

UNITED STATES COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

+ + + + +

UNEDITED

FRIDAY

NOVEMBER 15, 2002

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SAN DIEGO, CALIFORNIA

+ + + + +

The Commission convened at 8:35 a.m., in the Coast Ballroom, Holiday Inn by the Bay, 1355 North Harbor Drive, San Diego, California, 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

Present by telephone:

PETER N. KIRSANOW, COMMISSIONER
RUSSELL G. REDENBAUGH, COMMISSIONER
ABIGAIL THERNSTROM, COMMISSIONER

LESLIE R. JIN, STAFF DIRECTOR

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Staff Present:

KIMBERLY ALTON
DEBRA CARR, DEPUTY GENERAL COUNSEL
IVY DAVIS
TERRI DICKERSON
PAMELA DUNSTON
JOYCE SMITH
ALEX SUN

Staff from the Western Regional Office Present:

GRACE HERNANDEZ
PHIL MONTEZ
ART PALACIO
ANGIE TREVINO

State Advisory Committee Members Present:

FERNANDO HERNANDEZ, Chair, California SAC
GIL ALSTON, Retired Judge, Member California SAC
JANE WEBB-VIGNERY, Chair, Arizona SAC

Commissioner Assistants Present:

LAURA BATIE
PATRICK DUFFY
JOY FREEMAN
KIMBERLY SCHOLD
KRISHNA TOOLSIE

Also present:

PENNY EDGERT

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

(8:35 o'clock a.m.)

1
2
3 CHAIRPERSON BERRY: The meeting will come
4 to order. Online. I think -- who's online, could you
5 please identify yourselves?

6 COMMISSIONER REDENBAUGH: Commissioner
7 Redenbaugh.

8 CHAIRPERSON BERRY: And, Commissioner
9 Thernstrom, are you there?

10 COMMISSIONER THERNSTROM: Commissioner
11 Thernstrom is online.

12 CHAIRPERSON BERRY: Okay. Thank you.

13 The meeting will come to order.

14 COMMISSIONER THERNSTROM: Commissioner
15 Kirsanow should be online.

16 COMMISSIONER KIRSANOW: I'm on.

17 CHAIRPERSON BERRY: Are you on,
18 Commissioner Kirsanow?

19 COMMISSIONER KIRSANOW: Commissioner
20 Kirsanow's on.

21 CHAIRPERSON BERRY: Hello. Good morning.

22 COMMISSIONER KIRSANOW: Good morning.

23 **I. Approval of the Agenda**

24 CHAIRPERSON BERRY: I guess it's still
25 morning.

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1 The first item on the agenda is the
2 approval of the agenda. I wanted to say to the
3 Commissioners that our SAC Chairs are here. And our
4 SAC Chair from Arizona will have to leave early today.

5 And so I am going to ask the Commissioners'
6 indulgence, that we could have the presentation of
7 projects after the SAC presentations.

8 There are two SAC members who will --
9 Chairs who will present to us, from Arizona and
10 California, so that we can indulge and appreciate her
11 schedule since she came here all the way from Arizona
12 and has to go back, it turns out, in order to give
13 this presentation.

14 So if there is no objection to that, I
15 would ask for the approval of the agenda with that
16 understanding. Could I get a motion to --

17 COMMISSIONER MEEKS: I'll move.

18 COMMISSIONER EDLEY: Second.

19 CHAIRPERSON BERRY: Could I get a second?

20 COMMISSIONER EDLEY: Second.

21 CHAIRPERSON BERRY: Is there anybody who
22 has any other discussion of the agenda?

23 COMMISSIONER THERNSTROM: Yes. I wonder,
24 Madam Chair, whether we could -- if there are items to
25 be voted on, whether we could push them towards the

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1 front as well as so that those of us who cannot stay
2 for the entire time will miss no vote.

3 CHAIRPERSON BERRY: I couldn't understand
4 what you said, Commissioner.

5 COMMISSIONER THERNSTROM: Are there items
6 that we need -- that will be voted on today? Because
7 I have a preference, if possible, for voting, bringing
8 those items up earlier rather than later because I
9 have some time constraints myself.

10 CHAIRPERSON BERRY: Okay. That's good,
11 because the items that we understand that we need to
12 vote on will all be brought up before the SAC Chair
13 gives her presentation.

14 COMMISSIONER THERNSTROM: Good. Thank
15 you.

16 CHAIRPERSON BERRY: Okay. Unless
17 something happens that I don't know about, and I can't
18 tell that.

19 All those in favor of approving the agenda
20 with those understandings indicate by saying "Aye."

21 COMMISSIONERS: Aye.

22 CHAIRPERSON BERRY: Opposed?

23 So ordered.

24 **II. Approval of the Minutes**

25 CHAIRPERSON BERRY: The next item is to

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1 approve the minutes of the July 19th meeting. We
2 simply do not ask the approval of any minutes for
3 September 13th and October 11th because the Commission
4 did not have an official meeting on that date, but we
5 are asking the item is to approve the minutes of the
6 July 19 meeting.

7 Could I get a motion?

8 COMMISSIONER THERNSTROM: So moved.

9 COMMISSIONER EDLEY: Second.

10 CHAIRPERSON BERRY: All those -- anybody
11 have any changes in the minutes for July 19th?

12 All those in favor indicate by saying,
13 "Aye."

14 COMMISSIONERS: Aye.

15 CHAIRPERSON BERRY: Opposed?

16 So ordered.

17 COMMISSIONER THERNSTROM: Madam Chair,
18 just one question. I'm sorry, I should have brought
19 this up before. Someplace in this agenda shouldn't
20 there be approval of the calendar for 2003?

21 CHAIRPERSON BERRY: That will be under the
22 Staff Director's Report.

23 COMMISSIONER THERNSTROM: Okay. Thank
24 you. I'm sorry.

25 CHAIRPERSON BERRY: That's all right.

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III. Announcements

CHAIRPERSON BERRY: On the announcements, there are many announcements to make about events associated with civil rights. I will mention a few of them.

November 16th, this month, we recognize that in 1990 on that date the Native American Graves Protection and Family Abuse Prevention Act was passed, which provides protection of American Indian gravesites and the repatriation of Indian remains and cultural artifacts to tribes, which was a very important issue for them and for the country.

November 10th, Fred Korematsu and Minoru Yasui and Gordon Hirabayashi filed their petitions to overturn their World War II convictions for violating the curfew and evacuation orders. They did that in 1983 and later on there was of course the law passed for recompense and they received apologies. So that day is marked.

There are the Individuals with Disabilities and Education Act, was enacted on November 29th, 1975.

I also point out that since the last time we had an official meeting, of course, Democratic

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1 Congresswoman Patsy Mink, who was a great champion of
2 civil rights and women's rights, education, died at
3 the age of 74 in Honolulu of viral pneumonia. She was
4 very instrumental in the passage of Title IX of the
5 education amendments.

6 I also would like to point out that since
7 our last meeting, Senator Paul Wellstone, of Minnesota
8 of course, who was a champion in the cause of civil
9 rights and human rights, among other things, and I
10 remember getting up at four o'clock in the morning in
11 Alabama to catch a plane to fly to -- a little plane
12 to fly to Minnesota during his first campaign to go to
13 breakfast, that he called up and begged me to come to.

14 That great champion of course died along with members
15 of his family and staff on this airplane.

16 This also is National American Indian and
17 Alaska Native Heritage Month, in November.

18 So I wanted to point out these. There are
19 other items, legislation and the like, that have taken
20 place that we could acknowledge, but I thought that
21 these were important.

22 Does anyone else have any announcements
23 that they would like to make?

24 COMMISSIONER BRACERAS: I do, Madam Chair.

25 CHAIRPERSON BERRY: Yes.

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1 COMMISSIONER BRACERAS: As some of you may
2 know, this year the Navy has revived its scholarship
3 program for students attending historically black
4 colleges. The ROTC program has 10 full scholarships
5 at each of 12 major historically black colleges or
6 universities. The restoration of these 120
7 scholarships for African American students is a
8 wonderful outreach program to help achieve diversity
9 in our armed forces.

10 And I'd like to congratulate this
11 admission for reviving that program which was dormant
12 under the previous administration.

13 My second announcement has to do with
14 President Bush's Commission on the Educational
15 Excellence for Hispanic Americans. And I just wanted
16 to announce that that commission has released an
17 interim report, the final report being due out in
18 March of the coming year. The report basically
19 studies the issue of Hispanic education in this
20 country. It does not make specific recommendations at
21 this time, but I believe the final report plans to do
22 that.

23 And I would recommend that anybody who's
24 interested take a look at it on the website, which is
25 www.yesican.gov.

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1 . And in conjunction with that, one of the
2 interim things they talk about is the need to do more
3 outreach to Hispanic parents, particularly immigrant
4 parents, about education and the importance of their
5 kids getting an education and staying in school.

6 And I know that this Commission, one of
7 the things we're charged with doing is issuing public
8 service announcements. That's part of our statute and
9 our charter. So I'd like everybody to at least think
10 about whether we might do some public service
11 announcement in Spanish for Spanish-language
12 television, just encouraging -- you know, in line with
13 our recommendation -- encouraging immigrant children
14 to stay in school and get a good education.

15 I think that might be something that would
16 be worth us looking into, so I wanted to announce the
17 report and suggest people take a look at it and ask
18 that we consider maybe doing a PSA on the topic.

19 CHAIRPERSON BERRY: Why don't we ask the
20 Staff Director to look into the possibility of doing
21 this PSA.

22 MR. JIN: Okay.

23 CHAIRPERSON BERRY: Okay? All right.

24 COMMISSIONER THERNSTROM: And I have one
25 announcement.

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1 CHAIRPERSON BERRY: Yes, Commissioner
2 Thernstrom. Yes.

3 COMMISSIONER THERNSTROM: I don't know if
4 all Commissioners know, but Hugh Price is stepping
5 down as President of the National Urban League. And I
6 just would like to personally note that Price has been
7 an enormously effective leader. That he with be hard
8 in fact to replace. I am very sorry to see him go. I
9 understand the need to move on in his own life, but
10 I'd like personally to commend Price for the work he
11 has done at the National Urban League and particularly
12 with respect to education.

13 CHAIRPERSON BERRY: Well, I think that
14 that's -- thank you for reminding us of Hugh's leaving
15 --

16 COMMISSIONER EDLEY: Madam Chair?

17 CHAIRPERSON BERRY: -- the Urban League.

18 Do you want to say something about that?

19 COMMISSIONER EDLEY: Yeah. I think that
20 -- I agree whole-heartedly. I think that might
21 warrant sort of a formal letter or something like that
22 from the Commission as a body. I think Commissioner
23 Thernstrom put it very well.

24 CHAIRPERSON BERRY: Well, we can do that.
25 When I became aware that he was leaving, I sent Hugh

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1 a note telling him that before he became President of
2 the Urban League I had said publicly, and it was
3 various articles, that the Urban League was missing in
4 action in many of the great policy debates of the
5 period and that since he had been there the Urban
6 League was in the midst of a very important policy
7 debate about issues such as education and the like.

8 So you're all right, he's done a great
9 job. If there's no objection to doing so, we may
10 draft a note to him saying that the Commission
11 commends him for his service, in particular his work
12 on education issues, wish him well and know that he
13 will be hard to replace. How's that?

14 COMMISSIONER THERNSTROM: That's great.

15 CHAIRPERSON BERRY: Yes, okay. Any other
16 announcements? Commissioner Meeks?

17 COMMISSIONER MEEKS: Yes, I do. It could
18 fall under the Staff Director's Report, but it's
19 related to the 2000 South Dakota SAC study that came
20 out of the forum that the Commissioners attended in
21 South Dakota.

22 After the SAC report was released the
23 Governor of South Dakota commissioned a study to
24 determine whether Native Americans were treated
25 differently than nonIndians. And I think we had some

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1 concerns about how can that be -- the methodology of
2 the report. But I think in the end the report was a
3 pretty balanced report, but it did find that there
4 were some disparities.

5 The researchers are now extending their
6 study to attempt to determine why that is. And those
7 findings are supposed to be released next summer.

8 And one of the recommendations that came
9 out of the report too was on the federal sentencing
10 guidelines, which after Native Americans, you know,
11 more than it does just about any other race. They
12 have formed an advisory committee of which I am a
13 member. And we're researching to see if Native
14 Americans are disproportionately affected by the
15 federal sentencing guidelines because of the federal
16 criminal jurisdiction over typical local law offenses.

17 And so we are also looking at comparing
18 the federal sentences to the state sentences for
19 similar cases. State by state where there's a large
20 population of Native Americans. We're going to try to
21 get an interim report out in March.

22 And one other recommendation that came out
23 of that report was for a treatment center at Pine
24 Ridge, South Dakota. And the Oglala Sioux Tribe
25 received a \$12.4 million DOJ grant to build a

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1 correctional facility that also includes space for
2 inmates to receive career counseling, substance abuse
3 treatment, and medical services.

4 The Lower Burrell Tribe has also been
5 approved a grant to build a similar facility.

6 And, lastly and relative, to the Indian
7 vote, in the 2000 South Dakota SAC report a
8 recommendation was made that Indians get involved with
9 state and federal elections and vote. And the 2002
10 election I'm happy to say had an unprecedented Indian
11 voter turnout in South Dakota.

12 On Pine Ridge, the typical turnout is
13 usually about 17 percent. This year it was 43
14 percent. And, you know, it can get better, but I
15 really believe that Native Americans can see now that
16 they can make a difference and stay involved in
17 elections. And it was -- I just attended the National
18 Congress of American Indians' conference and that was
19 really big news and got talked about a lot, and will
20 inspire I hope reservations across the country.

21 CHAIRPERSON BERRY: Thank you, Elsie.

22 I think it's really important that our
23 South Dakota SAC report, which made all those
24 recommendations, in the forum that we held out there
25 has been responded to in the way that you point out.

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1 And that it seems to, by all accounts from South
2 Dakota, made a tremendous difference.

3 I want to commend our South Dakota SAC for
4 the work that they did. And maybe the Staff Director
5 ought to send them a note and tell them that we
6 acknowledge that here. They will see the transcript,
7 but their work has had so many reverberations since
8 that time and it just keeps going.

9 Yes, Commissioner Edley.

10 COMMISSIONER EDLEY: Just a different
11 matter.

12 CHAIRPERSON BERRY: Yes.

13 COMMISSIONER EDLEY: The Civil Rights
14 Project at Harvard put out a report a couple of weeks
15 ago on just a simple analysis looking at state by
16 state and county by county disparities in spoiled
17 ballot rates using the 2000 election data.

18 And it got some press attention. I
19 commend it to everyone's attention. I'll see that
20 everybody gets a copy of it complete with the very
21 pretty color maps.

22 And I think we're all generally familiar
23 already from the work that we did on Florida with the
24 phenomenon. This is only county-level data, not
25 precedent level data. And the central finding of

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1 course is that there are very wide disparities from
2 state to state in the residual ballot rates. And that
3 even in many of the relatively well performing states
4 there are tremendous disparities county to county
5 within a state.

6 COMMISSIONER THERNSTROM: Controlling for
7 demographic?

8 COMMISSIONER EDLEY: No, not controlling
9 for anything. Just looking at the residual, --

10 COMMISSIONER THERNSTROM: I see.

11 COMMISSIONER EDLEY: -- at the error
12 rates.

13 COMMISSIONER THERNSTROM: Okay.

14 COMMISSIONER EDLEY: And the reason I
15 raise is that -- the reason I raise it is for two
16 things. One is that the recently -- the recently-
17 enacted federal election reform legislation, in my
18 view, frankly doesn't do very much to directly get at
19 this issue of disparities from jurisdiction to
20 jurisdiction in residual ballot rates, which is
21 unfortunate. Certainly some of the things that they
22 do in terms of the new technology and some money for
23 voter education will indirectly have an impact on
24 residual error rates over time, but one could have
25 some questions about whether the legislation goes as

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1 far as it should.

2 But for the future, I hope at some point
3 over the next year or two the Commission will have a
4 chance to revisit this issue to look at the -- to look
5 at the '02 data to see what happens, what the trends
6 are with respect to these disparities. I'm not
7 talking about race now. I'm just talking about
8 disparities from jurisdiction to jurisdiction. The
9 basic principle is the one person-one vote principle.

10 And that we understand very well in law that when
11 election districts are redrawn, the courts insist,
12 under the equal protection clause, are really quite
13 close match in populations from district to district
14 so as not to have vote dilution.

15 But the reality of course is if elections
16 are administered in a way that then results in
17 effective vote dilution because of disparities in
18 spoilage rates, then it just strikes me we're back in
19 the same ballgame of worrying that one community with
20 a poor election infrastructure or inadequate
21 investments in worker training or voter education may
22 end up having the votes from that jurisdiction not
23 count as much as votes in other jurisdictions.

24 So I simply wanted to -- I'll circulate
25 that report to -- to the Commission as a whole for

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1 your interest, and I wanted to flag it as something
2 that in the fullness of time and other work
3 permitting, we may want to take a look at this issue
4 of voter dilution as this new election commission gets
5 established under the statute. We may have some
6 recommendations for them to focus on.

7 CHAIRPERSON BERRY: Okay. Is there an
8 appropriation for that, or do you know? Does anybody
9 know? Is it being appropriated now or what?

10 COMMISSIONER EDLEY: It is, Madam Chair.
11 There's a -- yeah, a lot more than we will.

12 CHAIRPERSON BERRY: Oh. That's not too
13 hard.

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

15 CHAIRPERSON BERRY: The next item on the
16 agenda is the Staff Director's Report. And, as
17 Commissioner Thernstrom pointed out, we need to vote
18 on the Commission schedule for next year.

19 I think you were sent a schedule take a
20 look at to see if those days were -- the point was to
21 look to see if those were days on your calendar that
22 you thought you might be able to -- or would be able
23 to meet and to see if you agreed to that. And if you
24 had any suggestions to change these, that you would
25 make those suggestions.

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1 So if people brought their calendars or
2 are aware already of what their calendars are, could
3 we get a motion to approve this for purposes of
4 discussion?

5 COMMISSIONER MEEKS: I'll move.

6 CHAIRPERSON BERRY: And a second from
7 somebody.

8 COMMISSIONER THERNSTROM: I'll second it.

9 CHAIRPERSON BERRY: All right. Any
10 discussion?

11 COMMISSIONER THERNSTROM: If it was
12 possible for the other Commissioners, I would prefer
13 rather than March 14th a week later, March 21.

14 CHAIRPERSON BERRY: March 21? Everyone
15 should look at March.

16 Anybody else, anybody have a problem with
17 that?

18 COMMISSIONER MEEKS: I don't.

19 CHAIRPERSON BERRY: Okay. Well, then why
20 don't we change it to the 21st.

21 COMMISSIONER THERNSTROM: Thank you very
22 much.

23 CHAIRPERSON BERRY: All right. If there
24 are no other changes could we have agreement that this
25 schedule will be the dates of the meetings for the

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1 next calendar year?

2 All those in favor indicate by saying,
3 "Aye."

4 COMMISSIONERS: Aye.

5 CHAIRPERSON BERRY: Opposed?

6 So ordered.

7 COMMISSIONER BRACERAS: May be I heard
8 just a moment, Madam Chair?

9 CHAIRPERSON BERRY: Yes.

10 COMMISSIONER BRACERAS: I'm just wondering
11 whether it might be possible to have a little bit more
12 advanced notice from the staff on the location of the
13 meetings and the agenda. And I say this because I
14 realize that we voted in May to hold our meetings
15 outside the beltway wherever possible so that we could
16 hear from our State Advisory Committees, but for
17 planning purposes it would be certainly be helpful to
18 me and I know to other Commissioners to be able to
19 plan a little bit farther in advance.

20 I was not able to attend either the
21 September meeting or the October meeting and may have
22 been able to juggle some things and do so at least in
23 September if I had known sooner that we would not be
24 meeting in Washington. And it was just logistically
25 impossible for me to get there in Delaware in

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1 September, and I regret that I was unable to do so.

2 But I think that if we were able to have a
3 little bit more notice, it might facilitate all of the
4 Commissioners being able to attend, so.

5 CHAIRPERSON BERRY: Okay. Why don't we
6 agree -- yes, Commissioner Edley.

7 COMMISSIONER EDLEY: And if I can add.
8 Also I think if we're going to be -- if we're going to
9 have some activities the day before, that we also --

10 COMMISSIONER BRACERAS: Right.

11 COMMISSIONER EDLEY: -- get notification
12 of that as early as we can as well.

13 COMMISSIONER BRACERAS: Right. So I mean
14 I guess if I were going to put it in the form of a
15 motion -- well, why don't I just move to amend our
16 policy of 30-day notice to 60-day notice.

17 COMMISSIONER THERNSTROM: Well, why don't
18 you include Commissioner Edley's suggestion. And also
19 in order to properly prepare for subjects that are
20 being discussed at the meetings, it would be at the
21 same time very good to know what the topic will be, so
22 that we don't come to meetings unprepared.

23 CHAIRPERSON BERRY: Staff Director, what
24 do you think?

25 MR. JIN: Well, Madam Chair, I --

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1 CHAIRPERSON BERRY: It wouldn't be for the
2 meeting in December because we already decided that.
3 So we're not asking you to --

4 COMMISSIONER BRACERAS: Just starting in
5 the next calendar year.

6 CHAIRPERSON BERRY: What would be your --
7 so that would be that you would have to let us know
8 about, let's see practically speaking, what would be
9 the next thing you'd have to do? We'd have to know --

10 MR. JIN: Well, I certainly would ask if
11 we were to adopt this policy that we have a certain
12 grace period so we wouldn't have to like at this
13 moment come up with whatever's needed for January. I
14 mean we --

15 COMMISSIONER THERNSTROM: Well, January is
16 the planning meeting. Wouldn't that naturally be in
17 Washington?

18 CHAIRPERSON BERRY: Well, we don't know
19 yet. But the -- why don't we say that you will -- why
20 don't we agree to the motion with the understanding
21 that no later than the notification for the March
22 meeting, --

23 MR. JIN: Okay.

24 CHAIRPERSON BERRY: -- which gives you --
25 since it's going to be two months, that you --

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1 COMMISSIONER BRACERAS: Well, how about
2 February?

3 CHAIRPERSON BERRY: -- let us know. You
4 would have to let us know about February in December,
5 --

6 MR. JIN: We can do that.

7 CHAIRPERSON BERRY: -- if we passed that.
8 Can you do that?

9 MR. JIN: We can do that.

10 CHAIRPERSON BERRY: Okay. The Staff
11 Director says he can do that.

12 MR. JIN: Yeah. Madam Chair, notice
13 provision we can do. The other things, I understand
14 the sense of the Commission, and we will do the
15 absolute best we can. Some of the activities that are
16 less formal, they get developed as we --

17 CHAIRPERSON BERRY: Work with the SACs.

18 MR. JIN: Yes, --

19 COMMISSIONER BRACERAS: I don't think we
20 need to know what the activities are. We just need to
21 know if there's going to be a day of activities on the
22 Thursday, then we can, you know, adjust our schedules
23 accordingly to be there, whatever those activities may
24 end up being.

25 COMMISSIONER THERNSTROM: Well, and I'd

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1 like to know the general subject. I have a great
2 preference for arriving at meetings having done my
3 homework.

4 CHAIRPERSON BERRY: Well, I think that --
5 just a second, and I'll respond, but Commissioner
6 Meeks.

7 COMMISSIONER MEEKS: I mean I have no
8 objection to being notified as early as possible, or
9 whatever. But you know, for instance, Cruz and I, we
10 know we have to reserve time to go either to D. C. or
11 somewhere. And it's never -- if I have to come to San
12 Diego, that's just no different. It's easier in some
13 ways.

14 So, you know, to make it 60 days, to me,
15 puts the staff at some disadvantage, I'm not sure.
16 But I'm not arguing the case necessarily, but I just
17 think that for those that have a short trip to D. C.,
18 there are some of us that have a long trip to D. C.

19 COMMISSIONER BRACERAS: Yeah. No, and I
20 certainly respect that. It's just that, for example,
21 a trip to New York, you know, would not require a
22 large amount of planning for daycare purposes in my
23 case, but a trip to California requires a huge amount
24 of daycare planning. And so it's just easier if I
25 know in advance and I'm able to make those

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1 arrangements. So I realize that others have planning
2 difficulties all the time, but if we could all have
3 our lives made a little bit easier, I think that would
4 be to the benefit of everybody.

5 CHAIRPERSON BERRY: Let us be clear about
6 what we're moving. We are moving, and the motion
7 would be, that the Staff Director will tell me, so I
8 can notice, I'm the one who's supposed to decide it,
9 and he will notify you at least 60 days in advance
10 where the location of the next Commission meeting.
11 And that this policy will get into effect with respect
12 to the February meeting. That's the motion.

13 COMMISSIONER BRACERAS: I'm sorry, and
14 Commissioner Edley said --

15 CHAIRPERSON BERRY: And -- and that the
16 Staff Director will information you at that time
17 whether or not there are activities on the day before
18 the meeting, okay?

19 COMMISSIONER BRACERAS: Great.

20 CHAIRPERSON BERRY: That's all that we are
21 moving. In terms of letting you know exactly what
22 activities, that's all worked out with SACs. And the
23 SACs, as you know, are volunteers. So they get
24 together and the Staff Director and the Regional
25 Coordinator gets together with them as they can and

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1 work this out. And everybody tries to work
2 cooperatively, but the timing on it may not always be
3 exactly what they would like and what we would like,
4 given the constraints of resources and their
5 volunteering and their other activities and the like.

6 So you will do the best we can, right?

7 MR. JIN: That's correct, Madam Chair.

8 CHAIRPERSON BERRY: Let us know. But the
9 motion is 60-days notice starting with the February
10 meeting and letting people know at that time when the
11 notice issued whether there are activities on the day
12 before.

13 COMMISSIONER THERNSTROM: Well, is it
14 possible, Madam Chair, to include the topic, the
15 general topic as part of this motion? Because
16 certainly if we decide we're going to x city, we must
17 have some idea of what the general topic is.

18 CHAIRPERSON BERRY: I would rather not do
19 that because for what reasons the Staff Director gave
20 already. There are many topics that the SAC may be
21 considering, and they may be trying to finalize
22 whether they want to do one or the other. And giving
23 them as much time as possible is really important, and
24 I would rather opt on the side of giving them latitude
25 and letting him work with them, rather than boxing

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1 them in that far ahead.

2 MR. JIN: That's right, Madam Chair. I
3 mean sometimes the SAC has one specific idea and they
4 are planning way ahead. Other times the SAC has an
5 idea as to what they want to do, but it's really not
6 firm. And so we're not really ready to say that we're
7 probably going to do this because it may not happen
8 and it could create confusion. There are other times
9 where what we try to put together is a combination of
10 things, and those things tend to get done, you know,
11 much more closely to the time when the event is
12 supposed to take place.

13 The one thing to remember is that, and
14 again we try to provide you accurate information as
15 early as possible, but we'd rather not give you stuff
16 that could eventually be incorrect.

17 I think one thing to remember is when the
18 Commission has voted on this, one of the key reasons
19 for doing it was to go and just talk to the SAC
20 members and other people in the civil rights community
21 there to find out what's going on. So that's really I
22 think -- I always thought that was the key part of
23 going there, not necessarily, you know, all the
24 different topics.

25 CHAIRPERSON BERRY: All right. I call for

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1 the question, or somebody has to call for the
2 question.

3 COMMISSIONER THERNSTROM: Can I just one
4 ask question on this still? So, in other words, when
5 the staff is picking a location it is not necessarily
6 because there are issues that have arisen, let's say
7 border control, in that location that is fruitful for
8 the Commission to address. It's really -- you know,
9 we are simply going to places where there will be SAC
10 committees that may or may not be addressing something
11 that is central to our concerns. Is that -- I'm just
12 a little confused on that.

13 CHAIRPERSON BERRY: It is clear that we go
14 in part. And we need to close off this part of the
15 discussion because it's taking too long --

16 COMMISSIONER THERNSTROM: Right.

17 CHAIRPERSON BERRY: -- and people are
18 waiting.

19 COMMISSIONER THERNSTROM: Yes. I'm sorry.

20 CHAIRPERSON BERRY: It's -- it is clear
21 that we go to places for a combination of reasons, and
22 the Staff Director and I discuss it. Sometimes
23 there's a hot issue there. Other times there's
24 several issues. And the SAC may be in need of
25 reinforcement or wish to have us urgently to come to

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1 meet with them in terms of reinforcing what they're
2 doing in their local communities.

3 There may be a combination of reasons or
4 they may have two or three issues that they want to
5 tell us about or people in the community who they
6 think need to meet with us. And so we try to assess
7 all of those factors and to figure out the logistics
8 of it to try figure out where we would get the maximum
9 response and bang for our buck.

10 Yes, Commissioner Edley.

11 COMMISSIONER EDLEY: Can we -- I don't
12 think this ought to be that hard. Can we just have it
13 be part of the legislative record, or whatever, that
14 when the -- when the Staff Director and the Chair
15 notify us at the 60 days, that they tell us as best
16 they can what they think the topics might do and so
17 we'll accept any comments or input that commissioners
18 may have about things that ought to be addressed if
19 we're going to Las Vegas?

20 But that it -- but that we -- it just be
21 understood that that's not any sort of -- that that's
22 not binding, that that's not definitive, that there's
23 got to be some fluidity built into it. And the Staff
24 Director and the Chair will do their best to keep us
25 informed as things change, as things develop.

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1 But I think just a good faith, let us know
2 as early as convenient, as early as possible what the
3 possibilities are and what the staff is thinking
4 about.

5 VICE CHAIRPERSON REYNOSO: Call for the
6 question.

7 CHAIRPERSON BERRY: All those in favor of
8 the motion indicate by saying, "Aye."

9 COMMISSIONERS: Aye.

10 CHAIRPERSON BERRY: Opposed?

11 So ordered.

12 Is there anything under the Staff
13 Director's Report that people would like to ask, under
14 this particular topic, the Staff Director about or not
15 beyond what we've just been discussing?

16 COMMISSIONER REDENBAUGH: Madam Chair,
17 this is Commissioner --

18 CHAIRPERSON BERRY: Yes, Commissioner.

19 COMMISSIONER REDENBAUGH: We have a
20 question, and actually a motion. When we originally
21 discussed on May 17th the issue of flying to various
22 locations, possibly in conjunction with the SAC, it
23 was done the understanding that it would be that that
24 traveling would be done absent a specific vote to the
25 contrary.

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1 And I would like to move that, in fact,
2 whenever we are going to be holding meetings outside
3 of Washington, D.C. that perhaps within that 60-day
4 notice, a full vote be conducted by the staff, the
5 Staff Director of all Commissioners as to their
6 preference going to a particular city or going out of
7 Washington for that particular day.

8 CHAIRPERSON BERRY: You heard the motion.

9 COMMISSIONER THERNSTROM: I second it.

10 CHAIRPERSON BERRY: Okay. All those in
11 favor of the motion indicate by saying, "Aye."

12 COMMISSIONERS: Aye.

13 CHAIRPERSON BERRY: Opposed?

14 VICE CHAIRPERSON REYNOSO: Nay.

15 COMMISSIONER EDLEY: Nay.

16 VICE CHAIRPERSON REYNOSO: Or nay.

17 CHAIRPERSON BERRY: Nay. You oppose?

18 COMMISSIONER EDLEY: Can we get maybe a
19 roll call?

20 CHAIRPERSON BERRY: I add to your no.

21 All right. Someone has requested a roll
22 call. Commissioner Kirsanow?

23 COMMISSIONER KIRSANOW: Aye.

24 CHAIRPERSON BERRY: Commissioner
25 Thernstrom?

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1 COMMISSIONER THERNSTROM: Aye.

2 CHAIRPERSON BERRY: Commissioner Reynoso?

3 VICE CHAIRPERSON REYNOSO: No.

4 CHAIRPERSON BERRY: Commissioner
5 Redenbaugh?

6 COMMISSIONER REDENBAUGH: Aye.

7 CHAIRPERSON BERRY: Commissioner Meeks?

8 COMMISSIONER MEEKS: No.

9 CHAIRPERSON BERRY: Commissioner Edley?

10 COMMISSIONER EDLEY: No.

11 CHAIRPERSON BERRY: Commissioners
12 Braceras?

13 COMMISSIONER BRACERAS: Aye.

14 CHAIRPERSON BERRY: Commissioner Berry,
15 no.

16 The motion fails.

17 All right. Anything else under the Staff
18 Director's Report?

19 COMMISSIONER BRACERAS: I have a few
20 things. I'm sorry. Just one of them relating to the
21 dates and the logistics of traveling. As most of you
22 can tell, I am going to be having a baby in December.
23 So I just wanted to put you all on notice that
24 unfortunately I will not be able to be in New York in
25 December, but would very much like to participate by

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1 telephone hook-up and would like my assistant Kimberly
2 Schold to be able to do so as well.

3 I'm not yet sure about January. That will
4 depend on where we go and my doctor's order and how
5 the delivery goes and so forth. So I will certainly
6 keep you posted about that, but I just -- I wanted it
7 to be clear on the record that I will be participated,
8 you know, via telephone hook-up for those two meetings
9 due to the circumstances. And I hope that all
10 accommodations can be made so that my assistant and I
11 can participate in that fashion.

12 CHAIRPERSON BERRY: Fine. No objection
13 and we already have a policy, so it's fine. And good
14 luck to you.

15 COMMISSIONER BRACERAS: Thank you.

16 CHAIRPERSON BERRY: Let us know when you
17 have the twins.

18 VICE CHAIRPERSON REYNOSO: Yeah, there's
19 only one condition.

20 COMMISSIONER BRACERAS: I will.

21 VICE CHAIRPERSON REYNOSO: There's only
22 one condition. You should bring the baby as you can
23 so we can meet it.

24 COMMISSIONER BRACERAS: The only -- the
25 more substantive things I wanted to ask about are the

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1 Educational Accountability Project. I know the
2 written Staff Director's Report says that we'll be
3 having a briefing probably some time in the first part
4 of 2003. And I'm wondering if the staff has any idea
5 of how that briefing will be structured or if we know
6 more clearly what month it will take place. Because
7 that's an issue that I'm very interested in, so I'd
8 just like some clarification from the staff on where
9 we think that project's going and how it's shaping up.

10 CHAIRPERSON BERRY: Did you want to
11 discuss it now or under commission projects?

12 COMMISSIONER BRACERAS: Oh, well, it was
13 under the Staff Director's Report in this area, so --

14 CHAIRPERSON BERRY: Okay. All right.
15 Well, that's fine. We can do it now.

16 COMMISSIONER BRACERAS: -- it doesn't
17 matter to me. I'd just like a more detailed briefing
18 on what's happening with that project.

19 CHAIRPERSON BERRY: Okay. Could we wait
20 until -- would you mind waiting?

21 COMMISSIONER BRACERAS: No, not at all.
22 That's fine.

23 CHAIRPERSON BERRY: Since some of the
24 Commissioners want us to get things out of the way
25 that have to be voted on.

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1 COMMISSIONER BRACERAS: Okay.

2 CHAIRPERSON BERRY: So we'll defer that
3 question, okay.

4 **V. SAC Appointments**

5 CHAIRPERSON BERRY: The next item on the
6 agenda is the SAC appointments for Arkansas, Georgia,
7 Illinois, New Hampshire, New York, Oklahoma, Texas,
8 and Tennessee.

9 Could I get a motion to approve those?

10 COMMISSIONER REDENBAUGH: So move.

11 CHAIRPERSON BERRY: Could I get a second?

12 COMMISSIONER BRACERAS: Second.

13 CHAIRPERSON BERRY: Is there any
14 discussion?

15 Yes, Vice Chair.

16 VICE CHAIRPERSON REYNOSO: Madam Chair,
17 we've agreed that in the past that I would vote in
18 favor of it with the understanding that the staff
19 would take a second look at some of the concerns I
20 have. And I have on this occasion three concerns.

21 In Illinois there's only one Latino on the
22 SAC even though the population is something like 12
23 percent, so I suggest that the staff take a look to
24 see if one or two others can be added for balance
25 purposes.

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1 And in all others there's only one Native
2 American in -- in the SAC. And, again, I suggest that
3 maybe there ought to be more than one Native American
4 one in the SAC. The SAC is composed of 12.

5 And in Texas four of the 17 are Latinos
6 even though in Texas Latinos represent a third of the
7 population. So I suggest that we take a second look
8 at that.

9 I've been told in the past that normally
10 we'd have flexibility and that folk can be added to
11 the SAC. If that's true, then I would vote with the
12 others to approve these reports.

13 CHAIRPERSON BERRY: Okay. Does anybody
14 else have any comment? Yes, --

15 MR. JIN: Madam Chair and Vice Chair,
16 we'll differently do that. We'll look into that.

17 The only thing I would like to add is that
18 we would also ask that the Commission vote to endorse
19 the chairs of those eight states except for Arkansas,
20 New Hampshire, and Texas. Those we still need some
21 leadership statements from, and we'll provide those to
22 you at a later time.

23 CHAIRPERSON BERRY: I didn't -- I meant to
24 say that I needed the motion to include of course the
25 chairs of these SACs, which are in the appointment

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1 packages.

2 So could we --

3 COMMISSIONER BRACERAS: Wait. Can I just
4 have some clarification? Is it that you can add
5 additional members to the SACs after we vote --

6 CHAIRPERSON BERRY: They have to bring
7 them back --

8 COMMISSIONER BRACERAS: So is there a
9 limit on how many numbers there are?

10 MR. JIN: SACs have a limit of 21. The
11 range is 11 to 21.

12 MS. DAVIS: No, no, no.

13 CHAIRPERSON BERRY: Ivy's trying to answer
14 the question.

15 MS. DAVIS: Thank you. There's a floor of
16 -- you have to at least 11 as a minimum, but I will
17 remind you, California has 26 members right now.

18 COMMISSIONER BRACERAS: Okay. So these
19 aren't full, and the Vice Chair's recommendations can
20 be...

21 CHAIRPERSON BERRY: Considered.

22 COMMISSIONER BRACERAS: Gotcha.

23 CHAIRPERSON BERRY: Now I forget what I
24 was -- oh, the Chairs of the SACs are included in the
25 appointment packages, so when you vote for the motion

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1 you are voting for the entire package, which includes
2 the chairs, which is what the Staff Director was
3 pointing out.

4 Did the maker of the motion accept that?
5 I forgot who made the motion?

6 COMMISSIONER REDENBAUGH: I made it. I
7 accept.

8 CHAIRPERSON BERRY: And does the seconder
9 accept that? And I don't remember who seconded it,
10 but whoever --

11 COMMISSIONER BRACERAS: I think I do.

12 CHAIRPERSON BERRY: All right. So the
13 motion is then to approve these appointments with the
14 Chairs and with the understanding that you'll go back
15 and look and see if you want to recommend some more
16 people to us to respond to these concerns.

17 All those in favor of the motion indicate
18 by saying, "Aye."

19 COMMISSIONERS: Aye.

20 CHAIRPERSON BERRY: Opposed?

21 So ordered.

22 **VI. SAC Report**

23 CHAIRPERSON BERRY: The next items is the
24 State Advisory Committee Report on Civil Rights Issues
25 in West Virginia. Could I get a motion to approve the

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1 SAC report?

2 VICE CHAIRPERSON REYNOSO: So move.

3 CHAIRPERSON BERRY: Could I get a second?

4 COMMISSIONER BRACERAS: Second.

5 CHAIRPERSON BERRY: All those in favor of
6 approval the Civil Rights Issues in West Virginia
7 Report from our SAC indicate by saying, "Aye."

8 COMMISSIONERS: Aye.

9 CHAIRPERSON BERRY: Opposed?

10 So ordered.

11 **VII. FY-2004 Budget Estimate**

12 CHAIRPERSON BERRY: The next item is the
13 FY 2004 budget estimate to OMB for purposes of
14 discussion. Could I get a motion to approve?

15 VICE CHAIRPERSON REYNOSO: So moved.

16 CHAIRPERSON BERRY: Can I get a second?

17 COMMISSIONER MEEKS: Second.

18 CHAIRPERSON BERRY: All those in favor of
19 the --

20 COMMISSIONER REDENBAUGH: Madam Chair?

21 CHAIRPERSON BERRY: Yes.

22 COMMISSIONER REDENBAUGH: Commissioner
23 Redenbaugh.

24 CHAIRPERSON BERRY: Yes, Commissioner
25 Redenbaugh.

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1 COMMISSIONER REDENBAUGH: A point of
2 clarification and then I think I do want to have a
3 discussion.

4 Could you just review with me, this has
5 been submitted already to OMB -- or I'm not sure where
6 we are.

7 CHAIRPERSON BERRY: The Staff Director, as
8 I understand from him, has -- the staff has had staff-
9 to-staff discussions at OMB about what the
10 recommendation is from the staff to the Commission,
11 with the understanding that it is the staff
12 recommendation, and the Commission has not yet
13 endorsed a budget. Is that right? /

14 MR. JIN: That's correct, Madam Chair. We
15 sent over the staff draft and made it very, very clear
16 that the Commissioners have not voted on it.

17 COMMISSIONER REDENBAUGH: And this was due
18 to OMB in --

19 CHAIRPERSON BERRY: The schedule.

20 COMMISSIONER REDENBAUGH: -- September,
21 presumably, or --

22 MR. JIN: Right. Based on our
23 conversations with OMB, our budget officer's
24 communications with them, we felt that it was prudent
25 to get them over a copy even if it hadn't been voted

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1 on.

2 COMMISSIONER REDENBAUGH: All right.
3 Well, then I do want to have some discussion. And I
4 admit that I'm significantly underprepared for this,
5 having seen this document -- having not spent enough
6 time with it.

7 But as I've over expressed in the past,
8 you know, generically all budget documents are a set
9 of promises between the parties. And I'm not prepared
10 to support this particular submission without a
11 review of how we performed on the current budget and
12 project, which I think as a managerial we're not to be
13 doing periodic anyway. So that's the general concern
14 that I have with this particular submission.

15 CHAIRPERSON BERRY: Okay. Any other
16 comments?

17 COMMISSIONER THERNSTROM: Well, I could
18 add a word on that, that it is confusing to some of us
19 to have a budget and a list of projects for the year
20 and then a complete alteration of our priorities,
21 which is what these trips have involved. I do
22 personally feel a fiduciary responsibility here that
23 -- and, you know, it's troubling to me when I can't
24 come through on it, in effect.

25 CHAIRPERSON BERRY: Anybody else have a

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1 comment?

2 Yes.

3 VICE CHAIRPERSON REYNOSO: Madam Chair, I
4 think we discussed this last meeting where we've gone
5 over the scheduling, where we're required by OMB and
6 the budgetary process to agree like two years ahead of
7 time with the projects are going to be. But it's
8 understood by OMB and the budgetary apparatus that in
9 fact we're free to change those projects and
10 priorities as we go along and as the matters require.

11 So it seems to me that there's no danger to
12 proceeding as is normally done in the federal
13 government.

14 The other thing is of course that we're
15 duty-bound to include a budget that explains what our
16 resources are and what we need to actually do the job.

17 And I think that's what we've tried to do with the
18 budget, so it seems to me we're proceeding in the
19 normal federal way.

20 CHAIRPERSON BERRY: Okay. Anybody else
21 have any further discussion on the subject of this
22 budget proposal?

23 Yes.

24 COMMISSIONER EDLEY: Well, I just want to
25 make clear at least in my experience -- my experience

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1 over the years in these members and, in particular,
2 from my time working in OMB.

3 For what it's worth, I want to assure my
4 colleagues that in the minds of OMB officials but also
5 in the minds of appropriators, the budget decisions
6 that the White House and the appropriation decisions
7 of the Congress are not contingent in any way upon
8 some specific list of programmatic activities. That's
9 not what the appropriation line items contain. It's
10 not what the report in the appropriations bill
11 contains. It's not what the narrative in the
12 President's budget submission contains.

13 So our responsibility -- our fiduciary, if
14 you will, responsibilities or even our quasi
15 contractual obligations to OMB and the Congress don't
16 include that level of detail as to what topics we're
17 going to be taking up or even where we're going to be
18 going.

19 So that's not -- I think the question of
20 what kind of role or what kind of oversight the
21 Commission takes of the decisions made by the staff is
22 a separate matter from the budget submissions to the
23 White House and the Congress. And I think we have a
24 planning meetings scheduled for January and it's that
25 planning process internal where I think the issue of

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1 topics and travel and so forth is much more relevant.

2 CHAIRPERSON BERRY: Any further discussion
3 of this matter?

4 If there is no further discussion, then
5 someone call for the question.

6 COMMISSIONER BRACERAS: I call for the
7 question.

8 CHAIRPERSON BERRY: All those in favor of
9 item number 7, which is the FY 2004 Budget Estimate
10 indicate by saying, "Aye."

11 COMMISSIONERS: Aye.

12 CHAIRPERSON BERRY: Opposed?

13 COMMISSIONER REDENBAUGH: No.

14 COMMISSIONER THERNSTROM: No. I'm going
15 to oppose it, too.

16 CHAIRPERSON BERRY: Okay. I hear --
17 hearing only two opponents of it, the motion passes,
18 and so the budget is approved.

19 COMMISSIONER KIRSANOW: Commissioner
20 Kirsanow also opposed.

21 CHAIRPERSON BERRY: I couldn't hear you.

22 COMMISSIONER KIRSANOW: Commissioner
23 Kirsanow also opposed.

24 CHAIRPERSON BERRY: Then the budget is
25 still approved.

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1 The -- we are aware, I will say after we
2 have approved it, that this is just what we think the
3 Commission needs. It doesn't mean we'll get it. It'd
4 be nice if we get it, but we won't.

5 **VIII. Discussion of Letter to the DOJ**

6 The next item on the agenda is to hear
7 from our -- oh, let me do this first because there may
8 be necessity for a vote on it.

9 Commissioner Braceras yesterday suggested,
10 if I recall correctly, and she's here and can speak
11 for herself obviously, that we might consider sending
12 a letter to Justice about the allegations that there
13 were some vigilante incidents along the border in
14 Arizona.

15 Am I recalling correctly?

16 COMMISSIONER BRACERAS: Yes. We talked
17 about maybe sending a letter asking them just to look
18 into it. I don't think we have enough information to
19 ask them to take specific action, --

20 CHAIRPERSON BERRY: Right.

21 COMMISSIONER BRACERAS: -- but we can ask
22 them to look into it and see whether anyone's civil
23 rights may have been violated.

24 CHAIRPERSON BERRY: Okay.

25 COMMISSIONER BRACERAS: And report back to

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1 us or take whatever action is necessary.

2 CHAIRPERSON BERRY: Could you off the top
3 of your head, Commissioner Braceras, what you've just
4 said so the staff can write it down in addition to
5 looking at the transcript and draft a letter so it
6 would be -- comport with what you have in mind?

7 COMMISSIONER BRACERAS: Just to send a
8 letter to the Justice Department indicating that we
9 heard testimony on this issue and we're concerned
10 about it. And, you know, could they look into it and
11 either report back or take whatever action is
12 necessary.

13 CHAIRPERSON BERRY: See if the allegations
14 -- if there is any validity to any of the allegations
15 and report back. If there is any action, let us know,
16 or something like that.

17 COMMISSIONER BRACERAS: That sounds fine.

18 CHAIRPERSON BERRY: Yes, Commissioner.

19 COMMISSIONER EDLEY: Well, we also heard
20 then --

21 CHAIRPERSON BERRY: Are you going to Help
22 Commissioner Braceras?

23 COMMISSIONER EDLEY: Well, we also --

24 COMMISSIONER BRACERAS: I don't want to
25 draft the letter off the top of my head. I'm sure the

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1 staff is perfectly capable of doing that.

2 COMMISSIONER EDLEY: As I understand it,
3 the Arizona SAC has looked into this somewhat, so --

4 CHAIRPERSON BERRY: And they're going to
5 tell us about that.

6 COMMISSIONER EDLEY: Right. So I think it
7 would make sense in the letter to at least reference
8 the fact that our SAC in Arizona has looked into it
9 and without -- without framing the letter as though
10 we're endorsing any factfindings by the Arizona SAC, I
11 think it would be good to at least --

12 COMMISSIONER BRACERAS: Right.

13 COMMISSIONER EDLEY: -- acknowledge that
14 the Arizona SAC has been working on it, mentioned --

15 COMMISSIONER BRACERAS: I mean I guess we
16 could even -- you know, if there's any -- I haven't
17 had a chance to read this fully, but if there's any
18 specific report or document from the Arizona SAC on
19 it, we could include it, and then they could take it
20 from there.

21 CHAIRPERSON BERRY: Right. That would be
22 great. So after we hear from the Arizona SAC we'll
23 know better, but is there anyone who has an objection
24 to sending the letter of inquiry to the Justice
25 Department that we are discussing?

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1 Hearing no objection, the staff will send
2 such a letter and see what we get back. And we will
3 then -- now we go onto the presentations from the SAC
4 members.

5 And we have with us the SAC Chairs from
6 California and Arizona and a member to give reports on
7 their states. We're happy to have them come. We're
8 so grateful for their service to the Commission.

9 The Arizona SAC, as was just pointed out,
10 recently looked into the issue of federal border and
11 immigration policy in that state, including with the
12 migrant deaths along the border. And so it will be
13 interesting to hear from them. And they're now just
14 giving us a package of what looks like news articles
15 concerning this subject.

16 And from the -- so let me introduce the
17 two SAC Chairs and the member. From the California
18 SAC we have with us Fernando Hernandez, Dr. Fernando
19 Hernandez, who is Chair of the State Advisory
20 Committee and was recently reappointed to the second
21 term. Is that right?

22 DR. HERNANDEZ: Yes, ma'am.

23 CHAIRPERSON BERRY: Thank you very much
24 for your service.

25 Dr. Fernandez is from Long Beach and is

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1 Chairman of the Foundations Department in the College
2 of Education at California State University at Los
3 Angeles. He is a strong advocate for equal
4 educational opportunity for everyone. Is the former
5 chairman of the board of directors for the Community
6 Youth Gang Services. He is active in service to his
7 university and his community, and he will be
8 discussing the activities of the California SAC.

9 . Also with us from the California SAC is
10 Gilbert C. Alston of Pasadena who is a retired
11 Superior Court Judge, a retired U.S. Air Force Pilot,
12 a past Military Affairs Committee Chairman of the
13 Pasadena Chamber of Commerce, and he has experience as
14 a peace officer and as a prosecutor. He's also a life
15 member of the NAACP and a member of the Pasadena
16 Chapter of the Red Cross Advisory Council.

17 He served on the boards and committees of
18 many church groups and community-based organizations.

19 He attended the briefing in Arizona on migrant deaths
20 along the border, but he will be discussing issues
21 from the California perspective or any other
22 perspective he feels like discussing this on.

23 And, finally, all the way from Tucson is
24 June Webb-Vignery, who is Chair of the Arizona SAC.
25 And we are grateful for your service, and who was also

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1 recently reappointed by the Commission to a second
2 term.

3 Dr. Vignery is executive director of the
4 Metropolitan Education Commission. She served as a
5 member of -- the Arizona Civil Rights Advisory Board,
6 the Arizona Women's Committee. She's been a member of
7 the University of Arizona Latin American Resource
8 Board and served on the Executive Board of the NAACP
9 Tucson Chapter.

10 Her extensive community involvement also
11 includes service on the Arizona Womens Political
12 Caucus, the Tucson Civil Rights Coalition, the Tucson
13 Womens Discrimination Task Force, the League of the
14 United Latin American Citizens otherwise known as
15 ULAC.

16 Dr. Vignery is a historian by training and
17 has published several books and articles. And we want
18 to mention that we don't list books and articles --
19 I'm teasing you -- many of which concern equal rights
20 and employment issues. And she will be discussing
21 border control issues in our state.

22 But before I -- we continue with the SACs,
23 I think Phil Montez, who is our Director for the
24 Western Regional Office and has been at the Commission
25 since I think 1967 -- is that right, Phil?

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1 MR. MONTEZ: I forgot the year.

2 CHAIRPERSON BERRY: I'll say a few words.

3 He started as a Consultant in the Field Services
4 Division and was promoted to Civil Rights Community
5 Service Specialist, a job that no longer exists, the
6 title at least, in July 1968. He's been a Supervisor
7 Equal Opportunity Specialist, and then the Regional
8 Director of the Western Regional Office since 1982.
9 And has continued to serve admirably and well in that
10 position ever since.

11 So, Phil, will you please proceed, and
12 then we will hear from our SAC members.

13 **IX. Western Regional SAC Presentations**

14 MR. MONTEZ: All I wanted to say was Dr.
15 Hernandez will introduce our illustrious guest and
16 make their presentations to the Commission. I'm glad
17 you're here.

18 CHAIRPERSON BERRY: All right. Okay.
19 Well, we're glad we are.

20 Dr. Hernandez.

21 DR. HERNANDEZ: Thank you very much,
22 Commissioner Berry. And I want to welcome to
23 California my Arizona -- the Arizona SAC Chair June
24 Vignery.

25 And I want to thank Judge Alston for

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1 taking time to come.

2 I think most importantly I want to thank
3 the Commission for accepting our invitation to come to
4 California. I know we've asked Phil to invite you
5 numerous times. And I'm glad that you were able --

6 VICE CHAIRPERSON REYNOSO: Are you sure
7 he's done it.

8 DR. HERNANDEZ: And I'm glad you're able
9 to be here in San Diego, that has the best weather in
10 the entire world.

11 I also want to thank Commissioner Braceras
12 for mentioning the Navy scholarship program. I'm a
13 Captain in the United States Naval Reserve and very,
14 very much involved in recruiting minority officers
15 into the Navy. And so I want to thank you for that,
16 Commissioner. That's a real important activity and I
17 think we want to make sure that our armed forces and
18 are Navy reflects the diversity of our nation.

19 The California State Advisory Committee is
20 presently involved with several -- several projects.
21 And we have completed a post-9/11 forum in San Diego
22 and one in San Francisco. And on November the 20th
23 we'll be holding a forum in Sacramento as a
24 continuation of our 9/11 project.

25 The final city to be reviewed will be Los

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1 Angeles. And then upon completion of this project,
2 the committee would like to issue one report focusing
3 on what is happening post 9/11 in the four cities and
4 how civil rights in ease of these cities is being
5 handled and the state of civil rights post-9/11.

6 Each one -- each city will be a separate
7 chapter in the report.

8 Recently the Western Regional Office
9 received complaints of discrimination against minority
10 officers in the City of Huntington Park. And the
11 regional staff and I discussed the situations and we
12 agreed that these Huntington Park officers, the
13 minority officers should be referred to the Equal
14 Employment Opportunity Commission.

15 The staff communicated with the regional
16 director of EEOC asking him to meet with these police
17 officers. And this was due to the delicacy, as you
18 might imagine, of the police officers challenging
19 their own department.

20 The director of EEOC spent a good
21 afternoon discussing the ramifications of their filing
22 a complaint against the Huntington Park Police
23 Department. And subsequently these minority officers
24 filed a complaint against the Huntington Park Police
25 Department.

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1 The EEOC is now investigating their
2 complaints of discrimination and unequal treatment.

3 The Regional Director and I met with the
4 city attorney and the police chief to get a background
5 on these complaints. And we will be holding a forum
6 in Huntington Park in the very near future to look at
7 allegations of discrimination and unequal treatment
8 against minority police officers in Huntington Park.

9 We are also going to look at the grievance
10 procedure that the Police Department uses in -- and
11 their complaint process for aggrieved officers, so
12 we'll be holding that forum in the next few weeks.

13 In California there have been two consent
14 decrees filed against two police departments. And the
15 Department of Justice filed in federal court, asking
16 the court to set a consent decree against the Los
17 Angeles Police Department, and the request was
18 honored.

19 In Los Angeles City we have a new police
20 chief. And the committee has voted to analyze the
21 consent decree and to hold a public forum in the first
22 part of the year. The staff's been collecting data,
23 and all the SAC members have received a copy of the
24 consent decree.

25 I'd like to thank Judge Gil Alston, who is

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1 here, who did a great job in analyzing for the SAC the
2 two consent decrees. And he's done a line-by-line
3 analysis of the consent decree. And the fact that
4 he's been a superior court judge helps him to -- helps
5 the SAC to make sense out of some very, very difficult
6 legal terminology. And he's done a great job helping
7 us to understand exactly what the decrees say and what
8 they're asking. So he'll talk a little bit more about
9 that in a bit.

10 The other police department that we'll be
11 analyzing with respect to the second consent decree is
12 the Riverside Police Department, where the state
13 Attorney General has filed against the department.

14 The committee has voted to hold a briefing
15 in Riverside and to analyze the progress of the
16 consent decree.

17 Now the committee feels strongly that
18 these two consent decrees have to be looked over by a
19 committee to make sure that they're progressing and
20 that all the powers that be are carrying out the
21 mandate of the courts.

22 Judge Alston's analysis I think is going
23 to help us to ask the right questions and try to get
24 to the bottom of exactly what it is that's going on
25 with these consent decrees.

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1 We also intend to collaborate with four
2 other SACs, Arizona, New Mexico, and Texas, to explore
3 some of the issues that you explored earlier with
4 respect to border problems.

5 In our San Francisco meeting we recently
6 had a rather spirited discussion surrounding the whole
7 issue of border violence and the associated problems
8 of people coming across the border trying to get into
9 the United States and the deaths and the way that some
10 of the authorities have been handling these
11 unfortunate people that are crossing the border into
12 the United States.

13 I'm real pleased that my fellow chair from
14 Arizona is here. It's going to give me an opportunity
15 to pursue a little further exactly how we want to do
16 this, but we are intent on working with the other SACs
17 on this problems because it's a huge problem and it's
18 a problem that cannot be addressed by just one SAC.
19 We think we really need to take on a regional
20 approach.

21 And I'm gratified that the Commission
22 looked at the issue here. And it may well be that we
23 can work very, very closely with you as you begin to
24 look at these issues and we're of course going to be
25 transmitting all that we find along to you.

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1 Finally, I'd like to say that we have
2 another concern and it's a concern that we're going to
3 be looking at down the line once we finish these
4 projects, and that's the state of minorities in higher
5 education here in California.

6 Given the impact of affirmative action,
7 one of the things that we've been concerned about and
8 that we've received a lot of complaints about is
9 access to higher education on the part of minorities.

10 And, in addition to access, we're also concerned
11 about the number of minorities represented on the
12 faculties and the administration of both the
13 California State University and the University of
14 California.

15 These are areas where we're getting a lot
16 of complaints and where there's an awful lot of
17 concern being raised.

18 The State of California has one of the
19 finest higher education systems in the nation and I
20 daresay probably in the world. It's a fine system,
21 but we're beginning to get really concerned about
22 whether minorities are going to be participating in
23 representative numbers in these two very, very fine
24 systems.

25 Finally I'd like to say that the United

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1 States Commission on Civil Rights is a very, very
2 important commission. We're gratified that you're
3 reconnecting with the SACs again. You are the
4 conscience, the moral conscience of the United States
5 of America.

6 You play a very, very important role in
7 our communities. When you come to San Diego or
8 California, or whatever state you're in, you represent
9 the best of what this nation has to offer.

10 And we are very gratified that you're here
11 in California. And we support the work of the
12 Commission. We're think you're very, very important
13 and we feel that the United States needs the
14 Commission on Civil Rights. And we are -- and as the
15 Chair of the SAC, I know -- the California SAC, I know
16 I speak on behalf of the State Advisory Committee of
17 California in saying that we will do everything we
18 possibly can to support your work and to partner with
19 you to make sure that the moral conscience of America
20 stays alive and well.

21 Thank you again. And I want to just --
22 before I finish my remarks thank, in particular,
23 Commissioner Cruz Reynoso, who's a resident of
24 California and who has been just for the State
25 Advisory Committee. He attends our committee meetings

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1 from time to time. He's attended our forums. And I
2 just want to say on behalf of the entire SAC of
3 California, Commissioner, thank you very much for all
4 of the fine work that you've done with us and for
5 being a partner in helping the Commission and the
6 State Advisory Committee do its work.

7 Thank you very much. And I'd now like to
8 introduce my colleague from Arizona, June Vignery.

9 CHAIRPERSON BERRY: Thank you.

10 DR. WEBB-VIGNERY: I too would like to
11 express the Arizona SAC's appreciation for your coming
12 to this region of the country.

13 This opportunity for us to share with you
14 the issues and concerns of this locality is valuable
15 not only for the civil rights health of this region,
16 but actually the United States. And I know it takes
17 some work our part to get to different regions of our
18 country. It's a big country, but what you are doing
19 is invaluable and thank you for being here to listen
20 to us.

21 The Arizona SAC has engaged in several
22 activities, and I'll just briefly mention. We have
23 held two hearings to date on the education of minority
24 children and also the Justice system in Arizona and
25 it's treatment of minorities. Those hearings have

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1 been held in Tucson and in Flagstaff.

2 A third one has been put on hold, but will
3 be -- I gather from talking with our Regional
4 Director, we'll be able to hold this shortly in the
5 Phoenix area so that we can complete that series of
6 hearings.

7 At the same time we have met or I have met
8 with the state Attorney General after 9/11 to discuss
9 profiling of Muslims in our state. And that was with
10 our Regional Director.

11 But the most important thing that we have
12 done this year has -- and that's not to say that those
13 hearings are not extremely important at the time of
14 our list, but we have had 320 deaths on the border in
15 Arizona this summer. And it is extremely at the top
16 of the list not only of the political community -- if
17 you could have heard the gubernatorial candidates talk
18 about this in Arizona, but also the economic
19 development community.

20 What is happening there is just crucial
21 that we deal with it. So on August 23rd, 2002, the
22 Arizona SAC held a factfinding hearing to gather
23 information about Mexican nationals -- and at that
24 time we learned there are many other nationals
25 crossing the border -- and attempting to cross into

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1 southern Arizona from Mexico.

2 We held the hearing because this issue of
3 the deaths incurred was the primary problem that we
4 saw at that time. We're concerned about the deaths.
5 And Arizona -- and it's very salient in Arizona and a
6 top priority issue for our religious leaders as well.

7 Media coverage of the issue has been and
8 continues to be extensive, as your packet of medium
9 materials demonstrates. And that continues, and I
10 just recently -- I brought one article over with me
11 that I'll be quoting from that was just in the
12 newspaper just recently.

13 Representatives from both public agencies
14 and private organizations approved before the
15 committee to address the situation along the border.
16 We heard testimony from Henry Ramon, who is the Vice
17 Chair, of the Tohono O'odham Nation. We heard Robin
18 Hoover, Humane Borders; Katie Hudak, BorderLinks;
19 Chief David Aguilar, U.S. Border Patrol; Andy
20 Silverman, University of Arizona, College of Law;
21 Aljania Cabrerra, who is Deputy Counsel General from
22 the consulate of Mexico; the Reverend John Fife,
23 Samaritan Patrol; and many others.

24 Much of what was presented by the speakers
25 yesterday addressed what we heard. Operation

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1 Safeguard in Arizona does channel border crossers to
2 rural Arizona, where they enter into one of the driest
3 and harshest desert environments in the world.

4 Vice Chair Ramon of the Tohono O'odham
5 Nation emphasized an issue which was not addressed
6 yesterday concerning this. The Tohono O'odham Nation
7 occupies a large portion of this rural area. Its
8 people live on both sides of the border, and about
9 1400 the Tohono O'odham People, and they are
10 registered, live on the Mexican side. Seven thousand
11 on the United States side are U.S. citizens, but they
12 can't produce documentation because, as Ramon stated,
13 historically the Native People did not document on
14 paper. And the elders were primarily born at home.
15 Thus my birth -- no birth certificates are there, and
16 this is a problem.

17 These people are harassed by the Border
18 Patrol incessantly. He stated, "Our people are no
19 longer free to travel. They are intimidated, their
20 vehicles tailgated by the Border Patrol agents,
21 looking into their cars, shining bright lights in
22 their faces, running them off the road, asking them to
23 produce documents they don't have."

24 "Now our people," to quote Ramon, "are
25 afraid to go out in the open to gather native plants

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1 and fruits because they're warned if they stop you and
2 you don't have papers, 'We will deport you.'" And the
3 people who are born here on the reservation would be
4 at a loss if they're deported to the other side.

5 So most of the elders who don't have birth
6 certificates hide from the Border Patrol. Further, he
7 said, the Border Patrol has not sought agreement or
8 permission to operate on the reservation.

9 Reverend Fife, of the Samaritan Patrol,
10 described the need for change in Border Patrol and
11 Immigration Officials' policy so we do not have
12 another summer of record deaths.

13 He warned that the attempt now to seal the
14 border is impossible. There are 2,500 miles of desert
15 and mountains out there. And what it takes to control
16 a border we learned from the example of the migration
17 between east and west Berlin during the Cold War.

18 That wasn't a remote desert wilderness
19 area. It was an urban area of about 37 miles. And
20 border officials tried to control and seal that border
21 with everything you've heard about going down on this
22 border and more.

23 They increased the number of border
24 agents; that didn't do it. They built a wall -- that
25 didn't do it. They militarized the border with

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1 military units; that didn't do it. They tried
2 helicopters and dogs; that didn't do it.

3 They built two walls, that didn't do it.
4 with a did it was to mine the area with landmines
5 between these two walls, put a machine gun nest every
6 50 yards and issue shoot-to-kill orders. And that's
7 what it took and in urban area of just 37 miles to
8 seal off the border.

9 You can imagine the cost to do that over
10 2,500 miles, let alone the hum and moral cost of put
11 machine gun nests and landmines along that border and
12 issuing shoot-to-kill orders.

13 In your press packets are suggested
14 matters for solving the border problem and saving
15 lives from both Reverend Fife and Vice Chairman Ramon,
16 as well as U.S. Congressman Jim Colby and U.S. Border
17 Patrol Chief David Aguilar.

18 The Arizona SAC also made recommendations
19 to the U.S. Commission on Civil Rights after the
20 hearing was over. They voted to send a letter to you
21 which was sent on September 6th, 2002 requesting the
22 following: One, a call for formal congressional
23 hearings on the issue of deaths of people crossing
24 into the U.S. from Mexico.

25 We are concerned that if something isn't

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1 done quickly we will have deaths again next year, and
2 it will rest on our conscience.

3 And, number two, the Commission support HR
4 2348, which has been introduced to address the Tohono
5 O'odham People and their U.S. citizenship.

6 In conclusion, recently the *Tucson Citizen*
7 ran an editorial from Ricard Pimentel, an *Arizona*
8 *Republic* columnist. It stated that, quote: The U.S.
9 should be outraged at the deaths of 320 border
10 crossers last fiscal year. It is a national tragedy.

11 Three hundred and twenty is 152 more than died in the
12 Oklahoma City bombing.

13 They are dying to come to work in the
14 United States. Our business interests are desperate
15 that they continue to do so. Immigrating reform,
16 expanding the number of visas allowed Mexicans.
17 Helping Mexico narrow the gap between its economy and
18 ours. Amnesty. These, more than militarizing the
19 border, will save lives.

20 CHAIRPERSON BERRY: Thank you. Thank you
21 very much.

22 DR. HERNANDEZ: I'd now like to introduce
23 Judge Gilbert Alston, a member of the California SAC.

24 JUDGE ALSTON: Welcome to California,
25 Commissioners. I will keep my remarks to a time limit

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1 in order to conserve time. I would like to comment on
2 the last issue that the Arizona SAC Chairman mentioned
3 to you, and that is the selective policing of the
4 border which is causing the deaths in the desert.

5 This is something which could be changed
6 by a simple policy change on the part of the Border
7 Patrol to channel the border crossers away from the
8 most difficult routes across the border and into the
9 United States, into those that are the easier. It
10 would make their job a little easier because if
11 apprehension is their goal, certainly the border
12 crossers would take the easy routes and eschew the
13 difficult ones. That can be done with the stroke of a
14 pen.

15 The gentleman who did testify in Arizona,
16 the chairman -- or the Director, David Aguilar, the
17 Chief of the Border Patrol, did not seem to realize
18 that his agency's method of enforcing the immigration
19 laws was the basic cause of the deaths of the desert.

20 He was concentrating primarily on the *coyotes*, who
21 are the people who smuggle -- the smuggler who smuggle
22 the aliens in. His focus was on apprehending them.

23 He did have some sympathy for the workers,
24 but did not seem to realize that his enforcement
25 methods were a primary cause of the deaths. The

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1 coyotes were taking the routes and losing the people
2 because the other routes were heavily patrolled by his
3 agency.

4 Turning from that to the consent decrees
5 that we have in Riverside and in Los Angeles. We do
6 have a new Chief of Police now in Los Angeles. You've
7 probably all read about Mr. Bratton. He comes to us
8 from New York, and has an excellent reputation of
9 reform.

10 I saw Mr. Bratton being interviewed on a
11 news broadcast just last week. And he made mention of
12 the consent decrees in the same sentence as other
13 obstacles like changing officers' attitudes and other
14 things that were -- I don't know exactly how to put
15 it, but he put us in a category thinking of the
16 consent decrees of one of those things that somehow he
17 was going to have to get around or, quote, get rid of.

18 He speaks -- he talks a good game. He
19 says he's for the kind of reformation of the Police
20 Department that the consent decrees is directing.
21 This is an excellent chance for the Commission to get
22 together with Mr. Bratton to analyze what has been
23 done prior to his coming onboard and to assist him in
24 getting the balance of the consent decree up and
25 running and enforced.

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1 All of the consent decrees -- both of the
2 consent decrees contain paragraphs which specify time
3 limits by which certain things must be done and
4 reports must be made. We do not have the information
5 as to whether or not those reports have been filed and
6 whether those things have been done. It would be very
7 simple and nonconfrontational simply to establish
8 which things have not been done, which things are
9 behind schedule, and to offer our assistance in
10 helping him get those things taken care of.

11 Any questions you might have, I prepared
12 an analysis of each decree which might be helpful if
13 you wish to go through the decree. The one on the
14 L.A. consent decree should be on your left knee while
15 the consent degree is on your right knee as you're
16 going through it. The one on the Riverside decree is
17 more general. I listed the things, the basic elements
18 of the decree and the time limitations that were
19 placed on those things, and it would be rather simple
20 there too to make an inquiry of the chief there.

21 The chief there is also new, incidentally,
22 and has come aboard since the decree was entered into.

23 CHAIRPERSON BERRY: Which chief?

24 JUDGE ALSTON: Riverside.

25 VICE CHAIRPERSON REYNOSO: Riverside.

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1 JUDGE ALSTON: Yes.

2 CHAIRPERSON BERRY: The suggestion you
3 made about the meeting with Mr. Bratton, --

4 JUDGE ALSTON: Yes.

5 CHAIRPERSON BERRY: -- the Chief. I
6 really hadn't thought about that. The Commission is
7 already on record and has a policy concerning the LAPD
8 and the County, because we did a report on it and we
9 made recommendations. And that was a report that Cruz
10 Reynoso may recall, and you may too, Fernando, and the
11 rest of you, that we --

12 DR. HERNANDEZ: Could you speak up, Mary?

13 CHAIRPERSON BERRY: -- we found a number
14 of serious problem with the -- which had been in
15 existence for a long time and made some
16 recommendations and highlighted them. And the *L.A.*
17 *Times*, I think it was, wrote an article --

18 VICE CHAIRPERSON REYNOSO: Editorial.

19 CHAIRPERSON BERRY: -- an editorial saying
20 we shouldn't have done that because everything was
21 fine and dandy in the L.A. Police Department. It was
22 a month or two after that that all the information
23 came out that everything we said was exactly right in
24 the paper, so the reporter who had done a little story
25 on it called me and said he was shocked to find out

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1 that this was the case.

2 But, in any case, I think, Phil, in terms
3 of follow up, maybe what we ought to do is you -- and
4 we can just do this, we don't need because we already
5 have a policy, to set up a meeting, I'd be happy to
6 come out and go with you guys to meet with Bratton,
7 and to go over this. And I'd like to take a look at
8 the consent decree.

9 If you will just share with the
10 information with us, we can distribute it to anyone
11 who's interested, any Commissioners, and just go over
12 some of these items and talk about their responses.

13 And we might do it with the Riverside one,
14 too, but on L.A. we clearly have a record of
15 recommendations and analyzes and all the rest of that
16 that I think we could act on, and see where we get.

17 JUDGE ALSTON: We have something here in
18 California called the three strikes law.

19 CHAIRPERSON BERRY: Right, we heard of it.

20 JUDGE ALSTON: And we're on the third
21 strike with respect to the Police Department. We had
22 Willy Williams, we've had Chief Parks. Neither one of
23 them could do anything with the Police Department. We
24 now have Bratton and I think that he is our third
25 strike. And I think we have to get behind him.

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1 The Los Angeles Police Department, by
2 virtue of being here in Hollywood, and getting all the
3 publicity they get, they kind of set the stage. They
4 the set the standard for police departments all over
5 the country.

6 If we can't tame the L.A. Police
7 Department, we can't tame any of them. And Bratton
8 needs every bit of help that he can get in order to do
9 that. And if we can come in in an advisory kind of --

10 CHAIRPERSON BERRY: Right.

11 JUDGE ALSTON: -- helping role, he might
12 be able to do it.

13 CHAIRPERSON BERRY: Yeah. Because of my
14 impression of him is that he, from the experience in
15 New York and other experiences, is that he would be
16 receptive.

17 And the comments that you -- that he made
18 that you referred to probably were comments made in
19 ignorance of what was actually going on. And I'm sure
20 he's got a whole load of problems to deal with, but we
21 might do that. If you want to follow up on that, I'd
22 be perfectly happy to do so.

23 MR. MONTEZ: We'll get copies of the
24 consent decree to the Staff Director along with the
25 analysis of Dr. --

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1 CHAIRPERSON BERRY: Right, the analysis.

2 MR. MONTEZ: -- Judge Alston.

3 CHAIRPERSON BERRY: And I wanted to say to
4 Chairperson Vignery from Arizona. The Staff Director
5 said that there is in preparation some kind of summary
6 of what they recommended. I don't know whether there
7 are any time sensitive issues in your recommendations.

8 I myself -- I don't know about the other
9 Commissioners. I didn't know anything about the issue
10 of the Native Indian population and the border issues
11 as related to that community being divided and the
12 elders not having documentation. It's like my mother
13 not being able to get on the airplane because she
14 doesn't have a driver's license, and she's 87.

15 But, anyway, -- yes.

16 COMMISSIONER MEEKS: What's the name of
17 that bill again?

18 DR. WEBB-VIGNERY: It's HR...

19 COMMISSIONER EDLEY: 2348.

20 JUDGE ALSTON: 2348.

21 DR. WEBB-VIGNERY: 2348.

22 COMMISSIONER MEEKS: And what's your sense
23 as far as support for that in Arizona?

24 DR. WEBB-VIGNERY: Well, the support in
25 Arizona is strong for that. The -- they've been on

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1 the Tribal Rolls since 1938 in the Indian
2 Reorganization Act.

3 COMMISSIONER MEEKS: Right.

4 DR. WEBB-VIGNERY: And many live -- this
5 is not only on the United States side of the border,
6 but it's on the Mexican side. And they've always had
7 the opportunity to travel back and forth. And it's
8 only been since 9/11 that that's been cut off.

9 And at the same time the citizenship
10 status of those in Mexico is in question. But the
11 ones, as I said, on the United States side, they have
12 no birth certificates, so it's a very deep problem for
13 them.

14 CHAIRPERSON BERRY: So this bill would
15 regularize their status?

16 DR. WEBB-VIGNERY: Yes, uh-huh.

17 CHAIRPERSON BERRY: We need to know more
18 about that to see if we want to -- I mean I don't know
19 what the status of it is or where it is. Congress of
20 course is not --

21 DR. WEBB-VIGNERY: Well, I know there's
22 been visitations from delegations from Arizona to the
23 congressional offices in Washington on this. And we
24 understood it was on the right track for passage. And
25 then 9/11 happened and everything got...

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1 DR. HERNANDEZ: But that's also the other
2 reason why I think we have out have a multistate
3 approach to this and a multistate project. As we
4 started looking at this issue. And if you remember a
5 few years ago, the committee did a multistate project
6 on border violence.

7 And I think we did some really good work
8 there. It was picked up widely be the press and I
9 think forwarded to the Commission. And the Commission
10 also helped us in terms of calming the situation and
11 improving the border violence problem.

12 CHAIRPERSON BERRY: Right.

13 DR. HERNANDEZ: But what we're looking at
14 now is with these deaths and all the associated
15 problems, it's not going to be enough to look at it
16 just in an isolated situation just in Arizona, because
17 we're experiencing similar problems in some of the
18 desert areas in California that are less patrolled and
19 certain the same can be said of Texas and New Mexico.

20 So we want to take a multistate look at
21 this. And I think one of the things that we found
22 very, very positive the last time we did this, is when
23 you get four SACs together, pieces of the puzzle start
24 coming together in a very interesting fashion. And I
25 think this is something that the four SACs could

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1 collaborate with the entire Commission on and I think
2 really move on agenda and begin to help the nation
3 figure out what it's going to do with its border.

4 And there are a lot of issues associated
5 with those people crossing the border. And I think
6 the nation has to face those issues. And certainly
7 you can provide the moral leadership to take the
8 country in the right direction with respect to the
9 human lives that are at stake here because we're
10 talking about large numbers of people dying because
11 they want to come to the United States to have a
12 better life.

13 These are not bad people. It's a real
14 problem. And it's something that ends up being very
15 inhumane in the long run. So we want to take a look
16 at this. And we think that a four-state approach,
17 multistate approach to this is going to have much more
18 impact than if just California did or just Texas or
19 just Arizona.

20 CHAIRPERSON BERRY: Well, we -- as you
21 know, we went out yesterday and had good meetings with
22 people from the Border Patrol and we heard from people
23 here. And it just seemed that, you know, the Border
24 Patrol, these folks are trying to do their jobs. And
25 there's so many inconsistencies in the policy and so

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1 many things that are detrimental.

2 The point you made, Judge Alston, about --
3 and I hadn't thought about that either. I guess
4 that's why we have meetings and stuff, so we can think
5 about things we never thought about before. But,
6 anyway, that the funneling of migrants, that they
7 might funnel them into an easy-to-cross area and then
8 arrest them, from the Border Patrol's standpoint,
9 which would make their job easier because they could
10 funnel them there and arrest them, as opposed to
11 funneling them to someplace where they're likely to go
12 out and die, where the terrain is rough.

13 But of course they're more visible if you
14 funnel them someplace that is heavily populated.
15 That's one of the political issues. And it's one
16 reason why they were diverted from the San Diego area,
17 for example, because it had become a hot political
18 issue.

19 And so the diversion, which I think when
20 it was done, well-meaning people didn't think about in
21 getting the problem out of sight. It's going to be
22 out of mind because they're going to go die. They
23 were just thinking out of sight, out of mind, and
24 maybe they'll stop coming and not making those
25 connections.

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1 But your idea of channeling them to the
2 easy areas, they were already coming to the easy
3 areas, and they decided to do the opposite, right?

4 DR. HERNANDEZ: Well, Madam Chair, the
5 other thing is that, I think that needs to be pointed
6 out here, and I think Chairman -- Chairwoman Vignery
7 pointed it out, is why do they keep coming. They keep
8 coming because there's a need.

9 It's '90 just that they're coming to
10 someplace and they don't have any place to go. They
11 come and they get employed. They actually find
12 employment. And I think if you look around the San
13 Diego area and you look at who's washing the dishes,
14 who's washing the cars, who's serving your food, who's
15 parking your cars, --

16 VICE CHAIRPERSON REYNOSO: Who's cooking
17 Chinese food.

18 DR. HERNANDEZ: Exactly. -- what you're
19 going to find is they look a lot like the people that
20 are crossing the border. And there's an awful lot of
21 people making an awful lot of money off of people that
22 cross the border.

23 And so the other part of the issue is not
24 just funneling people so that they can be arrested,
25 but the other part of the issue is that those that do

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1 across, find a place. And why. So it's not -- it's
2 not just that these people are breaking the law,
3 they're getting across.

4 I think the thing that people miss is that
5 there's also people that are breaking the law on the
6 other side of the border, employing these people. And
7 I think that we've got to begin to face up to the
8 issue. And certainly this is true in California and
9 this would -- this is true in terms of the California
10 economy.

11 If you took all those illegal immigrants
12 and put them back in Mexico tomorrow, the California
13 economy would be devastated, would be devastated. And
14 daresay the same is probably true for Arizona, Texas,
15 and New Mexico.

16 So the other half of this is the issue of
17 economic justice. And who's making money off of these
18 people. It goes both ways. And the other half is
19 never talked about. All we focus on is these poor
20 people trying to get across the border, being
21 arrested, the Border Patrol racking up numbers. But
22 what happens to the people that get past the Border
23 Patrol, where do they go and what do they contribute
24 to this country. That story hasn't been told. And I
25 think that's one of the things we want to focus on as

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1 we get together with our other colleagues to see what
2 is going on, what is the business side of the
3 immigration question.

4 CHAIRPERSON BERRY: Um-hum. Right.

5 COMMISSIONER MEEKS: An excellent issue.

6 DR. WEBB-VIGNERY: The question of
7 militias was raised before we took our seats here.
8 And the militia question was addressed in the
9 transcript, which I gather you're going to receive a
10 synopsis of?

11 MR. JIN: We're going to work up a
12 synopsis where --

13 DR. WEBB-VIGNERY: Well, there are --
14 there are. And we have, one of the members of our SAC
15 has been threatened by the militia. She is an
16 advocate for changing what's happening on the border.

17 And we've had disappearances in Arizona of people
18 coming across. And I think there's article in your
19 news packet which refers to that, where the militia
20 has probably been involved.

21 CHAIRPERSON BERRY: These are vigilante
22 groups?

23 DR. WEBB-VIGNERY: Yeah.

24 CHAIRPERSON BERRY: Okay.

25 JUDGE ALSTON: I would like to make one

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1 comment about House Resolution 2348. The Tohono
2 O'odham Nation is an Indian Tribe that was here in
3 1492. How does it look for us to be passing a
4 resolution declaring them to be citizens? Isn't that
5 a little bit ridiculous.

6 Their reservation or their Native lands
7 were cut in half by the -- was it the Treaty of
8 Guadalupe Hildago with Mexico?

9 CHAIRPERSON BERRY: Yes.

10 JUDGE ALSTON: And this is the difficulty:
11 They live on both sides of the border. We did it to
12 them. They didn't do it to us.

13 VICE CHAIRPERSON REYNOSO: Shouldn't those
14 folks have dual citizenship? It's not the only tribe
15 that was cut in this fashion. And until certain
16 years, they certainly not until the late '30s or '40s
17 did we start sort of looking strictly at restricting
18 folk going both ways. So until rather recently,
19 historically speaking, these folk were able to go to
20 Mexico and come back without being harassed.

21 And it seems to me that we might go beyond
22 2348 and suggest that these folks are perfect
23 candidates for dual citizenship.

24 CHAIRPERSON BERRY: Yes. Isn't it true --

25 JUDGE ALSTON: As a law professor, sir,

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1 you know that the Constitution says that if you're
2 born of American parents in another country you're a
3 citizen.

4 VICE CHAIRPERSON REYNOSO: Right.

5 JUDGE ALSTON: So that automatically makes
6 them citizens.

7 VICE CHAIRPERSON REYNOSO: Well, no, but
8 presumably there are some who just live -- I assume
9 there are some who just live on the Mexico side whose
10 children are born there. But they still belong to the
11 same tribe.

12 CHAIRPERSON BERRY: Isn't it true on the
13 northern border too that -- isn't it true on the
14 northern border --

15 VICE CHAIRPERSON REYNOSO: Sure. Sure.

16 CHAIRPERSON BERRY: -- that there are
17 tribes -- are there tribes that are on both sides of
18 the Canadian-U.S. border?

19 COMMISSIONER MEEKS: Yeah. Some of the
20 Mohawk Tribes.

21 CHAIRPERSON BERRY: There are?

22 COMMISSIONER MEEKS: Yes, um-hum.

23 CHAIRPERSON BERRY: So among all the
24 things that we have on our list, we need to get
25 somebody to look into that whole general topic.

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1 Let me -- does anyone else have anything
2 else that they would like to either say or ask our SAC
3 representatives before we thank them for their
4 wonderful service and say that we will follow up on
5 the recommendations and we'll read with interest the
6 materials that you give us?

7 VICE CHAIRPERSON REYNOSO: Madam Chair,
8 just -- I assume that the staff will send a copy of
9 the material that we received to the Commissioners who
10 are not here present?

11 MR. JIN: Yes, of course.

12 VICE CHAIRPERSON REYNOSO: Okay.

13 CHAIRPERSON BERRY: Okay. All right.
14 Well, thank you very, very much.

15 DR. WEBB-VIGNERY: Thank you.

16 CHAIRPERSON BERRY: Who's the governor.
17 You mentioned the governor of Arizona? I know who the
18 governor of California is.

19 DR. WEBB-VIGNERY: Oh, it's Janet
20 Napolitano, who was our attorney general.

21 CHAIRPERSON BERRY: Oh, you've got a new
22 governor?

23 DR. WEBB-VIGNERY: Yes.

24 VICE CHAIRPERSON REYNOSO: Pretty tight
25 election, huh?

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1 DR. WEBB-VIGNERY: Very tight.

2 CHAIRPERSON BERRY: Yeah. Okay. Thank
3 you.

4 Now we have a presentation. We want to
5 discuss the -- where am I -- the presentation on
6 education?

7 VICE CHAIRPERSON REYNOSO: Yes. Yes.

8 CHAIRPERSON BERRY: Okay. All right.
9 Terri, let's do your presentation.

10 VICE CHAIRPERSON REYNOSO: Madam Chair,
11 I'd just like to recognize the presence of Penny
12 Edgert, who's here today, who's very involved with
13 higher education in California. And so she was
14 interested in hearing this report.

15 CHAIRPERSON BERRY: Oh, all right.
16 Welcome.

17 Thank you, Terri.

18 MS. DICKERSON: Good morning.

19 VICE CHAIRPERSON REYNOSO: Good morning.

20 CHAIRPERSON BERRY: Good morning to you.

21 MS. DICKERSON: This is a review that the
22 Office of Civil Rights Evaluation conducted.

23 I'll move over to here because there's
24 some feedback for some reason. I guess, as usual, I'm
25 the only thing standing between you and lunch. And I

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1 have --

2 (Laughter.)

3 MS. DICKERSON: And, as usual, I have
4 data, --

5 CHAIRPERSON BERRY: Oh, good.

6 MS. DICKERSON: -- which I hope you find
7 fascinating.

8 CHAIRPERSON BERRY: I enjoyed reading your
9 draft very much.

10 MS. DICKERSON: Thank you.

11 CHAIRPERSON BERRY: Thank you. I'm
12 looking forward to looking at it on the screen.

13 **X. Equal Opportunity in Higher Education**

14 CHAIRPERSON BERRY: Thank you. This is a
15 staff report and the staff authors who worked on this
16 were Sock-Foon MacDougall, she was the Team Leader;
17 and the people who served on the Team were Wanda
18 Johnson; Margaret Butler, Monique Dennis-Elmore;
19 Manuel Alba; and Mireille Zieseniss -- basically our
20 whole office conducted this analysis.

21 We looked at percentage plans, the
22 challenge of equal opportunity in higher education.
23 And the purpose was to update and expand on the 2000
24 report that was issued by the Commission Toward an
25 Understanding of Percentage Plans in Higher Education:

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1 Are They Effective Substitutes for Affirmative
2 Action.

3 We also wanted to review admissions
4 policies, national enrollment trends, to give some
5 context to the percentage plans and to examine what
6 the federal role is, since that is our interest.

7 In order to do this we obtained
8 application admission enrollment data from the States
9 of California, Texas, and Florida. And we also got
10 national enrollment data from the internet that we
11 reviewed and analyzed and made part of this
12 examination.

13 We also looked at literature from a number
14 of other sources. We did a pretty extensive
15 literature review and we conducted some interviews
16 with federal, state, and university officials.

17 CHAIRPERSON BERRY: So the data you got
18 from the states is their official data?

19 MS. DICKERSON: Yes, it is.

20 CHAIRPERSON BERRY: Okay, all right.

21 MS. DICKERSON: We got it directly from
22 the schools.

23 And we evaluated all of that. In
24 addition, we'll go -- the report went into some detail
25 about the schools we reviewed and why we looked at the

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1 ones that were affected by percentage plans. In some
2 states it's across the board, in others it's not. But
3 primarily looked at those that had flagship status or
4 those that were involved in the percentage plan
5 programs, to just begin to develop a picture of the
6 effects of new admissions policies on minority
7 enrollment in particular.

8 Okay. Well, let's talk about affirmative
9 action. Traditional affirmative action programs were
10 already significantly improving diversity on college
11 campuses. I guess affirmative action really came
12 about in the 1960s and visible progress was really
13 evident by the 1980s, though some disparities still
14 existed in higher education. And some of the
15 admissions policies started to be challenged in the
16 1990s.

17 There were a lot of legal and legislative
18 challenges in recent years, including the
19 consideration of race in admissions, financial aid,
20 recruitment and outreach programs.

21 Kind of setting the stage for this review
22 and for talking about percentage plans. In the report
23 we noted that challenges seem as if they are going to
24 continue. The Supreme Court, looks like there are
25 some cases that are moving through the system, and the

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1 Supreme Court may have an opportunity to speak on this
2 again, sometime soon, in fact. And the challenges
3 that we know have resulted in percentage plans have
4 done so in the states of California, Texas, and
5 Florida.

6 Okay. Let's talk just about the
7 percentage plans. And then, as you know from looking
8 at the paper, we looked at a number of other things.
9 For example, national enrollment trends and the impact
10 of the SAT and other success predictors.

11 But just talking about percentage plans
12 alone, first the University of California. The
13 University of California had a 12.5-percent plan for
14 admissions since 1960. So that was before the race
15 ban in the state as well as after. This is the only
16 state in which there was a percentage plan in place
17 even before the race ban.

18 And so it's interesting to look at
19 California because you can look at the effect of
20 percentage plans both with and without affirmative
21 action. And by affirmative action, I guess I'm
22 generally talking about consideration of race in
23 admissions decisions, but also if you talk about
24 affirmative action you can talk about outreach
25 programs as well as that target minority students.

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1 Since the race bans came into effect the
2 plan has undergone modifications. Some of the
3 modifications, the modifications were made to increase
4 the diversity of the students. One of the
5 modifications was the Four Percent Plan and the other
6 was the comprehensive review. These are just in
7 California.

8 The Four Percent Plan admits California
9 students who graduate in the top four percent of their
10 high schools. And this expands the eligible pool to
11 includes students who rank near the top in their
12 school but not the top 12 percent graduates statewide.

13 So what I mean by that is say statewide the 12
14 percent of students had a GPA of 3.5. I have a GPA of
15 3.4, but I'm still in the top four percent of my high
16 school, even though I didn't meet the statewide
17 cutoff, then the plan was modified to include students
18 like me, like that would be in that example.

19 And the whole idea is to drill a little
20 deeper and get students who didn't qualify statewide,
21 but they are very good students. And, you know, maybe
22 it sort of evens out the inequalities in the
23 infrastructure that might be across the state and the
24 differences between school districts.

25 The other is the comprehensive review.

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1. That was the other modification that came about after
2 the affirmative action ban. And it expanded the
3 existing 10, that purely academic selection criteria,
4 to include four nonacademic factors: Motivation,
5 leadership, initiative. There's another one that I
6 don't have listed right here. I can't recall right
7 now.

8 What were the effects of the race ban and
9 the policy changes? The race ban further reduced the
10 already small portions of African American, Hispanic,
11 and Native American students in the U.C. system's
12 undergraduate and professional schools. The recent
13 changes in policies have been accompanied by small
14 increases in undergraduate and professional
15 applications and admissions from underrepresented
16 minorities, compared to when the race ban was
17 initially imposed.

18 Further effects. For both undergraduate
19 and professional schools, the proportions of the
20 groups remain lower than they were before the race
21 ban. In particular, the chances of undergraduate
22 admission for African American, Hispanic, and Native
23 American applicants to the L.A., Berkeley, and San
24 Diego campuses dropped.

25 This is what we found when we reviewed the

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1 data. For the U.C. system as a whole, higher rates of
2 underrepresented minorities didn't always result in
3 higher enrollment rates in the undergraduate and
4 professional schools.

5 Now as far as affirmative action and
6 outreach. Prior to the race ban, the University of
7 California had an array of affirmative action programs
8 that were intended to increase minority students'
9 eligibility rates for college. These are like Stay in
10 School Programs and programs that -- workshops.
11 Things that help students sometimes in the lower
12 grades, but also in high school, mentoring programs,
13 things of that nature that are targeted specifically
14 to black, Hispanic, Native American students based on
15 race and their families.

16 Because of the ban, the University of
17 California wasn't allowed to target outreach in that
18 way. So they've changed those programs. They when --
19 the programs became more targeted to disadvantaged
20 students and high schools with low numbers of students
21 attending the university -- attending the University
22 of California.

23 They extended efforts deeper into the
24 middle and elementary schools, especially to beef up
25 and math since preparation. And they also tried to

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1 double in size the number and results of the previous
2 outreach program. So they doubled the amount of money
3 they were putting into it. They tried to include
4 twice as many students and they tried to admit twice
5 as many students.

6 The University of California outreach
7 programs currently include programs for enrichment,
8 mentoring, and scholarships for disadvantaged
9 students, but these aren't based on race.

10 Making the process of transferring from
11 community colleges was another part of it. Making
12 that easier, because a lot of the -- if you read the
13 report, a lot of minority students tend to be in the
14 community colleges. Improving the teaching skills in
15 low performing schools, so better preparing -- so that
16 they can better prepare students for college admission
17 and facilitating teacher recruitment and retention.

18 The full effects of these programs is
19 really not going to be known for years to come. For
20 example, the ones that were put in place for eighth
21 graders in the past year, we won't know for four years
22 when those students start applying for college what
23 the effect of these programs are.

24 So, in conclusion, for California, the
25 race ban has resulted in admitting and enrolling

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1 smaller proportions of African Americans, Hispanics,
2 and Native Americans than it did with affirmative
3 action programs; and modifications to the long
4 existing percentage plan and extended outreach have
5 yet to overcome the detrimental effects of the ban.

6 Okay. Now we're in Texas. We looked at
7 the *Hopwood* ruling which abolishes the use of race or
8 ethnicity as college recruitment, admission, financial
9 aid, and student retention criteria in the is that.

10 The plan was initiated in '88 -- I mean in
11 '98. And the percentage plan was -- came about as a
12 result of HB 588. This guaranties high school
13 graduates in the top ten percent of their classes
14 admission to Texas public schools or university of
15 their choice.

16 Now the non-10 percent students are not
17 guaranteed admission. Whether or not they are
18 admitted depending we seats that are left over after
19 the 10 percent have made their decisions about whether
20 or not they're going to accept the offers from the
21 Texas schools.

22 Admissions and guidelines apply to
23 students not ranked in the top 10 percent. And at the
24 point that that determination is made and if a student
25 is not in the top 10 percent, the university can

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1 consider a student's academic performance and other
2 factors. They can look at socioeconomic background
3 and standardized test scores in order to make that
4 determination.

5 December 2001, the Texas A&M system
6 regents tentatively approved a plan that would pursue
7 the top 20 percent of students at approximately 250
8 low-performing or disadvantage high schools. These
9 are schools that are perennially underrepresented or
10 are never represented in the top 10 percent. They've
11 never had a student to qualify in the top 10 percent.

12 So legal concerns prompted the University
13 to table this proposal; though. The concerns were
14 associated with how many schools, what number of
15 schools, is it 250, how -- at what level does it go
16 too far to not comply with *Hopwood*. So there were so
17 many concerns about that, that this was tabled.

18 In 1994 during affirmative action
19 admission policies, the racial and ethnic breakdown at
20 the University of Texas at Austin was white, 65
21 percent; blacks, 5 percent; Hispanics 15 percent. All
22 minorities 36 percent. And *Hopwood* has had a profound
23 effect on minority enrollment. Blacks are now less
24 three percent and Hispanics are less than 13 percent,
25 whereas they used to be 15.

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1 The primary beneficiaries have been Asian
2 Pacific Americans. Asian American enrollment
3 increased initially. It was a very perceptible jump
4 eventually, but it's leveled off since. So that's
5 something that really the state universities should
6 continue to examine and track to see if it has leveled
7 off, if it's going to increase or decrease or stay the
8 same.

9 They still struggle to recruit,
10 especially, African American students. They are 12
11 percent of the state's population but, as I said, only
12 three percent of the school system.

13 The Texas Universities are continuing to
14 look for methods to admit more minorities within the
15 legal boundaries of *Hopwood*. For example, they have
16 started the "Keep Texans in Texas Program" in that
17 they have matched scholarship offers from out-of-state
18 schools to try to keep the Texas students in the Texas
19 schools.

20 Overall the number of minority students
21 has declined at the University of Texas. The
22 percentage of applicants admitted has declined and the
23 number of those admitted, who actually enroll has
24 declined since the 1996 --

25 CHAIRPERSON BERRY: So the applications

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1 are up, but the applicants admitted and the admittees
2 who enroll have declined?

3 MS. DICKERSON: Correct.

4 CHAIRPERSON BERRY: Okay.

5 MS. DICKERSON: In '96 UT Austin admitted
6 57 percent of black applicants. But by 2001 black
7 applicants had increased by 24 percent, but admittees
8 decreased by 19 percentage points.

9 Only 38 percent applicants were admitted
10 in 2001 and of those only 266 total enrolled. So pre-
11 race ban 1996: 2,496 Hispanics applied. 65 percent
12 were admitted. And by 2001, fewer Hispanics were
13 admitted in 2001 than in 1996. The number of
14 Hispanics applied had increased by 20 percent, but the
15 percentage who were admitted decreased by 15 percent.

16 So we can really see there's been a profound effect
17 on Hispanic enrollment and African American
18 enrollment.

19 The University of Texas at Austin was
20 concerned about declined minority enrollment, and they
21 have started to take action. And one action that they
22 have attempted to draw students, they created the
23 "Long Horn Scholarship Program." It's aimed at low
24 income high schools. And they awarded 64 four-year,
25 need-based scholarships in the first year.

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1 We're going to see the relationship
2 between financial need and minority enrollment a
3 little bit earlier, as it was expressed in the paper.

4 As for graduate and professional schools, the number
5 of minorities in graduate and professional schools is
6 declining since *Hopwood* as well. Even though the 10
7 percent plan doesn't apply to professional schools, it
8 really can't because the source of that is high
9 schools in the state. But minority enrollment rose at
10 both law school, 17 percent in 2000 -- the year 2000-
11 2001, the academic year. This was only a one percent
12 increase from the previous academic year and overall a
13 seven-and-a-half percent decline from when the plan
14 began in 1996.

15 As well, although minority admissions data
16 from the three law schools varied to some extent, the
17 U. T. Austin school of law has admitted fewer
18 minorities in each of the post *Hopwood* years that we
19 looked at.

20 The most recent data on minority
21 enrollment at the University of Texas Medical School
22 shows that five and a half percent fewer enrolled
23 students are students, when compared to the 1997-1998
24 year.

25 The only grouped to have experienced a

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1 steady increase at the University of Texas Medical
2 Branch was Asian Pacific Americans. And, again, time
3 is going to tell if that trend continues. But,
4 generally, the trend foretells a further reduction of
5 minority enrollments in the coming years, if they
6 continue the direction they are now.

7 Outlawing race, conscience affirmative
8 action programs and higher education in Texas has had
9 a negative impact on minority enrollment at the
10 University of Texas, Austin. And I'm talking about
11 overall minority.

12 And also increasing at some schools,
13 minority admission rates have mostly declined at the
14 premier Texas law and medical schools. Some of the
15 main conclusions, after we looked at taxes.

16 And let's go to Florida now. The Florida
17 percentage program has its roots in the order, an 1999
18 order which banned the use of race or ethnicity in
19 University of admissions and replaced it with the
20 Talent 20 Program. That took effect in the year 2000
21 -- academic year 2000-2001. And it does not apply to
22 graduate, law, and medical admissions.

23 This program similarly guarantees
24 admission to one Florida's 11 public institution.
25 Who's eligible? Any Florida resident who graduated in

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1 the top 20 percent of his or her public class. And
2 students also must have completed a prescribed 19-unit
3 academic high school curriculum. The number of units
4 is spelled out in the report, the Florida section of
5 the report.

6 The Talented 20 Program is one of three
7 pathways to enrollment in the state University system.

8 The second is through traditional criteria, reviewing
9 SAT, ACT, and GPA. And the third is the profile
10 assessment which examines nonacademic factors for
11 students who may have a weak high school record, then
12 schools can start out look at their background.

13 That's in a nutshell the talented 20
14 program.

15 The use of class ranks in admissions
16 decisions particularly hurts blacks, is what we found,
17 in their access to higher education. Specifically,
18 because of their weaker high school performance
19 relative to other groups, blacks have the smallest
20 percentage of high school graduates qualifying for the
21 Talented 20 students.

22 You look at black high school graduates,
23 blacks have the smallest percentage applying to
24 college.

25 We looked at three classes in our review.

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1 And what we found is the percentage of blacks
2 identified as Talented 20 students changed minimally
3 for the three classes that we examined. And so what
4 we have determined is that African American students
5 in the state of Florida are disadvantaged from the
6 very beginning of the admissions process because of
7 the low high school record.

8 In the University system enrolled black
9 Talented 20, first-time students, as the percentage of
10 all enrolled black first-time students is lower than
11 the comparable figures for other groups.

12 Civil rights advocates are concerned in
13 the state that minorities are being shut out and that
14 they're saying that that really needs to be examined.

15 Hispanic, Native American and especially black
16 Talented 20 students are underrepresented at the
17 selective University of Florida relative to their
18 presence in the entire state university system and in
19 comparison with the group's presence among high school
20 graduates.

21 So in Florida, let's see, we analyzed the
22 enrollment in two ways, both as a part of the school
23 and as a part of the state university system. As for
24 enrollment outcome of the three pathways to enrollment
25 in Florida, enrollment increased overall so that the

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1 number of minority and nonminority first-time students
2 enrolled in the university system increased, as one
3 might have expected. But the percentages of minority
4 groups didn't change because enrollment on that
5 changed. So even -- there are even more white
6 students. So the percentages of minority groups
7 didn't change.

8 The data show that blacks are admitted to
9 the University system at rates almost always lower
10 than those of other groups. White admission rates are
11 always substantially higher than the overall minority
12 rates. And as a group minority admittees enroll
13 Hispanic and blacks at a lower rate than whites.

14 Within the University system, the
15 University of Florida and Florida State University,
16 the percentage of black first-time students who are
17 consistently lower than the 1999 -- the percentage is
18 consistently lower than that of the 1999 high school
19 class. Hispanics are similarly underrepresented at
20 the selective University of Florida and Florida State
21 University.

22 We looked at graduate and professional
23 schools as well as in the state of Florida and we
24 found the same pattern. First time black graduate
25 admission rates are almost always lower than other

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1 groups. And white admission rates are -- a whole lot
2 higher than overall graduate minority rates.
3 Substantively.

4 Graduate and professional students, to
5 continue, the first time minority graduate enrollment
6 grew substantively in the University system in 2001
7 and 2002, the second year of the race ban, however
8 Hispanics and especially blacks remain
9 underrepresented in the University of Florida relative
10 to their presence in the whole University system.

11 Minority rates of admission are lower than
12 for other groups. First-time black and Hispanic law
13 school students were admitted at lower rates than
14 other groups. Minority law enrollment fluctuated,
15 while those at the other law school, the University of
16 Florida Law School, College of Law, it fell steadily.

17 Admission rates for first-time minority
18 medical students improved after the race ban. Still,
19 overall minority admission rates are lower than those
20 for whites. While blacks and Hispanics have the
21 lowest rate at all. The first minority medical
22 students grew minimally at the -- in the University
23 system and the two medical schools that we studied.
24 Again, the black and Hispanic were the lowest of all.

25 So we concluded about the Florida is that

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1 the Talent 20 Program does not enhance action to
2 higher education for blacks, nor does it help improve
3 the presence of blacks and Hispanics at the two
4 selective flagship universities. And I'm going to get
5 into why that is a concern in the next set of slides.

6 The overall proportion of minorities in
7 the University system stayed the same despite
8 increases in the number of minority first-time
9 students. So the proportions did not change.

10 Graduate admission rates for blacks are
11 almost lower than for those in the other groups. Law
12 and medical school admission rates for blacks and
13 Hispanics are lower than those for other groups. So
14 you can see a common pattern here.

15 Just to summarize and compare the
16 percentage plan programs and how we focused this
17 report. And if you look at the middle column,
18 California had a percentage plan in place before the
19 race ban and after the race ban. And that's what we
20 looked at.

21 In Texas and Florida we looked at the
22 effect of admission, the effect of the percentage plan
23 on admission before and after the plan was
24 implemented.

25 And for the University of California we

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1 only looked at the U.C. system because the 12-and-a-
2 half percent plan only applies to the University of
3 California. There's a 33-and-a-half percent plan
4 which applies to Cal State. And community colleges in
5 that state don't have a presence plan at all. But
6 U.C. has the strictest percentage plan, and that's
7 what we looked at.

8 And in Texas and in Florida, the percent
9 plan applies to all of the colleges and universities
10 in the system.

11 In terms of eligible students, a student
12 can be -- statewide in California, a student can
13 qualify by being in the top 12 and a half percent, as
14 I said before. Or the top four percent of their high
15 school. And in Florida, the plan only applies to
16 students' high school academic record in their
17 particular high school.

18 I'm sort of tempted to kind of fast
19 forward through --

20 CHAIRPERSON BERRY: Go right ahead and do
21 it because we will remember those. We just had them,
22 so that's okay. You can go to the next session.

23 MS. DICKERSON: Go to the next set. I'm
24 going to go -- well, basically what we found when we
25 looked at admission standards and success predictors,

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1 like the ACT and the SAT, that there really has been
2 an over reliance on those tests and they've become
3 widely disputed, largely due to disparities in the
4 test scores and the racial and ethnic groups.

5 The gaps in the scores between white and
6 nonwhite students has really widened. There is a lot
7 of evidence that shows that and several studies that
8 show the disparity -- the gap may be more due to the
9 number of times that people take the SAT tests. Those
10 who take it multiple times tend to progressively
11 better. Those who have access to preparation, SAT
12 preparation classes tend to do a whole lot better.
13 And so there is a widening, there is a gap that is
14 growing between students that can be connected to race
15 in terms of SAT and ACT scores.

16 As for national trends in college
17 enrollment, I'll just summarize that as well. What we
18 found is that -- I'll pick a few of them. Affirmative
19 action increased minority participation in higher
20 education. Over the last 25 years, minorities were 20
21 percent of college students in 1976 and they are 33
22 percent today. Blacks are 12 percent of college
23 students, Hispanics 11 percent, and Asian Pacific
24 Americans are five percent. But there still are
25 problems.

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1 COMMISSIONER EDLEY: Is that all I read?

2 MS. DICKERSON: Yes.

3 COMMISSIONER EDLEY: Or just four year
4 schools or does that include -- is that only four-year
5 schools?

6 MS. DICKERSON: I would have to look it up
7 because I don't know, but I believe it's all schools.

8 COMMISSIONER EDLEY: Okay. Two-year and
9 four-year.

10 COMMISSIONER REDENBAUGH: Excuse me, Madam
11 Chair?

12 CHAIRPERSON BERRY: Yes.

13 COMMISSIONER REDENBAUGH: Yes. Commission
14 Redenbaugh. This has been a very informative and
15 productive meeting. I regret I have to leave to go to
16 an appointment, but I wanted to -- I wanted to commend
17 the presenters from the various SACs and the current
18 presentation on the education report. This is all
19 well done.

20 CHAIRPERSON BERRY: All right. Thank you
21 very much.

22 COMMISSIONER EDLEY: Take care, Russell.

23 CHAIRPERSON BERRY: Take care, Russell.

24 COMMISSIONER REDENBAUGH: Okay. Thank
25 you.

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1 MS. DICKERSON: The disparities that still
2 exist is there is enrollment and variation within
3 groups and among subgroups so there's a tendency to
4 lump all Hispanic students all together when you
5 really shouldn't look at the subgroups as well as The
6 Asian Pacific Americans because some groups are well
7 ahead of others.

8 And as well there's a disparity, white
9 students are more likely to attend college at a
10 traditional age and minority students tend to be
11 older. Whites and Asian Americans are more likely to
12 attend four-year colleges and blacks Hispanics are
13 more likely to attend the two-year colleges.

14 And the trends are similar in graduate and
15 professional schools.

16 Let's see what some of the main
17 disparities are. Hispanics are five percent, blacks
18 are nine percent of graduate students. And minorities
19 are 21 percent of law schools and 31 percent of
20 medical school students.

21 Asian Pacific Americans, though, account
22 for 17 -- I'm not sure that -- I think what that's
23 supposed to say is even though minorities are highly
24 represented in medical schools, 17 percent of that is
25 Asian Americans. And the rest are all other

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1 minorities combined.

2 CHAIRPERSON BERRY: Oh, okay. I remember
3 that from reading it.

4 MS. DICKERSON: Yeah. That's what that's
5 supposed to say.

6 Okay. I don't think I'm going to go over
7 all the information about financial access in the TRIO
8 programs. Essentially some of the problems that we
9 discussed were that there are repeaters. These are
10 programs that are targeted to counselors, school
11 districts, et cetera.

12 And it's very difficult to expand beyond
13 the schools that have always participated in TRIO
14 programs, because now there are new immigrant groups
15 that may be situated in suburbs and rural areas and
16 people who will have different language requirements.

17 And TRIO is not able to expand beyond that because
18 there's just not enough money to reach all the
19 students. It only reaches about seven percent of the
20 eligible population, which is a very, very small
21 percentage. So it creates a real disconnect with
22 people who need access to financial aid.

23 The other thing we find with financial aid
24 is now that it's starting to rely more on academic
25 record than it used to rely on need, a lot of

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1 scholarships that used to go to people based on
2 academic need, are going on --

3 COMMISSIONER EDLEY: You mean based on
4 financial need.

5 MS. DICKERSON: -- based on financial need
6 -- thank you -- are going to people, other people who
7 may not -- who may otherwise -- who would otherwise be
8 able to afford college.

9 CHAIRPERSON BERRY: Like the people in the
10 *New York Times* editorial who will take the Hope
11 Scholarships and buy cars with them.

12 MS. DICKERSON: Okay. So it really
13 creates a crisis for students who but for the
14 financial means, they might be -- they are excluded
15 from being able to go to college.

16 Okay. Let's get to some of the overall
17 conclusions. Let's skip through the financial aid.
18 Overall, I guess what the picture ends up being is,
19 you know, we're saying to black, Hispanic, Native
20 American students that: Compared to others, you
21 probably won't be admitted to college. If you are
22 it's going to be a lower tier university, possibly a
23 two-year degree and not a four-year degree.

24 If you get in, you may not have the
25 financial aid to be able to accept, or it's going to

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1 take you longer to graduate because we find that there
2 are a lot of students that because of part-time work,
3 they are taking longer to get that degree or taking
4 longer to even enter college.

5 So -- and some of the financial aid that
6 used to go to them is going to students who might be
7 able to have afforded it without assistance.

8 Percentage plans, we found weren't a
9 viable substitute for affirmative action. That in
10 each percentage plan statement, minority students are
11 faring the same or worse. And of course we're looking
12 at this evaluation in terms of what it's done to
13 minority enrollment. The plans have to be
14 supplemented with proactive recruitment, outreach, and
15 academic support programs. And the earlier that they
16 start, the better.

17 A model percentage plan did find very good
18 features and best practices in all of them. The
19 extensive outreach that is part of the California
20 percentage plan program, the focus on improving,
21 reaching students early and getting them to stay in
22 school and recognize the value of education, which is
23 done in Florida, and the school choice which is built
24 into the Texas program.

25 States have to broaden the use of things

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1 as such as the comprehensive review that allows
2 administrators to look at other factors, like
3 demonstrated leadership or motivation or use work
4 experience in evaluating a candidate. And they also
5 have to perform regular examinations of percentage
6 plans.

7 We found that there was not very -- that
8 there aren't a lot of studies at all done by the
9 states on these percentage plan programs. In fact, we
10 were asking for data and they were collecting it for
11 the first time to send it to us. So states really
12 need to look at what the impact of these programs has
13 been. They need to study them regularly and they need
14 to do a comprehensive review of all the schools in
15 their system that with five analysts we weren't able
16 to do.

17 And the federal government has to make
18 TRIO and financial aid programs accessible to all who
19 are eligible.

20 That's the end of my presentation.

21 CHAIRPERSON BERRY: I think it's -- yes.

22 COMMISSIONER MEEKS: Terri, I just have
23 one question. Why -- I mean were the Native American
24 numbers so small that you couldn't pick them up or
25 they did not just counted them?

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1 MS. DICKERSON: Yeah, they're in the
2 report. I guess generally the trends are -- the
3 numbers that you start with were so small that it was
4 hard to make the big conclusions. I think the state
5 university systems probably could if they were, you
6 know, picking up on the data and looking at it across
7 the board for a number of years. But in relation to
8 the data that we got we were able to make the broad,
9 the sweeping conclusions.

10 CHAIRPERSON BERRY: But the numbers are in
11 the report?

12 MS. DICKERSON: They are in the report,
13 yes.

14 COMMISSIONER THERNSTROM: I have a
15 procedural question --

16 CHAIRPERSON BERRY: Yes, Commissioner
17 Thernstrom.

18 COMMISSIONER THERNSTROM: I just want to
19 know as we go forward here on this report what is the
20 process. I haven't had a chance to read it, frankly,
21 but I will do so very carefully. Are there going to
22 be -- can Commissioners write, you know, separate
23 statements of some sort and react in response to it?
24 Is it going to be published, what is the time table
25 and so forth?

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1 CHAIRPERSON BERRY: It's a draft staff
2 report. And for staff reports the Commission does not
3 have to approve them. They're just put out for the
4 informational purposes. And it was presented to us
5 and give to us. And if we have any comments that the
6 staff might use, since it says "Draft," as they
7 finalize they would very much appreciate having those
8 in terms of any questions we have or points we'd like
9 to make or things that we think that they missed.

10 And the overall purpose of it was simply
11 to update the situation on the percentage plans and to
12 provide data that other researchers might be able to
13 use because the data is not out there, as Terri
14 pointed out, until they asked for it. The states
15 hadn't even collected it, so one of the benefits of
16 this exercise is to get the data and get it out there
17 so that people can look at it and reach their own
18 conclusions.

19 So that was the general idea. Although if
20 the Commission wants to do something else with it, it
21 can, but that was the idea.

22 COMMISSIONER THERNSTROM: Oh, so as it
23 stands now, we don't vote on this at any point?

24 CHAIRPERSON BERRY: Not unless we wish to
25 decide that we wish to --

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1 COMMISSIONER THERNSTROM: Okay. Now I
2 just -- it's just a point of clarification. I just
3 didn't know.

4 CHAIRPERSON BERRY: And if there are any
5 comments that you have, I'm sure that the staff would
6 love to have a good read and some feedback would be
7 great as they work on this.

8 COMMISSIONER THERNSTROM: Good.

9 CHAIRPERSON BERRY: Commissioner Edley.

10 COMMISSIONER EDLEY: I think I'd like,
11 like Commissioner Thernstrom, I'd like to give some
12 comments to the staff on the draft report, which I'll
13 tried to do in the next ten days or so. But it
14 strikes me that we might consider at the next meeting
15 whether there are some policy recommendations we want
16 to make to Congress arising from the staff report to
17 try to inform Congress' consideration of
18 reauthorization of the Higher Education Act.

19 My understanding is that the staff, the
20 bipartisan staff on the Hill have asked the public to
21 provide recommendations for the reauthorization by the
22 end of December so that they can be putting together
23 their legislative language early in the calendar year.

24 So actually if we had two, three, four
25 particular ideas building off of what the staff has

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1 discovered or otherwise, December -- it would be
2 really timely if we could talk about those in
3 December, see if we might actually have some things we
4 could agree upon as a group.

5 CHAIRPERSON BERRY: Well, I think that's a
6 great idea and that after you read it, if you have any
7 suggestions that you would like to make in terms of
8 policy, that we could consider, why don't you get them
9 to the Staff Director in time for him to circulate and
10 put the item on the agenda. And then we can discuss
11 it at the last meeting -- next meeting and decide
12 whether we want to agree to it. Anyone can -- any
13 commissioner is perfectly welcome to do that, and we
14 would appreciate it.

15 Also, if you have any comments on the
16 staff draft, if you could get them to the staff
17 director within the next 10 days. And then as they
18 finalize, they can look at your comments and see how
19 they fit in and so on. That would be helpful too.

20 Also the document is in draft out on our
21 website so that people who read it, who are
22 researchers or who are interested who may want to ask
23 questions about it or add something or check it out,
24 and I'm not going to do this, but I was going to ask
25 Penny whether the data seemed to her to fit with what

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1 was going on in California, but it won't go on the
2 record.

3 MS. EDGERT: Thank you.

4 CHAIRPERSON BERRY: But, in any case, so
5 it's perfectly -- it's a perfectly open public process
6 and we'll see how it works in terms of it. But so far
7 I think we've made a great contribution in just
8 getting the data and putting together and putting it
9 out there so people can have it.

10 And, Terri, I want to commend you for the
11 work of your staff and for --

12 MS. DICKERSON: Thank you.

13 CHAIRPERSON BERRY: -- your usual good
14 work.

15 Does anybody else have anything else on
16 this?

17 Okay. The -- yes.

18 COMMISSIONER EDLEY: Can I -- just one
19 other thing. If it's not too burdensome there's an
20 aspect of this that I'd be very interested in. I know
21 the Civil Rights Project we did some work relating to
22 the merit versus financial need scholarships and the
23 disparate impact of those state level policy changes.

24 But if you could -- if you can find out anything
25 easily generally about what's going on in the country

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1 with regard to cut-backs in state financial aid
2 programs as a result of to the recession? You know
3 with all the state budget pressure.

4 I've heard generally that they've been
5 raising tuitions, cutting down on financial aid
6 programs. If there's any way to get a handle on just
7 what the magnitude of what that phenomenon is and --
8 and some sense of whether that's having an impact on
9 people's ability to go to postsecondary education. I
10 think that would be interesting and might affect
11 recommendations we could have to Congress.

12 COMMISSIONER THERNSTROM: I think, Chris,
13 the budgetary process is just starting in a lot of the
14 states that are feeling financially strapped. I'm not
15 sure that information is yet in place.

16 VICE CHAIRPERSON REYNOSO: Yeah, that may
17 be -- that may be so. My sense is, though, this is a
18 trend that started last year. And then if the actual
19 policy decisions haven't -- even if the actual policy
20 decisions haven't been made, I know there's some
21 places like in California where they're talking about
22 a 20-percent across-the-board cut -- the governor's
23 talking about a 20-percent across-the-board cut, it
24 might be interesting to at least call them.

25 Maybe the way to frame the question again

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1 would be what, if anything, do we know --

2 COMMISSIONER THERNSTROM: Yeah. No,
3 that's fine. Yeah.

4 COMMISSIONER EDLEY: -- about the cyclical
5 -- about the cyclical impact of -- of the economy on
6 state budgets for higher ed. financial assistance.

7 COMMISSIONER THERNSTROM: Right. I think
8 it's a good question. I would like to know the answer
9 myself.

10 CHAIRPERSON BERRY: So if you can find out
11 anything, Terri, and in particular for this you're
12 only interested in three states, but just in general
13 if you could find out for us, that would be --

14 MS. DICKERSON: Okay.

15 CHAIRPERSON BERRY: Anything you can find
16 out we'd love to know.

17 MS. DICKERSON: We'll look and see what's
18 out there.

19 CHAIRPERSON BERRY: Okay. Maybe when you
20 ask the question, maybe they'll go find out the
21 question.

22 MS. DICKERSON: Yeah, like they would on
23 this. What do we have to ask 50 states, though?
24 We'll see what's out there.

25 CHAIRPERSON BERRY: Yes.

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1 COMMISSIONER THERNSTROM: Well, actually
2 you know the states that are really financially
3 strapped.

4 CHAIRPERSON BERRY: Maybe the DuPont
5 Circle has some answers, you know, ACE and all those
6 folks, Dazzle Group and the rest of them.

7 VICE CHAIRPERSON REYNOSO: Yes, Madam
8 Chair, a related issue in California and I know
9 elsewhere is the increased cost of education in public
10 institutions of higher education, so that in law
11 schools for example, institutions that I'm associated
12 with. It's go up more than twice in the last few
13 years. And it's happened also at the community
14 college level and at the undergraduate level. So
15 obvious as the cost goes up, for those who are
16 financially needy, presumably the help should go up,
17 and it hasn't.

18 MS. DICKERSON: That's true. One of the
19 points we make in the paper is how education -- people
20 are being priced out of education now. Yeah.

21 VICE CHAIRPERSON REYNOSO: Yeah.

22 CHAIRPERSON BERRY: I wanted to point out
23 that of course California, which has made some very --
24 according to what you have given us -- some positive
25 responses to this whole problem than in the -- I guess

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1 the president of the U.S. system is retiring, Dr.
2 Atkinson, who has shown marvelous leadership on this
3 issue. I can say myself having been a chancellor of a
4 university, that in the late 20th century and the
5 early 21st century it is not often that heads of
6 universities show any great leadership on matters of
7 public policy. They mostly keep their heads down or
8 raise a whole lot of money, or something, and are on
9 their way.

10 So he has been remarkable in his
11 willingness to find ways, and I admire his ability to
12 find ways through a sort of minefield on this issue
13 and it's the people who work for him. It means he
14 picked good people. To come up with something that
15 would satisfy the desires of people to have access to
16 higher education at the same time maintaining what the
17 U.C. system stands for in terms of its quality.

18 And, you know, he is an epitome of the
19 idea -- of the example of the idea in higher
20 education, the positive idea, that you can have equal
21 opportunity and excellence at the same time. And so I
22 just wanted to take note of this.

23 I knew had he to retire sometime, but I
24 didn't know it was going to be this year.

25 VICE CHAIRPERSON REYNOSO: Madam Chair, I

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1 just wanted to comment that I was teaching at UCLA Law
2 School both before and after affirmative action. And
3 it was of interest to me that the law school was
4 commended for its ability to increase all of the
5 indices of excellence during the time that affirmative
6 action was in place. So there's in my view no
7 conflict between the notion of affirmative action and
8 excellence, as I've seen it operate.

9 CHAIRPERSON BERRY: Right. Well, I won't
10 tell other stories. I could sit here and tell other
11 stories about that, but I won't do it.

12 Any other comments on what -- well, okay,
13 hearing none, we have -- unless I forgot something and
14 no one reminded me, gotten through the items on the
15 agenda.

16 Have I missed something?

17 COMMISSIONER THERNSTROM: I think Future
18 Projects.

19 **XI. Future Agenda Items**

20 CHAIRPERSON BERRY: Oh, I missed the
21 projects. I'm sorry. Let's do the projects and
22 answer first Commissioner Bracer's question, which
23 question was about the education accountability
24 report.

25 COMMISSIONER BRACERAS: Just a little more

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1 detailed information on --

2 CHAIRPERSON BERRY: Right.

3 COMMISSIONER BRACERAS: -- where we stand
4 with the educational account --

5 CHAIRPERSON BERRY: And thank you, Terri,
6 again.

7 MS. CARR: Did we do the Staff Report?

8 MR. JIN: Thank you, Terri.

9 Well, along with myself -- of Terri
10 Dickerson is here from the Office of Civil Rights
11 Evaluation and Debra Carr, the Deputy General Counsel
12 of General Counsel's Office is here, so hopefully with
13 the three of us we can answer all the questions that
14 you might have.

15 In terms of the Educational Accountability
16 Project, I think we're looking at the briefing in
17 January or February, somewhere around there. And
18 again Debra could --

19 COMMISSIONER BRACERAS: I would love it if
20 it could be in February so that I could definitely
21 attend. I don't want -- I mean obviously don't do it
22 around me, but I'd just like to put in that word.

23 MR. JIN: Okay.

24 COMMISSIONER BRACERAS: Because I'm not
25 sure about January. I mean I'll participate by phone,

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1 but I'd love to be at such a briefing if I can, so.

2 CHAIRPERSON BERRY: Okay. We'll keep that
3 in mind.

4 COMMISSIONER THERNSTROM: Um, --

5 COMMISSIONER BRACERAS: Go ahead.
6 Continue.

7 COMMISSIONER THERNSTROM: I'm sorry. If
8 we were off the education, I wanted to ask about the
9 environmental --

10 CHAIRPERSON BERRY: No, no, no.

11 COMMISSIONER THERNSTROM: -- test report,
12 but --

13 CHAIRPERSON BERRY: Excuse Me,
14 Commissioner. Excuse me. I think Mr. Jin is going to
15 give more some answers to Commissioner Braceras'
16 question.

17 COMMISSIONER THERNSTROM: Oh, I'm sorry.
18 Okay.

19 MR. JIN: I was just going to add also
20 that, you know, this is -- we had subpoenaed a lot of
21 documents related to this, the Educational
22 Accountability Project. And staff is going through it
23 quite nicely, but it's taking quite a bit of time. So
24 that's kind of where the status is.

25 The General Counsel's Office, over the

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1 summer especially, lost a number of lawyers, and
2 they're rebuilding somewhat but, anyway, they're going
3 through it, are getting new people involved, and so I
4 think we're moving along pretty well in respect -- in
5 light of that.

6 COMMISSIONER BRACERAS: Is it -- one of my
7 questions is is going to be a staff briefing or are we
8 having a briefing from witnesses?

9 MS. CARR: Witnesses.

10 COMMISSIONER BRACERAS: Witnesses, okay.

11 CHAIRPERSON BERRY: Okay. Commissioner
12 Thernstrom, you had something.

13 COMMISSIONER THERNSTROM: Yeah. Hanging
14 out there is the Environmental Justice Report. I was
15 wondering what was happening with that.

16 CHAIRPERSON BERRY: Did we get the
17 Management Information Systems report?

18 MR. JIN: Yes. All the Commissioners
19 should have gotten management information statement
20 timelines for the various projects from the General
21 Counsel's Office and from OCRE. And so --

22 CHAIRPERSON BERRY: We can look at the MIS
23 for environmental justice.

24 COMMISSIONER THERNSTROM: Yes. Somehow I
25 missed that in a...

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1 CHAIRPERSON BERRY: Is it in the --

2 MR. JIN: Debra, do you want to just
3 elaborate on that since...

4 CHAIRPERSON BERRY: If you turn to the MIS
5 you will find -- and Debra will --

6 MS. CARR: I'm sorry. Commissioner
7 Thernstrom, could you repeat your question for me?

8 COMMISSIONER THERNSTROM: well, if it's
9 in the information, that's fine. I actually -- we can
10 just move on. I don't want to take people's time. I
11 somehow missed that.

12 COMMISSIONER BRACERAS: I'm just looking
13 at it right now. It looks like in the documents that
14 circulated, it says the target date for completion is
15 May 2003.

16 COMMISSIONER THERNSTROM: Fine.

17 CHAIRPERSON BERRY: And now you will have
18 enough of a package each time, Commissioner
19 Thernstrom, to tell you exactly where each project is
20 --

21 COMMISSIONER THERNSTROM: Okay. That's
22 great.

23 CHAIRPERSON BERRY: Didn't what it's
24 doing. And then --

25 COMMISSIONER THERNSTROM: Sounds good.

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1 COMMISSIONER EDLEY: There's a two-day
2 training session available from the staff on how to
3 interpret these endless reports.

4 (Laughter.)

5 COMMISSIONER EDLEY: I think the next
6 training sessions is scheduled for June --

7 CHAIRPERSON BERRY: Let the record show
8 that Commissioner Edley is teasing.

9 COMMISSIONER BRACERAS: I have a question
10 on this.

11 CHAIRPERSON BERRY: Yes.

12 COMMISSIONER BRACERAS: It's number 18 on
13 the list as a staff director review. Is there a
14 window in here in which Commissioners have a chance to
15 review and comment on the report? And then do we vote
16 on the report, or how does that work.

17 CHAIRPERSON BERRY: It says --

18 MR. JIN: Yes, Commissioner Braceras.
19 This is -- it's like any other report. Once the staff
20 is finished with it, including the Staff Director's
21 Review, then it comes to the Commissioners. And of
22 course at that point you can either approve it or
23 reject and make comments and us to, you know, we work
24 in light of your comments.

25 CHAIRPERSON BERRY: And what this means is

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1 that these office reports are telling us where the
2 office is finished.

3 COMMISSIONER BRACERAS: Right. So --

4 CHAIRPERSON BERRY: When they get their,
5 the OJC is through, it's going to go to the staff
6 Director.

7 COMMISSIONER BRACERAS: Right. And it
8 looks like the timeline for Staff Director review is
9 that that office would finish reviewing it at the
10 beginning of April 2003 which should hypothetically
11 give us almost two full months, the Commissioners, a
12 chance to review it. And then I guess it would be
13 probably on the agenda for the June meeting.

14 CHAIRPERSON BERRY: If this all works out,
15 yes.

16 MR. JIN: Right.

17 COMMISSIONER THERNSTROM: I have just been
18 reminded by my husband that we are due at a memorial
19 service for David Riesman, the great Harvard
20 physiologist, in less than an hour. I better get off
21 and I thank everybody.

22 CHAIRPERSON BERRY: We're just about
23 finished anyway, Abigail. We're just going over this.

24 COMMISSIONER THERNSTROM: Okay. Very
25 good.

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1 CHAIRPERSON BERRY: Thank you.

2 COMMISSIONER THERNSTROM: Thanks. Bye.

3 COMMISSIONERS: Bye.

4 CHAIRPERSON BERRY: Okay. So it looks
5 like if this works out, that you're extrapolation from
6 the dates is correct.

7 MR. JIN: Right.

8 COMMISSIONER BRACERAS: Right.

9 CHAIRPERSON BERRY: If it all goes --

10 COMMISSIONER BRACERAS: So we should be
11 expecting barring other circumstances, --

12 CHAIRPERSON BERRY: Somewhere in that one
13 --

14 COMMISSIONER BRACERAS: -- we'd basically
15 be approving it in June and --

16 CHAIRPERSON BERRY: Yeah, basically.

17 COMMISSIONER BRACERAS: -- hopefully
18 having, you know, a month or so to look it over.

19 VICE CHAIRPERSON REYNOSO: But we can't
20 help but add a footnote that sometimes things don't
21 work out quite the way we want.

22 COMMISSIONER BRACERAS: That is true.

23 CHAIRPERSON BERRY: But the MIS does give
24 us the staff's best guesstimate --

25 COMMISSIONER BRACERAS: Right.

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1 CHAIRPERSON BERRY: -- and only for us as
2 to where these things are.

3 COMMISSIONER BRACERAS: Well, that's what
4 we're looking for.

5 CHAIRPERSON BERRY: Yes.

6 COMMISSIONER BRACERAS: So thank you.

7 CHAIRPERSON BERRY: Okay. Anything else,
8 gang?

9 All right. Hearing nothing else, thank
10 you very much for coming and the meeting is adjourned.

11 VICE CHAIRPERSON REYNOSO: Thank you very
12 much.

13 (The meeting was adjourned for the day at
14 11:08 o'clock a.m.)

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