

US COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING

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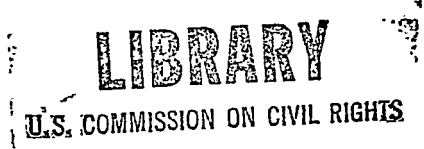
FRIDAY

JULY 16, 2004

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WASHINGTON, DC

The Commission convened at 9:30 a.m. in Room 540 of 624 9th St NW, 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

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Staff Present:

John Blakeley

Debra Carr, Esq.; Deputy General Counsel

Terri Dickerson, Assistant Staff Director, Office of
Civil Rights Evaluation

Pamela Dunston, Chief, Administrative Services and
Clearinghouse Division

Teresea Brooks

Margaret Butler

Latrice Foshee

Dorelle Gray

Wanda Johnson

Myrna Hernandez

Sock Foon MacDougall

Emma Monroig

Jenny Park.

Michelle Royster

Joyce Smith, Parliamentarian

Alexander Sun

Dawn Sweet

Deborah Vagins

Audrey Wright

Tiffany Wright

Mireille Zieseniss

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Commissioner Assistants Present:

Kristina Arriaga

Laura Batie

Patrick Duffy

Joy Freeman

Christopher Jennings

Kimberly Schuld

Melissa Sharp

Krishna Toolsie

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P R O C E E D I N G S

9:28 A.M.

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CHAIRPERSON BERRY: The meeting will come to order, please.

Is Commissioner Braceras on the phone?

COMMISSIONER BRACERAS: Yes, I am.

CHAIRPERSON BERRY: Good morning.

COMMISSIONER BRACERAS: Good morning.

Approval of Agenda

CHAIRPERSON BERRY: The first item on the agenda is the approval of the agenda. Could I get a motion?

COMMISSIONER REDENBAUGH: So moved.

CHAIRPERSON BERRY: Second?

COMMISSIONER THERNSTROM: Second.

CHAIRPERSON BERRY: All in favor indicate by saying aye?

(Ayes.)

Opposed?

(No response.)

Approval of Minutes

So ordered.

The next item is the approval of the minutes of April 9th. Could I get a motion?

COMMISSIONER REDENBAUGH: So moved.

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1 CHAIRPERSON BERRY: Could I get a second?

2 COMMISSIONER THERNSTROM: Second.

3 CHAIRPERSON BERRY: Any changes?

4 COMMISSIONER REDENBAUGH: I'd like the
5 minutes to reflect that the June meeting was canceled
6 because the federal offices were closed.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER REDENBAUGH: For the Reagan
9 funeral and that the May meeting was adjourned at the
10 time of adjournment which I believe was 9:40.

11 CHAIRPERSON BERRY: What does the
12 transcript show?

13 COMMISSIONER REDENBAUGH: Very good.

14 STAFF DIRECTOR JIN: I believe the
15 transcript shows 9:42.

16 CHAIRPERSON BERRY: Okay. We'll put that
17 down. Any -- as reflected in the transcript.

18 Any other changes?

19 COMMISSIONER REDENBAUGH: None from me.

20 CHAIRPERSON BERRY: With those changes,
21 does anyone -- oh, I should call for the question.

22 All in favor, indicate by saying aye.

23 (Ayes.)

24 Opposed?

25 (No response.)

1 So ordered.

2 **Announcements**

3 Next item on the agenda is announcements
4 which I have somewhere or other. I just had them. I
5 don't know what I did with them. Okay, here, all
6 right.

7 Yesterday, we had this briefing on
8 election integrity and voting rights which went very
9 well, mainly concerned with the purge issue.

10 The 40th anniversary of the Voting Rights
11 Act took place, was it a couple of weeks ago? July
12 2nd was when it was signed, which was one of the most
13 important pieces of civil rights legislation passed in
14 our history and has made an enormous change in
15 American society.

16 On July 26th, the Americans With
17 Disabilities Act was signed into law by George Bush,
18 President, the first. And has also been of enormous
19 importance in trying to overcome discrimination and
20 increased opportunity for people who are disabled and
21 the Commission has had long experience in dealing with
22 the issues regarding disability. And we have had a
23 number of reports on this subject.

24 The Commission is sad to see the departure
25 of three of our valued employees and we wish them luck

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1 and happiness in their new endeavors.

2 Ms. Wanda Johnson, Wanda, oh boy, I'm
3 going to miss you, a civil rights analyst for OCRE and
4 who has dedicated over 30 years to the Commission.
5 Boy, you've been here longer than I've been around.
6 Will retire August 1st. You started as a junior
7 researcher while earning a Master of Science degree in
8 the Administration of Justice at AU and you worked on
9 almost all of the major reports that have been done by
10 OCRE on everything from voting rights education,
11 employment, housing and the administration of justice.
12 We want to thank you and I want to thank you
13 personally for your work at the Commission and
14 congratulate you for your 30 years of federal service.
15 Wonderful. Thank you, Wanda.

16 (Applause.)

17 Dawn Sweet, the Commission's Editor has
18 been serving the Commission diligently since 1998 in
19 her position. She provided technical assistance to
20 virtually every program office at the Agency,
21 ~~especially OCRE, OGC and OSD and ASCD, every regional~~
22 office, too. And moving into the realm of civil
23 rights agency work, she moves on to a new position as
24 an equal opportunity specialist in the Office of Civil
25 Rights at the U.S. Department of Transportation. We

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1 very much appreciate the work that Dawn has done here
2 at the Commission and wish her well.

3 And then finally, Ms. Monique Dennis
4 Elmore, a valued employee at the Commission for four
5 and a half years, working as a civil rights analyst in
6 OCRE, left July 11th to accept a position in the
7 Housing Section of the Department of Justice's Office
8 of Civil Rights. We will miss these employees and all
9 of their unique contributions to this agency.

10 Summer interns, several new interns in the
11 Office of Staff Director; Mark Diegas, who is
12 somewhere here. Are they here? Senior in Political
13 Science from the University of Florida.. Evan Wong,
14 who is an Asian American Studies and Political Science
15 major at the University of Washington. And in the
16 Office of Civil Rights Evaluation, Joshua Forstater,
17 who is a General Studies major at Villanova. He's
18 here. And Marisa Greenwald, who is a Government
19 major at Cornell. Are you here, too?

20 COMMISSIONER REDENBAUGH: Stand up.
21 There.

22 CHAIRPERSON BERRY: And Paul Trenti, who
23 is a senior in high school at Walt Whitman High
24 School. Is he here? Hey there, Paul.

25 And then in the Office of General Counsel,

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1 we have Bahar Cankurt who is a second year law student
2 at Syracuse University Law School. Hey there.
3 Theresa Marie Conley who is a third year law student
4 at Cal. Western School of Law; and Senchal Daschiell,
5 who is a second year law student at Georgetown.
6 Welcome to all of you and I hope you're enjoying your
7 stay here at the Commission this summer.

8 The Combined Federal Campaign of the
9 National Federal Area for 2003, I want to acknowledge
10 the participation of the staff and employees in it and
11 because of their efforts and generosity, the
12 Commission was able to raise \$7,363 for the Campaign,
13 an all-time record for the Commission. That's
14 wonderful money that is very much needed by these
15 charities and wonderful. As a result, the Commission
16 was given the President's Award for achieving 75
17 percent of employee participation, the Summit Award
18 given for achieving more than the previous year as an
19 award by 3 percent and the 100 Goal Certificate Award
20 given for exceeding our campaign goals. So I want to
21 thank the staff for its combined show of generosity
22 and enthusiasm which well deserved these awards that
23 the Agency was given. I think that's wonderful of the
24 staff.

25 (Applause.)

1 And I, in particular, want to thank Pam
2 Dunston who I thank for all things, who is head of our
3 Administrative Services and Clearinghouse Division who
4 was named an Eagle Giver for contributing 1 percent of
5 her salary. That's wonderful, Pam. Congratulations
6 to Pam.

7 (Applause.)

8 VICE CHAIRPERSON REYNOSO: Let the record
9 show applause.

10 CHAIRPERSON BERRY: Yes. Commissioner
11 Thernstrom?

12 COMMISSIONER THERNSTROM: Yes, I think
13 that you misspoke. You agreed on one little matter.
14 You referred to the 40th Anniversary of the Voting
15 Rights Act.

16 CHAIRPERSON BERRY: I meant the Civil
17 Rights Act.

18 COMMISSIONER THERNSTROM: And of course it
19 was the Civil Rights Act. Maybe you want to correct
20 that.

21 CHAIRPERSON BERRY: Oh, thank you very
22 much. If I said Voting Rights, that's next year.
23 Thank you very much, Commissioner Thernstrom.

24 COMMISSIONER EDLEY: What's your field
25 again?

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1 CHAIRPERSON BERRY: History, legal
2 history.

3 (Laughter.)

4 CHAIRPERSON BERRY: In any case, it's
5 embarrassing. Okay. That's not as bad as when I went
6 to the White House in the Carter Administration when I
7 was running education and they gave me a role at the
8 Brown v. Board of Education Anniversary Celebration to
9 introduce the President. And I stood up there in the
10 East Room and said "President Carter intends to
11 discriminate" when I meant "President Carter intended
12 to demonstrate."

13 (Laughter.)

14 All the people in the audience laughed --
15 there was a whole room full of people, laughter. I
16 didn't know what they were laughing about, of course,
17 because I didn't realize what I had said. And then --
18 and some of these people, a lot of them I knew and
19 they were just laughing and having a good time at my
20 expense. And then when I finally figured it out, I
21 said "Oh, that was a Freudian slip" and then they just
22 really laughed. All right. I never got to introduce
23 the President again.

24 (Laughter.)

25 The announcements, does anyone else have

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1 any announcements?

2 VICE CHAIRPERSON REYNOSO: I have an
3 announcement.

4 CHAIRPERSON BERRY: Vice Chair Reynoso.

5 VICE CHAIRPERSON REYNOSO: A rather
6 serious one, Madam Chair. Today, the Chairperson and
7 I as Vice Chair, have signed and either have sent or
8 will be sending today a letter addressed to the
9 following: the President, The Honorable Bill Frist,
10 The Honorable J. Dennis Hastert, the Honorable Tom
11 Delay. And it says:

12 "Dear Sirs: We write to inform you of
13 what amounts to the dereliction of duty by
14 Commissioners Jennifer C. Braceras, Peter N. Kirsanow,
15 Russell G. Redenbaugh, and Abigail Thernstrom of the
16 United States Commission on Civil Rights.
17 Collectively and individually, they have consistently
18 contravened established policies, procedures, and
19 traditions of the Commission. Documentation of this
20 behavior can be found attached to this letter as
21 Exhibits A through G.

22 "We assure you that despite the apparent
23 disinterest of these Commissioners, the Agency
24 continues to fulfill its mission of monitoring and
25 reporting on the status of our nation's civil rights.

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1 For instance, in April of this year, the Agency held
2 the first in a series of briefings on voting and
3 election reform, and issued an accompanying briefing
4 paper. The paper, title *Is America Ready to Vote?*
5 assessed the election readiness of the country for the
6 upcoming November elections. Over the last several
7 years, the Commission has released a number of well-
8 received comprehensive reports and studies. In July
9 2003, the Commission related *A Quiet Crisis: Federal*
10 *Funding and Unmet Needs in Indian Country*, for which
11 it received the National Congress of American Indians'
12 Public Sector Leadership Award. Subsequently last
13 year, the Commission also issued *Not in My Backyard:*
14 *Executive Order 12,898 and Title VI as Tools for*
15 *Achieving Environmental Justice*, which was cited in a
16 November 2003 New York Law Journal article by Michael
17 B. Gerrard of Arnold & Porter. Members of the civil
18 rights community have applauded the report as a
19 comprehensive assessment of environmental justice
20 issues with recommendations important to the civil
21 rights community. Another recent report titled *Beyond*
22 *Percentage Plans: The Challenge of Equal Opportunity*
23 *in Higher Education*, was highlighted on CNN and cited
24 by the Supreme Court in *Gratz v. Bollinger*.

25 "In addition, since September 11, 2001,

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1 the Commission and its state advisory committees have
2 held numerous briefings, public meetings, and forums
3 on topics related to the terrorist attacks and the
4 ensuing government and community response. These
5 fact-finding meetings resulted in numerous
6 publications, covering racial and ethnic
7 discrimination, immigration policy, bioterrorism and
8 healthcare disparities. The Commission also set up a
9 dedicated hotline, which has served to gauge the
10 frequency, nature and distribution of real and
11 perceived discrimination across the country.

12 "In short, through its reports and papers,
13 the Commission continues to contribute to the public
14 discourse on the most significant civil rights issues
15 of our day. As a study agency, the Commission is
16 designed to be a bi-partisan, collegial assembly of
17 esteemed leaders who deliberate and decide, as a body,
18 the Commission's policies and positions on important
19 civil rights issues. The conduct of the concerned
20 appointees, however, demonstrates a lack of interest
21 in the Commission's work and a disregard for their
22 duties. They routinely fail to attend meetings in
23 person. Several have misused their titles and
24 offices. In an unprecedented manner, they treat the
25 Commission as a legislative body and fashion

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1 themselves as a minority faction. On this basis, they
2 correspond with third parties on a variety of policy
3 issues, often without timely notice, or notice at all,
4 to the rest of the Commission. By using their
5 official stationery and titles in such correspondence,
6 they show disrespect to the Commission and sow
7 confusion in the public mind as to the official
8 Commission policy and positions.

9 "While we regret having to bring these
10 concerns to your attention, we believe it is our duty
11 to inform you of them. Sincerely, Mary Frances Berry,
12 Chairperson and Cruz Reynoso, Vice Chairperson."

13 Copies of this letter are being
14 distributed to Commissioner Jennifer C. Braceras,
15 Commissioner Christopher Edley, Jr., Commissioner
16 Peter N. Kirsanow, Commissioner Elsie Meeks,
17 Commissioner Russell G. Redenbaugh, Commissioner
18 Abigail Thernstrom; the Honorable Ted Stevens,
19 President Pro Tempore, United States Senate; The
20 Honorable Tom Daschle, Senate Minority Leader; The
21 Honorable Nancy Pelosi, House Minority Leader; The
22 Honorable Orrin G. Hatch, Chairperson, U.S. Senate,
23 Committee on the Judiciary, Subcommittee on the
24 Constitution; The Honorable Patrick J. Leahy, Ranking
25 Member, U.S. Senate, Committee on the Judiciary; The

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1 Honorable Jim Sensenbrenner, Jr., Chairperson, U.S.
2 House of Representatives; Committee on the Judiciary;
3 The Honorable John Conyers, Jr., Ranking member, U.S.
4 House of Representatives, Committee on the Judiciary;
5 The Honorable Russell D. Feingold, Ranking Member,
6 U.S. Senate, Subcommittee on the Constitution; The
7 Honorable Steve Chabot, Chair, U.S. House of
8 Representatives, Subcommittee on the Constitution; and
9 the Honorable Jerrold Nadler, Ranking Member, U.S.
10 House of Representatives, Subcommittee on the
11 Constitution.

12 That is my announcement, Madam Chair. I
13 am so sorry to have to make this.

14 CHAIRPERSON BERRY: We will enter the
15 exhibit into the record with the letter, yes.

16 VICE CHAIRPERSON REYNOSO: Thank you.

17 CHAIRPERSON BERRY: Yes, Commissioner
18 Kirsanow?

19 COMMISSIONER KIRSANOW: I'm a big devotee
20 of the Daily Show with Jon Stewart and I would
21 recommend that this particular segment be submitted to
22 him because I think the audience would find it very
23 entertaining.

24 And also, when I was in college there was
25 a notion in Psych 101 known as projection whereby

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1 someone who would accuse others of a particular course
2 of action was actually guilty of that course of
3 action. When I listened to this, I think of Psych 101
4 and this is projection on steroids. Many of the items
5 that you listed and I haven't looked at the exhibits,
6 obviously, in detail, are things that I think pertain
7 to virtually everybody on this Commission at one time
8 or another.

9 When you indicate that certain four
10 Commissioners who all happen to be Republican
11 appointees, act as if they are in a minority or
12 majority of a particular fashion, that's something
13 that we have complained about very often as having
14 transpired on the other side of the table.

15 I find this very peculiar, very funny, but
16 at the same time it's par for the course. We have
17 been seeing this same type of insincerity, going on
18 since at least I've been on the Commission and in
19 fact, before I was on the Commission when there was an
20 attempt to kick me off the Commission. So I can't say
21 I'm surprised and I'm not necessarily disappointed,
22 because as I say I'm not disappointed when I watch the
23 Daily Show. I suppose I will have further response
24 after having had an opportunity to take a look at the
25 exhibits.

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1 CHAIRPERSON BERRY: Yes, Commissioner
2 Redenbaugh?

3 COMMISSIONER REDENBAUGH: Yes, I have a
4 question about the term of art, dereliction.
5 Commissioner Reynoso, is that dereliction of duty?

6 CHAIRPERSON BERRY: Dereliction of duty
7 was his term.

8 COMMISSIONER REDENBAUGH: Could you
9 explain what that means in the law?

10 VICE CHAIRPERSON REYNOSO: I think the
11 term speaks for itself, Commissioner.

12 COMMISSIONER THERNSTROM: I actually
13 don't. I don't know what it means, so I'd like a
14 definition.

15 VICE CHAIRPERSON REYNOSO: Well, I'm
16 afraid you'll have to consult your own attorney on
17 that.

18 COMMISSIONER THERNSTROM: All right.
19 Well, we've got an attorney right here.

20 I have no idea what you're talking about,
21 Cruz. I have no idea what you're talking about. I
22 see as I open this -- I mean again. I'm flabbergasted
23 and I couldn't stop myself from sitting here and
24 smiling. This is so absurd. I open the first pages
25 and I see there's a list, the Manhattan Institute of

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1 what people have been doing so here we go,
2 commemorating the 50th Anniversary of Brown v. Board
3 of Education. . .Manhattan Institute, for instance,
4 speaking with Peter Kirsanow and Gerald Brown at the
5 Heritage Foundation. That's some sort of dereliction
6 of duty on my part? I'm not allowed to speak about
7 Brown v. Board of Education which I did, of course, on
8 *The Washington Journal* as well as the Fred Friendly
9 Seminar where I believe -- were you there with us on
10 that? I can't remember.

11 And Uncommon Knowledge. What is this all
12 about, Cruz? It just strikes me as -- what is the
13 point of this? It's silly.

14 VICE CHAIRPERSON REYNOSO: I'll just say
15 this. I mentioned to Russell that two or three months
16 ago I was compelled to take these actions. I'm afraid
17 that it also applies to the others. I felt compelled
18 to take this step, I'm sorry to say that.

19 COMMISSIONER THERNSTROM: Well, you have
20 just said that you want civility on this Commission.
21 Everybody on this Commission wants civility. You have
22 just written a letter that is uncivil and further
23 poisons an atmosphere on this Commission. Nobody
24 wants to be poisoned. I mean you have made zero
25 attempt to work with us. We have made a huge attempt

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1 to work with you. The only -- I see you've got a
2 chart of meetings missed. I'm not sure it's accurate
3 at all with respect to me, but in any case, the only
4 meetings I have missed are ones that have been out of
5 town where I have frankly not had a day on each side
6 in which to travel because I've had a very heavy
7 schedule in the last year. But I mean a few weeks ago
8 was the first time I was home for an entire week. And
9 my husband couldn't believe, oh my God, you're home.

10 So I don't think that this -- I don't know
11 whether this is accurate or not. I would have to go
12 back to my own calendar, but I have not missed a
13 single meeting that I was able to go to.

14 COMMISSIONER REDENBAUGH: I wasn't aware
15 that there was an attendance requirement.

16 COMMISSIONER THERNSTROM: And I'm not
17 aware that there was an attendance requirement anyway,
18 but I mean it's -- the whole thing is just -- what is
19 with you?

20 VICE CHAIRPERSON REYNOSO: I just want to
21 say the following. I did not do this lightly. All
22 that we have included here is based on transcripts and
23 matters that one will find recorded. I was very
24 careful with the language I used to try to be as
25 respectful as possible. I have reached the point

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1 where I had to make clear what my observations were.
2 I assumed that you would disagree with them and you're
3 free and you have plenty of opportunities to me and
4 other efforts I have seen to respond to this. That's
5 fine with me. But this stands as exactly how I feel.

6 COMMISSIONER THERNSTROM: Well, you know
7 what, Cruz, I mean one of the charges, using
8 stationery. I don't even know where the Commission's
9 stationery is in my house. I've never used a piece of
10 Commission stationery in my life. What are you
11 talking about?

12 VICE CHAIRPERSON REYNOSO: You'll find it
13 at Exhibit 6.

14 COMMISSIONER BRACERAS: May I be heard?
15 This is Jennifer Braceras?

16 CHAIRPERSON BERRY: Commissioner Braceras?

17 COMMISSIONER BRACERAS: First of all, I'd
18 like to add my comments. I think this is absolutely
19 laughable. If we were to comb the record for examples
20 of things that the Vice Chair, the Chair and the Staff
21 Director have done over the course of the years that
22 we considered inappropriate, I'm sure we could come up
23 with a list of things twice as long as the one you've
24 prepared there, which is not to say that any of them
25 violate any rules per se, but believe me, there are a

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1 million things we could come up with. Maybe, Peter,
2 Russell and I should comb the record and send a
3 similar letter out because I'm sure we could come up
4 with just as many.

5 In any event, I don't believe that
6 Russell, Peter, Abby or I have violated any rules of
7 the Commission or laws of the United States or
8 regulations of the Commission. Yes, there have been
9 times when I haven't been able to appear in person
10 like today. But with one exception, when I had to
11 attend my brother's high school graduation and observe
12 Passover services with my family, I have never missed
13 a Commission meeting. I have participated by phone or
14 in person in every meeting since I came on the
15 Commission, so if you are going to accuse me of a
16 dereliction of duty because I observed a religious
17 holiday on a day a Commission meeting was scheduled
18 for, and went to a family graduation, then I think
19 that's quite disturbing.

20 Frankly, I think it's disturbing that a
21 Commission meeting was held on a religious holiday
22 when a request had been made to move it, but that's
23 another point.

24 So I think the record will reflect that
25 there's been no Commission meeting missed outright,

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1 except for that one. And that all of us have been
2 attentive to our duties, have diligently read all of
3 the reports that have come out by staff. And in fact,
4 I would argue that we pay greater attention to the
5 reports than other members of the Commission because
6 the four of us have been the only ones to come up with
7 constructive criticisms and to really read the reports
8 with a fine toothed comb. The rest of you rubber
9 stamp them. I question whether you even read them at
10 all, frankly.

11 So I think these charges are absurd. I
12 think they're baseless and believe me, I could come up
13 with many more about all of you, but I'm not going to
14 stoop to that level of arena.

15 CHAIRPERSON BERRY: Thank you very much.
16 Yes, Commissioner Redenbaugh.

17 COMMISSIONER REDENBAUGH: I'm certainly
18 unaware of any single occasion where I've used or
19 misused my office or title in any way that wasn't
20 connected directly to the Commission and Commission
21 business. Are there examples of that that you have
22 here?

23 CHAIRPERSON BERRY: If you'd like to pause
24 and have someone read the exhibits to you, Russell,
25 I'm perfectly willing to do that.

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1 COMMISSIONER REDENBAUGH: Well, I'd like
2 one of our staff to look at that for me. -

3 CHAIRPERSON BERRY: I hesitate to read the
4 entire list --

5 COMMISSIONER REDENBAUGH: No, I don't want
6 that. I don't understand the --

7 CHAIRPERSON BERRY: I'm willing to take a
8 break while you have your assistant read --

9 COMMISSIONER REDENBAUGH: They can look
10 now. One thing I did notice as Commissioner Reynoso
11 was listing the Commission's list of considerable
12 accomplishments during this last year, if we were
13 being disruptive, we've been incredible, ineffective
14 because the Commission has accomplished a great deal
15 as this document --

16 CHAIRPERSON BERRY: It might have been
17 better if you had contributed more.

18 COMMISSIONER REDENBAUGH: Well --

19 CHAIRPERSON BERRY: It might have been a
20 better product, who knows.

21 COMMISSIONER KIRSANOW: Dissent doesn't
22 necessarily mean a lack of contribution.

23 COMMISSIONER REDENBAUGH: I'm certain that
24 it would have been more productive and a better
25 product if we had been able to contribute more and

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1 cooperate better. And as you know, for some very long
2 time, I've tried to increase the collaboration and
3 cooperation.

4 CHAIRPERSON BERRY: Well, I think we
5 should either move on or if we wish to take a break to
6 read this, I'm willing to. Otherwise, I think we
7 should move the agenda, unless someone has an
8 objection.

9 COMMISSIONER THERNSTROM: I have no
10 objection, but I will reiterate, I do not understand
11 this. I see my op eds are listed. I mean I'm not
12 allowed to write op eds? I write them under my name,
13 most of the time, you know. Is something wrong with
14 that? This whole document is on its face ridiculous.

15 COMMISSIONER KIRSANOW: I think we should
16 move on.

17 **Staff Director's Report**

18 CHAIRPERSON BERRY: Okay, let's move on
19 then. The next item on the agenda is the Staff
20 Director's Report. Does anyone have any questions on
21 the Staff Director's Report?

22 (No response.)

23 Does anyone have any comments on the Staff
24 Director's Report? Does anyone have anything to say
25 about the Staff Director's Report?

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1 COMMISSIONER KIRSANOW: I've got a couple
2 of questions. We've missed a couple of meetings due
3 to the federal holiday in June and also the
4 adjournment in May and I would like to know to what
5 extent or what impact that has on our time line with
6 respect to reports for the balance of the year and
7 where we stand in terms of anticipated topics for
8 Commission meetings?

9 And also, I think we've got what,
10 September, October, November and then we have December
11 where we should have a vacancy of both Chair and Vice
12 Chair and I'm wondering what the transition plans are
13 for that time?

14 CHAIRPERSON BERRY: What is your -- is
15 that your legal opinion, Mr. Kirsanow?

16 COMMISSIONER KIRSANOW: It's not my legal
17 opinion. I think it's pretty --

18 CHAIRPERSON BERRY: Are you objecting?

19 COMMISSIONER KIRSANOW: I'm not objecting
20 anything.

21 CHAIRPERSON BERRY: Well then, I think
22 it's up to us to decide or somebody, not you.

23 COMMISSIONER KIRSANOW: I'm not deciding
24 anything. I think it's fairly well known, it's in the
25 public domain, that your terms expire in December.

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1 CHAIRPERSON BERRY: Well, there may be
2 some dispute about that. But in any case, what are
3 you asking the Staff Director? He's not going to
4 comment on that.

5 COMMISSIONER KIRSANOW: Well, someone
6 should comment on it because we only have a few months
7 to make preparation for a transition.

8 The questions, the discrete questions are
9 what are the plans and how do you -- the cancellations
10 or the one cancellation and one holiday impact the
11 timeline for the rest of the year and what, if any,
12 transition plans are there for December?

13 STAFF DIRECTOR JIN: I'll answer the parts
14 that I have some responsibility for.

15 As the Commissioners know, we had two
16 reports ready to go to the Commissioners for the June
17 meeting. In fact, we had sent those out a couple
18 weeks prior to the June meetings, so obviously those
19 reports are now being considered for July. If we had
20 had the June meeting we would have had three reports
21 for consideration today and now we have five.

22 The Staff has six reports all together for
23 this fiscal year and so we owe you one other report
24 and we will have that ready by September. And so, in
25 terms of does it really affect within this fiscal

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1 year, the work of the Commission, the answer is no.
2 You'll still get all of the reports, that the work
3 we're doing is coming.

4 In terms of the September meeting, I think
5 the -- I'm not really sure at this point whether we'll
6 have a briefing or anything else associated with the
7 meeting. As the Commissioners know, under our rules,
8 we are responsible for giving Commissioners 30 days'
9 notice before briefing and we certainly will do that
10 if a briefing does take place. In September, we will
11 have for the Commissioners a discussion on the budget
12 for the next fiscal year in terms of the projects that
13 the Commissioners had approved back in January and
14 February. We'll have numbers for that in which we do
15 every year and that's, of course, an opportunity for
16 the Commissioners to ask any questions about the
17 budget and so forth. So we'll have that in September
18 also and so I think that's what I see coming up.

19 COMMISSIONER KIRSANOW: What about the
20 transition in December?

21 STAFF DIRECTOR JIN: I don't see that as
22 being a question for me to answer. I'm just not sure
23 what you think that would be my involvement.

24 COMMISSIONER KIRSANOW: Who would be the
25 person to answer that?

1 STAFF DIRECTOR JIN: I'm not sure what the
2 question is frankly, I guess, as Staff Director.

3 COMMISSIONER KIRSANOW: What we have are
4 defined terms for each Commissioner that consist of
5 six years and it would appear that that defined term
6 for the Chair and Vice Chair end in December, frankly,
7 before the December 10th meeting which means there
8 will be a vacancy, two vacancies, but also crucial
9 vacancies in the Chair and Vice Chair positions. If
10 those are not filled, we'll have a December 10th
11 meeting in which there will not be a Chair and Vice
12 Chair.

13 Is there any contingency plan for that?
14 Has this occurred before and we can maybe piggyback
15 off of what the precedent has been? Maybe that's
16 something for the General Counsel to answer, but I
17 think we're only a few months away from that, only a
18 few meetings away from that and we should have a
19 handle on what we're going to be doing.

20 Maybe I should ask, is it your position
21 that there is going to be a vacancy in December in
22 those respective positions?

23 STAFF DIRECTOR JIN: Well, I don't think
24 that -- I mean that's not really something for me to
25 say at this point. I mean like I said, that's --

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1 there are rules that govern the terms and appointments
2 for the Chair and Vice Chair and we'll make sure we
3 follow those rules and I mean that's about all I can
4 say about that actually.

5 COMMISSIONER KIRSANOW: There's been no
6 transition planning for the vacancy?

7 CHAIRPERSON BERRY: He cannot answer the
8 question because it's not his responsibility. It is
9 up to the appointing authority in every case with
10 appointments to this Commission to decide when
11 appointments are made and when they should be made.
12 It's not up to the Commission to decide. It's up to
13 the person who makes the appointment.

14 COMMISSIONER KIRSANOW: I would agree with
15 that, but it's up to the Commission to make sure that
16 it operates in a seamless fashion.

17 CHAIRPERSON BERRY: We will do so and we
18 will do so in a timely fashion.

19 COMMISSIONER KIRSANOW: Maybe we could ask
20 the General Counsel's office for an opinion as to that
21 or is it your position, apparently, we have a
22 disagreement that --

23 CHAIRPERSON BERRY: Commissioner Kirsanow,
24 the Commission has had transitions many times since
25 1957. This is not a new question.

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1 COMMISSIONER KIRSANOW: It is a new
2 question in terms of this particular term.

3 CHAIRPERSON BERRY: There's plenty of
4 precedent in terms of how the Commission makes a
5 transition. It has been done in this Agency and every
6 other agency. There's no real sticky question about
7 what happens. The only thing that happens is when it
8 is time for somebody to leave, they leave and in fact,
9 the appointing authority, even before that time,
10 usually before that time, it's always been the case,
11 appoints someone else. That usually is what happens
12 at the Commission.

13 When that happens, the other person is
14 appointed and then they discuss with the people who
15 are already there handing over the authority. We're
16 not running a huge agency with a lot of relationships,
17 with money and so on to communities or anything like
18 that.

19 This has happened seamlessly on many
20 occasions since 1957 and I assure you that when it
21 happens this time, it will happen seamlessly.

22 COMMISSIONER BRACERAS: May I be heard?

23 CHAIRPERSON BERRY: Yes, Commissioner
24 Braceras.

25 COMMISSIONER BRACERAS: I'm not sure I

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1 heard you correctly, but I think I heard the Chair say
2 that they consider it to occur when people feel it's
3 time for them to leave.

4 CHAIRPERSON BERRY: I said that vacancies
5 occur when people leave. You misheard.

6 COMMISSIONER BRACERAS: Okay, fine. I'd
7 like to finish speaking.

8 I mean technically vacancies occur when
9 terms are up, period, not when anybody decides it's
10 time to leave or when anybody -- it could occur if
11 somebody leaves earlier --

12 CHAIRPERSON BERRY: Yes.

13 COMMISSIONER BRACERAS: -- than their 6-
14 year term. But they can't go on later than their 6-
15 year term. For example, I took my seat on December 7
16 of whatever year it was and six years to the day after
17 I took my seat will be the day that my term is over,
18 not two weeks later, not a month later, the day I took
19 my seat. And that's when I will either be reappointed
20 or leave at that point. So it's a factual question.
21 It's not up for debate. So the term is either offered
22 or it's not and if it's up and we're going to have two
23 vacancies in December, then I think it would be wise
24 to discuss how we're going to proceed without a chair
25 or a vice chair at the meeting. It's really very

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1 simple.

2 CHAIRPERSON BERRY: That was a very
3 helpful comment you made, Commissioner Braceras.

4 COMMISSIONER BRACERAS: So my point being

5 --

6 CHAIRPERSON BERRY: Yes, that is the view
7 of the legal position of the Commission and always has
8 been since the statute was changed in 1999, I think it
9 was. Was it 1999? When was it?

10 Commissioners serve a 6-year term from the
11 date on which they were appointed, yes, we are in
12 agreement.

13 That's what you said and I agree with
14 that. That's the statute and that's what the
15 Commission's position has always been.

16 COMMISSIONER THERNSTROM: That is not the
17 holding of the personnel.

18 CHAIRPERSON BERRY: Which had nothing to
19 do with this question.

20 COMMISSIONER THERNSTROM: Well, it did
21 have to do with this question.

22 CHAIRPERSON BERRY: It was about an
23 expired person who fills a term that has not expired,
24 what is the response to when an appointment is made
25 and how long the term is of the person who fills an

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1 unexpired term which is a different legal issue. But
2 in any case --

3 COMMISSIONER THERNSTROM: Madam Chair, I
4 believe the term is independent of the --

5 CHAIRPERSON BERRY: We're arguing
6 endlessly about something that doesn't make any
7 difference since none of us have the authority to
8 decide it.

9 (Laughter.)

10 COMMISSIONER THERNSTROM: You know, Robbie
11 George's term expired which, of course, you have his
12 seat in December, I believe. Isn't that correct?

13 COMMISSIONER THERNSTROM: I have no idea.

14 COMMISSIONER BRACERAS: If I could just
15 clarify? The reason my term starts on December 7th is
16 because that is the date that Yvonne Lee's term
17 expired and I came in that very day because that is
18 the day that her term expired. That's the reason that
19 I came in on that day.

20 So it had to do with the expiration of the
21 previous seat, not when I showed up.

22 CHAIRPERSON BERRY: We are discussing
23 legal matters and none of us are in a position to
24 decide them, including me, yes. None of us are, which
25 is why I don't understand why we're discussing it.

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1 COMMISSIONER KIRSANOW: Because it's very
2 clear, I mean, the position to know what the intent of
3 the Commissioners are, it seems to me many of us
4 believe your term expires in December. And whether
5 it's -- the legal opinion of Office of General Counsel
6 or the D.C. Circuit, at least we're entitled to know
7 what your opinion of it is.

8 CHAIRPERSON BERRY: My opinion is that
9 under the statute, Commissioners serve six years from
10 the date of their appointment. That's my position
11 which is the Commission's position.

12 COMMISSIONER BRACERAS: And when does your
13 appointment --

14 CHAIRPERSON BERRY: I have no idea. I
15 don't recall at the moment and I didn't know you were
16 going to ask me and I don't understand why I have to
17 answer it, since I have no idea.

18 In any case, it is a legal question and
19 it's not one that we can answer and it's up to the
20 appointing authorities to decide how they handle these
21 matters. But I assure you that whenever it happens
22 there will be a seamless transition.

23 COMMISSIONER KIRSANOW: Does the Vice
24 Chair have an opinion as to when his term expires?

25 VICE CHAIRPERSON REYNOSO: No, I do not.

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1 COMMISSIONER BRACERAS: So let me just
2 clarify, the appointing authority in your case would
3 be George W. Bush?

4 CHAIRPERSON BERRY: The appointing
5 authority means the President of the United States in
6 the cases that you are mentioning. Other people have
7 other appointing authorities.

8 COMMISSIONER BRACERAS: Right, so George
9 Bush will decide when your term ends is what you're
10 saying?

11 CHAIRPERSON BERRY: I assume if he's the
12 President.

13 COMMISSIONER BRACERAS: Oh, he'll be the
14 President in December.

15 CHAIRPERSON BERRY: Oh, that's a political
16 judgment. I can't get into that.

17 COMMISSIONER BRACERAS: It's not a
18 political judgment, it's a fact. No matter what,
19 he'll be President in December.

20 CHAIRPERSON BERRY: It's not for the
21 Commission to decide. I'm not going to deliberate
22 that.

23 COMMISSIONER BRACERAS: Well, I anticipate
24 that George Bush will decide when your term ends.

25 CHAIRPERSON BERRY: The President, whoever

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1 is the President of the United States will decide.

2 COMMISSIONER BRACERAS: Right, and he will
3 be President in December no matter who wins the
4 election, obviously.

5 COMMISSIONER EDLEY: Can we go to the
6 substance of the Commission's work, come on, you guys.

7 COMMISSIONER KIRSANOW: We have to
8 determine who the Commission is before we can go to
9 its substance.

10 COMMISSIONER EDLEY: The White House, the
11 Courts, if necessary, somebody other than this group.

12 CHAIRPERSON BERRY: So we're just spinning
13 our wheels.

14 The next item on the agenda, there are a
15 bunch of reports we have. And one is the Ten Year
16 Check-up --

17 COMMISSIONER KIRSANOW: I'm still not done
18 with the Staff Director's Report. I had some more
19 issues.

20 I would like to ask that the Staff
21 Director, if he could, there is -- there have been a
22 number of reports with respect to a series of
23 memoranda that were issued that would indicate that
24 there may have been a manipulation of the judicial
25 confirmation process. It's been widely reported. And

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1 it's been reported that certain Senators or a Senator
2 was requested to hold up appointments for the purpose
3 of effecting the composition of certain Courts. The
4 memoranda also indicate that the appointments were
5 thought to be manipulated on the basis of the
6 ethnicity of certain of the nominees to the respective
7 Courts. And there were also reports that the
8 Judiciary Committee staffers have had access to
9 memoranda that would indicate that there has been some
10 evidence of public corruption.

11 I would request that the Staff Director
12 take a look at the extent of evidence and report back
13 to us as to the current status of what's known in the
14 public domain and also if there's any reason why we
15 shouldn't take a closer look at the allegations that
16 have been made in the press and also the substance of
17 the memoranda.

18 COMMISSIONER THERNSTROM: Has Jennifer
19 been cut off?

20 CHAIRPERSON BERRY: Maybe that's what all
21 that noise was.

22 COMMISSIONER THERNSTROM: She wouldn't
23 hang up.

24 CHAIRPERSON BERRY: Pam will tell us in a
25 minute. She's trying to hook her up again, I think.

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1 All that disruption occurred, so maybe
2 you're going to have to repeat what you said because I
3 hardly heard what you said because there was all this
4 screeching and screaming.

5 COMMISSIONER KIRSANOW: Just to kind of
6 recapitulate briefly, I'd like the Staff Director to
7 take a look at the extent of information evidence out
8 there which is in the public domain and report back to
9 us as to whether we should, why we shouldn't be taking
10 a look at matters contained in memoranda that suggest
11 that the Senators on the Judiciary Committee were
12 asked to manipulate the composition of certain Courts.

13 CHAIRPERSON BERRY: Commissioner Edley?

14 COMMISSIONER EDLEY: I would just like to
15 add to that that you consult with the General Counsel
16 about the jurisdiction because it's not -- I mean it
17 just strikes me from what little I know in reporting
18 the question, it's not within the Commission's -- it
19 doesn't seem to me like something that's really our
20 business. It strikes me as not within our charter,
21 but I'd simply request before you spend a lot of time
22 on it, that you get some kind of a judgment from the
23 General Counsel about whether or not it's within our
24 purview.

25 STAFF DIRECTOR JIN: Madam Chair, the

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1 Deputy General Counsel and I have talked about this
2 because I think it had been raised either directly or
3 indirectly before, so Debra and I did talk about this.
4 I think that Debra has a pretty clear opinion on
5 this.

6 MS. CARR: The Office of General Counsel
7 did look at this a little bit ago. We looked at our
8 statute and our regs and the request made to the Staff
9 Director.

10 In looking at the regulations and statute,
11 there was only one, even potential area we could look
12 at the matter recommended by Commissioner Kirsanow and
13 that was under the administration of justice. And in
14 looking at that part of our authority, and looking at
15 the nature of the allegations or concerns, we
16 determined that even under that section of our statute
17 that we lacked jurisdiction. We have no enforcement
18 authority. The parties that were mentioned are
19 allowed by law to lobby and based on information that
20 has been discussed and talked about I believe
21 publicly, there was actually no delay in the process,
22 no actual manipulation of a process that occurred.

23 COMMISSIONER KIRSANOW: And what did you
24 examine to -- in terms of the evidence, to reach that
25 conclusion?

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1 MS. CARR: Which part?

2 COMMISSIONER KIRSANOW: The conclusions
3 that there were no delays and that first of all, the
4 parties involved are allowed to lobby. I haven't seen
5 anything related to lobbying. Is there's some
6 particular evidence, were there memoranda that you
7 looked at to come to that conclusion?

8 MS. CARR: We were looking at federal law
9 regarding 501(c)(3)s. We were looking at what we
10 could find about the nature of the organization
11 mentioned in your prior request, and then we were
12 looking at news articles and other things in the
13 public domain concerning what we could find on that
14 particular issue.

15 COMMISSIONER KIRSANOW: Have you drafted
16 anything, any memoranda, any reports, any opinions as
17 to your conclusions?

18 MS. CARR: We drafted a very informal note
19 to the Staff Director highlighting the three points
20 that I just raised before the Commission.

21 COMMISSIONER KIRSANOW: Could we get a
22 copy of that memo?

23 MS. CARR: I see no problem. It would, of
24 course, have to go through the Staff Director, since
25 we communicate to Commissioners through that process.

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1 COMMISSIONER KIRSANOW: I'd request a copy
2 of the memo.

3 STAFF DIRECTOR JIN: I'd be happy to
4 provide it.

5 CHAIRPERSON BERRY: I have no objection.
6 Yes, Commissioner Thernstrom?

7 COMMISSIONER THERNSTROM: I have a
8 question for the Staff Director. You mentioned that
9 we could expect a report in September, which report is
10 that?

11 STAFF DIRECTOR JIN: That's the report
12 that the Commissioners asked us to do as part of
13 project planning a couple of years ago. Commissioners
14 might remember that before President Clinton's term
15 ended it had asked that the staff do a report
16 assessing the civil rights record of President Clinton
17 and then as part of the project planning process,
18 after that, it decided that it ought to do that for
19 each of the Presidents.

20 COMMISSIONER THERNSTROM: All right, so
21 this is the Bush civil rights report?

22 STAFF DIRECTOR JIN: That's correct.

23 COMMISSIONER THERNSTROM: And how about
24 the effective agency review?

25 STAFF DIRECTOR JIN: The Bush report, the

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1 Effective Agency Review, is an opportunity that the
2 Commission provides kind of on its own. It's not a
3 statute requirement. It provides the Agency an
4 opportunity to assess the report to the extent that it
5 directly affects them and their operations. It
6 provides an opportunity to give input, reckoning
7 misstatements and stuff like that.

8 The Bush report is really not an
9 assessment of any other federal agency. It's an
10 assessment based on available information on the civil
11 rights record of President Bush. And so this report,
12 Effective Agency Review, does not apply.

13 CHAIRPERSON BERRY: Did you do it for the
14 Clinton?

15 STAFF DIRECTOR JIN: Does not apply to the
16 Clinton report either.

17 CHAIRPERSON BERRY: Any other --

18 COMMISSIONER THERNSTROM: Is Commissioner
19 Braceras back with us, by the way?

20 CHAIRPERSON BERRY: Are you back,
21 Commissioner?

22 COMMISSIONER BRACERAS: Yes, I'm
23 rejoining. I apologize. I had an emergency phone
24 call from a family member that I needed to take.

25 CHAIRPERSON BERRY: Fine. Yes,

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1 Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: Do we know where
3 the September meeting will be?

4 CHAIRPERSON BERRY: Where the September
5 meeting will be?

6 COMMISSIONER REDENBAUGH: Will it be in
7 Washington?

8 CHAIRPERSON BERRY: We're not sure.

9 COMMISSIONER THERNSTROM: I'm sorry, I was
10 going to say a decision has to be made by tomorrow, I
11 believe, is that correct?

12 CHAIRPERSON BERRY: When is the September
13 meeting, does anybody know?

14 VICE CHAIRPERSON REYNOSO: When is the
15 September meeting?

16 COMMISSIONER THERNSTROM: 17th?

17 CHAIRPERSON BERRY: What is today?

18 VICE CHAIRPERSON REYNOSO: Today is the
19 16th of July.

20 COMMISSIONER REDENBAUGH: Does that date
21 conflict with Rosh Hashanah?

22 CHAIRPERSON BERRY: Does it?

23 COMMISSIONER REDENBAUGH: I don't know.

24 CHAIRPERSON BERRY: I'm asking if anyone
25 knows. Whoever has a calendar.

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1 COMMISSIONER BRACERAS: I'm looking at my
2 calendar.

3 VICE CHAIRPERSON REYNOSO: Rosh Hashanah,
4 according to this, on the 16th of September.

5 CHAIRPERSON BERRY: Do you want to change
6 the meeting?

7 VICE CHAIRPERSON REYNOSO: 15th and 16th
8 of September.

9 CHAIRPERSON BERRY: Does anyone want to
10 change the date of the meeting?

11 COMMISSIONER REDENBAUGH: It's the 16th
12 and 17th?

13 VICE CHAIRPERSON REYNOSO: No, it begins
14 at sundown on the 15th.

15 COMMISSIONER BRACERAS: Yes, it's not
16 critical from my perspective that a meeting on the
17 17th be changed.

18 COMMISSIONER KIRSANOW: What if it
19 involves travel?

20 COMMISSIONER BRACERAS: If I can't come
21 down on Friday morning which has been my practice,
22 that may be more difficult, yes. Where are we
23 thinking of having it so I can plan?

24 COMMISSIONER EDLEY: If you are
25 contemplating travel, I'd love to host it.

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1 CHAIRPERSON BERRY: You mean the dean --

2 COMMISSIONER EDLEY: At my new house.

3 CHAIRPERSON BERRY: At your house? Does
4 that involve dinner?

5 COMMISSIONER EDLEY: Anything you want.

6 CHAIRPERSON BERRY: I think what we should
7 do is hold open the possibility by noticing that it
8 may be outside Washington, since we have a 60-day
9 requirement with the understanding that by when -- can
10 you decide it's actually going to be in Washington?

11 COMMISSIONER BRACERAS: Well, I don't
12 think you can just hold open the possibility. You
13 have to tell us tomorrow one way or the other.

14 CHAIRPERSON BERRY: Yes. Well, if you
15 don't want to hold open the possibility, then we'll
16 decide it.

17 COMMISSIONER BRACERAS: It needs to be
18 decided so that we can plan accordingly.

19 CHAIRPERSON BERRY: Uh-huh. Staff
20 Director, do you think -- I don't think it's going to
21 be possible to have it outside of Washington in
22 September. So that's my view.

23 What do you think Staff Director?

24 STAFF DIRECTOR JIN: We, I think September
25 is always a tough month in a fiscal year because

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1 obviously that's when we also try to make sure we're
2 watching our pennies even closer.

3 CHAIRPERSON BERRY: Okay, so we can't do
4 it out of town in September. So we'll have it here in
5 September. Okay. We'll keep the date?

6 COMMISSIONER BRACERAS: The date is fine.

7 CHAIRPERSON BERRY: It's scheduled.

8 COMMISSIONER EDLEY: And the October
9 meeting is --

10 CHAIRPERSON BERRY: We can't decide that.

11 COMMISSIONER EDLEY: The date is the 15th?

12 CHAIRPERSON BERRY: The 15th?

13 COMMISSIONER BRACERAS: I don't think
14 that's right.

15 STAFF DIRECTOR JIN: October 8th. I'm
16 sorry.

17 COMMISSIONER EDLEY: Thank you.

18 **Ten Year Report**

19 CHAIRPERSON BERRY: Let's do the reports.
20 Are we ready to do that?

21 ~~The Ten Year Checkup~~ is the report. As I
22 understand, Staff Director, you want to introduce the
23 report?

24 STAFF DIRECTOR JIN: Yes, Madam Chair. If
25 I may make a couple of comments and I want to

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1 introduce each of the Office Directors to briefly
2 introduce each of the reports. I think as we
3 discussed a little earlier, we do have five reports on
4 the agenda this month which I'm sure is some kind of
5 record, but even enough of the circumstances of
6 combining the report of last month and this month, I
7 think five reports in two months is probably a record
8 also.

9 And of course, while I hope that action be
10 taken on all of them today, the most critical one for
11 action is the Statutory Report because there's a
12 requirement that that be submitted to Congress before
13 the end of the year.

14 Before we do discuss the reports, however,
15 I would like to make a couple of comments and add a
16 few words of thanks to the staff. I know that we
17 probably have a lot to discuss today, so I don't want
18 to take up a lot of time because we do have a lot of
19 reports and I feel particularly a need today to make a
20 few comments, to thank the staff who were involved in
21 this report. Because in part, because of the
22 requirement under the Commission administrative
23 instructions that three members of the staff not
24 involved in research and writing a report must review
25 it for each report.

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1 I don't think I'm exaggerating when I say
2 that probably half of our staff have a direct role in
3 one or more of these reports. So I'm incredibly proud
4 of those that worked on this report, these reports and
5 accomplishments that they have made despite the
6 growing resources crunch that we face every year.

7 I think we talked a little bit earlier
8 about some of those accomplishments, so maybe I won't
9 get into those specifically. But I truly think that
10 staff has done a remarkable job, not only this year,
11 but for a number of years now and I really appreciate
12 it.

13 Any time you mention names, you risk
14 leaving people out which is an awkward situation to be
15 in, but even with that I really do want to mention
16 four names. The two Office Directors Terri Dickerson
17 and Debra Carr, I think, have done a marvelous job of
18 leading their offices, pushing the projects forward
19 and reviewing and editing reports and in some cases
20 doing some actual writing.

21 We are fortunate at the Commission to have
22 a number of good staff here, but we are blessed that
23 the managers of two of our most vital and largest
24 offices are two of the smartest, hardest working and
25 most effective employees agency and in my experience

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1 of having worked in five federal agencies now, they
2 are two of the best employees, managers and colleagues
3 I've had an opportunity to work with.

4 The other two employees I want to mention,
5 Dr. Berry mentioned in her announcements, but I think
6 I would be remiss not to add my own couple of comments
7 regarding two employees who will be leaving soon for
8 other endeavors. Dawn Sweet, I saw her nod, there's
9 Dawn. She wasn't here earlier and I think the reason
10 was because even though she's going to be leaving us,
11 her personal and professional pride required that she
12 was probably upstairs working to do things beyond the
13 call of duty which she always does. Dawn is still in
14 her earliest stages of her career and like Dr. Berry
15 said, is leaving us after six years to seek -- to take
16 a promotion and to seek new opportunities. She is the
17 Commission's editor and is responsible for editing our
18 reports, but that does not begin to capture Dawn's
19 contributions to the Agency. She is superb at what
20 she does and that alone would make her incredibly hard
21 to replace. But Dawn's value to the Commission and
22 the tremendous respect she has earned from the rest of
23 the staff results not only from her skill and hard
24 work and deep commitment to civil rights, but also
25 from the result of the grace and professionalism that

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1 she brings to the office every day. Dawn is perhaps
2 the most liked person on our staff and I couldn't be
3 happier that she has this new wonderful opportunity,
4 but that feeling is tempered just a little bit by
5 realizing that the Commission will be much poorer when
6 she departs.

7 As for Wanda Johnson, what can I say? To
8 some, she is the U.S. Commission on Civil Rights.
9 Wanda denies that she was the first employee ever
10 hired by the Commission. If she is telling the truth,
11 I think her 33 years with the Commission is a record.
12 We can confirm that, but if it is a record, it is the
13 kind of record, I suspect will be like Joe DiMaggio's
14 56-game hitting streak and will never be broken.

15 However, despite Wanda's many
16 contributions to the Commission that the Chair
17 mentioned earlier, Wanda's indomitable spirit, her
18 persistence and determination will be among her most
19 remembered qualities and a major reason for the
20 affection and high esteem to which she is held.
21 Wanda, may you have at least another 33 years to enjoy
22 the retirement you so richly deserve. You have
23 enriched the lives of so many here at the Commission
24 over the years. We are grateful and we thank you.

25 I will now turn the microphone over to

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1 Terri Dickerson who will introduce the Statutory
2 Report.

3 **Statutory Report**

4 MS. DICKERSON: Thank you very much,
5 especially thank you, Les for what you said. It makes
6 me feel a little guilty about being so crabby the last
7 couple of months.

8 (Laughter.)

9 But I do want to, in addition -- we're
10 talking about the Statutory Report which is the fourth
11 in a series of reports that we've done over the last
12 three years. It's a 10-year review of the
13 recommendations that the Commission offered to federal
14 agencies over the past 10 years.

15 This year, Sock Foon MacDougall, was the
16 team leader for this report. And on her team was
17 Wanda Johnson and Margaret Butler, Monique Dennis
18 Elmore and Dawn Sweet is always a member of the team
19 because she finalizes all of our reports and keeps us
20 from embarrassing ourselves by doing a real thorough
21 editorial review. As I mentioned, it's the fourth in
22 a series and so this particular report evaluated the
23 Departments of Education, Health and Human Services,
24 HUD and the EEOC.

25 I think more importantly though is looking

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1 at the series as a whole in terms of what we found.
2 We certainly found that to a large extent many of the
3 Commission's recommendations were implemented. In
4 cases that they weren't, it was either because
5 technology had changed and now it allowed people to do
6 things, the Agency, to do things that they couldn't do
7 10 years ago, so they somehow answered the
8 recommendations, but maybe not explicitly as we had
9 said.

10 There were some changes in emphasis at
11 other agencies and so their priorities changed and so
12 to some extent they did not fulfill, change those
13 recommendations.

14 Another thing that we just noticed in
15 stepping back from these four reports across the
16 board, agencies tend to use different terminology to
17 describe the same thing. Sometimes one agency might
18 talk about pending complaints and another one talks
19 about backlog complaints and another one talks about
20 open complaints. Another talks about unresolved
21 complaints and they might all be talking about the
22 same thing or they might not. So one of the things we
23 feel really strong about is that it really assists
24 regulators and people who want, need to get
25 information and certainly the Commission, the public,

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1 oversight committees, agencies were more consistent in
2 terms of the terms that they use.

3 They also do the reverse. They use terms
4 that describe different things. They're referring to
5 different things, but using the same terminology, but
6 also sometimes another agency might be using a very
7 similar term and be describing something else.

8 In this particular report, we looked, we
9 asked them about outputs as well and one of our
10 recommendations is that they focus more on evaluation
11 factors that are more on the elimination of
12 discrimination, rather than only the process-oriented
13 evaluation factors that agencies, all of them, across
14 the board, tend to use.

15 We did conduct an effective agency review
16 and this is where I'll close. For this particular
17 report, as I mentioned there were four agencies. We
18 sent out four requests for comments. We received
19 comments from all four and we incorporated those
20 comments into the draft that I believe was mailed to
21 the Commissioners. And that's all I plan to say.
22 I'll respond to any questions.

23 CHAIRPERSON BERRY: Can we get a motion to
24 approve Terri's --

25 COMMISSIONER EDLEY: So moved.

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1 COMMISSIONER REDENBAUGH: Second.

2 CHAIRPERSON BERRY: Any discussion?

3 COMMISSIONER REDENBAUGH: Well, I would
4 just add that to the Staff Director's comments, Terri,
5 that it's very clear that you and the other staff
6 members have worked incredibly hard to get these five
7 reports in front of us and I think you've done a great
8 job. And I'm supporting this report. You all have my
9 thanks as well.

10 MS. DICKERSON: Thank you very much.

11 CHAIRPERSON BERRY: Commissioner Edley?

12 COMMISSIONER EDLEY: I want to associate
13 myself with those comments. I just -- in reading this
14 I was struck by something that Terri just mentioned
15 and that is I'm surprised at how effective the
16 Commission's work has been. I wouldn't say it's a
17 home run, but it's certainly -- I guess I was more
18 cynical, more skeptical, more pessimistic than the
19 evidence would bear out.

20 So I think we are really smart to have
21 suggested this project.

22 (Laughter.)

23 Because I think it does illuminate the --
24 it does illuminate the value of the Commission's work.

25 CHAIRPERSON BERRY: One of the first

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1 things I learned when I first, let me say again, as I
2 have said many times, how wonderful I think Terri and
3 her staff are.

4 Diamonds and gold would not be sufficient
5 in all of the Mozambique mines to pay you for what you
6 do. But in any case, when I first came on the
7 Commission, I was quite surprised in those days when
8 the Commission had resources, it did -- your office
9 did audits and reviews of most agencies every year.
10 And I was amazed when I first came in, coming from
11 Education where I was running something, to find out
12 that, in general, everybody did what we had done in
13 Education.

14 When the Commission suggested something
15 which usually were practical things that you could do
16 to make your life easier and make your work better,
17 down at the level of the civil servants, it didn't
18 have anything to do with politics, people would try
19 that and were always responsive. And then I was
20 surprised when I came over to find out it wasn't just
21 us that all the agencies would take the suggestions.
22 Usually, when they didn't do it, it was because they
23 didn't have the money or as you said, some other thing
24 developed and they would say so. So you really do get
25 a bang for your buck out of these statutory, these

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1 kinds of reviews and so I think it's quite wonderful.

2 Anyway, does anybody else have any
3 comments? And if not, I call for the question, all
4 those in favor of the report, indicate by saying aye.

5 (Ayes.)

6 Opposed?

7 COMMISSIONER BRACERAS: No.

8 CHAIRPERSON BERRY: Who said no?

9 COMMISSIONER BRACERAS: Braceras.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER THERNSTROM: I abstain.

12 COMMISSIONER KIRSANOW: Abstain.

13 CHAIRPERSON BERRY: Braceras abstains --

14 COMMISSIONER BRACERAS: No, Braceras votes
15 no.

16 CHAIRPERSON BERRY: Braceras says no. And
17 Thernstrom and Kirsanow abstain.

18 COMMISSIONER BRACERAS: Can I have an
19 opportunity to submit in writing explaining my views?

20 CHAIRPERSON BERRY: Sure.

21 COMMISSIONER BRACERAS: As I did in the
22 past?

23 CHAIRPERSON BERRY: Absolutely.

24 COMMISSIONER BRACERAS: Thank you.

25 STAFF DIRECTOR JIN: Is 14 days

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1 sufficient, Commissioner Braceras?

2 COMMISSIONER BRACERAS: Fine.

3 CHAIRPERSON BERRY: Did you say yes?

4 COMMISSIONER BRACERAS: Yes.

5 CHAIRPERSON BERRY: All right.

6 Commissioner Redenbaugh?

7 COMMISSIONER REDENBAUGH: Were you about
8 to move to the next report?

9 CHAIRPERSON BERRY: I was about to.

10 COMMISSIONER REDENBAUGH: In light of the
11 somewhat contentious beginning of the meeting this
12 morning, I'd like to ask if we could take these
13 reports out of order.

14 CHAIRPERSON BERRY: Take them out of
15 order?

16 COMMISSIONER REDENBAUGH: Well, not go to
17 that one next, but go to Federal Funding. Can we take
18 Federal Funding next?

19 **Federal Funding Report**

20 CHAIRPERSON BERRY: Does anyone have any
21 objection? No one objects.

22 So could we have -- that's yours too,
23 right, Terri?

24 MS. DICKERSON: Yes. The Funding Federal
25 Civil Rights Enforcement 2005 Report updates the

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1 previous ones that OCRE has done over the past four or
2 five years, four years, and adds to those that were
3 done in 1995 and a series of them in the 1980s as
4 well.

5 This report updates with the President's
6 2005 request the funding, staffing and workload levels
7 at six agencies between 1994 and the President's 2005
8 request.

9 That's -- we use the same methodology and
10 the same deflators that we used in the past.

11 CHAIRPERSON BERRY: Okay. Could I get a
12 motion to approve the report?

13 COMMISSIONER EDLEY: So moved.

14 CHAIRPERSON BERRY: Could I get a second?

15 VICE CHAIRPERSON REYNOSO: Second.

16 COMMISSIONER REDENBAUGH: Actually, I
17 should have said something.

18 CHAIRPERSON BERRY: You meant to move,
19 right?

20 COMMISSIONER REDENBAUGH: No.

21 CHAIRPERSON BERRY: You meant to object?

22 COMMISSIONER REDENBAUGH: No, I meant to
23 actually have -- we can do this in a formal way.

24 CHAIRPERSON BERRY: Did you want to say
25 something?

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1 COMMISSIONER REDENBAUGH: Yes.

2 CHAIRPERSON BERRY: I was going to have
3 comments after we got the motion.

4 COMMISSIONER REDENBAUGH: Okay, we can do
5 it that way.

6 CHAIRPERSON BERRY: There was a motion to
7 approve it that I thought I heard. And a second.

8 Now discussion. Commissioner Redenbaugh.

9 COMMISSIONER REDENBAUGH: I like this
10 report. This report reflects a number of
11 conversations that we had here that Commissioner Edley
12 and I had. It also reflects a meeting that my special
13 assistant and I had with the Staff Director with Terri
14 and I think with others and it particularly in the
15 introduction does a very difficult thing and that is
16 brings into understanding to look at outputs rather
17 than merely inputs. And I think it really makes a
18 great start in that direction.

19 I had some specific comments that would
20 extend and substantially I think improve the report
21 and I'd like to submit those either in the meetings we
22 had before, if that works best and then bring this
23 report back for consideration in September. I think
24 we would have a really strong report then.

25 CHAIRPERSON BERRY: So the request is to

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1 table until September?

2 COMMISSIONER EDLEY: I'll second that.

3 CHAIRPERSON BERRY: The maker of the
4 motion and the seconder agree to table so without any
5 other further objections, we table this report until
6 September and in the meanwhile there will be
7 discussions between Commissioner Redenbaugh, Terri and
8 Staff Director about further refinements and the
9 report will be brought back again in September.

10 COMMISSIONER REDENBAUGH: Okay, great.

11 CHAIRPERSON BERRY: Okay. All right now,
12 do we want anything else out of order, Russell?

13 COMMISSIONER REDENBAUGH: Yes.

14 (Laughter.)

15 COMMISSIONER REDENBAUGH: I don't want to
16 be derelict.

17 (Laughter.)

18 CHAIRPERSON BERRY: It's not the same
19 thing.

20 VICE CHAIRPERSON REYNOSO: Out of
21 sequence.

22 CHAIRPERSON BERRY: So which one?

23 COMMISSIONER REDENBAUGH: I think as I
24 look at the rest of them, there's one that I think is
25 going to be very hard to get concurrence on, that's

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1 the Education.

2 CHAIRPERSON BERRY: So you want to do it
3 last? How do you want to do it?

4 COMMISSIONER REDENBAUGH: What I was
5 thinking, I think on the others, they also fit in the
6 category that they can be improved with comments. I
7 felt very strongly that way about the Federal Funding
8 Report, sort of a hand in it, you know?

9 I don't write -- have ready hand specific
10 comments for improving the others, but I also --
11 keeping in mind that although staff had to work very
12 hard to get these to us, we had to work quite hard to
13 read them and probably not as hard, in my case, as I
14 should have to really come up to speed on them. So I
15 do think, for example, I could have some improving
16 comments for the others and I'd like those held over
17 if that doesn't cause some inappropriate delay.

18 CHAIRPERSON BERRY: Yes, Commissioner
19 Meeks?

20 COMMISSIONER MEEKS: Haven't we before
21 been able to make changes after it was approved?

22 CHAIRPERSON BERRY: Yes.

23 COMMISSIONER MEEKS: Isn't there a period
24 of time where changes can be incorporated? I'm
25 thinking of the Broken Promises Report. There's some

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1 changes. They aren't anything real substantial, but I
2 would like to vote on the report, but acknowledge that
3 there's some comments and changes that we would like
4 to make.

5 CHAIRPERSON BERRY: See, Russell, there
6 is, as Commissioner Meeks says -- thank you for
7 reminding me, another way to do this which is if you
8 feel substantially comfortable with any of the
9 reports, even the funding one, you can vote to -- we
10 can agree to pass it with the understanding that the
11 changes you're suggesting would be incorporated.
12 We've done that before.

13 COMMISSIONER REDENBAUGH: Yes. And I have
14 done that before.

15 CHAIRPERSON BERRY: Yes.

16 COMMISSIONER REDENBAUGH: Right now, I
17 don't feel comfortable.

18 CHAIRPERSON BERRY: Not with the Native
19 American one?

20 COMMISSIONER REDENBAUGH: Well, those are
21 the two, yes. No, I wouldn't want to -- I wouldn't be
22 comfortable in doing that and that reflects more the
23 process and not the reports. And not the staff.

24 CHAIRPERSON BERRY: So does it have to do
25 with substantive information that you think you might

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1 present later for these two reports or just simply you
2 think that these two reports should be voted down?

3 COMMISSIONER REDENBAUGH: No. I don't
4 think they should be voted down. I think they can be
5 improved and passed. I had done enough work on the
6 Federal Funding to be absolutely confident of that and
7 very clear about where I would make the
8 recommendations, not to change, but merely to extend
9 to the good work the staff had done.

10 I didn't pay, as I mentioned earlier,
11 didn't pay sufficient attention to these reports to
12 have the confidence of where I could have something to
13 add, but I believe if I looked at them, I would have
14 useful suggestions.

15 CHAIRPERSON BERRY: So you are asking that
16 these two be deferred on the same basis as the other,
17 that you would in the meanwhile have --

18 COMMISSIONER REDENBAUGH: Yes. It's the
19 same basis, but it's a little different in that I'm
20 absolutely certain about the Federal Funding.

21 CHAIRPERSON BERRY: And the others you'd
22 just like an opportunity to see?

23 COMMISSIONER REDENBAUGH: Yes.

24 CHAIRPERSON BERRY: Commissioner Meeks,
25 what is your pleasure? Do you think we should do that

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1 or just vote on it or what do you want to do? On the
2 Indian one.

3 COMMISSIONER MEEKS: I don't think it's
4 imperative that it gets passed this month. I still
5 would like to see the Broken Promises Report go
6 forward.

7 COMMISSIONER KIRSANOW: Excuse me,
8 Commissioner Meeks, which is the Broken Promises?

9 COMMISSIONER MEEKS: The Indian Health
10 Service --

11 COMMISSIONER KIRSANOW: Yes, I understand.
12 For a moment I thought you were referring to another
13 report.

14 CHAIRPERSON BERRY: A soap opera. We have
15 a motion on the floor. We either table the motion or
16 we vote on it. What is the pleasure of the maker and
17 the seconder of the motion?

18 COMMISSIONER MEEKS: I guess I'd move to
19 table it and then we can get comments.

20 CHAIRPERSON BERRY: Okay. So with
21 agreement, we will table this report also until --
22 we're tabling both the Broken Promises until --

23 COMMISSIONER MEEKS: And the Equal Access
24 as well, the Language Barriers.

25 COMMISSIONER BRACERAS: I'm sorry, I

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1 didn't hear.

2 COMMISSIONER THERNSTROM: Also,
3 Commissioner Braceras, tabling Towards Equal Access,
4 Eliminating Language Barriers from Federal Programs
5 Report, so tabling both of those for consideration at
6 a later date.

7 COMMISSIONER BRACERAS: Fine.

8 CHAIRPERSON BERRY: Commissioner Edley?
9 Just a moment, we're tabling them until September,
10 just like we did with the other.

11 COMMISSIONER EDLEY: Right, to a date
12 certain.

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER EDLEY: Okay. I suppose
15 that's resolved, but another option would be to do
16 notational voting, to have people circulate the
17 changes that they would like made and then vote at
18 that point after a revision is done, but I don't have
19 an objection to holding all the way over until
20 September.

21 CHAIRPERSON BERRY: If Commissioner Meeks
22 seemed to believe -- is it okay to hold it over until
23 September?

24 COMMISSIONER MEEKS: I think that's okay.
25 But I think that to make the procedure clear is that

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1 we get changes to whoever the affected -- which ever
2 office, so that the next report highlights those.

3 CHAIRPERSON BERRY: We know what the
4 changes are?

5 COMMISSIONER EDLEY: Yes, so maybe -- I'm
6 sorry.

7 COMMISSIONER MEEKS: Yes.

8 COMMISSIONER EDLEY:- If we got a revised
9 report reflecting people's changes that people would
10 like and perhaps a cover memo, that would be helpful,
11 a cover memo indicating what changes have been made.

12 CHAIRPERSON BERRY: So this means that
13 Russell is committing himself to meetings with the
14 Staff Director and the staff between now and then.

15 COMMISSIONER REDENBAUGH: I was just
16 balancing that with my revisit to the world
17 championship in Brazil and I'm trying to --

18 COMMISSIONER EDLEY: We'll go down with
19 you.

20 CHAIRPERSON BERRY: That's a good idea.

21 COMMISSIONER REDENBAUGH: A change of
22 venue is often recommended. Yes, that is what I'm
23 committing myself to and I encourage my colleagues to
24 --

25 COMMISSIONER THERNSTROM: To join you.

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1 COMMISSIONER REDENBAUGH: To join me. I
2 intend this to be -- I thought of this more of a
3 conspiracy.

4 COMMISSIONER THERNSTROM: Right. I'm into
5 conspiracies, Russell.

6 CHAIRPERSON BERRY: So any Commissioner
7 who would like to suggest changes or suggest things
8 that would improve this to their satisfaction, by all
9 means, please do so.

10 COMMISSIONER REDENBAUGH: So probably we
11 need a date certain for staff then to --

12 CHAIRPERSON BERRY: How far ahead will the
13 staff need to know what these changes are in order to
14 do them for the September meeting, Terri, if I may ask
15 Terri.

16 MS. DICKERSON: Well, you just heard two
17 of our team leaders -- two have already gone. If it
18 would be possible in two weeks --

19 COMMISSIONER THERNSTROM: We need to meet
20 with the staff, Terri, to be realistic.

21 COMMISSIONER REDENBAUGH: My travels.

22 CHAIRPERSON BERRY: When could you do it
23 then?

24 COMMISSIONER REDENBAUGH: I could meet the
25 first week in August.

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1 COMMISSIONER THERNSTROM: Can we get back
2 to you on the exact meeting because obviously there
3 are a few of us who would like to participate and we
4 will have to coordinate schedules.

5 MS. CARR: There are three reports being
6 tabled, only one affects OGC at the moment, but I
7 would like to just remind Commissioners that without
8 having any idea of the nature of the changes you may
9 be proposing, some of those changes may or may not
10 have to go through an additional review if they affect
11 material about the agencies should pass on. So please
12 keep in mind that we don't have an unlimited amount of
13 time to make these revisions because it may have to be
14 reviewed outside the Agency again.

15 CHAIRPERSON BERRY: Which may delay when
16 it can be approved.

17 Why don't we shoot for the end of next
18 week. The Commissioners who wish to meet with staff
19 will inform the Staff Director when they can do it or
20 some times when they can do it.

21 COMMISSIONER THERNSTROM: That's fine.

22 CHAIRPERSON BERRY: And that way they can
23 plan somehow what they can do. Yes, Commissioner
24 Redenbaugh.

25 COMMISSIONER REDENBAUGH: Have we ever or

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1 did we have discussion about having a briefing on this
2 language?

3 CHAIRPERSON BERRY: No, not language, no.
4 I don't think so. You mean this language barriers?

5 COMMISSIONER REDENBAUGH: Language
6 barriers.

7 CHAIRPERSON BERRY: Which is just about
8 federal programs, about access to federal programs,
9 that's all it is.

10 COMMISSIONER REDENBAUGH: Yeah, all right.

11 COMMISSIONER EDLEY: I think I may have
12 mentioned at one point possibly doing something in
13 connection -- some voting in language.

14 COMMISSIONER REDENBAUGH: I think that's
15 what I'm thinking of.

16 CHAIRPERSON BERRY: But this is just about
17 federal programs.

18 COMMISSIONER REDENBAUGH: Okay.

19 COMMISSIONER KIRSANOW: Madam Chair, what
20 are the parameters, I guess the Staff Director, the
21 parameters for access to in the course of looking at
22 these reports, the source materials for the reports,
23 background material, footnoted material.

24 STAFF DIRECTOR JIN: You know,
25 Commissioner Kirsanow, your assistant and my assistant

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1 had a conversation about that about the Ten Year
2 Review and the way I kind of approached that was that
3 I thought about that situation and frankly, I had
4 never run into it before. And I decided that what was
5 appropriate was that it was an interpretation on my
6 part as to existing policy and that if the
7 Commissioners felt that access to certain information,
8 in order to help them decide on a report, once it was
9 out to you all, that that was something we could do.

10 So my suggestion, I think, is if there's
11 certain information that in terms of that it was
12 provided to us by the various agencies or whatever
13 that you feel would be helpful, I think we can work
14 that out, just like we worked it out with Christopher
15 on the other matter.

16 But it's something that really, I don't,
17 at least in my memory have come up before, so that's
18 how I kind of made that interpretation.

19 COMMISSIONER KIRSANOW: I think -- and I
20 recall that. My assistant told me you permit us
21 access to source materials and I appreciate that and I
22 think we probably would do that on a fairly limited
23 basis. But we weren't going to be permitted to make
24 copies, not that I intend to, but I think that on
25 occasion it would be difficult for me to just sit

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1 there in a room here at the Commission and review the
2 source materials.

3 I think it would be more helpful and I'd
4 have more deliberative opportunity to review the
5 material if I could make copies of just discrete
6 things and take them back, unless they're somehow
7 privileged.

8 STAFF DIRECTOR JIN: And I think in terms
9 of communications with Christopher, when all was said
10 and done, we didn't say well, you absolutely cannot
11 make copies. I think the concern that I had after
12 consulting with Deputy General Counsel was some of the
13 stuff that he was looking at was stuff that was given
14 to us by other agencies how we tried to approach that
15 information, historically, is that to the extent that
16 there's information that should be made available to
17 the public we try to make it so the agencies get to
18 make that decision. They provided to us as a courtesy
19 under the rules of the government, they're supposed to
20 provide it to us. They're supposed to cooperate, but
21 nevertheless, they provide it to us for the purpose of
22 us studying the reports, so you all can vote, read it
23 and vote on it. And we just wanted to try to protect,
24 primarily we were trying to protect their information
25 and not have it be out and about. So that was the

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1 major concern there.

2 COMMISSIONER KIRSANOW: But we would have
3 access to some materials to copy, if necessary.

4 STAFF DIRECTOR JIN: Sure.

5 COMMISSIONER KIRSANOW: Okay.

6 CHAIRPERSON BERRY: But we should avoid
7 disclosure of the materials that are given because
8 they're not given to us with the notion that we're
9 going to disclose them to the public. So if
10 Commissioners are going to have them, then they have
11 to be responsible for avoiding disclosure to the
12 public because it may violate the conditions under
13 which they were given to us to use.

14 The issue has never arisen before, but now
15 it has.

16 **Closing the Achievement Gap**

17 Okay, the next report is *Closing the*
18 *Achievement Gap, the Impact of Standards-Based*
19 *Education Reform on Students' Performance*. Does
20 anyone have any views on what we should do with that?
21 I tried before getting a motion and then getting it
22 seconded and see what was going to happen and then --
23 yes?

24 STAFF DIRECTOR JIN: Actually, I think
25 Deputy General Counsel has a few comments. Do you

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1 want to have her make them?

2 CHAIRPERSON BERRY: Yes, go ahead and
3 introduce them.

4 MS. CARR: Some of my comments are going
5 to be brief and I have to start by saying unlike
6 Terri, I make no apologies for being cranky over the
7 last several months.

8 (Laughter.)

9 But just as Terri did, I do want to
10 acknowledge the two members of the Office of General
11 Counsel who worked on this report. They both should
12 be here, Jenny Park and John Blakeley. I should note
13 that this is a project team that went from five
14 attorney-advisors to ultimately two, and so they did a
15 wonderful job making sure that this report was
16 produced on time.

17 This report in many ways is a bit of a
18 follow-up to the prior Commission work produced by
19 OCRE, the Quiet Crisis Report which focused on the
20 funding issue, the unmet needs --

21 STAFF DIRECTOR JIN: Are you talking about
22 --

23 MS. CARR: I'm sorry, I was thinking about
24 Indians, Native Americans. I'm so sorry.

25 The Education Report, that project team as

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1 well shrank from five to eventually two members. The
2 two team members on that report were Joyce Smith and
3 Deborah Vagins and I think they're both here this
4 morning.

5 That project, Education Accountability,
6 evolved over a long period of time. I believe the
7 Commissioners started discussing the issue of
8 educational accountability quite some time ago. I
9 think it was approved originally in 2001.

10 And as the legislative landscape changed
11 in the field of education, the thinking of the
12 Commissioners about the scope of this report also
13 evolved. And as the Commissioners debated this
14 report, debated the issues to be discussed in this
15 report, staff was ever mindful of trying to
16 incorporate your thinking as it changed over the
17 years.

18 What I'd like to say about education is
19 that the report focused on two states, Virginia and
20 Maryland. And we received information from those two
21 states through interviews, through documents that were
22 reviewed under subpoena, through documents that were
23 publicly available, through a broader literature
24 survey and through some conversations with members of
25 the various State Departments of Education.

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1 The report ultimately looked at how these
2 two states were complying with the mandates of No
3 Child Left Behind and what implementation of No Child
4 Left Behind in these two states means for the academic
5 success of low-income students and students of color
6 in Maryland and Virginia.

7 As a result of looking at these two
8 states, the report makes several recommendations. The
9 recommendations are broad recommendations in some
10 cases as it addresses specific issues having to do
11 with the No Child Left Behind Act. And then in many
12 cases, it makes specific recommendations as to things
13 states, both at a local level, not the state level,
14 could do to improve the education provided to low
15 income students, LEP students, students with
16 disabilities and students of color as they move
17 forward with No Child Left Behind.

18 CHAIRPERSON BERRY: Okay, for purposes of
19 discussion could I get a motion to approve the report?

20 COMMISSIONER EDLEY: So moved.

21 VICE CHAIRPERSON REYNOSO: Second.

22 CHAIRPERSON BERRY: Discussion? Yes.

23 COMMISSIONER KIRSANOW: I would say that
24 my review of the report was limited. Although I read
25 it, I did not study it in detail since we had so many

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1 reports to review at the same time, but my
2 recollection is that I didn't see any reference to
3 what I consider to be one of the summary source points
4 for this particular topic and that is our colleague's
5 book on it which is almost the identical title,
6 *Closing the Racial Educational Achievement Gap*.
7 Having gone through that book, there are a number of
8 analyses pertaining to that. I don't know that there
9 is -- I know in the past there's been some reference
10 made to not incorporating the work of various
11 Commissioners in reports issued by the Commission. I
12 don't know if that's an outstanding policy, if there's
13 a reg or administrative instruction to that effect.
14 If there isn't though, I think it would be a
15 significant omission not to make reference to the data
16 and the analyses contained in no excuses. Is there a
17 reason for that?

18 MS. CARR: Actually, our response is two-
19 fold. Members of the team, in fact, did read all
20 literature addressing the issues that were within the
21 scope of the report that we thought were relevant that
22 would include any written material by Commissioners
23 and others on the topic.

24 The Commission, as you noted, has had a
25 prior policy about quoting the individual work of

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1 sitting Commissioners and so therefore we did not
2 directly quote or attribute the work of Commissioner
3 Thernstrom.

4 COMMISSIONER KIRSANOW: I think I did see
5 references to other works that may not be the
6 individual work of Commissioners, but of entities with
7 which Commissioners are aligned. Is there a specific
8 demarcation between Commissioners' work for which they
9 may be the author or Commissioners' work where they
10 are the proponent, proprietor, primary mover for that
11 work? For example, I think there was references made
12 to the Harvard Civil Rights Project. I think that's
13 great. I think it should be done because I think
14 they're doing much of the heavy lifting in that
15 regard. But was there some type of -- what were the
16 parameters for discriminating between that type of
17 work and for example, Commissioner Thernstrom's work?

18 MS. CARR: I think when we talk about
19 quoting the work of Commissioners, it would be the
20 work that they have written directly, not work that
21 may have been published by a group that they are
22 associated with or affiliated with.

23 CHAIRPERSON BERRY: Like the Manhattan
24 Institute?

25 MS. CARR: Exactly. If we read something

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1 published by Manhattan that was relevant to the issue
2 of this report, it would have relied on and cited that
3 work or that report. However, if you're talking about
4 something written specifically by Commissioner Edley,
5 we may have read it, may have thought about it, but we
6 would not rely on it, quote its source in our report.

7 COMMISSIONER EDLEY: Why?

8 COMMISSIONER THERNSTROM: I mean the rule
9 is so silly, I can't figure it out.

10 COMMISSIONER EDLEY: I guess I don't think
11 it's -- I can imagine a reason, but I'm just -- rather
12 than imagining it, could you or the chair maybe tease
13 it out?

14 CHAIRPERSON BERRY: I don't recall --

15 COMMISSIONER EDLEY: You don't want give
16 the appearance of becoming a soap box for
17 Commissioners?

18 CHAIRPERSON BERRY: No, no, no. I don't
19 recall any great -- when I first came on the
20 Commission, I was told that it was because
21 Commissioners, some Commissioners like to promote
22 themselves and would think that every report you had
23 about anything that was tangentially related to
24 anything that they did because when I first came on
25 the Commission, I mean I write a lot of stuff myself

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1 that has to do with civil rights policy. I thought
2 that they should flag some of the stuff that I had
3 written. And it seemed curious to me that they didn't
4 and I asked the question and the then chair told me
5 that there had been Commissioners who liked to promote
6 themselves and who thought that stuff that even the
7 staff thought on occasion didn't have anything to do
8 with what they were doing and they wanted all their
9 work cited.

10 And that you could, at some point, if you
11 had a number of Commissioners who were writers, this
12 is what they told me, that you would have every report
13 filled with things done by Commissioners as opposed to
14 -- with the staff trying to please all of the
15 Commissioners.

16 Now I suppose -- I didn't object and I
17 don't recall that the Commissioners ever cited
18 anything that I wrote. I've managed to survive
19 without that. But anyway, I see no reason myself for
20 such a policy so long as the staff is free to decide
21 whether they think something is relevant, but then it
22 would be up to Commissioners not to get on them about
23 not putting their stuff in. And so I think they
24 should treat the work that Commissioners do like they
25 treat the work of anybody else who's done something.

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1 That's my own view, but that's why it was said. Yes.

2 COMMISSIONER EDLEY: I have to say I
3 appreciate the -- issue from the standpoint of the
4 appearance to the public of possible lack of
5 objectivity on the part of the Commission to the
6 extent that it cites work authored by members of the
7 Commission. Period, paragraph.

8 CHAIRPERSON BERRY: But --

9 COMMISSIONER EDLEY: However, I actually
10 -- I feel a little -- I'm a little nervous for that
11 same kind of appearance of impropriety by the
12 references to the Harvard Civil Rights Project because
13 although I did not personally author those reports, I
14 did raise most of the money that led to those reports
15 and had some editorial input into them, but moreover,
16 some people might look at it and see the footnotes and
17 say oh, Edley was just pushing to get more visibility
18 for the work of his project.

19 So I just want to say it made me a little
20 uncomfortable and I would feel better if -- unless --
21 I guess I would have a rebuttable presumption against
22 using something of this sort, and if the staff thought
23 that the footnote reference was important in an
24 intellectual sense, fine. But I just have to say it
25 gave me a little bit of a qualm.

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1 CHAIRPERSON BERRY: And I agree with you.

2 COMMISSIONER EDLEY: I think that the
3 Manhattan Institute thing is different because as far
4 as I know, Abigail does not have supervisory
5 responsibility or managerial responsibility over say
6 Jay Green's work on dropouts.

7 CHAIRPERSON BERRY: I agree.

8 COMMISSIONER THERNSTROM: I agree with
9 that, Chris.

10 CHAIRPERSON BERRY: I agree with you
11 absolutely, Edley. I'll recognize you in a minute,
12 Commissioner. I agree with you absolutely. When I
13 saw the Civil Rights Project cited I thought that was
14 wrong and earlier when there was a report done by OCRE
15 that had cited your project, I said to the Staff
16 Director, that I didn't think that they should cite
17 the Civil Rights Project because it's emphatically
18 your project.

19 And that I thought that if we had a rule
20 about that that it would make sense in terms of public
21 perception. It doesn't have anything to do with --
22 and that there are plenty of other things for the
23 staff. They can read the stuff. They obviously
24 should read it and inform themselves, but I just
25 thought it went over the line and so I wouldn't -- I

1 agree with you. It made me feel uncomfortable.

2 COMMISSIONER EDLEY: I may be being too
3 circumspect.

4 CHAIRPERSON BERRY: I think it should be
5 taken out myself, as a matter of fact.

6 I wouldn't vote for the report unless it
7 is taken out, but in any case, does anyone else have
8 any comment?

9 Yes, Commissioner Redenbaugh?

10 COMMISSIONER REDENBAUGH: Yes. On that
11 point, I think maybe we're being too sensitive,
12 particularly since this has never been a problem in
13 anyone's recent memory or in anyone's memory that is
14 even not recent.

15 Now, I don't publish, so maybe I'm unaware
16 of all of the pressures and conflicts in this, but it
17 seems to me that if the report is strengthened by
18 including something that Commissioner Edley is
19 responsible for and strengthened by including
20 something that Commissioner Thernstrom has shared
21 authorship, I think it is a sensitive matter, but I
22 think the report should be strengthened. And perhaps
23 if this issue arises, rather than having a rule that
24 prohibits this, it's referred to some kind of ethic
25 review or some -- right?

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1 I don't have the concern that the staff
2 would, in effect, pander to the Commissioners.

3 MS. CARR: Madam Chair, just quickly on
4 that --

5 COMMISSIONER REDENBAUGH: Although that
6 may not be a bad idea, the pandering.

7 (Laughter.)

8 I would attend more meetings.

9 MS. CARR: The staff is not always
10 thoroughly aware of what your relationships are to and
11 in various groups and associations so if what we are
12 to consider would be whether someone has a key role in
13 editing for an organization or fund raising or setting
14 a research agenda, that may be very cumbersome for
15 staff to always identify on its own. So in thinking
16 about that policy, please keep in mind we don't know
17 the level at which you're involved or entangled in
18 some research groups.

19 CHAIRPERSON BERRY: Commissioner?

20 COMMISSIONER KIRSANOW: I think many of
21 the points are well taken and I would adopt what
22 Russell has to say.

23 I don't know that I would be in agreement
24 with a blanket prohibition. I think the inclusion of
25 the work from the Harvard Civil Rights Project, for

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1 example, makes good sense to me. I think enough
2 review makes sense, but the fact that a report would
3 be presumably passed by the Commission which
4 Commission consists of members from the Democrat,
5 Independent and Republican parties would probably
6 militate against there being any kind of promotion of
7 one's work or that there would be any bias attendant
8 thereto.

9 In addition, when you have a work, for
10 example, the Harvard Civil Rights Project, if you were
11 to do a report on segregation or desegregation, to not
12 credit--the Harvard Civil Rights Project I think would
13 be silly. It occupies the field. And this book
14 occupies the field and it's not as if we're adopting
15 arguments that are in the book that could presumably
16 be viewed as personal arguments or ideological
17 arguments. There's raw data in the book that I think
18 is very useful. So I would be opposed to having any
19 kind of a -- I think very -- discretion needs to be
20 exercised in what's included. But at the last
21 instance, we all vote upon it, I think that's a fairly
22 good litmus test for whether or not a particular
23 agenda is being promoted.

24 CHAIRPERSON BERRY: Yes?

25 VICE CHAIRPERSON REYNOSO: In terms of

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1 notice, it may be adequate as is sometimes done in
2 articles to simply footnote that the person has that
3 association with that agency or even that the person
4 is a member of the Commission. So there's no -- it's
5 sort of up front.

6 CHAIRPERSON BERRY: I also, sitting here
7 as a historian and a scholar wearing that hat, there's
8 something about this discussion that bothers me
9 methodologically.

10 The staff, if it is -- should not
11 privilege work done by members of the Commission.
12 Therefore, if the staff, staff should do a
13 comprehensive bibliography and a comprehensive
14 assessment of the literature. And just because
15 something is written by a member of the Commission
16 doesn't mean that it occupies the field. Just because
17 the Civil Rights Project does work, doesn't mean that
18 other people don't do work on segregation and
19 desegregation.

20 And so if I see a footnote that has your
21 project and doesn't have work done say in Duke by
22 Kleitfelter or other places, then they're privileging
23 your work and in fact -- or they haven't done a good
24 job and they haven't done a thorough research job of
25 what's available in the literature. They haven't done

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1 a good literature review. Kleitfelter could suspect
 2 that they're privileging your work because you're on
 3 the Commission because why are they not mentioning all
 4 these other people, some of whom are quite prominent
 5 who do work on this. Or if one did some work on high
 6 stakes testing and didn't mention what the folks at
 7 Columbia had done -- I've forgotten his name -- are
 8 doing, yet they mention some other stuff, then I have
 9 questions because I'm accustomed to doing
 10 bibliographies and literature searches that are
 11 thorough and while Commissioner Thernstrom and I'll
 12 just come to this point, I've talked about your
 13 project, has a book which is interesting, provocative,
 14 has lots of data in it, there are many other studies
 15 of the achievement gap that are not cited in this
 16 report.

17 So if we're talking about it being
 18 comprehensive, we shouldn't privilege work done by
 19 people who are on the Commission no matter how
 20 prominent it is. If we're going to put in your
 21 project, we should put in other stuff. If we're going
 22 to put in Commissioner Thernstrom, we should put in
 23 other stuff on the achievement gap that's been done by
 24 other scholars, some of which contest what is in that
 25 work.

1 So I don't know how to accomplish this
2 because you're not -- it's not like I'm directing a
3 dissertation and making people go out and do
4 everything in the world, but there's something about
5 it that makes me uncomfortable.

6 COMMISSIONER EDLEY: May I suggest an
7 amendment to what you're suggesting? It could be then
8 that a way to do this would be -- I suggest one
9 qualification to your point. It is very rare that a
10 footnote is exhaustive.

11 CHAIRPERSON BERRY: Really?

12 COMMISSIONER EDLEY: It's just in the
13 nature -- yes. It's just in the nature of research
14 that -- that's why you see footnotes with one or two
15 things cited instead of 48 or 49 things cited. At
16 some point you draw a line and make judgments about
17 how attenuated the relevance has to be to include it
18 in the footnote or how accomplished the scholar needs
19 to be. Not all scholars equally accomplish. Not all
20 references are equally seminal, not all comments are
21 equally germane. So you make judgments when you're
22 doing a footnote.

23 And so with that stipulation maybe the way
24 to do it --

25 CHAIRPERSON BERRY: None of which are

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1 objective.

2 COMMISSIONER EDLEY: None of which are
3 objective, exactly.

4 CHAIRPERSON BERRY: That's my point.

5 COMMISSIONER EDLEY: Right.

6 (Laughter.)

7 COMMISSIONER EDLEY: So maybe a way to do
8 it is when there is a circumstance in which the staff
9 is otherwise inclined to include something authored by
10 a member of the Commission or an organization with
11 which the Commission has no association, that there is
12 a heightened responsibility to make sure that the
13 footnote is extensive, that the reference is extensive
14 so that other relevant literature is there just to
15 make sure that there is no appearance of impropriety
16 or --

17 CHAIRPERSON BERRY: I would accept that.

18 COMMISSIONER EDLEY: Or favoritism or
19 special status or whatever.

20 CHAIRPERSON BERRY: I would accept that.

21 COMMISSIONER EDLEY: Something of that
22 sort so that it --

23 CHAIRPERSON BERRY: I like that.

24 COMMISSIONER EDLEY: And just for the
25 record, I have to say that the particular reports that

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1 are cited, I have huge, from the Harvard Civil Rights
2 Project, I have huge disagreements with personally,
3 just for the record. Just to get that out. I think
4 they are overly critical of the job of No Child Left
5 Behind.

6 CHAIRPERSON BERRY: Okay.

7 COMMISSIONER EDLEY: That's another
8 matter.

9 CHAIRPERSON BERRY: Yes, Commissioner
10 Thernstrom?

11 COMMISSIONER THERNSTROM: All right, two
12 things. I do want to talk about the substance of this
13 report. But just briefly on this question of total
14 omission of my co-authored book, No Excuses. Number
15 one, there aren't actually a lot of other studies.
16 Ours is the first comprehensive -- comprehensive as
17 much as we could make it of the topic you have, the
18 Jenks and Phillips, but that is simply a collection of
19 essays and except for the introduction, not really
20 accessible to people without a Ph.D. in the social
21 sciences.

22 I mean I just came from the annual meeting
23 of the National Council for Education where Steve and
24 I opened the meeting as speakers at the plenary
25 luncheon. There is a wide recognition that this is

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1 the book on this topic and I'm hardly into self-
2 promotion. I mean you put out a Voting Rights Report.

3 I did not say a word about the fact that I have
4 written a book on minority voting rights that actually
5 got one of the two American Bar Association prizes as
6 well as three other academic prizes. I did not say
7 one word about hey, wait a minute. Where's my book?
8 I mean I don't care.

9 But in this case, the legitimacy of this
10 report, it takes away from the legitimacy of the
11 report not to cite the work that is being -- the
12 reason I haven't been home at all for the last seven,
13 eight months is because I've been -- I'm beginning to
14 say no to invitations, but I'm just deluged with them
15 and I've been meeting with people with educational
16 authority all over the country, superintendents of
17 education, state commissioners, etcetera. This is the
18 book they're reading on this subject and it's just --
19 I mean it's just peculiar not to include it.

20 But in any case, let me talk about the
21 substance of this report. I know that the staff
22 worked very hard on this and I'm very -- it bothers me
23 to be in the position of being a critic because I am a
24 critic of the report. I mean I wish we could get to
25 the point in this Commission where we could work

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1 together in such a way that we end up with reports
2 before they land on our desk that we can all sign onto
3 and find a different way of handling this whole matter
4 because I'm not comfortable with saying that -- which
5 I'm forced to do, that I have -- I'm deeply critical
6 of the report.

7 Let me just give some of the reasons. I
8 can't possibly -- on every page is marked up. I won't
9 bore you with all the kind of details of my
10 disagreements, but in no particular order, I mean I
11 just kind of splashed some thoughts on a page last
12 night. Let me tell you what the kind of the heart of
13 my problems are.

14 The report is full of undefined terms and
15 phrases; adequate instruction, cultural sensitivity,
16 highly qualified teachers, equal educational
17 opportunities, sufficient funding, parent empowerment,
18 professional development and so forth.

19 There are multiple assertions in this
20 report that -- for which proper evidence is not
21 provided and in effect, all together, there is a
22 failure to provide readily available data. And let me
23 give you just one example here. The class size
24 question, in fact, class size differences between high
25 and low minority schools, I was just looking at ETS'

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1 report yesterday on this. High and low minority
2 schools are quite small. They're much too small to
3 explain the racial gap in academic achievement. The
4 difference between high and low poverty schools in
5 terms of class size, there's no difference. It's
6 nonexistent. Again, ETS has got this. You don't have
7 to look at No Excuses if you're somehow resistant to
8 that idea.

9 In any case, almost nobody argues that
10 there is -- that class size makes any difference
11 beyond the very early grades except of course the
12 teachers' unions who want more teachers, but there is
13 a general consensus. I mean Deborah Meyer and I had a
14 discussion on this on a panel and somebody raised a
15 question in the audience and she said don't even go
16 there to the person who raised the question.
17 Thernstrom is right on that. Okay.

18 And in my observation an awful lot of the
19 best schools have very large classes. Actually, they
20 use the money for other purposes because the money,
21 when you're talking about scarce dollars, the money is
22 often used better for other purposes and classroom
23 size really boils down to classroom management skills.

24 Another example of a topic that can't be
25 discussed without a hard look at the data is the

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1 question of highly qualified teachers. Again, there's
2 the definitional problem. I don't accept the normal
3 definition of highly qualified, but experience and
4 degrees and so forth. But in fact, there is not again
5 much of a difference in teacher qualifications in the
6 usual -- by the usual definition that I don't accept
7 between high and low minority schools. And again, the
8 measures for highly qualified, it seems to me, sorely
9 wanting.

10 We know that good teachers matter. They
11 matter more than anything else, except for I think
12 good principals are equally important because in so
13 many ways they shape the quality of the teaching
14 within a school or they should shape it if they were
15 instructional leaders. But we know that good teachers
16 matter. We do not have a checklist, nobody has a
17 checklist saying these are the qualities of a good
18 teacher. We can say on the basis of student results,
19 oh, she or he is a good teacher, but the criteria for
20 -- that would guide a principal in hiring such
21 teachers are still a big unknown in the field and
22 there's the assumption in the report, in addition,
23 that African-American students are better off with
24 African-American teachers. There's no data to
25 substantiate that. And luckily, I mean that's lucky

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1 because we certainly don't want to take all of our
2 black teachers from the suburbs and send them to the
3 inner city and also given the fact that doors are
4 finally open in this country to African-American
5 college students to the law profession, to the medical
6 profession, to business and so forth, it is especially
7 for students coming from families where there's no
8 accumulated wealth, where they're perhaps the first
9 member of their generation to go to college, they're
10 unlikely to head to teaching. They're going to head
11 to a more lucrative, more prestigious profession. So
12 it better not be true that black students need black
13 teachers because we're in deep trouble. ..

14 What substitutes for hard evidence in the
15 report are phrases like "it is has been reported that"
16 or "according to research". Well, "it has been
17 reported", I mean it's been reported that the moon is
18 made of green cheese. That's not an acceptable phrase
19 to me. And "according to research" well, what is the
20 quality of the research? Whose research? Is it
21 reliable? What are the opposing arguments?

22 And in fact, the research that's cited is
23 often not research. It's either a journalistic --
24 it's a story of a journalistic nature or it's the work
25 of an advocacy group like the NAACP, like FairTest,

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1 but you know, that's fine. You want to cite their
2 work, but then you've also got to cite the scholarly
3 literature.

4 I mean the whole report reads like a
5 results-driven document. There are conclusions first
6 and then the evidence is found. So high stakes
7 testing is bad. Here's the evidence which is not
8 really evidence.

9 One of the topics that -- as an example of
10 this, "research indicates grade retention and
11 increases dropout rates." Well, the whole dropout
12 question is a matter of a lot of scholarly debate. I
13 just mumbled under my breath and I disagree with Jay
14 Green on the dropout rate. This report ignores the
15 standard measures of high school graduation rates. I
16 mean the digest of educational statistics paints a
17 completely different picture. The Nells Study follows
18 students from 8th grade in 1988 to 2000, 12 years
19 later. Eighty-six percent of blacks had a high school
20 degree and that corresponds to the standard census
21 figures for 25 to 29 year olds. It's also no
22 different from those 21 to 25 year olds.

23 And indeed the figures of Jay Green and
24 this report don't make any sense in that we know that
25 75 percent of black students do start college.

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1 Graduation rates are something quite different.

2 High stakes testing is said to stigmatize.
3 Those that failed, well, again, hopefully you need
4 some survey data or something -- some sort of evidence
5 on that and people take tests all their life, driver's
6 license tests, employment exams, professional exams,
7 and so forth. And one can raise the question of which
8 -- are you stigmatized every time you fail one?
9 Should we have no tests at all? Are you stigmatized
10 by having a worthless diploma and not having the
11 skills and knowledge that you will need to do well in
12 the American economy. And if so, are these tests
13 giving you vital information and you know, I can only
14 speak for Massachusetts, but our high stakes testing
15 to the best of our knowledge which is why all of our
16 urban superintendents are on board, is mobilizing
17 schools to educate kids who have been woefully,
18 shamefully neglected over the decades.

19 Finally, teachers and principals are
20 saying to each other, wait a minute, we can't simply
21 assume that on the basis of a child's skin color, this
22 is not a kid going anywhere. Every kid has to be
23 educated, so teachers are getting together, working
24 together, finally, etcetera. There's a huge
25 mobilization, remedial education as well, remedial

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1 education after school programs and so forth.

2 Finally, the most -- and as I said, I've
3 got every page marked up here and I'm not going to
4 bore you with it, but the most tortured, it seems to
5 me, of the ideologically driven points is the report's
6 jaw dropping discussion of Asians as a people of color
7 without equal educational opportunity. In fact, the
8 racial gap in academic achievement is not between
9 privileged whites and people of color, it's by every
10 measure between whites and Asians on the one hand,
11 blacks and Hispanics on the other hand. Asians are
12 twice as likely as whites to obtain a four-year
13 college degree. They are half the students at UCLA
14 and Berkeley in a state that's 10 percent Asian.
15 Asians, of course, are about four percent of the
16 American population, but they are 27 percent of the
17 students at MIT; 25 percent at Stanford; 17 percent at
18 Harvard and so forth. You look at selective high
19 schools, take the two most selective in New York City,
20 Stuyvesant and Bronx Science, Asians are half of the
21 student bodies of both those schools.

22 The gap between whites and Asians on some
23 math tests is larger than the black/white gap. I mean
24 the Commission cites low high school attendance rates,
25 according to the 1990 census on the part of

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1 Cambodians, Vietnamese, Laotians. Well, sure. These
2 are people, a group of recent immigrants who spent
3 their high school years in their native country. It
4 says nothing about Asian educational opportunity in
5 this country.

6 I mean Lawrence Steinberg's *Beyond the*
7 *Classroom*, which is also a book worth citing here,
8 looked at nine high schools in California and
9 Wisconsin. Contrasts between Steinberg concludes
10 between Asian and non-Asian students is sharper than
11 between poor and affluent children; between those with
12 two parents and those without; between any other
13 groups defined along economic or demographic lines.

14 I mean the Asian student -- Asian students
15 whose parents never finished high school score 48
16 points higher than whites on the math SATs. The story
17 of Asian-American success in school is extraordinary
18 and this report just tortures this record in order for
19 the picture to be drawn of white versus non-white.

20 I'm going to stop there. I'd be glad if
21 anybody wants to really go through this page by page
22 and write up my comments which are now in scribbled
23 form, but it's very, very disappointing to me and I
24 feel very -- I regret very much that I ended up being
25 such a critic.

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1 CHAIRPERSON BERRY: Commissioner Edley?

2 COMMISSIONER EDLEY: Well, actually given
3 Commissioner Thernstrom's offer to do all of that work
4 to write up the comments, it might well be that -- I
5 mean I would certainly enjoy seeing them and perhaps
6 responding to some of them and that perhaps will
7 improve the report.

8 COMMISSIONER BRACERAS: I'm sorry, I'm
9 having trouble hearing.

10 COMMISSIONER EDLEY: I had unclipped my
11 microphone. I'm sorry, Jennifer.

12 COMMISSIONER BRACERAS: That's okay.

13 COMMISSIONER EDLEY: In light of
14 Commissioner Thernstrom's generous offer to write up
15 some comments, circulate some comments, I think that
16 -- I mean I would find that very helpful. I know that
17 there are some things that you said that I agreed
18 with. There's some that I disagreed with, but I don't
19 know what the chances are that it would create a
20 possibility of getting a majority vote for a revised
21 report. But it certainly might strengthen the report.

22 So I mean I'd be inclined to table the report in
23 anticipation of seeing her comments.

24 CHAIRPERSON BERRY: Commissioner
25 Thernstrom.

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1 COMMISSIONER THERNSTROM: My comments go
2 so to the heart of this report. I don't think -- I
3 think the other reports can be fixed. I don't think
4 this report can be fixed. I'd be happy to do it, but
5 I just don't think this report can be rescued.

6 I'd be glad to go through that.

7 COMMISSIONER EDLEY: Even if you just
8 dictated something.

9 COMMISSIONER THERNSTROM: Pardon me?

10 COMMISSIONER EDLEY: Even if you just
11 dictated something.

12 COMMISSIONER THERNSTROM: No, no. I'll do
13 that.

14 COMMISSIONER EDLEY: Let me just be
15 candid. My view is even if you don't -- even if none
16 of the four of you are under any circumstances
17 prepared to go forward with an abstention or with
18 support for the report, I think that given the
19 tremendous effort that the staff has put into this to
20 date making, giving them an opportunity to improve it,
21 based upon comments from the Commissioners is -- I
22 mean it's almost a matter of professional respect for
23 the hard work that they've done thus far.

24 COMMISSIONER THERNSTROM: That's fine.
25 That's why I offered. I am very curious, by the way,

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1 as to why the -- obviously, increased the burden on
2 the two people who ended up writing this report. Why
3 was there initially a staff of five and then it went
4 down to two?

5 MS. CARR: The original staff of five, I
6 think three --

7 COMMISSIONER EDLEY: Three of them read
8 your book and decided they didn't want anything to do
9 with it. No.

10 (Laughter.)

11 MS. CARR: Three of those staff members,
12 if memory serves, took positions elsewhere shortly
13 after or about the time -- actually, before the
14 briefing and were not replaced because we did not fill
15 at all the vacant positions at OGC, so we had no one
16 to take their place when they left.

17 CHAIRPERSON BERRY: Commissioner Kirsanow,
18 you had your hand up?

19 COMMISSIONER KIRSANOW: Just an
20 observation. This goes to the discussion that
21 preceded Abby's or Commissioner Thernstrom's
22 exposition. I think that exposition kind of
23 highlights why it's a good idea not to summarily
24 dismiss the inclusion of Commissioners' work. I'm
25 persuaded by some of the issues that she's raised that

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1 we would benefit greatly from the inclusion of
2 Commissioners' work, where appropriate, in the reports
3 issued by the Commission.

4 CHAIRPERSON BERRY: Yes, Vice Chair?

5 VICE CHAIRPERSON REYNOSO: Madam Chair, I
6 thought it was a very good report. I do think that we
7 owe it to the agencies, the two states from whence we
8 have so much information to give them our best
9 thinking. And so I don't know if I'll end up agreeing
10 or disagreeing with the criticism.

11 As it stands, I find it to be a good
12 report, but I'd be happy to take a look at anything
13 that is put forward and respond to it, and agree or
14 disagree.

15 CHAIRPERSON BERRY: I myself look forward
16 to seeing in more detail Commissioner Thernstrom's
17 comments because as she went through the remarks I am
18 aware myself of literature which contests much of what
19 she said about two subjects, one about class size. I
20 think I know the article literature pretty well. And
21 the other is on highly qualified teachers as defined
22 as teachers who know the subject matter and can
23 demonstrably show that their students achieve. And
24 there's a lot of literature on the effect of highly
25 qualified teachers.

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1 I also know of literature that shows that
2 students of whatever race or ethnicity that there are
3 some benefits to be obtained, whether they're white
4 students, Asian American students, whatever they are,
5 Indian students, to have at least some teachers in
6 their school who they can emulate and see are people
7 like them.

8 I am aware of some of that literature.
9 I'm also -- I was impressed with the staff's nuanced
10 attempt to deal with the Asian American question
11 because Asian Americans cannot be lumped, just as
12 Latinos cannot be lumped, in my view. There are many
13 different groups of them and they have different life
14 histories and most often when we talk about high
15 achieving Asian students, there are some that we're
16 not talking about. And if Yvonne Lee were here today,
17 she would say precisely that. And I think that their
18 nuanced attempt to deal with that question was
19 interesting.

20 I also thought as we talked about class
21 size what occurred to me is I was about to ask
22 Commissioner Thernstrom if she was aware of an elite
23 private school that had large class sizes for its
24 students. What I mean by elite, Phillips, Andover,
25 Exeter. I mean Sidwell Friends and the like, that

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1 routinely present the students with large class sizes
2 and find that this is a good way to teach the students
3 and who have parents who approve of large class sizes
4 for their students.

5 I visited many elite private schools and I
6 haven't seen one yet that thought that having a large
7 class size was appropriate and if she is aware of
8 people paying a lot of money to send their kids to
9 those schools.

10 So I am not an expert on education. I
11 don't hold myself out to be, although I used to run
12 federal education programs and have kept up with the
13 field since that time and do read the literature, but
14 I look forward to seeing what she said, but her
15 description, and I've also read her book. But her
16 description of her complaints about the report in the
17 way that it was done was to me the best evidence that
18 if the staff is to take these positions, they're going
19 to have to do a lot to explain what the opposite
20 literature is because there's considerable literature
21 on all these matters which are contested, highly
22 contested. There is no firm conclusion that I have
23 seen in the literature about any of these matters that
24 put it without the bounds of further discussion.

25 And in my view, the best indicators of

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1 scholarship is to be open to the fact that there is
2 always a continuing discussion of these matters and
3 that no one ever has the last word on the subject.

4 Yes, Commissioner Thernstrom?

5 COMMISSIONER THERNSTROM: Look, I welcome
6 a literature review. In fact, the most frequent
7 comment we have gotten on No Excuses is that it's
8 invaluable in the footnotes, particularly, literature
9 review of across the ideological spectrum. And I'd
10 love to see that in the report.

11 Now on the highly qualified teachers,
12 nobody disagrees that kids need highly qualified
13 teachers and nobody disagrees that there's a paucity
14 of them and there's a paucity of them, you know, in
15 suburban schools as well as in urban schools, but I do
16 agree that the -- in the large urban districts the
17 teachers are not good enough. These are children who
18 come, they are high needs children in terms of the
19 educational demand and they need very good teachers.
20 I think there are a lot of reasons why really
21 academically gifted people are not attracted to the
22 teaching profession and why the most academically
23 gifted teachers leave the inner city schools. The
24 work conditions are not what they should be and not
25 what they have to be in order to keep the best

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1 teachers there, but my point was simply, look, we do
2 not have a checklist and if you think that an end
3 degree or professional development points -- a math
4 teacher's professional development points which could
5 be in phys. ed, but count and the ed. degree for a
6 math teacher can be in math education and not in a
7 faculty of arts and sciences with actual math courses
8 or if you think that simply years warming a seat in a
9 classroom makes you a qualified teacher --

10 CHAIRPERSON BERRY: Who said that?

11 COMMISSIONER THERNSTROM: The point is --

12 COMMISSIONER BRACERAS: May I be heard?

13 CHAIRPERSON BERRY: .. Commissioner
14 Thernstrom isn't finished. Does the report say that,
15 Commissioner Thernstrom that sitting in a chair --

16 COMMISSIONER THERNSTROM: The report fails
17 to define highly qualified.

18 CHAIRPERSON BERRY: I see, I see.

19 COMMISSIONER THERNSTROM: And I am not --
20 and I'm simply saying to you I have never said at any
21 point that we do not need qualified teachers.

22 You say Asians should not be lumped
23 together, well, whites shouldn't be lumped together.
24 No group should be lumped together, but the fact is
25 that the National Assessment for Educational Progress

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1 does not disaggregate these groups. We do not have
2 the data we need and if you pulled out the data on
3 Asian -- the Vietnamese, Cambodian, Laotian
4 performance, then you'd have even higher Asian-
5 American averages. But you know, I'd love to have
6 that data. I'd like to have it -- we could do
7 something very simple. I would like what is the
8 country of origin of the parents. That would be very
9 important for African-American students as well.

10 COMMISSIONER BRACERAS: I'm sorry to
11 interrupt, but I am going to have to get off the
12 phone.

13 COMMISSIONER THERNSTROM: Please, please,
14 take --

15 CHAIRPERSON BERRY: I have not recognized
16 you, Commissioner Braceras. And I will recognize you
17 in just one second.

18 But I did ask Commissioner Thernstrom, do
19 you agree that in scholarship no one's work is ever
20 the last word?

21 COMMISSIONER THERNSTROM: Of course,
22 nobody's work is the last word.

23 CHAIRPERSON BERRY: Okay, I just wanted to
24 make sure you agreed.

25 COMMISSIONER THERNSTROM: That goes

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1 without saying.

2 CHAIRPERSON BERRY: Okay, thank you very
3 much. I appreciate that.

4 Commissioner Braceras?

5 COMMISSIONER THERNSTROM: Especially mine.

6 CHAIRPERSON BERRY: No one. Commissioner
7 Braceras?

8 COMMISSIONER BRACERAS: First of all, I'd
9 like to echo all of the things that Abby has said
10 about what the problems with this report are. But I'd
11 also like to say that the discussion that we've just
12 embarked on, particularly between the chair and
13 Commissioner Thernstrom, is one we should have had
14 weeks or months ago before the report was brought up
15 for a vote and it's one that's very illuminating and
16 one that I think we should -- it's exactly what we
17 should have been doing in order to help shape the
18 report down the road.

19 Now maybe it's too late to do that, maybe
20 it isn't, but I guess my bottom line is that unless
21 substantial changes could be made to this document,
22 I'm going to vote no for all the reasons Commissioner
23 Thernstrom stated and additional reasons as well.

24 CHAIRPERSON BERRY: Okay. Commissioner
25 Edley?

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1 COMMISSIONER EDLEY: I move to table so we
2 can have time to get some comments to the staff from
3 Commissioner Thernstrom and I have some I'd like to
4 provide as well.

5 CHAIRPERSON BERRY: And some of us want to
6 respond to the comments.

7 COMMISSIONER EDLEY: Right.

8 CHAIRPERSON BERRY: That you have.

9 COMMISSIONER EDLEY: Right. And I think
10 that -- okay.

11 VICE CHAIRPERSON REYNOSO: Second the
12 motion.

13 CHAIRPERSON BERRY: So as the maker, did
14 we have a motion? Do the maker of the motion and the
15 seconder accept to table?

16 COMMISSIONER EDLEY: Yes. If there's no
17 objection, we will table the report and look forward
18 to receiving comments that we can review and respond
19 to.

20 **State Advisory Committee Report on City**

21 **Services and the Justice System**

22 The next report is the State Advisory
23 Committee Report on *City Services and the Justice*
24 *System, Do Korean American Store Owners in Baltimore*
25 *Get Equal Treatment?*

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1 COMMISSIONER BRACERAS: I'm going to be
2 hanging up at this time.

3 CHAIRPERSON BERRY: Are you going to vote
4 for or against the Korean Store Owners?

5 COMMISSIONER BRACERAS: You can put me
6 down as for.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER BRACERAS: Okay? Thank you.

9 VICE CHAIRPERSON REYNOSO: Thank you.

10 CHAIRPERSON BERRY: You moved it,
11 Commissioner?

12 VICE CHAIRPERSON REYNOSO: I move.

13 COMMISSIONER EDLEY: Second. ..

14 CHAIRPERSON BERRY: Any discussion,
15 further? All in favor of approving the Korean Store
16 Owners Baltimore Report indicate by saying aye.

17 (Ayes.)

18 Opposed?

19 (No response.)

20 And we include Commissioner Braceras.

21 Pass.

22 **Proposed Closed Meeting on Personnel Matters**

23 The next item on the agenda is a proposed
24 closed meeting on personnel matters. This was an item
25 that we had on the agenda before and it was never

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1 taken up.

2 Did those who asked for it to be on the
3 agenda wish to discuss this matter further or has it
4 been overtaken by events?

5 COMMISSIONER REDENBAUGH: Yes. I think
6 I'm behind this issue. And I think it's been
7 overtaken by events.

8 CHAIRPERSON BERRY: That's what I thought.

9 COMMISSIONER REDENBAUGH: So I don't think
10 there's any need at all for a closed door discussion.

11 CHAIRPERSON BERRY: Okay. Yes,
12 Commissioner Thernstrom?

13 COMMISSIONER THERNSTROM: Just for the
14 record, I didn't think that we asked for a closed
15 door. We asked for a discussion, but I think we were
16 opposed to a closed door because there weren't
17 specific personnel matters, but whatever.

18 CHAIRPERSON BERRY: I think, didn't
19 counsel advise us that it should be?

20 STAFF DIRECTOR JIN: Again, if it's moot,
21 it's moot, but the reason I proposed we have a closed
22 session was after I had several conversations with the
23 Deputy General Counsel. I thought that was the better
24 way to go, but hopefully we don't have to get into
25 that conversation.

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1 CHAIRPERSON BERRY: Yes. Commissioner
2 Redenbaugh?

3 COMMISSIONER REDENBAUGH: Let me address
4 that, Staff Director, you feel that the questions that
5 I ask in my memo of gosh, I don't know --

6 STAFF DIRECTOR JIN: I know what you're
7 talking about.

8 COMMISSIONER REDENBAUGH: I'm sorry?

9 STAFF DIRECTOR JIN: I know what you're
10 talking about, Commissioner.

11 COMMISSIONER REDENBAUGH: Those are
12 questions that can only be answered in a closed door
13 session?

14 STAFF DIRECTOR JIN: No, I think some of
15 them could clearly be discussed in open session. I
16 think some of them should have been discussed in
17 closed sessions. Others are kind of in a gray area
18 and so because -- if we do go into closed session,
19 anything that is discussed that could have been
20 discussed in open discussion, under our rules we would
21 make a record of that anyway. I just thought that the
22 best approach and the most prudent approach was to
23 have that in closed session. I think it would have
24 generated a better discussion and it would have
25 avoided the risk that maybe something that would have

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1 been said in a public session wouldn't be said. So
2 that was my view. It was not that everything you
3 raised should have been in a closed session.

4 COMMISSIONER REDENBAUGH: Okay. Let me
5 consult my notes.

6 CHAIRPERSON BERRY: Okay.

7 VICE CHAIRPERSON REYNOSO: Can I move
8 adjournment?

9 CHAIRPERSON BERRY: You can, but let's
10 wait and see if Russell --

11 COMMISSIONER THERNSTROM: I think he's
12 done.

13 COMMISSIONER REDENBAUGH: No, I'm not
14 done.

15 COMMISSIONER THERNSTROM: Okay.

16 (Pause.)

17 CHAIRPERSON BERRY: We're waiting for
18 Russell. Does anyone have anything else while we're
19 waiting for Russell?

20 **Future Agenda Items**

21 COMMISSIONER THERNSTROM: What was the
22 future agenda items?

23 CHAIRPERSON BERRY: If there are any, if
24 anybody has got any beyond what we've already
25 discussed.

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1 Yes, Commissioner Redenbaugh, are you
2 satisfied?

3 COMMISSIONER REDENBAUGH: I am. I think
4 those events have been overtaken by time.

5 Are you about to adjourn?

6 CHAIRPERSON BERRY: Yes.

7 COMMISSIONER REDENBAUGH: I have one
8 observation and I hope it will be of a
9 noncontroversial nature.

10 CHAIRPERSON BERRY: Okay. Listen up.

11 COMMISSIONER REDENBAUGH: It dawned on me
12 that we rather painfully and clumsily have moved to
13 approach the process that we discussed, not well, in
14 January of Commissioner input to the report production
15 process.

16 CHAIRPERSON BERRY: Not really, because
17 what we have done which I think is a good thing is we
18 have said that Commissioners will now do what we've
19 been asking Commissioners to do for years which is to
20 come and meet with the Staff Director and the staff
21 and discuss reports. And what we asked before, and
22 you did that on the Ten Year Checkup, I guess it was,
23 Funding, Funding.

24 COMMISSIONER REDENBAUGH: Right.

25 CHAIRPERSON BERRY: And you did that. And

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1 now you're having further meetings. We have always
2 thought that, but there's no reason not to have had
3 several meetings of that type before the report ever
4 came up which was entirely possible to do.

5 COMMISSIONER REDENBAUGH: So what is it
6 that we have not really done that I thought we had
7 done?

8 (Laughter.)

9 I got confused.

10 COMMISSIONER EDLEY: We should discuss
11 that in closed session.

12 CHAIRPERSON BERRY: We'll discuss that in
13 closed session, Russell.

14 (Laughter.)

15 COMMISSIONER REDENBAUGH: I assume we want
16 to make sure that I haven't done anything that I
17 didn't think we hadn't done and intended not to do.

18 CHAIRPERSON BERRY: No, no, no. It had to
19 do with meetings convened, special assistants and this
20 staff person, and that. It was a whole convoluted
21 thing. But essentially, I see you as doing exactly
22 what I had hoped people would do all this time when I
23 kept saying go meet with the Staff Director and his
24 staff.

25 COMMISSIONER REDENBAUGH: It sometimes

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1 does take me a long time to figure it out.

2 CHAIRPERSON BERRY: Oh Russell, don't give
3 me that.

4 Yes, Commissioner Thernstrom?

5 COMMISSIONER THERNSTROM: Number one, I
6 did meet with staff.

7 CHAIRPERSON BERRY: I know you did. You
8 should have met again. It might have been helpful.

9 COMMISSIONER THERNSTROM: You know I need
10 a document in front of me to meet again and go over
11 slowly what problems I have and so forth. It's got to
12 be a kind of on-going process of that sort. But also,
13 could we as Commissioners have copies of the response
14 of the Commission to the GAO report that was sent out?
15 Would that be possible? Wasn't it October?

16 STAFF DIRECTOR JIN: Yes, I thought you
17 had copies of it. Our response is attached, so we'll
18 provide you with copies. We'll provide all of you
19 with copies of the report which includes all the
20 attachments.

21 CHAIRPERSON BERRY: Okay, the answer is
22 yes.

23 COMMISSIONER KIRSANOW: That reminds me,
24 we were copied a couple of months ago, I think with a
25 letter that came from I believe the Judiciary

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1 Committee about the attempts by GAO to meet. And I
2 know you had responded and I was wondering what the
3 status of that was. Were there documents that were to
4 be turned over? Were there meetings and what's the
5 current status?

6 STAFF DIRECTOR JIN: Sure. The Commission
7 might remember there were two examinations, one having
8 to do with for lack of a better description kind of
9 what the oversight, structural oversight, the other
10 having to do more with financial management and we had
11 open meetings with both of them. We've had subsequent
12 meetings with both of them. I've met actually a
13 couple of times now with GAO.

14 I have another meeting planned this
15 upcoming week that was very easily mutually agreed
16 upon. They've asked us for certain documents and in
17 that kind of situation there's always going to be a
18 little give and take in terms of getting all the
19 documents there. But I think we're moving
20 cooperatively and in agreement and so I think we're
21 moving forward pretty well. And I think the
22 Commissioners might remember that at least one of the
23 Committees asked for your names and phone numbers so
24 we've provided that and we've alerted you that you
25 might be getting calls. So I think that's the status.

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1 COMMISSIONER KIRSANOW: This is part of
2 the Do Not Call Registry.

3 In terms of the give and take of
4 documents, are there certain documents that are
5 privileged that you wouldn't be handing over?

6 STAFF DIRECTOR JIN: No, it's not that at
7 all. It's just that it takes time, sometimes to get
8 all the documents and the documents are in possession
9 of other parties and it's just -- again, we're
10 cooperating. We're moving forward, but I don't want
11 to come across like I'm always referring to the
12 resource issue, but we are short-staffed, so we are
13 trying to do the best we can and even now, as we speak,
14 the financial management part of the GAO, they've been
15 here every day for probably about a week and a half
16 and we've been trying to meet with them and provide
17 them with the documents that they've asked for. And
18 at the same time, not only putting in today's meeting,
19 but yesterday's meeting. So it's a matter of juggling
20 everything.

21 And again, I think that we're not only
22 acting in good faith, we are acting very productively
23 and we're trying our best to keep to the exact
24 schedule they requested. And to the extent that we're
25 slipping a little bit, it's fairly small.

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1 COMMISSIONER KIRSANOW: So we will be
2 providing them with everything they need?

3 STAFF DIRECTOR JIN: Sure.

4 COMMISSIONER KIRSANOW: Good.

5 CHAIRPERSON BERRY: All right, anything
6 else?

7 I entertain a motion to adjourn.

8 COMMISSIONER KIRSANOW: So moved.

9 CHAIRPERSON BERRY: Second. All in favor,
10 ayes.

11 (Ayes.)

12 The meeting is adjourned, without
13 objection. Thank you.

14 (Whereupon, at 11:53 a.m., the meeting was
15 adjourned.)

16

17

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