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U. S. COMMISSION ON CIVIL RIGHTS

MEETING

Friday, November 15, 1996

The Commission met in Room 540, YWCA Building, 624 9th Street, N. W., Washington, D. C. 20425, at 9:45 a.m., MARY FRANCES BERRY, Chairperson, presiding.

PRESENT:

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

MARY K. MATHEWS, STAFF DIRECTOR

STAFF PRESENT:

BARBARA BROOKS
KI-TAEK CHUN
JAMES S. CUNNINGHAM
JOHN DILL
PAMELA DUNSTON
BETTY EDMISTON
EDWARD HAILES, JR.
GERRI MASON HALL
GEORGE M. HARBISON
CAROL-LEE HURLEY
JACQUELINE L. JOHNSON
FREDERICK ISLER
WILLIAM LEE
STEPHANIE Y. MOORE, GENERAL COUNSEL AND PARLIAMENTARIAN
VERONIQUE PLUVIOSE-FENTON

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STAFF PRESENT: (Continued)

CHARLES RIVERA
TAMI TROST
ANTHONY K. WELLS, SR.
AUDREY WRIGHT
NADJA ZALOKAR

COMMISSIONER ASSISTANTS PRESENT:

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

A G E N D A

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Special Announcement

Mary Mathews, Staff Director

Approval of the Agenda

Approval of the Minutes of the October 25th Meeting

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P R O C E E D I N G S

1

2

9:45 a.m.

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CHAIRPERSON BERRY: Good morning.

4

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7

I would like to, with the indulgence of my colleagues, do something out of the ordinary, which is to have a special announcement, which is a very special announcement, before we do anything.

8

9

10

Could my colleagues -- is there anyone who objects to indulging me to make a very special announcement before we begin?

11

12

VICE CHAIRPERSON REYNOSO: I have no

objection.

13

14

CHAIRPERSON BERRY: Are there any objections?

(No response.)

15

16

17

Okay. Well, without objection, then, I will make the announcement. Actually, I'll let the Staff Director Mary Mathews announce it.

18

19

20

She informed me some time ago of her desire to take the action that she is going to describe and she has decided to announce it this morning.

21

Go right ahead, Staff Director.

22

23

STAFF DIRECTOR. MATHEWS: Thank you, Madam

Chair.

24

25

I wanted to inform the Commission that I will be leaving the Commission at the end of this calendar

1 year. I'm going to be moving on to some other
2 opportunities, taking a little relaxation time in
3 between. I've very much appreciated the opportunity
4 I've had to serve as Staff Director.

5 And I want to thank the staff, in particular,
6 for tremendous efforts under very austere budget
7 circumstances, for the most part. Their dedication and
8 their hard work has been evidenced and I've very much
9 appreciated it.

10 I expect the White House to move quickly to
11 name a new Staff Director and I will ask you to
12 elaborate, if you want to, any further.

13 CHAIRPERSON BERRY: Well, let me just say
14 that I want to thank Mary Mathews. I don't know what I
15 have to say to thank her enough for being willing at a
16 very difficult time in the history of this Commission
17 when those of you who were not on it at the time don't
18 understand how difficult it was when we had no Staff
19 Director, when we had a problem with who was going to,
20 on a day-to-day basis, manage the agency for the
21 Commissioners, who after all are part-time and aren't
22 here all the time and don't have the responsibility.
23 And somebody had to be found.

24 And first, I guess, hit upon the idea of Mary
25 being a conduit, which was simply to transfer, tell us

1 what the staff was doing and try to muddle through that
2 way, and then, in the end, she was willing to undertake
3 the responsibility of being a political appointee for
4 the first time in her life and become a Staff Director.

5 And I know that it has been very difficult.
6 I know how difficult, with the resources, the staffing
7 problems, the issues and all the rest. But I just want
8 to thank you from the bottom of my heart for what
9 you've done and wish you every success in what you do
10 in the future.

11 STAFF DIRECTOR MATHEWS: Thank you very much.

12 CHAIRPERSON BERRY: So that's my special
13 announcement.

14 Vice Chair?

15 VICE CHAIRPERSON REYNOSO: Well, Madam Chair,
16 I was pleased 2-1/2 years ago -- you were just talking
17 a minute ago of how long it's been -- that we still
18 have in this country the draft. Because I believe it's
19 something akin to that to get somebody to be the Staff
20 Director at that time.

21 So I just want to express my appreciation at
22 the resilience of the Staff Director. Every time that
23 I see her, I whisper in her ear, "Are you keeping your
24 sanity?" And every time she has said yes, except this
25 morning. Somebody volunteered for her the answer. The

1 answer was, "What sanity?" So I knew things were
2 changing.

3 I know it's been a difficult time for the
4 Commission in terms of its structure and in the context
5 of a difficult structure we were able to reach the
6 compromise that Mary could indeed join us and has been
7 able to serve us well now for 2-1/2 years. It was
8 supposed to be a few months once upon a time.

9 STAFF DIRECTOR MATHEWS: That's right.

10 CHAIRPERSON BERRY: Okay. Well, -- and the
11 White House, I did inform the White House staff of this
12 yesterday, that this announcement would be made today,
13 and asked them to put us at the top of the list for
14 finding a Staff Director because, as you can tell from
15 reading the press, they haven't even figured out who's
16 going to be in the Cabinet yet. And I guess Staff
17 Director at the Commission is not number one on the
18 list of items that --

19 Good morning, Commissioner George.

20 COMMISSIONER GEORGE: Thank you.

21 CHAIRPERSON BERRY: -- that the President has
22 to deal with.

23 So I urged them to not let the agency
24 languish and to try to move. We've got about six
25 weeks, I guess, until the end of the year, and I will

1 be urging on them the notion of finding somebody
2 because we, as you know, have a process here where the
3 person has to meet with the Commissioners and the
4 Commissioners have to figure out who they will approve.
5 And then you've got all of the FBI checks and all that
6 business before that, so it can take time.

7 So I will be over the next few days trying to
8 keep the pressure on them to get somebody, but it's a
9 very difficult job.

10 Okay. Well, with that -- and the
11 announcement we just had, Commissioner George, was that
12 the Staff Director is resigning.

13 The first item on the actual agenda is to
14 approve the agenda.

15 Could I get either a motion to approve the
16 agenda or something?

17 COMMISSIONER ANDERSON: So move.

18 COMMISSIONER LEE: Madam Chair, can we have
19 the report from the staff on the St. Petersburg
20 situation?

21 CHAIRPERSON BERRY: I have some things to say
22 about that, and Commissioner Anderson may, under
23 announcements. And then we'll ask for that. We'll do
24 it under there.

25 No change in the agenda?

1 COMMISSIONER GEORGE: Madam Chair, can I just
2 add to the agenda a discussion of briefing procedures?

3 CHAIRPERSON BERRY: Briefing procedures.

4 Any objection?

5 (No response.)

6 No objection. Okay.

7 Any other additions to the agenda or
8 suggestions?

9 COMMISSIONER REDENBAUGH: Yes. I have one
10 which may properly come actually under the Staff
11 Directors' report, but it's a preliminary discussion of
12 the GPRA, the Government Review and Performance Act of
13 '93.

14 CHAIRPERSON BERRY: Okay. We'll take that --
15 since this is a short meeting, short cycle meeting that
16 we have one time every year in which we don't have a
17 Staff Director's report -- we do that every year --
18 we'll do that under announcements, too, or as an item,
19 but I'll put it down. The -- what did you call that?

20 COMMISSIONER REDENBAUGH: GPRA. Government
21 Review and Performance Act of 1993, I think, is the --

22 CHAIRPERSON BERRY: Okay. GPRA -- GRPA.

23 COMMISSIONER REDENBAUGH: Yes. PA. Yes.

24 CHAIRPERSON BERRY: All right. Any other
25 things people would like to discuss?

1 (No response.)

2 Okay. Then all in favor of the agenda as
3 modified, indicate by saying aye.

4 (Chorus of ayes.)

5 Opposed?

6 (No response.)

7 Okay. The minutes of the October 25th
8 meeting, the second item on the agenda.

9 Who seconded the agenda approval? They
10 didn't get a note here of who did it.

11 Commissioner Anderson.

12 CHAIRPERSON BERRY: All right. Thank you.
13 The minutes. Could I get a motion?

14 COMMISSIONER REDENBAUGH: So move.

15 CHAIRPERSON BERRY: A second?

16 COMMISSIONER ANDERSON: Second.

17 CHAIRPERSON BERRY: Any discussion of the
18 minutes?

19 (No response.)

20 All in favor of approving the minutes as they
21 are presented to you, indicate by saying aye.

22 (Chorus of ayes.)

23 Opposed?

24 (No response.)

25 Okay. Now we get to announcements.

1 First, would you like to go first, or what's
2 the deal here? You've got announcements. Make a bunch
3 of announcements.

4 STAFF DIRECTOR MATHEWS: Okay. Thank you.

5 I wanted to start off with the Los Angeles
6 mini-hearing, the reconvening of it. I understand Vice
7 Chair Reynoso and Commissioner Anderson and a couple of
8 our staff members were in Los Angeles just a few days
9 ago; returned last evening, I believe. And we were
10 successful in completing the questioning of the last
11 witness. So in terms of the hearing, the hearing
12 process itself has been completed.

13 CHAIRPERSON BERRY: I want to thank the Vice
14 Chair and Commissioner Anderson again for this service,
15 the arduous duty on behalf of the Commission.

16 I was just curious as to were there any --
17 did anybody come to the open forum?

18 VICE CHAIRPERSON REYNOSO: No.

19 CHAIRPERSON BERRY: Good. Well, I shouldn't
20 say good, but it was good you had it. And the Chief
21 showed up and all that, so it went well.

22 Go ahead, Staff Director, please.

23 STAFF DIRECTOR MATHEWS: Okay. I wanted to
24 move on to St. Petersburg. I have a couple of things
25 actually to mention on St. Petersburg.

1 The Chairperson, Commissioner Anderson and
2 our Southern Regional Director, Bobby Doctor, jointly
3 went to St. Petersburg, I believe it was October 30th,
4 and had a series of meetings. This was following the
5 riots that occurred just a short while prior to their
6 visit.

7 The meetings were with the mayor, the police
8 chief, the city council and a group meeting with civil
9 rights organizational leaders and community --
10 individuals from the community. I understand you may
11 want to comment more, Chairperson, but I understand the
12 meetings were a very good beginning in terms of
13 demonstrating the Commission's interest in assisting
14 and were a response to the mayor requesting the
15 Commission to be involved and assist in trying to
16 resolve the issues.

17 Following up further, the Florida State
18 Advisory Committee has scheduled a community forum on
19 St. Petersburg for December 3 and 4. They will have an
20 evening meeting on Tuesday, December 3, to hear from
21 community leaders, business owners and ministers on the
22 status of race relations and police community relations
23 in St. Petersburg. And then the next day, the SAC will
24 hear from federal, state and local government officials
25 and others. The next day is expected to last a full

1 day.

2 I especially mention that in light of
3 Commissioner interest in possibly attending. I also
4 have, which we can pass out here today, a series of
5 news clips on the St. Petersburg situation that the
6 staff prepared. I thought Commissioners may be
7 interested in that.

8 CHAIRPERSON BERRY: Yes. Commissioner
9 Anderson and I did go down to St. Petersburg and had
10 the meetings. You have noted from the press that since
11 that time the grand jury did not indict the police
12 officer and there's been another disturbance, I guess,
13 or one or two or three or more. I don't know how many.
14 A continuing disturbance in St. Petersburg. So the
15 issue there continues.

16 Commissioner Anderson, would you like to
17 comment on our visit and the situation?

18 COMMISSIONER ANDERSON: I would, after your
19 remarks.

20 CHAIRPERSON BERRY: Well, I really just -- I
21 thought it was important for the Commission to respond
22 when the mayor had asked. It's not clear whether he
23 was asking the Southern Regional Officer, who he was
24 asking, but after he had asked the Commission to come
25 and it was widely publicized that we were asked to

1 come.

2 And Commissioner Anderson pointed out to me,
3 which persuaded me that the two of us should go down
4 there, is that this would be one time that the
5 Commission, or one of the times that the Commission was
6 in the curve or ahead of the curve, as opposed to
7 waiting until something was over and then showing up,
8 especially when we had been asked. And that we had a
9 responsibility.

10 And it does fit in with our racial tensions
11 project. It fits in generally with what we're supposed
12 to do, so there's no question about that. And also,
13 particularly, with what we've been doing about the
14 racial tensions project.

15 I do intend to go back to St. Petersburg to
16 the forum myself, and would hope that other
17 Commissioners would be able to attend, too. It's going
18 to be very important for us to come up or for the SAC
19 to come up with some recommendations or some
20 conclusions and to be involved in the process.

21 Rabbi Agin, who is our State Advisory
22 Committee Chair, is from Ft. Myers, I think, and is a
23 Republican.

24 STAFF DIRECTOR MATHEWS: Yes.

25 CHAIRPERSON BERRY: He's from Ft. Myers and

1 he's been on the SAC for quite a while.

2 STAFF DIRECTOR MATHEWS: About eight years.

3 CHAIRPERSON BERRY: Eight years. And he was
4 in Miami when we had the Miami hearings. Some of you
5 may recall that he welcomed us there.

6 He has been very much involved. Yesterday, he
7 was talking to media about his upcoming forum and about
8 past SAC activities. One of the things that was
9 interesting was that the press kept reporting that the
10 Commission had given the city of St. Petersburg an F
11 and then had given them a B. So there are all these
12 grades.

13 So people kept calling me asking me when did
14 we start grading people and --

15 VICE CHAIRPERSON REYNOSO: Was that on a
16 standardized test?

17 CHAIRPERSON BERRY: That's what they asked.
18 me. And what do you have to do to get an A.

19 COMMISSIONER REDENBAUGH: You just wait.

20 CHAIRPERSON BERRY: And I kept trying to find
21 out where these grades came from. Get Charlie Rivera
22 to find out where these grade came from and the Staff
23 Director. And nobody could ever find out.

24 Apparently, we never gave any grades. It was
25 a comment made to the press by our Regional Director

1 about, you know, maybe they deserve a B, an F. So that
2 came on national news, international by the way,
3 because the Polish television or something called me up
4 about it, and Moscow, about our grading system. So
5 maybe we should have a grading system. I don't know.

6 But in any case, it's very serious business
7 down there. The community does seem to be somewhat
8 polarized, although there are some people who are
9 working very hard, both people we saw on the city
10 council, people out in the community, to try to mend
11 things.

12 And so I found it illuminating to be there
13 and I thought it was the right things to do, and I
14 think it would be the right thing to do to go back.

15 Commissioner Anderson?

16 COMMISSIONER ANDERSON: Thank you.

17 I thought it was most worthwhile to take the
18 trip to St. Petersburg, although I must say that I
19 left, after our visit, rather disturbed about the
20 situation there.

21 We had what I would characterize as
22 productive positive meetings with the mayor, the chief
23 of police, the city council, and what I would describe
24 as maybe 300 to 400 church, community and neighborhood
25 leaders or activists at Primitive Baptist Church that

1 evening.

2 One of the disturbing things to me, at least,
3 was the fact that there seemed to be a tale of two
4 cities. One tale you got from talking to the city
5 officials and the other tale you got from speaking to
6 the residents and activists in South St. Petersburg in
7 the black section of the city.

8 I am not sure there are any easy answers
9 there, but I think that it reflects in many ways
10 similar problems to what we've seen in other larger
11 urban areas. What was troubling to me in part was --
12 and I think we had quite candid discussions in private
13 with the city officials and I don't think it's a
14 mischaracterization to say that they seemed to be very
15 positive in terms of their attitudes and activities
16 towards race relations in their city, and trying really
17 to advance the cause of racial harmony and community
18 development in that city.

19 However, there is a huge gulf between
20 expectations and the perception of performance and
21 maybe the reality of performance among the residents in
22 the black community and what had been occurring by city
23 officials. So, I think that they have many problems
24 there the city officials had not realized prior to the
25 last month and I think unfortunately the situation is

1 exacerbated by evidence that there are some individuals
2 in the community that really do want to promote
3 violence there.

4 And my own view is that justified anger does
5 not justify the kind of violence we've seen down there
6 on two occasions but I think it's very good that the
7 Commission be involved with the State Advisory
8 Committee in doing that assessment that they're going
9 to do next month. And I think it probably was
10 important that we went down there.

11 And I think the function that we can help
12 serve in that community is to provide a review and
13 assessment that ought to have credibility in all the
14 aspects of the community, in all segments of the
15 community. I think if we can provide that function, we
16 will do something positive.

17 CHAIRPERSON BERRY: I agree with everything
18 that Commissioner Anderson said. The only piece that I
19 thought was sort of missing from the government's side
20 down there -- and I said so to the government people,
21 so maybe they are already responding to it, and I will
22 check on it when we go back down to the forum -- is
23 that they didn't seem to -- had not seemed to have
24 thought about any kind of real plan that they could lay
25 out to show the community.

1 You know, not that they would implement it
2 tomorrow, but some kind of plan put together with
3 community people, government people, people from the
4 white community, the black community, leadership, that
5 would say we recognize these particular problems,
6 social and economic problems, not just police and
7 community but all the issues that they raised with us.

8 Things like recreational facilities and jobs
9 and what happens to housing and things like that. Some
10 kind of systematic approach which has happened in other
11 cities, and some cities where there's not much in the
12 way of resources and others where there's more.

13 Chicago has had such a plan; Cleveland, to rebuild
14 Cleveland; and Detroit is underway. Not that things
15 are fixed but so that people have a positive attitude
16 about things that are implemented.

17 And that seemed to have not been really
18 thought of. Indeed, I think the mayor sort of said,
19 you know, they really hadn't gotten into that point.
20 And I'm hoping that out of this comes some kind of
21 action plan to be implemented which will have support.

22 And I don't like to use the word responsible,
23 but I was about to say from responsible community
24 leaders. Well, you know, even from irresponsible
25 community leaders, so that the next time something

1 happens -- and something is going to happen inevitably.
2 They've got to work on the police issues. But that
3 there's more confidence and trust.

4 Because if there's confidence and trust, you
5 can get people to listen to reason sometimes, or at
6 least most of them. And then the ones that don't
7 listen to reason, the other people will denounce them.
8 But if there's no confidence and trust, then you've got
9 a real problem.

10 Commissioner Redenbaugh?

11 COMMISSIONER REDENBAUGH: Yes. I want to
12 commend you, in particular, and the Commission, in
13 general, for responding in the way that we have with
14 you and Commissioner Anderson going there. I mean, I
15 think this is exactly the kind of thing that we
16 anticipate when we reserve some of our money for
17 unanticipated events.

18 And I just think we've moved in a very timely
19 and in a very productive way. In light of our budget
20 plans, it's good to maintain the capacity to do more of
21 this than we have been able to do in the past. And so
22 I commend you all.

23 Well done. Thank you.

24 CHAIRPERSON BERRY: Yes, Vice Chair?

25 VICE CHAIRPERSON REYNOSO: Madam Chair, I

1 want to join in Commissioner Redenbaugh's notion that
2 it's a good thing that we're able to respond in a
3 timely fashion when these issues come up. I think 90
4 percent of the good that can be done is by being on the
5 scene quickly when something like this happens.

6 I was interested in how the incidents in St.
7 Petersburg relate to the testimony we heard days ago in
8 Los Angeles from the police chief, where we queried him
9 at some length about the continuing problems of certain
10 segments of the community with the police departments
11 in the given communities. And I mentioned to him that
12 this Commission has been dealing with those issues
13 since 1957 and that until the last two years when I
14 began to get a lot of civil rights complaints
15 pertaining to immigration, the greatest number of
16 complaints that I got in terms of civil rights were
17 police/community complaints.

18 And his response -- we pushed him on what he
19 thought his response was to those continuing issues.
20 And while he gave us many suggestions, the repeated
21 theme of his was that these issues won't be solved
22 overnight but that we will take positive steps to solve
23 them insofar as there is leadership at the top.
24 Leadership in the police department, leadership in the
25 communities, and so on.

1 At the same time, Commissioner Anderson was
2 telling me about the community meeting that you all
3 attended where person after person got up with his or
4 her own personal horror story about a relationship they
5 had had with the local police.

6 And there was already a predisposition on the
7 part of folk who were there, who were all substantial
8 citizens in the community, who had these ill
9 experiences with the police or people of authority.
10 And so they were immediately ready to accept or believe
11 the worse, if you will, in terms of what had happened
12 between the community, and particularly the young man
13 that was shot, and the police, whether in or not that
14 was in fact justified by whatever subsequent
15 investigation would show.

16 I dare say that to me, it seems to indicate
17 that in part, because they weren't focused on it, we
18 have a situation here where it seems to me the
19 governmental and police leadership in the community
20 there have not provided the sort of leadership that our
21 witness in Los Angeles was suggesting we need, so that
22 when an incident like this breaks out -- and they are
23 bound to break out from time to time, they're not so
24 many good citizens in the community who have already
25 had these ill experiences and you have citizens who are

1 able to say, well, wait, you know, that's not been our
2 experience with the police or with the city officials.

3 So these things don't happen in a vacuum, is
4 what the message was, I think, from our witness in Los
5 Angeles.

6 CHAIRPERSON BERRY: I just think that from
7 years of researching these issues and dealing with them
8 also, and thinking about all the reports the Commission
9 has done and the whole series in the 1970's and early
10 '80s on police/community issues when the Commission
11 went around the country holding hearings just on police
12 and community. Police practices and civil rights or
13 something, it's called. Somebody here must know what
14 it's called. But anyway, there are a series of
15 reports.

16 There is a tension which will always exist
17 between police and community because police, especially
18 communities that are different racially or some other
19 way, the "other," because there is, first of all,
20 suspicion; and secondly, police are worried about their
21 own safety. And especially if you're in an area where
22 there's crime.

23 You know, all these considerations come in,
24 so there's always a tension. And there's always a
25 tension for people who comment on it and who analyze it

1 between wanting police to be guardians to stop crime
2 and on the other hand, not wanting them to abuse
3 people. And the police know this themselves.

4 I mean, the chief down there that we were
5 talking to, who seems like a decent person, is very
6 much aware of his problem of managing the force and
7 keeping them alert as crime fighters and at the same
8 time making sure they don't do things to provoke
9 incidents and to abuse people. I mean, it's just a
10 constant kind of tension. And it has to be worked on.

11 And almost every police force we've ever
12 studied on the Commission has told us that there's not
13 enough training on these issues and a lot of police
14 officers don't know how to balance these things.

15 And one of the questions we asked -- I've
16 forgotten who asked it of the police chief, was whether
17 he understood that if a person has -- a police officer
18 has a lot of complaints filed against him, whether
19 they're found to be valid or not, that this particular
20 person bears watching. Because all of the studies that
21 the Police Institute, the Police Foundation, everyone
22 has done, indicates that policing, just like anything
23 else, if there are lots and lots of complaints filed
24 against somebody, you should at least observe to see if
25 there's some problem going on there.

1 It wasn't clear to me that he sort of got
2 that. Maybe he did. But anyway, we will learn more
3 when we go down there, and so we are on the curve on
4 St. Petersburg.

5 Did you have some other --

6 COMMISSIONER HIGGINBOTHAM: May I just make a
7 comment?

8 CHAIRPERSON BERRY: Yes, Commissioner
9 Higginbotham.

10 COMMISSIONER HIGGINBOTHAM: First of all, I'm
11 delighted the two of you did what you did. It's an
12 important contribution. I would hope that from the
13 Commission, even recognizing how overburdened the staff
14 is, that we can get a bibliography which is available
15 to deal in these emergencies.

16 As an example, if you read over the National
17 Commission on the Causes and Prevention of Violence,
18 they have whole books, one including one on Chicago,
19 the Civil Rights Commission. And if we had a way so
20 that when these problems take place that the thinkers
21 in the community would at least have access to the
22 literature so they would recognize that they're not
23 unique and they will have some history in terms of how
24 the problems have been approached.

25 Every mayor seems to think when you have a

1 riot of this type, of course, it could happen anywhere
2 but here. And I think we've spent all of this money
3 over decades and it might be good if we could think in
4 terms of preparing some type of preliminary packet
5 which would be available, almost the same way when
6 someone gets hit by an automobile and they get into the
7 ambulance. They can open the book and say if you have
8 this symptomatology, give them oxygen.

9 CHAIRPERSON BERRY: I think that is an
10 excellent suggestion. And it segues me into another
11 issue, and that is the Texaco issue, which has been
12 much in the news.

13 And several people had called me when this
14 first surfaced to see whether either I, the Commission,
15 the State Advisory Committee, somebody was going to
16 make some kind of response and get involved. And as I
17 thought about it -- well, first of all, you have
18 litigation which is ongoing. Secondly, I in my own
19 mind, I thought the most useful contribution the
20 Commission could make in that setting was to give to
21 the guy who is the chair of Texaco and those people who
22 are involved, the materials the Commission has on how
23 you go about creating a nondiscriminatory workplace.

24 Because the Commission has lots of
25 information, chapters and reports, all sorts of things,

1 where step by step -- and of course, they should have
2 created a nondiscriminatory workplace years ago,
3 according to the CEO. He says that they need to create
4 one, so I'm only inferring from what he said. But
5 there are all kinds of steps. It's not like a new --
6 you know, something that has to be reinvented as to how
7 you do this.

8 And so it seemed to me that if we were going
9 to do anything, the first thing we could do is share
10 that. But I thought it was too premature to get
11 involved at this point.

12 But one of the things I've been watching in
13 the news on this issue is the Texaco people keep
14 talking about various activities they're going to
15 engage in to improve things at Texaco. But all the
16 Commission studies show that the leader of any
17 organization has to be involved with the implementation
18 of any steps to create a nondiscriminatory workplace,
19 even down to the most minute, until it's done. You
20 can't hand it over to somebody and say, well, I'm going
21 to hire somebody or I'm going to let staff guy Joe be
22 involved to do this.

23 And until you get it done, whether it's a
24 university, a corporation or the Commission or whatever
25 it is, the people at the top have to really be in there

1 pitching all the time and showing that they are
2 involved. Otherwise, the organization will not
3 respond.

4 So maybe at some point we could, in putting
5 together our bibliography that you're talking about,
6 Commissioner Higginbotham, we'd have something on this
7 nondiscriminatory workplace, would be one of the
8 packets so that people could be sent that and offered
9 any other advice that we might have.

10 Is that the end of yours before we go to the
11 GRPA?

12 COMMISSIONER HIGGINBOTHAM: May I just make a
13 --

14 CHAIRPERSON BERRY: Yes.

15 COMMISSIONER HIGGINBOTHAM: I'm delighted for
16 the Commission to look at Texaco or any other matter.
17 I'm going to abstain from voting on anything pertaining
18 to Texaco, not because I'm suggesting that they've been
19 flawless or that there aren't some serious problems.
20 But they've asked me to look, as a consultant, in terms
21 of how they can go forward in the future.

22 I've not made a definitive judgment but I
23 didn't want anyone to be not aware of that fact.

24 CHAIRPERSON BERRY: Okay. One of the reasons
25 why I mentioned it was to give you the opportunity to

1 put that in the record.

2 VICE CHAIRPERSON REYNOSO: Madam Chair, I
3 just want to suggest that maybe it's not too early to
4 be in touch with a CEO because we are not a litigation
5 organization, so I don't think it would be incongruous
6 to even have you give him a call and maybe get together
7 with the CEO to reinforce what you just said. That
8 unless the CEO is willing personally to be involved and
9 to have it high on the agenda for several years, it's
10 not going to happen automatically. I think it might be
11 salutary to have such a meeting.

12 So I just want to express my own view that
13 since we are in no way in litigation, I don't believe
14 it would be improper for us to be in touch with him.

15 CHAIRPERSON BERRY: Well, we might think
16 about that as something that the New York State
17 Advisory Committee might be interested in doing and
18 monitoring what's going on there as part of their
19 activities, if they're interested in doing it.

20 Go ahead.

21 STAFF DIRECTOR MATHEWS: Thank you. I wanted
22 to add a few more announcements briefly.

23 At the last Commission meeting we discussed
24 two options for dates for the Mississippi Delta Hearing
25 in March. The staff has looked at all the angles of

1 these in terms of hotel availability. And my staff has
2 talked to the Regional Director and he's indicated that
3 based on his records, there are no conflicting
4 organizational events during either of those weeks.

5 The hotel availability appears to be only one
6 of those two weeks, and that's the March 6 through 8th
7 time frame.

8 I also asked the General Counsel's office to
9 review, in terms of their sources of information, and
10 there are a few issues that might be relevant to the
11 March 6th to 8th dates. There are a few potential
12 conflicts, but if you want further information, I can
13 call on the General Counsel. But it does appear to me
14 as though March 6 to 8 is certainly the better of those
15 two. The other week would not work, I don't believe.

16 CHAIRPERSON BERRY: So we're March 6, 7th and
17 8th in Mississippi?

18 STAFF DIRECTOR MATHEWS: Right.

19 COMMISSIONER GEORGE: We no longer have to
20 hold the 13th, 14th and 15th?

21 STAFF DIRECTOR MATHEWS: Right. Right.

22 COMMISSIONER GEORGE: But it's not certain,
23 the 6th to the 8th?

24 CHAIRPERSON BERRY: Yes, it is.

25 COMMISSIONER GEORGE: Oh, it is certain.

1 CHAIRPERSON BERRY: The 6th, 7th and 8th are
2 the dates for the Mississippi Delta hearing.

3 STAFF DIRECTOR MATHEWS: The next issue is
4 the budget for fiscal year 1998 has been prepared
5 following Commissioner decisionmaking at the last
6 Commission meeting. We have just finalized the
7 packages and delivered it to OMB. Copies will be
8 distributed to the Commissioners next Monday.

9 I guess I could go from that into --

10 CHAIRPERSON BERRY: The item about the GRPR
11 or the PGPR --

12 COMMISSIONER REDENBAUGH: LPGA.

13 STAFF DIRECTOR MATHEWS: Yes. It sounds like
14 a hit tune, doesn't it?

15 The Government Performance and Results Act, I
16 believe, is the term. This is a -- I have an overview
17 here, maybe just to give you one sentence.

18 This is a framework through which agencies
19 will be required to set strategic goals, measure
20 performance and report on the degree to which goals
21 were met. In the submittal for fiscal year 1998, the
22 OMB has required five agencies, very large agencies, of
23 which the Commission is not one of the five, to submit.
24 on a trial run. This Act actually kicks into effect
25 with the fiscal 1999 submittal which would go to the

1 Office of Management and Budget in September of 1997.

2 I've asked staff some time ago to coordinate
3 with Office of Management and Budget on this issue and
4 they have indeed done that. There has been a meeting
5 or two and some follow-up discussions by phone. So we
6 are beginning to develop a framework but it's an
7 ongoing process. And that is what is envisioned in
8 this current fiscal year, an ongoing coordination with
9 the Office of Management and Budget.

10 The plan itself, when it is developed, would
11 span a five year period running up through fiscal year
12 2002, and it would include a description of the mission
13 of the organization and general goals and objectives to
14 be achieved.

15 OMB has stressed to the staff in the
16 discussions on this issue that given the mission of our
17 agency and our size, that this strategic plan for the
18 Commission would be extremely general, as they would
19 envision it, general in nature.

20 That's all I have on that topic.

21 COMMISSIONER REDENBAUGH: Can I ask for a
22 little clarification?

23 STAFF DIRECTOR MATHEWS: Certainly.

24 COMMISSIONER REDENBAUGH: OMB is only
25 requiring five big agencies?

1 STAFF DIRECTOR MATHEWS: To submit this --

2 COMMISSIONER REDENBAUGH: For the 1998 dress
3 rehearsal kind of thing?

4 STAFF DIRECTOR MATHEWS: Yes. That's my
5 understanding. And other agencies, not among those
6 five, are working with OMB on pretty much a continuing
7 basis throughout the year to develop a draft and talk
8 to OMB about the draft. So it's an ongoing process.

9 COMMISSIONER REDENBAUGH: Given that at least
10 by the standards of money that OMB deals with, we're
11 obviously not an important agency. In spite of that,
12 are they cooperative with you in terms of your efforts
13 to produce this?

14 STAFF DIRECTOR MATHEWS: Oh, very much so.
15 Staff reported to me there was a very good exchange.
16 They had a good long discussion on this -- it was some
17 months back -- to try to begin. And staff is working
18 already in developing a draft. So we're very deeply
19 into this issue.

20 COMMISSIONER REDENBAUGH: There has been just
21 one meeting or more than one?

22 STAFF DIRECTOR MATHEWS: It's difficult to
23 recall here off hand. I believe there was one meeting
24 but there were -- oh, I see staff in the back here
25 giving me an indication there were two meetings.

1 COMMISSIONER REDENBAUGH: Two meetings.

2 STAFF DIRECTOR MATHEWS: I could not tell you
3 off the top of my head how many telephone calls
4 following up.

5 COMMISSIONER REDENBAUGH: Is it your sense
6 that this would be useful for an agency in our
7 situation? It may not be that one size does fit all.

8 STAFF DIRECTOR MATHEWS: I think that it
9 certainly is a useful exercise. I think the agencies
10 that have things like how many tax returns do you
11 process a month or other agencies and how many grant
12 applications do you process, those functions lend
13 itself more readily to this process than our function.
14 And larger agencies have, as we know, they have usually
15 a variety of funding sources and a variety of accounts.
16 And so this process is designed to look at each account
17 and how it's envisioned and then develop goals and
18 objectives appropriately.

19 In the Commission's case, we are a one line
20 item budget. We have one account, one line item, so we
21 only have one issue. In terms of budgeting, we have
22 one issue. We have one mission.

23 COMMISSIONER REDENBAUGH: As an executive of
24 the agency, do you think it would be a useful way to
25 measure for -- you have to measure the accomplishment

1 of the agency, of us?

2 STAFF DIRECTOR MATHEWS: I think it would be
3 difficult, Commissioner Redenbaugh. I think that's
4 something the staff is wrestling with right now, how to
5 translate this process into the Commission's way of
6 operating. So we're wrestling with that issue. I
7 think it's very difficult.

8 The process envisions an agency more typical
9 along the lines of what I just said.

10 COMMISSIONER REDENBAUGH: Thank you.

11 CHAIRPERSON BERRY: Under announcements, I
12 think Commissioner George had an item that we stuck
13 there for want of another place to put it.

14 COMMISSIONER GEORGE: Yes. The briefing for
15 today, as I understand it, has been canceled.

16 CHAIRPERSON BERRY: Yes.

17 COMMISSIONER GEORGE: I'm sorry. Postponed.
18 It's been postponed. But I think we might take a
19 little of the time that would have gone to the briefing
20 to have a discussion of briefing procedures, which it
21 seems to me it would be very good for us to sort of
22 regularize and formalize so that everyone was happy
23 with the way briefings were planned and executed.

24 I'm not at all clear, actually, on whether we
25 have formal procedures for this or not. It seems to me

1 that we did have a discussion a few months back or
2 maybe even a year back on the procedures, but it's not
3 clear to me whether we have formal rules about the
4 amount of time in advance that a briefing -- that we'll
5 be given notice of a briefing; the amount of time in
6 advance we'll be given notice of witnesses; the time
7 we'll have to contribute to that and so forth.

8 Did we settle that issue?

9 CHAIRPERSON BERRY: No. Commissioner George,
10 this is one of those things I wish you would not do,
11 but I have a hunch you're going to do it anyway.

12 COMMISSIONER GEORGE: What's that?

13 CHAIRPERSON BERRY: I had hoped we would not
14 regularize how we do briefings. Briefings came about
15 as an idea to give the Commission some flexibility to
16 deal at an ad hoc basis with issues that arise, without
17 a lot of planning, without a lot of rules. That if any
18 Commissioner wanted a briefing on something, all they
19 had to do was say so. And unless there was strenuous
20 objection by somebody, the staff would immediately go
21 out and try to round up some people to have a balanced
22 briefing. That is, some people who were for and some
23 who were agin' and try to give us some -- because the
24 whole purpose of the briefing is just to inform
25 ourselves about whatever it is, and also to show the

1 public that we are taking an interest in whatever this
2 issue happens to be.

3 So there was deliberately never a regular
4 formal regularized procedure. If we make it that way,
5 we will have hardening of the arteries and constraints,
6 and then we will have to find yet another more flexible
7 kind of thing we can use when something happens.

8 One of my greatest frustrations at this
9 Commission is the inability to respond quickly to
10 anything that happens. I mean, everything seems to
11 take forever and everything takes five million
12 procedures. And I know you have to balance an interest
13 in worrying about fairness and balance and all that
14 against the need to respond flexibly.

15 What I liked about me and Commissioner
16 Anderson going to St. Petersburg is we didn't have to
17 spend six months trying to figure out whether we were
18 going to go to St. Petersburg, and gee, you know, how
19 many people are going, to get the train ready. And by
20 the time it got ready, there would not be an issue.

21 So, if you can think of some way -- I think
22 it's fairer to say that everybody can suggest a
23 briefing, anybody who wants to. If you want to suggest
24 one, unless somebody objects, the staff will put it
25 together.

1 The staff is generally on notice that it
2 ought to be balanced, and if it isn't, people are going
3 to raise holy hell, and they'd better make sure it is.
4 And if they can't work it out so it's balanced because
5 not enough people from one side or the other can come,
6 cancel it or something or wait until another time. And
7 if the timing is such that you can't get it together,
8 then delay it.

9 But if you want to make rules, I can't do
10 anything about it.

11 COMMISSIONER GEORGE: Tell me this. Do we
12 even have a procedure for recommending briefings?

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER GEORGE: Is a Commissioner to
15 call Mary Mathews and recommend a briefing or are we
16 supposed to do it at a Commission meeting?

17 CHAIRPERSON BERRY: You can call Mary
18 Mathews, you can say it at a meeting, you can send a
19 note. You can do it however you want to. Carrier
20 pigeon.

21 COMMISSIONER GEORGE: Okay. Then what
22 happens? Someone calls Mary and says -- or the Staff
23 Director, whoever the Staff Director will be, and says
24 I think we ought to have a briefing on thus and so.
25 What happens next?

1 CHAIRPERSON BERRY: If the Staff Director
2 sees no problem, if you say I need to have it this
3 week, at the next meeting, if there's enough time, then
4 the Staff Director can check around to see if anybody
5 objects. If you suggest it and you say I want in
6 December or January or whatever to have a briefing, at
7 the next meeting, we'll say our schedule of briefings
8 are blah, blah, blah. We've done that.

9 And if anybody says, well, I don't like that
10 briefing, I don't want to have a briefing on that, then
11 we would discuss it and see whether enough people
12 object not to have it. But you'd be able to suggest it
13 at any time. Only if you needed to have it in three
14 weeks and there was no meeting in between would it come
15 as a total surprise to people that there was going to
16 be one.

17 I mean, everybody knew there was going to be
18 something on welfare and --

19 COMMISSIONER GEORGE: Oh, no. I have no
20 objection. This is something that's bothered me for a
21 long time. The reason I bring it up today is since the
22 briefing has been postponed. We had the time set
23 aside. It seemed to me a good time to discuss the
24 issue of notification and procedures.

25 I agree with you that flexibility is

1 desirable. On the other hand, I think that we ought to
2 have some reasonable advance notice of a briefing.

3 I'm not complaining about this particular
4 briefing but we ought to have -- on a regular basis, we
5 ought to be able to expect that there will be
6 reasonable notice and a genuine opportunity to
7 contribute to the formation of the witness list and to
8 object if it turns out that the briefing is taking
9 shape in a way that a Commissioner finds objectionable.

10 CHAIRPERSON BERRY: I think that objecting to
11 a briefing -- you have a list of briefings. If you
12 want to object at a meeting when you get the list and
13 say I don't think there should be a briefing on this --

14 COMMISSIONER GEORGE: Do we have a list of
15 briefings?

16 CHAIRPERSON BERRY: You were given a list.
17 You were told.

18 Weren't they told what the whole list was
19 going to be for the rest --

20 STAFF DIRECTOR MATHEWS: About six months
21 ago.

22 CHAIRPERSON BERRY: Six months ago.

23 COMMISSIONER GEORGE: For the rest of the
24 year or what?

25 CHAIRPERSON BERRY: Right here in the

1 meetings.

2 COMMISSIONER GEORGE: Well, then, we don't
3 have the flexibility

4 CHAIRPERSON BERRY: Except we added -- we
5 added some. And you were told about this one.

6 Was it last time that they were told?

7 STAFF DIRECTOR MATHEWS: Right.

8 CHAIRPERSON BERRY: At the last meeting. The
9 ones that were added, you were told at a meeting that
10 they were added, like this one. And when you were told
11 this, if you didn't -- I'm not saying you don't want
12 it.

13 COMMISSIONER GEORGE: Right.

14 CHAIRPERSON BERRY: But if you hadn't wanted
15 it, you could have said, well, I don't think we should
16 have a briefing on welfare and then we would have
17 discussed it. I didn't have a formal vote because
18 that's now how --

19 COMMISSIONER GEORGE: Oh, no, no. I'm not
20 asking for a formal vote and I have no objection to
21 this particular briefing.

22 CHAIRPERSON BERRY: Right. In other words,
23 you will never be never be surprised that a briefing is
24 going to happen. That is, you will know.

25 COMMISSIONER GEORGE: We will always have how

1 much notice?

2 CHAIRPERSON BERRY: Well, you will know at
3 least at the meeting before the meeting, if there's
4 some emergency thing added.

5 COMMISSIONER GEORGE: Okay. So nothing will
6 be added unless it's added at a meeting before the
7 meeting at which the briefing will be held?

8 CHAIRPERSON BERRY: Yes, yes. And if it's an
9 emergency and we have to for some other way do it that
10 way, somebody will call you and tell you. Okay? The
11 Staff Director. How's that?

12 COMMISSIONER GEORGE: Well, I mean, more than
13 a week in advance?

14 CHAIRPERSON BERRY: I don't envision any
15 emergency that's going to happen, but I don't know
16 what's going to happen. And that may not be good
17 enough for you, but as far as balance and witnesses, I
18 hope we don't get into the same position on this that
19 we are in on hearings because this is not a hearing
20 where you have to have witnesses submitted, then vet
21 them, then send them back, and all that sort of thing.

22 If you want to suggest witnesses, suggest
23 them. When you were told last month that there was
24 going to be a welfare briefing, if you had somebody you
25 wanted to suggest, you should have suggested them

1 sometime between then and now. Anyone could.

2 COMMISSIONER GEORGE: I understand.

3 CHAIRPERSON BERRY: But if that's not good
4 enough, we could have procedures.

5 COMMISSIONER GEORGE: Well, does anybody else
6 -- I mean, if nobody else has a view on this, we can
7 leave things where they are.

8 CHAIRPERSON BERRY: Okay.

9 Commissioner Redenbaugh?

10 COMMISSIONER REDENBAUGH: Yes. I think it's
11 fine the way it is, reserving the right to object to
12 anything at any time.

13 CHAIRPERSON BERRY: Right.

14 COMMISSIONER REDENBAUGH: I think -- you
15 know, the briefings, I found them to be informative and
16 useful and balanced. I think a couple of times they
17 may have conflicted with some ministerial
18 responsibilities that we had, but that's not anything
19 that could be resolved by this discussion.

20 I'd like to leave it the way it is, Robbie,
21 and if you want to shape them more, I think there's
22 certainly the opportunity to do that.

23 CHAIRPERSON BERRY: Okay. But if you have a
24 problem, tell us if there's a problem with any
25 particular one you don't like. Or something you'd like

1 to add, feel free to add it.

2 COMMISSIONER GEORGE: My concern is only that
3 we have sufficient notice to play a role if we wish to
4 in planning the briefing and structuring the briefing
5 and identifying the witnesses.

6 CHAIRPERSON BERRY: Yes, Commissioner
7 Anderson?

8 COMMISSIONER ANDERSON: I think it would be
9 helpful if our memory was refreshed periodically as to
10 what is in the pipeline in terms of briefings. And if
11 we were told six months ago, we may have forgotten.

12 I don't know if every month or we could just
13 know. And that way we'd have a timely basis.

14 My view of the briefings, I'm not looking --
15 and I almost hate to say this because it's so easy to
16 misconstrue this. But my intention or concern is not
17 so much with balance but with getting experts who can
18 really, without so much a concern for balance, give us
19 information and analysis. And I don't know how to be
20 too clear about that.

21 But I would suggest, for example, that the
22 witness we had in Los Angeles I think is the kind of
23 witness I have in mind for briefings. That is,
24 somebody with a wealth of experience comes and presents
25 an analysis which does not fall easily into a

1 particular ideological or philosophical category, but
2 is somebody who is able to give you some information
3 and actually knowledge on a particular topic.

4 Now, if we were looking at balance for that,
5 we would have had to have the police association
6 represented or maybe a citizen or two, et cetera, et
7 cetera. But I don't necessarily see that as the
8 function of the briefing.

9 Now, if we get into very philosophical or
10 ideological witnesses, then you have to have balance.
11 And I don't want my remarks to be taken to mean that
12 I'm not concerned about the ideology or the philosophy
13 of the people. But if we can get people who can
14 actually -- I think all of us pretty much sitting
15 around the table understand what the philosophy and the
16 ideology are on pretty much all of these issues. And
17 I'm not sure that that's what we need, to hear a
18 clearer, precise articulation of that kind of thing in
19 our briefings.

20 CHAIRPERSON BERRY: So that the kind of
21 witness -- just to make sure I understand what you mean
22 and the staff understands, the kind of witness who
23 could come here and tell us what three strikes and
24 you're out is, how it works, what are the up sides, the
25 down sides, what impact it has -- just using an example

1 -- on the criminal justice system in a state or
2 nationwide or something like that. Whether or not they
3 philosophically liked it, didn't like it or whatever,
4 you would think that that witness didn't need to be
5 balanced by somebody. Just trying to figure out who
6 would balance this witness.

7 Is that the point you're making?

8 COMMISSIONER ANDERSON: Well, yes. I mean,
9 that's a more difficult job than trying to get balance.

10 I mean, we can get an organization that
11 supports three strikes and you're out and one that
12 opposes it and maybe that's the best way to do it. But
13 I think in some ways trying to find a different kind of
14 witness.

15 When we did the police culture briefing, the
16 witness we had from Temple struck me as that kind of
17 individual who wasn't actually coming in here with a
18 particular ideological bent on the issue but had
19 studied it, and I think somewhat objectively, from a
20 position of scholarship.

21 But I think that kind of witness is very
22 beneficial for us. The more of that we can do, the
23 better.

24 CHAIRPERSON BERRY: Probably good for
25 educating the public, too, that looks in on these

1 things from time to time.

2 VICE CHAIRPERSON REYNOSO: Madam Chair, just
3 a couple of observations.

4 Both Commissioner Anderson and I commented on
5 the pleasure of having one witness with which we were
6 able to have a dialogue for about an hour and get real
7 information. So I've been pleased that we've been
8 either cutting down on the number of witnesses per
9 panel when we have formal hearings, or allowing more
10 time.

11 And that's by way of saying that since the
12 briefings are informational, I'm not even sure that at
13 briefings we need to worry about balance. Indeed, we
14 can have two or three briefings on the same issue. If
15 we want to hear about affirmative action, as we've
16 talked, for example, we could have a whole panel of
17 people who think affirmative action is wonderful. Then
18 we could have a whole panel of people that think it's
19 anti-American. That's up to us.

20 And if we didn't have a panel but had only
21 one witness at a time that we could have a dialogue
22 with, then I might even like that better. I mean, it
23 seems to me we ought to be free to have the briefings
24 be those briefings that can give most information and
25 ideas to us. And some of the same concerns that we

1 have at hearings I think probably ought not to apply to
2 briefings. We'd have greater flexibility.

3 CHAIRPERSON BERRY: Commissioner Lee?

4 COMMISSIONER LEE: Madam Chair, I've only
5 attended two briefings but I found both of them very
6 informative and very helpful to me and I'm sure for the
7 public. And I do agree with the other Commissioners.

8 For me the briefings are informational and
9 the witnesses who are coming in are coming in
10 voluntarily to share the information, so it's very
11 different from the official hearings that some of them
12 are coming against their will.

13 So I would like to keep this a very informal
14 process for people who really have something to share
15 with us, whether we agree with them or not. But it's
16 very helpful to us in future debates. So I would
17 really like to keep this an informal process and I
18 really don't worry too much about having a balanced
19 view because eventually, those views will come out.

20 CHAIRPERSON BERRY: Now Commissioner Anderson
21 wants to say something again, so he's not
22 misunderstood. I know you, Commissioner Anderson.

23 Commissioner George wants to say something
24 about what you said.

25 COMMISSIONER GEORGE: Maybe I'll preempt him.

1 CHAIRPERSON BERRY: Okay. Go ahead.

2 COMMISSIONER ANDERSON: Well, I mean, I would
3 say that certainly some people's objective scholar is
4 another person's radical ideologue, and it's a matter
5 of judgment. But I think if we have enough time to
6 look at projected witnesses and people we're inviting
7 and have a chance to comment on that or maybe offer
8 alternatives, that may do a lot, too.

9 I think if we give everybody enough time to
10 look at who may be invited to the briefings, that may
11 be do some of it.

12 CHAIRPERSON BERRY: Commissioner George?

13 COMMISSIONER GEORGE: I originally asked to
14 be recognized in order to denounce Commissioner
15 Anderson, but --

16 CHAIRPERSON BERRY: He scurried back hastily.

17 COMMISSIONER GEORGE: So I want to say a very
18 strong word for the importance of balance in these
19 things.

20 CHAIRPERSON BERRY: Okay.

21 COMMISSIONER GEORGE: But I also want to say
22 would it compromise flexibility too much if we could be
23 notified as the staff is planning each new briefing?
24 Even if we've been told in advance that, well, you
25 know, in March we're going to having a briefing on this

1 and that subject.

2 But when the staff turns its attention to
3 planning that particular briefing, could we be notified
4 that the planning of this briefing is now in the works;
5 please get us the names of suggested witnesses by a
6 certain date to contribute to this. And we will then
7 be getting you a list of -- and I guess we're not
8 supposed to call them witnesses -- presenters in time
9 to give you opportunities to object.

10 CHAIRPERSON BERRY: Why don't we do this.
11 Why don't we say that you will be reminded again every
12 month of what the current list is of briefings and any
13 additions, and what the one is for the next month,
14 which the staff will be planning. And you will be told
15 at the meeting that if you have any suggestions or
16 whatever, you should get them in that week.

17 COMMISSIONER GEORGE: That would be fine.
18 Yes.

19 CHAIRPERSON BERRY: You'll already know the
20 list. And then you'll have like a few days if you've
21 been thinking about it.

22 How about if we do that?

23 COMMISSIONER GEORGE: That sound good.

24 Does the staff take basically a month in
25 preparing -- do you start preparing for a briefing

1 about a month in advance, start contacting your
2 potential presenters and so forth? Is that about the
3 time frame?

4 STAFF DIRECTOR MATHEWS: That's about the
5 time frame.

6 CHAIRPERSON BERRY: Because some of it
7 depends on whether -- what the Commission's agenda is
8 and whether we can have that one month, as it turns
9 out. Like if we have a lot of things to do or
10 something happens, then you may have to change it
11 around a little bit.

12 COMMISSIONER LEE: Madam Chair?

13 CHAIRPERSON BERRY: Yes, Commissioner Lee.

14 COMMISSIONER LEE: So is the briefing
15 rescheduled for the December meeting then?

16 CHAIRPERSON BERRY: Yes. The welfare one,
17 we're trying to get it for December. So if you guys
18 have any -- I mean you Commissioners have any
19 additional names that you want to present or something,
20 you should probably do that in the next few days.
21 Shall we give you a week since you had last month to
22 think about it?

23 COMMISSIONER GEORGE: Right.

24 CHAIRPERSON BERRY: All right. I would
25 reserve the possibility of discussing one more

1 announcement, possibly, which is just in the way of
2 something that I would add, in addition, after we do
3 Number 4.

4 Let's move to Number 4, the Equal Educational
5 Opportunity Project Series Volume 1 Report, which would
6 be the statutory report.

7 Staff Director, could you please introduce
8 this topic for the Commission?

9 STAFF DIRECTOR MATHEWS: I'd be glad to,
10 Madam Chair.

11 On August 20th, the staff presented the
12 Commissioners with the draft of the Equal Educational
13 Opportunity Report, Volume 1 in the series. The other
14 reports expected in the series --

15 CHAIRPERSON BERRY: August 20th, 1996?

16 STAFF DIRECTOR MATHEWS: August 20th, 1996.
17 Other reports expected in the series will be presented
18 individually, each volume individually, to the
19 Commissioners.

20 The Commissioners decided at the September
21 Commission meeting to have their special assistants
22 work together to reach some agreement on whatever
23 issues might arise prior to voting for approval of this
24 Volume 1, and the outgrowth of that discussion -- I
25 have a copy here of a revised draft which incorporates

1 changes discussed by the special assistants during
2 their meeting of Thursday, November 7th, sent out by
3 the Chair.

4 And so we are ready to discuss it at this
5 meeting today.

6 CHAIRPERSON BERRY: Well, I would only add
7 that the suggestion that the special assistants work on
8 this, led by my special assistant, was made by
9 Commissioner George and agreed to by the rest of the
10 Commission.

11 My special assistant has worked very hard on
12 this. I have spent -- carved time out of my own
13 schedule, time I didn't have, actually, to work on this
14 and to make sure that those Commissioners who initially
15 were satisfied with the report the way it was would be
16 receptive to listening to the suggestions made by the
17 other Commissioners, so that we could reach some
18 consensus.

19 So, I have spent countless hours working on
20 this document since the assignment was given to us, and
21 I know that the Commissioners, other Commissioners,
22 have too. And that Commissioner Lee's assistant and
23 Vice Chair Reynoso's assistant came in from California,
24 which is way out there in the far away place on at
25 least two occasions I know of, and were on the phone

1 constantly with my special assistant working on this.

2 So a lot of staff time has been invested
3 because I really thought that it was important for us
4 to try to get this report done.

5 If we do not get this report voted on at this
6 meeting, it will not go out this calendar year. And so
7 the Commissioners have had it since August 20th and I
8 would hope I could get a motion to approve it for
9 purposes of discussion.

10 VICE CHAIRPERSON REYNOSO: I'll so move, but
11 I want to discuss it a little bit.

12 CHAIRPERSON BERRY: Could I get a second?

13 COMMISSIONER LEE: Second.

14 CHAIRPERSON BERRY: All right.

15 Discussion?

16 VICE CHAIRPERSON REYNOSO: I proceeded myself
17 in the spirit that the motion that our special
18 assistants get together implied, and that is that we
19 were ready to make changes that we weren't particularly
20 happy with because I thought it was a good report. And
21 I am prepared to vote to approve the report with the
22 changes that have been made. But I just feel compelled
23 to indicate that I don't agree with many of the
24 changes. Particularly, the changes that seem to excise
25 from this report references to folk whose primary

1 language is not English.

2 And there seems to be in the suggestions
3 made, which I am willing to accept for the purpose of
4 getting this report out, that we don't need to worry
5 about such folk; that that's tough luck that we have
6 folk like that in this country; and the suggestion that
7 there aren't special responsibilities that schools have
8 toward those individuals in bringing about their
9 integration into our society.

10 I just happen to disagree with that
11 implication and I think that it weakens our report to
12 have excised those discussions pertaining to limited
13 English students. I think we have to worry about
14 bringing everybody into the fold.

15 And I noticed one very minor change, but I
16 think it's indicative of, from my point of view, the
17 wrong-headedness of some of these changes, where in one
18 particular page there was an agreement that the notion
19 that socio-economic standing has been a barrier to
20 education. That particular notion was cut out of page
21 1, my note says, of Chapter 3.

22 And I can't help but recall reviewing law
23 school admissions tests on one occasion with the dean
24 of the school where I was teaching at that time. And
25 the LSAT was matched practically perfectly with the

1 socio-economic standing of the family from whence that
2 student came.

3 So it seems to me that to not acknowledge
4 that socio-economic standing in our country has
5 something to do with education is wrong-headed. It
6 seems to me that some of the changes that were
7 suggested, which I will accept, simply don't accept the
8 history of our country and the reality of our country.

9 Nonetheless, 99 percent of the report is
10 still intact. I think it's a good and helpful report,
11 and I will vote for it. But I just felt compelled to
12 indicate that I really disagree with some of the
13 changes that we've made. End of my mini-sermon.

14 CHAIRPERSON BERRY: Let me just say, for
15 purposes of clarification for those who were not privy
16 to the process, I agree with the Vice Chair. Many of
17 the things that were excised from the report I thought
18 were fine. As a matter of fact, I would have voted for
19 the report the way it was with no changes.

20 But the theory by which we all accepted these
21 changes was that this is an enforcement report. It's
22 supposed to tell us how the civil rights agencies are
23 going about the job of enforcing the law that exists
24 that is on the books.

25 If we were writing this report from my

1 perspective, my educational perspective, all of those
2 things would have stayed in the report and you would
3 have agreed with it and you would have been happy. But
4 since there are Commissioners who don't agree with
5 those educational perspective and the educational
6 perspectives are matters that can be debated and could
7 be subjects of entire reports on their own.

8 The ideas that were excised to leave in the
9 report -- this is the theory by which we persuaded
10 ourselves to accept the changes -- that what was left
11 in the report then was the enforcement issue. And as
12 long as you understood it as an enforcement report, it
13 could be useful, and therefore, we would sort of hold
14 our noses, as it were, and go ahead with it as an
15 enforcement report.

16 We did the same thing on Title VI, by the
17 way. We were willing to accept all these changes in
18 order to get the enforcement part of the report. That
19 is maybe unhappily what one has to do. It's called
20 compromise in a democracy and it's what you have to do
21 when you have Commissioners who disagree
22 philosophically. And perhaps we could have studies
23 done, if we had the money, on some of these issues. But
24 that's the theory.

25 VICE CHAIRPERSON REYNOSO: Madam Chair, I

1 don't disagree with that. And that's why I'm willing
2 to vote. I'm a little bit reminded of a Commission that
3 I once served on, and the time came to make decisions.
4 And the Chair presented two options to us. And I turned
5 to my colleague next to me who was a congressman, and I
6 said, I don't agree with either option. And he said,
7 welcome to the legislative process.

8 This is not quite the legislative process but
9 we have to make compromises, so long as we meet our
10 statutory responsibilities. Which I think this report,
11 incidentally, even with those minor excises, is an
12 excellent, excellent report.

13 So I have no qualms about voting for it, but
14 I just felt compelled to indicate that I really didn't
15 agree with some of the things that we have done.

16 CHAIRPERSON BERRY: Any other discussion?

17 Commissioner Lee and then Commissioner
18 Redenbaugh.

19 COMMISSIONER LEE: Madam Chair, I was --
20 initially, I was ready to vote for this report because
21 I think it was a really well put together report. And
22 I also want to join the Vice Chair in expressing that
23 no matter what the changes, it's still a really good
24 report. And I do want to commend the special
25 assistants who really put in a lot of effort to agree

1 on the final language.

2 I do have a grave concern that we seem to
3 lessen the issue of bilingual education. While I agree
4 that we need to get this report issued, I request that
5 the issue of bilingual education be discussed in the
6 future briefings because I think it's a very important
7 area.

8 Now that it's out of the report, I do want to
9 have some kind of a public discussion on that.

10 CHAIRPERSON BERRY: Okay. I'm just told that
11 Volume 3 of the Education Report will be on limited
12 English proficiency. But that, bilingual education, we
13 have added it to our list of briefing topics.

14 STAFF DIRECTOR MATHEWS: Right.

15 CHAIRPERSON BERRY: Any other comments?

16 Yes. Commissioner Redenbaugh.

17 COMMISSIONER REDENBAUGH: I think that the
18 process that we experimented with here -- you know,
19 from my perspective, I think it's worked very well.
20 And I think we've moved this report, from my
21 perspective, close to a report which may require a
22 number of us to hold our noses and vote. But as you
23 point out, that is the nature of compromise and it may
24 be as good as it gets.

25 For myself, the rather substantial changes

1 that our assistants have worked out only came back to
2 me on Tuesday, along with the 237 pages of other
3 briefing material for today's meeting, and perhaps I
4 misallocated my time, but I put them on some other
5 things and not on this, and am not prepared, as a
6 consequence of having not reviewed it rather than that
7 I've reviewed it and have resolved either for or
8 against.

9 I may be in a different situation than some
10 of my other colleagues, but that's where I am about it.
11 And I'm not prepared to vote on it today.

12 CHAIRPERSON BERRY: Any other comments?

13 COMMISSIONER HIGGINBOTHAM: I join with the
14 Vice Chair. It took a great deal of strength for me to
15 not file a concurring statement.

16 I would say that as to the excision, for the
17 record, an excision is not a concession that it should
18 have been excised. But the excision occurred so you
19 could get a majority vote. And that's all that.

20 CHAIRPERSON BERRY: Yes, Commissioner George?
21 Did you have your hand up?

22 COMMISSIONER GEORGE: I did.

23 CHAIRPERSON BERRY: You look like one of my
24 students who can't decide whether they want to --

25 COMMISSIONER GEORGE: Oh, no. I've decided.

1 I may still look like one of your students, but all us
2 students look alike.

3 My understanding is there are still some
4 points on which the assistants are not in agreement or
5 in which the Commissioners, through their assistants,
6 are not in agreement. In other words, that there are
7 still some outstanding issues in dispute or under
8 discussion.

9 Is that wrong?

10 CHAIRPERSON BERRY: That is not my
11 understanding. My understanding is that there are some
12 minor matters that may be at issue. Not substance, but
13 how some things shall be stated or some word or
14 whatever, where there is agreement, but it just isn't
15 in this particular draft. Somebody brought it up after
16 this came out. But that there are no substantive
17 matters that we are aware of that are still under
18 debate.

19 I am not aware of any, and I'll ask -- any
20 substantive matter where our side has refused to agree.
21 We have agreed with everything that has been suggested.
22 I mean, some people would call it caved compared to
23 agreeing.

24 And if you have other language here this
25 morning you'd like, we'll agree. But the point is

1 we're going to pass the doggone report.

2 COMMISSIONER GEORGE: I appreciate that
3 spirit of accommodation.

4 CHAIRPERSON BERRY: So if you've got some
5 word you want to change, tell me and we'll accept.

6 COMMISSIONER GEORGE: I do. I do, as a
7 matter of fact, have some thing.

8 CHAIRPERSON BERRY: As long as it's excising
9 or changing language.

10 COMMISSIONER GEORGE: Did the assistants have
11 some wrapping up contact? I don't care if it was a
12 meeting, phone calls. Was there some wrapping up at
13 the end where the assistants agreed that we have now
14 covered the issues, there's nothing left in dispute or
15 at least nothing of substance left in dispute?

16 Is there a misunderstanding here among the
17 assistants about whether this thing has been wrapped up
18 or not?

19 CHAIRPERSON BERRY: Well, if there is, this
20 process isn't working. Because we would not have
21 proceeded to prepare this draft if the draft does not
22 reflect -- I mean, if there are Commissioners who are
23 saying that this draft doesn't reflect their
24 discussions -- is that what you're saying? Because
25 that would be a problem.

1 COMMISSIONER GEORGE: Let me see if I
2 understand it from your point of view, Madam Chairman.

3 The proposals that were made by the
4 assistants for Commissioners Redenbaugh, Anderson,
5 Horner and George were canvassed and were accepted in
6 substance, at least. Might have been word changes.

7 CHAIRPERSON BERRY: They even went through
8 them line by line, I'm told.

9 Now is there any Commissioner here who says
10 that you did not go line by line or have a meeting to
11 discuss these matters?

12 COMMISSIONER GEORGE: Well, I mean, this is
13 an issue about what the assistants did. I think there
14 might be some misunderstanding among the assistants.

15 CHAIRPERSON BERRY: Oh, I see.

16 COMMISSIONER GEORGE: That's what I'm worried
17 about.

18 For example, was there any discussion of the
19 proposal which I understand -- or language that I
20 understand was put forward to commend the idea of
21 experimentation with school choice?

22 This was, I understand, a proposal that went
23 through my assistant to your assistant.

24 CHAIRPERSON BERRY: Yes. And the answer is
25 that we agreed that if someone wants to propose

1 language in the first sentence -- and nod yourself if
2 I'm answering this right -- we'd be happy to put it in
3 there. And somebody was supposed to be writing the
4 language.

5 And that happened after this. But we agreed
6 --

7 COMMISSIONER GEORGE: Oh, this happened
8 after?

9 CHAIRPERSON BERRY: But we agreed. And we
10 agreed.

11 Do you want to take a five minute break and
12 consult with your assistant?

13 COMMISSIONER GEORGE: Please.

14 COMMISSIONER REDENBAUGH: Yes. Could we do
15 that?

16 CHAIRPERSON BERRY: Why don't we do that.
17 We'll recess for five minutes and you can all consult
18 with each other.

19 (Whereupon, a brief recess was taken.)

20 CHAIRPERSON BERRY: We will reconvene the
21 meeting.

22 We're discussing the Equal Educational
23 Opportunity Report.

24 We understand before we have more discussion
25 and call for a vote on this, that during the editing

1 process on this report, which will go forward should
2 the Commission approve it, if there are minor language
3 changes that need to be made either because somehow the
4 special assistants missed them when they were reading
5 and they are in conformity with the agreement we have,
6 which is that this report is about process and about
7 enforcement and not about resolving substantive issues
8 concerning education, that those editing suggestions
9 can be -- language suggestions can be put in during the
10 editing process, so long as they are consistent with
11 what was already agreed to and so long as they are just
12 things that were either overlooked or somehow didn't
13 get taken care of. That's normal practice.

14 But now, let's continue the discussion and
15 see if there are some other comments that Commissioners
16 would like to make before I see if we're ready to take
17 a vote.

18 Commissioner George, do you have a comment
19 you'd like to make?

20 COMMISSIONER GEORGE: Yes. Thank you.

21 I'd like to propose three changes to the
22 draft. The first is on page 2, to add a footnote to
23 the end of the first paragraph, which is on the second
24 on "Background." And the footnote would be to the
25 following effect.

1 "As this report examines the federal role in
2 achieving --

3 COMMISSIONER HIGGINBOTHAM: Please, say it
4 slowly.

5 COMMISSIONER GEORGE: Oh, I'm very sorry.

6 COMMISSIONER HIGGINBOTHAM: Very slowly. I
7 want to hear every word.

8 COMMISSIONER GEORGE: Okay. "As this report
9 examines the federal role in achieving equal
10 educational opportunity, it does not address social
11 problems and issues of familial relations and values
12 which are beyond the reach of school systems."

13 That's it.

14 CHAIRPERSON BERRY: While I might, in my
15 right mind, quibble about whether they really are
16 beyond the reach of school systems, I would not object
17 because school systems could ostensibly -- it might be
18 better to say "which are important to education."

19 COMMISSIONER HIGGINBOTHAM: I disagree with
20 it 100 percent and I feel very strongly about it.

21 If you want to say, "which many believe are
22 beyond the reach of school systems," I'm willing to
23 accept that. I'm not willing to assume that we can
24 make a declaratory view that school are impotent in the
25 formulation of values.

1 So that I'm willing to recognize divisions
2 but I'm willing to give an exclusivity which that
3 footnote suggests.

4 COMMISSIONER GEORGE: "Which many people
5 believe." Add "which many people believe."

6 CHAIRPERSON BERRY: Would you accept "which
7 many people believe?"

8 COMMISSIONER GEORGE: Yes.

9 CHAIRPERSON BERRY: Okay. Then we, without
10 other objections, have agreement on that.

11 What else would you like to suggests?

12 COMMISSIONER GEORGE: Chapter 2. There's
13 division on the Commission about the constitutional
14 basis of federal involvement in education.

15 COMMISSIONER HIGGINBOTHAM: What page,
16 please?

17 CHAIRPERSON BERRY: He's on Chapter 2, page
18 1, down here in the second paragraph where it says,
19 "According to Secretary of Education Richard --

20 COMMISSIONER HIGGINBOTHAM: Excuse me. I'm
21 slow, but I watch carefully.

22 CHAIRPERSON BERRY: Well, when you find it,
23 say Amen.

24 COMMISSIONER HIGGINBOTHAM: All I'm saying is

1 what page, please.

2 CHAIRPERSON BERRY: Page 1, Chapter 2.

3 COMMISSIONER HIGGINBOTHAM: Page 1, Chapter
4 2. Okay.

5 CHAIRPERSON BERRY: Verse -- no. Right
6 before footnote 5.

7 COMMISSIONER HIGGINBOTHAM: I'm with you.

8 CHAIRPERSON BERRY: Amen?

9 COMMISSIONER HIGGINBOTHAM: Amen. All right.

10 CHAIRPERSON BERRY: "According to Secretary
11 of Education Richard W. Riley," -- see that third line
12 down in the second paragraph?

13 COMMISSIONER HIGGINBOTHAM: Yes.

14 CHAIRPERSON BERRY: "-- the federal
15 government has a vital meaningful role." That's a
16 quote from Riley. Then it says, according to Riley and
17 other commentators, one constitutional basis can be
18 found in the power given to Congress to provide for the
19 common defense and general welfare.

20 What is it you want to suggest, Commissioner
21 George?

22 COMMISSIONER GEORGE: I'd either like to drop
23 the question of the constitutional basis altogether
24 since we don't agree about it. Don't have to raise the
25 issue at all. Doesn't seem to me critical that we

1 raise it. Or to acknowledge division on the point.
2 Not on the equal protection, Fourteenth Amendment
3 basis, which I think we all agree about, but on the
4 Article 1 basis.

5 So, let me, as a proposal, just say we drop
6 these two sentences altogether and any discussion that
7 is later in the report about the constitutional basis
8 of federal involvement.

9 Various statutes invoke what Congress' view
10 is, including the Article 1 power in this area. I
11 don't think we have to take a position on it.

12 CHAIRPERSON BERRY: So the proposal is to
13 drop everything from footnote 5 down to the end of the
14 paragraph? Is that correct?

15 COMMISSIONER GEORGE: To footnote 7. Yes.

16 CHAIRPERSON BERRY: Anyone have any
17 objection?

18 So it would read, with the quote from Riley,
19 and then it would go over to the next page.

20 COMMISSIONER GEORGE: Right.

21 CHAIRPERSON BERRY: "Federal aid to education
22 is based on the appropriateness of the federal
23 government's response in meeting national needs."

24 COMMISSIONER GEORGE: Although I do want to
25 make clear that I have no objection to and in fact

1 agree with and don't think that anybody on the
2 Commission disagrees with the proposition that there's
3 a Fourteenth Amendment basis of federal involvement.

4 VICE CHAIRPERSON REYNOSO: I didn't know
5 there was a substantial -- I would agree to dropping
6 both sentences but I confess that I didn't know there
7 was substantial quarrel, at least in the Courts, that
8 there's a proper basis for government -- federal
9 government involvement in education.

10 COMMISSIONER ANDERSON: I really want to
11 object to it.

12 VICE CHAIRPERSON REYNOSO: Is this a
13 philosophical disagreement?

14 COMMISSIONER GEORGE: Yes. A philosophical
15 disagreement.

16 COMMISSIONER ANDERSON: I'm sorry, Cruz.

17 VICE CHAIRPERSON REYNOSO: I try to keep up
18 with these things and I didn't know there were any
19 dissents.

20 CHAIRPERSON BERRY: Justice Reynoso will
21 finish and then Chief Judge Higginbotham.

22 VICE CHAIRPERSON REYNOSO: I was just a
23 little bit surprised by Robbie's comment that there was
24 disagreement because I had not noted any in the cases
25 that I had read. So then apparently this is beyond a

1 Court disagreement. This is a philosophical
2 disagreement beyond that, apparently.

3 CHAIRPERSON BERRY: Okay.
4 Chief Judge?

5 COMMISSIONER HIGGINBOTHAM: Let me see if I
6 understand what we're being asked to do. In the next
7 to last sentence, we say that Secretary Riley takes
8 that position. Now is there anyone here who would
9 suggest that he does not take that position?

10 If you do not suggest that he did not take
11 that position, then why delete it? It just shows that
12 in the marketplace of ideas, different people disagree.
13 So that the fact that you quote someone doesn't mean
14 it's an endorsement. But it is on the thought that
15 people will be reading over these reports in the
16 marketplace of ideas who have not come to a definitive
17 conclusion and who recognize that we do not have all
18 the wisdom, and therefore, may be interested in knowing
19 what others have said.

20 So therefore, I feel strongly against
21 deleting it when it is an accurate statement. And
22 what's the reason for deleting it?

23 CHAIRPERSON BERRY: Would you accept saying
24 "although disputed," or something like that?

25 COMMISSIONER HIGGINBOTHAM: No problem.

1 Don't delete the man.

2 COMMISSIONER GEORGE: That was my
3 alternative, although I think it would be a very
4 interesting rule to live by that we got to quote one
5 side of an argument and then we wouldn't object to
6 that. Because after all, one side does believe that
7 argument to be true.

8 COMMISSIONER HIGGINBOTHAM: I'm perfectly
9 willing, if you've got a sentence right now. We've
10 been playing around with this report since August. And
11 if we don't get it done, on the other hand, someone
12 will be calling us before a congressional committee and
13 saying that we do not move with efficiency and we don't
14 meet deadlines. And the reason why we don't meet
15 deadlines is because we have this type of dialogue.

16 Now, -- so if you have a sentence where you
17 want to say that others disagree, see John Jones, Henry
18 Smith and Mary Jones, no problem. Put it in.

19 COMMISSIONER GEORGE: Let's do it with two
20 words.

21 CHAIRPERSON BERRY: Okay. What are the two
22 words?

23 COMMISSIONER GEORGE: "Although disputed,"
24 comma.

25 COMMISSIONER HIGGINBOTHAM: Fine.

1 COMMISSIONER GEORGE: I need a comma.

2 CHAIRPERSON BERRY: "Secretary Riley and
3 other commentators believe one constitutional basis for
4 federal involvement can be found in the power --"

5 Is that all right?

6 COMMISSIONER GEORGE: Fine. Yes.

7 COMMISSIONER HIGGINBOTHAM: Wait a minute.

8 CHAIRPERSON BERRY: Do you accept that?

9 COMMISSIONER HIGGINBOTHAM: Yes. I accept
10 that for that sentence. But that was the minor point.

11 CHAIRPERSON BERRY: What was the major point?

12 COMMISSIONER HIGGINBOTHAM: The last one
13 says, "Another basis is derived from the rights
14 afforded in the Equal Protection Clause of the
15 Fourteenth Amendment."

16 Now, when Chief Justice Warren wrote the
17 opinion in Brown v. Board of Education, he starts out
18 looking at a whole series of ways under which you could
19 reevaluate Plessy, and, rather than decide it on
20 privileges and immunities or deciding it on due process
21 or deciding it on the Thirteenth Amendment, all of
22 which grounds had been urged, they decided on Equal
23 Protection grounds of the Fourteenth Amendment.

24 Now, again, if you want to put in another
25 basis is derived from the rights afforded in the Equal

1 Protection Clause of the Fourteenth Amendment, about
2 which others may disagree, fine. But this goes
3 literally to your construction of the scope of the
4 Fourteenth Amendment.

5 And why do I stress this?

6 Because in Casey v. Planned Parenthood, the
7 centrists, Justice Suter, Justice Kennedy and O'Connor,
8 when dealing with the whole question of the Fourteenth
9 Amendment, said Plessy v. Ferguson was wrong the day it
10 was decided. And that's 1896.

11 And I don't want to play around with this
12 Commission taking definitive positions on this. I'm
13 perfectly delighted to add anything which you want to
14 say. The quote. They've got footnotes here.

15 CHAIRPERSON BERRY: Judge Higginbotham, you
16 don't have to because Commissioner George, now that
17 we've changed the first sentence, accepts that the
18 second sentence will stand as is.

19 COMMISSIONER HIGGINBOTHAM: Okay. Well, I'll
20 withdraw the rest of my argument.

21 CHAIRPERSON BERRY: Is that correct?

22 COMMISSIONER GEORGE: I thought I was clear
23 on this before. I want to be clear on it now. I agree
24 Plessy v. Ferguson was wrong on the day it was decided
25 and I think that the Fourteenth Amendment provides --

1 and I don't think anybody disagrees on this Commission
2 that the Fourteenth Amendment provides a basis for
3 federal involvement in education. No doubt about it.

4 CHAIRPERSON BERRY: We were just striking the
5 whole thing because we were striking this other
6 sentence. That was all. He didn't disagree.

7 COMMISSIONER GEORGE: I didn't want to leave
8 you, Judge Higginbotham, with the impression that we
9 were implying, by selectively citing only one basis of
10 jurisdiction, that the federal government did not have
11 Article 1 power, because I know you believe that.
12 That's all.

13 So my point was we could drop it in order to
14 make clear that we're not getting into the issue of the
15 basis at all, not to raise any criticisms or objections
16 to the idea of Fourteenth Amendment power. No question
17 about it.

18 COMMISSIONER HIGGINBOTHAM: Okay.

19 CHAIRPERSON BERRY: Okay. Now what was your
20 third suggestion?

21 COMMISSIONER GEORGE: My third has to do with
22 references to the study by James Coleman, the 1963
23 study, which I understand is contradicted or revised or
24 the findings of which are altered by a later study by
25 James Coleman which was in 1989.

1 CHAIRPERSON BERRY: Do you know which page
2 you're on?

3 COMMISSIONER GEORGE: Yes. I believe it's
4 page 13 of Chapter 2. Which was published by the
5 Government Printing Office in '66.

6 CHAIRPERSON BERRY: So what is it you would
7 like?

8 COMMISSIONER GEORGE: I would like either to
9 take note of contrary findings or findings in intention
10 with the findings of the Coleman study from '63 in the
11 later study, which I believe is '89, or delete
12 reference to the Coleman study. Again, either is fine
13 with me, although I think it probably would be best to
14 just make reference to -- and it could be done in the
15 footnote -- the later Coleman study.

16 I think this isn't anything that we can work
17 out language on the spot, but if you agree in principle
18 that the later study if in fact on Coleman's own terms
19 contradicts or his intention with or differs from the
20 earlier study, that ought to be noted or made reference
21 to.

22 CHAIRPERSON BERRY: Now, this section is on
23 the emerging federal role in the area of education.

24 COMMISSIONER GEORGE: Yes.

25 CHAIRPERSON BERRY: The section begins on

1 page 5. And it is a historical -- apparently
2 historical description --

3 COMMISSIONER GEORGE: No. I understand.

4 CHAIRPERSON BERRY: No. I'm just trying to
5 explain, for points of reference, description of this
6 subject, the evolution of the federal role. And the
7 reference to the Coleman study comes at the end of that
8 before we get to the '64 Civil Rights Act.

9 So in terms of timing, this study was
10 authorized by the Civil Rights Act of '64, which is why
11 its placement is right here. But what Commissioner
12 George, if I understand him, is saying, is that there
13 was a later study done by Coleman in 1989.

14 COMMISSIONER GEORGE: I believe it was 1989.

15 CHAIRPERSON BERRY: Or 1980 something.

16 COMMISSIONER GEORGE: Yes.

17 CHAIRPERSON BERRY: In which you believe he
18 made some other findings. And he wants that study.

19 So we could either put that study -- footnote
20 it and say what it said in the footnote.

21 COMMISSIONER GEORGE: That's all. Yes.

22 CHAIRPERSON BERRY: Or take the whole thing
23 out.

24 Well, what do you think? What is your
25 pleasure?

1 VICE CHAIRPERSON REYNOSO: Well, my
2 impression is that there was a later report by Coleman
3 but I don't recall that it contradicted the matters
4 that are stated in this paragraph. But certainly if
5 there's a later report that casts doubt on anything, it
6 would be proper to bring that --

7 COMMISSIONER GEORGE: Could we leave it at
8 this? Could we ask the assistants to look into the
9 matter? If it doesn't contradict the specific points
10 here, then it needn't be included. But if there is any
11 tension or difference that it simply be noted in a
12 footnote just as a noted fact.

13 CHAIRPERSON BERRY: Well, what we will do
14 now, since we're going to put this report back into the
15 hands of the Staff Director if we approve it, we will
16 ask the Staff Director and the staff to talk to the
17 assistants and make this change, not that the
18 assistants have to go through another round of doing
19 it. We'll make them responsible for doing all of these
20 changes that we're talking about.

21 Okay? Is that all right?

22 COMMISSIONER HIGGINBOTHAM: Well, since I am
23 always the epitome of collegiality, I would go for cf.,
24 compare cite. Give me a cf. cite. And if you want to
25 put excerpts where he has said something which in your

1 view is different.

2 COMMISSIONER GEORGE: Okay. That would be
3 fine.

4 CHAIRPERSON BERRY: Okay. So that will be a
5 cf., compare cite, for those who are not learned in the
6 law.

7 Commissioner George, are we at the end or do
8 you have more?

9 COMMISSIONER GEORGE: Those are the three.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER GEORGE: Although it might be
12 we'll need to have a look to make a question of the
13 basis of the federal role consistent with our
14 acknowledgement of controversy in the first point that
15 I made.

16 CHAIRPERSON BERRY: The findings?

17 COMMISSIONER GEORGE: In the findings on page
18 1. Just consistency. The findings on page 1 of Chapter
19 6. Just make sure that they're consistent.

20 CHAIRPERSON BERRY: Somebody checks to make
21 sure that there's consistency? Okay.

22 All right. And remember, I did say that in
23 the editing process, if there are other language
24 changes that need to be made that are consistent with
25 the agreements, then we would understand that there may

1 be some minor -- but they have to be consistent with
2 these agreements. And we're talking about minor
3 changes.

4 And that also, if Commissioners still feel
5 the need to write concurrences, we would understand
6 that they would do so.

7 Yes, Commissioner Anderson?

8 Although I would hope they wouldn't feel that
9 need.

10 Go right ahead.

11 COMMISSIONER ANDERSON: I have a modification
12 I'd like to propose to the beginning of Chapter 6, the
13 first paragraph there. And before I do, I'd like to
14 say that I think that this process we've gone through
15 on this report has been a good one and I would look
16 forward to attempting to replicate it in future
17 reports.

18 I want to thank my special assistant, Joseph
19 Broadus, and the other special assistants who have
20 spent so much time on this effort. I think if we'd had
21 even a little bit more time, we could have saved
22 ourselves some time at this Commission meeting in terms
23 of the staff preparation on it. But in any event, I
24 think it's been worthwhile effort.

25 Now, what I would like to do is make a

1 modification to the language of the first -- following
2 the first full sentence in the first paragraph on page
3 1 of Chapter 6. And what raises my concern is this.

4 I have thought that our enforcement reports
5 should stay as much as possible on procedure and the
6 operations of the agency being monitored, and as far as
7 we can get from more substantive issues that divide the
8 members of the Commission. And so I think much of what
9 we've been doing in the revision process has been
10 moving us in that direction.

11 Now, one of the difficulties I have, and it's
12 a serious difficulty, is the fact that if we look at
13 the first sentence of U. S. Commission on Civil Rights
14 finds that in general the U.S. Department of Education,
15 Office for Civil Rights operates a highly developed
16 civil rights implementation, compliance and enforcement
17 program that should serve as a model for other civil
18 rights agencies. And I think, in general, there is
19 much in our report that could support that.

20 However, that general endorsement of OCR
21 comes in the middle of some congressional review and
22 concern for specific activities and initiatives of OCR
23 which are of a more substantive nature than simply, in
24 my view, procedures.

25 So what I would like to avoid in this

1 recommendation is its interpretation as coming down one
2 way or the other on these outstanding issues before
3 some of the House committees.

4 So what I would propose is either a sentence
5 following that or a footnote at that point saying to
6 the effect, as follows: "The Commission is aware that
7 certain initiatives or activities of OCR are under
8 review by various congressional committees and the
9 Commission's recommendation takes no view on the
10 substance of such OCR initiatives or activities."

11 What I would like to avoid -- "initiatives or
12 activities" period. End of inclusion.

13 What I would like to avoid is our report
14 dropping in the middle of this review and being used by
15 one side or the other to defend its position when I
16 don't believe the Commission has looked at some of
17 these issues and is really intending this report to
18 resolve some of it.

19 So I hope that suggestion would not meet with
20 opposition among my colleagues, but that's the --

21 CHAIRPERSON BERRY: I don't have any
22 objection to it. I mean, clearly, we say that this is
23 an enforcement report and so it isn't taking a position
24 on any substantive activities. That's why it isn't. And
25 we may have projects that will take positions on these

1 substantive activities but this report wasn't supposed
2 to do that in the first place.

3 So if you feel that it's necessary to
4 indicate so that people don't infer positions, then I
5 guess that's a choice we could make.

6 Anyone feel uncomfortable?

7 COMMISSIONER HIGGINBOTHAM: Well, --

8 CHAIRPERSON BERRY: I mean, we're sort of
9 uncomfortable about the whole thing. But I mean,
10 anyone feel uncomfortable enough that they have to say
11 something?

12 I take that back. I don't ask if anyone
13 feels uncomfortable. I will assume that people who
14 feel uncomfortable --

15 COMMISSIONER HIGGINBOTHAM: If you hear me,
16 you will know I feel uncomfortable.

17 CHAIRPERSON BERRY: And that despite our
18 discomfort, we will, in the spirit of compromise and
19 collegiality and agreement and the fact that the report
20 has lots of good information in it which will be very
21 useful, we will console ourselves, if I can use that
22 word, and feel that we've done good work this day.

23 COMMISSIONER HIGGINBOTHAM: Can I hear the
24 specific language, please?

25 CHAIRPERSON BERRY: Yes.

1 Could he hear the specific language?

2 COMMISSIONER ANDERSON: Yes.

3 "The Commission is aware --

4 COMMISSIONER HIGGINBOTHAM: Slowly, please.

5 COMMISSIONER ANDERSON: "-- that certain
6 initiatives or activities of OCR are under review by
7 various congressional committees and the Commission's
8 recommendation takes no view on the substance of such
9 OCR initiatives or activities."

10 CHAIRPERSON BERRY: Maybe it would be --
11 Commissioner Anderson, just to be clear, maybe it would
12 be better to say "no position on OCR's substantive
13 initiatives and activities," or "no position on the
14 issues involved in OCR's substantive initiatives and
15 activities."

16 COMMISSIONER ANDERSON: That's fine.

17 CHAIRPERSON BERRY: Because the report does
18 take a position on its procedural initiatives.

19 All right. With that, are we ready for the
20 question?

21 All in favor of approving this report with
22 the changes discussed here and whatever minor editing
23 changes are consistent with these agreements as the
24 staff goes forward, indicate by saying aye.

25 (Chorus of ayes.)

1 Those opposed?
2 (No response.)
3 Great. Thank you very much.
4 COMMISSIONER GEORGE: Having done this much
5 work, can we call the roll, Madam Chairman?
6 CHAIRPERSON BERRY: All right.
7 VICE CHAIRPERSON REYNOSO: Madam Chair, I
8 just think that in the future when we're working on
9 these reports, we should have a little laptop computer
10 with us.
11 CHAIRPERSON BERRY: All right. Maybe that's
12 what we should do and just bang it out right here.
13 All right. I'll call the roll then.
14 Commissioner Anderson?
15 COMMISSIONER ANDERSON: Aye.
16 CHAIRPERSON BERRY: Berry. That's me. Aye.
17 Commissioner George?
18 COMMISSIONER GEORGE: Aye.
19 CHAIRPERSON BERRY: Commissioner
20 Higginbotham?
21 COMMISSIONER HIGGINBOTHAM: Aye.
22 CHAIRPERSON BERRY: Commissioner Horner?
23 Absent.
24 Commissioner Lee?
25 COMMISSIONER LEE: Aye.

1 CHAIRPERSON BERRY: Commissioner Redenbaugh?

2 COMMISSIONER REDENBAUGH: Aye.

3 CHAIRPERSON BERRY: Vice Chair Reynoso?

4 VICE CHAIRPERSON REYNOSO: Aye.

5 CHAIRPERSON BERRY: All right. The report is
6 approved, seven to zero, with one absent.

7 All right. Are there any future agenda
8 items, which is the next item on the agenda?

9 Future agenda items or anything else that
10 anyone feels moved to say at this day?

11 (No response.)

12 If not, I will entertain a motion that we
13 adjourn.

14 VICE CHAIRPERSON REYNOSO: So move.

15 CHAIRPERSON BERRY: Nondebatable.

16 (Whereupon, the proceedings were concluded at
17 12:15 p.m.)

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In the Matter of: MEETING

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SONIA GONEALEE
Official Reporter.

Dated: NOVEMBER 15, 1996

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