

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY

MAY 9, 2003

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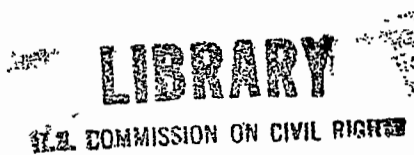
WASHINGTON, D.C.

The Commission convened at 9:35 a.m. in Room 540, 624 9th Street, Northwest, Washington, D.C., Chairperson Mary Frances Berry presiding.

PRESENT:

- MARY FRANCES BERRY, Chairperson
- CRUZ REYNOSO, Vice Chairperson
- JENNIFER C. BRACERAS, 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  
 MARGARET BUTLER  
 DEBRA CARR, ESQ., Deputy General Counsel  
 KI-TAEK CHUN  
 EDWARD DARDEN  
 IVY DAVIS, Chief, Regional Program Coordination  
 TERRI DICKERSON, Assistant Staff Director for  
 OCRE  
 PAMELA DUNSTON  
 SHELDON FULLER  
 SOCK FOON MACDOUGAL  
 TINALOUISE MARTIN  
 KWANA ROYAL  
 EILEEN RUDERT  
 JOYCE SMITH, Parliamentarian  
 ALEXANDER SUN  
 DAWN SWEET  
 DEBORAH VAGINS  
 AUDREY WRIGHT  
 TIFFANY WRIGHT  
 MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA  
 LAURA BATIE  
 PATRICK DUFFY  
 JOY FREEMAN  
 KIMBERLY SCHULD  
 MELISSA SHARP

A-G-E-N-D-A

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

9:35 a.m.

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CHAIRPERSON BERRY: The meeting will come to order please.

**I. APPROVAL OF AGENDA**

CHAIRPERSON BERRY: First item on the agenda is the approval of the agenda. Can I get a motion to approve the agenda?

COMMISSIONER KIRSANOW: So moved.

COMMISSIONER REDENBAUGH: Second.

CHAIRPERSON BERRY: All in favor indicate by saying aye.

(A chorus of ayes.)

CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: So ordered.

**II. APPROVAL OF MINUTES**

CHAIRPERSON BERRY: The next item is the approval of the minutes of April 11, 2003. Can I get a motion?

COMMISSIONER KIRSANOW: So moved.

COMMISSIONER REDENBAUGH: Second.

CHAIRPERSON BERRY: Okay. Anyone have any changes in the minutes, or anything they'd like to

1 discuss? If not, all in favor indicate by saying aye.

2 (A chorus of ayes.)

3 CHAIRPERSON BERRY: Opposed?

4 (No response.)

5 CHAIRPERSON BERRY: So ordered.

6 **III. ANNOUNCEMENTS**

7 CHAIRPERSON BERRY: Under announcements, I  
8 first would like to note that Commissioner Edley is  
9 not here today. His father passed. Christopher  
10 Edley, Sr., who was former president of the United  
11 Negro College Fund, died on May 5. Civil rights  
12 warrior, and father of Christopher and his sister, and  
13 he passed away at his home in New Rochelle. He was  
14 75. And I know all of us offer -- if we have not  
15 already -- offer our condolences to Chris and to his  
16 family.

17 Christopher Edley, Sr., was the head of  
18 the United Negro College Fund for 18 years, retiring  
19 in 1991. He raised a humongous amount of money on  
20 behalf of private, historically black colleges and  
21 universities. And it was under his tenure that they  
22 came up with this slogan, "A mind is a terrible thing  
23 to waste." This campaign.

24 He was born a poor guy, poor family, in  
25 Lynchburg, Virginia. He went to Howard University,

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1 where he got his undergraduate degree, and then to the  
2 law school in Cambridge Massachusetts, Harvard.

3 Then he joined a Philadelphia law firm,  
4 had a good career there. And then he served the city  
5 -- as an officer on the City's Human Rights  
6 Commission. He worked at this commission, Civil Rights  
7 Commission, as Chief of the Administration of Justice  
8 Division starting in 1960.

9 And then in 1963, the Ford Foundation  
10 appointed him as the first African-American program  
11 officer. And he was in charge of public interest law  
12 firms, and social justice programs, and the like  
13 there.

14 And he was one of the people who was  
15 responsible for funding most of the public interest  
16 law firms that started in that period. And then after  
17 that, the UNCF.

18 I knew Christopher Edley, Sr., as a  
19 friend, and as a colleague for years. And when I ran  
20 federal education programs he used to beat me up all  
21 the time about various funding sources. And we were  
22 in a lot of causes together.

23 He was a wonderful, witty, elegant,  
24 intelligent, ethical man who made great contributions.

25 And so his legacy, I think, will live on with UNCF

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1 and everything else.

2 There's another person who passed this  
3 month who was a key individual in the civil rights  
4 movement, a woman named Ruby G. Martin, who has  
5 probably not been heard of by most people. And she  
6 died on May 8, 2003, at the age of 70 in Richmond.

7 And Ruby was in the civil rights movement.  
8 She became an administrator in some of the civil  
9 rights offices in the government. And then she was  
10 the Virginia Secretary of Administration, appointed by  
11 Governor Doug Wilder. She was a Howard University Law  
12 graduate.

13 But the thing that I remember most about  
14 her is that she founded something called the Civil  
15 Rights Project in Virginia which was to look at and  
16 monitor what federal agencies did for children on  
17 human rights issues.

18 You remember that, Cruz.

19 VICE CHAIRPERSON REYNOSO: Yes.

20 CHAIRPERSON BERRY: And Ruby was a giant.  
21 It was her idea. She conceived it. She started it.  
22 She made it work. And she had a staffer working with  
23 her, who was a woman named Marion Wright Edelman.

24 VICE CHAIRPERSON REYNOSO: We've heard of  
25 her.

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1 CHAIRPERSON BERRY: Who then, out of that  
2 project, grew something that we call the Children's  
3 Defense Fund. And so Ruby deserves great credit for  
4 having done that.

5 The other thing I'd like to announce is  
6 that the ethics reports are due for commissioners and  
7 their assistants by May 15. And all of you should  
8 have copies, and if you don't, you should ask the  
9 office of the staff director for a copy.

10 You can get an extension of 45 days for  
11 good cause, and then there's a grace period after the  
12 due date. But if you file late, you have to pay a  
13 fine. So I would encourage everyone to file. Unless  
14 you like to pay fines, I don't know what you like to  
15 do.

16 The other thing is that this is Asian  
17 Pacific Heritage Month. And we've already sent out a  
18 notice about that. And we are celebrating Asian  
19 Pacific Heritage Month here at the Commission with a  
20 series of films that began on May 7 and will run  
21 throughout the month of May, on Americans of Asian  
22 descent.

23 And the Commission, as you know, has had a  
24 number of reports on issues that concern particularly  
25 Asian Pacific Islanders. Everything from hate crimes

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1 to glass ceilings, the myth of the model minority, and  
2 the rest of it.

3 And things like a round table discussion  
4 on Asian civil rights issues, recent activities  
5 against citizens and residents of Asian descent.  
6 There have been a number of reports that we have done.

7 The other thing in terms of marking what  
8 has happened in the month of May while we are  
9 celebrating Asian Pacific Heritage Month. On May 10  
10 1869, the first transcontinental railroad was  
11 completed.

12 And Chinese immigrant laborers were the  
13 ones who most of all were working on that, although  
14 severely underpaid and overworked. Twelve years after  
15 that, the Chinese exclusion laws passed, marking the  
16 beginning of what was to become over half a century of  
17 repression of Chinese immigration to the United  
18 States.

19 May 2 marks the civil rights marches in  
20 Birmingham, Alabama, against segregation. May 2  
21 through 10 in 1963. These were the marches in which,  
22 on television, there were images shown of people  
23 having fire hoses and police dogs brought in to  
24 contain peaceful protestors. And Dr. Martin Luther  
25 King was put in jail and wrote his celebrated Letter

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1 from the Birmingham Jail, which explained his use of  
2 non-violent civil disobedience as a method of forcing  
3 change in unjust laws.

4 Lots of kids were arrested. This whole  
5 thing helped to stimulate support for the progress in  
6 desegregation that was made with lots of other  
7 landmarks after that time.

8 There were a lot of civil rights cases  
9 decided in the month of May also. One of them was in  
10 1896. Plessy against Ferguson was decided in May. As  
11 we know, the Supreme Court hands down a lot of  
12 decisions in May. So on May 17, 1954, 50 years ago,  
13 they decided Brown versus Board of Education.

14 So two weeks before the Brown decision, on  
15 May 3, the Court struck down policies that  
16 discriminated against Mexican-Americans in jury  
17 selection, in a case called Hernandez versus Texas.

18 And on May 20, 1996, the Supreme Court  
19 decided Romer versus Evans, which has to do with  
20 discrimination against people based on sexual  
21 orientation.

22 And so this is May, a busy month for the  
23 courts, and for events, and the month of the passing  
24 of good friend Christopher Edley. Christopher Edley,  
25 Sr.

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**IV. STAFF DIRECTOR'S REPORT**

CHAIRPERSON BERRY: The next item on the agenda is the Staff Director's Report. Does anyone have any questions?

COMMISSIONER BRACERAS: I think Russell does, Madam Chair.

CHAIRPERSON BERRY: All right.

COMMISSIONER BRACERAS: Commissioner Redenbaugh is seeking recognition.

CHAIRPERSON BERRY: Commissioner Redenbaugh.

COMMISSIONER REDENBAUGH: Oh, thank you, Jennifer. Actually, before the Staff Director's Report, I have just a small announcement, if I may make that.

It is that the Bureau of the Census has released a report which I haven't read in full, but it deals with something that concerns all of us, me in particular I think, and that's the gap between African-American and white income, wealth, home ownership, and educational achievement.

The Census Bureau report looks to be very interesting, because it shows continued improvement in the closing of these gaps. So I look forward to examining the report in detail, but I wanted to call

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1 that to our attention.

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER THERNSTROM: I just wanted to  
4 say that I think -- on the record -- that I think all  
5 the commissioners, I'm sure all the commissioners join  
6 you in celebrating Christopher Edley's life, and his  
7 accomplishments.

8 CHAIRPERSON BERRY: Thank you. Yes,  
9 Commissioner.

10 COMMISSIONER BRACERAS: I'd just like to  
11 make a brief announcement on something I've mentioned  
12 before. The White House Initiative on Excellence in  
13 Education for Hispanics has released its final report,  
14 and I wanted to make the commissioners and the staff  
15 aware of it.

16 Unfortunately, the bad news in the report  
17 is that the current condition of education for Latino  
18 children is not very good. One-third of Hispanic  
19 students fail to complete high school, according to  
20 the report, and only 10 percent graduate from college.

21 That's fewer than 100,000 students each year.

22 The report makes recommendations for  
23 improving the state of education for Latino children,  
24 and calls for a recommitment to setting high  
25 expectations for these children, and recommends ways

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1 to help parents to navigate the often complex system  
2 of education in this country, especially those who may  
3 not speak English.

4 And the report is available on the web  
5 site, at "www.yesican.gov". It's posted in both  
6 English and Spanish. And so I would like to just  
7 bring that to everybody's attention, and I look  
8 forward to studying its conclusions in more detail.  
9 But it's not available in hard copy yet, but it is  
10 available on the web.

11 CHAIRPERSON BERRY: Okay.

12 COMMISSIONER THERNSTROM: Madam Chair?

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER THERNSTROM: When it becomes  
15 available in hard copy, if all of us could receive a  
16 copy, that would be easy for the staff to do for us.

17 COMMISSIONER BRACERAS: Kim can circulate  
18 it, because we're expecting a copy to be sent over to  
19 us. So ...

20 COMMISSIONER THERNSTROM: Well, then  
21 you're going to have to photocopy it. I mean, we  
22 could --

23 COMMISSIONER BRACERAS: We can have  
24 additional copies.

25 COMMISSIONER THERNSTROM: Oh, okay.

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1 COMMISSIONER BRACERAS: Yes, we'll take  
2 care of it, if people have an interest.

3 COMMISSIONER THERNSTROM: Thank you.

4 CHAIRPERSON BERRY: Do we know how many  
5 Latino children, or what percentage, speak some  
6 language other than Spanish? I mean, when they come  
7 here as immigrants.

8 COMMISSIONER BRACERAS: Like Portuguese,  
9 or ...

10 CHAIRPERSON BERRY: No. I mean, if they  
11 come from Guatemala, or if they come from --

12 COMMISSIONER BRACERAS: Some language  
13 other than English?

14 CHAIRPERSON BERRY: Yes, and other than  
15 Spanish.

16 VICE CHAIRPERSON REYNOSO: Yes,  
17 indigenous.

18 COMMISSIONER BRACERAS: Indigenous  
19 languages.

20 CHAIRPERSON BERRY: Do we know?

21 VICE CHAIRPERSON REYNOSO: I haven't seen  
22 any figures. In California, we have an increasing  
23 number of folk coming from Oaxaca and some other  
24 places who do not speak Spanish.

25 But I haven't seen any figures.

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1                   CHAIRPERSON BERRY: Because I know when I  
2 was in Peru, in the Altoplano, the people didn't speak  
3 Spanish. And I was way out in these rural areas.  
4 They spoke -- I think they spoke Quechua.

5                   And then there was a woman once who worked  
6 -- a friend of mine who had come from Central America.  
7 And her children, they didn't speak Spanish. They  
8 spoke some other --

9                   COMMISSIONER BRACERAS: Yes. No, of  
10 course, there are indigenous languages throughout  
11 South America. The bulk of Latino immigrants to this  
12 country, of course, are Spanish speakers.

13                   VICE CHAIRPERSON REYNOSO: It's probably  
14 doubly difficult for them because many of them are  
15 working as farm workers. So, for example, in the area  
16 where I live, I run into whole crews of folk that are  
17 speaking a language other than Spanish.

18                   And being farm workers, with the movement  
19 that's involved, they have sort of a double -- it's  
20 doubly difficult for them to get the sort of education  
21 that we hope for all the children.

22                   CHAIRPERSON BERRY: Do you know, Abigail -  
23 - Commissioner Thernstrom, if --

24                   COMMISSIONER THERNSTROM: You can call me  
25 Abigail.

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1 CHAIRPERSON BERRY: If in Massachusetts  
2 there's any data about this, or any --

3 COMMISSIONER THERNSTROM: Well, I was  
4 about to say, I would be glad to look into that,  
5 because I've been vaguely aware of this problem. And  
6 it's compounded by the fact that if you have a Latino  
7 surname, you end up in a bilingual education class  
8 that is oriented to Spanish-speaking students, when in  
9 fact, Spanish is not your native language.

10 And I'd be delighted to see whether the  
11 Department of Education in Massachusetts could come up  
12 with some data for me. Because you do raise a very  
13 interesting question here.

14 CHAIRPERSON BERRY: Yes, I've just always  
15 wondered about that. Yes, Commissioner Redenbaugh.

16 COMMISSIONER REDENBAUGH: Well, that also  
17 raises for me a taxonomic question. And that is, if  
18 these are indigenous populations that are -- that  
19 belong to a different language group and to a  
20 different set of cultural traditions, in what sense  
21 are they Hispanic or Latinos? Or what makes a Latino?

22 Because it would -- you know, I'm thinking  
23 about some South American Indian populations.

24 CHAIRPERSON BERRY: So what's the answer,  
25 Russell?

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1                   COMMISSIONER REDENBAUGH:   Well, I don't  
2 have it. I have a question.

3                   COMMISSIONER BRACERAS:    Actually, the  
4 report speaks to that in the introduction, about the  
5 difficulty of categorization to some extent. I know,  
6 just from briefly looking at it on the web, that the  
7 report by the Commission does grapple with that very  
8 problem.

9                   And of course -- I mean, of course the  
10 U.S. government, in the census has grappled with that  
11 from the beginning. So we're certainly not going to  
12 be able to solve that here today.

13                   But yes, it's -- there are many subgroups  
14 of Latinos. And they often have different interests  
15 and different concerns.

16                   CHAIRPERSON BERRY:   Yes.

17                   COMMISSIONER THERNSTROM:    This is a  
18 problem that interests me a lot, and I would love the  
19 Commission to have a more extended discussion about  
20 it. These umbrella categories violate reality. The  
21 category Asian violates reality. It's no more  
22 meaningful than European. And the category Latino or  
23 Hispanic violates reality.

24                   And there are consequences for this kind  
25 of crude categorization of Americans. And it would be

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1 an interesting topic for the Commission to further  
2 explore.

3 VICE CHAIRPERSON REYNOSO: Well, Madam  
4 Chair, the construct to account for identification by  
5 ethnicity and race has always been of interest to me.

6 I remember some years ago I had an interview with  
7 then chair of the U.S. Commission on Civil Rights, who  
8 was Jewish. And he asked me, "Is it really true that  
9 in California I'm considered an Anglo? A good Jewish  
10 boy?"

11 I said, "Sorry, but in California, anybody  
12 who's not black, or Asian, or Latino is an Anglo."

13 He says, "I can't believe it."

14 CHAIRPERSON BERRY: Well, it is an  
15 interesting --

16 COMMISSIONER BRACERAS: He'd made it into  
17 the mainstream.

18 CHAIRPERSON BERRY: Yes, because in the  
19 Asian-American community, there are -- within that  
20 community, folks know that some people speak Korean.  
21 That is, if they still speak that language.

22 VICE CHAIRPERSON REYNOSO: Sure.

23 CHAIRPERSON BERRY: Some others are  
24 Filipino. Whatever. I mean, it's well understood by  
25 all these people. And among Indians, there are all

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1 the different nations, right? And everybody knows  
2 that.

3 But when we talk about Latinos, we may say  
4 that people come from different places, but we usually  
5 talk in terms of Spanish-speaking. Isn't that the way  
6 the definition goes, right?

7 COMMISSIONER BRACERAS: Well, it depends  
8 who you consult. I think the Census Bureau has a  
9 different definition than community groups, and may  
10 have a different definition than -- That's part of the  
11 problem. In the literature, there's no precise  
12 definition.

13 COMMISSIONER THERNSTROM: The census is  
14 such a mess on this.

15 CHAIRPERSON BERRY: I thought we discussed  
16 this once before in here, and we -- not this precise  
17 question -- and we agreed that we were going to have  
18 some other discussion of it, or some paper, or some  
19 something.

20 Because I remember you saying,  
21 Commissioner Thernstrom, the same thing you said this  
22 time, that this was a very interesting --

23 COMMISSIONER THERNSTROM: Well, could we  
24 have a -- you know, I'd like to hear from Census  
25 experts and --

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1 CHAIRPERSON BERRY: Well, we could get a  
2 briefing.

3 COMMISSIONER THERNSTROM: Could we have a  
4 briefing?

5 CHAIRPERSON BERRY: Have them come and  
6 talk to us about it or something. Or is that  
7 something we shouldn't do? Are there reasons why we  
8 shouldn't? Are we sticking our toe in something --

9 COMMISSIONER BRACERAS: No.

10 CHAIRPERSON BERRY: -- better off not --

11 COMMISSIONER BRACERAS: No, not at all.  
12 It's just that we've talked about this before. This  
13 just goes to process, and we have so many other  
14 things.

15 CHAIRPERSON BERRY: We'd get the census.

16 COMMISSIONER BRACERAS: So many things on  
17 the table, and I don't want to see the staff  
18 necessarily throwing in another thing when we're  
19 trying to sort of get a handle on the things that  
20 we've already undertaken.

21 CHAIRPERSON BERRY: Yes.

22 COMMISSIONER BRACERAS: Believe me, I have  
23 a great personal interest in the topic. It's  
24 something, you know, that I've thought about and  
25 talked to people about for all of my adult life.

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1           So I have, you know, a very genuine  
2 interest in the topic. But I think we should hear  
3 from the Staff Director on the current state of  
4 projects before we embark on any new assignments.

5           CHAIRPERSON BERRY: Why don't we do this,  
6 commissioners. Why don't we just simply say to the  
7 Staff Director that on his list of things, that we're  
8 thinking about having briefings.

9           Because from time to time, we all suggest  
10 things that we should have. He should put that down  
11 on a list. And then after he has assessed, figured  
12 out where he's going, but just keep in mind that we're  
13 interested in this.

14          COMMISSIONER BRACERAS: Yes. No, it's a  
15 great topic.

16          VICE CHAIRPERSON REYNOSO: Madam Chair?

17          CHAIRPERSON BERRY: Yes.

18          VICE CHAIRPERSON REYNOSO: There are in  
19 fact some changes. The census, of course, struggled  
20 with the issue of multi-ethnicity of a person.

21           And I was at the University of California  
22 at Berkeley School of Law the other day, and I was  
23 told that in their admissions, apparently they ask  
24 folk on a voluntary basis to identify themselves by  
25 race and ethnicity. And they've changed the forms to

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1 advise the applicants that they can check off more  
2 than one category.

3 So, I think that didn't used to be done,  
4 even when it was done on a voluntary basis. So,  
5 apparently there are some evolutionary changes in our  
6 view of who we are as Americans.

7 CHAIRPERSON BERRY: Yes. And I wanted to  
8 ask, if I may, Commissioner Redenbaugh, the  
9 announcement you made?

10 COMMISSIONER REDENBAUGH: Yes?

11 CHAIRPERSON BERRY: Could you -- Do you  
12 know what year that data came from?

13 COMMISSIONER REDENBAUGH: '02.

14 CHAIRPERSON BERRY: From '02?

15 COMMISSIONER REDENBAUGH: Yes.

16 CHAIRPERSON BERRY: And the principal  
17 finding was that --

18 COMMISSIONER REDENBAUGH: The principal  
19 finding, and I can't cite the data here, but that  
20 enrollment in high school was up. Graduation rates  
21 were up. That is the gap -- the gap narrowed.

22 Intact family rates were up. And home  
23 ownership was up. And let me -- Melissa, have you got  
24 the web site?

25 MS. SHARP: Yes. It's "www.census.gov"

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1 and it's under "Releases".

2 CHAIRPERSON BERRY: Okay. Under  
3 "Releases"? Okay. Somehow I missed that report. So  
4 I'll look at that, too.

5 COMMISSIONER REDENBAUGH: I wanted to, if  
6 I may?

7 CHAIRPERSON BERRY: Yes.

8 COMMISSIONER REDENBAUGH: Add one thing  
9 for the Staff Director to note. If at such time that  
10 we do have the kind of briefing we were just  
11 discussing, I would recommend that we include as one  
12 of the panelists someone to represent I guess what I'd  
13 call the nontraditional.

14 The census people will need to have very  
15 operational and pragmatic concerns. I think it might  
16 be useful to inform us, somebody who comes from the  
17 community of language experts. Like a Noam Chomsky  
18 orientationally.

19 What's the relationship between ethnicity  
20 and the kind of -- not the languages spoken. I don't  
21 mean that. I mean in a larger sense the relationship  
22 between that -- Well, really, I guess the shorthand  
23 word is "culture".

24 CHAIRPERSON BERRY: They've got a very  
25 good department of linguistics, I understand, over at

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1 Georgetown. There may be some people over there that  
2 could look at that.

3 COMMISSIONER REDENBAUGH: Yes. And I  
4 actually don't -- I didn't say this very precisely. I  
5 really mean more the philosophy of language, rather  
6 than you know, the linguistics.

7 CHAIRPERSON BERRY: You mean the meaning  
8 of -- what this all means?

9 COMMISSIONER REDENBAUGH: Yes. I haven't  
10 said that at all well, but maybe a more  
11 anthropological approach.

12 CHAIRPERSON BERRY: I see. The meaning of  
13 language groups, and language, and distinctions. I'm  
14 just trying to figure out -- help the Staff Director  
15 figure out what you mean.

16 Is that it? You're talking about meaning?

17 COMMISSIONER REDENBAUGH: It's in that  
18 direction. Maybe I can -- The language -- The  
19 culture. Let's say culture rather than language  
20 group. The culture has a great deal to do with the  
21 world you see.

22 CHAIRPERSON BERRY: Okay. So culture and  
23 world-view, and the relationship thereto, and how  
24 language fits in with that.

25 COMMISSIONER REDENBAUGH: Yes. Or how

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1 these categories, these ethnic categories, fit in with  
2 that or don't.

3 CHAIRPERSON BERRY: So you need a cultural  
4 anthropologist of some kind.

5 COMMISSIONER REDENBAUGH: Something like  
6 that.

7 CHAIRPERSON BERRY: So you need --

8 COMMISSIONER REDENBAUGH: Let me come up  
9 with a couple of citations to written work, and then  
10 that can more precisely point to what I'm talking  
11 about.

12 CHAIRPERSON BERRY: Okay. Yes?

13 COMMISSIONER THERNSTROM: This whole  
14 discussion raises an issue for me that we've touched  
15 on off and on. And that is, Jennifer said, well, the  
16 staff already has a lot on its plate. And indeed it  
17 does.

18 I would just love some six month planning.  
19 What are our priorities? It seems to me this would  
20 be extremely helpful to the staff, as well as the  
21 members of the commission, to have -- You know, what  
22 are we going to do in the next six months. What's the  
23 top of our agenda. What briefings or hearings are we  
24 going to have.

25 And so both the staff and we could have a

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1 road map and properly prepare for upcoming meetings.  
2 You know, I can't remember what the answer to that was  
3 in the past. And obviously, you know, it would take  
4 some little time to put in place, but I wouldn't mind  
5 making a motion to say let's have work with six-month  
6 kind of plans as to where we go.

7 Madam Chair, are you opposed to that?

8 CHAIRPERSON BERRY: Well, we already have  
9 a process for him to do that. So let's let him  
10 explain what it is first, before we --

11 COMMISSIONER THERNSTROM: Okay.

12 STAFF DIRECTOR JIN: Yes, I was just going  
13 to say that as commissioners know, every year we go  
14 through the project planning process, which the  
15 primary focus is on projects a couple or three years  
16 down the road.

17 But through that process, the staff knows  
18 all the projects that they're supposed to be working  
19 on in the next three years. And of course, that can  
20 be modified at various times, primarily through  
21 project planning. But at the same time, emerging  
22 issues come up, and we've always looked at those  
23 issues and so forth.

24 And that's okay. But the staff, I think  
25 that they -- in terms of the projects the

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1 commissioners have already assigned, they've got  
2 plenty to do in terms of setting up hearings and stuff  
3 like that.

4 In terms of -- unless I misunderstood what  
5 you said about six-month planning, that's really --  
6 for a lot of that stuff. For example, our staff, the  
7 Office of Civil Rights Evaluation, they're in the next  
8 couple or three months going to finish up all the  
9 projects that they have due and owing for this fiscal  
10 year.

11 That doesn't mean they're going to be  
12 sitting around like in late summer. They're going to  
13 start to look at the projects for next year.

14 COMMISSIONER THERNSTROM: Well, I'm  
15 concerned -- I'm sorry. I didn't mean to interrupt  
16 you.

17 STAFF DIRECTOR JIN: No, I was just going  
18 to say, you know, the same can be said for the General  
19 Counsel's office. General Counsel's office is  
20 finishing up a project for September, finishing up  
21 another project for next year. Not next year, but  
22 later this year, they're going to be having a public  
23 activity related to their Native American project.

24 I think one of the things I probably don't  
25 do a good enough job at is kind of reminding the

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1 commissioners that staff also has a lot of other  
2 responsibilities that don't really come to the  
3 attention of the commissioners. The monitoring  
4 responsibilities, of the General Counsel's office,  
5 just like any other law office, whether it's the  
6 government or anybody else, they do our legal work.  
7 And that's something most of the time you don't see.  
8 But I know very well.

9 COMMISSIONER BRACERAS: Unless you hire  
10 someone else. In which case, they don't.

11 STAFF DIRECTOR JIN: And -- But you know,  
12 they have six lawyers right now. So that's a lot of  
13 things that they do that you don't even see. So I  
14 appreciate Commissioner Braceras' comment about the  
15 sensitivity to the staff responsibilities and so  
16 forth.

17 Not to say that we couldn't do other  
18 stuff, but I think we just have to be very judicious  
19 in that regard.

20 COMMISSIONER THERNSTROM: No, but my  
21 concern was six-month out planning meetings of the  
22 commission, because for instance this meeting, I had  
23 no idea until whatever it was, you know, a week ago or  
24 so what exactly we were doing.

25 And I wouldn't mind, and maybe the other

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1 commissioners don't agree. I would not mind having  
2 the opportunity to say, well look, in the next six  
3 months the staff is working on the following projects.

4 Let us have the following discussions built around  
5 the projects that are on the table, and with a  
6 judgment as to their priority, what the priorities  
7 are.

8 So that I had a sense of the meetings  
9 coming up, what the topics were going to be, and also  
10 so we could discuss what briefings or hearings we  
11 wanted, so that we don't have -- well it would be nice  
12 to have a briefing at some point, but I mean so that  
13 we could, you know, put our priorities in order. And,  
14 you know --

15 CHAIRPERSON BERRY: Let me try to  
16 recognize -- Excuse me, Abigail.

17 COMMISSIONER THERNSTROM: Sure.

18 CHAIRPERSON BERRY: I'll get back to you.  
19 Commissioner Meeks?

20 COMMISSIONER MEEKS: I'm just not -- Is  
21 this under the Staff Director's Report that this whole  
22 -- I know it has sort of evolved from other  
23 discussion, Announcements, I think. But --

24 CHAIRPERSON BERRY: It's under the Staff  
25 Director's report that we're talking.

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1                   COMMISSIONER MEEKS: Is it under the Staff  
2 Director's Report? Okay. I have a comment, but I  
3 won't make it right now because if this is under the  
4 Staff Director's Report, we're on agenda.

5                   CHAIRPERSON BERRY: Okay. Commissioner  
6 Redenbaugh, did you have your hand up or not?

7                   COMMISSIONER REDENBAUGH: I did.

8                   CHAIRPERSON BERRY: Okay.

9                   COMMISSIONER REDENBAUGH: You know, I'm  
10 very sensitive to what the Staff Director said about  
11 the importance of maintaining the project priorities  
12 and time lines, as committed to. And I certainly  
13 don't think we have to disrupt that.

14                   But I think the intention of Commissioner  
15 Thernstrom's discussions was in that gap between our  
16 sort of daily things, and the big projects. There's  
17 some discretion for things like -- certainly not for  
18 hearings. Briefings. Thank you. That's exactly what  
19 -- yes.

20                   Briefings, or panels, or informal areas  
21 where we can put our attention. In the same way that  
22 there's discretion about where we hold our meetings,  
23 and the agenda that then flows from the decision to  
24 have the meeting in a location other than Washington.

25                   So there's discretion in that area. And

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1 Abbey, I take your comment to mean --

2 COMMISSIONER THERNSTROM: Yes.

3 COMMISSIONER REDENBAUGH: -- could we have  
4 more planning of sort of the smaller things, not the  
5 big projects.

6 COMMISSIONER THERNSTROM: Exactly.

7 CHAIRPERSON BERRY: I would be -- Did you  
8 have your hand up, Peter?

9 COMMISSIONER KIRSANOW: Yes, I did. I was  
10 just going to concur with Russell's comments. It  
11 seems to me it makes perfect sense to have, to the  
12 extent possible, given exigencies that may arise, to  
13 have maybe a six month, or eight month, or some number  
14 of months schedule, tentative schedule, whereby we'd  
15 have some idea as to what topics were going to be  
16 treated. And I understand that that would vary.

17 But then maybe bring a little bit more  
18 definitiveness to it by having a 60 day notice period  
19 advising us what the topic was going to be two months  
20 down the road.

21 And I understand we have things in the  
22 pipeline now, and this is something that would take a  
23 little bit of time to implement. Maybe that could  
24 occur beginning in September or something like that.

25 But one of the frustrations I have, and I

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1 know a number of other commissioners share it, is --  
2 and this is, you know, no fault of anyone's -- but  
3 that I get my booklet a week beforehand. And we're  
4 all very busy. And I've got trials coming up. And I  
5 do my best to digest all of this to get prepared for  
6 the upcoming meeting.

7 And I don't think I do justice to the  
8 folks who have spent so much time on it. For example,  
9 the Civil Rights Evaluation Report. If I had a little  
10 bit more time, knowing what was coming up going in,  
11 then I think I could properly prepare a little bit  
12 better.

13 And so my suggestion would be that  
14 possibly we'd have a six month tentative schedule, but  
15 at bare minimum a 60 day notice as to what was going  
16 to be coming up two months hence.

17 CHAIRPERSON BERRY: I would hope that we  
18 would -- what I would like to do with this, if the  
19 Staff Director will indulge me, is to say that we can  
20 at the next meeting if you wish have an interim  
21 review, which is really what I hear you talking about.

22 Because at the planning meeting, we talk  
23 about projects, and then we talk about other ideas  
24 people have. And then from time to time people raise  
25 different subjects that they'd like to look at.

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1           Maybe we need from time to time an interim  
2 review of what's going to happen in the next few  
3 months, so that people -- instead of waiting a whole  
4 year and then saying here's what we're going to do  
5 next year, we think, on projects, and here's what the  
6 briefings are, maybe we could on an interim basis sort  
7 of review for everybody here's where we are.

8           Although we have the MIS, it doesn't  
9 really lend itself to that. And here's -- just in  
10 plain language. Here's where we are, and here's what  
11 we think is going to be happening over the next  
12 whatever, and let's talk about it if you want to.

13           And we can do that. We don't need to -- I  
14 mean that's --

15           STAFF DIRECTOR JIN: Sounds good.

16           CHAIRPERSON BERRY:           -- entirely  
17 appropriate to do. I mean there's no reason not to do  
18 it. Yes, Commissioner Meeks?

19           COMMISSIONER MEEKS: Well, I think what's  
20 getting talked about is the briefings. If we could  
21 have some kind of a sense out a few months, six  
22 months, eight months, of what some of the briefing  
23 topics could be, and when they might occur.

24           I can't remember, did we have a discussion  
25 about the letter that the Green Lining Institute?

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1 CHAIRPERSON BERRY: Yes, we said we were  
2 going to do something on that.

3 COMMISSIONER MEEKS: Yes. So I mean I  
4 would have to definitely defer to the Staff Director.

5 CHAIRPERSON BERRY: What he probably  
6 should do, maybe we can do that starting next meeting,  
7 is just give us a list of -- first, before the  
8 meeting, give us a list of all the things that we've  
9 agreed that we'd like to have briefings about, because  
10 most of us probably don't remember all of them, and  
11 which ones he projects we will be having over the next  
12 period.

13 And then we can combine that with what we  
14 already know about the projects which have been  
15 approved, because those are the things we approved at  
16 the, you know, beginning of the year.

17 And then if people want to discuss when we  
18 come to the meeting, you know, either I like that  
19 list, or I don't like that list, or I think that list  
20 ought to be changed, or now we ought to, you know, now  
21 that I'm reminded that that's the list that maybe this  
22 one ought to come before that one, or whatever. Then  
23 you could have that kind of discussion.

24 Now, I am -- when I say this, I'm  
25 perfectly aware, and that can be put into the mix,

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1 Staff Director, that sometimes when you do things --  
2 because I find these out on a month-to-month basis.  
3 As you know, the only thing the chair does in the  
4 Commission, besides chair the meetings, is mostly  
5 approve the agenda with the Staff Director.

6 So I find out when he's ready to do the  
7 agenda that they think this will be ready, and that  
8 will be ready, and whatever else will be ready, and  
9 that should go on the agenda. And that's okay,  
10 because a lot of it is deploying the staff and trying  
11 to get stuff done.

12 But I think, you know, looking at the  
13 list, and trying to figure out whether people still  
14 like all that stuff, or they don't like it, or  
15 whatever, would be probably a good idea to do.

16 So why don't we just -- you have any  
17 objection?

18 STAFF DIRECTOR JIN: No, that sounds like  
19 a good idea.

20 CHAIRPERSON BERRY: He doesn't have any  
21 objection to it, so starting with the next meeting why  
22 don't we just do that? Yes, Vice Chair.

23 VICE CHAIRPERSON REYNOSO: I was just  
24 going to comment that I know that I've been interested  
25 in the Green Lining. And I know the staff at least

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1 started doing some work on it, but I never know in  
2 light of their work schedule, when they have contacted  
3 witnesses, when we might have that briefing.

4 It would be good to do what has been  
5 suggested, and have an idea that it might happen in  
6 six months, might happen in three months. Might not  
7 happen at all, but ...

8 CHAIRPERSON BERRY: Okay. So why don't we  
9 just do that.

10 VICE CHAIRPERSON REYNOSO: Yes, okay.

11 CHAIRPERSON BERRY: Let's do that. Is  
12 that?

13 COMMISSIONER THERNSTROM: That's good.

14 CHAIRPERSON BERRY: All right. Anybody  
15 have anything else under the Staff Director's -- Yes,  
16 Commissioner.

17 COMMISSIONER MEEKS: I just wanted to make  
18 a comment that Commissioner Edley especially has been,  
19 and Staff Director, trying to try to figure out how to  
20 handle this budget better, and recommending conference  
21 calls.

22 And I saw throughout the State Advisory  
23 Committees that there were numerous conference calls.  
24 In the Eastern Region alone there were, I think, I  
25 counted eight conference calls. So that was good to

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1 see.

2 CHAIRPERSON BERRY: I think it's wonderful  
3 the way the SACs --

4 COMMISSIONER MEEKS: It's not a substitute  
5 for face-to-face meetings, but it surely is a ...

6 CHAIRPERSON BERRY: Yes, the way they're  
7 stepping up and trying to respond to -- Because I know  
8 the members of the SACs, you know, they keep telling  
9 us they want to do more stuff, they want to talk to  
10 each other and all that.

11 So I think that coming into the modern  
12 period and using conference calls, where as now  
13 there's probably something else you use instead of  
14 conference calls. We finally figured out how to do  
15 that.

16 COMMISSIONER MEEKS: Chat rooms.

17 CHAIRPERSON BERRY: It is a wonderful  
18 thing. The chat room? I don't know.

19 COMMISSIONER REDENBAUGH: The telephone  
20 was invented in 1896 I think.

21 (Laughter.)

22 COMMISSIONER REDENBAUGH: Or it might have  
23 been earlier than that.

24 CHAIRPERSON BERRY: So anyway, I think  
25 let's congratulate the staff. Anybody got anything

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1 else under the Staff -- Yes, Commissioner.

2 COMMISSIONER KIRSANOW: Yes, I had a  
3 couple of things. First is -- This goes to my  
4 ignorance as to how these things work in terms of  
5 finances.

6 But we got the determination on the EEOC  
7 case that indicated that there was certain back pay,  
8 and attorney's fees, and costs that were levied  
9 against the Commission. I'm not sure what fund that  
10 comes out of. I don't know if that's a part of the  
11 Commission's budget.

12 But the question is, in trying to total up  
13 the amounts, it's difficult to ascertain how much the  
14 amounts would be because I don't know if there's any  
15 interest component to it. And I'm not sure how many,  
16 you know, there's a clear definition in terms of back  
17 pay, and attorney's fees. But it seems to be in the  
18 hundreds of thousands of dollars.

19 Where does that money come from, and if it  
20 has an impact, a financial impact, on the Commission,  
21 to what extent does it impact the programs that we've  
22 -- or the briefings, hearings, programs that we  
23 currently have contemplated.

24 STAFF DIRECTOR JIN: Sir, Commissioner  
25 Kirsanow, this is one of those questions I was

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1 thinking like on one hand, I would love to have  
2 somebody ask that question so I can answer it, because  
3 I regret to say that I think that I know it's in your  
4 clips, and if I saw the article too, I think I would  
5 have come to a wrong conclusion.

6 Because the reality is that what the EEOC  
7 just ordered was in response to a very narrow motion  
8 that the Commission made about a year ago regarding a  
9 part of this case.

10 And it actually, even though the EEOC in  
11 this order reaffirmed its prior decision, it really  
12 gave us what we wanted because the only thing that was  
13 at issue was whether we had to put this person back  
14 into is specific titled position. And our position  
15 was that that restricted too unduly the Commission's  
16 managerial discretion.

17 We wanted to have -- We knew that we had  
18 to put the person back into a comparable position,  
19 something with substantially equivalent duties. But  
20 we wanted to not have to put the person, if we didn't  
21 want to, back into the same exact title.

22 And the EEOC basically said, well, I think  
23 you misread us because we never ordered that. And no,  
24 you don't have to put the person back into the same  
25 title. Can I? The exact same title. But so we're

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1 reaffirming our prior decision, but we just want to  
2 clarify that.

3           You know, so the point I'm trying to make  
4 there is that the impression one gets from, you know,  
5 an article that I saw in the paper, was that somehow  
6 we had to pay hundreds of thousands of dollars as a  
7 result of this decision.

8           Well, this decision was initially issued  
9 in September of 2000. And we appealed that last year  
10 about this time. The EEOC reaffirmed its decision,  
11 and of course you might remember that some of the  
12 commissioners wrote me several times for information  
13 regarding both that case as well as some other EEOC  
14 matters, which we responded to.

15           Last July we had a pretty extensive  
16 discussion at a Commission meeting on that, and I  
17 think after that actually we had some further  
18 discussion with some of the commissioners who had  
19 wanted to have a meeting with me, I think including  
20 yourself.

21           And so there's nothing new from that. The  
22 only thing new is that we appealed, asked for  
23 reconsideration on that very small, narrow portion of  
24 the decision. And this was the decision. Everything  
25 else we implemented last summer.

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1 COMMISSIONER KIRSANOW: Including the  
2 liability?

3 STAFF DIRECTOR JIN: Including the  
4 monetary award.

5 CHAIRPERSON BERRY: So could you answer  
6 his question about the money?

7 COMMISSIONER BRACERAS: So she was paid?

8 STAFF DIRECTOR JIN: She was paid last  
9 summer. Yes. And this particular amount came out of  
10 the judgment fund, which the federal government has as  
11 a matter of course for situations like this. So this  
12 case has not cost the Commission a dime.

13 CHAIRPERSON BERRY: Just a minute,  
14 Russell. Commissioner Braceras has her hand up.

15 COMMISSIONER BRACERAS: Well, I obviously  
16 can't speak for Commissioner Kirsanow, but I read the  
17 actual decision in this case, the first one in this  
18 one. My information doesn't come from the clips. My  
19 information comes from the EEOC.

20 So I've read it very clearly. And it's my  
21 understanding that although they did not make a  
22 decision at this time about the particular job title  
23 and category, that a separate complaint has been filed  
24 on that issue which is pending. Is that correct?

25 STAFF DIRECTOR JIN: There is a -- That's

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1 not clear at this point. I mean, we're --

2 COMMISSIONER BRACERAS: It's not clear as  
3 to --

4 STAFF DIRECTOR JIN: Yes, yes. We thought  
5 that everything had been rolled into this, but we're  
6 exploring that. The thing is that --

7 COMMISSIONER BRACERAS: Wait. So it's a  
8 yes/no question. Has something separate been filed?  
9 The answer is yes.

10 STAFF DIRECTOR JIN: Well, there was  
11 something separate filed a long, long time ago.

12 COMMISSIONER BRACERAS: In 1999?

13 CHAIRPERSON BERRY: This counselor says  
14 she knows the answer, that nothing has been filed  
15 recently. Debra, could you answer her question as to  
16 whether anything has been filed on the title issue  
17 which is still pending?

18 DEPUTY GENERAL COUNSEL CARR: There's been  
19 nothing new filed.

20 CHAIRPERSON BERRY: So there is no  
21 outstanding matter as far as you know?

22 DEPUTY GENERAL COUNSEL CARR: That would  
23 be correct. There's been nothing new filed in the  
24 matter -- leading in the complaints.

25 COMMISSIONER BRACERAS: I'm sorry, but in

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1 1999, a separate charge was filed with the EEOC. Now,  
2 there may be confusion as to whether or not they were  
3 consolidated, but the language of the EEOC opinion --  
4 I don't have it in front of me, but it seems to  
5 indicate that that matter.

6 I read it very carefully. It seems to  
7 indicate that that separate matter is still under  
8 review by the EEOC.

9 DEPUTY GENERAL COUNSEL CARR: Our position  
10 on that, until additional clarification can be  
11 received is that it's our view that absent a new  
12 filing or allegation, that everything filed up to this  
13 date has been heard and disposed of.

14 COMMISSIONER BRACERAS: No, I understand  
15 that, but that doesn't appear to be the EEOC's view,  
16 and they're the ones who will ultimately decide. So -  
17 -

18 DEPUTY GENERAL COUNSEL CARR: And we're  
19 responding to their view in terms of how we believe  
20 the case and the allegations have been handled and  
21 disposed of.

22 COMMISSIONER BRACERAS: Okay, because you  
23 know, a close read of the opinion, it was very clear  
24 to me that they didn't answer that question  
25 dispositively, they simply deferred it to another

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1 time. That was my reading of the opinion.

2 CHAIRPERSON BERRY: Is that your read?

3 COMMISSIONER BRACERAS: So I think the  
4 Staff Director's characterization is inaccurate.

5 CHAIRPERSON BERRY: Just a minute,  
6 Commissioner Braceras. Is it your understanding there  
7 is a matter outstanding?

8 DEPUTY GENERAL COUNSEL CARR: It's our  
9 view that there isn't a matter outstanding. Our view  
10 has been that the allegations that were all filed in  
11 the '90s have been disposed of by the most recent  
12 decision.

13 CHAIRPERSON BERRY: Does EEOC -- Are they  
14 pressing to say that the matters have not been  
15 disposed of?

16 DEPUTY GENERAL COUNSEL CARR: No.

17 CHAIRPERSON BERRY: Has the EEOC informed  
18 you that there are matters still outstanding that need  
19 to be disposed of?

20 DEPUTY GENERAL COUNSEL CARR: They made a  
21 reference in the last order about a matter needing  
22 processing. However, we believe that there is a  
23 misreading of the record, and that everything has been  
24 disposed.

25 CHAIRPERSON BERRY: Are you responding to

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1 EEOC?

2 DEPUTY GENERAL COUNSEL CARR: Yes, we are.

3 CHAIRPERSON BERRY: Okay. So that's where  
4 the matter stands.

5 COMMISSIONER BRACERAS: Yes. No, I  
6 understand that, this discrepancy between the General  
7 Counsel's position and the EEOC's position. But until  
8 that discrepancy is resolved, my understanding of what  
9 the EEOC did is to defer the ultimate determination to  
10 another time. I don't think that's inconsistent with  
11 anything Ms. Carr just said.

12 It does, however, call in the spin the  
13 Staff Director has put on it.

14 STAFF DIRECTOR JIN: I don't think it's  
15 inconsistent with anything I said.

16 CHAIRPERSON BERRY: Just a moment. But to  
17 answer Commissioner Kirsanow's question, the money has  
18 been paid, and it came from the judgment fund. Is  
19 that correct?

20 STAFF DIRECTOR JIN: That's correct.

21 COMMISSIONER THERNSTROM: The judgment  
22 fund is different from the Commission?

23 CHAIRPERSON BERRY: Right, that's a  
24 federal fund. So that all we can conclude from this  
25 discussion, if I heard everybody right, is that EEOC

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1 and General Counsel are contending as to whether or  
2 not there's anything left to be disposed of. Is that  
3 right?

4 DEPUTY GENERAL COUNSEL CARR: That would  
5 be correct.

6 CHAIRPERSON BERRY: So that's the  
7 conclusion.

8 COMMISSIONER BRACERAS: Well, yes, and  
9 there are very strong arguments that there is. So --

10 CHAIRPERSON BERRY: So you want to favor  
11 the EEOC's argument? Is that what you're saying?

12 COMMISSIONER BRACERAS: I have -- well.

13 CHAIRPERSON BERRY: No, I'm just asking is  
14 that what you wish to do?

15 COMMISSIONER BRACERAS: I have from the  
16 beginning had very strong concerns that the  
17 elimination of the Solicitor's position constitutes  
18 further retaliation. Yes, I have had a very strong  
19 concerns about that from the beginning.

20 And it's something that I have never  
21 agreed with. I believe that the woman should be  
22 reinstated to the Solicitor's job. And it would be up  
23 to the EEOC to determine whether or not that  
24 constitutes retaliation or not, but --

25 CHAIRPERSON BERRY: Oh, no.

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1 COMMISSIONER BRACERAS: Excuse me, I'm  
2 speaking.

3 CHAIRPERSON BERRY: I'm talking to the  
4 Staff Director. Don't try to interrupt. He was  
5 trying to interrupt you. Go ahead.

6 COMMISSIONER BRACERAS: But, you know, as  
7 somebody who formerly defended retaliation complaints  
8 for Fortune 500 companies, were I advising you as a  
9 client, I would certainly tell you to avoid possible  
10 liability that she should be reinstated to the exact  
11 position.

12 I've seen these cases time and time again  
13 in my practice, and the companies always claim that  
14 the position doesn't exist anymore, that there's no  
15 need for a position. And that's exactly how they get  
16 into trouble, and that's exactly how they violate the  
17 law.

18 So yes, based on my experience, I have  
19 very grave concerns about the way it's been handled.  
20 It's not for me to decide. It's for the EEOC to  
21 decide. But as a former management lawyer, I think  
22 it's my duty to advise you as to my opinion.

23 You can take it or leave it, but I have  
24 concerns.

25 CHAIRPERSON BERRY: I have to say, and I

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1 do not wish to be contentious, but I must say this,  
2 Commissioner. As a lawyer myself and a member of the  
3 Bar, I believe that it is inappropriate for a  
4 commissioner in the capacity that we are here to be  
5 giving legal advice, legal opinions.

6 COMMISSIONER BRACERAS: It's not a legal  
7 opinion. It's a personal opinion.

8 CHAIRPERSON BERRY: It's the province of  
9 the General Counsel to -- on behalf of the Commission,  
10 to represent the facts. But not the Commissioners who  
11 were not present when the events occurred; when  
12 there's a legal dispute going on.

13 COMMISSIONER BRACERAS: I've read all the  
14 pleadings and materials.

15 CHAIRPERSON BERRY: That we have a counsel  
16 representing us, and that as a matter of -- Because  
17 Commissioners are not here in their capacity as  
18 lawyers to advise the Commission on its legal matters.

19 So I cannot keep you from insisting on  
20 advising the Commission on legal matters, but that is  
21 not your responsibility as a commissioner. That's not  
22 the definition of your role here.

23 And it may give the misleading impression  
24 to people who do not know any better that therefore,  
25 as a commissioner, you are giving an opinion which

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1 should be taken into account in the resolution of a  
2 matter which is in dispute.

3 I consider that entirely inappropriate.

4 COMMISSIONER BRACERAS: That's a complete  
5 mischaracterization. I stated quite clearly that it  
6 was my personal opinion.

7 CHAIRPERSON BERRY: I consider you out of  
8 order. And I consider and wish you would rethink your  
9 position of giving legal advice to the Commission,  
10 because none of us are here to give legal advice on  
11 matters.

12 There are lawyers sitting at this table,  
13 but we're not here to give legal advice. I have my  
14 legal opinion on this question, but I am not going to  
15 state it because it's not my role or function to do  
16 it.

17 I'm sure the vice chair has his legal  
18 opinion, and I'm sure that Mr. Kirsanow, who is a  
19 lawyer who has expertise in these matters, has a  
20 professional opinion.

21 But I don't think it's up to us to state  
22 our legal opinions. And with that, I don't wish to  
23 argue about this, but if people insist on arguing  
24 about it, there's -- it can't be helped, but it is my  
25 responsibility as chair to point out to you that this

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1 is inappropriate behavior. Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: I have a  
3 question that is not of a legal nature. I'd like a  
4 clarification of fact. So, for this agency and other  
5 agencies, this just shows -- I just need someone to  
6 educate me. When there's a judgment against an  
7 agency, that's not paid by the agency's budget, but  
8 another fund set up in the government? Is that?

9 COMMISSIONER BRACERAS: That's correct.

10 COMMISSIONER REDENBAUGH: I'm actually  
11 looking at the Staff Director.

12 STAFF DIRECTOR JIN: Yes.

13 (Laughter.)

14 STAFF DIRECTOR JIN: I don't know all the  
15 nuances, but I know at least under certain  
16 circumstances, if there's a judgment against an  
17 agency, you can apply to the judgment fund for it to  
18 be paid, and they will pay it.

19 But I don't want to be categorical saying  
20 that with every judgment that that applies.

21 COMMISSIONER REDENBAUGH: Okay, but in  
22 this case then. Okay. So I didn't understand that at  
23 all. And that pays the judgment. Does it also pay  
24 the Commission's costs in defending against the  
25 complaint?

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1 STAFF DIRECTOR JIN: If you -- If by that  
2 -- maybe I'll ask counsel.

3 COMMISSIONER THERNSTROM: Outside counsel  
4 costs, whatever.

5 DEPUTY GENERAL COUNSEL CARR: The judgment  
6 fund would cover any damages awarded, any attorney's  
7 fees and costs. It doesn't pay the cost of the  
8 Commission's counsel, if there were outside counsel or  
9 any internal costs incurred.

10 COMMISSIONER REDENBAUGH: Well, the  
11 internal cost is staff. So then it would be, Staff  
12 Director, inaccurate to say that this did not cost the  
13 Commission one dime.

14 STAFF DIRECTOR JIN: Characterized that  
15 way, then I think that I see your point. But I think  
16 the question that Commissioner Kirsanow asked me was  
17 did we have to pay for anything on the judgment. So  
18 that was my reference.

19 COMMISSIONER REDENBAUGH: Your answer is  
20 very lawyerly. So we did have costs.

21 STAFF DIRECTOR JIN: Well, sure. I mean,  
22 the staff had to spend time to handle the case. That  
23 is true.

24 COMMISSIONER REDENBAUGH: Okay.

25 STAFF DIRECTOR JIN: I mean, that happens

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1 with all agencies.

2 CHAIRPERSON BERRY: The alternative is  
3 whenever anyone sues you, to simply give up and agree  
4 with them so that you don't have to pay the costs.

5 COMMISSIONER REDENBAUGH: No, I'm not  
6 against defending, especially if we win. But I am  
7 against the characterization and misrepresentation  
8 that this didn't cost the Commission a dime, or a  
9 penny, or whatever.

10 CHAIRPERSON BERRY: Commissioner Kirsanow?

11 COMMISSIONER KIRSANOW: Commissioner  
12 Redenbaugh's question answered much of what I had.  
13 But I had a couple of outstanding ones, and I'd like  
14 to be educated too.

15 If we applied to the judgment fund, and  
16 apparently this is -- there is some element of  
17 discretion with respect to applying to this fund, and  
18 some discretion as to whether or not they're going to  
19 pay it out? Or is this a point of protocol?

20 And if in fact there's a judgment that's  
21 paid out, is there some type of debit that is accorded  
22 to a particular agency? Is there some kind of  
23 recording somewhere about the amount that is paid out,  
24 and is it then something that is considered in terms  
25 of projecting a budget down the road?

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1 DEPUTY GENERAL COUNSEL CARR: It's  
2 discretionary with the agency involved in the  
3 litigation whether or not to seek payment or  
4 reimbursement by the judgment fund.

5 The judgment fund has discretion in terms  
6 of whether to agree with the request for payment or  
7 reimbursement, and they have their own internal  
8 criteria for doing that. And the part that may be  
9 driven by whether it was litigation, settlement, the  
10 nature of the allegations, those kinds of things, plus  
11 others.

12 The judgment fund is managed by the  
13 Treasury, so they obviously would be keeping track of  
14 who they're paying, what agencies are liable, and  
15 cost. Whether or not that's going to be held against  
16 an agency in terms of its future allocations, I don't  
17 believe so.

18 But it should be noted that the judgment  
19 fund will be changing its policy in the next fiscal  
20 year. Agencies may in fact, may be asked to reimburse  
21 the fund should they pay on the agency's behalf. And  
22 that's true for all government agencies, not just the  
23 Commission.

24 COMMISSIONER KIRSANOW: And did we retain  
25 outside counsel to defend in this?

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1 DEPUTY GENERAL COUNSEL CARR: The motion  
2 to reconsider, you mean? No. That was handled in-  
3 house.

4 COMMISSIONER KIRSANOW: Okay. At any  
5 point did we have outside counsel engaged in this  
6 particular case?

7 DEPUTY GENERAL COUNSEL CARR: I believe in  
8 the early stages, EEOC found that there was a conflict  
9 with the agency's then General Counsel, and so the  
10 Commission was conflicted out and hired outside  
11 counsel.

12 CHAIRPERSON BERRY: All right. Are you  
13 trying to say something else?

14 STAFF DIRECTOR JIN: Yes, I am.

15 CHAIRPERSON BERRY: Would you like to get  
16 further into the murk? Go ahead.

17 STAFF DIRECTOR JIN: I could --

18 DEPUTY GENERAL COUNSEL CARR: I'm sorry.  
19 I do -- I don't want to interrupt, but I want to  
20 caution the commissioners that some discussion in  
21 terms of generalities and the fund would be okay, but  
22 I just caution that we not get into too many details  
23 about the case unless there is a decision to go into a  
24 closed or executive session.

25 CHAIRPERSON BERRY: So, if we wish to

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1 pursue this in greater detail, we'll have to go into  
2 executive session?

3 COMMISSIONER BRACERAS: Well, there may be  
4 comments that are general enough.

5 STAFF DIRECTOR JIN: I feel I need to  
6 clarify the record.

7 CHAIRPERSON BERRY: Okay.

8 STAFF DIRECTOR JIN: I think the record  
9 seems to suggest right now, from what Commissioner  
10 Braceras says, that this individual was not in the  
11 capacity of the Solicitor. That's not true.

12 When the EEOC issued its decision back  
13 last year, we construed that decision to mean that we  
14 needed to reinstate her into the Solicitor position,  
15 which we did.

16 COMMISSIONER BRACERAS: And that's her  
17 current title?

18 STAFF DIRECTOR JIN: That's her current  
19 title.

20 COMMISSIONER BRACERAS: What are her job  
21 duties?

22 STAFF DIRECTOR JIN: And that we're not  
23 going to get into, not in this kind of situation. I'm  
24 not --

25 COMMISSIONER BRACERAS: Because they're

1 not the same.

2 CHAIRPERSON BERRY: Would the  
3 commissioners like an executive session -- excuse me,  
4 Staff Director -- to discuss this matter further?

5 COMMISSIONER BRACERAS: At some point yes,  
6 but --

7 CHAIRPERSON BERRY: Would you like one  
8 today? That's what I'm asking. Is there a need and  
9 desire to get into more detail about this? Because if  
10 so, we can have an executive session. I'm not -- I  
11 don't -- It's up to you. Are there commissioners who  
12 feel the need to have an executive session?

13 All right, well --

14 COMMISSIONER BRACERAS: I do.

15 CHAIRPERSON BERRY: Well, let's keep it at  
16 a certain level where we --

17 COMMISSIONER BRACERAS: I do feel that  
18 need.

19 CHAIRPERSON BERRY: Most of you want to  
20 have an executive session?

21 COMMISSIONER BRACERAS: It doesn't have to  
22 be today, but I do feel that need.

23 COMMISSIONER THERNSTROM: I would like to  
24 actually hear the rest of what the Staff Director had  
25 to say on this. And that would help us.

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1 CHAIRPERSON BERRY: Part of what he was  
2 going to say was stuff that I don't think he should  
3 say in public.

4 COMMISSIONER BRACERAS: Right, that's why  
5 if he's going to -- part of my problem is he wants to  
6 set the record straight, but -- quote unquote  
7 "straight" -- but General Counsel has just advised us  
8 not to get into the specifics.

9 CHAIRPERSON BERRY: Right, because we  
10 shouldn't. It's a personnel matter. We should not  
11 get into discussing this.

12 COMMISSIONER BRACERAS: That's fine, but  
13 my comment would be I do think we should have an  
14 executive session on this, but I also think we should  
15 wait until Commissioner Edley can be a part of it.

16 Because I think that all of the  
17 commissioners should discuss this.

18 CHAIRPERSON BERRY: All right, well then  
19 why don't we leave in abeyance, if that's okay with  
20 you, discussing it further until we have an executive  
21 session.

22 COMMISSIONER BRACERAS: That's fine, but I  
23 still have something I'd like to say, and I believe  
24 Commissioner Thernstrom does as well, that's not about  
25 the specifics of this case.

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1 CHAIRPERSON BERRY: All right, well let's  
2 take care not to say things that we shouldn't say.

3 COMMISSIONER THERNSTROM: Right, and I --

4 CHAIRPERSON BERRY: About personnel.

5 COMMISSIONER THERNSTROM: I just want to  
6 say something about the executive session. I don't  
7 want to go into executive session without Commissioner  
8 Edley here. I think that all, if we go into --

9 COMMISSIONER BRACERAS: I just said that.

10 COMMISSIONER THERNSTROM: You did? I  
11 wasn't listening, I'm sorry.

12 (Laughter.)

13 COMMISSIONER BRACERAS: Thanks, Abby.

14 (Laughter.)

15 COMMISSIONER BRACERAS: Well, I think we  
16 all agree about that.

17 CHAIRPERSON BERRY: All right. Well, we  
18 will defer this, any further record-clearing, or  
19 statements, or anything else, until we can discuss  
20 this again.

21 I will say, which has nothing to do with  
22 personnel, my own feeling about this case was that --  
23 and in general about cases -- is that I -- on any  
24 subject that involve the Commission -- is that I don't  
25 like the fact that the chair of the Commission,

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1 whoever it is, I just happen to be the chair now, is  
2 always designated as the party who, in fact, did  
3 whatever it is that happened, when the statute clearly  
4 makes it perfectly clear that the chair of the  
5 Commission has no authority beyond chairing meetings  
6 and approving the agenda.

7 And yet we tried to explain to the EEOC  
8 that we don't run like they do, where the chairman  
9 over there has authority and power and staff and  
10 money, and gets to tell people what to do and handle  
11 personnel.

12 They didn't care. They just said, well,  
13 the chair is going to be the head of the agency, and  
14 the chair is responsible for all of this. And it's  
15 not true.

16 So I think that at some point, the  
17 Commission, maybe not this one, maybe when one of you  
18 is the chair, the Commission ought to find some way to  
19 get the statute in accord with what happens in  
20 reality.

21 Because then I get people calling me up  
22 saying why did you do so-and-so to so-and-so? And I  
23 don't even know what they're talking about. So that  
24 will happen to some of you if you're ever the chair.

25 So I just think that there's an anomaly

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1 there, and I don't know what we do about it. The  
2 Commission is such a strange -- such an odd agency  
3 that we have all sorts of things happening.

4 Anybody got anything else on the Staff  
5 Director's?

6 COMMISSIONER THERNSTROM: Yes.

7 COMMISSIONER BRACERAS: Well, yes.

8 CHAIRPERSON BERRY: Commissioner  
9 Thernstrom, and then Commissioner Braceras.

10 COMMISSIONER THERNSTROM: Have we agreed  
11 to go into executive session next time?

12 CHAIRPERSON BERRY: No, because I think --

13 COMMISSIONER THERNSTROM: Next meeting?

14 CHAIRPERSON BERRY: Oh. I understood that  
15 you wanted to wait?

16 COMMISSIONER THERNSTROM: I want to wait  
17 till next meeting.

18 CHAIRPERSON BERRY: We can do it next  
19 time, fine.

20 COMMISSIONER THERNSTROM: Good. Okay.

21 CHAIRPERSON BERRY: Yes, Commissioner  
22 Braceras.

23 COMMISSIONER BRACERAS: Yes, I mean I hate  
24 to waste any more time on this, but you know --

25 CHAIRPERSON BERRY: You're not wasting

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1 time, go ahead.

2 COMMISSIONER BRACERAS: Well, okay. You  
3 know, since I feel that you criticized my concern as  
4 inappropriate, I need to respond. I never suggested I  
5 was giving legal advice. I did, however, suggest that  
6 as a commissioner I had concerns, and I will continue  
7 to raise my concerns about this and any other matter  
8 that may arise with the Commission because I do think  
9 that's part of our responsibility.

10 And particularly when an agency concerned  
11 with civil rights is being sued for a civil rights  
12 violation, I think that's something that all  
13 commissioners with legal background or otherwise  
14 should be concerned about. And it's something we need  
15 to talk about as a group.

16 So I'm not going to refrain from giving my  
17 opinions. Nobody should take them as legal advice,  
18 because certainly that's not what they are. But I  
19 will bring to bear my experience, as should the chair,  
20 as should the vice chair, as should anybody else who  
21 has experience in whatever area we're discussing.

22 I would gladly have commissioners bring  
23 forward their experience on any topic we're  
24 discussing. And I think that's an appropriate role.  
25 So I disagree with your statement that my comment was

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1 inappropriate, and I will continue to raise my  
2 concerns when I have them.

3 CHAIRPERSON BERRY: Well, in the interests  
4 of time, or perhaps I should not. I should have the  
5 transcript read back, so that we can hear the  
6 statement that you made.

7 Because I was referring clearly to your  
8 statement that as a management attorney --

9 COMMISSIONER BRACERAS: That in my  
10 experience, something that I had --

11 CHAIRPERSON BERRY: Right. And my only  
12 concern is that people not give legal advice when  
13 they're not here to give legal advice. Of course we  
14 can all state our opinions about everything in the  
15 world.

16 And so I appreciate your clarification of  
17 why you were giving your opinion, and what it meant,  
18 and that it's not to be taken as legal advice. So we  
19 won't ask anything be read back.

20 I just appreciate your clarifying for the  
21 record that that was not your intention. And perhaps  
22 I misunderstood you. I took that to be your  
23 intention. So thank you for that clarification,  
24 Commissioner Braceras.

25 Anybody have anything else on the Staff

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1 Director's Report? Yes.

2 COMMISSIONER KIRSANOW: Yes, this is on a  
3 completely different subject. I didn't see it in the  
4 Staff Director's Report, but I think last time we had  
5 something like this in the Staff Director's Report  
6 pertaining to the hotline that was reestablished  
7 pertaining to -- I think just prior to the outset of  
8 Gulf War II, we had the hotline reestablished for any  
9 kind of hate crimes, or acts of discrimination against  
10 Arab-Americans, or Muslims.

11 Number one, if you have it off the top of  
12 your head, what's been the experience with that? Is  
13 that still up? And number two, can we get a report on  
14 that?

15 STAFF DIRECTOR JIN: Can we get a report?

16 COMMISSIONER KIRSANOW: Yes.

17 STAFF DIRECTOR JIN: Yes, I think I can  
18 give you a general -- my general understanding, and  
19 then ask Terri Dickerson to elaborate if she feels she  
20 needs to.

21 I mean, we put that up, I think, as an  
22 appropriate precaution. And so I think it was a good  
23 idea. But I think fortunately, we did not really get  
24 -- unlike last time, we really did not get a lot of  
25 extra calls.

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1                   And so I think that's the status. Is that  
2 right, Terri? Yes, I think Ms. Dickerson just kind of  
3 confirmed that that's generally correct.

4                   COMMISSIONER KIRSANOW: Thank you.

5                   CHAIRPERSON BERRY: Commissioner  
6 Thernstrom?

7                   COMMISSIONER THERNSTROM: I have a  
8 question about the hotline. Was that specifically  
9 designated as a hotline for Arab-Americans, Muslims,  
10 whatever? Because there has been rising concern on  
11 the part of some Jewish groups about an increase in  
12 anti-Semitism in connection with Operation Iraqi  
13 Freedom.

14                   And I would also -- we have such hotlines  
15 -- hope that they would be open to other groups that -  
16 - if they had complaints related to, you know, to the  
17 war in Iraq, or the immediate precipitating event that  
18 has led to the establishment of the hotline.

19                   STAFF DIRECTOR JIN: Commissioner  
20 Thernstrom, first of all, it's important to remember  
21 that the Commission for many years, well before  
22 September 11, has had a complaint hotline dealing not  
23 only with complaints of harassment and hate crimes,  
24 but with a lot of other different matters.

25                   And again, I mean, that's been in

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1 existence for a long time. What happened was, as  
2 September 11 happened, both because of overflow, and  
3 because I think we decided that that was a service we  
4 could provide for those that had begun to get -- to be  
5 victims because of what happened, we created a  
6 separate number.

7 But certainly the situation you alluded  
8 to, or any other situation during the ongoing periods,  
9 we have a complaint hotline available for that.

10 CHAIRPERSON BERRY: Okay.

11 **V. FUNDING FEDERAL CIVIL RIGHTS ENFORCEMENT:**

12 **2004 REPORT**

13 CHAIRPERSON BERRY: Let's go to the next  
14 item, if that's all right with everybody. It's called  
15 Funding Federal Civil Rights Enforcement: 2004 Report.

16 And it is the responsibility of the Office of Civil  
17 Rights Evaluation.

18 And how do you want to?

19 STAFF DIRECTOR JIN: I think Ms. Dickerson  
20 has a short introduction to the report. The report  
21 kind of speaks for itself. So but I think that's what  
22 we're going to do.

23 CHAIRPERSON BERRY: Just a minute, Terri.

24 Yes?

25 COMMISSIONER BRACERAS: I'm sorry. Yes,

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1 with all due respect, I'm eager to hear the  
2 introduction, but I'm wondering whether we shouldn't  
3 table this entire discussion until Commissioner Edley  
4 can be here as well.

5 I believe he had communication with  
6 Commissioner Thernstrom asking that we table  
7 discussions, substantive discussions and votes until  
8 he can participate. And I would move that we do so,  
9 out of respect.

10 COMMISSIONER THERNSTROM: I'll second.

11 CHAIRPERSON BERRY: Okay. Anybody object?

12 COMMISSIONER THERNSTROM: Yes, I second  
13 that, if we need a formal vote. I would like to.

14 CHAIRPERSON BERRY: We don't need a vote,  
15 but does anybody object? I mean does anyone insist  
16 that we do it anyway? Okay, Terri, you have to save  
17 your dulcet tones --

18 COMMISSIONER BRACERAS: Sorry.

19 CHAIRPERSON BERRY: -- and golden-throated  
20 communication, your substance, until the next time.  
21 Okay.

## 22 VI. STATE ADVISORY COMMITTEE REPORT

23 CHAIRPERSON BERRY: Let's do the State  
24 Advisory Committee Report on Arab and Muslim Civil  
25 Rights Issues in the Chicago Metropolitan Area Post-

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1 September 11 (Illinois).

2 Can I get a motion to approve this report?

3 VICE CHAIRPERSON REYNOSO: So moved.

4 CHAIRPERSON BERRY: Can I get a second?

5 COMMISSIONER BRACERAS: Second.

6 CHAIRPERSON BERRY: This report is based  
7 on a forum -- a series of forums.

8 STAFF DIRECTOR JIN: Just one forum.

9 CHAIRPERSON BERRY: One forum that they  
10 had. And a lot of the State Advisory Committees had  
11 such forums. And this is one coming out of that. It  
12 reports what people said, summarizes the kinds of  
13 issues and problems that were raised.

14 Any further discussion of this report?  
15 All those in favor, indicate by saying aye.

16 (A chorus of ayes.)

17 CHAIRPERSON BERRY: Opposed?

18 (No response.)

19 CHAIRPERSON BERRY: So ordered.

20 **VII. FUTURE AGENDA ITEMS**

21 CHAIRPERSON BERRY: Are there any other  
22 agenda items, or anything else that I forgot that we  
23 ought to be doing? Or are we finished? Okay. Can I  
24 get a motion to adjourn?

25 COMMISSIONER KIRSANOW: So moved.

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1 CHAIRPERSON BERRY: Can I get a second?

2 COMMISSIONER BRACERAS: Second.

3 CHAIRPERSON BERRY: Okay, so all in favor  
4 indicate by saying aye.

5 (A chorus of ayes.)

6 CHAIRPERSON BERRY: Opposed?

7 (No response.)

8 CHAIRPERSON BERRY: So ordered. Thank you  
9 very much.

10 (Whereupon, the above-entitled matter went  
11 off the record at 10:44 a.m.)

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