

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY

APRIL 12, 2002

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WASHINGTON, D.C.

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The Commission convened at 9:30 a.m. in the Commissioner Meeting Room, 624 Ninth Street, N.W., Washington, D.C., Chairperson Mary Frances Berry, presiding.

PRESENT:

MARY FRANCES BERRY, Chairperson

CRUZ REYNOSO, Vice Chairperson

JENNIFER C. BRACERAS, Commissioner

CHRISTOPHER EDLEY, JR., Commissioner

ELSIE M. MEEKS, Commissioner

ABIGAIL THERNSTROM, Commissioner

VICTORIA WILSON, Commissioner



U.S. COMMISSION ON CIVIL RIGHTS

LESLIE R. JIN, Staff Director

STAFF PRESENT:

KIMBERLEY ALTON  
MARGRET BUTLER  
DEBRA CARR, Deputy General Counsel  
KI-TAEK CHUN  
IVY DAVIS  
EDWARD DARDEN  
BARBARA DELAVIEZ  
EMILY DENDY  
TERRI DICKERSON  
GEORGE M. HARBISON  
SOCK-FOON MACDOUGALL  
ALEXIS MARKS  
MARC PENTINO  
PETER REILLY, Parliamentarian  
KWANA ROYAL  
DAWN SWEET  
AUDREY WIGGINS  
REBECCA WILLIAMS  
DAVID WONG  
AUDREY WRIGHT  
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA  
LAURA BATIE  
PATRICK DUFFY  
KIMBERLY SCHULD

A-G-E-N-D-A

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CHAIRPERSON BERRY: The meeting will  
come to order, please.

**I. APPROVAL OF THE AGENDA**

The first item on the agenda is the  
approval of the agenda, and I understood that the  
staff would like us to add to the agenda the  
approval of the Federal Civil Rights Funding Report;  
is that right, Staff Director?

STAFF DIRECTOR JIN: Yes, Madam Chair.

CHAIRPERSON BERRY: And that you  
informed us of that by memo; is that correct?

STAFF DIRECTOR JIN: Yes. In the memo,  
I had indicated that it was not on the agenda, but  
that I would ask that this be considered today.

CHAIRPERSON BERRY: Could I get a motion  
to add that, please?

VICE CHAIRPERSON REYNOSO: So moved.

COMMISSIONER WILSON: Second.

CHAIRPERSON BERRY: All in favor  
indicate by saying aye.

(Commissioners vote aye.)

CHAIRPERSON BERRY: Anybody else have  
anything else before we -- yes?

1 COMMISSIONER WILSON: Thank you, Madam  
2 Chair. I would like to add to the agenda the issue  
3 of room temperature.  
4 (Laughter.)  
5 CHAIRPERSON BERRY: What would you like?  
6 COMMISSIONER WILSON: Down? I'd like it  
7 up, up, up.  
8 COMMISSIONER THERNSTROM: And I will  
9 second that motion.  
10 COMMISSIONER WILSON: This is a first.  
11 CHAIRPERSON BERRY: Could someone,  
12 whoever's in charge of such things, do something?  
13 Thanks, Pam.  
14 COMMISSIONER WILSON: Thank you, Pam.  
15 CHAIRPERSON BERRY: All in favor of the  
16 approval of the agenda -- oh, did I get a motion to  
17 approve the agenda? I need a motion to approve the  
18 agenda.  
19 VICE CHAIRPERSON REYNOSO: So moved.  
20 CHAIRPERSON BERRY: Second?  
21 COMMISSIONER MEEKS: Second.  
22 CHAIRPERSON BERRY: All in favor of  
23 approving the agenda with the addition that we added  
24 indicate by saying aye. Opposed?  
25 (Commissioners vote aye.)

1 CHAIRPERSON BERRY: So ordered.

2 VICE CHAIRPERSON REYNOSO: Madam Chair,  
3 I just want to comment that that motion was carried  
4 out so quickly about looking at the temperature,  
5 I've got to commend the staff. I mean it was  
6 amazing.

7 (Laughter.)

8 CHAIRPERSON BERRY: Very good staff  
9 members.

10 **II. APPROVAL OF MINUTES OF MARCH 8, 2002**

11 Approval of the minutes of the March 8,  
12 2002 meeting is the next item on the agenda. Could  
13 I get a motion to approve the minutes?

14 COMMISSIONER MEEKS: So moved.

15 CHAIRPERSON BERRY: Could I get a  
16 second?

17 COMMISSIONER WILSON: Second.

18 CHAIRPERSON BERRY: Discussion? Anybody  
19 have any changes or things that -- all those in  
20 favor indicate by saying aye. Opposed?

21 (Commissioners vote aye.)

22 CHAIRPERSON BERRY: So ordered.

23 **III. ANNOUNCEMENTS**

24 CHAIRPERSON BERRY: The next item on the  
25 agenda is announcements. And the first announcement

1 that I would like to make is I would like to commend  
2 the staff for the great work that they did on the  
3 election reform report. I am very pleased this  
4 morning I received many messages by e-mail this  
5 morning from various people of congratulations on  
6 the Commission's work on the report and how  
7 instrumental it was, the report on Florida, in  
8 creating the momentum to get the election reform  
9 bill passed, which, as you probably know by now,  
10 passed by a vote of 99 to one.

11 My good friend, Joan Hoff, Professor  
12 Joan Hoff, who is from Montana, happened to be in  
13 town last night, and she asked me who was the one  
14 that voted against the election reform bill, and she  
15 said, "I bet it was somebody from Montana," she was  
16 just kidding.

17 But in any case, the vote was 99 to one,  
18 and I just think that it is amazing that the  
19 Commission was not only able to do the hearings that  
20 we did, which received, as you know, international  
21 publicity and was carried all over the world, and  
22 was able to, in record time, the staff in record  
23 time produced a report which was very helpful.

24 And this was all during the time when  
25 since then, as recently as a few weeks ago, I think

1 the Washington Post had an editorial saying that our  
2 report was irrelevant noise, which is not the view  
3 of the senators who may have to fight to get this  
4 bill passed.

5 So congratulations to Eddie Hailes who's  
6 not here anymore and who was our Acting General  
7 Counsel at the time and the staff and OGC. And I  
8 also want to congratulate the staff in OCRE who did  
9 the studies and reports on election reform  
10 nationwide that were also instrumental in getting  
11 this work done, and Terri Dickerson and her staff in  
12 OCRE. So I think kudos all around for everyone.

13 (Applause.)

14 VICE CHAIRPERSON REYNOSO: Madam Chair,  
15 I just can't help but be reminded that when we had  
16 the hearings we asked the Governor in Florida why he  
17 had not used his power that's given directly by the  
18 statute to investigate any complaints pertaining to  
19 the election, and he said that he did not want to be  
20 duplicative of all the investigations that were  
21 taking place, one, by the U.S. Department of  
22 Justice, two, by the local attorney general in  
23 Florida, and, three, by us. As it turns out, we  
24 were the only ones who actually did the  
25 investigation and issued a report, because the



1 attorney general in Florida, who's a Democrat, ended  
2 up doing nothing, and the Attorney General of the  
3 U.S., who's Republican, ended up doing nothing.

4 CHAIRPERSON BERRY: Yes. Well, that's  
5 well-noted.

6 And the second announcement that I would  
7 like to make is I want to introduce and welcome the  
8 interns working in our Office of Civil Rights  
9 Evaluation: Emily Dendy -- I don't know if they're  
10 in here -- and Rebecca Williams from Ferman  
11 University in South Carolina, and Alexis Marks, who  
12 is from the University of California-Los Angeles.  
13 Welcome and thank you very much for coming to work  
14 with us. Enjoy your stay.

15 The third announcement that I would like  
16 to make is simply to point out that there was an  
17 Oversight Committee hearing in the House yesterday.  
18 Mr. Chabot's subcommittee, which in unprecedented  
19 fashion had a commissioner on this Commission to  
20 come forward to hurl charges at the entire  
21 Commission. It was supposed to be about the  
22 management of the Commission, and we will expect to  
23 have some follow-up from that, and we'll wait to see  
24 what that follow-up is.

25 I, was teaching at Penn yesterday and

1 was not able to view what happened, but we will be  
2 getting a transcript. There is also probably  
3 testimony available for any of you who have an  
4 interest in the subject that the staff will be happy  
5 to give you. Yes, Commissioner Thernstrom?

6 COMMISSIONER THERNSTROM: Could we have  
7 the testimony of all four witnesses placed at the  
8 table outside to be made available since, and I  
9 particularly, obviously, since I hurled charges,  
10 particularly interested in, you know, the  
11 availability. But I also think the Staff Director's  
12 testimony should, of course, and Mr. Shelton's and  
13 Mr. Schatz's testimony should be widely available.

14 CHAIRPERSON BERRY: Well, we don't -- if  
15 anyone wishes it and the staff can -- has it, they  
16 may give it to them, but the Commission doesn't just  
17 routinely distribute congressional testimony.

18 COMMISSIONER THERNSTROM: No, I'm just  
19 suggesting that it be put on the table outside.

20 CHAIRPERSON BERRY: If anyone would like  
21 it, please, the staff will be happy to give it to  
22 you. Thank you.

23 Does anyone else have anything on that?

24 If you do have it, you can give it people. Get it  
25 together if you have it.

1 I just want to point this out; you  
2 probably know it already -- this month is the  
3 anniversary of the assassination of Martin Luther  
4 King, and every year at this time I, remember him as  
5 he was alive and wonder what he'd look like today if  
6 he were an old man full of his years and were with  
7 us in all of his magnificent glory. And so I just  
8 wanted to say a word to acknowledge that I know you  
9 died this month, Martin.

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

11 Let me move on to the Staff Director's  
12 report. Does anyone have any questions on the Staff  
13 Director's report? Yes, Commissioner?

14 COMMISSIONER MEEKS: Yes. I have a  
15 couple of questions. Where the complaints are, and  
16 they're broken down by type, I was just curious what  
17 "no jurisdiction" meant. It's on Page 26.

18 CHAIRPERSON BERRY: Under Tab Number 4.

19 VICE CHAIRPERSON REYNOSO: One-thirty-  
20 two?

21 CHAIRPERSON BERRY: What Page?

22 COMMISSIONER MEEKS: Twenty-six.

23 VICE CHAIRPERSON REYNOSO: Oh, Page 26.

24 COMMISSIONER MEEKS: Page 26.

25 VICE CHAIRPERSON REYNOSO: There's a

1 listing of no jurisdiction for --

2 COMMISSIONER MEEKS: Which was the  
3 highest amount --

4 VICE CHAIRPERSON REYNOSO: A total of  
5 132.

6 STAFF DIRECTOR JIN: Terri, can you  
7 answer that for me, please?

8 CHAIRPERSON BERRY: I think it just  
9 means that there was no particular jurisdiction that  
10 could be identified.

11 COMMISSIONER MEEKS: Oh.

12 COMMISSIONER BRACERAS: I had people  
13 calling up and complaining about the rats. I mean,  
14 you know?

15 (Laughter.)

16 COMMISSIONER BRACERAS: Something  
17 completely irrelevant to the mission here.

18 MS. DICKERSON: Yes. It can represent a  
19 lot of things, but, essentially, it means it wasn't  
20 a civil rights matter.

21 COMMISSIONER MEEKS: Oh, okay.

22 MS. DICKERSON: That any enforcement  
23 agency would have responsibility for.

24 COMMISSIONER MEEKS: I'll never ask it  
25 again.

1 CHAIRPERSON BERRY: So they send it in,  
2 but -- no, that's fine. They sent it in, you  
3 received it, so you just recorded how many received  
4 like that.

5 MS. DICKERSON: We received it, and we  
6 responded to it to indicate to them that there  
7 wasn't a civil rights agency that had responsibility  
8 for whatever they were complaining about.

9 CHAIRPERSON BERRY: Okay.

10 COMMISSIONER MEEKS: And then the other  
11 thing I have to say is because of the work on the  
12 Administration of Justice in South Dakota, the U.S.  
13 Sentencing Commission met, I think it was last June,  
14 and then recently formed an Advisory Council to  
15 study how the federal sentencing guidelines affect  
16 Indian Country, and that's going to be over an 18-  
17 month period. They've asked if I would be on that  
18 Committee, so we're very pleased about that.

19 CHAIRPERSON BERRY: Yet another example  
20 of positive fallout from the work that the staff  
21 here and the people in the regional office in Denver  
22 who work so hard on all of this and our staff did on  
23 the South Dakota project. Thank you. We'll watch  
24 that and listen for news about that.

25 The next item on the agenda --

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COMMISSIONER EDLEY: Madam Chair?

CHAIRPERSON BERRY: Yes. Commissioner Edley first.

COMMISSIONER EDLEY: I wanted to make a comment about the election reform legislation in the Senate and also about Hoffman Plastics, but I'm a little confused about when I might have a chance to do that.

CHAIRPERSON BERRY: You should do that under the Staff Director's -- well, it's -- why don't you do it under the -- we're in the Staff Director's report, so go ahead.

COMMISSIONER EDLEY: Sure. First, I just wanted to note that while it's certainly terrific that the Senate has passed this legislation, I think that there's a substantial likelihood that the conference is going to be a very difficult one, in no small part, because the House approach to election reform is rooted in attaching conditions to federal grants, whereas the Senate approach combines conditionality with certain minimum federal standards. And there has been a rather partisan divide over that issue, so I think while we can applaud the important step this week, I hope the staff will keep an eye on developments.

1 And if there is an occasion or a need for us to  
2 weigh in, that we'll be given an opportunity to do  
3 so.

4 In particular, I also wanted to note  
5 that I was very disappointed that an amendment by  
6 Senator Clinton was defeated by a vote of 52 to 48,  
7 which I guess is pretty close, as things go. And it  
8 was an amendment that really went right to the heart  
9 of some of the problems that we found the most  
10 serious in Florida, specifically the disparities  
11 jurisdiction to jurisdiction in ballot spoilage  
12 rates. And whether one attributes that to poverty  
13 or to race or to education or to whatever, it  
14 certainly still means that Americans in one  
15 jurisdiction have a better democratic infrastructure  
16 than Americans in another jurisdiction.

17 COMMISSIONER BRACERAS: What would  
18 Senator Clinton's amendment have done?

19 COMMISSIONER EDLEY: It would have  
20 authorized the new Election Administration to  
21 promulgate, by rule, a benchmark for election system  
22 performance, as measured by ballot spoilage rates.  
23 So I think it was good that it got as far as it did,  
24 but I think, unfortunately, this is one of those  
25 things where quite a substantial advance in terms of

1 the civil rights agenda was missed, an opportunity  
2 was missed. Maybe there will be a study or  
3 something like that approved in the Conference  
4 Committee, but I just wanted to throw a little bit  
5 of a blanket over the celebrations there.

6 And then I wanted to say something about  
7 Hoffman Plastics, but --

8 COMMISSIONER THERNSTROM: I just want to  
9 ask you a question about the Senator Clinton's  
10 amendment. So the implementation of that proposal  
11 would have taken what form? How would that have  
12 worked? There would have been benchmarks. The  
13 states that didn't meet the benchmark, or counties  
14 or districts, whatever, how would that have -- what  
15 would happen next?

16 COMMISSIONER EDLEY: Well, that's the  
17 sort of thing that would have to be clarified in  
18 legislative history or in the conference report. I  
19 think the short statement of it would be that like  
20 other things in the bill that say thou shalt provide  
21 access for people with disabilities or thou shalt  
22 require federal ID of this, that or the other sort,  
23 if a state is out of compliance, then there's  
24 compliance action taken by the federal government,  
25 which usually, as a practical matter, simply means a



1 negotiation about some sort of corrective action  
2 plan over a period of time.

3 I think, actually, as interesting as  
4 that issue is, the other question, of course, raised  
5 by the amendment is how do you derive the benchmark  
6 and on what research is it based? But there is  
7 stuff in the record from the Cal Tech/MIT study,  
8 from the Carter/Ford Commission suggesting what  
9 kinds of ballot spoilage rates are generally  
10 prevailing around the country. So if you were  
11 rulemaking, you would get an opportunity to sort of  
12 gauge something that wouldn't be too aggressive.

13 COMMISSIONER THERNSTROM: I mean the  
14 remedial action on the other violations that you  
15 mentioned seem very obvious. This one seems very  
16 problematic.

17 COMMISSIONER EDLEY: Well, the studies  
18 are pretty clear. I mean the jurisdictions that are  
19 doing a good job with ballot spoilage, I think --  
20 and we saw some of this -- are the jurisdictions  
21 that use good technology, that put some money into  
22 voter education, that have people at the poll site  
23 who can explain to people when they're confused,  
24 having trouble with the ballot, et cetera. So it's  
25 not rocket science, and indeed we're often talking

1 about states and indeed within counties where it's  
 2 being done well in one place and not well in another  
 3 place. It's less a matter of mystery, I think, than  
 4 of perseverance in administration. But, again, I  
 5 guess it's a little bit academic.

6 CHAIRPERSON BERRY: Just a moment. Does  
 7 anyone have any other questions about the election  
 8 reform stuff before he goes to Hoffman Plastics?

9 COMMISSIONER THERNSTROM: If we could  
 10 have a summary of the two bills, as they've been  
 11 passed, that would be very nice.

12 CHAIRPERSON BERRY: That would be good,  
 13 and the staff, while we praised your work, your work  
 14 is not done. You have to do that, and you also have  
 15 to follow-up on the conference, because there may be  
 16 places where we need to intervene somehow again and  
 17 say something else, but we need to know that. So  
 18 between OGC and OCRE, Staff Director, they should  
 19 continue to do -- yes?

20 COMMISSIONER EDLEY: And just my own  
 21 sense of that is that the particular role that we  
 22 could have is in just reminding Congress if they are  
 23 or are not addressing problems that we identified.  
 24 In other words, we don't have to opine about the  
 25 whole universe of issues related to -- I mean we

1 could, but we don't -- I mean the thing that we  
2 really have the bona fides, the intellectual  
3 capital, relatively recently established and clear  
4 is I think with respect to our earlier --

5 CHAIRPERSON BERRY: Okay. Hoffman  
6 Plastics.

7 COMMISSIONER EDLEY: On Hoffman  
8 Plastics, I simply wanted to make sure that  
9 everybody had noted the Supreme Court's decision  
10 announced on March 27. This was a five to four  
11 decision in which the Court held that the policies  
12 of the Immigration Reform and Control Act of 1986  
13 foreclosed the National Labor Relations Board from  
14 awarding back pay to an undocumented alien who had  
15 never been legally authorized to work in the United  
16 States.

17 The gravamen of the decision, in my  
18 view, and I think the view of many others, is the  
19 suggestion that a regulatory statute, at least a  
20 regulatory statute regarding the work force, the  
21 labor market, doesn't apply to undocumented workers.

22 If the logic of the holding is extended from the  
23 NLRB to the Fair Labor Relations Act, to Title 7,  
24 employment discrimination issues, to age  
25 discrimination, to equal pay, I mean you name it,

1 then I think it is an invitation to lawlessness and  
2 exploitation of undocumented workers, which is, I  
3 suggest, not the right way to go about dealing with  
4 issues of illegal immigration.

5 I'm not proposing any particular action  
6 by the Commission at this stage. I just thought  
7 that people should be aware of the developments, and  
8 if down the road we have thoughts about something to  
9 do, it might be of interest. There is an EEOC  
10 guidance that says that Title 7 does apply to  
11 undocumented workers, but I think under the logic of  
12 this case, I would really suspect that at least some  
13 federal judges would hold otherwise now.

14 CHAIRPERSON BERRY: So it's an NLRB  
15 case. Yes, Vice Chair?

16 VICE CHAIRPERSON REYNOSO: We, I think,  
17 manifestly are going to have some civil rights  
18 issues arising, in part, from that case. In part,  
19 some are already beginning to arise in terms of the,  
20 as I understand it, the announcement by the Justice  
21 Department that they're going to come out with some  
22 statement or regulation encouraging the immigration  
23 authorities to work with local officials, local  
24 police officials to implement the immigration laws.  
25 And we've had experience with that -- disastrous

1 experience with that in times past of having local  
2 officials who are unacquainted with immigration laws  
3 trying to enforce immigration laws, having the  
4 consequence that undocumented immigrants do not  
5 report crimes, do not present themselves as  
6 witnesses when crimes have taken place and so on.  
7 But it's sad to say, I think much of that history is  
8 lost on the present administration and frankly lost  
9 on the Supreme Court.

10 CHAIRPERSON BERRY: Commissioner  
11 Braceras?

12 COMMISSIONER BRACERAS: Well, I just, I  
13 guess, wanted to put on the table whether we should  
14 ask the staff to prepare something on this since it  
15 is an issue that I guess will be coming up again and  
16 again. And I mean I guess my question is why should  
17 we wait for additional case law to develop? Why  
18 don't we start looking into what our recommendations  
19 would be proactively before we get to a point where  
20 we're asking for a million things to be undone?

21 COMMISSIONER EDLEY: Well, I mean now  
22 that I'm thinking about it, that might be right,  
23 especially if -- I mean this is not a constitutional  
24 holding, it's a statutory holding, so it's certainly  
25 available to the Congress to revisit this and make

1 its own judgment about the applicability of these  
2 various regulatory statutes.

3 COMMISSIONER BRACERAS: Right. That's  
4 my point.

5 COMMISSIONER EDLEY: And we could make a  
6 recommendation to Congress as to whether they ought  
7 to take it up, and if so, with what result. But as  
8 I say, I mean, from Title 7 to age discrimination,  
9 to equal pay, there are lots of places, and I think  
10 -- this has been a huge issue in -- there's been an  
11 issue about whistleblowers, for example, would  
12 immigrant, including undocumented workers, be  
13 willing to blow the whistle in sweatshop conditions  
14 that violate statutes?

15 COMMISSIONER BRACERAS: Right. Well, I  
16 mean I guess my question is can it be incorporated  
17 into one of the ongoing projects, like the crossing  
18 borders project? I mean could we -- or even if it  
19 can't be incorporated into that project, maybe we  
20 could just ask the staff to look into it and make  
21 recommendations, not just with respect to what  
22 should be done with the NLRB but take a look at the  
23 other statutes and say how this would affect things  
24 and what our recommendations would be so that we can  
25 ask the Congress to do something before the

1 judiciary starts doing things that maybe this  
2 Commission doesn't approve of.

3 CHAIRPERSON BERRY: That's a very good  
4 suggestion. Why don't we just do the following, do  
5 what you said, part of what you said: Instead of  
6 putting it in the project, just simply ask the staff  
7 to do a memo analyzing this case and its impact on  
8 the other statutes, or its prospective impact, and  
9 what recommendations they would make. And should we  
10 recommend to the Congress that it clarify what it  
11 intended in the NLRA and present that to us for us  
12 to decide whether we agree with that or whether we  
13 want something else done?

14 COMMISSIONER EDLEY: Can I suggest,  
15 Madam Chair, that we've opened the -- I mean they  
16 come back and say, well, we ought to do a briefing  
17 before we just immediately to recommendations?

18 CHAIRPERSON BERRY: Well, it's possible.  
19 Right. But make the staff -- but you could move  
20 that they do this, what you said.

21 COMMISSIONER BRACERAS: Okay. Well,  
22 yes.

23 CHAIRPERSON BERRY: Or we can just do it  
24 by unanimous consent. I mean is everybody -- is  
25 there anyone who objects and wouldn't like to have

1 it done?

2 COMMISSIONER BRACERAS: Yes. I would  
3 move that the staff look into --

4 CHAIRPERSON BERRY: Well, you don't need  
5 to move it because we all agree.

6 COMMISSIONER BRACERAS: Okay. Fine.

7 CHAIRPERSON BERRY: Without objection,  
8 the staff will do this. Do you understand what  
9 you're doing?

10 STAFF DIRECTOR JIN: We will do it.  
11 Yes.

12 COMMISSIONER WILSON: If we're all  
13 unanimous, maybe I should just object because it  
14 seems so aberrant for us all to --

15 (Laughter.)

16 COMMISSIONER EDLEY: Right. Somebody  
17 must be confused about something.

18 CHAIRPERSON BERRY: Everyone except  
19 Vicki agrees. No. By unanimous consent --

20 COMMISSIONER EDLEY: She wasn't supposed  
21 to be here anyway.

22 COMMISSIONER WILSON: No, I'm here now.

23 CHAIRPERSON BERRY: Okay. Yes,  
24 Commissioner?

25 VICE CHAIRPERSON REYNOSO: I have a



1 separate matter, Madam Chair. We've been talking  
2 about having a hearing on education, particularly on  
3 higher education and what's happening --

4 CHAIRPERSON BERRY: A briefing we were  
5 talking about.

6 VICE CHAIRPERSON REYNOSO: A briefing,  
7 yes, I'm sorry, a briefing on higher education. And  
8 I was just noticing that no reports have come out of  
9 California indicating that everything is honky dory  
10 there, that the University of California has  
11 admitted a good number of minority students. I  
12 noticed that the press releases issued by the  
13 University always talk about how many have applied,  
14 how many have been admitted, never how many have  
15 enrolled. And from my own knowledge of it, the  
16 enrollment figures are not quite what the admit  
17 figures are, and none of the improvement has to do,  
18 or very little has to do, with the leading  
19 universities, mainly UCLA and Berkeley, in terms of  
20 those numbers. And, secondly, certainly none of it  
21 has to do it with graduate schools.

22 And we've talked now for some time about  
23 having that briefing, and I'd just suggest that we  
24 -- maybe we ought to do it as quickly as we can,  
25 because it's a timely fashion -- it's timely now

1 because of reports that have just come out; and  
2 we've talked in the past about trying to do things  
3 in a timely fashion.

4 CHAIRPERSON BERRY: Okay. Well, the --  
5 yes, Commissioner Thernstrom? Did you have your  
6 hand up?

7 COMMISSIONER THERNSTROM: I did. I have  
8 a problem with your characterization of the press.  
9 I've read a lot of press on this, and the press I  
10 read simply says that the black and Hispanic numbers  
11 in the UC system as a whole are up, but at the  
12 flagships schools, as you just said, UCLA and  
13 Berkeley, they, you know, those schools still have a  
14 long way to go. I think the press has been, you  
15 know, quite accurate on this.

16 CHAIRPERSON BERRY: Well, I hope we  
17 don't get into a debate about what the press has  
18 said. I read an editorial in USA Today yesterday  
19 when I was on a plane or a train or a bus or  
20 something, and it said emphatically that the  
21 problems in California have been solved and they  
22 didn't really need affirmative action because all  
23 these numbers were up, and they never did point out  
24 which campuses or anything else. But I'm sure there  
25 were other press that, more responsible press, that

1 may have published the details.

2 COMMISSIONER THERNSTROM: Yes. I had  
3 one other point, which is that if we do hold a  
4 briefing, I hope -- this goes back to a previous  
5 discussion -- that we can have -- that all  
6 commissioners can submit names and we can have a  
7 spectrum of views on this matter, as I wish we did  
8 have on all questions that we have briefings on.  
9 But, obviously, the higher education picture is  
10 complicated and a number of us know quite a bit  
11 about it.

12 CHAIRPERSON BERRY: Okay. Well, we --  
13 the staff will -- yes, Commissioner Edley?

14 COMMISSIONER EDLEY: Just California?

15 CHAIRPERSON BERRY: Well, that's what  
16 last year suggested. Now, we did a report once on  
17 percentage plans in California, Texas and Florida in  
18 which we concluded, as I recall, that the percentage  
19 plan in Texas worked for undergraduates but didn't  
20 work for graduate and professional schools, and I  
21 think that's -- nobody denies that that's true. In  
22 Florida, we projected that it wouldn't work to admit  
23 students to the more prestigious campuses, and I  
24 think most people agree that that's correct, and  
25 that it wouldn't work for graduate and professional

1 schools.

2 And we predicted that in California, and  
3 correct me if others recollect differently, that the  
4 four percentage plan would do exactly what it has  
5 apparently done, which is to cascade students into  
6 the lesser institutions, less prestigious. They may  
7 not be lesser, they may be better, but less  
8 prestigious institutions. That's what we said.

9 So maybe what we ought to do is be  
10 headed toward sort of revisiting our report at the  
11 end of this process, after we've done briefings or  
12 research or whatever is necessary to try to do some  
13 kind of update or something. Yes, Commissioner  
14 Braceras?

15 COMMISSIONER BRACERAS: I just have a  
16 comment I'd like to make, and that is that I think  
17 this is an important issue, and I'd like to study it  
18 as well. But I think that it's interesting that  
19 last time we were here we were discussing how we  
20 didn't have enough time or resources to do our high-  
21 stakes testing hearing, and now we seem to have time  
22 to do briefings on a variety of other topics. And  
23 it seems to me that -- I mean there's always a  
24 tension between do we do a lot of issues at a  
25 surface level or a few issues at a deeper level;

1 that's always going to be the conflict here. And  
2 part of our role as commissioners is to set those  
3 priorities.

4 But it seems to me we ought to think a  
5 little bit about those things in the first instance,  
6 and if we set priorities for the year, we should  
7 stick with some of the priorities we've set.

8 Because I, as I said last time, would have very much  
9 liked to have seen a hearing on high-stakes testing,  
10 and I'm a little confused as to why the staff has  
11 time to do a lot of these other things but not the  
12 high-stakes testing hearing. So I guess I just  
13 raise that as something we should all keep in mind  
14 going forward when we're talking about project  
15 planning.

16 CHAIRPERSON BERRY: Yes. Is part of the  
17 answer, Staff Director, that it's a different staff  
18 we're talking about?

19 STAFF DIRECTOR JIN: Well, that's part  
20 of it.

21 CHAIRPERSON BERRY: And what's the other  
22 part of it?

23 STAFF DIRECTOR JIN: Well, and time is  
24 always an issue, resources always short. But I  
25 think the main thrust of our recommendation

1 regarding educational accountability, as we examined  
2 the information we had, we just felt it could be  
3 done better a different way too. And a briefing is  
4 very different than a hearing.

5 CHAIRPERSON BERRY: Briefings are  
6 cheaper, right?

7 STAFF DIRECTOR JIN: And they're easier  
8 to do.

9 COMMISSIONER BRACERAS: Right. But a  
10 certain number of briefings, ultimately, probably  
11 add up to the same amount of work as a hearing. So  
12 I guess it raises a flag in my mind as to whether  
13 the real reason behind cancelling the hearing was  
14 substantive as opposed to resource-based, because  
15 it's hard for me to understand why we have resources  
16 to do X, Y and Z but not to do A. So all I'm saying  
17 is it raises a flag in my mind as to the --

18 CHAIRPERSON BERRY: What is the  
19 substance you're referring to?

20 COMMISSIONER BRACERAS: Well, I don't  
21 know. I'm just saying it poses a question.

22 CHAIRPERSON BERRY: Oh.

23 COMMISSIONER BRACERAS: It poses a  
24 question as to what's really going on here, and I,  
25 frankly, you know, would still like a little more

1 information on why staff didn't feel a hearing on  
2 high-stakes testing was necessary. But I realize  
3 we've decided that issue and we've moved beyond it,  
4 but it does raise an issue in my mind.

5 CHAIRPERSON BERRY: Yes. Well, I have  
6 nothing to say about that. Yes? Did you have your  
7 hand up?

8 COMMISSIONER EDLEY: Obviously, I share  
9 some of Commissioner Bracer's interest in the high-  
10 stakes testing and hope that eventually we'll get  
11 back to it, but also on this one I do think we have  
12 enough invested in it already that a hearing and  
13 doing some updating of the earlier report, in light  
14 of new data, should not be heavy lifting, it seems  
15 to me -- a briefing, I'm sorry, should not be heavy  
16 lifting. It also would be very timely. Any day now  
17 there could be a decision from the 6th Circuit on  
18 the Michigan case. I think many people think  
19 there's a pretty good likelihood that the Supreme  
20 Court would grant cert on it.

21 I think part of the background  
22 understanding of this issue that would be useful for  
23 everybody, including the Court, is what are the  
24 numbers? And in what respects are these percent  
25 plans successful or unsuccessful because it

1 obviously bears on the narrow tailoring analysis  
2 under the 14th Amendment and Title 6. So I think if  
3 in the next several months we were able to get  
4 through this and actually have an updated report, it  
5 would be very good service for the public-at-large.

6 COMMISSIONER BRACERAS: I agree with  
7 that, and I'm not saying in any way that we  
8 shouldn't do that. Probably, at this time, we'd all  
9 like to do everything that's proposed or that's  
10 current and timely, but the staff obviously doesn't  
11 have the resources to do that. So it just seems to  
12 me that last week we were trying to alleviate their  
13 burden, and this week we're putting more on their  
14 plate, and I just wanted to raise that.

15 CHAIRPERSON BERRY: Thank you.  
16 Commissioner Wilson?

17 COMMISSIONER WILSON: Thank you, Madam  
18 Chair. I'd like to raise an issue that might  
19 possibly add additional burden to the staff's  
20 already very light load. And that is a question,  
21 something I've sort of been watching with concern,  
22 and I'm not sure it comes under our jurisdiction.  
23 And that is the issue of adoption for homosexual  
24 parents or people who would like to become parents  
25 who are in homosexual relationships. And I've been



1 following the situation in Florida where it is  
 2 against the law, and I'm wondering if, a, it comes  
 3 under our jurisdiction in any way, and if it does,  
 4 b, if the staff might investigate a little bit and  
 5 come up with a report that might eventually lead to  
 6 a briefing or what? I don't know how other people  
 7 -- well, you tell me if it comes under our  
 8 jurisdiction.

9 CHAIRPERSON BERRY: Well, I'll ask the  
 10 General Counsel, Deputy General Counsel, but in the  
 11 past, we've -- when we had issues concerning gays  
 12 and lesbians we have done it under our  
 13 Administration of Justice jurisdiction if it fit  
 14 there -- if it were an issue that fit under the  
 15 Administration of Justice, which is a broad  
 16 jurisdiction. But I'll ask if the General Counsel  
 17 -- if the Deputy General Counsel, who doesn't know  
 18 you're going to ask her these questions, knows the  
 19 answer to it or whether she'd like to look into it  
 20 or whatever. Debra?

21 MS. CARR: Thank you. I think I'd  
 22 actually like to look into whether in fact that does  
 23 fit under the general category of Administration of  
 24 Justice. I can't say now it does or doesn't.

25 CHAIRPERSON BERRY: So we will ask the

1 Deputy General Counsel to do that, without  
2 objection. Okay. Yes, Commissioner Thernstrom?

3 COMMISSIONER THERNSTROM: Just to return  
4 to the higher ed question, I think that the only new  
5 data, but I could be wrong, that we have has come  
6 out of California so that there is a real point to  
7 focusing on that state. I could be wrong on that.

8 And then just one word on the high-  
9 stakes testing question. The burden on the staff on  
10 that issue would actually be unusually light,  
11 because there are at least three commissioners here,  
12 and arguably four, who have quite a bit of expertise  
13 on K through 12 education. And so, you know, I do  
14 -- you know, I said this last time, and I'll repeat  
15 it, I do think it is a shame that this expertise is  
16 not being drawn upon in the Commission's work on  
17 this question.

18 CHAIRPERSON BERRY: Yes, Commissioner?

19 VICE CHAIRPERSON REYNOSO: Madam Chair,  
20 maybe I misunderstood or misrecollect. I thought  
21 that the decision was to not go on and have a  
22 hearing --

23 CHAIRPERSON BERRY: A briefing.

24 VICE CHAIRPERSON REYNOSO: -- but that  
25 the staff was still going to stay on top of this

1 issue, and therefore --

2 CHAIRPERSON BERRY: And there will be a  
3 briefing too.

4 VICE CHAIRPERSON REYNOSO: Yes. And  
5 they will be collecting the data, I had thought.  
6 Now, okay, so it's not that we've forgotten about  
7 it, it's that --

8 CHAIRPERSON BERRY: A hearing.

9 VICE CHAIRPERSON REYNOSO: -- it's that  
10 a hearing is very time-intensive, and therefore  
11 we're going to take it sort of a step at a time.  
12 Okay. Well, I started getting concerned that -- I  
13 have the same interest. I just started getting  
14 concerned.

15 COMMISSIONER EDLEY: We didn't pick a  
16 time. It's not calendared yet.

17 CHAIRPERSON BERRY: No, it's not a time,  
18 but it's going to be -- the only thing I would in  
19 response to Commissioner Thernstrom is that her  
20 question, which she has repeated here and elsewhere,  
21 fundamentally misstates the role of the Commission  
22 and the role of the commissioners and the staff.  
23 The work of the Commission does not depend upon the  
24 expertise of any given commissioner. I feel myself  
25 to be an expert about a whole lot of things. I may

1 not be expert in any of them, but I feel myself to  
2 be an expert about them, and feel like I could write  
3 the report better than anybody. But the point is  
4 that --

5 VICE CHAIRPERSON REYNOSO: Except, of  
6 course, the rest of us.

7 CHAIRPERSON BERRY: Right, the rest of  
8 you.

9 (Laughter.)

10 CHAIRPERSON BERRY: We are a collegial  
11 body, and we make policy, and the staff is to do the  
12 work, and we are to stay out of it until they bring  
13 it to us. And we give them policy guidance, but  
14 we're not supposed to do the work. It's never been  
15 done that way. If the Commission should decide that  
16 it wishes to do it that way, I would be very much  
17 open to the Commission deciding that. But unless it  
18 does, then the staff does the work, the full-time  
19 staff, civil servants, and don't let any of our  
20 little biases or views or what we think we're expert  
21 about, and some of us may not be expert about  
22 anything having to do with this. But that's the way  
23 it is, and so until it changes, that's the way we do  
24 it. Yes, Commissioner Braceras?

25 COMMISSIONER BRACERAS: I haven't been

1 here long enough to know if this has come up before,  
 2 but I do think in this particular case it's  
 3 interesting, because the staff obviously conducts  
 4 interviews with experts and other things, but in  
 5 this particular case, as Commissioner Thernstrom  
 6 said, there are experts who are sitting right here.

7 And I don't know -- I mean I know Commissioner  
 8 Edley is an expert in this area. I don't know if  
 9 the staff has availed themselves of his knowledge or  
 10 of Commissioner Thernstrom's knowledge, but  
 11 certainly if I were doing a report on high-stakes  
 12 testing, those would be the first two people -- two  
 13 of the first people I would talk to about it. So I  
 14 would just urge them to take advantage of the people  
 15 who are here, and not that the commissioners should  
 16 do the work, but that they can provide information.

17 CHAIRPERSON BERRY: That's not how the  
 18 Commission operates. You are to make the --

19 COMMISSIONER BRACERAS: That's  
 20 unfortunate.

21 CHAIRPERSON BERRY: We are to make  
 22 decisions about the matters once -- to give guidance  
 23 to the work, they go do the work, and then we may  
 24 use our expertise or lack thereof, and different  
 25 people may not have any expertise about anything in

1 particular. The Commission's design was not set up  
2 to have experts on it who knew about this, that and  
3 the other, but public spirited citizens who had a  
4 reputation in some other arena who would bring that  
5 reputation with them and gain respect.

6 COMMISSIONER BRACERAS: But if they  
7 weren't on the Commission, then they'd probably be  
8 consulted. So what you're saying is that by their  
9 presence on the Commission they're undermining the  
10 report because the staff --

11 CHAIRPERSON BERRY: Right.

12 COMMISSIONER BRACERAS: -- isn't allowed  
13 to contact them and tap into their expertise?

14 CHAIRPERSON BERRY: No one commissioner  
15 is supposed to influence the report before it's  
16 written. Everybody's supposed to have an equal  
17 shot.

18 COMMISSIONER BRACERAS: Well, I don't  
19 think they should influence the conclusions of the  
20 report one way or the other, but to interview people  
21 from a variety of spectrums who they have great  
22 access to, it seems a shame not to tap into that  
23 knowledge base.

24 CHAIRPERSON BERRY: Well, you'll get  
25 your crack at it when it's done. And if the

1 Commission wishes to change the process, which was  
2 long before my time, then the Commission can do so.

3 COMMISSIONER BRACERAS: I would like to,  
4 perhaps not at this meeting, but I would like to  
5 propose that that process be changed, because at  
6 least ostensibly we were all put on this Commission  
7 because we knew something about these issues. And  
8 if the staff can't avail themselves of the knowledge  
9 of some of the commissioners, it seems silly. I  
10 mean we might as well just get the man running the  
11 doughnut shop downstairs to sit on the Commission, I  
12 mean if it's not about the issues. So it seems to  
13 me counterproductive to bring people here to sit on  
14 this Commission who do have some knowledge of these  
15 issues and for the staff not to avail themselves of  
16 that resource. So, yes, I would like to, down the  
17 road, and I will formulate a more coherent proposal,  
18 but I would, down the road, like to change that,  
19 because I think commissioners should be able to be  
20 as active as they want, and the staff should be able  
21 to communicate with the commissioners freely and tap  
22 into their expertise on any issue.

23 CHAIRPERSON BERRY: Yes. Well, that's  
24 -- you may communicate with staff, you may ask the  
25 Staff Director. That's always the way that's been

1 done too, and if you'd like to change that, you can  
2 by vote. But I just -- I'm going to recognize you,  
3 Commissioner Wilson, but the last thing I'll say on  
4 this, the really last thing, is that the history of  
5 this Commission, if you look at the faces on the  
6 wall and the people who were appointed to this  
7 Commission, they weren't appointed because they knew  
8 all about civil rights.

9           Father Ted Hesburgh wasn't appointed to  
10 the Civil Rights Commission because he was an expert  
11 on issues of civil rights, it was because he was a  
12 distinguished President of a university who brought  
13 that distinction, they thought, at the time to the  
14 Commission. Neither was Arthur Fleming appointed to  
15 this Commission for that reason. The people who --  
16 Mary Lou Smith wasn't appointed for that reason, but  
17 because she was a distinguished Republican person  
18 who had been the first woman to be Chair of the RNC  
19 and the like. And they brought that kind of -- and  
20 there are people sitting on this Commission now who  
21 are not experts in the area of civil rights but who  
22 bring other distinction to bear.

23           And the idea is that every commissioner  
24 is supposed to bring that distinction, that's the  
25 idea. And that they will bring that imprimatur when



1 they look at the work of the staff, when they guide  
2 on what they think are the big issues out here, and  
3 will collegially go over the reports, discuss them,  
4 make their decisions about it and then say something  
5 that an ordinary human being out there who's  
6 educated might think made sense. That's the idea.  
7 It can be changed, but that's the idea.

8 Commissioner Wilson?

9 COMMISSIONER WILSON: Thank you, Madam  
10 Chair. First of all, I'd like to say in response to  
11 Commissioner Braceras' cry, really, is that when we  
12 recommend names of experts for the staff to call  
13 upon, that's basically using one's expertise to  
14 recommend other people. However --

15 COMMISSIONER BRACERAS: But I would  
16 recommend Edley and Thernstrom.

17 COMMISSIONER THERNSTROM: And I would  
18 add Braceras and the Chair.

19 COMMISSIONER WILSON: And I would add  
20 that I let you speak without interruption, and I  
21 would appreciate the same courtesy.

22 CHAIRPERSON BERRY: And I am sick and  
23 tired of at every meeting having to remind people  
24 not to interrupt people when they're recognized to  
25 speak. I just don't understand why common courtesy

1 cannot prevail in these meetings. Yes, Commissioner  
2 Wilson, would you please finish your statement?

3 COMMISSIONER WILSON: Thank you. The  
4 second thing I would like to say when, down the  
5 road, Commissioner Braceras, if you do come up with  
6 a proposal to change the way in which this  
7 Commission functions on a basic level, I want to say  
8 right now that I will fight vociferously against  
9 this.

10 COMMISSIONER BRACERAS: Even though you  
11 don't know what the proposal is you're already  
12 saying you'll be against it?

13 CHAIRPERSON BERRY: Commissioner  
14 Braceras, Commissioner Braceras, you are not  
15 recognized. Do you do this deliberately just to  
16 irritate everyone? The Commissioner is speaking.  
17 She asked you to be polite enough to let her finish  
18 her statement. She didn't interrupt you when you  
19 made your statement. Could you please -- unless you  
20 are, by design, trying to irritate Commissioner  
21 Wilson, could you please let her finish her  
22 statement? I will recognize you afterwards.  
23 Commissioner Wilson, please proceed.

24 COMMISSIONER WILSON: Again, in response  
25 to Commissioner Braceras, I was courteous enough, a,

1 to be quiet, but, b, I did listen to what you said.

2 And what you said was how you thought this should  
3 be changed. I listened to you very carefully. So  
4 in response to that, I will say, projecting, should  
5 you make this proposal -- and the reason why I  
6 wanted to say this right now is that it seems to me  
7 that the people on this Commission are -- that the  
8 Commission was devised in such a way so that the  
9 commissioners would be objective and the Commission  
10 would not be politicized by the commissioners, and  
11 that what we were here for is to bring our judgment  
12 and what wisdom, paltry or not, we had from our life  
13 experience. That's why we are here.

14 One of the reasons why I would fight for  
15 this, and the only reason I would fight for this, is  
16 that this Commission was formed out of desperation  
17 and a real need, and these people thought really  
18 long and hard and carefully about how to go about  
19 designing this Commission. And I would fight to  
20 uphold that, because I think there was a lot of  
21 wisdom that went into the way this Commission was  
22 organized.

23 CHAIRPERSON BERRY: Okay. Thank you.  
24 Do you wish to be recognized, Commissioner Braceras?

25 COMMISSIONER BRACERAS: Sure. I mean I

1 only wish to say that I think it's unusual that  
2 somebody would argue vociferously against a proposal  
3 that hasn't been coherently formulated yet. But  
4 that being said, I'm not proposing that we  
5 restructure the Commission in a way that would  
6 somehow counter the intentions of those who founded  
7 the Commission. I'm just saying that as far as  
8 internal rules are concerned, there could be a  
9 little fine tuning, and I certainly didn't mean to  
10 suggest any dramatic overhaul of Commission or  
11 Commission processes. But I think, as I said,  
12 internal rules could be improved.

13 CHAIRPERSON BERRY: Okay. Commissioner  
14 Thernstrom?

15 COMMISSIONER THERNSTROM: There's been  
16 quite a bit of talk just now about how the  
17 Commission works, its basic design, its history, and  
18 one of the issues that has come up repeatedly among  
19 -- I mean there are many issues, but one of them  
20 came up yesterday is contact between commissioners  
21 and staff other than through the Staff Director's  
22 Office, and, you know, I hear, "Well, that's how the  
23 Commission works, that's its design," but I can't  
24 find anywhere in any written regulations any  
25 reference to that arrangement or indeed a lot of

1 other arrangements that fall into that general  
2 category that have been mentioned this morning, like  
3 the staff can't interview commissioners for their  
4 expertise on particular subjects. I mean I just  
5 don't find any place where this is written. I don't  
6 know what these rules are, I don't know what these  
7 regulations are. I'm delighted to be enlightened by  
8 having -- by the Staff Director providing this  
9 information to me, but I've looked for it, and I  
10 can't find it.

11 CHAIRPERSON BERRY: I will say, and then  
12 we'll move on because we have three things to do  
13 before we have our guests, who were here on time and  
14 deserve to be heard on time, is that the matters  
15 that we have just been discussing are matters of  
16 Commission practice. They have been raised in this  
17 Commission over the years by numerous commissioners  
18 at various times, including I, myself, raising them.

19 COMMISSIONER THERNSTROM: I was going to  
20 say you, yourself.

21 CHAIRPERSON BERRY: And there have been  
22 responses given which are consistent with what the  
23 responses were today. The system has apparently --  
24 and so it's been in existence. I am not one of  
25 those people who say that because something's always

1       been done some way we should never change it, so  
2       that isn't my point at all, but I am an historian,  
3       which is why I keep talking about history, and I  
4       can't help that.

5               But if anyone wishes to change it or has  
6       a proposal to change it, I don't mind people  
7       presenting proposals to change it. I am simply  
8       relating to you what has happened and why it has  
9       happened, and it is in transcripts. You can find  
10      discussions over the years. I remember Arthur  
11      Fleming sitting and saying, "The commissioners only  
12      have one employee that they supervise and that's the  
13      Staff Director." He said that to me and shook his  
14      finger, which I don't do, I don't shake my finger at  
15      people, I don't think. But, in any case, if you  
16      have a proposal, present it, and we'll discuss it.

17             Now, the -- yes, Staff Director?

18             STAFF DIRECTOR JIN: I have one more  
19      item under Staff Director's report.

20             CHAIRPERSON BERRY: Oh, okay.

21             STAFF DIRECTOR JIN: I didn't want you  
22      to go to the next area.

23             CHAIRPERSON BERRY: Okay. I'm going to  
24      do federal funding of civil rights things next.

25             STAFF DIRECTOR JIN: Under the Staff

1 Director's report or --

2 CHAIRPERSON BERRY: Yes -- no, the next  
3 item.

4 STAFF DIRECTOR JIN: Yes. I did want to  
5 make a -- just briefly talk about an Advisory  
6 Committee meeting the District of Columbia, Virginia  
7 and Maryland will be having on the 24th and 25th, I  
8 believe, and they will be addressing some post-  
9 September 11 civil rights issues in the two-day  
10 event down in Annandale, Virginia. It's a joint  
11 effort between the three SACs. Because it should be  
12 an excellent forum, is nearby and has been the  
13 subject of keen interest to the commissioners, I  
14 asked Ivy Davis, the Director of our Regional  
15 Programs Coordinating Unit, and Ki Taek Chun, our  
16 Eastern Regional Office Director, to give a very  
17 short briefing on the event in case you have any  
18 questions or in case any of you might want to  
19 attend.

20 CHAIRPERSON BERRY: It's got to be  
21 really short.

22 STAFF DIRECTOR JIN: Very short.

23 CHAIRPERSON BERRY: Because you took up  
24 all the time.

25 (Laughter.)

1 MS. DAVIS: Well, I'll say good morning  
2 and hand it over to Ki Taek.

3 (Laughter.)

4 CHAIRPERSON BERRY: Yes, Ki Taek?

5 MR. CHUN: Well, in the interest of  
6 time, we are passing a most up to date agenda, which  
7 is evolving every day, but it's current as of  
8 yesterday, and I think that's self-evident. This is  
9 a joint effort of the three committees, and I think  
10 we all have expectations it will be a wonderful  
11 forum and, as Staff Director Jin said, it's nearby.

12 And the three committees would like to extend an  
13 invitation, I guess, I would say, to the forum so  
14 that you may -- if you feel inclined, there is an  
15 opportunity for you to participate in some  
16 appropriate manner. The agenda is there, and if you  
17 have any questions, I'll be happy to answer them.

18 CHAIRPERSON BERRY: So if people have  
19 time on the 24th and 25th, and interest, then you  
20 are invited to participate in this forum just like  
21 you participated in others.

22 MR. CHUN: But we would be interested in  
23 knowing in advance so that we can make appropriate  
24 arrangements.

25 CHAIRPERSON BERRY: Right. So I'm just



1 saying if people would check their calendars and see  
2 where they are and see if it's possible for them to  
3 do so, and you are, of course, invited.

4 COMMISSIONER EDLEY: This looks  
5 fabulous.

6 CHAIRPERSON BERRY: It does, yes.

7 COMMISSIONER EDLEY: It really looks  
8 fabulous.

9 VICE CHAIRPERSON REYNOSO: Excuse me.  
10 Is it both the 24th and the 25th?

11 MR. CHUN: It's a two-day event.

12 VICE CHAIRPERSON REYNOSO: Oh, I see.

13 MR. CHUN: The times are indicated under  
14 each individual panel.

15 VICE CHAIRPERSON REYNOSO: I see. Got  
16 you.

17 CHAIRPERSON BERRY: Okay. All right.

18 MR. CHUN: You can give me a call, the  
19 Office a call.

20 CHAIRPERSON BERRY: It looks terrific,  
21 it looks great. Good job, Ki Taek. Good job, Ivy.  
22 Thank you very much.

23 The next item on the agenda is to -- I  
24 would like someone to move the approval of the  
25 federal funding of Civil Rights Enforcement report.

1 COMMISSIONER EDLEY: So moved.

2 CHAIRPERSON BERRY: Could I get a  
3 second?

4 VICE CHAIRPERSON REYNOSO: Second.

5 CHAIRPERSON BERRY: As you know, this is  
6 just a baseline report. We did one last year, and  
7 we said at that time that every year we would --  
8 that OCRE would analyze the funding and simply give  
9 a report on what it looked like, and so that's what  
10 they've done this year, and we hope they'll keep  
11 doing that every year.

12 Is there any further discussion? All in  
13 favor indicate by saying aye. Opposed?

14 (Commissioners vote aye.)

15 CHAIRPERSON BERRY: So ordered.

16 **STATE ADVISORY COMMITTEE APPOINTMENTS FOR COLORADO,**  
17 **KANSAS AND LOUISIANA AND APPROVAL OF SAC CHAIRS FOR**  
18 **DISTRICT OF COLUMBIA AND STATE OF WASHINGTON**

19 CHAIRPERSON BERRY: The next one is the  
20 State Advisory Committee appointments for Colorado.

21 Let's take Colorado and the approval of the SAC  
22 Chairs for the District of Columbia and Washington  
23 State, and I'll come back to Kansas and Louisiana.

24 State Advisory Committee appointments  
25 for Colorado, approval of SAC Chairs for the

1 District of Columbia and Washington State, could I  
2 get a motion to approve?

3 VICE CHAIRPERSON REYNOSO: So moved.

4 STAFF DIRECTOR JIN: Madam Chair,  
5 Washington State's Chair is not ready.

6 CHAIRPERSON BERRY: Is not?

7 STAFF DIRECTOR JIN: No.

8 CHAIRPERSON BERRY: Okay.

9 STAFF DIRECTOR JIN: But the District of  
10 Columbia --

11 CHAIRPERSON BERRY: Chair for D.C. and  
12 appointment for Colorado only, motion to approve?

13 VICE CHAIRPERSON REYNOSO: Motion.

14 CHAIRPERSON BERRY: Second?

15 COMMISSIONER MEEKS: Second.

16 CHAIRPERSON BERRY: All in favor  
17 indicate by saying aye. Opposed?

18 (Commissioners aye.)

19 CHAIRPERSON BERRY: So ordered. Now,  
20 Advisory Committee appointments for Kansas and  
21 Louisiana, could I get a motion first, and then  
22 after we get the motion we'll --

23 VICE CHAIRPERSON REYNOSO: So moved.

24 CHAIRPERSON BERRY: Second?

25 COMMISSIONER EDLEY: Second.

1 CHAIRPERSON BERRY: Discussion?

2 COMMISSIONER MEEKS: I am actually going  
3 to ask to have them sent back on either one, and  
4 particularly Kansas is at issue because the Native  
5 American population there is about nine percent, and  
6 he has no Native Americans on the SAC. It's five  
7 percent in Louisiana, but still I think that  
8 represents a big enough share of the population that  
9 there should be at least one Native American on the  
10 SAC from there. So I'm going to ask that they be  
11 sent back.

12 COMMISSIONER THERNSTROM: This is Kansas  
13 you're talking about?

14 COMMISSIONER MEEKS: Yes. Kansas and  
15 Louisiana.

16 COMMISSIONER THERNSTROM: With the  
17 Kansas, it says the percent of total population of  
18 American Indian and Alaskan Native is less than one  
19 percent.

20 COMMISSIONER MEEKS: No. I think you're  
21 wrong on Kansas.

22 COMMISSIONER THERNSTROM: Is it wrong?

23 COMMISSIONER MEEKS: It's eight percent.

24 CHAIRPERSON BERRY: Must not be counting  
25 --

1 COMMISSIONER MEEKS: That's not what  
2 mine said.

3 COMMISSIONER THERNSTROM: Well, wait a  
4 minute. Demographics for Kansas --

5 CHAIRPERSON BERRY: Asawamadi Indians  
6 and the --

7 COMMISSIONER MEEKS: I'm looking at -- I  
8 don't know what page it is

9 COMMISSIONER THERNSTROM: Kansas.

10 COMMISSIONER MEEKS: Louisiana -- oh,  
11 no, that's five percent. No, Kansas I'm looking at.  
12 It says 2000 census data for Kansas, on Page -- it  
13 says nine percent.

14 COMMISSIONER THERNSTROM: No, it says  
15 0.9, 0.9. It's less than one percent.

16 CHAIRPERSON BERRY: Why don't we do  
17 this, in the interest of time -- are there any  
18 Indians on it, I don't know.

19 COMMISSIONER MEEKS: The numbers don't  
20 add up to begin with.

21 CHAIRPERSON BERRY: No, they never do.  
22 Are there any Indians on the Louisiana one?

23 COMMISSIONER MEEKS: No, there are not.

24 CHAIRPERSON BERRY: Are there any  
25 Indians on any of these?

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COMMISSIONER MEEKS: Yes. Colorado has Roland.

CHAIRPERSON BERRY: Why don't we do this: Why don't we -- we can either approve them with the understanding, like we do for the under 40 category, and say, "You should go back, that that is an issue." Why don't we do that. Is that okay, Elsie, if we approve it and say that they should go back and look? In the case of Louisiana, "You should add someone," and "You should go back in Kansas and see if there some reason why you should modify it." So we will approve them with that understanding if that's okay with everybody, that they need to go back and look at them.

All right. All in favor of the motion, as stated, indicate by saying aye. Opposed.

(Commissioners vote aye.)

CHAIRPERSON BERRY: So ordered.

**V. STATE ADVISORY COMMITTEE REPORT**

CHAIRPERSON BERRY: The next item on the agenda is the Alaska State Advisory Committee report. Some of the commissioners went to Alaska when they held a forum, didn't the Vice Chair go?

VICE CHAIRPERSON REYNOSO: I did.

CHAIRPERSON BERRY: And so did

1 Commissioner Meeks and Commissioner Lee, I think.

2 VICE CHAIRPERSON REYNOSO: Yes.

3 CHAIRPERSON BERRY: Absolutely. I was  
4 just in Alaska two weeks ago, and everybody was  
5 still raving about the work that you guys did up  
6 there. And so I think this is a good report. What  
7 do you think?

8 VICE CHAIRPERSON REYNOSO: Yes, Madam  
9 Chair. I was very pleased with the report, and I  
10 certainly think it ought to be approved.

11 CHAIRPERSON BERRY: Okay. Could I get a  
12 motion to do so?

13 VICE CHAIRPERSON REYNOSO: So moved.

14 CHAIRPERSON BERRY: A second? A second  
15 to the Alaska --

16 COMMISSIONER MEEKS: I'll second.

17 CHAIRPERSON BERRY: Any further  
18 discussion? All in favor indicate by saying aye.  
19 Opposed.

20 (Commissioners vote aye.)

21 CHAIRPERSON BERRY: So ordered. We now  
22 go to the briefing on the reauthorization of the  
23 Individuals with Disabilities Act.

24 COMMISSIONER THERNSTROM: Madam Chair,  
25 could I just say one last thing, just going back to

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the --

CHAIRPERSON BERRY: Oh, okay.

COMMISSIONER THERNSTROM: -- just going back to the Metropolitan Washington -- the agenda for April 24th and 25th. I would like to congratulate the group that put this together, congratulate on the record. I think it's splendid -- these are splendid panels. They're very diverse in their views and reflect the complexity of these issues. So I would like, on the record, to say -- to congratulate the group that put this together.

CHAIRPERSON BERRY: Fantastic. Okay. Thank you very much.

I'll entertain a motion that we adjourn.

VICE CHAIRPERSON REYNOSO: So motioned.

CHAIRPERSON BERRY: Non-debatable. All in favor indicate by saying aye. Opposed.

(Commissioners vote aye.)

(Whereupon, at 12:40 p.m., the Commission meeting was concluded.)