it. It's not very long.

9 The Commission authorizes the Chair to
10 conduct poll votes of Commissioners on any matter
11 between Commission's scheduled meetings if, in her
12 judgment, a poll vote will aid in the expeditious
13 completion of the Commission's work or otherwise
14 promote the efficiency of the Commission or the staff;
15 provided that if any Commissioner provides a timely
16 written request and explanation to the Chair and Staff
17 Director requesting that the matter be set for
18 discussion by the Commission, the Chair will either
19 hold the matter over for a regular meeting of the
20 Commission or schedule a telephone conference of the
21 Commission with public notice as required by the
22 statute.

23 CHAIRPERSON BERRY: Could someone move
24 that?

25 VICE CHAIRPERSON REYNOSO: So moved.

1 CHAIRPERSON BERRY: Could I get a second?

2 COMMISSIONER EDLEY: Second.

3 CHAIRPERSON BERRY: Okay. Discussion?

4 Yes?

5 COMMISSIONER KIRSANOW: I still have a
6 question as to how the poll vote is to be conducted.

7 STAFF DIRECTOR JIN: Historically, we've
8 done it by faxing to each of the Commissioners the
9 question, and then asking the Commissioners to respond
10 in a certain period of time. That part seems to have
11 worked pretty well in the past, actually.

12 CHAIRPERSON BERRY: Yes, that works well.

13 COMMISSIONER BRACERAS: How much time?
14 You said a certain period of time. Hours? Days?

15 CHAIRPERSON BERRY: Does anybody remember?

16 STAFF DIRECTOR JIN: Yes, it depends, but
17 certainly not hours. I mean --

18 COMMISSIONER BRACERAS: Okay. Because I
19 certainly don't necessarily get my faxes even within,
20 you know, one afternoon.

21 STAFF DIRECTOR JIN: Yes. No, no, no.
22 And, again, that is something else that -- that's
23 another part of the system or the practice that seems
24 to have not been a problem in the past.

25 COMMISSIONER EDLEY: And I should just say

1 when I've been delinquent, I've usually gotten a phone
2 message or something reminding me that something was
3 due, that a response was due.

4 COMMISSIONER BRACERAS: Well, I guess I'd
5 like to formally request that a voice mail message be
6 left that, you know, there's a vote waiting for your
7 attention on your fax machine.

8 CHAIRPERSON BERRY: All right. Take note
9 of that, staff.

10 STAFF DIRECTOR JIN: We will do that.

11 CHAIRPERSON BERRY: Do others want that?
12 We always get in touch anyway, don't we?

13 STAFF DIRECTOR JIN: We will do that for
14 everybody, yes.

15 CHAIRPERSON BERRY: Yes. Yes, Mr.
16 Kirsanow?

17 COMMISSIONER KIRSANOW: I'm generally in
18 favor of this. However, I just have a couple more
19 questions. To what extent has the staff determined
20 whether or not this complies with public records or
21 the Sunshine Act or related types of requirements?

22 STAFF DIRECTOR JIN: Yes. Well, Deputy
23 General Counsel and I talked about that yesterday, in
24 fact. We want to make sure that there's nothing in
25 this process that would violate those provisions. And

1 I think our conclusion was that there's nothing
2 inherent in this motion that would be violative, but
3 we need to be careful that we don't allow facts to
4 arise which could create some problems.

5 So Deputy General Counsel, I, and others
6 will just make sure that those facts do not arise.

7 COMMISSIONER KIRSANOW: Just a follow up.

8 It also occurs to me that some of these votes may be
9 subject to parliamentary issue. And I'm wondering, in
10 such poll vote, how would the parliamentarian or, for
11 example, OGC or someone else be involved in addressing
12 questions that may arise during such vote?

13 STAFF DIRECTOR JIN: I think that one
14 possible approach would be if you -- if those
15 questions are raised, then, you know, I can consult
16 with the appropriate people.

17 CHAIRPERSON BERRY: That would be, in my
18 view -- a Commissioner who has a request, an
19 explanation, or who wants to say in a timely manner
20 that they have some problem with it, there's a second
21 section down there that would deal with it. Wouldn't
22 you conduct a poll vote the same way you conduct it
23 now?

24 STAFF DIRECTOR JIN: Yes, that part would
25 be the same.

1 CHAIRPERSON BERRY: Yes. Okay. Yes, go
2 ahead.

3 VICE CHAIRPERSON REYNOSO: If there's any
4 question, the Commissioner can simply ask that we not
5 act on it until the next meeting.

6 CHAIRPERSON BERRY: Yes. Commissioner
7 Thernstrom?

8 COMMISSIONER THERNSTROM: I'm not opposed
9 at all to these poll votes. But I would like them to
10 apply to press releases that the Commission is sending
11 out with the implication that I have signed onto them
12 when, in fact, often I do disagree with either the
13 wording or the substance or the press release.

14 I would like to have had a poll vote
15 before the letter was sent to Governor Jeb Bush with
16 the letter itself faxed to me.

17 And, third, I'm still bewildered by the
18 reluctance to use e-mail rather than faxes. This
19 Commission -- I mean, it is becoming the only body I
20 ever deal with that doesn't send information by e-mail
21 instead of faxes. And I just -- I'm totally
22 bewildered by that.

23 CHAIRPERSON BERRY: Is there any further
24 discussion of this? Do you want to call the question?

25 COMMISSIONER EDLEY: Call for the

1 question.

2 CHAIRPERSON BERRY: All those in favor of
3 the motion that the Staff Director -- introduced on
4 behalf of the Staff Director, indicate by saying aye.

5 (Chorus of ayes.)

6 Opposed?

7 (No response.)

8 So ordered.

9 You've got another one?

10 STAFF DIRECTOR JIN: I've got a few more,
11 Madam Chair.

12 CHAIRPERSON BERRY: Okay. Hurry up.

13 **V. State Advisory Committee Appointments**

14 STAFF DIRECTOR JIN: Next, I would like to
15 introduce the Director of Regional Programs, Ivy
16 Davis, who will provide a brief report on the State
17 Advisory Committees.

18 As you know, the Commissioners have had a
19 number of discussions during the past several years on
20 how the Commission can help strengthen its support for
21 our Advisory Committees and improve our State Advisory
22 Committees, which are a key component of the
23 Commission's ability to fulfill our mission.

24 Ivy has been attending a number of SAC
25 meetings and functions these past couple of months to

1 get a better understanding of how they work, and I'd
2 like her to share briefly -- very briefly -- her
3 observations with you.

4 MS. DAVIS: Thank you. In fact, I'm just
5 back from a meeting of the California State Advisory
6 Committee Wednesday in San Diego. I got back last
7 night.

8 And the Vice Chair mentioned that one of
9 the Commission reports on black farmers was an issue
10 when you met with the Secretary of Agriculture. While
11 I was in California, the statement that the Commission
12 made, I believe last year, on the use of Native
13 American names as mascots is an issue that is alive in
14 California.

15 I think there is an effort to prohibit or
16 prevent schools from using such names for their
17 mascots, and they cited the Commission's statement in
18 those discussions. So there is that sort of back and
19 forth.

20 As the Staff Director mentioned, I have
21 attended over the past few months or observed meetings
22 of the State Advisory Committees in several states.
23 And I am absolutely -- have absolutely been blown away
24 by the proceedings that have gone on there. The
25 committee members are anxious to meet more frequently

1 and to explore creative ways in which that can be
2 done, to address some of the concerns that you all
3 have raised over time.

4 The SAC chairs who attended our meeting
5 here in Washington, I believe it was in February of
6 this year, about 15 members came in. You had an
7 opportunity, Commissioner Braceras, to participate in
8 that, as well as some of the other Commissioners.
9 Indicated that they welcome the opportunity to work
10 closely and collaboratively with the Commissioners.

11 And so I'd like to encourage you all to
12 consider conducting Commission meetings outside of the
13 beltway, and perhaps coordinating your meetings around
14 the scheduled SAC meeting or a forum that the SAC may
15 be conducting. And I prepared a statement or a
16 motion, I guess, that would sort of capture that idea,
17 and I believe that --

18 CHAIRPERSON BERRY: Does anybody have a
19 copy of --

20 MS. DAVIS: And please forgive me, I am a
21 little sleep deprived. What it says is, whenever
22 possible, the Commission will hold future meetings
23 outside of Washington, D.C., absent a specific vote to
24 the contrary, and, where possible, in conjunction with
25 a meeting or forum of the SAC.

1 STAFF DIRECTOR JIN: And there's more.
2 The second part is the location of these Commission
3 meetings will be determined by the Chair, after
4 consultation with the Staff Director, and announced at
5 least one month in advance.

6 CHAIRPERSON BERRY: Could I get someone to
7 move --

8 COMMISSIONER MEEKS: I move.

9 CHAIRPERSON BERRY: You want it moved,
10 Staff Director?

11 STAFF DIRECTOR JIN: Yes, we would like
12 that.

13 CHAIRPERSON BERRY: Okay. Could someone
14 second it?

15 COMMISSIONER EDLEY: Second.

16 CHAIRPERSON BERRY: Okay. Any discussion?

17 VICE CHAIRPERSON REYNOSO: Madam Chair? I
18 just want to mention that I went for a press
19 conference in Alaska last week to release the report
20 of the Advisory Committee on the hearings that had
21 been held in Alaska, and I was just impressed by the
22 interest that the press had in the report there. And,
23 of course, I was interested in the tremendous response
24 we had to the hearings themselves.

25 I was reminded of the sort of response we

1 had in South Dakota and the sort of response we had in
2 Hawaii when we held meetings with the SAC Advisory
3 Committees. So I personally have just found those
4 efforts by the Commission to be very well received and
5 to have real meaning for the people that we met with.

6 So it strikes me like a very good idea.

7 CHAIRPERSON BERRY: Commissioner Meeks?

8 COMMISSIONER MEEKS: Yes. And I've said
9 on many occasions, I've been to at least three or four
10 State Advisory Committee meetings, and, I mean, it's
11 really there that we find out what the local issues
12 are and the issues that really seem to be what we
13 should be working on. And so I'm -- I'd be very happy
14 to vote for this motion.

15 CHAIRPERSON BERRY: Edley?

16 COMMISSIONER EDLEY: I'm going to support
17 this. I do hope that there will a substantial effort
18 by the staff when we do hold meetings out of town to
19 make sure that the communications are set up so that
20 if we have to -- if any of us have to participate by
21 speakerphone, you know, that the audio will work and
22 all the rest of it. I mean, I, too, have young
23 children, and so this may be complicated.

24 But I would also say that if this ends up
25 -- I mean, it's got all of these qualifications about

1 where possible, etcetera, etcetera, so I'm sure that
2 obviously the financial considerations will be a
3 factor in all of that.

4 But you might think about getting some
5 subsidy from the National Endowment for the Arts,
6 because since we spend so much of our meetings in
7 political theater, I think the idea of taking it on
8 the road --

9 (Laughter.)

10 CHAIRPERSON BERRY: All right. Take your
11 show out on the road.

12 Yes, Mr. Kirsanow?

13 COMMISSIONER KIRSANOW: I'd like to
14 piggyback on what Commissioner Edley had to say. I'm
15 wondering if the staff has developed any kind of cost
16 estimate for doing something like this. And I know --
17 you know, I know it's difficult to estimate because
18 you don't know where we're going at any particular
19 time as we speak right now. But in general terms, do
20 you have a cost estimate?

21 And number two is, I'd like to thank Ms.
22 Davis for her work on this. But as a procedural
23 matter, I don't know that I've seen anywhere in the
24 administrative instructions or anywhere else that
25 staff people are able to introduce motions. I think

1 someone else is going to have to introduce that motion
2 on her behalf.

3 CHAIRPERSON BERRY: It wasn't introduced?
4 I thought the Vice Chair introduced it.

5 VICE CHAIRPERSON REYNOSO: Yes.

6 CHAIRPERSON BERRY: It was introduced by
7 the Vice Chair and seconded by Commissioner Meeks.

8 VICE CHAIRPERSON REYNOSO: Yes. I Made
9 the motion.

10 CHAIRPERSON BERRY: You wanted to -- go
11 ahead and answer him.

12 STAFF DIRECTOR JIN: Yes. I'd like to try
13 to answer that. Yes, we have thought about the costs,
14 and, like you said, the -- we don't have dollar
15 figures. But I think one of the things we're going to
16 have to do, because our budget is tight, is we're
17 going to have to kind of find ways to cut the costs --
18 pare the costs back.

19 I mean, I don't think we should be looking
20 at this as like when we do hearings this costs us so
21 much, or this is going to cost this much, because
22 we're not going to have nearly the same kind of
23 traveling party when we do hearings. A lot of the
24 General Counsel's office usually goes.

25 We may even have situations where not only

1 would we hook up Commissioners who want to be by
2 phone, maybe we might hook up some of our staff, some
3 of our managers by phone in this room, as we do these
4 trips. So we are going to look at the cost issue very
5 carefully and try to keep that to a minimum.

6 But in terms of when I talk to Ms. Davis
7 and others, I, myself, have had some conversations
8 with SAC chairs and other people and the regional
9 directors, and this just seems like a very valuable
10 thing to do. And we'll find a way to keep the cost
11 down.

12 CHAIRPERSON BERRY: Commissioner
13 Thernstrom?

14 COMMISSIONER THERNSTROM: Well, the one
15 monthly advance notice -- I mean, if we were to go,
16 let's say, to Hawaii, Alaska --

17 STAFF DIRECTOR JIN: Don't bet on that.

18 (Laughter.)

19 COMMISSIONER THERNSTROM: Okay. I'm not
20 betting on it. But the fact is that, at least for me,
21 in most cases, one month's notice is really
22 insufficient. I do make plans a number of months in
23 advance. And, you know, in terms of phone hookups,
24 and so forth, inevitably at these meetings out of town
25 there will be fewer Commissioners actually physically

1 present.

2 Phone participation is not the same as
3 meeting together in a room. And I do think that
4 regular monthly meetings at which all Commissioners
5 are present, unless somebody has, you know, an
6 extraordinary personal reason for not being able to
7 make it, is very, very important. And I think we are
8 compromising that.

9 CHAIRPERSON BERRY: Yes, Commissioner
10 Braceras?

11 COMMISSIONER BRACERAS: My only comment
12 would be that I -- I think the burdens of proof are
13 reversed here. I do think that we should have to
14 affirmatively vote to go somewhere and evaluate the
15 benefit of a particular proposal as it comes up.

16 I do think that getting out to the rest of
17 the country and seeing what the SACs are doing is a
18 worthy goal. But I think the burden should be on us
19 deciding each particular proposal on its own merits.
20 I don't think we should have to vote down a particular
21 trip, and so I'm going to vote against it.

22 I also think it's too vague. Whenever
23 possible -- I'm not sure what that means. I don't
24 think we should strive to hold all or even half of our
25 meetings out in the heartland, although I think some,

1 you know, would be very valuable.

2 So I don't know what "whatever possible"
3 means. I'd rather say four times a year we're going
4 to go out to localities and meet with people and hold
5 our meetings there, or say -- whatever the number is
6 that we can agree upon. But it's too vague, and I
7 think the burdens of proof are reversed of what I'd
8 like to see. So I'm going to vote against it for
9 those reasons.

10 CHAIRPERSON BERRY: Commissioner Edley?

11 COMMISSIONER EDLEY: I think getting out
12 may -- well, let me just move the question.

13 CHAIRPERSON BERRY: All right. Okay. The
14 question has been called.

15 COMMISSIONER EDLEY: Instead of debating
16 it further.

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

19 (Chorus of ayes.)

20 Opposed?

21 (Nays.)

22 So ordered.

23 You've got to hurry. We've got --

24 STAFF DIRECTOR JIN: Yes, I'm trying to
25 hurry, Madam Chair.

1 One item, and then I've got to answer Mr.
2 Kirsanow's --

3 CHAIRPERSON BERRY: We've got people who
4 are here for the briefing, and --

5 STAFF DIRECTOR JIN: Yes.

6 CHAIRPERSON BERRY: -- we apologize to
7 them that we're a little late, but we're almost
8 finished. They're all nodding their heads, so --

9 (Laughter.)

10 STAFF DIRECTOR JIN: The last thing is
11 this, Madam Chair. Over the years, the problem of
12 draft reports being leaked has cropped up
13 periodically, and not frequently but it does occur
14 periodically. And my predecessor, Ruby Moy, was
15 actually asked to conduct an exhaustive examination of
16 this issue, which she did. She put together a staff
17 committee to help her.

18 The committee conducted a number of
19 interviews with staff from other agencies who had --
20 who are familiar with these issues, including the --
21 an Inspector General's office in one agency. The
22 bottom-line conclusion was that leaks are very
23 difficult, if not virtually impossible, to stop.

24 This Commission last discussed this issue
25 last fall, I believe, late last summer or last fall.

1 And former Commissioner Redenbaugh actually raised the
2 possibility of just releasing the draft reports to the
3 public at the same time that the draft -- the staff
4 sends drafts to the Commissioners for their review.

5 And I know that Commissioners have
6 discussed this option at least a couple of times, and
7 there may be different views on this. But after
8 thinking about it, I do think that that approach is a
9 good idea. In fact, I would suggest that we send a
10 draft report -- when we send a draft report to the
11 Commissioners, we place those reports as well as other
12 work products on our home page.

13 This, in my view, will allow for full and
14 wide disclosure and publication of our work, which I
15 think is desirable. And, of course, it should be
16 clearly marked that this is a staff draft and not yet
17 approved by the Commission. But I think such an
18 approach will also create interest and debate, which,
19 again, I think are also good ideas.

20 So, again, one more time I have a motion
21 for the Commissioners to consider. And if you will
22 ignore what I think is a dangling parentheses here, it
23 says, "All draft reports by Commission staff, reports
24 submitted by State Advisory Committees, and reports or
25 briefing materials, prepared by staff or submitted by

1 panelists invited to participate in Commission
2 briefings or forums, shall be posted on the Commission
3 website for public information at the time the
4 documents are forwarded to the Commission for their
5 consideration."

6 The documents should be clearly indicated
7 as draft and should be removed after one year or when
8 a final approved or accepted document is available,
9 whichever date is earlier.

10 CHAIRPERSON BERRY: Before someone --
11 well, after it's moved -- could someone move that,
12 please?

13 VICE CHAIRPERSON REYNOSO: I'll move.

14 CHAIRPERSON BERRY: Second?

15 COMMISSIONER EDLEY: Second.

16 CHAIRPERSON BERRY: Could you explain what
17 "accepted" means?

18 STAFF DIRECTOR JIN: Yes. That is for --
19 when the Commission examines State Advisory Committee
20 reports, the committee has already issued the report.
21 It's their report. What the Commission does is
22 determine whether it's accepted for publication.

23 CHAIRPERSON BERRY: Okay. There is a
24 motion on the floor. Any discussion on the motion?
25 Did I hear a call for the question?

1 COMMISSIONER EDLEY: Question.

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

4 COMMISSIONER THERNSTROM: Wait a minute.
5 I'm sorry.

6 CHAIRPERSON BERRY: The question -- even
7 though the question has been called, you may go ahead
8 and speak, with the agreement of -- does everyone
9 agree?

10 COMMISSIONER EDLEY: That's fine. That's
11 fine.

12 COMMISSIONER THERNSTROM: I would hope
13 that dissents from reports when they have been drafted
14 could also be included in the material that is posted.

15 CHAIRPERSON BERRY: Would dissents -- yes,
16 Commissioner Edley?

17 COMMISSIONER EDLEY: Well, I think that's
18 -- that seems okay to me, provided the dissents don't
19 -- provided publication of the dissents wouldn't
20 violate any statutes. And, similarly, I assume that
21 -- I assume, by the way, that any of the staff
22 prepared material or any of the SAC material that's
23 going to be posted will have been through the defame
24 and degrade review --

25 STAFF DIRECTOR JIN: Yes.

1 COMMISSIONER EDLEY: -- so that we're not
2 violating any statutes or anything --

3 STAFF DIRECTOR JIN: Yes.

4 COMMISSIONER EDLEY: -- in that way
5 either, right?

6 STAFF DIRECTOR JIN: That's right.

7 COMMISSIONER EDLEY: Okay.

8 CHAIRPERSON BERRY: But we would not know
9 if there was a dissent until the report is voted on.

10 COMMISSIONER EDLEY: Right. But then,
11 presumably, once there is a dissent, though --

12 CHAIRPERSON BERRY: Right.

13 COMMISSIONER EDLEY: Okay. Right.

14 CHAIRPERSON BERRY: I'm just making it
15 clear.

16 COMMISSIONER EDLEY: Yes.

17 CHAIRPERSON BERRY: Okay.

18 VICE CHAIRPERSON REYNOSO: May I just make
19 the correction I keep making, and that is that these
20 are really separate statements, not dissents, because
21 this is -- because this is a commission that's a study
22 commission.

23 COMMISSIONER EDLEY: Thank you. Thank
24 you, Judge.

25 (Laughter.)

1 CHAIRPERSON BERRY: The question is --
2 call the question again, just for the heck of it.

3 COMMISSIONER EDLEY: Question.

4 CHAIRPERSON BERRY: All those in favor,
5 indicate by saying

6 CHAIRPERSON BERRY: The question is --
7 call the question again just for the heck of it.

8 COMMISSIONER EDLEY: Question.

9 CHAIRPERSON BERRY: All those in favor
10 indicate by saying aye. Opposed? So ordered.

11 (Motion Passed.)

12 Now, you could add -- I think -- what's
13 your -- do you have anything else --

14 STAFF DIRECTOR JIN: No, let me answer
15 Commissioner Kirsanow's question. Commissioner, in
16 January, this body took up the issue of my decision to
17 intervene and to have Paul Weiss represent us. And I
18 think -- my take on that discussion was that the
19 majority of the commissioners endorsed my view that
20 Ms. Wilson was properly still serving out her six-year
21 term, and that the guidance was that as long as I
22 thought it was appropriate I should continue to act in
23 accordance with that view. I was not aware of any
24 limitation on that, so that is my understanding as to
25 my authority and responsibility. And of course if the

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1 Commission corrects me, I will stand corrected.

2 CHAIRPERSON BERRY: Okay. Yes?

3 COMMISSIONER KIRSANOW: A couple of
4 questions with respect to that. Because my question
5 actually went a little bit farther than that. In the
6 letter that I received May 13, it says a number of
7 things that call into question who the Commission is.
8 It says, "Because the Commission respectfully
9 disagrees with the legal conclusions reached by the
10 Court of Appeals." That's one. I don't know that
11 there's ever been a consensus taken by the Commission
12 here since the Court of Appeals decision was issued
13 that it disagrees with such decision. There may have
14 been an implication based on what transpired in
15 December or January, and the Commission's
16 determination to intervene in U.S. v. Wilson, but
17 there was no explicit determination made that it
18 disagrees with the Court of Appeals decision which it
19 says right here.

20 It goes on to say that the Commission does
21 not intend to move to stay the mandate of the Court of
22 Appeals. Again, there's not been a Commission meeting
23 until today since that Court of Appeals decision, so I
24 don't know when it was that the Commission decided not
25 to move to stay the mandate, or, as it goes on to say,

1 that the Commission does not oppose the United States'
2 motion for immediate issuance of a mandate. Again, no
3 action was taken, to my knowledge.

4 So the question is who's the Commission,
5 because it seems to me that the Commission, or at
6 least some phantom within the Commission, is acting
7 without any authority or at least authority as
8 determined by a vote of the commissioners.

9 Also, I was present at the meetings in
10 December, January and thereafter, and really looked at
11 the transcripts in great detail, and I didn't see
12 anything about a continuing authority or a vote on a
13 continuing authority to pursue this matter beyond the
14 District Court level. That is particularly called
15 into question since there is obiter dicta in the Court
16 of Appeals decision with respect to the authority of
17 this body to engage in independent litigation.

18 So I'd like you -- someone to address who
19 is the Commission and who it is who's acting on behalf
20 of the Commission when there's no votes being taken on
21 these various issues.

22 CHAIRPERSON BERRY: The Commission is a
23 majority of the Commission. Is that correct,
24 Parliamentarian? When votes are taken by a majority,
25 that is the Commission?

1 MR. REILLY: Yes.

2 CHAIRPERSON BERRY: Okay. That's one.
3 Two, if there is any commissioner who feels that what
4 the Staff Director did to pursue these matters,
5 including the matter of not opposing the stay and not
6 opposing the mandate being issued and saying that the
7 Commission respectfully disagrees with the Court of
8 Appeals, that in doing so he was not following up on
9 the authority that he has as Staff Director and that
10 he is given, then that commissioner should introduce a
11 motion to that effect, which can be debated and voted
12 on here.

13 Because my understanding is that the Staff
14 Director does have that authority and that the
15 Commission is clearly and on the record in terms of
16 what its position is, and he has simply followed
17 through as we ask him to do and as we would have
18 expected him to do. But if there is a motion, then we
19 can debate here and do that. And in the interest of
20 time, I would appreciate it if someone who has a
21 motion would introduce one. Yes?

22 COMMISSIONER KIRSANOW: Madam Chair, point
23 of order. With all due respect, saying that the
24 Commission is the Commission doesn't answer the
25 question of when it is that the Commission did either

1 of the four things I've cited in the May 13 letter.
2 None of those things have happened. There's been no
3 votes. The Commission has not done it. And there's
4 no relation back to any previous determination made in
5 December or January because all these things indicate
6 that they were done post the Court of Appeals
7 decision, which is only a few days ago.

8 In addition to that, I think it's
9 premature to say, or at least it's out of order to say
10 that now commissioners can disagree or agree or ratify
11 or not ratify an action that was clearly ultraverous
12 because no one at any time on this Commission had
13 voted upon any of these four items. So I think at
14 least as a preliminary matter, there needs to be a
15 clear statement as to who the Commission is, who was
16 the authorized to do these four things?

17 I don't want to belabor the point, but if
18 we're going to be acting as a responsible Commission
19 in a lawful fashion, not in a ultraverous fashion,
20 these things need to be addressed before we give
21 authority. The Staff Director may very well have it,
22 but I don't know that anywhere I've seen, in either
23 statute, regulations, the administrative instructions,
24 that he has that authority. And simply because the
25 Commission then retroactively provides it to him, I

1 don't think is proper.

2 CHAIRPERSON BERRY: I will recognize you
3 Edley, but my suggestion was not to be retroactively
4 providing anything. Yes, Commissioner Edley?

5 COMMISSIONER EDLEY: Well, that's the
6 point that I was going to make, because I certainly,
7 speaking for myself, I was of the firm belief back in
8 January, February, whenever it was that we discussed
9 this, that there was a majority Commission view about
10 the way in which to approach these things and that the
11 Staff Director did have authority and indeed
12 continuing authority to prosecute that sense of the
13 Commission, and that no formal votes to codify that in
14 any respect were necessary.

15 And I'd add that my view is that since
16 there was not a vote taken by the Commission to the
17 contrary, that it was perfectly appropriate for the
18 Staff Director to continue as he did invoking the
19 authority of the Commission in that letter. But that
20 said, I certainly feel as though the concerns that
21 Commissioner Kirsanow has raised are expressed in good
22 faith and are reasonable concerns to raise and so
23 forth.

24 I mean I would just encourage him that if
25 he wants to change the understanding, that he

1 introduce a motion to that effect and that we vote on
2 it. But in the absence of that, I think the majority
3 of the Commission shares my understanding of both our
4 view, institutionally, and of the Staff Director's
5 authority.

6 CHAIRPERSON BERRY: So we have basically a
7 disagreement. Yes?

8 COMMISSIONER KIRSANOW: I'd like to
9 elaborate upon that a little bit, and I appreciate
10 what Commissioner Edley has to say on this. However,
11 I think it's getting for us to introduce a motion with
12 respect to it, I think he most respectfully has it
13 backwards. If there was a sentiment of the Commission
14 sometime in December or January, it's very interesting
15 because the Commission and the constitution of the
16 Commission, by virtue of the Court of Appeals
17 decision, has fundamentally changed. There are now
18 different people on the Commission, and one of the
19 people who voted purportedly in favor of this
20 particular sentiment that you talk about is no longer
21 on the Commission, by virtue of this operation.

22 So I would say that if there was such
23 sentiment, if it's continuing on and if it vests the
24 Staff Director with the authority to continue to
25 prosecute this particular action, although I don't

1 agree with that at all, then that sentiment was
2 rendered null and void by the Court of Appeals' very
3 decision.

4 But it still doesn't address the
5 fundamental question that I had and that is when you
6 say who the Commission is, clearly who is the
7 Commission who gets to issue statements like this,
8 regardless of whether or not there was a sentiment at
9 a particular time. There may have been that
10 sentiment. Maybe there was a general understanding
11 about the Commission, that you could prosecute this
12 action as far as it goes.

13 As an aside, it's also my understanding
14 that at some point, at least in reported decisions or
15 reported newspaper accounts, at one point, maybe at
16 the oversight hearing, Staff Director had indicated
17 that he was going to abide by or the Commission, as I
18 presume he's the Commission, was going to abide by the
19 decision of the Court of Appeals. Maybe I'm mistaken
20 about that, but those are the reported articles.

21 But, nonetheless, it begs the question,
22 who is the Commission because, again, these are post
23 Court of Appeals decision actions, and by virtue of
24 that Court of Appeals decision anything that
25 transpired, not anything, but the things that we're

1 discussing transpiring prior to the Court of Appeals
2 decision are inoperative, or at least called into
3 great question. It seems someone has taken it upon
4 themselves to act on behalf of the Commission.

5 CHAIRPERSON BERRY: Yes, Edley?

6 COMMISSIONER EDLEY: Well, I think as a
7 legal matter, the Court of Appeals decision did not
8 make things that occurred before it be inoperative so
9 in the sense that we under a District Court order to
10 seat Commissioner Wilson and honor her membership in
11 the Commission at a time.

12 But more broadly, what I would suggest is
13 that there is a long-standing practice where quite
14 regularly, as a matter of course, both the Chair and
15 the Staff Director speak in the name of the -- in the
16 voice of the Commission, subject to correction. If at
17 a meeting one of us says, "That's ridiculous, that's
18 not indeed what our position is, I have a motion to
19 reverse that stand or to reverse that position or
20 whatever," so that seems to me -- I mean this actually
21 goes -- it's in some way related to the point about
22 letters, that the Chair sends out in the name of the
23 Commission. And after the fact, we may come to the
24 next meeting and say, "That was wrong. We want to send
25 another letter correcting the impression conveyed by

1 the Chair's letter." We're perfectly free to do that.

2 I think that, again, what I would suggest
3 is that we don't go back historically and revote,
4 reconsider automatically past decisions, past policies
5 of the Commission whenever someone new joins the
6 Commission. I think the appropriate thing to do would
7 be for the new Commission, so to speak, the new
8 members of the Commission, the new membership of the
9 Commission, that somebody make a motion and that we
10 can redebate the issue, we can revote on the issue,
11 but the fact that someone new has arrived I think
12 can't mean that automatically all that has gone before
13 is called into question.

14 CHAIRPERSON BERRY: The staff advises me
15 that the vote on the question of the Staff Director's
16 authority was five to two. So even if Commissioner
17 Wilson hadn't been here, it would have been four to
18 two. And even if Commissioner Kirsanow had been here
19 and then on that occasion voted, it still would have
20 passed so that there's no legal issue about if the
21 legal issue is stated that would have changed, it
22 would not have.

23 If someone has a motion -- we have people
24 waiting for us who have come here in good faith to
25 brief us. Now, if you -- we simply disagree

1 apparently. Now, is there something beyond the
2 disagreement? Yes, Commissioner Braceras?

3 COMMISSIONER BRACERAS: Well, I'd like to
4 express my opinion, but I'd also like to address the
5 statement you just made, that we need to move on
6 because people are waiting. And with all due respect
7 to the witnesses, and I thank them all for coming here
8 today, you do this every time. There are procedural
9 irregularities, we try to bring them up to help
10 preserve the integrity of the Institution, and then
11 you say, "We don't have time to discuss them because
12 the witnesses are waiting. And if you really cared
13 about civil rights issues, you'd want to get to the
14 substance." Well, no, that's not the case.

15 The integrity of this Institution depends
16 on whether or not it's managed with integrity, and
17 frankly it's not. And so we are going to keep raising
18 these issues, we are going to keep pushing these
19 issues. If that means people have to wait, I'm truly
20 sorry for that. Perhaps if you'd let us have contact
21 with the staff outside of Commission meetings, we'd be
22 able to resolve some of these things before getting
23 here and then wasting people's time.

24 But all of that said, I think that
25 Commissioner Kirsanow's points are accurate and valid,

1 and one of the points which I think is important to
2 raise here, and it goes well beyond the implications
3 of the Wilson case, has to do with the Staff
4 Director's authority generally, and whether he has the
5 right to make certain decisions and just have the
6 Commission retroactively endorse them, because that is
7 in fact what happened in this case. He made the
8 decision to intervene and to hire Paul Weiss, Rifkin,
9 Wharton & Garrison to represent the Commission on the
10 matter before it ever came up for a vote. And it only
11 came up for a vote when there was a protest.

12 So that issue, which goes to the role of
13 the Staff Director, is an important one to sort out,
14 and frankly I don't think it's one that we, as a body,
15 can vote on. I think it's a regulatory or statutory
16 question that when he's going to make broad policy
17 determinations, he needs to come to the Commission in
18 the first instance. And the fact that he didn't do so
19 here, again, further undermines the integrity of this
20 body. So I'd like to kind of put in the broader
21 perspective.

22 CHAIRPERSON BERRY: Could we -- we're
23 still not ready to move on. Okay. Commissioner
24 Thernstrom?

25 COMMISSIONER THERNSTROM: Well, this is

1 just -- I have two brief points. One, just
2 reinforcing what both Commissioner Braceras and
3 Kirsanow said. I mean motions cannot override
4 statutory limitations or expand authority, and that's
5 why this is important to talk about them.

6 There's another note here that I want to
7 interject. With this appeal to the Supreme Court, we
8 continue to accept, in effect, pro bono, uncompensated
9 work from Paul Weiss Rifkin. You can say we gave them
10 a flat fee of \$1,000. The flat fee of \$1,000 is less
11 than the equivalent of \$1 to John Lott would have been
12 that I was told would be unacceptable. I mean Paul
13 Weiss Rifkin has contributed hours and hours and
14 thousands and thousands of dollars worth of time, and
15 there really is some tension between the suppression
16 of my dissent on the grounds that there was
17 uncompensated labor and the fact that the Commission
18 is now accepting pro bono work from a law firm.

19 VICE CHAIRPERSON REYNOSO: Madam Chair, I
20 move the agenda. We have heard these arguments over
21 and over again, particularly when the reporters are
22 here, and I just think we ought to move on. We've
23 heard these at least half a dozen times, and if
24 there's nothing new to be presented, I think we ought
25 to move the agenda.

1 CHAIRPERSON BERRY: Mr. Kirsanow?

2 COMMISSIONER KIRSANOW: Madam Chair, I'd
3 like to get this behind us also, but two points to
4 make. First of all, I had a number of questions for
5 the Staff Director, and he's only answered one of
6 them. And I'll just truncate this for the interest of
7 time because I appreciate the individuals who are here
8 to testify for the briefing.

9 The one question that I do need an answer
10 to is why is that the request of Commissioner Braceras
11 back in January, I believe, as to the points and
12 authorities for the ability of the Staff Director to
13 engage outside counsel and engage in independent
14 litigation. What are those points and authorities?
15 And if you don't have them, I would move that we
16 direct the OGC to seek an opinion from the Attorney
17 General as to whether or not this Board, this
18 Commission has the authority. Because it flies in the
19 face of all the statutes I've seen, and the burden of
20 proof, I think, is on this Commission, why it is he
21 has the authority, or how it is he has the authority
22 to engage independent counsel, pay for such counsel
23 and engage in litigation on its own behalf when the
24 Justice Department is charged with doing just that?
25 But the preliminary question is have you at any time

1 addressed this issue consistent with Commissioner
2 Braceras' request?

3 CHAIRPERSON BERRY: Do you remember?

4 VICE CHAIRPERSON REYNOSO: Madam Chair,
5 we've gone over these matters at least two or three
6 times before.

7 COMMISSIONER KIRSANOW: With all due
8 respect, we did not.

9 VICE CHAIRPERSON REYNOSO: And the new
10 commissioner was present.

11 COMMISSIONER KIRSANOW: With all due
12 respect, I'll send the Vice Chairperson the notes.

13 CHAIRPERSON BERRY: Be in order. There's
14 no motion. Is that a motion?

15 COMMISSIONER KIRSANOW: The motion was
16 that he seek an opinion from the Attorney General as
17 to the authority to engage in independent litigation.

18 CHAIRPERSON BERRY: All right. A second?

19 COMMISSIONER THERNSTROM: A second.

20 CHAIRPERSON BERRY: All right.

21 VICE CHAIRPERSON REYNOSO: Call for the
22 question.

23 CHAIRPERSON BERRY: Call for the question.

24 Do you call?

25 VICE CHAIRPERSON REYNOSO: Call for the

1 question.

2 CHAIRPERSON BERRY: All right. All in
3 favor of the motion indicate by saying aye. Opposed?

4 VICE CHAIRPERSON REYNOSO: No.

5 CHAIRPERSON BERRY: No.

6 COMMISSIONER KIRSANOW: Roll call.

7 VICE CHAIRPERSON REYNOSO: No. I said no.

8 CHAIRPERSON BERRY: Okay. Are you opposed
9 or for? The motion is to seek an opinion.

10 VICE CHAIRPERSON REYNOSO: I'm opposed to
11 it.

12 CHAIRPERSON BERRY: Okay. Then all right.
13 You want a roll call?

14 COMMISSIONER KIRSANOW: Roll call, please.

15 CHAIRPERSON BERRY: Okay. All those in
16 favor of the motion, which is to seek an opinion from
17 the Attorney General on this matter, indicate by
18 saying aye. Commissioner Thernstrom?

19 COMMISSIONER THERNSTROM: Aye.

20 CHAIRPERSON BERRY: Vice Chair?

21 VICE CHAIRPERSON REYNOSO: No.

22 CHAIRPERSON BERRY: Commissioner Kirsanow?

23 COMMISSIONER KIRSANOW: Aye.

24 CHAIRPERSON BERRY: Commissioner Meeks?

25 COMMISSIONER MEEKS: No.

1 CHAIRPERSON BERRY: Commissioner Edley?

2 COMMISSIONER EDLEY: No.

3 CHAIRPERSON BERRY: Commissioner Braceras?

4 COMMISSIONER BRACERAS: Aye.

5 CHAIRPERSON BERRY: Berry? No. Motion
6 fails.

7 We have two State Advisory Committee
8 reports or two sets of Advisory Committee reports that
9 the Advisory Committees are very anxious to have us
10 pass today, and we can do that, I hope, quickly or
11 table them if people are not ready. The State
12 Advisory Committee appointments first that are needed
13 so that the Advisory Committees can continue to
14 function. And those appointments are for Arizona,
15 Hawaii, Idaho, Kentucky, Oregon and New York -- not
16 Kentucky. Arizona, Hawaii, Idaho and Oregon.
17 Arizona, Hawaii, Idaho and Oregon. And a SAC Chair
18 for Washington State.

19 STAFF DIRECTOR JIN: As well as the SAC
20 Chairs for all those four states and the State of
21 Washington.

22 CHAIRPERSON BERRY: And the State of
23 Washington only a SAC Chair. Is that right?

24 STAFF DIRECTOR JIN: That's correct.

25 CHAIRPERSON BERRY: Okay. Could I get a

1 motion to approve?

2 COMMISSIONER MEEKS: I'll make a motion.

3 COMMISSIONER EDLEY: Second.

4 CHAIRPERSON BERRY: Okay. Is there
5 further discussion of the SAC appointments. All those
6 in favor indicate by saying aye. Opposed? So
7 ordered.

8 (Motion Passed.)

9 Then there is a State Advisory Committee
10 report on race relations in Waterloo, Iowa. Could I
11 get a motion to approve it?

12 **VI. State Advisory Committee Report**

13 **Race Relations in Waterloo**

14 COMMISSIONER EDLEY: So moved.

15 VICE CHAIRPERSON REYNOSO: To accept it.

16 CHAIRPERSON BERRY: To accept it, that's
17 right. We accept. Thank you.

18 VICE CHAIRPERSON REYNOSO: Second.

19 CHAIRPERSON BERRY: Thank you, Vice Chair.

20 Is there discussion of the report on race relations
21 in Waterloo?

22 Okay. All those in favor indicate by
23 saying aye. Opposed? So ordered.

24 (Motion Passed.)

25 The last point I want to make is that we

1 have talked about -- last month we talked about
2 student diversity in the University of California
3 system, we had a big discussion of it. And based on
4 the issues raised during that discussion, I want to
5 ask the staff to prepare an update of the percentage
6 plans report that we did and that was published by the
7 Commission in April 2000, because we said we were
8 going to have a briefing someplace, and we'll figure
9 out where, and maybe we should have that update done
10 before we have this. So I want to ask you to do that.

11 Is anybody who objects to the staff
12 preparing an update on the report in terms of the
13 data, the most recent data on the subject? Yes?

14 COMMISSIONER BRACERAS: I don't object,
15 but I have a comment that we are once again putting
16 more work on the plate of the staff who found it
17 impossible to find the time to put on a hearing on
18 education accountability, which we had already voted
19 to do. So I just once again flag that as an issue
20 that I think we're speaking out of both sides of our
21 mouths when we say the staff doesn't have time to do
22 X, Y and Z, but then we put A, B and C on their
23 plates.

24 CHAIRPERSON BERRY: Well, figure it out,
25 Staff Director. If you can do it, if you can't, let

1 us. Yes, Commissioner Thernstrom?

2 COMMISSIONER THERNSTROM: You know, this
3 is information that is readily available from a number
4 of sources. It's just not something we have to do
5 independently. It's so easy.

6 COMMISSIONER EDLEY: I think that's
7 exactly the point. All the staff has to do is call
8 the University of California system, et cetera. It's
9 a matter of updating something that the Commission has
10 already published to try to keep it current with the
11 data.

12 COMMISSIONER THERNSTROM: Well, I bet the
13 Center for Equal Opportunity could give that to you in
14 two seconds.

15 COMMISSIONER EDLEY: Right, but I'm not
16 sure I would trust --

17 CHAIRPERSON BERRY: Now, now. Now, now.

18 COMMISSIONER EDLEY: No, they can call the
19 University system and get the existing data.

20 CHAIRPERSON BERRY: Okay. All right. If
21 there are no other items on this agenda part, then we
22 will move on to the -- and there aren't any, I guess
23 -- we will move on to the briefing where people have
24 very patiently waited for us. And we should take a
25 five-minute break while they come up to sit, and that

1 means five minutes only. Please come forward and I
2 will introduce you when I come back.

3 (Whereupon, the foregoing matter went off
4 the record at 11:14 a.m. and went back on
5 the record at 11:24 a.m.)

6 (Whereupon, at 1:30 p.m., the Civil Rights
7 Commission meeting was adjourned.)

8

