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U.S. COMMISSION ON CIVIL RIGHTS

MEETING

FRIDAY, MARCH 22, 1996

The Commission met in Conference Room  
540, 624 Ninth Street, N.W., Washington, D.C. 20036  
at 9:30 a.m., Mary Frances Berry, Chair, presiding.

COMMISSIONERS PRESENT:

MARY FRANCES BERRY	Chairperson
CRUZ REYNOSO	Vice Chairperson
CARL A. ANDERSON	Commissioner
ROBERT P. GEORGE	Commissioner
A. LEON HIGGINBOTHAM, Jr.	Commissioner
YVONNE Y. LEE	Commissioner
RUSSELL G. REDENBAUGH	Commissioner (via telephone)
MARY K. MATHEWS	Staff Director



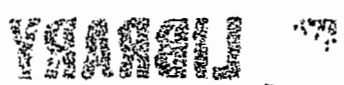
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COMMISSION STAFF PRESENT:

- BARBARA BROOKS
- JAMES S. CUNNINGHAM
- KI TAEK CHUN
- BETTY EDMINSTON
- GERRI HALL
- GEORGE HARBISON
- CAROL LEE-HURLEY
- JACQUELINE L. JOHNSON
- WILLIAM LEE
- STEPHANIE Y. MOORE, General Counsel
- VERONIQUE PLUVIOSE-FENTON
- CHARLES RIVERA
- MIGUEL SAPP, Parliamentarian
- ANTHONY K. WELLS, Sr.
- AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

- RONALD BROWN
- JOSEPH BROADUS
- ADERSON FRANCOIS
- CHARLOTTE PONTICELLI
- WILLIAM L. SAUNDERS, Jr.
- CYNTHIA VALENZUELA

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

(9:40 a.m.)

1  
2  
3 CHAIRPERSON BERRY: We're going to call  
4 the meeting to order. The first item is the approval  
5 of the agenda. Approval of the agenda for the  
6 meeting.

7 VICE CHAIRPERSON REYNOSO: Madam Chair,  
8 I'd like to ask that we have an executive session to  
9 discuss a personnel matter.

10 CHAIRPERSON BERRY: Is there a second?

11 COMMISSIONER LEE: Second.

12 CHAIRPERSON BERRY: Okay. It's been moved  
13 then, seconded, that we add to the agenda an executive  
14 session at some point to discuss a sensitive personnel  
15 matter. Is there any objection?

16 All in favor, say aye. Opposed?

17 Good morning, is that Russell?

18 COMMISSIONER REDENBAUGH: Yes. Good  
19 morning.

20 CHAIRPERSON BERRY: Well, good morning to  
21 you, Russell sunshine.

22 COMMISSIONER REDENBAUGH: May I speak to  
23 the agenda?

24 CHAIRPERSON BERRY: Yes, you may.

25 COMMISSIONER REDENBAUGH: My time is

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1 limited this morning. I will need to leave at about  
2 11:00. Therefore, I ask that discussion on the staff  
3 proposal for projects to be deferred, delayed,  
4 dismissed, be moved higher on the agenda so I might  
5 participate in the discussion.

6 CHAIRPERSON BERRY: Okay. We will make  
7 sure that we discuss those earlier. We'll move them  
8 up somewhere here.

9 COMMISSIONER REDENBAUGH: Thank you.

10 CHAIRPERSON BERRY: To make sure we get to  
11 them well before 11:00. The executive session that's  
12 being proposed, do you envision it being short, Mr.  
13 Vice Chair?

14 VICE CHAIRPERSON REYNOSO: I do.

15 CHAIRPERSON BERRY: Okay. Are there any  
16 other additions to the agenda before we -- with that  
17 addition and with the modification that we'll move the  
18 planning retreat discussion up earlier. I'll just see  
19 how the first part of it goes, Russell, but I promise  
20 you I'll move it up far enough so we'll have plenty of  
21 time to discuss it.

22 COMMISSIONER REDENBAUGH: That's fine.  
23 Thank you.

24 CHAIRPERSON BERRY: Is that all right?

25 COMMISSIONER REDENBAUGH: Yes. Certainly.

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1 CHAIRPERSON BERRY: Okay. With that, can  
2 we get a motion to approve the agenda?

3 COMMISSIONER HIGGINBOTHAM: So moved.

4 COMMISSIONER REDENBAUGH: Second.

5 CHAIRPERSON BERRY: All in favor, say aye.  
6 Opposed?

7 Okay. The next item is the approval of  
8 the minutes of December 15, 1995, and March 6, 1996.

9 VICE CHAIRPERSON REYNOSO: Madam Chair, on  
10 the minutes of December 15, 1995, I have one of the  
11 most important suggestions I have ever made. On the  
12 second line, instead of a comma should be a period.

13 (Laughter.)

14 CHAIRPERSON BERRY: Okay. Any objection?  
15 Does anyone else have any changes they'd like to make  
16 in the minutes for either one of these days? If not,  
17 can I get a motion to approve the minutes?

18 VICE CHAIRPERSON REYNOSO: So moved.

19 COMMISSIONER REDENBAUGH: Second.

20 CHAIRPERSON BERRY: All in favor, say aye.  
21 Opposed?

22 Okay. The next item is announcements. Do  
23 you have any announcements, Staff Director?

24 MS. MATHEWS: I do, Madam Chair.

25 CHAIRPERSON BERRY: Oh good. Well, go

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1 right ahead.

2 MS. MATHEWS: I first wanted to address  
3 the funding situation. Many of you may have noticed  
4 the events on Capitol Hill yesterday in regard to the  
5 continuing resolution. The Commission, as you know,  
6 is one of the agencies that is affected by this. It  
7 is my understanding that the House and Senate both  
8 passed, yesterday late in the day, a continuing  
9 resolution that would extend funding until March 29,  
10 which is another week. We are going to be making an  
11 announcement to the employees to report to work  
12 Monday, since the current CR expires today at  
13 midnight.

14 Another funding issue is the Commission's  
15 inclusion in the President's budget, which was  
16 submitted to the Capitol this week as well. This is  
17 the budget request for next fiscal year, FY 1997. The  
18 Commission is reflected in this budget request with  
19 the Administration's support for \$11.4 million. There  
20 are a few charts in this document that refer to a \$9.3  
21 million number for the Commission, but the  
22 Administration is supporting the \$11.4 number for us.

23 I have also now some follow-up items I  
24 wanted to just touch on briefly from the December  
25 meeting, since we have not had a Commission meeting

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1 since then. You will recall we sent a letter that the  
2 Commissioners agreed to at the December meeting to the  
3 Secretary of the Army. It was in regard to the hate  
4 group activity and racially motivated killings at Fort  
5 Bragg. We followed up with the Army Department to see  
6 if they had concluded their investigation.

7 We learned that there was a press  
8 conference yesterday in which the Department had  
9 released a report. We have copies for each  
10 Commissioner. I know some of you, since you are  
11 flying back, you may not want to carry it with you,  
12 but if you would like, we have copies today. We just  
13 got them late yesterday. This is entitled, "The  
14 Secretary of the Army's Task Force on Extremist  
15 Activities." Or we can mail it to you, whichever you  
16 would prefer.

17 Another follow-up item from the December  
18 meeting is the terms for Commissioners Anderson and  
19 Redenbaugh. Commission follow-up items in that regard  
20 involved a letter that was sent to the Speaker of the  
21 House and the President Pro Tempore of the Senate  
22 expressing the Commissioners' interpretation of our  
23 statute in this area.

24 We received replies back from each  
25 individual. Speaker Gingrich replied that



1 Commissioner Anderson's current term would expire on  
2 February 11, current at that time, I should say,  
3 Commissioner Anderson. And that he had been  
4 reappointed for a new six-year term beginning February  
5 12, 1996.

6 Senator Thurmond responded back,  
7 indicating that on first impression it would appear  
8 that Commissioner Redenbaugh's first term expired  
9 December 12, 1995. Senator Thurmond added that he  
10 believed that consideration should be given though to  
11 clarification in this area by the full Senate. We  
12 have not received any word further on that issue.

13 Commissioner --

14 COMMISSIONER REDENBAUGH: Excuse me.

15 MS. MATHEWS: Yes.

16 COMMISSIONER REDENBAUGH: Senator  
17 Thurmond, in what capacity was he speaking?

18 MS. MATHEWS: As the President Pro  
19 Tempore.

20 COMMISSIONER REDENBAUGH: Oh, I see.  
21 Okay.

22 MS. MATHEWS: Commissioner Redenbaugh  
23 also was reappointed for a new six-year term by  
24 announcement on the Senate floor December 22, 1995.

25 Following up some other items, you will

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1 recall we discussed at the December meeting the report  
2 on Title VI. The Commissioners agreed at that time to  
3 vote by facsimile transmission to my office. The  
4 agreed upon date was December 28. I believe on that  
5 date precisely, the Chair wrote to each Commissioner  
6 to extend the voting opportunity until Monday, January  
7 8. At which point we had the closing of the  
8 Washington, D.C. offices due to snow.

9 So we extended the opportunity for  
10 Commissioners to vote until 2:00 p.m. the first work  
11 day the Federal Government was re-opened here in  
12 Washington. The result of the vote was a passage of  
13 the Title VI report by a vote of five to three.  
14 Advance copies of the report were forwarded to Capitol  
15 Hill and to the White House, as is our customary  
16 practice. We are currently in the latter stages of  
17 preparing the document for printing.

18 Another follow-up item were reports that  
19 I forwarded to each of you. They were from the  
20 regional directors, the appropriate geographical area  
21 covering the following three issues. One was an item  
22 mentioned by Commissioner George at the December  
23 meeting about an activity by a group known as the  
24 Rickies in Oregon. The other was on the racially  
25 motivated killings in Fort Bragg. The third was on

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1 killings in Harlem.

2 Moving on here to another issue. Vice  
3 Chair Reynoso brought up a point at the December  
4 meeting about frequent flyer miles.

5 VICE CHAIRPERSON REYNOSO: I had that  
6 noted in my remarks.

7 MS. MATHEWS: Staff has researched this  
8 issue and we are at this point -- we've looked at the  
9 Federal travel procedure in this area. We have  
10 determined that the best course of action is to assess  
11 how to track, were we to implement an official program  
12 in this area. We are getting some demonstrations from  
13 some systems about how to track this in about two  
14 weeks. So I should have a further report for you in  
15 the near future on that.

16 We also forwarded to each Commissioner a  
17 copy of the disk for the Commission's first radio  
18 public service announcement. I hadn't received a  
19 reply from any of you, but I am hoping you found it as  
20 good a start in this area as I think it was.

21 CHAIRPERSON BERRY: I notice there's an  
22 increase in the Commission's -- complaints filed with  
23 the Commission. Last time I looked, I think it was  
24 700 and something a month. Was there an increase  
25 attributed to this PSA or not?

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1 MS. MATHEWS: Yes. I appreciate you  
2 asking that question. I had talked to our Assistant  
3 Staff Director for Civil Rights Evaluation about that  
4 matter. He reported most definitely that this PSA has  
5 received wide play around the country. As a result,  
6 we're getting a significant higher volume of civil  
7 rights complaints from individuals, in which they tell  
8 us that they are writing to us by virtue of hearing  
9 this public service announcement because we have  
10 included in it our 800 number for individuals to call  
11 in, obviously at no expense to themselves.

12 So it is a very good public service. I am  
13 very pleased about the connection that has been made  
14 there.

15 CHAIRPERSON BERRY: Staff Director, we are  
16 going to give you one more minute.

17 MS. MATHEWS: Okay. Well, we haven't met  
18 in a while, Madam Chair. I'll follow up here then  
19 briefly on the March telephonic Commission meeting,  
20 and indicate that Commissioner decisions made at that  
21 meeting were transmitted or followed up and  
22 implemented.

23 By that, I mean that the House Oversight  
24 Subcommittee was informed orally of the decisions and  
25 that the documents both in the official system of

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1 records and any other documents that staff may have  
2 relevant to the Oversight Subcommittee's request were  
3 collected, logged, and forwarded to the subcommittee.

4 That's it, Madam Chair.

5 CHAIRPERSON BERRY: Okay. Well, now what  
6 we will do is just have a brief executive session, and  
7 then go to the program proposals so that we can have  
8 time, unless someone wants to make another  
9 announcement or discuss something else relevant to the  
10 announcements. I have one announcement to make.

11 COMMISSIONER GEORGE: Thank you, Madam  
12 Chairman. Should we continue announcements now or  
13 pick them up after the executive --

14 CHAIRPERSON BERRY: Go ahead now.

15 COMMISSIONER GEORGE: Okay. I had a  
16 couple of things. First of all, I wanted to introduce  
17 my new special assistant. I know that Judge  
18 Higginbotham and Judge Reynoso both have new special  
19 assistants as well. It would be nice to meet them.  
20 Mine is Bill Saunders, who comes to us from the  
21 Lawyer's Committee on Human Rights. He's a lawyer,  
22 graduate of the Harvard Law School and former law  
23 professor at Catholic University.

24 CHAIRPERSON BERRY: I know that  
25 Commissioner Redenbaugh has a new special assistant

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1 also. Is that true, Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: Yes. It is.  
3 This would be the right moment. She is Charlotte  
4 Ponticelli, who joined us this month, and comes from  
5 among other places, previously the State Department.

6 CHAIRPERSON BERRY: Okay. She is right  
7 over there.

8 COMMISSIONER GEORGE: What law school did  
9 she graduate from?

10 COMMISSIONER REDENBAUGH: Her law school  
11 degree has not been delivered yet.

12 (Laughter.)

13 COMMISSIONER REDENBAUGH: I'm actually an  
14 equal opportunity employer.

15 (Laughter.)

16 COMMISSIONER REDENBAUGH: I have people  
17 who don't have law degrees.

18 CHAIRPERSON BERRY: I want to say too that  
19 this is the first meeting at which Judge Higginbotham  
20 has been present in person. Although he was in person  
21 on the phone at the last meeting. So therefore, I  
22 want to -- I know you agree with me, that we extend a  
23 warm welcome to him to the Commission, and look  
24 forward to working with him productively.

25 COMMISSIONER REDENBAUGH: Absolutely.

1 Welcome.

2 CHAIRPERSON BERRY: Judge Higginbotham,  
3 would you mind introducing your special assistant?

4 COMMISSIONER HIGGINBOTHAM: I have the  
5 pleasure of introducing Aderson Francois. Aderson is  
6 a star, like all of the other special assistants. A  
7 graduate of New York University Law School. The only  
8 profound disadvantage he has had in life is that he  
9 served a two-year clerkship on the United States Court  
10 of Appeals for me. Thereafter, he was at Paul Weiss  
11 Rifkind Wharton Garrison, where he was highly  
12 respected. He has a commitment to civil rights and  
13 was willing to take about a 60 percent reduction in  
14 income. So I feel very, very privileged to have him  
15 as a colleague.

16 CHAIRPERSON BERRY: Well, thank you very  
17 much. Welcome to you also.

18 Did I miss anybody? No, I didn't.

19 COMMISSIONER GEORGE: Has Cruz introduced  
20 his --

21 CHAIRPERSON BERRY: Cruz, did you  
22 introduce Cindy last time?

23 VICE CHAIRPERSON REYNOSO: We did. But  
24 I'll introduce her again. My relatively new assistant  
25 is Cindy Valenzuela -- stand up -- who is a recent

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1 UCLA law graduate.

2 CHAIRPERSON BERRY: There she is, right  
3 over there.

4 Did you have another announcement?

5 COMMISSIONER GEORGE: I did. I have two  
6 more. One, I wonder if we can get a quick update, if  
7 you happen to have the information to hand about the  
8 matter of the religious rights of Americans in Saudi  
9 Arabia. I know Commissioner Horner has raised that  
10 matter before.

11 I continue to hear press reports about it.  
12 I wondered if there is any information about whether  
13 this situation has been resolved favorably to the  
14 cause of civil and religious rights or not.

15 MS. MATHEWS: I do not have any further  
16 update from the State Department, but we'd be glad to  
17 --

18 COMMISSIONER GEORGE: Would it be possible  
19 to look into the matter and see?

20 MS. MATHEWS: Certainly.

21 COMMISSIONER GEORGE: I just heard  
22 something about it in the middle of this week. I  
23 thought that it had been resolved, but I'd like very  
24 much to know if it hasn't.

25 MS. MATHEWS: Certainly.



1                   COMMISSIONER GEORGE:     Then the Staff  
2 Director made reference to my inquiry regarding  
3 alleged anti-Catholic activity abetted by a city,  
4 which conducted a parade out in Oregon. I received,  
5 as all of you did, a report from Philip Montez, our  
6 regional director for the Western Regional Office. I  
7 want to commend Regional Director Montez on the  
8 report, which was quite thorough and useful.

9                   Because it's good news, I thought I would  
10 call attention to the comments made by two  
11 individuals, one, a spokesperson for the group that  
12 was involved in the activity called the Rickies. On  
13 page two of Director Montez's report, the spokesperson  
14 says that the Rickies fully accept criticism from  
15 anyone who might think our entry was not funny.  
16 However, no one should construe our intentions or our  
17 actions as bigoted or hateful. We neither intended  
18 nor displayed bigotry, simply parody. The Rickies are  
19 sorry that some people are offended by our actions.

20                   Well, I'm not quite sure at what level  
21 that really is an apology, and to what extent there's  
22 a recognition that any offensive goings on occurred.  
23 However, it is clear that the mayor of the city of  
24 Eugene, Ruth Bascom, has put on the record I think, a  
25 fully adequate apology in a letter that's quoted in

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1 Director Montez's report to the local Catholic pastor,  
2 whose name is Father Scott Vandehey.

3 The Eugene celebration, Mayor Bascom said,  
4 which for me is a wonder of humor and political satire  
5 and colorful community participation, must also  
6 maintain and respect the diversity and be sensitive to  
7 deeply held beliefs. I regret that this year's parade  
8 entry by the Rickies lacked that sensitivity to people  
9 of our worshipping Catholic communities.

10 I think we all recognize that we ought to  
11 be over sensitive to good natured light-hearted ethnic  
12 or religious humor. There are strong traditions  
13 within our ethnic groups and our religious communities  
14 of engaging in that sort of humor.

15 My concern, and I know the concern of the  
16 Catholic League for Civil and Religious Rights which  
17 brought this matter to my attention, is that this was  
18 a case where it really did go over the line.  
19 Therefore, I'm happy to report and to bring to the  
20 public's attention the apology issued by Mayor Bascom  
21 of the City of Eugene as its reported to us in  
22 Director Montez's report.

23 Thank you, Madam Chairman. That's all.

24 CHAIRPERSON BERRY: All right. Thank you.

25 Any other announcements? Okay. Well then we are

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1 going to have a brief executive session. I am saying  
2 that so the staff knows not to go away and have  
3 breakfast and coffee and second breakfasts. Then  
4 we're going to do the program proposals. So as soon  
5 as we can clear everybody out, we'll go ahead.

6 I want only here the parliamentarian and  
7 the Commissioners, period. If you are not a  
8 Commissioner and you are not a parliamentarian --

9 (Whereupon, the proceedings went  
10 immediately into closed session.)  
11  
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## P-R-O-C-E-E-D-I-N-G-S

(10:25 a.m.)

1  
2  
3 CHAIRPERSON BERRY: We are going to take  
4 up the program planning retreat discussion which is  
5 listed as item number eight on the agenda. This item  
6 is necessary in view of our -- we do program planning  
7 anyway, as you know.

8 But we now have some budgetary changes  
9 that have been made which require us to look at our  
10 projects to make some judgements about which ones we  
11 want to keep, which ones we want to get rid of, what  
12 kind of modifications do we want to make in these  
13 projects. We have before us recommendations from the  
14 staff as to how they think we should best do this in  
15 view of the budgetary reality.

16 Is there someone who would like to either  
17 make a motion for purposes of discussion? Perhaps if  
18 we could get a motion to either accept, reject,  
19 discuss these, perhaps accept and then can make  
20 modifications as we go along or would you like to do  
21 them one by one or how would you like to do these?  
22 What is your pleasure, Commissioners?

23 Commissioner Anderson?

24 COMMISSIONER ANDERSON: I think I'd prefer  
25 to do them one by one. It might be easier.

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1 CHAIRPERSON BERRY: Okay. All right. In  
2 terms of your time, I'll make sure we get in whatever  
3 you want to particularly call attention to before you  
4 end, Commissioner Redenbaugh. I'll keep my eye on the  
5 clock.

6 COMMISSIONER REDENBAUGH: All right.

7 CHAIRPERSON BERRY: But on the first page  
8 of this report, we have the fiscal year of 1996.  
9 These are changes that they are proposing in the  
10 projects that we already approved. We didn't get a  
11 full appropriation. We know this. The monies have  
12 been reduced, so we have to -- and projects have been  
13 delayed by the furloughs and all the other things that  
14 have happened.

15 They are recommending that we take --  
16 right now, they are working on the equal educational  
17 opportunity report, which would be our statutory  
18 report for this year. That is the one where, you  
19 know, every year we have to do one of these. That's  
20 correct, that this is our statutory report for the  
21 year and that the statute says we have to produce  
22 every year, Commissioner Redenbaugh.

23 COMMISSIONER REDENBAUGH: Yes. I  
24 understand that.

25 CHAIRPERSON BERRY: And the educational

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1 opportunity one is that one for this year. The staff  
2 is currently working on it. The update does not  
3 propose that we discontinue working on it, that we  
4 just continue with that one. That was the first one.

5 Does anyone have any objection to our  
6 continuing to work on or want to discuss further the  
7 equal educational opportunity law enforcement report?  
8 I see no signs of anyone wanting to disrupt it, so we  
9 can go to the next one.

10 COMMISSIONER REDENBAUGH: I have a  
11 question. You touched on it and I endorsed what we  
12 have just done. But I asked for a little further  
13 explanation because it strikes me that about 90 days  
14 ago or so, and I'm not at all clear about the date, we  
15 had assurances that our projects and plans were moving  
16 roughly on schedule. It strikes me that this  
17 reduction in our anticipated output is much greater  
18 than the reduction in our appropriation from  
19 anticipation and the furlough and snow closings would  
20 justify.

21 CHAIRPERSON BERRY: So your question is?

22 COMMISSIONER REDENBAUGH: These look like  
23 very big cuts relative to what I would expect from the  
24 budget reality and shut-down.

25 CHAIRPERSON BERRY: Staff Director,

1 Commissioner Redenbaugh believes that the cuts that  
2 are being proposed on projects, the adjustments on  
3 projects, seem on the surface at least to be greater  
4 than or not commensurate with the actual cuts in the  
5 appropriation. He is wondering about that and would  
6 like some kind of response in general.

7 MS. MATHEWS: Well, in general, these  
8 recommendations that are included in the program  
9 planning memorandum to the Commissioners, were made by  
10 the staff that are managing the programs.

11 COMMISSIONER REDENBAUGH: This is a  
12 document that we received this week.

13 CHAIRPERSON BERRY: That's correct. The  
14 one that says program planning.

15 COMMISSIONER REDENBAUGH: My colleagues  
16 may have much greater capacity to read these things  
17 than I do, but that seemed like very short time for us  
18 to then decide this. So anyway, you were saying?

19 MS. MATHEWS: It is a recommendation.  
20 Obviously the Commissioners can discuss and end up in  
21 a different place. But it is a recommendation based  
22 on our assessment of current work load demands. Also,  
23 it's a reflection of the original agreement upon which  
24 these proposals were approved by the Commissioners.  
25 As you know, that was an assumption of a significantly

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1 higher amount of money that was requested of OMB.

2 COMMISSIONER REDENBAUGH: How much higher?

3 CHAIRPERSON BERRY: \$11.4.

4 MS. MATHEWS: Well, \$11.4 is what the  
5 Administration put forward for the Commission last  
6 year, in other words, in the last cycle, for this  
7 current fiscal year 1996. But the Commissioners  
8 approved these project proposals at a higher amount  
9 than that.

10 As you know, we have not received a full  
11 appropriation this year. We have been operating under  
12 these CRs, with two good chunks of time of temporary  
13 shutdown and furlough of almost all staff.

14 CHAIRPERSON BERRY: One thing that may  
15 help to answer the question is what percentage  
16 reduction do we have from the amount that the  
17 Commission thought we had when we approved the  
18 proposals? In other words, the number we were working  
19 with when we approved these proposals was what, and  
20 the number now, so that we can figure out whether  
21 we've got half of what we thought we had or what.  
22 Maybe that would help.

23 COMMISSIONER REDENBAUGH: Yes. That's a  
24 very good way to ask the question. Thank you.

25 CHAIRPERSON BERRY: So how much did we

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1 think we were proposing? Was it 13 something? I  
2 forgot what the numbers were.

3 MS. MATHEWS: It was in the middle range  
4 of \$12 million. I can get the figure in a minute or  
5 two by checking with the appropriate staff. But I am  
6 going to approximate about \$12.4 or \$12.5.

7 We have had CRs this year. The first  
8 period of time, a couple weeks, was factored at I  
9 believe \$8.3 million. Then we had a furlough. Then  
10 the next CR was factored at an annual assumption of  
11 \$8.5 brought down to the couple weeks the CR covered.  
12 The last CR and this one that is going to be for next  
13 week is factored on an annual assumption of \$8.75  
14 million. So they have been slightly different in  
15 terms of the allocation of money.

16 COMMISSIONER REDENBAUGH: But all  
17 basically in the eight.

18 MS. MATHEWS: Yes. Correct.

19 COMMISSIONER REDENBAUGH: Okay.

20 CHAIRPERSON BERRY: Does that help you,  
21 Commissioner Redenbaugh?

22 COMMISSIONER REDENBAUGH: Yes. It does.  
23 Thank you.

24 CHAIRPERSON BERRY: Now the fair  
25 employment law enforcement report, they are asking

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1 that it be delayed rather than -- because it's the one  
2 on the EEOC. Is this for our statutory report for the  
3 next year? This is our statutory report for 1997. So  
4 the one for this year is the equal opportunity one.  
5 The one for next year is the one looking at the EEOC,  
6 which is the fair employment law enforcement.

7 COMMISSIONER REDENBAUGH: That's the  
8 statutory.

9 CHAIRPERSON BERRY: Right. That's the  
10 statutory.

11 COMMISSIONER GEORGE: Well, they are both  
12 statutory.

13 CHAIRPERSON BERRY: Right. One for this  
14 year. The next one for the next year.

15 So those, we approved those as our  
16 statutory ones. It would seem to me that where we  
17 should be looking for making adjustments would not be  
18 to change those because we have to do statutory.  
19 Unless we have some other statutory.

20 COMMISSIONER REDENBAUGH: I would  
21 definitely concur with that.

22 CHAIRPERSON BERRY: Right. So maybe we  
23 shouldn't spend a lot of time trying to figure out  
24 whether we want to keep those or not, and then move to  
25 the things that are not statutory, where we have more

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1 flexibility. Is that agreed?

2 COMMISSIONER REDENBAUGH: Fine with me.

3 CHAIRPERSON BERRY: Commissioner George?

4 COMMISSIONER GEORGE: I think that is a  
5 good idea. I would also suggest having just agreed to  
6 what we agreed to, that we avoid taking any action  
7 that we don't have to take today. This is a matter of  
8 establishing priorities and so forth. It would be  
9 good to have a bit more time to think through these  
10 possibilities here.

11 So I wonder if we could air views and  
12 considerations and get answers to questions from each  
13 other and from the Staff Director today. I'd be  
14 perfectly happy to take action on things that  
15 everybody can already agree to that aren't  
16 controversial.

17 In a question, when we raise questions of  
18 priorities, people are going to have different views.  
19 So if we get into any questions that discussion is  
20 necessary for, I hope we can have discussion and just  
21 delay the vote until our next meeting if possible.

22 CHAIRPERSON BERRY: Unless there is  
23 something that someone in particular thinks that we  
24 ought to vote on.

25 COMMISSIONER GEORGE: Yes. That's

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1 pressing or anything.

2 CHAIRPERSON BERRY: And we can, without  
3 objection then, say that the statutory reports we will  
4 keep as they are and move on to discuss others. Is  
5 there any objection to that? No objection. So we  
6 don't have to go back to those again.

7 Then we go to just the purposes of looking  
8 at them and making any comments. The expanding  
9 economic opportunities of African-American, Asian, and  
10 Latino youth. They ask that this be delayed, not  
11 abandoned but delayed on the grounds of fiscal  
12 problems.

13 Then that we should discontinue plans to  
14 continue a project on inappropriate discrimination of  
15 credit, which we had scheduled for 1997. And that  
16 they would include this in the economic opportunities  
17 report of African-American, Asian and Latino youth.  
18 I don't understand how that would go, but --

19 COMMISSIONER ANDERSON: Well, that's the  
20 question I have. I mean depending upon how you define  
21 youth, I don't know what their access to credit is  
22 other than their parents anyway.

23 CHAIRPERSON BERRY: So that one I didn't  
24 understand. So we would need further clarification,  
25 Staff Director, on what this means in terms of credit

1 opportunity.

2 COMMISSIONER GEORGE: Where would that  
3 actually go?

4 CHAIRPERSON BERRY: Right. Then we get to  
5 enforcement of the Americans with Disabilities Act.  
6 The recommendation is that we not do a separate report  
7 on the enforcement of the Americans with Disabilities  
8 Act and that we defer one part of the report until  
9 1997. Then we reformulate it if the recommendation to  
10 drop the one part is adopted.

11 The part that is proposed that we not do  
12 is the employment aspect. The rationale is that  
13 employment will be included in the fair employment law  
14 project report. So that is what the suggestion here  
15 is for the ADA.

16 Commissioner Redenbaugh, you had some  
17 comments about this, I think.

18 COMMISSIONER REDENBAUGH: I have  
19 commented. I would say first that the process,  
20 selecting of the mix of programs and the timing of  
21 them is clearly a political process. I mean that in  
22 the good sense of the word political.

23 I think it's unwise and fraught with  
24 danger to make these proposals four days before a  
25 meeting and ask us to vote it up or down without the

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1 benefit of discussion and compromise and an effort to  
2 reach political consensus. I think that would have  
3 been the purpose of our planning retreat that was  
4 either monied out or snowed out, I can't remember  
5 which now.

6 But I think the wisdom in having the  
7 planning retreat was very good. I don't know how at  
8 this meeting we can reach a consensus about these  
9 things. So that's my comment about the process in  
10 general.

11 About the ADA in particular, I think the  
12 people who are interested in the ADA have been waiting  
13 for us for a long time to do something. I think to  
14 them, you know without more discussion and coalition  
15 building, to move to shrink and delay the program or  
16 the studying this way I don't support it at all. I  
17 don't believe that a majority of the Commissioners --  
18 well, we'll find out I guess. But I don't believe  
19 that a majority of the Commissioners will want to do  
20 that.

21 CHAIRPERSON BERRY: Commissioner George?

22 COMMISSIONER GEORGE: Well, Russell, in  
23 response to the first set of comments, I think what we  
24 just agreed to after my proposal a moment ago was to  
25 not vote on things like this. So we're not being

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1 forced to -- I don't think that there is a problem in  
2 -- secondly, I agree that we need to do something on  
3 this. People have been waiting a long time.

4 Third is just one I can't resist, which is  
5 since Russell has introduced the idea of political in  
6 the good sense, just a reminder of Aristotle's  
7 definition of politics, which he said was the highest  
8 and best of the sciences because it studied what was  
9 highest and best in man.

10 CHAIRPERSON BERRY: Oh, okay.

11 VICE CHAIRPERSON REYNOSO: There's that in  
12 Mexico and Spanish culture of putting sayings that you  
13 should have in mind all the time over the door. We  
14 should put that --

15 (Laughter.)

16 COMMISSIONER GEORGE: What I just quoted  
17 to you is on the wall as you enter the Politics  
18 Department of Princeton. A little self-aggrandizing  
19 comment.

20 CHAIRPERSON BERRY: That's why he made it.  
21 I think that the Commission has not done a report on  
22 disabilities, I don't think, since we did something  
23 before most of you were on the Commission, called  
24 Accommodating The Spectrum Of Individual Abilities.  
25 People are nodding their heads, so maybe I got it

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1 right. That was some time ago. That was a very  
2 important report.

3 When we decided we would do this one, we  
4 discussed that, we as Commissioners, and the fact that  
5 we hadn't done one in a long time. This is a very  
6 crucial and important issue. So I too am wondering  
7 how we would justify it. I mean I think it's  
8 important enough it ought to be done by itself. There  
9 are other things that are listed here that I would be  
10 willing to jettison before I would jettison this.  
11 That's just my own personal view.

12 Commissioner Anderson?

13 COMMISSIONER ANDERSON: Yes. I would  
14 agree with that. I think it maybe inadvertently sends  
15 the wrong signal coming from the Commission. I would  
16 be prepared to vote on it today. My vote would be to  
17 keep it on track, and not to accept the  
18 recommendation. But if we have to defer it, maybe  
19 there's something that would change my mind, but I  
20 don't think so right now.

21 CHAIRPERSON BERRY: Now the Staff  
22 Director, would one of your staff members who I guess  
23 is involved in this, one of your directors is trying  
24 to get recognized. Would you be willing to have this  
25 person speak?



1 MS. MATHEWS: Yes. I would be glad to  
2 have actually both office heads, the General Counsel.

3 CHAIRPERSON BERRY: If they want to say  
4 anything.

5 MS. MATHEWS: Yes. Well if it's  
6 convenient to a further discussion, they could  
7 certainly come and be available for any further  
8 question.

9 CHAIRPERSON BERRY: I think, Mr. Isler,  
10 did you want to make a comment?

11 MR. ISLER: Yes. I did.

12 CHAIRPERSON BERRY: Why don't you come  
13 forward and make it?

14 COMMISSIONER GEORGE: Madam Chairman,  
15 while he is coming forward, can I ask that the Staff  
16 Director supply us with copies of that earlier report  
17 on accommodating facilities?

18 CHAIRPERSON BERRY: Certainly.

19 Yes, Mr. Isler?

20 MR. ISLER: The staff does not recommend  
21 that we jettison or discontinue reports on the  
22 Americans with Disability Act project. What we are  
23 recommending is that that project be handled  
24 exclusively by OGC. That was as a result of long  
25 discussions with the General Counsel. We feel that

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1 that is a very legal statute and that the fact finding  
2 could be done much better and more efficiently in a  
3 hearing process than in a fact finding process by the  
4 OCRE staff.

5 CHAIRPERSON BERRY: Let me ask you a  
6 question. The part of it that says that the  
7 employment part would be put into the employment  
8 project. What does that mean?

9 MR. ISLER: That was already included.  
10 The Americans with Disability Act Title I is already  
11 included in the Fair Employment Practice project.  
12 That will be an extensive part of the Fair Employment  
13 Practice project.

14 CHAIRPERSON BERRY: So in other words,  
15 this recommendation is unartfully phrased.

16 MR. ISLER: That's correct.

17 CHAIRPERSON BERRY: But there is the idea  
18 of deferring it until fiscal 1997?

19 MR. ISLER: That's correct.

20 CHAIRPERSON BERRY: All right. So that  
21 what the Commission is saying is that we don't want to  
22 defer it, at least some of us are saying and I think  
23 others agree. One, we do not want to defer it. Two,  
24 we want to do it as a free-standing project. Whether  
25 it is done by OGC or not, who does it, I mean which

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1 office does it, that would depend on what kind of  
2 project it is.

3 But I understand your point. You are  
4 saying that you are not for abandoning the project.  
5 Now we have the question of do we defer it and the  
6 scope of it.

7 MR. ISLER: That's correct.

8 CHAIRPERSON BERRY: Commissioner Anderson?  
9 I thought you had your hand up.

10 COMMISSIONER ANDERSON: Yes. What I  
11 understand is that we are jettisoning part of it,  
12 turning responsibility to OGC, and then the component  
13 that OGC is responsible for gets shifted into the  
14 other report? Is that what we are doing?

15 CHAIRPERSON BERRY: I still don't  
16 understand. Let me try this and see if this is right.

17 What you said, I think, and what we are  
18 supposed to understand, is that this project, what was  
19 meant was that the project wouldn't be abandoned. It  
20 would be moved to 1997 instead of 1996. Two, before  
21 the project had OCRE and OGC doing the project  
22 together. Is that correct?

23 MR. ISLER: That's correct.

24 CHAIRPERSON BERRY: But the staff is  
25 suggesting that now it be done only by OGC. You are

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1 pointing out to us that when you do the Fair  
2 Employment Project, which is our statutory report for  
3 next year, you will have in it -- am I wrong?

4 MR. ISLER: That's correct.

5 CHAIRPERSON BERRY: You will have in it  
6 some employment matters related to ADA, because the  
7 EEOC handles disability employment claims.

8 MR. ISLER: That's correct.

9 CHAIRPERSON BERRY: Am I understanding  
10 that?

11 MR. ISLER: What we are saying  
12 specifically is that the project calls for OGC and  
13 OCRE doing Title II of the ADA, which relates to  
14 public accommodations. The Fair Employment Practice  
15 Project calls for OCRE to do Title I of the ADA, which  
16 we will be doing in the Fair Employment.

17 CHAIRPERSON BERRY: Okay.

18 MR. ISLER: So we are not abandoning  
19 either Title I or Title II. We are just asking that  
20 Title II be conducted by OGC through the hearing  
21 process.

22 CHAIRPERSON BERRY: The accommodations  
23 part?

24 MR. ISLER: The public accommodations,  
25 where you are dealing with the Department of Justice.

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1 They are responsible for Title II.

2 CHAIRPERSON BERRY: Okay.

3 MR. ISLER: We'll handle Title I of the  
4 ADA that's related to employment, which is under the  
5 jurisdiction of EEOC.

6 CHAIRPERSON BERRY: So now I understand  
7 what you are saying. Did you understand that? At  
8 least we understand what is being suggesting.

9 So what we are suggesting is that we want  
10 a free-standing report on ADA to update the  
11 accommodations part that we did before in 1980  
12 something or other. The only query is, do we want the  
13 employment part of ADA taken out of the employment  
14 study that you are doing and put in with the  
15 accommodations part, so that both employment and  
16 public accommodations would be in the same report, or  
17 do we have any preference one way or the other? That  
18 would be the only question left for us to think about.  
19 But thank you very much. That is a clarification.

20 COMMISSIONER HIGGINBOTHAM: Madam Chair,  
21 I am still a little confused. We have a deadline  
22 problem which I gather is inherently implied when you  
23 talk about deferring until 1997. So that we have to  
24 decide whether you want to defer.

25 If you do not want a deferment, for me I

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1 leave it to the administrators to decide whether OCR  
2 or the Office of General Counsel, how they will  
3 allocate the responsibilities. That's a staff  
4 judgment.

5 But I think that what we have to meet head  
6 on is whether it should be deferred until 1997. If we  
7 are against deferring to 1997, then what we need to  
8 hear from the staff is what is its impact upon other  
9 projects we have. So that what would be ideal for me  
10 would be to get a timeflow sheet with a proposed  
11 schedule for these projects and then to get an  
12 alternative timeflow sheet for these projects.

13 Now I recognize that if you have to do the  
14 Americans with Disability Act and you want to have  
15 that finished during fiscal year 1996, then it's going  
16 to impact on others. I'd like to know what would  
17 happen on the others.

18 So I think that then we would be voting on  
19 the totality with some wisdom, rather than just voting  
20 the specific project as if it is not related to  
21 anything else.

22 CHAIRPERSON BERRY: Right. That's very  
23 good. We can have that before we actually vote. But  
24 listening to what has been said so far, I would think  
25 we should do ADA in fiscal 1996, and start it.

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1 COMMISSIONER HIGGINBOTHAM: I am for that.

2 CHAIRPERSON BERRY: And do the  
3 accommodations part, which will update what we did  
4 before at least. If there are hearings or anything  
5 like that, try to do them. But then we have the  
6 question which we're going to get to of other hearings  
7 and other hearing reports and what we will be giving  
8 up and what we will do and the like. But you are  
9 quite right, yes.

10 Commissioner George?

11 COMMISSIONER GEORGE: So even though  
12 there's obviously a lot of support and probably  
13 unanimity on this particular issue, I would still  
14 suggest, especially in light of Judge Higginbotham's  
15 I think very wise proposal, that we not make any  
16 formal commitment, take any vote on even this where  
17 there's unanimity, until we see it integrated into the  
18 whole package. I have no doubt what the outcome will  
19 be, but let's look at what the Judge called flow  
20 charts, and we'll see which options. I imagine that  
21 this is going to be right in there on both of them for  
22 early completion.

23 CHAIRPERSON BERRY: Right. So is that  
24 okay with you, Commissioner Redenbaugh?

25 COMMISSIONER REDENBAUGH: Absolutely. I

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1 think these things have to be decided as a whole.

2 CHAIRPERSON BERRY: Okay. Everybody wants  
3 to do it. We will do it. We are just going to figure  
4 out what else we're able to cut or how we do it.  
5 Okay?

6 COMMISSIONER REDENBAUGH: Yes.

7 CHAIRPERSON BERRY: All right. Now  
8 naturalization issues. The suggestion is that we do  
9 a short clearinghouse report in 1997 instead of -- in  
10 other words, that's being deferred. The idea is that  
11 the money problems mean and the time problems means  
12 that that should be deferred until next year, which is  
13 a staff judgement about how much they can do.

14 Does anybody have any comments?

15 COMMISSIONER LEE: Madam Chair, on the  
16 naturalization issue, there's an ongoing national  
17 debate on citizenship and naturalization this year.  
18 If we were to defer it to next year, I think the  
19 Commission may miss the opportunity to provide some  
20 really valuable information to the national debate.  
21 So what was the rationale behind deferring it until  
22 next year? You mentioned there's only a few staff  
23 members working on the project.

24 MS. MATHEWS: It is really a workload  
25 assessment based on others that are proposed here to

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1 be retained in this fiscal year. So since we are in  
2 a readjustment conversation, I mean obviously the  
3 Commissioners could look at readjusting any of these.

4 I might add one other thing, if I could  
5 elaborate on one other point. The recommendations  
6 that are here using this example of the naturalization  
7 issues, this is a recommendation to produce a short  
8 clearinghouse report as contrasted with the original  
9 Commission proposal, which was a statutory report with  
10 findings and recommendations. So that is a difference  
11 also.

12 CHAIRPERSON BERRY: What we will do is  
13 keep in mind when you are re-working this for our  
14 decision, what Commissioner Lee has just said about  
15 the national debate is going on now. You can see and  
16 rework it and reconfigure on other points.

17 COMMISSIONER GEORGE: Yes. Could I just  
18 get a very brief precis of what sorts of issues we  
19 would be discussing in the clearinghouse report? What  
20 sorts of information we would be trying to break out.  
21 I think I understand at the general level what  
22 Commissioner Lee said, but it would be helpful in  
23 evaluating just how important it is to know exactly  
24 what types of issues we might be talking about. Is it  
25 citizenship --

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1                   CHAIRPERSON BERRY: The Vice Chair was the  
2 one who proposed it.

3                   VICE CHAIRPERSON REYNOSO: Yes. Just the  
4 whole issue of -- it's been phrased variously whether  
5 to put the N back into INS because so little effort  
6 has been placed budgetarily and so on into the  
7 naturalization process. You see newspaper accounts  
8 day in and day out of lines of hundreds of people  
9 waiting to get their naturalization papers. We have  
10 the phenomenon of people having passed all the  
11 examinations and confirmed for citizenship, having to  
12 wait months and months and months and months to be  
13 sworn in. During that time, they obviously don't have  
14 the protection of citizenship.

15                   I personally participated in a program.  
16 A judge invited me to participate in a program where  
17 2,000 people were being sworn in in Sacramento at the  
18 same time. Somehow, citizenship is so important and  
19 yet the national government has not put the resources  
20 and emphasis that needs to be placed in encouraging  
21 citizenship, which I think all the polls indicate the  
22 American people want. Even in responding to the  
23 immigrants who want to become citizens. So they are  
24 resource and priority issues.

25                   They are also issues beyond that, in terms

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1 of how immigrants should be approached to become  
2 citizens. The effort to integrate them into American  
3 life without their having a sense of rejecting their  
4 cultural life before they come to this country. There  
5 has been that tension.

6 I think any report that we provide -- and  
7 as indicated, that national debate is taking place  
8 right now in Congress and elsewhere. Again, it's a  
9 matter of priorities. But if by chance it can be done  
10 while that national debate is going on, obviously it  
11 would be better.

12 Those are the big issues that I see.

13 CHAIRPERSON BERRY: So we can keep that in  
14 mind as you rework the naturalization issue.

15 Then we have the Los Angeles hearing  
16 report. The staff asks that the Commission again  
17 consider holding a mini hearing in Los Angeles to  
18 update the record. We did this hearing in I forget  
19 when we did it.

20 MS. MATHEWS: June 1993.

21 CHAIRPERSON BERRY: And a lot of --

22 VICE CHAIRPERSON REYNOSO: 1993?

23 CHAIRPERSON BERRY: Yes. And a lot of  
24 water has flowed under the dam.

25 VICE CHAIRPERSON REYNOSO: 1993, not 1983.

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1 CHAIRPERSON BERRY: In Los Angeles since  
2 1993. The staff reiterates its request that we  
3 consider within our project proposals letting them  
4 hold a mini hearing in Los Angeles to update the  
5 record.

6 Commissioner Lee had something to say.

7 COMMISSIONER LEE: I'm just sorry I wasn't  
8 here in 1993 to attend the hearing. I'm sure the  
9 hearing was very productive and you got a lot of  
10 information. But it has been three years and a lot of  
11 things have happened in LA.

12 In a recent visit to LA, I was approached  
13 by several people who told me that there were four  
14 incidents involving Korean Americans as highly  
15 suspicious in nature. That is this year alone.  
16 Tension is really high there. I think that it would  
17 be a great time for us to go back for another hearing  
18 to amend any report that you have done in 1993.

19 CHAIRPERSON BERRY: Vice Chair?

20 VICE CHAIRPERSON REYNOSO: This is where  
21 we end up in conflict. Even though I am very much in  
22 favor of the ADA and naturalization, I must say that  
23 I guess just structurally it seems to me that we need  
24 to wrap up the things we've been involved in already.  
25 So when it comes down to it, my vote is going to be to

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1 finish up the things that we have done already. I  
2 would be very much in favor of authorizing the mini  
3 hearings, which I take it is with two Commissioners  
4 and anybody else that can attend, to try to do that  
5 and wrap up those hearings, update the hearings and  
6 get that report out.

7 My reaction will be the same for the New  
8 York hearings. That is, the things that we have  
9 already done, we need to get out as quickly as  
10 possible. I'm sure that will be my ultimate vote.  
11 Then do as much of the other things as we can.

12 But I would be very much in favor for that  
13 recommendation.

14 CHAIRPERSON BERRY: Commissioner Anderson?

15 COMMISSIONER ANDERSON: Thank you. I  
16 would concur with that. I think we have to get these  
17 hearings done. We've got to get the reports out. I  
18 think just about every time we went to one of these  
19 hearings we had at least one witness get up and say  
20 you know, you come into town, you do another hearing,  
21 you issue another report, and nothing happens.

22 Now we have to go back and do a second  
23 hearing because we haven't even gotten the report out  
24 yet. So I think whether or not I'm going to vote for  
25 a hearing, I'm not decided yet, but I think we ought

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1 to really prioritize putting these reports on the fast  
2 track.

3 There probably is something to doing an  
4 update on this and just see looking back over two and  
5 a half, three years since we were there, has there  
6 been any change in these kinds of problems, better or  
7 worse. I think that's worth it, rather than coming  
8 out with a report that is three years old in terms of  
9 the evidence.

10 COMMISSIONER HIGGINBOTHAM: I'd just like  
11 to add a footnote. I think you look foolish to say  
12 that the whole investigatory process which this  
13 Commission symbolizes, is that we were supposed to do  
14 what courts and all these other agencies can't do, to  
15 handle something expeditiously. For us to come out in  
16 1997 or late 1996 on a report of a hearing of 1993, if  
17 I had to vote I would rather just say we scrap it,  
18 than to come out with the old.

19 But I would much prefer that we have this  
20 mini hearing, conditioned upon again in our time flow  
21 chart, that we have deadlines as to when we expect a  
22 hearing, expect the report to be finished. It seems  
23 to me that staff, and I used to be chief judge for  
24 Pennsylvania, New Jersey, Delaware and the Virgin  
25 Islands. The one thing I could never do with staff is

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1 say we've got to get all these projects finished.

2 They have got to know a deadline. We've  
3 got to know that it is workable. So that I'm coming  
4 back to the same thing.

5 My vote would be do the mini hearing. Set  
6 hypothetically the staff's recommendation as to when  
7 it would be, and also when the report would be  
8 finished. If you don't do that, I'd just say scrap it  
9 all.

10 CHAIRPERSON BERRY: I would agree with  
11 that. I would ask the Staff Director if she would let  
12 the General Counsel come forward so we can ask her her  
13 views about the timing on all this.

14 COMMISSIONER REDENBAUGH: Madam Chairman?

15 CHAIRPERSON BERRY: Yes.

16 COMMISSIONER REDENBAUGH: I do have to  
17 leave the call now.

18 CHAIRPERSON BERRY: Okay.

19 COMMISSIONER REDENBAUGH: Thank you very  
20 much for elevating this in the agenda. I want to  
21 concur with Judge Higginbotham. I am not convinced  
22 yet, the staff has not indicated to me that we need a  
23 mini hearing to complete or to write a report. But I  
24 think -- I certainly agree with the opinion that it's  
25 way too long between the event and the report. We

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1 need to either complete these or abandon them.

2 CHAIRPERSON BERRY: Okay.

3 COMMISSIONER REDENBAUGH: Thank you very  
4 much.

5 CHAIRPERSON BERRY: Thank you.

6 Would you ask the General Counsel to --

7 MS. MATHEWS: Yes. General Counsel?

8 CHAIRPERSON BERRY: General Counsel, Ms.  
9 Moore, in view of the comments that have been made,  
10 you explained to us at an earlier meeting why the  
11 staff thought there ought to be a mini hearing because  
12 of gaps in the record. You told us that staff had  
13 been working on it before you became General Counsel,  
14 trying to write the report. Is that correct?

15 MS. MOORE: Yes, Madam Chair.

16 CHAIRPERSON BERRY: The staff found gaps  
17 in it and was having trouble completing it. On your  
18 watch -- in view of the comments of Commissioner  
19 Anderson and Commissioner Higginbotham and  
20 Commissioner Redenbaugh, if the Commission were to  
21 agree, which we have not done yet, to hold a mini  
22 hearing --

23 A mini hearing for those of you who  
24 haven't been here, just means that two Commissioners  
25 can go instead of the whole Commission. Everybody can

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1 go if they want to, but if you can find the time, that  
2 at least two Commissioners can go so long as they are  
3 not from the same political party. You can hold the  
4 hearing anyway. That's why we call it a mini hearing.

5 It is less expensive, because everybody  
6 doesn't have to go, although others can go if they  
7 want to. In terms of people's schedules and their  
8 time, it is easier to work out. If we have a defined  
9 purpose, a very clear purpose, and we send people  
10 there.

11 What do you think about the possibility if  
12 the Commission were to agree, well even if we don't  
13 agree, what do you think of the possibility of getting  
14 this Los Angeles report done in some kind of time  
15 table that is expeditious, if we were to update it or  
16 agree to let the staff go out and update it with a  
17 couple of Commissioners?

18 MS. MOORE: Well, if I can approach the  
19 question this way. There were two separate  
20 recommendations with respect to updating the Los  
21 Angeles hearing report. One emanated from the staff.  
22 One emanated from the Commission.

23 Our recommendation here follows up on the  
24 discussion that the Commission itself had with respect  
25 to the Mark Fuhrman tapes and the ongoing events

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1 around police brutality.

2 So we were not re-raising the  
3 recommendation that we had made earlier in 1994 with  
4 respect to the other three provisions that were  
5 developed in the Los Angeles hearing. That was the  
6 economic opportunities, media and police. So we have  
7 only -- this recommendation was only meant to follow  
8 up on the Commission's own discussion with respect to  
9 the police.

10 CHAIRPERSON BERRY: All right. So what  
11 would you do in the -- in other words, when we discuss  
12 this as a Commission now, I remember that you reminded  
13 me, we talked about the Fuhrman tapes and OJ Simpson  
14 and all the things that have happened. So you are  
15 saying, the staff is saying that if we want the report  
16 to be updated in the areas of police community  
17 relations and other issues, then you'd have to go send  
18 somebody out to get the information to update it?

19 MS. MOORE: Right.

20 CHAIRPERSON BERRY: In the absence of  
21 that, how would the staff go about finishing this  
22 report?

23 MS. MOORE: The staff will complete the  
24 report on the record already compiled.

25 CHAIRPERSON BERRY: With the gaps that you

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1 had found before?

2 MS. MOORE: Exactly.

3 CHAIRPERSON BERRY: But you would follow  
4 the Commission's instructions and simply complete it?

5 MS. MOORE: Right.

6 CHAIRPERSON BERRY: Okay.

7 MS. MOORE: We would and could do that.

8 CHAIRPERSON BERRY: In this fiscal year?

9 MS. MOORE: Yes. We could accomplish that  
10 in this fiscal year.

11 CHAIRPERSON BERRY: So it is up to us as  
12 to whether we want to reiterate that the staff should  
13 finish the report with the gaps you acknowledged and  
14 discussed with us, without attention to the things  
15 that have happened in Los Angeles since 1993 or  
16 whether we want you to update the report so that we do  
17 give attention to the things that have happened since  
18 1993 and finish the report. Is that the way I should  
19 frame the question?

20 MS. MOORE: Yes. Just another point of  
21 information. I'd also note that at the time the  
22 Commission, which did precede my tenure, was in LA,  
23 the results and the recommendations of the Christopher  
24 and Colts Commissions had not yet been implemented.  
25 Those have now been implemented. For us to write a

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1 report without any follow-up on those commissions I  
2 think again, I guess echoing the words of the good  
3 judge, would be unwise.

4 VICE CHAIRPERSON REYNOSO: If we have a  
5 mini hearing to update, and we put the highest  
6 priority on it, which would be my own inclination so  
7 that the hearing could take place quickly and so on,  
8 can you provide for us by the next meeting a time line  
9 about like when the hearing could take place, by when  
10 the report could be done?

11 MS. MOORE: Sure, but just a general  
12 comment. I mean I think everything is going to depend  
13 on what is decided overall here. We have in OGC, two  
14 hearings that were cancelled last year. If I could  
15 just in terms of ADA, remind the Commission when we  
16 talk about fiscal 1997, we are only talking about a  
17 matter of six months from now. So the deferral for  
18 ADA to October, really as early as October of this  
19 year, contemplates taking or following through with  
20 the affirmative action and the Mississippi Delta  
21 hearings in the time period in between.

22 We only have a staff of 13 lawyers here.  
23 So those are the dilemmas that we are dealing with.  
24 But we could indeed give you a timeflow chart after  
25 the Commission has considered all of these projects,

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1 and come up with reasonable deadlines.

2 CHAIRPERSON BERRY: So in other words,  
3 after you hear the rest of our discussion on the  
4 hearings which are listed here, you would be able to  
5 give us a flow chart telling us how this would all  
6 work out?

7 MS. MOORE: Yes, Madam Chair.

8 CHAIRPERSON BERRY: Okay. You really  
9 clarified one thing for me. This report,  
10 recommendation on the mini hearing is not to repeat  
11 the recommendation that failed before. It is to say  
12 that if you want us to update since 1993, then we need  
13 to go back to do it. That makes sense. I mean I  
14 understand it now, the sense of the recommendation.

15 MS. MOORE: Of course it would be our  
16 desire to update the full record, but because the more  
17 favorable discussion within the Commission was held  
18 around the police issues, we have narrowed our  
19 recommendation to that.

20 COMMISSIONER HIGGINBOTHAM: May I make a  
21 suggestion to your superb, our superb General Counsel?  
22 It would be very helpful to me when we got our next  
23 report, that we had a categorization of the  
24 significant documents which have been filed subsequent  
25 to the visit to Los Angeles. The Christopher report,

1 the follow-up on that. There's a whole substantial  
2 comment. Therefore, it would help us in assessing how  
3 much you want to go in.

4 I would hope, I would hope that we would  
5 have the broadest picture and not get caught, and I  
6 know that the General Counsel would never fall in this  
7 trap, of what I believe is the OJ Simpson syndrome.  
8 That case has received enough publicity for public  
9 information that the Civil Rights Commission has no  
10 need to enlighten the American public on that issue.

11 But the whole issue of police conduct,  
12 exclusive of the O.J. Simpson case. I mean the Furman  
13 testimony is significant, I submit respectfully, not  
14 as to what happened in the O.J. Simpson case. And I  
15 had to vote right now, I would vote against  
16 considering the O.J. Simpson case per se, but looking  
17 at police conduct in toto.

18 CHAIRPERSON BERRY: So could you -- yes,  
19 Commissioner Anderson?

20 COMMISSIONER ANDERSON: The difficulty  
21 that I see that we have here is we're pushing these  
22 decisions into April which is now going to give us  
23 five months and we're not going to do anything in  
24 August, so that gives us four months. The balance  
25 here is, it's hard to make decisions without the kind

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1 of outlay that you've described. On the other hand,  
2 I think in my own mind I'm coming to the conclusion  
3 that we ought to prioritize just a couple priorities,  
4 that is, getting the statutory report out this year,  
5 getting the L.A. report out this year, doing the LA.  
6 mini-hearing and doing one other hearing.

7 CHAIRPERSON BERRY: Right.

8 COMMISSIONER ANDERSON: And seeing whether  
9 today we can come to some consensus, if that's do-able  
10 within the four working months or five working months  
11 that we have. If that's so, then maybe that ought to  
12 be built into the April analysis, so that at least  
13 between now and April we're not -- we've got the  
14 direction we're going into, in terms of goals and  
15 objectives that we think we can fulfill. Now what  
16 that does to the ADA and other things, maybe we can  
17 assess them in April, but it seems to me we ought to  
18 identify key priorities today and move forward.

19 CHAIRPERSON BERRY: Why don't you list  
20 those again, please, if you remember what you just  
21 said?

22 COMMISSIONER ANDERSON: The statutory  
23 report that we're looking at in terms of equal  
24 education opportunity, the L.A. report of the mini-  
25 hearing --

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1 CHAIRPERSON BERRY: And then another one.

2 COMMISSIONER ANDERSON: One additional  
3 hearing whichever is --

4 CHAIRPERSON BERRY: Would you be willing  
5 to accept as one additional one finishing the  
6 Mississippi Delta, because that -- if we finish  
7 Mississippi Delta, we will be through with the racial  
8 -- am I right? Am I counting right? The whole racial  
9 tensions project will be finished.

10 COMMISSIONER ANDERSON: I think we ought  
11 to do that.

12 CHAIRPERSON BERRY: And then we'll be able  
13 to say we finished that.

14 COMMISSIONER ANDERSON: Yes.

15 CHAIRPERSON BERRY: So if we could somehow  
16 do those this year, I think we would be -- I mean, we  
17 could then move on. I mean, bring some kind of  
18 closure in doing these racial tensions hearings.

19 Yes, go ahead.

20 VICE CHAIRPERSON REYNOSO: Just as a  
21 reminder that I know that the General Counsel has  
22 already been working on the statutory report for '97,  
23 so --

24 CHAIRPERSON BERRY: OCRE.

25 VICE CHAIRPERSON REYNOSO: So that in

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1 telling us how far the resources will go, it seems to  
2 me all that they're doing should be input. Frankly,  
3 I'd be very pleased if this year we could do those  
4 three things.

5 CHAIRPERSON BERRY: So could we -- I think  
6 you're right, Commissioner Anderson. If we wait until  
7 next month to decide that we're going to do at least  
8 these things, then we're just pushing off decisions  
9 and we won't be able to plan. So if we feel, if  
10 there's consensus among us at least, that we want to  
11 do those things, why don't we agree to do them and  
12 have the staff come back and give us the time lines  
13 and build it into the rest of the project decisions as  
14 we go along and continue to discuss them. Unless  
15 somebody sees something wrong with that, at least  
16 we'll know what we're doing.

17 VICE CHAIRPERSON REYNOSO: I guess the  
18 only problem that I have is that Russell left us  
19 thinking that we wouldn't make any decisions. I feel  
20 a little bit uncomfortable about that.

21 COMMISSIONER ANDERSON: Could I -- could  
22 we, what I'd like to see us do is do the framework  
23 that has been suggested with those four priorities as  
24 the key priorities and then we can see at the next  
25 meeting what that does to, say, the ADA report and

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1 other things and then we can come to a final  
2 conclusion at that meeting.

3 VICE CHAIRPERSON REYNOSO: Okay.

4 COMMISSIONER ANDERSON: That we want to go  
5 ahead and do it this way or we want to amend it  
6 because we do want to do the ADA or we want to put  
7 something else into it, but not take a final cut  
8 today, just give sort of a guidance as to how we  
9 prepare the final decision document for the next  
10 meeting.

11 CHAIRPERSON BERRY: So that the staff will  
12 know as far as the consensus around this table is  
13 concerned, there's a sense that the statutory report,  
14 the L.A. mini-hearing to update and Mississippi Delta  
15 to finish out the racial tensions projects seem to be  
16 priorities for at least those of us sitting at the  
17 table as they build what they're going to present to  
18 us and what we're going to decide at the next meeting.

19 COMMISSIONER ANDERSON: And what that does  
20 to everything else.

21 CHAIRPERSON BERRY: Everything else that's  
22 here.

23 COMMISSIONER ANDERSON: Then we can make  
24 a final cut.

25 CHAIRPERSON BERRY: Okay, all right.

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1 Commissioner George?

2 COMMISSIONER GEORGE: I agree with  
3 everything except I'm still not certain that I'm for  
4 the mini-hearing.

5 CHAIRPERSON BERRY: Okay.

6 COMMISSIONER GEORGE: So what I think I'd  
7 like to do if I understood the General Counsel Moore  
8 correctly on this, is as to the scope of the proposed  
9 mini-hearing. If she could prepare for us a brief  
10 statement of precisely what we were going after in  
11 relation to police conduct, the police conduct issue  
12 and that it would be limited to the police conduct  
13 issue in a mini-hearing. In other words, if I was  
14 satisfied about the scope, a very do-able scope in a  
15 mini-hearing, one that would not be inappropriate for  
16 us to do it with only a couple of Commissioners there  
17 without broader representation of the Commissioners,  
18 then I think I would comfortable with it. So if that  
19 could be prepared, I'd be happy to go forward.

20 CHAIRPERSON BERRY: Now Commissioner  
21 George, keep in mind when we say "mini-hearing" that  
22 doesn't preclude the participation of other  
23 Commissioners.

24 COMMISSIONER GEORGE: I understand.

25 CHAIRPERSON BERRY: We only say that so

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1 that if it turns out that there are two Commissioners  
2 and other Commissioners either don't want to come or  
3 something, so we can facilitate having a hearing. So  
4 we're not saying other people can't participate. Just  
5 keep that in mind.

6 COMMISSIONER GEORGE: I do understand.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER GEORGE: But it doesn't move  
9 me from my --

10 CHAIRPERSON BERRY: All right, I  
11 understand. And this doesn't change the formulation  
12 that Commissioner Anderson made that everyone seems to  
13 agree with because if we decided not to do a mini-  
14 hearing, we still would be finishing the L.A. report  
15 as part of the series of things we're trying to  
16 finish. We just wouldn't be doing a mini-hearing and  
17 we wouldn't be doing any update and we'd be finishing  
18 in whatever way we could finish it, but the commitment  
19 is to try to finish these things this year. That's  
20 the sense of what we're talking about here.

21 COMMISSIONER GEORGE: I agree with that.

22 CHAIRPERSON BERRY: All right, okay. Now  
23 at that we need to discuss the New York hearing  
24 report. Why don't you just sit there for a minute,  
25 General Counsel, because these are all hearing things

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1 in case anybody wants to ask you anything.

2 The New York hearing report, the  
3 Commission staff is just simply recommending that we  
4 finish it which sounds like a good idea, if we see how  
5 it fits in with everything else.

6 The Affirmative Action hearing, now we  
7 have here an issue. I guess we'd have to see how that  
8 fits in with our plans to finish Mississippi Delta and  
9 the rest of the things that we want to do.

10 Does anybody have any particular  
11 expression that they'd like to make right now, a sense  
12 of it? Yes.

13 COMMISSIONER ANDERSON: Could I just ask  
14 for a status? Is there going to be a referendum  
15 initiative in California?

16 VICE CHAIRPERSON REYNOSO: Yes.

17 COMMISSIONER ANDERSON: On it this fall?

18 VICE CHAIRPERSON REYNOSO: The report is  
19 that it's on the ballot for November, the CCRI.

20 COMMISSIONER ANDERSON: Okay.

21 CHAIRPERSON BERRY: Which means we could  
22 do it in the next -- well, I don't know what we should  
23 do. Let's think about it because we could defer it  
24 until -- since we haven't done it, if we decide to do  
25 the others and we don't have time, we could do it

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1 later. Or we could do it now. I don't know.

2 COMMISSIONER GEORGE: I had been  
3 enthusiastic about doing this, in part, because it's  
4 such an important issue and, in part, because I  
5 thought we would have such a rollicking good time and  
6 get in a real knock down drag out when we -- there  
7 aren't any personalities, it was really on the issues.

8 (Laughter.)

9 Now in light of the press of other  
10 concerns, I'm not sure that we should. On the other  
11 hand, some work has been done on this already. So  
12 let's just see how it fits into the larger picture and  
13 prioritize things.

14 CHAIRPERSON BERRY: I agree with you. At  
15 the time it sounded like a lot of fun.

16 COMMISSIONER GEORGE: We were going to  
17 have a lot of fun.

18 CHAIRPERSON BERRY: But now it's sort of  
19 like well, I don't know. We can talk about it some  
20 more.

21 There was somebody over here.

22 COMMISSIONER HIGGINBOTHAM: I can't quote  
23 Aristotle, but I can quote the English poet who said,  
24 "I live in a sea of words where the nouns and the  
25 adjectives flow, where the verbs speak of action which

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1 never take place and the sentences come and go." That  
2 is a real description of where we've been.

3 My instincts are that if we can't do the  
4 other things in the next few months, there are a lot  
5 of risks in starting up affirmative action which is  
6 such a comprehensive, such a controversial that I  
7 would hope that when we decide to go into affirmative  
8 action, that we're really ready to give it a probing  
9 analysis, just the way the Civil Rights Commission  
10 went into Mississippi in 1963, '62, and they changed  
11 the whole climate.

12 CHAIRPERSON BERRY: Spent six months  
13 there.

14 COMMISSIONER HIGGINBOTHAM: I think this  
15 Affirmative Action hearing is more a headline than  
16 depth in terms of the staff. We've got a great staff,  
17 but I don't see how much they can carry on their back.

18 CHAIRPERSON BERRY: Maybe we need to do --  
19 we can think about all this, but maybe what would be  
20 better at this point, it may be more fun, Mr. George,  
21 is to after they do the California whatever, to have  
22 a whole series of things, not just one or two days,  
23 discussions about what we do now.

24 COMMISSIONER GEORGE: That's a good point.

25 CHAIRPERSON BERRY: That's more exciting

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1 at this point, I mean.

2 COMMISSIONER GEORGE: That's right. Yeah.  
3 This is going to be an area where we're going to find  
4 we have a lot of common ends even if we differ as to  
5 means and as the situation clarifies politically with  
6 the focus on those ends we can make some constructive  
7 contribution to this thing.

8 CHAIRPERSON BERRY: And then the staff  
9 work, whatever they've done, some of those same people  
10 could be involved there.

11 Why don't we -- what we're doing here is  
12 just giving the staff a sense of what we're thinking.

13 COMMISSIONER GEORGE: Good.

14 CHAIRPERSON BERRY: Let's look at the  
15 Miami -- the Miami hearing report is being written.  
16 Is that right?

17 MS. MOORE: Yes.

18 CHAIRPERSON BERRY: You wanted to say  
19 something?

20 VICE CHAIRPERSON REYNOSO: No, no. In  
21 fact, should I mention that we went over the New York  
22 hearing report too quickly and the Miami hearing  
23 report. Again, these hearings took place and I'd  
24 rather have OGC put priority on finishing what we've  
25 done and preparing for new hearings. I'd very much

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1 would like to get a sense of the General Counsel where  
2 they are or how much preparing for a new hearing, even  
3 the Mississippi hearing would interfere with getting  
4 these out because it just seems to me once we have a  
5 hearing, the highest priority ought to be in getting  
6 those reports out. That's just my own view.

7 CHAIRPERSON BERRY: Okay.

8 MS. MOORE: Well, Vice Chair Reynoso, the  
9 staff has been concentrating since the cancellation of  
10 the last two hearings exclusively on the production of  
11 these reports and we have gone -- I think we've made  
12 substantial progress on the Miami hearing report,  
13 additional work is still being conducted on the  
14 volumes of documents we received from the New York  
15 documents hearing in July of last year. So the  
16 analysis of those documents is on-going, but I do  
17 think that we've made substantial progress and that  
18 those two can be completed this year.

19 CHAIRPERSON BERRY: So we expect to have  
20 them this fiscal year?

21 MS. MOORE: Yes.

22 CHAIRPERSON BERRY: That's great.

23 VICE CHAIRPERSON REYNOSO: Both of them?

24 MS. MOORE: Both of them.

25 VICE CHAIRPERSON REYNOSO: Great.

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1 MS. MOORE: We have the process that a  
2 draft will be produced within this fiscal year,  
3 whether it has made its way up to the Commission based  
4 on the milestone charts is another issue.

5 CHAIRPERSON BERRY: But the OGC will  
6 finish it?

7 MS. MOORE: Yes.

8 CHAIRPERSON BERRY: That's good. That's  
9 real good to hear. Miami is being written.  
10 Mississippi Delta, we just discussed and we've talked  
11 about putting, doing some time lines on that, of  
12 course, and discuss it at the next meeting and  
13 indicated what our priorities are.

14 And then we would have a summary of the  
15 racial and ethnic tensions once we finish all the  
16 hearings and all the reports and so that would be in  
17 FY 1997 because even if we do all these hearings, we'd  
18 have to write the report, so that, I think, would be,  
19 make sense.

20 Then we have the technological change and  
21 job opportunities. Staff points out that that  
22 proposal it sounds like the implications for civil  
23 rights and global economic demographic technological  
24 change which is something that we discussed, which  
25 seems to cover the same topic and so the idea is that

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1 we would do that in 1997, the second one.

2 Does anyone have any comments about that?

3 As I go along, if you have comments about  
4 any of them that you want to share with the staff,  
5 please do.

6 Schools and religion. The proposal is to  
7 delay it until 1997 and then we change it from five  
8 mini-hearings to a smaller number.

9 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
10 just have an inquiry. How many months does 1997 have?

11 (Laughter.)

12 CHAIRPERSON BERRY: Good question. Not  
13 enough. Does anyone -- I think Commissioner Horner  
14 proposed this, but I'm not sure.

15 COMMISSIONER GEORGE: If I didn't propose  
16 it, I'm a strong supporter of it. I don't mind the  
17 delay. I think it's necessary in view of the other  
18 priorities, as the Staff Director composes the flow  
19 charts. But I would need to be talked into --  
20 reducing the number of the mini-hearings for reasons  
21 I'd be happy to go into, if you want me to go into  
22 more detail. I really want to get a cross section and  
23 a significant sampling of things here, so I'm going to  
24 be inclined when we do into more substance to make the  
25 case strongly for retaining the scope and the number

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1 of the mini-hearings, but I don't mind the delay.

2 CHAIRPERSON BERRY: Okay, so the staff  
3 should keep that in mind as they do the flow charts.  
4 That's why these comments are useful.

5 Financial aid for higher education for FY  
6 1997, too, because of the issues, many of you have  
7 children going to college and know something about  
8 financial aid or some day you will have children going  
9 to college. Anybody have any comments about this  
10 proposal or shall we -- the staff will just work that  
11 in and see how it fits in?

12 COMMISSIONER GEORGE: Can we advocate  
13 financial aid for professors and not just for  
14 students?

15 (Laughter.)

16 CHAIRPERSON BERRY: Professors.

17 COMMISSIONER GEORGE: It says "higher  
18 education." The money always goes to the students.

19 CHAIRPERSON BERRY: Yeah, right. Why do  
20 we need the students anyway?

21 (Laughter.)

22 Universities would be much better. I  
23 didn't say that. Charlie, tell the press that I  
24 didn't say that.

25 (Laughter.)

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1 Voting rights --

2 COMMISSIONER LEE: Excuse me, Madam Chair?

3 CHAIRPERSON BERRY: Yes.

4 COMMISSIONER LEE: I have a question. Now  
5 what if the -- can we combine the financial aid for  
6 higher education with the expanded economic  
7 opportunity?

8 CHAIRPERSON BERRY: Where is that?

9 COMMISSIONER LEE: Earlier.

10 CHAIRPERSON BERRY: The one over on --

11 COMMISSIONER LEE: Yeah. Is it possible  
12 to combine that instead of having two reports?

13 CHAIRPERSON BERRY: Yes, go ahead.

14 MS. MOORE: Madam Chair, we had not  
15 considered that, Commissioner Lee. We had, however,  
16 considered the relationship between the financial aid  
17 for higher education project and the affirmative  
18 action project. But we have not considered that. I'm  
19 sure the staff can take a look at that relationship of  
20 those two projects as developed in the concepts.

21 CHAIRPERSON BERRY: So it would be OGC and  
22 OCRE together? So Staff Director, maybe you could  
23 rework this and see if they would fit together somehow  
24 and have that as an option that you could look at.

25 VICE CHAIRPERSON REYNOSO: That's not a

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1 bad idea because some will go to college and some  
2 won't.

3 COMMISSIONER LEE: Right. It's an  
4 interesting proposition and yes, we can definitely  
5 rework this and combine.

6 CHAIRPERSON BERRY: Environmental justice,  
7 they ask that it be postponed. I don't have any  
8 problem with that. I don't know if anybody else does.

9 Then the rest of this is -- did I skip  
10 voting rights? Well, voting rights. Does anyone have  
11 any particular comments about voting rights that the  
12 staff would find useful?

13 VICE CHAIRPERSON REYNOSO: Well, again,  
14 the issue of what effect motor voter bill has had on  
15 increases of registration, whether that increase in  
16 registration meant an increase in voting. It's really  
17 quite crucial, but again, it's a matter of priorities.  
18 I can't say that it's more crucial in getting done  
19 reports on hearings we already have, for example.

20 CHAIRPERSON BERRY: And I think that that  
21 should be -- we might consider consolidating the  
22 project for 1997 on motor voter with voting rights in  
23 general.

24 VICE CHAIRPERSON REYNOSO: Yes.

25 MS. MOORE: Because this was a majority

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1 minority district.

2 CHAIRPERSON BERRY: Right. But we could  
3 consider, the staff could consider consolidating the  
4 two voting rights projects under the rubric of voting  
5 rights. I don't know conceptually how that would  
6 work, but you can consider.

7 COMMISSIONER GEORGE: It doesn't sound  
8 promising to me. They seem such different subjects.

9 CHAIRPERSON BERRY: Yeah.

10 VICE CHAIRPERSON REYNOSO: Well, it does  
11 have to do, I think, with participatory democracy.

12 COMMISSIONER GEORGE: Does it really save  
13 any time to do it that way? Are we getting any value  
14 out of combining these two?

15 CHAIRPERSON BERRY: I don't know.

16 COMMISSIONER GEORGE: If we're not, they  
17 really do seem to be distinct, especially the majority  
18 minority issue. It seems to me that stands on its own  
19 feet. It's a real interesting controversy.

20 CHAIRPERSON BERRY: I think you are  
21 philosophically and logically correct. A political  
22 philosopher.

23 (Laughter.)

24 We might, I guess, Commissioner George, on  
25 reflection, that's probably why he thinks the two of

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1 these don't go together.

2 COMMISSIONER HIGGINBOTHAM: Can you please  
3 help me? What is the voting rights project?

4 CHAIRPERSON BERRY: Majority minority  
5 districts remedies.

6 COMMISSIONER HIGGINBOTHAM: Only?

7 CHAIRPERSON BERRY: Right, that's what  
8 that is.

9 COMMISSIONER HIGGINBOTHAM: Okay.

10 CHAIRPERSON BERRY: Now the motor voter  
11 though, it seems to me that would be a monitoring  
12 project as well as a legal project, because it's being  
13 implemented, isn't it?

14 MS. MATHEWS: Yes.

15 MS. MOORE: Yes.

16 CHAIRPERSON BERRY: So the question is  
17 what happens when it's implemented? So that's not  
18 just a legal -- or it's OGC because it would be  
19 hearings. Is that the idea?

20 MS. MOORE: Right.

21 CHAIRPERSON BERRY: Okay. But there might  
22 also be research evaluation, so you might consider  
23 whether OCRE has a role to play in that.

24 Now under the -- for the purposes of --

25 COMMISSIONER HIGGINBOTHAM: Madam Chair,

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1 if I can just intervene since we've left voting  
2 rights. Justice Frankfurter used to say "I can define  
3 the term. I can guarantee the answer." You can frame  
4 this voting issue as a majority minority district or  
5 you can frame it pluralism and depending on what lens  
6 you look at it, you may very well come out quite  
7 differently. You've had majority minority districts  
8 in this country from 190 -- I mean you've had no  
9 majority minority districts from 1901 to 1929 and the  
10 real question was pluralism then. It may very well be  
11 now.

12 What I would hope when we categorize it,  
13 that we be very, very careful to not buy in on some of  
14 the buzz words and whether we use the term majority  
15 minority or whether we use the term "pluralism" or  
16 whether we combine them, I think it's important  
17 because the moment you use majority minority district,  
18 you have accepted a certain political culture and I  
19 think I should say just for the record that I'm Chief  
20 Counsel in Shreveport, Louisiana so I wanted to make  
21 that disclosure, but I think we should watch our  
22 definition.

23 CHAIRPERSON BERRY: Okay, and what would  
24 have been helpful for those of you who are new is to  
25 have given you the project descriptions.

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1 COMMISSIONER HIGGINBOTHAM: Okay.

2 CHAIRPERSON BERRY: Because we have them  
3 whether we sent them for this meeting or not, but we  
4 had them before when we voted on it and you don't --  
5 all you have is this sheet with these little  
6 paragraphs which is very difficult to figure out, but  
7 what the heck are we talking about here. So that  
8 would be helpful to you and next time I think people  
9 should have the project proposals as well as the flow  
10 charts and take under advisement the comments.

11 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
12 just want to underscore, Commissioner Higginbotham  
13 said from the point of view that in talking about  
14 maybe combining the two disparate issues, I was  
15 thinking more in terms of just does this enhance or  
16 not enhance a Republican form of government and so one  
17 can phrase the issue in different ways. I framed it  
18 as a participatory democracy and I just want to agree  
19 that how these issues are framed or who we start  
20 thinking about it is important.

21 CHAIRPERSON BERRY: Okay. Now this list  
22 of things we have under 1997, we have already  
23 discussed the ones that are on the first page. On the  
24 second page, we have already discussed the first four.  
25 The one we haven't discussed is the crisis of young

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1 African-American males in the inner cities. And the  
2 project calls for deference until 1998. I'm sure that  
3 the crisis of young African-American males in the  
4 inner cities will not be ended by 1998, unfortunately.  
5 So that this is a long standing problem.

6 COMMISSIONER GEORGE: I can't find it,  
7 Madam Chairman. What page?

8 CHAIRPERSON BERRY: Page 5 in the middle  
9 of the page. Right before the -- oh no, the crease is  
10 in mine. I had it folded. It was before  
11 environmental justice. Do you see that?

12 COMMISSIONER GEORGE: Yeah, I see it. I  
13 take your point, but it's the depth of the crisis that  
14 -- and the urgency of it. When I hear these  
15 statistics about the number of young African-American  
16 males in jail or in the criminal justice system, I  
17 mean this says to me just how horrible the situation  
18 is and at least from my point of view as we're  
19 prioritizing these things, I would probably put that  
20 one higher up than some of the ones that we've been  
21 discussing on the list here, just because of its  
22 urgency. I am very uncertain about what everybody can  
23 come forward with as far as concrete proposals to do  
24 something about this, but my goodness, if there are  
25 people we ought to hear from them about this and if

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1 there's any contribution we can make, I think we need  
2 to be doing it.

3 I'm not all that comfortable with putting  
4 it off to 1998. I think I would put it over some  
5 other things, but then you have a right to have me  
6 tell you what other things I would put it over.

7 CHAIRPERSON BERRY: I -- actually, if I  
8 were doing it personally, I would put it in my own  
9 personal ranking after the things that Carl was  
10 summarizing that we need to finish because we're doing  
11 them and we need to finish them. I would put it  
12 somewhere in that next group.

13 MS. MATHEWS: If I might add something,  
14 Madam Chair?

15 CHAIRPERSON BERRY: Yes.

16 MS. MATHEWS: Just to clarify the nature  
17 of this project, it calls for five hearings in five  
18 different cities. The report would cover a period of  
19 about five years, so I just wanted to clarify that  
20 this is a very large project.

21 COMMISSIONER GEORGE: A big undertaking.

22 MS. MATHEWS: Right.

23 CHAIRPERSON BERRY: But we might be able  
24 to begin it.

25 MS. MATHEWS: Yes.

1 CHAIRPERSON BERRY: In '97.

2 MS. MATHEWS: Right.

3 CHAIRPERSON BERRY: And have one of the  
4 hearings or at least start it or do something or have  
5 an overview of it here or have a briefing or do  
6 something.

7 COMMISSIONER GEORGE: I'd like to hear if  
8 there are other Commissioners who have anything to say  
9 about it.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER GEORGE: Maybe this isn't the  
12 hearing that we can really do anything about. It's a  
13 problem that's terrible, but maybe we don't have a  
14 contribution to make here, but if we do, I'd like to  
15 make it.

16 COMMISSIONER HIGGINBOTHAM: Well, I think  
17 it's a profound problem and I will just join in the  
18 chorus of saying it's a problem, that that's a  
19 positive contribution, but I am a little worried about  
20 how much we can do well. In the long run, I think  
21 this Commission's credibility is not going to be the  
22 number of press releases we can have, but how many  
23 qualitative reports we gave which made a difference.

24 What I would be delighted to see in the  
25 time flow, I'm willing to look at four options. If

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1 someone wants to put this young African-American on,  
2 then it means we take something else out and that's  
3 what I think we have to do because otherwise we're  
4 being foolishly authoritative, talking to a staff  
5 which is a fixed number and acting as if we've got a  
6 two horse stagecoach and assuming you've got six. Or  
7 you've got two jets and assuming you've got eight  
8 jets, whatever level we're at. I think it's a fair  
9 comment by Commissioner George, I'm willing to look at  
10 it, but I'm only willing to look at it if we've got  
11 three or four alternatives where the staff can swear  
12 to that if we do these things we can get them done.

13 CHAIRPERSON BERRY: But in addition to  
14 that, I think that we ought to ask the staff to do a  
15 review of the literature on this subject and give us  
16 a paper. Because as you point out, there's a lot of  
17 stuff done and a lot of discussion; review of the  
18 literature not that there's a problem, but state the  
19 problem, but a review of the literature of what people  
20 have proposed.

21 COMMISSIONER GEORGE: I think that's a  
22 terrific idea because on the basis of that we might be  
23 able to judge whether we really do have a contribution  
24 to make.

25 I agree that it would be a contribution

1 just for us to join the chorus because the chorus  
2 isn't loud enough yet. But this might really give us  
3 an idea of what contribution we have to make, if  
4 anything.

5 CHAIRPERSON BERRY: Commissioner Anderson?

6 COMMISSIONER ANDERSON: I strongly  
7 supported this when we initially talked about it. And  
8 I would be willing to move it up. I don't like moving  
9 it back. I don't know whether we should do it over  
10 five years. I think we ought to re-look at the scope  
11 of the project, maybe based on the literature search  
12 paper that it seems to me we're going to get.

13 We do some reports, the recommendations of  
14 which are in my opinion modest in the sense of the  
15 situation is basically or the system is basically  
16 good, but we think we can modify 5 percent or 10  
17 percent at the aegis. My initial impression of this  
18 problem is not that kind of a problem and so unless  
19 we're prepared as a Commission to make some very  
20 serious deep recommendations which I think is what the  
21 crisis calls for, I don't think we ought to venture  
22 into it at all.

23 The other question I have is whether we're  
24 going to learn substantially different things by going  
25 into five or six different cities. I don't know, but

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1 I'm not sure we are. I'd have to be convinced that  
2 the situation is so much different in Washington, New  
3 York, Chicago, Los Angeles, Atlanta, whatever, that we  
4 need to go to five or six different cities and do  
5 those kinds of hearings.

6 I'd like to have a cut as to whether the  
7 crisis is generalized enough that maybe two hearings  
8 is sufficient, but whether we really do see a  
9 variation that we need to do sort of a national kind  
10 of thing. Those are the kind of questions I think we  
11 ought to look at, but I'd be for doing this at a more  
12 accelerated basis given how it affects the other  
13 objectives.

14 CHAIRPERSON BERRY: Vice Chair.

15 VICE CHAIRPERSON REYNOSO: Madam Chair, it  
16 strikes me that we have sort of two types of hearings  
17 in terms of timing. There are the hearings where the  
18 national debate is going on and if we're going to be  
19 of influence, we should do it as quickly as possible.  
20 Then there are these types of hearings, as the ethnic  
21 tension hearings where we really need to go more into  
22 depth and provide to the nation something more than  
23 what was already said and put our own imprimatur on  
24 it.

25 It strikes me that this is the latter type

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1 and we need to balance those two types of hearings as  
2 we go along.

3 COMMISSIONER HIGGINBOTHAM: If I felt that  
4 the General Counsel had nothing to do, this is what I  
5 would have to say right now. I say forget the  
6 hearings throughout the country. Why don't we just  
7 assemble some people here for one day and say is there  
8 anyone here who thinks it's not a crisis? All right.  
9 If everyone agrees it's a crisis, why do we have to  
10 have a hearing? I mean it's a crisis. Now we  
11 therefore put our imprimatur, it's a crisis, on which  
12 lots of people have to focus. Now whether we are the  
13 catalyst for solution or not, we're the catalyst for  
14 saying that this is a crisis and this crisis impacts  
15 on human rights and dignity and all of these things  
16 and then maybe you just close the door and then you  
17 let someone else do it or maybe a congressional  
18 committee.

19 I think that -- let me just give you an  
20 analogy in the federal court because I went on in  
21 1964. I was 35 years old and all my colleagues, most  
22 of them, had sons older than me. When I suggested one  
23 day that we use computers to my seniors, it was  
24 considered to be -- what's this kid doing here? What  
25 you had was a system which wasn't working and the

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1 whole way you solved it was we've always had a  
2 stagecoach, so we used to use four horses and now we  
3 have six. Six is not working. You add two more and  
4 you have eight. Well, you get to the point if you  
5 keep on using a stagecoach, you're never going to get  
6 where you want. You may have to go to a completely  
7 different transportation form.

8 What I'm saying to you just from my  
9 observation, as a neophyte here, there are some things  
10 where we can make an impact without the national  
11 journey. On those things you do it and get it in back  
12 of you.

13 CHAIRPERSON BERRY: Well, it's also the  
14 case that some things we have found we have made  
15 impacts just by having a briefing.

16 MS. MATHEWS: That's right.

17 CHAIRPERSON BERRY: It doesn't involve,  
18 when I say "impact" I mean on public opinion in the  
19 midst of things and we use briefings for that where we  
20 discuss the issue here and it doesn't require the kind  
21 of investment. We don't have fact finding from it and  
22 we can't write reports from it, but in terms of  
23 disseminating ideas, it's an inexpensive way of to do  
24 so.

25 Commissioner Anderson?

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1                   COMMISSIONER ANDERSON: What I see are two  
2 major options which I would support and a middle  
3 option which I don't support. The two options that I  
4 support are either doing what you suggested, that is,  
5 highlight the problem and put our weight behind  
6 highlighting a problem or really setting this as a  
7 course that we really want to do something profound on  
8 and take as the analogy maybe Mississippi in the '60s  
9 because there are many ways this could be that kind of  
10 a response by the Commission.

11                   What I don't want to see us do is put out  
12 another report that sits on the shelf and sort of  
13 makes a moderate kind of addition to the literature  
14 search. That's what I don't think we should do. I  
15 think we should do either a major concentration here  
16 and do something very important nationally. That  
17 doesn't necessarily mean do hearings, or do the sort  
18 of red flare kind of -- more moderate.

19                   CHAIRPERSON BERRY: Uh-huh. Which means  
20 that there's a sense of which if we did the last thing  
21 you pose here, the second option, it might be like six  
22 months in Mississippi, you either concentrate it in  
23 one place and really get at solutions, or you go to  
24 places not because you think the problem is different,  
25 but because you are searching for solutions and you're

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1 highlighting it at the same time. I'm not saying you  
2 should. I'm just trying to think about how you would  
3 go about doing that.

4 Is Mississippi the analogy? Is  
5 Mississippi us staying in one place and going in depth  
6 or are there lots of Mississippi places that you go to  
7 to find out the solution?

8 I think the literature research, with what  
9 solutions have already been proposed, what is  
10 generally out there, even though we read about it in  
11 the paper and hear about it in the news and we see it  
12 and react to it, I think it would be useful as a start  
13 for us to try to figure out what we're doing.

14 But I agree with you. We don't want just  
15 another report so we can say we did a report on the  
16 crisis among African-American males and there it is on  
17 the shelf and move on. I think that's right.

18 Robert, did you?

19 COMMISSIONER GEORGE: I don't know to what  
20 extent -- there are probably aspects to the analogy  
21 with Mississippi holds up, but you know it's just such  
22 a different problem. There's not a clear operational  
23 objective the way desegregation was a clear  
24 operational objective. The good guys and bad guys  
25 aren't so clear. The problem just seems to me it's so

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1 much more complicated and intractable. It's so  
2 difficult to know what to do.

3 It obviously is going to require a lot of  
4 people who are in a position to do something to stand  
5 back from it and take a very sober look and try to  
6 press in from our preordained judgments about the  
7 thing. I guess I just want to hear from a lot of  
8 people who are sort of on the street who are in the  
9 system, in the criminal system, the religious leaders  
10 who are trying to deal in their communities and  
11 churches with trying to deal with the problem. I  
12 guess we really do need to hear a diversity of voices  
13 here and some real hard listening has got to go on  
14 before we can do anything else.

15 I guess it doesn't matter all that much  
16 whether we're here or we're out around the country, as  
17 long as we can get the diversity of voices. Here,  
18 we're not so much representing ideological points of  
19 view. When you have an ideological point of view you  
20 want a diversity of voices so you can sort the thing  
21 out ideologically. Here, you just want to know who is  
22 doing what and what is having some impact, at least.

23 CHAIRPERSON BERRY: Yes.

24 COMMISSIONER LEE: Could we do like  
25 briefings first and then follow-up with a full scale

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1 report. That does not take five years because I do  
2 have problems with lengthy reports. By the time we  
3 finish the report, a whole generation is gone.

4 But if you can do briefings first to  
5 identify certain points of views, so that that gets  
6 all of us acclimated in some way and then follow it up  
7 with a report, that might take just two or three  
8 years.

9 CHAIRPERSON BERRY: Well, what we could do  
10 is put in our list of things to do briefings about  
11 which we do informally as a Commission, that we want  
12 some briefings on this and the staff has heard that  
13 and the literature search and that gives us a start  
14 without having to wait to do anything beyond that and  
15 on any other topic, just for your information, people  
16 may have an interest and we can do the same thing.  
17 That's a very good idea. We can do briefings on this.

18 Okay, staff has heard that. On this page,  
19 on page 6, we discussed the other items on that page.  
20 We discussed ADA, the Department of Justice CRS and  
21 any sense of the priority of this project to do  
22 something about whether CRS, to evaluate the community  
23 relations service? It has been proposed it be merged  
24 and I don't know if those are on-going or was this  
25 just a time sensitive issue that people were concerned

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1 about?

2 Does this project still have viability  
3 even? It says OCRE. If you want to now, General  
4 Counsel, I think we are somewhat finished with you  
5 here at the moment, unless there's something else and  
6 we'll call you back up. Okay? Thank you very much.

7 VICE CHAIRPERSON REYNOSO: We were pleased  
8 to hear you have 103 lawyers working for you.

9 (Laughter.)

10 CHAIRPERSON BERRY: Staff Director, do you  
11 think this project still have viability or is this  
12 just some proposal -- I haven't followed any of this,  
13 I don't know. Is this low - high priority or does  
14 anybody here have any sense of it? I don't.

15 VICE CHAIRPERSON REYNOSO: Well, the  
16 courts have pretty well rejected the challenges, so I  
17 would think that --

18 CHAIRPERSON BERRY: No, no. I talking  
19 about CRS. We've already done the -- I skipped over  
20 motor voter because we already discussed it.

21 VICE CHAIRPERSON REYNOSO: I'm sorry.

22 CHAIRPERSON BERRY: We're on page 6 and  
23 I'm all the way down to community relations service of  
24 DOJ because we already did ADA.

25 Yes, Commissioner Anderson?

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1                   COMMISSIONER ANDERSON: I would think that  
2 this is the kind of issue that comes up in a  
3 transition from one administration to the next, unless  
4 we see that there's some big problem either that we  
5 ought to get rid of it or there's some great flood and  
6 we want to make sure it's capped.

7                   I don't see why fine tuning CRS is  
8 particularly our interest at this point, given the  
9 priorities of some of these other things. But my  
10 memory could be refreshed on that. I don't see it at  
11 the moment.

12                   CHAIRPERSON BERRY: All right, let's go to  
13 fair employment law enforcement. We've already had  
14 that. We discussed that. That's a statutory report  
15 from '97.

16                   Now we have federal employee EEO and  
17 affirmative employment programs to be delayed until  
18 1998 which means that we have plenty of time to  
19 consider what we do when 1998 comes. Does anyone have  
20 any concerns about the delay in this?

21                   Yes?

22                   MS. MATHEWS: I want to interject here a  
23 thought which I would hope the Commissioners would  
24 have in mind since we're now focusing more than we  
25 have been earlier in this discussion on projects for

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1 1998 and the overall objective of our planning  
2 discussion is to end up whether it be at this meeting  
3 or the next meeting with approved projects for 1998 at  
4 the conceptual stage and staff would then flush them  
5 out in more detail and eventually that would become  
6 our proposal to OMB in September for budget requests.

7 I just wanted to highlight that.

8 CHAIRPERSON BERRY: Okay, we'll keep that  
9 in mind. Does anyone have any views about whether we  
10 should jettison, do anything with or anything else  
11 with this EEO affirmative employment program or just  
12 leave it as a 1998 and put priorities on it? Okay.

13 COMMISSIONER GEORGE: What page are you  
14 on?

15 CHAIRPERSON BERRY: I'm on page 6.  
16 Federal civil rights enforcement effort. This is  
17 after OCRE completes the employment law project which  
18 is our 1997 statutory report. They would in 1998 do  
19 a statutory report updating the federal civil rights  
20 enforcement effort.

21 The Commission used to, years and years  
22 ago, when there was money and when there was a  
23 different period, every year do a federal civil rights  
24 enforcement effort report, looking at every federal  
25 level agency that enforced civil rights and updating

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1 what they had done during the year, making  
2 recommendations.

3 We are now doing one statutory report on  
4 one agency a year, given resources and given that the  
5 data base hadn't been kept up to date. As I  
6 understand this project, it would be that now that  
7 we've looked at the agencies around the government  
8 now, we would begin trying to do a comprehensive  
9 assessment again on a timely basis and that that's  
10 what this project is proposed to do anyway and that  
11 would be our statutory report for 1998. Is that  
12 correct?

13 MS. MATHEWS: Yes.

14 CHAIRPERSON BERRY: And after that we will  
15 try to do such a report. Is that basically what this  
16 is about or not? If it's not, then somebody tell me.

17 Okay, Staff Director says yes. Okay,  
18 1998. Now we have credit nationalization. We've  
19 already considered delaying the credit project.  
20 Anybody have any -- and then we have 1998 proposals,  
21 all listed. These are things we just discussed, but  
22 they're now listed as things that would be for the  
23 1998 year. Is that right?

24 MS. MATHEWS: That's right.

25 CHAIRPERSON BERRY: Once you're delayed

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1 and did all of the rest of the things that are in  
2 1996, 1997 as proposals, this is what 1998 would look  
3 like.

4 MS. MATHEWS: That's right.

5 CHAIRPERSON BERRY: I just think what we  
6 ought to do is we've commented on all of these we've  
7 given you our reactions. Wait to see the next piece  
8 we get. Let's go to project concepts at the end. The  
9 first one is on federal block grants. This is for  
10 1998?

11 MS. MATHEWS: Yes.

12 CHAIRPERSON BERRY: These are new project  
13 concepts that the Commission has not considered before  
14 that would be done in 1998. The first one is on block  
15 grants, delivery of services and civil rights  
16 enforcement. This would be a big project for 1998.

17 Does anyone have any general reaction to  
18 block grants in 1998?

19 COMMISSIONER HIGGINBOTHAM: I think it's  
20 absolutely critical because the way the research is  
21 being changed, and there's no safety net on some of  
22 these programs, particularly to children, the debate  
23 goes, as I understand it, "look, the states can do a  
24 better job. I'm taking the social needs. It's the  
25 bureaucrats in Washington. Let's send all the money

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1 down to the states." Now someone has to make an  
2 evaluation. Are the poor kids getting lunch programs?  
3 Are they get health care? What's the implication of  
4 all these? I think looking at federal block grants is  
5 a very high priority.

6 CHAIRPERSON BERRY: Does anyone have any  
7 further comments on the block grant proposal and  
8 whether we should continue to consider it?

9 VICE CHAIRPERSON REYNOSO: Well, I agree  
10 that it's very important and again it's actually on  
11 the political table now, but clearly we won't have the  
12 resources to look at it. It seems to me one thing has  
13 been missing in the debate thus far, as I have heard  
14 it, and that is what is the history of the states and  
15 local governments in protecting children and enforcing  
16 civil rights laws, etc. It seems to me that the past  
17 may not be a bad cause for the future and I think that  
18 whole debate needs to be expanded and I think it would  
19 be a very fruitful endeavor for us. My problem has to  
20 do with priorities, because we've already talked about  
21 priorities.

22 CHAIRPERSON BERRY: Right. If there are  
23 no other comments on this, how about the health care  
24 proposal which is the next one after this project  
25 concept? Access to health care for women and members

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1 of racial and ethnic minority groups and there's all  
2 about the health care disparities in here and that we  
3 would look at this as an issue.

4 Does anyone have any feelings about this  
5 compared to anything else?

6 Yes?

7 COMMISSIONER GEORGE: Madam Chair, it's  
8 actually not about this, but the problem of not having  
9 enough time really to go through these carefully and  
10 think about them and adjust them and think about what  
11 alternatives I might propose and I know other  
12 Commissioners might have things that they might want  
13 to propose, here really kicks in more than it did than  
14 the other one, so I suspect I'm going to want to  
15 contribute to the discussion and debate about these,  
16 but I'm just not equipped right now to -- I have read  
17 them through, but that's all I've done is read them  
18 through.

19 VICE CHAIRPERSON REYNOSO: I want to add  
20 a footnote to this one. It's again important, but  
21 it's a matter of priorities. The footnote I would add  
22 is that there's a unit at UCLA that studies health  
23 among Latinos and Latinas, particularly, and in a  
24 report about a year ago, it's interesting, that even  
25 though the Latino people as a whole are underemployed

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1 and on the lower rungs of the economic ladder, the  
2 report indicated that babies born to Latinas,  
3 particularly immigrant Latinas were among the  
4 healthiest in Los Angeles County and it's just of  
5 interest to me that we might in looking at issues of  
6 health care, looking beyond just some of the figures  
7 that are given here to what really goes to providing  
8 good health. It wasn't just money, at least insofar  
9 as that one unit of health is concerned. It's just  
10 interesting to me that so often poverty and poor baby  
11 nutrition and weight and survivability and all that go  
12 together, but certainly not among Latinas in Los  
13 Angeles County.

14 CHAIRPERSON BERRY: How about the one on  
15 -- does anybody have any comment at present on Project  
16 Concept 3 which has to do with discrimination against  
17 persons with HIV and AIDS as a proposal?

18 If not, then we will defer the discussion  
19 of all this next time and I think we've given about as  
20 much advice as we are able to give.

21 Did I miss something?

22 MS. MATHEWS: Consumer racism.

23 CHAIRPERSON BERRY: Is that Project 4? Oh  
24 yeah, I remember that. Consumer racism. We talked  
25 about having a briefing on consumer racism and then

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1 the snow came or the furlough or something happened  
2 and we never did do it.

3 They now have put here one of the most  
4 important provisions in the Civil Rights Act of 1964  
5 was the public accommodation section. And we talked  
6 about this subject at a meeting, maybe in December and  
7 so the idea is that we would have a project that would  
8 look at the extent of this kind of discrimination. We  
9 might reiterate our request, if we still want to do  
10 that we can have a briefing at some point on this.

11 COMMISSIONER HIGGINBOTHAM: If you have  
12 your briefing, Madam Chair, I'm all for it. You can't  
13 look at merely consumer racism. The data seems to  
14 indicate that the Federal Trade Commission did the  
15 study and indicated a woman goes in to buy an  
16 automobile. She pays -- white or black -- pays  
17 considerably more than the male. So when we see a  
18 problem where there's an across the board pathology,  
19 it's probably helpful if we included so --

20 CHAIRPERSON BERRY: So it would be  
21 consumer racism and sexism. Like women pay more to  
22 have blouses cleaned and ironed than men do to have  
23 shirts cleaned and ironed, even if they're large men  
24 and they're twice as large as I am and their shirt is  
25 larger, I still have to pay more.

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1                   COMMISSIONER HIGGINBOTHAM: I don't know  
2 if we have to go into that.

3                   (Laughter.)

4                   CHAIRPERSON BERRY: Or when I go to the  
5 store to buy athletic shoes and I go in the boys'  
6 section to buy a pair of shoes that will fit me, they  
7 are cheaper than if I go in the women's section to buy  
8 the same pair of shoes. Isn't that interesting?

9                   COMMISSIONER GEORGE: Well, there's an  
10 easy solution to that.

11                  CHAIRPERSON BERRY: Why should I be forced  
12 to go into the boys section. If I go to the mens'  
13 room the line is shorter.

14                  (Laughter.)

15                  In any case, I guess it's not consumer  
16 racism or sexism. I don't know what that is.

17                  In any case, your point is well taken and  
18 staff keep that in mind.

19                  Now could we, having given them this  
20 advice and since we agreed not to actually take votes,  
21 could we go back quickly to the rest of the agenda  
22 unless someone wants to comment?

23                  COMMISSIONER GEORGE: Just one final  
24 point. On Judge Higginbotham's suggestion about the  
25 flow sheets or flow charts, a couple of points about

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1 it, one, if it's possible it would be good to have  
2 those and I realize we're on short time frame because  
3 the next meeting is three weeks away, but if we could  
4 have those in advance of the meeting to review  
5 ourselves, if it's possible.

6 CHAIRPERSON BERRY: We'd like to have  
7 those at least 10 days before the meeting.

8 COMMISSIONER GEORGE: It would be really  
9 terrific.

10 CHAIRPERSON BERRY: As a pronouncement.

11 COMMISSIONER GEORGE: And the other thing  
12 is I'm wondering whether it would be possible or  
13 advisable not to try to do the flow charts all the way  
14 out into 1998, but to do them for now. We know we  
15 have decisions to make down the line through those  
16 1997 possibilities and we'll try to get ourselves some  
17 commitments made. We'll try to get some commitments  
18 made for ourselves, I should say, on those knowing  
19 that we are going to have to make decisions down the  
20 line about '98 and beyond.

21 Does that make sense? Maybe it doesn't.

22 CHAIRPERSON BERRY: Does anyone object?  
23 Does staff object that that be done?

24 MS. MATHEWS: It certainly could be done.

25 COMMISSIONER HIGGINBOTHAM: What's best

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1 for you?

2 MS. MATHEWS: The impact of that though is  
3 just to delay the entire preparation of our internal  
4 collection of information for the budget and my  
5 preference would be not to delay that. It's a very  
6 detailed process that typically gets underway in April  
7 and early May and if we don't have decisions on 1998  
8 concepts in April, then it will just defer all of the  
9 staff work.

10 Typically, the budget requests are due to  
11 OMB September 1 and that, in essence, means the end of  
12 August.

13 CHAIRPERSON BERRY: But when would we make  
14 1998 decisions under your description, Commissioner  
15 George?

16 COMMISSIONER GEORGE: Not at the next  
17 meeting. I'm prepared to make commitments through '97  
18 at the next meeting, but I'm not comfortable yet in  
19 three weeks making commitments that we're going to  
20 hold ourselves to beyond that.

21 CHAIRPERSON BERRY: How about would you be  
22 prepared to do it in May?

23 It seems like we have to turn the budget  
24 in at some point and we need --

25 COMMISSIONER GEORGE: Yeah, and we need to

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1 give the staff enough time to meet that September  
2 deadline.

3 When are the dates of the May and June  
4 meetings?

5 MS. MATHEWS: The May meeting is May 10.  
6 June is June 14th.

7 COMMISSIONER GEORGE: How about a crunch  
8 if we gave ourselves a June deadline, how bad would  
9 the crunch be for you?

10 MS. MATHEWS: Extremely bad.

11 COMMISSIONER GEORGE: We'll do it in May  
12 then.

13 CHAIRPERSON BERRY: By May, at the latest,  
14 even though Commissioner George may find that he has  
15 more time on his hands than otherwise and make up his  
16 mind about 1998 by next month, he may come in and say  
17 well, gee, I really had nothing to do and now I'm  
18 persuaded. Otherwise, in May, by May at the latest,  
19 we would make 1998 decisions and at the next meeting  
20 in April we will make decisions for 1996 and '97.

21 COMMISSIONER HIGGINBOTHAM: Let me try to  
22 sort out at least in my mind, I'm not asking  
23 Commissioner George to make a commitment at all for  
24 that year. What I'm suggesting is if you give us your  
25 views so that if we have it stretched out over these

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1 two or three years, you're saying this is the way it  
2 should go, maybe we will only be deciding for next  
3 year --

4 COMMISSIONER GEORGE: We can put a line  
5 down the flow chart and say well, here's what we're  
6 committing -- here's the menu, 1, 2, 3, 4, 5. We  
7 choose 2 or make some variant of 2 and we choose 2,  
8 but our commitment at this meeting is cuts here at the  
9 '97 projects.

10 CHAIRPERSON BERRY: Yes, is that clear to  
11 you, Staff Director?

12 MS. MATHEWS: Yes. That's clear to me.

13 CHAIRPERSON BERRY: It's not clear to me,  
14 but that's fine.

15 Commissioner Anderson?

16 COMMISSIONER ANDERSON: In looking at the  
17 project concept papers for '98, the question arises  
18 for me on the crisis of young African-American males  
19 project. Now my view at present is that we ought to  
20 accelerate that and therefore start it in '97 and try  
21 to get a lot done on it. If we're going to do it in  
22 '98, I wonder if we shouldn't have some kind of a  
23 project concept incorporating that kind of a proposal,  
24 if that's what we're doing because certainly if we're  
25 going to take that project and do it seriously is a

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1 substantial one and move into it in '98 in a big way.  
2 It's going to impact on some of the other ones and  
3 maybe we ought to factor that in as to that's the way  
4 we want to go.

5 I don't know whether that calls for a  
6 concept paper or what, maybe it does.

7 CHAIRPERSON BERRY: Did we have a concept  
8 paper before on the African-American males --

9 MS. MATHEWS: Yes, we did --

10 CHAIRPERSON BERRY: You don't have to find  
11 it right now.

12 MS. MATHEWS: It was approved with  
13 specific cities for these five hearings. Shreveport,  
14 Louisiana; Cleveland, Ohio.

15 COMMISSIONER HIGGINBOTHAM: I'd go to  
16 Shreveport.

17 CHAIRPERSON BERRY: Why don't you give us  
18 back the project concepts, the ones that we don't have  
19 projects concepts now and revised ones in light of the  
20 discussion.

21 COMMISSIONER ANDERSON: It may be that we  
22 don't want to do five cities in hearings over five  
23 years. We might want to do something in two years and  
24 maybe we ought to have a concept paper more like that.  
25 My sense is that's what we're thinking about.

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1                   CHAIRPERSON BERRY:     That's where the  
2 discussion seemed to be heading.   In light of the  
3 discussion, the project concepts on the ones where we  
4 had a discussion and it seemed the discussion was  
5 headed someplace other than where the project concept  
6 seemed to have bene headed before, okay.

7                   MS. MATHEWS:   That's fine.

8                   CHAIRPERSON BERRY:   Okay, the General  
9 Counsel wants to say something.

10                  MS. MOORE:   Well, I'll just --

11                  MS. MATHEWS:   General Counsel, would you  
12 mind coming up because of the microphone issue.   I  
13 don't think they'll pick you up back there.

14                  MS. MOORE:   Okay, I'm sorry.   I just  
15 wanted clarification for the staff in light of the  
16 last exchange.   Are we to actually develop a new  
17 project proposal for the crisis of the African-  
18 American male or first conduct a literature review and  
19 produce the paper after which a determination would be  
20 made as to how to go forward on that?

21                  CHAIRPERSON BERRY:   Well, my understanding  
22 based on what all of our discussion has been is that  
23 separately somebody, I don't know who the somebody is,  
24 will prepare a literature review paper for us to read.  
25 Separate from that, for the next meeting with all

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1 these flow charts and all the other things we were  
2 talking about, we will have project concepts and that  
3 one of the project concepts and the project concepts  
4 will be modified, the ones that have already been  
5 done, to reflect the discussion we've been having  
6 here. And the one on the African-American male would  
7 be modified to reflect the discussion we've been  
8 having here and we would have that next time.

9 We are going to do the project. The  
10 literature is to help review, help us sort out our  
11 thinking. Now we may, we hope we have the literature  
12 review by next time. If we don't, at least we need to  
13 have it at some point so that we can understand  
14 conceptually the solutions and what's been proposed.

15 MS. MOORE: We can certainly do that. I  
16 had misunderstood the original request to be for the  
17 literature review to help define the scope of a  
18 possible hearing which would mean that we really  
19 couldn't do the project concept until that had been  
20 concluded.

21 CHAIRPERSON BERRY: I understand your  
22 point and it did sound like that and it does make  
23 logical sense, but in a sense we're being sort of  
24 illogical because we have to make these decisions so  
25 we're asking for the project concept and as a

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1 literature review goes forward, there may be something  
2 in it that helps to modify it. But in any case we  
3 need a project concept in order to make these  
4 decisions.

5 Okay, now if we can go back quickly to the  
6 rest of the agenda. The only other announcement we  
7 did make is that the Commission's authorization  
8 expires on September 30th. Some of you know this  
9 already and were they given a draft authorization  
10 bill?

11 MS. MATHEWS: Yes, Madam Chair.

12 CHAIRPERSON BERRY: You were given a draft  
13 authorization bill because the Commission has to have  
14 an authorization bill to submit to OMB and to the  
15 Congress and so on as our participation in the process  
16 of asking that we be reauthorized. The authorization  
17 bill that you were given is only one page and as I  
18 read it, it doesn't make any changes in what we do.  
19 I don't see any changes here except for inserting from  
20 dates and striking one date and inserting another one  
21 and then saying it will terminate in 2002.

22 Is there anything else I've missed.

23 MS. MATHEWS: You have not missed a thing.

24 CHAIRPERSON BERRY: It's exactly like the  
25 one -- except we ask that it extend to the year 2002

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1 which is six years.

2 And so the discussion is do we want to be  
3 authorized and if we do, do we want to support this  
4 bill or is there something else we'd like to do about  
5 reauthorization. We do this every time we have to be  
6 reauthorized. The Commission makes a proposal or  
7 recommends that we are or are not reauthorized but we  
8 may think it should be 10 years and this is proposed  
9 as six years and we think it should be 2 years. There  
10 are all sorts of things or there may be things that  
11 we'd like to propose to add to it or change, but this  
12 is the purpose of the discussion.

13 Is there anyone who has any views or would  
14 you rather discuss this another time? Yes,  
15 Commissioner Anderson?

16 COMMISSIONER ANDERSON: Thank you. Can I  
17 ask what our time line is for submission to the  
18 committee of the proposal?

19 CHAIRPERSON BERRY: Staff Director?

20 MS. MATHEWS: There is no specific time  
21 line that I'm aware of. It's advisable, I think, for  
22 us to weigh in though as soon as possible and it has  
23 been recent past Commission practice, once  
24 Commissioners agree to a draft bill to forward it to  
25 OMB and to have OMB then forward it to the Congress

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1 officially.

2 There have not been any even tentative  
3 discussions to my knowledge with either the House or  
4 the Senate Oversight Subcommittees about hearing  
5 dates.

6 We would want, I would think, we would  
7 want to have a position developed that could be  
8 discussed at an oversight reauthorization hearing.

9 CHAIRPERSON BERRY: Could we ask Staff  
10 Director if Mr. Cunningham, who is the Congressional  
11 Liaison has any information to add to this?

12 MS. MATHEWS: Dr. Cunningham, would you  
13 mind coming forward to the microphone?

14 DR. CUNNINGHAM: Hi. I'm James  
15 Cunningham. As the Staff Director said, we don't have  
16 even tentative dates at this time. We can expect  
17 hearings, perhaps in May, but that's unknown at this  
18 point.

19 CHAIRPERSON BERRY: Okay. Well, thank you  
20 very much for that.

21 Any other Commissioner questions or  
22 comments, yes, Vice Chair?

23 VICE CHAIRPERSON REYNOSO: My only  
24 druthers would be, of course, to have it be a longer  
25 term than two years, but I leave that to the

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1 discretion of the staff of what they think is do-able.

2 CHAIRPERSON BERRY: Longer term. What  
3 does it say?

4 MS. MATHEWS: This is six years.

5 CHAIRPERSON BERRY: Down at the bottom,  
6 2002.

7 VICE CHAIRPERSON REYNOSO: Oh, okay, good.  
8 That sounds good. How did I miss that.

9 COMMISSIONER HIGGINBOTHAM: May I? Why  
10 don't we just go on record supporting this? It seems  
11 to me that if anyone wants to change it, fine. But if  
12 we can get some unanimity among our colleagues or at  
13 least a clear majority. If we're all in favor of  
14 extensions to 2002, why wait? So I propose that we  
15 support the extension of 2002, Lord be willing, most  
16 of us will be here.

17 (Laughter.)

18 CHAIRPERSON BERRY: That's a motion?

19 COMMISSIONER HIGGINBOTHAM: Yes.

20 CHAIRPERSON BERRY: The motion is to  
21 approve the recommendation that we be reauthorized at  
22 least through the Year 2002 and we forward this to OMB  
23 like we usually do. Is there a second?

24 COMMISSIONER LEE: Second.

25 VICE CHAIRPERSON REYNOSO: Second.

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1 CHAIRPERSON BERRY: Any discussion? All  
2 those in favor indicate by saying "aye."

3 (AYES.)

4 CHAIRPERSON BERRY: Oh, I'm sorry,  
5 discussion.

6 COMMISSIONER ANDERSON: Obviously, the  
7 committee is going to be looking at some issues. one  
8 of the issues is no secret. I think it's going to be  
9 the subpoena power of the Commission.

10 Now in the past I have supported a  
11 straight reauthorization of the Commission because I  
12 think that's the safest position for us to be in and  
13 then we can go up and discuss and answer the questions  
14 and negotiate with the Committee members.

15 I have the tendency to do that again this  
16 time, but I think it's worth taking a minute just to  
17 have a brief discussion before we just move the  
18 question and vote as if there's no issues under here  
19 that ought to be considered for a minute.

20 CHAIRPERSON BERRY: Could I ask the maker  
21 of the motion and the seconder to withdraw their  
22 motion?

23 COMMISSIONER HIGGINBOTHAM: Withdrawn.

24 CHAIRPERSON BERRY: Until -- no, we'll  
25 have it again. I'll tell you why I'm doing it. To

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1 withdraw that motion in light of Commissioner  
2 Anderson's comment and that maybe it would be better  
3 to consider voting on this after we discuss the  
4 subpoena issue, since that's one of the issues, as I  
5 understand it, is a major issue that's before us, or  
6 any other issues pertinent to the subpoena issue since  
7 that's been the major issue that's been discussed  
8 during the reauthorization. Is that all right with  
9 you if we do it that way?

10 COMMISSIONER HIGGINBOTHAM: It's okay with  
11 me or we could keep the motion on the floor and begin  
12 to discuss this subpoena. Whatever.

13 CHAIRPERSON BERRY: Okay, either one.

14 COMMISSIONER GEORGE: Is it crucial that  
15 we settle it today?

16 CHAIRPERSON BERRY: If we can, we should.  
17 If we can't, then we can't. Why don't we then,  
18 instead of withdrawing the motion we'll defer  
19 consideration of it until after we discuss the  
20 subpoena issue.

21 COMMISSIONER HIGGINBOTHAM: Let me tell  
22 you what my reaction is. If we're going to at some  
23 point or some members of the Commission want to modify  
24 the subpoena power, that is not in my view  
25 inconsistent. This is just saying that the Commission

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1 will live until the Year 2002, not necessarily in its  
2 present format on everything it does. So that that  
3 was merely the reason I proposed it. But I don't  
4 consider a vote for this, a vote that you -- what your  
5 position is on subpoena power. It seems to me that  
6 the Commission -- lots of other things could change on  
7 the Commission, at least if you're in being, you've  
8 got a chance to deal with those, but I'd be delighted  
9 to withdraw my recommendation, my motion. We want to  
10 do subpoena power first.

11 CHAIRPERSON BERRY: What is your  
12 preference, Commissioner Anderson?

13 COMMISSIONER ANDERSON: Doesn't matter to  
14 me?

15 COMMISSIONER HIGGINBOTHAM: Why don't we  
16 do subpoena power.

17 CHAIRPERSON BERRY: Okay, let's do  
18 subpoena power which is item 7. No one objects to my  
19 moving it to this point on the agenda. You were sent  
20 a bunch of memos and you had memos last time we  
21 discussed the subpoena issue and we said we would  
22 discuss it again today and you also have a draft, a  
23 bill -- it's not a draft bill, a proposed bill that  
24 was introduced by Congressman Foley that we sent out  
25 and all of you got a copy of that as well as a couple

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1 of memos that the Staff Director had written by Mr.  
2 Isler and Dr. Cunningham on their views about how this  
3 related to the Commission. It was interesting from a  
4 staff perspective, as well as an earlier memo from  
5 General Counsel, giving us the history of the subpoena  
6 power and how we operate and all the rest.

7 So the subpoena power is an issue. It's  
8 been raised in hearings. It's been discussed. So  
9 what we want to do today is discuss it again and see  
10 if there's anything the Commission, in any way the  
11 Commission wants to respond. We said we'd put it on  
12 the agenda again and that's the purpose of having it  
13 on the agenda today.

14 Is there anyone who wants to discuss this  
15 issue or has anything that they want to suggest or  
16 anything else?

17 Commissioner George?

18 COMMISSIONER GEORGE: Thank you, Madam  
19 Chairman. I've been thinking about this issue a lot  
20 since it arose in connection with Miami hearing. My  
21 thought is that the subpoena practices of the  
22 Commission are in need of reform, but I would hate to  
23 see those reforms imposed on us by Congress. I'd  
24 rather do it ourselves. I certainly would not like to  
25 see for many of the reasons that have been outlined

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1 and some of the materials we've gotten the subpoena  
2 power of the Commission stripped at all. I think that  
3 would be a very bad outcome. And so to that end I  
4 have drafted a motion which is detailed which proposes  
5 somewhat detailed policies for dealing with subpoenas  
6 and with subpoenas duces tecum and the subpoenas that  
7 are subpoenas that include requests for documents.  
8 And let me ask Bill Saunders to distribute my proposal  
9 which I would like to put in the format, Madam  
10 Chairman, of a motion to issue a policy directive.

11 CHAIRPERSON BERRY: Okay.

12 COMMISSIONER GEORGE: To order the Staff  
13 Director to amend the Administrative instructions of  
14 the Commission. I hope that this will at least  
15 provide the form of a solution to our problem and to  
16 the wise and prudent reform of our subpoena practices.  
17 It's got many points and maybe we won't agree on all  
18 of them. Some can be changed without changing others,  
19 so can we take a moment to read it or do you want me  
20 to read it into the record?

21 CHAIRPERSON BERRY: Why don't you read it  
22 into the record and we will read along and however  
23 people like to read while you do it?

24 COMMISSIONER GEORGE: This is a motion to  
25 issue a policy directive to order to Staff Director to

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1 amend the Administrative Instructions. It's in two  
2 parts. The first part pertains to witnesses. That is  
3 in turn two parts, part a, a witness at Commission  
4 hearings either testifies as to facts at issue or  
5 offers a perspective on the general matter under  
6 review. The former witness may be designated as a  
7 fact witness. The latter witness who possesses  
8 expertise and who advocates a particular point of view  
9 may be designated as a perspective witness.  
10 Perspective witnesses will not be included in  
11 Commission hearings, but only in other Commission  
12 informational proceedings which may be conducted in  
13 connection with the hearings. Information presented  
14 in such proceedings should ordinarily be included in  
15 hearing reports identified appropriately. Therefore,  
16 no subpoenas will be issued for appearance of a  
17 perspective witness at a Commission hearing. Part b  
18 of Section 1: Any Commissioner who recommends a  
19 witness for appearance at a hearing should indicate  
20 whether that witness is being recommended as a fact  
21 witness or as a perspective witness. Because a fact  
22 witness will be served with a subpoena, a Commissioner  
23 should not recommend as a fact witness anyone against  
24 whom the Commissioner would not support enforcement of  
25 the subpoena in the event of noncompliance.

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1                   Now section 2 on documents, again in parts  
2                   A and B, part A: When officers or employees of the  
3                   federal state and local governments have been  
4                   subpoenaed to testify with respect to their official  
5                   governmental duties, issuance of a subpoena duces  
6                   tecum for the production of documents relevant to  
7                   their testimony may be authorized by the Commission  
8                   chair without the prior approval of the Commissioners.  
9                   B: Subpoenas duces tecum and all other cases will be  
10                  issued only in connection with the documents hearing,  
11                  except as described below and only after a description  
12                  of the requested documents and the precise language of  
13                  the documents request has been submitted at least one  
14                  week in advance of the Commission meeting at which the  
15                  issuance of the subpoena duces tecum will be  
16                  considered to the Commissioner's for review and  
17                  comment. The question whether to issue the subpoena  
18                  duces tecum shall be placed on the agenda by the  
19                  Commission for consideration at the regularly  
20                  scheduled Commission meeting which proceeds the  
21                  hearing for which the subpoena duces tecum is being  
22                  sought. The Commission must vote by a majority to  
23                  approve the issuance of such proposed subpoena duces  
24                  tecum. The Commission may request and obtain  
25                  documents relevant to a Commission hearing or report

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1 through a request on the record during the hearing.  
2 A subpoena duces tecum may be issued only after a  
3 failure to comply with this request. The Commission  
4 by vote of a majority must approve the issuance of  
5 such proposed subpoena duces tecum.

6 Now I recognize that there are problems  
7 that would arise in connection with trying to execute  
8 this strategy. My proposal is that there are problems  
9 that are worth living with or we can live with easier  
10 than with the unreformed practices or with any reforms  
11 that I've been able to think of as an alternative and  
12 perhaps you'd be able to think of some that would be  
13 better than what I'm proposing.

14 Obviously one problem is the distinction  
15 between perspective witnesses and fact witnesses.  
16 There are going to be clear cases and gray areas and  
17 unfortunately there will be a lot of gray areas and  
18 someone would have to decide how a particular witness  
19 would be designated and therefore whether that witness  
20 would be testifying subject to subpoena or not.

21 I think that this is a problem that we can  
22 live with, certainly when it comes to the witnesses  
23 that are being recommended by the Commissioners. The  
24 Commissioners can recommend one way or another as a  
25 fact witness or as a perspective and I would suspect

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1 that the staff, unless they have compelling reasons to  
2 do otherwise would simply proceed as advised by the  
3 Commissioner.

4 Well, maybe I should just stop there and  
5 give everybody a chance to digest the proposal a  
6 little bit and perhaps comment on it. I realize also  
7 that I'm springing this on a lot of people and it is  
8 detailed, so I'm willing to -- very happy to handle it  
9 in any manner that you would like in giving everybody  
10 as much time as they would like to do this.

11 I would like to act before Congress acts,  
12 if Congress is to act on this, but with that one  
13 consideration in mind, it seems to me nonessential  
14 that we move immediately and it is essential that we  
15 move deliberately and carefully so that we do a good  
16 job in this area of cleaning up our own house.

17 CHAIRPERSON BERRY: I think for purposes  
18 of discussion, that is in the form of a motion, could  
19 I get a second, just so we can discuss it?

20 COMMISSIONER ANDERSON: Second.

21 CHAIRPERSON BERRY: Okay, Commissioner  
22 Anderson has seconded the proposal made by  
23 Commissioner George.

24 Would anyone be interested -- I had a  
25 couple of questions, but I'll wait and see if others

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1 have --

2 COMMISSIONER HIGGINBOTHAM: I had a  
3 couple. One, I don't see at first glance any very  
4 serious problem. I don't know what the history which  
5 triggered this, but I've got two questions which I  
6 need an answer for before I can intelligently vote.  
7 This term "perspective witness" I don't know if that's  
8 a word of art or a new philosophical definition.  
9 Where does that term "perspective witness" come from?

10 COMMISSIONER GEORGE: It's a pure  
11 invention of mine, I'm afraid. Can I say why I'm  
12 trying to come up with it because I think the history  
13 is relevant and of course, as you say, you weren't on  
14 the Commission when the problem arose.

15 Another term that struck me as a  
16 possibility, although there were reasons for not using  
17 it was an opinion witness as opposed to a "perspective  
18 witness". The distinction here is the problem is  
19 compelling by subpoena opinion. Some very substantial  
20 serious thoughtful people who had been subject to  
21 subpoena to give their opinions on I think it was  
22 affirmative action, that was the context in which it  
23 arose, objected on the ground, I forget who I'm  
24 quoting now, Judge, but the old line about I can give  
25 you my opinion freely, but it can never be compelled.

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1 So that for first amendment reasons and just reasons  
2 of elementary justice, when we're asking someone for  
3 an opinion we shouldn't be compelling that opinion.  
4 On the other hand, when we're asking somebody for  
5 facts which are within their grasp, we shouldn't  
6 necessarily have that hesitation about compelling,  
7 that they know the facts and they're available to that  
8 person and it's not an offense to the first amendment  
9 if we compel it.

10 So what I have in mind is that  
11 distinction. That's the historical background which  
12 explains why I'm interested in it. I chose the term  
13 "perspective" instead of opinion because I wanted to  
14 avoid the implication of some rules in trial courts  
15 having to do with expert opinion testimony.

16 COMMISSIONER HIGGINBOTHAM: The reason why  
17 I raised it is the federal rules of evidence, you have  
18 the term "opinion" evidence and several references and  
19 it seems to me that you have the burden of explaining  
20 to us in memorandum why you do not use the traditional  
21 distinction. This is an expression from Blackstone.  
22 "Since the memory of man runneth not to the contrary"  
23 and since you had -- I'm talking about Wigmore, for  
24 decades, this categorization I don't want for us to  
25 later get into court and "what do you mean by

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1 perspective witness, where did that come from?" Just  
2 this philosopher at Princeton University --

3 (Laughter.)

4 COMMISSIONER GEORGE: You have to pardon  
5 me my footnote in history.

6 (Laughter.)

7 COMMISSIONER HIGGINBOTHAM: If you use the  
8 word "perspective witness" and we made it clear that  
9 that is not dissimilar to what the Federal Rules of  
10 Evidence calls opinion witness, I have no trouble.  
11 But I mean I got to know what is the distinction, if  
12 any, between an opinion witness which courts have  
13 written for decades and a perspective. If it's the  
14 same, but you think clear, I have no problem. No  
15 problem.

16 COMMISSIONER GEORGE: Let me explain. I  
17 deliberately avoided the term opinion precisely  
18 because it is the term that's used in the litigational  
19 context because I did not want to create the  
20 impression that such a witness would have to be  
21 qualified as such a witness has to be qualified under  
22 the Federal Rules in the trial situation or that there  
23 would be other procedural evidentiary rules that would  
24 apply to those witnesses. Since we don't operate  
25 under those types of litigational rules in general

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1 here, I thought it was best to avoid the term.

2 Now I'm perfectly happy, Judge  
3 Higginbotham, to change it to opinion, but then I  
4 think we should add some footnote that would indicate  
5 that an opinion witness needn't be qualified as a  
6 courtroom trial expert.

7 COMMISSIONER HIGGINBOTHAM: I am willing  
8 to use your term provided that somewhere in this  
9 document we even note that this is synonym for opinion  
10 witness or that it's dissimilar. I mean we've got --  
11 the 14th amendment says due process equal protection  
12 privileges. All right.

13 Suppose someone else said well, I'm going  
14 to change it to not unequal protection. I mean  
15 therefore what does it mean? I like this, I like the  
16 thinking process. I'm thinking in terms of  
17 litigation.

18 CHAIRPERSON BERRY: May I make a  
19 suggestion --

20 COMMISSIONER HIGGINBOTHAM: We don't have  
21 to decide right now.

22 COMMISSIONER GEORGE: I understand.

23 CHAIRPERSON BERRY: Could I suggest that  
24 the way to resolve this based on what you are saying  
25 to each other is if we should approve this, you would

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1 either insert or you'd have a footnote or you'd have  
2 an asterisk or you'd have a bracket or you'd have a  
3 comma and you'd say it means the same thing as opinion  
4 witness for some purposes or not and explain it in the  
5 document.

6                   COMMISSIONER GEORGE: Yeah, I think the  
7 answer is to accept both Judge Higginbotham's  
8 suggestions and not treat them as alternatives, but to  
9 say with respect to it's similar to opinion testimony,  
10 but then the respect in which it's difference, having  
11 mainly to do with qualifications and other evidentiary  
12 rules that we operate under.

13                   So yeah, I'd be very happy to do that and  
14 I'm indifferent about the term, really.

15                   CHAIRPERSON BERRY: I like the term.

16                   COMMISSIONER GEORGE: Once things have  
17 been explained it doesn't matter -- the key thing is  
18 the explanation.

19                   COMMISSIONER HIGGINBOTHAM: The other  
20 minor point. On this question of subpoena, what I  
21 want to know is how other agencies handle this? I  
22 mean I was the Commissioner for the Federal Trade  
23 Commission I guess before most of these people here  
24 were born in 1962. And --

25                   VICE CHAIRPERSON REYNOSO: I was born

1 before 1962.

2 (Laughter.)

3 CHAIRPERSON BERRY: I wasn't.

4 COMMISSIONER HIGGINBOTHAM: And what I  
5 think we should do, I don't care whether your  
6 specialist does it or someone else, but I think we  
7 should get information as to how all of the  
8 administrative agencies deal with this problem. I  
9 mean do they have a rule or regulation, audit and then  
10 we will know whether we are coming up with something  
11 which is very different or not. There's a 10-volume  
12 work by Davidson on administrative procedure. I'm  
13 certain if you looked in that you'd find something --  
14 but I would want to know what does SEC, how does SEC  
15 handle it? How does National Labor Relations Board  
16 handle it, just so that we are not caught in court  
17 someone looking at the Administrative Procedures Act  
18 and saying what happened to these guys and girls? So  
19 if what we're doing is consistent with normal  
20 administrative agency -- no problem. If what we're  
21 doing is profoundly dissimilar, I'm not going to say  
22 I'm going to vote against it, I'd just like to know.

23 COMMISSIONER GEORGE: I think that's a  
24 terrific suggestion and why don't we step back and my  
25 assistant can go to work on it and maybe help with

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1 some of the other assistants, but that too reminds me  
2 of the oldest debate in philosophy which is between  
3 Plato and Aristotle whether the forms are existing in  
4 a transcended realm so that there's an ideal form of  
5 a thing that we know by abstraction or whether they  
6 exist only in the exemplars and Judge Higginbotham has  
7 established himself as a Platonist saying we should  
8 look to see how it's done. As an Aristotelian, and I  
9 have made the Platonic error of trying to think it up  
10 out of whole cloth without referencing any reality, so  
11 we'll take the Aristotelian route here and look at how  
12 it's exemplified in real cases.

13 CHAIRPERSON BERRY: What we will do since  
14 Commissioner George accepts that, are you going to  
15 speak to that same point?

16 VICE CHAIRPERSON REYNOSO: On the exemplar  
17 point, we're dealing not just with the administrative  
18 agencies but with independent administrative agencies.

19 COMMISSIONER HIGGINBOTHAM: I'd go through  
20 the whole thing. I just want to know whether -- I  
21 want to know how closely --

22 COMMISSIONER GEORGE: That's an excellent  
23 idea.

24 CHAIRPERSON BERRY: In terms of how we do  
25 it here in the Commission, the General Counsel's

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1 office will do this task and the special assistants  
2 can be involved or whatever, but it's their job to go  
3 out and find out all that stuff, so they can -- they  
4 hear what it is we want. Tell us what all the  
5 agencies do.

6 We have to keep in mind though when this  
7 assignment is being done is that this Agency is like  
8 and unlike other agencies. Keep that in mind. We are  
9 part-time Commissioners, remember that. We're not  
10 full time, like the SEC or the FTC or the NLRB. I  
11 don't know what the answer is. I'm just saying keep  
12 that in mind. And also keep in mind that we are not  
13 an enforcement agency.

14 MS. MATHEWS: Right.

15 CHAIRPERSON BERRY: Or a regulatory  
16 agency. We are a fact-finding agency. So I'm saying  
17 that all this will be useful to us and we ought to  
18 know it and I think it's important to know it and I'm  
19 just saying that we should all keep that in mind there  
20 are certain distinctions in terms of commission and I  
21 am sure that when they set up our statute, Herbert  
22 Brownell and all those folks, I'm sure that they  
23 looked at the administrative procedure and we may find  
24 that what we're doing is exactly like what everybody  
25 else does already. I'm sure they didn't make it up

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1 out of whole cloth. Just keep that in mind and  
2 Commissioner Anderson, were you about to say  
3 something?

4 COMMISSIONER ANDERSON: Well, maybe I'm  
5 gilding your point, but it seems to me that since  
6 we're not rulemaking or enforcement, we're principally  
7 advisory in that sense. If we can come across  
8 advisory commissions, subpoena power, that would be  
9 important as well to highlight that.

10 COMMISSIONER GEORGE: I think particularly  
11 entities which regularly elicit something like opinion  
12 testimony or what I'm calling perspective testimony,  
13 I mean that would be very helpful.

14 COMMISSIONER HIGGINBOTHAM: I'll tell you  
15 what and I apologize, Madam Chair, for talking too  
16 much, what I really think of this is in a contempt  
17 context. The moment we get into a contempt situation,  
18 no court is going to care whether the subpoena,  
19 whether the person who is sent to jail gets there by  
20 way of the advisory committee or full independent  
21 regulatory, look in terms of what are the rights of  
22 the litigants so that I guess I am probably looking at  
23 it from down the road, if you have litigation so that  
24 we can justify our position. I think it can be  
25 justified, but if we can then present to a court our

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1 basis for having made these choices --

2 COMMISSIONER GEORGE: Can I then suggest  
3 that Judge Higginbotham move to table my motion?

4 COMMISSIONER HIGGINBOTHAM: No, no, no.

5 COMMISSIONER GEORGE: Or I'll move to  
6 table my own motion. In other words, I've got a  
7 motion on the table and what we should do now is not  
8 vote on it at this meeting.

9 CHAIRPERSON BERRY: Can we have more  
10 discussion to see if there are other points before we  
11 table it?

12 COMMISSIONER HIGGINBOTHAM: I don't think  
13 we should table it. I'm just not prepared to vote.

14 CHAIRPERSON BERRY: We will accept your --  
15 we'll let you do it, but we'll first see if anybody  
16 has, and we've accepted those points. General Counsel  
17 will give us this information so we can have a basis  
18 for what's going on.

19 Are there other things that people would  
20 like to see? I had a couple of questions myself.

21 VICE CHAIRPERSON REYNOSO: I have a  
22 question on 2, but I think we're still on 1.

23 CHAIRPERSON BERRY: Okay, my question is  
24 on -- I think that simply put on 1(b), any  
25 Commissioner who recommends the witness for appearance

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1 should say "at a Commission proceeding" not "at a  
2 hearing."

3 COMMISSIONER GEORGE: Oh, right.

4 CHAIRPERSON BERRY: Because we're talking  
5 about people who wouldn't be at a hearing and not be  
6 at a hearing. So if we say "proceeding" that covers  
7 both.

8 And then we can go to duces tecum. Does  
9 anybody have any suggestions on duces tecum, the  
10 second part documents?

11 VICE CHAIRPERSON REYNOSO: My quick  
12 reaction is to have some qualms about the procedure  
13 suggested. I guess if we agree say on 1, and the  
14 staff has to clear instructions from us, then  
15 presumably they should be issuing a subpoena duces  
16 tecum only in the proper -- with the proper witnesses.

17 I guess I -- it strikes me -- it's an  
18 awfully cumbersome procedure to have us vote on this,  
19 the Commission vote on these matters, if we give clear  
20 instructions to the staff.

21 CHAIRPERSON BERRY: Well, as I see it,  
22 this is to respond to the concern that our request for  
23 documents may have been overbroad. Am I correct? Is  
24 that what this is responding to?

25 COMMISSIONER GEORGE: Yes, and to require

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1 the Commissioners themselves to exercise very hands on  
2 -- exercise hands on supervision of the issuance of  
3 reviewing these kinds of documents.

4 VICE CHAIRPERSON REYNOSO: I just wonder  
5 whether before we, as Commissioners, get into it, we  
6 ought not to have a review of where we think it's been  
7 too broad or when it's not been too broad to see if we  
8 can structure some instructions to staff. It just  
9 strikes me as awkward and cumbersome to have us be  
10 jumping in on each subpoena. If we could come up with  
11 instructions to staff and then later it turns out that  
12 there's something wrong and we could either work  
13 further on the instructions to refine them or maybe at  
14 some point do this, it just strikes me as awkward, I  
15 would say.

16 COMMISSIONER GEORGE: I don't think I can  
17 allay that concern completely, but in one little  
18 dimension of it I do have some draft language which I  
19 didn't include on this sheet, but I can do on an  
20 amended version which would indicate that where  
21 subpoenas are in identical form for similarly situated  
22 entities, the Commissioners wouldn't vote on each  
23 individual subpoena, they would be given the form and  
24 given the list of who -- the ideal example here of who  
25 they are, I should finish the thought, a list of who

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1 they are and then vote on them together. The ideal  
2 example here is our New York documents hearings, you  
3 get a list of financial houses, Merrill Lynch, Goldman  
4 & Sachs, Bear, Stearns and so forth and so on.  
5 There's going to be one form of the subpoena. The  
6 Commissioners can see the subpoena that's brought  
7 before them by the staff. If we like that scope or we  
8 think it's too broad or not and then you know, vote to  
9 wholesale issue that subpoena to all the financial  
10 houses.

11 Now that doesn't allay all your concern,  
12 but in the -- there wouldn't be the cumbersomeness of  
13 voting on individual subpoenas in the very many cases  
14 where they're asking for the same scope for similarly  
15 situated organizations.

16 VICE CHAIRPERSON REYNOSO: I guess I  
17 harken back to Judge Higginbotham's suggestion. Maybe  
18 we should put General Counsel and the 13 lawyers --

19 (Laughter.)

20 I guess I sort of would like to know what  
21 other agencies do here also because in some ways it  
22 sounds very burdensome and on the other hand, I don't  
23 know, I would doubt that the chair has ever not signed  
24 a subpoena that the staff has prepared because she  
25 assumes they have thought it through and done it

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1 carefully and all that. So that would argue that it  
2 won't take much of our time. On the other hand, it's  
3 not going to take, if it's going to be routine, then  
4 it seems counterproductive because then the staff  
5 might take the view, well, if they don't like it,  
6 don't tell us. I'd rather keep the responsibility  
7 focused, if you will, and the people that know most  
8 about who the witnesses are, what documents they might  
9 have and so on would be full court and with the  
10 General Counsel and if I had my druthers, well, first  
11 of all, I think I would like to know what other  
12 agencies do.

13 Secondly, just in terms of my experience  
14 on the Commission thus far, I think if I had my  
15 druthers, I'd rather work on giving the General  
16 Counsel more precise instruction if we're unhappy with  
17 some of the things that have happened.

18 COMMISSIONER HIGGINBOTHAM: Let me just  
19 throw out my anxiety. You can't predict the future  
20 and you've got to be very careful that you don't put  
21 any self-executing prohibitions. You've got to have  
22 some language, whatever it is, unless in exceptional  
23 circumstances. Let me do this. You say submit it at  
24 least one week in advance of a Commission meeting.  
25 What if there's a snow storm and someone gets it in

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1 five days before. The subpoenaed person has a right  
2 to go and file a motion to quash on the ground that  
3 the Commission failed to comply with their own  
4 procedures and therefore it's a void issue. And so  
5 what I'm looking at is a hostile witness, who without  
6 justification is hostile, is going to take these as  
7 rights.

8 What we're concerned about is fairness.  
9 I think we've got to be very, very careful that we  
10 don't find out all of a sudden that there's a  
11 snowstorm. We've got a hearing schedule and you find  
12 out for some crazy reason because of snow, it's 36  
13 inches high and Mary Mathews didn't come in and the  
14 whole hearing is jettisoned. And this is the way  
15 defense lawyers are going to use it.

16 I think the concept is good, but I think  
17 we have just got to think really hard in terms of the  
18 operational experience and I'm not -- I don't want you  
19 to feel I'm being negative. I'm trying to avoid the  
20 sand traps.

21 CHAIRPERSON BERRY: You have to think  
22 about whether you want an exceptional circumstance  
23 clause.

24 COMMISSIONER GEORGE: Yeah. I'm already  
25 drafting some language here. I think I've got it.

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1 I take the point --

2 VICE CHAIRPERSON REYNOSO: Which approach  
3 are you taking? Is this the Aristotelian approach?

4 (Laughter.)

5 COMMISSIONER HIGGINBOTHAM: Exactly.

6 COMMISSIONER GEORGE: Having been properly  
7 tutored by the Judge now, I've shifted from Plato to  
8 Aristotle.

9 Yeah, I think we can build something in  
10 where -- with the consent of the majority of  
11 Commissioners, an exception can be made and then I  
12 think extraordinary circumstances can then be  
13 sufficient. You can get some Commissioners on the  
14 phone to get the thing issued in a snowstorm.

15 Were there other points like that where  
16 exceptional circumstances would need to be built in?

17 COMMISSIONER HIGGINBOTHAM: I don't know.  
18 I had two minutes to look at this before you started  
19 reading it. All I'm saying is give us a little time.  
20 The concept -- the concern is certainly rational. We  
21 want to not throw the baby out with the wash.

22 CHAIRPERSON BERRY: May I say that the  
23 only points I have to make was in the last paragraph.  
24 We have in our statute now the right to proceed by  
25 interrogatories and I was wondering if you wanted to

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1 include in your -- that we may request and obtain  
2 documents, not only during the hearing, but by way of  
3 interrogatories.

4 COMMISSIONER GEORGE: I thought I had that  
5 in there as a matter of fact, let me just check.

6 CHAIRPERSON BERRY: Or even during  
7 interviews.

8 (Pause.)

9 COMMISSIONER GEORGE: Madam Chair, there's  
10 been some miscommunication. We'll have to sort out --  
11 I'll either give you a reason or get that back in  
12 there. It was in my original draft.

13 CHAIRPERSON BERRY: Would you consider  
14 putting in by way of interrogatories or even during  
15 interviews because these are all voluntary.

16 COMMISSIONER GEORGE: Right.

17 CHAIRPERSON BERRY: And they're even pre-  
18 hearing interviews, when people interview witnesses.

19 They can say no. There's other voluntary  
20 ways to do it. That was my only concern. Now here's  
21 where I think we are on this. Are you suggesting  
22 you'll give us an answer later to that query?

23 COMMISSIONER GEORGE: I take it we're not  
24 going to solve --

25 CHAIRPERSON BERRY: No, no. I mean do you

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1 -- you will give us an answer later as to whether you  
2 will include it or why you won't?

3 COMMISSIONER GEORGE: Yes, exactly.

4 CHAIRPERSON BERRY: Why don't we do the  
5 following? Why don't we agree that you will revise  
6 your proposal in light of the discussion and the  
7 agreements that you made here and send it out.

8 COMMISSIONER GEORGE: Okay.

9 CHAIRPERSON BERRY: And we'll get the  
10 information we asked for from the General Counsel and  
11 you will now suggest tabling the motion until next  
12 time.

13 COMMISSIONER GEORGE: I so move.

14 (Laughter.)

15 CHAIRPERSON BERRY: Is he permitted? I  
16 guess you are permitted.

17 COMMISSIONER GEORGE: I withdraw the --

18 CHAIRPERSON BERRY: No, no, no. We will  
19 vote on this motion. We will consider this motion  
20 again at the next meeting.

21 Now we have one other thing we must do  
22 then. We said we would discuss this before we discuss  
23 the authorization. Staff Director, can we hold over  
24 discussing the authorization motion until next time or  
25 do we have to act on it now, one way or the other?

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1 The one, the 2002?

2 COMMISSIONER HIGGINBOTHAM: Why don't we  
3 go on record now. We're all flexible. I don't want  
4 anyone to think that we may not want to be around,  
5 like us, they didn't even know whether they wanted to  
6 be around.

7 CHAIRPERSON BERRY: Well, I'll have to ask  
8 Commissioner Anderson since he was the one that we  
9 deferred to. Is there some reason why we shouldn't  
10 take this up now or would you feel more comfortable if  
11 we didn't?

12 COMMISSIONER ANDERSON: I think it would  
13 be fine to take it up now. It's just that the current  
14 authorization has the subpoena power, so I thought if  
15 we went on record prior to discussing the subpoena  
16 question it seemed as though we were taking a cut on  
17 how to come out on that and I am not sure we wanted to  
18 do that without any discussion.

19 CHAIRPERSON BERRY: Right, well, we are  
20 all agreed, if I hear the consensus around the table  
21 that we're going to address the subpoena issue. It's  
22 just simply a question of you heard the discussion and  
23 the discussion is in the record, but now what we're  
24 really doing is trying to decide whether the  
25 Commission is in favor of being reauthorized and

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1 whether we can go forward. So the motion is that the  
2 Commission is in favor of being reauthorized until the  
3 Year 2002. And is there any further discussion?  
4 There was a second. Who moved -- you moved it.  
5 Anybody second it?

6 COMMISSIONER LEE: Seconded.

7 CHAIRPERSON BERRY: You seconded it. Yes,  
8 Staff Director?

9 MS. MATHEWS: Madam Chair, when this draft  
10 was prepared and sent to you, the President's budget  
11 proposal for Congress had not been officially  
12 submitted and as a result in Section 4, there was a  
13 blank left there for the monetary proposal for 1997.  
14 I would suggest that we consider inserting \$11.4 in  
15 that blank area --

16 CHAIRPERSON BERRY: Which is Fiscal 1997?

17 MS. MATHEWS: Correct.

18 CHAIRPERSON BERRY: All right, well, with  
19 that addition, do you accept that the maker of the  
20 motion and the seconder? Is there any further  
21 discussion?

22 All right, all in favor of supporting the  
23 motion indicate by saying aye.

24 (Ayes.)

25 Opposed? Okay, the motion passes. Now

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1 the next item it says the Staff Director report. I  
2 would like to ask, to tell the Commission in this  
3 morning's paper there is an article, New York Times,  
4 "Radio Show Prank at Mosque Angers Muslims in  
5 Colorado" and it's about some folks who went to a  
6 mosque and some disk jockeys engaged in some pranks to  
7 demean and defame, according to this article, the  
8 sanctity of the mosque and dressed up like clowns and  
9 interrupted the religious ceremony that was going on  
10 in the mosque. I would like to ask my colleagues if  
11 we should ask the staff and people who are involved,  
12 are asking the Justice Department to investigate this  
13 issue, if they would be willing, just based on my  
14 having told them that this happened, to have the staff  
15 investigate it as to whether it did, in fact, happen.  
16 And if, in fact, as alleged, such an incident  
17 occurred, to make appropriate inquiries and to join,  
18 as we usually do in asking, drafting a letter which  
19 you can see, asking the Attorney General to  
20 investigate.

21 COMMISSIONER GEORGE: Absolutely. I so  
22 move.

23 CHAIRPERSON BERRY: Okay, so we'll get  
24 back to you. Does anybody object? Seconded the  
25 motion? I guess we need a motion.

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1 COMMISSIONER GEORGE: I make the motion.

2 COMMISSIONER ANDERSON: Second.

3 CHAIRPERSON BERRY: All in favor for  
4 proceeding as I have suggested indicate by saying aye.

5 (Ayes.)

6 Opposed? All right, so the motion is  
7 carried and you will see a letter of some kind go  
8 forward on this subject. Are there other questions on  
9 the Staff Director's Report or anything anybody wants  
10 to raise at this time. Vice Chair?

11 VICE CHAIRPERSON REYNOSO: I just want to  
12 say that I read with interest the new Civil Rights  
13 Journal and I thought it was very well done.

14 CHAIRPERSON BERRY: Yes, the journal is  
15 out. It's a fine job, Charlie. It looks good, reads  
16 wells. It's literate. May outsell People Magazine.

17 If there are no other questions on this,  
18 we'll go to the state advisory committee reports. We  
19 can take them up seriatim.

20 The first one is resources devoted to  
21 local and federal civil rights enforcement in  
22 Minnesota.

23 Can I have a motion to approve the report?

24 VICE CHAIRPERSON REYNOSO: So moved.

25 CHAIRPERSON BERRY: Second?

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1 COMMISSIONER LEE: Second.

2 CHAIRPERSON BERRY: Any discussion? All  
3 those in favor of approving the state advisory report  
4 from Minnesota, indicate by saying "aye".

5 (Ayes.)

6 Opposed? Abstentions?

7 COMMISSIONER GEORGE: Abstention.

8 CHAIRPERSON BERRY: Commissioner George  
9 abstains.

10 COMMISSIONER GEORGE: Can we call the  
11 roll, Madam Chairman.

12 CHAIRPERSON BERRY: The roll, yes.  
13 Commissioner Anderson?

14 COMMISSIONER ANDERSON: Aye.

15 CHAIRPERSON BERRY: Commissioner Berry,  
16 aye.

17 Commissioner George?

18 COMMISSIONER GEORGE: Abstain.

19 CHAIRPERSON BERRY: Commissioner  
20 Higginbotham?

21 COMMISSIONER HIGGINBOTHAM: Aye.

22 CHAIRPERSON BERRY: Commissioner Horner is  
23 absent.

24 Commissioner Lee?

25 COMMISSIONER LEE: Aye.

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1 CHAIRPERSON BERRY: Commissioner

2 Redenbaugh is absent.

3 Vice Chair?

4 VICE CHAIRPERSON REYNOSO: Aye.

5 CHAIRPERSON BERRY: Motion passes. The  
6 racial tensions in Tennessee report is the next one.  
7 Could I have a motion for its approval?

8 VICE CHAIRPERSON REYNOSO: So moved.

9 CHAIRPERSON BERRY: Second?

10 COMMISSIONER LEE: Second.

11 CHAIRPERSON BERRY: All right, the motion  
12 has been moved and seconded for approval of racial  
13 tensions in Tennessee. Do we have any discussion?

14 VICE CHAIRPERSON REYNOSO: Well, I just  
15 want to observe that in the observations near the end  
16 in Tennessee, the Commission used to be tracking many  
17 of the same matters that we've seen in the national  
18 scene. I guess it's not surprising, but -- well, I  
19 was surprised at how closely it tracked.

20 CHAIRPERSON BERRY: Yes. All those in  
21 favor of approving the Tennessee report indicate by  
22 saying aye.

23 (Ayes.)

24 Opposed? I'll call the roll again.

25 Commissioner Anderson?

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1 COMMISSIONER ANDERSON: Aye.

2 CHAIRPERSON BERRY: Berry, yes.

3 Commissioner George?

4 COMMISSIONER GEORGE: Aye.

5 CHAIRPERSON BERRY: Commissioner

6 Higginbotham?

7 COMMISSIONER HIGGINBOTHAM: Aye.

8 CHAIRPERSON BERRY: Commissioner Horner is  
9 absent.

10 Commissioner Lee?

11 COMMISSIONER LEE: Aye.

12 CHAIRPERSON BERRY: Commissioner

13 Redenbaugh is absent.

14 Vice Chair?

15 VICE CHAIRPERSON REYNOSO: Aye.

16 CHAIRPERSON BERRY: Okay, the motion is  
17 approved. State advisory committee appointments. We  
18 can take them either one by one or all together. Is  
19 there anyone who has a desire to take them one by one  
20 or one in particular you want to address?

21 COMMISSIONER GEORGE: Madam Chair, I have  
22 some questions about a number of them and I --

23 CHAIRPERSON BERRY: One by one?

24 COMMISSIONER GEORGE: Yeah, to the Staff  
25 Director, I wonder if Carol-Lee Hurley could be

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1 prepared, if needed, to respond to my questions.

2 CHAIRPERSON BERRY: Now why don't we then  
3 take the up one by one? Could I have a motion to  
4 approve the Alaska Advisory Committee Report?

5 VICE CHAIRPERSON REYNOSO: So moved.

6 CHAIRPERSON BERRY: Second?

7 COMMISSIONER LEE: Second.

8 CHAIRPERSON BERRY: All right, discussion.

9 COMMISSIONER GEORGE: Yes, Madam Chairman.  
10 Two incumbent members declined the opportunity to be  
11 considered for reappointment. I'm not sure whether  
12 that means reappointment was offered or how did the  
13 procedure work. They were told you can be considered  
14 and they said no, I don't want to be considered.

15 MS. MATHEWS: That's my understanding,  
16 Commissioner George.

17 COMMISSIONER GEORGE: Okay, so it was  
18 unclear as to whether they were going to be  
19 reappointed or not.

20 MS. MATHEWS: The individuals receive a  
21 letter asking if they wish to be considered for  
22 reappointment. These two declined.

23 COMMISSIONER GEORGE: And that happens in  
24 all cases with all the states?

25 MS. MATHEWS: Yes.

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1 COMMISSIONER GEORGE: So they  
2 affirmatively said no, we don't want to do it. Thank  
3 you. That's what I want to know.

4 Next, Madam Chair?

5 CHAIRPERSON BERRY: What about Arizona?  
6 Why don't we just ask questions about each one of  
7 these and then vote them all together.

8 COMMISSIONER GEORGE: That's just fine.  
9 Is Missouri next?

10 CHAIRPERSON BERRY: Arizona is next. Does  
11 anybody have any questions about Arizona appointments?

12 We're just going to do the questions and  
13 then we'll have one motion for all of them.

14 COMMISSIONER GEORGE: Yeah, this is the  
15 one a current member is not recommended for  
16 reappointment, two resigned, one did not attend any  
17 meetings and three did not seek reappointment. Did  
18 not seek reappointment, does that mean they got --  
19 just what happened in Alaska, they got the letter?

20 MS. MATHEWS: Yes.

21 COMMISSIONER GEORGE: Okay. One did not  
22 attend any meetings, two resigned. Is this just  
23 routine resignations or was there an issue out there  
24 that prompted -- was it routine? Okay. Thank you,  
25 Madam Chairman.

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1 CHAIRPERSON BERRY: California? Questions  
2 about California?

3 COMMISSIONER GEORGE: That's fine, no  
4 questions.

5 CHAIRPERSON BERRY: Missouri? The Show Me  
6 State. Questions about Missouri?

7 COMMISSIONER GEORGE: Three members are  
8 not recommended for reappointment to the Committee.  
9 One did not wish to be reappointed. That was the same  
10 as Alaska, the letter and so forth.

11 CHAIRPERSON BERRY: Yes.

12 COMMISSIONER GEORGE: Two members were not  
13 able to participate in the Committee's activities.  
14 Does that mean they didn't show up for the meetings?

15 MS. MATHEWS: Yes, that's my  
16 understanding.

17 COMMISSIONER GEORGE: And were not able --  
18 they had good excuses or they just didn't show up?

19 CHAIRPERSON BERRY: Carol, would you like  
20 to come up?

21 MS. HURLEY: I don't know. I don't recall  
22 the exact details, Commissioner George, but basically  
23 if participation is minimal or nonexistent that's the  
24 phrase that would be used.

25 COMMISSIONER GEORGE: Okay, that's what I

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1 was wondering about because sometimes it says "did not  
2 attend meetings" and other times it says "were unable  
3 to participate or unable to attend it." It does  
4 strike me that can be a meaningful distinction, but  
5 sometimes it just means the same thing.

6 Okay.

7 CHAIRPERSON BERRY: So whenever we see  
8 those two phrasings, it means the person didn't show  
9 up.

10 COMMISSIONER GEORGE: Didn't show up,  
11 okay. Those two members were informed by a letter of  
12 the right to appeal this decision to the Staff  
13 Director and no response was received.

14 MS. MATHEWS: That's correct.

15 CHAIRPERSON BERRY: Nebraska? Anybody for  
16 Nebraska?

17 COMMISSIONER GEORGE: No questions.

18 CHAIRPERSON BERRY: Vermont?

19 COMMISSIONER GEORGE: I do have a question  
20 here. Two members resigned during the appointment  
21 period to pursue other interests. The authorized size  
22 of the Vermont Advisory Committee is 11. The  
23 personnel actions requested, I think, would increase  
24 the size of the committee to 13 and would assure the  
25 effective operation of the Advisory Committee and

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1 improve political and racial balance.

2 I don't quite see how the -- I might be  
3 missing something, how the arithmetic on that one  
4 works out and if I'm reading it correctly, I don't see  
5 how the racial balance is affected. The two new  
6 people appointed are both Caucasians.

7 MS. MATHEWS: It's the particular chart  
8 that shows you the entire representation and --

9 COMMISSIONER GEORGE: Well, race,  
10 ethnicity, 9 white, 2 black, one Hispanic. I don't  
11 see how adding -- am I missing something? I don't see  
12 how adding two whites, maybe those -- I don't see how  
13 that makes it any -- it's just more whites.

14 CHAIRPERSON BERRY: You mean like who's  
15 being added?

16 COMMISSIONER GEORGE: Yeah.

17 MS. MATHEWS: Do you have any further  
18 information, Carol, would you like to come up here?

19 MS. HURLEY: I don't really recall the  
20 details, but perhaps the Eastern Regional Director who  
21 is here could provide that information.

22 CHAIRPERSON BERRY: Where is the Eastern  
23 Regional --

24 MS. HURLEY: No. He doesn't have  
25 anything. Vermont is a state that is very highly

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1 white and I will just expect that what is happening is  
2 that we're getting more minorities on the Committee.

3 COMMISSIONER GEORGE: I don't think -- I  
4 think it's actually not working then.

5 MS. HURLEY: Well, there's so few  
6 minorities in Vermont. It's difficult.

7 COMMISSIONER GEORGE: Then I just don't  
8 see the justification for increasing the size of  
9 Vermont. California only has 14 members. I can see  
10 it if you have a special reason because of balance of  
11 some sort, religious or political or racial, but I  
12 wonder if we could put this -- lay this one aside.

13 CHAIRPERSON BERRY: Why don't we lay  
14 Vermont aside and get a report on it so we can figure  
15 out what's going on.

16 COMMISSIONER GEORGE: Yeah. Okay.

17 CHAIRPERSON BERRY: Wyoming? Go ahead.

18 COMMISSIONER GEORGE: Okay. The personnel  
19 actions requested will provide the balance and  
20 appropriate representation. One current member did  
21 not wish to be reappointed. Two other current members  
22 are not recommended for reappointment. In order to  
23 provide appointment opportunities for persons who are  
24 currently more actively involved in civil rights.  
25 These two persons were informed of their opportunity

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1 to appeal this decision to the Commission. No  
2 correspondence was received from them.

3 Now I'm wondering about those two people.  
4 Does no correspondence from them mean we didn't hear  
5 from them at all or that they didn't make a written --

6 MS. HURLEY: We didn't hear from them at  
7 all.

8 COMMISSIONER GEORGE: Didn't hear from  
9 them at all.

10 MS. MATHEWS: If I can ask, did the Court  
11 Reporter pick that up? Thank you.

12 CHAIRPERSON BERRY: So in other words, we  
13 didn't hear anything, but they were told they had a  
14 right to appeal?

15 COMMISSIONER GEORGE: Okay, yeah. So the  
16 idea is there were two people who -- you had an  
17 opportunity to appoint two people who had more  
18 background in civil rights.

19 CHAIRPERSON BERRY: Than those people.

20 COMMISSIONER GEORGE: Although you decided  
21 to not reappoint those people, to appoint the two new  
22 people you informed the two new people and they just  
23 didn't --

24 MS. HURLEY: They did not appeal that  
25 decision.

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1 COMMISSIONER GEORGE: Get back. Okay.  
2 Did the two people who were not reappointed -- had  
3 they been faithful participants in activities of the  
4 SAC?

5 MS. HURLEY: I believe they had  
6 participated, but not to a fully enthusiastic extent.

7 COMMISSIONER GEORGE: Okay.

8 MS. HURLEY: You will see, I'm sure more  
9 and more of this or at least as many of this sort of  
10 replacement as we try to follow the Commissioner's  
11 wish to add younger members to the Committees. We  
12 can't justify having all Committees of large sizes.

13 COMMISSIONER GEORGE: Right.

14 MS. HURLEY: So we have to make some  
15 difficult choices sometimes to add the younger  
16 members.

17 CHAIRPERSON BERRY: Because in other  
18 words, if we kept the same people on forever, there  
19 wouldn't be any space to put any new members.

20 MS. MATHEWS: Right.

21 CHAIRPERSON BERRY: But they do have a  
22 right to appeal to us.

23 COMMISSIONER GEORGE: Right, and they were  
24 informed, but didn't communicate.

25 Yeah, okay. Thank you. Next?

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1                   CHAIRPERSON BERRY: We were doing what,  
2 Kentucky? Kentucky, yes. Kentucky. We have  
3 Kentucky. Anything on Kentucky? Anyone? I said  
4 Wyoming, didn't I?

5                   We were just doing Wyoming. Kentucky?  
6 Commissioner George, do you have anything on Kentucky?  
7 Does anybody else have anything on Kentucky?

8                   All right, how about Tennessee, interim  
9 appointment?

10                   Okay, well, with that, we have dropped out  
11 Vermont, so now I need a motion to approve all the  
12 State Advisory Committee appointments except the one  
13 for Vermont which we will consider again when we get  
14 more information.

15                   Can I have such a motion?

16                   VICE CHAIRPERSON REYNOSO: So moved.

17                   COMMISSIONER GEORGE: Just another  
18 question on Wyoming. I just noticed in my notes. Are  
19 we increasing the size of the Wyoming Committee?

20                   CHAIRPERSON BERRY: Carol-Lee? Is the  
21 size of Wyoming being increased?

22                   MS. HURLEY: I think it might be increased  
23 by one or two persons.

24                   COMMISSIONER GEORGE: Um --

25                   MS. HURLEY: In order to try to meet all

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1 the criteria of age and political balance and  
2 representation, gender representation. We have  
3 difficulty maintaining even for small states or states  
4 with low population a committee of 11. It's just not  
5 easy.

6 COMMISSIONER GEORGE: Uh-huh. In Wyoming,  
7 six new people are being recommended for new  
8 appointments while only three are being replaced, so  
9 I think it's probably three.

10 CHAIRPERSON BERRY: Three more.

11 COMMISSIONER GEORGE: So we're increasing  
12 it by three.

13 Would it be a good thing just for the  
14 future to indicate when we're increasing the size?

15 CHAIRPERSON BERRY: If that would be  
16 helpful.

17 COMMISSIONER GEORGE: I think it would be  
18 helpful to know that.

19 CHAIRPERSON BERRY: We'll do that from now  
20 on then.

21 MS. HURLEY: That will be --

22 CHAIRPERSON BERRY: Then we don't have to  
23 count it at the meeting. We'll have that information  
24 to begin with.

25 COMMISSIONER GEORGE: Yeah, did

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1 Commissioner Redenbaugh communicate at all about a  
2 question he had with the California appointments? Was  
3 there any communication, Staff Director?

4 MS. MATHEWS: Madam Chair.

5 CHAIRPERSON BERRY: Yes, Staff Director?

6 MS. MATHEWS: Commissioner Redenbaugh  
7 recommended two additional individuals and they're  
8 being considered by the Regional Director.

9 COMMISSIONER GEORGE: For California?

10 MS. MATHEWS: Yes, that was the state,  
11 California.

12 COMMISSIONER GEORGE: So, they're being  
13 considered but we're rechartering now?

14 MS. MATHEWS: Well, as you know, there are  
15 always opportunities as the year progresses for  
16 additional interim appointments and that's the  
17 consideration that's being given at the current time.

18 COMMISSIONER GEORGE: Did the -- I have a  
19 note that Commissioner Redenbaugh was concerned about  
20 one of the people who was not being reappointed. Did  
21 he raise any issue about that?

22 MS. MATHEWS: I do not have any  
23 information about that.

24 COMMISSIONER GEORGE: Okay.

25 CHAIRPERSON BERRY: But you have some

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1 information about people who he wanted appointed?

2 MS. MATHEWS: Yes, there were two  
3 individuals that he recommended for appointment and  
4 they are being considered by the Regional Director.  
5 That's all that has been communicated to me by  
6 Commissioner Redenbaugh for California.

7 COMMISSIONER GEORGE: Okay, well, I would  
8 like to put off California, if possible, until next  
9 time to give Mr. Redenbaugh an opportunity to raise  
10 the issue that he has. That would be my preference.  
11 The rest, with the exception of Vermont, I'm prepared  
12 to go with.

13 CHAIRPERSON BERRY: Does anyone object to  
14 that?

15 We will consider California and Vermont  
16 next time.

17 Commissioner Anderson?

18 COMMISSIONER ANDERSON: I'm seeing a  
19 gradual SAC member creep in terms of the number of  
20 members being on the SACs. Is there any economic  
21 effect of that? Is there a budgetary consequence of  
22 that?

23 MS. MATHEWS: Yes.

24 COMMISSIONER ANDERSON: If so, what is it,  
25 if you can say?

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1 MS. MATHEWS: Madam Chair?

2 CHAIRPERSON BERRY: Yes.

3 MS. MATHEWS: The general budgetary  
4 consideration is that even though the State Advisory  
5 Committee members are not salaried, they're not  
6 federal employees, we do provide for them travel  
7 reimbursement to SAC meetings. And that's the  
8 budgetary impact that I can see that would be directly  
9 relevant to the increased SAC size.

10 There might also be some other harder to  
11 pin down cost factors associated with regional staff  
12 and the coordination efforts with a few additional  
13 people, things like that.

14 COMMISSIONER ANDERSON: I don't know if  
15 it's de minimis or not, but we're moving even small  
16 states like Wyoming, we're increasing in terms of  
17 population --

18 CHAIRPERSON BERRY: It is a consideration.  
19 We've discussed this question over the years, off and  
20 on again. There was one point when somebody thought  
21 the California SAC should have 50 members because  
22 California is so large. And they should be divided  
23 regionally. And we debated it, but the costs seemed  
24 to be absolutely prohibitive.

25 In the past, we have considered the cost

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1 when we increased the SAC, but maybe we should think  
2 about it and tell the staff to think about that after  
3 thinking about the kinds of political balance, the  
4 ages, all kinds of diversity we like to see. But that  
5 is a consideration, and also the size of a state, I  
6 mean, if one state has a small population and they  
7 have as many SAC members or more than another state,  
8 that that does raise some kinds of questions about  
9 why.

10 MS. MATHEWS: It is definitely a  
11 consideration. I was just going to add on the size of  
12 the state point, Alaska is a good example. It's very  
13 expensive to hold a SAC meeting in Alaska. Just the  
14 SAC members themselves convening in one spot, but the  
15 regional staff in California, flying up and back, as  
16 contrasted with a small state in the upper Northeast  
17 area where many people could drive, wouldn't need to  
18 fly and the staff can easily get up and back even in  
19 the same day without overnight expenditures. So there  
20 are wide variances in terms of costs for these events,  
21 and as you may recall, we had a discussion that  
22 related to this at the National SAC Chair Conference  
23 last summer where we discussed alternative ways of  
24 conducting SAC business. One alternative being  
25 telephonic meetings and it's my understanding the

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1 Regional Directors are pursuing that whenever  
2 possible. That wouldn't work obviously for a fact-  
3 finding meeting, but it might work for a planning  
4 meeting.

5 CHAIRPERSON BERRY: Could we then with  
6 that get approval of the motion to approve the SAC  
7 appointments with the exclusion of Vermont and  
8 California which we will take up next time? That  
9 motion is accepted by the maker of the motion and the  
10 seconder. All in favor of the approval indicate by  
11 saying "aye".

12 (Ayes.)

13 Opposed? All right, the motion passes and  
14 the SAC appointments are approved.

15 I am told by the parliamentarian that I  
16 did not properly execute your tabling motion,  
17 Commissioner George. You made the motion to table,  
18 but apparently no one seconded it. Could someone  
19 please second it? I thought that someone did.

20 . Anybody?

21 VICE CHAIRPERSON REYNOSO: Second.

22 CHAIRPERSON BERRY: Vice Chair. And all  
23 in favor of the motion to table, indicate by saying  
24 "aye"?

25 (Ayes.)

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1 All right, and we're laying it on the  
2 table until the next meeting, so it will come up at  
3 the next meeting.

4 Are there other matters that should come  
5 before the Commission at this time? If there are no  
6 other matters, I would entertain a motion to adjourn.

7 VICE CHAIRPERSON REYNOSO: So moved.

8 CHAIRPERSON BERRY: Second?

9 COMMISSIONER LEE: Second.

10 CHAIRPERSON BERRY: Motion to adjourn is  
11 nondebatable, so thank you very much. Adjourned.

12 (Whereupon, at 1:13 p.m., the meeting was  
13 concluded.)

14