

U. S. COMMISSION ON CIVIL RIGHTS

- - -
MEETING
- - -

Friday, January 17, 1997

The Commission met in Room 540, YWCA
Building, 624 9th Street, N. W., Washington, D. C.
20425, at 9:30 a.m., MARY FRANCES BERRY, Chairperson,
presiding.

PRESENT:

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

GERRI MASON HALL, DEPUTY STAFF DIRECTOR

STAFF PRESENT:

MARLISSA BRIGGETT
BARBARA BROOKS
JAMES S. CUNNINGHAM
BETTY EDMISTON
EDWARD HAILES, JR.
GEORGE M. HARBISON
CAROL-LEE HURLEY
JACQUELINE L. JOHNSON
FREDERICK ISLER
WILLIAM LEE

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STAFF PRESENT: (Continued)

REGINALD MARTIN
 STEPHANIE Y. MOORE, GENERAL COUNSEL AND PARLIAMENTARIAN
 VERONIQUE PLUVIOSE-FENTON
 PETER REILLY
 CHARLES RIVERA
 MARCIA TYLER
 CATHERINE WALLACE
 ANTHONY K. WELLS, SR.
 BARBARA J. WILKENS
 AUDREY WRIGHT
 NADJA ZALOKAR

COMMISSIONER ASSISTANTS PRESENT:

JOSEPH BROADUS
 CHARLOTTE PONTICELLI
 WILLIAM L. SAUNDERS, JR.
 KRISHNA TOOLSIE
 CYNTHIA VALENZUELA

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P R O C E E D I N G S

9:30 a.m.

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CHAIRPERSON BERRY: I call the meeting to order, because we do have a quorum.

The first item on the agenda is the approval of the agenda. I point out to Commissioners, as I ask for approval of the agenda, that we will discuss the OPM matter under the Staff Report, so that you know that or you're reminded of that.

Could I have a motion to approve the agenda?

COMMISSIONER HORNER: So moved.

VICE CHAIRPERSON REYNOSO: Second.

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

(Chorus of ayes.)

Opposed?

(No response.)

So ordered.

Commissioner George, were you saying something?

COMMISSIONER GEORGE: Yes. Could we included in the agenda discussion of the FY 98 project, in light of the budget?

CHAIRPERSON BERRY: We have the projects. Let's see. They are the FY -- I didn't hear. What

1 year?

2 COMMISSIONER GEORGE: '98. Do we have a
3 place already for that?

4 CHAIRPERSON BERRY: No. I plan to say
5 something about the budget under the announcements.

6 COMMISSIONER GEORGE: Okay.

7 CHAIRPERSON BERRY: But we're not going to
8 revisit the whole issue of the budget. I'll explain
9 why in a minute.

10 COMMISSIONER GEORGE: I don't need a
11 discussion. It's something to clarify about the '98.

12 CHAIRPERSON BERRY: If you care to clarify,
13 you can do that under Staff Report, because this is a
14 continuing matter.

15 COMMISSIONER GEORGE: Okay.

16 CHAIRPERSON BERRY: All right. So, the
17 agenda will go forward in that way.

18 The minutes, please. Could I have a motion
19 for the approval of the minutes?

20 VICE CHAIRPERSON REYNOSO: So moved.

21 CHAIRPERSON BERRY: Could I get a second, and
22 then I'll take --

23 COMMISSIONER HORNER: Second.

24 CHAIRPERSON BERRY: Okay.

25 Commissioner Horner?

1 COMMISSIONER HORNER: Madam Chair, I don't
2 have any comment on the accuracy of the minutes, but I
3 have a question about something contained in the
4 minutes. And you could decide whether this question
5 should be answered now or in some other format.

6 I see references to consultations that the
7 SAC's are holding in the minutes and in the Staff
8 Report, and have seen references to consultations
9 before, and then reports being sent here for legal
10 sufficiency review and then publication of
11 consultations. And I would like to know what these
12 reports are, and if the Commissioners could be provided
13 a copy of them.

14 In other words, what's the difference between
15 a consultation and a report by a SAC which we don't
16 see, and a SAC report which we see and vote on?

17 CHAIRPERSON BERRY: Where do you see that in
18 the minutes?

19 COMMISSIONER HORNER: Well, for instance, on
20 page 2 of the minutes. Let's see. I will find it in
21 just a moment.

22 (Pause.)

23 The first paragraph under Announcements, "the
24 Florida State Advisory Committee plans to release an
25 executive summary of the meeting." And then, also,

1 under Tab 4, page 2, under the Mississippi Delta
2 Hearing, the next paragraph says, "SAC Reports. Legal
3 sufficiency review of the Ohio-Indiana -- et cetera --
4 consultations on affirmative action." And I don't know
5 what these consultations are and what the reports are.

6 CHAIRPERSON BERRY: I'll have someone answer
7 that, but I think they're just using consultation in
8 the alternative for forums.

9 Is that right, or am I wrong, or is it some
10 other thing, Carol Lee Hurley?

11 MS. HURLEY: The consultations are very
12 similar to a consultation that would be held by the
13 Commission.

14 COMMISSIONER HORNER: What we call a
15 briefing?

16 MS. HURLEY: People are invited to present
17 papers. The reports will come before you for your
18 acceptance for publication and they consist of --

19 COMMISSIONER GEORGE: I can't hear.

20 CHAIRPERSON BERRY: Can you talk into
21 something? Talk into that, please.

22 COMMISSIONER GEORGE: Can we know who is
23 speaking?

24 CHAIRPERSON BERRY: Carol Lee Hurley is
25 speaking.

1 COMMISSIONER GEORGE: Carol Lee. Yes.

2 CHAIRPERSON BERRY: And she's answering the
3 question about the difference between what
4 consultations are when they're held by the SAC's.

5 Go ahead. Let's see if they can hear now.

6 MS. HURLEY: The reports will consist of the
7 papers that were presented at the consultation without
8 findings or recommendations, and they will come before
9 you for your acceptance before they are put out on the
10 street.

11 COMMISSIONER HORNER: I have noticed in
12 previous staff reports that these consultations have
13 been going on in many states on the subject of
14 affirmative action. Does that mean that all these are
15 at some point coming to us for review and vote?

16 MS. HURLEY: Yes. There are five of them.

17 COMMISSIONER HORNER: Okay. Thank you very
18 much.

19 CHAIRPERSON BERRY: Okay.

20 Commissioner Redenbaugh?

21 COMMISSIONER REDENBAUGH: Yes. I have a
22 follow-up question for you, Carol Lee.

23 We defined a process by which SAC reports are
24 to be produced. These follow that same process, then?
25 Is that your understanding?

1 MS. HURLEY: That's correct.

2 COMMISSIONER REDENBAUGH: Okay. Thank you.

3 CHAIRPERSON BERRY: Anybody have any changes
4 in the minutes?

5 (No response.)

6 Okay. The only change I -- I don't really
7 want to make a change, but I want to make clear that
8 the language that the staff wrote under Staff
9 Director's Report that says that I said something, that
10 Redenbaugh were going to work with staff to prepare a
11 response. What we said was we would work with staff to
12 do whatever was necessary to make sure that they would
13 prepare a response, but I won't belabor that point. I
14 just want to make clear that that is what I in fact did
15 say, so it wouldn't be subject to different
16 interpretation.

17 Does anybody have any actual change?

18 (No response.)

19 Okay. Then we'll move on from the minutes to
20 announcements.

21 I have several announcements. The first
22 announcement, in case you hadn't noticed, is that we
23 don't have a Staff Director. Mary Mathews has left and
24 we don't have a Staff Director. We don't have an
25 Acting Staff Director either because those of you who

1 are familiar with the lawsuit and other stuff that was
2 involved with the Ishimaru case, know why we don't have
3 an Acting Staff Director or Staff Director. It's not
4 possible for us to do so until the President nominates
5 someone and the Commissioners agree.

6 Gerri Hall is Deputy Staff Director. She
7 used to be the Personnel Director, which was a career
8 position from which she has been separated. And after
9 Commissioners Redenbaugh and Yvonne Lee and I met with
10 the staff in connection with the OPM report, after that
11 time, I asked the White House to let us appoint her as
12 Deputy Staff Director in a political position, and they
13 agreed to do that until such time as we get a Staff
14 Director.

15 And once we get a Staff Director, the Staff
16 Director will have the opportunity to get that person's
17 own people in office. So this is a stop-gap measure
18 and Gerri agreed to do it. But keep in mind, she is
19 not the Staff Director. She's not the Acting Staff
20 Director. And she will only be performing whatever
21 ministerial duties have to be performed and can
22 logically be done to keep the place moving until such
23 time as we can get somebody.

24 So, with that, does anybody have any
25 questions about that or any concerns?

1 Yes, Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: What are the things
3 that in that role can't be done that would have been
4 done by the Staff Director? And are those things
5 essential?

6 CHAIRPERSON BERRY: Well, I would assume that
7 -- well, I'm assuming and I'm saying that she will not
8 be taking any kind of leadership role or doing anything
9 like publicly saying anything about the work of the
10 Commission in the way the Staff Director would, or
11 testifying, or doing stuff like that.

12 What I have in mind is the Deputy has a job
13 description which involves the nuts and bolts of the
14 day-to-day work, like signing people's personnel
15 things, so that we don't end up like we did last time
16 when we had no Staff Director, with a backlog of
17 grievances and people complaining because their normal
18 personnel work wasn't getting done, and other aspects
19 of operational management to get things back and forth
20 to us.

21 But I think beyond that, anything that can
22 wait, we'd just let it wait. That would be my guess.
23 And let's see how this goes and let's try to get a
24 Staff Director.

25 Yes, Commissioner Horner?

1 COMMISSIONER HORNER: Madam Chair, does this
2 suggest that in your view this position will be down
3 the road a career or political position, or is that
4 just an open question?

5 CHAIRPERSON BERRY: You mean the Deputy?

6 COMMISSIONER HORNER: The Deputy position.

7 CHAIRPERSON BERRY: There's no assumption
8 about it. It can be either.

9 COMMISSIONER HORNER: Okay.

10 CHAIRPERSON BERRY: So I hope that -- I want
11 to express my appreciation to Gerri for being willing
12 to do this.

13 COMMISSIONER GEORGE: Madam Chairman?

14 CHAIRPERSON BERRY: Yes, Commissioner George?

15 COMMISSIONER GEORGE: I wasn't quite clear.
16 I lost part of what you said early on in introducing
17 the matter. Is Gerri Mason Hall the Deputy Staff
18 Director or is her title something different?

19 CHAIRPERSON BERRY: No. She's the Deputy
20 Staff Director.

21 COMMISSIONER GEORGE: Oh, she is the Deputy
22 Staff Director. Okay.

23 CHAIRPERSON BERRY: I said I got the White
24 House to agree to let her be appointed as Deputy Staff
25 Director in the interim until we get a Staff Director.

1 And that matter would be revisited at that time.

2 COMMISSIONER GEORGE: Do we have any -- are
3 we planning anything that would involve the issuance of
4 subpoenas any time soon? That's one area where I'm not
5 clear whether we absolutely need a Staff Director to
6 present those to you for your signature?

7 CHAIRPERSON BERRY: I haven't looked at the
8 statute or the regs this morning or recently, but I
9 don't -- and I don't know the answer to that.

10 COMMISSIONER GEORGE: But we don't have any
11 hearings or anything coming up?

12 CHAIRPERSON BERRY: Well, we have Mississippi
13 coming up, so we'll have to check that out.

14 COMMISSIONER GEORGE: Okay.

15 CHAIRPERSON BERRY: But if it's necessary --
16 we'll look at it and decide. Okay?

17 COMMISSIONER GEORGE: Okay.

18 CHAIRPERSON BERRY: But I don't know the
19 answer.

20 COMMISSIONER GEORGE: Okay.

21 CHAIRPERSON BERRY: I do know we're having
22 the Mississippi hearing.

23 Any other thoughts?

24 Yes, Commissioner Anderson?

25 COMMISSIONER ANDERSON: Do you see any reason

1 at this point why the Mississippi hearing --

2 COMMISSIONER GEORGE: Talk more into the
3 mike, please?

4 COMMISSIONER ANDERSON: Do you see any reason
5 at this point why the Mississippi hearing might be
6 postponed?

7 CHAIRPERSON BERRY: No. I hope not. We've
8 already postponed it once.

9 COMMISSIONER ANDERSON: The fact that the
10 Deputy is going to take the day-to-day administrative
11 procedure means that we can move forward with that?

12 CHAIRPERSON BERRY: Well, the General
13 Counsel, under our regs and our administrative
14 instructions, runs the hearings anyway. So the Staff
15 Director or the Deputy Staff Director have very little
16 role to play in terms of actually managing the hearings
17 or doing any of that. So I would hope that -- if I
18 find out in the next few days, since you raised the
19 question -- that this is a problem, I will get back to
20 Commissioners and tell you the answer.

21 In fact, I'll get back to you and tell you
22 the answer to both questions, Robbie's question and
23 your question. I don't know the answer right now.

24 COMMISSIONER GEORGE: Mary, just so that I
25 can be clear, Gerri Mason Hall is the actual Deputy?

1 She's not in any kind of acting capacity? She's the
2 Deputy Staff Director?

3 CHAIRPERSON BERRY: No. She's the Deputy
4 Staff Director.

5 COMMISSIONER GEORGE: Right. Okay.

6 CHAIRPERSON BERRY: As a political appointee.

7 COMMISSIONER GEORGE: Got it.

8 CHAIRPERSON BERRY: Okay.

9 Anything else about this?

10 (No response.)

11 All right.

12 Now, ethics contact. You may have noticed in
13 your materials that Miguel --

14 COMMISSIONER GEORGE: Miguel Sapp?

15 CHAIRPERSON BERRY: Yes. -- has gone on
16 active duty in the military service. He's been called
17 to active duty, and so therefore, he's no longer
18 available as ethics contact for the Commissioners.
19 He'd been exercising that function. And so we have to
20 name somebody else.

21 And the General Counsel has asked Marlissa
22 Briggett, who is another Civil Service appointee who's
23 here, I guess -- is she here?

24 MS. MOORE: Yes. She's here.

25 CHAIRPERSON BERRY: There she is, right

1 there.

2 COMMISSIONER HORNER: Is that Melissa or
3 Marlissa? Marlissa?

4 Thanks.

5 CHAIRPERSON BERRY: B-R-I-G-G-E-T-T. And her
6 phone number is 376-6845. To handle ethics matters and
7 such things for the Commissioners.

8 Okay. The other thing I wanted to announce,
9 Commissioner Redenbaugh, I think it was, or someone,
10 raised the issue of the Government Performance and
11 Results Act of 1993.

12 Was that you, Commissioner Redenbaugh?
13 Somebody raised it the last time.

14 COMMISSIONER REDENBAUGH: Yes.

15 CHAIRPERSON BERRY: And what the Commission
16 was doing about it. And Kim Cunningham and George
17 Harbison -- George runs the budget and Kim used to be
18 OPPR, OCRE, and is now Congressional.

19 COMMISSIONER GEORGE: Mary, I'm having
20 trouble.

21 Leon, can you hear her?

22 COMMISSIONER HIGGINBOTHAM: Yes. I'm having
23 great trouble, also.

24 CHAIRPERSON BERRY: Someone raised a question
25 last time about the Government Performance and Review

1 Act. I think it was Commissioner Redenbaugh.

2 Could you hear that?

3 COMMISSIONER GEORGE: Yes.

4 CHAIRPERSON BERRY: And every federal agency
5 is supposed to prepare a report to go to OMB, I guess,
6 and to Congress, with measurements of performance. And
7 there was some concern about whether the Commission was
8 moving vigorously to have such a report available.

9 Kim Cunningham and George Harbison are the
10 co-leaders of a team that is developing the strategic
11 plan for the agency and they have a meeting scheduled
12 with OMB February 5th and they will -- this plan will
13 come to the Commission, if you're concerned about that,
14 at some point.

15 But I just wanted you to know that they are
16 working on it and it is being done.

17 The budget. As you know, we are not supposed
18 to announce publicly the budget numbers until the White
19 House releases them, although everybody in the world --
20 but we're not supposed to publicly announce that. So
21 that if any Commissioner would like to know what the
22 actual number is, I'd be happy to tell you at a break
23 or a meeting or whatever, because I don't want to be in
24 a position of having violated that.

25 I will simply say to you that one of the

1 questions that has been raised with me in the
2 discussions at OMB -- and I was asked to raise this
3 question with you, so I am. They wanted to level fund
4 us. I can say that much. But they're not. And the
5 query was, was I sure that my colleagues, all of whom
6 agreed that this should be our budget request, would
7 work hard to support the request once it was submitted
8 to the Congress. Because the President is committed, I
9 am told, to trying to get increased funding for certain
10 agencies in this year.

11 But there was some concern about whether all
12 of our Commissioners, and in particular, to be blunt
13 about it, the Republican appointees who are in the best
14 position to deal with the Republicans in the Congress
15 much better than I am, or anyone else, would support
16 the request once it goes forward. And there was some
17 concern that if every year they give us increases and
18 we don't support them strongly, that the OMB ought to
19 be putting that money in somebody else's budget, even
20 though it's a small amount, rather than ours. Because
21 most agencies, as you know, vigorously support their
22 own budget.

23 So, my answer to that -- and I'll just tell
24 you what my answer was. And if you disagree with that,
25 I'll go back and tell them something else.

1 My answer to that was that the Commissioners
2 voted to support this budget. And that to the extent
3 that the budget request reflects the priorities that
4 the Commissioners voted for and the projects that the
5 Commissioners voted for or has the flexibility to have
6 those projects, that I was sure that the Commissioners
7 would support what they proposed.

8 Now, is there anything else that I should
9 have said about that?

10 (No response.)

11 Is there any Commissioner who feels that it
12 should be reported that they don't support the budget
13 request?

14 COMMISSIONER HORNER: Madam Chair, I don't
15 think this is a good forum in which to go into the
16 nuances of down-the-road negotiation stances. So,
17 silence should not be interpreted one way or the other.

18 CHAIRPERSON BERRY: Okay.

19 COMMISSIONER GEORGE: Madam Chairman, I had
20 trouble hearing again.

21 Leon, did you?

22 COMMISSIONER HIGGINBOTHAM: I did. But what
23 I would like to be submitted in our budget is a system
24 which works on the telephone. I don't understand why
25 of all the organizations I deal with that the

1 Commission -- our Commission is the only one which
2 can't get a telephone system which works on a
3 conference call.

4 CHAIRPERSON BERRY: And you have mentioned
5 this on numerous occasions and I agree with you
6 absolutely. And we have mentioned this to the staff.
7 We're now mentioning it to them again.

8 COMMISSIONER HIGGINBOTHAM: If the staff
9 can't do it, we'd better get a consultant in. I mean,
10 no other organization has this problem. Either we have
11 worse equipment or worse management of the equipment.
12 And it's so frustrating when you can only get one-third
13 of the words of wisdom.

14 COMMISSIONER GEORGE: I agree completely with
15 Leon, but I'm pretty confident that it's the system and
16 not the management, based on my experience with it,
17 which means I think we need a new system. I don't have
18 any idea how much these things cost, but I think it
19 should be a high priority, given that so many of us so
20 frequently do have to participate by telephone.

21 CHAIRPERSON BERRY: Okay. I agree with that.
22 Anyone else?

23 No one disagrees, so we should find out how
24 much it costs. Maybe the staff should tell us how much
25 it would cost to upgrade the equipment.

1 COMMISSIONER GEORGE: Could we get that at
2 the next meeting?

3 CHAIRPERSON BERRY: Yes. And what we would
4 get for the upgrade in terms of our ability to
5 function.

6 COMMISSIONER HIGGINBOTHAM: You know what? I
7 would press it even more. There's no reason why staff
8 cannot give us a written report of their findings
9 within two weeks on this. And those of us who have
10 contacts elsewhere, should check it against our
11 sources. And when they send it to us, not only should
12 they give us the cost but what would be the time frame
13 for installation and implementation.

14 CHAIRPERSON BERRY: Anybody disagree with
15 that?

16 Commissioner Anderson?

17 COMMISSIONER ANDERSON: I think they should
18 just do it for the next meeting.

19 COMMISSIONER GEORGE: I can't hear this at
20 all.

21 COMMISSIONER ANDERSON: Robbie, I think they
22 should just do it and have it up and operational for
23 the next meeting.

24 COMMISSIONER HIGGINBOTHAM: I'll vote for
25 that.

1 COMMISSIONER ANDERSON: Just do it. I mean,
2 it can't be that much.

3 COMMISSIONER GEORGE: Well, the only thing
4 I'm concerned about there is I like Judge
5 Higginbotham's idea of us getting a report of what
6 they're going to do before it's done so that if Judge
7 Higginbotham or others who have connections with other
8 institutions that use systems thinks that what they're
9 about to do is actually a bad idea and there would be
10 some better system or some better way of putting this
11 thing together, we would have an opportunity for that
12 input.

13 I don't want to delay this, obviously, but I
14 thought there was some prudence in what the Judge had
15 suggested about getting a written report that we can
16 then run past other people.

17 CHAIRPERSON BERRY: Could I ask the staff
18 member who handles administrative services or these
19 matters, do we already know how much it would cost to
20 upgrade the equipment or is this something we will have
21 to find out?

22 MS. EDMISTON: We'll have to look into it.

23 CHAIRPERSON BERRY: That's Betty Edmiston who
24 runs administrative services.

25 MS. EDMISTON: The system has been checked

1 several times and --

2 COMMISSIONER GEORGE: We aren't hearing
3 anything.

4 CHAIRPERSON BERRY: I'll tell you what she's
5 saying. Okay?

6 MS. EDMISTON: The system has been checked
7 numerous times and we have been advised we have state-
8 of-the-art equipment.

9 VICE CHAIRPERSON REYNOSO: It's just not
10 true. I'm sorry.

11 CHAIRPERSON BERRY: Betty says that the
12 system has been checked many times and we've been told
13 that we have state-of-the-art equipment.

14 Therefore, I would, if you will defer, ask
15 that within two weeks they give us -- Betty gives us in
16 writing a memo explaining what's available, what we can
17 get, what we can get for our money. And then we can
18 check it out against our own sources and then we will
19 either agree to do that or not.

20 I guess it's so important and it's something
21 that directly relates to the Commissioners. And we
22 need to get the information. So why don't we just do
23 that and find out.

24 MS. EDMISTON: We might be able to go to
25 portable mikes, --

1 CHAIRPERSON BERRY: She said we might be able
2 to go to portable mikes, portable mikes, clip-on mikes.

3 COMMISSIONER GEORGE: Well, why don't we get
4 the options in a memo and don't try to settle it right
5 here, obviously.

6 CHAIRPERSON BERRY: Okay.

7 COMMISSIONER GEORGE: I think Judge
8 Higginbotham's idea is a great idea. Let them get us a
9 memo, give us the options and tell us how the equipment
10 we have now relates to other possibilities, and then we
11 can get input from other people and see whether we like
12 the proposal.

13 CHAIRPERSON BERRY: Okay. If there's no
14 objection, that's what we'll do.

15 Were you about to comment on that,
16 Commissioner Anderson, or something else?

17 COMMISSIONER ANDERSON: No.

18 CHAIRPERSON BERRY: No.

19 And what I said earlier, Commissioners
20 Higginbotham and George about the budget, was I simply
21 said that I couldn't tell you what the passback was
22 publicly, and asked whether Commissioners supported the
23 request that we had made. That I was asked that.

24 And I responded that so long as the
25 priorities that the Commission had could be -- were

1 permitted under the numbers, that I didn't see that
2 there would be any problem. And asked whether the
3 Commissioners had anything else to say. And
4 Commissioner Horner indicated that she thought perhaps
5 some other forum might be better for this sort of
6 discussion.

7 So that basically is what happened.

8 COMMISSIONER GEORGE: I'm not clear. Who
9 were you talking to?

10 CHAIRPERSON BERRY: OMB?

11 COMMISSIONER GEORGE: Oh, to OMB.

12 CHAIRPERSON BERRY: Yes. Okay?

13 COMMISSIONER GEORGE: Right. And before
14 anything -- this was a conversation before the budget
15 numbers that we're not allowed to reveal were offered?

16 CHAIRPERSON BERRY: Right.

17 COMMISSIONER GEORGE: Okay.

18 CHAIRPERSON BERRY: Okay. The other
19 announcement I wanted to make was that the Border
20 Violence Report that the Commission approved is ready
21 to go to be published, but we now have a minor problem,
22 which I wanted to report, which I think is resolved,
23 but I simply want to report on it.

24 Commissioner Lee had suggested when we
25 approved it -- this is the one where there were

1 dissenters and we agreed to let the dissents be
2 published. And we agreed that organizations that had
3 been identified and felt they might be defamed or
4 degrade or there were some indication, they could
5 respond.

6 And Commissioner Lee suggested that also
7 organizations that were not identified specifically but
8 could be the subject of these comments ought to be
9 identified and informed.

10 And you made that part of your motion,
11 Commissioner George, that we approved to go forward
12 with the publication with the dissents.

13 We now discover that -- two problems. One,
14 it's hard to identify all the organizations that
15 weren't identified. And two, to make sure you
16 identified all of them. And three, the dissenters now
17 say that if we do identify more organizations, they
18 want to respond to everything that the organizations
19 say. Which means that the organizations would want to
20 respond to everything they say.

21 I pointed this out to Commissioner Lee and
22 she said, well, why didn't we just go ahead and print
23 the report and forget it, because we could be here for
24 the next 20 years. And I wanted to point that out
25 since you, Commissioner George, on the record, you

1 simply accepted Commissioner Lee's suggestion. It was
2 not your suggestion.

3 COMMISSIONER GEORGE: Yes.

4 CHAIRPERSON BERRY: I wanted to make sure you
5 didn't feel strongly about it, and no one else did,
6 before we went forward with the printing.

7 COMMISSIONER GEORGE: Thank you. I
8 appreciate that courtesy. I'm perfectly willing to go
9 along with Yvonne Lee on what she wants to do now.

10 CHAIRPERSON BERRY: Okay.

11 Yes, Commissioner Horner?

12 COMMISSIONER HORNER: Madam Chair, just for
13 clarification. The report, plus the dissent would
14 simply be published?

15 CHAIRPERSON BERRY: Yes. And what we have
16 now from places that were identified. And they have
17 been told - - the Centers have been told about those.
18 That's not the issue.

19 The issue now is the other people who are --
20 we don't know how numerous.

21 Okay?

22 COMMISSIONER GEORGE: Yes. That's a good
23 resolution.

24 CHAIRPERSON BERRY: All right. Now, the only
25 other thing I was going to do is, in light of the fact

1 that Bill Cosby is going to do our PSA for us for
2 nothing and is very much interested, in essence, to
3 mention that. I'm sure everybody knows that his son
4 was killed and the family is -- well, Camille and Bill
5 also happen to be friends of mine, so it is rather a
6 blow here, and I share their grief today.

7 VICE CHAIRPERSON REYNOSO: Madam Chair, is it
8 appropriate for us to send some sort of communication
9 to Mr. and Mrs. Cosby?

10 CHAIRPERSON BERRY: Well, I don't know
11 whether we need to go that far. If anyone thinks we
12 should --

13 COMMISSIONER GEORGE: Oh, I think we should,
14 Madam Chairman. He's agreed to do this service for us.
15 I certainly think that we ought to communicate as a
16 Commission our condolences.

17 CHAIRPERSON BERRY: Okay. Does anybody have
18 any objection?

19 COMMISSIONER GEORGE: It's a very special
20 favor that a man of that stature has done.

21 CHAIRPERSON BERRY: Okay. If no one has
22 objections, we'll ask Charlie and his office -- and
23 Barbara Brooks I see here -- draft up something nice to
24 send as a letter from the Commission.

25 Let us go to the Staff Report.

1 COMMISSIONER GEORGE: I have a question on
2 announcements.

3 CHAIRPERSON BERRY: Oh, yes. Sorry. Yes.

4 COMMISSIONER GEORGE: Do we have any
5 briefings upcoming?

6 CHAIRPERSON BERRY: I don't think we have
7 any. If you want to suggest any or anybody has any,
8 let us know.

9 COMMISSIONER GEORGE: I was just wanting to
10 know since we don't have a Staff --

11 CHAIRPERSON BERRY: Right. We were going to
12 tell you if we had one for the next meeting, right,
13 Commissioner George?

14 COMMISSIONER GEORGE: Right.

15 CHAIRPERSON BERRY: There isn't one for the
16 next meeting. We know that.

17 Yes?

18 COMMISSIONER HORNER: Madam Chair, I don't
19 know whether this should come under Staff Report or
20 Future Agenda Items. but I had asked that we have a
21 briefing by the staff on the upcoming Equal Educational
22 Opportunity Report.

23 CHAIRPERSON BERRY: Let me ask this, since we
24 don't have any Staff Director.

25 Would you folks who are doing the Equal

1 Educational Opportunity Report be prepared to do a
2 briefing next time?

3 (Nonaudible response.)

4 Okay. Well, then, why don't we have them do
5 a briefing next time.

6 COMMISSIONER HORNER: Okay. All right.

7 COMMISSIONER GEORGE: I have another
8 question.

9 CHAIRPERSON BERRY: Yes, Commissioner George.

10 COMMISSIONER GEORGE: Is the Miami report
11 going to be given to us this month or when are we going
12 to -- I thought we were going to get it this month but
13 with the Staff Director situation, perhaps we're not.

14 CHAIRPERSON BERRY: Let me ask the General
15 Counsel.

16 When do you think the Commissioners might
17 possibly?

18 MS. HALL: I have no time frame. The exact
19 date I don't recall. But it was sent back to OGC for
20 some revisions and it will be back. January 31st is
21 our next deadline. And so I would expect it to get to
22 the Commissioners probably before the end of February.

23 CHAIRPERSON BERRY: Before the end of
24 February, we think, Commissioner George.

25 COMMISSIONER GEORGE: Thank you.

1 CHAIRPERSON BERRY: March is, of course, the
2 hearing.

3 Anybody else have any announcements or
4 questions?

5 (No response.)

6 Okay. Staff report, Item Number 4.

7 Let's see if we have others before we go to
8 the OPM report.

9 Anybody have any other questions about the
10 Staff Report?

11 COMMISSIONER GEORGE: Madam Chairman, I'm not
12 sure whether it was the Staff Report that I was to ask
13 my questions of clarification about FY '98, but --

14 CHAIRPERSON BERRY: Yes, it was.

15 COMMISSIONER GEORGE: -- I'm somewhat
16 reluctant to do so in view of the fact that we're not
17 yet going to reveal our budget situation.

18 Let me say what my concern is at a very
19 general level, and then perhaps you could suggest
20 whether I should go on or whether we should put this
21 over to our next meeting.

22 CHAIRPERSON BERRY: Okay.

23 COMMISSIONER GEORGE: I wanted to clarify the
24 question of the Schools and Religion Report, which I
25 thought we were going to try very hard to complete in

1 1998 and not go over into 1999. Although I understand
2 from your most recent memo, it's slated for going over
3 into '99.

4 I'd very much like to discuss that on the
5 agenda, but perhaps because it does involve questions
6 of budgeting, we should do that at the next meeting.

7 Is that --

8 CHAIRPERSON BERRY: Well, I do know -- I
9 don't remember exactly, but I do know the Schools and
10 Religion Project is part of what's in the budget. You
11 know, it will be supported in the budget, if that's
12 your question.

13 If you mean can the Commission then figure
14 out whether it wants, within that budget authority, to
15 do the whole project within one year or two years or
16 not -- is that what you mean?

17 COMMISSIONER GEORGE: Yes. I think it might
18 -- I mean, my understanding was that we were going to
19 try very hard to fulfill it -- to complete it in 1999,
20 making a truly major undertaking on a one-year basis
21 for the Commission. I'm concerned that in view of
22 budgeting considerations now, it's felt that we need to
23 push that over to 1999 and make it a 1998-1999 project.

24 I'd like to avoid that, if possible, but I
25 don't know. I think to resolve it, we'd probably have

1 to get into specifics of our budgeting.

2 CHAIRPERSON BERRY: Well, let me just say to
3 you that when the budget is submitted to the Congress
4 and the Commission looks at what is submitted, between
5 that time and when any budget is approved or
6 appropriation is approved by the Congress, we can say
7 here in the meeting that these particular projects need
8 to be adjusted one way or the other before final
9 approval, if that's what your question is.

10 In other words, are you saying are we sort of
11 locked into something or should we change it now?

12 COMMISSIONER GEORGE: Yes. I just want to not
13 preclude what I understood was going to be our goal of
14 completing the Schools and Religion Project in '98.

15 COMMISSIONER GEORGE: Okay. Well, we could
16 even decide to make the Schools and Religion Project
17 the only project we did in '98, if we wanted to.

18 COMMISSIONER GEORGE: Yes.

19 CHAIRPERSON BERRY: In other words, we'd
20 still have that flexibility to do that.

21 COMMISSIONER GEORGE: Okay.

22 CHAIRPERSON BERRY: Because the Commission
23 budget, when we actually get it, is one big budget
24 item. In other words, it's not separated into projects
25 or anything else. It's just a dollar amount.

1 And so if the Commission decides to
2 reconfigure it or to do some projects rather than
3 others, then there's no reason why the Commission can't
4 do that, as long as there's full disclosure.

5 COMMISSIONER GEORGE: Okay.

6 CHAIRPERSON BERRY: So it's not as if we have
7 some line item that says we're going to do this as
8 opposed to that.

9 COMMISSIONER GEORGE: Schools and Religions.
10 Yes.

11 CHAIRPERSON BERRY: We get a big lump sum of
12 money. That's what we get.

13 COMMISSIONER GEORGE: Right.

14 CHAIRPERSON BERRY: So that my Vice Chair --
15 what did you just say Vice Chair? Go ahead and say it
16 to Robbie.

17 He wants to comment, Robbie.

18 VICE CHAIRPERSON REYNOSO: It was not I who
19 wrote this, but I will read it. It's not a budget
20 problem. It continues into 1999 for writing,
21 underlined, report. We still intend to do all five
22 hearings in 1998. That's what the note says.

23 CHAIRPERSON BERRY: In other words, what you
24 read should have been -- it was the General Counsel --
25 meant that we do plan -- whatever you read on the

1 project --

2 COMMISSIONER GEORGE: Oh, to complete the
3 hearings in '98?

4 CHAIRPERSON BERRY: Right. But the question
5 is will the writing be all finished. That's what the
6 question is.

7 COMMISSIONER GEORGE: I see. Okay.

8 CHAIRPERSON BERRY: So, really, does that
9 answer your question then?

10 COMMISSIONER GEORGE: I think it does. I
11 think we're not precluded from actually even getting it
12 written in 1998. Of course, that might be. But
13 there's a possibility that we'll have to go over to
14 1999 to get the writing of the report done.

15 CHAIRPERSON BERRY: Right.

16 COMMISSIONER GEORGE: Okay. I do understand.

17 CHAIRPERSON BERRY: All right.

18 COMMISSIONER GEORGE: And we will have an
19 opportunity. We're obviously not at the point where
20 anything is locked in stone. We'll have an opportunity
21 to discuss this in the future.

22 CHAIRPERSON BERRY: Right. Again. Yes.

23 We'll discuss it again and again and again.

24 Okay. Anybody have any other questions about
25 the Staff Report?

1 Yes, Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: In the way that we
3 do our accounting, do we track the cost of projects?

4 CHAIRPERSON BERRY: Do we track the cost of -
5 - anybody know the answer to that?

6 MS. HALL: Yes.

7 CHAIRPERSON BERRY: Yes, what?

8 MS. HALL: Yes, we do.

9 CHAIRPERSON BERRY: Yes, we do.

10 COMMISSIONER REDENBAUGH: How do we do?

11 CHAIRPERSON BERRY: How do we do it?

12 COMMISSIONER REDENBAUGH: No, no, not how do
13 we do it. How have we done in the actual versus
14 budget?

15 CHAIRPERSON BERRY: How have we done in the
16 actual versus budget? Does anybody know the answer to
17 that?

18 In other words, has the cost been what we
19 thought it was going to be? Is that your question?

20 COMMISSIONER REDENBAUGH: Uh-huh.

21 CHAIRPERSON BERRY: Okay. Does anyone know
22 the answer?

23 MS. HALL: That's something we would have to
24 review in the budget office and we could get back to
25 you on it. But they do track it. We have specific

1 codes for projects and the staff reports the amount of
2 time spent on projects.

3 COMMISSIONER REDENBAUGH: So there's a
4 project costing tracking system that's used?

5 MS. HALL: Yes.

6 COMMISSIONER REDENBAUGH: I asked, and I've
7 asked it such a general way that it may not be useful,
8 but what's behind my question is as we prepare to
9 support with differing levels of enthusiasm our budget
10 before Congress, one of the things that is going to be
11 important to me is to have assurance that we will, in
12 fact, be able to complete the projects that we've said
13 we're going to do in that year and that we are going to
14 be, within some reasonable tolerance, close to the
15 budget amounts and to be assured that we haven't fallen
16 into taking on more projects than we could possibly
17 complete either with the time available or with the
18 money available.

19 CHAIRPERSON BERRY: All right. So would you
20 like to be told how well we've done in some period of
21 time, tracking these?

22 COMMISSIONER REDENBAUGH: Yes. I'm not sure
23 if I want to ask that because I may be asking for
24 something that's very burdensome and difficult to
25 produce, and I --

1 CHAIRPERSON BERRY: In other words, you would
2 like some assurances or some indication that you should
3 not feel assured?

4 COMMISSIONER REDENBAUGH: The double negative
5 got me on that one.

6 CHAIRPERSON BERRY: In other words, you want
7 to know whether you should be comfortable with the idea
8 that things generally come in where they're tracked in
9 terms of how much money and so on, and time, or not?

10 COMMISSIONER REDENBAUGH: Yes. And one of
11 the things that I'm looking for is something that I see
12 in other organizations where there's some person who's
13 actually promising the budget, who says -- here, look.
14 Here's what we're planning for '98 and '99. And based
15 on what we've done in the past and my team and my
16 skill, I'm promising that we'll be within 10 percent of
17 that.

18 CHAIRPERSON BERRY: Well, let me ask this.
19 Does anybody know in terms of the projects that we'll
20 be considering today and the ones that are on board for
21 '98 which are listed there, has the staff taken into
22 account when putting together these projects the
23 budgetary implications and the likelihood that we will
24 finish what we're already doing and what we plan to do
25 or not? I mean, was it that kind of a consideration?

1 MS. HALL: Yes. It was supposed to have been.

2 CHAIRPERSON BERRY: Yes. The answer is, yes,
3 it was supposed to have been.

4 COMMISSIONER REDENBAUGH: Okay. My sense has
5 been that in the past, we have way over -- we've take
6 on way more projects than we have been able to
7 complete. And I would like to find us not in that
8 condition in the future, even if we need to take on
9 less.

10 CHAIRPERSON BERRY: When we had that big
11 discussion on the budget, Commissioner Redenbaugh, with
12 numbers flying everywhere all over the place, we did
13 that. And I think that as soon as we are able to
14 discuss our passback openly, we should have another
15 budget discussion.

16 COMMISSIONER REDENBAUGH: And have another
17 look at that.

18 CHAIRPERSON BERRY: And have another look.
19 Which is what Commissioner George is also suggesting.

20 So it could be as early as next time because
21 I think the President sends it up there sometime
22 between now and the next time we meet. And maybe
23 that's something we ought to do next time.

24 Okay?

25 COMMISSIONER REDENBAUGH: Yes. Thank you.

1 CHAIRPERSON BERRY: Yes, Commissioner Horner?

2 COMMISSIONER HORNER: Madam Chair, I just
3 want to reinforce what Russell says, because we have
4 gotten projects for our consideration. Now, we've had
5 them many times proposed in the past. We've discussed
6 them many times. Last time we had a huge discussion
7 about the necessity for having amounts attached.

8 And in this, with maybe 18 projects here, we
9 have only one with a figure attached to it. And
10 therefore, once again, we can't really assess how much
11 attention to put in on any given project. And once
12 again, I feel unable to make a sensible judgment.

13 And one other comment I would make is that
14 one of the points that OPM raised in its assessment of
15 the agency was that staff morale was adversely affected
16 by reported budget shortfalls. And it seems to me
17 there are two ways to approach that. You can get more
18 money or you can ask the staff to do only as much work
19 as is supported by the budget we have.

20 And in order for us to be responsible with
21 respect to managing the staff, we need to ask the staff
22 to do projects only to the extent our budget will
23 support it.

24 So, I really would reinforce Russell's plea
25 for more budget information as we go.

1 MS. HALL: Most of these projects --

2 COMMISSIONER GEORGE: I'm not sure who's
3 speaking, but please, speak up.

4 CHAIRPERSON BERRY: Most of the projects, I'm
5 told, that we have in here were previously discussed by
6 the Commissioners, the ones that were previously
7 discussed. And we had the dollar amount then, but
8 somebody could go get them now, the ones that we
9 discussed before.

10 COMMISSIONER HORNER: Sure. Why are we
11 discussing them again?

12 CHAIRPERSON BERRY: Because we didn't make
13 any decision. In other words, there are some we
14 discussed and we didn't really decide whether we wanted
15 to do them. Others we discussed, and the question is
16 do we still want to do them. And therefore, should the
17 staff move from the project concept.

18 Is that what these are called or what are
19 these?

20 Yes. To the full blown proposal stage and
21 put them in the budget for next year. So we're being
22 asked how do we feel about those now.

23 COMMISSIONER HORNER: Are we going to do this
24 four or five times a year or are we going to do it and
25 consider it done at some point?

1 CHAIRPERSON BERRY: We're going to do it and
2 consider it done but there is a sense -- that's what
3 the process requires. But my sense is, from what
4 Commissioners say, they like to revisit it over and
5 over again.

6 In the past, what the Commission would do --
7 the past, way past. What the Commission would do is do
8 it once. And then from then on, that would be the end
9 of that.

10 My sense from this Commission in the last
11 year and a half or so or two, is that people like to
12 revisit these matters over and over again from time to
13 time, as the process goes forward, as their thoughts
14 change. And sometimes, to be blunt about it, some
15 people forget, including myself. But the main thing is
16 that in light of whatever realities occur as we
17 proceed, people seem to want to revisit them again.

18 Now, there's something to be said for leaving
19 them once we decide, and I guess that makes sense. But
20 it also makes sense if things change, for people, if
21 they should like it, to discuss it again.

22 COMMISSIONER HORNER: But if we are going to
23 revisit it at a given meeting, then we need to assemble
24 all the information we used at our most informed
25 meeting. With all due respect, I think we need the

1 budget information once again in order to have a useful
2 discussion. And if whatever Commissioner asked for a
3 revisiting maybe could say -- we could postpone the
4 revisiting until the subsequent meeting when we had the
5 budget.

6 I don't understand what caused the staff to -
7 - since we had discussed this two meetings ago, to
8 bring it forward again. And I don't object to
9 discussing it again, but I want to have all the
10 information that we had when we discussed it initially.

11 CHAIRPERSON BERRY: Oh, it's because every
12 January, the Commission, according to our program, the
13 procedure that in the AI's --

14 COMMISSIONER HORNER: I see.

15 CHAIRPERSON BERRY: -- is supposed to look
16 again --

17 COMMISSIONER HORNER: I see.

18 CHAIRPERSON BERRY: --- at its priorities and
19 to reevaluate whether it still likes what it's doing or
20 wants to do something else or wants to propose
21 something else. And that's the only reason why we're
22 doing this. That's all.

23 And it's whether we still like the concepts.
24 Do we still think these things are important enough to
25 even be thinking about them? I mean, that really is

1 what the issue is.

2 COMMISSIONER HORNER: Could we have the
3 budget officer of the Commission just give us the
4 summary figures?

5 CHAIRPERSON BERRY: Sure. I'll have them do
6 that so that when we get to it, we can write down the
7 figures that we had.

8 And the other thing I have said to staff is
9 they should never assume that I at least have anything
10 that I had before. In other words, to tell me that six
11 months ago I discussed this and I had a copy of it --
12 well, I'm not sure. So if we're going to discuss it,
13 give it to me again. I may or may not have it.

14 COMMISSIONER GEORGE: Let me just say that I
15 think I might have opened a can of worms. My
16 understanding is that we have a firm commitment to do
17 the Schools and Religion Project?

18 CHAIRPERSON BERRY: Yes.

19 COMMISSIONER GEORGE: In '98. And that
20 that's not up for grabs.

21 CHAIRPERSON BERRY: Yes.

22 COMMISSIONER GEORGE: I do understand that
23 sometimes budgetary considerations can affect things
24 and I guess I just want to know as soon as possible if
25 in any way the budgetary considerations will affect the

1 commitment I think we have firmly made to doing the
2 Schools and Religion Project in '98. That's the only
3 reason I was raising the issue.

4 CHAIRPERSON BERRY: There's nothing I know,
5 Commissioner George, about the budget as it currently
6 stands that would interfere with the Commission doing
7 the Schools and Religion Project. I mean, I have made
8 clear to everybody that Commissioners see this as a
9 major priority. And for some Commissioners, it is like
10 the major, major priority and that we are supposed to
11 get this done.

12 So, no, I don't see any problem with that.

13 COMMISSIONER GEORGE: Good. That's good.

14 CHAIRPERSON BERRY: Now, other issues, we may
15 discuss, but not that one.

16 COMMISSIONER GEORGE: Thank you. That's
17 great.

18 CHAIRPERSON BERRY: I must say to you, too,
19 though, since you raised it again about the budget.
20 The OMB staff was very, very, very -- did you guys hear
21 what I said about Schools and Religion? It's firm.

22 The OMB staff was very, very excited about
23 the Measuring Discrimination Project. And the reason
24 why they were excited is because the program review --
25 whatever that thing is called, the one that Kim and --

1 MS. HALL: GPRA.

2 CHAIRPERSON BERRY: GPRA, that all the
3 agencies are doing, requires them to measure their
4 performance. And for civil rights agencies, there's no
5 way they can measure their performance if they don't
6 have any idea about discrimination and some way that
7 they can describe what may be out there. And they
8 thought that since we are a bipartisan Commission,
9 evenly divided, that we may be in the best position to
10 contract with people to try to get something done that
11 everybody else can use, as well as the public.

12 And my own idea about that is that if we were
13 to do this project, that Commissioners who have
14 expressed an interest in it and are knowledgeable about
15 it, ought to, unlike what we've done in the past --
16 since we should make a new departure here to try to
17 solve some of our problems -- ought to work with the
18 staff to devise what kind of project it would be, what
19 would be asked, what the direction would be.

20 And my suggestion would be that Commissioner
21 Redenbaugh and Commissioner Horner, as well as any
22 other Commissioners who are interested, would be the
23 Commissioners who would undertake to do that with the
24 staff.

25 And I say that because Commissioner Horner

1 expressed her interest in this, in the Title 6 project.
2 And I also know that for some Commissioners who are
3 knowledgeable about the way organizations operate,
4 figuring out what the staff is doing is of primary
5 importance.

6 So my view is if we decide to do it -- and
7 they were very excited about it -- that it would be the
8 kind of thing that Commissioners, especially those who
9 I have referred, would work the staff to figure out how
10 to do it, what to ask, and all the rest of it.

11 Anyway, did you hear that, Commissioner
12 George?

13 COMMISSIONER GEORGE: I did. I have a
14 question on the budgeting of that.

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER GEORGE: My recollection -- I
17 could be wrong. My recollection is that we were going
18 to propose a kind of special budgeting specifically for
19 that.

20 CHAIRPERSON BERRY: We were going to propose
21 that if the -- after we put in all of our projects,
22 that if the OMB and the White house saw fit and thought
23 this was an especially good idea, they would give
24 special attention to this. That is sort of the way we
25 somehow -- I've forgotten the exact language.

1 There's no reasons why, no matter what they
2 approve, the Commission has to do anything except what
3 the Commission wants to do. Let me make that clear.
4 That has been made clear over and over again because
5 we're an independent Commission. But I was just
6 pointing out to you that they were excited about that
7 one.

8 COMMISSIONER GEORGE: But we didn't request
9 that there be some special appropriation for this
10 project?

11 CHAIRPERSON BERRY: No. We said something
12 like special attention or some mushy mealy-mouthed
13 expression like that to sort of signal that sort of
14 thing.

15 COMMISSIONER GEORGE: But I guess the formal
16 request is where the lump sum of money -- we noted to
17 them that this was a possible project of some
18 importance?

19 CHAIRPERSON BERRY: Right. Possibly.

20 COMMISSIONER GEORGE: Okay. I get it.

21 CHAIRPERSON BERRY: Okay. All right.

22 Now, the OPM Report.

23 You were sent a staff report, which was
24 actually prepared before Mary Mathews left, and you
25 were sent a draft transmittal letter. Since that time,

1 on Monday of this week, Commissioner Redenbaugh --
2 other Commissioners told me that they had comments but
3 Commissioner Redenbaugh gave me, in writing, some
4 comments on the report and on the letter of
5 transmittal.

6 Do you need other copies or does everyone
7 have their copy of the staff report and the letter of
8 transmittal? I just want to make sure you brought it
9 with you.

10 (Pause.)

11 Okay. I then took the letter that
12 Commissioner Redenbaugh gave me and asked the staff to
13 look at the report and see if there were places where
14 they would change it in response to his comments,
15 either using the language he proposed or doing
16 something else to it to respond to whatever it was he
17 proposed.

18 And I looked at the transmittal letter to see
19 if there were places in it that could be changed in
20 response to his comments. I am doing this in this way,
21 for obvious reasons. He submitted his comments in
22 writing and I think it will be easier from his
23 perspective to do it this way.

24 COMMISSIONER GEORGE: Mary, I'm losing you.
25 I don't know if Leon can hear.

1 COMMISSIONER HIGGINBOTHAM: Vaguely.

2 CHAIRPERSON BERRY: I took the comments that
3 Commissioner Redenbaugh gave me in writing and asked
4 the staff to look at the staff report to see if there
5 were places in which they would change it in response
6 to his comments, or if they thought that something
7 could be clarified in light of his comments or needed
8 clarifying, that would be helpful in doing this report..

9 I also looked at the transmittal letter to
10 see if there were places in it that I would change in
11 response to his comments.

12 I did this in this way as, in part, a
13 courtesy to him, in that it's easier to do it this way
14 for him and it is in writing, and it was done that way.
15 So that's why I did it that way.

16 And others may agree or disagree with the
17 comments he made or feel that there shouldn't be
18 anything in response and so on, but I wanted you to
19 know, one, that I had done it; and that this special
20 treatment, if you might want to call it that, of his
21 comments, does not mean that other people's comments
22 are not just as valid and valuable and to be taken into
23 account or that anybody has to agree with them. I
24 happen to think that they have great merit.

25 Some of his comments were matters that

1 required the answers to questions and they were not
2 matters, in the staff view, that needed to go in the
3 staff report, and my view, that needed to go in the
4 transmittal, because they were matters that the Office
5 of Personnel Management already knew the answers to.
6 They were things that the Commissioners might not know,
7 like what is a crediting plan. I'll just use that as
8 an example. Or what is some kind of performance
9 management something or other, or matters which they
10 would know. So we wouldn't need to like say to them,
11 here's what this animal is.

12 And so that, I didn't -- they didn't put in.

13 Now, I can tell you, if you have your letter
14 before you, that -- and you can track this as you go
15 along.

16 Can you hear me, guys? Are you still with
17 me?

18 COMMISSIONER GEORGE: Yes. I don't know if -
19 - Leon, can you?

20 CHAIRPERSON BERRY: I'm yelling into the
21 thing, so it should be better.

22 COMMISSIONER GEORGE: And make sure, Mary,
23 that Leon can hear.

24 CHAIRPERSON BERRY: Leon, can you hear me?

25 COMMISSIONER HIGGINBOTHAM: I'm having a

1 little trouble but maybe it's just my hearing.

2 CHAIRPERSON BERRY: Leon, and Robbie?

3 COMMISSIONER HIGGINBOTHAM: Yes. I can hear
4 you.

5 CHAIRPERSON BERRY: If you take out your
6 letter --

7 COMMISSIONER HORNER: This is your --

8 CHAIRPERSON BERRY: The letter to Ms. Okin.

9 COMMISSIONER HORNER: The January 6th, the
10 draft?

11 CHAIRPERSON BERRY: Right. If you take that
12 out, --

13 COMMISSIONER HIGGINBOTHAM: I have it in
14 front of me.

15 CHAIRPERSON BERRY: And we can give to -- if
16 Commissioners would track along here, they can tell
17 what changes I've made. There aren't that many in the
18 letter, but at least you'll know what I'm doing here.

19 Start at the beginning and look at what you
20 have.

21 Do you have a copy of what I'm about to read?
22 And you can give it to the folks who are here. I'll
23 just read it.

24 COMMISSIONER HORNER: This is a new -- this
25 is a draft you've done?

1 CHAIRPERSON BERRY: It's the old letter with
2 underlined, the changes that I've made, in response to
3 Russell.

4 COMMISSIONER HORNER: Madam Chair, if we
5 could have had this even last night, it would have been
6 vastly facilitative of -- I just want to say that for
7 the record.

8 CHAIRPERSON BERRY: Well, I didn't give it to
9 you last night because I only got it Monday, worked on
10 it, and I know from experience that for Commissioners
11 to receive something on the day before the meeting, and
12 they have it -- you know, here, we've got this right
13 before the meeting. And I planned to read it to you.
14 There are Commissioners who are not even here.

15 But you don't have to look at the way it's
16 done there. You can do it however you want. I'm going
17 to read to you what's here. It's only three things, so
18 it shouldn't be that hard.

19 Instead of beginning the letter the way it's
20 begun, it would simply say: "Thank you for your letter
21 of November 25th, 1996, transmitting the report of the
22 evaluation conducted by your staff of the personnel
23 operations at the Commission. We have reviewed the
24 report and welcome the information and suggestions
25 provided." That's all it would say. Just a new

1 introduction thanking them.

2 Did you hear that Leon and Robbie?

3 COMMISSIONER HIGGINBOTHAM: Yes, I did.

4 CHAIRPERSON BERRY: And the rest of the page
5 stays exactly as it is, and you go to the second page.

6 Right after the language which says, "the
7 Commission will discuss the OPM report with whomever is
8 selected as the new Staff Director," -- do you see
9 that?

10 COMMISSIONER GEORGE: Yes.

11 CHAIRPERSON BERRY: At the end of that
12 sentence, here's a new line in the beginning of the
13 next paragraph: "In view of budget realities, the
14 Commission will continue to adjust priorities in order
15 to enable the Staff Director to keep assignments at a
16 manageable level." That sentence goes in.

17 And then it goes on with, "Because of our
18 concern with the issues raised."

19 At the end of that paragraph, there's only
20 one other change here Right after it says that the
21 representatives of the Partnership Council will submit
22 a monthly report for inclusion in the Staff Director's
23 report, it says, "the monthly report also will include
24 all actions recommended by the Council." That's the
25 Partnership Council.

1 "Further, the Staff Director will be
2 instructed to provide staff with the minutes of all
3 Commission meetings." So those two things would be put
4 in.

5 All of these were done in view of Russell's
6 suggestions that one of the problems is adjusting
7 budget priorities in light of reality; and two, that
8 the staff needs to have reports on what's going on and
9 the Commission needs to know what the Partnership
10 Council is doing. And that we would be involved with
11 the matters.

12 Now are there people who have comments before
13 I go to the report itself? Other comments on the -- or
14 more comments on the letter?

15 COMMISSIONER HORNER: Yes, Madam Chair. I
16 would like to have five minutes or so to read the
17 letter with these changes; to go to my notes that I've
18 made to myself on the draft letter.

19 CHAIRPERSON BERRY: Okay. Sure.

20 COMMISSIONER HORNER: And make an assessment
21 whether it's now in a condition that I would wish to
22 support. But I would like to say also that I presume
23 you are inviting the Commission to have you transmit
24 the report for the Commissioners? In other words, the
25 draft letter would be something the Commissioners would

1 all agree to, or a majority of the Commissioners would
2 agree to, and that the report would be transmitted by
3 the Commissioners. Is that your intention?

4 CHAIRPERSON BERRY: Well, the letter was
5 written to me, but I see no reason why I should answer
6 it, since first of all, I don't run the operations.
7 And I think it's a matter that all the Commissioners
8 should be involved in and that it should be a
9 Commission decision what we respond. So the intention
10 is to try to find some way to get the Commissioners to
11 agree.

12 COMMISSIONER HORNER: And that would mean
13 that a majority of the Commissioners or all the
14 Commissioners? A majority of the Commissioners?

15 CHAIRPERSON BERRY: It would mean that a
16 majority of the Commissioners agreed that this was the
17 case.

18 COMMISSIONER HORNER: Agreed to sign off on
19 the cover letter and the contents of the report?

20 CHAIRPERSON BERRY: Yes.

21 COMMISSIONER HORNER: In that case, I have
22 nine questions relating to the report.

23 CHAIRPERSON BERRY: Sure.

24 CHAIRPERSON BERRY: Which I need to have
25 answered. And then I would need to see redrafted

1 language before I'd be prepared to vote yes.

2 In lieu of that, I can vote no for the time
3 being. And if there's still a majority, of course, it
4 can be transmitted.

5 CHAIRPERSON BERRY: Well, my intention is to
6 have the Commissioners ask any questions they want to
7 ask, including the questions that Commissioner
8 Redenbaugh asked, which I am going to read the answers
9 to here, so that you'll have the answers.

10 COMMISSIONER HORNER: May I have five minutes
11 to read the draft letter?

12 CHAIRPERSON BERRY: Sure. You may have as
13 much time as you need.

14 We will recess for five minutes.

15 (Whereupon, a recess was taken.)

16 CHAIRPERSON BERRY: We will reconvene the
17 meeting.

18 Would you like to discuss the letter or would
19 you like to go on to discuss the report? What would
20 you like to do?

21 COMMISSIONER HORNER: Madam Chair, I would
22 like to discuss the letter because I have several
23 changes I would like to recommend to it.

24 CHAIRPERSON BERRY: Okay.

25 COMMISSIONER HORNER: Shall I --

1 CHAIRPERSON BERRY: Go right ahead.

2 COMMISSIONER HORNER: -- describe them?

3 CHAIRPERSON BERRY: Sure.

4 COMMISSIONER HORNER: One of the strands
5 running throughout the OPM report is the question of
6 merit -- of procedures that support the merit system in
7 hiring, promotion and cash awards.

8 I read this to be a concern of OPM's that we
9 are addressing now. And therefore, I would suggest that
10 in paragraph 2 -- and again, I'm trying to edit on the
11 fly here, so forgive me if I may not find the perfect
12 place to insert these recommendations. I would propose
13 - I'll read it quickly and then I'll read it more
14 slowly if people want to write it down.

15 CHAIRPERSON BERRY: Yes. Take your time.

16 COMMISSIONER HORNER: Paragraph 2, line 4.
17 Excuse me. Line 5, after "allegations unfounded." I
18 would propose to insert, "we take seriously the issues
19 that OPM raises with respect to hiring, promotion and
20 awards based on merit, and are correcting deficiencies
21 related to that issue."

22 So, I'll read it again. After "allegations":
23 "It is reassuring to know that you found such
24 allegations unfounded." I would insert: "We take
25 seriously the issues that OPM has raised with respect

1 to hiring, promotion and awards based on merit, and are
2 correcting deficiencies related to that issue."

3 In the final paragraph of page 1, the first
4 line: "We heard, as your report implied, that employee
5 morale has been affected negatively for over a decade
6 by the perpetual uncertainty about the Commission's
7 budget and authorization." I would propose that we
8 omit that sentence.

9 Every agency I've ever been associated with
10 has suffered low morale based on uncertainty relating
11 to authorization and budget, and this agency has had a
12 bit more than many, but to me, that looks like -- oh, a
13 defensive statement I don't think we need to make.

14 I would cross out that sentence and the word
15 "however," at the end of the second line, and just
16 begin with the next line, "The greatest sentiment
17 stressed by all the parties was the need to improve
18 communications."

19 And my final recommendation, although if I
20 may be forgiven just a grammatical suggestion, on page
21 2, paragraph 2, "the Commission will discuss the OPM
22 report with whoever is selected." Whoever is the
23 subject of the verb "is," and the whole clause is the
24 object of the preposition "with."

25 CHAIRPERSON BERRY: You're quite right.

1 COMMISSIONER GEORGE: Once an English
2 teacher, always an English teacher.

3 COMMISSIONER HORNER: Always. And
4 insufferably so. I know.

5 In the final paragraph, seems to me the final
6 paragraph does not speak to an outstanding issue unless
7 it's been satisfied, not to my knowledge. And that
8 outstanding issue is Carol Okin's request for
9 documents. And I believe the request for documents is
10 related to the issue raised in the final paragraph, but
11 I'm not sure.

12 I do know that Carol Okin has an outstanding
13 request for documents and I think we're defending the
14 Commissioners. So what I would like to know is have we
15 sent the documents? And if not, is there a reason why
16 not? And if not, can we?

17 The paragraph sounds defensive to me.

18 CHAIRPERSON BERRY: Do we know which
19 documents? Let's find the document request. It's
20 probably somewhere. Let's find it here somewhere.

21 Where is my copy of the report?

22 COMMISSIONER HORNER: I've got the report.

23 CHAIRPERSON BERRY: I just want to see what
24 the documents request so we can specifically ask the
25 staff.

1 COMMISSIONER HORNER: I'll find it here.

2 CHAIRPERSON BERRY: We're looking at the
3 report for the documents request, Commissioner George
4 and Commissioner Higginbotham.

5 (Pause.)

6 COMMISSIONER HORNER: I think there's a
7 letter in the appendix.

8 CHAIRPERSON BERRY: We'll find it. We have
9 time.

10 Oh, here's her letter.

11 COMMISSIONER HORNER: Yes. It's a letter to
12 Mary Mathews dated October 18th, a letter to Mary
13 Mathews from Carol Okin, Associate Director, Office of
14 Merit Systems Oversight and Effectiveness.

15 It asks specifically on page 2 of that letter
16 that the Commission address the basis for the agency's
17 determination that there was no conflict of interest in
18 the contract for Ms. Roth's services; the nature of her
19 duties; and evidence that the contract is in compliance
20 with certain procedures; and any documents or
21 correspondence relating to this contract.

22 I don't think the Commissioners should
23 dismiss that request without response. And I'm afraid
24 that final paragraph does that. It says we met and we
25 thought it was okay, but when we did meet in Executive

1 Session, I'm not aware that we had an extensive
2 assessment of the propriety of the contract. We had a
3 simple explanation to which apparently we didn't
4 object.

5 So I'm reluctant to put the Commission on
6 record in support of that action without a review of
7 the documents or at least an agreement to provide them
8 to OPM for its review.

9 CHAIRPERSON BERRY: Well, I think that what
10 we should do is -- and I'll ask the staff in a minute -
11 - what is in the letter is all we as Commissioners
12 know. That's what's in the letter right now.

13 All we know is that we had an Executive
14 Session and we discussed the general matter of the law
15 firm. And the statement of what we as Commissioners
16 did, is correct.

17 The question as to what the staff did or the
18 Staff Director, or what the contract said and all that,
19 you are correct. It's not addressed in the letter.
20 You're right about that.

21 So what we ought to do is to find out the
22 answer and then add to the letter, if need be, or to
23 the report and the letter, that documents in response
24 to your request on page 2 of October 19th are either
25 attached or in the record or in the report, or we don't

1 have them, or something. Or it's our understanding
2 that they don't --

3 COMMISSIONER HORNER: Since I know you want
4 to vote on this today, perhaps we could add a sentence
5 saying the Commission has not addressed Ms. Okin's
6 request and has instructed the staff to provide the
7 documents requested. The Commission has not addressed
8 OPM's request for documents.

9 CHAIRPERSON BERRY: In the October letter?

10 COMMISSIONER HORNER: Yes. And has
11 instructed the staff to provide those documents.

12 Now, later, if the staff comes back to us and
13 says it's illegal to do this, then we can assess that.
14 But I think for now all we have to say is "and has
15 instructed the staff to provide those documents."

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER HORNER: And with those changes,
18 I would propose -- I would support the transmittal
19 letter.

20 CHAIRPERSON BERRY: I would ask your
21 indulgence on only one word. I think the suggestions
22 are good ones and appreciate them.

23 In the first suggestion that you made when
24 you said we will take seriously the issues and so on
25 with respect to merit promotion or awards based on

1 merit --

2 COMMISSIONER GEORGE: Keep your voice up,
3 please?

4 CHAIRPERSON BERRY: -- and are correcting the²⁷
5 issues, would you mind if we said "and the agency is
6 correcting?"

7 COMMISSIONER HORNER: Yes. No, I would not
8 mind. Excuse me. "And the agency is correcting
9 deficiencies related to that issue," would be fine.

10 CHAIRPERSON BERRY: Would you mind?

11 COMMISSIONER HORNER: That's fine.

12 CHAIRPERSON BERRY: Okay.

13 Has everyone heard Commissioner Horner?

14 COMMISSIONER GEORGE: Yes.

15 COMMISSIONER HIGGINBOTHAM: Yes.

16 CHAIRPERSON BERRY: I think those are fine.

17 I mean, I don't have any problem with them.

18 COMMISSIONER HIGGINBOTHAM: I have one
19 concern.

20 CHAIRPERSON BERRY: I'll recognize you and
21 then I'll recognize Commissioner Redenbaugh.

22 Go ahead.

23 COMMISSIONER HIGGINBOTHAM: On the first page
24 before the deletion, I would not want it deleted for
25 this reason. When allegations are made, there is the

1 tendency to suggest that this problem is a very recent
2 one, one of this Administration, and that it's not
3 known in the history of the agency before.

4 The fact that you had problems before is no
5 justification for not solving them now, but I just
6 think in terms of a sense of accuracy, I like that
7 sentence because it puts it in perspective.

8 We want to deal with morale in an appropriate
9 way, but this is not a recent phenomenon. That's the
10 reason why I would like to leave that sentence in.

11 COMMISSIONER HORNER: Madam Chair, I agree
12 with what Leon is saying and I'll tell you why it is I
13 asked for the removal of that sentence and suggest that
14 we might, instead of removing it, extend it and solve
15 the problem that way.

16 Not only do I think all agencies have a
17 historic uncertainty in our system of government that
18 makes it a little whiny to point this out, I think that
19 the morale problem that arises in an agency, arises not
20 because the Congress or the President don't provide
21 enough funding, but because agencies persist in
22 attempting to do that for which they are not funded and
23 feel terrible because they can't get it all done.

24 And I think the problem with this agency has
25 been not so much one of funding uncertainty as of

1 unwillingness to adapt to the funding levels that
2 Congress has provided.

3 Nonetheless, I recognize that's an arguable
4 proposition. And I would propose as a compromise that
5 we say that employee morale has been affected
6 negatively for -- I would not say for over a decade,
7 since I'm not sure exactly when this negative effect
8 went into place. It might have been during the Carter
9 Administration. It might have been during the Reagan
10 Administration. It might have crept up and down over
11 that time. But I'm sure there are those here who have
12 a clear sense of when the problem began.

13 But I think that it is at least as arguable
14 that you could attribute the problem to the
15 Commission's failure to adapt. And I would suggest
16 that we say that employee morale has been affected
17 negatively for an extended period of time by the
18 uncertainty -- I would take out "perpetual," which I
19 think is too strong a word for what we're enduring.
20 "By the uncertainty about the Commission's budget and
21 authorization and by difficulties adapting to reduced
22 funding levels."

23 CHAIRPERSON BERRY: I don't have any problems
24 with that either.

25 COMMISSIONER LEE: Could you repeat that last

1 part?

2 COMMISSIONER HORNER: Sure. The whole
3 sentence would read: "We heard, as your report implied,
4 that employee morale has been affected negatively for
5 an extended period of time by the -- cross out
6 "perpetual" -- by the uncertainty about the
7 Commission's budget and authorization and by difficulty
8 in adapting successfully to reduced funding levels."

9 CHAIRPERSON BERRY: Okay.

10 Does that sound all right to you guys out
11 there in the field?

12 COMMISSIONER HIGGINBOTHAM: Well, actually, I
13 have no problem with the changes, except for "an
14 extended period of time." That brings in an ambiguity.
15 Are you talking about months or years?

16 CHAIRPERSON BERRY: Let's not say extended
17 period of time. Can we take that out then?

18 COMMISSIONER HIGGINBOTHAM: And the reason
19 why I like for over a decade, is it gives some
20 specificity to it. To say extended period of time,
21 someone may very well think you're talking about two
22 years or three years.

23 CHAIRPERSON BERRY: May I, for a point of
24 information, tell the Commissioners what the staff told
25 us on that regard, which is what this is about. And

1 what they're referring to is they usually talk about
2 when the Commission was downsized. That's what they
3 mean. They mean the year that all the folks got laid
4 off and the Commission went from whatever size it was
5 down to this size. That's what they mean usually when
6 they talk about that. All the people that they knew
7 left and that sort of downsizing thing.

8 COMMISSIONER HORNER: What year was that?

9 CHAIRPERSON BERRY: Somebody in the staff is
10 saying something.

11 When was it?

12 COMMISSIONER HORNER: '86?

13 CHAIRPERSON BERRY: '86.

14 COMMISSIONER HORNER: And the staff has still
15 not gotten over it and adapted? I mean, really. This
16 is --

17 CHAIRPERSON BERRY: No, no. I'm not saying
18 that we are negatively affected. What this is is what
19 we heard from them.

20 And so whether or not -- I mean, I don't care
21 how it's said. I don't even care if we drop the
22 sentence.

23 COMMISSIONER HORNER: Let's drop the sentence
24 and just start.

25 COMMISSIONER GEORGE: Madam Chairman?

1 CHAIRPERSON BERRY: Yes, Commissioner George?

2 COMMISSIONER GEORGE: We independents, I
3 think, don't really have a stake in this. It sounds to
4 me like it's between the Republicans and the Democrats.

5 CHAIRPERSON BERRY: It is. So I think they
6 should -- let them have at it.

7 Go ahead, guys. Wherever you end up is okay
8 with me.

9 COMMISSIONER GEORGE: Framing it one way
10 might make it sound like it's the Republicans and
11 another way, it might sound like it's the Democrats.
12 It might be a case for some desirable ambiguity here.

13 CHAIRPERSON BERRY: Yes. Because you could
14 argue that the Democrats controlled the Congress and
15 they didn't do anything about it except cut and slash.
16 So, I mean, a pox on everybody's houses unless they're
17 an independent.

18 COMMISSIONER HIGGINBOTHAM: Well, may I
19 respond?

20 CHAIRPERSON BERRY: Yes.

21 COMMISSIONER HIGGINBOTHAM: This case will
22 not make a cause celebre. I've given my thoughts as to
23 why I like "over a decade." If a majority prefers
24 "extended period of time," I will sleep well tonight
25 nevertheless.

1 CHAIRPERSON BERRY: Why don't we leave it in
2 and say an extended period. And then the Democrats can
3 argue that it was the Dems and the Republicans can
4 argue that it was the Republicans.

5 VICE CHAIRPERSON REYNOSO: I go along with
6 either, but I had liked "over a decade," just because
7 it goes beyond the current Congress, so that folk don't
8 think that it's just Gingrich and company that created
9 these problems.

10 COMMISSIONER HORNER: I don't object to
11 identifying the time period in which the low morale
12 commenced, if indeed that's the case. But then I would
13 require that we assess the quality of that judgment by
14 those who are experiencing low morale and get into long
15 stuff about what's the right course of action and what
16 do you need to do it. That's too much baggage for us
17 to take on here.

18 CHAIRPERSON BERRY: So what is your will? I
19 don't care one way or the other. And Robbie doesn't
20 care one way or the other.

21 I don't know.

22 COMMISSIONER HORNER: I don't care whether we
23 take the sentence out or leave it as an extended period
24 of time, but I would object --

25 CHAIRPERSON BERRY: Between the two,

1 Commissioner Higginbotham and Vice Chair, leaving it in
2 and saying "extended period of time" and taking it out
3 altogether, what is your wish?

4 VICE CHAIRPERSON REYNOSO: I'd rather leave
5 it in.

6 CHAIRPERSON BERRY: Leave it in, with
7 "extended period."

8 What about you, Commissioner Higginbotham?

9 COMMISSIONER HIGGINBOTHAM: I'd leave it in.

10 CHAIRPERSON BERRY: Okay. So we'll leave it
11 in with "extended period of time." The other
12 suggestions you've made are quite useful and wonderful.

13 Now, do others have suggestions on the
14 letter?

15 VICE CHAIRPERSON REYNOSO: Yes.

16 CHAIRPERSON BERRY: Yes, Commissioner
17 Redenbaugh.

18 COMMISSIONER REDENBAUGH: Yes. It goes to
19 the representation or the implicit representation that
20 we endorsed, because we had no objection to, the hiring
21 -- not the hiring, the engagement of I believe Deborah
22 Roth. That language is troubling to me. And I don't
23 even remember now what the language is.

24 CHAIRPERSON BERRY: It says in light of the
25 myriad of issues. Do you want me to read the whole

1 paragraph or just that sentence?

2 COMMISSIONER REDENBAUGH: Just that sentence.

3 CHAIRPERSON BERRY: "In light of the myriad
4 of issues, we expressed no objections when informed of
5 the incoming Staff Director's decision to obtain
6 expertise she believed not available at the
7 Commission."

8 So it deliberately does not say we approve,
9 because we didn't.

10 COMMISSIONER REDENBAUGH: No, it doesn't.
11 But I think it might imply that we had all the facts
12 and didn't object.

13 COMMISSIONER HORNER: Exactly.

14 COMMISSIONER REDENBAUGH: And I'm very
15 troubled by that interpretation. We did not have all
16 the facts and perhaps we should have insisted that we
17 have all the facts, but --

18 CHAIRPERSON BERRY: But we didn't.

19 COMMISSIONER REDENBAUGH: -- but we didn't.

20 CHAIRPERSON BERRY: Well, why don't we then
21 say that -- if I can find a piece of paper that I wrote
22 Commissioner Horner's. Your last addition was that we
23 would tell the staff to provide the documents; right?

24 COMMISSIONER HORNER: Yes. And I agree with
25 Commissioner Redenbaugh. I'm also uncomfortable. I

1 just felt I'd used up my psychological quotient of
2 complaint here.

3 CHAIRPERSON BERRY: How about if we added,
4 then, "we expressed no objections, based on the *
5 information we --

6 COMMISSIONER HORNER: We did not fully
7 assess?

8 CHAIRPERSON BERRY: The details or whatever.

9 COMMISSIONER HORNER: We didn't assess this.
10 We were kind of informed and offered no objections, but
11 we didn't think we were involved in a decision here.
12 We just thought we were getting information and we
13 didn't demand an inquiry.

14 CHAIRPERSON BERRY: How about, "we made no
15 detailed inquiry." Something like that. "But
16 expressed no objections." Is that the sense?

17 We didn't make any detailed inquiry.

18 COMMISSIONER HORNER: We didn't make any
19 inquiry.

20 CHAIRPERSON BERRY: Right. We were informed.
21 We made no inquiries.

22 COMMISSIONER REDENBAUGH: No objection is the
23 language that I object, or to which I object.

24 COMMISSIONER GEORGE: Somebody's talking?

25 CHAIRPERSON BERRY: Russell is saying he

1 objects to the language which said we made no
2 objections. But the record shows that we didn't make
3 any objections. We were informed. The decision had
4 been made. It was being carried out. And no one said,
5 well, gee, I don't think you should do that; tell us
6 more about it.

7 I didn't do that. Nobody did that. Because
8 we didn't really know it was that kind of an issue.

9 COMMISSIONER HORNER: Exactly.

10 COMMISSIONER REDENBAUGH: Right.

11 CHAIRPERSON BERRY: So it is factually
12 correct that we did not object. And the reason why we
13 didn't object is because of what I say here. That
14 there was this lawsuit and then there was nobody, and
15 then there were these grievances. And we were told
16 that one was filed against us, which it had been, and
17 that they had engaged this law firm.

18 COMMISSIONER HORNER: You know, it sort of
19 implies that because there was a lawsuit filed against
20 us, then we offered no objection. That we might have
21 otherwise looked more closely.

22 I don't even remember that there was a
23 lawsuit filed against us, and I doubt that entered into
24 our decisionmaking or non-decisionmaking.

25 CHAIRPERSON BERRY: Well, actually, it did.

1 Actually, it did, Commissioner Horner, because a
2 Commissioner asked whether these grievances were filed
3 against the Staff Director, so that she was simply
4 trying to defend herself, or whether they were against
5 the agency.

6 I don't mean us personally, but I mean
7 against the agency.

8 COMMISSIONER HORNER: Obviously, you've
9 reviewed this in the interim and none of us has.

10 I'm reluctant to imply a defense of the Staff
11 Director's decision in the absence of information as to
12 whether such a defense is warranted. And therefore, we
13 need to say less than we're saying here, I think.

14 COMMISSIONER ANDERSON: Well, Madam Chair?

15 CHAIRPERSON BERRY: Yes.

16 COMMISSIONER ANDERSON: I think it might be a
17 good thing to ask what we want to do on this issue
18 before we decide what we want to put in the letter.
19 Now, is the issue a done deal as far as we're concerned
20 and it requires no further action, or is there
21 something further we need to do? And if there's
22 something further we need to do, maybe that ought to be
23 the point of this paragraph.

24 CHAIRPERSON BERRY: Well, the point of it now
25 is that the Commission has not addressed the request

1 for documents and instructed the staff to provide the
2 documents. And we could even say we await further
3 advice from OPM regarding this matter.

4 How about that? So that if they tell us
5 something else after they review the documents, then we
6 can figure out what else it is we're supposed to do.

7 COMMISSIONER ANDERSON: I mean, I might say
8 that my impression of the Executive Session was a
9 preliminary review of the matter to make sure that from
10 the brief discussion we had, there were no large red
11 flags that were coming up that we needed to take a
12 second look at.

13 My impression was that that was not a
14 definitive kind of conclusive judgment by the
15 Commission that we undertook in that Executive Session.
16 But from what we learned at the time, there didn't seem
17 to be anything that merited much further investigation.

18 COMMISSIONER HORNER: How about we simply say
19 the Commission has not assessed this issue and has
20 asked the staff or instructed the staff to provide the
21 documents and throw the ball into OPM's court. Maybe
22 there's not an issue here. I don't think we need
23 either to defend the act nor to critique it. We can
24 just say we haven't assessed this issue. We're
25 providing you the documents you've requested. And

1 then, wait for OPM to come back to us and tell us if
2 there's still an issue.

3 CHAIRPERSON BERRY: Okay. How about then --
4 let's try this and see if it works. It may not work.

5 If we struck everything from "in light of the
6 myriad of issues," that next sentence. Strike that
7 sentence. Left the sentence: "Further, the Staff
8 Director informed us that this person found not worth
9 of pursuit." And then say what you just said,
10 Commissioner Horner. That we've instructed the staff
11 to provide the documents to OPM that were requested on
12 October whatever and we await further guidance from OPM
13 concerning this matter.

14 And that way, we won't be saying that the
15 Commission expressed anything one way or the other.

16 So, the way it would read now, if you did
17 that -- if we did that, is we'd strike "in light of the
18 myriad of issues, we expressed no objections when
19 informed of the incoming Staff Director's decision to
20 obtain expertise she believed not available at the
21 Commission." That would go out altogether.

22 We would leave in, because it's
23 informational, that the Staff Director informed us that
24 the IG said this. But then we would say that the
25 Commission has directed the staff to provide to OPM the

1 documents that were requested on October something
2 concerning this matter, and we await further guidance
3 after your further review, or something like that.

4 COMMISSIONER HORNER: Madam Chair, since none
5 of us -- or at least -- I shouldn't say that. Since I
6 haven't reviewed the transcript of the Executive
7 Session, can you assure me that the cause and effect
8 posited here is the cause and effect that occurred?

9 In other words, what's posited here is that
10 the matter came up -- the matter of the need for
11 outside legal services came up after the lawsuit filed
12 calling for the removal of the Staff Director. Now,
13 the implication is, came up pursuant to that, as a
14 result of that.

15 And then there was no Staff Director and
16 there were employee complaints and grievances, and one
17 against the Commissioners.

18 Now, were those the reasons why outside legal
19 service was requested, or was outside legal service
20 requested for reasons beyond those, as great as those,
21 but different from those, in addition to those?

22 CHAIRPERSON BERRY: I can provide you with
23 those assurances but I don't want you to act on my
24 providing you with assurances. I can assure you that
25 the discussion was about this matter, but I think that

1 it's not necessary to tell OPM that.

2 So, if you can assure yourself. And then
3 maybe what we could do is simply right after -- going
4 up further in the paragraph -- "the Commissioners
5 addressed the procurement in Executive Session" -- I
6 know that happened -- "when the services of the law
7 firm mentioned in your report were obtained."

8 COMMISSIONER HORNER: And then cross out
9 everything --

10 CHAIRPERSON BERRY: Cross out everything
11 else.

12 COMMISSIONER HORNER: Good.

13 CHAIRPERSON BERRY: Say that the staff has
14 been directed to provide OPM with the documents
15 requested on October --

16 COMMISSIONER HORNER: 18th, I think.

17 CHAIRPERSON BERRY: -- 1996 concerning this
18 matter and we await further guidance from OPM.

19 COMMISSIONER HORNER: That would entirely
20 satisfy me.

21 CHAIRPERSON BERRY: Did everyone hear what I
22 said?

23 MS. HALL: Would that keep the last reference
24 to the IG or not?

25 COMMISSIONER GEORGE: Please repeat that.

1 CHAIRPERSON BERRY: The query, would we keep
2 in the last line about the IG, because that is what the
3 Staff Director told us, or we would just defer any of
4 this until -- .

5 COMMISSIONER GEORGE: They get back to us.

6 CHAIRPERSON BERRY: Yes.

7 COMMISSIONER REDENBAUGH: I have a question
8 on that line also.

9 CHAIRPERSON BERRY: Commissioner Redenbaugh.

10 COMMISSIONER REDENBAUGH: We should, perhaps,
11 take it up separately.

12 CHAIRPERSON BERRY: Okay.

13 COMMISSIONER HORNER: I think we should take
14 that line out because it's just part of the shaggy dog
15 story here, and just go from the first sentence to the
16 final sentence, the final sentence we've added on.

17 CHAIRPERSON BERRY: Anybody out there in the
18 field have any comment on that?

19 The proposal is to leave out everything after
20 "were obtained," and then put in the new matter
21 concerning the instructions to provide the documents
22 and we'll await further guidance.

23 COMMISSIONER GEORGE: Does this mean that the
24 word "myriad" does not appear?

25 CHAIRPERSON BERRY: I love that word. It's

1 one of my favorite words, along with matutinal
2 ablutions.

3 COMMISSIONER GEORGE: I've got a great
4 grammatical question for Connie, if we're going to use
5 it.

6 COMMISSIONER HORNER: Oh, please.

7 (Laughter.)

8 You could go any way, Robbie, plural or
9 singular.

10 CHAIRPERSON BERRY: My two favorite words are
11 matutinal ablutions, which came out of some poem I read
12 when I was in the 6th grade.

13 Anyway -- Commissioner Redenbaugh?

14 COMMISSIONER REDENBAUGH: So we have deleted
15 --

16 CHAIRPERSON BERRY: Everything.

17 COMMISSIONER REDENBAUGH: I just want to be
18 careful here. We have deleted then the representation
19 that the IG of the Agriculture Department found nothing
20 to investigate?

21 CHAIRPERSON BERRY: Yes. We've deleted
22 everything after. So now the paragraph -- all that's
23 gone, if we do what we just said.

24 COMMISSIONER REDENBAUGH: Okay.

25 CHAIRPERSON BERRY: Okay.

1 Are there any objections?

2 Okay. All right.

3 Further discussion on the letter?

4 COMMISSIONER ANDERSON: There is something.

5 CHAIRPERSON BERRY: Yes. Commissioner
6 Anderson.

7 COMMISSIONER ANDERSON: I guess I have a
8 couple of recommended changes, if I might.

9 The first paragraph, line 3: "We have
10 reviewed the report and welcome the information and
11 suggestions provided."

12 I think technically the report makes findings
13 and recommendations and I think we should just say,
14 "welcome the findings and recommendations provided."

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER ANDERSON: Then on the second
17 page, the second paragraph, which is that one sentence,
18 I would amend that to say: "The Commission will discuss
19 the OPM report with whomever is --

20 CHAIRPERSON BERRY: Whoever.

21 COMMISSIONER ANDERSON: -- selected as the
22 new Staff Director, in order to ensure continued
23 improvement in the management of the Commission." So I
24 would strike, "and emphasize the need," to insert "in
25 order to ensure."

1 CHAIRPERSON BERRY: Okay.

2 COMMISSIONER ANDERSON: Then the first line
3 on page 2 is more of a minor point, but "seemingly the
4 communications issues to which many attribute the
5 morale problems" -- seemingly sort of gratuitously
6 makes this so attenuated. I think we should probably
7 just drop that.

8 And then I would say -- I would raise this as
9 question on the first page, going back to the first
10 page.

11 COMMISSIONER HORNER: There's a grammatical
12 change in your sentence, Carl. Seemingly should be
13 "the communications issues are a result," not is.

14 Shall I?

15 COMMISSIONER ANDERSON: Yes.

16 COMMISSIONER HORNER: Thank you.

17 CHAIRPERSON BERRY: Okay.

18 COMMISSIONER ANDERSON: And then in the
19 fourth paragraph on page 1, "In this regard, we noted
20 that the OPM team reached beyond the stated purpose of
21 the review." It seems to me that may be true, but it's
22 a little whiny to put it that way. It's not a huge
23 point with me but I think it's sort of truculent.

24 COMMISSIONER HORNER: It's a passive-
25 aggressive complaint.

1 (Laughter.)

2 COMMISSIONER ANDERSON: Should we decide
3 which we ought to be, passive or aggressive?

4 .CHAIRPERSON BERRY: In this regard, we noted
5 that the OPM team -- what we would do is drop the next
6 part, and it would then read: "In this regard, we noted
7 that the OPM team addressed morale, including negative
8 opinions and perceptions held by the Commission staff
9 with respect to overall agency management."

10 COMMISSIONER ANDERSON: Okay. That's all I
11 have.

12 CHAIRPERSON BERRY: Anybody else have any
13 comments?

14 (No response.)

15 All right. Well, in that case, I would
16 entertain a motion to approve the letter with the
17 changes indicated by the Commissioners, including the
18 one Commissioner Anderson indicated, because no one
19 objected to it.

20 COMMISSIONER HORNER: So moved.

21 CHAIRPERSON BERRY: Could I have a second?

22 No second?

23 COMMISSIONER REDENBAUGH: Second, for
24 purposes of discussion.

25 CHAIRPERSON BERRY: And then let's have --

1 there's more discussion going on here.

2 Commissioner Redenbaugh.

3 COMMISSIONER REDENBAUGH: I don't think I can
4 approve a letter of transmittal for a report that I
5 haven't previously approved. I think we have a
6 sequencing issue here, is all.

7 COMMISSIONER HORNER: Madam Chairman, may I
8 withdraw my motion and make it again when we've
9 concluded the whole discussion?

10 CHAIRPERSON BERRY: I wish you would -- of
11 course, you can do that.

12 I wish you would restate your concern,
13 Commissioner Redenbaugh?

14 COMMISSIONER REDENBAUGH: Well, if I'm not
15 satisfied with the report, I can't agree to sign the
16 letter of transmittal that transmits the report with
17 which I'm dissatisfied.

18 CHAIRPERSON BERRY: Well, let me try to
19 characterize what I think is going on here, and let's
20 see what you think is going on.

21 The Commission can direct the Staff Director,
22 if we had one, and in the absence of the Staff
23 Director, whomever we direct, to make whatever changes
24 we desire in the report.

25 COMMISSIONER REDENBAUGH: Yes.

1 CHAIRPERSON BERRY: Because we have the power
2 and authority to do that.

3 COMMISSIONER REDENBAUGH: Uh-huh.

4 CHAIRPERSON BERRY: So it isn't a question of
5 approving a transmittal and then not being able to
6 direct whatever changes we want in the report.

7 My understanding was that the motion to
8 approve the transmittal, which has now been withdrawn,
9 was simply to say that the language in the transmittal
10 letter, as it has now been changed by everybody's
11 suggestions, seems to be a reasonable transmittal
12 letter. That had nothing to do with what is actually
13 in the report, which isn't even discussed in the
14 transmittal letter, or isn't detailed or anything like
15 that, and we can move on.

16 But I just want to make sure that you and I
17 are at least in agreement about what's going on.

18 COMMISSIONER REDENBAUGH: We are.

19 COMMISSIONER HORNER: Madam Chair, I agree
20 with what I think Commissioner Redenbaugh said, which
21 is, it would not be right to vote to approve a
22 transmittal letter which would have the effect of
23 sending the report, unless you agree that the report as
24 we vote on it, ought to be sent.

25 CHAIRPERSON BERRY: Without changes.

1 COMMISSIONER HORNER: Yes. So I would make
2 the same motion with respect to the transmittal letter
3 as part of the package, after we've concluded the
4 discussion, if at that point I feel I want to send the
5 report as we have edited it.

6 CHAIRPERSON BERRY: Okay. Let's go to the
7 report unless somebody else has got something to say.

8 Commissioner Redenbaugh raised -- and I
9 begin, again, with his written suggestions. And I know
10 Commissioner Horner has nine questions.

11 May be we should do Commissioner Horner's
12 nine questions, first.

13 COMMISSIONER GEORGE: A little louder?

14 CHAIRPERSON BERRY: I said maybe we should do
15 Commissioner Horner's nine questions.

16 Do you have your nine questions, Commissioner
17 Horner?

18 COMMISSIONER HORNER: I do. I have notes to
19 myself which I hope will make sense even to me at this
20 point, but I made them several weeks ago. I'd be happy
21 to start.

22 CHAIRPERSON BERRY: Just go ahead and ask
23 them.

24 COMMISSIONER HORNER: Okay.

25 CHAIRPERSON BERRY: Go ahead. Take the

1 floor.

2 COMMISSIONER HORNER: All right.

3 Under "Required Actions," number 6. This is
4 probably just a request for clarification to me. I'm
5 not suggesting there's an inaccuracy. I just don't
6 understand the answer.

7 The required action is: "Establish procedures
8 to ensure that all required data is reported to the
9 central personnel data file."

10 And in the answer, there's a reference to the
11 National finance Center. And I don't understand
12 whether we're saying we're going to establish
13 procedures or we can't because there's something going
14 on with respect to performance appraisals in the
15 official performance files in the National Finance
16 Center. I can't literally understand what that means
17 and I just need an explanation.

18 CHAIRPERSON BERRY: Do you want to answer or
19 just read to her the change that you propose to respond
20 to that? Because Commissioner Redenbaugh asked the
21 same question.

22 MS. HALL: We do have a new --

23 CHAIRPERSON BERRY: Why don't you talk into
24 this.

25 MS. HALL: We actually have an updated

1 answer. At the time that the Staff Director prepared
2 the response --

3 COMMISSIONER GEORGE: Excuse me for
4 interrupting. Who's speaking?

5 CHAIRPERSON BERRY: This is Gerri Hall.

6 COMMISSIONER GEORGE: Oh, thank you.

7 MS. HALL: I'm sorry.

8 At the time that the response was drafted, we
9 were having difficulty entering this year's performance
10 ratings. We were entering the last three years, as we
11 should be. So we had completed earlier this year --
12 early 1996, we had done 1995 and 1994 ratings. But
13 because NFC was reconfiguring its system to accept new
14 performance appraisals systems in light of new
15 regulations, we weren't able to do so in September when
16 we had our ratings.

17 Since then, we have been able to enter them,
18 and that information will be downloaded directly into
19 the CPDF. So it's done, as of today.

20 COMMISSIONER HORNER: Okay. Great.

21 CHAIRPERSON BERRY: And they proposed, in
22 response to the same question from Commissioner
23 Redenbaugh on Number 6, Commissioner Horner, if you
24 would go to your page number 6, if you've got it.
25 Find Number 6 in your document.

1 COMMISSIONER HORNER: Oh, in the OPM report?

2 CHAIRPERSON BERRY: In the response.

3 COMMISSIONER HORNER: I have that.

4 CHAIRPERSON BERRY: Okay. You've got it
5 before you?

6 COMMISSIONER HORNER: Yes.

7 CHAIRPERSON BERRY: They propose to change
8 the line which reads, "Ratings for 1996 will be
9 entered?" They've changed that now to: "The
10 Commission's 1996 performance ratings were all
11 completed by the end of September. At that time, NFC
12 was beginning to reconfigure its system, which receives
13 the ratings, and we were advised to postpone our data
14 entry. As of January 13th, 1997, all data has been
15 entered."

16 COMMISSIONER HORNER: Okay. Thank you.

17 CHAIRPERSON BERRY: Okay.

18 COMMISSIONER HORNER: I'm a little uncertain
19 about the answer -- to backtrack to the first page --
20 to Number 3, Terminate the Employment. I'm very
21 reluctant to raise it, but I just would like to be
22 assured that there's a phrasing of the response that
23 just tracks what happened.

24 Has that draft response changed? I mean,
25 obviously the individual has not been reassigned but

1 has been appointed to a position, so I think the --

2 CHAIRPERSON BERRY: Well, separated, first.

3 COMMISSIONER HORNER: Okay. So it should
4 read the individual was terminated and now -- you just
5 need to say the individual was terminated. That does
6 it.

7 CHAIRPERSON BERRY: Okay.

8 Do you agree?

9 MS. HALL: Yes.

10 CHAIRPERSON BERRY: Let's write that in.

11 COMMISSIONER HORNER: I don't want to do
12 anything injurious to you. I really don't.

13 MS. HALL: Her response was actually tied
14 into the discussions because when the team was here,
15 they kept using the term "reassignment."

16 COMMISSIONER HORNER: Yes.

17 MS. HALL: And then if you look at the actual
18 report, it does say termination. So that is accurate.

19 COMMISSIONER HORNER: Okay. Thank you.

20 CHAIRPERSON BERRY: So we will make sure that
21 this says "was terminated."

22 VICE CHAIRPERSON REYNOSO: What paragraph is
23 that?

24 CHAIRPERSON BERRY: Number 3.

25 COMMISSIONER HORNER: I was concerned because

1 the implication was that you could take a not
2 appropriately made appointment and reassign, but you
3 can't.

4 CHAIRPERSON BERRY: Which you cannot do. So
5 terminated.

6 COMMISSIONER HORNER: Okay. Maybe this won't
7 be so hard.

8 CHAIRPERSON BERRY: See?

9 (Laughter.)

10 COMMISSIONER HORNER: Okay. Page -- let's
11 see. Number 5 under Performance Management. This is
12 under Recommended Actions, Number 5, Performance
13 Management. Monitor whether managers are conducting
14 progress reviews.

15 I have just a small suggestion to make there,
16 and that is that we should indicate that we -- since
17 these reviews are required, I think we ought to say in
18 addition to what response we have there, we ought to
19 say something about the personnel office will monitor,
20 track and report to the Staff Director, since this is a
21 long-range proposal, compliance with the requirement.

22 In other words, I think we ought to say
23 forthrightly, we'll comply. It's not hard and I think
24 it's just an oversight that we haven't carried the
25 answer through to full compliance.

1 CHAIRPERSON BERRY: Now, Russell raised that
2 one, too, so let me read to you the new language.

3 COMMISSIONER HORNER: Okay.

4 CHAIRPERSON BERRY: "The personnel office
5 will implement a new system." This is right after it
6 says, "routinely issues notices and reminders." You
7 see that?

8 COMMISSIONER HORNER: Do we have this
9 document you're reading from?

10 CHAIRPERSON BERRY: You don't have this.

11 COMMISSIONER HORNER: Okay.

12 CHAIRPERSON BERRY: "The personnel office
13 will implement a new system for tracking progress
14 reviews and reporting to the Staff Director on
15 compliance with deadlines. Specifically, the personnel
16 office will establish procedures for assisting
17 managers, monitoring timely compliance and reporting
18 noncompliance."

19 COMMISSIONER HORNER: Okay. That sounds --

20 CHAIRPERSON BERRY: That's what you had in
21 mind?

22 COMMISSIONER HORNER: Yes. And I apologize if
23 I should have that document.

24 CHAIRPERSON BERRY: No, because the others
25 don't have it. We just got this together.

1 COMMISSIONER HORNER: Okay. Fine.

2 CHAIRPERSON BERRY: So let's just do it here.

3 COMMISSIONER HORNER: Okay.

4 CHAIRPERSON BERRY: This is very helpful.

5 Can you hear out there, guys?

6 COMMISSIONER GEORGE: I hear Connie very

7 well.

8 CHAIRPERSON BERRY: You can't hear me?

9 COMMISSIONER GEORGE: Not as well.

10 CHAIRPERSON BERRY: Connie, why don't you

11 just say what I'm saying?

12 (Laughter.)

13 COMMISSIONER HORNER: It's all just fine so

14 far, Robbie.

15 CHAIRPERSON BERRY: Connie, tell them it's

16 all just fine.

17 COMMISSIONER HORNER: It's all just fine, so

18 far. I don't wish to presume, and I don't.

19 Number 7, the third sentence of our response

20 reads: "The current personnel director had planned to

21 develop a new system -- this is for performance

22 standards -- in concert with the Partnership Council."

23 Has any change been made to that answer? If so, I'll

24 just listen to the change. If not, I'll express a

25 concern.

1 CHAIRPERSON BERRY: Okay. The proposed
2 change is: "Her successor will work with managers and
3 employees to ensure that as a first item of business
4 for 1997 new standards are developed that clearly
5 specify rating level expectations and delineate work
6 responsibilities for each employee." That's what it
7 says.

8 COMMISSIONER HORNER: Is that the full
9 answer?

10 CHAIRPERSON BERRY: The other part is still
11 up here.

12 COMMISSIONER HORNER: Okay. Then I do have a
13 question and I may need to be updated on current
14 regulations.

15 There's a phrase here used that we'll develop
16 a new system in concert with the Partnership Council.
17 Are we mandated to do that by regulation? And if so,
18 is it our own internal regulation or OPM regulation or
19 law?

20 CHAIRPERSON BERRY: We had this Executive
21 Order; right? From the President?

22 MS. HALL: Yes. In part of the Executive
23 Order and the establishment of the partnerships, this
24 is an appropriate subject of bargaining. So, --

25 COMMISSIONER HORNER: Discretionary or

1 mandatory?

2 MS. HALL: It is now mandatory.

3 COMMISSIONER HORNER: Mandatory. Thank you.

4 I thought I needed to be updated. Thank you.

5 MS. HALL: Right.

6 CHAIRPERSON BERRY: And I might say for other
7 Commissioners, because I have to find out about this,
8 too, because I hadn't paid any attention to this stuff
9 in my materials about partnership councils. Had no
10 idea what -- well, --

11 COMMISSIONER GEORGE: Mary, speak up, please?

12 CHAIRPERSON BERRY: The Partnership Council
13 is something that was set up by Executive Order.
14 That's the question that Commissioner Horner just
15 raised. And OPM, I guess, was involved in that. They
16 know it exists. And it's labor and management.

17 And so these items, where it says you have to
18 talk to the Partnership Council to get it done, they
19 know you have to do that. But we're requiring in our
20 transmittal letter that we be told, as Commissioners,
21 everything the Partnership Council does or recommends.
22 That's why we put that in there, so that we'd be up to
23 date on what's being recommended, what is being done,
24 so that we would know what the Partnership Council is
25 doing, which we don't now.

1 I just wanted everybody to understand that.

2 COMMISSIONER HORNER: And I believe from the
3 addition that you just read me a minute ago, that we
4 are also talking with management, not just with the --
5 well, the Partnership Council is management.

6 CHAIRPERSON BERRY: Is labor and management.

7 COMMISSIONER HORNER: Yes. Labor and
8 management.

9 CHAIRPERSON BERRY: Yes.

10 COMMISSIONER HORNER: Are there any employees
11 who are not represented on the Partnership Council?

12 CHAIRPERSON BERRY: Do you know the answer to
13 that?

14 MS. HALL: In what respect do you mean that?

15 COMMISSIONER HORNER: Well, for instance, are
16 there any units of employees, that is, either labor or
17 management; who don't have a representative on the
18 council? For instance, do all GS-15's who -- are all
19 GS-15's represented or only those who are members of
20 labor unions?

21 MS. HALL: There aren't any in the labor
22 unions.

23 COMMISSIONER HORNER: I'm sorry. I meant
24 below the management level.

25 MS. HALL: No. They're all -- virtually all

1 of the lower level employees are bargaining unit
2 employees with the exception of those in the personnel
3 staff. So, arguably, you might not consider them,
4 since they're non-bargaining unit, but their views, in
5 our opinion, would be represented from management
6 because they're non-bargaining unit.

7 COMMISSIONER HORNER: Thanks.

8 CHAIRPERSON BERRY: Does anybody in the staff
9 have anything they want to say? I thought I heard
10 somebody sighing out there?

11 (No response.)

12 Okay. All right. I misheard. I just wanted
13 to make sure.

14 COMMISSIONER HORNER: My interest in this
15 stems from the fact that when the Partnership Council
16 is being developed that the major issue within
17 government as to whether there would be large segments
18 of employees who would be excluded, thereby enhancing
19 the power of the unions and diminishing the power of
20 management and non-union members. And to the extent we
21 have discretion here, I'd be interested. But that's
22 not a subject for discussion right now.

23 I just don't want to imbed anything in here
24 we shouldn't or don't want to.

25 CHAIRPERSON BERRY: Okay.

1 COMMISSIONER HORNER: Could we also have a
2 list of the membership at some point, membership of the
3 Partnership Council?

4 CHAIRPERSON BERRY: Could the staff provide
5 to us before the next meeting a list of the members?

6 COMMISSIONER HORNER: Not by name but by job.

7 CHAIRPERSON BERRY: Oh. By job title. Okay.

8 COMMISSIONER HORNER: Yes.

9 All right. Let's see. There's an answer
10 somewhere in here on the hiring of a legal consultant
11 that we had discussed with respect to the transmittal
12 letter. And I would suggest that the answer be
13 adjusted wherever it is, to reflect the -- I have
14 written down here --

15 CHAIRPERSON BERRY: To reflect what we just
16 did?

17 COMMISSIONER HORNER: To reflect what we just
18 did. Yes.

19 CHAIRPERSON BERRY: Does anybody know where
20 that is?

21 COMMISSIONER HORNER: I don't know where that
22 is. Maybe I'm wrong, but I think there's an answer
23 somewhere.

24 MS. HALL: It wasn't one of the items.

25 COMMISSIONER HORNER: It was not? Okay.

1 Then the transmittal letter will be fine.

2 CHAIRPERSON BERRY: Will serve. Yes. Okay.

3 COMMISSIONER HORNER: Those are my only --
4 wait one second.

5 (Pause.)

6 CHAIRPERSON BERRY: You can have a chance at
7 more, after you hear others, if you want.

8 COMMISSIONER HORNER: No. That's all.

9 CHAIRPERSON BERRY: Well, let me just add
10 here, in addition to what Commissioner Horner has said.
11 Are these new things that the staff put?

12 Which ones are the new ones?

13 In addition to the numbers that Commissioner
14 Horner has pointed to, if you look at Number 4 under
15 Required Action. In response to suggestions made by
16 Commissioner Redenbaugh that there should be more
17 specificity in the answer to Number 4 -- has everybody
18 found Number 4 under Required Actions? Number 4.

19 The language there has been deleted and
20 changed to read the following: "Annual written guidance
21 is provided by the personnel division. The standard
22 performance plan that has been in use for many years,
23 included a page to document progress reviews.
24 Unfortunately, it was rarely used. As of
25 December 17th, 1997 (sic), a more formal tracking

1 system was implemented in response to the OPM review.
2 Many of the tracking forms have already been filed in
3 the employees' personnel files. All reviews and filing
4 of respective documentation is expected to be completed
5 by February 1st, 1997. "

6 The request was for greater specificity, and
7 that's what's there.

8 The other one is on Number 5 on that same
9 page. For greater specificity, the action was there.

10 COMMISSIONER REDENBAUGH: Mary?

11 CHAIRPERSON BERRY: Yes.

12 COMMISSIONER REDENBAUGH: I think you just
13 have a typo. It's December '96.

14 CHAIRPERSON BERRY: Oh, did I say -- oh, yes,
15 '96. I'm sorry. I said December 17, 1997? I meant
16 December 17, 1996. '97 is this year.

17 In other words, it was finished this past
18 December.

19 COMMISSIONER REDENBAUGH: Last month.

20 CHAIRPERSON BERRY: Right.

21 Number 5. Find Number 5 under Required
22 Actions. It says the OPF's -- this is the answer. In
23 the second line of that, this is about OPF's. The line
24 that says, "It is underway and scheduled to be
25 completed before the end of the calendar year," has

1 been deleted.

2 And it says now: "The personnel management
3 specialists have completed their review of all OPF's."
4 So that's done. So we know that.

5 Let me see if there's anything else in
6 response to Commissioner Redenbaugh that Commissioner
7 Horner didn't raise.

8 On page -- Item Number 10 under Recommended
9 Actions. Well, one problem we have with Number 9 and
10 Number 10 is that we don't have a Staff Director, and
11 we say that clearer guidelines will be developed and
12 staff will work on that. But obviously, we don't have
13 a personnel director either.

14 We have to indicate that dates of completion
15 would be up to the new Staff Director but we're working
16 on this and are aware that these things should be done
17 and have advised staff to begin working on them.

18 So that kind of answer would have to be given
19 to matters that the Staff Director would have to
20 recommend so that they know we're working on it and
21 know we're doing it.

22 And so that's what I would say about those.

23 On page -- the next page, Number 13. Ah,
24 Number 12. This is all in response to Commissioner
25 Redenbaugh.

1 This is on the outside facilitator. "In view
2 of the OPM findings regarding the organizational
3 climate, the use of a facilitator will be raised at the
4 Partnership Council meeting."

5 So they will discuss whether to get a
6 facilitator.

7 And then under Number 13, OPM said the
8 Partnership Council should revisit the employee
9 recommendations that may have been tried, and
10 reconsider them.

11 The answer now would simply list all the
12 different recommendations and say specifically that the
13 Partnership Council will consider each and every one of
14 them and just simply list what they are, so that
15 they're specific, spelling out agency goals and
16 objectives, granting managers greater authority to
17 manage their programs, conducting executive staff
18 meetings and how to do it and what to do, more
19 scheduling of brown bag lunches and how they would like
20 those to go. Survey and training needs. All the items
21 that would be there.

22 Then under Number 14, where there's just a
23 one line answer, "on-the-job training will be
24 provided," and so on. It says: "The personnel director
25 will ensure that in addition to the job training that

1 will be provided the personnel staff on a continuing
2 basis, all employees in the personnel office will
3 receive any formal training they may require for
4 processing personnel actions and addressing the
5 documentation problems identified by OPM."

6 And Number 15 is longer, not just one
7 sentence. "In January 1996, a self-assessment of
8 personnel operations was begun, which included a review
9 of position descriptions, vacancy announcements,
10 operation procedures and other tools. The new
11 personnel director will be instructed to continue this
12 assessment with a review of customer feedback."

13 Does anybody have any other comments or
14 things that they'd like to have added or changed or
15 anything else in the report itself?

16 (No response.)

17 Okay. Anybody have any questions they'd like
18 to have answered?

19 Yes, Vice Chair?

20 VICE CHAIRPERSON REYNOSO: I have a question.
21 From whom will this memo be now, since Mary is no
22 longer with us?

23 CHAIRPERSON BERRY: The memo will be
24 transmitted and it will say --

25 VICE CHAIRPERSON REYNOSO: With your covering

1 transmission there?

2 CHAIRPERSON BERRY: With our transmittal
3 letter.

4 VICE CHAIRPERSON REYNOSO: Oh, okay.

5 CHAIRPERSON BERRY: And it's the staff report
6 with the Commissioners having reviewed it and so on, as
7 it says in the transmittal letter.

8 VICE CHAIRPERSON REYNOSO: Okay. Fine.

9 CHAIRPERSON BERRY: Yes, Commissioner
10 Redenbaugh?

11 COMMISSIONER REDENBAUGH: But it must have an
12 author, I presume?

13 CHAIRPERSON BERRY: An author? The staff.

14 COMMISSIONER REDENBAUGH: Can the staff be an
15 author?

16 CHAIRPERSON BERRY: Yes. The Staff
17 Director's office, in conjunction with the personnel
18 staff. It will say the Staff Director's office.

19 COMMISSIONER REDENBAUGH: Okay.

20 CHAIRPERSON BERRY: We're transmitting it.
21 Could I have a motion that we agree to this,
22 based on the changes that the Commissioners have made
23 in it?

24 VICE CHAIRPERSON REYNOSO: So moved.

25 CHAIRPERSON BERRY: Could I get a second?

1 COMMISSIONER REDENBAUGH: Second.

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

4 (Chorus of ayes.)

5 Opposed?

6 (No response.)

7 All right. So ordered.

8 Now, what is your pleasure on -- we do have
9 an agenda here. Let me see.

10 I beg your pardon?

11 COMMISSIONER GEORGE: Your voice was
12 dropping.

13 CHAIRPERSON BERRY: Sorry. That was very,
14 very helpful. And I want to especially thank
15 Commissioner Redenbaugh and Commissioner Horner for
16 their help in getting this project done. Thank
17 goodness. And we'll get it to OPM as soon as we can
18 get these changes and get it in there.

19 Project Planning. What is your pleasure,
20 Commissioners, about the project planning? Do we
21 actually want to do this or --

22 Commissioner Redenbaugh?

23 COMMISSIONER REDENBAUGH: Yes. Actually,
24 your prior response to Connie's question earlier in the
25 meeting has softened my mood about this already, but

1 some of these proposals that are here for our
2 consideration, although each one has merit, I feel a
3 little bit about the parent being worn down by the
4 adolescent child because I thought that we had
5 decisively and affirmatively decided that although
6 these were worthy, we were not going to keep
7 considering them.

8 I understand that January is the month to
9 look at everything all over again, and I probably
10 wouldn't feel this way if I hadn't been such a nag
11 about prioritization starting as early as last April.
12 So this may just be more of a personal problem. But
13 having sort of unburdened my psychology about that, I
14 would say, as one might expect me to say, I don't know
15 how I could even think about any of these things
16 without having money associated with them and without a
17 clearer sense of the budget.

18 So I think it's something that I would prefer
19 to put off to the next meeting, but not past that.

20 CHAIRPERSON BERRY: Well, let me try out
21 something else on Commissioners.

22 The other thing that we did historically in
23 January, and we're supposed to do, is to brainstorm
24 about other things that we might want to do. We have
25 raised a couple of times whether we want to do a theme

1 again, and I've forgotten what we said about that. I
2 don't think we decided.

3 COMMISSIONER REDENBAUGH: I think we all
4 liked it in the abstract but then we couldn't find one
5 that --

6 CHAIRPERSON BERRY: Nobody could think of a
7 theme.

8 COMMISSIONER GEORGE: I'm a firm no on the
9 theme.

10 CHAIRPERSON BERRY: I beg your pardon?

11 COMMISSIONER GEORGE: I said I'm a firm no on
12 the theme.

13 CHAIRPERSON BERRY: Commissioner George is a
14 firm no.

15 And also, to see whether there are other
16 matters that Commissioners would like us to pursue that
17 aren't in this package, some hot idea you've got that
18 you think the Commission ought to be doing in 1999.

19 One of the problems with this always for me,
20 and it's been true for years, is trying to figure out
21 what I will think is a good idea in 1999. I mean, it's
22 one thing if you're running an agency where you know
23 you've got so many widgets and so many bodies and so
24 many beds to fill and doctors to pay or whatever it is
25 and you're trying to project how many kids are going to

1 go to school and how much money you need. But when
2 you're trying to project, well, what will be the
3 important issue that we need to be working on, it's
4 really very hard.

5 But we're supposed to, because of the way the
6 budget process works, come up with something; then
7 agree to it. And then the staff will go away and write
8 proposals and details and come back again and we just
9 keep coming back and back and back until we come up
10 with a budget.

11 So, I don't know how to handle this, but if
12 you have any good idea or if any of you are prescient
13 and you know what will happen in 1999, that would be
14 helpful -- or something. You may propose other things.
15 And so that's why you keep getting these back, as well
16 as new things.

17 For example, do we think doing a project --
18 the Commission hasn't done any projects on gender in a
19 long time. Is it time we did projects on gender or
20 some project, either the one that they propose or some
21 other project that we can think of that has to do with
22 gender. Or we might ask ourselves also -- and I know
23 we won't answer it today. I can tell from the
24 expressions that we're not going to answer.

25 But we may try to figure out whether we want

1 to do -- maybe we don't want to do projects after we do
2 the ones we're doing. Maybe we'd like to have the
3 SAC's do their work, have PSA's, have some kind of new
4 configuration where we deal with issues as they arise,
5 whatever they are. Some structured way of dealing with
6 issues that become hot button issues when they arise,
7 so that we're not in a position of trying to predict.

8 Keep doing our enforcement reports that we're
9 required to do, because we know we have to monitor the
10 federal agencies. That's part of our job. And then
11 for the rest, say we will flexibly -- and say what the
12 structure is for doing that -- have this team or have
13 this approach to dealing with issues as they arise.
14 And we know that every year there will be issues
15 because there are always issues.

16 So that's one. I don't know the answer, but
17 that's one way to approach it if we are uncomfortable,
18 as I sense we are, trying to figure out what major
19 projects to do two years from now or three years from
20 now or the rest.

21 Yes, Vice Chair? And then Commissioner Lee.

22 VICE CHAIRPERSON REYNOSO: I very much like
23 your suggestion that we build into the structure a
24 system for responding to the issues --

25 COMMISSIONER GEORGE: Cruz, talk a little

1 louder, please.

2 VICE CHAIRPERSON REYNOSO: Yes. I was
3 indicating that I very much like the system. Can you
4 hear me?

5 COMMISSIONER GEORGE: Yes. I can now.

6 VICE CHAIRPERSON REYNOSO: -- that the Chair
7 was suggesting, that we come up with a system or a
8 procedure for responding to the issues that come up.
9 And maybe even budget for that. But provide a
10 sufficient structure that there'll be a sense of
11 comfort in it, so that we can indeed respond quickly to
12 the issues that come up.

13 One of the frustrations that I've heard from
14 the Chair and that I've had, and I've heard around the
15 table, is that issues of importance come up and if we
16 as a Commission are going to do that part of our task,
17 which is to provide some leadership to this country in
18 terms of how to respond to those issues, that we have
19 simply be frustrated in that effort because we've got
20 these projects that we figured five years ago would be
21 prime at this time.

22 It seems to me that working on some sort of
23 structure the way the Chair has suggested would be very
24 worthwhile.

25 CHAIRPERSON BERRY: Commissioner Lee?

1 COMMISSIONER LEE: I was going to suggest
2 that -- not for today, but maybe for a future meeting,
3 that we include in our discussion for future planning
4 the regional staff, because we talked about the
5 activities of the SAC's and the regional staff, and it
6 seems like, at least from my point of view, I really
7 don't have a broad picture of where all the regional
8 offices are going, what the issues are being faced by
9 them.

10 And I'm not saying that we should be -- our
11 future planning should be driven by them, but at the
12 same time, it would help me a lot to understand what
13 the SAC's and the different regional offices are
14 planning, what their future plans are for the next
15 couple of years or the next three years, so that we
16 could incorporate some of those activities as a
17 national project for us.

18 Why don't I try to do the following and just
19 ask your indulgence for five minutes, without anybody's
20 commitment to anything.

21 First of all, I like the idea of hearing from
22 the regions.

23 COMMISSIONER GEORGE: Speak up, please, Mary.

24 CHAIRPERSON BERRY: I like the idea of
25 hearing from the regional directors. The Commission

1 used to have, when we had more money, the regional
2 directors come to the Commission meetings. And that
3 practice was stopped because it's costly. But I wish
4 they could come to all the meetings, and maybe there
5 ought to be some rethinking. But at the very least, we
6 might have them come to tell us one time about what's
7 going on in their region and what they see as
8 important, directly, rather than pieces of paper that
9 they send forward. And I will ask the staff to arrange
10 that.

11 But if I may ask you to just look at the
12 proposals that were given to you, just look at them,
13 and tell me whether -- if I can find my copy. Tell me
14 whether, in looking at them, were there any -- and
15 remember, this is not a commitment to anything because
16 we're going to discuss this again. We have to discuss
17 it again when we have some numbers. Were there any on
18 there that struck any or all Commissioners as things
19 that we just don't see any reason why we should be
20 doing them?

21 Yes.

22 COMMISSIONER REDENBAUGH: I think that's a
23 hard question to answer in a public forum.

24 CHAIRPERSON BERRY: Oh, okay.

25 COMMISSIONER REDENBAUGH: Because each one of

1 these has some merit and some constituency.

2 CHAIRPERSON BERRY: Oh, I see.

3 COMMISSIONER REDENBAUGH: I would direct it
4 the other way and then see which ones are not.

5 CHAIRPERSON BERRY: Okay. Let's try that.

6 You saved Commissioner Horner from announcing
7 which ones she --

8 COMMISSIONER REDENBAUGH: Connie, you are, of
9 course, free to --

10 COMMISSIONER HORNER: I'll plunge in,
11 however.

12 COMMISSIONER REDENBAUGH: Hook and mouth.

13 (Laughter.)

14 CHAIRPERSON BERRY: Russell doesn't think you
15 should do that.

16 COMMISSIONER REDENBAUGH: No. Be my guest.

17 COMMISSIONER HORNER: I will simply make what
18 I think is an historic characterization.

19 I think that in a previous discussion during
20 some of our horse trading, we had decided to do -- have
21 a look at naturalization in lieu of voting rights, as
22 we decided in prioritizing that there were a lot of
23 other people working on voting rights and that we would
24 work on naturalization instead. And I still think
25 that's a good trade.

1 CHAIRPERSON BERRY: Okay. Well, that wasn't
2 too bad. That was not hook and mouth, or whatever you
3 said.

4 COMMISSIONER REDENBAUGH: No, no.

5 CHAIRPERSON BERRY: Well, let's then put it -
6 - does anyone have any thought about that? With all
7 that's happened in voting rights recently and that
8 might happen, do we still think that that's a good
9 trade?

10 Yes, Commissioner Lee?

11 COMMISSIONER LEE: If someone could refresh
12 my memory, I thought we had --

13 COMMISSIONER GEORGE: Please speak up,
14 Commissioner Lee?

15 COMMISSIONER LEE: If someone could refresh
16 my memory, I thought we had decided that voting rights
17 is still an important project but if other agencies
18 were going to take it up, we were not going to take it
19 up if we did not have enough resources.

20 But I support Commissioner Horner's idea of
21 naturalization because I think we were talking about
22 naturalization and immigration as a project at one
23 point. And for some reason, that was sort of dropped.

24 And I think that if we're planning a three-
25 year, five-year plan, I would want to put back

1 immigration and naturalization as one of the projects
2 that we should consider.

3 CHAIRPERSON BERRY: Okay. Now, does anyone
4 here -- I'll write that down. Naturalization.

5 Is there anyone who thinks that voting rights
6 is still something that we should be doing something
7 about? That's not in lieu of anything, just -- is
8 there anybody who feels strongly about that one way or
9 the other at this juncture? I don't mean that the
10 Commission will never in its life do anything about it,
11 but I mean for the next budget cycle.

12 (No response.)

13 Okay.

14 COMMISSIONER GEORGE: Which is what period,
15 Mary?

16 CHAIRPERSON BERRY: We're talking about the
17 1999 budget here. That's what we're discussing.
18 What's the plan for 1999. We're not revisiting '98 and
19 '97 this time. We'll do that next month.

20 VICE CHAIRPERSON REYNOSO: Madam Chair, I
21 think that the issue will probably come up when we
22 discuss naturalization, but there is a disturbing trend
23 in California of having a suggestion that immigrants
24 are voting fraudulently and so on. And it creates a
25 negative atmosphere for civil rights and the exercise

1 of the vote.

2 Somehow, the proof never comes up but there
3 are all kinds of allegations being made over and over
4 again. Recently, by a defeated Congressman.

5 COMMISSIONER HORNER: Well, there are
6 investigations underway, I believe, by the state. I
7 don't think we have the results of those.

8 VICE CHAIRPERSON REYNOSO: That's true. But
9 I'm just saying that that's an issue, a civil rights
10 issue. But I think it will come up under
11 naturalization, actually.

12 CHAIRPERSON BERRY: So that naturalization
13 might be --

14 VICE CHAIRPERSON REYNOSO: Yes.

15 CHAIRPERSON BERRY: Let me also say to you --
16 in order to get some chaff from the wheat.

17 This proposal here that's called the Federal
18 Civil Rights Enforcement Efforts, the last bullet under
19 the first Roman numeral, I think -- and I wanted to as
20 Fred Isler about this.

21 Good, Fred. I'm glad you walked up here.

22 I think that this -- we've already done part
23 of this project, unless my memory escapes me.

24 Fred, we already -- talk in that microphone,
25 please. We already did -- we're doing education now,

1 if I'm not mistaken, Office of Civil Rights. We did
2 HUD.

3 MR. ISLER: That's correct.

4 CHAIRPERSON BERRY: We did the Fair Housing
5 Report. So is this proposal still viable or should it
6 be chopped into --

7 COMMISSIONER GEORGE: Mary, what is the
8 proposal?

9 CHAIRPERSON BERRY: Under Roman numeral one,
10 the last bullet, it says the Federal Civil Rights
11 Enforcement Effort. What's the idea here?

12 MR. ISLER: That proposal is supposed to be
13 done in 1999, assuming we finish all the other
14 departments.

15 COMMISSIONER GEORGE: I can't hear any of
16 this.

17 MR. ISLER: The way that proposal is
18 developed is, it would be like a follow-up of all of
19 our recommendations. It would not be a new project.

20 What we would do is do a follow-up on all the
21 recommendations that are in our report. We feel that
22 you should give the agencies a year to two years to
23 implement our recommendations and that way, we can
24 assess whether they actually followed up on our
25 recommendations. And then we would provide a report to

1 the Commissioners.

2 CHAIRPERSON BERRY: Now, let me ask you this.
3 This is a Russell Redenbaugh type question because he
4 asks it.

5 Will we be finished with the report on all of
6 these agencies by this time?

7 MR. ISLER: No. That's why I've recommended
8 in several memos that we move that project back to the
9 year 2000.

10 CHAIRPERSON BERRY: In other words,
11 Commissioners, you can cross out this project and
12 you'll see it again for the year 2000 or something.

13 MR. ISLER: Right.

14 CHAIRPERSON BERRY: Now, while you're up
15 here, let me ask you about other OCRE's. Is this
16 evaluation of Fair Employment Law Enforcement, is that
17 still on the table?

18 MR. ISLER: That is scheduled for 1999.

19 CHAIRPERSON BERRY: That's the one that we're
20 doing after the disability?

21 MR. ISLER: After the ADA and Naturalization
22 Project.

23 CHAIRPERSON BERRY: So this would be -- I beg
24 your pardon? It's 1998?

25 MR. ISLER: 1998 and the Naturalization

1 Project, which was approved for 1998.

2 CHAIRPERSON BERRY: So in 1998, your office
3 is supposed to do ADA and Naturalization?

4 MR. ISLER: That's correct.

5 CHAIRPERSON BERRY: Okay. Now, we're going
6 to discuss this again, but let's just clear up these
7 matters while we're here, and then we don't have to
8 clear them up next time and you'll get a new list and
9 dollars and so on.

10 Now, so this would be your statutory report
11 for 1999. So that's what this is for. Okay.

12 MR. ISLER: That's correct.

13 CHAIRPERSON BERRY: So it's not that we need
14 to approve this. This is deferred for the future, for
15 it was deferred for 1999, and it would be the statutory
16 report for 1999.

17 So, Commissioners technically don't have to
18 do anything about that, unless we decide to change it
19 or something. It would be the 1999 statutory report on
20 Equal Employment, Fair Employment.

21 MR. ISLER: That's correct.

22 CHAIRPERSON BERRY: Yes, Commissioner
23 Redenbaugh.

24 COMMISSIONER REDENBAUGH: I'm just sort of a
25 little bit lost. Have we already affirmatively decided

1 to do this? I just don't remember it.

2 MR. ISLER: Yes. You decided that OCRE would
3 do in 1998, ADA and the Naturalization Project.

4 COMMISSIONER REDENBAUGH: I'm talking about
5 the thing you're now saying for '99.

6 MR. ISLER: For '99, you agreed that we would
7 do the Fair Employment Practice Project and the
8 Economic Opportunities -- Expand the Economic
9 Opportunities of African American, Asian and Latino
10 Youth. Those were the two projects that you approved
11 for us to do in 1999.

12 COMMISSIONER REDENBAUGH: Okay.

13 COMMISSIONER HORNER: So why isn't
14 Naturalization on this list for '99 then?

15 CHAIRPERSON BERRY: The answer is, I don't
16 know, but it will be on there next time when we discuss
17 it.

18 MR. ISLER: Because it's for 1998.

19 CHAIRPERSON BERRY: Ah, Fred just told us.
20 It was for 1998.

21 COMMISSIONER HORNER: Oh, I see. Okay.
22 Sorry.

23 MR. ISLER: You don't have the ADA and
24 Naturalization because they've already been approved
25 and factored in the budget process.

1 CHAIRPERSON BERRY: And so what we're talking
2 about here is what we're going to do in 1999, so that's
3 why!

4 MR. ISLER: That's correct.

5 CHAIRPERSON BERRY: But we're supposed to
6 remember that we already agreed to do these for 1998.
7 Which it might be well if we had, the next time we
8 discuss this, the paper told us again what we agreed to
9 do in 1998 so we'd have a context for this.

10 I'm not telling you that, Fred. I'm just
11 saying that that would be helpful to the Commissioners.

12 Okay.

13 Financial Aid for Higher Education is an OGC
14 project which was approved previously also, and that
15 was approved, was it not, for 1999, Stephanie?

16 COMMISSIONER HORNER: Well, it says deferred
17 for future consideration.

18 MS. MOORE: Yes.

19 CHAIRPERSON BERRY: In other words, the
20 Commissioners agreed to the project but they didn't say
21 when we would do it. That basically was the status of
22 it.

23 So the question is -- not today, but the
24 question is we'll be asked whether we still want to do
25 that, unless somebody has an idea right now that this

1 is not even worth considering, which Commissioner
2 Redenbaugh has told us we can't say.

3 COMMISSIONER HORNER: Madam Chair?

4 CHAIRPERSON BERRY: Yes.

5 COMMISSIONER HORNER: What is the premise? I
6 would inquire of the staff -- I don't know, Fred or
7 whoever. What is the premise for assessing financial
8 aid for higher education? In other words, what is the
9 civil right that --

10 MR. ISLER: That's OGC's project.

11 CHAIRPERSON BERRY: That's all right. We can
12 ask her.

13 COMMISSIONER HORNER: What is the definition
14 of the civil right related to higher education and what
15 is the definition of the extant problem?

16 CHAIRPERSON BERRY: Stephanie, do you want to
17 answer? Maybe you should talk in a microphone or
18 something.

19 See, now you staff have to answer more
20 questions.

21 COMMISSIONER HORNER: Was it a matter of
22 discriminatory award of federal financial aid or
23 something like that?

24 CHAIRPERSON BERRY: She means what is the
25 legal basis for us considering it as a civil rights

1 problem?

2 COMMISSIONER HORNER: Well, not legal basis,
3 particularly. I just don't understand -- I don't know
4 what the intent is. In other words, what's the problem
5 we would be addressing?

6 MS. MOORE: To determine whether there are
7 disproportionate awards going to college eligible
8 students on the basis of these categories that we've
9 indicated here. We do know -- the background research
10 did indicate that -- what are the groups that we've
11 looked at -- Hispanics, African Americans, Native
12 Americans, Asian Americans and immigrants -- were not
13 represented in large numbers.

14 COMMISSIONER HORNER: And were not getting
15 financial aid?

16 MS. MOORE: Well, no. Not represented at the
17 college level. And we're looking to see whether there
18 is any connection between the availability of financial
19 aid and their representation at the college level.

20 COMMISSIONER HORNER: Are you thinking that
21 there might be, for instance, African American college
22 applicants who would be admitted but would not attend
23 because of lack of availability of financial aid? And
24 the financial aid would be denied them in a
25 discriminatory fashion?

1 MS. MOORE: That could be.

2 COMMISSIONER HORNER: But is there something
3 that suggests to you that it is?

4 I guess what I'm saying is it's not self-
5 evident to me that there's a problem that others view -
6 - I don't think people think there's a problem of
7 discriminatory award of financial aid, and I need just
8 a little bit of assurance that there is such a problem
9 before saying we should devote resources to studying
10 it.

11 COMMISSIONER HIGGINBOTHAM: Well, --

12 CHAIRPERSON BERRY: Just a minute, Stephanie.

13 COMMISSIONER HORNER: I know poor people
14 don't have money and people with poor grades and poor
15 backgrounds and bad high schools don't get into good
16 colleges and all that. I understand all of that. But
17 I'm trying to see if there's a more precise problem so
18 we don't just do a long study emoting about how
19 unfortunate it all is. It is all unfortunate. It's
20 bad. Bad for individuals and bad for the country. But
21 I'm trying to get more precision in the question.

22 CHAIRPERSON BERRY: Right.

23 Commissioner Higginbotham, were you trying to
24 say something? I heard somebody go, "Ah, ah --

25 COMMISSIONER HIGGINBOTHAM: It was me. I'm

1 all of a sudden getting a lot of static on the line.

2 CHAIRPERSON BERRY: Can you hear now?

3 COMMISSIONER HIGGINBOTHAM: Yes. I wanted to
4 respond. I think we would have, Connie, no difficulty
5 in showing to you how much, by sampling, that there are
6 a significant number of minorities who don't go for
7 higher education solely because of an unavailability of
8 funding and an adequate amount of funding. So that so
9 far as to whether there's a problem in terms of
10 minorities not moving into higher education in the
11 proportion which they would have if loans were
12 available. I think you can get that established in
13 several documents.

14 There's another conceptual problem. In the
15 Brown case, Chief Justice Warren spoke in terms of
16 education being one of the most fundamental rights. So
17 therefore, preclusion of this fundamental right reached
18 an equal protection violation.

19 There is a further extension which goes that
20 while in the Brown case, and we're talking primarily
21 the option in K through 12, a very, very significant
22 argument can be made that higher education is
23 important.

24 Now, if you would look at the graduate
25 schools in terms of the production of Ph.D.'s, the

1 number of African Americans who are getting Ph.D.'s is
2 less than, I believe, 1 percent. And there's a lot of
3 evidence to suggest the reason why there are fewer
4 African Americans in some of the graduate school
5 programs is again because of an inability for funding.

6 And so we don't have to come up with our
7 conclusions, but I think there's enough data to suggest
8 this is worthwhile exploring.

9 COMMISSIONER HORNER: Madam Chair?

10 CHAIRPERSON BERRY: Yes.

11 COMMISSIONER HORNER: Everything he said is
12 accurate and easily observed, I think, by people who
13 pay attention. The question I'm raising is whether
14 what you've just described is not true for all poor
15 people and whether we should -- whether it's
16 responsible to suggest in our work that we think there
17 ought to be universal free higher education without
18 confronting that question directly. And should it be
19 universal or should it be universal only for certain
20 minorities?

21 In other words, I think what we're saying
22 here is life would be better for all poor people and
23 perhaps especially poor minorities if higher education
24 were free, if the government supported it, if parents
25 had more money, if there was a father contributing to

1 the support of the family. That's why I'm asking for
2 more precision.

3 It's easy to say there's a problem and it's
4 easy to say there ought to be a right to universal
5 higher education because it's important in modern
6 society, but we haven't said compared to what;
7 universal free housing, universal free food. Those are
8 more important.

9 CHAIRPERSON BERRY: May I just make one
10 comment? I make this only in my capacity as a person
11 who used to run all the federal education programs.

12 COMMISSIONER GEORGE: Speak up, please, Mary.

13 CHAIRPERSON BERRY: In my capacity as having
14 run all the federal education programs and having run a
15 university and all that sort of thing, that my
16 understanding of this -- I raised the same sort of
17 cause and effect questions when I first came to
18 Washington run federal education programs that
19 Commissioner Horner is raising. And my understanding
20 is that this project is limited to assessing federal
21 programs to provide higher education aid. And my
22 understanding is that the federal higher education
23 student aid programs have, as a major mission,
24 promoting equal opportunity to higher education without
25 regard to race and ethnicity, as well as other kinds of

1 things.

2 And so the query for the Commission is not
3 whether all poor people should get universal whatever,
4 but is the responsibility or the goal which the federal
5 government adopted -- it didn't have to adopt it -- but
6 the goal -- because there's no constitutional
7 requirement that it does. But the goal has been
8 adopted on a bipartisan basis by successive Congresses
9 and Presidents that our mission is to promote equal
10 opportunity to higher education without regard to race
11 and that this was a big problem.

12 And there has been some evidence reported in
13 things like journals and the Chronicle of Higher
14 Education, which is not a journal but a newspaper, and
15 other things, about allegations that there are
16 disparities in the award of aid and in the way the
17 programs operate and all the rest of it that may either
18 have the examples of disparate treatment or may have an
19 disparate impact.

20 And one can argue about whether you care
21 about treatment or impact. You -- I mean us, as
22 Commissioners. But that there is enough there that if
23 the Commission wanted to look into this, the Commission
24 would have a rationale for looking into it. And the
25 Commission would be able to assess whether these

1 programs are accomplishing their goal and whether
2 indeed such allegations about the way they operate and
3 what they do are correct, and is any of this
4 responsible for the numbers that Commissioner
5 Higginbotham was citing.

6 But these would be questions we would be
7 asking.

8 COMMISSIONER HORNER: Could you give me an
9 example of one allegation that minorities are receiving
10 -- that minorities are being discriminated against in
11 the award of federal loans and grants?

12 CHAIRPERSON BERRY: Well, there are some
13 people who think that, one, the policy itself, which I
14 haven't followed closely lately, and the way it is
15 implemented -- sometimes information about Pell Grants,
16 for example, is not made available to people who would
17 be eligible for it until the time had passed. And
18 these are allegations and they were made when I was
19 there. That the time would be passed for them to apply
20 before people in certain neighborhoods or certain
21 institutions found out that these things were available
22 or had applications to fill out. And therefore, when
23 they applied, it was too late. And they just happened
24 to be, in this case, black students who weren't able to
25 get access to this.

1 indicate that minorities of color are less well
2 represented at higher education than some other groups,
3 a question ought to be raised in terms of what the role
4 of the federal government should be to try to equalize
5 that. Because we're a Commission that worries not just
6 about discrimination in a negative sense, but how to
7 bring about equality of opportunity.

8 And so it seems to me that those are very
9 important recent developments that I would welcome our
10 taking a look at and see what we come up with.

11 CHAIRPERSON BERRY: We will revisit this, but
12 I hasten to add we're not saying that the Commission
13 should conclude anything in particular.

14 COMMISSIONER GEORGE: Mary, could you speak
15 up?

16 CHAIRPERSON BERRY: We're not saying the
17 Commission should conclude anything in particular at
18 this stage. We're simply talking about whether or not
19 we want to do a project about whatever it is.

20 So we'll defer this to discussion next time.

21 And then, just looking down -- I asked you
22 for five minutes. You've given me more than that.

23 Projects like Expanding the Economic
24 Opportunities of African American, Asian and Latino
25 Youth, which we said would start earlier and continue

1 into FY 1999. And that's the way that would be
2 treated.

3 Schools and Religion. We've already
4 discussed that. We know that's for 1998, so we don't -
5 - you know.

6 So what we would do is -- and then, we've got
7 these new ones; Access to Health Care for Women and
8 Members of Racial and Ethnic Minority Groups. Whether
9 that grabs anybody as a --

10 Yes, Commissioner Redenbaugh?

11 COMMISSIONER REDENBAUGH: I have two
12 comments. One is that if you back up a couple of
13 clicks to the Economic Opportunities for Minority
14 Youth, it may be useful to divide that into two or more
15 reports in the same way that I think it was good to
16 divide the Education Report.

17 I think it would be good to divide it along
18 minority group lines because I think some of the
19 problems and solutions may be not overlapping or may be
20 different.

21 So, anyway, it was really kind of a question
22 for more discussion but it may be useful to divide that
23 project into two or three.

24 CHAIRPERSON BERRY: So we would have -- for
25 Robbie and Leon, what we're talking about is the

1 These were allegations.

2 COMMISSIONER HORNER: Failure of high school
3 guidance counselors?

4 CHAIRPERSON BERRY: Right. And that they
5 didn't disseminate the information and that the federal
6 people who were responsible for seeing to it that
7 information gets out to folk were not diligent in
8 making sure that it did. That was one allegation.

9 Another was that students who wanted to take
10 certain programs in community colleges, for example, if
11 they wanted to become an x-ray technician or some job
12 or dental hygienist or physical therapist where you
13 thought you might get a job or something, that minority
14 students were not given aid if they tried to get into
15 those programs.

16 I'm not saying any of this is true. Whereas,
17 if they were trying to get into other less desirable
18 programs, people were very assiduous about seeing to it
19 that they were able to access the programs and do all
20 this.

21 And these are all allegations and they may
22 not even be true. But I'm just saying that there is
23 enough, at least in the sense of people, that this is a
24 problem. And the legal rationale for looking into it,
25 if we want to, is there. So that if people think,

1 compared to all the other projects we could do --
2 because there are a lot of project we could do and
3 there are limited resources to do them -- that we could
4 do this as a project.

5 Size and dimension of the problem? I don't
6 know.

7 COMMISSIONER HORNER: It's designated here as
8 a statutory report. And what you've just described may
9 reflect perhaps the allegations are true. But it seems
10 to me that they don't rise to the level of a statutory
11 report because they are failures of well intentioned
12 systems that require administrative correction rather
13 than systemic.

14 I don't want to belabor this any further
15 today, but I just want to say I'm a still a little bit
16 skeptical about this.

17 CHAIRPERSON BERRY: Anyone else?

18 Yes.

19 VICE CHAIRPERSON REYNOSO: Well, there's one
20 further matter, a recent development, with the passage
21 of 209 in California. A report I read, for example,
22 that the University of Maryland, I think, was ceasing
23 any scholarships that were race based.

24 I think if there's a diminution in the
25 scholarships going to minorities and the statistics

1 possibility of dividing the Economic Opportunities
2 Project to one on African American youth; one on Asian
3 American youth, perhaps; and one on Latino you,
4 perhaps. On the grounds that while these are all
5 problems, the dimensions of the problem and the cause
6 and effect relationships may be different.

7 COMMISSIONER REDENBAUGH: That was may
8 thinking. Yes.

9 CHAIRPERSON BERRY: We did that once years
10 ago when the Commission did some reports on economic
11 progress of some group or other and other groups. I
12 think there was one on black men and there was one on -
13 - I've forgotten. Somebody out there probably knows.

14 Kim, do you remember?

15 VOICE: [Off mike.]

16 CHAIRPERSON BERRY: Right. And we did them
17 separately because, while they were all issues, they
18 had different etiologies and different causes and
19 effect.

20 Anybody got any visceral reaction to that?

21 COMMISSIONER HIGGINBOTHAM: My visceral
22 reaction is that I'd like to get the staff's reaction
23 to this. When you start running down the data, you've
24 got to be careful. If you could at the same time
25 retrieve Latino and African American and Asian data,

1 isn't that better to pull all of that data
2 simultaneously, because then you can start looking at
3 correlations, rather than to do African Americans, then
4 come back and do Latinos, and then come back and do
5 Asians.

6 And why I am inclined to favor comparative
7 analysis, it is because I think that within minorities
8 some groups are hit worse than others.

9 I think if you do a report which shows the
10 differences, then maybe we could be wiser in terms of
11 our recommendations than if you look at a tunnel vision
12 on African Americans and then later a tunnel vision
13 with Asians or Latinos.

14 I think we're all in the same boat. Many of
15 us can say that many minorities are sinking. And I
16 think there's more commonality between the African
17 American problem and the Latino than there are
18 differences.

19 CHAIRPERSON BERRY: Well, then, another
20 option would be to -- and I'll recognize you in a
21 minute, Commissioner Anderson -- to do separate reports
22 and then do a summary which pulls together the
23 comparisons, which would respond to both of your
24 concerns.

1 COMMISSIONER HIGGINBOTHAM: Okay.

2 CHAIRPERSON BERRY: But Commissioner
3 Anderson?

4 COMMISSIONER ANDERSON: I think I would favor
5 one report because, as my memory serves, when you start
6 doing them one at a time, over time, different things
7 happen. And then if you decide all of a sudden we want
8 to move into another area, you've got one or two groups
9 saying -- well, how about our report.

10 And so I think it's better to have a shorter
11 time frame and get them all done together than over a
12 couple of years and maybe finding yourself -- well,
13 now, we've got to do this final or these last two
14 because we're committed to it, but we'd really like to
15 do something else.

16 CHAIRPERSON BERRY: What about the issue of
17 whether you'd mute or deflate your findings and
18 recommendations too much if in fact you try to do it
19 all at once if the problems and the remedies are
20 somewhat different, and therefore, you may not be able
21 to directly target what the issues are?

22 For example, when we did the Asian American
23 Report, which I've forgotten the title of it -- what
24 was it called? Fact or Fiction or something?

25 MS. HURLEY: Civil Rights Issues --

1 CHAIRPERSON BERRY: Thank you, Carol. Civil
2 Rights Issues --

3 MS. HURLEY: -- Facing Asian Americans in the
4 1990's.

5 CHAIRPERSON BERRY: -- facing Asian Americans
6 in the 1990's. Yes. Fact or Fiction was the old
7 report.

8 MS. HURLEY: Yes.

9 CHAIRPERSON BERRY: We found that there were
10 certain things that distinguished the experience of
11 Asian Americans from the experience of other minority
12 groups in the workplace and other places.

13 So what about the argument that if you put
14 them all together, you may tend to sort of mute what
15 the differences are by trying to make recommendations,
16 unless you're going to make all kinds of separate
17 recommendations in the same report.

18 We don't have to decide that today, but I
19 think we really ought to think about this a little bit,
20 whether we ought to do one report or several.

21 I think your point is well taken, Carl, that
22 if you do one and then you don't do the others, then
23 the question is when are you planning to do them,
24 unless you do them simultaneously.

25 What about the issue of block grants?

1 Anybody have any reactions to our doing some work on
2 block grants? Any visceral reactions? We'll get
3 intellectual reactions next time.

4 VICE CHAIRPERSON REYNOSO: Madam Chair, I had
5 assumed that that might be tied into the Federal Civil
6 Rights Enforcement effort that we talked about earlier,
7 because we had talked some months ago about the
8 importance of federal civil rights enforcement in light
9 of the federal block grants. Because now there will
10 not be the direct oversight by the federal government
11 but the civil rights laws are still in place.

12 So the federal government is going to have to
13 come up with different mechanisms to monitor whether or
14 not the states are complying with the civil rights
15 laws.

16 So I should think that in light of the recent
17 developments and perhaps further developments in
18 federal block grants, I would think that would be very
19 important.

20 CHAIRPERSON BERRY: Yes, Commissioner Horner?

21 COMMISSIONER HORNER: Madam Chair, the Urban
22 Institute is doing a huge evaluation of the whole
23 process of devolving authority and money to the states
24 and it might be worthwhile finding out what kinds of
25 questions they're asking to see if they're asking the

1 questions we would ask. In which case, we could ask
2 them to come and tell us what they're finding. Or if
3 they're not, then that might help focus what we're
4 doing.

5 Belle Sawhill is in charge of that.

6 CHAIRPERSON BERRY: All right. Staff will
7 find that out and we'll know this when we come to have
8 our discussion next time about this.

9 All right. I asked about gender. I didn't
10 get any rise out of anybody when I asked whether we
11 should do something about gender. The Commission
12 hasn't in years.

13 I guess in a public forum, the answer would
14 be yes; right, Russell?

15 COMMISSIONER REDENBAUGH: Oh, it's very
16 important.

17 CHAIRPERSON BERRY: Why don't we then just
18 leave these until next time and you will get more
19 information and more numbers, so that we can hopefully
20 make a decision. Make the -- not penultimate. What is
21 the word that means not the next to the last but the
22 next to the next to the last?

23 COMMISSIONER HORNER: There's such a word?

24 CHAIRPERSON BERRY: Yes.

25 COMMISSIONER HORNER: Ante-penultimate.

1 CHAIRPERSON BERRY: Ante-penultimate decision
2 about these things.

3 What about future agenda items beyond the
4 ones that we've already said are future agenda items?
5 Anybody have a future agenda item?

6 (No response.)

7 Okay. With that, then, I will entertain a
8 motion, unless I've forgotten something. I could have.
9 Let me see.

10 (Pause.)

11 I can't think of what I've forgotten.

12 I will entertain a motion to adjourn.

13 VICE CHAIRPERSON REYNOSO: So moved.

14 CHAIRPERSON BERRY: All right. It's
15 nondebatable.

16 We're adjourned. Thank you.

17 (Whereupon, the proceedings were concluded.)

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REPORTER'S CERTIFICATE

This is to certify that the attached
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In the Matter of: COMMISSION MEETING

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Dated: 1-17-96