

UNITED STATES COMMISSION ON CIVIL RIGHTS

MEETING

FRIDAY,
SEPTEMBER 8, 1995

THE COMMISSION MET IN ROOM 540, 624 9TH STREET, N.W., WASHINGTON, D.C., AT 9:30 A.M., MARY FRANCES BERRY, CHAIRPERSON, PRESIDING.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON
CRUZ REYNOSO, VICE CHAIRPERSON
CARL A. ANDERSON
✓ARTHUR A. FLETCHER, VIA TELEPHONE
ROBERT P. GEORGE
CONSTANCE HORNER
RUSSELL G. REDENBAUGH, VIA TELEPHONE
CHARLES PEI WANG
MARY K. MATHEWS, STAFF DIRECTOR

STAFF:

CONNER BALL
BARBARA BROOKS
FRANKLIN CHOW
JAMES CUNNINGHAM
EDWARD DARDEN
PAMELA DUNSTON
GEORGE HARBISON
CAROL LEE HURLEY
WILLIAM LEE
REGINALD MARTIN
STEPHANIE MOORE
JACQUELINE L. JOHNSON
CHARLES RIVERA
MIGUEL SAPP
ANTHONY WELLS, SR.
AUDREY WRIGHT
NADJA ZALOKAR

ASSISTANTS:

RONALD BROWN
THOMAS GRAY
DENNIS TETI
KRISHNA TOOLSIE

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P R O C E E D I N G S

(9:40 a.m.)

1
2
3 CHAIRPERSON BERRY: Commissioner Fletcher
4 and Redenbaugh are on the phone. Is that correct?
5 Hello? His line is busy?

6 MR. REYNOSO: Madam Chair, while we're
7 waiting for them to come on the line, I just wanted to
8 indicate that I had a very hard time when I was on the
9 phone the last time. I don't know if we should
10 experiment with some of those new fangled --

11 MR. GEORGE: Telemonitors?

12 MR. REYNOSO: No, I had in mind -- well,
13 what happens is that the mikes don't pick up our
14 voices and there are new fangled gadgets that you can
15 just wear on your neck and so the mike is always near
16 you and you can move around and all that and that way
17 the person on the phone can hear. I had a very hard
18 time following you on the discussion.

19 CHAIRPERSON BERRY: How about the rest of
20 you when you've been on the phone? Any problems?

21 MR. WANG: Sometimes there's background
22 noise.

23 MR. GEORGE: My problem has not been a
24 problem of being able to hear. It's been other
25 things. The problem I've had is it cuts in and out.

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1 I'll miss blocks where there's just nothing coming
2 through. It's happened twice.

3 CHAIRPERSON BERRY: Could the staff look
4 into the technology associated with this? Maybe the
5 Vice Chair can advise you. I don't know what this
6 piece of technology is, and see if we can improve the
7 transmission.

8 The first item on the agenda is the
9 approval of the agenda. Now is Commissioner
10 Redenbaugh on? Well, I'm assuming they will be on.
11 Could I get a move to approve the agenda, unless
12 somebody has some changes or something.

13 MR. REYNOSO: Madam Chair, could I? One,
14 I would suggest that when our colleagues come on we
15 might reopen -- I have two matters to add, if it seems
16 appropriate. One, maybe it will be included at the
17 end of the report from the Staff Director, but I'd
18 like to have a report on the meeting dates and whether
19 or not any of us got back to the staff with any
20 conflicts. I just keep getting calls for meetings and
21 so on, so I want to firm up those meeting dates. And
22 two, I'll have a resolution to present. It's being
23 prepared now, I take it, commending the First Lady for
24 the position she's taken in the meeting in China in
25 protection of the rights of women to bear children and

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1 the rights of a family. So that will be distributed
2 later on.

3 CHAIRPERSON BERRY: Where do you want this
4 in the agenda or do you care?

5 MR. REYNOSO: No.

6 CHAIRPERSON BERRY: Why don't we then put
7 it last if there's no difference?

8 MS. HORNER: Madam Chair, there's an issue
9 on which I'd like to suggest the Commission send a
10 letter. I don't know whether that needs to be added
11 to the agenda. It has to do with the Montgomery
12 County French language opportunity for Asian-American
13 students.

14 CHAIRPERSON BERRY: What we can do is the
15 one that the Vice Chair has we can do on the Staff
16 Director's report. We've already taken some action on
17 that. This is a new subject, so why don't we make it
18 a separate item and then why don't we do that, after
19 we do the SAC appointments, if that's all right?

20 MS. HORNER: Sure.

21 CHAIRPERSON BERRY: Does anyone have
22 anything else they'd like to add to the agenda?

23 MR. GEORGE: This is not so much an
24 addition to the agenda as a procedural recommendation.
25 In working with transcripts in the past a couple of

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1 things occurred to me that might just be helpful as a
2 matter of policy. One, could we take a roll of the
3 Commissioners at the beginning so it's clear on the
4 transcript record, after we've long forgotten our
5 experience of who is present? And I'd like to request
6 as a general matter on substantive votes on
7 substantive matters as opposed to merely procedural
8 matters like motions to adjourn and approval of the
9 minutes and so forth, that we go ahead and poll the
10 Commissioners, even though it takes a little extra
11 time, so that the votes and abstentions would be
12 recorded rather than simply recorded as a chorus of
13 "ayes" where it would be unclear where people stand.

14 MS. HORNER: That's a good idea.

15 CHAIRPERSON BERRY: On the first one, I
16 don't see any problem. On the second item, I don't
17 see any problem in doing it, except that procedurally
18 we are not required to do that unless the
19 Commissioners on each occasion indicate that they do
20 want to be polled. However, if everybody wants to be
21 polled, it's fine with me. I don't care.

22 MR. GEORGE: It's only for substantive,
23 not for approval of the minutes or adjourn the
24 meeting.

25 CHAIRPERSON BERRY: I'll resolve the

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1 dispute over what is substantive and what is
2 procedural.

3 MR. GEORGE: The Chairman makes the
4 decision and then we would be left with -- it's really
5 the recommendation of you. If we want to be polled,
6 we can do what we always do, say let's be polled.

7 CHAIRPERSON BERRY: Okay, I can see
8 nightmares.

9 MS. HORNER: Maybe we should make a
10 decision to be polled.

11 CHAIRPERSON BERRY: That's what I mean.

12 MS. HORNER: Unless we decide
13 affirmatively not to be polled for some reason. It
14 seems to me it's a pretty easy thing to do.

15 CHAIRPERSON BERRY: So now the decision
16 is, the recommendation is that we poll ourselves by
17 naming everybody and unless we take a vote not to poll
18 ourselves --

19 MR. GEORGE: Well, this is getting more
20 complicated than I thought. This is really a
21 recommendation to the Chairman.

22 CHAIRPERSON BERRY: Why don't we -- would
23 you mind doing this? When you feel the need or any
24 Commissioner feels the need to have a recorded vote of
25 exactly who voted on an issue, simply say so. Say on

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1 that one I'd like to have any Commissioner' who -- we
2 can keep doing it the way we're doing it and if you
3 feel the need, not you personally, but any
4 Commissioner, feel the need to say I would like to
5 have a poll, then let's just do it, agree that we will
6 do it.

7 MR. REYNOSO: It seems to me that that
8 makes sense, without any implication that somehow --

9 CHAIRPERSON BERRY: Because I don't want
10 to be in a position of deciding that something is
11 substantive or procedural and have a big argument
12 about whether it is substantive or procedural. I
13 would rather, if you don't mind, if you just do it
14 that way, any time you want us to poll, you or any
15 other Commissioner, just say so. We'll do it. Okay?

16 All right. Now any other items for the
17 agenda? Okay, if there are no other items for the
18 agenda, could somebody move the approval of the
19 agenda, as amended.

20 MR. GEORGE: So moved.

21 CHAIRPERSON BERRY: Could I get a second?

22 MS. HORNER: Second.

23 CHAIRPERSON BERRY: All in favor, say
24 "aye"?

25 (AYES.)

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1 CHAIRPERSON BERRY: Opposed? Somebody
2 said something. Oh, I see.

3 The approval of the minutes of July 14th
4 is the next item of business. Could I get a motion?

5 MS. HORNER: So moved.

6 CHAIRPERSON BERRY: Second?

7 MR. GEORGE: Second.

8 CHAIRPERSON BERRY: Any discussion? All
9 in favor say "aye"?

10 (AYES.)

11 CHAIRPERSON BERRY: Opposed? Minutes are
12 approved.

13 Are there any announcements? Staff
14 Director, do you have any announcements?

15 MS. MATHEWS: I do Madam Chairperson.

16 CHAIRPERSON BERRY: Well, then please
17 proceed.

18 MS. MATHEWS: I wanted to inform the
19 Commission that our Senate Appropriations
20 Subcommittee, this is the subcommittee on Commerce,
21 Justice, State, the Judiciary and Related Agencies,
22 held a markup session on the Fiscal 96 appropriations
23 yesterday. We were informed by the Subcommittee Staff
24 that the Commission was indicated in this
25 marked up bill at \$9 million and that is the current

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1 fiscal year appropriation. It is \$500,000 more than
2 the full House vote for the upcoming year and we have
3 learned this morning that the full Senate
4 Appropriations Committee will go to mark up next
5 Tuesday.

6 CHAIRPERSON BERRY: Thanks.

7 MR. REYNOSO: Does that mean that the
8 prediction would now be that we come out with \$9
9 rather than \$8.5? What about the implications of \$8.5
10 million, but we really don't know that that's going to
11 be approved.

12 MS. MATHEWS: It's too soon, I think, to
13 say where we will end up because the next step,
14 assuming it goes to a Senate vote and assuming this
15 number is retained throughout that process, then there
16 will be a House-Senate conference and it's hard to
17 predict how that would turn out at this point.

18 CHAIRPERSON BERRY: Okay, any other
19 announcements?

20 MS. HORNER: Do we have Commissioner
21 Redenbaugh on?

22 MR. REDENBAUGH: I think so.

23 (Laughter.)

24 MR. REDENBAUGH: However, I've been on
25 several times before.

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1 CHAIRPERSON BERRY: Good morning, Russell.
2 MR. REDENBAUGH: Good morning, Mary.
3 CHAIRPERSON BERRY: Do you have any items
4 you'd like to add to the agenda? Before you came on
5 the Commissioners agreed to add an item concerning the
6 Montgomery County, Maryland, some language issue
7 involving schools which we will hear more about when
8 the item is added and we discuss it. We agreed to add
9 that.

10 And we also agreed that the Vice Chair has
11 a resolution concerning the Chinese, the meeting in
12 China and we agreed that since we already discussed
13 that before in past resolutions, we will discuss that
14 in the Staff Director's Report.

15 We also agreed that when you came on if
16 you had something you wanted to add, you would add
17 that.

18 MR. REDENBAUGH: Well, thank you. The
19 Chicago Asian Report, that's on the agenda now, right?

20 CHAIRPERSON BERRY: Which?

21 MR. REDENBAUGH: The SAC Report from
22 Chicago?

23 CHAIRPERSON BERRY: Oh, SAC Report,
24 Illinois. No, no, there are no SAC Reports on the --
25 there's SAC appointments, but we don't have any SAC

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1 reports on today.

2 MR. REDENBAUGH: Okay, I'm speaking -- I'd
3 like to place it on the agenda as a discussion item.

4 CHAIRPERSON BERRY: Okay, you want to
5 discuss the SAC Report from Illinois? Is that what
6 you said?

7 MR. REDENBAUGH: Yes, the Illinois -- it's
8 previously published.

9 CHAIRPERSON BERRY: Oh, one that's already
10 published. Okay.

11 MR. REDENBAUGH: I just have a question,
12 some discussion about that particular report.

13 CHAIRPERSON BERRY: Why don't we do that
14 under the Staff Director's Report too, if you have no
15 objection?

16 MR. REDENBAUGH: That would be fine with
17 me.

18 CHAIRPERSON BERRY: All right,
19 Commissioner Anderson?

20 MR. ANDERSON: Maybe I'm tardy in raising
21 this matter --

22 CHAIRPERSON BERRY: Yes, you are.

23 MR. ANDERSON: But I would like to discuss
24 a possible briefing topic and I thought perhaps we
25 could do that under the Staff Director's Report so we

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1 don't need to amend the agenda.

2 CHAIRPERSON BERRY: Right. Briefing,
3 possible briefing topic. All right, yes.

4 MR. WANG: I have a question of the Staff
5 Director. Is there any possibility of potential gap
6 of fiscal year if the budget is not adopted?

7 CHAIRPERSON BERRY: Closed down.

8 MR. WANG: We will have like a furlough
9 situation? We had it before. It seems like we're
10 moving into one potentially.

11 CHAIRPERSON BERRY: Well --

12 MR. GEORGE: We call them sabbaticals.

13 (Laughter.)

14 MS. HORNER: You get half pay, right?

15 (Laughter.)

16 CHAIRPERSON BERRY: Yes, Staff Director?

17 MS. MATHEWS: Yes, we have been evaluating
18 the possibilities and the point that you've made is a
19 possibility and while it is very difficult to predict,
20 we're doing the right thing which is looking at all
21 the various possibilities so that we will be prepared
22 and planning with that in mind.

23 CHAIRPERSON BERRY: Haven't you gotten
24 guidance from OMB, I mean all the agencies in the
25 government?

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MS. MATHEWS: Yes.

CHAIRPERSON BERRY: To prepare for close down?

MS. MATHEWS: Yes, all agencies were issued instructions from OMB and from the Office of Personnel Management on this issue.

CHAIRPERSON BERRY: Before, as you pointed out, Charles, that there have been predictions of close down and the Commission at one time didn't have a budget, we RIF'd and everything else and it was very painful. But this year it seems like it's more likely than before. So we can hope not, but we're prepared?

MS. MATHEWS: Yes, we are prepared.

MS. HORNER: When is our October -- what do we have scheduled in October?

CHAIRPERSON BERRY: We have a meeting --

MS. MATHEWS: We have an October 6th Commission meeting.

MS. HORNER: So that meeting then would become subject to a decision as to whether it can or should occur.

CHAIRPERSON BERRY: Right.

MS. HORNER: Should we be prepared for that?

CHAIRPERSON BERRY: We should be prepared

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1 for the eventuality that we will not have a meeting in
2 October and if this drags on into November, we won't
3 have a hearing.

4 MS. HORNER: We don't have a hearing
5 scheduled for October?

6 CHAIRPERSON BERRY: No, right. All right,
7 do you have any other announcements, Staff Director?

8 MS. MATHEWS: I do not.

9 CHAIRPERSON BERRY: Okay. Does anyone
10 else have any announcements? I don't have any.

11 Let's go then to the Staff Director's
12 Report. We have a colloquy between the Staff Director
13 and Mr. George and when they're finished the colloquy,
14 we'll proceed.

15 MR. GEORGE: All right.

16 CHAIRPERSON BERRY: We don't know what
17 you're talking about.

18 (Laughter.)

19 CHAIRPERSON BERRY: We're going now to the
20 Staff Director's Report and first, Staff Director, is
21 there anything you want to tell us before we go to the
22 items that we added? Are there any questions about
23 anything else that's in the Staff Director's Report?

24 MS. HORNER: I'll have a few questions,
25 but I'll wait.

1 CHAIRPERSON BERRY: Do you want to ask
2 staff questions or what? You just made announcements.

3 Commissioner Horner?

4 MS. HORNER: Yes, the Civil Rights
5 Journal, according to the report, that is due out by
6 the end of September and I gather ready to go, I don't
7 know what it's contents are, who's writing for it,
8 what kind of articles it's going to include and I
9 wonder if you could give us a briefing on that.

10 MS. MATHEWS: I don't actually have
11 documents in front of me, Commissioner Horner, so I
12 can give you a general update. But we did have, I
13 believe at some point in the past, a discussion on
14 possible authors of articles and so -- and issues, it
15 was quite some time back. We did do that.

16 It is a publication that has a variety of
17 features. You probably remember that the Commission
18 used to do a magazine and I believe the last issue
19 that was published was 1989 and the current design of
20 the magazine includes, in addition to articles by
21 various authors, it includes other departments such as
22 a department we're calling viewpoints, where there
23 will be pages facing each other and pieces written
24 like a point-counterpoint.

25 MS. HORNER: Who is writing and on what

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1 subject for this issue?

2 MS. MATHEWS: For this issue the subject
3 is, I believe it's Affirmative Action and it's Abigail
4 Thernstrom and a gentleman named Laughlin McDonald.

5 I wonder if you can give me a minute
6 because Charles Rivera is here and he might have and
7 he does have some helpful information. The -- I'm
8 going to continue with departments here, since I've
9 started on that and go back to the authors for the
10 other portion of the magazine. There's also a
11 department called Yesterday which looks at a past
12 issue that was in the civil rights area that might not
13 have received a lot of credit, but it's worthy of
14 remembering. And the issue that's going to be in this
15 first piece is the legacy of Arthur Schloberg.
16 There's a department entitled Close Up which is going
17 to have a piece written by Chancellor Change Lin Tien
18 of the University of California and I'm sorry I was
19 incorrect -- excuse me, you wanted to ask something?

20 MS. HORNER: I'm interested in just
21 subjects and authors.

22 MS. MATHEWS: I do not -- like I said, I
23 was not prepared to present this, so I do not have a
24 lot of material here.

25 MS. HORNER: Just subjects and authors.

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1 MS. MATHEWS: Okay. I'm giving you as
2 much as I have right now. I mean I can give you
3 several ways I can handle this. I can call you after
4 the meeting --

5 MS. HORNER: No, no. That's okay.

6 MS. MATHEWS: Okay. The viewpoints piece
7 I said I thought it was Affirmative Action. I want to
8 correct that. It's on voting rights, but the two
9 authors were ones that I did mention.

10 There's book review pieces and I'm sorry
11 I do not have the details on that, but there are
12 several of those that were reviewed. There's a little
13 section on media and it's discussing television and
14 the issue of the model minority.

15 There's a section on the ERIC documents
16 that are put out by the Department of Education that
17 are sort of summary pieces of various important issues
18 in Civil Rights and that we have picked several just
19 to highlight to demonstrate the value of this
20 Department of Education resource for individuals.

21 The articles per se and here's something,
22 there's an article on organized hate in America by
23 Joseph Florry, Sr.

24 MS. HORNER: Who is he?

25 MR. RIVERA: He's senior investigator for

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1 Klan Watch.

2 MS. HORNER: Thank you.

3 MS. MATHEWS: Charlie, if you --

4 CHAIRPERSON BERRY: Commissioner Horner,
5 why can't we just give you a list of the articles and
6 the authors and files and anything else you want
7 rather than having them go down the list unless you
8 have some action item?

9 MS. HORNER: I have no action item. I
10 have a great curiosity, since I know this is ready to
11 go and all I want very simply is -- and I don't know
12 whether Charlie could give this to us, is just a tick
13 off of title, subject, I mean not title, but subject,
14 author and basically orientation, you know, like this
15 guy is a professor who has followed this or Klan
16 Watch, whatever, and if there are only maybe six or
17 seven articles, I think we can do that in about 90
18 seconds.

19 CHAIRPERSON BERRY: Charlie, read the
20 articles and the titles of people.

21 MR. RIVERA: The articles include
22 organized hate in America, as the Staff Director
23 pointed out --

24 CHAIRPERSON BERRY: Let me interrupt you,
25 first. Is it indeed true that this thing is going to

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1 be ready for whatever time you said?

2 MS. HORNER: September, late September?

3 MS. MATHEWS: We are working on it and it
4 is not imminently going to the printer, but it will be
5 soon.

6 CHAIRPERSON BERRY: Okay, go ahead,
7 Charlie.

8 MR. RIVERA: Yeah, well the first article
9 is a status report on hate activity and white
10 supremacy groups in the United States. This was
11 written before the Oklahoma City bombing and it has a
12 side bar by Rabbi Cooper with the Wiesenthal Center,
13 I believe it is in California on bigotry.

14 There's a piece by two immigration
15 scholars, one with the Carnegie Endowment, one at
16 Washington University in St. Louis on immigration,
17 civil rights, the linkage between those two things.
18 There's a cover story by Ellis Coes, a Newsweek editor
19 on counting by race in the census and issues that that
20 raises, based on the fact that it was an issue that
21 you focused on in one of your piece.

22 There's a piece on the Americans With
23 Disabilities Act, five years after it was passed.
24 There's a piece on --

25 CHAIRPERSON BERRY: Welcome, Commissioner

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1 Fletcher, excuse me for interrupting.

2 We are having Charlie Rivera read the
3 titles and the authors --

4 MR. FLETCHER: You'll have to say it
5 louder.

6 CHAIRPERSON BERRY: We're having Charlie
7 Rivera read the titles and the authors of the first
8 issue of the Civil Rights Journal which is in
9 preparation. He's doing that now. That's what's
10 going on right now.

11 MR. FLETCHER: Sorry my phone was tied up.

12 CHAIRPERSON BERRY: Well, we know you've
13 got these major issues to deal with and with a
14 campaign like this going on, so we appreciate your
15 being with us.

16 MR. FLETCHER: I was on the phone with
17 Senator Packwood discussing the elements of sexual
18 harassment.

19 (Laughter.)

20 CHAIRPERSON BERRY: Maybe he'll finally
21 get it, but you're a little late in explaining it.

22 (Laughter.)

23 Charlie, go ahead and read.

24 MR. GEORGE: If I might interrupt and say
25 that now all the Commissioners are present.

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1 CHAIRPERSON BERRY: Everybody here is,
2 everybody is here now.

3 Okay, go ahead.

4 MR. RIVERA: As I was saying, there's an
5 article on ADA, written by one of the staffers who was
6 involved in drafting the original legislation.
7 There's an article on improving of teaching civic
8 virtues in schools by Ernest Lefever. There's an
9 article on philanthropy, the linkage between
10 philanthropy and civil rights. And there is an
11 article that we still are dealing with on educational
12 issues affecting minority children in schools that we
13 hope to have finished very quickly. The -- I think
14 that about does it.

15 MS. HORNER: Can I ask who wrote the
16 article on philanthropy and civil rights?

17 MR. RIVERA: Robert Bothwell. He is head
18 of the Center for Philanthropy.

19 MS. HORNER: Right.

20 MR. RIVERA: We tried to get the new
21 president of Independent Sector and she just had too
22 much on her platter to do it.

23 CHAIRPERSON BERRY: Okay.

24 MS. HORNER: I have other questions of the
25 Staff Director's Report.

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CHAIRPERSON BERRY: Yes.

MS. HORNER: I noticed that one person who was subpoenaed for the New York mini-hearing didn't show up. Who was that?

MS. MATHEWS: I'm trying to remember the name of the organization.

CHAIRPERSON BERRY: Stephanie, who was the guy's name?

MS. MOORE: Farnstock Company, Eric Shames.

MS. HORNER: And do we know why he didn't show up?

MS. MOORE: He said when he did not show up, the U.S. Attorney was ordered to handle the situation and did. He has fully complied.

MS. HORNER: Well, he was ordered to show up -- what do we do in an event like that?

MS. MOORE: We could either conduct another hearing or we could simply have, as we did, have the U.S. Attorney make clear to Mr. Shames that the Commission expects compliance with subpoenas to appear and force him or compel him to comply earlier with the document request.

MS. HORNER: Okay, thanks. I think that's all I have.

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1 CHAIRPERSON BERRY: Anybody else have any
2 questions for the Staff Director before we do the
3 items that we said we would do that are here?

4 MS. HORNER: I did, I'm sorry. We got a
5 little copy of a proposed PSA, sorry.

6 MR. GEORGE: No, that's okay.

7 MS. HORNER: That's what you and she were
8 having your colloquy about?

9 MS. MATHEWS: That's right.

10 MS. HORNER: Okay, I'll just be quiet and
11 let you say what you want to say.

12 MS. MATHEWS: I wanted to bring up the
13 memo that had been forwarded to the Commissioners on
14 the radio PSA and see if there are any comments. We
15 had discussed the last time that the issue was before
16 the Commission, had discussed moving forward as soon
17 as we could agree on a theme and an approach in
18 general.

19 MS. HORNER: I have only some questions
20 just about how you went about picking this particular
21 one out of the range of options, why you selected this
22 one, how much it's going to cost, whether it fits in
23 with the messages that we talked about in our minutes
24 on this subject. In other words, tell us why this and
25 why not alternatives, what's the goal?

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1 MS. MATHEWS: We've had some and you know
2 from the briefing we had before the Commissioners that
3 we had some very good outside advice, given that this
4 is a new issue for the Commission in terms of a new
5 mandate.

6 We had these experts come before us, the
7 variety of individuals some months ago and this is
8 designed to address a general premise of the civil
9 rights issue. It's not designed to go through any
10 specific area. We have a lot of options in the future
11 to do other PSAs that might be more specific in
12 nature. I think we all agree the general topic would
13 be good to start off with and it's a conversational
14 tone which is also designed to be easy and hopefully
15 people who would listen would actually take it in,
16 rather than a more formal approach and it's targeted
17 to individuals who listen to a particular type of
18 music. The cost would be about \$10,000. The design
19 in terms of the play between the various types of
20 music that people refer to and prefer, versus the
21 issue of not discriminating against other individuals,
22 I thought was a very effective way to get the message
23 across.

24 MS. HORNER: Who is producing it and is it
25 a sole source contract?

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1 MS. MATHEWS: There's a company that we
2 have gone to. It's a company that actually has helped
3 the Department of Justice put out a PSA on the ADA and
4 was very effective. I cannot recall the name offhand.

5 CHAIRPERSON BERRY: Does Charlie remember?

6 MR. RIVERA: Unfortunately, no.

7 MS. HORNER: I frankly doubt the name
8 would mean anything to me, but I'm just trying to get
9 a -- since these are going to be on-going, I'm just
10 trying to get a feel for how we're going about doing
11 it. So eventually, I would like to know the name, but
12 it's not --

13 MR. RIVERA: It's an acronym, so this is
14 not going to be very helpful, MMBA.

15 (Laughter.)

16 MS. HORNER: Thank you. Okay.

17 MR. RIVERA: Margolies, Mitchell, Burns
18 and Associates.

19 CHAIRPERSON BERRY: What do the
20 Commissioners think about this PSA idea?

21 MR. FLETCHER: Madam Chair?

22 CHAIRPERSON BERRY: Yes.

23 MR. FLETCHER: That's a radio?

24 CHAIRPERSON BERRY: Yes, do you want me to
25 sing it?

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(Laughter.)

MR. FLETCHER: When you read it, you don't hear the song. Let me hear somebody read it.

CHAIRPERSON BERRY: That's not exactly my kind of music, but it's music all the same. I'm Mary Chapin Carpenter. This is a message about making choices. You can always choose between your Beethoven and Bo Diddley. There's supposed to be two Ds in Bo Diddley, by the way. But don't choose between people because of their race, age, gender or disability. We probably should say religion too, because that's in our mandate. That's discrimination and it's against the law. If discrimination happens to you or to someone you know, you can call this number: 1-800-552-6843 because discrimination is just out of tune with America. This is brought to you from the folks of the U.S. Commission on Civil Rights and this good station.

MS. HORNER: What is Mary Chapin Carpenter's degree of authority today?

CHAIRPERSON BERRY: Well, Mary Chapin Carpenter is --

MS. HORNER: I don't know.

CHAIRPERSON BERRY: She's almost an icon in country music.

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MR. FLETCHER: Madam Chair?

CHAIRPERSON BERRY: Yes.

MR. FLETCHER: Does Charlie know or either the staff director know whether the hot button words in that were arrived out through a focus session or something or did they pull them out of the air?

CHAIRPERSON BERRY: Focus session?

MR. FLETCHER: Yes. Normally, when they decide on certain words in an ad of that nature, it's often the product of some focus session to find out how people react and responded to the emotional hot buttons in the ad.

CHAIRPERSON BERRY: Well, that's one of the questions I was going to raise if no one did, was whether we wanted the staff to use focus groups to try out messages before we used them or not. That was a question I was going to raise.

MR. GEORGE: I think we've got a great focus group right here.

CHAIRPERSON BERRY: Where?

MR. GEORGE: I think we should try it out before the Commissioners.

(Laughter.)

MR. GEORGE: We're the focus group. We're cheap, much cheaper.

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1 MR. FLETCHER: Well, Madam Chair, I have
2 this kind of feeling. It's an ad that says certain
3 people know the price of everything and the value of
4 nothing. If this ad doesn't have an impact we want it
5 to have, I wouldn't mind spending a little money to
6 find out. You don't have to go through a whole lot of
7 processes to get it done, but it seems to me that if
8 we're going to spend any money at all, rather than to
9 just have some words on the air, we ought to have a
10 pretty good idea whether those words are going to have
11 the impact we want them to have at this crucial hour
12 in the nation's racial problems.

13 CHAIRPERSON BERRY: That was my question.
14 I was going to ask the same question. I don't know
15 the answer. There are cost considerations. Whether
16 we think we are a focus group. I'm not sure how you
17 get a focus group.

18 MR. GEORGE: Get a bunch of different
19 people.

20 CHAIRPERSON BERRY: You hire a firm.

21 MR. GEORGE: Oh, you mean that way.

22 CHAIRPERSON BERRY: You hire some -- an
23 advertising firm, a public relations firm. Maybe
24 Charlie knows, he's waving his hand. Do you know?

25 MR. RIVERA: If I could just provide some

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1 guidance. The firm we went to is a professional
2 advertising firm that has done these before with great
3 success, for private and federal agencies. They have
4 conducted focus groups. They did conduct a small
5 focus group, but not of the kind that does sampling
6 and brings people in from different parts of the
7 country, different socio-economic levels and that kind
8 of thing and the reason was the Commissioners wanted
9 a very fast thing done for dissemination over the
10 radio stations before the end of the fiscal year. And
11 given the limitations of funds, we weighed all the
12 alternatives and decided to go with this particular
13 group. We think it's a very good one and it reflects
14 some things they've done with great success.

15 CHAIRPERSON BERRY: Perhaps we could --
16 oh, Commissioner George.

17 MR. GEORGE: I wanted to stay on the PSA,
18 but to change the subject within that. Can I do that
19 now or do you want to close this up?

20 MR. REYNOSO: I don't have strong feelings
21 on the wording. I thought to have the first one be a
22 very general one and as an experiment for us, it's
23 probably a good idea and then we'll probably start
24 getting a feel for listener reaction and that sort of
25 thing once we succeed in getting it on the air. So I

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1 thought it was a little bit wimpy but it's fine as a
2 start, just to start getting a sense for folks'
3 reaction.

4 CHAIRPERSON BERRY: And I also think
5 probably it's not that controversial and it might be
6 at that point we would like to have a focus group and
7 get less wimpy as you go.

8 (Laughter.)

9 Before Commissioner George goes off on
10 another part of the subject, Commissioner Fletcher, do
11 you buy that, that maybe since this one is so --

12 MR. FLETCHER: I'm having a hard time
13 hearing you.

14 CHAIRPERSON BERRY: Let me try again.
15 Maybe the Vice Chair says that this particular PSA is
16 very wimpy, wimpy. Did you hear that?

17 MR. FLETCHER: Yeah.

18 CHAIRPERSON BERRY: And so the question is
19 should we then, since no one seems to be particularly
20 upset if I can read the table about this particular
21 one, perhaps we should just try it in its wimpiness
22 and then for now on agree that when we get to more
23 specific subjects that may be more controversial, we
24 might think about focus groups but at least have the
25 staff tell us how much that would cost and how you do

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1 that and get some idea about it. How about that, Mr.
2 Fletcher?

3 MR. FLETCHER: Uh --

4 CHAIRPERSON BERRY: Do you think we should
5 do it at all?

6 MR. FLETCHER: You keep fading out. Maybe
7 we need another hookup.

8 CHAIRPERSON BERRY: You can't hear me.
9 Well, I can hear you.

10 MR. FLETCHER: Well, your voice keeps
11 cutting off. I'm not able to hear the complete
12 thought.

13 CHAIRPERSON BERRY: Okay, well, let's try
14 another hookup here and see what happens.

15 Commissioner George, are you still on this
16 part of the point? He has something on PSA, but not
17 this.

18 MR. GEORGE: Well, my reaction is similar
19 to Cruz's. It's hard to judge the merits of this, I
20 find, when you don't have any other alternatives to
21 compare it to. That's generally been my practice,
22 looking at different kinds of advertising. But
23 there's a certain rationale behind this that makes
24 sense.

25 Obviously, tensions are heating up because

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1 of lots of different reasons. Every night on the
2 television we see a new reason. And I think it might
3 be the better part of wisdom for us to keep a certain
4 prudence in mind in terms of how we initiate these
5 PSAs, so while I think it's a very soft message that's
6 coming out, it might not be the best idea to have what
7 I call a hard-hitting message at this time.

8 The question is what kind of audience do
9 you want to get and you get a different audience, a
10 hard hitting message than you do with a soft message.
11 So --

12 MR. FLETCHER: Madam Chair?

13 CHAIRPERSON BERRY: Yes, Mr. Fletcher.

14 MR. FLETCHER: Are you hearing me?

15 CHAIRPERSON BERRY: I can hear you.

16 MR. FLETCHER: Can you get me another
17 hookup? I'm not hearing half the meeting.

18 You and Commissioner Redenbaugh, they both
19 need another hookup.

20 MR. GEORGE: So my disposition would be to
21 go forward with this and if we move forward in this
22 whole project, then to over time look at a variety and
23 have somebody come and tell us this is the kind of
24 audience you're going to hit with this kind of a
25 message. This is who you will reach with this kind of

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1 a message. That would be important for us to do,
2 that's my view.

3 I just want to parenthetically say,
4 Commissioners, I don't know how much we're getting in
5 our appropriations, but I think we can do better for
6 a few hundred dollars than what we got here. I think
7 we ought to do it if we can.

8 CHAIRPERSON BERRY: Okay, are you still on
9 this same point?

10 MR. WANG: I wanted to share with you I
11 was associated with the New York State Division on
12 Human Rights. We have a regular -- it started as one
13 line that humorizes everyone's business. They come in
14 with the kind of contact that -- whatever, that may be
15 something we want to consider to have a catch phrase
16 that people will use over and become a symbol so every
17 time the airway is on, have that symbol and then we
18 can have, I think, a variety of versions. A different
19 version catering to a different audience. You always
20 have that kind of unifying line that would sort of
21 remind everyone what we're all about.

22 MS. HORNER: I move we go ahead with this
23 PSA.

24 CHAIRPERSON BERRY: Well, we don't
25 actually need a motion for that because it's -- we're

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1 not going to formally approve this, I guess, unless we
2 want to.

3 MS. HORNER: We should.

4 CHAIRPERSON BERRY: Okay, do you want to
5 make another point?

6 MR. GEORGE: I phoned the Staff Director
7 about the memo and had a helpful discussion with her
8 about it. I had several concerns. I think one of the
9 issues that faces us is whether we want these messages
10 to be basically exhortational or educational. My
11 general view is that while exhortation is important
12 and I wouldn't mind having some of them being
13 exhortational, I hope that we can make them more
14 educational to educate the public about what does
15 constitute illegal discrimination and get some real
16 educational benefit out of it. But as I say, I don't
17 mind having some exhortation. I don't mind this one,
18 so this can be one of the exhortational ones, although
19 I hope, as I said, we have others.

20 The Chairman has already noted the
21 importance of including religion on the list and I
22 certainly think that's right.

23 A final point on the distribution and I
24 did not raise this one with Mary, although I should
25 have, and it's just a concern that I hope we will

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1 distribute future PSAs to stations other than country
2 music stations. I don't want to play into the
3 stereotype of the country music listener as a redneck
4 who is just the sort of person who is likely to
5 discriminate. I say this as a West Virginian and a 5-
6 string banjo player. So I take and believe that the
7 reason for the choice is that the population of
8 country music listeners is broad based, economically
9 and socially in terms of age and is often selected as
10 a prime target audience. I just want to be sure that
11 it's not the only audience that we target.

12 CHAIRPERSON BERRY: Okay, well, I guess I
13 can come up with -- I grew up on Grand Old Opry and
14 country music.

15 MR. GEORGE: Do you play the fiddle?

16 CHAIRPERSON BERRY: And I can sing a few
17 lines of a few country songs. I don't want to do
18 that.

19 (Laughter.)

20 I'm not a redneck either. In any case, I
21 think then that we can vote on this one -- are they
22 back?

23 MR. FLETCHER: Yeah, I'm back.

24 CHAIRPERSON BERRY: You can hear us now?

25 MR. FLETCHER: Yes, I can hear you real

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well now.

CHAIRPERSON BERRY: We have a motion from Commissioner Horner that we go ahead and approve this PSA. Did we have a second?

MR. ANDERSON: Second.

CHAIRPERSON BERRY: All right, any further discussion?

MR. REDENBAUGH: Yes, Madam Chair?

CHAIRPERSON BERRY: Yes, Commissioner Redenbaugh.

MR. REDENBAUGH: I'm prepared to vote for this so this is a question in general and not about this particular PSA and that is have we or will we adapt a criteria for assessing whether or not the PSAs in general and any particular PSA, specifically, is effective and if so, what are those criteria?

CHAIRPERSON BERRY: Okay. So how will we get feedback, that's a question.

MR. REDENBAUGH: How will we know if this is the wrong thing or the right thing?

CHAIRPERSON BERRY: If it worked or didn't work. Is that the question?

MR. REDENBAUGH: Exactly.

CHAIRPERSON BERRY: One of the customers that we identified was reached and all that other

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1 Redenbaugh language that you use all the time --

2 MR. REDENBAUGH: Right.

3 (Laughter.)

4 CHAIRPERSON BERRY: I don't know the
5 answer to that, but I think that you're quite right
6 that we should build that in somehow in the process.

7 MR. GEORGE: I have one thought about it.
8 My understanding is that radio -- and I could be
9 wrong, please correct me, if I am -- that radio
10 stations have to play a certain number of public
11 service announcements by law or regulation, but they
12 get to choose which ones to play. I think one
13 indicator of success would be whether ours is being
14 chosen, the disc jockeys and radio people themselves
15 --

16 CHAIRPERSON BERRY: So one measure would
17 be however crude, would be, whether anybody plays it.

18 MR. GEORGE: I don't know how that's
19 registered and we end up knowing whether they have
20 played it or not. I don't know.

21 MR. RIVERA: Excuse me, can I respond to
22 that?

23 CHAIRPERSON BERRY: Sure.

24 MR. RIVERA: The thing that is important
25 to bear in mind is that the discussion that you've

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1 been having concerning a comprehensive thoughtful
2 campaign that includes these kinds of concerns has
3 been addressed. We have submitted a proposal for next
4 year for mounting a campaign that looks at the need
5 for focus groups, the need for different target
6 audiences, the need for different messages and the
7 Staff Director and Public Affairs is discussing this.
8 It's a function of whether we have funds this year,
9 whether we can have cooperative arrangements with
10 other agencies, etc. etc.

11 So the immediate response to the question
12 is that we do have built into this an audience
13 response in terms of numbers of play for this
14 particular radio piece.

15 MR. GEORGE: Will you know will it be
16 registered somehow, how often it has been played?

17 MR. RIVERA: Yes.

18 MR. GEORGE: Thank you.

19 CHAIRPERSON BERRY: And we will then,
20 Commissioner Redenbaugh, the question we will get a
21 proposal, Charlie says, through the Staff Director.

22 MR. REDENBAUGH: I got you, thank you.

23 MR. FLETCHER: Madam Chair?

24 CHAIRPERSON BERRY: Yes, Commissioner
25 Fletcher.

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1 MR. FLETCHER: I didn't get to hear the
2 distribution list, who it's going to?

3 CHAIRPERSON BERRY: Who is this going to?

4 MS. MATHEWS: It's going to 1,200 country
5 and western stations.

6 CHAIRPERSON BERRY: This one is going to
7 country and western stations.

8 MR. GEORGE: Future ones will go to
9 others.

10 CHAIRPERSON BERRY: Future ones will go to
11 others.

12 MR. FLETCHER: I would just add it may not
13 be appropriate at this time, but I will just add that
14 I find that traveling back and forth across the
15 country that college radio stations have tremendous
16 audiences beyond the student body, particularly those
17 that have call in shows and of course most of those
18 college stations are nonprofits, but I can assure you
19 that based on experiences I'm having right now, that's
20 a tremendous audience and I would guess that many of
21 those college radio stations would like to be on the
22 distribution list.

23 CHAIRPERSON BERRY: I bet they would. My
24 students would. Anyway, all right so we have a motion
25 to approve the use of this particular PSA.

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1 COMMISSIONER ANDERSON: Madame Chair.

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER ANDERSON: I would just like
4 to say before we leave this topic, first I think we
5 ought to vote on all of them, because I think all the
6 commissioners are supportive of this project. I think
7 if we have a good consensus of the direction we're
8 moving in, I think that's just good for the project.

9 Secondly, I think Commissioner Wang's
10 suggestion, I took it to be a suggestion, is a good
11 one. I think we ought to follow up on it. That is,
12 if we are going to come out with different PSAs, there
13 could be consistency with a tag line, whatever that
14 tag line is, heartbeat of America or whatever, I mean
15 it's a very --

16 COMMISSIONER GEORGE: Folks, it's a U.S.
17 civil rights group.

18 CHAIRPERSON BERRY: From your folks, not
19 your father's civil rights.

20 COMMISSIONER GEORGE: Ah shucks.

21 COMMISSIONER ANDERSON: I'll give you a
22 little banjo theme music.

23 I think we ought to give some thought to -

24 -

25 CHAIRPERSON BERRY: A tag line.

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COMMISSIONER ANDERSON: A tag line that has a consistent theme that runs through all of these.

CHAIRPERSON BERRY: Could we ask staff to include that in the deliberations over this subject.

Okay. All in favor of the motion, indicate by saying aye.

Opposed?

COMMISSIONER GEORGE: Could we roll call it, Madame Chair?

CHAIRPERSON BERRY: Okay. We have a new procedure, Commissioners Redenbaugh and Fletcher. We have now decided without any objection after a spirited mini-debate, that when a commissioner would like a roll call vote on a question, the commissioner can so indicate and then we'll have a roll call vote.

So I only have a roll, so I'll just do it in terms of -- I don't know the alphabet so Commissioner Reynoso.

VICE CHAIR REYNOSO: Yes.

CHAIRPERSON BERRY: Commissioner Anderson.

COMMISSIONER ANDERSON: Aye.

CHAIRPERSON BERRY: Commissioner Fletcher.

COMMISSIONER FLETCHER: Aye.

CHAIRPERSON BERRY: Commissioner George.

COMMISSIONER GEORGE: Aye.

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1 CHAIRPERSON BERRY: Commissioner Horner.

2 COMMISSIONER HORNER: Aye.

3 CHAIRPERSON BERRY: Commissioner
4 Redenbaugh.

5 COMMISSIONER REDENBAUGH: Aye.

6 CHAIRPERSON BERRY: Commissioner Wang.

7 COMMISSIONER WANG: Aye.

8 CHAIRPERSON BERRY: Okay. And I vote yes.
9 So it's unanimous.

10 Now, under the staff director's report,
11 while everybody else was discussing what they want on
12 the agenda, I forgot to mention myself, so I'm tardy,
13 that I wanted to briefly discuss the follow-up to our
14 Los Angeles hearing, which is an item we have done
15 before. It's a project we have already finished, so
16 it's an ongoing item.

17 What I wanted to suggest was that we might
18 agree to have a mini-hearing in Los Angeles, I know we
19 have revisited this issue before, as a result of the
20 latest incidents that have occurred in Los Angeles and
21 the tape of Mr. Fuhrman and all the fallout from that,
22 in regard to the police and community relations.

23 One part of our Los Angeles hearing
24 concerned police and community relations. I don't see
25 how we could complete the report on it, given what has

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1 happened and the fallout there, which everyone I hear
2 from in Los Angeles tells me is very serious, without
3 going out and taking another look at police and
4 community relations in Los Angeles.

5 In connection with the Fuhrman tapes, I
6 also wanted to ask if the commissioners would be
7 willing to send a letter to Janet Reno, asking her to
8 investigate the expressions that Mr. Fuhrman made. At
9 least the statements that he made about things that he
10 had done to fabricate evidence and to do all sorts of
11 things, which if he did them, would undermine respect
12 for the police. I was hoping that the commissioners
13 would be willing to at least ask Ms. Reno if she would
14 look into them.

15 I asked the staff director to -- I had
16 told her to pass these around to you. It's very
17 brief. If you could look that over while you mull.
18 We'll just take a minute. I'll read it so that
19 Commissioner Fletcher and Commissioner Redenbaugh can
20 hear it while we're doing this.

21 It's a letter to Janet Reno. It says,
22 "Dear Mr. Reno: The U.S. Commission on Civil Rights
23 was deeply disturbed by the expressions of racial
24 bigotry and police misconduct evidenced in the tape
25 comments of retired Los Angeles police detective Mark

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1 Fuhrman. Incidents such as this threaten to create
2 deep racial divisions in Los Angeles and to aggravate
3 existing tensions between minority residents and the
4 Los Angeles Police Department."

5 "The Commission requests that your
6 department undertake an investigation of the incidents
7 reported on the tapes to ensure that the civil rights
8 of Los Angeles citizens have not been violated. Swift
9 and appropriate action by the Federal Government is
10 necessary to restore the confidence of the residents
11 of Los Angeles, particularly those in minority
12 communities."

13 "Thank you for your prompt attention.
14 Please keep the Commission advised as to any action
15 you take regarding this matter."

16 I am quite open to any changes that anyone
17 would like to make. First Commissioner Anderson, and
18 then Commissioner Redenbaugh.

19 COMMISSIONER ANDERSON: Thank you, Madam
20 Chair. This looks very good to me. Let me say that
21 when I raised earlier the question of a briefing, it
22 was also regarding this matter. So I want to address
23 that at a meeting as well.

24 I have a question and then I also have a
25 comment. The question is, and I'm familiar in a

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1 general way I think as everyone is with the incidents
2 reported on the tape, but are we -- the question is,
3 is the letter intended to initiate a departmental-wide
4 investigation by the Department of Justice, the police
5 department-wide investigation? Or is it intended to
6 specifically look at incidents that Fuhrman is talking
7 about?

8 CHAIRPERSON BERRY: It's about the
9 incidents that Mr. Fuhrman said he participated in on
10 the tapes.

11 COMMISSIONER ANDERSON: Okay.

12 CHAIRPERSON BERRY: Because I don't know
13 what else has happened in Los Angeles. But he on the
14 tape, which I listened to on CNN, he talked about
15 several different incidents in which he had. And
16 these incidents, as the press has already reported,
17 happened to accord with previously reported incidents.
18 So the point is whether he is telling the truth or did
19 this really all happen and how did he fit in it?

20 I am not suggesting a departmental-wide
21 investigation of the police department, because I
22 don't know anything about that.

23 COMMISSIONER ANDERSON: The other thing is
24 I think that maybe it's an obvious point, but I think
25 we should say something about it is not our intent to

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1 interfere with any criminal proceedings currently
2 underway. That is --

3 VICE CHAIR REYNOSO: Criminal
4 investigation you mean?

5 COMMISSIONER ANDERSON: Yes. That the
6 Justice Department -- I don't want a response to this
7 letter saying we can't do anything because we might
8 interfere with a particular trial that's ongoing at
9 the moment. Okay? So I think we should reference
10 that in the letter. Otherwise, I'm prepared to
11 support it.

12 CHAIRPERSON BERRY: It's not our intent to
13 -- just to make sure we get this right -- to interfere
14 with any particular criminal proceeding that might be
15 underway, or something. Is that the point?

16 COMMISSIONER ANDERSON: Yes. I think so.
17 I have some comments on the hearing question too, but
18 you want to resolve this first?

19 CHAIRPERSON BERRY: Okay, let me put this
20 somewhere first so we all know what we're doing here.
21 Okay. It is not our intent to interfere with any
22 particular criminal proceeding that might be underway.
23 We have to put that somewhere.

24 Staff correct it. You guys work with it.
25 I don't know where it should go. But you get the

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1 idea.

2 MS. MATHEWS: Yes.

3 CHAIRPERSON BERRY: We're not trying to --
4 and we agree that that's what we should do. Yes.

5 Commissioner Redenbaugh had a comment.

6 COMMISSIONER REDENBAUGH: Yes. I support
7 this letter fully. I have a larger concern. I'm not
8 sure if this letter should include that or not, but
9 let me get it on the table.

10 I am not only deeply disturbed by the
11 Fuhrman tapes, but by the allegations of police
12 misconduct in Philadelphia in this same area, of
13 evidence. More than allegations in fact. So my
14 concern is that there's a widespread pattern in
15 practice here. I am not sure how to move with it, but
16 I wouldn't want us to limit our concern merely to the
17 L.A. -- to these reports from L.A.

18 CHAIRPERSON BERRY: Yes, Commissioner
19 Redenbaugh.

20 Commissioner, are you going to address his
21 point or make a different point?

22 COMMISSIONER GEORGE: Yes. I was going to
23 address Mr. Redenbaugh's point.

24 CHAIRPERSON BERRY: Okay, Commissioner
25 George.

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COMMISSIONER GEORGE: Yes, Mr. Redenbaugh, I think it would be valuable in a letter. We might very well want to do more in a letter to specifically focus on the Fuhrman tapes and on the specific incidents as the Chairman has indicated in the letter that he refers to, and request a Federal investigation into those specific incidents. If those incidents occurred, then the civil rights of Americans were violated in those specific incidents. As the letter says, beyond that, it raises the problems of promoting racial disharmony and distrust and so forth and so on.

Now as I understand it, Commissioner Anderson is proposing a more general hearing that would go to what Mr. Redenbaugh has called a pattern and practice across the country. It might be at that time as we gather information from people who might testify at that hearing or briefing, whatever it's going to be, which might include police officers and judges and jurists and lawyers who have been involved, and perhaps academics with expertise, we could then go on to ask for more things.

But I think that it's important that where we have specific incidents that we know if true are civil rights violations, that we ask for an investigation of those specific incidents, rather than

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1 say you guys in the Justice Department should do
2 something about the problem nationwide. So that's why
3 I am supporting sending this letter, more or less like
4 this. Then I'm very happy to go on to other things,
5 Philadelphia or some of the other, the allegations of
6 misconduct by Federal officials as well.

7 CHAIRPERSON BERRY: And on Philadelphia,
8 are you going to address Philadelphia?

9 COMMISSIONER HORNER: No. I want to
10 address this letter.

11 CHAIRPERSON BERRY: Oh. Okay.
12 Commissioner Redenbaugh, I know about the incidents in
13 Philadelphia. Perhaps we should have something
14 drafted up that refers specifically to Philadelphia,
15 although I haven't heard -- it's just that I heard the
16 Fuhrman tapes.

17 COMMISSIONER REDENBAUGH: I think that's
18 right. I am persuaded by what Commissioner George
19 said. As he also pointed out, this is not limited to
20 local law enforcement, but also Federal. It's a very
21 large issue and one that concerns us very much.

22 CHAIRPERSON BERRY: Okay. Commissioner
23 Anderson had his hand up before you, Commissioner
24 Wang.

25 COMMISSIONER ANDERSON: Well, let me say

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1 what I would like to propose. I support this letter
2 and think we should go forward with it. What I would
3 like to see is for us to have a briefing. I would see
4 it as preliminary to a hearing, a mini-hearing in Los
5 Angeles.

6 But what I would really like to do is
7 bring in six to nine experienced law enforcement
8 personnel, at the city and maybe Federal levels,
9 although I'm not sure about the Federal level.

10 I would like to have an extensive briefing
11 with them, discussion with them, to really probe the
12 extent of this problem, its character, how it
13 develops. Not so much from the academician side or
14 the advocate side, but from officers who have been on
15 the force for 20 years, 25 years, and really sit down
16 with them and talk about what is going on here and the
17 extent of it and the pervasiveness of it. There are
18 a number of police organizations that I think we could
19 go to, to find that kind of expertise.

20 I think that would help us a great deal in
21 preparing a mini-hearing in Los Angeles on this thing.
22 So we get to know much more thoroughly of what's out
23 there, the extent of it, and how it develops.

24 CHAIRPERSON BERRY: Well, since I have no
25 trepidation at all about thinking that staff can do

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1 everything, it occurs to me that they ought to be able
2 to put together a briefing in October since we don't
3 have a hearing in October, assuming we're open.

4 The kind of briefing you are talking
5 about, that Charlie and his crew could put that
6 together just in a snap for October, get some police
7 people in to talk about this issue. Then we could
8 think about a mini-hearing maybe in March or
9 something. I am just thinking about dates on which we
10 are not already doing something else. That seems to
11 me about the earliest one possible as a follow-up.

12 I just think that on the Los Angeles idea,
13 before we could finish our report, since this has
14 police community relations as a big part of it, people
15 would find it incongruous that we didn't follow up on
16 this thing, which is probably going to be an issue at
17 least I'd say for the 18 months or so. So for that
18 reason was why I was making the suggestion about the
19 mini-hearing.

20 But I think you are quite right, that a
21 briefing, and this is a nation-wide problem. There is
22 evidence that it happens in a lot of places or things
23 like that happen in a lot of places and not just in
24 Los Angeles or even Philadelphia.

25 COMMISSIONER ANDERSON: If I could just be

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1 clear. I mean what brought it to my mind was one of
2 the -- I think it was the CBS news coverage of this a
3 week or so ago, and they interviewed of course a squad
4 captain or a station chief saying of course there's no
5 problem here. Then they interviewed two brothers who
6 had both been on the force say 20 and 25 years, both
7 Afro-American. They said look, this goes on all the
8 time. It's pervasive and you're kidding yourself if
9 you don't think it's a problem.

10 Those are the kind of guys that I would
11 say we ought to have at the briefing. We should not
12 have the union representatives or the deputy police
13 chiefs or whatever. But I would say we should try to,
14 even if they are retired or recently retired, we
15 should try to get guys who have been on forces for
16 lengthy periods of time that can really sit down and
17 talk to us without looking over their shoulder as to
18 what this is going to do to their contract or
19 something like that. That's what I had in mind for
20 this.

21 CHAIRPERSON BERRY: Okay. Commissioner
22 Horner.

23 COMMISSIONER HORNER: I'd like to get back
24 to the letter for a moment. It has been suggested
25 that Mark Fuhrman is not a reliable person. I'd like

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1 to suggest two word changes in this letter because it
2 has been suggested he is not a reliable person.

3 We talk about in the second line, police
4 misconduct evidence in the taped comments. I would
5 like to suggest that he's not reliable as to what is
6 evidence in those, since it's been suggested that he's
7 both a perjurer and a delusionary. Therefore,
8 although much of what he said may represent reality,
9 some of what he said may not represent reality.
10 Therefore, I'd like to suggest that we not
11 characterize his ramblings as evidence, and say police
12 misconduct described rather than evidence.

13 CHAIRPERSON BERRY: I don't have a problem
14 with that.

15 COMMISSIONER HORNER: Secondly, down below
16 the next paragraph, second line, we talk about
17 incidents reported. Well, he's not a reliable
18 reporter. I would like to say again, incidents
19 described on the tapes, a more neutral term.

20 CHAIRPERSON BERRY: How about if we say
21 discussed?

22 COMMISSIONER HORNER: Sure.

23 CHAIRPERSON BERRY: Because we said
24 described in the first.

25 COMMISSIONER HORNER: That's fine.

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1 COMMISSIONER WANG: Madam Chair, just on
2 that paragraph. I'd like to suggest to restore the
3 confidence, I guess if we can just say what
4 confidence. Confidence towards --

5 CHAIRPERSON BERRY: Oh, you mean what kind
6 of confidence? Restore confidence in the justice
7 system or the law system. Confidence in the justice
8 system, how about that?

9 COMMISSIONER ANDERSON: The administration
10 of justice.

11 CHAIRPERSON BERRY: Administration of
12 justice.

13 COMMISSIONER FLETCHER: Madam Chair.

14 CHAIRPERSON BERRY: Yes, Mr. Fletcher.

15 COMMISSIONER FLETCHER: I would recommend
16 create confidence rather than restore.

17 CHAIRPERSON BERRY: Gotcha.

18 COMMISSIONER FLETCHER: A leap of faith
19 there. I'll do my best.

20 CHAIRPERSON BERRY: How about to initiate,
21 no. To restore.

22 COMMISSIONER GEORGE: Ensure.

23 CHAIRPERSON BERRY: How about ensure.
24 Ensure, that's better.

25 COMMISSIONER GEORGE: And perhaps it could

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1 be ensure confidence with the residents of Los
2 Angeles, particularly those in the minority
3 communities, in the justice system.

4 CHAIRPERSON BERRY: In the administration
5 of justice.

6 COMMISSIONER GEORGE: I'm sorry. In the
7 administration of justice.

8 CHAIRPERSON BERRY: Okay, yes.
9 Commissioner George.

10 COMMISSIONER GEORGE: We're going back and
11 forth between these subjects I know, but I did want to
12 say something regarding Carl Anderson's hearing,
13 briefing proposed, because I think he hit on something
14 very important when he talked about the need to get
15 people who can really give us the story without having
16 another agenda or fear of retaliation or anything like
17 that. For those reasons, I think it might be very
18 good to focus in on retired police officers, who will
19 not or are less likely to suffer any damaging
20 consequences for telling the truth as they see it.

21 I wish that there were a way that we could
22 have witnesses testify anonymously or in some fashion
23 that would enable them to talk without fear of any
24 retaliation within the force.

25 CHAIRPERSON BERRY: We could put a hood

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1 over them, like they do on television or a scrambled
2 signal.

3 COMMISSIONER GEORGE: Probably not a good
4 thing for us to do.

5 CHAIRPERSON BERRY: Putting on a hood,
6 right.

7 COMMISSIONER GEORGE: Since I can't think
8 of any practical way to do that, but if anybody can
9 think of a practical way, I'd like to.

10 CHAIRPERSON BERRY: I was only kidding.
11 I did not mean placing a hood on anyone, for the
12 record.

13 COMMISSIONER GEORGE: Short of some system
14 of anonymity, and if anybody can think of a way, I
15 mean I'm really serious. If you can think of a way to
16 get anonymous testimony that would be lawful for us to
17 do, I'd like to do it because I think it's so
18 important that we put people in a position to be able
19 to speak freely.

20 Short of that though, I think the idea of
21 having retired police officers with plenty of
22 experience would be the best way to get genuine no-
23 holds barred authentic testimony.

24 COMMISSIONER WANG: Did we do that in the
25 Mt. Pleasant hearing? We did that somewhere. Do you

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remember?

CHAIRPERSON BERRY: Were there retired people in the Mt. Pleasant hearing? Anybody remember?

COMMISSIONER WANG: We had someone who would not give us their name.

CHAIRPERSON BERRY: That's right. We had people who didn't want to be identified.

COMMISSIONER GEORGE: What did we do in that case?

MS. MATHEWS: They had a bandanna over their face.

CHAIRPERSON BERRY: Oh, they had a bandanna over their face.

COMMISSIONER GEORGE: So there's a precedent for this.

CHAIRPERSON BERRY: Yes. We did it in Mt. Pleasant.

COMMISSIONER ANDERSON: I don't know if police officers would like to wear bandannas.

CHAIRPERSON BERRY: Why don't we do the following. Why don't we have a motion or why don't we agree to send the letter as edited and to have a briefing as soon as the staff can organize it, hopefully in October.

Do we want to agree to have a mini-hearing

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1 after that in L.A. or to just consider having a mini-
2 hearing? Are people still nervous about mini-hearings
3 or do these events make you more willing to say?

4 I don't see how we can finish the L.A.
5 report without one. So why don't we do the first two
6 first in a motion.

7 So the motion is that we approve the
8 sending of the letter to Ms. Reno as edited, and that
9 we have a briefing on police, what shall we call it,
10 conduct, as soon as the staff can organize it,
11 including either retired police officers or those who
12 cannot be identified, if they want to be anonymous.
13 But in some way, to try and get testimony about --

14 COMMISSIONER HORNER: I have a visceral
15 desire not to have people with bandannas. The reason
16 for that is that it denigrates the notion of open
17 citizenship and obligation to say the truth. So if
18 you could omit that portion from the resolution, I
19 would be happy to support it.

20 COMMISSIONER GEORGE: I'll withdraw it.
21 I think everybody shares my concern.

22 COMMISSIONER HORNER: I agree with the
23 retired part as a strong suggestion to the staff.

24 VICE CHAIR REYNOSO: Madam Chair, I just
25 want to point out that there are other folk around who

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1 have seen patterns of activity. There are sometimes,
2 it's in Los Angeles, the Police Commission. There are
3 folk who have served on it for many years who may not
4 be on it now, who might be willing to speak. There
5 are attorneys who handle police malpractice cases who
6 have seen maybe 10 or 20 or 30, so it's not just one
7 incident, that might have some observations for us.
8 And of course some community groups have been long
9 observers.

10 So I don't disagree with the resolution.
11 Retired police officers or others that can help
12 educate us on the pattern and practice. But I'm just
13 suggesting that I think it's an excellent idea to have
14 retired police officers, particularly those of color.

15 There was an article in the L.A. Times
16 shortly after this, citing several police, African-
17 American and other minority police officers saying, we
18 don't know why everybody seems to be surprised.

19 Now I confess that I have yet to run into
20 anybody in the Latino or African-American community
21 that was surprised. But certainly the mayor and
22 others have expressed great surprise and shock. But
23 those officers were quoted as saying look, this is
24 routine stuff.

25 CHAIRPERSON BERRY: And there was an

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1 article yesterday, was it Commissioner Fletcher in the
2 Wall Street Journal?

3 COMMISSIONER FLETCHER: Wall Street
4 Journal, that's right.

5 CHAIRPERSON BERRY: And there were people
6 quoted in it. So there are apparently people who are
7 willing to publicly say whatever it is they want to
8 say about this. So the idea is to try to have the
9 staff collect, to invite people who are willing to
10 speak openly, who have experience, long experience in
11 police departments about this issue in order to
12 educate us about it. Yes.

13 COMMISSIONER GEORGE: One thing that I
14 liked about the way Carl Anderson framed it, and it's
15 a concern that I have about Cruz's suggestion here, is
16 that I very much like in this particular briefing to
17 make sure that to the extent possible, that no
18 considerations of partisanship enter.

19 So that if we have groups that are
20 traditionally considered to be adversarial to the
21 police, then there would be a demand for police union
22 representatives to be there, people from the Fraternal
23 Order of the Police, and people like that. I think
24 there are very good reasons that Carl has indicated
25 for not having these people there. So the idea of

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1 having lawyers and advocacy groups causes me some
2 concern about -- not in a moral sense, but in the
3 other sense, the integrity of exactly what we could
4 get out of the thing.

5 If we really focus pretty much on people
6 who have been in the system who are not in an
7 adversarial role of any kind, but can just tell us
8 what they have observed. That is a concern. If it
9 goes the other way, I am perfectly happy, but --

10 CHAIRPERSON BERRY: Our experience in the
11 Mt. Pleasant hearing, as I recall, was that the police
12 officials, the union person, was not concerned to
13 defend the police behavior. As a matter of fact, if
14 I recall correctly, he said that a lot of these things
15 happen because the police are not trained well enough,
16 and that they need more training and nobody gives them
17 enough training.

18 So in other words, he didn't defend the
19 notion that none of it happens. He was more than
20 willing to say that it does, but attributed it to a
21 lack of training.

22 We must keep in mind that however we do
23 this, there will be people who will complain that we
24 haven't given their side of whatever it is.

25 COMMISSIONER GEORGE: I understand.

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1 CHAIRPERSON BERRY: Whatever we do. So if
2 we have all police officers and if they say problems
3 happen, there will be some people who say you should
4 have had somebody come to say that there aren't any
5 problems. Somebody else will say you should have had
6 advocacy groups.

7 I'm pretty much satisfied if we can get
8 enough police people to come, to have them talk to us.
9 With that, after discussion, is that okay?

10 VICE CHAIR REYNOSO: Sure?

11 CHAIRPERSON BERRY: Can we vote on that
12 motion? The motion is the letter and the briefing.

13 COMMISSIONER GEORGE: Call the roll.

14 CHAIRPERSON BERRY: Oh call the roll.
15 Commissioner Reynoso.

16 VICE CHAIR REYNOSO: Aye.

17 COMMISSIONER FLETCHER: Yes.

18 CHAIRPERSON BERRY: Commissioner Anderson.

19 COMMISSIONER ANDERSON: Aye.

20 CHAIRPERSON BERRY: Commissioner Fletcher
21 said yes. Commissioner George.

22 COMMISSIONER GEORGE: Aye.

23 CHAIRPERSON BERRY: Commissioner Horner.

24 COMMISSIONER HORNER: Aye.

25 CHAIRPERSON BERRY: Commissioner

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1 Redenbaugh.

2 COMMISSIONER REDENBAUGH: Yes.

3 CHAIRPERSON BERRY: Commissioner Wang.

4 COMMISSIONER WANG: Yes.

5 CHAIRPERSON BERRY: There he is. Okay,
6 that one has passed unanimously.

7 Now, on the question of a mini-hearing for
8 L.A., can I get somebody to move that we do it?

9 COMMISSIONER FLETCHER: So moved.

10 CHAIRPERSON BERRY: Can I get a second?

11 COMMISSIONER GEORGE: Second.

12 CHAIRPERSON BERRY: Okay. Any further
13 discussion?

14 COMMISSIONER HORNER: Madam Chair, until
15 I see the witness list, the content of the subpoenas,
16 and the subject matter agenda, I'd like to withhold a
17 positive vote on that. So I am going to vote no in
18 the near term and to recommend to my fellow
19 commissioners that on a subject this extremely
20 sensitive, that it would be the responsibility of the
21 Commission, not just of the staff, to construct, to
22 approve the construction or approve alternative
23 constructions of this hearing.

24 I recognize the necessity of the
25 Commission to rise to this occasion, but I think we

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1 need to be doing it without the typical anxiety levels
2 about what it's going to be. I know we have scheduled
3 in October and November the Mississippi hearing.

4 CHAIRPERSON BERRY: November.

5 COMMISSIONER HORNER: November, and we
6 have one meeting between now and then at which we
7 could discuss the design of that hearing. We know
8 it's been established for the City of Greenwood. We
9 don't know why there and why not elsewhere. We do not
10 know who is coming and so on, and what the subject
11 matter content would be.

12 So I am going to vote no on this proposal
13 now, but would be happy to consider such a proposal
14 after seeing a broad parameter outline of what
15 witnesses we would invite, such that everyone we would
16 invite would be on there, not that everyone on the
17 list would come or would ultimately be selected. What
18 subjects we intend to raise, and generally, what line
19 of questioning. And also what we would be requesting
20 through the subpoena power.

21 CHAIRPERSON BERRY: Any further discussion
22 before we vote?

23 COMMISSIONER ANDERSON: Yes, I would.

24 CHAIRPERSON BERRY: Yes, Mr. Anderson.

25 COMMISSIONER ANDERSON: You know we went

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1 to Los Angeles twice. We went soon after the riots.
2 Then we went to the hearings. I supported that. I
3 thought we had to go there quickly. I think we have
4 to go there again in a mini-hearing.

5 Although there are obviously real dangers
6 with going there at this period of time, with what may
7 happen, what may not happen, so I think we have to
8 have more commissioner involvement over this hearing,
9 the timing of it, the parameters of it, the panels, et
10 cetera, than we may have had for other hearings.

11 So I guess I'm halfway where Connie is
12 coming from so that I am prepared to support it, but
13 I think only on the understanding that I would expect
14 that there be much more commissioner input in terms of
15 formulating the hearing, the timing of it, et cetera.

16 CHAIRPERSON BERRY: Well, we would set a
17 time later. We're not going to -- what we are doing
18 now is saying that conceptually we agree that before
19 we can do the Los Angeles report, we at least need to
20 go do a clean-up again on this.

21 I kept thinking as you talked though, that
22 something else will happen after we do -- well anyway,
23 the hope is that we would be at the point then where
24 we could write the report and get it out. So we
25 wouldn't be setting a time for it.

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1 What we'd be doing is agreeing
2 conceptually that in fact we do need to do another run
3 at Los Angeles before we finish the report. That's
4 the idea. We'd come back to the commissioners again
5 about when we're going to have it. Maybe we can
6 decide that after we have the police briefing. Maybe
7 something else will come up. See if we open, we're
8 open when all that. But at least if we understand
9 that what this means is that you can't do a report
10 about police community relations without doing
11 something else in there in L.A.

12 COMMISSIONER HORNER: Madam Chair.

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER HORNER: I'd like to make a
15 motion, if I can. I move that the staff prepare for
16 the Commission's consideration a design for such a
17 hearing at a date to be determined, and that the staff
18 as soon as they can present us with such a design,
19 including who would be invited, what would be the line
20 of questioning, and what would be the content of the
21 subpoenas, so that we can consider it at the next
22 meeting after the staff makes it available.

23 COMMISSIONER WANG: There's a motion on
24 the floor.

25 CHAIRPERSON BERRY: There's a motion on

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1 the floor. I thought I heard sounds from the
2 telephone.

3 COMMISSIONER REDENBAUGH: Yes. I support
4 an additional hearing in Los Angeles in the near
5 future, but I have the same concerns raised by Connie
6 and Carl. So I am going to vote against this
7 particular motion.

8 But I would support a motion that directs
9 the preparation of the design of the hearing and
10 allows us to approve that at an early date.

11 CHAIRPERSON BERRY: The point of
12 information before the Commission would do a hearing,
13 any hearing, whether it's mini or non-mini, the
14 Commission would receive a design as part of a
15 proposal which tells us why we are doing a hearing and
16 what the subject of the hearing is, which is what we
17 approved on every other hearing we've had. So that's
18 not a new procedure.

19 COMMISSIONER HORNER: Madam Chair, I am
20 suggesting for this hearing a different procedure.
21 The reason I am suggesting is that if we agree in
22 concept and then must vote no in order to prevent an
23 ill-design in our view or some commissioners' view, an
24 ill-designed hearing from going forward, we may have
25 insufficient votes to prevent.

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1 Whereas if we withhold our support for
2 such a hearing until we see a hearing we think will be
3 useful, then it's a inferment (phonetic) to the
4 question. Do we wish to have this particular hearing
5 or do we wish to be placed in a posture of attempting
6 to muster support for preventing a particular hearing.
7 Frankly, it's placing the burden of responsibility by
8 my resolution more on the Commission than is typically
9 the case.

10 CHAIRPERSON BERRY: Well then I am
11 inclined to withdraw my motion, and to say that we
12 should not plan to have a hearing.

13 Because if commissioners want to take the
14 occasion for the proposal for this hearing to retract
15 the policy commitment that is made both in our
16 administrative instructions, by regulations, and that
17 this Commission reaffirmed recently in another
18 meeting, that it is the responsibility of the staff to
19 receive our suggestions for witnesses, to then devise
20 the agenda after we've had a proposal which we've
21 approved, and that that's a staff responsibility, not
22 a commissioner responsibility.

23 So if the occasion of my motion is an
24 occasion to change that, then I simply withdraw the
25 motion and think that we should wait until after the

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1 police briefing and discuss this later, and decide
2 whether we really want to do a hearing or not.
3 Because I didn't have in mind changing all the
4 procedures. I was just simply trying to get a hearing
5 conceptually done on L.A.

6 Yes, Commissioner George.

7 COMMISSIONER GEORGE: I have a compromise.

8 CHAIRPERSON BERRY: Okay.

9 COMMISSIONER GEORGE: The compromise would
10 be to postpone the vote this time either way, and ask
11 the staff to prepare an analytical document as to why
12 we should have a hearing. It would make the case, in
13 view of the new circumstances, the new developments,
14 and give an idea of what the scope of the hearing
15 would be. It would not identify particular witnesses,
16 but give us categories of where witnesses would be
17 drawn from, and how the drawing of those witnesses
18 would enable us to accomplish the goals that justify
19 having them in a hearing in the first place.

20 So it's not a hearing design, but an
21 analytical statement of why we need a hearing. Then
22 if the commissioners agree yes, we vote yes, we'll
23 have a hearing.

24 CHAIRPERSON BERRY: Commissioner Fletcher.

25 COMMISSIONER FLETCHER: Is there a motion

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1 on the floor or are we discussing one?

2 CHAIRPERSON BERRY: Well, it was a motion
3 on the floor to approve the concept of having a mini-
4 hearing. Why don't we just have a vote on the motion.

5 COMMISSIONER FLETCHER: I'd appreciate
6 that.

7 CHAIRPERSON BERRY: That we agree to have
8 a mini-hearing in L.A. at a date to be decided later
9 on by the Commission, and with the understanding that
10 as usual, we will get a proposal from the staff as to
11 the scope of the hearing and all the other things that
12 the staff are supposed to do before we have a hearing.

13 COMMISSIONER FLETCHER: Is this an
14 amendment to the motion that's on the floor?

15 CHAIRPERSON BERRY: No. It's the same
16 motion. I'm just explaining it. The same motion.
17 Can you hear me?

18 COMMISSIONER FLETCHER: Yes. I think so.

19 CHAIRPERSON BERRY: It's the same motion
20 I made in the first place, that we have a mini-hearing
21 in L.A. on the question of police and community
22 relations before we finish this L.A. report. That was
23 my original motion. It's the same motion that was
24 seconded. So why don't we vote on it and then see
25 what else happens.

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I call for the question. All those in favor of the motion to have a mini hearing in L.A. indicate by saying aye.

COMMISSIONER FLETCHER: Do a roll call, please.

CHAIRPERSON BERRY: Do a roll call. Okay. Reynoso.

VICE CHAIR REYNOSO: Aye.

CHAIRPERSON BERRY: Anderson.

COMMISSIONER ANDERSON: No.

CHAIRPERSON BERRY: Fletcher.

COMMISSIONER FLETCHER: Yes.

CHAIRPERSON BERRY: George.

COMMISSIONER GEORGE: No.

CHAIRPERSON BERRY: Horner.

COMMISSIONER HORNER: No.

CHAIRPERSON BERRY: Redenbaugh.

COMMISSIONER REDENBAUGH: No.

CHAIRPERSON BERRY: Wang.

COMMISSIONER WANG: Yes.

CHAIRPERSON BERRY: Berry, Yes. So it's four to four. We don't have a mini-hearing in L.A. So we'll just move onto the next item on the agenda.

COMMISSIONER FLETCHER: Madam Chair.

CHAIRPERSON BERRY: Yes, Mr. Fletcher.

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1 COMMISSIONER FLETCHER: When it's time to
2 put that item together as to whether we are going to
3 be involved in any kind of hearing where police are
4 concerned, I would like to make sure that if staff who
5 puts it together point out that we have in our files,
6 in our library, information that indicates that a vast
7 majority of the nation's race riots started with
8 police brutality and the misuse of power by the
9 police.

10 What we are seeing as we end this century
11 is the same thing. Now either we do what the Congress
12 created us to do or we throw in the towel. This is
13 not the time to dance away from the most critical
14 problem in this country. I want the record to show
15 that I said that.

16 CHAIRPERSON BERRY: I might remind
17 commissioners too that the Commission did a report on
18 police practices and civil rights after hearings that
19 took place all over this country, in cities all over
20 this country. That was the year before I came on the
21 Commission. The report came out finally while I was
22 on the Commission, in 1982 I think it was.

23 Commissioners might read that report on
24 police practices and civil rights. They will be
25 perhaps surprised, or perhaps they already know that

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1 the same issues that we're discussing now --

2 COMMISSIONER WANG: Is that the issue of
3 who's guarding the guardians?

4 CHAIRPERSON BERRY: Yes. "Who's Guarding
5 the Guardians" it's called. The Commission got into
6 a great deal of trouble for issuing that report
7 politically. We were accused of attacking police and
8 undermining the authority of police by complaining
9 about police community relations.

10 So I would just point out to
11 commissioners, they might be guided by or at least to
12 get some idea of how people respond to these things
13 and what the Commission did before. There were
14 hearings by the full Commission in cities all over the
15 country, the SACs, State Advisory Committees did their
16 own committee work. It was a huge project that took
17 up a long period of time. In fact, if we had the
18 resources to do it, I would think that it's something
19 that needs to be done again.

20 Commissioner George.

21 COMMISSIONER GEORGE: Yes. Could the
22 staff provide us with copies of that 1982 report?

23 CHAIRPERSON BERRY: Yes. Please. Was it
24 1982? I saw people nodding. I think it's 1982. It
25 sticks in my head.

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Okay. The next item.

MS. MATHEWS: Madam Chair, I have a --

CHAIRPERSON BERRY: Oh, the budget on the staff. You received a copy of the FY 1997 budget estimate, which is what we forward to OMB. This happens every year. This is the first stage in the budget request process. We need a formal vote by the commissioners on this budget proposal.

It is based on proposals that the Commission already approved, which are project proposals, and now it's put into numbers.

So could I have a motion to approve the budget request?

COMMISSIONER WANG: So approved.

CHAIRPERSON BERRY: Second?

COMMISSIONER GEORGE: Second.

CHAIRPERSON BERRY: Any discussion?

COMMISSIONER HORNER: Madam Chair, I understand from Ron Brown, he got it only yesterday afternoon. I haven't looked at it. Am I wrong?

MS. MATHEWS: Well, Commissioner Horner, it was given out with the Miami briefing books, which were distributed Tuesday.

COMMISSIONER HORNER: Tuesday, and I arrived back in town late Wednesday night. So that

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1 left me only Thursday, and I had prior commitments on
2 Thursday. I am troubled. I don't want to obstruct
3 the process. I am troubled because I am voting for a
4 pig in a poke, and I know that eight months from now
5 somebody will tell me that I voted for something that
6 I didn't intend to vote for.

7 Therefore, I'm just going to have to
8 abstain, but I'm not going to object because I
9 recognize that you need -- did you say this is our
10 submission?

11 MS. MATHEWS: To OMB.

12 COMMISSIONER HORNER: To OMB, which is
13 already probably a little -- well, it's due. Right?

14 MS. MATHEWS: It's due.

15 COMMISSIONER HORNER: It's due. The devil
16 is always in the detail. We may agree in concept four
17 or five months ago to do something, but when we find
18 out the spin the staff has put on it, may not like
19 that spin, may want to reverse spin, a neutral spin,
20 and we're just stuck. I don't know what to do about
21 this, other than to wish that we had received it
22 perhaps five days in advance.

23 CHAIRPERSON BERRY: Commissioner Anderson.

24 COMMISSIONER ANDERSON: Thank you. I am
25 prepared to vote today. I intend to vote no because

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1 it seems as though we've got a discussion on the Hill,
2 as I understand it, whether we get 8.5 million or 9
3 million.

4 COMMISSIONER FLETCHER: Madam Chair, I
5 can't hear.

6 CHAIRPERSON BERRY: Commissioner Anderson
7 said he intends to vote no. It seems that we're
8 having a discussion on the Hill as to whether the
9 Commission will get 8.5 million or 9 million. He is
10 proceeding.

11 COMMISSIONER ANDERSON: Thank you. I
12 haven't plugged this into my calculator, but it looks
13 like a 13.8 million request, is somewhere around a 50
14 percent increase in terms of what the Congress is
15 considering our fair share.

16 Therefore, I just think it may be a
17 reasonable reflection of what we are proposing to do,
18 but I don't think it's a reasonable proposal, given
19 the realities in the Congress for us to come back
20 several days later and say we want a 50 percent
21 increase over what you are giving us. So I just think
22 it makes us look sort of detached from budget reality,
23 so I just intend to vote no on it.

24 CHAIRPERSON BERRY: Any other discussion?
25 Yes.

1 VICE CHAIR REYNOSO: Well, as I understand
2 it this is all really preliminary. It's going to OMB.
3 There will be discussions with them. It seems to me
4 that we ought to go forward with what we think we
5 need. Obviously there will be compromises even before
6 it gets to the Congress.

7 I understand what you are saying, but as
8 I understand it, this is sort of like a formal
9 requirement for us, where we state what our druthers
10 are.

11 COMMISSIONER HORNER: Do we not, Madam
12 Chair, do we accept OMB's mark and testify on behalf
13 of it or do we not?

14 CHAIRPERSON BERRY: We can or can not.
15 We've had an argument about that for 20 years.

16 COMMISSIONER HORNER: Meaning that
17 conceivably you could choose to testify in support of
18 this particular budget.

19 CHAIRPERSON BERRY: If you wanted to.

20 COMMISSIONER HORNER: If we wanted you to
21 or you wanted to, and we didn't attempt to muster five
22 votes to ask you not to.

23 So it seems to me, Cruz, it really is a
24 serious statement, to be taken as a serious statement
25 of our desiderata (phonetic) to the Congress.

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1 CHAIRPERSON BERRY: Or in the alternative
2 the Commission could decide that it doesn't like
3 whatever OMB recommends and make other things.

4 Why were you chuckling, Commissioner
5 Fletcher? I thought I heard you chuckling.

6 COMMISSIONER FLETCHER: Yes. I did.
7 Whenever you go up there, they are actually going to
8 cut you back. I am sure the Defense Department didn't
9 worry when they got all that money they don't need.

10 COMMISSIONER HORNER: Madam Chair, I'd
11 like to suggest that just tactically, I am going to
12 change my mind and vote no with Carl, because I think
13 if you suggest something a bit closer to what's
14 probable, you will get a more credible hearing than
15 suggesting something that's just sort of out of the
16 ballpark.

17 I have seen this dynamic, and it will just
18 get laughed at and dismissed.

19 CHAIRPERSON BERRY: Well I was about to
20 chuckle too, Art, because I guess I've been doing this
21 too long too, because I have been on both sides of
22 this argument. So I won't say anything.

23 COMMISSIONER FLETCHER: As far as I'm
24 concerned, I'm still sane. I have a pretty good sense
25 of smell out here as a result of running around the

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1 country, going from campus to campus, and ghetto to
2 ghetto, and up to talk to the powers that be, that
3 there's a general agreement. It's not just in the
4 press. There's a general agreement that the toughest
5 problem facing America right now is race.

6 This is the agency that's put in business
7 to deal with that. It is just kind of curious to me
8 at this stage in the game for us not to be putting the
9 strongest foot forward that we possibly can.

10 Congress is going to cut us back, but if
11 we can validly justify and validate and point out what
12 we need and make a full court press to get it, I think
13 that's what we ought to do.

14 But I yield to your better judgement. But
15 let me assure you that I am down in Alabama right now.
16 Let me assure you that there's some uneasiness,
17 serious uneasiness about this nation's racial plight
18 right now.

19 I keep getting asked questions about what
20 is the role of the U.S. Commission of Civil Rights at
21 this critical hour in our history. And for us not to
22 go, I've got to say it again, for us not to go for
23 broke, validate it every inch of the way, for us not
24 to go for broke at this time, to arm ourselves with
25 the resources that we need to do what the so-called

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1 Commission founders had in mind, to me is backing away
2 from the problem.

3 That's my position. I'll vote for any
4 budget you want me to, but that's my position.

5 CHAIRPERSON BERRY: Okay. Is everybody
6 ready for the vote on this point on this?

7 COMMISSIONER FLETCHER: I'm ready for the
8 question.

9 CHAIRPERSON BERRY: All those in favor of
10 the budget proposal indicate by saying aye.

11 Nos?

12 COMMISSIONER GEORGE: Call it.

13 CHAIRPERSON BERRY: Commissioner George
14 wants a roll call vote. Reynoso.

15 VICE CHAIR REYNOSO: Aye.

16 CHAIRPERSON BERRY: Anderson.

17 COMMISSIONER ANDERSON: No.

18 CHAIRPERSON BERRY: Fletcher.

19 COMMISSIONER FLETCHER: Aye.

20 CHAIRPERSON BERRY: George.

21 COMMISSIONER GEORGE: Aye.

22 CHAIRPERSON BERRY: Horner.

23 COMMISSIONER HORNER: No.

24 CHAIRPERSON BERRY: Redenbaugh.

25 COMMISSIONER REDENBAUGH: Aye.

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CHAIRPERSON BERRY: Wang.

COMMISSIONER WANG: Aye.

CHAIRPERSON BERRY: Berry, aye. It passes one, two, three, four, five, six to two.

Okay.

COMMISSIONER REDENBAUGH: Madam Chair.

CHAIRPERSON BERRY: Yes.

COMMISSIONER REDENBAUGH: I need to leave the call shortly. Could I take my agenda item up now?

CHAIRPERSON BERRY: Oh okay, sure. Go right ahead.

COMMISSIONER REDENBAUGH: It's really a procedural or a process question not a content question. When the small task force that I chaired reviewed and revised the process by which the Commission prepares and approves the work product of the SACs, at that time we modified the process in a way that would require that the AIs be rewritten to reflect that.

I think there has been an oversight in that that probably has not been done. This came to my attention as a consequence of the publication of the Illinois SAC civil rights issues facing Asian Americans. So I'd just like to make the request that the AIs be updated to reflect the process which we put

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1 in place, I think it was in 1993, but it may have been
2 1994.

3 CHAIRPERSON BERRY: Does anybody other
4 than Commissioner Redenbaugh know what is this?

5 VICE CHAIR REYNOSO: What he's talking
6 about?

7 CHAIRPERSON BERRY: Yes. The Vice Chair
8 says he knows.

9 VICE CHAIR REYNOSO: Yes. I was on the
10 committee.

11 CHAIRPERSON BERRY: That's right.

12 VICE CHAIR REYNOSO: We had accepted the
13 recommendations as to certain procedures to be
14 followed. It is my impression, that is the
15 commissioners, that the rules and regulations that we
16 have, I must confess as to other matters also, have
17 not been updated, but specifically as to the state
18 committee system has not been updated, and probably
19 since we passed that with a formal vote, some priority
20 should be placed maybe on changing those.

21 CHAIRPERSON BERRY: I see. So the request
22 or the instruction to the staff director is that the
23 AI concerning SAC reports should be modified to
24 reflect the Commission's approval of the report. Is
25 that the --

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1 COMMISSIONER REDENBAUGH: Yes. The
2 process that we approved.

3 Specifically what called it to my
4 attention was that this work product of the Illinois
5 SAC was published not strictly in compliance with that
6 new process, but in compliance with the AIs, as they
7 have not been rewritten.

8 CHAIRPERSON BERRY: I see. Okay. Well,
9 staff director, you heard the discussion.

10 MS. MATHEWS: I did, Madam Chairperson.

11 CHAIRPERSON BERRY: You will see to it
12 that the AIs are reviewed to make sure that the
13 process is consistent with whatever it is.

14 MS. MATHEWS: We will follow up on that
15 issue.

16 CHAIRPERSON BERRY: Commissioner
17 Redenbaugh, don't leave yet. I need you for
18 something.

19 COMMISSIONER HORNER: Madam Chair, it just
20 occurred to me why it is that I didn't, since I had an
21 extra 45 minutes this morning, review the budget
22 materials. The answer was that it was not on the
23 agenda. A vote on the budget was not on the agenda.
24 That is why I just left it with the Miami materials,
25 as an informational memo to be looked at later. I am

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1 just curious as to why we just had this vote.

2 COMMISSIONER FLETCHER: Speak a little
3 louder, please, Connie.

4 COMMISSIONER HORNER: Yes. Art, I am just
5 realizing why it is when I had a little extra time
6 this morning I didn't use that time to go over the
7 budget materials and be prepared to vote on them. The
8 reason I didn't is that a vote on the budget was not
9 on the agenda. There was no indication when we
10 received the budget materials that they were being
11 presented to us, I believe, for the purpose of a vote.

12 COMMISSIONER FLETCHER: Oh, okay.

13 COMMISSIONER HORNER: Therefore, I was
14 being asked to vote on something without knowing, even
15 though I did it turns out have 20 minutes or so anyway
16 to look at it, I didn't. I am distressed at this --

17 CHAIRPERSON BERRY: Why don't you give the
18 commissioner an answer so that she understands.

19 Staff director is answering the question.

20 MS. MATHEWS: In the past, the budget has
21 not been an item on the agenda at this stage in the
22 game. In most of the past years that I can recall off
23 the top of my head here, it has been a through the
24 mail process. It hasn't even been taken up at a
25 Commission meeting at this particular point in the

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1 budget process.

2 CHAIRPERSON BERRY: What we usually ask is
3 if you have any objections, call and let us know.

4 COMMISSIONER HORNER: And why did you
5 change the procedure this time?

6 MS. MATHEWS: We were having a meeting so
7 closely in conjunction with the completion of it, it
8 seemed to make sense.

9 COMMISSIONER HORNER: Well that's an
10 accidental function of timing that seems to me it
11 should not be determinative of whether we vote on
12 something or not.

13 MS. MATHEWS: All I am trying to indicate
14 is the Commission has not requested a vote on the
15 budget per se. We have done a mail process where it's
16 been if you object, please do contact the staff
17 director.

18 CHAIRPERSON BERRY: Commissioner George.
19 Oh I'm sorry, Commissioner Wang, you had your hand up.

20 COMMISSIONER WANG: Just to remind you of
21 another item which we don't have on the agenda, which
22 is our response to the SAC recommendations.

23 CHAIRPERSON BERRY: Isn't that on here?
24 That's on here. That's the next item.

25 COMMISSIONER WANG: Okay.

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1 CHAIRPERSON BERRY: Before I forget, we
2 had a letter that we sent last time to -- Commissioner
3 Redenbaugh, are you still there?

4 COMMISSIONER REDENBAUGH'S ASSISTANT: He
5 has stepped away momentarily. I can get him.

6 CHAIRPERSON BERRY: Will he be back?

7 COMMISSIONER REDENBAUGH'S ASSISTANT: Just
8 a moment and I'll get him.

9 CHAIRPERSON BERRY: All right. I need him
10 not just for this but for the next thing.

11 This is just an information piece. We
12 sent a letter with the Commission's approval to Janet
13 Reno, asking her about the roundup or whatever it's
14 called. Our letter to the Attorney General asked her
15 specifically to tell us about departments and agencies
16 that received Federal funds, and what they were doing.
17 We didn't ask her just about Federal officials.

18 Her response was limited to talking only
19 about looking at Federal officials. So what I had
20 planned to do was send the letter back to her again
21 with a little note saying that whoever drafted this
22 for you, didn't know that this paragraph was in the
23 letter, and could she please respond to that.

24 So I consider the letter non-responsive.
25 I'm sure it wasn't intentional.

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1 The item that we have here, we have the
2 resolution. Are you ready for your resolution, or did
3 I do all of the additions here?

4 COMMISSIONER GEORGE: Madam Chairman?

5 CHAIRPERSON BERRY: Yes.

6 COMMISSIONER GEORGE: Just a point to go
7 back to the previous discussion. For the future, I
8 was happy to vote on it because I was prepared. I
9 voted yes on this budget request.

10 I liked the idea of voting on it at this
11 stage. I hope that in the future rather than simply
12 asking for comment, we will at this stage as well have
13 an opportunity to vote on it. I think that the way it
14 was done this year, whether it was procedurally right
15 to change procedures or not, is the right way to do it
16 for the future.

17 CHAIRPERSON BERRY: Okay. We have two --
18 yes.

19 VICE CHAIR REYNOSO: I'm sorry, Madam
20 Chair, under the staff director's report, I had raised
21 the issue of the meeting dates.

22 CHAIRPERSON BERRY: Calendar.

23 VICE CHAIR REYNOSO: Has that been
24 approved already?

25 CHAIRPERSON BERRY: That's what I was

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going to next.

VICE CHAIR REYNOSO: Oh I see.

CHAIRPERSON BERRY: Commissioner

Redenbaugh, are you back?

COMMISSIONER REDENBAUGH: Yes. I am.

CHAIRPERSON BERRY: I have two items here that I need you for. One is calendar. Are you happy with the calendar dates?

COMMISSIONER REDENBAUGH: Am I?

CHAIRPERSON BERRY: Yes.

COMMISSIONER REDENBAUGH: I'm sorry.

CHAIRPERSON BERRY: I'm asking if everyone is happy. We're trying to conclude the calendar.

COMMISSIONER HORNER: Madam Chair, these are the original dates? There hasn't been a more recent one?

CHAIRPERSON BERRY: Right. The idea is can we go with this calendar? Anybody got any other concerns?

VICE CHAIR REYNOSO: Yes, ma'am. I just want it firmed up.

CHAIRPERSON BERRY: All right?

COMMISSIONER HORNER: It's all right with me.

CHAIRPERSON BERRY: Commissioner

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1 Redenbaugh, I can't hear you.

2 COMMISSIONER REDENBAUGH: I have no
3 problem.

4 CHAIRPERSON BERRY: Okay. The second
5 thing I want you for is this resolution that the Vice
6 Chair has on the First Lady's trip to China.

7 COMMISSIONER REDENBAUGH: Oh, okay.

8 CHAIRPERSON BERRY: Will you read it,
9 please?

10 VICE CHAIR REYNOSO: Yes. I had a draft.
11 We revised it, the Chair having reminded me that some
12 matters were outside of our jurisdiction. So I'll
13 read the second draft, which is the draft that I am
14 proposing.

15 U.S. Commission of Civil Rights
16 Resolution. Whereas on her current trip to the
17 People's Republic of China as the head of the American
18 delegation to the U.N. Fourth World Conference on
19 Women, First Lady Hilary Rodham Clinton spoke out
20 against human rights violations against women of all
21 nations.

22 And whereas the First Lady's criticism of
23 those nations which violated women's rights was
24 courageous, unequivocal and uncompromising.

25 And whereas the First Lady's comments were

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1 an endorsement --

2 COMMISSIONER HORNER: Excuse me, Cruz.

3 VICE CHAIR REYNOSO: I'm sorry.

4 COMMISSIONER HORNER: I have a different
5 version.

6 COMMISSIONER GEORGE: You've got the
7 earlier one. Here's the --

8 COMMISSIONER HORNER: I'm sorry.

9 VICE CHAIR REYNOSO: I'll continue.

10 CHAIRPERSON BERRY: Why don't you read it
11 again.

12 VICE CHAIR REYNOSO: Okay.

13 CHAIRPERSON BERRY: It's short.

14 VICE CHAIR REYNOSO: Whereas on her
15 current trip to the People's Republic of China as the
16 head of the American delegation to the U.N. Fourth
17 World Conference on Women, First Lady Hilary Rodham
18 Clinton spoke out against human rights violations
19 against women of all nations.

20 And whereas the First Lady's criticism of
21 those nations which violated women's rights was
22 courageous, unequivocal and uncompromising.

23 And whereas the First Lady's comments were
24 an endorsement of the traditional American family
25 values and the right of women to be free from state-

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1 sponsored legislation or practices which deny their
2 rights, and whereas the host country of the U.N.
3 Fourth World Conference on Women is one of those
4 countries which is one of the most flagrant and
5 persistent in denying women their basic human rights
6 to reproduce, now be it resolved that the U.S.
7 Commission on Civil Rights hereby commends the First
8 Lady for her outspoken and courageous defense of the
9 basic human rights to which all women, regardless of
10 nationality, are entitled. End of resolution.

11 I must say that both here, and I'll be
12 speaking on the Advisory Committee, I had affirmative
13 feelings today. So often we are expressing concerns.
14 It seemed to be appropriate on an occasion to say what
15 was done was right. We had discussed U.N. problems
16 with this conference beforehand, so I thought that
17 since one, we had participated, and two, I thought the
18 speech that the First Lady delivered was particularly
19 potent, that this would be appropriate for us.

20 CHAIRPERSON BERRY: Can I get a second?

21 COMMISSIONER WANG: Second.

22 CHAIRPERSON BERRY: Discussion.

23 COMMISSIONER HORNER: Cruz, what made the
24 First Lady's speech so strong was the specific nature
25 of what she said. I would like to ask you why you

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1 changed your resolution from the earlier draft, which
2 mentions not forcing women to undergo involuntary
3 sterilizations, abortions and other measures in the
4 name of family planning, and made it a more bland and
5 general statement.

6 VICE CHAIR REYNOSO: I have the original
7 draft. The Chair reminded me that we in this
8 Commission are proscribed, as I understand it, to deal
9 specifically with issues of abortion, but we can
10 express a more general concern. That is why I changed
11 it.

12 You are right that it was particularly
13 dramatic because she was specific, but apparently we
14 must be more general in our response. So that's the
15 reason.

16 COMMISSIONER HORNER: I would love to be
17 able to vote for this. Maybe when I hear my fellow
18 commissioners I will. I have one reservation about it
19 that I simply want to put on the table. That is the
20 use of the word courageous rather than the word
21 politic. In fact in all honesty, I do not believe the
22 First Lady engaged in an act of courage, no matter how
23 correct and proper her speech was.

24 It was an act designed to, in my view,
25 address an important substantive issue and also

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1 address a political constituency the President needs
2 for reelection. So I have trouble with the word
3 courageous as inflated.

4 VICE CHAIR REYNOSO: I have no objection
5 to cutting out. I'm just looking at it. It seems to
6 me that the spirit is still there without the word
7 courageous.

8 COMMISSIONER HORNER: Thank you.

9 VICE CHAIR REYNOSO: Was outspoken in
10 defense of. Yes.

11 CHAIRPERSON BERRY: Any other comment?
12 Commissioner Wang.

13 COMMISSIONER WANG: My concern about
14 paragraph number four, if I could suggest we move a
15 more general rather than just reproductive.

16 I think you heard the argument from China
17 all the time that we have 1.2 billion people, what do
18 you want us to do? Do you want us to have more
19 babies? Do you want us to have more children? We
20 will give it to you more.

21 That has become irresponsible. If they
22 continue to increase -- so we've got to find a way to
23 help them. So I think if we not to dwell on this, but
24 to just say about the general human rights.

25 CHAIRPERSON BERRY: You mean say is among

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1 the most flagrant and persistent in denying women
2 their basic human rights period?

3 COMMISSIONER WANG: Right.

4 CHAIRPERSON BERRY: That's your
5 suggestion?

6 COMMISSIONER WANG: Right. Rather than
7 dwell on the -- you see they are faced with a very
8 serious problem of controlling the growth of their
9 population. They want to do that but on the other
10 hand, they have no other -- shall we say they need to
11 find another way to be more humane and shall we say
12 acceptable to the world.

13 I would even say that if we can not even
14 talk about women, talk about all. I mean they are in
15 gross violation of all human rights.

16 CHAIRPERSON BERRY: Period.

17 COMMISSIONER WANG: I mean that's
18 understood. I mean no argument is there. So you
19 don't even have to say women. I would say that we --
20 China at this very moment is probably the single, I
21 mean most violator of human rights. We could say that
22 rather than give them this other aspect, which I mean
23 they are going to throw it back to you. If we have no
24 answer to help them, we're not really in a sense --

25 CHAIRPERSON BERRY: So you are suggesting

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1 whereas those -- is one of those countries which is
2 among the most flagrant and persistent in denying
3 human rights. Basic human rights period?

4 COMMISSIONER WANG: Yes. Exactly. I
5 would go with that.

6 CHAIRPERSON BERRY: Did you want a
7 response to that.

8 VICE CHAIR REYNOSO: Yes. It seems to me
9 that nobody has a quarrel with the efforts of a nation
10 to control population growth. Indeed, so much of the
11 efforts of the U.N. has been to helping nations
12 control population growth.

13 The issue here is how you do it. All the
14 studies indicate that education, though it takes
15 longer, that education, betterment in the economic and
16 particularly educational quality of women has been a
17 very effective way of controlling that.

18 The objection here has been to the method.
19 I guess I am reluctant to accept the suggestion as to
20 the fourth paragraph.

21 COMMISSIONER WANG: Am I allowed to
22 proceed?

23 CHAIRPERSON BERRY: I'll recognize you.
24 Go ahead. Sure.

25 COMMISSIONER WANG: The method is not the

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1 government, it's the people, it's the culture. It's
2 a practice by the masses, the farmers, who favor male
3 babies over female babies. That's a practice age-old,
4 by centuries of practice of favoritism.

5 So there's no law written, and Chinese
6 government did not in any way kind of favor male over
7 female. It didn't really practice any gross violation
8 in encouraging genocide against baby girls. It's a
9 belief in the minds of millions of farmers. It's a
10 conscious act. That the baby boy will continue the
11 line of heritage and the family tree and girls will
12 enter into the other family, so they will lose their
13 family.

14 CHAIRPERSON BERRY: But who will the boys
15 marry.

16 COMMISSIONER WANG: Boys marry in. If we
17 give in to that subject, we could have an argument.

18 When we say at this very moment that China
19 is in gross violation of human rights, they have no
20 real judiciary system for providing the due process,
21 I mean giving everybody the chance to --

22 COMMISSIONER FLETCHER: Madam Chair.

23 CHAIRPERSON BERRY: I will recognize
24 Commissioner Fletcher in a second. Commissioner
25 Anderson has had his hand up for quite a while.

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COMMISSIONER ANDERSON: Thank you.

COMMISSIONER FLETCHER: Charles, I heard you.

CHAIRPERSON BERRY: Commissioner Fletcher.

COMMISSIONER FLETCHER: Yes.

CHAIRPERSON BERRY: Hold on just one second. Commissioner Anderson was talking. You couldn't hear him.

COMMISSIONER ANDERSON: Oh I'm sorry.

CHAIRPERSON BERRY: Hold on just one second.

COMMISSIONER ANDERSON: Thank you, Madam Chair. I must say I am gaining a better appreciation as to why Congress in its wisdom has precluded us from discussing the issue of abortion.

However, with that observation let me just say that I have talked with witnesses of what has occurred in China on these matters. I read the personal testimonies of women who have been subjected to these things. I have seen the pictures of infants that are being treated under these policies. From my own standpoint, I can think of very few things that would be more abhorrent.

So whether the First Lady's comments were courageous or politic, I think a wise man once said

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1 that ideas have consequences. So that any time we can
2 speak out against this, I think we should.

3 I must say that there are probably aspects
4 of Chinese culture and the tradition which lend itself
5 to these kinds of practices, but again, what is going
6 on there is being sponsored, it is being enforced by
7 the government I think far beyond what would be
8 reflective of the culture. That is why you have so
9 many really in my view political refugees from that
10 country, who are being subjected to this one child per
11 couple policy.

12 So I would support keeping in even the
13 watered down language. Frankly, I don't see that it
14 would violate our statute for us to say, commend the
15 First Lady here, nations which force women to undergo
16 coercive measures in the name of family planning. I
17 don't see retaining that language from the original
18 draft as violating our mandate. So I would recommend
19 that we keep that. But I would support encouraging
20 this kind of action by the part of our government.

21 On the original draft I saw, I had jotted
22 down at the end of the last paragraph, which I don't
23 think is changed, adding after the words "are
24 entitled", the phrase "and urges continuing action by
25 the government of the United States to further those

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1 rights." I think it's always good for us to encourage
2 action as well as speaking out.

3 Since I have the floor, I will say too
4 that on Wednesday, I had the opportunity to meet with
5 Mr. Harry Wu. Without going into the details of the
6 peculiarities of the Chinese penal system or criminal
7 justice system as applied in his case, let me say that
8 he was treated considerably different and considerably
9 better by his captors because of his American
10 citizenship and because of their realization of the
11 strong action that was being taken by the United
12 States Government, in which I believe this
13 Commission's action was part.

14 So he extended his gratitude and
15 appreciation to us for the action that we had taken
16 some time ago. So I think that's good to put on the
17 record.

18 Cruz, I think what you are doing is good.
19 I intend to support it. I'd like to strengthen it
20 with those two recommendations if you agree. But
21 otherwise, let's go with it.

22 CHAIRPERSON BERRY: Commissioner Fletcher.

23 COMMISSIONER FLETCHER: I pass.

24 CHAIRPERSON BERRY: Commissioner
25 Redenbaugh, are you still there?

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1 COMMISSIONER REDENBAUGH'S ASSISTANT: He
2 stepped away. I will grab him.

3 CHAIRPERSON BERRY: I want him to vote.
4 Mr. George.

5 COMMISSIONER GEORGE: Thanks. I am going
6 to vote no on this, although, Cruz, I think that much
7 of what you say in here is valuable and I agree with
8 it.

9 I have been following this conference from
10 the first very closely. I have commented on it
11 extensively in the public media. I believe it was
12 outrageous for the United Nations to hold a conference
13 on the rights of women in China. I believe it was
14 wrong for the Clinton Administration to send our
15 delegation there. I particularly disapprove of the --

16 COMMISSIONER REDENBAUGH: Excuse me,
17 Robbie. Have we voted?

18 CHAIRPERSON BERRY: We're going to vote
19 now. We're waiting for you.

20 COMMISSIONER GEORGE: I'm saying why I'm
21 going to be a no vote.

22 COMMISSIONER REDENBAUGH: May I be
23 indulged and ask that my vote be taken now.

24 COMMISSIONER GEORGE: Russell, this will
25 take me three seconds. I promise I'll --

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CHAIRPERSON BERRY: We're going to vote in two seconds. Two seconds.

COMMISSIONER REDENBAUGH: All right.

CHAIRPERSON BERRY: All right. Go ahead, Rob.

COMMISSIONER GEORGE: Finally, if the delegation was to go and if the First Lady was to go, although very much of what she said was right and good, I would have thought it necessary that the statement be even stronger and more unequivocal in its denunciation of Chinese atrocities against women. Therefore I am going to vote no, while sympathizing with much of the sentiment Cruz has expressed. Thank you.

VICE CHAIR REYNOSO: Just with respect to the resolution, if the seconder, and I forget who the seconder was.

COMMISSIONER WANG: I seconded.

VICE CHAIR REYNOSO: Well, I think that we really ought to leave the words "to reproduce" on the fourth. I think it would be proper to add the words "and urge this continued action by the U.S. respecting those rights" at the end.

CHAIRPERSON BERRY: But not the other part.

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1 VICE CHAIR REYNOSO: But not the other
2 part.
3 CHAIRPERSON BERRY: Carl, because then
4 we'd have to have a long discussion about it.
5 COMMISSIONER HORNER: And drop courageous.
6 COMMISSIONER WANG: And drop courageous,
7 yes.
8 CHAIRPERSON BERRY: So now we're going to
9 vote on this resolution.
10 Commissioner Redenbaugh, can you hear me?
11 Can you hear me?
12 COMMISSIONER REDENBAUGH'S ASSISTANT:
13 Commissioner Redenbaugh has just left again.
14 CHAIRPERSON BERRY: Tell him I want him to
15 vote.
16 COMMISSIONER REDENBAUGH'S ASSISTANT: He
17 said that he votes yes.
18 CHAIRPERSON BERRY: Okay. You have to
19 have him say that himself, Stella.
20 COMMISSIONER HORNER: While she's getting
21 him, maybe we could do our poll.
22 CHAIRPERSON BERRY: Yes. The rest of us
23 can vote. Are we doing a poll? Yes, okay.
24 Vice Chair.
25 VICE CHAIR REYNOSO: Aye.

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CHAIRPERSON BERRY: Commissioner Anderson.

COMMISSIONER ANDERSON: Aye.

CHAIRPERSON BERRY: Commissioner Fletcher.

COMMISSIONER FLETCHER: Yes.

CHAIRPERSON BERRY: Commissioner George.

COMMISSIONER GEORGE: No.

CHAIRPERSON BERRY: Commissioner Horner.

COMMISSIONER HORNER: Aye.

CHAIRPERSON BERRY: Commissioner Redenbaugh -- we'll come back to him.

Commissioner Wang.

COMMISSIONER WANG: Yes.

CHAIRPERSON BERRY: Commissioner Berry, yes. Okay the motion passes. We will have Commissioner Redenbaugh when he comes back on the phone.

COMMISSIONER WANG: Can I just add, just for the sake of argument or whatever. I have only one daughter. I have no son.

VICE CHAIR REYNOSO: I must say that the address didn't go to the phenomena that you are talking about, which is a very serious phenomenon promulgated, as you indicate, by the people, particularly the rural people. That is not part of the government efforts. So the speech and this

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1 resolution goes to government activity. That's why it
2 seems to me appropriate to leave this in, though
3 that's a very serious problem.

4 COMMISSIONER WANG: Yes, but I might add,
5 I believe the government is trying to deal with it.

6 COMMISSIONER GEORGE: Yes, but the
7 government knows perfectly well what the culture is
8 and what the consequences will be.

9 CHAIRPERSON BERRY: We'd like your vote on
10 this motion.

11 COMMISSIONER REDENBAUGH: I asked that my
12 vote be recorded in the affirmative. Thank you.

13 CHAIRPERSON BERRY: All right. Thank you.
14 It passes with one opponent. Thank you very much.

15 Now the calendar we did. The SAC report
16 we did. Have we done all of the staff director's
17 report? Anybody have anything else on the staff
18 director's report? If not, then we go to the SAC
19 Chair Conference follow-up.

20 SAC Chair Conference follow-up. Staff
21 director.

22 MS. MATHEWS: I have a summary for the
23 commissioners of items that the staff has addressed
24 since the SAC Chair Conference was held on June 8.

25 COMMISSIONER FLETCHER: Madam Chair.

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1 CHAIRPERSON BERRY: Yes, Commissioner
2 Fletcher.
3 COMMISSIONER FLETCHER: I am going to have
4 to leave you in 20 minutes.
5 CHAIRPERSON BERRY: In 20 minutes?
6 COMMISSIONER FLETCHER: Yes.
7 CHAIRPERSON BERRY: All right, I'll move
8 it up fast. Fast. We want you on the Miami hearing
9 briefing.
10 COMMISSIONER FLETCHER: All right.
11 MS. MATHEWS: The first issue that we
12 explored was whether or not the Commission can use
13 funding from the private sector to support SAC
14 activities. The answer to that is no, it is not
15 legally permissible. The main reasons are the
16 legislative mandate on advisory committees and the
17 requirement that they be funded by the government.
18 Secondly, the importance of the Commission maintaining
19 its independence.
20 The next issue was whether or not there
21 are any legal bars to the SACs, creating executive
22 committees. The staff response on that is that the
23 SACs could indeed form subcommittees to perform
24 special projects.
25 Next, whether the SACs could use

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1 conference calls for SAC meetings, and the answer is
2 yes, as long as we abide by the regulatory
3 requirements that provide for public access. If we
4 use a telephonic hook-up, that we have a speaker phone
5 so that the public can indeed hear the proceeding.
6 Procedures and further information to that effect have
7 been forwarded to the regional directors.

8 Following that, we looked at whether or
9 not SAC meetings could be advertised electronically.
10 The answer to that question was yes, that can be done.
11 However, we learned at the SAC meeting through some
12 discussion that not all the SAC members have
13 electronic mail, nor do they all have even a computer.

14 So there's a variety of information
15 exchange, communication exchange procedures that we
16 will probably have to continue to use, but we can
17 explore this electronic information. It could be
18 certainly provided for access to the public in terms
19 of further information about upcoming SAC meetings.

20 Following that we looked at whether or not
21 the regional offices could be equipped with toll-free
22 telephone lines. This is an item we are still
23 researching. The answer in general is yes, but the
24 cost is an issue that we need to explore further. The
25 cost would be determined on the volume of calls. We

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1 wanted to wait to see how the appropriation process
2 went in terms of next fiscal year, to see how this
3 cost once it's fully researched would match up with
4 the appropriation amount that we receive.

5 We also looked at whether or not public
6 service announcements could be developed on the
7 functions of a SAC. That was a suggestion made.
8 Obviously that's an issue that we are still exploring.
9 We are looking at issues like whether or not SACs
10 could be mentioned as the tag line, whether we could
11 have even a member of our state advisory committee be
12 the spokesperson for this particular type of PSA
13 within their state. So there are some creative ideas
14 the staff is looking at on that issue.

15 SAC meetings and trying to have a meeting
16 in states that haven't had a meeting in quite some
17 time, we addressed that immediately following the SAC
18 Chair Conference. You probably noted when you saw the
19 upcoming list for SAC meetings for September, there
20 are 23 SAC meetings scheduled to take place this
21 month.

22 Following that, we looked at whether or
23 not a guide could be developed on the use of student
24 interns by the regional offices. We indeed can use
25 student interns. A guide and additional instructions

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1 have already been given to the regions on that issue.

2 The last item is the --

3 VICE CHAIR REYNOSO: Can the students
4 interns be used as the U.S. Government official?

5 MS. MATHEWS: They would be employees of
6 the Commission on Civil Rights, yes.

7 The last issue I wanted to mention is the
8 request the SAC chairs made for a White House
9 conference on civil rights. We made some inquiry of
10 commissioners as to suggestions you might have, and
11 have still not received a lot of input. We received
12 I believe just one suggestion so far. So I would pose
13 that as my final point for the Commission discussion.

14 CHAIRPERSON BERRY: Yes, Vice Chair.

15 VICE CHAIR REYNOSO: I have one question.
16 Has the staff done any further work on the suggestion
17 coming from that conference that maybe we have sort of
18 a regional responsibility for each of the
19 commissioners for the SACS? Has anything further been
20 discussed in that regard?

21 MS. MATHEWS: We have not pursued that one
22 issue further. The items I mentioned here are the
23 progress to date. We will be looking into that.

24 VICE CHAIR REYNOSO: Thank you.

25 CHAIRPERSON BERRY: Now the White House,

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1 I think it's important that we have that report. It
2 will be in the record, and the SACs get the record of
3 what we do here at the meeting so that they can know
4 that we have discussed this.

5 But there was the item of the White House
6 conference. What we agreed to do was say that
7 commissioners would give their suggestions for what
8 might be included in such a conference so that we
9 could decide whether we wanted one and whether we
10 wanted to endorse their recommendation. But we have
11 never taken that up. As the staff director just told
12 us, she only got the suggestions from one person about
13 what might be taken up.

14 What is your will concerning this SAC
15 chair suggestion about a White House conference?
16 Shall we continue to defer it and think about it or
17 does someone want to have some kind of action?

18 COMMISSIONER HORNER: Madam Chair, I'd
19 like to suggest that we continue to defer it until
20 such time as we recognize that the environment is
21 right for such a recommendation. I think we will know
22 if and when that time arrives.

23 CHAIRPERSON BERRY: Okay. So well then
24 we'll just leave it at that. Any other questions
25 about the staff director's report on the SAC Chair

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1 Conference? If not, let's move onto the Miami hearing
2 briefing, which is the next item on the agenda.

3 We have the Miami hearing next week. You
4 have a briefing book that you were given, which
5 indicates the agenda and also tells us the witnesses,
6 and even gives us the details of the subpoenas that
7 have been issued to each witness, what they have been
8 asked, what they have been asked to bring.

9 Some of you may be aware that there has
10 been some publicity surrounding this hearing. I had
11 occasion last night to talk to someone from the ACLU
12 who had been told that the Commission was asking for
13 the membership lists of all the members of these
14 organizations, which as you know from reading your
15 briefing book is not true.

16 But the ACLU was told, at the ACLU
17 represents that they were told by a couple of the
18 witnesses that we were asking them for their
19 membership lists, which as we know, as any good lawyer
20 knows --

21 COMMISSIONER ANDERSON: NAACP against
22 Alabama.

23 CHAIRPERSON BERRY: So they said to me, we
24 know you know NAACP against Alabama if anybody does.
25 So I sent over a copy of the questions, since this was

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1 something that they were going to make a public
2 announcement about so that they could see we were not
3 asking these people for their membership lists.

4 The other thing you must know as
5 commissioners is that every time the Commission has a
6 hearing on a topic which is very hot in a particular
7 environment, this has been true throughout the history
8 of the Commission, there may be heightened tensions
9 around the activities of commissioners. There has
10 been some concern expressed, police department in
11 Miami, as a result of certain representations that
12 have been made about the Commission coming down there.

13 This is not unusual. It has happened in
14 the past whenever the Commission has had a hearing and
15 it's a hot subject and people are concerned about it.
16 It's not anything to be -- we should just be very
17 sensitive in terms of how we conduct ourselves, what
18 we do, how aware we are of where we are and what we're
19 doing. I just call that to your attention.

20 You have a briefing book. We could either
21 go through it or you could ask questions about it or
22 what is your wish. How would you like to proceed?

23 Yes, Commissioner Horner.

24 COMMISSIONER HORNER: Madam Chair, I don't
25 know how the commissioners will want to proceed, so

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1 I'm not addressing that question. However, I would
2 like to address the question of whether it is the case
3 that subpoenas are not requesting names of members of
4 organizations.

5 The reason I ask that question is that the
6 subpoenas demand any document, including computer
7 generated printouts. Now that's rather comprehensive.
8 Any document, including computer generated printouts
9 may include therefore any document which is a computer
10 generated printout of names of lists of members of
11 organizations.

12 I am also extremely concerned that the
13 subpoenas request draft proposals by individuals. I
14 am not sure why it is that an individual's draft
15 proposal is any business of this Commission. I would
16 assume that what we want are public documents which
17 are part of the public discussion. I would like to
18 hear -- I don't know what the remedy is for what I
19 think is an improperly worded subpoena, if our
20 intention is to exclude any membership lists in the
21 request.

22 CHAIRPERSON BERRY: Where is this
23 improperly worded subpoena that you are referring to?

24 COMMISSIONER HORNER: Exhibit A, Subpoena
25 Duces Tecum, nos. -- I can tell you it appears on

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1 several occasions. It appears in number -- just a
2 moment please. I just got this this morning. Oh yes.
3 Number four. "Any document including but not limited
4 to reports, studies, memorandums, policy statements,
5 press releases, computer generated printouts, and any
6 other writings produced or compiled by or on behalf of
7 the Florida 187 Committee."

8 Now any other writing that a member of
9 this committee has generated would seem to me an
10 outrageous intrusion into the privacy of American
11 citizens. It would seem to me that it would be
12 definitely chilling, and reminds --

13 CHAIRPERSON BERRY: I don't have this in
14 my briefing book.

15 COMMISSIONER HORNER: It's attached to the
16 -- it says Subpoena, United States of America
17 Commission on Civil Rights Subpoena.

18 CHAIRPERSON BERRY: For which person,
19 because we have to know which person in order to look
20 at it. I don't know which one.

21 COMMISSIONER HORNER: I think it's to the
22 Florida 187 Committee. The name is Robert -- it's
23 faxed, so I can't read it very clearly. It begins
24 with a B.

25 CHAIRPERSON BERRY: Okay. I just wanted

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1 to find it so I can read it.

2 COMMISSIONER HORNER: I can get the
3 briefing book.

4 CHAIRPERSON BERRY: Because I have the
5 subpoena that I was asked about by the press, and it
6 doesn't say anything like that. If it's in your
7 briefing book, it may be a planned -- so if I could
8 know which --

9 MS. MOORE: Robert Ross.

10 COMMISSIONER HORNER: How do you spell
11 that last name?

12 MS. MOORE: R-O-S-S.

13 COMMISSIONER HORNER: Thank you.

14 CHAIRPERSON BERRY: Yes.

15 MS. MOORE: If I may, you must read
16 further to understand the nature of the document that
17 is being requested. It is not requesting any computer
18 generated printout. It goes on to say regarding the
19 cost or other impact, economic or non-economic of
20 immigration to the United States, Florida, or to
21 cities or counties of Florida. So it's not requesting
22 anything with respect to membership lists.

23 CHAIRPERSON BERRY: The sentence by
24 itself. Why don't you bring it around and let me read
25 it.

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1 COMMISSIONER HORNER: I would ask that you
2 look at number seven, which requests any documents,
3 included but not limited to reports, studies,
4 memoranda, policy statements, press releases, computer
5 generated printouts, and any other writings containing
6 a list of any and all data upon which the Florida 187
7 Committee Inc. has relied in drafting its proposed
8 measure initiative bill or constitutional amendment.

9 MS. MOORE: Again, data does not include
10 people.

11 COMMISSIONER HORNER: Does not include
12 lists of names who may serve as sources for
13 information on which the Committee has relied?

14 CHAIRPERSON BERRY: It does not.
15 Commissioner Horner, quite clearly this subpoena does
16 not ask for membership lists. Can we please be clear
17 about that before we move on to the next.

18 COMMISSIONER HORNER: I am very happy to
19 be clear about that.

20 CHAIRPERSON BERRY: Where does it state
21 membership lists? It does not -- the sentence that
22 you just read does not say anything about membership
23 lists. The sentence you read before that quite
24 clearly, if anyone reads to the end of the sentence,
25 is related to --

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COMMISSIONER FLETCHER: I need to leave now again.

CHAIRPERSON BERRY: Information compiled - it's a good time. On behalf of Florida 187 Committee regarding the costs or other impact and any -- I don't see that anyone could interpret from that that somebody is asking them for their membership list.

Number seven. Any document including, but not limited to reports, studies, memoranda, policy statements, press releases, computer generated printouts, and any other writings containing a list of any and all data upon which the Florida 187 Committee has relied in drafting its proposed measures.

Now if you want to go to the question of whether we should ask for drafts, that's a separate question. But I first want to lay to rest this allegation that the Commission is asking people for their membership lists.

COMMISSIONER HORNER: I am glad to hear that and I would like to move to the question of the appropriateness, propriety of asking for such broad documentation, including draft proposals. I don't understand how it could be the business of the Federal Government, unless there is a criminal action under

1 consideration, to ask anybody for any draft proposal.

2 CHAIRPERSON BERRY: And Commissioner
3 Horner, the sentence that I have just read does not
4 state what you have said it stated. I will read it
5 again.

6 "Any document including, but not limited
7 to, reports, studies, memoranda, policy statements,
8 press releases, computer generated printouts and any
9 other writings containing a list of any and all data
10 upon which the Florida 187 Committee has relied in
11 drafting its proposed measure initiative bill, a
12 constitutional amendment."

13 All the thing asks for is this is a public
14 initiative bill or constitutional amendment. It's not
15 a private bill. It is asking not for a draft of any
16 writings. It is asking for data which was used to
17 produce the draft. That's all it's asking for.

18 COMMISSIONER HORNER: Madam Chair, the
19 language I am reading, number one, asks for "copies of
20 all other drafts or variations thereto, prepared by or
21 on behalf of", presumably by someone else not named,
22 of the Florida 187 Committee.

23 CHAIRPERSON BERRY: Where are you reading?

24 COMMISSIONER HORNER: I am reading from
25 Exhibit A.

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CHAIRPERSON BERRY: Now we go back to number one.

COMMISSIONER HORNER: Number one. It clearly asks for drafts.

CHAIRPERSON BERRY: Yes. That is of the proposed amendment.

COMMISSIONER HORNER: No. It says --

COMMISSIONER GEORGE: Yes. It's of the proposed amendment, I think.

COMMISSIONER HORNER: Drafts, yes, drafts. So that if I were to sit here today and speculate to myself what would I like to propose and to write out four or five drafts in my hand, and subsequently decide no, I don't think I want to do that, a draft of that sort would be subject to subpoena here.

Now I think it is considerably chilling.

MS. MOORE: If I may respond briefly, Commissioner Horner. All witnesses are advised, as is Commission practice, that they may bring along with them to the hearing, counsel to object to any of the subpoena inquiries.

COMMISSIONER HORNER: Do they hire a lawyer to do that and pay for a lawyer?

MS. MOORE: If I could just finish. The reason for the way in which each item was phrased was

1 based on staff's interviews with each of the
2 particular witnesses. Now some of the witnesses
3 initially indicated a willingness to submit drafts.
4 They were included in the subpoena to ensure that they
5 would indeed be submitted. I can not tell you right
6 here and now whether that was the case with Mr. Ross.
7 It was drafted though in response to the interviews
8 that we had.

9 Now if people have subsequently decided
10 that they feel that the item request is overly broad,
11 they can make the objection with an attorney or on
12 their own and we can accommodate that at the hearing.

13 COMMISSIONER HORNER: As a matter of
14 policy, I think it is highly objectionable for this
15 Commission to ask for or receive as a result
16 respondent to a subpoena, whether voluntarily or
17 respondent to a subpoena, drafts. In other words,
18 there should be no official language which demands
19 this, even if privately the individual --

20 CHAIRPERSON BERRY: Why not?

21 COMMISSIONER HORNER: Even if privately
22 the --

23 CHAIRPERSON BERRY: Why not?

24 COMMISSIONER HORNER: I will explain why
25 not. Even if privately an individual has said I will

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1 give you rough drafts, I don't think we should
2 subpoena rough drafts. Surely we leave it open to
3 individuals to provide information for the record,
4 should they choose.

5 VICE CHAIR REYNOSO: Madam Chair, I
6 suppose that's a matter of policy perhaps for us to
7 decide. But legally speaking and in terms of
8 discovery, the absolutely most routine matter in the
9 world.

10 COMMISSIONER HORNER: I'm sorry. I
11 couldn't hear what you said.

12 VICE CHAIR REYNOSO: It's the most routine
13 matter in the world to ask for drafts, to ask for
14 notes, to ask for all that that was evolved in the
15 final product. So at least in terms of what is
16 normally done in court, it is absolutely routine.

17 COMMISSIONER HORNER: This is not a court.
18 This is a Federal agency.

19 VICE CHAIR REYNOSO: No, no. I
20 understand. But in here I think we have some of the
21 same concern. How did they finally end up with this
22 certain wording, and an analysis of the discussions of
23 how they ended up with that certain notion that that
24 was a good public policy for the State of Florida, I
25 should think would be perfectly routine.

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1 COMMISSIONER HORNER: It may be routine.
2 I think it is wrongly routine if it is routine in an
3 environment like this. I really very much --

4 CHAIRPERSON BERRY: An environment like
5 what? What is the environment?

6 COMMISSIONER HORNER: The Civil Rights
7 Commission, an agency like ours should not be going to
8 voluntary private associations, not accused of
9 breaking any law, simply trying to express an opinion
10 on public policy matters, and demanding manifestations
11 of their preliminary thoughts.

12 CHAIRPERSON BERRY: If they do not wish to
13 submit them, they don't have to.

14 COMMISSIONER HORNER: I thought a subpoena
15 meant they had to.

16 CHAIRPERSON BERRY: They can object.

17 COMMISSIONER HORNER: They can object,
18 sure. I think we should not require individuals to
19 hire counsel when they are simply expressing their
20 private citizen opinions on a subject of public
21 policy. We should not force them into a position of
22 having to hire counsel and object and be overruled or
23 not. I just --

24 CHAIRPERSON BERRY: Do you think we should
25 ask --

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1 COMMISSIONER HORNER: I am with the ACLU
2 on this I guess.

3 CHAIRPERSON BERRY: Do you think that the
4 ACLU has objected to what we're doing? I talked to
5 them last night. They were told that we were doing
6 all sorts of things that we are not in fact doing,
7 including the most serious one that they were
8 concerned about is that we were asking for people's
9 membership lists.

10 They said how dare you ask them to list
11 their members. I said, "Who told you that? I'll send
12 you a copy of the doggone subpoena." The Commission
13 would never do that.

14 COMMISSIONER HORNER: Was the allegation
15 made that they were never asked for lists or that they
16 were never asked in the subpoena for lists?

17 CHAIRPERSON BERRY: The allegation was
18 that we had subpoenaed the membership lists of all of
19 these organizations that are against immigration,
20 because the Commission is on a hatchet mission to go
21 to Florida to kill the anti-immigration movement,
22 which is the ludicrous thing I've ever heard in my
23 life. That we were a bunch of liberal Democrats who
24 were coming down to Florida to kill.

25 I said, do you know who is on the Civil

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1 Rights Commission?

2 COMMISSIONER GEORGE: Were they talking
3 about the commissioners or staff?

4 CHAIRPERSON BERRY: I said, Commissioner
5 Horner, that leading liberal, Commissioner Anderson,
6 Commissioner George.

7 COMMISSIONER FLETCHER: Madame Chair?

8 COMMISSIONER HORNER: Madame Chair, it is
9 not these commissioners who have determined -- who
10 have, you know, decided on the contents of this
11 subpoena. And therefore, it is entirely appropriate
12 to speculate that the subpoena was not generated by
13 four Republicans and Independents.

14 (Laughter.)

15 COMMISSIONER FLETCHER: Madame Chair?

16 CHAIRPERSON BERRY: Yes, Commissioner
17 Fletcher?

18 COMMISSIONER FLETCHER: I think the record
19 will show that -- the transcriber is there, right?

20 CHAIRPERSON BERRY: Right.

21 COMMISSIONER FLETCHER: I think the record
22 pretty well shows where the Commission stands now.

23 CHAIRPERSON BERRY: Oh, okay.

24 COMMISSIONER FLETCHER: Both you and
25 Connie are on the record, and I think that's what is

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1 important.

2 CHAIRPERSON BERRY: Okay, thank you,
3 Commissioner. Commissioner Wang and Commissioner
4 Anderson.

5 COMMISSIONER WANG: Commissioner
6 Redenbaugh come back, you may want to ask for his vote
7 to complete the --

8 CHAIRPERSON BERRY: Oh, he did vote.

9 COMMISSIONER WANG: Okay.

10 CHAIRPERSON BERRY: Commissioner Anderson?

11 COMMISSIONER ANDERSON: Yes, I'd like to
12 make a couple of comments here. The first comment I
13 would like to make is that NAACP v. Alabama is -- I
14 mean, such a matter of black letter law in civil
15 rights enforcement that I -- even though we have
16 disagreements on the variety of issues, Madame Chair,
17 I would really be surprised if you signed a subpoena
18 knowingly requesting or demanding the production of
19 membership lists of political organizations.

20 And so, I mean, I would be surprised to
21 hear that. At the same time, and I want to be careful
22 what I say, somebody who was very sensitive and
23 perhaps not an attorney or not versed in civil rights
24 law, I think could read paragraphs one, four and seven
25 -- or perhaps three as well -- and with a very broad

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1 interpretation, say well, maybe I have to produce my
2 membership list.

3 I don't think that that is a necessary
4 interpretation of those paragraphs, but I think a very
5 broad, maybe careless interpretation, or a paranoid
6 interpretation, or a layman's interpretation could
7 result in that. So, I can see how that might be a
8 question of do we have to produce these computer --
9 because I think if you look at -- you know, you look
10 at number seven, it's a computer printed -- generated
11 print out and all data upon which the Florida 187
12 Committee has relied in drafting its proposed measure.

13 You could say that part of the data was a
14 determination of the strength of the movement, which
15 in some way could be measured by the membership list
16 of the committee sponsoring the amendment. Now,
17 that's stretching, but I think with that kind of
18 stretching you can raise the question of are we
19 demanding membership lists, or should that be
20 included.

21 But I would not think that the Chair of
22 this Commission would knowingly sign a subpoena that
23 said that political organizations would have to
24 provide membership lists. At the same time, I must
25 say that having looked at this subpoena, I would be

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1 very concerned that a political organization -- and I
2 use the word broadly in terms of public policy -- a
3 committee that's going to propose an amendment to a
4 state constitution or other kind of referendum or
5 initiative would be required to submit copies of
6 drafts of their proposal.

7 I can see that that -- I mean, that kind
8 of work product would be very sensitive. I mean, I've
9 been involved in initiative campaigns, and I'm sure
10 others of us have, and where you would like to have
11 the previous drafts with whatever penciled out or
12 whatever put in and whatever's -- whoever's initials
13 on the penciled drafts -- what goes in and what goes
14 out.

15 You know, that's highly sensitive, and I
16 think we ought to think long and hard before we ask a
17 political organization to furnish that kind of
18 information to a government agency. And the same
19 thing is -- you know, what kind of considerations are
20 causing you to take a particular position or does this
21 include advertising strategy behind memoranda on
22 advertising or polling or --

23 So, I mean, I'm troubled by the subpoena,
24 and I can see how in good faith we would want to have
25 some of these things. But I can also understand how

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1 somebody sitting back to now plan a very controversial
2 political campaign on an issue such as this is saying,
3 you know, why should I be making a matter of public
4 record here in a way our strategy, our discussion
5 memoranda on language, on advertising, on what we're
6 going to put in our brochures, on where we think our
7 support is, on what our demographic tells us about our
8 support base, our financial base.

9 I think to ask a political committee to do
10 that sort of thing to a government agency is -- really
11 ought to give us a long pause. And it may not have
12 been the intention at all behind the subpoena, but now
13 that it's surfaced publicly, I think we've got to
14 consider that seriously.

15 CHAIRPERSON BERRY: Well, I think that --
16 anybody have any other comments?

17 COMMISSIONER WANG: In general, I have a
18 comment.

19 COMMISSIONER GEORGE: I think Charles was
20 ahead of me.

21 COMMISSIONER WANG: I spoke to -- in terms
22 of the -- I don't know that we were able to find any
23 Asian person willing to testify.

24 STAFF DIRECTOR MATHEWS: The individual
25 that you recommended we contact, Staff did follow up

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1 with. But last I was informed, which was just a day
2 ago, he had not yet provided suggestions of witnesses.

3 COMMISSIONER WANG: Oh, I see.

4 CHAIRPERSON BERRY: But if he does, then
5 maybe we can -- they could comment at the beginning of
6 the forum or something -- in the open forum and
7 testify if we can come up with somebody.

8 COMMISSIONER WANG: All right.

9 CHAIRPERSON BERRY: Or maybe he could
10 testify.

11 COMMISSIONER FLETCHER: Madame Chair?

12 CHAIRPERSON BERRY: Yes, Commissioner
13 Fletcher?

14 COMMISSIONER FLETCHER: Can you talk to me
15 just a little bit about the conversation between you
16 and Civil Liberty folk?

17 CHAIRPERSON BERRY: The concern was that
18 we had heard that there were reports that the Florida
19 ACLU was concerned that the Commission was asking for
20 membership lists of the organizations. And a reporter
21 called and said this was going to be reported in the
22 press. And that the Florida ACLU was then going to
23 enjoin the Commission from asking for their membership
24 list, and that this was getting to be a hot issue as
25 pushed by -- I guess this same man that they're

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1 referring to.

2 And so, the -- I talked to the people at
3 the ACLU and told them that the Commission was not
4 asking for any membership list. I didn't know whether
5 this reporter's statements were accurate. I mean,
6 maybe nobody said that at the ACLU. And they said
7 yes, they had been alerted that the Commission was
8 subpoenaing membership lists, and that they would of
9 course be very concerned about that.

10 But they knew that I knew better than
11 that, and so they were puzzled as to why I would do
12 such a thing. But they simply told the complainant
13 that they would explore it, and they didn't make any
14 kind of statement that they were going to do anything
15 to us, and that they would explore it.

16 I shared with them a copy of the subpoena
17 to the person who they identified as complaining, and
18 then they agreed that it didn't ask for the membership
19 lists, and we did not discuss any of these other
20 facts. But they said -- or matters -- but they said
21 that they would get back to me if they had any other
22 concerns. And that was the end of this conversation.

23 COMMISSIONER FLETCHER: And how long ago
24 was that conversation?

25 CHAIRPERSON BERRY: That was last night.

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1 COMMISSIONER FLETCHER: Last night?
2 CHAIRPERSON BERRY: About 8:00 last night.
3 COMMISSIONER FLETCHER: So you do expect
4 them to get back to you?
5 CHAIRPERSON BERRY: If they have any
6 concerns. I haven't heard any yet. I've been
7 available. I gave them my number at home, and I've
8 been there, except for going out to run before I came
9 here today. And so I haven't heard from them yet.
10 And if I do hear from them, I'll try to address
11 whatever their concerns are.
12 But they weren't -- they said they didn't
13 -- you know, they thought we were asking for
14 membership lists, and they knew also that the
15 Commission statute precludes us from asking for
16 membership lists, so they didn't understand why we
17 were doing it or whether we were.
18 COMMISSIONER FLETCHER: So is it fair to
19 assume that they will be at the hearing monitoring us?
20 CHAIRPERSON BERRY: I would assume that
21 somebody will come. I'm sure a lot of people will be
22 there monitoring us. The unfortunate thing is that
23 commissioners know that we planned to have this
24 hearing a long time ago before these people started
25 talking about proposition whatever it is. But

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1 somebody in Miami thinks that the Commission concocted
2 this hearing in result of their campaign, and that
3 we're, as I say, a bunch of liberals coming down to
4 Miami to kill their campaign.

5 COMMISSIONER FLETCHER: So we had actually
6 included Miami as a hearing site when I was the
7 Chairman, right?

8 CHAIRPERSON BERRY: That's right, long
9 before I ever, you know -- and the way it was put to
10 me was Mary Berry had decided to come down there and
11 kill off the movement. And that we were there for
12 subpoenaing people, and that we were only going to
13 have them testify. We weren't dragooning in those
14 liberals or immigration advocates.

15 COMMISSIONER FLETCHER: I think our record
16 will show -- if that becomes an issue, I think our
17 record will show one of the reasons we selected Miami
18 was because of racial unrest there, is that not
19 right?

20 CHAIRPERSON BERRY: That is correct, and

21 --

22 COMMISSIONER FLETCHER: And the problem
23 that minorities in general and the African-Americans
24 in particular were having with the Miami Police
25 Department, is that not right?

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CHAIRPERSON BERRY: And with immigration tensions between the different immigrant --

COMMISSIONER FLETCHER: Okay, just so we stay with that -- with the subpoena.

CHAIRPERSON BERRY: I don't know who's next. Commissioner Anderson?

COMMISSIONER ANDERSON: Well, yeah -- I mean, Commissioner Fletcher, I mean, I agree with you as to the reason why we decided on Miami. Subsequently, we've got into a question of a referendum or an amendment to the state constitution, a 187 type issue. And I must say that I find the subpoena here -- the language of the subpoena troubling in its breadth for dealing with a political campaign.

I mean, I'd be happy to -- let's see, why don't we subpoena the presidential campaigns, because obviously that's -- immigration's an issue there, and let's see whether we can get all draft memoranda regarding their support on their issues.

I mean, what we've got is a political committee, and I think we must treat a political committee differently in terms of the kind of documents we're willing to subpoena than we are a different kind of organization or a government agency

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1 that we're concerned about wrongdoing or we're
2 concerned about ineffective or, you know, negligence
3 in terms of the way it's operating.

4 CHAIRPERSON BERRY: How about when the
5 Commission went to Mississippi in the early 60's and
6 did hearings and called in organizations that were
7 mobilized as political action committees to prevent
8 African-Americans from voting? The Commission
9 subpoenaed statements that they had made, educational
10 materials that they had distributed throughout the
11 state, and had them come in to talk about them.

12 Would that apply? I mean, does the same
13 logic apply? They were a political action committee.

14 COMMISSIONER ANDERSON: Well, not all
15 political action committees are equal. But in one
16 sense --

17 COMMISSIONER HORNER: Were they advocating
18 a public --

19 CHAIRPERSON BERRY: Yes, of course they
20 were advocating a public policy.

21 COMMISSIONER HORNER: They were not
22 attempting to subvert the law?

23 CHAIRPERSON BERRY: They were advocating
24 a public policy.

25 COMMISSIONER ANDERSON: Madame Chairman,

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1 I would say that as far as I'm concerned, matters of
2 public record and public documents are certainly fair
3 game. But I just wonder how much -- what kind of
4 documents of a more confidential nature really we
5 should be looking at.

6 And we might come out differently on that
7 question applied to those organizations at that
8 earlier time than we would on this given, you know,
9 the circumstances and the potential for violence and
10 the history of violence, etc., etc.

11 I mean, it would be one concern for me.
12 But again, here I'm very troubled by the fact that
13 we're looking at a committee that's getting ready to
14 have a political campaign in a state which, regardless
15 of how we feel about the issues, I mean, is not
16 something that goes back to the kind of violence that
17 we saw in the 60's in those states, but is something
18 entirely different.

19 And I must say that I'm very troubled by
20 it. I don't know how to say it any differently, but
21 I think it raises a real First Amendment issue in a
22 number of ways.

23 COMMISSIONER FLETCHER: Madame Chair?

24 CHAIRPERSON BERRY: Yes, Commissioner?

25 COMMISSIONER FLETCHER: I'm going back

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1 into my historical file right now. What did the
2 courts do when -- I think it was in Alabama where I am
3 now -- when the -- there was a petition for all the
4 membership of the NAACP down here -- didn't that
5 happen?

6 CHAIRPERSON BERRY: Right, we were
7 discussing that earlier, and we were saying that the
8 court decision of course was you cannot ask for
9 membership lists of these organizations. And we have
10 a provision in our statute which says that when we're
11 making investigations, we cannot ask for membership
12 lists. And the allegation made to the ACLU was that
13 we were violating that condition of the statute and
14 the court decision and civil liberties in general by
15 asking for a membership list.

16 That was the allegation that this group or
17 somebody apparently made.

18 COMMISSIONER FLETCHER: Yeah, I just
19 wanted to make sure the record shows that we were --
20 we are aware, at least you and the Council are aware,
21 that at one time, the NAACP and the Urban League and
22 the Southern Christian Leadership Conference -- an
23 effort was made to get their membership, and the court
24 said no, no, no.

25 CHAIRPERSON BERRY: Right.

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COMMISSIONER FLETCHER: All right.

CHAIRPERSON BERRY: Absolutely. Yes, Commissioner George?

COMMISSIONER GEORGE: Thank you, Madame Chairman. I was not a supporter of California Initiative 187 for the reasons that Bill Bennett stated I think quite eloquently. And I have no reason to think that 187 in Florida is going to be any different or any -- or that I'll be any more sympathetic to it.

But I am concerned that this kind of a subpoena is over broad in that it requires or demands the production of internal materials by people who are organizing politically. If I believed, or if we had reason to believe, or if it's being put to us that the Florida 187 committee has organized itself to deprive citizens of Florida or people in Florida of their civil rights, then I might, out of a concern to ensure that civil rights laws are enforced, be willing to go with something this broad.

But I don't think that's the allegation that's being made against these people. In fact, I'm not sure again, although I would not support their initiative, that it would be fair to call them anti-immigration. It probably includes plenty of people

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1 who are opposed to immigration generally, but my
2 understanding, at least with California 187, was that
3 it had to do with benefits for people who were in the
4 country illegally, rather than having to do with
5 public policy about whether we should stop
6 immigration.

7 I just don't know, because I haven't read
8 Florida -- Proposition 187. But I don't have any
9 reason at all to think that it's an organization
10 that's organized to deprive people of their civil
11 rights. And therefore, I think we should be
12 considerably more circumspect in our demands of them.
13 I'm perfectly happy to demand a copy of their
14 initiative, copies of press releases, other public
15 documents, but I don't think we should ask for their
16 internal memoranda and stuff that's related to their
17 internal strategizing and considerations of politics.

18 CHAIRPERSON BERRY: Yes?

19 COMMISSIONER REYNOSO: I'm sorry. Madame
20 Chair, I agree that we ought to be sensitive in
21 subpoenaing internal memoranda of any organization.
22 I can't run a judgement on this subpoena, because it's
23 indicated by the staff very often the subpoena follows
24 a discussion where the person might have already
25 provided all this. But it's our practice, I

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1 understand it, to nonetheless put it in subpoena form.

2 But I must say that with respect to 187 in
3 California and perhaps in Florida, it's not just what
4 the initiative said. The initiative said, among other
5 things, that undocumented would no longer be entitled
6 to welfare. Well, they were never entitled to
7 welfare. It was an absolutely -- in my point of view,
8 an absolutely false premise and false statement, and
9 the campaign run on falsehoods.

10 And in California, the Latino community
11 interpreted this as an anti-Latino initiative, not
12 just an anti-undocumented initiative. And that
13 created tensions and continues to create tensions to
14 this day. And I'm sure that it will not change. The
15 proponents of the initiative, including the Governor,
16 have been considered enemies of the Latino people in
17 California.

18 And if that's the perception, right or
19 wrong, that's going to create tensions in California;
20 and I'm sure the same thing is happening in Florida.

21 CHAIRPERSON BERRY: And I would assume
22 though that your comments -- those of you who
23 commented on the subpoenas -- that your comments are
24 not limited to the Proposition 187 organization, but
25 that you feel that the subpoenas which were also

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1 issued to the organizations on the other side of that
2 issue --

3 COMMISSIONER GEORGE: Oh, absolutely.

4 CHAIRPERSON BERRY: -- also, no one has
5 mentioned that the subpoenas were absolutely
6 consistent. Nobody asked them for anything that they
7 didn't ask the others.

8 COMMISSIONER GEORGE: We should have a
9 general -- I'm sorry, I think that our policy should
10 be a general policy that applies to all comers. I do
11 think the once circumstance in which I think it would
12 make a difference is the one that you talked about
13 from the 60's where you have an organization aimed at
14 law breaking in effect, at denying people their
15 established civil rights, rather than a changing the
16 laws that they don't like or something like that.

17 And I agree. Cruz has stated very well
18 some of the reasons that I myself oppose Proposition
19 187. But I don't think that that affects the question
20 that's before us regarding breadth and the perceptions
21 that others will have of what we're doing there.

22 And just as people in the Latino community
23 in California perceive the people who are for 187 as
24 being anti-Latino, whether the particular individuals
25 were not, some people will perceive a subpoena like

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1 this as being a fishing expedition or a persecution or
2 oppressive whether our intentions are good or not.

3 And they can't simply, I think, look at
4 the makeup of the Commission and see that it's divided
5 between liberals and conservatives unless we had
6 confidence that divisions within the staff politically
7 reflected that same breakdown. I frankly doubt that
8 they do. So you know, I think we should just be more
9 circumspect.

10 I'm not saying we shouldn't ask for
11 materials, just a little narrower.

12 COMMISSIONER HORNER: Madame Chair?

13 CHAIRPERSON BERRY: Yes, who wants to say
14 something?

15 COMMISSIONER HORNER: If we -- if the
16 subpoenas are all consistent in their language and all
17 asking for internal documents and preliminary
18 proposals, then it strikes me that it's disingenuous
19 to assert that they -- that these demands for such
20 materials are pursuant to conversations with
21 individual witnesses. Either they're all consistent
22 or they're tailored to each witness. But they can't
23 be both unless it happens to be the case that every
24 one of our witnesses volunteered to provide
25 preliminary and draft materials.

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1 CHAIRPERSON BERRY: No, no, no, no, that
2 is not what I said. Now let me make clear what I
3 said. The organizations on the other side --
4 political organizations is what I was referring to,
5 not every witness -- and there is an organization that
6 Mr. Soto, I think is the witness, which was against
7 one of these measures concerning -- or supporting
8 immigrants in one of these measures.

9 And his subpoena reads almost like the one
10 for this organization that we're discussing. And I
11 could ask Deputy General Counsel -- was his subpoena
12 also based on discussions with him?

13 MS. MOORE: Well, yes; it was.

14 CHAIRPERSON BERRY: Okay.

15 MS. MOORE: And it is possible for both
16 situations to exist. Based on our interviews, the
17 actual language of the inquiry is virtually identical.
18 If witness A offered to give drafts, then the language
19 asking for the draft is identical to witness B, who
20 also volunteered to give drafts. But each inquiry to
21 those particular witnesses may be very different based
22 on what they're doing and what we're interested in.

23 COMMISSIONER HORNER: I haven't had a
24 chance to look at these press reports yet, but it
25 strikes me as odd that someone would volunteer to give

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1 drafts and then go to the newspapers and complain
2 about drafts being demanded.

3 CHAIRPERSON BERRY: Yeah, it seemed very
4 odd to --

5 COMMISSIONER HORNER: And I wonder if the
6 voluntary nature was not all it is not thought to be
7 or portrayed to be. Maybe "volunteering" out of fear.

8 CHAIRPERSON BERRY: It may be a
9 misunderstanding, but I -- and I have learned in all
10 this time in public life not to believe everything I
11 read in the paper either. But the -- at least one of
12 these newspapers and one reporter who called kept
13 saying that these people said they didn't have any
14 information about immigration, so they didn't
15 understand why they were being witnesses.

16 I couldn't understand how somebody could
17 be the head of an organization and decide to have the
18 campaign -- which is why they were asked to testify,
19 and to respond by saying to the press that they have
20 no information concerning immigration issues.

21 COMMISSIONER HORNER: Madame Chair,
22 everyone isn't an academic social scientist. Some
23 people reach their conclusions based on personal
24 experience and feel strongly in which to mobilize --
25 to make a policy change as a result. And they don't

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1 have the high priced social scientist to collect data
2 and reports and studies. And I think that may be the
3 ordinary human to this.

4 CHAIRPERSON BERRY: Well then, the answer
5 to -- when they come to the hearing, is an answer we
6 want, which is we came by this by whatever they came
7 by it, and we don't have the stuff you subpoenaed.

8 COMMISSIONER HORNER: But it is all right
9 to -- it is all right to form and head an organization
10 based on your personal experience.

11 COMMISSIONER FLETCHER: Madame Chair, I'm
12 going to have to leave the line.

13 CHAIRPERSON BERRY: I agree. Now, do we
14 need to have any other questions about this briefing
15 before we move on to the next item?

16 COMMISSIONER REYNOSO: Madame Chair, I
17 just want to make one different sort of comment. I
18 know that it's been our practice to --

19 CHAIRPERSON BERRY: Don't leave yet,
20 Commissioner Fletcher. Just one minute.

21 COMMISSIONER FLETCHER: I'm late -- half
22 hour late for a meeting.

23 CHAIRPERSON BERRY: Hold on two minutes.
24 Okay, I want to see if anybody's got anything else on
25 this before I move to the next item.

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COMMISSIONER REYNOSO: Just a comment briefly. I know it's been our practice to have three or four speakers in each panel. In the past, I found that it gets crowded. And I just suggest -- I'm not suggesting any changes, but I'm suggesting that after this hearing, we talk again whether or not witnesses are able to fully express their thoughts and we're able to ask questions by having that many people on each panel.

CHAIRPERSON BERRY: Okay, we'll talk about it. Any other thing on this before Commissioner Fletcher leaves? Yes?

COMMISSIONER GEORGE: Then I would like to move that we direct the staff to modify these subpoenas that go to political groups to be more protective of their need to protect internal confidential documentation.

CHAIRPERSON BERRY: Are you suggesting that we modify the subpoenas which have already been sent to people to this hearing? Is that your suggestion?

COMMISSIONER FLETCHER: Hello?

CHAIRPERSON BERRY: Don't leave, Commissioner Fletcher.

COMMISSIONER GEORGE: Let me --

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1 CHAIRPERSON BERRY: The suggestion by
2 Commissioner George is that we modify the subpoenas,
3 if I understand him correctly --

4 COMMISSIONER GEORGE: Well, let me take
5 counsel on this from the Vice Chair.

6 CHAIRPERSON BERRY: -- that have already
7 been sent to people for the hearing that's supposed to
8 be next week.

9 COMMISSIONER GEORGE: Vice Chair -- I want
10 to take counsel from the Vice Chair on this. Is that
11 not possible?

12 COMMISSIONER REYNOSO: Probably not.

13 COMMISSIONER GEORGE: Okay, then let me
14 just propose then that it be a matter of future
15 policy.

16 CHAIRPERSON BERRY: A matter of future
17 policy that we are sensitive to the issues of
18 political organizations on all sides, and sensitive
19 also I would add to lay people who may not understand
20 procedures, and who may misinterpret certain
21 procedures as indicating matters that the Commission
22 certainly does not intend?

23 COMMISSIONER GEORGE: Well, no, it's not
24 -- I don't want it to simply reproduce what we're
25 already done. I mean, I think this is stated too

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1 broadly. And it demands more of an internal nature
2 than we can legitimately demand.

3 COMMISSIONER WANG: Commissioner George,
4 can I just -- if the argument is on the list, can we
5 restate to the two or three groups that -- we are not
6 interested in your lists. We're not asking for --

7 COMMISSIONER GEORGE: I'm not worried
8 about the list, Charles. The Chairman has made clear
9 that we're not asking -- we never were.

10 COMMISSIONER WANG: -- so that they
11 understood it, so there's no --

12 COMMISSIONER GEORGE: Oh, sure. No,
13 that's fine. No, I'm on a different issue. I'm on a
14 different issue.

15 COMMISSIONER WANG: Internal working
16 documents?

17 COMMISSIONER GEORGE: Yeah, internal
18 working documents, drafts, and so forth of a
19 committee. Stuff that they have not put out and made
20 public.

21 CHAIRPERSON BERRY: Well, if we're going
22 to have a debate about whether we have the legal right
23 to do it, then it's going to take two or three hours.
24 If the question is whether you want to do it, then
25 that's a different question.

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COMMISSIONER REYNOSO: No, Madame Chair.

It's just that we're too late to change what we've done here. And this -- it seems to me that if we're going to change our practices, it requires a serious discussion about why and how and when it would apply.

CHAIRPERSON BERRY: It would change the practice that's been in existence since 1957.

COMMISSIONER REYNOSO: Right. And I just suggest that maybe this be put down for a future discussion. We can't change this hearing now, and I would hate to be voting on something like this willy-nilly. It will mean very little to the staff if we --

COMMISSIONER GEORGE: Well, I would very much like to see past subpoenas that went to political groups or groups that were organized for constitutional changes and so forth just to assure myself that this is not out of the ordinary as far as its scope. And then perhaps it would not be inappropriate to have a discussion of that, because we're going to keep doing hearings.

This issue will undoubtedly come up again, or even form a subcommittee on which I would hope that the Vice Chair would serve to look at -- seriously consider the question -- come forward to the Commission with some sort of a proposal.

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1 CHAIRPERSON BERRY: Why don't we say that
2 the Commission will ask the staff to prepare for us a
3 memorandum on the Commission's practices and policies
4 related to the issuance of subpoenas and the content
5 of subpoenas to various political organizations so
6 that we have some basis on which to think we want to
7 reevaluate what we do rather than just doing it here.

8 COMMISSIONER GEORGE: Madame Chair?

9 CHAIRPERSON BERRY: Yes, yes?

10 COMMISSIONER FLETCHER: Madame Chair, I've
11 got 12,000 Baptists sitting across the street waiting
12 on me to come.

13 CHAIRPERSON BERRY: Right. Is there
14 something here we need to vote on?

15 COMMISSIONER FLETCHER: All I want to make
16 sure is that this -- I don't want you to break any of
17 our policies, but I want to make sure that this
18 transcript with all this debate and discussion is
19 available to the press and the ACLU so it's very clear
20 that we had no intentions whatsoever petitioning and
21 seeking their membership. Or, if you've got to call
22 the local ACLU in and let them see the transcript and
23 all this discussion that took place and let them do
24 so.

25 Likewise, if there's some members on the

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1 Hill who are concerned, and there's probably going to
2 get some now -- get some phone calls -- make sure that
3 that transcript is available to them and we've got it
4 down in Florida so it's very clear that we ask for
5 nobody's membership.

6 CHAIRPERSON BERRY: All right, we'll do
7 that.

8 COMMISSIONER FLETCHER: All right.

9 CHAIRPERSON BERRY: Is there anything to
10 vote on here before Commissioner Fletcher leaves? I
11 don't see anything to vote on.

12 COMMISSIONER HORNER: Don't know yet.

13 CHAIRPERSON BERRY: We're going to get the
14 memorandum from the staff.

15 COMMISSIONER REYNOSO: Good luck with
16 those 12,000 people.

17 CHAIRPERSON BERRY: Good luck with the
18 12,000, yes.

19 COMMISSIONER FLETCHER: I've been doing
20 pretty good, crew.

21 CHAIRPERSON BERRY: Thank you.

22 COMMISSIONER FLETCHER: There's 50,000 of
23 them down here.

24 CHAIRPERSON BERRY: Are they primitive
25 Baptists or are they missionary Baptists?

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1 COMMISSIONER FLETCHER: There's 50,000 of
2 them down here, but they could only get 12,000 in the
3 arena to hear me, so I've got to preach a real good
4 sermon.

5 CHAIRPERSON BERRY: I see. Okay, well
6 thank you very much.

7 COMMISSIONER FLETCHER: Sermon on
8 affirmative action.

9 COMMISSIONER GEORGE: I think I have a
10 motion on the table with --

11 COMMISSIONER FLETCHER: All right.

12 COMMISSIONER GEORGE: So since it's on the
13 table, I will withdraw that motion and simply satisfy
14 myself with putting on the record that I believe that
15 there are genuine civil liberties concerns that have
16 been raised by the scope of the subpoena.

17 CHAIRPERSON BERRY: And we'll get a memo
18 on the subpoena issue.

19 COMMISSIONER GEORGE: Thank you.

20 CHAIRPERSON BERRY: Yes, Commissioner
21 Anderson?

22 COMMISSIONER ANDERSON: I suspect, having
23 read one of the press accounts in a Florida paper,
24 there's two related issues here. One is, if we're
25 requiring the production of many documents from an

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1 COMMISSIONER FLETCHER: There's 50,000 of
2 them down here, but they could only get 12,000 in the
3 arena to hear me, so I've got to preach a real good
4 sermon.

5 CHAIRPERSON BERRY: I see. Okay, well
6 thank you very much.

7 COMMISSIONER FLETCHER: Sermon on
8 affirmative action.

9 COMMISSIONER GEORGE: I think I have a
10 motion on the table with --

11 COMMISSIONER FLETCHER: All right.

12 COMMISSIONER GEORGE: So since it's on the
13 table, I will withdraw that motion and simply satisfy
14 myself with putting on the record that I believe that
15 there are genuine civil liberties concerns that have
16 been raised by the scope of the subpoena.

17 CHAIRPERSON BERRY: And we'll get a memo
18 on the subpoena issue.

19 COMMISSIONER GEORGE: Thank you.

20 CHAIRPERSON BERRY: Yes, Commissioner
21 Anderson?

22 COMMISSIONER ANDERSON: I suspect, having
23 read one of the press accounts in a Florida paper,
24 there's two related issues here. One is, if we're
25 requiring the production of many documents from an

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1 organization, we may not be getting a printed out
2 membership list, but we may be getting documents which
3 reveal the names of many members, some of whom have
4 provided analysis, comments, views, in the expectation
5 that their comments would be confidential.

6 I think one of the leaders of one of these
7 organizations, and I'm not sure who, indicated that
8 organizers and supporters of 187 in California had
9 received many death threats. Now, I'm sure there's
10 some on the other side that may have received death
11 threats as well. But the point is, this is somewhat
12 serious.

13 And I don't think that we should
14 necessarily walk into this hearing next week with the
15 idea that sometime in the future we are going to have
16 an academic or calm discussion of our subpoena
17 procedures. I mean, the real possibility exists that
18 -- unless we've heard to the contrary already -- that
19 one or two of these organizations are going to walk in
20 and say you're going to get these five or six
21 documents and you're not going to get the rest.

22 And we're going to be confronted with an
23 issue of whether we're going to enforce the subpoena
24 or not. And so, I think that we would be well advised
25 to get whatever memoranda of analysis we're going to

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1 get from the staff pretty soon, and that some of us be
2 prepared to discuss this matter maybe Tuesday or
3 Wednesday or Thursday morning.

4 Because you know, we've had this before in
5 one of the -- I think when we went to Los Angeles
6 there was a question of whether somebody was comply
7 with the subpoena in terms of documents or appearance,
8 and we had to make a decision as to what we were going
9 to do to respond to that. And so I think we ought to
10 have a heads up on the fact that that's a possibility,
11 it seems to me.

12 CHAIRPERSON BERRY: Let me try to reassure
13 commissioners by saying that first of all, it is my
14 interpretation of the statute that we would not accept
15 anything and will announce to the witnesses that we
16 would not accept anything from them that would make it
17 possible for us to reconstruct any number of their
18 members that would in any way indirectly or directly
19 violate the statutory admonition that we should not
20 get membership lists.

21 So I would not want them to give us
22 anything that would make that possible. Also, we
23 might -- we sent a confidentiality statement to
24 witnesses in New York who were concerned about
25 documents. They were very quiet about it and didn't

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1 go to press and all that, but they were as concerned
2 about the confidentiality of what they gave us and
3 about any liability they might have later on for names
4 of people that came out or something in the documents.

5 And so, we -- the staff sent a
6 confidentiality statement to each one of them by fax
7 assuring them that they didn't want anything that gave
8 them the opportunity to identify, and that nothing
9 would be made available to -- even on the FOIA for
10 some other matters that they had concerns about.

11 And they were assured by this. It might
12 be well in light of this, and it cannot solve it,
13 because this is a more political issue here that we're
14 dealing with, that the staff could send a statement
15 after this meeting to the witnesses in the nature of
16 the confidentiality statement reminding them that the
17 Commission does not want membership lists or anything
18 that makes it possible for us, and that the subpoena
19 is not to be interpreted in that way, and that that's
20 our understanding. And that might help.

21 COMMISSIONER HORNER: Madame Chair?

22 CHAIRPERSON BERRY: Yes?

23 COMMISSIONER HORNER: Is it possible for
24 us to accept documents with names blotted out?

25 CHAIRPERSON BERRY: We can accept anything

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1 we want.

2 COMMISSIONER HORNER: For instance, I
3 still strongly oppose the solicitation or acceptance
4 of proposals and so on. Would we assume that names
5 would be blotted out from those documents?

6 CHAIRPERSON BERRY: We don't want the
7 names. We're not interested in the names.

8 COMMISSIONER HORNER: In other words, if
9 a memo says to so and so from so and so?

10 CHAIRPERSON BERRY: We don't care about
11 the so and so.

12 COMMISSIONER HORNER: Can the witnesses be
13 instructed prior to their submitting this in a timely
14 fashion so that they can blot those names out?

15 CHAIRPERSON BERRY: Well, we -- in the fax
16 that I'm proposing that the staff send to them as they
17 did in the New York case, they could simply say to
18 them we don't want submissions that make it possible
19 for us to identify the persons who are members or who
20 -- of the organization. That's not our intent, that's
21 not what we want to do, we're not interested in that.

22 COMMISSIONER HORNER: Now what is our
23 intent? Suppose some --

24 CHAIRPERSON BERRY: You mean --

25 COMMISSIONER HORNER: -- member would send

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1 in a -- or a non-member for that matter. Suppose
2 someone just sent in a proposal saying I think that
3 you ought to look at a proposition that would say thus
4 and so, and it gets tossed in a pile somewhere. What
5 is our intent in soliciting and making part of our
6 record such a document which doesn't have the formal
7 sanction or approval of the organization?

8 Why are we asking for it?

9 CHAIRPERSON BERRY: Could you explain work
10 product again, Vice Chair?

11 COMMISSIONER REYNOSO: It's just the
12 interest that this agency would have, and very often
13 in litigation one would have, in terms of the study
14 and thinking that led up to the final product.

15 COMMISSIONER HORNER: That's just -- oh,
16 wow. That's getting at people not for their acts, for
17 their public actions but their internal --

18 CHAIRPERSON BERRY: The commissioners keep
19 talking as if we're an enforcement agency. We're not
20 an enforcement agency.

21 COMMISSIONER HORNER: Well, I think that's
22 -- we can ruin a person's life.

23 CHAIRPERSON BERRY: We're not an
24 enforcement agency, and we have no intention of -- the
25 point of making these documents available to us is not

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1 to read them to the press or give them to anybody.
2 It's so that when we write a report, rather than
3 having as we've had in the past practically nothing to
4 write a report from, we will have materials and
5 documents without having to go back somewhere and get
6 something from somebody to be able to write reports.

7 The intent is not to -- nobody intends to
8 get up and say well you submitted this or somebody
9 thought that, and nobody wants any identification.
10 We're not an enforcement agency at all.

11 COMMISSIONER GEORGE: If we were
12 enforcing, or if we were in some sort of tort
13 litigation or something, then I could see trying to go
14 into work product in the way that's being proposed.
15 But it's precisely because we're not, it seems to me,
16 that we should ask for the group -- from the group
17 what its public positions are, what it has put out
18 publicly.

19 I wouldn't object to asking a person who's
20 testifying before us why that's the public position
21 and for an explanation. But I'm very uneasy about
22 internal communication between people who are
23 operating politically between -- reflecting the
24 cogitations and strategizing of people who have
25 organized themselves politically.

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It just seems to me not to be our business.

CHAIRPERSON BERRY: Commissioner George, you have already heard the answer twice, that there were discussions with these witnesses in which the witnesses agreed and offered to present such materials.

COMMISSIONER HORNER: Sometimes, sometimes.

CHAIRPERSON BERRY: And that these subpoenas therefore included these materials. And the purpose is only, as I understand it, to find out why they took certain positions to the extent that we can find out. I mean, what was the rationale for the position that you took. You were in favor of X or opposed to X, so why are you opposed to it, what were the ingredients that led you to this conclusion that this was a bad thing or a good thing or whatever.

But I think that it ought to be made clear to -- I think that if there is that much confusion though or that much concern on the part of the commissioners, then it means that we ought to be sensitive to that concern if you're concerned. Other people might be concerned if they thought so, and we ought to be sensitive to that, yes.

1 COMMISSIONER REYNOSO: But it's job as a
2 Commission to try to find out why these things
3 happened. If, for example, the drafts said -- as an
4 extreme, we want to have 187 because we hate all
5 foreigners or we hate all Cubans or whatever, that
6 seems to be material in our understanding of what
7 brings about ethnic tensions and so on.

8 And this is -- we are, to a certain
9 extent, a study group, if you will, it seems to me.
10 How much of that we actually would use in a report and
11 all that is something --

12 CHAIRPERSON BERRY: And we don't defame
13 and degrade. We don't mention the person. It's not
14 a question of identifying people and saying that they
15 said something or did something. It's not any of
16 that.

17 COMMISSIONER WANG: The confidentiality of
18 the nature, right -- nobody's going to be able to get
19 a hold of the document except the staff here. And we
20 have -- and New York is a perfect example that we
21 agreed to all of those presented documents that it
22 will be kept confidential.

23 COMMISSIONER REYNOSO: That's routine.

24 COMMISSIONER WANG: Right, so I don't see
25 -- I mean, I don't think it should be a concern. I

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1 think we really take up too much time -- I think we
2 ought to just wind it up. I think Commissioner George
3 had a very good solution. Earlier you asked that we
4 prepare such a memorandum to look at it. So, we will
5 look at it.

6 But I think at this very moment, --

7 CHAIRPERSON BERRY: We will also send a
8 memo to the --

9 COMMISSIONER WANG: Right.

10 CHAIRPERSON BERRY: -- participants
11 explaining what we're doing.

12 COMMISSIONER WANG: I think over concerned
13 a matter which I think is -- really doesn't exist,
14 doesn't exist.

15 CHAIRPERSON BERRY: Commissioner Horner?

16 COMMISSIONER HORNER: Madame Chair, I just
17 really have to say for the record that I strongly urge
18 that you include in your memo to witnesses --

19 CHAIRPERSON BERRY: Not mine, but the
20 staff's.

21 COMMISSIONER HORNER: The Staff's memo.
22 I'm urging this, but not in the expectation that it
23 will be done, but I want to say for the record I am
24 strongly urging that the request that a statement be
25 made to the effect that we no longer view submission

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1 of preliminary proposals, internal documents, -- in
2 other words, non-publicly -- documents which are not
3 yet public, that we will decline from enforcing the
4 subpoena for those documents.

5 I think if we did that, we would reassure
6 potential witnesses about our good faith. Entirely
7 diffuse what I speculate what might be a severe attack
8 upon the undertaking. And nonetheless, permit those
9 witnesses who sincerely wish to voluntarily provide
10 documents to do so. No one will stop them from
11 mailing us documents.

12 CHAIRPERSON BERRY: Vice Chair?

13 COMMISSIONER REYNOSO: Madame Chair, the
14 request has been made that we state that as a matter
15 of policy. Since that is not our policy, it seems to
16 be an improper statement to make at this time until we
17 reconsider the policy.

18 CHAIRPERSON BERRY: Well, we cannot do it
19 at any time because the Commission has the power and
20 the authority and the responsibility to very often
21 subpoena documents which have not yet been made
22 public. We have subpoenaed documents from the White
23 House that were not made public and that the White
24 House did not want to make available to us.

25 COMMISSIONER HORNER: That's a government

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1 agency, not a private --

2 CHAIRPERSON BERRY: And we've subpoenaed
3 all kinds of documents from all sorts of places.
4 We've subpoenaed documents from the Wall Street firms
5 that they didn't want to give to us that were not
6 public documents.

7 COMMISSIONER HORNER: Madame Chair, they
8 are publicly incorporated.

9 CHAIRPERSON BERRY: But we cannot make a
10 blanket statement that the Commission will not
11 subpoena documents which have not been made public
12 until we think through what we mean by that and how
13 far that goes. And I don't think we can do it at this
14 meeting, and I also want to reiterate the whole
15 purpose of this exercise at the hearing is fact
16 finding.

17 Fact finding requires that you find facts
18 and that you find more than superficial statements
19 that people would like to make about a subject. And
20 on the question of immigration, we're interested in
21 why people take the positions they take. And we're
22 not interested in them as individuals or trying to
23 defame them or trying to hold them up to a program,
24 and we don't even care what their names are.

25 COMMISSIONER HORNER: Ask them why they

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1 take the positions they take. I think we are
2 intending to defame an organization should an
3 incidental -- defame is the legal word. I don't know
4 the meaning of that legal word. But I will say that
5 because we are so broadly requesting documents, we
6 will sweep into our scrutiny documents that do not
7 have the reasoned approval of the organization, but
8 which arrive incidentally perhaps beyond the
9 organization's control entirely.

10 And we will sweep those up, and we will
11 use them in judging the -- as Cruz Reynoso said,
12 judging the -- weighing the organization. Not
13 individuals, but the organization thinks. And I think
14 that if we do that, we will A, be in error in our
15 conclusions; and B, be killing political thought and
16 expression.

17 I don't wish to belabor this any longer,
18 but that is going to remain my very frankly --

19 COMMISSIONER WANG: Madame Chair?

20 CHAIRPERSON BERRY: Yes, please, go right
21 ahead.

22 COMMISSIONER WANG: I just want to remind
23 Commissioner Horner when we had the -- representing
24 the California 187 here for a briefing, we had a very
25 -- shall we say exchange. I mean, very cordial.

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1 There weren't any -- I don't see any defaming. There
2 were no -- I mean, --

3 COMMISSIONER HORNER: Right, and nor did
4 we ask --

5 COMMISSIONER WANG: But we disagreed,
6 right? We have a disagreement, but that disagreement
7 reflects our different views and different beliefs.
8 So that -- I mean, in no way I think discourage him
9 from continuing doing what he believe he want to do.
10 And he continue to move forward in his belief of what
11 is the best for the state of California.

12 COMMISSIONER HORNER: And we should do
13 exactly that.

14 COMMISSIONER WANG: Yeah, so that's why I
15 don't think your concern is a -- I mean, a necessary
16 one. Because here, again, from this finding -- fact
17 finding, in my memory of sitting on the Commission, we
18 have never, in any shape or form, discouraged or kind
19 of tried to change anyone's opinion. We agree that we
20 disagree. That's the best we can describe.

21 And the group, after testifying -- after
22 giving up their view, would not change their view
23 because they come to the Civil Rights Commission
24 hearing and all the sudden going back and they're
25 going to be a different organization. They still will

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1 do whatever they believe in, continue to do what
2 they're doing.

3 COMMISSIONER HORNER: Would you like a
4 private letter to a friend to be subpoenaed by the
5 United States --

6 CHAIRPERSON BERRY: I think that just
7 because it's -- I mean, I know if Commissioner
8 Fletcher were on, he'd tell me to be quiet. But for
9 the record, because we are going to give this
10 transcript to people, I want to point out that there
11 is nothing in this subpoena that says anything about
12 anything that isn't done officially by the committee.

13 It says drafts or other variations thereto
14 prepared by or on behalf of the Florida 187 committee.
15 It does not say by individuals who are involved in the
16 Florida committee or somebody who may be a member, or
17 somebody who has some unauthorized piece of paper that
18 they throw on the table, and that we want you to sweep
19 all this up and give it to us.

20 It says by or on behalf of the committee,
21 and those are terms of art. And if it's not by the
22 committee, and if it's not on behalf of the committee,
23 nobody's asking for it. And that is clear from the
24 subpoena. Yes?

25 COMMISSIONER GEORGE: Well, that might

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1 depend -- if I can just question a little further
2 about it -- maybe that allays my concerns all
3 together. Now, does by the committee mean having been
4 approved by the committee?

5 CHAIRPERSON BERRY: Yes, by the committee.

6 COMMISSIONER GEORGE: So that if you have
7 an internal document that goes from one officer to
8 another officer recommending a strategy or a change,
9 that would not be included?

10 CHAIRPERSON BERRY: No.

11 Perhaps one that is not by the committee. It says
12 "drafts or other variations thereto prepared by or on
13 behalf of the committee." That's what it says, a
14 draft. Counsel has pointed that out to me again, but
15 that's what it says.

16 COMMISSIONER GEORGE: I know. Hang on.
17 No. I think this might be very helpful. The "by the
18 committee" thing means things that have been --

19 CHAIRPERSON BERRY: By the committee.

20 COMMISSIONER GEORGE: -- by the committee,
21 approved by the committee. In other words --

22 CHAIRPERSON BERRY: Prepared by the
23 committee.

24 COMMISSIONER GEORGE: Prepared by the
25 committee.

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1 CHAIRPERSON BERRY: Or on behalf of the
2 committee.

3 COMMISSIONER GEORGE: All right. That
4 means an internal document from, just so I can be very
5 clear --

6 CHAIRPERSON BERRY: From Joe to John.

7 COMMISSIONER GEORGE: -- Joe to John,
8 saying "We've got a lot of strength in the Northern
9 Panhandle."

10 CHAIRPERSON BERRY: Nobody cares about
11 that.

12 COMMISSIONER GEORGE: Okay. That's not
13 being discovered here.

14 CHAIRPERSON BERRY: We don't care about
15 that.

16 COMMISSIONER GEORGE: So the only drafts,
17 it seems --

18 CHAIRPERSON BERRY: Are by and on behalf
19 of the committee.

20 COMMISSIONER GEORGE: The committee. And,
21 reading it again here, they would be drafts of the
22 initiative itself.

23 CHAIRPERSON BERRY: Initiative bill or
24 constitutional amendment.

25 COMMISSIONER GEORGE: Okay. Not drafts of

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1 memoranda.

2 CHAIRPERSON BERRY: No. It doesn't even
3 say that.

4 COMMISSIONER HORNER: What is a proposal?

5 CHAIRPERSON BERRY: Counsel just pointed
6 that out to me that it doesn't say that.

7 COMMISSIONER GEORGE: It all depends on
8 how broadly you interpret the term "by." And if we
9 interpret it strictly as you're interpreting it, then
10 my concerns are largely allayed, I think.

11 CHAIRPERSON BERRY: That's the intent.

12 COMMISSIONER GEORGE: Now, I wonder if
13 that's not clear to these people.

14 COMMISSIONER HORNER: Perhaps one question
15 would clarify it. A proposed regulation produced by
16 the committee --

17 CHAIRPERSON BERRY: Where are you looking?

18 COMMISSIONER HORNER: I'm looking at
19 Number 3 under Exhibit A. Any document --

20 CHAIRPERSON BERRY: Has to be produced by
21 or on behalf of the committee.

22 COMMISSIONER HORNER: So someone who --
23 the committee obviously is a group of individuals. I
24 don't know how many people are in this.

25 CHAIRPERSON BERRY: I don't know either.

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1 COMMISSIONER HORNER: It might be 1,000.

2 CHAIRPERSON BERRY: I don't know.

3 COMMISSIONER HORNER: Because we don't
4 know what their structure is. We don't know whether
5 it's a formal or informal structure.

6 CHAIRPERSON BERRY: Right.

7 COMMISSIONER HORNER: And, therefore, it
8 may be you've got someone puts forward a proposal and
9 mails it in to the committee and says, "I'm producing
10 this on behalf of the committee" and it's a proposed
11 regulation. And the committee then accepts that, "the
12 committee" being perhaps the three people in an office
13 that day or the secretary or the chairman,
14 self-designated or other, accepts it. Well, I'm just
15 asking: What is --

16 CHAIRPERSON BERRY: Commissioner Horner,
17 the committee knows itself what its structure is and
18 what its approval processes are. And it knows when
19 something is by it or on behalf of it, which is all
20 we're asking them to produce.

21 COMMISSIONER HORNER: How can a proposed
22 regulation be a regulation of the committee if it is
23 only proposed and has not been approved by the
24 committee? So I think we are asking for preliminary
25 and later rejected ideas.

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CHAIRPERSON BERRY: No. These are those that are proposed by the committee.

COMMISSIONER HORNER: To the public.

CHAIRPERSON BERRY: Yes.

COMMISSIONER HORNER: Not proposed within the committee to itself.

CHAIRPERSON BERRY: Right.

COMMISSIONER GEORGE: Right.

COMMISSIONER HORNER: So we are not looking for any documents that do what Cruz suggested earlier, reveal internal thinking, but not public position.

CHAIRPERSON BERRY: These may reveal internal thinking.

COMMISSIONER HORNER: Well, they're also public if they're approved.

VICE CHAIRPERSON REYNOSO: No, no. If the committee sets up, general committee, sets up a subcommittee to draft something, it seems to me that this subpoena would include that original draft, even though the general committee might not accept it and make some changes before they finally present it if they have the same procedure in Florida as we do in California to say the attorney general.

COMMISSIONER HORNER: That's very chilling

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1 of honest political deliberation.

2 CHAIRPERSON BERRY: But they know what
3 their proposals -- they know what their "by or on
4 behalf of the committee" is. And that's what they
5 will give us. And if they don't give it to us, then
6 it's not by and on behalf of the committee. We
7 certainly aren't going to go out there and try to find
8 out whether it is or not.

9 COMMISSIONER HORNER: Three people in a
10 living room. Write it down and propose it.

11 CHAIRPERSON BERRY: It depends on what the
12 committee structure calls "by or on behalf of the
13 committee." That's up to them. And each committee
14 may have a different structure.

15 COMMISSIONER HORNER: Well, this is not a
16 policy. It would apply to any organization we wanted
17 to interrogate.

18 CHAIRPERSON BERRY: Commissioner Anderson?

19 COMMISSIONER ANDERSON: I'm hesitating to
20 prolong this, but if you look at the paragraph
21 numbered 7, it seems to me that it goes beyond that.
22 But maybe it's my reading of it.

23 CHAIRPERSON BERRY: Oh, Paragraph Number
24 7 says clearly "of any writings upon which the
25 committee has relied in drafting its proposed measure,

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1 initiative, bill, or constitutional amendment." Yes.
2 That's a different provision than the first two
3 provisions that we have just been discussing.

4 VICE CHAIRPERSON REYNOSO: Madam Chair?

5 CHAIRPERSON BERRY: Yes?

6 VICE CHAIRPERSON REYNOSO: I would like to
7 also indicate that generally the burden is on the
8 writer of the subpoena to make clear what's needed.
9 And if there's an ambiguity, a question comes up and
10 there's an ambiguity, and the folk can't get together,
11 generally the person would not be forced to produce
12 that.

13 So in terms of the concerns that we've had
14 in terms of ambiguities, I appreciate the concerns.
15 But generally that would be interpreted against us.

16 COMMISSIONER HORNER: If they're not
17 forced to, they need to be told they're not forced to
18 or, believing they're forced to for fear of law, they
19 may produce it nonetheless, even though they're not
20 required to. And it seems to me that we, therefore,
21 have to tell them what they're not required to
22 produce.

23 VICE CHAIRPERSON REYNOSO: Well, you're
24 speaking in favor of clarity of the subpoena. Nobody
25 would argue against that.

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1 COMMISSIONER HORNER: Well, I think we
2 could clarify the intent of the subpoena in a fax to
3 these witnesses, telling them what we do not require
4 that they submit, given that there is some obvious
5 ambiguity.

6 CHAIRPERSON BERRY: We have already
7 decided to. There will be ambiguity in any language
8 that any human being ever writes about anything.
9 Otherwise we wouldn't have lawyers. That's their job.

10 (Laughter.)

11 COMMISSIONER WANG: Or judges.

12 CHAIRPERSON BERRY: Or judges, for that
13 matter. But there will be, then, on this matter a
14 discussion later by commissioners about subpoenas and
15 the fax to the witnesses telling them we're not trying
16 to get anything that makes it possible for us to
17 figure out who the members are. This one might
18 interest you in that.

19 Could we go on to the next item, please?

20 COMMISSIONER ANDERSON: Could I just ask

21 --

22 CHAIRPERSON BERRY: Yes.

23 COMMISSIONER ANDERSON: -- if we can
24 receive a copy of the fax?

25 CHAIRPERSON BERRY: Sure. Why not? Staff

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Director.

I don't know. Should I ask the commissioners about whether -- Mary, I need to ask the commissioners whether you are interested in having police protection during the hearing. It has been suggested by the police department down there that you may want to consider it. And I leave that up to your discretion as to whether you wish or not.

COMMISSIONER HORNER: What have they told you or the staff about that? Why have they said anything?

CHAIRPERSON BERRY: Well, part of it is in the nature of security that one should not discuss in an open meeting just because I'm told that you're not supposed to discuss the details, just that they have some reasons for concern and wondered if we were interested in protection, just because the issue is --

COMMISSIONER WANG: Madam Chair, do we usually have marshals? We always have marshals; right?

CHAIRPERSON BERRY: We have marshals, but they're saying, in addition to that, do commissioners --

COMMISSIONER WANG: I see.

CHAIRPERSON BERRY: -- feel the need,

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1 staff. Yes?

2 COMMISSIONER ANDERSON: Are we going to be
3 discussing police conduct at this meeting?

4 CHAIRPERSON BERRY: That's a good
5 question. My own view is I'll just take my chances.
6 We can revisit that, but you can think about it and
7 decide if you want to. It's available for anybody
8 that wants it.

9 COMMISSIONER ANDERSON: Could I --

10 CHAIRPERSON BERRY: Yes?

11 COMMISSIONER ANDERSON: Are they talking
12 individually or are they talking --

13 CHAIRPERSON BERRY: Individually.

14 COMMISSIONER ANDERSON: -- in the
15 meetings?

16 CHAIRPERSON BERRY: Individual.

17 COMMISSIONER ANDERSON: Well, maybe -- and
18 I hate to prolong this meeting, but it might be worth
19 at the end of it to go into executive session for a
20 few minutes and discuss it.

21 CHAIRPERSON BERRY: Why don't we do that.
22 Okay. Why don't we do the SAC? And then we'll have
23 -- oh, we've got Commissioner's Horner's issues.

24 CHAIRPERSON BERRY: The State Advisory
25 Committee appointments for Arkansas, Delaware,

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1 Georgia, Illinois, Maine, North Dakota, Oklahoma,
2 Rhode Island, Tennessee, Virginia, and West Virginia.

3 Is there any person who wishes to discuss
4 individually one of these appointments? Yes? Is it
5 West Virginia you wish to discuss?

6 COMMISSIONER GEORGE: No. Believe it or
7 not, I thought that was all right. If I could hold
8 out Illinois, North Dakota, and Oklahoma.

9 CHAIRPERSON BERRY: Illinois, North
10 Dakota, and Oklahoma.

11 COMMISSIONER GEORGE: Thank you.

12 CHAIRPERSON BERRY: Could I get a motion
13 to approve the SACs other than Illinois, North Dakota,
14 and Oklahoma?

15 COMMISSIONER HORNER: I so move.

16 CHAIRPERSON BERRY: Second?

17 COMMISSIONER WANG: Second.

18 CHAIRPERSON BERRY: All in favor?

19 VICE CHAIRPERSON REYNOSO: Discussion.

20 CHAIRPERSON BERRY: Oh, discussion.

21 VICE CHAIRPERSON REYNOSO: Madam Chair, I
22 mentioned earlier that I was in an affirmative mood,
23 both in terms of the resolution I suggested and in
24 terms of these submissions by the staff.

25 I want to note that there have been

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1 several conditions, some of the committee members
2 under age 40, and that in each of these submissions,
3 each of the commissions has at least 2 persons under
4 40, one having up to 5 and another one 4.

5 And I just mentioned to my wife last night
6 when I called that it takes a long time but I really
7 saw some good has been done here. And I just want to
8 thank the staff and the committees for being
9 responsive to those concerns.

10 COMMISSIONER WANG: I wish I could say the
11 same thing. In two states I find that there is just
12 no Asian representation.

13 CHAIRPERSON BERRY: Which two? Do you
14 remember which?

15 COMMISSIONER WANG: One is I think
16 Tennessee.

17 CHAIRPERSON BERRY: Tennessee.

18 COMMISSIONER WANG: The other is, if I'm
19 not mistaken, Arkansas, the state of our President.

20 CHAIRPERSON BERRY: Okay.

21 COMMISSIONER WANG: So I may be wrong on
22 the second one.

23 CHAIRPERSON BERRY: But we need to look at
24 that.

25 COMMISSIONER WANG: Right.

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CHAIRPERSON BERRY: Take note of that,
Staff Director.

STAFF DIRECTOR MATHEWS: Yes.

CHAIRPERSON BERRY: Okay. With those
comments, all in favor say aye.

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

CHAIRPERSON BERRY: Opposed.

(No response.)

CHAIRPERSON BERRY: Okay. Now the
Illinois. We'll take them one by one, the ones that
are left. Illinois, Commissioner George?

COMMISSIONER GEORGE: Yes. Thank you,
Madam Chair.

Illinois, the two members have been
separated. I couldn't find the reason for the
separation. It said "Our policy is now," and it's
fallen in most of these cases to give the reason for
the separation. It's possible that I just couldn't
find it, staring right at it.

STAFF DIRECTOR MATHEWS: Let's see if I
can find this one.

CHAIRPERSON BERRY: Is that policy to give
the reason for separation or was it the policy that if
the person didn't want to be separated they could
appeal?

1 COMMISSIONER GEORGE: I thought it was
2 both. No, it's not?

3 CHAIRPERSON BERRY: Policy is that the
4 person can, if they do not want to be removed they can
5 appeal to the Commission to ask to be retained.

6 COMMISSIONER GEORGE: I'm sure that's
7 true, the second half is true, but I think that our
8 policy was to give a statement of the reasons for the
9 separation. And some of these do give statements of
10 the reasons.

11 Could we have the Staff Director ask Carol
12 Lee?

13 CHAIRPERSON BERRY: Is that true?

14 STAFF DIRECTOR MATHEWS: Madam
15 Chairperson?

16 CHAIRPERSON BERRY: I don't mind being
17 wrong.

18 STAFF DIRECTOR MATHEWS: There is a little
19 --

20 COMMISSIONER GEORGE: It happens so
21 rarely, huh?

22 CHAIRPERSON BERRY: Right, once 1,000
23 years.

24 STAFF DIRECTOR MATHEWS: There's an
25 annotation that is typically put on one of these

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1 summary sheets when individual members previously with
2 the SAC have withdrawn and it was inadvertently not on
3 this. But the answer to your question is that one of
4 these members moved to another state and, therefore,
5 was not eligible to continue. And the other member
6 did not want to be reappointed.

7 COMMISSIONER GEORGE: Yes. Well, my
8 experience was that we have been told that pursuant to
9 some -- good. So we can just record those two.

10 On the North Dakota?

11 CHAIRPERSON BERRY: Go right ahead.

12 COMMISSIONER GEORGE: Six members have
13 been separated. I think it's probably the same
14 oversight.

15 STAFF DIRECTOR MATHEWS: This is North
16 Dakota?

17 COMMISSIONER GEORGE: Yes.

18 CHAIRPERSON BERRY: North Dakota. Does
19 anybody know anything about North Dakota?

20 (No response.)

21 CHAIRPERSON BERRY: And what was the third
22 one?

23 COMMISSIONER GEORGE: The third was
24 Oklahoma. That's a different issue.

25 CHAIRPERSON BERRY: Okay. North Dakota

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1 membership. While you're finding that, can we vote on
2 the Illinois one? All in favor of the -- could we
3 have a motion to approve the Illinois SAC?

4 COMMISSIONER GEORGE: So moved.

5 COMMISSIONER HORNER: Second.

6 CHAIRPERSON BERRY: All in favor?

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

8 CHAIRPERSON BERRY: Opposed?

9 (No response.)

10 CHAIRPERSON BERRY: Illinois is gone.
11 Okay. Maybe you could go on to the Oklahoma issue
12 while you're finding out about this one.

13 COMMISSIONER GEORGE: Yes. Sure. Yes.
14 I was just a little confused about this. This SAC is
15 of the minimum size. It's got 11 members. Yet, only
16 two were separated with four new appointments. So
17 does this mean that we have had only nine members in
18 the past on that one or am I just miscalculating?

19 CHAIRPERSON BERRY: You mean why does it
20 have nine members? Is that what you're --

21 COMMISSIONER GEORGE: No, no. Was it
22 functioning with nine members in the past or were
23 there more in the course of things?

24 STAFF DIRECTOR MATHEWS: Sometimes when a
25 SAC has been appointed, in this case with 11 members,

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1 during the period of the 2-year appointment process a
2 member or two will withdraw or resign. And that's
3 what happened in this case.

4 COMMISSIONER GEORGE: Okay. Further on
5 Oklahoma, I think to meet the partisan balance on the
6 committee, we need to appoint another Republican or
7 Independent.

8 CHAIRPERSON BERRY: I'm not looking at
9 that. I'm looking someplace else. Okay.

10 VICE CHAIRPERSON REYNOSO: What is their
11 requirement on that type of balance?

12 COMMISSIONER GEORGE: I think it's the
13 same as for us as the Commission, no more than half,
14 50 percent, as members. No? Am I wrong? Is that
15 right?

16 STAFF DIRECTOR MATHEWS: No, it's not that
17 strict.

18 COMMISSIONER GEORGE: Oh, sorry. - Then I
19 withdraw.

20 STAFF DIRECTOR MATHEWS: They don't have
21 the same rules.

22 CHAIRPERSON BERRY: No.

23 COMMISSIONER GEORGE: Okay.

24 CHAIRPERSON BERRY: What was the one about
25 North Dakota? Two members didn't want reappointment.

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1 Two members were replaced in order for providing
2 diversity to the committee, it says in our book. And
3 the others didn't want to be reappointed. That's what
4 it says.

5 COMMISSIONER GEORGE: This is?

6 CHAIRPERSON BERRY: North Dakota.

7 COMMISSIONER GEORGE: North Dakota.

8 STAFF DIRECTOR MATHEWS: It's in the cover
9 member to you all.

10 COMMISSIONER GEORGE: Okay.

11 CHAIRPERSON BERRY: Where it says
12 "Personnel Actions Requested." Do you know whether
13 that diversity, was that one of the age problems or
14 something else?

15 STAFF DIRECTOR MATHEWS: It was to provide
16 age and also for activity and I believe in one case a
17 person who was more informed about civil rights.

18 CHAIRPERSON BERRY: Okay. And then it was
19 somebody who was 40, I guess, or under.

20 STAFF DIRECTOR MATHEWS: Under 40.

21 CHAIRPERSON BERRY: Is that what you mean
22 by "age"?

23 STAFF DIRECTOR MATHEWS: Yes.

24 CHAIRPERSON BERRY: Then the other four
25 people didn't want to be on it.

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COMMISSIONER GEORGE: And where was it?

I believe you. I just don't --

CHAIRPERSON BERRY: Where does it say that?

STAFF DIRECTOR MATHEWS: Towards the end.

CHAIRPERSON BERRY: Personnel actions.

STAFF DIRECTOR MATHEWS: On the memo, but towards the end of the memo. What's the section?

CHAIRPERSON BERRY: "Personnel Actions Requested."

STAFF DIRECTOR MATHEWS: "Personnel Actions Requested."

COMMISSIONER GEORGE: Okay. I'm looking in the wrong place.

STAFF DIRECTOR MATHEWS: It's before the Chairperson.

VICE CHAIRPERSON REYNOSO: V.

COMMISSIONER GEORGE: Okay.

CHAIRPERSON BERRY: Could somebody show it to Commissioner George?

VICE CHAIRPERSON REYNOSO: Yes. It's Page 2 of the report at V.

COMMISSIONER GEORGE: Oh, okay. I see. I think it has been our practice, whether or not I was right about its being a required practice, to follow

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1 the rule about not having more than half being members
2 of one political party. So I would like it if, given
3 that we have a small number in Oklahoma, we could
4 appoint another Independent or Republican to achieve
5 that.

6 If there's a reason not to, that's fine,
7 too.

8 CHAIRPERSON BERRY: I don't have any
9 problem.

10 COMMISSIONER GEORGE: Yes.

11 CHAIRPERSON BERRY: Can we appoint, Staff
12 Director, either another Independent or a Republican
13 to the --

14 COMMISSIONER GEORGE: To Oklahoma.

15 CHAIRPERSON BERRY: -- to Oklahoma's?
16 Okay. With those inquiries answered, could we now
17 vote on these? Oklahoma and, --

18 COMMISSIONER WANG: So moved.

19 COMMISSIONER HORNER: Second.

20 CHAIRPERSON BERRY: -- yes, North Dakota.
21 All in favor say aye.

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

23 CHAIRPERSON BERRY: Opposed?

24 (No response.)

25 CHAIRPERSON BERRY: Commissioner Horner?

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1 COMMISSIONER HORNER: Yes. Madam Chair,
2 for those who don't live in the Washington area -- I
3 don't know whether we still have Russ and Art. I
4 guess Russ and Art are both off the phone. Recently
5 a decision was made by the Montgomery County Board of
6 Education to deny access to a French language
7 immersion program to two elementary school students.

8 The two students were denied access
9 explicitly because each of them had one Asian parent
10 and one Caucasian parent. Because each had one Asian
11 parent, they were viewed as valuable to the or
12 necessary to the provision of a sufficient number of
13 Asian origin students in their home base school. And,
14 therefore, although they otherwise would have been
15 reportedly admitted to this program, they were not.

16 This was raised to the level of the board
17 of education, which affirmed the earlier decision.

18 That strikes me as being a quota. And I
19 know the Commission is on record as being against
20 quotas. Therefore, I would like to ask for the
21 Commission to agree to ask staff to prepare a letter
22 to the Montgomery County Board of Education saying
23 that this is unfair to these two young girls just
24 because one of their parents is of Asian origins.

25 It's not a big matter. It's going on all

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1 over the country. But I think we can take a stand.

2 CHAIRPERSON BERRY: Commissioner?

3 VICE CHAIRPERSON REYNOSO: Yes. Madam
4 Chair, I wonder if we might ask for a staff report on
5 that because I know in --

6 COMMISSIONER HORNER: Sure, absolutely.

7 VICE CHAIRPERSON REYNOSO: -- San
8 Francisco we have had some of the same debates.

9 COMMISSIONER HORNER: I agree.

10 VICE CHAIRPERSON REYNOSO: And then it
11 turns out that it's --

12 COMMISSIONER HORNER: Actually --

13 VICE CHAIRPERSON REYNOSO: -- actually a
14 different sort of issue. So I'd just like to -- I'd
15 feel more comfortable having a staff report.

16 COMMISSIONER HORNER: I absolutely agree
17 with you and would do the same if I weren't closer to
18 this.

19 CHAIRPERSON BERRY: Okay. Well, let's ask
20 the staff to give us a memo on it so that we can
21 consider it for a vote next time or see what we do for
22 it, see if there's a motion.

23 COMMISSIONER HORNER: Thank you.

24 CHAIRPERSON BERRY: Does anyone have any
25 other future agenda items or anything else that you

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would like to discuss at this time?

(No response.)

CHAIRPERSON BERRY: If not, then we need to have the Solicitor tell us that it's okay to go into executive session here for a few minutes. You can't leave yet, Commissioner George.

COMMISSIONER GEORGE: Why would I want to do that?

CHAIRPERSON BERRY: You can do whatever you'd like.

COMMISSIONER GEORGE: Why would I want to do that?

CHAIRPERSON BERRY: Solicitor, we wish to go into executive session in order to discuss a sensitive matter, personnel matter.

COMMISSIONER HORNER: Well, it is a personnel matter in a sense.

(Whereupon, the foregoing matter recessed from open session at 1:10 p.m. to reconvene in executive session and went back on the record in open session at 1:23 p.m.)

CHAIRPERSON BERRY: And we go back on the record. I think what we usually do is we recess. Is that what we usually do, so that if we're at the

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1 hearing, or do we -- I've forgotten what we did last
2 time. Did we recess so that if at the hearing we
3 needed to do something official, we could?

4 STAFF DIRECTOR MATHEWS: Yes, Madam Chair.

5 CHAIRPERSON BERRY: If there's something
6 official related to the hearing that we at the hearing
7 --

8 COMMISSIONER HORNER: But it does not
9 permit us to do --

10 CHAIRPERSON BERRY: Anything else.

11 COMMISSIONER HORNER: -- Commission
12 business other than --

13 CHAIRPERSON BERRY: No. Anything that's
14 hearing-related.

15 COMMISSIONER ANDERSON: You mean like
16 voting to enforce the subpoena.

17 CHAIRPERSON BERRY: No.

18 (Laughter.)

19 CHAIRPERSON BERRY: Yes, deciding we were
20 going to or deciding something related to the hearing
21 that may come up. We recess only for that purpose.
22 And then we adjourn after the hearing is over. Am I
23 right? Am I wrong or what?

24 STAFF DIRECTOR MATHEWS: Yes, yes.

25 CHAIRPERSON BERRY: I think I'm right.

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STAFF DIRECTOR MATHEWS: Yes, you're right. You're right.

CHAIRPERSON BERRY: Let's recess this meeting, then, for that purpose only. Is that clearly understood? No one intends to do some thing other that has anything to do with anything else. It's just for purposes of hearing. Okay?

VICE CHAIRPERSON REYNOSO: Okay.

CHAIRPERSON BERRY: All right. Can we adjourn? All right. We'll adjourn.

(Whereupon, the foregoing matter was concluded at 1:26 p.m.)

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