

STAFF PRESENT: (Continued)

Frederick Isler
Stephanie Y. Moore, General Counsel
Veronique Pluioise-Fenton
Charles Rivera
Anthony K. Wells, Sr.
Audrey Wright
Nadja Zalokar

COMMISSIONER ASSISTANTS PRESENT:

Charlotte Ponticelli
William Saunders, Jr.
Krishna Toolsie

P R O C E E D I N G S

1

2

9:40 a.m.

3

4

CHAIRPERSON BERRY: The meeting will come to order.

5

6

7

8

9

10

11

12

The first thing. My understanding is that because of a scheduling conflict -- well, actually Commissioner Higginbotham would like for us to consider having the Equal Educational Opportunity Project report discussed I guess after the announcements. And then, under the Staff Director's report, to discuss the letter concerning civil rights and welfare reform right after that.

13

14

Is that your suggestion Commissioner Higginbotham?

15

16

COMMISSIONER HIGGINBOTHAM: If you could, I'd be most grateful.

17

18

CHAIRPERSON BERRY: Yes. So, I'm suggesting that minor modification to the agenda.

19

20

Does anyone else have any?

Yes?

21

22

23

24

25

COMMISSIONER HORNER: Madam Chair, I'd like to -- since I understand Commissioner Redenbaugh may not be able to stay on for the duration, since he sent us a memo on the project priorities some weeks back, I would like to have that moved up so that he'd be able

1 to stay on.

2 CHAIRPERSON BERRY: So we could do that,
3 those three things, right away, if there's no
4 objection.

5 Does anyone have any other suggestions?

6 With that, could I get a motion to approve
7 the agenda?

8 VICE CHAIRPERSON REYNOSO: So move.

9 CHAIRPERSON BERRY: Second?

10 COMMISSIONER HORNER: Second.

11 CHAIRPERSON BERRY: All in favor?

12 (Chorus of ayes.)

13 Opposed?

14 (No response.)

15 So ordered.

16 The minutes of the July meeting are the next
17 item on the agenda.

18 Could I get a motion?

19 VICE CHAIRPERSON REYNOSO: Move their
20 approval.

21 COMMISSIONER HORNER: Madam Chair?

22 CHAIRPERSON BERRY: Yes, Commissioner Horner?

23 COMMISSIONER HORNER: I have just one

24 minor --

25 CHAIRPERSON BERRY: Could I get a second, and

1 then -- anybody?

2 VICE CHAIRPERSON REYNOSO: Second.

3 COMMISSIONER HORNER: A minor correction. On
4 page 2, paragraph 2, under Programmatic Theme
5 Discussion, I would like to insert a few words.

6 The sentence reads: "Commissioner Horner
7 suggested and Commissioner Redenbaugh concurred that
8 discussion of a general programmatic theme be postponed
9 until the budget is determined."

10 We also talked about resolving the
11 prioritization of projects when we had that budget
12 determination. So I would like to add, "after a
13 general programmatic theme," "and resolving the
14 prioritization of projects."

15 CHAIRPERSON BERRY: Okay.

16 COMMISSIONER HORNER: I have transcript with
17 me if we need it.

18 CHAIRPERSON BERRY: All right. "And
19 resolving the prioritization of projects" will be
20 inserted at that point.

21 Anybody else have any other corrections to
22 the minutes?

23 (No response.)

24 I have one that the staff has pointed out.
25 That Laura Murphy, the Director of the Washington

1 Office of the American Civil Liberties Union in the
2 minutes, on page 6, is referred to as, quote, "a
3 lobbyist for mandatory minimum sentencing in the 1994
4 Omnibus Crime Bill." Unquote. And they said that
5 that is incorrect, because the transcript of the
6 briefing shows that she has lobbied for the mandatory
7 minimum sentencing safety valve in the 1994 Omnibus
8 Crime Bill.

9 So the word "safety valve," should be put in
10 the description of Ms. Murphy's position. So we would
11 make that change in the minutes, also.

12 Any other changes?

13 (No response.)

14 Okay. All in favor of approval of the
15 minutes with those changes, indicate by saying aye.

16 (Chorus of ayes.)

17 Opposed?

18 (No response.)

19 Any announcements that we should make, as
20 quickly as possible at this point so that we can move
21 on for the Commissioners who have to leave?

22 Do any Commissioners have any announcements,
23 first of all?

24 (No response.)

25 If not, Staff Director, do you have any?

1 MS. MATHEWS: I do, Madam Chair.

2 I wanted to update the Commission on the
3 status of our reauthorization. In terms of the
4 position in the House, there was a full committee
5 markup this week on the 18th. The bill was approved
6 without any amendments. A House floor vote has not
7 been scheduled yet, but could likely occur next week.

8 On the Senate side, our reauthorization bill
9 was on the agenda for a markup session at yesterday's
10 full Judiciary Committee, but minority side on our
11 committee raised an objection to the pace of judicial
12 nominations and put a non-substantive hold on all other
13 measures that were pending for that markup session. So
14 our bill was not considered yesterday.

15 There has not been a date set for another
16 markup but that could likely occur next week, as well.
17 I understand on the Senate side there is ongoing staff
18 discussions on various aspects of the Senate
19 Reauthorization Bill with no firm agreement yet on
20 where they all stand.

21 In terms of appropriation, this is the update
22 on that score. The House has passed the Commerce-
23 Justice-State Appropriation Bill. It includes an
24 amount of \$8.74 million for the Commission for fiscal
25 year 1997. And the appropriation is pending on the

1 Senate side.

2 The legislators have indicated that they are
3 interested in adjourning for the year September 27, and
4 if our appropriation bill and others have not made it
5 through all the typical steps by then, there's
6 discussion that there may be an omnibus appropriation
7 bill or there may be a short-term CR, which, as I
8 understand it, might be four months in duration; might
9 the six months in duration.

10 If the omnibus bill is passed, that might be
11 for the entire bill.

12 Let me just see quickly if there's any other
13 topic.

14 As far as the Los Angeles hearing last week,
15 I thought we had a very successful hearing and staff is
16 pursuing with the U.S. Attorney the one witness who did
17 not come to the hearing. And I understand there's
18 ongoing discussions with the U.S. Attorney or how to
19 obtain that person's testimony.

20 CHAIRPERSON BERRY: The U.S. Attorney was not
21 entirely familiar with these procedures, not ever
22 having had it happen before. So, they were all quite
23 bemused and puzzled, which is why they were a little
24 slow to react. But now the Justice Department has
25 explained it to them and so they, as of yesterday, said

1 that by today they would be prepared to work out a time
2 to get Mr. Thompson, who's the man in question, to
3 testify.

4 That may involved -- and Commissioner
5 Anderson, I hope you can hear me. The Commission has
6 to consider whether you -- there are two ways to do
7 this, I understand. One is to have Vice Chair Reynoso
8 and Commissioner Anderson be there to take this guy's
9 testimony with one of the staff attorneys, and could do
10 that within the next 30 days possibly; within the next
11 20-something days, because the record is open for 30
12 days.

13 The other is if the Commissioners saw the
14 questions -- and I thought I had a copy but we can make
15 available a copy of the questions that are to be put to
16 Mr. Thompson. And if you felt comfortable having it
17 done that way since the hearing is -- the record is not
18 closed yet and it was a mini-hearing, technically, with
19 Commissioner Anderson and Vice Chair Reynoso -- to let
20 Vice Chair Reynoso, with an attorney, just ask the guy
21 the questions. It would be up to you.

22 I would feel more comfortable if Commissioner
23 Anderson were willing to journey to Los Angeles yet
24 again, Commissioner Anderson, to sit with Vice Chair
25 Reynoso, so that it would be bipartisan and the two who

1 are having the mini-hearing would be there, although I
2 really -- it's up to you, but I really don't see any
3 need for the whole Commission to go back out to Los
4 Angeles to get Mr. Thompson's testimony.

5 Yes?

6 COMMISSIONER GEORGE: Madam Chairman, when
7 would it be?

8 CHAIRPERSON BERRY: They would schedule it
9 around the calendars of the two -- or the Commissioners
10 who are really the relevant ones to go, and Mr.
11 Thompson. And the U.S. Attorney would work that out.

12 COMMISSIONER GEORGE: The goal would be in
13 the next month or two --

14 CHAIRPERSON BERRY: Oh, no, no. We'd like to
15 do it before the record closes.

16 Commissioner Anderson, did you hear all that?

17 COMMISSIONER ANDERSON: What I heard was it
18 didn't seem as though I have an option.

19 (Laughter.)

20 CHAIRPERSON BERRY: So, the only other thing
21 I would suggest -- it's just a suggestion. See if
22 anybody has a reaction to it. If they take the
23 testimony, they would do so in public, just on
24 principle, because it's supposed to be a public.

25 Would the Commission have any interest -- and

1 since it would be announced to the public that it was
2 done publicly -- having Commissioner Anderson and the
3 Vice Chair, since they'll be there, make themselves
4 available say for another hour if the public wants to
5 come in and say something?

6 I mean, it seems to me that would be a
7 generous approach since they'd be there anyway.

8 What do you think about that, Commissioner
9 Anderson?

10 COMMISSIONER ANDERSON: Well, I think it
11 would be fine.

12 CHAIRPERSON BERRY: Okay.

13 What about you, Vice Chair?

14 VICE CHAIRPERSON REYNOSO: That would be
15 fine.

16 CHAIRPERSON BERRY: All right. So as soon as
17 the attorney gets back today, they will work out with
18 the General Counsel and with the two of you and Mr.
19 Thompson, a time when all of you can be there, if
20 there's no objection from Commissioners.

21 Yes, Commissioner Horner?

22 COMMISSIONER HORNER: Madam Chair, has Mr.
23 Thompson made any formal explanation of his wish to --

24 CHAIRPERSON BERRY: Yes. Mr. Thompson has
25 made several explanations. One is that he didn't want

1 to testify.

2 COMMISSIONER HORNER: I forget who he is.

3 CHAIRPERSON BERRY: He's the Chief of Police
4 in a town called Englewood.

5 COMMISSIONER HORNER: Okay.

6 CHAIRPERSON BERRY: And we were having him
7 testify because he is the immediate past President of
8 an organization of police officers which had relevant
9 testimony on general issues like community policing and
10 things of that kind. That's what he's testifying
11 about, not about anything particularly having to do
12 with Los Angeles.

13 But he just didn't see -- he didn't want to
14 testify in public. He didn't want to get involved in
15 the controversy because it's controversial in Los
16 Angeles. And he made all these kinds of reasons.
17 First, he said he didn't get the subpoena. Then when
18 they showed that he did get it -- and so, now the U.S.
19 Attorney understands and they are working it out.

20 Yes, Commissioner George?

21 COMMISSIONER GEORGE: Does this involve
22 enforcing our subpoena?

23 CHAIRPERSON BERRY: Yes.

24 COMMISSIONER GEORGE: So do we need to vote
25 to enforce the subpoena today, or --

1 CHAIRPERSON BERRY: No. We considered that
2 at the hearing.

3 COMMISSIONER GEORGE: Out there.

4 CHAIRPERSON BERRY: We all agreed we were
5 going to enforce it. So we're not going to have to go
6 to Court. The U.S. Attorney is working it out
7 informally, which is always the best way to do it, if
8 you can.

9 Okay. So you'll hear more about that,
10 Commissioner Anderson.

11 COMMISSIONER ANDERSON: All right. Thank
12 you.

13 CHAIRPERSON BERRY: The other thing I would
14 say to the Commissioners is that we have to work out a
15 time for the Mississippi hearing. You may consider
16 whether any of you have any time this year before the
17 end of the year and before Christmas. I know this is a
18 tremendous headache because everybody's calendars are
19 fixed.

20 COMMISSIONER HORNER: Madam Chair, I didn't
21 bring mine. I'm very, very sorry.

22 CHAIRPERSON BERRY: But what I would ask is
23 if you did not bring your calendar, could you please
24 either tell the staff today before you leave, if you
25 know, some times when you think you would be available,

1 so they can try to work up a matrix and then get back
2 to people. And if we can just do it, I think we can't
3 come any closer to Christmas than 10 days before
4 Christmas, but sometime between now and then, if we
5 could get that done. And I'll just leave it at that.

6 Yes, Commissioner George?

7 COMMISSIONER GEORGE: Is it a two-day block
8 we need or three-day?

9 CHAIRPERSON BERRY: Three days we need.

10 Okay. So just keep that in mind and tell the
11 staff. Tell Jackie, I guess, what you know about that
12 and she'll get the rest of you on the phone.

13 COMMISSIONER LEE: Madam Chair?

14 CHAIRPERSON BERRY: Yes?

15 COMMISSIONER LEE: Is the hearing site still
16 the same?

17 CHAIRPERSON BERRY: The same place.
18 Mississippi. What was the name of it? Greenville,
19 Mississippi.

20 I have discussed with the Staff Director that
21 I think a step which is not included in our procedure
22 ought to be included every time we have a hearing or
23 one is planned. And that is, once the Commissioners
24 decide when they can do it, the Regional Director ought
25 to immediately canvass the area to find out if anything

1 else is going on, what are the plans.

2 I mean, that's not a step, but it seems to me
3 that that's an important step, so that before the
4 General Counsel's office does all this and before we
5 are locked in, we know that it's likely that it will
6 come off or not. I just think that's important. And
7 she has agreed that, naturally, that would be part of
8 the process from now on.

9 Okay. Let's go to -- if I haven't forgotten
10 anything, let's go to the letter first, only because
11 it's shorter.

12 You were sent a letter by the Staff Director
13 that is a draft to go to the President, which has to do
14 with the civil rights implications of the new Personal
15 Responsibility and Work Opportunity Act of 1996. I
16 must say to the Commissioners that after we got this
17 draft, I ran into some people in the Administration and
18 ask them, just in a conversation, chit-chat, what they
19 were doing about that. And nobody had even really
20 thought about it, to tell you the truth. So that
21 whatever we decide to do about this, I think, is
22 timely.

23 Does anyone have -- could we get a motion so
24 we can discuss it?

25 VICE CHAIRPERSON REYNOSO: I move that we

1 send the letter, a draft of which we've received.

2 CHAIRPERSON BERRY: Okay. And could somebody
3 second it and then we'll discuss it.

4 COMMISSIONER HORNER: I'll second it.

5 CHAIRPERSON BERRY: All right.

6 Comments? Suggestions? Questions?

7 Did everybody get the letter? That's the
8 first questions.

9 VICE CHAIRPERSON REYNOSO: Yes.

10 Madam Chair, it seems to me that the letter
11 was simply a reminder to the Administration that the
12 civil rights laws are still in the books and that they
13 should be conscious of that as the block grant vehicle
14 goes into place. It seems to me that for us, as a U.S.
15 Commission on Civil Rights, to be in a position of
16 reminding them of that would seem like an appropriate
17 step. But that's as far as I thought the letter went.

18 CHAIRPERSON BERRY: Yes, Commissioner Horner?

19 COMMISSIONER HORNER: Madam Chair, I just
20 have a question about fact. What year was the
21 Tennessee Medicaid/Medicare discrimination case found?

22 CHAIRPERSON BERRY: The case is -- I'll tell
23 you in a second.

24 COMMISSIONER HORNER: I just want to know
25 whether it's two years old or 10 years old or --

1 CHAIRPERSON BERRY: The report on this is a
2 1994 report, which describes the legislation. Let me
3 see if I can find the date of the case in here.

4 Anybody know what page? It's a 1990's case.

5 COMMISSIONER HORNER: Okay. That's good
6 enough.

7 CHAIRPERSON BERRY: But I don't remember
8 exactly the date. Okay.

9 COMMISSIONER HORNER: And the sentence after
10 the sentence that deals with that states that our
11 investigation -- never mind. It's clear to me now.

12 CHAIRPERSON BERRY: Okay.

13 Commissioner George?

14 COMMISSIONER GEORGE: Madam Chairman, I would
15 like to support this letter, proposing only the
16 deletion of the final session in the third paragraph,
17 which gets into an issue that's divided the
18 Commissioners in the past. It's the sentence that
19 begins, "Furthermore."

20 COMMISSIONER HIGGINBOTHAM: Could you please
21 read it? I don't have it before me.

22 CHAIRPERSON BERRY: Oh, sorry.

23 Could you read that?

24 COMMISSIONER GEORGE: Certainly, Leon.
25 "Furthermore, a June 1995 report of the

1 Commission, Funding Civil Rights Enforcement, found
2 that resources and staffing levels of key federal civil
3 rights agencies have not kept up with mounting
4 workloads."

5 It is a "Furthermore." It does not go to the
6 substance. It simply additionally supports the
7 propositions contained in the earlier parts of the
8 paragraph. I think it can be excised without
9 diminishing the impact of the paragraph and it would
10 remove a stumbling block for me, and probably make this
11 a unanimous letter.

12 I would also just like to ask whether the
13 quotation in the second paragraph, the reference to
14 religion, religious faith or refusal to actively
15 participate in religious practice is from TANF or from
16 some supporting documentation.

17 I have no objection to it at all. I notice
18 it's in quotation marks and I'd just like to include
19 the citation if it's not already implied to be part of
20 TANF.

21 CHAIRPERSON BERRY: Is that from the statute?
22 I think it is, but I'm not sure.

23 MS. MATHEWS: My recollection is it's from
24 the statute as well, but I don't have the statute in
25 front of me.

1 CHAIRPERSON BERRY: Where is Kim? He knows.

2 Ask him.

3 VOICE: From the Conference Report.

4 COMMISSIONER GEORGE: From the Conference
5 Report. Could we simply indicate that that's the
6 source? And I have no problem. Well, there's one
7 point of clarification that I had.

8 And that's all, Madam Chairman.

9 CHAIRPERSON BERRY: Well, I would be, for my
10 part, willing to accept the excision of the sentence
11 since it seems to me that it's not absolutely necessary
12 to the letter and if we can get a unanimous letter, I
13 think that would be a contribution that Arthur Fleming
14 would probably rise from his grave and applaud. So I
15 don't have any problem with that.

16 Does anybody else have a problem?

17 VICE CHAIRPERSON REYNOSO: That's fine.

18 There's a motion on the floor.

19 COMMISSIONER HIGGINBOTHAM: Well, if that is
20 the only change we're going to make, I would go along
21 with that. If it were more than that, I would want
22 further discussion.

23 CHAIRPERSON BERRY: Now, now.

24 COMMISSIONER GEORGE: I'm trying to find
25 something else, Leon, --

1 (Laughter.)

2 CHAIRPERSON BERRY: All right. Well, can I
3 call for the question then?

4 All in favor, indicate by saying aye.

5 (Chorus of ayes.)

6 Opposed?

7 (No response.)

8 No. Okay. So ordered.

9 Now, the Equal Educational Opportunity
10 Project report. Could we, for purposes of discussion,
11 get a motion?

12 VICE CHAIRPERSON REYNOSO: Yes. I so move.

13 CHAIRPERSON BERRY: Can I get a second, just
14 for the purpose of --

15 COMMISSIONER ANDERSON: Second.

16 CHAIRPERSON BERRY: Moved and seconded that
17 we approve this report.

18 First of all, Staff Director, we received a
19 letter from Commissioner Redenbaugh concerning this
20 report and then we received a response from us.

21 Could you sort of quickly reprise the
22 exchange just for the -- you know, so it's on the
23 record that we had this exchange about this report and
24 what the result is before we go forward?

25 MS. MATHEWS: Certainly.

1 Commissioner Redenbaugh indicates his
2 question about the staff providing the Commissioners
3 with a series of reports on this project and I
4 responded, after having staff research to find some
5 particular quotes from past Commissioner discussion.
6 And I guess a quick summary here would be that in the
7 April 1993 and I believe in May of 1993, in both
8 Commission meetings there discussions on projects of
9 which the Education Report was one of the projects
10 discussed.

11 There were I believe two memos from the
12 Acting Staff Director at that time on this and in al of
13 the memos, there was reference to a series of reports.
14 There was also reference to proposing the appropriation
15 of differing amounts. The amount that was particular
16 referenced in one case was \$13 million, with additional
17 staff being hired under that assumption solely for the
18 purpose of completing the Education Report.

19 The Commissioners voted at the May meeting,
20 five to zero, to approve the staff program plans, which
21 included the Education Report. However, the amount of
22 money that resulted form that vote did not materialize
23 for the Commission. The approval of this project was at
24 \$11,144,000.

25 CHAIRPERSON BERRY: Could I, for purposes --

1 in the interest of time of those Commissioners who have
2 to leave, ask you, Staff Director, is the point that
3 the Commission at some point agreed to have multiple
4 reports and agreed to certain other ways it would be
5 done, but always with the contingency that the money
6 was going to be some amount that we never got?

7 COMMISSIONER HIGGINBOTHAM: I'm having
8 trouble hearing.

9 CHAIRPERSON BERRY: That the money, the
10 funding would be -- our budget would be in an amount
11 that we never received.

12 Is that the sum and total of what the
13 response is with all these different numbers?

14 MS. MATHEWS: Yes, Madam Chair. I would
15 strongly emphasize, though, the wide disparity between
16 our current appropriation at \$8.75 [million] and the
17 amount of money at which this project was considered.
18 And the series of reports was contemplated from the
19 inception.

20 CHAIRPERSON BERRY: Okay. So that's the long
21 and short of it.

22 Now, could we have some discussion, further
23 discussion, either of that or of the report, or does
24 anyone have any comments, suggestions, whatever?

25 Yes, Commissioner Horner?

1 COMMISSIONER HORNER: Madam Chair, I would
2 very much prefer to postpone the vote until the next
3 meeting. We got it, I think, in the final week of
4 August and then we were out in California. I think
5 that it looks to be a very strong useful report.

6 I have problems with it that I think could be
7 negotiated without extraordinary difficulty in the
8 interim and I would like to ask if my fellow
9 Commissioner would agree to postpone for a month while
10 I have an opportunity to point out what concerns I
11 have.

12 CHAIRPERSON BERRY: Did you Commissioners
13 understand -- Commissioner Horner?

14 Redenbaugh and Higginbotham?

15 COMMISSIONER REDENBAUGH: I did.

16 COMMISSIONER HIGGINBOTHAM: Yes.

17 CHAIRPERSON BERRY: Reactions? Comments?

18 COMMISSIONER REDENBAUGH: I have the same
19 difficulty --

20 CHAIRPERSON BERRY: Yes, Commissioner
21 Redenbaugh?

22 COMMISSIONER REDENBAUGH: -- that
23 Commissioner Horner refers to, and I join her in that
24 request.

25 VICE CHAIRPERSON REYNOSO: If there are no

1 time pressures, it seems to me that would be
2 appropriate.

3 I've had the time to go over substantial
4 portions and, like Commissioner Horner, I find it
5 really very -- I find it a well done report and useful,
6 but if there are no time pressures, it's an extensive
7 report. That would be fine.

8 CHAIRPERSON BERRY: Commissioner George?

9 COMMISSIONER GEORGE: I had the thought,
10 Madam Chairman, that this report might be one on which
11 it might be useful, again, to put into place the
12 procedure that we used to achieve not quite consensus,
13 but a successful resolution to the Title VI report.

14 If the assistants could huddle and bring
15 together before the next meeting, perhaps, or the
16 meeting after, the comments that their individual
17 Commissioners have, suggested changes, corrections,
18 deletions, additions and so forth, and see if behind
19 the scenes, as it were, we can at least get out of the
20 way that it's not worth fussing about with the
21 Commissioner's themselves. And then if there are any
22 issues left over that need debate, then we can do it,
23 having the main bulk of the work done by the assistants
24 working with their individual Commissioners and then
25 working together in advance.

1 I think it might be an efficient way to get
2 the report out.

3 I agree with both Vice Chairman Reynoso and
4 Commissioner Horner that this is one where we ought to
5 be able to get not only a majority but unanimity. And
6 I think if we use this approach that proved so
7 successful once before, it might do it again.

8 CHAIRPERSON BERRY: The only disadvantage I
9 can see is Commissioner Horner doesn't have an
10 assistant.

11 COMMISSIONER HORNER: Yes. And that --

12 CHAIRPERSON BERRY: That disadvantages
13 Commissioner Horner.

14 COMMISSIONER HORNER: My newly found
15 assistant, alas, was newly admitted to law school
16 unexpectedly from a law school on whose waiting list he
17 had not even been placed, who telephoned at the last
18 minute. Commissioner Horner will have to do the work.

19 CHAIRPERSON BERRY: Well, maybe Commissioner
20 Horner could get some assistance from someone.

21 COMMISSIONER HORNER: I can get some help. I
22 can get some help.

23 CHAIRPERSON BERRY: Well, my own view would
24 be that I would be perfectly willing to have this
25 procedure go forward if Commissioners agree to make

1 their assistants available and if everyone agrees to be
2 responsive to calls for meetings and discussions and
3 the like. Because we don't want people to be left out
4 and then that they somehow didn't get involved or
5 didn't know what was happening.

6 Yes?

7 COMMISSIONER HORNER: Madam Chair,
8 Commissioner Redenbaugh's assistant has volunteered to
9 represent me in these discussions with his concurrence.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER REDENBAUGH: I concur.

12 And I would support, Robert, your
13 recommendation to proceed in this way, but I would
14 object to your characterization of the prior process as
15 successful.

16 CHAIRPERSON BERRY: Well, then, if it wasn't
17 successful, then I wonder if we ought to do it.

18 COMMISSIONER REDENBAUGH: No. I think we
19 should. I think you should try it again.

20 COMMISSIONER HORNER: And Madam Chair, if
21 Commissioner Redenbaugh's assistant -- if Commissioner
22 Redenbaugh and I have any differences on this report,
23 Commissioner Redenbaugh's assistant may argue with
24 herself about it.

25 (Laughter.)

1 CHAIRPERSON BERRY: Commissioner Anderson,
2 what do you think?

3 COMMISSIONER ANDERSON: Well, I see no
4 significant problems with what I've read so far in the
5 report, so I'd be happy to give this procedure an
6 opportunity to see if it works. I think it can.

7 CHAIRPERSON BERRY: What about you,
8 Commissioner Higginbotham?

9 COMMISSIONER HIGGINBOTHAM: Well, I'm ready
10 to vote. I'm perfectly willing to let it go over for
11 another month.

12 I believe that at some stage after the
13 assistants have discussed it and if there's any
14 disagreement, we are entitled to get in writing the
15 alternative language. What I don't want would be a
16 further discussion on the abstractions, so that when we
17 come to our next meeting, we will see, specifically if
18 there's disagreement, what is alternative language so
19 that we can then vote intelligently or think about it
20 intelligently.

21 So, I know the Court of Appeals laid out the
22 rule in the Third Circuit that if you don't like
23 something, you give the alternative language. And I
24 think it's very helpful. And I'm perfectly pleased to
25 wait. I would hope that we can come to a resolution.

1 CHAIRPERSON BERRY: Yes.

2 Commissioner George?

3 COMMISSIONER GEORGE: Yes. That's
4 exactly what we did last time.

5 COMMISSIONER HIGGINBOTHAM: Great.

6 COMMISSIONER GEORGE: The individual
7 Commissioners proposed changes of language. Sometimes
8 simply deletions; other times additions where language
9 was added; and went back and forth with their
10 Commissioners and things were largely worked out. Not
11 to the satisfaction of everybody. In the end, I think
12 the report was five to three. Yes. Five to three.

13 But in any event, well, can I say more or
14 less work.

15 COMMISSIONER REDENBAUGH: I think it would be
16 much better than the Commissioners talking about it.

17 COMMISSIONER GEORGE: Madam Chairman, if I
18 could suggest, it, I think, worked out very well when
19 your assistant Krishna Toolsie took the lead in sort of
20 organizing the meetings last time. If he could be
21 designated to do that again, I think it would work out
22 beautifully.

23 CHAIRPERSON BERRY: All right. I will ask
24 him to do that. And I will say here that he will wait
25 to schedule such a meeting about 10 days from now so

1 that every assistant, every Commissioner has an
2 opportunity to read, tell the assistants what it is you
3 don't want or do want, so that when he sits down, we
4 can get all the proposed changes and then he can work
5 with them.

6 So, he'll give you 10 days to read.

7 COMMISSIONER GEORGE: I don't want to suggest
8 that they'll be able to work everything out at the
9 first meeting, but there will be time, if we take the
10 Chairman's idea of the 10-days for the first meeting,
11 for another meeting or two of the assistants, once
12 they've each gotten back to their individual
13 Commissioners and said what went on and where the
14 various Commissioners stand.

15 And by the next meeting, I should think we
16 would be in a position to push this through.

17 CHAIRPERSON BERRY: Okay. So there'll be a
18 first meeting; then there will be a go back to
19 Commissioners by assistants; and then further meetings
20 and go backs, as needed, until we resolve this. And we
21 will take Commissioner Higginbotham's suggestions; that
22 is, that by the next meeting, if anyone still wants to
23 propose some new language, they should have some new
24 language with them or something rather than just simply
25 objecting.

1 All right. The only time pressure on this,
2 Staff Director, is what?

3 MS. MATHEWS: It would be by the end of this
4 calendar year in terms of our statutory report for
5 1996.

6 CHAIRPERSON BERRY: Okay. So depending on
7 how you interpret when we're supposed to do this, we
8 have some time. And there's a dispute about the --
9 which I acknowledge -- about how one interprets this.
10 But in any case, we are working diligently on this and
11 the record will show that the Commissioners are working
12 diligently on this.

13 Okay. Other comments?

14 COMMISSIONER HORNER: Madam Chair, I'm just
15 recalling we did have an argument once which I think
16 remained unresolved as to whether statutory applied to
17 fiscal or calendar year. I just want to make note of
18 that. That's all.

19 CHAIRPERSON BERRY: Right. That's what I
20 meant when I said there is a dispute on what this
21 means. But at least the record shows the Commissioners
22 are working diligently on this report and will try to
23 resolve it.

24 I would also like to suggest that at the next
25 meeting, depending on how this process goes, we had

1 said we might discuss -- we said we would discuss the
2 idea of a theme again, after we have our budget. Isn't
3 that what the Commissioners said? And by then, we
4 should know what our budget is one way or the other.
5 Or should we do that in November? We have to think
6 about when we plan to do that.

7 And let's see what other proposals we have.
8 Are there other items in the Staff Director's report?

9 Oh, I know.

10 COMMISSIONER REDENBAUGH: Seems to me there
11 were project priorities.

12 CHAIRPERSON BERRY: I'm sorry, Commissioner
13 Redenbaugh. Right. Project priorities. We want to do
14 those next because you may have to leave.

15 Staff Director, what are we doing on project
16 priorities?

17 MS. MATHEWS: I came prepared to discuss the
18 budget but I don't have project priorities in terms of
19 this issue. One of the Commissioners suggested this.
20 Maybe I could --

21 COMMISSIONER GEORGE: Russell asked me, Madam
22 Chairman, since he's on the phone, to reiterate the
23 proposals that he made in his memo. And I brought some
24 additional copies of the memo if people don't have them
25 along and would like to look at.

1 This is a memo that went out to all the
2 Commissioners in July. The one I photocopied has
3 "Please deliver to Honorable Constance Horner," on the
4 top, but it's the same letter. The same went to
5 everybody.

6 COMMISSIONER REDENBAUGH: Let me just
7 interject, if I may, Robbie.

8 COMMISSIONER GEORGE: Yes.

9 COMMISSIONER REDENBAUGH: What we are
10 reasonably certain of now that we didn't know in July
11 is that our budget will be about \$8.7 million. And in
12 July, or June and July, we were uncertain about that.
13 So that seems to be resolved.

14 And in light of that, we in fact have more
15 projects than we have money.

16 CHAIRPERSON BERRY: I see. So in other
17 words, Russell, what you're suggesting is the item I
18 was mentioning about discussing priorities after the
19 budget. That now that we know generally what the
20 budget is, we should do it now? Is that the point?

21 COMMISSIONER REDENBAUGH: Yes.

22 CHAIRPERSON BERRY: Okay.

23 COMMISSIONER REDENBAUGH: I think you raised
24 it at the June meeting, Mary, the idea that we couldn't
25 really do this until we did have a sense of the budget.

1 CHAIRPERSON BERRY: Right. And now we do.

2 COMMISSIONER REDENBAUGH: I think you're
3 right about that and think we have a pretty strong
4 sense of it.

5 CHAIRPERSON BERRY: That, we do.

6 COMMISSIONER REDENBAUGH: It's unlike to be
7 \$14 million.

8 CHAIRPERSON BERRY: Right. Very unlikely.

9 COMMISSIONER GEORGE: The actual proposed
10 prioritization from Russell is in the fourth paragraph.

11 COMMISSIONER HORNER: Could you read it?

12 COMMISSIONER GEORGE: Yes. Shall I read it
13 for everybody?

14 It begins, "Clearly, we need to prioritize,
15 and I'd welcome the chance to brainstorm with you. In
16 my view, we should hold the staff to no more than five
17 major projects for fiscal year '97, focusing on our top
18 priorities. For example, the ADA, Americans with
19 Disabilities Act, as the statutory report; two, the
20 crisis of young African-American males in inner cities;
21 three, schools and religion; four, expanding the
22 economic opportunities of African-American, Asian and
23 Latino youth; and five, the Mississippi Delta report."

24 He goes on: "We should consider dropping
25 altogether the environmental justice project and the

1 fact-finding hearing on affirmative action, both now
2 scheduled for fiscal year '97, as well as the project
3 on global economic demographic and technological change
4 scheduled for fiscal year '97, proposed, as I recall,
5 by Commissioner Redenbaugh.

6 "I think we should consider deferring the
7 voting rights project to 1998. The naturalization
8 project could also be deferred and made a statutory
9 report for fiscal year '98 perhaps in lieu of voting
10 rights, along with the evaluation of fair employment
11 law enforcement.

12 "Because the summary report on racial and
13 ethnic tensions cannot be done until after the reports
14 on L.A. and Mississippi are completed, I would suggest
15 we defer the summary to fiscal year '98. We should not
16 consider any new projects for fiscal year '98 at this
17 time."

18 That's it.

19 CHAIRPERSON BERRY: Okay. The Staff Director
20 was trying to say something.

21 Yes, Staff Director?

22 MS. MATHEWS: Madam Chair, the budget
23 proposal that was given to Commissioners for discussion
24 at this Commission meeting was for fiscal year '98. It
25 does include in the narrative, as is typical with our

1 presentation of material, reference to plans for fiscal
2 '97 based on Commissioner approval at earlier meetings.

3 The status on some of our projects that were
4 expected to be completed this fiscal year '96, for
5 funding uncertainties and federal furlough and other
6 issues, we are in the position of continuing on with
7 some of these projects into '97. By that I mean the
8 Mississippi Delta hearing, for example; the completion
9 of the reports on the Los Angeles hearing; the New York
10 hearing. So those need to be considered in this.

11 And I guess I would add that should
12 Commissioners make a decision today that would affect
13 the fiscal '97 or '98 decisions already made earlier
14 this year, that will certainly change all of our budget
15 presentation, which is scheduled to go to OMB next
16 week, at present.

17 VICE CHAIRPERSON REYNOSO: Madam Chair, two
18 or three thoughts. One, --

19 CHAIRPERSON BERRY: Can you hear out there?

20 VICE CHAIRPERSON REYNOSO: Can you hear me
21 all right?

22 COMMISSIONER REDENBAUGH: Yes.

23 VICE CHAIRPERSON REYNOSO: I guess the fourth
24 paragraph that Russell has written here, comports, it
25 seems to me -- it captures the spirit of our discussion

1 when we were discussing priorities. But I'm reluctant
2 to vote on it right now without a report from the staff
3 precisely on what's in the basket now; how much that's
4 going to take, what resources we're going to have, so
5 we're better informed.

6 Two, since we discussed the priorities, there
7 are at least two matters that come to my attention that
8 we might want to consider putting into the mix. One is
9 the concern raised by Commissioner Horner -- she's
10 raised it actually a couple of times -- that I think we
11 ought to give a lot of thought to and it would require
12 staff time. And that is the notion of measuring
13 discrimination.

14 Connie has raised several times the issue of
15 what does discrimination mean? What do we look at?
16 What indices do we look at? And in thinking about it,
17 I've been reminded of the early experience of the Equal
18 Employment Opportunity Commission in dealing with
19 employment discrimination where there had been state
20 commissions that dealt with it, but they hadn't really
21 dealt with the issue of what is discrimination in
22 employment.

23 I remember the early discussions in the
24 Commission was one of the things we've got to do is try
25 to say this is discrimination and this is the way we

1 measure it. And we've been around for a long time and
2 we haven't sat back and thought about those things.

3 So I was just thinking that might be
4 something that maybe more than a year project but
5 something we might want to think about.

6 Secondly, in some ways more immediate, is the
7 legislation that passed Congress that has deleted some
8 of the public systems that immigrants, that is, lawful
9 immigrants, have. And the implications for them seems
10 to be -- would appear to me to be something we might be
11 concerned about. And that's something more immediate.

12 So that's a long way of saying that I'd like
13 to have the staff sort of think about those things, as
14 well as what's present now, and give us a report for
15 next meeting and then vote on it next meeting.
16 Although I think Russell has captured the sense that we
17 had about what was most important.

18 CHAIRPERSON BERRY: May I make a couple of
19 suggestions?

20 Oh, were you about to say something, Russell?

21 COMMISSIONER REDENBAUGH: If I may.

22 CHAIRPERSON BERRY: Go ahead. But can I make
23 just a point of information first?

24 COMMISSIONER REDENBAUGH: Yes.

25 CHAIRPERSON BERRY: My recollection of

1 Commissioner Horner's statements about discrimination
2 were not so much in the vein that you gave. Maybe I
3 don't recollect accurately. It was how do you know how
4 much discrimination there is.

5 VICE CHAIRPERSON REYNOSO: Right.

6 CHAIRPERSON BERRY: How do we know.

7 VICE CHAIRPERSON REYNOSO: Right.

8 CHAIRPERSON BERRY: I guess you'd have to
9 define it to know how much it is.

10 VICE CHAIRPERSON REYNOSO: You have to define
11 it and you have to measure it. No, but that's right.
12 Is there discrimination? How much is there? How do we
13 know? What indices do we have of it? That sort of
14 thing. Because some folks we say, well, we all know
15 there's still a lot of discrimination. Other folks
16 say, well, we're not so sure.

17 CHAIRPERSON BERRY: Okay.

18 VICE CHAIRPERSON REYNOSO: And it seems to me
19 that that's worth looking at.

20 CHAIRPERSON BERRY: Commissioner Redenbaugh?

21 COMMISSIONER REDENBAUGH: First of all, I
22 agree with you that we cannot -- I am not proposing
23 that we adopt this agenda today.

24 VICE CHAIRPERSON REYNOSO: Oh, okay. I
25 misunderstood. I thought you were asking that we act

1 on it today.

2 COMMISSIONER REDENBAUGH: Well, we can act to
3 adopt it but we can act to consider -- you know, to
4 produce a new project plan in light of what the Staff
5 Director said. That is, we have uncompleted work from
6 '96 which -- and I'm not at all opposing that that
7 comport with what you're saying about the measurement
8 of discrimination.

9 The concern that I have and the complaint
10 that I'm making -- is that we're now at the end of this
11 fiscal year and as a group we have not resolved our
12 priorities for '97, whose budget we now know almost
13 certainly. And we have not resolved our priorities for
14 '98 in light of what we might expect realistically the
15 budget to be. And I don't think we are being
16 responsible to continue to entertain a list of projects
17 that is obviously far more ambitious than either of the
18 staff or us as Commissioners can complete.

19 CHAIRPERSON BERRY: You've got that straight.

20 COMMISSIONER REDENBAUGH: And we have
21 continued -- all of these projects have merit, but what
22 our reality is, we will get almost nothing done if we
23 don't choose among them.

24 And I think we need to move quite forcefully
25 to say, look, this \$8.7 million, how are we going to

1 spend it.

2 CHAIRPERSON BERRY: I would suggest de
3 minimis, because it's very difficult to decide to get
4 rid of something that everybody's interested in, or
5 some people are interested in. There are a couple of
6 things that maybe we can vote to get rid of altogether
7 without too many objections, de minimis, and then see
8 where we are.

9 I would suggest that we drop the
10 environmental justice and the global economic
11 demographic and technological change projects if there
12 is no objection. Then we will at least have done
13 something.

14 COMMISSIONER GEORGE: I'll second that
15 motion. I think this is moving in the right direction,
16 exactly.

17 CHAIRPERSON BERRY: The Staff Director wants
18 to say something.

19 MS. MATHEWS: Madam Chair, I believe the
20 Commissioners, in an earlier discussion, have already
21 dropped the global technological --

22 CHAIRPERSON BERRY: Well, good. Then we'll
23 drop the environmental justice thing, too.

24 COMMISSIONER GEORGE: Let's drop it again.

25 CHAIRPERSON BERRY: That doesn't mean that at

1 some later time, should we live so long, we can't do
2 these again. But for now, we would drop these out of
3 our priorities that we keep discussing.

4 COMMISSIONER HORNER: That's a good idea.

5 CHAIRPERSON BERRY: All right. Now let's see
6 if there's anything else here we can all agree to
7 either drop or do something with, and then we would be
8 able to move on.

9 You don't suggest dropping anything else
10 except the affirmative action one, Russell?

11 COMMISSIONER REDENBAUGH: Well, I don't
12 drop -- I also propose moving one or two into '98
13 because I don't think it's possible to achieve them in
14 '97.

15 CHAIRPERSON BERRY: All right. So now having
16 these, do we believe that in 1997 we will be able to do
17 a hearing on affirmative action? Do we believe or do
18 we want to realistically?

19 Yes, Commissioner George?

20 COMMISSIONER GEORGE: I think I was the
21 proposer of this one and I've now given up on it, and I
22 would be happy to see it dropped.

23 COMMISSIONER HIGGINBOTHAM: Which one are we
24 dropping, sir?

25 COMMISSIONER GEORGE: Affirmative action.

1 CHAIRPERSON BERRY: Affirmative action.

2 COMMISSIONER HORNER: That would be fine with
3 me.

4 CHAIRPERSON BERRY: That doesn't mean we
5 can't resurrect it and decide to do it. It just means
6 that we would agree we're not doing it in '97. That's
7 the query, Leon - I mean, Commissioner Higginbotham.

8 COMMISSIONER HIGGINBOTHAM: I really think
9 we've got more than we need that we can handle
10 competently. And when you have too many, you don't do
11 anything well.

12 I would like to direct staff to respond
13 precisely in terms of what they think we can get done.
14 And then we should hold them to that commitment, saying
15 that you contemplate that there will be some
16 emergencies, you contemplate there are going to be
17 vacations and all these other things. Now, tell us how
18 much -- of all these projects, what do you think we
19 have a high probability of doing within fiscal year X
20 and Y.

21 I think they should tell us. And then from
22 that, we've got a realistic basis. My problem is that
23 I don't know what they can handle and voting for a
24 specific deadline may be a meaningless gesture.

25 CHAIRPERSON BERRY: Right. Well, I just

1 meant did you feel that the policy concern on the
2 affirmative action one, would you agree that it's
3 something that if we do not do it in 1997, that would
4 not be fatal if we either deferred it or dropped it?
5 That was the query, really.

6 COMMISSIONER HIGGINBOTHAM: I think this is
7 where we are. If you let it go until -- when would
8 it -- when would we file a report?

9 CHAIRPERSON BERRY: Either the next year or
10 thereafter.

11 COMMISSIONER HIGGINBOTHAM: I think you're
12 going to be probably close to obsolescence in many
13 ways. The Third Circuit came down with an opinion, the
14 Paxman case, versus Piscataway in August. You've got
15 Hopwood coming out of the Fifth Circuit. Everyone else
16 is running around discussing it.

17 What I think is going to be the anomaly will
18 be that if we're supposed to have some expertise in
19 looking at it, we will be the last. And I think you
20 have to decide is this the type of issue which we're
21 willing to say that everyone's discussing this statute
22 in another panel although we should move it.

23 I think that my view of the segments of the
24 public if we do not make some comments, whatever way
25 you go on affirmative action, some people will wonder

1 whether we have been living up to our obligations.

2 Saying that, I have to hear from staff to see
3 what they can get done. So if it is the majority wants
4 to move it back, I might --

5 CHAIRPERSON BERRY: Now one factor we should
6 keep in mind, is the staff prepared an affirmative
7 action hearing. And remember, we had a close-down or
8 something happened. I've forgotten.

9 COMMISSIONER HIGGINBOTHAM: Was that a
10 briefing or a hearing?

11 CHAIRPERSON BERRY: It was a hearing
12 actually, wasn't it?

13 Yes. It was hearing. It was all scheduled
14 and all the witnesses were ready to go. And we simply
15 didn't have it because of the close-down.

16 Yes, Commissioner Horner?

17 COMMISSIONER HORNER: Madam Chair, I
18 appreciate Commissioner Higginbotham's concern because
19 we don't want to seem to be not attending to things
20 that are very much on the public mind. We also have to
21 ask where is our value added.

22 We did do an excellent summary, I recall. I
23 think I recall the staff did an excellent summary of
24 affirmative action history and programs, which I think
25 was a useful summary for the discussion broadly.

1 Secondly, I think that there is a lot of
2 activity in the federal workplace now as to what
3 programs and projects are or should survive, are
4 surviving are should survive. And it might be most
5 useful if we could come back to this after the period
6 of a year and make our value added an assessment of
7 what is going on with respect to affirmative action in
8 the federal workplace.

9 We don't have to decide to do that now. It
10 seems likely to me that that's a live -- potentially a
11 live issue that we could add value on. And I don't
12 think we have to decide to do it, but I think we can
13 keep in the back of our minds that that might be a
14 useful thing for us to contribute to the larger
15 discussion down the road, depending on the course of
16 events. Perhaps nothing will happen, nothing will
17 change. Perhaps a lot will happen.

18 CHAIRPERSON BERRY: Anybody else have an
19 opinion? What is the view from California?

20 VICE CHAIRPERSON REYNOSO: Of course, we
21 have the initiative on the ballot that will take place
22 in November. I think that it's a very important issue
23 and probably the quicker we can have a hearing like the
24 one that we planned, the better off we are. I don't
25 see that we can have it before November, but after the

1 ballot, whichever way it goes, to have folk come before
2 us to tell us what the effect will be and so on, I
3 think might be very useful.

4 CHAIRPERSON BERRY: You mean after the vote
5 takes place?

6 VICE CHAIRPERSON REYNOSO: Yes.

7 CHAIRPERSON BERRY: In fact, Commissioner
8 Redenbaugh, that's the way we had talked about it. The
9 last discussion we had on this, as I remember -- now, I
10 remember. We said we would wait until the California
11 vote and then after that, our hearing would focus more
12 in terms of, you know, sort of where do we go from here
13 kind of thing, both in the federal workplace and by
14 states, rather than trying to influence the debate for
15 good or ill while it was going on.

16 COMMISSIONER HORNER: Madam Chair?

17 CHAIRPERSON BERRY: Yes.

18 COMMISSIONER HORNER: When I said federal
19 workplace, I meant federal programs, not just federal
20 workers.

21 CHAIRPERSON BERRY: Workers. But the
22 programs.

23 COMMISSIONER HORNER: Right.

24 CHAIRPERSON BERRY: So that's the last
25 discussion we had, Commissioner Redenbaugh. That we

1 would wait until that happened and then we would sort
2 of talk about, you know, where does the country go from
3 here.

4 COMMISSIONER REDENBAUGH: Right.

5 CHAIRPERSON BERRY: In the vein of the
6 article that Commissioner Horner wrote. I think she
7 wrote an article about where do we go from here, or
8 something.

9 COMMISSIONER REDENBAUGH: I recall that now.
10 I think all of these projects have their merit and the
11 reality is we cannot do them all. And we continue to
12 not choose which ones we're going to do.

13 VICE CHAIRPERSON REYNOSO: Well, Madam Chair,
14 it seems to me that we do have to make those priority
15 decisions. And I'd be prepared to vote on it. I think
16 we've agreed to get a staff report and then we'll
17 simply vote on them next time.

18 CHAIRPERSON BERRY: Commissioner George?

19 COMMISSIONER GEORGE: Yes, Madam Chairman. I
20 want to simply say that I think that Commissioner
21 Higginbotham makes an excellent argument in saying that
22 an issue like affirmative action is one that the
23 country would expect something called the U.S.
24 Commission on Civil Rights to weigh in on. It's in
25 fact, such a good argument, that I made it myself in

1 proposing this hearing. But I have lost heart about
2 it.

3 What I like about Russell's proposed
4 prioritization here is that it really does put the
5 focus and our resources on issues that are more likely
6 to be ones on which we can cooperate. And whatever
7 differences of opinion we have, I think we're probably
8 going to generate some helpful consensus reports in the
9 end.

10 I suspect that with an affirmative action
11 hearing the squabbling would begin with the shaping of
12 the hearing and go all the way through to the report,
13 and the report probably get hung up in it and I don't
14 know that we'd make such a contribution.

15 I think where the force of Commissioner
16 Higginbotham's argument leads me is to the conclusion
17 that we all, as Commissioners, ought to be weighing in
18 with our opinions on the affirmative action issue and
19 doing the best to inform ourselves on it so that our
20 contributions can be informed. But I'm no longer in
21 favor of spending our resources on actually having a
22 hearing, whether it's before or after the initiative or
23 the Supreme Court's resolution of the cases that Judge
24 Higginbotham referred to coming out of the Fifth and
25 Third Circuits.

1 So, that's my view. That's where I am.

2 COMMISSIONER HIGGINBOTHAM: Could I just add
3 a footnote?

4 CHAIRPERSON BERRY: Yes.

5 COMMISSIONER HIGGINBOTHAM: The Commissioner
6 is correct. We filed a report sometime ago. The
7 problem is that the report, with all due respect, is
8 obsolete. The report was filed and I expect you can
9 check -- was filed before the Supreme Court decided
10 Andorand. Adorand was the high water mark case where
11 the Supreme Court reversed the rulings in Metro. And
12 so we are sort of in the anomalous situation of having
13 a report filed prior to the Supreme Court's most
14 significant opinions of last June. And everyone else
15 is acting on the basis of Andorand and on the basis of
16 Hopwood and dialoguing on the basis of the Third
17 Circuit case.

18 And we will have only an obsolete report on
19 the opinion. Obsolete, just because the whole
20 jurisprudence system has moved beyond where we thought
21 it was because many people did not anticipate these
22 results.

23 Now, saying all of that, I know we have to
24 prioritize. And all I'm raising to us is that I'd
25 rather have a report filed which indicates the various

1 controversies, even within our body. Why should we be
2 any better than the Supreme Court on the key cases?

3 (Laughter.)

4 For example, on congressional redistricting,
5 there are 11 Justices of the Supreme Court who have
6 decided the cases -- when White has been replaced by
7 Justice Ginsberg and Blackman has been replaced by
8 Justice Brier. So you have 11 Justices who've decided
9 these cases and they were divided six to five.

10 So I see nothing wrong if we have divisions.
11 It doesn't bother me. But maybe that's just the
12 pathology of the industry on that. I do think it's
13 great when we can have consensus.

14 Having said all of that, let me summarize my
15 position. One, --

16 CHAIRPERSON BERRY: Please don't say anything
17 else Leon.

18 COMMISSIONER HIGGINBOTHAM: Pardon me?

19 CHAIRPERSON BERRY: Please don't say anything
20 else. You've persuaded me.

21 COMMISSIONER HIGGINBOTHAM: Go to it.

22 CHAIRPERSON BERRY: Staff Director?

23 MS. MATHEWS: Madam Chair, I want to mention
24 that in view of the fact this hearing had been
25 scheduled to occur, staff has done all the preparation

1 work and I think it would be a quick exercise to get
2 this hearing underway. And so I would just offer that
3 for the consideration of the Commissioners. I don't
4 think the expense angle would be a consideration of any
5 import on this project.

6 CHAIRPERSON BERRY: Let me just say that I,
7 at the beginning of the discussion, I was prepared to
8 just simply strike this. But after hearing the
9 arguments, especially being reminded of Commissioner
10 George's argument when he first proposed it, which now
11 has vanished, and then hearing Commissioner
12 Higginbotham saying we're no better than the Supreme
13 Court --

14 VOICE: Which I resent.

15 (Laughter.)

16 CHAIRPERSON BERRY: And feeling that even if
17 we are divided, well, we'll just be divided. I mean,
18 if they can be divided, what's wrong with us being
19 divided. And the staff did do the work and the country
20 does need some guidance on where it goes from where
21 it's going. And what are they paying us for to be a
22 civil rights commission if the toughest, hottest, hot
23 button issue, we just simply hang around and say
24 nothing about it, even if we disagree.

25 So at this point, I guess the status of it is

1 that we approved the hearing, so in order to disapprove
2 it, we would need a motion approved by a majority to
3 approve it. So that's the status of it at this point.

4 Commissioner Lee wanted to say something.

5 COMMISSIONER LEE: I just want to add that,
6 first of all, --

7 COMMISSIONER HIGGINBOTHAM: Can you talk a
8 little louder, please?

9 COMMISSIONER LEE: First off, the hearing was
10 already scheduled. That means the public might have
11 gotten wind that there was going to be an affirmative
12 action hearing. So there is a certain expectation from
13 the public that this body will have some sort of a
14 report.

15 And to honest with you, I do not -- I have
16 not and I will not expect this body to have a unanimous
17 report, just as the issue is so controversial, that I
18 do expect us to have to balance views for people to
19 continue with the discussion.

20 So I really hope that we will not abandon our
21 responsibility to bring about discussions on issues,
22 whether they're controversial or popular or whatever.
23 We should schedule it as early as possible, especially
24 with the Californian vote in November. And I'm sure
25 there will be other states looking at civil initiatives

1 and I think we could add into some of the discussions.

2 CHAIRPERSON BERRY: And who knows? We might
3 just get some agreement. That's possible.

4 Commissioner George?

5 COMMISSIONER GEORGE: Well, I think the
6 public --

7 COMMISSIONER ANDERSON: Madam Chair?

8 CHAIRPERSON BERRY: I will recognize you just
9 a soon as Commissioner George -- is that you,
10 Commissioner Anderson?

11 COMMISSIONER ANDERSON: Yes. Thank you.

12 COMMISSIONER GEORGE: I believe the public
13 will survive if we disappoint them on a hearing that
14 they heard about. I am less concerned that our report
15 will be, in the end, divided than I am about the
16 consequences for collegiality on the Commission, based
17 on my experience with the Commission in the preparation
18 of the -- in execution of the hearing.

19 If we are to go forward with this hearing,
20 let me simply state as emphatically as I can the
21 importance of structuring the hearing with the full
22 input of all the Commissioners, having in mind the
23 possibility for misunderstanding and impressions of
24 unfairness and so forth in an area this controversial
25 within the Commission.

1 Let it be planned and structured in a way
2 that every Commissioner can agree going in, yes, this
3 is a fair hearing. This is a fair setup. This is a
4 balanced set of witnesses. The topics are framed in a
5 way that is balanced and not biased, so that we can
6 avoid what I'm really concerned about, which is not
7 that we will be divided in the end. I already know
8 that. And I'm prepared for the surprise that the
9 Chairman says we might have of some measure of
10 agreement. I think that's right and it would be good.
11 But I'm very worried about the implications for
12 collegiality that are a threat here.

13 And so I just want to emphasize, again, and
14 then I'll be quiet about it, the importance of fairness
15 and the involvement of all of the Commissioners every
16 step of the way in the preparation of the witness
17 lists, the topics and so forth and so on. I realize
18 that some work has already -- considerable work has
19 already gone into this. Something was already planned.
20 But I see the potential. Even then I saw the potential
21 for serious conflict and I see it now. And steps have
22 to be taken to avoid it in advance if we're going to do
23 this.

24 CHAIRPERSON BERRY: Could I just for point of
25 information remind the Commissioners that you received

1 an agenda, you received a witness list before the
2 shutdown. I know it was a long time ago. I'd
3 forgotten, too. And we had a lot of concerns about
4 balance, which we discussed.

5 And in the end, witnesses that Commissioners
6 suggested were put on. You might go back and look
7 again or we can send you again -- that staff send again
8 the list and all that. But we had all those
9 discussions before. It was quite a while ago. And
10 ended up with a situation where people seemed to be
11 satisfied that it was balanced.

12 We need to revisit it and make sure, but I'm
13 just pointing out that we did get that far along before
14 the close-down, so that you'll remember it. That was
15 the only point I was making.

16 COMMISSIONER GEORGE: Well, my recollection
17 is that we had not -- everybody wasn't satisfied. I
18 could be -- I mean, it's a question of recollections.
19 Anybody's recollection could be wrong. I don't share
20 that recollection. But whichever way it was, unless we
21 can get ourselves into a position where everybody is
22 satisfied and then execute it as such, please, let's
23 not do this project because it can only damage our
24 collegial relationship. And there is good that we can
25 do on other projects.

1 CHAIRPERSON BERRY: All right. Let's be fair
2 and we will be balanced.

3 I'm going to recognize Commissioner Horner,
4 who had her hand up, and then you, Commissioner
5 Anderson.

6 COMMISSIONER ANDERSON: Okay. Thank you.

7 COMMISSIONER HORNER: Madam Chair, if we go
8 forward with this, since, as everyone's pointed out, so
9 much time has passed, and as Commissioner Higginbotham
10 indicated, things have happened, I think we need to
11 revisit the design of the hearing and the witness list.
12 And one of the things that I'd like to request very
13 strongly, because I feel uncomfortable in many of our
14 hearings for the lack of this. It's not until we get
15 the hearing book and we see the questions that the
16 council is preparing to ask that we really know what
17 issues are on the staff's mind.

18 For instance, in the California mini-hearing
19 we had, we learned that there were issues having to do
20 with a Special Order 40 or something like that. But
21 the first I became aware of the existence of such an
22 issue was upon receipt of the book. And that's late in
23 the game.

24 So I would request that we receive from the
25 staff what I think is a really normal thing to ask for,

1 which is what is the intent, what is the design. Not
2 listing the issues we're going to look into,
3 affirmative action with respect to this, that and the
4 other thing, but what's the question or what are the
5 five big questions that we want witnesses to address.

6 Because when we're asked to suggest
7 witnesses, we suggest them because we know they have an
8 interest in affirmative action, but then the staff
9 provides a list of specialists who have targeted a
10 certain arena, a certain question. And if we'd known
11 what the question was the staff wanted to direct the
12 answers to, then we might be better at providing
13 suggestions for witnesses.

14 So, I would ask that we get a two-page memo
15 in the next few weeks that says here's what we want to
16 get out of this hearing. And that way people are put
17 on notice and have a fair shot at saying I don't think
18 that's a good approach. Let's get something else out
19 of that hearing. And then we can discuss it.

20 CHAIRPERSON BERRY: Okay.

21 Commissioner Anderson?

22 COMMISSIONER ANDERSON: Thank you.

23 My view is this. That the hearing that we
24 planned 10 months to a year ago was timely at that time
25 and is no longer timely now. The value that I saw the

1 hearing, as we originally discussed it, was that it was
2 to focus issues precisely, keeping in mind the fact
3 that we had the referendum in California and we had
4 certain cases going through the federal judiciary.

5 In a hearing that had taken place nine, 10
6 months ago, with transcripts and summary or a report
7 issuing from it at about this time or earlier, would
8 have contributed, I believe, to general public debate.
9 I don't believe that that initial goal is going to be
10 met as successfully trying to do this hearing in the
11 next month or two or three.

12 I think over the next several years we're
13 going to have one bite of the apple on the question of
14 affirmative action, and how can we be most successful
15 in contributing something worthwhile to this national -
16 - not just the debate but the policy considerations.
17 And I think we ought to take a long look at what
18 Commissioner Horner suggested of looking at this in
19 terms of the effect and results in federal programs.

20 And we might want to take a look a year from
21 now, if California does pass this initiative, what has
22 been the effects in California. Well, I think I'm
23 perhaps the last one on the Commission who wants to go
24 back to California but something like that, it seems to
25 me, could have a specific contribution to the whole

1 national policy reconsideration of the subject. And I
2 think that may be a much important contribution from
3 the Commission than the type of hearing that we
4 originally contemplated, which I think would have had a
5 benefit had we been able to do it at the time we
6 proposed doing it. Now, I think really take a look a
7 year from now and do something different.

8 CHAIRPERSON BERRY: Well, would you consider
9 a year from now to be in the fiscal year '97 as opposed
10 to '98? In other words, would you consider a year from
11 now to be nine, 10 months as opposed to a total year?

12 COMMISSIONER ANDERSON: I think we ought to
13 discuss a little bit. If we assume for a minute that
14 California is going to pass this initiative, and it may
15 or may not. I haven't seen any polls out there
16 recently. But if we assume it's going to pass, then
17 looking this time next year, there ought to be some
18 kind of evidence as to what's happening out there as a
19 result. And maybe that's the kind of thing we ought to
20 be looking into.

21 CHAIRPERSON BERRY: Yes. Maybe what we could
22 do is get the staff to give us a little memo which
23 would say what the hearing should be focused on now,
24 based in part on the discussion we're having here as
25 opposed to what it was focused on last time. And I

1 would think things like what does mend it, don't end
2 it, result in in federal programs. What does it result
3 in and what happens in the various states.

4 And then the only other point I would make is
5 that we might consider having a consultation the day
6 before we have the hearing to reduce the hearing so
7 that the issues that arose before about people who you
8 wanted -- various Commissioners wanted to talk but who
9 had no facts, quote/unquote, could come on the
10 consultation day to express their views.

11 And it would be sort of like the proposal
12 Commissioner George made before that didn't get
13 approved, that you have a consultation in which people
14 came who voiced opinions about what it should be and so
15 on, and then have hearings for the fact-finding.

16 Commissioner Horner and somebody out there
17 was saying something, too.

18 Yes?

19 COMMISSIONER HORNER: Madam Chair, one of the
20 primary purposes of a hearing is C-SPAN. One of the
21 secondary purposes of a hearing is the written report
22 that stays with people for a long time and gets quoted
23 and read by journalists and advocates and so on. And I
24 don't want to support any bifurcation, procedural
25 bifurcation, which reduces the impact of people who

1 question the utility of affirmative action and enhances
2 the impact of people who support it.

3 And I am sure that there are those on the
4 Commission who would have precisely the opposite
5 perspective on that. And therefore, I think we're
6 going -- from my point of view, it's very important
7 that if we do something, we do it in such a way that
8 there's a fair shot at history and current politics,
9 not just some nominal inclusion.

10 And secondly, I want to say again what
11 Commissioner Anderson just reaffirmed. That we need to
12 have a targeted question or series of questions.
13 Otherwise, we're going to have nothing but a he
14 says/she says propaganda exercise. We're not going to
15 answer any significant questions.

16 So I think we need to have a more targeted
17 hearing than we might have had when this was a -- when
18 the subject was just being opened on the part of the
19 public and in public debate. And therefore, I still
20 think it is a good idea to ask what is going on with
21 federal programs since that is an easily targetable
22 issue and I agree with Commissioner Anderson that it
23 would be useful to see a year after this California
24 initiative passes, if it does, what has happened.
25 Might even be useful if it fails to find out how people

1 feel about that fact a year later.

2 CHAIRPERSON BERRY: Now I know why your
3 proposal didn't pass, Robert.

4 But any way --

5 COMMISSIONER GEORGE: What proposal was that?

6 CHAIRPERSON BERRY: About there being a
7 bifurcation, consultation, dah da, dah da.

8 COMMISSIONER GEORGE: Are you opposed to
9 that?

10 CHAIRPERSON BERRY: That's all right. That's
11 all right.

12 COMMISSIONER HORNER: I'm opposed to it if it
13 means that C-SPAN will be hear for one part and not
14 another part and that the official report will contain
15 the findings of a hearing but not of a consultation.

16 CHAIRPERSON BERRY: But that was your
17 proposal.

18 COMMISSIONER HORNER: I don't know. I'm just
19 raising the question.

20 COMMISSIONER GEORGE: See? It's starting
21 already.

22 CHAIRPERSON BERRY: Sorry I raised that.
23 Who out there was asking to be recognized?

24 COMMISSIONER REDENBAUGH: Yes.

25 CHAIRPERSON BERRY: Commissioner -- whoever

1 was asking?

2 COMMISSIONER REDENBAUGH: Redenbaugh.

3 CHAIRPERSON BERRY: Redenbaugh.

4 COMMISSIONER REDENBAUGH: Thank you.

5 COMMISSIONER HIGGINBOTHAM: And I'll follow
6 him, if I may.

7 CHAIRPERSON BERRY: All right, Commissioner
8 Higginbotham.

9 COMMISSIONER REDENBAUGH: I'd like to bring
10 us back to -- away from the merits of the affirmative
11 action hearing and related -- I would be in favor of
12 such a hearing but -- what is the process by which we
13 will decide what we do in '97 and '98?

14 I'm prepared -- I'm not prepared to vote
15 either for -- I'm not prepared to vote for any single
16 project separately from a menu of projects and I'm not
17 proposing that this could be resolved today. But I
18 would like to get away from the piecemeal decision of
19 what we're going to do and look at a set of or several
20 sets of proposals which in my view should include the
21 affirmative action hearing, so that we can decide in a
22 more systematic way our relative preferences for what
23 we want to do and when.

24 CHAIRPERSON BERRY: Okay. Well, where we
25 are, Russell, is we have, as you noted, we've dropped

1 environmental justice.

2 COMMISSIONER REDENBAUGH: I'm sorry. Say
3 that again?

4 CHAIRPERSON BERRY: We dropped environmental
5 justice altogether. That's gone. Okay? We still have
6 these five that you said should be the top priorities.
7 They're still on the list for 1997.

8 COMMISSIONER REDENBAUGH: Actually, I must
9 say I don't even know if those are possible. I don't -
10 - haven't seen the budget amounts for those and
11 adjusted for the fact that sort of our '96 work will
12 now be 1997. So even what I'm proposing may not be
13 realistic.

14 CHAIRPERSON BERRY: Could we ask the Staff
15 Director whether she knows if the budget is sufficient
16 to include, based on the work you've already done and
17 the budget work that's been done, those five projects,
18 as well as finishing the projects that we already have
19 to finish, L.A. and Mississippi for the 1997?

20 MS. MATHEWS: At \$8.75 million?

21 CHAIRPERSON BERRY: Right. Which is what our
22 budget is.

23 MS. MATHEWS: That's what our current
24 situation is and that's what it looks like it will be
25 for next year.

1 CHAIRPERSON BERRY: Right. So is there
2 sufficient money to do these?

3 COMMISSIONER HORNER: Plus L.A., Mississippi
4 and the Educational Reports.

5 CHAIRPERSON BERRY: Do you know?

6 MS. MATHEWS: I would have to defer to staff
7 and have some consultation to answer. I'm not
8 comfortable answering that off the time of my head,
9 Madam Chair.

10 CHAIRPERSON BERRY: Okay. Isn't that your
11 question, Commissioner Redenbaugh?

12 COMMISSIONER REDENBAUGH: Yes. I would
13 prefer not to have an off the top of the head answer.
14 I think we need precision in this. So I think the
15 Staff Director has responded very appropriately.

16 And I also believe we should not assume the -
17 - is it \$11 million?

18 CHAIRPERSON BERRY: What? For next year?

19 COMMISSIONER REDENBAUGH: For '98.

20 CHAIRPERSON BERRY: Yes. We're not assuming
21 that, no.

22 COMMISSIONER REDENBAUGH: Well, what's going
23 in our OMB --

24 CHAIRPERSON BERRY: \$14 [million], isn't it?

25 MS. MATHEWS: Yes.

1 CHAIRPERSON BERRY: \$14 [million] point
2 something or other.

3 COMMISSIONER REDENBAUGH: Oh, \$14 [million].

4 CHAIRPERSON BERRY: Yes.

5 COMMISSIONER REDENBAUGH: Well, we'll be
6 having these same discussions a year from now around
7 that when that comes in at \$9.3 [million].

8 CHAIRPERSON BERRY: Why don't we ask the
9 Staff Director to give us by -- before next time, a
10 list of these projects and the amounts we can spend
11 under the \$8.74 [million] and whether it covers these
12 projects that we still have left on the list, including
13 the ones that were mentioned. Commissioner Horner
14 mentioned some. The ones that are underway right now
15 that we have to finish.

16 And then, if there's room, also to consider
17 things like measuring discrimination and to give us,
18 with dollars associated with projects, whether we have
19 enough money to cover these. And then we would be able
20 to better make a decision about what to drop and the
21 affirmative action, and see what the dollar amounts
22 are.

23 Commissioner Higginbotham had his hand up.
24 Yes?

25 COMMISSIONER HIGGINBOTHAM: I'm in agreement

1 with what you said. What I would like for the staff to
2 do is to give us alternative menus. Let's assume that
3 in looking at them, they say we cannot do all five at
4 the present level of funding. And they have to start
5 with a projection from the present level of funding and
6 assume that that level is not going to be increased.
7 It's foolish for us to waste time on the assumption
8 that what we asking for we're going to get.

9 So what the staff should do is to give us a
10 level of realism. So what they should do is to say, in
11 terms of -- okay. We can get projects A, B and C done
12 or we could do A, C, D, or we could do B, C, D and E.

13 So, what we are then voting for is that when
14 you've hung out realistic alternatives that we can then
15 say to the staff, all right, you take menu 1 or menu 2
16 or menu 3. So that I am operating on the assumption
17 that they may comment that we can't do it all, but what
18 we have to have is to say, okay, if you can't do it
19 all, among three alternative, we prefer alternative 1.

20 So that's what I think we have to -- that's
21 the kind of report we have to get in. Not that it's
22 difficult, but what are the clear alternatives.

23 On the fair hearing, Connie, we've got to
24 have fair hearings on that. No one wants anything other
25 than a fair hearing and to compile a record where all

1 views are articulated. And how they're construed is
2 another thing, but no one would want a process where on
3 the record you did not get the spectrum advocated.

4 Now, coming back to the question of
5 affirmative action, this is what I think I see
6 happening in the Commission. There was a time in the
7 distant past where one looked at the Civil Rights
8 Commission as being the formulator of alternatives to
9 correct what were perceived as injustices. And
10 therefore, it was the institution which threw out a
11 wholesale series of things in the marketplace of ideas,
12 whether it was on voting, whether it was on public
13 accommodation, et cetera.

14 What I am fearful that we could get into if
15 we do nothing on affirmative action, we will not be
16 formulators of ideas. We would be reactors to others
17 who have taken the lead. You cannot run a national
18 commission on the basis of what happened in California.
19 There are 49 other states and there are all types of
20 proposals throughout the country right now. I think
21 you have at least 20 states which have anti-affirmative
22 action or modified affirmative action.

23 And so it seems to me that what we have to do
24 is to make it clear what's the spectrum or thrust
25 throughout the country and at some point, we'll make a

1 judgment in terms of what we think are the better
2 alternatives. But I think we'd be making a serious
3 mistake if we say that we have to wait for a year or a
4 year and a half to see what is flushed out of
5 California when things are happening in Colorado and a
6 whole host of other states.

7 I think we have to have a national
8 perspective. We have to a monitor of the national
9 agenda. And in all due respect to my friend from
10 California, they may have Hollywood but they don't have
11 the whole nation.

12 CHAIRPERSON BERRY: Commissioner George?

13 COMMISSIONER GEORGE: Well, that is a
14 powerful argument. I'm not though, in the end,
15 persuaded by it, because I think that in an area like
16 affirmative action where there is a conflict of visions
17 among intelligent people of good will who are committed
18 to the cause of civil rights, I'm just not sure that we
19 will end up doing one way or another, anything more
20 than reacting.

21 The additional information, of course, is
22 always useful and often causes us to change this or
23 that aspect of our views, but the principles are very
24 well worked out, articulated, defended well by people
25 on both sides. I think we basically know what they

1 are.

2 And we would be reacting to events, bringing
3 to bear information and arguments, reacting to events
4 one way or another, whether it's to the Hopwood and
5 Piscataway decisions which are now to be reacted to or
6 California's civil rights initiative which will soon be
7 reacted to and so forth.

8 I think we're probably using our resources
9 and energies better to throw the spotlight on problems
10 and injustices that exist and which are not getting the
11 national attention they deserve. That's why I've so
12 strongly supported a project on the plight of African-
13 American males in the inner cities and why I've so
14 strongly supported the project of schools and religion.
15 I think here are areas where there are very serious
16 national problems. In come cases, very serious
17 injustices which people -- which need to be called to
18 people's attention.

19 I guess I would like to revise Dr. Johnson's
20 famous comment about people more often need to be
21 reminded than instructed. Well, I think in some
22 cases -- and these are some -- people need to be
23 confronted more than argued with. We need to get
24 people to actually get the focus on terrible situations
25 that exist that these two projects could throw light

1 on. And I think that would be something very helpful
2 that we could do.

3 CHAIRPERSON BERRY: Commissioner Anderson?

4 I thought I heard Commissioner Anderson.

5 Maybe I didn't. Okay.

6 COMMISSIONER ANDERSON: No, I didn't. But
7 maybe in a minute or two.

8 CHAIRPERSON BERRY: Okay.

9 Commissioner Redenbaugh?

10 COMMISSIONER REDENBAUGH: Commissioner
11 Redenbaugh.

12 CHAIRPERSON BERRY: Oh, Commissioner
13 Redenbaugh. That's who that was. Okay.

14 COMMISSIONER REDENBAUGH: I'm going to have
15 to leave the call soon, but I would like to make a
16 proposal along the lines that what Commissioner
17 Higginbotham requested of staff. That is, a set of
18 menu options with the '97 and '98 prices, priced inside
19 our '97 budget and a realistic assumption for '98,
20 which I would assume would make a modest increase over
21 '97.

22 And I would propose that we have those menus
23 to interact with ahead of the next meeting and that at
24 least one of them -- several of them include
25 affirmative action but at least one of them not include

1 it. And we can move to allow a motion.

2 COMMISSIONER HIGGINBOTHAM: I support that.

3 CHAIRPERSON BERRY: Yes, Commissioner Horner?

4 COMMISSIONER HORNER: I support that, too.

5 And I suggest that since we must tell OMB before this
6 process is concluded what it is we intend to do for our
7 money that we're requesting, that we tell OMB that we
8 know the Commission will do at least four projects or
9 five projects, whatever the staff deems doable
10 minimally. That the Commission is still deliberating
11 among the following list. And that we simply list the
12 projects that have been discussed today, as well as the
13 ones we're carrying over from last year.

14 In other words, that we confess to OMB that
15 we have not reached final conclusion. There are ways
16 to word this. But that we know we are making a
17 commitment to do X number, at least. Because
18 otherwise, you're going to submit something to OMB that
19 precedes the deliberation that Commissioner
20 Higginbotham has proposed.

21 CHAIRPERSON BERRY: This idea would
22 substitute for the vote we normally take on sending the
23 budget to OMB, so I'm prepared, if someone would second
24 that, to have that be the motion.

25 COMMISSIONER GEORGE: I'll send it.

1 CHAIRPERSON BERRY: Okay. Did everyone out
2 there hear? This is going to be the motion but I'm
3 going to let the Staff Director speak.

4 In other words, we'll submit the budget to
5 OMB but they will be told in some way that we're still
6 deliberating and, de minimis, the Commission will do X
7 number of projects and that's what they will be given.
8 And then the Commissioners will get this other
9 information and we'll conclude the deliberations.

10 COMMISSIONER GEORGE: The information that
11 Judge Higginbotham requested?

12 CHAIRPERSON BERRY: Right. And Redenbaugh.
13 Yes.

14 Anyone have any comments?

15 VICE CHAIRPERSON REYNOSO: Madam Chair, I
16 just want to hear from the Staff Director as to whether
17 in her view that's viewable or that would meet the
18 obligation that we have to OMB.

19 CHAIRPERSON BERRY: Okay.

20 MS. MATHEWS: I need to ask a question to
21 clarify. Are we talking about '97, fiscal year '97 and
22 '98 in this?

23 COMMISSIONER HIGGINBOTHAM: I am.

24 CHAIRPERSON BERRY: Yes, yes.

25 MS. MATHEWS: Okay. Anything the

1 Commissioners want to do is doable, to answer that
2 question. If we were to approach it this way, I would
3 say this. It would put us in an extremely different
4 posture as typical government submittals. And we would
5 not be in a position of saying we need X amount of
6 money for these reasons, which is usually the most
7 compelling argument to get X amount of money.

8 CHAIRPERSON BERRY: Commissioner Horner?

9 COMMISSIONER HORNER: How much money are we
10 asking for? I mean, I don't remember that we voted on
11 how much money to ask. It may have been a while back.

12 MS. MATHEWS: The Commissioners voted on
13 projects for '98 and the staff has calculated an added
14 up all the money. And that is the vote I expected we
15 would have today, which is the memorandum presented to
16 you showing the total of \$14,059,000.

17 COMMISSIONER HORNER: So by definition, we
18 would be scaling -- implicitly scaling back that
19 request if we tell OMB that we're requesting -- in
20 other words, how do you arrive at a summary figure?

21 MS. MATHEWS: The figure -- Madam Chair, the
22 figure is arrived at by taking the project proposals
23 and then costing them out. And there are a few
24 administrative costs also that our agency --

25 COMMISSIONER HORNER: I mean if we have to,

1 under the proposal that I've made, would that figure
2 therefore change or remain the same?

3 MS. MATHEWS: It could very well change.

4 COMMISSIONER HORNER: But if it remains the
5 same, then what you would do would be to say we will do
6 -- why is it impossible for you to tell OMB that we
7 forcefully want to do all say 10 items but we haven't
8 prioritized. And therefore, after the appropriation is
9 made by the Congress, we will be forced to prioritize
10 and drop some off.

11 In other words, why can we not simply tell
12 OMB that we are going to do 10 projects if we get \$14
13 million but we will prioritize after we receive our
14 appropriation.

15 MS. MATHEWS: If I would respond to that,
16 certainly, that can be done. I would draw the
17 Commissioner's attention to page 2 of this proposal
18 that was submitted, which says in bold, "fiscal year
19 '97 and '98." The same sentence appears which I put in
20 as an attempt to address that point you just made,
21 Commissioner Horner.

22 It says the Commissioners have indicated a
23 desire to reconsider projects once the annual
24 appropriation has been enacted.

25 COMMISSIONER HORNER: I would respectfully

1 suggest that in light of the discussion we've had today
2 that there ought to be a stronger indication of
3 Commission uncertainty. This implies that we would
4 need to mount a majority to make a change and I think
5 what we're saying is we have a high degree of
6 uncertainty. That is, our priorities are not reflected
7 in the plans as written.

8 VICE CHAIRPERSON REYNOSO: Madam Chair, as I
9 understand it, what the staff has done was take what we
10 had voted on and then put a figure on it, which comes
11 out to \$14 million. And the normal way, I take it, of
12 approaching this is then to give that figure to OMB.
13 And we know on our past history that chances are rather
14 slim that we'll get indeed the \$14 million. And then
15 at that point, we'd reconsider.

16 It seems to me that's an appropriate and
17 logical way to go. And I think, based on this
18 discussion, I'd prefer to just simply proceed the way
19 we normally do.

20 We came up with figures. It comes out to \$14
21 million. We ask them for the \$14 million because
22 that's what we need. They come back and say, sorry,
23 and then we obviously do what we're doing now, and
24 that's reevaluating and set the priorities based on the
25 money Congress has given us. And I assume that every

1 agency goes through essentially the process, and that's
2 what the process that OMB is used to.

3 And if they get from us an uncertain
4 statement, they will hardly know what to do with it.

5 CHAIRPERSON BERRY: If I may, just a point of
6 information. If I understood the suggestion that was
7 made in the proposed motion, which hasn't really been I
8 guess a motion yet, is that we be a little bit more
9 transparent than that. That we tell OMB, maximum, the
10 Commission has all these projects and they come to \$14
11 million, whatever it is, but that the Commission is
12 deliberating and prioritizing and expects to come back
13 in the budget process at yet a later time to suggest
14 some changes.

15 In other words, not just at the end of the
16 appropriations process but as the appropriations
17 process proceeds, the Commission will be back to them
18 to suggest.

19 Is that what you mean, after we prioritize?

20 COMMISSIONER HORNER: Madam Chair, I'm not
21 sure what to suggest at this point. I don't remember
22 that we ever decided to do a project on HIV and AIDS.
23 Maybe we did. And we've already decided we want to
24 drop environmental justice.

25 And so I would suggest that we retain the

1 significant category of five projects, possibly with
2 the addition of affirmative action if the Commission
3 decides to do that, the five projects that are
4 identified in Commissioner Redenbaugh's priority list
5 and also in the staff's report identified as such, and
6 drop all the rest.

7 I don't -- you know, additional projects, as
8 funded. We think -- for instance, make the difference
9 between the five substantial projects and \$14 million
10 identifiable as responding to civil rights activities
11 and issues that arise during the course of the year.
12 We do that anyway.

13 VICE CHAIRPERSON REYNOSO: Madam Chair --

14 COMMISSIONER HORNER: I object to the
15 listing, I guess, of all these projects and then not
16 doing them and not having decided we want to do them.

17 VICE CHAIRPERSON REYNOSO: Madam Chair, I
18 agree that we should drop or postpone the environmental
19 project, not because it wasn't important. We all agree
20 it was important, but because I was proceeding on the
21 notion that realistically when we get to '97 and '98,
22 we aren't going to have the \$14 million.

23 However, were we to get the \$14 million, I'd
24 love to have that project. So, that's why I was asking
25 and I wanted to hear from the staff, because

1 understanding better now how the process goes, I'm not
2 willing to say at this point I want to drop
3 environmental. If we get the money, I'd love to do it.
4 So I don't want to drop it now.

5 COMMISSIONER HORNER: How can we possibly
6 ask --

7 CHAIRPERSON BERRY: Just a minute,
8 Commissioner Horner. Somebody out there spoke up
9 before you.

10 COMMISSIONER HORNER: Sorry.

11 CHAIRPERSON BERRY: Was that Commissioner
12 Redenbaugh or who was that?

13 COMMISSIONER ANDERSON: I think it was
14 Anderson.

15 CHAIRPERSON BERRY: Oh, Commissioner
16 Anderson.

17 COMMISSIONER ANDERSON: Thank you.

18 I'm going to vote no on this if it comes to a
19 vote. The last time we had a vote on the budget, I
20 voted no. And several times earlier I have raised at
21 least my concern that I think the budget submissions
22 that we're doing are way far out of line with what we
23 realistically expect.

24 My math isn't that good but I think if we're
25 talking \$14 million we're talking 50 percent or 60

1 percent increase over what we're getting now in two
2 years. Now, I think if we were the Department of
3 Health and Human Services or some other department or
4 agency of the government submitting a budget that was
5 60 percent higher than their last mark appropriation.
6 I mean, I think if it were HHS, they'd be laughed out
7 of the office because they would be talking hundreds of
8 billions of dollars difference.

9 COMMISSIONER HORNER: Madam Chair, I agree.
10 this is --

11 CHAIRPERSON BERRY: Let Commissioner Anderson
12 finish, please.

13 COMMISSIONER ANDERSON: Yes. Let me just say
14 that I think that not only -- and I've said this
15 before, I believe. I think it affects the credibility
16 but also has us time after time engaged in precisely
17 what we've done today, which is trying to fit too many
18 projects into a shrinking budget that we know we are
19 not getting. Any illusion that we may in the next
20 Congress or the next two Congresses get an extra \$4
21 million or an extra \$5 million, I don't see that.

22 And I think realistically we ought to be
23 submitting a budget at \$11 billion and plan projects
24 along that. Because then we might just get a bit of an
25 increase. And if we don't, at least then we don't go

1 through this massive sort of ratcheting down of 50
2 percent increase in our budget and projects based on
3 that kind of an assumption.

4 So, I think the thing is out of whack. I
5 would propose that what we submit to OMB is much more
6 realistic as to what we really think we're going to
7 get. We may see a new Congress in January and I don't
8 think it's the Congress that's going to give us a 60
9 percent increase in our budget.

10 CHAIRPERSON BERRY: What is the deadline for
11 submission to OMB, Staff Director?

12 MS. MATHEWS: Madam Chair, we received an
13 extension until this Commission meeting. The deadline
14 was September 1.

15 CHAIRPERSON BERRY: And when is OMB preparing
16 -- planning to prepare or actually prepare the budget?
17 Do we have any inkling? I know they have these
18 deadlines. Because what I was going to suggest is that
19 if they are planning to prepare or if they say you have
20 to turn something in, that you simply tell them that
21 the Commission is going to decide at the next meeting
22 and if you have to turn something in, you'll give them
23 a piece of paper, but they should expect another one
24 next time. And that this is based on what the
25 Commissioners -- a whole laundry list of things the

1 Commissioners are interested in, but that we're going
2 to pare it down next time.

3 I see no reason myself not to tell them that.
4 What are they going to say if we tell them that? Yes
5 or no. And that you'll resubmit after the
6 Commissioners look at this. But we must commit
7 ourselves to make a decision at the next meeting.

8 Will that solve everybody's problem?

9 COMMISSIONER REDENBAUGH: It would solve mine
10 because I find myself joining with Commissioner
11 Anderson. I'm not going to support a \$14 million
12 submission.

13 CHAIRPERSON BERRY: Is there anybody whose
14 problem wouldn't be solved by doing this?

15 COMMISSIONER HORNER: My problem would be
16 solved providing we get information as to the cost of
17 each project proposed --

18 CHAIRPERSON BERRY: That's what we're
19 planning to do.

20 COMMISSIONER HORNER: -- from the staff
21 before we make the decision.

22 CHAIRPERSON BERRY: Well, the plan is that
23 according to the Higginbotham/Redenbaugh --

24 COMMISSIONER HORNER: Right. But that will
25 have figures attached.

1 CHAIRPERSON BERRY: -- we will get numbers
2 related to projects.

3 COMMISSIONER HORNER: Yes. Okay.

4 CHAIRPERSON BERRY: And that the
5 Commissioners will promise that next time we will
6 decide.

7 Now is there anybody, any Commissioner whose
8 problem wouldn't be solved by that process?

9 (No response.)

10 Then if that is okay, why don't we ask the
11 Staff Director to check with OMB. And if they insist
12 that she turn in something, turn in something with a
13 letter that says the Commissioners are in fact going to
14 look at this list at the next meeting and select
15 priorities, but this is the whole laundry list of
16 everything the Commissioners have agreed to at one time
17 or another and it comes to \$14 million whatever it is
18 thousand dollars.

19 Is that okay?

20 COMMISSIONER HORNER: Yes.

21 CHAIRPERSON BERRY: Do we have any objection?

22 (No response.)

23 Okay. Without objection, then, that's what
24 we will do.

25 COMMISSIONER GEORGE: Withdraw your motion.

1 COMMISSIONER HORNER: I withdraw the motion.

2 CHAIRPERSON BERRY: All right. That's what
3 we will do. And we'll decide this next meeting.

4 Now, next item. State Advisory Committee
5 Report. Let's see. Ohio.

6 COMMISSIONER REDENBAUGH: I need to leave.

7 CHAIRPERSON BERRY: Yes. I understand.

8 COMMISSIONER REDENBAUGH: Okay. Thank you
9 all very much.

10 CHAIRPERSON BERRY: All right. Thank you.

11 COMMISSIONER HIGGINBOTHAM: I really have to
12 leave.

13 CHAIRPERSON BERRY: I understand.

14 COMMISSIONER HIGGINBOTHAM: We've covered the
15 things which I think are the most critical policy ones,
16 have we not?

17 CHAIRPERSON BERRY: Right. And if
18 Commissioner Anderson is still there, we still will
19 have a quorum. We only have these two reports to do,
20 State Advisory Committee -- just a vote and that's all,
21 I guess.

22 COMMISSIONER HIGGINBOTHAM: Okay. Well, I'll
23 stay for another five minutes. I'm running out of
24 time, though.

25 CHAIRPERSON BERRY: Okay. Thank you very

1 much.

2 COMMISSIONER GEORGE: I've got to run. I vote
3 for whichever side has the superior argument on this.

4 (Laughter.)

5 CHAIRPERSON BERRY: State Advisory Committee
6 Report from the state of Ohio. Could I have a motion
7 to approve? And then we'll see what happens.

8 VICE CHAIRPERSON REYNOSO: Madam Chair, I
9 move to approve, though I'll express some qualms in a
10 minute.

11 CHAIRPERSON BERRY: Okay. Could I get a
12 second for discussion purposes?

13 COMMISSIONER HIGGINBOTHAM: Second.

14 CHAIRPERSON BERRY: All right.

15 Discussion, Vice Chair?

16 VICE CHAIRPERSON REYNOSO: I move to approve
17 just because I notice that it's been so long in getting
18 to us, but this report seems to sort of harken back to
19 a previous way of doing reports that doesn't end up
20 with a solid series of recommendations and so on. But
21 in light of the fact that it has just taken so long
22 apparently to get it to us, I think we should just go
23 on and accept it.

24 CHAIRPERSON BERRY: Right.

25 VICE CHAIRPERSON REYNOSO: It's just a report

1 of their areas.

2 CHAIRPERSON BERRY: Commissioner Lee?

3 COMMISSIONER LEE: Actually, I just have a
4 question because that was the first staff report that I
5 have come across with no recommendations. I just
6 wanted to know was that a normal practice.

7 CHAIRPERSON BERRY: Well, they used to do
8 that sometimes. Just have a forum, let everybody talk
9 and then record what they said.

10 VICE CHAIRPERSON REYNOSO: Yes. That's what
11 I meant, Commissioner Lee, by saying that it seems to
12 harken back to a way that seemed to have been done some
13 time back. You feel sort of unfinished when you finish
14 the report.

15 COMMISSIONER HORNER: Madam Chair, do we know
16 if there was a management problem that resulted in the
17 long delay in the production of this report?

18 CHAIRPERSON BERRY: We can ask.

19 Any comments, Staff Director?

20 MS. MATHEWS: Yes, Madam Chair. There was a
21 June 5 memorandum that I prepared which summarized the
22 fact that this had originally -- this state had
23 originally been assigned to the Central Region. And
24 then a year or two later, 1991, I guess it was, a year
25 later, the new -- three new regional offices were

1 reopened. And this state was then reassigned to the
2 Midwestern, the newly opened Midwestern Regional
3 Office.

4 But since the report had been -- or the
5 project, I should say, had already been started in the
6 Central Region, it was retained there, but the Central
7 Regional Director had many other priorities and this
8 took a back seat.

9 CHAIRPERSON BERRY: In other words, a problem
10 of bureaucracy.

11 All right. Why don't we just get it done and
12 get it out of here and move on. That's my judgment.

13 Could we vote on this SAC report from Ohio?

14 All in favor of approving it, however many
15 qualms you have, indicate by saying aye.

16 (Chorus of ayes.)

17 Opposed?

18 (No response.)

19 Okay. It's passed.

20 COMMISSIONER LEE: Madam Chair, I do want to
21 raise one question though. I'm uncomfortable if future
22 SAC reports with similar -- just, you know. To me it's
23 like a briefing kind of thing. That they could have
24 done it as a briefing, which costs a lot less than a
25 report. And I think we may want to encourage other

1 SAC's that if they're doing -- getting budgets to do
2 reports in the future, that they should contain
3 findings and recommendations. Because that, to me, is
4 what a report is.

5 Otherwise, I just can't -- I don't know why
6 they need the budget to do briefings, because this
7 basically was more or less a briefing paper to me.

8 CHAIRPERSON BERRY: Staff Director?

9 MS. MATHEWS: Yes. Thank you, Madam Chair.

10 The State Advisory Committees, as all of us
11 are aware, have the total discretion to decide their
12 program agenda. Occasionally their SAC reports do
13 result in findings and recommendations but that is not
14 a requirement of the SAC's. They have had
15 consultations and briefings and whatever venue they
16 think is the most appropriate to address the issue at
17 hand.

18 So I would just remind the Commission of
19 that.

20 CHAIRPERSON BERRY: Why don't we -- we can
21 encourage them though, right?

22 MS. MATHEWS: Yes.

23 CHAIRPERSON BERRY: The idea is to encourage
24 them.

25 Now we have -- the item is the appointments

1 for the State Advisory -- this is the last item. State
2 Advisory Committee appointments for the District of
3 Columbia, Maryland, Michigan, Nevada, New York,
4 Washington and an interim appointment for the state of
5 California.

6 Could I get a motion?

7 COMMISSIONER HORNER: So move.

8 CHAIRPERSON BERRY: Can I get a second?

9 VICE CHAIRPERSON REYNOSO: Second, so long as
10 California is spelled properly.

11 (Laughter.)

12 CHAIRPERSON BERRY: Any discussion?

13 (No response.)

14 All those in favor, indicate by saying aye.

15 (Chorus of ayes.)

16 Opposed?

17 (No response.)

18 All right. That's the last item, except if
19 there are any future items.

20 Anyone have a future item?

21 Yes, Commissioner Horner?

22 COMMISSIONER HORNER: Madam Chair, just a
23 brief -- just something, a sentence or two I'd like to
24 say. I've read the proposed or the planned PSA
25 language and it looks excellent and good. I would just

1 like to say one sentence about one word that troubles
2 me a little bit but not enough to try to make a fuss
3 about it.

4 The sentence is, "Teach your children to
5 value others for their differences." And I wonder if it
6 wouldn't be better for us to try to begin thinking
7 about teaching our children to value others for their
8 common humanity rather than for the fact that they are
9 ethnically Italian or religiously Catholic or male or
10 female. In other words, valuing each other for
11 humanity rather than for our accidental or cultural
12 differences.

13 I understand the intent is to say we
14 appreciate people regardless of differences but that
15 isn't literally what it says. That's all.

16 CHAIRPERSON BERRY: Maybe it should have said
17 despite their differences.

18 COMMISSIONER HORNER: Well, I would think
19 that would be a stronger statement and a more logical
20 statement.

21 CHAIRPERSON BERRY: Maybe that's a typo or
22 something.

23 Could you ask if Bill would be willing to say
24 "despite their differences?"

25 MS. MATHEWS: Certainly.

1 CHAIRPERSON BERRY: He's very agreeable, so -
2 - and I'm really happy that he's agreed to do this.
3 Bill Cosby is going to do this PSA. But I don't
4 understand "for their differences," so maybe "despite"
5 would be -- yes. Let's try that anyway.

6 But I jut want to congratulate the staff on
7 getting this done.

8 Any other items?

9 (No response.)

10 All right. Don't forget to tell the staff
11 when you can meet, when you can go to Mississippi. And
12 I appreciate very much your being here today and thank
13 you very much.

14 And the meeting is adjourned.

15 (Whereupon, the proceedings were concluded at
16 _____.)

17

18

19

20

21

22

23

24

LIBRARY
U.S. COMMISSION ON CIVIL RIGHTS