

## U.S. COMMISSION ON CIVIL RIGHTS

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## MEETING

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Friday, May 10, 1996

The Commission convened in the Main Conference Room, on the Fifth Floor of 624 9th Street, N.W., Washington, D.C. at 9:30 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON

CRUZ REYNOSO, VICE CHAIRPERSON

CARL A. ANDERSON, COMMISSIONER

ROBERT P. GEORGE, COMMISSIONER

A. LEON HIGGINBOTHAM, JR., COMMISSIONER

CONSTANCE HORNER, COMMISSIONER

YVONNE Y. LEE, COMMISSIONER (via telephone)

RUSSELL G. REDENBAUGH, COMMISSIONER

MARY K. MATHEWS, STAFF DIRECTOR

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STAFF PRESENT:

BARBARA BROOKS

KI-TAEK CHUN

JAMES S. CUNNINGHAM

PAMELA A. DUNSTON

VERONIQUE PLUVIOSE-FENTON

GERRY M. HALL

GEORGE M. HARBISON

CAROL-LEE HURLEY

JACQUELINE J. JOHNSON

STEPHANIE Y. MOORE, General Counsel

CHARLES RIVERA

MIGUEL SAPP, Parliamentarian

ANTHONY K. WELLS, SR.

AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

ADERSON FRANCOIS

DEEANA JANG

CHARLOTTE PONTICELLI

WILLIAM L. SAUNDERS, JR.

KRISHNA TOOLSIE

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

(9:45 a.m.)

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CHAIRPERSON BERRY: The meeting is called to order. The first item on the agenda is the approval of the agenda. Could I have a motion or --

COMMISSIONER HORNER: So moved.

VICE CHAIRPERSON REYNOSO: Second.

CHAIRPERSON BERRY: Okay, any discussion? All in favor, indicate by saying "aye."

ALL: Aye.

CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: So ordered. The next item is the approval of the minutes of the April 12, 1996 meeting. Could I have a motion?

COMMISSIONER HORNER: So moved.

CHAIRPERSON BERRY: Second anybody?

VICE CHAIRPERSON REYNOSO: Second.

CHAIRPERSON BERRY: Any discussion? Discussion? All in favor, indicate by saying "aye."

ALL: Aye.

CHAIRPERSON BERRY: Opposed?

(No response.)

CHAIRPERSON BERRY: So ordered. The next item is announcements. Staff Director, do you have

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1 announcements? You always have an announcement.

2 STAFF DIRECTOR MATHEWS: And I do -- I do  
3 again today have some announcements. I first wanted  
4 to mention that the 1996 funding measure for the  
5 Commission was passed by Congress and enacted in late  
6 April.

7 It included an amount of \$8.75 million for  
8 the Commission on Civil Rights for this fiscal year.

9 The next funding issue I want to indicate  
10 is the Fiscal 1997 appropriation request. We have  
11 just delivered to the Appropriations Committees the  
12 Commission's appropriation request package and  
13 materials, which is following up on Commission  
14 decisions made at the last Commission meeting.

15 And we'll have copies. This was just  
16 prepared, so we'll have copies mailed to each  
17 Commissioner next week, early next week. Yes?

18 COMMISSIONER REDENBAUGH: May I know the  
19 amount?

20 STAFF DIRECTOR MATHEWS: Well, this was  
21 the amount that we announced one or two Commission  
22 meetings ago: \$11.4 million.

23 COMMISSIONER REDENBAUGH: Eleven-four?

24 STAFF DIRECTOR MATHEWS: Yes. This is the  
25 result of the request we made last fall to the OMB and

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1 the pass-back from the Administration. And the amount  
2 that was included, it's the same amount included in  
3 the President's budget book, which was submitted to  
4 the Hill, I believe, about a month ago.

5 CHAIRPERSON BERRY: Are you finished  
6 Commissioner Redenbaugh?

7 COMMISSIONER REDENBAUGH: Yes.

8 CHAIRPERSON BERRY: You're just pondering?

9  
10 COMMISSIONER REDENBAUGH: Yes. I was just  
11 trying to add up all the zeros, as unaccustomed as I  
12 am to large sums.

13 (Laughter.)

14 CHAIRPERSON BERRY: Commissioner Horner?

15 COMMISSIONER HORNER: Mary answered my  
16 question.

17 CHAIRPERSON BERRY: Oh.

18 COMMISSIONER HORNER: I wanted to know  
19 whether the Administration had sought the same amount.  
20 And it had.

21 CHAIRPERSON BERRY: Oh, okay. All right,  
22 any other announcements, Staff Director?

23 STAFF DIRECTOR MATHEWS: I only have one  
24 other, Madame Chairperson. The Administration has  
25 indicated their support for the Commission's

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1 reauthorization.

2 And our reauthorization bill package will  
3 be forwarded to the Hill next week.

4 CHAIRPERSON BERRY: Okay. So they're not  
5 opposed to our reauthorization?

6 STAFF DIRECTOR MATHEWS: Yes.

7 CHAIRPERSON BERRY: Yes, Commissioner  
8 Horner?

9 COMMISSIONER HORNER: Madame Chair, have  
10 we seen this package, we, the Commissioners?

11 STAFF DIRECTOR MATHEWS: This is the  
12 package the Commissioners -- I'm sorry, if I could  
13 respond, Madame Chair?

14 CHAIRPERSON BERRY: Go ahead.

15 STAFF DIRECTOR MATHEWS: This is the  
16 package that the Commissioners voted on at an earlier  
17 meeting and agreed to.

18 COMMISSIONER HORNER: Okay. And as I  
19 recall, it didn't make any changes or something, I  
20 don't remember exactly. That was a long time ago.

21 CHAIRPERSON BERRY: Okay, all right. Do  
22 you have any other announcements? That's it?

23 STAFF DIRECTOR MATHEWS: Right.

24 CHAIRPERSON BERRY: Does any Commissioner  
25 have any announcements about anything more?

1 (No response.)

2 CHAIRPERSON BERRY: Okay. Then we'll go  
3 to the Staff Director's report. One of the things we  
4 need to do under the Staff Director's report is to  
5 come up with a date for the hearing in Los Angeles.

6 At the last meeting, we voted to have  
7 Commissioner Anderson and Commissioner -- I mean, Vice  
8 Chair Reynoso be the two Commissioners on a bipartisan  
9 basis who would conduct the hearing.

10 So, I guess it means that it has to be  
11 done on a day when Commissioner Anderson and  
12 Commissioner -- and Vice Chair Cruz Reynoso can do it.  
13 I mean, that's essential.

14 And then if anybody else wants to go, then  
15 that's fine. But the whole idea of a mini-hearing is  
16 how many people have to show up. And we only need two  
17 Commissioners if they're each from different parties.

18 And the date that the Staff Director just  
19 handed me that's been suggested, because of some  
20 calendar, something I don't know about, is August 22nd  
21 and 23rd.

22 So, I guess the query is either -- are you  
23 both available on that day or not?

24 COMMISSIONER ANDERSON: It's impossible  
25 for me, Madame Chair, on the 22nd and 23rd. I don't

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1 know if that means we have to look to September or  
2 what, but --

3 CHAIRPERSON BERRY: Well, we have to find  
4 a mutually agreeable date. Do you have any dates in  
5 September? I think this is important enough we ought  
6 to wrap it up.

7 Do you have any times in September that  
8 you could do it, Commissioner, and how are you in  
9 September?

10 COMMISSIONER ANDERSON: I think I have  
11 some dates in September, but my calendar -- my more  
12 complete calendar is in my briefcase in my car, so --

13 CHAIRPERSON BERRY: Did you have any ideas  
14 about September, Staff Director?

15 STAFF DIRECTOR MATHEWS: Madame Chair, my  
16 suggestion would be the week after Labor Day. But I  
17 don't know if that would be problematic for the  
18 Commissioners or not.

19 CHAIRPERSON BERRY: Is that problematic  
20 for you, Commissioner Anderson and Vice Chair Reynoso?

21  
22 COMMISSIONER ANDERSON: Would we be  
23 speaking of the fifth and the sixth or the week after?

24  
25 CHAIRPERSON BERRY: Anytime that week

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1 between the third and the seventh is the week after  
2 Labor Day. And then we could go to the next week if  
3 that week doesn't fit.

4 COMMISSIONER ANDERSON: The fifth would be  
5 impossible for me.

6 CHAIRPERSON BERRY: Okay. How about the  
7 next week?

8 VICE CHAIRPERSON REYNOSO: If we could do  
9 it the 12th and 13th. It's suggested as two days,  
10 right?

11 CHAIRPERSON BERRY: Right.

12 VICE CHAIRPERSON REYNOSO: If we could do  
13 it the 12th and 13th --

14 COMMISSIONER ANDERSON: I could do it.

15 CHAIRPERSON BERRY: You could too?

16 COMMISSIONER ANDERSON: I believe I can,  
17 yes.

18 CHAIRPERSON BERRY: Oh, okay. Well if  
19 that's the case, then why don't we just lock that in?  
20 Because I know people's calendars, by this time,  
21 September is getting pretty tight.

22 COMMISSIONER ANDERSON: Yes.

23 COMMISSIONER HORNER: Madame Chair?

24 CHAIRPERSON BERRY: Okay, so that would be  
25 the 12th and the 13th in Los Angeles for Commissioner

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1 Anderson and Vice Chair Reynoso, and any other  
2 Commissioners who choose to participate. Yes,  
3 Commissioner Horner?

4 COMMISSIONER HORNER: Madame Chair, before  
5 we lock it in, the agenda, to me, looks incredibly  
6 large for a two-day hearing. And I'm concerned that  
7 we may have a series of sort of superficial litmus  
8 tests on various subjects without the opportunity for  
9 depth or pinning things down.

10 It's my understanding that the hearing is  
11 intended as an update, I know. So that should make it  
12 easier to do things superficially and still  
13 satisfactorily.

14 But I wonder if we ought not to ask the  
15 staff to narrow the agenda somewhat. And also, I have  
16 not seen a list of proposed witnesses, and I wonder if  
17 such exists at this time.

18 CHAIRPERSON BERRY: Well, the answer to  
19 the last question is we don't prepare witness lists  
20 until after Commissioners have seen the agenda and get  
21 some response because it would be foolhardy, at best -

22 COMMISSIONER HORNER: Yes.

23 CHAIRPERSON BERRY: -- to have witnesses.

24 And Commissioners are supposed to -- they have an

1 opportunity to suggest witnesses before anybody sees  
2 a witness list.

3 So, we can't do the witness list until  
4 after we figure out the agenda.

5 COMMISSIONER HORNER: That means we can't  
6 see the witness list before the Commissioners approve  
7 the holding of a hearing?

8 CHAIRPERSON BERRY: No, we decided that  
9 and reaffirmed it by a vote of the Commission on a  
10 motion introduced by Vice Chair Reynoso several months  
11 ago when the same subject came up.

12 And the Commission, by a majority vote,  
13 reaffirmed that Commission policy and practice is that  
14 the staff is responsible for preparing the witness  
15 list and giving it to the Commissioners in advance of  
16 the hearing after taking into account the suggestions  
17 made by Commissioners as well as witnesses who are  
18 collected by the staff.

19 And that is a Staff function which they  
20 must do. And that is not a requirement before we  
21 agree to have a hearing. We reaffirmed that if I --  
22 am I correct?

23 VICE CHAIRPERSON REYNOSO: Yes, that's  
24 correct.

25 CHAIRPERSON BERRY: Somebody refresh my

1 recollection.

2 VICE CHAIRPERSON REYNOSO: About three  
3 months ago.

4 CHAIRPERSON BERRY: So that the way this  
5 would go is we see the agenda, we've agreed to have a  
6 hearing, a mini-hearing. We've said who's going to  
7 conduct it. We can talk about the agenda.

8 And then we will suggest witnesses, and  
9 then the staff will come up with witnesses. And then  
10 we'll get a witness list. That's the way that's done.

11 And the agenda itself, I'm open to  
12 discussion by Commissioners of the agenda. But if you  
13 have any response, Staff Director, before we discuss  
14 it, or if there's anything you want to say -- do you  
15 want to say anything, discuss it?

16 STAFF DIRECTOR MATHEWS: I'm not sure,  
17 Madame Chair, I could add anything to the discussion  
18 other than what you have indicated.

19 CHAIRPERSON BERRY: Vice Chair?

20 VICE CHAIRPERSON REYNOSO: Madame Chair,  
21 my only -- I went over the agenda, and I thought it  
22 was doable if the panels are small panels. That is,  
23 if we just have a couple of people testifying, say for  
24 an hour and a half, then -- then we have a chance to  
25 ask a lot of questions.

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1           If we have a panel the way we've done  
2 sometimes with five witnesses, each one takes ten  
3 minutes, then we're rushed and we aren't able to get  
4 into depth. So, I'm concerned about that. It just --  
5 it seems to me it's doable if we limit the panels.

6           That would be a maximum of three,  
7 hopefully only two. Then we have a chance to ask the  
8 in-depth questions.

9           CHAIRPERSON BERRY: Okay.

10          COMMISSIONER HORNER: That's my  
11 perception. And that would be fine with me if the  
12 Staff Director thinks that with a limited number of  
13 witnesses, we can get the proper information on these  
14 issues.

15          VICE CHAIRPERSON REYNOSO: Yes. It seems  
16 to me we did have testimony on most of these matters  
17 in the L.A. hearing. So -- we wouldn't need a whole  
18 array of witnesses, it seems to me. If we can limit  
19 the number of witnesses, then I think it's doable.

20          CHAIRPERSON BERRY: Commissioner  
21 Redenbaugh had his hand up.

22          COMMISSIONER REDENBAUGH: Yes, I have the  
23 same concern that it is a very, very full two days.  
24 And I understand there's been a request from the  
25 Western Region to add another topic.

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1 CHAIRPERSON BERRY: Yes, I was going to  
2 suggest we discuss that after we resolve this part.

3 COMMISSIONER REDENBAUGH: I don't see how  
4 to do that in two days, you know? I think we need to  
5 shrink it down somehow.

6 And I'm not -- I'm not proposing which are  
7 the things we should exclude, but it does look like a  
8 big bite.

9 CHAIRPERSON BERRY: Well, I think that --  
10 and we'll get a response from the Staff Director in a  
11 minute. But I think that if what the Vice Chair has  
12 said is what is intended, that these are updates since  
13 these topics were discussed before, and what you're  
14 doing is getting two or three witnesses to update so  
15 that we're not out of date when we do the report, and  
16 then consider whatever new matter there is, then I  
17 could see where it might be done.

18 But we'll have to ask the Staff Director,  
19 is that what is intended or is that doable after  
20 hearing this discussion?

21 STAFF DIRECTOR MATHEWS: Madame Chair, I  
22 was actually glad to hear some of these comments  
23 because the staff, in our discussion prior to  
24 preparing this outline of the hearing, had the premise  
25 that there would be a few witnesses at each panel to

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1 allow for more dialogue and more questioning than we  
2 might have had in some of our hearings where they were  
3 not the follow-up hearing.

4 And I personally think that this is very  
5 doable and a very good outline.

6 CHAIRPERSON BERRY: And besides, there  
7 will be fewer Commissioners maybe.

8 (Laughter.)

9 CHAIRPERSON BERRY: Yes, Commissioner?

10 COMMISSIONER HORNER: Madame Chair, I just  
11 want to make sure that the staff believes that it can  
12 resist pressures from groups that want to be  
13 represented in such an important venue.

14 In other words, if you will have only,  
15 say, three -- three people testifying and eight  
16 organizations, governmental or non-governmental,  
17 feeling that they are important enough to want some  
18 input, and then given the need for balance across the  
19 array of points of view, can you both achieve balance  
20 in points of view and satisfy the need to accommodate  
21 the range of groups that will have they have a  
22 significant point of view to express and constrain the  
23 numbers for each of these categories?

24 STAFF DIRECTOR MATHEWS: Madame Chair?

25 CHAIRPERSON BERRY: Yes, please.

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STAFF DIRECTOR MATHEWS: I am confident, Commissioner Horner, that we can achieve balance and representation of various points of view with a small number of witnesses.

Any organization or individual who wants to come and present views and is not a part of the regular hearing, they always have the option of coming at the open session for a five-minute period.

COMMISSIONER HORNER: But we wouldn't want to leave a balanced presentation to the end of the day, less significant, less media covered opportunity for individual citizens.

We do want to have a balanced presentation on these issues to the extent substantial different points of view exist in the main body of the hearing.

And I'm wondering if you are able to do that with two or three people on the whole subject; for instance, the relation of local law enforcement with Los Angeles immigrant communities. Can you, with a very limited number of witnesses, accommodate the demand for balance?

STAFF DIRECTOR MATHEWS: Madame Chair?

CHAIRPERSON BERRY: Yes, you may answer that. But let me tag onto the question and say that I would hope that in considering your approach and

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1 your answer that you would, keeping in mind what our  
2 purpose is in terms of update, try to -- first of all,  
3 I would hope the Commissioners, in suggesting  
4 witnesses, would keep in mind that we're trying to get  
5 balance and that there may be one organization, say,  
6 that represents a broader spectrum of views.

7 I don't know the answer to that. I'm just  
8 making suggestions, that you might keep those kinds of  
9 things in mind, that the Commissioners might also,  
10 when we suggest people, that this is what we're trying  
11 to do.

12 But anyway, go ahead and answer the  
13 question.

14 STAFF DIRECTOR MATHEWS: Well, I am  
15 confident that we will be able to have a balanced  
16 presentation of views. And I will give you my  
17 assurance that we will do that.

18 COMMISSIONER HORNER: Okay, thank you.

19 CHAIRPERSON BERRY: Okay, Commissioner  
20 Anderson, since you and Vice Chair are going to be  
21 conducting this --

22 COMMISSIONER ANDERSON: My view of the  
23 matter would be -- would be as follows, and it's a  
24 little bit complicated, I suppose. Looking back at  
25 the briefing we did several months ago about the

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1 police conduct, it seemed to me that we had there --  
2 it was -- in my opinion, it was sort of an uneven  
3 briefing.

4 We had witnesses who were obviously  
5 institutional representatives who I felt were not as  
6 helpful as say, for example, the academician from the  
7 university. Was it Temple University, University of  
8 Pennsylvania?

9 CHAIRPERSON BERRY: I think it was Temple.

10

11 COMMISSIONER REDENBAUGH: Temple.

12 COMMISSIONER ANDERSON: Temple. Now, I  
13 don't know how this goes to the matter of balance, but  
14 I think, for example, the scholar we had could have  
15 gone on -- from Temple could have gone on for an hour  
16 easily.

17 And in my own mind, we had some witnesses  
18 --

19 VICE CHAIRPERSON REYNOSO: I'm sorry. If  
20 he was a scholar, he could only go 50 minutes.

21 (Laughter.)

22 COMMISSIONER ANDERSON: There were some --  
23 there were some others that I thought three to four  
24 minutes was plenty. Now how you -- you know, devise  
25 a rule to accommodate that, I don't know.

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1           But I was not -- if we are going to try to  
2 get the kind of witnesses, using the Temple professor  
3 as an example -- I'm not particularly concerned so  
4 much about balance in terms of ideology.

5           And some of these panels, you know -- is  
6 there, for example, racial and gender bias? And my  
7 own sense is I'm not -- I would not like to see  
8 attorneys who have been involved in a number of these  
9 cases come up and explain all their cases and their  
10 current litigation and why there's tremendous  
11 problems, and then somebody else come up and say, for  
12 the defense, that there isn't.

13           I would be more interested in seeing one  
14 or two people who have studied the matter for a long  
15 time from some, at least, institutionally neutral  
16 standpoint, come in and talk to us about their  
17 assessment of the problem outside the context of  
18 particular involvement in litigation or complaints or  
19 something like that.

20           But that's my own impression. I don't  
21 know how that accommodates questions like balance, for  
22 example. But I would find that to be more productive.  
23 And I would rather have a half an hour to talk to that  
24 person than I would litigants or people who sort of  
25 come from the standpoint of being, you know, counsel

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1 for litigation.

2 That's my only -- I don't know if that  
3 helps at all, but --

4 CHAIRPERSON BERRY: That helps. All of  
5 that is good guidance. Good ahead. Did you have a  
6 response to --

7 STAFF DIRECTOR MATHEWS: I do. Thank you,  
8 Madame Chair. I just wanted to add one point in  
9 regard to your comment, Commissioner Anderson. The  
10 preparation for briefings is quite different, as you  
11 probably know, than --

12 CHAIRPERSON BERRY: He knows because he's  
13 been here for years now.

14 (Laughter.)

15 STAFF DIRECTOR MATHEWS: Well, I'm just  
16 trying to make the point that the pre-interview  
17 process for hearings is one where we would hope to  
18 have the selection of witnesses.

19 CHAIRPERSON BERRY: Screening out people,  
20 you mean?

21 STAFF DIRECTOR MATHEWS: Right.

22 CHAIRPERSON BERRY: And making sure that  
23 they are focused?

24 STAFF DIRECTOR MATHEWS: Right.

25 CHAIRPERSON BERRY: Well you, of course,

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1 will take into account this discussion we're having  
2 here and the expectations of the Commissioners are  
3 being made very clear. I can see Commissioner  
4 Anderson's point.

5 If you had a scholar who had worked on  
6 this subject and who portrayed no particular  
7 ideological concern about it, although there is always  
8 some bias, that might be very informative on the  
9 subject.

10 COMMISSIONER ANDERSON: I mean, we could  
11 all find scholars who have a particular --

12 CHAIRPERSON BERRY: Bias.

13 COMMISSIONER ANDERSON: -- bias on things.  
14 It comes out very clear. But I think there are some  
15 who may not fall into that category.

16 I mean, I would share Commissioner  
17 Horner's concern about balance. But maybe there's a  
18 way so that we don't have to broaden our panels  
19 because we have to have every side institutionally  
20 represented, I guess is the point I'm trying to make.

21 CHAIRPERSON BERRY: Yes, that's true.

22 COMMISSIONER REDENBAUGH: But we have, of  
23 course, many categories of testimony. And for  
24 example, under practically each one, we have community  
25 organizations or witnesses or advocacy groups. But it

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1 seems to me a manifest we could have an advocacy group  
2 representing one element of the community, maybe in  
3 one panel, and the different advocacy group in another  
4 panel.

5 That is, we don't have to have, you know,  
6 a balance in each -- in each panel.

7 CHAIRPERSON BERRY: You mean -- advocacy  
8 group?

9 COMMISSIONER REDENBAUGH: And I don't  
10 think that that would have ten witnesses, you know?

11 CHAIRPERSON BERRY: So, let's try to do  
12 that. Let's try to keep all this in mind as we -- as  
13 we do this.

14 COMMISSIONER HIGGINBOTHAM: Madame Chair?

15 CHAIRPERSON BERRY: Yes?

16 COMMISSIONER HIGGINBOTHAM: May I ask --  
17 I haven't --

18 CHAIRPERSON BERRY: Commissioner  
19 Higginbotham?

20 COMMISSIONER HIGGINBOTHAM: -- been a  
21 beneficiary of these hearings, so I'm looking at it as  
22 a stranger. Is there any reason why you can't ask  
23 someone to give you a statement, which then becomes a  
24 part of the record?

25 Let me just give you an example. I've

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1       been trying a lot of civil rights cases. I understand  
2       how someone might say, well for instance, a civil  
3       rights lawyer has bias.

4               But the whole history of a corridor of  
5       history demonstrates -- you know, if you look at the  
6       Thurgood Marshall trials -- used it, William Henry  
7       Hastie, these people were a partisan advocate and made  
8       a profound contribution.

9               So (1) if you let -- if you've got a  
10       mechanism so a statement can be filed --

11               CHAIRPERSON BERRY: Yes?

12               COMMISSIONER HIGGINBOTHAM: -- therefore,  
13       we would not be involved on the pre-judgement so that  
14       if you came across someone who had a series of cases,  
15       either as counsel for the plaintiff or as counsel for  
16       the defendant, I would welcome that information going  
17       into the record.

18               They do not necessarily have to testify  
19       extensively. So that that would be my approach into  
20       asking the Staff to consider. And then we would have  
21       a record which you can work on very, very  
22       thoughtfully.

23               CHAIRPERSON BERRY: The answer to the  
24       question is yes, we can have statements. We can  
25       collect information a number of ways:

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1 interrogatories, statements submitted for the record,  
2 all sorts of mechanisms.

3 And your having made that statement goes  
4 into the information that is available to the staff so  
5 that they will be guided.

6 That's part of the reason why we have  
7 these discussions, so that they can be guided by the  
8 discussion in reading the transcript in terms of what  
9 the Commission wants them to do. So, that's very  
10 important to me, that statement. Yes, it can be done.  
11 Right, Staff Director?

12 STAFF DIRECTOR MATHEWS: That's right,  
13 Madame Chair.

14 CHAIRPERSON BERRY: Okay. Any other  
15 comments about this process to guide the staff or  
16 anything else on this subject before we go to another  
17 subject?

18 (No response.)

19 CHAIRPERSON BERRY: Okay, hearing none,  
20 then we'll go to -- any other questions on the Staff  
21 Director's report or any issues anyone wants to raise  
22 or any -- oh, I said I was going to go back to the  
23 point you made, Commissioner Redenbaugh.

24 You let me move on without discussing it,  
25 that we received a letter --

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1 COMMISSIONER REDENBAUGH: Oh, yes.

2 CHAIRPERSON BERRY: -- from Fernando  
3 Hernandez, who is the Chairperson of the California  
4 SAC. And Mr. Hernandez asked us -- he says, for those  
5 who haven't read the letter or don't know where it is  
6 or forgot it, the letter is -- can you hear me,  
7 Yvonne? Commissioner Lee?

8 (No response.)

9 CHAIRPERSON BERRY: Commissioner Lee?

10 (No response.)

11 CHAIRPERSON BERRY: I thought she was  
12 awfully silent. Somebody check to see where she is.

13 STAFF DIRECTOR MATHEWS: Would you check,  
14 Mr. Wells?

15 CHAIRPERSON BERRY: It says, "This letter  
16 is to re-urge a request previously forwarded to you by  
17 former California SAC Chair, Mike Carney, regarding  
18 the effort to gather information on employment  
19 practices in the television media in L.A."

20 And the SAC wants the Commissioners to  
21 complete the media project by having representatives  
22 of the television media subpoenaed to appear and give  
23 testimony at the mini-hearing.

24 And that they, in 1994, requested the  
25 participation of two Commissioners at a public forum

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1 in L.A. This request was predicated on the  
2 Commission's -- Committee's conclusion that voluntary  
3 cooperation would not be forthcoming, and they needed  
4 Commissioners in order to get response.

5 And Commissioners were unable to act on  
6 the request in time to meet statutory publication  
7 requirements for Commission hearings.

8 But now that we're having a mini-hearing,  
9 they would like us to help them in their television  
10 project by having the Commissioners make a panel on  
11 this part of the mini-hearing.

12 And what I'm wondering is (1) should we do  
13 this? What is the view of the Commissioners? And (2)  
14 is there some way for them to have a SAC -- for us to  
15 have a -- procedurally have the Commissioners who are  
16 there, if they are willing, to aid the SAC in  
17 compelling testimony or would it have to be part of  
18 this hearing?

19 I guess it would have to be part of a  
20 hearing. It would have to be another panel on this  
21 hearing. What is your view, Commissioner Redenbaugh,  
22 since you seem to be apprised of this subject?

23 COMMISSIONER LEE: I only wanted to come  
24 on again.

25 CHAIRPERSON BERRY: Good morning. Where

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1 did I leave you, Yvonne?

2 COMMISSIONER LEE: Well, after you made  
3 the announcement, then everyone just trailed off. And  
4 I kept yelling, but no one heard me.

5 CHAIRPERSON BERRY: Oh, bracita.

6 (Laughter.)

7 COMMISSIONER LEE: Hopefully I'll be with  
8 you for the rest of the morning.

9 CHAIRPERSON BERRY: We --

10 VICE CHAIRPERSON REYNOSO: Can you hear  
11 all right now?

12 COMMISSIONER LEE: Yes.

13 VICE CHAIRPERSON REYNOSO: Okay.

14 CHAIRPERSON BERRY: We're going to have  
15 the L.A. mini-hearing on September 12th and 13th.

16 COMMISSIONER LEE: Okay.

17 CHAIRPERSON BERRY: Commissioners should  
18 submit names of witnesses if they want to. And then  
19 we'll apprise you of the other information about that  
20 subject that we discussed.

21 COMMISSIONER LEE: Okay, okay.

22 CHAIRPERSON BERRY: Now what we're  
23 discussing is a letter from the SAC Chair in  
24 California, Mr. Hernandez.

25 COMMISSIONER LEE: Right.

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1 CHAIRPERSON BERRY: Are you aware of this  
2 letter?

3 COMMISSIONER LEE: I am.

4 CHAIRPERSON BERRY: And we're trying to  
5 decide -- Commissioner Redenbaugh brought this up.  
6 We're trying to decide what to do about it. So,  
7 that's where we are in the discussion.

8 COMMISSIONER LEE: Okay.

9 CHAIRPERSON BERRY: Did you say anything,  
10 Commissioner Redenbaugh?

11 COMMISSIONER REDENBAUGH: Not yet.

12 CHAIRPERSON BERRY: Oh, okay.  
13 Commissioner Redenbaugh?

14 COMMISSIONER REDENBAUGH: Well, I -- you  
15 know, I'm not enthusiastic about this. And I -- what  
16 would be different in this from -- how would this  
17 differ or augment what we did already in the media  
18 project when we were there so long ago?

19 CHAIRPERSON BERRY: Well, we don't know  
20 because he doesn't tell us.

21 COMMISSIONER REDENBAUGH: Okay.

22 CHAIRPERSON BERRY: I mean, he doesn't say  
23 what it is he wants to do.

24 COMMISSIONER REDENBAUGH: Then I don't  
25 know how I could be for something that I don't know

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1 what it is.

2 CHAIRPERSON BERRY: Yes, Vice Chair?  
3 Maybe he knows something.

4 VICE CHAIRPERSON REYNOSO: Yes. Madame  
5 Chair, I've had some knowledge of what's happening,  
6 not as complete and I -- of course that the General  
7 Counsel would want to be in touch with the SAC and  
8 stuff.

9 I take it that any hearing like this is  
10 surely within the purview of the General Counsel. But  
11 the SAC, a year or two ago, maybe it was '94, had its  
12 own hearing on these issues. I attended a part of it.

13 But when it was -- since it was their  
14 hearing, they could only have people testifying who  
15 were willing to come and testify. So, they felt that  
16 it was an incomplete hearing from the point of view  
17 that the officials in the industry declined to  
18 participate apparently, and to -- and to complete the  
19 process. They thought it was necessary to have -- to  
20 have them.

21 But they don't have subpoena power. We're  
22 the only ones that have subpoena power. So, that's  
23 why they were suggesting that.

24 How -- how many witnesses or how long? I  
25 don't know. The impression I have, it's only that, is

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1 that it would be half a day.

2 If it can be worked out mechanically and  
3 so on, I think that it would be an important thing to  
4 do. And it seems to me that if we can work with --  
5 with advisory committees, and we think the projects  
6 would work well and so on, then it's probably not a  
7 bad idea to have -- to have mini-hearings to help them  
8 finish the work that they're doing.

9 But their concern had been, as I  
10 understand it, was that they had this hearing. They  
11 considered it unfinished because -- because some of  
12 the officials from the industry weren't willing to  
13 come to testify.

14 And they would like to have them testify  
15 and wrap up their hearing. That's what I understand  
16 has happened.

17 CHAIRPERSON BERRY: Commissioner Horner?

18 COMMISSIONER HORNER: Madame Chair, I  
19 assume that because we have different procedures for  
20 SAC hearings and Commission hearings that we really  
21 ought to -- I shouldn't say I assume.

22 Because we have different procedures, we  
23 ought to treat the request of this SAC as a request  
24 for a hearing, a mini-hearing. And we ought to assess  
25 it on its virtues, or lack of virtues, on that basis

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1 alone.

2 And the reason I say this especially is  
3 that I think it might set a very bad precedent in  
4 terms of our relationship with SACs for SACs to  
5 believe that we stand by to avail the SACs of a  
6 subpoena power indirectly that they are not afforded  
7 by statute or regulation.

8 And therefore, I would not support our  
9 agreeing to this request until I saw a fully developed  
10 staff rationale for a mini-hearing on this subject.

11 In other words, I think we ought to treat  
12 it seriously as a mini-hearing suggestion. And  
13 therefore, I wouldn't be prepared to say yea or nay at  
14 this point.

15 CHAIRPERSON BERRY: Why don't we do the  
16 following if there's no objection? Why don't we ask  
17 the Staff Director to have the General Counsel find  
18 out what these people want to do in this mini-hearing,  
19 and then figure out if it makes any sense in terms of  
20 either the report itself or their report, or it's  
21 something that you ought to recommend to us?

22 And then if you recommend it to us, then  
23 detail what it is that we'll be doing. And then we  
24 can read it and consider it, just as we considered the  
25 other mini-hearings in accord with Commissioner

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1 Horner's suggestion?

2 And you could then inform these people  
3 that that's the response, and that we are considering  
4 it. We haven't rejected it. It's just that we're not  
5 going to pro forma agree to it just because the  
6 Commissioners happen to be going there.

7 COMMISSIONER HORNER: But I think it's  
8 important for other SACs --

9 COMMISSIONER REDENBAUGH: Right.

10 COMMISSIONER HORNER: -- not to get the  
11 impression --

12 COMMISSIONER REDENBAUGH: Right.

13 COMMISSIONER HORNER: -- by what we say or  
14 however we communicate to them that this is a motus  
15 operandi that we're going to adopt whenever we have a  
16 mini-hearing anywhere.

17 CHAIRPERSON BERRY: So, we would look to  
18 see a proposal from you if that's what you decide to  
19 do.

20 STAFF DIRECTOR MATHEWS: Yes, Madame  
21 Chair, I'd be glad to follow up.

22 CHAIRPERSON BERRY: Yes, Vice Chair?

23 VICE CHAIRPERSON REYNOSO: I just want to  
24 say I agree with Commissioner Horner on that. I had  
25 once been approached by the California SAC to maybe

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1 have something, a mini-hearing in Orange County,  
2 pertaining to some electoral problems that they had at  
3 that time.

4 And I suggested to them that they write to  
5 the Commission. And I had assumed that then the staff  
6 would do the work and make a recommendation. But then  
7 apparently, they decided not to go forward with that -  
8 - with that project.

9 But yes, I think that's -- it's an  
10 independent judgement for us to run.

11 CHAIRPERSON BERRY: Okay, we'll do it that  
12 way then. Any other questions or comments on the  
13 Staff Director's report? Commissioner Redenbaugh?

14 COMMISSIONER REDENBAUGH: Oh yes, well I  
15 speak -- this may be mislocated, but I wanted to make  
16 a report about this task force for the --

17 CHAIRPERSON BERRY: Oh yes, yes.

18 COMMISSIONER REDENBAUGH: Yes, yes. Well,  
19 the good news is I don't have much to report.

20 (Laughter.)

21 COMMISSIONER REDENBAUGH: I can report  
22 that the Chair's memory is far more accurate than my  
23 own.

24 CHAIRPERSON BERRY: Oh, well that is  
25 wonderful.

1 (Laughter.)

2 CHAIRPERSON BERRY: Surprising, but  
3 wonderful, in this case.

4 COMMISSIONER REDENBAUGH: Yes.

5 (Laughter.)

6 COMMISSIONER REDENBAUGH: That, in fact,  
7 the task force in '93, I believe, did examine this  
8 process and produce some recommendations which I --  
9 which the Commission adopted, which I think we are not  
10 -- have not been following. Although, I think not  
11 willfully ignoring them, they just -- they slipped  
12 from view, as I forgot them also.

13 (Laughter.)

14 COMMISSIONER REDENBAUGH: I've circulated  
15 the evidence of our past work to our colleagues,  
16 excluding Connie Horner. Connie, you were drafted to  
17 be on this task force with us. If you accept this  
18 draft --

19 (Laughter.)

20 COMMISSIONER REDENBAUGH: -- this is to  
21 review the SAC appointment process.

22 COMMISSIONER HORNER: I would be happy to.

23 COMMISSIONER REDENBAUGH: Thank you.

24 CHAIRPERSON BERRY: Okay.

25 COMMISSIONER REDENBAUGH: Then we really

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1 don't have anything to report except that there is  
2 evidence --

3 (Laughter.)

4 COMMISSIONER REDENBAUGH: -- that we did  
5 something, and we're not in compliance with that. So,  
6 we will examine it more fully and have a report with  
7 recommendations by the next Commission meeting.

8 CHAIRPERSON BERRY: Well, I very much  
9 appreciate that.

10 COMMISSIONER REDENBAUGH: I know you've  
11 been losing sleep over that.

12 (Laughter.)

13 CHAIRPERSON BERRY: Well okay, good.

14 COMMISSIONER REDENBAUGH: And then I was -  
15 - if I could ask the Staff Director, do you have a  
16 report on -- on the recommendations that I made which  
17 triggered this whole "look around and see" thing?

18 CHAIRPERSON BERRY: Before I do that, let  
19 me see, did I hear you saying something, Commissioner  
20 Lee?

21 COMMISSIONER LEE: Yes. I think maybe --  
22 Redenbaugh for his viewpoint is very good, and I have  
23 just one comment on the Staff Director's report.

24 CHAIRPERSON BERRY: Oh, okay. It's about  
25 something else. Okay, we'll finish this up, and then

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1 I'll come back to you. Staff Director?

2 STAFF DIRECTOR MATHEWS: Okay, the Western  
3 Regional Office Director, Commissioner Redenbaugh, has  
4 provided me just this morning with an update on his  
5 progress in interviewing candidates for the California  
6 SAC that you referred.

7 And there were additional candidates  
8 referred by Vice Chairperson Reynoso.

9 COMMISSIONER REDENBAUGH: Yes.

10 STAFF DIRECTOR MATHEWS: He has  
11 interviewed some of these individuals, but is still in  
12 the process, has not completed the interviews yet.

13 But he's been travelling to the different  
14 parts of California personally talking with these  
15 individuals. And he expects to complete the  
16 interviews in the near future. I know he was  
17 interviewing this week even.

18 So, I'm hopeful we'll have a comprehensive  
19 report from him between now and the next Commission  
20 meeting in terms of results of his interviews and his  
21 recommendations to me and my approval in terms of  
22 candidates for interim consideration by the  
23 Commissioners.

24 COMMISSIONER REDENBAUGH: Okay, thank you.

25

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1 CHAIRPERSON BERRY: All right,  
2 Commissioner Lee?

3 COMMISSIONER LEE: Yes, I have just one  
4 comment on the Staff Director's report.

5 CHAIRPERSON BERRY: Well, will you excuse  
6 me just a minute, Yvonne?

7 VICE CHAIRPERSON REYNOSO: No, it's on a  
8 different subject.

9 CHAIRPERSON BERRY: Oh, a different  
10 subject. Go ahead, Commissioner Lee.

11 COMMISSIONER LEE: On the Congressional  
12 activity, I really enjoyed reading the section on the  
13 legislative development. But I do have a question for  
14 the Staff Director. Is it possible that you could  
15 prepare a summary and a status report on the  
16 particular legislative issues when you mention  
17 reauthorization, the Individuals With Disability  
18 Education Act, so I will know what that act is and  
19 what's the status.

20 It would help me a little bit more. It  
21 gives me more information on these issues. Is that  
22 possible?

23 CHAIRPERSON BERRY: Okay, Staff Director?

24 STAFF DIRECTOR MATHEWS: Commissioner Lee,  
25 yes indeed, we can provide some additional background

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1 information on what's included in each of these  
2 legislative measures, as well as just the status in  
3 terms of committee vote or full-floor vote.

4 COMMISSIONER LEE: Thank you.

5 STAFF DIRECTOR MATHEWS: Okay.

6 CHAIRPERSON BERRY: Okay, so from now on,  
7 we will -- when there's a report on some legislative  
8 matter, the Commissioners will receive a description  
9 of what this item is, what it's about, not assuming  
10 everybody knows. And for people interested, they can  
11 read it. Okay, the Vice Chair?

12 VICE CHAIRPERSON REYNOSO: Yes, I just had  
13 a question on Commissioner Redenbaugh's suggestion  
14 that we have a briefing on three strikes. I just  
15 wondered what the status of that was, whether the  
16 staff had thought about it, thought it was a good  
17 idea or --

18 CHAIRPERSON BERRY: Three strikes and  
19 you're out?

20 VICE CHAIRPERSON REYNOSO: Yes.

21 CHAIRPERSON BERRY: Three strikes and  
22 you're out, Staff Director.

23 STAFF DIRECTOR MATHEWS: We have --

24 VICE CHAIRPERSON REYNOSO: Not meant to be  
25 a status report on baseball.

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1                   STAFF DIRECTOR MATHEWS: That wasn't the  
2 three strikes you were referring to. We -- the staff  
3 has followed up on the discussion at the last  
4 Commission meeting on suggestions that were made for  
5 briefings. That would be one of them.

6                   And the work though that's most  
7 immediately being done is preparation for a briefing  
8 at the next Commission meeting on Consumer Racism and  
9 Sexism, which as you recall we tried to have for the  
10 April meeting and found that participants needed  
11 additional time, you know, to prepare, and some  
12 weren't available on that particular April date.

13                   But we will be following up on each of the  
14 suggestions made for subsequent briefings.

15                   CHAIRPERSON BERRY: Anything else on the  
16 Staff Director's report? Commissioner Anderson?

17                   COMMISSIONER ANDERSON: I received  
18 something about the Commission going forward in the  
19 Federal Register with a proposal for amendments to our  
20 regulations. Is there anything -- is that true?

21                   Is there anything the Staff Director can  
22 tell us about that and maybe the nature of it?

23                   STAFF DIRECTOR MATHEWS: Madame Chair?

24                   CHAIRPERSON BERRY: Yes, sure.

25                   STAFF DIRECTOR MATHEWS: Commissioner

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1 Anderson, I did not send anything out on that. I'm --

2 CHAIRPERSON BERRY: Astounded?

3 STAFF DIRECTOR MATHEWS: -- not aware of  
4 the Commission proceeding in amending our regulations.  
5 So, I'm -- I don't know how else to respond to you.

6 COMMISSIONER ANDERSON: Okay.

7 CHAIRPERSON BERRY: Maybe you could inform  
8 us, Commissioner Anderson. Are we amending our  
9 regulations?

10 COMMISSIONER ANDERSON: No. Well, I don't  
11 know, and that's why I'm asking the question. There's  
12 no plans for amendments to the regs?

13 STAFF DIRECTOR MATHEWS: None that I'm  
14 aware of.

15 COMMISSIONER ANDERSON: Okay.

16 COMMISSIONER HIGGINBOTHAM: May I ask --

17 CHAIRPERSON BERRY: Commissioner  
18 Higginbotham?

19 COMMISSIONER HIGGINBOTHAM: -- does the  
20 Federal Register have a reference to that or -- I'm  
21 just trying to figure out your source.

22 COMMISSIONER ANDERSON: I didn't see it in  
23 the Federal Register.

24 COMMISSIONER HIGGINBOTHAM: Okay, all  
25 right. Okay, fine, okay. If it's in the Federal

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1 Register, I get worried.

2 (Laughter.)

3 COMMISSIONER HIGGINBOTHAM: I throw it  
4 out.

5 CHAIRPERSON BERRY: Okay, so there's a  
6 gremlin somewhere. Anybody else have any other  
7 questions for the Staff Director on the Staff  
8 Director's report. Oh, the Mississippi Delta hearing  
9 dates, we need to set some dates for the Mississippi  
10 Delta hearing, my friends.

11 If we do that, is that the last one in  
12 this series?

13 VICE CHAIRPERSON REYNOSO: Yes.

14 STAFF DIRECTOR MATHEWS: Yes, Madame  
15 Chair.

16 CHAIRPERSON BERRY: So, we'll be finished  
17 with this series if we set a date for Mississippi  
18 Delta?

19 Query: do we want to burden -- yes,  
20 Commissioner Redenbaugh?

21 COMMISSIONER REDENBAUGH: We won't be  
22 finished with the series, except we will have set the  
23 dates.

24 CHAIRPERSON BERRY: Right.

25 (Laughter.)

1                   COMMISSIONER REDENBAUGH: There's a great  
2 deal of work between here and there.

3                   CHAIRPERSON BERRY: Do we want to burden  
4 the Vice Chair and Commissioner Anderson by trying to  
5 hold the Mississippi Delta hearing also in September,  
6 or do we want -- so we get it done this fiscal year,  
7 and be proud to have accomplished getting them all  
8 done as we said we would do?

9                   Or do we want to be more practical and say  
10 well, we don't think we can get it done in September  
11 although we'd like to?

12                   The staff has proposed the dates of  
13 September 18th through the -- what is that, a two?

14                   STAFF DIRECTOR MATHEWS: The 20th. And  
15 Madame Chair?

16                   CHAIRPERSON BERRY: Yes.

17                   STAFF DIRECTOR MATHEWS: If I could  
18 mention that September 20th is already the scheduled  
19 September Commission meeting date.

20                   CHAIRPERSON BERRY: And the Commission  
21 meeting is scheduled for September 20th.

22                   COMMISSIONER REDENBAUGH: In Mississippi?

23                   CHAIRPERSON BERRY: No, it's just  
24 scheduled.

25                   (Laughter.)

1 COMMISSIONER HORNER: Madame Chair, I'm  
2 not -- I'm not available on the --

3 CHAIRPERSON BERRY: Okay.

4 COMMISSIONER HORNER: -- 18th.

5 CHAIRPERSON BERRY: Are you available any  
6 other time in September, Commissioner Horner?

7 COMMISSIONER HIGGINBOTHAM: I'm available  
8 the fifth through the ninth if I can fly out on the  
9 ninth in time to get to New Jersey by the tenth.

10 CHAIRPERSON BERRY: Yes. Well then, it  
11 looks like we're moving to -- since that's the week --  
12 well, that's not the week. That's the week  
13 Commissioner Anderson is not available.

14 COMMISSIONER HORNER: Madame Chair, if  
15 you'll bear with me for a moment, I have an ambiguous  
16 notation on my calendar for the 17th -- for the 15th  
17 through the 18th.

18 CHAIRPERSON BERRY: Of September?

19 COMMISSIONER HORNER: I have a note that  
20 I'm to hold for a corporate board retreat. And I  
21 don't know whether that has -- those dates have been  
22 overtaken by events. I would have to review my -- all  
23 of October, November and December to see I have noted  
24 firm dates that would supersede those dates and  
25 therefore free them up.

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1 If you could just bear with me for a  
2 minute while I flip through those two months?

3 CHAIRPERSON BERRY: Okay. Would everybody  
4 else consider the months of September and October and  
5 see how your schedules are looking?

6 VICE CHAIRPERSON REYNOSO: Since we have  
7 the meeting scheduled for that day, if it's good with  
8 Connie, that might not be a bad time to do it, even  
9 though we would have a -- those from the California  
10 hearing would have to --

11 COMMISSIONER HORNER: I would have to miss  
12 the first day. I would have to miss the 18th. I  
13 could be available the 19th and 20th.

14 CHAIRPERSON BERRY: The 19th and 20th.  
15 What does it look like for you, Commissioner Anderson?

16 COMMISSIONER ANDERSON: I'm travelling the  
17 16th and 17th and 18th. But I could travel -- where  
18 are we going to -- where are we going to hold this?

19 CHAIRPERSON BERRY: In Mississippi,  
20 Greenville, Mississippi.

21 COMMISSIONER HORNER: Is that easily  
22 accessible by plane?

23 CHAIRPERSON BERRY: How do you get there,  
24 anybody?

25 STAFF DIRECTOR MATHEWS: Madame Chair,

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1 it's -- a flight would need to be taken to a nearby  
2 city. And the drive, as I understand it, is about an  
3 hour, or another smaller plane.

4 CHAIRPERSON BERRY: So either an hour  
5 drive or a puddle jumper.

6 COMMISSIONER HORNER: And the nearby city,  
7 is that a city where a lot of flights from a lot of  
8 places?

9 STAFF DIRECTOR MATHEWS: Yes, there are  
10 actually two options. I believe Jackson, Mississippi  
11 which is the capitol, is one option. Little Rock,  
12 Arkansas is also very close. They're both about equal  
13 distance.

14 COMMISSIONER HORNER: Okay.

15 CHAIRPERSON BERRY: Commissioner Anderson?

16 COMMISSIONER ANDERSON: Could I ask, is  
17 the last week in September, that's not possible?

18 CHAIRPERSON BERRY: The last week in  
19 September. How is everybody else's September -- how  
20 about the last week in September. Does that look  
21 awful, Commissioner Horner?

22 COMMISSIONER HORNER: I can't do it the  
23 last week.

24 CHAIRPERSON BERRY: It looks awful for  
25 Commissioner Horner. So, let's go back to the week

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1 that Commissioner Anderson is travelling every day.

2 COMMISSIONER REDENBAUGH: Speaking on  
3 behalf of Commissioner Anderson's family, what's the  
4 benefit of crowding this in this fiscal year? Because  
5 we probably won't be done for months.

6 CHAIRPERSON BERRY: That would be except  
7 to say we did it this fiscal year.

8 COMMISSIONER REDENBAUGH: Well, we could  
9 just say that then.

10 (Laughter.)

11 CHAIRPERSON BERRY: Okay.

12 (Laughter.)

13 COMMISSIONER REDENBAUGH: We have with  
14 some other things.

15 (Laughter.)

16 CHAIRPERSON BERRY: Okay.

17 (Laughter.)

18 COMMISSIONER REDENBAUGH: I have a report  
19 here.

20 COMMISSIONER HORNER: I am completely free  
21 the first week of October.

22 CHAIRPERSON BERRY: The first week in  
23 October?

24 COMMISSIONER REDENBAUGH: Wait a minute.  
25 Well, I mean if it's only the questionable public

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1 relations benefit of announcing that we did something  
2 that we won't then report on for another year, I don't  
3 see -- of course, I don't understand public relations  
4 and I would defer to our communications officer.

5 But I don't see any great harm or that the  
6 public would be damaged if we slipped it into the  
7 first quarter of the next year.

8 CHAIRPERSON BERRY: Now, all right, how  
9 does -- how does October look for people?

10 COMMISSIONER REDENBAUGH: Unless we just  
11 are intent on destroying the September schedule.

12 CHAIRPERSON BERRY: Or intent on  
13 destroying Commissioner Anderson.

14 COMMISSIONER ANDERSON: Well, the first  
15 week --

16 STAFF DIRECTOR MATHEWS: Can I --

17 CHAIRPERSON BERRY: Yes.

18 STAFF DIRECTOR MATHEWS: If I could just  
19 make a comment here before we seriously pursue the  
20 first week in October?

21 CHAIRPERSON BERRY: Okay.

22 STAFF DIRECTOR MATHEWS: The funding  
23 situation is always, you know, one that you can't  
24 predict at this point in the year for the first week  
25 in October. And we've most often been -- over the

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1 last years, been on continuing resolutions which never  
2 provide sufficient funding to conduct anything other  
3 than regular business.

4 Travel money and other expenses associated  
5 with the hearing, we could not afford if we were under  
6 a CR. So, I would want the Commissioners to take that  
7 into consideration.

8 CHAIRPERSON BERRY: Oh, I hadn't thought  
9 about that. So, that's a reason.

10 COMMISSIONER HIGGINBOTHAM: May I --

11 CHAIRPERSON BERRY: Yes, Commissioner  
12 Higginbotham?

13 COMMISSIONER HIGGINBOTHAM: -- just look  
14 at my schedule? I think Commissioner Horner and I  
15 are at opposite ends of the time spectrum. I could be  
16 available the 26th, 27th and --

17 CHAIRPERSON BERRY: Of September?

18 COMMISSIONER HIGGINBOTHAM: I can be  
19 available then Friday, the 20th getting into Jackson  
20 or wherever we have to get and the night before. My -  
21 - and that's my September schedule.

22 VICE CHAIRPERSON REYNOSO: Is this  
23 contemplated as a three-day hearing?

24 CHAIRPERSON BERRY: Three days, yes.

25 COMMISSIONER HORNER: Can we do it on the

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1 weekend?

2 CHAIRPERSON BERRY: How do people feel  
3 about Saturdays?

4 COMMISSIONER HORNER: Commissioner  
5 Higginbotham is available on the 20th. And if he's  
6 available on the 21st and 22nd, I can do that with no  
7 difficulty.

8 CHAIRPERSON BERRY: What do people think  
9 about Saturdays? What do you -- oh, you think  
10 something about Saturdays?

11 STAFF DIRECTOR MATHEWS: I do.

12 CHAIRPERSON BERRY: Okay, Staff Director.

13 STAFF DIRECTOR MATHEWS: Madame Chair, the  
14 impact of having a hearing on a Saturday will result  
15 in overtime expenses for many of the staff members who  
16 are needed at hearings. And the cost of the hearing  
17 would therefore increase.

18 I would like that to be factored in as a  
19 consideration. And if I could add the fact that this  
20 year, our funding situation is extremely tight. The  
21 \$8.75 million that we just received is less than the  
22 \$9 million appropriation the Commission had last year.

23 COMMISSIONER HORNER: Madame Chair, I'd be  
24 willing to be absent on the first day of the hearing  
25 if that would make it easy, if we could do it then,

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1 the 18th, 19th and 20th, and that meets other people's  
2 requirements.

3 CHAIRPERSON BERRY: But then Commissioner  
4 Higginbotham can only be there --

5 COMMISSIONER HORNER: Oh, I'm sorry.  
6 You're not available on the 19th.

7 COMMISSIONER HIGGINBOTHAM: I'm not  
8 available on the 19th. I would be available on the  
9 20th, not on the 21st.

10 CHAIRPERSON BERRY: So you wouldn't be  
11 available on the 21st anyway. What about --

12 COMMISSIONER HIGGINBOTHAM: But the next  
13 week, I gather that --

14 CHAIRPERSON BERRY: But you're not -- you  
15 have a tight schedule on the next week. Is that  
16 right, Commissioner Horner?

17 COMMISSIONER HORNER: That is the week of  
18 the 23rd?

19 CHAIRPERSON BERRY: Yes.

20 COMMISSIONER HORNER: I am available  
21 Monday, Tuesday -- no, I am not available Tuesday or  
22 Thursday of that week.

23 CHAIRPERSON BERRY: Okay.

24 COMMISSIONER HIGGINBOTHAM: But you're  
25 available Friday and Saturday.

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1                   COMMISSIONER HORNER: I'm available Friday  
2                   and the following Monday and Tuesday. But that would  
3                   be expensive to keep us there over the weekend.

4                   COMMISSIONER GEORGE: But what about the  
5                   Monday and Tuesday, the --

6                   COMMISSIONER HORNER: Oh, the Monday and  
7                   Tuesday, the 30th and the 1st?

8                   COMMISSIONER GEORGE: The beginning --

9                   COMMISSIONER HORNER: Yes, I'm available  
10                  those two days.

11                  CHAIRPERSON BERRY: Which two days?

12                  COMMISSIONER HORNER: I'm available --  
13                  Monday is the 30th of September, Tuesday is the first.  
14                  But Mary Mathews was saying.

15                  COMMISSIONER REDENBAUGH: Don't we have to  
16                  get home before our money runs out?

17                  CHAIRPERSON BERRY: You might have to stay  
18                  in Mississippi forever, never go home.

19                  COMMISSIONER HORNER: How about that  
20                  Wednesday, Thursday and Friday, do you think the CR --

21                  CHAIRPERSON BERRY: Which days?

22                  COMMISSIONER HORNER: The second,  
23                  third and fourth of October. It seems to me in an  
24                  election year, it's quite likely that this would get  
25                  resolved by the -- a day or two after the end of the

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1 fiscal year, don't you think?

2 STAFF DIRECTOR MATHEWS: Could I respond,  
3 Madame Chair?

4 CHAIRPERSON BERRY: Yes, please.

5 STAFF DIRECTOR MATHEWS: While that may be  
6 quite likely, what also happens, and you all may know  
7 this, but I'll just say this to demonstrate the staff  
8 difficulties here, the availability of new fiscal year  
9 money does not occur until October one.

10 So, we could not even -- we couldn't even  
11 commit to hotel rooms and --

12 CHAIRPERSON BERRY: I see.

13 STAFF DIRECTOR MATHEWS: -- a court  
14 reporter or any of the needs until -- and we need more  
15 time than just one day before the event to make all of  
16 these arrangements.

17 COMMISSIONER HORNER: Madame Chair, maybe  
18 it would be a good idea for the Staff Director to  
19 circulate one of those things that she has circulated  
20 in the past, where we all note dates when we're  
21 available and let you try to put it together and get  
22 back to us.

23 CHAIRPERSON BERRY: Okay, let -- okay,  
24 we'll do that, but let me -- let me -- just to get a  
25 sense here, have a couple more comments. One,

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1 Commissioner Higginbotham?

2 COMMISSIONER HIGGINBOTHAM: We do have a  
3 meeting On October 25th. And I, at least, would feel  
4 good if you could combine these together.

5 So, what about October 24, 25, 26 --

6 CHAIRPERSON BERRY: When does your October  
7 --

8 COMMISSIONER HORNER: I can't do it on the  
9 24th.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER HIGGINBOTHAM: But you could  
12 do it on the 25th and 26th?

13 COMMISSIONER HORNER: Yes, I could.

14 CHAIRPERSON BERRY: Let me ask --

15 COMMISSIONER GEORGE: The 26th is a  
16 Saturday.

17 COMMISSIONER HIGGINBOTHAM: Yes, I know.

18 CHAIRPERSON BERRY: Let me ask this. Is  
19 Commissioner

20 CHAIRPERSON BERRY: Let me ask this. Is  
21 Commissioner George -- we haven't asked you any  
22 schedule questions. What does your schedule look like  
23 for the 19th and 20th of September, the 18th, 19th and  
24 20th --

25 COMMISSIONER GEORGE: And 21st.

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1 CHAIRPERSON BERRY: And 21st.

2 COMMISSIONER GEORGE: Which is the  
3 Saturday.

4 CHAIRPERSON BERRY: What is your -- are  
5 you able to --

6 COMMISSIONER GEORGE: The 18th and 19th  
7 are fine.

8 CHAIRPERSON BERRY: The 20th is a  
9 Commission meeting.

10 COMMISSIONER GEORGE: The 20th is a  
11 Commission meeting, and I can certainly be there in  
12 the morning for that.

13 CHAIRPERSON BERRY: Okay.

14 COMMISSIONER GEORGE: At some point in the  
15 afternoon, I'll have to disappear and I couldn't do  
16 the Saturday. But I can do the 18th, 19th and much of  
17 the 20th.

18 CHAIRPERSON BERRY: So Commissioner  
19 Higginbotham can only do Friday, which means that if  
20 the hearing were all day Friday, you could be there --  
21 you could come in Thursday evening. If we had the  
22 open forum, you could do that. And then you could do  
23 all day on Thursday.

24 COMMISSIONER HIGGINBOTHAM: Friday.

25 CHAIRPERSON BERRY: Friday. Commissioner

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1 Horner, on the other hand --

2 COMMISSIONER HORNER: I can do all day  
3 Thursday and Friday.

4 CHAIRPERSON BERRY: -- can do all day  
5 Thursday and Friday.

6 COMMISSIONER HORNER: Yes.

7 CHAIRPERSON BERRY: And who else can't do  
8 either of those? Can everybody else do all the rest  
9 of those?

10 (No response.)

11 CHAIRPERSON BERRY: Well, we will  
12 circulate -- the Staff Director will try to get some  
13 dates. But it seems to me that we ought to  
14 tentatively, just because it's hard to get any date  
15 for anything, say that we would do it the 18th, 19th  
16 and 20th, and let Commissioner Horner and Commissioner  
17 Higginbotham come in when they could and stay as long  
18 as they could.

19 And then that means that the next time we  
20 have a hearing, they have to come and stay the entire  
21 time while the rest of us come in when we can. Yes,  
22 Staff Director?

23 STAFF DIRECTOR MATHEWS: Madame Chair, do  
24 you want to see if --

25 CHAIRPERSON BERRY: Oh, Commissioner Lee.

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1                   STAFF DIRECTOR MATHEWS:  -- Commissioner  
2 Lee is available?

3                   COMMISSIONER LEE:  Yes, I'm available.

4                   CHAIRPERSON BERRY:  Okay.  You could do  
5 it, okay.  So, we're going to write down 18th, 19th  
6 and 20th, but then circulate something anyway in case  
7 anybody has any second thoughts, and then go for that.

8

9                   And then poor Commissioner Anderson --

10                  COMMISSIONER ANDERSON:  Yes, thank you.  
11 Could I ask whether that week in October, the third  
12 week in October, which Commissioner Higginbotham  
13 suggested, whether that's a possibility, or did we  
14 rule that out?

15                  CHAIRPERSON BERRY:  The third?

16                  COMMISSIONER HORNER:  Beginning the 21st?

17                  COMMISSIONER ANDERSON:  Yes, that week.

18                  COMMISSIONER HORNER:  I can't do it on the  
19 24th.

20                  COMMISSIONER GEORGE:  Nor can I.

21                  COMMISSIONER ANDERSON:  Okay.

22                  COMMISSIONER REDENBAUGH:  What we need are  
23 between Connie and Carl, right?  I mean, you and I are  
24 not useful in these things.

25                  CHAIRPERSON BERRY:  Oh, I will not even

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1 address that. I plan not to address that. So, we  
2 will leave it that way, but circulate something  
3 anyway. Any other --

4 COMMISSIONER HIGGINBOTHAM: If I may?

5 CHAIRPERSON BERRY: Yes.

6 COMMISSIONER HIGGINBOTHAM: If you can do  
7 it on the 18th, 19th and 20th, I can probably work  
8 something out and just have a leave -- deal with that  
9 by phone the morning of the 19th.

10 CHAIRPERSON BERRY: Oh, that would be  
11 terrific.

12 COMMISSIONER HIGGINBOTHAM: I could  
13 conceivably do that.

14 CHAIRPERSON BERRY: That would be very  
15 much appreciated. Okay, if nothing else on the Staff  
16 Director's report, the next item is a major item.

17 At the last meeting when we agreed on the  
18 program plans for 1996 and 1997, Commissioner  
19 Redenbaugh, I think it was, said that we ought to  
20 consider -- and remember, my memory is better than  
21 yours now, Russell.

22 COMMISSIONER REDENBAUGH: Yes, I'm  
23 reminded of that.

24 CHAIRPERSON BERRY: My track record isn't  
25 too bad so far. We're at one-zip right now.

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1 Commissioner Redenbaugh suggested that we might  
2 consider a programmatic theme for the future, since  
3 we're finishing up on the racial tensions theme, and  
4 that we might discuss that.

5 And so the idea is that we would come up  
6 with, if we can, or if we think it's a good idea,  
7 another general programmatic theme for what the  
8 Commission might be doing, and so the staff would be  
9 guided in moving new proposals consistent with that  
10 theme, beginning no later than fiscal of 1998, unless  
11 everyone decides that the theme is so overpowering  
12 that we should throw out everything and do it  
13 immediately, which is what we did the last time.  
14 Commissioner Redenbaugh?

15 COMMISSIONER REDENBAUGH: Well, I thought  
16 more about this, and I definitely think there is a  
17 benefit to have some vision statement and some  
18 unifying theme to the work that we do.

19 I do think that it's difficult to come up  
20 with such a theme in this kind of formal meeting and  
21 setting, unless someone just has something that really  
22 just knocks us right off our chairs.

23 So, my thinking about it is that we could  
24 spend perhaps an hour, up to an hour, in a -- of  
25 course, we still do have it in a meeting, but in which

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1 we maybe speculate some alternative themes, maybe even  
2 have someone facilitate the discussion, and see if  
3 there's something that emerges from the eight of us as  
4 something that we all feel very strongly about and  
5 connected to.

6 So, I think there is a -- to get these  
7 things, it's been my experience there's a process that  
8 you have to go through. Otherwise, they're just like  
9 wallpaper that you just glue up and then it falls  
10 right back down the next morning.

11 So, I think if we want to do this, and I  
12 encourage us to do that, is structure the kind of  
13 process where we think about it, write a little  
14 something up, and then come together in perhaps a  
15 facilitated meeting for an hour.

16 VICE CHAIRPERSON REYNOSO: Wallpaper  
17 manufacturers are going to send us letters of protest  
18 when they read that statement.

19 (Laughter.)

20 COMMISSIONER REDENBAUGH: Not, the paper,  
21 the glue. It's been my experience in my house, Cruz.

22 (Laughter.)

23 CHAIRPERSON BERRY: Then Russell, you will  
24 spend the next six months after the letters come in  
25 going around to wallpaper conventions --

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1 (Laughter.)

2 CHAIRPERSON BERRY: -- explaining that you  
3 really didn't mean it and that you love all those  
4 people.

5 (Laughter.)

6 CHAIRPERSON BERRY: Your entire house will  
7 be wallpapered.

8 (Laughter.)

9 CHAIRPERSON BERRY: Anyway, yes,  
10 Commissioner Horner?

11 COMMISSIONER HORNER: Commissioner Reynoso  
12 had his hand up first.

13 CHAIRPERSON BERRY: Oh, that's yours.

14 VICE CHAIRPERSON REYNOSO: Well, I was  
15 just going to agree with Russell that I think it's --  
16 I think we ought to give this a lot of thought and I  
17 think it's a good idea to have an overall theme within  
18 which hearings or discussions can have -- deal with  
19 that.

20 CHAIRPERSON BERRY: Commissioner Horner?

21 COMMISSIONER HORNER: Madame Chair, I  
22 agree with just this one caveat. And that is, if we  
23 have a facilitator, I hope it will be someone who is  
24 respectful of our intellect and experience, and  
25 sophisticated enough to recognize that we have a

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1 little bit of both. Some of us do anyway.

2 That was a self-deprecating remark.

3 I --

4 (Laughter.)

5 COMMISSIONER HORNER: My concern is that  
6 over my years in government, I have frequently  
7 encountered facilitator who condescended and wasted  
8 our time and got in the way of intelligent discourse.  
9 And I would rather that we do this in a free-wheeling  
10 way on our own unless we have a high assurance that  
11 our facilitator will be recessive and will not come  
12 with any unusual theories we'd have to deal with  
13 before getting to the subject at hand.

14 CHAIRPERSON BERRY: No, Russell, why in  
15 the heck do we need a facilitator?

16 COMMISSIONER REDENBAUGH: Well --

17 CHAIRPERSON BERRY: We're all big people.

18 COMMISSIONER REDENBAUGH: That's probably  
19 why.

20 (Laughter.)

21 COMMISSIONER REDENBAUGH: Well, I've done  
22 a number of these, usually in a corporate setting.

23 CHAIRPERSON BERRY: Why don't you be the -  
24 - no, okay.

25 COMMISSIONER REDENBAUGH: I don't think I

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1 can. You know, I'm a party at interest. It's been my  
2 experience that skillful facilitation is very  
3 important to bring things out and to manage the  
4 dynamics of any group.

5 I have such a person in mind. His --

6 CHAIRPERSON BERRY: I knew you would.

7 COMMISSIONER REDENBAUGH: His liability is  
8 that he's a friend and colleague of mine. His asset  
9 is that he's very skillful in this. He is a  
10 Washingtonian, I mean ex-government guy from the party  
11 not in power in the Congress.

12 In fact, he was in the Carter  
13 Administration, Education Department. In spite of all  
14 that --

15 (Laughter.)

16 CHAIRPERSON BERRY: One of my former  
17 employees.

18 (Laughter. )

19 CHAIRPERSON BERRY: Keep talking, brother.

20 COMMISSIONER REDENBAUGH: I think he would  
21 satisfy Connie's concern.

22 (Laughter.)

23 CHAIRPERSON BERRY: Is this a guy I fired?

24 (Laughter.)

25 COMMISSIONER REDENBAUGH: No, this is a

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1           guy you moved out to the turkey farm.

2                   CHAIRPERSON BERRY:    I see.

3                   COMMISSIONER REDENBAUGH:    No, I don't  
4 think he is aware of you from that era.

5                   CHAIRPERSON BERRY:    Okay, good.

6                   COMMISSIONER REDENBAUGH:    Well Connie, he  
7 would -- it's Dr. Jilevey.  Connie, he would satisfy  
8 your concern about sophistication and sensitivity.  He  
9 understands his role is to facilitate and not to  
10 impose.

11                   COMMISSIONER HORNER:    Because facilitator  
12 often impose a kind of juvenilization on the  
13 participants.

14                   COMMISSIONER REDENBAUGH:    Well, I would  
15 give my assurance that he would not do that.

16                   COMMISSIONER HORNER:    Okay.

17                   COMMISSIONER REDENBAUGH:    And I share your  
18 concern.  Often these are people who were too unsuited  
19 for real work.

20                   CHAIRPERSON    BERRY:        This is very  
21 interesting.  This is the first time that I can  
22 remember that Commissioner Horner and I agree  
23 completely about anything.

24                                   (Laughter.)

25                   COMMISSIONER REDENBAUGH:    I think --

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1 COMMISSIONER HORNER: Madame Chair, maybe  
2 we could try this without a facilitator. And at the  
3 expense of losing one hour of full Commission time  
4 over the course of the year, if it didn't work without  
5 the facilitator, we could then try it with the  
6 facilitator. How about that, Russell?

7 CHAIRPERSON BERRY: Would you oppose that,  
8 Russell?

9 COMMISSIONER HORNER: Think of it as a  
10 pilot project in non-facilitated discussions.

11 (Laughter.)

12 COMMISSIONER REDENBAUGH: I -- my only  
13 concern, Connie, is about our colleagues that are less  
14 loquacious than you. I'll accept this constraint.  
15 That's all right.

16 CHAIRPERSON BERRY: All right,  
17 Commissioner --

18 COMMISSIONER REDENBAUGH: I'll try this  
19 unfacilitated approach.

20 CHAIRPERSON BERRY: Commissioner George,  
21 did you have any comments? Commissioner Lee, did you  
22 have any? You're less loquacious than Commissioner  
23 Horner I guess.

24 (No response.)

25 VICE CHAIRPERSON REYNOSO: Especially if

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1 you can't hear us.

2 CHAIRPERSON BERRY: Especially if you  
3 can't hear us.

4 (Laughter.)

5 CHAIRPERSON BERRY: What are you people  
6 doing to her? She's not there, Tony. Commissioner  
7 Lee is not there. She's cut off. Commissioner Lee?  
8 Maybe I can bring her to light.

9 Could we try this without any type of  
10 commitment on the part of anyone? What do people  
11 think about the idea of having an overriding theme?  
12 That's the first thing, I guess.

13 We, the Commission, has not always had  
14 overriding themes where the Commission has had  
15 projects. And we had this racial tensions thing.

16 And before that, some years ago, the  
17 Commission had some theme ones. But it's not  
18 necessary to have a theme.

19 How do we feel, since we've had this one  
20 theme for a while? How do we feel about the idea, and  
21 then we can revisit this? No one is committed by  
22 anything they say today unfacilitated.

23 How do we feel about the idea of having a  
24 theme? Russell has told us how he feels.

25 COMMISSIONER HIGGINBOTHAM: I would

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1 support it.

2 CHAIRPERSON BERRY: You think there should  
3 be a theme?

4 COMMISSIONER HIGGINBOTHAM: I support  
5 exploration of the concept of a theme by committee.

6 COMMISSIONER REDENBAUGH: Yes, if we don't  
7 find one that fits --

8 CHAIRPERSON BERRY: Well, do any of you  
9 who have had experience with the theme, the idea of a  
10 theme, have any doubts about its usefulness or feel  
11 that --

12 VICE CHAIRPERSON REYNOSO: No. My only  
13 experience really has been since I joined the  
14 Commission. I was told that we had a series of  
15 hearings that were basically on the theme of racial  
16 tensions.

17 And I thought it was a good idea to sort  
18 of have a general theme. So then when Russell raised  
19 the issue of we're finished with that theme, why don't  
20 we think of another theme, I reacted favorably. It  
21 might be that if we think more about it, we may not be  
22 as favorable.

23 But at least my -- my quick response was  
24 to say, "Not a bad idea. Let's think about it."

25 CHAIRPERSON BERRY: Okay. So, we're

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1 willing to consider it. Now, the staff, based on this  
2 piece of paper you just handed me, has been thinking  
3 about programmatic themes in view of putting this item  
4 on the agenda.

5 Maybe we could take a minute to have the  
6 Staff Director tell us at least what they've been  
7 thinking about, which doesn't preclude us from  
8 thinking about something entirely different.

9 How about that? Would you mind doing  
10 that?

11 STAFF DIRECTOR MATHEWS: Not at all.

12 CHAIRPERSON BERRY: In general, just tell  
13 us what they've been. Are you on, Commissioner Lee?

14 (No response.)

15 CHAIRPERSON BERRY: Commissioner Lee?

16 COMMISSIONER HIGGINBOTHAM: Excuse me.  
17 Madame Chair, if I may, I don't understand why the  
18 Commission has such difficulty in telephone service in  
19 reaching Commissioners.

20 I'm on several boards and we never have  
21 any trouble. And it's either that we have cheap  
22 equipment or someone doesn't know how to operate it.  
23 I'm assuming it's cheap equipment, and I think it's a  
24 worthwhile investment to upgrade it.

25 Every time I've been on the phone, I got

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1 about every third word. Well, I could do with every  
2 other word, but getting only third word, you're at a  
3 slight disadvantage.

4 CHAIRPERSON BERRY: And all of the --

5 COMMISSIONER HIGGINBOTHAM: I think it's  
6 a serious problem.

7 COMMISSIONER HORNER: I agree.

8 CHAIRPERSON BERRY: And all of you how  
9 serve on other boards and commissions and all of us  
10 know that there is better equipment.

11 COMMISSIONER HORNER: Yes.

12 CHAIRPERSON BERRY: But you know, I've  
13 spent hours, and I know you have, participating in  
14 something and I never lost a word that anybody said.  
15 So, it's possible to have better equipment.

16 COMMISSIONER LEE: Hello again.

17 CHAIRPERSON BERRY: And the equipment we  
18 have now, for your information, is better than what we  
19 had when I first came on the Commission in the Dark  
20 Ages.

21 But even now, this is -- I mean, Staff  
22 Director, is there something that you can do about  
23 this equipment?

24 STAFF DIRECTOR MATHEWS: Madame Chair, we  
25 have one other option that I'm aware of. We can

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1 certainly explore others that I'm not aware of. But  
2 the one other option that we could use, which might be  
3 just what was needed here, is to have lapel  
4 microphones for each Commissioner, which would just  
5 bring the microphone closer to the speaking voice.

6 But whether or not that will amplify  
7 sufficiently for a Commissioner on the phone --

8 CHAIRPERSON BERRY: No, no, we're talking  
9 about the disconnections as well as the sound quality.

10 STAFF DIRECTOR MATHEWS: Yes. I will have  
11 staff look into this. Because I personally -- I don't  
12 know what is causing this problem, and I'm as anxious  
13 to have it solved as you all are.

14 COMMISSIONER HIGGINBOTHAM: I'm on the  
15 Board of the *New York Times* and the *National*  
16 *Geographic*, and it just works all the time. *National*  
17 *Geographic* is in Washington.

18 CHAIRPERSON BERRY: Yes.

19 COMMISSIONER HORNER: No, I've never had  
20 a problem in any corporate setting. And I think  
21 probably we need the staff or a consultant to make a  
22 recommendation to us about options for new equipment,  
23 would be my guess, and find out how much that would  
24 cost and if we had the money to do it.

25 It would be a terrific thing we could do

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1 for the Commission for a long, long time.

2 CHAIRPERSON BERRY: Okay. Commissioner  
3 Lee?

4 COMMISSIONER LEE: Yes.

5 CHAIRPERSON BERRY: Good.

6 COMMISSIONER LEE: I'm on.

7 CHAIRPERSON BERRY: We're talking about  
8 the programmatic theme idea. And I've just been  
9 handed a note by the Parliamentarian that the naming  
10 of names of a possible person to be hired should not  
11 be done because it might create a conflict of interest  
12 if the person is hired, because people are supposed to  
13 be hired through a bidding process and open  
14 competition.

15 And guidelines can be established and --

16 COMMISSIONER REDENBAUGH: Oh, you're  
17 thinking of the facilitator?

18 CHAIRPERSON BERRY: Yes.

19 COMMISSIONER REDENBAUGH: Oh, I was  
20 thinking this was pro bono work, not --

21 COMMISSIONER HORNER: Well, that's not  
22 necessarily --

23 COMMISSIONER REDENBAUGH: In the same way  
24 that we have had people speak to us before: Dr.  
25 Florez and, you know, other people come.

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1 CHAIRPERSON BERRY: Right.

2 COMMISSIONER REDENBAUGH: And so --

3 CHAIRPERSON BERRY: Well, so we're not  
4 talking about a contract?

5 COMMISSIONER REDENBAUGH: No, I'm not.

6 CHAIRPERSON BERRY: Okay. All right,  
7 now, what we're doing here --

8 COMMISSIONER LEE: Excuse me, Madame  
9 Chair.

10 CHAIRPERSON BERRY: Yes?

11 COMMISSIONER LEE: I think I missed part  
12 of the discussion. On the programmatic theme, are we  
13 talking about a separate meeting to talk about this or  
14 --

15 CHAIRPERSON BERRY: What we're doing is we  
16 are agreed that the Commissioners will talk among  
17 themselves at some point about a programmatic theme.  
18 If that doesn't work, then the Commission will have  
19 someone who is more expert come in talk to us and  
20 facilitate our discussion so we can come up with a  
21 theme.

22 And so far, everyone has agreed that there  
23 ought to be some kind of theme, or at least explore  
24 the idea of having a theme.

25 And we stopped there when you were off the

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1 phone, and now you're back. And I said the Staff  
2 Director had shown me a list here of themes that the  
3 staff had been discussing. And I thought we would  
4 just tell you what those were.

5 COMMISSIONER LEE: Okay.

6 CHAIRPERSON BERRY: And then we can either  
7 discuss them, not discuss them, move on, or whatever  
8 the Commission chooses to do. But go ahead, Staff  
9 Director.

10 STAFF DIRECTOR MATHEWS: Okay, Madame  
11 Chair. I have a couple of thoughts to bring up, and  
12 just a couple of subsets for each to give you the feel  
13 for the staff's thinking. These are not fully  
14 developed ideas yet.

15 The Civil Rights Implications for Children  
16 is the first idea we have explored, looking at issues  
17 such as juvenile justice and the Delinquency  
18 Prevention Act of 1974. You probably are aware of  
19 Congressional hearings that have been held recently on  
20 juvenile violence.

21 And there are some statistics that the  
22 staff has been aware of showing the largest percentage  
23 of criminals over the next five years is projected to  
24 be in the teenage age bracket.

25 Another possible subset of this broad

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1 category of civil rights implications for children  
2 would be children in poverty.

3 Questions that we could explore would be  
4 things like what are the current figures on children  
5 in poverty? What factors account for these figures?  
6 Are they rising?

7 Another subset could be teenage literacy.  
8 Just what are the statistics and what are the  
9 precipitating factors there as well?

10 And another area we could explore would be  
11 the issue of children and AIDS and the high percentage  
12 that seems to be there currently in the statistics.  
13 What are schools -- implications for schools with  
14 children who have HIV/AIDS, virus testing for drugs,  
15 that type of questioning.

16 If I could move on to another --

17 CHAIRPERSON BERRY: Go ahead.

18 STAFF DIRECTOR MATHEWS: -- possibility  
19 for consideration would be a topic on the Status of  
20 Women. And the subsets here we would be thinking  
21 about would be health care/pay equity issues,  
22 employment in non-traditional fields, and sexual  
23 harassment.

24 A third possibility staff is exploring is  
25 the general concept of Hate Crimes. And in this area,

1 we would be thinking about the militia movement,  
2 possibly following up on the Fort Bragg killings and  
3 some of the information that was imparted in our  
4 recent Commission meeting from our Regional Director  
5 on that, church bombings in the South and all of the  
6 concerns that they would raise in the civil rights  
7 implications.

8           What are the root causes? The militia  
9 movement. Those would be some possibilities of  
10 getting into the -- into that subject matter.

11           And the last concept that staff is just  
12 beginning to think about is Civil Rights Enforcement  
13 through Litigation. And this project, if we would  
14 pursue this, would examine over three to four years  
15 the efforts of litigators to enforce civil rights in  
16 various subject areas: housing, employment,  
17 education, voting and the like.

18           And the interaction of court procedure and  
19 civil rights could be assessed to determine whether  
20 unexpected obstacles impede the progress of civil  
21 rights.

22           Such an analysis could assist in  
23 determining what recommendations, if any, would better  
24 enhance enforcement efforts through substantive  
25 statutes.

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1 CHAIRPERSON BERRY: That's interesting.  
2 So, we have children, status of women, hate crimes,  
3 and enforcement through litigation as themes that  
4 they've been thinking about.

5 COMMISSIONER HIGGINBOTHAM: I'm ready to  
6 vote.

7 CHAIRPERSON BERRY: You're ready to vote?  
8 (Laughter.)

9 CHAIRPERSON BERRY: Anyone, any comment on  
10 any of the Staff's ideas? Yes, Commissioner Horner?

11 COMMISSIONER HORNER: Madame Chair, I  
12 don't know whether it's premature to comment since we  
13 may be having a fuller exploration, but I see two out  
14 of those that really stand out in my mind.

15 One is the children violence, juvenile  
16 justice administration. Given the statistics we've  
17 all been reading recently about what -- as Mary  
18 suggested, what may be impending and how we're going  
19 to deal with that or prevent whatever we can prevent  
20 of it.

21 The other is the civil rights enforcement  
22 through litigation. It's a constant theme and all our  
23 discussions of civil rights enforcement, budgets, and  
24 broad -- broad diverging approaches to civil --  
25 improvement of civil rights.

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1           The question of litigation, public and  
2 private, and its effectiveness I think is a  
3 significant one.

4           CHAIRPERSON BERRY: Any other -- anyone  
5 else have any comments? Commissioner Redenbaugh?

6           COMMISSIONER REDENBAUGH: Yes, I would say  
7 that I would agree with Commissioner Horner about  
8 those two projects. But I think all four of these are  
9 projects rather than an overall theme.

10           They are projects that we could -- we  
11 definitely ought to consider. But I don't think they  
12 move up to the level of a vision statement that would  
13 then guide us for a pneumatic or mission vision  
14 statement for a long number of years, three years or  
15 five years, something like that.

16           CHAIRPERSON BERRY: You see, that's why we  
17 need a facilitator because we don't know the  
18 difference between a project and a vision statement.

19           COMMISSIONER REDENBAUGH: No, I think  
20 they're worthy projects.

21           CHAIRPERSON BERRY: Commissioner  
22 Higginbotham, you said you were ready to vote. I know  
23 you were kidding, but what's your reaction to these  
24 topics?

25           COMMISSIONER HIGGINBOTHAM: No, I am. I'm

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1 ready.

2 (Laughter.)

3 CHAIRPERSON BERRY: You don't know the  
4 difference either.

5 (Laughter.)

6 COMMISSIONER HIGGINBOTHAM: Well I guess  
7 if I had to vote for one broad category, without  
8 drawing the specificity, I would include children, for  
9 which there would be many subsets.

10 We have a tendency to often talk about  
11 eradicating racial, religious, national origin or  
12 gender discrimination. And we seem to be oblivious to  
13 the fact that integrated poverty is as devastating for  
14 the victim as a racial poverty or gender poverty or  
15 religious poverty.

16 And somehow or another in the next  
17 century, we're going to have to come to grips with how  
18 we can talk in terms of broad scale human rights, and  
19 what are the paths by which we can work on the  
20 protection of human rights, which will have the civil  
21 rights implication, and yet be very inclusive.

22 And so for that reason, the whole issue of  
23 children in poverty, or some aspect of it -- you're  
24 talking about you would go for children in violence.  
25 I am confident that if you get a rundown on the data,

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1 you would find that poor children are more victims of  
2 poverty than welcome. So, that it seems --

3 CHAIRPERSON BERRY: You mean of violence  
4 or of poverty?

5 COMMISSIONER HIGGINBOTHAM: Poor children  
6 are more often, percentage-wise, victims of poverty  
7 than affluent children.

8 COMMISSIONER GEORGE: I think you mean  
9 violence.

10 COMMISSIONER HIGGINBOTHAM: Yes, let me  
11 say it again. I obviously didn't say it right. Poor  
12 children are more often a victim of violence than  
13 affluent children.

14 CHAIRPERSON BERRY: Yes.

15 COMMISSIONER HIGGINBOTHAM: So therefore,  
16 if you're looking at violence, you've got to look at  
17 poverty.

18 CHAIRPERSON BERRY: Right. I see, okay.  
19 Yes, Commissioner Redenbaugh?

20 COMMISSIONER REDENBAUGH: I think we're  
21 having it right now, aren't we?

22 (Laughter.)

23 COMMISSIONER REDENBAUGH: See, see. This  
24 is -- man behind the curtain. Maybe' the whole  
25 question -- because one of the concerns I have about

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1 children, having a number of them myself --

2 CHAIRPERSON BERRY: Too numerous to  
3 mention.

4 COMMISSIONER REDENBAUGH: No, no.

5 (Laughter.)

6 COMMISSIONER REDENBAUGH: Watch it. But  
7 the concern that I have is the kind of lives the  
8 children lead, even although middle class or affluent,  
9 are very different from, I think, what I hold as the  
10 ideal.

11 Maybe a theme of children and family, not  
12 limiting it to children and poverty, but could be  
13 something I could certainly get behind as a theme,  
14 children and family.

15 And you know, there's a dozen or two dozen  
16 subsets under that.

17 CHAIRPERSON BERRY: Yes, Commissioner  
18 George?

19 COMMISSIONER GEORGE: Perhaps a consensus  
20 is already emerging because I too think that of the  
21 items that Staff has suggested, that the concern with  
22 children would be the one that I would vote for if it  
23 were put to a vote today.

24 I do think though that we shouldn't rule  
25 out in advance the possibility that we would carry on

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1 our theme of racial and ethnic tensions. There's more  
2 to be donee.

3 I think what has been done is or will be  
4 invaluable. The -- my experience on the Commission  
5 with having that theme inclines me to the view that  
6 having a theme is a good thing, although I don't think  
7 it's an indispensable thing.

8 And if we can't agree on a theme, that's  
9 fine. And I'm not arguing here for the retention of  
10 the racial and ethnic tensions theme. I just want to  
11 say that it should be in the mix. We shouldn't  
12 consider that we're done with that and can move on.

13 CHAIRPERSON BERRY: Commissioner Lee, are  
14 you still there?

15 COMMISSIONER LEE: Yes, I'm still here.

16 CHAIRPERSON BERRY: Okay, I just wanted to  
17 make sure we didn't lose you.

18 CHAIRPERSON BERRY: Vice Chair?

19 VICE CHAIRPERSON REYNOSO: My memory of  
20 this case may be better than Russell's. We're beating  
21 up on Russell today. Because it seems to me that in  
22 the very initial discussion, Russell had suggested the  
23 theme that I've been thinking about, and it may work  
24 out.

25 But I just want to put it on the table.

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1 Of the suggestions, incidentally, I too am taken by an  
2 overriding them of children. Because when we think of  
3 civil rights, we want to think about a time in our  
4 country when we have to worry less as a government of  
5 civil rights and the American people, simply as a  
6 matter of practice and custom, exercise civil rights  
7 as we described it.

8 So, the theme of children can look 20  
9 years toward the future. What can we do now? So that  
10 when they're adults, we have less government -- in the  
11 area of civil rights?

12 But the -- but my election is that a theme  
13 that was suggested by Russell just in passing was the  
14 theme of empowerment. And I've been thinking about as  
15 a possible theme because with civil rights, we're  
16 concerned about having all individuals and all groups  
17 having the same power in our society to be able to  
18 influence, power to protect themselves.

19 So, and that could come up with children,  
20 with families, with different racial or ethnic or  
21 religious groups.

22 So, I just wanted to put that -- the theme  
23 of empowerment on the table.

24 CHAIRPERSON BERRY: Do you recall this  
25 theme, Commissioner Redenbaugh?

1 COMMISSIONER REDENBAUGH: I do.

2 (Laughter.)

3 COMMISSIONER REDENBAUGH: Surprising as  
4 this might seem.

5 (Laughter.)

6 COMMISSIONER REDENBAUGH: I'm kind of  
7 running away from the term "empowerment," but I like  
8 the distinction and the phenomenon. Empowerment, I  
9 think, is kind of a loaded or code word among certain  
10 groups in the country.

11 But I -- so it has -- the word has that  
12 baggage. But one of the things I've been thinking  
13 about is kind of what will the country be like in the  
14 next century. You know, it's not too far off to begin  
15 thinking that way if you're a long-term investor or  
16 policy planner.

17 And I've been thinking of that -- of our  
18 paradigm of the -- of the entitlement paradigm is  
19 going to give way to something else because the  
20 country has now gotten pretty well divided into groups  
21 that don't like each other.

22 Across that issue, there's a, you know,  
23 bid wedge around that. And I -- so I don't know where  
24 it might lead. But I think where it might end up, one  
25 of the candidates I think to replace that, is the

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1       notion not of -- and to replace this notion of  
2       redistribution is a notion of participation.

3               And empowerment, I think, is over in that  
4       direction of participation. I was -- the reports I  
5       had from -- I was impressed by the reports.  
6       Congressman Rangel's appearance on television last  
7       night in which he said jobs and economic opportunity  
8       is really the thing that the African-American  
9       community needs.

10              And I'm so struck by the need for that,  
11       you know? As I've said before, we are punishing our  
12       citizens by having the economy grow at this crawling  
13       two percent rate, an enormous disparate impact on  
14       people who are not employed or not fully employed.

15              CHAIRPERSON BERRY: Well, you had every  
16       opportunity to run for president on such a platform:  
17       a growth of two percent.

18              COMMISSIONER REDENBAUGH: Well --

19              CHAIRPERSON BERRY: That's all right.

20              COMMISSIONER REDENBAUGH: -- in the recent  
21       and not-lamented Republican primary campaigns, I  
22       noticed the historical practice of killing the  
23       messenger was subverted to the practice of because we  
24       didn't like the messenger, we killed the message.

25              (Laughter.)

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1                   CHAIRPERSON BERRY: I don't even have to  
2 ask you what message. Now, I have been thinking when  
3 you said "empowerment," which you're right, it is a  
4 loaded word. But when you mentioned that, I didn't  
5 forget it either.

6                   And I had been thinking about it. I  
7 thought you would raise it again today and you didn't.  
8 So, I was prepared to have you raise it.

9                   And what I thought you meant, Russell, was  
10 that -- and you and I had a conversation about this a  
11 long time ago, which there's no way you could  
12 remember.

13                   COMMISSIONER REDENBAUGH: No way.

14                   (Laughter:)

15                   CHAIRPERSON BERRY: It was in your garden  
16 in fact.

17                   COMMISSIONER REDENBAUGH: I remember that.

18                   CHAIRPERSON BERRY: That what you really  
19 want to do civil rights is get to a point where you  
20 don't have to worry so much about enforcement, as Cruz  
21 said. But when people are empowered or participate or  
22 have what they need because of their own actions, as  
23 well as the environment which permits action, then you  
24 don't have to worry so much about civil rights  
25 enforcement.

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1 I mean, that would really be the goal;  
2 that if people are treating each other the way they're  
3 supposed to be treating each other anyway, and there  
4 are not the constraints on -- whether it's credit or  
5 loans or whatever you're talking about --

6 COMMISSIONER REDENBAUGH: Yes.

7 CHAIRPERSON BERRY: -- then you don't need  
8 to worry about civil rights enforcement so much,  
9 right?

10 COMMISSIONER REDENBAUGH: Yes, I don't  
11 believe in the perfectibility of man. And I think  
12 these schemes that rely on our innate goodness are  
13 really likely to fail.

14 But I know the arrangements that are based  
15 on social power and economic power endure and work  
16 well. And I think the tragedy in America is that  
17 there are large numbers of people and groups that are  
18 systematically -- don't have access to participation.

19 And credit and capital is one of the  
20 things you mentioned.

21 CHAIRPERSON BERRY: Well, if we were going  
22 to pursue the racial and ethnic tensions with our  
23 subtitle, which is what? I forgot what the subtitle  
24 was, poverty and inequality and discrimination?

25 As Commissioner George was saying, and if

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1 we were going to tie that together with your  
2 participation, what I thought you were going to  
3 propose Russell, so I'll say you're proposing it.

4 COMMISSIONER REDENBAUGH: Oh, I like that.

5 CHAIRPERSON BERRY: Is -- hypothetically,  
6 is that the Commission might, over in the next series,  
7 do some models of what works in all the areas of  
8 trying to "empower" people so that they're in a  
9 position to take care of themselves.

10 I mean, whether it's education models or  
11 things at work, whether it's entrepreneurship models  
12 or --

13 COMMISSIONER REDENBAUGH: Access to credit  
14 and capital.

15 CHAIRPERSON BERRY: Whether it's access to  
16 credit models that do, in fact, work.

17 COMMISSIONER REDENBAUGH: Yes, credit and  
18 capital.

19 CHAIRPERSON BERRY: And you know, if you  
20 look -- yes, credit and capital. If you look at the  
21 areas in which we think people need participation,  
22 whether it's voting areas that work, see what works.

23 This time what we've done in the racial  
24 tension series is to identify all the problems and  
25 have everybody tell us what they are, and make some --

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1 we hadn't made any findings yet, I don't think. Maybe  
2 we made some report.

3 But this would be a whole different  
4 ballgame in that you're trying to figure out what does  
5 work to move people to the point where we think they  
6 should be moved.

7 And there will, of course, be disagreement  
8 about whether this works or that works or whether  
9 somebody thinks that should work or not work, or  
10 whether it's consistent -- whether there would be news  
11 about something else.

12 But the identification of what works, I  
13 think, would make an important contribution.

14 COMMISSIONER REDENBAUGH: I think so too.  
15 And I think it can begin an important discussion. I  
16 think what we ought to be -- not we, the Commission --  
17 what we, the country, ought to be arguing about is how  
18 best to get the growth rate of the economy up to four  
19 percent, not how best to slow it down.

20 And you know, we have a billion new people  
21 in the global labor force that weren't there five  
22 years ago. And that's been a tremendous change in the  
23 labor supply, and a tremendous source of new  
24 competition for Americans who only have to sell their  
25 labor.

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1                   And you know, it's one of the -- one of  
2 the facts of the rest of the century and into the next  
3 one that can't go away, that the labor/capital ratio  
4 has shifted very dramatically in a very short period  
5 of time.

6                   And I think that as long as -- it's my  
7 view that as long as we maintain this two percent  
8 growth rate, we will trap people right where they are.  
9 We will trap them in poverty. We will trap them in  
10 middle class sort of wage/slave, you know, work hard  
11 to pay your taxes; two incomes are not enough.

12                   And at the same time, it's not a surprise  
13 that incomes of the -- at the bottom end of the labor  
14 spectrum are falling in real terms, because that's  
15 where all the new competition is.

16                   CHAIRPERSON BERRY: Then of course --

17                   COMMISSIONER REDENBAUGH: And I think  
18 we've got to take account of that in the work we do.  
19 You know, otherwise, too many groups in America will  
20 be entitled to sit in the front of the stopped bus.

21                   CHAIRPERSON BERRY: Right. Okay,  
22 Commissioner Higginbotham?

23                   COMMISSIONER HIGGINBOTHAM: I sort of am  
24 a scribbler. If I had to vote within two minutes for  
25 a theme, what I would call it would be "Children at

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1 Risk from Violence, Poverty and Inequality to a New  
2 Empowerment, Height and Opportunity."

3 And within that, you can spin off a whole  
4 host of things. You can look at race. You can look  
5 at religion. You can look at immigration.

6 But what we're talking about is going from  
7 where we are to where we should be. And that has to  
8 be the theme. And in it, you look at all the impact  
9 of racial discrimination.

10 So, I guess we've got to work out a two  
11 sentence theme. You know, and then you can spin off  
12 a whole lot of components within that.

13 COMMISSIONER LEE: Excuse me, Madame  
14 Chair. Could you ask the person to speak louder? I  
15 can't hear the --

16 COMMISSIONER HIGGINBOTHAM: You can't hear  
17 me?

18 (Laughter.)

19 CHAIRPERSON BERRY: Talk in that little  
20 thingy there.

21 COMMISSIONER HIGGINBOTHAM: I'm sorry.  
22 Can you hear me now?

23 COMMISSIONER LEE: Oh yes. Oh, that was  
24 you, okay.

25 (Laughter.)

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1 CHAIRPERSON BERRY: Say that again so  
2 Yvonne can hear.

3 COMMISSIONER HIGGINBOTHAM: No, I was  
4 saying that I had to try to figure out in less than  
5 two sentences, a theme that would sort of be your  
6 skeleton, and you would build up from that a great  
7 deal.

8 And if I had to have a theme, it might be  
9 "Our Children at Risk from Violence, Poverty and  
10 Inequality to a New Empowerment, Height and  
11 Opportunity."

12 Now when you talk about inequality, you  
13 can spin off all of the present discrimination,  
14 intentional or unintentional, the economic problems.  
15 And then you talk about the vision as to where they  
16 should be.

17 So, that was what I was trying to suggest.

18 CHAIRPERSON BERRY: Yes, Commissioner?

19 COMMISSIONER HORNER: Madame Chair --  
20 Leon, did you say "Our Children," O-U-R?

21 COMMISSIONER HIGGINBOTHAM: Yes, O-U-R.

22 COMMISSIONER HORNER: Okay, okay.

23 COMMISSIONER HIGGINBOTHAM: I mean, you're  
24 going to strike out --

25 COMMISSIONER HORNER: Right, does

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1 violence?

2 COMMISSIONER GEORGE: I think he was just  
3 making clear that it's a statement. In other words,  
4 it's not put in the form of a question.

5 COMMISSIONER HORNER: Right, right.

6 COMMISSIONER HIGGINBOTHAM: "Our Children  
7 at Risk:".

8 CHAIRPERSON BERRY: But the violence and  
9 the economic stuff Russ was talking about, the  
10 violence stuff that Connie and others were talking  
11 about, all of that somehow would have to have a place  
12 in it.

13 So, it's not just totally the  
14 discrimination side. There's the other side, which is  
15 (1) you know, what causes the crime, how do you  
16 contain it, what's going to happen. And the economic  
17 stuff because if you don't have economic empowerment -  
18 - I wish I can think of the -- economic whatever, the  
19 children won't be able to prosper, whether their  
20 families are able to prosper, which is connected to  
21 this whole issue of jobs and growth and all the rest  
22 of it.

23 So, it's trying to come up with a theme  
24 that would encompass all of that. Yes, Commissioner  
25 Horner?

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1                   COMMISSIONER HORNER: I think that's a  
2 very good theme, and I would support it with just a  
3 question as to whether in identifying violence,  
4 poverty and inequality, we aren't presenting a pre-  
5 judgement as to the range of sources of --

6                   COMMISSIONER HIGGINBOTHAM: There are many  
7 more.

8                   COMMISSIONER HORNER: Yes, there are many  
9 more, and I think we must -- I think it would be  
10 preferable to say "Our Children at Risk" and then  
11 either a generic statement.

12                   COMMISSIONER HIGGINBOTHAM: Sure.

13                   COMMISSIONER HORNER: For instance, I  
14 would want to family break-down, et cetera, from my  
15 side of the table here, and so on. But generically --

16

17                   COMMISSIONER HIGGINBOTHAM: I'm not  
18 hostile to exploring family breakdown.

19                   COMMISSIONER HORNER: I know you're not.  
20 But I think broadly children at risk is not only  
21 perfect for this Commission, I think it's appropriate  
22 for the whole country.

23                   CHAIRPERSON BERRY: How about "Causes,  
24 Consequences and Remedies?"

25                   COMMISSIONER HORNER: Yes, something like

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1 that.

2 COMMISSIONER HIGGINBOTHAM: The same  
3 prescription -- I'm not sure.

4 CHAIRPERSON BERRY: You don't have to say  
5 what the answer is --

6 COMMISSIONER HORNER: Right.

7 CHAIRPERSON BERRY: -- since we don't know  
8 what the answer --

9 COMMISSIONER HORNER: I think that would  
10 be better.

11 CHAIRPERSON BERRY: Something like that.  
12 Yes, Commissioner George and then Commissioner  
13 Redenbaugh?

14 COMMISSIONER GEORGE: Well, there are some  
15 things that are -- whether or not they're causes,  
16 they're certainly consequences like violence. And I -  
17 - if we could agree on just what the bad consequences  
18 are, then maybe we would -- maybe we should draw  
19 attention to that.

20 I mean, I think the value of doing some  
21 programs, hearings, or other events in this area is  
22 just focusing the spotlight on some things that are --  
23 that are known in some areas, among academics,  
24 professionals of the criminal justice system, and so  
25 forth, but need to be more widely known.

1           People need to be more worried generally  
2 about this. And juvenile violence is plainly --  
3 plainly one of them. The problem that I've been  
4 worrying about a lot, as you know, is the plight of  
5 the African-American male I think is -- comes under  
6 this, and is exactly the kind of problem where a light  
7 needs to be shed.

8           People really need to know the facts about  
9 this. And we can argue, and need to argue a lot about  
10 what the origins of the problem are and what can be  
11 done about the problem. But that there is a problem,  
12 that has got to get some attention.

13           And we can, I think, do a service in that.  
14 So we can, you know, I think at least identify some  
15 bad things that we want to shed the light on, and then  
16 maybe make an effort, it doesn't have to be in the  
17 title of the thing, to highlight not only the  
18 problems, but as -- as you say, Madame Chairman, try  
19 to identify what has been working out there, at least  
20 in small scales and try to encourage the good as well  
21 as throw light on the bad.

22           CHAIRPERSON BERRY: Mr. Redenbaugh, did  
23 you have another comment or did this squelch you? Did  
24 George's comment --

25           COMMISSIONER REDENBAUGH: No, I don't. I

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1 think that would be unlikely.

2 (Laughter.)

3 COMMISSIONER REDENBAUGH: Conceivable, but  
4 -- as long as we're not on legal topics. No, I don't  
5 know how to do this, but I think it is important that  
6 the staff really support and be a part of -- and  
7 endorse this kind of vision statement or theme.

8 Now I gather since the seed of this came  
9 from staff that they are not hostile to what we've  
10 done here. But I think -- and I don't know -- in this  
11 kind of meeting, I don't know how we can accomplish  
12 that.

13 But I would not want us to go in the  
14 direction that the eight of us loved and that the  
15 staff really resisted because they had no passion for  
16 it.

17 You know, I think that -- I've been in  
18 organizations like that, not fun.

19 CHAIRPERSON BERRY: Well, Commissioner  
20 Horner, did you --

21 COMMISSIONER HORNER: I just wanted to  
22 add that I think we really ought to focus as a theme  
23 of what we do on your suggestion of what works. And  
24 it needn't, as Robbie suggested, be part of our formal  
25 title, although perhaps that would be a good thing.

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1                   But I think it ought to be an aggressive  
2 effort by the staff in constructing our undertaking to  
3 focus not exclusively, but in a significant way on  
4 that, on models that work.

5                   CHAIRPERSON    BERRY:           Commissioner  
6 Higginbotham?

7                   COMMISSIONER HIGGINBOTHAM: I just threw  
8 this out. I think that we've got to look at it this  
9 way. What is it that captured the attention of a broad  
10 spectrum of people to cause them to recognize a  
11 significant problem?

12                   The reason why I used "Our" O-U-R,  
13 "Children at Risk," is that there is sort of an "us  
14 and them" mentality in this country. And I think all  
15 of our children are at risk in many, many way, so that  
16 we have to convey a message that you cannot sort of  
17 create artificial boundaries and the problem does not  
18 spill over.

19                   It's just like the whole question with  
20 these nuclear plants. If a plant blows up in Russia,  
21 in Sweden you may die. And if something blows up in  
22 North Philadelphia, it's going to have a big impact at  
23 Bryn Mawr.

24                   And I think that we've got to reach the  
25 American public so that they do not think there are

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1 false security barriers which they can put up and  
2 their children will not be at risk.

3 CHAIRPERSON BERRY: Okay, why don't we --  
4 one way to test the staff response is to note body  
5 language. And I haven't seen anybody out there....

6 (Laughter.)

7 CHAIRPERSON BERRY: -- or anything else  
8 out there. The other is --

9 VICE CHAIRPERSON REYNOSO: Did you see  
10 them all giving the victory sign out there?

11 (Laughter.)

12 CHAIRPERSON BERRY: The other is to ask if  
13 the Staff Director could take away from this  
14 discussion, if it is the Commissioners' wish, and  
15 attempt to, in draft form, sort of put something  
16 together that contains these ideas that we have all  
17 expressed.

18 And there are areas that I can hear  
19 resounding in my ears of agreement, at least about  
20 what we ought to be looking at, and the idea about  
21 children.

22 And then we could look at it and think  
23 about this some more, and revisit the question again.

24 And I think we did pretty well  
25 unfacilitated, but maybe I'm wrong.

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1 COMMISSIONER REDENBAUGH: I'm not willing  
2 to accept the assessment that it was unfacilitated.

3 (Laughter.)

4 CHAIRPERSON BERRY: Okay, all right. Is  
5 there anyone who thinks the suggestion about having  
6 the staff do that -- and we will get some sense when  
7 we get it back of how they feel about it to from the  
8 way it's written up and --

9 COMMISSIONER REDENBAUGH: No, I like that  
10 recommendation.

11 CHAIRPERSON BERRY: Yes, Commissioner  
12 Anderson?

13 COMMISSIONER ANDERSON: Can I ask, does  
14 that leave open the possibility for further discussion  
15 of themes --

16 CHAIRPERSON BERRY: Oh sure.

17 COMMISSIONER ANDERSON: -- the next.

18 CHAIRPERSON BERRY: Oh sure. This was --

19 COMMISSIONER ANDERSON: But I think it's  
20 a good -- I think it's a good theme, but I'd like to  
21 reflect a little bit more on --

22 COMMISSIONER HIGGINBOTHAM: There may be  
23 others proposed.

24 CHAIRPERSON BERRY: And meanwhile, why  
25 don't we think? If we think of others or nuances on

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1 this one, the next time we come together, we won't  
2 just spend time discussing this one, but react to it  
3 some more and see what else we think. Okay?

4 STAFF DIRECTOR MATHEWS: Madame Chair?

5 CHAIRPERSON BERRY: Yes.

6 STAFF DIRECTOR MATHEWS: If I can add one  
7 comment here. We'll be very happy to respond, as  
8 indicated, on the dialogue here today. If the  
9 Commissioners desire to consider the beginning of this  
10 project in Fiscal 1998, we would need to have some  
11 closure at the next meeting for budget preparation for  
12 submittal in early September.

13 CHAIRPERSON BERRY: Okay. Let me ask too,  
14 at least two Commissioners expressed some interest in  
15 the civil rights enforcement through litigation as a  
16 topic at least maybe, if not a theme, then as a  
17 project.

18 Would you like the staff to elaborate  
19 somewhat on that, see what it looks like, or shall we  
20 just move on? Yes, Commissioner Anderson?

21 COMMISSIONER ANDERSON: I would appreciate  
22 that. I didn't address -- no one has addressed the  
23 other topic there of hate crimes. And I wonder if it  
24 isn't worth speaking maybe at the next meeting a  
25 little bit on whether we think that -- and I don't

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1 know whether the best description of this as a topic  
2 is hate crimes.

3 But we spent a lot of time looking at  
4 racial and ethnic tension. And as we come to the  
5 conclusion of this, we see a much larger incidence of  
6 militia -- so-called militia activity, bombing of  
7 churches.

8 And do we consider that to be simply a  
9 blip that is a several year phenomena, but is in a  
10 sense extraneous. Or are we seeing something here  
11 that is a shift somehow and may be a shift as a result  
12 of globalization or a number of other items?

13 And if it is a shift, like maybe what  
14 happened in the 20's with the resurgence of the Klan  
15 in so many states and it was sort of a decade  
16 phenomenon, we're seeing something like that happen,  
17 maybe it deserves our attention in a way that it won't  
18 be attended to in other forms.

19 But I say maybe hate crimes is not the  
20 best topic to address that phenomena. Maybe it's not  
21 as significant a phenomena as I may be suggesting it  
22 is.

23 But if it is a significant phenomena, then  
24 maybe this Commission, even though it's not an easy  
25 one obviously to look at, maybe it's something we

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1 ought to think about a little bit. I just wanted to  
2 put that out.

3 COMMISSIONER LEE: Madame Chair?

4 CHAIRPERSON BERRY: Yes, Commissioner Lee?

5 COMMISSIONER LEE: I agree with Commis-  
6 sioner Anderson. I am concerned about the increasing  
7 activities against these groups. And even though we  
8 may agree on bringing that up, find that report or  
9 whatever, I think time does not permit us to do that.

10 I would appreciate having a briefing on  
11 this issue and a very near future meeting. Because  
12 we've gotten reports from the Department of Treasury  
13 that I do think it would help me a lot if we have a  
14 briefing among the Commissioners just to discuss the  
15 topic.

16 And that may help us to decide on future  
17 activity areas.

18 CHAIRPERSON BERRY: Well, I think that a  
19 briefing would be a good idea. And in particular, I  
20 am struck by Commissioner Anderson's points about  
21 globalization as a possible factor, and other kinds of  
22 things, and whether there is some kind of a change  
23 going on or some kind of a sea change or a "blip" as  
24 he put it.

25 And it is an important-enough issue that

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1 it would seem curious indeed if we, as a Civil Rights  
2 Commission, paid no attention to it or -- while this  
3 is going on and it's everywhere, or at least being  
4 discussed everywhere.

5 And so if we could begin with a briefing  
6 where we brought in some experts as well as -- maybe  
7 we could find the kind of experts like the guy from  
8 Temple is going to become a paradigm of what it is  
9 that we're trying to find -- who would talk to us  
10 about these matters.

11 That would help us in trying to decide  
12 whether we need to have a project on it or something  
13 else. What do you think about that, Commissioner  
14 Anderson?

15 COMMISSIONER ANDERSON: Sure, it would be  
16 great.

17 CHAIRPERSON BERRY: Yes.

18 COMMISSIONER HORNER: I'd like to hear  
19 from the Southern Law Poverty Center, as experts with  
20 a passion on one -- you know, a passion and a vision  
21 about this situation.

22 Then, I would like to hear from academic  
23 experts, if any, who believe that the material that  
24 the Poverty Center puts forth is on one side of the  
25 question that Carl asked, a blip rather than a trend.

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1           In other words, I have had the same  
2 question. Are we -- are we in one of those situations  
3 where we're reading the early signs of something that  
4 will be historically awful, or are we seeing  
5 heightened communication of isolated events that have  
6 always been with us, or that are only slightly  
7 escalated for easily explained reasons?

8           So, I hope that we can make a very serious  
9 effort to answer that question rather than just  
10 provide another venue for aggregated -- expression of  
11 aggregated anecdotes which we've all read a lot of.

12           CHAIRPERSON BERRY: Why don't we then say,  
13 unless someone objects, that the briefing will be  
14 directed at that particular question? We'll try to  
15 enlighten ourselves about that.

16           Of course, in the course of the  
17 discussion, the experts may say something about the  
18 episodes or something.

19           COMMISSIONER HORNER: Oh no, no, that's a  
20 given.

21           CHAIRPERSON BERRY: Right.

22           COMMISSIONER HORNER: But I don't know  
23 whether we have anyone who is attempting to answer  
24 this question. But only contending parties with the  
25 point of view with -- in other words, is there an

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1 impartial academic assessment available anywhere?

2 I don't know. If there is, I sure would  
3 love to hear from it.

4 CHAIRPERSON BERRY: And Charlie Rivera, I  
5 may say that, Staff Director, who does these things,  
6 there has to be squirreled away somewhere an academia,  
7 somebody who's sitting there musing about this and  
8 writing all kinds of things in obscure journals nobody  
9 ever reads, except five other people, who would be  
10 happy to come and tell us at great length about all  
11 the reasons for this, where the trends seem to be  
12 going. Or maybe one of two. Yes, Commissioner  
13 Higginbotham?

14 COMMISSIONER HIGGINBOTHAM: I think there  
15 are a lot of -- more than 25 years ago. I was on the  
16 National Commission on the Causes and Prevention of  
17 our Conservative -- Senator Kennedy was assassinated,  
18 Malcolm and some others.

19 What I would hope -- what I would hope is  
20 that anyone whom we have to come to speak, that we get  
21 their material which they've written and that we get  
22 it a few days in advance.

23 My mind isn't fast enough to sort out a  
24 speech. But if I got the data a week in advance, I  
25 can then correlate it to a whole host of others. And

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1 I have just found that those kinds of presentations  
2 are much more effective.

3 If we have data, then we can have a real  
4 dialogue. Otherwise, we're just the recipient of a  
5 penetrating speech.

6 CHAIRPERSON BERRY: Okay. Yes, Vice  
7 Chair?

8 VICE CHAIRPERSON REYNOSO: Sometimes, I  
9 find that rather than having there be conflicting  
10 views that the people who spend a lot of time on these  
11 issues generally end up agreeing. But somehow it  
12 doesn't get translated to public policy.

13 So, I'm not sure that we'll always find  
14 contrasting views. In some areas, there might be  
15 pretty uniform opinions by those who have spent a lot  
16 of time studying these issues.

17 CHAIRPERSON BERRY: Yes. Okay, so we'll  
18 do that on that question. All right, if there is no  
19 objection, then we'll go to the next item on the  
20 agenda, which is item number six, the Commission's  
21 subpoena power, which we have visited and visited and  
22 continue to visit, because it's an important issue.

23 And we have a memo from Commissioner  
24 George. Commissioner George, would you like to --

25 COMMISSIONER GEORGE: Thank you, Madame

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1 Chairman.

2 CHAIRPERSON BERRY: -- comment and begin  
3 the discussion?

4 COMMISSIONER GEORGE: I have not modified  
5 my proposal since the last time I had it before you.  
6 It was modified from the time before that, especially  
7 in light of Commissioner Higginbotham's observations  
8 and suggestions.

9 I hoped that what this proposal would do,  
10 if enacted -- and it's in the form of a motion to  
11 issue a policy directive to the Staff Director within  
12 the administrative instructions -- would be to improve  
13 the accountability of the -- in the use of our  
14 subpoena power and the Commissioners' role and  
15 accountability in the use of the power, and also to  
16 avoid potential First Amendment problems having to do  
17 with compelling opinion testimony, without harming or  
18 restricting in any serious or damaging way the scope  
19 of the subpoena -- of the Commission's subpoena power.

20 A broad scope, I think, is necessary to  
21 accomplish the goals that we have, and our  
22 responsibilities to fulfill them. But I don't think  
23 that that means that we cannot improve accountability  
24 and other aspects of our exercising the subpoena  
25 power.

1           So, I'll simply recall that my proposal is  
2 in two parts. One goes to the question of  
3 distinguishing opinion, which I call perspective  
4 testimony, from fact testimony.

5           And the second part has to do with  
6 procedures for approval by the Commissioners,  
7 subpoenas duces tecum.

8           CHAIRPERSON BERRY: Commissioner Lee, are  
9 you there?

10          COMMISSIONER LEE: Yes, I'm still here.

11          CHAIRPERSON BERRY: I just want to make  
12 sure we hadn't lost you.

13          COMMISSIONER GEORGE: I don't if --

14          CHAIRPERSON BERRY: Could you hear  
15 Commissioner George?

16          COMMISSIONER LEE: Yes, I can hear him.

17          CHAIRPERSON BERRY: Okay. Okay.

18          COMMISSIONER GEORGE: I would be happy to  
19 vote on my proposal today, but I don't want to force  
20 this. I think this is an issue that we should work  
21 out altogether.

22           And if people want still more time to  
23 think about it or if people want to propose further  
24 revisions in view of any thought they've been able to  
25 give it in the meantime, I would be happy to do that

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1 as well.

2 I hope that we will, sooner rather than  
3 later, get around to some reform. And I'd be happy,  
4 as I say, to do it today, but it doesn't absolutely  
5 have to be done today from my point of view.

6 CHAIRPERSON BERRY: Does anyone -- just  
7 point of information, Staff Director, do you know when  
8 the Commission's reauthorization hearing, I guess it's  
9 a hearing, is to take place?

10 STAFF DIRECTOR MATHEWS: Madame Chair, the  
11 latest word I have is not definite. It's just  
12 possible thinking about the House Oversight  
13 Subcommittee and the months that they are considering  
14 holding a hearing for our reauthorization are possibly  
15 June or July.

16 On the Senate side, we may or may not have  
17 a hearing on reauthorization.

18 CHAIRPERSON BERRY: Okay.

19 COMMISSIONER GEORGE: Well, in view of  
20 that, Madame Chairman, maybe it would be good to vote  
21 on this today if we possibly could.

22 CHAIRPERSON BERRY: When is the June  
23 meeting?

24 STAFF DIRECTOR MATHEWS: The June meeting  
25 -- give me one second -- is June 14th.

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1 CHAIRPERSON BERRY: The fourteenth. I'll  
2 give you a moment there, Staff Director, to see what  
3 Mr. Cunningham has to --

4 COMMISSIONER GEORGE: Let me say in the  
5 meantime, Madame Chairman, that I recognize that my  
6 proposal is not perfect. I just have not been able to  
7 come up with a way in my own mind to improve it still  
8 further.

9 There's a particular issue that will, I  
10 think, be a vexing one under my proposal, which is it  
11 won't always be possible to distinguish very easily  
12 between the two types of testimony that I've  
13 designated fact and perspective in part one.

14 And I just think it's one of those areas  
15 where we're going to have to do the best we can, and  
16 hope by good will all around, we'll be able to muddle  
17 through.

18 I think there will be, in most cases,  
19 clear cases as to whether we're asking for somebody's  
20 perspective and philosophical view or we're asking for  
21 data.

22 But plainly, there will be cases where  
23 it's difficult to try the line. I just don't know  
24 what to do about them.

25 CHAIRPERSON BERRY: Did you have anything

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1 to add on the reauthorization issue?

2 STAFF DIRECTOR MATHEWS: The Assistant  
3 Staff Director for Congressional Affairs indicated to  
4 me just a moment ago that in his latest discussion  
5 with the Senate Staff, they have now indicated that  
6 they will hold a hearing, but the date has not been  
7 set.

8 CHAIRPERSON BERRY: Okay, Commissioner  
9 Horner?

10 COMMISSIONER HORNER: Madame Chair, I  
11 don't know what issues the Senate or the House are  
12 planning to raise in the context of reauthorization,  
13 and yet you're going to be asked to go up and testify,  
14 perhaps as early as early June and before another  
15 meeting of the Commission.

16 And since I don't know what the issues  
17 are, I don't know that we are able to give you the  
18 Commission's advice on how to testify with respect to  
19 these issues.

20 And I'm wondering if you're planning  
21 simply to react out of your own sense of what's  
22 appropriate or if you have a -- in other words, what's  
23 the Commission going to say through you when asked  
24 about issues, whatever they are?

25 CHAIRPERSON BERRY: Well, if we have a

1 hearing or when we have a hearing, I would hope, given  
2 the fact that the Congress now has a majority from the  
3 Republican party, that one -- at least one of the  
4 Commissioners who is a Republican would be willing to  
5 go to the hearing.

6 In the past, Commissioner Anderson has  
7 gone. We've all been very grateful for that. If  
8 Commissioner Horner, Mr. Anderson -- let's see, do we  
9 have anybody else who's actually a Republican here?

10 So that it would be very helpful both to  
11 give their perspectives, I mean your own perspective,  
12 about whatever it is I'm saying or not saying, and  
13 your own point of view, and also to show the  
14 bipartisan nature of the Commission publicly.

15 We've always thought in the past that that  
16 was important. When the Democrats controlled the  
17 Congress and the Chair went up, who was a Republican,  
18 often somebody from the Independent side or affiliated  
19 with the Democrats would go up to show support and  
20 that it was bipartisan.

21 So I would hope that the same thing would  
22 happen.

23 COMMISSIONER HORNER: Madame Chair, if  
24 anyone is going to do that, if we're not going to  
25 attempt to achieve a consensus respecting any of the

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1 issues relating to reauthorization, at least the  
2 members of the Commission ought to know well in  
3 advance what the members of the House and Senate  
4 Committees think are issues. What are their plans and  
5 proposals for us?

6 I don't know. And I would like to know as  
7 soon as possible through the professional Legislative  
8 Staff here or whatever.

9 CHAIRPERSON BERRY: Well, I would like to  
10 know too, and don't. I have no idea. The last time  
11 I had gone up to testify, no one told me anything was  
12 an issue before I got there.

13 COMMISSIONER HORNER: That's dreadful.

14 (Laughter.)

15 COMMISSIONER HORNER: And frankly, we  
16 need to remedy that within the week, I would think,  
17 and fill in the gaps.

18 CHAIRPERSON BERRY: So to the extent that  
19 staff can find out what the issues are, it would be  
20 very helpful if we knew so that we could discuss them.

21 In the absence of a discussion, in the  
22 absence of finding anything out, all I have done is do  
23 what Chairs have done before, which is answer  
24 consistent with what I think the Commission has  
25 publicly done on the record, because that's about all

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1 I can do -- you know, unless I'm asked for my opinion.

2 And Commissioner Anderson, I guess he's  
3 given what he thinks publicly as well as what his  
4 opinion is. Is that pretty much the way it's been,  
5 Commissioner Anderson?

6 COMMISSIONER ANDERSON: Yes.

7 COMMISSIONER HORNER: Well, that's a good  
8 fall-back I suppose, but I don't think it's optimal.

9 CHAIRPERSON BERRY: I agree. Commissioner  
10 George?

11 COMMISSIONER GEORGE: Well, I don't think  
12 -- I think we know at least one thing they're going to  
13 ask about, and that's the subpoena issue. I mean,  
14 we're not completely in the dark.

15 CHAIRPERSON BERRY: Do we know this?

16 COMMISSIONER GEORGE: Well, I guess we  
17 don't know it officially. But realistically, we know  
18 that this is a concern -- that we have all sorts of  
19 evidence that this is a concern up there and there are  
20 people prepared to introduce proposals, perhaps have  
21 already introduced proposals.

22 I've seen at least drafts of legislative  
23 proposals that I think would be Draconian as far as  
24 the Commission's subpoena power is concerned and go  
25 much too far in the name of reform.

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1                   So that's -- frankly, I mean if it's not  
2 clear to people, let me make it clear to people. It's  
3 frankly one of the reasons I'm interested in our  
4 taking some action on this.

5                   I think we can -- we can deal better and  
6 more sensitively with our own problem here than can  
7 Congress.

8                   And I think -- I'm hoping we'll be able to  
9 persuade Congress that we have done something.

10                  CHAIRPERSON BERRY: Staff Director, do you  
11 know or does the Assistant Staff Director for  
12 Legislation know, officially whether this issue is  
13 going to be raised?

14                  STAFF DIRECTOR MATHEWS: Madame Chair, I  
15 do not know. I have not received any information  
16 about issues that might be raised at a hearing. I  
17 could ask the Assistant Staff Director for  
18 Congressional Affairs if you would like.

19                  CHAIRPERSON BERRY: Ask him, please.

20                  STAFF DIRECTOR MATHEWS: Dr. Cunningham?

21                  DR. CUNNINGHAM: Yes? I don't have any  
22 official correspondence, but I know that in -- in  
23 discussing this with staff, it is a very big concern  
24 of theirs that the Committee Chairman does not have a  
25 position on our subpoena power. But it is certainly

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1 an issue that is likely to be addressed by the  
2 Committee in considering reauthorization and  
3 legislation.

4 CHAIRPERSON BERRY: And while you're  
5 standing there, has anybody suggested any other  
6 issues?

7 DR. CUNNINGHAM: Not that I've heard of.  
8 And obviously, it would be the term of our  
9 reauthorization and whether we would be reauthorized  
10 would be an issue.

11 But frankly, whether we would be  
12 reauthorized has not been discussed with the --

13 CHAIRPERSON BERRY: Okay.

14 DR. CUNNINGHAM: But the Chairman is --

15 CHAIRPERSON BERRY: So -- go right ahead.

16 COMMISSIONER HORNER: So as far as you  
17 know, those are the only questions that would come up  
18 that are substantial?

19 DR. CUNNINGHAM: Those matters --

20 COMMISSIONER HORNER: And would you be  
21 able to -- or I should direct I guess to the Staff  
22 Director. Would it be possible for us to have a short  
23 memo that would lay out what you know officially,  
24 unofficially, however you know it, about the point of  
25 view of the Committee members so that anyone who goes

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1 to the hearing doesn't go in completely ignorant of  
2 who thinks what as far as we know.

3 I mean, they've written us, made comments  
4 in other hearings, talked to the press, whatever your  
5 source --

6 DR. CUNNINGHAM: That is our normal  
7 procedure, and we would certainly --

8 COMMISSIONER HORNER: Okay.

9 DR. CUNNINGHAM: -- be prepared to prepare  
10 that memo.

11 CHAIRPERSON BERRY: All right?

12 STAFF DIRECTOR MATHEWS: Madame Chair,  
13 yes, I would add that for any hearing on this topic,  
14 staff contacts the staff of the members of the  
15 Subcommittee in advance of the hearing and tries to  
16 glean this kind of information.

17 Sometimes it's forthcoming and sometimes  
18 not. But we have consistently made an effort to get  
19 this, and provide -- we will provide whatever  
20 information comes out of those discussions?

21 CHAIRPERSON BERRY: Okay. I just thought  
22 we needed to know this information. Let's proceed.  
23 Does anyone have any -- I forgot to mention that  
24 Commissioner Redenbaugh, who has forgotten already,  
25 testified once in the past at a reauthorization

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1 hearing when Fletcher was Chair. Do you remember  
2 that?

3 COMMISSIONER REDENBAUGH: I do, yes.

4 (Laughter.)

5 COMMISSIONER REDENBAUGH: It's actually  
6 coming back to me.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER GEORGE: So Madame Chairman,  
9 the party that you and Russell and I belong to was  
10 represented fully?

11 CHAIRPERSON BERRY: Yes.

12 (Laughter.)

13 CHAIRPERSON BERRY: Does anyone -- beg  
14 your pardon?

15 COMMISSIONER REDENBAUGH: No, no, just  
16 mumbling.

17 CHAIRPERSON BERRY: Does anyone have any  
18 comment on Commissioner George's proposal or any other  
19 matters related to the item number six, which is the  
20 Commission's subpoena power? Yes, Commissioner  
21 Higginbotham?

22 COMMISSIONER HIGGINBOTHAM: I have a  
23 rather strong position in terms of never drafting  
24 anything to satisfy a Congressional Committee's  
25 hostility to a procedure so that they will not become

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1 more Draconian if you think your position is  
2 fundamentally right.

3 I just don't believe in capitulating. If  
4 they want to take a position which I think is wrong,  
5 I'd rather for them to do than to make a concession  
6 which I think is inappropriate.

7 And that's my starting point. And so  
8 therefore, I have to know, and I, the least  
9 experienced Commissioner here, as to what is the  
10 problem and why?

11 Now, there's one decisive fact to me which  
12 is that of all of the federal independent commissions,  
13 only two are required to seek enforcement through the  
14 United States Attorney General.

15 So therefore, when someone talks about the  
16 United States Commission on Civil Rights being sort of  
17 potentially more pernicious, the fact is it can't be.  
18 Because we have the least amount of power of all of  
19 the agencies. So, that's my first point.

20 The second is that this system has been  
21 working from the beginning. And the Republicans  
22 stayed on its axis and its function.

23 So therefore, if someone wants to say  
24 we've looked at your history for more than two decades  
25 and how we want you to function differently than all

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1 of the preceding commissions, I think it's their  
2 burden to prove and not mine.

3 So that my position, flat out, is we don't  
4 have to do anything to placate anyone if we think  
5 they're wrong. And I'd rather meet it head-on, let  
6 them propose the most Draconian things, rather than to  
7 make a concession which they're not entitled.

8 CHAIRPERSON BERRY: So your reading of the  
9 memos about what the other commissions do leads you to  
10 believe that ours is the most restrictive?

11 COMMISSIONER HIGGINBOTHAM: I think so.  
12 No one has made a suggestion in any document that the  
13 Civil -- the United States Civil Rights -- the United  
14 States Commission on Civil Rights is out of tandem  
15 with what everyone else does, or that we are more  
16 harsh or irresponsible or unfair.

17 So, I see no reason why we have to change.  
18 Now, if -- if we get past the point where you've got  
19 a majority's vote to change, then I can deal with the  
20 language.

21 But I think there's a very real risk on  
22 amending administrative instructions. All you do is  
23 open litigation because there's nothing which an  
24 adversary likes more than to say they haven't complied  
25 with their own regulations, their own instructions.

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1           So therefore, when we start to, as for  
2 example in paragraph two, set up a guideline that all  
3 of these things have to be done at least one week in  
4 advance of the Commission meeting, and someone does it  
5 six days in advance, or five days in advance, right  
6 away you get subject to litigation that you didn't do  
7 -- give it timely notice.

8           Now in view of the smallness of --  
9 relative smallness of our staff and in view of what I  
10 observed in my brief period of time, that they're  
11 always in a crunch to set up additional criteria, it  
12 seems to me, makes it much harder for the Staff to do  
13 the job because by the nature of our situation,  
14 there's always going to be a crunch.

15           CHAIRPERSON BERRY:    Okay.    Any other  
16 comments?   Yes, Vice Chair?

17           VICE CHAIRPERSON REYNOSO:   Well, Madame  
18 Chair, as Rob indicated, there are two parts to his  
19 suggestion.   The second part, I'll direct my attention  
20 to that before -- as I see it, the real change in the  
21 suggested procedure would be basically that the  
22 regulations now say "subpoenas for the attendance and  
23 testimony of witnesses or the production of written or  
24 other matter, can be issued by the Commission over the  
25 signature of the Chairman and may be served on any

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1 person designated by the Chairman."

2 And as I -- the principal difference in  
3 paragraph two would be that on many occasions, that  
4 the Commissioners would have to vote on the issuance  
5 of that.

6 And I'm just -- again, I was struck -- and  
7 I mentioned last time -- with how liberal several of  
8 the other commissions are, sometimes even allowing  
9 individual members of the commissions to enforce their  
10 -- to sign and enforce their subpoenas.

11 I would just hate to be more restrictive  
12 than is required by law. And the subpoena reg that I  
13 just read, it seems to me, does put the statute --  
14 have us do. So, I don't know that I'm in favor of  
15 having us, as individual commissioners, vote on  
16 subpoenas as they come up.

17 Because if we have a real question as to  
18 the purpose of the hearing or the thrust of the  
19 hearing, we, as commissioners can express that. I  
20 just -- I just don't know that we need to have the  
21 individual commissioner's vote.

22 On the first part, I agree that it's  
23 sometimes hard to tell when a person is a witness  
24 that's going to be a fact witness or a --

25 CHAIRPERSON BERRY: Perspective?

1                   VICE CHAIRPERSON REYNOSO: -- perspective  
2 witness. Well, there's an element of confusion there.  
3 My suggestion would be that we pick up, I think, on a  
4 suggestion that you had, Rob, early on that if we have  
5 a hearing, maybe we divide the hearing into two parts,  
6 a hearing and a non-hearing.

7                   For the hearing, we continue to issue  
8 subpoenas. Then we could half a day or something of  
9 that sort where we have people come and testify  
10 without subpoenas on the broader philosophical,  
11 historical, other issues, but have that be not really  
12 be a hearing.

13                   But the hearing itself sort of stick to  
14 the procedures we've followed. And that way, even if  
15 they get into testifying on facts, that's all right.

16                   It's just the big difference is that we  
17 haven't subpoenaed them. And I don't know if that  
18 would be too confusing for the staff or not. But I  
19 remember our discussing that, oh, two or three months  
20 ago.

21                   And rather than -- than changing the regs  
22 on our -- on how we exercise our subpoena power,  
23 because I think there is some danger to that, maybe we  
24 take care of that in a different sort of way, it can  
25 all happen together.

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1           But for example, in one hearing -- well,  
2 the hearing that we haven't had yet on affirmative  
3 action, Connie was suggesting that she wanted some  
4 folks who would just speak to the philosophical  
5 aspects of affirmative action.

6           Presumably those would be what you would  
7 call perspective witnesses. And if we have such a  
8 hearing, maybe we have half a day of non-subpoenaed  
9 witnesses that just speak to their own views and how  
10 they view affirmative action historically and  
11 philosophically.

12           And then when we get to the witnesses that  
13 testify as to programs and all that, we would want  
14 facts, that then we follow our normal procedure.

15           So, that was sort of my overall reaction  
16 to the memo.

17           CHAIRPERSON BERRY: Yes.

18           COMMISSIONER LEE: Madame Chair?

19           CHAIRPERSON BERRY: Yes, Commissioner Lee?

20           COMMISSIONER LEE: Maybe I have not  
21 attended any of the Commission hearings, but I just  
22 don't see the urgency of this Commission to revise or  
23 amend any of the power that the Commission has, which,  
24 by reading all the records, from the Staff's report  
25 and all the front line complications that --

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1 Commission -- fuel the Commission.

2 I think we have to -- subpoena power  
3 already. And I think the Commission has operated very  
4 well within the power that gives to the Commission.  
5 And I agree. I don't see the need or the urgency to  
6 voluntarily limit our current practice and our current  
7 powers.

8 And if people want to do that, let them  
9 come and tell us and let us see where it stands. But  
10 I just don't see the need to do it now.

11 CHAIRPERSON BERRY: Commissioner George?

12 COMMISSIONER GEORGE: Yes, let me respond  
13 to all three. First in response to Judge  
14 Higginbotham's point, if I believed that our  
15 Commission's procedures were not in need of reform,  
16 then the threat of a more drastic -- of a drastic  
17 action, I think would not be sufficient --

18 COMMISSIONER HIGGINBOTHAM: Sure.

19 COMMISSIONER GEORGE: -- as a ground for -  
20 - for reform. So, I do want to make it clear that --  
21 well, as I said earlier, one of my motives here is to  
22 forestall what I fear will be Draconian action.

23 I want to make plain that when I say that,  
24 I mean to share the view that we need reform, but to  
25 say I think we can reform it better, more sensitively.

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1           We know what our needs are. We know what  
2           our experience is. We know what our problems have  
3           been, at least those of us who think that there have  
4           been at least some problems.

5           And I think we can do it with a scalpel.  
6           I don't want a meat axe.

7           In response to Vice Chairman Reynoso, I  
8           think, Cruz, that you're basically agreeing with what  
9           I proposed in 1, which -- but I think your objection  
10          is to 2.

11          VICE CHAIRPERSON REYNOSO: I'd like to get  
12          away from the ambiguity, or my marginal note says,  
13          "confusion in terms of what type of witness." And  
14          that way if we could just have -- I don't know how  
15          this will -- but if we could have a section in a  
16          hearing, if in a hearing we decide it's important to  
17          have some folk there who will keep presenting  
18          philosophical or other non-factual bases, then simply  
19          have that be as part of the proceedings but not part  
20          of the full hearing.

21          COMMISSIONER GEORGE: Well, that's  
22          precisely what I meant to do in 1(a). And if I failed  
23          to, it's not my -- it's not a problem with my goal.  
24          It's a problem with my language.

25          VICE CHAIRPERSON REYNOSO: Okay.

1                   COMMISSIONER GEORGE:    The idea here is  
2                   that fact witnesses testify at hearings; what I call  
3                   prospective witnesses do not.    However, they could  
4                   testify at proceedings that are held in conjunction  
5                   with hearings, and their testimony could be taken into  
6                   account in hearing reports, noted in hearing reports,  
7                   and so forth.

8                   So I think what I'm trying to do in 1 is  
9                   exactly what you think is a good idea and I think is  
10                  a good idea.    And if I haven't done it, let's just  
11                  work over the language.

12                  Now, you have a real -- I think a real  
13                  objection on 2, and I think here we just have a  
14                  disagreement.    And I think that Commissioner Lee's  
15                  objection is identical, so I can treat them both  
16                  together.    I just want to stress that unless I'm,  
17                  again, failing in my goal, I am not attempting to  
18                  restrict the Commission's subpoena power.    I don't  
19                  think that it has that effect at all.    We still have  
20                  the same scope of subpoena power.

21                  What I've tried to do is to improve  
22                  Commissioner accountability in the area of the  
23                  particular type of subpoena that we use -- the  
24                  subpoena duces tecum -- where documents are being  
25                  requested.    So we might just have a philosophical

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1 disagreement about that, and I see any hope of a  
2 majority kind of disappearing on me as we talk about  
3 it.

4 But I still do think it would be better if  
5 the Commissioners themselves passed on subpoena duces  
6 tecum, except in the circumstances in which I think  
7 that's stated here, that there would be an exception  
8 rather than staying with the current system.

9 I respect the alternative view that  
10 Commissioners Reynoso and Lee take. I just think it  
11 would be better to do it the other way.

12 VICE CHAIRPERSON REYNOSO: I wonder if we  
13 could have a discussion about -- you indicated to  
14 Commissioner Higginbotham that, in fact, as I  
15 understood it, though you didn't go into detail, that  
16 maybe there are some things that we could improve. I  
17 wonder if it would be helpful to have discussions, as  
18 we've had some other times in the past, and then have  
19 the General Counsel, who has implemented these  
20 policies, then take those concerns into account.

21 That is, if there is something that we've  
22 done that in your view is not the right thing to do,  
23 we ought to have that discussion. And if there's sort  
24 of a consensus around the table, then -- as I  
25 understand it, then the staff has taken that into

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1 account in terms of how they implement the subpoenas.

2 For example, there was some question in  
3 the subpoenas in Florida that there was a catch-all  
4 phrase in some subpoenas duces tecum that said, "And  
5 all other documents that you might have bearing on  
6 this issue." If we have some qualms as to that type  
7 of language, then we should express it maybe, and then  
8 maybe have a response from the General Counsel in  
9 terms of why that perhaps is normally done in all  
10 subpoenas, why it's not done.

11 In other words, when something has  
12 bothered us in the past, sometimes we have talked  
13 about it and resolved it that way rather than with a  
14 formal changing of regulations, and that sort of  
15 thing.

16 COMMISSIONER GEORGE: Well, I think we  
17 probably have a philosophical difference here. If my  
18 proposal fails, then I hope an alternative proposal  
19 would come onto the table that might remain closer to  
20 the current system but provide some opportunity for  
21 greater supervision of -- precisely of subpoenas duces  
22 tecum.

23 My philosophical view is that this is an  
24 area where we're getting into people's papers. We  
25 often have very good reasons for it, but when we're

1 doing that I would very much like us to take  
2 responsibility and to be accountable as Commissioners  
3 directly. That's the philosophical position I hold.  
4 I think it's a good one. I think it's a matter of  
5 good government. But I understand and respect those  
6 who disagree.

7 CHAIRPERSON BERRY: Well, Commissioner  
8 Anderson I think had his hand up next.

9 COMMISSIONER ANDERSON: Right. Thank you.  
10 Well, I think I've said on a number of  
11 occasions on issues like this that I favor greater  
12 Commission accountability and review, and I'm not sure  
13 we have a great deal of accountability as  
14 Commissioners over the subpoena power. So I think  
15 that Commissioner George ought to be commended, at  
16 least from my perspective, of advancing a proposal  
17 that raises this and focuses what I feel is a need for  
18 greater Commissioner accountability in this matter.

19 Now, as we talk about the Commission's  
20 power of subpoena, I think our scope is pretty broad.  
21 I don't see us as having a more restricted scope for  
22 subpoena than other Commissions. We may have a more  
23 restricted power of enforcement, having to go through  
24 the Justice Department.

25 But I would say when you're looking at a

1 small organization which may have, you know, on paper  
2 a husband and wife and three or four other people or  
3 10 people have started an organization and they're  
4 working, for a federal agency to come in with a  
5 subpoena demanding all of the papers or whatever, I  
6 mean, the chilling effect on a small organization is  
7 pretty heavy.

8 And I'm not sure that when they are told,  
9 "And, by the way, the Attorney General of the United  
10 States is going to enforce this subpoena," that they  
11 understand that to be a limitation on our subpoena  
12 power --

13 (Laughter.)

14 -- rather than amassing the entire power  
15 of the Department of Justice suddenly on our side. So  
16 I think it's a problem now.

17 I don't want to rehash the issues that  
18 were surrounding the Miami hearing, but I do think  
19 that the controversy in Miami suggested quite clearly  
20 that there is a potential for problems, and I don't  
21 think, frankly, that the committee -- and I have not  
22 talked to anyone on the committee or any of the staff  
23 of the committee about the reauthorization hearing,  
24 whether this is going to come up as an issue, but I  
25 think anybody who has been in this town for more than

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1 15 minutes. given what has happened, ought to see that  
2 it probably is going to come up at the hearing. It's  
3 probably going to be discussed in any markup on our  
4 reauthorization bill.

5 I'm not sure that the committee just ought  
6 to leave it alone and say, "Well, the Commissioners  
7 are going to, you know, try to reach consensus on it."  
8 If we try to take some kind of an action vis-a-vis our  
9 internal administrative rules, I don't know whether  
10 that's sufficient or not, but at least it indicates  
11 that we see that we need greater accountability, or we  
12 need greater input into the process.

13 I must say with Commissioner Higginbotham  
14 that the more we start putting deadlines and dates and  
15 everything, we're just -- we're in a sense creating  
16 all sorts of grounds for litigation and objections and  
17 defenses to enforcement of subpoenas, etcetera, which  
18 I would, you know, think would be problematic. And so  
19 maybe the whole effort that provides this with a  
20 certain finesse is not going to work for a variety of  
21 just sort of practical reasons.

22 But I think it's something that we ought  
23 to look at, because I do believe that the subpoenas  
24 for the production of documents holds with it a  
25 potential of real chilling effect on some

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1 organizations. And I do think the issue of whether a  
2 witness who we would like to appear before us, because  
3 of his expertise and not necessarily because he is  
4 cognizant of facts that basically only that witness  
5 knows, and, therefore, we have to have, I think that's  
6 a real issue -- that we compel somebody against their  
7 desire to give us his opinion about something. I  
8 think that's important.

9 Now, somehow I believe this Commission  
10 ought to have more review and involvement in whether  
11 or not we compel these people to do this, and I'm not  
12 sure that we've found any formula that I'm -- the  
13 current formula I'm not happy with. Let me put it  
14 that way.

15 CHAIRPERSON BERRY: Commissioner  
16 Redenbaugh, were you about to say something? Has Carl  
17 said what you were about to say?

18 COMMISSIONER REDENBAUGH: He did.

19 CHAIRPERSON BERRY: Okay. Well, then I'll  
20 go on to the next --

21 COMMISSIONER REDENBAUGH: However --

22 (Laughter.)

23 -- now that I've been reactivating my  
24 memory --

25 (Laughter.)

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1 I would say that I join with Commissioners  
2 George and Anderson in saying that from my standpoint  
3 there is a problem, and it is a problem of  
4 insufficient Commissioner accountability. And I think  
5 there may be some defects in the George proposal,  
6 particularly as it specifies time rather rigidly, but  
7 I certainly -- I'm in favor of our -- us maintaining  
8 our independence by examining and modifying ourselves,  
9 rather than waiting until others do it. So I  
10 certainly support the proposal in its general  
11 orientation.

12 CHAIRPERSON BERRY: Yes, Commissioner  
13 Horner?

14 COMMISSIONER HORNER: I think that we have  
15 within the Commission a tremendous reservoir of  
16 potential very beneficial accountability in the  
17 presence of members of the Commission who are  
18 appointed by more than one President and members of  
19 Congress. I think that that reservoir of  
20 accountability ought to be used.

21 I think that we ought to affirmatively  
22 vote every subpoena of a witness and a document, take  
23 responsibility for it. And if we're not as a body --  
24 if a majority of us as a body is not willing to take  
25 accountability and responsibility for the use of such

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1 great government power, then we shouldn't ask the  
2 Congress to go on giving us that power.

3 It is an enormous power, and it can be  
4 very, very easily abused. And I think that if we have  
5 any -- are to have any standing as a Commission, we  
6 ought to retain that power, but we ought to hold  
7 ourselves accountable for its use. And, therefore, I  
8 think I would join with Commissioner Higginbotham in  
9 voting against this, but from a different perspective  
10 entirely.

11 CHAIRPERSON BERRY: Let me try -- go  
12 ahead, Vice Chair. Do you want to say something?

13 VICE CHAIRPERSON REYNOSO: I was just  
14 going to say that I have not -- I thought this was  
15 more meant to correct something that had gone awry.  
16 I had not realized that it was more like a  
17 philosophical approach in terms of the role of the  
18 Commission. Though my position really doesn't change,  
19 it seems to me that to set down the guidelines  
20 included in Arabic 2, I still view as a limitation, so  
21 I would still vote no on that. And I would go with  
22 the understanding that Robbie has indicated I proposed  
23 yes on Arabic 1.

24 CHAIRPERSON BERRY: Let me try this. It  
25 seems to me from listening to the discussion this time

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1 and last time that either no one, or someone who  
2 hasn't said so, objects to the idea that we should not  
3 subpoena people who are not in possession of facts,  
4 who hold themselves out not to be in possession, and  
5 we don't think they're in possession of any facts.  
6 And that if a Commissioner recommends somebody as a  
7 witness that a Commissioner ought to be able to figure  
8 out whether they're recommending them to be a fact  
9 witness or a prospective witness.

10 I see Commissioner Horner shaking her  
11 head, so maybe the second --

12 (Laughter.)

13 -- is not true. But the first at least  
14 that -- the point I was going to make was that if  
15 there is consensus that for people who say they are  
16 philosophical, or you say they are when you recommend  
17 them, and we feel that their views would be  
18 interesting or informative, or whatever, we could have  
19 a consultation or a briefing or something in  
20 connection with the hearing to hear from these people,  
21 and that their views could, then, be taken into  
22 account in the reports, so long as they're identified  
23 as people who were not subpoenaed, who were there as  
24 prospective witnesses.

25 I sensed before I said that that most

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1 people thought that there was nothing wrong with that.

2 Commissioner Horner, are you objecting to  
3 that?

4 COMMISSIONER HORNER: Madame Chair, I'm  
5 sorry that I can't join what seems to be otherwise a  
6 consensus. I do not believe that the differentiation  
7 between fact and prospective is a realistic one.

8 I believe, moreover, that to attempt to  
9 make that distinction would relegate people who have  
10 an informed lifetime of experience to bring to bear on  
11 an issue, but no statistical data because they're not  
12 social scientists but might be, for instance,  
13 practitioners, that that would relegate their  
14 testimony to a lesser status, that C-SPAN would close  
15 up shop and go away, and, therefore, the public  
16 education function those people would provide would be  
17 lesser.

18 And I think it would subject the  
19 Commission itself to endless squabbling over whether  
20 a Department of Labor Deputy Assistant Secretary was  
21 representing fact, i.e. the staff produced information  
22 provided that that Deputy Assistant Secretary or  
23 opinion as an appointee of a given administration. I  
24 just don't think it can work in practice.

25 VICE CHAIRPERSON REYNOSO: Madame Chair?

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1 CHAIRPERSON BERRY: Yes?

2 VICE CHAIRPERSON REYNOSO: I find myself  
3 sort of in between and betwixt. I don't believe that  
4 it would work in practice from the point of view that  
5 a person would only give a point of view and not back  
6 it up with statistics or historical events, and so on.  
7 But procedurally, and I thought that's what we were  
8 trying to get to, the only difference is that the  
9 person would not be subpoenaed. Therefore, the  
10 person's presence would be completely voluntary.

11 Once present, still speaking a  
12 philosophical or -- in philosophical or historical  
13 terms, presumably that person would use all of the  
14 facts, etcetera, that the person had at his or her  
15 disposal, and we could take advantage of that. So I  
16 agree with Commissioner Horner that once the person is  
17 there, I find it very difficult to say, "This is only  
18 going to be philosophical and not factual."

19 But I was focusing more on how you'd get  
20 the person there, and the import was that such a  
21 person who will be giving, if you will, a  
22 philosophical view based on facts, etcetera, we would  
23 not exercise or power of subpoena. So it's how you  
24 get them there rather than what happens after they get  
25 there.

1 CHAIRPERSON BERRY: Well, having been  
2 reminded that there's no consensus about --

3 (Laughter.)

4 VICE CHAIRPERSON REYNOSO: Oh.

5 CHAIRPERSON BERRY: Consensus means  
6 Commissioner Horner didn't agree.

7 (Laughter.)

8 COMMISSIONER HIGGINBOTHAM: Commissioner  
9 George, again, you have tackled an important and  
10 difficult problem, and I thank you for it. I am  
11 inclined --

12 VICE CHAIRPERSON REYNOSO: On with which  
13 everybody agrees, I would say.

14 (Laughter.)

15 COMMISSIONER GEORGE: -- brought you all  
16 together.

17 (Laughter.)

18 COMMISSIONER HIGGINBOTHAM: The  
19 hypothetical I was going to ask you -- and I just  
20 don't know how this Commission would look at it -- you  
21 have John Jones, a claims agent for insurance  
22 company X, which specializes in insuring churches, and  
23 he has investigated 20 claims in state A, B, and C,  
24 where the members of the congregation are African-  
25 American, or a synagogue, where the people are Jewish.

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1           Now, he has put all of these things  
2 together. We want to know, what does he see in the  
3 totality about these? Now, is he a fact witness or a  
4 prospective witness?

5           COMMISSIONER GEORGE: You're not going to  
6 have any difficulty, Leon, in identifying hard cases,  
7 cases that are going to be very -- I said that at the  
8 beginning, and you've just proven it, although I'll  
9 give you my opinion on this one.

10          COMMISSIONER HIGGINBOTHAM: All right.  
11 Well, what you're asking --

12          COMMISSIONER GEORGE: On this one, he's a  
13 fact witness.

14          CHAIRPERSON BERRY: Yes, absolutely.

15          COMMISSIONER HIGGINBOTHAM: He's a fact  
16 witness.

17          COMMISSIONER GEORGE: He's a fact witness.

18          CHAIRPERSON BERRY: He's a fact witness.

19          COMMISSIONER GEORGE: Yeah.

20          CHAIRPERSON BERRY: He has facts,  
21 information that he is -- excuse me. Oh, that's --

22          COMMISSIONER HIGGINBOTHAM: But at the end  
23 he has to --

24          (Laughter.)

25          COMMISSIONER GEORGE: Mrs. Berry, co-

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1 counsel.

2 (Laughter.)

3 CHAIRPERSON BERRY: Go ahead, Counsel.

4 (Laughter.)

5 COMMISSIONER GEORGE: Well, no, I -- of  
6 course, everything is a --

7 (Laughter.)

8 CHAIRPERSON BERRY: Yes, Commissioner  
9 Higginbotham?

10 COMMISSIONER HIGGINBOTHAM: He has  
11 investigated all of these claims. Your last question  
12 is, do you believe that these bombings of synagogues  
13 and black Baptist churches have anything to do with  
14 anti-semitism or anti-race?

15 CHAIRPERSON BERRY: Based upon --

16 VICE CHAIRPERSON REYNOSO: Madame Chair,  
17 I have been called as a witness, a fact witness.

18 (Laughter.)

19 I refuse to give that information.

20 (Laughter.)

21 CHAIRPERSON BERRY: Counsel, do you want  
22 to answer that?

23 COMMISSIONER GEORGE: Well, I mean, I'll  
24 take -- I mean, it was an amusing line. I mean, I  
25 think that if the witness made that objection, I think

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1 I would honor it and say, no, we won't compel you  
2 under the subpoena power to answer that question,  
3 although I think it would be appropriate for the  
4 person, the claims examiner, to render an opinion on  
5 that based on his very close acquaintance with the  
6 data.

7 Now, I have a different case in mind of --  
8 at least I want to give a clear -- what would be to me  
9 a clear case. Say, we have the affirmative action  
10 hearing, and we invite Cornell West to come and give  
11 his opinion, and William Bradford Reynolds to come and  
12 give his opinion on whether affirmative action  
13 policies, at least this or that affirmative action  
14 policy is --

15 VICE CHAIRPERSON REYNOSO: Clearly, that  
16 wouldn't be based on fact.

17 (Laughter.)

18 COMMISSIONER GEORGE: So in that case, you  
19 know, I don't think either of them should be  
20 testifying under compulsion. I mean, they would agree  
21 on the -- we'd say, "Well, here is what we've learned  
22 about how the program works at Davis or at Texas," or  
23 whatever it is. "Here is what they do. Here is the  
24 procedures." Now, is that just, unjust,  
25 constitutional, fair, good?

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1 CHAIRPERSON BERRY: From your perspective.

2 COMMISSIONER GEORGE: From your  
3 perspective, exactly.

4 CHAIRPERSON BERRY: And the answer to your  
5 first question, if I may interject, Commissioner  
6 Higginbotham, is that the insurance examiner, in the  
7 context of the way Commission hearings are conducted,  
8 could be asked whether he found any indications in his  
9 investigation that would lead him to believe that  
10 there was a connection between the burnings, or  
11 whatever they were, targeted on particular groups.

12 That is, if he saw anti-semitic graffiti  
13 or something like that, without reaching a conclusion  
14 as to the meaning, unless he meant to, which is a  
15 question of fact. Did he find anything that had  
16 anything to do with this? He could be asked that.

17 COMMISSIONER HIGGINBOTHAM: Is it the  
18 position that an expert -- is it the position that we  
19 can't subpoena anyone who is an expert?

20 CHAIRPERSON BERRY: We can subpoena anyone  
21 we want to.

22 COMMISSIONER GEORGE: The claims examiner  
23 is an expert. I mean, he --

24 COMMISSIONER HIGGINBOTHAM: Well, from  
25 your prospective witness I'm using expert in the sense

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1 of --

2 CHAIRPERSON BERRY: Oh, you mean get back  
3 to --

4 COMMISSIONER GEORGE: Yeah. If it's  
5 purely a prospective witness, then I don't think we  
6 should be using the subpoena power there.

7 Now, I have anticipated the case where,  
8 you know, we have a -- where we have what I'm calling  
9 a fact witness, but since we've got him here we're  
10 going to ask his opinion. That's Cruz's case. We  
11 might ask more broad -- even a more broad  
12 philosophical question, and I have no objection to  
13 that person answering that question. I'm just saying  
14 if a person doesn't want to answer that question we  
15 should honor that. We would --

16 CHAIRPERSON BERRY: But before we get  
17 hopelessly confused and muddled here, or before I do,  
18 the situation as it exists now and has since 1957 is  
19 that the Commission subpoenas witnesses for hearings.

20 COMMISSIONER GEORGE: Every single one.

21 CHAIRPERSON BERRY: And the Commission  
22 made a policy of subpoenaing all of the witnesses for  
23 hearings, and the Commission made that policy because  
24 the Commission, 1) wanted to make sure that people  
25 showed up, and there were people from whom they wanted

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1 to get information who wouldn't come, and also other  
2 people who wanted to be protected by the subpoena to  
3 show up.

4 And instead of drawing all of these  
5 distinctions, they made a general rule that for a  
6 hearing you have the subpoena power, you subpoena  
7 people for hearings. And that has been honored, and  
8 I think there's one mayor somewhere who wasn't  
9 subpoenaed one time. But that has been honored for  
10 those purposes, and that's the situation now. You can  
11 subpoena anybody you want to subpoena for a hearing.

12 What we're talking about is, are there  
13 changes that need to be made for whatever reasons  
14 people think changes need to be made?

15 Commissioner Anderson?

16 COMMISSIONER ANDERSON: Thank you.

17 CHAIRPERSON BERRY: I'll recognize you  
18 next, Cruz.

19 COMMISSIONER ANDERSON: I've listened to  
20 the discussion here, and I have a lot of questions in  
21 my own mind as to who would be a fact witness, who  
22 would be a prospective witness or an expert witness.

23 It seems to me the only clear person who  
24 would be a fact witness would be a government official  
25 called on to testify specifically as to what the

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1 agency or department is doing. But regardless of  
2 whether the eight of us can decide in our minds that's  
3 clearly a fact witness, that's clearly an expert  
4 witness, what to me is determinative is the fact that  
5 you give almost everyone who is not a government  
6 official the opportunity say, "No, I'm not a fact  
7 witness. I'm a prospective witness."

8 Now, they may have a strong case or a weak  
9 case, but you potentially put into jeopardy almost  
10 everybody from the private sector you are calling as  
11 a witness, because unless we're going to ask them only  
12 a series of questions related to facts and no  
13 opinions, they can all argue the purposes of avoiding  
14 and forcing enforcement of the subpoena, or at least  
15 the procedure to enforce the subpoena, that they're  
16 really being called for their perspective on the  
17 issue.

18 And so, therefore, I think it's -- as I  
19 hear the discussion going on and on, and how unclear  
20 we are on certain hard cases, which I think are a  
21 limited number of categories, but nonetheless almost  
22 all of our witnesses may fit in those categories, it  
23 convinces me that maybe we cannot make that kind of a  
24 distinction.

25 At some point months ago, if I had not put

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1 it on the record I had thought it pretty strongly, and  
2 that is I think we probably ought to just vote on  
3 every subpoena. I hadn't thought about that for a  
4 while, but I think the more I hear the discussion  
5 maybe that's how we resolve this.

6 But in any event, the question of expert  
7 witness versus fact witness I think is a morass that  
8 opens up a very large problem for us.

9 CHAIRPERSON BERRY: Vice Chair? And I'll  
10 get you next, Commissioner Redenbaugh.

11 VICE CHAIRPERSON REYNOSO: But as I hear  
12 the discussion, I confess to becoming a little bit  
13 more iffy, even about Arabic 1, because the complaints  
14 that I've had are witnesses that are friendly,  
15 actually, to the Commission, but had a hard time  
16 setting that time aside, etcetera. And probably if  
17 they didn't want to appear, they would say, "Wait a  
18 minute. I've read your regulations, and I think I'm  
19 an opinion witness, not a fact witness."

20 I was just looking at the proposal that we  
21 have for the mini-hearing. Mayor Reardon, I'm sure,  
22 is a very busy person, and if he by chance doesn't  
23 want to appear, he'll say, "I've got nothing but  
24 opinions to give you. And how dare you to call me  
25 when your own regulations say that." So I can see

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1 that there might be some problems.

2 CHAIRPERSON BERRY: Commissioner  
3 Redenbaugh?

4 COMMISSIONER REDENBAUGH: I think that the  
5 thing I remain troubled by -- and I think my  
6 colleagues across the room do, too -- by the following  
7 -- that -- and there has been no, really, response to  
8 this point. I don't think we should compel, under  
9 threat of enforcement of a subpoena, private citizens  
10 to come and testify when we know that what we are  
11 asking them -- we know that we're asking for their  
12 opinions and not because they are in possession of  
13 evidence.

14 And I think it is very different when we  
15 want a police chief to come and testify on the conduct  
16 of his office. I could understand why he would not  
17 want to come. But I think he has placed himself by  
18 being in the public office in a position where he --  
19 this is one of his reasonable duties.

20 And we are sort of dancing around this  
21 issue by calling them fact versus opinion witness, but  
22 for me I'm against compelling private citizens to come  
23 and give their opinion.

24 CHAIRPERSON BERRY: Commissioner  
25 Redenbaugh, this is one of those that if you think

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1 about it very carefully I bet you're going to change  
2 your mind.

3 COMMISSIONER REDENBAUGH: I hope I've got  
4 a lot of things like that.

5 CHAIRPERSON BERRY: If, in fact, we did  
6 not -- were not able to subpoena private citizens, we  
7 wouldn't be able to find out anything that's going on  
8 in any industry, whether it's Wall Street or brokerage  
9 houses. We wouldn't be able to find out any  
10 information.

11 When we're setting up the consumer racism  
12 and sexism briefing, I'm told by the Staff Director  
13 that some people don't want to come who have  
14 information in the industry, because it's not a  
15 subpoena and they -- it's not that they only have  
16 facts; they just think it's not in their best interest  
17 to --

18 COMMISSIONER REDENBAUGH: Yes, and I think  
19 that is a different case, because we are subpoenaing  
20 information about -- for which they have knowledge and  
21 about the conduct of themselves or their industries or  
22 their companies.

23 CHAIRPERSON BERRY: Right.

24 COMMISSIONER REDENBAUGH: That's very  
25 different than asking Cornell West to come and talk to

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1 us.

2 CHAIRPERSON BERRY: Well, Cornell West --  
3 first of all, I meant by private -- I meant non-  
4 governmental entities, which is what I thought you  
5 were going to rethink. Because the point is that Wall  
6 Street is not a governmental entity. You know that.

7 COMMISSIONER REDENBAUGH: Yes, I --

8 CHAIRPERSON BERRY: And neither are these  
9 people who run the laundry industry, who don't want to  
10 charge me less money to iron my blouse. But --

11 (Laughter.)

12 -- in point of fact, these people -- and  
13 over the years, the Commissioners found that people  
14 who are non-governmental people for whom the  
15 Commission needs information to be able to do an  
16 adequate job are reluctant to come, especially if they  
17 think that the information is going to put them in a  
18 bad light.

19 COMMISSIONER REDENBAUGH: I'm not  
20 objecting to subpoenaing that person.

21 CHAIRPERSON BERRY: Oh, you're not.

22 COMMISSIONER REDENBAUGH: No.

23 COMMISSIONER GEORGE: Madame Chair?

24 CHAIRPERSON BERRY: Yes?

25 COMMISSIONER GEORGE: I'm interpreting

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1 Commissioner Redenbaugh as simply agreeing with  
2 number 1. Well --

3 COMMISSIONER REDENBAUGH: Yes.

4 COMMISSIONER GEORGE: -- Arabic 1 here,  
5 which --

6 CHAIRPERSON BERRY: Oh, you're agreeing  
7 with 1.

8 COMMISSIONER GEORGE: -- which would  
9 permit us to subpoena. The distinction between  
10 federal, state, and local employees and private  
11 parties comes in 2, not in 1. I want to be very clear  
12 about this. And this goes to the question -- I'm  
13 going to make one more plea. Connie, I think I'm not  
14 going to be able to convince you, so I'm not pleading  
15 with you here. I --

16 (Laughter.)

17 I'm pleading with the judges and with  
18 Commissioner Lee on the ground that I am not  
19 restricting -- my proposal does not restrict the scope  
20 of the subpoena power, that every subpoena we now  
21 issue we can still issue, same scope, that we're not  
22 limiting how broad the scope can be. We're just  
23 taking responsibility for that scope when we establish  
24 it.

25 The same is true here. Anybody we can now

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1 subpoena we'll be able to subpoena under 1, if we're  
2 going to ask them questions about facts. I mean, even  
3 Cornell might have some facts. We might compel him to  
4 testify as to that. But if we're going to not ask for  
5 facts but for opinions, then, you know, we've given up  
6 that right to subpoena that person.

7 CHAIRPERSON BERRY: I want to be clear  
8 that I misunderstood you, Russell. If Robbie's  
9 interpretation of what you said is correct, I  
10 misunderstood you.

11 COMMISSIONER REDENBAUGH: Okay.

12 CHAIRPERSON BERRY: You were talking about  
13 1(a) --

14 COMMISSIONER REDENBAUGH: Yes.

15 CHAIRPERSON BERRY: -- which is the one  
16 about the prospective/fact --

17 COMMISSIONER REDENBAUGH: Yes.

18 CHAIRPERSON BERRY: I thought you meant  
19 that under no circumstances --

20 COMMISSIONER REDENBAUGH: Oh.

21 CHAIRPERSON BERRY: -- would the  
22 Commission subpoena anybody --

23 COMMISSIONER REDENBAUGH: No, no.

24 CHAIRPERSON BERRY: -- who wasn't a  
25 government official.

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1 COMMISSIONER REDENBAUGH: No, no.

2 CHAIRPERSON BERRY: Okay. Good.

3 COMMISSIONER GEORGE: No, that would be a  
4 different -- the government/non-government would be a  
5 different distinction, and I'm not proposing that at  
6 all.

7 CHAIRPERSON BERRY: I see.

8 COMMISSIONER GEORGE: My distinction is  
9 fact and prospective.

10 COMMISSIONER HORNER: I'm still confused  
11 about Commissioner Redenbaugh's point of view on this.  
12 Could you just restate it? What are you for, and what  
13 are you against?

14 COMMISSIONER REDENBAUGH: I'm for -- let  
15 me recompile this, then. I am for all of us as  
16 Commissioners voting on each subpoena.

17 COMMISSIONER HORNER: Voting what?

18 COMMISSIONER REDENBAUGH: On each  
19 subpoena.

20 COMMISSIONER HORNER: Okay.

21 COMMISSIONER REDENBAUGH: I myself --

22 COMMISSIONER HORNER: Witness or  
23 documents.

24 COMMISSIONER REDENBAUGH: Yes.

25 COMMISSIONER GEORGE: Well, let me just

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1 interrupt there. Then, that goes further --

2 COMMISSIONER HORNER: Than you --

3 COMMISSIONER GEORGE: -- than I'm going  
4 here.

5 COMMISSIONER REDENBAUGH: Well, that's  
6 fine.

7 CHAIRPERSON BERRY: Commissioner Lee, are  
8 you there?

9 COMMISSIONER LEE: Yes, I'm here.

10 CHAIRPERSON BERRY: Okay, good.

11 COMMISSIONER REDENBAUGH: And, Connie, I  
12 want to also stipulate that I would not support the  
13 compelling of opinions from private citizens.

14 COMMISSIONER HORNER: Okay. Okay. Fine.  
15 I understand that. Thank you.

16 CHAIRPERSON BERRY: Now, the other point  
17 that I was going to make about the lack of consensus,  
18 total agreement in consensus, was that in my own view  
19 it is practically impossible and unrealistic for the  
20 Commission to say that we would vote on every subpoena  
21 ever issued by the Commission, and if we intend to  
22 have hearings.

23 Why is that practically impossible? Given  
24 the schedules of Commissioners -- and I'm not just  
25 talking about this Commission but all of the ones I've

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1 served on of this Civil Rights Commission -- given  
2 peoples' schedules, their involvements, and the way  
3 hearings are put together, and the time constraints on  
4 the staff and everything else, to say that before any  
5 subpoena could be issued every Commissioner has to  
6 vote -- now, if you wanted to say something different,  
7 which was that once you got the witness list, or the  
8 documents witness list, if any Commissioner objected  
9 to somebody being subpoenaed, they could inform the  
10 Staff Director and Commissioners might be polled.  
11 That's a whole different issue.

12 But to say that every time we have a list  
13 of documents or subpoenas, everybody has to vote on  
14 each item before we can go ahead and prepare a  
15 hearing, that is just logistically -- this is not  
16 ideology speaking. This is practically speaking.  
17 That is totally unworkable, given the schedules that  
18 people have, their involvements, what people are  
19 doing, the timing on trying to get it done. If we  
20 held one hearing in three years we'd be very lucky.

21 I'm just telling you that. That is the  
22 case, and that's my view of it. And so I'll leave it  
23 at that.

24 Commissioner Horner?

25 COMMISSIONER HORNER: I'll just respond

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1 very briefly. I think that it should be entirely  
2 possible at the meeting preceding a hearing -- that  
3 is, typically a month in advance -- or let us say two  
4 meetings preceding a hearing, typically six weeks in  
5 advance of a hearing, that the Staff Director could  
6 present to the Commission a list of every individual  
7 the Staff Director wishes to subpoena, and every  
8 document the Staff Director wishes to subpoena, and  
9 the language of those subpoenas, for the Commission to  
10 vote up or down on.

11 Typically, the outcome of that would be a  
12 very rare exception -- that is, a discussion -- very  
13 rarely on one individual or one kind of document or  
14 documents. And it seems to me that it gets to the  
15 administration of the Commission's business that we  
16 don't have 30 days or 40 days before a hearing full  
17 knowledge of what we intend to do at a hearing. That  
18 is the one of the reasons we are ill-prepared when we  
19 go into the hearings, because the staff has not given  
20 us 30 days in advance a full list of people.

21 Now, over the course of the succeeding  
22 period, the staff might drop someone, but ought not at  
23 that point, it seems to me, to be adding someone.

24 CHAIRPERSON BERRY: The nightmares that go  
25 on around this place within two months of a hearing

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1 are unbelievable -- the 24 hours a day people put in,  
2 the smallness of the staff, the fact that we try to do  
3 two or three hearings, which is, you know, like a  
4 nightmare, the people who can't show up, the somebody  
5 who got sick, the this that happened, or the that that  
6 happened, or whatever. I mean, it is just incredible.

7 And then I'll make one last point, and  
8 then I'll recognize whoever's hand was up. I think  
9 it's Commissioner Higginbotham.

10 No one has addressed, really, the point  
11 that while the scope of who we may subpoena is very  
12 broad, the point that someone made here about the  
13 restrictions on what we do, and I don't think these  
14 are to be taken lightly. I mean, all of these federal  
15 agencies -- I read that long document. I mean, there  
16 are places where Commissioners subpoena people. Staff  
17 members subpoena people.

18 We can't make anybody come, and we can't  
19 tell anybody that the Attorney General is going to  
20 enforce the subpoena because we don't know if the  
21 Attorney General is or not. It's up to the Attorney  
22 General to decide that. And over the years there  
23 haven't been that many. I mean, we have a check on  
24 what we do. There haven't been that many times  
25 anybody has asked anybody to enforce a subpoena or

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1 that they have enforced it.

2 And so when you read the plethora of  
3 approaches to doing this in all of the other agencies  
4 and then look at what we do, we have more restrictions  
5 on us than anybody.

6 I, too, wanted to say before I recognize  
7 Commissioner Higginbotham, I very much appreciate what  
8 you've done, Commissioner George. This is a tough  
9 problem, and you've given careful thought to it, and  
10 I thought this fact/prospective thing was going to be  
11 a winner here. It turned out I was wrong.

12 But I just -- you know, I just want to  
13 commend you for taking a crack at it, and we'll  
14 continue with the discussion.

15 Yes, Commissioner Higginbotham?

16 COMMISSIONER HIGGINBOTHAM: Well, Oliver  
17 Wendall Holmes said a page of history is worth a  
18 volume of logic. We've had 39 years. Before I'd  
19 throw out 39 years to make any significant  
20 modification I've got to have some compelling logic to  
21 throw it out.

22 Now, if you talk to any U.S. Attorney in  
23 the country, and you told him that on every major case  
24 he or she has to be ready 45 days before, 60 days  
25 before, they would look at us as if we were mad.

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1           The way litigation works is sometimes  
2 you're doing very -- you know, Sadie Smith is supposed  
3 to testify, and we know that, and 60 days in advance.  
4 But then Sadie Smith has a baby, and then you want to  
5 find out, well, who is going to replace Sadie Smith?  
6 And that's Jacqueline Jones, who is out of the state.  
7 And this becomes critical.

8           I mean, we are acting with blinders on in  
9 terms of the way litigation works. If we have so much  
10 trouble getting together with just the seven of us,  
11 who are sort of --

12           CHAIRPERSON BERRY: Eight.

13           COMMISSIONER HIGGINBOTHAM: Eight. Well,  
14 seven plus the Chair.

15           (Laughter.)

16           I presume the Chair is flawless.

17           (Laughter.)

18           CHAIRPERSON BERRY: Oh, okay. All right.

19           (Laughter.)

20           COMMISSIONER GEORGE: He'd make rather a  
21 good lawyer, wouldn't he?

22           (Laughter.)

23           COMMISSIONER HIGGINBOTHAM: I think if we  
24 get an abuse -- I think the staff has gotten a signal.  
25 If we get a specific abuse, in view of that abuse we

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1 should let everyone know that we want to have as much  
2 order and fairness as possible, but I think it's tough  
3 to put a prophylactic rule in. And I guess that's  
4 where I am.

5 CHAIRPERSON BERRY: Okay. Commissioner  
6 George?

7 COMMISSIONER GEORGE: Perhaps I could wrap  
8 it up. I'll try not to provoke any further comment,  
9 but just say a final word in defense of my proposal.

10 CHAIRPERSON BERRY: This is not your  
11 final --

12 COMMISSIONER GEORGE: What's that?

13 CHAIRPERSON BERRY: This is not your final  
14 word. You may have to go back to the drawing board.  
15 But anyway, go ahead.

16 (Laughter.)

17 COMMISSIONER GEORGE: I have a feeling  
18 about that, but --

19 (Laughter.)

20 I just want to be very clear, since in the  
21 discussion of my proposal other possibilities that I  
22 am not proposing have been raised, which would much  
23 more dramatically alter the policy. So if there is  
24 anybody who hasn't decided how he's going to vote yet,  
25 and trying to make up a mind, do have in mind the

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1 particular modest, sensible --

2 (Laughter.)

3 -- moderate proposal that I have put on  
4 the table here, both in terms of one -- the common-  
5 sensical proposal that I have put on the table.

6 So I will formally move this, and I will  
7 ask possibly Russell if he would favor me with a  
8 second and --

9 CHAIRPERSON BERRY: No, no, no. Let's not  
10 move it --

11 COMMISSIONER GEORGE: No?

12 CHAIRPERSON BERRY: -- please.

13 COMMISSIONER REDENBAUGH: I think we ought  
14 to come back.

15 CHAIRPERSON BERRY: I think we ought to  
16 come back. Russell agrees. I think this discussion  
17 -- each time we discuss this I learn more myself. And  
18 you're making progress. It may not seem like it.

19 (Laughter.)

20 But why don't we, you know, go back and  
21 rethink, and ask your colleagues -- and I ask all of  
22 you -- think about this some more, and consult with  
23 Commissioner George, and I don't want your proposal  
24 voted down. You've made a good effort here, and it  
25 has lots of interesting possibilities, and maybe there

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1 are changes that could be made in it that could  
2 command a majority. But I don't want your proposal  
3 voted down.

4 Why don't we leave it for consideration,  
5 since it wasn't -- you know, we don't really have to  
6 vote on it. Nobody has moved officially to do that.  
7 And let's continue to discuss it, unless you're just  
8 so totally fed up that you --

9 COMMISSIONER GEORGE: No, I'm not fed up.

10 (Laughter.)

11 No, I am not fed up, and I appreciate all  
12 of the kind words that you and Judge Higginbotham and  
13 the others have said about my efforts here. But I do  
14 get the sense that I am in a position where altering  
15 things in one direction is going to lose me some  
16 people who might support me. Altering things in the  
17 other direction might lose other people who might  
18 support me.

19 I don't know if there is anybody who  
20 supports me. It's entirely unclear to me, based on a  
21 lengthy discussion. Usually, I can tell how people  
22 are going to vote. I know how some of you are going  
23 to vote. But my sense is that I don't know what else  
24 I can do which will either -- I think whatever I do is  
25 going to lose me possible support on one side or the

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1 other, and I don't see the support there for my  
2 proposal.

3 COMMISSIONER HORNER: I'll second your  
4 proposal in order to call the --

5 COMMISSIONER GEORGE: Well, I don't want  
6 to -- if people don't want to vote, I don't want to  
7 ram it down their throats. But --

8 CHAIRPERSON BERRY: But, Commissioner  
9 George, you've heard possibilities here about  
10 modifying timelines that some people think are too  
11 rigid. You've heard suggestions here about changing  
12 the modus operandi in terms of the voting that you're  
13 requiring. There have been all sorts of suggestions  
14 that have been made here for improvement of your  
15 proposal.

16 COMMISSIONER GEORGE: But, Madame Chair,  
17 if I go in one direction, modifying it, it may  
18 alienate some people. I can try, but --

19 CHAIRPERSON BERRY: Well, I mean --

20 COMMISSIONER GEORGE: -- I don't --

21 CHAIRPERSON BERRY: -- I would appreciate  
22 it if you tried. I mean, you could always vote it  
23 down the next time, I mean, if you really are in the  
24 mood for --

25 (Laughter.)

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1 COMMISSIONER HIGGINBOTHAM: That's  
2 something that is cruel and unusual punishment.

3 CHAIRPERSON BERRY: If that's what you'd  
4 want. I'm trying to --

5 (Laughter.)

6 COMMISSIONER GEORGE: Let me get some --  
7 I don't know what's appropriate here, Madame Chairman.  
8 Rule me out of order, if I go out of order. But can  
9 I get some sense of --

10 CHAIRPERSON BERRY: How people are  
11 feeling?

12 COMMISSIONER GEORGE: -- how -- is there  
13 anybody who thinks that the perspective -- just to  
14 start with number 1, the prospective/fact distinction  
15 is not hopeless?

16 COMMISSIONER HIGGINBOTHAM: Yes, it's not  
17 hopeless.

18 CHAIRPERSON BERRY: We're not actually  
19 going to vote on --

20 COMMISSIONER GEORGE: There are four of us  
21 who think it's not hopeless.

22 CHAIRPERSON BERRY: The rest think it's  
23 hopeless? Okay.

24 COMMISSIONER GEORGE: Yeah. Well, no, and  
25 I understand that, as I said. I mean, you're not

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1 going to have any difficulty coming up with hard cases  
2 here, and I'm not claiming infallibility on this or  
3 anything.

4 CHAIRPERSON BERRY: Yes, Pope John.

5 (Laughter.)

6 COMMISSIONER GEORGE: Claiming  
7 infallibility for him, but not for --

8 (Laughter.)

9 Now, on number 2 -- now, remember, I am  
10 not proposing that we vote on every subpoena. I know  
11 that there are some Commissioners who would prefer  
12 that, but that is not what I am proposing. I am  
13 proposing the modest, moderate, sensible step of  
14 voting on subpoenas *duces tecum* when those are issued  
15 to non-governmental parties.

16 Can I get a reading of who thinks that is  
17 not hopeless?

18 CHAIRPERSON BERRY: The way he puts it --  
19 hopeless.

20 COMMISSIONER GEORGE: Well, I've got four  
21 -- well, I don't have a majority on either.

22 COMMISSIONER HORNER: You got your vote.

23 (Laughter.)

24 COMMISSIONER GEORGE: Yeah, I don't see  
25 how I can win. I mean, and any amendment I make --

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1 CHAIRPERSON BERRY: Commissioner Anderson  
2 wants to say something. Shall we let him?  
3 Commissioner Anderson?

4 COMMISSIONER ANDERSON: Well, I have one  
5 question, and then something to say perhaps. Is there  
6 a motion on the floor?

7 CHAIRPERSON BERRY: No, we're just --

8 COMMISSIONER HIGGINBOTHAM: Yes, I thought  
9 there was.

10 CHAIRPERSON BERRY: No, no, no, no.

11 COMMISSIONER HIGGINBOTHAM: Didn't we  
12 second it?

13 CHAIRPERSON BERRY: No. The item was put  
14 on for discussion. Then, Commissioner George said he  
15 was going to move it and asked Redenbaugh to second  
16 it, and I asked him if he would hold that and not move  
17 it.

18 COMMISSIONER HIGGINBOTHAM: But what did  
19 Commissioner Horner say?

20 COMMISSIONER HORNER: I'm sorry. I  
21 thought he had moved it.

22 CHAIRPERSON BERRY: No, I asked him to  
23 hold it.

24 COMMISSIONER HIGGINBOTHAM: Okay.

25 CHAIRPERSON BERRY: So then he --

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1 COMMISSIONER HORNER: I was seconding  
2 nothing.

3 (Laughter.)

4 CHAIRPERSON BERRY: She was seconding --

5 COMMISSIONER REDENBAUGH: But she did  
6 exceptionally well at it.

7 (Laughter.)

8 CHAIRPERSON BERRY: Now, Commissioner  
9 Anderson?

10 COMMISSIONER ANDERSON: Well, I think it  
11 would be worthwhile to reach consensus on what could  
12 be reached, either in a negative sense or a positive  
13 sense. What I would like to do, if Commissioner  
14 George does not move his entire proposal, I for one  
15 would like to move an amended form. And I hesitate to  
16 say this before we move on yours, because I don't want  
17 it to be seen as undercutting the proposal, but I  
18 think there is a sense that the proposal, as it's  
19 drafted now, will not be adopted in the next few  
20 minutes.

21 (Laughter.)

22 CHAIRPERSON BERRY: Commissioner Lee, are  
23 you there?

24 COMMISSIONER LEE: Yes. I'm still here.

25 CHAIRPERSON BERRY: Okay.

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1                   COMMISSIONER ANDERSON: So, I mean, in my  
2 view, I would move the adoption of what we are now  
3 referring to as Arabic 2, amended to strike the second  
4 sentence in the third paragraph, which is paragraph  
5 (b)(2), so that it would then read, "Subpoenas duces  
6 tecum will be issued only in connection with a  
7 documents hearing, except as described below."

8                   Strike the next part of the sentence, so  
9 that it would then continue, "Commission staff will  
10 present the Commissioners with a list of all persons,"  
11 etcetera, so that we would not be confined or  
12 constrained by an arbitrary time limit, which then  
13 gives rise to the difficulty of what both the Chair  
14 and Commissioner Higginbotham have indicated.

15                   Now, that may not be a perfect -- that may  
16 not be perfect, but I think it represents a baseline  
17 of what I think should be done. And so if we're not  
18 going to move Commissioner George's full proposal --  
19 and he has no objection -- then I would move this, as  
20 I've just amended it.

21                   CHAIRPERSON BERRY: All of Section 2, with  
22 the exception of that one sentence.

23                   COMMISSIONER ANDERSON: Right.

24                   COMMISSIONER GEORGE: Well, it's --

25                   COMMISSIONER ANDERSON: Right.

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1                   COMMISSIONER GEORGE:    -- it's not a  
2 complete sentence. In other words, the second half of  
3 the sentence remains.

4                   COMMISSIONER HORNER:  Yeah.

5                   COMMISSIONER GEORGE:    So it begins,  
6 "Commission staff will present the Commissioners  
7 . . ." you know, and so forth.

8                   COMMISSIONER HORNER:   May we have two  
9 minutes of silent time?

10                  CHAIRPERSON BERRY:  Two minutes of silent  
11 time?

12                  COMMISSIONER HORNER:  To read it.

13                  CHAIRPERSON BERRY:  Oh, sure.

14                  COMMISSIONER HORNER:    Read all of  
15 Section 2.

16                  CHAIRPERSON BERRY:  Sure. We'll take two  
17 minutes to read Section 2.

18                  COMMISSIONER ANDERSON: The intention here  
19 is to get us out from under an arbitrary time limit  
20 that causes those problems.

21                  CHAIRPERSON BERRY:    But people need  
22 silence to read this --

23                  COMMISSIONER LEE:    Yes.

24                  CHAIRPERSON BERRY:    -- Commissioner  
25 Anderson, so we know what we're --

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1 Did you get that point, Commissioner Lee?

2 COMMISSIONER LEE: Yes, I'm reading it,  
3 too.

4 CHAIRPERSON BERRY: Okay. Has it been two  
5 minutes? I don't know. It's been two minutes. Let's  
6 see, you moved your -- and somebody seconded it. And  
7 I've forgotten who it was.

8 COMMISSIONER GEORGE: Well, maybe --

9 CHAIRPERSON BERRY: Well, you moved it.  
10 Because I need to ask a question about the proposal.  
11 What is the status of it? You moved it, Commissioner  
12 Anderson.

13 COMMISSIONER ANDERSON: I moved it. I  
14 don't think I have yet received a second.

15 CHAIRPERSON BERRY: You haven't received  
16 a second. Okay.

17 COMMISSIONER HIGGINBOTHAM: But if you  
18 don't have a second --

19 CHAIRPERSON BERRY: You'd better ask for  
20 a second.

21 COMMISSIONER HORNER: Second.

22 CHAIRPERSON BERRY: Okay. Now, is there  
23 any discussion?

24 COMMISSIONER HORNER: Without prejudice to  
25 my vote.

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1 CHAIRPERSON BERRY: Let me ask a question  
2 of Commissioner George, who wrote this originally.

3 COMMISSIONER GEORGE: Yes, ma'am.

4 CHAIRPERSON BERRY: So he knows what all  
5 the rest of it means. Could you explain -- this  
6 proposal under B, which is what we're looking at? The  
7 only time we'll issue a subpoena duces tecum is if  
8 there is a documents hearing, except -- with the rest  
9 of the stuff that's after that.

10 COMMISSIONER GEORGE: Right.

11 CHAIRPERSON BERRY: Is that correct? Am  
12 I reading it right? It says, "Will be issued only in  
13 connection with a documents hearing, except" -- oh,  
14 you don't have one.

15 COMMISSIONER GEORGE: No, I've got it.  
16 I've got it. Yes, okay, "except as described below."

17 CHAIRPERSON BERRY: Right. And so any  
18 time it's not a documents hearing, we follow these  
19 procedures below. Is that correct? It says except --

20 COMMISSIONER GEORGE: No, no. Here is --  
21 I think here is the idea that we will sometimes obtain  
22 documents even when we're not having a documents  
23 hearing.

24 CHAIRPERSON BERRY: Right.

25 COMMISSIONER GEORGE: Okay? Those will be

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1 circumstances in which people are prepared to make  
2 available to the staff, through the Commission,  
3 documents that they don't mind us having and they  
4 think would be useful to our deliberations, whatever  
5 they are.

6 CHAIRPERSON BERRY: All right. But what  
7 I'm trying to understand is, "A subpoena duces tecum  
8 will be issued only in connection with document  
9 hearings, except as described below." In other words,  
10 we follow the procedures after that paren. closed, if  
11 it's not a documents hearing, is that right?

12 COMMISSIONER GEORGE: Yes. Bill Saunders  
13 has just called my attention to the relevant reference  
14 there. If you go down two more paragraphs, "The  
15 Commission may also request" -- it's on page 2, the  
16 penultimate paragraph, "The Commission may also  
17 request and obtain documents relevant to a Commission  
18 hearing a report to a request on the record during the  
19 hearing. A subpoena duces tecum may be issued only  
20 after a failure to comply with this request."

21 I had recalled -- I think in part, Madame  
22 Chairman, this also comes from a conversation that I  
23 had with you about the usefulness of situations in  
24 which we've had a witness before us, and suddenly that  
25 witness makes reference to a document that we didn't

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1 even know about. And we have very often said, "Well,  
2 would you be kind enough to make a copy of that  
3 available to the staff?"

4 Usually not in connection with the  
5 proceeding that we're in, because they might not have  
6 it there to hand, but then they'll ship something to  
7 Mary Mathews, or whomever, the -- Stephanie or whoever  
8 the appropriate person is, and we've acquired it that  
9 way. I don't want that to be somehow a violation of  
10 our procedures.

11 COMMISSIONER HORNER: In other words, no  
12 one could be compelled to produce documents pursuant  
13 to a --

14 COMMISSIONER GEORGE: Right.

15 COMMISSIONER HORNER: -- during the  
16 Commission without a subsequent vote of the --

17 COMMISSIONER GEORGE: That's right.

18 COMMISSIONER HORNER: -- Commissioners.

19 COMMISSIONER GEORGE: Now, let's say we  
20 find out that there is some very important document --  
21 let's say that we find out there is a very important  
22 document, and in connection with this discovery for  
23 some reason what popped into my mind is -- what is his  
24 name? His name is Butterfield, all of a sudden said  
25 we have these tapes of the -- those might be of some

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1 relevance.

2 But if we all of a sudden have a discovery  
3 that there is an important document out there, we can  
4 request that, and the other person might say, "Well,  
5 I can't turn that over to you, because that contains  
6 sensitive information." At that point, we might want  
7 to have a documents hearing and issue a subpoena duces  
8 tecum to compel.

9 VICE CHAIRPERSON REYNOSO: I'm not really  
10 acquainted with --

11 CHAIRPERSON BERRY: Speak up a little.

12 VICE CHAIRPERSON REYNOSO: I'm not really  
13 acquainted with the term "documents hearing."  
14 Normally, you subpoena a person and then ask that  
15 person to bring the documents. You can subpoena the  
16 documents, too.

17 CHAIRPERSON BERRY: They mean like the one  
18 we had on Wall Street, where all we did was documents,  
19 I think.

20 VICE CHAIRPERSON REYNOSO: Well, but you  
21 still subpoena a person to bring the documents.

22 CHAIRPERSON BERRY: To bring them, yes.

23 VICE CHAIRPERSON REYNOSO: Is that what  
24 you mean?

25 COMMISSIONER HIGGINBOTHAM: A document

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1 doesn't arrive on its own.

2 (Laughter.)

3 CHAIRPERSON BERRY: The custodian of the  
4 documents.

5 COMMISSIONER GEORGE: I don't know. Isn't  
6 that room in the White House where they suddenly  
7 appear?

8 (Laughter.)

9 CHAIRPERSON BERRY: Let the record show  
10 that I objected rather strenuously to that.

11 (Laughter.)

12 Now, let's proceed.

13 (Laughter.)

14 COMMISSIONER GEORGE: Yeah, that's, Cruz,  
15 what I had in mind. And I think that that is a term  
16 that we do use. I don't know if it's in the  
17 administrative instructions now, but it's a term that  
18 we have used. I think it would be well understood by  
19 the staff.

20 VICE CHAIRPERSON REYNOSO: Good.

21 CHAIRPERSON BERRY: Commissioner  
22 Higginbotham, are you sighing or speaking?

23 COMMISSIONER HIGGINBOTHAM: Well, both.

24 (Laughter.)

25 This is a fundamental, profound change in

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1 the 39-year history when you end up, when you say a  
2 majority of all Commissioners must vote to approve the  
3 issue of a subpoena duces tecum. And I -- I know that  
4 there is no division among this Commission. But in  
5 the future --

6 (Laughter.)

7 -- in the future, there may be Commissions  
8 which are evenly divided.

9 (Laughter.)

10 And if you want to really put the  
11 Commission on dead center, all you have to do is to  
12 have four people to not vote for the issuance of a  
13 subpoena, and the Commission becomes absolutely  
14 ineffective. And I think it can bring in a whole lot  
15 of implications.

16 You look at the statute, and the statute  
17 doesn't require it. When you look at all of the other  
18 -- of the terrific analysis of the other agencies,  
19 that isn't required. And what it means to me is that  
20 if you want to make the United States Commission on  
21 Civil Rights impotent, that's all you need, because if  
22 they don't have to produce -- if they don't have to  
23 produce the document, you can't have a comprehensive  
24 enough hearing. And I think that that could be a  
25 very, very significant impediment.

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1                   And my final thing is, why is it that for  
2 almost four decades this Commission has been able to  
3 function without a scandal in this area, and now it  
4 has reached such a cause celebre that we have to get  
5 to this point.

6                   CHAIRPERSON BERRY: Commissioner Horner?

7                   COMMISSIONER HORNER: I think it would not  
8 have the effect of making the Commission impotent. It  
9 would have the effect of making the Staff Director  
10 unable to make decisions of extreme sensitivity  
11 unilaterally in the face of the Commission's  
12 impotence.

13                   I think it would make the Commission  
14 potent and responsible, and if that were to lay bear  
15 the sometimes reality that there is great division in  
16 these issues, that might well suggest that given such  
17 division the government in the part of the -- on the  
18 part of the staff ought not to be demanding the  
19 presence and testimony and documents of private  
20 citizens.

21                   CHAIRPERSON BERRY: Please --

22                   COMMISSIONER HIGGINBOTHAM: May I respond?

23                   CHAIRPERSON BERRY: Let her finish,  
24 please.

25                   COMMISSIONER HIGGINBOTHAM: Oh, I thought

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1 she had finished. I'm sorry.

2 CHAIRPERSON BERRY: She was only saying  
3 "ah."

4 COMMISSIONER HORNER: That's all right.  
5 And I had some other major point to make, which has  
6 now escaped my mind, so --

7 (Laughter.)

8 -- if I may, I'll come back --

9 CHAIRPERSON BERRY: Let me -- before you  
10 speak, Commissioner Higginbotham, and while  
11 Commissioner Horner tries to recall --

12 COMMISSIONER HORNER: It's hopeless.

13 CHAIRPERSON BERRY: -- let me just say  
14 that -- remind those who have been on the Commission  
15 that the Commission approves a hearing, the Commission  
16 votes to approve a hearing. That has to be done by a  
17 majority. The Commission votes a proposal for a  
18 hearing, which says what the hearing is going to be  
19 about and all that sort of stuff, by a majority.

20 The Commission even reviews, as we did  
21 today for the mini-hearing, the agenda for the  
22 hearing. The Commission recommends witnesses for the  
23 hearing. My only point is it's not that the  
24 Commission is totally uninvolved in the process and  
25 has no points at which it can say to people, "Listen,

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1 either we shouldn't do this, or if we're going to do  
2 it we should have this kind of witness and not that  
3 kind of witness." That would be totally  
4 irresponsible.

5 What we're really talking about is what do  
6 you do in the run-up to the hearing itself,  
7 procedurally, and trying to get the witnesses, get the  
8 materials, and so on. And if we have a documents  
9 hearing, the Commission votes to have a documents  
10 hearing, not that the staff just goes ahead and has  
11 one. So those have all been the points, the levers by  
12 which the Commission operated to exercise its  
13 influence in the past.

14 Your query is, is there something that has  
15 happened after 39 years that means that the Commission  
16 ought to exercise greater leverage in the record of 39  
17 years? And I guess that's what your question is.

18 COMMISSIONER HIGGINBOTHAM: Not greater  
19 leverage, greater preclusion.

20 CHAIRPERSON BERRY: Preclusion.

21 COMMISSIONER HIGGINBOTHAM: Preclusion is  
22 the issue here.

23 CHAIRPERSON BERRY: Okay.

24 COMMISSIONER HIGGINBOTHAM: It's not  
25 leverage.

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1 CHAIRPERSON BERRY: Yeah, okay.

2 COMMISSIONER HIGGINBOTHAM: Now, what it  
3 means, as a practical matter, is suppose a subpoena  
4 duces tecum was issued. What is the worst which could  
5 happen? The person testifies, and suppose the four  
6 people who would not have voted to approve the  
7 subpoena duces tecum, they have full latitude to  
8 comment on whether the subpoena should have been  
9 issued. They've got full latitude to comment on the  
10 evidence.

11 When you preclude testimony, you preclude  
12 the public from knowing what the person would have  
13 said, and that's what I'm concerned about.

14 CHAIRPERSON BERRY: Also --

15 COMMISSIONER HIGGINBOTHAM: And you are  
16 making it, as a Commissioner, within an adequate  
17 record. That's the terrible thing about this  
18 suggestion. You are precluding the issuance of a  
19 testimony -- of testimony when you don't know enough  
20 facts, you don't know as much as the staff. And  
21 that's the reason why practically no one has this  
22 rule.

23 CHAIRPERSON BERRY: It's also true,  
24 Commissioner Higginbotham, that, if the Commission  
25 wants to enforce a subpoena, you need five votes at

1 least.

2 COMMISSIONER HIGGINBOTHAM: Sure.

3 CHAIRPERSON BERRY: You can't enforce it  
4 if you don't have a majority. You can't even ask --  
5 you can't get it enforced anyway unless the attorney  
6 decides to. But you can't even ask them to unless a  
7 majority of the Commissioners agree to do that.

8 COMMISSIONER REDENBAUGH: That's the way  
9 it is now?

10 CHAIRPERSON BERRY: Yes. You can't ask  
11 the Justice Department to enforce a subpoena unless a  
12 majority of the Commissioners agree to do it. And the  
13 U.S. Attorney can even decide then not to enforce it,  
14 but you've got to have five votes in order to do that.  
15 The Chair can't do it. Four Commissioners can't do  
16 it. The Staff Director can't do it. That's the way  
17 it's done. It has been done that way.

18 Commissioner Horner, did you remember what  
19 you were going to say?

20 COMMISSIONER HORNER: Yes, I did, Madame  
21 Chair, and I'll make my point very briefly. Judge  
22 Higginbotham asked what has changed over 39 years to  
23 make the Commission advise now not to allow the staff  
24 to subpoena American citizens at will.

25 I think what has changed is an increased

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1 -- as the power of the Federal Government has  
2 dramatically increased over that period of time,  
3 ordinary citizens have felt a greater sense of threat,  
4 and in my view somewhat legitimately so, although one  
5 doesn't wish to be carried away on this subject.

6 But to the degree that there is legitimate  
7 concern, and to the degree that there is concern which  
8 perhaps not legitimate is nonetheless felt, I think  
9 it's incumbent upon the Federal Government now to  
10 change its ways, to modify its ways, and to be more  
11 sensitive to both the perception and the reality of  
12 federal intervention in the lives of private citizens,  
13 especially on issues of great religious, political,  
14 and other kinds of sensitivity.

15 I recognize the perspective you're  
16 bringing to bear on this. It's entirely admirable.  
17 But I am reacting to my perception of what the  
18 condition of the country demands now. It's a judgment  
19 call.

20 COMMISSIONER LEE: Madame Chair?

21 CHAIRPERSON BERRY: Yes, Commissioner Lee,  
22 I'll recognize you then.

23 COMMISSIONER LEE: It's my understanding  
24 that the staff really does not subpoena potential  
25 witnesses at will. As I recall, the staff report

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1 mentioned it was a very small percentage of witnesses  
2 that needs to be subpoenaed. Isn't that right?

3 CHAIRPERSON BERRY: We subpoena everybody  
4 who is going to be a witness at a hearing.

5 COMMISSIONER LEE: Right.

6 CHAIRPERSON BERRY: Right.

7 VICE CHAIRPERSON REYNOSO: But that's a  
8 small percentage.

9 CHAIRPERSON BERRY: If they are within  
10 subpoena range.

11 COMMISSIONER LEE: Right.

12 VICE CHAIRPERSON REYNOSO: But that's a  
13 small percentage, generally, of the potential  
14 witnesses that are interviewed by the staff maybe.

15 COMMISSIONER LEE: Right.

16 VICE CHAIRPERSON REYNOSO: Yeah.

17 CHAIRPERSON BERRY: That's right. They  
18 interview a lot of people.

19 VICE CHAIRPERSON REYNOSO: Yeah.

20 CHAIRPERSON BERRY: Right.

21 VICE CHAIRPERSON REYNOSO: Right.

22 CHAIRPERSON BERRY: That's true.

23 COMMISSIONER LEE: I really think that if  
24 we changed the rule now by making it a majority of the  
25 Commission having to approve any kind of a subpoena,

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1 I agree with the Judge. You know, how about the  
2 potential witnesses who go -- whose opinions we need  
3 to know we'll never know, because they would not want  
4 to come forward to these cases.

5 And, again, if ain't broken, if it hasn't  
6 been broken for 39 years, I just don't see why we have  
7 to voluntarily redo this to meet -- it's pressure.  
8 It's not a power. It's a very pressured pull to carry  
9 out the Commission's position.

10 CHAIRPERSON BERRY: Did I hear you say, in  
11 the words of friendly Peter Dooley, if it's not broke  
12 don't fix it, or if it ain't broke don't fix it?

13 COMMISSIONER LEE: Well, I just don't  
14 think that --

15 CHAIRPERSON BERRY: Oh.

16 (Laughter.)

17 Okay. Commissioner Anderson?

18 COMMISSIONER ANDERSON: I listened very  
19 closely to what Commissioner Higginbotham was saying,  
20 and I must say that much of it convinced me of the  
21 rightness of my amendment, although I'm sure you  
22 didn't intend that effect on my part.

23 There is the issue -- I mean, the point  
24 you make is well taken, that by requiring a majority  
25 to agree to the subpoena we do put certain power in

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1 four Commissioners to thwart moving forward. But I  
2 think there are two things to keep in mind -- that not  
3 every Commission has had the complexion of this  
4 Commission and not everyone will in the future.

5 The first, in my mind, is if you require  
6 five votes, you're required on both sides, and we've  
7 got a number of witnesses that are suggested by all  
8 sorts of Commissioners and all sorts of groups of  
9 Commissioners. So that I don't think the requirement  
10 for five votes necessarily cuts the same way.

11 The second thing is that I think we should  
12 put procedures in play that require us to move on the  
13 basis of consensus, and to be very candid about it,  
14 and not on the basis of, say, half the Commission  
15 being opposed but being unable always to find a fifth  
16 vote. And, therefore, the division on the Commission  
17 gets deeper.

18 I think we ought to look at a procedure  
19 that requires consensus up front, rather than going  
20 through a long process and then finding at the end of  
21 the process -- that is, when the report is being  
22 written, the recommendations being made -- a deep  
23 division on the part of the Commission that detracts  
24 from the effectiveness of the report and the impact of  
25 the report.

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1           And so, therefore, I think that in looking  
2           at how we set up the hearing, if we're going to have  
3           Commission approval of all of these steps, it is not  
4           such a profound leap to require Commission approval  
5           for this intermediate step. If we're going to require  
6           five votes to go to the Justice Department to enforce  
7           a subpoena, then I don't think it's such a large step  
8           to require five votes up front to issue the subpoena  
9           to begin with.

10           So I think that, as I reflect on what has  
11           been said and thinking about this for several months,  
12           that the more we can try to move toward consensus  
13           among the Commissioners earlier in the process the  
14           better off we are in getting a product that the  
15           Commission as a whole can support. And, therefore, I  
16           think I'd like to go forward with this proposal.

17           CHAIRPERSON BERRY: Commissioner George,  
18           do you want to say something?

19           COMMISSIONER GEORGE: Yes, I just wanted  
20           to say in response to Leon's point that we are  
21           exercising a very significant power over people, and  
22           the power to do good is the power to do evil, and I  
23           think it's very good even for good governments to be  
24           very meticulous about procedural protections of people  
25           against possible abuse.

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1                   And what my proposal is aimed at doing is  
2 offering that kind of protection, and it does seem to  
3 me -- and it might just be a difference of philosophy  
4 here -- it does seem to me that we shouldn't exercise  
5 this power over private parties of getting into their  
6 papers if we don't have a majority, if there aren't  
7 five Commissioners who are prepared to take  
8 responsibility and be accountable for that.

9                   I suspect that the way it works, the way  
10 it would work in practice, is the staff could propose  
11 a particular subpoena duces tecum of a particular  
12 breadth, and some Commissioners might object to any  
13 subpoena duces tecum being proposed. More often, I  
14 suspect, some Commissioners will be prepared to agree  
15 to a subpoena duces tecum, but will want the breadth  
16 to be narrowed somewhat, and that that would be the  
17 practical protective effect.

18                   Where a majority was unwarranted, a four-  
19 person group were unwarrantedly preventing the  
20 Commission from getting access to crucial materials,  
21 that would be done on the public record. And they  
22 would be accountable for that and I would suspect  
23 would be held accountable publicly and in the media  
24 for that.

25                   CHAIRPERSON BERRY: I just wanted to say

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1 that there is nothing in the record that indicates  
2 that the Commission has subpoenaed materials and  
3 papers from private parties who are unrelated to any  
4 organization, any cause, or any other matter that the  
5 Commission was interested in.

6 In other words, the Commission -- there's  
7 nothing in the history of this Commission, either  
8 recently or since 1957, that indicates that the  
9 Commission went about subpoenaing materials from  
10 private citizens who, in fact, were not involved in  
11 some kind of organization or entity or function that  
12 the Commission was seeking information about.

13 So I just wanted to say that, as a matter  
14 of fact, that is the case. Yes, they have been non-  
15 governmental people, but it has been in their capacity  
16 of being related to some cause, some organization,  
17 some something, that the Commission wanted something  
18 about. So I think that's fair to say.

19 I think the other thing is the more I  
20 listen to this discussion, the more I sense that what  
21 is intended by changing this clause on the discussion  
22 about the majority voting to approve subpoenas duces  
23 tecum could be accomplished simply by informing people  
24 who are to produce materials that no subpoenas can be  
25 enforced unless a majority of the Commission agrees to

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1 do so.

2 In fact, if they knew that, and they  
3 didn't want to submit the materials and felt that they  
4 could command a majority -- they could not -- we could  
5 not command a majority, and it was split four to four,  
6 to have them present the materials, they could simply  
7 not present them. And the Commission, unless a  
8 majority agreed to ask the U.S. Attorney to enforce it  
9 -- I mean, I can see where somebody who doesn't know  
10 that may have a different view.

11 But if we informed all people who were  
12 asked for materials that subpoenas can only be  
13 enforced if a majority of the Commission agrees, then  
14 they, in fact, know that that is the case. And you  
15 could accomplish that without making any change in the  
16 rules. I just pointed that out -- that probably is  
17 totally unsatisfactory, but I thought I would point it  
18 out.

19 COMMISSIONER GEORGE: Well, let me just  
20 say why it's unsatisfactory. I mean, I think if we  
21 issue a subpoena we ought to enforce it.

22 COMMISSIONER HIGGINBOTHAM: We don't have  
23 that option.

24 COMMISSIONER GEORGE: We don't?

25 CHAIRPERSON BERRY: Yes, we do.

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1                   COMMISSIONER HIGGINBOTHAM: I mean, the  
2 Attorney General is --

3                   COMMISSIONER GEORGE: Oh, I understand,  
4 Judge. But, I mean, if we issue a subpoena, we should  
5 seek its enforcement. We should go to the Attorney  
6 General, and I would hope ordinarily united. I mean,  
7 I can certainly anticipate many situations -- I mean,  
8 it would be -- I would be loathe ever to vote against  
9 enforcing a subpoena that we had issued as a  
10 Commission, even if I were personally opposed to that  
11 subpoena being issued.

12                   There are some circumstances, I'm sure,  
13 that would be extreme enough in my own view that I  
14 would be compelled to do that, but I can imagine many  
15 circumstances in which I might think a particular  
16 subpoena is overbroad, and I would have voted against  
17 it and would vote against issuing that subpoena.

18                   But then when it -- if someone resisted  
19 our subpoena, it would be very important to me that  
20 the Commission subpoenas be enforced, and so I would  
21 vote for enforcement.

22                   CHAIRPERSON BERRY: Just so you all know  
23 this, in the past the Commission has subpoenaed  
24 materials and witnesses. And when they were not  
25 forthcoming, even though the Commission unanimously

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1       agreed to do this, the Commission has decided not to  
2       enforce a subpoena.

3               Why did the Commission decide not to  
4       enforce it? Because given the circumstances of the  
5       conduct of the hearing, given efficiency and use of  
6       resources, given what the Commission was involved in,  
7       they decided that it was a better part of valor to in  
8       that particular instance.

9               So I'm just saying that it's not that  
10       every time they agreed to do it they went ahead and  
11       enforced it. They made a new judgment each time.

12               COMMISSIONER GEORGE: I understand that,  
13       and there can be very good reasons that we become  
14       aware of for not enforcing it. But I guess I'd like  
15       to, to the extent possible, depoliticize it at that  
16       stage. If we have reasons for not enforcing it, well,  
17       that's fine. Or if it makes sense for the Commission,  
18       we can accomplish our goal, we've learned we can  
19       accomplish our goals without it, that's fine, too.

20               But if we're going to have a philosophical  
21       or a political dispute about whether a subpoena --  
22       whether someone should be compelled, I would very much  
23       like to have it at the stage where we're deciding  
24       whether to issue the subpoena and taking  
25       responsibility for it there, rather than down the line

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1 on the enforcement issue.

2 CHAIRPERSON BERRY: The last point I'll  
3 make is in the history of the Commission -- and this  
4 is in the history books about the Commission -- the  
5 Commission was more vehemently attacked for being part  
6 of an oppressive Federal Government in its early years  
7 than it has even been in recent years, or that the  
8 Federal Government has been in recent years. In fact,  
9 Commissioners were almost run out of the State of  
10 Mississippi.

11 Commissioners had great difficulty trying  
12 to maintain the power of the Commission to do its  
13 work, to use its enforcement power. Commissioners and  
14 staff were called all sorts of names about people as  
15 representatives of the heavy-handed Federal  
16 Government.

17 I'm just pointing this out so that you  
18 will know that the history of this organization, and  
19 the history of the Federal Government, is replete with  
20 even more heated and virulent controversies than  
21 attend what goes on in the public today. And the  
22 Commissioners every time have stood up and said, "Hey,  
23 you know, this is what we have to do, and this is what  
24 we have to maintain."

25 There are controls on what we do, and I'm

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1 not trying to advise you in any way in terms of how  
2 you vote, but I'm just telling you that that is the  
3 history of the organization, which you can read in  
4 books about the history of -- that people can make  
5 available to you if you wish to confirm that this was  
6 the case.

7 Is there any further discussion? Yes?

8 COMMISSIONER HIGGINBOTHAM: I will make  
9 this last presentation less than five hours.

10 (Laughter.)

11 It makes absolutely no sense to -- in the  
12 year 1996, to be making this distinction between  
13 private versus governmental. I mean, are we saying  
14 that General Motors is private and the State of  
15 Mississippi is governmental? Are we saying that  
16 Mitsubishi is private and the State of Illinois is  
17 governmental? That distinction between private and  
18 government has been out of American juris prudence for  
19 half a century.

20 We know that major corporations who are  
21 (quote) "private" have much more power than  
22 governmental. And are we throwing all of the support  
23 of the Commission -- throwing out all of the cases  
24 which disregard this private/governmental distinction?

25 Let me give you a couple of examples.

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1 Most of -- many of the people who are going to prison  
2 now, they aren't in (quote) "state prisons." We have  
3 prisons which are being operated by private  
4 corporations, and let us suppose that some of the  
5 private corporations are -- in the administration of  
6 their jails are seriously violating the rights of  
7 inmates.

8 Do we say as a Commission, "Oh, yeah, but  
9 that's done by a private corporation"? That kind of  
10 distinction is dead from any juris prudential view, so  
11 we are going back centuries when we start to make  
12 these distinctions.

13 If someone is big enough to violate human  
14 rights, whether it's done by General Motors,  
15 Mitsubishi, or EEOC, or the State of Mississippi,  
16 there should be no distinction. And we will look like  
17 we are bereft of history when we start making -- when  
18 50 years from now when someone looks in our record,  
19 they're going to look at Griswold's great descent as  
20 a great moment of this Commission, when he was in  
21 Mississippi, dealing with private entities who were  
22 involved in vigilante movements, to deprive people of  
23 their rights.

24 And Griswold could stand up against the  
25 vigilante movements, which included killing Medgar

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1 Evers, and now we are worried about offending private  
2 enterprises. It is a repudiation of what this  
3 Commission has stood for, and maybe that's where we  
4 are in this society. But to make this private versus  
5 governmental distinction it seems to me is to turn the  
6 clock of history back.

7 CHAIRPERSON BERRY: Yes, I know we are  
8 going to get --

9 COMMISSIONER HORNER: It is.

10 (Laughter.)

11 CHAIRPERSON BERRY: Yes, Commissioner  
12 Horner?

13 COMMISSIONER HORNER: It is, indeed, to  
14 roll back and increasing excrescence of public power.  
15 Yes, that's an accurate characterization, but there is  
16 a different way to look at it. And that is that this  
17 will be more in keeping with earlier distinctions of  
18 public/private to the benefit of the citizenry.

19 CHAIRPERSON BERRY: Is the Ku Klux Klan a  
20 private organization or a public --

21 COMMISSIONER HIGGINBOTHAM: It is. It  
22 certainly is.

23 CHAIRPERSON BERRY: It is? Oh. I don't  
24 know. Somebody else had their hand up. I think it  
25 was Commissioner George. Sorry. I'll recognize the

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1 Vice Chair and then let --

2 COMMISSIONER GEORGE: Oh, sure. Sorry.

3 VICE CHAIRPERSON REYNOSO: I was just  
4 going to say that, clearly, government has the  
5 potential for the present actions. And, you know, we  
6 don't have to go back in history beyond the McCarthy  
7 hearings to be reminded of that. And if I were  
8 convinced that the history of this Commission was to  
9 violate people's first amendment or privacy rights,  
10 then I might be thinking differently.

11 The history of this Commission actually  
12 has been, it seems to me, the opposite. By the use of  
13 the subpoena power to protect the first amendment and  
14 civil rights of folk -- and I think basically that's  
15 the way the Commission has used it -- so I am  
16 reluctant to then vote on what I view is a limitation,  
17 a self-imposed limitation of that. So that's sort of  
18 where I started.

19 CHAIRPERSON BERRY: Back where you started  
20 from.

21 Commissioner George, do you want to speak,  
22 or do you want me to go ahead and --

23 COMMISSIONER GEORGE: Well, go ahead and  
24 -- I mean, I don't know how we've gotten into this or  
25 what I said in my proposal that triggered this, but

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1 I'm just very disappointed. I don't think that the --  
2 I could be missing it, Leon, but I do not see how  
3 anything in my proposal would raise any of the  
4 concerns that you've raised.

5 I have not proposed that the Civil Rights  
6 Commission cannot play a role in highlighting and  
7 combatting discrimination by private parties under  
8 civil rights acts that do outlaw that sort of -- those  
9 sorts of civil rights violations.

10 I could, I think, make a detailed response  
11 to draw some distinctions to try to show you that your  
12 most recent intervention was not apt in response to  
13 what I'm trying to do here. But I'm afraid it would  
14 just get us into a very lengthy, continuous exchange  
15 on the matter. I think there is a valid distinction  
16 between private and public power. I think it's  
17 absolutely -- the power of private and public  
18 institutions is absolutely crucial in many areas of  
19 our juris prudence, which I would be very happy to go  
20 into.

21 Nothing in that, in the recognition of  
22 such a distinction, suggests that civil rights cannot  
23 be violated by private organizations or that the Ku  
24 Klux Klan is not a private organization, or that we  
25 ought not to be able to reach the activities of the Ku

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1 Klux Klan. I mean, nothing like that at all.

2 I'm trying to deal here with what I take  
3 to be a significant problem, and I thought at least  
4 many of my colleagues agreed with me that there's at  
5 least a problem here. And I can appreciate that I  
6 perhaps haven't quite accomplished it or done it as  
7 well as I could, but this is not a debate over whether  
8 we ought to be concerned about discrimination by  
9 powerful private interests at all.

10 CHAIRPERSON BERRY: Do I hear other  
11 comments, or should I call this for a vote? Yes,  
12 Commissioner Anderson?

13 COMMISSIONER ANDERSON: Let me just say,  
14 I don't want to read an implication into anything that  
15 has been said that's not there. But as far as I'm  
16 concerned, and my intention, it was in no way to  
17 shield any organization that would be violating civil  
18 rights through this proposal. Certainly, I mean, the  
19 question isn't the Ku Klux Klan a private  
20 organization. I mean, it is not an intention to  
21 shield any organization like that.

22 And I think if any -- for example, if we  
23 were to hear serious allegations that there is a  
24 private contractor operating a prison system where  
25 there are violations, I would assume that we would all

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1 vote to go after that. I mean, I voted to go into the  
2 Mississippi -- a review of the jail situation there  
3 that we did. So I don't see it as that.

4 I see it simply, number one, we are a  
5 federal agency in charge -- directed to review the  
6 civil rights enforcement of other federal agencies,  
7 and so I think that we ought to have a very automatic,  
8 if you will, subpoena power with federal agencies.  
9 And we ought to be able to get those documents very  
10 readily.

11 And there should be no -- well, really,  
12 there should be no need for a subpoena, because it's  
13 a federal agency. And, certainly, there really should  
14 not be a need for a subpoena against a state agency  
15 because they should cooperate with us. So I see that  
16 as a perfectly reasonable part of this proposal, that  
17 if there is resistance then we have very clear  
18 discretion to go do that.

19 What I'm saying is where we have a private  
20 entity, we ought to afford a second look, a review by  
21 the Commission. And I don't see that review as being  
22 in any way shielding it, but I think that people are  
23 entitled to that, and I think organizations are  
24 entitled to it. And I think, frankly, if we give that  
25 second look up front, it will make it much more easy

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1 to move for enforcement, to recommend enforcement, and  
2 to deal with the witnesses and the documents that we  
3 do get.

4 So that's -- anyway, that's the intention  
5 that I had behind it, and we may have a very important  
6 disagreement on philosophy. But at least I want to  
7 make my intention and my motivation clear on the  
8 thing.

9 CHAIRPERSON BERRY: I'll recognize you,  
10 Commissioner Horner, but first let me say that my  
11 saying is the Ku Klux Klan a private organization was  
12 not meant to imply that anyone here thought the Ku  
13 Klux Klan should be insulated from investigation. I  
14 was simply trying to clarify, you know, what did we  
15 mean by private organization.

16 And, secondly, to remind you again that  
17 the Commission, when it agrees to have a hearing, if  
18 it's a documents hearing, it knows that we are  
19 subpoenaing documents from brokerage houses, banks,  
20 whatever. It's not that you don't know this. It's  
21 not that it comes as a surprise when we get the  
22 witness list. You know this already, and you have a  
23 full opportunity to say, "You know, I don't think we  
24 should subpoena banks," or whatever it is you don't  
25 think we should, "or pressure groups against banks,"

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1 or whatever.

2 Commissioners do have opportunities --  
3 they may not be sufficient opportunities in the minds  
4 of some Commissioners, but Commissioners do have  
5 opportunities to make decisions about this process.

6 Commissioner Horner?

7 COMMISSIONER HORNER: I just wanted to say  
8 -- to make sure that I was not misunderstood, that I  
9 am trying to support a situation in which the  
10 Commissioners take responsibility for subpoenaing  
11 governmental and private organizations and citizens,  
12 not to avoid subpoenaing, but to force us to take  
13 responsibility and to walk us back a bit from the  
14 power of the Staff Director and the staff and elevate  
15 the potency and meaning of our inquiries and our  
16 investigations by forcing us to take responsibility.

17 And I also would like to associate myself  
18 with Commissioner Anderson's remarks about the  
19 necessity to force us to engage in what I think the  
20 founders anticipated in setting up our form of  
21 government -- horse trading, moving to the center,  
22 modification of views. And I think that by forcing us  
23 to deal with these more difficult issues, and not just  
24 leaving it to the untrammelled power of staff, that we  
25 will become a better Commission.

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1 CHAIRPERSON BERRY: If there are no other  
2 comments, I guess the motion is on the floor.

3 COMMISSIONER HIGGINBOTHAM: Madame Chair,  
4 I gather that silence -- no response is not considered  
5 that there's not one thought about.

6 (Laughter.)

7 COMMISSIONER HORNER: Fair enough.

8 CHAIRPERSON BERRY: I wish to call the  
9 question. All those in favor of Commissioner  
10 Anderson's motion --

11 COMMISSIONER GEORGE: Just to clarify,  
12 Madame Chairman, I think we're just voting on  
13 Section 2 of my original draft as revised by Carl  
14 Anderson.

15 COMMISSIONER ANDERSON: Yeah.

16 COMMISSIONER GEORGE: Right? Not  
17 Section 1. There's no --

18 CHAIRPERSON BERRY: Yeah, your proprietary  
19 statement here on the part of George.

20 COMMISSIONER GEORGE: What's that?

21 CHAIRPERSON BERRY: I'm telling Anderson  
22 he heard your proprietary statement.

23 COMMISSIONER GEORGE: Oh, I didn't mean to  
24 be proprietary. I just mean -- we're not voting on  
25 the --

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1                   CHAIRPERSON BERRY: I'm getting to it.  
2 We're voting on the George-initiated proposal of your  
3 Section 2, as modified by Commissioner Anderson. And  
4 all of those who are in favor of this proposal -- and  
5 a roll call vote has been asked for. First of all,  
6 let me see what the vote is, and then I'll call the  
7 roll.

8                   All those in favor indicate by saying aye.

9                   (Chorus of ayes.)

10                  Okay. Who said aye? 1, 2, 3, 4. Okay.

11                  All those opposed indicate by saying no.

12                  (Chorus of nos.)

13                  1, 2, 3. And then I have to vote. Hm.

14                  (Laughter.)

15                  COMMISSIONER GEORGE: Surprise us, Madame  
16 Chairman.

17                  (Laughter.)

18                  Let's call the roll.

19                  CHAIRPERSON BERRY: It's a tough one,  
20 Robbie. No.

21                  Commissioner Anderson?

22                  COMMISSIONER ANDERSON: Aye.

23                  CHAIRPERSON BERRY: Commissioner Berry,  
24 no.

25                  Commissioner George?

1 COMMISSIONER GEORGE: Aye.

2 CHAIRPERSON BERRY: Commissioner  
3 Higginbotham?

4 COMMISSIONER HIGGINBOTHAM: No.

5 CHAIRPERSON BERRY: Commissioner Horner?

6 COMMISSIONER HORNER: Aye.

7 CHAIRPERSON BERRY: Commissioner Lee?

8 COMMISSIONER LEE: No.

9 CHAIRPERSON BERRY: Commissioner  
10 Redenbaugh?

11 COMMISSIONER REDENBAUGH: Aye.

12 CHAIRPERSON BERRY: Vice Chair Reynoso?

13 VICE CHAIRPERSON REYNOSO: No.

14 CHAIRPERSON BERRY: Okay. The motion  
15 fails. But let me suggest this. I --

16 COMMISSIONER GEORGE: Well, let me just  
17 say that I am beginning to change my opinion on the  
18 view and have been persuaded by you that work --

19 (Laughter.)

20 CHAIRPERSON BERRY: And I would like to  
21 suggest that I think that maybe we should move for  
22 further discussion on this.

23 COMMISSIONER GEORGE: Okay.

24 CHAIRPERSON BERRY: And I will be speaking  
25 to some of you about some ways that we can do

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1 something else on this.

2 COMMISSIONER GEORGE: I want to know how  
3 I allowed myself to get --

4 CHAIRPERSON BERRY: I'm not giving up  
5 altogether.

6 COMMISSIONER GEORGE: -- so emotionally  
7 invested in subpoena requirements.

8 (Laughter.)

9 CHAIRPERSON BERRY: It's important.  
10 Future agenda items? Anyone have future  
11 agenda items?

12 COMMISSIONER REDENBAUGH: Do you mean for  
13 a future meeting?

14 CHAIRPERSON BERRY: Yes.

15 COMMISSIONER REDENBAUGH: Good. Because  
16 I'm worn out now.

17 (Laughter.)

18 And I wasn't even in the middle. I would  
19 like to come back to two questions. My reading of the  
20 transcript confuses me, as to our project proposal for  
21 '97.

22 CHAIRPERSON BERRY: '97.

23 COMMISSIONER REDENBAUGH: '97. So I don't  
24 want to take it up now, but I think I'd like some  
25 clarification on that. It also is my view that it is

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1 still a very ambitious schedule, from the standpoint  
2 of the eight of us. I don't think the eight of us can  
3 get that done, especially given the length of this  
4 meeting. So that's one thing.

5 And then, secondly, we are still open on  
6 '98.

7 CHAIRPERSON BERRY: Right.

8 COMMISSIONER REDENBAUGH: Right. That's  
9 not --

10 CHAIRPERSON BERRY: We're still discussing  
11 that. Right. Would you like an answer to any of  
12 that, or are you just saying you want to discuss it  
13 some time?

14 COMMISSIONER REDENBAUGH: Yeah, I'm -- I  
15 don't want to discuss anything now.

16 (Laughter.)

17 CHAIRPERSON BERRY: All right. Well,  
18 could I have a motion to adjourn?

19 COMMISSIONER GEORGE: So moved.

20 CHAIRPERSON BERRY: It's not debatable, so  
21 the meeting is adjourned.

22 (Whereupon, at 1:31 p.m., the meeting was  
23 adjourned.)

24

25

**NEAL R. GROSS**

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CERTIFICATE

This is to certify that the foregoing transcript in the  
matter of: Meeting

Before: U.S. Commission on Civil Rights

Date: May 10, 1996

Place: Washington, DC

represents the full and complete proceedings of the  
aforementioned matter, as reported and reduced to  
typewriting.

Charles Foyath

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