

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY,

JANUARY 9, 2004

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WASHINGTON, D.C.

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

PRESENT:

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

LESLIE R. JIN, Staff Director

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STAFF PRESENT:

DEBRA CARR, ESQ., Deputy General Counsel, OGC
 IVY DAVIS, Chief, Regional Programs
 Coordination Unit
 TERRI DICKERSON, Assistant Staff Director, OCRE
 PAMELA A. DUNSTON, Chief, ASCD
 GEORGE M. HARBISON, Chief, BFD
 TINALOUISE MARTIN, Director, HRD
 MARC PENTINO
 KWANA ROYAL
 JOYCE SMITH, Parliamentarian
 AONGHAS ST. HILAIRE
 ALEXANDER SUN
 DEBORAH VAGINS
 AUDREY WRIGHT
 TIFFANY WRIGHT
 MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

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

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

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(9:37 a.m.)

CHAIRPERSON BERRY: The meeting will come to order. Happy New Year to everyone and good morning.

I. Approval of Agenda

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

COMMISSIONER EDLEY: So moved.

CHAIRPERSON BERRY: Could I get a second?

COMMISSIONER REDENBAUGH: Second

CHAIRPERSON BERRY: All in favor indicate by saying aye.

(Chorus of ayes.)

CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: So ordered.

II. Approval of Minutes of Dec. 12, 2003 Meeting

CHAIRPERSON BERRY: The next item on the agenda is the approval of the minutes of December 12th meeting. Does anyone have any changes or --

VICE CHAIRPERSON REYNOSO: Should I identify myself? I'm Cruz Reynoso.

(Laughter.)

1 VICE CHAIRPERSON REYNOSO: Just a small
2 change. I had made the announcement pertaining to
3 Senator Paul Simon, if that could be included.

4 CHAIRPERSON BERRY: It's not in here?

5 VICE CHAIRPERSON REYNOSO: I didn't find
6 it.

7 CHAIRPERSON BERRY: That's right. You
8 did.

9 VICE CHAIRPERSON REYNOSO: Is it there? I
10 missed it.

11 CHAIRPERSON BERRY: I don't see anything.

12 COMMISSIONER MEEKS: Actually what is not
13 there is that it's you.

14 CHAIRPERSON BERRY: Yes, I didn't announce
15 that. Vice Chair Reynoso did.

16 STAFF DIRECTOR JIN: We'll make that
17 correction.

18 CHAIRPERSON BERRY: Okay. Anybody have
19 anything else on the minutes?

20 (No response.)

21 CHAIRPERSON BERRY: Okay, all right. All
22 in favor of approving the minutes as changed, indicate
23 by saying aye.

24 (Chorus of ayes.)

25 CHAIRPERSON BERRY: Opposed?

1 (No response.)

2 CHAIRPERSON BERRY: So ordered.

3 **III. Announcements**

4 CHAIRPERSON BERRY: The next item on the
5 agenda is announcements. I would like to announce
6 that Phil Montez, who has been Regional Director in
7 the Western Region of the Commission and has been with
8 the Commission since 1967, has retired. He announced
9 his retirement after all of these years of service.

10 VICE CHAIRPERSON REYNOSO: And he's just a
11 kid.

12 CHAIRPERSON BERRY: Right. He's just a
13 kid, and Phil did a wonderful job all of these years
14 out there in the West, and we will miss him, but I
15 certainly hope he will have a wonderful retirement,
16 and I certainly believe he will knowing Phil.

17 Also, Marc Pentino, who worked in the
18 Eastern Regional Office for the past nine years and
19 who also worked on the West Virginia SAC report that
20 we will be considering today, is leaving to go to the
21 Department of Transportation, and we wish him all the
22 best.

23 The other announcement, Prince Holliday,
24 who is a Michigan staff member from Detroit, died in
25 his sleep on December 19th, 2003. He was at Blue

1 Cross/Blue Shield in a variety of management roles,
 2 including corporate vice president, and agreed to be
 3 on a number of civic boards in Detroit, including
 4 Detroit Downtown, and served on our SAC for which we
 5 were very grateful.

6 Since we last met, the California law that
 7 would have allowed undocumented persons to get
 8 driver's licenses has been repealed, and this has
 9 been, of course, a source of some consternation to
 10 some people and pleasure to some people in California
 11 and has raised a lot of issues.

12 January 20th, 2004, is the anniversary of
 13 the birth of Martin Luther King, Jr., and we will
 14 commemorate the 75th anniversary of his birth this
 15 year, and we will, of course, honor the ideals for
 16 which he fought and celebrate how far we have come as
 17 well as recognizing how far we have to go on these
 18 issues.

19 Thanks to his leadership, our nation has
 20 made extraordinary progress in eradicating
 21 discrimination, invidious discrimination, in the last
 22 few years we have created the Martin Luther King, Jr.
 23 holiday, which still exists, and Dr. King's legacy
 24 will be honored as we move the nation closest to its
 25 highest ideals.

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1 January 1st, 1863, was the day on which
2 President Abraham Lincoln issued the Emancipation
3 Proclamation during the beginning of the third year of
4 the Civil War, and which freed some slaves, although
5 in class, one always debates how many slaves were
6 freed and were they freed and whatever, and was
7 Lincoln the emancipator, but the people at the time
8 thought he was, and some slaves were freed. It was
9 followed, of course, by the passage of the 13th
10 Amendment.

11 The Supreme Court ruled in Lau v. Nichols
12 on January 21st, 1974, 30 years ago, that having
13 children arrive at school with little or no English
14 speaking ability, and providing sink or swim
15 instruction was a violation of their civil rights.
16 Lau, of course, is grounded in Title VI of the Civil
17 Rights Act of 1964, and the Commission has done a lot
18 of work on limited English proficiency and continues
19 to do that.

20 Does anyone else have any announcements
21 they wish on any subject whatsoever?

22 (No response.)

23 CHAIRPERSON BERRY: Hearing none, the next
24 item on the agenda is the Staff Director's report.
25 Does anyone have any questions to raise or comments or

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1 anything else?

2 But before we do that, I want to ask just
3 one question, and that, Commissioner Redenbaugh, I
4 would like to know whether there is anything that
5 could be done to make sure that the Commission
6 effectively accommodates your disability. Is
7 everything being done that can be done or is there
8 anything else we could do?

9 It occurred to me that I ought to assure
10 myself of that.

11 COMMISSIONER REDENBAUGH: Well, let me
12 give it some further thought. I'm aware of nothing.
13 Thank you.

14 CHAIRPERSON BERRY: At the moment, you
15 mean.

16 COMMISSIONER REDENBAUGH: At the moment,
17 yes.

18 CHAIRPERSON BERRY: Okay, but if there is
19 anything, make sure, and if any issue is raised or
20 there is anything you need, let's make sure you get
21 it. Okay?

22 COMMISSIONER REDENBAUGH: Is there
23 something that prompted this concern?

24 CHAIRPERSON BERRY: Only my waking up in
25 the middle of the night as I always do thinking about

1 Commissioner Redebaugh.

2 (Laughter.)

3 CHAIRPERSON REYNOSO: I don't know if you
4 want to go down that road.

5 COMMISSIONER REDENBAUGH: Perhaps we
6 should consider this at another moment.

7 (Laughter.)

8 CHAIRPERSON BERRY: No, no, no, no. On my
9 "to do" list and thinking at the beginning of the
10 year. You were one of my 12 items on my list. So I
11 just thought I would make sure.

12 COMMISSIONER BRACERAS: And why aren't the
13 rest of us thought of?

14 CHAIRPERSON BERRY: Because you don't have
15 a disability, to my knowledge.

16 COMMISSIONER BRACERAS: How do you know?

17 (Laughter.)

18 VICE CHAIRPERSON REYNOSO: I think what
19 Mary is telling us is she's reached the age where
20 she's beginning to think about these things.

21 (Laughter.)

22 CHAIRPERSON BERRY: Anyway, okay. Good.
23 Now, does anybody have anything for the Staff Director
24 that they'd like to raise?

25 COMMISSIONER REDENBAUGH: Yes. The issue

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1 that I wrote about regarding the home town meetings,
2 is the Staff Director's report the place for that
3 discussion?

4 CHAIRPERSON BERRY: Yes, absolutely.

5 COMMISSIONER REDENBAUGH: Oh, good. Then
6 if this would be the appropriate time, I'd like to
7 discuss the logic of our holding a meeting in Seattle.

8 The communication announcing that location didn't
9 include any of the reasoning behind that.

10 CHAIRPERSON BERRY: And you'd like to know
11 from the Staff Director why I -- the procedure says
12 that I decide where we meet base on consultation with
13 the Staff Director.

14 COMMISSIONER REDENBAUGH: Okay, but --

15 CHAIRPERSON BERRY: But in the
16 consultation --

17 COMMISSIONER REDENBAUGH: Perhaps I should
18 direct the question be --

19 CHAIRPERSON BERRY: Yeah, please do. He
20 can speak to it, but I --

21 COMMISSIONER REDENBAUGH: Well, no. I
22 would think that it would be better if he did.

23 CHAIRPERSON BERRY: Okay. Upon the Staff
24 Director's advice that we have not yet met with the
25 Regional Director and the SACs from the Western

1 Region, although we have been to various other regions
 2 to meet, and that he thought that it was time that we
 3 did that, and he recommended that we go to some place
 4 in the Western Region so that those SAC chairs can all
 5 come to tell the Commission about what's going on in
 6 their regions, and that he had gotten some inquiries
 7 from them as to why we didn't want to come out and
 8 meet with them.

9 It occurred to me that we could get
 10 briefed from then on what's going on there, and that
 11 the Staff Director said he would also identify issues
 12 that could be discussed while we were there and get a
 13 perspective from the West Coast on some of the
 14 important issues as well as there were a couple of
 15 site visits that he had in mind.

16 But his primary concern, as he explained
 17 it to me, was that there were a lot of things that
 18 they wished to discussion, and we have been to every
 19 other region or most of them. We have not visited any
 20 regions in the Western Region.

21 COMMISSIONER REDENBAUGH: There isn't any
 22 particular event in Seattle of which I was unaware.

23 CHAIRPERSON BERRY: All right. We could
 24 go to Portland. I guess that's in the Western Region.
 25 There are a lot of places in the Western Region, but

1 Seattle seemed to be -- it was a place he recommended.
2 So that was the -- it seemed to me to be a good idea.
3 I accepted that.

4 COMMISSIONER REDENBAUGH: Obviously
5 meteorological considerations weren't given much
6 weight.

7 CHAIRPERSON BERRY: Which considerations?

8 COMMISSIONER REDENBAUGH: Meteorological.

9 CHAIRPERSON BERRY: Meteorological.

10 COMMISSIONER REDENBAUGH: Weather.

11 CHAIRPERSON BERRY: You mean rain.

12 (Laughter.)

13 CHAIRPERSON BERRY: No, it had nothing to
14 do with that.

15 COMMISSIONER REDENBAUGH: No, I see that.

16 CHAIRPERSON BERRY: Otherwise we would
17 have gone to Hawaii maybe.

18 COMMISSIONER EDLEY: I do think the law
19 school at Berkeley would be delighted to host a
20 Commission next fall, meaning --

21 CHAIRPERSON BERRY: This fall?

22 COMMISSIONER EDLEY: No, I'm serious. I'm
23 completely serious.

24 COMMISSIONER REDENBAUGH: Well, this sort
25 of raises a larger question in which is absent, you

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1 know, some compelling local issue, which often there
2 is, you know, reason, I'm concerned as I often am
3 about is this the best use of our limited resources,
4 and particularly, this is, I think, a question
5 probably more specifically for the Staff Director in
6 terms of the allocation of the financial resources
7 against our other projects and against the personnel
8 needs.

9 How do you make the assessment about the
10 return, rate of return, on something like that versus,
11 say, if we need to meet with the Western people
12 bringing them here versus us going there.

13 CHAIRPERSON BERRY: Well, I would let him
14 answer the balance of resources question, but I would
15 say that in my own view, it would probably cost more
16 to bring all of the people from the West, the guy from
17 Hawaii and the SAC chairs from the West to Washington
18 than it would to go there.

19 And also, I think that when we go to
20 places and we make visits and the people in the
21 community have a chance to come and see us and talk to
22 us and see us in action. They very much appreciate
23 it.

24 I mean, I have been just astounded by the
25 reception in most of the places that we went, the

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1 people who come out, the local media's interest in
 2 what we're doing, and I think that it's good for us to
 3 be out on the ground seeing people and letting them
 4 see us in different regions of the country and having
 5 an opportunity to come and listen to what we do and
 6 watch what we do.

7 I just have found that to be of
 8 incalculable benefit. I don't know what the dollar
 9 balances are for the Staff Director. He can answer
 10 that, but I just found it very beneficial. I don't
 11 know if other members or Commission have found it
 12 beneficial, but I think -- yes, Vice Chair.

13 VICE CHAIRPERSON REYNOSO: Well, Madame
 14 Chair, I had my Assistant Laura just check, and
 15 actually we've discussed this matter several times.
 16 I'm looking now at November '02, where you said
 17 practically the same thing:

18 "It is clear that we go to places for a
 19 combination of reasons, and the Staff Director and I
 20 discussed that sometimes it's a hot issue there.
 21 Other times there are several issues, and the SAC may
 22 need to be in need of reinforcement or wish to have us
 23 urging to come to meet with them in terms of
 24 reinforcing what they're doing in their local
 25 communities, et cetera."

1 So you're pretty consistent, but beyond
2 that, I would say that I've been very enthused about
3 the meetings that we've had away from Washington,
4 meeting with the folk that deal with these issues day
5 in and day out.

6 At one time I remember the staff did do a
7 financial study when we were meeting some other place,
8 and it came out that the expenses were about even
9 because sometimes you get cheaper hotel rooms, et
10 cetera, et cetera. Sometimes it's even cheaper to fly
11 elsewhere than to Washington, D.C.

12 But I just think that it has been of
13 tremendous value not only to us, but to the folk that
14 we meet with, and I think the procedure has worked
15 well.

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

17 CHAIRPERSON BERRY: Okay. I don't know.
18 Do you want the Staff Director to say something,
19 Commissioner Redenbaugh?

20 COMMISSIONER REDENBAUGH: Yeah, I'm just
21 concerned about two -- obviously there's merit and
22 benefit in traveling for all of the reasons both you
23 and Cruz have mentioned, and how does that weigh
24 against the personnel needs and staffing the agency
25 and compensating the staff in the way that they need

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1 to be, and does the fact that we're under a continuing
2 resolution impact our ability to do travel?

3 STAFF DIRECTOR JIN: Yes, sir. I think
4 the fact that we're under a continuing resolution,
5 especially this particular continuing resolution which
6 runs to the end of this month, and then the way that
7 they've been running so far is that, this is not like
8 somebody may remember in 1994 when there were some
9 real serious questions as to whether the government
10 would continue to operate and continuing resolutions
11 were running a few days at a time.

12 That's not the situation here. I think
13 that clearly everybody is interested in making sure a
14 lot of the agencies can operate. So I don't think
15 that's of real issue here.

16 I think one of the things at this point,
17 again, the Commissioners remember when the
18 Commissioners decided in good part on the
19 recommendation of staff and I certainly thought it was
20 a good idea.

21 Because of the resource issue, certainly
22 the Commissioners at this point felt that we should
23 not travel every month. Even though that still may be
24 a good idea, I would have some concerns because on the
25 whole it costs a little more to travel. It's hard

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1 kind of comparing apples and oranges because a lot of
2 times when we travel we have briefings and hearings,
3 especially with our projects. So it's kind of hard to
4 compare everything.

5 But it does cost a little more to travel,
6 and so if we travel every month, I would have some
7 concerns, but the last time we traveled was when we
8 went to Albuquerque to look at Native American health
9 care, which is one of our projects. The time before
10 that was in February when we went to Charlotte and in
11 part to look at educational accountability.

12 So the last time we really traveled just
13 to kind of see what's going on out in the different
14 regions and so forth was really a year ago. So, under
15 those circumstances, I think our travels are certainly
16 a very reasonable use of resources, and obviously
17 anything we do that's of value costs some money,
18 whether it be our reports, our SAC activities,
19 everything. So use of our Lexis/Nexis.

20 So in terms of the context of everything,
21 I think it's a very reasonable expenditure under the
22 circumstances.

23 COMMISSIONER REDENBAUGH: So you don't
24 feel it's restraining your ability on the personnel
25 side?

1 STAFF DIRECTOR JIN: Well, obviously, as
 2 I've said, I think, a number of times, and I think
 3 most of you agree with me, because our budget has
 4 decreased in terms of real current dollars every year,
 5 we need more money. So, sure, it's a constraint, but
 6 again, just like I think it's your jobs and my jobs to
 7 try to try to continue to do good work and get good
 8 products out there and do all of the stuff that the
 9 Commission is supposed to do within the budget
 10 constraints, I mean, this just falls for me within one
 11 of those areas.

12 COMMISSIONER BRACERAS: May I be heard?

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER BRACERAS: I mean, with all
 15 due respect, I don't really think that answers
 16 Commissioner Redenbaugh's question. I think he's
 17 asking you, and my concern as well, is about
 18 priorities. I mean, you're saying, yes, we need more
 19 money. Okay, fine. We don't have it.

20 So given what we do have, you know, is the
 21 priority to hear from SAC leaders or to compensate our
 22 overworked and overburdened staff or to buy new
 23 computers or to whatever?

24 I mean, you know, part of being an
 25 administrator and a manager is having to prioritize

1 within the budget that you're given. So I'm curious
2 as to what those priorities are.

3 STAFF DIRECTOR JIN: Okay, Commissioner.
4 I think if the question was, should this be the first
5 priority over every priority, my answer would be no,
6 but I think in terms --

7 COMMISSIONER BRACERAS: I'm asking you
8 what your priorities are.

9 STAFF DIRECTOR JIN: Well, first of all,
10 I'd be happy to try to answer that, but I think it's
11 important to remember that this question is not
12 simply, that's my personal priorities. I think my
13 priority is to implement the responsibilities of the
14 Commission, including the desires of the
15 Commissioners, in a way consistent with the legal
16 mandates. So the Commissioners have --

17 COMMISSIONER BRACERAS: Well, I can assure
18 you --

19 STAFF DIRECTOR JIN: The Commissioners
20 have, in my mind, appropriately and wisely voted to at
21 least periodically visit some of the regions. I can
22 tell you from talking to -- I talked to the SAC chair
23 just a couple of days ago. He's very excited that the
24 Commissioners are coming out to that Pacific Northwest
25 Region, and the only thing I would caveat that with

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1 what Dr. Barry said, the Chair said is it's not just
2 going out West. We're going out to the Pacific
3 Northwest.

4 I mean, that's a little different. I used
5 to live there, and there are different parts of the
6 country that feel like nobody pays attention to them.
7 Pacific Northwest is one of those parts, and so this
8 really to some of the people out there is important.

9 So I think in terms of value, this is a
10 very good value, and it's a wise expenditure
11 consistent with what the Commissioners have voted.
12 That's a good idea.

13 COMMISSIONER BRACERAS: I mean, I
14 understand that in an ideal world it would be a good
15 idea. In a world of limited resources, I haven't seen
16 a rationale laid out as to why this takes precedence
17 over other things. I mean, you say you're acting on
18 the wishes of the Commissioners. I can assure you
19 that 50 percent of the current Commission doesn't
20 think this is a good idea.

21 So, you know, you may we acting on some
22 prior vote, but I can tell you right now four of the
23 people whom you allegedly report to and take orders
24 from don't think it's a good idea.

25 CHAIRPERSON BERRY: Well, I think we

1 should -- I'm going to call the discussion because the
 2 procedure is that I make the decision after the Staff
 3 Director makes a recommendation to me. The Staff
 4 Director can only operate on prior votes until there
 5 is another vote, and until the procedure is changed, I
 6 intend to continue to make the decision.

7 And I am happy to be responsible for it,
 8 and I took his advice and one may quibble with his
 9 advice, but unless the Commission wishes to try to
 10 call for some kind of vote to change the procedure
 11 then, we have had this discussion several times, and I
 12 see no reason to continue it unless there's a motion
 13 on the floor.

14 Yes, Commissioner Redenbaugh.

15 COMMISSIONER REDENBAUGH: I ask that since
 16 these decisions are, as you pointed out, well thought
 17 out, ahead of the selections being made, that when the
 18 selection is made and we're notified, that the basis
 19 for that be shared with us so that we can begin to
 20 organize our thinking around that so that we have more
 21 notice of the thinking behind the decision.

22 CHAIRPERSON BERRY: That sounds like a
 23 very seductive idea, very nice and benign idea, but
 24 what it presumes is that there's some basis on which
 25 to challenge the discussion, and the decision is made

1 in accordance with a procedure.

2 So while part of me says, "Oh, sure, we
3 will share with you all of the reasons why this
4 decision was made, the procedure doesn't require us to
5 do that. But to the extent that we can, Commissioner
6 Redenbaugh and to the extent that the Staff Director
7 can, then we'd be happy to share the basis of the
8 decision for you -- with you when it is made. Okay?

9 COMMISSIONER REDENBAUGH: But there's no
10 presumption. Thank you.

11 CHAIRPERSON BERRY: Commissioner
12 Thernstrom has --

13 COMMISSIONER THERNSTROM: I think
14 Commissioner Kirsanow had his hand up first. I'd be
15 delighted to let him go first.

16 COMMISSIONER KIRSANOW: Thank you.

17 I was just curious as to whether or not
18 there has been any budgetary analysis made with
19 respect to this particular trip, and if so, what is
20 the budgetary impact of the Seattle trip as you
21 estimate it to be, and conversely, as I think
22 Commissioner Reynoso indicated, that on occasion it
23 seems that it might be just as expensive to have
24 people come here. Has there been any analysis done of
25 what the expense would be to have the anticipated

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1 people who are going -- the people who we anticipate
2 are going to be present at this particular meeting in
3 terms of SAC people coming here, what the budgetary
4 impact of that would be.

5 COMMISSIONER THERNSTROM: Well, can I just
6 piggyback on that one second so that it becomes one
7 question, and I have a question on a completely
8 different matter as well.

9 But, you know, I think there would be
10 concern on the part of some of us if, for instance,
11 the trip had an impact on performance bonuses for the
12 staff, on step increases for the staff. In other
13 words, it would be nice to have some more information
14 as to exactly what the budgetary impact.

15 CHAIRPERSON BERRY: I have no intentions
16 of -- well, let's just be clear. I will not, unless
17 there is a vote to do so, direct the Staff Director to
18 put in writing on a piece of paper some analysis that
19 pits the staff and its bonuses and its step increases
20 and all of this stuff. All that is is obfuscation,
21 and anyone can see through it.

22 So we can sit there and talk about this
23 all day long if you want to, but I am not going to
24 instruct, unless there is a vote by a majority to do
25 so, the Staff Director to do anything except what he's

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1 already doing, and I am going to make a decision about
2 whether or not we go someplace in accordance with the
3 procedure that is there.

4 I have already told Commissioner
5 Redenbaugh we will share with him or with you to the
6 extent possible the basis of the decision to go to a
7 certain place, and I think that's reasonable, but I
8 think going behind the decision to do all of this kind
9 of analysis is unnecessarily burdensome and is
10 unnecessarily contentious.

11 So with that, unless there is a motion,
12 yes?

13 COMMISSIONER EDLEY: No, I'd just like to
14 ask my colleagues, and Commissioner Braceras made the
15 point about it being a four-four split. That's
16 obviously true. In a matter of months, you will have
17 a majority. Change the policies; change the
18 procedures. I would really like to move on to the
19 substance of what we've got on the table today and
20 talk about that.

21 COMMISSIONER THERNSTROM: Yes. I have one
22 other question for the Staff Director not on this
23 subject.

24 CHAIRPERSON BERRY: Okay, sure.

25 COMMISSIONER THERNSTROM: Is there some

1 policy that it would be useful for you to articulate
2 as we are now already thick into the presidential
3 campaign season as to what the guidelines are with
4 respect to endorsements, involvement, and so forth? I
5 think it would be useful for Commissioners.

6 CHAIRPERSON BERRY: I can help you in that
7 connection. You may not know this because you weren't
8 here, but this question came up before in the last
9 election cycle, and --

10 COMMISSIONER THERNSTROM: Okay. I wasn't
11 here.

12 CHAIRPERSON BERRY: I'm telling him
13 because he wasn't.

14 COMMISSIONER THERNSTROM: Oh, okay.

15 CHAIRPERSON BERRY: He won't know the
16 answer, but if you look in the files or have OGC or
17 somebody look in the files, you will find that the
18 same question came up the first time with reference to
19 Commissioner Ramirez in one of those elections, and
20 she was supporting Fritz Mondale, and it was answered
21 in terms of Commissioners have the right to do
22 whatever they feel like doing in a campaign.

23 We're special government employees as you
24 know, and Commissioners may do as other citizens do on
25 these issues, as they wish, but you should unearth

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1 that.

2 COMMISSIONER BRACERAS: Well, it would be
3 useful to have.

4 COMMISSIONER THERNSTROM: Yeah, and
5 identifying themselves as members of the U.S.
6 Commission on Civil Rights or --

7 CHAIRPERSON BERRY: Identifying themselves
8 for purposes of identification, which the public
9 already knows, as Commissioners if they want to,
10 professors, whatever they are, yes, anything that they
11 are by description, but I think it would be better
12 that the --

13 COMMISSIONER BRACERAS: Yeah, it would be
14 helpful to have something in writing because I think
15 all of us want to be conscious of that, and also, you
16 know, how you can identify yourself, and any details
17 that you have would be useful.

18 STAFF DIRECTOR JIN: Okay. Will do.

19 CHAIRPERSON BERRY: And how others can
20 identify you because, as you know, whether you
21 identify yourself or not, others may identify you
22 however they wish.

23 COMMISSIONER BRACERAS: Yes.

24 COMMISSIONER EDLEY: While you're digging
25 around in the file cabinets, if you have something

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1 also that is a guidance about identifying ourselves in
2 things that we write, that would be --

3 CHAIRPERSON BERRY: That we publish?

4 COMMISSIONER EDLEY: Yeah.

5 COMMISSIONER BRACERAS: That have nothing
6 to do with the campaign, that might just be on a --

7 COMMISSIONER EDLEY: Yeah. I mean, I'm
8 just finishing a book chapter. I don't know. I just
9 don't know if there are rules.

10 STAFF DIRECTOR JIN: Okay. We'll do that.

11 CHAIRPERSON BERRY: Okay. Anybody have
12 anything else?

13 (No response.)

14 **V. State Advisory Committee Report: Coping**
15 **with Police Misconduct in West Virginia**

16 CHAIRPERSON BERRY: Okay. The State
17 Advisory Committee report, the next item on the
18 agenda, coping with police misconduct in West
19 Virginia. Can I get a motion to accept the report?

20 COMMISSIONER EDLEY: So moved.

21 CHAIRPERSON BERRY: Could I get a second?

22 COMMISSIONER MEEKS: Second.

23 CHAIRPERSON BERRY: Yes?

24 VICE CHAIRPERSON REYNOSO: Madam Chair, I
25 just wanted to comment I thought that was well done,

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1 and I think the Advisory Committee is to be commended,
2 as I think we said with another advisory committee,
3 just sticking to this issue for some time.

4 And I want to commend particularly the
5 last portion of the Chapter 4 of the report,
6 "Alternative Models for Police Disciplinary
7 Procedure," and I want to comment particularly, that
8 I'm convinced as they are that we need to take a
9 second look at police community relations, and that
10 the notion of accountability in terms of incentives
11 for the police in terms of examining what a police
12 officer on the street thinks is a good thing, and so
13 they will commend one another for having done that
14 good thing, and really it's the key for any potential
15 improvement rather than -- I shouldn't say "rather,"
16 but that would be far better than civilian review
17 boards and other folk who are looking at what they're
18 doing from the outside.

19 And I just go out of my way to mention
20 that because this is the first report that I've seen
21 from an advisory committee nibbling at that those
22 issues, and since they have been dealing with this
23 issue now for several reports apparently. The next
24 time they look at it and focus on that, I think it
25 would be very helpful for them and for us.

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1 CHAIRPERSON BERRY: Which is the culture
2 of this.

3 VICE CHAIRPERSON REYNOSO: Exactly, the
4 culture within the police department, and when an
5 officer does something good, for example, they mention
6 that officers will get rewarded based on the number of
7 arrests, and they suggest that maybe there ought to be
8 a reward for the number of times that they're able to
9 diffuse a volatile situation into a nonvolatile
10 situation. There ought to be measurements and ways of
11 looking at the good things that officers do.

12 But I don't think that we've done enough
13 work in that area, and since this advisory committee
14 has been following these issues for some time, it
15 seemed to me that if they continue doing this sort of
16 work, maybe that ought to be the focus of their next
17 report.

18 So I just thought it was a good report,
19 but I am particularly interested in that aspect of it.

20 CHAIRPERSON BERRY: Well, the subject of
21 police misconduct, I don't know if you noticed it, but
22 this week there's a settlement in New York in the
23 Amadou Diallo --

24 VICE CHAIRPERSON REYNOSO: Yes, yes.

25 CHAIRPERSON BERRY: -- case for millions

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1 of dollars.

2 VICE CHAIRPERSON REYNOSO: Right.

3 CHAIRPERSON BERRY: First, I noticed that
4 at least one of the New York papers gave some credit
5 to the Commission for its report on the New York
6 Police Department on racial profiling as being
7 instrumental in this, but I think that there was a
8 study done one time of all of the funds that have been
9 paid by municipalities in police brutality cases. It
10 was an extraordinary amount of money that they've had
11 to pay out, which you would think -- and I remember we
12 discussed this once with an expert who was here. I've
13 forgotten his name. He was a really great professor
14 at some place in New York -- of the issue of why
15 police departments don't behave better when there are
16 such big damage awards of amounts that they have to
17 pay out in settlements.

18 And I remember he told us it's because the
19 police aren't paying it.

20 VICE CHAIRPERSON REYNOSO: Right.

21 CHAIRPERSON BERRY: He told us that
22 sitting right here. He said, "They're not the ones
23 who are paying the money. It's the municipalities."

24 But the taxpayers there have that amount
25 in terms of their social services reduced or their tax

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1 bills increased by that amount.

2 VICE CHAIRPERSON REYNOSO: We hear about
3 quite a bit in New York, Los Angeles, the bit cities -
4 - it took me a little bit aback -- that this report
5 out of West Virginia also raises that issue, and they
6 give some of the figures, and apparently it's pretty
7 high even in West Virginia.

8 But in my comments, I was actually
9 thinking about the hearings we had in Los Angeles, the
10 hearings we had in New York, and I remember one
11 gentleman, a black minister testifying that the
12 hearing we have there, particularly with that special
13 unit that had been set up in the police department,
14 was simply the last of a series of issues tha the had
15 been concerned with, and that he wasn't blaming the
16 Commissioner or the mayor at that time because he had
17 been dealing with these issues for 30 years.

18 Whether the administration was Democratic
19 or Republican, somehow these issues didn't go away.
20 They would come up in different forms. So that's one
21 of the reasons, and I couldn't help but think about
22 that in reading this report and why I continue to
23 think that more study needs to be done about the
24 culture and the matter of rewards and training and all
25 of that of the cop on the beat rather than -- even in

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1 New York we had the mayor and the Commissioner come
2 and tell us about all of the good work they were
3 doing. Then we had dozens of citizens telling us
4 about the bad work they were doing, and you have the
5 folk like this, and we don't get to the core of it.

6 So I was just excited that in Chapter 4
7 this report starts getting at some of the core, I
8 think.

9 CHAIRPERSON BERRY: I think the guy's name
10 was Jim Fife, I think.

11 COMMISSIONER EDLEY: Very good.

12 CHAIRPERSON BERRY: Is that right?

13 COMMISSIONER EDLEY: Yeah.

14 CHAIRPERSON BERRY: Boy, I'm not getting--
15 (Laughter.)

16 COMMISSIONER EDLEY: Don't leap to
17 conclusion.

18 (Laughter.)

19 CHAIRPERSON BERRY: Okay. Any other
20 comments on the report?

21 (No response.)

22 CHAIRPERSON BERRY: All right. All those
23 in favor of accepting the report indicate by saying
24 aye.

25 (Chorus of ayes.)

1 CHAIRPERSON BERRY: Opposed?

2 (No response.)

3 CHAIRPERSON BERRY: So ordered.

4 **VI. Program Planning**

5 CHAIRPERSON BERRY: Now we go to program
6 planning unless there's something else I've missed,
7 that I didn't do.

8 We have some proposals from our staff, and
9 we have a list for projects for FY 2004 that they gave
10 us for our information and that approved for 2005, and
11 then we have these new ones that they are proposing.
12 Is there anything that you wish to say, Mr. Staff
13 Director, or is it res ipsa loquitur?

14 STAFF DIRECTOR JIN: No, I think this has
15 nothing to do with race.

16 (Laughter.)

17 STAFF DIRECTOR JIN: I think it's pretty
18 much all of the documents. I mean, I think all of the
19 Commissioners have gone through at least one cycle.
20 So I don't think I necessarily need to go through any
21 major presentation.

22 CHAIRPERSON BERRY: Oh, we'd like a -- no.

23 STAFF DIRECTOR JIN: Do you want a little
24 presentation?

25 (Laughter.)

1 CHAIRPERSON BERRY: That's okay.

2 STAFF DIRECTOR JIN: I mean a small one.

3 CHAIRPERSON BERRY: Commissioner
4 Redenbaugh.

5 COMMISSIONER REDENBAUGH: Before we do
6 this, I sent a letter to the Commissioners, which I
7 was hoping the discussion of that might precede the
8 discussion of any of the merits of any individual
9 project.

10 CHAIRPERSON BERRY: Could you please just
11 identify this for the record? Just say a memorandum
12 to the Commission on the subject of?

13 COMMISSIONER REDENBAUGH: It was on the
14 subject of a change in the process for preparing
15 projects.

16 CHAIRPERSON BERRY: Okay, all right.

17 COMMISSIONER REDENBAUGH: And I must say
18 I'm not very happy with the articulation of what I
19 sent. It appears inordinately complex, I'm afraid,
20 and I didn't mean it to be that, but my intention is
21 to increase the or to improve the process, and so
22 drawing on our experience in the past where we've
23 organized some of our really effective multi-
24 Commissioner task forces, you know, I propose
25 something along those lines here.

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1 CHAIRPERSON BERRY: Okay. Well, now that
2 you've described it, I was only asking for you to
3 describe what it was.

4 COMMISSIONER REDENBAUGH: Yes, that's what
5 I'm referring to.

6 CHAIRPERSON BERRY: So we would know how
7 to assess it.

8 Vice Chair?

9 VICE CHAIRPERSON REYNOSO: Yes, Madam
10 Chair. I went over the suggestions with some care.
11 The letter stated January 5, '04, and I must say that
12 I concentrated on the modest proposal, but --

13 COMMISSIONER REDENBAUGH: But the immodest
14 one is a little confused.

15 (Laughter.)

16 VICE CHAIRPERSON REYNOSO: But the modest
17 proposal manifestly would affect deeply how the staff
18 does its work quite differently from how it does it
19 now, and as you know, I've mentioned in times past
20 that we really ought to hear from the staff, I think,
21 before making any changes.

22 I was going to ask Russell if we might ask
23 Les to talk to particularly the two units that I think
24 would be most involved here and come back with their
25 own reaction or further discussion on it or maybe even

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1 some other ways of meeting the suggestions that you
2 have so we can have a more in depth discussion.

3 COMMISSIONER REDENBAUGH: I think that's
4 very right.

5 VICE CHAIRPERSON REYNOSO: I must say I
6 did focus on modest proposal because even that modest
7 proposal, I think, would change completely the way
8 we've traditionally done our work.

9 CHAIRPERSON BERRY: I don't know which one
10 of you had your hand. I think Christopher did.

11 COMMISSIONER EDLEY: Well, I like that
12 idea, but I was going to suggest, Les, that if we do
13 proceed this way that one thing the staff might think
14 about is if there's a lot of nervousness about it,
15 then at least think about whether to do it on some
16 sort of pilot basis or something like that would give
17 them more of a comfort level.

18 But let me just put that in the mix of
19 what you think about as a way to assess it.

20 CHAIRPERSON BERRY: Commissioner Braceras?

21 COMMISSIONER BRACERAS: I agree it's a
22 good idea to get the input of the staff. However, I
23 don't think that that's dispositive. I think that we
24 have to make a decision as Commissioners as to how to
25 run our own ship. I don't think it's up to the staff

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1 to decide, although we should certainly take their
2 views into consideration.

3 You know, the question for me has always
4 been who's in charge and who's running the show. Are
5 we, you know, just here to authorize and lend
6 credibility to the work of the staff or are we, as
7 Commissioners, as a body, not as an individual, but as
8 a body, supposed to be integral to the process?

9 I've always felt that the Commissioners
10 should be more involved and, therefore, was very happy
11 to see Russell's proposals, and I think that the
12 spirit in which he put them forward is really in the
13 spirit of good government and the spirit of
14 nonpartisan reform.

15 I think that if all of the Commissioners,
16 with all of our varying perspectives and diverse
17 backgrounds, can be more involved in the process, then
18 our work product is going to be stronger, and our
19 credibility will be greater.

20 So, I don't see why in principle anybody
21 would be opposed to moving in this direction. That
22 said, I also want to say that I don't think it makes a
23 lot of sense to go forward and approve any particular
24 projects for future years until we figure out how
25 projects are going to be implemented.

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1 So I'm not prepared to vote to approve any
2 of these proposals, even though many of them -- any of
3 the substantive proposals -- even though many of them
4 are excellent ideas, until we first get our house in
5 order in terms of our process.

6 CHAIRPERSON BERRY: So that we can not
7 waste our time -- and I'll listen to others in a
8 minute -- if it is the view of the four Republican
9 Commissioners that we should not consider the projects
10 or approve any of them until such time as we get the
11 staff input and approve the process, then there's no
12 sense in us sitting here discussing the projects, if
13 that's already how you've made up your minds.

14 COMMISSIONER BRACERAS: Or if I can just
15 respond to that, you know, obviously the second
16 version of Russell's recommendations is very
17 comprehensive and would probably need, you know, a
18 great deal of discussion and thought, but I mean,
19 perhaps we can collaborate and come up with today, you
20 know, a more modest proposal, a skeletal set of
21 procedures which can be fleshed out later, in which
22 case I would be happy to go ahead and approve
23 substance.

24 But I think we have to at least move
25 towards thinking about how we can make our work

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1 products better, more credible, you know, narrow the
2 scope. Sometimes our reports, you know, can be
3 excellent, but they're too broad and too unfocused,
4 and so I think we need to think about our procedures
5 before we send our staff running off on wild goose
6 chases to study this, that, or the other issue. We
7 need to have a way to narrow the issues and to have
8 our process set before we start them working on
9 something.

10 CHAIRPERSON BERRY: Vice Chair.

11 VICE CHAIRPERSON REYNOSO: Well, Madam
12 Chair, I could, I guess, in going over the modest
13 proposal, I just thought of so many issues I'll just
14 mention one. We've been working very hard for the
15 last several years, and Russell has been particularly
16 influential in trying to have us get the reports out
17 in a more timely fashion, and I must say that now,
18 compared to what it was when I first joined the
19 Commission about ten or 12 years ago, we're doing
20 really very, very well.

21 How will this impact the getting of the
22 reports out in a timely fashion, for example? But
23 that's just one of many things where I think we need
24 to --

25 COMMISSIONER BRACERAS: I think it will

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1 help. It will help keep people on a time line.

2 CHAIRPERSON BERRY: Commissioner Edley.

3 COMMISSIONER EDLEY: Well, I guess I'd
4 very much -- to my mind, it is not necessary to
5 resolve the procedural questions that Russell has
6 raised, which I don't view as unimportant, in order to
7 have a substantive discussion of some of the proposals
8 that the staff has prepared for us, and I'm sure that
9 individuals have thought of additional projects that
10 we'd like to put on the table and kick around a little
11 bit.

12 It does seem to me that it would be
13 possible to go ahead and have a discussion and a vote
14 on the program planning issues and then revisit them
15 after we've resolved the procedural question to see if
16 we want to make any adjustments in light of whatever
17 procedures were adjusted. That's what I would prefer.

18 Another possibility would be to have the
19 substantive discussion of these issues that have been
20 presented and defer a vote until after the procedural
21 matters are resolved, but in any case, I have to come
22 two subway stops to get to this meeting. Elsie had to
23 come from South Dakota. Others I know had to travel.

24 I'm sure, I assume, the staff is preparing things for
25 the Commission to do next month and the month after,

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1 et cetera.

2 This is the month we're supposed to do
3 program planning. You know, I'd like to have the
4 discussion of program planning.

5 CHAIRPERSON BERRY: Commissioner Meeks?

6 COMMISSIONER MEEKS: Am I wrong that the
7 2004 and 2005 budget have been approved?

8 CHAIRPERSON BERRY: Yes, they have.

9 COMMISSIONER MEEKS: So this is 2006
10 projects?

11 CHAIRPERSON BERRY: Right.

12 COMMISSIONER MEEKS: I mean, there's
13 plenty of time to resolve this, and I know that my
14 first thought was if I were Staff Director or
15 Executive Director, I would have said, you know, the
16 proposal -- and I think Russell's is reasonable in a
17 lot of accounts and his intent might vary, but I think
18 that it merits some more oomph. It merits some
19 thought by the Staff Director of what all the
20 implications are of the proposal.

21 And so, even if we could let him think
22 about that for a month and come back at the next
23 meeting, I mean, I think no one is opposed to some
24 structural changes or procedural changes, but I think
25 it would be reasonable to say can we think about this

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1 next month, or can we really discuss it next month
2 after Les has had a chance to really talk with his
3 staff and maybe you've already set this for us. I
4 don't know, but --

5 CHAIRPERSON BERRY: Yeah, Russell said he
6 thought it would be reasonable to let the staff --

7 COMMISSIONER MEEKS: Oh, okay.

8 CHAIRPERSON BERRY: If I'm not misstating.

9 COMMISSIONER REDENBAUGH: No, I did say
10 that.

11 CHAIRPERSON BERRY: That you thought it
12 was reasonable.

13 COMMISSIONER REDENBAUGH: No, I think it's
14 essential.

15 COMMISSIONER EDLEY: But, Jennifer, if you
16 want to press it, let's have a vote on Russell's --

17 COMMISSIONER BRACERAS: Well, can I say
18 something?

19 COMMISSIONER REDENBAUGH: Well, no, I
20 don't want -- I'm not going to let there be a vote on
21 my proposal.

22 CHAIRPERSON BERRY: Would you prefer to
23 wait to at least see what the staff has to say about
24 your proposal?

25 COMMISSIONER REDENBAUGH: No, I have

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1 something to --

2 COMMISSIONER BRACERAS: Can I?

3 CHAIRPERSON BERRY: I'm going to -- yes,
4 just a second. I'm going to recognize you,
5 Commissioner Braceras.

6 Russell, are you wanting a vote before the
7 staff has a chance to --

8 COMMISSIONER REDENBAUGH: Absolutely not.

9 CHAIRPERSON BERRY: Okay. Commissioner
10 Braceras.

11 COMMISSIONER BRACERAS: You know, I think
12 I've been misunderstood. I by no means object to
13 having the staff director consider the proposals, make
14 alternate suggestions, talk to the staff. All of that
15 is very reasonable.

16 By the same token, given that we are
17 talking about projects for 2006 in this planning
18 meeting, it seems to me no rush to approve them
19 substantively, and so I think it's ridiculous to put
20 the cart before the horse and say, well we're going to
21 talk about all of these projects we're going to do
22 without deciding the procedure for doing them.

23 And if I may finish.

24 COMMISSIONER MEEKS: I'm listening.

25 COMMISSIONER BRACERAS: I have to say,

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1 I've come to resent the fact that every time somebody
2 on this Commission puts forward a proposal for reform
3 or a proposal for altering the process in a way to
4 make things more democratic, that somehow we're
5 regarded as trying to be obstructionists and we're
6 wasting everybody's time, and let's just do what we've
7 come here to do.

8 I mean, we should be concerned about good
9 government and process, and just because somebody
10 raises those concerns doesn't mean we're wasting our
11 time. I think it would be a very productive use of
12 our time to talk about some of these issues and hear
13 what other Commissioners think about them so that the
14 Staff Director has a sense when he goes back to talk
15 to the staff of where other Commissioners stand on
16 these proposals that we've all, you know, had at our
17 desks for at least a couple of days and hopefully have
18 had a chance to read.

19 So my point is, you know, I don't
20 understand what there's a need for the eye rolling and
21 the complaining that we're bringing up issues that
22 frankly have been of concern to us for some time.
23 Yet, you know, somehow our concerns about the process
24 of this Commission, the administration of this
25 Commission are considered either invalid or a waste of

1 time and not a good use of the Commission's time when
2 we're here together for a meeting.

3 I mean, that's ridiculous.

4 CHAIRPERSON BERRY: Commissioner Braceras
5 -- no, I am going to answer.

6 COMMISSIONER BRACERAS: Feel free.

7 CHAIRPERSON BERRY: I am going to answer
8 not her, but where the process is going. I think
9 Commissioner Edley's suggestion that we discuss the
10 substantive proposals is a good one because that's why
11 we came here today, and unless there is some motion to
12 overrule the decision, then I am saying we're going to
13 proceed with what we said we were going to do, which
14 is to do the proposals, which is the next item on the
15 agenda. I called it, and no one objected to calling
16 that item.

17 We will in the meanwhile have the Staff
18 Director look at Russell's proposals and talk with his
19 staff and get some feedback and some reactions on how
20 he would either approve this, think we should approve
21 this, or how he thinks it should be modified or
22 whatever.

23 And also, if Commissioners wish to discuss
24 some of Russell's proposals just to give advice to the
25 Staff Director while he's doing all of this, we can do

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1 that, too. But I would like for us to discuss the
2 proposals, and also there is nothing undemocratic
3 about operating according to procedures that have been
4 approved democratically. That is the essence of
5 democracy actually, and what we are doing is operating
6 according to procedures that were approved
7 democratically.

8 There is nothing incredible or uncredible
9 about Commission reports that are approved by the
10 Commission. In fact, some of them have been approved
11 since there was a majority of people who were not
12 appointed by Republicans here. So I assume, unless
13 someone can show otherwise, that Commission reports
14 have credibility, although there's always a lot more
15 work that can be done on everything else.

16 But I would like to discuss the proposals,
17 and if anyone has limited advice to give the Staff
18 Director while he's off looking at Russell's ideas so
19 that we can come back and discuss them, do that.
20 Otherwise we're going to discuss the proposals.

21 Now, Commissioner Kirsanow.

22 COMMISSIONER KIRSANOW: Just to move this
23 along, I would move that we discuss the proposals
24 contingent upon a vote to be conducted on such
25 proposals absent or subsequent to input from the Staff

1 Director on the impact of Russell's proposals.

2 COMMISSIONER THERNSTROM: I second that,
3 and that was the motion I was about to make. Edley's
4 Option 2, in other words.

5 CHAIRPERSON BERRY: Did you say that,
6 Edley, that we're not to vote on the proposals?

7 COMMISSIONER EDLEY: Well, I said it
8 unless it was ridiculous. I mean, I don't want to say
9 anything ridiculous, but --

10 COMMISSIONER THERNSTROM: Of course you've
11 never said anything ridiculous.

12 CHAIRPERSON BERRY: Why are we discussing
13 them if we're not going to vote on them?

14 COMMISSIONER EDLEY: The only reason I'm
15 hesitant is because at least there's one proposal that
16 I wanted to make that I was concerned might have an
17 impact on what the staff has on its plate in the
18 current fiscal year, and if the Commissioners are
19 interested in pursuing it, that's the relation to the
20 Voting Rights Act, and if the Commissioners are
21 interested in pursuing that, then I'd like us to be
22 able to give guidance to the staff to appropriately
23 adjust the mix of what they're working on now.

24 Is that too obscure?

25 COMMISSIONER BRACERAS: You want to put

1 something on their plate, not for six, but four.

2 COMMISSIONER EDLEY: Yeah, I was going to
3 suggest something that's on their plate for '04, which
4 I understand from the Staff Director a lot of work
5 hasn't begun already, that it be converted from a
6 major project to perhaps just a briefing in order to
7 try to free up time to get started on something
8 related to the Voting Rights Act which will be up for
9 reauthorization, and that sort of has a time limit
10 aspect to it.

11 COMMISSIONER KIRSANOW: It says that
12 particular data from this, I mean, if everyone is in
13 agreement.

14 CHAIRPERSON BERRY: You mean excise the
15 point that Christopher is making?

16 COMMISSIONER KIRSANOW: Right. Generally,
17 my proposition would pertain --

18 COMMISSIONER EDLEY: Tabling the '06
19 decisions.

20 COMMISSIONER THERNSTROM: The final vote
21 on them, as you proposed in your second option. You
22 had two options. This is your second one.

23 CHAIRPERSON BERRY: Vice Chair.

24 VICE CHAIRPERSON REYNOSO: Well, I guess
25 I'll need some clarification.

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1 CHAIRPERSON BERRY: Well, who seconded it?

2 COMMISSIONER THERNSTROM: I'll second it.

3 VICE CHAIRPERSON REYNOSO: But I just want
4 to comment that I thought we were dealing with '06,
5 and --

6 COMMISSIONER THERNSTROM: Yeah, we are.

7 VICE CHAIRPERSON REYNOSO: -- and
8 presumably we will have made a decision on Russell's
9 proposal way before '06, and presumably that procedure
10 will then guide how the staff will proceed on the '06
11 project. So I'm puzzled in terms of what the issue
12 is.

13 COMMISSIONER BRACERAS: Would you like me
14 to clarify for you?

15 CHAIRPERSON BERRY: Russell, let me ask
16 you a question since you made the proposal.

17 COMMISSIONER REDENBAUGH: Yes, yes.

18 CHAIRPERSON BERRY: Since these are '06
19 projects, why is it essential that we make a decision
20 about changing the procedure, and that you do that --
21 what they're working on right now, the staff, I mean,
22 is the 2004 and the 2005 projects. They won't start
23 working on the '06 projects until next year or some
24 other time. So why can't you wait until we get a
25 majority and pass whatever procedures you feel like

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1 proceeding?

2 Why do you need to do this now? It won't
3 apply to 2005, '04 and '05 anyway?

4 I'm asking Russell since he made the
5 proposal.

6 COMMISSIONER REDENBAUGH: Yeah. Well, I
7 think we're kind of all in the wrong thicket here, and
8 let me just -- I know we've got a motion pending, or
9 two or three. I kind of lost track.

10 COMMISSIONER THERNSTROM: No, we've got
11 one. Call it Edley 2.

12 COMMISSIONER REDENBAUGH: But just can I
13 take a minute, Mary?

14 CHAIRPERSON BERRY: Sure.

15 COMMISSIONER REDENBAUGH: Because I think
16 we're kind of in the wrong story here a bit. This
17 sort of organizational design or process, I mean, this
18 is something I really know a lot about and I'm really
19 good at.

20 CHAIRPERSON BERRY: I noticed.

21 COMMISSIONER REDENBAUGH: And there's
22 reason to believe that none of the rest of us here
23 are. So just let me be the expert witness for a
24 minute.

25 CHAIRPERSON BERRY: Okay.

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1 COMMISSIONER REDENBAUGH: It's hard work,
2 process design and organizational design. It's really
3 hard, and I have a sense of urgency about it. The
4 decision about '06 projects, we know how to make those
5 decisions. '06 is a long way off. That's really not
6 hard work. We know how to do that, and I don't have a
7 great sense of urgency that has to get done right this
8 second.

9 But I wanted to get started, not voted on,
10 but started, the discussion about the process changes.
11 They absolutely have to involve staff. They can't be
12 pushed down from the bottom or from the top, but they
13 can be tremendous -- and we've done a lot, as Cruz
14 pointed out.

15 When Cruz and I came on the Commission, we
16 had reports older than -- older than some of us
17 almost, older than some of our staff. But I want to
18 get away from where we get a report that comes to us
19 on a take it or leave it basis or gets passed by, you
20 know, a majority of one vote and has a bunch of
21 objections to it, and I think we can do that.

22 But the hard work is the work of changing
23 the process, and that's what I'd like to use some of
24 today's time, since we all are here together, and we
25 are here representing a variety of political points of

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1 view, and that's why I think it's important not to
2 just wait, as you've suggested one could do, to design
3 a process that doesn't represent only one point of
4 view.

5 I don't see an ideology in this process, a
6 political ideology. It is intended to be neutral with
7 respect to politics.

8 CHAIRPERSON BERRY: Would you,
9 Commissioner Kirsanow, accept the notion of thinking
10 about, in light of what Russell said and the
11 conversation, changing your motion slightly? Because
12 it seems that we could discuss the 2006 proposals and
13 we would either approve or reject them on the
14 substance with a motion that said that the procedure
15 to be applied in beginning to implement them, which
16 isn't going to take place for a while, will be
17 determined based on the outcome of the discussion
18 concerning Russell's proposals.

19 COMMISSIONER KIRSANOW: That's essentially
20 what my motion was, but I want to make it very clear,
21 especially after hearing what Russell just had to say.

22 I think to a large extent substance bleeds over into
23 process and vice versa, and in discussing the
24 substance of particular project proposals before us, I
25 think it makes sense to have a template in our minds

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1 as to what process is going to be applied to those
2 substantive proposals.

3 So I think it makes sense for us to
4 talk -- we're here today for us to discuss program
5 planning. I think it makes sense for us to talk about
6 those things substantively, but also to the extent we
7 can, talk about these issues that Russell has raised
8 today, but defer a vote on adoption of them until such
9 time as we've received input from the Staff Director
10 at some later point.

11 CHAIRPERSON BERRY: Question: what is the
12 relevance of the procedural question to whether or not
13 one likes the substance of, say, an inquiry into
14 religious discrimination against Muslims in the work
15 place?

16 COMMISSIONER KIRSANOW: Probably limited,
17 but I'm persuaded by what Russell has to say in my own
18 limited experience as to the impact of process on
19 substance. Without addressing that particular example
20 that you've just provided, I can envision a
21 circumstance in which we have a substantive issue that
22 may not lend itself to Russell's proposal, and for
23 that reason if we adopted Russell's proposal, we would
24 abandon that particular project. I can't think of one
25 off the top of my head, but that's the possibility.

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1 CHAIRPERSON BERRY: Commissioner Edley

2 COMMISSIONER EDLEY: Well, in the interest
3 of candor, which I guess is often a mistake, but
4 Howard Dean is my name. Here's what this feels like
5 to me.

6 I think Russell has put forward a couple
7 of intriguing ideas that address some concerns that
8 some members of the Commission have voiced quite
9 often. I thought that the Chair, the Vice Chair,
10 certainly my comments were an effort to engage the
11 content of Russell's proposals in good faith. I think
12 there are a lot of important and interesting ideas
13 there to be considered.

14 And I, frankly, thought that Commissioner
15 Braceras' linking of that with a willingness to take
16 up the program planning and vote on the program
17 planning today had very little to do with a logical
18 connection between the content of Russell's proposal
19 and a decision on the merits of those six activities
20 and had more to do with an effort to hold hostage the
21 Commission's decision making on the program planning
22 to a timely consideration of Russell's process
23 proposals.

24 And I think given certainly my effort, and
25 I thought that of Cruz and Mary, to be forthright and

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1 in good faith talk about Russell's proposals, it
2 seemed to me that that linkage, while perhaps not
3 ridiculous, gives this whole thing a political
4 coloration.

5 I mean, so let me try again. I think that
6 what you're hearing from the Democratic appointees
7 here is an expression of good faith willingness to
8 give serious consideration to the proposal Russell has
9 made and to do so in a timely and deliberate way
10 because I, at least, am searching for a way to be less
11 partisan and less ideological and more constructive in
12 the way in which we interact.

13 And, candidly, I think that the effort to
14 link it, I think kind of this linkage of the votes
15 makes me feel like I'm naive in adopting that posture
16 because I just don't get why it is -- I think it's
17 Mary's last point -- I don't get why it is that
18 whatever we decide about Russell's procedures bears on
19 whether or not collectively we think that religious
20 discrimination against Muslims is a worthwhile thing
21 to pencil into the '06 agenda.

22 COMMISSIONER BRACERAS: Can I -- a point
23 of personal privilege.

24 CHAIRPERSON BERRY: Well, let us see --
25 let us see --

1 COMMISSIONER BRACERAS: I was directly --

2 CHAIRPERSON BERRY: Let us see --

3 COMMISSIONER BRACERAS: No. Point of
4 personal privilege.

5 CHAIRPERSON BERRY: Let us see --

6 COMMISSIONER BRACERAS: That takes
7 precedence.

8 CHAIRPERSON BERRY: -- what you get for
9 your candor, Commissioner Edley, whether you get the
10 knife.

11 Go ahead, Commissioner Braceras.

12 COMMISSIONER BRACERAS: No. I think
13 that's a very -- I think that's reasonable but in one
14 respect. An honest statement, and I'll be equally
15 honest, I agree with Commissioner Edley's analysis of
16 my viewpoint. Since I've come on this Commission,
17 it's been my experience that proposals for reform or
18 to let Commissioners have greater input have been met
19 with politburo-like resistance.

20 And so, yes, it is my view -- and I speak
21 only for myself now -- that if I need to withhold my
22 vote on substance in order to effect change, positive
23 democratic change in this organization, then that is
24 what I'm going to do, and if you want to call that a
25 raw political move, fine. That's exactly what it is

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1 because the reason I joined this Commission was to try
2 to help reform it, try to help reform what I see as a
3 laughable, dysfunctional institution and to make it
4 something that we can all be proud of.

5 So, I've sat here for two years and voted
6 on projects that many of us agreed were interesting,
7 timely, and worthwhile studying, only to see then (a)
8 disappear into a black hole; (b) be treated without
9 academic balance or academic rigor. And so now, no,
10 I'm not going to vote for anything until I see process
11 reform.

12 So you're right about that, and I wasn't
13 trying to hide any cards. You know, it's not as if I
14 was trying to be covert about it. I'm being totally
15 honest about it. I think we need to put process
16 before substance, and I'm willing to hold up substance
17 until I get reform because I'm a reformer on this
18 Commission. That's why I joined this Commission.
19 That's the first thing.

20 The second thing is what I take offense to
21 in your comments is not that analysis of what it is
22 I'm trying to do, because you're right about that.
23 What I take offense to is Commissioner Edley's
24 comments that he is trying to act in good faith and be
25 nonpartisan, while at the same time saying the

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1 Democratic appointees are acting in good faith and the
2 Republican appointees are all evil obstructionists.
3 How --

4 COMMISSIONER EDLEY: I'm sorry. Did I
5 say --

6 CHAIRPERSON BERRY: He didn't say
7 "Republican appointees."

8 COMMISSIONER BRACERAS: He specifically
9 said that the Democratic appointees were the only ones
10 acting in good faith.

11 CHAIRPERSON BERRY: He didn't say the
12 "Republican appointees."

13 COMMISSIONER EDLEY: I made no
14 characterization about the Republican appointees.

15 COMMISSIONER BRACERAS: Well, you drew a
16 line in the sand.

17 CHAIRPERSON BERRY: Let's read the record
18 back.

19 COMMISSIONER BRACERAS: No. Let me finish
20 my statement, and then you can read the record back
21 for whatever you want.

22 The implication was clear that you and
23 Cruz and May are acting in good faith, whereas, you
24 know, Jennifer and her cohorts aren't.

25 COMMISSIONER EDLEY: I'm sorry if you

1 interpreted it that way. I only meant you. I didn't
2 mean your other colleagues.

3 COMMISSIONER BRACERAS: Well, okay, fine.
4 The bottom line is, the bottom line is I think it is
5 acting in good faith to do whatever it takes to get
6 reform of an institution that is wildly out of
7 control, and it is not as if the staff doesn't have
8 plenty to work on. Okay?

9 We are talking about projects that are for
10 2006. My position in no way holds up the current work
11 of Commission staff. They can proceed with all of the
12 things we've authorized them to do for '04 and '05.
13 So it's in no way obstructionist to say you may no
14 longer have my vote until you reform yourselves.

15 CHAIRPERSON BERRY: May I? I will let you
16 respond in a minute, but let me just say something
17 very startling. Were I interested only in the
18 political game, were I not interested in the
19 Commission once I'm not here anymore, I would simply
20 say let's vote for Russell's measure proposal and
21 let's get it over with because I don't care. I won't
22 be here anyway in 2006. You guys can do whatever you
23 want.

24 But the reason why I'm not saying that, so
25 that we're very clear, is that I know the history of

1 this Commission very well, have studied it as well as
2 been part of it, and I know why we operate the way we
3 do, and I know why we don't let the staff be
4 interfered with by individuals on the Commission or
5 individuals, people's special assistants and various.

6 And as a matter of fact, the first years of the
7 Commission, the special assistants worked under the
8 supervision of the Staff Director to avoid that.

9 And I know why we do this, and I also am
10 offended by attacks on the credibility of work that
11 the staff has done because our reports, while in some
12 quarters they may be things that people aren't
13 interested in, there are other quarters like the
14 Supreme Court of the United States and other legal
15 quarters in which people respect the work that we do,
16 and I don't think the staff should have to sit and
17 listen meeting after meeting to how the work that they
18 do isn't very good when, in fact, it is and they work
19 very hard.

20 But because I know the history, because I
21 know how the Commission is supposed to operate and
22 because I know why it is staff driven as opposed to
23 not being staff driven, then even though I won't even
24 be here in 2006, I am not going to sit here and say
25 what I would say otherwise: is vote for Russell's

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1 thing and let's get with the substance.

2 So what I'm going to do is vote against
3 Commissioner Kirsanow's proposal since I believe
4 everything that Commissioner Edley said is correct.
5 I'm just surprised that he candidly stated it on the
6 record, and then we will see where we are after we
7 vote down Commissioner Kirsanow's proposal.

8 I am even saying if we don't approve any
9 projects for 2006, it is better not to approve any
10 than to try and establish some procedure which is
11 going to undermine the way the staff works over these
12 years -- I don't mean just the people who are here now
13 -- have operated this Commission and avoided undue
14 influence ahead of time from individual Commissioners
15 on the work to the detriment of other Commissioners
16 who might have other views.

17 And finally, if people really were so
18 interested in the process and in getting involved,
19 there is absolutely no reason why Commissioners could
20 not have accepted the invitation to go meet with
21 staff, talk about projects or their assistants, or to
22 read the drafts and make comments in writing on them,
23 or to sit here for hours discussing the drafts and
24 going over them line by line as we used to do in the
25 Civil Rights Commission when Arthur Fleming was here.

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1 There's no reason why Commissioners wouldn't do all of
2 those things.

3 And since Commissioners have not, I
4 myself, speaking candidly now, am a little bit
5 suspicious of this great interest in the process, and
6 having said that, you are next, Commissioner Edley,
7 unless you decided not to say anything, being
8 surprised by my candor.

9 COMMISSIONER EDLEY: Yeah, I'm stunned,
10 and Russell's proposals to me most fundamentally raise
11 the question of whether or not ideological combat and
12 political strife, which often seem to turn Commission
13 meetings into theater, will be imposed upon the Civil
14 Service staff pulling away on these projects.

15 Alternatively, whether it is possible even
16 for members of this Commission to constructively
17 engage the staff in a way that will improve the
18 Commission's work, which I take to be the aspiration
19 underlying Russell's proposal.

20 And I just have to say that this
21 discussion has made me believe that it is not possible
22 to move in the directions that Russell described
23 without poisoning the activities of the staff. So
24 I've moved backwards, and I'm -- I mean, I hope it
25 will be possible for the Staff Director or others to

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1 suggest ways in which interaction between Commission
2 members and the staff can be shaped in a way that will
3 maximize the positive and minimize the negative, but
4 I'm doubtful.

5 And, again, I say this understandingly,
6 that the majority is going to shift in a few months,
7 and the new majority can set it up any way they want
8 to set it up. But I'm prepared to vote and have a
9 stalemate now, and I'm prepared to vote and be
10 outvoted a year from now, but I'm just disappointed.
11 That's all.

12 CHAIRPERSON BERRY: Commissioner
13 Thernstrom.

14 VICE CHAIRPERSON REYNOSO: Yes, I think
15 she was first.

16 COMMISSIONER THERNSTROM: Well, needless
17 to say, I deeply resent the depiction of these
18 proposals as in any sense political, partisan. I do
19 think that this is an effort to simply have a
20 responsible process end that we'll be more involved
21 in.

22 I mean, from the beginning of my tenure
23 here, since starting in January 2001, I have been a
24 process person. I am always a process person in every
25 context in this Commission because I do believe that

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1 the quality of the substance of any reports, the
2 quality of outcome and its legitimacy depends in great
3 measure on the process. You can always revisit
4 substance if you get the process, if the process is
5 right, and if the process is right, you will have
6 everyone signing on in a way that really it seems to
7 me would minimize or decrease in any case the partisan
8 splits on this Commission, and therefore --

9 COMMISSIONER EDLEY: I'm sorry, Abby. You
10 said you think you can design the process? Is that
11 what you said?

12 COMMISSIONER THERNSTROM: Yes, I think
13 that Russell's proposal is an effort to, in fact,
14 reduce the partisan split on this Commission because
15 there would be a constant working with the staff at
16 every stage of a project so that people would sign on
17 and at the end of the day, if people feel that the
18 process has been legitimate, even if they disagree
19 with substantive matters in the report, they will
20 nevertheless embrace it, embrace its legitimacy
21 precisely because they have been part of the process,
22 and if you're part of the process and you feel you're
23 part of the process, you lose one day. You know, you
24 feel I can return another day and through this same
25 process perhaps I'll win.

1 But in any case, it has been legitimate,
2 and so I think, indeed, that the partisan splits on
3 this Commission would be radically decreased by
4 adopting Russell's modest proposal. And, you know,
5 I'm happy to have as Pete's motion suggested a
6 discussion of the substantive projects, but I also do
7 not want to vote on these projects for the reasons
8 I've just stated until -- I don't want to have a final
9 vote -- until we get the process in place because I
10 see such a clear link between process and substance.

11 Now, as I understand it, the Chair and
12 now, of course, Edley has just cast a vote against all
13 reform of the sort that Russell has proposed, and
14 that, of course, makes me very sad, and I see
15 absolutely no down side to having a substantive
16 discussion but deferring that final vote until we can
17 get our processes in place.

18 As to the point about, you know,
19 Commissioners have always been free to meet with the
20 staff and so forth, two things. One, you can't meet
21 with the staff and have anything interesting and
22 important and significant to say unless you got this
23 process in place, where there are periodic reports at
24 every stage of a project so that you have some sense
25 of what the issues are, what the questions that have

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1 been raised, what the staff is working on, the kinds
 2 of conclusions the staff is tentatively coming to,
 3 and, you know, I did take -- but, I mean, that's just
 4 not a conceivable process. I mean, it's not possible
 5 as things are now constructed.

6 And I did have one occasion which I did
 7 very much. I have, you know, as others as well on
 8 this Commission have, I have a great deal of expertise
 9 on questions of education, and I did have one meeting
 10 and nothing came of it, and I did subsequently write a
 11 note to those with whom I met, and there was no answer
 12 for months. Kristina would know the exact timing of
 13 that, and I don't have it in front of me.

14 But as it stands, it's just not a useful
 15 process. What Russell is suggesting would be a useful
 16 process, would involve real input from Commissioners
 17 if they chose to provide it, and at the end of the
 18 day, of course, what they have to say could be ignored
 19 in the final report, but at least there would be, as I
 20 say, this legitimate process that I think would lend
 21 legitimacy to the reports as a whole, left wings or --

22 CHAIRPERSON BERRY: Your conversation,
 23 Commissioner Thernstrom, has made me even more wary
 24 rather than less simply because several things that
 25 you said were totally inaccurate. Neither

1 Commissioner Edley nor I said we were opposed to all
2 reforms. Neither of us.

3 COMMISSIONER THERNSTROM: You said --

4 CHAIRPERSON BERRY: Of the sort that
5 Russell had proposed. We said that we would wait to
6 see what the Staff Director had to say about this, but
7 my initial reaction to it was the reason why I wasn't
8 just going to vote for it was because of what I know
9 about the history and traditions of the Commission.

10 I won't make that speech again, but in any
11 case, I said I would wait to see.

12 COMMISSIONER THERNSTROM: I'm glad to have
13 misunderstood you on that.

14 CHAIRPERSON BERRY: Right, and the second
15 thing is that on this point of the staff telling us
16 from time to time, we could have asked the staff to
17 come here any time we want to while they're working on
18 something and tell us where they are and what they're
19 doing, right here with everybody to put their cards on
20 the table.

21 The other thing is that I spent one time
22 12 hours in the Commission conference room at a
23 meeting with Commissioners where we went over a report
24 and fought over a paragraph that somebody objected to,
25 and finally came up with something that most of us

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1 agreed to and one guy didn't like it, but he felt he
2 had had his day in the sun and discussed it.

3 So that that kind of discussion can take
4 place on drafts among Commissioners, as well as taking
5 place otherwise. I don't prejudge what's going to
6 come out of the Staff Director's review of Russell's
7 proposals, but I'm saying that the reason why I don't
8 go for them whole hog and just vote for them because I
9 won't be here and just say, "I don't care," is because
10 of what I know about the positive aspects of how the
11 Commission operated.

12 But beyond that, if no one else has a
13 point, then I guess we should call for the question.
14 Does anyone have -- yes, Vice Chair.

15 VICE CHAIRPERSON REYNOSO: Madam Chair, I
16 just want to say one thing, and perhaps Commissioner
17 Braceras has a different experience than mine, but I
18 just want to say here publicly what I always -- how I
19 respond. The folk will ask me how we're able to do
20 our work when we have four Republican appointees-and
21 four Democratic appointees, and I tell them that
22 sometimes we aren't able to work on really
23 controversial issues like Affirmative Action, and so
24 on, but that the work that comes out of this
25 Commission is absolutely top flight, and I tell them

1 that because I speak not with politicians, but with
2 academics. I remember having discussions about the
3 housing report that came out two or three years ago,
4 and I have several academics talk to me about what it
5 had added to the area of knowledge in housing, and
6 even those that have been controversial like the
7 Florida report, we heard from folk on Capitol Hill
8 commenting on all of the information that was there
9 that was helpful to them.

10 And of course, you mentioned the Supreme
11 Court. That is I have found that the work of the
12 staff that the staff does has been really very, very
13 good, and so I sometimes agree that sometimes the
14 recommendations go -- sometimes they're so extensive
15 that I disagree with some of them, but as a whole, the
16 work is to be well respected by folk in the academic
17 field, by litigators who depend on this information,
18 and so on.

19 So I tell people that despite that, we're
20 doing good work. There's some work that we can't do
21 because of the split in philosophies as to what civil
22 rights means or is, but nonetheless, the great body,
23 90 percent of the work that relates to civil rights we
24 have been able to do, and we've done very well.

25 So that's my own perspective. I just want

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1 to share that.

2 CHAIRPERSON BERRY: Okay. I don't know
3 which of you was first.

4 COMMISSIONER BRACERAS: Go ahead, Pete.

5 COMMISSIONER KIRSANOW: I'd like to speak
6 to the motion again. I thought that the motion I had
7 put forth was predominantly a summary of what
8 Commissioner Edley had proposed as his Option 2, and
9 for that reason I thought we might be able to garner
10 enough votes to proceed forward.

11 I think, again, it makes sense to discuss
12 the substance. That's why we're here. We've already
13 had some discussion with respect to -- limited
14 discussion with respect to Commissioner Redenbaugh's
15 proposal, and also deferring a vote based on input
16 from the Staff Director, I think, strikes me as a
17 reasonable proposal because this proposal that I'm
18 holding that is Commissioner Redenbaugh's proposal may
19 not be what we ultimately adopt. I'm presuming it
20 would be a consensus proposal or something nearer to a
21 consensus proposal that we could all live with, and
22 then we will have safe time by having had in a
23 subsequent discussion determined what the procedure
24 would be, and then vote and adopt the proposals that
25 staff would be working on in 2006.

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1 I'd like to make two points. One is there
2 was a suggestion that somehow the Republican
3 Commissioners' proposal is an indication our
4 Republican Commissioners have a concern about the
5 credibility or the quality of staff work, and speaking
6 for myself, and I'm fairly certain I'm speaking for
7 the other Republican Commissioners, that's not the
8 case.

9 I at least on one occasion told staff that
10 while I had voted against the proposal, it had nothing
11 to do with their hard work and the quality. It really
12 had to do with what Russell likes to talk about,
13 inputs and outputs. Given the charge that they had, I
14 thought that they did a phenomenal job. I thought
15 that the charge was wrong, and the charge had
16 originally come from us.

17 I'm persuaded also by what Commissioner
18 Thernstrom said, and that is that I think it is less
19 likely to be partisan if there is an agreed upon
20 framework by which we will have some input and
21 involvement in the production of these reports because
22 then at the end of the day, I think we will have
23 invested in the project, and we will have less concern
24 about whether or not the procedure has been fair,
25 regardless of whether I agree or disagree.

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1 For example, and I'll use this as an
2 example. The environmental justice report was one
3 that I thought that the staff, given what the charge
4 was, did a very good job, but one of the reasons why I
5 cast a negative vote was I thought that the inputs or
6 the direction given was not what it should have been.

7 It conceivable my vote would have been
8 different had a structure similar to what Russell's
9 proposed been in place at that time and I had been
10 assured that Chris or Cruz or Abby or someone had had
11 some input into it in the final document, was one that
12 reflected some considered input from Commissioners,
13 all or one or two or three.

14 So, again, I would reiterate that the
15 proposal I put forward was an attempt in a collegial
16 atmosphere. I think intellectually I agreed with what
17 Chris had to say in terms of the way this should
18 proceed. I hope this doesn't evolve into a partisan
19 battle about whether or not we should move forward on
20 certain projects and in what fashion.

21 And since it is 2006 that these projects
22 we're going to be working on, I think we can have a
23 substantive discussion and then vote at some point
24 after we've had a deliberative process from or a
25 deliberation from the staff as to the impact of this

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1 proposal on whether or not we're going to move forward
2 on this project.

3 CHAIRPERSON BERRY: In other words, you
4 would preserve the linkage between approving the
5 projects and approving reform at some point?

6 COMMISSIONER KIRSANOW: I think they would
7 be contingent upon it because I think otherwise, well,
8 yes. I will just say yes for that.

9 CHAIRPERSON BERRY: Commissioner Braceras.

10 COMMISSIONER BRACERAS: I just want to be
11 clear about my intention here because the way it has
12 been portrayed by some of my colleagues is that
13 individual Commissioners seek to influence or strong
14 arm the process and that we're trying to reform the
15 process to allow individuals to influence reports.

16 No. I think if anybody has read Russell's
17 proposal carefully, they see that the objective here
18 is to have all of us collectively, not behind the
19 scenes, not behind closed doors, but in public, on the
20 record, collectively influence the process step by
21 step, and basically, I mean, I think what Russell's
22 proposal very clearly does is it replicates the
23 process that many other commissions use whereby
24 specific recommendations and findings are voted on
25 individually, not as a whole report, and minority

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1 viewpoints are then recorded in the final document,
2 and that's common practice and not controversial at
3 all.

4 So, you know, the motivation behind it is
5 not nefarious. It does increase the democracy of the
6 Commission. It increases the public access to our
7 deliberations and to the sort of thinking behind our
8 reports, and I'm surprised that it has met with -- you
9 know, that people seem to be -- I don't know -- sort
10 of questioning the motivation.

11 So you know, I am prepared to do just as
12 Pete and, before him, Chris originally suggested,
13 which was to discuss the substance of things, but not
14 vote on them until we have these better procedures in
15 place.

16 CHAIRPERSON BERRY: I will recognize you
17 in a minute, but point of information. The Commission
18 procedures now, there's nothing that forbids anybody
19 from voting on recommendations one by one.

20 COMMISSIONER BRACERAS: But we've asked
21 for that several times and it has never been done.

22 CHAIRPERSON BERRY: On occasion I have
23 asked if people would like to go over the report and
24 the recommendations and everything page by page, and
25 I've been prepared to sit here all day and do it. So

1 there's nothing in the process now that would keep a
2 Commissioner from doing that.

3 And without getting into the guts of
4 Russell's proposals, there is nothing in the process,
5 except the Commissions' unwillingness to go ahead and
6 do it.

7 Not to get into the guts of Russell's
8 proposal because, if all this needs and it's even
9 clearer that it needs to be vetted and discussed by
10 the staff and get back to us, is that his proposal, as
11 I understand it, has special assistance of
12 Commissioners involved with getting briefings from
13 staff and putting into it with staff in both of his
14 proposals, but I won't say more about it.

15 I don't know which one of you had your
16 hand up, but, Chris, please.

17 COMMISSIONER EDLEY: I think that the
18 difficulty, Pete, just to engage your comments, is
19 that I agreed with virtually every word that you said
20 and with the spirit of what you said.

21 I had a brief E-mail exchange with
22 Russell. I looked at these proposals, and so I
23 approach this discussion with the spirit of, okay,
24 let's see. Maybe it's possible to put the path behind
25 us and start afresh and construct a process that would

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1 have the attributes that you, Pete, described. And I
2 was prepared to do that, to try to put the past behind
3 us and figure out how do we proceed on a going forward
4 basis.

5 My perception of Jennifer's linkage, which
6 was confirmed by every subsequent statement that she
7 had made in this meeting, is that she at least is not
8 prepared to put the past behind and approach this as
9 if we're going to start afresh in hopes of achieving
10 things that both you and Abby spoke about in terms of
11 engagement with the staff.

12 My feeling is that without putting the
13 past behind us, the kind of engagement that you
14 describe will be ugly and counterproductive, and
15 therefore, I'm not prepared to pretend that it would
16 be otherwise.

17 In other words, I think it would work in a
18 circumstance in which people were going to put the
19 past behind us and approach it in good faith, but I
20 think the linkage proposal itself is evidence that,
21 no, this is politics as usual in a different form.

22 What I guess I would say to you is to the
23 extent that you, Abby, Russell are inviting us to set
24 off in a different manner and try to construct a
25 different modus vivendi, then you should, I

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1 respectfully suggest, accept at face value the
2 statement that I and some of my colleagues are ready
3 to engage the content of Russell's proposals in good
4 faith, in a timely way will do that, period.

5 So, I'm -- well, that's all I have to say.

6 CHAIRPERSON BERRY: Commissioner Meeks, I
7 think you were next, but before you do that, I will
8 say that I'm prepared to have an up or down on
9 Commissioner Kirsanow's proposal, and if it's voted
10 down, I'm prepared to discuss the proposals and have
11 them voted down or not vote on them.

12 But go ahead.

13 COMMISSIONER MEEKS: Yeah, I mean, I
14 didn't -- at least I wasn't characterizing Russell's
15 proposal, but let's get a chance to look at them, let
16 Staff Director talk with staff, and we think about
17 what the implications are and come back next month
18 even and discuss this.

19 I mean, I'm not and I don't presume that
20 this process, if it's changed, is going to make us
21 vote unanimously on any report. On the environmental
22 report, he had good reason for his vote, negative
23 vote. I'm sure if the process was different someone
24 else would have voted up or down on it.

25 But I think this discussion has gone --

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1 CHAIRPERSON BERRY: Too long?

2 COMMISSIONER MEEKS: -- too long and --

3 CHAIRPERSON BERRY: Okay. I call for the
4 question. All those in --

5 VICE CHAIRPERSON REYNOSO: Yes. Could I
6 get the motion? I'm confused at this point.

7 CHAIRPERSON BERRY: It's Commissioner
8 Kirsanow's motion.

9 COMMISSIONER KIRSANOW: I trust I'll
10 remember it now. The motion is to discuss the
11 substance of the proposals today. We've already had a
12 little bit of discussion of Russell's proposals at
13 least in the general sense, but to defer the vote
14 until such time as you've received input from staff
15 upon Russell's proposals.

16 CHAIRPERSON BERRY: Okay. All those in
17 favor of the motion indicate by saying aye.

18 (Chorus of ayes.)

19 CHAIRPERSON BERRY: Opposed.

20 (Chorus of nays.)

21 CHAIRPERSON BERRY: So now what we'll do,
22 is discuss the proposals without voting on them or
23 we'll vote on them, and if they're voted down, they're
24 voted down, and that's just it.

25 The first proposal under the Office of

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1 Civil Rights Evaluation, religious discrimination
2 against Muslims, religious discrimination in the work
3 place, evaluation of the Department of Homeland
4 Security and civil rights enforcement, and our federal
5 security activities discrimination decree, and
6 accessibility in an information age.

7 Is there anyone who feels that any of
8 these proposals, without committing yourself to how
9 you will vote, is something that you think is worth
10 the Commission looking at at all, or do you think that
11 none of them are worth the Commission looking at?

12 Yes.

13 VICE CHAIRPERSON REYNOSO: Madam Chair, my
14 recollection is that the staff recommended that we end
15 up voting to proceed only on two of the --

16 CHAIRPERSON BERRY: OCRE's, yes.

17 VICE CHAIRPERSON REYNOSO: And the General
18 Counsel also.

19 CHAIRPERSON BERRY: Most of them, yeah.

20 VICE CHAIRPERSON REYNOSO: Okay. So we're
21 really talking about which two of these five that we
22 think would be more appropriate; is that correct?

23 CHAIRPERSON BERRY: Right. So what we're
24 asking then, to rephrase it -- thank you, Vice Chair -
25 - is without voting or committing oneself to a vote,

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1 are there any proposals that were among the ones that
2 OCRE suggested that any of you think should be the two
3 that the Commission ought to ultimately, if it looks
4 into anything in 2006, will look into, or is it that
5 none of them attract your attention or you have
6 something else you would like to propose?

7 The staff can also go away and write new
8 proposals if the Commission has some ideas of things
9 that the Commission would like to see formulated. So
10 if you've got some ideas, anything at all that you
11 would like to substitute for these or if you don't
12 like any of these or if you would like more work on
13 them or if you do like them.

14 Commissioner Edley.

15 COMMISSIONER EDLEY: I think that when the
16 Supreme Court took up the affirmative action cases for
17 the University of Michigan, there was a fairly unusual
18 amount of attention in that litigation to the social
19 science evidence related to the two constitutional
20 propositions that were before the court. And I
21 suppose what I would like is for the Commission to
22 think about what kinds of investigation would be
23 helpful in anticipation this time not of a Supreme
24 Court case, but of congressional consideration of
25 reauthorization of the Voting Rights Act.

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1 That is to say it strikes me that as
2 Congress thinks in 2007 about the preclearance
3 provisions in Section 5 and about the language rights
4 issues in Section 2003, that if there were some way to
5 do whatever we could to assist the Congress by
6 insuring that appropriate kinds of studies and
7 investigations have been done well in advance to guide
8 their deliberations. I think that would be a great
9 service by the Commission.

10 CHAIRPERSON BERRY: Don't you think that
11 should be under OGC and OCRE, a hearing process or
12 both or a combination of both?

13 COMMISSIONER EDLEY: Maybe it's a joint
14 effort because I think part of it may have to do with
15 -- I would definitely think that it would involve a
16 hearing. I can certainly think of some things that
17 might require a hearing, for example, looking into the
18 question of how the department has administered the
19 preclearance process over the period of time, but on
20 the other hand, I think there might very well be
21 important elements that are more social science
22 oriented in nature, looking, for example, at the rates
23 of participation of language minority groups in those
24 jurisdictions covered by Section 203, what the
25 demographic changes suggest in terms of whether

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1 Section 203 needs to be modified in any way.

2 So, I think it would be sort of a joint
3 exercise. If we were going to pursue this, my
4 suggestion would be that the staff narrow the focus of
5 its work, its planning for this project with an eye
6 towards seeing to it that the Commission's work
7 complements work that's probably going to be done by
8 other people anyway.

9 Do you know what I mean? So that we have
10 kind of a niche contribution that the Commission study
11 those questions that are unlikely to be studied
12 effectively by other organizations or other entities?

13 And if I can just add one of the other
14 things, I would just maybe put a marker. I'm not
15 going to be here, I hope, but I think since the
16 reauthorization of the Voting Rights Act and new
17 consideration of the Voting Rights Act is so important
18 in so many levels, that one might think about
19 combining a hearing with briefings or something of
20 that sort so that it's really a substantial
21 undertaking.

22 CHAIRPERSON BERRY: And the one thing in
23 addition to what you suggested on it would be to look
24 at perhaps in the introduction in some way the impact
25 of the Voting Rights Act on Latinos or on different

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1 groups that are covered.

2 COMMISSIONER EDLEY: I think that's right,
3 especially because the Section 203, the language
4 rights provision, it's going to be very interesting, I
5 think to understand whether that provision has
6 functioned as intended in those communities, those
7 states that have an influx of immigrants who have
8 become recently naturalized citizens.

9 It also connects to the technology issues
10 we talked about in relation to the Florida report.
11 That is to say does the emergence of new technologies
12 for voting make it possible to do more in the way of
13 translation services, et cetera? That means if the
14 thresholds for when a jurisdiction should try to
15 provide ballots in other than English. Maybe those
16 triggers should be changed in light of the
17 availability of technology.

18 So, yes, is the answer to your question.
19 There's a lot of interesting stuff that could be
20 useful as you go about the Commission.

21 CHAIRPERSON BERRY: Commissioner
22 Thernstrom.

23 COMMISSIONER THERNSTROM: Well, the whole
24 voting rights issue, of course, is immensely
25 complicated, and in terms of the record in Section 5

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1 enforcement and what should happen, the emergency
2 provision that was supposed to be for five years only
3 when it was passed in '65 and has now been extended up
4 to total number of years that now I've lost track, in
5 any case, expires and has to be renewed in 2007 and
6 it's going to be renewed, but the whole zeitgeist in
7 developing the enforcement of that provision has
8 altered. When I wrote in 1987 my published "Whose
9 Votes Count?" there was an absolute commitment on the
10 part of the civil rights groups, on the part of the
11 voting section on the Civil Rights Division in the
12 Justice Department to maximizing the number of safe
13 minority districts, that is, minority districts or
14 districts with minority² constituencies of at least 65
15 percent concentration to make up for low voter
16 turnout. Fifty-one percent would be viewed as a safe
17 minority district.

18 At the time in '87, I argued that that was
19 a waste of minority votes with high concentration, and
20 the response on the part of the civil rights community
21 was to say, you know, basically that's an anti-civil
22 rights position and she's an idiot.

23 Today precisely what I said in '87 has
24 become the conventional line in the civil rights
25 community, not that anybody --

1 COMMISSIONER EDLEY: Cites you.

2 COMMISSIONER THERNSTROM: Right. I mean,
3 Adam Clymer in The New York Times who originally
4 reviewed "Whose Votes Count?" said, "Is she crazy?"
5 now is coming out with exactly my line, but anyway,
6 you know, such is the life of authors. It's the way
7 the cookie crumbles.

8 But in any case, it has now become an
9 immensely complicated issue of precisely what the
10 tradeoffs are in terms of the so-called influence
11 district versus safe minority constituencies. If we
12 were to get into that subject, we are wading into an
13 incredibly complicated thicket, and that is a major
14 project.

15 And, by the way, just to add a little note
16 to that, it is exactly the kind of project that
17 requires the kind of process that Russell suggested,
18 but in any case, I just think we need to know what
19 we're getting into with that very complicated issue.

20 CHAIRPERSON BERRY: Well, I would hope
21 that the Commission would get into at least the
22 enforcement issues, if nothing else, because the
23 Commission is particularly situated better than
24 anybody else to deal with what the Justice Department
25 is enforcing, whatever the definitions are.

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1 Even if they change, there's still an
2 issue of what are they enforcing, and now to make it
3 even more complicated, you've got the Supreme Court
4 apparently accepting the idea in the last Mel Watt
5 case that political reasons for making the change,
6 whatever the impact they have on minority voters --

7 COMMISSIONER EDLEY: Are just fine.

8 CHAIRPERSON BERRY: -- are just fine, and
9 that argument was advanced to try to win Mel's case,
10 but now it is being used in precisely the other way.

11 So I would hope that the Commission would
12 bite off a piece of this whole discussion even if it
13 is just enforcement issues. -

14 But yes, Commissioner Edley.

15 COMMISSIONER EDLEY: I agree with all of
16 that and with what Abby said as well. I suppose my
17 instinct on this would be if I were going to be
18 around, I think my impulse would be to try to narrow
19 the Commission's project so that to the extent one can
20 draw these lines it's less about the Commission trying
21 to make a recommendation with respect to what should
22 the retrogression standard be going forward and more
23 kind of a sense of I'd just like to understand and I'd
24 like Congress and the public to understand what has
25 been the experience under the current provisions. How

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1 have they been administered? Sort of assemble the
2 range of judgments about effectiveness.

3 And I think that I understand that the
4 lines are difficult to draw, but I think there has not
5 been -- maybe in the second 203 is it going to be
6 easier to deal with in the Section 205 arena?

7 COMMISSIONER THERNSTROM: Much easier.

8 COMMISSIONER EDLEY: But I think, for
9 example, in the administration of the Section 5
10 preclearance, just really understanding how the
11 department has over the years handled it, what is
12 done; what are the examples of the kinds of election
13 practices that have triggered an objection? Maybe
14 even more important, what are the kinds of things that
15 came into the department and triggered an informal
16 response and were changed before they even got to the
17 stage of a formal objection being filed? They were
18 below the radar stuff that might not be readily
19 apparent to other researchers.

20 But I accept the spirit of Abby's caution
21 very much. It probably would not be all that
22 productive to wade into some of the murkiest aspects
23 of a retrogression standard, but I think there are
24 other areas where we would have a comparative
25 advantage.

1 CHAIRPERSON BERRY: Okay.

2 COMMISSIONER THERNSTROM: Well, and part
3 of the problem, Chris, is that I had the luck at the
4 time to be able to see internal memos in the voting
5 section and to see how Section 5 questions were
6 handled. I think I'm the only one to have looked at
7 those internal memos. Those internal memos are really
8 the only way of answering the question that you've
9 raised, and we will not get to those internal memos.

10 And among the things, I mean, for
11 instance, the attorneys in the voting section raised
12 the question of below the radar was where the
13 attorneys were drawing maps for jurisdictions which
14 they were not supposed to be doing, but the only way
15 and saying these lines will be acceptable to us.

16 But the only way of getting at that kind
17 of below-the-screen information is to have seen those
18 internal memos. Just as an aside --

19 COMMISSIONER EDLEY: And won't we be able
20 to get at them?

21 COMMISSIONER THERNSTROM: Oh, well, the
22 last I knew at least when I was working on it, they
23 were not -- maybe we can now that they're public.

24 COMMISSIONER EDLEY: We have.

25 COMMISSIONER THERNSTROM: Yeah, I mean, we

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1 have.

2 COMMISSIONER THERNSTROM: We have as I
3 understand. So maybe we can.

4 I mean, by the way, as an aside just
5 because it might amuse people here, one of the things
6 I argued in "Whose Votes Count?" was that the
7 Republicans were laughing all the way to the political
8 bank with these racially gerrymandered districts, and
9 everybody also said at the time, "She's got to be
10 kidding," and of course, I was right on that as well.

11 But this is just a very difficult -- the
12 question, of course, is just very difficult to get at.

13 That's just my bottom line, but the Commission can
14 get at those internal memos. It is a lot of work to
15 go through piles and piles of correspondence and
16 intra-voting section correspondence.

17 CHAIRPERSON BERRY: So, the bottom line?

18 COMMISSIONER EDLEY: Now I'm even more
19 interested in the project. I mean, it may be what you
20 just said in terms of really getting at what's going
21 on, if not us, then who?

22 COMMISSIONER THERNSTROM: Hey, listen.
23 I've been writing on voting rights, and I've been
24 writing on it since 1987. A lot of years passed.

25 COMMISSIONER EDLEY: Maybe you'll get it

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1 right this time.

2 COMMISSIONER THERNSTROM: Maybe I'll get
3 it right? That is still the best book I've written,
4 Chris. I got it right.

5 (Laughter.)

6 CHAIRPERSON BERRY: Your husband was not
7 on that book, was he?

8 COMMISSIONER THERNSTROM: No.

9 COMMISSIONER EDLEY: Ah-ha.

10 (Laughter.)

11 CHAIRPERSON BERRY: Is there a sense then;
12 do I hear a sense from you, Commissioner Thernstrom,
13 that you would find such a project interesting, as
14 Commissioner Edley would --

15 COMMISSIONER THERNSTROM: Depending on
16 exactly how the questions were framed, what
17 information we could get access to. I'm not
18 interested in a once over lightly on such a
19 complicated subject.

20 CHAIRPERSON BERRY: Well, why don't we
21 get, if there's no disagreement at least about this,
22 why don't we get the staff to try to direct a little
23 proposal of some sort reflecting the discussion here?

24 And, Les, you may consult with any
25 Commissioners you wish or their staffs.

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1 STAFF DIRECTOR JIN: Okay.

2 CHAIRPERSON BERRY: While you're doing so,
3 so that we could see what such a proposal would look
4 like and try to limit in some way to reflect what the
5 discussion here is. Is there anyone opposed to staff
6 doing this?

7 COMMISSIONER BRACERAS: Are we going to
8 have an opportunity to vote on whether to go forward
9 after we see the proposal? I just want to be clear.

10 CHAIRPERSON BERRY: Oh, no, I will by fiat
11 announce that this project and this --

12 COMMISSIONER BRACERAS: I just want to be
13 clear because we're agreeing by consensus.

14 CHAIRPERSON BERRY: -- will go forward.

15 COMMISSIONER REDENBAUGH: In Seattle.

16 (Laughter.)

17 CHAIRPERSON BERRY: The consensus is that
18 the proposal will be -- that's what I'm asking for --
19 would you like to vote on whether the proposal can be
20 written?

21 COMMISSIONER BRACERAS: No. I'm perfectly
22 happy to see a proposal. I just want to make sure
23 that that not --

24 CHAIRPERSON BERRY: We're not voting on
25 anything.

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1 COMMISSIONER BRACERAS: -- a green light
2 to go forward with anything --

3 CHAIRPERSON BERRY: We haven't voted on
4 anything yet.

5 COMMISSIONER BRACERAS: -- unless we have
6 a chance to discuss and vote.

7 CHAIRPERSON BERRY: You have to vote on
8 projects, Commissioner Braceras. Okay?

9 COMMISSIONER BRACERAS: I just wanted to
10 make sure that wasn't what we were doing.

11 CHAIRPERSON BERRY: Oh. No, we're not
12 voting. I'm asking if anyone objects to having the
13 proposal written and presented, but I could get a
14 motion or something.

15 COMMISSIONER THERNSTROM: No, we don't
16 need a motion on this, for goodness sake.

17 CHAIRPERSON BERRY: Okay. Without
18 objection.

19 Yes?

20 COMMISSIONER KIRSANOW: Let me take
21 another stab at this. Why don't we have staff, just
22 as an exercise, draft a proposal trying to incorporate
23 some of Russell's suggestions on this particular
24 project?

25 CHAIRPERSON BERRY: Called back door.

1 COMMISSIONER KIRSANOW: Just to see what
 2 the outcome is. I think you've already suggested that
 3 we can consult with Commissioners. Let's just see
 4 what happens and what kind of satisfaction the
 5 Commissioners have we have ultimately with what staff
 6 comes up with.

7 CHAIRPERSON BERRY: Well, I think that
 8 having him consult and see if anybody has anything to
 9 say about it is good. We've done that before so I see
 10 no objection to doing that, but I wouldn't call that
 11 following a proposal. I wouldn't want to back door it
 12 that way.

13 We've already disposed of that issue for
 14 now, but we will consult as he --

15 COMMISSIONER BRACERAS: No, but --

16 CHAIRPERSON BERRY: -- puts this together.

17 COMMISSIONER BRACERAS: I mean, I like
 18 Pete's idea very much that --

19 CHAIRPERSON BERRY: I'm sure you do.

20 COMMISSIONER BRACERAS: Well, can you give
 21 me a chance to speak?

22 I think the idea is for the staff to come
 23 up with a substantive proposal that incorporates a
 24 specific procedure which is limited only to this
 25 project, and that might be a good way of sort of

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1 getting the staff to flesh out their own ideas on the
2 process.

3 CHAIRPERSON BERRY: We're mixing apples
4 and oranges. They're supposed to be working
5 separately on analyzing the process and coming up
6 with. That would be different people from the people
7 who are trying to come up with proposals.

8 COMMISSIONER BRACERAS: But Pete's idea
9 isn't attacks through the back door anything because
10 it wouldn't bind any future projects. The idea is
11 almost like a pilot program to see how something like
12 that would work.

13 CHAIRPERSON BERRY: That's one of the
14 things we're supposed to be considering, is whether
15 they want to suggest a pilot program, which was one of
16 the things for them to evaluate, which they have not
17 done yet because they haven't sat down to talk about
18 whether they want to do this yet.

19 COMMISSIONER BRACERAS: I think it's
20 totally reasonable, and if he's moving to do that, I
21 second it.

22 CHAIRPERSON BERRY: Is this a motion?

23 COMMISSIONER KIRSANOW: I'm not going to
24 make a motion. It's simply a suggestion. I'd like to
25 move on, but it's just for staff consideration.

1 CHAIRPERSON BERRY: So, staff, to the
 2 extent that you think it works and you can do it
 3 without being delayed for six months or whatever time
 4 it takes or in the substantive part of this, because
 5 I'd like to see what a proposal looks like while we're
 6 approving proposals or not approving proposals.

7 And this proposal would be a joint OCRE-
 8 OGC and now --

9 COMMISSIONER EDLEY: Does that mean it
 10 doesn't count against either agency's total or it
 11 counts against both?

12 CHAIRPERSON BERRY: That's a good
 13 question.

14 (Laughter.)

15 VICE CHAIRPERSON REYNOSO: I have the
 16 sense that if it's going to be in depth, as Abby has
 17 suggested, that it probably counts against both of
 18 them.

19 COMMISSIONER EDLEY: Well, let's see how
 20 the staff drafts it.

21 CHAIRPERSON BERRY: Yes, let's see what
 22 they come up with.

23 VICE CHAIRPERSON REYNOSO: Okay.

24 CHAIRPERSON BERRY: How about religious
 25 discrimination against American Muslims in the work

1 place? Does anyone have any particular positive or
2 negative or neutral feelings about that proposal?

3 Commissioner Meeks.

4 COMMISSIONER MEEKS: Well, I would just
5 say that the second one then is religious
6 discrimination in the work place, and if we're going
7 to do one or the other, I think they could be combined
8 in some way, you know, if people agree that number two
9 is the one we should take on.

10 Maybe no one thinks that. I'm not biased
11 for or against it.

12 CHAIRPERSON BERRY: Does anyone have any
13 particular fondness or dislike for talking about
14 religious discrimination in the work place for either
15 muslims or for people in general as a project?

16 COMMISSIONER BRACERAS: I think I really
17 like the topic, but I agree with Elsie that it's sort
18 of redundant. I'd like to see a broader look at
19 religious discrimination against, you know, all
20 religions, including Muslims, of course, but also
21 including Christians and Catholics, and any other
22 religion that may be facing discrimination in the work
23 place.

24 CHAIRPERSON BERRY: Yes, Commissioner
25 Thernstrom.

1 COMMISSIONER THERNSTROM: Well, I guess
2 this is a question for the people who have expertise
3 in employment discrimination here. Are we going to
4 get accurate information here? I mean, I'm just
5 worried about data quality.

6 COMMISSIONER KIRSANOW: Well, to the
7 extent you do, it's going to come principally from the
8 EEOC. It's going to come from the EEOC or the various
9 correlatives to the EEOC, the human rights commissions
10 at the state level.

11 That's where the greatest locus of data
12 is. I'm sure there are some university studies along
13 those lines, too, but they probably to a large extent
14 incorporate what you get from the EEOC and its sister
15 agencies.

16 COMMISSIONER THERNSTROM: Are we going to
17 learn things that the EEOC doesn't already know
18 because it has been collecting data?

19 COMMISSIONER KIRSANOW: That's a good
20 question. What we'll know is, I mean, what we'll know
21 from the EEOC data is we'll have numbers. In terms of
22 the breakdown Jennifer suggests and in terms of who's
23 being discriminated against.

24 COMMISSIONER THERNSTROM: Doesn't the EEOC
25 do that?

1 COMMISSIONER KIRSANOW: Yeah. I mean,
2 that's what I'm saying. Because we're going to be
3 using their data. I don't know what else --

4 COMMISSIONER BRACERAS: I mean, I think
5 that in addition to EEOC data, it would be helpful to
6 look at case law on these topics and not just look at
7 -- in other words, something that has synthesized
8 current case law and religious discrimination with the
9 statistics would be a product that's different from
10 something that the EEOC would put out and might be
11 worthwhile and useful to academics

12 CHAIRPERSON BERRY: Well, in the project
13 doesn't it say that for one of them, the first one,
14 that they're going to analyze EEOC information and
15 evaluate literature review, EEOC interviews with staff
16 representatives of groups, and employers, and on the
17 second one, which is the big one, it says on page 6
18 that they're going to look at federal sector religious
19 discrimination and possibly identification of best
20 practices from private sector employers. The study
21 would identify EEOC stuff, look at education,
22 technical assistance to employers, training, trying to
23 prevent religious discrimination, fact finding,
24 literature, review and analysis of EEOC complaints and
25 compliance data.

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So the second one basically is federal sector with some attention to best practices in the private sector.

COMMISSIONER BRACERAS: I mean, neither of those talk about the case law, and maybe we think that's beyond the scope. I'm open to that, but I mean, one issue that's certainly interesting to me is how both the EEOC and state agencies, as well as courts are defining religion in terms of discrimination.

I mean, there's this case out in Western Mass. with a woman -- I forget where she worked, Costco or one of those types of places -- and they had a policy against body piercing, and she won a probable cause finding of discrimination from the EEOC on the grounds that she was the member of some pagan religion that was basically body worship that included body piercing.

So I just think it's interesting to see how courts and administrative agencies are defining religion and what groups are feeling persecuted and availing themselves of anti-discrimination laws. Maybe that's all beyond the scope, but just something to throw out.

CHAIRPERSON BERRY: Did you have a

1 question?

2 VICE CHAIRPERSON REYNOSO: Just a quick
3 note. As Commissioner Braceras indicated, there's
4 probably a lot of activities in some of the state
5 agencies, particularly the big ones like New York and
6 California, and the staff should be taking a look at
7 that.

8 CHAIRPERSON BERRY: If we're going to do
9 the court stuff, then it would become an OGC involved
10 project. As I read it -- or maybe they could do some
11 of that in terms of the introduction, like what the
12 courts are saying about what religion is.

13 But as I read it, it's in terms of OCRE's
14 role of trying to evaluate what government agencies
15 are doing and monitor that and do social science
16 literature review. I think that they've defined the
17 scope that way.

18 I may be wrong about that. Maybe you want
19 to say something and maybe Terri.

20 STAFF DIRECTOR JIN: Yeah, Madam Chair. I
21 think that's right, and if Terri wanted to add
22 something she can, too, but I think what we tried to
23 do here, and again, clearly I don't think we saw any
24 scenario where the Commissioners would want to do both
25 of these proposed projects, and of course, always if

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1 the Commissioners want to do another related project,
2 that's fine, too.

3 But I think the idea was that part of it
4 was in keeping with some of the comments I think
5 Commissioners have made over the months of wanting to
6 see some projects that are kind of more narrow, more
7 manageable, and maybe spend a little bit more time and
8 depth. The (unintelligible) America project is more
9 like that way. The other one is a more generic, one
10 which has value, but is probably a little more of a
11 survey.

12 But, Terri, do you want to add anything to
13 either one of those projects?

14 Again, if the Commissioners -- I think
15 like the Chair said, if certainly the Commissioners
16 want to do a project that involves some discussion of
17 cases, I mean, that's perfectly fine, but of course,
18 that will have to be done as kind of a joint project
19 between the two offices.

20 COMMISSIONER BRACERAS: I mean, I wasn't
21 trying to complicate things. I thought, you know,
22 it's one thing to look at the data that EEOC may
23 already be collecting, but I think to kind of give it
24 a higher level of analysis as to what that means in
25 terms of the case law might be more useful.

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1 STAFF DIRECTOR JIN: If I can just make
2 one more comment, earlier there was a comment made
3 about is EEOC, already collecting the data. I think
4 the answer is yes, but as far as we know, maybe
5 internally they may evaluate the data for their own
6 internal purposes, but certainly, it's not within
7 their mission, and they don't go about like taking the
8 data and assessing it and integrating in some
9 literature so that examination and stuff like that.

10 I mean, that's where we kind of have the
11 value added here. -

12 CHAIRPERSON BERRY: So what you've heard
13 so far is that Commissioners like the idea of having
14 something more general that considers more than just
15 the Muslim religion and also maybe some modification,
16 some proposal to include so that the staff can think
17 about how they could put together stuff that human
18 rights agencies do, stuff that courts have had to say
19 and the like, and in your thinking about trying to
20 revise the proposal or a proposal on this subject, but
21 we still haven't prioritized in terms of what anybody
22 thinks is more important than anything else. But at
23 least that's the response you get.

24 Yes? I mean the staff. Yes.

25 COMMISSIONER EDLEY: Well, I wanted to

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1 speak to the issue of priority because I don't have
2 any objection intellectually at all, and I even have
3 some interest in what's been discussed in the last ten
4 minutes.

5 As a matter of establishing priorities,
6 it's not clear to me that doing kind of what are the
7 developments with regard to religious discrimination
8 in the work place should be a higher priority than
9 doing a similar thing with respect to people with
10 disabilities or age discrimination -- I mean, and so
11 maybe the way to ask this is just thinking back over
12 both what's on our plate for '04 and '05 and what
13 we've done in the last few years probably done on age
14 discrimination; I can't recall.

15 CHAIRPERSON BERRY: Not recently.

16 COMMISSIONER EDLEY: And with the aging of
17 the work force, I'm just wondering. There were
18 certainly a lot of stories in this last economic
19 cycle, business cycle about firms trying to squeeze
20 out older employees because it's cheaper to replace
21 them with younger employees. Their incentives were
22 the pension benefits, related to health care issues
23 and the like.

24 I don't mean to be affirmatively pitching
25 back specific issues. I'm just raising the question

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1 of the comparative of doing something on religious
2 discrimination in the work place versus some of these
3 other areas. I'm at a loss as to how to --

4 CHAIRPERSON BERRY: In disability, the
5 last time we did it, we showed disabled people didn't
6 really get employed, if I recall correctly.

7 COMMISSIONER EDLEY: There have been some
8 very interesting case law developments so --

9 COMMISSIONER REDENBAUGH: They were not in
10 the work place.

11 CHAIRPERSON BERRY: Right. So we wouldn't
12 be doing anything on them. Discrimination in the work
13 place is not in the work place.

14 COMMISSIONER EDLEY: Well, that's one way
15 to minimize the problem.

16 VICE CHAIRPERSON REYNOSO: Right.

17 (Laughter.)

18 VICE CHAIRPERSON REYNOSO: Madam Chair,
19 the problem I have is I think all five listings are
20 interesting and worthwhile, but in terms of
21 priorities, if we go with the voting rights, then I
22 think I would go with number three, evaluation of the
23 Department of Homeland Security's civil rights
24 enforcement as the two projects that I would
25 recommend.

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1 I'm very interested actually in the
2 religious one also, but if we're limited to two, I
3 think I'd go with voting rights and Homeland Security.

4 COMMISSIONER BRACERAS: I'm sorry. I may
5 have missed. Are we trying to limit it to two? Is
6 that what's feasible?

7 CHAIRPERSON BERRY: Yeah. The Vice Chair
8 reminded us that the staff and the Staff Director had
9 asked us to, if we could --

10 COMMISSIONER BRACERAS: Two from each
11 group, one from OCRE and one from and one from --

12 VICE CHAIRPERSON REYNOSO: No, two under
13 each group.

14 COMMISSIONER BRACERAS: Two from each.

15 COMMISSIONER THERNSTROM: Yeah.

16 COMMISSIONER BRACERAS: Okay. I mean, it
17 seems to me that within the first group, you know, one
18 can be collapsed into two, and number four can be
19 collapsed into number three, which boils it down to
20 actually three things and only needing to eliminate
21 one or I don't know. Chris just suggested a new topic
22 which also seems worthwhile, but it seems that we can
23 do some consolidating with the list that we have.

24 VICE CHAIRPERSON REYNOSO: That's fine.

25 COMMISSIONER BRACERAS: Doesn't number

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1 four seem like a subtopic of three?

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER EDLEY: Terri looks like
4 she's about to cry.

5 COMMISSIONER BRACERAS: Why? Because that
6 would make it too broad?

7 MS. DICKERSON: Given the resources, I
8 just believe that the scope might be inordinately
9 large for the number of people that we have to work on
10 it for the resources that we have to carry it out.

11 COMMISSIONER BRACERAS: Because number
12 three seems large as it is, and maybe you want to just
13 bite off a piece of that. I mean, maybe the piece is
14 just number four and maybe it's a different piece,
15 but --

16 MS. DICKERSON: Number four involves quite
17 a few agencies.

18 COMMISSIONER BRACERAS: Oh, I see.

19 MS. DICKERSON: Yeah. If you look at the
20 Department of Transportation.

21 COMMISSIONER BRACERAS: So both of them --
22 well, okay.

23 CHAIRPERSON BERRY: So Homeland Security
24 is narrower. I'm just looking at --

25 COMMISSIONER BRACERAS: Well, it's both

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1 narrower and broader.

2 (No response.)

3 CHAIRPERSON BERRY: Right. I was just
4 wondering what Terri -- but Russell had his hand up.
5 Stay there, please, Terri.

6 COMMISSIONER REDENBAUGH: Yes, please.

7 I don't know how to think about priorities
8 without having costs associated with them. Dean
9 Edley, do you have a way?

10 COMMISSIONER EDLEY: I do.

11 COMMISSIONER THERNSTROM: He's calling him
12 Dean Edley already.

13 COMMISSIONER EDLEY: I prefer the dart
14 board method.

15 COMMISSIONER REDENBAUGH: I see. Deans
16 will probably not be permitted that.

17 COMMISSIONER EDLEY: No, but in more
18 seriousness, I think that I take what the staff has
19 presented as a sense that they can afford to do two
20 projects in each office at the price --

21 COMMISSIONER REDENBAUGH: Or at the least
22 the projects are of similar ties.

23 COMMISSIONER EDLEY: Yeah, there's sort of
24 a modal cost recognizing that we are projecting out a
25 couple of years and the projects need to be further

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1 defined, and I take the spirit of Terri's concern to
2 be that if we simply collapse them, it may make sense
3 verbally, but from the cost perspective, we're fooling
4 ourselves. Just collapsing them verbally doesn't
5 change the fact that the tasks involve these added
6 demands on staff time.

7 I think so if they're really doing to be
8 limited to two and you start collapsing, what we're
9 really instructing them to do is go back, combine
10 them, and then chuck them down to a manageable size.

11 Let me give you an example. You could --
12 one thing to do would be to take number four, which is
13 our federal security activities, discrimination three,
14 and instead of trying to answer the question, make it
15 a meta question and ask: are we satisfied that the
16 agencies have the wherewithal to detect discrimination
17 if it is, in fact, occurring.

18 Do you know what I mean? So that --

19 COMMISSIONER BRACERAS: That's almost a
20 philosophical question though, even beyond the data.

21 COMMISSIONER EDLEY: Well, it's really
22 more like doing an audit of their own --

23 COMMISSIONER REDENBAUGH: Are the
24 processes in place to do that?

25 COMMISSIONER EDLEY: -- civil

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1 rights/Inspector General operations? Are the
2 processes in place in order to monitor how much is
3 going on in the field? Do they have the resources to
4 monitor it effectively? Do they have the policies in
5 place to define what does or doesn't constitute
6 discrimination?

7 But it doesn't aspire to doing the level
8 of sort of a granular empirical assessment ourselves.
9 I don't know.

10 CHAIRPERSON BERRY: Vice Chair and then --

11 VICE CHAIRPERSON REYNOSO: I just wanted
12 to remind us if memory serves me from time to time the
13 staff will come back and say, you know, "This is the
14 way we started, but it's too big and can we redefine
15 it both in terms of getting it out in a timely fashion
16 and in terms of being able to deal with it with the
17 staff that we have?"

18 So these are projections that I think will
19 be subject and have some modifications as staff gets
20 into it.

21 CHAIRPERSON BERRY: Commissioner Braceras.

22 COMMISSIONER BRACERAS: To sit here and do
23 which ones we might focus on, and this may not be a
24 basis on which we decide to study things, but looking
25 at these and thinking about which ones of these might

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1 be less political or more bipartisan or more capable
2 of getting a consensus from the group, I mean, it
3 seems to me, for example, if you study religious
4 discrimination and you include Christians and
5 Catholics as well as Muslims and, you know, Jews,
6 other groups, that that may be something that would
7 lend itself more to many of us on this Commission,
8 lend itself more to a product that we can all agree on
9 as opposed to, for example, Homeland Security,
10 which -- let's just be honest about it -- is going to
11 be a huge issue in this campaign.

12 VICE CHAIRPERSON REYNOSO: But it is just
13 so --

14 COMMISSIONER BRACERAS: Okay, but it's
15 still political. You know, let's say George Bush gets
16 reelected and whatever. I mean, it has got a much
17 more political component to it, I think. The Homeland
18 Security debate, for better or worse, has become a
19 political issue which is on the table now and probably
20 will be in the future, whereas I think religious
21 discrimination, that issue, looking at it as it
22 applies to all religions and all groups, to me is
23 inherently nonpolitical and is something that -- and
24 maybe it doesn't break down that way, but I'm just
25 throwing it out there as maybe we want to focus on

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1 issues that seem, you know, more -- that we can look
2 at it with more of a neutral eye than a political eye.

3 CHAIRPERSON BERRY: Okay. Commissioner
4 Meeks.

5 COMMISSIONER MEEKS: Well, I agree that it
6 could be viewed more politically. I'm just not sure
7 that we should make a decision based on that
8 because --

9 COMMISSIONER BRACERAS: Well, maybe we
10 shouldn't. I'm just --

11 COMMISSIONER MEEKS: Yeah, given the
12 number of agencies that's been collapsed into
13 Department of Homeland, and you know, the Commission
14 has always looked at civil rights functions under all
15 federal agencies, I don't see where the Department of
16 Homeland Security should be exempt, but in 2006, I
17 mean, I think there's going to be some big --

18 COMMISSIONER BRACERAS: Yeah. I still
19 don't think it should be exempt. I'm just saying in
20 terms of prioritizing and trying to focus our
21 attention on issues where we might be able to all come
22 together.

23 I know that, you know, when proposals were
24 being made for an Office for Civil Rights in the
25 Homeland Security Department we all had wildly

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1 different views about that on this Commission, and
2 obviously the makeup of this Commission won't be the
3 same in 2006, but it seems to me that religious
4 discrimination is something that there are less
5 divergent views on. I mean, we're all basically
6 against it, whereas I think --

7 CHAIRPERSON BERRY: We're against it? I'm
8 in favor of it unless you -- I want to favor Baptists.

9 COMMISSIONER BRACERAS: The point is that
10 the Homeland Security issue is one on which there is a
11 more political component than there is with religion.

12 CHAIRPERSON BERRY: We don't disagree. I
13 absolutely agree with that.

14 COMMISSIONER BRACERAS: And maybe that's
15 irrelevant. I'm just pointing out that we can try to
16 be more collegial and collaborative in terms of what
17 issues we choose to study. I don't know. It just may
18 improve things down the road. That's all I'm
19 thinking.

20 CHAIRPERSON BERRY: Why don't we do this
21 then? Why don't we take Jennifer's advice, at least
22 in part, and why don't we leave -- since we can only
23 pick two at this stage; the staff would like us to
24 recommend two, and we're not recommending them, but
25 we're saying tentatively; but why don't we just say

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1 that for further consideration we will look at
2 religious discrimination -- this is for further
3 consideration -- but right now religious
4 discrimination in general would be one for the reasons
5 that -- and other reasons because substantively they
6 are important issues.

7 COMMISSIONER BRACERAS: Oh, yeah, they are
8 important issues. We're trying to choose between
9 them.

10 CHAIRPERSON BERRY: -- to work on them
11 except for schools and education on the long term.

12 And that the voting rights joint project
13 would be the other.

14 VICE CHAIRPERSON REYNOSO: That's fine.

15 COMMISSIONER EDLEY: Would you want to
16 pick a third in case the voting rights doesn't turn
17 out to be satisfactory?

18 CHAIRPERSON BERRY: Right, and the third
19 would be going against the reasons that Jennifer gave,
20 but in favor of the reasons that Elsie gave and
21 somebody else. As a third option we put Homeland
22 Security, but we put the general religious
23 discrimination and the voting rights that nobody
24 seemed to really hate as the two things that they
25 might think about that they might possibly be doing.

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1 I say all of that because we haven't voted
2 on it, and I'm aware that we haven't voted on it, and
3 I'm aware that we have to vote on it.

4 COMMISSIONER BRACERAS: So I'm sorry.
5 You're saying that --

6 CHAIRPERSON BERRY: For purposes of
7 discussion and for a further elaboration and
8 discussion and votes and later on some time, we would
9 say for now we're talking in terms of religious
10 discrimination in the work place generally.

11 COMMISSIONER BRACERAS: Right.

12 CHAIRPERSON BERRY: And we're talking
13 about the voting rights project which is a joint
14 project, both that they have to draft up.

15 COMMISSIONER BRACERAS: Right.

16 CHAIRPERSON BERRY: And Homeland Security
17 would be put down as a further option if for some
18 reason the voting rights blows up and people want a
19 second proposal, unless somebody thinks of another one
20 in the meanwhile.

21 COMMISSIONER THERNSTROM: So we're only
22 talking about OCRE at the moment.

23 CHAIRPERSON BERRY: At the moment. That's
24 for OCRE, and Terri looks somewhat happier than she
25 did when she was back there about to cry.

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1 But then for OGC, there are four things
 2 there, and I for one like the immigration stuff. Oh,
 3 voting rights, that's right. They have voting rights
 4 as one of theirs. So that means we have to pick some
 5 one thing and then a backup in case the voting rights
 6 blows up in the same way that we just did OCRE.
 7 That's what that means.

8 I don't know. I think Abigail was next.

9 COMMISSIONER THERNSTROM: I happen to very
 10 much like number three, the disproportionate placement
 11 of children of color in the state foster care systems.

12 I also am extremely interested in the
 13 question of color matching between foster kids or
 14 adoptive kids and the race or ethnicity of parents. I
 15 don't know whether we can wed the two, but I think
 16 that there is an issue of discrimination/civil rights
 17 issue in the latter question as well.

18 CHAIRPERSON BERRY: Anybody else see
 19 anything else on there that they sort of are fond of?

20 Yes, Commissioner Edley.

21 COMMISSIONER EDLEY: First I want to say
 22 that I would hope that as the staff thinks of shaping
 23 the voting rights thing that you shape it in a way
 24 that makes it comparable. I don't want it to swallow
 25 up two slots, one in each.

1 COMMISSIONER BRACERAS: So find a way to
2 stick it into one category or the other.

3 COMMISSIONER EDLEY: Yeah, right. I mean,
4 I think that, yeah, we ought to be looking for a way
5 in which we stick it in one category or the other,
6 with the understanding that there will be an assist by
7 the other office, and that it's complemented by
8 another project that's in the second office to get
9 some assist from the first office

10 I mean, do you know what I mean? I think
11 I made my point.

12 Second, as much as I think the immigration
13 related employment practices issue, I think that's
14 very important. I think that immigration legislation
15 is going to be such a moving target over the next two
16 years, two to three years, that I don't really believe
17 -- I think it's unlikely that an '06 project on this
18 topic will be timely for congressional consideration.

19 CHAIRPERSON BERRY: Good point.

20 COMMISSIONER EDLEY: And therefore, as
21 important as the subject is, I think we should drop it
22 from the list for that reason.

23 If we want to play on that topic, then we
24 should think about doing a briefing next year or
25 something of that sort, but that way you just get some

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1 people who have done some empirical work on employer
2 sanctions, et cetera, who could come in and talk about
3 what the evidence is, but I wouldn't suggest anything
4 more ambitious than that.

5 VICE CHAIRPERSON REYNOSO: That's not a
6 bad idea.

7 COMMISSIONER BRACERAS: I like that.

8 VICE CHAIRPERSON REYNOSO: I think we
9 ought to see if we could make any recommendations from
10 the debate that's going on, but I think you're right
-11 for '06.

12 CHAIRPERSON BERRY: That's fine.

13 Yes, Commissioner Meeks.

14 COMMISSIONER MEEKS: Well, I actually
15 think number four would be a good briefing topic.

16 VICE CHAIRPERSON REYNOSO: Yeah, I'm
17 interested in four.

18 COMMISSIONER EDLEY: The media ownership
19 issue?

20 VICE CHAIRPERSON REYNOSO: Yeah.

21 COMMISSIONER MEEKS: Well, I mean,
22 obviously we can't fit them all into a project, but it
23 would be an interesting briefing.

24 CHAIRPERSON BERRY: Yeah, I think so, too,
25 and in a timely fashion, too, because it's a very hot

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1 issue. So we could take that under -- what do you
2 think, Cruz?

3 VICE CHAIRPERSON REYNOSO: You know,
4 sometimes we've had a briefing to help us decide
5 whether or not we're going to have hearings, for
6 example. We might consider doing that.

7 CHAIRPERSON BERRY: So maybe we could have
8 a briefing on the impact of deregulation in minority
9 media ownership. I sort of like number three also,
10 the same one that Commissioner Thernstrom liked, and I
11 even like it with the coda that she added about
12 placement of kids.

13 So we're left with that one.

14 COMMISSIONER THERNSTROM: And it has the
15 virtue of what Jennifer was talking about, but it is
16 an issue I think that we could come together on.

17 COMMISSIONER MEEKS: I agree.

18 COMMISSIONER BRACERAS: Yeah, I really
19 like number three as well. I'm not as interested in
20 number four, although I have no objection to it. My
21 preference would be for number two because I think --
22 and maybe I'm wrong -- but I think that there's a
23 dearth of information on the Southeast Asian
24 community.

25 And I think that that could be a value

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1 added report, and it seems to me that even if it's
2 just using, you know, whatever clout we may have to
3 get issues facing the Southeast Asian community into
4 the public eye, that might be a useful thing to do
5 because I think it's something that's underplayed,
6 under thought about by politicians and the media and
7 people.

8 So for whatever it's worth, I like two and
9 three under the OGC proposals, and I agree with
10 everything Chris said about immigration. I think it's
11 extremely important, but difficult to get your arms
12 around while everything is in flux.

13 CHAIRPERSON BERRY: So we're left with the
14 idea of having a briefing on the deregulation of
15 minority media ownership, which means it doesn't have
16 to be a project at least now. It may be one some
17 other time.

18 But so we've got two here that have been
19 spoken of favorably in addition to the voting rights
20 one, which means that one of these could be like
21 number two, such as we did with OCRE, and the other
22 one as a backup if voting rights falls through.

23 COMMISSIONER BRACERAS: So voting rights
24 could also be reconceptualized and put in OCRE. I
25 mean, there's no reason voting rights has to be under

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1 OGC if we're evaluating current government enforcement
2 of Voting Rights Act. Wouldn't that fall under OCRE?

3 VICE CHAIRPERSON REYNOSO: It could.
4 We'll get a recommendation from the staff on that
5 actually.

6 COMMISSIONER BRACERAS: Yeah.

7 CHAIRPERSON BERRY: But for now we've
8 lopped off some of these at least, and we got left the
9 cost of your thing and adoption and so on and the
10 social services compensations under OGC.

11 VICE CHAIRPERSON REYNOSO: That's fine.

12 CHAIRPERSON BERRY: And then we know what
13 we have under OCRE and the voting rights thing.

14 So why don't we leave it at that for the
15 moment? Yes, Commissioner Edley.

16 COMMISSIONER EDLEY: You know, we're
17 talking about '06, and the fact is if you had a firm
18 view about what you really wanted to do and it
19 required slightly different staffing patterns, you'd
20 have two years to adjust.

21 I mean, if you needed just through
22 attrition and so forth and decided you needed to staff
23 up one office a little more than another office, the
24 way in which you do your hires, looking ahead at what
25 the work loads are going to be. So --

1 COMMISSIONER BRACERAS: Well, meaning that
2 you could do three projects under OGC and one under
3 OCRE or vice versa?

4 COMMISSIONER EDLEY: Well, yeah, or vice
5 versa. I mean, if you think about --

6 COMMISSIONER BRACERAS: Right.

7 COMMISSIONER EDLEY: -- people from
8 different offices working on different stuff. I mean,
9 a lot of the voting rights stuff that we talked about,
10 for example, I could easily imagine somebody with a
11 J.D. as well as somebody with an M.A. or a Ph.D. doing
12 the work.

13 So I hope that as the Staff Director
14 thinks this through there will be a little bit of
15 imagination applied to the resource constraint
16 challenge.

17 CHAIRPERSON BERRY: But we need to think
18 all of this through for us, and we'll just leave these
19 at that. It was a good discussion to this time, and
20 then maybe next time we can discuss these again, and
21 we'll see how we proceed on these matters.

22 Before we adjourn, unless somebody has got
23 something else, I should have asked you, and I should
24 have earlier, is it possible to change the May 14th
25 meeting? Vice Chair Reynoso's son has finally been

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1 notified that he might possibly graduate.

2 VICE CHAIRPERSON REYNOSO: He will
3 graduate.

4 (Laughter.)

5 COMMISSIONER BRACERAS: And have a
6 commencement somewhere?

7 CHAIRPERSON BERRY: On May 14th.

8 VICE CHAIRPERSON REYNOSO: At Pratt
9 Institute in New York.

10 CHAIRPERSON BERRY: And so if it were
11 possible for Commissioners to adjust their calendars
12 to permit him to go see his son on commencement.

13 One thought that the Staff Director and I
14 had was to ask you whether you thought we could meet
15 on a day other than Friday for a change unless you've
16 got a calendar that doesn't permit it, like on May
17 17th, which is the anniversary of Brown v. the Board
18 of Education.

19 COMMISSIONER BRACERAS: What day of the
20 week is it?

21 VICE CHAIRPERSON REYNOSO: A Monday. It's
22 the following Monday.

23 CHAIRPERSON BERRY: We never meet on any
24 day except Friday, but the question is whether anybody
25 could, and if so, we might have some people come in

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1 and talk about Brown, you know, some of the people who
2 were involved in it if they're still around, and
3 people who know about it and have a little reception
4 or something.

5 VICE CHAIRPERSON REYNOSO: Party. For
6 those of us who teach, we're beyond the semester then.
7 So that's fine with me.

8 CHAIRPERSON BERRY: So it doesn't matter
9 to us.

10 COMMISSIONER BRACERAS: It sounds
11 interesting and great, and you shouldn't change it for
12 me. I just don't happen to have day care on Mondays.
13 So I might be able to arrange something, but it does
14 sound very interesting, but --

15 CHAIRPERSON BERRY: Can we find day care
16 for --

17 VICE CHAIRPERSON REYNOSO: Well, I'll pay
18 for it.

19 CHAIRPERSON BERRY: -- Commissioner
20 Braceras?

21 COMMISSIONER BRACERAS: I'll look into it.
22 I have no substantive objection.

23 CHAIRPERSON BERRY: Does anyone else have
24 any?

25 COMMISSIONER THERNSTROM: I'm not sure.

1 CHAIRPERSON BERRY: Well, maybe we can't
2 do it.

3 COMMISSIONER THERNSTROM: Is it true that
4 the 17th is Monday?

5 COMMISSIONER EDLEY: Monday, the 17th.

6 VICE CHAIRPERSON REYNOSO: Well, if
7 somebody can't make it, then it shouldn't be --

8 COMMISSIONER THERNSTROM: I'm trying to
9 figure this out.

10 CHAIRPERSON BERRY: Do you have day care
11 any other day?

12 COMMISSIONER BRACERAS: All the other
13 days.

14 CHAIRPERSON BERRY: Every day except
15 Monday.

16 COMMISSIONER BRACERAS: Yeah.

17 COMMISSIONER EDLEY: Is this some
18 religious thing with your nanny?

19 COMMISSIONER BRACERAS: No, no. She just
20 works for another family on Mondays.

21 COMMISSIONER THERNSTROM: No, I can make
22 it. I'm sorry. I can make it.

23 COMMISSIONER BRACERAS: I'll see what I
24 can juggle. It sounds interesting.

25 COMMISSIONER THERNSTROM: I think we ought

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1 to check with Russell before we make a final decision.

2 CHAIRPERSON BERRY: Okay. Let's do this
3 so that we have two options. Let's check with Russell
4 and see if Russell can do it, and if he says yes,
5 let's do it and hope that you can get day care.

6 COMMISSIONER BRACERAS: I will try.

7 CHAIRPERSON BERRY: And if not, then
8 Christopher will send his nanny and Maria will stay at
9 home with the kids.

10 (Laughter.)

11 CHAIRPERSON BERRY: Then, if we can't do
12 it that day, is there a day other than Friday, the
13 week before the Commission meeting? Because you don't
14 want to do anything about Brown after Brown's
15 anniversary, that you guys could meet, like between
16 the 10th and -- because he can't do it Friday, but he
17 can do it another day.

18 Is that possible at this moment, depending
19 on Russell's schedule, as a backup?

20 COMMISSIONER MEEKS: Well, Monday is
21 actually better for me.

22 COMMISSIONER THERNSTROM: Friday the 7th
23 is out for me if that's the question.

24 CHAIRPERSON BERRY: No, my question is
25 this. If we cannot do it on the 17th because of

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1 Russell, and we can't do it on the 14th because of
2 Cruz or we can't do without Cruz, is there a day
3 during the week of May 10 through 12, 14th, before
4 Friday that you could meet. That's the query, any of
5 you, or that you cannot meet.

6 COMMISSIONER BRACERAS: I can do it any
7 day except the following Monday poses the same -- the
8 previous Monday poses the same problem.

9 COMMISSIONER THERNSTROM: I'm all right.

10 CHAIRPERSON BERRY: You're all right like
11 the 11th-12th?

12 COMMISSIONER THERNSTROM: Yes.

13 CHAIRPERSON BERRY: All right. Well,
14 let's see what Russell says, and if he says it's a go,
15 we'll do it on the 17th. Otherwise --

16 VICE CHAIRPERSON REYNOSO: Thank you very
17 much.

18 CHAIRPERSON BERRY: -- we'll pick a day
19 during the week, and we really very much appreciate
20 you.

21 Could I get a motion to adjourn?

22 VICE CHAIRPERSON REYNOSO: So moved.

23 CHAIRPERSON BERRY: Is there a second?

24 COMMISSIONER EDLEY: Second.

25 CHAIRPERSON BERRY: All in favor indicate

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1 by saying aye.

2 (Chorus of ayes.)

3 CHAIRPERSON BERRY: Opposed?

4 (No response.)

5 CHAIRPERSON BERRY: So ordered.

6 Thank you.

7 (Whereupon, at 12:14 p.m., the Commission
8 meeting was adjourned.)

9

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