

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY,

SEPTEMBER 12, 2003

+ + + + +

WASHINGTON, D.C.

+ + + + +

The Commission convened at 9:30 a.m. in Conference Room of the U.S. Civil Rights Commission, Room 540, 624 Ninth Street, N.W., Washington, D.C., Chairperson Mary Frances Berry, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON

CRUZ REYNOSO, VICE CHAIRPERSON

JENNIFER C. BRACERAS, COMMISSIONER

CHRISTOPHER EDLEY, JR., COMMISSIONER

PETER N. KIRSANOW, COMMISSIONER

ELSIE M. MEEKS, COMMISSIONER

RUSSELL G. REDENBAUGH, COMMISSIONER

ABIGAIL THERNSTROM, COMMISSIONER

LESLIE R. JIN, STAFF DIRECTOR

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STAFF PRESENT:

KIMBERLEY ALTON

DEBRA CARR, ESQ., Deputy General Counsel

IVY DAVIS, Chief, Regional Programs

Coordination Unit

TERRI DICKERSON, Assistant Staff Director for

Civil Rights Evaluation

PAMELA A. DUNSTON

LATRICE FOSHEE

GEORGE M. HARBISON

PIERRE JASMIN, Intern

SOCK-FOON MACDOUGALL

TINA LOUISE MARTIN

MARC PENTINO

KWANA ROYAL

JOYCE SMITH, Parliamentarian

ALEXANDER SUN

DAWN SWEET

DEBORAH VAGINS

AUDREY WRIGHT

TIFFANY WRIGHT

MIREILLE ZIESENISS

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COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA

LAURA BATIE

PATRICK DUFFY

JOY FREEMAN

CHRISTOPHER JENNINGS

KIMBERLY SCHULD

MELISSA SHARP

KRISHNA TOOLSIE

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C-O-N-T-E-N-T-S

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

(9:52 a.m.)

CHAIRPERSON BERRY: Good morning, everyone.

PARTICIPANTS: Good morning.

CHAIRPERSON BERRY: The meeting will come to order, and we apologize for starting late, but we'll see if we can move along.

I. Approval of Agenda

The first item on the agenda is the approval of the agenda. Could we get a motion to approve the agenda?

VICE CHAIRPERSON REYNOSO: So moved.

CHAIRPERSON BERRY: Could we get a second?

COMMISSIONER KIRSANOW: Second.

CHAIRPERSON BERRY: All in favor indicate by saying aye.

(Chorus of ayes.)

CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: So ordered.

II. Approval of Minutes of July 18, 2003 Meeting

The next item is the approval of the minutes of the July 18, 2003 meeting. Could I get a

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1 motion, please?

2 VICE CHAIRPERSON REYNOSO: So moved.

3 CHAIRPERSON BERRY: Could I get a
4 second?

5 COMMISSIONER EDLEY: Second.

6 CHAIRPERSON BERRY: Does anyone have any
7 changes or additions or anything that they would
8 like to put in the minutes?

9 (No response.)

10 CHAIRPERSON BERRY: Hearing none, all in
11 favor indicate by saying aye.

12 (Chorus of ayes.)

13 CHAIRPERSON BERRY: Opposed?

14 (No response.)

15 CHAIRPERSON BERRY: So ordered.

16 **III. Announcements**

17 The next item on the agenda is
18 announcements. First of all, there's a new intern
19 here, fall intern, Mr. Pierre Jasmin, who may be
20 here. If you are, stand up.

21 Mr. Jasmin, is from Connecticut State
22 University. Welcome, and I hope you have a
23 wonderful experience while you're here.

24 I just want to take note of some things
25 that happened while we were not here briefly in

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1 passing, and I'm sure that everybody is aware of it.

2 We had the anniversary of the Voting
3 Rights Act of 1965, which is one of the most
4 important pieces of civil rights legislation.

5 We've had the anniversary of Martin
6 Luther King's "I Have a Dream" speech, which was
7 much celebrated and discussed and commemorated
8 across the country.

9 We also have the anniversary of the
10 ratification of the 19th Amendment to the
11 Constitution which says that the right to vote shall
12 not be denied on account of sex, and there is also,
13 after we meet and before we meet the next time, will
14 be the anniversary of the bombing of the 16th Street
15 Baptist Church on September 15th, 1963, when the
16 four little girls were killed.

17 September 15th to October 15th will be
18 Hispanic Heritage Month, and the Commission will
19 join the nation in celebrating Hispanic Heritage
20 Month, and as you know, the Commission has done a
21 lot of work on Latino issues and continues to do so.

22 There will also be the anniversary of
23 the integration of Central High School in Little
24 Rock.

25 I want to note the death of Congressman

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1 Charles Bennett, who was a great proponent of civil
2 rights during his time, he was from Florida. He
3 supported the Voting Rights Act of 1965 at great
4 political risk and was also a co-sponsor of the
5 Americans with Disabilities Act.

6 And finally, the death of SAC member
7 Bishop John Burgess on August 24th, who was a member
8 of the Massachusetts Advisory Committee and who as
9 Bishop of Massachusetts was the first African
10 American head in the Episcopal diocese in the United
11 States.

12 Also, we of course know that we remember
13 the people who were killed two years ago in the
14 World Trade Center and at the Pentagon, the
15 anniversary of which was yesterday, and all of us
16 feel saddened by the tragedy and by the continued
17 suffering of all the people whose relatives were
18 killed and the people who are involved in this.

19 Those were the announcements that I
20 have. Does anybody else have any announcements that
21 they wish to make?

22 All right, yes.

23 COMMISSIONER KIRSANOW: Yes, Madam
24 Chair. I'd just like to make note of our Co-
25 Commissioner Russell Redenbaugh's outstanding

1 imitation of Bruce Lee at the Rio de Janeiro jujitsu
2 championships.

3 COMMISSIONER EDLEY: Ironman Redenbaugh.

4 COMMISSIONER KIRSANOW: I'd also like to
5 introduce my special assistant that I think may last
6 longer than the others, Chris Jennings.

7 CHAIRPERSON BERRY: Okay. Thank you.
8 I sent Russell a note after his victory
9 saying, "Great," or something.

10 COMMISSIONER REDENBAUGH: Yes, you did.

11 CHAIRPERSON BERRY: And he sent me
12 something back saying, "Oh, it's just all in a day's
13 work."

14 (Laughter.)

15 CHAIRPERSON BERRY: So I'm used to that.
16 Okay.

17 COMMISSIONER EDLEY: We'll try and keep
18 these two worlds separate.

19 (Laughter.)

20 COMMISSIONER EDLEY: Just stay on that
21 side of the room.

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

23 CHAIRPERSON BERRY: Now we go to the
24 Staff Director's report. Staff Director, is there
25 anything you want to say to us before we see if

1 there are any questions or things that people want
2 to raise under the Staff Director's report?

3 STAFF DIRECTOR JIN: Yes, Madam Chair.
4 I do have a couple of items.

5 One is I just want to note that the next
6 Commission meeting will be October 17th, and it will
7 be in Albuquerque, and that will be in conjunction
8 with a briefing associated with an Office of General
9 Counsel's project on Native American health issues.
10 And I noted that the meeting will probably start
11 very early, eight o'clock or 8:30, and will run all
12 day.

13 There will be no formal event on
14 Thursday, the day before, but I just wanted to let
15 the Commissioners know that we are trying to put
16 together maybe something informal, perhaps a visit
17 to an Indian Health Services center or something
18 like that.

19 So we will keep the Commissioners
20 apprised about anything that develops in that
21 regard.

22 CHAIRPERSON BERRY: You mean like a
23 reservation?

24 STAFF DIRECTOR JIN: Perhaps a
25 reservation, but perhaps also a health center or

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1 Health and Human Services has health service centers
2 in some places, and so that's still in development.

3 CHAIRPERSON BERRY: Okay.

4 STAFF DIRECTOR JIN: But something.

5 We're going to try to put together something to take
6 advantage of the fact that we're in Indian Country.

7 The other item I think I just wanted to
8 bring up, I don't know if this is quite the proper
9 place, but it's part of the Staff Director's report.
10 As the Commissioners know, a couple of weeks ago we
11 sent out some new information as well as some
12 information the Commissioners have seen before on
13 the issue of racial data collection, and of course,
14 with Proposition 54 in California on the October 7th
15 ballot, this very issue is front and center at this
16 point.

17 And so given if I remember correctly all
18 of the Commissioners had at one time indicated an
19 opposition to a ban on collecting racial data, I
20 thought you might want to make another effort at
21 developing a statement on this issue to which almost
22 all of you could agree.

23 So I just throw that out for the
24 Commissioners to decide what to do, if anything.

25 CHAIRPERSON BERRY: We had a statement

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1 or something before.

2 STAFF DIRECTOR JIN: Yes, and if you
3 don't have a copy, we have additional copies we can
4 distribute, the statement.

5 COMMISSIONER BRACERAS: Yeah, I'd like a
6 copy. I don't know if I have that.

7 STAFF DIRECTOR JIN: Sure.

8 CHAIRPERSON BERRY: Oh, I see this in
9 the back here. It says, "The U.S. Commission on
10 Civil Rights recognizes the importance of race and
11 ethnographic data collection in the realization,
12 monitoring, and analysis of the nation's civil
13 rights policy and goals. Nascent movements and
14 proposals around the country to ban the collection
15 of race and ethnographic data, such as the
16 initiative drive currently underway in California,
17 undermine national efforts to identify, analyze, and
18 address continuing instances of civil rights
19 violations, as well as the ability to measure the
20 progress achieved in promoting equal opportunity for
21 all citizens.

22 "Collection of and access to such racial
23 data is critical to obtaining an accurate and
24 meaningful understanding of the condition of civil
25 rights and equal opportunity in this country. Lack

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1 of such data would severely hamper and interfere
2 with the ability of law enforcement agencies, the
3 judiciary, service providers, and researchers to
4 enforce the nation's civil rights laws and analyze
5 their effects.

6 "Sound civil rights policy planning, and
7 legislation in such areas as education and health,
8 among others, would be highly difficult, if not
9 impossible in the absence of empirical data on the
10 race and ethnicity of affected populations.

11 "Thus, given the significant role that
12 scientific and empirical data play in the
13 development, research, and enforcement of civil
14 rights, the Commission opposes all efforts at
15 banning or restricting the ability of government
16 entities or public institutions to collect race or
17 ethnographic data."

18 I would only suggest, having read that,
19 that I wouldn't say equal opportunity for all
20 citizens. I would say all persons because I don't
21 care about whether they are citizens or not.

22 COMMISSIONER BRACERAS: I'm sorry. Was
23 this released previously or this is on the table for
24 discussion now?

25 CHAIRPERSON BERRY: Didn't we discuss

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1 this?

2 COMMISSIONER BRACERAS: I just forgot
3 the history.

4 STAFF DIRECTOR JIN: Yes. This
5 statement was circulated to the Commissioners after
6 the May 2002 briefing.

7 COMMISSIONER BRACERAS: Right. So what
8 happened with it?

9 STAFF DIRECTOR JIN: Well, actually it
10 did not pass, I think. If I remember correctly, it
11 tied four-four.

12 COMMISSIONER BRACERAS: Okay.

13 STAFF DIRECTOR JIN: And there was no
14 movement by anybody to try to come up with different
15 language or anything. So at that point we had
16 nothing.

17 COMMISSIONER BRACERAS: I see.

18 STAFF DIRECTOR JIN: But, of course,
19 this is just staff's proposed language, and could
20 and should be changed upon the Commissioners'
21 desires.

22 CHAIRPERSON BERRY: Yes?

23 VICE CHAIRPERSON REYNOSO: Madam Chair,
24 I don't remember that it went to a vote. I had sort
25 of assumed since we were all in agreement that this

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1 would be written out, we would all agree on it, and
2 it would be done. It was only later that I found
3 out that one of the Commissioners had not agreed to
4 the wording, and then basically nothing happened.

5 So I was a little bit surprised,
6 frankly, when I found out. So I don't think any
7 formal action took place after our discussion.

8 CHAIRPERSON BERRY: Well, here's what
9 the actual transcript says, which the Staff Director
10 sent to us again. It says that -- let's see

11 Reynoso: "Could you put that in a
12 motion?"

13 Commissioner Braceras: "Okay. I move
14 that the staff put together a draft statement on the
15 issue of racial privacy for a poll vote by the
16 Commission."

17 Edley: "Second. But you also had
18 earlier opposed the initiative."

19 "Yes, correct."

20 "Okay. Second to that motion. Second."

21 So apparently, if I recall also, we
22 asked Commissioners to indicate in a poll vote
23 whether they agreed with this, and there was not a
24 majority to agree with it. I don't know when people
25 actually voted, but there weren't five people.

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1 COMMISSIONER BRACERAS: I think my sense
2 at the time, and I still feel that way, is that it
3 is a little verbose, and if we're going to try to
4 get something that everyone can agree on, I think
5 simplicity and brevity are the better course, and
6 it's just a little --

7 COMMISSIONER EDLEY: Right.

8 COMMISSIONER BRACERAS: Something more
9 general and simple would probably serve the purpose
10 better, but I think that was my concern at the time,
11 if I recall.

12 CHAIRPERSON BERRY: How about the last
13 sentence, Commissioner Braceras? If it just said
14 not "thus," but "given the significant role that
15 scientific and empirical data play," not "plays,"
16 "in the development, research, and enforcement of
17 civil rights, the Commission opposes," and not "all
18 efforts," just "opposes efforts in banning or
19 restricting the ability of government entities and
20 of public institutions to collect race or
21 ethnographic data." Just that.

22 COMMISSIONER BRACERAS: Yeah, just give
23 me a moment.

24 COMMISSIONER THERNSTROM: Is it
25 appropriate for me to say something?

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1 CHAIRPERSON BERRY: Oh, yes, sure.

2 COMMISSIONER BRACERAS: Go ahead.

3 COMMISSIONER THERNSTROM: It is actually
4 no longer accurate to say that Prop. 54 is front and
5 center. Ward Connerly himself has admitted that
6 this is going down, and it's basically dead in the
7 water.

8 There are several inaccuracies in this
9 statement. I mean, for instance, education data
10 will be collected. It is mandated by No Child Left
11 Behind. It will also be mandated -- and also by the
12 enforcement of Title VI, I know that the Federal
13 Department of Education is going to insist on the
14 collection of the educational data that I, for
15 instance, very much depend on in my writing.

16 There is a law enforcement exception
17 built into the proposition. I believe there is also
18 a health exception. You know, at this point this
19 issue is really moot.

20 CHAIRPERSON BERRY: Yes?

21 VICE CHAIRPERSON REYNOSO: Madam Chair,
22 while Connerly's indicated pessimism, there was a
23 poll just taken or reported two days ago that
24 indicates that at least the polls are even right
25 now.

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1 COMMISSIONER THERNSTROM: Oh, is that
2 true? I did not see that poll.

3 VICE CHAIRPERSON REYNOSO: Yeah, and
4 Schwarzenegger has come out against it, as have the
5 Democratic candidates.

6 COMMISSIONER THERNSTROM: Exactly, and
7 plan to spend a great deal of money in opposition.
8 Connerly doesn't have that.

9 VICE CHAIRPERSON REYNOSO: Right. So
10 that's why I think he made that statement, but the
11 polls -- that's the way the poll came out.

12 COMMISSIONER THERNSTROM: I didn't
13 realize that.

14 VICE CHAIRPERSON REYNOSO: Yeah.

15 CHAIRPERSON BERRY: I thought maybe if
16 we could avoid all of the -- what I'm suggesting is
17 that we get rid of all of that stuff that's written
18 there and just go down to the last sentence and
19 whatever modifications anybody wants to make or --

20 COMMISSIONER BRACERAS: Can I suggest
21 some modifications?

22 CHAIRPERSON BERRY: Yes.

23 COMMISSIONER BRACERAS: Just playing
24 with it a little bit while Commissioner Thernstrom
25 was speaking, "so given the significant role that

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1 scientific and empirical data play," and I just have
2 "the academic study and enforcement of civil
3 rights," comma, "the Commission opposes" -- I would
4 delete "all" and just say, "The Commission opposes
5 efforts to ban," scratch "restrict," "the ability of
6 government entities or public institutions to
7 collect racial or ethnographic data."

8 VICE CHAIRPERSON REYNOSO: Fine.

9 CHAIRPERSON BERRY: Fine.

10 COMMISSIONER THERNSTROM: Let me say one
11 more thing if I could. I would love the Commission
12 to have unanimous votes on something. I am not
13 going to sign this. The decisions in Gratz and
14 Grutter for me have altered my beliefs in relation
15 to this issue, and I can't sign it. I'm sorry.

16 CHAIRPERSON BERRY: Yes, Commissioner
17 Redenbaugh.

18 COMMISSIONER REDENBAUGH: Could one of
19 you just refresh my memory? When we had the
20 presentation from the Federal Reserve Board two
21 months ago, this issue of the data collection came
22 up, and I can't recall all of it. What was the
23 essence of that conversation?

24 The banks either are or are not
25 collecting the data, and what does the statute --

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1 there is some credit statute on this issue, right?

2 VICE CHAIRPERSON REYNOSO: Well, that
3 was a little bit complicated because they're
4 collecting data on some matters and not on other
5 matters, and I think we received a copy of an
6 extended letter that went from the staff asking for
7 more information on that, but they collect it for
8 some purposes and not for other purposes.

9 COMMISSIONER REDENBAUGH: Am I right in
10 my vague recollection that there is a statute that
11 requires some data collection?

12 VICE CHAIRPERSON REYNOSO: Right.

13 CHAIRPERSON BERRY: Let's see. Edley
14 and Meeks wish to speak, and I don't know who raised
15 their hand first. So you guys fight it out.

16 COMMISSIONER EDLEY: No, actually Elsie
17 is on the committee, and maybe she --

18 COMMISSIONER MEEKS: Well, actually I'm
19 just going from Sandra Braunstein's testimony, and
20 it said, "Responding to assertions by other
21 speakers, she acknowledged that the Federal Reserve
22 recently adopted Regulation B prohibiting the
23 collection and consideration of race and ethnicity
24 data pursuant to CRA."

25 So it's just a regulation that they

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1 adopted.

2 COMMISSIONER REDENBAUGH: That's a fed.
3 regulation.

4 COMMISSIONER MEEKS: Yeah.

5 COMMISSIONER EDLEY: It's not in
6 statute.

7 COMMISSIONER REDENBAUGH: So they were
8 free to not adopt that.

9 COMMISSIONER EDLEY: Correct.

10 COMMISSIONER MEEKS: But the Federal
11 Reserve does collect race data in the context of the
12 Equal Credit Opportunity Act and HMDA and the Fair
13 Housing Act.

14 VICE CHAIRPERSON REYNOSO: Right.

15 CHAIRPERSON BERRY: So what she
16 explained to us, as I recall -- and thank you for
17 refreshing our recollection, Elsie -- was that it is
18 collected for a whole lot of purposes, but under
19 Regulation Q --

20 COMMISSIONER MEEKS: B.

21 CHAIRPERSON BERRY: -- they don't use it
22 for the CRA determination.

23 COMMISSIONER MEEKS: Right.

24 COMMISSIONER REDENBAUGH: Oh, all right.

25 VICE CHAIRPERSON REYNOSO: Right.

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1 COMMISSIONER REDENBAUGH: But it is
2 permissible --

3 CHAIRPERSON BERRY: Right.

4 COMMISSIONER REDENBAUGH: -- for it to
5 be --

6 CHAIRPERSON BERRY: For everything else,
7 but they don't use it for CRA.

8 COMMISSIONER REDENBAUGH: -- thought to
9 be normal and customary.

10 CHAIRPERSON BERRY: Right, and the
11 people who were before us, as I recall, wanted them
12 to use it for CRA, and they didn't understand why
13 they issued Regulation Q. Is that correct?

14 COMMISSIONER MEEKS: B.

15 CHAIRPERSON BERRY: B. I'm sorry. What
16 did I say? Did I say Q?

17 (Laughter.)

18 COMMISSIONER REDENBAUGH: Q I do know.

19 CHAIRPERSON BERRY: That's right. I
20 know Q, too. That's why it's on my mind.

21 (Laughter.)

22 CHAIRPERSON BERRY: B, B, yes, B, B.

23 COMMISSIONER EDLEY: This doesn't answer
24 the question of why they use letters when everybody
25 else uses numbers, but we could --

1 (Laughter.)

2 CHAIRPERSON BERRY: I think I'll go
3 along with that and save that discussion.

4 Yes, Cruz.

5 VICE CHAIRPERSON REYNOSO: No, no.

6 CHAIRPERSON BERRY: Is there further?

7 VICE CHAIRPERSON REYNOSO: No, no. I
8 think she --

9 CHAIRPERSON BERRY: Is there further
10 discussion?

11 VICE CHAIRPERSON REYNOSO: No, but just
12 to have it on the table, I'd like to second -- did
13 you make a motion?

14 COMMISSIONER BRACERAS: It wasn't. I
15 don't think I did it formally, but if you'd like me
16 to, I will.

17 VICE CHAIRPERSON REYNOSO: Sure.

18 CHAIRPERSON BERRY: Would you please
19 move your language?

20 COMMISSIONER BRACERAS: Okay. I move
21 that the Commission adopts the following statement.
22 I'll read it again.

23 "Given the significant role that
24 scientific and empirical data play in the academic
25 study and enforcement of civil rights, the

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1 Commission opposes efforts to ban the ability of
2 government entities or public institutions to
3 collect racial or ethnographic data."

4 CHAIRPERSON BERRY: And you second that?

5 VICE CHAIRPERSON REYNOSO: I second it.

6 CHAIRPERSON BERRY: All right.

7 COMMISSIONER REDENBAUGH: Question.

8 CHAIRPERSON BERRY: Yes, yes,

9 Commissioner Redenbaugh.

10 COMMISSIONER REDENBAUGH: Government
11 entities or institutions, this is a term of art, I
12 presume?

13 CHAIRPERSON BERRY: Which?

14 COMMISSIONER REDENBAUGH: Government
15 entities and institutions.

16 CHAIRPERSON BERRY: Public institutions.

17 COMMISSIONER REDENBAUGH: Okay. And a
18 public institution is?

19 CHAIRPERSON BERRY: It may not be a
20 government institution.

21 COMMISSIONER REDENBAUGH: Okay. So like
22 the Bank of America?

23 CHAIRPERSON BERRY: A public university.

24 COMMISSIONER REDENBAUGH: Okay. Right.
25 I just wanted a clarification.

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1 CHAIRPERSON BERRY: Any other
2 discussion?

3 COMMISSIONER THERNSTROM: I'm sorry.
4 I'm now confused. Jennifer, read it again. I'm
5 sorry.

6 COMMISSIONER BRACERAS: "Given the
7 significant role that scientific and empirical data
8 play in the academic study and enforcement of civil
9 rights, the Commission opposes efforts to ban the
10 ability of government entities or public
11 institutions to collect racial or ethnographic
12 data."

13 COMMISSIONER EDLEY: I'd like to move
14 that we substitute "data" for "data."

15 (Laughter.)

16 COMMISSIONER BRACERAS: I probably said
17 it differently each time I read it.

18 CHAIRPERSON BERRY: Does anyone else
19 have any salient point?

20 All right. All in favor indicate by
21 saying aye.

22 (Chorus of ayes.)

23 CHAIRPERSON BERRY: Those opposed.

24 (Chorus of nays.)

25 COMMISSIONER KIRSANOW: No Commissioner

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1 Kirsanow and Commissioner Thernstrom, no. Everyone
2 else, aye. The motion passes.

3 Thank you very much.

4 Anything else, Staff Director?

5 STAFF DIRECTOR JIN: Not from me, Madam
6 Chair.

7 CHAIRPERSON BERRY: Okay, Commissioner
8 Redenbaugh.

9 COMMISSIONER REDENBAUGH: Yeah, I have a
10 matter that I think should come under the Staff
11 Director's report.

12 CHAIRPERSON BERRY: Okay.

13 COMMISSIONER REDENBAUGH: That I think
14 we can dispose of in, say, five minutes.

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER REDENBAUGH: And that's the
17 concern that we have that was brought to our
18 attention about the security of private
19 communications between our assistants in this case.
20 We've had some discussion, some letter about it, and
21 I'm concerned, Staff Director, about security, in
22 general, but in this particular case, it was just an
23 instance of security in the offices here, and I
24 wanted to raise this question in a very general
25 sense and ask what we're doing about that.

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1 STAFF DIRECTOR JIN: Well, there's no --
2 I'm not quite sure how to answer. Let me kind of
3 make -- kind of say a couple of things, and if that
4 helps answer it, then fine. If not, then you can
5 ask me more specific questions.

6 I mean, staff could have their own
7 offices. It's their office. Nobody goes into those
8 offices unless invited or unless with permission,
9 unless there's an emergency.

10 I'm not aware at this point of any
11 security problems with offices. So --

12 COMMISSIONER BRACERAS: We are.

13 STAFF DIRECTOR JIN: Do you want to be,
14 I mean, specific? I guess we can talk about that,
15 but I think I know the incident Commissioner
16 Redenbaugh is referring to, and you know, to my
17 knowledge, there was nothing in that incident that
18 involved a breach of security.

19 COMMISSIONER BRACERAS: Well, if I may
20 be heard.

21 CHAIRPERSON BERRY: Yes, Commissioner
22 Braceras.

23 COMMISSIONER BRACERAS: Since it
24 involved my special assistant, communications
25 between two special assistants, one of whom was

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1 Kimberly, essentially something was brought to the
2 attention of the Chair which was a private
3 communication between two special assistants which
4 could have only been found in Kimberly's office.

5 So I can only deduce that there was a
6 breach in security.

7 CHAIRPERSON BERRY: Well, my own view of
8 all of this, and you may say whatever you wish and
9 everyone else may, is that the Staff Director should
10 review the, if he has not already done so, the
11 security. I don't know how this happened to have
12 come to me. I've been trying to remember exactly
13 how, but I don't.

14 But you might review how communications
15 are handled, and I don't know whether it was mailed
16 or whether it was by hand or whatever, and also the
17 security of people's offices and who has access to
18 them.

19 COMMISSIONER BRACERAS: Well, it's --

20 CHAIRPERSON BERRY: And that there can
21 be some assurance.

22 COMMISSIONER BRACERAS: It's not just
23 the physical security. I think it has to do with
24 the integrity of our processes, and I guess my
25 question for the Chair is when somebody brings to

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1 you what is clearly a private communication between
2 two people that work in this agency, doesn't that
3 raise a red flag to you? Isn't that something that
4 concerns you?

5 Why would you take that communication
6 and use it to your advantage?

7 CHAIRPERSON BERRY: I have had --

8 COMMISSIONER BRACERAS: Why wouldn't you
9 simply instruct whoever gave it to you that that was
10 inappropriate work place behavior?

11 CHAIRPERSON BERRY: First of all, I
12 don't know where it came from. You're making
13 assumptions.

14 COMMISSIONER BRACERAS: It doesn't
15 matter. You had it.

16 CHAIRPERSON BERRY: Secondly --

17 COMMISSIONER BRACERAS: You had it. You
18 shouldn't have had it.

19 CHAIRPERSON BERRY: Commissioner
20 Braceras, I do not wish --

21 COMMISSIONER BRACERAS: And you tried to
22 use it to your advantage.

23 CHAIRPERSON BERRY: -- to argue with
24 you, and I have not tried to use anything to my
25 advantage.

1 COMMISSIONER BRACERAS: And so the
2 ethical -- the ethical -- the ethical concern I have
3 is not just who may have gone into Kimberly's
4 office, but with Chair.

5 CHAIRPERSON BERRY: My ethical concern -
6 -

7 COMMISSIONER BRACERAS: And her
8 behavior.

9 CHAIRPERSON BERRY: -- is why
10 Commissioners would say that they are going to vote
11 against a report before they have heard any review
12 of the report discussed in the meeting or anything
13 else, make up their minds to vote for it, against
14 it, and to make clear that they are, and then get
15 all upset when somebody --

16 COMMISSIONER BRACERAS: That's
17 incorrect.

18 CHAIRPERSON BERRY: -- when somebody
19 finds a piece of paper that says they've intended to
20 do that and then passes it around to people
21 surreptitiously.

22 COMMISSIONER BRACERAS: No, that's
23 out --

24 CHAIRPERSON BERRY: It could be under
25 their door or any other way, and I am always

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1 concerned about leaks. I'm always concerned about
2 security, but my concern, my ethical concern and my
3 professional concern, is why Commissioners would, in
4 fact, make up their minds to vote against something,
5 have that expressed in writing before they even hear
6 a discussion from staff.

7 COMMISSIONER BRACERAS: Okay.

8 CHAIRPERSON BERRY: That's my concern,
9 and I don't know how this note came to me. I get
10 all kinds of notes about all kinds of things slipped
11 under the door, by mail, by other reasons, and I
12 have no intention of going around trying to figure
13 out where it came from. It was authentic as far as
14 I know, and so if you would like to discuss why you
15 decided to vote against a report --

16 COMMISSIONER BRACERAS: Yes, I would.

17 CHAIRPERSON BERRY: -- before the report
18 was even discussed and expressed that, according to
19 the person who reliably, I guess, expressed your
20 view --

21 COMMISSIONER BRACERAS: Well, that's a
22 summary incorrect characterization.

23 CHAIRPERSON BERRY: -- then -- then
24 which was confirmed by some of the Commissioners,
25 then, in fact, I'd like to discuss that.

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1 COMMISSIONER BRACERAS: Yes.

2 CHAIRPERSON BERRY: Otherwise you say
3 whatever you like.

4 COMMISSIONER BRACERAS: That's right. I
5 may and I will.

6 CHAIRPERSON BERRY: Commissioner Meeks?

7 COMMISSIONER MEEKS: I just think this
8 is one of these discussions that does not do the
9 Commission -- does not move forward any kind of good
10 agenda.

11 COMMISSIONER BRACERAS: Your personal
12 correspondence wasn't stolen.

13 CHAIRPERSON BERRY: Would you please --

14 COMMISSIONER BRACERAS: Ours was, and so
15 we're concerned.

16 CHAIRPERSON BERRY: Commissioner
17 Braceras, Commissioner Meeks has the floor.

18 COMMISSIONER MEEKS: If this is to be
19 discussed, it should be discussed in private, in the
20 executive committee.

21 CHAIRPERSON BERRY: All right.

22 COMMISSIONER BRACERAS: I disagree.

23 COMMISSIONER MEEKS: I'm not calling for
24 that, but I just -- this is not going to move
25 forward --

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1 CHAIRPERSON BERRY: If we're going to
2 name people's names and have a discussion about --
3 and I will ask counsel if that's the case, but I
4 think it is the case -- this ought to be done in an
5 executive session and not in a public meeting, and
6 some names have already been mentioned, and all
7 kinds of allegations.

8 COMMISSIONER BRACERAS: No, I think the
9 record and the public should be made well aware of
10 what's happening here.

11 CHAIRPERSON BERRY: Commissioner
12 Braceras --

13 COMMISSIONER BRACERAS: Well aware.

14 CHAIRPERSON BERRY: -- you do not decide
15 whether we have an executive session or not.

16 COMMISSIONER MEEKS: But there are rules
17 governing --

18 CHAIRPERSON BERRY: There are rules, and
19 I will ask counsel about it.

20 COMMISSIONER MEEKS: -- governing
21 executive sessions.

22 CHAIRPERSON BERRY: I will ask counsel
23 about it, yes.

24 Counsel, could you tell us whether if we
25 are going to discuss this and discuss people's names

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1 in connection with this whether it should be done in
2 executive session or not?

3 COMMISSIONER BRACERAS: It goes to a
4 vote, doesn't it?

5 CHAIRPERSON BERRY: Could I please --
6 no, there's a ruling, and you can overturn it if you
7 wish.

8 Go ahead.

9 MS. CARR: If the Commission is
10 discussing personnel matters or naming particular
11 names of people, staff and others, we would
12 recommend that you go into closed session for the
13 sake of privacy and for the sake of not disclosing
14 internal personnel issues.

15 CHAIRPERSON BERRY: So I rule as the
16 Chair that this matter would have to be considered
17 in executive session. If you wish to overturn my
18 ruling, you may make a motion to do so --

19 COMMISSIONER BRACERAS: Well, before we
20 do that --

21 CHAIRPERSON BERRY: -- and the motion
22 will be considered by this body.

23 Does anyone wish to make a motion to
24 overturn the ruling of the Chair? Otherwise we will
25 move on to the next topic of discussion.

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1 COMMISSIONER BRACERAS: I wish to speak
2 to the issue.

3 CHAIRPERSON BERRY: Do you wish to make
4 a motion, Commissioner Braceras?

5 COMMISSIONER BRACERAS: Yes. First of
6 all, no. That's ridiculous.

7 CHAIRPERSON BERRY: You are out of
8 order. Do you wish to--

9 COMMISSIONER BRACERAS: I wish to --

10 CHAIRPERSON BERRY: -- make a motion?

11 COMMISSIONER BRACERAS: I wish to
12 discuss in open forum not a personnel question but
13 the policy issue of what the role of Commissioners
14 is in terms of reviewing reports and determining
15 whether or not to approve them. That is not a
16 personnel issue. That can be discussed in open
17 forum.

18 CHAIRPERSON BERRY: All right. If you
19 want to move on to another issue --

20 COMMISSIONER BRACERAS: No, I would like
21 to discuss that and then --

22 CHAIRPERSON BERRY: -- the role of
23 Commissioners, then you may go --

24 COMMISSIONER BRACERAS: -- then we can
25 move on.

1 CHAIRPERSON BERRY: -- right ahead. Go
2 right ahead.

3 COMMISSIONER BRACERAS: Thank you.

4 CHAIRPERSON BERRY: If that's what you
5 wish to discuss.

6 COMMISSIONER BRACERAS: Thank you.

7 Obviously we are asked on a number of
8 occasions to read reports, review them, and come to
9 a determination about whether or not we want to put
10 our stamp of approval on them. There is nothing
11 wrong with coming to that -- after reading a report
12 carefully, with doing due diligence on the report,
13 conducting some independent fact finding and
14 determining whether or not we want to vote for a
15 report. In fact, that is our job. We should be
16 doing due diligence. We should read the reports
17 carefully, not just skim them and rubber stamp them,
18 which of course is what the Chair would like us to
19 do; I think our role is to be careful and diligent
20 in our review of reports.

21 You seem to think that there's something
22 wrong with that and that if you conducted your due
23 diligence as a Commissioner and as a Commissioner's
24 assistant, that there's something wrong with coming
25 to a meeting with a presumption or an opinion of how

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1 you're going to vote, one way or the other.

2 There's not. Judges do that all the
3 time. They read briefs. They get bench memos.
4 They make a presumed decision. They go into court.
5 They hear oral argument. Sometimes it changes their
6 mind. Usually it doesn't.

7 And that is no different really than
8 what we do here. So to the extent that a member of
9 the staff is going to come forward and do a
10 PowerPoint presentation which summarizes what we've
11 already read, ordinarily I don't think that's going
12 to change most people's mind. It's just going to
13 clarify what we've already reviewed.

14 So I'm not saying it can never change
15 somebody's mind. I know that it has, but there's
16 nothing wrong with any of us showing up at a meeting
17 having done our homework and done our research and
18 having an informed opinion.

19 If you think that's unethical, then I
20 don't know what to think. You have a serious
21 problem because we're just doing our jobs.

22 So to the extent that there was any
23 communication indicating that the Commissioners and
24 their special assistants were carefully dissecting
25 and analyzing a report, I'm not going to apologize

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1 for that because that's our role. And I just want
2 that on the record.

3 CHAIRPERSON BERRY: Doesn't every --

4 COMMISSIONER BRACERAS: I realize you
5 think that we're just supposed to show up and agree
6 with whatever you want to do.

7 CHAIRPERSON BERRY: Does anyone else
8 wish to be recognized? Yes, Commissioner
9 Thernstrom.

10 COMMISSIONER THERNSTROM: I cannot see
11 this as a personnel matter that is appropriate for
12 executive session, and of course, if we are going
13 into executive session, it has to be, I believe, has
14 to be put in the Federal Register what is it, 30
15 days beforehand? Whatever, however many days it is
16 beforehand, but anyway, it can't be done today.

17 This is not a personnel matter, however.
18 This is a matter involving the confidentiality of
19 memos in the Commission and our sense of security
20 that any kind of memos between our Commissioners
21 that are supposed to be confidential are, indeed,
22 confidential, and I have to say I also do not
23 understand; I'd be delighted for a clarification,
24 but I don't understand receiving an obviously
25 confidential document and not immediately doing an

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1 investigation as to where this came from and so that
2 whatever route will not be used again because the
3 whole integrity of the workings of this Commission
4 depend on a sense that we can trust the processes
5 within this building.

6 CHAIRPERSON BERRY: Do others wish to be
7 recognized? Does anyone else seek recognition?
8 Yes, Commissioner Kirsanow.

9 COMMISSIONER KIRSANOW: Yeah, I agree
10 with Commissioner Thernstrom. I don't think this is
11 a personnel issue, although the issue may be
12 bifurcated to one where we're talking about the
13 general policy concerns about the confidentiality of
14 communications between Commissioners, between
15 special assistants and Commissioners, and special
16 assistants to special assistants, and then the kind
17 of ministerial aspect of investigating the personnel
18 implications of this.

19 I'm not alleging that there has been any
20 kind of crime committed or anything like that, but
21 there's some serious concerns here. From what I
22 understand from Commissioner Redenbaugh's letter, it
23 appears as if this document was either stolen from
24 someone's office or mails were tampered with. And
25 it seems to me that to preserve the integrity of any

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1 body, especially a public body such as this and to
2 preserve public confidence in that body, some type
3 of investigation needs to be implemented almost
4 immediately after it becoming public knowledge or
5 coming to light.

6 So I would suggest that, number one,
7 there be some type of investigation as to in a
8 general sense what kind of security concerns we have
9 here; in a specific sense, what happened in this
10 particular case. How did somebody get access to
11 this and should that person be disciplined? And
12 that's something that can be discussed in an
13 executive session.

14 And it's something I think is of some
15 particular import. I don't think it's something
16 that is a minor matter.

17 CHAIRPERSON BERRY: Do others seek
18 recognition on this question? Yes, Commissioner
19 Redenbaugh.

20 COMMISSIONER REDENBAUGH: Yeah, it
21 wasn't my intention that we spend this much time on
22 this. I associate myself completely with the
23 remarks of Commissioner Kirsanow. I think this is a
24 process issue with the Staff Director and not a
25 sensitive personnel issue for the Commissioners to

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1 discuss.

2 I am concerned about security both in
3 this case and in a general sense. So I just want to
4 clarify that.

5 Also, I would say since I was the
6 Commissioner who indicated that I was going to,
7 ahead of time, ahead of the meeting, that I was
8 going to vote against this report, I also want to
9 say I find nothing at all inappropriate with
10 reaching the conclusion about how one might vote
11 before the meeting.

12 Now, in this case it actually happens
13 that based on the presentation in the meeting I did
14 change my mind about this and voted for the report,
15 but one can vote against reports for lots of valid
16 reasons, and those can be reached before we get to
17 this meeting. So I just wanted to clarify my
18 position about that.

19 CHAIRPERSON BERRY: Do others wish to
20 speak to this subject?

21 (No response.)

22 CHAIRPERSON BERRY: All right. Hearing
23 none, Staff Director, will you please review
24 security of mail and people's offices and the like
25 and make sure that everything that needs to be done

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1 has been done?

2 STAFF DIRECTOR JIN: Okay.

3 CHAIRPERSON BERRY: And if one wishes to
4 pursue this question at a later meeting
5 Commissioners will indicate so, and you may tell us
6 what you conclude, and beyond that we'll move on.

7 Yes, Commissioner Kirsanow.

8 COMMISSIONER KIRSANOW: Madam Chair, I
9 would also like to ask the Staff Director to conduct
10 an investigation as to this particular incident,
11 what occurred here. Also, in general terms conduct
12 an investigation with respect to the security
13 apparatus or the provision of confidentiality among
14 all of the staff members, but also I think we can't
15 just forget about this particular incident. I think
16 it is of some import.

17 COMMISSIONER BRACERAS: Second.

18 COMMISSIONER THERNSTROM: Well, I agree
19 with that as well.

20 CHAIRPERSON BERRY: I don't -- could you
21 clarify so staff and we --

22 COMMISSIONER KIRSANOW: Yes.

23 CHAIRPERSON BERRY: -- understand what
24 it is you're asking for so that we can see if we
25 agree? What exactly are you asking for?

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1 COMMISSIONER KIRSANOW: Yes, Madam
2 Chair. I'd like to move that the Staff Director
3 conduct an investigation as to how this particular
4 document became purloined, so to speak, or came into
5 your custody.

6 CHAIRPERSON BERRY: That's your motion?

7 COMMISSIONER KIRSANOW: Yes, that's the
8 motion.

9 CHAIRPERSON BERRY: Do I hear a second?

10 COMMISSIONER BRACERAS: Second.

11 CHAIRPERSON BERRY: Does anyone want to
12 speak to the motion? Yes, Commissioner.

13 COMMISSIONER EDLEY: I'm going to oppose
14 it. It sounds --

15 COMMISSIONER BRACERAS: You're in favor
16 of purloining documents?

17 COMMISSIONER EDLEY: Well, I don't know
18 that anything was purloined. I don't know the
19 circumstances.

20 COMMISSIONER BRACERAS: Why not
21 investigate and find out?

22 COMMISSIONER EDLEY: Because I don't
23 think -- I don't think it advances the agenda of
24 this Commission. We're going to look at -- we're
25 going to -- I think you're trying to create a

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1 political stir, and I want to move on. Let's
2 address whatever security issues there are and move
3 on and get to the substance of the Commission's
4 work.

5 This is -- I think that your -- I am
6 offended by a lot of the ad hominem comments that
7 have been made over the last several minutes, and I
8 would really like to get back to the work of the
9 Commission, the substance of our work.

10 I would oppose the motion.

11 CHAIRPERSON BERRY: All the -- yes,
12 Commissioner Thernstrom.

13 COMMISSIONER THERNSTROM: I appreciate
14 what you're saying, Chris, but there isn't a bright
15 and clear line between substance and process. That
16 is, the processes of this Commission have to be
17 correct in order for substance to proceed on a sound
18 basis.

19 There was here a very disturbing
20 incident, and I do not see the harm. In fact, I see
21 -- I mean, you cannot look into, it seems to me, to
22 the general issue without addressing the specifics
23 of what has triggered this investigation. It is
24 important that people feel that their memos are
25 confidential.

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1 VICE CHAIRPERSON REYNOSO: Madam --

2 CHAIRPERSON BERRY: Yes.

3 VICE CHAIRPERSON REYNOSO: I call for
4 the question.

5 CHAIRPERSON BERRY: The question has
6 been called for. All those in favor of the motion
7 indicate by saying aye.

8 (Chorus of ayes.)

9 CHAIRPERSON BERRY: Opposed?

10 (Chorus of nos.)

11 CHAIRPERSON BERRY: The motion fails for
12 lack of a majority.

13 We will go on with the agenda. Is there
14 anything else in the Staff Director's report that
15 anybody is interested in doing?

16 **V. State Advisory Committee Interim**

17 **Appointment for Illinois**

18 Then the next item is the State Advisory
19 Committee interim appointment for Illinois. Could I
20 get a motion for approval?

21 COMMISSIONER REDENBAUGH: So moved.

22 CHAIRPERSON BERRY: Could I get a
23 second?

24 COMMISSIONER KIRSANOW: Second.

25 COMMISSIONER BRACERAS: Second.

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1 CHAIRPERSON BERRY: Any discussion?

2 (No response.)

3 CHAIRPERSON BERRY: And if not, all in
4 favor indicate by saying aye.

5 (Chorus of ayes.)

6 CHAIRPERSON BERRY: Opposed?

7 (Chorus of ayes.)

8 CHAIRPERSON BERRY: You're opposed or
9 are you --

10 COMMISSIONER REDENBAUGH: No, I'm sorry.
11 I was just late.

12 CHAIRPERSON BERRY: Okay.

13 COMMISSIONER REDENBAUGH: My timing in
14 this matter is not what it should be.

15 CHAIRPERSON BERRY: Okay. So ordered.

16 **VI. Fiscal Year 2005 Budget Estimate to OMB**

17 The next item is the FY 2005 budget
18 estimate to OMB. Staff Director, do you have
19 anything to say about that?

20 STAFF DIRECTOR JIN: Just a couple of
21 quick comments to introduce it Madam Chair.

22 This is the annual opportunity for the
23 Commissioners to have input in the submission to OMB
24 regarding the fiscal year budget that addresses the
25 projects that the Commissioners had talked about and

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1 decided upon earlier this year.

2 So this is the proposal, and during the
3 mail-out, of course, we sent the Commissioners the
4 documents that have been the kind of documents we've
5 been sending Commissioners for, I think, a lot of
6 years now.

7 So I'd be happy to answer questions, and
8 if I can't answer them, then George Harbison, our
9 budget person, I'd turn to him. But I'll do my best
10 to answer your questions.

11 CHAIRPERSON BERRY: Okay. Anyone
12 seeking recognition? Yes, Commissioner Redenbaugh.

13 COMMISSIONER REDENBAUGH: Yeah, I'd like
14 to begin, you know, with sort of my usual questions
15 in the area of management process and structure, you
16 know, organizational design kinds of issues.

17 I'm somewhat disadvantaged in that I
18 have a new special assistant who is unfamiliar with
19 what we've done in the past. This document looks
20 very different from our OMB submissions from prior
21 years, but I didn't ask Melissa to go back and
22 check, and she has no recollection.

23 Is this really quite different?

24 STAFF DIRECTOR JIN: I didn't say the
25 document was our OMB submission. I said this

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1 document is, if not identical, it's virtually
2 identical to what we've been giving Commissioners
3 for many years now, and basically what happens is
4 after this, then staff takes this document as a
5 guide from the Commissioners, and then we create the
6 document that then is submitted to OMB, which
7 includes a lot more narrative about the projects,
8 about accomplishments, stuff like that.

9 COMMISSIONER REDENBAUGH: Okay. Because
10 that's what I was used -- that's what I was looking
11 for, is a document that says, in effect, if we got
12 this much money, here's what we would do with it.

13 STAFF DIRECTOR JIN: Well, this document
14 does do that. It --

15 CHAIRPERSON BERRY: Well, we get copies
16 of that big thing, right?

17 COMMISSIONER REDENBAUGH: I didn't see
18 that in those, Staff Director. What I saw was
19 sorted by categories of activity, like
20 Commissioners' compensation and travel and staff
21 compensation, but not sorted -- sorted by category,
22 but not in any way associated with what would be
23 produced.

24 STAFF DIRECTOR JIN: Well, let me
25 backtrack slightly then. I mean, in terms of just

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1 describing how the process works a little bit, and
2 again, Commissioner Redenbaugh, I do want to make
3 clear that, I mean, this is like, I think, my third
4 one, and when I first came here, you know, not to
5 say that the way to do it is always the way it has
6 always been done before. I asked around to see, you
7 know, how you normally do this, and so people have
8 referred me to how we've done it in the past.

9 And so I looked back, you know, for at
10 least a number of years. This has been the way
11 we've done it. So this is nothing extraordinary.

12 But in terms of our process, what
13 happens is that a few months after the project
14 planning meetings where the Commissioners decide on
15 a project, Mr. Harbison sends out to each office
16 manager, including, of course, the head of the
17 Office of Civil Rights Evaluation and the head of
18 General Counsel's Office, which are the two offices
19 that do the projects the Commissioners have voted on
20 and say for this next fiscal year, for fiscal year
21 2005, knowing what your responsibilities are, you
22 know, what kind of money do you think you need and
23 what do you need it for type of thing.

24 And so they provide Mr. Harbison with
25 this information and, you know, he might have some

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1 dialogue with them and so forth. And then at some
2 point Mr. Harbison puts something together, and then
3 he and I start talking, and you know, we're going
4 back and forth a little bit.

5 COMMISSIONER REDENBAUGH: So this is not
6 the OMB submission.

7 STAFF DIRECTOR JIN: This is not the OMB
8 submission.

9 COMMISSIONER REDENBAUGH: But what is
10 this? That's the part I'm not clear on.

11 STAFF DIRECTOR JIN: What is this?

12 COMMISSIONER REDENBAUGH: Yes. What do
13 you need from us in order to prepare the OMB
14 submission?

15 COMMISSIONER EDLEY: This is really an
16 input to --

17 CHAIRPERSON BERRY: The OMB submission.

18 COMMISSIONER REDENBAUGH: Well, and to a
19 whole set of project plans, which would include
20 costing and mapping and resources. That's what I
21 think is interesting for us as Commissioners to vote
22 on.

23 COMMISSIONER THERNSTROM: I mean, that's
24 what we need.

25 VICE CHAIRPERSON REYNOSO: Madam Chair,

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1 I understand that the figures come out about the
2 same as in previous years, and this is a statement
3 of what we believe we need even though for the last
4 many years we haven't been getting that amount. So
5 I saw it as simply a different way of giving us the
6 details, but the conclusion was basically the same.

7 Am I wrong?

8 CHAIRPERSON BERRY: Right.

9 VICE CHAIRPERSON REYNOSO: That's the
10 way I see it.

11 CHAIRPERSON BERRY: It looks to me very
12 much like the same thing we asked for last time. Am
13 I --

14 STAFF DIRECTOR JIN: Well, yeah. I
15 don't want the Commissioners to think though that we
16 just took the same numbers and we just plug them in
17 because staff put in a lot more time than that, but
18 it is project driven, and some of the offices, they
19 feel like, well, okay, you know, what we asked for
20 last year, that's still the need. So let's ask for
21 it again.

22 But other offices, they do make changes
23 and Mr. Harbison and I do kind of go over those and
24 so forth, but the numbers have been fairly similar
25 now for a number of years.

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1 COMMISSIONER REDENBAUGH: But, Cruz, if
2 I could be recognized.

3 CHAIRPERSON BERRY: Yes, sure.

4 COMMISSIONER REDENBAUGH: Cruz, but how
5 do we know what we need if we don't know what we're
6 going to do?

7 COMMISSIONER THERNSTROM: And spend on
8 particular things we plan to do.

9 COMMISSIONER BRACERAS: Yes.

10 STAFF DIRECTOR JIN: Well, I mean, you
11 do know what you're going to do because basically
12 for the part that has to do directly with the
13 Commissioners, of course, overall you're involved,
14 you know -- you're responsible for everything, but
15 in terms of direct projects, I mean, the four
16 projects that we're talking about here are the ones
17 that you indicated to us at the last project meeting
18 you really wanted us to do.

19 COMMISSIONER REDENBAUGH: Right.

20 STAFF DIRECTOR JIN: They were the
21 Adarand project, the wealth gap project that
22 Commission Redenbaugh and others crafted together,
23 minority under representation in decennial census,
24 and the review of the Community Reinvestment Act.

25 I mean, that's the initial guiding point

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1 for the Office of the General Counsel, and Office of
2 Civil Rights Evaluation in terms of --

3 COMMISSIONER REDENBAUGH: Well, how much
4 do you need? You don't need 50 -- how much do you
5 need for those?

6 STAFF DIRECTOR JIN: Well, and again, I
7 think that based on my conversations with the
8 program managers, what they do is they say, I mean,
9 again, we all have doubts that we're going to get
10 \$15 million. So they've got to have contingency
11 plans of how do we implement the Commissioners'
12 projects if we don't get any more money.

13 But in terms of developing the project,
14 they also take into account, well, okay, this is
15 what the Commissioners really want to do, and if we
16 really could do a Cadillac kind of project, this is
17 the kind of staffing we would need.

18 And so that is what I think the starting
19 point is, what they're asking for here, and --

20 COMMISSIONER REDENBAUGH: Right. I
21 understand much better now.

22 STAFF DIRECTOR JIN: Yeah.

23 COMMISSIONER REDENBAUGH: So what do you
24 need from us?

25 CHAIRPERSON BERRY: For us to say yes

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1 and go ahead and work out all of these other
2 details.

3 COMMISSIONER REDENBAUGH: And then -- so
4 you need that today, and then you'll come back to us
5 for another vote or is this the vote?

6 STAFF DIRECTOR JIN: No, this really is
7 the vote because then this basically will allow us
8 to do what I would say is the managerial
9 responsibility that my staff has, which is to take
10 that information, the project planning part, as well
11 as approval today, and then move forward and create
12 that document for the OMB.

13 COMMISSIONER REDENBAUGH: But will we
14 see that before it goes to OMB?

15 STAFF DIRECTOR JIN: No, normally I
16 don't think in the past you've ever seen that before
17 it goes to OMB.

18 COMMISSIONER REDENBAUGH: We have seen
19 it though, right?

20 CHAIRPERSON BERRY: Oh, yeah. We get
21 copies of it.

22 STAFF DIRECTOR JIN: I believe so. I
23 believe so.

24 COMMISSIONER EDLEY: And when does it go
25 over? Is it due at the end of the month or --

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1 STAFF DIRECTOR JIN: It needs to go up
2 in the next few months, I believe. George, when
3 does it need to go up?

4 MR. HARBISON: The actual due date is
5 September 8.

6 STAFF DIRECTOR JIN: Okay.

7 CHAIRPERSON BERRY: So we're late.
8 Okay.

9 Yes?

10 VICE CHAIRPERSON REYNOSO: And I think
11 we need to be reminded that we're talking about '05,
12 and that invariably we make changes.

13 COMMISSIONER REDENBAUGH: Well, I'm
14 prepared to support this.

15 PARTICIPANT: When they ignore us.

16 COMMISSIONER REDENBAUGH: And they make
17 changes, too.

18 Yeah, I'm prepared to support this with
19 the understanding that I now have and with the
20 expectation that it seems unlikely that we'll get
21 the amount requested.

22 CHAIRPERSON BERRY: Oh, we already know
23 that.

24 COMMISSIONER REDENBAUGH: Yeah, no. Do
25 we?

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1 And then what will really happen is
2 we'll have to, you know, as we do every year, live
3 inside the budget and shrink down the Cadillac
4 projects.

5 CHAIRPERSON BERRY: Absolutely.

6 COMMISSIONER REDENBAUGH: Yeah, all
7 right.

8 VICE CHAIRPERSON REYNOSO: Madam Chair.

9 CHAIRPERSON BERRY: Yes.

10 VICE CHAIRPERSON REYNOSO: The reference
11 to Cadillacs I think is old fashioned. It's a BMW
12 or something else now.

13 CHAIRPERSON BERRY: Lexus.

14 COMMISSIONER REDENBAUGH: No, no. We're
15 in the Buy America plan here.

16 VICE CHAIRPERSON REYNOSO: Oh, okay.

17 CHAIRPERSON BERRY: All right. Are you
18 ready for the question? Yes?

19 VICE CHAIRPERSON REYNOSO: Yes.

20 CHAIRPERSON BERRY: All in favor
21 indicate by saying aye, with the understandings that
22 we've all discussed here on the record.

23 (Chorus of ayes.)

24 CHAIRPERSON BERRY: Opposed?

25 (No response.)

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1 CHAIRPERSON BERRY: So ordered.

2 VII. "Not in my Backyard: Executive Order
3 12898 and Title VI as Tools for
4 Achieving Environmental Justice" Report

5 Now we have the "Not in My Backyard
6 Executive Order 12898 in Title VI as Tools for
7 Achieving Environmental Justice" Report. Mr. Staff
8 Director.

9 STAFF DIRECTOR JIN: This is the report
10 on environmental justice, and I just want to
11 introduce a person who many of you know, Debra Carr,
12 who will do a quick introduction, I think, and then
13 we'll open it up for questions.

14 COMMISSIONER THERNSTROM: I have a
15 request. I realize there's no rule I can hang my
16 hat on here, but it is a 200 page report, and I
17 would really like some more time to read it and I
18 wonder if it would be possible to discuss this at
19 the next Commission meeting instead.

20 CHAIRPERSON BERRY: Anybody have any
21 view on this?

22 COMMISSIONER REDENBAUGH: I join that
23 position.

24 CHAIRPERSON BERRY: All right. Is there
25 any staff reason why we should or should not that I

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1 don't know about?

2 STAFF DIRECTOR JIN: Well, I mean, I
3 understand and, of course, approve of the idea if
4 the Commissioners need more time. You know, that's
5 their prerogative, but, I mean, the staff concern
6 would just be at the next meeting we probably need
7 to have a very short business meeting because we're
8 going to have a briefing wall to wall, which is why
9 we're going to start at eight or 8:30.

10 So timing wise, we're hoping to keep the
11 business meeting very short. Other than that, we
12 have no concerns.

13 COMMISSIONER BRACERAS: Maybe we could
14 hear from Ms. Carr today but reserve judgment just
15 because I feel that, you know, we did devote two
16 full Commission meetings to these hearing. The
17 report, you know, took over a year basically to put
18 together and prepare, and it is quite lengthy, and
19 I've skimmed it, but I'd like to go over it a little
20 bit more carefully before I make a decision.

21 And so I do feel that I need more time,
22 but if you want to, because of the packed schedule
23 next time, hear from the staff today and then vote
24 next time, that would be workable for me.

25 CHAIRPERSON BERRY: Does anybody have

1 any objection to that? Do you object?

2 COMMISSIONER REDENBAUGH: No, I don't
3 object.

4 CHAIRPERSON BERRY: Oh, okay.

5 VICE CHAIRPERSON REYNOSO: Madam Chair,
6 I would suggest that everybody have a long airplane
7 ride coming in and that will --

8 (Laughter.)

9 COMMISSIONER THERNSTROM: We need to get
10 here via California.

11 CHAIRPERSON BERRY: So why don't we do
12 that then, Staff Director?

13 STAFF DIRECTOR JIN: Okay.

14 CHAIRPERSON BERRY: Let Debra go ahead
15 and say something about it, and then we just wait
16 until next time.

17 Yes, Commissioner Redenbaugh.

18 COMMISSIONER REDENBAUGH: That
19 absolutely is a good solution in this case, and may
20 we ask the Staff Director on reports that are this
21 size and complexity that we have more than seven
22 days for their contemplation?

23 STAFF DIRECTOR JIN: Yes. We try to and
24 sometimes --

25 COMMISSIONER EDLEY: Just say yes.

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1 CHAIRPERSON BERRY: Just say yes.

2 (Laughter.)

3 COMMISSIONER REDENBAUGH: Sometimes you
4 just have to say yes.

5 STAFF DIRECTOR JIN: Yes, we'll do the
6 best we can.

7 COMMISSIONER REDENBAUGH: We will, too.

8 CHAIRPERSON BERRY: Can we now have
9 Debra?

10 STAFF DIRECTOR JIN: Yes, and could I
11 just make one more comment?

12 CHAIRPERSON BERRY: Yes.

13 STAFF DIRECTOR JIN: I mean, my
14 suggestion is I think that to maximize the time
15 here, hopefully it's not just Debra making a
16 presentation, but if you have questions, even
17 preliminary questions, with the understanding that
18 some of you may not have read everything, I think
19 that kind of dialogue would be very constructive,
20 too. So I would encourage that.

21 CHAIRPERSON BERRY: If anyone has any.

22 COMMISSIONER BRACERAS: Sure, right.

23 CHAIRPERSON BERRY: Go ahead, Debra,
24 please.

25 MS. CARR: I'm not sure that my comments

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1 will save you a lot of time next month because
2 basically all I really needed to tell you was, as
3 Commissioner Braceras noted, the result of the
4 environmental justice hearings that the Commission
5 held in January and February of 2002.

6 As you may recall, the Commission
7 approved that environmental justice hearing by a
8 vote in December of 2000, and then in December of
9 2001 agreed to set a date of FY '02 for the actual
10 hearings. Those hearings obviously did occur.

11 The report took a little over a year to
12 complete. However, we think it actually addresses
13 the issues that were identified as important to
14 policy makers, to advocates, to community groups,
15 and to the federal agencies.

16 So as you will see in the report, the
17 issues that surfaced as critical or significant by
18 those participating in the hearing would be to
19 actually seek to explain this concept of
20 environmental justice, which is done in Chapter 2 of
21 this report.

22 Also in Chapter 2, in addition to
23 explaining the concept, we tackled some of the
24 specific issues related to the concept, such as, you
25 know, how adverse impact is determined, whether or

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1 not opposition to environmental justice is
2 appropriately rooted on some economic concerns that
3 the Commission has heard about and how some federal
4 programs, like Super Fund actually can help if
5 appropriately funded in addressing some of these
6 environmental justice concerns that you heard about.

7 Chapter 3 takes on the Title VI
8 component, which you all heard extensively about in
9 the hearing.

10 The four agencies who testified, the
11 representatives from EPA, Interior, Transportation,
12 and Health and Human Services, all have Title VI
13 programs, and all told the commission that their
14 title VI programs were tools for achieving
15 environmental justice and addressing complaints that
16 had environmental components to them.

17 And so Chapter 3 is an overview of those
18 Title VI programs in those four agencies.

19 The Commission also heard about the
20 impact of the Sandoval decision, and I believe
21 Commissioner Edley specifically wanted to know how
22 the agencies would respond to Sandoval, and so
23 Chapter 4 is an analysis of Sandoval and talks about
24 some agency responses.

25 The bottom line on that is that Sandoval

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1 really puts the pressure on federal agencies to have
2 strong Title VI enforcement programs.

3 Let's see. The last two issues,
4 actually three issues that the Commission heard
5 about involve the use of alternate dispute
6 resolution, the importance of data collection, and
7 accountability issues. Accountability is
8 particularly of interest to Commissioner Redenbaugh,
9 and so in that chapter we looked at how agencies
10 create evaluation criteria and measure outcome as it
11 relates to environmental justice enforcement.

12 And the final chapter deals with
13 recommendations, and the recommendations are
14 straightforward laid out and are related to the
15 topics that are discussed in the report.

16 CHAIRPERSON BERRY: Okay, all right.
17 Then I guess with that -- yes, Commissioner Edley,
18 were you about to say something?

19 COMMISSIONER EDLEY: Well, I hope it's
20 not inappropriate, and I know we're going to have a
21 discussion, but I just want to commend the staff.
22 When I started going through this, I was just
23 gleeful because I had found the reading that I can
24 use in the seminar I'm teaching when we get to the
25 point where I have to do environmental justice. So

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1 you've saved me a lot of work.

2 I did have a question of what if -- I
3 think it really is a wonderful piece of --

4 COMMISSIONER BRACERAS: For which
5 course?

6 COMMISSIONER EDLEY: It's a civil rights
7 seminar on non-education related policy topics.

8 Can you say something about the vetting
9 with agencies? Have you gotten agency comments?
10 And what was the tenor of those comments thus far?

11 MS. CARR: We did go through effective
12 agency review. All four of the agencies were sent
13 portions of the report that dealt with issues of
14 substance, either portions where we identified
15 certain reports, certain activities and programs,
16 used data that they had previously provided to us,
17 or used data that related to their programs that we
18 received from other sources.

19 EPA had comments ranging from
20 substantive to minor issues. To the extent that any
21 agency submitted a comment that would change our
22 overall assessment of their program, we incorporated
23 their comment and explained its impact or used it in
24 our analysis.

25 To the extent a comment wasn't

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1 substantive or didn't change the bottom line
2 finding, we did not necessarily include that comment
3 because it didn't change the report.

4 There were a few occasions where even
5 though a comment did not change the staff's
6 assessment, we felt that we would, nonetheless,
7 include it if it really helped just illustrate or
8 highlight better a particular point.

9 COMMISSIONER EDLEY: I see. So those
10 references to the agencies' reactions, that came out
11 of the affected agency review that are sprinkled in
12 here.

13 MS. CARR: Yes, to some extent, but
14 remember a lot of the information that went into the
15 report came from the hearing, came from comments in
16 open session, came from written and other
17 submissions, and came from staff independent
18 document review and research.

19 And to the extent that we missed
20 something or could have gotten something a little
21 bit better, the agencies, if they pointed that out,
22 we tried to accommodate that and reflect that.

23 CHAIRPERSON BERRY: Yes, Commissioner
24 Thernstrom.

25 COMMISSIONER THERNSTROM: Were the

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1 relevant sections sent, for instance, to Christopher
2 Foreman or was that do you think unnecessary under
3 the defame and degrade?

4 MS. CARR: It was not required under the
5 defame and degrade because nothing in the report as
6 it related to Chris Foreman, for example, rose to
7 the level of defame and degrade by our own internal
8 policies and standards, and since Chris Foreman
9 wasn't, you know, an agency under review who we felt
10 needed fair comment, it would not have been afforded
11 to him for that reason.

12 CHAIRPERSON BERRY: Yes, Commissioner.

13 COMMISSIONER KIRSANOW: I have two
14 questions that are not related to one another.
15 First is, Debra, I see strewn throughout this
16 report, which is quite lengthy, a number of
17 references to communities of color, but I don't see
18 any definition of community of color, and I was
19 wondering what does that mean, and what ethnicities
20 are contained within that definition.

21 There were two -- go ahead.

22 MS. CARR: Actually there is a
23 definition of the terms "minority," "minority
24 populations" in Chapter 1 in Footnote 6, and those
25 words, "minority," "minority population," and

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1 "communities of color," are used interchangeably
2 with the understanding that they mean the same as
3 defined in the executive order, its accompanying
4 memorandum, and as the agencies have defined it for
5 us in our interrogatories to them.

6 COMMISSIONER KIRSANOW: Good. Number
7 two is I noticed toward the end there's a reference
8 to OMB guidelines regarding the quality and accuracy
9 of information that all agencies must develop
10 guidelines to do that.

11 And I was just wondering, aside from
12 EPA, do we have such guidelines?

13 MS. CARR: Actually we do. They're
14 still under development/review in the Staff
15 Director's Office. So we've actually been trying to
16 implement our own regulations.

17 COMMISSIONER KIRSANOW: What do you
18 think? What type of timetable are we looking at?

19 MS. CARR: I'd have to defer to OSD.

20 STAFF DIRECTOR JIN: I'm sorry. Can you
21 repeat the question, Commissioner?

22 COMMISSIONER KIRSANOW: Yeah, Debra has
23 just indicated that we're in the process of
24 implementing some type of guidelines to insure the
25 quality and accuracy of information or reports that

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1 we produce, and I was wondering what the timetable
2 for promulgation of those guidelines might be.

3 STAFF DIRECTOR JIN: Yeah, I think I
4 probably need to talk to Debra a little more about
5 that. I apologize for seeming like I'm punting, but
6 I think that's probably the best answer at this
7 point.

8 CHAIRPERSON BERRY: And you'll give us
9 an answer after that.

10 STAFF DIRECTOR JIN: Right.

11 CHAIRPERSON BERRY: Maybe by next time
12 you can give us an answer to the question. Okay?

13 Other questions for Debra. I would like
14 to know -- yes.

15 VICE CHAIRPERSON REYNOSO: No, I just
16 want to comment that I thought it was very well
17 done, frankly, a very moderate approach to the
18 serious issues that are posed, but I thought it was
19 well analyzed.

20 CHAIRPERSON BERRY: I just wanted to ask
21 you what was the general tone and tenor of the
22 responses, in general, because my experience around
23 here with environmental issues is that since the
24 first encounter in '70-something or other for my
25 time with Bill Ruckelshaus over the EPA when he

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1 didn't understand how that was part of their
2 function, and he then came to understand that.

3 The agencies have generally sort of
4 accepted whatever political administration was in
5 that there was a lot more work that needed to be
6 done and there were a lot of issues that needed to
7 be looked at, and they're trying a hard as they can,
8 but that these are not only complex, but that they
9 know that there are major issues out there, and they
10 haven't been sensitive, as in some cases that we
11 worked on issues, where people say, well, there's no
12 problem, and why are you asking us this question.

13 So what is the tone and tenor of the
14 responses?

15 MS. CARR: Well, I think to a great
16 degree when it's the Commission on Civil Rights
17 going to an agency saying, "Hey, we're doing a
18 study," we're not necessarily welcome with open
19 arms.

20 However, as we worked with the agencies,
21 explained that we were actually trying to do a fair
22 and balanced review and wanted to reflect the extent
23 to which they were implementing the executive order,
24 they all were receptive and cooperative. In
25 particular, I think, EPA's Office of Civil Rights

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1 and the Department of Transportation's Office, of
 2 Civil Rights and their legal office were quite
 3 cooperative, and I think the information that DOT
 4 gave on issues, like how can you address
 5 environmental justice issues on the front end, and
 6 do more of the prevention. How do you get by state
 7 and local authorities, and to what extent federal
 8 agencies can bring that out?

9 I think that was very useful
 10 information, and I hope we've incorporated that
 11 information well in this report.

12 CHAIRPERSON BERRY: Okay, all right. No
 13 other questions about this. Then we will by
 14 agreement defer this, Staff Director, until next
 15 time and you'll put it on the agenda. We'll put it
 16 on the agenda again.

17 STAFF DIRECTOR JIN: Okay.

18 CHAIRPERSON BERRY: Does anyone have any
 19 other agenda items before we go to the briefing?
 20 Yes, Commissioner Thernstrom.

21 COMMISSIONER THERNSTROM: I just want to
 22 just note my appreciation for the postponement
 23 because I really haven't had time to read this. So
 24 thank you very much.

25 CHAIRPERSON BERRY: Okay. Could

1 Commissioner Thernstrom tell me when her book -- is
2 it out?

3 COMMISSIONER THERNSTROM: We have --

4 CHAIRPERSON BERRY: And are you giving
5 away copies?

6 COMMISSIONER THERNSTROM: We've got the
7 first copies, and I assume the publisher is mailing
8 it to book stores this week or early next week.

9 CHAIRPERSON BERRY: And we'll be given
10 complimentary copies to --

11 COMMISSIONER THERNSTROM: I will. I at
12 the moment only have ten copies.

13 CHAIRPERSON BERRY: Oh, okay.

14 COMMISSIONER THERNSTROM: But I will
15 definitely do so, and I was thrilled -- here it is,
16 folks -- I was thrilled that we made the Washington
17 Post Book World list of books to look for this fall.

18 PARTICIPANT: Congratulations.

19 COMMISSIONER THERNSTROM: So that was
20 very, very nice this past weekend.

21 **VIII. Presentation on Native Americans**
22 **and the South Dakota Criminal Justice System**

23 CHAIRPERSON BERRY: Okay, all right,
24 good. We then will go to the briefing, and could we
25 ask Dr. Braunstein to come forward please? And then

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1 I will introduce this topic.

2 Some of you will recall, I hope that we
3 went to South Dakota. Some of us went to South
4 Dakota when the South Dakota State Advisory
5 Committee did a forum on Native Americans in South
6 Dakota and the justice system, which came about
7 after a number of Native Americans had been killed
8 in what were alleged to be suspicious circumstances
9 in South Dakota, and it was a big political issue in
10 that state.

11 And the SAC took up this issue and
12 invited us to come out, and we did; some of us did.

13 And it was a wonderful event, wonderful in the
14 sense that the subject was tragic, but people came
15 from all over the state, driving for miles and miles
16 and miles they told me to get there in order to be
17 in the public witness part of this thing.

18 And then as a result, there was a report
19 which asked for a federal task force to look at
20 inequities in administration of justice that came
21 out in that discussion.

22 And it has had significant impact in the
23 state, and Dr. Richard Braunstein, who is an
24 assistant professor in both political science and
25 the W.O. Farber Center for Civil Leadership and the

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1 Government Research Bureau -- he's split three ways
2 at the University of South Dakota -- undertook a
3 study which was commissioned by the State of South
4 Dakota on this whole subject of criminal justice,
5 the administration of justice, and access by the
6 Native American people and how they are treated in
7 the state.

8 He is also the founder and Executive
9 Director of CIVIC, a nonprofit, nonpartisan
10 organization dedicated to providing citizens with
11 access to a wide range of public voter information.

12 He has come to us to present this
13 information that he elicited and to answer some
14 questions for us on this important study. As I
15 said, it has had great impact in the State of South
16 Dakota and in Indian Country generally, and we very
17 much appreciate your coming forward to us today.

18 Could you please proceed?

19 Yes?

20 COMMISSIONER THERNSTROM: Just one
21 announcement. With apologies and absolutely no
22 disrespect, Commissioner Kirsanow and I have to
23 leave very shortly for another engagement, but we
24 will be reading very carefully the transcript of
25 your remarks, and again, I do apologize.

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1 DR. BRAUNSTEIN: There is no offense
2 taken. You may also look through my presentation.
3 I'll leave you --

4 COMMISSIONER THERNSTROM: Oh, thank you.
5 That's great. I'm delighted that's there.

6 DR. BRAUNSTEIN: Sure.

7 COMMISSIONER THERNSTROM: And appreciate
8 your coming very much.

9 DR. BRAUNSTEIN: Thank you.

10 CHAIRPERSON BERRY: Okay. Thank you.

11 All right. Dr. Braunstein. And do you
12 want to introduce your colleague?

13 DR. BRAUNSTEIN: Yes. Jeremy Zell is a
14 research assistant with the Government Research
15 Bureau in my office, and he's going to be helping
16 today.

17 I'd like to thank the Commission for
18 inviting me here today. I've been spending the past
19 two years or so after the SAC meeting trying to find
20 out whether or not the empirical evidence gathered
21 from the state's criminal justice system bears out a
22 perception which was forwarded in that report that
23 suggests that there's a double standard in South
24 Dakota criminal justice. And so we've been working
25 quite hard to find out whether or not a broad range

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1 of empirical data bears that out.

2 And so I'm going to be reporting the
3 findings of our initial research on that topic
4 today, and also, that initial research elicited a
5 second phase to collect even more data than the
6 state itself maintains, and that is from local law
7 enforcement and prosecutorial records, pre-sentence
8 investigations, and the like.

9 And so we're in the midst of that
10 effort, and I'll be able to present some of those
11 findings, the preliminary findings from that second
12 phase here today as well.

13 And I just want to welcome any comments
14 and criticisms, as this is very much a work in
15 progress. I anticipate that this work will progress
16 into a national study that I'll propose in January
17 to the National institute of Justice, to study the
18 impact of federal jurisdiction on the administration
19 of American Indian criminal justice issues
20 generally, and have had some degree of cooperation
21 from federal agencies and other states as it relates
22 to, you know, moving that agenda forward.

23 And so, again, I just welcome criticisms
24 and comments that might, you know, sort of be
25 productive towards these larger research ends of

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1 American Indian criminal justice.

2 So I'll just ask Jeremy to go forward.

3 I think I've already basically suggested
4 or explained, rather, what our objectives are. So
5 we can go forward.

6 The orientation to this research is to
7 be able to restructure the state's criminal justice
8 data so that we track individuals from their first
9 entrance into the system. That's the arrest stage
10 and the initial charging stage, through to wherever
11 they drop off in the process, whether the charges
12 are dismissed before prosecution or whether they are
13 released after the full expiration of a prison term.

14 So wherever they would drop off, that is the
15 objective. We're just trying to find out what
16 motivates those outcomes.

17 You can see that we initially had a very
18 large number of cases. There were 178,000 cases
19 shared with us by the state from 1994 to 2000.
20 Those include the records from the Division of
21 Criminal Investigation. That's DCI. The courts,
22 that's the Unified Judicial System or UJS, and the
23 Department of Corrections.

24 And so to the extent that we had
25 records, we decided to narrow our study to studying

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1 only those cases where there was a felony, at least
2 one felony on the docket.

3 South Dakota dockets allow for up to
4 eight charges to be present, and we excluded any
5 cases that did not have at least one felony in those
6 eight charges.

7 Then we decided -- just give me one more
8 second -- we decided to restructure the data, moving
9 it away from the docket structure that's imposed by
10 the State of South Dakota, and instead tracking
11 individuals. And so you see the 18,186 cases are
12 the cases that we actually analyzed for this
13 research.

14 Oftentimes it's suggested that
15 disparities can be informed by comparisons of census
16 data with criminal justice data, and you see in the
17 left panel of this slide that there is a disparity
18 of 8.3 percent to 17. -- what is that? I can't even
19 see it -- 6 percent in the felonies data set. That
20 is in the 24,000 cases by the way.

21 And I believe that that is an
22 unproductive comparison, and so I decided to include
23 this slide to open up for discussion my views that
24 one cannot make these kinds of comparisons. These
25 comparisons tell us very little about the systems

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1 behavior. It tells us very little about individual
2 criminal defendants' behavior, and as a result,
3 tells us very little at all about disparities in the
4 criminal justice system.

5 And so going forward, my research
6 proposes that we start from the point of the
7 criminal justice system and employ a 20 percent rule
8 to identify the presence of disparities which are of
9 concern rather than just simply benign disparities,
10 which may result from any number of variations
11 within criminal justice or individual behavior.

12 And so the way that this 20 percent rule
13 works is that of the 18,000 cases that we studied,
14 American Indians constitute 16.7 percent of all
15 those cases. Twenty percent of that is
16 approximately 3.3. So we create a threshold above
17 and below to identify the presence of under or over
18 representation.

19 I submit to the Commission that
20 exceeding the threshold of under or over
21 representation, that is, the 20 percent rule, is not
22 indicative of discriminatory conduct, but rather a
23 source of concern that ought to be further
24 investigated by practitioners, administrators, and
25 leaders within the minority community. I find this

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1 to be a more compelling approach that was first
2 forwarded in a study of Latino education rights
3 issues and by Ken Meier and Joseph Stewart, and I
4 find this to be a very compelling approach that was
5 used in their study of civil rights in the
6 Department of Education Study.

7 And I hope to forward this as a standard
8 that can be reliably used in these kinds of studies.

9 So I'll show you how it works here.

10 One of the first instances, certainly
11 not the first instance, of disparity that we
12 observed in our study is the percent of American
13 Indians that were determined to be unbondable by the
14 courts. This is not a measure of how many were
15 released on bond, but rather how many were
16 determined by the courts to be unbondable.

17 And you see 27 percent is clearly above
18 the 3.3 percent threshold that would be on the up
19 side of the 16.7 value, and so once you get past,
20 you know, perhaps 20 percent, just to be
21 approximate, you see that there's a considerable
22 over representation here.

23 This is not an uncomplicated finding.
24 The decision for bond is a discretionary decision.
25 It often relates to the crime itself that's before

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1 the court, and so the more serious crime, the less
2 likely you're going to find bond, and there is a
3 bias that I'll describe in a few minutes where
4 American Indians have committed in the State of
5 South Dakota's data more violent crimes than whites
6 by a percentage. And so that might be behind this.

7 I'll talk to you a little bit later
8 about how we're going to move forward to pinpoint
9 these effects, but I don't have that conclusion to
10 share with you today.

11 I can say, however, that it is a rather
12 large disparity by our 20 percent rule.

13 It's perhaps even more of a concern
14 based on the initial charge data. The left most
15 poll shows the charge severity, and you can see that
16 the white group, which is the blue column behind the
17 American Indian column is slightly higher in each of
18 the categories. So charge severity, charge counts
19 are slightly higher for the white community in South
20 Dakota than they are for the Indian community, and
21 this might inform some expectations about
22 bondability. It might inform some expectations
23 about sentence length, incarceration, and the like.

24 And so going into it, it seems as though
25 there's rough parity between the two racial groups

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1 that then raise concerns for individual level
2 disparities that we found.

3 So again, just to reiterate here, the
4 charge severity which is measured by South Dakota
5 felony class does not show disparities between the
6 groups. In fact, it shows slightly more serious
7 crimes being committed, again by felony class, by
8 the white community.

9 That also goes to the amount of charges
10 on the docket. I said before that you can have up
11 to eight charges on the docket. Charge count counts
12 those, right, and provides an average, and the
13 average for the white community is, again, slightly
14 higher than it is for the Indian community.

15 When we think about case disposition,
16 that's the outcome of cases. I've highlighted the
17 instances where the 20 percent threshold was
18 exceeded with those values that are in red here.
19 You can see that in the acquittal rate, that is, in
20 the few instances where someone actually goes to
21 trial, that number is only two percent of all cases
22 in the State of South Dakota. Eleven, point, one
23 percent of those cases resulted in acquittal for an
24 American Indian.

25 We would expect that number to be 16.7,

1 right? That's the expectation, that there would be,
2 you know, something like even tracking through the
3 system. To the extent that it's within the 20
4 percent rule, I would suggest that that's a benign
5 disparity that doesn't generate concern. So the
6 acquittal rate is a concern.

7 The suspended imposition rate for the
8 American Indian community is also a concern, where
9 the guilty plea dismissal rates and transfer to
10 other jurisdictions or alternative institutions,
11 like treatment and things like this, are not of
12 concern.

13 For the white community, the under
14 representation and transfer is a concern because one
15 would expect this is a good outcome. So the white
16 community would be concerned about the lack of
17 transfer to, let's say, treatment or other types of
18 administration of their case.

19 Hold on for one second.

20 The suspended imposition column is,
21 again, like bond. It is not a simple consideration.
22 It's not offered simply for first time offenders. A
23 suspended imposition is kind of like a conditional
24 discharge. It's called many names in the criminal
25 justice system. It basically says that the sentence

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1 will be imposed but not administered, and so if a
2 set of conditions are met, like, for instance,
3 reliable probation or something like this, the
4 sentence basically disappears after a period of
5 time.

6 This is a good result, particularly for
7 first time offenders who are not necessarily bad
8 folks, but who have made a mistake. The under
9 representation of American Indians may be informed
10 by the commission of violent crimes. Again, I've
11 noted that there's a bias, and I'll present the
12 actual numbers on that in just a second, but when we
13 look more carefully at suspended impositions, just
14 as one area of concern where the disparity exceeded
15 the 20 percent rule, we see that violent crime
16 defendants generally received fewer suspended
17 impositions.

18 This little indented smaller text
19 provides the numbers here. Only 15 percent of
20 suspended impositions were given to defendants with
21 at least one violent crime on the docket, and that
22 amounted to only 39 instances over the seven-year
23 period that we studied.

24 So I decided that it was important to
25 control for violent offenses, right? So I kind of

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1 put a control and filtered only those violent crime
2 cases and found that the odds ratios were still off,
3 and it makes the disparity look slightly worse when
4 controlling for violent crimes. The ratio is one to
5 eight of an American Indian receiving a suspended
6 imposition where a violent crime is at issue, where
7 for white defendants that ratio is three to four.

8 So, again, this is a source of concern,
9 and so here are the numbers basically for the
10 violent crime versus nonviolent crime cases in our
11 data set.

12 You see that there's, again, an over
13 representation of American Indians at 23.8 percent
14 of those committing violent crime and an under
15 representation within the 20 percent threshold of
16 them committing nonviolent crimes.

17 You'll notice that the white community
18 did not exceed because their number is about 15
19 percent, right? Because 20 percent of 76, you
20 know. So they did not exceed or under represent or
21 over represent in either of these categories.

22 The only over representation or under
23 representation is in the violent crime area for
24 American Indians.

25 Well, you know, most folks want to know

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1 about sentence length, and so obviously we've done
2 some careful analysis of sentence length. Now, what
3 we've done is tried to model the reality of the
4 process so where there were consecutive and
5 concurrent sentences offered in the various
6 positions in the docket or where there were sentence
7 dismissals or amendments, we took all of these into
8 account in modeling a final or what I call actual
9 sentence length.

10 So the 667 days for all crimes, that's
11 the over representation or the bias, let's say, in
12 sentence length that works to the disadvantage of
13 American Indians. It takes into account not the
14 sentence that was given by the court for each crime,
15 but rather the actuality or the expectation that
16 they will serve a specific amount of time.

17 And so if you kind of look at that as a
18 lower number than the sentences that are typically
19 given, the 667 days appears to be even more of a
20 concern than one would initially think.

21 There's a split in South Dakota criminal
22 justice I'm sorry to report between something like a
23 white crime and something like an Indian crime.
24 White crime here I'm associating with nonviolent
25 crimes, and it is the case that in nonviolent crime

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1 categories, whites receive the longer sentences than
2 Indians. All right?

3 And so in ten of ten nonviolent crime
4 categories that we studied, there were longer
5 sentences for white defendants than American Indian
6 defendants, and I'll show you those crime categories
7 in just a second.

8 That was a slight larger mean or average
9 of 23 and a half days. When we look only at violent
10 crimes, we see that it's 522 days longer for
11 American Indians. That's the sentence, but it's not
12 true that in each crime category American Indians
13 were receiving longer average sentences. In only
14 eight of ten crime categories, American Indians
15 received it.

16 So you see when we break this up whites
17 are being disadvantaged, if you will, if you'll
18 allow me to use that language, in nonviolent crime
19 categories. In each of those nonviolent crime
20 categories there were longer sentences for whites,
21 and in all but assault and vehicular homicide,
22 actually the first and last alphabetically, American
23 Indians received longer sentences. So whites
24 received longer sentences in assault and vehicular
25 homicide cases.

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1 All right. Well, looking at, you know,
2 kind of the pre-prison end of the process, we saw
3 that from the time you're arrested to the time where
4 your case is disposed of was shorter for whites in
5 all instances. All right. So whites are moving
6 through the system in South Dakota more quickly,
7 that is, from arrest to trial or -- excuse me --
8 from arrest to case disposition, which would be the
9 end of a trial in that instance.

10 All right. Thirty-seven days shorter
11 for whites in all cases; 47 days shorter where there
12 are multiple felonies on the docket; and 25 days
13 shorter where there's only a single felony on the
14 docket.

15 I'm suggesting to the Commission today
16 that this is consistent with also plea bargain
17 rates, and I'll explain why. American Indians
18 accept more plea bargains than whites and also go to
19 trial less. I'm concerned that this is in some ways
20 related to the legal representational structures in
21 the State of South Dakota.

22 And there's a correlation between these
23 outcomes or disparities that are noted through this
24 part of the presentation and the distribution of
25 legal representation.

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1 I don't want to make assumptions about
2 the quality of legal representation here. So please
3 do not misinterpret what I'm saying. The numbers
4 suggest that case outcomes are better with private
5 counsel. I don't have a slide on that, but case
6 outcomes are better for any defendant, whether it's
7 white or Indian, where there is private counsel.
8 I'm not going to speculate on why that is. I'll
9 just share the data with you today.

10 The public defender category, this
11 middle category, you can see that American Indians
12 are using public defenders or -- excuse me. My
13 mistake. Court appointed. I put a qualification on
14 the bottom of the slide, "court appointed." I'll
15 explain just in a minute what that means.

16 But where court appointed attorneys are
17 used, American Indians are using them much more
18 frequently. They're also using private counsel in
19 fewer instances.

20 I say "court appointed." Some of you
21 from more urban areas may not be familiar with this,
22 but in the State of South Dakota, there are only
23 three public defender offices in the larger
24 communities. If you're in a more rural community in
25 the State of South Dakota, you are appointed an

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1 attorney.

2 As in other rural communities in our
3 nation, those attorneys typically are not criminal
4 justice or, let's say, criminal defense specialists.

5 By and large, these are general practitioners that
6 are on the court's rolls as a source of additional
7 business. I'm sorry to say that in such stark
8 terms, but I fear that that could be problematic.

9 It has been shown in other criminal
10 justice studies to be correlated with less favorable
11 outcomes, and so we are going to investigate that
12 much more closely.

13 Again, I have no explanation for this.
14 I can only show you the data and point out the
15 correlation between outcomes being better with
16 private attorneys. So we'll go forward.

17 Now we're going to get into an analysis
18 of the prison phase of the criminal justice process.

19 Overall prison time for American Indians was
20 longer, 28 days, in fact. That's the amount of time
21 that was served regardless of whether you expired
22 your sentence fully or whether you were released on
23 parole.

24 The news is not all bad here. In fact,
25 it's quite good, and I think that the Commission

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1 would be particularly interested in what I have to
 2 say right now. That is, there was a legislative
 3 reform in 1996 that roughly models the federal
 4 sentencing guidelines in terms of introducing a
 5 formula to determine parole eligibility.

6 And as you all must know, the underlying
 7 norm here is to remove the influence of
 8 socioeconomic factors, including race, as a
 9 demographic. And so where that was instituted, we
 10 have a pre- and post-reform test that we have done.

11 The pre-reform period included 54 days
 12 longer prison time for American Indians before the
 13 reform, which left the decision to a parole board,
 14 and zero days' difference -- and I'm going to repeat
 15 that -- zero days' difference from 1996 after the
 16 reform. This is quite a remarkable finding, I
 17 think, that this parole formula would be responsible
 18 for removing not only the actual days of disparity,
 19 but the statistical significance of that disparity.

20 That 54-day disparity, as everything
 21 that I've presented for you today -- I've only
 22 presented findings which are statistically
 23 significant, by the way -- that was a significant
 24 finding, 54 days, and zero days, which is also just
 25 a remarkable thing.

1 The downside to this is that parole
2 violations in the state went up after the reform,
3 and so these two bars, the before and after bars,
4 show you that in each instance for American Indians
5 and whites parole violations went up after the
6 reform.

7 Now, obviously prison administrators
8 would argue that they are better situated to make
9 parole determinations than a formula is, and from
10 this data, one would suggest that they are correct.

11 I juxtapose the issue like this. Which
12 is our community more interested in, racial equality
13 or public safety? And that is a rather stark
14 contrast, given the data that we have to analyze
15 here today.

16 Again, I don't propose an answer to
17 that. I can just point you to the data. So we'll
18 continue on.

19 Yes?

20 COMMISSIONER REDENBAUGH: Did you want
21 us to hold questions or --

22 DR. BRAUNSTEIN: No. Absolutely,
23 please.

24 COMMISSIONER REDENBAUGH: Can we ask?

25 DR. BRAUNSTEIN: Absolutely.

1 COMMISSIONER REDENBAUGH: This is a
2 fascinating presentation. In terms of the tradeoff
3 you're just talking about, the shorter sentences or
4 shorter time versus the tradeoff for higher parole
5 violations, did you look at the parole violations to
6 see if they were -- to sort them into significant
7 criminal acts or --

8 DR. BRAUNSTEIN: We did a little bit of
9 analysis, but I think --

10 COMMISSIONER REDENBAUGH: -- or
11 technical violations, like left the state or
12 something.

13 DR. BRAUNSTEIN: Yes. I think I can
14 answer that in part, and here's what I can
15 contribute. In that statistic is a number of parole
16 violations that came along with a new offense.

17 COMMISSIONER REDENBAUGH: Oh, okay.

18 DR. BRAUNSTEIN: So a new charge, right,
19 which then would start its own process, and that
20 increased as well.

21 COMMISSIONER REDENBAUGH: Okay.

22 DR. BRAUNSTEIN: I cannot answer --

23 COMMISSIONER REDENBAUGH: You are
24 measuring things then that we really must care
25 about.

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1 DR. BRAUNSTEIN: Yes.

2 COMMISSIONER REDENBAUGH: Okay.

3 DR. BRAUNSTEIN: That's true. I will
4 say that I should go back and look more carefully
5 at, let's say, procedural violations, whether they
6 showed up for their meetings and things like this or
7 left the state. You know, I'm sure there's a long
8 list, and I have done no analysis of that.

9 However, I did look at the number of
10 parole violations that resulted in a new charge, a
11 new crime, and that was up as well in each instance
12 for whites and Indians.

13 The numbers are roughly similar. In
14 other words, white parole violators are not
15 outpacing Indian parole violators, and so this is an
16 overall phenomenon that I think prison
17 administrators are rightly concerned about. It's a
18 tension that should be discussed in greater detail,
19 I think.

20 COMMISSIONER REDENBAUGH: And the
21 magnitude of the increase in parole violators is a
22 serious problem then, from your point of view.

23 DR. BRAUNSTEIN: Well, the number is
24 less than 25 percent. I mean, we saw I think it was
25 a 12 or 13 percent increase. I'm sorry I don't have

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1 that exact number to share with you right now. I'll
2 leave that up to policy makers to determine what the
3 cut point is for serious concern.

4 COMMISSIONER REDENBAUGH: Right. Okay.
5 But that's what I was -- yeah.

6 DR. BRAUNSTEIN: I don't really have an
7 answer to whether or not this is, you know,
8 alarming, you see?

9 COMMISSIONER REDENBAUGH: Right, because
10 maybe it's not.

11 DR. BRAUNSTEIN: Perhaps it's not.

12 COMMISSIONER REDENBAUGH: It depends on
13 the benefit on the other side.

14 COMMISSIONER MEEKS: But wait. So --

15 CHAIRPERSON BERRY: Is he -- are you at
16 the end?

17 DR. BRAUNSTEIN: No, I'm not at the end.

18 CHAIRPERSON BERRY: You all have more
19 questions? Okay, go ahead then.

20 COMMISSIONER MEEKS: Just to follow up
21 on his point, so parole violations after this, after
22 1996, went up for both non-Indians and white, or for
23 Indian and whites.

24 DR. BRAUNSTEIN: Yes, and we excluded
25 other racial groups from our studies.

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1 COMMISSIONER MEEKS: Okay, okay.

2 DR. BRAUNSTEIN: So I don't have on
3 Indian --

4 COMMISSIONER MEEKS: So before, Indians
5 served longer sentences than afterwards, I mean,
6 when all of the socioeconomic factors were --

7 DR. BRAUNSTEIN: Yes. There was a 54-
8 day disparity in the data before the parole reform.

9 The parole reform created an introduction of a new
10 variable called offense date, and so it was very
11 easy for us to study because the state had to
12 collect different types. In other words, they
13 couldn't apply the formula to people who had been in
14 the prison before the reform. This would have been
15 something like an ex post facto.

16 So it made it very easy to study, and so
17 we broke up the data into two groups, the before and
18 after group, and saw a 54-day disparity against
19 American Indians, that is, not against. That's a
20 wrong word. I think that that was longer for
21 American Indians before the reform and zero days
22 between the two groups after.

23 COMMISSIONER MEEKS: Okay.

24 CHAIRPERSON BERRY: And parole
25 violations --

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1 DR. BRAUNSTEIN: And parole violations
2 for both.

3 CHAIRPERSON BERRY: -- for both went up.

4 DR. BRAUNSTEIN: Yes, and you can look
5 at the polls. The American Indian numbers are just
6 slightly higher, but the scale is also larger. So
7 there's an optical illusion at issue here. All
8 right? Because the 25th --

9 COMMISSIONER MEEKS: Yeah, yeah.

10 DR. BRAUNSTEIN: Okay. So the larger
11 numbers would reduce the percentage difference. The
12 percentage differences are comparable.

13 CHAIRPERSON BERRY: But if the parole
14 violations went up for both groups --

15 DR. BRAUNSTEIN: Yes.

16 CHAIRPERSON BERRY: -- why did you say
17 at the end of the discussion, before Commissioner
18 Redenbaugh asked you a question, the issue is
19 whether you believe in public safety or racial
20 equality?

21 DR. BRAUNSTEIN: I'm suggesting that
22 parole violations are related to public safety in
23 this instance.

24 CHAIRPERSON BERRY: No, no, no, no, no,
25 no. If the numbers went up of both whites and

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1 Indians of people who were violators --

2 DR. BRAUNSTEIN: I understand the
3 question. I misunderstood before.

4 CHAIRPERSON BERRY: -- why did you state
5 it was a dichotomy --

6 DR. BRAUNSTEIN: Yes.

7 CHAIRPERSON BERRY: -- between public
8 safety and racial equality?

9 DR. BRAUNSTEIN: Yes, I'll answer that
10 question.

11 CHAIRPERSON BERRY: I don't understand.

12 DR. BRAUNSTEIN: I was thinking that
13 before the reform there was a disparity, and before
14 the reform parole violations were less, by a
15 percentage, for both groups, and for general cases.

16 After the reform the disparity is
17 removed, but parole violations went up.

18 CHAIRPERSON BERRY: But for both groups.

19 DR. BRAUNSTEIN: For both, for everyone.

20 CHAIRPERSON BERRY: That's what you
21 said.

22 DR. BRAUNSTEIN: Yes.

23 CHAIRPERSON BERRY: If they went up for
24 both groups, why does the two become --

25 DR. BRAUNSTEIN: Because -- because --

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1 well, okay. All right. I'll speak more directly.
2 If parole boards have discretion and if the
3 discretion is producing a disparity, all right, then
4 presumably the alternative to a formula is the
5 return to parole board discretion, which then
6 presumably would reintroduce a disparity.

7 CHAIRPERSON BERRY: But if both go up,
8 why isn't there some other remedy?

9 DR. BRAUNSTEIN: There may very well be.

10 CHAIRPERSON BERRY: Other than going
11 back to the old system if they both went up, which
12 would implicate public safety, right?

13 DR. BRAUNSTEIN: Yes, and right now
14 there are rough middle grounds in the parole
15 process. In other words, there's variation across
16 states. South Dakota uses a formula-based system.
17 Some states use full discretion for parole boards,
18 and so the answer to your question may be rooted in
19 the middle.

20 It may be the case that in some states
21 we could do analysis that could find some structural
22 process that, you know, serves both interests.

23 I'm speaking simply for our data here in
24 the State of South Dakota, and in a limited fashion,
25 I think too limited for your tastes, you know,

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1 posing it in terms of one or the other.

2 I know that there's variation. I know
3 that some states' parole systems use both, a
4 guideline rather than a formula. Ours is a formula,
5 right, which is determined before you serve your
6 first day, and some states use a kind of more
7 instructed guideline for a parole board that reduces
8 the discretion of the parole board, but is not as
9 formalistic as South Dakota's.

10 CHAIRPERSON BERRY: Well, as I often
11 tell my students, my question wasn't that
12 complicated or at that high a level. My question is
13 a very simple one.

14 DR. BRAUNSTEIN: I can say from the
15 State of South Dakota that it's all based on the
16 data.

17 CHAIRPERSON BERRY: Given the parole
18 violations went up, and I don't know the answer, but
19 if parole violations did, indeed, go up for both
20 groups, which ostensibly would implicate the public
21 safety, right? Would that be -- ostensibly;
22 hypothetically.

23 DR. BRAUNSTEIN: Certainly that's what I
24 was thinking.

25 CHAIRPERSON BERRY: Then, indeed, we may

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1 be willing to look at all kinds of options as to
2 what we might do.

3 DR. BRAUNSTEIN: That's correct.

4 CHAIRPERSON BERRY: Not that our stark
5 choice is to go back to the old system or to keep
6 this one and worry about the public safety. That
7 was my only point.

8 I mean, we don't necessarily have to go
9 back to using racial -- creating racial disparities.

10 There may be something else we need to do. I don't
11 know what the something else is, but the white
12 numbers went up --

13 DR. BRAUNSTEIN: Yes.

14 CHAIRPERSON BERRY: -- as well as the
15 Native Americans. That was my only point.

16 DR. BRAUNSTEIN: And I think that the
17 answer is probably rooted in empirical data from
18 other states that use middle ground approaches where
19 both discretion and guidelines structure the
20 decision.

21 CHAIRPERSON BERRY: Okay, sure. You may
22 proceed if you wish.

23 DR. BRAUNSTEIN: Yes. I would like to
24 share the second phase findings. You know, the
25 initial study that I showed you obviously does not

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1 point to anything like differential treatment, and
2 the perceptions and the SAC report suggested a
3 double standard. And so we were contracted to find
4 out whether there was a double standard existing,
5 and we found nothing like this because we cannot
6 control for demographic factors.

7 And so, you know, we need to compare
8 similarly situated individuals. So I'd like to say
9 the example that we need to cluster, you know, poor
10 whites and poor American Indians with similar
11 criminal histories and similar charges to see
12 whether or not there are disparate outcomes for
13 similarly situated cases, and to do that, we've had
14 to collect a large set of demographic information.

15 And so here in the second phase of the
16 research we've collected data on everything that you
17 see here and then some. I didn't include
18 everything, but you can see we're interested in
19 defendant demographics, including criminal history,
20 which the FBI is providing to us. The NCIC system
21 is very useful in this area.

22 Employment history, which we're getting
23 from pre-sentence investigations; educational
24 background, which we're getting from PSIs as well;
25 and family history.

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1 We're also interested in crime
2 demographics. We want to know what the use of
3 violence and weapon type, the resulting harm of
4 either a violent crime or a property crime, and also
5 the relationship of the defendant to the victim.
6 These crime demographics are also important controls
7 as we try to focus in on similarly situated cases
8 and also identify the role of the system in these
9 disparities.

10 The final thing, which is of great
11 importance to me -- and I'm sure to all of the
12 Commissioners here -- is the race of the victim
13 demographic. It's quite important to know how cases
14 -- what the outcome is in cases where we have
15 different kinds of intra-racial or interracial,
16 where the victim is white or the victim is American
17 Indian.

18 And so I'm going to report just at the,
19 again, percentage level a relatively negative
20 picture for the American Indian community in the
21 State of South Dakota. The red bars in the back
22 typically mean that it's a worst-case outcome for
23 the American Indian community.

24 The Indian community has a higher
25 percentage of unsatisfied judgments or restitutions.

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1 They have a worse criminal history, that is, a five-
2 year history of arrests being greater than four
3 arrests in five years; more Department of
4 Corrections commitments that would be greater than
5 or equal to one.

6 They have slightly higher, although very
7 close history of drug abuse, but a much higher
8 history of alcohol abuse.

9 I'll go forward here.

10 The education of American Indians is
11 less. I'm sorry that the bar suggests something
12 different, but the value is equal or means the
13 education level is less than 12, right? And so that
14 number is looking worse for the Indian community.

15 Employment is looking worse, where
16 there's less employment. Unemployment greater than
17 six months is also looking worse for the Indian
18 community.

19 The number of dependents that the
20 defendant is responsible for is also higher for the
21 American Indian community. The responsibility of
22 primary care is higher, although the economic
23 support figures are lower, which again is a negative
24 finding for the American Indian community, I
25 believe.

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1 The only thing that I've found that I'm
2 presenting here right now so far is that the history
3 of mental illness for the American Indian community
4 seems to be less than that for the white community.

5 Crime demographics and the victim
6 demographics here are, again, troubling. Crimes
7 involve actual violence. We've already talked about
8 that. That's higher. Crimes involving personal
9 injury is higher. Use of a weapon is higher, and
10 let's skip one, right? Drinking during the crime is
11 higher, and for the white community drugs during the
12 crime is higher for the white community.

13 We can go back to this victim
14 demographic. That's the fourth from the left. It
15 says where the first victim, and we have tracked
16 demographic information on up to three victims. I'm
17 going to report only on the position of the first
18 victim, which is typically the most harmed in the
19 way that these records are kept.

20 We see that there are more interracial
21 crimes in the Indian community, but I encourage the
22 Commission to realize that there's only 8.3 percent
23 population in the state, which means that there is
24 more opportunity for interracial crime in the Indian
25 community than there is for interracial crime in the

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1 white community, and so these findings are not
2 surprising, based on simple census figures.

3 This really suggests that Indians in
4 South Dakota are in sort of a double bind, right? I
5 write here that American Indians experience
6 disparities in socioeconomic areas, including higher
7 unemployment, lower education, lower incomes than
8 their white counterparts, and these disparities are
9 often and have been associated with, on the other
10 hand, longer sentences, tougher case dispositions,
11 more time spent in jail, and negative criminal
12 histories, each of which we've seen here in the
13 State of South Dakota.

14 And we'll move forward to provide more
15 pointed causal analysis after we complete this round
16 of data collection. So in January of 2004, we hope
17 to have our final report prepared with a
18 multivariate analysis, and in that we'll be able to
19 test the significance of these individual
20 demographics on things like sentence length, or the
21 dichotomous outcome of bondability, or whether you
22 get parole or not.

23 And so we'll have a more conclusive
24 report -- you can turn those lights on -- a more
25 conclusive report for those interested in this very

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1 difficult issue in January.

2 CHAIRPERSON BERRY: Isn't your --

3 DR. BRAUNSTEIN: Thank you.

4 CHAIRPERSON BERRY: -- if I may -- thank
5 you very much for the presentation. This is a very
6 interesting discussion.

7 What you have, in fact, done -- in civil
8 rights legalese that we are accustomed to -- is to
9 say that there may be a disparate impact in the
10 administration of justice, and you have said,
11 therefore, there is a rebuttable presumption that
12 something is going wrong with the Indians in that
13 system which might be --

14 DR. BRAUNSTEIN: I would correct one
15 thing that you said: "in the administration of
16 justice" -- it depends on what you mean by that.

17 CHAIRPERSON BERRY: I mean the system
18 from arrest to trial to punishment, that is,
19 incarceration, those steps.

20 DR. BRAUNSTEIN: That's a difficult
21 issue.

22 CHAIRPERSON BERRY: But that's what you
23 talked about --

24 DR. BRAUNSTEIN: Yes.

25 CHAIRPERSON BERRY: -- from arrest to

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1 charging, to trial, to all of the things that you
2 listed up there, to incarceration rates.

3 DR. BRAUNSTEIN: Yes.

4 CHAIRPERSON BERRY: That there may be
5 discrimination, but it is a rebuttable presumption
6 and not conclusive, and therefore, in order to see
7 whether it is, in fact, accurate, you will do this
8 other analysis, which may show from the data you
9 just gave us that it is highly reasonable that there
10 would be these disparities in the administration of
11 justice and that we would expect them because, given
12 the socioeconomic condition of the community, you
13 would expect them to go to jail at a higher rate, be
14 arrested and have all of these things done to them,
15 which, in fact, would give the lie to the Native-
16 American argument that they are mistreated in the
17 criminal justice system by shifting the discussion
18 to their socioeconomic condition, where they are
19 also mistreated.

20 But it gets the bear away from the
21 criminal justice system, which then has no real
22 responsibility for discrimination because the
23 discrimination comes -- it's like people who argue
24 that the reason why African Americans have trouble
25 and discrimination in employment or high

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1 incarceration rates or whatever, it's because as a
2 community we have lots of poor people who are not
3 well educated and the like, and so, therefore, you
4 end up blaming the victim, so to speak, because you
5 are in that condition.

6 And it may not shift the discussion to
7 talking about the debt that is owed to Native
8 American Indians or what has happened to them
9 historically to put them in the condition they're
10 in, and that somebody needs to do something about
11 these socioeconomic factors.

12 I'm not saying you're saying that.

13 DR. BRAUNSTEIN: I understand.

14 CHAIRPERSON BERRY: But it may lead to a
15 discussion that shifts the entire emphasis away from
16 what happens in the criminal justice system to these
17 people are in this predicament because of their own
18 deficits, and therefore, until they get over those
19 deficits, we can expect them to end up being in
20 jail, and da-da-da-da-da-da-da.

21 And I'm not sure where that leaves us,
22 but I'm just saying that that's the end result. But
23 my question and --

24 DR. BRAUNSTEIN: That may be the end
25 result.

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1 CHAIRPERSON BERRY: Yes. It may be, and
2 it may be that then what the Native American
3 community has to do -- and the people who care about
4 them -- is to not only focus on the responsibility
5 for these, quote, deficits, unquote -- I'm just
6 using those words to summarize -- but also refocus
7 attention again on what happens on the ground in the
8 criminal justice system.

9 Because just because someone is poor and
10 of a socioeconomic disadvantaged community, there
11 are other factors that may end up having them
12 mistreated. You may be mistreated in the criminal
13 justice system without regard to the fact that you
14 are poorly educated. You may or may not. There may
15 be something else, you know, going on.

16 I'm not saying that -- I'm not
17 criticizing what you're doing. I'm just saying that
18 the implications of all of this for the Native
19 American community are not entirely benign.

20 And the other thing, the only question I
21 wanted to ask you is, you said something about
22 mental illness and the rate of mental illness was
23 lower --

24 DR. BRAUNSTEIN: Yes.

25 CHAIRPERSON BERRY: -- in the Native

1 American community. And I was wondering where the
2 mental illness data came from.

3 DR. BRAUNSTEIN: Pre-sentence
4 investigations, and so if there was a record of an
5 assessment, I would imagine. I haven't talked to
6 Court Services to get their specific criteria for
7 this determination, but the court services
8 investigator would have determined that for any
9 defendant that a PSI, or pre-sentence investigation,
10 is completed for.

11 CHAIRPERSON BERRY: And would one of the
12 factors perhaps be whether or not the person has
13 ever been counseled or seen or involved in therapy
14 or any kind of thing for --

15 DR. BRAUNSTEIN: I would assume that's
16 the case, but, again, I haven't spoken to the
17 investigators that completed those reports.

18 CHAIRPERSON BERRY: Because we have
19 found in studies in the Latino and African American
20 community that there's less likelihood that anybody
21 would have gone to any kind of health care provider
22 for mental anything.

23 DR. BRAUNSTEIN: I've read these reports
24 as well.

25 CHAIRPERSON BERRY: -- that we've had

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1 it. So it might be a factor on that data.

2 DR. BRAUNSTEIN: It may very well be.

3 CHAIRPERSON BERRY: Yes. Commissioner
4 Meeks?

5 COMMISSIONER MEEKS: So, I mean, if you
6 look at the socioeconomic factors, I mean, clearly,
7 you know, Natives have higher, but I didn't really
8 understand whether there was a comparison between
9 non-Indians with similar factors and then whether
10 the court system treated then the white poor person
11 and the Indian poor person with the same.

12 DR. BRAUNSTEIN: And this is what I hope
13 to provide.

14 COMMISSIONER MEEKS: Okay. So you
15 haven't really gotten to that number. I mean, the
16 name of your study is "Does Race Matter." So --

17 DR. BRAUNSTEIN: We're on the trail.

18 COMMISSIONER MEEKS: Okay, okay. So
19 that's what you don't know yet.

20 DR. BRAUNSTEIN: Yes. I think that
21 there's something -- and this also responds to the
22 Chair's comments -- there's something in the
23 literature called the warranted disparity, and
24 something in the literature called an unwarranted
25 disparity, and unwarranted disparities are typically

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1 associated with misadministration or poor
2 administration of justice by the system.

3 And so this is the question that we are
4 after. What degree of responsibility falls with the
5 state, or is there a presence of a double standard,
6 in fact, rather than a perception?

7 And I hope that by controlling carefully
8 for all of these cases, in other words, getting down
9 to the similarly situated individuals, we'll be able
10 to have an estimate of warranted versus unwarranted
11 disparities. All right?

12 There should be no disparities between
13 similarly situated cases. Our court record and
14 civil rights law suggests that's the case, that
15 there are certain instances -- but they are few --
16 where similarly situated individuals can be treated
17 dissimilarly.

18 Justice in my opinion is not the similar
19 treatment of all cases. It's the similar treatment
20 of similar cases, right? And so when we get to the
21 final analysis, we'll be able to comment on this
22 particular point, and that's the commitment that I
23 certainly have to the research. And I think that
24 from that, even if it is the case that there are no
25 unwarranted disparities -- and I do not wish to

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1 speculate too much about this -- I think that
2 there's a great deal of concern in the State of
3 South Dakota by criminal justice administrators for
4 having a dialogue about what can be done.

5 I don't think that the cases that
6 they're going to suggest, well, we're not
7 responsible and, therefore, we don't have to talk
8 anymore about this.

9 And I just suggest this on the basis of
10 the cooperation that we've had, and that also
11 pertains to some federal agencies. You know, I
12 think that you know that there are many efforts
13 under foot to try to get to the heart of this issue,
14 and I hope to participate in that dialogue once we
15 have conclusions.

16 CHAIRPERSON BERRY: Yes.

17 VICE CHAIRPERSON REYNOSO: I think the
18 report is terrific because I think that numbers
19 matter, and I've never seen one where you've been
20 able to get as high a percentage of the folk
21 actually involved in the process to do your
22 analysis. So I was very impressed by that.

23 There are obviously some dangers. For
24 example, you started out the discussion by pointing
25 out the great disparity of Indians in prison as

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1 compared to the population, more than twice as many,
2 and you mentioned that you didn't think that that
3 was a significant figure because you have to look at
4 what's behind that.

5 And I guess I have some qualms about
6 your observation that that's not a significant
7 figure, because it seems to me that we have to look
8 at the entirety about how society approaches the
9 administration of justice system.

10 I appeared one time as a panelist before
11 the Ninth Circuit judges, and they had a report
12 asking the question: is there discrimination by the
13 judges in sentencing, because there's such a
14 disproportionately large number of Latinos and
15 African Americans being sentenced to prison by
16 judges in the Ninth Circuit.

17 And the conclusion of the report
18 basically was that there wasn't. And I can't tell
19 you from looking at the report that I could really
20 disagree with them, because they look, for example,
21 at how often has this person been arrested aside
22 from being convicted, and they look at the whole
23 background.

24 But of course, what the judges cannot
25 look at is, why were they arrested. Was the arrest

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1 proper, and so on?

2 And so from their criteria, there was no
3 discrimination. But I remember mentioning to them
4 that until I'm convinced that Latinos and African
5 Americans were ordained by God to be more criminally
6 prone, I'd be concerned about those great
7 disparities.

8 And so I'm just a little bit concerned
9 about --

10 DR. BRAUNSTEIN: May I respond to that?

11 VICE CHAIRPERSON REYNOSO: Oh,
12 certainly.

13 DR. BRAUNSTEIN: I am not unconcerned
14 about those disparities. I'm suggesting that in
15 terms of our research, we are charged with the
16 difficult question of whether there's a double
17 standard in South Dakota criminal justice and
18 whether the system is responsible for observed
19 disparities.

20 VICE CHAIRPERSON REYNOSO: Right.

21 DR. BRAUNSTEIN: And so in getting to
22 the heart of that question, I use the word
23 "unproductive," not "insignificant." And so what I
24 would say in response is that I can't get from Point
25 A to Point B using that comparison.

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1 VICE CHAIRPERSON REYNOSO: Fine.

2 DR. BRAUNSTEIN: And I'll remind you
3 that federal jurisdiction makes this comparison even
4 worse than it appears on the surface, right?

5 Because of the 8.3 American Indian population in the
6 State of South Dakota, it's been estimated somewhere
7 between two thirds and three quarters of that Indian
8 community never is under the state's jurisdiction.

9 VICE CHAIRPERSON REYNOSO: Right, right,
10 right.

11 DR. BRAUNSTEIN: And so we're studying
12 state outcomes, and we did not include the federal
13 process, nor the tribal process, and so I'm not
14 unconcerned about that disparity. I'm suggesting
15 that it is unproductive to become a basis for an
16 analysis of the system's culpability, and that's the
17 only context that I presented today.

18 VICE CHAIRPERSON REYNOSO: Well, as I
19 say, I thought your study was terrific, and I think
20 that these types of figures -- I must say it also
21 breaches some of the assumptions that some of us
22 have had. For example, I'm a former judge. So I
23 sort of object to taking discretion away from
24 judges, and yet here you have an example where
25 taking discretion away actually has worked in the

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1 way that the legislature hoped it would work.

2 So I just found it fascinating, I must
3 say, and instructive. Nonetheless, I think after
4 all your studies are finished, we still have to
5 have, and I'm sure you'll make the observation that
6 it's only part of the picture, because the
7 administration of justice system is an entire
8 system, and it's hard for you to get to some of the
9 core activity from whence the data comes, like
10 arrest records, you know, the discretion of the cop
11 on your beat, and so on.

12 So there will still be some matters that
13 will be unanswerable after you finish the study, but
14 I want to commend the state for funding this study,
15 and then the good work that you folks are doing.

16 CHAIRPERSON BERRY: And I think we ought
17 to commend ourselves as a Commission for going out
18 to South Dakota and --

19 VICE CHAIRPERSON REYNOSO: I'm sure
20 that's why it happened.

21 CHAIRPERSON BERRY: -- and creating all
22 that "heck" out there.

23 VICE CHAIRPERSON REYNOSO: We give you
24 some work.

25 CHAIRPERSON BERRY: And I, too, want to

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1 say that I think the study is very thorough, and I
2 very much appreciate what you're doing.

3 And I do think, in answer to
4 Commissioner Meek's question, your looking at
5 similarly situated people based on class and the
6 like will be very important, as you say you will be
7 doing, but I also wondered as I listened to this.
8 There was some talk about the race of the victim in
9 some of these cases.

10 VICE CHAIRPERSON REYNOSO: Yes.

11 CHAIRPERSON BERRY: And there was one
12 bar that showed that. Are you planning to look at
13 more intensely the race of victims once you start
14 looking at similarly situated people, and whether or
15 not what happens to them?

16 Because as we know in the law, that has
17 a big impact. You know, it's the McCloskey factor
18 on what happens to people.

19 DR. BRAUNSTEIN: Yes.

20 CHAIRPERSON BERRY: And I did a book
21 called The Pig Farmer's Daughter in which I looked
22 at a lot of state cases, and I found almost
23 invariably that was one of the factors that you
24 could use to try to figure out -- there were others
25 -- try to figure out what was going on.

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1 DR. BRAUNSTEIN: Well, the answer to
2 your question is unequivocally yes. One of the main
3 research questions that we haven't addressed in this
4 perception of a double standard is the treatment of
5 cases by the race of the victim, and so it's very
6 high on our priority list.

7 CHAIRPERSON BERRY: And what did you
8 mean when you said, "Unfortunately there are white
9 and Indian crimes"? I didn't understand what you
10 mean.

11 DR. BRAUNSTEIN: I mean to say that it
12 ought not to be that way. It seems as though
13 there's a conflict theory perspective here. It
14 seems that, you know, whites are being treated by
15 the least sentencing judges, right? The criminal
16 justice system differently in property crimes or,
17 not property crimes, excuse me, nonviolent crimes,
18 and American Indians are being treated differently,
19 more severely, and whites more severely in non-
20 property -- nonviolent in the violent crime
21 category.

22 And when you see such a clear break in
23 the sentencing length disparities, it seems as
24 though it's problematic.

25 CHAIRPERSON BERRY: But you're saying

1 the Indians, as I recall, were treated less severely
2 in the nonviolent category; is that right?

3 DR. BRAUNSTEIN: Yes.

4 CHAIRPERSON BERRY: The data that you
5 put up there; is that correct?

6 DR. BRAUNSTEIN: Yes, yes, and when I
7 say "unfortunately" here, I mean for the white
8 community as well as the Indian community. I think
9 that there's a significance here that needs to be
10 looked at very carefully. Why we have in the State
11 of South Dakota such a clear break in sentence
12 length behavior or in sentencing behavior between
13 these types of crimes, between the violent and the
14 nonviolent crimes, where whites had longer sentences
15 in each of the nonviolent crime categories studied,
16 and American Indians had in 80 percent of the crime
17 categories studied, or eight of ten, longer
18 sentences in the violent crime category.

19 So I was suggesting that we were
20 unfortunate meaning that, you know, it perhaps ought
21 not to be this way. It ought to be on an individual
22 case-by-case basis, and it looks like --

23 CHAIRPERSON BERRY: Maybe Commissioner
24 Meeks knows, but what I'm trying to find out is --
25 or maybe you know -- whether there are certain

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1 crimes in South Dakota that the general population
2 says, you know, "That's something Indians do," or
3 like you know, in the old days they used to say
4 black people in the South -- they say, "You steal
5 pigs." That's just something black people do.

6 DR. BRAUNSTEIN: The same is true also
7 in gender studies. I've done a lot of reading in
8 criminal justice studies focusing on gender gaps and
9 gender disparities, and there is something like a
10 woman's crime, you know, and then when there is a
11 perpetration of a crime that is not a traditional
12 woman's crime, the woman defendant becomes treated
13 more harshly than a male defendant.

14 CHAIRPERSON BERRY: Okay, all right.

15 COMMISSIONER MEEKS: Which you found to
16 be true in this case, too.

17 DR. BRAUNSTEIN: Well, again, I would
18 just reserve conclusions on this. I am very
19 concerned about that, and this is something that
20 will be, again, very high on the list of things to
21 do, to try to find out when we control for the
22 demographics, why is it that so many nonviolent
23 crime cases result in longer sentences for whites
24 and so many violent crime cases end up with longer
25 sentences for American Indians.

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1 CHAIRPERSON BERRY: Yes, Commissioner
2 Meeks.

3 COMMISSIONER MEEKS: I just want to make
4 one point, that I mean, I think Dr. Braunstein has
5 been pretty subtle or level or I don't know what the
6 term might be when he --

7 DR. BRAUNSTEIN: Professional.

8 COMMISSIONER MEEKS: -- is reporting
9 this, but in your paper here you say South Dakota's
10 empirical evidence validates many of the initial
11 concerns about the treatment of American Indians,
12 and then which the report really just reported on.

13 DR. BRAUNSTEIN: And I agree. I stand
14 behind that statement.

15 COMMISSIONER MEEKS: And that "further
16 disadvantages experienced in the length of prison
17 time served and the time of release from prison show
18 bias in the state's criminal justice system."

19 I just felt like you weren't, you know,
20 completely --

21 DR. BRAUNSTEIN: Well, the question is
22 what's behind the bias. So I'll state for this
23 Commission very clearly that the system has
24 disparate outcomes, and this is synonymous with
25 bias, in my opinion.

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1 COMMISSIONER MEEKS: Yeah.

2 DR. BRAUNSTEIN: And the question now is
3 why, and this is what I'm being guarded or
4 professional about, if you want to choose these
5 words, but --

6 COMMISSIONER MEEKS: Being professional.

7 DR. BRAUNSTEIN: -- but the data shows
8 bias.

9 I'll also remind those of you who have
10 read this report, and it's available outside if
11 anyone would like to or they can just contact me and
12 I'll share a copy with them, but when we apply the
13 20 percent threshold measure in the -- I'm sorry if
14 I don't remember this -- but approximately 30 stages
15 of the process that we investigated, there was an
16 overwhelming number of disparities exceeding the 20
17 percent rule in the American Indian community. It
18 was the majority of those 30 or 35 categories
19 relating to processes in the criminal justice
20 system.

21 This is bias, and so again, we are
22 charged with the responsibility in finding out -- is
23 it the state's responsibility? Is there something
24 like a discriminatory trend or behavior?

25 And I cannot speak to that. I hope to

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1 be able to, you know, utilize the 30 years of race
2 criminal justice studies that have been done largely
3 in the African American and Latino communities to
4 inform the research here and to suggest that there
5 are models that can be drawn on to make conclusions.

6 And I will not avoid conclusions once we
7 have all the data. I will speak as frankly and
8 forthcoming as I possibly can.

9 CHAIRPERSON BERRY: So, in other words,
10 our state advisory committee report was quite
11 correct in its conclusions about there being
12 disparities.

13 DR. BRAUNSTEIN: Absolutely.
14 Disparities are clearly present in the data.

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER MEEKS: Well, the
17 appearance of disparities.

18 CHAIRPERSON BERRY: Yes, that's what
19 they said.

20 DR. BRAUNSTEIN: Yeah, yeah. Where I
21 have more trouble with the state's advisory
22 committee report is where it says that there's a --
23 well, they say there's a perception, and this is, no
24 doubt, true that there is a perception of a double
25 standard, and I do not dispute that, and some of the

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1 disparities that we've seen support that
2 anecdotally.

3 The question is: does the empirical
4 evidence support the perception? And that's what
5 we're trying to get at.

6 And so I think that in the State of
7 South Dakota the conversation has gone too far for
8 its conclusions without looking carefully enough at
9 the data, and so I would criticize any party in the
10 state that's willing to make conclusions before the
11 data has been analyzed.

12 CHAIRPERSON BERRY: Okay. Yes.

13 VICE CHAIRPERSON REYNOSO: I noticed
14 that you did have something akin to focus groups
15 that you met with from time to time.

16 DR. BRAUNSTEIN: Yes, yes. Many of
17 them.

18 VICE CHAIRPERSON REYNOSO: Which I
19 thought was very good. I just want to share with
20 you that I guess I've been in most parts of the
21 country, and I was pretty taken aback at the hearing
22 -- I was one of those Commissioners who attended the
23 hearings -- at the strength of feeling by many of
24 the Indians who testified, particularly in the
25 latter portion that's for the public to testify. As

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1 the Chair mentioned, one grandmother had traveled
2 200 miles only to testify for three minutes.

3 I just got the sense that there was a
4 greater disparity or sense of division between the
5 Indian community and the white community in that
6 hearing than I've heard in other hearings that we've
7 had where we're dealing with Latinos and blacks.
8 The emotion and the sense of separateness just
9 seemed to be so stark, and I noticed that that came
10 up a little bit in the meetings that you had.

11 DR. BRAUNSTEIN: I have to say that this
12 is, in part what's motivating my interest in
13 studying the impact of federal jurisdiction within a
14 state's boundaries. There are structural factors at
15 work here that are not at work --

16 VICE CHAIRPERSON REYNOSO: Absolutely.

17 DR. BRAUNSTEIN: -- in the Latino
18 community or in the African American community. And
19 so I think it's incumbent upon us to find out what
20 the actual impact of jurisdictional structure,
21 structural arrangements and things like this.

22 It's not a simple matter of history.
23 There are negative histories for many groups. I
24 think that as we move forward to think about the
25 administration of justice, we ought to consider

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1 carefully the role that jurisdictional arrangements
2 play.

3 So I've proposed a study, and I think, I
4 hope it will be accepted, and I know I will go
5 forward with it whether I have to seek private
6 funding or perhaps do it on Saturday mornings, but
7 the question is: what does a Public Law 280 state,
8 what does a non-Public Law 280 state, and what does
9 a state without physical reservations with high
10 Indian populations look like? Right?

11 So we have three types that I've
12 identified, and this Commission may be able to help
13 me identify more types, but there are reservations
14 with federal jurisdiction on them. There are
15 reservations with kind of combined jurisdiction.
16 There are states with reservations with combined
17 jurisdiction. There are states with state
18 jurisdiction, reservations with states, and then
19 there are states without reservations.

20 VICE CHAIRPERSON REYNOSO: Right.

21 DR. BRAUNSTEIN: And so we need to look
22 at variation across these types of Indian
23 communities to see how much of that you observe can
24 be associated with structure.

25 VICE CHAIRPERSON REYNOSO: Yes. If you

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1 can structure those studies, that would be terrific.
2 I don't know of any such studies, frankly,

3 DR. BRAUNSTEIN: There are none, and I
4 hope to provide that in collaboration with the
5 Harvard project on American Indian economic
6 development. Miriam Jorgensen and Joe Kalt have
7 both shown interest in what we're doing, and I think
8 that their expertise both on the research end and
9 also knowing the community would contribute greatly,
10 and so I hope that we'll move forward together, the
11 Farber Center, Government Research Bureau, and the
12 Harvard project I just mentioned to see that this
13 research is done well.

14 CHAIRPERSON BERRY: Okay. All right.
15 We want to thank you very much for coming.

16 VICE CHAIRPERSON REYNOSO: Thank you.

17 CHAIRPERSON BERRY: This was
18 outstanding.

19 DR. BRAUNSTEIN: Thank you for inviting
20 me.

21 CHAIRPERSON BERRY: We very much
22 appreciate it, and we'll be looking at your other
23 research as it comes along.

24 DR. BRAUNSTEIN: Yes. Thank you.

25 CHAIRPERSON BERRY: The meeting is

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1 adjourned. Is there any objection?

2 VICE CHAIRPERSON REYNOSO: Well, Madam
3 Chair, I had a question if we're ready -- I guess
4 we're not -- to decide on meeting dates for next
5 year just because I --

6 CHAIRPERSON BERRY: Are we?

7 STAFF DIRECTOR JIN: Madam Chair, I
8 think we usually do that in November or October or
9 November.

10 COMMISSIONER REDENBAUGH: Let's try and
11 do it in October.

12 VICE CHAIRPERSON REYNOSO: October?

13 CHAIRPERSON BERRY: October. Can you
14 think about it between now and then?

15 VICE CHAIRPERSON REYNOSO: Yes.

16 CHAIRPERSON BERRY: Okay.

17 VICE CHAIRPERSON REYNOSO: I will do so.

18 CHAIRPERSON BERRY: Okay. Without
19 objection.

20 (Whereupon, at 11:59 a.m., the meeting
21 was adjourned.)

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