

US COMMISSION ON CIVIL RIGHTS

MEETING

FRIDAY, 14 JULY 1995

OPEN SESSION

The meeting was held in Conference Room 500, 624 9th Street, N.W., Washington, D.C. at 9:30 a.m., Mary Frances Berry, Chair, presiding.

Present:

Mary Frances Berry	Chairperson
Cruz Reynoso (via Telephone)	Vice Chairperson
Carl A. Anderson	Commissioner
Arthur A. Fletcher	Commissioner
Robert P. George	Commissioner
Constance Horner	Commissioner
Russell G. Redenbaugh	Commissioner
Charles Wang	Commissioner
Mary K. Mathews	Staff Director

Also Present:

Staff Present:

Carol-Lee Hurley
Conner Ball
Jacqueline Johnson
Anthony K. Wells
Frederick Isler
Betty Edmiston
Barbara J. Brooks
Edward Darden
James Cunningham
Nadja Zalokar
Tami Trost
Christine Plagata-Neubauer
Stephanie Moore
William Lee
Miguel Sapp
George Harbison
Franklin Chow
Rosalind D. Gray
Charles Rivera

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Summer Interns Present:

Bonnie Shen
Alex Eule
Jennifer Parry
Nicola Marzek

Commissioners' Assistants Present:

Ron Brown
Dennis Teti
Stella Youngblood
Krishna Toolsie

I-N-D-E-X

<u>AGENDA ITEM</u>	<u>PAGE NUMBER</u>
I. Approval of Agenda	4
II. Approval of Minutes of June 9, 1995 Meeting	6
III. Announcements	6
IV. Staff Director's Report	11
V. "Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs" Report	36
VI. Allegations of Racist Behavior by Agents of the Bureau of Alcohol, Tobacco, and Firearms in Tennessee	127
VII. Religious Liberty	138
VIII. SAC Chair Conference Followup	152
IX. State Advisory Committee Report "Rising Racial Tensions in Logan County, West Virginia"	152
X. Future Agenda Items	154

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

(9:41 a.m.)

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CHAIRPERSON BERRY: First of all, the first item on the agenda is approval of agenda. And we had a suggestion for an addition to the agenda. It came from Commissioner Anderson, which I'm inclined to add to the agenda.

It concerns the "Allegations of racist behavior by agents," it says here, "of the Bureau of Alcohol, Tobacco, and Firearms in Tennessee." I'm reading from Commissioner Anderson's memo to the staff director.

I suggest that we add this to the agenda. After we discuss Title VI, if there's no objection, although under the rules I am allowed to add it to the agenda, I think it should be added. Okay. Without any kind of objection, we'll do that right after we do Title VI.

Does anyone have any other suggestions or additions to the agenda? Commissioner Anderson?

COMMISSIONER ANDERSON: I have another item related to religious liberty which I'd like added.

CHAIRPERSON BERRY: Okay. Could we --

VICE CHAIRPERSON REYNOSO: Madam Chair?

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1 CHAIRPERSON BERRY: Yes, Vice Chair?

2 VICE CHAIRPERSON REYNOSO: I just want to
3 mention that I can't hear the discussion too well.
4 And I do want to participate. It would be helpful if
5 it turned out that there's a way of doing that.

6 CHAIRPERSON BERRY: Can you hear me now,
7 Vice Chair?

8 VICE CHAIRPERSON REYNOSO: I can hear you
9 a little bit better, yes.

10 CHAIRPERSON BERRY: All right. I'll yell
11 into the thing. If everybody can push up their mikes
12 a little bit closer? Commissioner Anderson said he
13 wants to add another item to the agenda concerning
14 religious liberty.

15 VICE CHAIRPERSON REYNOSO: Okay.

16 CHAIRPERSON BERRY: How about if we add
17 that item after we discuss the BATF item, which was
18 also suggested by Commissioner Anderson.

19 COMMISSIONER ANDERSON: Good. Thank you.

20 CHAIRPERSON BERRY: Okay. So, with that,
21 can we get a motion for approval of the agenda?

22 COMMISSIONER ANDERSON: So moved.

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

25 (Whereupon, there was a chorus of "Ayes.")

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CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: No opposition. It was unanimous.

CHAIRPERSON BERRY: The next item is the approval of the minutes of June 9, 1995. Could I get a motion for the approval of the minutes?

COMMISSIONER ANDERSON: So moved.

CHAIRPERSON BERRY: All right. It has been moved and seconded. Does anyone have any discussion of the minutes of the last meeting?

(No response.)

CHAIRPERSON BERRY: No discussion. All in favor of approval of the minutes indicate by saying "Aye."

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

CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: Unanimous approval.

CHAIRPERSON BERRY: Now we come to the item of announcements. You have been given information which notes that the markup of our budget has taken place in the House. Why don't you make these announcements?

STAFF DIRECTOR MATHEWS: I'll be glad to.

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1 CHAIRPERSON BERRY: You're the staff
2 director. I'm not.

3 The staff director is making
4 announcements, Vice Chair.

5 STAFF DIRECTOR MATHEWS: On June 28th the
6 Commission's House Appropriations Subcommittee held a
7 markup session. And the markup for the Commission for
8 Fiscal '96, the upcoming fiscal year, was 8.5 million.
9 This compares with our current appropriation, which is
10 9 million, by being a \$500,000 reduction.

11 The full House Appropriation Committee is
12 scheduled to take up this bill, the
13 Commerce-Justice-State bill, this coming week, on July
14 19th. We will be getting back to you with results
15 after that occurs.

16 CHAIRPERSON BERRY: Do you have any other
17 announcements?

18 COMMISSIONER WANG: Can I hazard a
19 question? What is the rationale?

20 CHAIRPERSON BERRY: Sure, yes.

21 COMMISSIONER WANG: What is the rationale
22 for the reduction?

23 STAFF DIRECTOR MATHEWS: Commissioner, as
24 you know, there's a big concern about funding in
25 general and reducing the deficit and paring back where

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1 it appears needed.

2 A lot of other agencies were reduced
3 dramatically. This is not a dramatic reduction, but
4 it's a reduction that would severely impact us. And,
5 as a result, we are hopeful that the money will be put
6 back in and that we'll end up with some increased
7 number.

8 COMMISSIONER WANG: You're still hopeful?

9 STAFF DIRECTOR MATHEWS: Yes, I'm still
10 hopeful.

11 CHAIRPERSON BERRY: The civil rights
12 agencies under the jurisdiction of the same
13 subcommittee, how did they fare, Staff Director? Do
14 you know?

15 STAFF DIRECTOR MATHEWS: I have a summary
16 of that if you'll give me just one minute here. All
17 of them received reductions with the only exception
18 being EEOC. I'm doing this without the document here
19 in front of me. I believe the EEOC was -- their mark
20 was exactly what their current appropriation is. But
21 I believe all the others have a serious reduction.

22 The Civil Rights Division at the
23 Department of Justice, the House subcommittee mark is
24 the same as the Fiscal '95 level. So they were not
25 reduced.

1 CHAIRPERSON BERRY: So level funding for
2 EEOC and Justice.

3 STAFF DIRECTOR MATHEWS: Level funding for
4 EEOC and Justice.

5 CHAIRPERSON BERRY: How about the others?

6 STAFF DIRECTOR MATHEWS: These other
7 agencies are the key civil rights components of the
8 other agencies under different House Appropriation
9 Subcommittees. Department of Education, the House
10 subcommittee mark was a seven percent cut from the
11 current Fiscal '95 level, approximately 54 million, as
12 compared to the administration's request of 62.748.

13 CHAIRPERSON BERRY: Just give us the
14 percentages.

15 STAFF DIRECTOR MATHEWS: Okay. Health and
16 Human Services, a 40 percent cut from the current
17 level. Department of Labor, 7.0 percent cut from the
18 current level; and the Fair Housing Office at HUD,
19 House subcommittee mark frozen at the '95 level.

20 CHAIRPERSON BERRY: So that they all given
21 the budget environment fared well compared to some
22 other reductions we've heard except HHS OCR, which is
23 the smallest staff.

24 I'm inclined to have a discussion with the
25 Secretary over there about that agency. It has the

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1 most minuscule civil rights office with the largest
 2 number of programs that are recipients of federal
 3 funds on the domestic side. And, yet, they have this
 4 tiny, little OCR, which in my memory the whole time
 5 I've been in Washington -- and it used to be HEW and
 6 I used to be in it -- has always had this small staff.
 7 And it's almost never been able to accomplish very
 8 much. And they get a 40 percent reduction. It's
 9 interesting. I don't know what the Secretary did
 10 about that or whatever.

11 But, anyway, the rest of them seem --
 12 compared to the paring we know about elsewhere not to
 13 be too bad. So that puts our budget mark a little bit
 14 in perspective, but, remember, this is only the
 15 beginning of the process. You've got the full
 16 Committee and the House floor and the Senate and all
 17 the rest of it. Okay. Any other announcements or any
 18 comment about that?

19 (No response.)

20 CHAIRPERSON BERRY: The next item on the
 21 agenda if there are no announcements -- any
 22 commissioners, any announcements?

23 (No response.)

24 CHAIRPERSON BERRY: No. Is the staff
 25 director's report. What about the New York hearing

1 briefing book, Staff Director? Do you want to tell us
2 about that first? Is it in your report?

3 STAFF DIRECTOR MATHEWS: I'd like to
4 mention something about the New York hearing briefing
5 book. We have developed briefing books. They will be
6 put in the mail to each of the commissioners today.
7 The briefing --

8 VICE CHAIRPERSON REYNOSO: Excuse me.
9 This is Cruz. I can't hear Mary Mathews too well. I
10 can hear Mary Berry very well.

11 STAFF DIRECTOR MATHEWS: Okay, Cruz. I
12 now have two microphones.

13 VICE CHAIRPERSON REYNOSO: Thanks.

14 STAFF DIRECTOR MATHEWS: I'm amplified.
15 Okay.

16 VICE CHAIRPERSON REYNOSO: Thank you.

17 STAFF DIRECTOR MATHEWS: All right. The
18 briefing books for the upcoming hearing in New York
19 City on July 26th have been prepared. They will be
20 put in the mail to each commissioner today.

21 They contain typical information. There's
22 a background briefing paper. There's information on
23 each of the individual witnesses. And, as you know,
24 the predominant group of witnesses is witnesses who
25 are custodians of records, who will be coming to

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1 provide the Commission with records.

2 CHAIRPERSON BERRY: And I think we should
3 point out to the commissioners, although it's in one
4 of the briefing papers we got, that these people who
5 are coming as custodians are not necessarily experts
6 on the subjects. They are merely the people who are
7 custodians of the records. And the subpoena duces
8 tecum is directed at getting the records from them.

9 And they have to attest to us that these
10 are the right records, that they have been kept
11 properly and the like and that's their purpose in
12 being there, and that also some of this information is
13 confidential.

14 We have agreed in getting the information
15 and getting the information about the information from
16 the EEOC that we would not publicly identify these
17 people when we, in fact, write the report.

18 We'll analyze the information. We'll
19 analyze the data. But this is not designed to try to
20 target some particular individual in terms of them
21 providing the information to us.

22 And I'm just telling you this so that when
23 we go to the hearing we will understand that the
24 person who comes in with the record may not be some
25 expert who can answer all sorts of questions about the

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1 record. They can merely authenticate them, attest to
2 their validity and that they've been kept in the
3 proper manner and the like.

4 Commissioner Horner?

5 COMMISSIONER HORNER: Does that mean that
6 the line of questioning will get not to the substance
7 of them but simply the authentication of the
8 documents?

9 CHAIRPERSON BERRY: Right, precisely.

10 COMMISSIONER HORNER: May I ask why we're
11 inviting the mayor in that case, rather than simply
12 his designee responsible for the documents?

13 CHAIRPERSON BERRY: Because, as the
14 briefing paper explains to us, the mayor told us last
15 time when we were there. He offered to give us a
16 later report on certain items within his jurisdiction,
17 some of his programs and activities and some of his
18 policies. And he's been asked to provide information
19 concerning the policies and to give us an update on
20 the things he promised he would give us an update to.

21 So that's why the mayor is in the -- he's
22 not a custodian. And he's to discuss some of the
23 policy matters that he said he would update us on, bid
24 match program. I remember he told us that he would
25 tell us next time we came how that policy had worked

1 out, what he thought about it, and matters like that.

2 So he is in that category, although some
3 documentation will be provided. But the other people,
4 there are some union people who are also bringing
5 documents who may be asked some questions. They're
6 not custodians, about two or three of them. And
7 that's because the line of questioning the last time
8 over there lends itself to updates.

9 But the rest of these people, all of these
10 people from the brokerage houses and all of those
11 places, they're just bringing data as the custodian
12 that they will present to us so the staff can analyze
13 it.

14 COMMISSIONER HORNER: Could we have a
15 sense of the flavor of the questions?

16 CHAIRPERSON BERRY: They'll be in the
17 briefing book. The entire line of questions will be
18 in.

19 COMMISSIONER HORNER: Okay. I'm going to
20 be traveling between now literally and the day of the
21 hearing. Is it possible to get the briefing book
22 today?

23 STAFF DIRECTOR MATHEWS: Yes.

24 COMMISSIONER HORNER: Great.

25 STAFF DIRECTOR MATHEWS: Yes. They're

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1 ready.

2 COMMISSIONER HORNER: Okay.

3 STAFF DIRECTOR MATHEWS: So, I mean, they
4 could be handed to your special assistant today or put
5 in the mail this afternoon, either one.

6 CHAIRPERSON BERRY: Commissioner George?

7 COMMISSIONER GEORGE: Thank you, Madam
8 Chairman.

9 CHAIRPERSON BERRY: Can you still hear,
10 Cruz?

11 VICE CHAIRPERSON REYNOSO: Yes.

12 COMMISSIONER GEORGE: Let me get a shot,
13 Cruz.

14 VICE CHAIRPERSON REYNOSO: Okay.

15 COMMISSIONER GEORGE: The various
16 institutions that I see on the list for the morning
17 and afternoon obviously represent a very large number
18 of financial firms, but far from all that do major
19 business in New York. And I was wondering how these
20 firms were selected.

21 Was it done on a kind of random basis or
22 because of some particular activities that they have
23 been involved in or how was the decision made to
24 request the records from some and not others?

25 CHAIRPERSON BERRY: There is a memo in

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1 your briefing book which explains how the staff picked
2 them. And it was based on the data provided by EEOC
3 and profiles that were developed, although if you'd
4 like us to read the memo into the record, we will.

5 COMMISSIONER GEORGE: Oh, no need to.

6 CHAIRPERSON BERRY: But there's a staff
7 memo. There are two of them that explain in great
8 detail how these particular ones were selected from
9 all the rest of them.

10 COMMISSIONER GEORGE: Thank you.

11 CHAIRPERSON BERRY: And if you have
12 questions after that, I'm sure -- Mary, would you if
13 they have any questions?

14 STAFF DIRECTOR MATHEWS: Absolutely.

15 CHAIRPERSON BERRY: I think it's very
16 detailed, explains how it was done.

17 COMMISSIONER FLETCHER: Madam Chair, I
18 think it's important to make sure that we honor the
19 confidentiality. This is a kind of a cooperation
20 between this agency and the EEOC that I've never quite
21 heard of before. So I'd like to see it continue.

22 So let's make sure that we go an extra
23 mile in protecting that confidentiality because the
24 records as we go into this extreme battle over whether
25 we should have affirmative action and many of the

1 civil rights legislation, it is very clear to me as I
2 go across the country speaking that folk do not know
3 the record. They have no idea as to the record where
4 housing opportunities are concerned, as to the record
5 where employment opportunities are concerned, any of
6 those vital areas.

7 Somehow the data seems to kind of just
8 disappear, and it's hard to make a strategical plan of
9 any kind without the numbers. So we must protect that
10 confidentiality if they're going to trust us with the
11 numbers.

12 CHAIRPERSON BERRY: Yes. Commissioner
13 Horner?

14 COMMISSIONER HORNER: Madam Chair, I
15 understood the purpose of this hearing was to remedy
16 deficiencies in the hearing we held last September.
17 I understand from Commissioner Fletcher's comment that
18 we may be responding to a request from the EEOC to
19 supply information they are unable to get --

20 CHAIRPERSON BERRY: No, no, no, no.

21 COMMISSIONER HORNER: No?

22 CHAIRPERSON BERRY: No, no, no, no. They
23 shared information --

24 COMMISSIONER HORNER: What was he
25 referring to?

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1 CHAIRPERSON BERRY: In your briefing memo
2 and in what I said to you and in the earlier memo you
3 were sent, the EEOC gave us data which we used at the
4 New York hearing on the profiles of various firms.

5 There was a staff report that the lawyers
6 prepared that was handed out at the meeting based on
7 the EEOC data. We got the data from them. They
8 collected it under the EEO 1 forms I think they're
9 called.

10 COMMISSIONER GEORGE: Correct, right.

11 STAFF DIRECTOR MATHEWS: That's right.

12 CHAIRPERSON BERRY: But in New York we did
13 not ask enough precise questions of the firms for the
14 staff to be able to analyze for our purposes this
15 data. So now what we're doing -- and we with the EEOC
16 in giving us the data that we're using and in giving
17 us the information, which is explained in the memo, we
18 have an understanding that we're not trying to betray
19 the confidentiality of any particular firm by
20 targeting or identifying them. We're just interested
21 in profiles and how the picture looks and the like.
22 And that was the understanding we had.

23 And the firms are cooperating by
24 presenting their own individual information, which we
25 may compare to the EEOC data, which we may -- and

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1 information on recruitment practices and the like,
2 with the understanding that we're not out to target
3 them, but we're just interested in how this works.

4 COMMISSIONER HORNER: How many firms all
5 told are we collecting data from? The reason I'm
6 asking is: Will it be possible to identify these
7 firms simply by virtue of the open hearing at which
8 they have presented information when we reach our
9 conclusion?

10 CHAIRPERSON BERRY: Yes. They know, yes.
11 Their names are here.

12 COMMISSIONER HORNER: Yes.

13 CHAIRPERSON BERRY: And they know they
14 will be identified at the hearing.

15 COMMISSIONER HORNER: Yes.

16 CHAIRPERSON BERRY: But we're not going to
17 discuss the data at the hearing. So they're satisfied
18 that we will analyze the data. But people will know
19 that they testified and that they brought data, their
20 custodians brought data. They don't mind that.

21 But after that and when we analyze and do
22 the report, we won't say, for example "X Bank," by
23 name, "told us Y, Z" and the like. Okay? We will
24 simply without saying the name of somebody and
25 targeting them and saying, you know, "These people are

1 bad guys and those guys are" by name.

2 COMMISSIONER HORNER: Will our report
3 imply or state that the basis for our conclusions
4 about, for instance, hiring is this submission of data
5 so that people could infer that if we are hearing from
6 four or five firms, that it is these four or five
7 firms on which our conclusions about deficiencies are
8 based?

9 CHAIRPERSON BERRY: Well, there are so
10 many.

11 COMMISSIONER HORNER: That's why I asked:
12 How many are there?

13 COMMISSIONER GEORGE: I counted 45.

14 STAFF DIRECTOR MATHEWS: Forty-four.

15 COMMISSIONER HORNER: Oh, okay. That's
16 sufficiently comprehensive. Thank you.

17 COMMISSIONER FLETCHER: In answer to your
18 question with reference to my comment, Connie, I can
19 recall since being here asking agencies to provide us
20 with information. And they didn't really want to do
21 it. They considered the information proprietary.

22 COMMISSIONER HORNER: I see.

23 COMMISSIONER FLETCHER: And it was our
24 job, again, it's based on fact-finding. If they won't
25 give you the record, you ain't finding no facts.

1 COMMISSIONER HORNER: Gotcha.

2 COMMISSIONER FLETCHER: So what I'm trying
3 to do is basically we could cut this move right now
4 saying "Yeah. You could have our records provided you
5 live up to your agreement with us." That's basically
6 what I was saying.

7 COMMISSIONER HORNER: Thank you.

8 COMMISSIONER FLETCHER: You're welcome.

9 CHAIRPERSON BERRY: Under the "Staff
10 Director's Report," which is where we are on the
11 report, you note that we have already agreed to dates
12 for the hearings in Miami and the Mississippi Delta.

13 We agreed earlier to have a hearing on
14 affirmative action at some time or other. The
15 question is whether the Commission wants to hold a
16 hearing in affirmative action in October or whether
17 they want to hold it in December or they want to hold
18 it in January. In other words, when does the
19 Commission wish to?

20 Now, there are proposed dates. One
21 proposal is for the week of October 16th. And I might
22 explain to those of you who may be a bit concerned
23 about the heavy agenda of hearings that since we have
24 been able to hire a number of lawyers under our
25 appropriation last year and staff up the General

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1 Counsel's Office, my understanding is that the lawyers
2 are working in teams. And so it is possible for us to
3 be much more productive and execute many, many more
4 activities than we are accustomed to based on being
5 able to hire some more lawyers.

6 So we can, in fact, if you want to do a
7 hearing on affirmative action in addition to the ones,
8 Miami and -- and also depending on the commissioners'
9 schedules because you all have your own schedules to
10 keep.

11 And so the question is: Do we want to do
12 it in October, do we want to do it in December, or do
13 we want to do it in January? And how do these dates
14 look? Commissioner Wang?

15 COMMISSIONER WANG: If you say that the
16 staff time would permit such a hearing on affirmative
17 action, I think the sooner the better. The October
18 date, Madam Chair, would be I think a favorable time
19 frame from my standpoint.

20 CHAIRPERSON BERRY: The staff proposed the
21 week of October the 16th as a possibility.

22 COMMISSIONER HORNER: I am free only one
23 day that week, unfortunately, Tuesday.

24 CHAIRPERSON BERRY: Okay.

25 COMMISSIONER HORNER: Have we discussed

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1 previously how many days we want to devote to this?

2 CHAIRPERSON BERRY: Well, it would seem to
3 me we did not absolutely, but we talked in the range
4 of two or three days. It's a big topic, you know, we
5 all know, lots of very key people wanting to testify
6 covering all the bases. So I don't think one day will
7 do it or two days. I don't know. We'd be lucky if we
8 do it in three days.

9 COMMISSIONER GEORGE: Can we just rehearse
10 the dates of Miami and Mississippi Delta? Miami is in
11 the middle of September?

12 CHAIRPERSON BERRY: Miami is September
13 14th and 15th. And the Mississippi Delta is November
14 15th, 16th, and 17th, which is a meeting date. The
15 17th is a meeting date.

16 COMMISSIONER GEORGE: What was the
17 possible December date?

18 CHAIRPERSON BERRY: December the 13th,
19 14th, and 15th, which is about as late as you can get
20 toward the --

21 COMMISSIONER GEORGE: The holiday.

22 COMMISSIONER HORNER: I can do that.

23 CHAIRPERSON BERRY: Okay. What do people
24 think about December?

25 COMMISSIONER GEORGE: Would it be here in

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1 Washington?

2 CHAIRPERSON BERRY: We were assuming that.
3 That's what we talked about before, the last meeting.

4 How does December sound?

5 COMMISSIONER GEORGE: Yes, that's okay for
6 me.

7 CHAIRPERSON BERRY: Schedules? Can people
8 do December?

9 COMMISSIONER FLETCHER: When in December?

10 CHAIRPERSON BERRY: Thirteenth, 14th, and
11 15th.

12 COMMISSIONER HORNER: We're already
13 scheduled to have a meeting on the 15th.

14 CHAIRPERSON BERRY: Right. So the 13th
15 and 14th and going on -- maybe we could have a short
16 meeting.

17 COMMISSIONER HORNER: Right. What I mean
18 is that people are already scheduled to be here for
19 the --

20 COMMISSIONER FLETCHER: Madam Chairman, is
21 it possible to do it in November?

22 CHAIRPERSON BERRY: Well, November we have
23 --

24 COMMISSIONER GEORGE: Mississippi Delta
25 right in the middle of it.

1 CHAIRPERSON BERRY: Unless people have
 2 another time in November that they can do another one.
 3 You know, in the early days the Commission used to
 4 have hearings about every week, people would --

5 COMMISSIONER FLETCHER: I would like to be
 6 in on this, but my problem is my term expires in late
 7 November. I won't be a commissioner.

8 CHAIRPERSON BERRY: November the what?

9 COMMISSIONER FLETCHER: November 24th, I
 10 believe.

11 I'd like to be in on that hearing. I'll
 12 testify if I can't be a member.

13 STAFF DIRECTOR MATHEWS: We know that.

14 COMMISSIONER GEORGE: Is it out of the
 15 question to switch Mississippi Delta and the
 16 affirmative action hearing? They're one month apart.
 17 Let me throw the staff off completely.

18 CHAIRPERSON BERRY: Well, I don't -- Mary,
 19 do you know whether the logistical arrangements for
 20 the Mississippi Delta hearing are at such a point that
 21 if we were to switch the dates it would create some
 22 problems?

23 STAFF DIRECTOR MATHEWS: It could be
 24 easily switched. We have not committed in writing to

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CHAIRPERSON BERRY: To hotels and things.

STAFF DIRECTOR MATHEWS: -- to hotels and all.

CHAIRPERSON BERRY: So that's a possibility.

COMMISSIONER FLETCHER: We're going to have four new commissioners.

COMMISSIONER GEORGE: If that switch is possible, that might solve the --

CHAIRPERSON BERRY: That might solve the problem. Okay. Well, is there anyone who -- I guess everybody was assuming they were coming to the one in November. So it shouldn't be a problem.

COMMISSIONER HORNER: The problem will be finding a time to do the Mississippi one.

CHAIRPERSON BERRY: In December.

COMMISSIONER GEORGE: Could we do it in that December date?

COMMISSIONER HORNER: Oh, I see, yes.

COMMISSIONER GEORGE: Just do a switch.

COMMISSIONER HORNER: In other words, do it December --

CHAIRPERSON BERRY: Thirteenth, 14th, 15th.

COMMISSIONER HORNER: Yes, 15th.

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1 COMMISSIONER GEORGE: In a warm climate.

2 CHAIRPERSON BERRY: Why don't we agree,
3 then, to do Mississippi Delta in December and to do
4 the affirmative action hearing November on the same
5 dates we were planning to do the Mississippi Delta?

6 COMMISSIONER FLETCHER: So moved.

7 CHAIRPERSON BERRY: Need a second.

8 COMMISSIONER REDENBAUGH: Second.

9 COMMISSIONER GEORGE: Madam Chair?

10 CHAIRPERSON BERRY: Yes?

11 VICE CHAIRPERSON REYNOSO: What date in
12 November?

13 CHAIRPERSON BERRY: November the --

14 COMMISSIONER HORNER: Thirteenth, 14th,
15 15th.

16 CHAIRPERSON BERRY: No, Cruz. November
17 the 15th and 16th for affirmative action. We have a
18 meeting already on the 17th.

19 VICE CHAIRPERSON REYNOSO: Okay.

20 CHAIRPERSON BERRY: And that will be in
21 Washington.

22 VICE CHAIRPERSON REYNOSO: Okay.

23 CHAIRPERSON BERRY: And then December the
24 13th, 14th, and 15th -- and I think for us academics,
25 I think we'll probably be finished with classes by

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1 that time -- to have the Mississippi Delta.

2 COMMISSIONER GEORGE: That's good.

3 VICE CHAIRPERSON REYNOSO: Okay.

4 CHAIRPERSON BERRY: So was it seconded?

5 I forgot.

6 COMMISSIONER GEORGE: It was.

7 COMMISSIONER FLETCHER: I move the motion
8 and the second.

9 CHAIRPERSON BERRY: Okay. Moved by
10 Fletcher. Seconded by?

11 COMMISSIONER REDENBAUGH: Redenbaugh.

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

14 (Whereupon, there was a chorus of "Ayes.")

15 CHAIRPERSON BERRY: Opposed?

16 (No response.)

17 CHAIRPERSON BERRY: Unanimous. And so
18 that takes care of that schedule.

19 Now, is there anything else under the
20 "Staff Director's Report" that commissioners would
21 like to discuss?

22 COMMISSIONER REDENBAUGH: Yes.

23 CHAIRPERSON BERRY: Yes, Commissioner
24 Redenbaugh?

25 COMMISSIONER REDENBAUGH: This is my

23
1 annual question to whichever staff director we have at
2 that time, which is: Do we have a report on the
3 progress of the electronic communication project in
4 the agency?

5 STAFF DIRECTOR MATHEWS: I would be glad
6 to give you a report.

7 COMMISSIONER REDENBAUGH: Or just a date
8 by when we will actually be able use these things.

9 STAFF DIRECTOR MATHEWS: Well, they're
10 operational at the current time, Commissioner
11 Redenbaugh.

12 COMMISSIONER REDENBAUGH: Oh, good. I
13 have never received any messages.

14 STAFF DIRECTOR MATHEWS: We are up and
15 running. And, as with any kind of new exercise, I
16 think we're still in a transition period in terms of
17 employee training. We've had training, but in terms
18 of familiarity and the like. But we are already
19 identifying issues that can be more effectively used
20 by electronic --

21 COMMISSIONER REDENBAUGH: That is, the
22 directory of addresses, would that be sensitive or
23 classified? Might I have that?

24 STAFF DIRECTOR MATHEWS: Absolutely. I
25 believe that a directory, a draft, has been prepared

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1 and is under final review at the current time.

2 COMMISSIONER REDENBAUGH: So I would
3 expect it in early August, then?

4 STAFF DIRECTOR MATHEWS: Or maybe before
5 that.

6 COMMISSIONER REDENBAUGH: Okay. And also
7 is it your intention to have communications go among
8 and between commissioners on this or --

9 STAFF DIRECTOR MATHEWS: I would think
10 that might be --

11 COMMISSIONER REDENBAUGH: -- is this a
12 closed loop staff thing?

13 STAFF DIRECTOR MATHEWS: Each commissioner
14 was given, as you and the others probably received, a
15 package from us. Each commissioner was given software
16 and opportunities for training if you felt the need
17 for it. So most definitely it could be utilized among
18 the commissioners.

19 COMMISSIONER REDENBAUGH: Okay. Yes. I'm
20 told the only thing I'm missing now is the directory.

21 STAFF DIRECTOR MATHEWS: And we will
22 definitely be getting a final directory developed in
23 the next couple of weeks.

24 COMMISSIONER REDENBAUGH: And any early
25 reports of how this has shown up? I mean, I've just

1 been waiting for five years for this. I'm kind of
2 ready to hear you get the people who like it, don't
3 like it, it looks promising, too soon to tell.

4 CHAIRPERSON BERRY: Is anybody using it?

5 STAFF DIRECTOR MATHEWS: It is being used,
6 and we are incorporating new utilization of it as time
7 goes by. I mean, it's in the transition stage would
8 be the way I would generalize it at the current point.

9 COMMISSIONER REDENBAUGH, I do recall you
10 and I having conversations about this. And I'm very
11 pleased that it has been implemented in the Commission
12 this year.

13 CHAIRPERSON BERRY: So we have a
14 commitment that by early August, meaning like the
15 first week in August, there will be a directory. Is
16 that right, Staff Director?

17 STAFF DIRECTOR MATHEWS: That's correct,
18 Madam Chair.

19 CHAIRPERSON BERRY: Okay. Any other
20 questions on the staff director's report?
21 Commissioner Anderson?

22 COMMISSIONER ANDERSON: Can we have a
23 little bit more thorough update on the civil rights
24 journal and where we are with that, the articles, the
25 editorial staff, et cetera? I mean, if you can do it

1 now, fine. If you can do it in a memo later, that
2 would be fine, too, but --

3 STAFF DIRECTOR MATHEWS: I'd be glad to
4 give you a short summary right now. The goal we're
5 shooting for is to have the civil rights journal
6 issued at the end of September. And we're moving
7 definitely in that direction.

8 We have received articles from various
9 individuals. We had a Commission meeting some months
10 ago where we discussed the types of articles and we
11 had some names in front of us. We've received some
12 excellent articles.

13 We're in the design and layout phase right
14 now, putting the pieces together in an interesting
15 fashion, and are looking forward to having the final
16 document out and available at the end of September.

17 The first issue, which is what this is,
18 since 1989, I believe, does require the design layout
19 aspect to it. But subsequent issues for the upcoming
20 fiscal years we will have a layout already developed.
21 And it will be actually a quicker production schedule
22 for the future.

23 CHAIRPERSON BERRY: Okay. Any others?
24 Yes, Commissioner Horner?

25 COMMISSIONER HORNER: Madam Chair, could

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1 we also have from Mary Mathews an update on our public
 2 service announcement script? I'm wondering if that's
 3 a result of the briefing we got, we decided that our
 4 original conceptual approach of institutional
 5 advertising might not be the best way to start, and if
 6 you're revisiting that or just haven't gotten to it or
 7 I just don't know where we are.

8 STAFF DIRECTOR MATHEWS: We have received
 9 an informal agreement with the Department of Interior
 10 to provide the services we discussed the last time we
 11 had a discussion on this point at a Commission
 12 meeting. By that I mean they are very kind and
 13 generous to offer to us at no cost to the Commission
 14 utilization of their in-house studio and a staff
 15 member who has expertise in this area.

16 And it's my understanding that the
 17 individual staff members working on this project have
 18 met with him, have received agreement that he will
 19 assist in drafting the script, but that his time has
 20 been tight of late. And we had hoped to have a script
 21 finalized working with him this week, but I don't have
 22 it yet.

23 COMMISSIONER HORNER: Mary, we were
 24 supposed to get the script a few weeks after the
 25 briefing for our review.

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STAFF DIRECTOR MATHEWS: Right.

COMMISSIONER HORNER: And you're talking about finalizing script.

STAFF DIRECTOR MATHEWS: I'm not changing that point you're making, Commissioner Horner. What I'm driving at is that the staff here in the Commission felt the need for additional expertise.

And this individual has a lot of experience in this type of creative words to get the message across. And they felt he could be of great assistance in developing a script that would then come to me, would be sent to you all for your review.

And I had hoped that the staff would have a copy to me before now, but we're working on it as fast as possible. We are still shooting for having a radio spot aired before the end of this fiscal year.

COMMISSIONER HORNER: Well, we won't meet. We will have only one meeting at which to discuss the script if you have one between now and then.

STAFF DIRECTOR MATHEWS: There is only one meeting, but, yes, we could certainly forward it to you in the mail. That's another option.

COMMISSIONER HORNER: Well, I think it's important that we see the script.

STAFF DIRECTOR MATHEWS: Yes.

1 COMMISSIONER HORNER: We have no idea what
2 this is about to say.

3 STAFF DIRECTOR MATHEWS: Yes. Right,
4 right.

5 COMMISSIONER HORNER: And it's our
6 institutional --

7 STAFF DIRECTOR MATHEWS: Right, right.

8 COMMISSIONER HORNER: -- reputation at
9 stake here.

10 CHAIRPERSON BERRY: Mary, why don't you
11 send us a script in August? And if any discussion is
12 necessary, it can take place at the September meeting.

13 STAFF DIRECTOR MATHEWS: That sounds fine
14 to me, too.

15 CHAIRPERSON BERRY: So that's what we'll
16 do. Okay? Send it to us, and we'll discuss it in
17 September.

18 Any other questions on the staff
19 director's report?

20 (No response.)

21 CHAIRPERSON BERRY: Okay. Then we go to
22 Title VI, the Title VI report. Could I just for
23 purposes of discussion have somebody introduce a
24 motion for approval? And then we will discuss it.

25 COMMISSIONER FLETCHER: So moved.

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COMMISSIONER GEORGE: Second.

CHAIRPERSON BERRY: Okay. Why don't we discuss this report? Mary, do you have anything to say by way of introduction or do you want anybody to say anything by way of introduction before we begin discussing it? We plan to go through it from beginning to end.

STAFF DIRECTOR MATHEWS: I have the staff members who worked on this here who would be available for questions, but I believe that the report has been before the Commission for some time now. And I'm not sure that it may need any introduction.

I think it's an excellent -- I will make a few remarks. I think it's an excellent, a comprehensive look at Title VI programs. It's the very first time that the Commission has taken a look at Title VI in approximately 20 years.

And the comprehensiveness of the report I think was very appropriate given that time span of the Commission not addressing this issue before and given the fact that Title VI is an aspect of the activities of quite a large number of cabinet departments and federal agencies.

I think it's organized in a very effective way designed to enable individual agencies to take a

1 look at the chapter that relates to their particular
2 program. And so it would give them a very easy way to
3 access the information, our analysis, and the findings
4 and recommendations related to their particular
5 program.

6 CHAIRPERSON BERRY: Okay. Who are the
7 staff members, just for the record, who worked on
8 this?

9 STAFF DIRECTOR MATHEWS: We have Frederick
10 Isler, the Acting Assistant Staff Director for our
11 Civil Rights Evaluation Office; and Tami Trost, a
12 civil rights analyst; and Nadja Zalokar, civil rights
13 analyst; and this is a new employee who has a very
14 interesting name, Christine Pagata-Neubauer. All
15 right.

16 CHAIRPERSON BERRY: Pagata-Neubauer. All
17 right.

18 STAFF DIRECTOR MATHEWS: We're very glad
19 to have you, Christine, with us.

20 CHAIRPERSON BERRY: They're all sitting
21 there in a row?

22 STAFF DIRECTOR MATHEWS: Correct.

23 CHAIRPERSON BERRY: Okay. All right. I'm
24 inclined unless someone has an objection to do the
25 Arthur Fleming style of reviewing this report, which

1 is to go page by page and see if anybody has any
2 questions on any part.

3 I don't want anyone who has something that
4 they want to discuss ignored. So does anybody have
5 any questions on -- instead of doing it page by page,
6 does anybody have any question on the executive
7 summary, any pages that you would like to discuss or
8 changes you would like to have made? Commissioner
9 Horner?

10 COMMISSIONER HORNER: Madam Chair, I
11 wonder if it's a good use of our time to go through
12 this page by page.

13 CHAIRPERSON BERRY: Last time at the
14 Commission meeting when we considered a report a
15 commissioner objected that we were not sufficiently
16 looking at the report and that we were approving it
17 without going through it.

18 And in the past, years ago, when I first
19 came on the Commission, we used to read reports. We
20 used to sit here all day and read them page by page
21 and go over them.

22 I don't really have to do that, and I'm
23 suggesting that we could take them section by section.
24 But I do want to be sure that I don't overlook some
25 point that somebody wanted to make.

1 So I would prefer unless you object --
2 there are numbered sections -- at least if we could do
3 it section by section to make sure that somebody
4 doesn't overlook something that they meant to mention
5 or something like that.

6 COMMISSIONER FLETCHER: I move the section
7 by section approach.

8 CHAIRPERSON BERRY: Yes.

9 COMMISSIONER HORNER: Are we going to vote
10 on this procedure?

11 COMMISSIONER FLETCHER: We can if we want
12 to.

13 COMMISSIONER HORNER: There's a motion.

14 CHAIRPERSON BERRY: Anybody want to second
15 the motion?

16 COMMISSIONER WANG: I second the motion.

17 CHAIRPERSON BERRY: Okay. Anybody opposed
18 or does anybody want to discuss whether we should go
19 section by section?

20 COMMISSIONER HORNER: All right. Let's
21 have a vote on whether we should do it section by
22 section.

23 CHAIRPERSON BERRY: All right. Can you
24 hear us, Cruz?

25 VICE CHAIRPERSON REYNOSO: Yes. Is a vote

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1 going to be taken about --

2 CHAIRPERSON BERRY: If you wanted to have
3 discussion, you can before we take a vote.

4 VICE CHAIRPERSON REYNOSO: Well, no. I'd
5 like to say that I spent considerable time on the
6 Title VI report. And I think that it's an excellent
7 report, a little bit depressing in terms of what had
8 been done, but I think an excellent report. And I'm
9 prepared to vote to accept it.

10 CHAIRPERSON BERRY: Okay. But right now
11 we're asking whether the Commission wishes to discuss
12 it section by section. I don't care one way or the
13 other.

14 COMMISSIONER HORNER: Madam Chair? Madam
15 Chair, I'm prepared to vote and to say succinctly why
16 I'm going to vote how I'm going to vote now. And,
17 therefore, from my point of view it's not necessary to
18 go through it section by section.

19 If the staff would like elaboration
20 subsequently, I would be glad to provide it in a
21 meeting or in writing.

22 CHAIRPERSON BERRY: I would rather you
23 vote on it so that if we don't go it section by
24 section and there are later complaints that people
25 didn't get a chance to mention something because I

1. rushed it through, at least you will have an
2. opportunity --

3. COMMISSIONER HORNER: Call for the
4. question.

5. COMMISSIONER FLETCHER: Call for the
6. question.

7. CHAIRPERSON BERRY: -- to state your view.

8. COMMISSIONER FLETCHER: Call for the
9. question.

10. CHAIRPERSON BERRY: All in favor of
11. looking at this report section by section indicate by
12. saying "Aye."

13. (Whereupon, there was a chorus of "Ayes.")

14. CHAIRPERSON BERRY: Okay. Opposed?

15. COMMISSIONER HORNER: No.

16. CHAIRPERSON BERRY: Anybody else care to
17. vote, one way or the other?

18. COMMISSIONER REDENBAUGH: I don't care how
19. we proceed.

20. CHAIRPERSON BERRY: You don't care how we
21. proceed.

22. COMMISSIONER REDENBAUGH: I mean, there
23. are various ways to do it. They're all fine.

24. CHAIRPERSON BERRY: But we're taking a
25. vote. Three if I count you. Why don't we do it by a

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1 show of hands? How many people are in favor of doing
2 it section by section?

3 (Whereupon, there was a show of hands.)

4 CHAIRPERSON BERRY: One, two, three. How
5 about you, Cruz? I didn't hear.

6 VICE CHAIRPERSON REYNOSO: I'm abstaining
7 because I'm prepared to vote for the report.

8 CHAIRPERSON BERRY: Okay. Three, one
9 abstention. One this side of the table? I'm asking
10 for your vote.

11 COMMISSIONER HORNER: No.

12 CHAIRPERSON BERRY: Okay. One no.
13 Commissioner George?

14 COMMISSIONER GEORGE: Abstain.

15 CHAIRPERSON BERRY: One abstention.
16 Commissioner Anderson?

17 COMMISSIONER ANDERSON: Abstain.

18 CHAIRPERSON BERRY: One abstention, but
19 the vote --

20 COMMISSIONER FLETCHER: Madam Chair?

21 CHAIRPERSON BERRY: Yes?

22 COMMISSIONER FLETCHER: It sounds like to
23 me that folk are ready to vote now.

24 CHAIRPERSON BERRY: They want to vote now?

25 COMMISSIONER FLETCHER: That's what it

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1 sounds like to me if that's --

2 COMMISSIONER GEORGE: We should have some
3 discussion, I think. I mean, I don't care how we have
4 it, but --

5 COMMISSIONER FLETCHER: I'll tell you what
6 we'll do. I'll move that we accept the report.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER GEORGE: Well, that's already
9 been moved.

10 CHAIRPERSON BERRY: Let me conclude the
11 count. Okay? The count is three in favor of section
12 by section; one, two, three abstentions; and one no,
13 which in point of fact means that voting section by
14 section prevails in terms of voting.

15 COMMISSIONER HORNER: What?

16 COMMISSIONER GEORGE: Of voting or
17 discussing?

18 COMMISSIONER HORNER: You said
19 "discussing," Madam Chair.

20 CHAIRPERSON BERRY: Voting on whether to
21 discuss section by section.

22 COMMISSIONER GEORGE: Oh, yes.

23 COMMISSIONER HORNER: And we decided --

24 CHAIRPERSON BERRY: Voting on whether to
25 go section by section.

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1 COMMISSIONER GEORGE: Right, in
2 discussion.

3 COMMISSIONER HORNER: The proposition was
4 to go section by section.

5 CHAIRPERSON BERRY: Right.

6 COMMISSIONER HORNER: And that proposition
7 has just failed.

8 CHAIRPERSON BERRY: Three voted in favor.

9 COMMISSIONER HORNER: Right. And that's
10 not five. We need five.

11 CHAIRPERSON BERRY: Three abstained. One
12 voted no. I vote in favor, which makes four.

13 COMMISSIONER HORNER: Four, but we need
14 five.

15 CHAIRPERSON BERRY: Four, three, one. No.
16 We need four. We need a majority of the number of
17 commissioners voting in favor in order for a motion to
18 pass.

19 COMMISSIONER GEORGE: Majority. That's
20 right. She's right.

21 COMMISSIONER HORNER: Oh, okay.

22 CHAIRPERSON BERRY: Yes. So it passed.
23 Now, that doesn't mean that we have to read the
24 sections. I just mean that I say to you: Does anyone
25 have any questions on Section Number 1 or is there

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1 anything anyone wishes to discuss on Section Number 1?
2 If you do not, say "No." If you do, say "Yes," and
3 we'll move on.

4 Commissioner George?

5 COMMISSIONER GEORGE: Just one
6 clarification, which might make the whole thing
7 straight. In other words, all we're doing section by
8 section is discussing. We're not going to vote
9 section by section.

10 CHAIRPERSON BERRY: No. We're going to
11 ask.

12 COMMISSIONER GEORGE: We're going to vote
13 on the report as a whole.

14 CHAIRPERSON BERRY: Precisely.

15 COMMISSIONER GEORGE: We're not going to
16 vote for just Section A.

17 CHAIRPERSON BERRY: Precisely. The
18 question before us was whether we would discuss it
19 section by section. So I am asking: Is there any
20 commissioner who wishes to discuss something
21 concerning the executive summary of the report?
22 Commissioner Horner?

23 COMMISSIONER HORNER: Yes, Madam Chair.
24 Thank you. Because the executive summary summarizes
25 the report, this would be a good opportunity for me to

1 make an overall point, which I'll make very quickly.

2 I can't vote for the report. And I can't
3 vote for the report because in its totality it takes
4 a 21-year-old baseline problem and --

5 COMMISSIONER FLETCHER: Excuse me, Connie.

6 COMMISSIONER HORNER: Yes?

7 COMMISSIONER FLETCHER: I've been on the
8 other end trying to hear way out there. May I suggest
9 that you pull that --

10 COMMISSIONER HORNER: Oh, thank you. I'm
11 sorry.

12 COMMISSIONER FLETCHER: Okay. There we
13 go.

14 COMMISSIONER HORNER: Sure. I'm not able
15 to vote for the report because in its totality it does
16 not take account of the fact that 21 years have past
17 and redefine the problem in terms of today but
18 presumes the utility of a now I think potentially
19 outdated baseline definition of the problem. In other
20 words, I think we need conceptually to revisit the
21 issue.

22 Secondly, in its treatment of the Reagan
23 years, Reagan presidential years, it presumes that the
24 basis for judgment is more personnel means commitment
25 to civil rights. Absent that, there's no policy

1 alternative, no legal or constitutional alternative,
2 interpretation of what constitutes good enforcement.

3 I don't see any evidence that interviews
4 were conducted with significant players from that
5 period. It's kind of presumed that that was a time of
6 simple bad odor. And I think it's not a fair
7 assessment of that period.

8 Third, there is advocacy for race-based
9 scholarships.

10 And, fourth, there is a presumption, an
11 unexamined presumption, of the value of disparate
12 impact theory. And these are all areas where I think
13 there needs to be a more balanced presentation and
14 more of a presumption of good faith for people of
15 opposing points of view.

16 CHAIRPERSON BERRY: Okay. Anybody else
17 want to say anything? We can come back to the
18 executive summary again at the end. I plan to because
19 it is a summary. Would anybody at this time want to
20 say anything about it? Yes, Commissioner Wang?

21 COMMISSIONER WANG: Madam Chair, I
22 understand fully Commissioner Horner's concern, but I
23 think until such time that we have changed the
24 baseline -- at this very moment we have not changed
25 the baseline. This is a discussion.

1 So since all the data collected were on
 2 the basis of the past, whatever happened in the last
 3 20 years or so, if we were to wait for whatever is
 4 going to happen down the road, then we cannot do
 5 anything anymore. Let's just stop and don't write
 6 anything.

7 I think on that basis we need to -- I take
 8 note of what you're saying, but, on the other hand,
 9 given the current, at least up to this moment,
 10 framework, I think this document presents one of the
 11 best written documents that we have ever produced. I
 12 felt, I mean, from that standpoint, not talking about
 13 predicting the future, I think that part you're
 14 absolutely correct, whatever the future holds may
 15 totally be a different story.

16 But at this very moment, based on what we
 17 currently have in terms of a point of reference, I
 18 mean, that's where we can go by it. So I would make
 19 that point.

20 VICE CHAIRPERSON REYNOSO: Madam Chair?

21 CHAIRPERSON BERRY: Yes, Vice Chair?

22 VICE CHAIRPERSON REYNOSO: You know, I've
 23 been in this business of enforcement of civil rights
 24 laws on and off I guess professionally since 1965. I
 25 think we've learned how some effective ways of

1 enforcing civil rights are.

2 And it seems to me that this is a very
3 sophisticated report that takes into account those
4 procedures and programs that we know have worked. And
5 it seems to me that there is some burden on those who
6 are critical of those programs that have worked to
7 come up with alternatives.

8 It's not enough, it seems to me -- with
9 due respect, Connie, today is the 1990s, not the 1960s
10 and the 1950s, not the 1970s. But there's some
11 responsibility to come up with a more effective way of
12 implementing those ideals found in the legislation.

13 And I just found this, based at least on
14 my own experience, to be a very well-done report,
15 suggesting in detail what these agencies can do better
16 to enforce the civil rights law that Congress has
17 passed.

18 CHAIRPERSON BERRY: Could I just say to
19 those who are not aware or just remind all of us what
20 the purpose of these reports is and what the staff
21 mandate was in doing all of this work that they did.
22 Enforcement reports have been done by this Commission
23 ever since the Commission was involved in getting the
24 civil rights laws passed.

25 The first task for the Commission was to

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1 do fact-finding, to sort of recommend what kind of
2 laws should be passed. After that, one of the
3 Commission's missions was to evaluate the enforcement.

4 Enforcement studies have been done by this
5 Commission over and over, year in and year out, until
6 recent years, no matter what administration was in
7 office, no matter what.

8 And the question always asked by the Civil
9 Service staff was: How well are they enforcing the
10 laws that are on the books, the laws that are there?
11 The question asked by the staff is not: Should there
12 be other laws or is this an old problem, new problem,
13 different problem, or whatever?

14 But if the legislature doesn't change the
15 law, how well are these agencies doing the job of
16 enforcing the law that is there and, looking at each
17 agency and its responsibility, is it doing what it is
18 supposed to be doing, not that the staff would ask:
19 Well, should they be doing this or do we think it's a
20 great idea? And for years Civil Service staff and
21 this agency have done this job.

22 We have started again in this Commission
23 trying to do enforcement reports again to evaluate
24 enforcement. And what the staff has done is followed
25 the model to the best of their ability, to get the

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1 information, and to say that until the law changes,
2 which we as a Commission may recommend that the law
3 should be changed or we think the law isn't the way it
4 should be or that the problem isn't being addressed.

5 But this report has a narrower purpose of
6 looking at enforcement. Now, I see the staff members
7 nodding their heads. I mean, that's the question they
8 were asked to do. And they went out, and they did
9 this work. And they did it.

10 So I would hope we would keep that in
11 mind, whether we like the report or don't like the
12 report. I can't influence anybody to like or dislike
13 it. But at least understand what the question was
14 that they were asked and what they were trying to
15 answer as we go through it and as we respond to their
16 work.

17 Does anybody want to make any more
18 comments on the summary before I ask you if you want
19 1 through -- and I'll go through the whole thing and
20 then come back again.

21 COMMISSIONER GEORGE: On the summary,
22 Madam Chairman -- well, let me say just generally
23 since I think all of us have to preface our remarks
24 with a more general comment I think it's very
25 difficult to do a report that would be satisfactory

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1 from the point of view of all the commissioners
2 representing the diverse viewpoints that we have.

3 And I believe that this report is a
4 comprehensive one. And it's technically really a very
5 good one. When we get to the approval of the West
6 Virginia SAC report, I'm going to vote to approve that
7 report, which has now had the technical improvements
8 that I suggested and that we've now made a matter of
9 policy. But this report does an even better job at
10 that and as a sort of model.

11 And if the report embodied a philosophy
12 that I agreed with, I would be very happy to vote for
13 it because it's a very good report. And for those of
14 you who do agree with the philosophy of the report, I
15 think you should vote for it because it is an
16 excellent job. I can't complain about the technical
17 accomplish of the report. It's very good.

18 I wish I did agree with the philosophy,
19 but I don't. And I think it is difficult to write a
20 purely technical report that doesn't embody a
21 philosophical view about civil rights or matters like
22 civil rights.

23 So that's something that throughout the
24 report gives me trouble, although respecting, as I do,
25 that reasonable people have different views of civil

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1 rights than my own, I can see why the report would be
2 very impressive to people who do take a different
3 view.

4 Now, to restrict my comment here to the
5 executive summary, one place where I have a
6 disagreement is on the whole issue of block grants and
7 the potential of block grants for good, as opposed to
8 harm.

9 The executive summary is very critical of
10 block grants. I understand responsible people have
11 the criticisms that are mentioned here, but --

12 CHAIRPERSON BERRY: What page are you
13 referring to?

14 COMMISSIONER GEORGE: Well, it's on Page
15 4, again on Page 14. For example, on Page 14,
16 "Congress has complicated civil rights enforcement by
17 increasingly converting federal financial assistance
18 programs into state-administered block grants without
19 requiring sufficient and consistent federal oversight
20 of civil rights enforcement."

21 CHAIRPERSON BERRY: Would you like to
22 suggest some different language? That's the other
23 purpose of going through this section by section? So
24 if you would like to say something else, tell us what
25 you would like it to say.

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1 VICE CHAIRPERSON REYNOSO: I'm sorry. I
2 can't hear this exchange too well.

3 CHAIRPERSON BERRY: The exchange concerns
4 Page 14 of the executive summary, where Commissioner
5 George has a problem with the discussion of block
6 grants. And I said --

7 VICE CHAIRPERSON REYNOSO: I heard your
8 expression of concern on block grants, --

9 CHAIRPERSON BERRY: What I said was --

10 VICE CHAIRPERSON REYNOSO: -- not your
11 reaction to that concern.

12 CHAIRPERSON BERRY: What I said was that
13 one purpose for going through the report in this way
14 is that if commissioners have changes that they would
15 like to suggest in the language, we can see if other
16 commissioners would agree and we can agree on language
17 changes that may satisfy people so that we can get
18 some agreement. So I asked him if he had any language
19 changes he would like to pose.

20 VICE CHAIRPERSON REYNOSO: That makes
21 sense. I must say that my reaction was not that the
22 report was critical of block grants but that if we're
23 going to have a block grant, we have to recognize that
24 there's a special responsibility of the federal agency
25 to lay down ground rules and guidelines for the states

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1 to follow and that the federal agencies had failed to
2 do that.

3 I didn't view it as critical to block
4 grants. I viewed it as simply presenting different
5 issues for enforcement of civil rights. And the
6 report was critical that the federal agencies had not
7 taken that into account.

8 So it wasn't, it seems to me, a policy
9 statement for or against block grants. It was simply,
10 again, looking at what Congress had intended with
11 respect to Title VI and then saying "Look, the
12 agencies need to take this into account."

13 CHAIRPERSON BERRY: So if you would like
14 to propose some language -- I agree with the Vice
15 Chair. When I read it, I didn't take it as
16 criticizing block grants. I took it wondering what
17 was going to happen with civil rights enforcement.

18 COMMISSIONER GEORGE: I understand that,
19 but I'm not persuaded of the truth of the claim that's
20 made that there's a danger of failure of civil rights
21 enforcement because of failures of Congress to impose
22 sufficient requirements on the states to whom block
23 grants are made. I don't see that that's been
24 established in the report.

25 CHAIRPERSON BERRY: In other words, you

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1 don't see anywhere in the report where it shows that
2 there is insufficient federal oversight of civil
3 rights enforcement?

4 COMMISSIONER GEORGE: In the area of block
5 grants.

6 CHAIRPERSON BERRY: But do you see
7 anywhere in the report where there is evidence of
8 insufficient federal oversight of civil rights
9 enforcement at the state level?

10 COMMISSIONER GEORGE: I can't speak to
11 that right now. I'll have to go through my notes.
12 But in the area of block grants, which is what I'm
13 focused on now, I don't see the argument made.

14 CHAIRPERSON BERRY: There is a discussion
15 in the report -- I can't think offhand of the page;
16 maybe staff can tell me -- of block grants that are
17 already in place where there is insufficient
18 enforcement already.

19 I recall reading some department already
20 has block grants. I don't know whether it was Labor
21 or somebody. And there was a question about the
22 Office of Civil Rights in that agency having the
23 resources.

24 And in HHS there are already block grants,
25 if I recall correctly. And the text under those

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agencies talks about the problems of civil rights enforcement.

And so I read this as saying that given what we know already, we're worried about this, not that we're worried about block grants, but we're just worried about making sure that there's enough civil rights enforcement.

Could the staff help us a little bit here and try and -- that's the other purpose of doing this -- to find where in the report there's a discussion of block grants?

CHAIRPERSON BERRY: Chapter 3?

STAFF DIRECTOR MATHEWS: Chapter 3, Page 38.

CHAIRPERSON BERRY: Page 38. Chapter 3, Page 38, "Application of Title VI to Block Grants" on Page 38, Chapter 3. And there's a whole discussion here of the problems that arise with block grants.

And the discussion doesn't criticize block grants. It just talks about how the civil rights agencies haven't been able to keep up and haven't issued guidelines and haven't done the things that they're supposed to do.

And so maybe staff can answer this, but I am sure that people would be willing to write the

1 executive summary in any way you please to show that
2 they're not objecting to block grants. They just want
3 to make sure that civil rights enforcement takes place
4 and sufficient guidelines as to what the
5 responsibility is exists.

6 So if you want to propose language, I
7 mean, I would be happy to entertain it and I'm sure
8 others would, too.

9 COMMISSIONER FLETCHER: Madam Chair?

10 CHAIRPERSON BERRY: Yes, Commissioner
11 Fletcher?

12 COMMISSIONER FLETCHER: One of the
13 greatest failures of the block grant approach is in
14 Commissioner Roby's state with reference to HUD. If
15 you take a look at how HUD carries out that mandate in
16 some of those communities, in New Jersey it's a joke.
17 And I think the record will show it, not only where
18 civil rights are concerned, but where some other
19 responsibilities are, too.

20 Block grants turned out to be one of the
21 biggest political boondoggles playing partisan
22 politics at the grass roots level that you ever want
23 to see. And civil rights is not excluded from the
24 process.

25 CHAIRPERSON BERRY: So that if you would

1 like the executive summary to state that the
2 Commission is not criticizing block grants but is
3 concerned about civil rights enforcement, I don't see
4 anything wrong with doing that because it's not the
5 intent to do that, if I understand the staff
6 correctly. They're all nodding their heads.

7 Commissioner Anderson?

8 COMMISSIONER ANDERSON: Well, I don't want
9 to preempt Commissioner George's language on this
10 subject if he has some, but a problem that I see in
11 many of our reports -- and it is reflected in this
12 report, and it is perhaps only a problem that I see --
13 that we are confronted with very what I would call
14 complicated and significant questions which we discuss
15 for two or three minutes. And then we hammer out some
16 type of language.

17 And I don't think that's how to go about
18 this. I think the question of civil rights
19 enforcement vis-a-vis block grants is a significant
20 question. And I don't think the Commission in terms
21 of the commissioners has engaged the very serious
22 discussion about the implication of block grants
23 vis-a-vis civil rights enforcement, what the role of
24 the federal government is generally with block grants,
25 and how that should affect civil rights. That's one

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1 issue under many others.

2 This report makes an argument for new
3 litigation authority on the part of the Department of
4 Justice. I think that's a matter that we could take
5 a considerable amount of time to discuss. Yet, we're
6 going to take about two or three minutes to review
7 that issue and move on to something else. That's what
8 I don't like about the way the process works on this
9 Commission. It's not the first time I've raised it.

10 We'll go back to the benchmark problem.
11 I don't recall this Commission saying that the
12 benchmark for all of our reports will begin in 1980.
13 We never voted on that. Yet, time after time that
14 becomes the benchmark in our reports. It was the
15 benchmark in our last report. I objected to it. I
16 was in the minority.

17 But we have no philosophy adopted by this
18 Commission which says 1980 is the benchmark. I think
19 it raises significant questions. I mean, what has
20 happened in the last 15 years has been an attempt to
21 make government more efficient, have fewer federal
22 staffing positions, try to bring reductions into the
23 budget at all levels. And so I think that's a
24 question that we could discuss.

25 Now, we're going to disagree on that. And

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some of us are going to say effective enforcement is measured by these sorts of things. And others of us are going to say there can be efficiencies brought to government. And so it doesn't necessarily means you're doing a worse job by doing a leaner budget and staffing office.

But that's something we can disagree on. But it is an assumption that permeates this report at all levels of it chapter after chapter.

And to me it makes very little sense to go on Page 12 and then Page 18 and then Page 21 and then Page 37 and try to discuss all of those reflects of that what I would call philosophical bias, which, like I say, permeates the report.

There are other problems. Now I'm moving on beyond the block grants, but there are other things like this that give me real serious problems. So I don't think from a technical level I am as satisfied with it as, say, Commissioner George is.

For example, jump ahead to the Justice Department for one minute. There apparently is an unwritten policy under the Reagan administration to downplay civil rights enforcement, which we have on the assertion of, what, a GS-12, a GS-14, whose department apparently was the one that was affected by

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1 the unwritten policy.

2 But, to my knowledge, there is no
3 indication in this report from what I can tell that
4 the Assistant Attorney Generals for civil rights at
5 that time were interviewed in the making of this
6 report, that the Attorney General was interviewed for
7 this.

8 And we have an assertion by one staff
9 member as far as I can tell. That's adopted by the
10 report, which in any other kind of circumstance would
11 be considered hearsay or completely not accepted
12 without any kind of collaborating evidence.

13 So it's those kinds of questions that
14 cause me real problems from a technical aspect. And
15 we can go through page after page after page and point
16 them all out, but I think they are sort of pervasive
17 problems that unless we're going to take three or four
18 days to rewrite this thing here I don't think from my
19 standpoint are going to be solved.

20 CHAIRPERSON BERRY: Well, Commissioner
21 Fletcher?

22 COMMISSIONER FLETCHER: I'm inclined to
23 agree with some of the points that Carl made except I
24 wouldn't start at 80. I'd start with the beginning of
25 the second Nixon administration. During the last two

1 years of the first Nixon administration, it became
2 evident that there was a way to enforce the civil
3 rights legislation.

4 My memory of civil rights legislation goes
5 back to '64, when we were trying to get it on the
6 books. It became very clear in the House and the
7 Senate that the last thing they wanted was
8 enforcement.

9 They didn't mind having the statutes on
10 the books, and they didn't mind having all that lovely
11 language, but the thought of enforcement hung up the
12 '64 Civil Rights Act for 100 days in the longest
13 filibusters in the history of the Congress at that
14 time. And the issue was all about whether there would
15 be enforcement or not.

16 It was very clear that liberals,
17 conservatives, and middle of the road were all of one
18 mind when it came to civil rights legislation. They
19 didn't want it enforced.

20 And one of the first things the first
21 Nixon administration managed to do was come up with a
22 way to start the enforcement process and set some
23 standards. And the minute it became evident that
24 those standards would work at the beginning of Nixon
25 2, we began to see a diminishing desire to carry on

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1 the enforcement process.

2 And I might just add it permeated the
3 Carter administration, too. The real desire to get
4 into the trenches and go to the site where the action
5 was and determine whether enforcement was, in fact,
6 the order of the day became very clear that it wasn't.

7 So if you're talking benchmark, let's go
8 back to the beginning of Nixon 2. That's when they
9 decided to bail out on enforcement.

10 CHAIRPERSON BERRY: Maybe it's because I'm
11 the historian. I keep trying to put context in. If
12 commissioners would read the history of this agency
13 and read its reports, they will find that the
14 Commission has consistently criticized the lack of
15 enforcement of civil rights, no matter which party was
16 in power. And it has also done so by looking at the
17 work and the reports from Civil Service staff in order
18 to not ask political officials to make political
19 judgments about their own behavior.

20 This has been a persistent pattern. It
21 has been done in season and out. And the Commission
22 has always found what Commissioner Fletcher just said,
23 a lack of political will, not because the politicians
24 were evil people or anything like that, but because of
25 the way the political process works and to put the

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1 kind of resources into civil rights enforcement into
2 kind of attention.

3 But using people who are civil servants
4 and data, paper, documents as a basis for analysis has
5 been consistently the way this has been done to avoid
6 being influenced politically by political officials
7 who will tell you, as they're supposed to, that
8 they're doing a good job, that everything is just
9 fine.

10 I mean, what political official is going
11 to tell you that "I'm doing a lousy job. And
12 everything is awful. And we're not enforcing"
13 whatever it is, whether it's beef quotas or civil
14 rights?

15 So I think that, again, we're being unfair
16 to the staff. I myself am willing to stay here all
17 day if necessary, two days, three days, whatever, to
18 go through this report.

19 I also think commissioners have a
20 responsibility if they object to something in the
21 report to propose new language, to say what they
22 object to. I mean, the staff worked very hard on this
23 report. It's our only statutory report for this year.

24 And so I read it very carefully. I'm sure
25 you did. If you don't like something in it, say what

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1 you don't like, and let's do some language if it takes
2 all day. And let's move on.

3 But just to say "Well, we don't like it.
4 So, therefore, let's forget it," I just don't think
5 that's fair to all the work that was done.

6 VICE CHAIRPERSON REYNOSO: Madam Chair?

7 CHAIRPERSON BERRY: Yes, Vice Chair?

8 VICE CHAIRPERSON REYNOSO: Following up on
9 your statements and Commissioner Fletcher, I just
10 wanted to indicate that I had the opportunity to work
11 with EEOC in '67 and '68. And we had more than our
12 share of problems with the Justice Department, which
13 at that time had the enforcement power with the EEOC
14 and, if you will, within the Johnson administration.
15 And those are now historically viewed as some of the
16 golden years of civil rights.

17 But the reality is that the way civil
18 rights was enforced and wasn't enforced then seemed to
19 have fallen short of the ideals incorporated in the
20 legislation. What this report has done, it seems to
21 me, irrespective of the party in power, is to show how
22 administratively the government can be better if
23 getting a little bit closer to the ideal of enforcing,
24 of implementing the ideal sound in the legislation.

25 And it seemed to me that it was a very

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1 effective report in bringing that to the attention of
2 the administration and Congress. Then it's up to
3 them, obviously, what they pick up on.

4 I thought it was particularly valuable
5 that the report was able to show that some
6 administrative agencies have, in fact, done pretty
7 well and pointed to the techniques that those agencies
8 have done.

9 And those that are not doing well if
10 there's the political administrative will to do so
11 will hopefully pick up on those other experiences and
12 implement them and thereby get full circle to the
13 ideals incorporated in the congressional mandates and
14 I think thereby serve the American people well.

15 CHAIRPERSON BERRY: Commissioner Anderson?

16 COMMISSIONER ANDERSON: I would like to
17 make two points. One, obviously a report like this
18 has to interview staff. And it should interview staff
19 at agencies of all levels in my opinion. But I would
20 simply reiterate that the comment of one staffer that
21 there is an unwritten policy that is taken at face
22 value and then becomes the leitmotif for the report as
23 far as I'm concerned is not adequate scholarship. And
24 it's not adequately substantiated in the report.

25 Now, in terms of not hearing from the

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1 political appointees or interviewing them or relying
2 on their statements, I would ask you to turn to Page
3 3 of the executive summary, which says that, quoting
4 the HUD Secretary, Henry Cisneros, -- this is on Page
5 3 -- "This entire effort represents a new direction
6 for the department. Over the past 12 years HUD's
7 response has been weak, inadequate, and unsuccessful.
8 Our department has been responsible for some of the
9 problems and the reluctance of past administrations to
10 address the problems, has served only to make them
11 worse. This is a new day. And President Clinton and
12 his administration are initiating a coordinated,
13 unified response to the longstanding problems of
14 racism and spacial separation."

15 Now, maybe that's true. maybe it's not
16 true. But it is exactly --

17 CHAIRPERSON BERRY: What page are you on,
18 sir?

19 COMMISSIONER ANDERSON: Page 3 of Chapter
20 1.

21 CHAIRPERSON BERRY: Oh, you said you were
22 on the summary.

23 COMMISSIONER ANDERSON: Page 3 of Chapter
24 1. I thought it was in the summary.

25 But, I mean, that's exactly the kind of

1 thing I thought we were not going to do. But, I mean,
2 if we can do it with Henry Cisneros, we ought to at
3 least be asking Brad Reynolds and Chuck Cooper and
4 John Dunn "These are the allegations on the record.
5 Was there or wasn't there or why did you shift down
6 from Title VI to shift toward personnel towards the
7 Americans With Disabilities Act enforcement of '90?"
8 So I don't know how Brad Reynolds was gearing up for
9 that seven years before and some of these questions.

10 CHAIRPERSON BERRY: Well, Commissioner
11 Anderson, if you have points in the report where you
12 would like the staff to go back and ask questions, you
13 should note those pages. And if we don't vote on this
14 today, the staff can go back. Any comments any
15 commissioner has that you want reworked or you want
16 changed or you want us to discuss again, that's
17 entirely appropriate for you to raise questions about
18 or any part you want to raise questions about,
19 although my reading of this section is that it is very
20 critical of HUD. And he hadn't quoted that, and there
21 are quotes in here other places from other political
22 officials.

23 So the point is not that you don't say
24 anything about political officials. It's that you do
25 rely very heavily on what Civil Service people say.

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1 And the example you gave us of the civil servant, if
 2 you want somebody to go back and find corroborating
 3 evidence on that point or you have something you'd
 4 like to have dropped there, you should simply note it.

5 In other words, our discussion should be
 6 about the substance of the report and changes that
 7 commissioners would like to have made in order to see
 8 if the report is viable and it could pass, not "I
 9 don't like this, that or the other." So the heck with
 10 it."

11 This report cost the taxpayers -- I had a
 12 memo somewhere here that tells me -- \$365,000. Now,
 13 that to me is a lot of money and the staff time put
 14 into it.

15 So if we have problems with things in the
 16 report, we ought to say what they are. We ought to
 17 ask the staff to go back to do more work on specific
 18 points. And we should not just dismiss it out of hand
 19 and say "Well, I don't like it."

20 Yes, Commissioner Anderson?

21 COMMISSIONER ANDERSON: Well, I'm trying
 22 not to give the appearance of dismissing it out of
 23 hand. The point I would like to make is that I have
 24 a very strong concern that you look at a component
 25 within a department or within an agency that has been

1 downsized and you hear the complaints of the effect of
2 persons who have had their component downsized.

3 They have interpretations. They cast a
4 certain interpretation on the motivations of the
5 people in that department who are making those
6 decisions. And we don't hear from their superiors as
7 to why under certain budgetary constraints or certain
8 new policy directives or certain new civil rights laws
9 --

10 VICE CHAIRPERSON REYNOSO: Carl, you're
11 fading out.

12 COMMISSIONER ANDERSON: Well, Cruz, I'm
13 sorry. I'll try better, but I must say --

14 VICE CHAIRPERSON REYNOSO: I heard just
15 about all of that.

16 CHAIRPERSON BERRY: You were just
17 beginning to fade, he said.

18 COMMISSIONER ANDERSON: You know, I think
19 it's very unfair to have a process that does this and
20 doesn't hear from some of these individuals as to what
21 components went into some of these decisions. And so
22 I don't think it is dismissing it out of hand.

23 And I'm not sure it is a problem that can
24 be cured by saying "On Page 35 delete this quote and
25 add this." I think perhaps if the process were fixed

1 so that we did get some type of input from some of the
2 decision-makers in terms of these matters, instead of
3 just the affected and "agreed" individuals to some of
4 the decisions, we might have written an entirely
5 different report that might have emphasized entirely
6 different things.

7 COMMISSIONER WANG: Madam Chair, could I?

8 CHAIRPERSON BERRY: Yes.

9 COMMISSIONER WANG: The other thing we did
10 on the college admission, you remember we reached
11 certain decisions. But we did allow the president of
12 Harvard, the president of UC Berkeley to attach their
13 different views. And that was part of the report.

14 So I think on that, Carl, I think you're
15 absolutely correct. If we do have this quote saying
16 in this respect some of the opposite views could be
17 attached as an addendum, if you want to go for it, I
18 think, I mean, it's --

19 CHAIRPERSON BERRY: Commissioner?

20 COMMISSIONER WANG: Yes?

21 CHAIRPERSON BERRY: Commissioner Wang, let
22 us remind ourselves of the process. This report was
23 sent to the agencies --

24 COMMISSIONER WANG: Right.

25 CHAIRPERSON BERRY: -- for comment. This

1 report was not written without being sent.

2 Thank you, Commissioner Fletcher.

3 I appreciate your help. This report was
4 sent to the agencies for comment. If we want to write
5 a report based on what political officials have to say
6 about what they did, we can do such a report. This
7 report was sent to the agency officials and the civil
8 servants there, many of whom who have been there for
9 years.

10 We sent all of our reports to the agencies
11 for affected agency review. And we include any
12 letters we get from people in the agencies in there.

13 And there is also a given in this process
14 that we keep forgetting. There is a statute, which
15 has certain requirements in it, no matter who is in
16 office. And there are regulations that have been
17 there for years -- some of them go back to the 1970s
18 -- that haven't been changed by various people who
19 have come and gone.

20 So there is a statutory basis. This is
21 not entirely a matter of different people coming to an
22 agency or deciding they want to do one thing and
23 others do another. The Congress hasn't changed the
24 statute.

25 So there is a given. But if we want to do

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1 a report where we ask and we want to add to our
2 process -- and, besides, the commissioners approved
3 the proposal for this project. We act as if we didn't
4 approve it. It was outlined in terms of how we were
5 going to do it, what was going to happen. And, again,
6 the staff relied on the proposal as we approved it.

7 If we didn't like it, we didn't want to do
8 it that way, we should have said so. If we want to
9 change the process to now get political officials in
10 each agency to comment going back in time, in addition
11 to people who are there, we ought to say so.

12 Yes, Commissioner Anderson?

13 COMMISSIONER ANDERSON: Well, I mean,
14 number one, no proposal that I saw that I voted on
15 stated we would not receive information from former
16 officials of these departments who are making
17 decisions. I'm just unaware that that was indicated
18 on any of the proposals.

19 And, as far as receiving information from
20 political officials, I mean, this report relies, for
21 example, on memoranda to you from the current
22 Assistant Attorney General on the performance of the
23 department. So, I mean, he is a political official.

24 I'm saying that an accurate, a fair
25 process would have taken into account factors in terms

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1 of decision-making from former officials in this
2 department during the time in which the report is
3 studying their actions. And I think not to have done
4 that is unfair.

5 And I don't think that to point that out
6 now is to say I am urging that we change the
7 procedures under which this Commission has acted. If
8 it has acted like that in the past, I think those
9 procedures in the past are inaccurate and inadequate.

10 CHAIRPERSON BERRY: Mr. Redenbaugh?

11 COMMISSIONER REDENBAUGH: I'm kind of
12 reluctant to say anything, but I always overcome that,
13 as you know. I think there's something that's
14 important that's not being said but that was alluded
15 to by Commissioner George in his preamble. And that
16 is that a couple of things: one, that we have come to
17 a fork in the road about the whole question of civil
18 rights, affirmative action, and preferences and that
19 honest and legitimate, caring people have
20 disagreements about how to proceed, even though we
21 might agree, have agreed, that the path that we've
22 taken up until now has been on average pretty
23 effective. I think everybody's kind of stepping
24 around that one.

25 And the other thing is that, well, to

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1 extend that further, without repudiating past
2 policies, saying "No. That was a big mistake," say
3 "No. Those policies got us where we are now. Now
4 what do we need?"

5 And there's a kind of -- this report as
6 framed in sort of the tone and mood of it ignores the
7 opportunity to reframe the question or reexamine
8 "Well, now what?"

9 I'm troubled by the metrics that are used
10 in the report, but I'm also troubled, as Commissioner
11 George is, that only one philosophical point of view
12 with respect to this topic is represented in the
13 report. And I think that can be remedied with an
14 edit, a reedit.

15 And I think it's important for us to use
16 this report as an opportunity to reframe some of the
17 questions about civil rights and about preferences.
18 And some of the policies implicitly recommended in the
19 report I don't agree with. And I think they may have
20 been good policies up until about now.

21 So those are the objections that I have to
22 this report. And I wouldn't want us to lose the
23 opportunity that this report is to really improve this
24 report and to open up some additional way of looking
25 at: How do we solve the problems we have of

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1 opportunity in this country?

2 COMMISSIONER WANG: Madam Chair?

3 CHAIRPERSON BERRY: Commissioner Wang?

4 COMMISSIONER WANG: Commissioner, I think
5 your point focused on one aspect where I think the
6 Chair had tried to respond earlier that this document
7 is not in a sense a philosophical document. This is
8 a factual document of what each department had tried
9 to reinforce or carry out or implement, the law that's
10 on the book.

11 COMMISSIONER REDENBAUGH: But, if I could

12 --

13 COMMISSIONER WANG: Shall we say we're not
14 in our coming up hearing them on affirmative action.
15 And their report will give us ample time to debate and
16 to kind of really pass judgment on what should we look
17 at from the past and what we hope to go for the
18 future. So I think this one is not I think a
19 philosophical document.

20 So based on that, I think this is where I
21 think I differ a little bit with you to the extent, I
22 mean, we have an enforcement document based on what is
23 currently -- I mean, earlier I think Commissioner
24 Horner made a similar point I think we tried to come
25 to grips with.

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1 This document is a limited document. This
 2 document looks at from that narrow standpoint based on
 3 the law that's on the books and whether each agency
 4 has fulfilled its mandate and its obligation on that
 5 framework, rather than say, "Look, okay" because I
 6 felt I would agree that if we were to have, again,
 7 time to really allow the other sort of a different
 8 view to be attached so as to give the previous
 9 political appointees a chance to differ and to defend
 10 themselves, which I think that may just give us a kind
 11 of a fairness presented, which we always wanted.

12 But, on the other hand, saying "Look,
 13 let's use this document to start debating whether
 14 there's the pros and cons of the law that's already
 15 been passed," I think we're never going to get
 16 anywhere. We'll just be forever here, I think, and
 17 continue the discussion.

18 COMMISSIONER REDENBAUGH: May I respond to
 19 --

20 CHAIRPERSON BERRY: Yes, Commissioner
 21 Redenbaugh?

22 COMMISSIONER REDENBAUGH: Yes. Thank you.
 23 Every document is a philosophical document
 24 because every document carries with it the embedded
 25 assumptions that the writers and editors have about

1 the subjects which they may think they are describing
2 but they are really only interpreting. Then
3 everything is a philosophical document.

4 And I've studied enough philosophy to be
5 able to convince my butcher that the meat doesn't
6 exist. I don't want to trivialize it, but they are
7 all important.

8 CHAIRPERSON BERRY: Commissioner Fletcher,
9 did you have your hand up?

10 COMMISSIONER FLETCHER: Before I make my
11 observation, I'm going to vote for the report. I want
12 staff to know. I'm going to go get a raise, a crack
13 maybe, but that's about it.

14 Let me say this, Madam Chair. As we talk
15 right now, I'm scheduled to appear on 138 campuses.
16 And the number is growing. And I'm finding that the
17 kids want to find out and the faculty want to find out
18 what in the world is this thing called civil rights.
19 We had no idea.

20 And when I put the number up in terms of
21 the trillions of dollars that we have spent the last
22 30 years trying to remove this flaw from the American
23 culture so America can be America and its citizens
24 free to be free, the kids love to hear it. So does
25 the faculty.

1 This is one of the reports that I intend
2 to use as soon as we get it out of here to conduct my
3 lectures and to make sure that young people know just
4 how difficult it was to decide to put the law on the
5 books to begin with and how much more difficult it has
6 been to get it enforced in spite of all the trillions
7 of dollars we've spent.

8 I think the number right now is we have
9 spent a trillion dollars since the '64 Civil Rights
10 Act was passed to make equal employment opportunity,
11 equal housing, and all those equalities a fact of
12 life.

13 I think that this report does have some
14 significant flaws in it, but not so much that we could
15 end up with a better report by going any further.
16 What I would like to do is see some kind of report
17 come forward to show how the political climate changed
18 political appointees and caused political appointees
19 to play to the climate, as opposed to their
20 responsibility, regardless of the party they were in.

21 Now, I think maybe an amendment or another
22 report actually reviewing members of the Carter
23 administration, for an example, to find out why in
24 spite of the fact that they kept the numbers in the
25 budget up to this point but the travel orders to go to

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1 the site where the discrimination was taken place were
2 cut back.

3 What was the political influence there
4 that caused them to decide that they wanted to go with
5 desk audits, instead of going to the site where
6 discrimination takes place, to find out whether, in
7 fact, the numbers on the desk audit were, in fact,
8 what was going on in the plant?

9 So I agree. We do need to talk to it. In
10 fact, I'd like to see a separate report, if possible,
11 interviewing both the Republican and Democrat
12 appointees since the '64 Civil Rights Act became the
13 law of the land to find out just what kind of impact
14 did the political climate have in terms of getting on
15 with ending discrimination.

16 So to that degree I'm kind of inclined to
17 go along with you. I wish we could do a special
18 report and find out exactly what the political climate
19 was and why did Nixon think for a fleeting moment he
20 could get on with enforcement and why the second time
21 around he thought maybe we'd better back away from
22 this. I'd be curious to know.

23 I'd be curious to know why Jimmy Carter
24 thought we'd better tippy-toe around this thing and
25 not make anybody mad. I'd be curious to know.

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1 I'd be curious to know exactly why Brad
2 Reynolds decided to take a duplicates approach, his
3 founding sense over on this side and over on this side
4 doing something else. I'd be curious to know: What
5 did the political climate have to do with you making
6 them? We need to know this.

7 I think this is the greatest moment in the
8 history of this country to deal with civil rights.
9 Right now we can't get around it. And we're not going
10 any further until we do. And that means that this
11 agency for the first time since it's been in existence
12 can come forth with the data that's needed to make the
13 decisions that will get us up and into the
14 Twenty-First Century.

15 I don't have any problems with what you're
16 saying. I'm going to vote for this report, but I
17 agree with you. Let's find out why the politicians
18 preferred to play to the wind, instead of to the
19 mandate that they inherit when they come into office.

20 We need to know that. And we need to know
21 it because the political climate is going to change
22 again and again and again and again. And we want to
23 know what that political climate is going to do with
24 respect to enforcing civil rights, the one thing that
25 has kept this country from being what it ought to be.

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1 CHAIRPERSON BERRY: The Commission has
2 always permitted the staff who are responsible for a
3 report to say something, however briefly. And the
4 staff on this report is greatly energized by our
5 discussion of their methodology and wishes to just
6 briefly say something.

7 So I would hope that this Commission would
8 be as generous as we have been in the past and permit
9 the staffperson to at least have something to say,
10 just however briefly, about the methodology, whether
11 or not we agree with it.

12 So, if there is no objection, who is going
13 to say something? Fred, you, or who, who is going to?

14 CHAIRPERSON BERRY: We may not like what
15 you say, but we'll listen to you. We have --
16 Frederick Isler and Tami Trost have come forward.

17 MR. ISLER: First of all, I'd like to say
18 that when we decided to do this report, we based our
19 decision to recommend the report based on monitoring
20 that we had done prior to deciding to submit a
21 proposal to the Commission. And that monitoring was
22 at several different federal agencies.

23 And the monitoring indicated that the
24 Department of Justice and at several agencies no one
25 were really enforcing Title VI. That monitoring went

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1 on to show that they didn't even have staff that was
2 trained to enforce Title VI. Several individuals that
3 were responsible for enforcing Title VI didn't even
4 know what Title VI was.

5 As a result of that, we decided to develop
6 a proposal to look at the enforcement of Title VI. In
7 developing that proposal, we were careful to make sure
8 that we did not develop a proposal where we would deal
9 with the philosophical, even the legal interpretation
10 of Title VI in the regulations and statutes.

11 We developed a proposal that was approved
12 to look at the enforcement mechanism to see if they
13 were carrying out the mandate of the law, the present
14 statutes and regulations that were approved by both
15 Congress and the present administrations. And that is
16 exactly what we did.

17 Also, when we decided to look at the time
18 frame for this report, the time frame for this report
19 was based on 1975 to 1995. And the reason we used a
20 time frame of 1975 to 1995 is because our last report
21 stopped at 1974. We decided to do a continuing --
22 this report was modeled after the 1974 report, almost
23 to the letter.

24 Also, when we decided to interview
25 individuals to obtain facts for this report, a

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1 decision was made to only interview officials at
2 federal agencies. To give any other organization an
3 opportunity to provide information, we sent out
4 several letters to all sorts of organizations asking
5 for input on this report, asking if they had studies,
6 comments on this report.

7 And a mixture -- we did not base that
8 decision on any political affiliation. When we went
9 to the Department of Justice, we interviewed 54
10 individuals at the Department of Justice from the
11 acting deputy -- acting assistant attorney general on
12 down. And they all were consistent in indicating to
13 us that from 1975 until the present time, 1994, they
14 had abrogated their responsibility to provide
15 oversight and guidance on Title VI enforcement.

16 COMMISSIONER FLETCHER: They had done
17 what?

18 MR. ISLER: They neglected their
19 responsibility.

20 COMMISSIONER REDENBAUGH: Could I follow
21 up with that? Who's saying this?

22 MS. TROST: The Assistant Attorney
23 General.

24 MR. ISLER: All the way down to --

25 COMMISSIONER REDENBAUGH: So they're

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1 making an assessment about the --

2 CHAIRPERSON BERRY: No, these were not
3 political appointees, were they?

4 MR. ISLER: These individuals were there
5 from 1970 to 1994. These employees were there 20, 30
6 years.

7 COMMISSIONER REDENBAUGH: So they're
8 making an assessment about themselves?

9 MR. ISLER: That's correct.

10 COMMISSIONER REDENBAUGH: Okay, that's
11 what I'm trying to -- okay.

12 MR. ISLER: The individuals we
13 interviewed, they organized and structured the
14 coordination and review section. They wrote the
15 regulations. They wrote the proposals, the
16 guidelines. These were not individuals that just got
17 to the Department of Justice. They had 25 years.
18 Every last one of the persons we interviewed had at
19 least 25 years of seniority in coordination and
20 review.

21 When we went to the agencies, the
22 directors -- we interviewed the directors. We
23 interviewed general counsels. Those individuals had
24 been in Title VI for up to 20 to 25 years. They gave
25 us the same assessment that that agency for the --

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1 from 1975 on had failed to enforce Title VI. We not
2 only relied on interviews, we analyzed enforcement
3 documents, enforcement plans.

4 Those enforcement plans said the same
5 thing. There was absolutely no mention of Title VI
6 enforcement in those enforcement plans. With respect
7 to the philosophical thrust, we have not one point in
8 time said the Commission says you should do. What
9 we're saying in this report is DOJ, it is your
10 obligation to tell these agencies what to do.

11 You should first follow your guidelines
12 and exactly of order 12250 and provide the leadership
13 and the technical assistance that the President has
14 delegated to you. What we have done here is look at
15 enforcement mechanisms and expand on them very clearly
16 so that we could give them a specific understanding of
17 what the enforcement mechanisms are.

18 One of the problems we had in this report
19 is the people that were responsible for enforcing
20 Title VI didn't even know what a pre-award was. They
21 didn't know what a compliance review was. So we
22 defined it for them and told them here's what a pre-
23 award is and here's what you're really supposed to be
24 doing when you're doing a pre-award.

25 And DOJ, if they don't understand, then

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1 you should give them guidance. We do not have one
2 recommendation in this report that takes a position on
3 anything like disparate treatment, disparate impact,
4 affirmative action. What we say in this report is
5 Department of Justice, it is your responsibility to
6 interpret disparate impact.

7 It is your responsibly to ensure that the
8 agencies are complying with Title VI and enforcing
9 Title VI. That is basically what this report does.

10 CHAIRPERSON BERRY: Now does -- do you
11 want to say something?

12 MS. TROST: Well, I wanted to just follow
13 up on the tone of the report. With respect to the
14 interviews, the point of mentioning the unwritten
15 policy -- and I believe that we tried very hard to
16 emphasize the fact that it was only based on the
17 interviews that there was this unwritten policy, and
18 that we attempted to get a written document to support
19 the position.

20 And I think that we'd be very willing to
21 either move what we have in the footnote up to the
22 text and accommodate that. But that is just one
23 reason why the staff felt that they weren't capable of
24 enforcing their obligations under Title VI. And we --
25 the point of raising that unwritten policy was simply

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1 to say whether or not it existed, this is what the
2 staff believed existed, and this is why they operated
3 the way they operated and didn't operate the way they
4 should have operated.

5 And it's one reason along with the burden
6 of the Americans With Disabilities Act and the
7 decreased funding and all the other reasons that we
8 give for their inability to enforce their obligations
9 and --

10 CHAIRPERSON BERRY: Does any commissioner
11 want to say something? Yes.

12 COMMISSIONER HORNER: Madam Chair, first
13 of all, I think we're very fortunate to have people
14 who bring this degree of passion and intellectual
15 force to the problem. And I want you to understand
16 that that's my view of the work you do, because I'm
17 going to have to disagree with you. But I hope that
18 we can disagree on the basis of my respect for the
19 work you do.

20 Mr. Isler, I think you just said that
21 there was no statement that -- of preference for
22 disparate impact theory. But in fact, there is a
23 statement using the word crucial that it is -- that
24 disparate impact theory is crucial to -- "crucial to
25 ensure that all groups have equal access to

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1 recipient's programs."

2 CHAIRPERSON BERRY: What page are you
3 reading?

4 COMMISSIONER HORNER: It's page 15 --
5 chapter 15, pages 16 and 17. I don't want to direct
6 you to that right now. You can look at it later if
7 you want. But the point I want to make is that in
8 spite of your obvious good faith and extraordinarily
9 thorough work, there is -- and I have to say, I think
10 without your fully appreciating it from my point of
11 view, embedded in this report -- point of view that is
12 widely held within the Civil Rights Commission staff,
13 if not exclusively held, but very divergent from the
14 point of view that many people out in the country have
15 and that I share.

16 And when Commissioner Fletcher says there
17 is -- you know, the correct way to think, and then
18 there's nasty bad politics, I'd interpret that
19 differently. I'd say that the political ferment
20 represents in great measure -- not exclusively, but in
21 great measure, people of good faith who have a
22 different point of view on how to solve the problems
23 that we're addressing.

24 And the reason I am tortured again and
25 again by my inability to vote for these reports after

1 all the work the staff has done is that I am tired of
 2 having my point of view represented in a one page
 3 dissent tacked onto the back, but the whole multi-
 4 hundred page work has embedded in it a different point
 5 of view.

6 And I'd like to address just one other
 7 point here. Chairman Berry has said that when we do
 8 these reports, we are only talking about the law and
 9 is the law being enforced or is it not being
 10 enforced. If I believed that were true, I would have
 11 to agree with her. But I don't believe that's what
 12 we're talking about here.

13 An enormous portion of what the government
 14 does takes off from the law and flies into the ether.
 15 I will give you an example. And a fact that's
 16 troubling to me in this report -- of course we have to
 17 have the federal government enforcing Title VI. I
 18 don't question that, wouldn't dream of questioning
 19 that.

20 I'll give you an example from outside the
 21 realm of Title VI. The Assistant Secretary for Fair
 22 Housing at HUD, former Assistant Secretary, Roberta
 23 Achtenberg, brought suit against a group in California
 24 which had petitioned for a zoning -- San Francisco,
 25 thank you -- had petitioned for -- over a zoning

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1 question.

2 And this group of citizens living in a
3 neighborhood apparently did not want to have a -- I
4 think a drug and alcohol halfway house in their
5 neighborhood.

6 COMMISSIONER FLETCHER: Berkeley.

7 COMMISSIONER HORNER: Berkeley, thank you.
8 Did not want to have that in their neighborhood --
9 petitioned their government on it. And Ms. Achtenberg
10 brought suit as part of her responsibilities as she
11 saw them under the ADA to enforce the law.

12 Now, there's nowhere in the law that said
13 she had to do that. This was in the realm of
14 bureaucrat discretion. And she then reversed herself.
15 Now, did she reverse herself because initially she
16 wanted to do the right thing and nasty politics
17 interfered, or did she reverse herself because she was
18 doing something grossly inappropriate and good policy
19 interfered?

20 Well, there are two ways to look at it.
21 And that's what we're wrestling with in this report.
22 I cannot go through line by line as the Chairman would
23 like and explain every line where I would like
24 something changed. Because I see embedded in the
25 entire report unexamined or un -- yeah, unexamined

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1 assumptions with which I disagree.

2 And I know that you on the staff used to
3 come to these meetings. It used to be open to all the
4 staff. The Chairman changed that. When it was open
5 to all the staff, you had the opportunity to come and
6 hear from the commissioners their good faith
7 explanations for different points of view.

8 You don't have that now. So all you get
9 is what you read in the newspapers, I assume; much of
10 it critical in the mainstream press. So I don't know
11 where we go from here. I would like to ask you to
12 take this report back as civil servants and say is --
13 what is our duty here, and go back and look at the
14 entire report and say are we being -- are we giving
15 the full benefit of the doubt to the people in the
16 Reagan years?

17 Is it possible that they had some sincere,
18 decent point of view that they were trying to express
19 in their policies? Well, let's look back at their
20 congressional testimony, for instance, when they
21 explained what they were trying to do.

22 And as you write the report, instead of
23 just presuming that they were bad guys or that certain
24 policies that are widely debated like disparate impact
25 have only one good guy answer, give us a sense of the

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1 liveliness and depth of the debate, and then go on.
2 Reach your conclusions. Fair is fair.

3 You have a point of view. You are
4 entitled to it. And you can bring it to us for our
5 deliberation. But kind of start the chapters by
6 saying there's been a debate on these subjects.
7 People with good faith have had different points of
8 view. Here's what one group thought; here's what
9 another group thought. Okay?

10 CHAIRPERSON BERRY: Staff, point of
11 personal privilege. I am quite pleased to be regarded
12 as omnipotent in all things. But I did not indeed
13 issue any instruction concerning attendance at staff
14 meetings. That is an erroneous -- a false statement
15 that my colleague has made, which I must correct for
16 the record.

17 COMMISSIONER HORNER: Madame Chair, many
18 on the staff are -- have a misapprehension on this.

19 CHAIRPERSON BERRY: Excuse me, you're out
20 of order, Commissioner Horner. You have made a
21 personal remark concerning me which is erroneous, and
22 I have now corrected it for the record.

23 COMMISSIONER HORNER: It was the staff
24 director I'm told, Madame Chair.

25 CHAIRPERSON BERRY: The other point that

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1 I would like to make is that I understand that the
 2 section that Commissioner Horner read which you didn't
 3 look at is in the findings and recommendations, Mr.
 4 Isler and Ms. Trost. So -- and as you know, the
 5 findings and recommendations are to be reviewed by the
 6 commissioners who will decide whether they accept,
 7 reject and debate them.

8 They are not conclusions that are part of
 9 the body of the report. And the whole purpose of them
 10 being there is for us to discuss them. So I just
 11 wanted to point out for the record that section is in
 12 the findings and recommendations, and it is a matter
 13 for the commissioners to discuss among themselves and
 14 decide, and is not part of the substantive part of
 15 the report.

16 Commissioner Anderson?

17 COMMISSIONER ANDERSON: Thank you. I'd
 18 like to make a comment responding to Commissioner
 19 Fletcher that I was going to make before the staff
 20 made their presentation, then I'd like to say
 21 something about what the staff said.

22 CHAIRPERSON BERRY: Does anyone want to
 23 address the staff, or would you like them to leave now
 24 or -- I'm mean, to go back and sit where they were?
 25 Are we still engaged with them, Commissioner Anderson?

1 I didn't hear you clearly.

2 COMMISSIONER ANDERSON: I'm going to make
3 a comment --

4 COMMISSIONER REDENBAUGH: I'm going to
5 engage with them after Commissioner Anderson.

6 COMMISSIONER ANDERSON: -- which relates
7 to what they said. So if they can stay if they're
8 comfortable. When I was in the Reagan administration,
9 both at the Department of Health and Human Services
10 and at the White House, I engaged Assistant Attorney
11 Generals for civil rights arguing for greater civil
12 rights enforcement -- their interpretation of the law
13 permitted them to argue for.

14 So while I talked about former holders of
15 that office, it is not because I necessarily agree
16 with their interpretation of civil rights enforcement
17 or think that it is sufficient. But it is because I
18 think in fairness we should have included their
19 decision making, at least their input in this process.
20 But I want to make that clear.

21 Something that I have related on a couple
22 of occasions while I've served on this Commission, and
23 I can't make it any more candidly than I have made it
24 in the past, so I'll make it again. I see one of the
25 roles of this Commission to try to reach segments of

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1 our community with our reports -- our national
 2 community with our reports and our work product that,
 3 for various reasons, does not have entirely high
 4 regard for the work product of this Commission.

5 And they see it as philosophically
 6 motivated. They see it as partisan. And while we are
 7 -- easily sit here and criticize people who are not
 8 on the Commission for being partisan, there are people
 9 in responsible positions of this government that look
 10 at our work product as partisan, as biased, as
 11 philosophically oriented in a way which predetermines
 12 the outcomes of our recommendations, regardless of
 13 what the facts are.

14 And I have attempted in my proposed
 15 amendments to our reports at times to try to present
 16 an argumentation in the reports that doesn't
 17 automatically turn off a segment of the public policy
 18 influencers or decision makers in this country that I
 19 think we need to have a dialogue with and I think we
 20 can have a dialogue with if we don't unnecessarily
 21 engage in the kind of rhetorical discourse that at the
 22 beginning turns them off.

23 Now, what I would say to you, Mr. Isler,
 24 is that what I've heard you just say about taking a 20
 25 year view of this and interviewing officials who have

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1 been at this for 25 years who have seen a consistent
 2 pattern over the 25 year period -- a downplaying of
 3 ineffective enforcement of Title VI, is a very
 4 different interpretation, very different impression,
 5 that I received reading this report.

6 I didn't read this report seeing it as a
 7 20 year snapshot. I read this report as seeing about
 8 a 12 year snapshot, a 14 year snapshot, and that has
 9 a very different impact on a number of people I think
 10 should read this report and should be influenced by it
 11 and who are not going to do it, because they are going
 12 to have a very different interpretation of the
 13 motivation behind this report given the way it is
 14 written now.

15 So I mean, I'm happy to hear what you've
 16 said about it, and I would like us to have a work
 17 product that takes steps to make stronger Title VI
 18 enforcement and more accurate Title VI enforcement.
 19 And I must say that during the years that I worked at
 20 the largest department in this government, I was
 21 astounded time and again, not just in the civil rights
 22 area, in other areas, that very fundamental aspects of
 23 what one thought in employees -- a governmental
 24 employee's job description included was entirely --
 25 that the person was entirely ignorant of his

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1 responsibilities in that area.

2 So I'm disposed to believe what you say
3 about people who are supposed to be enforcing Title VI
4 who have no idea about the most fundamental aspects of
5 Title VI enforcement, because I saw it in other areas
6 in the government. Which also leads me to believe
7 that their inability to deal with Title VI may not be
8 based entirely or solely or primarily on a disposition
9 of their superiors that we are not going to have Title
10 VI enforcement.

11 It may be a more pervasive problem. It
12 may, in many cases, also be that. I don't know. But
13 anyway, I would say that if the report reflected more
14 of what you had just said to us, I would be much more
15 disposed to voting for it.

16 CHAIRPERSON BERRY: Any other commissioner
17 have comments concerning the staff and what the staff
18 had to say? Yes, Commissioner Redenbaugh?

19 COMMISSIONER REDENBAUGH: Yeah, I -- good,
20 I want to agree fully with what Carl just said. I
21 would very much like to see more of your remarks you
22 made today in the report. I think that's the most
23 telling set of assertions that one can make about the
24 topic of enforcement over this 20 year period.

25 My other comment really goes to the whole

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1 question of the process and the way in which staff
2 interact with us as commissioners. And I feel
3 disconnected from the process of the work that the
4 staff does, and other commissioners may feel
5 differently. But for me, I'm unaware of what's
6 happening until it's in the form of a report before
7 us.

8 And I speculate that it might be useful
9 when we're doing -- when staff is doing reports of
10 this magnitude, the Title VI report, to have briefings
11 along the way from staff to -- the people actually
12 working on the report -- to give a little report --
13 not a project plan like well, we're halfway done; but
14 sort of a sense and a flavor of the content and the
15 tone and mood of the thing.

16 Do you think that would be useful in
17 guiding you in preparing such a thing?

18 MR. ISLER: At the present time, we do
19 give the staff regular briefings.

20 MS. MATHEWS: If I might interject --
21 Fred, I hope you don't mind if I interrupt you for a
22 minute. Commissioner, I would hope that I might get
23 a chance to respond to this prior to one of my staff
24 members.

25 COMMISSIONER REDENBAUGH: Well, I didn't

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1 anticipate starting the question with you, but if you
2 insist on that, please do so.

3 MS. MATHEWS: Okay. If the Commission
4 wishes to have updates up and beyond what is contained
5 in the Staff Director's written report which is
6 intended to provide the kind of periodic update that
7 you suggested, if the Commission is interested however
8 in addition information, we would be glad to provide
9 that.

10 COMMISSIONER REDENBAUGH: Well, I'm
11 actually not interested in information, and I think
12 the Staff Director's reports are to me more based on
13 well, here's the activity that we're undertaking.
14 Here's when it might be done, we're hopeful about this
15 and that.

16 But it gives me no flavor for the content
17 of the project under question. So I was asking
18 something beyond mere information about the status.

19 CHAIRPERSON BERRY: What are you
20 suggesting, Commissioner Redenbaugh?

21 COMMISSIONER REDENBAUGH: Well, this idea
22 is not well formed, so I offer this as speculation,
23 and I'd like to --

24 CHAIRPERSON BERRY: Are you suggesting a
25 briefing -- interim briefings?

1. COMMISSIONER REDENBAUGH: Yeah, I think
2. so, in an informal way. But I would have been
3. fascinated as we were going through this process say
4. maybe a year or two ago to hear what Fred has told us
5. today, that again and again, with these 25 year
6. veterans, people were not up to speed on what they
7. should be doing or the role they had.

8. CHAIRPERSON BERRY: Well, Staff Director,
9. why don't you consider how the Commission might have
10. interim briefings on --

11. COMMISSIONER REDENBAUGH: Well, I don't
12. want to move to that without concurrence of my
13. colleagues. I offer that as a speculation from one
14. commissioner who feels kind of separated from the
15. process.

16. CHAIRPERSON BERRY: Well, what I was
17. suggesting was not that we have a vote on it, but that
18. she might think about it and we could have some more
19. discussion of how it could be done since it's just an
20. idea that emerged today.

21. COMMISSIONER REDENBAUGH: Yes, yes -- a
22. really bad one.

23. CHAIRPERSON BERRY: And she could think
24. about it and see how that would work out, and we could
25. discuss it again. Yes?

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1 COMMISSIONER REDENBAUGH: Fred, as the
2 drafter of the report, you know, what do you think
3 about the idea of some kind of briefing like that? I
4 would like to hear what you were about to say.

5 MR. ISLER: We would have to discuss that
6 with the Staff Director and think about it myself
7 before I make a decision or make a recommendation.

8 COMMISSIONER REDENBAUGH: You wouldn't
9 even have a speculation now?

10 (Laughter.)

11 MR. ISLER: I will say --

12 COMMISSIONER REDENBAUGH: First amendment
13 being what it is.

14 MR. ISLER: The first amendment will get
15 you killed.

16 (Laughter.)

17 Throughout this process and Title VI
18 enforcement, we do brief the Staff Director on the
19 contents and what we our preliminary findings are, the
20 direction we're going. And we also give the Staff
21 Director an update report on where we are.

22 COMMISSIONER REDENBAUGH: But that's like
23 a progress report, right?

24 MR. ISLER: No, no; we engage the Staff
25 Director in discussion.

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1 COMMISSIONER REDENBAUGH: Okay, I see. So
2 she's like really aware of the content and tone and
3 mood of the thing?

4 MR. ISLER: She's aware of both the
5 content and how we're progressing.

6 CHAIRPERSON BERRY: Commissioner Wang?

7 COMMISSIONER WANG: I support the
8 suggestion. If we had such a -- sort of interim
9 discussion, it may help. And also avoid some of the
10 future potential differences. But my question is that
11 I think we have come to a point -- we want to vote on
12 the report. I think a couple of suggestions I feel is
13 a good one.

14 If we were to go back and solicit some
15 comments from some of the individuals cited, is that
16 possible? Is there time to do that?

17 MR. ISLER: I would have to think about
18 that. I'm not too sure that would change the contents
19 or the findings and recommendations in this report at
20 all.

21 COMMISSIONER WANG: Right. But just to
22 allow the other -- those who have cited -- you know,
23 a chance to present their views so as to make
24 everybody feel that we have done our due diligence.

25 MR. ISLER: Well, could we do that in time

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1 to have a statutory report published and printed this
2 year or not?

3 CHAIRPERSON BERRY: The Commission may
4 wish to consider as a matter of policy for the future
5 whether everyone who is mentioned in reports should be
6 sent copies of the material or asked to be
7 interviewed. That's never been done. The Commission
8 has always sent agency review materials to the agency,
9 and has never, in my memory, gone back to people who
10 are no longer around or talked to everybody who was
11 cited. And that may be a good idea.

12 I have -- the historian in me thinks
13 that's great. I'd like to have everybody say
14 something all the way back to the Nixon -- 1974. And
15 I pick on historians when they don't do that.
16 Somebody wrote a book about the Philadelphia plan and
17 didn't interview -- you Art and I castigated him up
18 and down in the Journal of American History.

19 He got mad at me. So the historian in me
20 says that's terrific. The Commission has never done
21 that. It does take a great deal of time. It might
22 be something worth considering. But I think Fred is
23 right in terms of -- you know, do we want to start
24 that now with this report that's finished? Yes?

25 COMMISSIONER WANG: Madame Chair, one

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1 possible remedy is that we can always publish a
 2 supplementary report after this -- we add on this,
 3 right, and then we come back with a supplementary --
 4 whatever. You know, a reason. That could be six
 5 months, a year later.

6 CHAIRPERSON BERRY: Or we could have a
 7 briefing on the report and have all the officials from
 8 every administration who were ever in office come and
 9 say what they think about what they did and publish
 10 it. There are a lot of things to do, but what we have
 11 before us now is what we do about this report.

12 COMMISSIONER WANG: Okay.

13 CHAIRPERSON BERRY: Yes, Commissioner?

14 COMMISSIONER FLETCHER: I have a question
 15 of you, Mr. Isler. Knowing the fear pervades these
 16 agencies, I have to ask you a question. How did you
 17 get them to be so frank with you? I'm serious. How
 18 did you get them to be so frank with you and tell you
 19 exactly what the situation was in terms of carrying
 20 out the civil rights mandate?

21 Now some of them -- I'll preface that by
 22 saying I get all kind of calls at night. I get Lord
 23 knows what you can imagine left in my mailbox with
 24 reference to what is not happening, with people saying
 25 please don't call my name. What's that saying we got

1 that we -- we call it the -- I can't think of the name
2 of the term -- whistleblower.

3 I get every kind of whistleblowing piece
4 of information you could think of in terms of carrying
5 out civil rights. But I've never had one who was
6 willing to say to me all right, I'll go on the record
7 on this. Because if I do, I lose my job or whatever,
8 and I'm not going to get a shot. I'm curious to know,
9 --

10 MR. ISLER: You have individuals that are
11 cited in this report that's been in the civil rights
12 area and are attempting to enforce Title VI for 20
13 some years. And they're real frustrated --

14 COMMISSIONER FLETCHER: About to retire?

15 MR. ISLER: No.

16 (Laughter.)

17 They're really frustrated and they
18 understand the importance of these programs and the
19 making sure that everybody benefits from these
20 programs -- federal assisted programs equally. And
21 they themselves feel personally that all of us are not
22 benefiting from these programs. And they themselves
23 feel that because they haven't been doing their job,
24 there are all sorts of violations of Title VI out
25 there that's not being uncovered because they're not

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1 doing their job.

2 And I don't want to give the impression
3 that the reason they're not doing their job is
4 necessarily because of their superiors. They're also
5 not doing their job because they're not trained and
6 they haven't taken the initiative to ensure that they
7 have the skills and abilities to do their job. And
8 some of the directors have not taken the initiative to
9 do the things that they should do to ensure that they
10 deploy their resource appropriately.

11 And we indicated that very strongly in
12 this report.

13 CHAIRPERSON BERRY: In the report. Yeah,
14 it's in there in chapter and verse -- in every
15 chapter. I was impressed with that.

16 MR. ISLER: Also, we did not -- we were
17 very forefront in saying hey, just getting more
18 resources and staff is not going to do it. You're not
19 even using the staff that you have. You're not even
20 using the resources that you do have. You have to
21 justify more resource. They should not give you more
22 resources unless you can justify why you need more
23 resources.

24 That's in this report. We're not saying
25 give department 100 more bodies. What we're saying,

1 department, you justify why you need 100 more civil
 2 rights -- and go through a process. We're saying go
 3 through a budget process. Go through the evaluation
 4 process. Submit a justification. We have elaborate
 5 recommendations to the Department of Justice as to how
 6 they would do that to defend their budget.

7 CHAIRPERSON BERRY: Okay, thank you very
 8 much, Fred and Tami. Oh, did you want to say
 9 something?

10 COMMISSIONER GEORGE: Yeah, could I just
 11 say ask a --

12 CHAIRPERSON BERRY: Oh, Commissioner
 13 George.

14 COMMISSIONER GEORGE: -- question about
 15 the impact of the ADARAND decision? Does that
 16 decision make you want to revisit any of the sections
 17 of the report? Does that need to be taken into
 18 account?

19 CHAIRPERSON BERRY: Vice Chair, can you
 20 hear? Commissioner Reynoso?

21 VICE CHAIRPERSON REYNOSO: Yes, I heard
 22 the question.

23 CHAIRPERSON BERRY: Okay.

24 VICE CHAIRPERSON REYNOSO: The question
 25 was whether the ADARAND decision was -- would have an

1 impact on this report.

2 CHAIRPERSON BERRY: Yeah, and that was
3 Commissioner George's question. Okay.

4 MR. ISLER: No, it would not, because we
5 have not dealt with the legal interpretation --

6 VICE CHAIRPERSON REYNOSO: I can't hear
7 the response though.

8 MR. ISLER: No, it would not, because we
9 have not dealt with the legal interpretation of
10 affirmative action and the strict scrutiny, ie. media
11 scrutiny, in this report at all on the theory or
12 narrowly tailored theory that they dealt with in the
13 ADARAND. So this has absolutely nothing to do with
14 the ADARAND.

15 COMMISSIONER GEORGE: Would the case
16 itself though have an impact on the proper application
17 of Title VI?

18 CHAIRPERSON BERRY: Are you a lawyer?

19 MR. ISLER: That's something you would
20 have to ask our Deputy General Counsel.

21 COMMISSIONER GEORGE: Oh, sorry. Okay.
22 Were there any lawyers involved in preparation?

23 CHAIRPERSON BERRY: They do legal
24 sufficiency --

25 COMMISSIONER GEORGE: Those legal

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1 sufficiency review --

2 MS. MATHEWS: And Ms. Trost is an
3 attorney.

4 CHAIRPERSON BERRY: Oh, you're an
5 attorney, okay. Vice Chair?

6 VICE CHAIRPERSON REYNOSO: Yes? Go ahead.

7 CHAIRPERSON BERRY: Since you're a
8 justice, I was about to ask you whether --

9 VICE CHAIRPERSON REYNOSO: Can you hear
10 me?

11 CHAIRPERSON BERRY: Yes.

12 VICE CHAIRPERSON REYNOSO: Oh, I had
13 contemplated this question in going over the report.
14 And of course, I've read the ADARAND case. And it
15 seemed to me that this report would not be influenced
16 by the ADARAND case as it reads, because it reads in
17 terms of what the federal agencies themselves are
18 doing. And of course, the ADARAND case just set a
19 constitutional standard that the course will take a
20 look at in the future.

21 In fact, even the ADARAND case was -- sent
22 back for the district courts to take a second look at
23 as to whether they met that standard or not. So it
24 seemed to me that in terms of a review of how these
25 laws have been working and suggestions for the -- what

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1 to do differently, that the ADARAND opinion was not
2 just this report.

3 CHAIRPERSON BERRY: Okay. Any other
4 questions for the staff? Okay, thank you very much.
5 My suggestion to go section by section even though
6 approved is not getting anywhere. Anybody have any
7 questions on Section 1? Anybody have any questions on
8 Section 2 or comments? I'm going to do this --
9 Section 2, Chapter 2 of the report.

10 Anybody have anything on Chapter 3 of the
11 report, coordination enforcement role of the
12 Department of Justice? Anybody have anything on
13 Chapter 4, requirements and key elements of the Title
14 VI program? Anybody have anything on five, on the
15 Department of Education chapter?

16 Anybody have anything on six, the
17 Department of Health and Human Services chapter?
18 Anybody have anything on the Department of
19 Agriculture, Chapter 7? On HUD, Chapter 8? Chapter
20 8, the Department of Labor? Chapter 10, Interior? 11
21 is EPA. Anybody have any points they'd like to make
22 or suggestions or anything else?

23 12, the Small Business Administration; 13,
24 the Office of Justice Programs -- Department of
25 Justice; 14, the U.S. Department of Transportation;

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1 and Chapter 15, the overall Title VI enforcement
2 efforts in the federal agencies, which is findings and
3 recommendations. Would anyone like to delete, change,
4 amend, make comments about any finding or any
5 recommendation beyond the one that Commissioner Horner
6 has already addressed, which is on page 15 and 16 of
7 the report -- that one or anything else? Yes?

8 COMMISSIONER WANG: Madame Chair, I don't
9 know how this could be phrased. I think one
10 experience I find in the whole area is that the
11 information flow -- sometimes many of us don't get the
12 information about the programs or the participation
13 has totally been excluded, because information doesn't
14 reach to the level.

15 I'll give you two examples. One time when
16 Department of Health and Human Services started this
17 reach out program on SSI, out of all the program
18 funding in New York City, they funded 22 programs.
19 Not a single one covers the Asian community. And so,
20 the public -- has a state -- I mean, no Asian program
21 of this outreach, and cannot responsive immediately
22 the next week, and they started one.

23 But not until I asked them, and then
24 there's no -- but information wasn't actually flow
25 into our community. So many of the times, the program

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1 exists which we don't -- recently, just last November,
2 SBA issued a national RFP -- minority -- Women's
3 Business Assistance Center program. And SBA intended
4 to set up 12 Women's Business Assistance centers
5 throughout the country.

6 And we didn't get any of those information
7 until a week before the deadline by accident. So
8 that's the kind of -- I think problem that actually
9 exists I think in all the different areas. So this is
10 where I find it -- even though in one week I was able
11 to get one of the Asian women's groups in New York
12 file an application and we were funded.

13 And they were actually awarded the
14 contract. But I think this is where -- if we could in
15 some way at the opening or whatever, I think the
16 information of all the different programs that are
17 supposed to be widespread -- supposed to be
18 disseminated -- I mean broadly, are not being done,
19 particularly to some of the emerging groups that are
20 not traditionally included in this whole process.

21 CHAIRPERSON BERRY: Go ahead, Fred.

22 MR. ISLER: We have a very strong
23 recommendation in Chapter 15, page seven, on outreach
24 and education that would address your concern.

25 CHAIRPERSON BERRY: Outreach and

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1 education? Okay. All right, anyone else have any
2 other comments? Yes? Somebody said something.

3 COMMISSIONER REDENBAUGH: No, I was
4 thinking to have a comment, but I restrained myself.

5 CHAIRPERSON BERRY: He doesn't actually
6 have one. Yes, Commissioner Anderson?

7 COMMISSIONER ANDERSON: I just want to say
8 that maybe it's apparent from what I've said earlier,
9 but I mean, we've gone through this and I made a
10 decision that rather than go through and try to talk
11 about specific recommendations, my objections are more
12 fundamental than that. And so, that's why I did not
13 go through page by page on the report or the
14 recommendations on the report.

15 CHAIRPERSON BERRY: Okay. Yes,
16 Commissioner?

17 COMMISSIONER GEORGE: Madame Chair, would
18 there be any inclination among people who are prepared
19 to support the report to remove the endorsement of
20 disparate impact theory

21 CHAIRPERSON BERRY: And that's the one on
22 page 15?

23 COMMISSIONER GEORGE: Or affirmative
24 action or race based scholarships.

25 CHAIRPERSON BERRY: Give me the --

1. COMMISSIONER GEORGE: Well, I'm afraid
2 they're peppered around here quite a --

3 CHAIRPERSON BERRY: Okay, disparate impact
4 is on page 16 and 17.

5 COMMISSIONER WANG: Commissioner, would
6 you care to give us your recommendation?

7 COMMISSIONER GEORGE: I don't think that
8 the Commission should endorse the use of disparate
9 impact theory.

10 CHAIRPERSON BERRY: In other words, we
11 would simply drop finding number 13 and recommendation
12 number 13.

13 COMMISSIONER GEORGE: Well, I don't know.
14 I mean, --

15 CHAIRPERSON BERRY: It can be just
16 dropped.

17 CHAIRPERSON BERRY: But it may appear in
18 dozens of locations. We can't --

19 COMMISSIONER GEORGE: The trouble is so
20 much is peppered around. But I just want -- I mean,
21 I'm just trying to gauge to see whether there's any --

22 CHAIRPERSON BERRY: Oh, you mean -- well,
23 sometimes what the Commission does is to approve
24 reports contingent upon the removal of all language
25 referring to X or recommendations referring to Y or --

1 I'm not suggesting any particular one, but I'm just
2 saying that has been done in the past. Yes?

3 COMMISSIONER FLETCHER: In response to his
4 observation or suggestion, may I remind you, my
5 friend, that ADARAND did not say disparate impact
6 didn't have an impact. It simply said you can't prove
7 the disparate impact alone. So that, as far as I'm
8 concerned, does not mean that the report is out of
9 bounds.

10 What ADARAND said is you -- if you think
11 you're going to carry the day with disparate impact
12 alone, not so. You have to draw an affirmative action
13 program that is much tighter than that. It can't rest
14 of disparate impact. You can include it, but then you
15 have to prove that the disparate impact is
16 discrimination.

17 Okay, and that's basically what you said.
18 That's what all five of them -- I also want to remind
19 this Commission that the five judges that ruled on
20 behalf of ADARAND also included the fact in each of
21 their briefs that discrimination is alive and well.
22 They simply said you can't prove it with disparate
23 impact alone.

24 All four of the other judges also said
25 discrimination is alive and well. They felt the

1 disparate impact would probably carry the day. I'm
 2 inclined to agree that disparate impact, which opens
 3 the door the tighter scrutiny, and I believe when we
 4 get through with the close scrutiny, we are going to
 5 eventually come up with just how bad discrimination
 6 really is.

7 And I would like -- I'm not going to
 8 propose it now, but I would like to see this
 9 Commission go all out -- all speed forward ahead to do
 10 some disparate studies. They call them disparity
 11 studies in city councils all over the country. And
 12 what's happening with those disparity studies is
 13 they're proving what else is involved in
 14 discrimination besides disparity alone.

15 And those disparity studies are going to
 16 show exactly the total nature of the problem. And so,
 17 I for one am not inclined to believe that we should
 18 remove that just so we're not leaving the impression
 19 that disparate impact will carry the day alone.
 20 That's what the new civil rights and that's what the
 21 new affirmative action program -- whatever it's going
 22 to be -- is likely to turn out to be.

23 You can't prove it with that particular
 24 statistical data that shows disparate impact will not
 25 carry the day.

1 CHAIRPERSON BERRY: So are you suggesting
2 that you want to say that disparate impact alone does
3 not prove a discrimination --

4 COMMISSIONER GEORGE: No, I appreciate
5 Commissioner Fletcher's comment very much. It really
6 does drive me back to the position that I mentioned
7 during the Chicago report. There are two ways to
8 proceed with these things. We can try to water it
9 down to a common denominator that we can all agree
10 upon, and maybe those aren't such good reports.

11 Maybe it's better to have a strong report
12 even if there's dissent and to have that dissent
13 registered in the -- in a separate statement. Or if
14 it's a concurrence, in a separate statement. So I
15 think that's probably best.

16 It's a complicated issue. I appreciate
17 that it's complicated, and that we shouldn't try to
18 water it down.

19 CHAIRPERSON BERRY: I did try to
20 negotiate. Did anyone want to say anything about the
21 executive summary? Okay, no one does. Does anyone
22 want to comment on anything, or do you want to call
23 for the question?

24 COMMISSIONER FLETCHER: So moved.

25 CHAIRPERSON BERRY: Call for the question?

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COMMISSIONER FLETCHER: Yes.

CHAIRPERSON BERRY: All in favor of approving the Title VI Enforcement Report indicate by saying "aye."

(Round of ayes.)

Okay. All those opposed, indicate by saying no.

(Round of no's.)

Okay. The report is four for. Four would be the vote. However, I will vote against the report, so that parliamentarily I can bring it up again on the floor, since you must bring it up again by someone who has voted against the report and not by someone who voted for it. So for that purpose, I will vote against it. Therefore, instead of being four-four, it will fail by my vote against it also.

Did you understand that, Cruz?

VICE CHAIRPERSON REYNOSO: No, I couldn't hear too well. I'm sorry.

CHAIRPERSON BERRY: Well, let me tell you, the vote was four against approval of the report, and would have been four for the approval of the report. However, I decided to vote against the report, so that under our parliamentary procedure I would be permitted to bring the report up again as the person who voted

1 against the motion, which I could not do if I voted in
2 favor of the report. Did you hear that?

3 VICE CHAIRPERSON REYNOSO: I understand
4 you.

5 CHAIRPERSON BERRY: Okay. Yes,
6 Commissioner Fletcher?

7 COMMISSIONER FLETCHER: Madam Chair, I
8 have a question now. Given that you've done that, and
9 the report will be brought up against, to the extent
10 that the information that -- that Mr. Isler shared
11 with us to show it more balanced, to show that -- make
12 sure that it's clear that the failure to be committed
13 to affirmative action in any of the civil rights
14 efforts, and especially Title VI, that it didn't start
15 or end with the Reagan administration, but actually
16 goes all the way back from the time the law was
17 actually enacted into being, and the extent to which
18 all of the necessary resources, including training,
19 were not a part of preparing the field staff to go out
20 and do the job. Will the report now be amended to
21 reveal that?

22 CHAIRPERSON BERRY: Well, let me say what
23 my intent is, since I said that I gave you reasons for
24 my voting. I intend to discuss with the Staff
25 Director the possibility of revising the Executive

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1 Summary and the findings and recommendations to
2 reflect more clearly -- the information is already in
3 the report, which is that it goes back to 1970, since
4 people were confused about even when it started -- and
5 that there is a significant problem of staff at the
6 civil service level over 25 years, people not
7 enforcing.

8 And to make it clear that this is not a
9 partisan effort, that it is a sort of a pox on both
10 houses sort of thing. And to then present it to the
11 Commission again with taking into account some of the
12 other comments that have been made here, in September.
13 And if the Commission votes it down again, the
14 Commission just votes it down again. I can't do
15 anything about that.

16 But I do think with the great expenditure
17 of money and time and effort, and the fact that we do
18 not have another statutory report, and the importance
19 of this subject, that it is worth a try to try to get
20 it approved. So that's what my intent is.

21 Yes, Commissioner Redenbaugh?

22 COMMISSIONER REDENBAUGH: Yes, I very much
23 support your intent, and I -- I think we, with the
24 expenditure of a little more money, could produce a
25 report that I would support, particularly along the

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1 lines that you suggested, including the -- the
2 comments about philosophy and tone.

3 As an alternative, would there be any --
4 would it make sense, and this is maybe more of an
5 administrative question or a procedural question, to
6 divide the report into -- it is very long -- to divide
7 the report into sort of the back section that's
8 background, or context, and then the -- another
9 section that -- or another report that is the analysis
10 of that, and findings and recommendations. I don't
11 know if that buys us anything.

12 CHAIRPERSON BERRY: Do you mean two or
13 three?

14 COMMISSIONER REDENBAUGH: Well, I meant
15 two.

16 CHAIRPERSON BERRY: One would be
17 background.

18 COMMISSIONER REDENBAUGH: Yes, which I
19 think, you know, that's the record. We could
20 stipulate that and go ahead and publish that very
21 shortly.

22 CHAIRPERSON BERRY: And then the other
23 would be --

24 COMMISSIONER REDENBAUGH: The analysis of
25 that and findings and recommendations.

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1 CHAIRPERSON BERRY: So we could do the
2 report and then do the findings and recommendations
3 separately. I just want to make sure I understand.

4 COMMISSIONER REDENBAUGH: Yeah, that's
5 what I'm speculating. I don't know if that is even
6 workable, but in a report of this magnitude --

7 CHAIRPERSON BERRY: Well, I think the only
8 reason why we can't do that is because a statutory
9 report has to have findings and recommendations.
10 That's what the Congress, in the statute, required us
11 to do.

12 COMMISSIONER REDENBAUGH: Got it. Okay.

13 CHAIRPERSON BERRY: However, I do think,
14 and I may be wrong about this, but I do think that
15 with some work, if people have fairly -- and I have no
16 reason to believe otherwise -- represented their views
17 at this meeting, that there are ways to accommodate
18 some of the comments that have been made here without
19 doing violence to the thrust of the report, as Fred
20 has described it, and as the detail in each chapter
21 reflects what he said. And I do think that there
22 ought to be a way to do it, along with the findings
23 and recommendations, to make sure that it's not some
24 philosophical debate or some partisan --

25 COMMISSIONER REDENBAUGH: Or that it

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1 includes both aspects of that.

2 CHAIRPERSON BERRY: Or something.

3 COMMISSIONER REDENBAUGH: Right.

4 CHAIRPERSON BERRY: And so I think we
5 should take a shot at it. Yes?

6 COMMISSIONER GEORGE: Madam Chairman,
7 would it be appropriate for those of us who'd like to
8 comment in a way that we hope would assist the staff
9 at this point, and I think your strategy is a very
10 good one, to submit memos to them through the Staff
11 Director? Is that the appropriate --

12 CHAIRPERSON BERRY: Yeah. What you should
13 do is if you are moved to do so, you should give a
14 memo to the Staff Director with your comments, and do
15 it as soon as possible.

16 COMMISSIONER GEORGE: But for purposes of
17 sharing with the --

18 CHAIRPERSON BERRY: Yes.

19 COMMISSIONER GEORGE: -- staff, who will
20 be --

21 CHAIRPERSON BERRY: She can discuss it
22 with them.

23 COMMISSIONER GEORGE: -- will be revising.

24 CHAIRPERSON BERRY: Yeah.

25 COMMISSIONER GEORGE: Thank you.

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1 CHAIRPERSON BERRY: If you wish to, yes.
2 But you should do it in, you know, short order,
3 because it does take some time to do this. Okay.

4 COMMISSIONER FLETCHER: Madam Chair?

5 CHAIRPERSON BERRY: Yes. I want to thank
6 the staff for your work, okay, and I'm sure the
7 Commission appreciates the hard work that you've done.

8 COMMISSIONER GEORGE: Could I make a
9 request? I mean, I will do this myself and request to
10 others, unless there is some particular feature of it
11 that's controversial. If Commissioners could, who are
12 going to send a memo, could send a copy to the other
13 Commissioners --

14 CHAIRPERSON BERRY: Yes.

15 COMMISSIONER GEORGE: -- I think it would
16 be useful.

17 CHAIRPERSON BERRY: Okay. Any who has --

18 COMMISSIONER GEORGE: I mean, I will do
19 that for others.

20 CHAIRPERSON BERRY: Anybody who has a
21 memo, appreciate you --

22 Okay. Let's move on here. We said we
23 would discuss the Bureau of Alcohol, Tobacco, and
24 Firearms issue, and the religious liberty issue next,
25 so let us do that. You have the action, Commissioner

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1 Anderson.

2 COMMISSIONER ANDERSON: Thank you very
3 much.

4 I think most of us have seen the articles
5 of the last several days on the Bureau of Alcohol,
6 Tobacco, and Firearms, so-called annual good old boys
7 roundup. I'm looking at The Washington Times from
8 July 11th. The headline is, "The Racist Ways Die Hard
9 at Lawmen's Retreat: Annual Good Old Boys Roundup
10 Cited as Evidence of Klan Attitude at ATF." There is
11 another front page story in today's Washington Times
12 entitled "ATF Ignored Tales of Roundup and January
13 Testimony Described Racism."

14 This linking of Klan attitude with law
15 enforcement -- I mean, we've discussed this before.
16 Commissioner Fletcher has been one who has raised it
17 I think at least once or twice with us, and it was
18 part of the reason why we were interested in what was
19 going on in those jails in the south. It is, I
20 suppose, one of the great ironies, that here we are
21 spending how many hours debating federal enforcement
22 of Title VI in grantees and beneficiaries, etcetera,
23 when federal lawmen are acting -- allegedly are
24 engaged in this kind of activity.

25 I must say, when I read this, my first

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1 reaction was, well, we're having all of these hearings
2 here at the Commission. Why don't we have a hearing
3 on it, and let's subpoena, starting with the Director,
4 and all of the way down until we find out who is
5 involved, who knew what, and then move back up the
6 ladder and see what the deal is.

7 I'm not sure that's the best way to go
8 about it, but that's -- that's my initial reaction or
9 what I'd like to propose, and we can discuss what we
10 should do about it. I'd like to propose at the very
11 least we send a letter to the appropriate committees
12 and ask them for an investigation of it and a hearing
13 into it.

14 I would not impose entirely sending a
15 similar letter to the Department of Justice, but I
16 would like to -- I think what we need is an open --
17 something like this deserves an open accountability
18 and people in front of the nation saying, "I knew
19 about it. I did nothing," or, "Gee, I didn't know
20 anything about it. And how could that be?"

21 But I -- that's where I'd like to see us
22 go, so I'm going to move that we send a letter to the
23 appropriate committee chairmen in Congress, urging
24 them to entertain hearings on this event.

25 COMMISSIONER HORNER: I second the motion.

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1 CHAIRPERSON BERRY: Discussion?

2 COMMISSIONER WANG: Madam Chair, if we
3 were to invite them here for a little briefing, right,
4 and I may also be more direct --

5 CHAIRPERSON BERRY: Let me just say, if
6 others don't have comments now, in speaking to the
7 motion, that, of course, I am very concerned about
8 these allegations. The Washington Post article this
9 morning indicates that the -- this Ocoee, Tennessee --
10 I don't know if that's near where you are right now,
11 Cruz, Ocoee, but watch out, man.

12 VICE CHAIRPERSON REYNOSO: What part of
13 Tennessee?

14 (Laughter.)

15 CHAIRPERSON BERRY: O-C-O-E-E, Ocoee. I'm
16 a Tennessean, you know, so --

17 VICE CHAIRPERSON REYNOSO: Yeah.

18 CHAIRPERSON BERRY: -- you watch out over
19 there in Ocoee.

20 Anyway, that this drew about 300 law
21 enforcement officers from around the country. Some of
22 them were BATF agents, and BATF agents apparently
23 helped organize these things for years. But that
24 there were law enforcement officers from various law
25 enforcement agencies around the country.

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1 Commissioner Anderson is correct that
2 these law enforcement agencies, including BATF, are
3 recipients of federal funds. And, indeed, the Justice
4 Department has a responsibility under Title VI to
5 investigate the departments that may have been there,
6 the law enforcement officials that may have been
7 there, including the Bureau of Alcohol, Tobacco, and
8 Drugs -- Tobacco and Alcohol people.

9 So I would, while I think it's fine to
10 write to the Congress to ask them, I think we most
11 certainly should write a letter to the Justice
12 Department, reminding them of their responsibility
13 under Title VI to get to the bottom of this whole
14 thing.

15 And I would even be in favor of us having
16 a hearing about it ourselves, and I would be in favor
17 of us taking time in September to have the staff
18 generate questions that we could ask and to subpoena
19 some of these people and have them come over here, if
20 it's time to do that. I've forgotten what the
21 deadlines are on subpoenas and notices and all of
22 those other little things that you have to do.

23 But I would, at the very least, add to the
24 motion, make sure that we send something to Justice on
25 -- about the exercise of their Title VI

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1 responsibility. So that's all I would say about it.

2 Yes, Commissioner Redenbaugh?

3 COMMISSIONER REDENBAUGH: I fully support
4 this motion. I have a concern if we proceed to a
5 hearing or briefing that it -- I don't understand how
6 all of this works, but if there is an ongoing Justice
7 Department investigation, and it may be a criminal
8 investigation, would we be in some way interfering
9 with that process?

10 CHAIRPERSON BERRY: Well, the only point
11 I was directing it at is under Title VI. If there are
12 departments that receive federal money -- we have law
13 enforcement officers who do this -- there's a serious
14 question about whether sanctions ought to be taken --

15 COMMISSIONER REDENBAUGH: Absolutely.

16 CHAIRPERSON BERRY: -- against them, and
17 these would be civil sanctions and not criminal ones.
18 However, it might be best, in light of what you just
19 said, for us to send a letter to the committees, to
20 the Justice, and then once Justice -- I know Justice
21 will investigate in addition to what the committees
22 do, although the committee thing I am afraid is going
23 to get all involved in the general assault on the
24 Bureau of Alcohol, Tobacco, and Firearms for all kinds
25 of other things they've been doing.

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1 We could have some kind of hearing or
2 briefing after the -- after the investigation is done,
3 or something. But I think we are probably in a better
4 position to do a balanced, given the balanced nature
5 of the constitution of the Commission, inquiry into it
6 than some of those other folks are. But I don't
7 oppose asking them to do it.

8 COMMISSIONER REDENBAUGH: Well, I'm not
9 opposed to asking them. I just raised the question of
10 not --

11 CHAIRPERSON BERRY: When.

12 COMMISSIONER REDENBAUGH: -- not -- well,
13 not interfering with what might be a criminal
14 investigation.

15 CHAIRPERSON BERRY: Yes, Commissioner
16 Anderson?

17 COMMISSIONER ANDERSON: If it's
18 appropriate to amend my motion, and then without
19 objection of the seconder and others, I think it could
20 be amended so that we send a letter -- so that the
21 motion would be we send a letter to the appropriate
22 committee chairmen in Congress asking for a hearing.
23 We send a letter to the Department of Justice asking
24 for an investigation. And as part of that request to
25 Justice we ask its opinion whether a hearing or a

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1 briefing by this Commission on the matter would impede
2 or interfere with Title VI enforcement by the
3 Department of Justice, or possible criminal
4 investigation by the Department.

5 COMMISSIONER HORNER: No objection from
6 the seconder.

7 CHAIRPERSON BERRY: I have a procedural
8 objection to it. I have a substantive objection to
9 that. We cannot be in the position ever of asking any
10 agency whether we should do something, for any reason,
11 since we sit high and look low as they say in my --

12 (Laughter.)

13 And the -- and we do not ask; we tell.
14 And so we don't want Justice -- they might get in the
15 habit of asking us something. I don't want to make
16 too nice a matter of it. Maybe what we should do is
17 just forget about us having a hearing, and then make
18 a decision as soon as we see what comes back and what
19 happens in the process whether we want to.

20 But I just know that if you ask people a
21 question and they answer it, the next time they want
22 you to ask them something they say, "Well, the last
23 time you asked us. Why didn't you ask us this time?"
24 And so I just -- maybe I'm just too concerned about
25 the Commission's independence, but it's --

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1 COMMISSIONER ANDERSON: Well, I share that
2 concern. My thought was we'd get a response back from
3 them that said, "Yes, it did," or "no, it didn't," and
4 then we could make our decision. But I'm happy not to
5 ask them the question.

6 COMMISSIONER REDENBAUGH: So it's --
7 you're not asking for permission, then.

8 COMMISSIONER ANDERSON: No, I'm just
9 asking to see whether or not in their opinion it would
10 affect it, but I'm happy not to ask the question, too.

11 CHAIRPERSON BERRY: One time the
12 Commission was told by the Kennedy administration that
13 it should not go to Mississippi to do a hearing on
14 voting rights, because it would interfere with the
15 enforcement of the voting rights procedures, and wrote
16 a long legal memo about why the Commission shouldn't.

17 In fact, it was because they didn't want
18 the Commission to go to Mississippi, and the
19 Commission went anyway. So we have a history in this
20 agency, and so I don't -- I mean, I think that -- why
21 don't we just forget about us having a hearing. Let's
22 just do the rest of the motion, if that's okay with
23 everybody, and ask Justice, you know, to investigate
24 it, and ask the Congress to -- yes, Commissioner
25 George?

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1 COMMISSIONER GEORGE: In addition to that,
2 and perhaps I should wait until we vote on this, but
3 in addition to that, I would propose that we put out
4 a press release immediately. Of course, not all of
5 the facts are in; we know that. But I've already
6 heard people dismissing this as the behavior of a
7 bunch of overgrown children and idiots who were even
8 on private time and after hours and off duty, and all
9 of that stuff. And it was, you know, they're
10 constitutionally protected, and everything else comes
11 out here.

12 But it seems to me that this is an
13 occasion where law enforcement, in general, just has
14 to be reminded that the trust and good faith of
15 Americans across the board, including in this case
16 particularly black Americans, it crucially depends on
17 them believing that the people who are enforcing the
18 laws do not have prejudice against them and would not
19 behave in this way. And this just undercuts -- I
20 think we need to support law enforcement as much as we
21 can. It's so important in this country right now.

22 But to have law enforcement people
23 undercutting them -- and I would hope law enforcement
24 agencies across the country would denounce these
25 people, because they -- they put a blight on the name

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1 of all law enforcement, and people will begin to think
2 that this is the way all law enforcement behaves.

3 So I think that this should be an occasion
4 where the Commission really puts out a statement
5 reminding law enforcement of just how crucial it is
6 for them to have the -- maintain the good faith of all
7 Americans, and that behavior like this, whatever is
8 eventually proved and whether it was technically not
9 illegal or whatever it is, it is damaging to law
10 enforcement and to law enforcement efforts, and
11 therefore to all of us.

12 CHAIRPERSON BERRY: Let's do this. Let's
13 restate the motion. The motion is to write to the
14 committees of Congress, the appropriate committees of
15 Congress, requesting an investigation into this widely
16 reported matter, which is summarized in the newspaper
17 account and which we've discussed here, and to ask the
18 Justice Department, consistent with its civil rights
19 enforcement responsibilities, to investigate these
20 matters. That's the motion that's on the floor.

21 Commissioners who are in favor of that
22 motion, please indicate by saying aye.

23 (Round of ayes.)

24 Opposed?

25 COMMISSIONER FLETCHER: I vote twice.

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1 (Laughter.)

2 CHAIRPERSON BERRY: The vote is nine to --
3 no.

4 (Laughter.)

5 The vote is unanimous.

6 Now, the second part of that is
7 Commissioner George's motion, which has three parts,
8 which is we issue a press release which will express
9 three sort of ideas. One is that we certainly support
10 law enforcement and realize what a difficult job, you
11 know, police officers have, and so on, but that it
12 really is important.

13 Commission studies over the years -- and
14 we have done many on police practices -- indicate how
15 important it is for law enforcement officials to have
16 the confidence of communities that they are fairly and
17 equitably enforcing the law. And that the kind of
18 behavior that is reported at least, whatever the
19 results of any investigations, raises serious concerns
20 about the credibility of law enforcement officials,
21 and that they should be aware of this, and the
22 Commission laments any such behavior --

23 COMMISSIONER GEORGE: Excellent.

24 CHAIRPERSON BERRY: -- if it did occur.
25 Something like that.

1 COMMISSIONER GEORGE: Very well
2 summarized.

3 CHAIRPERSON BERRY: You get the idea.

4 All right. Second for that?

5 COMMISSIONER HORNER: Second.

6 CHAIRPERSON BERRY: All those in favor,
7 indicate by saying aye.

8 (Round of ayes.)

9 Opposed?

10 (No response.)

11 It is unanimous.

12 Now, there is a motion -- there is a
13 subject of religious liberty that Commissioner
14 Anderson wanted to raise.

15 COMMISSIONER ANDERSON: Thank you, very
16 much. I'm not sure this will be so unanimously
17 accepted, but I have a draft statement that I'm going
18 to move the adoption of, and I'd like to just pass it
19 out as I read it into the record.

20 CHAIRPERSON BERRY: Sure.

21 COMMISSIONER ANDERSON: Would you just
22 hand these down?

23 I move the adoption of the following
24 statement. "According to the State Department, the
25 Chinese government intends to restrict the right of

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1 Americans and other foreign nationals to religious
2 expression and the free exercise of religion during
3 the United Nations World Conference on Women scheduled
4 to take place in Beijing in September.

5 We believe that our government should not
6 agree to send a delegation whose participation is
7 conditioned on the relinquishment or attenuation of
8 the right to religious freedom, including religious
9 expression or the right not to be discriminated
10 against based on religion or any other status included
11 in this Commission's statutory mandate.

12 In addition, the Chinese government has
13 arrested an American citizen, Mr. Harry Wu, apparently
14 because of his laudable record in the field of civil
15 rights for Chinese nationals and Chinese Americans.
16 Since June 19th, he has been detained, apparently
17 without benefit of counsel. We believe that Mr. Wu's
18 rights to due process of law and the administration of
19 justice have been grossly violated, and he should be
20 released immediately.

21 The participation of the United States
22 delegation in the Beijing Conference should be
23 conditional on the release of Mr. Wu, and on credible
24 assurance that the religious rights of Americans in
25 China will be respected. If the government of China

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1 rejects these conditions, we urge the administration
2 to withdraw its delegation, and we urge Congress to
3 cancel funding for American participation in the
4 conference."

5 CHAIRPERSON BERRY: Could we hear more
6 about the -- first, we need a -- that's the motion.
7 We need a second.

8 COMMISSIONER HORNER: Second.

9 CHAIRPERSON BERRY: Okay. Discussion?
10 Could we hear more about -- I'm familiar with the
11 second paragraph.

12 COMMISSIONER ANDERSON: Yeah.

13 CHAIRPERSON BERRY: I'm less familiar with
14 the first.

15 COMMISSIONER ANDERSON: Well, it's I
16 believe common knowledge, or at least I had been
17 directly told this by individuals who have been to
18 China, that it is standard practice, particularly for
19 Americans, that they may bring into their country
20 articles -- for example, Bibles or other religious
21 articles -- for their own personal use. But they are
22 not able to bring in articles which may facilitate a
23 religious exercise, like a church service or articles
24 which they may want to give to others when they
25 arrive.

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1 There are news accounts in yesterday's
2 paper, and earlier papers, that the State Department
3 has now advised members of the delegation scheduled to
4 go to Beijing for the World Conference on Women that
5 they may not bring these articles because they will be
6 seized, or possibly seized, by government officials as
7 they attempt to enter the country.

8 So I think we have raised this issue once
9 in terms of religious expression of American
10 governmental officials or agents of the government in
11 Saudi Arabia, and I think it's something that we ought
12 to send a clear message on, that we believe that
13 Americans, particularly representatives of our
14 government, should not be required to relinquish their
15 civil rights in their own personal sense when they go
16 on government business to another country.

17 I don't see that as necessarily affecting
18 the way the governments of these countries treat their
19 own nationals, but it certainly does send a tremendous
20 signal, both overseas and at home, in terms of our
21 commitment to certain civil rights when we accept such
22 conditions.

23 And I think, you know, where would we be
24 five years ago if we were sending a delegation to
25 South Africa and we had the kind of conditions

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1 regarding apartheid that, you know, this similar kind
2 of condition. So I think this is at least my concern
3 on it, and I hope I would have four additional
4 Commissioners that would concur.

5 CHAIRPERSON BERRY: Commissioner Wang?

6 COMMISSIONER WANG: Thank you.

7 First, I want to say I support the content
8 of the letter. I want to ask a couple of questions.
9 One is that I think we have not really dealt with any
10 questions from an international -- sort of human
11 rights or civil rights.

12 CHAIRPERSON BERRY: Haiti, we did. I went
13 to see the Pope about Haiti, and --

14 COMMISSIONER WANG: We did.

15 CHAIRPERSON BERRY: -- he kept talking
16 about the Iatians (phonetic), and I didn't know he was
17 talking about the Haitians.

18 (Laughter.)

19 He kept -- "the Iatians (phonetic)" he
20 kept saying.

21 (Laughter.)

22 And finally, his secretary whispered to
23 me, "Haitians." Oh, the Haitians. Oh. Anyway, so
24 the Haitians. That was --

25 (Laughter.)

1 So that's international, and the
2 Commission took positions on the Haitian, you know,
3 refugee -- the business.

4 COMMISSIONER WANG: I was asked personally
5 of this many, many times. My response always is that
6 this is the State Department's problem. The Civil
7 Rights Commission always focuses on just domestic
8 issues related to the civil rights of Americans,
9 rather than international. So that's where I try to
10 avoid -- not get into it, not that I personally --

11 CHAIRPERSON BERRY: Oh, you mean Mr. Wu's
12 issue, not the first issue. Are you talking about
13 Mr. Wu's?

14 COMMISSIONER WANG: Yeah, Mr. -- well, in
15 general. I just need an understanding whether are we
16 -- I mean, like your earlier comment that we can do
17 anything we want to. That's, I mean, a very blanket
18 situation, if we are to enter into this area where the
19 State Department, basically it is their jurisdiction.
20 I need a little clarification on that.

21 CHAIRPERSON BERRY: Okay. Commissioner
22 Horner?

23 COMMISSIONER HORNER: I'm going to support
24 the statement, and I asked the same question of myself
25 that you asked of yourself. I think the answer is we

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1 are addressing our comments to American decisionmaking
2 about its own participation, relating to its own self-
3 definition of what's -- what's appropriate to our
4 standing as American citizens.

5 CHAIRPERSON BERRY: Yes. We would not
6 send anything to the Chinese government. That would
7 be interfering under the -- I've forgotten which act
8 it is -- the Logan Act, or something -- with the
9 diplomatic relationships of the United States, which
10 we're not permitted to do.

11 I just had one. I am going to support the
12 motion if the -- I can get some clarifying language or
13 something on the first issue. I don't have any
14 problem with the Mr. Wu issue, and I don't have any
15 problem with the issue that Commissioner Anderson
16 explained, the way he explained it.

17 But the statement doesn't explain it. So
18 for somebody who doesn't know what this other thing is
19 about, maybe it would be possible to put something
20 after your first sentence that characterized, just
21 generally, what kinds of things we're talking about --
22 you know, bringing in materials or having items for
23 religious worship. That at least -- in other words,
24 this is a matter -- the Chinese government has not
25 officially stated this as far as we know, but there

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1 have been press accounts of this.

2 COMMISSIONER WANG: Madam Chair, maybe I
3 can help. It is my understanding that churches are
4 right now open for people to come in to worship, but
5 individuals are not to give literature or pamphlets or
6 Bibles to anybody else, except for your own use. So
7 the Chinese government will not permit on the street
8 kind of passing out leaflets, or, you know, but there
9 are organizations that are sending in -- anyway, they
10 don't just care about this, you do it.

11 But the government officially would not
12 permit any open religious preaching and conversion.
13 But the churches are being attended, you know, in the
14 cities in China. So worship on Sundays, you know.

15 CHAIRPERSON BERRY: Okay. Commissioner
16 George?

17 COMMISSIONER GEORGE: I was just going to
18 propose perhaps some language that would do the trick.
19 After that first sentence which refers to generally
20 the problem of research in some religious expression
21 and free exercise of religion, perhaps we could make
22 reference to restrictions on the importation or use of
23 religious materials, liturgical or other religious
24 materials. Would that --

25 CHAIRPERSON BERRY: We could do that. Or

1 having heard the rest of what was just said, I would
2 even be satisfied if nothing else was changed except
3 to say, "According to the State Department, the
4 Chinese government may restrict the right of Americans
5 and other foreign nationals," and then to leave the
6 rest of it as it is.

7 The reason why I would do that is because
8 it intends to --

9 COMMISSIONER GEORGE: Yeah.

10 CHAIRPERSON BERRY: -- Mr. Wu has
11 happened. We know; that's done.

12 COMMISSIONER GEORGE: Yeah.

13 CHAIRPERSON BERRY: As far as we can tell,
14 the Chinese may do this other thing, and we need
15 credible assurance, which is down in the last
16 paragraph.

17 COMMISSIONER GEORGE: I'm happy with what
18 you're --

19 CHAIRPERSON BERRY: So if you changed it
20 to "may," then I would be happy to support it.

21 COMMISSIONER ANDERSON: Strike "intends
22 to" and insert "may."

23 CHAIRPERSON BERRY: May restrict.

24 COMMISSIONER ANDERSON: Yeah.

25 CHAIRPERSON BERRY: And then just leave

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1 the rest of it.

2 COMMISSIONER GEORGE: Madam Chairman, just
3 for Charles, I have been told by the President of the
4 Pueblo Institute that as far as the religious worship
5 of delegates and NGO representatives from around the
6 world, that the Chinese are going to restrict the
7 worship services for the participants to what they
8 call a spirituality tent, so that they, in fact, won't
9 have access to any of the churches that are
10 functioning, although apparently there are not
11 independent churches functioning. But they -- they
12 couldn't -- would not have an opportunity to rub
13 shoulders with believers.

14 But anyway, this is the information I have
15 from Pueblo.

16 CHAIRPERSON BERRY: So that would help.

17 Commissioner Redenbaugh, did you still
18 want to say something, or did that --

19 COMMISSIONER REDENBAUGH: No.

20 CHAIRPERSON BERRY: Okay. Vice Chair, can
21 you hear all of this?

22 VICE CHAIRPERSON REYNOSO: Well, I heard
23 the initial part, and the discussion has gone in and
24 out. So I'd like, when the discussion is over, sort
25 of a summary of where we are and what the -- and

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1 exactly what we're voting on. I take it it's on
2 Carl's statement, and there has been some discussion
3 about changing of the language.

4 CHAIRPERSON BERRY: Right. If -- when
5 there are no other comments, I'll read it as -- or
6 just summarize it again. I won't read it.

7 Cruz?

8 VICE CHAIRPERSON REYNOSO: Yes?

9 CHAIRPERSON BERRY: What we would be doing
10 here now, we know that Mr. Harry Wu has been arrested
11 and detained.

12 VICE CHAIRPERSON REYNOSO: Right, yes.
13 And I agree with you. I have no problem with that
14 aspect of the statement.

15 CHAIRPERSON BERRY: The first part of the
16 statement was about the intention to restrict the
17 right of Americans to religious expression. And as
18 Commissioner Anderson described it, and Commissioner
19 Wang, and then Commissioner George subsequently, there
20 were certain actions that the Chinese seemed to have
21 projected that would probably interfere with free
22 exercise, like the distribution of materials --

23 VICE CHAIRPERSON REYNOSO: Okay.

24 CHAIRPERSON BERRY: -- meetings with
25 people, and so on.

1 But my point was that that hasn't happened
2 yet.

3 VICE CHAIRPERSON REYNOSO: Yes.

4 CHAIRPERSON BERRY: And so to say "intends
5 to restrict" was a little too strong. And that I
6 thought it should be changed to, "The State --
7 according to the State Department, the Chinese
8 government may restrict the right of Americans."

9 VICE CHAIRPERSON REYNOSO: Yes. Okay.
10 That makes sense.

11 CHAIRPERSON BERRY: And then to simply say
12 that we want -- in order for the United States to
13 participate, we need a credible assurance that the
14 religious rights of Americans in China will be
15 respected, that that would be fine then.

16 VICE CHAIRPERSON REYNOSO: Okay.

17 CHAIRPERSON BERRY: And that Mr. -- we
18 think Mr. Wu ought to be released, you know, and given
19 administration of justice. And so the motion now
20 reads in that way.

21 VICE CHAIRPERSON REYNOSO: Okay.

22 CHAIRPERSON BERRY: So is everybody ready
23 for the question?

24 COMMISSIONER FLETCHER: I have one
25 question.

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1 CHAIRPERSON BERRY: You have a question?

2 COMMISSIONER FLETCHER: Yes.

3 CHAIRPERSON BERRY: Commissioner Fletcher
4 has a question.

5 COMMISSIONER FLETCHER: Carl, I'm going to
6 support you, but I'm just curious to know -- I'm
7 curious to know about the second paragraph. Is he
8 being detained because of his religion?

9 COMMISSIONER ANDERSON: No.

10 CHAIRPERSON BERRY: No, no, it's
11 administration of justice.

12 COMMISSIONER ANDERSON: Administration of
13 justice issue.

14 COMMISSIONER FLETCHER: Okay. All right.

15 CHAIRPERSON BERRY: So we have two issues
16 here -- the religious freedom issue and the
17 administration of justice issue, and both concern the
18 conference in Beijing, which is why they're in the
19 same resolution.

20 All those in favor of this resolution, as
21 amended, indicate by saying aye.

22 (Round of ayes.)

23 Opposed?

24 (No response.)

25 It is unanimous. However, I'd like to

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1 suggest that we not step on our press releases by
2 issuing all of them at the same time. And it might be
3 well to issue the one concerning the BATF thing first,
4 since this is a little bit along of -- what do you
5 think? What is your pleasure? Does that make sense
6 to everybody? Not just put them all out at the same
7 minute?

8 COMMISSIONER GEORGE: What would be the
9 intelligent way to do that? I think that's probably
10 right, that the ATF should probably come first.

11 COMMISSIONER HORNER: I think we probably
12 won't get a separate story relating to the
13 Commission's activity for either of these, but that it
14 would okay to release them simultaneously, because
15 both statements feed into stories on the overall
16 subject. In other words, I doubt it would step --
17 have the effect of stepping on --

18 COMMISSIONER GEORGE: Well, what if we
19 could -- would it be appropriate to get Charlie
20 Rivera's advice on this, since he is our expert on
21 this?

22 CHAIRPERSON BERRY: Mary, can we ask
23 Charlie his advice? Would you ask him to give us his
24 advice?

25 STAFF DIRECTOR MATHEWS: I'd be glad to

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1 call Charlie Rivera up and see what his comments might
2 be on this. He has excellent experience in this issue
3 that has been --

4 CHAIRPERSON BERRY: And we know this is
5 going to be Headline News in CNN or --

6 (Laughter.)

7 MR. RIVERA: No, no, no. I -- I have to
8 agree with what Commissioner Horner said. I think
9 it's highly likely that we would get the biggest bang
10 for the effort to get both out as soon as possible, so
11 that they could be incorporated into whatever stories
12 are being written on these two issues.

13 CHAIRPERSON BERRY: Okay. All right.
14 Now, let's go to the SAC Committee report in West
15 Virginia, which we've had before us before, and we
16 only have it back before us again because of putting
17 the -- oh, what is it? Putting citations, references
18 to the recommendations.

19 So we need a motion to approve the
20 Virginia-West Virginia SAC report.

21 COMMISSIONER GEORGE: So moved, Madam
22 Chairman.

23 CHAIRPERSON BERRY: I need a second.

24 COMMISSIONER WANG: Second.

25 CHAIRPERSON BERRY: Okay. Any discussion?

1 Do we need -- I know one point we made in
2 the transcript of the minutes, or somewhere I saw, was
3 that once we got the report with the citations we
4 would make a decision as to whether we wanted to
5 actually include the citation in the printed report,
6 or was it sufficient for us to discuss it. Remember
7 that discussion?

8 COMMISSIONER GEORGE: Yeah, I do. I,
9 again, propose that we -- that we just keep it in
10 there. We've got it in. I think it's useful to the
11 reader. My preference is to keep it in.

12 CHAIRPERSON BERRY: What page is it on, do
13 you know? Does anyone know what page that's on? It's
14 in the back of the report. Where is it?

15 Commissioner George? Oh, page 35, is that
16 right? I guess I'm right, then.

17 (Laughter.)

18 Vice Chair?

19 VICE CHAIRPERSON REYNOSO: Yes?

20 CHAIRPERSON BERRY: We included the
21 citation on page 35 in the finding. I guess on 37
22 also. It says Chapter 1, pages so-and-so. Do you
23 have any feeling about -- you were the one who made
24 the point about we'd take a look at it and see whether
25 -- how it would look printed or decide whether we

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1 wanted to leave it in, or whatever. Do you have any
2 preference or --

3 The citation simply says on page 35 of the
4 Virginia report, "Chapter 1, pages 3 through 12" as a
5 citation. And Commissioner George says that he
6 prefers to keep the citation in when we print it. I
7 just wondered if you thought this was -- was there any
8 reason to discuss this further.

9 VICE CHAIRPERSON REYNOSO: I have no
10 objection. That's fine.

11 CHAIRPERSON BERRY: You have no objection.
12 Okay. Ready for the question.

13 All in favor indicate by saying aye.

14 (Round of ayes.)

15 Opposed?

16 (No response.)

17 Okay. It passed unanimously. Future
18 agenda items. Does anyone, beyond what we've already
19 discussed, have any future agenda items? Okay.

20 STAFF DIRECTOR MATHEWS: Madam Chair?

21 CHAIRPERSON BERRY: Yes, Staff Director?

22 STAFF DIRECTOR MATHEWS: I would just like
23 to indicate that a proposed calendar for Commission
24 meetings for 1996 has been forwarded recently, and we
25 would be interested in any comments anybody would have

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1 if there are conflicts with your schedule.

2 CHAIRPERSON BERRY: I missed one item on
3 the agenda, because there is no -- I thought number 7
4 was -- there is no -- number 8 should be by the West
5 Virginia, and number 7 is a SAC report.

6 You got the report of the SAC Chairs
7 meeting, and we -- I think in September we should
8 probably discuss the report, because we promised them
9 that we would get a report, we would read it, and then
10 we would have a discussion about how to respond to
11 some of their concerns.

12 So we would appreciate it if you would
13 read it between now and the next meeting, and see if
14 you have some ideas about positive responses we might
15 make to some of their concerns and recommendations.
16 So we'll leave that at that, unless someone wants to
17 discuss it further at this time.

18 Okay. Anything else, Staff Director?

19 STAFF DIRECTOR MATHEWS: No.

20 CHAIRPERSON BERRY: Could I get a motion
21 to adjourn?

22 COMMISSIONER WANG: So moved.

23 CHAIRPERSON BERRY: All right. It's not
24 debatable, so we're adjourned. Thank you.

25 (Whereupon, at 12:35 p.m., the Commission

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meeting was adjourned.)

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