

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC MEETING

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Tuesday, June 23, 1998

The Commission convened in Room 540, YMCA Building,  
624 9th Street, NW, Washington, D.C. 20425, at 2:00 p.m.,  
Mary Frances Berry, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON

COMMISSIONERS VIA TELEPHONE

CRUZ REYNOSO, VICE CHAIRPERSON

CARL A. ANDERSON, COMMISSIONER

ROBERT P. GEORGE, COMMISSIONER

CONSTANCE HORNER, COMMISSIONER

YVONNE Y. LEE, COMMISSIONER

RUSSELL G. REDENBAUGH, COMMISSIONER

PRESENT

RUBY G. MOY, STAFF DIRECTOR

STAFF PRESENT:

KIMBERLEY ALTON

MARLISSA BRIGGETT, PARLIAMENTARIAN

PAMELA DUNSTON

EDWARD A. HAILES, JR.

JACQUELINE L. JOHNSON

REGINALD MARTIN

STEPHANIE Y. MOORE, GENERAL COUNSEL

AUDREY WRIGHT

**LIBRARY**

U.S. COMMISSION ON CIVIL RIGHTS

COMMISSIONER ASSISTANTS PRESENT:

KAREN CENCE

CHARLOTTE PONTICELLI

WILLIAM L. SAUNDERS, JR.

KRISHNA TOOLSIE

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

1 CHAIRPERSON BERRY: The meeting is now convened and  
2 we are discussing the schools and religion project. You  
3 received a memo prepared by Eddie Hailes and the team and  
4 sent to you from the Staff Director concerning the subject.  
5 Concerning the hearing, the purpose of the meeting is to  
6 decide (1) whether we will have one and, (2), will we have  
7 it in Seattle or someplace else and hope that the staff  
8 will be guided in this matter. Could we get some sort of  
9 motion so we can have some discussion? A motion to have --  
10 why don't we just discuss it? Does anyone have any  
11 comments on the staff memo or Staff Director, do you have  
12 anything to say about the memo or does it speak for itself  
13 or --

14 STAFF DIRECTOR MOY: Thank you, Madam Chair, the  
15 memo speaks for itself. We'll be guided by Commissioners  
16 actions.

17 COMMISSIONER GEORGE: Madam Chairman.

18 CHAIRPERSON BERRY: Yes, Commissioner George.

19 COMMISSIONER GEORGE: The memo was useful. I would  
20 only add to it that, there are undoubtedly people in the

1 Portland area who would be of interest and use to the  
2 Commission who would be willing to appear without being  
3 subpoenaed to appear. I assume they would be subpoenaed,  
4 anyway, my point is that although Portland is 173 miles  
5 from Seattle and therefore beyond the subpoena range, that  
6 would not preclude us getting some interesting testimony  
7 from people in the Portland area where there are some  
8 important cases.

9 CHAIRPERSON BERRY: Okay.

10 VICE CHAIRPERSON REYNOSO: Mary?

11 CHAIRPERSON BERRY: Yes, Vice Chair.

12 VICE CHAIRPERSON REYNOSO: I have a question for  
13 Robbie.

14 OPERATOR: Pardon the interruption, for Mr.  
15 Redenbaugh is joining in. (At this point, Commissioner  
16 Redenbaugh joins in.)

17 CHAIRPERSON BERRY: Russell?

18 COMMISSIONER REDENBAUGH: Yes.

19 CHAIRPERSON BERRY: We just started and opened by  
20 saying that we are discussing the schools and religion memo  
21 which we all got and that the purpose of the meeting is to  
22 discuss whether we have another hearing and if we do, if it  
23 would be in Seattle. Then I asked the Staff Director if

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she had any comment and she said the memo basically speaks for itself and then Commissioner George had been recognized in the speaking.

COMMISSIONER REDENBAUGH: Alright, thank you.

COMMISSIONER GEORGE: While I actually finished my comments to Cruz, I have a question to the New York Project Director?

CHAIRPERSON BERRY: Could you make your comment again, Sir?

COMMISSIONER GEORGE: Oh, sure, I was just saying that I count the memo useful about one of the cases you undoubtedly have seen it yourself. I would simply add one thing to the memo, the memo noted that since Portland is 173 miles from Seattle, which is beyond the 100 mile subpoena range, and there are some interesting cases and people who are in the Portland area, I know that if some of those people would be able to appear without being compelled to appear by subpoena who wouldn't resist subpoena despite the fact that they are beyond the range, so that is just an addition to the points that were made in the memo.

CHAIRPERSON BERRY: And now I recognize the Vice Chairperson.

1           VICE CHAIRPERSON REYNOSO: I was going to ask a  
2 question of Robbie. The comments pertaining to Portland  
3 are pertinent to my question, and the question has to do  
4 with whether or not it's worthwhile having another hearing.  
5 I must say that I found the first hearing that we had was  
6 really a good hearing. A lot of information, a lot of  
7 points of views were expressed but particularly I thought,  
8 it seemed to me that we had the gathering of facts in terms  
9 of what the current issues are. The second hearing I  
10 thought we would learn more, but I can't really say that I  
11 learned much more at the second hearing, that is, the  
12 issues that were brought up. We had the specific  
13 witnesses, I guess, but the issues that were brought up, we  
14 had already heard testimony about them in New York, and  
15 then we get the staff memo that indicates basically that  
16 the issues that we would hear about in Seattle and if we  
17 have the hearing there, would be very much the same. But  
18 Robbie, for folk who would be coming from Portland, I think  
19 mostly they would be testifying as to their individual  
20 experiences which were the ones that we heard about in  
21 Washington, or many of the folk have been there simply to  
22 express their opinions and, of course, generally we focus  
23 on fact gathering at hearings, so I am just struck by that

1 and struck also by the fact that for the first time in my  
2 experience, we did not have anybody from the community to  
3 come forward at the end of our hearing in New York to  
4 express the quantity of their organization or themselves  
5 individually. I guess, the question I have is whether we  
6 are going to be any wiser or more factually informed after  
7 another hearing as compared to where we are now. This is  
8 one of the few times when I really have that sort of  
9 question, so I just wonder what your reaction to the  
10 hearings are and to the memo in light of the concern that  
11 I have, Robbie.

2 COMMISSIONER GEORGE: Mary, can I respond?

13 CHAIRPERSON BERRY: Yes, go right ahead.

14 COMMISSIONER GEORGE: Well, Cruz, my perspective is  
15 different from yours. I count the New York hearing very  
16 useful. I also found the Washington hearing which was  
17 really more in the order of a consultation to be useful and  
18 I would like to hear what we would hear if we went out to  
19 the pacific northwest. I wasn't especially troubled that  
20 people from the community didn't come to the open mike  
21 because with very few exceptions in the past, I have not  
22 found that kind of testimony to be useful, now of course,  
3 my experience is limited and it might be the different

1 perspectives in which the areas of testimony have come from  
2 witnesses who we did not subpoena but rather came forward.  
3 But the only thing that really disappointed me in New York  
4 was that the media and the public, more generally, did not  
5 show up for the hearing. I am sure Charlie Rivera and his  
6 office did the best they could. It was a terrible,  
7 terrible, terrible rainy day as you will recall. Just the  
8 nastiest possible New York late spring weather.

9 COMMISSIONER HORNER: Robbie, C-Span was covering  
10 the atheist convention that day.

11 {Laughter}

12 COMMISSIONER GEORGE: Well, they really had  
13 something special. I think the one point on which I would  
14 agree with Cruz is that there wasn't as much public  
15 interest and that was one of Cruz' points, not as much  
16 public interest on the hearing as there should have been  
17 and I would hope that if we do a hearing or mini hearing in  
18 the pacific northwest, that we could rectify that and get  
19 the attention to the issues that they deserve. I think  
20 beyond that is just really a difference in perspective. I  
21 did find the testimonies very useful and important.

22 CHAIRPERSON BERRY: Could I just interrupt to say  
23 for the court reporter that was Commissioner George



1 speaking, who just spoke, G-E-O-R-G-E and before  
2 Commissioner George was Vice Chairperson Reynoso, R-E-Y-  
3 N-O-S-O and before that Commissioner Redenbaugh who came in  
4 afterwards and we repeated some stuff for him. And then  
5 Commissioner Horner was the one who mentioned the Atheist  
6 Convention taking place at the same time and so that brings  
7 you up and so if the Commissioners could identify  
8 themselves for the court reporter it would be very helpful.  
9 Thank you.

10 In my own case, I could see where even if we covered  
11 the same issues, I can understand an argument but doing it  
12 in a different venue with different people who might bring  
13 a different perspective or some different angle on it. I  
14 could see where that might be a difference. I was  
15 disappointed too that not more people showed up, but I  
16 understand now about the Atheist Convention. That explains  
17 it.

18 VICE CHAIRPERSON REYNOSO: Where was the Atheist  
19 Convention? I'm just curious.

20 COMMISSIONER HORNER: I think, but I am not sure,  
21 that it was in the Washington-Baltimore area.

22 CHAIRPERSON BERRY: Does any other Commissioner have  
any comment on this?

1 COMMISSIONER REDENBAUGH: Yes.

2 CHAIRPERSON BERRY: Yes Commissioner Redenbaugh.

3 COMMISSIONER REDENBAUGH: Yes, this is Commissioner  
4 Redenbaugh. I think that a third hearing would in fact be  
5 very useful in a different region of the country, even if  
6 it was similar in question. But, I have a rather different  
7 concern, which is not about the futility of it, but about  
8 the capacity to complete this and the other projects which  
9 we have committed to complete this year. I'm a bit of a  
10 broken record on this one, so in light of that concern,  
11 rather than the usefulness of the (inaudible) I would like  
12 to discuss how are we going to get all these things done in  
13 the times that we have committed to do them?

14 CHAIRPERSON BERRY: That's a good question. Who  
15 knows the answer to that question? Staff Director, do you  
16 have any light to shed on this subject of timing and  
17 resources -- on how it's going to get done?

18 STAFF DIRECTOR MOY: No, I don't because we have  
19 also had some vacancies, as I mentioned before, that have  
20 affected us in doing the things that we need to do here.

21 COMMISSIONER REDENBAUGH: But given that we do know  
22 about the vacancies, do you have now a new estimate as to  
23 when these things can be done?

1 STAFF DIRECTOR MOY: No, I don't.

2 COMMISSIONER GEORGE: I'm sorry, Mary, I didn't  
3 quite catch all of that? Was the elimination of the  
4 question of possible dates of a third hearing?

5 CHAIRPERSON BERRY: Well, if I understood  
6 Commissioner Redenbaugh, the point he made was that he  
7 wanted to know about the capacity of the agency to get the  
8 reports on time, if I understood him correctly.

9 COMMISSIONER GEORGE: Yes, that is my, that answered  
10 my question. And the other work we committed to be done  
11 this year.

12 CHAIRPERSON BERRY: As well as the management  
13 initiatives and the other reports. Is that your point?

14 COMMISSIONER GEORGE: Yes, it is.

15 CHAIRPERSON BERRY: And then I --

16 COMMISSIONER GEORGE -- and the statutory report as  
17 well.

18 CHAIRPERSON BERRY: And then I asked the Staff  
19 Director if she had any comment on it. That was what the  
20 staff director was responding to -- The capacity question.  
21 It was not precisely about the capacity to do the hearing,  
22 it was about the capacity to do everything. We are going  
23 to borrow the context that I was asking the question just

1 to follow up on Commissioner Redenbaugh.

2 COMMISSIONER REDENBAUGH: I'm not reassured by the  
3 answer which the Staff Director gave, that we will in fact  
4 complete those things that we have committed to do this  
5 year. Perhaps the rest of you are more satisfied about  
6 that.

7 COMMISSIONER ANDERSON: Madam Chair?

8 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

9 COMMISSIONER ANDERSON: Thank you, perhaps the Staff  
10 Director can tell us whether or not the projects we have  
11 are on track for completion this year, or which ones are  
12 not.

13 CHAIRPERSON BERRY: Okay, Staff Director.

14 STAFF DIRECTOR MOY: The MIS, the staff has  
15 completed its training and we are still looking into  
16 additional training for people who were sick at the time it  
17 was given. I'm comfortable with the AI's. The AI's have  
18 been given to the Office of the Staff Director to review.  
19 I'm comfortable with the CFRs and as to the other projects,  
20 the ADA has been given to the Office of the Staff Director  
21 for its review.

22 COMMISSIONER ANDERSON: I think it's excellent. The  
23 Commissioners have that one.

1           STAFF DIRECTOR MOY: I know, but I get a chance to  
2 look at it too.

3           COMMISSIONER ANDERSON: You look at it before we --

4           STAFF DIRECTOR MOY: Right, it's been sent to the  
5 Commissioners. Other things are ongoing. I think if you  
6 decide to go ahead with the religion project, we will have  
7 to readjust our resources in order to comply.

8           COMMISSION ANDERSON: So, regarding the vacancies we  
9 have now, all of the projects are still on schedule?

10          STAFF DIRECTOR MOY: Yes, that's right. That means  
11 that other people on staff have had to do additional work.

12          CHAIRPERSON BERRY: What projects are still on  
13 schedule? You mean the ones you described are still on  
14 schedule, right?

15          STAFF DIRECTOR MOY: Right, in September, you will  
16 have Crisis in African American Males, that would be in  
17 September.

18          COMMISSIONER REDENBAUGH: Now, is that a hearing or  
19 consultation?

20          STAFF DIRECTOR MOY: No, a consultation.

21          CHAIRPERSON BERRY: What about the OGC projects and  
22 how they will be affected by the school and religion work?

23          STAFF DIRECTOR MOY: Given the vacancies that are

1           there now, they are going to be doing double work. I am  
2           pretty sure that other staff in OGC will have to be  
3           reassigned in order to do the schools and religion project  
4           as well.

5           COMMISSIONER HORNER: Does doing double work mean  
6           working an 80 hour week? What are we talking about here?

7           STAFF DIRECTOR MOY: I hope not, because some of the  
8           attorneys that have already left, positions have not been  
9           filled and they are in the process of interviewing people  
10          now.

11          COMMISSIONER HORNER: It occurred to me that if we  
12          have a time crunch, I'd like to put an option out, not  
13          something I would necessarily support, but something we  
14          could think about would be holding the third hearing, but  
15          instead of doing a report, just publishing a transcript.  
16          That way the presentation would be available for all  
17          interested parties.

18          CHAIRPERSON BERRY: We would do what, Commissioner  
19          Horner, the last part of what you said?

20          COMMISSIONER HORNER: Oh, I just said that way, the  
21          transcripts would be available to people who would have an  
22          interest in this issue of course we would not have the  
23          staff analysis of the legal issues involved. It's just a

1 random thought.

2 COMMISSIONER ANDERSON: Connie, would that fulfil  
3 the obligations under the re-authorization statute?

4 COMMISSIONER HORNER: I don't know. I'm sorry,  
5 that's not something I had considered.

6 STAFF DIRECTOR MOY: Madam Chairperson?

7 CHAIRPERSON BERRY: Yes, the Staff Director has  
8 something else she would like to say.

9 STAFF DIRECTOR MOY: In addition to the other  
10 projects and reports that I mentioned a few minutes ago,  
11 the LA report would go to the Commissioners before the July  
12 meeting and the New York report to the bankers and firms  
13 before the July meeting, the Mississippi report would be  
14 submitted to the General Counsel for preliminary review,  
15 I'm sorry, has been and so, we still have these that are  
16 ongoing.

17 CHAIRPERSON BERRY: Okay, that's more information.  
18 The question that Commissioner Horner raised was about  
19 doing a hearing and just having a transcript as a possible  
20 solution. I don't know, Commissioner George, you were the  
21 driving force behind these ideas -- it's not that the rest  
22 of us were not interested - I have heard much of this, but  
I'm just saying -- it was your idea conceptionally.

1           COMMISSIONER GEORGE: Oh, I very much appreciate  
2 your interest --

3           CHAIRPERSON BERRY: I want to know what you think  
4 in terms of whether we should do a report on the two we've  
5 done and try to get that report done or whether you would  
6 rather have another hearing and have a transcript done or  
7 what is your pleasure?

8           COMMISSIONER GEORGE: I certainly do appreciate  
9 everybody's interest and cooperation in this session and  
10 their turning out for the hearings and I know people have  
11 made quite an effort and everybody's full participation,  
12 now, in principle, I don't have any objection to the idea  
13 of publishing the transcript so long as we will be free to  
14 attach to the published transcripts our own comments as  
15 individual Commissioners. However, I have a serious  
16 question as I raised with Connie a moment ago, I'm not sure  
17 that that fulfills our obligation under the re-  
18 authorization statute. Now, if it does, alright. I would  
19 be willing to go along with that, but I frankly doubt that  
20 it does although we would have to take counsel on that and  
21 have a close look pre-authorization statute and so forth.

22           COMMISSIONER HORNER: At this time, I don't think we  
23 want to put off this decision while we do that.



1           CHAIRPERSON BERRY: I think we need to decide  
2 something one way or the other. Earlier, when we discussed  
3 this, just to remind Commissioners, there was some  
4 discussion about whether Commissioners Horner and George  
5 would be able to comment before they left assuming they  
6 left and assuming that the report wasn't done. Remember  
7 that discussion?

8           COMMISSIONER GEORGE: But there would still have  
9 been a report.

10          CHAIRPERSON BERRY: The commitment was that  
11 transcripts could be published and you could comment before  
12 you left if all these things happened hypothetically, so  
13 the Commission did consider doing that and did agree that  
14 that was a possibility, but that does not relate to the  
15 question of whether we should ultimately do a report, so  
16 what I am interested in knowing, I really am interested in  
17 just your view of how this plays out since you know more  
18 about the subject. I am assuming you know more about it.  
19 Would it be better to do a report on two hearings or would  
20 it be better to do another one and have the transcript and  
21 whenever the report can be done, do it. That's a judgment  
22 that has to be made.

          COMMISSIONER GEORGE: Yes --

1           COMMISSIONER HORNER: Madam Chair, this is Connie  
2 Horner. I will defer to Commissioner George on this, as  
3 you put it, the driving force.

4           COMMISSIONER GEORGE: Well, unfortunately, Connie,  
5 although I have been able to develop a bit of a background  
6 of knowledge on the substance and questions involved with  
7 these hearing, there is no special expertise I have on the  
8 credential question as to whether it is better for us as a  
9 Commission to get a report out in a more timely fashion  
10 based on the two hearings or go ahead and have the third  
11 hearing with the risk of the report being substantially  
12 being delayed but with the option, in the meantime, and I  
13 take it this is what Mary was talking about, with the  
14 option in the meantime of publishing the transcripts and  
15 commentary from people who wouldn't be around when the  
16 report came out? I can see it both ways -- I'm sorry --  
17 I'm really thinking out loud here.

18           CHAIRPERSON BERRY: Did someone seek recognition?  
19 I thought I heard someone?

20           COMMISSIONER ANDERSON: Commissioner Anderson.

21           CHAIRPERSON BERRY: Commissioner Anderson.

22           COMMISSIONER ANDERSON: I would propose we go ahead  
23 and do the third hearing, publish the transcript with the

1 individual used by Commissioners and later publish the  
2 report in the due course of time. I make a move.

3 COMMISSIONER HORNER: I second that.

4 CHAIRPERSON BERRY: It's been moved and seconded.  
5 Is there further discussion?

6 COMMISSIONER GEORGE: I have a question for the  
7 Staff Director about possible time frame. I don't need to  
8 know the exact dates, but what are the earliest dates we  
9 can conceivably go out to Seattle? Are we talking about  
10 August, are we talking about September?

11 STAFF DIRECTOR MOY: Commissioner George, we need at  
12 least 30 days out in order to put it in the Federal  
13 Register.

14 COMMISSIONER GEORGE: I understand.

15 STAFF DIRECTOR MOY: And 30 days from now would be  
16 July 23. You all would have to get the list in to us. I  
17 would say that the list would be due no later than this  
18 Friday and then I hope it does not cut into your August  
19 vacation time.

20 CHAIRPERSON BERRY: So, the earliest time we could  
21 be looking at would be some time in early August. That's  
22 the way it sounds. Yes, Commissioner Redenbaugh.

23 COMMISSIONER REDENBAUGH: I think Robbie's question

1           went not to the statutory requirements or how early we  
2           could do this, but I think it went to our administerial  
3           capability. How quickly could we do this? That is a more  
4           interesting question.

5           CHAIRPERSON BERRY: That is a different question.  
6           All right, then, well, what's the answer to the question to  
7           when we would be able to in terms do it, of our capacity to  
8           perform, to get this done?

9           STAFF DIRECTOR MOY: Realistically, it would be done  
10          after Crisis and that's September.

11          COMMISSIONER GEORGE: You mean to get things out  
12          there for a hearing?

13          STAFF DIRECTOR MOY: Well, yes, Commissioner George.  
14          People would have to go out there logistically just as they  
15          did for New York, to look for a location. It wasn't easy  
16          to find what they did in New York.

17          CHAIRPERSON BERRY: So, we are saying sometime in  
18          September. Anybody knows when the Crisis begins?

19          COMMISSIONER HORNER: Yes, I have it on my calendar  
20          here. I have it tentatively for Thursday, the 17th of  
21          September for when the Commission meeting is on Friday,  
22          September the 18th.

23          CHAIRPERSON BERRY: So, we will be talking about

1 some time after that.

2 COMMISSIONER HORNER: Can I just add a caveat here?

3 A hearing has to be balanced as between the parties. If  
4 Commissioner Anderson and I are both unavailable, we can't  
5 hold one of these things. I just want to alert everybody  
6 that it's hard -- I certainly have days when I am available  
7 after September, but not many, in other words, it involves  
8 a day to fly out and a day to fly back and a day there.  
9 So, we are looking at a three-day period in September or  
10 October when both Commissioner Anderson and I or presumably  
11 a majority of other Commissioners are available and before  
12 we decide we are going to do that, we should probably make  
13 sure that that's a possibility.

14 CHAIRPERSON BERRY: Right. Let me ask you this  
15 Commissioner George -- Are you still in a position that you  
16 think that a third one should actually be a hearing as  
17 opposed to a forum or a briefing without subpoenas? I'm  
18 asking you that only because of the point that Commissioner  
19 Horner just made.

20 COMMISSIONER GEORGE: I take your point. When could  
21 we do it if we didn't need to exercise the subpoena power?

22 CHAIRPERSON BERRY: Well, my point was this though -  
23 my point was not when, my point was if it should happen

1 which I surely hope it doesn't happen, that no one could  
2 find a date on which Commissioner Horner or Anderson can be  
3 available at a time that would get it done before you  
4 ostensibly thought you were leaving, that if you had a  
5 briefing or a forum then even if they could come for part  
6 of it or didn't or worked out something else, you could do  
7 it, but otherwise, if it is going to be a hearing, then one  
8 of them has to be there, with all of us little independents  
9 running around.

10 COMMISSIONER GEORGE: Yeah, one of us would have to  
11 re-register.

12 CHAIRPERSON BERRY: Right

13 COMMISSIONER GEORGE: I think you'd make a great  
14 Republican, Mary.

15 CHAIRPERSON BERRY: All right, I think you'd make a  
16 great Democrat.

17 COMMISSIONER GEORGE: Well, I've been a Democrat.  
18 I have had that experience.

19 CHAIRPERSON BERRY: I'm not trying to persuade you  
20 of anything, I'm just asking you a question. You have two  
21 now if you approve - it is still better if you have it as  
22 a hearing.

23 COMMISSIONER GEORGE: Well, it is definitely better

1 if you have it as a hearing. Now is it absolutely  
2 essential, I think it would be better to have a  
3 consultation than to have nothing.

4 CHAIRPERSON BERRY: Yes, Commissioner Horner.

5 COMMISSIONER HORNER: I can say that I am available  
6 to fly on Wednesday, September 30. I have a hearing on  
7 Thursday, the 1st and fly back on the 2nd.

8 CHAIRPERSON BERRY: The Staff Director is saying  
9 something.

10 STAFF DIRECTOR MOY: Commissioner Horner, as all  
11 Commissioners know, this is the close-out time of year and  
12 it also plays havoc on the travel. Everything has to be  
13 in, it is a problem.

14 CHAIRPERSON BERRY: So we would have to do it --  
15 what dates did you say at the end of the month?

16 COMMISSIONER HORNER: I was talking about the last  
17 days of September and the first days of October.

18 CHAIRPERSON BERRY: So, the last days we could do it  
19 would be on the 29th or the 30th. You have to be back by  
20 when?

21 COMMISSIONER HORNER: By the 30th.

22 CHAIRPERSON BERRY: Everyone would have to be back  
23 by the 30th, if we did it in this fiscal year.

1           COMMISSIONER HORNER: I also could do it anytime  
2 from the 14th of September through the 21st.

3           CHAIRPERSON BERRY: OK, through the 21st.

4           COMMISSIONER HORNER: In other words, I could fly  
5 back on the 21st.

6           COMMISSIONER GEORGE: Mary, is there any chance of  
7 doing this at the end of August, in other words, doing it  
8 before the Crisis rather than after?

9           STAFF DIRECTOR MOY: You may be getting into  
10 people's vacation time as well as the educators and our  
11 staff.

12           COMMISSIONER GEORGE: Could we poll people about the  
13 last week or so in August to see if it's out of the  
14 question for people?

15           COMMISSIONER HORNER: I am not available on the 27th  
16 so if we have it after that, I am not available on the  
17 26th and 27th.

18           COMMISSIONER GEORGE: Are you available on the 24th,  
19 25th, 28th?

20           COMMISSIONER HORNER: I'll tell you in just a  
21 moment. I am available on the 24th but I would have to be  
22 back in Washington by the 26th. I could do a hearing on  
23 the 25th.



1 COMMISSIONER GEORGE: What about Cruz?

2 VICE CHAIRPERSON REYNOSO: I don't have my teaching  
3 schedule except that my calendar says that instruction  
4 begins on August 24th --

5 COMMISSIONER GEORGE: Oh, you start early.

6 VICE CHAIRPERSON REYNOSO: -- And the arrangement I  
7 have at the law school is that they try to keep Thursday  
8 afternoons and Fridays free for me because that is when we  
9 normally have meetings, so for me, it is easier for me to  
10 do it on a Friday.

11 COMMISSIONER GEORGE: So Connie, would the 27th or  
12 28th of August be all right?

13 COMMISSIONER HORNER: I have a meeting in New York  
14 on the 27th. If possible to do so, I could fly out to  
15 Seattle after 3:00 eastern time in the afternoon. That  
16 would get me into Seattle while planes are still flying.

17 COMMISSIONER GEORGE: I think it would work because  
18 you have the time difference working in your favor.

19 COMMISSIONER HORNER: I could do that for a hearing  
20 on the 28th.

21 COMMISSIONER GEORGE: Now Mary, you yourself are  
22 often off and away in August, is that out of the question  
23 for you, the 28th of August?

1           CHAIRPERSON BERRY: Yes, but carry on, my friends.  
2           Let's see, we are talking here -- What is the story of  
3           August on the staff's perspective? We still haven't heard  
4           from them. Let's hear again from them.

5           COMMISSIONER GEORGE: On the 28th of August...

6           STAFF DIRECTOR MOY: Well, I think the important  
7           person is that Eddie Hailes won't be available.

8           COMMISSIONER HORNER: This is Labor Day week-end, I  
9           think.

10          CHAIRPERSON BERRY: The 28th of August, we're  
11          looking at? What is the staff, what is the Admin services  
12          point of view about the 28th of August? What about OGC's?

13          STAFF DIRECTOR MOY: When you are talking about  
14          witnesses, you are going to have a problem trying to track  
15          them down in the month of August. People are on vacation,  
16          people in the education field will be on vacation.

17          CHAIRPERSON BERRY: People are on vacation. They'll  
18          be at Wharts Hole and I won't mention that other place in  
19          Massachusetts, and all sorts of places like that, which is  
20          a consideration. Let's ask this, Commissioner Horner, I  
21          very much appreciate your trying to cooperate, but let me  
22          ask you this, does your schedule get tighter after  
23          September? It seems like if we do it after the fiscal year

1 closed?

2 COMMISSIONER HORNER: No, actually, I have a pretty  
3 clear calendar from the first of October through the 12th.

4 CHAIRPERSON BERRY: Now, we have a Commission  
5 meeting that is on the 16th. When is the ADA hearing? How  
6 about we try to do the schools and religion in October,  
7 then and try to work around, Commissioner Anderson, I have  
8 not heard from you yet. Is your schedule usually tight as  
9 usual?

10 COMMISSIONER ANDERSON: Well, I think from my part  
11 we can look at the 28th of August. I can look at dates in  
12 October, too.

13 COMMISSIONER HORNER: On the 16th when we have a  
14 meeting scheduled, if we have a hearing in Seattle on that  
15 day, I could make that or the day before, Thursday, the  
16 15th.

17 CHAIRPERSON BERRY: How does that sound from your  
18 perspective Commissioner Anderson and from the staff  
19 perspective -- October than instead of these other times?  
20 The Staff Director is saying something.

21 STAFF DIRECTOR MOY: Is it to have a hearing in the  
22 fall, or, if you want, we can probably do a forum in July.

CHAIRPERSON BERRY: In other words, if we wanted to

1 do a forum, we could have it in July, is that what you're  
2 saying? But if we want to do a hearing, then it's in the  
3 fall.

4 COMMISSIONER REDENBAUGH: Robbie, if you are, as you  
5 suggest, highly balanced on this point, may I recommend  
6 that you go for the forum in July as any day in October is  
7 getting very close to the end of the calendar year.

8 COMMISSIONER GEORGE: Yeah, that's right, and the  
9 30-day period would close the record and all that.

10 COMMISSIONER REDENBAUGH: I think you are asking the  
11 staff to do something which I think is pretty difficult.  
12 Well, the information we gathered from a consultation that  
13 was not a hearing, could that be fully incorporated into  
14 the record and taken into account, in the a report, I mean?

15 CHAIRPERSON BERRY: Let me consult here with the  
16 office staff.

17 (Inaudible)

18 CHAIRPERSON BERRY: It could be used as - you have  
19 a transcript just like we usually do and that could be  
20 available and the material could be used as background  
21 information in the report but it could not be used in the  
22 same way as sworn testimony could be used in a report.

23 Okay. Carl?

1           COMMISSIONER ANDERSON:     I would say that the  
2 question is that you cannot use the testimony to establish  
3 a particular fact, but you could use the testimony to  
4 establish an opinion of the person testifying.  Then I  
5 think the consultation would be valuable because I'm not  
6 sure if so much of this issue turns out particular types of  
7 facts and interpretations.

8           CHAIRPERSON BERRY:     What do you think about the  
9 issue and reaction to that Commissioner George?

10          COMMISSIONER GEORGE:    I think that there are facts  
11 that you would be significant to gather, but this is really  
12 a matter of trade offs and I think it would be worth the  
13 trade off to do the consultation and gather information and  
14 facts including factual information that could at least be  
15 used as background to fill in the larger picture that was  
16 created when you put together what we heard in Washington  
17 and New York with what we hear in Seattle.  So, I guess  
18 with all things considered, I am persuaded that it would be  
19 worth doing a consultation in July in Seattle with the  
20 understanding that this would be completed.  In other  
21 words, this completes it.  In other words, I would not ask  
22 them for any additional hearing or anything.  The whole  
project would now turn into two hearings and a consultation

1 rather than three hearings and I'm prepared to live with  
2 that with the understanding that the write up of this and  
3 the report of this would be completed and published by the  
4 end of the year.

5 CHAIRPERSON BERRY: Well, all of the transcripts at  
6 least and as much as can be done on the reports, but the  
7 transcripts at least with statements. We know we would  
8 have that so we wouldn't have to worry about whatever  
9 happens with the staff, we would get that, and that they  
10 would work expeditiously on the report, but officially we  
11 would have to call this, you could call it unofficially or  
12 whatever you want, but we would have to call it a briefing  
13 or a forum, simply because for a consultation, you  
14 technically invite people to give papers and you pay them  
15 for the papers. You see what I mean?

16 COMMISSIONER GEORGE: Will this be analogist to what  
17 we did on the church burnings? In other words, or that it  
18 wouldn't involve state advisory committees?

19 CHAIRPERSON BERRY: Right, the same kind of thing  
20 except it's not theirs. Now, let's find a date in July,  
21 then. We didn't do that. So we're saying we are doing  
22 this in July. So when are we doing this in July? People's  
23 calendars tell us in terms of what we can do.

1           COMMISSIONER HORNER: I'd like to start by asking if  
2 we can do it the week of the 20th simply because that's my  
3 clearest week if that's not good for others, then we can  
4 work around dates.

5           COMMISSIONER GEORGE: Well, I'm afraid that is about  
6 the only week I can do it and I hope it is doable for  
7 others.

8           COMMISSIONER ANDERSON: It is a good date for me.

9           COMMISSIONER LEE: Do we still have to do the  
10 thirty-day notice?

11          CHAIRPERSON BERRY: No, No, No.

12          COMMISSIONER LEE: Then I am available on the 20th  
13 to the 22nd.

14          CHAIRPERSON BERRY: Then are you available on the  
15 23rd?

16          COMMISSIONER LEE: No, I won't be.

17          CHAIRPERSON BERRY: Would you be available any day  
18 that week?

19          COMMISSIONER LEE: Just on the 20th and the 22nd.

20          CHAIRPERSON BERRY: Oh, I'm sorry, I didn't hear  
21 you. So from your standpoint, it will be the 20th, 21st  
22 and the 22nd. And from your standpoint, Commissioner  
23 George?

1           COMMISSIONER GEORGE: The 23rd, the 24th -- let me  
2 see if I can get out of my commitment on the 22nd, though -

3 -

4           COMMISSIONER HORNER: How about the 17th?

5           COMMISSIONER ANDERSON: No, I know that I can't do  
6 that. What about the following week? The week of the  
7 27th.

8           COMMISSIONER HORNER: I am not available at all that  
9 week.

10          COMMISSIONER LEE: (Inaudible)

11          COMMISSIONER REYNOSO: About the only day that I  
12 could be available would be the 20th.

13          CHAIRPERSON BERRY: So, we have another problem here  
14 now. So the staff says the earliest Admin Services would  
15 organize this and it would be the 20th.

16          COMMISSIONER GEORGE: For a briefing, do we need two  
17 political parties represented?

18          CHAIRPERSON BERRY: No, that's right, we don't.  
19 That is one of the points.

20          COMMISSIONER GEORGE: So we can relax to that  
21 constraint.

22          CHAIRPERSON BERRY: We can relax to that constraint.

23 I would like everybody to be there if they can but --



1           COMMISSIONER HORNER: Obviously, is the obligation  
2 you have on the calendar now - something that you can't get  
3 out of?

4           COMMISSIONER GEORGE: On the 22nd, well, I think I  
5 can escape. The 20th and the 21st are absolutely out for  
6 me. The 22nd, I might be able to do, the 23rd and 24th are  
7 absolutely free.

8           COMMISSIONER HORNER: You need to fly back on the  
9 22nd?

10          COMMISSIONER LEE: I have an obligation on the  
11 evening of the 22nd.

12          CHAIRPERSON BERRY: Can I ask a question, Vice  
13 Chair? Are you available the week after that?

14          VICE CHAIRPERSON: No, I'm afraid that starting the  
15 22nd of July, I will not be available till the middle of  
16 August.

17          CHAIRPERSON BERRY: But, you would be available on  
18 the 20th.

19          VICE CHAIRPERSON REYNOSO: Yes, I can do the 20th.

20          COMMISSIONER HORNER: How about the 13th and 14th?

21          COMMISSIONER GEORGE: No, those I can't do.

22          COMMISSIONER HORNER: 16th and 17th? you can't?

23          COMMISSIONER GEORGE: No, that week I can't do.

1 CHAIRPERSON BERRY: Who is available on the 22nd?

2 COMMISSIONER GEORGE: I am.

3 COMMISSIONER HORNER: I am.

4 COMMISSIONER BERRY: OK, one, two any one else.

5 COMMISSIONER GEORGE: OK, did Yvonne say no for  
6 sure?

7 COMMISSIONER LEE: No, I can not make it on the  
8 22nd.

9 COMMISSIONER ANDERSON: I am.

10 CHAIRPERSON BERRY: That is 3 - who is available on  
11 the 23rd, the same people? And who is available on the  
12 24th? You too, Commissioner Horner?

13 COMMISSIONER HORNER: Yes.

14 CHAIRPERSON BERRY: And on the 20th, Robbie is not  
15 available.

16 COMMISSIONER GEORGE: No.

17 CHAIRPERSON BERRY: Okay, so that's out. The next  
18 week - this is awful.

19 COMMISSIONER GEORGE: The next week I can do all  
20 week.

21 COMMISSIONER HORNER: You can have it without me.  
22 It is either going to be without me the week of the 27th or  
23 without Yvonne the week of the 20th.

1 CHAIRPERSON BERRY: Or without Cruz both weeks, or  
2 without Carl the second week. This is awful.

3 COMMISSIONER ANDERSON: I hate to tell you, I cannot  
4 do it that week of the 27th.

5 COMMISSIONER GEORGE: I'm sorry, I was confused  
6 earlier when I said I was free the week of the 20th.  
7 That's not true, I am free the week of the 27th, but I  
8 still could do the 22nd, the 23rd or 24th.

9 CHAIRPERSON BERRY: This is awful.

10 COMMISSIONER LEE: With all things considered, I  
11 think July 22nd is about the best day for everybody. I  
12 could be up there on the 22nd.

13 CHAIRPERSON BERRY: Cruz, is there no way you can do  
14 any part of the 22nd.

15 VICE CHAIRPERSON REYNOSO: No, I can't.

16 COMMISSIONER GEORGE: Cruz doesn't get back until  
17 mid-August. I don't get back until August 12th.

18 COMMISSIONER GEORGE: Would it be absolutely out of  
19 the question if we go as early as July 8th or 9th?

20 COMMISSIONER ANDERSON: No, we have the Commission  
21 meeting on the 10th. I don't know how you could get people  
22 that soon, unless it was a come-as-you-are-briefing.

23 CHAIRPERSON BERRY: I think to be very frank with my

1 colleagues, I think we are pushing it a little, to ask  
2 anybody to do anything in July or August, and given what we  
3 all know about everyone's vacation schedules and family  
4 commitments as well as other things they have to do to ask  
5 for it at the end of July. I think the staff would try, if  
6 we tell them to, they will try. For people to commit  
7 themselves to doing something and to try to make sure we  
8 have the right kind of balance and do all the things we  
9 know we have to do is a little difficult. I don't know  
10 what the answer is, but I'm just saying, it is a little  
11 difficult.

12 COMMISSIONER GEORGE: You are absolutely right,  
13 could we move forward and look at the week of September  
14 7th?

15 COMMISSIONER REDENBAUGH: Does that include Labor  
16 Day week-end?

17 CHAIRPERSON BERRY: Before we go there, what was  
18 that date in August when a lot of people were available.

19 COMMISSIONER HORNER: I am available from the 20th  
20 through the 24th.

21 CHAIRPERSON BERRY: How many other people are  
22 available in that window. We are talking about a day, I  
23 guess. How many other people are available in that period

1 when Connie says she is available? Are you available then,  
2 Robbie?

3 COMMISSIONER GEORGE: Yeah, I would prefer that  
4 Monday, the 24th, but I could do the days before, too.

5 COMMISSIONER REDENBAUGH: Monday is not the 24th  
6 Robbie.

7 COMMISSIONER HORNER: Yes it is.

8 CHAIRPERSON BERRY: We are in August Russell.

9 COMMISSIONER REDENBAUGH: I missed a whole month,  
10 there.

11 CHAIRPERSON BERRY: How many of you are available on  
12 the same dates during that period when Connie and Robbie  
13 are available in August? Is there anyone who is not? Cruz  
14 are you back then?

15 VICE CHAIRPERSON REYNOSO: Yes, school starts the  
16 24th, but I had mentioned that I don't think it was helpful  
17 that the best days for me when I know I will not have  
18 classes is Friday, but I think I always will have problems  
19 with that.

20 CHAIRPERSON BERRY: How about the 21st?

21 COMMISSIONER HORNER: The only day I will be  
22 available is August 19th.

23 COMMISSIONER LEE: August 19th - through the 21st?

1 CHAIRPERSON BERRY: Are you available on the 21st?,  
2 Robbie? Connie, Carl, Yvonne, Cruz?

3 ALL: Yes

4 VICE CHAIRPERSON REYNOSO: I think so, I am not  
5 sure. I have something down on my calendar - Friday, the  
6 21st? I'll check.

7 CHAIRPERSON BERRY: Well, we need to make a decision  
8 now. So, I need you to tell me. I need to know whether  
9 you are available that day, because everybody else seems to  
10 be --

11 VICE CHAIRPERSON REYNOSO: Let's do it.

12 CHAIRPERSON BERRY: -- except Eddie which means the  
13 General Counsel will have to appoint somebody to ask the  
14 questions, so we will do that. Why don't we have it on  
15 the 21st then. Seems like most people are available and if  
16 anything inevitable happens, it still will be enough  
17 people. Well, that settles that then, a forum on August  
18 21st and then we will proceed after that. I guess it is by  
19 unanimous consent so we really don't need a motion. Is  
20 there anything else we need to discuss. Staff Director, is  
21 that enough guidance for you folks?

22 STAFF DIRECTOR MOY: Yes.

23 CHAIRPERSON BERRY: All right Commissioners, it was

1 like pulling teeth, but thank you very much.

2 COMMISSIONER GEORGE: Staff Director, being that  
3 this is going to be the end of August, when should we have  
4 all our witness list to you?

5 STAFF DIRECTOR MOY: I would still like it at the  
6 end of this week, if you could or Monday at the latest.

7 COMMISSIONER GEORGE: I'm going to have to do it as  
8 late as Tuesday.

9 CHAIRPERSON BERRY: Next Tuesday, close of business  
10 is deadline for proposed witnesses and for the meeting, can  
11 I have a motion to adjourn.

12 COMMISSIONER HORNER: Madam Chair, can I, am I able  
13 to ask a quick procedural question?

14 CHAIRPERSON BERRY: Sure.

15 COMMISSIONER HORNER: I have a question that probably  
16 can't be answered today, but I think we need an answer  
17 about the Commissioners' responsibility regarding staff  
18 compliance with the rules of the Commission and personnel  
19 laws of regulation. We have all gotten copies of a letter  
20 from our subcommittee Chair in the House to you asking the  
21 Commissioner's cooperation, relating to a matter of a GAO  
22 inquiry and I'd like to just hear from the Staff Director  
what responsibility the staff has and the Commissioners

1 have to look into such a matter or to refer such a matter  
2 formerly to the Office of Government Ethics. In other  
3 words, I want to know what we are suppose to do and I don't  
4 expect anyone to have that answer off the top of their  
5 heads, but we do need an answer, I think. We can't just  
6 let it sit there without response.

7 CHAIRPERSON BERRY: Staff Director, you heard the  
8 question and as Commissioner Horner says she does not  
9 expect you to have the answer off the top of your head so  
10 that you can think about it so that we can have the answer,  
11 or do you already know the answer?

12 STAFF DIRECTOR MOY: No, I -- I haven't seen the  
13 letter --

14 COMMISSIONER HORNER: I don't want to refer more  
15 specifically to it because I don't want to reciprocate the  
16 requirements for an executive session so I'm just asking  
17 generally since our subcommittee Chair, when our  
18 subcommittee Chair asks us to cooperate and encourage the  
19 staff to cooperate with a GAO inquiry, what's our  
20 obligation and responsibility?

21 CHAIRPERSON BERRY: Why don't we have the Staff  
22 Director look at the question as it is and to think about  
23 it and if it need be that she does not have the letter you



1 are talking about, I will share my copy with her and then  
2 discuss this with her. How is that? How would that be?

3 COMMISSIONER HORNER: That would be just fine. I  
4 see that she is not CC'd on the letter. The date is May  
5 15th.

6 CHAIRPERSON BERRY: And for the Commissioners'  
7 information, I have in fact replied to the letter. I  
8 explained to the staff there that I was out of the country  
9 when the letter came, which is why they never got an  
10 answer, but I replied generically to the letter so that  
11 they know that I received it and not trying to not do  
12 anything with it, but you will get copies of what I sent as  
13 a reply and the Staff Director will be prepared to answer  
14 this question for us.

15 COMMISSIONER HORNER: At the next meeting?

16 CHAIRPERSON BERRY: Yes. Okay. All right, motion  
17 to adjourned.

18 COMMISSIONER HORNER: So moved.

19 COMMISSIONER GEORGE: Seconded.

20 CHAIRPERSON BERRY: Non-debatable. Thank you.

21

22