

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

U.S. COMMISSION ON CIVIL RIGHTS

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Friday, February 6, 1998

The Commission convened in Room 540, YWCA Building, 624 9th Street, NW, 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 and
joined meeting at 11:00 a.m.)
A. LEON HIGGINBOTHAM, JR., COMMISSIONER (via
telephone)
CONSTANCE HORNER, COMMISSIONER
YVONNE Y. LEE, COMMISSIONER (via telephone)
RUSSELL G. REDENBAUGH, COMMISSIONER (via telephone)

RUBY G. MOY, STAFF DIRECTOR

STAFF PRESENT:

KI-TAEK CHUN
JAMES S. CUNNINGHAM
PAMELA DUNSTON
BETTY EDMISTON
M. CATHY GATES
GEORGE HARBISON
CAROL-LEE HURLEY
JACQUELINE L. JOHNSON
WILLIAM LEE
EMMA MONROIG
STEPHANIE Y. MOORE, General Counsel
MARC PENTINO

EXECUTIVE COURT REPORTERS, INC.
(301) 565-0064

STAFF PRESENT: (Continued)

PETER REILLY
CHARLES RIVERA
EILEEN E. RUDERT
MIGUEL SAPP, Parliamentarian
PATRICE STANLEY
MARCIA TYLER
CATHERINE WALLACE
AUDREY WRIGHT
NADJA ZALOKAR

COMMISSIONER ASSISTANTS PRESENT:

ANDERSON FRANCOIS
CHARLOTTEE PONTICELLI
WILLIAM L. SAUNDERS, JR.
KRISHNA TOOLSIE
CYNTHIA VALENZUELA

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

2 9:45 a.m.

3 Approval of the Agenda

4 CHAIRPERSON BERRY: The first item on the
5 agenda is the Approval of the Agenda.6 I would like us to have a discussion of the
7 reauthorization, which is not on here, and, so, we can
8 either do it under the Staff Director or somebody can
9 move to have it as a separate item. If no one objects,
10 we can do it under the Staff Director; otherwise,
11 somebody can move to have it done as a separate item.

12 (No response)

13 CHAIRPERSON BERRY: Okay. We'll just talk
14 about it there then.15 All right. Could I get a motion then to
16 approve the agenda?

17 COMMISSIONER ANDERSON: So moved.

18 COMMISSIONER HORNER: Second.

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

21 (Chorus of ayes)

22 Approval of Minutes of January 9, 1998 Meeting

23 CHAIRPERSON BERRY: Motion to approve the
24 minutes of January 9th, 1998.

1 COMMISSIONER HORNER: So moved.

2 COMMISSIONER ANDERSON: Second.

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

5 (Chorus of ayes)

6 COMMISSIONER REDENBAUGH: Madam Chair?

7 CHAIRPERSON BERRY: Yes. Yes, and I think
8 Russell was trying to -- Russell, were you trying to
9 say something about the agenda? I mean about the
10 minutes?

11 COMMISSIONER REDENBAUGH: About the minutes,
12 yes.

13 CHAIRPERSON BERRY: Yes? Yes?

14 COMMISSIONER REDENBAUGH: Okay. The minutes
15 don't reflect the discussion that we had regarding our
16 submission of budget planning discussion submission to
17 OMB, and I would ask that the minutes reflect the
18 discussion in which it was explained that the
19 submission was likely procedural, and that we would --
20 would have in the future the substantive discussion of
21 the project proposal.

22 CHAIRPERSON BERRY: As I recall the
23 discussion, we can put something in on whatever the
24 transcript shows the discussion was, but as I recall
25 the discussion, we said that we would vote on it, but

1 that we understood that we would have to review it
2 again --

3 COMMISSIONER REDENBAUGH: Yes.

4 CHAIRPERSON BERRY: -- once the budget was
5 submitted. Is that what you're talking about?

6 COMMISSIONER REDENBAUGH: Yes. Yes, I'm
7 referring to that.

8 CHAIRPERSON BERRY: Okay. So, we should add
9 something to the minutes on that subject. Okay.

10 Anything else on the minutes? Yes,
11 Commissioner Anderson?

12 COMMISSIONER ANDERSON: Thank you, Madam
13 Chair. I have several amendments, I guess.

14 CHAIRPERSON BERRY: Okay.

15 COMMISSIONER ANDERSON: On Page 2, --

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER ANDERSON: -- under the Staff
18 Director's Report, the first paragraph, the last
19 sentence in the first paragraph --

20 CHAIRPERSON BERRY: Why don't you just say in
21 turn what you want to add?

22 COMMISSIONER ANDERSON: Yeah. Okay. Well,
23 the sentence says, "After Commissioner discussion
24 regarding the issuance of subpoenas, it was agreed that
25 the Commissioners would be notified if the

1 determination was made that subpoenas duces tecum would
2 be needed for the documents of private groups and
3 organizations."

4 As I review the transcripts, I think it would
5 be more accurate to say that it was agreed that
6 subpoenas duces tecum would be issued only to public
7 officials seeking government documents.

8 CHAIRPERSON BERRY: That's correct.

9 COMMISSIONER ANDERSON: Okay. Thank you.
10 The second paragraph --

11 CHAIRPERSON BERRY: Simultaneous of.

12 COMMISSIONER ANDERSON: Yeah. Okay. Second
13 paragraph, again the last sentence, "General Counsel
14 further stated that the Staff Director would receive
15 the New York and Los Angeles hearing reports within the
16 month of January which would then go forward for
17 editorial legal sufficiency and affected agency
18 review."

19 I think also we said that we could expect
20 those reports at the March meeting.

21 CHAIRPERSON BERRY: That's correct, as I
22 recall the meeting.

23 COMMISSIONER ANDERSON: Yeah. And, so, if
24 that's --

25 CHAIRPERSON BERRY: We can check the

1 transcript again, but that's my recollection.

2 COMMISSIONER ANDERSON: Yeah. Thank you.

3 And then the third paragraph, after the
4 second sentence, "Commissioner Anderson asked that the
5 subpoenaed documents from public officials would hamper
6 the U.S. Attorney's criminal investigation into the
7 Sonoma County Sheriff's Office."

8 Actually, I asked about that, but I also
9 asked about the same matter a little bit later
10 regarding Rohnert Park, and I think that's probably
11 what ought to be there because it was at that point
12 then that Mr. Montez replied that the Justice
13 Department's investigation, etc.

14 CHAIRPERSON BERRY: Do you want to say --
15 Good morning, Commissioner George. We're discussing
16 the minutes, and Commissioner Anderson has amendments.

17 Commissioner Anderson, do you want to say
18 "and the other place" or what do you want to it to say?

19 COMMISSIONER ANDERSON: Well, I'd like to
20 insert in lieu of Sonoma County, Rohnert Park Police
21 Department, and then "Mr. Montez assured Commissioner
22 Anderson that it would in no way affect the Justice
23 Department's investigation since the Justice
24 Department's investigation differs from the advisory
25 committee's planned community forum", and I think I did

1 get that kind of clear assurance from Mr. Montez about
2 that.

3 CHAIRPERSON BERRY: Okay.

4 COMMISSIONER ANDERSON: Then at the bottom of
5 that paragraph, we have "Mr. Montez clarified his
6 response to state that the forum will examine the
7 overall training and hiring policies of the surrounding
8 police departments", and then I would add to that "and
9 would not be raising issues of individual cases".

10 CHAIRPERSON BERRY: That is correct, as I
11 recall.

12 COMMISSIONER ANDERSON: Yeah. Now, finally,
13 the next paragraph, "The report would be written by the
14 Western Regional Office with the Commissioners
15 approving or disapproving the report through
16 established Commission procedures."

17 As I understand it, we agreed. Now the
18 ambiguity there is to which established Commission
19 procedures, whether it goes to the established
20 Commission procedures of SAC reports or regular
21 Commission reports. I thought we had agreed that we
22 would be able to offer changes on the -- on behalf of
23 Commissioners, so that it might be more appropriate
24 there to say with the Commissioners submitting changes
25 to the draft report through established Commission

1 procedures.

2 CHAIRPERSON BERRY: It probably should say it
3 would be written with the approval or disapproval of
4 the report through established Commission procedures
5 for hearings and reports, because that's the issue.

6 COMMISSIONER ANDERSON: Yeah, yeah. Okay.
7 That's fine with me.

8 CHAIRPERSON BERRY: Okay.

9 COMMISSIONER ANDERSON: Those are -- those
10 are my amendments. Thank you, Madam Chair.

11 CHAIRPERSON BERRY: Thank you.

12 Anyone else have anything on the minutes?

13 (No response)

14 CHAIRPERSON BERRY: Okay. Well, then all in
15 favor of the minutes as amended, indicate by saying
16 aye.

17 (Chorus of ayes)

18 CHAIRPERSON BERRY: Opposed?

19 (No response)

20 Announcements

21 CHAIRPERSON BERRY: Next item. Next item is
22 Announcements, and Announcements, the request for
23 appropriations was submitted to the Congress on
24 Wednesday, February 3rd, \$11 million. Budget, Monday,
25 February 2nd, President submitted it to the Congress.

1 Commission budget would go to 11 million from 8.74
2 million.

3 The President also proposed 206 million in
4 civil rights enforcement funding in FY 1999, a 17-
5 percent increase, which is the largest in almost 20
6 years.

7 We had a press conference here and in L.A.
8 with the Vice Chair and Yvonne Lee present on the
9 Commission Report on Equal Opportunity and Non-
10 Discrimination for Students with Limited English
11 Proficiency on January 21st.

12 An update on the Asian-Pacific American
13 Petition, Joseph Sandler of the DNC and Professor Frank
14 Rowe were asked during the briefing to respond directly
15 to specific inquiries by the Commission.

16 Mr. Sandler denies that the DNC reviewed
17 contributors on the basis of race or name or national
18 origin or that there was a second audit directed at
19 Asian Americans.

20 He also reports that based on their
21 information, there were no advertisements for the 1996
22 U.S. Senate race in Kentucky by the DNC, including a
23 phrase "to send an all American family to the Senate or
24 anything similar to that phrase".

25 I don't know why I'm reading this, but it's

1 one of the announcements.

2 VICE CHAIRPERSON REYNOSO: I think that
3 question has been asked about that --

4 CHAIRPERSON BERRY: Oh, I see.

5 VICE CHAIRPERSON REYNOSO: -- during the
6 hearing.

7 CHAIRPERSON BERRY: So, that's why I'm
8 reading it.

9 VICE CHAIRPERSON REYNOSO: It's just the
10 response.

11 CHAIRPERSON BERRY: Okay.

12 VICE CHAIRPERSON REYNOSO: Yeah. Carl asked
13 the question.

14 COMMISSIONER ANDERSON: If I could say, as I
15 recall, the question was that the state democratic
16 party or the state candidate had run, and whether any
17 DNC officials knew about that or had supported it or
18 had objected to it, if they didn't know. So, it wasn't
19 a question of whether it was a DNC commercial but
20 whether it was a local state party or state candidate.

21 CHAIRPERSON BERRY: What did you say, General
22 Counsel?

23 MS. MOORE: Mr. Sandler reported that there
24 were no advertisements at all, period, to their
25 knowledge, that contained that phrase.

1 CHAIRPERSON BERRY: To his knowledge. So,
2 all you're doing is saying to his knowledge. There may
3 have some, we don't -- he doesn't know about, but this
4 is Mr. Sandler's --

5 COMMISSIONER ANDERSON: Okay.

6 CHAIRPERSON BERRY: -- response.

7 COMMISSIONER ANDERSON: Great. Thank you.

8 CHAIRPERSON BERRY: The Jackson Advocate, a
9 black-owned newspaper, in Jackson, Mississippi, was
10 fire-bombed on January 26th. Investigators are
11 considering all possible motives, including the
12 likelihood that this was a racially-motivated hate
13 crime.

14 We pointed this out. The Commission held its
15 briefings on the church burnings in this area in March
16 1997. The Commission film series celebrating Black
17 History Month begins on Monday, February 2nd, and there
18 are film presentations starting each day at 12 noon.

19 The last point is that the House Constitution
20 Subcommittee of the Judiciary agreed eight to one to
21 send the Commission's reauthorization bill to the full
22 committee for consideration.

23 Does anyone else have any announcements of
24 anything?

25 (No response)

1 Staff Director's Report

2 CHAIRPERSON BERRY: Okay. Then we'll go to
3 the Staff Director's Report, and does anyone have any
4 questions on the Staff Director's Report? Any
5 Commissioner?

6 COMMISSIONER HORNER: Madam Chair, I have --
7 I have a question about the distribution of the New
8 York hearing report.

9 According to the normal procedures, the
10 Commissioners have not yet received that report because
11 it has not gone through all the preliminary processes
12 it goes through before the Commissioners receive it.

13 My concern is this: there was a story in the
14 Wall Street Journal quoting the Chair in -- as
15 discussing the findings of the report. Specifically,
16 the Wall Street Journal reports, "As for the study, the
17 Civil Rights Commission's chairwoman, Mary Frances
18 Berry, said some of the most alarming findings
19 involving the number of blacks and Hispanics listed as
20 officials and managers by their firms", and then a
21 little bit beneath that, another quote, "So far, the
22 draft report confirms there are many problems on Wall
23 Street when it comes to hiring African Americans and
24 other people of color, Dr. Berry said."

25 My question is: why is it that or is it the

1 case that this is an accurate story? And I'm directing
2 this question to the Staff Director, that the Chair
3 received a copy of the report, but when I asked for a
4 copy, upon reading this article, was told I could not
5 have one because it wasn't through the processes yet.

6 If it is the case that the Chair has read the
7 report, does -- is it appropriate for the Chair to have
8 the report but not the Commissioners?

9 STAFF DIRECTOR MOY: Commissioner Horner, no
10 Commissioner and the Chair did not receive a copy of
11 the report. It is still --

12 COMMISSIONER LEE: I cannot hear.

13 STAFF DIRECTOR MOY: Sorry, Commissioner Lee.
14 No one on the Commission has received a copy of the New
15 York report. The Chair has not received it. No
16 Commissioners have received it either. It's still
17 going through its processes.

18 COMMISSIONER HORNER: May I ask then -- ask
19 the Chair to confirm this statement? Have you received
20 a copy of the report, and, if so, do you think it is --

21 CHAIRPERSON BERRY: Commissioner Horner, I
22 consider your question an insult to my integrity. The
23 Staff Director has already told you that she has not
24 distributed the report to anyone.

25 COMMISSIONER HORNER: I wonder if you had --

1 CHAIRPERSON BERRY: Although I consider it an
2 insult --

3 COMMISSIONER HORNER: Sorry.

4 CHAIRPERSON BERRY: -- to my integrity, I am
5 going to answer the question. You have been in
6 Washington for a long time. Since you have made --
7 directed this question to me, a point of personal
8 privilege.

9 You've been in Washington long enough in
10 high-level jobs to know there's something called a
11 "leak". So, to even ask me this question presumes that
12 you don't understand that, and you also have been
13 around this town long enough to know that the press
14 reports all sorts of things that may or may not be
15 accurate.

16 So, to presume after the Staff Director has
17 told you that she has not, if I understood her right,
18 -- is that correct? You haven't given this report to
19 anybody?

20 STAFF DIRECTOR MOY: I have not given the
21 report to anyone.

22 CHAIRPERSON BERRY: Okay. And I do not have
23 a copy of the report. Okay? And if you want to know
24 whether I commented to the press, I'd be happy to
25 answer that. Would you like to know that?

1 COMMISSIONER HORNER: Madam Chair, I have
2 asked a very simple --

3 CHAIRPERSON BERRY: I have answered the
4 question.

5 COMMISSIONER HORNER: -- and straightforward
6 --

7 CHAIRPERSON BERRY: I have answered your
8 question.

9 COMMISSIONER HORNER: -- question. I would
10 like to know whether the Wall Street Journal is in
11 error in quoting you that the draft report confirms
12 certain facts which would imply that you had -- that
13 you were privy to the draft report.

14 I do -- certainly do not believe that the
15 Staff Director is misrepresenting her own actions of
16 alternative sources for receipt of a report, and what I
17 want to know as a Commissioner is whether you are
18 speaking to the press about the contents of a report,
19 such contents the other Commissioners having been
20 denied. That's all.

21 CHAIRPERSON BERRY: Commissioner Horner, you
22 are not my boss, and I don't have to respond to you.
23 Okay? So, you do not have to speak to me as if I'm a
24 subordinate that you are interrogating. That's Number
25 1. I'm not your subordinate. I do not work for you.

1 Let me make that very clear in case you don't know it.
2 So, I don't like the tone and tenor of your question,
3 and I don't like the implication of it, and I don't
4 like the insult to my integrity.

5 Now, to answer the question, I have no copy
6 of this report, do not have it. Okay?

7 COMMISSIONER HORNER: Have you seen it?

8 CHAIRPERSON BERRY: No. Are you a lawyer?

9 COMMISSIONER HORNER: I am a member of the
10 Commission.

11 CHAIRPERSON BERRY: I have answered you.
12 Asked, answered.

13 Now if you'd like to know what I was
14 commenting on in the press, and if other Commissioners
15 would like to know, other Commissioners I have
16 discussed this with who have asked me what I was
17 commenting on in a polite way, and I have answered
18 them. So, I will answer those who haven't heard it.

19 I was asked by the press to comment on some
20 information that they already had leaked to them
21 concerning the New York hearing report, and I was asked
22 whether I thought this information sounded like there
23 were problems on Wall Street, and whether it was
24 consistent with what I had heard at the hearing, what I
25 had read in the materials, and what I had read in the

1 staff report, and what I knew about problems on Wall
2 Street, and I responded to the press, and it sounded to
3 me very much like I would say that this was probably
4 accurate in terms of problems on Wall Street.

5 We had heard this at the hearing. It was in
6 the staff report, and that therefore while the report
7 is confidential and is a draft, and we've not received
8 it yet, and they would know about it when we had it, it
9 sounds to me like there are major problems on Wall
10 Street, and that's my view, and that what they told me
11 sounded like it was probably accurate. That was my
12 answer.

13 COMMISSIONER HORNER: So that when you cited
14 the draft report confirms something, you are speaking
15 about a draft report you haven't seen; you're
16 confirming something on the basis of what you've heard
17 from a reporter?

18 CHAIRPERSON BERRY: Yes.

19 COMMISSIONER HORNER: Thank you.

20 CHAIRPERSON BERRY: And on the basis of what
21 I heard and read in the staff report and heard at the
22 New York hearing, which is in the transcript, and for
23 those of you who were not at the New York hearing or
24 did not read the transcript or don't know about the
25 testimony or the staff report, that -- the information

1 about the small number of minorities on Wall Street in
2 high-level jobs, and for those of you who do not know
3 about the EEO-1 reports that come out every year and
4 are available to the public, and which I have seen,
5 which confirm this, that is exactly what is confirmed
6 in them.

7 So, I felt entirely comfortable in speaking
8 to the press about this subject when they already had
9 information. Now where they got it from, I don't know.

10 COMMISSIONER HORNER: If they're correct in
11 what they have?

12 CHAIRPERSON BERRY: Yes, if they're correct.

13 COMMISSIONER HORNER: Which is an assumption
14 that perhaps we ought not to make in talking with them.

15 CHAIRPERSON BERRY: Well, I assumed -- my
16 inferences were based on what was in the staff report,
17 what was in the transcript of the hearing that we did
18 in New York, and what is in the EEO-1 report on
19 industry, whether or not it was true. But it sounded
20 like it was the same information.

21 COMMISSIONER HORNER: Thank you.

22 CHAIRPERSON BERRY: Yeah. Anyone else have a
23 question on the Staff Director's Report?

24 COMMISSIONER ANDERSON: Well, I have -- I
25 have a question. I got the February 2nd update on the

1 Sonoma County. Anything further about that or --

2 STAFF DIRECTOR MOY: I am going to -- I'm
3 sorry, Madam Chair. May I speak?

4 CHAIRPERSON BERRY: Go right ahead.

5 STAFF DIRECTOR MOY: May I defer to Cruz
6 Reynoso, Vice Chair, sorry, or Yvonne Lee for the
7 latest update?

8 I have received confirmation from Phil Montez
9 indicating that he is willing to go ahead without
10 issuing subpoenas for --

11 CHAIRPERSON BERRY: Why?

12 STAFF DIRECTOR MOY: Based on the
13 confirmation from several police chiefs and training
14 officials that they would appear at the hearing or any
15 forum without being subpoenaed.

16 CHAIRPERSON BERRY: So, Phil then, if I'm
17 hearing you right, Phil has told you that the police
18 now say they will show up without being subpoenaed?

19 STAFF DIRECTOR MOY: Correct.

20 CHAIRPERSON BERRY: And Phil then has said
21 what? That we should do what?

22 STAFF DIRECTOR MOY: That -- that we could go
23 ahead and have the hearing --

24 CHAIRPERSON BERRY: Have a hearing or have a
25 forum?

1 STAFF DIRECTOR MOY: Have -- I'm sorry. Have
2 -- have a forum. I'm not used to all these words.

3 CHAIRPERSON BERRY: Okay.

4 STAFF DIRECTOR MOY: Have a forum with the
5 Commissioners who plan to attend as well as the SAC
6 members.

7 CHAIRPERSON BERRY: And we don't need to have
8 a hearing? Is that the point with subpoenas?

9 STAFF DIRECTOR MOY: With -- with subpoenas,
10 yes.

11 CHAIRPERSON BERRY: Well, a hearing has
12 subpoenas. So, we don't need to -- is that his point?

13 STAFF DIRECTOR MOY: Without subpoenas.

14 CHAIRPERSON BERRY: That we would have the
15 forum? Well, let me see if I got this straight.

16 Cruz?

17 VICE CHAIRPERSON REYNOSO: Well, no, I'm
18 sorry. This is actually new to me because the latest I
19 had heard was simply that we were proceeding with --
20 with what we had voted on, the mini-hearing, but that
21 even though a week or two ago, I had talked with --
22 with Phil, and at that point, he needed -- he thought
23 he still needed the subpoenas, the latest I heard was
24 that apparently all the officials he had contacted
25 indicated that they would -- that they would appear

1 without -- without the subpoena.

2 So, he has not submitted to this office the
3 necessary information for the issuance of subpoenas
4 because he has the assurance from the police chiefs and
5 others that he has been in contact with that they will
6 appear.

7 So, as I understood it, the only difference
8 is that he doesn't think he needs the subpoenas for the
9 public officials. That's what I understood.

10 CHAIRPERSON BERRY: Now if that's true, then
11 what we could do is just have the forum and do like we
12 did when Carl and I went to -- where did we go? St.
13 Petersburg, and like we did with the church fires, and
14 I guess the advantage of that is that the SAC members
15 would then be able to ask questions as they did there;
16 whereas if it's a hearing, then the Commissioners would
17 be the people asking questions, and that the outcome
18 then, if this is all -- and you're saying that this is
19 the case, would be desirable because then we wouldn't
20 have to subpoena anybody, and people would come forward
21 voluntarily, and that the idea of subpoenaing had a
22 salutary effect because people are saying, well, we'll
23 come. So, you end up with the same result.

24 I mean if -- if that's the case?

25 STAFF DIRECTOR MOY: That was my discussion

1 as of yesterday.

2 CHAIRPERSON BERRY: And you wouldn't have to
3 use staff from here to go out to California.

4 COMMISSIONER LEE: Madam Chair?

5 CHAIRPERSON BERRY: Yes, Commissioner Lee?

6 COMMISSIONER LEE: Does that mean that after
7 the forum, --

8 CHAIRPERSON BERRY: Commission report.

9 COMMISSIONER LEE: Commission report.

10 CHAIRPERSON BERRY: Yeah. If it's -- if it's
11 done by the SAC, like we did in other places, and the
12 Commissioners who go, who decide to go, go with the
13 SACs hearing it and -- and running it, then it would be
14 a SAC meeting. We wouldn't need lawyers to have
15 subpoenas. We wouldn't need staff to go out there to
16 pay people and handle logistics.

17 So, if that's the outcome, then it would be --
18 -- hey, in a way, it would be great. Would answer a lot
19 of questions about resources.

20 What do you think, Commissioner Anderson,
21 since you were the person who was willing to go, about
22 all this development?

23 COMMISSIONER ANDERSON: Well, I think if
24 we're getting compliance without subpoenas, it's better
25 than forcing subpoenas on people.

1 CHAIRPERSON BERRY: Hm-hmm.

2 COMMISSIONER HORNER: Would a letter go out
3 to the people invited to testify, explaining to them
4 that this is now just a state advisory committee
5 inquiry or forum with some Commissioners in attendance,
6 so that they understand accurately what the status of
7 this inquiry is?

8 CHAIRPERSON BERRY: I guess they would get
9 the same letter that the SAC always sends, because we
10 haven't sent any letters. Nothing has gone to them
11 from here.

12 COMMISSIONER HORNER: We've asked them only
13 by telephone?

14 CHAIRPERSON BERRY: Yeah. If people have
15 been talking on the telephone, I think -- is that
16 right, Ruby? I'm trying to --

17 STAFF DIRECTOR MOY: I'm sorry. I was
18 referring to -- we received a sample packet of -- I'm
19 trying to find out from my assistant, the package of
20 letters, was it? Inviting the --

21 CHAIRPERSON BERRY: Just a minute.

22 (Pause)

23 STAFF DIRECTOR MOY: Okay. It was a list of
24 invitees that Phil Montez had sent out inviting these
25 participants.

1 CHAIRPERSON BERRY: Had he invited them
2 already or are you saying it's a list of people he's
3 going to invite?

4 STAFF DIRECTOR MOY: No. These -- these --
5 these had already gone out. These were copies.

6 CHAIRPERSON BERRY: So, we'd need another
7 letter. If the letter says it's a mini-hearing, then
8 Commissioner Horner is making the right point, which is
9 that if we're not going to have a mini-hearing, then
10 they should get another letter saying it's a SAC forum.

11 STAFF DIRECTOR MOY: Right.

12 CHAIRPERSON BERRY: So that they're not
13 confused.

14 STAFF DIRECTOR MOY: Right.

15 CHAIRPERSON BERRY: And Phil might even tell
16 them that he's, you know, pleased at their willingness
17 to come.

18 STAFF DIRECTOR MOY: So noted.

19 CHAIRPERSON BERRY: Yeah. Because we don't
20 want them to think it's a hearing.

21 COMMISSIONER HORNER: Assuming they are still
22 willing to come to a SAC forum.

23 CHAIRPERSON BERRY: Well, didn't you get --
24 didn't you say you got something from Phil saying they
25 are willing -- what are they willing to come to?

1 Are they willing to show up without being
2 subpoenaed? That's the point.

3 STAFF DIRECTOR MOY: Yes, they are willing to
4 -- I have copies of two, one from the Chief of Police
5 of Santa Rosa, who indicated that they would be there
6 without subpoena. The other one was -- it's the same
7 one. Sorry.

8 This is what Phil Montez has told me, that
9 the Chief of Rohnert Park, the Sheriff of Sonoma
10 County, and the Chief of Santa Rosa County, training
11 officers and community people were willing to come
12 without subpoenas.

13 CHAIRPERSON BERRY: Is this the same letter
14 that somebody just gave me?

15 STAFF DIRECTOR MOY: Yes.

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER ANDERSON: Well, Madam Chair,
18 could we maybe see a copy of the letter?

19 CHAIRPERSON BERRY: Sure. Why not? Do you
20 have another copy?

21 STAFF DIRECTOR MOY: No.

22 CHAIRPERSON BERRY: Well, make one.

23 STAFF DIRECTOR MOY: Okay.

24 CHAIRPERSON BERRY: Or some.

25 STAFF DIRECTOR MOY: Okay.

1 VICE CHAIRPERSON REYNOSO: Madam Chair, it
2 seems to me that if -- if Phil and -- he's apparently
3 been spending a lot of time in Sonoma, is confident
4 that all these people will show up, I agree with
5 Commissioner Anderson that -- that it's better to do it
6 that way and not have people feel they've been forced
7 to -- to appear.

8 CHAIRPERSON BERRY: It says -- this letter
9 which you'll get says down at the bottom, "The issuance
10 of subpoenas will contribute toward creating courtroom-
11 type adversarial situation, and we do not believe this
12 would be in the best interests of our communities nor
13 will it necessarily facilitate the exchange of
14 information."

15 VICE CHAIRPERSON REYNOSO: Thank you.

16 CHAIRPERSON BERRY: Oh, I'm sorry. You folks
17 on the phone can't see these letters, can you? Hello?

18 COMMISSIONER LEE: No, we can't.

19 CHAIRPERSON BERRY: Commissioner Lee,
20 Commissioner Redenbaugh, Commissioner George?

21 COMMISSIONER GEORGE: Right. You're correct.

22 CHAIRPERSON BERRY: Let me tell you what
23 we've got here. We've got a memo from Phil Montez,
24 February 4th, says, -- yes? Yes, Vice Chair?

25 VICE CHAIRPERSON REYNOSO: I think probably

1 we should just look at --

2 CHAIRPERSON BERRY: Which two should we look
3 at?

4 VICE CHAIRPERSON REYNOSO: Sonoma County. I
5 think it's the next one.

6 COMMISSIONER ANDERSON: Maybe we should just
7 read it, Madam Chair. Read the letter from --

8 CHAIRPERSON BERRY: Which one? The Sonoma
9 County Law Enforcement Chiefs?

10 COMMISSIONER ANDERSON: Yeah.

11 CHAIRPERSON BERRY: Okay. Okay.

12 COMMISSIONER GEORGE: I'd like to hear that
13 one read. I think the one from Phil has been pretty
14 well described.

15 CHAIRPERSON BERRY: Oh, okay. I've been
16 informed -- this is from the Sonoma County Law
17 Enforcement Chiefs Association to Phil. Okay?

18 "I've been informed that the U.S. Commission
19 on Civil Rights will be holding a public hearing in
20 Santa Rosa, California, February 20th. The topic will
21 be focused on law enforcement and community
22 relationships in Sonoma County. I've been further
23 informed that the United States Commission on Civil
24 Rights has acted on fraudulent information or mis-
25 representations.

1 Specifically, some individuals were
2 apparently successful in convincing the Commission that
3 law enforcement representatives in Sonoma County would
4 not be responsive to an invitation to attend this
5 hearing, and that subpoenas would be required to ensure
6 such a presence.

7 It is truly unfortunate that a body as
8 esteemed as the Commission would be misled on such an
9 important issue. It is also extremely troublesome that
10 the Commission would react on such false information
11 without demonstrating objectivity by first contacting a
12 law enforcement person in Sonoma County in order to
13 confirm or deny such an outrageous allegation.

14 On behalf of the Sonoma County Law
15 Enforcement Chiefs Association, I'm writing to request
16 that the Commission be informed that they've been
17 terribly misled. All of the law enforcement
18 professionals in Sonoma County are more than willing to
19 attend and participate in a public hearing with the
20 Commission without threat of service of subpoena.

21 We welcome the Commission's presence and look
22 forward to participating in the public hearing. The
23 issuance and service of subpoenas will by their very
24 nature contribute toward creating a courtroom-style
25 adversarial situation.

1 We do not believe that this would be in the
2 best interests of our communities nor will it
3 necessarily facilitate the exchange of information. In
4 fact, it could only add to the potential for
5 divisiveness.

6 Although we do not know what the Commission's
7 motives are due to lack of information from the
8 Commission, nevertheless, we would find it hard to
9 believe that the Commission would wish to contribute
10 toward creating any further divisiveness within our
11 community.

12 In essence, we are depending upon the
13 Commission's positive leadership to correct this error.
14 It is very unfortunate the Commission has been misled.
15 This undoubtedly would have been averted had anyone
16 from law enforcement been contacted prior to the
17 Commission making a decision.

18 Fortunately, the deception appears to have
19 surfaced early enough to allow the Commission to
20 reconsider the issuance of any subpoenas. This matter
21 certainly raises the question of what other false
22 information has been delivered to the Commission.

23 Your assistance with communicating this
24 request to the Commission would be most appreciated.
25 Michael Dunbaugh, Chief of Police, Santa Rosa, on

1 behalf of the Sonoma County Law Enforcement Chiefs
2 Association".

3 I think it's only fair since I read this to
4 you to read Phil's -- I have to read Phil's note
5 because it says that we were misled, and Phil is the
6 one who gave us the information. That's where we got
7 our information.

8 Phil has a note to Ruby which says, "Early in
9 WRO", that's Western Regional Office, "initial inquiry
10 into this matter", this is dated February 4th, "I was
11 advised by an individual within Sonoma County law
12 enforcement that law enforcement officials should not
13 be expected to cooperate with this agency on any fact-
14 finding efforts, and that official attendance can only
15 be guaranteed through the use of subpoena.

16 The individual provided me with this
17 information did so on the condition that he remain
18 anonymous. After carefully weighing all factors
19 surrounding the scope of this inquiry, I consider the
20 information provided to me to be credible and reliable
21 and have proceeded accordingly in requesting that
22 witnesses be subpoenaed.

23 Moreover, to avoid the appearance of singling
24 out or targeting the law enforcement community, it is
25 our desire that all witnesses be subpoenaed regardless

1 of the extent of their cooperation.

2 Copies of other correspondence advising
3 public officials of this event are being forwarded to
4 you via overnight mail."

5 I don't know what the Commission prefers to
6 do, but I think that -- and you may say whatever you
7 think we should do, of course, but I do not think that
8 we should get into trying to decide, you know, whether
9 somebody did tell somebody X, Y or Z or whether
10 somebody mis-communicated something.

11 Mr. Dunbaugh says apparently some individuals
12 convinced us that they would not be responsive as to
13 who those individuals were.

14 I also think it points out something else.
15 In the past, we've subpoenaed witnesses without
16 targeting any particular group precisely for the reason
17 that we didn't want any particular group to claim that
18 we thought that they were uncooperative, and, so, just
19 the policy of subpoenaing everybody made it clear that
20 nobody was being targeted, and people who wanted to be
21 protected could be.

22 But wherever that issue lies, and that debate
23 may be for another day, we need to decide whether we
24 are in accord with the view that what we should do is
25 just go ahead and have the forum and have letters go to

1 people saying we thank them for their cooperation, but
2 it will be a forum and appreciate their willingness to
3 come.

4 VICE CHAIRPERSON REYNOSO: Madam Chair, I
5 just want to add one word. I talked with Phil a couple
6 of times after he had met with several of the -- of the
7 police officials, and it was his impression from his
8 personal meetings, not just from what he says in the
9 memo, that it would be -- that -- that the individuals
10 would not cooperate.

11 It may be there's been a change since that
12 time because I understand there have been some articles
13 printed up there. I haven't seen them. There's been a
14 change in the thinking, but I think we should welcome
15 that change and proceed as we discussed a few minutes
16 ago.

17 CHAIRPERSON BERRY: Any other Commissioner
18 have any comment on this question?

19 (No response)

20 CHAIRPERSON BERRY: Okay. Well, -- yes?
21 Commissioner Anderson?

22 COMMISSIONER ANDERSON: I'm almost without
23 words here because there seems to be really a very
24 clear difference between the recitation here on the
25 part of the chief and what we're getting from our

1 regional director, frankly, and there may be -- there
2 may be a change of decision on the part of this Law
3 Enforcement Chiefs Association, although his clear
4 representation is that there has not been a change in
5 position, and I would say that if our initial decision
6 was based on -- on an anonymous recommendation by one
7 person without contacting law enforcement officials who
8 actually will make the decision, I think that was a
9 mistake in judgment.

10 VICE CHAIRPERSON REYNOSO: I agree with you.
11 That's why I added the comment. Because this -- this
12 notice actually is dated February 4th or something very
13 recent, and the discussions I had with Phil pre-dated
14 this, and at that time, that's what he reported to me.

15 I think -- I think I -- I made such a report
16 at the last -- at the last meeting. That would be a
17 month ago.

18 COMMISSIONER ANDERSON: So, Phil --

19 VICE CHAIRPERSON REYNOSO: And he had already
20 reported to me that he had met with some of the
21 officials, and that was his strong impression from
22 meeting with him. So -- but I agree with you, that if
23 simply based on anonymous source, I think that's bad
24 judgment, but he had reported to me, I guess, over a
25 month ago, because we had a meeting a month ago, that

1 he had met with many of the officials, and it was his
2 impression from meeting with them, they would not
3 appear without the subpoena, and on that basis, he
4 recommended that we should subpoena.

5 Then we asked the question whether non-public
6 officials needed subpoenas, and I think he was on the
7 phone, his reaction was negative. So that we voted to
8 subpoena only the public officials, and I think the
9 Chair is phrasing the question as to whether or not
10 that was wise or not, but I think that's what we voted
11 to do.

12 COMMISSIONER ANDERSON: But Phil does not say
13 in his memo to you --

14 CHAIRPERSON BERRY: It's not to me. It's to
15 --

16 COMMISSIONER ANDERSON: To the Staff
17 Director, --

18 CHAIRPERSON BERRY: Yeah.

19 COMMISSIONER ANDERSON: -- that he
20 subsequently then --

21 CHAIRPERSON BERRY: I read it.

22 COMMISSIONER ANDERSON: -- met with law
23 enforcement officials and was told or had the
24 impression that they would not attend without a
25 subpoena. All right. That's not in his memo. Where

1 is it?

2 CHAIRPERSON BERRY: The only thing that's in
3 the memo is what I read.

4 COMMISSIONER ANDERSON: Right. So, what he's
5 related to the Vice Chair is not in the memorandum.

6 VICE CHAIRPERSON REYNOSO: That's correct, as
7 I read it.

8 COMMISSIONER ANDERSON: Because what he's
9 told you contradicts what the chief has put here in
10 writing on behalf of all of the law enforcement
11 personnel in the area.

12 VICE CHAIRPERSON REYNOSO: Yeah. Again, the
13 chief's letter's dated January 26th, and the
14 discussions I had with him apparently must have been a
15 month ago because I remember reporting that to the
16 Commission. So, that's why I'm -- these are all sort
17 of late -- late -- late letter and late memo, and the
18 discussions I had with him obviously pre-dated our last
19 meeting, and I reported what -- what his impressions
20 were at that time.

21 CHAIRPERSON BERRY: I don't think --

22 VICE CHAIRPERSON REYNOSO: I thought we asked
23 him about that on the phone, too, and he --

24 CHAIRPERSON BERRY: I thought we did.

25 VICE CHAIRPERSON REYNOSO: -- confirmed that.

1 Yeah.

2 CHAIRPERSON BERRY: I don't think --
3 Commissioner Anderson, I don't think we can reach any
4 conclusions about where the true lies on the question
5 of whether people are willing or unwilling as between
6 Phil and this letter because, first of all, we have
7 before held forums where law enforcement officials
8 indicated they would come on the church fires, and
9 there was one state, I've forgotten which one it was we
10 went to, where none of them showed up. They all said
11 they'd come. Letters went out, and their leaders
12 decided not to come.

13 The only people who came were the FBI guy and
14 somebody from the ATF, and none of the locals came. I
15 don't remember what state that was, and it was --
16 whatever state it was, I said something about it, about
17 the governor and the state people. I wish I could
18 think, but I don't remember which one.

19 So that I -- I could see a situation -- and I
20 don't know whether this is true or false. I mean I
21 don't know the answer. Where once it became public
22 that people were going to be subpoenaed because someone
23 had alleged or said that they wouldn't come, where
24 other people who got together and who were able to make
25 a decision decided this is ridiculous.

1 So, some of them may never have been asked in
2 the first place, and some of them maybe have decided to
3 come because they knew they were going to be subpoenaed
4 or, in the alternative, Mr. Montez may simply have not
5 asked enough people and felt that he had asked enough,
6 and, so, he may have used bad judgment or it may be
7 that the idea of subpoenaing them made them willing to
8 participate.

9 But I just think that as far as we're
10 concerned, what we should do is simply have the forum
11 and have a letter go to people thanking them for being
12 willing to come and saying that we don't -- you know,
13 we don't know -- whatever the facts are on the
14 situation, we're happy that they are able to come, and
15 Mr. Montez, in order to protect himself, may next time
16 have to go ask the officials.

17 But in these cases, also, you often get
18 people who are not willing to go on the public record.
19 If they work in the law enforcement -- the chief's
20 office or some place, they may not want it publicly
21 stated that they said that nobody in the office would
22 come. I mean that's a problem, which is why we
23 subpoena people.

24 Commissioner Horner?

25 COMMISSIONER HORNER: Yes. I would just make

1 an observation with no consequences for action, but my
2 observation is that they have agreed to come to a
3 hearing, but they have not agreed to come to a SAC
4 inquiry, and the difference in status is of some
5 consequence, and I would just make that observation.

6 So, we shouldn't write a letter saying thank
7 you for agreeing to come to a SAC forum when they have
8 not.

9 CHAIRPERSON BERRY: Okay. Well, then maybe
10 the letter --

11 COMMISSIONER HORNER: We should just let them
12 know that there's been a change.

13 CHAIRPERSON BERRY: Right. Maybe the letter
14 ought to say that, you know, in view of their
15 willingness to come and so on, that the Commission has
16 not -- has decided not to hold a hearing which would
17 require subpoenaing people, but simply let the SAC
18 proceed with the forum, and that we appreciate -- would
19 appreciate their willingness to cooperate and to show
20 up.

21 COMMISSIONER HORNER: Yes.

22 CHAIRPERSON BERRY: So that, you know, we can
23 get to the bottom of whatever these problems are.

24 COMMISSIONER HORNER: Yes, I think that would
25 be good.

1 CHAIRPERSON BERRY: So, could we make sure
2 that that happens?

3 STAFF DIRECTOR MOY: Yes.

4 CHAIRPERSON BERRY: So nobody is -- and to
5 make sure that the letter has that right kind of
6 information in it.

7 Yes, Commissioner Anderson?

8 COMMISSIONER ANDERSON: I agree with you. I
9 don't think we're going to get to the bottom of this at
10 this meeting. I -- I would hope that any communication
11 we have with the chiefs or any public communication we
12 have is not going to infer that they've changed their
13 mind. We're happy too, that they've changed their
14 position and now will come without subpoenas.

15 I think we ought to have a certain neutrality
16 about this, and I would suggest to the Staff Director
17 that I would look into this matter and just see how we
18 approach these kind of local government officials for
19 participating in our forums or in our hearings prior to
20 issuing subpoenas, so that we're sure that we really do
21 concur that subpoenas are needed, and we have -- and we
22 have a basis to make that judgment in the future.

23 CHAIRPERSON BERRY: So that the letter then
24 -- Staff Director, so that you're clear, the letter is
25 not to say that they've changed their position, and

1 we're happy about it. That's not to be said in the
2 letter.

3 But it is to say that the Commission has
4 decided to hold a forum instead -- to let the SAC
5 proceed with holding a forum rather than holding a
6 hearing, and appreciates their letter of whatever date
7 it is, and hopes that they will be willing to
8 participate in the forum, so that we can get to the
9 bottom or have discussions about these important issues
10 of community and police relations or something like
11 that.

12 Okay. Anything else anybody else has before
13 we mention reauthorization?

14 COMMISSIONER REDENBAUGH: Madam Chair?

15 CHAIRPERSON BERRY: Yes, Commissioner
16 Redenbaugh?

17 COMMISSIONER REDENBAUGH: I have a question
18 on -- for the Staff Director on ADA project.

19 CHAIRPERSON BERRY: Yes.

20 COMMISSIONER REDENBAUGH: May we do this now?

21 CHAIRPERSON BERRY: Sure.

22 COMMISSIONER REDENBAUGH: Do you have
23 anything to announce about that?

24 STAFF DIRECTOR MOY: Yes. We -- we have a
25 problem -- I'm sorry, Madam Chair. May I speak?

1 CHAIRPERSON BERRY: Yes.

2 STAFF DIRECTOR MOY: Thank you. We have a
3 problem in securing hotel space right now, and we're
4 still looking to optional dates and hotel sites for the
5 ADA hearing. I have some possible suggested dates, if
6 we could go through them, and this is what is needed
7 right now.

8 CHAIRPERSON BERRY: Those are all -- I can't
9 do it in March. This date. There's a date of April
10 24th-25th. Anybody know what days of the week?

11 COMMISSIONER REDENBAUGH: I cannot do those.

12 CHAIRPERSON BERRY: You already know that
13 without even knowing what days of the week they are?

14 COMMISSIONER REDENBAUGH: Yes, I have a
15 wedding.

16 CHAIRPERSON BERRY: Oh.

17 COMMISSIONER ANDERSON: Friday and Saturday.

18 VICE CHAIRPERSON REYNOSO: My best friend's
19 wedding.

20 CHAIRPERSON BERRY: Oh, great. I hope it
21 won't be like the movie.

22 COMMISSIONER GEORGE: Mary, what were the
23 dates we're talking about?

24 CHAIRPERSON BERRY: I said the 24th-25th, but
25 Russell just said he can't do that. So, that took care

1 of that little --

2 STAFF DIRECTOR MOY: The 24th and the 25th is
3 Friday-Saturday.

4 CHAIRPERSON BERRY: Russell's in a wedding.
5 In going backwards, -- well, we also need to keep in
6 mind that at some point after that, we have to have --
7 we have to have Schools and Religion, but that's
8 another question that we haven't scheduled yet.

9 Then from there, we would go May 7th and 9th.

10 STAFF DIRECTOR MOY: The 7th is a Thursday.

11 CHAIRPERSON BERRY: We meet on -- the
12 Commission meeting is on the 8th.

13 What did you say, Commissioner Lee?

14 COMMISSIONER LEE: I can't do it on the 7th.

15 CHAIRPERSON BERRY: You can't do it on the
16 7th.

17 COMMISSIONER REDENBAUGH: When is the
18 Commission meeting?

19 CHAIRPERSON BERRY: May 7th through 9th, and
20 the Commission meeting is on the 8th.

21 COMMISSIONER GEORGE: I'm sorry. I'm lost.
22 Are we talking about Schools and Religion?

23 CHAIRPERSON BERRY: No, no, no. I just said
24 -- I just said keep in mind that as we try to nail down
25 ADA, that we do have a Schools and Religion hearing

1 some time after that. In other words, as we keep
2 moving around dates. So, we're trying to find a date
3 for it.

4 COMMISSIONER GEORGE: The 8th and 9th were
5 proposed?

6 CHAIRPERSON BERRY: This is one date, and the
7 Commission meets on May 8th.

8 Commissioner Horner said she doesn't have her
9 calendar, but her calendar probably has a Commission
10 meeting on it.

11 COMMISSIONER HORNER: I'm sure I can do it on
12 the 8th and the 9th. So.

13 COMMISSIONER GEORGE: I can do it, too.

14 CHAIRPERSON BERRY: And --

15 COMMISSIONER REDENBAUGH: Excuse me, Madam
16 Chair.

17 CHAIRPERSON BERRY: Yes?

18 COMMISSIONER REDENBAUGH: The -- the ADA is
19 two days?

20 CHAIRPERSON BERRY: Two.

21 COMMISSIONER REDENBAUGH: Okay. So, it would
22 be the 7th and 8th, is that --

23 CHAIRPERSON BERRY: Is that right? We would
24 say --

25 COMMISSIONER REDENBAUGH: Because the 9th I

1 believe to be a Saturday.

2 STAFF DIRECTOR MOY: That's correct.

3 CHAIRPERSON BERRY: The 9th is Saturday.

4 COMMISSIONER REDENBAUGH: Right.

5 CHAIRPERSON BERRY: So, if we had it the 7th
6 and the 8th, some people could come on the 8th because
7 that's supposed to be a Commission meeting day, even if
8 they don't know whether they can come on the 7th yet.

9 COMMISSIONER HORNER: My guess is that I can.
10 I'm not sure.

11 VICE CHAIRPERSON REYNOSO: Where is it going
12 to be?

13 CHAIRPERSON BERRY: Here in Washington.

14 VICE CHAIRPERSON REYNOSO: Oh, okay.

15 CHAIRPERSON BERRY: The -- Commissioner Lee,
16 you're saying you can -- you could be here on the 8th
17 but not the 7th?

18 COMMISSIONER LEE: Yes.

19 CHAIRPERSON BERRY: What about other
20 Commissioners? Anybody can't be here the 7th or the
21 8th?

22 COMMISSIONER REDENBAUGH: I can be here.

23 CHAIRPERSON BERRY: How many people -- how
24 many people know they can be here on the 7th? We need
25 at least five to --

1 COMMISSIONER REDENBAUGH: I can be here on
2 the 7th.

3 CHAIRPERSON BERRY: Okay.

4 COMMISSIONER GEORGE: I can, Mary.

5 CHAIRPERSON BERRY: So, we can have at least
6 five to start. Okay. And Commissioner Horner may be
7 able to be here and knows she can be here on the 8th.

8 Okay. Well, why don't we then try to nail
9 down -- does this mean we can actually get it on this
10 day, the 7th? I mean does -- we can? Okay. So, why
11 don't we go to the 7th and the -- May 7th and 9th?

12 VICE CHAIRPERSON REYNOSO: 7th and -- 7th and
13 8th or 8th and 9th?

14 CHAIRPERSON BERRY: I'm sorry. 7th and 8th.

15 VICE CHAIRPERSON REYNOSO: Okay.

16 CHAIRPERSON BERRY: Okay. So, that's the ADA
17 change.

18 All right. Thank you, Russell, for raising
19 that.

20 COMMISSIONER REDENBAUGH: Yes. I have
21 another question about that for the Staff Director.

22 STAFF DIRECTOR MOY: Yes?

23 COMMISSIONER REDENBAUGH: I think it would be
24 more helpful for myself and probably other
25 Commissioners, too, if you -- if the Staff Director's

1 report and this ADA report contain more -- be more
2 forward-looking and contain more commitments rather
3 than a reporting of things that haven't happened.

4 CHAIRPERSON BERRY: You mean like include
5 when something is expected?

6 COMMISSIONER REDENBAUGH: Yes. There was a
7 lot of explanation about what hasn't -- isn't
8 happening.

9 CHAIRPERSON BERRY: What isn't happening.

10 COMMISSIONER REDENBAUGH: It would be good, I
11 think, to have that include what we expect.

12 CHAIRPERSON BERRY: Staff Director?

13 STAFF DIRECTOR MOY: Commissioner Redenbaugh,
14 that's because the report that you have covers a
15 certain period of time. I guess what I could do is if
16 I had questions, I could just include a sheet of paper
17 to all Commissioners in your mail-out, here are the
18 following questions, bring your calendars, we may have
19 dates to consider.

20 CHAIRPERSON BERRY: No, no, no, no, no. He's
21 asking whether in the Staff Director's report, where it
22 summarizes over a period of time what the offices have
23 done or not done, which is what we get all the time,
24 and that's the standard practice, --

25 STAFF DIRECTOR MOY: Right.

1 CHAIRPERSON BERRY: -- could we also have
2 included in there under each office things that are
3 projected to happen, like we'll be doing the ADA
4 hearing on X day or we expect to get the L.A. and --
5 what's the other one?

6 Good morning, Leon.

7 COMMISSIONER HIGGINBOTHAM: Good morning. I
8 was in a car headed for Philadelphia. The driver took
9 the wrong route. So, we just -- it's a long story, but
10 I'm on now, and I'll be on.

11 CHAIRPERSON BERRY: Okay. Thank you very
12 much.

13 We are discussing the Staff Director's
14 report.

15 COMMISSIONER GEORGE: Mary, can I also -- can
16 I take this opportunity to ask to get off the phone and
17 come over to the Commission? Can I do that without
18 disconnecting Leon and Russell?

19 CHAIRPERSON BERRY: I don't know. Yes, he
20 can.

21 COMMISSIONER GEORGE: Okay. So, if I --
22 should I just hang up the phone?

23 CHAIRPERSON BERRY: They're nodding their
24 heads.

25 COMMISSIONER GEORGE: Okay. Thank you. I'll

1 see you in a few minutes.

2 CHAIRPERSON BERRY: The -- but -- but did you
3 understand that point, what he's talking about?
4 Saying, you know, we expect to have the L.A. report to
5 the Commission by X time. We expect to have -- is that
6 what you mean, Russell, or what do you mean?

7 COMMISSIONER REDENBAUGH: Yes, yes, that's
8 exactly what I mean, more forward-looking than -- more
9 announcing what's going to happen than what isn't.

10 CHAIRPERSON BERRY: No. Just leave him off,
11 please. Thank you. Forward-looking. Okay.

12 STAFF DIRECTOR MOY: Thank you.

13 Reauthorization

14 CHAIRPERSON BERRY: Reauthorization. You --
15 the bill was passed. There are two points that we need
16 to discuss and maybe more, if anybody's got any they
17 want to discuss.

18 One is there was a proposal at the
19 reauthorization hearing from Congressman Scott. It was
20 a bi-partisan bill, Scott and Canady, Canady-Scott, and
21 the proposal was made that the Commission's
22 reauthorization be for 10 years, I think that's right
23 -- am I right? 10 years?

24 STAFF DIRECTOR MOY: To FY --

25 CHAIRPERSON BERRY: 2008 or something.

1 STAFF DIRECTOR MOY: -- 2008.

2 CHAIRPERSON BERRY: Which would be about 10
3 years, and that the Commissioners' terms, which are now
4 six years, remain at six years rather than being cut
5 back to four years.

6 Representative Canady agreed to discuss this
7 with Representative Scott and to come to some
8 resolution of that point, that they would discuss it,
9 before the full committee hearing, and Congressman
10 Scott then withdrew the amendment on the basis that the
11 two of them will get together and figure out what they
12 want to do about this, and, so, the query for
13 Commissioners is: do you have any interest in
14 proposing that the Commission's reauthorization be
15 extended and that the terms remain as they are as a
16 basis for their discussion that they're going to have
17 before the -- before the full committee or do you wish
18 to have any input in this matter at all? That's the
19 first question.

20 Yes, Vice Chair?

21 VICE CHAIRPERSON REYNOSO: Well, Madam Chair,
22 I -- I certainly would like to have some input.

23 CHAIRPERSON BERRY: Okay.

24 VICE CHAIRPERSON REYNOSO: You want it now?

25 CHAIRPERSON BERRY: Yes.

1 VICE CHAIRPERSON REYNOSO: Well, Madam Chair,
2 I've got to express to my fellow Commissioners my great
3 dismay at this reauthorization bill.

4 We have a -- a report, a short memo, from our
5 General Counsel which summarizes the suggestions as
6 following: overall, the proposed bill contains a
7 potpourri of provisions clearly designed to exert
8 heightened and unprecedented congressional control over
9 the program and operations of the Commission.

10 The General Counsel, of course, is being very
11 third partyish and -- and professional. I would
12 translate the term "congressional control" to political
13 control. I see this effort as a -- as an effort by
14 Congress to control this Commission, how it operates,
15 have the terms be concurrent with a political change-
16 over in -- in political leadership, and I view it as a
17 straight effort at politicizing this -- this
18 Commission.

19 I object to practically every single
20 suggestion involved in those changes, and I would
21 suggest that we have a serious discussion about the
22 possible effects on how this Commission operates if
23 this were to go through and see whether or not we have
24 a consensus as to what we ought to do about it.

25 CHAIRPERSON BERRY: Okay. How would you --

1 does anyone else have any comments before I ask the
2 Vice Chair how he wishes to proceed in this regard?

3 (No response)

4 CHAIRPERSON BERRY: Do you have some kind of
5 motion or you just want to have a discussion or what?

6 VICE CHAIRPERSON REYNOSO: Well, I -- I would
7 -- I would --

8 CHAIRPERSON BERRY: And also first, I would
9 ask, though, because I need -- are people interested in
10 the two questions that I posed about the term of the
11 reauthorization and the -- and the terms of the
12 Commissioners? Before we get into any other matters
13 that anybody wants to discuss.

14 VICE CHAIRPERSON REYNOSO: Well, I'm
15 certainly interested in the terms of the Commissioners.

16 CHAIRPERSON BERRY: What's going on? Oh,
17 okay. Yes, I understand. Yes.

18 Vice Chair?

19 VICE CHAIRPERSON REYNOSO: Yes. Well, of the
20 two matters that you mentioned, Madam Chair, I'm more
21 interested in discussing the -- maybe we can discuss
22 them both, but certainly reauthorization for a longer
23 term provides greater stability to the Commission.

24 But I'm particularly concerned about the
25 four-year terms suggested for the Staff Director and

1 for the Commissioners because it seems to me that's a
2 clear effort at politicizing this -- this Commission,
3 and I'd like to have a discussion on that.

4 If you'd like a motion on the table, I'd be
5 happy to make a motion that we oppose the suggested
6 change.

7 CHAIRPERSON BERRY: Okay. Go ahead. Make a
8 motion --

9 VICE CHAIRPERSON REYNOSO: I so move.

10 CHAIRPERSON BERRY: -- for purposes of
11 discussion.

12 Anybody want to second it for purposes of --

13 COMMISSIONER LEE: I second it.

14 CHAIRPERSON BERRY: -- discussion? Okay.

15 Discussion? Is there anyone who is opposed
16 to the idea of saying that it should remain at six
17 years for whatever reason or who wishes to discuss it
18 at all?

19 VICE CHAIRPERSON REYNOSO: Well, Madam Chair,
20 I -- I want to make clear that it's been my supposition
21 since this Commission was first formed in the '50s that
22 -- that there was an effort by Congress precisely to
23 not make the years of the term be one where it could --
24 where the Commission could -- could be changed that
25 quickly with any political leadership in Congress or --

1 or the White House, and the effort was made to have
2 this Commission be an independent one, and one of the
3 ways that -- that it was suggested it be done and
4 successfully is to make the term six-year terms, so
5 that there's that overlap with political change because
6 this Commission is not supposed to be responsive to --
7 to any immediate change in Congress or -- or the White
8 House.

9 It's supposed to be serving both of them but
10 be independent, and it seems to me that that's a good
11 aim, and that the six-year term goes a long ways to
12 assuring that. Obviously it doesn't assure it
13 completely, as we know, but I think it's a good step in
14 that direction.

15 To cut it to four years, I think, practically
16 assures the further politicizing of this Commission,
17 which I think would be a great disservice to the
18 country.

19 CHAIRPERSON BERRY: Commissioner Horner?

20 COMMISSIONER HORNER: There's always a
21 tension between -- in government, in any branch,
22 between reflectiveness of the sentiments of the
23 electorate and independents of the sentiment of the
24 electorate.

25 Six years strikes me as being a very long

1 term, and it is so long that it strikes me that it
2 could detach the Commission from the electorate's
3 outlook at a given time, and that a shorter term really
4 would adjust what I think of as an imbalance in that
5 respect. That's all I have to say about that.

6 CHAIRPERSON BERRY: Anyone else have any --
7 yes, Commissioner Anderson?

8 COMMISSIONER ANDERSON: I'd like to say,
9 first, that I think if we have votes, I would suggest
10 that we wait till Commissioner George is here, and we
11 make sure we have Commissioner Higginbotham on the
12 line. So, if we're going to vote, maybe we can defer
13 the votes to some time when we're all here later this
14 morning.

15 COMMISSIONER HIGGINBOTHAM: May I -- can you
16 hear me?

17 CHAIRPERSON BERRY: Yes, but Commissioner
18 Anderson is speaking. Can you hold one second, and
19 then I'll recognize you?

20 COMMISSIONER ANDERSON: I -- I was going to
21 say that there are days when I think the term of our
22 service ought to be more like one year than six years
23 or four years.

24 I -- I don't see it cutting in -- in the kind
25 of political way that the Vice Chair is saying. If

1 there is any temporary advantage, I think that's going
2 to work itself out. I don't feel terribly strongly one
3 way or the other, whether it's a four-year term or a
4 six-year term.

5 I do think it perhaps puts us in a -- kind of
6 a strange position of arguing for the length of our
7 terms, but I would be -- I'd be willing to settle for
8 four years, if that's what the Congress wants to do, If
9 they want to do six years. I'm not sure if we've got
10 negotiations going on between the Republicans on the
11 committee and the Democrats on the committee, it makes
12 a lot of sense for us to get in the middle of that on
13 this kind of an issue.

14 CHAIRPERSON BERRY: Judge Higginbotham, did
15 you want to say something? We're talking about the
16 terms.

17 COMMISSIONER HIGGINBOTHAM: You know what? I
18 am getting close to a hotel where I should have been a
19 long while ago, and I just want to say that I may be
20 off the phone for about 10 minutes, and I'd be pleased
21 to vote on anything 10 to 15 minutes from now, but if
22 we get tied up, the Vice Chair expressed my thoughts.

23 CHAIRPERSON BERRY: Okay. Well, we're --
24 we're waiting also for Commissioner George, who is
25 coming from one place to this place, before we vote on

1 anything. So, there will be time for you to get into
2 the hotel. Do we know where he's going?

3 COMMISSIONER HIGGINBOTHAM: Yes, it's the
4 Omni Hotel.

5 CHAIRPERSON BERRY: Okay. All right. So, if
6 we lose you, we will --

7 COMMISSIONER HIGGINBOTHAM: They know how to
8 reach me at the Omni Hotel.

9 CHAIRPERSON BERRY: Okay. And -- but we're
10 not going to vote until both you and Commissioner
11 George, who is on his way here from somewhere, --

12 COMMISSIONER HIGGINBOTHAM: Okay. All right.

13 CHAIRPERSON BERRY: -- get back and are in a
14 position, but we are having this discussion.

15 COMMISSIONER HIGGINBOTHAM: Okay. Well, I'll
16 call you back as soon as I get in.

17 CHAIRPERSON BERRY: Okay. Does anybody else
18 have any comments on the -- on the term issue at this
19 time? Otherwise, what we can do is go to the next
20 issue, and -- yes?

21 COMMISSIONER LEE: Madam Chair, I do. I
22 think the Commission has been viewed as an independent,
23 bi-partisan agency since its inception, and because of
24 that, I guess the public has valued the work of this
25 agency, whether it's a fact-finding mission or reports

1 that we've issued, and it's that independence that we
2 have that gives us the ability in the public eye, that
3 our opinions, our reports, our recommendations are not
4 based on political or other issues, and the fact that
5 the current proposal asking for four-year terms, I
6 agree with the Vice Chair. We're just politicizing the
7 Commission, thinking that we're serving at the pleasure
8 of whoever is so-called in charge politically.

9 Therefore, the work of this --

10 COMMISSIONER HIGGINBOTHAM: I'm going to sign
11 off. I'll be with you in about 15 minutes.

12 CHAIRPERSON BERRY: Okay. Yes, Commissioner
13 Lee?

14 COMMISSIONER LEE: That the role of the
15 Commission will be changing every time there's a
16 political change-over, and that message is important in
17 civil rights monitoring and that does a dis-service to
18 the public, and I strongly agree with the Vice Chair
19 that we should oppose the four-year proposal on that
20 basis, and I certainly hope that we can do that.

21 CHAIRPERSON BERRY: Commissioner Anderson?

22 COMMISSIONER ANDERSON: I'm trying to see how
23 this politicizes it. If the bill is enacted, then the
24 term of office affects no one currently on the
25 Commission. We have two Commissioners' terms expiring

1 this year, the end of this year.

2 So, they would be replaced by an appointment
3 for a four-year term, which puts it into the next
4 Administration for reappointment. Now how does that
5 change or politicize the appointment?

6 The four congressional appointments stay with
7 the political party that does the appointment whether
8 it's a four-year or six-year term, unless we're
9 assuming that the Executive Branch is going to change
10 parties, but again I don't understand how it
11 politicizes the appointment of the presidential
12 commissioners, presidentially-appointed commissioners.

13 CHAIRPERSON BERRY: I guess it depends on
14 timing and whether there are changes. The history of
15 the provision, the reason why it was made six years to
16 begin with, when there were six commissioners and they
17 were all appointed by the President, was the -- the
18 intent was to avoid having a change every time an
19 Administration changed. That was the original intent
20 way back, and the idea then was that the Commission is
21 not supposed to represent the views of the electorate
22 on any particular election.

23 The Commission is supposed to, much like the
24 checks and balances in our system, where the rights of
25 a minority are protected, whether or not the majority

1 wants them protected, this Commission was supposed to
2 as a body look out for the protection of rights,
3 whether or not the electorate wanted rights protected,
4 that this is not a question that is raised at each
5 election, and even if it is, that people's rights don't
6 depend on who gets elected.

7 I mean that was the theoretical concept, and
8 Dwight Eisenhower and Mr. Brownell, who was his
9 Attorney General, according to Arthur Fleming, God rest
10 his soul, were willing to live with that notion, and
11 the members of Congress who put the Commission in on a
12 bi-partisan basis were willing to live with that
13 notion, and that the effort is to avoid political
14 influence, which is the reason why in the history of
15 the Commission, whenever the White House or the
16 Congress tried to get the Commission not to release
17 reports or not to do certain things or to shape what
18 the Commission was going to say or to keep the
19 Commission from going some place or whatever the
20 Commission always -- people in both parties always said
21 no, we're not supposed to be -- we don't respond to
22 political whims of the moment, and, so, the idea
23 conceptually was that.

24 Now the technical aspect of this as to what
25 the change would mean and when the dates would shift

1 and all that, I haven't analyzed, and you may be
2 correct, but, conceptually, the idea of six years was
3 so that people wouldn't get into their minds that it
4 was somehow related to when the elections occurred, you
5 somehow were supposed to change the people or
6 something. That was the whole point.

7 Yes, Commissioner Horner?

8 COMMISSIONER HORNER: Sorry. The thought
9 just slipped my mind. If you could bear with me for a
10 moment.

11 (Pause)

12 COMMISSIONER HORNER: I'll come back to it.

13 CHAIRPERSON BERRY: Okay. Commissioner
14 Redenbaugh, I'll recognize you, and then Commissioner
15 Horner.

16 COMMISSIONER REDENBAUGH: I -- I hadn't
17 thought about this, but I -- first of all, it would be
18 hard to imagine there being more political and it --
19 I'm not sure it matters much, but I -- I -- I -- in the
20 -- in the tradition of the Commission, you know, where
21 -- where the Commission was to not -- not necessarily
22 not be responsive to the more typical nature of the
23 electorate -- why was the change made for congressional
24 appointees? It looks like that was --

25 CHAIRPERSON BERRY: What did you say? When

1 or why?

2 COMMISSIONER REDENBAUGH: Well, I started
3 with when. It looks like that really changed the
4 structure of the Commission.

5 CHAIRPERSON BERRY: Right. The Commission
6 has been a -- in my view, in many ways, an abomination,
7 and I mean that word, since the change that took place,
8 even though I was involved in it.

9 Arthur Fleming said at the time, and he
10 proved to be prescient, that those of us who were angry
11 because President Reagan fired some of the
12 commissioners because they didn't agree with his
13 political views, including me, and then in the civil
14 rights community, they insisted on a compromise of some
15 kind after we sued the President and won in federal
16 district court, that we would rue the day we did that
17 because it would destroy the Commission as an entity
18 that could behave without political considerations, and
19 Arthur said that in the fullness of time, we should
20 have just gone our way quietly and let people take it
21 over and do whatever they wanted to with it, which is
22 what they did anyway, and not get involved in changing
23 the structure because the day we did that meant that
24 eventually we would end up with a commission that
25 wouldn't be able to take any leadership role on any

1 public issue, and he proved to be quite correct, and
2 from -- from that point on, I listened to my elders,
3 and, so, it happened, Russell, because we sued the
4 President, and won.

5 There was a compromise, and in trying to get
6 the groups to agree, they did not want to have a
7 commission where the President appointed all the
8 appointees because he'd have fired a bunch of people,
9 and the congressional people worked out with them then
10 a compromise, a political compromise, in that the
11 Congress would make some of the appointments. The
12 Republicans in the House would make one, the Democrats
13 would make the other.

14 COMMISSIONER REDENBAUGH: Right.

15 CHAIRPERSON BERRY: The Republicans -- right.
16 The one we've got now. Each party gets one the House
17 and Senate, and the President gets four, and we went up
18 to eight instead of six, and that was all designed to
19 keep one side or the other from making all the
20 appointments, and it -- at first, it didn't work
21 because the Republicans got all the six, and those of
22 us who were here were two for a long time, and now
23 we're four-four, but it politicized the Commission at
24 that point, and the question --

25 COMMISSIONER REDENBAUGH: That's already been

1 done.

2 CHAIRPERSON BERRY: And the question is: can
3 we ever get back, or do we just keep giving way and
4 making it even more political? I guess that's really
5 the question, and --

6 COMMISSIONER REDENBAUGH: My own view is that
7 appointments by -- by the President looks like a
8 liberal political structure than the one we now have.

9 CHAIRPERSON BERRY: Oh, yes, especially with
10 advice and consent, though.

11 COMMISSIONER REDENBAUGH: Hm-hmm.

12 CHAIRPERSON BERRY: There's a more open
13 process. There's confirmation. Yes.

14 COMMISSIONER REDENBAUGH: If we want a -- if
15 we want to put forward a structure that's political,
16 that would be one that I think would -- would do that,
17 and given that we're going to be political, perhaps we
18 ought to be more responsive. This is too large an
19 issue to have -- to discuss here, I suppose, but thank
20 you for the history.

21 CHAIRPERSON BERRY: Okay. Yes, Commissioner
22 Horner?

23 COMMISSIONER HORNER: Yes. I want to defend
24 the notion that the Commission is and should be
25 responsive, somewhat responsive to the electorate;

1 otherwise, if we simply thought there was such a thing
2 as civil rights, which is fixed for all time, we would
3 have no commission at all. We'd have a group of
4 technical experts. They'd be civil servants, and
5 they'd have lifetime tenure in the absence of some
6 wrong-doing, and that's not what we have because
7 there's a recognition that rights expand and contract
8 over time through the judiciary, for instance, through
9 the legislature.

10 We change what we think of as a right, and
11 therefore we need to have people who are appointed as
12 we do by political figures to reflect somewhat the
13 electorate's broad notion of whether rights in a given
14 time are -- are appropriate in their degree of
15 expansiveness.

16 My sense is that four years, especially since
17 it would not overlap precisely with presidential
18 appointments, would afford that degree of
19 responsiveness without inappropriately compromising
20 sense of independent judgment.

21 CHAIRPERSON BERRY: I think -- I've forgotten
22 who was next. Go ahead, Vice Chair.

23 VICE CHAIRPERSON REYNOSO: Madam Chair, the -
24 - I -- I -- I've followed the U.S. Commission on Civil
25 Rights since it was established, and when it was first

1 established, I think it provided great moral leadership
2 for this country.

3 Sadly, in my view, since the legislative
4 changes were made, there has been an element of
5 partisanship where the Commission, I think, has been
6 incapable of providing that moral leadership, and, of
7 course, it's correct that there should be some change,
8 and there will be changes in terms of what are the
9 priorities for civil rights in this country, but I
10 think those are broader concepts.

11 Certainly I think that's what Congress and
12 President Eisenhower had in mind, not subject to change
13 every two years or every four years, and it seems to me
14 that we've gone one very important and tragic step in
15 the politicizing of this Commission, which continues to
16 this day.

17 Thus when I was appointed, knowing the
18 history of the Commission, I thought that maybe there
19 was an effort now to go back to the days when we were
20 not as politicized, but when I got to the Commission, I
21 saw that that was not true, and that we've continued in
22 a very politicized, highly-politicized fashion, which
23 has been, I think, a great dis-service to this country,
24 and the question before us now is whether we further
25 politicize it, and I would very much lament that if we

1 do anything in terms of our views as to how this
2 Commission should function.

3 It seems to me we should think through and
4 make recommendations to Congress about how to -- how to
5 less politicize this Commission because in my view, it
6 did great work while -- while it was not politicized in
7 the Eisenhower tradition, and when it became
8 politicized in the Reagan tradition, I think we sadly
9 have been -- not been able to do the sort of work that
10 certainly the initial concept of this Commission called
11 for.

12 So, I would hate to take one further step to
13 -- to make it even less effective.

14 CHAIRPERSON BERRY: I think that I'd make one
15 other point, and then I'll recognize you, Carl, that
16 the other analogy that was drawn in terms of six-year
17 terms was the analogy to the concept of why the Senate
18 is elected for six years, supposed to be the more
19 reflective body, according to the history of our
20 Constitution, as opposed to the House with its two
21 terms and being able to, without thinking about things
22 like appointments and politics and all that, deal with
23 these issues.

24 Commissioner Anderson?

25 COMMISSIONER ANDERSON: Thank you. I'll get

1 back to the -- my point earlier about the numbers. If
2 you look at presidential elections in 2000, 2004, 2008,
3 and you look at a four-year term for commissioners
4 beginning in '98, 2002, 2006, 2010, I don't see how --
5 I don't see the politicalization of those appointments
6 by -- if you have -- if you have a six-year term where
7 the two positions that are opened in '98, they would be
8 appointed in 2004 or reappointed.

9 So, you'd have a reappointment in either the
10 second term of a president or the new term of a
11 president. Somebody on the Hill must have run these
12 numbers. I'm looking at them for the first time today,
13 but I can't -- I can't see how a four-year term or a
14 six-year term, given the fact that they're breaking
15 basically in the center of presidential terms, is going
16 to politicize this Commission. So, I -- that's my
17 first observation.

18 My second observation is I am not sure that
19 we are going to get a de-politization of this
20 Commission through presidential appointments and Senate
21 confirmation if the Bill Lann Lee confirmation or the
22 Loni Guinear confirmation is any indication of whether
23 this is going to be a politicized appointment with a
24 Senate confirmation problem or not -- process or not.

25 Now I think I would also say that since it is

1 Ronald Reagan's birthday today, that somebody might
2 speak a word perhaps in his defense, and I think one of
3 the things --

4 VICE CHAIRPERSON REYNOSO: In civil rights
5 matters?

6 COMMISSIONER ANDERSON: Yes.

7 VICE CHAIRPERSON REYNOSO: Oh, okay.

8 COMMISSIONER ANDERSON: Yeah. And what I
9 want to say about it is this, --

10 CHAIRPERSON BERRY: Uh-oh. Boy, now we're in
11 for it. Go ahead.

12 COMMISSIONER ANDERSON: What I want to say
13 about it is this, that part of the reason why this
14 Commission has -- is no longer perceived by many as
15 offering a clear moral conscience or a clear moral
16 beacon is in part a result of the fact that the issues
17 that this Commission is dealing with oftentimes do not
18 lend themselves to a clear moral solution that everyone
19 can agree with as a moral solution.

20 By that I mean this, if you look at the
21 issues, for example, that the Commission dealt with in
22 the early 1960s, that is separate but equal education,
23 there were arguments for separate but equal education
24 in public schools, but they did not have a great moral
25 force to them.

1 I would say that the morality, say, of
2 affirmative action in employment or in higher
3 education, which this Commission has discussed, does
4 not lend itself to quite such a clear moral consensus
5 on the part of society.

6 Now, I think we have differing views of the
7 appropriate role of affirmative action or affirmative
8 action as a moral position, but I don't -- I don't
9 think that it is so clearly either side, so clearly can
10 claim the moral high ground on some of these issues.

11 Now we may be in for a several-hour debate on
12 that, if you like, but the fact of the matter is that
13 there is, I think, more complicated issues that this
14 Commission deals with, and we see some of those
15 complications, say, in Sonoma County, for example.

16 CHAIRPERSON BERRY: Yes?

17 VICE CHAIRPERSON REYNOSO: Well, maybe it's
18 true that we deal with more complicated issues. I
19 don't think so, but I think we need to be reminded, I
20 guess I've had an interest in these issues for a long
21 time, that many of the leaders in -- in favor of
22 segregation were ministers who argued that God ordained
23 it.

24 Now if that's not a moral basis for
25 segregation, I don't know what is. So, I think now we

1 just assume that there was not a strong moral basis for
2 Jim Crow, but much of the argument in those days was
3 absolutely based on morality, God ordained it, the
4 races to be separate. God said that was the right way
5 to do. That's the moral thing to do, and I think maybe
6 we are forgetting that.

7 CHAIRPERSON BERRY: Yes, there is that
8 opinion in Loving against Virginia in the lower court
9 decision, where the Virginia judge goes on and on about
10 how God ordained that birds and bees be separate, and
11 that people of different colors be separate, and he's
12 citing chapter and verse of some Bible I never heard
13 of.

14 VICE CHAIRPERSON REYNOSO: But that was the
15 basis for much of the political argument which was
16 morally based. So, you know, I just --

17 CHAIRPERSON BERRY: But I think with all due
18 respect, ladies and gentlemen, that we should probably
19 defer this discussion until George and Higginbotham
20 come back. I've decided that in terms of time, unless
21 you've got a problem with it, that we should probably
22 get some of these other less-controversial matters
23 done, and then come back to it when they are here, if
24 that's all right with you, and if -- maybe if we can
25 get something else done.

1 Perhaps -- because I think we'll probably
2 start losing people around 12:00, and I don't want to
3 lose them before we do it. We have two state advisory
4 committee reports, and we have the Management
5 Information System which Commissioner Redenbaugh and
6 the rest of us have been deeply interested in.

7 I think if there are no controversies --
8 we'll see. Can somebody move the approval of the state
9 advisory committee reports one-by-one or together or
10 what?

11 COMMISSIONER REDENBAUGH: Moved them
12 together.

13 CHAIRPERSON BERRY: All right. Can I get a
14 second?

15 VICE CHAIRPERSON REYNOSO: Second.

16 CHAIRPERSON BERRY: Any discussion of the
17 state advisory committee reports?

18 (No response)

19 CHAIRPERSON BERRY: I think one of them came
20 to us before and was sent back for more balance, came
21 back to us before. It had additional testimony
22 included in it. I think that's the case.

23 And, so, anybody have any comments on these
24 two reports or can we go ahead and have them?

25 (No response)

1 CHAIRPERSON BERRY: Okay. Are you ready for
2 the question? All in favor, indicate by saying aye.

3 (Chorus of ayes)

4 CHAIRPERSON BERRY: Opposed?

5 (No response)

6 CHAIRPERSON BERRY: So ordered.

7 Now, if we can go --

8 COMMISSIONER REDENBAUGH: Madam Chair?

9 CHAIRPERSON BERRY: Yes?

10 COMMISSIONER REDENBAUGH: I just wanted to
11 commend particularly the Eastern Region on the report.
12 I think it's an excellent example of -- it's an
13 excellent report and an excellent example of the
14 process working very well.

15 Commissioner George joins meeting.

16 CHAIRPERSON BERRY: Okay. Well, thank you.
17 Why don't we go to the Management Information System?
18 We're going back to a discussion of reauthorization,
19 Commissioner George, in a few minutes when Commissioner
20 Higginbotham is on again. He was on and off again, and
21 we were waiting for you and for him, but we're going to
22 go now to the Management Information System, which
23 Staff Director, I understand, George Harbison's going
24 to make this presentation, is that right?

25 STAFF DIRECTOR MOY: Yes, Madam Chair.

1 CHAIRPERSON BERRY: Okay. George, you want
2 to come forward and do whatever it is you're planning
3 to do on this subject?

4 STAFF DIRECTOR MOY: Pick up the microphone,
5 please.

6 CHAIRPERSON BERRY: You need a mike. So, you
7 can sit over there.

8 Commissioner Redenbaugh has discussed this
9 with the staff, is that right, Commissioner Redenbaugh?

10 COMMISSIONER REDENBAUGH: That is correct.

11 CHAIRPERSON BERRY: And the Staff Director.
12 So, I hope that they found his discussion helpful.
13 We'll find out, Russell.

14 COMMISSIONER REDENBAUGH: We will see.

15 CHAIRPERSON BERRY: Okay.

16 (Pause)

17 CHAIRPERSON BERRY: You ready, George?

18 MR. HARBISON: I'm ready.

19 Management Information System

20 MR. HARBISON: Can everybody hear me?

21 CHAIRPERSON BERRY: I can't, and I'm sitting
22 here.

23 MR. HARBISON: Cannot? Can everybody hear me
24 now?

25 CHAIRPERSON BERRY: Can you hear,

1 Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: Yes, I can.

3 CHAIRPERSON BERRY: Okay.

4 MR. HARBISON: I've provided a brief hand-
5 out. We're trying to do slides, but this is a brief
6 hand-out that essentially explains the system and where
7 we are and where we're going, what we're trying to do
8 with it. I apologize for those of you who are on the
9 phone that we could not get this to you.

10 The Commission on Civil Rights Project
11 Management System, briefly how we got into this, the
12 need to improve our management of projects was
13 initially or has been emphasized by both Commissioners
14 as well as GAO and others in terms of what we need to
15 do to make matters more efficient and effective.

16 We -- in order to do this, we -- it was
17 determined that we needed to have a system whereby we
18 could manage our projects. To that end, our vision
19 statement for the Commission on Civil Rights and our
20 Management Information System is that the system or the
21 objective was to provide a comprehensive method to
22 effectively and efficiently manage -- sorry -- plan,
23 manage and report on Commission projects, to provide
24 enhanced management visibility and long-term more
25 effective and efficient use of organizational

1 resources.

2 Now, the system as we have set it up is
3 designed to do just that, to manage Commission-approved
4 projects from beginning to completion, and include
5 follow-up activities when appropriate.

6 Because the Commission's appropriation is
7 primarily salary-driven, the system itself, it will be
8 greatly dependent upon the use of people resources.

9 The system as we envision it, as of October
10 1st, we had a system in place which was essentially the
11 -- the accounting system that was in place or used by
12 the National Finance Center that we used on a monthly
13 basis.

14 We found that that system -- it was great for
15 costing, but it did not provide scheduling and planning
16 information. So, we looked at off-the-shelf software,
17 PC software, and we ended up with Microsoft Project.
18 We have adapted that software and combined it with our
19 monthly data entry from the National Finance Center and
20 have come up with a working Management Information
21 System.

22 So, what we have is a combination of
23 Microsoft Project and the National Finance Center's
24 centralized accounting system.

25 Again, the system is going to be part time

1 and attendance-driven. It will also -- in terms of the
2 National Finance Center, it will include all
3 obligations that have been charged against an
4 individual project.

5 To get more into the heart of this in terms
6 of what the system does, we have what we call a model
7 system. Basically, the model -- the basic elements of
8 the project under the model would consist of the
9 project plan, project task, sequencing the task,
10 applying resources to the task, establishing a project
11 schedule, managing the critical path, communicating and
12 reporting the results of the project as -- as we manage
13 it.

14 Each one of these has -- has specific
15 definitions and utilizations, and I'll go through each
16 one of them very briefly. The project plan itself is
17 composed of tasks and time lines, and these tasks and
18 time lines are developed for individual projects, and
19 they indicate how the project is supposed to go. In
20 other words, it includes coordination with all the
21 appropriate stakeholders.

22 For example, coordination among office
23 directors for editorial review, legal sufficiency
24 review, travel, budget. These would be considered the
25 stakeholders in the Management Information System.

1 The project tasks are then further broken
2 down into discreet elements, which means that anything
3 that needs to be accomplished as part of that project
4 is identified. For example, if we had the task being
5 --

6 COMMISSIONER REDENBAUGH: George?

7 MR. HARBISON: Yes, sir?

8 COMMISSIONER REDENBAUGH: Do you want
9 questions at the end or as you go along?

10 MR. HARBISON: I think my preference, sir,
11 would be to hold questions till the end.

12 COMMISSIONER REDENBAUGH: Oh, okay. Thank
13 you.

14 MR. HARBISON: We're applying resources to
15 each one of the tasks. The resources consist of
16 people, time and materials. Again, as promised, the
17 majority of the resources are going to be in terms of
18 people, and I can't over-emphasize that enough. When
19 we're looking at projects in terms of do we want to
20 keep a project, do we not want to keep a project,
21 attention should be given to the fact that if we don't
22 want to keep a project, that doesn't mean that we're
23 going to eliminate -- that we're going to totally
24 eliminate the costs associated with that project
25 because in most instances, our people are going to

1 compose the majority of the resources on the project,
2 and unless we eliminate the people, we can't eliminate
3 the project.

4 Once a project task has been identified, and
5 we assign the resources to them, the next step is to
6 schedule each of the tasks in the project. Each
7 project will have a specific start date followed by a
8 schedule of each task listed under the project. All
9 tasks will have a duration or an estimated time to
10 complete, and these will be expressed in either hours,
11 days or weeks, but all -- all projects and tasks -- all
12 tasks will have an estimated duration.

13 What we end up with is basically three
14 elements: tasks, resources and schedules, which will
15 be and can be constantly adjusted to meet whatever
16 conditions are prevailing at the Commission at any
17 given point in time.

18 If we need to re-evaluate availability of
19 resources on any particular project, we can do that
20 within the system. It will allow that to happen.

21 The next area then is managing the critical
22 path, and by that, essentially what we're saying is
23 that we have -- we have placed the tasking into a
24 schedule that says these items will be done at this
25 point in time.

1 The next task obviously is to monitor how
2 we're progressing on individual tasks and analyzing
3 where we can, either increase the efficiency of that
4 schedule or identify areas where there is -- where
5 there is -- where there's anticipated to be variances,
6 and these are all going to show up in the types of
7 reports that the system is capable of generating.

8 Which brings us to communicating and
9 reporting on the progress of the various projects, and
10 I want to emphasize here that there are a number of
11 ways in which we can communicate progress on the
12 reports, but there are -- the system allows for
13 efficiency.

14 We have specified reports that can be readily
15 printed that will -- that managers can use to analyze
16 how they're doing on any given project or any
17 particular task at any given point in time in the
18 schedule duration for that task.

19 One thing that we want to do in terms of
20 reporting is to provide -- one of the objectives in
21 terms of reporting is to provide monthly status reports
22 to both managers as well as Commissioners on the status
23 of the projects as they exist at that point in time.

24 Some of the reports that we will be using --
25 and I've included an attachment to some of these

1 reports, which is only a sample and is not by any means
2 all inclusive. There are many other ways of depicting
3 the data and analyzing the data, and these give some
4 very simple reports that will give status on the
5 project at any given time.

6 Some of the reports would include an overview
7 of the project itself, what we anticipate doing, what
8 resources that you estimate you are going to use for
9 the project, who is assigned to it. Current activities
10 will show what is currently happening with the project.

11 Cost can be both forward-looking as well as
12 retro in that you have an estimate showing what you
13 anticipated as your budget. You also have actual
14 costs, and then there's the comparison of actual
15 against -- against your budget estimate, and it will
16 show the variances there.

17 Another report has -- will show for managers
18 who was assigned to any given project or task at any
19 given time -- point in time, and what that cost is,
20 what their scheduling difficulties may be, if in fact
21 they have any. It will show resource allocation,
22 resource over-allocation, resource under-allocation,
23 and, finally, it will show the workload per individual.

24 For example, if I have individuals assigned
25 to writing report, it will show that that resource is

1 in fact attached to that report, to that task for
2 whatever duration that individual is -- is in fact
3 attached to it.

4 Again, a lot of this is going to be based on
5 -- on the time and attendance system as well as
6 management's ability to -- to plan and utilize and
7 analyze the data that's provided in the system.

8 Some of the critical assumptions, and I call
9 them critical only because they're critical to me, but
10 some of the assumptions in this -- in the formulation
11 of the system were (1) that budget estimates had to be
12 prepared or must be prepared for each task that is to
13 be used in the project; all resources used on a
14 project, and this one is really critical, all resources
15 used on a project must be properly coded to the
16 accounting that is established for that project.
17 Otherwise we will get a distorted view of what
18 resources are in fact being used on any given project.

19 And a third one is that managers must have
20 training in one project management as well as the
21 Microsoft Project management software that we're
22 currently using to implement the Management Information
23 System.

24 Finally on that, like any other -- any other
25 data entry system, the information coming out is only

1 as good as the information going in. It must be kept
2 current and maintained at all times.

3 I would just go through one or two of the
4 reports very briefly in the rear. For those of you who
5 had these, we're talking about the sections following
6 the green -- the green tab sheets.

7 One is a report that's entitled "Who Does
8 What?", and basically what it does, it identifies what
9 individual is assigned to what task, when they started,
10 when they anticipate finishing or when they actually
11 finish that project, and this can be expanded to show
12 how much time they actually spent on the project.

13 For managers, what is more important here is
14 that when a full calendar of tasking is presented, it
15 shows where all of your resources are at a glance, so
16 that you will be able to determine whether or not you
17 have sufficient people resources to do X, Y and Z or
18 whether you're -- whether you don't have enough
19 resources to do the project.

20 One other report here is the budget report,
21 an example of a budget report, which essentially shows
22 total cost, baseline cost, the variance, actual cost
23 and the remaining balance.

24 What these are is it's a comparison of your
25 actual expenses against your baseline, and the baseline

1 is -- is the estimate that you establish when you
2 initially set up the project, your budget estimates.

3 In conclusion, I believe that the system as
4 we have it will provide or does provide the means to
5 more efficiently and effectively manage CCR projects.
6 It provides a means to report in a variety of formats
7 to all levels that have an interest in how we manage
8 projects, and when used appropriately will meet the
9 concerns of all interested officials for greater
10 project visibility.

11 That concludes my presentation. Are there
12 any questions anyone might have?

13 CHAIRPERSON BERRY: Vice Chair?

14 VICE CHAIRPERSON REYNOSO: In putting this
15 plan together, were you in consultation with the
16 different departments within the Commission to see if
17 this made sense to them?

18 MR. HARBISON: I was in touch primarily with
19 the Office of General Counsel and Civil Rights
20 Evaluation.

21 VICE CHAIRPERSON REYNOSO: Okay. I guess
22 those are the more -- the bigger ones. How -- how
23 about the regional offices?

24 MR. HARBISON: I do not envision the regional
25 offices as having this depth of -- of requirement for

1 that type of information.

2 We have a limited -- the regions at this
3 stage do not -- do not account for their projects using
4 standard project coding the way the others do.

5 VICE CHAIRPERSON REYNOSO: Okay. So, this is
6 mostly for the project -- this is mostly for Commission
7 projects?

8 MR. HARBISON: Yes.

9 VICE CHAIRPERSON REYNOSO: And will you need
10 then -- first, let me say that to me, it looks very
11 good, but it does mean, I assume, that you will have to
12 have different type of recordkeeping, for example, in
13 the New York budget report. You have report drafting.

14 To the extent that that's done by one
15 department or the other, the individuals working on it
16 will have to say on Project 1, you'll give a number
17 presumably to New York report, say it's 01, and on 01,
18 I worked six hours on it today, on 03, I worked two
19 hours on it, that sort of thing. So, you'll have to
20 have some -- some on-going recordkeeping.

21 MR. HARBISON: That's correct, and that's
22 currently being done.

23 VICE CHAIRPERSON REYNOSO: Okay.

24 MR. HARBISON: The project has an identifier,
25 so that when any individual is working on that project,

1 his time is reported under that project code.

2 VICE CHAIRPERSON REYNOSO: Okay.

3 CHAIRPERSON BERRY: Any other questions from
4 any Commissioner?

5 COMMISSIONER REDENBAUGH: Yeah. I have some.

6 CHAIRPERSON BERRY: Yes, Commissioner
7 Redenbaugh?

8 COMMISSIONER REDENBAUGH: George, the
9 question arises, it would be very -- it would be much
10 easier to answer what if questions.

11 MR. HARBISON: I agree.

12 COMMISSIONER REDENBAUGH: When the
13 Commissioners say, gee, we'd now like to do a project
14 on or an initiative on, we can just define that or that
15 gets defined, then the system would be for the Staff
16 Director to come back and say, well, you can do that,
17 Commissioners, and here's the impact it will have on
18 the committed projects.

19 MR. HARBISON: Yes, what the system will show
20 is the availability of resources at any point in time,
21 and to the extent that resources are not available,
22 whether or not we want to redirect resources -- the
23 system isn't going to say redirect.

24 What it will say is that you've only got X
25 number of --

1 COMMISSIONER REDENBAUGH: Exactly.

2 MR. HARBISON: -- resources available.

3 COMMISSIONER REDENBAUGH: Yeah.

4 MR. HARBISON: We analyze it at that point
5 and say okay, what can we do now?

6 COMMISSIONER REDENBAUGH: For example, an
7 action we took today, which was to move the ADA hearing
8 to May, then the system wouldn't let it -- if we -- we
9 would see what the consequences of that would be for
10 other projects?

11 MR. HARBISON: It would show -- it would show
12 that balanced against -- well, that's what it would
13 show, is the resources as scheduled through that point
14 in time.

15 COMMISSIONER REDENBAUGH: Hm-hmm.

16 MR. HARBISON: And then we would have to
17 measure it analytically to see what -- what the impact
18 would be, and I think we can also plug that information
19 in for a -- for an automated print-out of what that
20 would be.

21 COMMISSIONER REDENBAUGH: Yeah. Very good.
22 And then also, it would show the capacity for what I
23 call collision alerts. This would then let us know,
24 hey, wait a minute, that's not going to work because
25 there's only -- there's only one economist, and we need

1 three.

2 MR. HARBISON: That's correct.

3 COMMISSIONER REDENBAUGH: Okay. Is it your
4 -- well, who in the agency has the responsibility then
5 for the implementation and training and adoption of all
6 this? Because it's obviously much more than merely
7 installing software. It will involve a change in
8 practices and change in management practices. It's a
9 different way of working, not merely just a nice
10 software tool.

11 MR. HARBISON: Agreed. The -- the actual
12 utilization of the system itself is going to be done by
13 the -- the program directors or project directors who
14 will be reporting to the Staff Director, who in turn
15 will be reporting to the Commissioners.

16 In setting up the system, the training aspect
17 of it -- we've only -- we've -- we're -- we're looking
18 at the second half of the training now, which is that
19 -- that having to do with training managers in how to
20 plan and manage projects.

21 COMMISSIONER REDENBAUGH: Is that separate
22 from how to use this particular piece of software?

23 MR. HARBISON: Yes.

24 COMMISSIONER REDENBAUGH: Yeah.

25 MR. HARBISON: Yes.

1 COMMISSIONER REDENBAUGH: Okay.

2 MR. HARBISON: And -- but in terms of how to
3 use the software, we already have identified a source
4 that will train us to use the software.

5 COMMISSIONER REDENBAUGH: And tell me more
6 about the plan for then the management training.

7 MR. HARBISON: We are really just getting it.
8 I just got a notice this morning from the training
9 folks that they have identified a couple of -- of
10 training sources, but I have not fully investigated
11 that. Didn't have time to do anything with it this
12 morning.

13 COMMISSIONER REDENBAUGH: Okay. And you're
14 the first one responsible for install, implement,
15 change?

16 MR. HARBISON: I am the primary culprit.

17 COMMISSIONER REDENBAUGH: Okay. That's good
18 to know. As you've gone forward, anything that is --
19 any surprises in it, unexpected, that you view as
20 either good or bad, that you would -- that would be
21 worth sharing with us?

22 MR. HARBISON: I -- personally, I think the
23 system overhaul is -- is a very good -- I think it's a
24 very good product.

25 Again, it's -- it's incumbent upon us to make

1 sure that -- that we use the system. In other words,
2 it's not one of those things where you can install it
3 today, use it today, and not pick it up again for
4 another six weeks and still expect to be -- be current
5 on it or to get any real benefit from it. It has to be
6 used.

7 It's not quite as labor intensive as I had
8 initially -- and I think that's because we are -- we're
9 keying in data now on a summary format rather than
10 individually. So, we've managed to eliminate some of
11 that -- some of the labor intensity of it, but again
12 we're -- we're more concerned in terms, I think, of
13 scheduling and utilization of resources. So, I -- I
14 think it's a good system.

15 COMMISSIONER REDENBAUGH: Good. Thank you.
16 That's all I have, and thank you for your presentation
17 and for your -- your work on this project. It's
18 incredibly important for the going-forward work of the
19 Commission to have these kinds of tools and skills.

20 CHAIRPERSON BERRY: Thank you, Russell.
21 Vice Chair?

22 VICE CHAIRPERSON REYNOSO: Yeah. Madam
23 Chair, just as the system develops, then perhaps some
24 -- some formulas can be utilized to build into the
25 projects the time that Commissioners and their staffs

1 put into the projects, and from time to time, even the
2 regional offices, just to be more true to -- to really
3 representing what that project is.

4 For example, if we have hearings, it seems to
5 me that either the staff can have us code that time or
6 they can simply look at our time sheets and know that
7 we were holding hearings, we were on that project, and
8 -- and that time can be attributed to that project.

9 Just -- I think this has gone at least 90
10 percent, 95 percent of where we need to go, but to make
11 it more accurate as it develops, you can probably
12 experiment with how to make it more accurate because I
13 think it will be very helpful to have as accurate as
14 possible reporting of what the projects take in terms
15 of time and resources because that's a very important
16 part of what we do, which budgetarily in times past
17 appear to be a minimal part of what we're doing.

18 CHAIRPERSON BERRY: The -- you have, George,
19 I think one of these sheets that does have the
20 Commissioners' names. So, I would assume that whatever
21 work we did on the project would be allocated there.
22 Is that where that goes?

23 MR. HARBISON: That's what I was getting
24 ready to say.

25 CHAIRPERSON BERRY: And then anybody else who

1 does anything on it, there would be an allocation of
2 what they do, right?

3 MR. HARBISON: Yeah. These -- what you see
4 there are the planned -- these are the planned
5 resources you used against that project. So, we would
6 provide the -- the accounting for you, and you in turn
7 would use that accounting.

8 For example, if Code 48 is New York hearing,
9 whenever you worked on New York hearing, you would
10 enter Project Code 48, and we would automatically --
11 the system would automatically pick that up.

12 VICE CHAIRPERSON REYNOSO: Okay.

13 CHAIRPERSON BERRY: I have a question. I
14 have one concern about the project management. You say
15 managers must have training in. I'm trying to figure
16 out. Do you mean by that that office heads, like Fred
17 and Stephanie and so on, have to be trained in
18 operating this software and doing data inputs? Is that
19 the point you're making?

20 MR. HARBISON: They have to be trained in how
21 to use the software, yes.

22 COMMISSIONER GEORGE: Now that's what I call
23 non-discrimination.

24 CHAIRPERSON BERRY: Right. George, my
25 concern there is they have management information

1 systems like this or to do stuff like this in other
2 places. Lawyers have it. Law firms. But lawyers
3 don't do the inputs or do the data entries or learn how
4 to operate software.

5 It would be considered a waste of lawyers'
6 very expensive time to have them doing this sort of
7 work. In the university, they have systems that
8 generate all this kind of data, but professors don't
9 sit down and learn how to do inputs. Even the
10 department chair doesn't or the dean.

11 So, I'm trying to see whether we need -- is
12 it that we have a staff problem here in terms of having
13 someone trained in each office to actually do this or
14 are we saying we should take lawyers and civil rights
15 analysts at very high salary levels, and when we have
16 shortages, because we have a small agency, and have
17 them doing, you know, inputting and running software to
18 keep up, you know, the system?

19 I -- and in your case, you're on budget. You
20 have a lot of responsibilities, and you have, I think,
21 two people in your office, professionals, if I'm not
22 mistaken. So, how are you going to add on these?

23 I'm just trying to figure out when we say
24 blithely that we're going to do all these things, how
25 we end up managing it and promising what we deliver and

1 not end up utilizing resources that should be devoted
2 to something else and getting caught short on something
3 else.

4 MR. HARBISON: My response to that is that
5 irrespective of how we -- how we implement the system,
6 the project directors must know how to utilize the data
7 that's being provided to them, even if I provided it
8 myself.

9 Say my staff decided they were going to do
10 all of it -- all of the -- the data entry and maintain
11 the system.

12 CHAIRPERSON BERRY: What is that noise?

13 MR. HARBISON: The program offices would
14 still be responsible for being able to understand and
15 analyze what this data is saying to them.

16 CHAIRPERSON BERRY: Oh, I understand that. I
17 mean it's when they give you a print-out showing how
18 many hours, billable hours you did in the law firm, how
19 much money you're generating, you have to understand
20 what you're doing.

21 But in terms of inputting and keeping track
22 of such stuff. So, I'm just asking isn't there a
23 requirement for more staff resources and some kind of
24 levels involving data management or project management
25 rather than having -- saying that, you know, the

1 lawyers and the analysts ought to be doing this?

2 MR. HARBISON: There will be a requirement
3 for -- for human resources. I -- I can't put a value
4 on it in terms of how many --

5 CHAIRPERSON BERRY: Okay.

6 COMMISSIONER REDENBAUGH: Madam Chair?

7 CHAIRPERSON BERRY: Yes? Commissioner
8 Redenbaugh?

9 COMMISSIONER REDENBAUGH: George and I had
10 this discussion last week, and I think, George, you may
11 have misspoken yourself in what you said a moment ago.

12 I think what George meant to say is two
13 things, that the managers ought to know how this
14 particular software works, not that they need to be
15 doing data entry.

16 CHAIRPERSON BERRY: Hm-hmm.

17 COMMISSIONER REDENBAUGH: You know, but
18 separately and a larger issue, the managers will --
19 will need to know, if they don't already, and perhaps
20 they do, to increase their skill in managing projects.

21 CHAIRPERSON BERRY: Okay. But not managing
22 this system? That's not what we're talking about?

23 COMMISSIONER REDENBAUGH: That's correct.
24 Not the data input and that aspect of it.

25 CHAIRPERSON BERRY: Right. Okay. Well,

1 that's clearer, and the other thing I wanted to ask is
2 how do we avoid, George, in terms of your overall
3 responsibilities concerning budget and information
4 systems, how do we avoid conveying a picture of the
5 Commission that will make it appear that all we do is
6 projects?

7 Hello, Judge Higginbotham. How you doing?

8 COMMISSIONER HIGGINBOTHAM: Fine. My
9 apologies for the delay.

10 CHAIRPERSON BERRY: We're talking about the
11 Management Information System, which George has just
12 presented to us.

13 How do -- how do we, George, since we don't
14 have a system like this to show what people are doing
15 on complaints or what they're doing on regional office
16 projects and SAC reports or whatever, which make a big
17 chunk of -- you know, take up a big chunk of the work
18 of the agency and the people who run the administrative
19 and management areas.

20 How do we keep from having it appear, once
21 the system is in place, have somebody report that, you
22 know, the Commission only -- all it does is projects
23 and here are the numbers on those, and, boy, that's not
24 very much in terms of the hours put or the time. What
25 are these people doing with the rest of their time?

1 How do we keep that from happening?

2 MR. HARBISON: I think the best way to do
3 this is to follow the -- the guidelines from GPRA, and
4 that is --

5 CHAIRPERSON BERRY: From what?

6 MR. HARBISON: From -- from GPRA, the
7 submission from GPRA, where we define each of those
8 areas, and we say this is -- this is where we
9 anticipate our resources are going to be, and it's --
10 it's very easy for us to track those resources in terms
11 of -- of cost, so that we can put out a report that
12 says we've spent X number of dollars on PSAs. We spent
13 X number of dollars on regional operations. We spent X
14 number of dollars on Commissioners. We spent X number
15 of dollars in civil rights evaluation on General
16 Counsel investigations. We can do that.

17 CHAIRPERSON BERRY: But for these, we will
18 have hours spent --

19 MR. HARBISON: Yes.

20 CHAIRPERSON BERRY: -- and detailed
21 information. For the other things, we won't. All
22 we'll have is we spent this many dollars on --

23 MR. HARBISON: We -- we have that
24 information. It's just that it would be more time-
25 consuming to format it in that -- that way.

1 CHAIRPERSON BERRY: Is it possible at some
2 point -- not now, because all you've been asked to do
3 is this, and we have to get this up and running. Is it
4 possible at some point to do a management information
5 system that will show all those other things when we
6 have staff to do it in the same way? I mean display
7 hours and so on.

8 MR. HARBISON: I think it's worth
9 consideration. I mean I don't -- I -- I'm sure we
10 could come up with a system that would do something.

11 CHAIRPERSON BERRY: Okay. All right. Thank
12 you.

13 If no one has any other questions for George,
14 we'll just thank him for his presentation.

15 When will this be up and running? Give us a
16 forward-looking date here.

17 MR. HARBISON: You would.

18 CHAIRPERSON BERRY: About when we can expect
19 to say that this is in fact up and running again. I
20 know it was done up once, and now it had to be revised,
21 and now it's done up.

22 When do we think we can say that this will
23 probably be, you know, up and running and ready to
24 generate information to people?

25 MR. HARBISON: Well, we -- the -- my

1 objective here is to try and get reports to
2 Commissioners with the March submission.

3 CHAIRPERSON BERRY: Okay. All right. Thank
4 you very much.

5 COMMISSIONER REDENBAUGH: Thank you, George.

6 COMMISSIONER HORNER: Thank you.

7 CHAIRPERSON BERRY: I want to do two other
8 things. There's two more things to do. One is to go
9 back to the Reauthorization discussion, and the other
10 one is to consider Item Number 7.

11 We said we'd go back to the Reauthorization
12 discussion when Commissioners Higginbotham and George
13 were on the phone. I wanted to ask Kim Cunningham,
14 because if it's all right with the Commissioners and
15 the Staff Director, if we could get him to explain to
16 us the calculations he did on the appointments and when
17 they would be up under the six-person/four-person
18 iteration. Just explain that, because I don't
19 understand what the note says. It's a bunch of
20 numbers. Just factually, Kim. We'll not ask you to
21 take a position. We're asking you to explain the
22 calculations. Just the facts here. Right. The whole
23 truth and nothing but it now.

24 MR. CUNNINGHAM: Well, we looked at the dates
25 for the expiration of the current Commissioners' terms

1 and extended those out four years and then on, and the
2 way it turns out is roughly four Commissioners have
3 terms expiring at the end of '98 or early '99. Those
4 terms then for new Commissioners or -- or
5 reappointments would expire in the year 2002 or early
6 2003 and on to 2006, 2007, early 2007.

7 The other half of the Commissioners' terms
8 expire at the end of 2001, early 2002. There's one in
9 2002. So, those would rotate in 5 and 6 and 9 and 10,
10 2010.

11 What is interesting here is that on average,
12 the Commission will turn over -- half the Commission
13 will turn over every two years. However, the way the
14 terms are staggered now, you'll have half turning over
15 after a three-year period, and then another half
16 turning over after a one-year period, and what that
17 means is that between year 2001, early 2002, and 2002;
18 you'll have a complete turn-over of all eight
19 Commissioners. So, you'll have a substantial change-
20 over in the Commission in roughly a one-year period.

21 It is true that these overlap presidential
22 elections. It will also be true that all four of the
23 presidential appointees will be appointed by a sitting
24 President. So, they will turn over every term.

25 CHAIRPERSON BERRY: So, every presidential

1 term, the four presidential --

2 MR. CUNNINGHAM: Four presidential terms,
3 and, of course, Congress turns over every two years.

4 CHAIRPERSON BERRY: But the four presidential
5 ones would turn over every presidential term?

6 MR. CUNNINGHAM: Every President. Each
7 President will have an opportunity to appoint all four
8 of the presidential appointees.

9 CHAIRPERSON BERRY: Hmm. Which is -- that
10 means that it would be politicized like you said
11 because --

12 VICE CHAIRPERSON REYNOSO: Well, it's just
13 one more step. As we've discussed, there's a certain
14 politicization in -- even under the original concept
15 with the President appointing and the Senate confirming
16 because that's -- that's a political process, also, but
17 then it became more political when the President could
18 appoint without Senate confirmation and Congress
19 appointed, and I think this -- the suggested step now
20 makes it even more political. That's all.

21 CHAIRPERSON BERRY: Yes, Commissioner Horner?

22 COMMISSIONER HORNER: Why is it more
23 political to have appointees appointed by a President
24 who's been elected within a year or two than to retain
25 appointees of a President who's been defeated?

1 CHAIRPERSON BERRY: Because the people who
2 are retained are retained despite the fact that the
3 President has been defeated, because his defeat has
4 nothing to do ostensibly with their ability and under-
5 standing and willingness to promote the cause of civil
6 rights and to serve, and it is to make precisely the
7 point that they are not related in any way, although
8 they were appointed by him, so far they've all been
9 him, that in fact their service and tenure is not
10 supposed to be thought of conceptually in terms of his
11 fate.

12 COMMISSIONER HORNER: It may not be supposed
13 to be thought of that way by someone's concept, but the
14 reality is that if President Carter's appointee serves
15 two years into President Reagan's term, that is as much
16 a political fact as President Reagan's appointee would
17 be serving into -- President Reagan's appointee would
18 be serving side-by-side with President Carter's
19 appointee.

20 What I'm trying to say is so long as we have
21 the work of the Commission being done at some level not
22 by civil servants who are supposed to be less
23 reflective of the political milieu, we are going to
24 have a political environment, and it seems to me that
25 one of the problems the Commission confronts is that

1 long after the country has changed its perception and
2 reflected that change in elections, the Commission
3 continues to reflect a previous political outlook.

4 So, I don't think we can say we're not being
5 political. I think we can only say we're retaining
6 older politics in the face of the country moving to a
7 different politics.

8 CHAIRPERSON BERRY: Well, actually what we're
9 saying -- and I can see now that we're never going to
10 agree about this because actually what we're saying is
11 that it is entirely apolitical to be unconcerned about
12 the fact that a particular President puts somebody on.

13 In the old days, the people served on this
14 Commission until they got tired. It didn't matter who
15 put them on, the idea was that they were devoted to the
16 cause of civil rights; that is, the laws that had been
17 passed by the Congress to make sure they got enforced
18 and signed by some President, so long as they were
19 laws, unless somebody repealed them or did something in
20 the political process. But they were committed to
21 their enforcement and committed to working on making
22 sure that they got enforced, okay, or if they thought
23 they should be repealed, they would recommend that they
24 should be, but otherwise they were committed to civil
25 rights, and it didn't matter, and that the longer they

1 stayed and enlarged their vision, much as Supreme Court
2 Justices are supposed to do, serving for life, that
3 they would be devoted to the cause, and Presidents may
4 come and go, but the Commission adheres to certain
5 verities.

6 I mean if -- if one worried about Presidents,
7 I would not be proud of the fact that when Jimmy Carter
8 appointed me, the first thing I did on the Commission
9 was to criticize his policies concerning Haitian
10 refugees. That was my first act.

11 President Clinton appointed me to this
12 Commission, and I criticized him publicly and made
13 statements about him that he didn't like because I
14 don't see the fact that he appointed me or anybody
15 appointed me to have anything to do with my devotion to
16 the cause of civil rights and dealing with these
17 issues.

18 I don't care who appointed me. Commissioners
19 aren't supposed to care.

20 COMMISSIONER HORNER: In which case, if -- if
21 Commissioners are appointed every four years or six
22 years, it's irrelevant if Commissioners abide by the
23 ethic of not caring and simply exercise their judgment.

24 CHAIRPERSON BERRY: But if you have four who
25 are appointed by the same President, and they do not

1 share my view, and they don't have to, and they feel
2 because somebody appointed them they're reflecting the
3 politics of that four years and not some, you know,
4 kind of larger vision, it would probably lead to or may
5 more probably lead to a situation where you have people
6 thinking in terms of the politics of what's going on.

7 I mean it's -- we really are emphatically not
8 supposed to care about majoritarian politics, except to
9 try to influence it to be in favor of civil rights.

10 COMMISSIONER HORNER: But there's a huge
11 difference in my mind between what you're referring to
12 as politics, meaning partisan advantage or
13 disadvantage, --

14 CHAIRPERSON BERRY: Right.

15 COMMISSIONER HORNER: -- which -- in which I
16 have very little interest and none with respect to this
17 Commission. That's one issue.

18 Then there's politics in its more positive
19 meaning, which is that circumstances of our lives
20 together in equality change, and you want people who
21 will not be rigidly committed to their perhaps now
22 outdated sense of the -- of the state of the -- of the
23 nation. So, you want people who will be really attuned
24 to the state of the nation and -- and bring a vision to
25 bear which reflects recent thinking.

1 COMMISSIONER HIGGINBOTHAM: Madam Chair?

2 CHAIRPERSON BERRY: What you want them to do
3 is to bring -- I agree with that. You want them to
4 bring recent thinking to bear so that you're going to
5 -- it's like not having to amend the Constitution every
6 week or every year.

7 You want them to bring new thinking to bear,
8 to interpret the laws in terms of the conditions that
9 exist now, to try to come up with ideas that will help
10 the nation achieve a vision of equality, of opportunity
11 for everybody in the society, and you want them to do
12 that, but the sort of milestone is you're supposed to
13 be committed to equal opportunity for everybody in the
14 society in whatever way, and laws that are on the books
15 being enforced, nobody who appointed you.

16 So, I -- that version of politics, I agree
17 with.

18 Commissioner Higginbotham?

19 COMMISSIONER HIGGINBOTHAM: I'm wondering if
20 someone on the staff could do a chart for us, because I
21 don't have it clearly in mind, what would have been the
22 consequence if the President, which is being proposed,
23 had been in effect -- I would be curious in knowing how
24 many people who have been appointed by -- and their
25 names by a specific President continued and were re-

1 appointed by another President, and hopefully the
2 President is of a different political party.

3 But if we could just get the record clear as
4 to what's been the history of the Commission, I think
5 that would be helpful for discussion. Otherwise, I
6 think you get caught in a very theoretical framework
7 which -- it becomes difficult to decide what's the
8 better judgment, at least for me it is.

9 CHAIRPERSON BERRY: Okay. Jim, that's all we
10 need from you. We don't want you to sit there. I
11 think we'll recognize Commissioner George, and then you
12 can --

13 COMMISSIONER GEORGE: I would be pleased to
14 defer to the Vice Chairman. I -- I was only going to
15 suggest some language for the minutes, which is that a
16 seminar in political philosophy then ensued during
17 which Mr. George sat silent.

18 CHAIRPERSON BERRY: That is interesting.
19 That is.

20 VICE CHAIRPERSON REYNOSO: Madam -- Madam
21 Chair, I raised the issue because I -- I had thought,
22 though I confess I was doubtful, that we might be able
23 to provide some guidance to the committee in terms of
24 the thinking of this Commission, but it's clear to me
25 that that guidance cannot be provided, just as we have

1 not provided leadership to this country.

2 So, I forget who -- who seconded my motion,
3 but I'd like to withdraw my motion.

4 CHAIRPERSON BERRY: Commissioner Lee, --

5 VICE CHAIRPERSON REYNOSO: I don't think --

6 CHAIRPERSON BERRY: -- do you permit the Vice
7 Chair to -- you agree?

8 COMMISSIONER LEE: Yes.

9 CHAIRPERSON BERRY: Okay. The only other
10 issue on reauthorization -- I asked you about the --
11 the duration of the -- the reauthorization, whether you
12 wanted it long or short, but if that's going to take
13 the same kind of debate, I guess we can -- we can
14 forget about that one, too.

15 The other thing that the Staff Director had
16 sent to the committee in her letter that she sent up
17 was to point out that the times that were given, the
18 deadlines, for the various reports were too short,
19 given -- and I think it's pointed out in the General
20 Counsel's memo, given the requirements of the
21 regulations and our processes for how long it takes to
22 do each step, that if you assume that you had the
23 hearing on Schools and Religion, say, in June or July,
24 that if you just counted from there going forward, it
25 was obvious you were not going to get a report by

1 September, and that it would be foolhardy at best for
2 anyone to think that there was going to be a report,
3 and that they might want to change some of the
4 deadlines to more accurately reflect, even if they
5 think the Commission staff ought to work harder, but
6 even if you just counted the days that it takes for
7 each thing to happen, it was obvious it wasn't going to
8 happen by September, and I think the Commission had
9 already agreed that if Commissioner George or Horner or
10 whomever is going off wanted to weigh in and say
11 something about these matters before they left, they
12 could anyway. I mean I think we had that discussion.

13 COMMISSIONER HORNER: Madam Chair, just for
14 the record, --

15 CHAIRPERSON BERRY: Yes?

16 COMMISSIONER HORNER: -- Commissioner George,
17 not Commissioner Horner.

18 CHAIRPERSON BERRY: Commissioner George, yes.
19 I think we had that discussion. So, I don't know. The
20 question is do we want to say anything about these
21 deadlines or do we want to simply leave -- the Staff
22 Director as having -- on behalf of the staff pointed
23 this out as the only response in terms of that -- yes,
24 Commissioner George?

25 COMMISSIONER GEORGE: This strikes me as a

1 technical rather than a philosophical problem. It's
2 been dealt with in the Staff Director's memo to
3 Congressman Canady. I don't think there's anything
4 really to add.

5 CHAIRPERSON BERRY: Okay.

6 VICE CHAIRPERSON REYNOSO: Madam Chair, I
7 agree with that, not because it's not a philosophical
8 argument. I object vigorously to this micro-management
9 effort by this subcommittee with obviously a lot of
10 information from somebody in this Commission. I think
11 it's a terrible way to do things, but I think we would
12 get into the same philosophical discussion.

13 So, I don't -- don't care to proceed. So, I
14 -- I agree with -- with my fellow Commissioner that we
15 just as soon say nothing.

16 CHAIRPERSON BERRY: The --

17 COMMISSIONER HIGGINBOTHAM: Madam Chair?

18 CHAIRPERSON BERRY: Yes, Commissioner
19 Higginbotham?

20 COMMISSIONER HIGGINBOTHAM: This is on the
21 preceding point. I just hope that someone will
22 authorize a study on the Commission staff to do the
23 study about which I was speaking. These things come up
24 suddenly. People have the necessary data.

25 CHAIRPERSON BERRY: So, we have a listing of

1 the -- the members and when they were appointed, sort
2 of a historical thing, to bring it up to date.

3 COMMISSIONER HIGGINBOTHAM: Political
4 significance.

5 CHAIRPERSON BERRY: Yes?

6 COMMISSIONER HORNER: And, Madam Chair, one
7 thing we may be overlooking is that because of the need
8 to maintain a partisan balance on the Commission, a
9 Democratic President may have to appoint a Republican
10 and vice versa.

11 CHAIRPERSON BERRY: So, we'll keep that in
12 mind.

13 COMMISSIONER HORNER: That should be noted.

14 VICE CHAIRPERSON REYNOSO: Or an independent.

15 CHAIRPERSON BERRY: Or --

16 COMMISSIONER HORNER: Or an independent.

17 CHAIRPERSON BERRY: -- an independent, who
18 then gets not to go to Commission hearings, right?
19 Remember that, Robert.

20 COMMISSIONER HORNER: You don't have to --
21 ever have to appoint an independent. You may.

22 COMMISSIONER GEORGE: You may. You may
23 appoint an independent. Of course, I -- I -- it would
24 be interesting to follow up with Commissioner
25 Higginbotham's suggestion and see how often Republicans

1 appoint Democrats or the Democrats appoint Republicans
2 as opposed to a Democrat or Republican appointing an
3 independent, but I mean everybody knows it's easy
4 enough to find a Republican that thinks like a Democrat
5 or an independent that thinks like a Republican and so
6 forth.

7 CHAIRPERSON BERRY: Yeah. Should we sue to
8 the far right those independents? What do you think?

9 COMMISSIONER HORNER: Well, you know, I -- I
10 find it hard to resist an opportunity to sue.

11 CHAIRPERSON BERRY: I know that. Let's talk
12 about that. Let's talk about it at some point.

13 The other point was in the statute of the
14 proposed legislation, there is a provision that our
15 statutory report or our enforcement report, rather, for
16 1999, I think, Fair Employment Practices or something
17 like that, and the staff pointed out to us that the
18 Commissioners had agreed that we would do Minorities
19 and Health Care for our statutory report for that year,
20 and the Staff Director has pointed this out to the
21 committee in her letter that she sent up.

22 Do we want to do anything further on that or
23 simply leave the -- and you have an explanation in the
24 memo from the General Counsel about how we had burdened
25 the EEOC several times this year with data requests for

1 various reports, some of which we approved and others
2 we didn't, even after we got all the data from them,
3 and with the large workload that they have and backlog
4 in the EEOC, which is known to everyone who has any
5 knowledge of the matter, that it doesn't make sense to
6 change the report and further burden them by making yet
7 another data request that we expect them to meet, and
8 that we should abide by our decision, since the
9 legislation hasn't been passed anyway, to stay with the
10 report that we had -- that we had chosen for that.

11 Does anyone want to do anything further than
12 have the Staff Director's letter on the record
13 concerning that? Any interest in doing anything?

14 (No response)

15 CHAIRPERSON BERRY: Okay. Hearing none, I
16 think I covered all the issues that -- yes, Staff
17 Director?

18 STAFF DIRECTOR MOY: Madam Chair, may I point
19 out that we still have not gotten the specific dates
20 for the Schools and Religion?

21 CHAIRPERSON BERRY: We don't have dates for
22 the Schools and Religion hearing, and, so, I guess we
23 need to -- we said we would pick dates.

24 General Counsel, have you got any ideas about
25 when we should have the Schools and Religion or in

1 terms of your calendar?

2 Before, we talked about having it some time
3 in June or after June or something. I mean that's the
4 last discussion we had as Commissioners.

5 Now if we're going to have a hearing in May,
6 ADA is in May, or should we -- since some people don't
7 have their calendars, Commissioner Horner doesn't have
8 hers, I know, should we just say that we'll poll the
9 Commissioners this week? Would that be better?

10 COMMISSIONER GEORGE: Can we do it as soon as
11 possible, just to get this tied down?

12 CHAIRPERSON BERRY: How about this week? Did
13 you want to say something, General Counsel, or should
14 we poll the Commissioners or what? What's the point?

15 VICE CHAIRPERSON REYNOSO: Madam Chair, I was
16 just chatting with General Counsel that some of the
17 provisions of the statute make absolutely no sense and
18 wondered whether I wanted her to comment, and I said
19 no, you know. Afterwards, when we can't do it, we'll
20 explain to Congress why it was impossible to do it that
21 way. But they make absolutely no sense. This is the
22 sin of micro-management, but I don't care to say
23 anything further. Maybe the General Counsel does.

24 COMMISSIONER GEORGE: Well, if any of that
25 pertains to the dates, I wish you would say. Does it

1 pertain to the dates?

2 MS. MOORE: Well, it -- it -- it pertains to
3 what our -- I mean the statute hasn't passed yet, that
4 is clear, but what is -- what is unclear to me and to
5 our office is whether the proposed Religious Freedoms
6 Project is indeed a substitution for what we currently
7 have been working on or is it a project in addition to
8 the one that we've been working on, and if that is the
9 case, -- if -- if the latter is the case, that is, that
10 it is an addition, then conducting -- well, I guess we
11 would move forward to conduct hearings and schedule
12 them, but there is -- there is a major concern with the
13 way that the legislation is drafted on the Schools and
14 Religion Project.

15 COMMISSIONER GEORGE: I suppose, yeah. I
16 mean if -- if that's a question, we should probably get
17 an answer from the committee about whether they mean
18 the same project or a different -- there would be a
19 tremendous amount of overlap if they were --

20 MS. MOORE: Right.

21 COMMISSIONER GEORGE: -- separate projects,
22 but I think what we should do right away, just so that
23 we don't delay it any further, is to identify the dates
24 when we're available.

25 CHAIRPERSON BERRY: Okay. So, we can do that

1 this week. We'll do a poll, ask the Staff Director to
2 poll the Commissioners and try to come up with a grid
3 and do dates. But we do need to clarify this because
4 we may need, if they pass the statute, to substitute
5 what they're proposing for what we're proposing or
6 something, because it doesn't make sense to have two
7 hearings.

8 COMMISSIONER GEORGE: Certainly not.

9 CHAIRPERSON BERRY: Okay. So, we'll have to
10 get some clarification, but we'll try to get these
11 dates, poll some dates this week, this week.

12 COMMISSIONER HIGGINBOTHAM: Madam Chair?

13 CHAIRPERSON BERRY: I mean by next week,
14 starting --

15 COMMISSIONER GEORGE: Sure.

16 CHAIRPERSON BERRY: -- the week Monday. Yes,
17 Commissioner Higginbotham?

18 COMMISSIONER HIGGINBOTHAM: I don't mean to
19 be difficult. Have we covered all of the substantive
20 matters we had on the agenda?

21 CHAIRPERSON BERRY: Yeah. The only other
22 thing we have left is the Executive Session to discuss
23 a personnel matter.

24 COMMISSIONER HIGGINBOTHAM: Okay. If I'm not
25 here, you have my proxy.

1 CHAIRPERSON BERRY: We're about -- we're
2 about to do it now.

3 COMMISSIONER HIGGINBOTHAM: Okay.

4 CHAIRPERSON BERRY: Right at this moment. If
5 no one has anything else, we're going to have the
6 Executive Session. So, --

7 MS. MOORE: You have to state --

8 CHAIRPERSON BERRY: What do I have to state?

9 MS. MOORE: -- the nature of the --

10 CHAIRPERSON BERRY: The Executive Session is
11 -- is -- is to discuss a personnel matter involving a
12 member of the Commission staff. Is that sufficient?
13 Yes? Parliamentarian has to say something.

14 MR. SAPP: It is the opinion of the -- it is
15 -- it is my opinion pursuant to Exemption Number 2 of
16 the Government in the Sunshine Act, 5 United States
17 Code 552(b)(c)(2), the Commission meeting of 6 February
18 1998 to review and make determinations regarding issues
19 relating to internal personnel rules and practices of
20 the agency may be closed to the public.

21 CHAIRPERSON BERRY: Thank you,
22 Parliamentarian.

23 So, as soon as everybody leaves, we'll
24 discuss it. Shouldn't take too long.

25 (Pause)

1 CHAIRPERSON BERRY: Why don't we -- we'll go
2 back on the record, and does anyone have any future
3 agenda items? Anything else you wish to discuss?

4 (No response)

5 CHAIRPERSON BERRY: If not, then I'm supposed
6 to ask you for a -- to move to adjourn, I guess,
7 instead of just --

8 VICE CHAIRPERSON REYNOSO: So moved.

9 COMMISSIONER GEORGE: Second.

10 CHAIRPERSON BERRY: It's not debatable. All
11 in favor, say aye.

12 (Chorus of ayes)

13 CHAIRPERSON BERRY: We're adjourned. Okay.
14 Thank you very much.

15 (Whereupon, the Open Session of the Committee
16 Meeting was adjourned.)

17