

U. S. COMMISSION ON CIVIL RIGHTS

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MEETING  
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Friday, January 9, 1998

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  
CARL A. ANDERSON, COMMISSIONER  
ROBERT P. GEORGE, COMMISSIONER (Via Telephone)  
A. LEON HIGGINBOTHAM, JR., COMMISSIONER  
CONSTANCE HORNER, COMMISSIONER  
YVONNE Y. LEE, COMMISSIONER  
RUSSELL G. REDENBAUGH, COMMISSIONER

RUBY MOY, STAFF DIRECTOR

STAFF PRESENT:

JAMES S. CUNNINGHAM  
EDWARD DARDEN  
CONSTANCE DAVIS (Via Telephone)  
BOBBY DOCTOR (Via Telephone)  
JOHN DULLES (Via Telephone)  
PAMELA DUNSTON  
BETTY EDMISTON  
M. CATHY GATES

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## STAFF PRESENT: (Continued)

EDWARD HAILES, JR.  
GEORGE M. HARBISON  
CAROL-LEE HURLEY  
FREDERICK ISLER  
MELVIN JENKINS (Via Telephone)  
JACQUELINE L. JOHNSON  
PHILIP MONTEZ (Via Telephone)  
STEPHANIE Y. MOORE, GENERAL COUNSEL  
MIGUEL SAPP, PARLIAMENTARIAN  
PATRICE STANLEY  
MARCIA TYLER  
CATHERINE WALLACE  
AUDREY WRIGHT

## COMMISSIONER ASSISTANTS PRESENT:

KAREN CENCE  
ADERSON FRANCOIS  
CHARLOTTE PONTICELLI  
WILLIAM L. SAUNDERS, JR.  
KRISHNA TOOLSIE  
CYNTHIA VALENZUELA

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9:38 a.m.

CHAIRPERSON BERRY: Good morning.

The first item on the agenda is the approval of the agenda.

Could I get a motion?

COMMISSIONER HORNER: So moved.

VICE CHAIR REYNOSO: Seconded.

CHAIRPERSON BERRY: Any discussion?

(No response.)

All in favor, indicate by saying aye.

(Chorus of ayes.)

Opposed?

(No response.)

So ordered.

The second item is the approval of the minutes of the December 5th, 1997 meeting.

COMMISSIONER HORNER: Madam Chair?

CHAIRPERSON BERRY: Yes.

COMMISSIONER HORNER: I don't know whether this is minutes or not but there's just a very minor error in the transcript for the last meeting. And I don't have the transcript with me but it's page 14 of the transcript, just for the record. And it attributes a remark Commissioner George made to me, and it's an

1 unexceptionable remark, but nonetheless, for  
2 integrity's sake, toward the bottom of page 14, the  
3 remark is attributed to me.

4 The question is attributed to me, having to  
5 do with the requirement for political parties.

6 CHAIRPERSON BERRY: You mean the "Mary, I was  
7 somewhat startled by the information that you got?"

8 COMMISSIONER HORNER: Yes. That's the  
9 remark. Exactly. And that is Commissioner George.  
10 And I checked with Commissioner George and he verified  
11 that he said it, not I.

12 CHAIRPERSON BERRY: You agree, Robbie?

13 COMMISSIONER GEORGE: Oh, yes, yes. I want  
14 credit for that remark.

15 CHAIRPERSON BERRY: Then we should change the  
16 transcript to reflect or note that the transcript is in  
17 error in that regard.

18 COMMISSIONER HORNER: Thank you.

19 CHAIRPERSON BERRY: Any other -- anything on  
20 the minutes?

21 (No response.)

22 Okay. I don't think I got a motion, a motion  
23 to approve the minutes.

24 COMMISSIONER HORNER: So moved.

25 COMMISSIONER ANDERSON: Seconded.

1 CHAIRPERSON BERRY: Any further discussion?

2 (No response.)

3 All in favor, indicate by saying aye.

4 (Chorus of ayes.)

5 Objections?

6 (No response.)

7 So ordered, without objection.

8 Announcements. I have three to make. The  
9 first is that the Staff Director has asked the Regional  
10 Directors to be on the phone today so that they can get  
11 a flavor of our meetings. It's a good idea, I think,  
12 for them to do so. They used to do it. Sometimes they  
13 used to come to meetings and we haven't been able to  
14 afford it. So I think -- are all of them on, or --

15 STAFF DIRECTOR MOY: Yes.

16 CHAIRPERSON BERRY: Okay. Then the other is  
17 that -- you want to announce Patrice?

18 STAFF DIRECTOR MOY: Yes. I'm pleased to  
19 announce that Patrice Stanley has joined the Commission  
20 as a Special Assistant to the Staff Director. And  
21 Patrice has had experience working with the federal,  
22 state and municipal levels, most recently the Federal  
23 Highway Administration at DOT and the Maryland General  
24 Assembly in Annapolis.

25 CHAIRPERSON BERRY: Okay. Thank you.

1           And then the third announcement is that we're  
2 going to have a press conference to release the Limited  
3 English Proficiency volume of the Education Opportunity  
4 Report for which there was a unanimous vote by the  
5 Commissioners, on January 21st, 1998 at 10:00 in the  
6 Fifth Floor Conference Room. So we want to inform you  
7 of that fact. The Press Office said that there was a  
8 lot of interest in this report and recommended that we  
9 actually have a press conference to release it. So  
10 we're going to do that January 21st.

11           COMMISSIONER GEORGE: Excuse me, Mary. I  
12 didn't hear the date.

13           CHAIRPERSON BERRY: January 21st.

14           COMMISSIONER GEORGE: 21st. Yes.

15           CHAIRPERSON BERRY: At 10:00 in the morning  
16 in the Conference Room.

17           Okay?

18           COMMISSIONER GEORGE: Thank you.

19           CHAIRPERSON BERRY: Anyone else have any  
20 announcements?

21           (No response.)

22           Okay. With that, we'll go to the Staff  
23 Director's Report.

24           Anyone have any -- before we talk about  
25 Sonoma, which we're going to talk about under the Staff

1 Director's Report, does anybody have anything else that  
2 they want to discuss under the Staff Director's Report?

3 (No response.)

4 Okay. Well, let's talk about Sonoma then.

5 As I recall, it was Commissioner Lee who  
6 introduced a motion concerning the recommendation that  
7 the Regional Director had made that the Commissioners  
8 agree to have two Commissioners go to Sonoma for a  
9 forum on police issues, community police issues. And  
10 Commissioner Horner asked that we defer the discussion  
11 until she had an opportunity to review her materials.  
12 And there were some other questions.

13 Commissioner George asked whether the  
14 Regional Director envisioned using subpoenas duces  
15 tecum as well as subpoenas. And we have some memos  
16 from Phil Montez about this subject and Phil is on the  
17 phone for any further discussion.

18 So the question of the hour is whether the  
19 Commissioners agree or believe that we should agree to  
20 have at least two Commissioners go to Sonoma County for  
21 a forum so that subpoenas may be issued to compel the  
22 testimony of some people who the Regional Director  
23 believes he might not get otherwise.

24 Did I state succinctly what the issue was,  
25 Commissioner Lee?



1 COMMISSIONER LEE: Right.

2 CHAIRPERSON BERRY: Okay.

3 Is there any discussion? And I think you  
4 made a motion. Somebody refresh my recollection.

5 You had an actual motion, didn't you?

6 COMMISSIONER LEE: Yes. And it was deferred  
7 until this meeting.

8 CHAIRPERSON BERRY: And it was tabled until  
9 today. So is there any discussion? How do  
10 Commissioners feel about this? Anybody got any -- yes?

11 VICE CHAIR REYNOSO: Well, if I remember  
12 correctly, what Mr. Montez mentioned was that he had  
13 been told by some of the public officials that they did  
14 not feel they could appear without being subpoenaed.  
15 So in light of that, it made sense to me to authorize  
16 this mini-hearing with subpoena power.

17 I don't know what the answer is to the  
18 subpoenas duces tecum, the question that was raised.  
19 Maybe we can ask Mr. Montez about that now. I can't --  
20 at least from his initial report there was no  
21 indication that subpoenas duces tecum would be used,  
22 though I assume that if testimony is given that's  
23 dependent on reports and the reports are not presented,  
24 then the Commission might want to subpoena those  
25 reports. But we had no answer to that question at the

1 last meeting.

2 CHAIRPERSON BERRY: There was a memo, I  
3 think, since then -- I don't know what date is -- from  
4 Phil, in which he says -- it may have crossed your path  
5 or not crossed your path in going back and forth at the  
6 end of the year -- which said that -- January 6th, so  
7 you wouldn't have gotten it. Which says that he would  
8 want to have subpoena -- did everybody get this memo?  
9 Do people have this information?

10 COMMISSIONER GEORGE: Mary, I have the  
11 December 31st memo covering Phil Montez' October 6th  
12 memo, but I don't have a January 6th.

13 CHAIRPERSON BERRY: Okay. Let me read his  
14 January 6th memo, which is probably somewhere or other,  
15 for all of us.

16 It says: In response to the questions you  
17 raised -- and the questions are some that Commissioner  
18 Anderson raised about the status of the DOJ inquiry and  
19 your question, Commissioner George, about the  
20 subpoenas.

21 COMMISSIONER GEORGE: Yes.

22 CHAIRPERSON BERRY: It says: In response to  
23 the questions you raised, the Kao complaint -- and  
24 that's the single complaint about the single man who  
25 was killed -- that was his name, right, Commissioner

1 Lee? -- has been assigned to the Criminal Section of  
2 the Civil Rights Division of DOJ. Their investigation  
3 has not been completed nor were they able to provide  
4 details about when the investigation would be  
5 completed.

6 Likewise, the Community Relations Service at  
7 Justice is in a holding pattern after conducting  
8 several community meetings. No additional meetings are  
9 planned at this time. Please note, however, that the  
10 status of either the CRS or DOJ investigations are  
11 immaterial to the objectives of the planned State  
12 Advisory Committee activities because they involve one  
13 specific instance of alleged misconduct. It is very  
14 unlikely that we would be able to elicit any commentary  
15 information on the record regarding this case.

16 As our October 6th memorandum pointed out,  
17 the SAC proposes to look at the overall programs in  
18 place in Sonoma County, including police practices,  
19 procedures, training and hiring, to determine whether a  
20 lapse in those areas is in some way contributing to the  
21 allegations at hand.

22 Then, on the question of subpoenas. Yes, to  
23 ensure the appearance of witnesses, especially law  
24 enforcement officials at the meeting, we need to issue  
25 subpoenas. Likewise, issuance of subpoenas duces tecum

1 would be recommended to ensure that requested records  
2 are submitted.

3 And that's from Phil Montez, and he's on the  
4 phone if you want to ask him anything else.

5 COMMISSIONER GEORGE: On the question of  
6 subpoenas duces tecum, --

7 CHAIRPERSON BERRY: Yes.

8 COMMISSIONER GEORGE: -- I would certainly  
9 have no objection at all if the subpoenas duces tecum  
10 were limited to government employees at any level who  
11 were being asked to provide public documents. If  
12 that's what Phil has in mind, then it's no problem as  
13 far as I'm concerned.

14 CHAIRPERSON BERRY: Phil, is that what you  
15 have in mind?

16 MR. MONTEZ: Yes. The question of the Chair  
17 of the State Advisory Committee has to be held in mind  
18 just maybe for public documents, without getting the  
19 chiefs in Sonoma County to participate in the hearing.  
20 Then you wouldn't have any documents at all.

21 CHAIRPERSON BERRY: Okay.

22 COMMISSIONER GEORGE: But can I take it from  
23 that that if there's any change, then if you have any  
24 desire to subpoena -- issue subpoenas duces tecum to  
25 any private groups or to try to obtain any private

1 documents, you'll come back to the Commission before  
2 that happens?

3 MR. MONTEZ: Yes. But I don't see any -- at  
4 this point anyway -- need to do that. I don't think  
5 there's any need to do that. I think what we want to  
6 get is a good file on the public record. And getting  
7 that and getting the participation of the police chiefs  
8 would give us a well balanced forum.

9 CHAIRPERSON BERRY: If you mean, Commissioner  
10 George, that should we agree, that we will agree that  
11 any subpoena duces tecum would only be issued to public  
12 officials as a limitation, then I think I'm clear about  
13 that. So whether Phil came back or not, we would just  
14 agree not to issue any, even if he did ask for them.

15 Vice Chair, did you --

16 VICE CHAIR REYNOSO: I think we need a  
17 clarification. The question was posed as whether or  
18 not the Commission would be seeking public documents.  
19 If there are public documents, presumably we don't need  
20 the subpoena. So I assume it means documents from  
21 public officials.

22 Is that right, Robbie?

23 COMMISSIONER GEORGE: Well, I'm not sure  
24 about the distinction, Cruz, that you have in mind. In  
25 other words, by public documents, I mean documents that

1 are the property of federal, state or local officials.

2 VICE CHAIR REYNOSO: Okay. That's fine.

3 CHAIRPERSON BERRY: Right. Because public  
4 documents are those things that are published in  
5 publicly available resources, like the Congressional  
6 Record or the State Legislative Findings. And non-  
7 public documents are those that are --

8 COMMISSIONER GEORGE: I hear your point.

9 CHAIRPERSON BERRY: Yes. -- in their offices  
10 but they're not in a publication somewhere.

11 COMMISSIONER GEORGE: Yes. If they belong to  
12 the government and, in that fact, I suppose why Phil  
13 would need in some cases to exercise the subpoena  
14 power.

15 CHAIRPERSON BERRY: Okay. Anybody have any  
16 other question?

17 Yes, Commissioner Horner?

18 COMMISSIONER HORNER: Madam Chair, I would  
19 like to know from the Staff Director or someone how  
20 much staff time would be involved in preparing for and  
21 conducting or assisting in conducting this hearing.  
22 And the reason I ask is that we had our New York  
23 hearings on racial and ethnic tensions in September '94  
24 and July '95 and those reports have not been issued  
25 yet. And I have a concern that we are dissipating

1 energies from very high investment activity. And I  
2 just have a concern about that. So I would like to  
3 know how much staff time this would absorb.

4 CHAIRPERSON BERRY: Yes. Well, you can  
5 answer that, Staff Director. But first, I would like  
6 to know exactly what it is you would be doing, Phil.

7 The Commissioners would come. There would be  
8 subpoenas issued to law enforcement and other public  
9 officials. You would hold the forum. I'm just stating  
10 what I think is the case, and you can tell me if it's  
11 not.

12 You would hold the forum as you normally do,  
13 although it would have the status of a mini-hearing  
14 because there would be Commissioners and you'd have  
15 subpoenas for the same people you would have had if  
16 there had been a forum and they had come voluntarily.

17 Then, after that, the Regional Office would  
18 write a report, or what would happen after that?

19 MR. MONTEZ: The Regional Office will handle  
20 most of the staff work. We would need some assistance  
21 from OGC on the subpoenas. That's about it. Probably  
22 one day or so to dispense with the subpoenas.

23 COMMISSIONER HORNER: Would you ask him to  
24 speak up?

25 CHAIRPERSON BERRY: Could you speak up, Phil?

1 We're having a little trouble hearing you. I don't  
2 know what's happening.

3 MR. MONTEZ: The Regional Staff will handle  
4 most of the interviews and so forth prior to the forum.  
5 All we would need would be some assistance from OGC,  
6 probably one lawyer, to assist us with the subpoenas.  
7 Then the follow-up and the report writing would be done  
8 by the California Advisory Committee and the staff out  
9 here, with the normal procedure it goes through as we  
10 send it to OGC and so forth, for hearing.

11 The important thing is having the  
12 Commissioners to use the subpoenas to get the  
13 information that we need.

14 CHAIRPERSON BERRY: Commissioner Horner, does  
15 that clarify what you need to ask, or would you just  
16 like to have the same question?

17 COMMISSIONER HORNER: It clarifies. It  
18 clarifies. It's clarifying or not relieving of my  
19 concern.

20 CHAIRPERSON BERRY: Okay. Then you want to  
21 comment on this, Ruby?

22 STAFF DIRECTOR MOY: Are you talking about  
23 the cost involved?

24 COMMISSIONER HORNER: No.

25 CHAIRPERSON BERRY: Staff time.



1           COMMISSIONER HORNER: I'm talking about the  
2 staff time. We are backed up on previous commitments  
3 quite substantially and I know that the legal staff  
4 here has to be involved whenever there's a report, and  
5 other staff. So in fact, to do it right, to do it with  
6 integrity, requires staff time here at headquarters,  
7 even if the regional staff is originating the product.

8           So I have some concern about this.

9           STAFF DIRECTOR MOY: Madam Chair, may I defer  
10 to the Office of General Counsel, Stephanie Moore?

11           CHAIRPERSON BERRY: You can, to answer the  
12 specific question about OGC. But the other staff time  
13 -- there's other staff time involved, too. And  
14 Commissioner Horner is quite right that Commissioners  
15 ought to be aware that whenever we approve anything  
16 that we have not previously approved, it affects what  
17 we previously approved, because there's only so many  
18 staff members. So sometimes we blithely -- and I do it  
19 myself -- think something is a great idea and why don't  
20 we do it, or some urgent issue or emerging issue comes  
21 forward and we immediately devote a bunch of staff time  
22 to it, and then something else is late. And the more  
23 we do that, the more things get backed up.

24           Now, that's okay if we know what we're doing  
25 and we agree that that's what we want to do, but it's

1 not okay if we do it and then we look at the staff and  
2 say, well, why didn't you finish that first thing you  
3 were supposed to be doing. Why didn't you finish that  
4 first thing you were doing when we, in fact, came up  
5 with three other things since they were supposed to do  
6 that and they didn't have any more staff to do it, and  
7 we just act as if we're not cognizant of what we  
8 decided to do.

9           So I think she's quite right to raise the  
10 question.

11           Now, if you want to comment, OGC -- you got  
12 any comment on that, Stephanie?

13           MS. MOORE: No. I think Phil has responded  
14 adequately.

15           CHAIRPERSON BERRY: And if one of your  
16 lawyers -- it would take like one of the lawyers? He  
17 says one lawyer.

18           MS. MOORE: Based on his statement, it would  
19 take one.

20           CHAIRPERSON BERRY: One lawyer. How much  
21 time, though, to do that?

22           MS. MOORE: It would depend on how many  
23 subpoenas he was --

24           CHAIRPERSON BERRY: How many witnesses he  
25 had? Yes. Okay.

1 Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: I want to follow up  
3 on this same topic, and I'm not quite sure how to do  
4 it. But it's my understanding that to do something  
5 that is a hearing where you must take special care to  
6 build a record, both in terms of subpoenas and the  
7 questions and then the way you produce the transcript.  
8 This is something that demands a lot of skill and is  
9 very time consuming. And I conclude this not only from  
10 my own observations and limited experience in this area  
11 but from the great difficulty we've had in completing  
12 the Los Angeles reports and the New York reports  
13 because of the requirement that I just referred to.

14 And in reviewing the Staff Director's Reports  
15 and the staff reports for the last year, because it was  
16 a year ago at this planning meeting that I raised the  
17 question about the lateness of the L.A. and New York  
18 hearing reports. In reviewing that, I see that in each  
19 month there was difficulty from other things  
20 interfering with completing those reports.

21 So I think that this must be something very  
22 difficult to do. And my way of orienting around  
23 planning is to look at something more tangible than the  
24 kind of proposal we have here in terms of either money  
25 and/or, in this case, staff days.

1           So it's hard for me to say, gee, this is  
2 really a great idea and we ought to do it at the  
3 expense of something else, because I really don't have  
4 any sense of the cost of it. And by cost, I mean more  
5 than money. And what I mean is the cost in delaying  
6 other work product that we are behind on and in which  
7 we have a great deal already invested.

8           So I would like a more definitive answer to  
9 Connie's question.

10           CHAIRPERSON BERRY: Okay.

11           Vice Chair?

12           VICE CHAIR REYNOSO: Madam Chair, I'm not  
13 sure that we can ever have a completely definitive  
14 answer but I think that the entire staff ought to be  
15 commended for responding to the concerns that we've had  
16 of, one, responding in a timely manner to an issue that  
17 comes up, and two, doing it with minimal time in terms  
18 of central staff time, so that the other projects don't  
19 get delayed.

20           Here we have a proposal, and it was initially  
21 suggested that it could be done simply in terms of a  
22 SAC forum and they could do it entirely. The report  
23 then came back saying, sadly, from our investigation,  
24 we can't do the type of report that we would like  
25 because the public officials indicate that they would

1 not come to the hearing. So the suggestion by the  
2 staff then was that we have a sort of traditional SAC  
3 forum, but sort of combined with the concept of a mini-  
4 hearing so that, one, there's further prestige in terms  
5 of a couple of Commissioners being there, and two, they  
6 have whatever subpoena power they needed to at least  
7 get the officials there to get a balanced report.

8 I thought that was a very fruitful and  
9 imaginative way of proceeding in this manner to do what  
10 we wanted to do and yet take very little time. And we  
11 have the response from our General Counsel that it  
12 would take one lawyer. She can't tell how much because  
13 we don't know yet how many folk we'll be subpoenaing.  
14 But it seems to me that we're dealing with rather  
15 minimal time from central staff and yet getting  
16 something done in a timely manner.

17 So I thought it was really a nice balance, a  
18 nice combination of having us be able to respond in a  
19 manner that doesn't take two or three years to do a  
20 hearing when time is of the essence, and yet do it in  
21 such a way that we combine our central staff forces  
22 with a staff of a region. And here Mr. Montez has  
23 indicated they really will take, as they do with other  
24 forum type meetings, the principal responsibility.

25 The obligation of General Counsel and other

1 staff would be no greater than it would be, presumably,  
2 on any report that's issued by a SAC where presumably  
3 they still have to do the -- check the statutory  
4 requirements and so on. But it would be no greater  
5 burden than any other report from a SAC, except on  
6 making sure the subpoenas are done properly, and so on.

7 CHAIRPERSON BERRY: But as I heard, though,  
8 Commissioner -- and I'm going to recognize you,  
9 Commissioner Lee. As I heard Commissioner Redenbaugh,  
10 it sounds to me like he's suggesting that if you have  
11 two Commissioners go and it becomes a hearing, then the  
12 process that applies to hearings may apply in order to  
13 get it done properly, which would be a heavier burden  
14 than just having a forum with subpoenas and then having  
15 the Regional Director and the staff write a report,  
16 which is what I was envisioning at first; that the only  
17 thing different would be that there would be two  
18 Commissioners and there would be subpoenas of people  
19 rather than having them just come, and then the  
20 regional staff would go away and do it.

21 But he's raising, I think -- if I heard him  
22 right -- an additional question about how records are  
23 made and who asks the questions and what's done, and  
24 all that.

25 Commissioner Lee?

1           COMMISSIONER LEE: First of all, I certainly  
2 appreciate the staff's daily challenges of trying to  
3 meet their primary responsibility of completing  
4 Commission reports and other activities. But at the  
5 same time, I do think that there's a certain level of  
6 responsibility that the Commission staff has to assist  
7 the regional staff and the SACs of fulfilling their end  
8 of the responsibilities, which includes conducting  
9 forums and what have you.

10           This whole Sonoma County thing came about as  
11 a very genuinely, I thought, simple public interest  
12 that the California SAC wanted to take up, which was  
13 here is a county within the last 10 years had  
14 mushroomed into a major county. The population has  
15 changed. There's a new middle class diverse community.  
16 And at the same time, there are these police-community  
17 issues that have popped up.

18           The community is very interested. The  
19 surrounding communities are also interested because  
20 that could be an example of what other communities may  
21 be in the future when you have a new middle class  
22 moving into traditionally rural communities. What  
23 happens to the residents there.

24           So, I certainly support the State Advisory  
25 Committee's intention of going in to conduct these

1 public forums, to engage in a very timely dialogue. I  
2 thought we were going to go the Commissioners route to  
3 help expedite the concern that the Regional Director  
4 has, which is without the two Commissioners going in,  
5 the SAC would not be able to have a balanced  
6 presentation from certain segments of the law  
7 enforcement officials.

8           And going back to last month, from all  
9 indications people said that was one of the best  
10 Commission meetings and activities because we were  
11 dealing with a very timely concern. And I know the  
12 staff was under a lot of pressure to do the work in  
13 less than two months, and they did a tremendous job.  
14 But the ultimate beneficiary of last month's activity  
15 was the public because of all the valuable information  
16 that generated from that. And I hope the staff takes  
17 pride in that. And I certainly took pride as a member  
18 of this Commission.

19           The Sonoma County issue -- I certainly don't  
20 envision the staff to take any more time than just  
21 assisting the regional staff by doing the technical end  
22 of assuring certain members of the community will be  
23 able to attend this public forum. And I know that it  
24 may be an issue that we'll have to deal with in the  
25 future. Let's just say if other SACs may have similar



1 problems, what kind of burdens would that place on the  
2 existing staff.

3           But on this case, I understand from the  
4 presentation by Phil a couple of months ago, all he  
5 wanted was the technical assistance from the Commission  
6 staff so that he, from the regional office end, can  
7 proceed with what regional staffers and the SACs do on  
8 a monthly basis. So I hope that we will approve this  
9 proposal and have the California SAC proceed with this,  
10 I think, very important and timely public forum.

11           CHAIRPERSON BERRY: Commissioner Anderson?

12           COMMISSIONER ANDERSON: Thank you.

13           We have an ongoing criminal investigation by  
14 the U.S. Attorney's Office into the Sonoma County  
15 Sheriff's Office, investigating the conduct of certain  
16 officers there, and I would assume certain long-  
17 standing practices and training of the department.  
18 Now we're proposing to subpoena documents from the  
19 Sonoma County Sheriff.

20           Have we received any kind of communication  
21 from the U.S. Attorney's Office that our intervention  
22 at this point in their criminal investigation is not  
23 going to interfere with that?

24           CHAIRPERSON BERRY: Phil, do you know the  
25 answer to that?

1           MR. MONTEZ: The U.S. Attorney's Office  
2 referred us to the Civil Rights Branch Division of the  
3 Department of Justice. They are very tight-mouthed.  
4 As you look at the procedures that they are following,  
5 it's not with the Sonoma County Sheriffs. It's with  
6 the Broward Park Police Department. That's where the  
7 killing took place. It has nothing to do with the  
8 Sheriff's Department.

9           The Department of Justice will only tell us  
10 that their investigation continues. This happens in  
11 many police cases. The investigation continues. They  
12 have five years to issue an indictment.

13           Usually what happens is the case comes to a  
14 close after the five years and nothing takes place.  
15 The U.S. Attorney's Office in San Francisco referred us  
16 to the FBI. The FBI then referred us to the Department  
17 of Justice in Washington, D.C. So it's back there.  
18 And a discussion begins with the investigator who's  
19 handling it. And they are very tight-lipped about it.  
20 They have put us in the position of being totally  
21 independent of what they're doing.

22           So it has nothing to do with their  
23 investigation. They don't give you that kind of  
24 information.

25           COMMISSIONER ANDERSON: Sir, if I could just

1 follow-up for a minute. Then we're not contemplating  
2 subpoenaing any documents related to the Kao incident?

3 MR. MONTEZ: No. We already have the  
4 investigative report that when the Sheriff's Department  
5 was asked to do the investigation. We have that report  
6 already. We have already asked for that. The only  
7 interest we have in getting these documents that are  
8 already public was that it will get the officials that  
9 come to bring the documents with them.

10 It would take more work for us to go out and  
11 seek out the documents. This way they would bring them  
12 voluntarily. That's the only difference.

13 I'm just trying to make it clear that the  
14 Department of Justice investigation is totally  
15 different than what we're doing and we're not going to  
16 get any information from them on the Kao shooting.

17 CHAIRPERSON BERRY: Yes, Commissioner Lee?

18 COMMISSIONER LEE: This hearing is not to  
19 concentrate on just that one particular police  
20 shooting. I think it was going to cover how nine  
21 police-related shootings had taken place in two years,  
22 which is the highest amount in major counties in  
23 California. And I think that's where the public  
24 interest and public concern is. And that's why they  
25 wanted to have this public forum. Not only on that one

1 case.

2 And DOJ is only investigating the Kao case,  
3 now the other eight.

4 CHAIRPERSON BERRY: Yes, Vice Chair?

5 VICE CHAIR REYNOSO: Madam Chair, I just want  
6 to mention that the California SAC is not inexperienced  
7 in having these -- what we call forum, but they're  
8 really like hearings. I've attended some of their  
9 hearings and those are something they have done  
10 apparently for years. They are very well organized. A  
11 certain number of committee members are present. They  
12 ask questions. It looks very much like the sort of  
13 hearings that we have.

14 CHAIRPERSON BERRY: Yes, Commissioner Horner?

15 COMMISSIONER HORNER: Madam Chair, I'd like  
16 to know if we would be looking into each of these nine  
17 hearings -- nine police-related shootings. A police-  
18 related shooting means, I assume, the police shot  
19 someone. Where they all fatal or --

20 COMMISSIONER LEE: All fatal.

21 COMMISSIONER HORNER: All fatal. And is it  
22 our intention -- is it the SAC's intention to look into  
23 each of these and determine whether in each case the  
24 police activity was justified or not?

25 CHAIRPERSON BERRY: Phil?

1           MR. MONTEZ: We don't look at the specific  
2 incidents, as such. We look at the overall policies of  
3 the Sonoma County Police Departments. There are  
4 several police departments, independent municipalities,  
5 besides the Sonoma. We're looking at issues of  
6 training and we're looking at issues of hiring. We're  
7 looking at the issues surrounding what is going on up  
8 there.

9           We really can't look at individual cases, as  
10 you have mentioned. Our concern is not how it happened  
11 or anything else. Our concern is to raise the issues  
12 of how officers are recruited, the training, what they  
13 go through. That's the more important issues that we  
14 want to raise. We're not raising issues of the  
15 individual cases.

16           CHAIRPERSON BERRY: Commissioner Horner?

17           COMMISSIONER HORNER: So the presumption  
18 would be that these nine cases represent improper  
19 police action or else there wouldn't be a problem, a  
20 generic problem of hiring or training to investigate.  
21 In other words, I guess I'm a little concerned that we  
22 are operating on a presumption but not demonstrating  
23 the validity of the presumption.

24           MR. MONTEZ: The news media in Northern  
25 California has raised the issue that there has been --

1 [inaudible] -- in the last two years. And in many of  
2 their new articles, they raise how come the percentage  
3 is so high in Sonoma, which is really much less than  
4 cities like Los Angeles and New York. We cited that  
5 particular news story in our October 6th memorandum to  
6 you, and we said it's a unique situation in that so  
7 much is going on there that doesn't happen in larger  
8 cities.

9 COMMISSIONER HORNER: I can see how that  
10 would raise a question but haven't investigations  
11 produced answers in each of these cases?

12 CHAIRPERSON BERRY: Let Phil answer.

13 COMMISSIONER HORNER: In other words, has  
14 some of these cases come out in such a way after  
15 investigation that it's obvious there was inappropriate  
16 police behavior and others appropriate police behavior,  
17 or what's the --

18 MR. MONTEZ: That's sort of the questions  
19 that we might be able to resolve. The investigations  
20 that are done on these are done internally, as I'm sure  
21 you know. There's no oversight group really taking a  
22 look at what has happened or what goes on in that  
23 particular county that would be in the position of an  
24 oversight group.

25 COMMISSIONER HORNER: So we would then have

1 to review the individual cases in order to practice  
2 oversight?

3 MR. MONTEZ: Well, our position, of course,  
4 is not -- as I've stated to you before, it's not  
5 individual cases as much as the other things that are  
6 important in the kind of condition that goes on there.  
7 I don't see that we can do much more in the particular  
8 individual cases that you speak of. I just don't think  
9 that that's the issue. [Inaudible.]

10 We're trying to make an assessment to raise  
11 the issue to law enforcement that the question is  
12 really what is going on with your training. Are police  
13 officers taught improper procedures? That's the kind  
14 of thing we're more interested in.

15 CHAIRPERSON BERRY: Commissioner  
16 Higginbotham?

17 COMMISSIONER HIGGINBOTHAM: I commend the  
18 staff. There's a clear self-evident way to strangle  
19 this Commission and to make it an exercise in  
20 impotence. The way you do that is that you don't give  
21 the staff enough of an opportunity to make factual  
22 inquiry. And precluding them from making factual  
23 inquiry precludes us from getting the information  
24 fleshed out with some reasonably objective sense.

25 I don't think whether there's a presumption

1 one way or the other is helpful analytically. There's  
2 a problem. People died from police bullets. We know  
3 enough about history that some people are [inaudible]  
4 with a misuse of police power. Some people are killed  
5 because the police had no other rational alternative.

6           The Civil Rights Commission should be the  
7 agency which tries to get the facts. I don't know  
8 where it's going to come out but we should not set up a  
9 whole series of barriers when it does not require an  
10 inordinate amount of staff time, when a SAC group wants  
11 to make a rational inquiry.

12           So I vote for the proposal. And if we reject  
13 it, I just don't know what we can do. [Inaudible.]

14           VICE CHAIR REYNOSO: I just have one other  
15 comment out of personal experience. When I was a young  
16 lawyer, we had a police killing of a young Chicano.  
17 The community was very much up in arms and I was able  
18 to persuade the sheriff to allow me to be involved in  
19 the coroner's inquiry. And through the series of  
20 hearings, it was determined that the killing was a  
21 stupid killing but not a [inaudible] killing. And that  
22 had the tendency to settle down the community.

23           So I think a lot of good comes out of simply  
24 putting the facts on the table and then coming up with  
25 recommendations. So it seems to me that this is



1 really, for the amount of time particularly that the  
2 central staff is going to put into it, a very  
3 worthwhile effort.

4 MR. DOCTOR: Madam Chair?

5 CHAIRPERSON BERRY: Yes.

6 MR. DOCTOR: Is it okay if I butt in?

7 CHAIRPERSON BERRY: Yes. Sure.

8 MR. DOCTOR: This is Bobby Doctor down in  
9 Atlanta. And I'm compelled at this point to make some  
10 comments because I've had the experience of having  
11 Commissioners come down and obviously bring subpoena  
12 powers. But I've also had the Commissioners come down  
13 without subpoena powers over the years. And we've also  
14 done quite a bit of programming in the area of police-  
15 community relations, particularly down in Florida, the  
16 major cities there. And, of course, up in Memphis,  
17 Tennessee.

18 I can assure the Commissioners that there's  
19 not an awful lot of staff time out of Washington anyway  
20 associated with pulling these projects off. I think  
21 it's very clear that 96 to 97 percent, if not more of  
22 the work is actually going to be done by the SAC and  
23 the staff out in the field.

24 But the overriding question I think that has  
25 to be looked at is the impact that these patterns tend

1 to have on police-community relations. And we have  
2 looked at it from that angle down here in the South.

3 As you might well know and remember, there  
4 were quite a few killing, particularly in large cities  
5 in Florida, especially Miami, some years ago. And we  
6 looked at patterns and practices that had to do with  
7 good policing in a given community. We were more  
8 concerned with patterns and practices than the actual  
9 shootings themselves, although we readily understood  
10 that questionable shootings or shootings under  
11 questionable -- or killings under questionable  
12 circumstances obviously adversely impact the overall  
13 question of police-community relations. So I think you  
14 have to look at it in a very broad sense, and I assure  
15 you that there's not an awful lot of staff time out of  
16 Washington associated with any of these projects.

17 CHAIRPERSON BERRY: Commissioner Anderson?

18 COMMISSIONER ANDERSON: Thank you.

19 I'd like to go back to my original question  
20 to the Regional Director. Of the eight incidents that  
21 is listed in his memorandum from '95 to '97, two of the  
22 killings involve Broward (phonetic) Park officers.  
23 Now, I thought I understood that we were not going to  
24 subpoena documents from the Broward Park Police  
25 Department. Is that true or not?

1 CHAIRPERSON BERRY: Phil?

2 MR. MONTEZ: Yes.

3 CHAIRPERSON BERRY: Do you plan to subpoena  
4 documents from the -- what?

5 COMMISSIONER ANDERSON: Broward Park Police  
6 Department.

7 CHAIRPERSON BERRY: Could you hear the  
8 question?

9 MR. MONTEZ: Yes. No, just, as was stated  
10 before, the public documents that are already there.

11 CHAIRPERSON BERRY: What do you mean by  
12 public document?

13 MR. MONTEZ: Public documents are those that  
14 are available to the public.

15 CHAIRPERSON BERRY: But you just want them to  
16 bring them along so you guys don't have to go and find  
17 them.

18 MR. MONTEZ: Right.

19 CHAIRPERSON BERRY: Does that answer your  
20 question, Commissioner Anderson, or not?

21 COMMISSIONER ANDERSON: Well, it answers the  
22 first part of my question. The second part of my  
23 question was does subpoenaing documents from the  
24 Department affect this investigation of the department?

25 CHAIRPERSON BERRY: Phil, does the

1 subpoenaing of public documents that you envision  
2 affect the investigations?

3 COMMISSIONER ANDERSON: By Justice.

4 MR. MONTEZ: No. Probably the investigation  
5 by the Department of Justice, they probably already  
6 have the documents anyway, but it's not going to affect  
7 it in any way. I have to reassure you that what we are  
8 doing in no way can affect the Department of Justice  
9 investigation.

10 CHAIRPERSON BERRY: Yes, Commissioner  
11 Redenbaugh?

12 COMMISSIONER REDENBAUGH: You know, I'm  
13 learning much more about this today than I knew before,  
14 so let me just clarify my understanding because it  
15 strikes me that this is the kind of thing we ought to  
16 be doing and that we ought to be doing this one. And I  
17 still -- you know what my concern is, so let me just  
18 clarify the understanding.

19 This is a product of the SAC. It will be  
20 done as a forum. That the Commissioners are needed  
21 only for subpoena power, and that --

22 VICE CHAIR REYNOSO: They might even have  
23 something to contribute.

24 COMMISSIONER REDENBAUGH: My experience. I  
25 suggest you're right. Since I won't be one of the

1 Commissioners, I'm more certain that you're right.

2           So I'll just state very clearly I'm concerned  
3 about mission creep on this thing and I'm concerned  
4 about our other projects. And now that I understand  
5 that we're focusing on police practices and training  
6 and things like that in a county that's clearly under  
7 some kind of stress because of all the rapid change in  
8 demographics, that's the class of thing I think we can  
9 do really well and ought to do, which I think has  
10 implications for other counties around the country.  
11 And my own experiences suggests are areas that law  
12 enforcement particularly in more rural counties are  
13 less well trained than they ought to be. So this could  
14 be a valuable thing.

15           So I'm concerned about mission creep. I'm  
16 concerned about the involvement of OGC and I'm  
17 concerned about not having this as the justification  
18 for being late on other things that we're already late  
19 on. I need some reassurances about those things. I'm  
20 not sure from who. Ruby -- I guess, from you.

21           CHAIRPERSON BERRY: I'll let the Staff  
22 Director answer this, but let me first make a couple of  
23 comments.

24           My experience teaches me -- and I realize  
25 that no two situations are ever alike, and so

1 experience is not everything. But my experience  
2 teaches me several things. The Commission gets more  
3 bang for its buck in terms of public support and  
4 interest when it responds to issues that are of public  
5 interest at the time. And if any of you think about  
6 what's happened since you've been on here, you'll know  
7 that that's true.

8           When we did the church fire forums, I mean,  
9 there was great media interest. There was great public  
10 interest. When Carl and I went down to St. Petersburg,  
11 that was after a police shooting which was under  
12 investigation and there was a riot, more than one as I  
13 recall.

14           Bobby, you remember that. And there was  
15 great public interest.

16           Whenever the Commission has responded, the  
17 Asian American issues that we responded to last month,  
18 we get responses. People are interested in our work.  
19 They think we're doing something that is helpful to the  
20 public whether they agree with the outcome or not. And  
21 most often they think we've made a contribution.

22           Over the years, the scholar and methodical  
23 part of me -- and I'm schizophrenic about this, of two  
24 minds -- has always wanted the Commission to adhere to  
25 turning out reports, and whatever the schedule is, keep

1 working on them, get them out, because I want them on  
2 the shelves. I want people to know them. I want them  
3 to be there. That's part of it.

4           The other part of me knows what I just said  
5 about dealing with front burner issues is really  
6 important, and I have tried over the years and been in  
7 numerous discussions in this Commission about how do we  
8 deal with the front burner issues at the same time that  
9 we keep the other things going.

10           We never have enough money. We have even  
11 less now than we've had before. And so it's really  
12 tough. But one of the things we cannot do is deal with  
13 cutting edge or front burner issues and then ourselves  
14 criticize the staff when they don't get long-term  
15 projects done and they're delayed. I mean, that's not  
16 fair for us to do as Commissioners.

17           We either have to say we prefer to stick to  
18 doing the projects that are outlines, no matter what  
19 happens, or we are willing to have some play in getting  
20 things done and understand why they can't be done in a  
21 timely fashion. I don't care who's supposed to do  
22 them, which office or wherever. But it's not fair.  
23 And this is what has happened over the last 10 years,  
24 15 years since I've been on here.

25           Numerous times we've had three, four, five

1 different issues that come up that staff goes off and  
2 does a great job because we told them to. Not we, who  
3 are here, but I was here and some of you were and some  
4 of you were not. And then start berating the staff and  
5 berating them and telling other people that they're not  
6 doing their job because they're behind on sometime when  
7 we were the ones who got them behind.

8           So I'm in favor of doing something on  
9 Sonoma. I am not willing to accept any assurances from  
10 the Staff Director or anyone else that it will not  
11 affect anything else. I have found all such claims in  
12 the past to be false, simply because you never know  
13 what's going to happen. And I've been around this  
14 place long enough to know what kinds of things go on.

15           So I don't care what assurances you get,  
16 Russell, I don't believe them. Something will be  
17 affected or may be affected. But I'm going to support  
18 doing something on this.

19           We are expert -- this Commission has more  
20 information about police practices and more experience  
21 dealing with this issue, a series of reports that are  
22 well respected by everybody, including police. And if  
23 you think about it, the police who come before us, in  
24 the last eight or nine years, have told us that they  
25 need training.



1           One of the biggest deficiencies is a lack of  
2 training. So nobody's going to criticize us for  
3 assessing the training of police and saying what we  
4 want to say about it, as long as we don't get into who  
5 did what to whom and did somebody shoot somebody with  
6 good reason or bad reason, which really isn't our  
7 business.

8           So I'm going to be in favor of doing  
9 something on this. And I think just to get this  
10 procedurally correct, since I don't remember what we  
11 did the last time, Yvonne, why don't you renew your  
12 motion and then somebody second it, and then we'll vote  
13 on it.

14           COMMISSIONER LEE: I forgot what the motion  
15 was.

16           CHAIRPERSON BERRY: The motion was to have  
17 Commissioners go and --

18           COMMISSIONER LEE: A minimum of two  
19 Commissioners.

20           CHAIRPERSON BERRY: Right.

21           COMMISSIONER LEE: From each major political  
22 party to attend.

23           CHAIRPERSON BERRY: This is outrageous,  
24 Robbie. It's outrageous. Two political parties.

25           COMMISSIONER GEORGE: Typical verbiage.

1           COMMISSIONER LEE: At least one from -- to  
2 attend a public forum to be conducted by the California  
3 State Advisory Committee on police-community relations  
4 and practices in Sonoma County.

5           CHAIRPERSON BERRY: And could I get a second?

6           VICE CHAIR REYNOSO: Seconded.

7           CHAIRPERSON BERRY: Okay. Are you ready for  
8 the question?

9           Commissioner George?

10          COMMISSIONER GEORGE: I have a couple of  
11 things.

12          The first question. Is it anticipated that  
13 the forum will generate some sort of a written  
14 document, a report or something along those lines?

15          CHAIRPERSON BERRY: It's going to be a SAC  
16 report, won't it, Phil? Is that the idea?

17          MR. MONTEZ: It can happen either way. It  
18 can be a Commission report. It could be a SAC report.

19          COMMISSIONER GEORGE: Well, I think there's a  
20 real issue here then. If the Commission is to go out  
21 there and the Commissioners are to sponsor it and  
22 deliver subpoena power and so forth, then I think it's  
23 very important that the Commission have control of what  
24 eventually comes out of it.

25          MR. MONTEZ: No problem.

1           CHAIRPERSON BERRY: But, Robbie, we already  
2 have to accept or reject the SAC report in the end.  
3 Remember?

4           COMMISSIONER GEORGE: Oh, no. I understand  
5 that perfectly well. But this is a different  
6 situation. It's very clear to accept or reject and the  
7 grounds for rejection are procedure, balance, things  
8 like that. Here I think there shouldn't be a situation  
9 created where the Commission in effect delegates its  
10 subpoena power to a State Advisory Commission and the  
11 State Advisory Commission to act just as it would with  
12 any other State Advisory Commission report.

13           I think once the Commission has made the  
14 decision to invest its authority and prestige in the  
15 generation of a report, the Commission's got to take  
16 responsibility for that report, full responsibility,  
17 not just the decision whether to publish or not.

18           Do you disagree with that?

19           CHAIRPERSON BERRY: Well, it's going to be  
20 written though by the regional staff. That was part of  
21 the agreement. Otherwise we're talking about even more  
22 resources here.

23           So does your suggestion preclude the actual  
24 writing to be done by the regional staff?

25           COMMISSIONER GEORGE: No. I don't care who

1 writes it, so long as employees of the Commission are  
2 involved.

3 CHAIRPERSON BERRY: Okay.

4 COMMISSIONER GEORGE: But I do want the  
5 Commission to have the authority to either approve or  
6 disapprove. And you know what ordinarily happen. And  
7 that if some negotiation is needed, that negotiation  
8 takes place and the Commissioners are fully involved.  
9 And at the end of the day, a report that's acceptable,  
10 probably not what anybody in particular would have  
11 wanted, but acceptable to everybody is generated.

12 Do you see the problem I'm trying to put my  
13 finger on here?

14 CHAIRPERSON BERRY: Well, to restate what I  
15 think you're saying, which I don't find objectionable,  
16 is that once the Commissioners are involved, should we  
17 decide to do this, then although the regional staff  
18 might write it, we would use our usual procedure in  
19 deciding as a Commission whether to accept or reject it  
20 and not the procedure that we apply to SAC reports.

21 COMMISSIONER GEORGE: Yes. Because once our  
22 subpoena power is involved, I think we have that level  
23 of responsibility.

24 CHAIRPERSON BERRY: Commissioner Anderson?

25 COMMISSIONER ANDERSON: So is what we're

1 talking about here a joint project in which the  
2 Commission will get a draft report and we will, like in  
3 other draft reports, page by page look at language, or  
4 are we going to be given a SAC report that we're going  
5 to vote up or down on without the expectation that  
6 Commissioners will say this needs to be change on this  
7 page or that, like we normally do on the Miami Report  
8 or the other reports?

9 VICE CHAIR REYNOSO: What Robbie is  
10 suggesting, and Phil says that it sounds fine to him,  
11 that we treat it like a Commission report. That is, it  
12 will be drafted at the regional level and come to us,  
13 but it will be a Commission report. So then we have  
14 the same power that we would have with any Commission  
15 report as if it came from our own staff, the central  
16 staff.

17 CHAIRPERSON BERRY: Commissioner Anderson?

18 COMMISSIONER ANDERSON: Legal sufficiency  
19 review? Does that change?

20 VICE CHAIR REYNOSO: No. I think that always  
21 takes place anyway. That takes place whether it's SAC  
22 or us.

23 COMMISSIONER ANDERSON: It's no greater  
24 burden?

25 VICE CHAIR REYNOSO: No. No greater burden.

1           COMMISSIONER GEORGE: And, Mary, does it  
2 create any problem as far as the -- the staff usually  
3 protects the independence of the advisory commissions  
4 is concerned, once we make this a joint project?

5           CHAIRPERSON BERRY: Well, if we make it a  
6 joint project, we, being Commissioners, who have the  
7 policymaking authority for the agency, if we say that  
8 it is a joint project, then it becomes a joint project  
9 because we said so.

10          COMMISSIONER GEORGE: And that means we're  
11 not invading the independence of the SACs in violation  
12 of the statute?

13          CHAIRPERSON BERRY: No. And we also have the  
14 Regional Director who manages the SACs or deals with  
15 them or whatever, saying that he understands that it  
16 would be a Commission report. So that the SACs -- what  
17 we would have -- it's better not even to call it a  
18 joint project. If we do it this way, then what it  
19 becomes is a Commission report carried out and executed  
20 by mechanism of a forum with the State Advisory  
21 Committee and Commissioners involved, which then  
22 generates a written report which we then approve or  
23 disapprove through the ordinary Commission procedures.  
24 That's the best way to describe it.

25          VICE CHAIR REYNOSO: That's good.

1           COMMISSIONER HORNER: The SAC will accept  
2 this?

3           CHAIRPERSON BERRY: I'm asking. Phil said  
4 that he understood that it didn't matter whether it was  
5 a Commission report.

6           Is that -- did you hear what I said, Phil?

7           MR. MONTEZ: Yes. I heard it.

8           CHAIRPERSON BERRY: Is that okay?

9           MR. MONTEZ: Fine. Fine.

10          COMMISSIONER GEORGE: Okay. And then the  
11 question of timing. When would the forum be held and  
12 could we set a date by which the Commission would have  
13 a report to vote on?

14          MR. MONTEZ: The tentative date for the  
15 forum, a tentative date with -- the only preclusion is  
16 that without agreement from the State Advisory  
17 Committee, whatever emerges from within -- we have a  
18 tentative date of February 27th, which is a Friday.

19          CHAIRPERSON BERRY: We need to know whether  
20 one of our Republican members, since we have two  
21 Democratic members in California, is able to go to  
22 California on February 27th. And if not, can one of  
23 them go on some other day?

24          MR. MONTEZ: Yes. We want it around the  
25 convenience of the Commissioners.

1 CHAIRPERSON BERRY: You can't have it unless  
2 you have one of them. So that's why I'm asking.

3 Just say thank you, please, Phil. I mean,  
4 what I'm saying is you've got to have one of them, so I  
5 need to have a date --

6 I beg your pardon?

7 MR. MONTEZ: It's the 27th of February.

8 CHAIRPERSON BERRY: May I please ask them  
9 first? May I, please? Can I just ask first? And then  
10 if they say no, get another date from them and start  
11 over again. Please.

12 MR. MONTEZ: That's what I was implying.

13 CHAIRPERSON BERRY: I'm asking. Yes.

14 COMMISSIONER HORNER: Madam Chair, I didn't  
15 bring my calendar. I'm very sorry. I just can't respond  
16 until I get back to my house.

17 CHAIRPERSON BERRY: Commissioner Anderson  
18 cannot do it on the 27th. Have you any other  
19 alternative dates, Mr. Montez?

20 MR. MONTEZ: Not at this time. If  
21 Commissioner Anderson will give us a date, we'll go  
22 with it.

23 CHAIRPERSON BERRY: Commissioner Anderson, is  
24 there a date? And you prefer Fridays? Is that the  
25 problem? Or what's the problem? Or doesn't it matter



1 when it is?

2 COMMISSIONER ANDERSON: It would be better --

3 VICE CHAIR REYNOSO: Fridays, would be better  
4 for me because I don't have classes then.

5 Are those bad days for you?

6 COMMISSIONER ANDERSON: No. The 20th seems  
7 to be okay for me.

8 CHAIRPERSON BERRY: Is that a Friday?

9 COMMISSIONER ANDERSON: Yes. I guess this  
10 discussion assumes that the motion is going to be --

11 CHAIRPERSON BERRY: No, no. There's no sense  
12 in -- we might as well understand this. So there is at  
13 least a date available on which at least one of the  
14 Republican Commissioners' is free in the event that the  
15 motion passes. We were just having this as part of the  
16 discussion.

17 Is there any other discussion on the motion?

18 COMMISSIONER GEORGE: Mary, I have more here.

19 CHAIRPERSON BERRY: Yes. Thank you,  
20 Commissioner George.

21 COMMISSIONER GEORGE: You're welcome. I like  
22 to contribute.

23 Now, on the date by which we will have a  
24 report, if we have the hearing at the end of February  
25 or beginning of March, by when can we be sure that

1 we'll have a report that we as a Commission can --

2 CHAIRPERSON BERRY: You can't.

3 COMMISSIONER GEORGE: -- can vote on.

4 CHAIRPERSON BERRY: Do you want a realistic  
5 answer to do you want us to make up an answer?

6 COMMISSIONER GEORGE: No. I want a  
7 realistic. In fact, I want a commitment.

8 CHAIRPERSON BERRY: Phil, how long will it  
9 take your regional staff to --

10 MR. MONTEZ: Three months.

11 CHAIRPERSON BERRY: Three months.

12 MR. MONTEZ: By the beginning of summer you  
13 would have it.

14 COMMISSIONER GEORGE: Okay.

15 CHAIRPERSON BERRY: Anything else?

16 COMMISSIONER GEORGE: Yes, yes. So, here's  
17 my concern. If I'm to vote to approve this, I want to  
18 make sure that I'm going to have a chance to vote on  
19 that report before I go off in December. So on the  
20 understanding that I will have that opportunity, I'm  
21 prepared to vote favorably.

22 CHAIRPERSON BERRY: Okay.

23 MR. MONTEZ: I can guarantee you'll have it  
24 by the beginning of summer.

25 CHAIRPERSON BERRY: Now is there some date by

1 which we have to do subpoenas, General Counsel, if  
2 we're going to have it February 20th? Do we have time?

3 MS. MOORE: The subpoenas usually are issued  
4 within 10 days prior to the hearing.

5 CHAIRPERSON BERRY: So you have some time if  
6 he has the list. Okay.

7 COMMISSIONER GEORGE: I have one more.

8 CHAIRPERSON BERRY: Yes, Commissioner George.  
9 We'll let you ask the next question and then other  
10 people want to be recognized. Go right ahead.

11 COMMISSIONER GEORGE: Yes. I couldn't hear  
12 Commissioner Higginbotham's comment earlier. At least  
13 I couldn't hear the beginning of his comment earlier.  
14 Was there some suggestion that there was an effort to  
15 impede the Civil Rights Commission's involvement in  
16 Sonoma County?

17 CHAIRPERSON BERRY: Go ahead. You can speak  
18 for yourself.

19 COMMISSIONER HIGGINBOTHAM: No.

20 COMMISSIONER GEORGE: Okay.

21 CHAIRPERSON BERRY: No. He was just talking  
22 about factfinding in general and that effort to impede  
23 factfinding would impede the work of the Commission.  
24 He wasn't talking about Sonoma in particular, as I  
25 understood it.

1 COMMISSIONER GEORGE: Okay.

2 CHAIRPERSON BERRY: I want to know who is  
3 next. I lost track.

4 Vice Chair?

5 VICE CHAIR REYNOSO: I just have a short  
6 question. I'm not sure I can make it the 20th, so I  
7 just want to make sure that Commissioner Lee could make  
8 it on the 20th.

9 COMMISSIONER LEE: I will be.

10 VICE CHAIR REYNOSO: Okay.

11 CHAIRPERSON BERRY: Commissioner Horner?

12 COMMISSIONER HORNER: I just want to say that  
13 although I would like to be able to agree to defer to  
14 Commissioner George's desire for a date certain before  
15 he leaves the Commission, I want to reserve my  
16 opportunity to consider some other report, like the  
17 two-year old report, a higher priority. And I'm simply  
18 going to assert that. That's all.

19 CHAIRPERSON BERRY: Now, Robbie, you do  
20 understand that -- you heard all of what I said about -  
21 - and what Commissioner Horner said earlier and we've  
22 all said about when we ask staff to do something by a  
23 date certain it sometimes interferes with other stuff.  
24 You do understand that.

25 COMMISSIONER GEORGE: Yes, I do. Yes. Very

1 certainly. It puts me in the same two minds that it  
2 puts you of.

3 CHAIRPERSON BERRY: Right.

4 COMMISSIONER GEORGE: I don't know really  
5 whether we ought to -- if he knows or not for that  
6 reason, but if I have a firm commitment as to at least  
7 getting this thing done quickly, that we're going to be  
8 in a timely fashion, --

9 CHAIRPERSON BERRY: Right.

10 COMMISSIONER GEORGE: Then, however much it  
11 delays, it will limit the amount of time it can delay  
12 other projects.

13 COMMISSIONER HORNER: I don't accept such a  
14 firm commitment, speaking for myself. So I would  
15 prefer that we not assume it.

16 In other words, I would like the opportunity  
17 to vote on reports that are long pending with large  
18 investment and not preclude that opportunity by placing  
19 this as the single highest priority.

20 COMMISSIONER GEORGE: Well, if I could  
21 respond?

22 CHAIRPERSON BERRY: Go right ahead.

23 COMMISSIONER GEORGE: Well, Connie, I  
24 appreciate that and I myself would prefer to be able to  
25 vote on some other reports that quite possibly won't be

1 issued. But what makes me take the position I'm taking  
2 here is that here we're authorizing something a bit  
3 unusual and experimental and something whose results  
4 I'm not quite sure -- I'm not sure how the results are  
5 going to work out. And I want to exercise some measure  
6 at least of supervision and influence on the outcome,  
7 given the experimental nature of what we're doing.

8           This might turn out to work very well, this  
9 kind of extension, this kind of a project, between a  
10 SAC and the Commission itself. But I'm unwilling just  
11 to sort of throw that out on the water and then leave.

12           So it's as much for the procedural -- for  
13 procedural reasons as for substantive ones that I  
14 particularly wish us to have a firm commitment on the  
15 date on this particular report.

16           CHAIRPERSON BERRY: Commissioner Anderson?

17           COMMISSIONER ANDERSON: We're kind of backing  
18 into the project prioritizing section.

19           CHAIRPERSON BERRY: Right.

20           COMMISSIONER ANDERSON: I'll put my cards on  
21 the table. I want to see the New York and the L.A.  
22 hearing reports to the Commission and out and I don't  
23 want to be here in a couple of months and be told we  
24 can't do that because we've done Sonoma County.

25           Now as I understand the discussion today,

1 we've got a couple of days of work in OGC on subpoenas  
2 and then the focus of the work is going to shift out to  
3 California and we're going to see some time in the  
4 summer a report come back from the regional office.  
5 Then the central office is going to be working on it.

6 So hopefully, we'll have L.A. and New York  
7 done by that time, but maybe we need to talk about that  
8 in the next section. But as far as I'm concerned, I'm  
9 prepared to support this but I'm not prepared to  
10 support it if there is any type of a reasonable  
11 possibility that we'll be sitting here six months from  
12 now being told we couldn't get to New York, we couldn't  
13 get to L.A., because we had to do Sonoma.

14 COMMISSIONER HORNER: That's exactly my  
15 position.

16 CHAIRPERSON BERRY: Well, because it is  
17 germane to the resolution of this question, I think we  
18 should ask when we expect to get the New York and L.A.  
19 reports. I mean, that seems to me to be relevant to  
20 the question that you're asking.

21 General Counsel, do you know when the New  
22 York and L.A. reports will go to OSD or wherever they  
23 are, or whatever? Could you give us a little --

24 MS. MOORE: Very soon you'll get the report  
25 drafts.

1 CHAIRPERSON BERRY: And when do you expect?  
2 Knowing that it can't be absolute, but when do you  
3 expect L.A. might be at the OSD or where is it or  
4 what's the story on it?

5 MS. MOORE: They're both in full draft under  
6 revision and should be submitted within the month, but  
7 I doubt that this has any impact on the Sonoma  
8 business. Sonoma is just another routine SAC report,  
9 as it's being discussed right now.

10 CHAIRPERSON BERRY: But it will take some  
11 time from the attorneys in OGC for the subpoenas and  
12 also for the legal sufficiency when it comes back, if  
13 it's supposed to go out in three months.

14 MS. MOORE: Right. Just as it does with any  
15 other SAC report.

16 CHAIRPERSON BERRY: Right.

17 COMMISSIONER GEORGE: I can't hear Stephanie.  
18 Can you just repeat it?

19 CHAIRPERSON BERRY: I will.

20 She's saying that this would be treated --  
21 OGC would have two things to do. One is working on the  
22 subpoenas before they're issued, and two, the legal  
23 sufficiency once the report comes back from the region,  
24 and that OGC usually does legal sufficiency on SAC  
25 reports anyway. So, what you're really talking about



1 is more -- is the work with the subpoenas and that this  
2 is just another SAC report on which one has to do legal  
3 sufficiency.

4           The last part of Stephanie's response I'm  
5 going to ask about because she said that -- I think I  
6 understood you to say that it didn't have anything to  
7 do with the planning. But what it has to do with it is  
8 Commissioners who have asked about this want some  
9 assurance. They believe it has something to do with  
10 it. That's number one. If I hear them right. And  
11 also, even if it's a legal sufficiency of a SAC report,  
12 it is another SAC report that nobody was counting on  
13 getting, which wasn't on the list of SAC reports and it  
14 has to be done now by three months from now, if I  
15 understand. It's going to come back from the region in  
16 three months, from what Phil said, and it's going to  
17 have to be done.

18           And the question is do we expect L.A. and New  
19 York to actually be in OSD before three months after  
20 the forum in Sonoma County, should we approve it.  
21 That's what the question is.

22           MS. MOORE: Yes.

23           CHAIRPERSON BERRY: The answer is yes.

24 Okay.

25           Does that help anybody?

1 (No response.)

2 Okay. Thank you very much, General Counsel.

3 Yes, Commissioner Anderson?

4 COMMISSIONER ANDERSON: Yes. It helps a lot.

5 Now, as I understand it, the two reports are  
6 ready to go to the Office of the Staff Director?

7 MS. MOORE: No. That is not what I said.

8 COMMISSIONER HIGGINBOTHAM: A little louder  
9 so we can hear you.

10 MS. MOORE: That is not what I said. I said  
11 they're both in draft under revision.

12 CHAIRPERSON BERRY: About how soon do you  
13 think they will be?

14 COMMISSIONER GEORGE: I'm sorry, Mary. I  
15 can't hear Stephanie.

16 CHAIRPERSON BERRY: She said that they're  
17 both in draft, under revision, and -- what was the last  
18 thing you said?

19 MS. MOORE: Within the month.

20 CHAIRPERSON BERRY: Within the month they  
21 should go to the Office of the Staff Director.

22 COMMISSIONER GEORGE: Within the month of  
23 January?

24 MS. MOORE: Yes.

25 CHAIRPERSON BERRY: And that she said

1 earlier, in case you didn't hear -- I think I repeated  
2 it -- that she expects these reports will be -- they  
3 will be in OSD and they should come up before the  
4 Sonoma report, should we do it, comes back from the  
5 region for legal sufficiency.

6 Yes, Commissioner Anderson?

7 COMMISSIONER ANDERSON: So once they go to  
8 OSD, then what's the time frame do we anticipate?

9 MS. MOORE: That's up to you.

10 CHAIRPERSON BERRY: What happens in OSD?  
11 I've forgotten. Editorial review among other staff  
12 offices; right?

13 COMMISSIONER HIGGINBOTHAM: And  
14 Commissioners.

15 MS. MOORE: And then to the Commissioners.

16 CHAIRPERSON BERRY: And then it goes to --  
17 then it can go to us and out for affected agency review  
18 at the same time. To us in draft, if there is any.

19 COMMISSIONER ANDERSON: So we have the sense  
20 of maybe a month for editorial.

21 MS. MOORE: Editorial is usually a week.

22 COMMISSIONER ANDERSON: A week. So we could  
23 have this at the March meeting.

24 CHAIRPERSON BERRY: This is what? January?

25 VICE CHAIR REYNOSO: Yes.

1 CHAIRPERSON BERRY: That's the way it sounds.  
2 Okay. Any further discussion before we --  
3 okay. I call for the question.

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

6 (Chorus of ayes.)

7 Opposed?

8 (No response.)

9 So ordered.

10 Okay. So we're going to do this. And the  
11 date has to be -- we said what date, but there can be  
12 further working out of the date between the two in  
13 California and the -- oh, that's right. I have to say  
14 who the Commissioners are. That's right. I forgot  
15 that.

16 Commissioner Anderson, will you accept this  
17 grave responsibility?

18 COMMISSIONER ANDERSON: Yes. I will accept,  
19 subject to my schedule.

20 CHAIRPERSON BERRY: Yes. I know it will have  
21 to be worked out within your schedule but you will  
22 accept.

23 And Commissioner Horner, in the event that  
24 Commissioner Anderson finds it impossible to schedule  
25 and they can find a place in your schedule, would you

1 be willing to be a second option?

2 COMMISSIONER HORNER: Yes.

3 CHAIRPERSON BERRY: All right.

4 COMMISSIONER GEORGE: Could you also just  
5 remind us of what the commitment is as far as the date?  
6 I know about the specific date but did Phil say the  
7 summer?

8 CHAIRPERSON BERRY: Phil said three months  
9 after the forum takes place. About three months.

10 MR. MONTEZ: Which is about four months.

11 CHAIRPERSON BERRY: Four months?

12 MR. MONTEZ: Don't shoot me before --

13 CHAIRPERSON BERRY: Okay. Four months. He's  
14 saying four months -- are you saying four months after  
15 the forum?

16 MR. MONTEZ: Right.

17 CHAIRPERSON BERRY: He's saying within four  
18 months after the date of the forum. Did you hear that,  
19 Robbie?

20 COMMISSIONER GEORGE: Yes. That's fine.

21 CHAIRPERSON BERRY: And the date is going to  
22 be worked out by the Staff Director, consulting with  
23 Commissioner Anderson first and Commissioner Lee and  
24 the Vice Chair. And then -- and I have assigned to  
25 this -- I am assigning to this Commissioner Anderson

1 and Commissioner Lee as the two people, with backups of  
2 Horner and Reynoso.

3 Okay. Can we go to the next -- yes?

4 MR. MONTEZ: I would just like to say that  
5 all Commissioners are welcome to the great state of  
6 California.

7 CHAIRPERSON BERRY: No, they're not. We  
8 can't afford it. We can't have all the Commissioners  
9 going out to all the SACs.

10 Let's go on to the next item, which is  
11 project planning. And let me just say by way of  
12 openers, remind ourselves the major purpose of what we  
13 are doing today, which may not appear, but the major  
14 purpose of what we're doing today is to figure out if  
15 any Commissioner has any suggestions about new projects  
16 that should be considered and drafted up in proposal  
17 form by the staff for our further consideration for the  
18 year 2000.

19 Now, to remind you again, except for last  
20 year the Commission has had this meeting every January  
21 for as long as I can remember. To remind you of  
22 something else, the Commission has never known what the  
23 pass-back figure is when we have these meetings. We  
24 knew last year because we had it in February and it was  
25 after the State of the Union and the pass-back had been

1 announced publicly.

2           In prior years, the Commission never knew  
3 what the pass-back was and that was because the purpose  
4 of the meeting was not to fill in -- I think I'm right  
5 about that -- was not to fill in budget numbers but the  
6 purpose of the meeting was to think in terms of ideas  
7 that Commissioners had about things we wanted to do, to  
8 remind ourselves of what the things were that were  
9 already in the pipeline. And then what happened was  
10 when we got the pass-back, the staff, starting from the  
11 top of our priorities all the way down as far as they  
12 could go, came up with a budget within the pass-back  
13 and then sent us a copy of what was being suggested.  
14 And that's the way we've done it.

15           But in the meanwhile, we have come up with  
16 new ideas for the out-year on the budget which in this  
17 case is 2000. Now, this time, since we're having this  
18 meeting in January again, what will happen is -- and  
19 I'm willing to tell any of you. I happen to know what  
20 the pass-back figure is but I can't say it in this  
21 meeting. If anybody wants to know, I'll be happy to  
22 tell you as long as you don't discuss it in the  
23 meeting.

24           And Commissioner Anderson, would you please,  
25 if you haven't already, tell Commissioner Horner, or

1 right her a note and tell her since she's next to you,  
2 what the pass-back figure is, and we'll do the same  
3 thing over here.

4 But the point is, please do not blurt it out  
5 in the meeting. Not that anything will happen to us.  
6 I mean, what will they do? Draw and quarter us? Cut  
7 our necks off or something? Whatever.

8 But in any case, the point is this year  
9 again, after we have this discussion and we review the  
10 priorities we've already established, which shouldn't  
11 take too long to figure out whether we still like them  
12 or don't like them, the staff will then squeeze --  
13 starting at the top -- them into the pass-back figure  
14 and we will get something in a fax which will show us  
15 how that was done. And that will be done immediately  
16 after the pass-back is announced and before the paper  
17 goes into OMB showing what our figure is within the  
18 pass-back figure. So that's what's going to happen.

19 So today what you're being asked to do is to  
20 review the list, see if your priorities have changed.  
21 You got a memo, too, that came from Ruby with an  
22 underlying memo from Fred and from Stephanie about how  
23 they see the priorities. And then if you have some new  
24 things that you think the Commission should be doing,  
25 let's talk about them. And some of you may recall that



1 Racial Tensions came out of that famous or infamous  
2 meeting in Richmond, which came out of the meeting, the  
3 discussion in the meeting. And then after that, the  
4 staff wrote up proposals and brought them back to us.

5 We will have plenty of opportunity after this  
6 meeting to look at any proposed ideas in proposal form  
7 before a budget for 2000 has to be submitted because  
8 we've got a whole cycle and we're now talking about  
9 1999.

10 So that's where we are in the discussion.  
11 And I guess we could first look at our priorities from  
12 before and make up our minds or do anything else you'd  
13 like to do on this subject. Whether we have different  
14 priorities, whether we like them -- there've been some  
15 modifications of the proposals.

16 For example, I think the Disabilities  
17 Project, the staff now -- is that correct, Ruby -- has  
18 proposed that it be a two-year project instead of a  
19 one-year project? Am I right about that?

20 STAFF DIRECTOR MOY: Right. I want to defer  
21 to Fred, if I may.

22 CHAIRPERSON BERRY: Okay.

23 Fred, do you want to say something about that  
24 or just explain that?

25 First, let me recognize Commissioner

1 Redenbaugh.

2 COMMISSIONER REDENBAUGH: Yes. I just have a  
3 procedural issue first.

4 So, today we're identifying priorities for  
5 2000; right? I'm just trying to see --

6 CHAIRPERSON BERRY: Priorities.

7 COMMISSIONER REDENBAUGH: -- see what you  
8 said. And --

9 CHAIRPERSON BERRY: And reviewing the  
10 priority list for '99, the ones we're working on now  
11 and that go into '99, --

12 COMMISSIONER REDENBAUGH: Right

13 CHAIRPERSON BERRY: -- to see if your ideas  
14 have changed, so that the staff can be advised when  
15 they make up this list to fit into the 1999 pass-back  
16 figure, that if something has changed and you don't  
17 like something any more, they will know that the  
18 Commission now doesn't like that or wants that at the  
19 bottom or -- and then when they make up the list that  
20 they'll fax to you, they will be so advised.

21 COMMISSIONER REDENBAUGH: And do we have cost  
22 bases for these?

23 CHAIRPERSON BERRY: You can have cost bases.  
24 I think they gave us a sheet showing the cost within  
25 the \$13 point whatever it is we figured out. And you

1 can have cost bases for the others.

2 I mean, they're the same cost. They still  
3 cost I guess the same thing. But I guess I don't see  
4 the relationship between -- the cost haven't changed, I  
5 don't think, since we had -- when did we have this  
6 discussion? September? We talked about all these  
7 projects.

8 COMMISSIONER HORNER: But we don't have the  
9 costs identified in this memo, I think is what --

10 COMMISSIONER REDENBAUGH: That's what I'm --

11 COMMISSIONER HORNER: -- Russell is saying.  
12 And therefore, if we're going to make changes, we won't  
13 have the opportunity to consider costs.

14 In other words, suppose you want to add a  
15 project and subtract a project. You don't know whether  
16 you're adding a very costly project and subtracting a  
17 very cheap project. We may need to call upon staff as  
18 we discuss, since it's not here.

19 CHAIRPERSON BERRY: Don't we have a -- did  
20 the Commissioners get something showing within the --  
21 what is it? \$13 point -- whatever the budget request  
22 was -- a list of the projects and how much they cost  
23 within \$13 -- what is it? \$13 point what, George, the  
24 total.

25 Isn't there a sheet showing \$13.7 [million].

1           STAFF DIRECTOR MOY: Yes. I believe so. Do  
2 we have that?

3           CHAIRPERSON BERRY: If not, let's get one,  
4 because that comes right out of the budget book, if I'm  
5 not mistaken.

6           Am I mistaken, George? Those numbers are the  
7 same as in the budget book? The one we sent to OMB, I  
8 mean.

9           I thought the only thing you didn't get was  
10 the sheet showing what the pass-back figure was.

11          COMMISSIONER HORNER: And Madam Chair, we  
12 have two memos, neither of which alludes to any figure  
13 whatsoever. Two memos that we were given in  
14 preparation for this discussion. I'm sure there have  
15 been figures presented in the past.

16          CHAIRPERSON BERRY: I'm talking about the one  
17 that amounts to \$13.5 [million] or whatever it is.  
18 Where is it?

19          Oh, you mean the figure in the budget? Yes.  
20 But there's a sheet that shows us. Why isn't that --

21          STAFF DIRECTOR MOY: Let me ask George if he  
22 happens to have a sheet with him and we can have copies  
23 made.

24          CHAIRPERSON BERRY: George, could you come up  
25 here for a minute and look at this budget? Does this

1 add up to \$13.5 [million]? I don't see any totals, so  
2 I don't know.

3 George, come around here, please.

4 Just a second.

5 (Pause.)

6 They add up to \$13.5 [million] or to the  
7 pass-back figure. What is this?

8 MR. HARBISON: This is a list of all --  
9 everything.

10 CHAIRPERSON BERRY: All of them? This is all  
11 the projects. It should match what's in the budget  
12 book but it's just on a sheet so you can see it.

13 Now, what is this?

14 STAFF DIRECTOR MOY: That's what she's  
15 passing out.

16 CHAIRPERSON BERRY: Okay. That should give  
17 us some idea, on two sheets of paper, how much  
18 everything costs.

19 Connie, do you have that for Russell, the  
20 sheet?

21 COMMISSIONER REDENBAUGH: Yes. She's -- yes.  
22 This is apparently something we got last night, which  
23 is --

24 CHAIRPERSON BERRY: Maybe they gave it to her  
25 because he can't --

1 COMMISSIONER HORNER: But I didn't get it.

2 COMMISSIONER REDENBAUGH: This was in  
3 response to a request made earlier.

4 So, planning, I still am a little disoriented  
5 on this.

6 CHAIRPERSON BERRY: You are?

7 COMMISSIONER REDENBAUGH: Yes. Like every  
8 year at this time. But planning, for me -- and I don't  
9 think we have a shared understanding of what it is --  
10 only involves -- not only, but it involves tradeoffs of  
11 three things: time, money and other resources, like  
12 people or facilities. And so we have money here.  
13 Looks like what we've got last night are the direct  
14 costs but not the full costs, so I'm not quite sure how  
15 to interact with these numbers. [Off mike.]

16 I think what we're doing here will be making  
17 tradeoffs and I'm not sure on what basis.

18 CHAIRPERSON BERRY: Well, the ADA hearing  
19 report on the sheet I'm looking at has an amount of  
20 money, \$160,000.

21 George, do you have this sheet?

22 And then it has discretionary/non-  
23 discretionary, and then a total, which comes up to  
24 \$160,000. Now, that's how much the ADA project costs.

25 COMMISSIONER REDENBAUGH: Looks like a

1 bargain.

2 MR. HARBISON: That's the hearing costs.  
3 That's the hearing.

4 COMMISSIONER REDENBAUGH: That's just the  
5 hearing.

6 CHAIRPERSON BERRY: The hearing report.

7 MR. HARBISON: [Off mike.]

8 CHAIRPERSON BERRY: And we're looking at '99.

9 MR. HARBISON: Right.

10 CHAIRPERSON BERRY: Oh, I see. Okay. So  
11 your report for this year would be finished by the time  
12 this starts?

13 MR. HARBISON: That's correct.

14 CHAIRPERSON BERRY: So we're just talking  
15 about the hearing report is \$160,000.

16 And then it has numbers, Russell. It has  
17 numbers for every project here. Like \$438,000 for the  
18 Crisis of African American Males.

19 COMMISSIONER REDENBAUGH: Yes. But what I  
20 don't find here, and it may be that we just haven't  
21 spent enough time on it, is I don't find the other  
22 Commission costs.

23 CHAIRPERSON BERRY: Okay. Well, when it says  
24 non-discretionary/discretionary, George, are the other  
25 Commission costs in that?

1 MR. HARBISON: [Off mike.]

2 CHAIRPERSON BERRY: And you mean by other  
3 costs, Russell, --

4 COMMISSIONER REDENBAUGH: The rent on this  
5 building.

6 See, we have a secret pass-back number;  
7 right?

8 CHAIRPERSON BERRY: Right.

9 COMMISSIONER REDENBAUGH: That we presume to  
10 be less than \$13.7 [million]; right?

11 CHAIRPERSON BERRY: Yes, yes.

12 COMMISSIONER REDENBAUGH: So we actually get  
13 down inside that by some amount.

14 CHAIRPERSON BERRY: Right.

15 COMMISSIONER REDENBAUGH: Then the projects  
16 that we select will impact that. But what we may have,  
17 but I can't find, is what are the financial commitments  
18 we've made to spend anyway that are independent of  
19 projects.

20 CHAIRPERSON BERRY: Okay. Well, let me ask  
21 George this.

22 George, the other items in the budget that  
23 Russell is referring to, like rent and light and I  
24 don't know, indirect costs, I guess they are --

25 COMMISSIONER REDENBAUGH: And things like



1 public affairs, other activities.

2 CHAIRPERSON BERRY: Administrative services,  
3 public affairs, other things that are not projects,  
4 okay? Would they be -- how would they be affected by  
5 any decisions we make? Are you saying that we can  
6 isolate the projects from those decisions and that  
7 those are fixed costs that we will have anyway, and so  
8 we're not talking about adjusting them up or down?

9 MR. HARBISON: It's possible there may have  
10 to be some adjustments to the projects.

11 CHAIRPERSON BERRY: The projects. How about  
12 the other costs that Russell is talking about, the cost  
13 of the public affairs unit, the cost of --

14 COMMISSIONER REDENBAUGH: Regional.

15 CHAIRPERSON BERRY: Yes. Regional operations.

16 MR. HARBISON: To the extent that there are  
17 proposed increased over the estimate and we received an  
18 amount less than what we requested.

19 CHAIRPERSON BERRY: Which we did do. We can  
20 say that.

21 MR. HARBISON: Then there is a very big  
22 possibility that some of those costs would have to be  
23 raised.

24 CHAIRPERSON BERRY: Does that affect the  
25 projects? In other words, in what we're being asked to

1 do -- that's what Russell's question is -- can we work  
2 on these projects and decide what to do about them  
3 without worrying about those other items, or should we  
4 be worrying about those other items as we go along and  
5 do this?

6 And I guess I'll ask another question. Is  
7 the non-discretionary part on this chart, is that the  
8 apportionment of rent, staff, whatever? What's  
9 discretionary and what's non-discretionary?

10 MR. HARBISON: None-discretionary is salaries  
11 and benefits.

12 CHAIRPERSON BERRY: Salaries and benefits.  
13 Discretionary is --

14 MR. HARBISON: Any other item that is  
15 required to complete that project.

16 CHAIRPERSON BERRY: Like?

17 MR. HARBISON: [Off mike.] Court reporters.  
18 Anything like that. Travel. All that would be  
19 considered.

20 CHAIRPERSON BERRY: Where is Commissioner  
21 travel, if any?

22 MR. HARBISON: Commissioners' travel is in  
23 their own separate --

24 CHAIRPERSON BERRY: Category?

25 MR. HARBISON: -- category.

1           CHAIRPERSON BERRY: How about the question  
2 that was raised at the hearing last year that we tried  
3 to deal with and tried to deal with afterwards, which  
4 is how much of the kinds of costs we're talking about,  
5 how much is to be allocated in support of the projects?  
6 That is, how much Commissioner time, travel, et cetera,  
7 should be shown in support of projects and how much  
8 travel, how much public affairs, how much everything,  
9 so that when you look at a figure of what something  
10 costs you get a full picture of what it costs. So that  
11 if you were to lop off the Crisis, say for example,  
12 report and hearing, you would be lopping off some  
13 Commissioner time and some other stuff too, in addition  
14 to the salaries of the employees who work on the  
15 project. Isn't that right?

16           MR. HARBISON: I wouldn't consider  
17 Commissioner time as a direct project cost. It would  
18 be likely an indirect cost within that project. [Off  
19 mike.]

20           We have traditionally -- Commissioner  
21 expenses as well as headquarters expenses, regional  
22 expenses, anything that is a non-direct project in its  
23 own account.

24           What you see on the schedule that you have  
25 are those costs that are directly related to completing

1 that project. Your time and anybody else's time that  
2 is applicable to a project will be recorded against  
3 that project if they use the correct project code when  
4 they're incurring expenses against a project.

5 For example, if you -- if any member of a  
6 Commission went to a hearing on any one of the projects  
7 that we have proposed, you would charge your time to  
8 the project code associated with that hearing. And it  
9 would automatically accrue against the project.

10 CHAIRPERSON BERRY: And who would charge  
11 their time to that hearing? Who would mechanically do  
12 that?

13 MR. HARBISON: Mechanically, that would be  
14 the individual.

15 CHAIRPERSON BERRY: They would say on their  
16 time sheet eight hours, hearing in Los Angeles?

17 MR. HARBISON: Yes.

18 CHAIRPERSON BERRY: And then when you kept  
19 track of it, you would write down the code for that  
20 month, that Commissioner spent eight hours in a hearing  
21 in Los Angeles?

22 MR. HARBISON: That's correct.

23 CHAIRPERSON BERRY: And then when you went  
24 back and did a recapitulation of how the money was  
25 spent, it would show eight hours Commissioner, or

1 whatever number of hours it was.

2 MR. HARBISON: It would automatically accrue  
3 once the time code is entered into the accounting  
4 system.

5 CHAIRPERSON BERRY: Put in. I see. Okay. I  
6 just wanted to be sure we didn't think we were putting  
7 any codes, because we're not.

8 (Crosstalk.)

9 COMMISSIONER REDENBAUGH: I think we're  
10 mixing two things that are different. One was the  
11 tracking of costs as they actually occur, which is now  
12 what you're just talking about. Then the other is the  
13 looking ahead budget. And I think we ought to stay  
14 more on that.

15 Here's what I don't understand. Can I say  
16 this number that's on this page?

17 CHAIRPERSON BERRY: the total?

18 COMMISSIONER REDENBAUGH: Yes.

19 CHAIRPERSON BERRY: No.

20 COMMISSIONER REDENBAUGH: No, no. Not the  
21 total, the total of the projects.

22 CHAIRPERSON BERRY: Yes. You can say that as  
23 long as it's not the total pass-back.

24 COMMISSIONER REDENBAUGH: I don't even know  
25 the whole numbers.

1           So this plus million number, the total of the  
2 projects, I think the project total that we had in  
3 September was a \$3 million number; right? We'll just  
4 truncate it a decimal point.

5           Now, the \$3 million number, I believe  
6 presumed a pass-back of \$13.7 [million] but now I'm not  
7 clear on that. We have reason to believe it's less  
8 than \$13.7 [million], perhaps by more than a little.  
9 Then I'm not assured that we can -- I don't know how to  
10 interact with the \$3 million number.

11           CHAIRPERSON BERRY:    Okay. Well, let's answer  
12 that question.

13           COMMISSIONER REDENBAUGH:  It looks to me like  
14 it's way too big a number.

15           CHAIRPERSON BERRY:  George, do you know how  
16 much the total amount for projects was in the \$13.7  
17 million request? I mean, we can look in the budget and  
18 see, but do you know? So that we can verify how much  
19 it was.

20           And then, where did you get \$4 million on  
21 this page?

22           MR. HARBISON:  I'm going to be honest with  
23 you.

24           CHAIRPERSON BERRY:  I think somebody added it  
25 up.

1 COMMISSIONER REDENBAUGH: Yes. Charlie added  
2 it. She has a calculator.

3 CHAIRPERSON BERRY: Okay.

4 MR. HARBISON: I'm not certain where the \$4  
5 million --

6 COMMISSIONER REDENBAUGH: It's the summation  
7 of --

8 CHAIRPERSON BERRY: The numbers that are  
9 somewhere or other.

10 MR. HARBISON: Okay. Now I understand. The  
11 listing that was sent out to the Commissioners is --

12 CHAIRPERSON BERRY: The -- oh, go ahead.

13 MR. HARBISON: -- is a listing of projects  
14 that are available for consideration. It is not  
15 intended to equate to the OMB request at -- whatever  
16 that OMB request figure was. It is a list of projects  
17 that had been previously discussed. It includes  
18 everything that was in the OMB request plus an  
19 additional one or two projects that had been discussed  
20 but were not included in the --

21 COMMISSIONER REDENBAUGH: Yes. Good. So, I  
22 understand this is the wish list then; right? What  
23 level of budget reality should we think about as we  
24 review this list? Keeping in mind that what we're now  
25 doing is actually making choices, not preparing

1 something we send to OMB.

2 MR. HARBISON: I'm not sure I understand.

3 COMMISSIONER REDENBAUGH: How much are we  
4 going to have to spend in the year we're talking about  
5 on projects?

6 CHAIRPERSON BERRY: And can you, in fact, fit  
7 all of these projects into the pass-back, the ones that  
8 are on the sheet we got?

9 MR. HARBISON: No.

10 CHAIRPERSON BERRY: You can't?

11 MR. HARBISON: No.

12 CHAIRPERSON BERRY: Okay. Well, that's one  
13 answer.

14 COMMISSIONER REDENBAUGH: I want to say  
15 something. My view is that as Commissioners, we eight  
16 are absolutely not doing the modest job we've been  
17 tasked with in the ministerial area.

18 And, George, I'm making this complaint  
19 against the Commissioners, not against you.

20 We are not asking for the kinds of  
21 information that we need to make the decisions that we  
22 keep making, and then staff can't possibly fulfill,  
23 because they do have constraints that are real. And I  
24 continue to be very disappointed in our ability to  
25 manage this planning process.



1 CHAIRPERSON BERRY: Commissioner Horner?

2 COMMISSIONER HORNER: Madam Chair, I think I  
3 agree with what Russell has just said. And I guess my  
4 basic question is why don't we defer this  
5 decisionmaking at least until we're able to discuss the  
6 pass-back. In other words, why not do it next month  
7 after the budget is revealed since we already have a  
8 list of projects and it's only a matter of adapting it.

9 CHAIRPERSON BERRY: When do we have to turn  
10 in our numbers fit within the pass-back?

11 MR. HARBISON: My understanding, and I have  
12 to verify this, is that it's within plus or minus five  
13 days after the President's State of the Union.

14 COMMISSIONER HORNER: You mean, send them to  
15 the Congress?

16 MR. HARBISON: Yes.

17 STAFF DIRECTOR MOY: Excuse me. I was told  
18 that February 2nd is when our budget is due on the  
19 Hill.

20 CHAIRPERSON BERRY: February 2nd?

21 COMMISSIONER HORNER: I see. I see.

22 CHAIRPERSON BERRY: And so the reason why we  
23 -- I guess what I'm saying to you, Russell, and I know  
24 it's not satisfactory, but we have never looked at  
25 budget numbers in the January meeting ever before.

1 COMMISSIONER REDENBAUGH: Yes. I understand.

2 CHAIRPERSON BERRY: We have just -- here is  
3 what is Commissioners think are great ideas, and you  
4 guys in the staff grow out some proposals, and here are  
5 what our priorities still are. Let's go down the list.  
6 And then you put in and give us a sheet back showing  
7 how you put our priorities into the pass-back and go  
8 down as far as you can. And then the ones that won't  
9 fit, put them in the next year and then we'll  
10 reevaluate them next time.

11 I guess what I'm saying to you is I agree  
12 with you.

13 COMMISSIONER REDENBAUGH: When then it sounds  
14 like it doesn't matter what we put in.

15 CHAIRPERSON BERRY: Right.

16 COMMISSIONER REDENBAUGH: Well, then, I'm  
17 going to vote on everything because all projects have  
18 friends.

19 CHAIRPERSON BERRY: Let me say this. We  
20 already also had -- who says what?

21 STAFF DIRECTOR MOY: Fred.

22 CHAIRPERSON BERRY: Where is Fred? Fred  
23 wants to say something. Come on, Fred. Say whatever  
24 you want to say.

25 MR. ISLER: First of all, this chart that you

1 have is only a chart showing all the projects in  
2 September that we agreed to defer to 1999. It is not a  
3 chart to say that we want to do or we recommend that we  
4 do all these projects in 1999.

5           What the staff did do, Stephanie and I, we  
6 got together and we made a recommendation to the  
7 Commissioners to defer some of these to the year 2000.  
8 So this does not represent what we are asking the  
9 Commissioners to do or consider in 1999. This is a  
10 list that was created as a result of Commissioners  
11 approving all these projects back in 1998.

12           COMMISSIONER REDENBAUGH: Excuse me. Then,  
13 Fred, this is a list of things you're proposing we not  
14 do?

15           MR. ISLER: No.

16           COMMISSIONER REDENBAUGH: No?

17           MR. ISLER: Since we can't make decisions for  
18 the Commissioners on what projects we do in 1999, we  
19 list all the projects that you approved of us carrying  
20 over and deferring until 1999, in addition to the ones  
21 we think will be carried over in 1999 because we do not  
22 have sufficient resources and staff to do in '98.

23           Then Stephanie and I made a recommendation  
24 through a memo. For instance, in our recommendation,  
25 we asked that Federal Agency Block Grant Project, which

1 would equal something like 492 be deferred to the year  
2 2000. So that we be backed out in '99.

3 COMMISSIONER REDENBAUGH: Okay.

4 MR. ISLER: We asked that Expanding Economic  
5 Opportunities -- but you're the only ones that can make  
6 those decisions. We recommend that Expanding Economic  
7 Opportunities be deferred to the year 2000.

8 COMMISSIONER REDENBAUGH: Okay.

9 MR. ISLER: But the Commissioners have to  
10 make the decision as to whether we do that. So that's  
11 what this --

12 COMMISSIONER REDENBAUGH: Now, then, Fred, I  
13 think I'm starting to understand this. If we defer all  
14 these things that you all have recommended we defer,  
15 does that get us inside the pass-back for '99?

16 CHAIRPERSON BERRY: Is that right, George?

17 MR. HARBISON: That's correct.

18 MR. ISLER: That's correct.

19 COMMISSIONER REDENBAUGH: Way inside?

20 MR. ISLER: Way inside.

21 COMMISSIONER REDENBAUGH: Okay.

22 CHAIRPERSON BERRY: And, George, if we leave  
23 these things deferred, which we agreed to before. We  
24 agreed to do this in September or sometime or other, to  
25 defer them. All this is the list.

1           If we do that and you think about the other  
2 costs that you have that you asked about earlier, like  
3 Commissioners and public affairs and so on, you can  
4 come up with a budget that will get us within the pass-  
5 back?

6           MR. HARBISON: Yes.

7           CHAIRPERSON BERRY: Okay. So that's the  
8 answer. So the only question for us as Commissioners,  
9 again, is do we want to change some of these deferred  
10 to 1999. Is it that we don't like some of them any  
11 more or we don't want them there, we don't want to do  
12 them.

13           So first we have to pick out and say these  
14 are still -- let's just keep -- you know, let's go with  
15 what Stephanie and Fred have in the memo and keep the  
16 list that we have or we don't like this list and we  
17 want to change it to some other list or some other way.  
18 And then once we do that, the projects left for the  
19 year 2000 on the next page, there are four projects  
20 which would be a start for 2000, and then we could  
21 suggest anything else we wanted to suggest for 2000 and  
22 that's the answer to the question.

23           COMMISSIONER HORNER: I have a question to  
24 ask of Fred relating to a point on the second page of  
25 the memo from Fred and Stephanie. Just a point of

1 clarification.

2           There are two sentences in here that seem to  
3 be contradictory and probably aren't. One says OCRE  
4 and OGC will complete the ADA report as a statutory  
5 enforcement report for FY '98. And then two sentences  
6 down it says OGC expects to conduct the hearing on the  
7 ADA project in FY '98 and produce a statutory hearing  
8 report together with OCRE in FY '99.

9           I don't understand. Are we talking about two  
10 -- about a statutory enforcement report. What's the  
11 difference?

12           MR. ISLER: It will be done in 1998.

13           COMMISSIONER HORNER: 1998, the statutory  
14 enforcement report.

15           MR. ISLER: The statutory hearing report will  
16 be done in 1999 jointly with OGC.

17           COMMISSIONER HORNER: Okay. We always have  
18 been using the term statutory report to refer to the  
19 enforcement report and that's correct in terms of FY  
20 '98, statutory enforcement report. But the report  
21 you're talking about for '99 is not the statutory  
22 enforcement report we're required to do each year.

23           MR. ISLER: No.

24           CHAIRPERSON BERRY: It's a statutory hearing  
25 report which means it has findings and recommendations.

1 COMMISSIONER HORNER: Okay. Thank you.  
2 Thank you.

3 MR. ISLER: Right.

4 CHAIRPERSON BERRY: Commissioner Anderson?

5 COMMISSIONER ANDERSON: While we're on that  
6 topic, the reference to a staff report --

7 CHAIRPERSON BERRY: Where?

8 MR. ISLER: That's a mistake.

9 CHAIRPERSON BERRY: Where it is?

10 COMMISSIONER ANDERSON: Oh, okay.

11 COMMISSIONER HORNER: Let's clarify the  
12 mistake.

13 CHAIRPERSON BERRY: Where are you reading? I  
14 don't know. Where are you looking?

15 COMMISSIONER ANDERSON: It's in the  
16 Attachment section. It seemed to me that I probably  
17 should ask outside the meeting. But the staff report  
18 and statutory report.

19 MR. ISLER: Yes. That's an old summary of  
20 the ADA when we initially -- which has been corrected.

21 COMMISSIONER ANDERSON: So we're going to get  
22 one report from you and one report from OGC?

23 MR. ISLER: That's correct.

24 COMMISSIONER ANDERSON: In different years.  
25 Okay.

1 MR. ISLER: That's correct.

2 COMMISSIONER ANDERSON: Okay.

3 CHAIRPERSON BERRY: Russell, the question,  
4 just so we don't leave your questions entirely up in  
5 the air, once we finish all this process and we get  
6 those other numbers, I think the kinds of questions  
7 that you are asking, it's my understanding that they  
8 were going to be an ongoing part of this information  
9 system process.

10 COMMISSIONER REDENBAUGH: That, too, is my  
11 understanding.

12 CHAIRPERSON BERRY: So I think we should have  
13 a discussion of that with the numbers, with the  
14 questions.

15 COMMISSIONER REDENBAUGH: I actually proposed  
16 before that we have the decision of the issues or the  
17 principles for that before we get into numbers.

18 CHAIRPERSON BERRY: Okay. Why don't we do a  
19 discussion of that next time. Is that okay?

20 COMMISSIONER REDENBAUGH: In February? Okay.

21 CHAIRPERSON BERRY: Is that all right?  
22 Because I do think we need to have that discussion.

23 COMMISSIONER REDENBAUGH: I think so because  
24 the two agencies that reviewed us last year spoke to  
25 that issue.



1 COMMISSIONER GEORGE: Hello?

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER GEORGE: Oh, Mary --

4 CHAIRPERSON BERRY: That was Russell,  
5 talking. Did you hear him? Okay.

6 COMMISSIONER REDENBAUGH: Yes. I commit to  
7 it then for February and will write something to orient  
8 some of the questions and discussions ahead of time.

9 CHAIRPERSON BERRY: And why don't you and I  
10 talk about that before then.

11 COMMISSIONER REDENBAUGH: Uh-huh.

12 CHAIRPERSON BERRY: I'll call you. We'll get  
13 together on that.

14 COMMISSIONER REDENBAUGH: All right.

15 CHAIRPERSON BERRY: Okay.

16 Commissioner Anderson?

17 COMMISSIONER ANDERSON: I just want to say  
18 that in terms of this project prioritizing and the  
19 budget, we submit a budget, which in this case is \$13.7  
20 [million]. OMB is going to slice off a couple of  
21 million. Then it's going to go to the Hill and the  
22 Hill is going slice off a couple of million. And, you  
23 know, we spend a lot of time working on this budget and  
24 working on this prioritizing and we know that what  
25 we're doing today matters very little because we're

1 going to hear back from Congress and we're going to  
2 have to go through this whole thing again to come down  
3 a couple of more million.

4           And I just think that it might be better to  
5 look at FY '98 and say, you know, instead of assuming  
6 we're going to get a 57 percent increase next year,  
7 decide, look, Congress may give us 10 percent, 15  
8 percent, 20 percent, and let's build a realistic budget  
9 out of that. And then we're pretty well set because I  
10 think we keep sending the staff back to redo all of  
11 this stuff and we know that a couple of months from now  
12 we're going to be sitting here trying to cut another  
13 couple of million out of this.

14           And so my proposal would be to try to look at  
15 this budget prioritizing from the reverse. Not look at  
16 the high number and try to cut it but look at the low  
17 number and say realistically what do we expect we're  
18 going to get.

19           I think we'd save time in the long run doing  
20 that because we've got 81 percent program evaluation  
21 increase. We've got 102 percent in legal analysis and  
22 investigations. We've got a 59 percent in State  
23 Advisory Committees. We're just not going to get that.  
24 And then 40 percent in program support.

25           Seems to me if we look at the lower end of

1 the figure we'd do this much better. But having said  
2 all that, maybe a way of looking at this is to see to  
3 what extent we really need 59 percent increase in State  
4 Advisory Committee activities and 40 percent in program  
5 support. I assume that the pass-back -- to meet the  
6 pass-back, we're going to look at State Advisory  
7 Committees and program support, right? And big cuts  
8 there let us do more in programs.

9 MR. HARBISON: [Off mike.]

10 COMMISSIONER ANDERSON: So, we can't tell in  
11 the program area until they sort of tell what they're  
12 going to do with SACs and program support. Is that  
13 right?

14 MR. HARBISON: Yes.

15 CHAIRPERSON BERRY: But, Carl, what do we do  
16 with the need to turn in something in the budget  
17 process that meets the pass-back figure? I mean, do we  
18 say we're not going to do that because we know we're  
19 not going to get that much anyway, so, hey, guys --

20 COMMISSIONER ANDERSON: Let's just pull a  
21 number out of the air. We've got \$8.7 [million] from  
22 Congress. And if we propose \$10.9 [million] or \$10.5  
23 [million], I don't know how much of a jump that is.  
24 It's probably 15-20 percent. Then would we be sitting  
25 here? Well, how much of a cut would we be sitting here

1 talking about an OMB pass-back on \$10.5 [million] or  
2 \$10.8 [million] or \$10.9 [million]. That's my point.  
3 No matter what we send up there, OMB is going to cut it  
4 but I don't think they're going to cut it \$2 million or  
5 \$3 million.

6 CHAIRPERSON BERRY: Yes, George?

7 MR. HARBISON: A comment for Commissioner  
8 Anderson. Perhaps a better way to look at this is that  
9 we make what we feel, as the Commission staff, that we  
10 have these issues that we'd like to address. And in  
11 order to do that, we need additional funding to do  
12 that. We can't do it on what we're getting. So  
13 perhaps a better way to approach the fact that we might  
14 get less appropriated than what we requested would be  
15 for staff to present the Commissioners with alternative  
16 options at lower levels, once we know what that pass-  
17 back -- what the appropriation is going to be.

18 And when Congress tells us what we're  
19 actually going to get, rather than have the  
20 Commissioners spend an inordinate amount of time trying  
21 to figure out what to cut, we could provide you with  
22 options in terms of -- for your consideration, in terms  
23 of what would be what the staff would recommend as a  
24 way to get there.

25 COMMISSIONER HIGGINBOTHAM: It makes sense to

1 me. That's the only problem. What you said made  
2 sense.

3 CHAIRPERSON BERRY: Commissioner Horner, when  
4 she first got on the Commission, we at least had one  
5 thing in common. Did the same thing I did when I first  
6 got on the Commission. Having come from a big agency  
7 where I was used to option papers with staff, where I  
8 would check off boxes and I'd read all the  
9 justification. That was the way I'd been trained. I  
10 grew up that way in the big agency. And I came over  
11 here and the first time somebody presented something to  
12 me, I started looking for the options paper and there  
13 was no options paper.

14 COMMISSIONER HORNER: Especially option B.

15 CHAIRPERSON BERRY: Right. And so then I  
16 said to the staff in a meeting -- and I did the same  
17 thing you did. I was outraged. I said what happened  
18 to the -- we need to have options. I don't expect to  
19 decide anything without the staff working up options.  
20 And they just -- you know, said to me, well, we've  
21 never done it that way. You don't need it. It's not  
22 that complicated. And I never got any option paper to  
23 this day.

24 But, yes, I like options with justifications  
25 with each, and so that you know what you're doing. So

1 I don't see any objection to that.

2 I guess what we have to do, and we should do  
3 that right now, is do we agree with Fred and Stephanie  
4 through Ruby's paper, or is there something about it we  
5 don't like in terms of going through this next exercise  
6 of trying to fit things into \$11 million.

7 Yes, Commissioner Redenbaugh?

8 COMMISSIONER REDENBAUGH: My understanding,  
9 which is increasing substantially the last few minutes,  
10 is that it doesn't matter.

11 CHAIRPERSON BERRY: Correct.

12 COMMISSIONER REDENBAUGH: So given that it  
13 doesn't matter, why don't we treat the Stephanie/Fred  
14 document like the Base Closing Commission and vote it  
15 up or down, given that we're going to have to re-  
16 discuss everything later anyway.

17 CHAIRPERSON BERRY: And then you're going to  
18 get a document right after the pass-back is announced  
19 which will show you the budget figure with the projects  
20 fitted into the number. That will be the next thing  
21 you get.

22 COMMISSIONER REDENBAUGH: Uh-huh.

23 CHAIRPERSON BERRY: And then you and I will  
24 have some discussions about overall planning and  
25 budgets and numbers and then we'll get some discussion

1 about how to do that next, after that.

2 COMMISSIONER REDENBAUGH: Uh-huh.

3 CHAIRPERSON BERRY: And then we'll go merrily  
4 to the Congress with our appropriation request and then  
5 we'll get it cut, and then we'll get some options from  
6 George and the staff about what to do. So that's what  
7 will happen?

8 COMMISSIONER REDENBAUGH: I like the idea of  
9 being able to blame staff for these deferrals.

10 CHAIRPERSON BERRY: So what we need to do is  
11 to agree that the staff can go ahead and start trying  
12 to put this pass-back together. But we need to do one  
13 other thing. If any Commissioner has any great ideas  
14 about some new projects that you would like the staff  
15 to work up a paper on or a proposal or something for  
16 the Commission to do in the year 2000, you need to say  
17 so or you need to -- yes, Commissioner Horner?

18 COMMISSIONER HORNER: Madam Chair, not to be  
19 responsive to your offer, just a small for the record  
20 matter.

21 The proposal we're going to I think be voting  
22 on shortly says that OGC and OCRE recommend that work  
23 on the Measuring Discrimination in America Project  
24 commence in FY 2000 and that has always been contingent  
25 upon an affirmative vote after the consultation. And I

1 just want to mention that for the record. That is  
2 included in -- that fact is properly included in an  
3 asterisk on the two-page budget paper. Asterisk:  
4 Contingent upon accomplishing a consultation and  
5 obtaining Commissioner approval to develop project  
6 plan.

7 CHAIRPERSON BERRY: Well, maybe that should  
8 be assumed to incorporate that language.

9 COMMISSIONER HORNER: Fine. Fine.

10 MR. DULLES: Madam Chair?

11 CHAIRPERSON BERRY: Yes.

12 MR. DULLES: This is John Dulles in Denver.

13 CHAIRPERSON BERRY: Yes, John Dulles.

14 MR. DULLES: How are you today?

15 CHAIRPERSON BERRY: I'm fine.

16 MR. DULLES: Great.

17 Listen, I was just looking over the materials  
18 in the package and I noticed in the project entitled  
19 Expanding Economic Opportunities and African American,  
20 Asian and Pacific Islanders and Latino Youth, that  
21 there is no inclusion of Native American youth. It was  
22 my understanding, based upon my participation in your  
23 meeting in November, you would add Native American  
24 youth as a group to be included in that project. And I  
25 wanted to call it to your attention.



1           CHAIRPERSON BERRY: That's right. We did  
2 discuss that at the briefing and said we would either -  
3 - that we'd do the same kind of project on Native  
4 American youth.

5           COMMISSIONER LEE: I think the staff has  
6 already put in a paragraph.

7           CHAIRPERSON BERRY: Oh, it's down here in the  
8 paragraph. Yes. But, okay. Keep that in mind.

9           In the heading, the little bullet there.  
10 Okay. So that will be understood, too, because we did  
11 agree to do that.

12           Yes, Vice Chair?

13           VICE CHAIR REYNOSO: Madam Chair, I don't  
14 know whether in the project on Measuring Discrimination  
15 we had in mind -- I guess we haven't really quite  
16 defined that, even though I think that potentially that  
17 may be one of the most valuable projects that we do,  
18 trying to identify what discrimination is. But  
19 particularly since the Mississippi hearings, I've been  
20 reminded of the relationship of the issues of civil  
21 rights and poverty. And I know that would be a -- I  
22 just think there is now, with the elimination, large  
23 elimination of de jure discrimination, a greater  
24 relationship of civil rights issues and poverty.

25           And I'm not quite sure how to characterize

1 such a project, but I think that we ought to stick with  
2 the issue of how to identify discrimination, but in  
3 thinking about civil rights, the relationship of civil  
4 rights to poverty has just taken a far greater input in  
5 my own thinking. And some time in the future we ought  
6 to be thinking about doing some more thinking, doing  
7 some more investigating of the relationship in modern  
8 day America of the relationship of poverty and civil  
9 rights.

10 CHAIRPERSON BERRY: Did you want to comment  
11 on that, Russell, or something else?

12 COMMISSIONER REDENBAUGH: Yes. On that,  
13 particularly.

14 Cruz, I think you're right. Would it seem to  
15 you that that would come under the Economic  
16 Opportunities Project or both?

17 VICE CHAIR REYNOSO: It's related to it.

18 COMMISSIONER REDENBAUGH: Yes. I don't think  
19 of it as either/or, but I share your concern that we  
20 address that. Yes.

21 CHAIRPERSON BERRY: Commissioner Anderson?

22 COMMISSIONER ANDERSON: Well, I feel strongly  
23 about it, too, and that's why I thought the -- what was  
24 it? Two days of hearings in Los Angeles on the subject  
25 of Economic Opportunity that was had was so important.

1 And I think we should be getting that out in terms of  
2 our report.

3 VICE CHAIR REYNOSO: I agree.

4 COMMISSIONER ANDERSON: But we should  
5 continue. But I think we laid a foundation there that  
6 we should not lose sight of.

7 CHAIRPERSON BERRY: But I think, if I  
8 understand you correctly and your concern, do you mean,  
9 Cruz, that there ought to be some kind of project in  
10 which we have discussions, whether it's a consultation  
11 or a hearing or something or just a project where the  
12 staff does literature review or something which will  
13 discuss the relationship generally of civil rights  
14 issues and concerns to poverty or economic status  
15 issues.

16 VICE CHAIR REYNOSO: Economic development is  
17 part of it. But, for example, we were talking earlier  
18 about police-community relations. I would be sure from  
19 the reports I read and what I know that at least nine  
20 out of 10 police-community incidents that raise  
21 potential civil rights issues have to do with poor  
22 people. Somehow those with economic and political  
23 power in the community have a different relationship  
24 with the police irrespective of race, it seems to me,  
25 although race is not unimportant.

1           But somehow the economic standing of the  
2 individual in the community in which he or she lives  
3 seems to be very important in terms of whether or not  
4 civil rights issues arise in terms of the community and  
5 the police.

6           The issue of education which was talked about  
7 in Mississippi and how much support the public schools  
8 get is so related to the issue of poverty and civil  
9 rights. And practically every aspect that one sees of  
10 civil rights, the issue of poverty is related, as well  
11 as the issue of race, ethnicity and so on. Sometimes  
12 perhaps even more so.

13           And so all the things that we've been doing  
14 that relate to that, including economic development, I  
15 think are very important. But my sense is that it's  
16 all interrelated and I don't think we've ever quite  
17 looked at it that way.

18           And so I'm suggesting -- you know, maybe we  
19 have a briefing on the issue first to try to explore  
20 that issue, as we hope to do with the issue of how do  
21 we identify discrimination in modern day America.

22           CHAIRPERSON BERRY: Commissioner  
23 Higginbotham?

24           COMMISSIONER HIGGINBOTHAM: I agree with the  
25 Vice Chair. I would rephrase the concept a little

1 differently than calling it measuring discrimination in  
2 America. And I would rephrase it as measuring  
3 discrimination and access in America. And if we aren't  
4 sophisticated enough to go beyond discrimination, since  
5 de jure has often been written out but not the issue of  
6 access --

7 COMMISSIONER GEORGE: I'm sorry. I'm having  
8 trouble hearing Commissioner Higginbotham.

9 COMMISSIONER HIGGINBOTHAM: I'm sorry. I  
10 shall -- can you hear me now?

11 COMMISSIONER GEORGE: Yes.

12 COMMISSIONER HIGGINBOTHAM: From my  
13 experience, I think you have to watch out limiting  
14 yourself in your measuring to measuring mere  
15 discrimination because you tend to get into a whole  
16 series of de jure aspects. And what you want to  
17 measure is also the issue of access. And let me give  
18 you a couple of examples.

19 Out of 268 first year students at the  
20 University of California at Berkeley this year, only  
21 one is African American. Out of 468 at the University  
22 of Texas Law School, only four are African Americans.  
23 In April of 1950, Thurgood Marshall argued Sweat v.  
24 Painter on the de jure issue. Now, to get into a cycle  
25 where we have moved at the University of Texas from an

1 exclusion which is zero to last year, September, only  
2 four, one may very well not be able to argue  
3 affirmative exclusionary discrimination but it is also  
4 very relevant on the issue of access.

5 Now, for better or worse, I have decided that  
6 I'm going to write on these issues. Not labor my  
7 colleagues to get their vote, but to express my own.

8 I've got an article coming out in the New  
9 York Times Sunday Magazine Section called "Breaking  
10 Thurgood Marshall's Promise," pertaining to the  
11 University of Texas Law School. The number of African  
12 Americans who are applying to medical school during the  
13 year 1997 now is down and someone as thoughtful as the  
14 President of the College Board, Donald Stewart, says  
15 this. Quote: We're looking at a potential wipeout that  
16 could take away an entire generation of black and  
17 Hispanic students."

18 The data is overwhelming. I don't expect for  
19 this Commission to get to these important issues but  
20 it's a profoundly serious problem. When you look at  
21 the data and you have it on charts, you wonder what's  
22 going to happen in a context where in California, by  
23 the year 2003, the majority of the population will be  
24 non-white. And you're going to end up with one student  
25 at Berkeley Law School?

1           Now, to me, I think those are sort of  
2 important issues. Now, I'm not going to risk raising  
3 affirmative action before this Commission because I  
4 don't want to get another 4/4 vote. And the last time  
5 I apologized. I know I spoke fervently. Got ill.  
6 Mary called the paramedics. And I promised my family  
7 I'd be calm this time.

8           CHAIRPERSON BERRY: You're being calm.

9           COMMISSIONER GEORGE: Does that mean I have  
10 to behave myself?

11           COMMISSIONER HIGGINBOTHAM: What I'm really  
12 saying is that if you're going to go -- if this  
13 Commission is going to go for the issue of measuring  
14 discrimination, it has to have an index other than pure  
15 discrimination. It has to have a measure of access.  
16 And until we come to grips with the issue of access,  
17 we're going to have a lot of serious problems.

18           And the access cuts across the board. I  
19 think I made mention before, but I want to mention it  
20 again. Three years ago when they reorganized Congress,  
21 they brought in 66 pages, 65 pages in the United States  
22 House of Representatives. Of the 65, 64 were white  
23 and one was Asian.

24           Now, I have a little difficulty -- and  
25 believe me, it's not one black boy or girl in this

1 country who can carry a flag. I mean, it might be  
2 arguable that we haven't passed some of these tests,  
3 but I have difficulty in coming to grips with it.

4 CHAIRPERSON BERRY: Or one Latino who could?

5 COMMISSIONER HIGGINBOTHAM: I have difficulty  
6 with that, also.

7 So, to look at Congress and just indict them  
8 in a foolish way, a whole bunch of racists or people  
9 who favor racial discrimination I think is deceptive.  
10 But what the record does show, it's an obliviousness to  
11 accessibility.

12 And if we're going to have measure, our  
13 measures should bring us up to a new level of  
14 sophistication. And that new level of sophistication  
15 deals with the issue of access. As to how you get the  
16 access, fine? But how do you get access?

17 Now, in doing it, I'm not relying on the  
18 NAACP, the Urban League, the United Negro College Fund.  
19 I'm willing to use Nan Cohane who's President of Duke,  
20 former President of Wellesley College. And she says,  
21 in a most significant statement, about the importance  
22 as an educational phenomenon, as an educational  
23 phenomenon, of having diversity. Important for the  
24 students.

25 So when we go through these, I think we have



1 to be very, very careful that we not get locked in on  
2 the obsolete terminology of decades ago. And that was  
3 looking at discrimination.

4 I remember when I first went into  
5 Mississippi, it was so easy. The black doctor who went  
6 to register to vote was asked how many bubbles in a  
7 cake of soap. I had a prima facie case that maybe  
8 there was something wrong when you figured out that his  
9 wife was asked how many gallons of water in the ocean.  
10 I mean, at least had a prima facie case. But you see,  
11 that's discrimination. That's what the Commission did  
12 so well. But that's not this world.

13 So, to make a long story short, I hope that  
14 if you pursue this, that you pursue it not in terms of  
15 the terminology which was utilized two decades ago but  
16 what I think has to be the terminology of the 21st  
17 Century.

18 CHAIRPERSON BERRY: Let me just say, Leon, I  
19 think that's a very eloquent statement and I agree, of  
20 course, with all of it. And I look forward to reading  
21 your article. When the measuring discrimination  
22 project was first discussed and proposed, the emphasis,  
23 I think, was on trying to figure out how to measure  
24 what enforcement agencies are supposed to enforce  
25 against.

1                   COMMISSIONER HIGGINBOTHAM: I understand.

2                   CHAIRPERSON BERRY: And that every time they  
3 start trying to enforce, somebody says, well, that's  
4 not discrimination. So the point was this was just a  
5 rather sort of practical notion that this Commission  
6 ought to be situated to at least help them figure out  
7 what it is they're supposed to be enforcing and have  
8 some definitive statement about that and consider all  
9 the different views about how you go about measuring it  
10 for purposes of litigation and enforcement.

11                   The question you raise is a very profound one  
12 and it's much more substantive. Even though measuring  
13 discrimination is controversial because there are some  
14 people who think one thing is discrimination and other  
15 people think it's not, and then you've got intentional  
16 and non-intentional and you've got failure to act and  
17 so on.

18                   But I just wanted to say the reason why I  
19 support what you have said about access is a  
20 conversation that you and I had the other day when I  
21 was telling you that what I was working on was the  
22 issue of whether a state can mandate requirements for  
23 admission to higher education and then fail to provide  
24 the opportunity for students in high school to meet the  
25 requirements.

1           And I was giving you all the evidence, some  
2 of which we had in our Mississippi hearing. But  
3 evidence from California, and other states which I've  
4 received over the break. And it happens right here in  
5 the D.C. public school, as which all manner of ill  
6 things happen, and schools all over this country where  
7 states permit trustees who they appoint to mandate  
8 college preparatory requirements for admission to  
9 universities and then fail to ensure that the high  
10 schools the kids attend offer college preparatory  
11 courses. Which means that many of the children who  
12 graduate successfully, I might add, and with good grade  
13 point averages, present themselves to the university ad  
14 are turned away because they haven't taken the right  
15 set of courses.

16           And some of the universities investigated and  
17 found out that their school didn't offer all the  
18 courses and that there was no public school that they  
19 could attend which offered the courses. Or having SATs  
20 and ACTs and failing to see to it that in the schools  
21 that poor, black and Latino kids attend in large  
22 numbers, that the same PSATs that the kids in the  
23 wealthier public school districts are taking are  
24 offered or any kind of pre-testing experience.

25           So that when the kids graduate, even the ones

1 who haven't dropped out -- they're in class. They go  
2 to school. They make good grades. They can't get  
3 admitted to the university. Some of them haven't even  
4 been told that there's anything called an SAT and their  
5 parents don't know and they can't get in the  
6 university.

7           So what do they do? They go to community  
8 college and then they can't transfer.

9           So, my query was to you. I asked you as a  
10 matter of law whether you agree that if the state  
11 mandates a requirement and then fails in its equal  
12 opportunity obligation to provide a free, adequate  
13 public education under the state constitution to  
14 provide the opportunity, whether that was  
15 discrimination. It clearly is a denial of access.

16           And so I think that those are issues in the  
17 climate we live in and with the demography. They raise  
18 poverty questions. They raise race and national origin  
19 and ethnicity questions that this Commission ought to  
20 be working on. And I hope this project or project on  
21 access, which could be a separate project, would  
22 consider issues like these.

23           And the discussion we're having, by the way,  
24 is for the benefit of not only ourselves but the staff,  
25 so that they might go away and try to extract some

1 ideas about new projects from the discussions that  
2 we're having or modifications of old ones.

3 Commissioner Horner?

4 COMMISSIONER HORNER: Yes. Something that I  
5 think bears thinking about in this arena is a situation  
6 like what you have here in D.C. There was a chart in  
7 The Washington Post in the last few days about what  
8 percentage of students in the D. C. schools in the 4th  
9 grade and the 8th grade had reached a basic level of  
10 attainment in reading and math, a middling level and a  
11 proficient level. And there are a lot of things one  
12 can learn from this chart. And it was listing all the  
13 public schools in the city; elementary, middle and  
14 secondary, and how they fared.

15 Among many things you can learn from a chart  
16 like this is that there was zero percent students who  
17 had reached proficiency in math. Zero percent.  
18 Meaning out of all the graduates of D. C. public  
19 schools there isn't one who'd be qualified to be  
20 admitted to Berkeley on the merits. There isn't one.  
21 That is, there is less than 1 percent, zero percent,  
22 who would be able to take an exam.

23 And this is a school system which is supposed  
24 to be, historically, politically responsive to a school  
25 board. Our current Mayor is a former member of the

1 school board. And apparently there's been massive  
2 failure by the political leadership. The political  
3 leadership has been predominantly of the same race and  
4 ethnicity as the students.

5           And so one of the questions that bothers me  
6 is how is it possible to encourage a stronger political  
7 response under our normal political systems of  
8 governments rather than always looking to try to use  
9 federal law to overcome the consequence of failed  
10 political response. What, if anything, can we do to  
11 encourage parents to feel, for instance, that they can  
12 make stronger demands even when they don't know  
13 precisely what demands they should make because they  
14 haven't been through that. They haven't taken SATs so  
15 they don't know to demand the PSAT.

16           So where is the leadership that is just in a  
17 situation where it has emerged with sufficient  
18 educational attainment to be able to go to the parents  
19 and say: A, this isn't good enough; and B, I can tell  
20 you what is good enough. And you just back me with  
21 your votes and I'll get it for you. Why is that  
22 failing?

23           And my own speculation, having lived here now  
24 for 30 years, my own speculation is that it fails  
25 because the first priority of the political system has

1 been jobs. And a lot of those jobs are city jobs, like  
2 teaching. And here has been a very weak standard being  
3 applied at the expense of the children in order to  
4 guarantee individuals jobs, even though they might not  
5 be good enough for them.

6 And that's a matter of survival and I  
7 understand that. But something has to change in this  
8 maladaptive pathological political environment.

9 CHAIRPERSON BERRY: Yes, Cruz?

10 VICE CHAIR REYNOSO: I think that does fit in  
11 within the notion of access. Here you have youngsters  
12 that somehow are going through the system. They don't  
13 have access now to better colleges and so on. I think  
14 that would be a subject that we might discuss.

15 I was just jotting down as this discussion  
16 was going on that we're talking about many interrelated  
17 matters. We're talking about politics. We're talking  
18 about sort of identifying de jure discrimination, the  
19 importance of economics.

20 I remember out of Mississippi -- I might have  
21 the same reaction, to a certain extent, in Washington.  
22 I remember after the Mississippi hearings I thought to  
23 myself, after the discussion of public schools, what  
24 would happen if every black family in the Delta was a  
25 millionaire. They wouldn't have the sort of problems

1 they're describing in the public schools. They either  
2 would have a lot of money for the public schools or  
3 they would set up their own private schools and hire  
4 the best teachers in the country, et cetera. And yet  
5 many of the civil rights type issues they were  
6 describing arose out of the currently segregated  
7 schools and inferior public schools.

8           The issue of youngsters being able to go to  
9 college is itself economic. If a lot of the youngsters  
10 in Washington had the money to send their kids to  
11 private schools, then they probably wouldn't be having  
12 these sort of problems in the public schools.

13           And yet it's not all economics. It's not all  
14 political, in a way.

15           I had a discussion with some folk last night  
16 about a certain government program that as committees  
17 that invite people to participate in that government  
18 program. And one of the young men I met with who's  
19 Latino from California and is now here in Washington  
20 was commenting on the practically exclusion, apparently  
21 not willful exclusion, of Latinos in that process. He  
22 says, what can we do? He says, I'm the only one out of  
23 I don't know how many people in that program that's in  
24 that program. And I find that among the committees  
25 that make those selections, there are very, very few



1 Latinos even in the Southwest.

2           And there it's a matter of consciousness, of  
3 political pressure, of a combination of matters, but  
4 it's certainly not education, not economics, not many  
5 of the traditional things that we think about. Yet it  
6 is an issue of access. You aren't going to have a good  
7 representation in that program unless the committees  
8 that make the selections are themselves well  
9 represented geographically, ethnically, by gender, et  
10 cetera.

11           So, I like the notion of access because it  
12 can bring into politics, economics, de jure  
13 discrimination. I think all of these matters that  
14 impede us from having folk have the opportunity that  
15 they need to fully participate in the economic and  
16 political and artistic life of our country.

17           CHAIRPERSON BERRY: Yes, Commissioner Horner?

18           COMMISSIONER HORNER: Just a one-sentence  
19 further thought. The word access implies that there's  
20 some group that can give and another group that can  
21 only receive. In other words, if you have access you  
22 could give it to someone else. And it seems to me that  
23 we need to be sensitive to the possibility that people  
24 have it within their capacity to get what they want if  
25 they change certain behavior, in the political realm,

1 primarily, but also in the cultural realm.

2           The access is there to be taken. And this is  
3 the argument we all have time and again on every  
4 different issue. And I don't like -- I'd like there to  
5 be some acknowledgement that there is a question of  
6 what people want and are willing to sacrifice in order  
7 to get it.

8           VICE CHAIR REYNOSO: I don't disagree with  
9 that. In the agency that I have in mind, it's probably  
10 even more than that. It's not even people who are  
11 there being unwilling to incorporate more people. It's  
12 somehow a lack of either consciousness or they really  
13 would like to do that in an ideal world, but somehow,  
14 haven't put enough energy to do it.

15           Sometimes it's not anything evil. It's not  
16 even a matter of giving up something that the person  
17 holds dear. It's somehow just a notion of putting into  
18 effect what you know is the right thing to do.

19           Sometimes it gets a little more complicated,  
20 actually.

21           CHAIRPERSON BERRY: Commissioner -- did you  
22 have your hand up, Russell?

23           COMMISSIONER REDENBAUGH: I did.

24           CHAIRPERSON BERRY: Yes. And then  
25 Commissioner Higginbotham.

1                   COMMISSIONER REDENBAUGH: Yes. One of the  
2 things that I see -- and Connie, I'm responding to what  
3 you said specifically -- is so many people are so ill-  
4 served by their political institutions. And you were  
5 talking about the school board here as an example.  
6 That they are so unaware and uninformed and hard to  
7 inform themselves of what opportunities might be  
8 available. And then they've encountered so many  
9 obstacles that -- I agree with what you said about the  
10 normal term access because it does connote something  
11 that could be different. But I'm concerned that --  
12 actually, I don't have anything further to contribute.  
13 I don't have it clear.

14                   CHAIRPERSON BERRY: Well, when you think of  
15 it, I'll recognize you.

16                   COMMISSIONER REDENBAUGH: Yes. Good. Thank  
17 you.

18                   COMMISSIONER HORNER: I don't mind using the  
19 term at all. I just wanted to say something about the  
20 term as it's usually used.

21                   CHAIRPERSON BERRY: Higginbotham, Judge  
22 Higginbotham. Then Anderson.

23                   COMMISSIONER HIGGINBOTHAM: I have no patent  
24 on the term access. Someone comes up with a better  
25 one, --

1 COMMISSIONER HORNER: Oh, no. It's fine.

2 COMMISSIONER HIGGINBOTHAM: -- I'd be  
3 delighted. I think access is better than looking at  
4 pure discrimination.

5 CHAIRPERSON BERRY: How about opportunity?

6 COMMISSIONER HIGGINBOTHAM: I really don't.  
7 want to define the term now. I think it takes a lot  
8 more time to think it out. But access is tolerable for  
9 me.

10 As to the deficiencies of the urban  
11 government in Washington, you'll get no debate from me.  
12 And as to the deficiencies throughout the country for  
13 the weak and the poor, I think that there are some  
14 compelling cases which can point to a whole host of  
15 places.

16 And I think that what this Commission has as  
17 its fundamental problem is how does it identify its  
18 role. I don't know enough about politics. Everyone  
19 whom I ever supported in Philadelphia who was running  
20 as an independent against a democratic organization,  
21 lost. So obviously I am not one to give political  
22 insights. So I would back away a little bit because  
23 that's not within, I believe, my proficiency.

24 The problem I think right now is whom do we  
25 say we want to save. And if you once conclude that you

1 want to save children and you want to save victims then  
2 there are varied series of multiple approaches you  
3 could take. But if you say you want to purify  
4 government, you can spend a tremendous amount of energy  
5 trying to purify government and still the children get  
6 lost in the transition.

7           The most compelling fact to me in the Brown  
8 case is to look at the difference between Collin Sites,  
9 a state chancellor in Delaware who, when he faced a  
10 Plessy v. Ferguson challenge of a segregated school and  
11 he looked at the schools and he said the disparities  
12 were so great, the remedy would be immediate admission.  
13 So the kids were immediately admitted to the superior  
14 school, in the public school and the University of  
15 Delaware.

16           In contrast, to two other cases which came  
17 out of South Carolina, Briggs v. Elliott, and the case  
18 which came out of Virginia, the Judge said, oh, this is  
19 terrible. We're ordering the school board to bring its  
20 facilities up and to work on it immediately. And in  
21 the process, whole generations of kids got no relief  
22 because what does it profit someone who's in the 10th  
23 grade who wants to get physics and Algebra to find that  
24 10 years later the school system provided physics and  
25 Algebra. That person is lost forever.

1           So I've got a different model and that model  
2 is focused primarily on the victims.

3           And how do I look at this Commission? And  
4 I'll close out. I would look at this Commission the  
5 same way I would if suddenly an epidemic broke out and  
6 we found thousands of people who were ill from a  
7 specific disease, bacteria, which causes pneumoconiosis  
8 and they are very ill, some dying. Now what's the role  
9 of the federal government in that?

10           The federal government can work for immediate  
11 immunization programs or it can say, look, these people  
12 shouldn't have gotten ill because this should have been  
13 done for the pollution system and that should have been  
14 done, and therefore, they have to tough it out until we  
15 some day get it together.

16           So I look upon the Civil Rights Commission as  
17 if we are a public health agency but a social justice  
18 agency, and that we have an obligation to deal with the  
19 disease of racism, whether it's race, gender, national  
20 origin, with the highest level of specificity that we  
21 have competence. Just as I would expect that from the  
22 federal bureau of public health, which would be looking  
23 at the assault of a new dreaded disease.

24           And this is a philosophical call we have to  
25 make. And that's where I am.

1 CHAIRPERSON BERRY: Okay. All right.

2 Yes, Commissioner Anderson? Did you want to  
3 say something?

4 COMMISSIONER ANDERSON: I guess I do.

5 I'm glad that you raised this. I mean, I  
6 think you're raising some really tough questions and I  
7 think this Commission ought to deal with it.

8 COMMISSIONER HIGGINBOTHAM: Yes.

9 COMMISSIONER ANDERSON: Seems to me that  
10 someone could argue that the reason we talk about  
11 access is because it's now longer a question of  
12 discrimination at the admissions committee at Berkeley  
13 Law School. I suspect there is as much discrimination  
14 in that committee against Afro-Americans as there  
15 probably is at Harvard Law School. Which makes me  
16 think that it's probably close to zero.

17 If we have evidence, then let's look at it on  
18 the basis of discrimination. If it's a question of not  
19 discrimination but access, then it seems to me that the  
20 situation at Berkeley or Harvard is a symptom. It's  
21 not a cause of the problem. And we ought to then look  
22 at some very tough questions about is this generation  
23 of Afro-American students as qualified as the  
24 generation of African American students 10 years ago or  
25 20 years ago.

1           Have they been getting the kind of public  
2 education and other education that makes them as  
3 competitive as they were or more competitive vis-a-vis  
4 just an objective standard of what do their test scores  
5 show? Any relationship to other racial and ethnic  
6 groups in this country?

7           Now, I don't know the answer to that. Assume  
8 for a minute the answer is that they are not as  
9 competitive. At what point if they are victims, and  
10 I'm happy to agree that they have been victimized. At  
11 what point in that process do they become victims?

12           And therefore, I agree with you. I doesn't  
13 do very much good for the 10th grader to say five years  
14 from now we're going to have the college prep courses  
15 that a 10th graders in your school needs. But taking  
16 the four African Americans at the University of Texas  
17 Law School and making it eight or making it 12 and  
18 saying, okay, now we've got access, is not going to  
19 help the 9th grader that's going to still go to that  
20 school and still not get the requisite education that  
21 he or she deserves.

22           And I tell you, I drive to work and I drove  
23 home every day and I drive past some pretty bad schools  
24 in this city and I drive past the same kind of street  
25 crime and drug dealing and other kind of vice that



1 Latino mothers are walking their 7 and 8-year old kids  
2 by and African American mothers are doing the same  
3 thing.

4           And so it's just not public school budgets.  
5 It's a whole infrastructure. And if we don't do  
6 something to address the whole infrastructure -- I  
7 mean, I would not walk my kids to their school past  
8 that kind of crime in a neighborhood and I would fight  
9 it and I would make sure that it didn't exist there.  
10 But it exists all throughout that city. And one day a  
11 week you see a squad car then, and then it's not there.  
12 And two days later, the squad car is not there and the  
13 same problems are going on.

14           So it's a complicated problem. I'd be happy  
15 to address it and I think we ought to address it.

16           CHAIRPERSON BERRY: I want to say something.  
17 Russell, did you think of what you wanted to  
18 say?

19           COMMISSIONER REDENBAUGH: No. I had  
20 something else, but I'll be happy to follow you.

21           CHAIRPERSON BERRY: Okay. What I want to say  
22 is this. I'm going to try three things.

23           First of all, -- and I did a lot of research  
24 on this over the break. Spent a lot of time on it and  
25 collected a lot of information from people who run

1 colleges and universities and high schools and  
2 everything else. And we had a hearing on it in  
3 Mississippi and we heard a lot of information about  
4 what goes on.

5 In the first place, this issue is not about  
6 whether there's a bigot in the admissions office in  
7 Berkeley or on the admissions committee. Every time I  
8 debate Denis DeSuza, he starts out with, "Are you  
9 saying there's a bigot in the Berkeley admissions  
10 office?" That has nothing to do with it. Let's assume  
11 there are no bigots in the Berkeley admissions office.

12 The first point I want to make to you is that  
13 there are a lot of black and Latino students, no matter  
14 how poor they are, who are going to school, who haven't  
15 dropped out, whose mothers have walked them past the  
16 drugs and so on, who are trying very hard and who are  
17 in schools where college preparatory courses are not  
18 offered to them. I have the evidence of this. We  
19 heard it in Mississippi and are hearing it from the  
20 school officials. And who have never taken a PSAT,  
21 don't know what it is. Nobody's ever offered it to  
22 them. And who applied to the California State  
23 University System with good grades and are turned away  
24 because of the cell, the box that says list all your

1 college preparatory courses. They can't list some of  
2 the ones they should have had because their school  
3 didn't offer them and no school was available to them  
4 unless they went to private school and they had the  
5 money to do that, and they don't know anything about  
6 what they were supposed to do.

7           SATs, no PSATs, unless their parents found  
8 out about it, had some money, bought it for them.  
9 That's one group of students.

10           In my view, they are being discriminated  
11 against. The State of California or whatever state it  
12 is -- Texas -- is responsible for higher education,  
13 public higher education, under the constitution of that  
14 state and appoints the regents and trustees who make  
15 the rules about who gets in. So the State is legally  
16 responsible.

17           That same State is responsible for the K  
18 through 12 schools and permits schools to exist where  
19 kids who try hard can't make it because they don't  
20 offer to them or insist that the local people do -- and  
21 we saw this in Mississippi -- what they need. That's  
22 one set of kids. They're being discriminated against  
23 in my view, and I think we ought to say something about  
24 that. And we'll have an opportunity to on the  
25 Mississippi report.

1           There's a second group of kids who either  
2 don't go to school or drop out or who are not there or  
3 who were taught by teachers who are incompetent.  
4 That's another set. And for them there are all these  
5 social problems of the kind you talk about, Carl, that  
6 affects what happens to them and their life chances.

7           As far as the teachers are concerned, I don't  
8 care what color they are. I don't care who's running  
9 the school system. What did Thurgood say? A black  
10 snake can kill you just as easily as a white snake.

11           So the fact that the teachers are the same  
12 color as the people doesn't make any difference. The  
13 point is -- and I don't even care -- and I know that  
14 this is true, that many people got jobs in these  
15 systems, not just here in D. C. but all over the  
16 country in the public sector because blacks, and then  
17 Latinos, couldn't get jobs in the private sector. So  
18 that you had all this shift into the public sector and  
19 you had people who shifted into teaching.

20           I know all of that. And here in D. C. it's  
21 particularly important because we don't have any  
22 industry, except the government. And never had.

23           The point is that we ought to say something,  
24 too, about the state -- and in the case of D. C., it's  
25 the Congress because of our peculiar situation -- being

1 responsible for seeing to it that kids are taught what  
2 they're supposed to be taught by competent teachers.  
3 And if they're not, then the teachers either ought to  
4 be trained or they ought to get rid of them.

5           Now, I don't care what color they are,  
6 whether they're white teachers in Oakland who say they  
7 can't talk to kids because they don't understand what  
8 they're saying, or whether it's black teachers or  
9 Latino teachers. I don't care. And I think that it is  
10 discriminatory for state governments to run public  
11 institutions where they don't do that.

12           It's what I told Governor Fordice, Melvin, if  
13 you're on the call, down there in Mississippi. Yes,  
14 they took a school system in receivership in Tunica,  
15 but they didn't do anything to improve anything. Why  
16 take it in receivership if you're not going to see to  
17 it that you get rid of incompetent teacher, you make  
18 sure that the kids do come to school.

19           So, I think we have to be concerned about  
20 kids who do come to school, as well as the ones --  
21 don't just assume that all the kids who are poor and  
22 whatever don't go to school. We have to be concerned  
23 about the ones who are there and are not being given  
24 what they're supposed to get.

25           And facially, it's as easy to me as what Leon

1 said about people ask how many bubbles or how much  
2 water is in the ocean. That if the state requires you  
3 to take something and then doesn't see to it that you  
4 can take it, to me that it just facially  
5 discriminatory.

6 And I think that this Commission -- and  
7 that's without even arguing about whether tests are  
8 valid or whether standardized tests are -- I mean,  
9 there's a whole argument about that question. I'm just  
10 talking about plain old -- and you can call it access  
11 if you want to, or opportunity or whatever you do. And  
12 I would like to see this Commission do something about  
13 those questions.

14 Now, Russell, I'll recognize you.

15 COMMISSIONER REDENBAUGH: I think that, Leon,  
16 the thing you said was very illuminating to me. It was  
17 one of those things like -- I'm starting to see  
18 everything differently. Because, you know, your  
19 orientation is about the current and immediate concerns  
20 of the people who've been hurt. And there are times  
21 when my orientation is about the design of an economic  
22 or political or legal system that would be better way  
23 in the future. And I see that some of the ways I've  
24 looked at things have not included what you've raised,  
25 what you've been talking about, and should. Because

1 these two different ways of looking at the problem are  
2 not mutually exclusive. And I don't think that one is  
3 necessarily right or wrong.

4           And so, anyway, what I was thinking is that  
5 from that framing of the issue that you made, I can now  
6 see that there are more areas of common projects for,  
7 undertaking because they're dealing with different  
8 temporalities and different concerns. And I like the  
9 example you gave. People who have a virulent infection  
10 need care in a different temporality than the normal  
11 public health. You know, let's vaccinate your children  
12 and clean up the water supply.

13           And we need to be able to explore both kinds  
14 of remedies and not think that one kind is the only  
15 solution and would preclude the other.

16           So, anyway, I wanted to thank you, Leon, for  
17 shifting how I've been thinking about lots of these  
18 issues.

19           COMMISSIONER HIGGINBOTHAM: Thank you.

20           CHAIRPERSON BERRY: Commissioner Lee?

21           COMMISSIONER LEE: Madam Chair, I agree with  
22 you that I don't think there are bigots on the UC  
23 boards or whatever. However, I do think that we have  
24 enough people in responsible positions whose decisions  
25 are based on their own perceptions of certain groups.

1 Therefore, they have expectations of people in these  
2 groups. And being a member of the Asian American  
3 community, we have a schizophrenic personality because  
4 on one hand people are saying you're not discriminated  
5 against. Look at the achievements that you have made  
6 in all these levels. But at the same time, because of  
7 these perceptions that they have on the Asian Americans  
8 as a group, people are being discriminated against  
9 because of these perceptions, and therefore,  
10 expectations.

11           Going to Carl's observation of children  
12 walking through crime ridden areas, in San Francisco,  
13 the major success stories elected officials have been  
14 using over and over again are like how have the  
15 Vietnamese children, the refugees, made such great  
16 strides in the '80s when they had to live in the worst  
17 part of San Francisco. How could they have made such  
18 great strides in schools.

19           So, everybody thought, oh, wow, they made it,  
20 so everyone else should have made it, too. But what  
21 they have forgotten to mention was that it was just a  
22 very small number of children. That the educators took  
23 it upon themselves to work with the family and the  
24 community to make sure that they had equal access, they  
25 had the same opportunity, as other children. And



1 because of the special circumstances that they had,  
2 they came here from a war torn country. And whether  
3 you like the term or not, additional attention was  
4 given to the schools and children and they excelled.  
5 They made it. And they are now realizing the all-  
6 American dream. But a majority of them did not because  
7 people did not think that they needed other people who  
8 had different perceptions. Asian Americans expected  
9 them to do otherwise.

10 So, I fully want to see us proceed with this  
11 project because I think there's a lot of areas that we  
12 need to explore. But at the same time, I hope that  
13 this Commission does not have the kind of perception  
14 also about different groups; whether certain groups are  
15 less discriminated against or whatever. Because if  
16 we're going to go in to this project, I think we need  
17 to really go in with a very objective way of viewing  
18 all groups.

19 CHAIRPERSON BERRY: I want to propose one  
20 other project. Is there somebody out there proposing  
21 something?

22 COMMISSIONER GEORGE: Yes, Mary, I wanted to  
23 speak with this one.

24 I need to register a dissenting voice here. I  
25 think the Commission would be making a very bad mistake

1 if it took Commissioner Higginbotham's advice and  
2 turned the project on measuring discrimination into a  
3 project that would be concerned with the concept which  
4 he has labeled as access. And I realize that he's not  
5 tied to that term.

6 It's not the term that I object to for these  
7 purposes. It really is the concept.

8 When we initially discussed the measuring  
9 discrimination project, it was clear that some of us on  
10 the Commission, perhaps not all of us, knew that this  
11 was a very, very difficult topic. I know that the  
12 Chairman knows the social science here, and perhaps  
13 some of the other members of the Commission do know it.  
14 It raises tremendously difficult methodological issues.

15 And a concern that I had, and I know that  
16 others have, is that given the complicated nature of  
17 the methodological issues that are presented whenever  
18 you try to measure discrimination, there is the risk of  
19 creating concepts which are very amenable to  
20 ideological manipulation.

21 Nevertheless, it's a very important subject  
22 matter and we decided that we should at least have a  
23 consultation which would enable us to inform ourselves  
24 sufficiently to know whether this project really did  
25 have some promise, so that we could make an important

1 contribution.

2           Now, we shouldn't consider that the only  
3 possibilities are that we have to account for our woes  
4 either by proposing that de jure discrimination still  
5 exists, which it largely doesn't, or that the only  
6 other possibility is some very amorphous vague concept  
7 like lack of access.

8           There's something else, and it's very  
9 important. And that is de facto discrimination. Many  
10 people in this country believe that even though we have  
11 conquered de jure discrimination, we have left in place  
12 an infrastructure which encourages de facto  
13 discrimination. That a lot of people, in violation of  
14 the law but in a way that makes it very difficult to  
15 catch and punish them, are discriminating against  
16 people based on race and other illegitimate factors.

17           If we could make some contribution to either  
18 confirming that thesis or rebutting it, I think it  
19 would make a great contribution to the discussion,  
20 particularly of race relations in America. And I think  
21 that would be a very worthy thing to do.

22           I don't know, given the methodological  
23 problems, whether we actually would be able to make  
24 that contribution, but I think it's worth having a  
25 consultation to see whether or not we think we could.

1 I think the mistake would be to expand beyond that into  
2 an area that is much vaguer, more amorphous, and  
3 frankly much more susceptible, even more susceptible,  
4 to ideological manipulation.

5           At that point, I predict -- you heard it here  
6 first. You would get the Commission splitting right  
7 along ideological lines, whether it's 4/4, 6/2 or  
8 whatever it is, with some people believing, perhaps  
9 rightly, that the other side is simply engaged in an  
10 ideological fix and is not objectively pursuing the  
11 question that we had set for ourselves of trying to  
12 measure actual discrimination in America.

13           And I think that the reason for that is we  
14 all know that there are very serious problems that  
15 remain and we have very different points of view about  
16 what caused those problems and what the solutions are.  
17 And I think those points of view do reflect differences  
18 as to how we conceive ourselves as a Commission.

19           I do not conceive the Commission as a public  
20 health agency. It seems to me that this Commission has  
21 as its role fighting discrimination based on race and  
22 other illegitimate factors. And that if we could only  
23 perform that role as well as we should, we will make a  
24 very great contribution and one that could be made  
25 without the degenerating into ideological strife.

1           Some of our problems perhaps we could solve  
2 with out ideological differences. Now others will  
3 remain. But there's a vast system of shared  
4 responsibility that is part of the responsibility.  
5 There are vast governmental and non-governmental  
6 problems that we have. And the problems with politics  
7 is largely concerned with mediating disputes as to what  
8 the causes of our woes are and what the solutions  
9 should be, or what solutions at least should be tried.

10           I agree with Judge Higginbotham. I don't  
11 completely disagree with Judge Higginbotham. I do  
12 agree with him about this. It plainly is a problem to  
13 have a situation in this country where one black  
14 student is admitted to the law school at the University  
15 of California-Berkeley. I think it's disingenuous of  
16 conservatives to pretend that that's not something that  
17 should trouble us, in the same way I think it's  
18 disingenuous of liberals to suppose that diversity does  
19 not function or that what lies under the banner of  
20 diversity functions to promote actual discrimination.

21           So I think that there's fault on both sides  
22 of the ideological spectrum. But I fear that if we try  
23 to address the problem in terms such as those that  
24 Judge Higginbotham has laid out for us with the concept  
25 of access, whether we use that word or not, we will not

1 make the contribution that we could have made and we'll  
2 fall right back into the ideological strife that's  
3 really been an impediment to the Commission's  
4 functioning.

5 CHAIRPERSON BERRY: Robbie, where would you  
6 place the issue that I raised about --

7 COMMISSIONER GEORGE: The issue that you've  
8 raised is legitimate.

9 CHAIRPERSON BERRY: Under discrimination or  
10 under access?

11 COMMISSIONER GEORGE: Under discrimination.  
12 You yourself made the point that you consider it to be  
13 discriminatory in a situation where a state mandates  
14 certain requirements in order to be eligible for some  
15 good. Let's say a college education in an institution  
16 of the state.

17 CHAIRPERSON BERRY: Or any good, for that  
18 matter.

19 COMMISSIONER GEORGE: Whatever good it is.  
20 And then fails in its constitutional or statutory  
21 responsibility under state or federal law to provide  
22 the resources that it's meant to provide.

23 Now, of course, we'd still have a  
24 methodological problem here that is not insignificant.  
25 And that is how do we classify that discrimination.

1 Is that discrimination based on race or some other  
2 illegitimate factor within our jurisdiction or not.  
3 But in that case, at least we're in the ballpark.

4 CHAIRPERSON BERRY: Okay. The other thing is  
5 you said it was disingenuous for conservatives on the  
6 one hand to do X or liberals on the other hand to do Y.  
7 In this whole debate, the other thing that poisons it  
8 in my opinion is that in universities like yours and  
9 mine and Leon's and some of the rest of us went to  
10 around here, we do believe in diversity when it doesn't  
11 come to race. We believe in admitting people without  
12 regard to standardized tests or without taking them  
13 into account very much when it's not a racial issue. We  
14 do it for legacies. I know we do it at Penn and they  
15 do it at Harvard. I guess they still do it at  
16 Princeton. I mean, I know they still do it at  
17 Princeton.

18 And we then with straight faces say to the  
19 public that all we do is admit people based on these  
20 certifiable standards because we believe in excellence  
21 when anyone who cares to penetrate the deep recesses of  
22 what we do finds out that's not true.

23 Then, secondly, we have this whole issue of  
24 athletes. And then it was quite disingenuous for some  
25 person -- I've forgotten who said it -- well, anybody

1 can be an athlete. Anybody can be Michael Jordan, I  
2 guess. But universities do -- not the one that I teach  
3 at because we don't care about athletics and Connie's  
4 alma mater. But the one where I went to graduate  
5 school where we do care about athletics and at Berkeley  
6 and so on, we have all of these requirements that we  
7 waive or something for athletes who are going to be  
8 proficient and entertain everybody and raise some money  
9 for the university.

10 So there's a lot of disingenuousness going on  
11 in this debate, don't you think?

12 COMMISSIONER GEORGE: I believe there is a  
13 lot of disingenuousness going on in the debate. And I  
14 said that myself, which is what prompted your comment.  
15 However, I think in the case of athletics you don't  
16 have -- you have really the serious moral problem. An  
17 overemphasis on athletics by colleges and universities  
18 I think is imprudent. It might even be stupid. But it  
19 doesn't raise the sorts of justice questions that are  
20 raised in cases of race discrimination.

21 Now, legacies are really complicated and  
22 interesting.

23 CHAIRPERSON BERRY: We don't have do  
24 legacies.

25 COMMISSIONER GEORGE: Yes. Now you've got me



1 started. It might be that legacies really should be  
2 considered to be suspect in a way that racial  
3 classifications are suspect. But if that's true -- and  
4 there's a long argument to be had here -- I think it's  
5 probably because the way in which past racial  
6 discrimination impacts current admissions in terms of  
7 race.

8           So I'm certainly not invested in defending  
9 legacies. Maybe legacies should go out the window,  
10 too. But I suspect that they present in fact the same  
11 moral problem that race discrimination does. It's  
12 because the problem of legacy is really parasitic on  
13 the larger problem of race discrimination, the  
14 historical pattern of race discrimination at places  
15 like Princeton and Penn and Harvard.

16           CHAIRPERSON BERRY: The point I was making  
17 about athletes is that two students present themselves  
18 to Berkeley to the non-bigot in the Berkeley admissions  
19 department, and they came from the same high school and  
20 they have the same information in every cell on the  
21 application. And the one student is rejected, saying  
22 you don't meet the SAT requirements. You don't meet the  
23 garde point requirements. You don't meet the college  
24 prep. The other student is admitted and told, great,  
25 we want you because boy, you can catch a football great

1 and we can just see it on Saturday afternoon out there  
2 in the old ballpark.

3 You don't think that raises any problems?

4 COMMISSIONER GEORGE: Yes. I said it might  
5 very well be stupid, imprudent, based on misguided  
6 sense of values and particularly as those values  
7 pertain to what universities are for and about. But I  
8 don't think, frankly, that it raises the basic question  
9 of justice that is raised in cases of race and might  
10 well be raised in cases of the legacy.

11 People just might have their values confused  
12 to treat sports -- treat athletic achievement as even  
13 in the same ballpark, in the same league. There I go  
14 with an athletic analogy. In the same league with what  
15 universities are really supposed to be about, which is  
16 intellectual attainment. But there's a difference  
17 between some thing being stupid and based on a  
18 misguided sense of values than being injustice.

19 Injustice is a particular -- you know, it's a  
20 category of overall general mad values and stupidity  
21 but not everything that's stupid and bad and based on a  
22 misguided sense of values is also unjust.

23 CHAIRPERSON BERRY: So what would be just in  
24 that situation would be to go to politics and to have  
25 persons who think that that is unfair agree that the

1 university should change its policies or that they  
2 should take some of their funding away, which is a  
3 political question; right?

4 COMMISSIONER GEORGE: Growing up in West  
5 Virginia, I often wondered why the people of the state  
6 just didn't rise up and say to West Virginia  
7 University, in which they were investing a whole lot of  
8 money, hey, forget the football team. You guys should  
9 be giving our West Virginia young people the best  
10 possible academic training and qualifications you can  
11 give. There's no reason why the West Virginia  
12 University can't be as good as our neighbor, the  
13 University of Virginia, which doesn't put that much  
14 emphasis on the football team, although it's had a good  
15 basketball team from time to time.

16 CHAIRPERSON BERRY: This is about to  
17 deteriorate into a seminar, so I'll stop.

18 VICE CHAIR REYNOSO: You mean being elevated  
19 to a seminar.

20 CHAIRPERSON BERRY: Right. Elevated to a  
21 seminar.

22 Let us agree that we will -- the staff will  
23 take into account these comments we've made in terms of  
24 trying to draft some new proposals, but let us have a  
25 motion that the Commission agrees that we will let the

1 staff proceed to put these priorities into the pass-  
2 back and send them to us, based on the memo and the  
3 discussion that we've had here about these priorities.  
4 At least get that much done today.

5 COMMISSIONER HORNER: So moved.

6 COMMISSIONER REDENBAUGH: Seconded.

7 CHAIRPERSON BERRY: Could I get a second?

8 Okay.

9 All in favor, indicate by saying aye.

10 (Chorus of ayes.)

11 Opposed?

12 (No response.)

13 So we'll go forward.

14 Does anyone have any other agenda item? I  
15 have just one more. And that is does the Commission  
16 have any interest in supporting, discussing, rejecting,  
17 commenting on the issue of whether the hate crime  
18 statute should be amended to include hate crimes based  
19 on gender, age and sexual orientation? Which is a  
20 proposal that the Congress will be considering. And  
21 since the Hate Crimes Act is one that we have commented  
22 on and we were original supporters of the legislation  
23 itself, I want to know if you -- before asking the  
24 staff to do any work -- if you have any interest at all  
25 in commenting on, supporting, rejecting, discussing

1 this particular issue.

2 We have some time.

3 COMMISSIONER GEORGE: Mary?

4 CHAIRPERSON BERRY: Yes.

5 COMMISSIONER GEORGE: I propose that we stay  
6 out of it. And the threat behind the proposal is we  
7 will have many seminars if we get into that.

8 CHAIRPERSON BERRY: Okay.

9 COMMISSIONER HORNER: I agree.

10 CHAIRPERSON BERRY: Is there anyone who has a  
11 particular concern other than that?

12 (No response.)

13 If not, then we will leave it at that.

14 Any other agenda items?

15 Yes, Commissioner Redenbaugh?

16 COMMISSIONER REDENBAUGH: I just have a  
17 request of the Staff Director, and that is -- two  
18 requests, really. Would it be possible to have the  
19 transcripts of the prior meetings a week or 10 days  
20 sooner than we now have them? And may we also have  
21 them on floppy disk?

22 CHAIRPERSON BERRY: How many people want them  
23 on disks aside from Russell, who I assume does want  
24 them on disk.

25 COMMISSIONER REDENBAUGH: Yes, I do.

1 CHAIRPERSON BERRY: Anybody else need to have  
2 the transcript on disk?

3 (No response.)

4 Okay. Why don't we -- can we -- I'm sure  
5 that the person, the supplier, can do this if we tell  
6 them to.

7 Can you? You don't know, do you?

8 THE REPORTER: Yes.

9 CHAIRPERSON BERRY: They do have it on disk.  
10 So could we provide a floppy disk to Russell? And then  
11 if anybody else wants one, they can have one. And  
12 could we see if we could get the transcript 10 days  
13 earlier?

14 Okay. Anything else?

15 (No response.)

16 All right. I would entertain a motion to  
17 adjourn.

18 VICE CHAIR REYNOSO: So moved.

19 COMMISSIONER HORNER: Seconded.

20 CHAIRPERSON BERRY: Okay. It's nondebatable.  
21 Thank you very much.

22 (Whereupon, the proceedings were concluded.)  
23  
24  
25

