

U.S. COMMISSION ON CIVIL RIGHTS
COMMISSION MEETING

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FRIDAY, SEPTEMBER 17, 2004

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WASHINGTON, D.C.

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

PRESENT:

MARY FRANCES BERRY	Chairperson
CRUZ REYNOSO	Vice Chairperson
JENNIFER C. BRACERAS	Commissioner
CHRISTOPHER EDLEY, JR.	Commissioner
PETER KIRSANOW	Commissioner
ELSIE M. MEEKS	Commissioner
RUSSELL G. REDENBAUGH	Commissioner
ABIGAIL THERNSTROM	Commissioner
LESLIE R. JIN	Staff Director

STAFF PRESENT:

JOHN BLAKELEY	
MARGARET BUTLER	
DEBRA CARR, ESQ.	Deputy General Counsel
IVY DAVIS	Chief, Programs Coordination Unit
TERRI DICKERSON	Assistant Staff Director, Office of Civil Rights Evaluation
PAMELA DUNSTON	Chief, Administrative Services and Clearinghouse Division
DORELLE GRAY	
GEORGE HARBISON	
SOCK EON MacDOUGALL	
TINA MARTIN	Director of Management
EMMA MONROIG	
JENNY PARK	
KWANA ROYAL	
MICHELLE ROYSTER	
ALEXANDER SUN	
DEBORAH VAGINS	
TIFFANY WRIGHT	

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STAFF PRESENT CONT'D.:

MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

LAURA BATIE

PATRICK DUFFY

JOY FREEMAN

CHRISTOPHER JENNINGS

KIMBERLY SCHULD

MELISSA SHARP

KRISHNA TOOSIE

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I. Approval of Agenda

CHAIRPERSON BERRY: Good morning. The meeting will come to order. The first item on the agenda is the approval of the agenda. Can I get a motion to approve the agenda, please.

VICE CHAIRPERSON REYNOSO: So moved.

COMMISSIONER REDENBAUGH: Second.

CHAIRPERSON BERRY: All those in favor indicate by saying aye

(Chorus of ayes.)

CHAIRPERSON Berry: Opposed.

(No response.)

II. Approval of July 16, 2004 Minutes

CHAIRPERSON BERRY: So ordered. The next item is approval of the Minutes of July 16th, 2004, Meeting. Can I get a motion to approve the Minutes?

VICE CHAIRPERSON REYNOSO: So moved.

CHAIRPERSON BERRY: Anyone have any changes or corrections for the Minutes? Hearing none, all those in favor indicate by saying aye.

(Chorus of ayes.)

CHAIRPERSON Berry: Opposed.

(No response.)

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CHAIRPERSON BERRY: So ordered. The next item on the agenda is announcements. The first one is to welcome Dorelle Gray, who is the new Secretary in the Office of General Counsel. She must be here somewhere. I don't know - to the Commission. She comes from the Justice Department, where she worked in the Appellate Section six years, and then also in the Office of Commercial Litigation Corporation. She also has worked with USIA.

The other point to make is since our last meeting, of course, we had the anniversary of the Voting Rights Act of 1965 in August. And, of course, one of the issues that we'll be considering, or the issue we'll be considering later today concerns the Voting Rights Act and voting rights issues during this election cycle.

It is also Hispanic Heritage Month, September 15th, 2004 to October 15th, 2004, and the Commission joins the nation in celebrating this month.

And we, of course, have worked on as a Commission -- the Commission has long worked on issues concerning the status of opportunities available to Latinos who now represent the largest minority group in the country, nationwide ethnic minority group.

1 For example, in March of last year, the
2 Commission held a briefing revisiting the civil rights
3 implications of the Mt. Pleasant disturbances and the
4 state of affairs in the Latino community here in D.C.
5 since the 1991 civil unrest in Mt. Pleasant. Well,
6 OCRE has completed most recently its FY 2004 report
7 examining federal attempts to provide language access
8 to the public. And this report successfully reviews
9 seven federal agencies and areas on the agenda for
10 consideration by the Commissioners today.

11 We understand that removing language
12 barriers or addressing the issue is an important civil
13 rights issue in the Latino community. The 19th
14 Amendment to the Constitution was ratified in August
15 in 1920, saying that the right of the citizens of the
16 United States to vote shall not be denied on account
17 of sex. After a long campaign by its advocates, years
18 to gain women's suffrage through modification of
19 individual state laws.

20 The desegregation of Central High School
21 in September 1957 is also an anniversary that takes
22 place this month. After *Brown v. The Board* was
23 decided 50 years ago, of course, there was resistance
24 to its implementation, and some of that resistance
25 eventually was focused at Central High School when

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1 President Eisenhower eventually had to order troops in
2 to protect the black students who were entering
3 Central High School.

4 The Martin Luther Kings "I Have a Dream"
5 speech, of course, took place in August of 1963, so we
6 mark the 41st anniversary of that, and the influence of
7 the civil rights movement and Dr. King in moving our
8 nation forward in terms of the struggle for equal
9 opportunity for everyone in our society.

10 September 15th, 1963 was the bombing of
11 the 16th Street Baptist Church in Birmingham. A few
12 weeks after the speech, the Ku Klux Klan bombed the
13 church, killing four girls. They were eleven-year-old
14 Denise McNair, and three fourteen year olds, Cynthia
15 Wesley, Carol Robertson, and Addie Mae Collins, when a
16 dynamite bomb exploded at the church. The bombing and
17 the killing of these four little girls was one of the
18 most heinous domestic terrorist acts of the civil
19 rights era.

20 We also take time to remember the myriad
21 of people representing over 90 nations who were killed
22 three years ago in wake of September 11th, when the
23 World Trade Center in New York and the Pentagon in
24 D.C. were attacked, as well as the airplane that
25 crashed in Somerset County, Pennsylvania - a grave

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1 moment in American history. And the impact of it, of
2 course, is still being felt in every aspect of our
3 lives, including issues of civil rights.

4 We have discussed at this Commission
5 issues of violence, threats, and discrimination
6 against Muslims, Arab Americans, and other people who
7 people think are Muslims and Arab Americans in the
8 aftermath of that.

9 The anthrax contaminations and that
10 environment which occurred killing people. We never
11 found out who, in fact, did it. Renewed concerns
12 about disparities in our healthcare delivery systems,
13 which we discussed here at the Commission, and more
14 attention to the disparities in our healthcare
15 delivery systems. So that all of these matters are
16 things I think we should take note of at this time.

17 Does any Commissioner have anything they
18 wish to mention or announce? Yes.

19 VICE CHAIRPERSON REYNOSO: Madam Chair, my
20 wife doesn't fly, so she and I have been having
21 motorized trips across the country for nearly half a
22 century. And it used to be very rare to find a
23 Mexican restaurant other than the southwest. The most
24 recent trip was this last summer. There was a Mexican
25 restaurant and a Chinese restaurant in practically

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1 every little hamlet that we went to, so just an
2 indication of the changes in America.

3 CHAIRPERSON BERRY: All right. What I
4 really want to know is, was the food good?

5 VICE CHAIRPERSON REYNOSO: Not so much,
6 I'm afraid.

7 CHAIRPERSON BERRY: But they at least had
8 it.

9 VICE CHAIRPERSON REYNOSO: Yes.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER KIRSANOW: Madam Chair.

12 CHAIRPERSON BERRY: Yes, Commissioner
13 Kirsanow.

14 COMMISSIONER KIRSANOW: I just wanted to
15 congratulate Commissioner Redenbaugh for getting a
16 gold medal and a silver medal at the World Jujitsu
17 Championships. And to my knowledge, he was the only
18 blind competitor, and nonetheless was able to secure
19 those two medals. I think that's quite remarkable,
20 and I'd like to congratulate him.

21 (Applause.)

22 COMMISSIONER REDENBAUGH: Thank you.

23 CHAIRPERSON BERRY: Congratulations,
24 Russell. But I'm not surprised. I would have been
25 surprised if you hadn't.

1 COMMISSIONER THERNSTROM: We think he
2 should have come in his medals.

3 CHAIRPERSON BERRY: Yes, indeed, adorned
4 with medals.

5 COMMISSIONER KIRSANOW: Arnold also got a
6 medal, didn't he?

7 COMMISSIONER REDENBAUGH: I'm pretty sure.

8 COMMISSIONER EDLEY: I'll never disagree
9 with him again.

10 CHAIRPERSON BERRY: Commissioner Meeks.

11 COMMISSIONER MEEKS: Well, this week
12 actually a federal judge ruled on a redistricting case
13 in South Dakota that involved two districts that were
14 -- actually one of them was my district, but it packed
15 two reservations into one district, and so the ACLU on
16 behalf of Alfred Bonshirt sued the state, and the
17 judge ruled this week that, in fact, there was voter
18 packing, and so that the state will have to redraw the
19 lines. That's I think very good news. It offers
20 Indians a better chance.

21 CHAIRPERSON BERRY: That is wonderful.
22 The other thing on the subject of Native Americans, on
23 Indians, is that we did receive the letter we had
24 mentioned before from the National Congress of
25 American Indians commending the Commission for its

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1 Commission to decide what's on their schedule, but
2 we'll have that passed out right now.

3 CHAIRPERSON BERRY: And people can take a
4 look at it.

5 COMMISSIONER THERNSTROM: I would have
6 liked to have had this prior to the meeting. I wonder
7 if --

8 CHAIRPERSON BERRY: But you sent out --
9 did you send out a note --

10 STAFF DIRECTOR JIN: We did send out a
11 note. I agree. Normally we would try to send this
12 out with the mail-out, so I apologize for that.

13 COMMISSIONER THERNSTROM: Or even in the
14 email that you sent us, we could have -- it could have
15 included the dates, at least for me would have been a
16 major convenience.

17 STAFF DIRECTOR JIN: Yes. I agree, but I
18 think to keep in mind though -- I mean, this is the
19 exercise uniquely to the Commissioners to decide what
20 works and what doesn't work, so hopefully this is
21 helpful, but there's nothing magical about these
22 dates.

23 CHAIRPERSON BERRY: In other words, you
24 just spread them out and then you tried to skip
25 holidays.

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1 work on the health care issues, "Quiet Crisis", and
2 the other report, the name of which I don't remember.

3 STAFF DIRECTOR JIN: The Health Care
4 Report.

5 CHAIRPERSON BERRY: What's the name of the
6 other one? That they really are -- "Broken Promises",
7 which is on the agenda today. Right?

8 STAFF DIRECTOR JIN: Yes, it is.

9 CHAIRPERSON BERRY: And that letter should
10 be distributed to the Commissioners. They already
11 gave us an award for our work on these. As I told you
12 before, I went up to their meetings to accept the
13 award on behalf of the Commission. It really was the
14 work of Terry and her staff on these issues.

15 Anybody have anything else that they'd
16 like to announce? Okay. Hearing none, the next item
17 on the agenda is the Staff Director's report. Is
18 there anything you wish to say to us, or you'd just
19 like to answer questions.

20 STAFF DIRECTOR JIN: Madam Chair, I think
21 we're going to bring up - we have a draft proposal
22 that is basically designed, so that I think we missed
23 any major holidays, and we try not to have meetings
24 within three weeks, so it's kind of like spread out in
25 that regard. But, of course, it's up to the

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STAFF DIRECTOR JIN: Yes, that's right. We generally meet the second or third week of a month, and so we tried to keep that practice, and tried to miss the holidays and tried to spread it out. This is pretty typical of a normal year.

COMMISSIONER KIRSANOW: Madam Chair, I was not aware of the email. I probably got it, but I get about 150 a day so sometimes I miss them if I don't see it as a flag item or priority item. And in speaking to some fellow Commissioners, I guess they did it and said the email requested that we bring our calendars. I didn't bring my calendar today. I'm wondering if we could table this consideration for -- consideration of this schedule for sometime in the future.

COMMISSIONER REDENBAUGH: That sounds like that would accommodate me, as well.

CHAIRPERSON BERRY: Well, the problem -- would you like to --

COMMISSIONER EDLEY: Well, I guess the difficulty -- I mean, I guess I would yield if both of you -- it's just I'm filling up with this new job I have. They're having to schedule lots of fund raising trips and alumni events and so forth for me, and I'm just getting worried. Well, I guess we don't have any

1 choice.

2 COMMISSIONER THERNSTROM: It's very hard
3 for Russell.

4 COMMISSIONER EDLEY: No, I appreciate
5 that. I understand. So could we try to do it next --

6 CHAIRPERSON BERRY: Maybe you could do it
7 by email. Would that be too confusing? You could
8 simply review your calendars once you go back and
9 figure out if these work or if they don't, suggest
10 something else, and send emails to the Staff Director.

11 And then he could try to make up some new chart or
12 something.

13 COMMISSIONER BRACERAS: I'm sorry. I just
14 noticed there's one date on here that must be a typo
15 because December 18th is a Sunday.

16 COMMISSIONER REDENBAUGH: Well, that's a
17 new convention to try.

18 COMMISSIONER BRACERAS: It must be the
19 16th. Right?

20 STAFF DIRECTOR JIN: Yes, it is a typo.

21 COMMISSIONER BRACERAS: Should we change
22 that on our --

23 CHAIRPERSON BERRY: Is that right? Okay.

24 COMMISSIONER BRACERAS: I'm just --

25 CHAIRPERSON BERRY: Well, how would that

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1 be, Commissioner Thernstrom.

2 COMMISSIONER THERNSTROM: Well, I have a
3 question for Commissioner Edley. With respect to you,
4 am I correct to say that your term expires in March?
5 Is that correct?

6 COMMISSIONER EDLEY: I don't know when it
7 does. It's March, April - I'm honestly not sure.
8 When does yours expire?

9 COMMISSIONER MEEKS: In April.

10 COMMISSIONER THERNSTROM: Okay. So with
11 respect to the two of you then --

12 COMMISSIONER EDLEY: So April or May, just
13 the first couple.

14 COMMISSIONER THERNSTROM: It's just the
15 first few meetings.

16 COMMISSIONER BRACERAS: Well, they could
17 be reappointed.

18 COMMISSIONER THERNSTROM: They could be
19 reappointed.

20 COMMISSIONER EDLEY: That's not nice.

21 COMMISSIONER BRACERAS: You mean --

22 (Laughter.)

23 COMMISSIONER THERNSTROM: I was going to
24 say does Commissioner Edley really want to come for
25 the rest of the year all the way across the country.

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1 CHAIRPERSON BERRY: Maybe you could, if
2 you don't mind, would you mind reviewing it and trying
3 to do it by email? If it doesn't work, then --

4 COMMISSIONER REDENBAUGH: Yes, if it
5 doesn't work, it doesn't work.

6 CHAIRPERSON BERRY: Just to try to see if
7 Christopher can figure out his -- maybe if you could
8 take -- how long would it take you after you leave
9 here, a week or so, or how long before you'd be able
10 to email back and say this is okay, it's not okay, or
11 these other dates would be better?

12 COMMISSIONER REDENBAUGH: A week.

13 CHAIRPERSON BERRY: What did you say,
14 Russell? I couldn't hear you.

15 COMMISSIONER REDENBAUGH: A week.

16 CHAIRPERSON BERRY: A week. I would say
17 that by the end of next week or something, next week.

18 If you could send an email to the Staff Director and
19 say these dates will work or they won't work. You can
20 try. If it doesn't work, then you just have to do it
21 next month.

22 COMMISSIONER BRACERAS: Just flipping
23 through quickly and not looking carefully, I have a
24 couple of things right now, and I don't know if it's
25 worth bringing them up so that we're all working from

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1 the same base.

2 CHAIRPERSON BERRY: That would be worth
3 it. Let's do that, because if people already know
4 they can't meet by the --

5 COMMISSIONER BRACERAS: Well, just one -
6 fifth of July, that's the Fourth of July week, and we
7 typically go on vacation for that week.

8 CHAIRPERSON BERRY: Okay.

9 COMMISSIONER BRACERAS: And since we're
10 not meeting in August anyway, and it wouldn't push too
11 close to the next meeting, if we could move that to
12 the following week, that would be helpful. So that
13 would be July 15th. And then like I said, the December
14 date looks to be incorrect. Friday, September 9th, I
15 have a conflict. I don't know if it's possible to
16 have a different date.

17 COMMISSIONER EDLEY: Which date was that?
18 I'm sorry.

19 COMMISSIONER BRACERAS: Friday, September
20 9th. And I guess the week before is Labor Day weekend,
21 so the week after would be the 16th.

22 CHAIRPERSON BERRY: So why don't you write
23 the 16th there. Any others?

24 COMMISSIONER REDENBAUGH: Now would that
25 conflict with Rosh Hashanah?

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1 COMMISSIONER BRACERAS: It does not.
2 Well, it doesn't say it on this calendar, but I'm --
3 no, Rosh Hashanah is in October next year.

4 CHAIRPERSON BERRY: So that's the 16th.
5 Anybody off-hand see anything that you know you can't
6 do.

7 COMMISSIONER BRACERAS: I won't be at the
8 February -- I'll participate in February by telephone
9 since we'll be having our fourth child. But other
10 than that --

11 CHAIRPERSON BERRY: Oh, my. You know that
12 already.

13 COMMISSIONER BRACERAS: February 5th.

14 COMMISSIONER THERNSTROM: Yes, there
15 aren't nine months between now and February.

16 COMMISSIONER BRACERAS: As long as I can
17 come back from --

18 CHAIRPERSON BERRY: Russell, what we're
19 all doing is Christopher is doing something. I think
20 he's taking --

21 COMMISSIONER EDLEY: February 18th would
22 be terrific. I mean, I have to be here in the east on
23 Thursday anyway.

24 CHAIRPERSON BERRY: So why don't we then
25 say that that's what will happen. You've plugged in

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1 these new dates, and everybody has written those in,
2 and then people will email you to say whether all
3 these dates seem to work; which can, of course, be
4 changed. And then you can do a calendar, and then
5 Christopher will know how to -- and if that doesn't
6 work, then you just have to do it next month.

7 Okay. What else were we doing? Oh, the
8 Staff Director's report. Anyone have anything on the
9 Staff Director's report that they'd like to discuss?
10 Are you still doing dates?

11 III. Staff Director's Report

12 COMMISSIONER EDLEY: Well, I was just
13 going to ask people to at least consider April 8th
14 instead of 15th.

15 COMMISSIONER THERNSTROM: I can't do the
16 8th.

17 COMMISSIONER EDLEY: Can you do the --

18 COMMISSIONER BRACERAS: You'll be
19 scrambling to get your taxes --

20 COMMISSIONER THERNSTROM: Oh, wait a
21 minute. Wait a minute. Wait a minute. I may be
22 wrong on that, Chris. Just hold on a second. Let's
23 go back. No, I'm wrong. I can do the 8th. I'm sorry.

24
25 COMMISSIONER EDLEY: That would be great.

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1 That would be my last meeting.

2 CHAIRPERSON BERRY: What did you say, what
3 date?

4 COMMISSIONER EDLEY: April 8th instead of
5 the 15th.

6 CHAIRPERSON BERRY: 8th instead of the
7 15th.

8 COMMISSIONER EDLEY: Yes. Understanding
9 that Russell and Pete still have to check.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER BRACERAS: And luckily, I
12 think that the first time since I've been on, it
13 doesn't overlap with either Good Friday or Passover,
14 so that's nice to see.

15 COMMISSIONER EDLEY: The 8th.

16 COMMISSIONER BRACERAS: Either of those,
17 either March or April.

18 CHAIRPERSON BERRY: Okay.

19 COMMISSIONER KIRSANOW: Is the Staff
20 Director going to make a report?

21 CHAIRPERSON BERRY: He said -- did you say
22 you were going to make -- do you have anything else to
23 report?

24 STAFF DIRECTOR JIN: No, I'll answer
25 questions.

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1 COMMISSIONER KIRSANOW: I do have a couple
2 of questions. One had to do with the budget estimate
3 for this year. It's \$15 million?

4 CHAIRPERSON BERRY: That's the next item
5 we'll be going to, if you'd like. Would you like to
6 go to that?

7 COMMISSIONER KIRSANOW: I guess a couple
8 of other questions. One is, at some point in the last
9 week or more than a week, there was a notice in the
10 "Federal Register", I believe, about the hearing
11 related to subpoenaed documents from the Commission.
12 Can someone explain to me what that related to, and
13 give some background?

14 STAFF DIRECTOR JIN: Sure. I think you're
15 talking about the proposed Congressional hearings
16 regarding subpoenaing some documents from the
17 Commission. It was set up for this last Wednesday.
18 I had one of my staff go over there, and he told me
19 when he got back that it had been cancelled. And he
20 called, and I understand it's been reset for this
21 upcoming week. This only happened a couple of days
22 ago, and nobody called us in advance to notify us, so
23 we're still in the midst of finding out exactly what
24 happened. But as the Commissioners know, we've been
25 in the last couple or three months, four months, been

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1 engaged in extensive work with GAO on two reports that
2 they're doing. And additionally, in the midst of
3 that, we got a very substantial request from Congress
4 for documents. And we've been working very much with
5 GAO to try to comply with their expedited schedule,
6 which they informed me was driven by the requester's
7 desires.

8 We wrote back Congress and explained that
9 we were working diligently on the request that they
10 had made of us, but that a lot of the documents they
11 had asked for were actually in the possession of other
12 parties, and that the request went back almost
13 uniformly to 1995. Many of those documents we don't
14 have and are not required to keep, so we told them we
15 were still in the process of copying documents, trying
16 to assess what we do have, who has what. And that we
17 were also working very closely with GAO, because the
18 people that requested GAO to examine us were really
19 the same people in Congress who had asked for these
20 documents. So they wrote back to us, and among other
21 things that they said was that you should definitely
22 prioritize responding to GAO, which we've done, and
23 we're still engaged with them. And so I can only
24 assume at this point that the subpoena relates to some
25 of those documents that they had requested earlier.

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1 COMMISSIONER KIRSANOW: You haven't
2 received a subpoena itself, or haven't seen a
3 subpoena?

4 STAFF DIRECTOR JIN: We have not received
5 the subpoena itself.

6 CHAIRPERSON BERRY: I thought you said it
7 was put off until next week.

8 STAFF DIRECTOR JIN: Yes, it was going to
9 be -- my assumption was that they were going to act on
10 it last week because it was noticed up, like you said,
11 but that it was pushed off. And like I said, my
12 staffer I asked to call, called the House Judiciary
13 Committee and was informed that it had been pushed
14 off.

15 CHAIRPERSON BERRY: Wasn't the hearing to
16 decide whether they would issue a subpoena?

17 STAFF DIRECTOR JIN: Yes. Because under
18 the House rules, they have to have a vote, so I think
19 there were some discussions among members at this
20 point as to what they're going to do, but officially
21 that's all we know, because they never let us know in
22 advance what they were thinking or whatever, so that's
23 what I know at this point.

24 CHAIRPERSON BERRY: Anybody have anything
25 else? Yes, Commissioner Thernstrom.

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1 COMMISSIONER THERNSTROM: I'm just puzzled
2 by something you said. You said that they want
3 documents going back to what you said, '96?

4 STAFF DIRECTOR JIN: '95.

5 COMMISSIONER THERNSTROM: '95. And that
6 you're not required to keep such documents and you
7 don't have them. But as I understand it -- fair
8 enough. But as I understand it, the Commission has
9 subpoenaed documents from DOJ and others that way
10 predate, go back to dates as early as 1982 and so
11 forth. Now, of course, if we're not required to keep
12 documents going back to '95, are they required to keep
13 documents going back to '82, and is there a bit of a
14 double standard here?

15 STAFF DIRECTOR JIN: Well, I expect that
16 different documents have to be kept for different
17 lengths of period of time, and so I think that without
18 knowing exactly what documents we're talking about, it
19 would be hard to answer that question. I mean, some
20 of the documents they requested of us, you know, only
21 have to be kept a few years, some are longer and so
22 forth, so I'm not saying that -- I didn't indicate
23 which of the documents, and I couldn't tell you at
24 this moment we're only required to keep for a couple
25 of years, which for three years, which for longer than

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1 that. But my point was simply that the law did not
2 require us to keep all the documents requested of us
3 for that period of time.

4 In terms of our request, again, I don't
5 know exactly which request we make that go back to
6 beyond three years or beyond five years. But,
7 obviously, if we request a document or set of
8 documents and the agency doesn't have it and they're
9 not required to keep it, certainly we wouldn't
10 penalize them for it.

11 CHAIRPERSON BERRY: Well, isn't the short
12 answer that financial management documents, which is
13 what we're talking about here - right? Bills, things
14 like that having to do with -- they have dates on them
15 and you have to keep them for that length of time.
16 The kind of stuff we subpoena from agencies has to do
17 with policy matters and so on. And also, they are
18 usually put in the archives after they are done, so
19 when you say you don't have them, you may not have
20 them here, but if they're policy documents they would
21 be in storage, and that would be true of any agency.

22 Also, if an agency doesn't -- I just
23 happen to know this because I have to request
24 documents from people all the time, and the kind of
25 research I do, government agencies, and I go to the

1 archives all the time. But anyway, if they don't have
2 something, they'll tell you they don't have it. And
3 if you don't have it, then you don't have it. But by
4 and large, if they're policy documents, they're either
5 somewhere around the agency or they're the National
6 Archives or some place in storage. It just takes you
7 time to get them. You can't get them tomorrow. That
8 doesn't mean you couldn't get them eventually. But
9 certain things, like the bill you paid for pencils or
10 whatever it is, there's a length of time which you
11 have to keep those. Isn't that right?

12 STAFF DIRECTOR JIN: Yes.

13 CHAIRPERSON BERRY: Is that right? Okay.

14 That's my understanding.

15 COMMISSIONER THERNSTROM: That clarifies
16 it.

17 CHAIRPERSON BERRY: Does anyone have
18 anything else on the Staff Director's report?

19 COMMISSIONER KIRSANOW: Yes, I do.

20 CHAIRPERSON BERRY: Yes.

21 COMMISSIONER KIRSANOW: One other thing.
22 There was a posting for the General Counsel position
23 recently, and I think we had sent a memo requesting
24 some kind of the status of that. My recollection was
25 there was a question about the regulations pertaining

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1 to that particular position, the duties, the
2 description of it, and so forth. Can you tell us what
3 the status, number one, of the posting is, and whether
4 or not there's been any reconciliation of the posting
5 with the necessity, what I believe to be the necessity
6 to get some kind of finalization of the regulations?

7 And this I don't recall, but is there some
8 type of imperative that derives from there had been an
9 EEOC complaint or settlement out there that may have
10 some kind of impact on the General Counsel posting the
11 position?

12 STAFF DIRECTOR JIN: The short answer is
13 that there's nothing out there that impedes the
14 posting of the General Counsel's position. The regs
15 that you're talking about has nothing to do with the
16 position of General Counsel, nor the duties.

17 What happened was, as I think you noted in
18 your memo to me, back in '88 or so, '98 or so, the
19 Commissioners had agreed, pursuant largely to GAO's
20 suggestion, clarify our own regs to make sure the
21 public out there had a good understanding as to how
22 the Commission is structured, what positions are there
23 and so forth. And it did get delayed for a variety of
24 reasons in terms of getting published, but at some
25 point it did get published.

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1 Subsequent to that, there was for a
2 variety of reasons, we needed to put the Solicitor's
3 position back in, in terms of organizational
4 structure. But there's nothing in there that affects
5 the authority to post any position, and certainly not
6 General Counsel's position. And so I checked with
7 both lawyers and personnel as to confirm my
8 understanding that the posting of the General
9 Counsel's position is appropriate. And the reason is
10 because we are authorized to have that position, and
11 we do have a job description for it which delineates
12 the duties, and the duties of the General Counsel and
13 the duties of the Solicitors are very different.

14 To list their delineated duties and their
15 position description, General Counsel essentially, of
16 course, is the Chief Legal Officer for the agency, as
17 well as the Manager of our law office. So again,
18 after I got your memo, I did check to confirm that we
19 were operating appropriately.

20 CHAIRPERSON BERRY: Commissioner
21 Thernstrom.

22 COMMISSIONER THERNSTROM: I have a modest
23 request of the Staff Director's office; that is, that
24 when we send emails to the office in response to a
25 request of one sort or another, that those emails get

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1 acknowledged, because I never know whether you've
2 actually received them or not. And I find that I'm
3 sitting there wondering well, did they get it, did
4 they not get it, and it would just help with a
5 received, thanks.

6 STAFF DIRECTOR JIN: Okay. We do try to
7 either acknowledge the response or assistant to
8 assistant, stuff like that, but we'll try to keep an
9 eye on that issue you raised.

10 COMMISSIONER THERNSTROM: Yes, I mean
11 things get -- you know, emails go astray, so it would
12 help.

13 **IV. FY 2006 Budget Estimate**

14 CHAIRPERSON BERRY: Anything else on the
15 Staff Director's report? Hearing none, the next item
16 on the agenda is the FY 2006 budget estimate.
17 Commissioner Kirsanow, you had a question about the
18 budget.

19 COMMISSIONER KIRSANOW: Yes. I just -- I
20 think the estimate I saw was for \$15 million.

21 STAFF DIRECTOR JIN: Fifteen point one.

22 COMMISSIONER KIRSANOW: And my
23 recollection is that for a long time, we've been
24 flatlined to about \$9.6 million.

25 STAFF DIRECTOR JIN: Nine million, more

1 like nine point zero.

2 COMMISSIONER KIRSANOW: Nine million,
3 whatever it is, somewhere in that neighborhood.
4 First, how is the estimate constructed in light of the
5 fact that we've been flatlined? And I guess there's a
6 reasonable presumption that that would be the case
7 this time. Well, that's the first question.

8 STAFF DIRECTOR JIN: Well, let me --
9 before I go and explain this how we go about
10 constructing it, I mean, let me just say as a preface
11 kind of what goes through my mind in terms of that as
12 I work with staff. I think like you said, we've been
13 flatlined for many, many years at \$9 million. And I
14 think that, my understanding that even before I got
15 here, that the Commission's approach was let's ask for
16 what we think we need, and then we'll work through it.
17 And so the first step is after the Commissioners in
18 January, February, whenever decide on the projects,
19 shortly thereafter our Budget Director, Mr. Harbison,
20 writes each of our offices, including our two program
21 offices, who are primarily responsible for
22 effectuating the projects the Commission has voted on,
23 and ask for budget estimates, what we call a budget
24 call. And so we get those estimates from the various
25 offices, and then Mr. Harbison tries to pull them

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1 together in a preliminary document. He goes back to
2 each of the offices as needed to get clarification and
3 things like that. If things look like they're just
4 totally out of line, I think he has some preliminary
5 conversations with the offices on that. And then at
6 some point he gives me a document combining all these
7 proposals, and then he and I have conversations. And
8 sometimes I go back to the offices, but he and I then
9 try to craft something that ensures that we can do the
10 projects that the Commission has asked for, as well as
11 all the other things that we either feel we need, or
12 we're told that we need from our various office
13 managers.

14 Now we don't just accept each of the
15 office manager's requests. We both look at what we
16 consider to be the reasonableness of it, as well as
17 equity among offices. So that's what we do, and so
18 that's how this budget gets developed.

19 CHAIRPERSON BERRY: Does anyone have
20 anything else?

21 COMMISSIONER KIRSANOW: Yes, I understand
22 that, and it kind of strikes me in terms of allocation
23 of budgetary resources if -- I mean, it's I guess
24 always a projection of every agency that you're going
25 to acquire more, and hope to get more than you did in

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1 the previous year. But in terms of allocating the
 2 budgetary resources for any given project, department,
 3 any other kind of endeavor of the Commission, if you
 4 know that you've been at nine plus million for a
 5 while, and then you have an estimate of \$15 million,
 6 which is more than a 50 percent increase, how do you
 7 then reconcile whether or not you're being realistic
 8 in your estimates with respect to what's going to be
 9 happening in the next year?

10 STAFF DIRECTOR JIN: Well, like I said, I
 11 mean my understanding has been that the approach the
 12 Commission historically has taken is let's ask for
 13 what we think we need, and then if there's discussions
 14 to get less, that's fine. I mean, in the four years
 15 since I've been here, my understanding is that there's
 16 been times in the past where the Commission would make
 17 a request, and I think in the 90s the Commission was
 18 making requests for probably ballpark the same number,
 19 and OMB would ask the Commission to come in and talk
 20 to them. There would be some discussions, and I think
 21 in at least several of the years, they probably agreed
 22 on a number like 11, 11 and a half, which Congress
 23 didn't pass either, but there was discussion. In the
 24 four years since I've been here, OMB has never asked
 25 to have those discussions, so I guess the argument

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1 could be made that if we're totally realistic, maybe
2 we should just ask for \$9 million. But again, based
3 on my understanding as to how we've historically
4 approached this, is that really would not be a good
5 thing to do.

6 CHAIRPERSON BERRY: Commissioner
7 Redenbaugh, then Commission Edley, and did you have
8 your hand up too?

9 COMMISSIONER REDENBAUGH: Yes, if I could
10 sort of join Pete. It is exactly the way that the
11 Staff Director said. And this goes back well before
12 he joined us, and it troubled me then. And I think
13 I've seen submissions even more unrealistic than the
14 \$15 million, maybe 16 or 18. I mean, they must think
15 we inhale over here. And I've objected to them for
16 about a dozen years as really unrealistic. I don't --
17 I'm very reluctant to associate myself with an
18 unrealistic request. And it's been the practice in
19 the agency for a long, long time to submit these huge
20 requests.

21 What I can't remember, and the question I
22 want to ask the Staff Director is, let's say the
23 number comes back at \$9 million roughly. Then what's
24 the allocation process?

25 STAFF DIRECTOR JIN: The process after it

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1 comes back from OMB, what's called the pass back, is
2 then we have to submit documents to Congress. And
3 what we do, because it's my understanding that we have
4 to submit a budget number that's -- what we do is
5 this. We re-allocate our items in the format that the
6 Congress asks us for to be consistent with the \$9
7 million, but we also indicate that we still felt that
8 \$15 million was what was appropriate. And we give a
9 verbal explanation for that. But that in terms of the
10 charts and the numbers, it's a line with the pass back
11 number.

12 COMMISSIONER REDENBAUGH: Now when you say
13 "we" --

14 STAFF DIRECTOR JIN: The "we" is basically
15 Mr. Harbison and myself. It's "we" in terms of the
16 Commission, but Mr. Harbison and myself.

17 COMMISSIONER REDENBAUGH: You know, it's
18 been a whole year, and I just can't remember that far
19 back. Do the Commissioners vote on that again? Does
20 that change the priorities?

21 STAFF DIRECTOR JIN: No.

22 COMMISSIONER REDENBAUGH: We don't vote on
23 it, or it doesn't change the priorities?

24 COMMISSIONER EDLEY: It's not at that
25 level of detail. There will be a lump sum for program

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1 stuff, but --

2 CHAIRPERSON BERRY: You are recognized for

3 --

4 COMMISSIONER EDLEY: I apologize.

5 CHAIRPERSON BERRY: No, you're recognized
6 for point of information. Go ahead.

7 COMMISSIONER EDLEY: It's not at that
8 level of detail. There would be a lump sum. It won't
9 break down which projects are being undertaken or
10 anything of that sort.

11 COMMISSIONER REDENBAUGH: So it doesn't
12 pin it off to any particular programmatic --

13 COMMISSIONER EDLEY: No.

14 COMMISSIONER REDENBAUGH: All right.

15 CHAIRPERSON BERRY: Edley was next.

16 COMMISSIONER EDLEY: I just wanted to say
17 that I'm not quite sure what unrealistic means in this
18 context. Again, just speaking from my experience at
19 OMB, from an OMB vantage point or from a Congressional
20 vantage point, if this agency were to ask for \$15
21 million or \$20 million, it's not unrealistic in the
22 sense that if they want to give us the money, they can
23 give us the money, and they can afford it. It's a
24 question of their priorities. And with all due
25 respect, if I were a Republican appointee to this

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1 Commission with the prospect of having control of the
2 Commission, I would be asking for at least \$15 million
3 and trying to persuade a Republican White House to
4 support it, because with Republican control of the
5 Commission, the opportunity to drive an agenda that's
6 congenial to the Administration is going to be --
7 might make it a much more attractive investment option
8 for the OMB.

9 COMMISSIONER BRACERAS: We're not supposed
10 to be driving agendas favorably for one administration
11 or another.

12 COMMISSIONER EDLEY: Well, that's good to
13 hear. That's good to hear, but it's -- in the same
14 way that -- so I guess what I'm saying is that whether
15 -- this is a trivial amount of money, absolutely
16 trivial amount of money to OMB or to the Congress.
17 It's only a question of whether they think
18 programmatically what it is that the Commission would
19 be doing starting a year hence is worth a couple of
20 million additional dollars. And I think that depends
21 upon their sense of who the people are who are running
22 the Commission and what the Commission is setting out
23 to do. And that, presumably, is going to be changing,
24 so I don't think it's -- it's not unrealistic in a
25 fiscal sense. It may be unrealistic as a matter of

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1 political prediction. But even that I would say is
2 kind of -- is really sort of up for grabs.

3 CHAIRPERSON BERRY: Commissioner Meeks.

4 COMMISSIONER MEEKS: I'm pretty much just
5 following on what Chris said, but I mean I think the
6 term is really, is it a reasonable budget. And I
7 think it's more reasonable to ask for what's
8 reasonable, rather than to say it's unrealistic.
9 Maybe it's unrealistic doesn't get funded, but it's
10 still below reasonable in my mind.

11 CHAIRPERSON BERRY: Did you have your hand
12 up, Commissioner Thernstrom?

13 COMMISSIONER THERNSTROM: I did, but I --
14 Commissioner Kirsanow has already been involved in
15 this. I'd like to hear what he has to say, and then
16 I'd like to go after him.

17 CHAIRPERSON BERRY: Okay.

18 COMMISSIONER KIRSANOW: I mean, Chris, I
19 don't disagree with what you have to say in terms of
20 asking for a certain amount. That's not really my
21 question. It's really a question of if you're asking
22 for \$15 million, but then the pass back, as you put
23 it, is at \$9 million, I'm concerned about the process
24 and the analysis that goes into getting to that \$15
25 million. And then finding out that you have \$9

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1 million.

2 If I'm going to be constructing a budget
3 that is 50 or 60 percent greater than what I'm likely
4 to receive, that budget, seems to me, has some
5 significant defects in it, and needs to be re-examined
6 very closely. So that's what I'm concerned about. It
7 would be nice if you ask for \$15 million, you got back
8 \$15 million, but historically that's not been the
9 case. So it's a matter of the underlying
10 understandings and frame works that goes into that
11 request. Are we being - I'm not saying that we're not
12 - but are we being realistic and reasonable in
13 assessing what components get funded, and how?

14 CHAIRPERSON BERRY: Do you still wish to
15 speak?

16 COMMISSIONER THERNSTROM: Yes, I do - a
17 couple of things. This piggybacks on what
18 Commissioner Kirsanow said in part. I mean, I am --
19 the difference between \$15 million and \$9 million is a
20 radical difference in how the priorities of this
21 Commission are structured. And to the best of my
22 knowledge, we've never seen the pass back budget of \$9
23 million after the larger requests are denied. And, I
24 mean, money does drive the agenda to some extent of
25 the Commission. That's an important number. I don't

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1 -- I'm bothered because you can't separate priorities
2 from actual funding by simply ignoring the likely
3 reality here.

4 And my second point is just to reiterate
5 what Jennifer said, and to say another word on that.
6 I mean, this is not, I hope, going to become a
7 Republican Commission. I never want to think of it
8 that way, but --

9 COMMISSIONER EDLEY: I agree with that
10 sentiment.

11 COMMISSIONER THERNSTROM: Yes, but if --

12 COMMISSIONER BRACERAS: I think your
13 comment was a Freudian slip.

14 COMMISSIONER THERNSTROM: But if one does
15 think of it that way then, of course, those who are
16 not Republicans on this Commission should be trying to
17 reduce the budget, not expand the budget, and deny the
18 future Republican majority of funding.

19 Now I would hope that the Democrats and
20 Independent/Democrats who are on this Commission would
21 not think that way, and I certainly don't want to
22 think of our future as ideologically driven, or driven
23 by partisan affiliations.

24 CHAIRPERSON BERRY: I would say point of
25 personal privilege, as the only Independent I think on

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1 this Commission, I am not a "Slash Democrat", thank
2 you. And I wish to define myself as I have a right to
3 do as a human being in whatever way I choose, and so
4 these snide little pejorative comments are not --

5 COMMISSIONER THERNSTROM: No, it's wasn't
6 a snide --

7 CHAIRPERSON BERRY: I have already stated
8 what I am, and I am the only Independent on here. I
9 have a point of personal privilege to say that. I
10 have nothing else to say about this. Vice Chair,
11 please.

12 VICE CHAIRPERSON REYNOSO: I just -- my
13 own experience has been that the budget process is one
14 where we go in, we make a request. There's
15 negotiation. A different figure is reached
16 administratively. It eventually goes to the White
17 House and Congress. They come back with a fixed
18 figure. When we discuss priorities, my recollection
19 is that we keep in mind how much money we have, so
20 I've seen no incongruity in the process.

21 Secondly, many of us have these type of
22 budgetary responsibilities with other organizations,
23 and it seems to me that the governmental process is
24 not much different than the process that I go through
25 with other organizations, where if you have so much

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1 money you'd like to do XYZ. Think of the work that
2 our advisory committees could do if they had more
3 money, for example.

4 Nonetheless, at the end of the legislative
5 day, we've got so much money, and we take that into
6 account in our programmatic meetings, which take place
7 in-depth once a year. And then we re-analyze,
8 depending how much money we have. I guess I haven't
9 seen as a problem the issues that are being raised in
10 terms of our not being able to plan realistically,
11 because we have the hopes that we'll get \$15 million,
12 so that's been my own experience.

13 CHAIRPERSON BERRY: Commissioner Kirsanow.

14 COMMISSIONER KIRSANOW: I have one last
15 question on this. And I want to reiterate again, it's
16 not so much a function of how much money we're
17 requesting, but the presumptions underlying that
18 request. And to calculate what is a reasonable
19 estimate, I think requires a look at what's been done
20 in the past, and also where we are right now.

21 My understanding is that we have an
22 obligation to conduct audits or self-audits, and I
23 don't know that we've done that yet. I know that we
24 had an extension or something of that nature for a
25 couple of years. And I don't know how we can make a

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1 request unless we have conducted such an audit, and we
 2 know what the template is for making such a request.
 3 Have we conducted any kind of an audit along those
 4 lines? And if we haven't, where are we in that
 5 process? I think we have until the end of this year
 6 to do that.

7 VICE CHAIRPERSON REYNOSO: I don't know
 8 about an audit.

9 CHAIRPERSON BERRY: He's working on that.

10 STAFF DIRECTOR JIN: I'm sorry. An audit
 11 of what, Commissioner?

12 COMMISSIONER KIRSANOW: A self-audit, or
 13 commissioning an audit for the agency. Don't we have
 14 a -- I think all other agencies have got
 15 responsibilities to conduct audits, and I don't know
 16 if we have done so, or if we're in the process of
 17 doing so, or are we exempt somehow?

18 STAFF DIRECTOR JIN: Audit of?

19 COMMISSIONER KIRSANOW: Of the finances.

20 STAFF DIRECTOR JIN: Yes. Sure. No, and
 21 we are in the process, consistent with the Tax
 22 Accountability of 2002 Act, of getting an audit for
 23 2004. I mean, yes we are. That's a financial audit.
 24 That's a little different.

25 Let me just add maybe something that, I

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1 mean, in terms of like you said, Commissioner, I mean
2 we know that there's a good likelihood that we're
3 going to operate under no increase, and so mentally we
4 assume that. And as I told the Commissioners many
5 times before, that gets tougher every year because of
6 inflationary factors. But, you know, if we don't get
7 a budget increase, then basically it's the Commission
8 you see. I mean, and this proposal, basically a third
9 of the increases is associated with supporting
10 advisory committees better. A third of the proposals
11 basically is associated with enhancing our
12 programmatic offices, our General Counsel's office and
13 OCRE. The other third is enhancing support functions,
14 you know, our Human Resource Division, our Budget
15 Division, Administrative Services, Library and stuff
16 like that. So again, you know, if we got more money,
17 the kind of money we're talking about, I can get my
18 regional offices, we can get our regional offices back
19 to a full level and increase it. There's an infinite
20 amount of stuff we can do on regional offices and
21 advisory committees. And unfortunately, we're doing
22 only a really small part right now, and it's
23 decreasing every year because of financial problems.

24 We have no choice. I mean, that's what
25 we're faced with, but with additional money we can

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1 double the staff in each of those regional offices.
2 And it probably still wouldn't be beyond what was the
3 capacity in the past. And as Commissioner Edley said,
4 I mean I think what Commissioner Edley said is
5 absolutely true.

6 Back in the early 80s, if you take what we
7 got in the early 80s as a budget, extrapolate it to
8 the present date accounting for inflation, we would be
9 well over \$20 million. I mean, there's a need out
10 there.

11 We have a staffing level right now about
12 65. Once upon a time the Commission had 250 people,
13 so I mean the kind of stuff we would do is not that
14 much different than the stuff that we would like to
15 do. We don't have that money, we do what we've been
16 doing. I mean, that's what it comes down to.

17 CHAIRPERSON BERRY: The -- I think that we
18 don't have more time to consider this, unless somebody
19 has something that's really, really, crucial. And the
20 issue is, the staff has done what they've done in the
21 past, which is try to come up with what the Commission
22 needs based on the projects that have been approved,
23 the fact that the regional offices don't have staff,
24 SACs can't do their work. And to do all that and
25 propose, and they've come up with 15 whatever it is

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1 million dollars.

2 Whether or not that's approved depends not
3 just on the pass back, but it depends on what
4 negotiations take place after that, if there are any.

5 And the budget, of course, is not itemized. It's one
6 big number, as Commissioner Edley says. You get one
7 big number back. So the real question is, does the
8 Commission want to support this budget estimate to
9 OMB, or does the Commission want to reject this budget
10 estimate to OMB? And so I would like someone to move
11 the approval of the budget estimate so we could vote
12 on it. And then get a second, and then we can have
13 further discussion, if you'll just hold.

14 COMMISSIONER THERNSTROM: Okay.

15 CHAIRPERSON BERRY: Can I get a motion to
16 approve.

17 COMMISSIONER EDLEY: I move.

18 CHAIRPERSON BERRY: Can I get a motion to
19 second.

20 COMMISSIONER REDENBAUGH: Second.

21 CHAIRPERSON BERRY: Yes. Now, please.

22 COMMISSIONER THERNSTROM: I think, Staff
23 Director, what's bothering some of us is that if we
24 support this and the pass back is \$9 million, it is
25 correct, as the Vice Chair says, that when individual

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40
1 projects come up we consider them, but there is no
2 point at which we have a chance as Commissioners to
3 look at the overall picture, and to say okay, we've
4 got \$9 million to work with. That turns out to be the
5 fact. What are priorities, rather than this kind of
6 piecemeal should we do this, should we do that? I
7 mean, there is no kind of big picture discussion given
8 what the budget actually turns out to be. And so I
9 guess my question is, if we would vote for this \$15
10 million, would -- wait until we see what kind of money
11 we've got, would we have an opportunity not to go, as
12 we have in the past as the Vice Chair correctly
13 described it, piecemeal throughout the year, but have
14 a chance to look at the whole picture and talk about
15 it.

16 CHAIRPERSON BERRY: The answer the Staff
17 Director cannot give, but I will give it to you, is
18 yes, you can, if you say that's what you want. After
19 all, you are the Commission. All you have to do,
20 instead of asking the question, is to say you would
21 like to modify the motion, and to include in it that
22 the Commission would review the pass back, and review
23 the priorities when it is received by the Commission
24 before it is returned. That's all you have to do.
25 Would you like to do that?

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1 COMMISSIONER THERNSTROM: I would like to
2 do that.

3 COMMISSIONER REDENBAUGH: Second.

4 CHAIRPERSON BERRY: Okay. Would you maker
5 of the motion and the seconder accept the
6 modification?

7 COMMISSIONER EDLEY: Yes.

8 COMMISSIONER REDENBAUGH: Yes.

9 CHAIRPERSON BERRY: Now, are you ready for
10 the question?

11 COMMISSIONER EDLEY: No, I'd like to make
12 a comment. Sorry. My suggestion would be -- here's
13 my -- back in the 90s when I was at OMB, somebody from
14 over here, I think it was the Chair --

15 CHAIRPERSON BERRY: Yes, what did I do?

16 COMMISSIONER EDLEY: -- came over to me
17 and made a pitch for OMB to put more money into the
18 Commission. And she described what the situation was,
19 and the important work that could be done if there
20 were some additional resources, and I shoveled money
21 into the President's request.

22 CHAIRPERSON BERRY: Right. Sure.

23 COMMISSIONER EDLEY: Which Congress didn't
24 go along with it, but what I'm saying -- all I'm
25 saying is that there was sort of a pitch to the White

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1 House at that level about why it would be
2 substantively valuable to do it. So with all respect,
3 my recommendation to those of you who know folks at
4 the White House would be, if when you're running the
5 place, you want to have the ability to go further down
6 that list of project priorities, and do more things,
7 that you might at least think about in the next couple
8 of weeks going over there and saying maybe 15 is too
9 much, but 9 is too little, and can't you find some
10 nickels on the floor somewhere to at least put into
11 the President's request to Congress.

12 CHAIRPERSON BERRY: Well, they could take
13 your advice or not, but are we ready for the question?

14 COMMISSIONER EDLEY: That's the only way
15 it's ever going to get off of 9.

16 COMMISSIONER REDENBAUGH: No budget
17 document has much salesmanship in it.

18 COMMISSIONER EDLEY: That's right. That's
19 right. That's exactly right.

20 CHAIRPERSON BERRY: May we vote on the
21 motion, please, Commissioners. All those in favor of
22 the motion as amended --

23 COMMISSIONER THERNSTROM: As amended.

24 CHAIRPERSON BERRY: That's what I said,
25 Commissioner Thernstrom.

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1 COMMISSIONER THERNSTROM: Yes, yes, yes,
2 yes.

3 (Chorus of ayes.)

4 CHAIRPERSON BERRY: Those opposed. So
5 ordered.

6 COMMISSIONER KIRSANOW: I'll abstain for
7 the record.

8 **V. SAC Appointments**

9 CHAIRPERSON BERRY: Commissioner Kirsanow
10 abstained. The next item on the agenda is SAC
11 appointments. Can I get a motion to approve the SAC
12 appointments? Did you say yes or no?

13 COMMISSIONER REDENBAUGH: May we separate
14 Alaska?

15 CHAIRPERSON BERRY: Okay. Could I get a
16 motion to approve everybody except Alaska?

17 COMMISSIONER BRACERAS: No, just to
18 approve Alaska. Is that right?

19 CHAIRPERSON BERRY: I beg your pardon?

20 COMMISSIONER REDENBAUGH: Motion to
21 approve Alaska.

22 CHAIRPERSON BERRY: Oh, you said approve
23 Alaska.

24 COMMISSIONER REDENBAUGH: Yes.

25 CHAIRPERSON BERRY: Oh. Could I get a

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1 motion to approve Alaska? You moved that. Right?

2 COMMISSIONER REDENBAUGH: Yes, I moved
3 that.

4 CHAIRPERSON BERRY: Could I get a second.

5 COMMISSIONER BRACERAS: Second.

6 CHAIRPERSON BERRY: Any discussion? All
7 in favor indicate by saying aye.

8 (Chorus of ayes.)

9 CHAIRPERSON BERRY: Opposed. So ordered.

10 COMMISSIONER EDLEY: Do we have the Vision
11 Statement for Alaska?

12 CHAIRPERSON BERRY: I don't know. I
13 assume so. Yes, we do.

14 STAFF DIRECTOR JIN: We do not have a
15 Leadership Statement from Alaska. What I was going to
16 suggest to the Commissioners is we have Leadership
17 Statements from the proposed Chairs for Nevada, South
18 Dakota, and Utah. And those I would ask that the
19 Chairs be confirmed with the rechartering. For the
20 other three states, I would ask that the states be
21 rechartered, but that when we get the Leadership
22 Statement that we're satisfied with, we would let the
23 Commissioners know, and at that point we would ask the
24 Commissioners to approve the --

25 CHAIRPERSON BERRY: We already approved

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1 Alaska. We just did it.

2 COMMISSIONER EDLEY: Oh, we did.

3 CHAIRPERSON BERRY: But we'll tell them to
4 send their Vision Statement in by a certain time.
5 It's a condition subsequent. Right?

6 STAFF DIRECTOR JIN: Okay.

7 CHAIRPERSON BERRY: How about the other
8 ones? Shall we do them one by one or all together?
9 One by one, is that your idea, Russell?

10 COMMISSIONER REDENBAUGH: No, the idea is
11 --

12 CHAIRPERSON BERRY: Not to do them one by
13 one.

14 COMMISSIONER REDENBAUGH: Well, I would
15 like to have more balance, more political party
16 balance on all the others.

17 CHAIRPERSON BERRY: More political party
18 balance on all the others.

19 COMMISSIONER REDENBAUGH: Yes.

20 COMMISSIONER EDLEY: I thought party
21 didn't matter. I'm confused.

22 COMMISSIONER REDENBAUGH: I think it does
23 on SACs.

24 COMMISSIONER EDLEY: I see.

25 COMMISSIONER THERNSTROM: It does on SACs.

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1 CHAIRPERSON BERRY: Of what does that
2 consist? How short are we? Do you know?
3 COMMISSIONER REDENBAUGH: I can't recall
4 the data, but it's in the submission.
5 CHAIRPERSON BERRY: Which ones did you say
6 you had Vision Statements on?
7 STAFF DIRECTOR JIN: We have them for
8 Nevada, South Dakota and Utah.
9 CHAIRPERSON BERRY: So you want to table
10 these with the idea of reviewing the party balances.
11 Is that your point?
12 COMMISSIONER REDENBAUGH: Yes.
13 CHAIRPERSON BERRY: Anybody have an
14 objection to doing that, and bring them back next
15 month? Any objection? Okay. Without objection.
16 Objections?
17 STAFF DIRECTOR JIN: No, I was just going
18 to ask what the Commissioners wanted us to do, because
19 the rules require that we try to make sure there's
20 diverse representation among a number of factors,
21 including parties which we try very hard to do. And
22 in some states historically, I don't know with this
23 group historically to the extent that a party has been
24 substantially under-represented, we try to go to the
25 party, and I think we've done that, for example, the

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1 Republicans in a number of states in the midwest. And
2 I don't know what the instruction is to me, whether
3 it's to try to get balance or try harder, or what to
4 do.

5 CHAIRPERSON BERRY: Well, let me ask you
6 this. Have you gone to the parties in the states
7 where -- or has someone gone to the political parties
8 to ask for nominations in these states where you were
9 short?

10 STAFF DIRECTOR JIN: Well, we've done that
11 in some states. I mean, it was never my understanding
12 that we had to -- my understanding is that we were
13 supposed to find good representation. And
14 historically, this is consistent in my mind with what
15 we've done as a Commission historically, that we did
16 not go to these states, as far as I know. I mean, I
17 don't know. I don't personally get involved in this.
18 I don't think we've gone to the parties and said well,
19 we only have four Republicans here. We have seven
20 Democrats. We're trying to look for three more
21 Republicans. We wouldn't do that. I don't know that
22 that -- I don't think we're supposed to do that, so
23 I'm not quite sure what we're supposed to do at this
24 point.

25 CHAIRPERSON BERRY: What are you asking

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1 them to do, Russell, go to the parties?

2 COMMISSIONER REDENBAUGH: I think it would
3 help going to the parties. I mean, in hindsight, it's
4 probably easy to find Republicans.

5 STAFF DIRECTOR JIN: Again, I don't want
6 to get into a situation where it sounds like I'm being
7 critical but getting people to serve is sometimes not
8 easy.

9 COMMISSIONER REDENBAUGH: It isn't,
10 believe me. I question that myself all the time.

11 CHAIRPERSON BERRY: Point of information,
12 the staff just gave me the one in Colorado has four
13 Republicans and four Democrats.

14 COMMISSIONER EDLEY: South Dakota has six
15 Democrats, four Republicans, three Independents.

16 COMMISSIONER REDENBAUGH: What are we
17 talking about here, guys?

18 CHAIRPERSON BERRY: We're talking about
19 appointees.

20 COMMISSIONER REDENBAUGH: No, I
21 understand. I'm talking to my team here.

22 COMMISSIONER THERNSTROM: I thought we had
23 --

24 COMMISSIONER REDENBAUGH: Am I on the
25 wrong page?

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1 CHAIRPERSON BERRY: Well, this page,
2 Colorado says four-four.

3 COMMISSIONER REDENBAUGH: Well --

4 CHAIRPERSON BERRY: It has 13 members all
5 together, Russell. It has four-four, Republicans and
6 Democrats, and five Independents. That's Colorado.
7 That's what the makeup of it would be, so I don't know
8 what we want them to do about that.

9 COMMISSIONER THERNSTROM: Can we table
10 this until the next meeting, go over this more
11 carefully.

12 CHAIRPERSON BERRY: Well, let's ask - it's
13 for the staff and for the SACs. Are there any
14 concerns as to why we should do any of these now
15 instead of making them wait, and that we should look
16 at these tables to make sure that they are
17 representative? .

18 MS. DAVIS: If I may --

19 CHAIRPERSON BERRY: Yes, here.

20 COMMISSIONER EDLEY: No, I see Utah seven,
21 Democrats four, Republicans three, four Independents..

22 COMMISSIONER REDENBAUGH: I think that's
23 the one --

24 CHAIRPERSON BERRY: Okay. So let's put
25 Utah aside. Okay. What else? Anybody got the rest

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1 of them? Colorado we just did, and it's balanced.
2 Utah is not. And South Dakota is --

3 COMMISSIONER MEEKS: It looks balanced to
4 me.

5 COMMISSIONER EDLEY: What does it say?
6 There's summary table at the end of it.

7 COMMISSIONER MEEKS: South Dakota, six,
8 three, and four.

9 MS. DAVIS: It's at the end of the memo,
10 just before the file forms, so probably about page 7
11 on each one.

12 CHAIRPERSON BERRY: Well, the only reason
13 why I'm hesitating is sometimes people who are willing
14 to serve on SACs, and it's sometimes hard to get them,
15 get a little irritated if there isn't some substantive
16 reason why you keep delaying appointing people. So if
17 it's true that it's not balanced, like the Utah one
18 isn't, so obviously we shouldn't vote on it. I want
19 to make sure the others are. Yes.

20 COMMISSIONER THERNSTROM: I mean, the
21 problem - I don't have it in front of me,
22 unfortunately - but one of the problems with this is
23 the large number of Independents on the Colorado SAC,
24 is that when one looks at the description of the
25 individual Independents, it does look as if they are,

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1 in effect, adding to the Democratic roster, so that
2 the imbalance is a bit camouflaged by the label as
3 Independent, but it is very imbalanced.

4 CHAIRPERSON BERRY: Well, Commissioner
5 Thernstrom, you may understand that after the comment
6 you made earlier to which I took personal exception, I
7 think --

8 COMMISSIONER THERNSTROM: I'm sorry that -
9 -

10 CHAIRPERSON BERRY: -- that you're
11 assuming that anybody who's an Independent, therefore
12 must be a Democrat.

13 COMMISSIONER THERNSTROM: No, I stated it
14 very carefully.

15 CHAIRPERSON BERRY: Because they can't be
16 Independents to be on the Commission committees, or
17 what?

18 COMMISSIONER THERNSTROM: I stated it very
19 carefully, that when one looked at the biographical
20 information given, that one can legitimately draw that
21 conclusion.

22 COMMISSIONER MEEKS: How can we not take
23 this at face value though. I mean, what basis do we
24 have to question --

25 CHAIRPERSON BERRY: People's affiliations.

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1 COMMISSIONER MEEKS: Where they fall if
2 they're an Independent.

3 COMMISSIONER THERNSTROM: Well, I mean, I
4 can go register tomorrow as an Independent, and I'm
5 not --

6 COMMISSIONER MEEKS: Sure. I could
7 register as a Republican.

8 COMMISSIONER THERNSTROM: And I don't
9 think they would take us at face value.

10 CHAIRPERSON BERRY: I think we're getting
11 into a sticky wicket, if we start challenging people's
12 acknowledged affiliation, and reading things and
13 deciding that we think they belong to some party or
14 other, because people have a right to determine that
15 they are Republicans, Democrats, Independents.
16 There's no reason why anybody has to be a Republican
17 or a Democrat.

18 COMMISSIONER EDLEY: Well, both parties
19 allege that they're Big Tens, so --

20 CHAIRPERSON BERRY: Right. And more and
21 more people are deciding not to belong to any party,
22 so we should penalize them?

23 COMMISSIONER THERNSTROM: Those parties
24 are Big Tens.

25 CHAIRPERSON BERRY: I'm not prepared to

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1 penalize people to be on SACs because they are
2 Independents, and to start nosing about trying to
3 figure out whether you, even though you say you're an
4 independent, are you really one or not. It seems to
5 me then if the balance is there, we can either vote it
6 up or down. But as in the case of Utah, I can
7 understand Commissioner Redenbaugh's point.

8 COMMISSIONER REDENBAUGH: Yes, and I
9 should have looked more closely at the others.

10 CHAIRPERSON BERRY: So I don't understand
11 why we should object to these other people. Yes,
12 Commissioner Meeks.

13 COMMISSIONER MEEKS: Then, you know in
14 that case, I make a motion that we move all but
15 Utah's.

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER MEEKS: That we vote on all -

18 -

19 CHAIRPERSON BERRY: Could we get a second
20 to that?

21 COMMISSIONER EDLEY: Second.

22 CHAIRPERSON BERRY: Is there further
23 discussion?

24 COMMISSIONER REDENBAUGH: I would add, I
25 don't know the statute, but I have a suspicion that

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1 the governing statute here is very clear about party
2 affiliation.

3 CHAIRPERSON BERRY: What do you mean "very
4 clear about party affiliation"?

5 COMMISSIONER REDENBAUGH: The FACA statute
6 speaks to party affiliation, and doesn't ask us to
7 look under the covers.

8 CHAIRPERSON BERRY: To see what people
9 are.

10 COMMISSIONER REDENBAUGH: But if anyone
11 can speak to that point, I could be corrected.

12 CHAIRPERSON BERRY: Yes. Staff Director,
13 what does it say?

14 STAFF DIRECTOR JIN: Yes. Madam Chair, I
15 was just talking to Ms. Davis, our Regional Program
16 Coordinating Unit Director, and my understanding is
17 that the standard is that no one party should
18 dominate. That that's the standard.

19 CHAIRPERSON BERRY: Okay. So the motion
20 is before us to approve all of them, except the one
21 from Utah, which has to be reviewed carefully.
22 Further discussion?

23 COMMISSIONER THERNSTROM: Yes. Now Ohio,
24 could we look at Ohio? I believe it has nine
25 Democrats, two Independents, and again one seems very

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1 politically left-winged, but six Republicans, so an
2 imbalance there.

3 CHAIRPERSON BERRY: Seems particularly
4 what, Commissioner?

5 COMMISSIONER THERNSTROM: Ohio.

6 CHAIRPERSON BERRY: No, no, the word you
7 used.

8 COMMISSIONER THERNSTROM: Well, let's just
9 leave it - nine Democrats, two Independents --

10 CHAIRPERSON BERRY: Left-wingy I thought
11 you said.

12 COMMISSIONER THERNSTROM: -- six
13 Republicans.

14 CHAIRPERSON BERRY: I thought you used the
15 expression -- I'm trying to see what word you used.

16 COMMISSIONER BRACERAS: I think she said
17 left-leaning.

18 CHAIRPERSON BERRY: Left-leaning.

19 COMMISSIONER THERNSTROM: Of the two --

20 CHAIRPERSON BERRY: Which means that
21 they're a Democrat. Is that your point?

22 COMMISSIONER BRACERAS: The point is that
23 nine to six isn't balanced.

24 COMMISSIONER THERNSTROM: Nine to six, and
25 the Independents both can't be assumed to be totally

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1 independent.

2 CHAIRPERSON BERRY: Yes, Staff Director.

3 STAFF DIRECTOR JIN: Madam Chair, can I
4 just ask for the record, in Ohio once he gets the
5 statement in, our chair that we're proposing is a
6 Republican.

7 COMMISSIONER BRACERAS: That's fine, but
8 nine to six still isn't --

9 STAFF DIRECTOR JIN: What I'm saying is
10 again, if you're telling me that what you want me to
11 do is come up with equal balance, I mean then tell me
12 that, and I will say that I don't think that's the
13 right standard. But I don't think a state with nine
14 of one party, six of the other, and the party -- and
15 the Chair being from the party with six meets the
16 standard of one party being dominating.

17 CHAIRPERSON BERRY: And two Independents.

18 STAFF DIRECTOR JIN: I don't think it
19 does.

20 CHAIRPERSON BERRY: Well, you want to take
21 Ohio off, you can do that. Now we're down to, if the
22 maker of the motion will accept it, we will set Utah
23 and Ohio aside, and approve the rest of them, which
24 consists of one, two, three. All those in favor of
25 the motion indicate by saying aye.

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(Chorus of ayes.)

**VI. Broken Promises: The Native American
Health Care System Report**

CHAIRPERSON BERRY: Opposed. Hearing none. Abstentions? So ordered. Okay. So that's done. Now the next item on the agenda is "Broken Promises: The Native American Health Care System" report. Could I get a motion to approve it?

COMMISSIONER MEEKS: So moved.

VICE CHAIRPERSON REYNOSO: Second.

CHAIRPERSON BERRY: Any further discussion of that report?

COMMISSIONER MEEKS: Can I just --

CHAIRPERSON BERRY: Yes, please.

COMMISSIONER MEEKS: -- make a few comments about it, and I really want to commend the staff on their work on this project. I think it's an excellent report, good recommendation. This report indicates, as does the "Quiet Crisis" report that we did last year, that the unmet health care needs of American Indians are still among the most abandoned in the United States.

You know, with the passage of the Indian Health Care Improvement Act of 1976, Congress established a goal of raising the status of health

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1 care for American Indians, and nearly 30 years later
2 this still has not -- this goal has not been realized.

3 And so I think it's long overdue for Congress and the
4 President to honor the federal government's obligation
5 to provide adequate health care for all Native
6 Americans, and so I'm very happy that this work was
7 done.

8 CHAIRPERSON BERRY: Okay. Questions?
9 All those in favor of the report on Indian health
10 care indicate by saying aye.

11 (Chorus of ayes.)

12 CHAIRPERSON BERRY: Opposed? Abstentions?
13 One, two, three, four abstentions, four approval. The
14 report is approved. So ordered.

15 **VII. Toward Equal Access: Eliminating Language**
16 **Barriers from Federal Programs Report**

17 The next item on the agenda is "Toward
18 Equal Access: Eliminating Language Barriers from
19 Federal Programs" report. Could I get a motion to
20 approve this?

21 VICE CHAIRPERSON REYNOSO: So moved.

22 CHAIRPERSON BERRY: Could I get a second?

23 COMMISSIONER EDLEY: Second.

24 CHAIRPERSON BERRY: Discussion? All those
25 in favor of -- are you waiting for the question? Yes,

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1 question. All those in favor of the Equal Access
2 report indicate by saying aye.

3 (Chorus of ayes.)

4 CHAIRPERSON BERRY: Opposed

5 (Chorus of Opposes.)

6 CHAIRPERSON BERRY: Those opposed? One,
7 two, three, four. Did you say you were opposed? The
8 motion is 4-4, and so the motion fails for want of a
9 majority. So the report "Toward Equal Access:
10 Eliminating Language Barriers" for reasons that remain
11 mysterious to us, since no one who is opposed to the
12 report indicated why they are opposing the report -
13 Terry, they don't like your report, but they don't
14 want to tell us why they don't like your report, so
15 they voted against it. Okay.

16 **VIII. Funding Federal Civil Rights**

17 **Enforcements: 2005 Report**

18 All right. "Funding Federal Civil Rights
19 Enforcements: 2005" report. Could I get a motion to
20 approve it.

21 VICE CHAIRPERSON REYNOSO: So moved.

22 COMMISSIONER REDENBAUGH: Second.

23 CHAIRPERSON BERRY: Any discussion,
24 further discussion of this report? Yes, Redenbaugh.

25 COMMISSIONER REDENBAUGH: My compliments

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1 to the staff in two ways. This is a difficult report
2 to do in that it's a report that measures outputs
3 rather than inputs. It's a very hard thing to do.
4 The staff accepted that challenge, did that. Also,
5 this is a report that I had very serious concerns
6 about that you may remember from the July meeting. I
7 met with Terry and the Staff Director and reviewed
8 parts of the report, and that process went very well.

9 I think it's a very good report, and I found the
10 staff cooperative. And I think the process went very
11 well.

12 CHAIRPERSON BERRY: Okay. All those in
13 favor of the "Funding Federal Civil Rights
14 Enforcement" report indicate by saying aye.

15 (Chorus of ayes.)

16 **IX. Future Agenda Items**

17 CHAIRPERSON BERRY: Those opposed. My
18 gosh, so ordered. The report is approved. Are there
19 any future agenda items that anyone would like to
20 bring up at this time? Yes, Commissioner Thernstrom.

21 COMMISSIONER THERNSTROM: I have a
22 question as to what the current status is of the
23 education accountability report.

24 CHAIRPERSON BERRY: Staff Director.

25 STAFF DIRECTOR JIN: Yes. And I believe I

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1 had a short conversation with your special assistants
2 on this, but --

3 COMMISSIONER THERNSTROM: Yes.
4 Unfortunately, she has a dental emergency and can't be
5 here.

6 STAFF DIRECTOR JIN: Yes. As the
7 Commissioners remember, at the last commission meeting
8 you, Commissioner Thernstrom, articulated a number of
9 concerns, and I think it was agreed upon that you
10 would put those in writing, and we would share that
11 with the Commissioners, which we have done. I think
12 that between -- I think maybe you were a little over-
13 optimistic in terms of how long it would take you to
14 get your comments, and my vacation schedule. By the
15 time we were able to really look at it carefully, it
16 was awful late, and you had a number of comments and
17 suggestions. And we're still trying to figure out how
18 to best appropriately address those concerns. So we
19 could not get it done in time for this meeting, so we
20 expect that we'll have it up at the next meeting.

21 COMMISSIONER THERNSTROM: Okay. Let me
22 make one comment on this. I think that the experience
23 of Russell and the unanimous vote that came out of it
24 does suggest how the potential for working with the
25 staff that has not really been realized in many past

1 reports. We can get unanimous votes out of this
2 Commission if we work together, and I'm sorry that the
3 process of working more closely together did not occur
4 earlier with the Education Accountability.

5 CHAIRPERSON BERRY: Okay. Anything else?

6 All right. Then we have concluded the agenda, and we
7 will begin at 11 a.m., as scheduled, with the "Voting
8 and Election Reform: Is America Ready to Vote." We
9 have just a few minutes to take a very brief break,
10 and to have the panelists come forward so that we can
11 start on time. And that's what we'll do at this
12 moment. Thank you.

13 (Whereupon, the proceedings in the above-
14 entitled matter went off the record at 10:51 a.m. and
15 went back on the record at 11:00 a.m.)

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