BUSINESS MEETING

Friday, October 17, 2003

The Commission convened at the Doubletree Hotel, 201 Marquette Avenue, Northwest, Albuquerque, New Mexico, at 8:30 a.m., Mary Frances Berry, Chairperson presiding.

PRESENT:

MARY FRANCES BERRY, Chairperson

CRUZ REYNOSO, Vice Chairperson

JENNIFER C. BRACERAS, Commissioner (via phone)

CHRISTOPHER EDLEY, JR., Commissioner (via phone)

PETER N. KIRSANOW, Commissioner (via phone)

ELSIE M. MEEKS, Commissioner (via phone)

RUSSELL G. REDENBAUGH, Commissioner (via phone)

LESLIE R. JIN, Staff Director

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STAFF PRESENT:

JOHN BLAKELEY
DEBRA CARR, Deputy General Counsel
IVY DAVIS, Chief, Regional Programs
Coordination Unit (via phone)
BARBARA DELAVIEZ
TERRY DICKERSON, Asst. Staff Director
for OCRE (via phone)
JOHN DULLES, Regional Director
PAMELA A. DUNSTON
JENNY PARK
MARC PENTINO (via phone)
JOYCE SMITH, Parliamentarian
ALEXANDER SUN
AUDREY WRIGHT
TIFFANY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA
LAURA BATIE
PATRICK DUFFY
JOY FREEMAN
CHRISTOPHER JENNINGS
KIMBERLY SCHULD
MELISSA SHARP (via phone)
KRISHNA TOOLSIE

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A-G-E-N-D-A

Approval of Agenda 4
Approval of Minutes of September 12, 2003 Meeting4
Announcements Kim Alton
Staff Director's Report
State Advisory Committee Report: "Racial Harassment In Vermont Public Schools: A Progress Report
Justice" Report
Future Agenda Items

P-R-O-C-E-E-D-I-N-G-S 8:30 a.m. Okay. We'll start CHAIRPERSON BERRY: over again. The meeting will come to order. APPROVAL OF AGENDA The first item on the agenda is the approval of the agenda. Could I get a motion to approve the agenda? VICE CHAIRMAN REYNOSO: So moved. 10 CHAIRPERSON BERRY: Could I get a 11 12 second? COMMISSIONER KIRSANOW: Second. 13 CHAIRPERSON BERRY: All in favor 14 15 indicate by saying aye. 16 ALL: Aye. CHAIRPERSON BERRY: Opposed? So 17 18 ordered. 19 APPROVAL OF MINUTES The 20 CHAIRPERSON BERRY: 21 item on the agenda is the approval of the minutes of 22 the September 12, 2003 meeting.

next

Could I get a motion to approve the minutes, please?

COMMISSIONER MEEKS: So moved.

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COMMISSIONER EDLEY: Second.

CHAIRPERSON BERRY: Thank you.

Are there any additions, questions, modifications to the minutes? Okay.

All those in favor of the approval of the minutes indicate by saying aye?

ALL: Aye.

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CHAIRPERSON BERRY: Opposed? So ordered.

ANNOUNCEMENTS

CHAIRPERSON BERRY: The next item on the agenda is announcements. One announcement I'm sorry to have to make, is that Kim Alton, who has worked here as a special assistant to the staff director for about 5 years in OSD, is now leaving. She is leaving on October 20th. And before she worked at the Commission, she worked on the Hill, on the House side. She is leaving to serve as Public Policy counsel for the Lawyer's Committee on Civil Rights. And we will miss her skill and professionalism. So this is her last meeting.

We also have two new interns for the fall. Ms. Gertrude Nandra of the University of Pittsburgh and Annie Woo of the University of California at Los Angeles. And we always appreciate

the service of interns and hope their experience at the Commission is rewarding.

Also to remind us that we are joining the nation in observing Disability Awareness Month from October 1 to October 31st. The Commission, of course, has within its jurisdiction to deal with the issues of civil rights related to persons with disabilities, and has a done a number of reports over the years, and continues to work on these issues.

September 30th was the anniversary of James Meredith in his last enrollment of the the first African-American become to student at the University of Mississippi, Ole Miss, which experienced much stürm und drang in that period including a riot and the death of two bystanders and the wounding of 160 federal marshals. In the end, the university was integrated. And he graduated in 1964.

On October 3, 1965, Lyndon President Johnson, stood in the shadow of the Statue Liberty signed the Immigration and of and Nationality Act οf 1965, which ordered the elimination of the national origins quota system in favor of a worldwide quota blind to national origin,

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which was regarded as a step forward in making Immigration policy more fair.

For Native American issues, we have the Nez Perce Treaty, and the anniversary of Chief Joseph's statement when he surrendered to United States forces near Chinook, Montana, October 5, 1977, declaring "I will fight no more forever," after a retreat of about 1500 miles. The Commission continues to work on issues concerned with Native American issues.

I might remind, if any of you are not aware of it, that yesterday they put the statue of Sacagawea, whose name wasn't pronounced that way by her tribe, in Statutory Hall yesterday in the Congress, which was quite an event that was celebrated there yesterday.

October 12, 1998, this is the fifth anniversary of the death of Matthew Wayne Shepard, the 21 year old University of Wyoming student who was brutally beaten and tied to a fence in Wyoming in a horrific instance of violence against a person who was gay. There were shows of protests. There was an impetus to pass a hate crimes federal law which added to the penalty for murder. But that bill has not passed, but his death gave impetus to

the effort to do so.

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The other thing I would point out is that the first American woman to walk in space, Dr. Kathryn Sullivan, did this on October 11th, 1984 and made one giant leap for American female astronauts 16 years after Neil Armstrong took this small step for man, one giant step for mankind.

Are there any announcements that Commissioners would like to make or any question or any subject? Hearing none.

STAFF DIRECTOR'S REPORT

CHAIRPERSON BERRY: The next item on the agenda is the Staff Director's report. Are there any comments, questions on the Staff Director's report?

VICE CHAIRMAN REYNOSO: Madam Chair, do we take up the future schedule at this time or later on?

CHAIRPERSON BERRY: Yes. The Staff Director's nodding his head yes. We'll take it up at this time.

Did you all receive a copy of the proposed schedule, Commissioners?

VICE CHAIRMAN REYNOSO: Yes, ma'am.

CHAIRPERSON BERRY: Are the

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1	Commissioners on the phone aware of the proposed
2	schedule?
3	COMMISSIONER BRACERAS: Yes.
4	CHAIRPERSON BERRY: Okay.
5	VICE CHAIRMAN REYNOSO: The April 16
6	schedule presents a problem for me.
7	COMMISSIONER BRACERAS: I can't hear.
8	CHAIRPERSON BERRY: All right. I will
9	repeat what people say.
10	He says that April 16th presents a
11	problem for him.
12	COMMISSIONER BRACERAS: Okay.
13	VICE CHAIRMAN REYNOSO: I wondered if
14	that might be changed to the 9th.
15	CHAIRPERSON BERRY: He wants to know if
16	people would be agreeable to change April 16th to
17	April 9th?
18	COMMISSIONER BRACERAS: Sounds fine to
19	me.
20	CHAIRPERSON BERRY: Is there anyone who
21	objects? No objections. Okay. April 16th is now
22	April 9th.
23	Are there any
24	COMMISSIONER BRACERAS: This is Jennifer
25	Braceras. I also have a conflict with this

1	schedule, the September date. And I'm wondering, I
2	don't I have no you know, we can change it to
3	any date in September.
4	CHAIRPERSON BERRY: Okay. September
5	10th is a problem for Commissioner Braceras. Does
6	anyone have any problems before we pick another
7	Friday, does anyone have any problems with other
8	Fridays in September that we must rule out?
9	Which one is the best one? How about
10	the 22nd? Can people do it on the 22nd? Is anyone
11	objecting to the 22 nd ?
12	VICE CHAIRMAN REYNOSO: Well, except the
13	next meeting is October 8th.
14	CHAIRPERSON BERRY: How many weeks would
15	that be?
16	STAFF DIRECTOR JIN: Madam Chair, I
17	think the 22nd is a Wednesday. The 24th would be a
18	Friday.
19	CHAIRPERSON BERRY: Oh, I must be
20	looking at the wrong.
21	STAFF DIRECTOR JIN: And then the 24th
22	would be only 2 weeks to the October meeting.
23	CHAIRPERSON BERRY: 17th.
24	VICE CHAIRMAN REYNOSO: Yes. Maybe the
25	17th.

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CHAIRPERSON BERRY: The 17th. The 17th. Are you sure that's right? Oh, I'm looking at the wrong month. No wonder I have the wrong date. The 17th. Okay. The 17th. Does anyone have a problem with the 17th? The September meeting is now on the 17th. d Does anyone have any problem with any . 7 other dates in the schedule? Okay. 8 Well hearing none, with the modifications that have been suggested and without 10 objection, that will be the schedule for the next 11 year's meetings. 12 Anything else anybody wants to raise on 13 the Staff Director's report? Yes, Commissioner 14 1. The 2 Mark to 12. 15 Meeks? COMMISSIONER MEEKS: Well, actually, 16 November 5th. 17 CHAIRPERSON BERRY: We have a late date 18 19 problem. COMMISSIONER MEEKS: I always react 20 21 slowly. CHAIRPERSON BERRY: Well, the 5th I have 22 23 a -- November 5th. COMMISSIONER MEEKS: There's a conflict. 24 25 So November 12th.

CHAIRPERSON BERRY: November 5th is a conflict for Commissioner Meeks. November 12th has others have a conflict suggested. Do been November 12th? Hearing none, the November 5th date will be changed to November 12th. All right. Does anyone else? Going ଶ Going twice. Going three times. All right. 7 once. modifications, then those 8 So with without objection this will be the schedule for the 9 10 next year. Does anyone have any other comments or 11 questions about the Staff Director's report? 12 COMMISSIONER KIRSANOW: Yes. Madam 13 Chair. This is Pete Kirsanow. . 14 CHAIRPERSON BERRY: Yes. 15 I wanted to ask COMMISSIONER KIRSANOW: 16 17 the Staff Director if in fact there has been any kind of progress report that he could provide to us 18 that's related to his assessment or investigation 19 20 related to security issues at the Commission. 21 CHAIRPERSON BERRY: Yes. 22 STAFF DIRECTOR JIN: Yes, Commissioner. 23 CHAIRPERSON BERRY: Can you hear him? Let's see if you can hear him before he goes on and 24 25 on.

STAFF DIRECTOR JIN: Can you hear me? COMMISSIONER KIRSANOW: I can hear you. STAFF DIRECTOR JIN: Okay. We have just begun the process and we're examining it. I have a couple of people looking into it, and asked them to give me whatever advice they deem appropriate and whatever else they need to follow up in terms of complying with what the Commissioners asked me to do 8 last time. quite done with it, but I'm not 10 next Commission and the 11 somewhere between now meeting, or the next Commission meeting at the 12 latest I think I can finalize it. And then we can 1,3 have a conversation, if you want. 14 COMMISSIONER KIRSANOW: Okay. ___Thank .__ 15 16 you. Thank you. STAFF DIRECTOR JIN: 17 CHAIRPERSON BERRY: All right. Any other 18 questions or comments about the Staff Director's 19 20 report? 21 Okay. Hearing none. 22 STATE ADVISORY COMMITTEE REPORT: "RACIAL HARASSMENT IN VERMONT PUBLIC SCHOOLS: A PROGRESS REPORT 23 CHAIRPERSON BERRY: The next item on the 24 25 the State Advisory Committee agenda is

"Racial Harassment in Vermont Public Schools: Α Progress Report." Could I get a motion to approve or to accept, rather, the Vermont report? VICE CHAIRMAN REYNOSO: So moved. ā CHAIRPERSON BERRY: Could I get second? Second. COMMISSIONER MEEKS: 8 COMMISSIONER KIRSANOW: Second. 9 there Are any CHAIRPERSON BERRY: 10 comments or discussions for points that anyone would 11 like -- let me ask the Vice Chair? 12 Madam Chair, I VICE CHAIRMAN REYNOSO: 13 just want to note the intractability of some of 14 these problems. Here, the advisory committee looked 15 issue before. They thought it had been 16 Then they look at it 17 closed, solved, end quote. again and it seemed that some of those issues are 18 still around. 19 So I think it's a good piece of work 20 because it just reminds us that some of these issues 21 are pretty tough and you have to stay with it. 22 23 CHAIRPERSON BERRY: Yes. They have been working on this for quite a while. I was impressed 24 with how persistent they are in continuing to follow 25

1	it. There has been some change. But, as you say,
2	they note that there's still stuff that needs to be
3	done.
4	Any other discussion? If not, all those
5	in favor of accepting the Vermont SAC report
6	indicate by saying aye.
7	ALL: Aye.
8	CHAIRPERSON BERRY: Opposed. So
9	ordered.
10	"NOT IN MY BACKYARD: EXECUTIVE ORDER 12898 AND
11	TITLE VI AS TOOLS FOR ACHIEVING ENVIRONMENTAL
12	JUSTICE" REPORT
13	CHAIRPERSON BERRY: The next item on the
14	agenda is "Not In My Backyard: Executive Order
15	12898 and Title VI As Tools For Achieving a
16	Environmental Justice" Report. For purposes of
17	discussion, could I get a motion to approve the
18	report?
19	VICE CHAIRMAN REYNOSO: So moved.
20	CHAIRPERSON BERRY: Could I get a
21	second?
22	COMMISSIONER MEEKS: Yes, second.
.23	CHAIRPERSON BERRY: All right.
24	Discussion? Do Commissioners have any comments or
25	discussion on the report or does anybody want to say
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anything, or staff, how are we doing this?

STAFF DIRECTOR JIN: Yes. I think the Commissioners may remember that the last time we had the deputy general counsel give a presentation in terms of the report, and what they've done and why they did what they did. And I think there was some preliminary discussion. But Commissioners asked that we push it back to this month.

So, I think we're ready to just have the Commissioners discuss and ask the deputy general counsel and her staff questions.

COMMISSIONER BRACERAS: Well, I'm sorry.

I didn't really hear what the Staff Director said.

It's very fuzzy.

as we would recall, we have discussed or this was presented or offered up to us before. And that we now have had time to look at it and consider our reactions. And that rather than making a presentation, the general counsel would just answer any questions we might have about the report.

VICE CHAIRMAN REYNOSO: Well, Madam Chair, while I vote in favor of the report, I must say that I thought we should have been more firm in recommending that Congress clarify the law in light

And in my view, of the Supreme Court rulings. provide for a private course of action, which the Supreme Court has said doesn't exist now, even though the lower courts had for decades said it does exist. I take it that Commissioner Braceras would not agree with me, since I read her extensive Law Review article, but I must say that's 8 9 strongly held view. CHAIRPERSON BERRY: Could you hear the 10 Vice Chair, Commissioner Braceras? 11 I got the gist COMMISSIONER BRACERAS: 12 of it. I think he basically established the report 13 to go further and recommends congressional action to 14 amend the law and cause of action, is that correct? 15 CHAIRPERSON BERRY: And he said at the 16 end that he had read your Law Review article. 17 Oh. COMMISSIONER BRACERAS: 18 CHAIRPERSON BERRY: And that he assumed 19 you didn't agree with him, but that was 20 position. Okay. I just wanted you to know he said 21 22 he read your Law Review article. COMMISSIONER BRACERAS: 23 Thank you. CHAIRPERSON BURRY: Okay. Are there 24 25 other comments?

COMMISSIONER BRACERAS: Yes, I have a comment. CHAIRPERSON BERRY: Yes. is BRACERAS: This COMMISSIONER Braceras. I'm going to vote against the report. The Vice Chair is correct, I would have even more reason to vote against the report if it went further 8 in adopting your suggestion. But I have enough reasons to vote against it as it stands. 10 Primarily, I believe that after giving 11 this report a close read, that it essentially just 12 launders the argument of environmental activists 13 14 through the machinery of the federal government. I don't think -- I'm sorry. Is somebody trying to say 15 something? 16 17 CHAIRPERSON BERRY: No, no, no. Proceed, 18 please. COMMISSIONER BRACERAS: Oh, okay. 19 20 So essentially I think that it does the 21 job of the arguments of the activists without paying 22 attention legitimate economic concerns of to 23 minority communities. And I believe that if this report were adopted, it would hurt 24 communities more than it would help them. 25 And for

that reason, I'm going to vote against the report. And I hope to be able to elaborate further, on review, in a short dissent. CHAIRPERSON BERRY: Okay. COMMISSIONER BRACERAS: Assuming it passes. CHAIRPERSON BERRY: Right. Vice Chair? 8 VICE CHAIRMAN REYNOSO: Madam Chair, 10 perhaps we should be reminded that we don't write 11 dissents, we write separate opinions. COMMISSIONER BRACERAS: I can't hear. 12 13 I'm sorry. 14 CHAIRPERSON BERRY: He said perhaps we should be reminded that what we write is really a 15 separate opinion. But I guess it can be a dissent 16 17 if the thing -- if it doesn't pass -- we don't know 18 whether it's going to pass or not, right? 19 VICE CHAIRMAN REYNOSO: Yes. 20 CHAIRPERSON BERRY: But whatever, 21 anyway, we understand your position that you would 22 write an opinion stating this in greater detail. 23 Are there other Commissioners who would 24 like to comment on the report? 25 COMMISSIONER REDENBAUGH:

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1	CHAIRPERSON BERRY: Yes.
2	COMMISSIONER REDENBAUGH: Commissioner
3	Redenbaugh. Good morning.
4	CHAIRPERSON BERRY: Good morning.
5	COMMISSIONER REDENBAUGH: I would prefer
6	to abstain from this report with the understanding
7	that I might join or write an additional comment or
8	opinion.
9	CHAIRPERSON BERRY: All right. Right.
10	Good. I mean good that you commented. I'm not
11	making a judgments on what you're doing.
12	Are there other Commissioners who have
13	comments that they would like to make? All right.
14	Hearing none, then all in favor of
15	approving the Environmental Justice Report indicate
16	by saying aye.
17	COMMISSIONERS: Aye.
18	CHAIRPERSON BERRY: Okay. Opposed?
19	COMMISSIONER BRACERAS: Nay.
20	COMMISSIONER KIRSANOW: No.
21	CHAIRPERSON BERRY: From what I heard,
22	could you identify yourself?
23	COMMISSIONER KIRSANOW: Commissioner
24	Kirsanow said no.
25	COMMISSIONER BRACERAS: Braceras votes
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no. CHAIRPERSON BERRY: Kirsanow and Braceras no. Edley, did you vote? COMMISSIONER EDLEY: Yes. CHAIRPERSON BERRY: You said yes. Is Abigail on the phone? I have not heard her. COMMISSIONER BRACERAS: No, she's not. CHAIRPERSON BERRY: Oh, she's not there. 10 Okay. 11 COMMISSIONER REDENBAUGH: You have my 12 abstention? 13 CHAIRPERSON BERRY: Any abstentions? 14 COMMISSIONER REDENBAUGH: Redenbaugh. 15 CHAIRPERSON BERRY: Okay. So we have 16 one abstention, we have Kirsanow and Braceras no, we 17 18 have Edley, Meeks, Reynoso and Berry yes. So the 19 report passes. 20 And let's give times within which we can Staff, advice me, 21 get additional statements. 22 please. 23 STAFF DIRECTOR JIN: I think ten days is

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CHAIRPERSON BERRY: And is ten days

fairly typical.

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1	enough, Commissioner Braceras and Commissioner
2	Redenbaugh, and Commissioner Kirsanow?
3	COMMISSIONER BRACERAS: You know,
4	ordinarily it would be fine. But because of some
5	other commitments that I have, could we get a little
6	more time?
7	CHAIRPERSON BERRY: How long would you
8	like?
9	COMMISSIONER BRACERAS: Well, let's see.
10	Today is the 17th, correct? Could we have until
11	the end of the month, until October 31st.
12	STAFF DIRECTOR JIN: Sure.
13	CHAIRPERSON BERRY: Staff Director says
14	fine.
15	COMMISSIONER BRACERAS: Thank youst
16	CHAIRPERSON BERRY: So October 31st.
17	COMMISSIONER REDENBAUGH: And that will
18	be fine with me as well.
19	CHAIRPERSON BERRY: Is that fine with
20	you Commissioner Redenbaugh?
21	COMMISSIONER REDENBAUGH: Yes. Thank
22	you.
23	CHAIRPERSON BERRY: Commissioner
24	Kirsanow, I didn't hear whether
25	COMMISSIONER KIRSANOW: Yes.
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CHAIRPERSON BERRY: Did you say yes? Yes, I did. COMMISSIONER KIRSANOW: Thank you. CHAIRPERSON BERRY: Okay. Thank you. So October 31st is the deadline by close of business, which means 5:00 p.m. EST. right. FUTURE AGENDA ITEMS CHAIRPERSON BERRY: Are there any future agenda items that anyone would like to bring to the attention of the Committee? Yes, Vice Chair? VICE CHAIRMAN REYNOSO:

Madam Chair, I want to comment briefly on our activity yesterday and how helpful it was to me in understanding the issues pertaining to the health problems that are faced by American Indians.

It is one thing to read the report, it's quite another to hear from the health providers directly and from those who are affected by it. And so that's by way of saying for future items, I would urge the Staff Director to think about having further projects like the one we had yesterday. And, of course, it's continued today. I just found it very helpful.

CHAIRPERSON BERRY: The Vice Chair, in

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case you didn't hear all he said, was simply saying how much he learned yesterday from being out talking to and listening to the Indians and the health providers and seeing them on the ground. And I must say that I was astounded. I mean, there were so many things that I would have thought I knew that I didn't. And surprising things.

For example, when they said that people couldn't call to make appointments and that's why there are all these walk-ins and walk-in clinics with big signs because they didn't have phones. I was about to suggest that we find somebody to contribute cellphones to everybody. And then they pointed out that they wouldn't work either, because there are no towers because of the geographic considerations and the poverty in the area. So that wouldn't work either.

So, that was just one thing that astounded me. But there were just so many things that we learned.

And so what the Vice Chair said was he just thought that the Staff Director, he hoped that he would schedule more such events for us to be able to see what's happening on the ground out there.

Does anyone have any other comments that

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they wish to make?

COMMISSIONER REDENBAUGH: Yes.

CHAIRPERSON BERRY: Yes. Commissioner

Redenbaugh?

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COMMISSIONER REDENBAUGH: Not on this topic so if you want to entertain more on that. It's just a future agenda item.

CHAIRPERSON BERRY: No, no. I meant on future agenda items.

COMMISSIONER REDENBAUGH: Yes. I'd like to discuss the next meeting. And not this one, because our technology limitations. We have the first Staff Director's report on budgeting as a consequence of Commissioner Edley's motion of a quarter or so again. And I would like to have a general discussion about that.

CHAIRPERSON BERRY: Okay. All right. We can do that. Does anyone have anything else that they want to particularly pinpoint or suggest? All right. Hearing none, this part of the meeting is now over and adjourned. And we are waiting to have the briefing, but we will take a break.

We'll see how many of the witnesses are here since it's not time for it.

But thank you very much, Commissioners,

who are on the phone. We very much appreciate your participation. Thank you, Madam STAFF DIRECTOR JIN: Chair. Hopefully, we'll fix this sound problem. CHAIRPERSON BERRY: We'll see if we can fix the sound problem while we're breaking. (Whereupon, the Business Meeting was adjourned at 8:56 a.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

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