

Library

U. S. COMMISSION ON CIVIL RIGHTS

LIBRARY

MEETING

U.S. COMMISSION ON CIVIL RIGHTS

Friday, June 13, 1997

The Commission met in Room 540, YWCA  
Building, 624 9th Street, N. W., Washington, D. C.  
20425, at 9:30 a.m., MARY FRANCES BERRY, Chairperson,  
presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON  
CRUZ REYNOSO, VICE CHAIRPERSON (Via Telephone)  
CARL A. ANDERSON, COMMISSIONER  
ROBERT P. GEORGE, COMMISSIONER (Via Telephone)  
A. LEON HIGGINBOTHAM, COMMISSIONER (Via Telephone)  
CONSTANCE HORNER, COMMISSIONER  
YVONNE Y. LEE, COMMISSIONER  
RUSSELL G. REDENBAUGH, COMMISSIONER (Via Telephone)  
EDWARD HAILES, JR., DEPUTY STAFF DIRECTOR

STAFF PRESENT:

MARLISSA BRIGGETT, PARLIAMENTARIAN  
BARBARA BROOKS  
SICILIA CHINN  
KI-TAEK CHUN  
JAMES S. CUNNINGHAM  
BETTY EDMISTON  
GEORGE M. HARBISON  
CAROL-LEE HURLEY  
FREDERICK ISLER

EXECUTIVE COURT REPORTERS, INC.  
(301) 565-0064

## STAFF PRESENT: (Continued)

JACQUELINE L. JOHNSON  
WILLIAM LEE  
REGINALD MARTIN  
EMMA MONROIG  
STEPHANIE Y. MOORE, GENERAL COUNSEL  
MARC PENTINO  
VERONIQUE PLUVIOSE-FENTON  
MARCIA TYLER  
ANTHONY K. WELLS, SR.  
AUDREY WRIGHT  
NADJA ZALOKAR

## COMMISSIONER ASSISTANTS PRESENT:

JOSEPH BROADUS  
ADERSON FRANCOIS  
CHARLOTTE PONTICELLI  
WILLIAM LEE SAUNDERS, JR. (Via Telephone)  
KRISHNA TOOLSIE  
CYNTHIA VALENZUELA

## A G E N D A

	<u>Page</u>
Approval of Agenda	5
Approval of the Minutes of May 9, 1997	5
Announcements	5
Staff Report	18
Nomination for Staff Director -- (Executive Session)	
State Advisory Committee Reports	
- District of Columbia: Residential Mortgage Lending Discrimination	22
- Kentucky: Bias and Bigotry in Kentucky	25
- Washington: Disproportionality in the Juvenile Justice System	25
Discussion of the Staff Draft GPRA Strategic Plan	28
Miami Report	82
Equal Educational Opportunity Reports	236
GAO Report	242
Future Agenda Items	

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

1

2

9:30 a.m.

3

4 order.

5

6 The first item on the agenda is the approval  
7 of the agenda. And let me just say that Commissioner  
8 Higginbotham, who, as you know, is in recovery from a  
9 very serious illness and a series of operations, asked  
10 me yesterday to tell you that he's going to try to be  
11 on the phone here by about 10:30. And he asked that we  
12 not, if possible, consider items that he had a deep  
13 interest in, like the Miami Report and the nomination  
14 for the Staff Director and the GAO Audit until that  
15 time, if it were at all possible.

16 And so, if --

17 COMMISSIONER HORNER: Madam Chair, I'll move  
18 we defer those decisions, if you'd like.

19 CHAIRPERSON BERRY: Right. I was going to --  
20 thank you. I thank you very much. Because I as going  
21 to say maybe we should reconfigure a little bit here  
22 and maybe do the SAC Reports first after the Staff  
23 Report and then the GPRA and then see if by that time  
24 he's on, and give him an opportunity to participate.

25 And if he isn't on by then, we'll just try to  
figure out what to do at that point.

1 All right. I appreciate that very much.

2 And with those changes, could I have a motion  
3 to approve the agenda?

4 COMMISSIONER HORNER: So moved.

5 COMMISSIONER REDENBAUGH: Seconded.

6 CHAIRPERSON BERRY: Any discussion?

7 No.

8 All in favor of the agenda as approved with  
9 the changes, indicate by saying aye.

10 (Chorus of ayes.)

11 Opposed?

12 (No response.)

13 So ordered.

14 The minutes of May 9th, 1997, Item Number 2.  
15 Could I have a motion?

16 COMMISSIONER ANDERSON: So moved.

17 COMMISSIONER HORNER: Seconded

18 CHAIRPERSON BERRY: Any discussion?

19 (No response.)

20 All those in favor, indicate by saying aye.

21 (Chorus of ayes.)

22 Opposed?

23 (No response.)

24 Okay. Now we'll go to announcements. And I  
25 think I have some, if I can find them.

1 I probably have even more than this.

2 The first one is that according to the staff,  
3 the House Subcommittee on the Constitution may schedule  
4 an oversight hearing on the Commission for mid-July and  
5 we will let you know when we know more about the date.  
6 And at that time, we would hope that some Commissioners  
7 would make themselves available for that hearing.

8 The second is we're going to consider today  
9 the GPRA performance plan but you should know -- I  
10 mean, the GPRA strategic plan. That's what it's  
11 called. But the performance plan, which is the second  
12 part of this, is being prepared by the staff. They're  
13 working on that already and we'll have that for the  
14 next meeting, just so you know where these things are.  
15 And that taskforce is chaired by Kim Cunningham and  
16 George Harbison, and they've been working very hard on  
17 that.

18 The performance plan has to be submitted, or  
19 is supposed to be submitted, to OMB in September along  
20 with our budget estimate. So that's the deadline on  
21 it. These are the dates.

22 The Arizona, California, New Mexico and Texas  
23 Advisory Committees had a press conference on their  
24 Border Violence Report and they got good press  
25 conference. There are some items in the press clips

1 about it.

2           The next thing is that in St. Petersburg,  
3 where our SAC has been very much involved and the  
4 Regional Office, and where Commissioner Anderson and I  
5 were down there, they've appointed the first African-  
6 American Police Chief in St. Petersburg, Goliath Davis,  
7 who was formerly the Assistant Chief of Police. And  
8 Darrell Stephens who we met when we were down there,  
9 has been promoted. He's now the City Manager.

10           I just thought that's very interesting. So,  
11 those changes have been made there.

12           The other is that the Church Arson Taskforce  
13 -- you may have noticed this in the news -- released  
14 their report on church fires in the South. That's the  
15 BATF/Government/Justice Department Taskforce working on  
16 the enforcement issues. And if you'd like a copy of  
17 it, we do have copies, and people who are interested  
18 may have a copy.

19           The other is that the Regional Office, Melvin  
20 Jenkins in the Midwest, I guess -- what region is that?  
21 Central Region Office -- is with, the SAC Chairs,  
22 arranging a forum in Boligee, Alabama, where some of us  
23 went last year to the church fire forum. And what  
24 they're having is a forum, a little meeting or  
25 something, called "One Year Later, Have Race Relations

1 Improved in Our Town," or something like that.

2 And that one is going to be on June 26th, I  
3 think. And if anyone, any Commissioner is interested  
4 in going down, you might consider doing that.

5 Melvin is trying to arrange some others at  
6 various -- in the other places. And if there are  
7 others, we'll tell you so that you can -- if you want  
8 to participate, you can, in those.

9 And I think it would be very interesting and  
10 helpful if some of you can go down to any of these, or  
11 one or two, or whatever, to see what's going on.

12 The other thing is that the President, as you  
13 know, has announced his -- or the White House staff, I  
14 guess, announced his race relations initiative and  
15 announced his advisory board last night. I have had  
16 several conversations with the White House staff and  
17 the President about this subject. And the advisory  
18 board, I think, is a good one. John Hope Franklin, as  
19 Chair, I think, is a great idea.

20 There were some discussions early on among  
21 the staff, I was told, about whether this Commission  
22 ought to have its racial tensions reports as part of  
23 the work product that whatever the President came up  
24 with would use, or what to do, or how this Commission  
25 could play some sort of role. And the White House



1 staff view eventually was that we could not be expected  
2 to play a major role because they didn't know whether  
3 we would actually finish our reports.

4           And as one of them describe it to me, we are  
5 a contentious group that is always disagreeing and  
6 spends a lot of time arguing about procedures and  
7 complaining, and that they didn't know whether we would  
8 finish. So they didn't want to be in the business of  
9 relying on us to do this.

10           But however, in the end, they said that --  
11 and I pointed out to them that despite our  
12 contentiousness and our differences, which I think  
13 probably reflect the ideological differences in the  
14 country -- I said that to the President -- that it was  
15 healthy discussion and that I thought that we had been  
16 very productive, despite our differences, and that we  
17 would be finishing our racial tensions reports before  
18 the end of the year. We expected to, the way we've got  
19 it organized.

20           And then they agreed that we would send our  
21 reports to this taskforce for their review and  
22 inclusion in whatever they come up with in the end.  
23 And so that was the way it was left.

24           And I myself think -- and that's the way I  
25 left it with them. That it's better for us not to be

1 involved because we're an independent commission and  
2 what the President wanted was an advisory board so that  
3 he could articulate his own views about the subject and  
4 not what some independent commission had to say about  
5 the subject.

6           So, as far as I know, this is the way the  
7 issue will be handled. And I just thought I would --  
8 and we will report this to our State Advisory  
9 Committees. One of our SAC chairs -- I've forgotten  
10 which one.

11           COMMISSIONER REDENBAUGH: Kansas.

12           CHAIRPERSON BERRY: Kansas. -- wrote to us  
13 about a White House conference and he wrote again. And  
14 so what is going on is somewhat in keeping with the  
15 idea that he had. And so those SAC chairs who want  
16 this to happen may be assured by this sort of national  
17 effort going on. So I thought I would report that to  
18 you.

19           Does anyone have any questions about any of  
20 that or any other announcements or any comments?

21           Commissioner Horner?

22           COMMISSIONER HORNER: Madam Chair, can you  
23 tell us if the advisory group has a staff, an executive  
24 director, or if it's going to meet just on -- in other  
25 words, is it going to be an operational group or what?

1           CHAIRPERSON BERRY: The advisory board, the  
2 seven people, unpaid volunteers. They will go to the  
3 events that will be set up.

4           And I say all this to you -- and don't hold  
5 me exactly to it because you've worked in the White  
6 House, a White House. And maybe it was better  
7 organized. But things change. But as far as I know  
8 this morning, the advisory board will go to the events,  
9 town meetings, other events. They're going to Little  
10 Rock in September on the anniversary of the Central  
11 High School episode, and will sit at the town meetings  
12 and listen to people and so on.

13           The advisory board will meet with the  
14 President occasionally to talk to him about the issues,  
15 at his discretion. And the staff -- there will be a  
16 staff paid for out of the Justice Department, after  
17 they consult with their appropriations committee.  
18 About 15 people, some of whom will be detailed from  
19 HHS, HUD, various agencies.

20           The civil rights groups were very much  
21 opposed to a first suggestion, which was that they take  
22 staff from all the civil rights agencies. Everybody  
23 pointed out they don't have any staff anyway, so what  
24 do you mean? How do you expect them to get any work  
25 done if you're going to take all their staff?

1           And so they plan now to reprogram somebody  
2 from Justice, if the committee approves. And they will  
3 have an Executive Director, who they've not named. And  
4 Christopher Edeley, Jr., his role will be to -- he  
5 can't go on leave from Harvard again, because you go on  
6 leave for two years and then you have to go back. So  
7 he's going to be a consultant and an advisory on this  
8 project and work with the domestic policy staff and  
9 with public liaison to get this done.

10           And the end product is supposed to be a  
11 speech next year, a major speech by the President, in  
12 which he announces what he thinks he's learned, what  
13 should be done. And along the way if they come up with  
14 any ideas that should be made, proposals for policy,  
15 they will announce them along the way.

16           So that's what I understand to be the case.

17           COMMISSIONER HORNER: Thank you.

18           CHAIRPERSON BERRY: Okay. Anyone else have  
19 any question, comments?

20           I was just told by staff that Commissioners  
21 who are on the telephone must announce their names  
22 before speaking for the Court Reporter. So we'll just  
23 keep that in mind.

24           Okay. So that takes care of that.

25           Staff Report. Anyone have any questions?

1 Oh, I had one more announcement.

2 In order for us to get our work done with  
3 dispatch, I am going to ask and plan to schedule the  
4 agenda for the July meeting for an entire day, from  
5 9:30 to 5:30 or something.

6 Now, we can either have a break for lunch or  
7 we can have lunch brought in, or we can go out for an  
8 hour or two hours. I think that's a waste of time, in  
9 my own view, given the amount of work we have to do in  
10 July.

11 The whole purpose of this is, as you know,  
12 and I'll remind you, the statute requires that we  
13 submit a statutory enforcement report to the Congress.  
14 We have been much criticized for not submitting it on  
15 time. And while there has been a debate in that past  
16 about whether on time means by October 1 or whether on  
17 time means by December 31st, I am willing to take the  
18 opinion of the oversight committee as a valid one, for  
19 obvious reasons. And so the date is October 1, whether  
20 you like it or not, or whether I like it or not.

21 And therefore, I do not intend personally to  
22 be responsible for us being in violation of the  
23 statute. And I do not intend personally to be  
24 admonished by the chairman again, that the statute also  
25 -- there's another statute that has a fine and a

1 penalty for agencies with contumacy, refuse to abide by  
2 the requirements of the law. So I am suggesting that  
3 we spend the day at the next meeting getting through  
4 our work.

5           And I am also going to suggest that if we  
6 don't finish it at the next meeting, we ought to have a  
7 special meeting after that, before September, to finish  
8 whatever we don't finish. Because I intend, if I can  
9 have anything at all to with it -- and if I can't, then  
10 I will just have failed personally and will confess  
11 failure -- to do everything I can to get these reports  
12 done.

13           So that was the announcement about the  
14 agenda.

15           Now, does anyone have any preferences as to  
16 whether we should, on that day -- and hereafter, I  
17 intend to schedule Commission meetings for an entire  
18 day. We used to meet all day long.

19           I think the Commission needs to do more of  
20 its work in public and be more transparent about why  
21 people think what they think and don't think what they  
22 think. We've been severely criticized for not  
23 discussing our reasons and justifications for what we  
24 do. And sometimes it's unpleasant and painful and  
25 stressful. But at least people will know what we think

1 and why we think what we think. And then I can go off  
2 and take a chill pill or something after the meeting.  
3 All of us can.

4 So unless we just have a light agenda or  
5 something and there's not much to do that month, then  
6 in the future we can expect to spend a day doing  
7 whatever work we have to do.

8 Does anyone have any comment on that?

9 Yes, Commissioner Horner?

10 COMMISSIONER HORNER: Yes.

11 Madam Chair, I would suggest, if that's the  
12 case, for those who leave town on Friday, that we ought  
13 to -- if we're planning to put in an eight hour day,  
14 that instead of beginning our work at 9:30, we ought to  
15 begin our work at 7:30 so that people can be able to  
16 leave town, if that's their practice.

17 CHAIRPERSON BERRY: You mean on Friday?

18 COMMISSIONER HORNER: On Friday. Well, our  
19 meetings have historically been on Friday, and I think  
20 that's a good idea.

21 VICE CHAIRPERSON REYNOSO: This is Cruz  
22 Reynoso. I would just plan to stay over. If we're  
23 going to meet all day, then I think I'd just have to  
24 stay over Saturday.

25 CHAIRPERSON BERRY: If we start at 7:30, if

1 you came in on the redeye -- isn't that what you do,  
2 Yvonne? What time do you --

3 COMMISSIONER LEE: 4:30, my time.

4 CHAIRPERSON BERRY: The redeye gets here  
5 about 7:30, doesn't it?

6 COMMISSIONER LEE: Yes.

7 CHAIRPERSON BERRY: I would be willing to  
8 start earlier, but -- I mean, I don't mind starting  
9 earlier.

10 Does anybody have -- anyone else have any  
11 comments about times to start?

12 COMMISSIONER LEE: I would prefer going  
13 through lunch time so we don't have any break.

14 CHAIRPERSON BERRY: And just have sandwiches  
15 brought in?

16 COMMISSIONER LEE: Yes. If we start at 9:00.  
17 Because it's going to be a little hard for me to get in  
18 by 7:30 and get ready to go. Or we could try.

19 COMMISSIONER HORNER: I'm sorry. Is it  
20 difficult for you to come in that early? I don't want  
21 to --

22 COMMISSIONER LEE: The flight gets in at  
23 6:30, so it takes me about an hour to get here.

24 COMMISSIONER HORNER: If that's too  
25 difficult, then I don't want to try to impose that



1 requirement.

2 COMMISSIONER ANDERSON: Why don't we try  
3 8:00.

4 COMMISSIONER HORNER: 8:00.

5 CHAIRPERSON BERRY: We could make a  
6 compromise, yes.

7 Is someone out there trying to say something?

8 VICE CHAIRPERSON REYNOSO: This is Cruz  
9 Reynoso. Maybe we could start at 8:30 or 9:00 then,  
10 whenever Yvonne thinks that it would be comfortable for  
11 her.

12 COMMISSIONER LEE: 8:00 is find. 8:00 is  
13 find.

14 CHAIRPERSON BERRY: She says she can do it at  
15 8:00.

16 VICE CHAIRPERSON REYNOSO: That's fine.

17 COMMISSIONER HORNER: And if we're to go  
18 through lunch, can we bring -- should we bring a brown  
19 bag? No, seriously.

20 CHAIRPERSON BERRY: If you'd like.

21 COMMISSIONER HORNER: Otherwise, blood sugar  
22 levels will drop and decisionmaking will grow fuzzier  
23 than it already is.

24 CHAIRPERSON BERRY: Right.

25 (Laughter.)

1           The suggestion is we'll either bring a brown  
2 bag. Or staff could go out and get something. Or we  
3 can take a brief break to get something.

4           COMMISSIONER HORNER: I think maybe we ought  
5 to take a brief break because I think it's a little  
6 undignified in a public meeting to be eating while  
7 we're in a public meeting. So I would suggest that we  
8 establish a 20 minute break for a brown bag lunch or  
9 something.

10           CHAIRPERSON BERRY: How about a half an hour?  
11 Okay. So we'll say half and hour. And we'll start at  
12 8:00 and maybe go to -- what? 4:30, then, if we're  
13 going to start at 8:00?

14           And if we finish before then, of course, we  
15 stop. The point is so that you, for planning purposes,  
16 you have some idea of what you're in for, so that you  
17 may do that.

18           Okay. So that's what we'll do. At least  
19 we'll try it out in July. How's that? And see what  
20 happens.

21           Okay. The next item would be the State  
22 Advisory Committee Reports.

23           COMMISSIONER LEE: Sorry. I thought you were  
24 going to go through the Staff Report.

25           CHAIRPERSON BERRY: Oh, I did. I skipped

1 over it. Sorry.

2 Go ahead. I was going to, yes.

3 COMMISSIONER LEE: I just wanted to report on  
4 a couple of incidents that I requested the Regional  
5 Staff to monitor the development.

6 The first one involves a series of fires that  
7 occurred in the East Bay area, which is across the  
8 bridge from San Francisco. Over an eight-month period,  
9 four Asian-owned businesses were burned down  
10 completely. The ATF is involved, and they think it's  
11 arson.

12 Right now, they're looking at two  
13 possibilities. One is extortion possibility. The  
14 other is racially motivated. Because all four owners  
15 were Asian-Americans. And within the Asian-American  
16 community, there is a great level of anxiety and fear,  
17 as you can expect, because they do not think extortion  
18 have anything to do with it. Because if you're going  
19 to extort something from the business people, you do  
20 not burn down the whole thing. You want to leave  
21 something.

22 And they fear that because in recent years  
23 Asian-Americans have been able to move into the  
24 business area, that might have caused a certain level  
25 of tension. So I want the Regional Staff to monitor

1 the development on that.

2           The second case involved a police shooting  
3 death of a 33-year old Chinese-American in Sonoma  
4 County, which is about an hour off the Golden Gate  
5 Bridge up in Northern California.

6           That area, within the last decade, has  
7 changed tremendously. Young families have moved in  
8 because of the affordable housing there and Asian-  
9 American professionals have also moved in during the  
10 last decade. So the population has shifted quite a  
11 bit.

12           On April 29, Mr. Gao, who's a Chinese-  
13 American engineer, was shot to death in front of his  
14 house by the police. And according to the police, the  
15 officer feared for his life because Mr. Gao was holding  
16 a stick in a martial arts fashion.

17           I have no idea what that meant. Mr. Gao had  
18 never practiced martial arts.

19           And because the county is relatively small,  
20 they do not have citizens review support or what have  
21 you, so the incident is being reviewed by another  
22 police department, a neighbor police department.

23           The Asian-American community in that area was  
24 outraged, so they had requested the U.S. Attorney's  
25 involvement and they had written -- they told me they

1 had written me in this office -- I haven't gotten a  
2 copy -- requesting the Commission's involvement. At  
3 least we're monitoring it.

4 So I hope the Region Staff can also monitor  
5 this case because it's very important. And it seems  
6 like whether there is excessive police force or if  
7 there's anything racially motivated -- the fact that  
8 the officer said something about a martial arts  
9 fashion, was really -- it was really an insult to the  
10 community. So I hope the Regional Staff can follow up  
11 on that.

12 CHAIRPERSON BERRY: And which town was this?  
13 It's in Sonoma County.

14 COMMISSIONER LEE: It's Sonoma County. It's  
15 Walnut Park. They have -- Sonoma State University is  
16 right there.

17 CHAIRPERSON BERRY: Ah. Okay.

18 Carol-Lee, could you follow-up on this?

19 Okay.

20 Any other either comments or questions or  
21 anything else about the Staff Director's Report?

22 (No response.)

23 Okay. If not, then the State Advisory  
24 Committee Reports.

25 Could I have a motion? And we'll consider

1 them separately.

2           The District of Columbia: Residential  
3 Mortgage Lending Discrimination.

4           COMMISSIONER LEE: So moved.

5           CHAIRPERSON BERRY: Could I get a second?

6           COMMISSIONER ANDERSON: Seconded.

7           CHAIRPERSON BERRY: Okay. Discussion.

8 Discussion of the Residential Mortgage Lending  
9 Discrimination in Washington, D. C. Project.

10           COMMISSIONER REDENBAUGH: Yes. This is  
11 Commissioner Redenbaugh.

12           CHAIRPERSON BERRY: Yes, sir.

13           COMMISSIONER REDENBAUGH: I'm not prepared to  
14 accept this report at this time. My concern is in the  
15 area of it being balanced. I think it's unfortunate  
16 that the data they used is out of date, although that  
17 is less of a problem than the lack of balance and the  
18 lack of opportunity for the other side to have their  
19 position presented in a way that's included in the body  
20 of the report.

21           CHAIRPERSON BERRY: Okay.

22           Any other comments?

23           (No response.)

24           Well, I have to agree with Commissioner  
25 Redenbaugh. And I don't know why it seems -- the

1 witnesses seem somewhat unbalanced.

2           It seems to me that there were other people,  
3 since you're right here in Washington, D. C., that they  
4 could have had to come in, maybe, from some of the  
5 government agencies that deal with this issue.

6           So, I know it's a SAC report, but my own view  
7 would be to ask them if they would be willing to take  
8 another look at it and see if there's something else  
9 that they would like to -- either talk to somebody else  
10 or add something or revise it.

11           I know if they don't want to, they don't have  
12 to, but it would be my -- I mean, I think that would be  
13 a good idea.

14           Yes, Commissioner Horner?

15           COMMISSIONER HORNER: Madam Chair, I agree.  
16 The polling data we've seen over the last week or two  
17 on the disparity of perception between whites and  
18 blacks about the degree of discrimination in the  
19 country suggests to me that we have to have  
20 conversations at a much greater level of detail than  
21 we've had. And I think a subject like lending  
22 discrimination is ripe for a great deal of exploration  
23 of motivations at a level of detail greater than has  
24 historically been the case.

25           So I would join you in encouraging the SAC to

1 take another look and maybe use this as a vehicle for a  
2 better discussion than has been held on this subject.

3 CHAIRPERSON BERRY: Does anyone else have any  
4 objection to that or any comment about that?

5 VICE CHAIRPERSON REYNOSO: This is Cruz  
6 Reynoso.

7 If it's true that the lending institutions  
8 didn't have an opportunity to present their point of  
9 view, clearly that should be presented and represented  
10 in the report. I must say that in terms of what  
11 actually was in the report, it depended a lot on other  
12 printed material that seems to be, so far as we know,  
13 pretty accurate.

14 But I agree that if there's any question,  
15 that the lending institutions should be the most  
16 involved. They would be the ones that the advisory  
17 committee would want to change their practices. Very  
18 much need to be involved and their point of view fully  
19 explored.

20 CHAIRPERSON BERRY: Okay.

21 Anyone else have any?

22 So I take what you're saying, Cruz, to mean  
23 that you would be willing to ask them again?

24 VICE CHAIRPERSON REYNOSO: Yes.

25 CHAIRPERSON BERRY: Okay.



1 Any other comments from anyone?

2 (No response.)

3 Okay. Well, if that's the case, why don't we  
4 simply defer this and have the State Advisory Committee  
5 read the -- give them the part of the transcript where  
6 we discuss this and ask them if they would be willing  
7 to take another look at it.

8 Okay. The next one is the Kentucky -- Bias  
9 and Bigotry in Kentucky report.

10 Could I have a motion on that one, please?

11 COMMISSIONER HORNER: So moved.

12 CHAIRPERSON BERRY: A second?

13 COMMISSIONER LEE: Seconded.

14 CHAIRPERSON BERRY: Any discussion of that  
15 one?

16 (No response.)

17 It appears to be pretty straightforward.  
18 It's a transcript. I'm not sure.

19 If there's no discussion, all those in favor  
20 of approval of the Kentucky -- or accepting the  
21 Kentucky report, indicate by saying aye.

22 (Chorus of ayes.)

23 Opposed?

24 (No response.)

25 Okay. So ordered.

1           The next one is the Washington report dealing  
2 with Disproportionality in the Juvenile Justice System.

3           Can I get a motion?

4           COMMISSIONER LEE:   So moved.

5           COMMISSIONER REDENBAUGH:   Seconded.

6           CHAIRPERSON BERRY:   All right.

7           Discussion?

8           VICE CHAIRPERSON REYNOSO:   This is Cruz  
9 Reynoso.

10           Is this a report in sort of the old style of  
11 reporting where the staff and the committee didn't  
12 spend too much time thinking through what the  
13 recommendations would be, if any?

14           I'm raising the question because we've  
15 discussed this in times past and I thought that we had  
16 recommended to the State Advisory Committees that they  
17 include or think about recommendations they would have  
18 based on their studies or series of meeting that they  
19 had. This one doesn't seem to do that.

20           CHAIRPERSON BERRY:   Carol-Lee, do you know  
21 the answer to that question?

22           MS. HURLEY:   The answer, Mr. Vice Chairman,  
23 is basically that --

24           CHAIRPERSON BERRY:   Can you hear her, Cruz?

25           VICE CHAIRPERSON REYNOSO:   No. I can't too

1 well. I'm sorry.

2 But incidentally, I've been able to hear  
3 very, very well the discussion by the Commissioners and  
4 it's really a pleasure. This is the first time that  
5 I've been on the phone under the new system and it  
6 certainly seems to work wonderfully to the previous  
7 system.

8 MS. HURLEY: The answer to your question,  
9 Commissioner, is that every project is not designed to  
10 have findings and recommendations, primarily because  
11 the staff time available to do the research to support  
12 findings and recommendations for every SAC report is  
13 insufficient. And since the SACs do not want to send  
14 to you findings and recommendations for which there's  
15 not ample justification but they still wish to do work  
16 in an area, some reports will come to you without  
17 findings and recommendations because the committee or  
18 committees believe that the subject is significant and  
19 there is something to tell you about it, even if they  
20 do not have a recommendation.

21 VICE CHAIRPERSON REYNOSO: So this is to  
22 bring to our attention, and obviously to the local  
23 folks' attention, the issues that they're concerned  
24 about?

25 MS. HURLEY: Yes, sir.

1 VICE CHAIRPERSON REYNOSO: Okay.

2 CHAIRPERSON BERRY: All right.

3 Could I have -- any other discussion of the  
4 Washington Report?

5 (No response.)

6 Okay. All in favor of accepting the  
7 Washington State Report, indicate by saying aye.

8 (Chorus of ayes.)

9 Opposed?

10 (No response.)

11 Okay. So ordered.

12 Let's go to the GPRA Strategic Plan, as we  
13 said we would, which is Item Number 10 on the agenda.

14 Kim, do you and George want to come up here  
15 in case anybody wants to ask you anything?

16 Well, there's no place for you to come up. I  
17 guess you could -- one of you could go over there.

18 Well, why don't you come around here.  
19 There's nobody sitting here, so come around here. And  
20 there's probably a -- yes. In your chair, there's a  
21 microphone.

22 Okay. The GPRA is Item Number 10.

23 Does either one of you want to sort of  
24 describe what we're doing here? You could toss a coin  
25 and decide who wants to do it.

1 Heads it's George; tails it's Kim.

2 Tails. Kim won.

3 Go ahead, Kim. Just introduce it and we'll  
4 talk about it.

5 MR. CUNNINGHAM: Very briefly, in 1993,  
6 Congress passed the Government Performance and Results  
7 Act, which was designed to improve efficiency and  
8 reduce waste in government programs. Since then  
9 there've been a number of pilot programs that test for  
10 various performance plans and other aspects of the law.

11 We are now at the point of implementing the  
12 key aspects of the law, the first of which is the  
13 implementation of strategic plans.

14 There are three overall components that we  
15 will be required to, as an agency, comply with: a  
16 strategic plan, which basically lays out the mission  
17 and overall general goals; a performance plan, which  
18 fits into and derives from the strategic plan, and that  
19 lays out the operational goals of the performance  
20 plans. Specifically, what we expect to do to  
21 accomplish our overall goals.

22 And finally -- and that is an annual plan.

23 And finally, we have an annual reporting  
24 requirement which obviously will report and compare how  
25 we do compared with our performance goals.

1           The strategic plan is a five-year plan. And  
2 the plan that we've put together for you reflects the  
3 GPRA requirements, as well as OMB's guidelines. It  
4 covers a period including this year and extending out  
5 through 2002. It must be revised every three years,  
6 revised and extended every three years. So we will  
7 have an update in three years from now. I guess it's  
8 the year 2001.

9           At any rate, the first stage is the strategic  
10 plan. It is due to Congress by September 30th of this  
11 year.

12           CHAIRPERSON BERRY: Now isn't there a  
13 procedure for -- what is this consultation business?  
14 I've read about that in some of the stuff or somewhere.  
15 Consultation with a congressional committee or  
16 something. What are we supposed to consult about?  
17 This plan, the performance plan? What?

18           MR. CUNNINGHAM: All of the above.

19           We have a requirement in GPRA to consult with  
20 Congress, as well as any other interested parties who  
21 would be interested in what we do. We have been in  
22 touch -- we have not conducted any formal consultation  
23 with our congressional committees. And they would be  
24 our oversight committees, both the House and the  
25 Senate; our appropriations committees; and both the

1 Governmental Affairs Committee in the Senate and  
2 Government Reform and Oversight Committee in the House.

3 CHAIRPERSON BERRY: And we would do this  
4 after the Commission has agreed that this is the plan  
5 that they want us to consult about? Is that the plan?

6 MR. CUNNINGHAM: That was the thought.  
7 Obviously, if we go to our committees and they have  
8 very strong concerns about some aspect of what the  
9 Commissioners approve, we would return to the  
10 Commission and offer those suggestions for  
11 consideration.

12 CHAIRPERSON BERRY: Okay. All right.

13 With that, we've had an opportunity to review  
14 this. Does anyone have any questions about it or does  
15 this seem to be a satisfactory plan?

16 And they are basing -- you're basing your  
17 work on the performance plan. It evolves from this;  
18 right?

19 MR. CUNNINGHAM: That's the idea. I mean,  
20 there's a synergy there back and forth. We do have a  
21 skeletal performance plan that we're going to be  
22 filling out in the next week, but they're supposed to  
23 relate to one another.

24 CHAIRPERSON BERRY: Commissioner Horner?

25 COMMISSIONER HORNER: I'd like to know if

1 there's a point in the -- among these three segments,  
2 where outcomes are supposed to be included?

3 I don't know what our outcomes would be but  
4 is that going to be coming up in one of the subsequent  
5 documents or is that not required?

6 MR. CUNNINGHAM: It is. It's fuzzy in terms  
7 of the OMB guidelines.

8 We have to articulate performance goals which  
9 are measurable and quantifiable. Some of our outcomes,  
10 such as influencing civil rights enforcement, are a  
11 little bit tough to measure.

12 We could, for example, look at whether an  
13 agency implements new guidelines or new policies  
14 resulting from our recommendations. And we are  
15 considering as a possibility including such outcomes.

16 Most of the key goals in our performance plan  
17 that we're drafting now will be of the nature of an  
18 output, so we will have reports, intermediate outputs,  
19 hearings, and other public events.

20 COMMISSIONER HORNER: I would just suggest  
21 that although we couldn't identify in this short time  
22 frame outcomes as opposed to outputs for everything we  
23 do, I would suggest that it would be useful to try to  
24 begin that process in a very small way by identifying  
25 just a few actual outcomes, like adoption by a



1 department of two-thirds of the recommendations we make  
2 in a given year, just to try it to see how it works.

3 MR. CUNNINGHAM: Or get the department to  
4 review our recommendations or considerations. But we  
5 are going to be moving in that direction.

6 COMMISSIONER HORNER: Yes.

7 CHAIRPERSON BERRY: But we have -- don't we  
8 have -- I've seen in other budget documents in other  
9 places we say so many of the recommendations were  
10 adopted by somebody or other.

11 MR. CUNNINGHAM: Yes.

12 COMMISSIONER HORNER: That's the sort of  
13 thing that I mean. Because I think over the long-term,  
14 this Act is designed to increase public confidence that  
15 we aren't spinning our wheels -- not "we" -- the  
16 federal workforce, aren't spinning our wheels, but are  
17 actually making some specific changes that can be  
18 identified. Not everything is quantifiable but where  
19 something could be quantifiable, it would be worth  
20 beginning the process, I think.

21 MR. CUNNINGHAM: That's precisely the  
22 direction we're moving. And we don't want to push too  
23 far beyond what really can be held accountable.

24 COMMISSIONER HORNER: Understand. What's  
25 reasonable. Sure.

1 MR. CUNNINGHAM: But certainly in that  
2 direction.

3 CHAIRPERSON BERRY: And we have, in the  
4 enforcement reports that Fred's shop does, we often get  
5 feedback from agencies that they've implemented X, Y  
6 and Z. They are particularly useful for implementation  
7 purposes. And even sometimes, even our SACs, will  
8 report back that the state of Alabama did so-and-so  
9 because the SAC recommended it.

10 So, I mean, I don't know how much trouble it  
11 would be to figure it out, but I think Commissioner  
12 Horner is correct. And that's really the direction  
13 where -- we will be asked those kinds of questions.  
14 Those are the most important questions in many ways.  
15 Otherwise, it just gets to be an exercise, another  
16 exercise, which we don't need.

17 Any other Commissioner have a comment?

18 Yes, Commissioner Redenbaugh?

19 COMMISSIONER REDENBAUGH: Commissioner  
20 Redenbaugh.

21 A question. Is there anything you need to  
22 complete this either from Commissioners or from any  
23 other source? Are you getting the cooperation that you  
24 need? Do you need anything else?

25 MR. CUNNINGHAM: Well, we've had -- in

1 developing the strategic plan, we've had excellent  
2 input from the staff. They've been very constructive  
3 in their comments. And I think the final product here  
4 reflects the collective action at the staff level.

5           We obviously -- I mean, this is your plan.  
6 This is the Commissioners plans, so you obviously have  
7 to take it and embrace it and make any changes that you  
8 feel would be appropriate for the direction you wish  
9 the Commission to take in the next five years.

10           The performance plan, that's where the rubber  
11 meets the pavement. That's going to require, I think,  
12 considerable thought on the part of the Commissioners,  
13 once you get the draft plan prior to the July 11th  
14 meeting.

15           I don't know what mechanism apart from a  
16 public meeting would be necessary to prompt the level  
17 of discussion that would be appropriate to get that  
18 passed in July.

19           CHAIRPERSON BERRY: You mean discussion by  
20 the Commissioners?

21           MR. CUNNINGHAM: By the Commissioners.

22           CHAIRPERSON BERRY: Well, we will -- we plan  
23 to send it to the Commissioners, and then to have it  
24 ready for discussion at the meeting.

25           MR. CUNNINGHAM: Right. And then we'd have a

1 full discussion in July?

2 CHAIRPERSON BERRY: It will be on the agenda.

3 MR. CUNNINGHAM: Yes.

4 This plan -- I mean, since we don't have an  
5 August meeting, we would hope that --

6 CHAIRPERSON BERRY: Maybe we will have an  
7 August meeting.

8 MR. CUNNINGHAM: Maybe we will. We can't  
9 assume not. But if you were to follow past practice  
10 and there were no August meeting, it would be  
11 appropriate or best to have both the strategic and the  
12 performance plans adopted by July so that they could --

13 CHAIRPERSON BERRY: In the July meeting, you  
14 mean?

15 MR. CUNNINGHAM: In the July meeting. They  
16 really should be wrapped up in time to be included with  
17 our submission to OMB for our 1999 budget cycle.

18 CHAIRPERSON BERRY: Assuming we send it in on  
19 time. The budget, I mean.

20 MR. CUNNINGHAM: Assuming. Yes.

21 CHAIRPERSON BERRY: When did we send it in  
22 last year?

23 MR. CUNNINGHAM: Later. Yes.

24 CHAIRPERSON BERRY: Okay.

25 Commissioner Redenbaugh, did that answer your

1 question?

2 COMMISSIONER REDENBAUGH: It did. Thank you.

3 CHAIRPERSON BERRY: Okay.

4 Commissioner Anderson?

5 COMMISSIONER ANDERSON: Thank you.

6 I have a couple of questions. The first one  
7 is on Goal 5. We say we are going to enhance the  
8 unique network. How do you envision us enhancing the  
9 network?

10 MR. CUNNINGHAM: We are working on specific  
11 performance goals now. We would expect to specify a  
12 minimum number of meetings per SAC per year, and also  
13 to indicate the emphasis that would be placed on  
14 completing projects and reports, and also specifying --  
15 these are all preliminary. We have not fleshed out any  
16 of the performance goals, so if you'd bear that in  
17 mind.

18 We would also be indicating that the SAC  
19 chairs and other SAC members would be involved in civil  
20 rights matters of local importance, and they would  
21 become specific as we could make them.

22 That's where we are in terms of implementing  
23 this goal.

24 CHAIRPERSON BERRY: Now, if we have any ideas  
25 ourselves about these goals, ways in which we could

1 implement them, so that you can put them in the  
2 performance plan, we can tell you that now; right?

3 MR. CUNNINGHAM: Sure.

4 CHAIRPERSON BERRY: So if we can think of  
5 anything off-hand. I like the idea of saying how many  
6 meetings they would have. SACs often want to know what  
7 the goals is in terms of how many they should have or  
8 what they should do, and to be a little more explicit  
9 about it.

10 Commissioner Anderson is still speaking.

11 COMMISSIONER ANDERSON: I think we had  
12 procedures for reports from the SACs developed, and I  
13 think that was under Commissioner Redenbaugh's  
14 committee he chaired. Maybe some of that could be  
15 incorporated into the programmatic plan, once we move  
16 to that area.

17 The other question I had was on Goal Number  
18 7, where we provide a model work environment. Do you  
19 think now we're providing that environment?

20 MR. CUNNINGHAM: Gee.

21 (Laughter.)

22 My seat just got a little bit warmer.

23 CHAIRPERSON BERRY: You want George to answer  
24 that one.

25 MR. CUNNINGHAM: George, would you --

1 (Laughter.)

2 The administrative realm should take that  
3 question.

4 MR. HARBISON: I think that the Commission is  
5 currently moving forward to ensure that this is  
6 happening. Obviously we have been criticized in the  
7 past for certain things that fall within this  
8 parameter. And I think the actions that we are now  
9 taking in response to some of those criticisms will  
10 help us in developing this Goal Number 7.

11 I'm not saying we're there yet but I think  
12 we're moving in that direction.

13 COMMISSIONER ANDERSON: So like Number 5,  
14 we're going to have program items within this category  
15 to move us closer to that goal; right? Or are we just  
16 assuming we're there already?

17 MR. HARBISON: No, we're not assuming.

18 COMMISSIONER ANDERSON: That sort of was my  
19 question.

20 MR. HARBISON: We're not assuming that we're  
21 there yet. No.

22 CHAIRPERSON BERRY: Like, for example, we  
23 need to do more -- do something about the EEO procedure  
24 within the agency, I mean, for employees, and the  
25 grievance procedures and some other stuff that were in

1 the OPM report and that the -- what is it called? The  
2 Partnership Council -- has discussed.

3 And so we would hope, then, if I understand  
4 Commissioner Anderson right, you would have some sort  
5 of items that would say we plan to do this by this time  
6 in order to meet this goal.

7 MR. CUNNINGHAM: Yes.

8 CHAIRPERSON BERRY: Was there a Commissioner,  
9 the Vice Chair or someone, who was saying something  
10 else?

11 Did someone out there want to add something  
12 to this?

13 COMMISSIONER REDENBAUGH: Yes. I'm  
14 Commissioner Redenbaugh.

15 I'm not quite sure how to say this, but with  
16 respect to --

17 CHAIRPERSON BERRY: Oh-oh. Here we go.

18 COMMISSIONER REDENBAUGH: No, no. This is  
19 not one of those.

20 (Laughter.)

21 With respect to the SACs, for example, where  
22 there's other legislation that governs some of the  
23 relationships between us and them -- give us, as an  
24 example. I have less than two I would like to point.

25 I would like us to be careful not to specify



1 how many meetings they should or must have.

2 CHAIRPERSON BERRY: You don't? Why?

3 COMMISSIONER REDENBAUGH: Well, I take your  
4 point that they like to know what's expected. Then we  
5 may want to say, you know, we expect that you'd have --  
6 whatever it is -- so many meetings a year.

7 I don't want them to have meetings just say  
8 the regs say that. And in general, government falls  
9 into trying to specify all of the inputs and actions  
10 where it might be more effective to specify the desired  
11 outcomes.

12 So, I don't want to -- I'm using this merely  
13 as an example. The Family Leave Act, which looks like  
14 a really good idea to encourage different behaviors.  
15 And already we have 300 pages of regulations.

16 CHAIRPERSON BERRY: So do you mean, Russell,  
17 for example, just so I understand you right. Instead  
18 of saying SACs would be expected to meet at least three  
19 times a year, for example, SACs will meet as often as  
20 is necessary to do X?

21 COMMISSIONER REDENBAUGH: Yes. And you might  
22 even say "and in the past, three times a year seems  
23 appropriate." So you give guidance without a  
24 requirement for naming those meetings.

25 We wouldn't want them to start scheduling

1 meetings just to get in compliance.

2 CHAIRPERSON BERRY: Okay. All right. I  
3 understand.

4 COMMISSIONER REDENBAUGH: You know. Saying  
5 that we'd like this type of work product that has this  
6 kind of impact. And how you do that, we're going to  
7 leave it a lot up to you. And in the past, it looks  
8 like three times a year has been what is needed, but if  
9 you can do it in two or six, have at it.

10 CHAIRPERSON BERRY: Kim, were you trying to  
11 say something? You were not?

12 MR. CUNNINGHAM: Well, just the thought that  
13 we could specify a minimum number of fact-finding  
14 meetings or meetings that would be related to, as  
15 opposed to organizational or planning meetings that  
16 would constitute, as with our hearings, a public event.

17 Some SACs, I understand, now have no meetings  
18 in a year and this would establish a minimum threshold.

19 COMMISSIONER REDENBAUGH: But to what  
20 purpose, though? See, I'm trying to get back to for  
21 the sake of what. I mean, these are volunteer  
22 organizations who we can't and shouldn't compel.

23 MR. CUNNINGHAM: Well, it has to do also with  
24 the distribution of resources to the State Advisory  
25 Committees and the regional programs generally.

1           COMMISSIONER REDENBAUGH: Well, I can imagine  
2 a situation. See, I'm concerned about generating a set  
3 of rules that then reduce our capacity to be effective.

4           I can imagine a situation where it's in a  
5 region's interest to have some states do nothing for a  
6 year in order to focus on a widespread and larger  
7 problem in two or three of the other states. So you're  
8 taking away the flexibility, the managerial initiative.  
9 An executive of the agency could make that call.

10           CHAIRPERSON BERRY: So in other words, we  
11 have to find some way to measure whether the SACs are  
12 being our eyes and ears in that state. I mean, that  
13 is, informing us and letting the public know of their  
14 existence without saying you ought to have this many  
15 meetings or you ought to have this many. There may be  
16 other ways to do that.

17           COMMISSIONER REDENBAUGH: I think that's  
18 right. Yes. I think that captures it well.

19           We want us and the country to be satisfied  
20 with the outcome, not satisfied that a minimum number  
21 of meetings took place at government expense.

22           CHAIRPERSON BERRY: Okay.

23           Yes?

24           MR. CUNNINGHAM: Well, Carol-Lee just  
25 suggested that in lieu of meetings, specify the

1 completion of a project or a fact-finding project in a  
2 two-year period or in the two-year term of the SAC.

3 COMMISSIONER REDENBAUGH: Actually, that's  
4 getting much closer. Yes. I like that. And then they  
5 could organize themselves however they need to do to  
6 get that done.

7 CHAIRPERSON BERRY: Okay.

8 Commissioner Horner, did you --

9 COMMISSIONER HORNER: Madam Chair, correct me  
10 if I'm wrong. Was the expectation identified in this  
11 report for a budget several million dollars greater  
12 than what we are currently being appropriated? I'm  
13 concerned that we ought not to base our strategic  
14 planning on more money than we are at all likely to  
15 get. And I don't understand why we ought not simply to  
16 reduce the gap by perhaps expecting to have somewhat  
17 more, but not that much more.

18 What is your thinking on that?

19 CHAIRPERSON BERRY: Well, the way it's  
20 written now, you're projecting \$11 million. Is that  
21 right, George? Kim?

22 MR. HARBISON: Right.

23 MR. CUNNINGHAM: Yes.

24 CHAIRPERSON BERRY: And so the suggestion is,  
25 since we don't know that we'll get \$11 million -- we

1 don't know what we'll get -- maybe that's unrealistic.

2           COMMISSIONER HORNER: I'm concerned that what  
3 happens when we base our demands upon ourselves on an  
4 unrealistic number, then we have no orderly process for  
5 planning and prioritizing when the time comes to act.  
6 So I would prefer to see planning based on a number  
7 closer to the current reality, although somewhat in  
8 excess of it.

9           MR. CUNNINGHAM: One possibility is we could  
10 -- and this we might want to do in consultation with  
11 OMB -- is just eliminate the budget expectations.

12           This plan, the law and the guidelines that  
13 we've received from OMB, push us towards making these  
14 goals as close to our operations as possible. The idea  
15 is that a staff could take the goals and conduct a  
16 program. It doesn't require that. And we felt that we  
17 couldn't reach that goal.

18           In other words, these goals are very general.  
19 They could be accomplished with \$8 million or \$20  
20 million. And we would just simply fill in the blanks  
21 year by year. So we might just put in, as you  
22 suggested, some general language that indicated that we  
23 would be submitting annual budget proposals and  
24 performance plans that would reflect your decisions on  
25 a year by year basis. And that might take care of

1 that.

2 COMMISSIONER HORNER: I think that would  
3 probably be more sensible for us.

4 MR. CUNNINGHAM: The President has projected  
5 in his budget a five-year appropriation for the  
6 Commission at \$11 million, so it seemed like a sensible  
7 number.

8 COMMISSIONER HORNER: I see. Well, in terms  
9 of relationships with OMB also, -- well, I don't want  
10 to beat this horse. It just strikes me there's a  
11 conflict here between realistic planning and correct  
12 intra-governmental relations. And I would suggest you  
13 use your discretion because you know better than I do  
14 what the correct intra-governmental relations require  
15 right now.

16 But for planning purposes and probably for  
17 discussions with the Congress, that Presidential number  
18 might cause difficulty in coming to agreement on what  
19 our plans are or should be.

20 CHAIRPERSON BERRY: Well, it may be possible,  
21 and why don't we try this, to plan based on our current  
22 appropriation adjusted for inflation, and then have  
23 some language in that if the Commission were to receive  
24 an appropriation of \$11 million, or whatever it is,  
25 then the goals would be adjusted in order to

1 incorporate more of X or Y or Z or something, and try  
2 to do it that way.

3 MR. CUNNINGHAM: Yes.

4 COMMISSIONER HORNER: I think that would be  
5 better.

6 CHAIRPERSON BERRY: And that way, it would  
7 satisfy our intra-governmental relations.

8 Were you about to say something?

9 (No response.)

10 Okay. So would that be possible, you folks  
11 who are working on this?

12 MR. CUNNINGHAM: and the other point that I'd  
13 add is that when we submit our performance plan,  
14 there'll be at least three cycles for that. There'll  
15 be an initial plan that will go in with our submission  
16 in September, and that will have in it the number that  
17 we're requesting for FY 1999. There will be revision  
18 of that when we get the passback, a new number. And  
19 finally, when we get the appropriation, we're going to  
20 have to revise the plan to reflect what we actually  
21 get.

22 So, we can make that consistent through the  
23 performance plan in specific terms.

24 CHAIRPERSON BERRY: Okay. Now, does that  
25 mean that we need to -- if we agree that you will do

1 this, then insofar as the GPRA, the strategic plan, is  
2 concerned --

3 VOICE: Excuse the interruption.

4 Commissioner Higginbotham joins.

5 CHAIRPERSON BERRY: Oh, good morning.

6 COMMISSIONER HIGGINBOTHAM: Good morning.

7 COMMISSIONER REDENBAUGH: Good morning, Leon.

8 This is Commissioner Redenbaugh.

9 COMMISSIONER HORNER: Welcome back.

10 COMMISSIONER HIGGINBOTHAM: Good morning to  
11 everyone.

12 VICE CHAIRPERSON REYNOSO: Good morning,  
13 Leon. Cruz Reynoso. i

14 COMMISSIONER HIGGINBOTHAM: It's good to talk  
15 to all of you.

16 COMMISSIONER HORNER: Welcome back.

17 COMMISSIONER HIGGINBOTHAM: Delighted to be  
18 back.

19 CHAIRPERSON BERRY: Yes. We're delighted to  
20 be united.

21 COMMISSIONER HIGGINBOTHAM: I can't at this  
22 point fly, but maybe the next meeting I'll be able to  
23 do it and would look forward to seeing you.

24 CHAIRPERSON BERRY: We missed you.

25 COMMISSIONER HIGGINBOTHAM: Thank you.



1           CHAIRPERSON BERRY: We're right in the  
2 middle, Leon, of discussing the strategic plan for  
3 fiscal years 1997 to 2002. And Commissioner Horner has  
4 suggested, and others of us have agreed, I think.

5           Russell, do you agree? Russell, do you agree  
6 with this idea about the budget?

7           COMMISSIONER REDENBAUGH: I do.

8           CHAIRPERSON BERRY: That we should project  
9 not based on getting \$11 million but our current  
10 appropriation plus inflation, rather than assuming  
11 we're going to get \$11 million, which we may not get.

12           And then the suggestion was made, which  
13 everyone seemed to find acceptable, that the staff  
14 might then write in some language saying "but were we  
15 to get the President's appropriation, we would do the  
16 following."

17           COMMISSIONER REDENBAUGH: I would agree with  
18 that.

19           CHAIRPERSON BERRY: Okay. With that, and  
20 assuming that they will do this, are there other parts  
21 of the strategic plan?

22           Yes, Commissioner Anderson?

23           COMMISSIONER ANDERSON: It may not be  
24 possible to resolve this item this morning, but I want  
25 to red flag it. And that is, on page 1, description of

1 how the general goals and objectives will be achieved,  
2 eight Commissioners determine the agency's policy  
3 direction, which is carried out under the day-to-day  
4 management and administration of a full-time Staff  
5 Director.

6 I think this is a very narrow description of  
7 the Commissioners' responsibility. Now, not all of my  
8 colleagues may agree with that. But I'm going to find  
9 it very difficult to support the strategic plan unless  
10 we have a broader understanding of the Commissioners'  
11 responsibility. And I think that it must include at  
12 least, in addition to setting policy direction,  
13 responsibility regarding budget.

14 And, I think we have a responsibility to  
15 supervise and oversee the day-to-day management and  
16 administration that's performed by the Staff Director.

17 CHAIRPERSON BERRY: Would you -- let me be  
18 clear what you mean by that.

19 Do you mean that we have a responsibility to  
20 supervise the Staff Director's day-to-day management or  
21 do you mean that we should manage on a day-to-day  
22 basis?

23 COMMISSIONER ANDERSON: No. I think we have  
24 the responsibility to supervise what the Staff Director  
25 does.

1           CHAIRPERSON BERRY: Well, why don't we say  
2 that then. I agree with that.

3           COMMISSIONER HORNER: I think we should.

4           CHAIRPERSON BERRY: Why don't we say  
5 something like eight Commissioners determine the  
6 agency's policy direction, which is carried out under  
7 the day-to-day management and administration -- under  
8 the supervision of the Commissioners.

9           Does that do what you want?

10          COMMISSIONER ANDERSON: That would be fine.

11          CHAIRPERSON BERRY: I don't have any problem  
12 with it.

13          COMMISSIONER ANDERSON: And maybe we want to  
14 insert something about budget priorities or budget.

15          CHAIRPERSON BERRY: The agency's policy  
16 direction and budget priorities. And then day-to-day  
17 management and administration is carried out by a full-  
18 time Staff Director, under the supervision of the  
19 Commissioners.

20          COMMISSIONER ANDERSON: Good.

21          CHAIRPERSON BERRY: Is that okay?

22          COMMISSIONER ANDERSON: It's fine.

23          CHAIRPERSON BERRY: I don't have any problem  
24 with that. Why did you think we'd have a problem?

25          I only have a problem if you say we're going

1 to be the day-to-day managers, because I'm not going to  
2 come over here and manage the plan on a day-to-day  
3 basis. I don't think you are either.

4 Okay. Anybody have an objection to that?

5 (No response.)

6 Did someone say something?

7 COMMISSIONER REDENBAUGH: I have no  
8 objection.

9 CHAIRPERSON BERRY: Okay. If no one has any  
10 objection, then we can get the language. It will be in  
11 the transcript.

12 What I said was eight Commissioners determine  
13 the agency's policy direction and budget priorities.  
14 And then I made another sentence because that was too  
15 long. And it said something like day-to-day management  
16 and administration is carried out by a full-time Staff  
17 Director, under the supervision of the Commissioners.

18 MR. CUNNINGHAM: And the SACs.

19 CHAIRPERSON BERRY: I forgot the SACs. What  
20 should I say about the SACs?

21 MR. CUNNINGHAM: Are there going to be any  
22 changes made to the SAC, to Number 5, reflecting the  
23 comments of --

24 CHAIRPERSON BERRY: I was just reading the  
25 description of how --

1 MR. CUNNINGHAM: Understood.

2 CHAIRPERSON BERRY: Number 5. You heard that  
3 discussion.

4 MR. CUNNINGHAM: And we would incorporate  
5 those changes, as well.

6 CHAIRPERSON BERRY: Okay.

7 Anyone have any other discussion or changes  
8 in this strategic plan that they would like to make?

9 (No response.)

10 Okay. With that, can we say that assuming  
11 the inclusion of the items that we have discussed here,  
12 which we assume the staff will do in good faith, that  
13 the Commissioners agree that this strategic plan can be  
14 used as a basis for discussion and for the performance  
15 plan and they can proceed?

16 So, could I have a motion, or something?

17 COMMISSIONER REDENBAUGH: So moved.

18 Commissioner Redenbaugh.

19 COMMISSIONER HORNER: Seconded.

20 CHAIRPERSON BERRY: All right. It's been  
21 moved and seconded.

22 All in favor, indicate by saying aye.

23 (Chorus of ayes.)

24 Opposed; no.

25 (No response.)

1           Okay. Let me make two comments.

2           So ordered.

3           Let me make two comments and then we're going  
4 to go to the next item.

5           I forgot to say Commissioner Redenbaugh had  
6 asked me for some information concerning performance  
7 evaluation of Commissioner Assistants.

8           And the answer to his inquiry -- and this is  
9 for every Commissioner who has an Assistant -- is that  
10 Commissioners are responsible for the evaluation of  
11 their assistants and may do so. And there is a form  
12 called an Individual Performance Plan, which you may  
13 get from the Personnel Office or have your Assistant  
14 get it from the Personnel office, which has to be  
15 filled out. And then you sign it and they sign it.  
16 And then you evaluate them based on that plan and turn  
17 in the evaluation.

18           And it's a process entirely between you, the  
19 Personnel Office, and your Assistant.

20           That's the answer to the question.

21           COMMISSIONER REDENBAUGH: Thank you.

22           CHAIRPERSON BERRY: All right.

23           The other is that we have a number of interns  
24 here today for the summer, and I forgot to say -- stand  
25 up, interns. They're sitting in here.

1 Anybody who's an intern, stand up.

2 Don't you know if you're an intern?

3 (Laughter.)

4 There they are. There's a motley crew here  
5 for the summer. Welcome, and thank you very much. And  
6 I hope you enjoy whatever you're doing here this  
7 summer. It will be useful to us, I'm sure.

8 Sit down. Welcome.

9 The next item that I want to go to, if I can  
10 find the piece of paper, is -- can't find the piece of  
11 paper.

12 (Pause.)

13 The Executive Session. And I have a piece of  
14 paper here that tells me how to do this, but I don't  
15 know what I did with it.

16 Anybody know where it is?

17 Ah, here it is.

18 On the agenda, is the matter of the  
19 nomination of the Staff Director. I need a motion to  
20 go into Executive Session.

21 Could I have a motion?

22 COMMISSIONER ANDERSON: So moved.

23 CHAIRPERSON BERRY: And after the motion is  
24 made, I don't need a second on this. I have a motion.  
25 And I need the Parliamentarian, Marlissa, to issue an

1 opinion regarding coverage under the Sunshine Act.

2           The purpose of this Executive Session is to  
3 discuss the nomination by the President, which is  
4 conveyed to me in a letter from Bob Nash, who is the  
5 White House Personnel Director, informing me that the  
6 President has nominated Ruby Moy to be the Staff  
7 Director, and that I should poll the Commissioners and  
8 inform them as to whether or not the Commissioners  
9 concur, as is required by the statute.

10           His letter says, "I'm pleased to inform you  
11 the President has selected Ruby Moy to serve as Staff  
12 Director to the Commission, pursuant to 42 U.S. Code  
13 1975(d). Please advise us by letter when a majority of  
14 the Commissioners have concurred in the selection."

15           And that's a letter from Bob Nash.

16           COMMISSIONER HORNER: Madam Chairman, may I  
17 ask a question?

18           CHAIRPERSON BERRY: Yes.

19           COMMISSIONER HORNER: This is not a procedure  
20 I'm accustomed to. Historically, when the President  
21 intends to nominate someone or nominates someone, that  
22 takes the form of a White House press release saying  
23 the President today announced his intent to nominate or  
24 announced his nomination of someone. Is there a reason  
25 why we have a change in that format?



1           It's not usual to have a nomination done by a  
2 letter from the Director of President Personnel, and I  
3 wonder if this is a nomination.

4           CHAIRPERSON BERRY: That's how we did the  
5 last one. The nomination of Mary Mathews was done  
6 exactly the same way, same letter. The nomination of  
7 Stuart Ishamura was done -- they did exactly the same  
8 letter on the computer.

9           COMMISSIONER HORNER: Does this constitute a  
10 formal Presidential nomination?

11          CHAIRPERSON BERRY: Yes. Yes, it does under  
12 the statute.

13          COMMISSIONER HORNER: Is this name being sent  
14 -- in other words, this name is being sent to us as a  
15 formal Presidential nomination?

16          CHAIRPERSON BERRY: Right.

17          "I am pleased to inform you the President has  
18 selected Ruby Moy to serve as Staff Director at the  
19 Commission."

20          And the reason why it is phrased this way --  
21 it's the same letter that was used in every other case  
22 -- is because the statute, our particular statute,  
23 requires us to concur --

24          COMMISSIONER HORNER: I see.

25          CHAIRPERSON BERRY: -- before any action is

1 done. And it says he shall select someone and then ask  
2 us to concur.

3 So, Bob, on his behalf, as a Presidential --  
4 whatever -- Personnel Assistant to the President, is  
5 asking us. That's why they phrase it that way.  
6 Counsel says that they have to phrase it that way and  
7 they have to ask us.

8 COMMISSIONER HORNER: And may I know the date  
9 of the letter?

10 CHAIRPERSON BERRY: May 8th, 1997.

11 COMMISSIONER HORNER: May 8th. This is May  
12 13th, today.

13 CHAIRPERSON BERRY: You mean June.

14 COMMISSIONER HORNER: Excuse me. That was  
15 May 8th and this is June 13th.

16 CHAIRPERSON BERRY: Right.

17 COMMISSIONER HORNER: May I ask why the delay  
18 in informing the Commission of this letter?

19 CHAIRPERSON BERRY: Oh, I informed you at the  
20 last meeting.

21 COMMISSIONER HORNER: You said that it was  
22 not possible --

23 CHAIRPERSON BERRY: I tried to get you to  
24 vote at the last meeting. And I didn't actually have  
25 the letter to give to you.

1 COMMISSIONER HORNER: No, you did not.

2 CHAIRPERSON BERRY: Right. But I asked you  
3 to vote because I had been told.

4 COMMISSIONER HORNER: May I ask -- it's a  
5 simple procedural question, Madam Chair, not a big  
6 deal. But it would have been nice for us to have  
7 received a copy of the May 8th letter before June 13th.

8 CHAIRPERSON BERRY: I have not given out the  
9 letters before and I didn't get it on May 8th,  
10 Commissioner Horner.

11 COMMISSIONER HORNER: How long did it --

12 CHAIRPERSON BERRY: This has not been a  
13 secret. We discussed this at the last Commission  
14 meeting. If you wish me to, I'll get the transcript  
15 out and have it read back.

16 COMMISSIONER HORNER: No, no. That's not  
17 necessary. I'm not making any big deal of this. I'm  
18 just -- well, never mind.

19 CHAIRPERSON BERRY: I realize it's puzzling  
20 because it's not done the normal way. And I realize  
21 that the President doesn't -- the fact that they don't  
22 make the announcement and do all that, and it's done in  
23 this "select and then let us know if you do." But I  
24 remember that the first time I was involved in this was  
25 with the Ishamura appointment.

1           The White House counsel had to advise the  
2 Personnel Director on how this should be done.

3           COMMISSIONER HORNER: Why has the President  
4 not put out a press release saying that he has asked  
5 the Commission to confirm this nomination?

6           CHAIRPERSON BERRY: He did not do this in the  
7 case of Mary Mathews or Stewart Ishamura either. He  
8 was advised that he needed to send a letter to us --

9           COMMISSIONER HORNER: I see.

10          CHAIRPERSON BERRY: -- before he did  
11 anything. Because, according to their read of the  
12 legal requirement, they would be in deep trouble if  
13 they tried to move and do anything other than to ask us  
14 first.

15          COMMISSIONER HORNER: To ask us?

16          CHAIRPERSON BERRY: If we concur with his  
17 selection.

18          COMMISSIONER HORNER: But it is -- he is  
19 announcing his selection and now it is up to us to  
20 concur?

21          CHAIRPERSON BERRY: If we wish.

22          COMMISSIONER HORNER: But there's no -- what  
23 I'm trying to get at here is this is not a request to  
24 see if we will concur.

25          CHAIRPERSON BERRY: No.

1 COMMISSIONER HORNER: This is the formal --

2 CHAIRPERSON BERRY: Right.

3 COMMISSIONER HORNER: -- nomination  
4 requesting our formal response.

5 CHAIRPERSON BERRY: Right. And that I should  
6 send a letter back, as I did on the last occasion.  
7 After the vote, I sent a letter back saying the  
8 Commissioners met on X day and they have concurred in  
9 the selection. And I gave them the votes. And the  
10 person then was brought up and signed the papers, and  
11 that was the end of it.

12 And they then did a press release saying the  
13 President has selected and Commission concurred with  
14 his selection of whoever.

15 COMMISSIONER HORNER: Madam Chair, I would  
16 just like if you could just let me take a look at the  
17 letter for a moment.

18 VICE CHAIRPERSON REYNOSO: Madam Chair? Cruz  
19 Reynoso.

20 While the letter is being reviewed, I just  
21 want to mention my own recollection is that the matter  
22 came up last time and that Commissioner Horner  
23 suggested that we wait until we did have the formal  
24 letter come in.

25 I guess this is the formal letter?

1 COMMISSIONER HORNER: Yes. I believe it is.

2 Thank you.

3 I just don't know why the President isn't  
4 telling us this rather than the Assistant to the  
5 President. Usually when some one is nominated by the  
6 President, it's the President who informs us that the  
7 President has made a choice, rather than the Assistant  
8 to the President.

9 And the reason I'm asking is that I always  
10 wonder if there isn't some flaw in the process that  
11 will cause it to be taken back later.

12 CHAIRPERSON BERRY: Veronica Biggins, who was  
13 the Personnel Director, sent a letter when Mary Mathews  
14 was nominated.

15 COMMISSIONER HORNER: Yes.

16 CHAIRPERSON BERRY: And I forgot who was the  
17 Personnel -- Bruce Lindsay, I guess, who was Personnel  
18 Director when Ishamura was nominated. In both those  
19 cases, the letter came from the Assistant to the  
20 President.

21 COMMISSIONER HORNER: With all due respect --

22 CHAIRPERSON BERRY: And all they did was send  
23 us the same letter.

24 COMMISSIONER HORNER: I must accept it in the  
25 spirit in which it's offered, but with all due respect,

1 I find it a questionable practice by the White House to  
2 do it this way. But I will accept their practice, if  
3 there's no alternative.

4 CHAIRPERSON BERRY: I would think that in  
5 your role on the National Academy of Public  
6 Administration and in the other involvements you have  
7 considering personnel matters, including Presidential  
8 nominees that I'm aware that you're involved in, you  
9 might want to consider this matter. But this is how  
10 they have done it every single time. And this is how  
11 they've been legally advised. And this is how it was  
12 done. And they were told that this is how you do it.

13 So, this is no different. It's exactly the  
14 same letter.

15 COMMISSIONER HORNER: Was it done this way  
16 prior to this Administration?

17 CHAIRPERSON BERRY: I don't know because I  
18 wasn't privy to what happened.

19 Maybe you know. Were you at the Personnel  
20 Office when the Bush people were nominated?

21 COMMISSIONER HORNER: I was.

22 CHAIRPERSON BERRY: You don't remember?

23 COMMISSIONER HORNER: Well, --

24 COMMISSIONER REDENBAUGH: Be careful.

25 CHAIRPERSON BERRY: You know you had

1 thousands of nominees.

2 COMMISSIONER HORNER: Yes. But if there was  
3 an exception for this agency, I would not necessary  
4 have known that fact.

5 CHAIRPERSON BERRY: Okay. All right.

6 So, anyway, this is for the -- can we have  
7 the Parliamentarian issue a ruling as to whether we can  
8 have an Executive Session to discussion this, any  
9 matters concerning this nominee, including the vetting  
10 and other information that may be available?

11 MS. BRIGGETT: Yes.

12 I certify that, pursuant to Exemption Number  
13 2 of the Government in the Sunshine Act, which permits  
14 closure if a matter relates solely to the internal  
15 personnel rules and practices of an agency, the  
16 discussion of the nomination of the Staff Director may  
17 be closed to the public.

18 CHAIRPERSON BERRY: Therefore, if there's no  
19 objection from the Commissioners that the public  
20 interest does not require open discussion, we would now  
21 go into Executive Session.

22 Only the Commissioners, the Parliamentarian  
23 and the stenographer may remain in the room. All  
24 others, please leave until we reconvene in public  
25 session.



1                   (Whereupon, the public session was adjourned  
2 and the Commissioners met in Executive Session.)  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 (Whereupon, the public session was resumed,  
2 as follows:

3 CHAIRPERSON BERRY: We are now going to take  
4 a vote by the Commission on the nomination of Ruby Moy  
5 to be the Staff Director, which is required by 42 U.S.  
6 Code 1975(d). And I'm going to ask -- where did  
7 Marlissa go?

8 Marlissa, would you record the vote for me,  
9 please? And I'm going to call out the names.

10 Commissioner Anderson?

11 COMMISSIONER ANDERSON: Aye.

12 CHAIRPERSON BERRY: Commissioner George?

13 (Pause.)

14 Oh, that's right. We'll have to come back to  
15 him. He went to his -- wherever.

16 Commissioner Higginbotham?

17 COMMISSIONER HIGGINBOTHAM: Aye.

18 CHAIRPERSON BERRY: Commissioner Horner?

19 COMMISSIONER HORNER: Aye.

20 CHAIRPERSON BERRY: Commissioner Lee?

21 COMMISSIONER LEE: Aye.

22 CHAIRPERSON BERRY: Commissioner Redenbaugh?

23 COMMISSIONER REDENBAUGH: Aye.

24 CHAIRPERSON BERRY: Vice Chair Reynoso?

25 VICE CHAIRPERSON REYNOSO: Aye.

1           CHAIRPERSON BERRY: Berry. Aye.

2           And I think George's phone is -- something is  
3 happening with his phone.

4           Did you get that number? 609-258-3270.

5           VOICE: We're trying to hook him up now. He  
6 left and went to his office. We'll continue trying  
7 until he gets to his office.

8           CHAIRPERSON BERRY: Okay. Well, let's just  
9 hold the vote open there for a minute because he  
10 already indicated how he was going to vote. He can't  
11 help it because there's a -- and there's already a  
12 majority of the Commissioners who have voted. And we  
13 can ask him if he wants to make it unanimous when he  
14 comes in.

15           And the Code requires a majority of the  
16 Commissioners, so we clearly have a majority.

17           I will report by letter today to the White  
18 House that this vote has been taken. And I thank you  
19 very much for that.

20           And now we can go to the next item, which is  
21 the Miami Report, which is Item Number 6 in your book.

22           You have what we call clean and redlined on  
23 the Miami Report in your book. And let me explain to  
24 the Commissioners, first, that the special assistants,  
25 as per agreement at the April 1997 Commission meeting

1 with Commissioner George making a proposal and the rest  
2 of us agreeing, that the special assistants would work  
3 on revising the Miami Report in time for us to have a  
4 vote last month.

5           The assistants worked very hard on this and  
6 they've had many meetings, and we have been engaged in  
7 responding to their work. The assistants had to  
8 consider well over 100 different revisions that were  
9 proposed and that had to be worked up, and I think we  
10 owe them a debt of gratitude for all the hard work that  
11 they did on this. And as a result, we do have a  
12 document here.

13           And we have two tasks as Commissioners.  
14 First, to resolve the outstanding disagreements which  
15 are minor and I think can be resolved; and second, to  
16 discuss the findings and recommendations to the extent  
17 that any of us have changes that we would make.

18           Let me point out, first, that there were two  
19 additional items that the assistants agreed to that,  
20 with all the changes -- and I want to congratulate the  
21 staff, too, because the staff in the Office of General  
22 Counsel, the civil service staff, worked over the  
23 holiday weekend. They worked well until 3:00-4:00 in  
24 the morning making changes that the assistants needed  
25 to have made in all these drafts, as they went back and

1 forth, because everybody was committed to trying to get  
2 this thing done so that we can meet some deadlines that  
3 we set for ourselves.

4           In the redlined copy, at the top of page 111,  
5 these are agreements that were made but somehow got  
6 left out. There are three things. Following the  
7 footnote. This is at the top of page 111 in the  
8 redlined copy.

9           There was an agreement to include some  
10 language which didn't get in, but the agreement holds.  
11 It's not there's any disagreement. And the language  
12 was: "Some scholars believe that the marketplace  
13 itself will ultimately accommodate different languages  
14 in the workplace and that a legislative or statutory  
15 solution is unnecessary."

16           That was supposed to be typed in and it was  
17 not. And so, pursuant to the agreement, I'm reading it  
18 into the record at this time as part of the agreement.

19           The second item that I am reading into the  
20 record, on the same page 111, there's some redlined or  
21 stricken -- when I say redlined, I mean it's stricken  
22 out -- language down about the middle of the page,  
23 which says, the beginning paragraph: "With regard to  
24 the marketplace argument," and goes down to the end of  
25 the redlining. That was not supposed to be redlined.

1 It was supposed to stay in. And so it will be restored  
2 as pursuant to the agreement that was made and will be  
3 included and not deleted.

4 And then, on the bottom of page 112, there is  
5 a quote there from Juan Perier that continues to the  
6 top of page 113. There was an agreement to remove this  
7 and it was not done, but the agreement is to remove  
8 from "I am confident" all the way to the end, to where  
9 it says "footnote 324," and the footnotes that go with  
10 it. So that that part of the agreement is to be kept.

11 Then, on page 186, there was an agreement to  
12 put in the titles of Representative Clay Shaw and  
13 Representative Lamar Smith, to insert there that Shaw  
14 is Republican-Florida, and Chairman of the Human  
15 Resources Subcommittee, House Ways and Means Committee.  
16 That didn't get put in and that will be put in. And  
17 that Lamar Smith is Republican-Texas, Chairman, House  
18 Judiciary Subcommittee on Immigration. And that will be  
19 put in.

20 And the last agreement of that kind where  
21 something did not get in is on that same page, in the  
22 sentence referring to Representatives Shaw and Smith.  
23 The sentence should say, "And alleged that many  
24 immigrants", not just immigrants but the word "many" is  
25 to be inserted there.

1           So those agreements were made.

2           And with that, let me tell you about the  
3 areas of disagreement that remain. And then we'll look  
4 at the findings and recommendations.

5           The first area that is still under discussion  
6 is the use of witness interviews, witness interviews.  
7 Some of the assistants say that their Commissioners  
8 believe that interviews with witnesses should not be  
9 used in the report.

10           The response to that that was made -- and  
11 then we can discuss it -- was that witness interviews  
12 are always used in Commission hearing reports.

13           The special assistants got copies from the  
14 library of some reports based on hearings in which  
15 these were included, and said that if one were to go  
16 get others, one would find the same thing, and they  
17 didn't want to copy everything that's in the library on  
18 every hearing that ever took place, and that this is a  
19 standard practice. And that the reason why interviews  
20 are used is because, one, the witnesses who are  
21 interviewed are given a copy of the Privacy Act of 1974  
22 which tells them in the document that they're given,  
23 that information supplied to staff members is on a  
24 voluntary basis and that the information can be used in  
25 the work of the Commission, including hearings and

1 other matters. And so that they know this.

2           And also, that the Commissioners are not able  
3 to ask all the questions they would like to ask in the  
4 hearing because there simply isn't enough time, and the  
5 General Counsel is not able to answer all the questions  
6 they would like to answer -- ask -- in the meeting.  
7 And so what the interviews do is to flesh out the  
8 record.

9           However, the special assistants responded  
10 that if there were particular interviews that we wanted  
11 to be deleted, they were quite agreeable to come back  
12 to us and get an agreement that they would be deleted.  
13 There were several of those. And we agreed to deleted  
14 them. But this is on the general issue.

15           The other response made by the assistants was  
16 that if there was a desire to have interviews not used  
17 in the future, that we could discuss that as  
18 Commissioners and decide that we didn't want them used  
19 in the future, but that given the practice of using  
20 them and the expectations that they would be used, that  
21 it would be untimely, if nothing else, to at this point  
22 simply say we were going to take out all of the witness  
23 interviews.

24           That's one issue.

25           The second issue is the use of historical



1 context. There are two places in the report, the  
2 introduction to Section 3 on pages 105 and 106, and the  
3 introduction to Chapter 4 on pages 181 through 184,  
4 where historical context for the issue is included.

5           The response by special assistants, after  
6 consulting with us, was that the historical context,  
7 again, is always used in the reports and that we  
8 thought that the historical context for a reader coming  
9 upon the report and trying to read about the topic made  
10 sense. But, however, if there were specific matters in  
11 the historical context that were desired to be removed,  
12 we would be willing to remove whatever the offending  
13 matter was, but that on the general issue of using  
14 historical materials and historical contexts, we would  
15 not think that that was a good idea to say we would  
16 not.

17           I forgot to tell you one thing about the  
18 interviews, and that is that the people, many of the  
19 people that are interviewed are not within subpoena  
20 range, and so they would not be subject to come to the  
21 hearing if they didn't want to because they can't be  
22 subpoenaed. And so the whole idea of interviewing is  
23 to add more information that can be used for the  
24 report.

25           So, I am prepared to have us undertake to

1 discuss these items in whatever way you choose. But  
2 first, I would like to get a motion to approve the  
3 Miami Report for purposes of discussion, and then just  
4 proceed from there and see how we come out.

5           Could somebody move to do that just for the  
6 -- I need a motion.

7           COMMISSIONER LEE: So moved.

8           CHAIRPERSON BERRY: I need a second.

9           COMMISSIONER REDENBAUGH: Seconded.

10          CHAIRPERSON BERRY: All right. Now, let's  
11 have discussion.

12          Any discussion of these matters?

13          COMMISSIONER HORNER: Is Commissioner George  
14 on?

15          CHAIRPERSON BERRY: Are you back, Robbie?

16          (No response.)

17          He said five minutes, didn't he?

18          COMMISSIONER HIGGINBOTHAM: Leon here.

19          CHAIRPERSON BERRY: Okay, Leon. We're glad  
20 you're there. We're very glad.

21          COMMISSIONER LEE: Madam Chairman --

22          CHAIRPERSON BERRY: Excuse me. Go right  
23 ahead, Commissioner.

24          COMMISSIONER LEE: Can we just take the  
25 historical overview question? Because I went back to

1 reading Chapter 3 and 4 without the historical overview  
2 and it's really confusing. And the way the two  
3 chapters were written, it was, to me, just a very  
4 factual introduction. For the average reader, I  
5 suggest it educates us about what the chapter  
6 discussion is going to be. So I would like to take  
7 this up for discussion first and see if there is any  
8 major problem that other Commissioners may have.  
9 Because I just don't find those chapters introductions  
10 to be unacceptable.

11 CHAIRPERSON BERRY: Okay.

12 COMMISSIONER HORNER: Madam Chair, could you  
13 bear with us for a moment while we go through extensive  
14 notes?

15 CHAIRPERSON BERRY: Sure. Sure.

16 Okay. Fine.

17 COMMISSIONER HORNER: I'm certain we can find  
18 our notes on this issue.

19 CHAIRPERSON BERRY: Go right ahead.

20 (Pause.)

21 COMMISSIONER HORNER: Madam Chair, I'm having  
22 trouble understanding what you mean by the history.  
23 Could you refer us to a particular --

24 CHAIRPERSON BERRY: If you would go to page  
25 117 of the redlined version, which just happens to be

1 the one I'm looking at. I guess I could look at the  
2 other one. And you will see on page 117 some history  
3 about foreign language.

4           It says, "Instruction has a long history in  
5 the United States, intertwined with our roots as an  
6 immigrant nation." And then, "As early as the 18th  
7 Century, Americans have pondered language in shaping  
8 national identity."

9           And it is those two pages that Commissioner  
10 Lee is saying she found instructive in terms of context  
11 if she came upon this topic. And we were trying to  
12 figure out was there some way to resolve whether we  
13 should have that included or not?

14           COMMISSIONER HORNER: Madam Chair, it's hard  
15 to discuss history or interviews separately from  
16 content and recommendations. And I guess what I would  
17 like to say in this context is that the history leads  
18 to conclusions, and therefore one can either talk about  
19 a problem with a history or talk about the problem with  
20 the selection of elements of the history that lead to a  
21 certain conclusion.

22           And I do have a philosophical difference with  
23 the substantive conclusion imbedded throughout this  
24 report that we are going to be a multi-lingual - truly  
25 multi-lingual nation. Because my own experience as a

1 person and as an educator and as a government official  
2 leads me to believe that if we adopt that course, that  
3 is, if we -- for instance, as the report suggests,  
4 mandate, recommend the mandating of foreign language  
5 study with the goal of reducing the status of the  
6 English language as the primary means of communication  
7 in our civic life --

8 OPERATOR: Excuse the interruption.

9 Commissioner Robert George rejoins.

10 CHAIRPERSON BERRY: Thank you.

11 Commissioner George?

12 COMMISSIONER GEORGE: Yes. Thank you, Mary.

13 CHAIRPERSON BERRY: We voted --

14 Excuse me, Commissioner Horner.

15 COMMISSIONER HORNER: No. Please.

16 CHAIRPERSON BERRY: We voted on the

17 nomination of Ruby Moy to be Staff Director.

18 COMMISSIONER GEORGE: Did you count me?

19 CHAIRPERSON BERRY: And it was unanimous,

20 except for your vote. Would you like to join the

21 unanimity?

22 COMMISSIONER GEORGE: Yes, I would. Thank

23 you.

24 CHAIRPERSON BERRY: You will be recorded as

25 having voted in favor.

1           And may I just briefly recap for him where we  
2 are?

3           Commissioner George, we're discussing the  
4 Miami Report.

5           COMMISSIONER GEORGE: Okay.

6           CHAIRPERSON BERRY: Can you hear me?

7           COMMISSIONER GEORGE: Yes, I can. Can you  
8 hear me?

9           CHAIRPERSON BERRY: Yes. And I am recapping  
10 for you what we've done while you were not on the  
11 phone.

12          COMMISSIONER GEORGE: Very good.

13          CHAIRPERSON BERRY: We have said that the  
14 staff worked very hard in OGC and our assistants worked  
15 very hard, and they considered a lot of  
16 recommendations. And then I pointed out, which I'm not  
17 going to read again, three areas where there were  
18 agreements to some language which got left out by  
19 mistake, and I read it into the record to make sure  
20 that everybody knew it was agreed to and there wouldn't  
21 be a problem with putting it in. And so that's not a  
22 problem.

23                 And then we went on to what is a problem.  
24 And we talked about the general issue of using  
25 interviews and the fact that we were willing to excise

1 specific interviews but to not generally. And I  
2 explained why, which we can discuss more, if you wish.

3 And secondly, I discussed the issue of using  
4 history on pages 117 in the redlined copy and somewhere  
5 else that I will find, as soon as somebody tells me -  
6 in the copy to introduce a section.

7 And Commissioner Lee explained that she  
8 thought that such history was useful in terms of sort  
9 of setting the context.

10 And Commissioner Horner was about to explain  
11 to us why what one selects or uses in the historical  
12 discussion may lead to certain recommendations and that  
13 that may be what the problem is.

14 And I was about to ask Commissioner Horner  
15 would she think it would be a better way to approach  
16 this to do the findings and recommendations and get rid  
17 of the ones we can't agree about, and then go back to  
18 see if this history has led us to this.

19 Or how would you like to do this?

20 COMMISSIONER HORNER: No, Madam Chair. I  
21 think we should probably approach it the way the staff  
22 has. And I agree with you that they've done a  
23 phenomenal amount of work, and work of high quality.

24 Some of the Commissioners believe that we  
25 ought to discuss -- and I agree -- ought to discuss the

1 findings and recommendations only after we have worked  
2 through the body of the report that leads to those  
3 findings and recommendations. Otherwise, we would have  
4 an unbearable task of going back and forth.

5 I don't want to go on too extensively. It  
6 seems to me, common sense that in the context of human  
7 nature, that when people don't have mastery of a  
8 language, their civic relationships are damaged. The  
9 ease of commercial relationship is damaged. People  
10 within the same neighborhoods have trouble talking to  
11 each other. All these things.

12 We think we have racial problems. If we were  
13 to layer linguistic problem of a substantial sort on  
14 top of that permanently, we would be asking for social  
15 chaos.

16 And therefore -- and I also think it's  
17 important to recognize that the founding political  
18 documents of the country and those that followed on to  
19 expand who we are civically are in the English language  
20 and ought to be understood by citizens in all their  
21 nuances.

22 And therefore, my bias or disposition is to  
23 support policies that welcome immigrants and assist  
24 them in becoming as fluent as native-speaking Americans  
25 in the English language so that they can have full



1 participation in our English-language based political  
2 history and our commercial encounters and our civic  
3 encounters.

4           We've all had the frustration of trying to  
5 get a piece of work done or a simple transaction when  
6 there's a language problem. I don't think this  
7 Commission should pursue recommendations that over time  
8 will make that problem worse, not better. And in my  
9 view, this report does contain suggestions and  
10 recommendations and information designed to encourage  
11 that.

12           Just finally, by way of example. There's a  
13 suggestion in this report that we ought to mandate  
14 foreign language instruction. The intention seems to  
15 be to create a situation in which everyone speaks a  
16 second language as fluently as a first language.

17           There are 157 languages spoken in Miami. It  
18 seems unlikely that this course of action is going to  
19 be sensible or productive or fruitful, and I just think  
20 we ought to put our focus on using social public  
21 resources, taxpayers' money, for total emersion in the  
22 English language so that we can have good civic and  
23 personal relationships as quickly as possible, and feel  
24 comfortable about having large numbers of immigrants  
25 come to this country because we know we're not going to

1 have this kind of language problem.

2           And therefore, I have a deep philosophical  
3 problem with the report, and I can't negotiate page by  
4 page. I don't know why we don't solve our  
5 philosophical problems and then have a report written  
6 to support our perspective rather than trying to  
7 negotiate sentence by sentence.

8           CHAIRPERSON BERRY: Well, I think that when  
9 we -- we have agreed, or we've talked about having  
10 briefings while the staff is writing reports, as we did  
11 with the education reports that we had, which I thought  
12 were quite successful. And prospectively, we ought to  
13 do that.

14           And I am suggesting, and I hope you would  
15 agree with the new Staff Director, that we do that.  
16 Which may solve some of these problems.

17           But retrospectively, that's a little hard to  
18 do. I mean, it's hard to go back and do something that  
19 we didn't do when we should have done it, perhaps.

20           But I guess if we could just sort of narrow  
21 the discussion, and then we can broaden it or do  
22 however anybody wants to. If we were to consider on  
23 page 117 and 118, the question before us is whether we  
24 are to keep this section in the report or to delete it.

25           COMMISSIONER HORNER: Well, it's going to

1 take a few minutes to read it now, to re-read it.

2 CHAIRPERSON BERRY: Right.

3 COMMISSIONER HORNER: I don't know how we can  
4 do this, Madam Chair. We're talking about literally  
5 dozens of pages.

6 If the other Commissioners want to do it,  
7 fine.

8 CHAIRPERSON BERRY: Commissioner Horner,  
9 actually we don't. The staff narrowed -- the special  
10 assistants narrowed this discussion to just three  
11 items. They did all that work themselves and we agreed  
12 with everything that your special assistant suggested,  
13 except we are now with these three items.

14 We had over 100 things that were considered.  
15 I personally spent hours with Krishna responding to  
16 things that he came back to the special assistants  
17 meeting asking me whether I agree with this, would I go  
18 along with this. I know Cruz did because we talked  
19 about it. And they have narrowed the discussion for  
20 purposes of this report to three areas. And these are  
21 the only three areas where our side said no.

22 We said no to nothing. I mean, everything  
23 else we either worked it out or we proposed some  
24 language.

25 I think I'm being fair. If I'm not, say so.

1           COMMISSIONER HORNER: I have at least 10  
2 pages here.

3           CHAIRPERSON BERRY: And there was so much  
4 back and forth and so many meetings and so much  
5 discussion. And we agreed to do that process that way.  
6 It was suggested and we all agreed. And now here we  
7 are, and we only have these three things.

8           And the three things are do we want to take  
9 out -- I mean, my own view would be while page 117 and  
10 118 is good historical context -- and it's not that  
11 long. I mean, I can read it.

12           COMMISSIONER HORNER: Madam Chair, the three  
13 things are witness interviews, historical context --  
14 and what's the third that you have identified?

15           CHAIRPERSON BERRY: There are only three.  
16 One is whether we use witness interviews. That's  
17 number one. Okay? Number two is pages 117 to 118,  
18 historical context, in your redlined version. And the  
19 third one is page what?

20           VOICE: Page 202 to 205 in the redlined.

21           CHAIRPERSON BERRY: 202 to 205 in the  
22 redlined version. Those are the only three questions.

23           COMMISSIONER HORNER: Oh, Madam Chair, I  
24 respectfully differ.

25           CHAIRPERSON BERRY: We received a memo from

1 the special assistants saying that there remained areas  
2 in which we've been unable to reach agreement, and  
3 these are three areas. And the findings and  
4 recommendations.

5 Not that this speaks for you. You don't have  
6 an assistant. I know that.

7 COMMISSIONER HORNER: Madam Chair, you  
8 haven't mentioned the findings and the  
9 recommendations.

10 CHAIRPERSON BERRY: I just did while you were  
11 speaking to Charlie.

12 COMMISSIONER HORNER: But there are literally  
13 dozens of places in the report where the findings and  
14 recommendations are not supported by the text. So if  
15 we were to agree to a finding and recommendation but  
16 the text contradicts that, the report then becomes  
17 subject to selective excerptation, which might  
18 misrepresent the conclusions.

19 Madam Chair, I'm going to -- I can't -- I'll  
20 be quite for a while and listen to what others have to  
21 say.

22 CHAIRPERSON BERRY: Well, you don't need to  
23 be quiet. I think that I'm prepared to go through the  
24 entire report again, if that's the wish. Even though I  
25 have spent all this time, I'm willing to spend more

1 time. I'm willing to spend as much time as necessary  
2 to get this solved.

3 Yes, Commissioner Higginbotham -- or  
4 Commissioner George? Commissioner George.

5 COMMISSIONER GEORGE: Sorry, Mary, it's not  
6 me.

7 COMMISSIONER REDENBAUGH: No. It's is  
8 Redenbaugh.

9 CHAIRPERSON BERRY: Oh, Commissioner  
10 Redenbaugh. Okay.

11 COMMISSIONER REDENBAUGH: Let me see if I  
12 understand what you're proposing, which is that we  
13 discuss these three areas that you've enumerated. If  
14 we reach agreement on those, we then revise the  
15 findings and recommendations --

16 CHAIRPERSON BERRY: Right.

17 COMMISSIONER REDENBAUGH: -- to the document  
18 as it then will be?

19 CHAIRPERSON BERRY: That's what I'm  
20 suggesting.

21 COMMISSIONER REDENBAUGH: Yes. I just wanted  
22 to make sure that's correct.

23 Well, I'm prepared to begin that process. I  
24 don't know that -- I mean, it seems like a clumsy way.  
25 People can do anything other than make you square

1 dance, but --

2 (Laughter.)

3 I'm prepared to begin the process.

4 VICE CHAIRPERSON REYNOSO: Madam Chair?

5 CHAIRPERSON BERRY: Yes, Vice Chair.

6 VICE CHAIRPERSON REYNOSO: Twice I've started  
7 classes in square dancing and I've never finished them.  
8 I don't know how well my wife and I would do in that  
9 regard.

10 But the report that came back to me was that  
11 the assistants had pretty well agreed on most of the  
12 specific language, in large part because I know that  
13 Cindy, through me, or Cindy, after conversation with  
14 me, agreed to most of the deletions that were being  
15 proposed.

16 Incidentally, not easily. I didn't agree  
17 with most of the suggestions that were made, but this  
18 was in an effort to get this moving.

19 Then, as I understood it, there were policy  
20 decisions that needed to be made and I guess there were  
21 policy decisions that would have to come back to the  
22 Commissioners, and that had to do with the practice, as  
23 I understood it, that we've always had of using witness  
24 interviews and the practice of including historical  
25 context.

1 I've been following the work of the  
2 Commission for many years, having acted as a consultant  
3 on one occasion and interested for many years before  
4 joining it. And I know that witness interviews --

5 CHAIRPERSON BERRY: Cruz, could you stop just  
6 a moment so we can give Commissioner Horner a chance to  
7 consult? Because we want to make sure that everyone  
8 hears this.

9 And I'm not being critical. I just want to  
10 make sure that everybody has time to say whatever they  
11 need to say. And I don't want to have to try to listen  
12 to two things at the same time. That's all.

13 Are you --

14 COMMISSIONER HORNER: I'm listening.

15 CHAIRPERSON BERRY: Oh, okay.

16 Go ahead, Vice Chair.

17 VICE CHAIRPERSON REYNOSO: Well, it's just  
18 that I find both the witness interviews and the use of  
19 historical context very very helpful in this report and  
20 reports that I've read before. So it seemed to me  
21 these were important policy considerations that indeed  
22 should come before the Commission and not ones that  
23 could be -- that I could authorize Cindy to negotiate  
24 away, if you will.

25 I happen to believe that they are good



1 practices, but it seemed to me more importantly that  
2 they properly should come before the Commission. So  
3 that's as I understand how we got to this point.

4 CHAIRPERSON BERRY: That's the question on  
5 the interviews.

6 VICE CHAIRPERSON REYNOSO: Right. And the  
7 historical context.

8 CHAIRPERSON BERRY: Yes.

9 COMMISSIONER HORNER: Madam Chair, of course  
10 we should have historical context. We always have and  
11 we should. My problem is with the content of the  
12 history. There's history and there's history. And I  
13 believe the history is one-sided and selective, and  
14 therefore, I have a problem with it. And I believe  
15 it's one-sided and selective in order to yield a  
16 certain policy conclusion with which I disagree.

17 So, that's the nature of my problem.

18 VICE CHAIRPERSON REYNOSO: Okay. But that's  
19 a fair statement. I thought that one of the issues  
20 being posed was whether or not we should have used a  
21 historical context, and I'm glad we agreed that it's  
22 helpful. Then on the specifics, I guess we could  
23 discuss.

24 I have a general comment on Commissioner  
25 Horner's concern in terms of -- about language. And

1 that is that I suppose that we interpret reports very  
2 differently. Because I would agree with everything  
3 that Commissioner Horner said. I would add a lot more  
4 to it, incidentally. But I would agree with what she  
5 said as far as she went.

6 I don't find anything in this report that  
7 goes contrary to that view. It goes beyond. And I  
8 happen to agree with the recommendations. But there's  
9 nothing incongruous with having a nation where  
10 everybody can understand one another and have those  
11 same people understand two or three other languages, so  
12 long as they understand the same language, for example.

13 So, I find -- I just don't find anything in  
14 the report that is not congruent with the views  
15 expressed by Commissioner Horner.

16 CHAIRPERSON BERRY: So that we are not -- and  
17 we are taking time to do that, so I might as well read  
18 it.

19 On page 117-118, the question is whether we  
20 delete these pages. And the page says:

21 "The instruction of foreign languages and of  
22 English -- you can look at it yourself -- to non-native  
23 speakers has a long history in the United States,  
24 intertwined with our roots as an immigrant nation. As  
25 early as the 18th Century Americans have pondered the

1 role of language in shaping our national identity.

2 During the 19th Century, the states of Pennsylvania and  
3 Louisiana and the territory that would later become New  
4 Mexico all considered the issue of bilingual education.

5           Responding to the anti-German climate spawned  
6 by World War I, 15 states had banned the teaching of  
7 foreign languages and required English to be the sole  
8 language of instruction in all schools, public and  
9 private, by 1919. Historically, language has been a  
10 key component of the national character that defines  
11 our American culture.

12           During times of national crises, our nation  
13 has equated loyalty to the American ideal with  
14 conformity to the English-speaking culture.

15           COMMISSIONER GEORGE: Madam Chairman?

16           CHAIRPERSON BERRY: Yes.

17           COMMISSIONER GEORGE: I was going to accept  
18 everything on that up to the last sentence. I would  
19 like the last sentence to be deleted.

20           CHAIRPERSON BERRY: The one that says "during  
21 times of national crises?"

22           COMMISSIONER GEORGE: Yes.

23           CHAIRPERSON BERRY: Even though that's true,  
24 I'd be happy to delete it if it will get some  
25 agreement, and ask my colleagues to.

1 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
2 won't agree to that.

3 CHAIRPERSON BERRY: Okay.

4 VICE CHAIRPERSON REYNOSO: It's just  
5 absolutely a historical truth. Why should we hide our  
6 face from the truth?

7 CHAIRPERSON BERRY: Because we should do it -  
8 - and I don't want to get into an argument with you, my  
9 friend -- because I think that it's not that  
10 Commissioner George -- you're not challenging the  
11 veracity of the statement, are you?

12 COMMISSIONER GEORGE: I'm saying that it's  
13 too sweeping and general to deal with a very  
14 complicated history.

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER GEORGE: The reference to our  
17 nation equated loyalty to the American ideal with  
18 authority to English-speaking culture. I just think  
19 that's too general and sweeping.

20 CHAIRPERSON BERRY: So in other words, there  
21 may be some people who did not in fact equate loyalty,  
22 so one cannot say "our nation." Is that the point?

23 COMMISSIONER GEORGE: It's certainly part of  
24 our nation.

25 CHAIRPERSON BERRY: Right.

1           COMMISSIONER GEORGE: It seems to be what  
2 we're doing here is really editorializing. I think  
3 we'd do much better if we could stick to the facts.

4           VICE CHAIRPERSON REYNOSO: Well, Madam Chair,  
5 if -- I guess my initial reluctance is I'm afraid that  
6 we'll come up upon many sentences like this. If it  
7 helps to proceed with the process, I'll agree to remove  
8 it. I have no agreement with the Commissioner that  
9 it's a overly sweeping statement, but it's meant to be  
10 one page, one and a quarter page of general  
11 introduction to the issue. And the sentences are  
12 generally true.

13           But if it will help move the discussion  
14 forward, I'll agree to cut it out. I don't think that  
15 it does anything bad to the paragraph or to the  
16 paragraph that follows.

17           COMMISSIONER HIGGINBOTHAM: Madam Chair?

18           CHAIRPERSON BERRY: Yes, Commissioner  
19 Higginbotham?

20           COMMISSIONER HIGGINBOTHAM: It's fascinating  
21 to be able to sort of listen to the dialogue from a  
22 distance. I would be perfectly happy to leave it in.  
23 I would be willing to take it out.

24           What I feel is that we are probably  
25 overestimating the amount of wisdom which the public

1 will get from any particular sentence. And what I am  
2 fearful of is that there has been a critique in terms  
3 of its mission not getting out our products timely.  
4 And I think that what we do today will be a case study  
5 as to whether, as a Commission, we are at the level of  
6 expedition a responsible Commission should be.

7           Now, if you have five or after all of these  
8 time which the assistants have spent and if we need  
9 substantially more time beyond today, I would much  
10 prefer at some point we either call for a vote, and  
11 those who disagree with that one sentence or another  
12 sentence, just file a separate concurring or dissenting  
13 opinion.

14           But I just don't know when this is going to  
15 be resolved and I feel very uncomfortable. Having been  
16 on agencies, having been on a court which has to  
17 resolve hundreds of opinions in the course of each  
18 year, if those agencies proceeded the way we are now,  
19 they would have an impossible backlog.

20           I really see an excessive impression of what  
21 the public reads when you see one sentence. And it's  
22 so very easy, after we get this through, if someone  
23 disagrees with sentence X, Y or Z, to file a one  
24 paragraph or two paragraph or 100 paragraph dissent,  
25 but we've got to get this moving. And I don't think we

1 serve the public well if we allow this to go  
2 considerably longer.

3 CHAIRPERSON BERRY: Well, why don't we, in  
4 the interest of collegiality, Leon and Cruz, do what we  
5 have done throughout this process. We have acceded to  
6 almost every change that has been proposed in order to  
7 try to get this process moving. And while I agree  
8 about the sentence, why don't we drop this one and see  
9 how many more we have to drop.

10 Go ahead.

11 VICE CHAIRPERSON REYNOSO: Madam Chair,  
12 first, I appreciate very much Leon's observations and I  
13 appreciate Robbie's concern about this sentence.  
14 First, I agree that maybe if we can't agree on  
15 everything, maybe a report should have a concurring  
16 opinion, for example. But if the choice is do we take  
17 this sentence out or do we have Robbie write a  
18 concurring opinion, I'd rather take this out. Because  
19 I think it means more if can have a unanimous or near  
20 unanimous Commission report.

21 So, again, in that light, I'd be more than  
22 happy to take that sentence out.

23 CHAIRPERSON BERRY: All right. We'll go on  
24 to the next paragraph.

25 COMMISSIONER HORNER: Madam Chair?

1 CHAIRPERSON BERRY: Yes.

2 COMMISSIONER HORNER: Madam Chair, I think  
3 Leon has given us some extremely sensible advice and I  
4 think we should accept his advice. Vote for the  
5 report; vote against the report. Vote for it with a  
6 dissent, but against it with a dissent.

7 I really don't see how we can possibly, as a  
8 committee here, negotiate out all our differences. all  
9 the differences which remain, in any timely fashion.

10 CHAIRPERSON BERRY: Okay.

11 Yes. Someone is saying something?

12 COMMISSIONER GEORGE: This is Robbie. I  
13 appreciate Cruz very much and I want to thank him.

14 Let's just step back. We have a pattern. We  
15 have a problem. We know we're divided. We have a  
16 pattern of trying to deal with the problem.

17 Report are produced that are basically, with  
18 only minor qualifications ordinarily, acceptable to one  
19 side of the Commission and unacceptable to the other  
20 side of the Commission. So what we have done to try to  
21 deal with that is come up with a strategy of working to  
22 negotiate towards acceptance of both sides.

23 I think it's not all the time, but at a  
24 certain point those negotiations break down and there  
25 are points that are left over that have to be



1 negotiated by the Commission.

2 Chairman Berry has proposed two or three  
3 times before that we go through on a line by line  
4 basis. This might be the time when that is necessary  
5 in order to get a report that would at least be  
6 something close to consensus support., So I'm prepared  
7 to do that. I'm prepared to go line by line. And  
8 maybe at the end of the day we're going to have a  
9 report that we all can live with.

10 Now, maybe not. There's no guarantee. When  
11 you deal with those issues, there's never a guarantee  
12 that there's going to be success, but I don't think  
13 that's a reason why we shouldn't try. And if it turns  
14 out that we don't manage to get a report that reaches  
15 consensus, I don't think we should beat our breasts  
16 over it. We can agree we're a very badly divided  
17 group. We can't expect to agree every time.

18 CHAIRPERSON BERRY: Commissioner George, for  
19 purposes of this report, the line by line after all the  
20 work that the Commissioner's assistants have done will  
21 consist of the areas where the disagreement remains.  
22 So can I --

23 COMMISSIONER GEORGE: That's my point. We  
24 got agreement where we did get agreement, and at a  
25 certain point it becomes necessary for the

1 Commissioners to negotiate over particular areas. I  
2 think there are only three.

3 CHAIRPERSON BERRY: There are three areas.

4 COMMISSIONER GEORGE: Plus findings and  
5 recommendations.

6 CHAIRPERSON BERRY: Right. That's it.

7 So why don't I finish reading this paragraph  
8 and we'll be through with this part.

9 VICE CHAIRPERSON REYNOSO: Madam, Chair?

10 CHAIRPERSON BERRY: Yes.

11 VICE CHAIRPERSON REYNOSO: Again, Cruz  
12 Reynoso.

13 I just want to say that I agree with Robbie  
14 on that. I think that the assistants went as far as  
15 they can and if we can work this out, I think we ought  
16 to -- you know, I concur with his expression of  
17 opinion.

18 CHAIRPERSON BERRY: Well, I'm going to read  
19 the next. We've agreed that we will give in and delete  
20 that sentence.

21 "For first generation immigrants, the English  
22 language defines most poignantly our national persona,  
23 reflected by our popular culture, our art and our  
24 system of government, and is an ever present reminder  
25 to them that without English proficiency they are

1 peripheral members of American mainstream culture."

2           If anyone has objections as I read along, say  
3 something.

4           "For this reason, language policy also serves  
5 as a barometer of states' varied reception and  
6 integration of newcomers in the absence of a federal  
7 immigrant, quote/unquote, policy.

8           "Florida and Dade County's policy toward  
9 immigrants, as reflected in the state and local school  
10 district's limited English proficient educational  
11 programs, is one that embraces newcomers and strives to  
12 ensure that their transition from immigrant to American  
13 is achieved, with opportunity for improvement and self-  
14 reliance. In this respect, Florida has laws that  
15 ensure language instruction for children and adults who  
16 have limited or no proficiency in English."

17           Now does anyone have any objection so far?

18           VICE CHAIRPERSON REYNOSO: Madam Chair, one  
19 matter that kept going through my mind as I read these  
20 reports on language is the emphasis on immigrants. And  
21 I can understand that, simply because of numbers. But  
22 in thinking about language, I always think about native  
23 Americans who had their own language before Europeans  
24 got here and who still do. And they represent part of  
25 the mix of languages other than English. I generally

1 don't refer to them as foreign languages, but languages  
2 other than English.

3           And in the report, we never mention that. It  
4 suggests to me that it's worth mentioning someplace  
5 along the way that these first Americans, if you will,  
6 have still many dozens of languages that are used right  
7 now.

8           COMMISSIONER GEORGE: How about, Cruz, if we  
9 added a footnote just taking note of the fact that  
10 there are very many languages that continue to be  
11 spoken.

12           CHAIRPERSON BERRY: And we could put that  
13 right at the beginning of footnote 336. Just the note  
14 that you said, Robbie.

15           COMMISSIONER GEORGE: Fine.

16           CHAIRPERSON BERRY: Okay?

17           COMMISSIONER GEORGE: Okay.

18           CHAIRPERSON BERRY: Now, if no one has any  
19 objections to that, I think I've read the part that was  
20 at issue. Have I read the part that's at issue or do I  
21 need to read anything?

22           COMMISSIONER GEORGE: Hang on a second, Mary.  
23 I'm going through my copy.

24           CHAIRPERSON BERRY: I mean on this particular  
25 page, I mean.

1 COMMISSIONER GEORGE: Oh, no. You've finished  
2 that.

3 CHAIRPERSON BERRY: Yes, Commissioner Horner?

4 COMMISSIONER HORNER: Everyone agrees that  
5 Florida and Dade County's foreign language education  
6 policies are inadequate because they don't -- because  
7 foreign language is elective? Does everyone agree to  
8 that? Microbiology, computer science are also elective  
9 and presumably could be as useful as learning a third,  
10 second or third language.

11 COMMISSIONER GEORGE: I'm sorry?

12 CHAIRPERSON BERRY: Let me read the next  
13 paragraph then since we're talking about the next  
14 paragraph. And I'll read to the end of this section  
15 then.

16 "Florida and Dade County's foreign language  
17 policies -- wait a minute.

18 "In this respect, Florida has laws that  
19 ensure language instruction for children and adults who  
20 have limited or no proficiency in English. Florida and  
21 Dade County's foreign language education policies are  
22 less generous. At the elementary and secondary  
23 education levels, foreign language courses are elective  
24 in non-magnet schools. Similarly, adult education  
25 programs, both through the Dade County Public Schools

1 and the Miami-Dade Community College provide few  
2 foreign language instruction courses compared to the  
3 number of English courses designed for non-native  
4 speakers."

5           Then it's -- "This chapter addresses Dade  
6 County's language education programs in the context of  
7 federal and state policies. It also examines the  
8 future of limited English proficiency programs, both  
9 nationally and in Florida, and the role of language  
10 policies and proposed reforms in race relations in  
11 Florida."

12           Commissioner Horner's question was the  
13 statement, "Florida and Dade County's foreign language  
14 education policies are less generous because foreign  
15 language courses are elective in non-magnet schools."

16           Do we agree that they are therefore less  
17 generous?

18           COMMISSIONER HORNER: Madam Chair, I would  
19 suggest that to prepare a young person in elementary  
20 and secondary schools for the future, it might be  
21 equally useful to take microbiology or computer science  
22 rather than French, German or Spanish, although it's  
23 always desirable to have foreign languages, the  
24 emphasis here seems to be toward creating a society in  
25 which native English speakers become proficient in

1 Spanish, and therefore, Spanish becomes a viable  
2 national language. And I think we ought to surface that  
3 and debate that, which seems to me to be quite implicit  
4 in the criticism of not requiring foreign language.

5 I don't understand why one would want to  
6 require foreign language any more than to require  
7 chemistry, physics, biology, computer, world history.

8 CHAIRPERSON BERRY: If they "are less  
9 generous" is the part and the "elective" part -- it  
10 would be descriptive only if it didn't say "are less  
11 generous." In other words, if they describe what goes  
12 on in Florida.

13 COMMISSIONER HORNER: I would question the  
14 utility and the motivation of describing the absence of  
15 required foreign language study unless the purpose is  
16 to require the study of foreign language to the  
17 exclusion of some other required course of study.

18 There are only so many hours in the day for a  
19 student. And my question is why should we mandate the  
20 study of a foreign language when there are many other  
21 potentially more useful mandates that one might make.  
22 And when the international language of the Internet is  
23 English.

24 In other words, it seems to me science  
25 education, math education, might be equally valuable to

1 mandate. And therefore, I simply disagree with the  
2 pejorative assessment of Florida and Dade County's --  
3 Dade County for not requiring these in elementary  
4 school, for instance. I think it would be a find thing  
5 for people to study foreign language in elementary and  
6 secondary school. I think the purpose here is not one  
7 I can support.

8 CHAIRPERSON BERRY: We may have a  
9 communication problem here. The staff says that the  
10 purpose of this -- go ahead and explain the purpose.

11 You got a mike?

12 Give her that mike.

13 OGC, go ahead. Tell us what that's -- and  
14 then we can decide what we want to do with it.

15 MS. MOORE: Yes. This paragraph is meant to  
16 merely be descriptive of language courses in Florida.  
17 The prior paragraph describes courses for limited  
18 English proficiency students. The next paragraph that  
19 we're discussing now talks about foreign language  
20 education. And there, the term "less generous" is only  
21 meant to suggest that there are fewer courses that are  
22 provided in Florida and Dade County in the area of  
23 foreign languages.

24 COMMISSIONER HORNER: I would ask why that is  
25 a relevant consideration for this report.



1 MS. MOORE: Because the chapter is on  
2 language education.

3 CHAIRPERSON BERRY: Like what is offered.

4 MS. MOORE: It is merely descriptive.

5 VICE CHAIRPERSON REYNOSO: This is Cruz  
6 Reynoso. It seems to me that -- I don't know whether  
7 it helps or not to use the term "extensive" rather than  
8 "generous." "Less extensive."

9 COMMISSIONER HORNER: I guess what troubles  
10 me is the recommendation which this description  
11 supports that there be a mandate, a mandated --  
12 somewhere in the body of this report there's a  
13 discussion that suggests that the state, the county and  
14 the country would be advised to mandate foreign  
15 language study. I don't know why we should be  
16 mandating foreign language study rather than mandating  
17 additional mathematics, additional science, better  
18 reading or more English.

19 MS. MOORE: Again, I think, as I've reviewed  
20 the findings and recommendations, Commissioner Horner,  
21 that there's no reference to the historical section in  
22 support of the findings and recommendations. All of  
23 the findings and recommendations -- there's only one  
24 that refers to page 118 and it is meant to relate to  
25 the section after this descriptive section that we're

1 referring to. ~

2 CHAIRPERSON BERRY: With all due respect, to  
3 respond directly to the point, is there a  
4 recommendation -- I don't remember one -- that foreign  
5 language should be made mandatory?

6 Oh, here it is. This is what she's referring  
7 to on page 257 in the recommendations, the redlined  
8 ones. "Students in all of Dade County --

9 COMMISSIONER GEORGE: Madam Chairman, could  
10 you give me a number? I don't have the redlined copy.

11 CHAIRPERSON BERRY: It's under Section 3 --  
12 Section 2, the recommendation. It's in the redlined  
13 copy. Let's give him the page number so you can find  
14 it in the non redlined copy.

15 I'll find it for you. Just a second,  
16 Commissioner George.

17 Page 227.

18 COMMISSIONER HORNER: Or page 257, depending  
19 on which text you're using.

20 CHAIRPERSON BERRY: Right. 227 for the clean  
21 copy.

22 COMMISSIONER GEORGE: 227?

23 CHAIRPERSON BERRY: Yes. 227. Bottom of the  
24 page. Clean copy.

25 COMMISSIONER HORNER: Are the texts the same?

1           CHAIRPERSON BERRY: Yes. Just that one is  
2 redlined.

3           COMMISSIONER GEORGE: 227. And which one?

4           CHAIRPERSON BERRY: 227. First bullet. Or  
5 256. I mean, it depends on which -- 227, clean copy,  
6 first bullet.

7           COMMISSIONER HORNER: Robbie, it says:  
8 "Enrollment in a foreign language program should also  
9 be mandatory throughout the academic career of all  
10 students in all of Dade County's public schools."

11           I cannot help but believe that this is  
12 intended to make the country or the county effectively  
13 bilingual. And I doubt that what is being considered  
14 here would be -- for instance, Vietnamese as a second  
15 language or French.

16           CHAIRPERSON BERRY: Well, the  
17 recommendations, we obviously can agree or disagree  
18 with. So that if we want to go to this recommendation  
19 to find out if people agree or disagree and should it  
20 be dropped, maybe that will ease the problem.

21           CHAIRPERSON BERRY: May I make a suggestion?

22           CHAIRPERSON BERRY: Yes.

23           COMMISSIONER GEORGE: I don't know about what  
24 Connie suggested. But it does seem to me that we go  
25 beyond our mandate with that second proposal, which is,

1 again, very sweeping. I'm sorry. The second  
2 sentence. But I don't have any problem with the first  
3 sentence.

4           Could we just include the first sentence of  
5 that bullet point and delete the second sentence?

6           COMMISSIONER REDENBAUGH: What is the first  
7 sentence?

8           CHAIRPERSON BERRY: I will read it.

9           "Students in all -- this is a recommendation,  
10 Russ.

11           "Students in all of Dade County's public  
12 schools could have access to intensive foreign language  
13 programs like those provided in the dual language  
14 schools." That's the first sentence.

15           COMMISSIONER REDENBAUGH: I don't want to  
16 belabor this too much. It was said by Commissioner  
17 Horner that perhaps it would be better to mandate  
18 microbiology or computer science. Although that may be  
19 my personal opinion, my view is that a civil rights  
20 commission ought not to be mandating anything where  
21 there's not a clear civil rights interest. And that  
22 education is private and personal and local and that  
23 the local organizations ought to respond to whether  
24 they have more math or less math independent of  
25 whatever I think about it.

1           So, I'm reluctant to do anything more than  
2 encourage. So I'm concerned, Robbie, that leaving the  
3 first sentence in still makes a much stronger  
4 recommendation than I would be prepared to go.

5           CHAIRPERSON BERRY: So you wouldn't even be  
6 prepared, since the report explains that some people  
7 feel that they need to learn a foreign language in  
8 order to be able to work in Miami, that they would even  
9 have access to foreign language; not that they'd be  
10 mandated but that they wouldn't even have access to it?

11           COMMISSIONER REDENBAUGH: I think that's an  
12 issue for the local school board that sets its  
13 curriculum up.

14           VICE CHAIRPERSON REYNOSO: Madam Chair?

15           CHAIRPERSON BERRY: Yes.

16           VICE CHAIRPERSON REYNOSO: Cruz Reynoso.

17           Clearly the report indicates -- and I recall  
18 the testimony in Miami -- that there are sometimes  
19 tensions that come up, for example, in employment  
20 situations because those who don't speak Spanish  
21 sometimes feel that even though it may not be a  
22 requirement for the job, that sometimes its a  
23 preference for those who are bilingual in the Miami  
24 area. And there was testimony by public officials that  
25 in fact they don't pay extra for language skills and

1 that those who speak Spanish there are so universally  
2 found that they don't have to make special efforts to  
3 get folk, even when Spanish-speaking Spanish would be  
4 helpful.

5 But we did have a report and testimony that  
6 there were some tensions that come up from time to time  
7 because of that lack of -- sometimes lack of Spanish-  
8 speaking ability particularly among African-Americans.

9 And so if that's true, clearly it's something  
10 that we as a Commission ought to be -- certainly it's  
11 within our capacity to make and our role to make  
12 recommendations in that regard.

13 Whether we agree with the recommendations or  
14 not is another matter. But certainly that's a matter  
15 that deals with racial tensions, ethnic tensions and  
16 matters that come squarely before us as issues of human  
17 rights and civil rights. It seems to me these are  
18 clearly matters that we ought to be concerned about.  
19 Now, whether we agree with a specific recommendation or  
20 not, I think is a different matter.

21 COMMISSIONER HORNER: Madam Chair?

22 CHAIRPERSON BERRY: Yes.

23 COMMISSIONER HORNER: I don't think African-  
24 Americans in need of jobs should have to take on the  
25 additional burden of learning Spanish in order to be

1 employable in the United States. And if we have any  
2 resources to devote to education of any language of  
3 origin, those resources ought to be devoted to mastery  
4 of one language.

5           The English language is the predominant  
6 language and the historical language, historically  
7 predominant language. Therefore, it is at least most  
8 efficient to devote our resources to ensuring mastery  
9 by everyone who lives here, citizen or not --  
10 immigrant, native born -- mastery of that language. If  
11 we do that, we will enormously enhance our  
12 productivity.

13           And I think it is -- with all due respect to  
14 you, Cruz, whom I do respect and to your history and to  
15 the admirable history in our country that you embody, I  
16 think it would be a tragedy to ask African-Americans  
17 now, on top of everything else that has to be done by  
18 them for participation in our economic life, also to  
19 learn a foreign language. I think this has just gotten  
20 out of hand.

21           CHAIRPERSON BERRY: Now before you comment --  
22 and I'm going to recognize you, Commissioner Lee -- I  
23 want to remind my colleagues that there was this very  
24 heated, I thought, testimony in Miami about the fact  
25 that whether they should have to learn Spanish or not,

1 black people were not able to get jobs because they  
2 were told that they didn't speak Spanish, and  
3 therefore, they couldn't get them.

4           And in fact, when the Commission went down to  
5 Miami before, in our report that's cited after one of  
6 the riots that occurred down there, one of the major  
7 issues there was employers refused to hire African-  
8 Americans because they didn't speak Spanish. And one  
9 of the demands that the African-American community had  
10 was if you want us to learn Spanish, why don't you  
11 teach it in the schools so that we can learn it.

12           COMMISSIONER HORNER: Why not use those  
13 resources, those educational resources, to teach people  
14 who speak Spanish to speak English. And therefore, if  
15 they are in entrepreneurial situations where they can  
16 hire people, they can hire people who speak English as  
17 a native language.

18           CHAIRPERSON BERRY: Commissioner Horner, we  
19 have two -- and Commissioner Redenbaugh. I'm not  
20 directing this just to you. And I'm only directing it  
21 at him, too, because both of you spoke to the issue.  
22 I'm sure others have similar views.

23           We have at odds here two sort of principles.  
24 One is local control. And the school board in Miami  
25 and the political system happens to be controlled by



1 people who speak Spanish. Since they speak Spanish,  
2 they lay out the rules. Okay?

3 And if they lay out the rules and the rules  
4 don't include teaching black kids Spanish, then they  
5 know that black kids won't be able to get jobs if they  
6 don't speak Spanish and the black kids can't afford to  
7 have money to go somewhere to get private tutors to  
8 learn Spanish, then how in the heck are the black kids  
9 going to get the jobs>?

10 COMMISSIONER HORNER: Well, if we're in the  
11 business of giving instructions to the locality, which  
12 is what we do routinely, why not give the locality a  
13 useful instruction?

14 CHAIRPERSON BERRY: Okay. So we would tell  
15 the locality. And what will we do about people in  
16 Miami who won't hire black kids who don't speak  
17 Spanish? What will we do about that? Us, as a  
18 Commission.

19 COMMISSIONER HORNER: Teach them English.

20 CHAIRPERSON BERRY: The people who won't  
21 hire?

22 COMMISSIONER HORNER: The people who are now  
23 13 and who will be hiring in nine years, eight years,  
24 seven years.

25 CHAIRPERSON BERRY: You mean teach the

1 Spanish-speakers English?

2 COMMISSIONER HORNER: Teach the Spanish-  
3 speakers English.

4 VICE CHAIRPERSON REYNOSO: Madam Chair, Vice  
5 Chair Reynoso.

6 I agree with Commissioner Horner that we  
7 ought to encourage the local schools and others to  
8 provide the resources to teach. And we're talking now  
9 a lot about adults, incidentally, because they're the  
10 ones who are serviced by service industries and they're  
11 the ones that the employers worry about when they come  
12 in and they can't speak English that they want somebody  
13 who speaks Spanish. And presumably, that's the source  
14 of some of these employment problems.

15 I think we ought to encourage the teaching of  
16 English to all those who don't speak English. And if  
17 Commissioner Horner would like to have us include that  
18 recommendation here or elsewhere, I think that would be  
19 very appropriate.

20 But I happen to agree with this  
21 recommendation also.

22 CHAIRPERSON BERRY: How about if we had --  
23 yes, Commissioner Anderson?

24 COMMISSIONER ANDERSON: Well, I think we're  
25 backing into an issue here that maybe we should resolve

1 as far as the Commission is concerned. Should someone  
2 in the United States, in order to be employed, be  
3 required to speak a language other than English. Is  
4 that a civil rights issue. Maybe we should address  
5 that and discuss it.

6 VICE CHAIRPERSON REYNOSO: It can be said  
7 differently looking at it from the point of view of the  
8 law. Can it be a bona fide occupational qualification  
9 that a person speak a language other than English if  
10 that industry deals with many folk who don't  
11 communicate in the English language.

12 Probably the EEOC would say yes, it can be a  
13 bona fide occupational qualification. You can't expect  
14 business people to hire folk who can't communicate with  
15 their clients.

16 So, I think that Commissioner Horner's views  
17 and the dilemma of legality and the law, I think -- I  
18 think we deal with both issues at the same time. We  
19 encourage those who don't speak English to learn  
20 English. We facilitate their learning English by  
21 providing night school and so on. But at the same  
22 time, we teach the youngsters languages that they need  
23 to have to be able to find that employment.

24 I see nothing incongruous with doing both at  
25 the same time.

1 CHAIRPERSON BERRY: Commissioner Lee?

2 COMMISSIONER LEE: In the interest of getting  
3 me back to the airport to catch my 5:00 flight --

4 CHAIRPERSON BERRY: Now, now.

5 COMMISSIONER LEE: -- I'm willing to strike  
6 the last sentence of the recommendation with the  
7 mandatory part, but I am not willing to give up the  
8 first one. Because all it says is students should have  
9 access to intensive foreign language programs. And I  
10 don't interpret this as in order to survive. By  
11 communicating with the Spanish-speaking community you  
12 have to learn a new language.

13 I interpret it as a way of recognition of  
14 whether we like it or not, we are in a global market.  
15 And if we are going to educate our students, we cannot  
16 deprive them of the opportunity to learn another  
17 language so that they can better compete, whether it's  
18 going to be in Dade County or in other jobs in the  
19 future.

20 In another part of the report, they did not  
21 say they have to learn Spanish so they could  
22 communicate. They also talked about another aspect of  
23 tourism. Brazil or Portuguese people coming in. That  
24 if they were able to speak that language, they would be  
25 able to get employment.

1           So I just see this not as a short-term  
2 resolution so that you can communicate with your  
3 neighbor. I see it as bettering our students so that  
4 they can compete with the global environment. And  
5 every other country's students speak another language.

6           COMMISSIONER HORNER: English.

7           COMMISSIONER LEE: And another language. And  
8 for us in this country, we're discouraging our kids  
9 from being ready to compete with other kids. I just  
10 don't understand that.

11           COMMISSIONER REDENBAUGH: Madam Chair?

12           CHAIRPERSON BERRY: Yes. Somebody.

13 Commissioner --

14           COMMISSIONER REDENBAUGH: Redenbaugh.

15           CHAIRPERSON BERRY: -- Redenbaugh.

16           COMMISSIONER REDENBAUGH: I'm going to  
17 support Commissioner Lee's position. I'm going to drop  
18 any objection I had to the first sentence.

19           VICE CHAIRPERSON REYNOSO: Commissioner  
20 Reynoso speaking. I'll go along with that.

21           CHAIRPERSON BERRY: Okay.

22           Commissioner Anderson?

23           COMMISSIONER ANDERSON: Well, I guess --  
24 look. I would say to Commissioner Lee, if we were on a  
25 scoreboard together, I would be very supportive of what

1 you're saying. In fact, if I were on a school board, I  
2 would mandate extensive language instruction,  
3 kindergarten through whatever, 10th grade, 12th grade,  
4 so that students would come out proficient in more than  
5 one language.

6 But when we say it here on the Civil Rights  
7 Commission, we're saying that as a matter of civil  
8 rights, students should have access to extensive  
9 foreign language programs. And I'm not sure that as a  
10 matter of civil rights we want to say that, make it a  
11 civil rights issue, access to extensive foreign  
12 language programs in public schools.

13 CHAIRPERSON BERRY: Commissioner Anderson,  
14 how do you get to the point we were discussing earlier  
15 about students who don't have access and therefore  
16 can't get jobs because they don't know how to speak  
17 whatever language it is and it's not English? They  
18 know how to speak English.

19 COMMISSIONER ANDERSON: Well, I mean, what  
20 that presumes is English as official language or  
21 English only is off the table. It presumes that there  
22 will be no dominant language in the society, I believe.

23 CHAIRPERSON BERRY: And that we can't enforce  
24 it. That's what it assumes. It assumes that -- see,  
25 the African-Americans who made these demands would have

1 been perfectly happy if we had said, or somebody had  
2 enforced if you speak English and you do that well, you  
3 can get a job. They wouldn't have objected to that.

4           What they object to is speaking English,  
5 totally can't get the job. And then nobody will teach  
6 them Spanish either. So then they say, well, what are  
7 we supposed to do. And that's the crux of the civil  
8 rights problem and the issue of what about these  
9 opportunities for people.

10           Yes, Commissioner Horner?

11           COMMISSIONER HORNER: Madam Chair, we have an  
12 obligation that goes beyond the ability of any  
13 individual to get a job in a country situation. We  
14 have an obligation to decide what's good policy for the  
15 whole country for the long-term.

16           Now, if I were a young African-American in  
17 Miami and I saw there were good jobs to be had if I  
18 spoke Spanish, I guess I'd ask my school board to give  
19 me Spanish education. And I don't see frankly why that  
20 can't happen. But if I were, as I think we are, making  
21 policy for the whole country, I would say as a national  
22 body recommending policies that have national  
23 prominence, that we should be extremely reluctant to  
24 recommend a policy that entrenches an expectation of  
25 multi-lingualism for economic success.

1           In other words, we may create a self-fulfilling  
2 prophecy where in the first instance you may find some  
3 young African-Americans better able to get jobs in  
4 hotels and restaurants in the tourism industry in  
5 Miami, but because they've had to master Spanish, they  
6 have not mastered something that will allow them entry  
7 to the high level occupations in the society, all of  
8 which still require, and I think will always require as  
9 an international language of science and commerce now,  
10 mastery of the English language.

11           So I think we could be consigning people to  
12 serving Spanish-speaking entrepreneurs in fast food  
13 joints and I think that's a bad vision.

14           CHAIRPERSON BERRY: Well, let me just try one  
15 more thing and then, if not, as I read the table, there  
16 may be enough support to just leave the first sentence.  
17 But let me try to engage --

18           COMMISSIONER HIGGINBOTHAM: If you'll excuse  
19 me, I support Commissioner Lee and I will not burden  
20 you by my argument.

21           CHAIRPERSON BERRY: Okay. The only point I  
22 was going to make is I think there is enough consensus  
23 to support the inclusion of the first sentence only,  
24 but let me try to make an effort to get everybody to  
25 agree. It may not work.



1           How about if we said that the Dade County  
2 public schools should ensure that every student has  
3 competency in English and it should devote its  
4 resources to this objective. And that, in addition,  
5 given the testimony concerning the current race and  
6 ethnic tensions currently in Miami and Dade County over  
7 the issue of foreign language, that students in Dade  
8 County's public schools should have access to foreign  
9 language programs.

10           COMMISSIONER HORNER: I would agree to that,  
11 as long as it doesn't say to intensive foreign language  
12 programs like those provided in the dual language  
13 schools, because that implies special resources devoted  
14 to foreign language rather than something else. But as  
15 you stated it, I would agree to that.

16           COMMISSIONER GEORGE: Could we just do it the  
17 way Mary just said it?

18           COMMISSIONER HORNER: Then would we take out  
19 the next paragraph?

20           CHAIRPERSON BERRY: Well, they've already  
21 said they don't want the next sentence. I mean, we've  
22 taken out the second sentence.

23           COMMISSIONER HORNER: But the next paragraph  
24 talks about --

25           CHAIRPERSON BERRY: Okay. Let's go to the

1 next paragraph.

2 COMMISSIONER GEORGE: Do we have agreement on  
3 the way the Chairman just read?

4 COMMISSIONER HIGGINBOTHAM: Let me just tell  
5 you, Madam Chair, I think you're really getting on a  
6 slippery slope.

7 COMMISSIONER HORNER: I do, too. I think she  
8 is.

9 CHAIRPERSON BERRY: Well, I'm trying to be  
10 agreeable here.

11 COMMISSIONER HIGGINBOTHAM: I mean, after  
12 having had the dilution, you get another delimiting.  
13 And then you have to qualify the third definition by a  
14 further dilution. Because what is involved here  
15 depends on what generation you identify civil rights.

16 Civil rights 40 years ago may have been  
17 considered to be merely primary things like the right  
18 to vote, the right against physical violence. Now  
19 civil rights, among some scholars, has a broader view.  
20 And they believe that a handful of rights and a  
21 bellyful of hunger is not civil rights.

22 Now, the way you get from a handful of rights  
23 to right a bellyful of hunger is jobs. And if jobs are  
24 not available, the right to vote, the right to be able  
25 to purchase lobster and filet mignon at the finest

1 restaurants is not a norm but it's a right.

2           Now, I don't want to go into what would be my  
3 extensive trauma, but I think you get -- it seems to me  
4 that that sentence, as originally read, was so mild  
5 that it is not worth debating. And someone who  
6 disagrees, as Commissioner Horner does, and feels  
7 strongly about it, should write a vigorous dissent.

8           This concept of diluting a dilution just so  
9 that we have a report out, but its impact as conscious  
10 rasing is minuscule.

11           CHAIRPERSON BERRY: Okay. Well, I'll back  
12 off the slippery slope. We'll just leave it as -- I  
13 perceive that there at least is less support for the  
14 first sentence, so we'll just leave the first sentence  
15 and drop the second sentence and then see what else we  
16 have to do here.

17           If we do that, then what we have to do is --  
18 we started back on page 117 which is where we got into  
19 this with the paragraph that Commissioner Horner had  
20 pointed out to us. I was reading on page 117. And we  
21 had finished reading that and we were discussing that  
22 sentence.

23           The next section -- then we have -- I read  
24 through that section and we've now discussed the  
25 recommendation. We had another -- is there any other

1 change that anybody want to make on page 118 in the  
2 redlined copy, which is page 105 and 106 in the regular  
3 copy, the part that I just read to you before we  
4 started discussing the recommendation.

5 Yes, Commissioner Horner?

6 COMMISSIONER HORNER: Just for the record, my  
7 original criticism stands, but I don't think it  
8 warrants further discussion.

9 CHAIRPERSON BERRY: Right.

10 COMMISSIONER GEORGE: Wait. I'm lost.

11 CHAIRPERSON BERRY: What I'm saying is we  
12 began discussing the recommendation because of  
13 Commissioner Horner's point that she made when I was  
14 reading the text on page 118. Do you understand,  
15 Commissioner George? 105 and 106 in the clean copy.

16 COMMISSIONER GEORGE: Yes.

17 CHAIRPERSON BERRY: That was all I was  
18 saying.

19 COMMISSIONER GEORGE: Well, I think there is  
20 a problem. I mean, I don't know, Madam Chairman,  
21 whether you've taken Judge Higginbotham's advice to  
22 heart just for that one point or as a general point. I  
23 mean, you've stated two views about how to do this  
24 thing.

25 But I think if it's taken to heart as a

1 general point, then we're just going to have to give up  
2 on the process and go back to the idea that you write  
3 the report the way -- and then the other half writes a  
4 dissent.

5 CHAIRPERSON BERRY: I am trying -- I don't  
6 intend to abandon the process entirely. I plan to go  
7 to sections to see if people want to have something  
8 deleted. I was just simply pointing out that that's  
9 what I was doing on that sentence.

10 COMMISSIONER GEORGE: Okay.

11 CHAIRPERSON BERRY: And so what I'm asking  
12 now is before we go on page 105 and 106 -- it would be  
13 106, right, in the clean copy -- what sentence are we  
14 talking about.

15 I just read that whole section to you before  
16 we went to the recommendation, remember? Before I go  
17 to the next section that has a problem, I want to see  
18 if anybody else wants to do anything else to this  
19 section.

20 COMMISSIONER GEORGE: Okay. The word  
21 "generous," we're going to change that to "extensive?"

22 CHAIRPERSON BERRY: We'll take the whole  
23 sentence out if you want to.

24 COMMISSIONER GEORGE: Yes.

25 CHAIRPERSON BERRY: Just say that the

1 elementary and secondary level, foreign language  
2 courses are elective in non-magnetic schools in Florida  
3 and Dade County period. Okay?

4 COMMISSIONER GEORGE: Yes.

5 CHAIRPERSON BERRY: All right. Done.

6 Now, we go to page -- the next section is on  
7 page 181-84 of your copy, the clean copy, and page 202-  
8 204 of the redlined copy, whatever it is you're looking  
9 at. Page 181 clean.

10 The history here. We have another history  
11 problem. Us historians don't like -- I'm a historian  
12 today and not a lawyer. So historically, this is  
13 what's at issue.

14 "The United States has embraced sizable  
15 numbers of those who have fled persecution elsewhere."  
16 And right before that is the quote from the Statue of  
17 Liberty which I won't quote to you because we all know  
18 it about the lamp beside -- give me your tired, your  
19 poor.

20 Then it says, "Historically, the United  
21 States has embraced sizable numbers of those who have  
22 fled persecution elsewhere, yet the United States also  
23 has a history of according differential treatment among  
24 similarly situated groups of refugees and asylees.  
25 Before the implementation of the Refugee Act of 1980,

1 refugee admissions policies had been administered in an  
2 ad hoc and highly ideological manner." And it quotes -  
3 - that is a quote from a Michael Fix and Jeffrey S.  
4 Pacell study. That language there is a quote.

5 "The Refugee Act implemented an explicit set  
6 of policies that committed the United States to  
7 annually receiving a substantial number of refugees and  
8 decreed that the United States grant refugee status in  
9 a politically neutral manner, rather than pursuant to  
10 foreign policy concerns. Under the Refugee Act the  
11 United States may grant political asylum to applicants  
12 who demonstrate a, quote, well-founded fear of  
13 persecution, on account of race, religion, nationality,  
14 membership in a particular social group or political  
15 opinion, unquote, and agrees not to return those  
16 meeting this definition to their country of origin.

17 "While advocacy groups generally see an  
18 improvement in the treatment of refugees and asylum  
19 seekers since enactment of the Refugee Act, there  
20 remains a sense that foreign policy concerns still play  
21 a role in determining the treatment accorded different  
22 groups of refugees. According to some, preferential  
23 treatment continues to be afforded different groups, as  
24 it had in the past.

25 "For example, Jannette B. Kelly, an Ethiopian

1 refugee who fled her country's pro-Soviet dictator in  
2 1980 states, quote, If the refugee program really has a  
3 humanitarian purpose, then it needs to be reexamined.  
4 There are a lot of countries that abuse human rights,  
5 but if they're not on the American government's list,  
6 it's not an abuse. Unquote.

7 "Critics point out that in 1993 more than 85  
8 percent of refugee applications from Bosnia-  
9 Herzegovina, Laos, the former Soviet Union, Vietnam and  
10 Cuba were accepted. Less than 35 percent of  
11 applications from Burma, Romania and Haiti, all known  
12 for human rights abuses, were accepted.

13 "Unlike refugees -- how far do I need to read  
14 -- whose applications for asylum in the United States  
15 are processed overseas, asylum applicants represent  
16 those individuals who have already arrived in the  
17 United States and are seeking political asylum. Asylum  
18 applicants must meet the, quote, well-founded fear of  
19 persecution standard that refugees have to meet, but  
20 they are entitled to more procedural safeguards than  
21 refugee applications which are processed overseas.

22 "Under the law, asylum decisions are  
23 individual case-by-case determinations based on neutral  
24 standards. Some note, however, that actual practice in  
25 asylum law may differ significantly from published



1 legal standards.

2 "Finally, some refugees are admitted into the  
3 United States pursuant to the parole power granted to  
4 the Attorney General in the Immigration and  
5 Naturalization Act. That power has come under attack.  
6 For example, the Illegal Immigration Reform and  
7 Immigrant Responsibility Act of 1996 limits the  
8 Attorney General's parole to allow parole authority,  
9 quote, only on a case-by-case basis for urgent  
10 humanitarian reasons or significant public benefit.  
11 Unquote.

12 "The Immigrant Reform Act further provides  
13 that the number of parolees who remain in the country  
14 for more than a year and do not adjust to permanent  
15 resident status shall be subtracted from the worldwide  
16 level of immigrants in a subsequent year.

17 "The Immigration Reform Act also affects  
18 asylum law. For example, the new law restricts the  
19 filing of asylum applications by aliens with no  
20 documents or fraudulent documents, unless they can  
21 prove a, quote, credible fear, unquote, of persecution,  
22 defined as, quote, a significant possibility, unquote,  
23 that the alien could establish eligibility for asylum.

24 "Refugee advocates argue that most people who  
25 flee their home countries because of war or political

1 persecution cannot obtain valid travel documents or  
2 documents that would evidence torture or victimization.  
3 The Immigration Reform Act also requires asylum  
4 applications to be filed within a year of entry into  
5 the United States. Previously there was no such  
6 deadline.

7 "Critics argue that many who are eligible for  
8 asylum may not apply for a variety of reasons. Among  
9 other things, potential asylees may not speak English,  
10 may not know how to apply or they may be suffering from  
11 post traumatic stress disorder which would impede their  
12 attention to the application process.

13 "In addition, the Immigration Reform Act  
14 limits judicial review. Generally, no court has  
15 jurisdiction to review discretionary decisions or  
16 actions of the Attorney General, other than the  
17 granting of asylum. Refugee advocates argue that most  
18 people who flee their home countries because of war or  
19 political persecution cannot obtain valid travel  
20 documents or documents that would evidence torture or  
21 victimization.

22 "Moreover, the Immigration Reform Act  
23 restricts the grant of work authorization to 180 days  
24 after the asylum application is filed and requires  
25 final administrative adjudications within 180 days in

1 the absence of exceptional circumstances. According to  
2 Senator Alan K. Simpson, former Senator, such  
3 provisions address the, quote, many unlawful aliens who  
4 have discovered the key to extending their stay in the  
5 United States by claiming fear of political persecution  
6 at home. They are able to delay their departure for  
7 years as they remain here and work while awaiting their  
8 hearing. Unquote."

9 Now, does anyone have reasons why they want  
10 to cut all that out or cut any of it out or change any  
11 of it?

12 COMMISSIONER ANDERSON: Yes. I have.

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER ANDERSON: Thank you.

15 Page 181, the third sentence. "Before the  
16 implementation of the Refugee Act of 1980, refugee  
17 admissions policies had been administered in an ad hoc  
18 and highly ideological manner."

19 I think I understand what ad hoc means. I  
20 don't understand what the author here means by highly  
21 ideological manner. I can speculate that a preference  
22 was given to refugees from countries in the Soviet  
23 Bloc. If that's what it means, I for one wouldn't  
24 regard that as an ideological manner in administering  
25 refugee policy.

1           So I think we're probably -- unless we can  
2 explain it better, I think it would just be best to  
3 drop that sentence, and in lieu thereof, say the  
4 Refugee Act of 1980 implemented an explicit set of  
5 policies, et cetera.

6           CHAIRPERSON BERRY: I would accept that, if  
7 others will. I see no need to actually have the  
8 sentence.

9           Okay. That's accepted.

10          Others?

11          COMMISSIONER ANDERSON: On 182, the second or  
12 third sentence. "For example, Jannette B. Kelly, an  
13 Ethiopian refugee who fled her country's pro-Soviet  
14 dictator -- and then it quotes her. Apparently quoted  
15 in the Christian Science Monitor.

16          My reaction is, so what? If we want to make  
17 the point that we are, for some irrational reason or  
18 more sinister reason treating refugees from Burma  
19 different than Bosnia-Herzegovina, then lets say that  
20 and let's substantiate it. But what -- I have a  
21 problem with many of our reports and language. We cite  
22 this, which is a perception, which has a presumption or  
23 leads to an inference because of the presumption, but  
24 we don't really document it and say what we really  
25 mean.

1           If we really mean that we're giving  
2 preference to people from Vietnam and Cuba at the  
3 expense of people from Haiti and Romania and there's  
4 some sinister reason for that, then let's document it  
5 and say it, in my opinion.

6           CHAIRPERSON BERRY: You mean document the  
7 sinister reason?

8           COMMISSIONER ANDERSON: Yes. I mean, I think  
9 there probably is very good reason for treating  
10 refugees from Bosnia-Herzegovina differently than  
11 refugees from Romania. I mean, thousands of people  
12 were tortured, raped and murdered in Bosnia-  
13 Herzegovina. Now, I don't see that as being the case  
14 in Burma, although the situation in Burma is not good,  
15 or Romania, or Haiti, for that matter.

16           So from that standpoint, I mean, there are  
17 some reasons why you would treat somebody differently  
18 from -- a refugee from Vietnam and Bosnia, than you  
19 would from Romania and Haiti and Burma.

20           CHAIRPERSON BERRY: So what would you like to  
21 do with this section?

22           COMMISSIONER ANDERSON: Well, I'm just  
23 pointing out if we want to say that there's a civil  
24 rights issue here, then let's document where it is. If  
25 there isn't, then let's delete it. Because the

1 implication is that somehow our refugee policy has a  
2 sinister motive behind it and I'm not convinced there  
3 is.

4 I'd be happy to say there is if there is, but  
5 from this I can't see it.

6 CHAIRPERSON BERRY: I thought the reason for  
7 the difference in refugee policy, although this doesn't  
8 say so, but I was always told this by the State  
9 Department that the difference in refugee policy had to  
10 do with countries that were aligned with the Soviet  
11 Union and countries who are not. And since the Soviet  
12 Union was our political enemy until it no longer  
13 existed, I guess, that we obviously treated people who  
14 were fleeing there -- we had a presumption that they  
15 were fleeing persecution as opposed to people who came  
16 from countries that were not aligned with the Soviet  
17 Union where we did not indulge in such a presumption.

18 That's what I was always told. Am I  
19 misunderstanding? Had anyone else ever heard that?  
20 That it was in our national interest and part of what  
21 our policy was because we were opposed to communism and  
22 opposed to what the Soviet Union was doing to people.  
23 So people who were trying to flee there, there was a  
24 presumption that they had a good reason. And that  
25 people who were trying to flee countries that were

1 allied with the Soviet Union, that there was a  
2 presumption that they had a good reason. Whereas,  
3 people who were coming from countries that were not  
4 allied with the Soviet Union, you, one, had to  
5 carefully inquire, and a level of inquiry was much  
6 different. And that's what I was told.

7           Would you object to that or is that contrary  
8 to what you understood, Carl, or am I completely  
9 confused?

10           COMMISSIONER ANDERSON: No. I think that's  
11 pretty accurate. I think that a good part of the  
12 reason why there was the presumption was that countries  
13 involved in the Soviet Bloc were what we would call  
14 totalitarian in the sense that they had a very  
15 extensive infrastructure for arresting, torturing,  
16 killing, imprisoning hundreds of thousands and millions  
17 of people. That had been systematically put in place.

18           Now, dictatorships in South America and other  
19 places and Asia, also did that, but not nearly at the  
20 kind of systematic ideological level. And therefore --  
21 I mean, it seems to me there was a rational basis for  
22 treating it differently than just simply an ideological  
23 bias.

24           CHAIRPERSON BERRY: Okay. So what should we  
25 do with this? I mean, we could say that while there

1 were the kinds of reasons that Carl just talked about -  
2 - Commissioner Anderson just talked about -- for the  
3 government policies, that critics complain that they  
4 saw a disparity in who got into the country, or  
5 something. I mean, which is a factual matter. There  
6 were critics who complained. And let it go at that.

7 Would that bother you, Carl?

8 COMMISSIONER ANDERSON: No.

9 CHAIRPERSON BERRY: If we just say that while  
10 government policy was predicated on the -- on the words  
11 he used about totalitarian and the rest of it as a  
12 distinction, critics complained that they saw  
13 differences in who was admitted to the United States  
14 and pointed out that in 1993 more than 85 percent were  
15 from there. And then strike the rest of it that you  
16 complained about, Jannette Kelly and the rest of that.

17 Anybody object to that?

18 VICE CHAIRPERSON REYNOSO: So you're talking  
19 about cutting out the sentence that according to some,  
20 preferential treatment continues to be afforded -- no.  
21 You're talking about the next sentence. "For example,  
22 Jannette Kelly --

23 CHAIRPERSON BERRY: What I'm talking about is  
24 inserting after "treatment accorded to different groups  
25 of refugees," make the point that Commissioner Anderson



1 made about the difference between totalitarian  
2 governments and others. And then go on after that,  
3 striking the Kelly and the rest of that. And then say  
4 but critics complain that in 1993 -- or they continued  
5 to see differences or complained that more than 85  
6 percent were accepted from there.

7 VICE CHAIRPERSON REYNOSO: That's fine.

8 CHAIRPERSON BERRY: Okay. Anybody else?

9 Yes.

10 COMMISSIONER GEORGE: I would be happy to go  
11 with that, Madam Chairman. There's one addition I'd  
12 like to delete footnote 9, which is -- testimony in  
13 opposition to Senator Ralph Burton's amendment and his  
14 testimony before the Senate. I'd like that whole  
15 footnote to be deleted.

16 CHAIRPERSON BERRY: Okay. Let's see. That  
17 footnote is related to something.

18 Okay. I don't have any problem with that.  
19 Nobody else does. Gone.

20 Yes, Commissioner Horner?

21 COMMISSIONER HORNER: Madam Chair, I'm not an  
22 expert on the elements of the Immigration Act under  
23 discussion here, but I would ask whether the Congress  
24 was responding to a problem that was identified in  
25 congressional hearings when it passed these

1 restrictions.

2           As I read through these few pages, it struck  
3 me that we're reading about actions by the Congress  
4 which are at least implicitly characterized as either  
5 mean or irrational or anti-immigrant or something like  
6 that. That's the implication. That these aren't wise  
7 policies.

8           And the only question I would ask is whether  
9 these policies were responding to abuses, as the  
10 Congress perceived them, of the former asylum policies.

11           In other words, was there some reason  
12 somebody had in mind that this passed the Congress.  
13 And if so, why is there no characterization of the  
14 purposes and the little bit of the rationale. All  
15 we've got is one sentence from Senator Simpson at the  
16 end of that discussion.

17           CHAIRPERSON BERRY: Well, why don't we then  
18 put a sentence at the beginning of the discussion and  
19 say that Congress was responding to --

20           COMMISSIONER HORNER: Whatever it was  
21 responding to.

22           CHAIRPERSON BERRY: -- reports of --

23           COMMISSIONER HORNER: Well, I don't know  
24 whether it was responding to studies that showed that  
25 hundreds of thousands of people were abusing the policy

1 and getting in front of the queue illegally for entry  
2 to the country. I don't know whether that was the  
3 case. I don't know whether literally it was the case,  
4 whether the Congress was told it was the case or  
5 whether the Congress believed it was the case, but  
6 usually Congress is responding to something.

7           And as part of our desire not to gratuitously  
8 slam the moral character of people who make our  
9 legislation, I think we ought at least to give some  
10 short good faith explanation of why they say they did  
11 what they did, if such exists.

12           CHAIRPERSON BERRY: Now, would you like to  
13 move Senator Simpson's statement which he made on the  
14 introduction of the bill up earlier so that it's  
15 understood that there was a problem?

16           COMMISSIONER HORNER: No, not particularly.  
17 I just would enjoin the staff to -- I mean, that would  
18 be fine if that's the best way to do it. I would just  
19 enjoin the staff to put in not just opinion, which can  
20 be discounted, but evidenced if it has been adduced.  
21 And obviously not comprehensive evidence but not the  
22 most discountable or dismissable anecdotal evidence  
23 either. The best evidence the Congress acted on when  
24 it made this decision.

25           And then if we want to disagree, fine. But I

1 think we're creating an ogre-ish image here, and  
2 perhaps that's not warranted.

3 CHAIRPERSON BERRY: Do others have comments  
4 on this?

5 VICE CHAIRPERSON REYNOSO: This is Vice Chair  
6 Reynoso. The implication that I read into the Refugee  
7 Act of 1980 was that Congress was concerned that in  
8 fact decisions had been made on an ad hoc basis before  
9 then and passed this statute which, the implication is,  
10 was a solicitous statute in terms of calling on the  
11 Executive to be fair in terms of how it made its  
12 decisions.

13 Then there's that then the critics say,  
14 following that, that nonetheless the Administration did  
15 not properly follow congressional mandate.

16 Later, in the more recent Reform Act, I think  
17 they were responding to the type -- the Congress was  
18 responding to type of concerns that Senator Simpson  
19 here is quoted as having. Maybe that could be said  
20 differently.

21 COMMISSIONER HORNER: Cruz, I was referring  
22 only to the Immigration Reform Act, not to the Refugee  
23 Act.

24 VICE CHAIRPERSON REYNOSO: Oh, I'm sorry.

25 CHAIRPERSON BERRY: Okay. We will put a

1 sentence at the beginning of the Refugee Reform Act,  
2 either the sentence that Senator Simpson made when he  
3 introduced it, at the beginning, which is the best -- I  
4 mean, it's what he said.

5 COMMISSIONER HORNER: But perhaps why he --  
6 you know, what evidence he adduced in four or five  
7 sentences to support what he said. He presumably  
8 didn't simply splat out a sentence and let it go at  
9 that and then they merely legislated one. Presumably  
10 some data was presented, perhaps from the Justice  
11 Department, which might be a more rhetorically credible  
12 source.

13 CHAIRPERSON BERRY: Well, we will leave that  
14 point, that either more from Simpson or more to explain  
15 why they did it will be inserted at that point on page  
16 183 where it says the Immigration Reform Act also  
17 affects asylum law. And that is agreed.

18 The last section -- yes?

19 COMMISSIONER ANDERSON: Are we going to  
20 continue on page 188 or are we moving way from 188?

21 CHAIRPERSON BERRY: 188?

22 COMMISSIONER ANDERSON: The non redlined.

23 CHAIRPERSON BERRY: 188.

24 COMMISSIONER ANDERSON: Yes. On the final  
25 version, I think.

1           CHAIRPERSON BERRY: We can go there if you  
2 would like to.

3           COMMISSIONER GEORGE: Back on 182, Madam  
4 Chairman?

5           CHAIRPERSON BERRY: Okay.

6           COMMISSIONER GEORGE: Did we conclude what we  
7 were going to say about the relationship between U.S.  
8 foreign policy and refugees, particular refugees? We  
9 reached agreement on that, I take it?

10          CHAIRPERSON BERRY: Yes. We're going to put  
11 in the language that Commissioner Anderson -- remember  
12 that?

13          COMMISSIONER GEORGE: Yes.

14          CHAIRPERSON BERRY: Okay. Page 188.  
15 Commissioner Anderson?

16          COMMISSIONER ANDERSON: Thank you, Madam  
17 Chair.

18                 This goes by way of, I think, a repeated  
19 concern I have in the way we draft reports and it is  
20 the historical background on Haitian refugees that is  
21 an example of this.

22                 It cites the Steppe-Fix statement on Haitian  
23 immigrants' treatment in South Florida and we cite them  
24 for this. "The estimated 80,000 Haitians in South  
25 Florida are among the most persecuted and suffering of

1 any contemporary immigrants in the U.S. Federal  
2 policies helped produce these conditions by subjecting  
3 Haitians in Florida to a relentless campaign of  
4 harassment designed to discourage Haitians coming to  
5 the U.S. and to compel those who are here to return."

6 Now, in my view, if this Commission feels  
7 that -- or concludes based on evidence that the 80,000  
8 Haitians in South Florida are among the most persecuted  
9 and suffering of any contemporary immigrants in the  
10 U.S. then I would not quote these people for that. I  
11 would say it directly ourselves. And I would document  
12 it with the evidence that indicates that.

13 I think it is more than just stylistic. I  
14 think we deal too often in a conflict of perceptions in  
15 which we then stand back in our text and don't really  
16 take a firm position. Either this is a true statement  
17 or it is not a true statement. If it is a true  
18 statement, then we should embrace it, we should  
19 document it, and we should stand as ourselves on behalf  
20 of the Commission. If it's not, if we don't think the  
21 evidence is there, then let's take the perception out.

22 CHAIRPERSON BERRY: Well, I think that it's  
23 probably just a stylistic way of leading into the next  
24 paragraph. However, I don't have any particular  
25 affection for it. And I don't see that it distorts

1 what comes in the next -- "according to Haitian refugee  
2 advocates" -- which is based on what advocates said and  
3 told us.

4 I don't see that it has any -- and I'm not  
5 willing to fight over it, so -- I don't know.

6 What do others think? Do we know what the  
7 section is? Do I need to read it again or what?

8 VICE CHAIRPERSON REYNOSO: This is Vice Chair  
9 Reynoso.

10 From my own reading, and I was on the  
11 Selection Commission on Immigration Refugee Policy and  
12 I followed these matters with some interest. I happen  
13 to agree with that quote. But again, I don't think  
14 that it's at all vital. It seems to me that if there's  
15 a sense that that quote should be removed, we can  
16 remove it.

17 CHAIRPERSON BERRY: Okay.

18 Well, Leon, I know how uncomfortable this  
19 makes you, but, again, I'm going to say, okay, we'll  
20 drop it.

21 Anything else, Commissioner Anderson?

22 COMMISSIONER ANDERSON: Can we turn to 192,  
23 the Haitian-Cuban community relations?

24 CHAIRPERSON BERRY: Yes.

25 COMMISSIONER ANDERSON: Haitian-Cuban



1 community relations.

2 CHAIRPERSON BERRY: What page are you on?

3 COMMISSIONER ANDERSON: 192 or 213, depending  
4 upon which version you have. It's about four pages,  
5 five pages past the other point.

6 CHAIRPERSON BERRY: Okay.

7 COMMISSIONER ANDERSON: And this is the  
8 confrontation, fist fight, between the customer and the  
9 clerk.

10 "The next day, a Haitian radio announcer  
11 related the incident and called on fellow immigrants  
12 and, quote, blacks in Overtown, Liberty City and Opa  
13 Locka to join in protest. Another announcer  
14 proclaimed, quote, we are going to make the Cubans pay  
15 for the way they treated Mandela. Unquote. One  
16 thousand protestors blocked access to the store during  
17 a nine hour confrontation."

18 Then the bottom of the paragraph, at the end,  
19 says, "It proved difficult, however, to assign  
20 responsibility for the triggering incident. Both the  
21 Haitian customer and the Cuban clerk had reputations  
22 for less than civil conduct."

23 But isn't really the problem here that an  
24 incident that may be all too common in American cities  
25 gets blown out of proportion and becomes a major racial

1 incident because people with a public persona use it to  
2 fan racial conflict?

3           So, I suppose it depends on what you mean by  
4 the incident, but I think it's not difficult to prove  
5 who has responsibility for triggering what becomes a  
6 large incident in the community, and that's the people  
7 who get on the public airwaves and organize a protest  
8 as a result of it. And I think the Commission ought to  
9 say that we ought not to be doing that and we ought not  
10 to encourage it.

11           CHAIRPERSON BERRY: As a recommendation right  
12 here?

13           COMMISSIONER ANDERSON: Wherever it is  
14 appropriate to say. But if part of what we want to do  
15 is try to keep racial tensions down, then we ought to  
16 say that people who incite racial tensions by trying to  
17 get storekeepers to pay for the way other people have  
18 been treated, et cetera, I think we ought to take a  
19 position on that stuff.

20           CHAIRPERSON BERRY: Any others have comments  
21 on that point? Everybody know where we are on page  
22 192?

23           COMMISSIONER HORNER: Just that I agree with  
24 what Commissioner Anderson just said.

25           VICE CHAIRPERSON REYNOSO: This is Vice Chair

1 Reynoso again. I agree with that. I think we've seen  
2 too many incidents lately of radio, particularly more  
3 than television, apparently, calling on folk to be  
4 involved in incidents that lead to -- sometimes  
5 violence, sometimes toward confrontation.

6 COMMISSIONER LEE: Madam Chair?

7 CHAIRPERSON BERRY: Yes.

8 COMMISSIONER LEE: I just have a quick  
9 question. I thought we were just going to go over some  
10 three major points, the historical perspective, the  
11 witness interviews and the findings. And now we're  
12 going into some of the text. So are we --

13 CHAIRPERSON BERRY: Are we violating that  
14 agreement?

15 COMMISSIONER LEE: No. I just wanted to --

16 CHAIRPERSON BERRY: The answer is I just did,  
17 without knowing it. Thank you for reminding me.

18 However in the interest to be generous -- I  
19 guess I'm just being generous.

20 But I guess Commissioner Anderson, one thing  
21 you might do since we stopped in this one, and then  
22 I'll stop doing it -- thank you, Commissioner Lee -- is  
23 to just say that both the Haitian customer and Cuban  
24 had reputations for less than civil conduct. And then  
25 put after that the radio -- was it radio announcements

1 or some other kind of announcements? Radio, I guess,  
2 announcements. The announcements over the airwaves  
3 seemed to incite the subsequent conflict or something  
4 like that.

5           Isn't that what you mean?

6           COMMISSIONER ANDERSON: Yes.

7           VICE CHAIRPERSON REYNOSO: Against a person  
8 who may have had nothing to do with that incident.

9           CHAIRPERSON BERRY: Yes. But the main point  
10 is that it was the announcements of the incident that  
11 incited the -- or seemed to incite. Why don't we put  
12 that -- the conflict that ensued. And just put that as  
13 a sentence instead of, "It proved difficult to assign  
14 responsibility."

15           We're striking -- we'll tell you what we did.  
16 We're striking, "It proved difficult, however, to  
17 assign responsibility for the triggering incident," and  
18 we're going to, after the sentence, "Both the Haitian  
19 customer and the Cuban clerk had reputations for less  
20 than civil conduct," change the sentence after that to  
21 the material we were just discussing. And that's all  
22 we're going to do with that.

23           Now what we're supposed to be doing is --  
24 we've done those sections. We're supposed to discuss  
25 the findings and recommendations or the interview

1 issue, if anybody want to discuss either. I'm ready to  
2 go to the findings and recommendations. but we can  
3 discuss further the interview issue.

4 We can do it first, if you want to.

5 COMMISSIONER GEORGE: Doesn't matter. If you  
6 want to do findings, let's do it.

7 CHAIRPERSON BERRY: Okay. Let's do the  
8 findings and then let's do the interview issue.

9 We're going to do the recommendations.

10 COMMISSIONER GEORGE: Where are we?

11 CHAIRPERSON BERRY: Recommendations.  
12 Findings and recommendations.

13 COMMISSIONER GEORGE: Yes. Does anybody know  
14 the page? Here it is.

15 CHAIRPERSON BERRY: Oh, you mean what page?

16 COMMISSIONER GEORGE: 218. I've got it.

17 CHAIRPERSON BERRY: Okay. Findings and  
18 recommendations, page 218.

19 Does anyone have any objection to the  
20 findings -- and I can read them -- on page 218,  
21 Introduction, Race Relations, Findings.

22 And let me just read the recommendations.

23 Dade County should authorize the Community  
24 Relations Board to create an ethnic relations taskforce  
25 not only to further investigate the causes of racial

1 and ethnic tension in Miami, but also to facilitate  
2 ongoing regular interaction and dialogue among the  
3 varied racial and ethnic communities in Miami on issues  
4 on which they share a common or conflicting interest.

5 That's the first recommendation. Does anyone  
6 have any objection to that recommendation?

7 (No response.)

8 It seems pretty benign.

9 The next recommendation -- yes?

10 COMMISSIONER ANDERSON: I have an amendment  
11 to Finding 1.2.

12 CHAIRPERSON BERRY: Okay.

13 COMMISSIONER ANDERSON: And it is that the  
14 first four words of that finding be stricken: "Cuban-  
15 American protests against." And in lieu thereof, be  
16 inserted the following words: "Public support of Fidel  
17 Castro by."

18 CHAIRPERSON BERRY: Public support of Fidel  
19 Castro by. And where do we start?

20 COMMISSIONER ANDERSON: African.

21 CHAIRPERSON BERRY: By African and African-  
22 American leaders. I'm going to read this.

23 Instead of saying Cuban-American protests  
24 against African and African-American leaders, such as  
25 Mandela and Young, have historically brought tensions

1 between the Cuban and African-American communities to  
2 the surface.

3           It would say "Pubic support of Fidel Castro  
4 by African and African-American leaders, such as Nelson  
5 Mandela and Andrew Young, have historically brought  
6 tensions between the Cuban and African-American  
7 communities to the surface.

8           COMMISSIONER GEORGE: Madam Chairman?

9           CHAIRPERSON BERRY: Yes.

10           COMMISSIONER GEORGE: If we're going to do  
11 that, I think we should insert before African and  
12 African-American, the word some, S-O-M-E. Some African  
13 -- and maybe repeat it. Some African and some African-  
14 American leaders.

15           CHAIRPERSON BERRY: Well, I think we should,  
16 in all fairness if we're going to do that -- and I  
17 agree with you -- we should also refer to Cuban-  
18 American protest because both things have been. Rather  
19 than dropping one or the other, they both have created  
20 racial and ethnic tensions in Miami, according to our -  
21 - I mean, it depends on who's ox is gored. And where  
22 you stand depends on where you sit. And Commissioner  
23 Anderson knows that, too.

24           So that what we're talking about is a two-  
25 edged sword here. That on the one hand African-

1 American leaders -- public support of Fidel Castro by  
2 some African-American leaders have brought tensions.  
3 In addition, Cuban-American protests against African-  
4 American leaders such as Mandela and Young have also  
5 engendered tensions.

6 COMMISSIONER GEORGE: That's exactly right.  
7 Just insert the word "some: the second time, too.

8 CHAIRPERSON BERRY: Yes. So we'll have two  
9 sentences there and we'll have a pox on both your  
10 houses and move on from there. Okay.

11 VICE CHAIRPERSON REYNOSO: I have a question.  
12 Has it been support of Fidel Castro or a decision not  
13 to be publicly critical of him that has brought these  
14 protests by Cuban-Americans?

15 CHAIRPERSON BERRY: Well, Nelson Mandela has  
16 supported Fidel Castro. I don't know about Andy.

17 VICE CHAIRPERSON REYNOSO: Andrew Young was  
18 the U.N. representative for a while for the U.S. and in  
19 that capacity, I just don't remember his ever,  
20 certainly on the U.S. ever supportive of --

21 CHAIRPERSON BERRY: I think what they mean is  
22 the Cuban-Americans were protesting. And if they were  
23 protesting, it was because of supporting Cuban, Castro.  
24 So we can assume that that was the case.

25 VICE CHAIRPERSON REYNOSO: Yes.



1           CHAIRPERSON BERRY: So we can use the two  
2 sentences. Okay.

3           The next recommendation on page 219 -- and  
4 feel free to suggest changes in the findings as we go.  
5 I'm just not going to read all these out loud.

6           Congress should restore full conflict  
7 prevention and resolution funding to the Community  
8 Relations Service of the Department of Justice to  
9 ensure impartiality and continued progress in the  
10 mediation and resolution of racial and ethnic tensions  
11 among Miami's diverse communities.

12           Yes, Commissioner Anderson?

13           COMMISSIONER ANDERSON: Well, I tell you.  
14 The problem I have with this finding and the  
15 recommendation based on it is that when you go back  
16 into the text, essentially the supporting documentation  
17 for the great job that the Community Relations Service  
18 has been doing is provided by the Director and the  
19 Regional Director of CRS and their own documents.

20           CHAIRPERSON BERRY: Okay.

21           COMMISSIONER ANDERSON: It would be different  
22 if Cuban-Americans or Afro-Americans in Miami were  
23 saying, look, we had this problem; they came in; they  
24 really were a valuable service to us. But we're not  
25 saying that. We're citing the Director, the Regional

1 Director and their own publication saying what they've  
2 done. And I think it just sets us up to look kind of  
3 strange.

4 We look like we're kind of -- well, enough  
5 said.

6 CHAIRPERSON BERRY: That we like the CRS?  
7 Does anyone else have any comment?

8 COMMISSIONER GEORGE: I would be in favor of  
9 removing this recommendation for all the reasons that  
10 I've stated with respect to this whole issue in the  
11 past.

12 CHAIRPERSON BERRY: Anyone have any comments?  
13 Anyone else?

14 VICE CHAIRPERSON REYNOSO: This is Vice Chair  
15 Reynoso. If we don't have material here to support the  
16 recommendation maybe that's appropriate. Though,  
17 frankly, the contact I've had with these folk, they  
18 have invariably been helpful. And I guess I accepted  
19 the material the staff has in the report in terms of  
20 value.

21 CHAIRPERSON BERRY: Now, we're going to rely  
22 upon your representation, Commissioner Anderson,  
23 without taking the time to go back to look, that that  
24 is indeed what the evidence is. And in reliance upon  
25 your representation, we're going to delete this. That

1 the evidence only comes from those who have a special  
2 interest in preserving their own agency. Okay.

3 And if that changes, you can tell me later.

4 COMMISSIONER LEE: And before we leave --

5 CHAIRPERSON BERRY: Yes, Commissioner Lee?

6 COMMISSIONER LEE: -- can I just make one  
7 recommendation? I can see the recommendation as  
8 continuing programs, such as the CRS, to ensure  
9 impartiality and continued progress in the mediation  
10 and resolution because they serve a purpose and I can  
11 see us making that as a recommendation.

12 Maybe if we can just delete "shall restore  
13 full conflict funding." We can just say Congress  
14 should continue to provide conflict prevention and  
15 resolution funding to the CRS. So that is  
16 irregardless of what the report has been citing the CRS  
17 was doing in this report.

18 CHAIRPERSON BERRY: But then we don't have  
19 any basis, if what -- and I'm relying on Commissioner  
20 Anderson -- what he has said to us. But we don't have  
21 anything to hang the recommendation on.

22 COMMISSIONER HIGGINBOTHAM: May I comment on  
23 that?

24 CHAIRPERSON BERRY: Yes.

25 COMMISSIONER HIGGINBOTHAM: It seems to me

1 that -- may I, Madam Chair?

2 CHAIRPERSON BERRY: Yes. Please.

3 COMMISSIONER HIGGINBOTHAM: It seems to me  
4 that it is mighty strange when an agency is getting out  
5 a report and wanting other people to think that we are  
6 credible, that we start out with a presumption of a  
7 lack of credibility for another agency, just because it  
8 is their report and they don't have strong additional  
9 sources.

10 I think Shakespeare's comment, "If you tickle  
11 them, shall we not laugh; if you prick it, will we not  
12 bleed; and if you poison us, we'll not die," has a lot  
13 of relevance.

14 I don't think that these people in other  
15 agencies are profoundly different than us. And  
16 presumably we want people to think of us as being  
17 credible. Presumably we want people to see a report  
18 from the Civil Rights Commission and to say that at  
19 least it has a presumption of competence. And  
20 therefore, that we should not get into the business of  
21 presuming that simply because another agency issued a  
22 report, it's presumed to be incompetent.

23 The whole history of a lot of changes,  
24 whether you're looking at SEC or National Labor  
25 Relations Board or a whole host, there've been some

1 great reports by agencies commenting on how well  
2 they've done things. I don't understand why we have to  
3 be so suspect. And I don't want people to look upon us  
4 the way this board is willing to now right down another  
5 agency on which presumably you have no evidence of  
6 their presumptive incompetence.

7 VICE CHAIRPERSON REYNOSO: Madam Chair?

8 CHAIRPERSON BERRY: Yes.

9 VICE CHAIRPERSON REYNOSO: Just while we were  
10 talking, I'm looking at pages 40 and 41, monitoring and  
11 mediation. And I notice one of the quotes is to a  
12 letter from Janet Reno, and then an attorney's  
13 testimony. This was testimony before a Senatorial  
14 committee. And then there's a quote on the Justice  
15 Department's overview, management overview report.

16 So, it's true that these are government  
17 documents, but at least what I've been able to gather -  
18 - and I just started looking at it in light of the  
19 comments -- it doesn't come directly from the people  
20 involved. It's still Department of Justice. And much  
21 of it seems to come from both outside of the Community  
22 Relations Service, but still within the Department of  
23 Justice.

24 So, just a clarification. At least some  
25 stuff here doesn't come directly from the folks in

1 Miami saying what a great job we did, even though some  
2 of course does. Because we have a quote here of a  
3 telephone interview.

4 CHAIRPERSON BERRY: Okay.

5 Any further discussion of this point?

6 COMMISSIONER ANDERSON: Well, I don't know  
7 what to say other than if you begin at page 40,  
8 monitoring and mediating racial and ethnic tensions,  
9 Community Relations Services, every single cite, with  
10 the addition of footnote 215, which is Attorney General  
11 Janet Reno, Attorney General, is either CRS, management  
12 review, annual report, Director of the Miami Field  
13 Office, Battles testimony, Battles interview, CRS  
14 overview, LaRoche interview, Battles testimony, CRS  
15 annual report, CRS annual report, CRS overview, CRS  
16 report, ibid, ibid, ibid, Battles interview, LaRoche  
17 interview, Battles interview, CRS report.

18 Now, I'm not saying they're incompetent.  
19 They may be very competent. But I'm not comfortable  
20 signing on to a recommendation and findings that talk  
21 about need for further funding based on simply their  
22 own documents.

23 I mean, I don't know a federal agency that  
24 comes forward with documents that say they ought to be  
25 de-funded. They all say they should receive more

1 funding and if they got more money they would do  
2 greater things. But it would be nice to have somebody  
3 else but the self-interested individuals who are going  
4 to receive this money to be our basis.

5 Now, if you feel comfortable sending  
6 something to Congress on that basis, vote for it. I'm  
7 not going to vote for it.

8 CHAIRPERSON BERRY: So we're willing to  
9 relent even though we don't say that they are  
10 competent. I'm still slicing the salami, Leon.

11 On page 220, --

12 COMMISSIONER HIGGINBOTHAM: Oh, is that what  
13 it is?

14 CHAIRPERSON BERRY: Yes.

15 The recommendation: Congress, Dade County  
16 and the City of Miami must ensure that government  
17 agencies administering economic programs, such as small  
18 business loans or set asides for minority contracts and  
19 distribute resources fairly to all racial and ethnic  
20 groups in the Miami area, the development and  
21 implementation of criteria associated with such  
22 programs so as to more fully include African-Americans  
23 in the area's prosperity must be a key priority for  
24 policymakers.

25 And this, again, is related to the complaints

1 about inner-ethnic tensions over these programs.

2 Can I go on, please?

3 The recommendation next: Public education is  
4 needed to address perceptions about immigrants that may  
5 be premised on erroneous assumptions or incomplete  
6 facts. Government and local community groups must  
7 collaborate on campaigns designed to provide the public  
8 with historical context and relevant facts upon which  
9 to base informed judgments and educated responses.

10 At the federal level, CRS operates a hotline  
11 service in Miami to respond to questions and concerns  
12 about the immigrant community. In addition to the  
13 hotline, CRS should solicit sponsorship of public  
14 service announcements through local media and billboard  
15 advertising designed to educate the public about  
16 immigration and cultural diversity and to dispel common  
17 misperceptions.

18 Going on.

19 Public education -- the recommendation -- is  
20 also needed to ensure understanding of the important  
21 economic role -- here we go. This will be an  
22 interesting one -- that bi-lingualism plays in Dade  
23 County's economy.

24 Go ahead, Connie.

25 Language ability is strongly correlated with



1 economic success in multi-cultural, multi-lingual  
2 communities like Dade County. As such, local  
3 government agencies and community leaders must ensure  
4 public awareness of the importance of language  
5 education and native language maintenance, especially  
6 among children and young adults.

7 Commissioner Horner.

8 COMMISSIONER HORNER: First, let me say that  
9 I do not support proposals to in some fashion make  
10 English an official language. I am opposed to  
11 legislation in the language arena. I'm opposed to  
12 legislation to make English an official language and  
13 I'm opposed to legislation to mandate the teaching of  
14 Spanish as a second language.

15 In terms of this recommendation, I can't  
16 support a recommendation to urge government to support  
17 native language maintenance and since there's much else  
18 that I disagree with in here, I don't know how to  
19 proceed. I just deeply believe it's bad economically  
20 and civicly and culturally and in every way. And  
21 there's no more I need to say on it, I think.

22 VICE CHAIRPERSON REYNOSO: Madam Chair, Vice  
23 Chair Reynoso.

24 I've been living in Miami the last five  
25 months and I don't know whether the folk that I've

1 talked to are correct or incorrect, but they tell me  
2 that the -- what they refer to a revival of the economy  
3 in South Florida, particularly Dade County and Miami.  
4 And in particular, with respect to its international  
5 trade with Latin America, has turned things around  
6 there considerably so that it's really -- Miami is on  
7 the -- very much has an active economic life now  
8 compared to say 10-15 years ago.

9           And at least the folk that I talked to have  
10 attributed particularly all of that to the immigrant  
11 community, and the importance in Miami of the folk  
12 there having those close ties to Latin America. And at  
13 least the folk I talked to would seem to agree with the  
14 content of this recommendation.

15           COMMISSIONER HORNER: Madam Chair?

16           CHAIRPERSON BERRY: Yes.

17           COMMISSIONER HORNER: I would ask  
18 Commissioner Reynoso if he believes that native  
19 language maintenance should be changed to Spanish  
20 native language maintenance or if he believes that  
21 Creole, Vietnamese, Thai, whatever, ought also to be  
22 maintained through the powers of local government  
23 agencies.

24           And if it is Spanish for economic reasons,  
25 then perhaps that ought to be said rather than some

1 generic prescription. I think it would be more honest  
2 to say precisely what we're talking about here.

3 VICE CHAIRPERSON REYNOSO: Oh, I see.

4 COMMISSIONER HORNER: If we talk about --

5 VICE CHAIRPERSON REYNOSO: If you adhere to  
6 the last sentence that says, "As such, local government  
7 agencies and communities must ensure awareness of the  
8 importance of language education and native language  
9 maintenance especially among children and youth," I  
10 think that the importance of language will be different  
11 community to community in South Florida, particularly  
12 in terms of international trade.

13 Portuguese and Spanish seem to be the most  
14 important languages other than English. English is  
15 clearly the most important language, incidentally, in  
16 international trade. So, I'm not at all tied to  
17 notions of native language maintenance.

18 CHAIRPERSON BERRY: Well, why don't we drop  
19 that.

20 COMMISSIONER HORNER: I still disagree  
21 strongly with the proposal but I'm just calling for  
22 more honesty here. Because what we're talking about is  
23 asking that the language of one immigrant group to the  
24 United States be strongly favored through government  
25 requirement, through law, at the expense of other

1 language groups and other subjects.

2 COMMISSIONER GEORGE: Madam Chairman?

3 CHAIRPERSON BERRY: Yes, Commissioner George.

4 COMMISSIONER GEORGE: I think this bi-  
5 lingualism problem is a big issue. There's much to be  
6 said on both sides. There's substance stuff that  
7 people on both sides have been addressing and --

8 COMMISSIONER HORNER: I couldn't hear what  
9 he --

10 CHAIRPERSON BERRY: We didn't hear the last -  
11 - you dropped off at the end, Robbie.

12 COMMISSIONER GEORGE: I'm sorry. I think in  
13 view of that, what we should do is just not take a  
14 position as a Commission on this issue and just drop  
15 it. If people want to take a position on it, let's  
16 state the consensus and people on either side could  
17 make a concurrent statement. It is important. It's a  
18 big issue. But it's one of these things on which  
19 there's division and reasonable argument on both sides.

20 State that as a matter of concurrences rather  
21 than trying to get consensus which I'm sure we're not  
22 going to get.

23 CHAIRPERSON BERRY: Okay. Does anyone  
24 disagree with Commissioner George's resolution?

25 (No response.)

1           Then what we will do is leave for  
2 concurrences the issue of bi-lingualism because he says  
3 we're not going to get agreement.

4           Is it true that we're not going to get  
5 agreement, even if we stay here all year?

6           COMMISSIONER REDENBAUGH: I think we're not.

7           CHAIRPERSON BERRY: We're not. Okay.

8           The next recommendation is: The Dade County  
9 Equal Opportunity Board -- so we'll write this for  
10 concurrences -- should institute measures to track the  
11 language ability of employees as part of its survey of  
12 the racial and ethnic composition of the metropolitan  
13 Dade County workforce.

14           In 1994, metropolitan Dade County had a  
15 workforce that was 29.8 percent white; 34.9 percent  
16 black and 33.8 percent Hispanic, according to its Equal  
17 Employment Opportunity Board survey. County-wide, non-  
18 Hispanic whites constitute 30.2 percent of Dade  
19 County's population; Hispanics, 49.2 percent; and non-  
20 Hispanics African-Americans 19.1 percent.

21           Statistics on the language ability of  
22 employees are needed to assess claims of preferential  
23 hiring based on language ability.

24           In other words, the statistics would be  
25 needed to look at people's claims that they somehow

1 aren't being hired and other people are being hired  
2 based on language ability.

3           COMMISSIONER HORNER: Is it a good thing to  
4 promote hiring based on language ability by supporting  
5 the teaching of second languages or is it a bad thing  
6 to hire on that basis? I think we have an inherent  
7 contradiction here.

8           This seems to be suggesting we should keep  
9 statistics to induce people not to hire on the basis of  
10 language, but all the previous recommendations on this  
11 subject have suggested that government agencies induce  
12 people to learn second languages in order to be hired.

13           VICE CHAIRPERSON REYNOSO: Madam Chair, this  
14 may go to the testimony we've heard that no statistics,  
15 and therefore, nobody knew in government, what the  
16 demands were for folk who spoke a language other than  
17 English or indeed how many employees spoke a language  
18 other than English. Because my recollection of the  
19 testimony was that it was said that there were so many  
20 folk around who spoke other language that they didn't  
21 need to have those statistics.

22           And I guess this recommendation says, gee, we  
23 really ought to know what's going on to see. Once  
24 knowing, the local government should review its own  
25 policies. I think it's fact gathering that they're

1 going after here. ~

2 CHAIRPERSON BERRY: And so the idea is that  
3 the reality that they're faced now with the facts is  
4 what they're -- okay.

5 COMMISSIONER HORNER: How would you know? If  
6 you collected language data and you knew that X number  
7 of employees spoke English and Spanish in a workplace,  
8 what would that tell you?

9 CHAIRPERSON BERRY: It would tell you how  
10 many people were available to talk to people who came  
11 to be served who only knew Spanish. That would be one  
12 thing it would tell you.

13 COMMISSIONER HORNER: So is this a customer  
14 service question or an employee question?

15 VICE CHAIRPERSON REYNOSO: Well, I guess it  
16 would tell you that if you have an office that services  
17 the community, and there are quite a few people there  
18 who already speak the languages that are spoken by the  
19 community, there's no need to restrict any hiring to a  
20 person who speaks those languages and no reason to  
21 discriminate against anybody who doesn't speak those  
22 language already.

23 COMMISSIONER HORNER: But otherwise, there  
24 would be?

25 CHAIRPERSON BERRY: If it's a bona fide

1 application.

2 VICE CHAIRPERSON REYNOSO: Yes. If you have  
3 a public service organization, like a fire department  
4 that has nobody on there who speaks a language that  
5 many in the community speak -- for example, Spanish --  
6 then I think that there would be -- indeed, I would  
7 think they would have a requirement that a certain  
8 number of hired personnel or if there'd be some way to  
9 communicate with the fire personnel that there's an  
10 emergency coming up.

11 COMMISSIONER HORNER: Would you pay higher  
12 wages to dual language employees of the county or the  
13 same wage?

14 VICE CHAIRPERSON REYNOSO: Well, I think it  
15 would be nice to make that recommendation. I  
16 personally would pay more. That's my own view. But we  
17 have testimony that that wasn't necessary in the Miami-  
18 Dade area because there were so many folk who speak  
19 language that folk in that area speak.

20 So, I think this might also help the local  
21 government know whether or not they in fact have those  
22 folk in each of those departments. They might in fact  
23 end up having a great many in one department and none  
24 or very few in another. And so I think this is  
25 suggesting that rather than ignoring the issue, the



1 local government might be better off to at least know  
2 what's going on.

3 COMMISSIONER HORNER: So an employee would  
4 perhaps be transferred on the basis of being able to  
5 speak Spanish where that need was perceived to exist?

6 VICE CHAIRPERSON REYNOSO: Maybe.

7 COMMISSIONER HORNER: Or promoted for that  
8 matter to a position where that need was perceived to  
9 exist.

10 I don't support this. I would put the  
11 statistic gathering resources into evening English  
12 language classes.

13 CHAIRPERSON BERRY: Let me find out here, if  
14 I may, in the interest of the fact that we've all  
15 reviewed these and know where we stand on them. Could  
16 someone tell me, point out to me, the recommendations  
17 with which they have a problem? And therefore, instead  
18 of me reading all of them, just tell me which ones you  
19 have a problem with and we'll discuss those.

20 Going from page 223 to page 238, just tell me  
21 which recommendations any Commissioner has a problem  
22 with and would therefore like to change.

23 VICE CHAIRPERSON REYNOSO: Vice Chair  
24 Reynoso.

25 If we can't get a consensus or a majority

1 vote, I take it that Commissioner Horner is going to  
2 vote no on everything.

3 CHAIRPERSON BERRY: Now, now, now.

4 VICE CHAIRPERSON REYNOSO: Well, --

5 CHAIRPERSON BERRY: That's your sense of it.  
6 Okay.

7 VICE CHAIRPERSON REYNOSO: -- I think it will  
8 be a no vote on the report. That's what I mean by  
9 everything.

10 CHAIRPERSON BERRY: I understand.

11 VICE CHAIRPERSON REYNOSO: If we can't get a  
12 consensus on this recommendation, then I would suggest  
13 that we drop this one, too. And this can be subject to  
14 concurring opinions, if one wants to.

15 COMMISSIONER HORNER: Madam Chair, I need to  
16 leave in eight minutes and Commissioner Reynoso is  
17 correct. I do intend to vote no, should I have the  
18 opportunity between now and the time I have to leave.

19 CHAIRPERSON BERRY: Right.

20 COMMISSIONER HORNER: I had no idea this  
21 meeting would go on this long and made an appointment.

22 CHAIRPERSON BERRY: Okay. Well, then, all  
23 I'm asking, Cruz, if you heard me, is could any  
24 Commissioner tell me if there are other recommendations  
25 with which they have a problem. And if they do, tell

1 me what they are and we can discuss them. And that way  
2 I don't need to read the ones that they don't have a  
3 problem with.

4 VICE CHAIRPERSON REYNOSO: Good idea.

5 CHAIRPERSON BERRY: So does anyone have a  
6 problem with any other recommendation that they would  
7 like to discuss before we take a vote?

8 COMMISSIONER GEORGE: If we're going to do  
9 this, I need a break to go through my notes.

10 CHAIRPERSON BERRY: You need a break to go  
11 through your notes?

12 COMMISSIONER HORNER: If you take a break, I  
13 will depart before the vote occurs. And that's your --  
14 obviously, your prerogative.

15 COMMISSIONER GEORGE: Commissioner Horner is  
16 going to leave anyway. Could we just go ahead and work  
17 line by line the way we've been doing?

18 CHAIRPERSON BERRY: She's going to leave  
19 anyway. And she's already said she's going to vote no.  
20 So my point is that -- okay. All right.

21 What do you need to do, Commissioner George?

22 COMMISSIONER GEORGE: Either I would like a  
23 break to consult my notes so that I can answer your  
24 question --

25 CHAIRPERSON BERRY: Yes.

1           COMMISSIONER GEORGE:  -- or we could continue  
2 going line by line.

3           CHAIRPERSON BERRY:  Okay.  Well, why don't we  
4 do this then.  Why don't I just say do you have a  
5 problem with the recommendation on page -- I think I'm  
6 on page 229 now.  Yes.

7           We already did the one on 227.  Now we go to  
8 229.

9           COMMISSIONER GEORGE:  Hang on a second.

10          (Pause.)

11          CHAIRPERSON BERRY:  There aren't that many.

12          COMMISSIONER GEORGE:  Oh, I see.  We have a  
13 difference in the copy.

14          Mary, on the clean copy, would that be 223?

15          COMMISSIONER REDENBAUGH:  Yes.

16          CHAIRPERSON BERRY:  Yes.

17          COMMISSIONER GEORGE:  Okay.

18          CHAIRPERSON BERRY:  Oh, I'm sorry.  I skipped  
19 some.  223.

20          Do you have a problem with the  
21 recommendation:  Any federal legislation declaring  
22 English the official language should be drawn very  
23 narrowly.

24          Is there anyone who has a problem with it?

25          VICE CHAIRPERSON REYNOSO:  I do.  I don't

1 think there should be any federal legislation declaring  
2 English --

3 COMMISSIONER HORNER: I don't either.

4 COMMISSIONER REDENBAUGH: I don't either.

5 CHAIRPERSON BERRY: I don't either.

6 COMMISSIONER HORNER: So let's say that.

7 CHAIRPERSON BERRY: There should be no  
8 legislation declaring English an official language.  
9 Why don't we just say that?

10 COMMISSIONER REDENBAUGH: Well, I don't know  
11 if our hearing supports our personal views.

12 COMMISSIONER HORNER: Then we could just drop  
13 the -- we could just drop it.

14 COMMISSIONER REDENBAUGH: It is my view but I  
15 don't know if the record supports it.

16 CHAIRPERSON BERRY: Okay. Then shall we have  
17 a recommendation on this subject or not?

18 COMMISSIONER LEE: I think with all the  
19 testimony it points to the fact that the folks who  
20 attended the hearing are saying that they do not want  
21 to see any legislation on English only type of --

22 CHAIRPERSON BERRY: Right. Most of the  
23 people who testified said that there should not be an  
24 official English but there were some who did say there  
25 should be. So I guess that's why the staff said, for

1 our purpose, that it should be drawn narrowly in case  
2 we wanted to do it one way or the other.

3 So what that means is that if we have enough  
4 consensus that we don't think there should be, there is  
5 enough evidence to say that there shouldn't be.

6 COMMISSIONER REDENBAUGH: Okay. I'll support  
7 that.

8 COMMISSIONER ANDERSON: Madam Chair, this is  
9 an interruption in this discussion for a minute, but I  
10 wonder whether we have to pass this today.

11 The reason I say that is because, as we just  
12 sort of just stumbled onto the recommendation regarding  
13 English as the official language, here we had a  
14 recommendation that at best is neutral on the subject  
15 but might imply that since we say it should be narrowly  
16 drawn and what the arguments should not be in favor of  
17 it, suggests that we may be more than neutral in terms  
18 of the whole question.

19 COMMISSIONER REDENBAUGH: It would suggest  
20 we're supportive?

21 COMMISSIONER ANDERSON: Yes. Suggests we're  
22 supportive. And yet we find that there are probably a  
23 majority of Commissioners immediately opposed to it.

24 So I think it might be -- I don't know what  
25 your agenda is for July 11th, but I think the process

1 we're going through here, without rushing it, it worth  
2 doing.

3 CHAIRPERSON BERRY: Commissioner Anderson, we  
4 cannot not vote this report up or down. In July we  
5 have to spend the entire Commission meeting discussing  
6 the Equal Opportunity Reports. We, by statute, are  
7 required to turn those reports in. We're going to  
8 discuss them here in this meeting and it's going to  
9 take us the whole meeting to discuss them.

10 We don't have time. And this has been laid  
11 over for -- how long have we had this report now?  
12 Since February.

13 Commissioners have had this report since  
14 February.

15 COMMISSIONER REDENBAUGH: Madam Chairman?

16 CHAIRPERSON BERRY: Yes.

17 COMMISSIONER REDENBAUGH: I recognize your  
18 point about the need to resolve this today. I think  
19 Commissioner Anderson raised an interesting point. The  
20 recommendation, as it stands, implies a position not  
21 held by at least a majority of us.

22 CHAIRPERSON BERRY: We should change it then.

23 COMMISSIONER REDENBAUGH: Yes.

24 CHAIRPERSON BERRY: And there's enough  
25 evidence in the report to change it.

1                   COMMISSIONER GEORGE:  Could I make a  
2 suggestion?

3                   CHAIRPERSON BERRY:  Yes.

4                   COMMISSIONER GEORGE:  I think what we should  
5 say is that while this Commission take no position on  
6 the question of declaring English the official  
7 language, in the event that Congress does that, we do  
8 believe that the legislation should be narrowly drawn  
9 and that concerns about cost should not be overriding,  
10 and so forth.

11                   I think that's the way.  I think it's the  
12 right thing to do, given the procedures.  And also, I  
13 think it's the best way that we can have an impact in  
14 the event that Congress does actually take that  
15 position.

16                   CHAIRPERSON BERRY:  The only change I'd make,  
17 Robbie, is that while this Commission believes there  
18 should not be an official English policy, because most  
19 of us believe there shouldn't be.  If the Congress  
20 decides to pass one, then it should be narrowly drawn.  
21 Concerns about cost should no be -- and all the rest of  
22 the caveats.

23                   COMMISSIONER GEORGE:  I know myself, I would  
24 vote not to take a position.  If we're going to take a  
25 position on that, I would urge us to take a position



1 independent of the racial and ethnic tension report.

2 VICE CHAIRPERSON REYNOSO: If they're  
3 integrally related.

4 CHAIRPERSON BERRY: And it was testified  
5 about as a source of racial and ethnic tension.

6 I think the read of the table is that most of  
7 us here, whatever our persuasion, don't think there  
8 should be official English, even if we think something  
9 else.

10 COMMISSIONER GEORGE: I agree with that. I'm  
11 not asking how people would vote if they were Congress.

12 CHAIRPERSON BERRY: Right.

13 COMMISSIONER GEORGE: It just seems to me  
14 that this report is the place for us to take a  
15 position. And if we are to take a position as a  
16 Commission, if we do see this as a civil rights issue  
17 on which we should take a position such that enacting  
18 English as the official language would have a  
19 deleterious affect on civil rights.

20 I think we should debate that issue, take  
21 information on the issue and make a statement as a  
22 Commission on it, but not use this particular context  
23 at this particular racial and ethnic tension hearing to  
24 take that position.

25 I mean, if the Commission is going take a

1 position on this very big disputed national issue, I  
2 think we should go into it carefully, do it right, and  
3 do it independently.

4 CHAIRPERSON BERRY: We've got enough evidence  
5 in the record, and it was raised a source of racial and  
6 ethnic tensions. I don't want to spend the whole --  
7 Commissioner Horner's eight minutes discussing this,  
8 but it seems that if we want to say we oppose it and  
9 that if it is done, it should be done carefully and  
10 that in this report, we're opposing it because of the  
11 testimony about racial and ethnic tension.

12 COMMISSIONER REDENBAUGH: Maybe there's a  
13 Solomonic mood here. How about if we say that we do  
14 not support, which is different from opposed.

15 CHAIRPERSON BERRY: Okay. Gotcha. We do not  
16 support. And then we would say that if Congress should  
17 pass one, it should be drawn narrowly and then say the  
18 rest of it.

19 Is that all right, Russ? Okay.

20 COMMISSIONER GEORGE: Well, Mary, I'm being taken  
21 by surprise on this completely. I didn't know that  
22 this was going to be an issue that we were going to  
23 debate by way of --

24 CHAIRPERSON BERRY: Official language?

25 COMMISSIONER GEORGE: Yes,.

1           CHAIRPERSON BERRY: And you have a problem, a  
2 real problem, Robbie?

3           COMMISSIONER GEORGE: I have a problem, yes.  
4 I mean, I'm caught by surprise. I'm trying to think  
5 this through as the discussion is going on and I know  
6 we have to move quickly.

7           I have a problem with it.

8           CHAIRPERSON BERRY: Well, the English  
9 legislation --

10          COMMISSIONER GEORGE: It was fine with me the  
11 way it was.

12          CHAIRPERSON BERRY: The prospects of  
13 declaring English an official language of the United  
14 States has, in Miami-Dade County, according to the  
15 evidence, a negative impact on racial and ethnic  
16 tensions. That's all we're saying here.

17          Therefore, if the Congress should pass such  
18 legislation, it should be very narrow, and concerns  
19 about cost should not play a major role. That's what  
20 we're saying.

21          COMMISSIONER GEORGE: Give me the language  
22 again, please?

23          CHAIRPERSON BERRY: Proposals for English as  
24 an official language of the United States have  
25 negatively impacted racial and ethnic tensions in

1 Miami-Dade County, according to the evidence from our  
2 hearing.

3 COMMISSIONER GEORGE: I wish I could. I just  
4 cannot go along with that on the record we have.

5 CHAIRPERSON BERRY: Okay.

6 COMMISSIONER GEORGE: [Off mike.]

7 CHAIRPERSON BERRY: Okay. Sounds like you're  
8 a little bit outnumbered on this one. And maybe that's  
9 a place for a concurring statement or something.  
10 Because everybody else seems to feel pretty strongly  
11 about it, Commissioner George.

12 COMMISSIONER GEORGE: [Off mike.]

13 I'm not criticizing you because the  
14 recommendations and findings were nothing something  
15 that we had worked out among the assistants, but I did  
16 get taken by surprise on it.

17 CHAIRPERSON BERRY: Why don't we come back to  
18 it in a minute. Hold page 223 and let's go on. Okay?

19 COMMISSIONER GEORGE: Yes.

20 CHAIRPERSON BERRY: And I'll think about it  
21 some more.

22 Official language legislation should not seek  
23 to eliminate language assistance programs. That's at  
24 the bottom of 223.

25 Anybody have any problem with that one?

1 (No response.)

2 Then we've got on the next page: Official  
3 language should not create -- we've already said we  
4 don't like it -- blanket requirements that INS swearing  
5 in ceremonies be conducted exclusively in English.

6 COMMISSIONER GEORGE: Hang on now.

7 CHAIRPERSON BERRY: 224.

8 COMMISSIONER GEORGE: Yes. I'm reading now.

9 (Pause.)

10 CHAIRPERSON BERRY: I didn't know it would  
11 take this long either, Commissioner Horner.

12 COMMISSIONER HORNER: I do apologize.

13 CHAIRPERSON BERRY: I thought we had these  
14 three issues and that was going to take a few minutes.

15 COMMISSIONER HORNER: I don't think we've  
16 ever gone this long.

17 CHAIRPERSON BERRY: We haven't. We misjudged  
18 the --

19 COMMISSIONER HORNER: And I recognize this is  
20 important.

21 COMMISSIONER GEORGE: I knew it was going to  
22 take a long time because, after all, it's just as  
23 important to everyone to --

24 COMMISSIONER HORNER: I regret I won't be  
25 able to vote on this important report.

1 CHAIRPERSON BERRY: We could let you vote  
2 before you leave, with a waiver by your colleagues.

3 COMMISSIONER REDENBAUGH: I have no  
4 objection.

5 CHAIRPERSON BERRY: I have no objection if  
6 you want to record your vote.

7 COMMISSIONER HORNER: Thank you very much,  
8 Madam Chair. I would like to regretfully record my vote  
9 as no.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER HORNER: There's much merit, but  
12 certain things I can't abide. Thank you.

13 CHAIRPERSON BERRY: Okay. Thank you.

14 Robbie, have you finished reading?

15 COMMISSIONER GEORGE: Yes. On 224, that  
16 recommendation?

17 CHAIRPERSON BERRY: Yes.

18 COMMISSIONER GEORGE: Okay. I'm finished.  
19 Yes.

20 CHAIRPERSON BERRY: Okay. 225. No  
21 recommendation.

22 226. Dade County should consider providing  
23 additional resources for the provision of equal  
24 employment opportunity case processing and for  
25 educational and community outreach programs to educate

1 employers and employees regarding when language  
2 requirements may be appropriate and when they may  
3 violate the law.

4           We've done the one on 227 already. We had a  
5 long discussion of that.

6           The one on 229: Federal, state and local law  
7 should recognize that mono-lingual English speakers are  
8 minorities in some communities and ensure equal  
9 educational access to language programs by these groups  
10 within those areas.

11           COMMISSIONER GEORGE: Hang on, Mary. Give me  
12 the numbers in the non redlined draft.

13           CHAIRPERSON BERRY: Page 229,  
14 recommendations. And it should be singular because  
15 there's only one recommendation.

16           Federal state and local law should recognize  
17 that English speakers are minorities in some  
18 communities, mono-lingual, and ensure equal educational  
19 access to language programs by these groups within  
20 those areas. Federal and state laws that protect a  
21 limited English proficient student should be expanded  
22 to protect the needs of limited Spanish proficient  
23 students in Dade County, as well as the needs of other  
24 limited, other than English proficient students in any  
25 county where they are language minorities.

1           Laws and policies designed to ensure the  
2 rights of language minorities to a meaningfully equal  
3 education should define language minority groups to  
4 include limited English proficient persons and those  
5 who are not proficient in the language spoken by the  
6 majority of the residents within that community.

7           So it's sort of paying attention to whether  
8 people speak English or don't speak English. Students.

9           COMMISSIONER GEORGE: Hang on a second.

10          CHAIRPERSON BERRY: I'm hanging on.

11          (Pause.)

12          Just hang on a little bit, Commissioners.

13 We're almost there. We're going to make it.

14          It's Michael Jordan and it's the fourth  
15 quarter and you've got the flu and you're trying to  
16 come down the court to make the points and you're about  
17 to pass out, and your temperature is 106.

18          COMMISSIONER GEORGE: And where are you?

19          CHAIRPERSON BERRY: On page 229.

20          Robbie is reading.

21          COMMISSIONER GEORGE: Madam Chairman, on this  
22 one I would like a change.

23          CHAIRPERSON BERRY: Okay.

24          COMMISSIONER GEORGE: I think we should  
25 recommend steps to ensure the equal education access to



1 language programs -- (off mike).

2 I am not in favor of the proposal to amend  
3 federal law that's contained in the last sentence.

4 CHAIRPERSON BERRY: Okay. Laws -- should be  
5 define to include English language proficiency and  
6 those who are not proficient in the language spoken by  
7 the majority.

8 In other words, you're not in favor of the  
9 amendment?

10 COMMISSIONER GEORGE: Yes.

11 CHAIRPERSON BERRY: Okay.

12 Anybody have an objection to dropping the  
13 last sentence?

14 COMMISSIONER GEORGE: I have none.

15 VICE CHAIRPERSON REYNOSO: It's all right.

16 CHAIRPERSON BERRY: Okay. Then it goes.

17 Next one. Entry exams for adult -- this is  
18 page 230 -- general education should be available in  
19 Spanish and other languages. Students who score below  
20 the ninth grade level in an exam administered in their  
21 language of greatest proficiency would be exempt from  
22 the fees.

23 Students scoring higher than the threshold  
24 level would only be eligible for free or subsidized  
25 English language instruction in accordance with federal

1 and state laws. These students would not be exempt  
2 from fees for all other non-language instruction  
3 courses.

4 Okay. The next one.

5 The Florida Department of Education should  
6 require prospective students to sign an acknowledgement  
7 attesting to their automatic eligibility for fee  
8 waivers. It should conduct random checks to verify  
9 these applications and assess fees and a penalty for  
10 students found to have executed fraudulent  
11 applications.

12 That's on page 230.

13 The bottom of 230: The Dade County Public  
14 School District should develop and implement guidelines  
15 for determining the residency of students -- going over  
16 to page 231.

17 232. Congress should encourage private  
18 industry to provide language instruction for its  
19 employees by offering tax incentives for employer  
20 sponsored education, allowing a tax credit for the cost  
21 of providing language instruction that would remove  
22 financial obstacles to providing such training and  
23 encourage private industry to satisfy the need created  
24 by insufficient funding for public education programs.

25 Russell, have you got a comment? Tax credit

1 was the word.

2 COMMISSIONER REDENBAUGH: No. I understand.  
3 It's a very poor economic policy. (Off mike.)

4 CHAIRPERSON BERRY: The tax incentive should  
5 reflect "cost" to the employer, as including tuition,  
6 fees, supplies and wages paid to employees while in the  
7 training program. Language training should include  
8 training for limited English proficient employees and  
9 training in the foreign languages spoken by either a  
10 majority of the residents who reside in the community  
11 where the business is located or by a majority of the  
12 residents in the country with which the business  
13 conducts a substantial majority of its dealings.

14 Okay. Bottom of the page:

15 VICE CHAIRPERSON REYNOSO: Madam Chair?

16 CHAIRPERSON BERRY: Yes.

17 VICE CHAIRPERSON REYNOSO: Could we just  
18 change that to -- and training in languages other than  
19 English? I mean, here you might have a person in a  
20 tribal situation that may need to know the tribal  
21 language. And just using the term language other than  
22 English instead of foreign language.

23 CHAIRPERSON BERRY: Like the language of the  
24 Hutus as opposed to the Tutsis, or vice-versa?

25 VICE CHAIRPERSON REYNOSO: Right.

1           CHAIRPERSON BERRY: Okay. You said change it  
2 to --

3           VICE CHAIRPERSON REYNOSO: Language other  
4 than English.

5           CHAIRPERSON BERRY: Other than English.  
6 Okay.

7           The bottom of the page: The participation  
8 rates of refugees and asylees in public benefit  
9 programs should be disaggregated from the participation  
10 rates of other immigrants.

11           That's so you can count them, I guess.

12           COMMISSIONER REDENBAUGH: Yes.

13           CHAIRPERSON BERRY: Next page.

14           Congress or the President should commission a  
15 taskforce to evaluate conflicting studies on the net  
16 national economic effect of immigration. The taskforce  
17 should be directed to facilities on and develop a  
18 consensus on methodology to produce sound studies  
19 driven by facts rather than by assumptions.

20           And that one is because we have all these  
21 conflicting studies about what it means. Okay.

22           The next one: Congress should amend the  
23 Welfare Reform Act allowing non-citizens to be eligible  
24 for food stamps and SSI on the same basis as citizens,  
25 subject to a limited deeming period for sponsored

1 immigrants.

2           That's on the issue of whether immigrants get  
3 food stamps and SSI.

4           Then: Florida should continue covering  
5 immigrants who --

6           COMMISSIONER GEORGE: Madam Chairman?

7           CHAIRPERSON BERRY: Yes.

8           COMMISSIONER GEORGE: On the Welfare Reform  
9 Act -- I'd like to delete that. It's a big national  
10 issue, a big debate. I take it the Commission has a  
11 position on this. I just don't think this is the proper  
12 context for it.

13           VICE CHAIRPERSON REYNOSO: This is Reynoso  
14 speaking. Just because Congress does something doesn't  
15 mean that it isn't a civil rights issue. Even the  
16 Supreme Court has recognized that aliens, because they  
17 don't have a right to vote, are among a protected class  
18 constitutionally. And to have done what Congress did -  
19 - and as I understand it, it may easily change its mind  
20 in the next few months. But to have done what Congress  
21 did, simply cut out lawful immigrants in certain rights  
22 certainly seems to me discriminatory and a violation of  
23 civil rights in a broad sense.

24           I'm not saying in a legal sense because  
25 Congress did it. But Congress has done other things in

1 the past that didn't comport with our notions of civil  
2 rights.

3 COMMISSIONER LEE: And that issue was brought  
4 up at the hearing.

5 VICE CHAIRPERSON REYNOSO: Very much so.

6 CHAIRPERSON BERRY: Yes. We have extensive  
7 testimony about that.

8 So I think the question is whether we agree  
9 with it or not, Robbie. If we don't agree, we can  
10 change the language.

11 COMMISSIONER GEORGE: If we're going to take  
12 up this issue, it seems to me we need to take it up.  
13 Plenty of information and representations on both  
14 sides. Carefully consider the issues, the information  
15 that was given. (Off mike.)

16 By the way, Cruz, I agree with you that,  
17 prima facie, at least, has more dimensions. I'm not  
18 saying the Commission should never speak on the issue  
19 of welfare reform. And obviously I agree with you that  
20 Congress was not saying this is a civil rights issue in  
21 the past. It may well be doing so now.

22 But if we're to get into this issue, I don't  
23 think this is the place to do it.

24 VICE CHAIRPERSON REYNOSO: I understand.

25 CHAIRPERSON BERRY: So what is your pleasure,

1 gentlemen and ladies? Should we try to modify this or  
2 should we try to drop it? Should we change it to  
3 something like Congress should carefully consider the  
4 impact on immigrants of these changes? Because I  
5 understand they are considering it.

6 Or should we just simply leave it as amended  
7 and let people who disagree disagree, or what should we  
8 do?

9 VICE CHAIRPERSON REYNOSO: I think that it's  
10 clearly and in fact currently not a top civil rights  
11 issue. So, I'd like to have us speak to us if a  
12 majority of us agree. And again, have this be subject  
13 to concurring or dissenting. It can be both concurring  
14 and dissenting opinions.

15 CHAIRPERSON BERRY: Okay. I don't sense that  
16 others feel too strongly about it. Maybe we'll go back  
17 to that. That's on 224 -- or 234.

18 Florida should continue covering immigrants  
19 who were receiving benefits under Medicaid and the  
20 former AFDC program. The federal government should  
21 provide additional support for those states like  
22 Florida in which a substantial number of immigrants  
23 reside.

24 Now, hasn't the Congress already done that?

25 COMMISSIONER GEORGE: I believe that's right.

1           CHAIRPERSON BERRY: They already did that, so  
2 our saying that --

3           VICE CHAIRPERSON REYNOSO: Well, they haven't  
4 made provision to help a state like Florida that has  
5 particular needs. So that part is there.

6           CHAIRPERSON BERRY: Okay. But they're  
7 debating that, but they've already changed -- made some  
8 of these other changes.

9           So, --

10          VICE CHAIRPERSON REYNOSO: I think so.

11          CHAIRPERSON BERRY: So that's okay. That's  
12 not really that much of a problem.

13                 Then we get: Proponents of measures  
14 restricting or prohibiting public benefits and services  
15 from undocumented immigrants should actively seek to  
16 minimize the anti-immigrant sentiment stemming from  
17 such measures. These proponents should publicly  
18 disassociate themselves from their supporters who are  
19 animated by discriminatory motivation. To the extent  
20 that measures generate misperceptions, community groups  
21 should provide the public with factual information.

22                 I would be willing to drop the middle  
23 sentence because to me it sounds like -- I'm not sure  
24 how you find out anybody's motivation. The way it's  
25 stated, it sounds -- I don't know. I don't know how to



1 describe why I don't like it, but I don't.

2           And if we just said that, to the extent that  
3 measures generate misperceptions, community groups  
4 should provide the public with factual information,  
5 we're conveying the same idea rather than trying to  
6 personalize it. In terms of people who advocate a  
7 certain position, it's hard to tell what their  
8 motivations are.

9           So I would propose removing the middle  
10 sentence and keeping the rest of it unless somebody  
11 objects.

12           COMMISSIONER GEORGE: I certainly agree that  
13 the middle sentence should be removed. I think what we  
14 are really aiming at here is preserving neutrality on  
15 the substantive issue while recognizing that the  
16 context of political disputation over these issues  
17 might generate hostility to immigrants.

18           CHAIRPERSON BERRY: Right And if it does,  
19 then somebody should do something about it.

20           COMMISSIONER GEORGE: Right. Now here I  
21 think the key thing is balance. I would like our  
22 language to be of the sort that could be affirmed by  
23 any reasonable person who's a supporter of these types  
24 of initiatives.

25           So I don't have a concrete proposal. I'm

1 thinking as I speak here. But I guess, perhaps what we  
2 could do is bring the issue in a way that might be  
3 taken to imply on their part a willingness to diminish  
4 the creation of anti-immigrant sentiment. We should  
5 recognize that there are people -- (off mike) --  
6 hostilities of immigrants who support these  
7 initiatives. I don't know exactly how to do that. But  
8 I don't have specific language. (Off mike.)

9 CHAIRPERSON BERRY: Well, Robbie, I think,  
10 with all due respect, proponents would not be unhappy  
11 with the language as it stands without the sentence,  
12 because most of them do actively seek to minimize --  
13 you know, to make clear that they're not trying to be  
14 anti-immigrant and that they don't want to cause  
15 immigrant bashing by what they've done. But then if we  
16 just say to the extent that there are misperceptions,  
17 people should -- there should be some factual  
18 information.

19 COMMISSIONER GEORGE: (Off mike.)

20 Why don't we say something like we recognize  
21 and encourage the active efforts of supporters of these  
22 initiatives to minimize anti-immigrant sentiment.

23 CHAIRPERSON BERRY: Okay.

24 COMMISSIONER GEORGE: And then keep the final  
25 sentence. To the extent that measures generate

1 misperception, we want them to provide the public with  
2 factual information. Yes. That's fine.

3 CHAIRPERSON BERRY: So we put a sentence in  
4 that would recognize and encourage them in their  
5 efforts to --

6 COMMISSIONER GEORGE: Right. Encourage  
7 efforts by proponents of these initiatives to actively  
8 -- (off mike).

9 Well, we'll work that out.

10 (Off mike.)

11 CHAIRPERSON BERRY: Right. And to the extent  
12 -- I get the point.

13 Next page. Immigrant advocacy groups should  
14 be sensitive to the concerns of all residents in areas  
15 heavily populated by immigrants and attempt to be as  
16 inclusive as possible. Cooperative educational and  
17 economic arrangements between and among advocacy  
18 groups, individuals and federal, state and local  
19 governments.

20 There's something left out of that sentence.

21 Cooperative educational and economic  
22 arrangements between and among advocacy groups  
23 individuals and federal, state and local governments  
24 should be established. Okay.

25 In other words, cooperate. Okay.

1           COMMISSIONER GEORGE: I'm not quite sure -- I  
2 mean, this word is tossed around, inclusive, a lot  
3 these days. I'm often unclear as to exactly what it  
4 means.

5           Would there be a way -- in this particular  
6 context -- this is not critical. Sorry to hold people  
7 upon this. But is there a way to be more specific  
8 about what we mean?

9           CHAIRPERSON BERRY: I think what they mean is  
10 -- and you guys can shake your heads if you don't -- is  
11 to include all of the immigrant groups who happen to be  
12 in wherever this place is.

13          COMMISSIONER GEORGE: (Off mike.) -- in an  
14 attempt to include --

15          CHAIRPERSON BERRY: Everybody. Anyone who  
16 has an interest.

17          VICE CHAIRPERSON REYNOSO: Madam Chair, the  
18 recommendation follows the sentence pertaining to the  
19 large influx of immigrants. I think it's aimed at --  
20 immigrants have a right to be wherever they are, but  
21 they should recognize that when there's a large influx  
22 of immigrants, there might be some tension around them  
23 by those who see them coming in. They should just be  
24 conscious of that in the things they do. Be sure to  
25 set up systems of communicating with the folk who are

1 already there so that the tensions can be minimized.

2 COMMISSIONER GEORGE: I think that's very  
3 wise but I wonder if we should end the sentence after  
4 the word "immigrant."

5 CHAIRPERSON BERRY: End the sentence after  
6 the word "immigrants?"

7 COMMISSIONER GEORGE: Yes. Unless somebody  
8 can tell me what -- particularly what --

9 CHAIRPERSON BERRY: Immigrant advocacy groups  
10 should be sensitive to the concerns of all residents  
11 in areas heavily populated by immigrants. Period. And  
12 "attempts to be as inclusive as possible" -- the  
13 language -- they're nodding their heads. It still  
14 means the same thing. So that's fine.

15 COMMISSIONER GEORGE: Okay.

16 CHAIRPERSON BERRY: The bottom of the page:  
17 It is outside the Commission's jurisdiction  
18 to comment generally on foreign policy determinations  
19 with respect to the Cuban Adjustment Act.

20 Oh, we found something outside the  
21 Commission's jurisdiction.

22 And to the government's stated inability to  
23 deport Cubans to Cuba. The Commission must, however,  
24 pursuant to its statutory mandate, study, appraise  
25 and/or investigate matters that constitute

1 discrimination or denial of equal protection under the  
2 law. The INS must ensure that all migrants are treated  
3 equally upon their arrival in the United States.

4 That's a statement, I guess, of what we're  
5 supposed to do.

6 The next page --

7 COMMISSIONER ANDERSON: Madam Chair?

8 CHAIRPERSON BERRY: Yes, Commissioner  
9 Anderson?

10 COMMISSIONER ANDERSON: Not to belabor style  
11 here too much, I think what we ought to do is just take  
12 that last sentence and make that the recommendation.  
13 And if you want a footnote the preceding three  
14 sentences in the recommendation or put it in the  
15 finding section or whatever, fine. But it just seems  
16 odd to me to have a recommendation that we're  
17 recommending it's out of our jurisdiction.

18 CHAIRPERSON BERRY: Okay. Remove the first  
19 part of the recommendation up to the findings and then  
20 we'd make the recommendation the sentence.

21 COMMISSIONER ANDERSON: The last sentence.

22 CHAIRPERSON BERRY: Right. Fine. Accepted.

23 Next page: The State Refugee Program must  
24 determine whether the Haitian community received less  
25 services than the Cuban community in Miami. If the

1 perception is based in fact, the State Refugee Program  
2 must correct the imbalance. If the perception is  
3 false, the State Refugee Program and the Governor's  
4 Office must develop a relationship with the Haitian  
5 community that will allow them to provide information  
6 to correct the misperception and develop a level of  
7 trust from the community.

8           Where the U.S. government is detaining  
9 refugees, all detainees must be treated with respect  
10 and dignity regardless of their race or ethnicity.

11           Last one on that page: The INS must make  
12 greater efforts to educate the Nicaraguan community of  
13 their eligibility for transitional work permits if they  
14 apply for suspension and deportation before June 12th,  
15 1997.

16           And by the time this comes out it will be too  
17 late for them to do that. So shall we just drop this  
18 or change it or just say nothing, or what? Is it too  
19 late?

20           VICE CHAIRPERSON REYNOSO: I think we should  
21 leave it. In fact, I hope later to bring out to the  
22 Commission's attention the serious problem of  
23 Nicaraguan and other Central American immigrants where,  
24 again, I think Congress has acted in a way that's  
25 discriminatory and violates what one would normally

1 call the civil rights of the Nicaraguan community.

2           And I don't know what the Judge did. The  
3 last I -- when I left Miami yesterday, I think the  
4 Judge was going to look to be issuing an order on -- or  
5 I guess a temporary restraining order he had issued was  
6 coming to an end and that he was going to either  
7 dissolve the injunction or put it in as a firm  
8 injunction against the government in terms of the  
9 possibility of deportation of Nicaraguans.

10           That is one of the most critical civil rights  
11 issues in the immigration area right now it seems to  
12 me. And I don't think that -- I think that for  
13 political reasons this Administration isn't going to  
14 deport all these folk right away. So I think this  
15 continues to be viable.

16           CHAIRPERSON BERRY: Should we then restate  
17 it, since it will be after June 12th, to say educate  
18 them for transitional work permits period, or  
19 something?

20           VICE CHAIRPERSON REYNOSO: Yes. That makes  
21 sense.

22           CHAIRPERSON BERRY: Okay. Because we don't  
23 want to have a date there that has nothing to do with  
24 anything.

25           VICE CHAIRPERSON REYNOSO: I agree.



1 COMMISSIONER REDENBAUGH: Madam Chairman?

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER REDENBAUGH: I need to leave  
4 about now.

5 CHAIRPERSON BERRY: Can we do a vote then?

6 COMMISSIONER REDENBAUGH: Well, we can just  
7 do mine.

8 CHAIRPERSON BERRY: Because we only have two  
9 more recommendations, but we can do a vote.

10 Yes. Would you?

11 COMMISSIONER REDENBAUGH: I don't know that  
12 my other colleagues are prepared to vote and I don't  
13 want to force the vote. If they would just give me the  
14 courtesy that we gave Connie, then you can continue  
15 your discussions.

16 CHAIRPERSON BERRY: Okay. Without objection,  
17 then.

18 COMMISSIONER REDENBAUGH: Before I do,  
19 concurrences will be published where?

20 CHAIRPERSON BERRY: In the report itself.

21 COMMISSIONER REDENBAUGH: Not as an appendix  
22 but as a --

23 CHAIRPERSON BERRY: At the end of the report  
24 all the statements are published.

25 COMMISSIONER REDENBAUGH: And if I could

1 record my yes vote?

2 CHAIRPERSON BERRY: Okay. I appreciate that  
3 very much, Commissioner Redenbaugh.

4 And we have three more -- two more.

5 COMMISSIONER REDENBAUGH: Okay. Thank you.

6 CHAIRPERSON BERRY: Thank you.

7 On page 237: Refugees should continue to be  
8 eligible for benefits upon their arrival to the United  
9 States. Benefits should include cash and medical  
10 assistance and social services, including language and  
11 job training.

12 Then there's one: The public should  
13 understand that for the purpose of governmental  
14 assistance, refugees are treated separate and distinct  
15 from other immigrants because of the nature of their  
16 entry into our country. To that end, federal, state  
17 and local officials and the media should be clear when  
18 they use the term refugee that they are referring to  
19 persons fleeing their native countries because of --

20 OPERATOR: Excuse the interruption.

21 Commissioner Redenbaugh has disconnected. Did you need  
22 me to reconnect him?

23 CHAIRPERSON BERRY: That's all right. He's  
24 off. Thank you very much.

25 VOICE: You're welcome.

1           CHAIRPERSON BERRY: -- because of persecution  
2 or a well-founded fear of persecution on account of  
3 race, religion, nationality, membership in a particular  
4 social group or political opinion.

5           And then the last one: The Immigration and  
6 Naturalization Service, the Community Relations Service  
7 and state and local government should work closely with  
8 the private sector to ensure a coordinated approach to  
9 the assistance offered to incoming refugees.

10           Now, we've gone through the findings and  
11 recommendations.

12           The only issue left over, Commissioner  
13 George, is the issue of the interviews. And I want to  
14 propose that -- and I don't know if I said this before  
15 you came on -- that since interviews are consistently  
16 used by the Commission in its reports and since we have  
17 agreed to remove interviews where a particular point  
18 was made, that the Commission have a discussion  
19 sometimes about this, or we can debate it now if you  
20 want to. But that for purposes of this report and the  
21 things the staff is working on now, we would only say  
22 that we will object when there are interviews that we  
23 don't -- you know, we think it's not balanced or we  
24 don't like it or there's something wrong with it.

25           But that since this is an administrative

1 proceeding and not -- which Leon, Commissioner  
2 Higginbotham and Judge Reynoso explained to me -- that  
3 this is an administrative proceeding and not a judicial  
4 proceeding, that there really is -- and we are  
5 permitted to use interviews and we do in fact use them  
6 and we use them routinely. But we can debate this if  
7 you want to.

8 Commissioner George?

9 COMMISSIONER GEORGE: I do think that we  
10 should revisit the policy on the use of interviews in  
11 the report. At that time, I will not advocate an  
12 absolute prohibition on the use of interviews.

13 CHAIRPERSON BERRY: Okay.

14 COMMISSIONER GEORGE: But I think that they  
15 should be used rarely and under fairly specific  
16 circumstances which I'll outline at the time we do have  
17 the discussion.

18 CHAIRPERSON BERRY: All right. I will  
19 reserve time for us to discuss that.

20 Did I hear someone saying something?

21 COMMISSIONER GEORGE: Well, I was continuing.

22 CHAIRPERSON BERRY: Oh. Go right ahead.

23 COMMISSIONER GEORGE: But for these  
24 particular focuses, it seems to me that we should visit  
25 the instances where there have been three hearing

1 interviews relied upon and decide whether those that  
2 represent the three hearing interviews are necessary.  
3 Keep the ones that are necessary. Delete the ones  
4 where they're not necessary.

5 CHAIRPERSON BERRY: Well, we will revisit  
6 this issue again. And I want to point out to you, as I  
7 call for the vote on this, that the language that has  
8 been drafted pursuant to Commissioner Horner's concern  
9 about the reasons why the Immigration Reform Act was  
10 passed in 1996 says: The Illegal Immigration Reform  
11 and Immigrant Responsibility Act of 1996 tracked  
12 closely the recommendation of the Commission on  
13 Immigration Reform. Testimony before Congress on the  
14 Act indicated that asylum claims exploded from less  
15 than 5,000 applications in the year 1980 to over  
16 150,000 a year. And then, in addition, according to  
17 Senator Simpson -- and then quote him.

18 So that gives us a basis for how this  
19 happened.

20 Could I call for the question on this report?

21 All those in favor of the approval of this  
22 report with the emendations and changes that we've  
23 agreed to, indicate by saying aye.

24 COMMISSIONER GEORGE: Mary, I have one point  
25 before we do this.

1 CHAIRPERSON BERRY: Commissioner George?

2 COMMISSIONER GEORGE: Yes. I would recommend  
3 that for the use of witness interviews, that we obtain  
4 a waiver. I don't care if we do it after the fact.  
5 That we obtain a waiver of any confidentiality in those  
6 interviews.

7 VICE CHAIRPERSON REYNOSO: A waiver in  
8 writing?

9 CHAIRPERSON BERRY: Wait a minute.

10 Commissioner George, you didn't hear me  
11 explain that we already give the witnesses a statement  
12 under the Privacy Act before we even interview them.  
13 And the statement that we give them says that the  
14 information obtained may be used routinely, as set out  
15 in the system notice, entitled CRC-04, a Commission  
16 project which I can read.

17 This system includes reports, hearings,  
18 statements, conferences, commentaries on legislation  
19 and possible referrals to other agencies. That they're  
20 all given this before they're even interviewed. Which  
21 means they already know that these will be used for  
22 this purpose. It's not a new issue with them.

23 COMMISSIONER GEORGE: Does that mean that  
24 they are not confidential?

25 CHAIRPERSON BERRY: They can be used in the

1 Commission reports and anything that we produce but we  
2 cannot actually hand them out to people who come in and  
3 say, "Give me Joe Jones' interview." But they can be  
4 used for the purpose that -- is that right, counsel?

5 MS. MOORE: Yes. The information that is  
6 collected through the interview process can be used in  
7 the reports and hearings that you've noted.

8 COMMISSIONER GEORGE: So we could quote the  
9 whole interview in a report?

10 MS. MOORE: We have not quoted the interviews  
11 in the report but there have been, in the past, reports  
12 that have been routine, selected portions of interviews  
13 quoted.

14 COMMISSIONER GEORGE: If we wanted to. And  
15 there's no protection? In other words, we could quote  
16 the whole report?

17 MS. MOORE: We could, yes. There are  
18 portions of the report that are confidential that are  
19 not recorded, Commissioner George.

20 COMMISSIONER GEORGE: (Off mike.)

21 MS. MOORE: I'm sorry. Portions of the  
22 interview that, if it's confidential, it is not  
23 recorded in the report.

24 COMMISSIONER GEORGE: What access does the  
25 public have to notes that are the basis of these

1 citations?

2 MS. MOORE: The public can request, through  
3 the Privacy Act, any information that is retained on an  
4 individual by their name.

5 Now, under the Privacy Act, a third-party  
6 cannot gain access to that report unless the individual  
7 whose report it is consents to releasing it.

8 CHAIRPERSON BERRY: So my understanding is  
9 that if the public wanted to read an interview report,  
10 the public would request of OGC, the agency, that they  
11 receive a copy of the interview report. The agency  
12 would then consult with the individual who was  
13 interviewed to ask if they had a problem. And if they  
14 didn't, the person could have it.

15 But we are permitted, as the agency, to use  
16 them in our reports.

17 COMMISSIONER GEORGE: And to quote them with  
18 restriction?

19 CHAIRPERSON BERRY: Well, it says right here.  
20 This system includes -- yes. They give us permission  
21 to do that when they're interviewed.

22 COMMISSIONER GEORGE: Okay. I'd like to sort  
23 of put another issue. We should visit this issue of  
24 the policy matters but we should put that on the agenda  
25 with the general discussion that I want to have of the



1 use of witnesses, because it does seem to me that  
2 there's a serious issue here with matter that occurred  
3 at the hearing when on the transcript. The public can  
4 control the transcript and judge for itself whether  
5 we've made proper use of it.

6 If we're going to rely on witness interviews  
7 at all, it seems to me there needs to be some  
8 accountability mechanism analogous to that, and it  
9 doesn't seem to me as though we have one.

10 CHAIRPERSON BERRY: Well, we can revisit it  
11 but the point again is that anyone who objects or who  
12 wants to read it and says I don't believe that  
13 interview reflects what Joe Blow said and I'd like to  
14 read Joe Blow's interview, they can request a copy of  
15 Joe Blow's interview. Joe Blow will be asked, "Do you  
16 mind if we give your interview out? If they say yes,  
17 we'll give it to them. If Joe Blow says, "Don't give  
18 anybody my interview," then we won't. And that  
19 basically is the answer.

20 COMMISSIONER GEORGE: That's odd, because  
21 here we disclose the whole interview in the report. He  
22 would have no way of preventing that. The witness has  
23 no way of preventing that from happening.

24 CHAIRPERSON BERRY: Well, he knows ahead of  
25 time because he concedes before he gives the interview.

1 That's the whole point. When he is interviewed, Joe  
2 Blow is given this piece of paper and told, "Do you  
3 understand that your interview may be used in our  
4 report on our hearing? It may be quoted from. We may  
5 put whatever we want to in the report." This is what  
6 the arrangement is. And Joe Blow says, "Fine."

7 COMMISSIONER GEORGE: I understand that. But  
8 it seems to me nonetheless very odd that -- (off mike)  
9 -- if somebody wants to check up on us for purposes of  
10 accountability, they've got to go through all these  
11 procedures, and perhaps fail, because permission won't  
12 be given, to have access to notes which we're then  
13 relying on and quoting.

14 I mean, I just think we should revisit that  
15 policy.

16 CHAIRPERSON BERRY: Okay. We'll do it. I'll  
17 put it on the agenda and we'll have a discussion about  
18 how these things are done because there are other  
19 points that could be made, but I won't do it in the  
20 interest of time. But I think you're right. It's an  
21 issue we should discuss.

22 COMMISSIONER GEORGE: (Off mike.)

23 CHAIRPERSON BERRY: Right. Yes. That was  
24 because my sense was that there was not a lot of  
25 support. Everybody was opposed to -- almost everybody

1 seems to be opposed to official English. So why don't  
2 we make that -- you know, for people who object to it -  
3 - I suggested at the end that what we would do is say  
4 that because of its impact on racial and ethnic  
5 tensions in Miami as evidenced during our hearings,  
6 that proposals making English the official language of  
7 the United States impacts negatively on racial and  
8 ethnic tension. That that would be our statement.

9           But that if Congress should decide to pass  
10 such legislation, concerns about it should be narrowly  
11 tailored and concerns about cost should not play a  
12 major role. That was my suggestion. But everybody  
13 else wanted to have us say that we don't support -- or  
14 most everybody else -- we don't support it.

15           Would you like us to agree to modify it in  
16 that way or what would you like to do?

17           COMMISSIONER GEORGE: The other issue, the  
18 welfare issue, although I have the view that we ought  
19 not -- this is on the top of 234. (Off mike.)

20           CHAIRPERSON BERRY: Well, Robbie, the  
21 testimony we had at the hearing indicated at the very  
22 least that proposals declaring English the official  
23 language of the United States impacts negatively on  
24 racial and ethnic tensions.

25           Just listen to what I'm saying. That would

1 be -- so we would have to state that if we made a  
2 change. And then we would have to then go on to say  
3 that any federal legislation should be drawn very  
4 narrowly.

5 Would you accept that?

6 COMMISSIONER GEORGE: (Off mike.)

7 CHAIRPERSON BERRY: What did I say? Does  
8 anybody know what I said? I'm getting tired.

9 Something like testimony at the hearing or  
10 something indicated that proposals to declare English  
11 the official language of the United States impacted  
12 negatively on racial and ethnic tensions. That was  
13 something like what I said.

14 Did you hear that?

15 COMMISSIONER GEORGE: Yeah.

16 CHAIRPERSON BERRY: And then right after  
17 that, therefore, any federal legislation declaring  
18 English the official language should be drawn very  
19 narrowly.

20 COMMISSIONER GEORGE: Yes. I think I can live  
21 with that. I can live with that just the way you  
22 stated it.

23 CHAIRPERSON BERRY: I figured you could.

24 COMMISSIONER GEORGE: (Off mike.)

25 CHAIRPERSON BERRY: Right. Or impacted

1 negatively.

2 COMMISSIONER GEORGE: (Off mike.)

3 CHAIRPERSON BERRY: Right. Now let's see if  
4 everybody else will accept that.

5 COMMISSIONER LEE: I cannot accept that. I  
6 just think that we need to make a strong statement.

7 VICE CHAIRPERSON REYNOSO: Why not -- excuse  
8 me. I think you had once recommended language saying a  
9 majority of the Commission opposes English as a  
10 official language. Nonetheless, if -- you know,  
11 something of that sort.

12 CHAIRPERSON BERRY: But it's connecting it  
13 causally with racial and ethnic tensions is what I was  
14 trying to induce Commissioner George to accept.

15 COMMISSIONER GEORGE: (Off mike.)

16 CHAIRPERSON BERRY: Most of them argued  
17 against it. There were a few who argued for it. There  
18 were people on both sides but most of them argued  
19 against it. And they who argued against it, argued in  
20 terms of the impact on racial and ethnic tensions.

21 COMMISSIONER GEORGE: (Off mike.)

22 CHAIRPERSON BERRY: What was the name of the

23 --

24 MR. ISLER: Stan Bradfield.

25 CHAIRPERSON BERRY: Mr. Bradfield of U.S.

1 English made a very strong argument. And so the point  
2 is then -- or we can say that because the testimony in  
3 Miami indicated that proposals for official English  
4 impacted negatively on racial and ethnic tensions, the  
5 majority of the Commission believes that there should  
6 be no such proposal. However, any federal legislation  
7 should be drawn very narrowly.

8 COMMISSIONER GEORGE: (Off mike.)

9 CHAIRPERSON BERRY: Why can't you vote for  
10 the report and write a concurring statement saying  
11 exactly what you just said. And that way, no one will  
12 be confused by your -- as others are going to do on  
13 another point that we raised here where they're just  
14 going to write a concurring statement and explain their  
15 view as opposed to the other view.

16 COMMISSIONER GEORGE: Okay. Then let's say  
17 it this way. Although a majority of Commissioners do  
18 not favor --

19 CHAIRPERSON BERRY: Okay.

20 COMMISSIONER GEORGE: -- should such a  
21 proposal be adopted by Congress, the Commission  
22 recommends that it be narrowly drawn, dah da, dah da.

23 CHAIRPERSON BERRY: That's fine. I don't  
24 have any problem with that.

25 COMMISSIONER GEORGE: Okay.

1 VICE CHAIRPERSON REYNOSO: That's fine.

2 COMMISSIONER GEORGE: We do need to say that  
3 testimony indicated that U.S. English proposals cause  
4 ethnic tensions. I think really assumes that there was  
5 testimony to the contrary as well. We have to  
6 recognize that as a matter of fact.

7 CHAIRPERSON BERRY: If you want to say that  
8 about testimony. Although I like your -- the way you  
9 phrased it, we don't need that about testimony.

10 COMMISSIONER GEORGE: That's fine. Then  
11 let's just drop it altogether.

12 CHAIRPERSON BERRY: So say yours again. Say  
13 again.

14 COMMISSIONER GEORGE: Although a majority of  
15 Commissioners do not favor legislation declaring  
16 English the official language of the United States, the  
17 Commission recommends that if such legislation is  
18 enacted it be narrowly drawn and that costs not be an  
19 overriding consideration in the policy debate.

20 CHAIRPERSON BERRY: Okay. All right.

21 Can we have a vote?

22 Yes. Commissioner Anderson has found one.

23 COMMISSIONER ANDERSON: If we go back to page  
24 226 in the non redlined edition -- I don't know what  
25 that is for the Chair's copy. But the recommendation,

1 unless I was not paying attention, on primary language:  
2 Congress should clearly address language policies in  
3 the workforce in order to clarify the issue. Any  
4 resulting legislation should balance the competing  
5 interests of the employer and both the mono-lingual and  
6 multi-lingual employees by reducing incidents of  
7 unremedied discrimination and avoidable workplace  
8 tension.

9 Now, it seems to me that what we're looking  
10 at here is a possible amendment to Title VII on an  
11 issue that is currently before the Supreme Court. And  
12 I for one am not ready to vote in favor of that.

13 VICE CHAIRPERSON REYNOSO: Excuse me. This  
14 is Reynoso.

15 Since it's before the Supreme Court, I  
16 believe, on a statutory interpretation matter, is it  
17 not? Then Congress would have the ultimate say if it  
18 is. And it seems not inappropriate for us to advise  
19 Congress what our own thinking is, if in fact we agree  
20 with this.

21 CHAIRPERSON BERRY: But if we agree with this  
22 language.

23 VICE CHAIRPERSON REYNOSO: Yes.

24 CHAIRPERSON BERRY: Do we think anybody  
25 should address this issue?



1                   COMMISSIONER ANDERSON: Well, I think it's  
2 possible that we could address it but I think that we  
3 should do it in the context that is different than  
4 inserting an amendment to Title VII in the basis of  
5 this report. I think we need more study on a Title VII  
6 issue like this.

7                   CHAIRPERSON BERRY: So what we actually need  
8 is proposals that would balance the competing interests  
9 of the employer and the employees to reduce the  
10 incidence of these. That should be made in dealing  
11 with the issue of language policies and the workforce.  
12 But the question is, who's going to make those  
13 proposals.

14                   I mean, in other words, who should we direct  
15 something at if it's not a statutory language in terms  
16 of trying to solve the problem? Apparently there is a  
17 conflict over language in the workplace between  
18 employees and employers. Should anybody address it or  
19 should we admonish employers to be diligent in trying  
20 to resolve it or should we -- what should we say about  
21 it?

22                   VICE CHAIRPERSON REYNOSO: I think the  
23 problem has been that these issues have ended up in the  
24 courts because there's disagreement as to what Title  
25 VII means and disagreement by some courts on the EEOC

1 established guidelines. So this seems to be a  
2 recommendation that if the courts are that uncertain  
3 what Congress meant, Congress ought to take a second  
4 look at it, have hearings and all that, and clarify the  
5 issues as to what the law means.

6 It seems to me not a bad recommendation in  
7 terms of what to do when the courts are confused as to  
8 what Congress meant.

9 CHAIRPERSON BERRY: Well, I'm not actually in  
10 favor of Congress amending Title VII.

11 VICE CHAIRPERSON REYNOSO: Do you mean once  
12 they get into it then there might be too many other  
13 issues?

14 CHAIRPERSON BERRY: Right.

15 VICE CHAIRPERSON REYNOSO: Yeah.

16 CHAIRPERSON BERRY: So I'm not in favor of  
17 that. So I'm not bothered by not asking Congress at  
18 this hour to do it, but it is an issue. And so the  
19 question is what do we as responsible Commission  
20 officials say about this conflict in the workplace over  
21 people who say they have a right to speak languages and  
22 employers who say that they have a right to have people  
23 who speak English. And how do we reduce the tension  
24 that exists.

25 I mean, one cop out is just to say ways

1 should be found to balance the competing interests.  
2 But it is an issue, so I don't know what we could say  
3 about it.

4           There should be a taskforce. Maybe the Dade  
5 County -- why couldn't the Dade County Board, with this  
6 taskforce that we asked them to set up. I've forgotten  
7 it. It was one of our recommendations that asked them  
8 to set up a taskforce. Because this is supposed to be  
9 about Florida and Dade County.

10           Does anybody remember? Was that the  
11 Opportunity Board or what board is that?

12           Maybe the Dade County-Miami Equal Opportunity  
13 Board ought to establish a taskforce to try to figure  
14 out ways to advise employers on how to balance the  
15 competing interests of the employer, both to reduce the  
16 instances of unremedied discrimination and workplace  
17 tension. At least that's doing something while we wait  
18 to see what the Supreme Court says and figure out what  
19 else to do.

20           What does anybody think?

21           VICE CHAIRPERSON REYNOSO: I think that's a  
22 good idea.

23           CHAIRPERSON BERRY: Okay. Anybody object?

24           Do you object, Commissioner Anderson?

25           Okay. All right.

1 Let's call for the question.

2 All those in favor of the passage of the  
3 report, indicate by saying aye.

4 (Chorus of ayes.)

5 And I'm going to write down names.

6 Commissioner Anderson?

7 COMMISSIONER ANDERSON: No.

8 CHAIRPERSON BERRY: Berry, yes.

9 George?

10 COMMISSIONER GEORGE: Yes.

11 CHAIRPERSON BERRY: Higginbotham?

12 COMMISSIONER HIGGINBOTHAM: Yes.

13 CHAIRPERSON BERRY: Horner, no.

14 Lee?

15 COMMISSIONER LEE: Yes.

16 CHAIRPERSON BERRY: Redenbaugh, yes.

17 Reynoso?

18 VICE CHAIRPERSON REYNOSO: Yes.

19 CHAIRPERSON BERRY: Okay. It passes 6 to 2.

20 Okay.

21 We have one last item left. Let me tell you  
22 that on the Equal Opportunity issue, I only put that on  
23 the agenda to remind you that the Commissioners have  
24 had the report -- Fred come over here quickly, please.  
25 We've had the first two of the reports since -- about

1 how long have we had the first here? Remember?

2 In May. And we just got the third one. And  
3 so we've got three of these already in our possession  
4 and have had them for some time. And we will be  
5 receiving the fourth one in the next few days. And the  
6 point is we also had a briefing on these reports.

7 Didn't we have a briefing?

8 MR. ISLER: That's correct.

9 CHAIRPERSON BERRY: When was the briefing?

10 MR. ISLER: The briefing was June.

11 CHAIRPERSON BERRY: In June on these reports.  
12 It wasn't June. This is June now.

13 MR. ISLER: February.

14 CHAIRPERSON BERRY: February. You lost some  
15 months somewhere.

16 And we asked questions about these  
17 educational opportunity reports so that we would be up  
18 to date. And so what I am suggesting is that at the  
19 next meeting, please consult among yourselves or with  
20 your assistants and come to the meeting prepared to  
21 discuss any comments that you have or any questions or  
22 any things you want changed. And then what we'll do is  
23 we will reduce the discussion to the areas where people  
24 want comments, changes, deletions and whatever they  
25 wish to have in the attempt to get the report finished,

1 because, as I told you, the statute requires us to  
2 finish it. And we should do everything possible to do  
3 that and be prepared and bring our sandwiches.

4 That's all I really wanted to say, Fred.

5 So I just wanted to make sure that you sat up  
6 here in case anybody wanted to ask you anything.

7 Anybody want to ask Fred anything about the  
8 process at this point or the reports?

9 As I understand it, we're going to have all  
10 of them except the profiles. Is that right?

11 MR. ISLER: That's correct.

12 CHAIRPERSON BERRY: And the profiles, do that  
13 quick, quickly. They're the schools.

14 MR. ISLER: We have five school district  
15 profiles: Charlotte, P.G. County, St. Mary County,  
16 Albuquerque and -- did I miss one? Seattle, Washington.  
17 Primarily they are clearinghouse reports. They're not  
18 enforcement reports. We're primarily doing those to  
19 inform the Commissioners of the issues, the educational  
20 practice, that we're doing within the full report so  
21 they can get an overview of what the schools are  
22 actually doing out there. So they relate to our four  
23 primary enforcement reports.

24 CHAIRPERSON BERRY: Okay. And so our primary  
25 enforcement reports will satisfy the statutory

1 requirement and conclude this keep Fred's shop on  
2 schedule so that they can work on ADA, so that next  
3 year we won't be late with the ADA report. That's the  
4 whole idea.

5           And the reason why we're clearing these  
6 racial and ethnic tensions reports out because we have  
7 hearings on African-American males and we've got  
8 schools and religion. And so what we're trying to do  
9 is not get bogged down, so that we can stay on schedule  
10 and get all these done.

11           Thank you, Fred. You can go away now.

12           The last item we have -- yes?

13           Did someone say something?

14           COMMISSIONER GEORGE: Yes. Can we agree now?  
15 I mean, (off mike). Can we agree now to have a meeting  
16 in August?

17           CHAIRPERSON BERRY: What I said was that if  
18 we do not finish in July with the education reports,  
19 you should be prepared to have a meeting in August.

20           COMMISSIONER GEORGE: I think it's almost  
21 certain that it will be necessary to do that. Could we  
22 schedule it now so we can pin people down on dates  
23 while they still have some lead time? Otherwise,  
24 everybody's going to not have any dates.

25           CHAIRPERSON BERRY: Does anybody have a

1 calendar? Is anyone willing to pin themselves down on  
2 a date?

3 COMMISSIONER LEE: Madam Chair?

4 CHAIRPERSON BERRY: Yes.

5 COMMISSIONER LEE: Since I'm the only one who  
6 has to come out from the West Coast, could we -- and  
7 the Vice Chair. Can we --

8 VICE CHAIRPERSON REYNOSO: Yes. I'll be in  
9 California by that time.

10 COMMISSIONER LEE: Can we just sort of  
11 schedule a two-day meeting in July instead?

12 COMMISSIONER GEORGE: No. (Off mike.)

13 CHAIRPERSON BERRY: Commissioner George, I  
14 think that was, who said no. You said we need the  
15 time. Is that what you said, Robbie?

16 COMMISSIONER GEORGE: I think we're going to  
17 need the time.

18 CHAIRPERSON BERRY: You mean the time in  
19 between?

20 COMMISSIONER GEORGE: That's right. I think  
21 we're going to need the time in between. I expect the  
22 assistants are going to have to work with each other  
23 again or are going to have to work with Fred.

24 I think it's unrealistic to think we're going  
25 to get away without an August meeting and still meet



1 our deadline.

2 CHAIRPERSON BERRY: Is anyone willing to  
3 provisionally give me a date in August that they can't  
4 meet?

5 COMMISSIONER ANDERSON: Cannot meet?

6 CHAIRPERSON BERRY: Cannot.

7 COMMISSIONER ANDERSON: The first week in  
8 August, I cannot.

9 CHAIRPERSON BERRY: Okay. Commissioner  
10 Anderson can't the first week in August.

11 Take note of this, somebody.

12 How about others? Is there sometime in  
13 August when you can't meet?

14 VICE CHAIRPERSON REYNOSO: The 22nd.

15 CHAIRPERSON BERRY: The 22nd of August.

16 COMMISSIONER GEORGE: That's a no or that's  
17 when we're trying to --

18 VICE CHAIRPERSON REYNOSO: That's a no.

19 CHAIRPERSON BERRY: Any time in August you  
20 can't meet, Commissioner George?

21 COMMISSIONER GEORGE: I'm like Carl. And I  
22 think, like Carl, the first week?

23 CHAIRPERSON BERRY: Yes.

24 COMMISSIONER GEORGE: Yes. The first week is  
25 out.

1 VICE CHAIRPERSON REYNOSO: Is that August 8th  
2 or August 1?

3 COMMISSIONER GEORGE: I'm sorry. It's August  
4 4 through August 8.

5 VICE CHAIRPERSON REYNOSO: Okay.

6 CHAIRPERSON BERRY: Okay.

7 COMMISSIONER GEORGE: Now, I could meet that  
8 next week, the week of August 11. Friday is the 15th.

9 CHAIRPERSON BERRY: Well, why don't we say  
10 then provisionally -- I can't meet any of these times  
11 but I'll meet anyway. So that's okay.

12 COMMISSIONER GEORGE: What about the 29th,  
13 the end of August?

14 CHAIRPERSON BERRY: I don't want us to get  
15 too close. Isn't that almost to Labor Day? And see,  
16 the staff is going to have a lot of work to do and  
17 people have vacations and stuff. And we're going to  
18 ask them to engage in extraordinary effort. So let's  
19 keep that in mind.

20 Yes, Commissioner Anderson?

21 COMMISSIONER ANDERSON: Could I ask how many  
22 people could be available even by telephone on the  
23 15th?

24 CHAIRPERSON BERRY: 15th of August?

25 COMMISSIONER ANDERSON: The Friday. The 22nd

1 I'm going to be on a plane, but --

2 CHAIRPERSON BERRY: Okay. How about the  
3 15th? Anyone object to the 15th, even if you have to  
4 do it telephonically?

5 (No response.)

6 Okay. We'll put down the 15th,  
7 provisionally, if he meeting day if we need to have  
8 another meeting.

9 Now, the last item we have on our agenda --  
10 and I'm sorry. You're going to have to indulge me  
11 because it's a time sensitive item -- is the GAO  
12 Report.

13 And the GAO Report, the staff gave us a  
14 draft. We were all sent the report and we were told  
15 that we could respond individually or collectively,  
16 depending on what we wanted to do.

17 The staff drafted something for us to answer  
18 the factual questions because we didn't have the  
19 answers to the factual questions. And then we have to  
20 decide whether we want to actually send the staff draft  
21 with some changes, whether we each individually want to  
22 send our own or how you want to do this.

23 First, let me just say that the staff draft -  
24 - does anyone have problems with it?

25 COMMISSIONER LEE: Would that include the

1 additional response?

2 CHAIRPERSON BERRY: You mean the one from  
3 Fred Isler?

4 COMMISSIONER LEE: Uh-huh.

5 CHAIRPERSON BERRY: I faxed you -- did you  
6 all get it?

7 VICE CHAIRPERSON REYNOSO: This is Cruz. I  
8 don't think I got it.

9 CHAIRPERSON BERRY: There's a letter, in  
10 addition, from -- what did I do with Fred's letter? Do  
11 I have Fred's letter? From Fred Isler, that we got  
12 after we sent you this, in which he answers for his  
13 office in terms of his own response.

14 Apparently he was given a copy of the report,  
15 too. I didn't know this. And so he's responding on  
16 his own. And the question is do we want to -- I guess  
17 that's the question you were asking, Commissioner Lee.  
18 Do we want to include his, which we haven't read, most  
19 of us, with ours.

20 But I think for now, since some people  
21 haven't read it -- Cruz, you haven't seen it?

22 VICE CHAIRPERSON REYNOSO: No.

23 CHAIRPERSON BERRY: Okay. Why don't we for  
24 now reserve our discussion to the thing we have seen,  
25 which is the draft OSD response and see what we think

1 of it.

2 Commissioner Anderson?

3 COMMISSIONER ANDERSON: Well, I'm prepared to  
4 vote for the OSD draft response if we end it after the  
5 second sentence.

6 CHAIRPERSON BERRY: Second sentence. Thank  
7 you for your draft letter. We reviewed this --

8 (Laughter.)

9 Okay.

10 COMMISSIONER ANDERSON: And I prepared a  
11 draft. It's a little bit longer than that but it  
12 essentially says the same thing. Maybe you could just  
13 slide that around the table.

14 I mean, it sort of depends where you come  
15 down on the overview of the report, but I think the  
16 report in general, although we might have some  
17 disagreements with some of the material in it, I think  
18 by and large, the report is correct in its general  
19 conclusions, in its assessment. I think we ought to  
20 say that. And I think we ought to indicate that we are  
21 going to implement the recommendations.

22 And for the people on the phone -- we still  
23 have two Commissioners on the phone with us. Maybe I  
24 should just read it.

25 CHAIRPERSON BERRY: We have three. George,

1 Redenbaugh and Higginbotham. I mean -- I'm sorry.

2 COMMISSIONER ANDERSON: Redenbaugh left.

3 CHAIRPERSON BERRY: George and Higginbotham  
4 and Reynoso.

5 COMMISSIONER ANDERSON: Oh, that's right.  
6 I'm sorry.

7 The response would be: We are grateful for  
8 the General Accounting Office's thorough investigation  
9 regarding the management improvements needed at the  
10 U.S. Commission on Civil Rights. We concur in your  
11 assessment and the recommendations you have offered.  
12 The Commissioners will be monitoring closely the  
13 performance of the new Staff Director to ensure timely  
14 implementation of the report's recommendations for  
15 improving resource and project management, increasing  
16 accountability for management of the Commission's  
17 operations and updating agency procedures and processes  
18 for carrying out our mission.

19 That's what I propose we send to them.

20 CHAIRPERSON BERRY: Okay. Any discussion?

21 VICE CHAIRPERSON REYNOSO: This is Cruz. I  
22 thought that the report, the draft response, was good.  
23 I thought a few times we could have added more details.

24 For example, at page 11, there's a Commission  
25 response under Section 19. Mission officials told us

1 that they did not know the cost of publishing and  
2 disseminating project reports, et cetera. Then the  
3 Commission reported that the Commission budget tracks  
4 the cost for publishing and disseminating project  
5 reports.

6 So it seems to contradict the GAO report. It  
7 just seemed to me that we might even have added some  
8 more details to show the correctness of the response.

9 And I had a couple of other marginal notes of  
10 that sort. But in general, I have no quarrel with the  
11 recommendations of the GAO report, but the way it's put  
12 together, it makes it appear to be -- makes the  
13 Commission appear to be a disaster area. And then they  
14 make very mild recommendations in terms of what to do  
15 about it.

16 So I'm prepared to accept the recommendations  
17 but not the -- sort of the context in which they're  
18 made in this report..

19 CHAIRPERSON BERRY: So in other words, you  
20 would concur in the recommendations but not in the  
21 assessment?

22 VICE CHAIRPERSON REYNOSO: That's right.

23 CHAIRPERSON BERRY: So that insofar as  
24 Commissioner Anderson's letter is concerned, we're  
25 grateful, we concur or accept your recommendations you

1 have offered and will be monitoring and so on, but not  
2 the assessment. That's what the issue is?

3 VICE CHAIRPERSON REYNOSO: Right. Right.

4 CHAIRPERSON BERRY: Okay.

5 Any other comments from any other  
6 Commissioners?

7 COMMISSIONER HIGGINBOTHAM: Well, I support  
8 this draft response. It's a little on the mild side  
9 but since I had three open heart surgeries, -- I  
10 support this draft for the reasons given.

11 CHAIRPERSON BERRY: Commissioner George, are  
12 you still there?

13 COMMISSIONER GEORGE: Yes. One of the  
14 options, as I understood this, is that the  
15 Commissioners can respond individually instead of as a  
16 group?

17 CHAIRPERSON BERRY: Right.

18 COMMISSIONER GEORGE: I'm for that.

19 CHAIRPERSON BERRY: Okay. You're for an  
20 individual response. Okay.

21 Any other -- have I asked every Commissioner?  
22 Who hasn't answered?

23 Did you say anything, Commissioner Lee, or  
24 did I forget you?

25 COMMISSIONER LEE: I was going to wait for



1 the other report.

2 CHAIRPERSON BERRY: So Commissioner George  
3 prefers to have his own response.

4 VICE CHAIRPERSON REYNOSO: This is Cruz  
5 again. If there's a consensus on the draft report, we  
6 could both send this report if we think it's accurate  
7 factually and then send our own reports. If we don't  
8 agree with the staff response, why then I think we're  
9 left to our own individual responses.

10 CHAIRPERSON BERRY: Well, if we all agree  
11 with the staff response or we had enough people to  
12 agree to it, we could send it.

13 COMMISSIONER HIGGINBOTHAM: Well, I guess  
14 that's the question for the vote, Madam Chair. Do we  
15 have --

16 CHAIRPERSON BERRY: Enough vote?

17 COMMISSIONER HIGGINBOTHAM: That's right. For  
18 the staff report.

19 CHAIRPERSON BERRY: Okay.

20 Commissioner George?

21 COMMISSIONER GEORGE: Yes.

22 CHAIRPERSON BERRY: Is your suggestion that  
23 the only report that is sent by anyone is ones that we  
24 would individually put together? That that's your  
25 preference?

1 COMMISSIONER GEORGE: That's my preference.

2 CHAIRPERSON BERRY: So you're not in favor of  
3 sending a consensus report and an individual report?

4 COMMISSIONER GEORGE: No. I believe we  
5 should just send individual reports.

6 CHAIRPERSON BERRY: So he's not in favor of  
7 your proposal either, Commissioner Anderson. He  
8 doesn't want anything for the Commissioners.

9 So, if I read the votes right, that means  
10 that three people are in favor of the staff draft, if I  
11 heard right; one person is in favor of -- so far,  
12 without counting myself -- the short and snappy  
13 version; and one person is in favor of individuals  
14 sending their own assessment.

15 And my own view would be that it would be  
16 nice to send something collective, whether it's  
17 Commissioner Anderson's letter or the staff draft, with  
18 changes, as well as people's sending their individual  
19 views. But that's just my own opinion.

20 So where we are is we can, I guess, take a  
21 vote on each one of these unless there's more  
22 discussion.

23 VICE CHAIRPERSON REYNOSO: Tell me again what  
24 Commissioner Anderson is recommending?

25 CHAIRPERSON BERRY: He is recommending his

1 letter, which is a collective response, brief and  
2 snappy. The one he read.

3 VICE CHAIRPERSON REYNOSO: Okay.

4 CHAIRPERSON BERRY: Would you be willing to -  
5 - just so we can see how the vote goes, Commissioner  
6 Anderson, would you be willing to concur and take out  
7 assessment and just have recommendations and leave the  
8 rest of it or not? It may not go anywhere anyway, but  
9 --

10 COMMISSIONER ANDERSON: Would it make it a  
11 Reynoso-Anderson letter?

12 CHAIRPERSON BERRY: That's what I'm trying to  
13 figure out.

14 VICE CHAIRPERSON REYNOSO: If it says  
15 recommendations then I would agree with that, as you  
16 know. So I could go along with that. I would still  
17 myself still file something separately by myself or  
18 with others because I don't think it's a complete  
19 response. But I think that it represents my thinking.  
20 I think the recommendations are fine.

21 COMMISSIONER ANDERSON: Well, then, I would  
22 strike assessment.

23 CHAIRPERSON BERRY: Okay. With the striking  
24 of assessments, let us take a little test vote here  
25 before we do an actual vote.

1 COMMISSIONER LEE: Madam Chair?

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER LEE: Before we do that, can I  
4 make one further recommendation? If Commissioner  
5 Anderson would agree to taking out thorough. Just say  
6 we're grateful for the GAO's investigation regarding  
7 and take out thorough.

8 CHAIRPERSON BERRY: -- the management  
9 improvements. And then we concur in your  
10 recommendations, the recommendations you've offered.  
11 And then the rest of it.

12 So it would be a Lee-Reynoso-Anderson.

13 CHAIRPERSON BERRY: Okay. Let me try out  
14 just a little test sort of vote here before we vote.

15 How many Commissioners are in favor of  
16 sending, whether you send your own individual one or  
17 don't send your individual one, sending the staff draft  
18 with a few changes?

19 COMMISSIONER GEORGE: Aye.

20 CHAIRPERSON BERRY: Okay. That's two people.

21 COMMISSIONER HIGGINBOTHAM: Leon.

22 CHAIRPERSON BERRY: Okay. That's three  
23 people. Okay.

24 How many people are in favor of sending the  
25 letter that Commissioner Anderson has now changed?

1           VICE CHAIRPERSON REYNOSO: If the OSD report  
2 doesn't have a majority, then I'd be in favor of the  
3 Anderson letter.

4           CHAIRPERSON BERRY: Okay.  
5 How about you?

6           COMMISSIONER GEORGE: How does the Anderson  
7 letter now read?

8           CHAIRPERSON BERRY: We are grateful for the  
9 General Accounting Office's investigation regarding the  
10 management improvements needed at the U.S. Commission  
11 on Civil Rights. We concur in the recommendations you  
12 have offered. The Commissioners will monitoring  
13 closely the performance of the new Staff Director to  
14 ensure timely implementation of the report's  
15 recommendations for improving resource and project  
16 management, increasing accountability for management of  
17 the Commission's operations and updating agency  
18 procedures and processes for carrying out our mission.

19           COMMISSIONER GEORGE: And we can still send  
20 our individual --

21           CHAIRPERSON BERRY: Right. And this is a  
22 little test vote I'm doing. I'm trying to see how many  
23 people would go for this letter and whatever else you  
24 want to send.

25           COMMISSIONER HIGGINBOTHAM: Please, count me

1 out. I'm not grateful, because they didn't do an  
2 adequate job. I believe the staff report is a fair  
3 analysis and I'm not grateful for someone who writes a  
4 report which does not take into consideration the  
5 history, does not note the grossly superior performance  
6 of the last two years compared to prior years. I don't  
7 applaud someone who forgets that what Oliver Wendell  
8 Holmes once said. "A page of history is worth a volume  
9 of logic."

10 CHAIRPERSON BERRY: Okay. So the way --

11 COMMISSIONER GEORGE: (Off mike.)

12 CHAIRPERSON BERRY: Yes? I thought I heard  
13 someone.

14 The way I count now, there are three in favor  
15 who would be willing to vote for the staff draft.  
16 There are three -- should I count you, Robbie?

17 COMMISSIONER GEORGE: For the Anderson draft,  
18 as amended?

19 CHAIRPERSON BERRY: Yes.

20 COMMISSIONER GEORGE: And we can still send  
21 our own report?

22 CHAIRPERSON BERRY: Right.

23 COMMISSIONER GEORGE: Yes. Okay.

24 CHAIRPERSON BERRY: Four who would be willing  
25 to send the Anderson draft.

1           COMMISSIONER LEE: Oh, I wasn't for it. I was  
2 just making a suggestion.

3           CHAIRPERSON BERRY: Three who would be  
4 willing to send the Anderson draft. And that's what we  
5 have before us, the Anderson --

6           COMMISSIONER HIGGINBOTHAM: Commissioner Lee  
7 has not voted on the staff report.

8           CHAIRPERSON BERRY: Oh. Staff report,  
9 Commissioner Lee? Would you be willing to support --

10          COMMISSIONER LEE: I was. I will support it.

11          CHAIRPERSON BERRY: So that's Lee,  
12 Higginbotham. Okay. Let's take the vote. Let's  
13 actually vote then.

14          COMMISSIONER HIGGINBOTHAM: Yes. Please do  
15 that.

16          CHAIRPERSON BERRY: All those who would  
17 support the -- which one shall I do first? I don't  
18 care. All of those who would support the OSD draft  
19 with some extension of the explanations in the way the  
20 Vice Chair has suggested, indicate by saying aye.

21          COMMISSIONER LEE: And possibly including  
22 this other report, if the other Commissioners have read  
23 it.

24          CHAIRPERSON BERRY: Okay. Once they've read  
25 it.

1 COMMISSIONER LEE: Yes.

2 CHAIRPERSON BERRY: That's the Isler letter.

3 All those in favor of supporting the OSD --  
4 sending the OSD draft with slight changes, indicate by  
5 saying aye.

6 (Chorus of ayes.)

7 Okay. Let me call the names.

8 COMMISSIONER GEORGE: Okay.

9 COMMISSIONER HIGGINBOTHAM: Please.

10 CHAIRPERSON BERRY: Commissioner  
11 Higginbotham?

12 COMMISSIONER HIGGINBOTHAM: Aye.

13 CHAIRPERSON BERRY: Commission Lee?

14 COMMISSIONER LEE: Aye.

15 CHAIRPERSON BERRY: Commissioner Reynoso?

16 VICE CHAIRPERSON REYNOSO: Aye.

17 CHAIRPERSON BERRY: And I would vote in favor  
18 of it, so that's four. Okay. Four.

19 All those opposed, indicate by saying aye. I  
20 mean no. I'm sorry.

21 All opposed, indicate by saying no.

22 COMMISSIONER ANDERSON: No.

23 COMMISSIONER GEORGE: No.

24 CHAIRPERSON BERRY: Okay. That's four to  
25 two.



1           Now, let's go to the -- I guess we don't vote  
2 on the Anderson draft then. I guess not. Okay.  
3 Although I'd be willing to send both the Anderson draft  
4 and the OSD report.

5           Yes, Commissioner Anderson?

6           COMMISSIONER ANDERSON: I just want to ask  
7 whether we want to send that response on behalf of the  
8 Commission with four votes in favor of it?

9           CHAIRPERSON BERRY: Well, let me just say  
10 that while technically we can because we have a quorum  
11 and the vote is four to two, which means it passed,  
12 it's the kind of issue that we've been severely  
13 criticized by the citizens commission for having  
14 arguments about votes. And I know that if we do that,  
15 people who are on the other side of the issue will say  
16 that we shouldn't record any votes unless it's a  
17 majority of the Commission, even though there's no  
18 parliamentary rule to say so.

19           And I don't know what to do about this issue.  
20 In all fairness if you have a quorum and if you have a  
21 vote, whether it's in the Congress or anywhere else,  
22 the vote prevails. And I'm always caught because I  
23 feel it would be unfair for the -- even if I didn't  
24 vote, it would be three to two.

25           So that means that if people who are on the

1 side of winning, if I refuse to report the vote as for  
2 the Commissioners, they can say that I am not abiding  
3 by practice and policy and that I'm not doing what I'm  
4 supposed to do. If I do it, I'll get criticized on the  
5 basis that it wasn't a majority.

6 So, you have a solution to this problem,  
7 Commissioner Anderson?

8 COMMISSIONER ANDERSON: I thought I did when  
9 I offered my letter. I'm not objecting to allowing the  
10 Commission to do it. I'm just thinking that --

11 CHAIRPERSON BERRY: Impact.

12 COMMISSIONER ANDERSON: -- responding to the  
13 GAO report that is of the nature it is, with a response  
14 that garners four votes on the Commission, I would be  
15 hesitant to do it if the vote went my way.

16 COMMISSIONER GEORGE: Madam Chairman?

17 CHAIRPERSON BERRY: Yes, Commissioner George.

18 COMMISSIONER GEORGE: I think procedurally, I  
19 think the particular context and issue and so forth  
20 really matter, but I think procedurally, I will commit  
21 myself right here as saying that you've got a  
22 legitimate majority here and you can send it on the  
23 basis of that. So I will lodge no procedural objection  
24 to that.

25 I don't think it would be -- I think it's

1 your point of view, as well as my own. I don't think  
2 it would prudent.

3 CHAIRPERSON BERRY: What do you think would  
4 be prudent?

5 COMMISSIONER GEORGE: Well, I think the  
6 prudent thing to do in view of the down the line  
7 division on this, it would be more towards -- would be  
8 for us individually to send our points of view or to do  
9 it in groups. Send the OSD as representing the view of  
10 most Commissioners. And then I don't know whether it  
11 would be a single view that could be accepted on the  
12 other side and send on behalf of the other four or  
13 whether there would be two or three or whatever.

14 I'd be willing to sign on to Carl's if he  
15 wants to do it. But I don't think it's prudent. (Off  
16 mike.)

17 COMMISSIONER HIGGINBOTHAM: Now, I must  
18 confess that I'm having trouble understanding this.  
19 (Off mike.)

20 (Laughter.)

21 Every Monday, it has 5:4 decisions; 4:2, 4:3  
22 decisions. They don't pass five persons voting on one  
23 concept for the basis of the judgment they make and  
24 they do it -- (off mike) -- and no one objects.

25 Now, we're not that much more pure than the

1 United States Supreme Court. They have no problem with  
2 me if you say the Commission voted, four in favor, two  
3 against, some abstaining. There's no problem with me  
4 if you use the numbers of the people, the names of the  
5 people who voted for.

6 But I can't understand why the United States  
7 Civil Rights Commission has to be -- (off mike).

8 CHAIRPERSON BERRY: Well, the point, --

9 COMMISSIONER HIGGINBOTHAM: Every day on the  
10 Supreme Court. And no one suggests that there's  
11 something wrong.

12 COMMISSIONER GEORGE: Can I explain why?

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER GEORGE: (Off mike.)

15 So I'm not going to object to it. But I do  
16 think it would be prudent, given the nature of the  
17 issue and the fact that we're doing it after a long  
18 meeting where two people had to go out of the meeting.

19 And we know what the result would be if they  
20 were here.

21 CHAIRPERSON BERRY: Well, we're assuming, We  
22 don't know how they would vote but we're assuming how  
23 they would vote. Or maybe you know. I don't know.

24 COMMISSIONER GEORGE: (Off mike.)

25 CHAIRPERSON BERRY: Well, I would think that

1 -- what did you say, Commissioner George?

2 COMMISSIONER GEORGE: I said, you know, it's  
3 a familiar divide, the same divide that we run into  
4 time and time again.

5 CHAIRPERSON BERRY: Over and over again.

6 COMMISSIONER GEORGE: Yes.

7 CHAIRPERSON BERRY: Well, I would think that  
8 in the interest of collegiality, and taking  
9 Commissioner Higginbotham's point that while it is  
10 perfectly within Commission policy, practice and  
11 everything else for me to sign a letter for the  
12 Commissioners if I have a majority, no matter how many  
13 Commissioners are here, that without violating that  
14 practice -- and I'm stating this on the record because  
15 I may drop dead tomorrow and somebody else will be the  
16 Chair of the Commission and I assume they will follow  
17 the practice and the policy. On this occasion, what I  
18 will do is we will send the OSD response and in the  
19 first line of it, we will say that the Commission, by a  
20 vote of four to two with two Commissioners not present  
21 -- and we can even say at the end of a long meeting  
22 that went much beyond the time, if that makes you  
23 happy.

24 I'm trying to be collegial here. I don't  
25 want folks to feel blindsided or anything. Four

1 Commissioners voted in favor of the response which is  
2 being forwarded to you, and we would appreciate it if  
3 you would include this in the report. And I assume that  
4 other people will send their own responses.

5 Now, do you guys think that's fair, those of  
6 you who voted in the opposition or is there something  
7 else I should do to be prudent?

8 Have any other prudent suggestions?

9 COMMISSIONER GEORGE: I don't have any  
10 objection. As I said, I don't have an objection.

11 CHAIRPERSON BERRY: Do you think that's fair  
12 though?

13 COMMISSIONER GEORGE: Yes. Yes, I do. I  
14 mean, I don't think we should do this very often, to  
15 vote on an issue this contentious, this divided, when  
16 two people aren't present when they're both on the same  
17 side.

18 If it were two people missing on one said and  
19 one on the other, that would be okay. But when they're  
20 both on the same side so that you just have a gratuity  
21 of those people being available with a majority.  
22 Because once that starts happening, I know from  
23 experience what happens next. When there's a majority  
24 of four to two and you see that coming, then the other  
25 side kills the quorum so that you can't take the

1 action.

2           So I'm not objecting. I don't think any kind  
3 of this is done that's duplicitous or unfair here. But  
4 let's just restrict it to this time just for our own  
5 internal purposes and without binding ourselves in any  
6 legal sense. I just think let's not do this very  
7 often.

8           CHAIRPERSON BERRY: Do you have a problem  
9 with that, Commissioner Anderson?

10           COMMISSIONER ANDERSON: No. I don't have a  
11 problem with you sending the letter without the  
12 amendment that you proposed if you wish to do that.  
13 That's fine with me. I think the record shows how many  
14 people voted for it.

15           And I'm not questioning the right or the  
16 precedent or anything like that. I just think that to  
17 use a Supreme Court example, I don't think Earl Warren  
18 would have been comfortable releasing Brown v. Board of  
19 Education in a four to three vote.

20           Now, this isn't Brown v. Board of Education,  
21 but in the history of the Commission, this GAO report  
22 is quite an important report and I think if I were  
23 doing it, I would not respond to GAO with a letter that  
24 garnered four votes of this Commission. That's all I'm  
25 saying. But we have a right to do it and certainly I'm

1 not going to stop anybody from doing that.

2 VICE CHAIRPERSON REYNOSO: Do you think it's  
3 better to have no official response then, Commissioner  
4 Anderson, and then just have the individual responses?

5 CHAIRPERSON BERRY: Yes. I'm trying to find  
6 out what you think would be fair under the  
7 circumstances. That we have individual responses?

8 VICE CHAIRPERSON REYNOSO: If that's more  
9 fair, then maybe that's what we should do.

10 COMMISSIONER ANDERSON: Well, I really think  
11 the problem is that the vote on the letter suggests  
12 what our response to the GAO report ought to be. And I  
13 think we put the letter before what we really want to  
14 do about the GAO report.

15 Now, if the idea is that the GAO report is  
16 erroneous and we don't have to really respond to it,  
17 the substance of it, then that gives us one course of  
18 action. But if we think that there are real problems  
19 that the GAO has identified, then I think a different  
20 kind of response is necessary.

21 And the letter, in my opinion, is the cart  
22 before the horse.

23 COMMISSIONER GEORGE: Madam Chairman?

24 CHAIRPERSON BERRY: Yes.

25 COMMISSIONER GEORGE: One thing I think we



1 have been very good about in the way of collegiality on  
2 the Commission is not taking advantage of the actions  
3 of members who seize the opportunity to put something  
4 through that we couldn't get through if everybody were  
5 there.

6 I don't accept those views, Madam Chairman.  
7 I recall not ever having missed a meeting or I don't  
8 recall every having missed a meeting. I think all the  
9 rest of us have had, from time to time, to miss a  
10 meeting. And that means that one side is a minority.

11 We can do without taking advantage of that.  
12 If you do that this time, I have no problem. That's  
13 okay. I don't consider it any kind of breach. But the  
14 reason I don't think we should make it any kind of  
15 precedent is I value this informal understanding we've  
16 had that we don't take advantage of gratuitous absences  
17 for getting something through that otherwise couldn't  
18 get through. That's my only point.

19 VICE CHAIRPERSON REYNOSO: My question,  
20 Robbie, whether positions are split or four, is it best  
21 then to simply not have an official response? Maybe  
22 just a response that says thank you for your report.  
23 Period. And then have individual responses. Do you  
24 think that would be the most collegial thing to do?  
25 Maybe that's what we ought to do. But we need to do

1 something.

2           COMMISSIONER GEORGE: I agree, Cruz. And I  
3 think the point -- I from the beginning have thought  
4 what we should do is respond individually to it. The  
5 letter from the GAO, as I recall, sets that out as one  
6 of two possibilities.

7           Actually, I think it specifically mentions  
8 that as a possibility. Maybe we should take advantage  
9 of that, given the circumstances that we mentioned, and  
10 do it that way. (Off mike.)

11           VICE CHAIRPERSON REYNOSO: But I must say,  
12 speaking personally, I wouldn't object to having a vote  
13 that just says that Commissioners -- that we voted to  
14 accept a recommendation that Commissioners respond  
15 individually. Period.

16           CHAIRPERSON BERRY: Well, we could either do  
17 that or we could send a letter saying that although the  
18 Commissioners voted four to two in this meeting, two  
19 Commissioners were absent and therefore, I am not  
20 sending a letter on behalf of the Commission but I am  
21 sending it on behalf of the four Commissioners who  
22 voted in this way, and go ahead and send the response.

23           COMMISSIONER GEORGE: That would be fine with  
24 me.

25           CHAIRPERSON BERRY: Do you think that's fair?

1                   COMMISSIONER GEORGE: I think it's perfectly  
2 fair.

3                   VICE CHAIRPERSON REYNOSO: In that event,  
4 though, Madam Chair, I'd make a motion that we thank  
5 the GAO for their report and that we have voted to  
6 permit individual responses from the Commissioners to  
7 the report, period. Then folk can get together and  
8 respond to it.

9                   CHAIRPERSON BERRY: How would we do that  
10 procedurally? We would take Carl's letter and say, if  
11 he takes out grateful -- we have received and reviewed  
12 the General Accounting Office's investigation regarding  
13 the management improvements needed at the Commission  
14 and we concur in the recommendations you have offered.

15                   VICE CHAIRPERSON REYNOSO: With the --

16                   CHAIRPERSON BERRY: Not that, either.

17                   (Laughter.)

18                   VICE CHAIRPERSON REYNOSO: There was a  
19 concern by Commissioner Higginbotham as to the tone of  
20 the letter, so I was just suggesting even a shorter  
21 letter. Just say thank you very much for your report.  
22 We appreciate it. We voted to have Commissioners  
23 respond individually. Thank you very much.

24                   That way we don't tread on anybody's --

25                   CHAIRPERSON BERRY: How is that? How would

1 that be, Carl? --

2 COMMISSIONER ANDERSON: It's fine with me.

3 COMMISSIONER LEE: But I thought the Judge  
4 didn't want to offend them for this.

5 CHAIRPERSON BERRY: Didn't want what?

6 COMMISSIONER LEE: The report. He didn't want  
7 to offend them.

8 COMMISSIONER GEORGE: Oh, no. He didn't want  
9 to say that they did a thorough job.

10 VICE CHAIRPERSON REYNOSO: -- in the response  
11 that I would hope to send, together with some other  
12 folk. But it's their job to issue reports, so they'd  
13 certainly have no objection to thanking them for the  
14 report. And in fact, their recommendations and other  
15 things are helpful.

16 CHAIRPERSON BERRY: Why do we need to send  
17 that though? They said people could just send  
18 individual responses. And the man from GAO is sitting  
19 here listening.

20 VICE CHAIRPERSON REYNOSO: All right.

21 CHAIRPERSON BERRY: What this debate tells  
22 us, if I may be permitted to say so, colleagues, is  
23 that the GAO never addressed the fundamental problem  
24 with the Commission.

25 VICE CHAIRPERSON REYNOSO: That's true.

1           CHAIRPERSON BERRY: Which, in my view, has  
2 not been addressed by the GAO. There is a fundamental  
3 structural problem with this Commission and if anyone  
4 wants to do anything about it -- I see staff members  
5 nodding their head. If anyone wants to do anything  
6 about this Commission with all due respect,  
7 recommending that we write a new table of organization  
8 and that we do some AI's and that we put in the  
9 management information tracking system which we had  
10 agreed to so anyway, is just wimping out.

11           That is not going to solve the fundamental  
12 problem with this Commission. The fundamental problem  
13 is that the structure puts us in a position where we  
14 get divided and we can't get consensus. It's hard for  
15 us to get consensus on anything. And then we have a  
16 Staff Director who runs the day-to-day and we can't get  
17 a consensus on what the Staff Director is supposed to  
18 do.

19           But basically it's that we're four-four.  
20 That's what our problem is. It's not an uneven number.  
21 if it were uneven, like the Supreme Court, it would be  
22 five to four or whatever, and you could always get a  
23 vote. But here, if everybody's here, most of the time  
24 you wouldn't be able to get anything done except  
25 without great, great storm and drung.

1           And I say that without saying that any of the  
2 individual recommendations or assessment that GAO made  
3 may have some merit. That isn't my point. But my  
4 point is when you get to the recommendations, let us  
5 consider do we really believe that changing the table  
6 of organization and publishing it in the Federal  
7 Register and writing some new administrative  
8 instructions and setting up a management information  
9 tracking system is going to improve the way we function  
10 as Commissioners and make us faster at getting reports  
11 done and agreement and consensus and all the things  
12 that are problems here at the Commission.

13           I mean, it's almost 3:00, so I'm sorry, Carl.

14           So here's what we'll do. The proposal on the  
15 floor is that even though we had this four-two vote, I  
16 can either write the letter saying that for the four  
17 people who want to send this or whatever we decide to  
18 send, that there was a four-two vote to send the OSD  
19 staff response and that two Commissioners were absent  
20 and we are evenly divided. So therefore, I am not  
21 sending this for the Commissioners, but with respect to  
22 GAO's invitation that we respond individually, the four  
23 of us are sending this. That's one suggestion.

24           I've forgotten what the others are. The  
25 others are that we -- and I assume, Commissioner

1 George, reiterating, you believe that under the  
2 circumstances, that's fair?

3 COMMISSIONER GEORGE: Yes.

4 CHAIRPERSON BERRY: And Commissioner  
5 Anderson, under the circumstances, however you might  
6 think -- the only other alternative is to send nothing,  
7 have another meeting or another discussion when  
8 everybody can be present and see if we can get a  
9 response and get an extension of the GAO deadline.  
10 That's the only other option I can think of because the  
11 deadline is next week. Monday.

12 COMMISSIONER GEORGE: I think Cruz was right.  
13 He had a good way of thinking about it. What would we  
14 send if we had deadlocked four to four. Just do it  
15 that way.

16 Your solution seems to fit, Chairman. Your  
17 proposal seems to fit that.

18 CHAIRPERSON BERRY: Okay.

19 Commissioner Anderson?

20 COMMISSIONER ANDERSON: Well, I think what  
21 you propose is fair. I think that sending a letter  
22 which four Commissioners have voted for is also fair on  
23 behalf of the Commission. I think, however, many  
24 people who are going to read that letter, when the most  
25 likely result is going to be you're going to get either

1 four or more other letters from Commissioners, the real  
2 effect is going to be four Commissioners took one  
3 position and a number of other Commissioners took  
4 another position.

5           So, effectively, it's going to be treated as  
6 individual Commissioners writing. And then the  
7 question will be that the arguments and the analysis  
8 rest on their own merits for whoever cares about  
9 reviewing the GAO report and our response.

10           So, either way you want to do it is fine with  
11 me.

12           CHAIRPERSON BERRY: I said there is another  
13 option, which is to not send anything, ask for an  
14 extension have another meeting and have the  
15 Commissioners all discuss it, either on the phone or in  
16 person. That's another option.

17           COMMISSIONER HIGGINBOTHAM: I would really be  
18 opposed to any discussion. We've got enough critiques  
19 about -- (off mike). Seems to me we've all had the  
20 report long enough and today should be the day. And I  
21 am willing to take any of those -- (off mike) -- and  
22 suggestions. I have no problem with making it clear in  
23 whatever communication you send out that four had one  
24 position and four had another. Two were able to vote  
25 against and the other two had expressed their



1 concurrence with the two who voted against it.

2           So I'm not against disclosure. I am against  
3 delay. (Off mike.)

4           CHAIRPERSON BERRY: Okay. We are going to  
5 send it out in that fashion with the explanation that  
6 we're not sending it on behalf of the Commission  
7 because the vote was four-two. That means that those  
8 of us who send it out are free to, if we have other  
9 statements that we want to add, add them, because it  
10 will be our statement. So we can incorporate the OSD  
11 response in whatever we happen to send out if we have  
12 anything to send out.

13           COMMISSIONER HIGGINBOTHAM: Right.

14           CHAIRPERSON BERRY: And others may write  
15 whatever they want to.

16           COMMISSIONER HIGGINBOTHAM: Right.

17           So that will be the understanding.

18           COMMISSIONER GEORGE: Okay. Good.

19           CHAIRPERSON BERRY: Okay. Then that takes  
20 care of that issue and I don't have anything else,  
21 unless somebody else has something else.

22           So in that case, thank you very much for the  
23 day. Your secretary asked me when this meeting would  
24 be over and I said promptly by no later than 2:00. I  
25 missed it by an hour.

1                   So the meeting is adjourned and I thank you  
2 very much for your time.

3                   (Whereupon the proceedings were concluded.)

4

5

REPORTER'S CERTIFICATE

This is to certify that the attached  
proceedings before: U.S. COMMISSION ON CIVIL RIGHTS

In the Matter of: MEETING

were held as herein appears and that this is the  
original transcript thereof for the file of the  
Department, Commission, Administrative Law Judge  
or the Agency.

  
Official Reporter.

Dated: JUNE 13, 1997