

U. S. COMMISSION ON CIVIL RIGHTS

- - -
MEETING
- - -

Friday, February 14, 1997

The Commission met in Room 540, YWCA Building, 624 9th Street, N. W., Washington, D. C. 20425, at 9:40 a.m., MARY FRANCES BERRY, Chairperson, presiding.

PRESENT:

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

GERRI MASON HALL, DEPUTY STAFF DIRECTOR

STAFF PRESENT:

BARBARA BROOKS
DAVID CHAMBERS
KI TAEK CHUN
JAMES S. CUNNINGHAM
PAMELA DUNSTON
BETTY EDMISTON
EDWARD HAILES, JR.
GEORGE M. HARBISON
CAROL-LEE HURLEY
FREDERICK ISLER
JACQUELINE L. JOHNSON

LIBRARY
U.S. COMMISSION ON CIVIL RIGHTS

STAFF PRESENT: (Continued)

WILLIAM LEE
ERIC MANN
REGINALD MARTIN
STEPHANIE Y. MOORE, GENERAL COUNSEL AND
PARLIAMENTARIAN
CHRISTINE PLAGATA-NEUBAUER
VERONIQUE PLUVIOSE-FENTON
TAMI TROST
CATHERINE WALLACE
ANTHONY K. WELLS, SR.
AUDREY WRIGHT
NADJA ZALOKAR

COMMISSIONER ASSISTANTS PRESENT:

JOSEPH BROADUS
ADERSON FRANCOIS
CHARLOTTE PONTICELLI
WILLIAM LEE SAUNDERS, JR.
KRISHNA TOOLSIE
CYNTHIA VALENZUELA

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9:40 a.m.

CHAIRPERSON BERRY: The meeting will come to order.

Could I have a motion for approval of the agenda, please?

COMMISSIONER HORNER: So moved.

COMMISSIONER ANDERSON: Second.

CHAIRPERSON BERRY: All in favor, indicate by saying aye.

(Chorus of ayes.)

Opposed?

(No response.)

So ordered.

Could I have a motion for approval of the minutes of January 17th, 1997?

COMMISSIONER HORNER: So moved.

CHAIRPERSON BERRY: Can I get a second?

COMMISSIONER LEE: Second.

CHAIRPERSON BERRY: Any discussion of the minutes or changes?

COMMISSIONER REDENBAUGH: I have a small change.

Charlotte, would you read that?

CHAIRPERSON BERRY: Yes. Charlie Ponticelli

1 is going to read the change.

2 MS. PONTICELLI: Commissioner Redenbaugh's
3 amendment pertains to the section in the minutes on
4 fiscal year 1999 program planning. Basically, the
5 amendment is to hook together those first two sentences
6 in that paragraph to read as follows:

7 "Commissioner Redenbaugh asked for
8 postponement of the program planning discussion until
9 the February 14 Commission meeting, to allow the
10 Commissioners to revisit the proposals when they have
11 more detailed information, including costs, before
12 them."

13 CHAIRPERSON BERRY: You meant project instead
14 of program, didn't you, Charlie?

15 MS. PONTICELLI: Yes.

16 CHAIRPERSON BERRY: In other words, we put
17 the two sentences together.

18 Anyone else have any other corrections?

19 (No response.)

20 Okay. Well, with that change, could I get a
21 motion to approve the minutes as changed?

22 VICE CHAIRPERSON REYNOSO: So moved.

23 CHAIRPERSON BERRY: Or did I get that
24 already? Okay. And somebody seconded it. I've
25 forgotten who.

1 So, all in favor, indicate by saying aye.

2 (Chorus of ayes.)

3 Okay. Announcements.

4 The first announcement that I would like to
5 make is that I would like to congratulate Vice Chair
6 Reynoso. He received the Spirit of Excellence Award in
7 recognition of his contribution to the advancement of
8 the legal profession from the American Bar Association
9 at its recent meeting in San Antonio.

10 And I note that it says, "In the spirit of
11 excellence." It doesn't say he's excellent. The
12 spirit of excellence.

13 (Laughter.)

14 VICE CHAIRPERSON REYNOSO: Their hopes.

15 CHAIRPERSON BERRY: And I want to offer you
16 my sincere congratulations on this occasion

17 (Chorus of congratulations.)

18 The other announcement -- let's see. Do I
19 have any other announcements?

20 We have received a response from Secretary
21 Glickman to -- I sent a letter to him telling him --
22 reminding him of our farm, black farmer report that we
23 did in 1965 -- not 1965, 1970-something -- '76.

24 This relates to the information that's been
25 mentioned in the news about the Department of

1 Agriculture and its problems with complaints made, and
2 reminded him of the report we had done.

3 And he wrote back thanking us and saying that
4 he's set up a task force to deal with this and asking
5 us to -- that he will continue to inform us, and asking
6 that our staff, who are responsible for that, have some
7 discussions with his staff about how they're proceeding
8 over there to resolve some of these issues.

9 The other announcement I want to make is that
10 Bill Cosby, because of the death of his son and a
11 number of other personal problems that he's dealing
12 with, has decided that he's not going to keep any of
13 his commitments beyond the appearances that he
14 contracted for two or three months that he already had
15 made, and so he's not going to do the PSA right now.
16 He may do one at a later time for us, but that we
17 should go ahead and try to get someone else right now.

18 And so we have under consideration Phylicia
19 Rashad, who appears with him on the Cosby Show and was
20 in the Huxtables as the family -- I forget what that
21 was called, the TV show that they had. They have a new
22 one. And so we are proceeding in that way and expect
23 at a later time that he will do one for us. And I
24 think we all understand why he can't do it right now.

25 Does anyone else have any announcements or

1 did I forget any?

2 (No response.)

3 No one else has any. Okay.

4 The Staff Report. Does anyone have any
5 questions or comments on the Staff Report?

6 VICE CHAIRPERSON REYNOSO: Are we going to
7 have a report in terms of the hearings?

8 CHAIRPERSON BERRY: That's right. Thank you
9 for reminding me, Vice Chair.

10 I wanted to ask whether Commissioners are
11 coming to the hearing in Mississippi. Will we have a
12 quorum? Just want to make sure.

13 Yes, Commissioner Horner?

14 COMMISSIONER HORNER: No. I'll be there.

15 CHAIRPERSON BERRY: Commissioner Horner will
16 be there.

17 Commissioner Anderson, will you be able to
18 make it?

19 COMMISSIONER ANDERSON: I'll be there for the
20 first day.

21 CHAIRPERSON BERRY: Okay.

22 You'll be there?

23 VICE CHAIRPERSON REYNOSO: I'll be there.

24 CHAIRPERSON BERRY: Okay. I just want to
25 make sure we had a quorum.

1 COMMISSIONER HORNER: Madam Chair, I still
2 haven't made my arrangements and I'll be there the
3 first day, assuming I can get from where I am to there
4 the day before.

5 CHAIRPERSON BERRY: Okay.

6 COMMISSIONER HORNER: And I'll make my
7 arrangements right after this meeting.

8 CHAIRPERSON BERRY: Okay.

9 COMMISSIONER HORNER: So I'll tell you if I
10 can't.

11 CHAIRPERSON BERRY: All right. And we should
12 be getting -- we've got a witness list. And when
13 should we be getting the briefing book do you think,
14 Stephanie?

15 MS. MOORE: Next week.

16 CHAIRPERSON BERRY: Next week? Okay.

17 VICE CHAIRPERSON REYNOSO: The hearings start
18 at what hour?

19 MS. MOORE: 8:30.

20 VICE CHAIRPERSON REYNOSO: 8:30 on Thursday?

21 MS. MOORE: Thursday, Friday and Saturday.

22 VICE CHAIRPERSON REYNOSO: And we go half a
23 day Saturday?

24 MS. MOORE: Yes. And Friday, there is a
25 Commissioner meeting scheduled at 8:00 a.m.

1 CHAIRPERSON BERRY: Okay. So 8:30 in the
2 morning. That's better than 8:00.

3 VICE CHAIRPERSON REYNOSO: Yes.

4 (Laughter.)

5 COMMISSIONER GEORGE: Madam Chair, what's the
6 deadline for the subpoenas going out?

7 CHAIRPERSON BERRY: Stephanie -- we sent the
8 witness list out to the Commissioners?

9 MS. MOORE: Right.

10 CHAIRPERSON BERRY: And have you sent the
11 subpoenas?

12 MS. MOORE: The subpoenas are ready. Today.

13 CHAIRPERSON BERRY: Today.

14 COMMISSIONER HIGGINBOTHAM: I'll be there on
15 Thursday. I don't know if I'll be there at 8:30, but
16 I'm just telling you.

17 CHAIRPERSON BERRY: How many people will be
18 there the first day?

19 COMMISSIONER HIGGINBOTHAM: I'll be there at
20 9:30 in the morning.

21 CHAIRPERSON BERRY: One, two, three, four.
22 Commissioner Redenbaugh?

23 COMMISSIONER REDENBAUGH: No. I will not be
24 there.

25 CHAIRPERSON BERRY: Okay. I just wanted to

1 see if we had five people to start.

2 COMMISSIONER HORNER: I'll be there if I can
3 get from Newark, New Jersey after 2:00 p.m. all the way
4 to Greenville on the 5th.

5 CHAIRPERSON BERRY: Which is problematic, but
6 you may be able to.

7 COMMISSIONER HORNER: Yes.

8 CHAIRPERSON BERRY: Okay. So it looks like
9 we would have five on the first day, so we need at
10 least five for a quorum. Is that right? Yes. My
11 count.

12 So once we get started and we have five, then
13 people can come in and out and we'll be okay.

14 Did I forget anything else, Cruz?

15 VICE CHAIRPERSON REYNOSO: No.

16 CHAIRPERSON BERRY: Okay.

17 Staff Report. Does anyone have any questions
18 on the materials that are here or anything anyone would
19 like to ask or discuss about the Staff Report?

20 COMMISSIONER LEE: Just a question.

21 CHAIRPERSON BERRY: Yes.

22 COMMISSIONER LEE: Regarding the Arizona SAC,
23 it was mentioned that they haven't met for about 11
24 months. Is there any reason why they aren't meeting?
25 Is there a budgetary constraint?

1 CHAIRPERSON BERRY: Arizona.

2 Carol-Lee, speak up and just tell them.

3 Carol-Lee is going to answer.

4 VICE CHAIRPERSON REYNOSO:

5 MS. HURLEY: The Arizona Committee will be
6 meeting on March 14th for a fact-finding meeting. I
7 don't recall when they last met, but we did not have
8 some meetings towards the end of last fiscal year
9 because of money.

10 CHAIRPERSON BERRY: Okay.

11 Oh, the other thing I wanted to say is that
12 on the Staff Director. I forgot to say anything about
13 that. No one asked me. That's strange.

14 The White House has a candidate under
15 consideration and is doing vetting. And whenever they
16 get finished with that, they will tell me that it's
17 okay to circulate the person's resume. They have said
18 I should not do that before they finish the vetting.
19 So, I will do that just as soon as they finish, and
20 then you will have an opportunity to call the person.
21 The person will call you to see if a meeting can be
22 scheduled, if you desire to do so.

23 Then, after you do that, I will call you or
24 have someone call you to find out whether you are
25 prepared to vote. If you are prepared, then we will.

1 If you're not prepared, then we'll wait until we meet
2 again and talk about it and do whatever we need.

3 So, I hope it can get done between now and
4 the next meeting. I hope. But I don't know how long
5 the vetting will take. Sometimes it takes a short
6 time; other times it takes longer. I don't know what's
7 going on.

8 So, it is moving. Something is happening. I
9 just wanted you to know that.

10 Okay. Anybody have any questions about that?

11 (No response.)

12 Okay. Nothing on the Staff Report?

13 (No response.)

14 Then we go to Item Number 5 on the Agenda,
15 which is Project Planning FY 1999. And it is important
16 that we give the staff some guidance at this meeting.

17 The main thing the staff wants to know or
18 needs to know is what projects you like. I know I
19 can't ask you what ones you don't like. I've been
20 reminded of that, so -- because no one wants to say
21 what they don't like.

22 But if you could just give us some guidance
23 on what you would like done or whether you've given any
24 thought to anything, in the interim from the last
25 meeting, of other projects that you have in mind or

1 that you may have thought of that you think would be a
2 good idea for 1999.

3 One of the problems is that I think 1999 is
4 when some of us go off the staff. Isn't that right?

5 COMMISSIONER GEORGE: The end of '98.

6 CHAIRPERSON BERRY: So in a way, it's sort of
7 like trying to figure out what somebody should do. I
8 think I'm out in '99. But it's hard to try to figure
9 out what somebody should do when they're not here, but
10 I guess that's what we have to do.

11 So, we need to -- for budgetary purposes, at
12 least -- make some decisions.

13 COMMISSIONER REDENBAUGH: I find it a little
14 awkward to be trying to decide '99, having not resolved
15 '98.

16 CHAIRPERSON BERRY: Okay. Would you like to
17 resolve 1998?

18 Now, 1998, which is the budget we have, all
19 of the projects -- you got a memo from Gerri indicating
20 to you that, based on the pass-back, none of the
21 projects you prioritized were affected by the pass-
22 back. They are still there as projects, totally
23 unaffected.

24 The only change as a result of the pass-back
25 was to downsize the Measurement of Discrimination

1 Project to only put in the money for the first year and
2 not the next year. So all other projects -- you got a
3 memo which is somewhere in here, but you got one.

4 COMMISSIONER REDENBAUGH: Yes. I did see
5 that.

6 CHAIRPERSON BERRY: Which told you that none
7 of your priorities were affected by these.

8 So the Commissioners -- all the Commissioners
9 have to do in this budget process is to decide what
10 your priorities are. You don't have to decide anything
11 about other activities that the Commission engages in,
12 such as SAC activities or activities carried on by
13 various units in the Commission as a matter of course,
14 any of the entities in the Commission, how the projects
15 will be done or what resources.

16 You don't have to decide that. All you have
17 to decide is what your priorities are and what you
18 would like to be done.

19 If you can imagine, it's sort of like --
20 let's see. There are three of us here or four of us
21 who are faculty members -- sort of five. It's sort of
22 like if you were in a department and you figured out
23 that your department would like to do X, Y and Z and
24 hire a new professor or something next year.

25 No one -- you and the department don't have

1 to decide whether the university is going to have the
2 money to do that. Somebody, the Chairman, the Dean,
3 somebody, will decide that. What you decide is --

4 COMMISSIONER REDENBAUGH: Well, in this case,
5 who would that somebody be?

6 CHAIRPERSON BERRY: The Staff Director.
7 Because the Staff Director is the management person who
8 is responsible for the operations budget and for the
9 management of the Commission. And if the Staff
10 Director does not believe the resources are available
11 or if there's a resource problem, the Staff Director is
12 responsible to tell us that there's a problem.

13 COMMISSIONER REDENBAUGH: If I could just
14 kind of start in the middle then?

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER REDENBAUGH: Under that
17 interpretation, it's hard to speak to as much, because
18 we don't have a staff director. But what I call our
19 attention to is that there are a large number of
20 unfinished projects going back as early as '93 and
21 unwritten reports which will need to be written and
22 paid for in '97 and '98, and which will have a
23 substantial impact on our capacity to have the
24 priorities we want to specify in '98.

25 So, I think we have to do something other

1 than what you're suggesting.

2 CHAIRPERSON BERRY: Well, we already have a
3 list.

4 Were you trying to say something, Vice Chair?

5 VICE CHAIRPERSON REYNOSO: Madam Chair, I was
6 just going to remind us that we've gone through this in
7 the past while I've been here; that is, when we have
8 projects that are unfinished, we've indicated a strong
9 preference to staff that projects that are already in
10 the course of being done be finished first before we
11 jump into new ones.

12 So, while I appreciate all the work the staff
13 has done on giving us these numbers and all that, we
14 really are just in the process of setting priorities
15 that would happen if we had our druthers. Then, if in
16 fact, as has happened in the past, we have projects
17 that already are in the works, we certainly -- I've
18 always felt, and I think around the table we felt that
19 those need to be finished first.

20 So, this is just simply a matter of
21 indicating what our druthers would be, if it's
22 possible.

23 COMMISSIONER REDENBAUGH: Except, Cruz -- I
24 would agree with that, except that our indications, or
25 our preferences to have projects completed, that hasn't

1 occurred. There are these 11 or so unpublished,
2 unwritten reports going back to work done in '93.

3 So, I want to call attention to the fact that
4 that's not getting done.

5 CHAIRPERSON BERRY: What are the 11
6 unfinished reports?

7 COMMISSIONER REDENBAUGH: I have a partial
8 list.

9 Charlie -- I think we're talking about the LA
10 hearing, the New York hearing.

11 COMMISSIONER HORNER: Miami.

12 COMMISSIONER REDENBAUGH: Miami.

13 CHAIRPERSON BERRY: The only projects that
14 I'm aware that the Commission has in the pipeline are
15 the racial tensions projects and the monitoring
16 projects.

17 Am I wrong about that? Did something happen
18 that I don't know about?

19 COMMISSIONER HORNER: The education report
20 has been stretched out now over multiple years, rather
21 than being completed, as we planned this year.

22 CHAIRPERSON BERRY: Right. But those are the
23 only ones I'm aware of. Are there others that I'm not
24 thinking about? Racial tensions and education.

25 COMMISSIONER REDENBAUGH: Well, racial

1 tension is the main. There's four or five reports
2 under that.

3 CHAIRPERSON BERRY: Miami, L.A., New York are
4 the three. And we haven't done Mississippi yet, but
5 then there'll be Mississippi, which will be four. But
6 the point is that obviously we have to finish the ones
7 that haven't been written yet.

8 You got a sheet of paper which shows you the
9 cost of those projects in FY 1996 and the 1997 budget
10 for them, which shows that they're all under budget
11 except for -- all of the racial tension ones are. The
12 Miami report you will be getting this week. It will be
13 -- we could give it to you, but it's kind of big. You
14 will get it this week. I mean, this week, you will get
15 it.

16 COMMISSIONER HORNER: We also have the
17 summary report for the racial tensions.

18 CHAIRPERSON BERRY: So that racial tensions
19 hasn't been finished but it's budgeted for. So I'm
20 trying to figure out --

21 COMMISSIONER REDENBAUGH: Yes. But my point
22 was, following up on Cruz's, that we as Commissioners
23 keep asking the staff to do more and more. I think
24 thereby making it impossible for them to complete what
25 we've previously asked them to do.

1 CHAIRPERSON BERRY: Well, are you suggesting
2 that what you'd like to do -- just so I'm clear about
3 what you're suggesting. Are you suggesting that what
4 you'd like to do is, instead of requesting money for
5 additional projects, you would like to request money
6 for existing projects?

7 In other words, in a budget year we would
8 request something. You have to submit a budget request.
9 So you're saying that what you would prefer to do is,
10 rather than discussing new projects, you would rather
11 ask for money to finish the projects we're doing? Is
12 that the suggestion?

13 COMMISSIONER REDENBAUGH: Well, no. The
14 suggestion is a little different from that. It is -- I
15 don't know how I can with a straight face ask for money
16 for new projects when we have done less than very well
17 at completing the projects we have underway.

18 CHAIRPERSON BERRY: But the projects we have
19 underway are still under budget.

20 COMMISSIONER REDENBAUGH: They may be under
21 budget but they're way over time.

22 CHAIRPERSON BERRY: What did you say,
23 Commission George?

24 (Pause.)

25 VICE CHAIRPERSON REYNOSO: Madam Chair, I

1 think we may be talking about in some ways two
2 different matters or two different concerns.

3 At this point, as I understand it, we're
4 concerned about the proposed budgets for some time in
5 the future; whereas, as I indicated earlier, we would
6 indicate what our druthers would be.

7 Russell is raising a concern that I've had,
8 too, that has to do, I have to assume, with the normal
9 operating procedures within the staff that takes us as
10 long as it does to finish a report and get it out of
11 hearings that we've had, for example.

12 And again, since I've been on the Commission,
13 and I know even before, we have a practice that seems
14 to -- and I don't know the internal workings, but it
15 seems to take us an awful long time to get those
16 reports out. And I think Russell is concerned about
17 that, which I actually see as a different issue than
18 the budgetary issue.

19 CHAIRPERSON BERRY: Well, let me just try it
20 for a minute, and then I'll recognize you, Commissioner
21 Horner.

22 Let me just say that, as I understand it
23 first of all, we didn't say when we would finish the
24 racial tensions reports. There was no deadline put on
25 it. We said we would do these hearings in order. We'd

1 do all these hearings and then we'd do reports.

2 COMMISSIONER REDENBAUGH: Let me interrupt,
3 if I may.

4 So that we have hearings that were done in
5 '93. This is now '97 and the report is not complete.
6 I'm not satisfied with that.

7 CHAIRPERSON BERRY: Well, I'm not either. So
8 I was not about to say that I was satisfied. I was
9 just going to say that when we decided to do them, one,
10 we didn't say when we were going to finish them. Not
11 that that's a good thing, but that's what happened.

12 The second thing is my understanding is that
13 if we had gotten more money, which we did request each
14 year, we would have been able to deploy more in the way
15 of resources by hiring more people to work here who
16 could have gotten the things done fast.

17 For example, we only have one statistician.
18 You keep hearing that all the time.

19 COMMISSIONER REDENBAUGH: Oh, I understand
20 that. But I think the reality then is we need to size
21 our activities inside the money we have.

22 CHAIRPERSON BERRY: Well, if that's the case,
23 Commissioner Redenbaugh, then I go back to my first
24 question. Are you suggesting that what we should do is
25 request money to finish the projects we have -

1 COMMISSIONER REDENBAUGH: Yes.

2 CHAIRPERSON BERRY: -- as opposed -- that's
3 what I asked you in the beginning.

4 I beg your pardon?

5 COMMISSIONER REDENBAUGH: I now see the
6 wisdom of your question.

7 CHAIRPERSON BERRY: Oh, okay.

8 Commissioner Horner?

9 COMMISSIONER HORNER: Madam Chair, we have a
10 note from Gerri Hall, which I think is very helpful to
11 this conversation. It's the memo in which are
12 identified the reductions that need to be taken for the
13 '98 budget. And I think some of these reductions speak
14 to what Commissioner Redenbaugh is talking about.

15 For instance, one of the reductions is
16 \$300,000 in travel. Another is \$350,000 in supplies,
17 equipment and other services. And one crucial one, it
18 seems to me, is about \$175,000 reduction in salaries
19 and benefits. And it seems to me that if we're talking
20 about accepting a reduction in anticipated salaries and
21 benefits, that has implications for doing our work.

22 And so it seems to me if we have a choice
23 between completely lopping off a given project on the
24 one hand, or reducing a project and also taking these
25 big staff reductions, that we ought to reduce the new

1 project and keep the staff, so that we can finish our
2 old projects expeditiously.

3 In other words, I am concerned about the
4 possibility of taking salary and benefit and travel
5 reductions when so much of our work is dependent upon
6 those people and their activities.

7 CHAIRPERSON BERRY: Did you hear that,
8 Commissioner Redenbaugh?

9 COMMISSIONER REDENBAUGH: I did.

10 CHAIRPERSON BERRY: So, my original question
11 then is are we suggesting or is someone suggesting that
12 what we ought to do for 1998 and for 1999 is to ask for
13 money to complete existing work to the extent that it
14 isn't completed, and ask for new monies?

15 In other words, consider that the staff we
16 have and the printing costs, the travel, everything
17 else, is a base. And then ask for more resources for
18 projects on top of that. And if we get more resources
19 on top of that, then do more projects. And if we
20 don't, then simply finish the projects we have.

21 Is that the suggestion?

22 COMMISSIONER REDENBAUGH: That is the
23 suggestion.

24 CHAIRPERSON BERRY: anyone have any --
25 Yes, Vice Chair?

1 VICE CHAIRPERSON REYNOSO: I think -- and I
2 may have to be helped with this -- that the procedure
3 in the government has been to --

4 CHAIRPERSON BERRY: George, don't leave
5 because I'm about to ask you a question. Do not leave.

6 (Laughter.)

7 VICE CHAIRPERSON REYNOSO: She caught you,
8 George.

9 -- to identify for budgetary purposes the
10 things that we would like to happen. And I guess,
11 Russell, I see that as the process we're in now.

12 Then, as we go along or as we get closer to
13 that year, we keep redoing our priorities. And one of
14 the ways we redo our priorities is to say we budgeted
15 for Project A but we don't have the money for that
16 because we've got to finish Projects 1, 2 and 3 that
17 are not yet done.

18 So, my sense has been that that's a matter of
19 prioritizing that should happen through the help of the
20 Staff Director and staff. And the concern that we have
21 right now basically is that somehow we haven't been
22 able to coordinate our own desires with the priorities
23 of personnel that the staff has been working with.

24 So, I'm not quite sure whether if we just
25 went forward and said we want money two or three years

1 from now for the projects we haven't finished right
2 now, that that really quite works together.

3 Do you follow me? I mean, we're talking now
4 about monies that we're going to spend --

5 COMMISSIONER REDENBAUGH: True.

6 VICE CHAIRPERSON REYNOSO: -- in two or three
7 years. And our concern is that we have projects that
8 we'd like to have finished now.

9 CHAIRPERSON BERRY: So, if I understand you
10 correctly, what you're saying is the budget would say
11 for 1998 we want to finish the projects that are in the
12 pipeline, expect to be able to finish them in 1998 if
13 we are given these resources that we're requesting.

14 VICE CHAIRPERSON REYNOSO: Right. But my
15 hope would be, actually, that by that time, because
16 we're talking a year or two or three down the line,
17 that these projects we have now would actually be
18 finished. That is, if we don't have the money -- we've
19 asked for the money we're spending now at least two
20 years ago, maybe three years ago. And then we keep
21 reevaluating our priorities.

22 And it seems to me that our priorities ought
23 to be reevaluated in such a way that we put more
24 resources into finishing the work that we've done. But
25 our hope for two or three years from now is still that

1 we'll have the projects we've been talking about.

2 CHAIRPERSON BERRY: Now, we have a factual
3 question here. We have a time line somewhere that we
4 discussed before for when these reports would be
5 finished that were projected for us about two, three
6 months ago. Miami you'll get next week. L.A. --
7 what's the story on that, Stephanie?

8 MS. MOORE: A draft report of L.A., the
9 police section, was due to me today.

10 CHAIRPERSON BERRY: Okay. So if the police
11 section is due to you today, then -- I mean, I know you
12 don't know, but when do you think we should be talking
13 about L.A. going to the Staff Director's office, an
14 estimate. Sometime in the next two or three months or
15 four months?

16 MS. MOORE: We have to get it.

17 CHAIRPERSON BERRY: So we expect then to get
18 the L.A. report in this fiscal year. We need this
19 information.

20 New York. When do we expect it to go from
21 you to the Staff Director? I know it will take longer.

22 MS. MOORE: It will take longer. We don't
23 expect that to be ready until the Summer. And
24 hopefully, presentation to the Commissioners in
25 September.

1 CHAIRPERSON BERRY: So that --

2 Yes, Commissioner Horner?

3 COMMISSIONER HORNER: Madam Chair, did I
4 understand we're about to get the Miami report?

5 CHAIRPERSON BERRY: Next week.

6 COMMISSIONER HORNER: Why are we getting the
7 Miami report based on a hearing held in '95 and we
8 still don't have the L.A. report, based primarily on a
9 hearing held in '93 and a New York hearing held in '94?

10 CHAIRPERSON BERRY: Well, I think -- I'll let
11 you answer it, but I think I know the answer. And if I
12 don't get it right, you can answer it.

13 You go ahead and answer it. Go ahead,
14 Stephanie.

15 MS. MOORE: Well, the problem with the L.A.
16 hearing, you'll recall, we made a request twice for
17 mini-hearings to update the record for the L.A.
18 transcript, which was rejected for most of the
19 materials but was accepted for the Police Community
20 Relations Section.

21 We have, as I said, completed the police
22 section, or at least that will be submitted to me
23 today. But the record from the 1993 hearing is a
24 difficult one.

25 And indeed, I would want to propose to the

1 Commissioners that we simply publish the transcript and
2 prepare an executive summary of that testimony. It's
3 very difficult at this time without updating the record
4 to make findings and recommendations based on that
5 report, based on that record.

6 COMMISSIONER HORNER: But why have we not
7 long ago completed the work based on that record? Why
8 is work proceeding on the New York and Miami without
9 completion?

10 In other words, I don't understand what is so
11 problematic about the L.A. hearing that we didn't long
12 ago complete everything other than the police update
13 section. What's the matter with the L.A. hearing that
14 we haven't been able to produce a normal report on it?

15 MS. MOORE: Well, again, I have made requests
16 to the Commissioners twice with elaborate discussions
17 of what was wrong with the L.A. hearing. I can
18 resuscitate those memos. But memos were distributed
19 that indicated where the record was insufficient for us
20 to proceed.

21 COMMISSIONER HORNER: Well, with all due
22 respect, from what I've heard about the L.A. hearing,
23 there was a substantial record created. And just for
24 the record and without trying to engage this anew now,
25 I'd just like to say that it seems to me that we ought

1 to have simply written the report we could based on
2 that hearing, pointing out that there would be areas
3 which weren't addressed.

4 MS. MOORE: Well, Commissioner Horner, just
5 to put it in context, when I began at the Commission,
6 the 1993 hearing had already taken place. We had lost
7 most of the staff in OGC that could have completed any
8 report based on that record.

9 Again, the Office of General Counsel has
10 requested on a number of occasions to update that
11 record. From '93 to the time that I came to the
12 Commission, a lot of changes had already taken place in
13 L.A. that had made the record out of date. And so it
14 was very difficult to make findings and recommendations
15 based on -- and it continues to be -- based on that
16 record.

17 CHAIRPERSON BERRY: So basically what's
18 happening is that the OGC hearings, Miami is a fresh
19 record and we're getting that next week. Los Angeles -
20 - Commissioner Anderson and the Vice Chair went out and
21 did the hearing, the last hearing on the police stuff,
22 to bring that up to date. So OGC is going to give us
23 that in a short period of time. But they have
24 repeatedly told us that the record in the first part is
25 not in any shape to make any findings and

1 recommendations. We have repeatedly denied their
2 request to update the record.

3 So what they're basically telling us is that
4 they find it impossible -- the lawyers who are there
5 now, find it impossible in good conscience within their
6 professional integrity and standards, to write a report
7 based on a transcript that they think is totally
8 deficient. And therefore, they would like us to let
9 them publish the transcript with an executive summary.

10 Now, I respect their professional judgment.
11 And if they as a matter of professional judgment and
12 ethics are not prepared to write something that they
13 think would violate their professional standards, I'm
14 not going to say that I think that they should.

15 Yes, Vice Chair?

16 VICE CHAIRPERSON REYNOSO: Madam Chair, with
17 respect to the budgetary matters, it seems to me these
18 last few minutes of discussion have fortified the sense
19 that I had that by the time these projects come up for
20 consideration, the three reports that we've talked
21 about will already have been done. And that's why I'm
22 concerned, in terms of Russell's recommendation, that
23 we ask for money for someone to finish the unfinished
24 business, quite -- principally, these three reports --
25 when by the time the projects come about, this will

1 already be done.

2 So it seems to me that maybe to respond to
3 Russell's concern, when we're thinking about a project,
4 or particularly when we go into it, we should not only
5 include, if it includes hearings, a hearing date, but
6 ask the Staff Director to give us a report as to
7 personnel, in terms of how quickly after that hearing
8 we can get the report. And make sure that we somehow
9 put the resources into that report to come back to us.

10 But in terms of what we're talking about this
11 morning, all the figures that we have and so on, don't
12 help us ask the question: If we had our druthers, what
13 priority would we set for that time?

14 COMMISSIONER REDENBAUGH: Cruz, I take your
15 point.

16 CHAIRPERSON BERRY: All right.

17 Then now we go to the question of what to do
18 for -- we didn't answer the question about Fred's
19 reports, his education things, like when they're going
20 to be finished.

21 Fred, I guess I could read this but I don't
22 understand some of it. So, when will your education
23 reports be finished?

24 MR. ISLER: As you know, Volume I of the
25 Education Report is finished. The 504 Disability

1 Report is complete. Title VI Law, the Limited English
2 Proficiency Report, will be turned in March 18th and
3 will be complete. Gender Equity in Math and Sciences,
4 the difficulties girls are having in advancing in math
5 and science, will be submitted June 18th, complete.
6 The profiles will be complete -- I'm sorry. The
7 Ability Group and Tracking will be complete in July.

8 CHAIRPERSON BERRY: So the expectation is
9 that the education reports, too, will be finished
10 before the end of the fiscal year?

11 MR. ISLER: We plan to deploy half of the
12 staff on the ADA, if it's prioritized as Number 1,
13 around July.

14 CHAIRPERSON BERRY: Okay.

15 MR. ISLER: So, we should complete all the
16 educational reports at least by August.

17 CHAIRPERSON BERRY: Okay. So we'll get back
18 to you with your briefing later. But that tells us
19 about the status.

20 Could you hear that, Commissioner Redenbaugh?

21 COMMISSIONER REDENBAUGH: Yes. And Fred,
22 thank you. In my seven years here, I've never had such
23 a clear set of goals and deadlines set out. Well done.

24 VICE CHAIRPERSON REYNOSO: But I note that he
25 didn't tell us the hour in which it would be --

1 (Laughter.)

2 CHAIRPERSON BERRY: Now that means that what
3 we should do next -- if I understand this clearly,
4 having those answers -- is figure out whether we need
5 to do anything else to 1998.

6 Now, it was the judgment of the Staff
7 Director --

8 COMMISSIONER REDENBAUGH: Well, I think we
9 do. Yes.

10 CHAIRPERSON BERRY: -- and the Budget Office.

11 May I just say this? It was their judgment
12 that we could do the projects that the Commissioners
13 had prioritized if we in 1989 got \$11 million, which
14 we're not going to get. But if we got \$11 million in
15 1998, it was their judgment that we could do all the
16 projects that the Commissioners wanted done and get
17 them done while reducing certain areas in the budget by
18 the amounts that you see here. That was a management
19 decision.

20 Now, are you saying that you would like to
21 say that you don't agree with the management decision
22 and therefore, you want to change it? Based on what?

23 COMMISSIONER REDENBAUGH: Well, I would say
24 that based on two things. One, in our meeting which I
25 believe was in October, what we did was -- painfully,

1 as I recall it -- ranked our priorities in some rough,
2 rank order.

3 So, I would propose instead of shaving them
4 down and making these others cuts, if we dropped the
5 projects that had the lowest priority. And I don't
6 even know what it is.

7 CHAIRPERSON BERRY: But, Commissioner
8 Redenbaugh, let me try one more time to say this. The
9 staff has concluded -- the Staff Director concluded,
10 and after consultation with the staff, that all of the
11 projects the Commissioner prioritized in October could
12 be done if the budget were reduced from \$13.260
13 [million], which we requested, to a request of \$11
14 million, which was the pass-back number.

15 COMMISSIONER REDENBAUGH: Yes.

16 CHAIRPERSON BERRY: All of them -- all, A-L-
17 L, could be done --

18 COMMISSIONER REDENBAUGH: I understand their
19 recommendations.

20 CHAIRPERSON BERRY: -- could be done, with
21 the exception of a reduction in the Measuring
22 Discrimination, which was not in terms of our
23 priorities.

24 We indicated at the time we would only do
25 that if we had the money. And that we could do all of

1 this with a reduction in printing, travel, salaries,
2 benefits and contingency fund, with an \$11 million
3 budget, though, which is not a reduction from what we
4 have now. It would be a reduction from \$13 million
5 down to \$11 million. That's important to keep in mind.

6 COMMISSIONER REDENBAUGH: Right. And probably
7 \$2 million more than we'll get.

8 CHAIRPERSON BERRY: Right. That's the point
9 to keep in mind. It was not a reduction in what we
10 have or a reduction from \$11 million. It was a
11 reduction from \$13.260 [million] down to \$11 [million].
12 That in order to achieve those numbers, they said that
13 this could all be done.

14 Now, for us it would seem to me that the only
15 query is are we saying we don't like the numbers that
16 the Staff Director put down for salaries, saying that
17 they could achieve these between \$13 and \$11 million,
18 and therefore, we would like to change these numbers
19 somehow because our priorities are all there.

20 COMMISSIONER REDENBAUGH: Well, then let me
21 deal with a more substantive issue.

22 CHAIRPERSON BERRY: Commissioner Horner is
23 trying to get recognized.

24 COMMISSIONER REDENBAUGH: Our priorities
25 basically are not all there. Measuring -- the project

1 that's labeled Measuring Discrimination, has expanded
2 from a two-year project to a three-year project. And
3 the total -- and the budget has expanded substantially.
4 And this was a project not approved by the Commission.

5 CHAIRPERSON BERRY: Number one, the
6 Commissioners did approve this project. The transcript
7 shows that the Commissioners did approve this project.

8 COMMISSIONER REDENBAUGH: Maybe we should
9 read the transcript as well. It said as a special
10 project if separately funded by OMB.

11 CHAIRPERSON BERRY: Right. And therefore,
12 that is --

13 COMMISSIONER REDENBAUGH: I would call that a
14 conditional approval.

15 CHAIRPERSON BERRY: That is why none of the
16 projects that the Commissioners approved without
17 condition were affected. All the projects that you
18 approved without condition are in the budget within the
19 \$11 million without any change at all. They're in
20 there. Which is what you approved.

21 Measuring Discrimination is only in there
22 with a reduction, after the projects that you approved
23 are in there. And it was the Staff Director's judgment
24 that all the projects you approved could be done and a
25 beginning on the conditional one by simply reducing the

1 amounts that you see there, based on a reduction from
2 \$13.260 [million] to \$11 million. That's what
3 happened.

4 Yes, Commissioner Horner?

5 COMMISSIONER HORNER: Madam Chair, it seems
6 to me that the amount the staff proposes to reduce in
7 salaries, benefits, contingency, travel, et cetera,
8 could be completely restored if we deferred Measuring
9 Discrimination to a later year, rather than reducing
10 Measuring Discrimination by over \$1 million and making
11 up the million that we would spend on it by cutting
12 staff.

13 It seems to me very self-defeating because
14 when we cut staff from the anticipated levels in order
15 to do the anticipated projects, we will end up being
16 unable fully to do the anticipated projects. Either
17 that, or we way over-budgeted in the first place and
18 we're cutting back to a necessary level, which I doubt.

19 So, it seems to me the sensible thing to do
20 in line with our proposal to, in this fiscal year,
21 complete reports, even at the expense of starting new
22 projects next year, not to take on this large new
23 project if it means we're going to have to cut staff,
24 cut salaries.

25 We were proposing to reduce staff by five.

1 Let's keep the five staff and defer the Measuring
2 Discrimination Project to a year in which we have the
3 money to do it.

4 CHAIRPERSON BERRY: The five, as the Deputy
5 Staff Director has just informed me -- again, the five
6 staff were for the Measuring Discrimination Project.
7 that's what they were for.

8 COMMISSIONER HORNER: But that project has
9 been --

10 CHAIRPERSON BERRY: Cut. That's why they
11 were cut.

12 MS. HALL: And the salaries were mostly --

13 COMMISSIONER HORNER: They were all for the
14 other 50 percent of the cost of the Measuring
15 Discrimination? All these are Measuring Discrimination
16 related?

17 MS. HALL: Primarily. One of the things that
18 I noted as far as printing, it could affect -- as I
19 mentioned in my last transmittal, that as far as the
20 line item for printing, that it could affect the number
21 of copies that we may send out on other items that we
22 print, because it was a cut that was made across the
23 board in printing, not directly tied to a particular
24 report.

25 So in that respect, it could affect the

1 number of copies of one of the other reports.

2 CHAIRPERSON BERRY: But she asked about --

3 MS. HALL: But the rest of it, yes. It was
4 tied to Measuring Discrimination.

5 COMMISSIONER HORNER: And what is the impact
6 on this project of cutting its size in half?

7 MS. HALL: Of Measuring Discrimination?

8 COMMISSIONER HORNER: Yes. Which half are
9 we --

10 MS. HALL: Well, --

11 COMMISSIONER HORNER: -- are you proposing to
12 do?

13 MS. HALL: It would be the beginning phase.
14 It was laid out in the description as several phases
15 and we believe we could accomplish with the -- it would
16 be \$800,000 for the first year in 1998. And that first
17 phase should be able to be accomplished.

18 COMMISSIONER HORNER: Why is a decision being
19 made to do this project in spite of the fact that we
20 had decided to do it only if we received additional
21 funds? And now having not received OMB approval for
22 additional funds, we are proceeding with half the
23 project or stretching the project out, rather than
24 being required, frankly, to revisit the whole issue
25 since we have approved it only if we got the additional

1 money and we didn't?

2 MS. HALL: Well, at the rate of \$11 million,
3 there would be additional funds. Not the entire
4 amount, the \$13 [million]. But at \$11 million, there
5 would be some additional.

6 Of course, you can revisit everything but --

7 COMMISSIONER HORNER: But we had decided not
8 to do it unless we got funds specifically identified as
9 additional for this purpose. We did not get funds
10 decided as additional for this purpose.

11 And therefore, my presumption is that we have
12 not approved it.

13 CHAIRPERSON BERRY: We did not say
14 specifically identified for this purpose. That was not
15 the language. I am clear about that. And in fact, the
16 only reason why OMB gave us any additional funding at
17 all was because they think we're going to do Measuring
18 Discrimination. That's the only reason why they gave
19 us any money, if you want to know the truth.

20 They would have given us zero. The first
21 pass-back was 8 points, which is what we have now.

22 The only reason why they were persuaded that
23 the Commission deserved to get any money at all was
24 that the Commission was going to do something useful,
25 which might be useful to the public, might be useful to

1 the other agencies and that they would therefore give
2 us a little money to start Measuring Discrimination.

3 COMMISSIONER HORNER: But we must then drop
4 something that we've had planned --

5 CHAIRPERSON BERRY: No.

6 COMMISSIONER HORNER: -- in lieu of -- we had
7 planned a budget of \$13.2 million, including money
8 identified for this project. Since money has not been
9 -- since we haven't received that full amount, we're
10 back where we were.

11 CHAIRPERSON BERRY: No, no, no, Commissioner
12 Horner. That is not the case. The case is that we
13 would have had the full amount for measuring
14 discrimination, which they didn't give us. What they
15 gave us was some money to start it with the
16 understanding that if we started and we want to
17 continue it, then in future years -- and if we get the
18 money, which we probably won't get anyway.

19 But if we get it and we start it, then in
20 future years they would give us additional money to
21 continue it. That's the argument.

22 And as the Deputy Staff Director just told
23 you, all of these reductions that you see here, except
24 for what she said about printing, are related to the
25 fact that we're not -- didn't get the money for

1 Measuring Discrimination. That's why they're there.

2 Yes, Commissioner Anderson?

3 COMMISSIONER ANDERSON: I'm trying to
4 understand. I'm a little bit confused here.

5 In October we decided on a budget, as I
6 recall, of \$11.4 [million], with an additional \$1.86
7 [million] for the Measuring Discrimination. So that's
8 what we requested of OMB.

9 Now, they have responded to us with a pass-
10 back figure of \$11 million which included money for the
11 Measuring Discrimination. Is that what we're to
12 understand?

13 CHAIRPERSON BERRY: Some money to begin it.
14 Yes.

15 COMMISSIONER ANDERSON: Well, our total
16 request was for \$13.26 [million] and they gave us \$11.
17 Where did they indicate that we were to use part of the
18 \$11 million for Measuring Discrimination?

19 CHAIRPERSON BERRY: They didn't, because we
20 are -- they don't indicate it that way. They don't
21 identify line items. Our budget doesn't have line
22 items, as a matter of fact. We've just got one big
23 lump sum of money. I'm just telling you that that was
24 the reason why they were able to give us any money
25 beyond \$8.75 [million].

1 And keep in mind the Commission does other
2 work other than projects. So that the money that is in
3 the budget that we request is not all devoted to
4 projects. We have lots of activities around here that
5 are not Commissioner approved projects. Our projects
6 are big items, but the Commission has work with the
7 SACs. It has all sorts of things that aren't in these
8 projects.

9 COMMISSIONER ANDERSON: But if I may just
10 pursue it for another minute or two, they have given us
11 less than what we requested without any consideration
12 of the Measuring of Discrimination Project, but we're
13 told that part of the less figure is to include money
14 for Measuring Discrimination?

15 CHAIRPERSON BERRY: But we're told not that
16 it is to. The Commission can decide to do whatever it
17 likes. OMB doesn't tell us what to do. That battle
18 was fought long ago.

19 I am simply informing you that the reason
20 why, after we got a pass-back of \$8.75 [million], they
21 were willing to negotiate an upper amount was they said
22 some of the things you do look to be interesting. This
23 one looks interesting. Therefore, we're willing to
24 give you some more money because we assume that the
25 Commission is going to do this very interesting

1 project.

2 Now, you can decide not to do it.

3 COMMISSIONER ANDERSON: Well, we had
4 originally decided not to do it; right? We had decided
5 to spend \$11.4 million on other projects. Then we had
6 said if OMB wants us to do this project, then they
7 should give us \$1.86 [million] to do this additional
8 project.

9 Now, they have not done that. They have
10 given us less than we asked for the other projects.
11 And now we're to say that with that less, we are also
12 to ratchet it down even further in order to begin on
13 the Measuring Discrimination Project.

14 Now, we may wish to do that, but I don't
15 believe that anything we did in October required that
16 we do that. That should be a separate decision. And
17 if we want to make it today, we can make that decision
18 today. But that should not be a foregone conclusion
19 because I think in October it clearly says \$11.4
20 [million] for all of these projects, apart from
21 Measuring Discrimination.

22 And if OMB wants us to do Measuring
23 Discrimination, they'd give us \$11.4 [million] plus an
24 additional figure. They did not do that.

25 CHAIRPERSON BERRY: And they did not agree

1 with us about the other items that we proposed in terms
2 of costs of various items. I'm not talking about
3 projects. Which means that they reduced -- they don't
4 accept our \$11.4 [million] as deciding that that's
5 exactly what we need for whatever we request. I mean,
6 that's not how it's done.

7 So just because we request \$11.4 million,
8 that doesn't mean they agree with us. So to describe
9 it as we wanted \$11.4 [million] to do all these other
10 things and they gave us \$11 [million], which means that
11 they didn't give us money for that, no. They gave us
12 \$8.75 [million] to do all the other things and then
13 gave us more money. It's a negotiating process.

14 However, the Staff Director determined within
15 the money that we were passed back that it was possible
16 to do all the projects. And in readjusting the budget
17 and reconfiguring it, could figure out how to do all
18 the projects, as well as start on this, with the monies
19 that we had available, if we got \$11 million. That's
20 the answer to that.

21 Now, if the Commission decides for reasons
22 other than budgetary reasons that even if we got \$11
23 million you still don't want to start it, that's a
24 decision the Commission can take.

25 VICE CHAIRPERSON REYNOSO: Madam Chair, I

1 want to agree that the final decision is up to us. But
2 the impression I get -- and I'm no expert. The
3 impression I get is that we are assuming greater
4 rationality in the process and our discussion here than
5 actually takes place. That is, if the folk in OMB come
6 back and say we're only going to give you so much
7 money, then further negotiations take place where they
8 give us more money under the assumption that we're
9 going to do Project A, B or C.

10 It seems to me that we would be well advised
11 to take into account Projects A, B and C, since that's
12 what the negotiation was about.

13 So, I'm just suggesting that the process
14 isn't quite as rational as the discussion around the
15 table seems to indicate, as I understand it.

16 CHAIRPERSON BERRY: But if the Commission, as
17 a different substantive matter does not want to do
18 Measuring Discrimination, that's another whole issue.

19 VICE CHAIRPERSON REYNOSO: Well, that's
20 right.

21 CHAIRPERSON BERRY: And if the Commission
22 doesn't want to do it -- I'm saying it can be done but
23 if we don't want to do it, that's up to us.

24 Yes, Commissioner? Are you trying to say
25 something, Commissioner Redenbaugh?

1 COMMISSIONER REDENBAUGH: Yes. I'm not quite
2 sure where to begin. I guess with Carl Anderson's
3 point that in the October meeting we have not decided
4 whether or not to do Measuring Discrimination.

5 What I notice is the description of the
6 project, although the name is the same, the description
7 has changed substantially or it appears to me that
8 there's a substantial change. And the total size of
9 the project, I think, has gone up. None of that have
10 we yet approved.

11 And I feel that this is being kind of slid by
12 me and I'm objecting to that. And I'm objecting to it
13 not because I have any substantive objection to the
14 project. In fact, I was one of the two Commissioners
15 that you wanted to get more involved in the shaping of
16 the project and have been willing to do that.

17 But I don't have anything on which I would be
18 willing to support an appropriation or a project of
19 roughly \$3 million. I don't know enough to do that.

20 CHAIRPERSON BERRY: What you would be
21 supporting, if you supported anything, would be a
22 consultation in which the Commission would explore with
23 experts what shape this project would take and how it
24 would be carried out in the first year, and then decide
25 how to proceed after that. That's what you'd be

1 supporting.

2 COMMISSIONER REDENBAUGH: Yes. Well, I don't
3 support that yet. I mean, I've been given this like a
4 take-it-or-leave-it option and I don't support that.

5 CHAIRPERSON BERRY: Okay. Well, if you don't
6 support it, you don't support it yet.

7 VICE CHAIRPERSON REYNOSO: Madam Chair, I
8 just -- it seems to me that what has happened, from
9 what I hear, is that of necessity negotiations take
10 place to which all of us are not privy. Certainly I
11 have not been. Which makes sense. I mean, you can't
12 have a whole committee meeting with OMB and others.
13 And that those who are negotiating with OMB -- and I
14 assume it's the Deputy Staff Director and the Chair --
15 tried to get as much money out of OMB in the spirit of
16 what we Commissioners have said we want to do.

17 And from what I hear this morning in terms of
18 those negotiations, that's precisely what happened.
19 And even though it's still up to us to decide what to
20 do, I want to be respectful of that history of
21 negotiations so that if, as I understand it, we were
22 going to get X amount, then based on the fact that we
23 have a project that looked exciting to them, as it was
24 to us, they said, okay, we're going to give you another
25 sum of money. That's part of the negotiations.

1 It seems to me that I want to take that into
2 account in deciding whether or not we go forward. It's
3 just more complicated than simply saying we want so
4 much money and then they're saying yea or nay. And I
5 think that in our final decision we have to take all of
6 this into account.

7 And my quick reaction is that to the extent
8 that we were able to negotiate to get some money to get
9 this project started, we ought to be -- it's something
10 good for the Commission, good for the American people.

11 CHAIRPERSON BERRY: Well, I don't think we
12 should do it if Commissioners -- one of the nice things
13 about it from their perspective was that the
14 Commissioner was bipartisan and has people with all
15 kinds of different views on it that they would bring to
16 bear on this project.

17 But if Commissioners, Republican appointees,
18 are so opposed to our even doing it, then I see no
19 reason for us to do it and that we should just simply
20 go forward with an \$8.75 million request and say that
21 that's what we want and that we're not interested in
22 doing Measuring Discrimination or anything else. And
23 the Commission is willing to say to OMB essentially,
24 "We don't care. We don't want to do this project
25 anyway. We don't think it's something we ought to do.

1 We're not ready to do it. It may seem exciting to
2 you."

3 And I must point out, too. Whatever
4 negotiations took place, the Commission was not
5 committed to do anything. I didn't say the Commission
6 would do X, Y or Z because I know that the Commission
7 has the right -- and I have fought for that right all
8 of my career -- to tell OMB, the President or anybody
9 else that we decide what we want to do, not them.

10 So it was just that they thought it was
11 exciting. They thought and the Staff Director thought
12 that this could be done within the budget that was
13 proposed, which I don't think we'll get anyway. So,
14 most of this discussion is sort of wasting time.

15 We talk like these are real numbers. And
16 certainly we're not going to get it if the Republican
17 appointees are opposed to it, since they control the
18 budget process on the Hill and I have no influence over
19 that. So, I think we're wasting time.

20 If they're opposed to it, then we ought not
21 to even do it and let's just forget it and move on.

22 Yes, Commissioner Horner?

23 COMMISSIONER HORNER: Madam Chair, just for
24 the record, I believe Commissioner Redenbaugh, who's
25 been spearheading this discussion, is not a Republican.

1 CHAIRPERSON BERRY: I said appointee.

2 COMMISSIONER REDENBAUGH: May I be
3 recognized?

4 CHAIRPERSON BERRY: Yes, Commissioner
5 Redenbaugh.

6 COMMISSIONER REDENBAUGH: No. I certainly am
7 a Republican appointee, but I do object to the
8 characterization that the four Republican appointees
9 are against this project. The case for the project has
10 not been made. And both Commissioner Horner and I have
11 expressed some willingness to be involved in the making
12 of that case on a bipartisan basis. That hasn't
13 happened, and I don't know why.

14 I'm not going to be put in the position of
15 saying that my objection is to the project. It is way
16 too soon for me to say that.

17 CHAIRPERSON BERRY: I have to tell you,
18 Commissioner Redenbaugh, as I have told you privately,
19 that the staff is not ready yet to meet and discuss the
20 contours of this project because we do need --

21 COMMISSIONER REDENBAUGH: And I'm not ready
22 to vote for it.

23 CHAIRPERSON BERRY: -- we do need a
24 consultation to figure out the contours of it because
25 it's too involved. However, if you're not prepared to

1 vote for it now, that's fine. I thought we had already
2 approved it. But if you're saying you want to
3 reconsider the vote for it -- .

4 COMMISSIONER REDENBAUGH: I didn't approve
5 it.

6 CHAIRPERSON BERRY: The Commission, I said.

7 COMMISSIONER REDENBAUGH: No. The Commission
8 did not approve it.

9 CHAIRPERSON BERRY: If you want to vote to --
10 well, we can argue about that until the cows come home.
11 But if you do not want to do it whether or not you
12 voted for it, my feeling is that we shouldn't do it.

13 COMMISSIONER HIGGINBOTHAM: Madam Chair?

14 CHAIRPERSON BERRY: Yes.

15 COMMISSIONER HIGGINBOTHAM: What's that
16 expression? In a journey of 1,000 miles you have to
17 take the first step. It seems to me that there is a
18 serious debate on whether there is the capacity to
19 measure discrimination in America. And some people
20 believe it's very easy to do. Some people believe that
21 it's difficult or may not be able to. And so we don't
22 have to decide that issue.

23 When I read about the protocol for the
24 proceedings, what you would have would be experts would
25 be invited, a broadbased group. Whatever your

1 ideological orientation, we'd make sure that you'd get
2 a representative spectra. And the first step is to
3 explore that question. And I think that is of great
4 value.

5 When you listen to people these days, some
6 people say basically, no problem. On the other hand,
7 when you read data, some people think that the problem
8 is worse than it was 10 years ago.

9 I think that we would make no loss if at
10 least we got a record of the spectrum of the debate and
11 then you vote as to whether you're going to continue in
12 depth. This is just an inquiry with no one having a
13 commitment.

14 So I don't see how it is disadvantageous
15 because at some point measuring discrimination is --
16 determining whether we can measure discrimination,
17 determining whether there is discrimination and, if so,
18 how much, is extremely important.

19 If you watched the Super Bowl and you see
20 close to 50 percent of the athletes are African-
21 Americans, one might say what's the problem. But if
22 you look at the Urban League report which says 50
23 percent or more of the people between 18 and 25,
24 African Americans in inner cities are unemployed and
25 then you have to go and figure out is there

1 unemployment just because blacks don't want to work or
2 is it because of certain discrimination, the whole
3 series or process.

4 I think we can make a valuable contribution
5 of just starting the initial inquiry. And if it
6 becomes too complex, the only thing that can be done,
7 we can cut it off. But I think this is the critical
8 issue of the next decade.

9 CHAIRPERSON BERRY: Commissioner Horner?

10 COMMISSIONER HORNER: Madam Chair, as you
11 know, we talked about my talking with the staff and
12 Commissioner Redenbaugh's talking with the staff to
13 better understand what this project would mean before
14 we made a commitment to support it. And that offer of
15 mine is still on the table. As you know, you called
16 me and said the staff, as you just said, wasn't ready
17 to talk about it.

18 But like Commissioner Redenbaugh, if the
19 staff isn't ready to talk about it, I'm not ready to
20 vote on it. And the reason is this.

21 Although I agree with everything Commissioner
22 Higginbotham just said, I mistrust the capacity of our
23 organization currently to do an extremely rigorous,
24 highly informed unbiased job of creating a
25 consultation.

1 If I can be assured by preliminary staff
2 work, simply done on current funding, that the staff
3 has -- if the staff would produce a 10-page report
4 outlining the arguments, outlining the experts whom
5 they would call into a consultation, giving us articles
6 attached which contain those experts' assessments of
7 the difficulties of measuring discrimination so that I
8 could be assured it wouldn't, in effect, end up being
9 an ideological put-up job. Then I would be very eager
10 to support such a project over the long-term. .

11 I'm not making any commitment right now, but
12 I frankly have seen too many -- well, for instance, by
13 way of example, we had a terrible last-minute
14 negotiation over the Educational Opportunity Report
15 because the staff operated to me on, by my lights,
16 unexamined presumptions which are false. Not
17 uniformly, but in substantial measure. I don't want us
18 to get into a bind like that on something that is
19 incredibly important, because Leon is right. If you
20 want to reduce all the arguments going on today to one
21 argument, it's an argument over how much discrimination
22 is there; what constitutes discrimination as opposed to
23 some other different phenomenon. It's the biggest
24 argument we have.

25 I would love to get an answer to that

1 argument. I fall into the category of those in between
2 believing it can't be measured at all and believing
3 that it's easily available. And so I would like to
4 hear from experts on this subject but I first need to
5 be assured that when the experts come in to talk to us,
6 it's not pre-cooked. Not necessarily by design but by
7 habit.

8 CHAIRPERSON BERRY: How about this as a
9 suggestion, then, which is I think is even better, if I
10 may say so. I'm going one better than the one you
11 make, because I agree with what both of you said.

12 How about if we agree that you and
13 Commissioner Redenbaugh and the Vice Chair would be
14 responsible for reading the staff recommendations on
15 who would come to the consultation, with their bios and
16 all the materials, and decide whether those are the
17 people and it's a balance group before any consultation
18 took place?

19 COMMISSIONER HORNER: I think the entire
20 Commission ought to have that opportunity, frankly. I
21 think the way we make decisions should be that the
22 staff presents a fully formed memo about the nature of
23 the project. And we have had something like that for
24 some of our projects. And I would be happy to pay

1 special attention to it. I'd be happy to work with the
2 other two Commissioners you identified. But I also
3 believe, frankly, that the entire staff (sic) ought to
4 receive such a memo and we ought to have a period of
5 time in which we can look at it and --

6 CHAIRPERSON BERRY: Well, here's what I
7 meant, Commissioner Horner. I didn't mean that the
8 whole Commission wouldn't look at it. What I meant,
9 early in the process when they are formulating who
10 would be the folks who would be on the consultation
11 with bios, with copies of materials, for you guys to
12 review and take a look at, before they actually drafted
13 the thing that they gave to all of us. Because at that
14 stage, you could tell, the three of you, if you felt
15 there were some real problems of balance without them
16 going to a full blown proposal. And then all the rest
17 of us would look at it.

18 COMMISSIONER HORNER: That would be fine.
19 But what I need is not just a bio. I need --

20 CHAIRPERSON BERRY: Materials.

21 COMMISSIONER HORNER: I need abstracts of
22 their thought, articles they've published,
23 institutional affiliations and so on, and time for me
24 to go and read this stuff, look into it.

25 CHAIRPERSON BERRY: Well, I don't have any

1 problem with that. I mean, I am not interested in
2 doing a biased project because the issue is too
3 important. And I think the contribution we could make
4 if we could ever get off the dime and start it, is
5 because we do have all these different perspectives --

6 COMMISSIONER HORNER: Right.

7 CHAIRPERSON BERRY: -- that are out there in
8 the country.

9 And who but us -- I mean, it seems to me that
10 it's something we ought to do. That's why we're set
11 up. It's part of our duty, in my view. And I am
12 sympathetic to you and I understand what you mean about
13 distrust and the cooking of it.

14 So that if the three of you would agree to,
15 first of all, vet at an early state when the staff is
16 working with it, and then bring it to us as a proposal,
17 have the staff bring it after you've vetted it, then
18 we'll approve it. Then we have an agreement about how
19 the consultation would go forward and that's what we'd
20 be doing first.

21 COMMISSIONER HORNER: Right.

22 CHAIRPERSON BERRY: So do you have any
23 problem with it if we do it that way?

24 COMMISSIONER REDENBAUGH: No, I don't.

1 CHAIRPERSON BERRY: You don't?

2 COMMISSIONER REDENBAUGH: No, I don't.

3 CHAIRPERSON BERRY: All right. Then can we
4 do it, please?

5 COMMISSIONER HORNER: We're not voting now.
6 The staff is going to have an assignment to help
7 prepare us for a vote.

8 CHAIRPERSON BERRY: No, we're not going to
9 vote. We're not going to vote. But listen, though.
10 We have a problem. We have to --

11 Oh, the Deputy Staff Director has a question.

12 MS. HALL: Maybe you're getting ready to
13 clarify, but timing. We're talking about budgets in
14 the future. And are you talking about something now?

15 CHAIRPERSON BERRY: At any point,
16 Commissioner Horner, if you and Commissioner Redenbaugh
17 and the Vice Chair and the rest of the Commissioners
18 will on that basis permit us to go forward with the
19 budget process? If at any time you're dissatisfied, we
20 can indicate that we're no longer supporting whatever
21 this project is because you're not satisfied with the
22 process?

23 COMMISSIONER HORNER: Madam Chair, no. I
24 don't accept that. I would characterize it quite
25 differently. The Commission has not decided to do

1 something. It's asked the staff to help it assess a
2 possibility. And I refuse to be identified as the,
3 quote, Republican appointee who's so frequently
4 referred to here, as the person who's standing against
5 something that otherwise well-intentioned people want
6 to do. So I don't accept that.

7 What I would say -- the way I would
8 characterize it is the project will go forward if the
9 Commission decides it will go forward, and the staff is
10 going to help us make that decision by presenting some
11 materials over the next two months, three months,
12 however long it would take the staff to do that.

13 CHAIRPERSON BERRY: The question I have --
14 that's fine. I don't have any problem with that. But
15 the question that the Deputy Staff Director has is a
16 technical question. We have to submit a budget. So
17 the query is, can we at this point put it in the budget
18 with the understanding that we can take it out if you
19 any of you have a problem or the Commission has a
20 problem?

21 COMMISSIONER HORNER: I agree with
22 Commissioner Redenbaugh and Commissioner Anderson that
23 we never voted to do this under these circumstances.
24 And therefore, no, I would not say that it will go
25 forward unless Commissioners X, Y and Z stop it.

1 COMMISSIONER REDENBAUGH: May I interject
2 here?

3 CHAIRPERSON BERRY: Yes.

4 COMMISSIONER REDENBAUGH: Thank you.

5 For purposes of the budget proposal, I would
6 be willing to put it in the thing we have to send to
7 the Hill.

8 CHAIRPERSON BERRY: Right.

9 COMMISSIONER REDENBAUGH: With the
10 stipulation, not in the proposal, but with our
11 understanding and stipulation that we in some future
12 moment will decide not to revoke it but to approve it
13 or not. And I would like to fully accept your
14 recommendation, Mary, that Connie and Cruz and I look
15 at the staff proposal, help shape that, and then bring
16 a recommendation to the full Commission.

17 CHAIRPERSON BERRY: So it would go in the
18 budget with our understanding stated on the record --
19 because that's what we're doing here, stating stuff on
20 the record -- that the Commission may decide not to go
21 forward at all with this.

22 COMMISSIONER REDENBAUGH: Or may decide to go
23 forward.

24 CHAIRPERSON BERRY: Well, how are we going to
25 put it in the -- we can't write it in the budget as a

1 proposal -- it's our understanding here but we can't
2 say in the budget.

3 COMMISSIONER REDENBAUGH: I understand that.
4 All right.

5 Do you understand?

6 COMMISSIONER ANDERSON: We can say that we
7 are studying the project and will make an affirmative
8 decision on it later in the year after our
9 consultation. We can say that to the budget.

10 CHAIRPERSON BERRY: I think what we would do
11 is say that in a separate letter of transmittal. I
12 don't think we actually say it in the -- there's no --
13 you don't do that in the budget. But we can say that
14 in a letter of transmittal. And when we go up to talk
15 about the budget, which I hope you will do, you can say
16 that in the budget hearing, depending upon how far
17 we've gotten at that time and when we go. Because we
18 may be able to get some of this done before that time.

19 COMMISSIONER REDENBAUGH: I would like to
20 have it done before that time so we can speak on behalf
21 of it.

22 CHAIRPERSON BERRY: Right.

23 So for now we would put it in, but we would
24 understand that -- well, we have to put the numbers in
25 the budget. We can't say we are reducing the amount

1 that we are requesting.

2 COMMISSIONER HORNER: We can put in the
3 budget a statement that the Commission continues to
4 review the question of whether Measuring Discrimination
5 should be a Commission project without -- in other
6 words, we shouldn't say -- we shouldn't put it in the
7 budget such that people reading what we've written will
8 believe we're going to do it and then later on, if we
9 don't do it, be called on the carpet for not doing
10 something we've implied we're going to do, or implying
11 that we need to vote to stop it at some point.
12 Otherwise, it will go forward because it's in the
13 budget.

14 CHAIRPERSON BERRY: How about if we put it in
15 as a possible Commission project?

16 COMMISSIONER HORNER: Can't we simply put a
17 sentence in our general budget information that says
18 the staff is preparing a review of this -- is preparing
19 materials for Commissioner review on this subject?

20 CHAIRPERSON BERRY: This is a -- the staff is
21 preparing materials for Commissioner review on the
22 subject? We can do that.

23 COMMISSIONER HORNER: Preparing materials for
24 the Commission to use in its decisionmaking process.

25 CHAIRPERSON BERRY: To use --

1 COMMISSIONER HORNER: I mean, why do we need
2 to put it in the budget other than to please OMB? And
3 I know that we have asserted again and again our
4 independence of OMB. So frankly, if we end up doing
5 it, they'll be happy. If we end up not doing it, they
6 won't be happy. But what they hear in the short-term
7 isn't going to make any difference.

8 CHAIRPERSON BERRY: No, no, no. This is not
9 an OMB consideration that I'm making now, but the way
10 the budget document looks that we send to the Hill.
11 You have to list all the projects.

12 COMMISSIONER HORNER: Right. So we're not
13 ready to list this yet because we haven't decided to do
14 it. I don't know how we can say we're doing it
15 directly or by implication if we haven't decided to do
16 it.

17 COMMISSIONER HIGGINBOTHAM: May I ask a
18 question? If -- Mary?

19 CHAIRPERSON BERRY: Yes.

20 COMMISSIONER HIGGINBOTHAM: If we did merely
21 the protocol and ascertaining the viability of
22 measuring discrimination, if that's all we were going
23 to do, how long a period would that be from your most
24 optimistic evaluation?

25 CHAIRPERSON BERRY: Well, what I would be

1 hoping --

2 COMMISSIONER HIGGINBOTHAM: Is that a year?

3 CHAIRPERSON BERRY: What I would hope -- and
4 you mean the consultation? That would be for the --
5 the consultation would take place during the next
6 fiscal year. The preliminary getting it ready and the
7 vetting that the Commissioners would do to make sure
8 that the consultation would be balanced, we would start
9 doing now. Because what I would hope, that process
10 would come to a conclusion before we had our budget
11 hearing.

12 COMMISSIONER HORNER: When is that?

13 CHAIRPERSON BERRY: So that -- I don't know
14 what date it is. It hasn't been set yet probably.

15 Is that right, Kim? I'm right? It's not set
16 yet?

17 MR. CUNNINGHAM: Right.

18 CHAIRPERSON BERRY: Sometime this Summer,
19 probably.

20 So that Commissioners would feel comfortable
21 supporting that, whoever goes up to testify. Like
22 Commissioner Anderson, perhaps, would feel comfortable
23 supporting it.

24 COMMISSIONER HORNER: So we have no --
25 nothing we need to do until right before our hearing.

1 CHAIRPERSON BERRY: No. What we need to do -
2 - Kim, do you want to say something about this?

3 MR. CUNNINGHAM: We're going to be conducting
4 staff interviews -- briefings with our appropriations
5 hearings. And at that point, we hope the
6 Commissioners, prior to any hearing -- and there may
7 not be a hearing this year as there was no hearing last
8 year -- that the Commissioners will also be speaking to
9 members of the committees. And it seems reasonable
10 that you need to have the strongest case to justify the
11 request of \$11 million. And that strongest case would
12 have a definitive agenda for FY '98.

13 Uncertainty about the Measuring
14 Discrimination Project would, I think, give staff and
15 members of the committees some pause as they try to
16 determine how much money we would have for the coming
17 fiscal year.

18 CHAIRPERSON BERRY: And when do we turn in
19 this document?

20 MR. CUNNINGHAM: It should be there now.
21 It's required immediately after the President submits
22 his budget. We've negotiated with the committee to
23 submit our request by the end of next week, which is
24 two weeks late, approximately.

25 So it's acceptable to them, but we need to

1 get it over there soon so that they can start working
2 on their analysis of the agencies under their
3 jurisdiction.

4 CHAIRPERSON BERRY: So if we put in some
5 language, which I think we need to, if we listed the
6 project and said that this is a project on which the
7 Commission staff is doing preliminary work in order for
8 the Commission to make decisions about whether and how
9 to proceed, what's wrong with that?

10 COMMISSIONER HORNER: That would be fine.

11 CHAIRPERSON BERRY: Okay.

12 COMMISSIONER HORNER: As long as it's clear
13 the Commission has not yet decided to proceed.

14 CHAIRPERSON BERRY: But did everybody hear
15 what I said? Because that's what it will say.

16 COMMISSIONER REDENBAUGH: Yes. I heard you.

17 COMMISSIONER ANDERSON: I didn't. Say it
18 again.

19 CHAIRPERSON BERRY: Say it again? I can't
20 say it again. I don't know what I said.

21 COMMISSIONER HORNER: We've got the
22 transcript.

23 MR. CUNNINGHAM: I expect discussions with
24 the committee to begin in March, and interviews between
25 Commissioners and members of the committees to take

1 place in March.

2 CHAIRPERSON BERRY: Okay.

3 MR. CUNNINGHAM: Presumably after the
4 Mississippi hearing. So that any uncertainty about
5 this project, if it's at all possible, could be
6 resolved between now and that March --

7 CHAIRPERSON BERRY: It won't be resolved by
8 then. But I think the language that we just came up
9 with put in the document, that gets us over submitting
10 a document, which is what I was trying to get. And
11 then, Kim, we'll have to figure out how to proceed.
12 There are some questions about Fred's staff and how
13 we're going to do this vetting process. We'll get it
14 done as soon as we can, but we do have to get the
15 document in. I understand.

16 Okay. All right.

17 Yes, Commissioner Anderson?

18 COMMISSIONER ANDERSON: Well, I don't think
19 we have to couch this in terms of uncertainty. We are
20 certain that we want to study the feasibility of doing
21 this project. Now, you can couch that as uncertainty
22 regarding the project, but you can also say it's a
23 certainty in terms of our decision to move forward to
24 examine whether we should do it. And that is --
25 unfortunately, our decisionmaking process may come in

1 the middle of flash points for decisionmaking in the
2 budget process, but that's the way it is.

3 Now, -- so I don't think we would have that
4 problem going to the Hill, in terms of some kind of
5 uncertainty about this project.

6 I want to just say, to make my own position
7 clear on this, I offered the amendment or the motion
8 back in October that we include this in the budget
9 submission, so it is not that I'm opposed to the
10 project of Measuring Discrimination. And I think, the
11 more I reflect on it, in many ways I'm more supportive
12 of it today than I was in October.

13 My overriding concern has to do with process
14 and not just the question of this sort of creeping
15 acceptance that after months it becomes a realization
16 that we approved something that maybe members of the
17 Commission didn't think they were approving or
18 approving unconditionally or approving without
19 condition. But it has to do with the more general
20 problem that we've had over the years.

21 Decisions that we've made, the time lines
22 slipping because we come up with better ideas. And it
23 may very well be that measuring discrimination is a
24 better idea for a project than a number of the projects
25 we have slouching towards conclusion in '97 or '98.

1 And so if they had never been begun, maybe it would be
2 better to have Measuring Discrimination rather than
3 some of these other projects.

4 But one of the reasons why I worded my motion
5 in October the way I did, I wanted to try to avoid the
6 problem we've had today and that is the reassessment of
7 this project, given smaller budget realities, in light
8 of the fact that we seem to have a continuing problem
9 of finish projects, even with the best of intentions.

10 And so my concern today does not go to the
11 merits of the project, Measuring Discrimination. It
12 goes to what I think is a continuing problem that we
13 have of meeting our deadlines and meaning what we say
14 in terms of our budget priorities.

15 Now, I just have to say one other thing. And
16 that is, I am not going to support any project of this
17 Commission once it becomes a matter of the Republican
18 appointees taking one position and the Democratic
19 appointees taking the other.

20 I have never characterized any of the actions
21 of any of the Commissioners on this Commission for the
22 entire time I've been on this Commission in terms of
23 Democratic appointees doing one thing; Republican
24 appointees doing another thing. I have tried in all of
25 these discussions to maintain a nonpartisan or

1 bipartisan collegiality. But as soon as the issue
2 becomes one of Republican appointees versus Democratic
3 appointees, I am no longer going to vote for a
4 consensus that is being attempted to being achieved on
5 a Commission.

6 I just say that. I don't have a long
7 discussion about it. Fine. But I think it's
8 counterproductive and I'm simply tired of it because
9 not all the Republican appointees had even discussed
10 this issue. And the ones who had were not, as I can
11 see, addressing the merits of it.

12 CHAIRPERSON BERRY: I apologize for referring
13 to you as a Republican appointee or to any of you as a
14 Republican appointee. I was only simply trying to point
15 out that in terms of the budget and the appropriations,
16 since Congressional control is in the Republican ranks,
17 I am sure that if Republican appointees oppose
18 something, we're not likely to get an appropriation.
19 That's just practical -- I mean, that's practical. But
20 I apologize for identifying you as a Republican
21 appointee, or any of you who feel that I should not.
22 And in future, I will not refer to you as a Republican
23 appointee.

24 COMMISSIONER ANDERSON: Look. I have no
25 embarrassment with being identified as a Republican

1 appointee, but what I think is counterproductive is
2 when we begin to have a disagreement that suddenly the
3 disagreement is characterized along partisan lines. I
4 don't think that facilitates the kind of collegiality
5 and effectiveness that I think we all want to have on
6 the Commission.

7 CHAIRPERSON BERRY: I think that's right, but
8 I still think that if the Democratic appointees opposed
9 a proposal and the Democrats controlled the
10 appropriations committee, the appropriations committee
11 probably wouldn't approve it. So I'll just use
12 Democrats instead of Republican appointees to make the
13 same point.

14 Yes, Commissioner Higginbotham?

15 COMMISSIONER HIGGINBOTHAM: Let's think of
16 moving forward. I'd like to just give you my sort of
17 reaction in terms of Commission and staff. I hope that
18 we will avoid putting the staff in a position where
19 they have to articulate concepts beyond their
20 expertise.

21 I mean, this whole question of Measuring
22 Discrimination, at the Kennedy School I hear it every
23 day from all spectrums, and it is frustrating. And
24 with all the money those people get, all their
25 experience, I see it every day.

1 Our staff is great. I don't think it's
2 better than the entire Kennedy School. I think that's
3 a fair assumption.

4 CHAIRPERSON BERRY: Well, --

5 COMMISSIONER HIGGINBOTHAM: I don't think
6 it's better than all of Harvard University. May be the
7 same, but I don't think it's better.

8 COMMISSIONER GEORGE: Let me say on this
9 score that our staff is at least less biased.

10 COMMISSIONER HIGGINBOTHAM: But what we've
11 got to do to really make progress on this is we can't
12 ask the staff to come up with their insights when part
13 of their experience they haven't been involved looking
14 at modal by modal distributions, all of the things,
15 regressional analysis, so on and so on. So we have to
16 sort of come together as a group.

17 . So we've got to say to the staff, look, if
18 you don't totally know this, please confess it. And it
19 is not an impugment of you. It's just because that's
20 not your specialty and you haven't been involved.
21 You've got one statistician. You just have not had that
22 expertise. It takes nothing from you.

23 So somehow or another we've got to, with
24 Commission and staff, work out a document which says we
25 believe there's a problem as to whether discrimination

1 can be measured. And there are great disputes as to
2 how you best approach. And therefore, we want to get
3 some of the most thoughtful and representative
4 individuals of all the multifaceted views to convene
5 and to give us their insights. And after we have that
6 on the record, then we can make a judgment as to the
7 practicability.

8 It seems to me that's where we are. But if
9 we get caught in a context -- well, staff has sent us
10 this and it's inadequate, I'm assuming that what you
11 send us will be inadequate. Because if you could do it
12 adequately, why don't we get involved in consultations.

13 So, I think we've got to try to come together
14 here as Commissioners and staff, recognizing that it's
15 sort of like Columbus exploring whether the world is or
16 is not round. I think if we have that philosophical --

17 VICE CHAIRPERSON REYNOSO: What was the
18 conclusion?

19 (Laughter.)

20 COMMISSIONER HIGGINBOTHAM: I don't know.
21 I'm trying to convey a perception.

22 But if we get -- and so, staff has sent a
23 report and, wow, is it inadequate, we're never going to
24 make progress.

25 CHAIRPERSON BERRY: Now, did someone have

1 their hand raised?

2 Yes, Commissioner Anderson.

3 COMMISSIONER ANDERSON: I think that's a
4 wonderful point. And what I would infer from it is
5 that the staff report ought to be in the nature of
6 raising questions and raising issues and raising the
7 different components within the issues and the
8 different sides and not try to resolve this for us, and
9 point us in the direction of people who could aid us in
10 making these decisions, if we're going to be the
11 decisionmakers, and not look at the report from the
12 other way.

13 CHAIRPERSON BERRY: The consultations -- I'll
14 just remind you, if you don't remember. When we
15 finally have it, all we do is we listen to the people,
16 ask them a bunch of questions. It doesn't make
17 findings or recommendations. And then we use the
18 information to make our own decisions about how we
19 proceed. So we're not trying to make findings.

20 COMMISSIONER HORNER: Do we publish?

21 CHAIRPERSON BERRY: We publish the papers.

22 COMMISSIONER HORNER: Which means that the
23 arguments made enter the public argument on the
24 subject.

25 COMMISSIONER HIGGINBOTHAM: This is good.

1 COMMISSIONER HORNER: So it's important for
2 the arguments made to be fully representative of good
3 thinking.

4 CHAIRPERSON BERRY: And different views.

5 Okay. Now, I know this is an unpleasant
6 thing to ask, but before we do Fred's briefing, we have
7 to decide something for 1999 because we have to tell
8 the staff something to put in the budget. I mean, we
9 have to tell them something about these projects. Even
10 if it changes later and even if -- I mean, they have to
11 have something to start working on for 1999.

12 COMMISSIONER GEORGE: Madam Chair?

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER GEORGE: On '98, just to enter a
15 clarification which I hope is an unnecessary one. My
16 understanding -- and I can defend this from the record
17 over more than one meeting -- is that the Schools and
18 Religion report is the highest priority report after
19 the Statutory report.

20 CHAIRPERSON BERRY: Right.

21 COMMISSIONER GEORGE: So if our funding
22 situation is such that some things have to be lost or
23 cut, this will be the last to go.

24 CHAIRPERSON BERRY: That won't. Right.

25 COMMISSIONER GEORGE: Okay. Thank you.

1 CHAIRPERSON BERRY: Because we want to get
2 that done before certain people's terms are up on the
3 Commission.

4 COMMISSIONER GEORGE: So the Republican --
5 (Laughter.)

6 CHAIRPERSON BERRY: Please, Commissioners,
7 say something about 1999.

8 VICE CHAIRPERSON REYNOSO: Haven't we voted
9 on priorities already?

10 CHAIRPERSON BERRY: Yes. And the question is
11 do we want to change them, do we want to say anything
12 else, do we want to -- how would you like us to frame
13 the question to you so that we can get an answer and
14 get on to Fred's briefing?

15 What is it the staff needs to know?

16 MS. HALL: What would you like to do in terms
17 of what's priority..

18 CHAIRPERSON BERRY: We have this chart.

19 MS. HALL: And that went in order of --
20 depending on which meeting, but that was the cover of
21 the narrative descriptions of the projects. And it
22 goes in the order of what had previously been
23 discussed, although Schools and Religion, recognizing
24 that that would be moved up further.

25 After you get to -- Measuring Discrimination

1 would be like the last of '98.

2 CHAIRPERSON BERRY: Then we have '99 on the
3 second page and it has a bunch of things here: Fair
4 Employment Law Enforcement, Financial Aid and Higher
5 Education. See all those things down there for 1999?

6 Should we for the time being simply leave
7 them there or should we add to them, subtract from them
8 or is there anything else anybody else wants to add?
9 That's the question.

10 MS. HALL: They have been adjusted to delete
11 a couple of concepts that had been discussed. I
12 believe Voting Rights was one of them, so that's no
13 longer on this list.

14 COMMISSIONER HORNER: Did we give OMB this
15 list?

16 CHAIRPERSON BERRY: No. This is for 1999.

17 COMMISSIONER HORNER: Okay. So nothing has
18 been communicated with respect to this?

19 CHAIRPERSON BERRY: Right.

20 COMMISSIONER HIGGINBOTHAM: Is there any
21 significance in the order with which we have these?

22 MS. HALL: Yes. The significance is that
23 those projects, from what we gleaned from the
24 transcripts and other discussions, the order is the
25 seeming priority, although you didn't vote on these

1 things. There were discussions of things that were
2 deferred initially and then things that were totally
3 new concepts, gender being the most recent new concept
4 that was submitted and never really discussed at
5 length.

6 Many of the higher up on the list, following
7 Measure Discrimination, had been deferred from earlier
8 discussions in 1996.

9 COMMISSIONER HIGGINBOTHAM: I ask this
10 question, Madam Chair, if I may, because while I would
11 vote for all these to be in for '99 I guess,
12 prioritizing the most significant aspect, I think, is
13 the Federal Block Grant, delivery of services and Civil
14 Rights enforcement.

15 There have been certain assumptions on block
16 grants, and yet I hear governors of some states being
17 very, very much concerned about what's going to happen
18 on the federal block grants, and they're trying to get
19 some supplemental or alternative relief.

20 So, my priority would be that Federal Block
21 Grants would be towards the top, if the ranking is
22 important. If that ranking is not important, I would
23 leave it where it is.

24 CHAIRPERSON BERRY: You've got the Urban
25 Institute proposal that Commissioner Horner said we

1 should get, and you note that the staff tells us that
2 in there, they do everything else, but they don't have
3 a civil rights component in it. Which means that this
4 civil rights component would be viable and we would be
5 the only ones, as far as we know, doing that.

6 COMMISSIONER LEE: Madam Chair?

7 CHAIRPERSON BERRY: Yes, Commissioner Lee?

8 COMMISSIONER LEE: Also, for the other
9 concepts, I know when we discussed this last year some
10 things had not happened, like the Welfare Reform law
11 that was passed. And I would like to suggest the
12 Access to Health Care be changed from a project concept
13 to a proposed project because I think there is an
14 urgency there and it may be appropriate by '99 to do it
15 as a project, if we're going to rank them as
16 priorities.

17 CHAIRPERSON BERRY: Gerri, where it says
18 project concept, that just means that's what we have or
19 this is how much -- what does it mean? We don't have a
20 proposal, or what?

21 MS. HALL: Right. Those items between
22 Evaluation of Fair Employment Law Enforcement and
23 Federal Civil Rights Enforcement, those had been
24 deferred. Discussed, developed and deferred. The ones
25 following had been conceived, submitted --

1 CHAIRPERSON BERRY: No proposal?

2 MS. HALL: Right.

3 CHAIRPERSON BERRY: So we've heard Access to
4 Health Care and we've heard Block Grants, with some
5 indication that Commissioner Higginbotham at least
6 thinks in terms of priorities, that ought to be up
7 there somewhere.

8 VICE CHAIRPERSON REYNOSO: Right. I have one
9 observation, or two observations. One is that we've
10 discussed the expanding of economic opportunities to
11 African-Americans, Asians and Latino youths. And my
12 only suggestion there is that while it would be one
13 report, that sometimes, as we discussed, the problems
14 of economic opportunity for Latino youths may be
15 different than African youths, and I just suggest that
16 we do it in the various parts, the three or four parts,
17 to keep those distinctions separate.

18 And my other observation is that as I
19 understand it, even though this does indicate some
20 priority, it's a very sort of a loose notion of
21 priority. We can redo that, can we not?

22 If, for example, we have talked about block
23 grants, maybe waiting a year after they've gone into
24 effect to see what the effect had been. But if we
25 develop a more urgent sense of it, we can redo that and

1 say that that goes to the top of the list, but for the
2 ongoing projects and the project that Robbie has urged
3 us to put as the next top priority.

4 So this is subject, as I understand it, to
5 reevaluation.

6 CHAIRPERSON BERRY: So, 1998, though, Schools
7 and Religions is the top one.

8 VICE CHAIRPERSON REYNOSO: Yes.

9 CHAIRPERSON BERRY: But on expanding the
10 economic opportunities of African-American, Asian and
11 Latino youth, this is a 1998 project.

12 The point that the Vice Chair was making --
13 are you still there, Russell?

14 COMMISSIONER REDENBAUGH: Yes, Mary. I
15 endorse his point.

16 CHAIRPERSON BERRY: The point he was making
17 was to separate those into parts of a report and to
18 look at them separately.

19 Does anybody have an objection in terms of
20 staff guidance, for them to know that? Because that is
21 something we're doing now.

22 Yes?

23 COMMISSIONER LEE: I just have a minor
24 suggestion. Can we also add Native American youths in
25 there or was there any reason why they were left out?

1 CHAIRPERSON BERRY: Only, as I understand it
2 -- maybe somebody else can clarify this. But my
3 understanding has been generally that the Commission
4 doesn't do projects concerning Native Americans, except
5 separately, as separate projects, because of their
6 different legal standing and the rules that apply to
7 them are different because of the tribal standing and
8 the special status that they have and the jurisdiction.

9 So that when we've done reports on Native
10 American Indians in the past, we've always done a
11 report on something having to do with Native American
12 Indians, because you have to start all with different
13 assumptions. Not that it isn't a problem. It's a major
14 problem. That's the only reason why, I think.

15 COMMISSIONER LEE: Then I would suggest to
16 change Asian to Asian-Pacific Islander.

17 CHAIRPERSON BERRY: Asian-Pacific Islander.
18 Okay. So that would be Samoans and, et cetera.

19 COMMISSIONER LEE: Hawaiians.

20 CHAIRPERSON BERRY: Yes, Commissioner Horner?

21 COMMISSIONER HORNER: Madam Chair, shouldn't
22 we be basing our distinctions relating to ethnic groups
23 to ethnic groups identified in the statutes whose
24 violation we would be assessing? In other words,
25 whatever the groups are which are identified in the

1 law, shouldn't those be the groups we look at? And it
2 depends, therefore, what law we're looking at.

3 VICE CHAIRPERSON REYNOSO: Not necessarily,
4 because we speak of national origin. And I suppose --

5 COMMISSIONER HORNER: I see.

6 VICE CHAIRPERSON REYNOSO: -- that Asian-
7 Pacific Islanders are national origin, as are Latino,
8 and yet they have quite different problems. So it
9 seems to me that the study is sort of a category of
10 where you can find a community of problems. And some
11 will be the same, but some will be different.

12 COMMISSIONER HORNER: So that if you found
13 that Russian immigrants in Queens were having a
14 terrible time getting equal opportunity for education,
15 you would add them to the list?

16 VICE CHAIRPERSON REYNOSO: Sure.

17 CHAIRPERSON BERRY: Sure.

18 COMMISSIONER HORNER: So have the groups
19 identified here -- is this the staff's best judgment as
20 to which groups are suffering the most violations of
21 civil rights?

22 VICE CHAIRPERSON REYNOSO: Actually, I think
23 that came from us.

24 CHAIRPERSON BERRY: Yes. It was discussion
25 we had --

1 VICE CHAIRPERSON REYNOSO: I think we were
2 the ones that talked about them.

3 CHAIRPERSON BERRY: -- about economic
4 opportunity for these. Trying to get opportunity.
5 Jobs and things like that.

6 VICE CHAIRPERSON REYNOSO: Excuse me. But
7 if --

8 CHAIRPERSON BERRY: Who proposed it? I don't
9 remember who proposed it? It was either you or
10 Russell. I don't remember.

11 VICE CHAIRPERSON REYNOSO: But if when
12 they're doing their studies, if the staff in doing its
13 study, for example, discovers that there are quite a
14 few, for example, Russian immigrants in the Sacramento
15 area, they've had a particular problem, I would assume
16 they would come back and talk to us about it, because
17 we two of the categories deal with that protected
18 class, national origin.

19 COMMISSIONER GEORGE: As a matter of fact, I
20 think it was a conscious decision. I had proposed a
21 project on expanding the economic opportunities of
22 disadvantaged youth and there was a strong feeling from
23 Cruz and Judge Higginbotham that it ought not to be
24 that, but it ought to name specific categories. And
25 these are the ones that the Commission chose. So I

1 think this is not the staff.

2 VICE CHAIRPERSON REYNOSO: Yes. I think
3 that's right.

4 CHAIRPERSON BERRY: Okay. So then we leave
5 the 1999 with the discussion.

6 COMMISSIONER REDENBAUGH: I have a question.

7 CHAIRPERSON BERRY: Yes.

8 COMMISSIONER REDENBAUGH: Would it be useful
9 either to us or to the staff to have this list chopped
10 down, pared down at this time, or if there's no use in
11 that, then I'll not make my suggestion.

12 CHAIRPERSON BERRY: Well, I think it should
13 be pared down, if we can pare it down. And staff would
14 think so, too, if we can pare it down.

15 COMMISSIONER REDENBAUGH: Okay. I propose
16 that we do some kind of cumulative voting, and that
17 should be a good way -- well, it may not work, but if
18 it did, I think it would capture the priority and the
19 intensity.

20 VICE CHAIRPERSON REYNOSO: But that's the
21 Guanier approach. Are you sure you want to follow that
22 up?

23 CHAIRPERSON BERRY: So starting with the
24 evaluation of fair employment law enforcement, going
25 down to the end of the page --

1 COMMISSIONER GEORGE: What page is that?

2 CHAIRPERSON BERRY: The second page.

3 COMMISSIONER REDENBAUGH: Now that I've
4 proposed doing that, I don't have the thing and I
5 haven't thought about it, but we perhaps could just fax
6 in our votes in a day or two. I'd propose something
7 like give each Commissioner eight votes and each of us
8 can spread around any way we want. And the total may
9 reveal something or not.

10 CHAIRPERSON BERRY: So that in a week,
11 Commissioners will fax in -- is it eight? No. Nine.
12 There are nine items, Russell.

13 COMMISSIONER REDENBAUGH: Let's give each one
14 of us nine votes.

15 CHAIRPERSON BERRY: Nine votes. And you will
16 fax in your nine votes, spread out, what you think is
17 most important?

18 COMMISSIONER REDENBAUGH: Yes. And I guess
19 the rule is however you want to. You can put all nine
20 on one thing, if you want.

21 CHAIRPERSON BERRY: If you want to. If you
22 think that one thing is so important that you want it
23 to get all nine, or you can spread them out and then
24 the staff will count up the reports and see which one
25 gets the heaviest number.

1 COMMISSIONER REDENBAUGH: Yes. I think the
2 tabulation on that will --

3 CHAIRPERSON BERRY: And then how many
4 projects shall we have? We've got to decide that,
5 though, Russell.

6 COMMISSIONER REDENBAUGH: Well, you build a
7 rank order.

8 CHAIRPERSON BERRY: Yes. But I mean we're
9 trying to cut some out. So how many should we cut it
10 down to?

11 COMMISSIONER REDENBAUGH: I'd look at the
12 distribution and see if there's a natural break.

13 COMMISSIONER HORNER: Madam Chair, we're
14 talking about projects that, as you said, we may
15 revisit but the staff wants to begin thinking and
16 reading. I would like to know how many projects the
17 staff thinks it can usefully begin thinking and reading
18 about, given the assignments it has for FY '97 and '98.
19 What's a useful number? Is it two; is it six; is it
20 none?

21 CHAIRPERSON BERRY: Did you want to say
22 something?

23 MS. HALL: Yes. I have one caveat in terms
24 of this list. And thank you, Fred, for pointing it
25 out.

1 Under the Federal Civil Rights Enforcement
2 effort, I believe there was discussion at the last
3 meeting that that would have to wait until we finished
4 other projects to go back and assess that. And that
5 should be probably moved to the year 2000.

6 CHAIRPERSON BERRY: So strike that?

7 MS. HALL: Yes.

8 CHAIRPERSON BERRY: So we only have eight
9 now. And now the question is how many can the staff
10 usefully -- what do you guys think would be a good
11 number of projects to think about and to be working on?
12 Eight or four or five or six?

13 Yes, Commissioner Anderson?

14 COMMISSIONER ANDERSON: Just so I can be a
15 little more clear on this, I would assume that the
16 Expanding Economic Opportunities, Naturalization and
17 Schools and Religion, there's no decision to be made
18 there in '99 because we're committed in '98 to complete
19 them.

20 CHAIRPERSON BERRY: Right.

21 COMMISSIONER ANDERSON: So there's no
22 decision there.

23 CHAIRPERSON BERRY: That's right. We're just
24 starting with Evaluation of Fair Employment Law
25 Enforcement. Right there.

1 COMMISSIONER ANDERSON: And going down to the
2 bottom?

3 CHAIRPERSON BERRY: Right. To the bottom.

4 So how many? Can the staff say how many of
5 these things we should be thinking in terms of?

6 (Pause.)

7 Well, it seems to me one way to do it is the
8 way you said it, Russell. But the other way to do it is
9 -- I mean, we can just ask how many Commissioners think
10 Federal Block Grants: Delivery of Services and Civil
11 Rights, ought to be a major priority for 1999? I mean,
12 how many think it shouldn't be a major priority for
13 1999? Why don't we do it that way. So we know that
14 should be on the list.

15 COMMISSIONER GEORGE: Put it in the
16 affirmative, I think.

17 CHAIRPERSON BERRY: Okay. How many people
18 think that Federal Block Grants: Delivery of Services
19 and Civil Rights Enforcement should be a major priority
20 for 1999? Everybody agrees.

21 COMMISSIONER REDENBAUGH: Yes. I do.

22 CHAIRPERSON BERRY: So we've got one.

23 How many people think that -- what was the
24 other one somebody mentioned?

25 COMMISSIONER HORNER: So that would be our

1 fourth project. Schools and Religion, Naturalization,
2 Expanding Economic Opportunity and then Federal Block
3 Grants.

4 CHAIRPERSON BERRY: Would begin in 1999,
5 though.

6 COMMISSIONER HORNER: Yes.

7 CHAIRPERSON BERRY: We're going to try to
8 finish Schools and Religion in '98.

9 COMMISSIONER HORNER: Right. It would be the
10 fourth project to be worked on in '99.

11 CHAIRPERSON BERRY: Right.

12 COMMISSIONER HORNER: I mean, how many
13 projects do we work on in a year?

14 CHAIRPERSON BERRY: Fred's shop works on how
15 many during a year?

16 MS. HALL: Usually two.

17 COMMISSIONER HORNER: It will finish in 8/98.
18 Oh, excuse me.

19 CHAIRPERSON BERRY: In '98. So we're talking
20 about '99.

21 COMMISSIONER HORNER: Oh, oh. We're
22 finishing Schools and Religion in '98?

23 CHAIRPERSON BERRY: We're going to try to
24 finish it in '98 so that it will be done in '98.

25 COMMISSIONER HORNER: Oh, okay. Okay.

1 CHAIRPERSON BERRY: Fred held up two fingers.
2 His shop usually works on two projects during the year.

3 How many projects does OGC work on during a
4 year? I know that's a funny question to ask.

5 MS. MOORE: Well, two, actually. I mean, we
6 produce two hearings while writing reports.

7 CHAIRPERSON BERRY: Okay. So you can do two
8 hearings.

9 COMMISSIONER HORNER: So we've really got our
10 -- we've got our list.

11 CHAIRPERSON BERRY: We have Block Grants. We
12 need at least -- at Fred has his Statutory Report for
13 1999, which is what, Fred?

14 MR. ISLER: Fair Employment Law and
15 Enforcement.

16 CHAIRPERSON BERRY: So we have that. We know
17 we have that. So that's two; one for -- okay. That's
18 two reports. Now we need two more. We actually only
19 need four. We need two more. So out of this list, are
20 there two more that we could -- Block Grants and Fair
21 Employment Law Enforcement, we've got. Which of these
22 other two involve hearings?

23 COMMISSIONER LEE: I say we push for the
24 Health Care.

25 CHAIRPERSON BERRY: Which of these other two

1 involve hearings? Because the two we just said are two
2 for Fred's shop, although Block Grants may involve
3 hearings. So anything else we get, if Fred says he can
4 only do two in a year, we obviously know we shouldn't
5 have more than two in a year. So that answers that
6 question, unless we get a huge budget increase from
7 some place.

8 COMMISSIONER HORNER: Or, alternatively,
9 there might be two not on this list that we might want
10 to do.

11 CHAIRPERSON BERRY: How about Consumer Racism
12 and Sexism? Anybody opposed to that? I mean, anybody
13 in favor of that?

14 COMMISSIONER GEORGE: Did we talk about the
15 health care that Yvonne mentioned?

16 VICE CHAIRPERSON REYNOSO: Yes. I favor
17 going with health care, access to health care.

18 CHAIRPERSON BERRY: Health care? Okay.
19 Access to Health Care.

20 Why don't we, for now -- that's for Fred's
21 office, too. So we've got three projects for Fred's
22 office.

23 MS. HALL: It's a joint project.

24 CHAIRPERSON BERRY: That's a joint project.
25 Joint OGC. And Block Grants ought to be joint, too,

1 because you have to have a hearing to find out what the
2 people out there think is going on.

3 MR. ISLER: It is a joint project.

4 CHAIRPERSON BERRY: Okay. So now we have
5 three projects: Fair Employment Law Enforcement,
6 Access to Health Care and Federal Block Grants.

7 COMMISSIONER GEORGE: On the Access to Health
8 Care, I'm assuming that the project can be shaped in
9 such a way that it's access to health care for women
10 and members of minority groups, to avoid implicating
11 the issue of abortion, which we're not supposed to be -
12 -

13 COMMISSIONER HIGGINBOTHAM: By statute.

14 COMMISSIONER GEORGE: -- implicated in. Yes.
15 So with that understanding, I'm a strong supporter of
16 this project.

17 CHAIRPERSON BERRY: Okay. So we have three.

18 Anybody see anything else, or should we just
19 leave it at three?

20 COMMISSIONER HIGGINBOTHAM: Let me just put
21 on the table whether these are orders we should enter.
22 I sort of think they are.

23 This whole question of affirmative employment
24 programs. The President of General Motors goes on
25 record with a lengthy speech saying it's absolutely

1 essential for the survival of General Motors. Connolly
2 of California says it's un-American.

3 Now, who in this country should be more
4 thoughtful than we are supposed to be on an issue of
5 this type? So, I'm just raising the issue. Are we
6 being sort of an ostrich?

7 I've been following a little bit what's
8 happening. Affirmative Action programs are going to be
9 on the ballots in probably three, four, five states and
10 organizations are being created against it. So, why is
11 it that the United States Civil Rights Commission
12 should not do something on it?

13 CHAIRPERSON BERRY: Now, we have for 1996 --
14 we still have the project. We haven't done it yet. So
15 maybe what we ought to do is add it to continue,
16 because that's realistic, in 1999. Because it's been
17 on there and we deferred it and it still is on there to
18 start in 1998.

19 So why don't we put it down to continue as a
20 project and then we have the rest of the projects,
21 unless someone objects to that. And then we're
22 finished with the projects.

23 Is that all right?

24 COMMISSIONER HORNER: Uh-huh.

25 VICE CHAIRPERSON REYNOSO: Yes.

1 CHAIRPERSON BERRY: Russell, do you have any
2 objection?

3 COMMISSIONER REDENBAUGH: No. I have no
4 objection.

5 CHAIRPERSON BERRY: I'm sorry to avoid your
6 cumulative voting.

7 COMMISSIONER REDENBAUGH: Oh, no. This works
8 fine.

9 COMMISSIONER GEORGE: I did want to offer,
10 though, to Judge Higginbotham -- as a Republican
11 appointee, I could offer you that old line that what's
12 good for GM is good for the country.

13 (Laughter.)

14 COMMISSIONER HIGGINBOTHAM: Right.

15 CHAIRPERSON BERRY: Okay. All right.

16 We have now agreed to do that or do you want
17 to formally vote that you agreed to do that?

18 COMMISSIONER REDENBAUGH: Vote.

19 CHAIRPERSON BERRY: Okay.

20 Carl -- Commissioner Anderson?

21 COMMISSIONER ANDERSON: So the vote would be
22 on --

23 CHAIRPERSON BERRY: That right now we have
24 four projects.

25 COMMISSIONER ANDERSON: Right. But the

1 Affirmative Action would not be completed in '98 but --

2 CHAIRPERSON BERRY: But in '99.

3 COMMISSIONER ANDERSON: -- in '99. So we're
4 just changing the year on that?

5 CHAIRPERSON BERRY: Right.

6 COMMISSIONER ANDERSON: Okay.

7 COMMISSIONER GEORGE: I'm lost.

8 COMMISSIONER ANDERSON: If you look at the
9 bottom of page 1, Affirmative Action is to be completed
10 in '98.

11 COMMISSIONER GEORGE: Yes.

12 COMMISSIONER ANDERSON: And now we're going -
13 -

14 CHAIRPERSON BERRY: It will say '99.

15 COMMISSIONER ANDERSON: -- to extend it into
16 '99, is all.

17 COMMISSIONER HORNER: Could I just ask a
18 question?

19 COMMISSIONER GEORGE: Why are we doing that?

20 COMMISSIONER HORNER: Instead of -- first of
21 all, I'll support that. But secondly, I wonder if we
22 do it for '97 and '98, if it wouldn't be a good idea
23 then to do what is on the list here, EEO and
24 Affirmative Employment Programs among Federal Employees
25 for '99.

1 I'd be supportive of either.

2 VICE CHAIRPERSON REYNOSO: I think that's our
3 statutory.

4 CHAIRPERSON BERRY: No, no. Statutory is the
5 Fair Employment Law Enforcement. That's the statutory.
6 This is within the federal government; right?

7 MR. ISLER: That's correct.

8 CHAIRPERSON BERRY: You mean do the federal
9 government one, Commissioner Horner?

10 COMMISSIONER GEORGE: I'm indifferent as to
11 whether we do it generically as a generic continuation
12 of Affirmative Action consideration or whether we use
13 the federal employee one. I'm just pointing out it's
14 there.

15 CHAIRPERSON BERRY: It's still on Affirmative
16 Action.

17 COMMISSIONER HORNER: Yes.

18 CHAIRPERSON BERRY: That's the point.

19 COMMISSIONER HORNER: But I fully support the
20 idea of doing just the continuation, if that's what
21 people want to do.

22 COMMISSIONER HIGGINBOTHAM: May I? Madam
23 Chair, may I --

24 CHAIRPERSON BERRY: Yes.

25 COMMISSIONER HIGGINBOTHAM: Does the staff

1 think that we would complete the Affirmative Action
2 report in '98?

3 CHAIRPERSON BERRY: No.

4 COMMISSIONER HIGGINBOTHAM: Okay.

5 COMMISSIONER HORNER: Well, then, I withdraw
6 my suggestion.

7 COMMISSIONER HIGGINBOTHAM: I mean, sense the
8 staff does not think that we will complete it in '98, I
9 was trying to anchor it in '99.

10 COMMISSIONER HORNER: I agree.

11 COMMISSIONER HIGGINBOTHAM: Okay. That's the
12 only reason why I raised it. It seemed to me that --
13 okay.

14 CHAIRPERSON BERRY: Couldn't we also argue
15 that if we consider Affirmative Action, some of the
16 issues that would be in the federal sector, the issue
17 of Affirmative Action and so on would be -- I mean,
18 shed some light on it or something?

19 COMMISSIONER HIGGINBOTHAM: Yes.

20 CHAIRPERSON BERRY: All right. So that we
21 are -- the motion is -- well, somebody make it. I'm
22 not supposed to make motions -- that we agree to do
23 these four projects for 1999.

24 COMMISSIONER GEORGE: They are?

25 CHAIRPERSON BERRY: Federal Block Grants;

1 Evaluation of Fair Employment Law Enforcement, as a
2 statutory report; Access to Health Care for Women and
3 Members of Racial and Ethnic Minority Groups; and
4 Affirmative Action.

5 COMMISSIONER GEORGE: So the statutory report
6 is actually not listed here?

7 CHAIRPERSON BERRY: Yes, it is. Evaluation
8 of Fair Employment. It's the first one. So the four
9 projects would be those.

10 Could someone move?

11 VICE CHAIRPERSON REYNOSO: So moved.

12 COMMISSIONER GEORGE: Just before we vote on
13 that, the other project that I've been pressing very
14 hard is the Crisis of African-American Males. Is that
15 affected in any way or we will finish that in '98?
16 It's not like Affirmative Action.

17 CHAIRPERSON BERRY: It's in '98.

18 COMMISSIONER GEORGE: But we're going to
19 actually -- well, Affirmative Action said finish '98
20 here. Now we now realize that that will be pushed
21 over. But I hope the same isn't true of the Crisis of
22 African-American Males.

23 CHAIRPERSON BERRY: Anyone have any comments?

24 COMMISSIONER GEORGE: If it is, I would like
25 to argue for that to be given priority.

1 MS. HALL: The last I was told.

2 CHAIRPERSON BERRY: The last you were told is
3 that it's on schedule?

4 MS. HALL: Yes.

5 CHAIRPERSON BERRY: That's the last she was
6 told. It was on schedule.

7 MS. HALL: For '98.

8 COMMISSIONER GEORGE: Which means that if for
9 some reason it's not, it would still enjoy a certain
10 priority over the '99 projects?

11 CHAIRPERSON BERRY: Because the '98s always
12 have priority.

13 COMMISSIONER GEORGE: Okay.

14 CHAIRPERSON BERRY: With that understanding,
15 it was moved and seconded?

16 VICE CHAIRPERSON REYNOSO: No. Just moved.

17 CHAIRPERSON BERRY: Not seconded.

18 COMMISSIONER LEE: Second.

19 CHAIRPERSON BERRY: All in favor of these
20 four projects being included for 1999, indicate by
21 saying aye.

22 (Chorus of ayes.)

23 Opposed?

24 (No response.)

25 Okay. Thank you.

1 Any future agenda items?

2 COMMISSIONER REDENBAUGH: Point of
3 clarification?

4 CHAIRPERSON BERRY: Yes.

5 COMMISSIONER REDENBAUGH: Does this mean that
6 the projects that were not so named are not approved?

7 CHAIRPERSON BERRY: Right.

8 COMMISSIONER REDENBAUGH: Okay. Good.

9 CHAIRPERSON BERRY: The projects that were
10 not so named are not approved by our Republican
11 appointee in Philadelphia. No, no, no. Sorry.

12 (Laughter.)

13 Now we will, if there's no objection, have
14 the briefing from Fred Isler about the Education
15 Report.

16 Yes?

17 COMMISSIONER GEORGE: Mary, just before we do
18 that, are there any briefings that are scheduled for
19 the next -- because we've got the hearing coming up.
20 So in the meeting in connection with that, we won't
21 have a briefing, obviously.

22 CHAIRPERSON BERRY: Vice Chair has asked that
23 there be -- and Commissioner Lee -- a briefing on the
24 Legal Services Corporation and issues related to that.
25 And no one else has suggested any briefings.

1 If anyone would like to suggest any, please
2 feel free to do so. And I assume that one will be
3 scheduled as soon as we can. We can't have it in March
4 because we've got a hearing.

5 COMMISSIONER GEORGE: Possibly in April?
6 Okay.

7 CHAIRPERSON BERRY: So you'll be notified in
8 advance.

9 COMMISSIONER GEORGE: Okay. Good.

10 COMMISSIONER HIGGINBOTHAM: Could I raise the
11 question? I guess it's partially from my background at
12 the Federal Trade Commission.

13 Groups which meet once a month put the staff
14 in a tremendous dilemma. We give directives, as we're
15 obligated to. So for about a week or 10 days they're
16 trying to figure out what we agreed on and what to
17 implement. And then they've got to get ready for
18 something that's going to come up in about two weeks.
19 And in between, how do they get a chance to get their
20 work done?

21 Now, this is just -- I've only been on the
22 Commission for a year and I'm just raising it to
23 colleagues. I think a very strong case could be made
24 for our meeting every six weeks rather than every four
25 weeks. That would give staff a little interstitial

1 time to get their work done rather than reacting to us.
2 If we met approximately every six weeks, that means
3 you'd have eight meetings a year, or if you wanted to
4 have nine, you could.

5 But that seems to me to be something which is
6 more plausible for getting the job done. And I'd be
7 interested in what your informal reactions are, or
8 maybe some of you just like to get together every four
9 weeks and don't want to break the continuity.

10 COMMISSIONER GEORGE: Well, this was such a
11 fascinating conversation this morning, I don't know if
12 I'd want to miss this very often.

13 (Laughter.)

14 COMMISSIONER HIGGINBOTHAM: Do you have any
15 feeling of four versus six weeks?

16 CHAIRPERSON BERRY: Does anyone have any
17 feelings?

18 COMMISSIONER GEORGE: Well, I feel the force
19 of Judge Higginbotham's point, but it would take some
20 convincing to get me around to it. I think in any
21 organization like this there's a natural and
22 unavoidable blurry line between staff authority and
23 Commissioner authority. And in my time on the
24 Commission, there has always been a certain sort of
25 struggle there. And often that tension transcends the

1 ideological divisions on the Commission and is in a
2 certain sense a tension involving the Commissioners on
3 the one side and the staff on the other side of the
4 issue.

5 And I think that reducing the number of
6 Commission meetings probably would shift a certain
7 amount of -- as a political scientists looking at this
8 -- shift a certain amount of authority in the direction
9 of staff and particularly the Staff Director, as
10 against the Commissioners, which, as someone who's on
11 this side of that line, I'd be loath to do out of self-
12 interest.

13 So it would take some convincing. I'd have
14 to be convinced that there wouldn't be a certain
15 erosion of Commissioner authority by virtue of the fact
16 we weren't meeting as frequently.

17 CHAIRPERSON BERRY: Commissioner Lee and then
18 Commissioner Anderson.

19 COMMISSIONER LEE: As I think the only one
20 who has to travel seven hours to get here, I'm really
21 supportive of having less meetings. But I think we
22 have to meet regularly now because of the lack of a
23 Staff Director situation. Once the permanent director
24 is in place, I really see that there would be less of a
25 need for us to meet as frequently as we are. And maybe

1 a compromise is let's wait until the Staff Director is
2 in place and then we move the meetings back. Because
3 by then, I think we won't need to address some of these
4 issues.

5 CHAIRPERSON BERRY: Commissioner Anderson was
6 next.

7 COMMISSIONER ANDERSON: Admittedly, I just
8 drive down the street for most of the meetings. But --
9 and I don't see -- I take Commissioner George's point.
10 I don't see it quite in those terms.

11 I think I would be for more meetings rather
12 than less because I think the more the Commissioners
13 meet and discuss things, the less misunderstanding
14 there is and there is more communication. It seems to
15 me that part of what gives us bumps in the road in our
16 meetings is seeing paperwork that may not be complete
17 or may be contradictory and wondering how it got there
18 and why it's not like this or why it's not some other
19 way. And being able to be in person to discuss it
20 frequently overcomes a lot of questions.

21 So I'm not proposing we meet more often but I
22 think that when we are able to meet and communicate
23 directly, personally, it overcomes a lot of things.
24 And most of what I see as being misunderstanding arises
25 from paperwork and not so much personal communications.

1 So I don't think we can meet more frequently but I
2 think if we did, we would have more smoother meetings.

3 CHAIRPERSON BERRY: Commissioner Horner, were
4 you about to say something?

5 COMMISSIONER HORNER: I agree with what
6 Commissioner Anderson just said, but I would add only
7 if the Commission were to move to a shift in meeting
8 schedules, that we not attempt to shift this year's
9 schedule because it cannot be done.

10 COMMISSIONER HIGGINBOTHAM: No, no. This is
11 a long-term aspect. I'm not talking about meeting now
12 in six weeks. It just seems to me that the process --
13 we've got some problems.

14 CHAIRPERSON BERRY: Commissioner Anderson?

15 COMMISSIONER ANDERSON: I don't mean by what
16 I just said to infer that there is a major problem with
17 the paperwork that we get from the staff. But I think
18 just when you deal with paper rather than dealing in
19 person, it's easier to misunderstand.

20 CHAIRPERSON BERRY: Commissioner Redenbaugh?

21 COMMISSIONER REDENBAUGH: Based on my
22 experience with other organizations and other boards
23 and this whole question of governance, which is one of
24 the areas I actually have written a small and
25 undistinguished article on --

1 CHAIRPERSON BERRY: Could you please
2 circulate that to your colleagues?

3 COMMISSIONER REDENBAUGH: Yes. I will do so.
4 I think we could function better meeting every six
5 weeks. And I think, Carl, the issue you raised is an
6 important one and we, I think, can devise another
7 mechanism for that. But I do think, based on my other
8 experiences, that if we had some slightly longer
9 meetings every six weeks, we may find it much more
10 productive than what we have.

11 Particularly in that our real issues should
12 always be around policy and not around implementation.
13 We ought to be deciding the what and the Staff Director
14 ought to be deciding how. And then we just need to
15 make sure the how is happening or the what is
16 happening.

17 We probably ought not to decide today, but I
18 would endorse further discussion with the idea that we
19 might experiment with a year of doing it every six
20 weeks and see what happens.

21 CHAIRPERSON BERRY: And I think you're
22 probably right if we met all day. The Commission used
23 to meet all day, break for lunch and come back. But
24 the Commission used to do a lot of things, like sit
25 here and read the reports page by page -- I've told you

1 that -- which was interminable.

2 But in any case, --

3 COMMISSIONER REDENBAUGH: I think that would
4 also give us the -- you know, the break for lunch. And
5 then we could associate with each other in a more
6 casual way and build some of the cooperation and trust
7 and can be increased here.

8 CHAIRPERSON BERRY: Yes, Commissioner George?

9 COMMISSIONER GEORGE: I'd point out to
10 Commissioner Redenbaugh that we can still have lunch
11 together, even if we don't do all that.

12 COMMISSIONER REDENBAUGH: Hopefully, the
13 Republican appointees.

14 (Laughter.)

15 CHAIRPERSON BERRY: But my own view is -- not
16 of what I think about the meetings. We will discuss it
17 again. But even when we meet, Commissioner Anderson,
18 and we have disagreements and we have what would be I
19 guess called arguments, debates, and sometimes it
20 somewhat stressful, I think in the end we come to some
21 kind of agreement by talking to each other that we
22 wouldn't come to otherwise. And we'd have more
23 confusion out there and distrust about what people are
24 doing or not doing or trying to do.

25 So under current circumstances, it probably

1 makes sense to meet. But when we get a Staff Director,
2 if we have a Staff Director in whom people have
3 confidence and trust, perhaps that would alleviate some
4 of the problems of what happens in between the
5 meetings.

6 So I thank you for the suggestion and you've
7 heard the views. And we will consider it again, take
8 it up again. And maybe try it on an experimental
9 basis. But I am sympathetic to Commissioner Horner.
10 I, too, would not like us to change the schedule now
11 for any purpose.

12 Could we then go to Fred's briefing?

13 And while he's coming up, if anyone wants to
14 take a two minute break or something, you can.

15 Oh, Russell, could you tell us whether the
16 mike is working or not?

17 COMMISSIONER REDENBAUGH: Yes.

18 CHAIRPERSON BERRY: Can you tell us whether
19 you can hear with these mikes we have now?

20 COMMISSIONER REDENBAUGH: Yes. They work
21 very well, and I was able to hear all of the
22 Commissioners all the time.

23 CHAIRPERSON BERRY: Okay. So then that means
24 we may have found a temporary solution.

25 COMMISSIONER REDENBAUGH: I think it's

1 satisfactory.

2 CHAIRPERSON BERRY: Okay. Great. That's
3 great.

4 Now we're going to have Fred's briefing about
5 the Education Report, as soon as people stop scurrying
6 around.

7 He's going to speak to us on the Education
8 Report.

9 Fred, you can introduce this however you
10 choose.

11 MR. ISLER: Office of Civil Rights
12 Evaluation. I take great pleasure being able to
13 present to the Commissioners today a briefing on the
14 Equal Education Opportunity Project.

15 You have before you, four members of my
16 staff. Each one will present a short three-minute
17 presentation on different reports.

18 The reason the four were chosen to do the
19 briefing, each one of them have developed special
20 expertise in various areas of the Equal Education
21 Opportunity Project.

22 David Chambers will be briefing you on the
23 limited English proficiency issue, on the law in Title
24 VI.

25 Christine Plagata-Neubauer will be briefing

1 you on Section 504, the Disability Report. In
2 addition, she will be briefing you on the Gender Equity
3 in Math and Science Report.

4 Tami Trost will be briefing you on Ability
5 Grouping and Tracking, and Nadja Zalokar will be
6 sitting in in the place of Wanda Johnson, because she
7 could not make it because of the weather. The doctor
8 advised her not to come out in bad weather because of
9 her condition. So she will be briefing you on School
10 District Profiles.

11 MS. PLAGATA-NEUBAUER: Good afternoon. I
12 guess it's afternoon now. My name, as Frederick said,
13 is Christine Plagata-Neubauer. And before we get
14 started telling you about each of the reports coming
15 from this project, I just wanted to provide a little
16 background on the project proposal and the purpose and
17 scope of what we've been tasked to do.

18 It has specified that the purpose of the
19 project has been to evaluate the U.S. Department of
20 Education and its Office for Civil Rights to enforce a
21 variety of laws mandating Equal Educational
22 Opportunity. Those laws are Section 504 of the
23 Rehabilitation Act of 1973; the Individuals with
24 Disabilities Education Act; Title VI of the Civil
25 Rights Act of 1964; the Equal Educational Opportunities

1 Act of 1974; and Title IX of the Education Amendments
2 of 1972.

3 Beyond that, the project proposal asked us to
4 focus on four major issues. The first being programs
5 provided to children with disabilities; the second, the
6 education offered to language minority children; the
7 third, math and science education for girls; and the
8 fourth, ability grouping and tracking for minority
9 children.

10 From this project so far, the Office for
11 Civil Rights Evaluation has completed two reports. The
12 first, Equal Educational Opportunity and Non-
13 Discrimination in Public Elementary and Secondary
14 Education, Federal Law Enforcement. This report is a
15 statutory enforcement report which was approved at the
16 end of 1996. I won't go into detail about that report
17 because all of you have seen it.

18 The current status, though, is that it
19 currently is in production for its final published
20 format and I believe that the anticipated date for that
21 may be late February, possibly March. You may need to
22 confirm that with Frederick or with the Staff Director.

23 As to the second report that we have
24 completed, its title is Equal Educational Opportunity
25 and Non-Discrimination for Students with Disability,

1 Federal Enforcement of Section 504. This, again, is a
2 statutory enforcement report and its primary focus is
3 looking at how the Department of Education has enforced
4 Section 504.

5 There is discussion of the Individuals with
6 Disabilities Education Act because there is a lot of
7 interrelationship between the two laws. The primary
8 focus is looking at the Office for Civil Rights. So,
9 because the Office for Civil Rights doesn't have
10 responsibilities for the IDEA -- that's the acronym for
11 the Individuals with Disabilities Education Act -- a
12 major focus is more so on Section 504.

13 The status of that report is that on
14 January 31st of this year, the report was completed and
15 submitted for views for legal sufficiency and for a
16 review by the Editorial Policy Review Board. The
17 report is currently undergoing those reviews and once
18 we receive that back, we hopefully will address those
19 comments. Thereafter, the report will go to the
20 Department of Education for agency review and comment.
21 And after that period, will be presented to you for
22 consideration.

23 MR. CHAMBERS: The next report is entitled
24 Equal Educational Opportunity and Non-Discrimination
25 for Students with Limited English Proficiency, Federal

1 Enforcement of Title VI and Lau v. Nickels. Our status
2 with this report is that we are developing preliminary
3 findings and recommendations and we are completing
4 editorial work on the final draft.

5 In keeping with the project proposal for the
6 Equal Educational Opportunity Project, the purpose of
7 this report is to assess --

8 COMMISSIONER REDENBAUGH: Excuse me. I need
9 to interrupt. I'm sorry.

10 I'm leaving the call now.

11 CHAIRPERSON BERRY: Okay. Thank you very
12 much, Commissioner Redenbaugh.

13 COMMISSIONER REDENBAUGH: Need to catch a
14 plane.

15 CHAIRPERSON BERRY: Thank you for everything.

16 VICE CHAIRPERSON REYNOSO: American?

17 (Laughter.)

18 MR. CHAMBERS: In keeping with the project
19 proposal for the Equal Educational Opportunity Project,
20 the purpose of this report is to assess the
21 effectiveness of federal civil rights enforcement,
22 implementation and compliance activities in ensuring
23 equal educational opportunities for students with
24 limited English proficiency.

25 Our principal focus in this report will be on

1 evaluating the efforts of the U.S. Department of
2 Education and its Office for Civil Rights in enforcing
3 existing civil rights laws.

4 We have therefore limited the scope of the
5 report to examining the policies and enforcement
6 efforts of the Department of Education pertaining to
7 two existing civil rights laws; Title VI of the Civil
8 Rights Act of 1964 and the U.S. Supreme Court's 1974
9 decision in the case of Lau v. Nickels. And to the
10 extent that it informs OCR's analytical approach to
11 conducting its civil rights compliance and enforcement
12 efforts, the Equal Educational Opportunities Act of
13 1974.

14 One of our primary goals with this report is
15 to determine whether OCR's policies comport with
16 existing civil rights laws; namely, Title VI, Lau v.
17 Nickels, and the Equal Educational Opportunities Act.

18 In measuring OCR's civil rights
19 implementation, compliance and enforcement efforts
20 against the anti-discrimination provisions of these
21 laws, we focused on whether OCR's Title VI regulation
22 and policy guidance provides sufficient clarity,
23 identification of sound practice and thoroughness for
24 states and local educational agencies on such
25 compliance related issues as parental notification and

1 involvement; the evaluation and allocation of teachers,
2 resources and facilities; the extent to which the
3 Office for Civil Rights assists school in their efforts
4 to maintain a primary objective of regular education
5 placement for students with limited English
6 proficiency; the elimination of barriers; and the
7 extent to which schools serve the individual needs and
8 abilities of each student.

9 Finally, our research and fact-finding show
10 that OCR has accomplished an important objective in
11 taking the vague standard enunciated by the U.S.
12 Supreme Court in Lau and providing practical meaning
13 for states and local education agencies to its
14 requirements for meaningful access and effective
15 participation.

16 We also note that reports of growing numbers
17 of limited English proficiency, particularly among poor
18 and immigrant families and continued compliance
19 problems indicate the need for vigorous OCR enforcement
20 of existing laws under Title VI and Lau v. Nickels.

21 CHAIRPERSON BERRY: Thank you, David.

22 MS. PLAGATA-NEUBAUER: The next report is
23 entitled Gender Equity in Mathematics and Science,
24 Federal Enforcement of Title IX. And this is a
25 statutory enforcement report.

1 At this stage, OCRE has conducted preliminary
2 fact-finding on the report. In that fact-finding, we
3 have discovered that OCRE in its 1994 strategic plan
4 has identified this issue, the participation of female
5 students in advanced mathematic and science courses as
6 a priority compliance issue, meaning that it's
7 directing its proactive activity, such as policymaking,
8 compliance reviews, technical assistance, outreach and
9 education activities on this issue.

10 Based on our preliminary fact-finding, a
11 draft was submitted to the Assistant Staff Director.
12 That draft had been returned from the Assistant Staff
13 Director requesting additional research, as well as an
14 extensive re-write and editing. So at this time, we'll
15 be doing follow-up research with OCR at the Department
16 of Ed, as well as follow-up interviews, to find out
17 more in detail what activities -- what they have done
18 with respect to this issue.

19 MS. TROST: Good afternoon. My name is Tami
20 Trost and I'm going to be discussing the next report,
21 which is Equal Educational Opportunity and Non-
22 Discrimination, Federal Enforcement of Title VI and
23 Within School Grouping Practices.

24 Currently the staff has completed preliminary
25 research and conducted a first round of interviews with

1 the Department of Education staff and we're in the
2 process of conducting follow-up interviews and
3 remaining research and drafting the report.

4 The primary purpose of this report is to
5 evaluate OCR's enforcement and compliance and
6 implementation of Title VI as it relates to within
7 school grouping practices. And we're discussing within
8 school grouping practices to describe the wide variety
9 of practices that occur within school grouping students
10 by either performance or estimated performance in a
11 variety of different areas, including gifted and
12 talented programs, magnet schools, ability grouping
13 programs and tracking.

14 And the primary focus, again, is specifically
15 on OCR's enforcement activities, not to determine
16 whether the practices are viable or not but to
17 determine the implementation of those practices in
18 schools.

19 MS. ZALOKAR: My name is Naja Zalokar. As
20 Frederick indicated, I'm filling in for Ms. Wanda
21 Johnson who couldn't be here because of the weather.
22 And I'm going to be talking about the final report in
23 the project called State and Local Efforts to Ensure
24 Equal Educational Opportunity: Five School District
25 Profiles.

1 In conducting the field research and fact-
2 finding for the other reports, we developed sufficient
3 information to produce school district profiles for
4 five school districts across the country. And what
5 these profiles are going to do is help place the other
6 reports in context and bring them down to the local
7 level and explain what is going on at the local level
8 in the issue areas that are addressed in the other
9 reports and to comply with the civil rights statues
10 that we are discussing in the other reports.

11 This report will be a clearinghouse report,
12 not a statutory report.

13 At this time, we've completed draft profiles
14 for each of the school districts, but the draft
15 profiles need to be reviewed by the Office Director and
16 probably will need some editing. And we anticipate
17 that we will have to do some additional fact-finding to
18 update the information that was included in those
19 reports before a final draft can be completed.

20 MR. ISLER: That concludes our briefing. If
21 you have any technical questions, I would like for you
22 to direct them to the individuals. If you have any
23 policy questions, you can direct them to me.

24 CHAIRPERSON BERRY: Anybody have any
25 questions?

1 COMMISSIONER HORNER: Yes, I do. Surprise.

2 On the limited English proficiency issue,
3 does the Department of Education have a theory as to
4 what practices are useful enough that those are the
5 practices schools should use, and if they don't use
6 those practices, they may be in violation of civil
7 rights laws?

8 MR. CHAMBERS: There's actually policy
9 guidance issued by the Department of Education which
10 identifies to some extent various areas where they have
11 alluded to sound practices. But that would only be in
12 vary narrow contexts. Like, for example, procedures
13 that would be neutral and nondiscriminatory in the
14 identification of such students because they would rely
15 on multiple assessment criteria as opposed to just one
16 instrument. So that would then reduce the possibility
17 of discrimination.

18 However, the Department does not endorse
19 specific educational approaches or programs. In fact,
20 the Department has a policy. The Office for Civil
21 Rights has a policy that when it is conducting
22 compliance or complaint investigations, it will look to
23 see whether or not the program that is being
24 implemented, regardless of what that program may be, is
25 being implemented in keeping with the educational

1 theory on which it's based. But it will not in any way
2 attempt to influence the development of that program.

3 COMMISSIONER HORNER: So if you had a
4 situation where there was a question about whether
5 civil rights were being violated and one school used
6 eight years of bilingual education to meet the
7 requirements of the law and another school used one
8 year of Berlitz style intensive language education,
9 according to both the Department of Education and your
10 criteria, either of those could theoretically meet the
11 requirements of the law?

12 MR. CHAMBERS: Theoretically, either of those
13 could meet the requirements of the law. However, they
14 would be very specifically interested in finding out
15 whether or not both programs were implemented
16 appropriately or properly, according to the theory.

17 COMMISSIONER HORNER: In other words, that
18 the right people got into the programs, that people
19 weren't retained in them inappropriately, and so on.

20 MR. ISLER: Let me follow-up on that. They
21 would want to make sure that each individual student,
22 regardless of what their background is, got the
23 opportunity to effectively participate in a regular
24 class. That's basically what they would do.

25 COMMISSIONER HORNER: So there is a

1 theoretical -- there is a pedagogical theory then by
2 which the decision is made as to whether civil rights
3 are being violated. That is, the theory is if the
4 student isn't in a regular class to some extent, that
5 would constitute a violation.

6 In other words, if they took all students
7 identified as being limited in their English
8 proficiency and for six months did nothing but teach
9 them English as a group separately, would our report
10 say that the Department of Education finds that
11 discriminatory?

12 MR. ISLER: No. The Department of Ed would
13 give the school an opportunity to determine whether
14 that practice was educationally justifiable and met the
15 needs of the students.

16 COMMISSIONER HORNER: But the burden of proof
17 for that practice would be on the school; whereas, the
18 burden of proof for a mainstreaming kind of practice
19 would be on the government?

20 MR. ISLER: That's correct.

21 COMMISSIONER HORNER: And why is that?

22 MR. ISLER: Why is it?

23 COMMISSIONER HORNER: Yes.

24 MR. ISLER: It would be on the government to
25 determine whether --

1 COMMISSIONER HORNER: In one case. And on
2 the school in the other. In other words, why isn't the
3 pedagogical practice of -- is there something in the
4 law that requires -- that prohibits the separation of
5 students with limited English proficiency?

6 MR. ISLER: No. Not on its face.

7 COMMISSIONER HORNER: Then why would our
8 report be implicitly at least critical of such a
9 practice, but approving of a practice that puts
10 students in mainstream bilingual classes?

11 MR. ISLER: Our report is not going to be
12 critical of that practice. Our report is only going to
13 set forth the standards that the Department of Ed/OCR
14 uses to evaluate that practice.

15 COMMISSIONER HORNER: And do we -- so we make
16 no comment whatsoever on the standards the Department
17 uses?

18 MR. ISLER: We make no decisions on the
19 programs or the practices the schools use.

20 COMMISSIONER HORNER: How about that the
21 Department uses? Do we comment on the practices that
22 the Department finds desirable or acceptable?

23 In other words, what I'm getting at is --

24 MR. ISLER: Not educational practices.

25 COMMISSIONER HORNER: Not educational

1 practices.

2 MR. ISLER: No. That is not our task or
3 function. We only comment on the civil rights theories
4 and practice.

5 COMMISSIONER HORNER: And is there a civil
6 rights theory that says students should not be
7 separated, they should be kept --

8 MR. ISLER: A group test that you use in the
9 civil rights theory for both Lau and Title V: That
10 they get equal benefits and services; that there's
11 effective participation. That's based on Lau. And
12 that it meets the individual needs of the students.
13 And that's determined by the standards that are set by
14 the school district.

15 COMMISSIONER HORNER: If the school district
16 decided -- and I won't protract this much longer. I
17 promise. But if the school district decided that it
18 wished to offer four hours of intensive English-
19 language education on Saturday morning and provided
20 transportation, or that it wished to permit students or
21 require students to stay an additional hour and a half
22 during the school day, is this the kind of practice
23 that we or the Department of Education are open to
24 without landing on the school and saying you're
25 violating one of these criteria? Are those kinds of

1 things looked okay?

2 MR. ISLER: The Department of Ed does not
3 make a decision on educational practices or programs of
4 the school district.

5 COMMISSIONER HORNER: But the laws and
6 judicial decisions you've cited do make a comment?

7 MR. ISLER: They have various criteria that a
8 school district has to meet from a civil rights
9 perspective and not from an educational theory concept.

10 COMMISSIONER HORNER: And are these
11 requirements -- is there a consensus about what these
12 requirements are or is there argument about what these
13 requirements are?

14 In other words, do most people interpret
15 these laws and requirements the same way?

16 MR. ISLER: That's correct.

17 COMMISSIONER HORNER: Okay.

18 CHAIRPERSON BERRY: Fred, why don't you
19 answer -- if I may interrupt -- the specific question
20 Commissioner Horner asked, because I'm getting
21 confused.

22 If the school district decided that children
23 should come on Saturday and provided transportation --
24 was that the one?

25 COMMISSIONER HORNER: Yes.

1 CHAIRPERSON BERRY: And that was the practice
2 they used to teach limited English proficient students,
3 would the query then be from a civil rights standpoint
4 whether there is equal access and benefit for
5 participation by the students and the services are made
6 available and they meet their individual needs?

7 MR. ISLER: That's correct.

8 CHAIRPERSON BERRY: Or would the question be
9 why are you having class on Saturday?

10 MR. ISLER: No. That wouldn't be the
11 question. The question would be the first three things
12 you said.

13 CHAIRPERSON BERRY: So the school district
14 could do that if they met the other tests.

15 COMMISSIONER HORNER: And what are the tests,
16 quickly?

17 MR. ISLER: Providing equal services and
18 benefits.

19 COMMISSIONER HORNER: This would be in
20 addition. This wouldn't be equal. This would be more
21 than. Okay. So it would meet that.

22 MR. ISLER: No, not more than. Equal
23 services and benefits; effective participation.

24 COMMISSIONER HORNER: What is effective
25 participation mean?

1 MR. CHAMBERS: Effective participation is
2 part of the statutory language of the Equal Educational
3 Opportunity Act and OCR, in conducting its compliance
4 and complaint investigation, reads that very broadly.

5 In fact, the first prong of their analysis is
6 to determine whether the school district is pursuing a
7 program informed by an educational theory recognized as
8 sound by some experts in the field, or at least deemed
9 a legitimate experimental strategy.

10 So, given that, I think they allow broad
11 discretion for the school district to engage in the
12 program that you mentioned or to engage in any one of
13 the panoply of different kinds of programs.

14 COMMISSIONER HORNER: And effective
15 participation means effective participation in the
16 curricular goals of the school or the curricular -- the
17 actual physical presence of the student?

18 MR. CHAMBERS: It means both. It means both
19 physical integration and it also means that the student
20 would have access -- meaningful access was the term
21 that was used in the Court in Lau -- to the regular
22 education program, to the school's mainstream program.

23 COMMISSIONER HORNER: So if the school
24 decided that the students really needed all to take six
25 months out of the regular curriculum and just gain

1 mastery of English say in the second grade, they could
2 not do that under this test because the students
3 wouldn't be getting the same math and American history
4 say? They wouldn't be effectively having to
5 participate?

6 MR. CHAMBERS: Participating. Well, you're
7 talking about removing them physically from the
8 classroom, which would be a potential civil rights
9 violation.

10 COMMISSIONER HORNER: Okay.

11 MR. CHAMBERS: Because, of course, the school
12 district has to be not just concerned about the
13 effective participation requirement of Lau and the
14 Equal Educational Opportunities Act, but also they must
15 not segregate or engage in separate treatment under
16 Brown.

17 COMMISSIONER HORNER: Okay. So even if the
18 students desperately needed, in the judgment of the
19 school district, to be segregated for six months to get
20 up to speed in English, that would be a violation of
21 their civil rights? I won't belabor this any more, but
22 I have to understand the argument.

23 MR. CHAMBERS: No. That's not true. You're
24 framing it in terms of one or the other; whereas the
25 school district, although it does have a requirement to

1 meet under the law, it does have legal obligations,
2 it's not one or the other. It's an effort on the part
3 of the school district, with the assistance of the
4 Office for Civil Rights, to allow that school to pursue
5 a program that's going to combine both of those things;
6 effective participation, and, to the greatest extent
7 possible, integration.

8 There may be a requirement for some level of
9 separation for some amount of time, but there must be a
10 strong emphasis on assurances that that child will be
11 returned to the regular education classroom at the
12 earliest possible time.

13 COMMISSIONER HORNER: And just one last
14 question on this. If a school district wishes to offer
15 intensive language instruction in addition to the
16 regular school program, is it -- do you think -- would
17 that meet the test of non-violation?

18 In other words, can the school offer
19 additional opportunities beyond the normal curriculum
20 to students of limited English proficiency or must it
21 be absolutely equal?

22 MR. CHAMBERS: There's no question that they
23 can.

24 COMMISSIONER HORNER: Okay. Thanks.

25 I'll finish up with just one other area.

1 CHAIRPERSON BERRY: Go ahead.

2 COMMISSIONER HORNER: Ability grouping and
3 tracking. We've all read the statistics that show that
4 disproportionate numbers -- disproportionate to -- if
5 the presumption is that everybody starts with equal
6 intellectual capacity and equal educational background
7 and equal intellectual development, in theory there
8 would be equal racial proportions in the advanced and
9 non-advanced sections.

10 In reality, that isn't how it's turning out.
11 And one of the things that has always concerned me is
12 that the places where the disproportion is occurring
13 are often places where minorities hold political power.
14 That is, mayoralities, city councils, and so on; boards
15 of education. And that induces in me a presumption
16 against racial bias.

17 And so I guess because of that question, I've
18 wondered why the rhetoric on this issue seems to
19 presume a discriminatory placement. And will your
20 report operate on the assumption that if there are
21 disproportionate numbers of minorities, that that is on
22 the face of it evidence of discrimination?

23 MS. TROST: We're not operating on any
24 assumption about the value or problems with ability
25 grouping practices as a concept. We're strictly

1 looking at the criteria that OCR, the Department of
2 Education applies when evaluating these practices as
3 they exist for civil rights compliance with Title VI.

4 COMMISSIONER HORNER: So you don't comment on
5 the legitimacy of the criteria the Department uses?

6 MS. TROST: Well, we're commenting on the
7 legitimacy of the criteria as it complies with the law,
8 as it complies with case law.

9 COMMISSIONER HORNER: But not pedagogically
10 speaking?

11 MS. TROST: No, no.

12 COMMISSIONER HORNER: So you don't have a
13 pedagogical opinion on this; whether it's a good thing
14 or a bad thing. And so you will report to us that the
15 Department thinks X --

16 MS. TROST: Exactly.

17 COMMISSIONER HORNER: -- and has either done
18 what it says it thinks or holds people to that standard
19 or not.

20 MS. TROST: The evaluation was based on the
21 criteria for placement in those classes; the testing
22 procedures. Those types of things.

23 COMMISSIONER HORNER: That's all.

24 VICE CHAIRPERSON REYNOSO: Would you look at
25 all at the results? For example, we were told that you

1 have this report on five schools. What if you find
2 that one program works and one doesn't at all? Would
3 that be included in your report?

4 MS. TROST: Well, one of the things that the
5 Department of Education and the Office of Civil Rights
6 has been doing is compiling a list of promising
7 practices where they've worked with the education
8 community and researchers, within the Department, in
9 the Office of Educational Research Improvement, to
10 develop practices that they consider promising in each
11 of these areas, actually, in all of the areas that
12 we're discussing.

13 And we raise that in the reports. We
14 describe them. But we don't place a judgment on which
15 ones are better or which ones are worse. We just
16 present them for description purposes and to state what
17 the Department of Education has said about them.

18 COMMISSIONER HORNER: Do you introduce in
19 your report if there's a difference of opinion and the
20 Department takes one side and says X is a desirable
21 pedagogical practice? Do you say in the report other
22 people think Y is a desirable practice or other people
23 don't think X is a -- do you say that? Do you show us
24 there are two sides of the argument or do you just take
25 the Department of Education?

1 MS. TROST: Oh, no. We're definitely
2 balancing the arguments. But the Department itself has
3 taken a position that they will not take a pedagogical
4 position on any educational practices. So, basically -
5 - they stick mainly to civil rights criteria for our
6 purposes.

7 COMMISSIONER HORNER: But you said they
8 identified best practices.

9 MS. TROST: Best practices that comply with
10 civil rights law. So it's not -- I guess -- I see
11 where your point is. We're trying very hard not to
12 place a judgment on the practices ourselves and just
13 describe them. And when we have the information about
14 alternative viewpoints, we raise those, as well.

15 COMMISSIONER HORNER: Okay. I hope you do.
16 Because I think it will give much more authority to our
17 findings if we acknowledge in good faith and
18 respectfully some of these differences of thinking.

19 MS. TROST: Absolutely.

20 CHAIRPERSON BERRY: Anybody else?

21 Yes, Commissioner Lee?

22 COMMISSIONER LEE: Regarding your state/local
23 efforts report, are you doing any comparisons between
24 jurisdictions? And what kind of variables are you
25 using when you're comparing?

1 MS. ZALOKAR: We are not strictly comparing,
2 although I believe we will have an introductory chapter
3 that will draw some comparisons. But at this point,
4 our profiles are independent profiles of each district,
5 basically looking at that district as a district and
6 not making comparisons between it and the nation as a
7 whole or other districts that we have studied.

8 COMMISSIONER LEE: And are you putting
9 comparable districts together? Like comparable
10 districts meaning similar economic, social backgrounds,
11 similar student population. Are you doing anything
12 like that?

13 MS. ZALOKAR: The five districts that we have
14 chosen are in fact representative, are really more an
15 attempt to come up with different types of districts,
16 because we have districts with different types of
17 populations and urban and rural, and we're trying to
18 kind of come up with a cross-section in a way of
19 districts. With five districts, only five districts,
20 it would be very difficult to make the kinds of
21 comparisons that you are talking about. And within the
22 scope of this project and the project proposal, we
23 don't feel that we could go there at this point.

24 I mean, we can do some comparisons among the
25 five districts that we've chosen, but we're not free to

1 come up with enough districts to find lots of examples
2 of districts of this type and lots of examples of
3 districts of that type.

4 COMMISSIONER HIGGINBOTHAM: Are you making
5 any analysis of the amount of resources per child being
6 spent on these projects?

7 MS. ZALOKAR: In the districts? We are just
8 describing the budgetary conditions of the districts.
9 We are not really coming up with an analysis.

10 In other words, this is a clearinghouse
11 report and we're looking more at what are they doing in
12 the civil rights issues -- on the civil rights issues
13 that we are talking about. Are they complying with the
14 civil rights statutes; do they have innovative programs
15 to comply with civil rights, promote equal educational
16 opportunity, rather than analyzing in depth the school
17 districts.

18 COMMISSIONER LEE: And if we don't have the
19 resource, as one of the variables, how can you measure
20 their achieving civil rights compliance?

21 MS. ZALOKAR: Do you want to answer that,
22 Frederick?

23 MR. ISLER: We're trying to determine whether
24 the school districts are complying with civil rights
25 laws and statutes and the policies and criteria that

1 are set forth by the Department of Ed. We're not
2 trying to trying to measure whether there's how much
3 discrimination out there. We're not looking at
4 outcomes at all. That's a separate report and that
5 would take us another two to three years for a report
6 of that nature.

7 CHAIRPERSON BERRY: At least.

8 MR. ISLER: Also, we discussed looking at
9 budget, budgets in school districts. But again, that
10 would take us about five years to do a quality report
11 where we make comparisons on budget and deal with the
12 impact a budget would have on schools' achievement and
13 ability to ensure that students get the appropriate
14 education. It would be impossible.

15 CHAIRPERSON BERRY: Anybody else have a
16 question?

17 (No response.)

18 I think this briefing has been very good and
19 the questions have been very good.

20 COMMISSIONER HORNER: I agree.

21 CHAIRPERSON BERRY: Because it highlights
22 something that I was saying one day when we were
23 talking about the education report that we just
24 finished negotiating, Frederick. That the evaluation
25 process does not involve the staff making judgments

1 about what particular kind of teaching activity or
2 whatever is going on should be done. What you're
3 supposed to be doing is testing the effectiveness of
4 OCR in implementing the laws and the standards they
5 use. Because the Commission could, if it decided to do
6 so, do an entire report, a project, on ability
7 grouping, whether it's discriminatory or not. That
8 would be a project to do. Or this thing about gender
9 equity. I've forgotten what it's called. Or limited
10 English.

11 Is bilingual education appropriate or does it
12 discriminate or does this kind of limited English
13 proficiency language thing discriminate or not. Those
14 would be projects, substantive projects that the
15 Commission could do. And there would be different
16 sides, different views about it.

17 But if you get involved in that without doing
18 the research on all sides and don't stick to trying to
19 evaluate whether OCRE is enforcing the law as the law
20 exists in terms of what's on the books and what's
21 there, I mean, it would take you forever to finish.

22 And Commissioners will disagree about such
23 things as ability grouping and we would spend a lot of
24 time fighting about that without having done research.
25 Whenever you put little red flags like that in your

1 report, you can see what happens. We immediately go to
2 the bunkers and start negotiating and doing all sorts
3 of things.

4 So I think that this was a great idea,
5 Commissioner Horner, and I think this should be very
6 helpful to the staff. And it's very helpful to us in
7 figuring out what these enforcement reports are
8 supposed to be doing.

9 Yes, Commissioner Horner?

10 COMMISSIONER HORNER: Could I just say I
11 think it has been very helpful and I appreciate it.
12 When we get our written products, I hope that they will
13 contain a kind of simple -- for my sake, I will say,
14 simple statement of what the law requires. Because
15 part of the problem we've had with reports is it's not
16 clear some of the times.

17 Since you all know what the law requires, but
18 I don't necessarily know the difference between a
19 policy preference and a legal requirement, it would
20 really be helpful to have a simple statement. What
21 does the law require? And then maybe beyond that, what
22 has the Department or an agency decided to do as a
23 policy preference about which we might argue.

24 We want to know whether the law is being met.
25 That's our statutory requirement. But beyond that, we

1 should be at liberty to argue about policy preferences
2 and choices. And sometimes the confusion arises from
3 our not being sure which it is.

4 So, it would be helpful to see that
5 distinction made. And this has really been useful. I
6 would like to do this more often.

7 CHAIRPERSON BERRY: Okay.

8 Commissioner Anderson?

9 COMMISSIONER ANDERSON: Yes. I would like to
10 thank you, too, although I didn't have any questions.
11 I think it's very good to put a face with the work
12 product that we get. And I must say that I know
13 several of you, but this is the first time I've met
14 some of you. And so I think that's very good.

15 And I would like to propose that we do this
16 more regularly. We've taken 35 minutes and it gives us
17 a snapshot of various reports or hearing preparation or
18 whatever. If we can pick different topics, different
19 areas of work and give us a little more familiarity of
20 who on the staff is doing it and we keep it a
21 manageable time, like 35 or 45 minutes, I think it
22 would be very helpful in the future.

23 CHAIRPERSON BERRY: Yes, Vice Chair?

24 COMMISSIONER ANDERSON: Maybe in the future,
25 even picking out one or two or these reports, and just

1 spend half an hour on it, particularly understanding
2 what the legal requirements are.

3 For example, we didn't get to talk at all
4 about the math science that I have a lot of interest
5 in. What does Title IX require? But if the cases say
6 that it requires, et cetera, then presumably our study
7 is based on those legal requirements and not just on
8 our own or even the Department's policy considerations,
9 but what's required by both the statute and Courts'
10 interpretations of that statute.

11 COMMISSIONER HORNER: Bearing in mind that we
12 are always, as a Commission, empowered to make
13 recommendations to the Congress or the President about
14 changes in the statute. And if we think the statute,
15 as applied, is not doing the job, we aren't simply to
16 say whether it's been applied properly or not, but a
17 second level, is it a good idea. Is the statute a good
18 one.

19 CHAIRPERSON BERRY: Okay. All right.

20 With that, we thank you very much.

21 COMMISSIONER GEORGE: Can I say a special
22 word of thanks to Wanda for the symbolism of her dress;
23 reminding us not only that it's Valentine's Day, but
24 Chinese New Year.

25 CHAIRPERSON BERRY: That's Naja.

1 COMMISSIONER GEORGE: The surrogate Wanda.
2 If Wanda were here, she would be doing it, too.

3 CHAIRPERSON BERRY: Yes. He wants to
4 introduce someone else.

5 MR. ISLER: I would like to introduce two
6 interns that are working for OCR for the first
7 semester.

8 Would you stand up, please?

9 Give you name and where you're from?

10 MS. KIM: I'm Catherine Kim. I'm a student at
11 Cornell University and I'm spending this semester in
12 D.C. with the Commission.

13 VICE CHAIRPERSON REYNOSO: Because it's
14 warmer here.

15 (Laughter.)

16 MS. REGALE: My name is Elena Regale. I'm
17 also a student at Cornell University. We're both in a
18 program called Cornell in Washington in which we are in
19 internship for a semester, but also take courses. So
20 we both decided to work for the Commission.

21 CHAIRPERSON BERRY: Well, thank you, and
22 welcome.

23 All right. Thank you very much, Frederick.

24 With that, we are finished.

25 Could we have a motion that we adjourn?

1 COMMISSIONER HORNER: So moved.

2 CHAIRPERSON BERRY: Not debatable.

3 Thank you, Commissioners.

4 (Whereupon, the proceedings were concluded at
5 12:40 p.m.)

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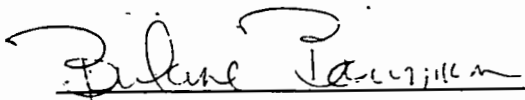
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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before: U.S. COMMISSION ON CIVIL RIGHTS

In the Matter of: COMMISSION MEETING

were held as herein appears and that this is the original transcript thereof for the file of the Department, Commission, Administrative Law Judge or the Agency.


Official Reporter.

Dated: FEBRUARY 14, 1997