

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY,
NOVEMBER 12, 2004

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The Commission convened at 9:33 a.m. in Room 540 at 624 9th Street, Northwest, Washington, D.C. at 9:30 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON
CRUZ REYNOSO, VICE CHAIRPERSON
JENNIFER C. BRACERAS, COMMISSIONER
CHRISTOPHER EDLEY, JR., COMMISSIONER
(via telephone)
PETER KIRSANOW, COMMISSIONER
ELSIE M. MEEKS, COMMISSIONER
RUSSELL G. REDENBAUGH, COMMISSIONER
(via telephone)
ABIGAIL THERNSTROM, COMMISSIONER

LESLIE R. JIN, STAFF DIRECTOR

STAFF PRESENT:

TERRI DICKERSON, Assistant Staff Director
 MANUEL ALBA
 TERESA BROOKS
 DEBRA CARR, Esq., Deputy General Counsel
 IVY DAVIS, Chief, Regional Programs
 Coordination Unit
 BARBARA DELAVIEZ
 PAMELA A. DUNSTON, Chief, Administrative
 Services and Clearinghouse Division
 GEORGE M. HARBISON
 SOCK-FOON MacDOUGALL
 EMMA MONROIG
 KWANA ROYAL
 MICHELLE ROYSTER
 ALEXANDER SUN
 DEBBIE VAGINS
 TIFFANY WRIGHT
 MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

LAURA BATIE
 PATRICK DUFFY
 JOY FREEMAN
 CHRISTOPHER JENNINGS
 KIMBERLY SCHULD
 MELISSA SHARP
 KRISHNA TOOLSIE

I-N-D-E-X

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

(9:33 a.m.)

CHAIRPERSON BERRY: The meeting will come to order. The first item on the agenda is the approval of the agenda.

I. APPROVAL OF AGENDA

CHAIRPERSON BERRY: Could I get a motion to approve the agenda?

VICE CHAIRPERSON REYNOSO: So moved.

CHAIRPERSON BERRY: Get a second?

COMMISSIONER REDENBAUGH: Second, of course.

CHAIRPERSON BERRY: All in favor indicate by saying "Aye."

(Whereupon, there was a chorus of "ayes.")

CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: So ordered. The second item is approval of the minutes of the October 8th, 2004 meeting.

II. APPROVAL OF MINUTES OF OCTOBER 8, 2004 MEETING

CHAIRPERSON BERRY: Could I get a motion? Motion?

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COMMISSIONER EDLEY: So moved.

CHAIRPERSON BERRY: Second?

COMMISSIONER THERNSTROM: Second.

CHAIRPERSON BERRY: Any changes, discussion, anything on the minutes?

(No response.)

CHAIRPERSON BERRY: Okay. All in favor indicate by saying "Aye."

(Whereupon, there was a chorus of "ayes.")

CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: So ordered. The next item on the agenda is announcements.

III. ANNOUNCEMENTS

CHAIRPERSON BERRY: I don't have any of those or do I have some? Okay. Thank you.

The commissioners please join the nation in observing National American Indian and Alaskan Native Heritage Month, which is the month of November 2004. The commission has marked this observation since 1976, when presidential and congressional resolutions proclaim a day, week, or month to celebrate the culture, contributions, and heritage of American Indians and Alaskan Natives.

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And, as commissioners know, the Commission has done a lot of work on issues concerning Native Americans and that the commission has received the National Congress of American Indians Public Sector Leadership Award for work done on studies related to Native Americans and Indians. And the museum opening this year on the Mall is fantastic.

Anyway, November 16th, 1990, the Native American Graves Protection and Family Abuse Prevention Act was passed by Congress, providing protection of American Indian grave sites and the repatriation of Indian remains and cultural artifacts to the tribes, which remains an interesting and important and sometimes controversial enterprise.

On November 10th, 1983, Fred Korematsu, Min Yasui, and Gordon Hirabayashi filed petitions to overturn their World War II convictions for violating curfew and evacuation orders directed at Americans of Japanese descent.

November 21st, 1989, the President signed into law an entitlement program to pay each surviving Japanese American internee \$20,000 for their internment. This, of course, happened after the attack on Pearl Harbor in World War II. And apologies were given. And the reparations have been paid.

1 November 29th, 1975 is the Individuals
2 With Disabilities and Education Act, which was passed
3 by Congress at that time. I remember that because
4 when I came into the Carter administration, it hadn't
5 been funded.

6 And the first day I was there to run the
7 education programs, we had a budget discussion on the
8 President's new budget. And the Secretary said, "Oh,
9 that will be about four."

10 And I said, "Four million. That's a lot
11 for a program."

12 And everybody in the room laughed. And
13 the Secretary said, "I lose that much on the way to
14 the bathroom. I mean, four billion anyway," which was
15 my introduction to the federal government.

16 Important Individuals With Disabilities
17 Act originally enacted as a result of society's
18 failure to provide children with disabilities
19 appropriate education. And it mandates the provision
20 of a free appropriate public education for children
21 with disabilities and some federal funding for that
22 goal.

23 November 1968 the Congresswoman Shirley
24 Chisholm, who is still happily living down in Florida,
25 became the first African American woman elected to

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1 Congress. In 1972, she ran for the Democratic
2 presidential nomination, the first African American in
3 modern history to do so, but she was unsuccessful. It
4 was an important milestone.

5 She was in Congress 15 years when in 1982,
6 she decided to not run again. She had a very
7 important public career in office before she was in
8 Congress.

9 November 6, 1986, the Immigration Reform
10 and Control Act of 1986, which we call IRCA, was
11 enacted, giving a major alien legalization program
12 that brought legal status to a large number of
13 undocumented Latinos. And so it was a landmark piece
14 of legislation.

15 I don't have any other announcements.
16 Does anyone else have any announcements?

17 COMMISSIONER KIRSANOW: I just wanted to
18 note one Gretchen just passed. We had a record
19 turnout in terms of number of voters. In some places
20 the estimate is that minority participation increased
21 by as much as 20 percent. And black participation in
22 some states was up to 30 percent, and I think that's a
23 very salutary outcome, not that there weren't any
24 glitches, but I think we should be very happy that so
25 many people participated.

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1 CHAIRPERSON BERRY: Okay. Anybody have
2 anything else? Yes?

3 COMMISSIONER MEEKS: Just to sort of add
4 on to that, Pine Ridge Reservation, my reservation,
5 which is the largest reservation in South Dakota, in
6 2000 I think voter participation was about 14 percent.
7 And it was at almost 60 percent.

8 CHAIRPERSON BERRY: How much?

9 COMMISSIONER MEEKS: Sixty.

10 CHAIRPERSON BERRY: Wow. So that's
11 absolutely fantastic.

12 COMMISSIONER THERNSTROM: What do you
13 attribute that to?

14 COMMISSIONER MEEKS: A lot of work by a
15 lot of people.

16 VICE CHAIRPERSON REYNOSO: Madam Chair, I
17 just want to note historically that I was part of the
18 commission that made the recommendations on IRCA.

19 CHAIRPERSON BERRY: Oh, that's right. I
20 know you had mentioned that.

21 VICE CHAIRPERSON REYNOSO: And that it was
22 very much of a bipartisan approach to the study on
23 immigration issues at that time. While the Commission
24 was established during the Carter administration, our
25 report was made during the Reagan administration. And

1 that's when the legislation passed.

2 CHAIRPERSON BERRY: Absolutely. Oh, I
3 know one other announcement I forgot to make. I have
4 appointed former Commissioner Victoria Wilson and
5 former Commissioner Francis S. Guess, one a Republican
6 and one an independent, to sit on the U.S. Elections
7 Assistance Commission Board of Advisers.

8 The Board of Advisers is 37 members drawn
9 from various national associations and government
10 agencies who play a role as volunteers in the
11 implementation of the Help America Vote Act. They
12 serve for two-year terms and may be reappointed.

13 Commissioner Guess, who was a close
14 personal friend and colleague of Senator Billy Frist
15 from my home state in Tennessee and served in the
16 cabinet with Lamar Alexander, who was a former
17 governor of our state and who is now in the Senate,
18 was quite agreeable to doing so.

19 And it was his suggestion after
20 consultation that it would make sense to appoint two
21 former commissioners to this voluntary board. And so
22 upon advice of counsel, who informed me that under the
23 statute, I could make the appointment. I appointed
24 them. And so I'm announcing that today.

25 The next item on the agenda is the staff

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1 director's report. Do you have anything to say,
2 first? And if not, then does anyone have any
3 questions? Does the staff director wish to say
4 something?

5 IV. STAFF DIRECTOR'S REPORT

6 STAFF DIRECTOR JIN: I will just answer
7 questions.

8 CHAIRPERSON BERRY: The staff director
9 will answer questions. Does anyone have any questions
10 for the staff director?

11 COMMISSIONER REDENBAUGH: Yes, I do.

12 CHAIRPERSON BERRY: Yes, Commissioner
13 Redenbaugh?

14 COMMISSIONER REDENBAUGH: Thank you. I
15 wanted to ask your thinking, the reasoning behind
16 submitting to the Executive Branch your designation
17 for positions prior to commissioners having had an
18 opportunity to express themselves on it.

19 STAFF DIRECTOR JIN: Okay. I would be
20 happy to, Commissioner Redenbaugh. Yes. I think I
21 wanted to clarify something. And, for those of you
22 who don't know, Commissioner Redenbaugh a couple of
23 days ago sent me an e-mail indicating that he had some
24 questions about how I proceeded.

25 Actually, the issue you raised, initially

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1 I had the same question. And so I wanted to make sure
2 I handled the process properly. But I think that it
3 would be a mistake to think that going to OPM was the
4 last step in the process because when I consulted with
5 my people in our Office of Personnel and, in fact, I
6 talked to them several times, I wanted to make
7 absolutely sure that I was on solid ground on this.

8 The OPM's role in this situation is just a
9 step. It's not the final step. And what happens is
10 whenever the federal government hires a new career
11 SES, Senior Executive Service person, if that's the
12 potential candidate, then OPM has to examine the
13 applicant to make sure that his or her qualifications
14 meet the federal government standards for SES
15 candidate.

16 So because that was not the last step and
17 because my Personnel Office assured me that their
18 approval or endorsement did not finish the process, I
19 felt that it was prudent to go ahead and
20 simultaneously go through that process as well as the
21 30-day notice.

22 COMMISSIONER BRACERAS: What do you mean
23 by "finish the process"? It's not clear to me.

24 STAFF DIRECTOR JIN: Yes. I mean, at some
25 point if the candidate that I selected is appointed,

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1 that would be my appointment. But let's just say two
2 of the steps among many that we would have to go
3 through in order to get to that point, if we get to
4 that point, one is that OPM has to look at the person
5 to see if she meets the qualifications.

6 And the second part, because of our
7 administrative instruction rules, as Commissioner
8 Redenbaugh noted to me, requires a 30-day notice,
9 which, of course, I knew, which is why I gave notice
10 31 days.

11 COMMISSIONER BRACERAS: When you say that
12 the OPM doesn't finish the process, hypothetically
13 you're saying the candidate may sign off on it.
14 You're saying that that is not the final word?

15 STAFF DIRECTOR JIN: That is exactly
16 correct. That is exactly correct. And so --

17 COMMISSIONER BRACERAS: In your view, the
18 second step is the 30-day notice after OPM?

19 STAFF DIRECTOR JIN: Well, no. I mean, my
20 view is that these are steps that have to be completed
21 before I can make the appointment. There's nothing in
22 our AI or anything else that suggests whether they
23 have the sequential which goes first, which goes
24 second, or whether they go concurrent.

25 COMMISSIONER BRACERAS: Let me ask you a

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1 question. As far as the factors that the Office of
2 Personnel Management would consider, wouldn't one of
3 their considerations be whether or not the Commission
4 has signed off?

5 STAFF DIRECTOR JIN: No. Our --

6 COMMISSIONER BRACERAS: That's an
7 irrelevancy to them?

8 STAFF DIRECTOR JIN: Yes because our
9 administrative instructions, I wouldn't say it's
10 unique, but it may be unique. But it's not typical.
11 I mean, we can have commissioners pass appropriately
12 if that's what the commissioners wanted a provision
13 that says for the two positions of deputy staff
14 director and general counsel if they wanted a chance
15 to veto the staff director's selection.

16 That's not an inherent part of the OPM
17 process. The OPM process doesn't even know who the
18 applicants are. All it does is make an assessment of
19 the background, experiences, skills of a potential
20 candidate and say, "Yes, this person meets that
21 qualification."

22 COMMISSIONER BRACERAS: Perhaps I am not
23 familiar enough with OPM's internal workings and
24 perhaps you're not the best person to answer this
25 question, but I would be curious what their practice

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1 is as far as when they get somebody's name forwarded
2 to them, is there an assumption that the governing
3 body has signed off or if the governing body has not
4 signed off whether that weighs at all or, if so, a
5 little or a lot in their calculations. I think that's
6 something that we need to find out.

7 STAFF DIRECTOR JIN: My understanding
8 from, again, several conversations with the Office of
9 Personnel is that they are looking at the candidate.
10 They're not trying to evaluate the merits of the --

11 COMMISSIONER BRACERAS: But you don't know
12 that for certain.

13 STAFF DIRECTOR JIN: I believe I know it
14 for certain based on my conversations with the Office
15 of Personnel.

16 COMMISSIONER BRACERAS: So we might need
17 to make further inquiry of that.

18 CHAIRPERSON BERRY: I know it for certain.

19 COMMISSIONER BRACERAS: All right. Well,
20 I'll call them and find out.

21 CHAIRPERSON BERRY: We have done it in the
22 past. So unless the OPM has changed its procedure,
23 which they may have done in recent years --

24 COMMISSIONER BRACERAS: I am just
25 interested to know from them exactly what the

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1 procedure is. I want that documented factually so
2 we'll have that for the record.

3 CHAIRPERSON BERRY: You may do that if you
4 wish, but I know we have done it in the past.

5 Commissioner Kirsanow?

6 COMMISSIONER KIRSANOW: I just want to
7 clarify something in the AIs. The language suggests
8 some discretion with respect to the rejection and
9 proceeding forward with the selection of this
10 particular appointee. And also there's a matter of
11 timing, and I just want to get it straight.

12 I was looking at AI-16.103. And it states
13 that, "The staff director shall submit the names of
14 any individuals whom he/she proposed to appoint as
15 deputy staff director or general counsel to the
16 Commission."

17 It goes on to say that "During a period of
18 30 calendar days after such submission, the Commission
19 by a vote of a majority may reject such proposed
20 appointments. If the Commission fails to act during
21 such period, the staff director thereafter may proceed
22 with the appointments" and suggests some discretion on
23 your part as to whether or not you can proceed with
24 the appointments.

25 There is also an issue with respect to the

1 timing.

2 COMMISSIONER BRACERAS: I am sorry. Can
3 you give us the citation again? Thank you.

4 COMMISSIONER KIRSANOW: Yes. It is
5 1-16.03. Of course, I don't have a past practice with
6 respect to this, but my reading of this would suggest
7 that having submitted the name to the Commission as a
8 body through an e-mail that I received October 12th,
9 that 30-day period concluded yesterday, presuming also
10 that if we're following normal practice, that if the
11 30-day period falls on either a holiday or a weekend,
12 it would be expended to the next business day, which
13 would be today.

14 So there is an issue with respect to
15 timing of this. How does that play into it?

16 Second, what, if any, ministerial or
17 substantive acts need to be taken after this because
18 it says "may proceed" with the appointments?

19 And third is if this was submitted to OPM,
20 we had a Commission meeting, I believe, on October
21 10th, where this could have been discussed or at least
22 some notice could have been given and why wasn't that
23 given?

24 STAFF DIRECTOR JIN: Answering your last
25 question first, I mean, to be honest with you, there

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1 was no particular reason. I mean, I knew that there
2 was a 30-day provision. And I think the day after the
3 Commission meeting, over the weekend, I was trying to
4 make a list of things I needed to do in upcoming weeks
5 and so forth. And I realized that this was something
6 that I had to do. So I gave notice as soon as I could
7 after that.

8 In terms of the 30-day thing, again, I'll
9 be honest with you. My own personal reading of the
10 administrative instructions is that I could have acted
11 on this prior to today's meeting because, again, I
12 know that both of us as lawyers, we know that in a lot
13 of court rules, there is a specific provision there
14 defining that the holidays do not count. And there is
15 nothing that says that here.

16 So I think that there is nothing that
17 indicates that weekends don't count or holidays don't
18 count. So I think that the 30 days did expire
19 yesterday, but it's moot because I have not -- after I
20 got Commissioner Redenbaugh's e-mail, I decided that I
21 ought to give you all a chance to vote by majority, as
22 allowed by the AI, that I'm wrong, that you don't
23 agree with me. It has nothing to do with wrong. You
24 could just say that you don't want me to proceed with
25 the appointment.

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1 So, I mean, if that's what you want to do,
2 you can still do it. But I do believe that the 30
3 days expired last night.

4 COMMISSIONER KIRSANOW: One follow-up, if
5 I may. You had indicated in invoking this particular
6 procedure that you had consulted with Personnel to get
7 their assessment as to the propriety of this. Did you
8 consult with anyone else, such as general counsel or
9 legal counsel outside of the Commission?

10 STAFF DIRECTOR JIN: No, I did not. Like
11 I said, my main thing was I wanted to be -- the main
12 question I had was the question that Commissioner
13 Redenbaugh had, which is, what is the role of the OPM
14 assessment of the SES candidate? Is that viewed as a
15 final step? Because if that meant that there was
16 automatic appointment after that, then, of course, I
17 needed to go through the 30-day process first.

18 But when I was assured that that was not
19 the case, that that just meant that it passed the OPM
20 part of the process, then I felt that a pretty plain
21 reading of the regs -- I mean, not the regs. A pretty
22 plain reading of the administrative instructions, it
23 gave me quite a bit of latitude as to the timing.

24 The only thing that was key was that I
25 knew that I could not finalize the appointment until I

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1 gave the commissioners 30 days. Plus, OPM had to
2 approve my proposed candidate.

3 CHAIRPERSON BERRY: Commissioner^{est}
4 Thernstrom, could I have that piece of paper?

5 COMMISSIONER THERNSTROM: Les, I am still
6 bothered by the time line here. "During a period of
7 30 calendar days after such submission, the Commission
8 by a vote of a majority may reject such proposed
9 appointment." That implies that within that 30-day
10 period, it seems to me, that a Commission meeting will
11 occur, that the 30 days will be so scheduled such that
12 we have a chance to have a discussion and a vote at a
13 regular Commission meeting.

14 It would have been so, it seems to me,
15 with all due respect, easy for you to have done this
16 in such a way that we weren't going to have to fiddle
17 with, "Well, does Veterans Day count or not count?"

18 I appreciate the fact that you didn't act
19 and you didn't take a kind of legalistic view that the
20 30 days have expired, but, nonetheless, it seems to
21 me, you know, it would have been so easy to just make
22 sure that within the 30 days, a regular Commission
23 meeting occurred and we had without any question the
24 opportunity to discuss this, instead of relying on
25 Russell to have written the note to you.

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1 CHAIRPERSON BERRY: And I am going to
2 answer this. As the person who signed this
3 administrative instruction, namely myself, and with my
4 recollection since I was there and present at the time
5 when the discussion took place and signed it, I will
6 tell you what the intent of the language is. It is as
7 it says.

8 And what has happened in the past is that
9 if commissioners -- there's a presumption that the
10 staff director may appoint whomever the staff director
11 wishes to be general counsel. That's the presumption.

12 What we decided was that, even though that
13 was the presumption, if there were people who had
14 objections and if the majority of the Commission had
15 objections for some reason that we hadn't imagined at
16 the time, that there ought to be an opportunity for a
17 majority to express that objection.

18 And if someone has -- and there has been
19 an occasion in the past when someone had an objection.
20 It had nothing to do with connection with the
21 Commission meeting.

22 And when that happened, that person said,
23 "I have an objection." And the Commission was polled
24 to find out if, in fact, other people had objections
25 and they didn't. But it wasn't necessarily connected

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1 with a meeting.

2 And the presumption is that the staff
3 director appoints whomever the staff director wishes
4 to be the general counsel. It's only to give sort of
5 an out, a safety valve, if, in fact, there's great
6 distress among the commissioners about some proposed
7 appointment, that they have an opportunity or some
8 mechanism by which they can express it.

9 Having said that, today we are at the
10 meeting. The staff director has explained to you that
11 he got the clearances from OPM but that he has not
12 appointed anyone to be the general counsel. And today
13 is the 30th day by anyone's count. And if there are
14 commissioners who don't like it or would like him not
15 to, they have an opportunity to vote to say that
16 today, which is what the procedure envisions.

17 So after all of this discussion takes
18 place, in my view, we can have a vote and see if a
19 majority of the commissioners object. And if a
20 majority does not object, the staff director is quite
21 free to go ahead and appoint whomever he wishes so
22 long as they're cleared by OPM to be general counsel.

23 Now, other discussion is entirely
24 possible. And we may have other discussion, but
25 that's the bottom line.

1 VICE CHAIRPERSON REYNOSO: Madam Chair?

2 CHAIRPERSON BERRY: Yes?

3 VICE CHAIRPERSON REYNOSO: Unless there's
4 an objection, I assume that we don't vote.

5 CHAIRPERSON BERRY: Right. Are there
6 objections? Would someone like to call for a vote
7 because they object?

8 COMMISSIONER KIRSANOW: Yes. I do have an
9 objection, not necessarily to the appointment but an
10 objection as to the process. I am not entirely
11 convinced that the process -- and I accept what you
12 have to say, and I believe that that is, in fact, the
13 case. But I do have certain issues with respect to
14 the whole OPM process and the timing again.

15 As I said, this has not to do with any
16 individual or the appointment itself but has to do
17 with the process. I do have an objection to that, as
18 raised by Russell Redenbaugh, Commissioner Redenbaugh.

19 For that reason, I would move that this be
20 tabled for consideration at December's meeting.

21 VICE CHAIRPERSON REYNOSO: I'm sorry. I
22 just need an explanation. I don't understand the
23 objection.

24 COMMISSIONER KIRSANOW: I am not exactly
25 sure that the explanation I received from the staff

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1 director with respect to the manner in which he
2 proceeded did, in fact, comport with the AI's or any
3 other authority that may have jurisdiction or govern
4 this particular situation. And I would like to
5 examine it a little bit further.

6 VICE CHAIRPERSON REYNOSO: In what manner?
7 I'm sorry. I still don't understand.

8 COMMISSIONER KIRSANOW: In going through
9 the timing of this, I still don't understand how --
10 and I'm looking at the plain language of the AI. I
11 hear what the Chair has to say, and I take what she
12 has to say with great seriousness, but it doesn't seem
13 as if the intent, the plain express intent, of this AI
14 was followed in this particular case.

15 CHAIRPERSON BERRY: The intent of the AI
16 was followed. There is nothing wrong with having
17 someone cleared before you have an agreement to
18 appoint them. It would be like saying if the
19 President wants to nominate someone to the cabinet, he
20 shouldn't have them cleared until he finds out if the
21 Senate wants them.

22 And so if you have a motion to table, if
23 the motion is seconded, we will vote on it. And I am
24 opposed to tabling this. So your motion is to table.

25 Is there a second to the motion to table it?

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1 COMMISSIONER THERNSTROM: I second it.

2 COMMISSIONER REDENBAUGH: Second.

3 CHAIRPERSON BERRY: All right. Any
4 further discussion?

5 (No response.)

6 CHAIRPERSON BERRY: All those in favor of
7 tabling indicate by saying "Aye."

8 (Whereupon, there was a chorus of
9 "ayes.")

10 CHAIRPERSON BERRY: Opposed?

11 (Whereupon, there was a chorus of
12 "ayes.")

13 COMMISSIONER BRACERAS: Roll call. Can we
14 do a roll call vote, please?

15 CHAIRPERSON BERRY: We can have a roll
16 call if you want. Give me a piece of paper.

17 COMMISSIONER BRACERAS: Yes. I want it on
18 the record.

19 CHAIRPERSON BERRY: Braceras?

20 COMMISSIONER BRACERAS: Aye.

21 CHAIRPERSON BERRY: Edley?

22 COMMISSIONER EDLEY: No.

23 CHAIRPERSON BERRY: Kirsanow?

24 COMMISSIONER KIRSANOW: Yes.

25 CHAIRPERSON BERRY: Meeks?

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1 COMMISSIONER MEEKS: No.

2 CHAIRPERSON BERRY: Redenbaugh?

3 COMMISSIONER REDENBAUGH: Aye.

4 CHAIRPERSON BERRY: Reynoso?

5 VICE CHAIRPERSON REYNOSO: No.

6 CHAIRPERSON BERRY: Thernstrom?

7 COMMISSIONER THERNSTROM: Aye.

8 CHAIRPERSON BERRY: Berry, no. It is a
9 four-four vote. The motion fails. Passage, the
10 motion is not tabled. If someone wants to move
11 anything else, they can. Otherwise, a majority of the
12 Commission has not objected to your appointment, Staff
13 Director. And you are free to appoint whoever the
14 person is or whatever you're doing to this position.

15 STAFF DIRECTOR JIN: Thank you.

16 CHAIRPERSON BERRY: Is there other
17 discussion of anything in the staff director's report?

18 COMMISSIONER BRACERAS: I have a short
19 logistical issue I wanted to raise. I'm actually not
20 going to be at the January meeting, although I will
21 participate by phone, because it is too close to my
22 due date.

23 But my assistant, Kimberly Schuld, tells
24 me that in trying to arrange rooms for herself and
25 others, that it's been nearly impossible because the

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1 meeting is at inauguration time. And I guess they're
2 not offering government rates, but the price of the
3 rooms is -- they need 5-night minimums, and it's about
4 \$1,800 a person.

5 So financially I don't know how the
6 Commission would handle that, if they would pay for
7 that or if we would be expected to pay the difference
8 or what the deal with that would be, but it seems to
9 me that the easiest thing is that maybe we should move
10 the meeting a couple of days forward or back because
11 it seems like it's turning out to be a logistical
12 nightmare, both in terms of room and probably it will
13 be in terms of transportation and other things.

14 I don't even know. It's not just the
15 price. I think the availability is so limited that I
16 believe what she said was the only rooms she could
17 find were 20 minutes, 30 minutes out into Virginia and
18 Maryland.

19 So I would propose moving the date for the
20 convenience of all of us coming from out of town.

21 CHAIRPERSON BERRY: Well, I don't know
22 about other people, but my calendar is pretty much
23 booked up. By this time every year, I am already
24 booked up for six months into the year.

25 COMMISSIONER BRACERAS: Every single day

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1 of January, you're booked?

2 CHAIRPERSON BERRY: I know January because
3 it's Martin Luther King's birthday.

4 COMMISSIONER BRACERAS: And you're booked
5 every day of the month?

6 CHAIRPERSON BERRY: And I teach. So I
7 have to teach. And then I have to do Martin Luther
8 King activities. I'd be willing to look at the
9 calendar and see if it can be changed, but I can't do
10 it right here.

11 COMMISSIONER BRACERAS: Well, I think we
12 should. I mean, you live locally, I believe. So
13 obviously it's not an inconvenience for you. And I'm
14 not going to be coming. So it's not an inconvenience
15 for me. But I think in consideration of all of those
16 coming from out of town -- and there are quite a few
17 -- we need to look into it.

18 Also, my secondary question would be, is
19 the Commission going to pay those exorbitant rates?
20 And is that fiscally responsible? I mean, are they
21 going to pay \$1,800 a person to stay in a hotel for a
22 Commission meeting?

23 CHAIRPERSON BERRY: Why don't we do this?
24 Why don't we have the staff director check into this
25 logistical problem? And why don't we if he can't

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1 figure out how to handle it, then propose some dates
2 and then poll us or have people send them out to us
3 and see if you guys can --

4 COMMISSIONER BRACERAS: Why don't we
5 propose some dates now so that it can all be looked at
6 together?

7 CHAIRPERSON BERRY: I can't do it now.

8 COMMISSIONER BRACERAS: Proposal that the
9 staff director can then e-mail people about. We could
10 throw up the dates. And then Les can send an e-mail
11 saying, "How do these dates work for you?" -- it's not
12 that complicated -- when everybody has their calendars
13 in front of them.

14 CHAIRPERSON BERRY: Commissioner
15 Thernstrom has a suggestion?

16 COMMISSIONER THERNSTROM: I just want to
17 reiterate. It's not simply a question of getting
18 hotel rooms, which in itself is a momentous obstacle.

19 But I can't imagine we're getting on flights. I
20 mean, it's going to be a nightmare. Let's just face
21 it. It's the wrong time to come to Washington from
22 out of town if you're not part of the inaugural
23 ceremonies.

24 COMMISSIONER BRACERAS: Not that I
25 wouldn't want a government-paid ticket to the

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1 festivities. However --

2 CHAIRPERSON BERRY: However, you're
3 delivering.

4 COMMISSIONER BRACERAS: Correct.

5 CHAIRPERSON BERRY: I'm not delivering.

6 COMMISSIONER THERNSTROM: I don't want a
7 government-paid ticket. I'll pass. I don't want to
8 come in this city at the time a gazillion other
9 people.

10 CHAIRPERSON BERRY: Staff Director, they
11 can propose some dates, and you can go off and look at
12 those logistics.

13 COMMISSIONER EDLEY: Madam Chair?

14 COMMISSIONER BRACERAS: I understand that
15 you're very busy, as are we all. But certainly there
16 has to be a three-hour window sometime in the month of
17 January that we can all carve out to meet.

18 COMMISSIONER EDLEY: Madam Chair?

19 CHAIRPERSON BERRY: Yes, Commissioner?

20 COMMISSIONER EDLEY: The other thing the
21 staff director might consider if that's the only day
22 that works, is perhaps we can meet in Baltimore or
23 Philadelphia.

24 COMMISSIONER BRACERAS: Again, that is
25 another big cost moving it to another city.

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1 COMMISSIONER EDLEY: Well, but it might be
2 fairly cheap. You know, it wouldn't require
3 overnights for the local people.

4 CHAIRPERSON BERRY: Maybe people could fly
5 into the Philadelphia airport. There's a hotel --

6 COMMISSIONER BRACERAS: I have an idea.

7 CHAIRPERSON BERRY: Yes?

8 COMMISSIONER BRACERAS: Why don't we have
9 it in Boston? That way I can show up in person and
10 Abby. It's local to both Commissioner Thernstrom and
11 myself.

12 COMMISSIONER EDLEY: We did it in
13 Philadelphia, Russell. Presumably it would be easy
14 for Russell.

15 COMMISSIONER REDENBAUGH: Yes.

16 CHAIRPERSON BERRY: I'd be up there. I
17 could do it for class. Class day I would be up there.

18 COMMISSIONER EDLEY: Anyway, that is just
19 an option.

20 CHAIRPERSON BERRY: Why doesn't the staff
21 director do this. Why don't you each tell the staff
22 director days that you cannot do it. And I'll figure
23 out when. And the staff director will consider
24 logistically those days or whether to have it
25 somewhere else, in Boston or Philadelphia.

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1 COMMISSIONER BRACERAS: By the way, I am
2 perfectly serious about that. I mean, I would love to
3 host a meeting in Boston, if not this time, then
4 another time. And I'm sure the Massachusetts SAC
5 would be thrilled about that, too.

6 So considering there are two commissioners
7 that live in that area --

8 CHAIRPERSON BERRY: That is a possibility.

9 COMMISSIONER BRACERAS: -- that might be a
10 possibility for this time. And if not, then let's
11 think about it for another time.

12 CHAIRPERSON BERRY: Someone said something
13 on the phone.

14 COMMISSIONER REDENBAUGH: Yes What is the
15 current date?

16 CHAIRPERSON BERRY: Twenty-first.

17 COMMISSIONER REDENBAUGH: Okay.

18 CHAIRPERSON BERRY: So if you could get to
19 the staff director days that you cannot do it? And
20 then he will consider all of these logistics and get
21 back to us in a week. Is a week enough?

22 STAFF DIRECTOR JIN: Yes. I was trying to
23 figure out if I were to get back to you within a week,
24 like when should the commissioners give me their
25 proposals back?

1 CHAIRPERSON BERRY: That is a good point.
2 How about commissioners get something to him by --
3 what is today? -- Monday or Tuesday? And then he can
4 play with it and see what he comes up with.

5 COMMISSIONER BRACERAS: Just to be clear,
6 you don't need anything from me because unless it's in
7 Boston, I'm prohibited from flying. I mean, if it's
8 driving distance, it might be possible, but I won't be
9 able to fly. So don't wait for anything from me.

10 CHAIRPERSON BERRY: How about if it's in
11 Boston?

12 COMMISSIONER BRACERAS: Yes. Oh, yes. I
13 will be there --

14 STAFF DIRECTOR JIN: Then you can make it.
15 Okay.

16 COMMISSIONER BRACERAS: -- with bells on.
17 My assistant I know is flexible. And I think most of
18 the other commissioners are. But don't wait for
19 anything from me.

20 STAFF DIRECTOR JIN: Okay. Fair enough.

21 CHAIRPERSON BERRY: The rest, other people
22 can look at their schedules.

23 Okay. Anything else on the staff
24 director's report? Yes?

25 COMMISSIONER KIRSANOW: I had asked the

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1 staff director clarification with respect to
2 commissioner terms. And you provided me with copies
3 and I think everybody else of e-mails indicating that
4 the terms of the chair and the vice chair expire
5 January 21st, I believe it is, which may have
6 something to do with the preceding discussion also.

7 You cited as authority traditional
8 practices, I believe, or longstanding practices.

9 STAFF DIRECTOR JIN: No. I said
10 longstanding Commission records.

11 COMMISSIONER KIRSANOW: Okay. Which
12 records are those? And how are they produced? And
13 what is your interpretation of those records in light
14 of other authority out there that seems to suggest
15 that terms expire six years from the date of the
16 beginning of that term?

17 STAFF DIRECTOR JIN: Right. And I think
18 we would agree that it's six years from beginning of
19 term. I did not personally look at all of the
20 different documents.

21 Again, I talked to our Personnel Office.
22 And again I had prior conversations with them, but I
23 just wanted to confirm. And, again, the main record
24 is the SF-52s, which is the individual personnel
25 records for each individual, whether it be

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1 commissioners or any employee in the federal
2 government stating the key information.

3 And from that record, the key information
4 was -- and my understanding is this was created right
5 at the beginning of the appointment. The appointment
6 date was for both the chair and the vice chair January
7 22, 1999.

8 And so applying that six-year rule that
9 you just indicated I think we all agree on, the
10 expiration date is January 21 midnight. So that was
11 the main document. Again, I'm sure there are other
12 documents, but that was the main document.

13 COMMISSIONER KIRSANOW: How is the SF-52
14 created and by whom?

15 STAFF DIRECTOR JIN: It is created at the
16 time of the personnel action. And when you say,
17 "Created by whom?". I know our Human Resource Office
18 does the paperwork on it and creates it.

19 I know that in the SF-52s having to do
20 with the staff, I believe I sign all of those. I know
21 I sign some of those. With this, I don't know, I
22 mean, but it was created at the time of the
23 appointment.

24 CHAIRPERSON BERRY: I think he means,
25 where do they get the information from to put in the

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1 SF? Is that what you would like to know?

2 COMMISSIONER KIRSANOW: That is part of
3 it, yes.

4 STAFF DIRECTOR JIN: Yes. And, to be
5 honest, I don't know in this specific instance where
6 that came from. I mean, I don't know specifically.

7 COMMISSIONER KIRSANOW: I just want to
8 state that, you know, there is authority that I think
9 is on point with respect to this particular Commission
10 that indicates that a term runs from or begins as of
11 the occurrence of a vacancy, not when someone
12 necessarily assumes that particular position. And I
13 don't know whether or not any paperwork, such as an
14 SF-52, is controlling in this particular instance.

15 CHAIRPERSON BERRY: Commissioner Braceras?

16 COMMISSIONER BRACERAS: I was just going
17 to dovetail on what Commissioner Kirsanow said and say
18 that, regardless of the longstanding practice of the
19 Commission or whatever any documents may say, clearly
20 the ruling of a court of law would trump that.

21 And I think that the holding in the
22 Kirsanow case is quite clear about that. So I think
23 we need to look at that and resolve it as a matter of
24 law, not as a matter of policy.

25 Second of all, we had a discussion about

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1 this some time ago, in which I believe the Chair said
2 that the person who would decide when her term was up
3 would be the President.

4 And I don't know if the White House has
5 made any determinations on that, but if she still
6 believes that, we need to let them opine.

7 CHAIRPERSON BERRY: Commissioner Meeks?

8 COMMISSIONER MEEKS: I don't mind
9 discussion on this, but this is one of those things
10 that the lawyers and whoever is going to have to
11 decide. I don't think that we are going to have a
12 decision in this. So I actually ask to move the
13 agenda along.

14 CHAIRPERSON BERRY: Okay. I'd be happy
15 to. Anybody have anything else on the staff --

16 COMMISSIONER KIRSANOW: One other thing,
17 Madam Chair.

18 CHAIRPERSON BERRY: Yes?

19 COMMISSIONER KIRSANOW: Last meeting I
20 think Commissioner Edley had asked the staff do some
21 work related to the election and try to monitor the
22 events pertaining to the election and whether or not
23 things were going smoothly or not. And we were
24 supposed to have a briefing on that.

25 I'm just wondering why the briefing was

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1 cancelled. I was pretty much looking forward to that.

2 STAFF DIRECTOR JIN: Yes. I think,
3 especially after the election, when we started having
4 more in-depth conversations with the people that we
5 thought would be the appropriate people to come and
6 talk about how the election went, including especially
7 the election protection people, various election
8 protection people, I think that basically they felt
9 that they needed to finish analyzing the data
10 information that was before them, before they felt
11 comfortable speaking authoritatively and accurately on
12 the subject.

13 So I think that, rather than to rush to a
14 briefing, that maybe we were a little premature. Of
15 course, it's something we can do further down the
16 road.

17 There's no question about that. I think
18 the issues -- obviously we all believe these are very
19 important issues and should remain on the front
20 burner. But it seemed like it was a bit premature in
21 light of responses we were getting from people we were
22 talking to. And so I indicated to the Chair that I
23 felt this should be postponed.

24 COMMISSIONER KIRSANOW: Can you tell us
25 what, if anything, staff is doing or has done? Did we

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1 deploy anybody to monitor elections, so on and so
2 forth?

3 STAFF DIRECTOR JIN: Yes. I wouldn't use
4 the word "monitor" in the sense that it gives the
5 impression that we were able to go out and do
6 investigations and so forth.

7 But we did send a couple of people to Ohio
8 and a couple of people to Florida. I call them
9 "observers." When I talk to them, I explained that it
10 wasn't realistic for me to expect them to be
11 monitoring or doing investigations, that the best we
12 could do was to have some people on the ground so that
13 we could get firsthand information as to what was
14 happening so they can talk to some people, visit some
15 precincts, and so forth. So we did do that.

16 COMMISSIONER BRACERAS: Have those people
17 reported back? I would be very interested to learn --

18 CHAIRPERSON BERRY: How many people?

19 STAFF DIRECTOR JIN: Sure. We had two
20 people go to Ohio and two people go to Florida.

21 COMMISSIONER BRACERAS: Have they reported
22 to you what their observations were or memorialized --

23 STAFF DIRECTOR JIN: Yes. I have had
24 conversations with both, with the people who went who
25 actually represented us of the teams that went. And I

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1 think that, you know --

2 COMMISSIONER BRACERAS: Did they reduce
3 any of that to writing?

4 STAFF DIRECTOR JIN: No, they did not. I
5 mean, I just asked for a verbal briefing.

6 COMMISSIONER BRACERAS: I'm just kind of
7 curious. I understand you're saying you don't want to
8 rush to judgment, and I can appreciate that. But
9 since we actually seem to have had staff who are on
10 the ground, it certainly would be interesting for
11 commissioners to hear what they observed.

12 And I'm unclear as to why they wouldn't be
13 ready just to talk about their visual observations on
14 the ground, not to necessarily make conclusions or
15 draw on other literature but just to tell us what they
16 saw. I think that would be fascinating.

17 I mean, if that's what the Commissioners
18 want, we can do that. My own caveat, again, would be
19 I don't want the commissioners to get the wrong
20 impression or for anybody else to get the wrong
21 impression as to what the staff was asked to do.

22 They did a great job. I mean, I was very
23 impressed with not only the four people who went but
24 with the people who laid the foundation for them.

25 COMMISSIONER BRACERAS: Great. That's

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1 what I'd like to hear about.

2 STAFF DIRECTOR JIN: But basically these
3 were somewhat anecdotal observations.

4 CHAIRPERSON BERRY: Les, whatever the
5 staff found out when you have those people you were
6 going to have brief us who weren't ready to brief us
7 when they come to brief us, why don't you have us also
8 informed as to what the staff said?

9 STAFF DIRECTOR JIN: Sure.

10 COMMISSIONER BRACERAS: I guess my
11 question is, was the purpose of sending the staff out
12 to these locations to inform the briefing, to
13 participate in the briefing, and to brief
14 commissioners or was that just something you wanted
15 them to do internally and had no plans on sharing with
16 us?

17 STAFF DIRECTOR JIN: I think at the very
18 least, it would have helped us with the context of a
19 briefing if we were to have a briefing. And depending
20 on what they saw and what other people saw, maybe they
21 would have had a role that was bigger.

22 But at the very least, I felt two things.
23 One is that that would be helpful in the context of a
24 briefing. A second is that the Commission because of
25 its size and so forth, we could not be in a position

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1 of doing an investigation and monitoring, that it
2 would be good just to have somebody there in a couple
3 of places, and that, if nothing else, I mean, even if
4 we were to have a briefing, I mean, we wouldn't
5 anticipate having a briefing for like nine or ten
6 days.

7 Again, if there were problems of the
8 magnitude and of the scope that happened in Florida in
9 2000, then it seemed like it would have been a good
10 idea to have people in places firsthand just to
11 observe. I mean, I know it's the idea.

12 COMMISSIONER BRACERAS: I guess my
13 question is it seems you did it for informational
14 purposes, which is great. But my question is, for
15 whose information was it: for your own or for the
16 Commission at large? And it seems to me that you're
17 answering that it was not for the information of the
18 Commission at large but, rather, just for staff
19 information, which seems to me to be not necessarily
20 an effective use of resources because if we're going
21 to spend the money to send people out there, it seems
22 that it would be more helpful if we heard what the
23 results of those efforts and labors were.

24 CHAIRPERSON BERRY: Les, I already
25 suggested to you that you have that information so

1 that it would be available when there is a briefing on
2 this.

3 STAFF DIRECTOR JIN: Right. And I think
4 that would be the best context.

5 COMMISSIONER BRACERAS: Right. I look
6 forward to it.

7 CHAIRPERSON BERRY: Commissioner
8 Thernstrom?

9 COMMISSIONER THERNSTROM: You said, of
10 course, they were only anecdotal observations. That
11 was inevitable. I mean, that was predictable from the
12 beginning.

13 I'm confused. Are we still planning to
14 have a briefing?

15 CHAIRPERSON BERRY: At some point.

16 COMMISSIONER THERNSTROM: At some point.
17 So you're contemplating the some point is?

18 STAFF DIRECTOR JIN: No specific date, no
19 specific date.

20 COMMISSIONER BRACERAS: What are you
21 aiming for?

22 STAFF DIRECTOR JIN: I think, rather than
23 set a specific date and then say, "Let's do that," I
24 think that what we probably ought to do is to continue
25 contact with the appropriate people and --

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1 COMMISSIONER BRACERAS: And who are the
2 appropriate people?

3 STAFF DIRECTOR JIN: Like I said, I mean,
4 we're talking a variety of people but certainly the
5 people that were doing election protection.

6 COMMISSIONER BRACERAS: Oh, you had people
7 that you were planning on having here and obviously
8 they felt they weren't ready. Who are they?

9 STAFF DIRECTOR JIN: Well, we have never
10 for a variety of reasons, I think, good reasons,
11 announced specific names until they are confirmed
12 panelists. I mean, we don't talk about the people
13 that we're thinking of inviting.

14 COMMISSIONER BRACERAS: You said, "keep in
15 contact with them." So it's obviously gone beyond
16 thinking of inviting. You've obviously been in
17 contact with them. So I'm just curious who they are.

18 STAFF DIRECTOR JIN: Well, like I said, I
19 mean, I'm more than happy to indicate that they are
20 people involved in election protection, but --

21 COMMISSIONER BRACERAS: You have
22 established relationships with these people that
23 they're willing to participate in a Commission
24 hearing. What do they tell you about when they might
25 be ready to do so?

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1 STAFF DIRECTOR JIN: Well, again, my focus
2 has been to make sure that if we do have a briefing,
3 that it be very productive. So I haven't pressed them
4 for specific dates.

5 COMMISSIONER BRACERAS: You know, I just
6 have to say that your failure to share even the most
7 basic information with commissioners about what your
8 plans are for a briefing that we're all very
9 interested in really borders almost on
10 insubordination. And I think these are very simple
11 questions, you know, who might come and talk to us
12 about this, when might they be ready.

13 You know, you just basically, as you have
14 done so many times, just fudge and fail to give us any
15 information. I just want to be perfectly clear on the
16 record that I think it's totally inappropriate.

17 CHAIRPERSON BERRY: Okay.

18 VICE CHAIRPERSON REYNOSO: Madam Chair?

19 CHAIRPERSON BERRY: Mr. Vice Chair?

20 VICE CHAIRPERSON REYNOSO: I just want to
21 take exception to the last comment. The staff
22 director has instructions from the Commission how to
23 proceed on these matters.

24 COMMISSIONER BRACERAS: To keep all
25 information from commissioners about any planned

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1 briefing?

2 VICE CHAIRPERSON REYNOSO: And it seems to
3 me that he is following those instructions in terms of
4 being in contact with people not at this point, as I
5 understand it, knowing exactly who will be ready
6 whenever we are ready to proceed, et cetera.

7 And it seems to me that he is following
8 the regular procedure established by this Commission.
9 And to upbraid him, as our distinguished commissioner
10 has done, seems to me inappropriate.

11 COMMISSIONER BRACERAS: May I respond?

12 CHAIRPERSON BERRY: Please.

13 COMMISSIONER BRACERAS: I just want to be
14 perfectly clear that the problem here is not
15 substantive. The problem here is the complete lack of
16 flow of information between staff and commissioners,
17 which has been a problem for years, even before I got
18 on this Commission but certainly ever since I joined,
19 about three years ago.

20 What I am objecting to is the failure to
21 involve commissioners in the process of any planning
22 activities beyond an initial endorsement of a project.

23 And we have talked about this many, many
24 times. But here it's not that we're meddling and
25 trying to influence. We simply want basic information

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1 about when you might try to put on a briefing, who
2 might be speaking, and what might be some of the
3 topics.

4 It's not an unreasonable request. I think
5 any outside observer would understand that this is an
6 unreasonable way to run this agency. And those are my
7 feelings on it. That is all I will say.

8 CHAIRPERSON BERRY: Vice Chair?

9 VICE CHAIRPERSON REYNOSO: To a certain
10 extent, I appreciate what the commissioner has said
11 because I went through those same frustrations
12 initially, not having direct contact with the staff
13 but having to go through the staff director, and
14 waiting until we were going to have a briefing before
15 I made my own recommendations and so on.

16 So I can understand the frustrations. But
17 I also understood that when you're dealing with a
18 Commission that's eight members and nobody has
19 priority over anybody else and the Commission has
20 voted to give that authority to the staff director, I
21 have to accept the notion that there is an element of
22 frustration that goes with this job. So I understand
23 that, but I also understand what the Commission
24 decided early on, to do it the way it is being done.

25 And so since the staff director is

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1 proceeding as he has been instructed, that was my
2 observation.

3 COMMISSIONER BRACERAS: Look, this is --

4 CHAIRPERSON BERRY: Well, yes.

5 COMMISSIONER BRACERAS: This will be the
6 last thing I will say. My frustration that I'm
7 expressing right now is not within ability to contact
8 staff and work intimately with staff. That is a whole
9 other issue.

10 The frustration that I'm expressing right
11 now is the failure of the staff director to answer
12 basic questions, not that he's not doing his job or
13 doing what we delegated him, doing the things that we
14 asked him to do. My concern is that he's not sharing
15 with us exactly what he is doing.

16 And so this has nothing to do with
17 micromanaging the staff and everything to do with the
18 responsiveness of the staff director. And I feel that
19 he has not been responsive, both today and on many
20 other occasions, in providing information.

21 And since that is his role to be a conduit
22 of information and a manager of the staff and to
23 convey to the Commission what is going on, I feel that
24 he has failed in that role, either intentionally or
25 unintentionally.

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1 That is my frustration, not that I am
2 trying to micromanage staff. I am just asking for
3 basic information.

4 CHAIRPERSON BERRY: Commissioner
5 Thernstrom?

6 COMMISSIONER THERNSTROM: Les, you have
7 said you are in contact with groups involved in
8 election protection, but that's a very broad category.
9 And it really is part of Jennifer's point.

10 I care whether the groups you are in
11 contact with kind of represent the spectrum of views
12 and approaches to the question of, for instance,
13 election fraud, disenfranchisement, whatever.

14 And so it is really important for us in
15 terms of the legitimacy of your findings with respect
16 to the question. It is important that we have
17 confidence that you are indeed consulting a broad
18 spectrum of views. And that's why it's preferable to
19 have information so that we're on the same page.

20 CHAIRPERSON BERRY: If I can interject so
21 we can move on, if any of you have any organizations
22 or individuals that you think it important that the
23 staff director include in his election protection or
24 proposed whatever he is doing with the briefing,
25 please give him those names and say, "I want you to

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1 get this person, that person, this organization. And
2 if they're not included, make sure they are."

3 And then when you work out whatever the
4 timing is on whoever it is you're talking to, then
5 include those people. Won't that satisfy you?

6 COMMISSIONER BRACERAS: Yes. Well,
7 partially. I mean, one thing I'm trying to ascertain
8 is the priority that the staff is giving this
9 briefing. Is this something that you want to make
10 happen soon? Is this something that you think is
11 important to continue with?

12 It almost seems to me like it's something
13 that you want to let die. I'm not sure. I can't
14 glean from your cryptic remarks whether this is a
15 priority we are going to be focusing on in the new
16 year or whether it's going to be another six months
17 because we want to do a full report and compile data
18 or whether you just want to let it drop off the radar.

19 You have given me no information to
20 indicate what the intent of the Commission staff is
21 and what the priority is. So that's really what I
22 want to know.

23 CHAIRPERSON BERRY: The answer the staff
24 director -- he did tell me why we weren't going to
25 have it and so on. And I told him he should have said

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1 in an e-mail to you guys why we weren't so you
2 wouldn't have to ask. Anyway, it's too late.

3 The groups he has or the staff has talked
4 to and the people who were involved in election
5 protection -- and you may have others -- weren't
6 ready. They thought that in a matter of weeks, they
7 would know when they would be ready and they would
8 tell the Commission but that they felt --

9 COMMISSIONER BRACERAS: At which point the
10 staff director will tell us when the briefing would
11 be?

12 CHAIRPERSON BERRY: Right. They hadn't
13 felt comfortable trying to come and say something
14 right away because they had too much data to analyze
15 and they wanted whatever they did to be done
16 professionally. That's what he told me.

17 Now, I think we should add if any of you
18 have any names -- I don't think he should disclose the
19 names of the organizations, but if you have names you
20 want to give him of people you want to make sure he
21 gets those people --

22 COMMISSIONER BRACERAS: I'm not sure why
23 that's inappropriate to disclose the names but
24 whatever.

25 CHAIRPERSON BERRY: Because they may

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1 decide they don't want to do it. You never can tell.

2 STAFF DIRECTOR JIN: Or we may decide that

3 --

4 CHAIRPERSON BERRY: You don't want them.

5 STAFF DIRECTOR JIN: -- we don't want
6 them.

7 COMMISSIONER BRACERAS: Fair enough.
8 Okay. Yes. I mean, as soon as you know a ballpark
9 figure, whether this is going to be January, April,
10 whatever, I'd like to know it. Are you saying that
11 this is a priority, this is something we want to get
12 done, putting together this briefing, in the next few
13 months or --

14 STAFF DIRECTOR JIN: Well --

15 COMMISSIONER BRACERAS: You were very
16 cryptic about that.

17 STAFF DIRECTOR JIN: What I am saying is
18 that I think the facts would determine my own judgment
19 as to how we want to do it and when we want to do it.
20 Now, I mean, it's --

21 COMMISSIONER BRACERAS: Well, I think the
22 Commission has already decided to do it. We voted on
23 that last month.

24 STAFF DIRECTOR JIN: Okay.

25 VICE CHAIRPERSON REYNOSO: Madam Chair, I

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1 just want to perhaps remind us that it has been our
2 established procedure to have the commissioners make
3 suggestions as to witnesses and organizations to the
4 staff director.

5 CHAIRPERSON BERRY: Make sure you make
6 some. It is a priority. And he will let us know as
7 soon as they say they are ready or they will be ready,
8 but it is a priority.

9 Okay. Can we move on? How about the
10 state advisory committee appointments for Hawaii,
11 Maine, Ohio, New Mexico, Rhode Island, Vermont, and
12 Washington?

13 V. STATE ADVISORY COMMITTEE APPOINTMENTS

14 CHAIRPERSON BERRY: Do you move them?

15 COMMISSIONER BRACERAS: I'm sorry. Can we
16 discuss?

17 VICE CHAIRPERSON REYNOSO: I second.

18 CHAIRPERSON BERRY: Yes. Okay. Now,
19 discussion?

20 COMMISSIONER BRACERAS: I was just
21 wondering. You know, we're going to be having some
22 new commissioners that may be -- we have no idea --
23 from one of these states. And they may have some
24 thoughts on people who should be involved in the state
25 advisory committees.

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1 I don't know if the commissioners feel we
2 should put it off until we have the benefit of the
3 views of the new commissioners, but I think it would
4 be a shame if, for example, we had a commissioner
5 appointed from Maine or Ohio that they weren't able to
6 tap into their network of civil rights activists and
7 recommend particular people from their home state. So
8 I would recommend tabling it.

9 CHAIRPERSON BERRY: Well, our practice in
10 the past has been not to do that. We have acted on
11 appointments when there were appointments coming up
12 with the understanding that if new people came on and
13 had people they wanted to add or something they wanted
14 to do, that the Commission would do it.

15 But we have not just stopped the process
16 because there were appointments to be made. We have
17 just never done that.

18 VICE CHAIRPERSON REYNOSO: No.

19 CHAIRPERSON BERRY: but if commissioners
20 wish to do it.

21 VICE CHAIRPERSON REYNOSO: Madam Chair, I
22 just want to point out that quite often, particularly
23 in the past, I have raised objections where there
24 weren't enough young people on the Commission.

25 But with the assurance of the staff that

1 they would, in fact, continue to look and make further
2 recommendations to add some folk to those advisory
3 committees, I was satisfied and voted to approve. In
4 fact, the staff did proceed to do that.

5 CHAIRPERSON BERRY: So if we could proceed
6 with the understanding that if people had folks they
7 want on or if they have objections to people who are
8 on and wish to raise them with the Commission, that
9 has happened. The Commission would entertain that.

10 Then we can just proceed with the normal
11 work of the agency without having to stop it.

12 COMMISSIONER BRACERAS: I would like to
13 move to table it to the next meeting.

14 CHAIRPERSON BERRY: Is there a second to
15 the motion to table?

16 COMMISSIONER KIRSANOW: Second.

17 CHAIRPERSON BERRY: All those in favor of
18 tabling indicate by saying, "Aye."

19 (Whereupon, there was a chorus of
20 "ayes.")

21 CHAIRPERSON BERRY: Opposed?

22 (Whereupon, there was a chorus of
23 "nays.")

24 CHAIRPERSON BERRY: Motion fails. Now we
25 will vote on the appointments, I suppose, if anybody

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1 wants to vote on them. Do you have objections,
2 anybody have objections, to specific members of these
3 committees or would people like to vote for one at a
4 time or do people just simply want to turn down all of
5 them?

6 COMMISSIONER MEEKS: I don't know how this
7 will turn out, but I suggest we vote state by state.
8 At least I am really lobbying for, if that is the
9 right word, Hawaii.

10 I know most of the members on that, and I
11 didn't have anything to do with the appointments.
12 It's just they're all really good people, some of them
13 who have been on there for a while and are good and a
14 couple that have been added that I happen to know.
15 Hawaii is a small state.

16 So I would like to see it go forward.
17 They have really worked hard. I hate to see it being
18 held up for that reason.

19 COMMISSIONER EDLEY: Can I move Hawaii,
20 please?

21 CHAIRPERSON BERRY: All right. A second?

22 COMMISSIONER MEEKS: Second.

23 CHAIRPERSON BERRY: All those in favor of
24 approving the appointments for Hawaii indicate by
25 saying, "Aye."

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1 (Whereupon, there was a chorus of
2 "ayes.")

3 CHAIRPERSON BERRY: Opposed? Opposed?

4 COMMISSIONER BRACERAS: Opposed.

5 COMMISSIONER KIRSANOW: No.

6 CHAIRPERSON BERRY: Are you opposed,
7 Russell? I can't hear you.

8 COMMISSIONER REDENBAUGH: No, not opposed.

9 CHAIRPERSON BERRY: You are not opposed.
10 So it passes. Okay.

11 COMMISSIONER MEEKS: Thank you.

12 CHAIRPERSON BERRY: Hawaii is passed.
13 Would anyone care to move any of the others?

14 VICE CHAIRPERSON REYNOSO: Yes.

15 CHAIRPERSON BERRY: Keep in mind, too,
16 that if you vote against the appointments, some of the
17 people on there might not be willing to serve ever
18 again, --

19 VICE CHAIRPERSON REYNOSO: Yes, yes.

20 CHAIRPERSON BERRY: -- whoever they are,
21 if the Commission -- since they're volunteering. It's
22 not like they're getting paid anything to do this.
23 And they can be removed at any time. So there's no
24 advantage to commissioners refusing to appoint people
25 when you can remove them any time you feel like it.

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1 That's why it just doesn't make any sense
2 when people have been vetted, when people have agreed
3 to serve, when there is partisan balance, when there
4 is age balance, when all of the requirements have been
5 met, to give the argument that you want to wait
6 because there are going to be some new commissioners,
7 when people can be added to the Commission at any time
8 and the advisory committees are going to be taking off
9 and are volunteering to give their time to do this,
10 absolutely in my view -- and I'm just going to use
11 strong language -- it is insulting to the people who
12 have agreed to serve, to do a public service that you
13 without even knowing them decide that you are going to
14 reject them for that reason.

15 So I want a motion for all of them. And
16 if you want to turn it down, you go ahead and turn it
17 down. Could I get someone to move the approval of
18 these appointments with the understanding that they
19 can be removed at any time, that people can be added
20 at any time, and these are good, public-spirited
21 citizens out here in the states who decided that
22 they're willing to work hard on civil rights issues
23 for this Commission? Could I get a motion?

24 VICE CHAIRPERSON REYNOSO: I so move.

25 CHAIRPERSON BERRY: Could I get a second?

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1 COMMISSIONER MEEKS: Second.

2 CHAIRPERSON BERRY: All those in favor
3 indicate by --

4 COMMISSIONER KIRSANOW: Discussion,
5 please.

6 CHAIRPERSON BERRY: Yes, discussion?

7 COMMISSIONER KIRSANOW: I would just as a
8 counterpoint to your statement with respect to
9 characterizing how the vote would proceed or what it
10 would do to the individuals, I don't perceive it as
11 being insulting to these individuals.

12 I don't know these individuals. I have
13 looked very closely at their biographies, their
14 qualifications. I've also looked at the balance. I'm
15 fairly satisfied that all of the criteria that I would
16 employ in assessing whether or not these individuals
17 should or should not be on advisory commissions have
18 been satisfied.

19 I don't have any specific objections to
20 any given individual. Some of the individuals from my
21 home state I don't know but know of. And I think that
22 they are very good people.

23 I concur with your assessment that these
24 are spirited-minded people. My assumption is that all
25 of these people would be very fine state advisory

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1 committee individuals.

2 Again, though, I concur with Commissioner
3 Braceras' assessment of the process here. I think it
4 would have a beneficial effect to have certain
5 commissioners who may come from these states or new
6 commissioners -- we are at a transition point right
7 now -- weigh in on this.

8 -- And we have consideration of state
9 advisory committees for several months now. I don't
10 want them to wait any longer, but it seems to me
11 waiting a month or two is not going to be fatal to
12 either the consideration of these individual
13 commissioners, or the zeal with which they want to
14 participate.

15 COMMISSIONER EDLEY: Madam Chair?

16 CHAIRPERSON BERRY: Yes, Commissioner
17 Edley?

18 COMMISSIONER EDLEY: I think we have eight
19 commissioners. We have a couple that are going to be
20 leaving soon. I think that they're entitled to
21 exercise their options in full and complete
22 consideration of their terms and we should move
23 forward.

24 CHAIRPERSON BERRY: I think also that
25 absolutely no logical reason has been given to object

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1 to these people. In fact, the appointment of people
2 to the SACs is not a fiefdom of particular
3 commissioners because they come from a particular
4 state. It's supposed to be the collective judgment of
5 members of the Commission, whether they come from a
6 state or don't come from a state, about whether they
7 believe the staff has done a good job with the
8 regional directors in coming up with public-spirited
9 citizens who are interested in working for the cause
10 of civil rights and are willing to put their time to
11 it.

12 It doesn't matter who is coming on this
13 Commission or going off this Commission or whatever
14 they are doing, especially since it's possible to
15 appoint new members at any time and it's possible to
16 take people off at any time, especially since the
17 people we're talking about are volunteers who are
18 doing it just because they wanted to agree civically
19 to participate.

20 So I think that if members of this
21 Commission turn down people on such a spurious basis,
22 I repeat, I think it is insulting and I'm prepared to
23 have a vote to let the word go forth that that is
24 exactly what you have done.

25 Yes, Vice Chair?

1 VICE CHAIRPERSON REYNOSO: Madam Chair, I
 2 just want to comment that it's not hypothetical they
 3 would find it insulting. We were able to bring in the
 4 chairs of the state advisory committees on one
 5 occasion. I met with many of them. I met with them
 6 individually.

7 We have had occasions in times past when
 8 we didn't approve these committees and we postponed it
 9 a month or two. And they told me directly they were
 10 insulted.

11 CHAIRPERSON BERRY: Yes, Commissioner.

12 COMMISSIONER REDENBAUGH: Madam Chair?

13 CHAIRPERSON BERRY: Commissioner
 14 Thernstrom and then Commissioner Redenbaugh.

15 COMMISSIONER THERNSTROM: It is more
 16 insulting to take people off of the Commission two
 17 months from now than it is to postpone the vote. If
 18 we postpone it and there are new commissioners here
 19 and we rope this proposed group in, then they will
 20 have a sense of support from the Commission as a whole
 21 in its revised form.

22 And I think, indeed, far from being
 23 insulting, that will add legitimacy to their tenure on
 24 these --

25 CHAIRPERSON BERRY: Commissioner

1 Thernstrom, I can't believe you made such a statement
2 because you are a social scientist.

3 COMMISSIONER THERNSTROM: Yes.

4 CHAIRPERSON BERRY: And you rely on having
5 a reputation for being a great analyst of things.

6 COMMISSIONER THERNSTROM: Well, I don't
7 know about that.

8 CHAIRPERSON BERRY: And if you think about
9 what you just said yourself, you will realize, first
10 of all, no one knows how long any commissioner who is
11 appointed will serve.

12 So if you're relying on the particular
13 support if you're a SAC member of some particular
14 commissioners, that's not something you can reliably
15 scientifically rely on because you don't know how long
16 they're going to be there.

17 Two, if there's anything that any of you
18 see that is wrong with some particular person here
19 that you don't want on the SAC, you can say that now
20 and you won't be any more wrong about it having made
21 your judgment if there is a new commissioner than you
22 would be now if you have assessed them. All you would
23 be doing is responding to the complaint of some one
24 person from some state who didn't like that person or
25 didn't want them on there.

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1 Your judgment is something you can make
2 now because you have the papers before you. You have
3 had an opportunity to review them. And you can see if
4 you think these people are people who should not be on
5 the SAC.

6 I assure you based on my own experience
7 that anyone who the Commission doesn't want to be on
8 the SAC because they don't think they are a good civil
9 rights person or they ask them to leave for that
10 reason, they would be happy to leave. They're
11 volunteers anyway. So it's not a big deal.

12 So if you would think about just for a
13 moment what you said yourself while I recognize
14 Russell? And then I'll recognize you again if you
15 have anything to say because I am as a scholar
16 somewhat embarrassed by that statement that you made.

17 Yes, Commissioner Redenbaugh?

18 COMMISSIONER THERNSTROM: I would never
19 want to embarrass you.

20 COMMISSIONER REDENBAUGH: Yes. Let me
21 disassociate myself with the Chair's recent remarks,
22 but I would say I think there are merits to both sides
23 of this argument that the understanding is that these
24 can be augmented in the future, I think past analogy
25 understanding that we can decrease as the occasion

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1 arises.

2 CHAIRPERSON BERRY: Yes, Commissioner
3 Thernstrom?

4 COMMISSIONER THERNSTROM: I was simply
5 responding to the question of whether it was
6 insulting. It was a very narrow plank. And I don't
7 know what my skills as a social scientist, whatever
8 they are, had to do with the price of water or
9 whatever.

10 CHAIRPERSON BERRY: It's all right. I
11 apologize for being embarrassed.

12 COMMISSIONER THERNSTROM: I was going to
13 say you are awfully easily embarrassed and I never
14 knew that about you before.

15 CHAIRPERSON BERRY: Okay. Why don't we
16 vote on this? Okay? All those in favor of approving
17 these SAC appointments indicate by saying, "Aye."

18 (Whereupon, there was a chorus of
19 "ayes.")

20 CHAIRPERSON BERRY: All those opposed
21 indicate by saying, "No."

22 COMMISSIONER BRACERAS: No.

23 CHAIRPERSON BERRY: All right. The motion
24 passes, then, by a majority. And the SACs are
25 approved.

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1 Now we'll go on to the next item, which is
2 "Redefining Rights in America: The Civil Rights
3 Record of the George W. Bush Administration,
4 2001-2004" report.

5 VI. "REDEFINING RIGHTS IN AMERICA:
6 THE CIVIL RIGHTS RECORD OF THE
7 GEORGE W. BUSH ADMINISTRATION, 2001-2004"
8 REPORT

9 CHAIRPERSON BERRY: For purposes of
10 discussion, could I get a motion to approve the
11 report?

12 VICE CHAIRPERSON REYNOSO: So moved.

13 CHAIRPERSON BERRY: Could I get a second?

14 COMMISSIONER MEEKS: Second.

15 CHAIRPERSON BERRY: All right. Is there
16 any discussion? Yes, Commissioner Braceras?

17 COMMISSIONER BRACERAS: Yes. I really
18 think it is important to put out a report on the Bush
19 administration or any administration on this topic. I
20 cannot support this report as currently written, and I
21 do hope that we can send it back to the staff and make
22 some changes and get a product that we can all agree
23 on because I think that as currently drafted, this is
24 a rhetorical, political document which is not fair and
25 balanced.

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1 I'm not saying that there aren't areas in
2 which the Bush administration can be criticized,
3 particularly areas in which recommendations can be
4 made for the next four years that might be very
5 constructive. I would like to see all of those things
6 in a revised report.

7 As it stands, I have several objections.
8 And I'll go through them quickly for the record, but
9 what I would ask is for some time to substantially
10 flesh out my concerns in writing and send them back to
11 the staff in the hopes of being able to create a
12 consensus document. But I am going to touch on them
13 briefly right now.

14 CHAIRPERSON BERRY: Commissioner Braceras,
15 could I interrupt you to say that I forgot to do
16 something before you started speaking? And then I'll
17 recognize you again. Is that all right? You can
18 start all over again if you want to.

19 COMMISSIONER BRACERAS: Go for it.

20 CHAIRPERSON BERRY: Okay. I forgot to let
21 Terri come up and do two minutes on her report, and
22 it's her report. Can I let her do that? I was
23 supposed to do that.

24 COMMISSIONER BRACERAS: Well, you know,
25 why --

1 CHAIRPERSON BERRY: And in the heat of the
2 discussion with Commissioner Thernstrom, I forgot.

3 COMMISSIONER BRACERAS: Let me say this
4 procedurally. Maybe it would be helpful because we've
5 all read the report quite carefully -- and I know
6 Terri can very articulately summarize it, but maybe if
7 I raise some of my brief concerns, she could address
8 her comments to that.

9 CHAIRPERSON BERRY: Okay.

10 COMMISSIONER BRACERAS: And then that way
11 --

12 CHAIRPERSON BERRY: Okay. You can go
13 ahead, and then she can.

14 COMMISSIONER BRACERAS: Okay. I guess
15 globally my concern is with the tone and the structure
16 of the document. I do think that there is some
17 inflammatory language in the report that can be taken
18 out that doesn't need to be in there for the report's
19 effectiveness.

20 I think in terms of the bias of the
21 document, my concern is that it relies on a lot of
22 activist group sources. In other words, it cites the
23 left wing civil rights establishment ad nauseam, which
24 is fine if the countervailing viewpoints are also
25 mentioned, not necessarily credited but noted.

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1 So, for example, where it cites to and
2 credits the views of one group, I think it is also
3 necessary to say, "Others believe X, Y, Z." So I
4 think it's important to have opposing views.

5 I think that the best way to structure a
6 report like this would be, frankly, to say this is
7 what the Bush administration has done on, for example,
8 affirmative action. Instead of having a paragraph or
9 a couple of pages that are politically loaded just to
10 state clearly what they have done, then say, "Some in
11 the civil rights community disagree with it because"
12 and credit those views. "Others feel differently,"
13 credit those views. "It is the view of the Commission
14 that" and then say what the majority of the Commission
15 feels. And then leave space to include dissenting
16 voices on the Commission.

17 So, in other words, a majority of the
18 Commission feels that the Bush administration hasn't
19 done enough on X, should do more on Y, the minority
20 comments, and then two sentences for the minority to
21 put in their comments.

22 I think that should be the approach to a
23 report like this, regardless of which ideological side
24 has control of this Commission. I think it's
25 important to recognize both sides of the debate for

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1 several reasons. One, to give the document
2 legitimacy; and, two, because if we want this to be
3 taken seriously by the Bush administration, which,
4 like it or not, is in power for the next four years,
5 we have to be fair and balanced and objective. And we
6 should try to be an aid to them in saying, "Here is
7 how you can refocus your efforts" or "Here is how you
8 can do more."

9 I think if we want to be a player in that
10 debate and how they run things, how they staff things,
11 how they prioritize, we need to produce something that
12 is more credible. I think that type of document would
13 be more useful both for the incoming administration
14 and for scholars.

15 So I have fundamental problems with the
16 tone and the structure and what I see as the bias of
17 the report. I would also say that in terms of the
18 topics that are discussed, it does leave out, the
19 report does leave out, a few areas which I believe the
20 Bush administration has prioritized, one being
21 enforcement of CRIPA, which is the Civil Rights of
22 Institutionalized Persons Act. I don't think it talks
23 about that at all. If it does, it doesn't talk about
24 it in any detail.

25 I know the Bush administration has worked

1 hard on the enforcement of that statute. And I think
2 we need to at least comment on what they have done and
3 how that compares with previous administrations and
4 whether we think that priority is wise or not.

5 Another priority of the administration,
6 which I think has not been sufficiently addressed one
7 way or the other, are there efforts on human
8 trafficking?

9 So I think we need to look at the issues
10 that the administration has prioritized. And it
11 doesn't mean we have to agree with those priorities or
12 any of those things, but we need to at least take
13 their focus as the starting point of what they have
14 done right and what they have done wrong.

15 Finally, I would just say that I strongly
16 object to the cheap shots that this report takes at
17 the Bush administration's minority appointments to the
18 cabinet and to the judiciary and to the federal
19 government service generally.

20 I think it is perfectly fine if we want to
21 list the number of Latino or African American or
22 minority appointments this President has made and give
23 the data in comparison to other administrations. And
24 people can draw their own conclusions from that. But
25 to somehow characterize these people as uncaring on

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1 the issues of civil rights is not only irrelevant to
2 this report but is completely inappropriate.

3 And particularly with respect to the
4 judicial nominees, the report, for example, in the
5 executive summary, I believe, and elsewhere, it
6 specifically says that the nominees and appointees "do
7 not support civil rights protections." What does that
8 mean? That is totally conclusory.

9 They may not support a particular vision
10 of civil rights, but to say that they don't care about
11 civil rights and to acknowledge that they may just
12 have a different perspective is very unfair.

13 And, frankly, with respect to the judicial
14 appointments, it's not relevant. What somebody's
15 views are about the enforcement of CRIPA or human
16 trafficking or faith-based initiatives or affirmative
17 action, frankly, you know, as a political matter, as a
18 political matter and as a policy choice is not at all
19 relevant to the qualifications of somebody to serve on
20 the federal bench. And that's a whole other topic.

21 The fact of the matter is that it's not
22 appropriate for this Commission to be opining on that
23 and particularly to be measuring and evaluating the
24 ethnic authenticity of these appointments.

25 So I have no problem, like I said, with

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1 stating the facts, which is this is how many people he
2 has appointed, how many people of color have been
3 appointed by this President, and letting people draw
4 their own conclusions.

5 But to try to denigrate these people as
6 inauthentic members of their race or insufficiently
7 committed to civil rights is something that I could
8 never sign my name to and I think is appallingly
9 insulting.

10 So those are my concerns with the report.

11 Like I said, I really do want to see a report on the
12 Bush administration and what they have done and what
13 they can do better and, frankly, what they have done
14 wrong in certain areas because there are areas where I
15 disagree with this administration.

16 I would like to be clear in a report from
17 a commission that includes Republicans. I think the
18 administration needs to hear that there are
19 Republicans concerned about civil rights that may
20 disagree with part of their agenda. That will give it
21 more legitimacy.

22 But this report doesn't do that. I'm
23 happy to give detailed suggestions and comments in
24 writing, which is what I plan to do if you will allow
25 me to do so.

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1 CHAIRPERSON BERRY: What did you mean by
2 "human trafficking"?

3 COMMISSIONER BRACERAS: Excuse me?

4 CHAIRPERSON BERRY: You said "human
5 trafficking."

6 COMMISSIONER BRACERAS: Slavery and
7 prostitution issues.

8 CHAIRPERSON BERRY: Do you mean in the
9 whole discussion about the trafficking in human
10 beings? I just want to make sure. I didn't
11 understand what you said.

12 COMMISSIONER BRACERAS: Yes. Right. I
13 mean, it's both domestic and international, yes, but
14 the Civil Rights Division, headed by Alex Acosta, has
15 jurisdiction over that, at least in part, and has been
16 doing a lot of work on that. So that's something that
17 is on their civil rights agenda and, therefore, we
18 should look at it.

19 CHAIRPERSON BERRY: I wasn't --

20 COMMISSIONER BRACERAS: Forced
21 prostitution and slavery in both international and --

22 CHAIRPERSON BERRY: Okay.

23 COMMISSIONER BRACERAS: And it comes into
24 play domestically in terms of immigration and people
25 being brought in against their will or under false

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1 pretenses to do labor in this country submersibly.

2 So there's a lot of mistreatment, as we
3 have talked about on this Commission, of immigrations
4 being brought here under false pretenses and kept
5 against their will doing forced hard labor. That is
6 some of the things that this administration has been
7 investigating and looking at.

8 It's not talked about in this report. And
9 I just think it needs to be talked about: a) because
10 it's an important issue and b) because this
11 administration has tried to do something about it. So
12 we need to look at whether their efforts are effective
13 or not.

14 (Whereupon, the foregoing matter went off
15 the record briefly.)

16 CHAIRPERSON BERRY: Terri left. So we'll
17 have to --

18 COMMISSIONER THERNSTROM: Yes. Maybe we
19 could get Terri back and somebody else could --

20 CHAIRPERSON BERRY: Mireille, could you
21 and Terri come up as soon as Terri -- somebody get
22 Terri in. And somebody else go do that. Mireille, I
23 want you to come up with Terri. Is that okay? Terri,
24 could you and Mireille come up and say whatever you
25 want to say?

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1 There may be things in the comments that
2 you want to address, and there may be things that you
3 want to address whatever you wish to address.

4 MS. DICKERSON: Thank you. Good morning.
5 I kind of segue. We also do civil rights complaints
6 and walk-in complaints.

7 CHAIRPERSON BERRY: Oh, that's right. You
8 do. That's right.

9 MS. DICKERSON: Trying to wear all of the
10 hats this morning.

11 COMMISSIONER THERNSTROM: Someone else I
12 hope is talking to her.

13 MS. DICKERSON: Yes, ma'am. Our
14 complaints specialist is sitting down with her.

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER EDLEY: Can we send Jennifer
17 out to help with that?

18 COMMISSIONER BRACERAS: I think it is
19 being staffed appropriately.

20 COMMISSIONER THERNSTROM: Chris, I think
21 that is slightly insulting. We're trading insults.

22 CHAIRPERSON BERRY: Okay. Are you ready?

23 MS. DICKERSON: The core team that worked
24 on this project was civil rights analysts Mireille
25 Zieseniss and Latrice Foshee as well and then social

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1 scientist Manual Alba. Sock-Foon MacDougall also
2 wrote the housing section. There were other people
3 who worked on the report as well, but that was the
4 core team.

5 OGC reviewed the report for legal
6 sufficiency, and other members of the Commission staff
7 not associated with OCRE also reviewed it as well for
8 editorial soundness.

9 By way of background, in 2000, the
10 Commission asked the staff to complete an evaluation
11 of the Clinton administration. I think it started out
12 as being something discussed that a contractor or
13 someone external would write. And then eventually it
14 was assigned to OCRE. We didn't have a lot of time to
15 complete what we did in the time that we had produced
16 the report.

17 This project, though, was brought this
18 project planning. It was assigned in 2002 for
19 delivery in fiscal year 2004. The staff started
20 working on it about this time last year.

21 Basically, the report -- this is Mireille
22 Zieseniss, who is the team leader on this particular
23 report.

24 The report includes an executive summary
25 and six chapters. The first is an introduction, as

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1 you know, explains the scope and methodology in the
2 context for the report.

3 Chapter 2 covers the administration's
4 commitment to civil rights based on public messages
5 and the administration's political appointments and
6 judicial nominations and as well the funding levels
7 for civil rights enforcement.

8 Through history, civil rights advances
9 have grown out of policy for this EEO and affirmative
10 action, housing, immigration, and voting rights. And
11 chapter 3 gets into those issues.

12 As civil rights has evolved, various
13 groups have become involved in the fight for equality.
14 So we discussed the groups in chapter 4. The policies
15 and initiatives of the administration that affect
16 immigrants, Native Americans, people with
17 disabilities, women, and other groups.

18 Chapter 5 is an assessment of the
19 administration's actions towards new or inherited
20 other programs that may have been started by another
21 administration that were designed to promote equal
22 access.

23 And, finally, in the conclusion, we pull
24 the information together to determine whether the
25 administration's efforts cumulatively have advanced or

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1 retarded civil rights.

2 I just want to say briefly a little bit
3 about the methodology. In completing the report, the
4 staff reviewed public statements and documents, policy
5 briefs, budget data executive reports.

6 There are 996 footnotes in the report.
7 More than 700 of them are -- we did a little analysis
8 of this while we were waiting for the meeting. More
9 than 700 of them are former Commission reports, SAC
10 reports, books, law reviews, White House documents,
11 executive orders, executive agency documents, bills,
12 statutes, congressional testimony, court decisions,
13 briefs, et cetera. And another 200 deal with our news
14 articles.

15 We also analyzed the policies that
16 executive cabinet agencies implemented. And to the
17 extent clarification was needed, we contacted
18 agencies. We conducted an extensive literature
19 review, emphasized reports, publications, offers from
20 scholars, et cetera. And we consulted historical
21 documents to establish context before we got into the
22 analysis of the types.

23 So that's how the staff proceeded on this.
24 If there are detailed questions about any aspect of
25 it, we would like --

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1 COMMISSIONER BRACERAS: I guess, yes.
2 Well, like I said, I'd like to put some of my
3 suggestions in writing, but I do feel it's in the best
4 interest of all of us to try to work together to
5 create a consensus document because I think that
6 failing to put out a report on the civil rights record
7 of this administration would be an abdication of duty.

8 So I think it's great that we can put out
9 such a report. I really want to try to make some
10 revisions so that we can all get on board.

11 I guess I would ask you why you chose to
12 talk about the nominees. I mean, obviously there's
13 controversy surrounding some of them. And a whole
14 report could be written, for example, just on the
15 nomination and handling of the nomination of the
16 Miguel Estrada case. And there are many different
17 views on that.

18 I think that it's a little bit outside the
19 scope of what we are trying to do, which is opine and
20 influence policy. It's not to say that there aren't
21 valid issues of concern about the judicial nominees,
22 but I just think to tackle it in this report, I'm
23 wondering why you chose to do that because I think
24 it's very divisive.

25 To me, it's a stumbling block right there.

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1 I can't even go further than that, even think about
2 supporting this report as long as that's in there.

3 CHAIRPERSON BERRY: Terri, before you
4 answer, I wanted to say something about Commissioner
5 Braceras' comments. First of all, it must be a matter
6 of civil rights policy to be concerned about judicial
7 nominations because Commissioner Braceras wrote a
8 letter to the Judiciary Committee supporting a
9 judicial nomination and identifying herself as a civil
10 rights commissioner and wrote it on the stationery of
11 this Commission. So it must be a matter of civil
12 rights concern or civil rights policy. Otherwise, she
13 would not have done that.

14 Secondly, there is a fundamental --

15 COMMISSIONER BRACERAS: Excuse me. No.
16 Point of personal privilege.

17 CHAIRPERSON BERRY: There is a fundamental

18 --

19 COMMISSIONER BRACERAS: Point of personal
20 privilege.

21 CHAIRPERSON BERRY: You didn't do this?

22 COMMISSIONER BRACERAS: Excuse me. Point
23 of personal privilege.

24 MS. DICKERSON: Yes, yes.

25 CHAIRPERSON BERRY: Did she do this?

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1 COMMISSIONER BRACERAS: May I finish? May
2 I speak?

3 CHAIRPERSON BERRY: I am asking the staff.

4 COMMISSIONER BRACERAS: Of course, I did
5 it.

6 CHAIRPERSON BERRY: Is this correct?

7 COMMISSIONER BRACERAS: Of course, I did
8 it.

9 CHAIRPERSON BERRY: I just want to make
10 sure I'm right.

11 COMMISSIONER BRACERAS: You're absolutely
12 right. I endorsed the candidacy of Miguel Estrada for
13 the D.C. Circuit, and I am proud to have done so.
14 That's not the point.

15 The point is when I spoke out on the
16 Miguel Estrada nomination, I did so because I felt
17 that a Hispanic American was being mistreated in the
18 process by the Senate as a result, in part, of his
19 ethnicity. And to me, there were implications with
20 civil rights with respect to the process of how he was
21 treated that needed speaking out on. And obviously
22 there are people who disagree with that. And that's
23 fine.

24 But in looking at the record of the Bush
25 administration, the judicial nominations process is

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1 too complicated and too large an issue to be put into
2 this report and just make conclusory allegations about
3 it.

4 It's just I am interested in building
5 consensus here and finding common ground on this
6 report. And I cannot sign onto a report that lists
7 the Bush judicial nominees that have been
8 controversial for one reason or another and simply
9 labels them as hostile to "civil rights." It's much
10 more complicated than that.

11 And I can't sign onto a report and I don't
12 think any of the other Republican commissioners can
13 sign onto a report that does that. It engages in
14 stereotyping of these people. And it's not
15 constructive to the process of making recommendations
16 and going forward with a positive civil rights agenda.

17 CHAIRPERSON BERRY: I am saying this
18 because it is not for you to say. It is a matter of
19 policy. It's not for the staff to say.

20 COMMISSIONER BRACERAS: To say what's in
21 the report?

22 CHAIRPERSON BERRY: They can say what's in
23 the report. What I'm about to say I'm saying because
24 of that. The template that the staff uses, no matter
25 who is in charge, when they do civil rights reports on

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1 any subject, they begin with the policy positions of
2 the Commission.

3 And the Commission has certain policy
4 positions on civil rights issues, the whole array of
5 issues that they discuss in this report. They don't
6 just sit down and decide themselves what the policy
7 is.

8 COMMISSIONER BRACERAS: Does the
9 Commission have a policy on judicial nominations?

10 CHAIRPERSON BERRY: The Commission has a
11 policy on civil rights issues.

12 COMMISSIONER BRACERAS: On judicial
13 nominations?

14 COMMISSIONER BRACERAS: The Commission has
15 a policy on affirmative action, on the rights of women
16 to be free of discrimination, on every issue that
17 these nominees have been challenged on and that the
18 staff talks about in the report.

19 The Commission's position is on the issues
20 that the nominees are associated with and the
21 understanding that judges are in position to make
22 decisions about these issues, as they do all the time.

23 And so the staff is beginning with the
24 policy positions of the Commission, also judges. If
25 one thinks that a judge's beliefs about civil rights

1 issues have nothing to do with whether or not they
2 should be a judge, then we just have disagreement.

3 I understand that the staff is focusing
4 not on the entire history of the nomination process of
5 every judge, but they are picking people who are
6 related to civil rights issues that this Commission
7 has a policy position on and is writing about the
8 reputation and the experience and background of these
9 people on this civil rights issue.

10 The other thing I wish to say -- I'm not
11 finished -- before I let them speak is that --

12 COMMISSIONER BRACERAS: No. I want to
13 recognized after you finish.

14 CHAIRPERSON BERRY: You can do whatever
15 you like when I finish. I saw nothing in this report
16 about anyone being an inauthentic representative of a
17 group. Again, the staff begins with the policy
18 positions of this Commission.

19 It is absolutely the rule in this
20 Commission and has been policy since 1957, when it was
21 created, that enforcement is as important as getting
22 legislation passed and that who enforces the laws and
23 how they enforce them is important. Otherwise you
24 have no civil rights protection. That's a policy
25 position of this Commission.

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1 So if you have appointees -- I don't care
2 what color they are -- who do not enforce the civil
3 rights laws in the way that they have been interpreted
4 and consistent with the policy positions of this
5 Commission, then the Civil Rights Commission unless it
6 changes its policy positions has to be at odds with
7 people to do these things.

8 The other point I wanted to make is in
9 terms of outlining the report, we never put dissenting
10 views into the bulk of a report. The staff doesn't do
11 that.

12 COMMISSIONER BRACERAS: That's
13 unfortunate. Most commissions do.

14 CHAIRPERSON BERRY: People who have
15 dissents write dissents. And they're added to the
16 report. We do that all the time, and everybody knows
17 we do that all the time.

18 The understanding and the hope is that
19 when you do a report, you hope this Commission is
20 going to vote for it. You don't start out with --
21 because what you start with is not -- see this is
22 where we totally disagree. And I don't see where this
23 is going.

24 You start out with the policy positions of
25 the Commission, not the views of individual

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1 commissioners. The staff starts from there. What is
2 the policy position of the Commission?

3 COMMISSIONER BRACERAS: I'm not asking
4 them to adopt my view on anything.

5 CHAIRPERSON BERRY: They don't need to put
6 into the report and they may not even know after each
7 little section that they write, "Well, let's see.
8 Some commissioners believe this, and some
9 commissioners believe that" after each section.

10 There is a policy position of the
11 Commission, which they must uphold until it is
12 changed, not that I dissent or you dissent or somebody
13 doesn't like it. We have an opportunity to do that at
14 the end.

15 So that on procedure, in terms of what you
16 think should be done with this report, it has nothing
17 to do with the way reports need to be done or
18 consistent with the policies of this Commission.

19 Also, the issue of the nominations and
20 what they did on the civil rights wrong, authenticity,
21 racially or otherwise, or inauthenticity, isn't
22 mentioned anywhere in this report.

23 So the template is the policy positions.
24 Is that what you guys did, used the policy positions
25 of this Commission?

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1 MS. DICKERSON: Yes.

2 CHAIRPERSON BERRY: Okay. Now --

3 COMMISSIONER BRACERAS: This is not --
4 listen to me.

5 CHAIRPERSON BERRY: And, Commissioner
6 Braceras, you cannot dominate the discussion.

7 COMMISSIONER BRACERAS: I'm not.

8 CHAIRPERSON BERRY: Other commissioners
9 would like to speak.

10 COMMISSIONER BRACERAS: I'm not, but I
11 think it is important to note --

12 VICE CHAIRPERSON REYNOSO: Madam Chair,
13 nor should there be interruptions.

14 CHAIRPERSON BERRY: Yes.

15 COMMISSIONER BRACERAS: May I be
16 recognized?

17 CHAIRPERSON BERRY: No. Commissioner
18 Kirsanow?

19 COMMISSIONER KIRSANOW: I would defer to
20 Commissioner Braceras.

21 COMMISSIONER THERNSTROM: Yes.

22 CHAIRPERSON BERRY: Commissioner
23 Thernstrom? You do not wish to speak? Okay.

24 Commissioner Braceras?

25 COMMISSIONER THERNSTROM: I do think I

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1 would like Commissioner Braceras to finish what she
2 has to say. And then I would like to speak.

3 COMMISSIONER BRACERAS: Obviously it seems
4 that the Chair is not interested in compromise or
5 coming up with a document that we can all support.

6 I am not asking the staff to adopt my view
7 on any particular issue. I am simply asking that they
8 consider some of my comments.

9 With respect to the courts, obviously any
10 neophyte knows that the courts opine on issues that
11 this Commission is concerned about. That's fine.
12 It's fine to have a template of discussing the issues
13 that we have a position on.

14 But, for example, the discussion of Miguel
15 Estrada and much of the controversy surrounding Miguel
16 Estrada has to do with the fact that his views are
17 unknown. Therefore, it's not constructive to be
18 opposing him or suggesting that he is opposed to civil
19 rights when, in fact, the record is unclear. And
20 that's making a value judgment that is appropriate in
21 the political arena but not necessarily appropriate
22 here.

23 First of all, this Commission may have a
24 position on affirmative action or on any of these
25 issues, but that does not mean that there is a

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1 specific Commission policy on the nitty-gritty of the
2 implementation of CRIPA or this or that.

3 So the fact that we might have an
4 over-arching policy of support for affirmative action
5 says nothing about -- we haven't agreed at all, one
6 way or the other, on the implementation of affirmative
7 action within the federal service, within these other
8 arenas, within the courts.

9 I mean, we have an over-arching policy
10 that yes, we support it, but votes have never been
11 taken on whether we support implementing in one way
12 versus another.

13 So you can't say that they're just taking
14 a mandate from what has already been decided. They
15 are not. These are all value judgments.

16 The problem is that not enough credit is
17 given to the other side, but primarily the issue of
18 the courts to discuss it thoroughly and fairly on any
19 one of these candidates would require -- I am not
20 saying that they are supposed to discuss the entire
21 history of the federal judiciary, but to even give
22 Miguel Estrada fair treatment would take so much more
23 space than is allotted for him that it's just
24 inappropriate to even have it in there.

25 I mean, yes, there are civil rights groups

1 that oppose Miguel Estrada. There are also civil
2 rights groups that favor Miguel Estrada, which leads
3 me to conclude that the evidence is inconclusive as to
4 where he is on certain issues and, therefore, we're
5 not in a position to say one thing or another.

6 I have no problem if we're concerned with
7 the diversity of federal appointments in stating, you
8 know, who has been appointed, what their race and
9 ethnicity are, and noting that certain people haven't
10 been approved because they're controversial. Those
11 are facts.

12 To say anything beyond that and to say
13 that George Bush is insensitive to civil rights
14 because he's selected for positions of power,
15 minorities with which the civil rights establishment
16 disagrees, is ludicrous.

17 CHAIRPERSON BERRY: Terri, you can answer,
18 yes.

19 MS. DICKERSON: With regard to the nominee
20 discussion in general, we relied somewhat on past
21 Commission reports, where the Commission has approved
22 certain points of view and policy --

23 COMMISSIONER BRACERAS: That doesn't make
24 a good policy.

25 MS. DICKERSON: But as well we covered

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1 this in the Clinton report. But the way the whole
2 discussion is set up, we do say supporters. We say
3 that it's important because they interpret and
4 establish precedent on which future case law can be
5 based.

6 We do directly state that supporters of
7 the President's nominations, on the other hand, assert
8 that their views have been misrepresented and accuse
9 opponents of racializing the process and using the
10 religious beliefs of nominees against them.

11 COMMISSIONER BRACERAS: But you still
12 conclude that it's evidence of Bush's insensitivity to
13 civil rights. In the end, it's cited as an example of
14 how the Bush administration fails on civil rights,
15 even though there's no evidence one way or the other
16 as to whether Miguel Estrada --

17 MS. DICKERSON: Well, I think with regard
18 to Mr. Estrada, we just say clearly that it's very
19 uncertain, unclear where he stands, but the cumulative
20 effect of all of the nominees that we discussed do end
21 up throwing into question what the impact of the
22 future of civil rights case law is going to be.

23 CHAIRPERSON BERRY: But, Terri --

24 MS. DICKERSON: With regard to Estrada, we
25 certainly don't say anything that --

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1 COMMISSIONER BRACERAS: Are you willing to
2 consider taking it out or revising that section?

3 MS. DICKERSON: Well, that's I don't think
4 my decision at this point.

5 COMMISSIONER BRACERAS: Whose decision is
6 it? Is it the Chair's decision? Is it the
7 Commission's decision or is it yours? Because you're
8 the head of the project.

9 MS. DICKERSON: Well, I've turned in our
10 work. And so I don't believe it's my decision at this
11 point.

12 COMMISSIONER BRACERAS: So whose decision
13 do you believe it would be?

14 CHAIRPERSON BERRY: The Commission's.

15 COMMISSIONER BRACERAS: As a whole?

16 CHAIRPERSON BERRY: Sure.

17 COMMISSIONER BRACERAS: Well, I guess the
18 bottom line here is that unless you can get five
19 commissioners to vote for this report, it is an
20 unauthorized document, which is not a Commission
21 product. If you want your report to be voted on and
22 approved by this Commission and to be a federal
23 publication and to be an official Commission document,
24 as opposed to the work of some staffer that has
25 nothing to do with anything, then you're going to need

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1 to get consensus.

2 I mean, you could put it up on your Web
3 site and *The New York Times* can cite it, but it has no
4 legitimacy unless we approve it.

5 MS. DICKERSON: I understand all of that.
6 I don't view it as my report. I view it as an
7 assignment that I had that OCRE carried out.

8 COMMISSIONER BRACERAS: Right. So
9 commissioners are going to have to understand that if
10 they want this report approved, changes have to be
11 made.

12 CHAIRPERSON BERRY: Terri, you didn't
13 answer the point about whether you used value
14 judgments or whether you had some evaluation of the
15 enforcement effort.

16 I know the answer, which is that you do
17 enforcement studies all the time. The Commission has
18 voted time and time again on what it thinks about
19 enforcement. Isn't that what you relied on for that
20 part?

21 MS. DICKERSON: Yes. And we cite many
22 previous Commission votes in this report and relied on
23 that.

24 CHAIRPERSON BERRY: Okay. Russell, were
25 you saying something?

1 COMMISSIONER REDENBAUGH: Yes.

2 CHAIRPERSON BERRY: Okay. Yes?

3 COMMISSIONER REDENBAUGH: If I may be
4 recognized, I think it's not fruitful to debate the
5 report further. I'm not yet prepared to vote for this
6 report, but I'm very much encouraged by the work that
7 I did with Terri Dickerson on our statutory report for
8 having the way we work together to improve that
9 report. And I think this report can also be improved.

10 So I'd rather not keep debating the
11 report, move forward to see if we could accomplish on
12 this one what we did so well on our statutory report.

13 CHAIRPERSON BERRY: All right.
14 Commissioner Kirsanow?

15 COMMISSIONER KIRSANOW: Yes. I want to
16 thank Ms. Dickerson and the staff for their efforts on
17 this. With civil rights funding, I think you went
18 back and forth. There was some give and take. I know
19 Russell was involved in that, Commissioner Redenbaugh,
20 and some staff assistance. And I think we produced a
21 report that was a credible report that there was a
22 consensus on.

23 With respect to the template methodology,
24 I'm hopeful that something can be done with respect to
25 this report in terms of, as Commissioner Braceras

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1 indicates, when I look at the report, there were a
2 couple of items, for example, where the template or
3 methodology related to a policy of the Commission
4 doesn't seem -- I don't know if there is a policy of
5 the Commission, for example, with respect to housing.

6 The direction of the report seems to
7 suggest; in fact, it says, that policies instituted
8 under the Bush administration have diminished housing
9 opportunities for the poor, disproportionately
10 minority families.

11 It seems to be viewing housing from a
12 perspective of minorities being renters, as opposed to
13 home ownership, where there has been a significant
14 increase in home ownership among minorities and there
15 has been a \$200 million initiative to increase home
16 ownership and its applicable rise, in fact.

17 So from that perspective, I'm hopeful that
18 there can be some revision or reconstitution of the
19 methodology to incorporate a vision that suggests that
20 home ownership, in fact, has something to do with
21 housing.

22 Racial profiling is another example where
23 I know the Commission has a policy, but the Bush
24 administration was the first administration that had a
25 policy with respect to racial profiling that may not

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1 have gone as far as some would like, but it had a
2 countervailing factor. And that is a balance between
3 civil rights and security, protection of the safety
4 and welfare of the citizens of the United States.

5 So I think there are certain things I'd
6 like to revisit because there may not have been policy
7 prescriptions or pronouncements by the Commission.
8 And I'm hopeful that, as Commissioner Braceras would
9 indicate, there would be like a better neutral
10 approach to assessing how the administration
11 discharged its obligations and functions in these
12 particular categories.

13 CHAIRPERSON BERRY: You may know, a point
14 of information, the Bush administration is proposing
15 to take \$54 million from the section 184, Indian Homes
16 Ownership and Loan Guaranty and Title VI Loan Guaranty
17 Programs, which were created by the federal government
18 to assist in housing development on Indian land.
19 Thousands of Native American families may continue
20 living in severely crowded and dilapidated homes as a
21 result of this.

22 Also, the Commission's policy goes to
23 recognizing that large numbers of poor and minority
24 families do rent and that any diminution in the
25 section 8 program or other programs that provide for

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1 rental subsidies in the name of the home ownership,
2 which everybody wants, is a diminution in the housing
3 resources available to them without something being
4 done.

5 The issue is the Commission's policy has
6 always been to recognize that, of course, home
7 ownership is a good thing, but you don't want to
8 diminish the supply of housing that is available for
9 people who are renters necessarily and who have to
10 rent and who need these section 8 programs.

11 Commissioner Thernstrom?

12 COMMISSIONER THERNSTROM: I am not really
13 clear as to why we have gone down this unfortunate
14 acrimonious path of debating the substance. I mean,
15 it seems to me that at the outset, Commissioner
16 Braceras posed a perfectly reasonable question, which
17 was that given the problems that some of us have with
18 the tone of the report, with structural issues, with
19 resources cited, and so forth, is it possible in
20 response to a document that she submits to the staff
21 to work with Commissioner Braceras and with any others
22 who might be interested in joining the conversation?
23 Is it possible to produce or to try to produce anyway
24 a document that we can all stand behind?

25 I thought that the point of letting

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1 Commissioner Braceras go before Terri Dickerson was so
2 Terri Dickerson could respond, instead of kind of
3 summarizing her report, which we have all read, so
4 that she could respond to Commissioner Braceras'
5 specific points.

6 But, in any case, there was no necessity
7 to debate the substance of this. There is a simple
8 question. Is there a point to going forward with a
9 conversation about how this report could be revised in
10 a way that would make it more acceptable to those of
11 us who have got some problems with it? It seems to me
12 that is the only question on the table.

13 CHAIRPERSON BERRY: Commissioner Meeks?

14 COMMISSIONER MEEKS: I guess I would
15 follow along with Commissioner Redenbaugh that I don't
16 know that it's worth debating this in some ways
17 because I think there is just deep disagreement about
18 Bush's civil rights record and that --

19 COMMISSIONER BRACERAS: As long as that
20 disagreement is reflected in the report, that's fine.

21 COMMISSIONER MEEKS: Well, then it's your
22 option to vote it down and --

23 COMMISSIONER BRACERAS: I want a fair
24 report. I don't want no report.

25 COMMISSIONER MEEKS: Fine. I mean, the

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1 report is there. You can vote against it. And I
2 think that that will show that the commissioners are
3 very divided about his record. And I think that's --

4 COMMISSIONER BRACERAS: But I don't want
5 --

6 COMMISSIONER MEEKS: -- as much as we can
7 accomplish.

8 COMMISSIONER BRACERAS: I want a report.
9 I want to accomplish something.

10 COMMISSIONER MEEKS: Well, I don't know
11 how you're going to --

12 CHAIRPERSON BERRY: I think that the
13 points that Commissioner Braceras made at the outset,
14 if these are the points she wishes to advance in
15 discussion with the staff, I am inextricably opposed
16 to advancing them. And I have said why. I don't want
17 to repeat it.

18 So what I would like to do is to have us
19 say how many of the commissioners who are here today
20 believe that we should revise the report in such a way
21 that there are views of so-called dissenting
22 commissioners, whatever they are, and other
23 commissioners after the paragraph discussions in the
24 report about what they each think about each side of
25 that, which is something we have never done.

1 Now, if people are in favor of that, then
2 that would give some guidance when she went to talk to
3 the staff that they're supposed to do that.

4 I'm opposed to it. I think we should do
5 reports the way they have been done. If there are
6 dissenting views, put them at the end. Use the
7 policies as a template.

8 But we could have several votes. We could
9 take a vote on whether we should do that. We could
10 take a vote on whether we should take out the judicial
11 nominations from the report. We can have a discussion
12 about whether we think talking about appointees means
13 we're labeling them inauthentic so that there is some
14 guidance because I think that our views on this are
15 we're in total disagreement about these matters. And
16 if that is the case, we don't need to footsie around
17 with the staff --

18 COMMISSIONER BRACERAS: Well, that's why
19 --

20 CHAIRPERSON BERRY: -- trying to get them
21 to write a report. I don't want consensus on the idea
22 that we shouldn't discuss judicial nominations or that
23 we should change and have dissenting views after every
24 paragraph or that we shouldn't point out that people
25 who are appointed aren't enforcing the civil rights

1 laws. I don't think there should be dissenting views.

2 Yes, Vice Chair?

3 VICE CHAIRPERSON REYNOSO: Madam Chair, I
4 wonder if we are going to hear from the staff. If we
5 are, then I have a statement and a motion to make
6 after that statement.

7 CHAIRPERSON BERRY: Do you have anything
8 to say, staff? Yes, Commissioner Braceras?

9 COMMISSIONER BRACERAS: Just as a
10 procedural matter, I agree there is no point in
11 discussing this right now, the substance. What I
12 propose is to submit a memorandum with a list of
13 changes that I believe are needed in this report.

14 I understand the fact that all of them may
15 not be adopted. That's part of the art of compromise.
16 But I could make a list of proposed changes, which
17 could then be voted on one at a time by the Commission
18 as a whole. And whatever changes are agreed to could
19 then be incorporated.

20 Some of them, like the judicial
21 nominations suggestion of removing that altogether,
22 may not be approved. Some of them may not. But at
23 least if there is a process where we could submit
24 objections and suggestions for change and won't be too
25 laborious, I mean, you know, between -- I don't know

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1 -- 5 and 20 bullet point suggestions, if there is a
2 process where we at least can feel that our views are
3 being taken seriously and that there's a willingness
4 to try to come forward and put together a document
5 that everyone can agree upon, then even if not all of
6 the suggestions are adopted because the process works,
7 that we may be willing to sign on to the finished
8 product.

9 So that's my proposal, that I or anybody
10 else who has concerns put together the list of
11 specifically what they would like to see changed. And
12 we can vote on each of those things. Then there is a
13 process of, instead of just -- there's no need to yell
14 and scream and fight about it in a nonspecific way.

15 Let's just talk about the issues and try
16 to work it out. I'll submit it in writing, and then
17 we can vote on each thing.

18 CHAIRPERSON BERRY: I would like to
19 propose that we vote -- we do two things. First, we
20 vote on whether we accept or reject this report as it
21 is. I happen to like it very much as it is.

22 Secondly, we then agree that we let
23 Commissioner Braceras submit whatever she wants. And
24 then the staff can begin anew working on a report on
25 Bush's civil rights --

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1 COMMISSIONER BRACERAS: I don't want a new
2 report.

3 CHAIRPERSON BERRY: -- based on this. But
4 I would like a vote on the report as it stands. And I
5 wish somebody would move that because I'd like a vote
6 on it.

7 VICE CHAIRPERSON REYNOSO: So moved.

8 CHAIRPERSON BERRY: Second?

9 COMMISSIONER MEEKS: Second.

10 CHAIRPERSON BERRY: All right. Is there
11 any further discussion before we vote?

12 COMMISSIONER BRACERAS: Yes, there is. I
13 want it clear on the record that to force through an
14 up or down vote on this report is to effectively deny
15 the chance of consensus building on this Commission
16 and on this report.

17 If there was a real interest in trying to
18 come together on this, we would work it through the
19 way Russell was able to do with the staff on the
20 funding report. And by forcing it to a "Yes" or "No"
21 vote, you are simply posturing and trying to say that
22 the people who were against it weren't constructive
23 and they were obstructionists and they voted it down
24 and they don't want to discuss these issues when, in
25 fact, just the opposite is true.

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1 We very much want to discuss these issues.
2 And we very much want to not vote down this report.
3 We very much want to vote for this report with some
4 changes.

5 By not allowing us to do that, you are not
6 allowing us to engage in the art of compromise and
7 negotiation, which is very sad and unfortunate.

8 CHAIRPERSON BERRY: Well, I would be happy
9 to have you suggest the changes that you want.

10 COMMISSIONER BRACERAS: Then why don't we
11 just table it until that could be done?

12 CHAIRPERSON BERRY: No. You can do it
13 now. We can go page by page, and you can tell us what
14 you want changed in the report. And I'd be happy to
15 have you do that. We've done it before in the
16 Commission, and it worked very effectively.

17 Otherwise, the points you made in the
18 discussion, the points you made, are points that are
19 fundamentally different from the template for this
20 report. So there's no way to -- if some people think
21 the world is round and others think it's flat, there
22 is no way to accommodate that.

23 COMMISSIONER BRACERAS: That's not true.

24 CHAIRPERSON BERRY: What we might do is
25 begin --

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1 COMMISSIONER BRACERAS: I am totally
2 willing to compromise on that.

3 CHAIRPERSON BERRY: -- begin all over
4 again. I suggest that what we do is vote on this
5 report. Then you and others should meet with the
6 staff and the staff director. And the staff should
7 begin again because this report does not reflect any
8 of the points that you made. And if it's going to,
9 it's going to have to be rewritten. And so for that
10 purpose, --

11 COMMISSIONER BRACERAS: It's not true.

12 CHAIRPERSON BERRY: -- we might as well
13 clear the decks --

14 COMMISSIONER REDENBAUGH: Madam Chair?

15 CHAIRPERSON BERRY: -- and then go ahead
16 and start all over again.

17 COMMISSIONER BRACERAS: That's not true.
18 You just want your headline that says, "Republicans
19 kill report in Bush civil rights," and you know it.

20 CHAIRPERSON BERRY: I don't want anything.

21 COMMISSIONER BRACERAS: You're trying to
22 force this into that position.

23 CHAIRPERSON BERRY: I don't want anything.
24 Yes, Commissioner Redenbaugh?

25 COMMISSIONER REDENBAUGH: Thank you.

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1 I believe this report can be improved. I
2 doubt that it can get eight votes, but I think it with
3 some improvements could get a substantial number more
4 than four. And although I share some of Commissioner
5 Braceras' concerns, certainly not all of them.

6 So I really would like to do what we did
7 in the prior report. And I'm certainly willing to
8 work with staff, as I did then. And I found that
9 effective and profitable, to include this report if we
10 can get that report that will pass.

11 CHAIRPERSON BERRY: You may decide that
12 you want to use some parts of this in the new report.

13 COMMISSIONER EDLEY: Madam Chair?

14 CHAIRPERSON BERRY: Yes, Commissioner
15 Edley?

16 COMMISSIONER EDLEY: I guess what I want
17 to know is if whoever moved and seconded are willing
18 to withdraw it. In other words, I'm considering a
19 motion, a motion to table.

20 CHAIRPERSON BERRY: You don't know what?
21 I didn't hear what you said.

22 COMMISSIONER EDLEY: I am wondering
23 whether whoever seconded the motion to vote on the
24 report would withdraw that second because otherwise
25 I'd like to make a motion to table.

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1 CHAIRPERSON BERRY: If you are going to
2 vote not to table the report and you're not going to
3 vote on the report, then obviously the report would be
4 tabled.

5 COMMISSIONER THERNSTROM: I am sorry. I
6 am lost. What did you just say?

7 CHAIRPERSON BERRY: So what you would like
8 to do, Christopher, is have the person who made the
9 motion or the seconder of the motion agree to withdraw
10 the second. Is that what you said?

11 COMMISSIONER EDLEY: And pursue what
12 Russell just said.

13 CHAIRPERSON BERRY: So, in other words,
14 you don't want to vote on the report?

15 COMMISSIONER EDLEY: Correct.

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER EDLEY: Well, let me put it
18 this way. I want to vote on the report as soon as I
19 can determine whether or not there is a way to get a
20 majority vote on a report that I would find
21 acceptable.

22 CHAIRPERSON BERRY: And when would that
23 be?

24 COMMISSIONER EDLEY: I find the report
25 acceptable as it stands.

1 CHAIRPERSON BERRY: Okay.

2 COMMISSIONER EDLEY: And I felt that some
3 of the things that Commissioner Braceras said I could
4 not agree to. I think that some of the things she
5 said I could agree to. And if that can be pursued in
6 a constructive way, I would support that process.

7 CHAIRPERSON BERRY: When is your deadline
8 on this reconsideration?

9 COMMISSIONER EDLEY: I would defer to the
10 Chair on that.

11 CHAIRPERSON BERRY: No. I'm asking you.
12 You are the one who -- you heard my views. You know
13 what I'd like to do. Since you would like to do
14 differently, I'm asking you, when would you suggest so
15 that the Commission would have an understanding that
16 this would be taken up again?

17 COMMISSIONER EDLEY: Well, let me ask
18 Commissioners Redenbaugh and Braceras when they think
19 they would be able to reduce their concerns to writing
20 so the rest of us can see them.

21 COMMISSIONER BRACERAS: Within a week or
22 two. I'm sorry. Did you hear that? I said, "Within
23 a week or two."

24 COMMISSIONER EDLEY: Yes, yes.

25 COMMISSIONER BRACERAS: And obviously,

1 look, you know, I prefer that the judicial nominations
2 section be taken out. Other people may not agree, but
3 it may end up being acceptable to me if we could
4 change a few key words.. So I'm not unwilling to
5 compromise about this. I just --

6 CHAIRPERSON BERRY: Timing?

7 COMMISSIONER BRACERAS: I said two weeks.

8 COMMISSIONER EDLEY: Two weeks.

9 CHAIRPERSON BERRY: And then we would vote
10 by -- can we agree to --

11 COMMISSIONER BRACERAS: I will have a list
12 of proposed changes or additions.

13 CHAIRPERSON BERRY: What about
14 Commissioner Redenbaugh?

15 COMMISSIONER REDENBAUGH: The same
16 timetable would work for me.

17 CHAIRPERSON BERRY: So we could have a
18 vote on this by poll vote.

19 COMMISSIONER EDLEY: That is what I would
20 like to do and, frankly --

21 CHAIRPERSON BERRY: And the poll vote
22 would be taken you say two weeks to give another --
23 what's the date of today? Today is the 12th of
24 November.

25 COMMISSIONER BRACERAS: Just to be clear,

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1 would we vote on each particular suggested revision or
2 we're going to have to vote them all up or down
3 because that is not going to be effective.

4 CHAIRPERSON BERRY: No. What is going to
5 happen is you are going to take your revisions. And
6 you and Commissioner Redenbaugh are going to meet with
7 the staff and see how to incorporate those into the
8 report, as many of them that you and Redenbaugh agree
9 since it is the two of you who are doing it, --

10 COMMISSIONER THERNSTROM: Well, wait a
11 minute.

12 CHAIRPERSON BERRY: -- have them put into
13 the report. And then the commissioners will get the
14 report. And then we'll vote on it.

15 COMMISSIONER BRACERAS: That is a little
16 more complicated because that involves other people's
17 schedules.

18 COMMISSIONER EDLEY: Right. If I can make
19 a different suggestion? If they are willing to write
20 a list, I think it would be helpful if we did a poll
21 vote on there by each of their lists of proposed
22 changes. And then I think we would be in a position
23 to stop, be in a position of having guidance from the
24 Commission about these changes to accommodate.

25 CHAIRPERSON BERRY: Timing, please? Give

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1 me some timing issues.

2 COMMISSIONER EDLEY: I think that what you
3 suggested sounds right if in two weeks we could have a
4 poll vote on the 5 to 20 items. On that basis, the
5 meetings with the staff could proceed.

6 I also think that the Chair and the staff
7 director would be in a position at that point based
8 upon the results of the poll vote to advise as to
9 whether or not the process was worth continuing.

10 CHAIRPERSON BERRY: And if it is worth
11 continuing, it's the staff makes revisions.

12 COMMISSIONER EDLEY: Correct.

13 CHAIRPERSON BERRY: If it isn't worth
14 continuing, then we have a poll vote on the report.

15 COMMISSIONER EDLEY: Correct.

16 CHAIRPERSON BERRY: Commissioner
17 Thernstrom?

18 COMMISSIONER THERNSTROM: Chris, the
19 problem with your suggestion here is that the devil is
20 always in the details of the language. And we really
21 do need at the end of the day a vote.

22 I mean, suppose you have Commissioner
23 Braceras' list of suggested revisions. Everything
24 depends on how those are interpreted and translated
25 and --

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1 COMMISSIONER EDLEY: I understand, Abby.
2 My assumption was that after the staff has made the
3 revisions, assuming it looks like it would be a
4 productive exercise, after the staff has made those
5 revisions, it would come to the Commission for a final
6 vote.

7 COMMISSIONER THERNSTROM: I see. So you
8 are proposing a two-stage vote, one on how many of us
9 go along with Jennifer's proposals, and at a later
10 date -- I think it has to be at a meeting because we
11 have to do this carefully. At a later date, at a
12 meeting itself, we go through a new text that we have
13 had a chance to read and properly digest. Is that
14 your point?

15 COMMISSIONER EDLEY: Yes.

16 CHAIRPERSON BERRY: Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: I just want to
18 make an observation. I don't necessarily have formed
19 an opinion as to what is the most appropriate way of
20 doing this, but if we have the list and a poll vote,
21 I'm just concerned that staff not be up 24 hours a day
22 trying to incorporate those changes. They sent a
23 whole lot of time putting together this report.

24 Speaking for myself, if I were doing it, I
25 don't think I could accomplish that objective. I

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1 think you guys are great, but I don't think I could do
2 it. And I'm just wondering if you guys could do it.

3 Aside from that, it seems to me that, even
4 if they could do it, I don't know what the rush is,
5 frankly. This is something that should be used as a
6 template for the incoming administration. It is the
7 same administration, but we are going to have a lot of
8 new faces.

9 If it is that important, it seems to me it
10 should be done right. I don't know that it needs to
11 be rushed through, even if staff can do it -- and I'm
12 looking out for them protectively -- that it's got to
13 be done in two weeks, three weeks, or four weeks.

14 COMMISSIONER THERNSTROM: It can't be.

15 CHAIRPERSON BERRY: Commissioner Edley,
16 with all due respect, I think your proposal stinks.
17 And I'm going to tell you why it stinks if it's not
18 obvious to you yet.

19 COMMISSIONER EDLEY: It is now.

20 CHAIRPERSON BERRY: It is obvious that the
21 Republicans do not want to vote on this report. It is
22 also obvious that there is no way the staff can write
23 a new report unless the policy positions of the
24 Commission change.

25 It would be much cleaner to simply vote

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1 this report up or down, move on, and if they want to
2 write a new report when they are in charge, let them
3 go ahead and write it and direct the staff, rather
4 than trying to piecemeal fit into this straitjacket of
5 the policies that exist now information bit by bit to
6 change what you can't change.

7 And so they have succeeded in getting you
8 to agree with them that they should postpone this in
9 perpetuity, whatever. And I hope you will rethink
10 your position. It would be much cleaner --

11 COMMISSIONER EDLEY: I already did that.

12 CHAIRPERSON BERRY: All right. Thank you.

13 COMMISSIONER EDLEY: I said I thought I
14 was persuaded by what Peter said.

15 CHAIRPERSON BERRY: Right. Yes. If he
16 hadn't said anything --

17 COMMISSIONER EDLEY: And I found what you
18 said insulting.

19 (Laughter.)

20 CHAIRPERSON BERRY: I apologize. You
21 insulted me before.

22 COMMISSIONER EDLEY: I call the question.

23 CHAIRPERSON BERRY: You call the question?
24 Okay.

25 COMMISSIONER EDLEY: I call the question.

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1 CHAIRPERSON BERRY: All those in favor of
2 approving this report indicate by saying, "Aye."

3 (Whereupon, there was a chorus of
4 "ayes.")

5 CHAIRPERSON BERRY: There are four of us
6 who say, "Aye." All of those opposed to this report
7 indicate by saying, "No" or whatever.

8 (Whereupon, there was a chorus of
9 "nays.")

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER BRACERAS: Roll call, please.

12 CHAIRPERSON BERRY: Where is that piece of
13 paper? All right.

14 COMMISSIONER EDLEY: I can't stand the
15 suspense.

16 COMMISSIONER BRACERAS: It's not a matter
17 of suspense. It's a matter of the record.

18 CHAIRPERSON BERRY: Commissioner Braceras?

19 COMMISSIONER BRACERAS: No.

20 CHAIRPERSON BERRY: Commissioner Edley?

21 COMMISSIONER EDLEY: No -- yes.

22 CHAIRPERSON BERRY: Commissioner Kirsanow?

23 COMMISSIONER KIRSANOW: No.

24 CHAIRPERSON BERRY: Commissioner Meeks?

25 COMMISSIONER MEEKS: Yes.

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1 CHAIRPERSON BERRY: Commissioner

2 Redenbaugh?

3 COMMISSIONER REDENBAUGH: No.

4 CHAIRPERSON BERRY: Vice Chair Reynoso?

5 VICE CHAIRPERSON REYNOSO: Yes.

6 CHAIRPERSON BERRY: Commissioner

7 Thernstrom?

8 COMMISSIONER THERNSTROM: No.

9 CHAIRPERSON BERRY: And Berry, yes. So
10 the report fails by a vote of four to four.

11 Okay. Now we --

12 COMMISSIONER KIRSANOW: Madam Chair?

13 CHAIRPERSON BERRY: Yes?

14 COMMISSIONER KIRSANOW: I just wanted to
15 note that the staff has done a very good job on the
16 funding of civil rights with incorporating these
17 comments. I would like to have seen at least an
18 attempt to do that.

19 I think I agree with Commissioners
20 Braceras, Edley, and Redenbaugh on this. We may not
21 have gotten complete consensus, but I think we would
22 have had a report.

23 I trust the staff. They did it once
24 before. That we could have voted on. They could have
25 presented it in utilitarian useful fashion to the

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1 administration. There may have been consensus on
2 certain items, but now we're left with nothing but the
3 report that's been voted down and possibly a headline
4 that says, "Commission Can't Agree on Something" or
5 whatever the headline someone presumes to write on
6 this. And I think that's very unfortunate.

7 CHAIRPERSON BERRY: And it also should say
8 that you commissioners agreed that you are going to do
9 a report --

10 COMMISSIONER THERNSTROM: I was going to
11 say --

12 CHAIRPERSON BERRY: -- on Bush's civil
13 rights record, which is what you said you were going
14 to do.

15 COMMISSIONER THERNSTROM: Yes.

16 CHAIRPERSON BERRY: And I'm just saying we
17 cleared the decks and you can start all over again
18 writing one.

19 COMMISSIONER THERNSTROM: Yes. I was
20 going to say, let the record show that we are
21 interested in continuing to pursue this subject, that
22 voting it down today is not voting it down forever or
23 not voting the subject down forever.

24 And I hope we will move on to a
25 constructive ground because it is an important topic,

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1 as Jennifer keeps saying. It is a very important
2 topic. And those of who are Republican appointees
3 will have criticisms of the Bush administration, I
4 assure you.

5 CHAIRPERSON BERRY: Now let's go to
6 another controversial item, education, "Closing the
7 Achievement Gap." Thank you, Mireille, and thank you,
8 Terri. "Closing the Achievement Gap: The Impact of
9 Standards-Based Education Reform on Student
10 Performance" report.

11 VII. "CLOSING THE ACHIEVEMENT GAP:

12 THE IMPACT OF STANDARDS-BASED EDUCATION REFORM
13 ON STUDENT PERFORMANCE" REPORT

14 CHAIRPERSON BERRY: Staff Director, do you
15 have anything to say about this?

16 STAFF DIRECTOR JIN: Well, I think Debra
17 Carr, the deputy general counsel, I think, has a
18 couple of words, but, as the commissioners remember,
19 Debra already made her maiden presentation at the last
20 meeting, I guess, or a couple of meetings before when
21 the commissioners started discussing this and then
22 decided on a different course.

23 So I don't think that Debra is going to
24 have a lot to words to say, but I would like Debra to
25 make a couple of introductory comments.

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1 CHAIRPERSON BERRY: Do you have anything
2 to say, Debra?

3 MS. CARR: Actually, I presented a report
4 several months ago. And it was tabled. There was an
5 opportunity for comment on the report in the interim.
6 There were comments received. And staff responded to
7 those comments.

8 CHAIRPERSON BERRY: Okay. All right. Can
9 I get a motion to approve this report?

10 VICE CHAIRPERSON REYNOSO: So moved.

11 CHAIRPERSON BERRY: Second?

12 COMMISSIONER MEEKS: Second.

13 COMMISSIONER BRACERAS: Discussion.

14 CHAIRPERSON BERRY: Discuss, please.

15 COMMISSIONER BRACERAS: I guess I will
16 keep it short and sweet. I agree with most, although
17 not all, of Commissioner Thernstrom's suggestions and
18 comments that were made about the report. Because
19 there was an inability to acknowledge those comments
20 within the report and to even try to incorporate some
21 of the suggestions, I feel I have to vote against the
22 report.

23 CHAIRPERSON BERRY: Okay. Any other
24 comments from anyone?

25 (No response.)

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1 CHAIRPERSON BERRY: All right. All of
2 those in favor of approving the report indicate by
3 saying, "Aye."

4 (Whereupon, there was a chorus of
5 "ayes.")

6 CHAIRPERSON BERRY: Opposed?

7 (Whereupon, there was a chorus of
8 "nays.")

9 COMMISSIONER BRACERAS: Roll call.

10 CHAIRPERSON BERRY: Roll call. I have a
11 piece of paper all ready. Thank you. Commissioner
12 Braceras?

13 COMMISSIONER BRACERAS: No.

14 CHAIRPERSON BERRY: Commissioner Edley?

15 COMMISSIONER EDLEY: Yes.

16 CHAIRPERSON BERRY: Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: No.

18 CHAIRPERSON BERRY: Commissioner Meeks?

19 COMMISSIONER MEEKS: Yes.

20 CHAIRPERSON BERRY: Commissioner
21 Redenbaugh?

22 COMMISSIONER REDENBAUGH: No.

23 CHAIRPERSON BERRY: Vice Chair Reynoso?

24 VICE CHAIRPERSON REYNOSO: Yes.

25 CHAIRPERSON BERRY: Commissioner

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1 Thernstrom?

2 COMMISSIONER THERNSTROM: No.

3 CHAIRPERSON BERRY: Berry, yes. The
4 motion fails by a vote of four to four. Okay.

5 Is there anything else anyone wishes to
6 add to -- yes, Commissioner Thernstrom?

7 COMMISSIONER THERNSTROM: It is a great
8 pity that these votes are splitting along partisan
9 lines on this Commission.

10 CHAIRPERSON BERRY: I don't belong to a
11 party. And I keep telling you that, and you keep
12 insisting that I do.

13 COMMISSIONER THERNSTROM: All right.
14 Ideological lines. And it's just unnecessary. It
15 really is. And I hope going forward, we can see a
16 Commission that mixes it up.

17 CHAIRPERSON BERRY: Okay. I certainly
18 hope so, too. I hope we have a commission that will
19 have some consensus. But I don't want a commission
20 that has consensus against civil rights. So I say
21 that with a caveat.

22 COMMISSIONER THERNSTROM: No one wants a
23 commission with a consensus against civil rights. I
24 don't think of myself as against civil rights.

25 CHAIRPERSON BERRY: I wasn't personalizing

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1 it. I said, "a commission." I said, "a commission."
2 I didn't say you, Commissioner Thernstrom. Please
3 don't identify yourself.

4 All right. If nothing else, I'll
5 entertain a motion to adjourn.

6 COMMISSIONER KIRSANOW: So moved.

7 CHAIRPERSON BERRY: Second?

8 VICE CHAIRPERSON REYNOSO: Second.

9 CHAIRPERSON BERRY: Non-debatable. All in
10 favor say, "Aye."

11 (Whereupon, there was a chorus of
12 "ayes.")

13 CHAIRPERSON BERRY: Opposed, "Nay"?

14 (No response.)

15 CHAIRPERSON BERRY: So ordered. Thank
16 you.

17 (Whereupon, at 11:49 a.m., the foregoing
18 matter was adjourned.)

19

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