

UNITED STATES COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY

FEBRUARY 7, 2003

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CHARLOTTE, NORTH CAROLINA

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The Commission met at the Omni Hotel, 123 East Trade Street, Charlotte, North Carolina, at 9:00 A.M., Mary Frances Berry, Chairperson, presiding.

Present:

Mary Frances Berry, Chairperson
Cruz Reynoso, Vice Chairperson
Christopher Edley, Jr., Commissioner

Leslie R. Jin, Staff Director

Present by telephone:

Jennifer C. Braceras, Commissioner
Peter N. Kirsanow, Commissioner
Elsie M. Meeks, Commissioner
Russell G. Redenbaugh, Commissioner
Abigail Thernstrom, Commissioner



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Staff Present:

Debra Carr, Deputy General Counsel
 Ivy Davis
 Terri Dickerson, Assistant Staff Director
 Bobby Doctor, Regional Director
 Pamela Dunston
 Sheldon Fuller
 Joyce Smith, Parliamentarian
 Alex Sun
 Audrey Wright
 Tiffany Wright

State Advisory Committee Members Present:

Dr. Bradford Brown, Vice-Chair Florida SAC
 Dr. Wyatt Kirk, Chair, North Carolina SAC
 Danny R. Sifford, SAC Member
 Willie Ratchford, SAC Member

Commissioner Assistants:

Kristina Arriaga
 Laura Batie
 Toni Johnson (via telephone)
 Joy Freeman
 Kimberly Schuld (via telephone)
 Melissa Sharp

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Vice-Chair Florida SAC

Adjourn

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

(9:00 a.m.)

I. Approval of the Agenda

CHAIRPERSON BERRY: The meeting will come to order. First item on the agenda is the approval of the agenda. Can I get a motion to approve this?

COMMISSIONER EDLEY: So Moved.

CHAIRPERSON BERRY: Can I hear a second?

COMMISSIONER REDENBAUGH: Second.

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

(Chorus of ayes.)

CHAIRPERSON BERRY: Opposed?

(No response.)

II. Approval of Minutes of the January 10th Meeting

CHAIRPERSON BERRY: The next item is the -- I beg your pardon, did someone say something? Let me ask the sign interpreter to ask if anyone needs sign interpretation at this time? (no response) Thank you. The next item is the approval of minutes of the January 10th meeting. So can I have a motion to the minutes?

COMMISSIONER EDLEY: So moved.

CHAIRPERSON BERRY: Can I get a second? Anybody?

1 COMMISSIONER REDENBAUGH: Second that.

2 CHAIRPERSON BERRY: Any changes or
3 anything anybody wants done to the minutes? Okay, all
4 in favor, indicate by saying aye.

5 (Chorus of ayes.)

6 CHAIRPERSON BERRY: Opposed?

7 (No response.)

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

9 CHAIRPERSON BERRY: So moved. The next
10 item on the agenda is the staff director's report.
11 Does anyone have any concerns or questions or anything
12 about the staff director's report they wish to
13 discuss? We have two items to consider under the
14 staff director's report, before we do that does
15 anybody have any questions or comments--

16 VICE CHAIRPERSON REYNOSO: What's the
17 latest on the budget?

18 STAFF DIRECTOR JIN: Appropriations?

19 VICE CHAIRPERSON REYNOSO: Appropriations.

20 STAFF DIRECTOR JIN: The continuing
21 resolution that is by us today and we expect that
22 there will be another continuing resolution that
23 probably runs about a week. The Congress intends to,
24 at some point, pass a bill-- it's not separate from
25 appropriations -- a bill that kind of covers everybody

1 to the end of the year. So they hope to do that very
2 soon.

3 VICE CHAIRPERSON REYNOSO: Thank you.

4 CHAIRPERSON BERRY: Thank you very much.
5 Anybody have another question or comment about the
6 staff director's report? Okay, the two items are
7 staff director's, as I understand it --

8 **IV. Approval of the Connecticut SAC chair**

9 STAFF DIRECTOR JIN: Madam' Chair, the
10 first item I wanted to get into specifics this morning
11 was approval of the Connecticut SAC chair; we provided
12 his leadership statement last week to the
13 Commissioners. Chris, you might remember that the
14 Commission approved the rechartering of the
15 Connecticut SAC last --I believe it was December, but
16 the SAC chair's statement was not included, so I would
17 recommend that the Commission today approve Mr.
18 Johnson, Mr. Patrick Johnson, as its SAC Chair.

19 CHAIRPERSON BERRY: Could I get a motion
20 to approve Mr. Johnson's appointment?

21 COMMISSIONER EDLEY: So moved.

22 CHAIRPERSON BERRY: Could I get a second?

23 COMMISSIONER REDENBAUGH: Second.

24 CHAIRPERSON BERRY: Who's that second,
25 Russell?

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COMMISSIONER REDENBAUGH: Russell.

CHAIRPERSON BERRY: Okay. All in favor repeat by saying aye.

(Chorus of ayes.)

CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: And for those of you who are on the phone the reporter has asked that you identify yourselves when you speak so she can get the names right. If you would, we would appreciate it. If I remember I will ask you to. I may not remember. But anyway, the second item is on the Utah report. What is it you want us to do?

STAFF DIRECTOR JIN: Madam Chair, this you might remember last month when we were in New Mexico we had invited the SAC Chairs from the Rocky Mountain's populace and the Utah SAC Chair, Ms. Milner, made a request on behalf of her committee, that the Commission reconsider the staff report that Utah issued in 1997. She requested that the Commission approve for publication which it did not do in 1997.

There was some discussion as to the reasons for it not passing in 1997, and Commissioner Redenbaugh raised the question as to whether it had

1 something to do with a procedural problem. The
 2 records indicated that in past SAC memory that there
 3 was some discussion about the tone that there were no
 4 procedural problems. Subsequently, we have determined
 5 that there were no procedural problems. In fact the
 6 General Counsel's Office at that time did conduct a
 7 legal sufficiency and the Utah staff did make some
 8 changes as a result of that. So, we have provided the
 9 Commissioners, as requested, a copy of that report
 10 which is quite lengthy, as well as relevant parts of
 11 the discussion in 1997, which again, I think confirms
 12 there were no procedural problems. The SAC committee
 13 believes that this is still a very relevant, important
 14 factor, so these developments make this a very
 15 important report and I would encourage the Commission
 16 to endorse or to vote in favor of the publication of
 17 this report.

18 CHAIRPERSON BERRY: Isn't it more precise
 19 to say staff directors insist the Commission accept
 20 reports from the SAC's, it does not approve them,
 21 since they are the reports of SAC. That's what
 22 they're asking us to do is to withdraw our objection
 23 to the publication of this report and to the sense
 24 that --

25 STAFF DIRECTOR JIN: Yes.

1 CHAIRPERSON BERRY: All right. Well, can
2 I get a motion to do what the SAC is asking us to do?

3 COMMISSIONER EDLEY: So moved.

4 CHAIRPERSON BERRY: Can I get a second on
5 that?

6 COMMISSIONER MEEKS: Second.

7 COMMISSIONER REDENBAUGH: Second.

8 CHAIRPERSON BERRY: Any discussion? All
9 right that was Commissioner Meeks who seconded it --

10 COMMISSIONER REDENBAUGH: And Redenbaugh.

11 CHAIRPERSON BERRY: And Redenbaugh
12 speaking.

13 COMMISSIONER REDENBAUGH: My understanding
14 of this matter can't be brought back through a second
15 vote unless it's raised by one of the Commissioners
16 who voted in the majority on the prior issue, on the
17 prior motion. I think it's a Robert's Rule issue
18 here; but that's not my area.

19 CHAIRPERSON BERRY: All right. If there
20 was a vote last time -- let me ask the staff the
21 record on that. There was a vote last time not to,
22 not to--

23 COMMISSIONER REDENBAUGH: Not to accept
24 the report.

25 STAFF DIRECTOR JIN: The motion was to

1 accept the report for publication and, in fact, three
2 of the current Commissioners were on the Commission at
3 that time, Chair, Vice-Chair and Commissioner
4 Redenbaugh.

5 CHAIRPERSON BERRY: I'll get back to you
6 in a minute, Mr. Redenbaugh. Let me see what
7 Commissioner --

8 COMMISSIONER EDLEY: It doesn't seem to me
9 that that element of Robert's Rules would make sense
10 for a body like this in which the membership changes.

11 Because if that were to make sense then, let's just
12 suppose hypothetically the ideological composition of
13 the Commission shifted dramatically, how would a
14 Commission ever be able to revisit earlier policy
15 statements if it required somebody who had been
16 originally on the losing side to -- wouldn't that --
17 so it seems to me -- I mean, I wasn't on the
18 Commission back then, it seems to me that --

19 CHAIRPERSON BERRY: Well, I sort of like
20 this rule now that you've explained it.

21 COMMISSIONER REDENBAUGH: I find your
22 argument persuasive.

23 CHAIRPERSON BERRY: I think this is a
24 great rule. It means that the Commission is locked
25 into positions that it has taken now and should the

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1 majority of the Commission change then only if someone
2 who voted against something would be able to -- or was
3 in the majority would be able to ask this to be
4 changed, right?

5 COMMISSIONER EDLEY: Somebody who was on
6 the prevailing side. Only somebody who --

7 CHAIRPERSON BERRY: Right. Okay, Russell,
8 that means that if you do not wish us to revisit the
9 Utah report we can't revisit it.

10 (Laughter.)

11 CHAIRPERSON BERRY: I think we should ask
12 the Parliamentarian regarding the Robert's Rule issue.

13 COMMISSIONER REDENBAUGH: I think we
14 should, yes.

15 CHAIRPERSON BERRY: Yes, I'm asking the
16 Parliamentarian to please come to the microphone and
17 tell us what the answer is.

18 MS. SMITH: The rule regarding this
19 consideration of a motion requires that a member of
20 the other side who voted against the motion raise the
21 motion to reconsider that vote, subsequent. Someone
22 who voted against the original motion to accept it --
23 and raise it --

24 CHAIRPERSON BERRY: Okay. So that's the
25 rule. The rule is as you say, Christopher, that if

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1 someone wants to change a decision that was made
2 before they would have to have been the prevailing
3 parties the first time to raise it.

4 MS. SMITH: That's right.

5 CHAIRPERSON BERRY: So Commissioner
6 Redenbaugh, do you wish this to be raised or not?

7 COMMISSIONER REDENBAUGH: Well, the only
8 thing I can respond to that, is this in fact the same
9 motion?

10 VICE CHAIRPERSON REYNOSO: And I've got a
11 question. What was the vote?

12 STAFF DIRECTOR JIN: The vote was four-
13 four to approve; it was not passed.

14 VICE CHAIRPERSON REYNOSO: Oh, okay.

15 CHAIRPERSON BERRY: Well, it was because
16 it is four-four that a motion passed, so the side that
17 wanted the motion to fail, won. It is in fact a
18 reconsideration of that motion.

19 COMMISSIONER REDENBAUGH: It is the same
20 motion.

21 COMMISSIONER EDLEY: The report was
22 different.

23 CHAIRPERSON BERRY: We'll do what
24 Commissioner Redenbaugh wishes to have done.

25 COMMISSIONER REDENBAUGH: We're all -- are

1 all the Commissioners present?

2 CHAIRPERSON BERRY: I think everybody's
3 there. I did not hear from Thernstrom or Braceras.

4 MS. THERNSTROM & BRACERAS: No, we're
5 here.

6 CHAIRPERSON BERRY: Okay. Thank you.

7 COMMISSIONER REDENBAUGH: I think we
8 should bring it back for a vote then.

9 CHAIRPERSON BERRY: Okay. All right then,
10 you move for a reconsideration of the matter of
11 accepting for printing the Utah Report about the
12 request of the Chair of the Utah SAC.

13 COMMISSIONER REDENBAUGH: I have made --
14 but I don't want to counter or block an issue.

15 CHAIRPERSON BERRY: I see. Okay. So we
16 could consider that and could somebody second -- I
17 think it was already said, Elsie or somebody wanted to
18 second it.

19 COMMISSIONER MEEKS: I believe I did.

20 CHAIRPERSON BERRY: Yeah, Commissioner
21 Meeks, okay. So all right, does anyone else wish to
22 speak to the motion? All those in favor of letting
23 the Utah SAC now publish this report indicate by
24 saying aye.

25 VICE CHAIRPERSON REYNOSO: Aye.

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1 COMMISSIONER EDLEY: Aye.

2 CHAIRPERSON BERRY: Those opposed to
3 letting the Utah SAC publish it?

4 COMMISSIONER BRACERAS: Nay.

5 COMMISSIONER REDENBAUGH: Nay.

6 COMMISSIONER KIRSANOW: Nay

7 COMMISSIONER THERNSTROM: Nay

8 CHAIRPERSON BERRY: So, if I hear rightly,
9 if you could say who you are here and say -- because I
10 can't see you.

11 COMMISSIONER KIRSANOW: Kirsanow, nay.

12 CHAIRPERSON BERRY: Okay.

13 COMMISSIONER REDENBAUGH: Redenbaugh, nay.

14 CHAIRPERSON BERRY: Okay.

15 COMMISSIONER BRACERAS: Braceras, nay.

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER THERNSTROM: Thernstrom, nay.

18 CHAIRPERSON BERRY: Okay. Meeks?

19 COMMISSIONER MEEKS: Yeah.

20 CHAIRPERSON BERRY: Meeks, yes.

21 VICE CHAIRPERSON REYNOSO: Reynoso, yes.

22 COMMISSIONER EDLEY: Edley, yes.

23 CHAIRPERSON BERRY: Berry, yes. So the
24 motion fails four to four, so they still can't publish
25 the reports. So the Utah SAC's not able to publish

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1 this report, okay.

2 VICE CHAIRPERSON REYNOSO: I'd like to
3 move that Russell go out to Utah and --

4 COMMISSIONER REDENBAUGH: I'm willing to
5 do that.

6 **V. Announcements**

7 CHAIRPERSON BERRY: I forgot to read the
8 announcements, so could you indulge me? With the
9 Commission's indulgence I will do so. I want to first
10 recognize that Vice-Chair Reynoso and Commissioner
11 member Elsie Meeks have been appointed to some more
12 work and additional writing. The Vice-Chair, has been
13 appointed to, by the governor of California, as chair
14 of a committee negotiating new Indian gaming contact
15 in California. It will be a lot of work and it's been
16 much in the news. And early in December he was
17 appointed to the advisory committee conducting a
18 search for a new president for the University of
19 California, also. And last month Commissioner Meeks
20 was named by the Federal Reserve Board to the Consumer
21 Advisory Counsel for the Federal Reserve Board. It
22 advises the Fed on its responsibilities of the
23 Consumer Credit Protection Act.

24 And then two lesser appointments in the
25 Agency, the OCRE is recruiting some interns for spring

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1 2003 semester, and we'll probably see -- I don't think
2 they're here, so I think we'll see them in Washington
3 and we will announce that again when we are there so
4 that they -- we can see them when we're there.

5 The other is that Attorney Marsha Lind, of
6 Fayetteville, Arkansas, who was chairperson of our
7 Arkansas Advisory Committee in the 80s died January
8 23rd in Fayetteville, and she was a dedicated attorney
9 with a lot of concerns about issues related to
10 juvenile justice, and she served very well and
11 productively as chair of our Committee. The other
12 thing is of course, this is Black History Month, which
13 started in 1926 when Carter G. Woodson started Negro
14 History Week, which has expanded and we celebrate this
15 month, just as we do the other heritage months at the
16 Commission.

17 The other thing is to say that the
18 Pennsylvania State Advisory Committee report -- is
19 facing the hiring of women owned businesses. Studying
20 the challenges facing businesses owned by women and
21 minorities has been -- had an impact on Pennsylvania.
22 We heard about that report and read it and we heard
23 from the chair when we were in Wilmington. And based
24 partly on that report legislation has been introduced
25 in Pennsylvania to change the way the state recruits

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1 minority women contractors; so this continues to have
2 impact.

3 The other thing is to point out that
4 February 19th, 1942, this month, was when Franklin
5 Roosevelt signed the executive order 9066 which
6 interned Japanese-Americans and that this blot on the
7 nation's escutcheon, in my view and the view of this
8 commission as a policy matter, was in fact removed,
9 somehow, modified -- it wasn't exactly removed.
10 People felt the sting of what happened there when
11 there was a rescission of the order and an apology to
12 Japanese-Americans and some reparations for what had
13 happened.

14 And February 10th, 1964, the Civil Rights
15 Act of 1964 was passed, which was one of the major
16 pieces of legislation enacted since reconstruction. I
17 think it was the second after the '57 Civil Rights
18 Act, which is a key in Civil Rights enforcement in the
19 country. February 12, 1909, the NAACP, the National
20 Association for the Advancement of Colored People,
21 which at the time focused on not only African-
22 Americans in their charter, but the brown and yellow
23 races and all the myriad peoples of color throughout
24 the world according to W. E. B. Du Bois's famous
25 statement, and it's founded by a group of black and

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1 white citizens, including Mary White Ovington,
2 W. E. B. Du Bois and others, and the NAACP still lives
3 to this day.

4 On February 1st, 1960, here in North
5 Carolina four black freshmen at North Carolina A&T sat
6 down at the lunch counter in segregated downtown
7 Woolworth's in Greensboro and refused to leave which
8 sparked the sit-in movements. They already had sit-
9 ins before earlier in that history, but the modern day
10 civil rights sit-ins by students and the Student
11 Nonviolent Coordinating Committee was sparked by their
12 efforts.

13 So those are the -- and I wanted to
14 announce also that Christopher Edley has been
15 appointed to the Board of the Division of Social
16 Sciences and Education of the National Research
17 Council of the National Academy of Sciences.

18 If there are other announcements of
19 distinctions or more work that you've been given in
20 various high level things, you can inform us and we
21 can put them in the record for these meetings. Does
22 anyone else have any other announcements?

23 All right, hearing none, we go on to
24 program planning. Staff Director, what is it you
25 expect us to do?

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VI. Program Planning

1
2 STAFF DIRECTOR JIN: Madam Chair,
3 Commissioners will remember again that last month in
4 New Mexico the Commission began what I thought was a
5 very good discussion on project planning for fiscal
6 year 2005, and the understanding and agreement was
7 that the Commissioners would continue that discussion
8 today and, hopefully, and would vote again to approve
9 two projects for the General Counsel's Office and two
10 projects for the Office of Civil Rights Evaluation.

11 The Commissioners have, I think,
12 eliminated four projects that were proposed by the
13 staff, and to short cut it I would say they were
14 projects 1, 3 and 5, and project 3, OPT. And the
15 Commissioners also discussed the possibility of,
16 during the intervening months, getting some kind of
17 statement and getting together and then coming up with
18 a proposal for an economic project. So that's where
19 we are at this point.

20 CHAIRPERSON BERRY: Okay. So we need to
21 approve, what, two projects for each?

22 STAFF DIRECTOR JIN: Three would be our
23 recommendation.

24 CHAIRPERSON BERRY: For 2005, and do you
25 have any recommendations from the ones that are here?

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1 STAFF DIRECTOR JIN: No. I think -- let
2 me add one more thing. I think there was some
3 discussion for Financial Aid in 2004 Project, I think
4 that the Commissioners requested that we maybe
5 consolidate some of the discussion on that because
6 they think, as it was indicated, that the re-
7 authorization bill is coming up later this year.
8 That's something that the Commission ought to be
9 enamored by.

10 In terms of 2005, I think the staff feels
11 that all remaining projects are good projects, and I
12 think if either Ms. Dickerson or Ms. Carr would like
13 to speak to it at this point, I'd be happy -- but I
14 think that they're all fine projects.

15 CHAIRPERSON BERRY: So we have left Ten
16 Years after *Adarand*, the OCRE and Removing the
17 Vestiges, is that right?

18 STAFF DIRECTOR JIN: Yes.

19 CHAIRPERSON BERRY: And Internet and Other
20 Technological Discrimination Against Persons with
21 Disabilities, those are still left --

22 STAFF DIRECTOR JIN: That's right.

23 CHAIRPERSON BERRY: --for consideration.
24 And then under Office of General Counsel the ones that
25 are left are under-representation in the census with

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1 the modifications that were discussed by the
2 Commissioners. And collateral non-criminal
3 consequences of a criminal conviction and review of
4 the Community Investment Act. And Commissioner
5 Redenbaugh is supposed to be involved with a group
6 with Commissioner Edley and Commissioner Meeks and
7 come up with an economic proposal?

8 COMMISSIONER EDLEY: You can blame me,
9 Russell.

10 COMMISSIONER REDENBAUGH: We have not
11 completed our work.

12 CHAIRPERSON BERRY: Okay. All right.

13 COMMISSIONER REDENBAUGH: We have -- it's
14 hard to coordinate the schedules of three people, we
15 discovered, but Commissioner Edley and I did have a
16 preliminary discussion and the three of us are
17 prepared -- I have a proposal, not to present today,
18 unfortunately, but I would like to further discuss it
19 with Commissioners Meeks and Edley. It is a very
20 short or very small, tightly bounded proposal
21 regarding employment opportunities and employment.
22 But I would like the opportunity, if I may, to -
23 discuss it further discuss it with my other two
24 colleagues.

25 CHAIRPERSON BERRY: Okay. All right. So,

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1 you're working on it?

2 COMMISSIONER REDENBAUGH: I am working on
3 it and I think that it will be an interesting but
4 small proposal.

5 CHAIRPERSON BERRY: Okay.

6 COMMISSIONER REDENBAUGH: They're projects
7 and --

8 COMMISSIONER EDLEY: Madame Chair. If I
9 could just sum up, I think it's a very promising step
10 if we could continue with your forbearance, we can
11 just work on this at the --

12 CHAIRPERSON BERRY: Could you give us a
13 clue as to whether it sounds like a research and
14 evaluation project or a legal type --

15 COMMISSIONER REDENBAUGH: Well, it's only
16 a research and evaluation project.

17 CHAIRPERSON BERRY: Okay --

18 COMMISSIONER REDENBAUGH: -- staff will
19 want to do it primarily as a survey of literature, but
20 I think it will go quite quickly.

21 CHAIRPERSON BERRY: Okay. I just wanted
22 to figure out what your office was doing. Okay. So
23 we have left here, three under OCRE and three under --
24 why don't we start with who is not interested -- which
25 project totally disinterests anyone on the Commission?

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1 Yes, Commissioner Edley.

2 COMMISSIONER EDLEY: More in the way of a
3 question. I'm wondering with respect to religious
4 discrimination against American Muslims. We have some
5 post 9/11 monitoring or something or other projects
6 going on if I recall correctly from the staff
7 director's report.

8 STAFF DIRECTOR JIN: That's correct.

9 COMMISSIONER EDLEY: I'm just wondering to
10 what extent we would get some purchase on that topic
11 in that context and --

12 STAFF DIRECTOR JIN: Yes. I mean,
13 certainly that topic continues to get covered as one
14 of the civil rights issues post September 11th, not
15 necessarily in the same kind of detail of course, but
16 at the same time, yes, it is being monitored. If
17 something major happens, we would alert the
18 Commissioners immediately.

19 CHAIRPERSON BERRY: I mean, are you asking
20 what kind of report this will be?

21 COMMISSIONER EDLEY: Well, I'm wondering
22 if we have -- given how limited, given the short list
23 of things that we can identify, I guess what I'm
24 wondering is whether we can today say that for the '05
25 year this item makes the short list and we seem to

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1 have in place a process for tracking post 9/11
2 developments and what kinds of hate crimes might
3 eventually come to light. So we have a mechanism in
4 place to raise this to our attention and put it on our
5 agenda, should there be dramatic developments. I'm
6 uncertain, but I'm just wondering whether -- if we're
7 going to pick three projects or so, perhaps we could
8 leave this one aside and just fold it in with a lower
9 level attention to the ongoing monitoring that the
10 Staff Director has just described.

11 CHAIRPERSON BERRY: Is there anyone out
12 there who has a view about the religious
13 discrimination against the American Muslims Project?

14 COMMISSIONER MEEKS: This is Elsie. We've
15 already done a lot of work on this. It doesn't really
16 need to be listed as an '05 project, in fact.

17 COMMISSIONER EDLEY: I guess that's what
18 I'm saying here.

19 VICE CHAIRPERSON REYNOSO: Madam Chair,
20 the main thing is it's just a reminder that we plan
21 these matters like years ahead, but there's nothing
22 proscribed. In fact, we've always taken a second look
23 at it in terms of what are priorities at that time, so
24 this is a requirement that apparently we have in terms
25 of the federal government, but for a commission like

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1 ours which tries to look at the issues that are
2 current, it's not a very practical approach. It can
3 some ways -- we can leave it and then change our minds
4 later on.

5 COMMISSIONER EDLEY: Madam Chair, I have
6 another thought. As I recall, there's some kind of
7 restrictions. I don't know whether it's in statute or
8 regulations or just tradition about the extent to
9 which we can make requests of SAC's to investigate
10 things. But this issue strikes me as one where we
11 might actually suggest to some SAC's where there are
12 substantial Muslim communities that they might
13 consider holding some community meetings or inquiring
14 over the next 18 months or so about the extent to
15 which they perceive this issue of discrimination
16 against the Muslims as being of major concern to them,
17 and essentially use the SAC's as our eyes and ears to
18 figure out what's the magnitude of the problem out
19 there and develop a little bit of baseline information
20 and then flow back into the Commission for a future
21 judgment about whether a major project is desired for
22 the Commission.

23 CHAIRPERSON BERRY: Les, do you know how
24 many SAC's are already doing the issue?

25 STAFF DIRECTOR JIN: I don't have a

1 specific number at this point, but the number that
2 have now done this, the Illinois SAC for example, the
3 Michigan SAC, the SAC's in the Washington DC area and
4 several others. Additionally, a number of other SAC's
5 when they even get together for planning meetings they
6 have had members of the Arab-American or Muslim
7 community come and talk about discrimination issues,
8 so there is some coverage in that regard and certainly
9 for them, they continue to do so --

10 COMMISSIONER EDLEY: But, now I'm changing
11 my mind. I mean you have that many SAC's looking into
12 problems then maybe there's something -- something
13 that we ought to look at.

14 CHAIRPERSON BERRY: Well, they did it in
15 response to the request that we made initially and we
16 posted the summaries of their proceedings on our
17 website and they've got a transcript made up. So, the
18 idea that has been -- ask the SAC's to do more work on
19 this? Or to somehow compile what they do, or maybe
20 ask if they need some help from headquarters because
21 SAC's don't have resources, as we know. Does anyone
22 else have any -- on the phone, have any views at all
23 about this project? Does anyone want to keep the
24 project? Does anyone want to get rid of the project?
25 Does anyone care what happens to the project?

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1 VICE CHAIRPERSON REYNOSO: Madame Chair.

2 CHAIRPERSON BERRY: You're not on the
3 phone.

4 VICE CHAIRPERSON REYNOSO: Oh, I'm sorry.

5 CHAIRPERSON BERRY: I'm trying to get some
6 feel what people on the phone wish to be done with
7 this project.

8 COMMISSIONER MEEKS: This is Elsie, I
9 couldn't really hear, I assume --

10 CHAIRPERSON BERRY: They were talking
11 about the SAC's and the idea of having them, which I
12 just repeated, consolidate their work, although they
13 would need some help with resources and whether we
14 should just do that.

15 COMMISSIONER MEEKS: Well, that's what I
16 think. We have worked on this issue, and we should
17 continue to monitor and take interest in it. In my
18 view, it's a very important issue, but I don't know
19 that we actually have to list it as a 2005 project.

20 CHAIRPERSON BERRY: Okay.

21 COMMISSIONER REDENBAUGH: I concur with
22 Commissioner Meeks.

23 CHAIRPERSON BERRY: Okay. Well, then
24 without objection, that's what we'll do with this
25 project. Does anyone have any comments, suggestions

1 about the three that are left now?

2 STAFF DIRECTOR JIN: Which are the three
3 that are left?

4 CHAIRPERSON BERRY: Removing the Vestiges
5 of De Jure Segregation, Internet and Other
6 Technological Discrimination Against Persons with
7 Disabilities, and Ten years After Adarand, and The
8 Effect of Changed Federal Procurement Standards on
9 Women and Minority-Owned Businesses.

10 COMMISSIONER REDENBAUGH: Yeah. I'd like
11 to hear a little more about the Internet project.

12 CHAIRPERSON BERRY: Okay. Does anyone
13 have anything else to say about the Internet project?

14 STAFF DIRECTOR JIN: I don't. I mean, I
15 did have a little bit of discussion on it last month
16 on this and, you know, it's an examination of the
17 developing new technology, and I don't think anybody
18 envisions somehow suggesting that technology shouldn't
19 advance or that on the whole it isn't good for
20 everybody. But with other new developments, there is
21 potential for certain groups in situations or
22 facilities to have hired to have certain barriers
23 facing them. I think the purpose of the project would
24 be just to illuminate that and discuss it and propose
25 possible ways to address it.

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1 COMMISSIONER REDENBAUGH: Well, I think
2 that makes sense. If it's proven its capabilities as
3 far as -- how -- how broad are you defining
4 disabilities, because it strikes me that the issue
5 really is primarily one of vision impaired.

6 STAFF DIRECTOR JIN: I'm sorry
7 Commissioner, could you repeat --

8 CHAIRPERSON BERRY: He wants to know how
9 broad the definition of persons with disabilities --

10 COMMISSIONER EDLEY: Just visually
11 impaired.

12 COMMISSIONER REDENBAUGH: Is it pretty
13 much limited to the visually impaired?

14 STAFF DIRECTOR JIN: Yeah, I think it
15 could be. I mean, this is one of those things in
16 terms of defining the scope of it the -- it could be
17 just limited to the vision impaired or it could be
18 broader.

19 CHAIRPERSON BERRY: Terri, would you like
20 to say something?

21 COMMISSIONER REDENBAUGH: Yeah, I'd like
22 to hear that, because I'm aware of -- Terri, you see
23 I'm visually impaired.

24 CHAIRPERSON BERRY: Russell, Terri will --

25 COMMISSIONER REDENBAUGH: Thank you.

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1 MS. DICKERSON: The scope really is --

2 COMMISSIONER REDENBAUGH: I'm sorry, I
3 can't hear Terri.

4 MS. DICKERSON: I'm sorry, can you hear me
5 now?

6 COMMISSIONER REDENBAUGH: That's much
7 better, thank you.

8 MS. DICKERSON: The scope really does deal
9 with vision and hearing impairment, but the real focus
10 of the project is really in the last paragraph where
11 we are making an assessment of whether the federal
12 agencies are providing information about social
13 service benefits in a format that's accessible to
14 persons with disabilities. So, it really isn't the
15 public or the private sector.

16 COMMISSIONER REDENBAUGH: It is the
17 private Internet?

18 MS. DICKERSON: Yes.

19 COMMISSIONER REDENBAUGH: Or the public
20 Internet?

21 MS. DICKERSON: Yes. Whether or not the
22 federal government is living up to that obligation to
23 serve people who have visual and hearing impairments.

24 COMMISSIONER REDENBAUGH: So then the
25 Office of Legal Counsel?

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1 CHAIRPERSON BERRY: No, in research and
2 evaluation. She's evaluating the government's
3 responsibility to provide information to people.

4 COMMISSIONER REDENBAUGH: Is there any
5 legislation on that already or responsibility? I mean
6 is there a compliance issue here as well, that's what
7 I'm asking.

8 MS. DICKERSON: Yes. There is. I'm
9 proposing in the third paragraph we discuss some
10 sections of Section 508 in the Rehabilitation Act and
11 as well --

12 CHAIRPERSON BERRY: As an executory, too.

13 MS. DICKERSON: Yes, and in March these
14 federal agencies made this information available to
15 the visually and hearing impaired. So we're looking
16 at the GSA, Department of Justice and the Executive
17 Orders and accessibility for people with disabilities.

18 COMMISSIONER REDENBAUGH: Well, I think
19 that this is a good project and it's one I am behind.
20 Thank you, Terri.

21 CHAIRPERSON BERRY: Okay. So unless
22 somebody objects we'll leave that one on there. Who
23 could object to ways to give people information about
24 things that they're supposed to have information
25 about; the government has a responsibility to. Does

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1 anyone want to talk about --

2 COMMISSIONER EDLEY: Well, for the record
3 and I hope Russell will agree with this -- maybe for
4 the future, just maybe for the staff to think about as
5 they're shaping this project. I suppose I'd also be
6 interested in at least one aspect of the private
7 sector here, and that is whether looking ahead over
8 the ten next 10 years, 15 years, which is a very long
9 timetable when talking about technology --

10 COMMISSIONER REDENBAUGH: We're certainly
11 -- we're not technology people.

12 COMMISSIONER EDLEY: Whether the various
13 kinds of age or accommodations that are needed are in
14 fact being developed by the private sector to have --
15 so that a change for discrimination given that -- or
16 add barriers, because I think there's certainly a
17 public interest in seeing to it that as technology
18 evolves we try to minimize the lag between the
19 evolution of new technologies and the evolution of the
20 accompanying accommodations --

21 COMMISSIONER REDENBAUGH: I hope that
22 they're aware, and I'm sure they are, the Commission,
23 there's a great deal of progress and work being done
24 in that area. Now I think that there should be even
25 more, but there is a lot happening there.

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COMMISSIONER EDLEY: Right.

CHAIRPERSON BERRY: Okay. So that's that a project. Now on the Removing the Vestiges. I think that that topic is defined too narrowly. It's not -- the important question is not where are we on the legal question of errors or subsequent equations, but where are we in terms of policy and frankness and the role of these institutions within their legal framework at this time. So, I would broaden it a little bit beyond this analysis of 'whether the vestiges of de jure segregation have been removed, which is a complicated question in itself. But you might look at it in terms of the role the institutions plays in terms of what has been done to remove the various things, the remedies that have been put in place and how they affected the role and condition of these institutions and their status in society today or something like that; the purposes that they serve.

If we could do that in some way, that would be, I think useful. Although, it would be useful just to know about the legal situation -- so you've got three here still left.

Well, it can't be helped. If I had to choose, I would probably choose the Internet one and the *Adarand* one, but I think the other one is

1 important too, so why don't we start and go through
2 hearing the particular conditions about the rest.
3 What about the ones under the Office of General
4 Counsel?

5 VICE CHAIRPERSON REYNOSO: We just have
6 two there, don't we?

7 CHAIRPERSON BERRY: Yes. Well, three.
8 What about the review of the Community Reinvestment
9 Act, that's still on the list?

10 VICE CHAIRPERSON REYNOSO: Yes, that's
11 still on the list.

12 CHAIRPERSON BERRY: Should we take that
13 off or leave it on?

14 VICE CHAIRPERSON REYNOSO: No, leave it
15 on.

16 COMMISSIONER MEEKS: No, leave it on.
17 This is Elsie, just add the economic project to multi
18 --

19 CHAIRPERSON BERRY: Oh, that's right. So
20 we need to drop one of these other projects.

21 COMMISSIONER BRACERAS: This is Jennifer
22 Braceras. I had a concern about project two under the
23 Office of General Counsel. It just seems to me that
24 this is a very interesting topic, but it seems to me
25 that it's actually not in our mandate.

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1 CHAIRPERSON BERRY: Collateral Non-
2 criminal Consequences of a Criminal Conviction?

3 COMMISSIONER BRACERAS: Yes.

4 VICE CHAIRPERSON REYNOSO: Well, but that
5 does deal with removal of the right to cast a vote, it
6 does deal with some immigration consequences which
7 have historically a really serious effect on
8 minorities.

9 COMMISSIONER BRACERAS: No, I understand
10 that. But, you know, I think that after the fact it's
11 a little bit broad. Obviously voting is within our
12 mandate in a very important way, but as we've all
13 discussed before, not every incident that effects a
14 minority community is within our mandate. And so if
15 it were limited to voting, it clearly would be, but as
16 stands now, I really don't believe it is. I think
17 it's much too broad.

18 CHAIRPERSON BERRY: But, you mentioned
19 voting, Cruz.

20 COMMISSIONER EDLEY: Public employment.

21 CHAIRPERSON BERRY: Public employment,
22 immigration.

23 VICE CHAIRPERSON REYNOSO: I'd like to
24 suggest --

25 COMMISSIONER BRACERAS: But those two are

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1 not in our mandate unless there's a specific claim of
2 discrimination.

3 VICE CHAIRPERSON REYNOSO: Well, I'm
4 assuming that when it says collateral non-criminal
5 consequences of a criminal conviction, it means -- as
6 simply based on civil rights, otherwise, you're right.

7 We could add that to it, but I'm just assuming that's
8 part of it.

9 COMMISSIONER BRACERAS: Well, if somebody
10 -- somebody -- could we have a statement about that
11 proposal such that -- you know, what we were looking
12 at. I mean, I guess if it's not based on civil
13 rights, then collateral non-criminal consequences of a
14 conviction effects all criminals, irrespective of
15 race. So civil rights implications are going to at
16 some point impact here, and it isn't clear to me. I
17 think we've discussed it before, all policies impact
18 different communities differently. So unless we're
19 going to say everything that's in our mandate, I'm not
20 sure it fits except with respect to voting, which is
21 very clearly within our mandate. I think as it's
22 crafted it's much too broad.

23 CHAIRPERSON BERRY: Are you objecting to
24 the notion that there's disparate impact on Latinos
25 and African-Americans?

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1 COMMISSIONER BRACERAS: Well, I'm not
2 saying that there's not.

3 CHAIRPERSON BERRY: No, but I'm saying
4 that you're objecting to the proposal which has as its
5 predicate that there's a disparate impact on African-
6 Americans and Latinos?

7 COMMISSIONER BRACERAS: I'm guess I'm just
8 not clear, so -- I mean, I know COMMISSIONER EDLEY
9 brings concerns in other contexts about how broadly we
10 interpret our mandate. And if every -- you know, I'm
11 just not sure how far we can go in evaluating public
12 policies unless they are very clearly linked to this
13 information.

14 VICE CHAIRPERSON REYNOSO: That can be
15 reworded. We can reword it. We could certainly say
16 civil rights implications of non-criminal consequences
17 of a criminal conviction.

18 CHAIRPERSON BERRY: That would satisfy,
19 although Commissioner Edley please speak to this
20 point.

21 COMMISSIONER EDLEY: I mean, beyond the
22 label of whether we just stick in the word 'civil
23 rights and try to get it to the heart and substance of
24 what Commissioner Braceras is talking about. Here's
25 the way I think about it, Jennifer. It's almost like

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1 -- it's almost like a 13th amendment incident kind of
2 an argument. The way I'm thinking about it is that
3 certainly in lots of minority communities there's this
4 concern that with the dramatic rates of incarceration
5 there is the creation of almost a form of second class
6 citizenship, of a caste which is characterized by
7 color, increasingly characterized by color. And so I
8 think what people are worried about is while you have
9 this dramatic expansion in the numbers of minorities,
10 particularly minority men who are being subjected to
11 the criminal justice system, at the same time this
12 constellation of continuing stigmatizing disabilities
13 are sort of attached to them, and that that de facto
14 caste system is a civil rights issue.

15 COMMISSIONER BRACERAS: Okay. Well, as
16 you heard, and I understand your point, but I'm
17 finding it very intellectually tenuous to say that,
18 you know, a mens rea act as broadly framed is a
19 bastion of slavery. That's sort of trivializing the
20 argument. Let's be real here. And the way the whole
21 proposal is worded to say that certain minorities will
22 suffer from felony conviction as if it's not a
23 voluntary act or -- a person has to be held
24 accountable. I mean, this is completely ridiculous in
25 my view and I think that that's about as far as being

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1 in the mandate at this minute.

2 COMMISSIONER EDLEY: I don't disagree with
3 anything that you just said, and agree with the
4 problems in terms of the wording of the proposal in
5 that respect. I think it's less a question, at least
6 from my point of view, it's less a question of the
7 sentencing or incarceration practices, then it is the
8 question of the public policy choices about what kinds
9 of sanctions or disabilities attach after the period
10 of imprisonment.

11 COMMISSIONER BRACERAS: Right, Chris, I
12 agree with you that there are public policy concerns
13 about those things, but I don't see how they are tied
14 to our mandate as civil rights activists. I just
15 don't think --

16 COMMISSIONER EDLEY: There are communities
17 in this country where there are estimates where there
18 are 40 percent of the black male population is
19 disenfranchised from voting as a result of the public
20 policy choices of the state legislatures.

21 COMMISSIONER BRACERAS: I understand so
22 far as we're talking about voters. That's something
23 that we're authorized to look at.

24 COMMISSIONER EDLEY: Okay. So you would
25 agree to it with respect to voting. Then those same

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1 individuals may be disenfranchised from seeking public
2 employment.

3 COMMISSIONER BRACERAS: But, Chris, it's
4 not because they're black; it's because they did
5 something very wrong. I mean, if they've been
6 convicted of a crime --

7 COMMISSIONER EDLEY: But by that
8 reasoning, Jennifer, there would be nothing wrong with
9 the poll tax because it's facially race neutral.

10 COMMISSIONER BRACERAS: That's not what
11 I'm saying, I know that.

12 VICE CHAIRPERSON REYNOSO: I don't know
13 that.

14 CHAIRPERSON BERRY: Could I please say
15 that --

16 COMMISSIONER BRACERAS: Well, I do want to
17 say, I'm sorry, I take offense to that, because I
18 think that that's completely different.

19 CHAIRPERSON BERRY: Take offense to what?
20 Hello?

21 COMMISSIONER BRACERAS: The vice chair's
22 comments that he doesn't know that -- I don't know
23 what to say.

24 COMMISSIONER EDLEY: He said that he
25 doesn't understand how you distinguish the cases.

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1 VICE CHAIRPERSON REYNOSO: Right, right,
2 that's what I'm saying.

3 CHAIRPERSON BERRY: Could I try just for a
4 moment and then I'll let you have at it again. The
5 staff -- all the staff is saying is that there is an
6 underlying predicate that there are -- there is
7 discrimination which the Commission has written about
8 before in the administration of justice that includes
9 the whole administration of justice process,
10 everything from arrest to trial to sentencing to
11 disparate sentencing; everything from drug offenses to
12 all kinds of other, death penalties, well documented
13 disparities in the criminal justice system from start
14 to finish. This has nothing to do with whether people
15 actually have committed a crime. And that given those
16 well-documented disparities that disproportionately
17 effect some groups of people of color, primarily
18 African-Americans and Latinos, that in fact the non-
19 collateral consequences by inference would appear to
20 disproportionately effect the same people for the rest
21 of their lives as a result of this underlying
22 predicate.

23 And it is these non-collateral
24 consequences, as opposed to before when the Commission
25 looked at issues of what happened when the police

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1 arrest you or what happens when, you know, the
2 sentencing or whatever. And so they are assuming that
3 we all know that there are well-documented disparities
4 in the administration of justice, some of which rise
5 to the level of discrimination, and they want to look
6 at these non-collateral consequences further. The
7 Commission has jurisdiction, as you know, to not only
8 look at voting issues but to look at education and
9 health and education, employment, and every other kind
10 of issue as it relates to civil rights.

11 I believe that the vice-chair's initial
12 suggestion, which the staff can flush out in the next
13 phase of this, is that we are concerned about the
14 civil rights implications. Having said all this
15 discussion on the record, which informs the staff,
16 would so define the subject as to not raise the
17 jurisdictional questions. If you wish to have the
18 jurisdictional question addressed, again, the proper
19 way to do that, whatever our views, is to ask the
20 General Counsel what is the General Counsel's view
21 that is it within our jurisdiction to consider these
22 issues on the rationale, as I understand it, that I
23 just gave. And I would be happy to ask the staff
24 director to have her answer that question.

25 COMMISSIONER BRACERAS: With all due

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1 respect, Madam Chair, I understand those issues and I
2 understand the rationale. I just don't happen to
3 agree with that.

4 CHAIRPERSON BERRY: Okay.

5 COMMISSIONER BRACERAS: I'd like my
6 objection stated on the record and the roll call --
7 views on that, because I do not think that this
8 project is within our mandate. I do not think that it
9 is an appropriate project for us to be considering.

10 COMMISSIONER EDLEY: Madam Chair, I think
11 we ought to drop this.

12 CHAIRPERSON BERRY: Why?

13 COMMISSIONER EDLEY: Well, I think as a
14 practical matter, it would not -- it would be an error
15 for us to try to direct the staff to either start
16 planning on such a project if the Commission is
17 divided, certainly not if it's four-four on whether
18 this is a worthwhile project. It's just -- I think
19 that we could do something -- if we could just have a
20 briefing on this subject and become better informed
21 and explore it and maybe a consensus about its merits
22 would emerge from that. But I think at this point we
23 really ought to stop -- we're talking about a limited
24 set of priorities with very limited resources for
25 projects that are coming to fruition sometime in the

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1 future. I really think we ought to be searching for
2 projects in which there's a pretty strong consensus on
3 the commission that it's worthwhile. Maybe I'm
4 assuming that there's a lot of support for what
5 Commissioner Braceras is concerned about, but I'm
6 uncomfortable proceeding if there's sharp
7 disagreement.

8 CHAIRPERSON BERRY: I don't mind not
9 having the project. I do mind having the record left
10 as if the Commission doesn't have jurisdiction to
11 consider such projects, which is why I want the
12 General Counsel to state for the record whether or not
13 the subject is jurisdictional so we're not forever
14 precluded -- the Commission is not forever precluded
15 from ever considering any issues having to do with the
16 non-collateral -- the collateral non-criminal
17 consequences of a criminal conviction on the rationale
18 that no matter how you phrase it that these issues are
19 not within the Commission's jurisdiction. That is --
20 I don't mind not doing the project; it wasn't my idea.
21 There's a lot of projects we can do. I just don't
22 want us to go away thinking that should the Commission
23 at some point decide it wants to do something on this
24 subject --

25 COMMISSIONER BRACERAS: Madam Chair, if I

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1 may be heard. Obviously, nothing we say here that any
2 of us say here about the particular projects, any
3 particular project at this time is binding on future
4 Commissions or future project proposals, I mean.

5 COMMISSIONER EDLEY: It would be binding
6 until and unless -- this is the history of the
7 Commission, this is the practice unless you wish to
8 overturn by it vote, if we get the General Counsel to
9 state its opinion on the record, you would have to get
10 the next General Counsel to state a different opinion
11 in order to overturn it. And since you raised the
12 jurisdictional issue --

13 COMMISSIONER BRACERAS: Ma'am --

14 COMMISSIONER EDLEY: -- may I please
15 finish, ma'am? Since you raised the jurisdictional
16 issue, you raised it and pursued it, I think it's
17 important to get it on the record what the General
18 Counsel's opinion is of whether this is jurisdictional
19 so that future Commissions are not in the position of
20 having to argue about whether this is jurisdictional
21 or not jurisdictional.

22 COMMISSIONER BRACERAS: I would just like
23 to be clear about what I am saying. First of all, I
24 had to give my side -- my view on this matter. But
25 the point that I'm making here is that I was raising a

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1 question about whether, giving the context of limited
2 resources, this project was one worth pursuing. I was
3 not making any global statement about whether projects
4 of this nature could be explored in the future. Yes,
5 I have concerns about whether this project is within
6 our mandate. But that is by no means binding on
7 future commissions. I just objected to going forward
8 with this proposal at this time. Obviously other
9 people have different views and none of those views
10 are binding, and we could just decide that we could do
11 the project or not do the project, and I think we've
12 got any of them.

13 CHAIRPERSON BERRY: We've already --
14 Commissioner Edley he's not in favor of the project,
15 none of us here, who are here in person feel that
16 strongly about it. If others of you want to have a
17 vote on the project we can, otherwise we'll just drop
18 it, which is what we've been doing. But I still would
19 like the General Counsel to state for the record, the
20 staff records, whether or not it is within the
21 jurisdiction of the Commission to do such projects --

22 COMMISSIONER BRACERAS: But wait, I would
23 also like to be clear -- and I concur; I'd be very
24 happy to hear from her side -- but I'd also like to be
25 clear that her opinion on the matter is also not

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1 binding.

2 CHAIRPERSON BERRY: Her opinion on the
3 matter will be binding until a future General Counsel
4 states a different opinion --

5 COMMISSIONER BRACERAS: According to what?

6 CHAIRPERSON BERRY: I'm sorry, Jennifer, I
7 do not wish to argue with you. Please don't do that.

8 COMMISSIONER BRACERAS: But it's a matter
9 of fact, because I think that it's --

10 CHAIRPERSON BERRY: That's the
11 Commission's policy. If you wish to change it, please
12 introduce a motion.

13 COMMISSIONER BRACERAS: I'm sorry?

14 CHAIRPERSON BERRY: Please introduce a
15 motion that you wish to have the policy changed.

16 COMMISSIONER BRACERAS: But I don't want
17 to have any policy changed. I want to have a civil
18 discussion and I just want to finish what I was
19 saying, which is I think -- as a growing body, the
20 Commission's ability to approve projects or not
21 approve projects is respected. Just because one
22 person interprets something as in the scope of the
23 mandate doesn't mean that it's binding or it's not.
24 The -- it's binding for another commission. Ms. Carr
25 works for us; we don't work for her.

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1 CHAIRPERSON BERRY: Another General
2 Counsel will work for the Commission, too.

3 COMMISSIONER BRACERAS: Exactly.

4 CHAIRPERSON BERRY: I am simply asking her
5 to state her legal opinions so that next time we can
6 get another legal opinion.

7 COMMISSIONER REDENBAUGH: Madam Chair,
8 first of all I'm a little concerned that we have Ms.
9 Carr state her opinion when we've already agreed, it
10 seems to me, that we're going to drop this particular
11 issue. So it seems to me that we're raising another
12 issue that need not be addressed at this particular
13 time which could unnecessarily bind us should we move
14 forward, and I think this is something out of the
15 ordinary for something that dropped out.

16 CHAIRPERSON BERRY: Ms. Carr, would you
17 please come forward and state your opinion as to
18 whether this is jurisdictional or not. Thank you.
19 Just briefly, I'm not going to take any more time.

20 MS. CARR: Right. Good morning,
21 Commissioners. In bringing together this project
22 proposal it was the finding of the Office of General
23 Counsel that the project fell under the umbrella of
24 the administration of justice provisions of the
25 Commission's mandate. The project was based on the

1 idea that there are existing disparities in the
2 criminal justice system that result in the
3 disproportionate number of minorities, especially
4 minority men, being arrested, charged and convicted.
5 And the idea was that based on that working
6 assumption, looking at the Commission's past work on
7 criminal justice issues and disparities in the system,
8 that this fell squarely within the Commission's
9 mandate. So therefore this proposal was put forward.

10 CHAIRPERSON BERRY: All right. Thank you
11 very much. Now, I beg your pardon.

12 COMMISSIONER THERNSTROM: -- I do not see
13 how that statement of General Counsel in any way
14 affects the current commission or any future
15 commission or this body or projects in the future --
16 it seems to me -- to be irrelevant.

17 CHAIRPERSON BERRY: You may do whatever
18 you like, Commissioner Thernstrom, but the practice
19 and policy of the Commission is that when the General
20 Counsel says something is illegal, the Commission
21 doesn't do it, and if the General Counsel says
22 something is legal, the Commission can either decide
23 to do it or not do it. And as new General Counsel
24 provides, the later General Counsel may come up with a
25 different opinion. But until that different opinion

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1 prevails, we follow the one that we have on the
2 record.

3 COMMISSIONER THERNSTROM: But surely any
4 specific proposal -- let's say one comes up six months
5 from now that has no bearing on this one, surely that
6 is a -- that is not the precise wording, surely that
7 is a separate jurisdictional issue and one that Ms.
8 Carr has just said is not binding.

9 CHAIRPERSON BERRY: It may or may not be a
10 separate issue. It depends on what the General
11 Counsel says at that time. We're not the General
12 Counsel. It is particularly the function of the
13 General Counsel to tell us what their interpretations
14 of our statute are.

15 COMMISSIONER THERNSTROM: Well, what their
16 interpretation is that there is really no difference
17 between what they do and say and what their
18 interpretation of the statute is.

19 CHAIRPERSON BERRY: Right, you can vote to
20 reject the interpretation of the General Counsel if
21 you wish at any time, but the General Counsel is
22 responsible for giving us a legal analysis, opinion,
23 and advice; that's the role of the General Counsel.
24 The Commissioners don't have to accept it, just like I
25 don't have to accept what my lawyer tells me, but

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1 that's the role and function and the General Counsel.

2 COMMISSIONER THERNSTROM: Yes, but putting
3 it on the record is of no importance whatsoever.

4 CHAIRPERSON BERRY: Oh, it is absolutely
5 important, so that we have a record that it took
6 place. In the absence of such a record, the next time
7 the issue comes up somebody would say, we never
8 considered that or we did consider it and the
9 discussion led to that it wasn't, you know, within our
10 jurisdiction and nobody said anything, the General
11 Counsel didn't say anything, so we assume that. But
12 anyway, you are quite right. The Commissioners may
13 vote to reject any General Counsel's opinion or get a
14 new one or whatever it wishes any time. I'm simply
15 following practice that has been in existence since
16 1957. I'm not doing anything any different. I'm
17 trying to hold to the Commission's practices.

18 COMMISSIONER REDENBAUGH: Madam Chair,
19 this is Mr. Redenbaugh. I have a very general
20 question which I believe -- I think we didn't touch on
21 this point directly, and I think it's non-
22 controversial. May I ask it?

23 CHAIRPERSON BERRY: Please.

24 COMMISSIONER REDENBAUGH: I hate to take
25 us into calmer waters -- and this really shows my

1 ignorance -- but is our jurisdiction or mandate,
2 however we talk about it, limited it to instances
3 where there is, quote, discrimination that impacts one
4 group versus another, or in fact would we have a
5 mandate, as we say, if there weren't a racial or
6 minority issue but the application of the law was
7 adverse to all citizens?

8 CHAIRPERSON BERRY: Well, the way the
9 Commission has historically interpreted this statute
10 is that we can look at issues where we don't know that
11 there is discrimination but where there may possibly
12 be, and not just race, because we keep forgetting that
13 this is not a race commission, you know.

14 COMMISSIONER REDENBAUGH: See, I'm just
15 trying to simplify this question.

16 CHAIRPERSON BERRY: But on any of the
17 things that are in our statutory mandate and that we
18 don't have to show that such discrimination exists in
19 order for us to work on the issue. What we do is work
20 on the issue sometimes to see if there is any problem
21 with it, and it may turn out that there is or there
22 isn't.

23 COMMISSIONER REDENBAUGH: Right, I
24 understand that. I meant in the case -- you know,
25 after that determination we could certainly

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1 investigate an issue. But do we have jurisdiction or
2 mandate where we have reason to believe that the
3 impact of such a situation falls, not
4 disproportionately on any of our protective groups,
5 but is still a problem that we can at least remedy?

6 CHAIRPERSON BERRY: My understanding has
7 always been that, no, because that would mean that we
8 would investigate or do everything about anything.

9 COMMISSIONER REDENBAUGH: Right.

10 CHAIRPERSON BERRY: If I think that I
11 don't like obesity in the United States, that people
12 are eating too much peanut butter and I want to
13 investigate, you know, whether peanut butter is
14 addictive or something and without regard to whether
15 it has anything to do say with disability or something
16 like that --

17 COMMISSIONER REDENBAUGH: So we're really
18 limited. Okay, I understand.

19 CHAIRPERSON BERRY: So you have to have
20 some nexus.

21 COMMISSIONER REDENBAUGH: Some basis in
22 which the impact -- there's a differential impact.

23 CHAIRPERSON BERRY: Yes, it may exist or
24 you think it might or --

25 COMMISSIONER REDENBAUGH: Right, to have a

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1 basis for that.

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER REDENBAUGH: Okay. Thank
4 you.

5 CHAIRPERSON BERRY: I don't mind being in
6 calmer waters, and I hate when we have to do these
7 things that are technical, but I think it's important
8 to keep faith with those who have come before, and
9 with statute, and all the rest of it; despite the
10 tediousness of it.

11 In any case, let us go on then, we have
12 left these projects there, and we now have two. So
13 that ends the project planning phase then, unless
14 somebody else has something to say about project
15 planning, and we will hear from Russell at a later
16 time about the economic -- Russell, Elsie and
17 Abigail. So, now what we want to go through is the
18 presentations from the Southern Regional Advisory
19 State.

20 COMMISSIONER THERNSTROM: I actually had a
21 question about the 2004 project, if I may?

22 CHAIRPERSON BERRY: Yes. Which project?

23 COMMISSIONER THERNSTROM: The Education
24 Accountability and this suggests that it will be
25 simply a staff report on the Commission Report --

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1 CHAIRPERSON BERRY: Where does it say
2 that?

3 COMMISSIONER THERNSTROM: I lost my page,
4 I'm sorry.

5 COMMISSIONER EDLEY: Page six. It's the
6 bottom of page six.

7 COMMISSIONER THERNSTROM: Page four of Tab
8 5. It says the staff will document for the basis of a
9 report. Does that imply a staff report?

10 CHAIRPERSON BERRY: Just a second. Okay.
11 Educational Accountability, staffing documents, "No
12 Child Left Behind," hold a briefing and other
13 information from the briefing -- that report is about
14 the report that's mentioned in the first paragraph.

15 COMMISSIONER THERNSTROM: I'm reading on
16 page four, under Tab 5, where it says the Commission
17 staff will in FY2002 conduct interviews in preparation
18 for a report on standards-based performance, including
19 "No Child Left Behind", and so on. That's suggests
20 that a staff report that is being worked on by the
21 Commission.

22 CHAIRPERSON BERRY: The staff is working
23 on a report which is referred to on page four and
24 which is also referred to on page, I guess it's seven,
25 six and seven, and I think -- is this right, Debra?

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1 That the comment where staff is holding a briefing and
2 the report, is still referring to the report that's in
3 the first paragraph and then it's on page four.

4 COMMISSIONER THERNSTROM: Well, whatever
5 wording, what kind of report is being proposed? Are
6 we voting on it? Are we sending opinions, sending
7 Commissioners' response to it or just locking out the
8 voices of dissenting Commissioners?

9 CHAIRPERSON BERRY: We understand what
10 you're saying and nobody's locking out anybody's
11 voices. I wish, Commissioner Redenbaugh, you could
12 encourage Commissioner Thernstrom not to use language
13 which is accusatory when she talks about what the
14 staff is doing since you're trying to calm the waters.

15 As we have discussed many times before, the education
16 report will be a report, voted on by the Commission
17 with full opportunity for people to dissent, since
18 you're assuming already they're going to dissent, and
19 you haven't even seen it.

20 COMMISSIONER THERNSTROM: That's not,
21 madam chair, if I may, there has to be an opportunity
22 to dissent.

23 CHAIRPERSON BERRY: So there will be a
24 report for the Commission to vote on. Is that right,
25 Staff Director?

1 STAFF DIRECTOR JIN: Yes, Madam Chair.

2 CHAIRPERSON BERRY: And for people to do
3 whatever they wish to with it, and the briefing
4 yesterday is not the report that is referred to on
5 page six and seven and page four, does that help?

6 COMMISSIONER THERNSTROM: Yes.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER THERNSTROM: Thank you.

9 **VII. Report of the Southern Regional SAC**

10 CHAIRPERSON BERRY: Sure. Anybody have
11 anything else before we go to the Southern Regional
12 State Advisory Committee Members? Next month, we will
13 have a briefing on affirmative action in higher
14 education which the Commission already has a policy
15 on, which supports affirmative action in higher
16 education. And we will have -- the staff, I guess,
17 has said we should have this and I think you know it's
18 a good idea at this time, and in Washington. And then
19 we will have in addition to -- just our one panel, not
20 a long thing. And if those of you who are on the
21 phone wish to suggest a name -- just a name, it's
22 going to be one panel with two or three people -- for
23 somebody to speak, could you please get that to the
24 Staff Director by the end of next week so that they
25 can get it done.

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1 And it will consider such issues as when
2 is something a quota, when it is not a quota and what
3 do percentage plans do and what don't they do, and
4 issues like that on the higher education affirmative
5 action question which has been heating up recently and
6 someone from the Department of Education, staff tells
7 me, will be asked to come, if they wish to do so to
8 talk about whatever their position is on the issue.
9 Did everybody hear that? Okay. Thank you.

10 Now, the presentations from the Southern
11 Regional Advisory. Bobby Doctor, our Regional
12 Director is here with the SAC members from the regions
13 who are going to appear. As many of you know we
14 decided to have these meetings outside of Washington
15 for a very exciting educational accountability
16 briefing yesterday. It was wonderful, very well
17 covered, very well attended, as these meetings have
18 been, and very well covered by the local media and a
19 lot of discussion, healthy discussion about the North
20 Carolina and South Carolina education accountability
21 programs. Also the one in Massachusetts was discussed
22 by a former board member, I guess, from the
23 Massachusetts State Board of Education here yesterday.

24 And so we are accomplishing our purpose by coming to
25 these states. And so what we want to do today, is to

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1 here from the SAC members who were able to come about
2 the issues here in their particular states.

3 So I would ask Bobby Doctor first, let me
4 introduce you, to see if there's anything you'd like
5 to say as the director of the Commission's Southern
6 Regional Office. Please speak up about your region
7 and about what's going on.

8 MR. DOCTOR: Thank you, Madam Chair. On
9 behalf of all the members of the advisory committees
10 here in the Deep South we'd like to take this
11 opportunity to welcome you all to this region. We had
12 anticipated that a former colleague of yours in the
13 person of Francis Guest would have been here, but I
14 understand he's had some sort of an emergency
15 development which precludes his being here.

16 CHAIRPERSON BERRY: And I understand that
17 Ms. Wanda George-Warrens of Rock Hill from South
18 Carolina is caught in the snowstorm.

19 MR. DOCTOR: Absolutely, there's a
20 snowstorm issue. Well, west of here and north of here
21 I understand that the snow ranged anywhere from two
22 inches to six inches, so obviously that has impacted
23 Ms. George-Warren's ability to be here. But we do
24 have obviously two of our very key members in the
25 person of Dr. Wyatt Kirk of the North Carolina

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1 Advisory Committee and also we have Brad Brown, both
2 Dr. Kirk and Dr. Brown. I might add that Dr. Brown's
3 the former chair of the Florida Advisory Committee and
4 currently serves as the Vice-Chair of the South
5 Florida Sub-Committee of the Florida Advisory
6 Committee. I was here yesterday to witness, to
7 observe, to take in much of what was said in
8 connection with the educational accountability
9 briefing. And I was struck by much of what was not
10 said. As you probably know we've had some experiences
11 in this particular field both in South Carolina and
12 North Carolina. And I guess my theory is that there
13 was a lot of discussion about what's going on in the
14 education field, but very little discussion about what
15 I perceive to be the overriding problem, not only as
16 it impacts the question of education, but also as it
17 impacts the question of health, welfare, economics,
18 just about every facet of American life. And that is,
19 America's inability to deal effectively with the race
20 question. And because of our inability to deal
21 effectively with the race question, we continue to be
22 plagued with problems in all of the categories that I
23 just alluded to, including education. We have done a
24 number of different projects in this particular area
25 in recent years. I'm going to talk about them after

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1 Dr. Kirk and Dr. Brown have had an opportunity to make
2 their presentations, and of course, they will be
3 talking about North Carolina and Florida. I will be
4 trying to give some very brief insight into what's
5 going on in South Carolina and certainly what's going
6 on in Kentucky and one or two of the other states that
7 obviously are not represented here today.

8 CHAIRPERSON BERRY: Okay. I want to say a
9 word about Dr. Kirk, as I introduce him. Is that all
10 right with you?

11 MR. DOCTOR: Absolutely.

12 CHAIRPERSON BERRY: Dr. Kirk is from
13 Pleasant Garden and he is Chair of the North Carolina
14 SAC. He is in the Department of Human -- a professor
15 in the Department of Human Development Services at
16 North Carolina A&T University in Greensboro. He has
17 been involved in all of the education and educational
18 counseling in the national organizations. He's been
19 named several times in "Who's Who among Black
20 Americans" and has worked hard on this SAC, and so
21 we're pleased that you were able to come here and that
22 you were here all day and yesterday, taking it in, and
23 that you're here this morning. And I'm sure you have
24 some reactions because you told me yesterday, I'm
25 going to something to say about this tomorrow. So you

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1 go ahead.

2 DR. KIRK: I have some reactions. But
3 first let me say, I'm Chair of the North Carolina SAC
4 and I'm glad to be here, but I want to make sure that
5 I introduce any people in my SAC who are here. So I'd
6 like to have them stand at this point; there are two
7 that I know of.

8 MR. RATSFORD: I'm Willie Ratsford and in
9 my other life I work as Executive Director for the
10 South Carolina African American Equal Access
11 Committee.

12 CHAIRPERSON BERRY: Okay.

13 MR. SIFFORD: My name is Danny Sifford and
14 I'm with the program for Accessible Living, a center
15 for independent living here in Charlotte.

16 CHAIRPERSON BERRY: All right. Thank you
17 very much for coming. We very much appreciate the
18 work of the SACs and their service.

19 DR. KIRK: I think more would have been
20 here if not had been the weather. I had contacted the
21 majority of the committee members and they said they
22 would be here, so I suspect the weather has something
23 to do with it. Let me just talk about two projects
24 before I get to some reactions to yesterday. As you
25 know we had the Title VI project that we're trying to

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1 get off the ground and I understand it has been
2 approved in the regional office, and we hope to get
3 that going in terms of our investigation of Title VI
4 in North Carolina. We have set it up so that we hope
5 to hold hearings in four of the cities across the
6 state to find out how Title VI is being treated and is
7 it fairly applied.

8 We have evidence that it's not, and that
9 there needs to be some changes in what goes on in
10 Title VI. The other concern in the state would be the
11 Department of Transportation. I have here a number of
12 reports and a number of complaints that have come from
13 the Department of Transportation in North Carolina and
14 they're constantly now trying to get some kind of
15 hearing going through the Justice Department.

16 Black contractors and minority contractors
17 in North Carolina find it very difficult to get their
18 fair share of the contracts that are available in
19 terms of highway, building and other projects having
20 to do with transportation. So they've kept me
21 informed on what's going on there and I intend to turn
22 this over to the Committee to see what they want to do
23 with that also. So those are two things that are
24 going on that I can report to you that we will be
25 concentrating on throughout the next year. Getting to

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1 what went on yesterday, I did sit through the hearing
2 on high-stakes testing and accountability. I guess
3 what I want to say first of all is that the only
4 winners in high-stakes testing is the testing
5 community and the corporations. I think that the money
6 that goes into testing and paying for testing and
7 buying the tests, if that money was put into the
8 morale and motivation of teachers and what teachers
9 do, I think we would be tremendously ahead in public
10 education. The other thing that I think that has to
11 be looked at and I didn't hear yesterday, is the fact
12 --

13 CHAIRPERSON BERRY: (Commissioner Edley
14 re-enters the room) Commissioner Edley, Dr. Kirk just
15 said that he thinks the money that is being put into
16 testing -- and that's a lot of money involved in all
17 of the testing industry and all the tests -- would
18 have a marvelous effect if it were put instead into
19 teaching and what happens with kids in the classroom.
20 I just wanted you to hear that. Go ahead, Dr. Kirk.

21 DR. KIRK: The other thing is, going back
22 to the comment I think Bobby alluded to, we've got to
23 come to the realization that the culture and the world
24 view of the school is very different from the world
25 view of the students going there. And until such time

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1 that that comes together, we're not going to make much
2 gains in terms what goes on in schools. Standardized
3 testing does not measure the most important key
4 elements in learning: creativity, imagination,
5 origination. Those are key concepts, when we talk
6 about learning. Standardized testing does not touch
7 on those. There are 160-some brain functions that
8 apply to learning. Standardized testing only reaches
9 six of those. We don't even touch on what the kids
10 learn, and I suspect that standardized testing tells
11 us more about what they learn than what they don't
12 learn. We look at it the other way around. In North
13 Carolina we need 10,000 teachers for next year. All
14 institutions with teacher education programs will only
15 produce 3,000. The teachers are leaving -- attrition
16 in North Carolina, in terms of teaching, has to do
17 with teachers being tired of teaching the test, not
18 teaching learning, and that has already been published
19 by the State Department. The teachers leaving the
20 school systems are leaving because they're tired of
21 the tests. They can't teach learning, and so until
22 such time that they do, we're not going to make much
23 headway in the area of education. Those are basically
24 my remarks and I would hope that someone would take a
25 crucial look at what happens to teachers, what can we

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1 do to support them and not what we do to support the
2 tests; the test is not going to tell us anything. In
3 the Japanese school systems they used this and they've
4 gone away from it; there's evidence that it does not
5 work. They have moved more towards a non-testing
6 environment in order to teach and in terms of math and
7 science and mathematics and English, they moved away
8 from it, standardized testing. They learned the kids
9 were being demotivated, not motivated. They found out
10 there's no creativity and that learning was not long-
11 lasting. Testing learning is for the moment. You
12 give me back what I want you to tell me and I can do
13 that, but where does that come into my life later on
14 and how does that stay with me? Those are the kinds
15 of things that I didn't hear yesterday that I think we
16 really need to be concerned about and I'll let it go
17 at that.

18 CHAIRPERSON BERRY: But, Dr. Kirk, didn't
19 you hear yesterday the folks who said the reason that
20 high-stakes testing is good is because life is a
21 series of high-stakes and children need to get used to
22 having high-stakes because once they leave school, you
23 know, to get a driver's license, you have to pass it,
24 that's a stake. Everything is stakes and so they need
25 to get used to that, so that's why they need to do it.

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1 DR. KIRK: But there's a question about
 2 whether that's true or not. There is some evidence
 3 that supports the opposite on that. That if you get
 4 people to the point of stress and demotivation, then
 5 it doesn't last, and then when you talk about testing
 6 you're talking about many times creating an
 7 environment for -- creating a position in this person
 8 that they freeze up, they don't learn. There are
 9 certain things you can learn from testing because
 10 there is some immediate kinds of things that we have
 11 to be able to do. But what we're finding out with
 12 students in school right now, is that the test is not
 13 helping them because they're afraid of it. We're
 14 getting ready at A&T to bring to our university 25
 15 black youngsters from high schools. These youngsters
 16 are coming to the university, we're going to take them
 17 in, we're going to work with them and nurture them in
 18 a different way than they've been nurtured in school.
 19 What we found out about them is they cannot pass
 20 tests.

21 CHAIRPERSON BERRY: You mean standardized
 22 tests?

23 DR. KIRK: Yes?

24 CHAIRPERSON BERRY: You're not opposed to
 25 all tests?

1 DR. KIRK: I'm not opposed to all tests,
2 but it's how they're used and do they help the person
3 psychologically as well as intellectually.

4 CHAIRPERSON BERRY: But it's important to
5 be clear as Commissioner Edley was saying yesterday,
6 that you're not opposing the idea of testing and
7 evaluating students to see if they learn what you're
8 teaching in class?

9 DR. KIRK: No, I'm not opposed to that.

10 DR. BROWN: The assessment has to be such
11 that it helps the student learn and retain.

12 CHAIRPERSON BERRY: You're only talking
13 about certain categories of tests.

14 DR. KIRK: Basically standardized tests.
15 Not other tests, not essay tests; I think they're very
16 good.

17 CHAIRPERSON BERRY: Okay.

18 DR. KIRK: I think students learn, they
19 learn how to write, they learn how to think, they
20 learn how to reflect. I'm speaking mainly of
21 standardized tests.

22 CHAIRPERSON BERRY: It's harder to grade
23 to essay tests. It's easier to grade, you know,
24 standardized, multiple choice, whatever, machine
25 readable, kind of tests.

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1 DR. KIRK: But essay tests will tell us
2 more what a students knows than a standardized test.

3 CHAIRPERSON BERRY: I see. Okay, and then
4 you said something about brain function, like there
5 were six, what did you say six --

6 DR. KIRK: There are six brain functions
7 and I can't name them, but the brain has 156 functions
8 that it operates off of, but testing doesn't reach all
9 of those functions, and since it doesn't reach all
10 those functions then what are they really learning?
11 It should apply -- what we do with learning should
12 apply to how people think, how people reason, and not
13 just a limited area in which they learn and reason.

14 CHAIRPERSON BERRY: How about the argument
15 that those six functions are more important than all
16 the others?

17 DR. KIRK: That's questionable.

18 CHAIRPERSON BERRY: Well. Okay. So we
19 will take those into account. Let's see what Brad
20 Brown has to say. Brad Brown, Bradford Brown, Dr.
21 Brown from the Florida SAC is a scientist and Director
22 of the Southeast Fisheries Center, National Marine
23 Fisheries Service of the National Oceanic Atmospheric
24 Administration, NOAA, as I called it when I was
25 Chancellor, called it NOAA. So you still have that,

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1 don't you?

2 DR. BROWN: Yes, we do.

3 CHAIRPERSON BERRY: He is a member and
4 former chair of the Dade County Human Relations Board
5 and he was former chair of the Florida --
6 Massachusetts SAC when he lived in that state and also
7 the Oklahoma SAC and this is your third SAC, right,
8 Brad?

9 DR. BROWN: Yes, it is.

10 CHAIRPERSON BERRY: And you're a
11 recidivist, that's what you are. Let us hear from you
12 about what's going on in Florida and your reactions to
13 the education briefing.

14 DR. BROWN: Thank you very much, Chair
15 Berry, Commissioners. I would just continue with what
16 was just said regarding high-stakes testing. We in
17 Florida are faced with a very critical issue this year
18 because the very first time our F-CAP, which is the
19 Florida high-stakes testing will be applied to third
20 graders. We expect maybe as many as half the African-
21 American third graders and about that many Hispanic
22 third graders will be retained in grade this year, as
23 a result of not being able to pass. The estimates are
24 about 30% overall and they also will apply to
25 graduating seniors.. So we can expect a very large

1 numbers of seniors to have certificates of attendance
2 rather than diplomas from high schools this year as a
3 result of the implementation of F-CAP.

4 On previous high-stakes tests in Florida
5 when the earlier tests were put in, where there was a
6 period of time when it allowed for people to bring
7 their scores up so they could at least teach to those
8 tests, they changed this. This is being implemented
9 this year. So we are faced with that part of the
10 perfect storm, if you will, to use the analogy in one
11 of your documents. In addition to the high-stakes
12 testing, in the throes of the impact of the One
13 Florida plan, I want to commend the Commission on your
14 analysis. It's one of the very few I've ever seen
15 that has gotten it right.

16 People often say that what we think should
17 have happened in the One Florida plan relates to the
18 issue of affirmative action as defined in
19 (indiscernible) and in reality of course that applies
20 essentially to only one small component, which is the
21 University of Florida and that is the place where the
22 numbers have dropped. The frightening thing, however,
23 is that what is in the University of Florida today
24 will be in other state universities tomorrow, and it
25 will be happening even faster in Florida than any of

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1 us thought because of the budget crunch, where were
2 are going to be restricting attendance at universities
3 sooner than might have happened otherwise. So we'll
4 see other states that will have to make selections
5 amongst people who are qualified, and whether, in
6 that, is the situation with whether or not you take
7 grades into consideration as one of the factors, and
8 so I expect in the future we will see the impact of
9 that you see at the University of Florida expanding to
10 other institutions of higher learning in the State of
11 Florida. So that, again, is going to have some very
12 devastating effects.

13 We're also seeing the resegregation of
14 schools, due to the ending of the court orders, and
15 that's being exacerbated by the proliferation of
16 charter schools. We are seeing -- as you know,
17 typically in southern states like Florida,
18 desegregation had some beneficial effects in terms of
19 being able to be addressed because we have large
20 county-wide school systems. What we're now seeing is
21 municipalities establishing charter schools,
22 developers in establishing charter schools. So we're
23 now seeing the same thing that we had up in northern
24 school districts, small little districts, de facto
25 districts, which is if you will, becoming charter

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1 schools which will be segregated by race.

2 Either the charter schools don't have to
3 pass the F-CAP and they also make no standards. In
4 Homestead, I'm thinking particularly of the Rosa Parks
5 Charter Schools because their students hadn't had
6 books. So far, people like the charter schools, even
7 within all communities because they're smaller,
8 they're more concerned with safety. We see a lot of
9 diversion of standards and quality in charter schools
10 being developed in some areas versus others as well as
11 a result of the re-segregation effect.

12 CHAIRPERSON BERRY: Poor Rosa Parks. They
13 just use her name for anything.

14 DR. BROWN: Isn't that right. The one
15 other aspect -- and I want to support what the
16 Regional Director said. I happened to serve on the
17 Bridging the Gap Committee of the Miami-Dade County
18 School System, the fourth largest in the nation. And
19 while they're willing to recognize that there is a
20 gap, there is a basic denial that race has anything to
21 do with it and, therefore, they're completely ignoring
22 the impact on the black families and others where the
23 gap still persists and have exacerbated in our magnet
24 school programs where race has been a factor in
25 admission and no longer will be. Other issues,

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1 community relations continue to be a major one, but I
2 think we had a shooting of a mentally disturbed
3 individual who tried to commit suicide as recently as
4 last week.

5 Last week we also had the release of the
6 state attorney's report on the man caught killing the
7 individual who was shot, late in the day on Martin
8 Luther King's birthday a year ago, who was just
9 released from the court with no prosecution. Again, a
10 situation where maybe that decision was correct, but
11 it certainly wasn't from a legal standpoint, where you
12 have fear and all the rest, but without question it
13 was an avoidable shooting and how do you, in fact, get
14 that achieved is a continuing problem relative to
15 community relations and police community relations.

16 OPERATOR: Pardon me. Abigail was
17 disconnected. Was that intentional?

18 CHAIRPERSON BERRY: Who?

19 OPERATOR: Abigail Thernstrom.

20 CHAIRPERSON BERRY: I suppose it was
21 intentional.

22 OPERATOR: Okay. Should I try to get her
23 back?

24 CHAIRPERSON BERRY: No.

25 OPERATOR: All right then. Thank you.

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1 DR. BROWN: Voting is a continuing issue
2 in Florida, and we appreciate presence of staff during
3 the election in November. The election in November
4 went off, with a humongous effort on the part of an
5 awful lot of people went fairly smoothly. There is
6 still a great deal of concern, however, about the
7 potential for fraud and errors with the touchcreed
8 voting machines that have no paper back-up, and
9 there's a great deal of concern about whether there's
10 a need for some type of a back-up if you have that
11 type of technology.

12 Furthermore, they did agree to settle with
13 the NAACP on that case, but they agreed to settle --
14 one of the key issues that was agreed to in that case
15 was to go back to all the felons that were wrongfully
16 -- I mean people who were identified as ex-convicts,
17 who were thrown out who weren't ex-convicts, never
18 mind the problem with the law itself, but that number
19 has been estimated maybe as high as 90,000 people.
20 And of course, the settlement was reached too late to
21 have that be implemented for the entire November
22 election or the primary election right before the
23 primary, and it still hasn't been implemented and we
24 still have an awful lot of people who were at some
25 degree one of a very large number of false positives

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1 in that particular case that are still out there.

2 We are still concerned about the
3 immigration issue, particularly with Haitians. Our
4 SAC has been involved with that. We had some success
5 and maybe some amelioration of some conditions within
6 the local institutions that are housing these people.

7 They're just still prisoners. You cannot deny the
8 fact that these people are not criminals, but if you
9 put them in a prison and they are going to be treated,
10 they have to be treated to some extent like prisoners
11 just because of the nature of the building that they
12 are in, which to my mind is unconscionable but no
13 improvement at all within INS itself.

14 You mentioned earlier the issue with the
15 Muslim communities and Arab communities particularly.
16 We've looked into that with the Florida SAC. We now
17 have a member from that community on the new Florida
18 SAC. Thank you for that recognition, but I think it's
19 a very direct result of our SAC's involvement in a
20 large number of local areas. You cannot do anything
21 now in the community relations area in Dade County,
22 whether it's just a community forum or whether's it's
23 urging people to vote without a representative of that
24 community being present and that was not there before.
25 And I attribute that very directly to the efforts of

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1 our Florida SAC raising those issues and providing
2 that kind of forum. We are very much concerned about
3 the ongoing work in the Hope VI projects and the
4 gentrification in the area, making those projects
5 actually live up to their promises, rather than being
6 a devastating impact on a large number of particularly
7 large families of low-income people in our
8 communities. We continue to look at Title VI
9 implications and contractor involvement throughout the
10 area of Jacksonville and one of the areas that doesn't
11 necessarily violate Florida law but does have a
12 significant impact on the continuing economic
13 disparities of Florida and that is when they do find
14 particularly African-American contractors -- Hispanic
15 contractors they find in Florida, they use them
16 elsewhere in well, but our African American
17 contractors tend to come from outside of the state,
18 when the largest amount of contractors may be the
19 letter of the law, but in any case this does help to
20 alleviate the economic disparities that can be defined
21 in Florida. Thank you very much for the opportunity
22 to describe where we are in our state at this time,
23 and I very appreciate your being here. Thank you.

24 CHAIRPERSON BERRY: On the ex-felon issue,
25 you said there may be like 90,000 people ex-convicts

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1 who were not, and the settlement is in -- which case
2 was this?

3 DR. BROWN: This was the, the NAACP v. the
4 State of Florida and several of the major counties in
5 Florida and several other people.

6 CHAIRPERSON BERRY: Did the Justice
7 Department do anything on that issue?

8 DR. BROWN: No.

9 CHAIRPERSON BERRY: To your knowledge?

10 DR. BROWN: To my knowledge the Justice
11 Department, to my knowledge the Justice Department
12 only addressed the issue of Creole language being
13 available and they did get a settlement in Miami-Dade
14 County which expanded the availability of assistance
15 in Haitian Creole, we call it Creole, but since the
16 Creole is a generic term, it's Haitian Creole that
17 we're actually talking about, and they do have the
18 settlement there, because the department was down
19 monitoring that settlement and that was also part of
20 the NAACP suit as well. But as far as I am aware,
21 that is the only settlement that the Justice
22 Department addressed and achieved.

23 CHAIRPERSON BERRY: How did that issue go
24 in November with the Creole?

25 DR. BROWN: Significantly better. We did

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1 have Haitian-Creole assistance available in a very
2 large number of polls, not just those that were 90%
3 Creole. However, we did have a significant issue in
4 Dade County for the first time in Miami-Dade county,
5 we've got ballots mailed out to everybody ahead of
6 time; that's never been done before. Something that's
7 been done always in California, and it was mailed out
8 to everybody in English and Spanish. The ballot that
9 was printed in English and Creole was not mailed out,
10 it was just distributed and the argument of the county
11 attorney is that the law didn't require them to do
12 that, and settlement directs assistance at the polls.
13 We now have a vote at the county commission that will
14 be done in the future in Miami. But to give you the
15 attitude of the election, actually the people running
16 the election in the community was that we don't need
17 to do it, so they didn't print them, they didn't put
18 them in the community. They didn't distribute them to
19 the newspaper that comes out periodically; that's not
20 the same as mailing them to people.

21 CHAIRPERSON BERRY: Do you know what has
22 happened on the issue of the Department of Motor
23 Vehicles turning in people's motor-voter
24 registrations? That was one of the issues in our
25 briefing --

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1 DR. BROWN: I should have brought the
2 settlement but -- actually need to read it -- they are
3 -- there were issues both with the Motor Vehicle
4 Department and with the Department of Social Services
5 as well, and there are a number of internal
6 improvements in the processes that were directed --
7 should have been -- should have mailed in and one of
8 the key issues here many people thought that since
9 they registered where they're going to vote that when
10 they changed their address for their license that that
11 would change their voting address. And of course, it
12 didn't. But what they now are expecting of these
13 people that come in, are supposed to be asked that.
14 So hopefully they will be at least -- people will ask
15 people who do changes of registration the same way
16 that they do new licenses about their -- do they wish
17 to change their licenses. So, there are a series of
18 steps like that that they have agreed to do to improve
19 their attention to this particular area. And one of
20 the problems, obviously, is there's not real
21 enforcement and some of the things are going to be not
22 all that easy to find out whether or not they're
23 actually being carried out everywhere.

24 CHAIRPERSON BERRY: Well, as I remember, I
25 think my recollection is correct, that the DMV

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1 director who came to testify was talking about there
2 not being a real system for making sure that the
3 ballots go from the DMV to the clerk's office and this
4 was a problem --

5 COMMISSIONER EDLEY: You're talking about
6 registrations.

7 CHAIRPERSON BERRY: Right, right, when
8 people -- I'm sorry, registrations, said, like for
9 example, when some of those people came and complained
10 that they have registered with DMV and then when they
11 got there they said they weren't. She -- it was a
12 woman -- and, yes, I think she testified that there
13 weren't really any kind of a system in place. Have
14 they done that now?

15 DR. BROWN: The settlement did set up
16 internal systems; they did agree to set up those
17 internal systems. What I'm saying is that the
18 enforcement of this still has to be looked at, whether
19 these things have actually been done and are they
20 implemented everywhere, but yes, the settlement, they
21 did get agreement, both Motor Vehicles and Social
22 Services for, if you will, a system to be put in place
23 to track and make sure the questions were asked and
24 that the forms actually got sent in. We will see how
25 that actually works. But yes, they did agree to those

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1 things in the settlement.

2 CHAIRPERSON BERRY: I would like staff, I
3 think OGC, if they're not already doing it, should
4 look at the settlement and then see how many of the
5 things they've agreed to do relate to the
6 recommendations that we've made and the findings that
7 we've made. And also look to see what the dates are
8 when they're supposed to implement this stuff and
9 monitor for us whether or not they're implementing it,
10 so that we may, you know if they're not implementing
11 that we may have to do something else, but -- let me
12 ask the SAC members, people like Brad and others, what
13 their views are on what's happening down there on the
14 ground. Because my hope had been that by now they
15 would have solved all of these problems.

16 DR. BROWN: And like I said that nobody
17 agreed to -- with the exceptions of a couple of
18 counties, settlements were agreed just prior to the
19 primary, so literally nothing had been implemented
20 between then and, you know, until after the elections.
21 I can only tell you what has happened since then in
22 terms of those processes, but it's an important issue
23 to look at because we're already beginning local
24 elections, you know, this spring in various areas of
25 Florida. So while it may not have the same degree of

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1 attention as we will in two years, there are reasons
2 why these should be already -- been in place now and
3 that needs to be followed up on.

4 CHAIRPERSON BERRY: Okay. I was
5 interested also in the Haitian refugees. As you know
6 when we were down in Florida we went to see those
7 women.

8 DR. BROWN: Yes.

9 CHAIRPERSON BERRY: Who were in that
10 correctional facility --

11 DR. BROWN: That's a very sobering
12 experience, isn't it?

13 CHAIRPERSON BERRY: Yes.

14 DR. BROWN: Slam, slam, slam, to maximum
15 security prison to see a few women who have come in.

16 CHAIRPERSON BERRY: Now, sister -- what is
17 her name, the woman from the college, she's the
18 president of the college now, sister --

19 DR. BROWN: Oh, Sister Jean, don't know
20 her last name. Sister Jean, I'm trying to think of
21 her last name.

22 CHAIRPERSON BERRY: This woman who is head
23 of the college --

24 DR. BROWN: Yes, Sister Jean. Right now
25 I'm having a little --

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1 CHAIRPERSON BERRY: She was saying that
2 she was willing to take those people in and her
3 college, if they would let her, and INS when we were
4 there were saying that they didn't know if her place
5 met the standards of where people had to stay. It was
6 kind of amusing, because I couldn't see how the
7 standards could be any worse than prison. But anyway,
8 the INS did promise us that they would look into
9 providing meals that met with -- meals that were more
10 amenable to the diet of those women. Because they
11 explained to us, the women have real trouble eating
12 some of the food. It was inconsistent with what they
13 were accustomed to eating and the times that they were
14 eating and they weren't prisoners, so they promised us
15 in the very least they would try to make conditions
16 there for them better; given that they weren't
17 prisoners. And I just wondered if anything has
18 happened, the women are they still there, or what's --

19 DR. BROWN: There's been some movement out
20 to -- I'll check on that. I've been out to the
21 national security prison since the Commission's gone.

22 You remember I was out of town when you were there,
23 so I wasn't able to go along. But I have been out
24 there since then, and I didn't recall anybody speaking
25 specifically about that issue, and of course, it's not

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1 INS that actually does it although they may -- would
2 have to provide some of the funding --

3 CHAIRPERSON BERRY: That's what they said.

4 DR. BROWN: -- for the prisoner to do
5 that. I will check on that and see whether they've
6 done that. There is a mixture of women there --
7 greatest number of them Haitian women and there are
8 Hispanic women and there are Asian women in that
9 complex, all of whom were used to diets and not
10 necessarily served at the prison; so, I will check on
11 that.

12 It's interesting that you mentioned that
13 the school doesn't meet standards because two women
14 with small children are being held in a motel, which
15 to me is unconscionable, because the children are not
16 allowed out of the room. They can't go out and play,
17 they don't get any educational training. They can sit
18 there and watch cartoons all day, and soap operas, but
19 that's the only thing that they are able to do during
20 that time and they're being kept isolated and we
21 weren't allowed to bring Christmas presents to the
22 children. I mean it's a really nasty situation.

23 CHAIRPERSON BERRY: Okay. Does anyone
24 else here want to ask the Commission anything?

25 COMMISSIONER EDLEY: I have two questions.

1 One, I think for you, Dr. Kirk, is has the SAC had a
2 chance to explore some of the issues related to the
3 dramatic increases in Latino population in North
4 Carolina, as yet?

5 DR. KIRK: No, we have not, and I suspect
6 that's because we don't have any Latinos on the
7 committee, which we need to, and we've been working on
8 that, and I would say that would be one of our moves
9 that we need to make now in terms of replacing SAC
10 members.

11 COMMISSIONER EDLEY: And I guess for both
12 of you, maybe all three of you, from time to time over
13 the last couple of years, the Commission has talked
14 about the desirability of using conference calls and
15 other strategies so that the SAC's -- so that SAC
16 members could be in more frequent communication with
17 each other, I mean telephonically and so forth. Have
18 either of you tried to do that yet, or Bobby, is that
19 happening in any of the states within the region?

20 DR. KIRK: Well Commissioner, it's not
21 happened yet. We are still waiting on the specific
22 guidelines through which we might implement that
23 particular approach. There's still some question in
24 the mind of a number of regional directors as to how,
25 you know, how do you work it out practically. I mean,

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1 how do you open such meetings up to the public when,
2 you know, it's still being worked on.

3 COMMISSIONER EDLEY: Staff director, can
4 all those questions be answered before the Commission
5 has its next meeting?

6 CHAIRPERSON BERRY: I thought they were
7 answered.

8 COMMISSIONER EDLEY: So did I, this
9 thought crossed my mind.

10 STAFF DIRECTOR JIN: As far as I'm
11 concerned they're answered, and I'm looking forward to
12 engaging the regional directors in further
13 conversation.

14 CHAIRPERSON BERRY: Because we, if I may
15 say so, we have meetings done by conference call. We
16 had some people on today who are on the phone and
17 usually what we do is, if we do it from Washington, if
18 I go down to the Commission and I'm there and the
19 staff is there and other people are out somewhere else
20 and they are on the phone. The public notice
21 requirement is satisfied by people being able to come
22 to the conference room in Washington, if they wish.
23 We've be doing that -- we've that done on numerous
24 occasions.

25 MR. DOCTOR: If may I. The meeting then

1 is open to the public in Washington as opposed to the
2 public in the state in which, you know, we are
3 concerned about.

4 CHAIRPERSON BERRY: Well, you can have a
5 SAC chair or somebody in a room in North Carolina here
6 in Charlotte and have all the rest of the SACs
7 connected up and people could be able to come here to
8 Charlotte just like they would if there were a bunch
9 of SAC members sitting here and engage and talk just
10 like people do when they come to the national
11 headquarters meeting and they talk with and listen to
12 people all around the country.

13 DR. BROWN: Would that be set up from the
14 national or we would set up locally?

15 CHAIRPERSON BERRY: The regional office
16 would set it up for you and then you could do it, and
17 as long as people were on the phone and as long as
18 this room or whatever room you were in was open to the
19 public and it's announced that it was open to the
20 public, then the public could come in and listen as
21 people talk. Just like we did our meeting this
22 morning, there were people on the phone right here,
23 they're not here. You can do the same thing.

24 Yes, Commissioner Edley.

25 COMMISSIONER EDLEY: Let me just say it

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1 takes approximately two minutes and a credit card to
2 arrange for a dial-in conference call, so that piece
3 of it is extremely easy. The other part about getting
4 the room and the speaker system and so forth, is
5 obviously a bit more complicated and I understand that
6 public notice that has to happen.

7 But again it's not the Commissions job to
8 try to micro-manage the staff or run it, but I would
9 respectfully suggest, Madam Chair and staff director
10 that maybe the only way to move this forward is for
11 the Staff Director to direct each regional director
12 that by a date certain, they will have seen that at
13 least one SAC conduct a conference call, of the sort,
14 conference call meeting of the sort that's a
15 directive. Just break the ice and get this thing
16 going because I think we've all agreed that the work
17 of the SACs is enormously valuable to the mission of
18 the Commission, and that given the budgetary times
19 we've got to push the envelope in finding ways for
20 these good volunteers to have an opportunity to talk
21 with each other and discuss the business of the
22 Commission.

23 CHAIRPERSON BERRY: Somebody was out there
24 on the phone just now.

25 COMMISSIONER REDENBAUGH: Yes, I just

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1 wanted to second what --

2 CHAIRPERSON BERRY: Redenbaugh.

3 COMMISSIONER REDENBAUGH: I wanted to
4 second what Commissioner Edley is saying because it's
5 even easier than that. Sometimes you don't even need
6 a credit card. There are a number of free conference
7 services.

8 CHAIRPERSON BERRY: A number of pre?

9 COMMISSIONER REDENBAUGH: Free. Without
10 charge. There are other services, but they do offer
11 conference calls --

12 CHAIRPERSON BERRY: Free.

13 COMMISSIONER REDENBAUGH. Free, yes. It
14 is as Commissioner Edley said, it is fairly easy; it
15 takes about two minutes.

16 CHAIRPERSON BERRY: Okay, and Staff
17 Director, you have said that you have already directed
18 the regional directors to do this?

19 STAFF DIRECTOR JIN: Yes, I have. I agree
20 with everything the Commissioners have said, I made
21 that clear. I thought we had a understanding that we
22 were proceeding. I guess I misunderstood, and so we
23 will make it clear and we will proceed along those
24 lines.

25 CHAIRPERSON BERRY: Okay. Brad.

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1 DR. BROWN: Yes, I would just like to say
2 two things. One, is in my agency we do this very
3 regularly, we group legal actions, where you're
4 actually passing regulations. and we make -- in the
5 proper region we will have a number of places around
6 the area where -- usually government facilities --
7 where people can come, the public, because of course
8 it's the public notice, can come and there will be a
9 speakerphone and call in and I would suggest that one
10 can probably -- since I've already used -- having been
11 in another federal agency, and my role as a SAC Chair,
12 somewhere I recall in the Commission there is a
13 requirement that other federal agencies cooperate with
14 the Commission.

15 And I think that that could well be
16 extended to getting federal agencies to provide, you
17 know, the meeting rooms, at least a minimal fee if
18 nothing else where the public could come in. I would
19 to hate see us not have the minimum -- we had four
20 meetings last year, which is more than most, and I
21 think the face to face and having people, especially
22 for the people is very valuable. When I chaired
23 Massachusetts, we would have 10 to 12 meetings a year
24 and in the heyday when the SACs were really busy and
25 extremely active -- I believe we had more than

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1 Northern New England did, because it's a small state,
2 but it seems to me the opportunity should not detract
3 from the few that we have now that face to face, but
4 allow us to expand significantly through using the
5 phone conference.

6 I would also like to suggest that we are
7 getting more and more available to have telephone
8 conferences -- I mean tele-conferencing where you
9 actually have the videos and I think that if one is a
10 little bit creative, we may well find places and there
11 are video conferencing systems that could be linked
12 into as well, and video conferencing is a significant
13 improvement for people who don't know each other.

14 People like to see who is there, so if
15 there -- you may very well be able to have at least
16 some people, and you can do the combination, may have
17 video conferencing available in Atlanta, Miami, St.
18 Petersburg and Gainesville, because it's the
19 university, and it could be linked. And so I would
20 like to think that staff would explore how that
21 technology could bring, and it may not bring everybody
22 in. You may have somebody in a rural town come in by
23 phone, but at least you have some places to look at
24 video as part of that conferencing system.

25 CHAIRPERSON BERRY: Yes, Dr. Kirk.

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1 DR. KIRK: Yes, I would piggyback on that
 2 because I think if the university -- I certainly get
 3 the University to provide areas where we could video
 4 conference; we have that facility throughout the
 5 campus. And I know I've done it for interviews for
 6 hiring and that kind of thing, and I think the
 7 University would be more than willing to help us, and
 8 I would really hope that we could do more on that
 9 because one of the things in Atlanta we have not been
 10 able to meet as much as possible because we have not
 11 done this. I would certainly hope that we can get
 12 together more. I think we could get a lot more done,
 13 and be more productive. You were asking about
 14 Hispanics, we haven't gotten into that, but that's
 15 something that we need to look at.

16 CHAIRPERSON BERRY: Well, I just think
 17 that we have talked about this question so many times.
 18 We talked about this endlessly and every time we
 19 talked about it we agree, and then the next time we
 20 talk about we still talk about talking about it.

21 COMMISSIONER EDLEY: And there are so few
 22 things we agree on.

23 CHAIRPERSON BERRY: So, it seems like,
 24 even if we agree, we still can't get it done. Even
 25 though the Staff Director has directed people to do

1 it, he still can't get it done. So, I don't know
 2 whether it means that the regional directors would
 3 prefer it if the Staff Director were instructed by the
 4 Commission to do it centrally and to simply deal with
 5 SACs, and to set up meetings for them and to make
 6 certain staff allocations in terms of taking people
 7 from the region and putting them in Washington and
 8 having a hands-on approach to servicing the SAC's. I
 9 would have thought it would be better to have the
 10 regions do it; I mean that's logical.

11 But if we can't get anything done, it
 12 seems to me that you keep having -- you have at least
 13 one meeting face-to-face, maybe one or two, one at
 14 least, and then if you have lots of meetings talking
 15 on the phone to each other, following up what's going
 16 on, having statements about things, having people come
 17 in, then you will be an active -- a very active SAC
 18 and we'll be utilizing you. And all of us are on
 19 committees and boards and all kinds of things, where
 20 we do conference calls all the time, just routinely.

21 You know, in a day I might do four or
 22 five, but with different groups of people, so it just
 23 seems to us it's routine. Isn't that right Russell,
 24 it's just a part of your life?

25 COMMISSIONER REDENBAUGH: It is. You

1 know, what we need is, in fact, is a teenager. If
2 memory serves, the first time we did agree to this was
3 1989. That was the first time I agreed to it, you may
4 have agreed to it before I got there.

5 CHAIRPERSON BERRY: That's a long time
6 ago.

7 COMMISSIONER REDENBAUGH: It's strikes me
8 that that's a long time. This is not all deliberate
9 speed.

10 CHAIRPERSON BERRY: Well then the staff
11 director's report needs the following. We would like
12 to have included in each region where you list states,
13 how many conference call meetings occur between the
14 SAC members every month for us to look at it, so we
15 can see how many meetings they had on the phone.

16 COMMISSIONER REDENBAUGH: I think we might
17 be getting over into the micro-area.

18 CHAIRPERSON BERRY: You don't want to know
19 that? I believe the staff director could just tell us
20 the next time, how they're doing on this.

21 COMMISSIONER EDLEY: I think we can
22 promise. I can promise -- excuse me.

23 CHAIRPERSON BERRY: Yes?

24 COMMISSIONER EDLEY: I can promise that
25 during the Staff Director's report next month I will

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1 ask which states have held conference calls, and if
2 the answer is none, I will on the spot make some kind
3 of crazy motion.

4 CHAIRPERSON BERRY: Well, let's see what
5 the Regional Director has to say about anything
6 including this and about the other states.

7 DR. DOCTOR: Okay. Thank you. Obviously,
8 it's a new approach and I think we'll be able to do
9 it, I don't think that's problematic. I think it's a
10 matter of working out the technology, working out all
11 of the details of doing it, but I think clearly that's
12 an area that we will be moving into. Let me say this
13 about --

14 COMMISSIONER REDENBAUGH: What we're
15 looking for, Bobby, is just a by when.

16 CHAIRPERSON BERRY: Commission Redenbaugh
17 --

18 MR. DOCTOR: What did you say, Russell,
19 I'm sorry I didn't hear you.

20 COMMISSIONER REDENBAUGH: I'm sorry. I
21 think really what the Commissioners are looking for is
22 just for an assurance that you'll have this done by a
23 date certain.

24 MR. DOCTOR: Yes. We'll assign that
25 immediately.

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1 COMMISSIONER REDENBAUGH: That's great, I
2 like immediately. We'll talk to you tomorrow.

3 MR. DOCTOR: How about Monday, Russell?

4 COMMISSIONER REDENBAUGH: Okay, Monday.

5 CHAIRPERSON BERRY: Commissioner Edley
6 just --

7 COMMISSIONER EDLEY: I would just
8 encourage the Staff Director, and I think that it may
9 be to get this ice broken, that it's going to require
10 some real hand holding and that there be somebody in
11 Washington who could provide the technical assistance
12 for the first one or two times that a regional
13 undertakes it. Because I think once -- my guess would
14 be that once Bobby has had the technical assistance to
15 work through things would have to be resolved. You'd
16 know how to do it and maybe then he could just roll
17 forward naturally on it's own. So, it may require a
18 little bit of aggressive technical assistance, not
19 just a directive back to the regional directors that
20 they do it.

21 CHAIRPERSON BERRY: Yes.

22 STAFF DIRECTOR JIN: Thank you. I think
23 that one thing I want to share with the Commissioners
24 is our goal is to make sure that the advisory
25 committees are served and that they are doing the work

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1 the best way possible because they're so many
2 different people out there. I think that as other
3 Commissioners have indicated the regional office have
4 a role there, but if that's not the way to do it, then
5 I want to find another way to do it.

6 I appreciate other contacts where
7 Commissioners have pointed out some shortcomings in
8 terms of how we've been doing things. But I really do
9 appreciate this conversation because it indicates that
10 there is strong support that the Commissioners have
11 for making that happen.

12 DR. BROWN: This has not been done in any
13 sector, in any states, these conference calls have
14 been?

15 STAFF DIRECTOR JIN: I think they're being
16 done on an ad hoc basis but certainly not in a
17 systemic way.

18 DR. BROWN: Could we be provided with some
19 of the pros and cons of that, some of things we need
20 to look out for?

21 STAFF DIRECTOR JIN: Well, again I think
22 as the Commissioners have said, I think two of you
23 have said, we need to be careful about it, because in
24 some situations it's not the best way to do it, it's
25 not completely useful. But the thing we need to keep

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1 in mind is our resources are very short, and so just
2 because of what's happened and it's been done that way
3 historically, we need to look at new ways of doing it
4 and that's the thing that we've been trying to do, and
5 there are some types of meetings where it still may be
6 better to meet in person, but nevertheless it can be
7 done effectively over the phone and those are the
8 things that we need to move on first.

9 And I am absolutely convinced that by
10 doing it that way you can make a lot of progress,
11 which is the key. It may not be perfect, but we can
12 make a lot of progress and be a lot more effective
13 than the way we are right now.

14 DR. BROWN: Well, I was just looking for
15 some kind of ideas about what we need to look out for
16 and how we need to set that up. Are there some things
17 in the way that would prevent us from being able to
18 carry this out and where else has it been done? I'm
19 still wanting some face to face meetings, but also I
20 want to know what are some of the pros and cons that
21 we may need to look out for.

22 STAFF DIRECTOR JIN: Yes. I want to give
23 credit here where credit is due. Ms. Ivy Davis has
24 done a lot of work on this and I think that we're
25 trying to work with the regional directors on it and

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1 we've made it clear to not argue, we've worked with
 2 General Counsel's office, we've worked with the SAC on
 3 it. We've tried to make it clear that in our minds
 4 there are no legal impediments and so it's a matter of
 5 implementation, so what we've got to do is find the
 6 right people at the table to do the implementation,
 7 those people that -- find other people.

8 CHAIRPERSON BERRY: But maybe you say that
 9 the SAC chairs would like to have, once you give this
 10 assistance to the regional directors, they would like
 11 to have a little check sheet of what it is to look out
 12 for --

13 DR. BROWN: Right, right. What are some
 14 of the limitations --

15 CHAIRPERSON BERRY: Yes.

16 STAFF DIRECTOR JIN: We would be happy to
 17 do that.

18 COMMISSIONER REDENBAUGH: You know I
 19 suspect that the conference call companies have a
 20 little brochure on it that they would be thrilled to
 21 make available to people.

22 CHAIRPERSON BERRY: Okay.

23 COMMISSIONER REDENBAUGH: They'd be happy
 24 to give those out.

25 CHAIRPERSON BERRY: Okay.

1 COMMISSIONER REDENBAUGH: And I think, you
2 know, the thing first one will probably be awkward and
3 go badly, but it's easy to correct quickly. You might
4 the first few, the first one is always the worst. You
5 can't know which one to buy until you actually have
6 one. So I encourage the folks just to try it.

7 CHAIRPERSON BERRY: All it can do is
8 either work or not work.

9 COMMISSIONER REDENBAUGH: It will probably
10 not work perfectly, but the failures will be
11 inexpensive.

12 CHAIRPERSON BERRY: Okay. We'll keep that
13 in mind. Yes Brad.

14 DR. BROWN: Yeah, I would encourage
15 somebody in Washington to be assigned to provide some
16 technical assistance on it. I know personally when I
17 stepped aside as Director to be a senior advisor in
18 Washington, and all of a sudden I don't have all these
19 people that I just turn to and tell them to do things,
20 one of them making conference calls. And I had to set
21 one up the other day for myself and it was kind of a
22 lot of work I found out, because I was used to just
23 turning to secretary and saying, we're going to have
24 to have a conference call at eight o'clock tomorrow
25 with these people, do it.

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1 And so it is helpful if you have somebody
2 who sort of did that rather than having every regional
3 office have to get their staff to try to do this kind
4 of research, who do you call, do you want to use AT&T,
5 operators, is there something else you should use, who
6 the contractor you dealt with for long distance and
7 that sort of thing, and I think you, maybe there's a
8 teenager out there, I agree with that. But I just
9 think that might get us immediately going if there was
10 somebody who actually did some of that technical thing
11 and said to all the regional directors so instead of
12 having everybody having to do that.

13 CHAIRPERSON BERRY: Okay. Bobby, please
14 proceed.

15 MR. DOCTOR: If the Chairman of the
16 Tennessee Committee could have been here, Frances
17 Guess, he would have talked about the Title VI
18 activity in the State of Tennessee. As a matter of
19 fact, Tennessee is one of the few states, certainly
20 the only state here in this region as far as I know,
21 but one of the few states in the country which has a
22 Title VI law which parallels the nation Title VI law,
23 and the Committee most recently has been involved in
24 dealing with the implementation of Title VI in the
25 state of Tennessee.

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1 Frances Guess was the chair, in fact I
2 think the immediate past chair of the Tennessee Human
3 Relations Commission and it's the responsibility of
4 that particular commission to implement that
5 particular law in Tennessee and so we've been
6 monitoring that particular activity and the activities
7 of that office.

8 In South Carolina, if Ms. Wanda George-
9 Warren had been here, she would have talked about
10 educational accountability in that particular state.
11 That committee has had a conference most recently on
12 the educational accountability after the legislature
13 passed a law in South Carolina. I was most interested
14 in some of the comments that were made by
15 Superintendent Anderson yesterday. We met with her
16 predecessor, Superintendent Tannenbaum, along with the
17 chief legal advisor for South Carolina Department of
18 Education.

19 In follow up to the education conference
20 we had over there, I had a very good meeting with Ms.
21 Tannenbaum about what was going on, how the law was
22 being implemented and, you know, whether or not civil
23 rights concerns were being given due consideration and
24 had some very good interaction with Ms. Tannenbaum in
25 that office. I suppose in the not too distant future

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1 we'll be doing the same thing with Superintendent
2 Anderson. In Kentucky most recently we have dealt
3 with hate group activity in that particular state.
4 We're concerned about the extent to which that kind of
5 activity is on the rise in the state of Kentucky. And
6 of course, the chair of that particular committee, Ms.
7 Beverly Watson, could not be here because her mother
8 most recently passed; I don't know if you've heard
9 about that or not. In the state of Georgia, we're
10 talking about analyzing civil rights progress and on
11 problems in that particular state. I've worked for
12 the Commission on Civil Rights for some 39 years now,
13 had the opportunity to work in some four different
14 regions. Obviously the southern region, which is
15 where we are most of the time, but also the
16 southwestern region, and the New England Region and
17 the Mid-Atlantic Region and I've never seen civil
18 rights, to be honest with you, and not since the very
19 beginning, deteriorate to the point where it is now.

20 In, for example, the states of Georgia,
21 South Carolina and Mississippi, we are still dealing
22 with the Confederate flag issue, which is a very, very
23 divisive issue. Two relatively good governors in the
24 states of South Carolina, a Republican and the state
25 of Georgia, a Democrat, have fallen by the political

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1 wayside, shall we say, because they exercised a great
2 deal of courage in terms of providing leadership on
3 the question of that Confederate flag issue. Chair
4 Berry, you may recall you personally met with the
5 governor of South Carolina at that time, and me and
6 members of the committee met with the governor at that
7 particular time. I think our meetings with him,
8 obviously paid off, but as a result of his moving in
9 the right direction on the particular issue in South
10 Carolina he was defeated the next time around. The
11 same thing happened in Georgia, most recently. As a
12 matter of fact, we did some work behind the scenes
13 with the Governor and his people on that flag issue in
14 Georgia.

15 Obviously the flag was changed and of
16 course that was used, quite effectively I might add,
17 in the opposition effort to get rid of that governor
18 and so we're now back to square one on the issue of
19 the confederate flag being part of the state flag in
20 the state of Georgia. There's obviously going to be a
21 referendum, a non-binding referendum, I might add, to
22 change the flag and to put back the Confederate flag
23 on the state flag. I think it's interesting to note
24 that in '56 when the confederate flag was added to the
25 state flag there was no referendum to do that. But

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1 now they're talking about a referendum in the state of
2 Georgia which is going to be very, very divisive, I
3 assure you, and is going to adversely impact race
4 relations in unimaginable terms. South Carolina,
5 obviously, the flag was moved from the top of the
6 capitol and placed in a more prominent position on the
7 state grounds. It is now at a location intersected by
8 Main Street, and of course, Gervais Street. It's
9 lower, more prominently displayed, more visible, I
10 might add, as opposed to being way on top of the
11 capitol. These issues are very, very divisive and I
12 think need to be watched very closely. Brad and I had
13 some extensive conversations last night about the
14 resegregation of schools, particularly in the urban
15 centers. Atlanta School System now has gone to about
16 95% black, maybe even a bit higher than that at this
17 point. That's true with a number of urban centers
18 around the south and my question is, and the concerns
19 that I have at this point is how serious is America
20 about dealing with the question of race. There's some
21 that would argue that the country is not serious at
22 all. There are some people that who would argue that
23 because they are now criminal penalties attached to
24 complying with civil rights laws and regulations that
25 that's reflective of a lack of commitment. But, the

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1 point I think needs to made, needs to be made very
2 strongly, unless we begin to get serious about the
3 question of race and the question of poverty in this
4 country, we're going to be in for some very, very,
5 very difficult days and on that, I'll stop.

6 CHAIRPERSON BERRY: It's a -- I was just
7 wondering what you think, you, and Dr. Kirk and Brad,
8 who've been involved in these issues so long about why
9 what you just stated is the case. I can,
10 intellectually, as a historian trace the roots of all
11 this and trace the ins and outs of it. I can do that
12 very easily and I can be a somewhat dispassionate in
13 talking about all the various milestones, and giving
14 you chapter and verse about history. In particular,
15 there's this wonderful book, by a guy named David
16 Blight, who is now in faculty at Yale, which is called
17 *Race and Reunion*, about how after the Civil War
18 everyone in the years immediately following the war
19 knew that the war was about slavery. That if you read
20 everything -- all of us historians know this, whether
21 it was from people in the south, white, black or
22 whoever, there was a national consensus that the war
23 had been fought over the issue of slavery and that
24 slavery was a casualty of that war. But that by 1900,
25 1915, we had reconciliation, a healing of the south

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1 and the north where it was redefined that slavery was
2 not a cause of war. That the Confederacy was a
3 glorious cause, it had nothing to do with slavery, of
4 people who were just brothers, who just disagreed and
5 who now had joined arms and healing -- it's a
6 wonderful book -- and how that whole tone of the
7 reunion and reconciliation, pervades all of the
8 discussions of the Confederate flag and what it means
9 and how, you know, some people think that slavery had
10 something to do with the war, the flag isn't a symbol
11 of that, it's just a symbol of, you know, a lost
12 cause, and we see that reverberating now. And he has
13 put together this marvelous book that describes it and
14 one can understand the debate over the flag today as
15 denial. What you said about denial and about refusing
16 to grapple with the issue, we're seeing that reunion
17 and reconciliation which is part of the national
18 debate now. And I can talk about all that as
19 historically, resegregation, Gary Orfield tells us
20 every year about the resegregation that's going on; we
21 can count on it, we're going to get that every year.
22 But then the question is, why does it keep happening,
23 and is it the case that only folks have been working
24 on the Civil Rights Commission for years and people
25 like John Franklin, care about segregation and does

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1 the country really not care that schools are
2 segregated. What you said about the south is, of
3 course, true about the north. Most schools are
4 segregated and Hispanics are experiencing the same
5 thing that has happened with African-Americans, and
6 now we call it racial isolation because that sounds
7 better. They're just isolated, they're not really
8 segregated, just isolated. And so I don't know what
9 happened. Yes, Commissioner Edley?

10 COMMISSIONER EDLEY: One question is why
11 is it happening and there are lot of elements to that.
12 The dismantling of school desegregation, decrease,
13 increase in the unitary status declarations of the
14 courts to the changing demography --

15 CHAIRPERSON BERRY: That's how it
16 happened, not why.

17 COMMISSIONER EDLEY: And, well, it's both
18 that the resegregation of the schools warrant
19 explanation into the why is because residential
20 segregation has, in many places, increased and because
21 court-ordered desegregation has decreased, and you can
22 ask the deeper question of why those things occur.
23 But there's this whole second category of questions
24 that I think that Bobby was raising, which is do we
25 care and what are we going to do about it? And let me

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1 just point to one issue of encouraging that I was
2 surprised by. When, we at the Harvard Civil Rights
3 Project in partnership with Jack Boger and Julius
4 Chambers at the University of North Carolina in
5 Charlotte, Center on Civil Rights, decided to have a
6 conference on this subject, the resegregation of
7 schools in the south, we -- this was last Friday of
8 last Labor Day weekend and we were in the first
9 instance surprised that while we expected to
10 commission about half of dozen papers, legal and
11 social science papers to explore the phenomenon, there
12 were so many terrific authors who proposed to write
13 papers for us that we ended up commissioning 18 papers
14 on the subject. And then the second thing that
15 happened is that we had to shut down registration of
16 conference at 500 people from around the region, and
17 indeed around the country, who wanted to come to talk
18 about the importance of this issue and what needs to
19 happen to address this issue of school desegregation.

20 So we had not only the largest one day release of new
21 research on the civil rights issue in at least the
22 last 35 years, but we also had this amazing outpouring
23 of interest from the research community, the equal
24 advocacy community and from community groups. My
25 point being, and I'm sorry to be long winded about my

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1 point being, I think that there is -- if not a silent
2 majority, at least an untapped reservoir of serious
3 concern about the direction that the country's taken
4 on a number of civil rights fronts in recent years,
5 and we have really just not had the civic leadership
6 or the political leadership to tap that reservoir.

7 MR. DOCTOR: Madam Chair, if I may, since
8 I brought this up. I think it's important that we all
9 understand, and I thought we were moving in the right
10 direction when the Clinton Administration appointed
11 the -- didn't ask the Commission to do it, I took
12 offense to that -- but developed a special commission
13 to look into this particular question.

14 I think we have to go back beyond the
15 Civil War, to be honest with you, I think we have to
16 go back to the founding fathers of this country and
17 the founding of this country. I think we have to look
18 very candidly and very honestly at how the country was
19 formed, under what circumstances it was formed. There
20 are some who would argue that the founding fathers of
21 this country were racists. They owned slaves, that
22 they obviously involved themselves in activities and
23 actions designed to subordinate people because of
24 their color. And I think we have to honestly and
25 candidly begin to go back to very beginning and having

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1 a very candid, and complete and honest discussion
2 about how this country got started, and work out
3 moving forward. I think we made a tremendous mistake,
4 it appears to me, by trying to look at individual
5 issues and not address the broad issue, for example,
6 of race relations in this society. Because poor race
7 relations in this society have virtually impacted
8 every issue that we look at, including education as
9 obviously noted yesterday; housing, welfare, jobs,
10 economics, so on and so forth and we've not done that.

11 I was hopeful that the commission that was
12 appointed by President Clinton back then would have
13 gone back to that point, and I think there's an air of
14 denial that grows bigger, bigger and bigger every
15 year. I think you could argue, but again the country
16 was not serious about civil rights, enforcement of
17 laws and regulations, because there were no penalties
18 attached. We expect folk to voluntarily comply with
19 civil rights law and regulations when in reality the
20 very folks who were opposed to the implementation of
21 the laws to begin with, were expected to voluntarily
22 comply with the enforcement of those laws. That
23 didn't happen, it's still not happening. And I think
24 we have to have such a discussion where we go back to
25 the very beginning, if we are going to effectively

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1 deal with race relations in this country.

2 CHAIRPERSON BERRY: Okay, Dr. Kirk..

3 DR. KIRK: I don't know -- there's two
4 things that I hear that really undermine the mission
5 of Commissions and what we do. One, is that the
6 conservative move in this country has almost silenced
7 this whole idea of equality.

8 The other thing is that it's amazing to me
9 how many people think because they see people of color
10 in more dimensions of their lives, that everything's
11 all right. It's amazing, people said, well what's
12 wrong, I see people doing this, I see people doing
13 that and they continually think that it's all right,
14 that we've moved ahead. But we're talking about a
15 small percentage of people of color, and we can't even
16 begin to get people to see that for the most part the
17 poor and people of color are still right where they've
18 always been.

19 And so I think those things two things
20 work to undermine what this Commission and what we as
21 faculty members try to do in our states. And I really
22 don't know what we can do to offset that at this
23 point. But those are two things.

24 CHAIRPERSON BERRY: Well, I, for one --
25 yes, Brad, I'll let you address it.

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1 DR. BROWN: Two things. I definitely
2 agree that we've got to look at the intensity of
3 racism that is going on throughout the history of this
4 country, and that we've got to address it. We
5 continue to deny it. We just had a health study to
6 redo our whole county health system and not once did
7 they mention any of the racial disparities. And I
8 don't think -- if you don't tackle it up front and
9 recognize it, then you're never really going to be
10 successful in dealing with it. Even if some of the
11 items, actual items, you suggest to do are basically
12 good things in life.

13 But maybe it's because, partially from
14 being in Miami, but I think what we're seeing and
15 what's happened is what I call the Latinization of
16 this country. And what I mean by that is that I think
17 our progress has gone from literally getting away from
18 the one drop rule that this country has had. No
19 longer -- the one drop rule is no longer that one
20 problem is that significant anymore. But we're moving
21 as what we see in Columbia, or Venezuela, in which
22 nobody's really ever been considered above the one
23 drop rule.

24 But the elitism, the school systems are
25 moving that way, they're becoming black American

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1 public schools but with no resources going to them,
2 and the elite always had great schools. And the color
3 line is not a hard and fast bar, like it was with the
4 one drop rule, so we can get the Condoleezza Rices and
5 Colin Powells.

6 But we still have the system that we can
7 go to the airport in Cartagena -- as I did not too
8 long ago -- you see who's carrying the bags and who is
9 lined up to fly out and then who is in between -- who
10 is in front of them. Even in Cuba, you go stay at a
11 hotel in Cuba and you see it's the light-skinned folks
12 that get the access to the dollar economy and that are
13 doing that. Even though you can see a chair of the
14 supreme court and other people who are black who have
15 made it to opportune -- you know, significant levels
16 in the government, that's not who you see at the
17 larger things. The impact is just as great in terms
18 of people of color and people who have, you know, the
19 enclaves, the compounds, that you see in Latin
20 America.

21 And now we're seeing our gated communities
22 and I don't see this in -- and I see that kind of
23 thing in how we're going in our school system, how
24 we're going with the graded differentiation between
25 wealth and the wealthy few percent. And the majority

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1 is going much the way that what we see in countries,
2 like as said Columbia, or Venezuela and many of the
3 others do that.

4 So I don't -- it's not at all related to
5 the increasing people of black background who are here
6 in North Carolina, because those are the folks who
7 aren't getting anything in those countries either.
8 I'm talking in terms of the hierarchical social
9 structure that we see in which grades, per se is not
10 critical, but as I said, the one drop rule that keeps
11 somebody out. But the overall implementation of
12 everything keeps most -- almost everybody down and
13 that's what we're still seeing here.

14 CHAIRPERSON BERRY: Well, I guess there is
15 -- I need to ask Cruz if he agreed that there is this
16 color bar or color differentiation still in Latin
17 America; where we look, we can see it. I often tell
18 the story, the first time I was in Brazil on some kind
19 of UN Conference and we kept going to all these
20 meetings and I never saw any dark-skinned people.

21 So I said to myself, I thought from
22 studying the history of Latin America that there were
23 a lot of dark-skinned people in Brazil, where are
24 these people? And finally when I went to another
25 member, they said you can meet the woman who is a

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1 member of the legislature. There's only one, so they
2 let me meet her. I think she's now a mayor or
3 something, Benita De Silva, talks about her, and there
4 wasn't anybody else.

5 And then finally they just said, well
6 that's because they're not in these circles, they're
7 here, if you want to see them, let's go look. They
8 call them barrios in Brazil, but that's true, I guess.

9 And if you look -- if you think about Venezuela, Hugo
10 Chavez, is that name?

11 DR. BROWN: Yes.

12 CHAIRPERSON BERRY: The guy who's the
13 president, as I read the news, one of the
14 differentiations there is that the poor people are
15 mainly the people who are supporting him or something.

16 And there is also this color group attributed,
17 related to who is up and who's down. Nani Ramirez
18 used to tell me -- she called that usala -- means pink
19 or something, I don't know what that means. But in
20 those countries --

21 DR. BROWN: But yet, I've met people in
22 levels of the government in Cuba that would, and this
23 is even twenty years ago, light as I am, but perfectly
24 willing to talk about their great grandmother was from
25 Africa or African. So that the one drop rule is what

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1 we've had to differentiate, and we brought that one
2 drop rule in our society looking more and more like
3 those societies.

4 CHAIRPERSON BERRY: I have only one other
5 question, which had nothing to do with this in
6 particular, which was why do you think that even
7 though the Civil Rights Commission has jurisdiction
8 over the issues related to disability, age, you know,
9 the whole litany of issues, why is that it appears
10 that most of the time that the SACs spend has to do
11 with race issues? And why is it that it appears --
12 and I haven't done a scientific study on this, but why
13 is it that it appears that most of the time the
14 Commission spends, I mean about national body, is on
15 race? Is it because race is the most contentious
16 issue or is it that, you know, there's sex
17 discrimination, we do stuff on sex discrimination,
18 time to time, age discrimination, religion we've done
19 stuff. But, why is it that we spend, what does this
20 mean that we spend --

21 DR. KIRK: Because race still matters more
22 than anything else; race matters. Race matters more
23 than the others. And that's not to put the others
24 down and say that they're not there, but race matters
25 in this country and there's no way out. Any way you

1 look at it, it matters.

2 CHAIRPERSON BERRY: What do you think
3 about that question?

4 VICE CHAIRPERSON REYNOSO: Well, I think
5 that's true. I think in our country the other issues
6 are more soluble or we see greater progress in them.
7 When there's an issue pertaining to disability there's
8 a general consensus we have tried to do something
9 about it. When there's an issue pertaining to
10 explanations like you said of gender, we've seen
11 tremendous progress, for example, once the doors were
12 open for females to be in many professions. We've
13 seen tremendous progress that has taken place in just
14 a few decades.

15 Meanwhile, we take a look at the inclusion
16 of African-Americans in the economic life of our
17 country and just jumping back to the second world war,
18 we have to look at why there hasn't been greater
19 progress with the very few visible exceptions. That
20 they -- the changes, the difference is dramatic.

21 DR. KIRK: I think it's because the
22 majority populations obviously includes women who
23 didn't have to -- people with disabilities who've been
24 in that group. So they have a different concern
25 across the board. You can argue that no question

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1 there's a glass ceiling and no question people who say
2 we don't want to spend that money because it hurts our
3 business to deal as accurately as one should with
4 disabilities and so forth. So those areas still have
5 to work harder on them. But once you begin to deal
6 with them -- those concerns versus what we deal about
7 race, rather than that --

8 VICE CHAIRPERSON REYNOSO: Even yesterday
9 it was pointed out that with respect to the testing
10 that if it was consonant --I think it was. It turned
11 out that thirty percent or so of the students were
12 mostly white who weren't going to be able to pass the
13 test. And they were saying, legislative response to
14 us, saying, hey you can't do that because I think both
15 legislatures holding down might offend. And on the
16 other hand in other jurisdictions for the vast
17 majority, up to 86 percent we were told, are members
18 of minorities that don't pass. Then many folks say,
19 whoops, tough, there's got to be some kind of
20 collateral damage for the greater good and it's just
21 too bad. So I think in many walks of life we'll
22 continue to see those differences.

23 DR. KIRK: I think people in those areas,
24 I think, are fundamentalists. I personally believe
25 that the bell curve's theory of intelligence is

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1 believed by vast, subconsciously, by a vast majority
2 of people. So again, they get rid of the one drop
3 rule because they in the bell curve you accept that
4 there's a few people who will be outstanding and you
5 don't want to discriminate against those, so those
6 people come forward.

7 But you really believe that the vast bulk
8 of those two peaks reflects a real reality. And
9 therefore, so when 30 percent fail, 50 percent fail
10 the class, that's what you expect and they really
11 believe that and nobody will convince me differently.

12 MR. DOCTOR: Madam Chair, I think it also
13 has to do with -- I was in the military some forty
14 years ago, and the black GIs in Europe, used to talk
15 about the uniform, and I don't mean the OD, old army
16 issue uniform, but the uniform of color. They still
17 talk about it here in America, particularly in the
18 deep south. It sends -- I mean, the uniform brings in
19 -- or is a test of all sorts of stereotypes or the
20 serious measures of tests in the uniform, which is
21 still problematic.

22 Yesterday when we talked about education,
23 the only person who -- well, we shouldn't say only
24 person, but the person who impressed me the most with
25 her comments was Ms. Reid. It's amazing that the Ms.

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1 Reids of this country are not in more prominent
2 positions from an educational standpoint. They aren't
3 superintendents, they aren't generally principals,
4 they aren't in high positions within, you know, the
5 educational system or any other system for that
6 matter.

7 But Ms. Reid really impressed me. What
8 she said made a whole lot of sense. That uniform that
9 enters the school system on the body of the young
10 black kid, that's what I'm talking about is, all sorts
11 of messages are sent to that individual. I mean they
12 know when they're wanted, they know the history of
13 school desegregation in this region, their parents
14 know the history of school desegregation in this
15 region, and when these kids come to school, and it's
16 clear that a lot of teachers don't even particularly
17 like the fact that they're there, let alone the fact
18 that they have to teach them, those messages are sent.

19 They radiate, they radiate within the
20 individual, but they also radiate within all the black
21 people within that institution. That's the feeling we
22 had in Germany when we where there as GIs. It was
23 clear to us that we were stigmatized by the uniform,
24 that society stigmatized us, because of the uniform
25 color.

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1 I remember when John F. Kennedy was
2 assassinated -- just to show you, you know, how deep
3 this was, the military doesn't like to talk about it
4 -- but when John F. Kennedy was assassinated and the
5 announcement was made over the PA system, there was
6 this roar of approval from -- if you've even been to
7 Germany and been on a military base, there are these
8 big cavernous buildings that are about five or six
9 stories high, and the sound echoes throughout the
10 entire building -- well, anyway, when the announcement
11 was made that John F. Kennedy had just been
12 assassinated, this roar of approval went up on the
13 side where the white GIs were, and there was dead
14 silence on the side where the black GIs were. But we
15 have to be serious, and I don't think we are, about
16 dealing with this question of race and I can't over
17 emphasize that.

18 CHAIRPERSON BERRY: Well, historically,
19 Bobby, it's been true that, your original question and
20 then the hallucinations that you're engaged in now and
21 what we've talking about is why is there denial and
22 why don't we grapple with and so on, is the history of
23 the country and the history of the world is that
24 people only grapple with such issues when they are
25 forced to.

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1 And they can be forced to by movements,
2 social movements, that put the issue on the front
3 burner where it can't be ignored. And then for a time
4 people do deal with it, whether it's you know farm
5 owners organizing and being disruptive or whether it's
6 the civil rights movements. Whatever it is, that when
7 people organize and when they make it uncomfortable
8 and when you have to pay attention to them, at least
9 there's some kind of paying attention.

10 The question is, you know, after a while
11 people get tired of being mobilized and organized and
12 then some of them are picked off and go on to
13 something else and then you -- so that the history of
14 movements is that you will move two steps forward and
15 one step backwards and you just keep on, sometimes
16 it's two steps backwards. But that it doesn't, you
17 know -- Fred Douglas said that violence seeks nothing
18 without the man, never has, never will. And so we
19 know that, and so why are we sitting here talking
20 about it.

21 You can study all day long, and write
22 reports and do all of that, and that's important,
23 because it gets information out and it's a meaningful
24 way to raise consciousness, but there has to be a
25 connection between movements, activism on the part of

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people and what is being reported. Well, we have taken the time in this very illuminating discussion and we appreciate it. And if there's no further work that is needed to be done here, we will without objection adjourn this meeting and thank you very much.

(WHEREUPON, the meeting was adjourned at this time.)

END

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