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U. S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, July 11, 1997

The Commission met in Room 540, YWCA
Building, 624 9th Street, N. W., Washington, D. C.
20425, at 8:15 a.m., MARY FRANCES BERRY, Chairperson,
presiding.

ORIGINAL

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON
CRUZ REYNOSO, VICE CHAIRPERSON
CARL A. ANDERSON, COMMISSIONER
ROBERT P. GEORGE, COMMISSIONER (Via Telephone)
A. LEON HIGGINBOTHAM, COMMISSIONER (Via Telephone)
CONSTANCE HORNER, COMMISSIONER
YVONNE Y. LEE, COMMISSIONER
RUSSELL G. REDENBAUGH, COMMISSIONER (Via Telephone)

RUBY G. MOY, STAFF DIRECTOR

STAFF PRESENT:

MICHELLE AVER
MARLISSA BRIGGETT
BARBARA BROOKS
DAVID CHAMBERS
KI-TAEK CHUN
JAMES S. CUNNINGHAM
PAMELA DUNSTON
EDWARD A. HAILES, JR.

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STAFF PRESENT: (Continued)

GEORGE M. HARBISON
CAROL-LEE HURLEY
FREDERICK ISLER
JACQUELINE L. JOHNSON
WANDA JOHNSON
WILLIAM LEE
ERIC MANN
STEPHANIE Y. MOORE, GENERAL COUNSEL AND
PARLIAMENTARIAN
CHARLES RIVERA
EILEEN RUDERT
MARCIA TYLER
ANTHONY K. WELLS, SR.
NADJA ZALOKAR

COMMISSIONER ASSISTANTS PRESENT:

JOSEPH BROADUS
ADERSON FRANCOIS
CHARLOTTE PONTICELLI
KRISHNA TOOLSIE

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8:15 a.m.

CHAIRPERSON BERRY: The meeting will come to order.

We want to welcome our new Staff Director in her first public meeting, Ruby Moy, who will get baptism by water, I guess, or fire, depending on what happens today.

Welcome to you, Ruby.

MS. MOY: Thank you.

CHAIRPERSON BERRY: And the first item on the agenda is to approve the agenda.

Could I get a motion to so approve?

VICE CHAIRPERSON REYNOSO: So move.

COMMISSIONER LEE: Second.

CHAIRPERSON BERRY: All right.

All in favor, indicate by saying aye.

(Chorus of ayes.)

So ordered.

The next item is the approval of the minutes of June 13th, 1997.

VICE CHAIRPERSON REYNOSO: So move.

CHAIRPERSON BERRY: Could I get a second?

COMMISSIONER ANDERSON: Second.

CHAIRPERSON BERRY: All in favor, indicate by

1 saying aye.

2 Oh, yes.

3 COMMISSIONER ANDERSON: I have one amendment,
4 if that would be in order at this time --

5 CHAIRPERSON BERRY: Go right ahead.

6 COMMISSIONER ANDERSON: -- on page 3.

7 CHAIRPERSON BERRY: Page 3.

8 COMMISSIONER ANDERSON: At the top of the
9 page, I believe it quotes the discussion about the
10 GPRA. And I think it was our decision that we would
11 say the Commissioners determined the agency's policy,
12 direction and budget priorities. And that would be on
13 page 51 and 52 of the transcript.

14 So if we could insert the words "and budget
15 priorities," after "agency's policy direction."

16 CHAIRPERSON BERRY: That's fine. I think
17 that was the tone and tenor of the discussion. I don't
18 remember the exact language.

19 So we would add that.

20 Anybody have any other changes to the
21 minutes?

22 (No response.)

23 Okay. In that case, ready for the question?

24 All in favor, indicate by saying aye.

25 (Chorus of ayes.)

1 Opposed?

2 (No response.)

3 Now we go to announcements.

4 Hopefully, the fact that we scheduled this
5 meeting today to last all day may eliminate the need
6 for the August 15th meeting, although we agreed that we
7 would have one on August 15th if we need one. So we'll
8 just see how it goes. This is a new departure for us.

9 The staff has given each Commissioner the
10 option of placing an order for lunch. We expect to
11 break for lunch about noon. If you want to make an
12 order for something to eat, write it on the menu and
13 the staff will pick it up. I think that's been done.

14 So that takes care of that part of the
15 business.

16 The other thing is that after we -- when we
17 get to the Future Agenda Items, we'll need to discuss
18 the Crisis of African-American Males in inner cities,
19 when to have the consultation, and we'll need to
20 discuss the Schools and Religion Project to figure out
21 what cities we're going to and when we expect to do
22 this. And hopefully, Commissioner George will be on by
23 that time.

24 I just wanted to let you know so that you
25 would know that after we finish the Education Reports,

1 there were these other items under Future, that we
2 really needed to do.

3 The other thing that I wanted to announce to
4 you is that the oversight hearing has been scheduled
5 for Thursday, July 17th, at 2:00 p.m., and in Room B-
6 352 of Rayburn. And I certainly hope that any
7 Commissioners who can -- and I certainly expect
8 Commissioner Anderson to show up, please.

9 If you're available, I really would. We need
10 you.

11 But I would hope that any Commissioner who is
12 available and who is interested and has the time would
13 be willing to appear in behalf of our -- to respond at
14 the oversight hearing.

15 So that's on July 17th at 2:00 in Room B-352
16 of Rayburn.

17 The other thing is that everybody got, I
18 hope, the GAO Audit Report. The staff sent copies to
19 all the Commissioners and I was told that the GAO was
20 sending copies. So maybe you got two copies. But in
21 any case, you should have gotten at least one copy of
22 the report.

23 And we discussed the report, of course, at
24 the last meeting, the draft report, and I didn't see
25 that many things that were changed in it. So I don't

1 if there's any need to discuss it, but we may want --
2 somebody may have something to say about.

3 But anyway, I hope you got it, so we won't
4 have Commissioners who don't have it available and who
5 do not see it.

6 The other is that I went to Louisiana and
7 Mississippi and Alabama at the end of June with a SAC
8 Chair and the SAC members in Alabama. It was
9 revisiting the places in the Delta and in Louisiana and
10 Black Belt, Alabama, Green County, that we went to last
11 year on the issue of the church fires. And we held a
12 forum. They held a forum in Boligee and we had site
13 visits in the other places, and there were Executive
14 summaries made of the transcripts. And the transcripts
15 -- well, there will be Executive Summaries. They
16 haven't been done yet. But there were transcripts of
17 the meetings and as soon as those are available, and
18 the Executive Summaries, we will distribute them to the
19 Commissioners.

20 The SAC members want to hold another press
21 conference like they did before, but I don't know how
22 that will turn out. I guess it depends on what they
23 think after they read the transcripts and the Executive
24 Summaries, and they'll make a judgment.

25 The idea was to go also to Tennessee and

1 South Carolina and North Carolina as a consideration,
2 but the SAC Chair, two of them who have been contacted
3 by the Regional Directors, do not feel that it is
4 timely to go to their states for a lot of local reasons
5 which I'm not sure I quite understood. But that's
6 their -- it's a SAC business. It's not our business.

7 So, I think that's probably a decision from
8 the SACs about whether the three want to have a press
9 conference of some kind either here or in Atlanta or
10 someplace where they can all get to.

11 I met, when I was in Mississippi -- along
12 with the Regional Director, and the SAC Chair was
13 invited -- with Governor Fordice of Mississippi. The
14 SACs had asked last year to meet with the governors in
15 those states, and the Governor of Louisiana, whose name
16 I think is Foster, did meet with the SAC last year, and
17 they had a very good meeting, and a lot of initiatives
18 have been taken in Louisiana.

19 The SAC Chairs were not able to meet --
20 Rodney Max, who's been our very aggressive SAC Chair in
21 Alabama, who's a lawyer in Birmingham, and our SAC
22 Chair in Mississippi, Professor Ward, had been trying
23 to meet with the governors and the governors wouldn't
24 put the SACs on their calendars.

25 So when I went to Mississippi, the SAC asked

1 again for a meeting and the governor did meet with me
2 and we had the meeting. And we had, as we described it
3 to the press, a very fruitful exchange of views, and we
4 agreed to agree about a lot of things and disagree
5 about some others. And it was a good meeting.

6 One of the most productive things that came
7 out of it, the SAC had been trying to get the governor
8 in that state and the Governor in Alabama to consider
9 sitting up a human rights agency or asking the
10 legislature to, because there are six states that don't
11 have human rights agencies. And the SACs in those six
12 states have recommended human rights agencies.

13 Once Governor Fordice understood that the
14 human rights agency was not just a race relations
15 agency but it was for people who had complaints about
16 everything from sexual harassment to age discrimination
17 to a whole range of issues and that now the people of
18 Mississippi have to go to Atlanta if they want to file
19 a complaint, it didn't seem perfectly reasonable for
20 him to tell the press that they didn't even need one in
21 Mississippi.

22 So he agreed that he will immediately engage
23 in a consideration of how to set up one, or if he
24 could, or if could get the legislature to do it. And
25 he told the press that, which was very good.

1 The other thing he did which was very useful,
2 the SAC and I had been trying to call to his attention
3 the school situation in the Delta, which we saw when we
4 went -- we heard testimony about when we went down to
5 Mississippi about some of the schools. And in
6 particular, in Tunica, I think it is, where the state
7 has taken over the school because of fiscal reasons as
8 well as student achievement reasons, which is something
9 that has happened elsewhere.

10 And he was persuaded after long discussion
11 that the state ought to be responsible for trying to
12 improve the quality of education in those schools, as
13 well as to deal with fiscal irregularities. And he
14 said that he would have his education people do that
15 and that he took personal responsibility, and that our
16 SAC can come meet with him in six months to get an
17 update on what he's doing.

18 So I thought that was a very good meeting.
19 And since that time, the Governor of Alabama who found
20 out that the meeting took place with the Governor of
21 Mississippi, has been trying to figure out whether he
22 can set up a meeting for a similar thing. So I think
23 it was worthwhile and it was a good visit.

24 The other thing I wanted to report to you is
25 that the briefing that Commissioner Redenbaugh asked

1 for on regulatory barriers to minority enterprise,
2 which was put off, is scheduled for the September
3 Commission meeting. So I want to remind you, again, if
4 you have names of people who you would like to have
5 included in the briefing, you should submit those
6 names. And we don't really have a deadline, but you
7 should do it as soon as possible so that people can
8 find out whether they can come or not and engage them
9 in that.

10 So that's for September. We want to plan
11 that for September.

12 The other thing I want to tell you is that
13 the -- well, I'll do this under staff -- we can do this
14 under Staff Director.

15 On the Wall Street Report Project, it's been
16 almost two years that we've had the boxes of data on
17 the Wall Street Project, and about three, four weeks
18 ago, the General Counsel had been telling us that that
19 project was being delayed because of the need to get
20 the statistical analysis done of all those boxes of
21 data that we collected.

22 And as you know, CNBC came here and did a
23 story on it, and NBC did a story on the Wall Street
24 Project in the expectations that the Commission would
25 finish it.

1 But the statistical work -- there's only one
2 statistician in the agency -- has been much delayed.
3 And we all discovered about three weeks ago that the
4 boxes on only one company had been analyzed in the two
5 years since we did the work. And the lawyers in the
6 General Counsel's office cannot finish the report until
7 the statistical work is done.

8 So that in order to get this done, the staff
9 has let a contract for \$25,000 to a statistical firm
10 that promises that within 60 days they will help get
11 the data analyzed, which is some --

12 How many boxes? How many copies it is?

13 Thirty-something copies.

14 So if we've done one by now in two years and
15 if we had 35, depending on how many boxes each one had,
16 one can imagine how long it would take, which would
17 just be awful in terms of the usability of the data.
18 And the lawyers can't finish until the stuff is done.

19 So I just wanted to let you know that that,
20 upon being discovered, is being done to get the report
21 done.

22 Aside from that, I don't really --

23 COMMISSIONER REDENBAUGH: Excuse me, Mary.

24 CHAIRPERSON BERRY: Yes.

25 COMMISSIONER REDENBAUGH: This is

1 Commissioner Redenbaugh. Does that, the report you
2 just gave, suggest that we need different project
3 management tools beyond what we have?

4 CHAIRPERSON BERRY: Well, what it suggests is
5 that we need to have more -- we are being told
6 repeatedly in the staff report about delays in
7 projects. And we even had a discussion here in the
8 meeting about only having one statistician. You may
9 remember that.

10 COMMISSIONER REDENBAUGH: I do.

11 CHAIRPERSON BERRY: On three or four
12 occasions. And how hard it was to get the stuff done.
13 But nothing was ever done about it.

14 And so what I did when I was informed during
15 the tenure of Eddie Hailes as Deputy Staff Director,
16 the General Counsel said again that we had to
17 understand this wasn't going to get done unless
18 somebody did something. We decided that we needed to
19 do something, so something was done.

20 It probably should have been done a long time
21 ago.

22 COMMISSIONER REDENBAUGH: Well, I was
23 thinking not so much of the instant case but --

24 CHAIRPERSON BERRY: Every case.

25 COMMISSIONER REDENBAUGH: There may come to a

1 class of issues where project management approaches and
2 tools could be valuable. That's the only point I
3 raise.

4 CHAIRPERSON BERRY: Well, I think in the
5 management information system which is being prepared
6 for our use, that was discussed with us. Remember, we
7 got a promise that we would have it by October, I think
8 it was the beginning of the fiscal year, that part of
9 what that system ought to do is give us better
10 information in a more concentrated fashion.

11 COMMISSIONER REDENBAUGH: Yes. I think the
12 purpose of that -- my understand of that is more of a
13 look-back rather than a tool that would actually look
14 forward and be useful in the management of projects.
15 But I'm not clear about that. That's just the
16 impression I have.

17 CHAIRPERSON BERRY: Oh. Well, my impression
18 of it was it was going to do both; give us a look-back
19 and also include the projections, again, about what's
20 happening; how much it's supposed to cost; updates on
21 what's happening. And so that it would concentrate our
22 minds on what --

23 COMMISSIONER REDENBAUGH: At a high level,
24 like Commissioner level oversight.

25 CHAIRPERSON BERRY: Right.

1 COMMISSIONER REDENBAUGH: I don't know that
2 that would necessarily be useful for people who are
3 actually managing the components of a project.

4 CHAIRPERSON BERRY: Okay.

5 COMMISSIONER REDENBAUGH: We need to take a
6 look at it, I would think.

7 CHAIRPERSON BERRY: Yes. We can talk about
8 that. But my own view on this specific one, which may
9 apply to others, to be just very blunt about it, is
10 that when the Staff Director was told over and over
11 again that this project is not going to get done unless
12 we do something about this issue, that somebody should
13 have done something. That's my view.

14 COMMISSIONER REDENBAUGH: Yes. I don't have
15 a different view.

16 CHAIRPERSON BERRY: And that that could be
17 done without doing anything except using management,
18 judgment. I mean, that's my view. Now, I may be wrong
19 about that.

20 Commissioner Anderson has his hand up.

21 COMMISSIONER ANDERSON: If I might say, I
22 think part of the problem here is a matter of judgment
23 and information. It's one thing to say in very general
24 terms with one statistician we can't get everything
25 done, and therefore, things are going to be delayed.

1 It's another thing to say we've got X number of boxes
2 and in two years we've gone through one box, but for
3 \$25,000 a firm can go through the rest of them in 60
4 days.

5 It would be my view that this is precisely
6 the kind of thing that ought to come to the Commission
7 if there's any question early on. If we need another
8 \$25,000 directed to do something or there's any
9 question, let's get that before the Commission in a
10 kind of informal how do we proceed in the matter, if
11 there's any question that there may not be support of
12 it.

13 But I would say without going through --
14 there isn't always the necessity to go through a very
15 structured information management assessment process
16 that itself takes 60 to 90 days. When there's a
17 problem like this, just come say, look, here's the
18 problem, and how do we move forward on it, and get a
19 quick consensus and let's resolve the thing and move
20 forward.

21 I think there could have been much more of
22 that in the past without too much difficulty among the
23 Commissioners, I would think.

24 CHAIRPERSON BERRY: Commissioner Horner, did
25 you have your hand up?

1 COMMISSIONER HORNER: Yes, Madam Chair. I
2 believe \$25,000 is the maximum that can be spent
3 without competing a contract. So for the record, could
4 we know the name of the organization with whom the
5 Commission has contracted? Do you know the name of the
6 organization?

7 CHAIRPERSON BERRY: Yes. It's a company
8 called Shick and Affiliates.

9 COMMISSIONER HORNER: And what are their
10 credentials?

11 CHAIRPERSON BERRY: I don't know
12 specifically, personally.

13 COMMISSIONER HORNER: I wonder if the Staff
14 Director could tell us. I'm concerned because we are
15 only as good as our statistics. And if this company
16 gives us bad work, we will not know that fact. We will
17 only have the results.

18 Therefore, I want to be assured that the
19 company has a very strong and reliable reputation.

20 CHAIRPERSON BERRY: Well, we'd be happy to.
21 I'll have to ask the Staff Director to give you copies
22 of the contract particulars so that you can review them
23 and satisfy yourself.

24 COMMISSIONER HORNER: I would just like to
25 see the curriculum vitae of the officers of the company

1 and the people who will be working on the project,
2 including how long they've been in business.

3 CHAIRPERSON BERRY: Anybody have anything
4 else?

5 (No response.)

6 Okay.

7 COMMISSIONER HORNER: Madam Chair, I have a
8 procedural question. Via a source outside the
9 Commission, I've received a White House press release
10 announcing the President's intent to nominate Ruby Moy.
11 It is dated June 19th. We voted on June 13th and we
12 voted because you urged us to vote on the basis of a
13 letter from the Assistant to the President for
14 Presidential Personnel telling us the President would
15 select Ms. Moy.

16 At that time, I raised the question that this
17 was unusual in my experience. That usually, the
18 President expresses his nomination or his intent to
19 nominate via a press release. Nonetheless, we did vote
20 unanimously to confirm Ms. Moy. And I would like to
21 know from you or from someone who can give us an
22 authoritative answer whether we indeed did vote to
23 confirm Ms. Moy before the President nominated her.

24 CHAIRPERSON BERRY: No. I showed you the
25 copy of the letter from -- didn't I?

1 COMMISSIONER HORNER: Yes. But the President
2 nominated her officially on June 19th and we voted to
3 confirm her on June 13th.

4 CHAIRPERSON BERRY: The President didn't
5 nominate her on June 19th.

6 COMMISSIONER HORNER: It says here June 19th,
7 for immediate release, on White House stationary. "The
8 President today announced his intent to appoint Ruby
9 Moy."

10 How is it he can announce his intent to
11 appoint her?

12 CHAIRPERSON BERRY: He did not announce his
13 intent to nominate her. He announced his intent to
14 appoint her, which meant that he was going to have the
15 papers signed to make the appointment after you had
16 voted to confirm her, which has to be done for this.

17 COMMISSIONER HORNER: Well, he cannot
18 announce his intent to appoint her when she has already
19 been confirmed. He can announce his appointment.

20 Now, perhaps the White House --

21 CHAIRPERSON BERRY: Made a mistake.

22 COMMISSIONER HORNER: Made a mistake. That's
23 all. I just wanted a clarification in the record that
24 it would seem that the White House made a mistake.

25 CHAIRPERSON BERRY: Okay.

1 COMMISSIONER HORNER: Or somebody made a
2 mistake.

3 CHAIRPERSON BERRY: We will inform them that
4 somebody made a mistake, but clearly she was nominated,
5 she was confirmed. I sent the letter back to the White
6 House saying that you had voted unanimously to confirm
7 her and then they processed whatever they needed to
8 process to appoint her. That's my understanding.

9 But I will point out to them that the press
10 release is confusing.

11 COMMISSIONER HORNER: Please do. We've had
12 enough procedural problems.

13 And I want to personally welcome Ruby Moy.

14 MS. MOY: Thank you, Commissioner.

15 CHAIRPERSON BERRY: Okay. All right.

16 Then we go to the -- unless somebody else has
17 an announcement, we go to the Staff Report.

18 Anybody have any questions on the Staff
19 Report?

20 (No response.)

21 Nobody has any questions?

22 COMMISSIONER REDENBAUGH: Well, perhaps this
23 is the place.

24 CHAIRPERSON BERRY: Yes, Commissioner
25 Redenbaugh.

1 COMMISSIONER REDENBAUGH: Yes. Thank you.
2 I didn't see in the material that we have,
3 the GPRA submission.

4 CHAIRPERSON BERRY: Right.

5 COMMISSIONER REDENBAUGH: And my recollection
6 is that it was done to us for review before this
7 meeting because the submission of it is require fairly
8 shortly.

9 CHAIRPERSON BERRY: The submission of it is
10 required with our budget, whenever we submit our
11 budget. Which, as you know, last year -- I've
12 forgotten when it was. It was sometime way after --
13 whenever.

14 But the reason why the GPRA, the rest of it,
15 is not on the agenda, is I had planned to put it on the
16 agenda but it was not finished. It had to be revised.
17 And it was revised and completed only yesterday and is
18 being reviewed by the Staff Director. So it wouldn't
19 have made sense to put it in the agenda.

20 So what we'll have to do is send it to you
21 for review. And if we have a meeting in August, we'll
22 consider it. And if we don't, we'll have to consider
23 it in September.

24 COMMISSIONER REDENBAUGH: Okay.

25 CHAIRPERSON BERRY: So that's what happened

1 to it.

2 COMMISSIONER REDENBAUGH: Thank you.

3 CHAIRPERSON BERRY: The other thing that I
4 forgot to announce is that we have -- you may have
5 noticed or not noticed that we don't have a Personnel
6 Director in the Commission, and there was a competitive
7 process and a Personnel Director has been selected
8 through that process. And the person is going to start
9 but we don't really know when.

10 I think, Ruby, I guess you're negotiating about a
11 start date? Is that right?

12 MS. MOY: Correct, Madam Chair.

13 CHAIRPERSON BERRY: Okay.

14 COMMISSIONER REDENBAUGH: How long has that
15 position been vacant?

16 CHAIRPERSON BERRY: Since -- Jerry Hall was
17 the last Personnel Director.

18 COMMISSIONER REDENBAUGH: Oh, right.

19 CHAIRPERSON BERRY: And then she became
20 Deputy Staff Director. Remember?

21 COMMISSIONER REDENBAUGH: Yes.

22 CHAIRPERSON BERRY: And then she left.

23 COMMISSIONER REDENBAUGH: Yes. I do recall
24 now.

25 CHAIRPERSON BERRY: So it 's been since she

1 left the position.

2 COMMISSIONER REDENBAUGH: Thank you.

3 CHAIRPERSON BERRY: Okay.

4 Anyone else have anything else in the Staff
5 Director's Report?

6 (No response.)

7 Okay. If not, then -- if I can find a piece
8 of paper -- the next item on the agenda is an Executive
9 Session. And the reason why it's on the agenda is that
10 we agreed that when the new Staff Director came at the
11 first meeting we would have an Executive Session to
12 have some discussion with the new Staff Director on
13 matters of internal management and policy
14 implementation.

15 So do I have a motion to go into Executive
16 Session for that purpose? I need a motion.

17 VICE CHAIRPERSON REYNOSO: So move.

18 CHAIRPERSON BERRY: Okay. The motion does
19 not need a second. So we have a motion.

20 And will the Parliamentarian issue an opinion
21 regarding coverage under the Sunshine Act?

22 MS. MOORE: Based on today's motion and on
23 the June 13th Commission meeting, I certify that
24 pursuant to the requirements of -- [inaudible] --
25 internal personnel rules and practices of the agency or

1 Exemption 6 concerning information of a personal nature
2 where disclosure would constitute a clearly unwarranted
3 invasion of personal privacy, discussion of internal
4 management and policy implementation may be closed to
5 the public.

6 CHAIRPERSON BERRY: Okay. So if there is no
7 objection from any Commissioner and if no one believes
8 that the public interest requires open discussion of
9 these matters of internal management and policy
10 implementation, we will now, by consent, go into
11 Executive Session.

12 That means that only the Commissioners, the
13 Parliamentarian and the stenographer may remain in the
14 room.

15 I would say for purposes of your own
16 schedules, those of you who are sitting there, so that
17 you can figure out how this might go, I don't think it
18 will take over an hour, and it may take under that.
19 But I just thought I'd let you know, and you can check.

20 All others, please leave until we reconvene
21 in the public session.

22 (Whereupon, the public session was adjourned
23 at 8:45 a.m. and the Commissioners met in Executive
24 Session.)

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10:05 a.m.

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(Whereupon, the public session was resumed,
as follows:

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CHAIRPERSON BERRY: The next item on the
agenda is the SAC appointments for Florida, Georgia,
Indiana, Louisiana, Maine, Tennessee and Virginia.

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Could we, if there's no objection, simply
take them all up, unless somebody has some particular
one.

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Could I get a motion on the SAC appointments?

VICE CHAIRPERSON REYNOSO: So move.

COMMISSIONER LEE: Second.

CHAIRPERSON BERRY: Let me -- did we get a
second?

I got a second. Okay.

Discussion.

Let me just say that Rabbi Agan, who is the
Chair of the Florida SAC and who is being recommended
for reappointment has informed us that sometime in the
next few months he is leaving Florida for a new
assignment at another position, another synagogue in
St. Louis or someplace. I've forgotten where. So he
will, although if this vote passes, he will be approved
as a member, we'll probably make the most -- the
Regional Office would probably use the most senior next

1 person as acting until we get a new appointment.

2 And you can also have this for your
3 information if you have any concerns about anybody in
4 Florida who you want to recommend.

5 So we're going to approve this today. And if
6 we do, he will stay in office as Chair. Then there'll
7 be acting, and hen there'll be a new appointment. I
8 just wanted to inform you of that so that you would
9 know.

10 Does anyone have any other comment or
11 discussion before we vote?

12 (No response.)

13 Okay. All in favor of the SAC appointments,
14 indicate by saying aye.

15 (Chorus of ayes.)

16 Opposed?

17 (No response.)

18 All right. Then so ordered.

19 Now we go to the Equal Educational
20 Opportunity Reports. We're going to take them up in
21 the order that they were sent to us, assuming that the
22 earliest one we read first and the next one in line we
23 read second, and the next one in line we read third and
24 the next one.

25 The report on disability would be the first

1 one, which was sent out to the Commissioners on May
2 5th. May 5th was when that was sent to the
3 Commissioners.

4 After that, we will do the Limited English
5 Proficiency report, which was sent to the Commissioners
6 on May 15th. And then after that, the gender --
7 gender, I guess it's called. Yes. Equal Educational
8 Opportunity and Nondiscrimination of Girls in Math and
9 Science Advance, which was sent out to the
10 Commissioners on June 5th.

11 And then finally, the last one that was sent
12 to the Commissioners on July 1st, which is the ability
13 grouping report. So we will just take them up in that
14 order.

15 And for purposes of discussion, could I get a
16 motion from somebody that we approve the one called
17 Equal Educational Opportunity and Nondiscrimination for
18 Students with Mental, Learning, Behavioral and Serious
19 Emotional Disabilities, Federal Enforcement of Section
20 504.

21 COMMISSIONER HORNER: So move.

22 CHAIRPERSON BERRY: Could I get a second?

23 COMMISSIONER ANDERSON: Second.

24 CHAIRPERSON BERRY: All right. Let us begin
25 the discussion.

1 And I had said last time that we would simply
2 ask whether Commissioners had comments or -- the
3 special assistants had a series of discussions about
4 this report and my understanding is that they made
5 certain agreements for modifications. And any approval
6 of this report will, as in our past discussions,
7 include the changes that the special assistants agreed
8 to. That's understood.

9 And so if anyone has other changes that they
10 would like to discuss or anything else that they would
11 like to say about the disability report, I will say,
12 just doing it in order, does anyone have any comments,
13 further comments that they would like to make on the
14 preface of the disability report?

15 I'm just going to go chapter by chapter. If
16 anybody's got anything, let's do it. And if not, then
17 we'll just move.

18 Does anyone have anything that they would
19 like to add on Chapter 1 of the disability report?

20 VICE CHAIRPERSON REYNOSO: Madam Chair?

21 CHAIRPERSON BERRY: Yes, Vice Chair.

22 VICE CHAIRPERSON REYNOSO: I want to mention
23 that I thought that Chapter 1 and Chapter 2 were
24 particularly well done in terms of the background and
25 problems that have arisen in the past.

1 CHAIRPERSON BERRY: Okay.

2 Any comments, suggestions on Chapter 2?

3 Chapter 2.

4 COMMISSIONER GEORGE: Madam Chairman?

5 CHAIRPERSON BERRY: Yes, Commissioner George.

6 COMMISSIONER GEORGE: I feel it would make
7 sense before asking about the individual chapters to
8 ask whether anybody wants to make comments of a general
9 nature about the report as a whole.

10 CHAIRPERSON BERRY: All right.

11 Well, if anyone would like to make comments
12 of a general nature about the report as a whole, please
13 feel free to do so.

14 Yes, Commissioner Horner?

15 COMMISSIONER HORNER: Unless something
16 changes in the report, I plan to vote for it. But I
17 would just like to -- when I say unless something
18 changes, I mean pursuant to this discussion. I would
19 nonetheless like to make two comments.

20 One is that I read recently in The New York
21 Times in a front page story that some enormous
22 percentage of New York City's education expenditures
23 are going for disabled students. It was a number that
24 flew in the face of anyone's common sense notion of how
25 many people are -- how many kids are disabled

1 physically, emotionally, however. And I think it would
2 be good when we discuss disability in the future for
3 the staff to make us aware of the larger argument
4 that's going on, fiscal argument that's going on on the
5 subject of whether the use of the term disability has
6 been expanded to cover people who aren't disabled in
7 order to garner federal funds for other purposes.

8 And when we put a report out like this -- as
9 I say, I'm going to vote for this. But when we put it
10 out, we look a little odd not to be engaging what seems
11 to be a large discussion in the fiscal and political
12 sphere of the state, municipality and maybe federal
13 level, for all I know.

14 So, I would just urge the staff to -- when
15 there is a major discussion in the general public realm
16 on a subject like this, to take account of it, even if
17 to reject it and to explain why it should be rejected.
18 Although I suspect it isn't easily rejected.

19 The other comment I would make is to ask for
20 someone involved in the writing of the report or
21 someone, I don't know who, to explain a little bit what
22 is meant by the phrase "cultural norm." There are
23 about four or five references in the report to
24 "cultural norms" being misunderstood as disability. In
25 other words, a kid is labeled disabled but if the

1 labeler understood the culture of the kid, that label
2 would not be applied or might not be applied.

3 I didn't see specific examples of this. And
4 just for my information, can someone give me an example
5 of what this would be?

6 CHAIRPERSON BERRY: Would you mind,
7 Commissioner Horner, if I take note of your question,
8 then see if anyone else has a general question?

9 COMMISSIONER HORNER: Sure.

10 CHAIRPERSON BERRY: And then I'll ask the
11 staff to respond.

12 Okay. Does anyone else care to make a
13 general statement about the report or to ask a question
14 about the general approach or to advise us of any
15 comments or responses that they would like to make
16 before I go back to asking Commissioner Horner's
17 question and then go back to the chapters?

18 Now, see, Commissioner George, since you said
19 that, I thought you had a general statement that you
20 wanted to make.

21 COMMISSIONER GEORGE: Oh, no. [Inaudible.]

22 CHAIRPERSON BERRY: Okay. I understand.

23 In that case, then, we'll get an answer to
24 Commissioner Horner's question about cultural norms.

25 Now, Fred Isler, do you want to answer this

1 question or have one of your staff members answer it?

2 MR. ISLER: I'm going to have to ask David.

3 CHAIRPERSON BERRY: David is going to answer
4 it?

5 David, come up here. See, there's a
6 microphone right there. See right there in that chair?

7 Talk in that.

8 You are David --

9 MR. CHAMBERS: I am David Chambers.

10 CHAIRPERSON BERRY: Right. You can sit down
11 if you want.

12 MR. CHAMBERS: Thanks. I'll attempt to speak
13 to the question.

14 I think that there may be some variety of
15 behavior across various racial/ethnic lines that may be
16 interpreted differently by people who are not exposed
17 to say, for example, people who have an intimate
18 knowledge of that culture. The culture, referring to
19 such things as language, religion, community values.

20 I think that there may be some differential
21 and some of those things may come across in specific
22 behaviors or patterns of speech that may be different
23 across racial and ethnic lines. And I think that's
24 what we're speaking about when we refer to cultural
25 norms.

1 COMMISSIONER HORNER: I understood that
2 conceptually but what I want is one or two examples,
3 because my disposition is not to accept that as
4 reality. And so I want to be educated on it just very
5 briefly.

6 Give me an example.

7 MR. CHAMBERS: I suppose a specific example
8 might be --

9 CHAIRPERSON BERRY: And you can hold that
10 down a little bit. Just pretend it's a lapel thing.

11 MR. CHAMBERS: Okay. I guess a specific
12 example might be in the Navaho community. I understand
13 that there's very little emphasis placed on speaking
14 and so a student might be silent quite frequently
15 because in this particular community there's a vast
16 divergence on the basis of the deference that's shown
17 by the child for an elder. And so the child is taught
18 at home not to speak. And this may be interpreted by
19 someone in the disability community in the school as
20 evidence of a disability when in fact there isn't one
21 present or it may lead to a wrong evaluation.

22 COMMISSIONER HORNER: Could you give me just
23 one more example?

24 MR. CHAMBERS: Yes.

25 MR. ISLER: One of the examples that's very

1 glaring, when we visit the Shaw school systems and we
2 went to the various schools where they had students
3 identified as learning and behavioral disabilities, we
4 were very shocked to find out that all of the students
5 that were in the classroom identified as behavioral
6 disabilities were young black males of age 8-years old.
7 And one of the things that we notice is that they were
8 very active and low attention span, and we questioned
9 them as to whether they actually should be classified
10 as a learning disability or whether the behavior
11 disability should be at the level of a disability. And
12 we didn't get a clear answer.

13 And they then said -- well, for some reason,
14 they didn't seem to notice that you had 12 young black
15 males in the class. And as a matter of fact, they had
16 all the desks turned toward the walls, which was very
17 shocking to us. And we asked them to reevaluate that
18 and reassess that and to discuss that with their
19 parents and determine whether it was normal for them to
20 be very active and very busy, and maybe they did not
21 have a learning disability, that it was part of their
22 upbringing.

23 COMMISSIONER HORNER: That's what I thought
24 this meant. And in the future, I think an example like
25 this is helpful to the reader just to test against the

1 conceptual understanding.

2 I also would suggest that to call, say,
3 inability to defer gratification or impulsiveness
4 hyperactivity is a mislabeling if it indeed represents
5 the child simply never having been taught. But I also
6 would question whether we ought to call not having been
7 taught impulse control a cultural norm. Even though in
8 a social science sense it may be a cultural norm, I
9 think we ought to use some normative language and say
10 clearly what it is. It's kids who haven't learned to
11 control impulses.

12 When you call it just a cultural norm, that
13 implies you're indifferent to it except descriptively.

14 CHAIRPERSON BERRY: Except -- can I help out
15 a little bit here?

16 MR. ISLER: Sure.

17 CHAIRPERSON BERRY: There are in some
18 families, including my own, where young black males up
19 to about the age of 9, are expected to range about in
20 the way that you were talking about. It's part of their
21 being themselves.

22 Now one may disagree with this and think
23 that's stupid, but that no one who -- I don't have a
24 child myself, but I'm talking about cousins and nieces
25 and nephews and all that whole range of people. That

1 if they behave that way, which some people would
2 characterize as low attention span, acting out, they're
3 just being boys in the perception of my family's
4 culture.

5 Now, you may say we ought to change my
6 culture, but I think that if a teacher knew that or at
7 least made an inquiry, they would say, look, that's not
8 going to work here and talk to the parents and say
9 here's what we've got to do with Johnny, whatever. But
10 it's still part of our cultural -- I mean, that's just
11 how we do things.

12 Now, there may be another label to be put on
13 it. Family -- I mean, I don't know what to call it,
14 the approach that some people have in their families to
15 how they think kids should behave.

16 COMMISSIONER HORNER: Now, I entirely agree
17 with you and agree with the report that children who
18 fit into this category ought not to be labeled
19 disabled. They're not. And it destroys the real
20 meaning of disabled for kids who really are disabled
21 and have a medical problem.

22 I just am calling for a little more
23 discussion on an equally -- perhaps an equally
24 important subject, which is does that cultural norm
25 make learning more difficult and create failure for the

1 child. And if so, should the cultural norm be changed
2 or should the system be changed for all children in
3 order to accommodate that cultural norm.

4 I would contend it can't be and shouldn't be
5 and I know there's an argument on that. But I think we
6 ought to surface some of these things because these are
7 the vital arguments going on in the policymaking realm.

8 CHAIRPERSON BERRY: And the way we dealt with
9 it was to have the teacher, once we discovered this
10 because one of the kids was labeled -- have the teacher
11 figure out better ways to make the kid interested.

12 COMMISSIONER HORNER: Well, I would contend
13 as a former teacher that you can do a bit of that but
14 that it is at the expense often of the other kids in
15 the class whose cultural norm is impulse control. And
16 it's perhaps not fair to the majority who are
17 controlling their impulses to handle it that way.

18 CHAIRPERSON BERRY: And that's what you're
19 asking us to discuss?

20 COMMISSIONER HORNER: No. I don't want to
21 discuss it now. I'm just saying this is the kind of
22 thing that underlies the national discussions and we
23 tend to suppress the real discussion that's going on in
24 our report and have only a discussion -- enough said.
25 I don't want to belabor this.

1 MR. ISLER: We did do research on that issue
2 but we decided not to expand the discussion because
3 you'll find out that there's more pro on that that
4 supports the theory of cultural norm versus that it's
5 not a cultural norm issue. So therefore, we decided
6 not to expand the discussion.

7 COMMISSIONER HORNER: Fine.

8 CHAIRPERSON BERRY: Instead of wading into
9 much deeper water -- and we see why you didn't discuss
10 it.

11 COMMISSIONER HORNER: I'm done.

12 CHAIRPERSON BERRY: Just keep in mind that on
13 these big national debates it would enrich our
14 reports -- I think that's what Commissioner Horner is
15 saying -- for us to pay attention to these kinds of
16 issues and address them rather than being so bland in
17 the approach.

18 COMMISSIONER HORNER: Well, there's a whole
19 audience that says, "What does this have to do with
20 anything?"

21 CHAIRPERSON BERRY: With my kids. Yes.

22 COMMISSIONER HORNER: Because they've got a
23 big issue in front of their eyes. And if we don't
24 mention that big issue and deal with it a bit then we
25 have less credibility. That's all.

1 CHAIRPERSON BERRY: I agree.

2 COMMISSIONER HORNER: But as I say, I'm going
3 to vote for this.

4 CHAIRPERSON BERRY: Okay.

5 Now, I asked if anyone had any questions
6 about Chapters 1 and 2. Does anybody have any
7 questions about Chapter 3, which is National
8 Statistical Trends for Students with Disabilities?

9 Is there anything else to add or change in
10 that chapter?

11 (No response.)

12 Okay. If not, then the next Chapter, which
13 is 4, which is about how the U.S. Department of
14 Education implements compliance and enforcement with
15 laws affecting students with disabilities, mental
16 retardation, et cetera.

17 Anybody have anything else to add to that
18 chapter?

19 (No response.)

20 We'll go to Chapter 5. Anyone have anything
21 on diagnostic and screening procedures?

22 (No response.)

23 If not, then we go to Chapter 6, Structuring
24 the Educational Programs to Serve a Diverse Population.

25 And then Chapter 7, Providing Parental

1 Notification and Ensuring that Institutional Programs
2 Facilitate and Encourage the Involvement of Parents in
3 Their Children's Education.

4 I must say that some of these titles are
5 really wordy. The whole title, the whole thing is very
6 wordy.

7 Chapter 8, Evaluating the Training and
8 Certification of Teachers, Facilities and Other
9 Resources and Allocating Teacher's Facilities and Other
10 Resources Prior to their Development during the
11 Implementation of Educational -- that's Chapter 8.

12 Anybody got anything on that?

13 If not, then we go to Chapter 9. And Chapter
14 9 is about eliminating barriers, providing access to
15 all subjects, activities and career opportunities for
16 each student to maximize his or her potential.

17 And then, Chapter 10, Findings and
18 Recommendations.

19 So we come to the end of the report on
20 disabilities.

21 Yes, Vice Chair?

22 VICE CHAIRPERSON REYNOSO: Could I ask a
23 question? Is it a practice to number -- to have the
24 pagination go by chapter rather than from the beginning
25 of the report to the end? I just found that a little

1 bit confusing.

2 COMMISSIONER HORNER: Yes.

3 CHAIRPERSON BERRY: Well, when it's printed
4 it doesn't, does it? When it's printed it will go --

5 VICE CHAIRPERSON REYNOSO: That's what I
6 remember, so it seemed a little bit -- a little
7 puzzled.

8 CHAIRPERSON BERRY: Okay. Well, if there are
9 no other questions about this then I will all for the
10 question and ask you to vote on this disabilities
11 report.

12 All those in favor of the approval of the
13 report, indicate by saying aye.

14 (Chorus of ayes.)

15 Opposed?

16 (No response.)

17 Okay. It is unanimous.

18 Then we come to the Equal Educational
19 Opportunity and Nondiscrimination for Students with
20 Limited English Proficiency, Federal Enforcement of
21 Title VI and Lau v. Nichols, which was sent to the
22 Commissioners on May 15th.

23 Could I have just for purposes of discussion
24 only a motion to approve the report?

25 VICE CHAIRPERSON REYNOSO: So move.

1 CHAIRPERSON BERRY: Could I have a second?

2 Okay. Discussion?

3 Somebody must have said second. Does anybody
4 second this?

5 COMMISSIONER ANDERSON: Second.

6 CHAIRPERSON BERRY: Okay. Discussion.

7 Vice Chair, you had your hand up?

8 VICE CHAIRPERSON REYNOSO: Yes, Madam Chair.

9 Yes.

10 I appreciate Robbie's suggestion that we have
11 an opportunity to comment on some general problems in
12 the report. And I'm conscious, of course, from what my
13 assistant, Cindy Valenzuela, has told me, that the
14 assistants were able to do a lot of work on Report
15 Number 1, but didn't get as far as they would have
16 liked on what I'm calling Report Number 2, the Title VI
17 and Lau v. Nichols report.

18 I just want to comment that at this point in
19 the way that the report is before us, I really would
20 not be able to vote in its favor. And the principal
21 reason is that there's a lot of discussion about the
22 Department's approach to Lau v. Nichols and Castaneda
23 and how the Department has tried to have their
24 guidelines and some regulations follow the principles
25 laid down.

1 But as I understand it also, the report says
2 specifically the Department has not published Title VI
3 regs relating specifically to limited English
4 proficiency and related guidelines to implementing Lau
5 v. Nichols.

6 And it strikes me sort of odd in the report
7 that it keeps saying the Department is doing this with
8 respect to Lau. The normal approach is that when the
9 Supreme Court has come down with an important ruling,
10 then it's the Department that has expertise in -- in
11 this case education. They will issue guidelines and
12 then a report like this would be making reference to
13 those guidelines and how well the Department is
14 implementing them, not implementing them.

15 And we seem to never come quite to grips with
16 that in the report. And until we do so, and talking
17 about the major issues in this area, seems to me that's
18 the major issue, and we never quite deal with that. We
19 seem to go around it.

20 I just from my point of view, frankly, -- and
21 again, I'd like to hear from the staff on this, but as
22 I read it, it's unsatisfactory to me and I wouldn't be
23 able to vote in its favor right now.

24 CHAIRPERSON BERRY: Okay. Are there any
25 other comments about the LEP report?

1 COMMISSIONER REDENBAUGH: I would make a
2 general comment.

3 CHAIRPERSON BERRY: Yes.

4 COMMISSIONER REDENBAUGH: I'd tend to vote
5 against this report, recognizing that from my point of
6 view there is no greater disability than an
7 insufficiency in language. And by that I don't mean
8 English, but people who are insufficient in any
9 language so isolated and so separate from the world
10 that the rest of our country shares.

11 I think it is a very serious problem and not
12 satisfactorily dealt with in this report. So I'm going
13 to vote against this one.

14 CHAIRPERSON BERRY: Anybody have any other
15 general comments?

16 Yes, Commissioner Horner.

17 COMMISSIONER HORNER: Yes. I'm going to vote
18 against this also on two grounds which are very broad
19 grounds.

20 One is that for every educational problem
21 identified there is a recommendation, it seems to me,
22 going well beyond anything even the Department of
23 Education's Office of Civil Rights or the Justice
24 Department has proposed to have the federal government
25 direct life within the classroom. And there's a kind

1 of common sense balancing of needs of the kids here
2 that I think goes over a line into lack of common
3 sense.

4 For instance, the report recommends that
5 parental involvement be mandated in hiring of teachers.
6 Well, the outcome of a recommendation like that seems
7 to me to be when it's mandated as opposed to simply
8 adopted as a policy at the local level, the outcome of
9 mandating it is distraction of the system, the
10 educational system away from its mission toward
11 compliance on something which doesn't get to the heart
12 of civil rights but may simply be a good idea.

13 And I think the report is full of good ideas
14 which, because they are intended to be set forth as
15 rules, will deflect the educational system, the
16 educators, to rules compliance and away from common
17 sense educational decisionmaking at the local level.
18 And although I can see the necessity and do see the
19 necessity for federal rules about basic civil rights
20 without any question and for compliance assessments and
21 enforcement without any question, I think the report
22 goes way too far in detailing what shall be done and
23 how it shall be done.

24 Secondly, the report proposes what seems to
25 me to be a remarkable creation of a new protected class

1 of students, of people in the country; the protected
2 class of those who don't speak, read or write English
3 well but who may be of many generations within this
4 country and may not have ever had within their family
5 the regular speaking of a foreign language.

6 And what this suggests to me is that we are
7 proposing to civil rights eyes the category of not yet
8 educated, the category of ignorance. And I recognize
9 there are nuances and subtleties to this debate; that
10 language is a very complex cultural phenomenon and all
11 of that. But I think it would be so simple to solve
12 this problem by clear, explicit and consistent policy
13 at every level of American policymaking, to spend extra
14 time and effort to teach standard English, but not to
15 make it a right and therefore throw it into the courts
16 and again deflect human effort away from simply doing
17 it.

18 Well, that's why I'm going to vote against
19 this.

20 CHAIRPERSON BERRY: Vice Chair?

21 VICE CHAIRPERSON REYNOSO: Madam Chair, I
22 just want to comment that I'm very interested. Several
23 times we've had discussions on these reports and we
24 haven't heard from the staff. So I would be very
25 interested in hearing from the staff; one, whether some

1 of these suggestions can still be properly included but
2 as suggestions, not as a mandate. If they are indeed
3 good ideas, it might be worthwhile mentioning them but
4 not mandating them.

5 Two, with respect to the concerns I've
6 raised, and three, with respect to the concerns that I
7 take it other people will raise, I'd just like to hear
8 the thinking and background from the staff; one, in
9 fairness to them, but two, particularly important, an
10 education to us, and see whether that changes our
11 minds.

12 CHAIRPERSON BERRY: Does anyone else have any
13 general comments on the report?

14 Yes, Commissioner Lee?

15 COMMISSIONER LEE: I'm prepared to vote
16 against the report as it is currently drafted. The
17 report contains a lot of good information, good
18 findings, yet it doesn't reflect on the final chapter.
19 So from Chapters 1 to 9, there are a lot of things that
20 the public would find useful, and I would like to again
21 hear from the staff how they came from the first nine
22 chapters to the last chapter.

23 I agree, some of those. I would like to see
24 from being a mandate to a recommendation or a
25 suggestion because I do think that there's some good

1 material here but it doesn't go -- it just didn't go to
2 the proper places.

3 CHAIRPERSON BERRY: Okay.

4 Do others have general comments on the
5 report?

6 Well, I have some general comments so I will
7 make them.

8 First of all, I would not vote for this
9 report the way it's written.

10 Secondly, I will, instead of just saying what
11 I find wrong with the report, suggest how I think the
12 report ought to be written and to me would be an
13 acceptable report for the Commission to do. I think it
14 should be revised. There's information there but it
15 needs to be rewritten.

16 First of all, I think as Commissioner
17 Redenbaugh says, this is a major problem we're talking
18 about, limited English proficiency. It is not a minor
19 problem. And it is a civil rights problem. And so
20 therefore, I think that the report ought to begin with
21 what is in Chapter 2, which is about the dimensions of
22 the problem, which needs to be explained. That is, the
23 large number of non-English speaking or limited English
24 proficient children who are of a national origin other
25 than that of the United States, who come in and need

1 the help to learn how to speak English. And it is a
2 growing problem.

3 So for this Commission to sort of turn its
4 eyes from doing anything about a report on it, I don't
5 think would be right. There's a question about what we
6 do, but it is a major problem in the society. And
7 immigration is going to continue and the numbers in
8 every school system around the country. This is a
9 major issue.

10 It's a major issue for OCR as part of their
11 enforcement responsibility. It has been for years, so
12 we ought to take it up.

13 Describe the dimensions of the problem. How
14 many folks are we talking about; school systems; the
15 resources that are being spent on it. And then once you
16 describe the problem, that it's a growing problem, talk
17 about the fact that there are some people who believe
18 that this problem ought to be augmented by discussion
19 of another problem which is children who are not of
20 national origin and who have problems speaking English.

21 Then discuss the people who think that that
22 ought to be an issue, because there are people. It's
23 like Commissioner Horner said about the disability
24 issue. There are people in this country -- and it's
25 been in the press -- who think this should be part of

1 the whole civil rights lexicon.

2 We may disagree with them, but they think
3 that. And when they look at a report like this, they
4 want to know, well, how come that's not in there.

5 So we should say there are folks who think
6 that Ebonics or black English or whatever, poor
7 Appalachian-speak or people who talk like us in
8 Tennessee ought to be part of the debate here.
9 Describe that and then say, but the Commission is not
10 going to take that up in this report. We are aware of
11 it as an issue. We know that people think this.
12 That's not what we're writing about here and the
13 Commission may at some later time consider this.

14 Then after you do that, say here is what OCR
15 has tried to do about limited English proficiency.
16 There was the Lau case. Then they had these regs and
17 they tried to figure out what to do with them. Then
18 they withdrew them. They've been going back and forth
19 on trying to figure out what guidance to give people.

20 There have been a few court cases. Describe
21 them. And they're in the report. But do it in a
22 coherent manner and a straightforward manner.

23 This is a situation that has been fraught
24 with difficulty because there is division in the
25 country about how you approach it. And just say that

1 explicitly. There's political division. Like you have
2 this sort of not to subtle thing about regs that were
3 written in august 1980 and they were withdrawn in
4 February of 1981 like we don't know what happened. A
5 ghost came along and suddenly they were withdrawn.

6 The Administration changed. I mean, there's
7 nothing wrong with saying that. People have different
8 political views about this issue and they're all people
9 acting in good faith but they don't agree.

10 And then to go on to say but OCR's task is
11 made harder because there are people in the immigrant
12 communities who disagree about what should be done.
13 Some people think there ought to be bilingual
14 education, and describe what that is. And some think
15 that bilingual education involves total immersion, and
16 describe what that is.

17 And others think it should be this, and then
18 other people think that that's just an employment
19 program for people and think it ought to be ESL. And
20 somebody else thinks this. And say what those -- and
21 this is why OCR has had a hard time and why it's not
22 easy to manage federal enforcement here.

23 And then conclude by saying because this is a
24 major problem, we believe -- we know how tough it is,
25 OCR, but we're not going to amend Title VI. That's

1 just dumb. Nobody's going to amend Title VI to do
2 anything. We're not going to ask the Justice
3 Department or the OCR to enforce the Equal
4 Opportunities Act. That's going too far.

5 In this political climate, the American
6 people, there's too much division about this. It's not
7 going to go anywhere, so why ask them to do it. And
8 just say, "OCR, please, try to develop more policy
9 guidance in these areas and pay attention to things
10 that are mentioned in this report about how you might
11 be able to make it a little better for folk." And the
12 school systems out there do need the guidance.
13 Remember that. Because they get sued. They get all
14 kinds of problems. And so OCR is expected to say
15 something.

16 And say, "Thank you very much. The end."

17 Now, in my view, that would be a report I
18 could vote for. I can't vote for this report.

19 Now, I don't know what we do here. Since it
20 doesn't seem like anybody could vote for it, whether we
21 abandon it -- the enterprise, I mean -- or whether we
22 ask the staff to take notes of everybody's comments and
23 try to see if they can come up with a revision that
24 does this or whether we think at this stage -- or
25 whether anybody thinks that what has been suggested

1 here, any of it, is something we ought to do.

2 I mean, I'd be interested in if anybody's got
3 any more general comments. And maybe if we hear from
4 the staff in general and then look at some details,
5 maybe we can get somewhere.

6 VICE CHAIRPERSON REYNOSO: Madam Chair? I'm
7 sorry.

8 CHAIRPERSON BERRY: Commissioner Anderson has
9 a comment.

10 COMMISSIONER ANDERSON: I was going to say
11 that I would like to hear from the staff as to whether
12 what you had proposed would require additional research
13 or whether what you propose is essentially a matter of
14 rewriting with the information research already on
15 hand. And if it's a matter of rewriting, how long it
16 would take to rewrite such a report, even if such a
17 report were five chapters instead of 10 chapters.

18 But that's the two questions I would have.

19 CHAIRPERSON BERRY: Okay.

20 Does anyone else -- is anyone else motivated
21 to make a general comment who has not done so? Or even
22 if you have done so. And then I'll ask the staff to
23 respond to all this.

24 COMMISSIONER GEORGE: Madam Chairman?

25 CHAIRPERSON BERRY: Yes, Commissioner George.

1 COMMISSIONER GEORGE: I would simply like to
2 add to everything that you said a request that if this
3 goes back to the staff for addition along the lines you
4 proposed, that there should be a very clear statement
5 up front with a full blown defense of precisely why
6 this is a civil rights issue. Make the arguments and
7 the let's see whether we all or which of us agrees with
8 it.

9 And there could be very important issues that
10 really aren't civil rights issues, and if they're not,
11 if we can't make the case that it really is a civil
12 rights issue, then I don't think we have any business
13 doing it, even if we have some helpful suggestions to
14 make because there are people on the Commission and
15 some people on the staff who are interested and have
16 some knowledge about educational policy.

17 CHAIRPERSON BERRY: Vice Chair?

18 VICE CHAIRPERSON REYNOSO: Well, in some ways
19 with Lau v. Nichols and with the legislation, it's
20 practically a given that it's a civil rights issue, if
21 you will.

22 CHAIRPERSON BERRY: Congress has said it is.

23 VICE CHAIRPERSON REYNOSO: Yes,

24 CHAIRPERSON BERRY: The courts have said it
25 is.

1 COMMISSIONER GEORGE: Well, make the case.
2 The it should be easy. It really should be easy.

3 CHAIRPERSON BERRY: In other words, have them
4 put in -- just so we're clear about what you're saying,
5 Commissioner George. In the beginning when they're
6 describing the dimensions of the problem, they should
7 say the Congress and the courts have determined that
8 this is a civil rights issue.

9 COMMISSIONER GEORGE: And say why.

10 CHAIRPERSON BERRY: And why.

11 COMMISSIONER GEORGE: We, of course, may
12 disagree.

13 CHAIRPERSON BERRY: With the Congress and the
14 court. Okay.

15 COMMISSIONER GEORGE: We may recommend -- I
16 mean, it's conceivable. It's logically possible that
17 we could say, well, look, I mean, this is just a case
18 of -- to use Connie Horner's term -- we're over civil
19 right-sizing things. And here's an issue that has been
20 put in terms of civil rights which really is an issue
21 of more general educational policy.

22 And if that is our considered view, since we
23 make recommendations to Congress and the President, it
24 seems to me we're not under any compulsion to move in.
25 We could rather say to the Congress and the President

1 that this is a case where we think you're putting a
2 matter in terms of civil rights which really needs to
3 be discussed under a different rubric.

4 CHAIRPERSON BERRY: Commissioner Horner.

5 COMMISSIONER HORNER: Just to make it clear,
6 Robbie, that my statement applied to the issue not of
7 people who are foreign-language born or children of
8 foreign-language --

9 COMMISSIONER GEORGE: No. But I understand.
10 Yes.

11 COMMISSIONER HORNER: Okay.

12 CHAIRPERSON BERRY: Well, let me just say
13 explicitly this is a threshold issue, Commissioner
14 George, because if we don't determine that we believe
15 it is a civil rights issue, we shouldn't ask the staff
16 to do anything.

17 COMMISSIONER GEORGE: Sure.

18 CHAIRPERSON BERRY: And so before we can
19 burden anyone or ask anyone to do anything else, we
20 ought to resolve in our own minds, based on what we've
21 read. I mean, we've read -- they have given us
22 information about the Equal Educational Opportunities
23 Act. They've given us information about Lau. And when
24 I say what I say, according to what I said to you, I
25 was not including the non-national origin kids as part

1 of this.

2 I explicitly said that we were going to
3 describe this as some people believing that this issue
4 ought to be considered and describe what's going on
5 with it because it's on the national mind, and say
6 we're not going to discuss this issue at this time;
7 take any position on discussing; just proceed with the
8 discussion of national origin.

9 So if we don't believe that the national
10 origin issue is a civil rights issue or can be, then we
11 ought to just say that now and then the staff doesn't
12 need to do anything. They can't determine that for us.
13 They've given us the information about the Equal
14 Educational Opportunities and Lau, which is the only
15 basis they're using to determine it.

16 Do you see what I mean, Commissioner?

17 COMMISSIONER GEORGE: Yes, I do. And I think
18 if we divide the two issues, that really might solve
19 it.

20 CHAIRPERSON BERRY: Well, I mean to divide
21 them.

22 Yes, Commissioner Horner?

23 COMMISSIONER HORNER: I made notes on what
24 you suggested and you concluded by saying that we ought
25 to conclude by saying OCR, try to develop more policy

1 guidance in this area. Presumably, this area means
2 limited English proficiency based on national origin.

3 CHAIRPERSON BERRY: Yes. That's what I mean.

4 COMMISSIONER HORNER: And I guess my question
5 would be is it worth putting out a report to instruct
6 OCR to try to develop guidance without telling OCR what
7 guidance we think it ought to develop. And if we do
8 want to tell OCR what guidance we think it ought to
9 develop, then we're going to have to, as a Commission,
10 resolve some pedagogical issue about the construction
11 of education for non-native English speakers.

12 And I guess I just want to say up front that
13 this may be difficult for us to do but that does not
14 suggest we can't try, I suppose.

15 CHAIRPERSON BERRY: Vice Chair?

16 VICE CHAIRPERSON REYNOSO: Madam Chair, I'm
17 not even sure that would be our role. Indeed, I was
18 speaking negatively about the reality that Lau regs
19 have not been issued. I could conceive of the
20 Department of Education, because they're the experts,
21 saying that there are many ways of meeting Lau.

22 You mentioned several of the techniques and
23 theories that are used. So long as they're well
24 planned and well executed, it may be that one technique
25 will work in grammar school A and another technique in

1 grammar school B.

2 CHAIRPERSON BERRY: And so long as they let
3 everybody have access to it who needs it, then they
4 wouldn't be discriminating.

5 VICE CHAIRPERSON REYNOSO: Yes.

6 COMMISSIONER HORNER: So our recommendation
7 would be for OCR to write guidelines which are very
8 open under that scenario.

9 VICE CHAIRPERSON REYNOSO: Well, I know
10 that's one possibility.

11 COMMISSIONER HORNER: I don't know. That's
12 one possibility.

13 VICE CHAIRPERSON REYNOSO: Right.

14 COMMISSIONER HORNER: So there is room for a
15 substantive recommendation with respect to the
16 implementation of that. And that would be a breath of
17 fresh air for OCR to be told that they ought to be open
18 and that they ought to permit these different ways so
19 long as they make sure that kinds who need it and in
20 the assessment of the kid's ability, they have access
21 to what they need.

22 COMMISSIONER HORNER: Isn't it self-evident
23 to them? Do we need to instruct them in a report,
24 frankly?

25 CHAIRPERSON BERRY: I don't know. It seems

1 there's a major problem here.

2 VICE CHAIRPERSON REYNOSO: Well, there are
3 political problems. And to have an independent agency
4 like us say do it, then they all agree that it needs to
5 be done. But somehow, they haven't been able to put it
6 together politically and maybe this gives them a little
7 bit of am oomph to be able to do it.

8 COMMISSIONER HORNER: I'm skeptical. The
9 political have perjured since 1970.

10 VICE CHAIRPERSON REYNOSO: Yes.

11 CHAIRPERSON BERRY: Well, why don't we have
12 the staff respond to all this.

13 Fred, how do you want to do this? I assume
14 you took notes on what we were saying.

15 MR. ISLER: Yes. Well, first of all, I'd
16 like to say thank you for all for your general
17 comments.

18 CHAIRPERSON BERRY: Can you guys hear Fred?

19 COMMISSIONER GEORGE: No.

20 MR. ISLER: Thank you for your general and
21 specific comments on the Lau v. Nichols report. And
22 I'm pleased to say that I think our staff agrees about
23 98 percent with everything you all have said.

24 We, too, realize that this report needs to be
25 rewritten, revised and restructured. And we need to go

1 back and think about how we're going to present it in
2 the best way possible so it will be a constructive
3 report and it will meet the needs of OCR. And I think
4 we can do that in a matter of -- without additional
5 research and we can do that in time for the August 15th
6 meeting.

7 CHAIRPERSON BERRY: What is the answer to the
8 question as to, one, whether this is a civil rights
9 issue? And you can explain that.

10 MR. ISLER: I think we're getting the two
11 issues confused with respect to limited English
12 proficiency and the very bold and courageous
13 recommendation we made about language ability. I think
14 we took it out of the realm of civil rights when we
15 start dealing with language ability. That's an
16 educational issue and it's not a civil rights issue.

17 And when we start trying to merge the two,
18 educational theories and practice with civil rights
19 theories and practice, we sort of got a little confused
20 as staff members. And therefore, I think Robbie,
21 Commission George, is talking about the language
22 ability. And we did not do adequate research to
23 support that particular recommendation. I'll be honest
24 with you. And therefore, there are two different issue
25 here; limited English proficiency based on national

1 origin minority and language ability in general.

2 CHAIRPERSON BERRY: Well, Fred, just so that
3 you're not misled by anything I have said, if I were
4 considering the issue as to whether kids who are not
5 national origin but who have difficulty with English,
6 whether the kind of recommendation you've made should
7 be made, if I were doing that on my own and in a
8 different context, I might end up saying that it should
9 be.

10 But for purposes of this report, I don't
11 think it's necessary to engage that discussion, so I
12 don't see any reason for me to engage -- I mean, from
13 my own experience I know that if I had not been treated
14 that way personally as somebody who was limited English
15 proficient, I would still be speaking Ebonics right now
16 and it wouldn't be just bad English.

17 And I also was not ignorant. Someone here
18 said that people who were native English speakers and
19 who didn't speak bad English -- spoke bad English,
20 needed education because they were ignorant. I have a
21 very high IQ. But I didn't know how to speak English.

22 COMMISSIONER HORNER: IQ and education are
23 two different things. You may have a very high
24 intelligence but not have had the language education
25 and experience to achieve a high command of the

1 language. And those are two separate questions.

2 CHAIRPERSON BERRY: Right. But I just don't
3 want you to think that everyone would agree that that
4 second issue which we're not going to make any
5 recommendation about or even fully consider would not
6 be a civil rights issue. There might be some
7 disagreement about that.

8 But I'm just saying I'd defer that
9 discussion.

10 MR. ISLER: I wasn't talking about them
11 limiting the scope of Title VI only to national origin
12 minority. I was talking about the clear recommendation
13 where we're talking about language ability based on
14 writing, reading and comprehension.

15 CHAIRPERSON BERRY: Oh, okay. All right.
16 Sure.

17 MR. ISLER: Which is different.

18 I'd like to still agree with our proposition
19 that Title VI involves both national origin, race and
20 color.

21 CHAIRPERSON BERRY: But we're not going to do
22 that in this report.

23 MR. ISLER: No.

24 CHAIRPERSON BERRY: That's the point.

25 MR. ISLER: I understand that.

1 CHAIRPERSON BERRY: Yes, Commissioner George?

2 COMMISSIONER GEORGE: Yes. I just wanted to
3 say that I appreciate Frederick Isler's candor and his
4 explanation very much.

5 Thank you, Frederick.

6 MR. ISLER: Sure.

7 CHAIRPERSON BERRY: Now, what was the other -
8 -

9 COMMISSIONER REDENBAUGH: Could I add a
10 comment on that?

11 CHAIRPERSON BERRY: On his candor?

12 COMMISSIONER REDENBAUGH: Yes.

13 CHAIRPERSON BERRY: Oh, okay. Go right
14 ahead.

15 COMMISSIONER REDENBAUGH: I'll be brief.

16 CHAIRPERSON BERRY: You mean you're going to
17 be uncharacteristically complimentary, Russell?

18 COMMISSIONER REDENBAUGH: I didn't realize
19 this would make me that way, because I'm very
20 complimentary on occasion.

21 COMMISSIONER GEORGE: I mean, it really is
22 useful when, instead of getting very roundabout
23 explanations and defenses that we're trying to think
24 our way through and can't quite follow and so on aren't
25 left with any clearer understanding of where we are.

1 If somebody says, well, you know, we really
2 got a little confused about this. We weren't looking
3 at it correctly. We really can't make the case that we
4 thought we could make, and that's it. Well, that's
5 just as helpful.

6 CHAIRPERSON BERRY: Commissioner Anderson?

7 COMMISSIONER ANDERSON: The Commissioners
8 previously have discussed conceptual assessment of the
9 report earlier in the report process and I think with
10 this report we've had an example of how that would
11 function. And so I think it was a good experience for
12 us. I mean, in one sense, a better experience would
13 have been for us to all vote in favor of the report.
14 But I think what this suggests is that we can take a
15 draft or a staff briefing and conceptually discuss it
16 and give direction to the staff in a very direct
17 exchange, which leads to the prospect of having a good
18 report at the end of the process.

19 And so I think this is maybe a model of --
20 what we've just done, of what we can do in the future
21 when there may be questions about the direction, scope,
22 et cetera, of the report as it's in the process.

23 CHAIRPERSON BERRY: What we've been talking
24 about, the notion of having, in addition to the
25 briefing that you guys gave us earlier in the year

1 about this education report, which talked in general
2 about what you were going to do, is maybe at midpoint
3 after you've done the research and some of the work, to
4 have another briefing about what you think your
5 findings will be and your recommendations. And then
6 the Commissioners can at that point have the kind of
7 discussion we're having now about what we think about
8 them. And that would give you even more direction
9 toward the end.

10 Let me make sure of something now. When you
11 go back, your staff goes back to revise it, if we agree
12 that that's what you should do -- we haven't yet agreed
13 that that's what you should do. But if we do that,
14 what kinds of recommendations, having heard the
15 discussion about recommendations and about what you
16 could do, what kind of recommendations do you think
17 it's possible to make to OCR in light of this
18 discussion if you review the report in the way we've
19 been talking about here.

20 MR. ISLER: One of the things -- I need to
21 clarify the distinctions between limited English
22 proficiency and language ability in general. They
23 definitely need to clarify that for the school
24 districts. If they had policy guidance from a general
25 sense on that, maybe we wouldn't have had the outrage

1 and the big thing about Ebonics in the first place.

2 The second thing. There's a major issue out
3 there about whether you should teach bilingual
4 education versus English as a second language, English
5 immersion. And it's not clear whether the students are
6 achieving in bilingual education versus English
7 immersion.

8 There's a big issue out there still which we
9 didn't deal with very well off of whether those
10 programs should be enrichment programs or remedial
11 programs. That's a big issue out there on that.

12 Another issue is the exit and entrance of the
13 limited English proficient students. Whether they are
14 put in there just because they speak another native
15 language or because their name is Julio or whatever,
16 and they're just thrust in an LEP class and they're
17 forgotten about. That's a big issue.

18 The Department of Ed needs to give them
19 guidance. They're still not clear.

20 And when they exit out of those programs and
21 whether they are also pulled out too long from their
22 regular curriculums.

23 And the final one is standards. When I mean
24 standards, I mean the curriculum, whether the
25 curriculum is lowered for them and they're just passed

1 on and they do not get a quality education as a result
2 of being in LEP. Those are still major issues out
3 there.

4 CHAIRPERSON BERRY: Now, what did you hear us
5 saying?

6 Just wanted to make sure the hearing is the
7 same as speaking.

8 What did you hear all of us saying, if
9 anything, about the first point you raised about the
10 different approaches to teaching these programs.

11 MR. ISLER: We would present what's going on
12 out there and the different approaches and the problems
13 that the school districts are having. And we would
14 present, if any, what OCR has done about it and what
15 they haven't done about it.

16 CHAIRPERSON BERRY: And what about
17 recommendations? In that specific area, what did you
18 hear us saying?

19 MR. ISLER: That the recommendations should
20 be so general. For instance, if it works -- it may
21 work -- ESL may work in one school district or one
22 class like in the mid level but it may not work in
23 another school district. It depends on the school
24 district, the curriculum. It depends on the students.
25 It depends on the educational programs. And OCR needs

1 to acknowledge that and develop some guidance to
2 acknowledge all of that and not have uniform standards
3 and like a script for educating all LEP students.
4 That's what I heard.

5 CHAIRPERSON BERRY: Did he hear properly?
6 Did anyone speak differently or hear differently? I
7 mean, it's important because we're going to ask them to
8 rewrite. We don't want them to have to rewrite and
9 rewrite.

10 Now, is there consensus that we ought to ask
11 them to revise this or are there people who are
12 persuaded that we should simply forget it? That's the
13 question of the hour.

14 VICE CHAIRPERSON REYNOSO: I think they
15 should revise. My concerns are strong. But while my
16 concern was not answered specifically, I take it that
17 in terms of making the recommendations that the
18 Department issue the regulations, they are answering
19 part of my concern. And if in fact the staff upon
20 rethinking agrees, as indicated, with 80 percent of the
21 discussion that we've had, it seems to me that it's
22 worth a shot at having them do this.

23 CHAIRPERSON BERRY: Commissioner Horner?

24 COMMISSIONER HORNER: I'm ambivalent and will
25 just let it sit as ambivalent. And the reason I'm

1 ambivalent is that I don't know from the report why the
2 regulations were never written, except I would
3 speculate that they weren't written because people
4 disagreed. And therefore, it's hard for me to know
5 whether writing the regulations would remove valuable -
6 - educationally valuable local discretion or whether
7 writing the regulations would clarify issues which
8 would be helpful to localities.

9 I don't know which would be outcome because
10 it would depend upon the regulations, the content of
11 the regulations. And therefore, it's very hard for me,
12 until I see the content of such regulations, to know
13 whether I would want to urge OCR to write them or not.

14 And my guess is probably I would not like
15 regulations coming out of the current administration,
16 but who knows.

17 So, I'm ambivalent and therefore, won't weigh
18 in one way or the other on the question of whether we
19 ought to abandon the undertaking or not.

20 CHAIRPERSON BERRY: Well, -- yes,
21 Commissioner Lee.

22 But may I, point of information, say that I
23 do not have in mind a recommendation to ask OCR to
24 write the regulations. That is not what I meant. In
25 fact, I do not want to ask them to only because I know

1 how difficult it is and I was there before when we
2 spent years on this stuff.

3 And you're right. People disagree. And I
4 think if they tried it again -- all I'm suggesting is
5 policy guidance, which does not rise to the level of
6 regulations --

7 COMMISSIONER HORNER: I see.

8 CHAIRPERSON BERRY: -- that would inform
9 people about these things. And they can at least
10 clarify.

11 I mean, I'd love it if I could get
12 regulations that I wanted, but I can't, even out of
13 this Administration, for a lot of reasons.

14 And so I didn't really have that in mind. I
15 just wanted to make that clear.

16 COMMISSIONER HORNER: Well, that makes it
17 easier.

18 CHAIRPERSON BERRY: Commissioner Lee?

19 COMMISSIONER LEE: I would not want to see
20 this project abandoned because of the simple fact that
21 it is a really critical issue and it's not going to go
22 away. As you say, it's going to get -- the debate is
23 going to get more heated.

24 There's already initiatives going on in
25 California dealing with this very same issue and that's

1 going to be on the California ballot, if they're
2 successful, next year.

3 So, if we continue with this project with the
4 understanding that we are not dictating what OCR should
5 do to local and state jurisdiction, which is not what
6 we had in mind, that's my understanding from this
7 morning's discussion, but to provide a broad range of
8 recommendations and ideas to not only OCR but for the
9 general public to start the debate and start thinking
10 about this whole issue of LEP, how it connects to civil
11 rights and how it connects to different community
12 groups.

13 So, I would like to see the report be
14 redrafted and I really hope that we would have a really
15 good discussion in August. Because come next year, it's
16 going to be a hot issue.

17 COMMISSIONER GEORGE: Madam Chairman?

18 CHAIRPERSON BERRY: Vice Chair, and then
19 Commissioner George.

20 VICE CHAIRPERSON REYNOSO: We in California
21 have developed a habit of trying to do away with the
22 U.S. Constitution. So there's a proposal now that's
23 being circulated that we in California prohibit any and
24 all bilingual education, since Congress has the
25 authority to issue -- to pass legislation in that area,

1 I assume that when we in California, if that were
2 successful, would want to say that Congress can't pass
3 that type of legislation. So it's very interesting
4 what's happening in California.

5 CHAIRPERSON BERRY: Yes.

6 COMMISSIONER LEE: There are smart people
7 there.

8 CHAIRPERSON BERRY: Yes. There are some
9 smart people in California.

10 Commissioner George?

11 COMMISSIONER GEORGE: Well, yes.

12 CHAIRPERSON BERRY: Did you hear that about
13 the smart people in California?

14 COMMISSIONER GEORGE: Yes. I heard about the
15 people in California trying to do away with the
16 Constitution. They've imported a lot of Supreme Court
17 Justices out there to do the job -- [inaudible].

18 I just wanted to see if Yvonne could give us
19 a few more details or may be Cruz could, about the
20 ballot proposal or proposals that she mentioned that
21 relate to the issues that the report is going to touch
22 on. I'd like to know that so I could know how the
23 report might figure in the politics of whatever the
24 debate will be, but I just don't know the details.

25 CHAIRPERSON BERRY: Politics. Politics.

1 COMMISSIONER GEORGE: What's the proposal,
2 the thrust of it? I realize there might not be a
3 specific proposal right now.

4 VICE CHAIRPERSON REYNOSO: It's been
5 announced by a gentleman who is self-funded, that he is
6 going to suggest a Constitutional change in California,
7 in the California Constitution, that public schools not
8 have bilingual education of any sort. Period. That's
9 what he says.

10 COMMISSIONER GEORGE: So there wouldn't be
11 any foreign language teaching or there just wouldn't be
12 bilingual.

13 VICE CHAIRPERSON REYNOSO: No bilingual
14 teaching.

15 COMMISSIONER GEORGE: No bilingual.

16 VICE CHAIRPERSON REYNOSO: He hasn't quite
17 described what that is, but that's the announcement has
18 been made just very recently, the last week or so.

19 COMMISSIONER GEORGE: is that the proposal
20 that would be on the ballot?

21 VICE CHAIRPERSON REYNOSO: Right. Right.
22 That's what is being proposed.

23 Now, they haven't -- I don't think they've
24 even written the proposals yet and they certainly
25 haven't gotten the signatures, but they've announced

1 their intention. And the gentleman who announced it
2 happens to have independently the half a million or a
3 million dollars that's very often required to get the
4 signatures.

5 So I assume that if he's serious, it will get
6 done.

7 COMMISSIONER GEORGE: Or are there any more
8 moderate proposals that are slated for ballot
9 initiative?

10 VICE CHAIRPERSON REYNOSO: No.

11 CHAIRPERSON BERRY: Commissioner Horner?

12 COMMISSIONER HORNER: Madam Chair, may I move
13 that we ask the staff to redraft the report pursuant to
14 this discussion?

15 CHAIRPERSON BERRY: Sure.

16 Is there a second?

17 VICE CHAIRPERSON REYNOSO: Second.

18 CHAIRPERSON BERRY: The only other discussion
19 I would make is that the special assistants apparently
20 went through this report up to Chapter 7. I'm waiting
21 to see if any of them object and say they didn't. No
22 one's saying. That's what I'm told. And they didn't
23 get through Chapter 8 and Chapter 9. Chapter 9 is the
24 findings and recommendations, unless I'm -- am I
25 right?

1 No. That's Chapter 10. They didn't get
2 through 8, 9 and 10 but they did get through the rest
3 of it. And to the extent that anything that they
4 agreed to or said is relevant to the revision, the
5 Staff Director will be given a copy of whatever they
6 agreed to. It may be totally irrelevant since the
7 whole thing is being rewritten. And they're all sort
8 of going -- [indicating].

9 But to the extent that it is, I just want to
10 make sure that the motion would include that.

11 VICE CHAIRPERSON REYNOSO: The motion to
12 approve is still on the table so we have to get that
13 off.

14 CHAIRPERSON BERRY: Have to get off the table
15 the motion to approve before I do this motion. So how
16 do I get it off the table? It's a substitute; right?

17 COMMISSIONER HORNER: I'll withdraw it. I'm
18 sorry. I didn't follow that parliamentary issue. I
19 just thought I'd offer it.

20 CHAIRPERSON BERRY: I didn't either. But how
21 about a substitute. Your motion would be a substitute
22 motion. How's that?

23 Do you mind it as a substitute motion?

24 COMMISSIONER HORNER: And what is it?

25 CHAIRPERSON BERRY: Your motion is to revise

1 it. The earlier motion was to approve it and we never
2 did anything with that.

3 COMMISSIONER HORNER: I see. Oh, I see. I
4 see.

5 CHAIRPERSON BERRY: So can yours be a
6 substitute?

7 COMMISSIONER HORNER: I move as a substitute
8 motion that we direct the staff to revise the report
9 pursuant to this conversation.

10 CHAIRPERSON BERRY: All right. And does the
11 seconder accept that?

12 VICE CHAIRPERSON REYNOSO: I think I was the
13 seconder. And if so, --

14 CHAIRPERSON BERRY: I believe it was --
15 Anderson seconded it.

16 Come on, Carl.

17 COMMISSIONER ANDERSON: We need some
18 bipartisanship here.

19 CHAIRPERSON BERRY: Okay. Cruz seconded it.

20 Okay. So with the understanding that if
21 there's anything at all that's relevant in the
22 discussions that the special assistants concluded as
23 you go through this revision, the Staff Director will
24 tell you guys.

25 We will have a revision and the understanding

1 is that we will have it for consideration well in
2 advance of the August meeting. And with that
3 understanding, there's no further discussion.

4 All those in favor of the substitute motion,
5 indicate by saying aye.

6 (Chorus of ayes.)

7 Opposed?

8 (No response.)

9 Okay. So that takes care of LEP.

10 Now we go to Equal Educational Opportunity
11 and Nondiscrimination for Girls in Advanced Mathematics
12 and Science.

13 You can just stay there, Fred, unless you
14 want to go over there.

15 What?

16 MR. ISLER: I'm going to get my report.

17 CHAIRPERSON BERRY: Oh. Go ahead.

18 Girls in advanced mathematics and science
19 education, federal enforcement of Title IX.

20 Could I just for purposes of discussion have
21 a motion to approve?

22 COMMISSIONER HORNER: So move.

23 CHAIRPERSON BERRY: Could I get a second?

24 VICE CHAIRPERSON REYNOSO: Second.

25 CHAIRPERSON BERRY: Okay. Discussion.

1 First, any general comments anyone wants to
2 make about this report?

3 Yes, --

4 COMMISSIONER GEORGE: Madam Chairman, --

5 CHAIRPERSON BERRY: -- Commissioner George?

6 COMMISSIONER GEORGE: -- I'm intending to
7 vote against this report. I've read it through twice.
8 I've explored the issue of trying to get into some of
9 the secondary literature and also discussing it with
10 social scientists who have explored the general issue
11 of why girls and boys sign up for what they sign up
12 for; why they do well where they do well; and what
13 possible explanations for differences are.

14 And it just seems to me that at the end of
15 the day the report fails to make a case for itself.
16 It's certainly will unnecessarily implicate certain
17 philosophical judgments about validity or goodness or
18 badness of cultural trends that affect the distribution
19 of boys and girls in different subject areas and their
20 performance in different subject areas.

21 And even assuming for the sake of argument
22 the validity of the philosophical viewpoint that seems
23 to flow through the report, it seems to me that the
24 report doesn't make the case for the fairly strong
25 findings and recommendations that are included as a

1 result of which, to my mind, this does not come near to
2 justifying a major federal extension, major extension
3 of federal intervention in local school curricular
4 policy. And therefore it seems to me there's just not
5 a report here for us to weigh in on.

6 Now, I realize that people with different
7 points of view are going to differ about this and we
8 might very well divide along the usual lines on this
9 report. And in that case, since Leon is not on the
10 phone, and I strongly suspect that he would be on the
11 opposite side to my side, I'm prepared, rather than to
12 take advantage of the fact that there is a person
13 missing, I'm prepared to abstain so that it doesn't go
14 down if we do divide along the usual lines.

15 But my actual view of the matter is that the
16 report doesn't justify itself, doesn't justify its
17 findings and recommendations, and that we ought not go
18 forward with it.

19 CHAIRPERSON BERRY: Could I know, just so I
20 clearly understand, Commissioner George, what is your
21 impression of why there has been in the past a gender
22 gap in this area and why the gender gap has improved,
23 at least through Grade 8, if I read this stuff right,
24 and why it remains from 8 to 12. What is your
25 impression as to why all that happened or is happening

1 or did happen?

2 COMMISSIONER GEORGE: Well, my impression
3 from the inquiries I've been able to make or literature
4 I've been able to look to is that there's really a
5 highly complex set of cultural factors that have to do
6 with the upbringing of children, parents' attitude
7 towards sex roles, the public's general understanding
8 of what is good for girls to do.

9 There's a certain amount of evidence that
10 natural abilities tend to differ by sex in some of
11 these areas, and not just in math and science but also
12 on the arts side and English and language ability and
13 so forth. And it's very high complicated matter on
14 which a lot of top notch people who have looked into
15 the matter express uncertainty themselves. And those
16 who seem to have a greater degree of certainty are
17 certain in different directions.

18 Some are certain that the explanation has to
19 do more with one thing. Others are certain that the
20 explanation has to do more with something else.

21 But it doesn't seem to me that the report
22 justifies any major intervention on our part or
23 recommendations and findings on our part that go to the
24 question of whether there's a civil rights issue here
25 that merits federal intervention.

1 CHAIRPERSON BERRY: I don't want to be
2 inquisitorial but I can't find any other way to do it.
3 I'm just trying to educate myself here. That's why I'm
4 asking you these questions because I want to make sure
5 I understand clearly what you think these things can be
6 attributed to.

7 So, my second question -- it will be my last
8 inquisition like question -- is why do you think or
9 those whose views you've consulted or materials you've
10 read, why do they think the gap has been reduced? For
11 the same cultural reasons?

12 COMMISSIONER GEORGE: Sure. The same sorts
13 of cultural reasons.

14 CHAIRPERSON BERRY: Okay. All right.

15 COMMISSIONER GEORGE: Do you have a view,
16 Mary?

17 CHAIRPERSON BERRY: Well, I'm puzzled about
18 it. That's why I'm asking the questions. I know the
19 gap has been reduced because if I trust the information
20 that I read, I know it's true. And I know there used
21 to be a gap even up to Grade 8. I know those are
22 facts. Okay?

23 COMMISSIONER GEORGE: Yes.

24 CHAIRPERSON BERRY: So my question is why did
25 it happen? Why was there the gap in the first place,

1 and then why has it reduced?

2 And I'm likely to conclude, although I don't
3 feel strongly about it, that whatever has been going on
4 in the last 10, 15, 20 years, whether it's enforcement
5 or the way parents raise kids or what they saw on TV or
6 whatever, that there's something that -- and federal
7 enforcement of the civil rights laws might have had
8 something to do with it, Title IX and the women's
9 equity stuff. The gap has been reduced.

10 Now, whether one thinks that's a good thing
11 or a bad thing will depend on what one thinks is
12 appropriate: one, for kids, and what careers this would
13 head them off into doing; or how one sees girls and
14 boys, I guess. And also it would depend on -- even if
15 you thought federal enforcement helped, whether you
16 thought federal enforcement was intrusive or a good
17 thing or a bad thing, and it would depend on all those.

18 But what puzzles --

19 COMMISSIONER GEORGE: Well, I'll certainly
20 agree there are very big philosophical issues that are
21 implicated along with just the sheer factual issues on
22 which there's some dispute, but at least there's a
23 greater measure of agreement.

24 Do you have a view about why the gender gap
25 continues to be so large between girls and boys to

1 girls' advantages, at certain levels when it comes to
2 art subjects?

3 CHAIRPERSON BERRY: I think it's
4 socialization, myself. That's just my view. And I
5 think it's also socialization -- the reason why
6 between Grades 8 and 12, the girls' math gap is still
7 there although it's improving. That's just what I
8 think. I may be totally wrong.

9 I just think that at that age, in terms of
10 children's development -- and you have children, you
11 folks who have children, so you know more about this
12 than I do -- that in terms of how they relate, how boys
13 and girls relate and what's going on in high school and
14 so on and what parents' expectations are in gender role
15 determinations, that it would make sense that girls,
16 even if they'd been very good at something earlier --
17 specific girls, I'm talking about -- that their
18 interests might be in some other direction or they
19 might be encouraged in another direction, so that that
20 might be why the 8 to 12 gap is more resistant.

21 But I really do think the reason why the gap
22 has been reduced is because of all the emphasis that
23 has been placed on this. I mean, it's been discussed
24 publicly. Everybody talks about girls and math
25 classes.

1 We've all heard about it and discussed it.
2 And there's a greater emphasis in school systems.
3 They're trying to make girls feel comfortable with math
4 and taking math, and there should be more women
5 engineers. And then girls see women who are engineers,
6 scientists, whatever, as role models, which they didn't
7 see before as much.

8 So I think it's all of that socialization, as
9 well as I think the federal enforcement thing is a
10 minor blip on the horizon. That's my view. But I
11 think it may have had something to do with it.

12 COMMISSIONER GEORGE: Well, I certainly think
13 that there's a lot of merit to what you say. I'm also
14 share them and perhaps even have a greater degree of
15 uncertainty about what the complex set of factors is.

16 And I suppose the cop out position that we
17 all repair to at the end of the day is to say that it's
18 probably some mixture of nature and nurture, but
19 exactly what the nature is is so difficult to control
20 for that it puts even the best social scientists in
21 something of a quandary.

22 CHAIRPERSON BERRY: I guess you would know
23 this already, Robbie. And you and I are have this nice
24 little seminar together which we like to do as
25 professors, and we're forgetting about everybody else.

1 And this is a Commission meeting. I forgot that.

2 We're in the seminar room or in somebody's office.

3 But anyway, it won't surprise you to know
4 that I think that women and men can do almost anything
5 they want, except men can't have babies yet, apparently
6 they can't. And that I think that women can do almost
7 anything they want to do and that they're encouraged to
8 do by their parents.

9 And so therefore, I wouldn't make a nature --
10 that's just my view. I wouldn't make a nature
11 distinction as to why girls and boys would do math
12 differently or art differently.

13 I think individual children, be they boys or
14 girls, have different capacities to and interests in
15 art, music, whatever, and they can be encouraged by
16 other people to do more of that, less of that or a lot.
17 And there may be geniuses. But I would not make a
18 nature distinction in terms of doing math, generally,
19 and apply it to girls or apply it to boys. That's just
20 my view.

21 COMMISSIONER GEORGE: Well, yes. I'm sure the
22 matter is complicated. I'm more open, I think, to the
23 possibility that there might be nature components to
24 the explanation of why girls in general and boys in
25 general tend to think about things differently. I'm

1 sure that there's a large measure of nurture and
2 culture and environment, as well. But there's an awful
3 lot of pretty good data out there now that tends to
4 show -- at least a lot of responsible people have
5 concluded that it tends to show that girls and boys do
6 think in different modes.

7 I mean, there are bits of combinations
8 politically, of course, because people who tend to
9 believe that outside of the experts tend to either be
10 people who have very traditional ideas about sex roles
11 or people who are on the radical feminist side and
12 think that there really is a different way that women
13 think from the way men think.

14 Now, I wouldn't want to overplay that because
15 there's an awful lot of evidence, as you say, that men
16 and women can do the same things and do the same things
17 well, but in accounting for these large-scale trends
18 among men and women, it does seem to me that there's
19 plenty of data to support the idea that nature,
20 especially in terms of ways of thinking and approaching
21 subjects has something to do with the explanation.

22 CHAIRPERSON BERRY: Okay.

23 Commissioner Horner?

24 COMMISSIONER HORNER: Having had the benefit
25 of this seminar -- most edifying -- I think that the

1 recommendations in the report are more prescriptive
2 than is warranted, given the degree of mystery involved
3 in the phenomenon and given the closing of the gap
4 which has occurred, for whatever combination of
5 reasons.

6 And therefore, I would prefer to focus our
7 products elsewhere. I think that the prescriptive
8 regime that is proposed is probably unduly prescriptive
9 given the current state of the problem.

10 CHAIRPERSON BERRY: Are there others who have
11 comments? Are there other who have comments, general
12 comments, on the report?

13 (No response.)

14 Then I think that if there are no other
15 general comments, and if people are not -- I don't
16 hear, as I did on the last report a sort of consensus
17 about getting rid of it.

18 I mean, I haven't heard from some people
19 here, so I don't know what the views -- I can't read
20 the table, as it were. So maybe we ought to go through
21 the --

22 COMMISSIONER REDENBAUGH: I can give you a
23 general comment of my view from this end of the table,
24 if you would like.

25 CHAIRPERSON BERRY: Okay.

1 COMMISSIONER REDENBAUGH: My own view -- and
2 it's not surprising that I can find evidence to support
3 what I believe in. My own view is contradicted by the
4 report and I agree with what Connie said, that Chapter
5 10 goes far beyond with respect to prescriptive. I'm
6 prepared to vote against the report.

7 CHAIRPERSON BERRY: Okay.

8 COMMISSIONER HORNER: I am, too.

9 CHAIRPERSON BERRY: Okay.

10 Do others wish to discuss the report or -- I
11 mean, you don't have to have general. Maybe you'll
12 think of some when we go through here.

13 Is it that you believe, Russell, Commissioner
14 George and Commissioner Horner, that the report is
15 pernicious and will do harm or do you just believe that
16 it's sort of beside the point or do you believe it's
17 sort of won't make much different anyway, or is it one
18 of those things where -- and I'll let the staff -- I
19 forgot to let the staff respond.

20 COMMISSIONER REDENBAUGH: I'm more in the
21 pernicious category.

22 CHAIRPERSON BERRY: Pernicious? Okay.

23 COMMISSIONER REDENBAUGH: Yes. In terms of
24 an extended involvement in the classroom, based on what
25 I think Connie rightly characterized as complex and I

1 think incomplete understanding of these mechanisms.

2 CHAIRPERSON BERRY: Okay.

3 COMMISSIONER HORNER: I think it's pernicious
4 in the individual recommendations for interventions
5 into the classroom.

6 CHAIRPERSON BERRY: Okay.

7 Commissioner George, is that your view also?

8 COMMISSIONER GEORGE: Well, I think that here
9 they're really probably is a genuine good faith
10 philosophical disagreement that has to do with people's
11 views about the general jurisdiction of the federal
12 government over educational policy. And if one has my
13 view, which is that the federal government's
14 jurisdiction is very narrowly limited and principally,
15 if not exclusively, has to do with civil rights issues,
16 and then of course we have a difference about what
17 constitutes a civil rights issue and what doesn't.

18 But if you have my view, then it would
19 certainly be pernicious in that it would reflect too
20 great a federal intervention in the absence of a
21 justification that strikes me as legitimate for this
22 kind of federal involvement.

23 So it's pernicious that way. Although I can
24 see that if you have the view that the federal
25 government has jurisdiction as part of its general

1 welfare under the general welfare clause of the
2 Constitution or something like that, then you would see
3 this as perhaps not the greatest report in the world.
4 Doesn't settle all the important issues and maybe it
5 simplifies that which is very complex, but wouldn't
6 really be pernicious.

7 so I think on this issue, the reason I'm
8 saying that it would be pernicious and the reason I
9 would oppose the report and consider it not simply to
10 be innocuous has to do with my background judgment that
11 federal intervention in educational policy should be
12 very much the exception and not the rule.

13 CHAIRPERSON BERRY: Okay.

14 Vice Chair?

15 VICE CHAIRPERSON REYNOSO: Madam Chair, I've
16 been somewhat surprised by the discussion. I believe
17 that once we as a country statutorily and
18 philosophically decide that it was time to bring
19 greater equality on the basis of gender, early on I had
20 thought -- and in fact, it's turned out to be that
21 way -- that we have succeeded more I think in finding
22 equality on the basis of gender than we have thus far
23 in finding equality on the basis of race and ethnicity,
24 for example.

25 And I think the reasons for that are pretty

1 clear. The folk who meant to be protected by laws that
2 proscribe discrimination on the basis of gender were
3 very closely related to many people who had a lot of
4 power and a lot of money. So it made sense that they
5 would make those jumps quickly.

6 On the other hand, Title XI and the efforts
7 to bring about equality on the basis of gender --

8 CHAIRPERSON BERRY: Title IX, you mean?

9 VICE CHAIRPERSON REYNOSO: Beg pardon?

10 CHAIRPERSON BERRY: Title IX.

11 VICE CHAIRPERSON REYNOSO: Title IX, I mean.

12 -- has been very important, I think, in pointing out
13 that equality can mean different things. Equality may
14 mean that women can have their own basketball team and
15 don't have to compete with men.

16 And so it's been a very important part, I
17 think, of our evolution in the last 30 or 40 years and
18 I guess I'm a little bit surprised.

19 What I sense is sort of an antagonist to
20 those efforts, much of which has come from the
21 government, that have been very educational and I think
22 very profitable in advancing the notion of how we reach
23 equality.

24 The issues discussed in this report indeed
25 are the issues that have been discussed in the public

1 debate and tries to come to grips with them. And there
2 is a suggestion of federal intervention.

3 As Robbie was talking, I just noticed there
4 was a suggestion with respect to the amendment of the
5 Equal Educational Act. There's a suggestion that
6 policy guidelines be issued.

7 But the issue of trying to bring equality of
8 opportunity to girls and young women, particularly in
9 math and science, has been much in the minds of the
10 public the last many years. And here we have some
11 concrete proposals about how to advance that issue.

12 Again, I think that these issues probably
13 will be solved more quickly even without federal
14 intervention than the issues of discrimination on the
15 basis of race and ethnicity. So this report is not as
16 crucial to me as some of the other reports.

17 Nonetheless, I thought that it dealt with an
18 issue that's very much -- very prominent in the public
19 eye and I thought it was basically a good report.

20 CHAIRPERSON BERRY: Commissioner Horner?

21 COMMISSIONER HORNER: I want to make it clear
22 that I am pleased with the progress that has been made
23 under law and cultural change, the progress that has
24 been made in math and science education for women. My
25 concern, I think, can be encapsulated if I would read

1 just one short sentence from the report.

2 VICE CHAIRPERSON REYNOSO: What page?

3 CHAIRPERSON BERRY: Let us know where you're
4 reading from.

5 COMMISSIONER HORNER: All right. It's page
6 15 of the -- I guess it's the -- yes, the final chapter
7 under Recommendation. And I identify it as standing in
8 for the broad approach of the report. It's the middle
9 of the recommendation.

10 "OCR should have its compliance officers and
11 investigators closely observing interactions between
12 teachers and students for any possible signs of gender
13 bias."

14 I believe you could destroy the interactions
15 between teachers and students by having an OCR
16 investigator sitting there closely observing this
17 interaction for nay sign of gender bias. And I think
18 most people who've ever been in a classroom would
19 recognize that that's the case.

20 It doesn't say here if there's a complaint of
21 discrimination against a teacher being brought. It
22 says here that OCR should be empowered under our
23 recommendation to go in and watch teachers as they
24 interact with students.

25 Now, it seems to me that this is a kind of a

1 government attempt to -- well, I won't -- I don't know
2 how to characterize this recommendation. It strikes me
3 as extreme, dangerous to liberty and pedagogically very
4 unsound.

5 CHAIRPERSON BERRY: Okay. Why don't we have
6 the staff respond to all that has been said so far.

7 MR. ISLER: Excuse me. Unlike the Lau
8 report, I do not agree with 80 percent of what's been
9 said by the Commissioners. I disagree. I think the
10 gender equity report is well balanced, well presented,
11 well written and based on sound research. And the only
12 thing I would say is -- and then I'm going to let Nadja
13 defend the report specifically -- is that I do agree
14 that some of the findings and recommendations could be
15 revised and revamped.

16 OPERATOR: Pardon the interruption. Leon
17 Higginbotham joins.

18 CHAIRPERSON BERRY: Oh, thank you.

19 Welcome, Leon.

20 COMMISSIONER HIGGINBOTHAM: Hi. How are you?

21 CHAIRPERSON BERRY: We're talking about the
22 gender equity report. We've had all the general
23 comments and the staff now is responding. And we've
24 finished the others except for ability grouping.

25 Go right ahead.

1 MR. ISLER: And I think the Commissioners, at
2 least Commissioner George and Commissioner Horner,
3 totally misunderstood what our charge and ask was with
4 respect to the gender equity report, and we will
5 explain why I feel that way in a few minutes.

6 With respect to our finding that Commissioner
7 Horner mentioned, unfortunately the staff assumed that
8 the Commissioners were aware that OCR does compliance
9 reviews. And in the context of doing compliance
10 reviews they do site visits and they visit school
11 classroom and they do already observe teachers and the
12 environment in the classroom. That's part of their
13 compliance review process.

14 They do not have to have complaints. They
15 could have concerns or their statistics could show
16 there may be a potential problem.

17 But I'll now let Nadja address the general
18 concerns about the report and also indicate to you why
19 I feel that some of the Commissioners totally
20 misunderstood what we were charged to do with respect
21 to gender equity.

22 CHAIRPERSON BERRY: Fred, we'll let Nadja
23 answer but I just want to make sure I understand you.
24 You said that because OCR does compliance reviews
25 generally that this recommendation was directed at

1 while they're doing the compliance review they ought to
2 notice gender bias? Is that what you said? I didn't
3 understand you.

4 MR. ISLER: That's correct. That's right.

5 CHAIRPERSON BERRY: I just wanted to make
6 sure I understood.

7 MR. ISLER: Yes. That is correct. That is
8 done in all compliance reviews with OFCCP, OCR,
9 Department of Justice. When they go into companies and
10 facilities, they do just those things.

11 CHAIRPERSON BERRY: Some people may think
12 they shouldn't but I just wanted to make sure I
13 understood what you were saying.

14 MR. ISLER: Right. But that's standard
15 compliance practices. And we just feel that OCR has
16 failed to do that on a continuous and consistent basis.

17 CHAIRPERSON BERRY: Commissioner Horner?

18 COMMISSIONER HORNER: Could I just get a
19 little better educated on this?

20 What precipitates an OCR classroom visit and
21 how many of them occur in the course of a year? There
22 are 16,000 school districts in the country. How many
23 of them would be visited by OCR into the classroom to
24 look for gender bias?

25 MR. ISLER: That is something I couldn't

1 answer specifically but they do look at a variety. It
2 depends on the situation. It depends on what
3 information they get from the parents, the students,
4 what the documents show, whether it necessitates going
5 into the classroom, whether it's a disparate treatment
6 case or whether it's a disparate impact case.

7 CHAIRPERSON BERRY: But the question
8 Commission Horner has, if I understand her correctly,
9 is how frequently do they do compliance reviews and how
10 do they decide which ones to go to.

11 COMMISSIONER HORNER: Well, on the subject of
12 gender bias compliance reviews. How often would they
13 go out, assuming no complaint has been made?

14 MR. ISLER: That is also an issue that
15 puzzles us. OCR raised this as a major issue in their
16 strategic plan and they've done very little compliance
17 reviews in the area of gender equity as it relates to
18 math and science, and they've yet to be able to tell us
19 why, other than they feel that perhaps they made a
20 mistake in raising this as a major issue in their
21 strategic plan. But they would not give us a definite
22 answer as to why they've done so few compliance reviews
23 as it relates to gender equity in math and science.

24 I guess the answer was their 12-page report
25 25 years after Title IX, which they feel that girls

1 have made progress in math and science. But they still
2 say they agree with us that they have not made
3 significant progress in advanced math and science,
4 primarily physics and calculus and higher math.

5 COMMISSIONER HORNER: And are they concerned
6 that the greater and more persistent gap between boys
7 and girls in boys' failure to command the language
8 relative to girls? Would they look at something like
9 that or is there no law that would come under?

10 MR. ISLER: I would have to let Nadja answer
11 that question specifically.

12 CHAIRPERSON BERRY: Okay, Nadja. Go ahead.

13 MS. ZALOKAR: First of all, with respect to
14 that specific question, I'm not sure that that gap that
15 you're talking about is exactly real in the sense that,
16 for instance, in the SAT scores, boys now perform
17 higher than girls on the verbal SAT. And that's been
18 true for the last few years. So I don't think it's
19 necessarily a persistently lower verbal ability for
20 boys.

21 COMMISSIONER HORNER: Nadja, I have a report,
22 an Educational Testing Service report from May 7th of
23 this year, as reported in the New York Times. The
24 report said the most persistent gap was not for girls
25 in math but for boys in English, suggesting that

1 schools should pay more attention to boys' language
2 skills.

3 The point I'm trying to make is if there is
4 uncertainty about this question, if it is as Chairman
5 Berry and Commissioner George suggested in their
6 colloquy a complex issue, is it worth the candle to
7 inflict a high level of anxiety, career anxiety, to put
8 it mildly, and self-censorship, perhaps, of the
9 spontaneity required in the classroom to have teachers
10 worried about investigators sitting in the back of the
11 room.

12 MS. ZALOKAR: I think that's a slightly
13 different question from where you started here.

14 COMMISSIONER HORNER: Okay.

15 MS. ZALOKAR: You started asking about
16 whether OCR should also be looking at boys and whether
17 there was any law. Of course, Title IX would cover
18 discrimination against boys as well as girls. But our
19 particular project was not focused on that. If you
20 look at the project proposal, our project proposal
21 directed us to look at girls in math and science and
22 that's what we did. And that's probably why you don't
23 see much of a focus on boys in this report.

24 That doesn't mean that we don't think that
25 OCR shouldn't be looking at discrimination against

1 boys, as well.

2 The second question you asked was about
3 intrusiveness in the classroom and did these things
4 justify intrusiveness in the classroom.

5 I just want to say that when OCR conducts
6 compliance reviews -- and so far, they have conducted I
7 think about six compliance reviews on
8 underrepresentation of girls in math and science. And
9 in none of those reviews have they really gone into the
10 classroom because as soon as they saw the girls were
11 equally represented, they just said, okay, we're not
12 going into the classroom.

13 COMMISSIONER HORNER: Well, then, how did
14 they judge interaction between --

15 MS. ZALOKAR: They don't do it.

16 COMMISSIONER HORNER: But we're recommending
17 that they do do it.

18 MS. ZALOKAR: What we're basically saying is
19 we shouldn't focus only on numbers, whether girls are
20 in the class, but we should look at little bit beyond
21 and see how they're doing in the class; are they being
22 treated fairly. We're not saying that we should have
23 myriads of investigators in every classroom in this
24 country. That's certainly not what we were intending.

25 COMMISSIONER HORNER: And I'm not suggesting

1 that's the standard against which we ought to judge.
2 But the fact is, you are recommending that OCR put
3 investigators into classrooms. I just read the --

4 MR. ISLER: We're not suggesting that they
5 put them in there. We're suggesting that when they're
6 in the process of doing compliance reviews that they
7 not just stop and look at statistics only and
8 documents, but they actually do an on-site review of
9 the classrooms.

10 COMMISSIONER HORNER: But you talk about
11 interaction between teachers and students. How can you
12 observe that unless you have an investigator in the
13 classroom?

14 MR. ISLER: In the process of doing a
15 compliance review, they would visit the classrooms.

16 COMMISSIONER HORNER: So you are proposing
17 that they do more than they're doing now. That they
18 add to their compliance review classroom -- the
19 presence of investigators.

20 MR. ISLER: On-site classroom. That's
21 correct.

22 COMMISSIONER HORNER: Well, there's a
23 difference between on-site where you might talk to the
24 administration or talk to the faculty or talk to
25 students. That's one thing. But it's another thing to

1 go into the classroom --

2 MR. ISLER: And we're making that
3 recommendation.

4 COMMISSIONER HORNER: -- and observe and
5 presumably record what goes on between the teacher and
6 the students and the students and the teachers.

7 MR. ISLER: We're making that recommendation.

8 COMMISSIONER HORNER: But you're telling me
9 that this hasn't been a typical behavior.

10 MR. ISLER: Not as it relates to gender
11 equity in math and science. No.

12 COMMISSIONER HORNER: Okay. Because I
13 thought earlier you were telling me that I hadn't been
14 aware that this goes on.

15 MR. ISLER: They do go to some classrooms in
16 some instances on some issues. I can't say
17 specifically --

18 COMMISSIONER HORNER: But we are recommending
19 more systematic use of that tool?

20 MR. ISLER: That's correct.

21 CHAIRPERSON BERRY: I still don't think it's
22 clear. If I understood you, they've never done it on
23 gender equity. They've visited classrooms on other
24 civil rights issues --

25 MR. ISLER: That's correct.

1 CHAIRPERSON BERRY: -- and they have noted
2 behavior. Your recommendation says that if they do a
3 compliance review on gender, they should go in the
4 classroom, too. Am I correct or incorrect?

5 MS. ZALOKAR: That's correct, what that
6 recommendation says. Yes.

7 CHAIRPERSON BERRY: I just want to be clear.
8 That's what the recommendation says.

9 MS. ZALOKAR: Yes.

10 COMMISSIONER HORNER: I think the problem of
11 racial discrimination so far exceeds the problem of
12 girls in math and science that one can't do any
13 equivalence here in determining whether a technique is
14 appropriate or not for a gender gap in math and science
15 because it has been appropriate or deemed appropriate
16 in a racial issue.

17 CHAIRPERSON BERRY: Nadja, do you have
18 anything else you'd like to say?

19 MS. ZALOKAR: I did want to say that our
20 report is not there to measure the amount of
21 discrimination against girls in math and science. That
22 wasn't what we were tasked to do. We were tasked to
23 see whether OCR was enforcing Title IX adequately and
24 that's what we tried to do.

25 And the suggestions that we're making have to

1 do with how OCR could improve its enforcement of Title
2 IX to make sure that individual girls are not
3 discriminated against, not just that the numbers out
4 there look like there's no problem any more to you.
5 But we don't really know that and that wasn't our
6 purpose to look at the problem. It was to look at how
7 we are enforcing the law and whether we're doing it
8 adequately.

9 And also, I would like to let you know that
10 we have re-looked at the recommendations in this report
11 and we agree with you in some sense that some of them
12 are a little extreme and we have revised them. We've
13 attempted to go through it quite a bit and revise the
14 conclusion to tone it down so we don't say that there's
15 a huge problem.

16 I think the findings and recs did seem to
17 imply there was a huge problem of discrimination
18 against girls. We didn't know that in this report.
19 And as we've rewritten it for ourselves, they don't say
20 that. We're saying more OCR needs to do certain things
21 to make sure that it is uncovering any problems that do
22 exist but we're not going out and saying there is still
23 a major problem.

24 COMMISSIONER HORNER: I see.

25 CHAIRPERSON BERRY: Does someone else wish to

1 comment before I say anything?

2 (No response.)

3 Let me just say that in my own view, while I
4 see that this is less of a problem than it used to be;
5 that is, the gap, I understand that the staff was asked
6 in terms of the proposal which the Commissioners
7 approved, to write something on this issue. So the
8 staff went about writing something on this issue.

9 Perhaps, again, it's one of those where if we
10 had had a review after you told us what your findings
11 and recommendations were, we would have said -- some of
12 us would have said, "Wait. Not so fast." But we
13 didn't do that. So that, in a sense, it's unfair to
14 blame the staff.

15 COMMISSIONER HORNER: I'm no blaming the
16 staff.

17 CHAIRPERSON BERRY: No, no, no. I'm not
18 saying that any individual is personally and
19 individually blaming the staff. I'm saying
20 collectively it would be erroneous to blame the staff
21 for having done what they thought they were supposed to
22 do, whatever we think about it.

23 My own view is that the report is solidly
24 done for what you were asked to do; that it could have
25 a tone and tenor in the beginning which said more about

1 the progress. You say progress has been made. And the
2 Title IX at 25 Report says explicitly that problems
3 still exist with grades 8 through 12, which is what
4 your report is about, as I understand, advanced
5 mathematics.

6 Your recommendations, if we go through the
7 report, and if we did, there are several I would ask
8 you to change. And that's one of the things that the
9 Commission is supposed to do. We, as Commissioners.
10 But I think in terms of the body of the report, while I
11 do not agree that gender equity issues have the same
12 potency as race issues for all the reasons that have
13 been given here by the Vice Chair and others, they do
14 have potency. Gender issues do have potency.

15 And what I hear from Commissioner George and
16 others in the discussion is that there are people who
17 are very strongly committed to certain ideas about
18 gender and sex roles and believe that they're based on
19 nature and nurture, and to them these are fundamental
20 issues. And it doesn't matter what we measure as
21 progress. You know, some change has been made and so
22 on. These are very visceral issues. Hit people in the
23 gut. So, I don't discount them.

24 So, I personally would vote for the report
25 simply because -- not that I think it's as important as

1 some other issues but because I would hope that the
2 progress that's being made would continue to be made.
3 But I, too, would ask -- would have voted for it and
4 will vote for it if there's a vote taken, which I'm
5 about to see if we do, with suggestions for
6 modifications in the recommendations.

7 Is there anyone else who wishes to speak
8 before we vote on this?

9 Yes, Commissioner Lee?

10 COMMISSIONER LEE: In addition to modifying
11 some of the recommendations, I would suggest the staff
12 to beef up the overview chapter to mention about how
13 the improvements came about. You mentioned that the
14 gap has been narrowed but you did not go into more of
15 the historical perspective. I think that would be very
16 helpful.

17 MR. ISLER: Some of the reports that we
18 received, we received after we had completed the report
19 on the gaps and everything. We were waiting for those
20 reports but they hadn't been published so we had
21 nothing concrete to verify those gaps. We kept talking
22 to the Department of Ed.

23 CHAIRPERSON BERRY: Now, we can do one of two
24 things. We can consign this one to the trash bin of
25 history or we can decide that we want the staff to

1 revise it.

2 Now, it depends upon how global the rejection
3 in the minds of Commissioners -- my sense is that the
4 rejection in the minds of some Commissioners is global
5 but I may be wrong about that.

6 COMMISSIONER GEORGE: Mary?

7 CHAIRPERSON BERRY: Yes.

8 COMMISSIONER GEORGE: Mine is global.

9 CHAIRPERSON BERRY: Okay. I heard one
10 global.

11 Are there any other globals around here?

12 I would -- yes?

13 VICE CHAIRPERSON REYNOSO: I want to inquire
14 as to what global means? Does that mean that in the
15 view of some of the Commissioners the federal
16 government has no further role in assisting in
17 diminishing any gender gap that exists in this area or
18 in any area, I suppose?

19 COMMISSIONER GEORGE: Except to the extent
20 that discrimination is at fault or at stake. Yes,
21 that's right.

22 CHAIRPERSON BERRY: Okay. You mean by that
23 individual discrimination, institutional -- no. Let's
24 not have another seminar.

25 VICE CHAIRPERSON REYNOSO: But Madam Chair,

1 you were being half facetious but indeed the whole
2 history, particularly in gender discrimination has been
3 a matter of defining discrimination. If you define
4 discrimination that any girl could compete for the
5 basketball team, then that's one definition of
6 discrimination. If you describe discrimination as
7 resources, as has been described, that's a completely
8 different definition of discrimination.

9 So I think it's relevant to what we're
10 discussing here. And it seems to me --

11 COMMISSIONER GEORGE: Cruz, I completely
12 agree with you about that. I think that there are very
13 important problems of definition which have behind
14 them, of course, differences in value and points of
15 view when it comes to defining discrimination, when it
16 comes to defining equality.

17 I completely agree with you when in a prior
18 intervention you said that much depends on how one
19 defines equality. And I think that's absolutely right.
20 But there are significant differences between people
21 and significant differences on the Commission, I
22 suspect, as to what constitutes equality in the area of
23 sex roles and relations between the sexes and the gaps
24 for both boys and girls that we've been talking about
25 in this discussion.

1 CHAIRPERSON BERRY: Okay. Why don't we just
2 simply have a vote on this. And the vote is whether --
3 on the motion which is on the floor. And the
4 understanding that I want to reiterate is I'm going to
5 vote for this report but with the understanding that
6 there will be these changes in it that Commissioner Lee
7 and I discussed.

8 So I'm ready for the question.

9 Mr. Isler, do you have something you'd like
10 to say?

11 No.

12 All those in favor of the approval of this
13 report, indicate by saying aye.

14 (Chorus of ayes.)

15 All of those -- that's one, two, and I count
16 myself. Three.

17 All those --

18 COMMISSIONER GEORGE: Is Judge Higginbotham
19 on the vote?

20 COMMISSIONER HIGGINBOTHAM: I said aye.

21 CHAIRPERSON BERRY: You said aye? So that's
22 four.

23 All those opposed to the report, indicate by
24 saying no.

25 (Chorus of no's.)

1 Let me count you. Did you say no, Carl? I
2 didn't hear you.

3 COMMISSIONER ANDERSON: I said no.

4 CHAIRPERSON BERRY: Okay. Russell, did I
5 hear you? Commissioner Redenbaugh?

6 COMMISSIONER REDENBAUGH: I'm here. No.
7 Sorry. I had the mike off.

8 CHAIRPERSON BERRY: Okay.

9 Commissioner George?

10 COMMISSIONER GEORGE: Yes. No.

11 CHAIRPERSON BERRY: Yes, no?

12 COMMISSIONER GEORGE: Sorry. Yes, this is
13 Commissioner George and he votes no.

14 CHAIRPERSON BERRY: So the vote is 4/4 and
15 the motion fails. Now, the report is not approved.

16 Let me ask if anyone has any interest in
17 having revisions. I guess if you had wanted to, you
18 would have said so, so why don't we leave it at that.

19 Why don't we open, for purposes of discussion
20 -- because I know that Commissioner Higginbotham wanted
21 to participate in the discussion, if he could -- the
22 report on ability group and just open it and see how
23 far we can go here.

24 This is the Equal Opportunity of Non-Native
25 Minority Students, Federal Enforcement of Title VI in

1 Ability Grouping Practices.

2 Could I have, for purposes of discussion, a
3 motion to approve the report?

4 COMMISSIONER HORNER: So move.

5 COMMISSIONER REDENBAUGH: Second.

6 CHAIRPERSON BERRY: All right. Discussion.

7 General comments first.

8 VICE CHAIRPERSON REYNOSO: Madam Chair, this
9 is another one of those reports that probably would
10 have profited from early discussion because in going
11 through the recommendations, I had a few objections if
12 one were to accept the assumption of the report. But
13 the assumption of the report seems to be that ability
14 grouping is okay, and it itself does not represent a
15 civil rights issue.

16 And then it goes on and makes a series of
17 recommendations on how to prevent discrimination, what
18 to look for, and so on. But the crucial issue in much
19 litigation and much discussion has been with the
20 primary issue; is ability grouping itself a civil
21 rights issue that has been used historically to the
22 disadvantage of minority groups. And we really don't
23 deal with that.

24 We assume that ability grouping is okay and
25 then make these series of recommendations as to how to

1 try to cut down that disparity. And I must say, as
2 with the report on Lau, I would not be in a position to
3 vote in favor of this report without a substantial
4 discussion of that very issue and no simply assuming
5 that it's okay.

6 CHAIRPERSON BERRY: Commissioner
7 Higginbotham, do you have any comments you'd like to
8 make on the ability grouping report?

9 COMMISSIONER HIGGINBOTHAM: I agree with the
10 Vice Chair's statement. I could pull together some
11 powerful history which demonstrates how the system has
12 used to the disadvantage of minorities. It's not that
13 I'm against grouping of talented people but sometimes
14 it's been used to preclude talented people from getting
15 the option. And I don't think that the historic
16 perspective is adequately revealed.

17 So it's like a report which starts mid-stream
18 and you aren't familiar with the shore from which you
19 left.

20 CHAIRPERSON BERRY: So would you then like,
21 on that basis, as we go through the discussion, the
22 understanding is you would be recorded as voting
23 against the report?

24 COMMISSIONER HIGGINBOTHAM: In its present
25 form.

1 CHAIRPERSON BERRY: Yes.

2 COMMISSIONER HIGGINBOTHAM: With the
3 modifications and the historical perspective, I
4 certainly could go along with it.

5 CHAIRPERSON BERRY: Okay.

6 Commissioner Lee?

7 COMMISSIONER LEE: I am prepared to go
8 against the report because of a combination of what the
9 two previous Commissioners have said. This whole thing
10 about assuming ability grouping is helpful, is
11 nondiscriminatory, within the Asian-American community
12 you do see an overrepresentation of Asian-Americans in
13 certain so-called honor groupings or advanced classes,
14 but that also is discrimination because it
15 discriminates against the students from being exposed
16 to other courses of studies.

17 So, while Asian-Americans have always been
18 used as one group that may support ability grouping
19 practices -- and I do want to point out that this whole
20 thing about discriminatory practices against ability
21 grouping does not apply only on students who are stuck
22 at the bottom rung. It also affects students who get
23 labeled as whiz kids and they get stuck in the upper
24 rank and never get exposed to other opportunities.

25 So I do think that the way the report is

1 written --

2 VICE CHAIRPERSON REYNOSO: They should be
3 able to associate with us less fortunate.

4 COMMISSIONER LEE: And I think that the way
5 the report is written right now assumes too much about
6 how this is the norm and this is the practice and how
7 it's acceptable. And I just have a lot of problems
8 with that.

9 And I don't know if -- you know, by modifying
10 this report, it's going to satisfy me.

11 COMMISSIONER GEORGE: Madam Chairman?

12 CHAIRPERSON BERRY: Yes, Commissioner George.

13 COMMISSIONER GEORGE: I don't want to become
14 inquisitorial but I really am puzzled and surprised by
15 what Yvonne said and I want to make sure that I
16 understand it. So I would like to ask her perhaps to
17 go through it again.

18 Let me just say, Yvonne, what I thought I
19 heard you say, and you tell me if this is correct.

20 I thought what you were saying is that
21 ability grouping is inherently discriminatory, that it
22 constitutes discrimination, and that the
23 overrepresentation of Asians in some of ability
24 grouping scheme at the top or in the top categories
25 constitutes discrimination against them because it

1 deprives them of other opportunities.

2 A, is that in fact your view or have I
3 misrepresented it; and B, what are the opportunities it
4 deprives them of?

5 COMMISSIONER LEE: Well, I think citing the
6 bipartisan Glass Ceiling Commission Report, it's cited
7 that Asian-Americans are overrepresented in middle
8 management, technical, professional ranks because
9 throughout their educational ladder they've been
10 shifted toward that area because they were thought to
11 be smart in math and all the technical areas. That
12 they were shielded away from other social studies and
13 other courses.

14 So as a result, they were put in the track
15 that was very narrowly focused and that affected them
16 in their future careers.

17 And what I talk about this ability grouping
18 is, people tend to think discrimination only affects
19 people who get stuck in the lower ranks because they
20 never get the ability to move up.

21 CHAIRPERSON BERRY: You mean in school.

22 COMMISSIONER LEE: Yes. In schooling. But in
23 this whole grouping practice it also affects -- it also
24 discriminates against people if they are not being able
25 to move horizontally. That's what I mean.

1 COMMISSIONER GEORGE: Well, if the same
2 students, though, are not discriminated against with
3 respect to their grouping in non-technical students or
4 non-mathematical and scientific subjects, how is that -
5 - how are they being discriminated against?

6 COMMISSIONER LEE: I think by putting them in
7 a pool, by putting them in a certain track, it denied
8 them the opportunity to be exposed to other aspects of
9 education.

10 COMMISSIONER GEORGE: But they still are
11 taking --

12 COMMISSIONER LEE: And I think that's what
13 grouping is.

14 COMMISSIONER GEORGE: I'm sorry, Yvonne. I
15 didn't realize you weren't finished. Go ahead.

16 COMMISSIONER LEE: And I thought that's why I
17 object to these ability groupings because it shields
18 the student from other aspects of education by grouping
19 them.

20 COMMISSIONER GEORGE: But the same students
21 are still taking history, English, social science,
22 foreign languages and so forth and they're being -- and
23 let's assume they're not being discriminated against.
24 They're not being put into low ability groups or being
25 excluded from participating in these subject areas

1 because they're Asian or any other reason. So I don't
2 see how they're hurt.

3 COMMISSIONER LEE: Well, I think they are
4 being hurt in later years when you see the other
5 aspects of development that they did not have in their
6 social interaction. So that is evident that Asian-
7 Americans are considered to be very excellent
8 technicians but not good at other areas. And when you
9 look at the report, when you look at the tremendous
10 overrepresentation of Asians in some of these technical
11 courses, that has some direct relevance.

12 CHAIRPERSON BERRY: Can I help a little bit?

13 COMMISSIONER GEORGE: Yes. Please.

14 CHAIRPERSON BERRY: Or try to? Factually.
15 Let's have a little colloquy here.

16 One of the things I think based on the Asian-
17 American report we did -- I've forgotten the name of
18 it, the last one we did. There were a couple before
19 that, too -- is, if I understand Yvonne rightly, and
20 she can correct me if I'm wrong. The whole idea is
21 that if you put Asian-American students into a track or
22 a grouping where the emphasis is on math and science
23 and that they made good scores in that and they're good
24 at technical subjects, okay? Even if they are taking
25 other courses, depending on what school they are in and

1 what kind of groupings they're in, they may not have
2 much interaction with other students.

3 And she's saying that if you're in a
4 classroom where everybody took everything together,
5 whether it was math and science or whether it was
6 history or art or whatever it is, all the kinds in
7 Grade 7 or whatever it is took these things together,
8 the kids would interact with others. They might get
9 more interested in some of the other subjects, like
10 history or political science or whatever it is they
11 teach in high school, and interact with the students,
12 too, and not end up so developmentally -- considered
13 developmentally narrow, which we found in those other
14 reports was the case.

15 So that when they go into the workplace,
16 everybody pigeonholes them as people who are good
17 technical thinkers, who are good at math and science,
18 but really don't have the cultural broadness or the
19 perspective or the ability to interact with other
20 people.

21 And she's saying, if I understand her
22 rightly, that while she doesn't think it's a bad thing
23 to be smart in math and science, that it would be
24 healthier for the students involved for everybody to be
25 all mixed up together in terms of their overall -- if I

1 understood you right -- cultural development.

2 Did I understand you rightly?

3 COMMISSIONER LEE: Right.

4 CHAIRPERSON BERRY: And that, basically, I
5 think, is what the point was, Robbie.

6 COMMISSIONER GEORGE: Very helpful
7 explanation.

8 CHAIRPERSON BERRY: You don't have to agree
9 with it, but I'm just telling you what the point was.

10 COMMISSIONER REDENBAUGH: Could I join in?

11 COMMISSIONER HORNER: I'll defer.

12 CHAIRPERSON BERRY: Who was that that said
13 something?

14 COMMISSIONER HORNER: Russell.

15 CHAIRPERSON BERRY: Commissioner Redenbaugh.

16 COMMISSIONER REDENBAUGH: Thank you, Connie.

17 What we've come to grips with here is -- or
18 are advising, anyway, is the question of -- the
19 question, there is a discrimination to categorize
20 people by ability groupings. Is that an illegal
21 discrimination or an appropriate one. And I'm
22 particularly interested in the comments of the two
23 Judges and the point that the report lacks the history
24 of the ways in which ability groupings have been used
25 in a way against civil rights and against equal

1 opportunity.

2 So, I think the irony of all this is that the
3 ability groupings cause people to be tainted as a class
4 rather than as an individual. And that's something
5 that I'm generally -- and in this case, specifically --
6 opposed to.

7 So anything that would take us back more in
8 the direction of interacting with individuals like
9 individuals, I would support.

10 COMMISSIONER GEORGE: Can I ask Russell a
11 question?

12 COMMISSIONER REDENBAUGH: It's all right with
13 me.

14 CHAIRPERSON BERRY: Go right ahead,
15 Commissioner George, if it's all right with him and if
16 it's all right with Connie, who was next.

17 COMMISSIONER HORNER: It's all right.

18 COMMISSIONER GEORGE: And again, I'm puzzled.
19 I mean, the individual -- assuming that there's not
20 what we would all agree is discrimination where an
21 ability grouping program was simply used as a pretext
22 for excluding some minority from the benefits of say an
23 advanced course in calculus or algebra, laying that
24 aside but just talking about ability grouping now where
25 there's no such bad motive, as I understand it, the

1 schools that I've known, students are treated as
2 individuals.

3 I mean, there's an appraisal made of
4 individual students' abilities. We don't assume that
5 because a student is from a Chinese background that
6 that student is going to be good at science. You test
7 the individual students. There's testing that goes on
8 all the way from kindergarten forward. And at the end
9 of the day -- my son is now moving into middle school
10 and a determination is going to be made about ability
11 grouping on the basis of math. And as far as I can
12 understand it, that's being done on a strictly
13 individualized basis.

14 Now, at the end of the day in the classroom,
15 there might be disproportionately higher number of
16 Asians or some other group, or a disproportionately low
17 number, but I don't see how the system has been
18 treating people as groups rather than individuals
19 because there's an outcome in which there's a
20 representation that reflects the general population.

21 See what I mean?

22 COMMISSIONER REDENBAUGH: I do. I don't have
23 an answer to what I think is your question because your
24 question goes to what's the experience of these things;
25 how do they actually work. And I can't respond to

1 that.

2 I wanted to go on and say to Yvonne, an
3 additional explanation that may fit the data about --
4 that you present, is that Asians have had a very
5 successful strategy for gaining access to the very
6 important and high paid roles in companies and has
7 worked very well.

8 CHAIRPERSON BERRY: But if I may interview,
9 our studies, in particular one that was done years ago
10 for the Commission by Thomas Sowell when he was less
11 well known, indicates that if Asian-Americans were not
12 Asian-Americans and then put into these pigeonholes,
13 they would be even more successful, as marked by money
14 success, than they in fact are.

15 And also, whether that's relevant or not,
16 Commissioner George, when you asked the question of
17 Commissioner Redenbaugh, --

18 COMMISSIONER GEORGE: Yes.

19 CHAIRPERSON BERRY: -- you left out of your
20 equation the comment that Yvonne made where her
21 emphasis was not so much on is the individual child
22 being discriminated against because somebody assessed
23 him wrong or did something wrong to him, but are his
24 life chances being limited and affected and his overall
25 education and his opportunities, therefore, being cut

1 off and thwarted by not putting him in an environment
2 with other students and putting him in an environment
3 where the emphasis is on you know how to do math and
4 science, so great.

5 And that really was her question.

6 COMMISSIONER GEORGE: I understood that to be
7 Yvonne's position, which you explained. And I
8 understand it. I don't necessarily agree with it but I
9 understand it.

10 I thought Russell was making a different
11 point and that's why I raised the question to Russell
12 about the individual students.

13 COMMISSIONER REDENBAUGH: Yes. I was making
14 a different point.

15 CHAIRPERSON BERRY: Okay. Okay.

16 I have one think that may indicate that -- I
17 mean, why I don't agree with this report either. It
18 just goes against everything I know.

19 I agree about the history. But on page 22 of
20 Chapter 4, there's a statement that grouping students
21 according to similar abilities, motivation, conduct and
22 other factors can foster teachers' facility to target
23 instruction more accurately to each student's aptitude
24 and subject mastery level.

25 Now, I don't know what they do at Princeton

1 where everybody makes A's.

2 COMMISSIONER GEORGE: Not in my class.

3 CHAIRPERSON BERRY: But in other places where
4 I've been teaching all these years, I have had students
5 of differing abilities in my classes and my task has
6 been to teach all of them. And if they weren't of
7 different abilities and I taught them the same way, one
8 could presume that there would be a high probability
9 that they would all either make A's or F's or
10 something. But I have a whole range of people all the
11 way from F's to A's and I have to sense what their
12 capacities are.

13 Sure, there are some threshold when they get
14 in. They're not brain damaged and they graduated from
15 high school someplace and they had recommendations.
16 But they're all sitting there in my class. And I would
17 love to be able to tell the university that I only want
18 you to put -- give me several sections. Have all the A
19 students in one. Test them. And the B's over here.
20 And then I can pitch the instruction at that level, but
21 were not far away, once you get beyond the threshold.

22 So I simply don't agree with that. I don't
23 agree that that is a rationale. And it goes so much to
24 the point Yvonne was making about teaching and mixing
25 students.

1 Students have a lot to learn from each other,
2 as well as from me, who's teaching. And so there are
3 statements like that from time to time in the report
4 that give a sort of level of support to the rationale.

5 While I have the floor, I'd just make one
6 other comment, and that is that in the recommendations,
7 very often they don't match up with the text. The same
8 problem Commission Horner was talking about generally
9 earlier.

10 For example, there's places in the text about
11 counselors and their role in assigning students to
12 different classes and saying what track they should be
13 in and what grouping. And it says in the text that
14 there's a problem with this because there aren't enough
15 counselors in the first place. The schools don't have
16 enough. The schools who have students who have
17 particular needs don't have enough. I guess it's a
18 resource problem.

19 And then when you go to the recommendations,
20 all you do is recommend that they train the counselors
21 better. You never say anything about the fact that
22 they don't have enough.

23 If you've already said that that's a major
24 problem, you would think that the recommendation would
25 somehow refer to school districts' responsibilities.

1 Also, there is -- and finally somewhere in
2 this report, something about students not being given
3 resources that are commensurate with low ability/high
4 ability students.

5 I would maintain that students who have more
6 problems need more resources and students who have
7 fewer problems need less. And I know there would be
8 disagreement about that.

9 So my overall view is I think the report
10 could be salvaged were there some changes in it, but I
11 would not vote for it in its present form either.

12 Commissioner Horner?

13 COMMISSIONER HORNER: I would like to vote
14 yes on this report. It seems to me that there are two
15 purposes to public school systems. One is to provide
16 the strongest intellectual demand upon students of
17 varying abilities that each student is able to rise to
18 the challenge of, and the other is to promote civic
19 understanding of how we do our civic business together
20 as grownups in the country.

21 And it seems to me that broad ability
22 grouping, not 10 different sections closely calibrated,
23 but broad ability grouping meets both those challenges.
24 And therefore, as a social vision, is a good idea.

25 I would like to see, for instance, in the

1 District of Columbia, whose school system is, I
2 believe, predominantly African-American, classes in
3 every school where those who are, for whatever reason,
4 most avid to learn and most able to learn deeply or
5 quickly or both are challenged way more than they can
6 when they're sitting in classrooms where the culture of
7 the student is antipathetic to learning or where the
8 students are physiologically ill-equipped -- physically
9 ill-equipped to learn because they're tired or
10 whatever.

11 It seems to me that one of the best things we
12 could do for racial advancement for African-Americans
13 is to seek out and rigorously and demandingly educate
14 kids who are able and ready to go for it. And it seems
15 to me that we, as a social vision, fail. In creating a
16 social vision, we fail if we insist upon suppressing
17 their capabilities in the interest of their learning to
18 have a social experience with those of lesser
19 capability.

20 And therefore, although I acknowledge the
21 need for civic encounter with people of all kinds of
22 abilities in a public school system, I don't think that
23 ability grouping, broad ability grouping, precludes
24 that. It doesn't preclude it because some kids have a
25 stronger ability in one subject but not another, and

1 therefore, they'll be mixed in one class. That is,
2 they'll be in the middle group in one class; the high
3 group in one class; maybe the low group in another
4 class.

5 I think there are sports. There are extra-
6 curricular activities. There are social occasions.
7 And so I think both those goals, intellectual challenge
8 so that we produce capable people and social
9 interaction which provides for adult capability for
10 civic interaction, are met with ability grouping.

11 And I think the report is kind of middle-of-
12 the-road and sensible. For the record, I think that
13 the problem with education is not so much a narrow
14 question of ability grouping as a large question of
15 where the floor is.

16 And, Mary, you and I have talked about this.
17 The floor is too low for all these kinds. And perhaps
18 our energy should over the long-term be directed to
19 that issue.

20 And finally, I would say I'm not -- I
21 appreciate what Commissioner Higginbotham is saying
22 about the history of this, and Commission Reynoso, and
23 that history has to be considered as we consider these
24 issues. And I think it's good if the report were to
25 say, given this history, people are really sensitive to

1 the possibility for abuse.

2 But right now in the current atmosphere, it
3 seems to me that the decision by a board of education
4 or superintendent of schools or a high school principal
5 or a group of faculty to levy the greatest challenge
6 possible on every individual is a much sounder decision
7 than the decision to abjure ability grouping on the
8 basis of history.

9 CHAIRPERSON BERRY: Yes. I was going to let
10 the staff comment, but go ahead.

11 VICE CHAIRPERSON REYNOSO: I just -- two
12 things.

13 Commissioner Redenbaugh said he couldn't
14 speak to the issue of experience that he was asked
15 about by Robbie. And two, Robbie himself wanted to
16 exclude the issue of bad motive.

17 And I just want to say that in my experience,
18 more often than not you don't find bad motive in these
19 practices but certainly in California there's been an
20 extensive debate and litigation, some of which I've
21 been involved in, when, for example, some years back
22 there was an educationally mentally retarded piece of
23 legislation in California and it was found that most of
24 the youngsters who were labeled educationally mentally
25 retarded and were put in that category were Spanish-

1 speaking.

2 In a case where we litigated, we had them
3 tested for their IQ bilingually. One youngster, the
4 daughter of the mother who first came to see us,
5 actually graded out at a genius category. And she knew
6 something was wrong because she had just moved to
7 California from Texas. In Texas, she was getting
8 straight A's, doing very well. She gets to California
9 and she becomes educationally mentally retarded.

10 We see invariably when there is ability
11 grouping that the ability groupings will be
12 disproportionately Spanish-speaking youngsters and very
13 often black youngsters. And those are the folk who
14 seem to be less challenged.

15 I agree that the issue ought to be
16 challenging all of these youngsters. But once they get
17 into those lower groupings, they're practically bound
18 to fail because they aren't being challenged and so on.

19 COMMISSIONER HORNER: Could I ask you a
20 question?

21 VICE CHAIRPERSON REYNOSO: Sure.

22 COMMISSIONER HORNER: I don't know the
23 demographics of California well, but surely there are
24 many school districts where virtually all the students
25 are Latino, Hispanic, of Spanish-speaking families.

1 And wouldn't it be sensible in that environment to
2 challenge the brightest with tougher work rather than
3 failing to challenge them?

4 In other words, aren't there situations where
5 you can remove the ethnic or racial consideration and
6 just say let's get these students as challenged as they
7 can be.

8 VICE CHAIRPERSON REYNOSO: The school
9 districts, and it's more so now than it was five or 10
10 years ago, where minority groups are a high percentage
11 of Spanish-speaking in Imperial County, of blacks in
12 Compton and so on, is still a relatively small minority
13 in California. So we have to worry in ability
14 groupings, too, not just what happens in those
15 relatively few districts where you have a majority
16 minority student body but you have to worry about what
17 happens in the districts where that's not true.

18 And unfortunately, in the district where it's
19 not true that pattern that I just indicated to you is,
20 I would say, the common pattern.

21 In terms of the districts that have a
22 majority Spanish-speaking or majority black, even there
23 I continue to have qualms about ability grouping
24 because they should all be challenged. But the history
25 of it is that once you have those groupings, those in

1 the lower groups are not challenged. And there is
2 challenge sometimes for the upper groups. But we're
3 basically educationally forgetting about those kids.
4 Many of them are very bright. And we're just losing
5 them to society.

6 And I think it becomes as that sentence you
7 read. And I hadn't focused on that, but so often you
8 hear school folks say, but it's easier to teach
9 students when they have sort of a similar level of
10 understanding. And it is easier, but the net result,
11 even in a predominantly Latino or black school
12 district, if you do that type of ability grouping,
13 invariably the group identified as a slow learning is
14 practically being lost. And they can never catch up.

15 COMMISSIONER HORNER: I agree with that. I
16 agree with that. And therefore, my reaction to that
17 would be not to smudge over the problem because those
18 kids get lost in a classroom where the teacher may be
19 teaching to the top or middle anyway. Not to smudge
20 over it by not having ability grouping but to target
21 it.

22 There was some discussion in the report of
23 putting good teachers with the kids in the lowest
24 group. Of course, that's a good idea. That should be
25 done. So what's wrong with just --

1 VICE CHAIRPERSON REYNOSO: The dynamics is
2 that very often a disproportionately large number of
3 youngster who are placed in the lower categories come
4 from families where the families are not as aggressive
5 in terms of going to the school board or going to the
6 teachers to protest.

7 If you had them mixed up, then you'll have a
8 reasonable percentage of parents that are aggressive
9 and that will insist that their children -- and if
10 their children are being challenged, so will the other
11 children in that class.

12 Sociologically speaking, as I say, my own
13 experience has been, and litigation has shown this and
14 statistics have shown this, that those lower groups get
15 lost. And the get lost for many reasons. One of them
16 is that the percentage of their parents that are
17 aggressive -- not that they don't have an interest in
18 education but that are aggressive in going to talk to
19 the teachers and so on, is somewhat less. So the
20 pressure is less on the school district.

21 When you have them all together --

22 CHAIRPERSON BERRY: The evidence also is that
23 while they should have good teachers, nobody wants to
24 teach in those schools.

25 VICE CHAIRPERSON REYNOSO: Of course. That's

1 another reality.

2 CHAIRPERSON BERRY: And so -- and we, as
3 citizens, don't do something to make it more attractive
4 for students to go there -- teachers to go there.

5 VICE CHAIRPERSON REYNOSO: Because those of
6 us who have a lot of power and money have our kids in
7 the upper categories.

8 COMMISSIONER HORNER: But it's being
9 extremely unfair to smart kids which parents who care
10 about their education to punish them with a lower level
11 of education because there are other parents who don't
12 mobilize resources, don't have the social background
13 that makes it easy for them to do that, don't have the
14 standing in the community or the perception of
15 standing.

16 In other words, why radically lower the
17 entire population's level of attainment in order to
18 accommodate deficits.

19 CHAIRPERSON BERRY: You're talking past each
20 other.

21 VICE CHAIRPERSON REYNOSO: A good teacher --

22 COMMISSIONER GEORGE: Madam Chairman?

23 CHAIRPERSON BERRY: Robbie wants to get into
24 this. But I'll let Cruz make one other statement. Then
25 I'll let you in, Robbie.

1 VICE CHAIRPERSON REYNOSO: A good teacher
2 understands the level of development in their students
3 and the challenge that they need.

4 CHAIRPERSON BERRY: Right. Understand the
5 difference between the sockless wonder and the people
6 who are really there to learn.

7 VICE CHAIRPERSON REYNOSO: I teach. I've got
8 a daughter that's taught grammar school and high school
9 and so on. You know those differences. And you know
10 that you should challenge student A with this level of
11 a reading book and student B with this level of a book
12 written in a certain language.

13 So a good teacher will challenge all of those
14 students. But when you separate them out, you
15 practically build into the system a non-challenge of
16 those youngsters in the, quote, lower levels.

17 COMMISSIONER HORNER: And when you don't
18 separate them out, you build into the system a non-
19 challenge. I've taught in elementary and high school,
20 public and private, suburban, urban and foreign. And
21 the fact is that in the elementary school and in some
22 courses in high school you cannot challenge the
23 smartest kids with 10 questions you're asking the class
24 that the lowest kids in the class can answer eight of.

25 VICE CHAIRPERSON REYNOSO: To a certain

1 extent, that's true. That happened with one of our
2 children who seemed to be, at very young, a genius at
3 math. Incidentally, he lost his genius as he got
4 older. I don't know why. But we had the money to send
5 him to a special math teacher on Saturdays, which he
6 loved.

7 I hated math. But I took him one time and he
8 and his math teacher were laughing about these
9 problems, having a good time studying math. Can you
10 imagine! But we had the resources and interest and
11 money to do that.

12 COMMISSIONER HORNER: What if you didn't?
13 Shouldn't he be able to get that in the school?

14 VICE CHAIRPERSON REYNOSO: But my point again
15 is most youngster and most of the families in the lower
16 levels simply don't have the resources and time and so
17 on that we had.

18 CHAIRPERSON BERRY: Commissioner George wants
19 to get in.

20 COMMISSIONER GEORGE: Mary, you said that I
21 wanted to get into this. In fact, I want to get us out
22 of this.

23 (Laughter.)

24 CHAIRPERSON BERRY: Oh, okay.

25 COMMISSIONER GEORGE: Before making that

1 attempt, I just want to clarify my position and my
2 exchange with Russell in view of what Cruz said.

3 When I proposed to exclude the cases of
4 genuine discrimination where ability grouping was used
5 as a pretext for discrimination, in other words, where
6 there was bad motive, I was excluding it for purely
7 analytical purposes in order to test the proposition
8 that ability grouping is, per se, or in itself, an
9 illicit form of discrimination.

10 When it comes to actual pretextual ability
11 grouping, I think that's right at the center of what
12 we're about as a Civil Rights Commission. And to the
13 extent that we identify that as a problem, we really
14 should go after it aggressively.

15 So that's just a clarificatory point.

16 Now, in an effort to get us out of this
17 discussion, as interesting as it is, I would just
18 propose that the general question of whether ability
19 grouping is good educational policy or indeed the
20 question of whether we ought to be a more or less
21 egalitarian society when it comes to class and
22 financial status and so forth should be distinguished
23 from the question before us of whether there's wrongful
24 discrimination going on.

25 It might be that ability grouping -- it just

1 might be it's logically possible that ability grouping
2 is bad educational policy and is unegalitarian in a bad
3 way but nevertheless does not constitute the kind of
4 discrimination that we are authorized and empowered and
5 bound to look into and explore and try to combat.

6 So I think it would be better if we tried to
7 focus the discussion less on the question of whether
8 it's good policy or bad policy and more on the question
9 of whether it is discriminatory in a way that we are
10 authorized and bound to examine.

11 Now, the question that Cruz and Leon raised
12 about the history of ability grouping here does seem to
13 me to be highly relevant to our mission because if
14 there is a strong powerful history of the use of these
15 ability groupings as a pretext for discrimination based
16 on race or based on ethnicity, we would do very well to
17 look to see whether that is continuing.

18 And in that case, any ability grouping would,
19 it seems to me, be automatically suspect the way that
20 literacy tests, given the history of the use of
21 literacy tests, are automatically suspect.

22 So I'm all for including that kind of
23 historical analysis together with a sociological look
24 at the extent to which it's continuing in any report
25 that we do on the subject. But I think that's to be

1 distinguished for the question of whether it's good
2 educational policy.

3 CHAIRPERSON BERRY: But every lawyer knows
4 that if you let me ask the question, I can tell you the
5 answer. And so in framing the question, Commissioner
6 George, the reason why the educational policy
7 discussion here began as I understand listening to it,
8 and proceeded, is because some people think that that
9 kind of educational policy is discriminatory.

10 COMMISSIONER GEORGE: Discriminatory based on
11 race or ethnicity.

12 CHAIRPERSON BERRY: On race or ethnicity.
13 And some people think it is not. Not prejudging which
14 side one should come out on. But some people think.
15 And some people also think that it's discriminatory
16 because it inhibits the life chances of people of
17 particular race and ethnicity.

18 COMMISSIONER GEORGE: I understand both those
19 points. But the discussion between Cruz and Connie,
20 which I think was very interesting and important, as I
21 understand it, was based on a consideration of whether
22 ability grouping would be legitimate or bad even in a
23 school where everyone concerned was of the same ethnic
24 group or the same racial background or whatever,
25 testing the very important question of whether ability

1 grouping is per se discriminatory.

2 It seems to me that the outcomes of that was
3 evident. That if you don't have discrimination based
4 on race or ethnicity or some other suspect category,
5 ability grouping -- there's an argument to be made
6 against ability grouping but that argument is not an
7 argument that pertains to our deliberations.

8 CHAIRPERSON BERRY: Well, let me try this out
9 on you then, Robbie.

10 Suppose that the school district, the people
11 who make the policy decisions in the school district,
12 decide to enforce ability grouping in a Hispanic school
13 district or a Latino majority school district where, as
14 a result of that policy, children who are consigned to
15 the lower ability tracks -- and there's evidence that
16 they of course are Hispanic because that's what the --

17 COMMISSIONER GEORGE: Everybody is.

18 CHAIRPERSON BERRY: -- the school district
19 is, but that the policy tends to discriminate against
20 that particular group of Hispanics. In other words,
21 you can discriminate against a group of people by
22 taking part of them and doing something to them which
23 ends up with kids who could have done the work not
24 being able to get a chance to do it. And the policy is
25 made by the school board, which may or may not be

1 Hispanic.

2 So the question is couldn't we at least
3 describe this problem and say that it may be an issue
4 that people are concerned about, because there are
5 people who are concerned about it, even if we reach no
6 conclusion, as in the case of the earlier discussion we
7 had about the national origin/non-national origin
8 people who take LEP. That it's an issue.

9 I mean, couldn't we at least describe the
10 problem?

11 COMMISSIONER GEORGE: Well, I don't think so.
12 Perhaps I've misunderstood you, but I don't think so.

13 CHAIRPERSON BERRY: Even if we don't think
14 it's a civil rights issue. Because you're not sure you
15 think the other one is a civil rights issue; that is,
16 non-national origin people, if I recall correctly, who
17 have trouble learning English.

18 COMMISSIONER GEORGE: You're talking about
19 the previous report --

20 CHAIRPERSON BERRY: Right.

21 COMMISSIONER GEORGE: -- that we considered?

22 CHAIRPERSON BERRY: Right.

23 COMMISSIONER GEORGE: Well, two things.
24 First of all, I think the way you framed it already had
25 loaded terms. I mean, we've got the school district

1 enforcing ability grouping and we're consigning people
2 at the bottom. So it already kind of loads it up
3 against ability grouping.

4 CHAIRPERSON BERRY: Deliberately,

5 COMMISSIONER GEORGE: I noticed. I just
6 wanted you to know.

7 But the second and I think more important
8 point is that -- and here, I might have misunderstood
9 you. But I don't think that you can make a case for
10 discrimination based on ethnicity even by showing that
11 people who are harmed -- in fact, we discussed the
12 analysis. Well, if it is, then say that they are
13 harmed. That the people who are harmed are themselves
14 Hispanic.

15 CHAIRPERSON BERRY: Right.

16 COMMISSIONER GEORGE: The question is whether
17 the harm is being imposed upon them because they are
18 Hispanic. And to understand that, we'd also have to
19 look at who's benefitted and what we consider a zero
20 sum game, and some are benefiting at the expense of
21 others, and so forth and so on.

22 So at least as I've understood the way you
23 set it up, I don't think we should be getting into it.

24 CHAIRPERSON BERRY: The suggestion was that
25 we could describe this if there were people who thought

1 it ought to be described as a problem without reaching
2 any conclusions about it. That was the only
3 suggestion. I wasn't concluding that it was a civil
4 rights issue. I was saying it could be discussed.

5 COMMISSIONER GEORGE: Okay.

6 CHAIRPERSON BERRY: Why don't we have the --
7 let me just say and then I'll ask the staff to respond,
8 unless somebody else wants to say something else --
9 that in my own view, that if the report -- after
10 listening to this discussion, if the report were to
11 include the kind of history that Cruz and Leon --
12 Commissioner Higginbottom and the Vice Chair were
13 talking about, and if the report were to address some
14 of the other points that were made here, including a
15 discussion even without reaching any conclusion about
16 the kinds of issues that Commissioner Lee was raising -
17 - which I had not heard that discussion before, so I
18 found it very interesting -- and then some modification
19 of some of the recommendations to make sure they accord
20 with what's in the report, then I see it might be
21 worth, if the staff doesn't have to do any other
22 research, which was Commissioner Anderson's question
23 about the earlier one, that we could ask the staff to
24 revise it and take another look at it.

25 But I still wouldn't vote for it in the form

1 that it's in.

2 But anyway, I now ask the staff to respond
3 unless any Commissioner has some other statement they'd
4 like to make.

5 VICE CHAIRPERSON REYNOSO: What an easy day
6 for the staff.

7 COMMISSIONER HORNER: I would just say that
8 we're putting the staff in a difficult position because
9 it is possible that in order to meet the requirements
10 you've just expressed, you might gain your vote and
11 lose mine.

12 CHAIRPERSON BERRY: Right.

13 COMMISSIONER HORNER: And that's not
14 necessarily the outcome but it's a possible outcome
15 before we put the staff to the work

16 CHAIRPERSON BERRY: Okay. Well, before they
17 respond then -- that's why I wanted to hear from
18 others, what is it about the way I put it that would
19 from the perspective of others, in addition to anything
20 that's already said, because my statement was not
21 outcome dispositive. I mean, I wasn't saying -- I was
22 simply saying what I thought might be a way to go.
23 What else or what instead of would need to be done from
24 the perspective of others so they can sort of answer
25 relative to what I said.

1 That is, what is it about what I said --

2 COMMISSIONER HORNER: Nothing.

3 CHAIRPERSON BERRY: Nothing in particular.

4 COMMISSIONER HORNER: No, no. I'm just
5 raising a theory. Just raising a theoretical
6 possibility so that my silence doesn't suggest --

7 CHAIRPERSON BERRY: Consent.

8 COMMISSIONER HORNER: -- consent.

9 CHAIRPERSON BERRY: All right.

10 Commissioner George. Yes.

11 COMMISSIONER GEORGE: Yes. Certainly from my
12 point of view, although I do not object, I would very
13 much welcome the discussion of the historical misuse of
14 ability grouping in a racially discriminatory way. I
15 think that's important. It's got to be included.

16 Secondly, the issue Yvonne raised, I want to
17 be clear on this. Although on the basis of the
18 presentation that she's made and your very helpful
19 further explanation of it, I'm skeptical -- I remain
20 skeptical as to whether the ability grouping that
21 results in an overrepresentation or disproportionately
22 high number of Asians in math and science classes
23 constitutes discrimination against them.

24 While I'm skeptical of it, in that case I do
25 agree that the question whether it constitutes

1 discrimination is a legitimate question going to civil
2 rights, as our Commission is empowered to consider
3 civil rights and defend civil rights.

4 So I'm entirely comfortable with the idea of
5 the staff going into that issue, but I think it has to
6 be done in a very careful way. And if an argument is
7 to be made in the end by the Commission, the Commission
8 has to take a position on that, I would certainly need
9 a lot of information and argument to persuade me that
10 in fact ability grouping constitutes discrimination
11 against Asians in the way that Yvonne suggested it did.

12 So, while not precluding the possibility of
13 being persuaded of that, it could very well cost my
14 vote if that assertion were going to be made on our
15 behalf without enough support to really persuade me
16 that that's discriminatory.

17 And then the third and final thing. I think
18 the staff should have a pretty clear idea of where
19 people are, certainly where I am, with regard to the
20 sorts of questions about ability grouping that, while
21 important as matters of educational policy, are not
22 civil rights concerns. And I would hope that the
23 report did not go into those.

24 And if the report went into those in anything
25 like a big way, then that would be an obstacle for my

1 voting for the report. But if not, then it's fine.

2 So I'm not objecting to anything that you
3 said in your little summation, but I just wanted to
4 provide a little more detail about where I am.

5 CHAIRPERSON BERRY: Okay. Commissioner
6 Anderson?

7 COMMISSIONER ANDERSON: I think the issue
8 raised by Commissioner Lee is an important issue, and
9 it's an issue that really has its foundation in our
10 Asian-American report. Whether it rises to the level
11 of discrimination, I don't know. It does rise to the
12 level of feeding a stereotype and, as any concentration
13 or specialization does, I mean it has adverse
14 consequences. That you become very proficient in your
15 specialization and, per se, you become less efficient
16 in other specializations.

17 Whether that's discrimination or not, I don't
18 know. But I think it's something we could and ought
19 to, perhaps, include in the report.

20 I would be willing to vote in favor of the
21 report today on the understanding that we were going to
22 add a chapter on the history and that we were going to
23 reference and have a discussion of the positive and
24 negative aspects of ability grouping, for example --
25 for the example of Asian-Americans. And that's sort of

1 where I am.

2 CHAIRPERSON BERRY: Could we have the staff
3 respond?

4 MR. ISLER: Sure. I wasn't here for the
5 discussion on historical background, but I will say
6 that I had a staff member do a historical background
7 chapter on ability grouping for about three months. We
8 were unable to come up with a balanced presentation on
9 that chapter, so we sort of jettisoned that and decided
10 that instead of dealing with the past we were going to
11 move to the present and the future and try to develop a
12 report to address some of the concerns at the present
13 time and in the future on present day ability grouping
14 and tracking. And we think we did that very well in
15 this report.

16 Also, with respect to whether ability
17 grouping is inherently discriminatory, our position
18 that is 80 percent of the school districts in the
19 country use ability grouping, some for of ability
20 grouping and tracking, so apparently the school
21 districts themselves in this country, by a majority,
22 feel that there's some merit to ability grouping and
23 tracking.

24 So our next move -- our position was to see
25 if we could develop a report that would give them some

1 way of -- if they were going to use ability grouping
2 and tracking, that they would structure the program
3 where it would not be discriminatory, that they would
4 also implement it where it would not be discriminatory,
5 and that we would deal with the discriminatory issues
6 by principles, and I think we did an excellent job in
7 doing that.

8 With respect to Commissioner Lee's concern
9 about Asian-Americans, if you look in Chapter 8 on page
10 11, we address that specific concern that she has in
11 our finding and recommendation. And in it's addressed
12 in Chapter 4, pages 22 through 26 with respect to
13 schools assigning students to ability courses on an
14 individual course by course basis, instead of based on
15 their specific general ability.

16 And also, we asked OCR to identify the non-
17 academic factors that can result in students being
18 locked into the same ability group for all subjects,
19 regardless of their subject-specific ability. And we
20 talk about school enrollment patterns. We talk about
21 class, level of instruction, policy governing class
22 size. So we think we adequately deal with that.

23 With respect to Commissioner Reynoso's
24 concern, definitely we think in Chapter 8, page 5,
25 we're definitely hitting to the heart of his concern.

1 We, too, share the concern with minority students being
2 locked in too low and there not being challenges. And
3 we think that this general finding goes to the heart of
4 that. And we dealt with that in Chapter 4, pages 12
5 through 21; in Chapter 7, pages 1 through 10.

6 CHAIRPERSON BERRY: Yes, Commissioner Horner?

7 COMMISSIONER HORNER: Madam Chair, just to
8 make this even more complicated, but very briefly, I
9 think it's possible for some people to make this
10 argument. If you have a predominantly white school
11 district where there is ability grouping which the
12 school district believes works well or even an
13 exclusively white school district, and then you have a
14 predominantly African-American or Hispanic school
15 district where there is no ability grouping because
16 those in charge think it's discriminatory to do it.
17 You might be discriminating, de facto, against the
18 Hispanic and black students by not offering them the
19 value of ability grouping, the educational value, which
20 80 percent of the school districts in the country think
21 exists.

22 I don't have a firm conclusion on this but I
23 think it's at least important to recognize you could
24 consider not ability grouping as discriminatory.

25 CHAIRPERSON BERRY: Fred, with all due

1 respect, your citation to page -- the page you cited
2 with reference to Commissioner Lee's concerns on page
3 11 of Chapter 8 is not relevant to her concerns.

4 Her concerns were described by her, by
5 Commissioner Anderson, by me. And her concerns are not
6 whether you keep students in the same group all day
7 long, which is what is addressed here.

8 What she's concerned about is what
9 Commissioner Anderson said, a stereotyping result of
10 putting student in ability grouping at all or in that
11 category. And Commission Anderson's suggestion was
12 that we might discuss the issue and the cites of it in
13 the report.

14 I'm not saying that there's anything in
15 particular wrong with this recommendation but I don't
16 think it addresses Commissioner Lee's concern.

17 I also think that on Chapter 8, page 5, that
18 you just referred to, that this is a sort of pius kind
19 of recommendation, if I may put it that way. There's a
20 lot of piety involved here. Schools ought to ensure
21 that they give challenging curriculum.

22 What you have heard from Vice Chair is that
23 they don't. And so he is concerned about perpetuating
24 the tracking. I mean, if you had a more hard-hitting
25 recommendation that said that we know that there are

1 resource problems and we know that there's research
2 that shows when kids are stuck in those tracks some of
3 them are never challenged and never get out if it, and
4 therefore, we admonish OCR to really have some strong
5 enforcement to see that these kids are challenged.

6 But just for us to piously say that they
7 ought to be challenged and wouldn't that be great is
8 they were challenged doesn't get us anyway.

9 MR. ISLER: I think if you just look at the
10 recommendation on isolation, I agree with you. You
11 have to look at all these recommendations in totality.
12 And we do talk about lack of resources and poor
13 teachers and the shortage of teachers and low ability
14 grouping and that they're not being instructed
15 throughout this report. We make recommendations to
16 deal with that.

17 CHAIRPERSON BERRY: Well, I think, Fred, with
18 all due respect, you're not going to get anywhere by
19 telling me I'm looking at the recommendations in
20 isolation because I read the report and all of the
21 recommendations. So that kind of response isn't going
22 to get anywhere with me.

23 It may get somewhere with other people here
24 and I think I know as much about reading
25 recommendations in a report as some other people around

1 here. So I am saying that I do not believe that there
2 is a hard-hitting recommendation in here that addresses
3 the resource problem, just as you don't on the
4 counselors. You do not say anything about what you
5 have in the text, which is that there aren't enough
6 counselors.

7 I come back to that. There is nothing in
8 these recommendation, and I read them very carefully,
9 which admonishes anything about providing more of them,
10 as well as training the few you've got.

11 Now, does your staff member want to say
12 anything? You don't want to say anything?

13 All right. I think that what we will do here
14 is either ask for a revision or we will just simply
15 vote on the report. Why don't we first see whether
16 there are sufficient number of Commissioners -- the
17 motion that's on the floor is to approve the report, so
18 if I were to call the question on that, we would be
19 voting to approve or disapprove.

20 COMMISSIONER REDENBAUGH: Madam Chair?

21 CHAIRPERSON BERRY: Yes.

22 COMMISSIONER REDENBAUGH: I'd like to propose
23 a substitute motion to revise.

24 CHAIRPERSON BERRY: Okay.

25 COMMISSIONER REDENBAUGH: Consistent with the

1 discussion had here.

2 CHAIRPERSON BERRY: Okay.

3 COMMISSIONER HORNER: What does that mean,
4 Russell?

5 CHAIRPERSON BERRY: First, we'll need a
6 second before we ask them that. If no one seconds it,
7 then we don't get to ask that.

8 Commissioner Horner?

9 VICE CHAIRPERSON REYNOSO: I'll second.

10 CHAIRPERSON BERRY: There's a second. And
11 somebody's going -- but Commissioner Horner has the
12 floor.

13 COMMISSIONER GEORGE: Sure.

14 COMMISSIONER HORNER: I think it would be
15 quite difficult to revise in light of the discussion
16 without getting more specific than that, Russell, since
17 I've said things. Cruz has; Yvonne has; Carl has;
18 Russell, you have; Robbie. What do you mean?

19 COMMISSIONER REDENBAUGH: I'm prepared to
20 answer. I mean to include a chapter or part of a
21 chapter on the history; to include the discussion asked
22 for by Yvonne and Carl with respect to Asians; and to
23 distinguish -- and this part I want to be a little
24 careful about. To distinguish that ability grouping is
25 a matter of educational policy which we don't promote

1 or discourage except we -- I don't want to open any new
2 ground here so I'm being careful. Except we want to
3 admonish that if used, and it is so widely used, that
4 the users be sensitive to the possibility of
5 discrimination, legal discrimination.

6 COMMISSIONER GEORGE: Madam Chair?

7 CHAIRPERSON BERRY: As soon as I make sure
8 Russell is finished.

9 Are you finished, Russ?

10 COMMISSIONER REDENBAUGH: Yes. Thank you.

11 CHAIRPERSON BERRY: Okay. Commissioner
12 George.

13 COMMISSIONER GEORGE: Yes. I think it might
14 be a good idea, to do what we did last time and just
15 ask people whether their objections are global.

16 CHAIRPERSON BERRY: You're so helpful,
17 Robbie. Yes. I will do that. Thank you for your
18 help. I mean that sincerely.

19 COMMISSIONER GEORGE: You're very welcome.

20 CHAIRPERSON BERRY: Are there Commissioners
21 whose objections to this report are global, meaning by
22 global that they do not think it will be possible for
23 them to vote for this report conceptually or there's a
24 presumption that they probably won't be able to
25 conceptually. The same kind of question we asked on

1 the gender report.

2 Are there any global responses?

3 (No response.)

4 No one has a global response.

5 All right, Commissioner --

6 COMMISSIONER GEORGE: Well, what I was
7 thinking in particular is if there are some people who
8 think that ability grouping in itself constitutes the
9 sort of wrongful discrimination that it's our job to
10 point out and combat, then I think we should know that
11 and it might mean that we can't have a report, as
12 opposed to thinking that there are civil rights
13 problems that are associated in some cases with ability
14 grouping. Perhaps in many cases with ability grouping.
15 But that in principal you could have it without a
16 violation.

17 CHAIRPERSON BERRY: Well, in my own case,
18 while I think it is most likely discriminatory and in
19 principle -- I believe in principal i could be done in
20 a nondiscriminatory fashion if you had the resources,
21 if you challenged the kids in the lower level, if you
22 did -- if you did, which nobody's going to do, which is
23 what the problem is. Nobody's doing it.

24 I can still vote for something if the report
25 is written in such a way that we are not so pious about

1 our recommendations in assuming that everybody will
2 just do this and recognize the reality, which is that
3 it isn't happening with these kinds who are in the
4 lower tracks and that they're not being challenged, and
5 be harder and tougher about that. Then I could vote
6 for it.

7 But I probably will vote for it anyway if you
8 do the history chapter, if you do the things that
9 Russell said, because I think on balance, probably if
10 that's done, it would be more worthwhile than not doing
11 it. And the staff was instructed to write such a
12 report and that's what they've done.

13 COMMISSIONER GEORGE: I worry about putting
14 Frederick in an impossible position here where he's got
15 to write a report that both condemns ability grouping
16 in principle and supports it in principle. I don't
17 know how he'll be able to weave that -- navigate that
18 line dividing the Commissioners. I just think it would
19 be very difficult for him.

20 And I would like to hear whether he thinks,
21 based on the discussion, it's going to be possible for
22 him to write a report or his staff to write a report
23 that satisfies everybody.

24 CHAIRPERSON BERRY: What do you think,
25 Frederick -- or did you want to say something, Vice

1 Chair?

2 VICE CHAIRPERSON REYNOSO: Two things. One,
3 I agree with Robbie that conceptually there could be a
4 grouping that have no racial or ethnic or other civil
5 rights connotations. If you have, for example, an area
6 that's been white for 200 years or 100 years and the
7 management is white and all the kids are white and
8 they've decided they want ability grouping, there might
9 be no sort of civil rights implication. One.

10 Two, I just want to emphasize that in my
11 observation, the history chapter in many, many
12 instances is still the present reality. So we've been
13 talking about the history chapter or the history part
14 but I would hope that the report would look at what's
15 happening now. And I assume that they have the
16 statistics and all that, as they said, to look at
17 what's happening now.

18 CHAIRPERSON BERRY: Well, they would have to
19 because that's part of the history.

20 VICE CHAIRPERSON REYNOSO: Yes. Right.

21 And so with those two footnotes, I would not
22 be in a position of saying that I have a global
23 objection.

24 CHAIRPERSON BERRY: Fred, what's the answer
25 to the question?

1 MR. ISLER: Well, since I manage by
2 consensus, the answer is yes, we can do it.

3 CHAIRPERSON BERRY: In other words, you'd
4 like to try?

5 MR. ISLER: Yes.

6 CHAIRPERSON BERRY: You'd like to try.

7 MR. ISLER: My answer is yes, we can do it.

8 CHAIRPERSON BERRY: You'd like to try.
9 It doesn't guarantee we will we will approve
10 it.

11 Commissioner Anderson.

12 COMMISSIONER ANDERSON: Well, now making
13 Fred's job maybe a little bit harder, it seems that how
14 the history chapter is written may obviously provide a
15 context for the rest of the report, which we will get
16 to the point where the Commission may divide and the
17 report go down based on the history chapter.

18 So it may be if we want a report, it might be
19 better to have a more condensed history which doesn't
20 fix the outcome of the report quite so clearly, so that
21 we can have a consensus on it.

22 VICE CHAIRPERSON REYNOSO: Madam Chair --

23 COMMISSIONER ANDERSON: Realizing that the
24 history is such that raises very strong concerns. And
25 so as one goes into an ability grouping situation or

1 system or program, one has to be aware that there are
2 historically significant problems.

3 VICE CHAIRPERSON REYNOSO: But I think the
4 history will show that when there are various racial
5 and ethnic groups represented in a school district and
6 there's ability groupings, sadly, invariably, the
7 minority groups are overrepresented in those lesser
8 ability groupings.

9 And it will show -- I think the history will
10 show that's been the great disadvantage of those groups
11 identified ethnically and racially.

12 If then the report simply says that if there
13 is that sort of ethnic and racial composition in those
14 school districts then one should take a really good
15 look to make sure that the things that Mary was saying
16 actually are happening, the kids are being challenged,
17 they do have resources, they do have good teachers.

18 So I don't think that a strong chapter on
19 history necessarily concludes that conceptually ability
20 grouping as an educational theory is good or bad but it
21 says -- I think it will say it's been bad for
22 minorities identified as minorities. And when you have
23 those groupings, look out.

24 COMMISSIONER GEORGE: Cruz?

25 VICE CHAIRPERSON REYNOSO: Yes.

1 CHAIRPERSON BERRY: I think Carl had the
2 floor, though. Sorry.

3 COMMISSIONER ANDERSON: I take your point.
4 If you have racial or ethnic groups that historically
5 have been disadvantaged, one would not expect them in a
6 fair ability grouping system to be at the high end of
7 the ability grouping. It's not necessarily that the
8 system itself is discriminatory but you would expect
9 that a group that's been legally or economically
10 discriminated against historically, their kids would be
11 in that group; right?

12 So, nuancing it, obviously that's a broad
13 brush statement. But the fact of the matter is it may
14 not evidence an ill will or a discriminatory intent in
15 the ability grouping system but it may make all the
16 more important attention given to the fact that
17 students in the lower categories of the ability
18 grouping must have the additional kind of assistance
19 that we're talking about in some of these
20 recommendations that ought to be stronger.

21 VICE CHAIRPERSON REYNOSO: Well, no. The
22 problem is, as Mary had indicated, that history will
23 also show that that hasn't happened. They don't have
24 the political and economic moxy to put the pressure on
25 the school boards or the resources go to those folk.

1 So you're right from the point of view that
2 history will say a school district, if it has a racial
3 and ethnic mix, ought to consider very carefully
4 whether they're going to have ability groupings because
5 the history has shown that you end up with
6 discrimination against those ethnic and minority
7 groups.

8 CHAIRPERSON BERRY: But as I understood -- if
9 I may -- because I think you're talking past each other
10 a little bit. If I understood though, Carl, the point
11 that Cruz was making, he was agreeing with you. And
12 he's saying that he only thinks that the report ought
13 to come down very hard, as I had said and you had
14 agreed, on making sure that these kinds who are at the
15 bottom have these resources.

16 He wasn't saying that they wouldn't be in the
17 lower tracks or groupings or whatever they're called.
18 He's just saying that the report ought to be tougher
19 than it is about making sure, since their parents don't
20 have the wherewithal to push them, that we believe hat
21 OCR has a duty or somebody has a duty to go in there
22 and make sure that they really are getting challenged,
23 getting attention, and are not just left there without
24 any challenges or anything else happening.

25 COMMISSIONER ANDERSON: Well, it's a tough

1 decision because when you -- take whatever example you
2 want to take. Take an 11th grade trig course. Okay.
3 You put all the students in that course and the teacher
4 is going to go through the book and at the end of the
5 year, they have got to get to the end of the book. And
6 the kids that can't keep up, whether they're in an
7 ability grouping or they're in that class, the teacher
8 is not going to slow down day after day after day to
9 challenge those students.

10 CHAIRPERSON BERRY: What about the kids who
11 are --

12 COMMISSIONER ANDERSON: So, that's the
13 tradeoff.

14 CHAIRPERSON BERRY: Carl, if you group them
15 and you had the, quote, lower ability kids in one class
16 by themselves in your trig example. They wouldn't be
17 taking -- whatever they're taking. How about a
18 recommendation that makes sure that those kids are in
19 fact challenged with the effort to try to move them up
20 rather than just assuming they can never learn
21 anything. They're over there. You know, the heck with
22 them. They'll just stay there forever and the rest of
23 their school career not go anywhere.

24 And that was the point that I was making and
25 I think Cruz was making. That too often is what

1 happens is they get over there. Nobody challenges
2 them. They don't get good teachers. Nothing happens
3 to them. And I think the report ought to be tougher
4 about emphasizing that fact and the responsibility to
5 do something about that than it is, if we're going to
6 have ability grouping.

7 And I'm saying that even though I don't agree
8 with it, I'm willing to go along with it if the report
9 also pays attention to those kids.

10 COMMISSIONER ANDERSON: I agree with you.

11 CHAIRPERSON BERRY: I thought you agreed.

12 COMMISSIONER GEORGE: Mary?

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER ANDERSON: Either way, there's
15 pluses and minuses and tradeoffs and it's not clear to
16 me if you end up in a better situation.

17 CHAIRPERSON BERRY: Yes. Commissioner
18 Horner? Commissioner George, I think, or somebody out
19 there?

20 COMMISSIONER GEORGE: Yes. It's me.

21 CHAIRPERSON BERRY: Okay. Commissioner
22 George.

23 COMMISSIONER GEORGE: Was Connie first?

24 CHAIRPERSON BERRY: No, no. You were first.
25 I can see her.

1 COMMISSIONER GEORGE: Oh, sorry.

2 CHAIRPERSON BERRY: And I hear you. So go
3 right ahead.

4 COMMISSIONER GEORGE: Okay. Well, the point
5 I wanted to make was really a reply to Cruz, because I
6 was struck by Fred Isler's report to us that in trying
7 to put together a history report that the staff had
8 difficulty really putting together a chapter on the
9 history that was balanced.

10 And I suspect that's because the history
11 probably is more complicated than Cruz's brief account
12 had in mind.

13 I don't think -- I mean, I haven't made a
14 study of this, so I'm just going on the basis of
15 general knowledge, which might be mistaken. But I
16 suspect that we would discover with a nuanced treatment
17 of the history of the subject that it's not that
18 minority groups always end up in situations where
19 there's a diverse ethnic backgrounds and racial
20 backgrounds in a community, always end up at the
21 bottom.

22 I suspect it's going to be more complicated.
23 That, for example, at least in many cases, some
24 minority groups will be very highly overrepresented.
25 Others, underrepresented. There might be considerably

1 higher proportion of Jews, say, or of Asians or of
2 certain sorts of Asians in the upper level groups.

3 Now, one might argue, as Yvonne was
4 suggesting earlier, that that is discriminatory against
5 them. But however we judge that matter of whether it's
6 discriminatory, I suspect that the facts are going to
7 be that it's not invariable that minority groups as
8 such are placed in the bottom but there's going to be
9 an overrepresentation of some minority groups and often
10 an underrepresentation of minority groups at the time
11 and the same for the bottom.

12 CHAIRPERSON BERRY: You are making me
13 suspicious, Robbie. Now I'm wondering because I think
14 that probably the problem with this history was what
15 they mean by balance is trying to get something that
16 both sides on the Commission would like. Because I
17 know, as a historian and having studied the history,
18 the history is pretty clear that Hispanics and African-
19 Americans -- Latinos, some groups of Latinos, most
20 groups, and African Americans, have been the ones who
21 are in there. And some groups of Asians now. But with
22 other groups at the top in things like math and science
23 and so on.

24 And I know that that history is clear. So
25 they may mean that they couldn't balance it out in a

1 way that they through we'd all find appealing or
2 something. I have a hunch that that's what they meant
3 by balance. And now I'm getting a little suspicious.
4 I'd forgotten that. But your comments remind me of
5 that. So I'm getting a little edgy and antsy.

6 I want to also point out that I had said we
7 were going to break for lunch at 12:00 and we didn't
8 because the discussion got too -- it was going to well
9 here. But may be can finish this up.

10 COMMISSIONER HIGGINBOTHAM: Madam Chair?

11 CHAIRPERSON BERRY: Yes, Commissioner.

12 Commissioner Horner, did you still want to
13 say something?

14 COMMISSIONER HORNER: Yes.

15 CHAIRPERSON BERRY: Commissioner horner and
16 then Commissioner Higginbotham.

17 COMMISSIONER HORNER: One. It seems to me
18 that one of the questions we're not talking about
19 because we've talked about it in other forums and it's
20 not on the table here, is the question of why there is
21 a disproportionate number of minorities in the lower
22 ability tracks, so-called ability tracks. And
23 obviously we all know the routine and real answers to
24 that question.

25 And it seems to me that among those routine

1 and real answers is a history of discrimination, a
2 history of ability grouping as a technique for
3 discrimination, for avoidance of blacks by whites in
4 school.

5 That then raises the question is that
6 phenomenon still active today. And if it is, what's to
7 be done about it. But if we believe that that ability
8 grouping is not usually being used in order to
9 discriminate today but is being used in order to place
10 students according to fairly demonstrated current
11 capabilities in different subject areas, then it seems
12 to me that our highest priority might be ability
13 grouping in order to generate a minority leadership
14 class that will serve to overcome the cultural
15 indifference to education among those who would
16 currently fall into the lower ability grouping or the
17 lower middle ability grouping, such as the old Dunbar
18 High School here in the District. Special attention to
19 the production of a leadership class.

20 And I am very reluctant to dwell upon the
21 problematic side of contemporary ability grouping, even
22 recognizing the historic use, because my concern for
23 the future is such that I think we need to find and
24 develop a leadership echelon, as well as being
25 absolutely as tough as you suggest among those who

1 aren't ready to do that at this point.

2 CHAIRPERSON BERRY: Okay.

3 Commissioner Higginbotham.

4 COMMISSIONER HIGGINBOTHAM: I identify with
5 the comments of Russell and I think they capture my
6 views.

7 CHAIRPERSON BERRY: Okay.

8 Well, then, why don't we see if we can get
9 a -- that was a substitute motion, was it, Russell?
10 Russell?

11 COMMISSIONER REDENBAUGH: I'm here. Just had
12 the mike off. Yes. A substitute motion.

13 CHAIRPERSON BERRY: And was it seconded? I
14 don't remember. I lost track.

15 COMMISSIONER GEORGE: I'll second it.

16 CHAIRPERSON BERRY: Reynoso seconded it.
17 Okay.

18 So let's have the question. The substitute
19 motion is that the staff will try its hand,
20 understanding there's no guarantee that we're going to
21 approve it. I for one want to make it clear that
22 there's no guarantee that I'm going to vote for it but
23 I'd like to see what they can come up with, as I think
24 others would.

25 And they should also consider this not in the

1 category of the LEP where we were pretty clear about
2 what we all sort of wanted and had the discussion and
3 we can see where we're going on this. But there's a
4 little fuzziness here on this one, I think.

5 But the motion is that the staff would revise
6 the report for us to look at again in advance of the
7 August meeting.

8 Are you ready for the question? And I assume
9 so.

10 All in favor indicate by saying --

11 COMMISSIONER ANDERSON: Oh, Commissioner
12 Anderson?

13 COMMISSIONER ANDERSON: Could I just ask?
14 The revision going to a history chapter and Asian-
15 Americans?

16 CHAIRPERSON BERRY: The things that Russell -
17 -

18 COMMISSIONER ANDERSON: What there a third
19 area?

20 COMMISSIONER REDENBAUGH: Well, there was a
21 third area which I said rather carefully and I don't
22 know that I could replicate that.

23 COMMISSIONER HORNER: I can. I wrote it
24 down, Russell.

25 CHAIRPERSON BERRY: Connie would like to read

1 it for you.

2 COMMISSIONER HORNER: May I?

3 COMMISSIONER REDENBAUGH: Yes, of course.

4 COMMISSIONER HORNER: You said you wanted to
5 distinguish that ability grouping as a matter of
6 educational policy which we don't promote or
7 discourage, but admonish that if used, the users be
8 sensitive to the possibility of illegal discrimination.

9 COMMISSIONER REDENBAUGH: Well said.

10 CHAIRPERSON BERRY: Okay.

11 (Laughter.)

12 COMMISSIONER HORNER: Thank you.

13 CHAIRPERSON BERRY: And it is also understood
14 that when the staff revises this, as in the case of the
15 other report, they may have to jiggle with the
16 recommendations, too, because they're writing.

17 COMMISSIONER REDENBAUGH: Yes, of course.

18 CHAIRPERSON BERRY: Everybody understands
19 that?

20 COMMISSIONER REDENBAUGH: That's implicit.

21 CHAIRPERSON BERRY: And so all in favor of
22 that motion, indicate by saying aye.

23 (Chorus of ayes.)

24 Opposed?

25 (No response.)

1 Okay. So ordered.

2 We're going to take a half hour break and we
3 have a lot of other work to do on the Schools and
4 Religion Project which is the next thing we have to
5 discuss under Future Agenda Items. We have to say what
6 we want to do about that.

7 So we're just going to break for half an hour
8 and then discuss that.

9 COMMISSIONER REDENBAUGH: Very good.

10 (Whereupon, the luncheon recess was taken at
11 1:00 p.m.)

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1 A F T E R N O O N S E S S I O N

2 1:45 p.m.

3 CHAIRPERSON BERRY: Okay. There are two
4 issues we need to discuss here. Well, there are
5 actually three.

6 Commissioner Anderson and Commissioner
7 Horner.

8 COMMISSIONER HORNER: Are Robbie and Russell
9 both here?

10 COMMISSIONER HORNER: Yes.

11 COMMISSIONER REDENBAUGH: Yes.

12 CHAIRPERSON BERRY: The only person who isn't
13 in here is Yvonne isn't back and Leon is not able to
14 continue at this point.

15 Let's -- the only thing, the one thing I
16 wanted to mention that I forgot to mention today -- and
17 I'm sure the Commissioners will think it's fine, is I
18 got a letter from the National Asian-Pacific American
19 Legal Consortium about an incident that had happened in
20 New York, allegedly, to six Asian and Asian-Pacific
21 American students and a white friend who were escorted,
22 according to them, from a Denny's Restaurant by two
23 white male security guards after they complained that
24 groups of white patrons had been seated before them.

25 And so there was an altercation at the

1 restaurant and the security guards did nothing to stop
2 the attack by some white male customers, according to
3 this account, who allegedly beat the two Asian-Pacific
4 Americans who complained unconscious and the security
5 guards didn't do anything.

6 And then somebody stopped the attack. The
7 police came and the police wouldn't take a complaint.

8 They say that the County District Attorney
9 has been investigating but no arrests have been made.
10 And what they would like us to do is ask our Regional
11 Director to see what they can find out about this and
12 to inform us, see if there's anything we think further
13 needs to be done.

14 COMMISSIONER GEORGE: Where did this
15 allegedly happen?

16 CHAIRPERSON BERRY: In Onondaga County, New
17 York, which I think is where Cornell is, if I'm not
18 mistaken. But in any case --

19 COMMISSIONER GEORGE: And who is our Regional
20 Director for this?

21 CHAIRPERSON BERRY: That would be the Eastern
22 Region, so that would be Kae Tek's region.

23 COMMISSIONER GEORGE: Okay.

24 CHAIRPERSON BERRY: So if you don't have any
25 objection, I would ask the Staff Director to have him

1 to look into it and report back to us anything that can
2 be found out about it.

3 COMMISSIONER REDENBAUGH: I have none.

4 CHAIRPERSON BERRY: Okay.

5 Now, the two issues I want to discuss, the
6 first is we need a date for the consultation on the
7 Crisis of African-American Males in Inner Cities.

8 I believe, and we've talked about this
9 before, that it should take place at the October
10 Commission meeting. We're talking about one day. And
11 the Commission meeting is on October 3rd.

12 The query is should we try to do it by having
13 the meeting very briefly in the morning and taking the
14 day or would Commissioners be able to come in the day
15 before that and do it. That's the query I have for
16 you.

17 COMMISSIONER GEORGE: This is in Washington?

18 CHAIRPERSON BERRY: Right. It's our
19 Commission meeting. And it's a one-day consultation.
20 So the query is can Commissioners do a day, or would
21 you prefer it if we just had a very brief meeting for
22 our work and then just spent the day on it, or what do
23 you think.

24 COMMISSIONER HORNER: It doesn't matter to
25 me. Friday the 3rd is Rosh Hashana.

1 CHAIRPERSON BERRY: Oh, it is. But sundown,
2 right?

3 COMMISSIONER HORNER: Sundown Thursday, the
4 2nd.

5 CHAIRPERSON BERRY: And we scheduled the
6 Commission meeting then.

7 COMMISSIONER ANDERSON: On my calendar I have
8 the 10th, but maybe I'm in error.

9 CHAIRPERSON BERRY: You have what?

10 COMMISSIONER ANDERSON: I have the 10th.

11 COMMISSIONER REDENBAUGH: Rosh Hashana begins
12 at sundown on October 1.

13 COMMISSIONER ANDERSON: I have Rosh Hashana
14 the 3rd.

15 CHAIRPERSON BERRY: Well, Rosh Hashana, we
16 have in the government official whatever it is book,
17 October -- or some book here, October 1st. Rosh
18 Hashana begins at sundown, goes through Thursday,
19 October 2nd, and then ends, if that's correct. Maybe
20 we discussed that. I don't know.

21 COMMISSIONER HORNER: From the point of view
22 of religious observance, is there a distinction between
23 the first evening of Rosh Hashana or the first day and
24 the last day or in other words, if it ends on the
25 morning of the 3rd, is that a time of observance?

1 COMMISSIONER REDENBAUGH: Doesn't it end at
2 sundown?

3 CHAIRPERSON BERRY: I ends at sundown.

4 COMMISSIONER HORNER: Sundown on what date?
5 The 3rd?

6 CHAIRPERSON BERRY: October 2. It starts on
7 the 1st and ends on October 2.

8 COMMISSIONER HORNER: My calendar has it on
9 the 3rd. I guess that's wrong.

10 CHAIRPERSON BERRY: What does your calendar
11 have, this calendar?

12 Well, we've got every kind of calendar.

13 Anybody else got another kind of calendar?

14 VICE CHAIRPERSON REYNOSO: My calendar says
15 the 2nd.

16 COMMISSIONER HORNER: Mine says the 2nd and
17 the 3rd.

18 CHAIRPERSON BERRY: Is there anybody who
19 happens to know?

20 COMMISSIONER GEORGE: Well, I've actually got
21 a Jewish person here I can ask.

22 CHAIRPERSON BERRY: Why don't we do the
23 following.

24 COMMISSIONER GEORGE: We're going to get a
25 correct answer here.

1 CHAIRPERSON BERRY: Right. But I vaguely now
2 recall that when we did the calendar, we discussed
3 this. I'd forgotten it. I don't remember what we
4 discussed. But what we could do is on October 3rd, if
5 that works, have a brief meeting. We've done that
6 before for things. And just make sure we schedule it
7 that way so it only takes a little bit, and then just
8 take the whole day and do the consultation, if that's
9 agreeable to people.

10 COMMISSIONER REDENBAUGH: That would be fine
11 with me.

12 CHAIRPERSON BERRY: Okay. Why don't we --
13 unless we hear something back from Robbie's query
14 that's going to make it a problem.

15 COMMISSIONER GEORGE: Mary, I've got it. My
16 wife's calendar shows Thursday, October 2nd.

17 CHAIRPERSON BERRY: Okay.

18 COMMISSIONER GEORGE: That would be the first
19 day. It goes for two days. So it would be sundown.
20 On the second day, it would be over.

21 COMMISSIONER REDENBAUGH: From sundown to
22 sundown?

23 COMMISSIONER GEORGE: Sundown on the 2nd --
24 I'm sorry. Sundown on the 1st to sundown on the 3rd.

25 CHAIRPERSON BERRY: Two days?

1 COMMISSIONER GEORGE: Two days.

2 COMMISSIONER HORNER: Do we have a custom of
3 not scheduling at periods of religious observance so
4 that people can attend, or --

5 CHAIRPERSON BERRY: We've tried not to meet
6 on days of religious observance. And I think where we
7 might have been thrown off is the calendars that we
8 were using has it on the 1st and the 2nd.

9 COMMISSIONER HORNER: Should we look at the
10 10th, the following Friday to see if we could get
11 everybody together?

12 CHAIRPERSON BERRY: What does the 10th look
13 like. People can look at their calendars to the extent
14 that they -- ah, Yom Kippur begins, but at sundown on
15 the 10th.

16 COMMISSIONER HORNER: Oh, and I'm going out
17 of town. I can't do it the 10th.

18 COMMISSIONER GEORGE: I'll be observing both
19 the Rosh Hashana and Yom Kippur holidays with my
20 family, so that --

21 CHAIRPERSON BERRY: How about the 17th? Good
22 thing we did this.

23 COMMISSIONER HORNER: Let's see. I can do it
24 on the 17th.

25 COMMISSIONER ANDERSON: That's also the first

1 day of Succoth. I would vote for the 17th myself.

2 VICE CHAIRPERSON REYNOSO: I don't know if I
3 can make it that day.

4 COMMISSIONER HORNER: Well, I have a -- since
5 I had nothing on my calendar for the 17th I didn't make
6 note of a tentative off-site meeting of a board I'm on.
7 And I think it was the 17th and 18th. But since it
8 hasn't yet been scheduled -- is everyone else available
9 for the 17th?

10 VICE CHAIRPERSON REYNOSO: I don't think I
11 am.

12 COMMISSIONER GEORGE: The 17th is bad for me.

13 COMMISSIONER HORNER: It would be the 16th,
14 wouldn't it? Oh, no.

15 CHAIRPERSON BERRY: Thursday, the 16th.

16 COMMISSIONER HORNER: Yes. Yes.

17 Oh, I'm sorry. No. I'm free the 17th. I
18 was looking in my '98 calendar.

19 CHAIRPERSON BERRY: Who said it was bad for
20 them? It's okay for Connie.

21 Who said it was bad for them?

22 COMMISSIONER GEORGE: No. It's bad for me.

23 CHAIRPERSON BERRY: How about the 24th?

24 VICE CHAIRPERSON REYNOSO: I'm okay on that.

25 COMMISSIONER GEORGE: That's bad for me.

1 CHAIRPERSON BERRY: Maybe that's why we
2 picked the 3rd.

3 Well, I think -- I don't know what we should
4 do here. The 3rd and the 10th we can't use. The 17th
5 we could use but somebody couldn't come.

6 COMMISSIONER GEORGE: On the 17th, I cannot
7 come.

8 CHAIRPERSON BERRY: You can't come on the 3rd
9 or the 10th either?

10 COMMISSIONER GEORGE: No. those are the
11 Jewish holidays.

12 CHAIRPERSON BERRY: So you can't come the
13 3rd, the 10th or the 17th.

14 COMMISSIONER GEORGE: I can't come for the
15 3rd, the 10th or the 17th.

16 COMMISSIONER REDENBAUGH: I can't come the
17 17th.

18 COMMISSIONER HORNER: How about going
19 backwards to September 26th, Friday, the week before
20 the 3rd.

21 No. Stephanie is saying no.

22 COMMISSIONER GEORGE: Could we veer from the
23 custom of holding it on a Friday?

24 CHAIRPERSON BERRY: Oh, chaos would ensue.

25 COMMISSIONER GEORGE: Sorry I even raised it.

1 CHAIRPERSON BERRY: How about the -- did I do
2 the 26th?

3 COMMISSIONER GEORGE: Of October?

4 CHAIRPERSON BERRY: Yes.

5 COMMISSIONER HORNER: That's a Sunday.

6 CHAIRPERSON BERRY: I'm sorry. The 24th.
7 What about the 24th.

8 COMMISSIONER HORNER: Yes.

9 CHAIRPERSON BERRY: That doesn't give the
10 staff much time between that and the next meeting, but
11 what about the 24th?

12 COMMISSIONER GEORGE: I'm sorry. The 24th is
13 bad for me. I might -- this is the consultation on
14 African-American males?

15 CHAIRPERSON BERRY: Right.

16 COMMISSIONER GEORGE: Well, I don't want to
17 miss this but I cannot do the 24th.

18 COMMISSIONER HORNER: How about the 31st?

19 CHAIRPERSON BERRY: That's Halloween.

20 COMMISSIONER GEORGE: I can do that.

21 CHAIRPERSON BERRY: Well, --

22 COMMISSIONER HORNER: You're just getting out
23 of taking your kids door to door, Robbie.

24 COMMISSIONER GEORGE: Yes. Well, I'm going
25 to make sure that they're at their religious services.

1 But as far as --

2 COMMISSIONER HORNER: Oh, all right.

3 COMMISSIONER GEORGE: -- pagan rites, --

4 CHAIRPERSON BERRY: The General Counsel
5 suggests since we're having this problem, why don't we
6 do the same idea but do it at the November meeting,
7 unless somebody now can't come on the 14th of November.
8 Crisis, I mean.

9 COMMISSIONER HORNER: No. That's fine.

10 CHAIRPERSON BERRY: And that means that we
11 ~~can do one of these dates in October that someone can't~~
12 show up as a Commission meeting because we're in
13 extremis and we have to. And there are only so many
14 days in October, so there's nothing else we can do.

15 COMMISSIONER HORNER: Right.

16 CHAIRPERSON BERRY: So, I think what we
17 should do -- so we'll do the Crisis at the November
18 meeting and we'll have a brief meeting and then do it
19 that day. Which means could you submit any names of
20 any individuals you would like to have participate to
21 the Staff Director's office by the 15th of August?

22 And the reason why you have to do that that
23 early is because they have to write papers. Remember,
24 this is a consultation so there will be papers that the
25 people write. And you should keep that in mind when

1 you suggest people. Okay.

2 Now what day are we stuck on now for the
3 Commission meeting in October? We're going to change
4 from the 3rd and go to what? The 17th?

5 COMMISSIONER HORNER: Robbie, do you need to
6 be -- do you need to be with your wife throughout the
7 day or only in the evening?

8 COMMISSIONER GEORGE: I begins -- I think it
9 begins on the 17th, doesn't it?

10 CHAIRPERSON BERRY: No. You're reading the
11 wrong --

12 COMMISSIONER HORNER: We're back on the 3rd.

13 COMMISSIONER GEORGE: Okay. On the 3rd, --

14 COMMISSIONER HORNER: It ends the evening or
15 sundown, the 3rd.

16 COMMISSIONER GEORGE: It ends on sundown, the
17 3rd. No. I have to be here on the 3rd during the day.

18 CHAIRPERSON BERRY: Okay. How about Yom

19 Kippur. It begins at sundown on the 10th.

20 COMMISSIONER GEORGE: It begins on the 10th.

21 CHAIRPERSON BERRY: Begins at sundown.

22 COMMISSIONER GEORGE: Yes. I could be there
23 then during the day on the day of Yom Kippur before it
24 begins. Yes, .

25 CHAIRPERSON BERRY: Now who was it that

1 couldn't come? I thought there was somebody.

2 COMMISSIONER HORNER: Can you do it on the
3 10th?

4 VICE CHAIRPERSON REYNOSO: I think I can be
5 here in the morning.

6 CHAIRPERSON BERRY: Okay. Why don't we have
7 the Commission meeting on the 10th.

8 VICE CHAIRPERSON REYNOSO: I can't be in the
9 afternoon of the 10th.

10 CHAIRPERSON BERRY: Oh, you can't be in the
11 afternoon. Okay.

12 So we'll just have a Commission meeting on
13 October 10th.

14 Okay. Change it to the 10th.

15 COMMISSIONER GEORGE: Okay. So a Commission
16 meeting on the 10th.

17 CHAIRPERSON BERRY: And Crisis will be the
18 next month's meeting.

19 COMMISSIONER GEORGE: Okay. What is the date
20 for the September meeting? September 5th?

21 CHAIRPERSON BERRY: Yes. September 5th.
22 Okay?

23 COMMISSIONER GEORGE: Got it. And is there a
24 date for the December meeting?

25 CHAIRPERSON BERRY: Anybody -- let's help

1 Robbie with his calendar.

2 COMMISSIONER HORNER: Yes. It's the 5th.

3 VICE CHAIRPERSON REYNOSO: I have everything
4 down the 5th.

5 CHAIRPERSON BERRY: Now let's go to Schools
6 and Religion. Here's what the issue is here.

7 During the next fiscal year, we have,
8 according to what we have approved as Commissioners, a
9 hearing on ADA, which is our statutory report, because
10 it's a joint OGC/OFCRE project and it involves a
11 hearing. So OGC would have a hearing on ADA sometime,
12 in enough time to get the statutory report done.

13 We also approved a hearing on Affirmative
14 Action which would also be an OGC project.

15 Then we have the project on Expanding
16 Economic Opportunity for Minority Youth, which is also
17 a joint OGC/OFCRE project. And we have Crisis of
18 African-American Males, a consultation, and then the
19 rest of the project.

20 All of these are OGC projects. What I am
21 about to say to you is that realistically speaking, my
22 friends, there is no way in my view OGC can do three
23 conferences, another hearing, three hearings and five
24 other hearings all in one year.

25 Now, we can say that OGC will in fact do it,

1 but it isn't going to happen. So my suggestion to you
2 would be, folks, we need to discuss what is in the
3 minds of those who want the Schools and Religion
4 hearing. What scope -- not substance. We didn't come
5 prepared to discuss that -- logistically, you had in
6 mind.

7 For example, did you have in mind five
8 hearings of three days duration in five different
9 places in the fiscal year? Did you have in mind one
10 day of hearings, which is what this other project has,
11 African-American Males, in five different places all
12 during the year? Or what did you have in mind? That's
13 the first question. Because the project proposal says
14 five hearings and we were very explicit about that, but
15 we didn't say anything more about it.

16 Also, did you have in mind cities for these
17 hearings? Did you have in mind rural areas? Did you
18 have in mind campuses or schools? And were are you
19 talking primarily about K through 12, none of which is
20 in the proposal or did you have something else in mind?

21 So I'd like to hear those who were proponents
22 because I think there are some people here who have a
23 deeper interest in this, at least expressed, than
24 others, and we want to make sure that these projects
25 get done the way folks expect.

1 So I'm asking for planning purposes. One,
2 what your idea is about Schools and Religions. And
3 then, depending on what we have to say about that,
4 we're going to have to drop some of these things.
5 We're probably going to have to drop some of them
6 anyway or press them into the next year in order to
7 make sure they get done.

8 COMMISSIONER HORNER: What determines that
9 something is an OGC rather than --

10 CHAIRPERSON BERRY: If it involves a hearing.

11 COMMISSIONER HORNER: And that is because OGC
12 has the ability to ask the questions?

13 CHAIRPERSON BERRY: And because under our
14 regulations and our statute, OGC does hearings because
15 they're lawyers and they do the subpoenas and all that.
16 And Fred's shop does the research and evaluation.

17 COMMISSIONER HORNER: But on a given project,
18 you can have OGC doing the hearing and Fred's shop
19 doing the research and writing?

20 CHAIRPERSON BERRY: Research, social science
21 research. Social science, yes. Social science
22 research.

23 So could we hear a little bit about what you
24 envisioned for the Schools and Religions? What you're
25 talking about?

1 COMMISSIONER GEORGE: Yes, Mary.

2 CHAIRPERSON BERRY: Yes, Commissioner George.

3 COMMISSIONER GEORGE: Yes. My hope was that
4 we could do five different cities with a full-blown --
5 I don't know that it has to be three days, but I would
6 say a minimum of two days, judging from our past
7 experience what we've been able to accomplish at the
8 Racial Tensions hearings -- hearings. I'd like it to
9 be a snapshot of the situation in the nation at large,
10 which I think means that it's important that we conduct
11 our hearings in different parts of the country, and
12 also looking at both urban and -- I don't know at this
13 point it would be rural or less urban or maybe smaller
14 and larger cities. That both smaller and larger cities
15 be included.

16 And also, I think it's very important that it
17 be K through 12.

18 CHAIRPERSON BERRY: K through 12?

19 COMMISSIONER GEORGE: Yes.

20 CHAIRPERSON BERRY: And do you have in mind
21 any particular cities?

22 COMMISSIONER GEORGE: Well, I have some that
23 I think it would be valuable to do. I have some ideas.
24 But these are certainly not locked in stone.

25 I think it would be very valuable to do

1 Philadelphia, Denver. I think it should be a
2 California city and San Francisco strikes me as a good
3 candidate. We did the Racial Tension hearing in Los
4 Angeles.

5 I think that there should be a smaller city
6 and perhaps a Midwestern smaller city. I don't have a
7 definite candidate for that. And then probably
8 somewhere in the South, and I don't know whether it
9 should be Atlanta or a smaller Southern city, but I'd
10 like that kind of representation geographically and in
11 terms of size.

12 CHAIRPERSON BERRY: How about Nashville?

13 COMMISSIONER GEORGE: Nashville would be --
14 yes. And Nashville is considerably smaller than
15 Atlanta, is it not?

16 CHAIRPERSON BERRY: Not really.

17 COMMISSIONER GEORGE: No? Okay.

18 CHAIRPERSON BERRY: No. It's smaller.

19 COMMISSIONER GEORGE: Well, if it's smaller,
20 that might be better.

21 CHAIRPERSON BERRY: Well, we can think about
22 it.

23 So, a Southern city, okay. East Coast would
24 be Philly.

25 COMMISSIONER GEORGE: Philly.

1 CHAIRPERSON BERRY: Denver and San Fran, and
2 some Midwestern city.

3 COMMISSIONER GEORGE: That's probably not
4 Chicago.

5 CHAIRPERSON BERRY: Not Chicago. Okay. And
6 so if we did that, does anyone else have any comment on
7 that sort of description or anything else you had in
8 mind that's different from what Commissioner George
9 said? No?

10 COMMISSIONER LEE: Actually, if Commissioner
11 George doesn't object, I would prefer to hold the
12 California hearing in Orange County instead of San
13 Francisco.

14 CHAIRPERSON BERRY: How about Orange County?

15 COMMISSIONER GEORGE: Well, could it be --

16 COMMISSIONER LEE: Given the topic of Schools
17 and Religion, because that's where many of the
18 activities are being started in Orange County, and
19 there a really diverse religious community in that
20 area. That would benefit the overall hearings, I would
21 think.

22 COMMISSIONER GEORGE: Isn't the same true,
23 though, of San Francisco?

24 COMMISSIONER LEE: Not as much. San Francisco
25 is actually a very small place. I hate to tell you,

1 but Orange County may be a little bit more
2 representative.

3 COMMISSIONER GEORGE: Well, could we leave
4 that open for now and perhaps I could talk further with
5 Yvonne about it or does it have to be settled today?

6 CHAIRPERSON BERRY: The other thing is we
7 need to talk about when we might do these hearings,
8 because I know that people's schedules are always a
9 problem.

10 The staff had said that from their
11 perspective it would be great if we could if we could
12 do them concentrated in a -- just do one right after
13 the other in a two or three-week period and get them
14 finished.

15 I know that that would play havoc with some
16 off our schedules. We wouldn't be able to --

17 COMMISSIONER HORNER: We couldn't all go to
18 all of them that way but we're probably not all going
19 to go to all of them anyway. So I'm not sure it would
20 make a difference.

21 CHAIRPERSON BERRY: How about if we
22 considered that, because that's one way. Do it all in
23 one fell swoop, get in the hearing mode, go out and do
24 them and finish with them, and then be ready to write
25 the report.

1 COMMISSIONER HORNER: I think that's a great
2 idea.

3 COMMISSIONER GEORGE: Well, it's worth a try.
4 I don't know if it will work when we actually get the
5 calendars out but it's worth a try.

6 CHAIRPERSON BERRY: Commissioner Anderson?

7 COMMISSIONER ANDERSON: I think it's a good
8 idea, although I would say that the schedule ought to
9 be such that if a Commissioner wanted to do all five --

10 CHAIRPERSON BERRY: They could.

11 COMMISSIONER ANDERSON: -- he or she could do
12 it without being on the road every day, would be my
13 only caveat.

14 COMMISSIONER HORNER: In other words, a day
15 or two between for going home between sessions?

16 COMMISSIONER ANDERSON: Maybe that makes if
17 four weeks instead of three weeks, but I think that
18 given the fact that --

19 CHAIRPERSON BERRY: That if we do two, does
20 it make sense?

21 COMMISSIONER GEORGE: As an alternative,
22 might it be possible to group them, 2, 2 and 1 or if
23 that's not possible, 2 and 3?

24 CHAIRPERSON BERRY: Well, if we do a two-day
25 hearing -- Stephanie, why don't you go over there and

1 talk on the microphone. I'm tired of trying to say
2 what you said.

3 MS. MOORE: I'm sorry.

4 COMMISSIONER HORNER: Madam Chair, we're also
5 going to incur a greater transportation cost if we
6 travel from Washington to San Francisco to Nashville,
7 because we won't be using roundtrip tickets.

8 CHAIRPERSON BERRY: Right. So that means
9 that if we went to San Francisco, we should come back.
10 So we should set up so that we can go to wherever this
11 is and then come back, and then go somewhere else and
12 then come back.

13 COMMISSIONER LEE: But if we do Denver and
14 California together, --

15 COMMISSIONER HORNER: Yes.

16 COMMISSIONER LEE: That would be a cost
17 saving.

18 CHAIRPERSON BERRY: Then we could stop over.

19 COMMISSIONER HORNER: Yes. Stop over.

20 CHAIRPERSON BERRY: So if we do these and we
21 do two days of hearings in each place and Commissioners
22 do seem receptive to trying to do them in sequence as
23 quickly as possible under the circumstances of what
24 we're talking about here, being able to come back home
25 and go out again.

1 So what are we talking here, Stephanie?
2 Spreading it out over a couple of months or something?

3 MS. MOORE: I think it sounds like a couple
4 of months, given four days to complete travel time per
5 city. We're talking about close to two months. But as
6 long as it's a concentrated effort to get them all done
7 sequentially, I think that that's what our interest is
8 and our suggestion is.

9 CHAIRPERSON BERRY: Okay. Now we need to
10 think about timing on this. I know this is always a
11 problem, but we need to think and plan ahead.

12 When do Commissioners think -- what are the
13 two months in your life when it would be better to try
14 to squeeze this in?

15 COMMISSIONER HORNER: July and August.

16 CHAIRPERSON BERRY: July and August?

17 COMMISSIONER HORNER: That's when people are
18 least tied up with other obligations.

19 COMMISSIONER GEORGE: I want to amend my
20 proposal. Then the cities should be Paris, --

21 (Laughter.)

22 CHAIRPERSON BERRY: We concur.

23 COMMISSIONER HORNER: Well, January and
24 February? I don't know. Not the Christmas period, I
25 guess.

1 COMMISSIONER GEORGE: And also, the
2 wintertime you run into the problem of airports closing
3 because of snow and all your plans falling apart.

4 COMMISSIONER REDENBAUGH: Only in Denver, of
5 the cities mentioned.

6 COMMISSIONER GEORGE: That's probably true.
7 And possibly Philadelphia. It's happened to me in
8 Philadelphia, Russell. Surely it's happened to you.

9 COMMISSIONER REDENBAUGH: Yes. Twice in 32
10 years.

11 MS. MOORE: In my view, the earlier months
12 would not serve the agency purposes overall because of
13 all the projects that the Chair has mentioned, the ADA
14 project must go forward as the statutory report. And
15 it seems to me that we would need to have that hearing
16 earlier rather than later.

17 CHAIRPERSON BERRY: The ADA, you mean?

18 MS. MOORE: The ADA.

19 CHAIRPERSON BERRY: So when you say earlier,
20 what are you talking about?

21 MS. MOORE: February. It's a joint project
22 with the OCRE so we're talking February. Certainly no
23 later than March.

24 CHAIRPERSON BERRY: So the idea is that Fred,
25 as I understand it, his staff is going to do their

1 research component and then the enforcement and then
2 the hearing is going to come on the stuff they find and
3 the people who are there. That's my understanding.

4 So you're saying February for ADA.

5 COMMISSIONER GEORGE: How about April and
6 May?

7 CHAIRPERSON BERRY: How about April and May?
8 How do people feel about April and May?

9 MS. MOORE: How about May and June?

10 VICE CHAIRPERSON REYNOSO: May and June
11 sounds better to me.

12 CHAIRPERSON BERRY: We feel better, both
13 academics among us.

14 Well, you're an academic, too, Robbie.

15 COMMISSIONER GEORGE: I'm on leave.

16 CHAIRPERSON BERRY: May and June would be
17 better in terms of schedules.

18 COMMISSIONER GEORGE: Okay.

19 CHAIRPERSON BERRY: So why don't we say if
20 it's agreed and there's no objection that May and June
21 will be the time that we would do it.

22 Now, does this mean we should consider
23 dropping or pushing into the next year some of these
24 other things? Or what impact will it have on this?

25 Are we realistically going to do a hearing on

1 Affirmative Action next year?

2 Come on, Commissioners. Step up to the
3 plate. Bite the bullet.

4 I beg your pardon?

5 COMMISSIONER REDENBAUGH: I was getting
6 recognized, I think.

7 CHAIRPERSON BERRY: Oh. Commissioner
8 Redenbaugh.

9 COMMISSIONER REDENBAUGH: Thanks.

10 I don't see how we can.

11 CHAIRPERSON BERRY: I don't either.

12 COMMISSIONER REDENBAUGH: I mean -- because I
13 think that it is one that needs to be done thoroughly
14 and about which I think there's substantial
15 nonagreement.

16 Still, I think that's not an easy one to do.
17 I think it is one that we have to give considerable
18 time and attention to. so I don't see how to include
19 it.

20 CHAIRPERSON BERRY: Well, then, why don't we,
21 unless there's no objection, given what we've just said
22 about doing these other projects, why don't we defer it
23 again and just concede that we are deferring it and
24 move on.

25 Now, let's make sure Crisis of African-

1 American Males -- after we do the consultation, what
2 else have we agreed to do, staff?

3 I believe -- is that a joint project, too?

4 MR. ISLER: We're supposed to assist.

5 CHAIRPERSON BERRY: Each other.

6 MS. MOORE: They are assisting. Yes.

7 CHAIRPERSON BERRY: So what's the deal on
8 that one?

9 MS. MOORE: Well, going through the various
10 transcripts over the course of Commissioner discussions
11 about the project, I believe that we have one
12 consultation which will then enable us to define the
13 parameters of the project. After that point, we will
14 then actually have a factfinding hearing from which a
15 report would be produced.

16 CHAIRPERSON BERRY: So are you saying that
17 after the Commissioners read the papers, listen and
18 have the discussion and you hear what they have to say,
19 you and your staff, you will be better able to define
20 what the hearing -- I'm just trying to understand --
21 what the hearing will be about in a way that we would
22 find it fruitful?

23 MS. MOORE: Right.

24 CHAIRPERSON BERRY: And then at that point we
25 would propose witnesses for the hearing and then we

1 would go ahead. Is that what you're saying?

2 MS. MOORE: That's correct.

3 CHAIRPERSON BERRY: So the timing on that
4 hearing -- should we be talking in terms of a timing
5 anyway, just in case we have to do it in terms of
6 people?

7 We said May and June for Schools and
8 Religion. Realistically, will we do a hearing on that
9 next year? It's not entirely up to you. It's up to
10 us, too. I mean, what we think.

11 COMMISSIONER ANDERSON: Why don't we try in
12 September?

13 CHAIRPERSON BERRY: No. We're doing
14 consultation in --

15 COMMISSIONER HORNER: What is a consultation?

16 CHAIRPERSON BERRY: Ah. Consultation -- and
17 we agreed to do this to inform ourselves better about
18 the subject, we said.

19 COMMISSIONER HORNER: I mean, but is it
20 literally physically bringing people in or --

21 CHAIRPERSON BERRY: Yes.

22 COMMISSIONER HORNER: Bringing people in.

23 CHAIRPERSON BERRY: They write papers. Then
24 they come here.

25 COMMISSIONER HORNER: Like a briefing with Q

1 and A?

2 COMMISSIONER GEORGE: And no subpoena.

3 CHAIRPERSON BERRY: No subpoena. They come
4 in.

5 COMMISSIONER HORNER: Okay.

6 CHAIRPERSON BERRY: We ask them questions.

7 COMMISSIONER HORNER: Okay.

8 CHAIRPERSON BERRY: And then when we finish
9 all that, we're supposed to be more informed and better
10 able to tell the staff what it is we're trying to do so
11 that they can do a hearing. And we agreed to do that
12 because we weren't sure what they wanted to do.

13 COMMISSIONER HORNER: No. That's fine. I
14 just couldn't remember.

15 MS. MOORE: They actually present scholarly
16 papers in their subject matter, unlike a briefing where
17 people may or may not bring testimony, written
18 testimony.

19 CHAIRPERSON BERRY: And the papers will be
20 published as consultation papers.

21 COMMISSIONER HORNER: Do we know what
22 question we're going to ask them to address in these
23 papers? That would affect whom I would recommend.

24 MS. MOORE: I'm sorry?

25 COMMISSIONER HORNER: That's all right.

1 Do we know what question we're going to ask
2 our consultants to address?

3 MS. MOORE: Yes, and no. Based on the
4 discussions, again, the broad discussions about the
5 crisis, our project, I believe that there was a
6 consensus at one of the meetings that one thing we did
7 not want to do or that the Commissioners did not want
8 the project to focus on was the question of whether
9 there was a crisis.

10 Everyone conceded that there was indeed a
11 crisis and that we should therefore not try to factfind
12 on that issue. We have identified in our preliminary
13 research at least five areas from which we would seek
14 people to speak on for criminal justice; health issues,
15 which includes AIDS, drug addiction, those types of
16 issues; education; employment; -- and I always say this
17 wrong.

18 CHAIRPERSON BERRY: Entrepreneurship.

19 MS. MOORE: Absolutely. As well as other
20 social indicators, social problems like high teen
21 pregnancy rates and the effect of all of those factors
22 on African-American males.

23 So, in terms of -- we have identified some
24 preliminary persons that we think are capable of
25 presenting papers in those areas. And of course, we

1 will await your suggestions, as well.

2 COMMISSIONER GEORGE: Stephanie, will you let
3 us know who the people you've identified are?

4 MS. MOORE: Sure. Now that we have a Staff
5 Director on board, I could submit that to her today and
6 can move forward.

7 COMMISSIONER GEORGE: Good. Thank you.

8 CHAIRPERSON BERRY: And if you think of other
9 topics while -- you heard those, and that was very
10 useful to hear those. If you think of something else
11 when you turn in your suggestions, say, well, I think
12 there ought to be a topic about whatever it is, unless
13 you want to tell us now.

14 COMMISSIONER GEORGE: Could Stephanie tell us
15 how many consultants she would anticipate us bringing in
16 in total?

17 MS. MOORE: Well, for a day, we could -- I
18 think we have a list of about 25 people right now.
19 However, it is not -- in my view, it's not yet
20 representative of all of the areas. We do want to, of
21 course, achieve some balance in terms of those who are
22 coming to speak in different fields.

23 So I think we have identified right now more
24 people who are experts, for example, in employment
25 issues as opposed to those who are learned in some of

1 the psychological issues that we might want to explore.

2 COMMISSIONER GEORGE: But at the end of the
3 day, would we be bringing in a total of 10 people?

4 MS. MOORE: I think it would be substantially
5 more, Commissioner.

6 CHAIRPERSON BERRY: How many panels can you
7 do in a day, Steph?

8 MS. MOORE: Well, in the hearings, we do how
9 many? About four panels.

10 VICE CHAIRPERSON REYNOSO: We should do less.

11 COMMISSIONER GEORGE: If these people are
12 writing individual papers, they won't be reading the
13 entire paper but they'll be giving a presentation.

14 Mary, I think it sounds to me like this is
15 more like what goes on in a scholarly conference and I
16 think trying to pack that many people into one day is a
17 mistake.

18 CHAIRPERSON BERRY: So how many people are
19 you thinking we could pack into a day, assuming it's a
20 conference. What do you do at your scholarly meetings?
21 How many are you getting a day?

22 COMMISSIONER GEORGE: Well, I would say not
23 more than a dozen if they're writing individual papers
24 to order for us and we're going to let them give
25 presentations based on them.

1 But that could be way off. I mean, do you
2 have a view?

3 CHAIRPERSON BERRY: We're not going to let
4 them read the papers.

5 COMMISSIONER GEORGE: I understand. They're
6 going to be giving presentations though based on the
7 papers. They're going to be reporting on fairly
8 substantial pieces of research.

9 CHAIRPERSON BERRY: And we'll ask them
10 questions, which always takes time.

11 COMMISSIONER GEORGE: It looks to me like you
12 need about 45 minutes per individual, with some --

13 CHAIRPERSON BERRY: Half an hour.

14 COMMISSIONER GEORGE: Oh, I don't know. No.
15 They can't give a presentation and respond to our
16 questions in that period.

17 CHAIRPERSON BERRY: Five minute summary
18 because we already have the paper.

19 MS. MOORE: You'll have the papers in front
20 of you.

21 CHAIRPERSON BERRY: And we'll read the paper
22 before we get there.

23 COMMISSIONER HORNER: Ah. Good.

24 CHAIRPERSON BERRY: So really, you will have
25 read the paper. That's the idea. Then we come with

1 the paper read and we have questions and we let them
2 have five minutes to say something if they want to.
3 But the basic purpose is for us to ask questions about
4 what they've written in the paper.

5 You think that will take more than half an
6 hour?

7 COMMISSIONER GEORGE: I just don't think it
8 should be done that way. I think we should give people
9 more time to summarize papers. Even if people are
10 thorough about reading the papers, that's an awful lot
11 of material for people to be digesting and keeping hold
12 of.

13 I would hope that we would let people give
14 more substantial summaries of their papers, more
15 substantial presentations, and that would give us a
16 good chunk of time for answering questions.

17 Stephanie, is the thought that if we have as
18 many as -- that we need to have as many as 25 or 30
19 people just in order to cover the range of issues?

20 MS. MOORE: Let me answer that in two ways,
21 Commissioner George.

22 First of all, we had looked at this sort of
23 patterning it after the Racial and Ethnic Tensions
24 national perspectives hearing.

25 CHAIRPERSON BERRY: Consultation

1 MS. MOORE: Consultation. It was called a
2 hearing but in effect it was -- the type of information
3 that was gleaned from that proceeding was in the nature
4 of a consultation.

5 You had people with broad views about racial
6 and ethnic tensions, like Ellis Coles and the like. So
7 we had patterned our view of this -- of structuring
8 this consultation after that, which would enable us to
9 bring a substantial number of people forward to talk
10 about their research in the area, give a brief abstract
11 on the paper that they're actually commissioned to
12 write for this proceeding.

13 After that, I think that we do have to cover
14 a substantial number of topics, because if you'll
15 recall, the proposal calls on us to then look for those
16 indicators in five cities over a period of five years.
17 I think it was Shreveport -- I can't remember the five.
18 There are five cities in the proposal.

19 So we're trying to get the broad parameters
20 from these people who have national perspectives or
21 broader perspectives on the problem, and then
22 concentrate on the particular targeted cities that were
23 outlined in the proposal.

24 CHAIRPERSON BERRY: Let me let Carl comment
25 and then I'll come back to you, Robbie.

1 COMMISSIONER GEORGE: Thank you.

2 COMMISSIONER ANDERSON: Well, OGC has
3 identified five areas, five subject areas. If we have
4 a meeting from 8:00 to 9:30, that leaves us roughly six
5 to seven hours, depending upon lunch, assuming we're
6 going to end at 4:30-5:00. I don't know how much we
7 can go on a consultation.

8 It seems to me we've got one hour and 15
9 minutes per --

10 CHAIRPERSON BERRY: Panel.

11 COMMISSIONER ANDERSON: -- the five topics.

12 Now, do we want -- are we happy with one
13 aspect per topic so that we can give that one expert an
14 hour or do we need two or three experts per subject
15 area?

16 CHAIRPERSON BERRY: To try to answer that, if
17 I may just for the moment.

18 Carl, you had mentioned before at one of our
19 meetings that sometimes it might be better to have one
20 person who is expert, really expert and done scholarly
21 work on something and really grill them than to have
22 like five or six people answering questions about
23 things. And I've often thought that if you could find
24 that person, whoever that person is -- like one time we
25 had a professor here on -- I think it was on police

1 practice or something, and he gave that kind of -- he
2 was on a panel of other people for the presentation.

3 But that's hard to do and it's also hard for
4 people to have confidence when they have different
5 views on this issue that one person is going to convey
6 everybody's views.

7 I guess an alternative would be to have more
8 than one day. We have to do something on the topics
9 unless some of us think that some of these topics
10 aren't things that we need to do.

11 COMMISSIONER GEORGE: Well, I'm concerned,
12 Mary, about just overwhelming ourselves.

13 And I'm also concerned, Stephanie, just to
14 say a word about your point about modeling the program
15 on the Racial and Ethnic Tensions hearing.

16 I'm concerned that it's not an appropriate
17 model. With those hearings, we heard from a lot of
18 people what was good and important to hear from:"
19 politicians, police officers and police administration,
20 representatives of various interest groups or ethnic
21 associations; and so forth.

22 As I said, it was important to hear from
23 them, needed a certain amount of time to devote to them
24 and so forth, but those presentations would be very
25 different from trying to digest a scholarly paper and

1 then to get the benefit of some engagement with the
2 scholar who is responsible for the paper.

3 You can run a lot more of those, the first
4 category, through the mill and digest what they have to
5 say than you can with substantial pieces of scholarly
6 research.

7 Which leads me to think, anyway, although I'm
8 prepared to be talked out of it. It leads me to think
9 that we really should schedule a considerably smaller
10 number of presentations per day than we would with an
11 Ethnic and Racial Tensions hearing.

12 CHAIRPERSON BERRY: Robbie, I'm going to let
13 Stephanie respond because she asked to, and then I'm
14 going to recognize Connie. But let me just say that I
15 think she was referring only to the national
16 perspectives day that we had on Racial and Ethnic
17 Tensions.

18 COMMISSIONER GEORGE: Oh, oh. I see.

19 CHAIRPERSON BERRY: Remember that day when we
20 had those people come in the beginning? I think you
21 were on the Commission then.

22 COMMISSIONER GEORGE: That was before, but
23 I've heard about it.

24 CHAIRPERSON BERRY: These were the so-called
25 experts. And they came and -- I say so-called. Some

1 of them were, I guess.

2 COMMISSIONER GEORGE: Yes. That was before I
3 was on the Commission.

4 CHAIRPERSON BERRY: They came, and they were
5 there all day long and there were several panels of
6 them. And she was saying a model like that. Although
7 it was called a hearing, it really wasn't. It was sort
8 of a consultation without papers.

9 Did you have a quick comment? Then I'll ask
10 Commissioner Horner.

11 MS. MOORE: Well, that was part of what I was
12 going to clarify for Commissioner George. That I was
13 only focusing on that particular hearing/consultation
14 hybrid, if you will.

15 The other point that I was going to make too,
16 though, was to emphasize the difference between the
17 consultation and the hearing, which would require less,
18 unfortunately from my perspective, but less role for
19 me, quite frankly, or the lawyers, in terms of
20 developing a factfinding record. That would leave far
21 more opportunity for the Commissioners to ask whatever
22 questions they might have, having received the paper in
23 advance.

24 This is merely an informational type
25 proceeding that would lay the groundwork for then

1 putting together and preparing a factfinding hearing.

2 CHAIRPERSON BERRY: So the questions will be
3 asked by the Commissioners in the main?

4 Commission Horner.

5 COMMISSIONER HORNER: Yes. I'm struggling
6 with when we do what element of this. There are three
7 questions that I would like to see answered. One is
8 what is the nature of the crisis. And I don't mean a
9 long description of how many people use drugs. I mean
10 what's going on here in a large sense. What are the
11 important causes; current, historical, whatever. And
12 what are solutions we can try to promote that would
13 work.

14 And one thing I think we don't need to do is
15 we don't need to have statistical characterizations of
16 problems where there's already adequate description of
17 the problems.

18 So I don't think we need -- and I don't know,
19 Stephanie. When you say criminal justice, health
20 education, do you mean that the consultation would
21 gather a factual basis, how many people are in jail or
22 do you mean a causative exploration?

23 MS. MOORE: I mean more of the three
24 questions that you just focused on.

25 COMMISSIONER HORNER: Okay. Okay.

1 MS. MOORE: Then the next step is to look at
2 the five cities and examine the hard facts.

3 COMMISSIONER HORNER: Okay.

4 MS. MOORE: Are there crazy, very high rates
5 of juvenile justice or blacks in the juvenile justice
6 system and how does that relate to the broader issues
7 that we learned from the consultation.

8 COMMISSIONER HORNER: Okay. So the
9 consultation is our chance as a group to explore with a
10 set of knowledgeable individuals not just how many
11 people have AIDS but what causes ill health in a large
12 population. I guess I'm trying to force us to attend
13 to the questions we would all be debating if we had a
14 two-hour discussion among ourselves and at the end of
15 that two hours we would say here are the things we
16 really don't understand. Because I don't think we
17 serve any purpose if we just add more verbiage. We
18 ought to come up with an understanding, an improved
19 understanding. I don't know how to formulate that.

20 CHAIRPERSON BERRY: Well, we have the three
21 questions you asked. Did you write them down?

22 COMMISSIONER HORNER: Yes. I can't remember
23 past one any more. I have to write it down.

24 What is the nature of the crisis? By that, I
25 mean what's really -- what are the big things going on

1 here. What are the important causes? We all know
2 dozens of micro-causes but what are the important
3 causes. And what are solutions.

4 CHAIRPERSON BERRY: Well, how about if we --
5 if one way we could look at it is these topics or
6 others that we might think of seem to us, preliminarily
7 at least, to be things that someone could address as to
8 how they fit into the nature of the crisis, whatever
9 that is and what are the causes of the crisis and how
10 does this particular aspect that they're knowledgeable
11 about fit into it, and then what solutions would there
12 be.

13 But there's another way to go about it, which
14 is to have open-ended expertise that is broader and
15 more general.

16 COMMISSIONER HORNER: Well, that's what I'm
17 wondering. I'm wondering if we should do that. I don't
18 have a conclusion. I haven't thought about it long
19 enough. But I'm wondering if we should.

20 For instance, the criminal justice figures
21 are devastating by any standard. And so one way to do
22 it would be to find out what crimes are people arrested
23 for, et cetera. Another way to do it is to say what is
24 the nature the relationship of the individual to the
25 society, the larger questions, and how do subgroups

1 relate to the larger society.

2 I don't want to get mushy but I think the
3 dialogue that President has called for really asks us
4 to rise to these larger questions. And I say that
5 knowing that not everybody thinks my answer are good
6 ones. But I think if we're going to have a productive
7 conversation that we have to go to that level.

8 CHAIRPERSON BERRY: So maybe -- yes, Carl?

9 COMMISSIONER ANDERSON: I would add two more
10 items to the list of three, my own perspective. And
11 that is, I would ask each of the consultants to take a
12 10-year projection and say based on what we know now
13 and the way things are headed where would be 10 years
14 from now. Because the problem with youth is they get
15 older.

16 Secondly, what kinds of things have succeeded
17 to the extent there's been any success. I'm assuming
18 that although the juvenile justice statistics are
19 devastating that they're not devastating to the same
20 extent everywhere. And it would be nice to know in
21 Philadelphia it's not so bad in this expert's opinion
22 because they have been able to do A, B, C and D, so we
23 have some models.

24 Finally, I look at this as really a type of
25 staff briefing for the Commissioners. And therefore,

1 I'm not so concerned that we have every spectrum of a
2 political or philosophical or ideological debate before
3 us in the panel. I would be very happy with somebody
4 who -- how you find this person is not entirely
5 ideologically driven in terms of his assessment but can
6 come and just spend 45 minutes, an hour with us, to
7 say, look, this is where I think it is.

8 Because I don't see this as defining ahead of
9 time our hearing. I see it as helping us to be capable
10 of defining the hearing at a later point. So I think
11 it has a different kind of purpose than a briefing or a
12 hearing.

13 CHAIRPERSON BERRY: Well, maybe what we
14 should do is get some general big thinkers and then get
15 some more specific thinkers who are still big thinkers
16 but, I mean --

17 COMMISSIONER ANDERSON: Even our Washington -
18 - you remember our Washington briefing? I mean, we did
19 strive for that kind of ideological balance and a
20 number of the panels were like that. I was thinking
21 even beyond that. Maybe have one person per area that
22 can just come and didn't have to agree with everybody
23 on the Commission but sort of a scholarly analysis more
24 than a politically or philosophically driven one, I
25 think.

1 CHAIRPERSON BERRY: I like that.

2 COMMISSIONER GEORGE: Well, I'm skeptical
3 about --

4 COMMISSIONER HORNER: About what?

5 COMMISSIONER GEORGE: Well, it's about value
6 free social science again.

7 CHAIRPERSON BERRY: Oh, again.

8 COMMISSIONER GEORGE: I mean, I agree that we
9 do need to aspire to a certain amount of balance here
10 and I imagine on most subjects it would be valuable to
11 have a couple of perspectives.

12 For example, in criminal justice you could
13 think of very good people who have different points of
14 view, genuine experts and big thinkers, to bring that
15 in on a panel. They might agree on some points;
16 disagree on other points. But I wouldn't want to just
17 throw away the concern for balance this time because I
18 think this will have something of a shaping role and we
19 do want -- just for its own sake, we want as
20 comprehensive a picture of the thing as we can. And if
21 there are important views that are out there, as
22 serious people, we should hear about them to the extent
23 that we can.

24 At the same time, I'm the guy who says that
25 we should hold the numbers down that we're going to be

1 willing to do in one day. So 12 to 15 would be my
2 ideal with a couple of people addressing each of those
3 five areas, at least a couple of people addressing each
4 of those five areas that Stephanie outlined for us.

5 CHAIRPERSON BERRY: Well, Commissioner
6 George, there's a sense in which we can engage a
7 person, even if it's somebody who takes a perspective
8 that I don't initially agree with. And I sometimes
9 enjoy beating up on people or having a discussion with
10 them, that is, and exchanges. It can be very exciting.

11 I mean, I often use books in my class, my
12 policy class, about things, and I don't agree with the
13 policy perspective, and I have the students read it and
14 we discuss it. And I love eviscerating the policy
15 perspectives of people I don't agree with.

16 I don't always feel like I have to give you
17 one book that says this and then another book that
18 counterbalances it. After all, I'm there. And after
19 all, we'll be here and we have perspectives.

20 So maybe we could alternate and have -- the
21 other kind of balance would be on one panel to have
22 somebody -- I think we ought to seek the ideal that
23 Carl's talking about. Try to find somebody. There are
24 scholars, and you know some, and we all know some, who
25 are not consciously ideological at least or try not to

1 be and who are just experts on certain areas and there
2 are little nuances that you may disagree some. Try to
3 find some folk like that.

4 COMMISSIONER GEORGE: Well, --

5 CHAIRPERSON BERRY: This is a lamp looking
6 for the honest man, huh?

7 Did you say something, Russell?

8 COMMISSIONER REDENBAUGH: Yes. I wanted to
9 see if I could get us out of here.

10 Robbie, I think I'm in favor of what Carl's
11 proposed in the abstract and it looks like you're
12 against it in the abstract. But really, neither of us
13 can say much until we have something concrete to either
14 like or dislike.

15 COMMISSIONER GEORGE: Well, that's a fair
16 point. Yes.

17 COMMISSIONER REDENBAUGH: And so, it's really
18 theological discussion.

19 COMMISSIONER GEORGE: Now we have the
20 theological but it's not in the way of piety.

21 CHAIRPERSON BERRY: How many angels can dance
22 on the head of a pin?

23 COMMISSIONER REDENBAUGH: One less than the
24 actual number.

25 CHAIRPERSON BERRY: Why don't we do this.

1 Why don't we think ourselves about people we would
2 propose and look at Stephanie's list.

3 COMMISSIONER REDENBAUGH: And then I can be
4 against somebody specifically. Is that fair, Robbie?
5 Give you someone to object to.

6 COMMISSIONER GEORGE: Well, yes.

7 CHAIRPERSON BERRY: And then you can propose
8 someone and the staff has heard and will take into
9 account the five big question that were asked by the
10 Commissioners as they put together these lists and then
11 we'll see what we come up with.

12 COMMISSIONER GEORGE: Well, what about my
13 idea of holding the number down to 15?

14 CHAIRPERSON BERRY: Oh, I don't know. To how
15 many? Fifty?

16 COMMISSIONER GEORGE: Fifteen.

17 CHAIRPERSON BERRY: Fifteen in a day, you
18 mean?

19 COMMISSIONER GEORGE: I think even that's
20 going to be tough.

21 COMMISSIONER REDENBAUGH: That's high.
22 That's a lot.

23 CHAIRPERSON BERRY: Does anybody want to cap
24 it at 15?

25 COMMISSIONER ANDERSON: Well, I would just

1 ask how much time we're leaving for each person. I
2 heard 45 minutes at one point.

3 CHAIRPERSON BERRY: That's too much.

4 COMMISSIONER ANDERSON: And 15, 45 time 15.

5 CHAIRPERSON BERRY: How many days is that?

6 COMMISSIONER GEORGE: Two.

7 CHAIRPERSON BERRY: That's two days.

8 COMMISSIONER GEORGE: Well, my worry was that
9 it was 25 or 30. I'd be very happy with 12 but I
10 realize that that is in some tension with my other
11 concern, which is to make sure that we've got a couple
12 of people on each of the major subject areas that
13 Stephanie mentioned.

14 COMMISSIONER REDENBAUGH: We really have --
15 you've identified what I'll call the -- paradox.

16 CHAIRPERSON BERRY: What is that?

17 COMMISSIONER REDENBAUGH: There's no solution
18 to the final.

19 CHAIRPERSON BERRY: Did you have something,
20 Vice Chair?

21 VICE CHAIRPERSON REYNOSO: I just wanted to
22 comment that at least Commissioner Anderson and I have
23 some experience with having a witness come forward
24 where we were able to engage him for over an hour. And
25 I found that to be one of the most productive sessions

1 that I've experienced on the Commission.

2 We have five subjects to cover. I'd be very
3 happy with having two people per subject, having 10
4 folk, and that way we can give each of them half an
5 hour and we have time to explore.

6 CHAIRPERSON BERRY: Commissioner Anderson?

7 COMMISSIONER ANDERSON: I would propose the
8 five subject areas, one hour to one hour and 15 minutes
9 per subject with a maximum of three persons per panel
10 and a minimum of one.

11 VICE CHAIRPERSON REYNOSO: Fair enough.

12 COMMISSIONER ANDERSON: And if we can agree
13 on one, fine. If for some reason we think we need a
14 diversity of views on a panel, then we'll go to a
15 maximum of three.

16 VICE CHAIRPERSON REYNOSO: Good idea.

17 CHAIRPERSON BERRY: Okay. If there's no
18 objection, then we will pursue it that way.

19 COMMISSIONER GEORGE: I do want to hear from
20 Stephanie on this, in fairness to her.

21 CHAIRPERSON BERRY: Stephanie, do you have
22 any objection to that?

23 MS. MOORE: No, no. Actually -- I mean, I
24 think part of my initial response, again, was to hold
25 open, not knowing what or whether the Commissioners

1 would have additional substantive areas of exploration
2 or who you might propose.

3 I just simply didn't want to limit us to not
4 have an opportunity to explore those topics, as well.

5 CHAIRPERSON BERRY: Okay.

6 MS. MOORE: So this works fine.

7 CHAIRPERSON BERRY: All right.

8 Any other discussion? I think we've got this
9 pretty well set and we've got the Schools and Religions
10 pretty well set.

11 I don't have anything else for us to discuss
12 unless I've forgotten something.

13 Did I forget something? What is it?

14 MS. MOORE: Madam Chair, I think both OGC and
15 OCR is -- I guess we're anxious to pinpoint a date or a
16 tie frame for the ADA project.

17 CHAIRPERSON BERRY: Okay. We need to have a
18 hearing date for the ADA. Are we talking about two
19 days here? Three days? One day? Or what?

20 MS. MOORE: It's a two-day hearing.

21 CHAIRPERSON BERRY: Two-day hearing.

22 We need a two-day hearing in February or
23 March on ADA. February. February is a cruel month.

24 February. My goodness. A two-day hearing in
25 February.

1 COMMISSIONER LEE: Actually, I would prefer
2 early March. February is Chinese New Year month.

3 CHAIRPERSON BERRY: there's what, Yvonne?

4 MS. MOORE: Chinese New Year.

5 COMMISSIONER LEE: Yes.

6 CHAIRPERSON BERRY: Chinese New Year. Okay.
7 Early March. What do people's schedules in 1998 look
8 like for a two-day hearing?

9 When is the Commission meeting?

10 VOICE: [Response off mike.]

11 CHAIRPERSON BERRY: Okay. That's right.
12 Maybe we should -- well, it's not time to do that,
13 doggone it.

14 COMMISSIONER LEE: Is the ADA hearing here in
15 D.C.?

16 CHAIRPERSON BERRY: They are enforcement
17 people we're having, so it would be here.

18 How about the week of March -- where is the
19 March calendar? Oh, it on here. Turn it over.

20 What does March 19th look like? March 19th.

21 COMMISSIONER HORNER: How many days? Is this
22 just one day?

23 CHAIRPERSON BERRY: That week. The week when
24 -- March 19th and 20th.

25 COMMISSIONER HORNER: Yes. It's okay with

1 me.

2 CHAIRPERSON BERRY: The 19th and 20th?

3 COMMISSIONER REDENBAUGH: 19th and 20th?

4 That would work for me.

5 CHAIRPERSON BERRY: Okay. Let's say that the
6 19th and 20th of March is the ADA hearing then. That
7 takes care of that.

8 All right. Is there anything else I've
9 forgotten to do?

10 Well, if I have, I've forgotten it.

11 Does anybody else have anything else?

12 COMMISSIONER LEE: So are we deferring the
13 economic opportunities hearing?

14 CHAIRPERSON BERRY: Oh, I forgot about that.
15 Expanding the Economic Opportunities, that's three
16 conferences, you said?

17 MS. MOORE: Right.

18 CHAIRPERSON BERRY: What do you mean,
19 conferences? Oh, that's a joint project?

20 MS. MOORE: It's a joint project.

21 CHAIRPERSON BERRY: Joint project.

22 What do you guys mean by conferences?

23 MR. ISLER: It's going to be similar to --
24 sort of similar to consultation, but --

25 CHAIRPERSON BERRY: Okay. Are we trying to

1 do three in one year?

2 MR. ISLER: No. This is a three-year
3 project.

4 CHAIRPERSON BERRY: So we need one for next
5 year?

6 MR. ISLER: Right. That's correct.

7 CHAIRPERSON BERRY: We need a date for a
8 consultation on Expanding Economic Opportunity for
9 Minority Youth, I think it's called. We need a one
10 day. Is that a one-day conference, consultation, or we
11 need to push it into the next year.

12 Let's look and see. What do people think
13 about the schedule now. We've got ADA in February.
14 We've got Crisis Consultation in November.

15 MS. MOORE: Schools and Religion in May and
16 June.

17 CHAIRPERSON BERRY: May and June. What about
18 a consultation on Expanding Economic Opportunity? We
19 have the Regulatory Barriers briefing in September.
20 Can anybody commit to another time to do the
21 conference?

22 Yes, Commissioner Redenbaugh?

23 COMMISSIONER REDENBAUGH: My sense of it is
24 we're working above redline here.

25 CHAIRPERSON BERRY: Well, that's why it's

1 interesting to do this and to actually try to nail down
2 dates, because then it becomes very obvious where
3 you're overcommitted.

4 COMMISSIONER REDENBAUGH: Yes. That's my
5 sense. My dates are full or above.

6 CHAIRPERSON BERRY: Fully booked.

7 COMMISSIONER HORNER: Who was most committed
8 to that subject? Maybe that person should withdraw --
9 offer to withdraw it if that person feels it was --

10 CHAIRPERSON BERRY: It was Commissioner
11 Redenbaugh and some of the rest of it. We all liked
12 it, but Russell began it.

13 Would you be willing to push that into the
14 next year?

15 COMMISSIONER REDENBAUGH: Yes. I would be
16 willing.

17 CHAIRPERSON BERRY: Okay. So we'll push that.
18 So that takes care of that.

19 So that means we've taken care of everything
20 here. The only thing left is whether we have a hearing
21 on Crisis after we have the consultation and after we
22 have a discussion after the consultation about what we
23 think that hearing should look like. And we don't have
24 a date for that.

25 COMMISSIONER REDENBAUGH: We'll have to be

1 able to pick a date range for that though, I think.

2 CHAIRPERSON BERRY: A date range?

3 COMMISSIONER ANDERSON: I suggested September
4 of '98, but does that pump into something else?

5 CHAIRPERSON BERRY: No, no. We can't because
6 we're not having the consultation until November. And
7 September is the Regulatory Barriers.

8 COMMISSIONER REDENBAUGH: September of '98?

9 CHAIRPERSON BERRY: Oh, you mean the next
10 year?

11 COMMISSIONER ANDERSON: Yes.

12 CHAIRPERSON BERRY: Oh, I'm sorry.

13 How about September 1998?

14 Okay. September 1998. Let's try to get a
15 date here. And then when we do the schedule of
16 Commission meetings, we'll fit these -- block these in,
17 knowing we've already committed to these.

18 Anybody open to -- how about the 17th and
19 18th?

20 Now, we want to make sure we don't bump into
21 a holiday. Isn't there a Jewish holiday in --

22 COMMISSIONER REDENBAUGH: I think that's in
23 October.

24 COMMISSIONER GEORGE: Yes. They're late, I
25 think, in '98.

1 CHAIRPERSON BERRY: Okay. So how about
2 September, the week in which -- let's see.
3 September 17th and 18th -- 16th, 17th and 18th, in that
4 range.

5 COMMISSIONER HORNER: Yes. That's good.

6 CHAIRPERSON BERRY: Okay. So let's mark that
7 off for Crisis, as a hearing. And that gets it in the
8 fiscal year, and that's after Schools and Religion.

9 Okay. Anything else we've forgotten?

10 COMMISSIONER GEORGE: Could Ruby Moy perhaps
11 send us a reminder of all these dates?

12 MS. MOY: Yes. Be glad to.

13 COMMISSIONER GEORGE: They'll be in the
14 transcript record, but it would be good if we had a
15 sheet with what we've agreed to on it.

16 MS. MOY: Okay.

17 CHAIRPERSON BERRY: And remember, we have an
18 August meeting, August 15th meeting here. And --

19 COMMISSIONER GEORGE: That's going to be
20 devoted to the education reports taht are being
21 revised?

22 CHAIRPERSON BERRY: And, if it's finished,
23 the GPRA.

24 We will -- shall we meet again at 8:00 or
25 shall we come in at 9:00-9:30?

1 Anybody got any preference?

2 COMMISSIONER REDENBAUGH: My preference would
3 be the 9:30, in that I will be attending telephonically
4 from the West Coast.

5 CHAIRPERSON BERRY: Okay.

6 COMMISSIONER ANDERSON: I'll be in the same
7 position.

8 CHAIRPERSON BERRY: All right. So we'll meet
9 at 9:30 on August 15th and let's see how we proceed.

10 Anybody have anything else?

11 (No response.)

12 Okay. If there's nothing else, then thank
13 yuy very much and the meeting is adjourned.

14 (Whereupon, the proceedings were concluded at
15 3:00 p.m.)

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