

UNITED STATES COMMISSION ON CIVIL RIGHTS

\* \* \* \* \*

WEDNESDAY, MARCH 6, 1996

\* \* \* \* \*

MEETING

The meeting of the Commission was held in Room 540, 624 Ninth Street, N.W., Washington, D.C., at 12:30 p.m.

PRESENT: (Telephonically)

- MARY FRANCES BERRY Chairperson
- CRUZ REYNOSO Vice Chairperson
- CARL A. ANDERSON Commissioner
- ROBERT P. GEORGE Commissioner
- A. LEON HIGGINBOTHAM, JR. Commissioner
- CONSTANCE HORNER Commissioner
- YVONNE Y. LEE Commissioner
- RUSSELL G. REDENBAUGH Commissioner
  
- MARY K. MATHEWS Staff Director

**LIBRARY**

U.S. COMMISSION ON CIVIL RIGHTS

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D.C. 20005

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COMMISSION STAFF PRESENT:

JAMES S. CUNNINGHAM

PAMELA DUNSTON

BETTY EDMISTON

GEORGE HARBISON

CAROL-LEE HURLEY

JACQUELINE L. JOHNSON

WILLIAM LEE

STEPHANIE Y. MOORE

General Counsel

VERONIQUE PLUVIOSE-FENTON

CHARLES RIVERA

AUDREY WRIGHT

COMMISSIONERS' ASSISTANTS PRESENT:

RONALD BROWN

WILLIAM LEE SAUNDERS, JR.

KRISHNA TOOLSIE

STELLA G. YOUNGBLOOD

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D.C. 20005

1  
2 P-R-O-C-E-E-D-I-N-G-S

3 (12:35 p.m.)

4 -- CHAIRPERSON BERRY: Good morning,  
5 everyone, and thank you for being willing to make  
6 yourselves available. I know how busy you all are.

7 I wanted to have this meeting because I  
8 had problems on the transcript of the December meeting  
9 that I think was in response to a comment by  
10 Commissioner Anderson, that if we were to be  
11 subpoenaed, or if he heard anything else about the  
12 subpoena issue, you would be informed and have an  
13 opportunity to make a decision about what you wanted  
14 to do rather than simply hearing about it after-the-  
15 fact. And since we have received this letter from our  
16 subcommittee -- and it was directed to all of us this  
17 time -- I thought that it was appropriate to convene  
18 a meeting to discuss the letter.

19 So the purpose of the meeting is to  
20 discuss how the Commission wants to respond to the  
21 letter.

22 Let me, just for purposes of recollection,  
23 remind you that at the December meeting we had a vote  
24 taken, which the result was 4 and 3, with 1  
25 abstention, on a motion which would direct the Staff

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 Director to turn over all materials to the  
2 subcommittee. That motion failed. And we had some  
3 discussion about whether we would respond if the  
4 committee directed its attention to us specifically,  
5 or not, and the points were made by me and other  
6 people that the committee had not asked us directly.

7 My only comment about the letter, before  
8 I open it up to discussion -- or for anything else  
9 you'd like to do -- on any modification you want --  
10 why don't we do this? Does anyone want to add  
11 anything else to the agenda beyond discussing the  
12 letter?

13 (No response.)

14 No one does?

15 (No response.)

16 Well, I hear agreement that we can discuss  
17 the letter. Is there anyone who objects to discussing  
18 the letter as the entire agenda of this meeting?

19 (No response.)

20 No one objects. All right, then I'll  
21 proceed.

22 My only other comment that I will make is  
23 that in the letter itself there's a reference to a  
24 letter I wrote to the subcommittee. The letter I  
25 wrote to the subcommittee made clear in the letter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 that the only reason I was writing is that I wanted to  
2 talk about the policy matters of the Commission's  
3 independence, and not about any specific materials  
4 that were referenced. Since that time, I have not had  
5 any contact, written or any other way, as I recall,  
6 with the Committee on this subject.

7 Well, the floor is open for any discussion  
8 any Commissioner would like to have in terms of  
9 response to the letter.

10 COMMISSIONER REYNOSO: Mary, this is Cruz.  
11 I've just been going through the letter. I have a  
12 couple of questions which I'll raise later, but I have  
13 a comment.

14 On the second page, last full paragraph  
15 says, "Most recently I understand that the chair has  
16 indicated the Commission's noncompliance is due to the  
17 fact that those two questions were directed to the  
18 Staff Director".

19 I guess that's an impression that the  
20 chair, Chair Canady, has that is not mine. I thought  
21 we just had said that since this communication was  
22 with the Staff Director, matters should be resolved at  
23 that level because there was no communication with us.  
24 And in fact; my recollection is that we suggested that  
25 Mary Mathews have discussions with the staff to see if

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 some of these things could be worked out.

2 And my question would be, what's happened  
3 since our last meeting? But that sentence, to me,  
4 indicates an understanding difference.

5 COMMISSIONER HORNER: Madam Chair, where  
6 is this sentence, Cruz?

7 COMMISSIONER REYNOSO: Page 2 -- I'm sorry  
8 -- the next to the last full paragraph. It lists A,  
9 B, C, then it has a short paragraph and the next  
10 paragraph. It just says, "Most recently I  
11 understand".

12 CHAIRPERSON BERRY: Well, the "most  
13 recently" I don't understand because the most recent  
14 communication -- we did discuss this in December at  
15 the meeting. I have had no communication with the  
16 Committee since December.

17 I think they may be referring to the  
18 letter I wrote to them on September 18th, but I don't  
19 know what the "most recently" means. But I do remind  
20 you that at the meeting in December, I asked the Staff  
21 Director directly, on the record, whether the  
22 subcommittee's request had been complied with. I  
23 asked that twice, and on both occasions the Staff  
24 Director told us that she had complied except for the  
25 interview report and the Executive Session transcript.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1           The Staff Director is there. Do you want  
2 to update us on your response to the state of your  
3 compliance at this point, either with what's in the  
4 letter or anything else, before we proceed?

5           COMMISSIONER HORNER: Madam Chair, before  
6 Mary does what you ask, I would just like to say for  
7 the record that I authored the motion to comply at the  
8 last meeting, and that motion was a vote of the  
9 Commission not to -- in fact, that motion failed. So,  
10 I don't recall any particular set of reasons that the  
11 Commission itself agreed to as to why people,  
12 individuals, didn't vote to comply with the motion.  
13 That was not my reasoning, obviously, because I  
14 proposed that we comply in full.

15           CHAIRPERSON BERRY: Right, the motion was  
16 Commissioner Horner's motion, and I don't recall  
17 either. I don't know whether that's what they're  
18 referring to or not, but we did have that vote 4-3-1

19           Staff Director, could you just clarify for  
20 us what the status of compliance were framed other  
21 than the interview reports and the Executive Session  
22 transcripts? What is the status?

23           MS. MATHEWS: Yes, Madam Chairperson. I  
24 have had a conversation this week, with Kathryn Hazeem  
25 -- she is the head staffer with Representative

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 Canady's subcommittee, the House Subcommittee on the  
2 Constitution -- and discussed with her this letter  
3 and, in particular, a question that I had in regard to  
4 a statement at the end of the letter where she  
5 indicates there are some administrative matters that  
6 she believes are still outstanding.

7 I told her that it was my feeling that we  
8 had fully complied, and that it certainly was my  
9 intent to do so and, if she could identify what she  
10 thinks is missing, that I would be glad to discuss it  
11 with her further, and provide whatever information she  
12 identifies.

13 We have agreed to discuss this further.  
14 She did not provide me with anything specific. She  
15 said she would get back to me, but it's my impression  
16 that she and I had total agreement on the issue of --  
17 that it's not an issue of contention in terms of  
18 administrative issues, and there may be one or two  
19 items which she will let me know at a later date.

20 The only item that I identified in my memo  
21 to her -- my letter to Charles Canady -- that was  
22 asked for, that we do not have, that we are still  
23 getting for her -- and I discussed that with her as  
24 well -- are some financial records from our National  
25 Finance Center in New Orleans.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005



1 CHAIRPERSON BERRY: And you will send  
2 those when you get them?

3 MS. MATHEWS: Absolutely, and I reiterated  
4 that this-week. We still do not have them.

5 COMMISSIONER ANDERSON: Madam Chair?

6 CHAIRPERSON BERRY: Commissioner Anderson?

7 COMMISSIONER ANDERSON: I'm still a little  
8 bit confused. If we could look at the March 1st  
9 letter from Chairman Canady that we're discussing,  
10 there is the identification of one broad area on page  
11 1, and then three more specific areas on page 2. And  
12 could the Staff Director specifically tell us whether  
13 we're complying with that or not, which is to say the  
14 paragraph at the bottom of page 1 that begins, "Any  
15 documents or other materials". I'd like to know in  
16 that paragraph are we fully complying or not and, if  
17 not, where not. And then for each of the other on  
18 page 2, subparagraphs A, B, and C, whether we're fully  
19 compliant; if not, where we comply and where we have  
20 not complied, and I think that would then give us a  
21 real clear idea of what the difference here is of what  
22 Chairman Canady seems to be wanting or not wanting.

23 CHAIRPERSON BERRY: Staff Director, at the  
24 bottom of page 1 where it says -- it lists some items  
25 -- "any documents or materials limited to -- see list

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 at bottom of page 1" --

2 MS. MATHEWS: I do.

3 CHAIRPERSON BERRY: Tell us in order,  
4 insofar as you know -- I guess you know -- tell us  
5 what the status of -- are things we have, things we've  
6 given, what's the status of each one of these?

7 COMMISSIONER GEORGE: Madam Chair, that  
8 part of my fax has been cut off, that last paragraph  
9 that seems to begin --

10 CHAIRPERSON BERRY: On which page?

11 COMMISSIONER GEORGE: On page 1.

12 CHAIRPERSON BERRY: Why don't I read it.  
13 It says, "Any documents or other materials (including  
14 but not limited to tape recordings, handwritten notes,  
15 correspondence, summaries, records of conversations or  
16 memoranda) with respect to the Commission's  
17 preparation for its hearings in Miami, Florida, on  
18 September 14 and 15, 1995, including: -- and then go  
19 to the next page --

20 COMMISSIONER GEORGE: Yes, I've got all  
21 that. Thank you. I've got all that information.

22 CHAIRPERSON BERRY: So, could you  
23 enlighten us on that?

24 MS. MATHEWS: Yes, Madam Chair. The  
25 conversation that I had with Kathryn Hazeem this week

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 covered these items that you and several other  
2 Commissioners have mentioned as well.

3 COMMISSIONER HORNER: Mary, your voice is  
4 fading.

5 MS. MATHEWS: I'm sorry, I will try again.  
6 I have rediscussed these items that are on -- begin on  
7 the bottom of page 1 and go onto A, B, and C on page  
8 2, with Kathryn Hazeem in my conversations this week  
9 as well.

10 And I have reconfirmed for myself that we  
11 have already provided the subcommittee with all items  
12 referenced in A, B, and C, with the exception of the  
13 items that I identified at the last Commission  
14 meeting, and these include Executive Session  
15 transcripts and interview reports relevant to the  
16 witnesses, or potential witnesses, for the hearing in  
17 Miami. We have provided everything else that is  
18 covered by A, B, and C, and beginning on the bottom of  
19 page 1.

20 CHAIRPERSON BERRY: Can I ask you this so  
21 that we're clear on this -- if everybody can hear me --  
22 - Staff Director, did you have tape recordings,  
23 handwritten notes, correspondence, summaries -- I'm  
24 just repeating what's down here -- letters of  
25 conversations or memoranda of -- were these items that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 you actually had that you gave to her, or did you give  
2 to her what you had? I don't understand -- from among  
3 the items that she requested in general, or are the  
4 interview reports part of the subject matter of A, B,  
5 and C, or what? Does your answer mean that you gave  
6 her a bunch of tape recordings, handwritten notes,  
7 correspondence, records of conversations -- does your  
8 answer mean that you gave her what you had that  
9 related to the Miami hearing, if it was anything that  
10 was in A, B, and C?

11 MS. MATHEWS: We did not have tape  
12 recordings, and we did not have handwritten notes.  
13 The pace with which the hearing preparation process  
14 goes and the small size of our agency really resulted  
15 in the majority of staff interaction in the General  
16 Counsel's Office and throughout the Commission being  
17 done by oral conversation.

18 So, handwritten notes and tape recordings  
19 were not -- we did not have any. There were none in  
20 our system of records.

21 COMMISSIONER HORNER: Do individuals have  
22 them in their possession -- that is, have you asked  
23 all individuals who conducted interviews to produce  
24 their handwritten notes?

25 MS. MATHEWS: Is that Commissioner Horner?

1 COMMISSIONER HORNER: Yes.

2 MS. MATHEWS: May I respond, Madam Chair?

3 CHAIRPERSON BERRY: Yes, sure.

4 MS. MATHEWS: Commissioner Horner, I have  
5 asked our General Counsel to provide me with the  
6 response here in regard to all of these issues as it  
7 pertains to her office. So, my interaction was  
8 between myself and the General Counsel.

9 COMMISSIONER HORNER: Has the General  
10 Counsel told you that she and her staff have no tape  
11 recordings or handwritten notes?

12 MS. MATHEWS: She has told me that the  
13 system of records maintained in the Office of General  
14 Counsel does not have handwritten notes or tape  
15 recordings.

16 COMMISSIONER HORNER: But that's quite a  
17 different question. The Committee is asking for the  
18 materials -- all materials which exist, not simply all  
19 materials which exist in some formal system of record.  
20 And I'm asking you, have you asked the General Counsel  
21 to obtain any outstanding existing handwritten notes  
22 or tape recordings relating to these interviews?

23 CHAIRPERSON BERRY: I would permit you to  
24 answer that because Commissioner Horner asked the  
25 question, but I don't read the letter as the committee

1 implying that someone on the staff is supposed to go  
2 around to each staff member to ask them, "Do you have  
3 any handwritten notes in your office concerning any of  
4 these matters", as you would do if it were a criminal  
5 investigation where you have a sweep of the office.  
6 I don't read the inquiry to ask anybody to go around  
7 and do that, or to go around and ask each person on  
8 the staff to recall each conversation you've had with  
9 anybody recorded. Maybe others read the letter to  
10 mean that, but I don't read the letter to mean that.

11 COMMISSIONER HORNER: Madam Chair, I'm not  
12 a lawyer, but previously when I've been responsible  
13 for offices from which congressional members have  
14 asked for materials, those materials were not confined  
15 to materials that someone chose to enter into a formal  
16 system, but included all materials related to the  
17 subject under request. That's how I read the language  
18 of this request. You know, I don't know what would  
19 provide a basis for interpreting the language more  
20 narrowly.

21 CHAIRPERSON BERRY: Well, I don't -- we'll  
22 see what other Commissioners think, but I do not read  
23 the letter, and never in my experience in the  
24 administrative government have I ever seen a letter  
25 which -- unless we were talking about a criminal

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D.C. 20005

1 investigation -- which implied, without stating, that  
2 we were to go to everybody's office to ask them to  
3 look through their desks and their briefcases to see  
4 if they could find a handwritten note about any matter  
5 -- because it never occurred to me that you would do  
6 that. Usually when I got requests, it was just look  
7 in the records, have people look and see if anybody  
8 kept anything, was there anything we were supposed to  
9 keep, and not to ask individuals personally to go  
10 through their briefcases, purses, and desks, to see if  
11 they could find some handwritten notes.

12 COMMISSIONER HORNER: I would hope that  
13 any interview notes would be kept more carefully than  
14 just in someone's purse or briefcase. Handwritten  
15 notes constitute a government record. I would hope  
16 they would be kept pursuant to the laws relating to  
17 the retention of government records.

18 CHAIRPERSON BERRY: Well, we have  
19 government records. We have interview reports, which  
20 is part of the discussion that we are having here, but  
21 you can ask -- if others want to know or if you want  
22 to know, the Staff Director can answer the question  
23 herself, or have somebody on the staff answer it, if  
24 more answering is needed.

25 COMMISSIONER ANDERSON: Madam Chair, this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 is Commissioner Anderson.

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER ANDERSON: I think we ought  
4 to answer the question. When I was -- I mean, it  
5 seems strange to me that attorneys would interview  
6 potential witnesses and not take notes of the  
7 interview. And all the attorneys I know who interview  
8 potential witnesses basically keep a written  
9 memoranda, usually handwritten, in their files  
10 regarding the subject matter of the interview. I  
11 suspect that's what Chairman Canady's letter is  
12 getting at, but it would be interesting to know  
13 whether or not the General Counsel's Office was asked  
14 about those kinds of interview notes. And I would not  
15 assume that that would be filed formally in any kind  
16 of official system of records that's being maintained  
17 in any office.

18 CHAIRPERSON BERRY: May we know  
19 specifically, before they answer the question, what it  
20 is you want to know? Do you want to know if the  
21 General Counsel was asked to ask staff members whether  
22 they had in their possession -- whether in their  
23 personal files, their desks, anything that was  
24 personal -- any notes related to anything having to do  
25 with the hearing, or do you want to know whether they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005



1 have any handwritten notes of their interviews with  
2 witnesses? What would you like to know?

3 COMMISSIONER HORNER: I just want to know  
4 so they can answer the question.

5 COMMISSIONER ANDERSON: I guess the best  
6 thing at this point, I'd like to know both.

7 CHAIRPERSON BERRY: Okay. Staff Director,  
8 could you answer the question, or have somebody answer  
9 it?

10 MS. MATHEWS: Madam Chair, I would --  
11 because my answer would be really a repetition of what  
12 I said before, meaning that I consulted with the  
13 General Counsel. General Counsel Stephanie Moore is  
14 here with me, and I would, if it's all right with you,  
15 ask her to respond.

16 CHAIRPERSON BERRY: Sure, go ahead.

17 MS. MOORE: And part one of the question  
18 was, again?

19 CHAIRPERSON BERRY: As I understand it,  
20 did you ask individual staff members whether they had  
21 any handwritten note related to any interactions that  
22 they had with the -- concerning the Miami hearing,  
23 anywhere in their possession, and then procure those  
24 notes from them in order to send them up to the  
25 committee.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 MS. MOORE: I did neither because I did  
2 not read the request as making that type of inquiry  
3 from Congress.

4 CHAIRPERSON BERRY: And did you -- you do  
5 have interview reports, though, typed up?

6 MS. MOORE: Yes.

7 CHAIRPERSON BERRY: Okay. And we've been  
8 discussing those. Now, is there need for another  
9 question?

10 COMMISSIONER ANDERSON: Yes, I have a  
11 question, Madam Chair.

12 CHAIRPERSON BERRY: Commissioner Anderson.

13 COMMISSIONER ANDERSON: The statement says  
14 "any" documents, including handwritten notes with  
15 respect to the Commission's preparation for the  
16 hearing in Miami. How is it that that somehow is  
17 unclear?

18 MS. MOORE: Well, again, Commissioner  
19 Anderson, as a lawyer, I did not read it -- and the  
20 Chair has already stated -- in a criminal proceeding,  
21 one would make such a sweep. In a request from  
22 Congress in its oversight function, one would not.  
23 One would check their system of record. We typically  
24 get FOIA requests as well, but we do not search for  
25 handwritten documents to comply with FOIA requests.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 COMMISSIONER ANDERSON: So taking  
2 documents including handwritten notes --

3 MS. MOORE: Would be those that are  
4 included in our official system of record. And if  
5 there were handwritten notes in our official system of  
6 records, those would be produced.

7 COMMISSIONER HORNER: And what would cause  
8 handwritten notes recording the contents of an  
9 interview to be excluded from the Commission's  
10 official records?

11 MS. MOORE: Because the interview report  
12 itself constitutes the official record.

13 CHAIRPERSON BERRY: In other words,  
14 somebody types up an interview report.

15 COMMISSIONER HORNER: But a government  
16 document is anything created in the course of doing  
17 the business of government.

18 CHAIRPERSON BERRY: Let me ask you this,  
19 General Counsel. Do you know for a fact that each  
20 staff member took handwritten notes?

21 MS. MOORE: I do not. We do not  
22 micromanage to that level. Some people use tape  
23 recorders. Some people use other people in the room  
24 with them to record. Some may even type on their  
25 computer as they are interviewing the person, if it's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 a telephonic interview.

2 CHAIRPERSON BERRY: And if they make a  
3 tape recording, do they, to your knowledge, preserve  
4 those recordings for records?

5 MS. MOORE: They are not retained in our  
6 system of records. They often tape over. We do not  
7 have the expense to maintain tapē recordings for  
8 everyone that we interview.

9 COMMISSIONER HORNER: I hope that at the  
10 time of this request no decision was made by any  
11 individual to begin taping over something which might  
12 fall, in a plain English reading, under this request.

13 CHAIRPERSON BERRY: Counsel, you can  
14 answer that. Even though the implication is  
15 pernicious, go ahead and answer.

16 MS. MOORE: It is extremely pernicious  
17 and, quite frankly, I resent it.

18 COMMISSIONER HORNER: I did not give you  
19 any motivation whatsoever, you said that typically  
20 recording over occurs. I'm saying I hope that  
21 recording over -- the recording over which typically  
22 occurs, atypically did not occur.

23 MS. MOORE: You suggested that someone  
24 might have made that directive but, at any rate, at  
25 the time that the request was made, all of our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 interviews had already taken place. So, whatever had  
2 happened to the tapes had already happened to the  
3 tapes. We were already in the middle of the hearing  
4 at that time.

5 CHAIRPERSON BERRY: So, pernicious  
6 procedures did not require staff members to make  
7 handwritten notes or to preserve tape recordings, and  
8 interaction that they have in preparation for the  
9 hearings. Now, whether or not we ought to require  
10 such notes and such tape recordings so that they could  
11 be made available is a different issue.

12 COMMISSIONER HIGGINBOTHAM: Madam Chair.

13 CHAIRPERSON BERRY: Commissioner  
14 Higginbotham.

15 COMMISSIONER HIGGINBOTHAM: We can get  
16 involved in a lot of debate when we go over the work  
17 and we may find that what was viewed by one  
18 perspective a problem, was really no problem at all.  
19 I am particularly -- I have no objection to our at  
20 least establishing what documents or materials we have  
21 in the Commission pertaining to the September 14 and  
22 September 15 hearing. And I have no objection to  
23 being identified that way.

24 I don't want an argument later, for  
25 someone to suggest that there was some material or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 significant document which we held back. So my  
2 personal reaction is that if -- I just don't know  
3 what's involved, but we have these official records.  
4 I have no objection to an inquiry to see whether  
5 there's anything else related there to which could be  
6 relevant. And if that appears to be a problem -- I  
7 don't want anyone in the congressional committee to  
8 have a basis to imply that there is some document out  
9 there which has been destroyed, or hidden, or not  
10 revealed.

11 I wasn't on the Commission then, and I'm  
12 certain no one did anything wrong, so that I don't  
13 feel uptight at least our getting identification of,  
14 when they say any document or other material, what  
15 those documents or what those materials are. After  
16 you do that, then we can decide the issue as to  
17 whether there's any valid reason as to why any  
18 specific document should or should not be released.

19 CHAIRPERSON BERRY: If I understand the  
20 exchange that just took place, there aren't any  
21 documents that the Staff Director or the General  
22 Counsel is aware of that would fit within the items  
23 that are listed, that haven't been made available to  
24 the Committee, except the interview reports.

25 I agree with you, Commissioner

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 Higginbotham, that in order to avoid the appearance  
2 that somehow somebody's trying to hide something,  
3 which is ridiculous, I don't have any objection  
4 either, if that is the Commission's wish, and I don't  
5 even care if isn't the Commission's wish, to having  
6 the General Counsel go in this case, because the  
7 issues have been raised in this way, and I don't want  
8 to create any kind of suspicion, to go back and ask  
9 the staff members, "Do you guys have any handwritten  
10 notes or anything, any Post-It notes, I don't care  
11 what it is, around your office that you can remember  
12 anywhere, that has anything to do with the Miami  
13 hearing". And if they find any such, put them in a  
14 paper bag or something and send them up to the Hill.  
15 I don't have any problem with that at all, just  
16 because the issues have been raised in this way.

17 I accept the General Counsel's view that,  
18 one, she isn't aware of anything and it never occurred  
19 to her to go ask anybody -- it wouldn't have occurred  
20 to me either -- to ask people about what's on their  
21 desk or what's on their desk or in their purse or in  
22 their briefcase. But if people want to know that --  
23 and in this case, since it's been raised and to avoid  
24 making a public relations issue out of it, then I  
25 think General Counsel should do that, go and ask

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 people if they've got anything.

2 COMMISSIONER HIGGINBOTHAM: I don't want  
3 my view to be overstated. What I would think may be  
4 the most rational thing to do would be let's assemble  
5 all of these things and create a log -- I don't like  
6 just handing someone all the materials and for us to  
7 not have duplicates or anything like that -- but I  
8 think we should get some kind of log and then we know  
9 what we're talking about. I have the impression that  
10 a lot of negative innuendos which some individuals  
11 which some individuals are -- who want to exploit this  
12 for nonrational purposes, would be eliminated. And  
13 the congressional committee, if it's found, would have  
14 no basis to complain.

15 CHAIRPERSON BERRY: I don't want you left  
16 with the impression, though, Commissioner  
17 Higginbotham, or anyone in the hearing of my voice,  
18 that there are such materials. General Counsel  
19 doesn't believe there are any, although there may be  
20 some folks --

21 COMMISSIONER HIGGINBOTHAM: I understand,  
22 it's a dialogue between Commissioner Horner and some  
23 of the others, a whole series of inferences which  
24 could be drawn differently, as I understood the  
25 questioning. So I just want to eliminate that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005



1 problem.

2 CHAIRPERSON BERRY: I understand. So why  
3 don't we say then that the General Counsel will go  
4 back again and ask staff members if they can find  
5 anything, and anything that she finds, if she finds  
6 anything, she would make a log of it and make copies  
7 of it, and give it to the committee -- any pieces of  
8 paper or anything else that they find.

9 On this particular issue, this is not  
10 precedential in terms of what the Commission is going  
11 to do about anything else, but in order to get over  
12 this, all these innuendos, we'll just let them go  
13 ahead and do this and, if nobody has any objections,  
14 Staff Director, we will ask the General Counsel to go  
15 do that, and make a log of whatever she finds, and  
16 give us a copy of the log, and send the thing up to  
17 the Congress if there is anything to find.

18 Now, is there anything else?

19 COMMISSIONER REYNOSO: There is one  
20 problem, and that is that -- I agree with the general  
21 tenor but, as I understand it, we may have made  
22 promises to some people we interviewed, of  
23 confidentiality, and we are constrained by statute in  
24 terms of what we can make available or not. If there  
25 happened to be any interview notes in either the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 confidentiality promise was made or we have some  
2 constraints in terms of what we can make public, of a  
3 vote that we would ask the subcommittee to be  
4 respectful of that.

5 COMMISSIONER HIGGINBOTHAM: If I could  
6 charge on, I was talking about the logging, not the  
7 release. It seems to me that when you get all this  
8 stuff logged, then the next stage would be if, for any  
9 reason, there is a problem as to any document having  
10 confidentiality, that what the General Counsel has to  
11 do is to advise us that there are confidentiality  
12 aspects in documents X, Y and Z, and then we make it  
13 very, very clear to congressional committee that there  
14 are these confidentiality problems, and we would  
15 request that they recognize that and act accordingly.

16 COMMISSIONER REYNOSO: With that proviso,  
17 I think that the suggestion makes a lot of sense.

18 COMMISSIONER ANDERSON: Madam Chair.

19 CHAIRPERSON BERRY: Commissioner Anderson.

20 COMMISSIONER ANDERSON: Thank you. I  
21 would like to make two points. The first point, I'd  
22 like to be clear where I'm coming from. I'm not  
23 principally concerned there may be a Post-It note in  
24 the bottom of someone's purse, but I am concerned  
25 about is what I believe to be a reasonable expectation

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 that an attorney who conducts an interview of a  
2 potential witness, makes handwritten notes of that  
3 interview, which becomes the basis for typing the  
4 memorandum of the interview, and is then sent forward  
5 into the official recordkeeping system, but I believe  
6 that it is reasonable to expect that that is done, and  
7 that those background notes are kept. And I don't  
8 think it is any type of innuendo for someone to say if  
9 the oversight committee wants to look at those notes,  
10 that our answer should be, those types of notes are  
11 not in the official recordkeeping system and,  
12 therefore, we have no knowledge of them and we have no  
13 obligation and no reason to respond, and we are fully  
14 complying with the request when we respond without  
15 including those kinds of documents. I just think,  
16 number one, that we ought to be clear on that, and  
17 that's my concern. I don't know how to say it anymore  
18 clearly than that.

19 Number two, in terms of logging the  
20 documents regarding the interviews of witnesses or  
21 potential witnesses, I hope that, and I would ask,  
22 that we include in the logging of documents a copy of  
23 signed Privacy Act statements, though I understand  
24 that's our procedure for every potential witness that  
25 is interviewed signs a copy of the Privacy Act

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.

1 statement, so I would like to see a signed copy of  
2 each of those statements.

3 MS. MOORE: That's not procedure.

4 COMMISSIONER ANDERSON: Because I think  
5 that goes to the issue of the expectation of  
6 confidentiality of information given by the potential  
7 witness in the interview.

8 COMMISSIONER REYNOSO: I think that's  
9 fair. As I heard Commissioner Higginbotham's  
10 suggestion, it was basically accepting the notion that  
11 was just articulated. That is, if those do exist,  
12 then they would be catalogued and, if there's no  
13 problem with confidentiality, turned over. If there  
14 is a problem, the problem would be identified for us  
15 by General Counsel.

16 COMMISSIONER HORNER: I have to get off  
17 the phone because I have to catch an airplane now.

18 CHAIRPERSON BERRY: Oh, you do?

19 COMMISSIONER HORNER: Yes. For the  
20 record, I just hope that we are able to comply  
21 expeditiously with the request.

22 CHAIRPERSON BERRY: You don't even have a  
23 minute, Commissioner Horner?

24 COMMISSIONER HORNER: Yes.

25 CHAIRPERSON BERRY: Why don't we have some

1 kind of a motion so we can at least --

2 COMMISSIONER REYNOSO: Let me try to frame  
3 a motion, maybe two if you think it's appropriate, in  
4 light of this discussion. I move that the interview  
5 reports that we now have be turned over to the  
6 committee with the request that the confidentiality  
7 that we promised, or the protection of the Privacy Act  
8 that we promised to the folk we interviewed, be  
9 respected by the committee. That would be my motion  
10 in terms of the interview notes.

11 We have pending, I understand, the issue  
12 of the Executive --

13 CHAIRPERSON BERRY: Let's do this one  
14 first.

15 COMMISSIONER REYNOSO: Okay.

16 CHAIRPERSON BERRY: Can I get a second on  
17 that?

18 COMMISSIONER HIGGINBOTHAM: Second.

19 COMMISSIONER GEORGE: Could I just ask  
20 now, Madam Chair, whether this would now cover  
21 everything being requested or that had been requested  
22 by the committee, with the exception -- which I think  
23 we're going to talk about in a moment -- of  
24 transcripts of Executive Session.

25 COMMISSIONER REYNOSO: This is meant just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 to cover what we know is present, and then I can add  
2 to the motion the Higginbotham suggestion that the  
3 General Counsel make inquiry of staff as to whether  
4 there exists tape recordings, handwritten notes,  
5 correspondence, summaries, records of conversation or  
6 memoranda, and that those also be turned over to the  
7 committee under these constraints of confidentiality.  
8 But if there are problems with respect to any of those  
9 matters, that the General Counsel sees that those  
10 files must be close to us. So this covers what I know  
11 exists, i.e., the interview reports, at least a little  
12 bit of wiggle room for the other matters in case the  
13 General Counsel runs into any problems.

14 COMMISSIONER HORNER: Madam Chair, it's my  
15 understanding that the Privacy Act does not extend to  
16 Congress and, therefore, I think making this issue is  
17 not relevant. Obviously, committees in the Congress  
18 handle enormously confidential information all the  
19 time, and we need only ask them to do that, and that  
20 is all, indeed, we can ask them to do. I am not going  
21 to be able to vote in support of this motion because,  
22 frankly, I think we have a clear request from the  
23 committee. I think we clearly have not fully complied  
24 with it, and I'm not going to concur in some kind of  
25 ameliorative or interim move which the committee, I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 believe, would view as not sufficiently expeditious at  
2 this point.

3 And I'm afraid I really must go to catch  
4 my plane. I regret that this call could not have been  
5 at a time when I was available for any extended  
6 conversation, but I've really got to get off. I'm  
7 sorry.

8 CHAIRPERSON BERRY: Thank you for being  
9 part of the call.

10 The motion, as I understand it, is not to  
11 ask -- is to request that the Congress respect any  
12 promises of confidentiality, it's not to imply that  
13 the Congress has to do anything about confidentiality.  
14 Is that correctly stated, Commissioner Reynoso?

15 COMMISSIONER REYNOSO: That's correct. I  
16 understand, as Connie does, that the statute doesn't  
17 apply to Congress, but it seems to me that they should  
18 be respectful and that that should be our request. If  
19 Connie is correct, that they are always respectful of  
20 that, then it seems to me they should have no  
21 objection to it.

22 CHAIRPERSON BERRY: Do we have any other  
23 discussion of the motion?

24 COMMISSIONER GEORGE: I'm not sure it's  
25 responding, I just want to make sure I understand it,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 and I'm trying to understand Connie's objection --  
2 which, unfortunately, she's not here to explain more  
3 fully -- but let me see if I have this right. As I  
4 understand it, Cruz's motion is simply that we comply  
5 in full with the request being made to us here --  
6 laying aside just for the moment the question of the  
7 transcripts of Executive Sessions -- but that we  
8 indicate that some of the material we're going to be  
9 turning over was acquired pursuant to a request for  
10 confidentiality, and we ask Congress to respect that.

11 Is there anything -- I guess I'm asking  
12 Cruz -- laying aside the transcripts of Executive  
13 Sessions -- that we are proposing to hold back, or  
14 that could be held back, in your motion?

15 COMMISSIONER REYNOSO: No, not that I know  
16 of. It's just that we don't know now what may or may  
17 not be available in terms of the listed matters --  
18 tape recordings, handwritten notes, correspondence --  
19 if the General Counsel runs into any -- if she sees  
20 any problems in turning any of that matter over, I  
21 just want her to feel free to bring it back to our  
22 attention, that's all.

23 COMMISSIONER GEORGE: What sort of  
24 problems did you have in mind?

25 COMMISSIONER REYNOSO: I can't think of



1 any now -- a person who may have 'fessed up to a  
2 crime, maybe.

3 CHAIRPERSON BERRY: May I try and comment,  
4 and maybe ~~it might~~ end up that you want to separate  
5 them, I don't know, but let's see. As I understand  
6 the question, Commissioner George, there are some  
7 things we already know we have. We know we have  
8 interview reports, and we haven't given those to the  
9 Congress, and we said we weren't going to give them to  
10 them -- at least at the last meeting we voted not to.

11 So, the idea here is that we would give  
12 them those. We know they are in existence, we do have  
13 them, but we would ask Congress to respect any  
14 promises of confidentiality or any statutory  
15 responsibilities that we feel we have by virtue of the  
16 confidentiality aspect, even though they are not  
17 governed by this, it's just a matter of respecting it.  
18 And those would be given over, absolutely, no problem.

19 The second piece of it is, since we've  
20 been told that nobody is aware of any of these other  
21 things down at the bottom of the page that I read,  
22 being around. But now we're telling them to go and  
23 ask people if they have anything like that, that we  
24 will turn those over, too, should there be anything,  
25 after making a catalog of them, and ask the Congress

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 about the confidentiality or statutory  
2 responsibilities we have related to those, but we  
3 don't know what they are because, as far as we know  
4 now, there aren't any.

5 And what Cruz is saying, if I understood  
6 him, is that the only caveat he's adding to the second  
7 category is if something happens that we can't imagine  
8 -- we don't know what it is -- in the course of  
9 finding whatever it is they're going to find, if they  
10 find anything, that it should be brought back to us  
11 for review.

12 COMMISSIONER REYNOSO: If the General  
13 Counsel thinks there's some sort of legal problem.

14 CHAIRPERSON BERRY: Yes. But now if you -  
15 -

16 COMMISSIONER GEORGE: I would think that  
17 needs to be in the motion, and I think what we should  
18 do is just to agree to comply fully and if, just in  
19 the nature of things, there's some impediment, some  
20 legal impediment to our complying, that the General  
21 Counsel or Staff Director notices in preparing the  
22 reply, then I think naturally it would come to our --

23 COMMISSIONER REYNOSO: That's fine.

24 CHAIRPERSON BERRY: Okay. Well, why don't  
25 we do it that way then.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 COMMISSIONER REYNOSO: That's fine.

2 COMMISSIONER HIGGINBOTHAM: A General  
3 Counsel is always on the horns of a dilemma. Is the  
4 General Counsel just creating an unnecessary problem?  
5 The only reason I framed it the way I did before, that  
6 the General Counsel would call it to our attention so  
7 it is clear that we expect for her to call to our  
8 attention a problem, if there is a problem, before it  
9 is sent in because then we can make an independent  
10 judgment as to what we have to do. You know, we could  
11 get together on a conference call if there's a  
12 problem.

13 I don't anticipate one, but I'm just  
14 trying to look at the worst possible scenario. And if  
15 you did get that, I think we should have some  
16 discussion about it before we send it over. That's  
17 all.

18 CHAIRPERSON BERRY: Well, why don't we do  
19 it this way. Let's have Cruz's motion without the  
20 language at the end in the actual motion where it says  
21 if there are any problems, but with the understanding  
22 stated here on the record that we all understand that  
23 if some problem arises that creates a legal problem,  
24 or otherwise that the General Counsel thinks should be  
25 brought to our attention before that matter is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 submitted to the Congress it will be called  
2 immediately to our attention, so as a Commission we  
3 can make a judgment.

4 COMMISSIONER HIGGINBOTHAM: That's fine.

5 COMMISSIONER ANDERSON: Madam Chair. One  
6 question. This means then that on page 2,  
7 subparagraphs A and B, Cruz's motion would have us  
8 comply with those requests.

9 CHAIRPERSON BERRY: Because my  
10 understanding -- and we could ask again to see if my  
11 understanding is correct -- my understanding is that  
12 we already told the committee before we got to the  
13 interview report discussion at the last meeting, about  
14 the contacts. We even gave them copies of the  
15 correspondence, with witnesses and contacts with the  
16 staff, and we even ultimately ended up saying if they  
17 wanted the staff to come up there, they could, so all  
18 that was left -- and we can verify that, but my  
19 understanding is that all that was left over would  
20 then be general language before A, B and C, and those  
21 were interview reports, or interview reports which  
22 aren't listed here, but interview reports were part of  
23 the material that we've really got a problem with, so  
24 that I wouldn't think that there is anything under A,  
25 B and C other than interview reports and the things

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 that the General Counsel may find by going back to  
2 make this inquiry that we're directing be made.

3 Now, if I'm incorrect about that, could  
4 somebody tell me?

5 MS. MATHEWS: Madam Chair?

6 CHAIRPERSON BERRY: Yes.

7 MS. MATHEWS: I have just reviewed the  
8 response as you were talking, that we made to Chairman  
9 Canady on these points, the response we've made  
10 already. And you were correct in the way you phrased  
11 things. I would add that in addition to communication  
12 with anybody outside the Commission, of which we gave  
13 them letters, we also gave them samples of  
14 correspondence routinely sent to all potential  
15 witnesses.

16 CHAIRPERSON BERRY: Is the correspondence  
17 a sample, something where everybody got the same thing  
18 and you just gave them one as opposed to giving them  
19 each one?

20 MS. MATHEWS: Yes, that's correct.

21 CHAIRPERSON BERRY: How about subpoenas,  
22 you gave them copies of subpoenas?

23 MS. MATHEWS: All individual subpoenas and  
24 all individual subpoenas duces tecum were given.

25 CHAIRPERSON BERRY: Now, does that answer

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 your question, Commissioner Anderson?

2 COMMISSIONER ANDERSON: I believe it does.

3 CHAIRPERSON BERRY: Okay.

4 COMMISSIONER HIGGINBOTHAM: Could I just  
5 add something? I mean, I'm not expecting to go into  
6 court on this, but when we turn things over, do we log  
7 everything so that later on we will know that document  
8 Z is at page 204? I mean, I'm trying to figure out  
9 whether we have a system -- because what occurs is, if  
10 we don't have a system which identifies the document  
11 which we gave them, you run the risk of someone saying  
12 they didn't get it, or they didn't get the complete  
13 one, and so forth and so on.

14 So, I'm trying to figure out what is our  
15 present protocol when we turn things over.

16 CHAIRPERSON BERRY: I would suspect, and  
17 I'll let them answer it -- do we keep a log now when  
18 we turn things over? I bet we don't.

19 MS. MATHEWS: Madam Chair, we keep a copy  
20 of the exact communication that was given. So,  
21 there's not a log, it's the actual.

22 COMMISSIONER HIGGINBOTHAM: I respect what  
23 a wonderful job you do, and I know how limited the  
24 funds are, but I think that what we've got to start to  
25 seriously think about is to look at some of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 systems which a lot of the major law firms use -- and  
2 I know it becomes more costly -- it's just a marking  
3 what you give them so it's got a number, and then it  
4 goes into your computer and you can retrieve it, if  
5 there's any dispute. And if someone starts to raise  
6 issues, if you've got to go before them, the Chair has  
7 before her a document list and she can just in her  
8 computer say, well, look, this isn't unusual. Look at  
9 documents A, B, C, D, X, Y and Z.

10 So it seems to me we've got to move  
11 towards that type of managerial style, if we can  
12 afford it.

13 COMMISSIONER REYNOSO: I have an  
14 observation along these lines. It seems to me that  
15 based on what the staff has mentioned to us now and  
16 mentioned earlier in the conversation, that this  
17 letter from Chairman Canady has some kind an  
18 exaggerated issue and controversy. Maybe when we  
19 respond, we should place before the committee our  
20 understanding of it, by having A, B, C, and D, and by  
21 having that next to last paragraph pertaining to  
22 documents and supportive personnel and procurement,  
23 and so on, if it's correct that we've turned those  
24 things over.

25 It just seems to me in our communication

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON DC 20005

1 we've got to remind the committee that, in fact, all  
2 that has been done, and we're now dealing with the  
3 interview reports and the subject matter of that  
4 portion of the bottom part of the first page, and as  
5 we will in a couple of minutes on the Executive  
6 Committee transcripts but it appears to me, at least  
7 from what staff says, that there's an exaggeration of  
8 the area of controversy in the March 1 letter.

9 CHAIRPERSON BERRY: Well, let's just -- I  
10 would assume that somebody was just simply repeating  
11 all those again, so what we can do is just repeat  
12 again what we've given, and talk about what we're  
13 doing here.

14 COMMISSIONER HIGGINBOTHAM: But, Mary, I  
15 don't want it repeated in conclusionary fashion. I  
16 just finished a case in England which has hundreds of  
17 thousands of documents, and it was just amazing when  
18 someone started to say, "Well, we haven't gotten this,  
19 we haven't gotten that", and you just go and look at  
20 a log and say, "Well, look, document 1,000 to 22,000  
21 cover this".

22 We are caught in what I honestly believe  
23 is some attempt to politicize this issue for a  
24 political advantage, to make the Commission look  
25 worse. And I think that's the case. I want to be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005



1 able to, if the matter comes up and someone says, "I  
2 didn't get it, all these documents you're getting" --  
3 and we can say, "Look, we released to them 1,222  
4 pages" --

5 CHAIRPERSON BERRY: Oh, I see your point.  
6 Okay.

7 COMMISSIONER GEORGE: Madam Chairman, I  
8 feel I need to intervene here, just to register my  
9 contrary opinion to an opinion that was just expressed  
10 by Judge Higginbotham, although I don't at all  
11 disagree with what I think is, in any event, his very  
12 sound proposal for how we should go about managing our  
13 affairs in this area, if we can afford it. But when  
14 I register my opinion that there is not any bad  
15 motivation on the part of the people who are on the  
16 committee, who are making this request.

17 I think if we get into the --  
18 unfortunately, earlier in this conversation we got  
19 into a question of impugning people's motives, and  
20 that is always bad device. I think perhaps it's  
21 sometimes best to candidly express our opinion about  
22 other people's motivations, other times it's probably  
23 best not to express them. If they are going to be  
24 expressed, I certainly want to register my contrary  
25 opinion.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON DC 20005

1                   COMMISSIONER HIGGINBOTHAM: Let me put it  
2 this way. Strike off the remark in committee, but if  
3 I read the newspapers, living outside of Washington,  
4 it seems to me that there's a lot of things which are  
5 going on these days which can be explained in part  
6 because of political agendas.

7                   Now, as to whether there's a political  
8 agenda here or not, I don't know, and I'm not trying  
9 to impugn anyone, and I'm not suggesting that you  
10 write to anyone and you say, "Hey, you've got a  
11 political agenda". I'm saying that the logic of  
12 reality is that there are political agendas out and,  
13 because there are political agendas out, I want to  
14 make sure that any group I'm on is not caught in that  
15 crossfire, and that you are prepared so that if the  
16 motivation is good or the motivation is bad, that we  
17 come out flawless, and I guess that's the point. They  
18 could be saints on this committee, and still everyone  
19 --

20                   COMMISSIONER GEORGE: I completely agree  
21 with the point about documenting, and I think your  
22 proposal is a very sound one. But given nature being  
23 the way it is, it has a way of investing itself in all  
24 of us and, whether we're members of Congress or  
25 members of the staff or members of the Civil Rights

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D.C. 20005

1 Commission, different ones of us probably have  
2 different opinions about whose political agendas are  
3 exact political agendas, and whose are pernicious and  
4 whose aren't pernicious, and I just don't think it's  
5 helpful for us to get into that.

6 CHAIRPERSON BERRY: Okay. Any other  
7 discussion of this one motion before we get to the  
8 Executive Session?

9 (No response.)

10 Okay. Are you read for the question? All  
11 in favor, indicate by saying aye.

12 (Chorus of ayes.)

13 CHAIRPERSON BERRY: Opposed? Anybody  
14 opposed?

15 (No response.)

16 You'd better call the role, though, to be  
17 sure. Commissioner Anderson?

18 COMMISSIONER ANDERSON: Aye.

19 CHAIRPERSON BERRY: I don't have a list of  
20 who comes alphabetically next.

21 MS. MATHEWS: You do, Madam Chair.

22 CHAIRPERSON BERRY: Oh, well, aye.

23 Commissioner George.

24 COMMISSIONER GEORGE: Aye.

25 CHAIRPERSON BERRY: Commissioner

1 Higginbotham.

2 COMMISSIONER HIGGINBOTHAM: Aye.

3 CHAIRPERSON BERRY: Commissioner Lee.

4 COMMISSIONER LEE: Aye.

5 CHAIRPERSON BERRY: Commissioner

6 Redenbaugh.

7 COMMISSIONER REDENBAUGH: Aye.

8 CHAIRPERSON BERRY: Commissioner Reynoso.

9 COMMISSIONER REYNOSO: Ayes.

10 CHAIRPERSON BERRY: So the motion carries.

11 Now let's do the Executive Session. Did  
12 you have a motion on that, Cruz?

13 COMMISSIONER REYNOSO: Yes, Madam Chair,  
14 I've been thinking about that, too, and then thought  
15 it would be better -- well, you suggested that we  
16 divide them, I think that's right.

17 On the matter pertaining to the Executive  
18 Meetings that we've had, I'd like to make a motion  
19 pursuant to the discussion we had, I think, at the  
20 last time we met at the Commission, that is that we  
21 indicate to the committee that again they recognize  
22 that these meetings had to do mostly with personnel  
23 and other matters that are not public, but that we  
24 would be pleased to have one of their staff people  
25 come and go over those Executive transcripts, but I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 don't think that here we should run copies and send  
2 them over to them.

3 CHAIRPERSON BERRY: Would we then explain  
4 to them that the Commissioners view them in the  
5 office, too?

6 COMMISSIONER REYNOSO: That's right. Yes,  
7 that's been our own practice. Again, to protect the  
8 confidentiality as they understand, I'm sure.

9 CHAIRPERSON BERRY: So the motion was then  
10 open up the records to the Congress and their staff --  
11 I mean, they can see them.

12 COMMISSIONER REYNOSO: Yes.

13 CHAIRPERSON BERRY: Under the same  
14 circumstances that Commissioners review them, and  
15 explaining to them why we have them -- I guess they  
16 already know this -- that Executive Sessions are  
17 usually for sensitive personnel matters.

18 Can we have a second, first, and then a  
19 discussion?

20 COMMISSIONER HIGGINBOTHAM: Second.

21 CHAIRPERSON BERRY: Any discussion?

22 COMMISSIONER GEORGE: Cruz, as I  
23 understand it, it's identical to the suggestion that  
24 I made at the last meeting.

25 CHAIRPERSON BERRY: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 COMMISSIONER REYNOSO: That's right. I  
2 forgot you had made that suggestion. I thought it was  
3 a good one, so I --

4 COMMISSIONER GEORGE: No, I'm not claiming  
5 any proprietary effort. I am, though, wondering if,  
6 in your perception, it does deviate in any way from  
7 what I had suggested.

8 COMMISSIONER REYNOSO: No. No. It's just  
9 that normally, if you're going to need a subpoena,  
10 you'd just send everything over. It seems to me  
11 that's unwise with the transcripts of the Executive  
12 Committee, that we should open -- I remember we had  
13 discussed it and as you have suggested at the last  
14 meeting.

15 COMMISSIONER GEORGE: So it would be that  
16 the transcripts of the Executive Sessions are going to  
17 be made available to staff and members of Congress on  
18 precisely the same terms that they're made available  
19 to Commissioners and members of our staff.

20 COMMISSIONER REYNOSO: Exactly.

21 COMMISSIONER GEORGE: Could that be --  
22 Madam Chairman, could that be negotiated between the  
23 Staff Director and the people over at the committee?  
24 In other words, might it be advisable to hear --  
25 instead of putting something in a letter like that, to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D.C. 20005

1 have a telephone conversation between our Staff  
2 Director and Kathryn Hazeem or somebody over there, to  
3 explain that this is the wish of the Commissioners --  
4 work it out on that basis.

5 CHAIRPERSON BERRY: Staff Director?

6 MS. MATHEWS: Yes, Madam Chair.

7 CHAIRPERSON BERRY: Have you mentioned  
8 this subject to Kathryn Hazeem?

9 MS. MATHEWS: Yes, I have.

10 CHAIRPERSON BERRY: And what was the --  
11 what happened?

12 COMMISSIONER REYNOSO: Did you mention  
13 this possible scenario based on our last discussion?

14 MS. MATHEWS: Yes, I did, Vice Chair  
15 Reynoso. I indicated to Kathryn Hazeem that while the  
16 Commissioners had not agreed to this concept, it was  
17 discussed at the December meeting, and I inquired as  
18 to what her reaction would be. And she indicated that  
19 if we were to make an official offer to this effect,  
20 she would take it to Chairman Canady, and that  
21 possibly this would be all right with them. She would  
22 not --

23 COMMISSIONER REYNOSO: Oh, good.

24 MS. MATHEWS: She would not commit,  
25 though, without obviously a discussion and an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 agreement on his part.

2 CHAIRPERSON BERRY: Then the query is for  
3 the Commissioners while we have the discussion, should  
4 we -- in view of Mary's conversation with Kathryn  
5 Hazeem, would it be better to have a separate letter  
6 that says this, or just to have her simply tell her  
7 again that we voted this at the meeting, if we vote  
8 it, and say that she can now take it to Congressman  
9 Canady? What would be your wish?

10 COMMISSIONER HIGGINBOTHAM: I would prefer  
11 to have some kind of document which Mary would have.  
12 It would not be on the horns of a dilemma of someone  
13 saying that she has to construe what we're thinking,  
14 so that the -- if we went on record in terms of what  
15 was voted the last time, which I approved, or if we  
16 just reincorporate that now -- I think we should just  
17 do it again so that there's a document of record and  
18 it indicates our good faith, and that we aren't  
19 backing away from it in any way.

20 CHAIRPERSON BERRY: Well, my query is,  
21 should we -- well, let's vote on this first, and then  
22 we can discuss it further.

23 COMMISSIONER ANDERSON: Madam Chair?

24 CHAIRPERSON BERRY: Commissioner Anderson.

25 COMMISSIONER ANDERSON: I would agree with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D.C. 20005



1 the comments just made. I think it's better to have  
2 it on the record. If we vote for this, then I think  
3 we should send over a letter or incorporate it into  
4 the other letter saying that the Commission voted that  
5 access be given under these circumstances. I think I  
6 voted for that last time.

7 CHAIRPERSON BERRY: You did.

8 COMMISSIONER ANDERSON: My inquiry is that  
9 I would ask either Staff Director or the General  
10 Counsel whether, in the intervening time, either of  
11 them or anyone on the staff has consulted with some  
12 other commission or some other authority to indicate  
13 whether or not -- I cannot believe that this is the  
14 first time a congressional oversight committee has  
15 requested transcripts of an Executive Session of a  
16 commission. Has there been past practice of other  
17 commissions to turn over transcripts physically under  
18 conditions of confidentiality?

19 CHAIRPERSON BERRY: Or have they taken  
20 this path of inviting a staff person in to review it  
21 on the same grounds as the Commissioners?

22 COMMISSIONER HIGGINBOTHAM: I think that's  
23 good input.

24 CHAIRPERSON BERRY: Does anybody know the  
25 answer -- not that you have to, but do you know the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D.C. 20005

1 answer?

2 MS. MATHEWS: Madam Chair, I have done no  
3 such research on other commissions or other agencies.  
4 All I can say is that, in my tenure here with the  
5 Commission on Civil Rights, we have never had a  
6 request from the United States Congress, any  
7 committee, for a review of Executive Session  
8 transcripts. So we do not have, to my knowledge, any  
9 past history in this respect ourselves.

10 COMMISSIONER GEORGE: Madam Chairman?

11 CHAIRPERSON BERRY: Commissioner George.

12 COMMISSIONER GEORGE: I don't have any  
13 objection to what Judge Higginbotham has proposed and  
14 what Carl has just agreed to of creating some sort of  
15 a record, and I agree that it might be useful to the  
16 Staff Director to do that.

17 Let me just say what my concern is, and  
18 then maybe somebody can come up with a way of meeting  
19 it, if it's worth taking it seriously. I would like  
20 this to be not a statement of principle on our side  
21 which would provoke them to "flex their muscle" in  
22 order to establish their own rights with regard to  
23 authority to actually get physical possession of these  
24 documents. That's why I suggested some sort of a  
25 negotiated way out, so that if we send a letter, which

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 is fine, I would like the letter to be phrased in such  
2 a way as to not state a punitive right on our part to  
3 withhold the physical transcript, which is to say that  
4 we think this is the best way of proceeding to protect  
5 the interests of people whose affairs are conducted in  
6 Executive Session, and so forth, and we're certainly  
7 not asking that Congress have any less opportunity to  
8 review these than we ourselves have, and so forth, so  
9 that Congress won't be provoked to make a big issue  
10 about it -- big issue of principle about their right,  
11 in fact, to get this. Do you see what I'm saying?

12 CHAIRPERSON BERRY: Yes. I understand  
13 what you're saying, but how would it be to have the  
14 letter simply say that on the question of the  
15 Executive Session transcripts, that at a meeting on  
16 whatever date this is, the Commission voted by  
17 whatever, to propose to the Congress that it view  
18 these documents in the same way that the Commission  
19 does, and describe how they are viewed.

20 COMMISSIONER GEORGE: That sounds good to  
21 me, the idea of propose to the Congress that -- yes.  
22 Yes.

23 CHAIRPERSON BERRY: Okay. Any other  
24 discussion of this motion?

25 (No response.)

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1                   Okay. Then I will call for the question.  
2 All in favor of making this proposal to the Congress,  
3 indicate by saying aye.

4                   (Chorus of ayes.)

5 CHAIRPERSON BERRY: Opposed?

6 COMMISSIONER HIGGINBOTHAM: Call the role.

7 CHAIRPERSON BERRY: Commissioner Anderson?

8 COMMISSIONER ANDERSON: Aye.

9 CHAIRPERSON BERRY: Commissioner Berry.

10 Aye.

11 Commissioner George?

12 COMMISSIONER GEORGE: Aye.

13 CHAIRPERSON BERRY: Commissioner  
14 Higginbotham?

15 COMMISSIONER HIGGINBOTHAM: Aye.

16 CHAIRPERSON BERRY: Commissioner Lee?

17 COMMISSIONER LEE: Aye.

18 CHAIRPERSON BERRY: Commissioner  
19 Redenbaugh.

20 COMMISSIONER REDENBAUGH: Aye.

21 CHAIRPERSON BERRY: Commissioner Reynoso?

22 COMMISSIONER REYNOSO: Aye.

23 CHAIRPERSON BERRY: All right. So that  
24 takes care that. Let me say just one thing, which I  
25 think is important to say now, and others may have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 something they want to say on the subject.

2 I want to remind the Commissioners that --  
3 well, two things. One, the only time a committee of  
4 Congress has ever asked the Commission for any  
5 materials having to do with its fact-finding was in  
6 the early days of the Commission. And the people who  
7 did it then did have bad motives -- this is documented  
8 by the Historian -- that they wanted to interview the  
9 Commission trying to do something about segregation.  
10 There was a very sensitive hearing in the south, and  
11 there was a big controversy. And there was also a  
12 problem with Staff Director issues.

13 That's the only time it has ever happened.  
14 I want to tell the Commission, too, because some of  
15 you might not know this, but all during the 1980s and  
16 during the time Fletcher was chair, I resisted the  
17 Democrats in the Congress asking the Commission for  
18 all sort of things, and I even said that a "line  
19 should be drawn in the sand", that the Congress should  
20 not ask the Commission for anything related to its  
21 fact-finding, no matter how nervous they were, or  
22 antsy, or whatever allegations were made, because the  
23 Commission only had two things going for it. One was  
24 it was an independent fact-finding body, and the other  
25 thing was it had subpoena power.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1           And so the committees of Congress did,  
2 whenever they were angry about something or they  
3 didn't like the way something was done, they got  
4 complaints, they would at least wait until the report  
5 was finished, and then they would wade in.  
6 Reluctantly -- and there was some heated controversy  
7 during that period -- they were asking for all sorts  
8 of other things and, frankly -- some of you may recall  
9 since your time on the Commission -- Fletcher  
10 complained all the time about micromanagement by the  
11 Congress of the Commission. They complained on the  
12 public record in Commission hearings. Other people  
13 complained all during the 1980s.

14           Now I think this subcommittee of the  
15 Congress has breached, in my opinion, that line. I  
16 don't think it's a good thing. I don't see what we  
17 can do about it. But I do think that -- I would wish  
18 that some of the people who are on the Commission who  
19 are better able to speak to members of Congress than  
20 I am -- since they are of the same political party and  
21 don't much care what I think -- that the independent  
22 fact-finding ability of the Commission is something  
23 that we must preserve, otherwise, we are no more than  
24 staff to the Congress, no matter who is in office.

25           So, my support for trying to not give

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 Congress materials on fact-finding goes to that issue.  
2 It doesn't have anything to do with any of these other  
3 matters. Now I think we've crossed the line. We'll  
4 have to worry about -- nothing we've done here, unless  
5 you say otherwise, implies that we will make the same  
6 responses in the future every time something is asked  
7 for. I think the Commission will have to make a  
8 decision each time what it wants to do.

9 But I just hope -- and I'm not attributing  
10 bad motives to anybody -- I just hope that the  
11 subcommittee will continue to respect our ability to  
12 make independent fact-finding, and I think the way we  
13 resolve these issues today is helping, and it doesn't  
14 involve us appearing that we're trying to hide  
15 anything, which we're not, and so I very much  
16 appreciate the way the Commission has behaved today.

17 Is there anyone else who wants to say  
18 something?

19 COMMISSIONER GEORGE: Madam Chairman, as  
20 you know, I'm a member of the same nonparty as you are  
21 a member of --

22 CHAIRPERSON BERRY: Right, so you can't  
23 help us.

24 COMMISSIONER GEORGE: I might be able to  
25 help. I frankly have not had any conversations with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 the committee since we last met, about this particular  
2 matter. But I take to heart your concern which I  
3 share about the independence of the Commission,  
4 whether it's from the Executive or the Congress. So,  
5 I would be very happy to sit down with you, and I  
6 think we could probably have -- maybe other  
7 Commissioners would like to join us -- frank  
8 conversation and, on the basis of that, talk about the  
9 sort of restraint that congressional committees should  
10 exercise with respect to a commission like ours. I  
11 think it's something that has to be a matter of  
12 congressional self-restraint. I don't think we can  
13 stand up as a matter of legal principle, against the  
14 subpoena authority of the congressional committees.  
15 I think basically we're going to have to give them  
16 whatever they want, but I think it is reasonable to  
17 argue and, if necessary, even plead in some cases,  
18 with people to exercise some self-restraint, that it  
19 might be roughly analogous to what is sometimes said  
20 about judges -- they can do whatever they want, unless  
21 a higher court reverses them, but at a certain level  
22 they have to exercise self-restraint.

23 So, I just want to let you know, and other  
24 Commissioners know, that I take your concerns to  
25 heart, and I share them, and I certainly will try to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005



1 do my part to bring whatever influence I have to bear  
2 on it, and I hope that other Commissioners will as  
3 well.

4 - CHAIRPERSON BERRY: I thank you very much  
5 for those sentiments.

6 COMMISSIONER REYNOSO: I just would want  
7 to emphasize that my vote on this is to respond to  
8 this specific -- I hope that it doesn't have  
9 precedence for the future. My own view, Robby, is a  
10 little bit more muddy than yours. I think that if we  
11 become convinced that certain activities like the  
12 Executive or the Legislature, have so interfered with  
13 our ability to gather facts, that we can't do our job,  
14 I think we have some good legal arguments to fight  
15 them on it. This issue is clearly not closed yet, it  
16 seems to me, in the matter that's come before us, but  
17 I just want to suggest that I think there are some  
18 limits to what the Executive or the Legislative bodies  
19 can ask of us if, in our judgment, we can't do our  
20 job, and we've been mandated by the legislative to  
21 perform.

22 CHAIRPERSON BERRY: Any other comments  
23 from any other Commissioner?

24 COMMISSIONER HIGGINBOTHAM: I am looking  
25 upon this as a matter of nonprecedential significance.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 I think that you can get the time, and various  
2 commissions have said that in their experience, where  
3 the Commission has to say that though Congress may  
4 have the right to be very intrusive, and there are no  
5 limits which the agency could put on it, you are  
6 obligated to point out how it can impede your  
7 effectiveness as an agency serving a public interest.

8 And if every time someone doesn't like the  
9 fact that we're hearing on something, and we get a  
10 congressional committee which says, look, you can  
11 bypass that by coming to us, then I think there are  
12 real problems. And at some point, if that continued,  
13 I would feel obligated, as a Commissioner, to write on  
14 it very, very thoughtfully and point out what I  
15 thought were the dangers, but hopefully this is just  
16 an isolated incident and we won't have to deal with  
17 that in the future.

18 COMMISSIONER ANDERSON: Madam Chair.

19 CHAIRPERSON BERRY: Commissioner Anderson.

20 COMMISSIONER ANDERSON: I would associate  
21 myself with the comments just made. I have not noted  
22 in the past several months what I would consider to  
23 over-reaching by the committee in this matter. That  
24 may not be a view joined in by other members on the  
25 Commission or on all the facts.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D.C. 20005

1           It is complicated, in large part, in my  
2 mind, because there was rather strong disagreement  
3 among the Commissioners as to whether or not there was  
4 over-reaching on the part of the Commission during  
5 that hearing.

6           Now, I don't want to re-open that whole  
7 debate at this point, but it does seem to me that the  
8 committee's inquiry and concerns that are reasonable  
9 here, I would also fight for the independence of the  
10 Commission if this became a routine matter -- that is,  
11 everyone who was opposed to a particular hearing or  
12 felt that it was a subject they did not want us  
13 venturing into, to run to a congressional committee to  
14 drum up hearings or some kind of oversight or  
15 harassment of us, I would fight that. I don't think  
16 that's the case here, however.

17           I also want to say that I think it is  
18 always better, and it has been the practice, I think,  
19 for most of the time I've been on the Commission, that  
20 most of the Commissioners, most of the time, treat  
21 people in good faith, even though we disagree on the  
22 principles involved at times, or the issues involved  
23 at times, we haven't questioned motive. And I think  
24 we should make a double effort not to do that in our  
25 relationship with the oversight committee. I think

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 it's easy to do that, but I think we should be on our  
2 guard about that. I think we should be as forthcoming  
3 as we can on production of information and having good  
4 lines of communication, and I think we should take the  
5 extra step at times, and I think if we do we could  
6 preserve our independence where it counts and have a  
7 pretty good relationship with the committee.

8 CHAIRPERSON BERRY: Thank you very much.  
9 Does anyone else have anything else they'd like to say  
10 about this subject, or anything else?

11 COMMISSIONER REDENBAUGH: Yes, I would.  
12 I've been very quiet and listening --

13 CHAIRPERSON BERRY: Well, I noticed that.  
14 What's wrong?

15 (Laughter.)

16 Are you ill?

17 COMMISSIONER REDENBAUGH: No, just didn't  
18 have anything to add that would contribute. I've  
19 exercised some self-restraint since I was being  
20 advocated.

21 CHAIRPERSON BERRY: Let me, by the way,  
22 welcome you and Carl back to the Commission.

23 COMMISSIONER REDENBAUGH: Does this mean  
24 we have to be sworn again?

25 CHAIRPERSON BERRY: I don't know. What do

1 I know? I don't know anything.

2 COMMISSIONER REDENBAUGH: You have all  
3 those degrees, you must know something.

4 CHAIRPERSON BERRY: They make my head  
5 hurt. Anyway, go ahead.

6 COMMISSIONER REDENBAUGH: Well, I would  
7 just say that it's clear that "independence" of the  
8 Commission -- and the independence is in quotations --  
9 that we are not -- that our independence is not  
10 absolute. And I think that's as it should be. I  
11 don't think any instrumentality of government should  
12 be limited only by its self-restraint. There's kind  
13 of a shortage of that in America, self-restraint.

14 So I agree very much with the comments  
15 made by Commissioners Higginbotham and Anderson, and  
16 encourage us to also be aware of the need for self-  
17 restraint, and cordiality with our oversight  
18 committee, if possible.

19 CHAIRPERSON BERRY: Absolutely.

20 COMMISSIONER GEORGE: Madam Chairman, I  
21 think there is a leftover issue here that we're going  
22 to want to deal with down the line, and I hope  
23 everybody will -- I know that various members of the  
24 Commission, maybe all of us, gave some thought to it  
25 a few months ago before events intervened, but that is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005

1 the issue of whether and, if so, how, we ought to  
2 reform our own procedures when it comes to the use of  
3 our subpoena power. Is that a matter that we could  
4 take up --

5 CHAIRPERSON BERRY: I'm hoping to have  
6 something on the March agenda. I don't know how  
7 that's going to work out with all the closures and God  
8 knows what, and I may be speaking to some of you  
9 individually before that time. But I'm hoping to have  
10 something -- have the staff have something developed  
11 before that time.

12 COMMISSIONER GEORGE: I'm glad to hear it.

13 CHAIRPERSON BERRY: Okay. If there's  
14 nothing else, could I get a motion to adjourn.

15 COMMISSIONER HIGGINBOTHAM: So moved.

16 CHAIRPERSON BERRY: It's nondebatable.  
17 So, thank you very much, and the Commission is  
18 adjourned.

19 (Whereupon, at 2:00 p.m., the Commission  
20 meeting was adjourned.)

21  
22  
23  
24  
25

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON D C 20005