

U. S. COMMISSION ON CIVIL RIGHTS

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MEETING  
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Friday, May 8, 1998

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

PRESENT:

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

STAFF PRESENT:

DAVID CHAMBERS  
KI-TAEK CHUN  
JAMES S. CUNNINGHAM  
BETTY EDMISTON  
M. CATHERINE GATES  
EDWARD A. HAILES, JR.  
GEORGE M. HARBISON  
CAROL-LEE HURLEY  
JACQUELINE L. JOHNSON  
REGINALD MARTIN

## STAFF PRESENT: (Continued)

STEPHANIE Y. MOORE, GENERAL COUNSEL  
MARC PENTINO  
MIGUEL SAPP, PARLIAMENTARIAN  
AUDREY WRIGHT

## COMMISSIONER ASSISTANTS PRESENT:

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

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9:30 a.m.

CHAIRPERSON BERRY: The meeting will come to order.

Could I get a motion to approve the agenda?

VICE CHAIRPERSON REYNOSO: Sure.

COMMISSIONER LEE: So moved.

CHAIRPERSON BERRY: Second?

COMMISSIONER GEORGE: Seconded.

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

(Chorus of ayes.)

Opposed?

(No response.)

So ordered.

Could I get a motion to approve the minutes of the April 17, 1998 meeting?

COMMISSIONER LEE: So moved.

CHAIRPERSON BERRY: Second?

VICE CHAIRPERSON REYNOSO: Seconded.

CHAIRPERSON BERRY: Anyone have any changes or corrections?

(No response.)

Hearing none, all in favor indicate by saying aye.

1 (Chorus of ayes.)

2 Opposed?

3 (No response.)

4 So ordered.

5 Announcements. Patrice Stanley, who was  
6 special assistant to the Staff Director here for a  
7 short time has decided to leave us to go over to the  
8 White House to work in the Office of Intergovernmental  
9 Affairs, and I'm certain that she will have a bright  
10 future and lots of hard work over there, too.

11 STAFF DIRECTOR MOY: Long hours.

12 CHAIRPERSON BERRY: Long hours and all the  
13 rest.

14 The proposed new date for the ADA hearing is  
15 Thursday, November 12, and Friday, November 13, 1998.  
16 The 13th is our regular Commission meeting day and the  
17 hearing is to take place here in Washington. So if you  
18 could either check your calendars now or have your  
19 Special Assistants call the office of the Staff  
20 Director -- if you can't do that now -- regarding your  
21 availability to attend the hearing on that date, it  
22 would be very much appreciated. And if we have  
23 consensus, then you would be so notified. And if not,  
24 then we'd have to find some other date.

25 COMMISSIONER HIGGINBOTHAM: Mary, what are

1 those dates? I'm sorry.

2 CHAIRPERSON BERRY: November 12th and 13th.

3 COMMISSIONER HIGGINBOTHAM: Thank you.

4 COMMISSIONER HORNER: Do you want a reaction  
5 now?

6 CHAIRPERSON BERRY: Yes.

7 COMMISSIONER HORNER: I can do it.

8 CHAIRPERSON BERRY: Good.

9 Are there other people who know they can do  
10 it?

11 COMMISSIONER LEE: I can do it.

12 CHAIRPERSON BERRY: Commissioner Lee can do  
13 it.

14 Commissioner George.

15 VICE CHAIRPERSON REYNOSO: I'm sure I can do  
16 it.

17 CHAIRPERSON BERRY: The Vice Chair can do it.  
18 Commissioner Anderson can do it.

19 VICE CHAIRPERSON REYNOSO: This is here in  
20 Washington?

21 CHAIRPERSON BERRY: Right.

22 I can do it.

23 COMMISSIONER GEORGE: As it happens, I'm in  
24 to Washington for a different meeting that day which  
25 will take a couple of hours of my time. I'm not sure

1 what those hours are, though. I'll have to check. I  
2 don't have it written down in my calendar. But I can  
3 certainly be here for the bulk of the hearing.

4 VICE CHAIRPERSON REYNOSO: And two days of  
5 hearing; 12th and 13th?

6 CHAIRPERSON BERRY: The Commission meeting is  
7 on the 13th.

8 Is the hearing going to take two days or one  
9 day? Who knows?

10 STAFF DIRECTOR MOY: Two days.

11 CHAIRPERSON BERRY: Two days. So we'll  
12 probably have a brief meeting in the morning the day of  
13 the meeting.

14 COMMISSIONER REDENBAUGH: I can do it.

15 CHAIRPERSON BERRY: Commissioner Redenbaugh  
16 can do it.

17 Do you happen to know whether you can, Leon?

18 COMMISSIONER HIGGINBOTHAM: I can.

19 CHAIRPERSON BERRY: Oh, good.

20 COMMISSIONER HORNER: This is amazing.

21 COMMISSIONER GEORGE: Is the plan that it  
22 would begin at 9:00 or roughly thereabout on the 12th?

23 CHAIRPERSON BERRY: Or roughly thereabout.

24 COMMISSIONER GEORGE: Okay. So, --

25 CHAIRPERSON BERRY: As usual.

1                   COMMISSIONER GEORGE: Yes. Okay. So it's  
2 two full days; 9:00 to 5:00?

3                   CHAIRPERSON BERRY: Right. Right.

4                   Is that correct, you all?

5                   STAFF DIRECTOR MOY: Yes.

6                   CHAIRPERSON BERRY: Yes. Okay. Good.

7                   On June 12th, 1998, the Commission meeting  
8 for that day in New York City will be at the U.S. Court  
9 of International Trade where we have -- in conjunction  
10 with the second Schools and Religion hearing. We've  
11 had a hearing at the International Trade Court before.  
12 It is very difficult, staff says, to find someplace to  
13 have a hearing in New York, and that they looked around  
14 everywhere to try to find a place.

15                   As I recall, the New York International Court  
16 of Trade or whatever was okay. We sort of felt distant  
17 from the witnesses. It was a big room, as I recall,  
18 and we were sitting kind of high up. But I think --  
19 you recall it, too, don't you, Commissioner Anderson?

20                   But it's free and it was available, so those  
21 were the two things that commended it to us. So maybe  
22 the staff can figure out some way to organize it so  
23 that it will be a little more user friendly, if  
24 possible. If not, then there we go.

25                   The Staff Director sent to you a memo from



1 the Office of General Counsel concerning site selection  
2 for the third hearing on Schools and Religions. This  
3 hearing which we are calling a mini-hearing, although  
4 anybody can go, is scheduled to take place on  
5 June 23rd, 1998. We need to decide whether we want to  
6 have it.

7           The staff suggests, as you note in the memo,  
8 that we hold a mini-hearing in Troy, Alabama. The  
9 Commission needs to think about that and to be prepared  
10 to decide that, which would segue us into the Staff  
11 Director's report, where we can decide that, if someone  
12 doesn't have an announcement that they'd like to make.

13           Do you have any announcements you'd like to  
14 make? Any other announcements, Staff Director?

15           STAFF DIRECTOR MOY: Yes, I do. Thank you,  
16 Madam Chair.

17           CHAIRPERSON BERRY: Okay.

18           STAFF DIRECTOR MOY: As noted in your  
19 Commission meeting mailout package, due to the short  
20 interval between the April and May Commission meeting,  
21 a Staff Director's Report was not prepared. So in your  
22 June mailout materials you will receive a Staff  
23 Director's Report that covers March 26th through May  
24 20th, 1998. And the report will include forward  
25 looking information.

1           The legal sufficiency review of the Asian-  
2 Pacific American briefing transcript and Executive  
3 Summary revealed defame and degrade issues.  
4 Clarification and revisions are underway to address  
5 these concerns. You will receive a copy of the  
6 transcript and Executive Summary when this process has  
7 been completed.

8           The OGC staff has submitted a supplemental  
9 listing of proposed witnesses for the Washington, D. C.  
10 Schools and Religion hearing. The list was faxed out  
11 last evening to each of you. If you have not received  
12 your copy, Jackie Johnson has extras.

13           CHAIRPERSON BERRY: And how many people --  
14 you got it? Just give us a copy if you've got a copy.

15           STAFF DIRECTOR MOY: Two. Two are --

16           CHAIRPERSON BERRY: She probably didn't see  
17 any fax.

18           STAFF DIRECTOR MOY: Two of them are on the -  
19 -

20           CHAIRPERSON BERRY: Only two people

21           STAFF DIRECTOR MOY: Yes. Two.

22           CHAIRPERSON BERRY: Oh, okay.

23           STAFF DIRECTOR MOY: Two extras on the  
24 supplemental.

25           And the OGC staff is diligently working to

1 complete the Washington, D. C. Schools and Religion  
2 hearing books.

3 CHAIRPERSON BERRY: You want her to give you  
4 this list?

5 COMMISSIONER HORNER: It's the two additional  
6 names?

7 CHAIRPERSON BERRY: Yes.

8 COMMISSIONER HORNER: I got them.

9 CHAIRPERSON BERRY: Oh, okay. You already  
10 got them. Okay.

11 VICE CHAIRPERSON REYNOSO: I didn't.  
12 Thank you.

13 STAFF DIRECTOR MOY: Anyway, the Schools and  
14 Religions hearing books will be sent out to each of you  
15 next week.

16 COMMISSIONER HORNER: I'm sorry. We can't  
17 hear you, Ruby. Could you speak up a little?

18 STAFF DIRECTOR MOY: Yes. The Schools and  
19 Religion hearing books will be completed and sent out  
20 to each of you next week.

21 CHAIRPERSON BERRY: Leon and Russell --  
22 Commissioner Redenbaugh and Higginbotham?

23 COMMISSIONER HIGGINBOTHAM: Yes.

24 CHAIRPERSON BERRY: Did you guys get the fax  
25 with the two additional witnesses for the Schools and

1 Religions hearing?

2 COMMISSIONER HIGGINBOTHAM: I believe I did.

3 CHAIRPERSON BERRY: Okay. Just wanted to  
4 make sure you got it.

5 Okay. So then we go to the Staff Director's  
6 Report where we can, first of all, see if anybody has  
7 any questions about -- any Commissioner has any  
8 questions about the Staff Director's Report.

9 You were through with your announcements?

10 STAFF DIRECTOR MOY: Yes, yes.

11 CHAIRPERSON BERRY: Or anything.

12 COMMISSIONER REDENBAUGH: Well, yes. I have  
13 a question.

14 CHAIRPERSON BERRY: All right. Commissioner  
15 Redenbaugh.

16 VICE CHAIRPERSON REYNOSO: Yes.

17 Staff Director, I did receive your voice  
18 mails yesterday but I have a question. Do you now have  
19 -- the subject here is the management information  
20 system?

21 STAFF DIRECTOR MOY: Yes.

22 COMMISSIONER REDENBAUGH: And do you now have  
23 a time by when this will be in place? I understand  
24 there have been a number of difficulties in moving  
25 forward with this.

1           STAFF DIRECTOR MOY: Yes. Why don't I just  
2 let the rest of the Commissioners know what we're  
3 talking about, if that's all right, Madam Chairman.

4           CHAIRPERSON BERRY: Yes. It would be useful.

5           STAFF DIRECTOR MOY: Commissioner Redenbaugh  
6 had asked me about the MIS and other questions  
7 concerning project costs and timeliness. And while our  
8 data is pretty comprehensive, I just need to point out  
9 that we lost an employee's production time for about  
10 six weeks due to illness. And as you know, we have no  
11 backup support in the finance department, so routine  
12 work went on with the MIS, which resulted in the  
13 software project that we discussed with Commissioner  
14 Redenbaugh previously to be Microsoft 97, which when we  
15 started to purchase it, was no longer available.

16           Then we had to go to Microsoft 98 and then we  
17 had to spend considerable time to see whether it was  
18 mandatory to use a GSA schedule vendor to provide the  
19 training and then to find a vendor who would train our  
20 people.

21           So all of this has been ongoing and we expect  
22 that we'll be able to submit something to each of the  
23 Commissioners no later than the first week in June.

24           We have MIS reports showing the various  
25 status of projects. Is that correct, George?

1 Right.

2 COMMISSIONER REDENBAUGH: So by the June  
3 meeting?

4 STAFF DIRECTOR MOY: Yes. No later than the  
5 first week in June you should have it.

6 CHAIRPERSON BERRY: Well, it's before the  
7 June meeting.

8 STAFF DIRECTOR MOY: The June meeting is, I  
9 think, June 13th. Right.

10 COMMISSIONER REDENBAUGH: Okay. Good. Thank  
11 you.

12 STAFF DIRECTOR MOY: Okay.

13 COMMISSIONER HORNER: I have a question.

14 CHAIRPERSON BERRY: Yes.

15 COMMISSIONER HORNER: Several months ago we  
16 had talked about the Staff Director evaluation and the  
17 Staff Director, I believe, was going to get legal  
18 advice on that issue.

19 Where are we on that?

20 STAFF DIRECTOR MOY: The status of that? I  
21 have not been able to get the final evaluation that we  
22 spoke about in the Executive Session.

23 COMMISSIONER HORNER: What's that?

24 Oh, okay.

25 STAFF DIRECTOR MOY: I have called my sources

1 and they are still working on that. —

2 CHAIRPERSON BERRY: Actually, we shouldn't be  
3 dealing with this in the public session. We should go  
4 to Executive Session.

5 COMMISSIONER HORNER: Sorry.

6 CHAIRPERSON BERRY: Thank you for reminding  
7 me.

8 COMMISSIONER HORNER: Should we do that now  
9 or should we --

10 CHAIRPERSON BERRY: I guess we should.

11 COMMISSIONER HORNER: It shouldn't take but a  
12 minute.

13 CHAIRPERSON BERRY: It shouldn't take that  
14 long. Yes. Why don't we do that.

15 Miguel, what do I have to do here?

16 I didn't even notice. I'm sorry. I'm very  
17 sorry.

18 All right. Well, we are going to discuss a  
19 personnel matter, sensitive personnel matter.

20 I need a motion, don't I, Miguel?

21 MR. SAPP: Yes.

22 CHAIRPERSON BERRY: I need someone to move  
23 that we have an Executive Session to discuss it.

24 VICE CHAIRPERSON REYNOSO: So moved.

25 CHAIRPERSON BERRY: And I need somebody to

1 second it. Could somebody second it?

2 COMMISSIONER LEE: Seconded.

3 CHAIRPERSON BERRY: Okay.

4 And I need a ruling from you; right? Please.

5 COMMISSIONER HORNER: Madam Chair, there's  
6 still --

7 MR. SAPP: That's all right. We can do it in  
8 the open.

9 CHAIRPERSON BERRY: The motion?

10 MR. SAPP: Yes.

11 CHAIRPERSON BERRY: Okay. He's going to tell  
12 me.

13 MR. SAPP: This is to certify that in the  
14 opinion of the undersigned, pursuant to Exemption  
15 Number 5 of the Government in the Sunshine Act, 5  
16 U.S.C. 552(b)(c), the Commission meeting of 8 May 1998  
17 to review and make determinations regarding personnel  
18 matters may be closed to the public.

19 CHAIRPERSON BERRY: Thank you.

20 So do we need to vote on the motion or just  
21 -- okay. We can proceed.

22 So everybody has to leave. It shouldn't be  
23 too long.

24 Just briefly. Don't go way away, okay? So  
25 we have to start all over again.



1                   And close the door, please.

2                   (Whereupon, the public meeting was adjourned  
3 and an Executive Session was held.)

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1                   (Whereupon, following the Executive Session,  
2 the public meeting resumed as follows:

3                   CHAIRPERSON BERRY: Okay.

4                   Staff Director's Report. Anyone else have  
5 any questions on this?

6                   Yes, Commissioner --

7                   COMMISSIONER GEORGE: I don't know if this is  
8 the --

9                   CHAIRPERSON BERRY: Who said yes out there?

10                  COMMISSIONER REDENBAUGH: Redenbaugh.

11                  Go ahead, Robbie.

12                  COMMISSIONER GEORGE: No. You go ahead. I  
13 defer to you, Russell.

14                  CHAIRPERSON BERRY: Commissioner Redenbaugh.

15                  COMMISSIONER REDENBAUGH: I sense a trap.

16                  (Laughter.)

17                  COMMISSIONER GEORGE: Well, there's something  
18 I can get accomplished in the meantime.

19                  CHAIRPERSON BERRY: Commissioner Redenbaugh?

20                  COMMISSIONER REDENBAUGH: Yes. I have a  
21 question for the General Counsel, I think.

22                  VICE CHAIRPERSON REYNOSO: Who's not here  
23 right now.

24                  COMMISSIONER REDENBAUGH: Well, in that case

25 --

1 CHAIRPERSON BERRY: They all went out and not  
2 all of them have come back yet.

3 COMMISSIONER GEORGE: I just sent a member of  
4 the staff out.

5 CHAIRPERSON BERRY: Why don't we discuss the  
6 issue of where to have the hearing, the mini-hearing,  
7 which is what I said we needed to decide.

8 Do you want to do that or do you want to wait  
9 until --

10 COMMISSIONER GEORGE: No, no. We can start  
11 there.

12 CHAIRPERSON BERRY: You can, because -- what  
13 was the motioning about, Aderson? Did you --

14 MR. FRANCOIS: [Off mike.]

15 CHAIRPERSON BERRY: Could we discuss the  
16 place for the mini-hearing? The staff recommendation  
17 is that we go to Troy, Alabama.

18 COMMISSIONER GEORGE: Yes.

19 CHAIRPERSON BERRY: Anyone have any comments?  
20 That's what you want to comment on?

21 COMMISSIONER GEORGE: Yes. Maybe Eddie could  
22 come up, as the person who's in charge of the team.

23 CHAIRPERSON BERRY: Okay.

24 COMMISSIONER GEORGE: I have had an  
25 opportunity to review the memo that we got from Eddie

1 Hailes making the case -- if I can find it -- making  
2 the case for Troy.

3 Yes. Here we are. It's Eddie Hailes memo of  
4 April 30th and it largely goes over the material -- the  
5 argument that Eddie gave to us during the briefing last  
6 time. And I'm unpersuaded by it and I continue to  
7 believe that we ought to do the third hearing in the  
8 Pacific Northwest, and preferably in Portland.

9 My reasons really go to concerns that I have  
10 about the overall project, and I've asked the --

11 CHAIRPERSON BERRY: Why don't you give me a  
12 copy of this and we'll read it.

13 I'm listening. Go ahead.

14 COMMISSIONER GEORGE: -- staff to circulate a  
15 memo that I submitted on Monday to Ruby after I had  
16 received and had a chance to review the partial witness  
17 list that we received the Friday before; that is, April  
18 30th.

19 And perhaps for the people on the phone I  
20 should read my memo.

21 CHAIRPERSON BERRY: Go right ahead.

22 COMMISSIONER GEORGE: "To the Staff Director.  
23 I am concerned that our timetable for the hearings on  
24 Schools and Religion is proving to be unrealistic. In  
25 particular, I am doubtful about the hearing scheduled

1 for May 20th. As of today we do not have a complete  
2 witness list. I fear that there is potential for  
3 conflict about proposed witnesses. And not  
4 unrelatedly, uncertainty remains about the scope and  
5 orientation of the hearings.

6 "We need a clear project design statement and  
7 probably a discussion to settle certain key matters  
8 among the Commissioners. Although I am confident that  
9 we can reach a common understanding and agreement, it  
10 seems to me that there remain issues on which such  
11 understanding and agreement must be reached.

12 "The worst thing we could do is proceed with  
13 a hearing which leaves some Commissioners distressed  
14 that things were not handled in the way they understood  
15 they were supposed to be. There's no need for conflict  
16 and dissention about these hearings and it would be a  
17 shame if such arose.

18 "I recognize that we are operating here under  
19 what is likely to be a firm congressionally mandated  
20 deadline. I would certainly support a request to  
21 Congress for a reasonable extension of the deadline  
22 specified in the reauthorization legislation.

23 "My concrete proposal is to have a discussion  
24 of witnesses and scope at our meeting this Friday and  
25 I'd ask the staff promptly to develop a project design

1 based on our discussion and shift the first hearing in  
2 Washington to the June 12th date, move the New York  
3 hearing to the June 23rd date and schedule the third  
4 hearing wherever we decide to hold it on July 9th or  
5 10th."

6 I don't say it in here, but I think that's in  
7 connection with the July Commission meeting.

8 And then my final paragraph is:

9 "Please feel free to circulate this memo to  
10 the other Commissioners. I would be happy to discuss  
11 the matter with any of them and with you. As you know,  
12 I will be in Los Angeles on Tuesday and Wednesday, back  
13 in Princeton on Thursday, and in D.C. for our meeting  
14 on Friday."

15 So that's the memorandum. And it does go --  
16 although I don't raise it in here -- to the issue of  
17 where the third hearing should be held.

18 I think it's very important to keep the focus  
19 of these hearings where it has been all along; and that  
20 is on religious free exercise issues in the schools.  
21 These are one-day hearings. We're very limited in what  
22 we can accomplish.

23 There were three original central pieces of  
24 the proposed hearings and the most important and first  
25 one was the Equal Access Act. The second one was

1 discrimination against students' religious expression  
2 in the school, and then the third was curricular --  
3 fairness in curriculum design as regards the treatment  
4 of religion.

5           There are many other issues related to  
6 Schools and Religion that are important. Some of these  
7 notably go to questions of establishment as opposed to  
8 free exercise. I don't think we should go into those  
9 issues, at least not in these hearings.

10           If we want to do another project, even just a  
11 one-hearing project that's related to establishment in  
12 a way that relates to the concerns of the Commission,  
13 that's fine with me. But I would hate to see these  
14 hearings deflected, given again that we've moved it  
15 down from five to three; they're now limited one-day  
16 hearings; two are focused on establishment issues.

17           Now, establishment issues are relevant to  
18 free exercise concerns insofar as attempts at  
19 accommodation of free exercise can sometimes raise  
20 establishment problems. So I don't have any objection  
21 to having some witnesses who are oriented toward and  
22 expert regarding establishment problems, but it should  
23 be in the context of establishment concerns as they  
24 relate to limits on accommodation of free exercise  
25 concerns.

1 I think the focus should be maintained very  
2 strictly on these free exercise concerns, and  
3 particularly on the most important one of all, which is  
4 the Equal Access Act and monitoring of the enforcement  
5 of that Act.

6 That all says to me that we ought to be going  
7 to the Pacific Northwest and not to Troy, Alabama. The  
8 reason being that the issues in Alabama, though very  
9 interesting, go mainly to establishment issues.

10 Now, again, you can't sharply divide  
11 establishment and free exercise. It's not as if there  
12 are no free exercise issues there. But the bulk of the  
13 interesting issues there are establishment issues;  
14 whereas in the Pacific Northwest the bulk of the issues  
15 are precisely the free exercise problems that we've  
16 oriented the hearings to in their original design and  
17 been committed to all along.

18 Now, there are, again, even issues even in  
19 the free exercise area or that could be conceived as  
20 free exercise issues that I think would be great to go  
21 into. But we just can't do it all in a one-day  
22 hearing. And so I think we should probably move away  
23 from it.

24 Take, for example, the issue of funding for  
25 parochial and religious schools. That raises very



1 important establishment concerns. There are voucher  
2 programs out there being proposed. The Supreme Court  
3 now is beginning to take cases that are going to give  
4 them an opportunity to examine some of these issues. I  
5 am very interested in them. They can, as I say, raise  
6 free exercise problems.

7 I recently heard a speech in which a  
8 proponent of vouchers tried to make the issue into a  
9 free exercise issue to meet an establishment counter  
10 argument by making it a free exercise issue.

11 I think it's really interesting; worth  
12 arguing about. But again, it comes at the expense of  
13 cutting time out of one-day in each of these three  
14 places which we can devote to the issues that we had  
15 originally identified.

16 So, I just think the sensible and prudent  
17 thing to do is to have fairly strict limits on the  
18 scope of these hearings so we can do a good job on a  
19 relatively narrow scope.

20 CHAIRPERSON BERRY: Vice Chair?

21 VICE CHAIRPERSON REYNOSO: From reading the  
22 memo, I must say that I didn't see that we had gotten  
23 away from the emphasis on accommodation, free exercise  
24 and equal access; particularly the Equal Access Act.  
25 And as Robbie indicates, sometimes even the voucher

1 issue has to do, in my view, with establishment but  
2 also with accommodation; is that a proper  
3 accommodation.

4           So, I have not -- at least just from reading  
5 the memo, I have not reached the same conclusion that  
6 we had veered from -- that the staff had veered from  
7 what we said we wanted to do. And actually, I was  
8 rather persuaded by the memo that we might get into a  
9 greater variety of issues in Troy. And it's a  
10 different sort of geographic area than New York or the  
11 Northwest, so I was personally prepared to just go  
12 forward with the staff recommendation.

13           Also, I'm struck by the fact that we keep  
14 getting these reports from the staff saying how hard it  
15 is to find a place in New York and then we run into a  
16 conflict with another hearing. I just have a sense  
17 that setting up these hearings is somewhat more  
18 complicated than being able to do this sort of shifting  
19 at the last minute, Robbie. That's just my sense.

20           So unless there's a really compelling reason  
21 to go differently, I know the staff has to plan these  
22 things so darn much ahead of time that if we can stick,  
23 as you indicate, with the accommodation, free exercise  
24 and equal access issues, I just as soon go with the  
25 staff notion.

1                   CHAIRPERSON BERRY: Any other Commissioner  
2 have anything to say before I recognize Commissioner  
3 George again?

4                   COMMISSIONER HIGGINBOTHAM: I agree with the  
5 Vice Chair. I think we've got to be very, very careful  
6 of what may be an inference, as I see it, of excessive  
7 micro management by the Commission. Presumably we have  
8 staff. Presumably they have confidence. Different  
9 people can have different views. The whole issue is  
10 going to be able to be flushed out and I think there  
11 would be no positive value in once again rejecting the  
12 staff view when it has some probative value in the way  
13 they've handled it.

14                   CHAIRPERSON BERRY: Any other Commissioner  
15 have a comment? Then I'll recognize -- because I'm  
16 sure you want to address everybody's comments.

17                   Yes, Commissioner Horner?

18                   COMMISSIONER HORNER: Just that we have been  
19 to the South on a number of occasions in the last 18  
20 months and we have not been to the Pacific Northwest.  
21 I think it would be worthwhile going there. I think  
22 the issues raised are issues that initially interested  
23 us there.

24                   And so I would support the idea of finding a  
25 location in the Pacific Northwest.

1           CHAIRPERSON BERRY: If we could -- and then  
2 I'll recognize you, Commissioner George.

3           I must say that off the top of my head I  
4 don't -- and I'll try not to have a seminar. I don't  
5 understand what you mean by a purer free exercise issue  
6 as opposed to a free exercise.

7           Give me an example of a purer free exercise  
8 issue untainted by any establishment concerns?

9           VICE CHAIRPERSON REYNOSO: An unfair  
10 question.

11           (Laughter.)

12           CHAIRPERSON BERRY: I just want to get  
13 conceptually what a purer --

14           COMMISSIONER GEORGE: Sure. Again, I have in  
15 mind, as the Vice Chair noted that I made the point  
16 that very often there are establishment issues at least  
17 hovering around because when a school tries to  
18 accommodate a free exercise claim there is the  
19 possibility of an establishment violation in the means  
20 of accommodation.

21           CHAIRPERSON BERRY: Yes, counsel. But I'm  
22 asking precisely for -- give me an example of a purer.

23           COMMISSIONER GEORGE: Sure. The teacher  
24 invites the children in the class to write a biography  
25 of an historical figure that they admire. The child

1 writes a biography of Jesus Christ. The teacher gives  
2 the child an "F," saying that's an inappropriate  
3 subject.

4 No establishment issue in sight but there's a  
5 pure free exercise claim.

6 CHAIRPERSON BERRY: Well, then, my  
7 understanding was that that discussion would take place  
8 or could take place in the hearing. And in fact, on  
9 the witness list, there was a man whose name I don't  
10 remember who was the subject of an article in The Wall  
11 Street Journal.

12 COMMISSIONER GEORGE: Charles Haynes.

13 CHAIRPERSON BERRY: And some other thing I  
14 read about him and some discussions he was in.

15 They were talking about issues like that:  
16 like students writing people; like people telling them  
17 they couldn't.

18 COMMISSIONER GEORGE: Absolutely.

19 CHAIRPERSON BERRY: So I am sure that he's  
20 capable -- I'm just picking him out of the air -- of  
21 discussing these issues with you or with the  
22 Commission, if the Commission wishes to discuss them.

23 COMMISSIONER GEORGE: I don't have any doubt  
24 about that.

25 CHAIRPERSON BERRY: So is the problem that

1 you -- well, I misunderstood. I thought you thought we  
2 weren't going to have a forum in which these issues  
3 could be debated.

4 COMMISSIONER GEORGE: Oh, no. The problem is  
5 not that there will be no opportunity to discuss free  
6 exercise issues. The problem is that if we move beyond  
7 those issues into establishment issues that aren't  
8 themselves necessitated by the accommodation efforts of  
9 schools in respect to free exercise, then we're going  
10 to cut -- we've only got one day for these hearings and  
11 we're going to cut into time that could be devoted to  
12 free exercise problems.

13 My problem is not that we will never have an  
14 opportunity to discuss free exercise. I want the whole  
15 day to be on free exercise issues and establishment  
16 issues being relevant where the accommodation of free  
17 exercise raises an establishment issue.

18 This is for the same reason I don't want us  
19 to expand the scope to go into something like -- as  
20 interested as I am in it -- the issue of aid to  
21 parochial schools. That's a big -- you could spend  
22 days on that one by itself but it's not relevant to the  
23 issue of free exercise in the public schools.

24 CHAIRPERSON BERRY: Well, --

25 COMMISSIONER GEORGE: Could I just address --

1 there was just one point that Commissioner Higginbotham  
2 and Vice Chairman Reynoso made that I do want to  
3 address, although this was less in Vice Chairman  
4 Reynoso's comment. And that is -- I'm sure Eddie and  
5 his team understand that in arguing for the Pacific  
6 Northwest I'm not attempting to micro manage the staff  
7 on an issue that really is appropriately left entirely  
8 to the staff.

9 From the beginning the choice of locations  
10 was going to be a policy judgment the Commissioners  
11 would have to make. We would make it on the basis of  
12 advice of staff, but we put the matter over from last  
13 time precisely for the staff to make the argument on  
14 behalf of its preferred view, with a view to the  
15 Commissioners finally making the decision.

16 But we didn't decide it and are not un-  
17 deciding it. We deliberately, very deliberately, very  
18 self-consciously left it undecided.

19 CHAIRPERSON BERRY: Well, unless the  
20 Commissioners -- I think we should divide the issues.  
21 The issue of where to go for the third hearing is  
22 different from the issue of whether we should redo all  
23 the other two hearings.

24 COMMISSIONER GEORGE: They are related but  
25 I'm happy to address them separately.

1 CHAIRPERSON BERRY: But it's two -- actually,  
2 two different issues.

3 We had a briefing last time from the staff  
4 and we had a briefing from them in which they told us  
5 what they were planning to do in each one of these  
6 hearings. And everybody had a full opportunity to  
7 discuss it. And I don't recall anyone telling the  
8 staff not to go forward and not to plan to have a  
9 hearing. I distinctly do not recall anything. Maybe  
10 some of you do.

11 So I'm sure they went ahead in good faith,  
12 based on the discussion -- and they had presented to us  
13 what they planned to do -- and prepared the hearing.  
14 The hearing is scheduled for May 20th. The witnesses  
15 are, I'm sure, subpoenaed. Yes. Because they have to  
16 be.

17 We couldn't probably have -- if we had the  
18 hearing in New York, then we'd have trouble finding a  
19 date for the other hearing in New York, and so on.

20 So I think what we should do, unless the  
21 Commission wants to vote to change what we're doing and  
22 not having the hearing on May 20th or the one in June,  
23 we should go ahead and the staff should be well advised  
24 from the discussion -- and we can say more, if you wish  
25 -- that you want to have plenty of time and space for



1 free exercise without people putting unmixed—  
2 establishment claims and discussion into the hearing  
3 since it's only for one day, and the other two issues  
4 that you are concerned about.

5           Then I think once we do that and see if  
6 there's sense of enough people who want to change those  
7 two, we should decide whether we want to go to the  
8 third hearing in the Northwest or in Troy, Alabama.

9           I, for one -- Commissioner Lee, did you want  
10 to say something? You're looking pensive.

11           I, for one, would like to know what you think  
12 you'll find out, those of you who believe this way, in  
13 the Northwest that you won't find out in Troy.

14           COMMISSIONER GEORGE: There'll be -- shall I  
15 answer that?

16           CHAIRPERSON BERRY: You can.

17           COMMISSIONER GEORGE: Yes. My own  
18 preliminary investigations reveal that you're going to  
19 find a lot more controversy over equal access type  
20 issues, over questions of curricular design, and cases  
21 of specific religious acts or expression being  
22 forbidden or discriminated against in the Northwest.

23           In Alabama, you will find very interesting  
24 Establishment Clause issues. Perhaps things such as  
25 the posting of religious texts, the Ten Commandments

1 and so forth in classrooms, which has been addressed by  
2 the Supreme Court in at least one case and held to be  
3 unconstitutional as establishment in the Supreme Court.

4           There will be some free exercise issues.  
5 There's the case that is contained in Eddie's memo of a  
6 Jewish family whose children were forced to pray or to  
7 bow heads during Christian prayers. There's the  
8 presence of officially sanctioned Christian prayer. At  
9 least it's alleged to be in some cases. So there are  
10 those establishment issues there.

11           But you're going to get a lot more and a lot  
12 more interesting free exercise issues in the Pacific  
13 Northwest, which is an area, I think it's worth noting,  
14 in which there's a long history of controversy over  
15 religious freedom issues and discrimination against the  
16 expression of faith.

17           The Chairman will recall that it was Oregon  
18 that was the site, even as far back as the 1920s of the  
19 famous case of Pierce vs. The Society of Sisters.  
20 There seemed to be a law, invalidated by the Supreme  
21 Court, which would have shut down effectively non-  
22 public, i.e., religious education. And many people  
23 have argued that the motivation for the law was a  
24 discriminatory and anti-religious one.

25           And issues have bubbled up there in the

1 Pacific Northwest over the years since then. This is  
2 not a new phenomenon.

3 I think it's a place we should go and look.  
4 I mean, a place where there's civil rights issues and a  
5 tradition of civil rights issues where our Commission  
6 hasn't been.

7 CHAIRPERSON BERRY: Commissioner Lee, were  
8 you about to say something?

9 COMMISSIONER LEE: I just have a question.  
10 My understanding is the New-York hearing would address  
11 some of the specific acts that you mentioned, and also  
12 the diversity issues. That was the New York hearing;  
13 right?

14 MR. HAILES: Yes. That's true.

15 COMMISSIONER LEE: And also, the equal access  
16 issues that Robbie had mentioned, some of them was  
17 being resolved in Oregon already, in their school  
18 policy?

19 MR. HAILES: Exactly.

20 COMMISSIONER GEORGE: Anywhere you go,  
21 whatever issues you address, some of the issues will  
22 have been resolved. There's no question about that.  
23 But the matters aren't settled finally in any of these  
24 jurisdictions.

25 CHAIRPERSON BERRY: Yes, Vice Chair?

1           VICE CHAIRPERSON REYNOSO: Just one footnote  
2 before we hear from Eddie, maybe.

3           I would have thought that curricular design  
4 is an establishment issue rather than an equal access  
5 issue.

6           COMMISSIONER GEORGE: Well, no, I don't think  
7 so. No.

8           Of course, there's a way, again, of re-  
9 framing it or framing it as an establishment issue but  
10 it very well might be a case of -- not of wrongful  
11 adoption of a religious view but the exclusion perhaps  
12 of a religious view or information of a religious  
13 nature in say an historical textbook or something like  
14 that.

15           CHAIRPERSON BERRY: But if it's state  
16 sanctioned, then it becomes establishment.

17           COMMISSIONER GEORGE: Or it might be a denial  
18 of religious freedom.

19           CHAIRPERSON BERRY: It might be, but if it's  
20 state sanctioned then it becomes establishment.

21           Well, let's not --

22           (Laughter.)

23           Staff Director, how about if I have Mr.  
24 Hailes respond or say something.

25           STAFF DIRECTOR MOY: Yes, please.

1 MR. HAILES: Thank you very much.

2 We do have curricular design issues in  
3 Alabama that can be addressed in a hearing in Troy.  
4 Our principal concern about going to the Pacific  
5 Northwest involves the one central case that's received  
6 the most attention, being the subject of litigation.  
7 In fact, there's a federal court hearing scheduled  
8 within a week of when we would go there.

9 And it just seemed to be problematic to have  
10 a Commission hearing in the very location where the  
11 major equal access case that's in litigation would have  
12 a federal court hearing.

13 CHAIRPERSON BERRY: And if we did do that,  
14 then we would effectively be saying that we might --  
15 some people might infer that we're trying to influence  
16 the concerns -- although we know that judges are  
17 pristine and pure and never read anything, never listen  
18 to anything, never hear anything -- and that we might  
19 do that in the case of other litigation where we have  
20 some interest one way or the other. Although on this  
21 matter of religion, most of us probably have the same  
22 interest, curiously enough.

23 But, anyway -- yes, Commissioner George?

24 COMMISSIONER GEORGE: Well, A, Eddie, that is  
25 not the only -- it's important, but that's the only

1 equal access issue in the Pacific Northwest, much less  
2 the only religious discrimination or discrimination on  
3 the basis of religious free expression there. There  
4 are a lot of them. And B, --

5 MR. HAILES: I'll be frank in terms of the  
6 research done by our staff. We've been hard pressed to  
7 find a whole lot of cases out there. And the cases  
8 that would deserve our attention are cases that are in  
9 the process of being resolved or this major one which  
10 is in litigation with a motion for summary judgment  
11 within a week of our scheduled hearing.

12 COMMISSIONER GEORGE: Well, there are cases  
13 in the process of being resolved that are not within a  
14 week. Yes, they're in litigation. But in the same way  
15 that Chandler vs. James is in litigation, sub judice.  
16 There's just been a petition in the Supreme Court of  
17 the United States in Connecticut.

18 MR. HAILES: The parties agree as to the  
19 facts. When you have a motion for summary judgment,  
20 the facts are in dispute or a judge has to make a  
21 decision whether those --

22 COMMISSIONER GEORGE: Well, he has to make a  
23 decision about whether there are live questions of fact  
24 to be determined.

25 MR. HAILES: But where the parties are

1 principally in agreement as to the facts and the matter  
2 is on appeal on the basis of law, we don't have the  
3 same problems bringing forth fact witnesses to discuss  
4 those issues where they are principally in agreement.  
5 But they can give us a very clear picture of what's  
6 going on in the public schools as it relates to free  
7 exercise and curricular design down in Alabama. And  
8 that's the reason why the staff believes that it would  
9 be better to go to Alabama as opposed to the Pacific  
10 Northwest at this time.

11 COMMISSIONER GEORGE: And the argument is  
12 because in one case there's a hearing within 10 days on  
13 matters of fact and in the other case, the parties have  
14 agreed as to the facts and so the relevant adjudication  
15 that's going on at the moment is on summary judgment?

16 MR. HAILES: Yes.

17 CHAIRPERSON BERRY: Because we are collecting  
18 facts. You mean, as a Commission. And we're  
19 subpoenaing people to get facts. And you're saying  
20 we'd be talking to the same folks who would be expected  
21 to testify in the court case at the same time to give  
22 facts, or after or before, which might be seen as our  
23 trying to influence or inject ourselves into the  
24 judicial process?

25 MR. HAILES: Exactly. And in Alabama, none

1 of the parties would disagree with anyone coming  
2 forward and testifying before the U.S. Commission on  
3 Civil Rights what their view is as to the facts there.  
4 In the Pacific Northwest, we have that problem.

5 CHAIRPERSON BERRY: Which means that if we're  
6 going to the Pacific Northwest, we shouldn't do it at  
7 that time?

8 MR. HAILES: Exactly.

9 COMMISSIONER GEORGE: We should do it 11 days  
10 later.

11 CHAIRPERSON BERRY: That would be even  
12 better.

13 COMMISSIONER GEORGE: We would get into  
14 questions where there are disputes as to fact.

15 MR. HAILES: The judge may agree that there  
16 are.

17 COMMISSIONER GEORGE: The judge may agree  
18 that there are. As opposed to going to Alabama where  
19 people agree on the facts and we'll just hear what  
20 people agree on?

21 MR. HAILES: Well, we'll hear what they say  
22 about discrimination in the public schools on the basis  
23 of religion. And I think that's what --

24 COMMISSIONER GEORGE: Well, you say there's  
25 agreed upon facts there.



1 MR. HAILES: Right. And so what we have to  
2 find out is how do you take those facts and make a  
3 judgment about resolving them, resolving the conflicts.  
4 The facts are basically agreeable. There are different  
5 perspectives on what those facts show.

6 CHAIRPERSON BERRY: You mean what it is we  
7 try to do?

8 COMMISSIONER GEORGE: Yes.

9 CHAIRPERSON BERRY: Collect the facts and  
10 make what we hope will be helpful recommendations. But  
11 if we're going to the Northwest, do you agree that we  
12 would go after the facts are collected and --

13 COMMISSIONER GEORGE: I'd be happy to go 11  
14 days later or however long.

15 COMMISSIONER HORNER: Well, let's do that.

16 CHAIRPERSON BERRY: I wouldn't want to go  
17 right at the same time.

18 COMMISSIONER HIGGINBOTHAM: May I comment on  
19 that?

20 CHAIRPERSON BERRY: Yes, Commissioner  
21 Higginbotham.

22 COMMISSIONER HIGGINBOTHAM: I can't tell you  
23 how aggravated I am by this conversation because it  
24 seems to me, Commissioner George, we've gone way out of  
25 our way to let this issue come ahead of other issues

1 because you wanted it to. And now we are in a position  
2 which, as I see it, that you are tilting a position  
3 which is not justifiable at all.

4 We don't know whether when this matter comes  
5 before the court, the court is going to continue it for  
6 a week or three weeks or a month. We do know that  
7 we're going to be right in the midst of litigation.  
8 So it's not like just setting the conference 11 days  
9 later.

10 Why do we have to get involved in this type  
11 of unnecessary aggravation? And I really feel that the  
12 Commission -- to yield to Commissioner George on this  
13 decision, we are using less than wise judgment. And I  
14 don't mean to be offensive because some in here have  
15 thought that my positions were not wise. And I took  
16 that as a compliment because I thought I was wiser.

17 (Laughter.)

18 Commissioner George may think that this  
19 position is wise, but it isn't. To me, it's nothing  
20 less than ludicrous to go into the midst of the one  
21 place where there is a trial about to go on, to feel  
22 that the Civil Rights Commission has to have a hearing.  
23 And we have hundreds of other venues where we can do  
24 that without that provocation.

25 CHAIRPERSON BERRY: Well, is there anyplace

1 other than Troy, Alabama, where there are issues that  
2 are live that we haven't been to before that it would  
3 make any sense to at least consider? Would people like  
4 to just consult a little bit here?

5 COMMISSIONER HIGGINBOTHAM: Madam Chair, if I  
6 may?

7 CHAIRPERSON BERRY: Yes, Commissioner.

8 COMMISSIONER HIGGINBOTHAM: We're going to  
9 get to the point where we're going to just paralyze our  
10 staff. I don't see why we have to go and look for some  
11 other place. They came up with Troy. If that works,  
12 so be it. What are we trying to do? Hold up our whole  
13 staff operation and get them to spend a lot of time  
14 trying to find some other place? What's the value of a  
15 staff recommendation if we're going to cut them down on  
16 this kind of ground.

17 CHAIRPERSON BERRY: Commissioner Lee?

18 COMMISSIONER LEE: I think we're traveling on  
19 a really dangerous path here if every time the staff  
20 comes back with a recommendation. We have to assume  
21 that they are professional. They've done the research,  
22 very thorough research. And if we have any questions,  
23 we should have brought it up earlier. And now we are  
24 looking at a one-month hearing schedule and all of a  
25 sudden we're saying let's change the venue.

1           And I'm still not convinced that Troy is not  
2 an appropriate place to get the information that we  
3 have set out to do when we agreed on the -- or some of  
4 you agreed on the religious project.

5           And I think that I would hate to question the  
6 staff every time they come back after they've done all  
7 the research. I mean, at the preliminary hearing last  
8 month we asked questions and they supplemented our  
9 concerns with a memo. And we should just proceed  
10 because if every time we delay and delay and delay, we  
11 just don't get these reports done.

12           CHAIRPERSON BERRY: Vice Chair?

13           VICE CHAIRPERSON REYNOSO: Madam Chair, I  
14 must say that Robbie is correct that we didn't settle  
15 on Troy or the Northwest based on the concerns that he  
16 had expressed at that time. So I don't consider it  
17 inappropriate to bring it up. But I think that the  
18 burden was on Robbie to persuade us otherwise, because  
19 we gave the staff a job to do. They came back and told  
20 us what their considerations were.

21           Thus far I'm not persuaded that the very  
22 issues that Robbie wants to go into can't be done in  
23 Troy.

24           When we give the staff a charge, they come  
25 back, they report something to us, make

1 recommendations, unless we feel that they really are  
2 mistaken and that we will get substantially more out of  
3 the Northwest than Troy. I just hate to not go along  
4 with the staff because I know from past experience all  
5 the work that goes into setting up these hearings.

6 And I confess, Robbie, that I'm not persuaded  
7 yet that we're going to learn more in Portland than we  
8 will in Troy.

9 CHAIRPERSON BERRY: More comment?

10 Yes, Staff Director?

11 STAFF DIRECTOR MOY: I'd like to say  
12 something.

13 CHAIRPERSON BERRY: How much more will it  
14 cost to go to Portland than Troy? It's probably  
15 cheaper because Troy is not across country.

16 STAFF DIRECTOR MOY: During the month of July  
17 there'd be all these super savers going out there.

18 But anyway, on behalf of staff, I know  
19 there's an enormous amount of preparatory work done,  
20 and there will be after each hearing. And I'm sure  
21 that they are also going to be under the gun because  
22 the H.R. 3117 tells them that they have to have this  
23 report concluded by September 30th.

24 Well, I know the month of August is a  
25 vacation time. We will be here working.

1 CHAIRPERSON BERRY: Yes, Commissioner George?

2 COMMISSIONER GEORGE: I just want to thank  
3 the Vice Chairman for noting, completely correctly,  
4 that we hadn't made a decision. We had very  
5 deliberately and self-consciously held the matter open  
6 pending a resolution by the Commissioners.

7 We did ask the staff to make a  
8 recommendation. The staff made the recommendation. We  
9 don't have to agree with that recommendation.

10 I completely agree that it is a matter for us  
11 to settle. My job is to try to persuade you. I  
12 haven't persuaded the Vice Chairman or others. That's  
13 fine. We can disagree about that. But the important  
14 thing is to notice that there is no insult to the  
15 staff. There's no change of venue. That term was  
16 used.

17 We're not changing the venue. The venue was  
18 never established.

19 The other points I'll simply leave  
20 unaddressed.

21 CHAIRPERSON BERRY: Commissioner Anderson?

22 COMMISSIONER ANDERSON: I would like to  
23 propose we stay to the merits of the substance of the  
24 issues. That's how I feel about it.

25 I think Mr. Hailes has made some very telling

1 points that we ought to consider. I think if the issue  
2 is changed as to the role of a Commissioner or several  
3 Commissioners in terms of the staff recommendation, the  
4 merits of the argument changes. At least it does for  
5 me.

6 Now it's no secret that Commissioner George  
7 has proposed this hearing. It's one that's very  
8 important to him. He's put a lot of time and effort  
9 into it. And now the staff recommendation comes back  
10 with significant difficulties for the Commissioner who  
11 has proposed this whole issue.

12 Now, maybe some of us don't feel as strongly  
13 about it as Commissioner George does, but I don't think  
14 it is inappropriate for him to address these issues  
15 when they were not resolved previously by the  
16 Commission.

17 So it's going to be a question, to put it  
18 very starkly, of a Commissioner who may be in a  
19 minority position in the Commission objecting to or  
20 questioning a staff recommendation that hasn't yet been  
21 voted by the full Commission, I think that's sort of a  
22 -- that's an argument that I don't feel comfortable  
23 with; that that Commissioner really doesn't have a  
24 right to do this because, after all, it puts a greater  
25 burden on the staff.

1           I mean, if that's going to be our modus  
2 operandi here, I think it's one which maybe in the near  
3 future cuts one way, but in the long-term may cut an  
4 entirely different way. So I think we ought to be  
5 careful before we adopt that as sort of a principle by  
6 which we have to vote around here.

7           VICE CHAIRPERSON REYNOSO: Madam Chair, I  
8 just want to say that I didn't interpret any of the  
9 previous expressions of opinion as being in that light.  
10 I thought they were dealing with the merits, which in  
11 turn, had to do with their being persuaded by the staff  
12 report, including the reality that litigation is going  
13 on.

14           At least the way I interpret the statements,  
15 they were going to the merits and saying that based on  
16 everything that they had heard, they were still  
17 persuaded that maybe -- at least of the two options,  
18 Troy was the better one. In part, because of the  
19 litigation.

20           CHAIRPERSON BERRY: Well, having been here at  
21 a time when I argued that the staff be damned, and  
22 having been here at a time when I argued that deference  
23 ought to be shown to the staff, and not feeling  
24 strongly about any of this, all I really want you to do  
25 is resolve it.



1           So, query. Are there enough people, since I  
2 divided the issue -- Commissioner George, now you've  
3 heard all this discussion, so what the heck do you  
4 want? Not that we'll do it.

5           COMMISSIONER GEORGE: I want to go to  
6 Portland.

7           CHAIRPERSON BERRY: But you weren't even at  
8 all persuaded? I must say I was persuaded, given the  
9 long continuum of the Commission's history, by the  
10 small piece of the argument about gathering facts at  
11 the same time that the court was gathering facts.  
12 Because while on this occasion I might not mind, I can  
13 see other occasions where I would mind. And it would  
14 depend on whose ox is gored.

15           So I think that part of it is very tricky.  
16 The rest of it, I don't really care one way or the  
17 other. But it will come back to haunt us if we were to  
18 do this, I fear.

19           COMMISSIONER GEORGE: That is one case. Now  
20 I think that Eddie Hailes and I have a disagreement or  
21 maybe our research has just turned up different things.  
22 I've tried to share some of my research with the staff,  
23 as Eddie knows. There's been memos and I had one  
24 meeting which you informed the Commissioners about I  
25 think at the last meeting or the one before with Eddie

1 and the Staff Director and her assistant, about this.

2           So we might have a disagreement and maybe we  
3 should discuss in some other context and share research  
4 and see why we have a difference as to how many  
5 interesting cases are there. But I wouldn't be  
6 deterred from going to the Pacific Northwest because  
7 there is one case that is in litigation. And I  
8 certainly would be prepared to defer the hearing a bit  
9 in order to avoid that, if people thought that that one  
10 case was a deal killer.

11           CHAIRPERSON BERRY: The sticky part is we  
12 won't know. I mean, even if we were to ignore  
13 Commissioner Higginbotham, which I'm not saying I'm  
14 doing, but if we were to do that, hypothetically,  
15 ignore his admonishment about what the court might be  
16 doing and say we'll agree to go there but only after  
17 the court has taken the facts or the trial, we don't  
18 know when that will be.

19           COMMISSIONER GEORGE: Is that the actual  
20 trial date?

21           MR. HAILES: It is a hearing on the motion  
22 for summary judgment and a permanent injunction. So it  
23 is a fact determination that has to be made by the  
24 federal court.

25           COMMISSIONER GEORGE: But it's not the trial.

1 It's on the basis of submissions. They're not hearing  
2 witnesses.

3 MR. HAILES: They're not. But it's to  
4 determine whether there are --

5 COMMISSIONER GEORGE: Material issues of fact  
6 in dispute.

7 MR. HAILES: Exactly. True.

8 COMMISSIONER GEORGE: Well, I think that's  
9 significant. And I don't think there's any more risk  
10 that it's going to look like we're trying to have an  
11 impact on the outcome of that case than it will look  
12 like we're trying to influence the decision in Chandler  
13 vs. James if we go to the South.

14 CHAIRPERSON BERRY: But we're a fact finding  
15 body.

16 COMMISSIONER GEORGE: We'll make  
17 recommendations based on fact. We see the facts and we  
18 say here's how things ought to be.

19 It works both ways.

20 MR. HAILES: We tried to do a comparative  
21 analysis between the two sites. We're not saying it's  
22 impossible to go to the Pacific Northwest. But between  
23 the two sites, we believe we could get a clearer  
24 picture of discrimination based on religion in Alabama  
25 than we could in the Pacific Northwest in that time.

1                   CHAIRPERSON BERRY: And you also have the  
2 point Commissioner Lee made. It's in the memo. That  
3 in New York, --

4                   MR. HAILES: In New York, we would get a very  
5 close look at the exact same issue raised in Portland,  
6 Oregon in New York City.

7                   COMMISSIONER GEORGE: That, I don't think,  
8 cuts any ice. Because part of what we want to do is  
9 not just find out whether the Equal Access Act is being  
10 respected and enforced in one part of the country.

11                   I mean, again, the original plan was to have  
12 five hearings with a main focus on the Equal Access  
13 Act. This is very much part of the record all along,  
14 so that we could see how the thing was being enforced  
15 and respected in different parts of the country.

16                   Now, the two places where there are the -- if  
17 we had to cut it down to two places, the two places  
18 where there's the most -- by your account and mine --  
19 where the most interesting controversy would be New  
20 York and the Pacific Northwest. New England, New York,  
21 Second Circuit, and the Pacific Northwest.

22                   MR. HAILES: It's for that reason that we  
23 proposed having a national overview where the leading  
24 experts on these issues would come to Washington, D. C.  
25 and talk about the cases throughout the nation.

1                   COMMISSIONER GEORGE: And I supported that.  
2 I supported that.

3                   MR. HAILES: By not going to the Pacific  
4 Northwest is the point I'm making.

5                   COMMISSIONER GEORGE: No. But it means that  
6 we're not having a look. We're not bringing this  
7 Commission to an area where there's profound  
8 controversy and interest on the very focal issue of the  
9 hearing and where it is alleged in some circles at  
10 least, credibly, that there's massive resistance to the  
11 implementation of the Equal Access Act.

12                   If that's true, we ought to know it. We  
13 ought to look.

14                   CHAIRPERSON BERRY: Well, --

15                   Commissioner Anderson, do you have a solution  
16 to get us off this dime?

17                   COMMISSIONER ANDERSON: No. I don't think I  
18 have a solution. I was thinking, though, that the  
19 Pacific Northwest is larger than Portland. We could go  
20 to Seattle, maybe, and avoid the direct media  
21 controversy that might occur by going right to the city  
22 where the trial is taking place.

23                   CHAIRPERSON BERRY: That, or consider going  
24 after, even if we don't know what the date is. Saying  
25 we would go after the fact finding. That would be

1 tricky because we'd have to defer some work in the area  
2 and we don't know when that would be.

3 But if you were bound and determined that you  
4 wanted to go there -- so it's either go to Troy,  
5 consider going to Seattle or someplace else in the  
6 Northwest or someplace else, or go to Portland after  
7 the fact finding and/or that the Commission will  
8 revisit the issue and just leave the third one  
9 dangling.

10 COMMISSIONER GEORGE: There are issues in  
11 Seattle. The legal and political culture there has  
12 generated the same controversy. If it's between  
13 Seattle and Portland, I'm happy to say Seattle if that  
14 gets around any problems.

15 CHAIRPERSON BERRY: What do you think?

16 MR. HAILES: Well, it would go beyond our  
17 subpoena range in bringing in those witnesses who are  
18 very familiar with the major issues in Portland,  
19 Oregon.

20 CHAIRPERSON BERRY: How about if we just  
21 looked at Seattle. Any other issues in Washington?

22 COMMISSIONER GEORGE: We want to look at the  
23 Pacific Northwest. But I wonder, do you have any  
24 reason to suppose that those witnesses would not honor  
25 subpoenas and be willing to come and testify even if

1 they couldn't be compelled?

2 MR. HAILES: Well, we would not issue  
3 subpoenas for persons outside the 100 mile range that's  
4 within our authority.

5 COMMISSIONER GEORGE: But we could invite  
6 them. Is there any reason to suppose they wouldn't  
7 appear?

8 MR. HAILES: Again, the team has not seen  
9 those cases in that area that --

10 COMMISSIONER GEORGE: No, no. I mean, the  
11 Portland area. In other words, would witnesses who  
12 were familiar with the Portland situation, perhaps  
13 cases in Portland and in Oregon that are separate from  
14 the matter that we've been discussing, that they could  
15 be invited to appear and presumably would want to come  
16 and make their case and tell us what they understand  
17 the situation to be, even if it weren't subject to  
18 subpoena, the way we might bring in an expert from New  
19 York or from California to Washington for the first  
20 hearing, even though we couldn't actually compel the  
21 testimony.

22 CHAIRPERSON BERRY: Why don't we do this.  
23 Have the staff -- why don't we just agree that --  
24 Commissioner Higginbotham?

25 COMMISSIONER HIGGINBOTHAM: I'm listening

1 very closely. I'm intrigued by what you're about to  
2 say.

3 CHAIRPERSON BERRY: Since we're at an impasse  
4 here apparently, why don't we agree that the staff will  
5 give us an analysis of what they would do in Seattle,  
6 if they did it. That's number one. And that  
7 contingent upon that analysis showing that it would be  
8 reasonable and worthwhile for the Commission to go to  
9 Seattle, that it would agree today that we would go.  
10 And that way, we'd leave it that way.

11 And then if their thing doesn't, then we can  
12 come back later on and decide something else. But just  
13 in order to get us out of this impasse, we wouldn't be  
14 going to Portland. We wouldn't be at the venue of the  
15 trial and we would be in a place where people from the  
16 Northwest who wanted to come and say something about  
17 whatever was going on in the Northwest could come.

18 So that why don't we decide to go to Seattle  
19 with a contingency or condition subsequent -- I've  
20 forgotten which one it is -- that if the staff  
21 discovers something that makes it seem absolutely not  
22 worth our while, a waste of resources or not able to do  
23 it, they will give us that information within a time  
24 certain and we can revisit the issue, whether we have  
25 to do it over the phone or whatever. But we will



1 decide today that the third one will be in Seattle,  
2 based on that contingency.

3 COMMISSIONER HIGGINBOTHAM: Do you want my  
4 reaction?

5 CHAIRPERSON BERRY: Yes.

6 COMMISSIONER HIGGINBOTHAM: I think it's  
7 absurd. It's absurd because we don't know -- at least  
8 I don't, and no one has told us what the situation is  
9 in Seattle. And we are now presuming that we should  
10 have a hearing there.

11 CHAIRPERSON BERRY: Right.

12 COMMISSIONER HIGGINBOTHAM: That there's  
13 prima facie evidence that we should have a hearing in  
14 Seattle but we don't have the evidence before us.  
15 That's why you have staff.

16 The staff should not be put into the burden  
17 of saying we're going to Seattle and you've got to  
18 prove the reasons why not.

19 CHAIRPERSON BERRY: Okay.

20 COMMISSIONER HIGGINBOTHAM: It seems to me  
21 that where they have already provided the evidence on  
22 Alabama, if someone wants to go and make inquiry about  
23 having a separate hearing in Seattle, fine. But I  
24 don't see where we should be making a decision now that  
25 it should be presumptively in Seattle.

1 CHAIRPERSON BERRY: Okay. Let's do this  
2 then. Could I have a motion first that the Commission  
3 will accept the staff recommendation to have the third  
4 hearing in Troy?

5 VICE CHAIRPERSON REYNOSO: I'll so move.

6 CHAIRPERSON BERRY: And could I have a second  
7 to that motion?

8 COMMISSIONER LEE: Second.

9 CHAIRPERSON BERRY: We've had discussion. Is  
10 there any further discussion of that specific motion?

11 (No response.)

12 Okay. All in favor of the Commission going  
13 to Troy, Alabama as recommended by the staff for its  
14 third hearing, indicate by saying aye.

15 (Chorus of ayes.)

16 Three.

17 All those opposed to going to Troy, Alabama,  
18 indicate by saying no.

19 (Chorus of nays.)

20 The motion fails for want of a majority.

21 Now, why don't we then -- I know if I ask to  
22 go to Seattle, we'll get the same vote. Why don't we  
23 ask that we do not decide today. We're not going to  
24 Troy. That's clear. We will not decide today but we  
25 will ask the staff to explore the possibility of

1 holding the third hearing in Seattle.

2 We'll get a memo from the staff --

3 VICE CHAIRPERSON REYNOSO: Or another place?

4 CHAIRPERSON BERRY: Or somewhere else that  
5 would give us the convenience of people in the  
6 Northwest who have these issues to raise being able to  
7 raise them and not present too many complications. And  
8 then the Commissioners will get that memo and you may  
9 be asked before the next meeting as to whether you  
10 concur. And we'll try to figure out some way to do it  
11 so that you can be asked to concur in ways that you  
12 will know that you've been asked to concur, not wonder  
13 whether you've been asked to concur, just in the  
14 interest of time and the staff trying to get ready to  
15 do what they need to do.

16 So could you please execute that?

17 Is that okay with you, Mr. Hailes?

18 MR. HAILES: We'll do that..

19 CHAIRPERSON BERRY: So why don't we leave the  
20 issue there. Okay.

21 COMMISSIONER LEE: Can we still have the  
22 timeline that we're looking at?

23 CHAIRPERSON BERRY: Yes. May 20th we have  
24 our first hearing here, right here.

25 COMMISSIONER LEE: Right.

1                   COMMISSIONER HORNER: The 20th? Oh, it's one  
2 day. That's right.

3                   CHAIRPERSON BERRY: That's to get there or  
4 something. Look at the calendar and the front sheet.  
5 The 20th.

6                   And then we have Schools and Religion in New  
7 York on Friday the 12th at the Trade Building, and then  
8 Schools and Religion on the 23rd and the site  
9 undetermined as of today.

10                   Okay. All right. This has been a very  
11 illuminating discussion.

12                   COMMISSIONER HORNER: But it's not over.

13                   CHAIRPERSON BERRY: Does anyone have anything  
14 else under the Staff Director's Report before I go on  
15 to the next item?

16                   Thank you, Mr. Hailes.

17                   Yes, Commissioner?

18                   COMMISSIONER HORNER: Yes. Madam Chair, I  
19 think we need to discuss Washington and New York a bit  
20 also.

21                   CHAIRPERSON BERRY: Go right ahead.

22                   COMMISSIONER HORNER: First of all, I think  
23 we need to add some Education Department, Justice  
24 Department witnesses to the Washington one. And then  
25 also introduce some greater balance of thinking in the

1 non-governmental witnesses.

2           There are two Catholic organizations that I  
3 think ought to be represented there. By my count,  
4 rough count, just looking at the institutional  
5 identifications of the witnesses, I think there's a gap  
6 there.

7           So I would propose that we invite the Justice  
8 and Education Departments to send witnesses for our  
9 first panel and that we add those two Catholic  
10 organizations for our second panel or third panel or  
11 fourth panel, and subtract two organizations from the  
12 list which represent the alternative point of view --  
13 an alternative point of view.

14           CHAIRPERSON BERRY: Let me see here. Who are  
15 the two Catholic -- so we can write them down here.

16           COMMISSIONER HORNER: Beckett Fund for  
17 Religious Liberty.

18           CHAIRPERSON BERRY: V-E-C -- Oh, like Samuel  
19 Beckett?

20           COMMISSIONER HORNER: Yes. Well, not  
21 exactly.

22           (Laughter.)

23           COMMISSIONER GEORGE: It would Thomas  
24 A'Beckett, not Samuel.

25           COMMISSIONER HORNER: And Catholic League for

1 Religious and Civil Rights.

2 CHAIRPERSON BERRY: Catholic League --

3 COMMISSIONER HORNER: -- for Religious and  
4 Civil Rights.

5 CHAIRPERSON BERRY: So that's a suggestion.  
6 That they be added to --

7 COMMISSIONER HORNER: The non-governmental  
8 panels.

9 CHAIRPERSON BERRY: And the Justice and  
10 Education Departments.

11 COMMISSIONER HORNER: I think they should  
12 appear first, as we usually have government  
13 representatives appear first.

14 COMMISSIONER GEORGE: I have a question about  
15 that.

16 CHAIRPERSON BERRY: Yes. And I'm going to  
17 let Eddie comment.

18 COMMISSIONER GEORGE: My question is actually  
19 for Eddie.

20 There's a footnote to the memo. I think it's  
21 actually the first footnote of the memo which indicates  
22 that governmental officials will be invited.

23 Did you already have that in mind, the  
24 Education and Justice people? Is that what that  
25 footnote is about?

1           MR. HAILES: We had in mind contacting them  
2 to determine whether they had any information that  
3 would be helpful to us and if they would be available  
4 to testify at our Washington hearing.

5           We haven't had full interviews with officials  
6 from Justice or Education but we've contacted them.

7           What we've discovered is that they probably  
8 don't have information that would be helpful to us for  
9 our Washington hearing. And if you look at the fact  
10 that we have a one-day hearing, it would be extremely  
11 difficult to bring in those persons who would come  
12 forward to say that they have very little information  
13 that may be helpful.

14           There are persons that we propose to present  
15 testimony at the hearing that will talk about whether  
16 and to what extent Justice or Education can increase  
17 what they are currently doing.

18           CHAIRPERSON BERRY: Now, Eddie; my  
19 understanding is that the Equal Access Act is enforced  
20 by the Education Department.

21           MR. HAILES: It is not. It's a private right  
22 of action.

23           CHAIRPERSON BERRY: I mean, it's a private  
24 right of action.

25           MR. HAILES: Correct.

1 CHAIRPERSON BERRY: But that the Education  
2 Department -- there were some guidelines that Reilly  
3 issued or the President -- I've forgotten which -- on  
4 this issue, and that the Education Department is  
5 knowledgeable about those guidelines.

6 MR. HAILES: Yes. And we have contacted  
7 Education to actually interview a person who would be  
8 available to testify and we have not been successful  
9 yet.

10 CHAIRPERSON BERRY: Well, since it is a  
11 private right of action, what would be the statutory  
12 basis for the Justice Department's -- unlike the other  
13 things in the Civil Rights Division where they have a  
14 statutory basis for intervention, what would they tell  
15 us. I'm not opposed to them coming. I'm just seeking  
16 information.

17 What would they tell us after they told us  
18 that it was a private right of action and they didn't  
19 have jurisdiction to bring suits.

20 MR. HAILES: That there may be instances in  
21 which they would defend the constitutionality of the  
22 Equal Access Act.

23 CHAIRPERSON BERRY: So they would tell us  
24 that. Okay.

25 Is that -- do we want that on the record? Is



1 that the point, that we want this on the record so that  
2 when other witnesses come in to talk about what they  
3 are or are not doing, then we have a basis for having  
4 already talked to them? Is that the point, or what?

5 Commissioner Horner?

6 COMMISSIONER HORNER: Well, I'll defer to  
7 Commissioner Anderson who has something to say on that.

8 CHAIRPERSON BERRY: Oh, Commissioner  
9 Anderson.

10 COMMISSIONER ANDERSON: Well, my interest in  
11 having representatives from the Department of Education  
12 and Department of Justice there is that the guidelines  
13 that the Administration have issues are, in my opinion,  
14 good guidelines in terms of interpreting what really  
15 the Constitution allows in terms of equal access  
16 outside the provisions of the legislation.

17 I think it's both looking at the legislation  
18 and also looking at the First Amendment. And  
19 therefore, I think it's an important aspect of our  
20 monitoring of federal civil rights enforcement because  
21 religious liberty obviously is a civil right which,  
22 because of these guidelines most recently, are an issue  
23 that we ought to be looking at in terms of how the two  
24 Departments have followed up in seeing to the extent to  
25 which those guidelines are being respected.

1           So, I think it's odd for us to have these  
2 hearings and overlook what I think is a very positive  
3 development, which is the issuance of those guidelines  
4 to schools.

5           CHAIRPERSON BERRY: Okay. So somebody from  
6 Education. What about Justice?

7           COMMISSIONER ANDERSON: As I recall, I think  
8 they were jointly issued by Justice and Education. I  
9 may be wrong on that.

10          CHAIRPERSON BERRY: If we find that they  
11 were, then that would be the reason for Justice. If  
12 you find that they were not, then --

13          COMMISSIONER HORNER: Education.

14          MR. HAILES: They were actually issued by  
15 Education with the concurrence of the Attorney General.

16          CHAIRPERSON BERRY: Because it was a legal  
17 matter.

18          MR. HAILES: Yes.

19          CHAIRPERSON BERRY: Yes?

20          COMMISSIONER GEORGE: And, although again  
21 equal access is the most important of the three main  
22 areas of inquiry as I think we've understood them all  
23 along, there are the other issues of discrimination  
24 based on religious or religious expression in which the  
25 Justice Department has perhaps in some cases intervened

1 or there would be questions as to why they have not in  
2 this or that case or in a pattern of cases intervened.

3 So beyond equal access, there certainly would  
4 be questions to ask Justice Department representatives.

5 CHAIRPERSON BERRY: So, they should be told  
6 that they are to answer questions not just about equal  
7 access, whether or not they have done any -- or the  
8 guidelines -- whether or not they issued them, but  
9 these other issues, too.

10 COMMISSIONER GEORGE: Yes.

11 CHAIRPERSON BERRY: And that the Education  
12 Department should also be told that because we're  
13 interested in the guidelines and anything that they  
14 have to contribute on the question.

15 COMMISSIONER GEORGE: Yes.

16 CHAIRPERSON BERRY: And we are in Washington,  
17 so --

18 My concern about the witnesses. I don't mind  
19 adding witnesses that Commissioners -- I mean, I think  
20 Commissioners suggest witnesses and they can be added.  
21 But I'm not sure that I think that any of these  
22 witnesses who are here should be dropped.

23 As I looked at them, two of them are from the  
24 National School Board Association; one from the School  
25 Board, and that's the group that represents all the

1 school boards. So I assume that they're coming because  
2 they are the person who's responsible for the legal  
3 issues related to the school boards.

4 MR. HAILES: Exactly.

5 CHAIRPERSON BERRY: So I wouldn't count them  
6 necessarily as being somebody who had some particular -  
7 - I don't know what their personal -- this person's  
8 personal view is, but the School Boards Association I  
9 see as a rather -- they're school boards, a benign kind  
10 of --

11 COMMISSIONER HORNER: Why would we need  
12 People for the American Way?

13 CHAIRPERSON BERRY: Mr. Hailes?

14 MR. HAILES: When you look at the cases that  
15 have been litigated on all of the topical areas that  
16 the Commissioners have expressed an interest in --  
17 curricula and equal access and all of the other issues  
18 -- People for the American Way has been involved in  
19 those cases.

20 And the particular person that was  
21 interviewed by our staff and recommended by the staff  
22 is someone who knows a great deal about the curricula  
23 issues that we expect to discuss at this national  
24 overview hearing.

25 COMMISSIONER HORNER: And it would not be

1 redundant to have Americans United for Separation of  
2 Church and State and the American Civil Liberties Union  
3 and People for the American Way?

4 MR. HAILES: No. The way we propose to have  
5 panels for this hearing, each of those persons would  
6 deal with a different or separate issue.

7 CHAIRPERSON BERRY: And not be on the same  
8 panel?

9 MR. HAILES: Exactly. They would not be on  
10 the same panel.

11 COMMISSIONER HORNER: And then there would be  
12 three people on the other side of each of those issues?

13 MR. HAILES: Well, not the other side. We  
14 think other people that have other facts to bring  
15 forward, not so much on the other side. I think you  
16 will see in the hearing, as our interviews have shown,  
17 is this growing consensus among litigants on both sides  
18 as to how to resolve these issues. And they may have  
19 different perspectives but not many. And they will be  
20 able to show the facts as they have investigated them.

21 You have certain Jewish groups that will come  
22 forward and talk about the discrimination against  
23 students based on religion and you'll have other  
24 persons who have investigated cases largely affecting  
25 Christian students.

1           So it's not so much that they're on different  
2 sides but they have looked at different facts of  
3 discrimination. And that's how we have set up the  
4 panels.

5           CHAIRPERSON BERRY: So that they would be --  
6 okay. So they would be speaking fact specific about a  
7 particular situation.

8           MR. HAILES: Exactly.

9           COMMISSIONER HORNER: We don't see the panels  
10 here. All we have is a list. Could you tell us who's  
11 on what panel so that we could see the balance on each  
12 panel?

13          CHAIRPERSON BERRY: We'll get that next week,  
14 right?

15          MR. HAILES: When we provide the briefing  
16 book, you will see the agenda for the hearing.

17          COMMISSIONER HORNER: But in your own mind,  
18 you already know who's going on what panel?

19          MR. HAILES: I have a general idea already  
20 and I expected at this meeting that we would get  
21 certain suggestions from the Commissioners. But for  
22 the most part, we do have in mind how they would be set  
23 up.

24          COMMISSIONER HORNER: Well, I would just like  
25 to say that when we see the list of panels, we may want

1 to react to the balance on those panels. Is there time  
2 for us to effectuate changes at that point without  
3 causing disruption if we do?

4 MR. HAILES: What would be helpful now is at  
5 this meeting if you'd give a pretty good idea or clear  
6 picture of what you want to see and the staff will  
7 review and make final decisions based on what we see in  
8 the transcript.

9 I'm pretty certain you'll be pleased with the  
10 way in which the panels have been set up.

11 CHAIRPERSON BERRY: But you are assuring us  
12 that the witnesses, whatever their designations or  
13 organizations, will be speaking about fact specific  
14 situations.

15 MR. HAILES: Right. And to be very specific,  
16 the persons that you mentioned will not be on the same  
17 panel. They'll be on different panels.

18 COMMISSIONER HORNER: I guess the question is  
19 not so much whether there are different facts adduced  
20 but what questions the members of the panel choose to  
21 address. That's what concerns me. Is the nature of  
22 the questions addressed balanced?

23 To go back to Robbie's earlier discussion,  
24 are we going to be hearing about people who have been  
25 denied the opportunity -- wrongly denied the

1 opportunity for Christian expression, for instance,  
2 rather than the avoidance; people who have suffered  
3 from a feeling of having Christian expression imposed  
4 upon them.

5 MR. HAILES: Yes.

6 COMMISSIONER HORNER: You understand what I'm  
7 getting at, I'm sure.

8 MR. HAILES: Sure. And Mark Trooznick and  
9 Steve McFarland and several other witnesses that have  
10 been interviewed by our staff and recommended have very  
11 specific fact scenarios that they intend to present at  
12 the Commission hearings.

13 COMMISSIONER HORNER: Okay. I will just say  
14 -- and then that's all I need to say at this point, I  
15 guess. I will just say as I read down the  
16 organizational affiliations on this list, they looked  
17 very tilted to one side to me.

18 MR. HAILES: They're not. Okay.

19 COMMISSIONER HORNER: And I need -- I guess I  
20 need some reassurance that that's not the case. And I  
21 don't know how you can give me that reassurance.

22 MR. HAILES: Okay. Now tilted to what side?  
23 It's a very interesting observation because I think we  
24 did a very good job, the team that I'm working with at  
25 this time, conducting interviews.



1           After doing a lot of research and receiving  
2 recommendations from the Commissioners -- specifically,  
3 Commissioner George -- have done a fairly good job.

4           COMMISSIONER HORNER: Well, if you can add to  
5 the list as suggested a little while ago and still have  
6 room for questions and answers without subtracting from  
7 the list, that would help. But I'd just question  
8 whether you're going to be able to do that in the time  
9 frame we've got.

10          CHAIRPERSON BERRY: Commissioner Horner, do  
11 you have any particular thing that you want these  
12 witnesses -- the staff to understand that you want  
13 these witnesses to talk about? Will they understand  
14 that they are coming for fact finding and do you have  
15 the specific advice to give to the staff about how you  
16 see these witnesses as participating, just from your  
17 point of view, I mean, so they can figure out which  
18 panels they'd like to put people on?

19          COMMISSIONER HORNER: No. I'm not going to do  
20 that. I will react to what the staff presents.

21          CHAIRPERSON BERRY: Okay. All right.  
22                Were you about to say something else?

23          MR. HAILES: I just want to be clear because  
24 you mentioned two organizations from which we should  
25 seek witnesses that you are proposing for the New York

1 hearing or for the --

2 COMMISSIONER HORNER: No, no.

3 CHAIRPERSON BERRY: For Washington.

4 COMMISSIONER HORNER: D.C.

5 MR. HAILES: Well, I am concerned about that.

6 COMMISSIONER HORNER: I'm sorry. This is the  
7 D.C. list, isn't it, that you gave us? You haven't  
8 given us a New York list.

9 CHAIRPERSON BERRY: No, no. No, he hasn't.

10 MR. HAILES: And we did ask for  
11 recommendations by a date certain so that the team  
12 would have an opportunity --

13 COMMISSIONER HORNER: I didn't know I needed  
14 to make a recommendation until I saw the nature of the  
15 list. If we'd gotten this list a long time ago, then -  
16 - you know.

17 COMMISSIONER GEORGE: Eddie, weren't the  
18 recommendations -- as it happens that the two groups  
19 that Connie mentioned, I think they were among my -- on  
20 my list. I mean, they have other things, too. I mean,  
21 I don't blame you for not -- you couldn't take all my  
22 recommendations. But I don't think they are new in the  
23 hopper or that you're hearing about them for the first  
24 time here.

25 CHAIRPERSON BERRY: Commissioners should be

1 advised that if there's a deadline for submitting  
2 recommendations, you should submit your recommendations  
3 by the deadline so that the staff can consider your  
4 recommendations and then the list that you get will  
5 include their assessment of your recommendations. And  
6 then they'll be prepared to respond to why they didn't  
7 put yours on or whatever happened.

8           And I'm sure that given the time lines, the  
9 staff will now try to get these people, someone from  
10 these two organizations, in and you also have  
11 subpoenas. I think they've already been issued. But  
12 they will take these recommendations and review them  
13 and try to do the best they can with them and hope that  
14 they can get somebody from there to come.

15           But you should try to meet the deadlines  
16 without worrying about what other people are  
17 submitting. Just submit your own list and that way  
18 you're well covered.

19           Commissioner George?

20           COMMISSIONER GEORGE: I think the Vice Chair  
21 wanted to get in.

22           CHAIRPERSON BERRY: Vice Chair?

23           VICE CHAIRPERSON REYNOSO: Well, I just -- I  
24 take it that even at this late date these are  
25 recommendations that the staff will then explore. It's

1 not an order to the staff. It's recommendations.

2 CHAIRPERSON BERRY: Yes.

3 (Crosstalk.)

4 COMMISSIONER HORNER: I think Commissioner  
5 George said he did submit these by the deadline.

6 COMMISSIONER GEORGE: Yes. I don't want to  
7 make a big deal out of it. Just work on this and get a  
8 reasonable outcome.

9 CHAIRPERSON BERRY: Commissioner Anderson?

10 COMMISSIONER ANDERSON: I don't want to make  
11 too big a deal out of it, but --

12 CHAIRPERSON BERRY: Oh, let's make a big deal  
13 out of it.

14 (Laughter.)

15 COMMISSIONER ANDERSON: What I was going to  
16 say was I do notice by looking at the list here that  
17 there is good religious balance on the list, with the  
18 exception that there are no Catholic organizations  
19 represented. There's two Protestant organizations, two  
20 Jewish organizations, an Islamic organization. So I  
21 think we ought to try to do that if it's at all  
22 possible.

23 I'd have problems with the list as it stands  
24 now because of that.

25 MR. HAILES: I should have mentioned before,

1 and I apologize for not mentioning that we did make  
2 contact with Catholic organizations and they, as I  
3 recall the memos from our staff, the team that made  
4 these contacts, witnesses were not available. But we  
5 will make, consistent with the Chairperson's statement,  
6 efforts to secure witnesses from other Catholic  
7 organizations. But we did certainly reach out and make  
8 attempts to find available witnesses to testify at the  
9 May 20th hearing.

10 CHAIRPERSON BERRY: And maybe some of you  
11 could -- or maybe, Commissioner Anderson, you could  
12 urge maybe the Catholic League or somebody to make  
13 somebody available. That would be helpful.

14 COMMISSIONER ANDERSON: I'd be happy to do  
15 that.

16 CHAIRPERSON BERRY: Commissioner George?

17 COMMISSIONER GEORGE: Yes.

18 Eddie, as you picture the day, how many  
19 witnesses, ballpark, can we realistically manage to  
20 fit? Would it be four panels of three on each panel?  
21 Is that a ballpark?

22 MR. HAILES: That's a ballpark.

23 COMMISSIONER GEORGE: Gosh. That's only 12.  
24 But it seems very realistic.

25 (Crosstalk.)

1 COMMISSIONER HORNER: We're up to 16 or 15.

2 COMMISSIONER GEORGE: Four panels of four?  
3 Something like that?

4 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
5 just think it's worth reminding ourselves -- and I can  
6 see the frustration of staff -- that some time ago we  
7 had a long discussion about how we shouldn't have too  
8 many people on the panels because then they all just  
9 give us the top few minutes of their thinking. We  
10 don't have time to ask them questions.

11 I personally have not divorced myself from  
12 that point of view. I'd rather have two people per  
13 panel than four or five, so we have a chance to really  
14 go into the discussions.

15 I'm just putting that on the table. I can  
16 see the frustration that staff would have in these  
17 circumstances.

18 COMMISSIONER HORNER: I agree with that.

19 CHAIRPERSON BERRY: Just make sure the panels  
20 are balanced to the best -- whatever that means.

21 COMMISSIONER HORNER: You can cut them back  
22 and maintain balance or create balance.

23 CHAIRPERSON BERRY: Yes. Or something. Just  
24 make sure it's -- yes.

25 COMMISSIONER HORNER: Everybody doesn't have

1 to come.

2 CHAIRPERSON BERRY: We want a balance. You  
3 understand that. A balanced hearing. Because we want  
4 the record to be.

5 Yes, Commissioner George?

6 COMMISSIONER GEORGE: Let's just take an  
7 example, Eddie, on the curriculum issues.

8 MR. HAILES: Sure.

9 COMMISSIONER GEORGE: A panel would  
10 presumably be formed on the basis of the names we have  
11 here of the fellow from North Carolina, of Professor  
12 Nord, Charles Haynes and Oliver Thomas. Those are  
13 people who have expertise in that area?

14 MR. HAILES: If I may, I'm reminded by our  
15 General Counsel that the witnesses remain confidential  
16 until the time of the hearing. We are working with a  
17 suggested list of witnesses and you have mentioned some  
18 that certainly have been contacted, considered.

19 COMMISSIONER GEORGE: But presumably there  
20 would be only one -- again, given that we do at most  
21 four panels, there would only be one panel on  
22 curricular issues?

23 MR. HAILES: Yes.

24 COMMISSIONER GEORGE: That's what I would  
25 think. And as I'm looking down the list, just having

1 in mind the Vice Chairman's most recent comment, as I'm  
2 looking down the list, I see three people already on  
3 the list who probably wouldn't be appropriate for  
4 anything but the curricular issues. And that's plainly  
5 why you have them here.

6           And if in fact those three, as you say  
7 proposed witnesses pan out -- and I think they'd be  
8 great witnesses. I have no objection whatsoever. That  
9 doesn't leave any room for the addition of certainly  
10 any more than one on that particular topic unless  
11 there's -- is there -- you don't have to say what the  
12 name is but is there somebody else on this -- or any  
13 other individuals of the ones proposed here that would  
14 be directed toward curricular issues mainly?

15           MR. HAILES: Yes.

16           COMMISSIONER GEORGE: So we have at least  
17 four. So there's curricular panel that's really formed  
18 if these pan out already. There's no room for any  
19 movement on --

20           CHAIRPERSON BERRY: Why don't we let the  
21 staff take under advice our discussion and keep in mind  
22 what we've been saying here and what the Commission  
23 expects. And then when you get your briefing books,  
24 let's hope -- I'm sure they've heard.

25           You've listened very carefully, right?



1 MR. HAILES: Very carefully.

2 CHAIRPERSON BERRY: And so I think -- and you  
3 heard Mr. Hailes say you'll be pleased. And his track  
4 record is usually -- when he says you'll be pleased,  
5 you'll be pleased. I mean, he doesn't have a bad track  
6 record.

7 So why don't we just leave it at that.

8 MR. HAILES: Just a final point?

9 CHAIRPERSON BERRY: Yes.

10 COMMISSIONER GEORGE: Would it be your  
11 expectation that the Education and Justice officials  
12 would be on the first panel? We would open with  
13 government people before moving to private?

14 MR. HAILES: We haven't made that decision.

15 CHAIRPERSON BERRY: We usually do.

16 COMMISSIONER GEORGE: That's a very -- I'll  
17 make that as a very strong recommendation. I think the  
18 Chairman agrees.

19 CHAIRPERSON BERRY: Yes. As Commissioner  
20 Horner said earlier, we usually start with the  
21 government.

22 COMMISSIONER GEORGE: Yes. I think it will  
23 help us in framing the questions for the next panels if  
24 we have the government people first.

25 CHAIRPERSON BERRY: Okay. Let's go on to the

1 --

2 Yes?

3 VICE CHAIRPERSON REYNOSO: I'm sorry, Madam  
4 Chair. I think since I don't see it on the agenda --  
5 probably under the Staff Director's Report. The staff  
6 had sent us a breakdown of the cost for the publication  
7 of the Asian-Pacific American briefing. It seems to me  
8 like a really moderate cost.

9 If it's needed, I would move to authorize the  
10 staff to do that. I forget quite how we left it.

11 CHAIRPERSON BERRY: There are two issues.  
12 One is that the cost is very minimal. You got a memo  
13 on the amount of money it would take. But we won't see  
14 it until after the defame and degrade whatever that was  
15 mentioned here earlier is done.

16 So, -- but I would think that conceptually,  
17 we had asked them to tell us how much it cost so that  
18 we could make a decision based on the cost.

19 VICE CHAIRPERSON REYNOSO: Is that our  
20 decision or staff decision?

21 CHAIRPERSON BERRY: Well, we took it as our  
22 decision.

23 VICE CHAIRPERSON REYNOSO: Okay.

24 CHAIRPERSON BERRY: Ordinarily --

25 VICE CHAIRPERSON REYNOSO: Then my motion

1 stands.

2 CHAIRPERSON BERRY: -- we would like to print  
3 it or disseminate it.

4 Could I get a second, first, and then --

5 COMMISSIONER LEE: Seconded.

6 CHAIRPERSON BERRY: Commissioner Horner?

7 COMMISSIONER HORNER: I haven't seen the  
8 package so I can't vote on it until I get it. And so  
9 could we have it and look at it and then vote on it  
10 next time?

11 Vice Chair, this was presented to us as a set  
12 of options by the staff and that's why it arose. We  
13 otherwise would have treated it like any other  
14 briefing, which was we had it and it was had and that  
15 was the end of it. The staff was proposing to do  
16 something different, so if we're going to vote on it,  
17 I'd just like to see it.

18 VICE CHAIRPERSON REYNOSO: Fine.

19 CHAIRPERSON BERRY: Do you want to table the  
20 motion until we get the --

21 VICE CHAIRPERSON REYNOSO: Yes.

22 CHAIRPERSON BERRY: -- materials? Okay. So  
23 we'll just --

24 Okay. The motion is tabled until we get the  
25 actual materials.

1

2           The Task Force SAC appointment process  
3 recommendations.

4           Last time I noted that some people had not  
5 read these and others wanted time, and that the  
6 Regional Directors wanted an opportunity to review and  
7 respond. And the Regional Directors did review and  
8 respond.

9           And so now we're back again with this item on  
10 the agenda with a decision as to what to do about it.

11           Commissioner Redenbaugh, you are the chair of  
12 the task force.

13           COMMISSIONER REDENBAUGH: Yes. In light of  
14 the discussion we had in subsequent discussions between  
15 the meetings, I don't find that there's enough of a  
16 coherence in the recommendations that I think we could  
17 agree to go forward. And I think the policy then is to  
18 withdraw these and not vote on them and not attempt to  
19 make any changes at this time.

20           CHAIRPERSON BERRY: Vice Chair?

21           VICE CHAIRPERSON REYNOSO: As a committee  
22 member, I concur with that recommendation.

23           CHAIRPERSON BERRY: Okay.

24           COMMISSIONER HORNER: And I also.

25           CHAIRPERSON BERRY: Okay.

1 Well, since the committee agrees to this,  
2 then we'll just simply expect everybody to abide by the  
3 process as it is presently instituted and then move on.  
4 And we may revisit the issue at some other point.

5 Then we have the State Advisory Committee  
6 appointments. State Advisory Committee appointments.  
7 Would you like to take these up separately or  
8 altogether?

9 Why don't we take them up separately because  
10 some people may have some concerns about one or the  
11 other.

12 The first one is Hawaii. Could I get a  
13 motion on the Hawaii appointments?

14 COMMISSIONER LEE: So moved.

15 CHAIRPERSON BERRY: Can I get a second?

16 VICE CHAIRPERSON REYNOSO: Seconded.

17 CHAIRPERSON BERRY: Any discussion?

18 (No response.)

19 All in favor, indicate by saying aye.

20 (Chorus of ayes.)

21 Opposed?

22 (No response.)

23 So ordered.

24 Montana.

25 VICE CHAIRPERSON REYNOSO: Move it.

1 COMMISSIONER LEE: Second. —  
2 CHAIRPERSON BERRY: Any discussion?  
3 (No response.)  
4 All those in favor, indicate by saying aye.  
5 Opposed?  
6 (No response.)  
7 So ordered.  
8 North Dakota.  
9 VICE CHAIRPERSON REYNOSO: Moved.  
10 COMMISSIONER LEE: Seconded.  
11 CHAIRPERSON BERRY: Any discussion?  
12 (No response.)  
13 All those in favor, indicate by saying aye.  
14 (Chorus of ayes.)  
15 Opposed?  
16 (No response.)  
17 So ordered.  
18 Texas.  
19 VICE CHAIRPERSON REYNOSO: Moved.  
20 COMMISSIONER LEE: Seconded.  
21 CHAIRPERSON BERRY: Discussion?  
22 (No response.)  
23 All those -- do you want me to defer the  
24 Texas one for a moment and go to Utah and West  
25 Virginia? I can do that.

1           COMMISSIONER ANDERSON: At the last meeting  
2 or two, Commissioner George has had concerns about  
3 Texas. He just stepped out of the room. I don't know  
4 whether he was aware --

5           CHAIRPERSON BERRY: Okay. Let's do Utah and  
6 West Virginia. And could somebody go tell him that we  
7 want to do Texas?

8           COMMISSIONER ANDERSON: I'd be happy to move  
9 West Virginia, if you'd like.

10          CHAIRPERSON BERRY: All right.

11                   Oh, he's from West Virginia, though, but I  
12 guess he doesn't -- why don't we do Utah. Would that  
13 be okay?

14          COMMISSIONER ANDERSON: It's fine with me.

15          CHAIRPERSON BERRY: Could somebody move Utah?

16          VICE CHAIRPERSON REYNOSO: Moved.

17          COMMISSIONER LEE: Seconded.

18          CHAIRPERSON BERRY: Okay. Any discussion?

19          COMMISSIONER REDENBAUGH: Yes.

20          CHAIRPERSON BERRY: Go right ahead,

21 Commissioner Redenbaugh.

22          COMMISSIONER REDENBAUGH: I'm sorry?

23          CHAIRPERSON BERRY: Go right ahead.

24          COMMISSIONER REDENBAUGH: Oh, okay.

25 I'm going to vote no on this one because it's

1 in the context of a larger issue for me that's  
2 unresolved. And that goes to the question that we  
3 discussed at length at the last meeting, which is the  
4 publication of reports that were not accepted by the  
5 Commission and the relationship between -- and that  
6 goes to the question of the relationship between the  
7 Commission, its employees and its --

8           The General Counsel's memo didn't anticipate,  
9 and I think could not have anticipated the recent  
10 developments which is a letter from the Chair of the  
11 Illinois SAC which I interpret to be that the Illinois  
12 SAC, for example, is seeking to publish the report in  
13 its official capacity rather than as private citizens.

14           And I think this is a issue that's very  
15 different than what people may do as private citizens  
16 and I think it's worthy of our discussion.

17           This might not be the moment to discuss it  
18 and I would be happy to defer discussion to another  
19 meeting if that's what Commissioners would like to do.

20           CHAIRPERSON BERRY: Commissioner Redenbaugh,  
21 would you like me to ask or have you asked the General  
22 Counsel whether she believes or thinks that the letter  
23 from the Illinois SAC indicates an intention to publish  
24 officially or if she's prepared to answer that, or  
25 would she like to -- maybe we should wait until next



1 time to ask her that, since she doesn't know I'm going  
2 to ask her this.

3 VICE CHAIRPERSON REYNOSO: Madam Chair -

4 COMMISSIONER REDENBAUGH: It is something  
5 that we ought to investigate more fully, including  
6 myself. So I would like to actually hold it over.

7 CHAIRPERSON BERRY: All right. We'll just  
8 wait.

9 Yes, Vice Chair?

10 VICE CHAIRPERSON REYNOSO: Madam Chair, just  
11 a reminder that Utah was not among those states that  
12 was going to publish the report, so I think that this  
13 issue is divorced from Utah, I believe.

14 COMMISSIONER REDENBAUGH: My recollection is  
15 different from that, Cruz.

16 CHAIRPERSON BERRY: What was the situation  
17 with Utah?

18 VICE CHAIRPERSON REYNOSO: I wonder if the  
19 staff can tell us.

20 CHAIRPERSON BERRY: Staff -- let's ask Carol-  
21 Lee. She's a regional person.

22 What's the situation? Is Utah one of the  
23 places that was planning to publish?

24 MS. HURLEY: No. The Utah report has not  
25 been published by any members of the committee. It

1 has, however, been released pursuant to FOIA. What  
2 happens to it after that is out of our hands.

3 CHAIRPERSON BERRY: So they were not one of  
4 those states?

5 MS. HURLEY: No. And I've heard no  
6 suggestion that they intend to do that.

7 COMMISSIONER HORNER: Madam Chair, I think  
8 that was a situation in which an employee of the  
9 Commission indicated to the press that the -- am I  
10 wrong, Carol-Lee? -- that the report would be  
11 available and provided a phone number?

12 MS. HURLEY: There was a press report to that  
13 effect, but it was inaccurate.

14 COMMISSIONER HORNER: Has there been a letter  
15 to the editor stating that?

16 MS. HURLEY: No. But I know that the  
17 Regional Director sent a memorandum to the Staff  
18 Director specifically stating that what was said was  
19 that to obtain the report, people had to write under  
20 FOIA to Washington.

21 COMMISSIONER HORNER: And what was the  
22 circumstance under which the Regional Director  
23 volunteered how one would go about obtaining a report  
24 which had not been approved by the Commission?

25 MS. HURLEY: I think that it was at a regular

1 meeting of the SAC when they were informed that the  
2 report had been rejected by the Commission. Meetings  
3 of the SACs are open to the public and there may have  
4 been a question raised subsequent to the meeting.

5 I don't know all the details.

6 COMMISSIONER HORNER: Or it may have simply  
7 been volunteered. We don't know.

8 MS. HURLEY: I don't know but I don't know  
9 why the staff would seek to bring more problems upon  
10 themselves.

11 COMMISSIONER HORNER: Staff might do it as an  
12 opportunity, not a problem. I would like to see a copy  
13 of the letter sent to the newspaper correcting the  
14 erroneous report by the reporter, for the record. If a  
15 correction like that is not made, it has ramifications  
16 for how people view our execution of responsibility.

17 CHAIRPERSON BERRY: Does everyone know and  
18 recall or have means to refresh their recollection as  
19 to which article we're talking about and which  
20 response, so that they can hear all this out?

21 COMMISSIONER GEORGE: Could we do all this  
22 next time, maybe?

23 CHAIRPERSON BERRY: That's what I meant,  
24 because I don't know. I don't remember it, to tell you  
25 the truth.

1 COMMISSIONER HORNER: Let's hold it over.

2 CHAIRPERSON BERRY: So -- okay.

3 Utah, we will hold over. Do we want to hold  
4 it over or do people want to vote on it?

5 COMMISSIONER REDENBAUGH: I'd like to hold it  
6 over given there's some uncertainty about it. I'm  
7 unclear.

8 CHAIRPERSON BERRY: Okay. So we would get  
9 answers to these questions. Okay.

10 Now we've done -- let's see. West Virginia  
11 we need to do.

12 Could I have a motion for the state of West  
13 Virginia?

14 COMMISSIONER GEORGE: So moved.

15 CHAIRPERSON BERRY: The motion is made by  
16 Commissioner George, Commissioner Redenbaugh. You have  
17 seconded the motion; right?

18 COMMISSIONER REDENBAUGH: Yes.

19 CHAIRPERSON BERRY: Any discussion of the  
20 West Virginia?

21 (No response.)

22 All right. All in favor, indicate by saying  
23 aye.

24 (Chorus of ayes.)

25 Opposed?

1 (No response.)  
2 So ordered.  
3 Texas.  
4 VICE CHAIRPERSON REYNOSO: So moved.  
5 COMMISSIONER LEE: Seconded.  
6 CHAIRPERSON BERRY: Discussion?  
7 (No response.)  
8 All those in favor, indicate by saying aye.  
9 (Chorus of ayes.)  
10 Opposed?  
11 COMMISSIONER GEORGE: No.  
12 COMMISSIONER HORNER: Madam Chair, would I  
13 just be able to say for the record that I have  
14 abstained on all of these.  
15 CHAIRPERSON BERRY: Okay.  
16 Commissioner George, no on Texas.  
17 Commissioner Horner abstained on all. Okay.  
18 All right. That takes care of Texas.  
19 Now, Future Agenda Items. Anyone have any  
20 additional future agenda items in addition to the Utah  
21 question, which we'll take up under an item, and the  
22 question of the Illinois SAC official, whatever, which  
23 we'll discuss when we discuss Utah next time.  
24 All right.  
25 Yes, Commissioner Anderson?

1           COMMISSIONER ANDERSON: I would ask when we  
2 might expect the New York hearing report to be a future  
3 agenda item.

4           CHAIRPERSON BERRY: Do you know, Staff  
5 Director? Would you like --

6           STAFF DIRECTOR MOY: I'd like to defer to our  
7 General Counsel, if I might.

8           CHAIRPERSON BERRY: Okay.  
9           General Counsel, could you answer the  
10 Commissioner's question?

11          MS. MOORE: I don't know when to expect it.  
12 The team leader for the New York hearing has left the  
13 Commission and that has put the timelines in disarray  
14 at this point. That was Lillian Moyano Yob.

15          CHAIRPERSON BERRY: So Lillian left? Oh.

16          COMMISSIONER ANDERSON: So we're in legal  
17 sufficiency review on New York?

18          MS. MOORE: No, we're not.

19          CHAIRPERSON BERRY: Where are we in terms of  
20 status?

21          MS. MOORE: We received the report from the  
22 contractor in -- I believe the last Commission meeting  
23 where we discussed it was in February. We received  
24 that. And of course, there was additional staff work  
25 that had to be done on her report. Lillian was working

1 on that section of the report. She has moved to Italy  
2 to be with her husband and we are reconfiguring the  
3 staff to absorb that load.

4 CHAIRPERSON BERRY: Further questions?

5 COMMISSIONER ANDERSON: Perhaps in the next  
6 meeting we can have a timeline for New York?

7 MS. MOORE: Okay. Yes, sure. But right now  
8 the bulk of the staff in OGC is working on Schools and  
9 Religions hearings. We have two vacancies in our  
10 office which have not been filled and we're just short  
11 staffed right now.

12 We have three hearings in rapid succession  
13 that are being planned for Schools and Religions and  
14 everyone is working on that. In fact, we have very few  
15 staff to conduct legal sufficiency reviews at this time  
16 because of the Schools and Religion and the ADA project  
17 out of OCRE.

18 CHAIRPERSON BERRY: Commissioner Horner.

19 COMMISSIONER HORNER: Madam Chair, just a  
20 suggestion in this context. The suggestion is perhaps  
21 whoever is working on the legal aspects related to the  
22 Asian-Pacific briefing be redirected to the New York  
23 hearing which occurred several years before the Asian  
24 Pacific briefing. But that's a minor item, I'm sure.

25 MS. MOORE: Well, Commissioner Horner, --

1 CHAIRPERSON BERRY: Just a minute. Let  
2 Commissioner Horner finish.

3 COMMISSIONER HORNER: I'm assuming these are  
4 both legal issues and therefore both employ legal time.

5 MS. MOORE: No.

6 COMMISSIONER HORNER: If I'm wrong, fine.  
7 But the larger question is that this is a management  
8 issue and I would just plead with the Staff Director to  
9 assume some very strong direction here and make some  
10 tough management choices to get this done.

11 CHAIRPERSON BERRY: Commissioner George.

12 COMMISSIONER GEORGE: Not on this subject.  
13 When you're finished with it, I'd like to be  
14 recognized.

15 CHAIRPERSON BERRY: Oh, okay. All right.

16 COMMISSIONER HORNER: I'm finished.

17 CHAIRPERSON BERRY: Anybody else have any  
18 comments on this?

19 Do you have any comments?

20 MS. MOORE: No. She answered her own --

21 CHAIRPERSON BERRY: Question.

22 MS. MOORE: -- erroneous assumption. Yes.

23 COMMISSIONER HORNER: This report was  
24 promised originally for the end of last summer, so the  
25 Religion and Schools hearing which was not even a gleam



1 in Commissioner George's eye at that moment, is hardly  
2 the sole -- if indeed it's the proximate cause.

3 CHAIRPERSON BERRY: Commissioner George?  
4 Another question?

5 COMMISSIONER GEORGE: To take us back to  
6 Schools and Religion just to get one point clarified  
7 while Eddie is here, if it's possible.

8 CHAIRPERSON BERRY: Thank you, General  
9 Counsel.

10 COMMISSIONER GEORGE: On the scope issue  
11 which we really didn't -- we focused on the witnesses  
12 and not on the scope.

13 Are we going to try to -- in these hearings,  
14 particularly in the Washington hearing, are we going to  
15 go so far as to address questions of aid to parochial  
16 schools or aid to religious --

17 MR. HAILES: The answer to that question is  
18 no, given the time limitations and the focus of the  
19 scope and orientation as initially proposed. The staff  
20 has determined it's best not to deal with that issue.

21 COMMISSIONER GEORGE: May I say amen,  
22 hallelujah?

23 MR. HAILES: It will stay the same.

24 VICE CHAIRPERSON REYNOSO: Is that a  
25 religious statement?

1 (Laughter.)

2 CHAIRPERSON BERRY: Anyone have any other  
3 comments about anything at all?

4 (No response.)

5 If not, then I will entertain a motion to  
6 adjourn.

7 VICE CHAIRPERSON REYNOSO: So moved.

8 COMMISSIONER HORNER: Seconded.

9 CHAIRPERSON BERRY: It's not debatable. So  
10 ordered.

11 (Whereupon, the proceedings were concluded.)

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