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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, September 5, 1997

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

PRESENT:

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

RUBY MOY, STAFF DIRECTOR

STAFF PRESENT:

- MICHELLE AVERY
- MARLISSA BRIGGETT, PARLIAMENTARIAN
- BARBARA BROOKS
- KI-TAEK CHUN
- JAMES S. CUNNINGHAM
- BETTY EDMISTON
- M. CATHERINE GATES
- GEORGE M. HARBISON
- CAROL-LEE HURLEY
- FREDERICK ISLER
- JACQUELINE L. JOHNSON
- REBECCA KRAUS
- WILLIAM LEE
- REGINALD MARTIN
- STEPHANIE Y. MOORE, GENERAL COUNSEL
- MARCIA TYLER
- AUDREY WRIGHT
- NADJA ZALOKAR

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COMMISSIONER ASSISTANTS PRESENT:

CHARLOTTE PONTICELLI  
WILLIAM LEE SAUNDERS, JR.  
KRISHNA TOOLSIE  
CYNTHIA VALENZUELA

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MEMBERS OF FIRST PANEL:

GERALD A. REYNOLDS,  
Center for New Black Leadership

TAALIB-DIN ABDUL UQDAH,  
Cornrows & Company

MARINA MORALES LAVERDY,  
Latin American Management Associates

CRAIG A. THOMPSON,  
Council for Economic and Business Opportunity, Inc.

MEMBERS OF SECOND PANEL:

NICOLE GARNETT,  
Institute for Justice

WILLIAM J. DENNIS,  
National Federation of Independent Business

DR. MARGARET C. SIMMS,  
Joint Center for Political and Economic Studies

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CHAIRPERSON BERRY: The meeting will come to order.

Could I get a motion to approve the agenda?

COMMISSIONER: So moved.

CHAIRPERSON BERRY: Can I get a second?

COMMISSIONER: Seconded.

COMMISSIONER HORNER: Madam Chair?

CHAIRPERSON BERRY: Yes.

COMMISSIONER HORNER: I'd like to suggest that we move the section on educational opportunity reports up to before the briefing, because it's possible some Commissioners may not be able to stay after the meeting, the briefing, and then another segment of the meeting.

CHAIRPERSON BERRY: Okay. Any objection to doing that? Then we would move that item before the briefing and why don't we move it before the responses to Commissioners comments on Illinois, Indiana and Michigan SAC reports, which would mean that that would be item number six, and then six would become seven, and so on, and so on, and so on. Alright? Any other changes? With that change, all in favor indicate by saying aye.

COMMISSIONERS: Aye.

CHAIRPERSON BERRY: Opposed? (No response) Could I get a motion for approval of the minutes of August 15, 1997?

COMMISSIONER: So moved.

1 COMMISSIONER: Seconded.

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

4 COMMISSIONERS: Aye.

5 CHAIRPERSON BERRY: Opposed? (No response) So  
6 ordered. Under announcements, the first one I would make is  
7 one I started with, and that is to acknowledge the death of  
8 Mary Louise Smith who was a member of this Commission in  
9 1982 and 1983, and who I will deeply miss and she is great -  
10 - her loss is a great one for the nation and for Iowa and  
11 for the cause of women's rights in particular. She was the  
12 first one to chair the Republican National Committee. I  
13 think the only one -- I'm not sure -- I don't think there's  
14 been a woman chair since then. And she was state chair in  
15 Iowa for a number of years, and in her later life,  
16 unfortunately, she was at odds with her party. And I  
17 remember she and Jill S. Rickelshus and many a meeting --  
18 not of this commission, but meetings (inaudible) commission  
19 in the last years of her life, saying, please I want my  
20 party back. They never got it back, and in the end, as a  
21 column that was in the Washington Post, I think it was  
22 yesterday or the day before, described it -- she was -- and  
23 the only way I can describe it, is she was trashed by her  
24 party in the state of Iowa, at least, that part of it, and  
25 all of her contributions -- she was very sad about this at

1 the end of her life.

2 And I just want to acknowledge that when she  
3 first came I was suspicious that she would only be  
4 interested in women's issues. She wasn't. She was  
5 interested in everything, and was a wonderful person, and  
6 tried to work behind the scenes and be very diplomatic, but  
7 when she saw that that wouldn't work, she was openly  
8 critical of her party, of the presidents -- and I say that  
9 as somebody who's criticized every American president since  
10 I've been alive of whatever party they belonged to and  
11 whether they appointed me to anything or not.

12 I remember with Jimmy Carter, the first thing he  
13 got irritated with me about -- he put me on the Civil Rights  
14 Commission and the first statement I made was to criticize  
15 him. Mary Louise was like that. She would criticize you if  
16 you needed it, and if you didn't and you needed support,  
17 she'd give it to you, and leadership and love. So I just  
18 wanted to acknowledge her death here in a public way.

19 The only other comments or announcements that I  
20 have is there'll be a 30 minute lunch break after the  
21 briefing, and if you'd like to order a sandwich or  
22 something, you should tell a staff person and they will pick  
23 up an envelope with your order and money and go get whatever  
24 you want.

25 There's a change in the briefing panel this --

1 one of them -- there's a new packet of bios that have been  
2 placed before you. I'm reading this. I assume that has  
3 happened. Yes, Commissioner George.

4 COMMISSIONER GEORGE: We'll be having lunch, you say,  
5 after the briefing?

6 CHAIRPERSON BERRY: Yeah. Whatever break -- we can't  
7 before that because -- unless we get time before that -- in  
8 terms of how the schedule goes.

9 COMMISSIONER GEORGE: Because there's nothing left  
10 after -- when we come back in light of the change.

11 CHAIRPERSON BERRY: Oh, I see -- we've changed that  
12 now. Okay, so we don't need to have lunch. Okay, fine.  
13 Thank you for pointing that out. So for future agenda items  
14 there's nothing unless we don't finish the rest of the work.

15 COMMISSIONER GEORGE: Move the future agenda items  
16 just before the briefing -- future agenda items?

17 CHAIRPERSON BERRY: Well, we will -- let's see how  
18 much time we have. We have to do the briefing at the time  
19 we're supposed to do it.

20 COMMISSIONER GEORGE: Is that 11:30?

21 CHAIRPERSON BERRY: Is that right? Staff?

22 STAFF: What time is the briefing?

23 CHAIRPERSON BERRY: Staff? 11:30. So if we finish  
24 everything, cool. I didn't need to read that about lunch.  
25 Okay, there'll be no lunch or do whatever you want to about

1 lunch. The other is that Commissioner Lee had asked that  
2 the Sonoma County incident and a memo that she sent to us be  
3 discussed on the agenda, but it came too late to put on the  
4 agenda, but I suggest that we discuss it under the Staff  
5 Director's Report.

6 With that, I don't have any announcements.  
7 Anybody else have anything? Okay. Yes, Staff Director's  
8 report. The first thing we can do then is discuss  
9 Commissioner Lee's request that we mention the Sonoma County  
10 -- we've discussed this before. This was the -- you go  
11 ahead and describe it, Commissioner Lee.

12 COMMISSIONER LEE: I think back in the June meeting, I  
13 asked the regional staff to look into the April 29th police  
14 shooting death of the 33-year old Chinese-American in Sonoma  
15 County, specifically (inaudible) which was about 40 miles  
16 off San Francisco in Northern California. Since then I  
17 understand there's been letters coming in from civil rights  
18 organizations, concerned citizens, around that area to the  
19 Commission, asking us to be involved in this case, not only  
20 in that one particular case, but also the status of police  
21 and community relations in Sonoma County.

22 It was discovered after the shooting, there had  
23 been eight other police shootings in Sonoma County which was  
24 a very high number of incidents in a county that size. It  
25 happened within a two year period and there has been a lot



1 of concern over the issue of administration of justice --  
 2 how -- how were the police trained, how were they hired,  
 3 what kind of a (inaudible) policy they had in the police  
 4 department and within the county.

5           Since then I met with the members of the Sonoma  
 6 County community. They all felt that there needs to be  
 7 community -- I mean commission's involvement in their search  
 8 for a way to bring these concerns out between the community.  
 9 They have specifically asked the Commission to go down to  
 10 Sonoma County, to hold a mini hearing of some sort so that  
 11 the community will have an opportunity to work to bring up -  
 12 - my apologies I'm just having a sleepy attack. I just got  
 13 in and a little sleepy right now.

14           They also ask us to come in for the mini hearing  
 15 so that the law enforcement, the county leadership, will  
 16 also have another opportunity to hear from them -- the  
 17 community -- some of their concerns. There has been nothing  
 18 of that sort ever in that county. Of the eight police  
 19 killings, police shootings, that occurred within the last  
 20 two years, all were cleared -- all was cleared by the  
 21 district attorney.

22           There is a unique system in that county because  
 23 they do not have an independent investigative body for  
 24 police shootings. It has been done by other police  
 25 departments around the county.

1                    Secondly, the grand jury -- the Sonoma County  
2 Grand Jury -- came out with a report, also in April, highly  
3 critical of the way these eight police shootings has been  
4 cleared -- the swiftness it was cleared, and the manner it  
5 was investigated, and it cried for additional attention in  
6 this area.

7                    So because of the Kao killing -- the Kao police  
8 shooting -- there has been a lot of public interest. The  
9 local newspapers have ran these stories regularly on a  
10 weekly basis, and the national Asian-American community is  
11 also on top of this issue because when Mr. Kao was shot to  
12 death, it was done in -- within 30 seconds when the police  
13 came, even though he was legally drunk, but they questioned  
14 whether there were other ways that this could have been  
15 avoided. And also the police who shot Mr. Kao was quoted as  
16 saying he was fearing for his life because Mr. Kao was  
17 holding a six foot stick. Later on, under district  
18 attorney's report found out the stick was a very thin stick  
19 -- half an inch in diameter, and it weighed 17 ounces. So  
20 the original thought of a six foot stick actually turned out  
21 to be a 17 ounce stick, and the police was quoted as saying  
22 he feared for his life because this guy was taking a martial  
23 art stand in front of him.

24                    Couple that along with the 30 seconds it took  
25 from the police to show up and to shoot him within the short

1 period of time, then also the time it took -- relatively  
2 quick time it took the district attorney to clear the police  
3 officers without looking into the actual sequence of events  
4 really brought a lot of frustration, a lot of anger, a lot  
5 of questions from the community.

6 And there had been two public rallies. At the  
7 last rally that was held in Union Square in downtown San  
8 Francisco, attended by over 1000 concerned citizens, all  
9 like -- they collected over 1000 signatures on the petition  
10 to the Commission, strongly urging the Commission to go into  
11 Sonoma County to hold mini hearings so that they will have  
12 the chance to share with us their observations as residents  
13 of that county and also some of their concerns over police  
14 and community relations and police -- police conduct.

15 So these are the petitions, and also I understand  
16 there has been a lot of letters submitted to the  
17 Commissioners in this office. I haven't gotten most of  
18 them, but they told me that they were sent to all of you  
19 requesting the same thing. And being a member of the  
20 Northern California community, I do feel the very high level  
21 of anger and frustration of the Sonoma County residents, and  
22 I feel that it is important for us to be there at this time.

23 The Department of Justice Community Relations  
24 Office has been out there trying to mediate and work with  
25 the community, but the community felt that it's more than

1 just talking to the CRS. They really want the opportunity  
2 to really talk to the federal independent body like the  
3 Commission, so that we can look into this issue under the  
4 administration of justice -- statutory power that we have.

5 So I decided to bring this up for the  
6 Commissioners' discussion, and again, I would really hope  
7 that we will have the opportunity to go out to Sonoma County  
8 in the very near future to get a better sense of what went  
9 on, not only in the Kao case, but what went on in Sonoma  
10 County -- these eight police shootings, even though they  
11 were cleared, but it cried for more information and  
12 investigation.

13 CHAIRPERSON BERRY: Okay, how many petitions would you  
14 say you --

15 COMMISSIONER LEE: They said there was over 1000.

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER LEE: They're all here.

18 CHAIRPERSON BERRY: What is your pleasure, ladies and  
19 gentlemen? Yes Commissioner Horner.

20 COMMISSIONER HORNER: I would like to be able to  
21 support Commissioner Lee's request, but before doing so, in  
22 order to avoid simply an emotional restatement of  
23 information that's already been well set forth in meetings  
24 and in the press, I would like to see from the staff before  
25 we decide whether we're going to do this or not, a

1 description of the -- of the events to the extent that the .  
2 information is understood, and then a discussion -- a brief  
3 discussion -- of what questions we can ask that will elicit  
4 information that isn't already readily available for public  
5 discussion in the county or in the state. Because I don't  
6 think we serve our role well if we simply become a forum for  
7 further anguished complaints and fierce rebuttal. I need we  
8 need actually to garner some information. So I would like  
9 to see the questions the staff would ask in such a hearing.  
10 And also what gaps are there in the -- in the information as  
11 it's understood in the press; and also a compilation of  
12 press reports.

13 CHAIRPERSON BERRY: Okay. Vice Chair?

14 VICE-CHAIR REYNOSO: Madam Chair, I talked with the  
15 staff in our western regional office, and they aren't sure  
16 that on this occasion the police, based on the meetings with  
17 the police chief and so on, that the police acted  
18 improperly. But I must say that I -- my own experience has  
19 been that there is a great deal of value in terms of the  
20 community-police relation, in simply facing some of these  
21 matters on the public record -- we can so so under oath, and  
22 sadly, the community reaction to this last shooting -- no  
23 doubt it's not -- it's not based only on this shooting, that  
24 is it's based on concern for -- it was mentioned there were  
25 -- have been apparently seven other shootings -- but

1 probably deterioration of the relationship of the Asian-  
2 American and perhaps other communities with the police. And  
3 it seems to me that there would be a great deal of value in  
4 simply placing these matters on the record.

5 If in fact, for example, the preliminary view of  
6 our staff that on this occasion the police may have acted  
7 properly, it would be very good to put that on the -- on the  
8 record and have the -- the community understand the details  
9 of what happened. If, on the other hand, the preliminary  
10 view of the staff is incorrect, it would be good to have  
11 that on the record too. So -- and it seems to me this might  
12 be a good time for us to do what we've talked about in the  
13 past of doing, and that is having a -- a mini hearing, and  
14 maybe without all of the -- I understand sort of a desire to  
15 know what questions we would ask, but I just hesitate to  
16 think that we would do the sort of preliminary preparation  
17 that we normally do for a hearing. If we were to do that,  
18 this mini hearing wouldn't take place for two years, and I  
19 think there's a great deal of value in doing it quickly.

20 So, I think Commissioner Horner's concerns are  
21 proper, but my only concern in that regard is that it not  
22 take a long time.

23 CHAIRPERSON BERRY: Any other Commissioner comment?

24 COMMISSIONER LEE: I'd just like to add that I don't  
25 think it was an emotional request, because it's taken them

1 since April -- this is like September -- four months -- and  
2 I think it was a very -- it was under very careful  
3 deliberations of the community leadership that they felt  
4 that it was proper for the Commission to go in because they  
5 felt that a lot of value could come out from the hearing --  
6 not only for the Kao family -- this is not on the Kao case  
7 at all.

8 In addition to asking us to go in, they had also  
9 asked for an investigation by the Department of Justice, and  
10 they also met with a U.S. attorney. The U.S. attorney,  
11 along with the DOJ representative in Washington, had also  
12 met with the law enforcement officials, the county  
13 leadership and the residents. But I think their request is  
14 not for them to air the anger. I think they've done that  
15 with the rally. That's why this is not -- they are not  
16 going to go there and talk about how angry they are. That's  
17 not the focus of them wanting us to go in.

18 They value the -- the importance of this  
19 Commission because of the work that we've done along the  
20 church burning hearings, the St. Petersburg. They read  
21 about the reports. They felt that the hearings and the  
22 reports that came out from the Commission had led new  
23 opportunities for both sides to talk and to work on  
24 solutions, which right now, they do not have. Seems like  
25 there is no trust from -- between the community and the

1 leadership, and when you have reports that came out -- for  
2 instance, the investigator, who was supposed to investigate  
3 the killing, the shooting, they spent all their time  
4 investigating whether Mr. Kao actually took Kung-Fu classes,  
5 which had nothing to do with the shooting. Yet they did not  
6 spend time looking at the background of the police who did  
7 the shooting.

8           So it did not bode well with the community when  
9 you have people who are supposed to be looking out for your  
10 interests, and they felt that it wasn't done properly. And  
11 they look at the Commission not as the savior to go in and  
12 to have all the answers. They just look at the Commission  
13 going in, not for a full-fledged hearing, but they want  
14 Commissioners who have the experience of conducting these  
15 kinds of hearings, to go into the County, to bring all sides  
16 together, to bring information that sides right now have not  
17 been able to share with each other for whatever reason.

18           CHAIRPERSON BERRY: Well, Yvonne, I'm listening to you  
19 talk. Would it suffice if the Regional Director and the SAC  
20 chair and any SAC members who are interested -- of course  
21 SAC would have to be interested -- if they decided that they  
22 would go to Sonoma and any Commissioners who were interested  
23 in going, just as Commissioner Anderson and I went to St.  
24 Petersburg; and you and I and other Commissioners, we went  
25 to places in the south on the SAC forums -- do you think



1 that would meet their needs?

2 COMMISSIONER LEE: I understand the original SAC  
3 Director had talked to one of the legal representatives,  
4 representing this case from the HML (ph) caucus, and he  
5 mentioned that because of resource reasons or whatever, he  
6 did not think that the regional staff would be able to go in  
7 and he suggested maybe the Commissioners would be able --

8 COMMISSIONER HORNER: Which costs the Commission more.

9 CHAIRPERSON BERRY: Yes, so my point is that if we  
10 could somehow have an inquiry made as to whether the SAC is  
11 interested in doing some sort of -- well, the chair, the  
12 regional director -- going in and any Commissioners who have  
13 an interest and time, could go as we've done in other cases.  
14 Perhaps that would -- and the Staff Director could worry  
15 about the resources. Seems to me, as Commissioner Horner  
16 says, it's a lot cheaper than doing a hearing, and my -- if  
17 the concerns that you have talked about might be able to be  
18 expressed and there would be representation from the  
19 Commission, and the Commission will be showing an interest  
20 in what's going on there. That was my question. But  
21 Commissioner Redenbaugh wants to say something. Do you want  
22 to respond first or -- yes, go ahead.

23 COMMISSIONER REDENBAUGH: I think this is the kind of  
24 issue which, if done well, needs to be done quickly. I  
25 agree with who said, you know, if we do the hearing in two

1 years and the report two years after that, the rate of  
2 return on that, I think, has got to be zero. And I think  
3 that what you propose, Madam Chair, has also the advantage  
4 of velocity. If we were to do something like that, it could  
5 be done much more quickly than it would take us to prepare  
6 and schedule and budget a hearing.

7 CHAIRPERSON BERRY: So would we -- would we -- would  
8 you accept -- do you think the people would accept who  
9 petitioned us, if we were then ask the Staff Director to  
10 discuss this with the regional director and a SAC chair and  
11 apprise them of this and see if they were interested in and  
12 figure out how to do it -- and it's a lot cheaper, and then  
13 we would be informed, and any of us who can would go?

14 COMMISSIONER LEE: My concern is the timeliness of it.  
15 I mean reading the staff reports -- Staff Director's report  
16 on SAC activities, it seems like they usually do not meet on  
17 a regular basis and oftentimes they even have a hard time  
18 trying to get a meeting together just to talk about what  
19 they want to do. Again, this has happened since April and  
20 this is September, and I think that the level of frustration  
21 -- and I don't think it's a level of anger. I think they're  
22 beyond anger. It's the level of frustration that they would  
23 -- I don't even go to any events in the north -- in Northern  
24 California because everywhere I go people say, what is the  
25 Commission doing? We sent you all those letters and it

1. seems like no one's calling us back. And I do think that we  
2 talk about our role as a Civil Rights investigative  
3 monitoring body --

4 COMMISSIONER REDENBAUGH: Right.

5 COMMISSIONER LEE: -- very often, and --

6 CHAIRPERSON BERRY: Well, I promise you, I would go.  
7 If such a thing is set up, I'll figure out some way to avoid  
8 my classes -- no -- and go. And I'm sure there would be  
9 other Commissioners --

10 COMMISSIONER REDENBAUGH: Or rescheduling them.

11 CHAIRPERSON BERRY: -- would be rescheduling my  
12 classes -- who would be happy to go, and how about in terms  
13 of velocity -- word Commissioner Redenbaugh used -- if we  
14 said to the Staff Director that -- and I know this can be  
15 done faster, because we went to St. Petersburg on a pretty  
16 fast -- I don't know how the regional director organized it,  
17 but we went while things were going on and the SAC in the  
18 church burnings -- we were -- we had a much more rapid  
19 response than preparing a hearing. So how about if we said  
20 that the Staff Director would talk to these relevant folks  
21 and see if it can be done quickly. Would that satisfy? And  
22 Commissioner George wanted to say something. You did.

23 COMMISSIONER GEORGE: Yes, but did Yvonne want to  
24 respond?

25 COMMISSIONER LEE: Go ahead.

1           COMMISSIONER GEORGE: Yes, in evaluating what our  
2 potential roles as a Commission should be, it would be  
3 useful for me to get a little additional information,  
4 particularly with regard to a distinction -- sort of --  
5 Yvonne, I'm asking for information here. Is the sense among  
6 people who expressed concern to you that there is a failure  
7 of communication and misunderstanding between law  
8 enforcement officials and the Asian-American community in  
9 the county?

10                   Or is it more accurate to say that there's a  
11 concern in the Asian-American community, or there are  
12 allegations, that there is prejudice in the police  
13 department against -- or in the law enforcement world  
14 generally out there -- against Asian-Americans, manifesting  
15 itself in Asian citizens being subjected to great risk, and  
16 in some cases even killed by police officers on the one  
17 side, and then police officers being cleared, unreasonably,  
18 or unreasonably quickly, when the victim of a shooting by a  
19 police officer is an Asian?

20           COMMISSIONER LEE: I don't think this is an Asian-  
21 American issue. They're not saying that as Asian-Americans  
22 we are being specifically targeted. What they are saying  
23 is, there's a level of -- they don't know how the police is  
24 trained to deal with situations like these because of the  
25 previous eight killings. The last police shooting involved

1 a Mexican-American. In Sonoma County --

2 COMMISSIONER GEORGE: Now these are eight killings --

3 COMMISSIONER LEE: Not Asian-Americans. Just people  
4 of different backgrounds. In Sonoma County they've  
5 experienced a tremendous population growth because of  
6 affordable housing. Middle class families want to go there  
7 because it's about the only place you can have a back yard  
8 these days in Northern California that's affordable. So  
9 people are moving in. Asian-American population, come the  
10 year 2000 census, would be the largest minority in the  
11 county, following that would be Latinos. The seventh police  
12 shooting, prior to Mr. Kao's tragic death, involved a  
13 Mexican-American living in that county. There was some  
14 misunderstanding and he was shot and killed by the police.

15 Originally, the police and the district  
16 attorney's office refused to investigate because they felt  
17 this person was an undocumented alien, which should make no  
18 difference. If somebody was shot by a police, that person  
19 should be given the -- the courtesy of an investigation.  
20 They did not want to investigate because they thought he was  
21 an illegal alien, until they found out he was absolutely a  
22 legal citizen of the county for a long time.

23 So, there's that and other police shootings, some  
24 of them involved victims who were mentally, maybe a little  
25 impaired, and that brought a lot of attention, like how are

1 the police officers trained to deal with a population in the  
2 community who may not be -- who should not be -- oh, how  
3 would I say it -- they should be given additional attention  
4 by the police before these tragic shootings occurred.

5 So the question is not whether Asian-Americans  
6 were treated unfairly. There is some concern over that  
7 because of the Kao case, but the main concern is whether  
8 police activities, the way the police has been trained, the  
9 way the police has been dealing not only with these eight  
10 cases, but also how they are dealing with the residents of  
11 Sonoma County, is a question.

12 CHAIRPERSON BERRY: So it's police-community relations  
13 which is this letter which I have now gotten -- she's  
14 passing -- well, I pass it --

15 COMMISSIONER LEE: And I was told that all these  
16 letters were sent, and they just gave it to me because I was  
17 at a meeting with them.

18 CHAIRPERSON BERRY: Okay. So this is under our  
19 Administration of Justice jurisdiction -- they're asking  
20 that we look at police-community relations in Sonoma County  
21 because of their concerns about any reforms that may take  
22 place, and as part of our duty to ensure fair administration  
23 of justice. That's the issue.

24 COMMISSIONER ANDERSON: Madam Chairman?

25 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

1           COMMISSIONER ANDERSON: Thank you. In regarding the  
2 conversation here; I understand that our office in Los  
3 Angeles have interviewed Sonoma law enforcement officials.  
4 The community relations service of the Department of Justice  
5 has been involved. The U.S. Attorney has investigated -- or  
6 at least has reviewed it. I for one, would be very hesitant  
7 to involve the staff at the Commission level or at the staff  
8 level without at least having a review of what kind of  
9 investigation has gone on previous to our involvement, and  
10 that, as a minimal, would seem to me to require some kind of  
11 a report from our Regional Director as to his preliminary  
12 review and conclusions.

13           CHAIRPERSON BERRY: I think that you are right on  
14 target as I listen too. The question that was put to the  
15 Regional Director before was about this specific case --  
16 this man, and the answers were about this particular case of  
17 this man. The question that needs to be put now is what  
18 about administration of justice issues in Sonoma County --  
19 the eight killings that Commissioner Lee has cited, and what  
20 is the issue concerning the administration of justice and  
21 police communication -- community relations in that county  
22 and get some information from him on that larger question.  
23 Yes, Vice-Chair.

24           VICE-CHAIR REYNOSO: A -- private discussions that  
25 just had with the police folks or that Justice has had are

1 very valuable, but they don't serve the purpose of placing  
2 things on the record, and it seems that from what I hear in  
3 the discussion, there's a desire and a need to sort of place  
4 these matters on the record so that the public discussion  
5 can go forward. It seems to me that there's some value to  
6 that. I like the Chair's suggestion because I think there's  
7 some flexibility, and I'm assuming a hearing like this could  
8 take place within a month and --

9 CHAIRPERSON BERRY: You mean the SAC --

10 VICE-CHAIR REYNOSO: Yes. I like the notion of the  
11 SAC taking the initiative because -- I've seen the  
12 California SAC operating on one public hearing before. They  
13 did a quite nice job about it. The -- you have to be sure,  
14 of course, that the folks they want to come would be willing  
15 to come because they don't have subpoena power, but my  
16 impression is that probably in this -- in Sonoma County,  
17 there would be -- certainly, the community people would  
18 come, and I have a sense that officials would come also  
19 because they too are interested in -- in clearing up these  
20 matters.

21 CHAIRPERSON BERRY: Well now, why don't we do the  
22 following, after this fuller discussion, if everybody  
23 agrees, or if there's no disagreement. Get another report  
24 from first, the Regional Director -- let the Staff Director  
25 get one from the Regional Director about this larger issue



1 about the eight killings and the administration of justice .  
2 issues; and the Regional Director might also consult with  
3 the SAC to see if the SAC is interested in this larger issue  
4 and then report back to us on what is found out, and then  
5 we'd be in better position to do something if we need to do  
6 something. And if it turns out that the SAC has decided to  
7 do something, then something will be done and then we can  
8 participate as so, and if not, then we'll know why. So if  
9 we do that, at least we will be showing responsiveness and  
10 we have been willing to discuss the issue and we are  
11 interested and concerned. So if there's no objection, we'll  
12 just proceed, Commissioner Lee, and thank you for bringing  
13 this to our attention.

14 On the Staff Director's report, I just want to  
15 make one other point and then I'll see if there are  
16 questions or if the Staff Director has anything. You were  
17 handed out a sheet of paper and you are probably wondering  
18 what the sheet of paper is that you're getting today, and I  
19 know Commissioners don't like to have things handed out to  
20 them, but I figure one sheet of paper -- you could take that  
21 home with you.

22 The Commission's budget we will discuss at the  
23 October meeting. What this is, and as many of you know, the  
24 appropriations process is not complete on the Hill yet, so  
25 we're not absolutely certain, although we think we're going

1 to be level funded -- but what this is is the staff's ideas  
2 in terms of total amounts that you see on the right hand  
3 side here on the bottom -- for what they are putting into  
4 the document they're going to send to us for us to approve  
5 in October to be sent to OMB as our budget request.

6 And I asked them to do this before giving us a  
7 budget request because I wanted to see what they were coming  
8 up with because my own view, and I'll just state it, is I  
9 think \$15,000,000 is outrageous. I'm not prepared to vote  
10 to ask OMB to give us \$15,596,000. Our -- I mean I'd like  
11 to have \$15,000,000, but I just think it doesn't make any  
12 sense. It's unreal, totally unrealistic.

13 The budget request this year was like \$11,000,000  
14 -- something -- and if we're flat funded, we're still back  
15 at 87.40, so I just thought in terms of looking at what they  
16 are doing -- and we've discussed all these projects before --  
17 - at least three times or four times, and we can discuss  
18 them again in October if you want to -- or if anybody  
19 doesn't remember one of them and would like to ask a  
20 question about what it is --

21 ADA is our statutory report, and the enforcement  
22 part of it which Fred Sharp (ph) will do is proposed to have  
23 the usual findings and recommendations, and then there will  
24 be a hearing from interest groups and enforcers, and that --  
25 it can or cannot have findings and recommendations, but the

1 enforcement part is the part Fred -- I think he does every  
2 year that's our statutory report.

3 And then we have these others that we've  
4 discussed before, and so I am weighing this before you  
5 because I thought we might want to give them a little bit of  
6 guidance as they proceed as to whether \$15,000,000 sounds  
7 like a good number to us, or they ought to be thinking in  
8 terms of something less than that, or if Commissioners had  
9 any ideas about either that they should scale back certain  
10 projects, drop certain ones -- and this is not for final  
11 decision. We're going to do that in October. But I just  
12 thought you ought to get a one-page, sort of snapshot of  
13 where these people -- where the staff is headed so that we  
14 don't end up with something in October that we just say we  
15 don't want -- and you may either comment on it now or if you  
16 want to make some comments in the next few days, that would  
17 be fine. Yes, Commissioner Horner.

18 COMMISSIONER HORNER: I'll defer to Commissioner  
19 Redenbaugh.

20 CHAIRPERSON BERRY: Commissioner Redenbaugh.

21 COMMISSIONER REDENBAUGH: I don't mean to pre-empt  
22 you, but I think maybe I have two or three questions that  
23 can't be answered now, but I think that we'd like to put on  
24 the table, because they will impact what we're able to  
25 accomplish in '99, and there probably should be some

1 relationship between our budget request and what we might  
2 actually be able to accomplish. And so the questions would  
3 need -- us as follows:

4 What uncompleted projects from '97 will take -- from  
5 the '98 budget -- because I imagine there must be some in  
6 that category? Then what of our '98 budget, assuming the 8-  
7 7-4 which certainly looks like a number to assume, how --  
8 what are we going to accomplish with respect to our  
9 committed projects, the ADA and religion in schools? And  
10 then what will be left over for unaccomplished in '98 which  
11 will then impact '99? As a way to then come to the question  
12 that you just asked, Madam Chair.

13 CHAIRPERSON BERRY: Right.

14 COMMISSIONER REDENBAUGH: About the '99, because I --  
15 I think we can't look at '99 in isolation in any way that is  
16 very responsible. So -- I don't have answers and nor do I  
17 expect anyone to have answers to those three questions  
18 today, but I -- I think that which influence our discussion  
19 in October pretty substantially.

20 CHAIRPERSON BERRY: Commissioner Horner.

21 COMMISSIONER HORNER: Madam Chair, when is this budget  
22 submission due to OMB?

23 CHAIRPERSON BERRY: OMB is -- well, I'll let the Staff  
24 Director answer, but it's my -- my understanding that OMB  
25 has not sent us a memo saying when it is due.

1 COMMISSIONER HORNER: They haven't?

2 CHAIRPERSON BERRY: But she's had discussions with  
3 them and it seems like October's okay, but I'll let her  
4 answer.

5 STAFF DIRECTOR MOY: As long as we get to them an  
6 estimate by the middle of this month, and the full details  
7 by the end of the month, we're okay.

8 COMMISSIONER HORNER: But when was -- they didn't give  
9 us a formal submission date?

10 STAFF DIRECTOR MOY: No, and we're -- we -- I was on  
11 the phone this week to find out from them how -- the due  
12 dates because it's been my understanding that this type of  
13 report needed to be in by this month.

14 COMMISSIONER HORNER: Technically, it would have to be  
15 in the first week of September.

16 STAFF DIRECTOR MOY: Well, I --

17 COMMISSIONER REDENBAUGH: Yes, I think circular A-11  
18 of theirs specifies that.

19 COMMISSIONER HORNER: My question arises from this  
20 question. When we vote at our October meeting, will you  
21 then have time to process the decision, crunch all the  
22 numbers, write descriptions and so on, and still make the  
23 submission timely?

24 STAFF DIRECTOR MOY: I'm getting a nod from George  
25 that says yes, we will.

1           COMMISSIONER HORNER: And is there -- I think we -- I.  
2 haven't obviously had a chance to read this since it was  
3 just handed out, and Commissioner Redenbaugh can't read it  
4 at the meeting, and therefore it's possible that we may need  
5 some additional information in order to make a decision in  
6 October. So I would like to ask that process be developed  
7 for our asking for further information that would meet your  
8 needs. What would that be? In other words, if I look at  
9 this later today and say I need answers to questions X, Y,  
10 and Z, of the sort that Commissioner Redenbaugh just asked -  
11 - what's the effect of spillover from '97 on to '98, and  
12 from '98 on '99 -- how would we ask those questions and get  
13 answers to them?

14           STAFF DIRECTOR MOY: Well, if you have those questions  
15 within, say, the next couple of days, I can submit it to  
16 George and George can give us some feedback, and then if he  
17 has any questions needed from you or any of the other  
18 Commissioners, then we'll have to stay in touch by phone.

19           CHAIRPERSON BERRY: Could I -- could I give also an  
20 answer? The chart on the left which does not have detail,  
21 is as I understand it, what the staff proposes without  
22 detailing it. We could ask for the detail -- what the staff  
23 proposes to do if the budget still is 8-7-4-0. And I was  
24 going to suggest that we have a conference call -- we  
25 Commissioners -- to discuss all this, if people think we

1 should -- to give them further guidance, sometime in the  
2 next, you know, week or two -- or this week, or whenever  
3 people can do it -- just to discuss these matters so that  
4 when they write the submission -- maybe if we do it that  
5 way, when they write it up, it'll be okay -- and we don't  
6 have to (inaudible). Yes, Commissioner Redenbaugh.

7 COMMISSIONER REDENBAUGH: Can I ask a clarification  
8 question? When you say guidance, what is -- what is meant  
9 by that? Because --

10 CHAIRPERSON BERRY: What do I mean?

11 COMMISSIONER REDENBAUGH: Yes, because as the -- the  
12 projects were things that Commissioners would have approved  
13 --

14 CHAIRPERSON BERRY: Before.

15 COMMISSIONER REDENBAUGH: By vote.

16 CHAIRPERSON BERRY: Right.

17 COMMISSIONER REDENBAUGH: Right.

18 CHAIRPERSON BERRY: What I mean by guidance is --  
19 which is why -- I guess I misunderstand the process --  
20 because I think this is rather simple to do, actually, to  
21 tell you the truth. I hate to use that word. But we have  
22 programmed projects, so there's no doubt about what we've  
23 approved. We know that already. And when we approved them,  
24 we had a long discussion once about how much they cost and  
25 all that -- we talked about it at least three times.

1 COMMISSIONER REDENBAUGH: Yes.

2 CHAIRPERSON BERRY: So all the staff is really  
3 proposing, as I can see here, is they're telling us that in  
4 1990 -- Fiscal 1998, if we get only 8.74 -- which looks like  
5 what we're going to get -- they can do the Americans With  
6 Disabilities Act, report and everything --

7 COMMISSIONER HORNER: That says adjustment though --  
8 there. It says recommended adjustments -- report, hearing.  
9 What does that mean? Adjustment from what to what?

10 CHAIRPERSON BERRY: The ones that have changes, like  
11 down here where it says "Crisis of young African-American  
12 youth" -- do you see that one? It says consultation and no  
13 hearings.

14 COMMISSIONER HORNER: But what about under Americans  
15 With Disabilities Act? It says "Report:" -- and then  
16 underneath that, "Hearing". Does that hearing applied to --  
17 is that a change?

18 CHAIRPERSON BERRY: The hearing -- no, it's not. It's  
19 what the column means -- and they're not in here, but they  
20 can answer it. What the column means is that where there is  
21 an adjustment, it tells you where in some things.

22 COMMISSIONER GEORGE: Is the adjustment though a  
23 financial adjustment or is this an adjustment --

24 CHAIRPERSON BERRY: Right, it's that they put down an  
25 amount of money here which will permit you to do what they



1 have in the right hand side. Okay? Do I understand that  
2 right?

3 COMMISSIONER HORNER: I'm afraid I still don't  
4 understand. For instance, with Americans With Disabilities  
5 Act, we're talking about \$94,100. And then in the next  
6 column it says recommended adjustments, report. Does that  
7 mean we're having a bigger report, a smaller report, no  
8 report, an additional? Hearing. One hearing rather than  
9 three? No hearing?

10 CHAIRPERSON BERRY: On that particular one, Staff  
11 Director, if I understand it clearly, that's not a change.  
12 It's just saying that's what we're going to do.

13 COMMISSIONER HORNER: The title recommended  
14 adjustments doesn't apply to the first item under  
15 recommended adjustments. I'm sorry, Madam Chair, I'm  
16 extremely impatient because I don't understand why we can't  
17 have clear and full documentation of what the staff is  
18 intending to do with what we've -- what we've proposed.

19 CHAIRPERSON BERRY: It makes -- the page makes certain  
20 assumptions which may be assumptions which shouldn't be  
21 made.

22 COMMISSIONER HORNER: A cover memo would be enormously  
23 helpful.

24 CHAIRPERSON BERRY: Right, it makes assumptions which  
25 is that first, everybody's going to remember what we

1 proposed to do and what we approved, and that you're just  
2 working off a summary. And saying here, now, instead of on  
3 Crisis doing a hearing, we're just going to do a  
4 consultation in 1998, which means that it can now fit within  
5 the money that we have and there will be no hearing on  
6 Crisis of Young African-American Youth until 1999. And that  
7 would save some money.

8 COMMISSIONER HORNER: Why can't someone write out, in  
9 the English language, here are the -- here are the changes  
10 we propose to what you agreed. You agreed to X, Y, and Z.  
11 We're proposing A, B, and C. That way we can decide whether  
12 we want --

13 CHAIRPERSON BERRY: Alright, why don't we ask the  
14 staff to do that? Okay? I don't mind asking them to do  
15 that. Great. Now, after we ask them to do that and they  
16 send that to us in the next few days, shall we then respond  
17 one by one by saying either I don't like that or I'd like to  
18 change this, and have them compile our responses and work  
19 off that to get something by -- for us for the October  
20 meeting? Or would you like to have a meeting to discuss  
21 that? Or what would you like to do? A meeting. Okay.  
22 Commissioner George.

23 COMMISSIONER GEORGE: Well, I just have a question.  
24 If we put it off until October, is Staff Director Moy going  
25 to be able to meet --

1 CHAIRPERSON BERRY: We don't know.

2 COMMISSIONER GEORGE: -- the schedule?

3 CHAIRPERSON BERRY: We know what we will do.

4 COMMISSIONER GEORGE: It looks to me like we can't put  
5 it off until October.

6 STAFF DIRECTOR MOY: Right. I won't be able to --

7 COMMISSIONER GEORGE: So some of the strategy's got to  
8 be --

9 CHAIRPERSON BERRY: Alright, let's have a meeting or  
10 conference call. So let's figure out real fast who has days  
11 when they cannot have a conference call. Just tell me when  
12 you absolutely can't between now and October. I agree.  
13 It's going to be real tough.

14 COMMISSIONER HORNER: I don't understand why we  
15 couldn't have done this say at the August meeting. I really  
16 don't. It would have been timely and not difficult, given  
17 that all the decision making had gone on before.

18 CHAIRPERSON BERRY: Well, next year we should do it at  
19 the July meeting maybe, and not August, because we're not  
20 going to meet in August, I hope. Let's get a date real fast  
21 for a conference call. Let's say the staff will get it to us  
22 in the next five days. Is that realistic, George? Ruby?

23 STAFF DIRECTOR MOY: I think so -- George, is it  
24 realistic?

25 CHAIRPERSON BERRY: Is that realistic?

1           STAFF DIRECTOR MOY: To get information to the  
2 Commissioners within five days?

3           CHAIRPERSON BERRY: The memo that Commissioner Horner  
4 talked about.

5           STAFF DIRECTOR MOY: Background documentation. Yes.

6           CHAIRPERSON BERRY: Okay, by the end of next week --

7           COMMISSIONER HORNER: Which means we could have  
8 Saturday and Sunday to look at the memo and Monday to  
9 consult with staff and that -- how about Tuesday, the 23rd  
10 or Wednesday the 24th? Would people be available? Tuesday  
11 the 23rd or the morning of the 24th?

12          CHAIRPERSON BERRY: The 24th of September -- I can do  
13 it. How about other folks?

14          VICE-CHAIR REYNOSO: I can do that.

15          CHAIRPERSON BERRY: Conference call --

16          VICE-CHAIR REYNOSO: I can do the morning, but I must  
17 complete by -- I'm trying to adjust, I'll be in California,  
18 I must complete by 8:30 Pacific time --

19          CHAIRPERSON BERRY: Which is what time here?

20          VICE-CHAIR REYNOSO: Well, 11:30.

21          CHAIRPERSON BERRY: Can everybody do it Wednesday  
22 morning, September 24th?

23          COMMISSIONER: I cannot.

24          CHAIRPERSON BERRY: How about Tuesday the 23rd?

25          COMMISSIONER: I cannot.

1 COMMISSIONER: I can do that.

2 COMMISSIONER ANDERSON: I'll be in Europe Tuesday.

3 CHAIRPERSON BERRY: You are?

4 COMMISSIONER ANDERSON: Or between Europe and here.

5 CHAIRPERSON BERRY: How about Monday, no?

6 VICE-CHAIR REYNOSO: I could do that.

7 CHAIRPERSON BERRY: What time? You could or couldn't?

8 VICE-CHAIR REYNOSO: Yvonne says no.

9 CHAIRPERSON BERRY: You cannot?

10 COMMISSIONER LEE: I could do --

11 VICE-CHAIR REYNOSO: Affirmative.

12 COMMISSIONER LEE: -- before 8:30 California time.

13 CHAIRPERSON BERRY: California time which is --

14 VICE-CHAIR REYNOSO: Monday morning the 22nd.

15 CHAIRPERSON BERRY: Which is what time here -- that's

16 11:30. Monday morning, the 22nd? Anyone who can't?

17 VICE-CHAIR REYNOSO: When would we be getting the

18 memo?

19 CHAIRPERSON BERRY: Five days.

20 COMMISSIONER HORNER: That means we would need to get

21 the memo by COB Thursday.

22 CHAIRPERSON BERRY: Right. Okay. Memo by COB

23 Thursday. Meeting Monday morning -- what time do you have

24 to finish, Yvonne?

25 COMMISSIONER LEE: 8:30.

1 CHAIRPERSON BERRY: She has to finish by 11:30 --

2 VICE-CHAIR REYNOSO: 11:30.

3 CHAIRPERSON BERRY: So what time would you guys like  
4 to have this conference call? Our time? Ten o'clock?

5 VICE-CHAIR REYNOSO: Ten o'clock, Monday the 22nd.

6 CHAIRPERSON BERRY: Okay, ten o'clock, Monday the  
7 22nd. Okay? Commissioner Redenbaugh.

8 COMMISSIONER REDENBAUGH: Yes, could we ask Connie to  
9 restate again your request for --

10 CHAIRPERSON BERRY: The memo.

11 COMMISSIONER REDENBAUGH: -- the memo?

12 COMMISSIONER HORNER: Yeah.

13 COMMISSIONER REDENBAUGH: So that we're all pulling on  
14 the same --

15 COMMISSIONER HORNER: I would like the memo that has,  
16 part one, this is what you Commissioners decided upon when  
17 you voted on FY97 -- or excuse, me, '98 and '99. This is  
18 what that costs. Part two. We, the staff, recommend the  
19 following changes in substance -- that is in process and  
20 costs for the following projects. That's all.

21 COMMISSIONER REDENBAUGH: And then may I add to that,  
22 clarification of what money would be available in '98,  
23 because there will be the spillover from '97 projects.  
24 Right?

25 CHAIRPERSON BERRY: Right.

1           COMMISSIONER REDENBAUGH: Are you agreeing with me,  
2 Mary?

3           CHAIRPERSON BERRY: I am agreeing with you. Therefore  
4 we have to have an assessment of what requirements remain to  
5 complete FY97 projects.

6           COMMISSIONER REDENBAUGH: Right. Or the proposals  
7 will be abandoned.

8           CHAIRPERSON BERRY: Right, but at least we need an  
9 identification of what remains to be done and what costs are  
10 associated with what remains to be done.

11          COMMISSIONER REDENBAUGH: And then we also need the  
12 thing which I think we've had difficulty ascertaining, which  
13 is the actual amount of money that is available for projects  
14 after, you know, the rent and things like that. But that  
15 may be known. I may be mistaken, but -- because all the 8.7  
16 is not available.

17          CHAIRPERSON BERRY: Yes, it's what's available after  
18 the regional offices and everything else -- rent, lights and  
19 stuff.

20          COMMISSIONER REDENBAUGH: Yes, the stuff which we  
21 consider reasonably fixed.

22          CHAIRPERSON BERRY: Right, fixed costs.

23          COMMISSIONER REDENBAUGH: Fixed costs. Yes.

24          CHAIRPERSON BERRY: Okay.

25          COMMISSIONER REDENBAUGH: So that we don't try and

1 spend the whole 8.7.

2 CHAIRPERSON BERRY: Okay, anybody else have anything  
3 else they want in this memo? Okay.

4 COMMISSIONER HIGGINBOTHAM: What I gather -- just  
5 (inaudible) -- but when you make a change that has a  
6 consequence, and the memo people know what the consequence  
7 would be -- if you are increasing the amount for one, and  
8 we're going to be limited to X amount, you have to decrease  
9 your allocation elsewhere. So that is what I'm hoping will  
10 be done. I don't think it's a difficult task. Am I correct  
11 that that's what we'll get?

12 CHAIRPERSON BERRY: What's decreased and what's  
13 increased.

14 COMMISSIONER HIGGINBOTHAM: I mean -- if I have  
15 \$100,000 for one project and you decide you need \$150,000 to  
16 do it adequately, then you have a \$50,000 shortfall. Where  
17 is that coming out of?

18 CHAIRPERSON BERRY: Okay, so we'll ask for them to  
19 explain that too.

20 COMMISSIONER HIGGINBOTHAM: It's cash.

21 CHAIRPERSON BERRY: No, I'm saying -- I'm saying that  
22 that -- they should make note of the fact that they have to  
23 explain that too -- in the memo.

24 COMMISSIONER REDENBAUGH: Leon, you must have studied  
25 budgeting at exactly the same time as I did.



1 COMMISSIONER HORNER: I think he studied logic.

2 COMMISSIONER REDENBAUGH: That too.

3 CHAIRPERSON BERRY: Is there anything else that people  
4 think should be in the memo? Yes, Commissioner --

5 COMMISSIONER: Well, this isn't --

6 CHAIRPERSON BERRY: Oh, it's not? Well, we're still  
7 finishing the memo. What about -- is there some way to  
8 factor in, or for us to factor in if the staff can't do it,  
9 a reconsideration of projects where we know we're not going  
10 to vote, in the end, to approve them? In other words, it  
11 seems to me that it is a salient consideration that if we as  
12 Commissioners know that we totally disagree about something,  
13 and that in the end we're not going to vote to approve it  
14 anyway, that when you write down the figure \$1,000,000 to  
15 spend on this project that we're being totally unrealistic  
16 because we're asking the staff to do work that's going to be  
17 useless; we're asking other agencies to do work that's going  
18 to be useless; we're asking ourselves to do work that will  
19 be useless. And if we know that we are totally,  
20 philosophically and in every other way, in disagreement  
21 about what should be done about this issue, and there's so  
22 many other issues to do things with, why in the heck should  
23 we do the project in the first place?

24 COMMISSIONER HORNER: Madam Chair, I've been trying  
25 since my -- practically my first week on this Commission, to

1 encourage just this kind of up front Commissioner  
2 deliberation, and every time -- before we ask the staff to  
3 do something -- and the problem that arises is we're told  
4 that it is the staff's appropriate prerogative to -- to  
5 bring to us, the Commissioners, options. Not that we, the  
6 Commissioners, should tell the staff what we think up front.  
7 And so we've been somewhat stymied in our attempts to do  
8 just this -- to surface real, serious differences in advance  
9 of a lot of staff work.

10 CHAIRPERSON BERRY: Well, I think a new assumption has  
11 to be made here. I had always assumed in my years on the  
12 Commission that the staff had a certain amount of expertise  
13 that I didn't have, and that the presumption was always that  
14 they would do good work and go out and present to us their  
15 best effort on a question. And that we would assume that  
16 that's what they were doing. And say that they had the  
17 expertise, and we had views and we would accept their work,  
18 with changes, and we'd comment or if they had facts we  
19 didn't understand we would ask questions, and we'd either  
20 vote one way or the other, but in the end, whatever they did  
21 was probably -- unless it had some great fault in it, get  
22 approved, and I would either write a dissent or I'd write a  
23 concurrence, something, and I'd move on.

24 But I think what our experience has shown that  
25 this is not the case. That what is happening now is that

1 there's no presumption that the staff work should be taken  
2 as valid -- I'm just stating what I've seen -- and that we  
3 will revisit everything that they do and make our own  
4 judgements about whether they should -- you know, should  
5 there be --

6 For example, if we know now that we don't believe  
7 that there should be an Americans With Disabilities Act or  
8 that it shouldn't be enforced in employment areas, or that  
9 there are certain things that the law requires it to do that  
10 really we don't believe should be done, and that if the  
11 staff writes a report in which they point out those things  
12 as things that should be done because the law, by their  
13 interpretation and the courts say that it should be done,  
14 then we're just not going to vote for the report, we ought  
15 to decide not to do an ADA report -- at least on employment,  
16 if half of us think that it should be and half of us -- and  
17 if we know that before the staff does one iota of work, then  
18 we just don't -- I'm just using that as an example --

19 Or if we know, for example, on the Crisis of  
20 Young African-American Males, that many of us think the  
21 government should play a role in doing X, Y, Z -- I don't  
22 know what the X, Y, Z is -- and some of us think that it's a  
23 matter of making them go to church, which I'm in favor of  
24 along with everything else -- then -- and that we don't  
25 think the government should be doing anything -- we ought to

1 talk about that before we have a report -- have the staff  
2 go do a bunch of work and spend all the taxpayers' money and  
3 then in the end, have a division and say we're not going to  
4 approve the report.

5 I mean that's just a waste of money. I think we  
6 are justifiably criticized by people who say that. So,  
7 Commissioner Horner, I take what you've said, and what I'm  
8 asking is, is there some way we can factor into our  
9 discussion, a review of where we stand on things and -- so  
10 that we can get some sense of the table before they go off  
11 and spend a year or two working? Yes, Commissioner George?

12 COMMISSIONER GEORGE: I think we have already done  
13 that, and the best example is the Crisis of Young African-  
14 American Males. I think by having a very serious  
15 consultation with a good spectrum of points of view on the  
16 range of central issues prior to making the decision about  
17 that -- how much money to allocate for more full blown  
18 considerations such as hearings, we're doing exactly the  
19 right thing. It might be that after the consultation we see  
20 enough potential for agreement that we're going to want to  
21 say, yes; we're going to spend a considerable amount of our  
22 resources on a fuller exploration of this topic. Or it  
23 might be that we will conclude, once the consultation's  
24 over, that we've got really bad division here, even over an  
25 issue that seemed in the beginning, to promise much room for

1 cooperation and agreement, it turns out that we're just  
2 going to fuss about this and fundamentally disagree, then we  
3 can make the decision on budget. So I think that we've  
4 already put in place a good example here.

5 CHAIRPERSON BERRY: So maybe that's what we -- now,  
6 enforcement, we've got a different issue though. We have to  
7 do a statutory enforcement report every year. And  
8 enforcement reports, according to what Congress said in the  
9 description when they said we had to do them, in the  
10 discussion, are reports which monitor how agencies enforce  
11 existing law. And then we propose either changes to make it  
12 more efficient, or something. And so that's supposed to be  
13 a straight-forward assessment -- the enforcement of the law  
14 which exists in a specific area.

15 But where we seem to run into problems is that  
16 when Fred's staff writes the reports and we get them, we get  
17 into debates about what the scope of the law is, whether we  
18 think it ought to apply to X, Y, and Z; whether or not the  
19 agency thinks it does or the court says it does, and we  
20 philosophically agree that such a thing should be the  
21 subject of the law or whatever -- so what do we do about  
22 that in the example, Commissioner George?

23 COMMISSIONER GEORGE: Well, we --

24 CHAIRPERSON BERRY: All sorts of reports.

25 COMMISSIONER GEORGE: Well, I mean we just disagree.

1 I think that sometimes it's possible for reports to be  
2 written in such a way as to garner agreement; sometimes it's  
3 possible, even if a report hasn't been so written, for us to  
4 use the procedures that we have used in order to get  
5 agreement. But I think we should be very candid with  
6 ourselves and realize that there will come some reports,  
7 given the division on this Commission, philosophically, and  
8 I'm increasingly tempted to say, temperamentally, there will  
9 come points at which it just won't be possible to get  
10 agreement, and there won't be a report.

11 CHAIRPERSON BERRY: But we are by law -- by law we are  
12 to produce a statutory report every year on enforcement.

13 COMMISSIONER GEORGE: On enforcement.

14 CHAIRPERSON BERRY: That's in the law.

15 COMMISSIONER GEORGE: Absolutely.

16 CHAIRPERSON BERRY: And we have been warned that there  
17 is some statute that fines people or something if they don't  
18 abide by -- and I have been beaten over the head by folks on  
19 the Hill because we haven't produced them. So what do we do  
20 if we get a report produced and we can't pass it and there  
21 isn't even a statutory report, then what do I do?

22 COMMISSIONER GEORGE: We -- I think it's fair to say  
23 that we are bound to, and we will, produce an enforcement  
24 report. I mean we already -- it already has a way of  
25 crashing in --

1 CHAIRPERSON BERRY: Okay.

2 CHAIRPERSON BERRY: -- when it comes to an enforcement  
3 report, I think if we're candid with ourselves, we know darn  
4 well that we will produce an enforcement report. Might not  
5 be to your liking, Madam Chairman, might not be to my  
6 liking, but we will produce one.

7 CHAIRPERSON BERRY: Something.

8 COMMISSIONER GEORGE: I do not believe that we can  
9 guarantee in advance, given the division on this Commission,  
10 that we will be able to agree on every report that it would  
11 be good to do.

12 CHAIRPERSON BERRY: Yes.

13 VICE-CHAIR REYNOSO: Madam Chair, I think there is a  
14 difference, though, in the two reports that you've  
15 described. In one report, when we are taking the initiative  
16 ourselves, I think it would be very good to have the kind of  
17 discussion that you and Commissioner Horner were talking  
18 about. In -- in the -- if you will, oversight report, it  
19 seems to me that we have the duty, if you will, to accept  
20 the public policy as established by Congress, and then ask  
21 the question, if -- is the Civil Rights implementation  
22 taking place as -- as Congress intended it to, whether we  
23 happen to agree with Congress or not.

24 So I think that's the sort -- so I think there is  
25 a difference of approach so that we may disagree with a

1 statute that Congress has passed that has a Civil Rights  
2 component, but we have a duty, it seems to me, to  
3 nonetheless ask the question, what did Congress mean to do  
4 and is the agency doing it and what suggestions do we have  
5 for the agency to better implement the policies of Congress.  
6 So to that extent, I think there is a difference.

7 CHAIRPERSON BERRY: Commissioner Redenbaugh.

8 COMMISSIONER REDENBAUGH: Yes. Of course I agree with  
9 what you just said, and I think to the extent, for example,  
10 that there is something that is public policy and law, that  
11 I would find myself in disagreement with, the place that I  
12 could express that is in a dissent to such a report. So I  
13 find myself in agreement with what you said. The two  
14 reports are quite different in nature. They are of two  
15 types.

16 I wanted to ask, Madam Chair, it's -- are there  
17 some pending projects that you were perhaps anticipating  
18 when you raised the initial question?

19 CHAIRPERSON BERRY: Right. Naturalization and  
20 citizenship. I have a hunch it's -- I mean my hunch may be  
21 totally wrong -- that's why we need to discuss that --

22 COMMISSIONER REDENBAUGH: That's in there, but not yet  
23 underway, right?

24 CHAIRPERSON BERRY: Right. I mean before they start  
25 doing something.



1           COMMISSIONER REDENBAUGH: So that's -- that's good.  
2 Then I wanted to move on to -- are there things underway  
3 which you have this suspicion? That's a tougher question.

4           CHAIRPERSON BERRY: Yeah.

5           COMMISSIONER REDENBAUGH: But it is fun, you know, to  
6 do spring cleaning sometimes.

7           CHAIRPERSON BERRY: Well, maybe what we could do --  
8 maybe what we could do is when we have this discussion, we  
9 can all think about this, and when we have this -- yes,  
10 somebody -- Commissioner Higginbotham.

11           COMMISSIONER HIGGINBOTHAM: Can I add a line or two?  
12 I am the neophyte on the Commission, so I can proceed -  
13 without a depth of experience which the rest of you have  
14 because you are the seniors. But even as a neophyte I'm  
15 willing to join in the extreme -- and I've been thinking  
16 about it a lot. And let me give you my thoughts in terms of  
17 a neophyte. Where I think we can go now -- all of us will  
18 have to take some consideration.

19                   First of all, I am pleased to accept the  
20 presumption of your expertise, the staff. I don't think  
21 that if a report comes out and is approved one time and is  
22 not approved another time it says -- it has nothing to do  
23 with the expertise of the staff. It has to do with the  
24 variety of eccentricities and our policy views as  
25 Commissioners. So I don't want the staff to get the

1 impression that the fault is being buried on them.

2 Now, so therefore, I set out the presumption that  
3 they have to have a little expertise on this, and if they  
4 don't have it, I want to do everything we can to make sure  
5 that they do. I believe that very -- the fundamental  
6 problem with the Commission -- and I've thought about it  
7 many a time and wanted to write a letter -- is the  
8 following. There seems to be some negative interests if we  
9 either have a division among Commissioners or if something  
10 (inaudible). I submit to you that there's nothing  
11 inherently wrong on a vote per person volume, either splits  
12 50-50, or there's a division. We have been advised by  
13 Justice O'Conner, Justice Kennedy, Justice Suter that the  
14 majority was clearly wrong in (inaudible) v. Ferguson, and  
15 the consenters views are now -- carry much strength in juris  
16 prudential thinking. So the fact that our Commission comes  
17 out divided -- and the case may be (inaudible) -- as much as  
18 it has anything else.

19 The tragedy of our Commission is that when  
20 something is divided four-four, apparently the report is not  
21 published because there's a disagreement. It seems to me  
22 that we would make just as much information to the public,  
23 and we would play just as important a role, if the report is  
24 published and say the Commission is divided four-four along  
25 these -- for these reasons. Then we are serving a more

1 valuable purpose. One, a year or two may have been spent  
2 carefully researching this material. I know that my  
3 colleague Addison spent weeks and weeks and weeks in  
4 Washington, working with other Assistants, trying to get a  
5 resolution on something, thinking that we had a resolution,  
6 and then we come back with none, and the report becomes  
7 dead, in effect, never letting it get into the marketplace  
8 of ideas. I think we ought to rethink this, and I see  
9 nothing wrong about the public learning that the Commission  
10 has been split evenly on this particular report and drawing  
11 whatever inference. The information gets into the  
12 marketplace of ideas.

13           And if we can live with what the Supreme Court  
14 lives with every term when things are split, when you don't  
15 have a ninth justice, four-four, and it becomes sometimes  
16 evident what the views are on both sides -- no one cared.  
17 So why should we have to have a greater standing than the  
18 United States Supreme Court? And until I understand that  
19 question as to why United States Civil Rights Commission has  
20 to be more wise than the United States Supreme Court, less  
21 tolerant of division, and totally intolerant of even splits,  
22 I think we're in trouble.

23           CHAIRPERSON BERRY: Well, okay, thank you for the --  
24 those comments. Does anybody have any comment on what Leon  
25 said? Not -- we'll think about it and say that we will get

1 this memo, we will have this meeting on September 22nd. Is  
2 there anything else on the Staff Director's report?

3 COMMISSIONER GEORGE: Well, on this memo --

4 CHAIRPERSON BERRY: Memo, yes.

5 COMMISSIONER GEORGE: By the memo I don't mean the one  
6 that's to come, I mean that sheet that we've got in front of  
7 us -- just -- I notice on projects that the Crisis is  
8 described -- the Crisis Project -- is described as "Crisis  
9 of Young African-American Youth". I think we have  
10 consistently vowed to put the focus this time on the problem  
11 of African-American men. Now, I realize that one cannot  
12 talk about men without talking about women in any context in  
13 which sex makes -- has any relevance, but as I recall the  
14 way the whole thing came about was some very compelling  
15 testimony we heard in Los Angeles from young men who wanted  
16 to put before the Commission precisely their unique  
17 problems. And so unless we made some decision to change the  
18 styling and thrust of the investigation, I think we should  
19 continue to style it as a Crisis of Young African-American  
20 Men.

21 CHAIRPERSON BERRY: Well, I think that's probably an  
22 error -- it's been called men all the time.

23 COMMISSIONER GEORGE: Yes.

24 COMMISSIONER HORNER: Males.

25 CHAIRPERSON BERRY: Males it was called.

1           COMMISSIONER HORNER: Men is nicer than males. Male  
2 is very reductionist.

3           CHAIRPERSON BERRY: So that's what it's supposed to  
4 be. Yes, Commissioner Redenbaugh.

5           COMMISSIONER REDENBAUGH: Just another comment on the  
6 Staff Director's report. There's a comment about the ADA  
7 benchmarks being changed? Milestones. I don't know what  
8 that means.

9           CHAIRPERSON BERRY: You don't know what milestones  
10 are?

11          COMMISSIONER REDENBAUGH: I think I do. I don't know  
12 what it means by them being changed.

13          CHAIRPERSON BERRY: What comment? What are you  
14 talking about? Where is this comment? Oh, you mean in the  
15 Staff Director's report?

16          COMMISSIONER REDENBAUGH: Yes.

17          CHAIRPERSON BERRY: Oh, you're on the Staff Director's  
18 -- I thought you were still on the memo.

19          COMMISSIONER REDENBAUGH: I'm sorry, no, could we --

20          CHAIRPERSON BERRY: Staff Director's report, a comment  
21 about milestones being changed. What's that about? Ah --  
22 it must be under O -- C-R-E. Page 3. "Standards regarding  
23 preliminary search -- the milestones have been revised."  
24 Does that mean revised to -- whether the end of the  
25 milestones end up with the project still being produced when

1 it's supposed to? As far as anybody knows? I don't  
2 understand what this means. Whenever there's anything  
3 written in the Staff Director's report if it isn't explained  
4 then people want to know what that means.

5 COMMISSIONER REDENBAUGH: It's sort of -- I can't tell  
6 if this is an announcement of a reduction or postponement or  
7 what --

8 CHAIRPERSON BERRY: Okay, let's ask -- let's ask --

9 COMMISSIONER REDENBAUGH: That's a red flag to me.

10 CHAIRPERSON BERRY: Staff Director says we should ask  
11 Fred what this means.

12 MR. ISLER: -- milestones -- in conjunction with the  
13 hearings so that I can complete the report in time for the  
14 hearings -- we're still negotiating on the -- for me to do  
15 the report so that she can do the hearing and the staff --

16 COMMISSIONER REDENBAUGH: So are you still on for the  
17 March hearing?

18 MR. ISLER: Yes.

19 COMMISSIONER REDENBAUGH: Okay.

20 CHAIRPERSON BERRY: So in other words, this is  
21 information we didn't really need, because all it did was  
22 worry us unnecessarily. Yes, Vice-Chair.

23 VICE-CHAIR REYNOSO: Madam Chair, just a detail. I  
24 suppose we on the west coast do more travelling than folk on  
25 the east coast for Commission purposes, so I suppose we come

1 in contact with Omega World Travel more often than others,  
2 and I just want to mention to our Staff Director that  
3 insofar as my own office is concerned, Omega World Travel is  
4 the single worst travel agency with which I've ever had --  
5 and I would urge the staff to do anything possible to  
6 contract with another travel agency.

7 CHAIRPERSON BERRY: Okay, yes, Mr. George.

8 COMMISSIONER GEORGE: Three items of information I  
9 would request from the Staff Director just by way of  
10 updates. First, could we get a brief report on the status  
11 of the preparation for our consultation on the Crisis of  
12 Young African-American Men, and some idea of when we'll be  
13 getting our briefing or our information about participants?

14 Second, could we have an update on the status of  
15 the data analysis for the New York report which we were  
16 supposed to have had within 60 days of the July meeting? I  
17 wonder if we have it, or if not, if we're expecting it soon?

18 And the third is, if it's timely to do so, I  
19 notice that the Schools and Religion project did not get a  
20 mention in the summary of OGC activities, but my  
21 understanding formerly was that a team had been assembled on  
22 this -- or at least some leadership had been put in place.  
23 Can we get a brief report on that as well? So those three  
24 items of information.

25 CHAIRPERSON BERRY: You want to ask Stephanie to

1 answer that?

2 STAFF DIRECTOR MOY: Yes, Stephanie?

3 CHAIRPERSON BERRY: Could you respond to that?

4 STAFF DIRECTOR MOY: Crisis.

5 CHAIRPERSON BERRY: Crisis, --

6 COMMISSIONER GEORGE: New York, --

7 CHAIRPERSON BERRY: -- New York, and --

8 COMMISSIONER GEORGE: -- and Schools and Religion.

9 CHAIRPERSON BERRY: -- Schools and Religion.

10 COMMISSIONER GEORGE: Status reports.

11 MS. MOORE: With respect to the Crisis, we received  
12 your recommendations for possible panelists on the Crisis  
13 project. We are pursuing those as well as the list that was  
14 disseminated to you -- people that we -- that we had  
15 identified. We are trying to locate some addresses for some  
16 of the potential participants and hope to have something  
17 finalized as soon as we hear back from the people. I mean a  
18 lot will depend on their schedules, availability to actually  
19 produce a paper.

20 COMMISSIONER GEORGE: Did other Commissioners make  
21 recommendations as well?

22 MS. MOORE: I believe Commissioner Horner and  
23 Commissioner George were the only two that --

24 COMMISSIONER GEORGE: And that as I recall is November  
25 14th, right?



1 MS. MOORE: Right. And --

2 CHAIRPERSON BERRY: And was your question too when --  
3 when would you get back something you said?

4 COMMISSIONER GEORGE: Oh, yes, do we -- well,  
5 Stephanie might actually have answered this, although it  
6 would be good if she could say anything more specific -- it  
7 may not be possible -- as to a target date for us having the  
8 list --

9 MS. MOORE: Well, again, I -- I'm not trying to be  
10 indefinite, but a lot will depend on the negotiations with  
11 the potential participants in terms of timeframes for them  
12 to commit and -- if you're asking about who they might be,  
13 I'm sure we can get that concrete from all of them. If  
14 you're asking for a uniform period of time. If you're  
15 asking at what point the actual papers would be presented,  
16 what I'm suggesting to you is that that will depend on the  
17 negotiations with -- some may come in earlier than others,  
18 depending on --

19 COMMISSIONER GEORGE: Okay, let me follow up on that a  
20 little bit. I think what Stephanie is referring to, which  
21 maybe people don't remember, is that we are going to get  
22 papers in advance.

23 MS. MOORE: Right.

24 COMMISSIONER GEORGE: I guess we're going to read the  
25 papers in advance and then have an opportunity to question

1 and explore with our panel of experts -- so one date would  
2 be the date by which we can get the papers -- and we're all  
3 going to need a certain amount of time -- it's a lot of  
4 papers if we stick with the number that we had in mind. So  
5 that's one date.

6 The other date that it would be good to have in  
7 advance is to know what date we're going to have -- is just  
8 the date by which we will know who is committed. So, again,  
9 the earlier the possible -- as early as possible there is  
10 better. It might be particular people whose more general  
11 work we're going to want to consult people -- you know, most  
12 of these people are going to have a lot of published work --  
13 we might want to dip into some of it. It would also be good  
14 to know if -- it might be possible sooner to know who has at  
15 least been approached or contacted, even if we don't yet  
16 have commitments so that we'll know who's been approached  
17 and who, among people we recommended, probably hasn't been  
18 approached.

19 CHAIRPERSON BERRY: Why don't we get a time from  
20 Stephanie -- a target date for when she will give us back  
21 the list of people who are the likely participants?

22 COMMISSIONER GEORGE: Good.

23 CHAIRPERSON BERRY: Can you give us all --

24 MS. MOORE: We can give you a list of the likely  
25 participants immediately. We cannot give you a list of

1 commitments until we've located -- located when they are.

2 CHAIRPERSON BERRY: Well, when do you think you can  
3 give us a list of confirmed participants? Confirmed in the  
4 sense that they have been contacted and agreed that they  
5 will at least participate?

6 MS. MOORE: Well, hopefully by -- certainly before the  
7 end of this month, but I would hope that the 15th of  
8 September would make the best sense.

9 CHAIRPERSON BERRY: Okay.

10 MS. MOORE: Because they will need to commit and  
11 produce the papers.

12 COMMISSIONER GEORGE: Well, that gives us the month on  
13 that --

14 CHAIRPERSON BERRY: So why don't we --

15 MS. MOORE: August was a bad month of course, because  
16 people travel.

17 COMMISSIONER GEORGE: Of course. This is making me  
18 worry about the time on reading the paper because do I -- is  
19 my recollection correct that we were anticipating as many as  
20 three panelists on each of five subject matters? Is that --  
21 is that right?

22 MS. MOORE: Yes, I think --

23 COMMISSIONER GEORGE: Possibly 15 papers -- that's a  
24 lot of reading.

25 CHAIRPERSON BERRY: If we got the papers by a month

1 before?

2 COMMISSIONER GEORGE: I think we'd need them a month  
3 before, yes, I think that would be doable. Less than that  
4 just gets so tight with everybody else's --

5 CHAIRPERSON BERRY: So we need to know who they are --  
6 or at least the staff will need to know, and have them start  
7 writing already, by the 15th.

8 COMMISSIONER GEORGE: Of September.

9 CHAIRPERSON BERRY: Yes.

10 COMMISSIONER GEORGE: And then October --

11 CHAIRPERSON BERRY: And then we'd have the papers --

12 COMMISSIONER GEORGE: -- by October 15th.

13 CHAIRPERSON BERRY: -- by October. What do you think,  
14 Stephanie?

15 MS. MOORE: I think that's a tight schedule, again,  
16 based on the types of people that we're approaching --

17 COMMISSIONER GEORGE: Yeah, these are pretty serious  
18 people.

19 MS. MOORE: Right, and because the consultation papers  
20 are -- are designed to be produced solely for this purpose,  
21 we would not want people merely coming in with published  
22 works that are already in the market place that we could  
23 assemble on our own. We are asking them to specifically  
24 address the concerns for this project.

25 CHAIRPERSON BERRY: How about if we ask the

1 participants to -- or ask the staff to send them to us when.  
2 they get them. In other words, say October 15th, if not  
3 everyone can produce it by then, send us a bunch, and then -  
4 - so that we wouldn't --

5 COMMISSIONER GEORGE: Yes, that's a good approach.  
6 We're not going to read them all at the same time anyway.  
7 That's a good point.

8 CHAIRPERSON BERRY: Yes.

9 COMMISSIONER GEORGE: Could you inform those of us who  
10 did make suggestions -- could you inform us informally as to  
11 who has been followed up on and who hasn't been?

12 CHAIRPERSON BERRY: You could have that conversation -  
13 -

14 MS. MOORE: Sure.

15 CHAIRPERSON BERRY: The second question was New York.

16 COMMISSIONER GEORGE: New York, yes, the data --

17 MS. MOORE: Actually I didn't understand --

18 COMMISSIONER GEORGE: The data analysis -- we're  
19 getting professional data analysis.

20 MS. MOORE: Right, we are.

21 COMMISSIONER GEORGE: And is that in yet?

22 MS. MOORE: Well, the final has not been --

23 COMMISSIONER GEORGE: No, I'm not talking about the  
24 whole project being completed --

25 CHAIRPERSON BERRY: The contract, you mean?

1           COMMISSIONER GEORGE: Yes, the contract work -- the  
2 contractor was supposed to produce the data analysis by now  
3 I think. Am I right?

4           MS. MOORE: No.

5           COMMISSIONER GEORGE: No?

6           MS. MOORE: No. And as the Staff Director's report  
7 indicates, work is on schedule. It is going forward and it  
8 is on schedule.

9           COMMISSIONER GEORGE: Including the data -- the  
10 outside work?

11          MS. MOORE: Yes.

12          COMMISSIONER GEORGE: That was my question. Okay.

13          MS. MOORE: That -- that is -- that's what on schedule  
14 -- the outside work.

15          CHAIRPERSON BERRY: Remember, Commissioner George, the  
16 -- the outside statistical work, putting together the  
17 statistical array from all the boxes, has to be done before  
18 our staff, including our statistician and our lawyers can  
19 actually do the rest of their work.

20          COMMISSIONER GEORGE: So we're caught up with  
21 everything but that --

22          CHAIRPERSON BERRY: No, no, no. Let me start again.  
23 The holdup on the New York project has been that we have all  
24 these boxes, right, and we have to have somebody do a  
25 statistical array in a form so that you're not just reading

1 boxes -- like how many of the companies had this, that, or  
2 the other? It's an array that the contractor is doing, not  
3 analyzing the data for our report, but doing an array so  
4 that our statistician and our staff can in fact do the rest  
5 of the work. And my understanding was that needed to be  
6 done before they could do the next step of their work.  
7 Which is why we got the contractor.

8 COMMISSIONER GEORGE: But when is the contractor  
9 supposed to complete that work? I guess that's --

10 MS. MOORE: I do not have the contract in front of me.  
11 I think it was a 90 day contract, and I honestly don't know  
12 the date.

13 COMMISSIONER GEORGE: Oh, I thought it was a 60 day,  
14 but I could be mistaken. Okay. Now the third question was  
15 the Schools and Religion.

16 MS. MOORE: Schools and Religion -- there has been a  
17 team, and I apologize, I thought that it was reflected in  
18 the report from OGC to the Staff Director, but a team has  
19 been organized and is doing the preliminary work on that  
20 project now.

21 COMMISSIONER GEORGE: Thank you.

22 CHAIRPERSON BERRY: Would you like to know more about  
23 the team or anything else?

24 COMMISSIONER GEORGE: Well, I'd be happy to know more  
25 about the team, I was just happy to be assured that --

1 because I had understood informally that was preceding -- a  
2 team had been assembled. I wanted to get that confirmed.  
3 If you'd care to say more, it would be good to know.

4 MS. MOORE: Well, Emma Monroig is the team leader on  
5 the project. There are four other members of OGC on that  
6 project and I have indeed advised the staff as well that  
7 those who are assigned to other priority projects may,  
8 depending on how the complexity of the five, four, three, or  
9 two hearings we -- I suggest those discussions will --

10 COMMISSIONER GEORGE: Right, depends on those  
11 hearings.

12 MS. MOORE: Right, they may be reassigned and so they  
13 are prepared to move forward on that project, I would think.

14 CHAIRPERSON BERRY: Commissioner Horner.

15 COMMISSIONER HORNER: Madam Chair, I want to ask the  
16 Staff Director a question. This may have arrived in my  
17 office in the last few days, I've been traveling. But this  
18 is my third request for the professional and academic  
19 credentials of the contractor who is arraying our data.  
20 It's a simple matter. Any professional person having a bio,  
21 surely it's in the contract or in associated materials. Who  
22 we have asked to do this? I would like to know their  
23 academic and professional credentials, the contract -- the  
24 employee, that is, who is actually doing the work -- or  
25 employees, as I said before, the officers of the company,



1 and the directors of the Board. If I could know who these  
2 people are and I'm extremely puzzled and extremely concerned  
3 that this information hasn't been forthcoming, as I say,  
4 unless it arrived in the last few days.

5 STAFF DIRECTOR MOY: Commissioner Horner, I left a  
6 message on your voice mail. It may have been while you were  
7 on vacation. Plus we also faxed a copy of the letter that I  
8 wrote to them, to you. You may not have seen --

9 COMMISSIONER HORNER: I've seen the letter you've  
10 written to them, but --

11 STAFF DIRECTOR MOY: I have not had a response. -

12 COMMISSIONER HORNER: But you haven't had a response  
13 from them, and it seems to me bizarre that a \$25,000 sole  
14 source contractor is so unresponsive that a simple phone  
15 call saying fax me or fax you their resume in over two  
16 months now, hasn't been complied with. And so I'm  
17 concerned. I'm worried that there may be some problem here.

18 STAFF DIRECTOR MOY: Alright, well let me look into  
19 that and I'll follow up on it.

20 COMMISSIONER HORNER: Okay, thank you.

21 CHAIRPERSON BERRY: Anybody else have anything? -

22 COMMISSIONER ANDERSON: Madam Chair?

23 CHAIRPERSON BERRY: Yes.

24 COMMISSIONER ANDERSON: Commissioner Anderson. On the  
25 contract, what's our obligation at this point regarding

1 their performance under it?

2 CHAIRPERSON BERRY: It is -- I will let the staff  
3 answer that because quite frankly, Commissioner Anderson, it  
4 is not really the Commissioners' responsibility to be  
5 involved in this. It is the Staff Director and the staff's  
6 responsibility to insure that performance, under any  
7 contract, is done. We've delegated that to the Staff  
8 Director. I have not said this before, and simply proceeded  
9 by asking the questions because the questions seemed  
10 reasonable to me. But I'll let the staff answer that, but I  
11 assume that they are responsible for the performance. I'm  
12 certain we're not because I haven't been involved, and I  
13 don't think you have, with trying to see whether this  
14 contractor is performing. So staff, please answer.

15 STAFF DIRECTOR MOY: Well, I feel that it's a  
16 management issue and I will follow up with Commissioner  
17 Horner's request and Commissioner Anderson and keep you  
18 informed. I'm not certain if the other side has received  
19 the letter, due to a lot of vacations and holidays.  
20 Remember it was August and people may have just closed down  
21 for the last two weeks of August, as most people do.

22 COMMISSIONER HORNER: Madam Chair, I hope our  
23 contractor isn't on vacation, frankly, and secondly, I also  
24 view this as totally a management problem or concern. I'm  
25 exercising Commissioner oversight because I don't want to

1 see a GAO investigation down the road and then the question  
2 being asked why didn't the Commission exercise oversight.

3 CHAIRPERSON BERRY: I'm sure you could arrange for  
4 such questions to be asked if you wish. I do not --

5 COMMISSIONER HORNER: Madam Chair. Madam Chair, --

6 CHAIRPERSON BERRY: Next -- uh --next --

7 COMMISSIONER HORNER: I object to that implication.

8 CHAIRPERSON BERRY: The next item --

9 COMMISSIONER HORNER: I am in full faith asking to  
10 exercise --

11 CHAIRPERSON BERRY: Contracts are not the business of  
12 the Commission. They are the business of the staff.

13 COMMISSIONER HORNER: Madam Chair, that was clearly  
14 uncalled for.

15 CHAIRPERSON BERRY: If the -- it was not uncalled for.  
16 I am, frankly, Commissioner Horner, sick and tired of you  
17 bullying people in these Commission meetings. I have come  
18 to the end of my patience. I have been warned not to  
19 respond to you, but I'm doing it beacuse I am sick and  
20 tired of your bullying and asking questions about matters  
21 that are really raising questions about things that are not  
22 the business of the Commissioners. If we would do our jobs,  
23 which is to have policy, pass these reports, review them, be  
24 responsible, not undermine the morale of the staff on these  
25 reports, I think we -- and let the staff do their job, we

1 would be much better off, and I hear Commissioner  
2 Higginbotham trying to restrain me, but at some point you  
3 just get sick and tired of someone bullying people.

4 The staff morale here is going down the tubes  
5 because of the negligence on the part of this Commissioner -  
6 - this Commission in looking at staff work, taking reports  
7 seriously, taking our job seriously. We could manage this  
8 place to death, and if we don't get any reports out of here,  
9 we will not be doing our jobs. And that's our job. It's  
10 the staff job to manage the agency, and if we don't want  
11 them to manage it, we ought to take back the responsibility  
12 upon ourselves and come here and manage it every single day.  
13 Otherwise, to besmirch the ability of the staff to manage it  
14 by raising all sorts of questions and implying all sorts of  
15 things about people is just not a proper way to approach it.

16 Now, I know I've done wrong and I therefore  
17 declare that I remove myself briefly from the Chair, and  
18 Vice-Chair will you take over, because I am just too upset  
19 with this continual bullying that goes on in this place --  
20 and you can go on to the next item. I'll try to collect  
21 myself and I --

22 STAFF DIRECTOR MOY: Mr. Vice --

23 VICE-CHAIR REYNOSO: Is there something further on the  
24 Staff Director's report? Yes.

25 STAFF DIRECTOR MOY: Yes, I do have an addition, and

1 this is a follow-up. As noted in today's Washington Post,  
2 some of the Commissioners had expressed an interest in the  
3 Denny's situation in Syracuse, New York. Yesterday it was  
4 reported that the prosecutor is indicating that the Asian-  
5 American students who were beaten up at the Syracuse Denny's  
6 may have orchestrated their claims of racism, and I have  
7 asked our Eastern Regional Office here to stay in contact  
8 with the attorneys for the Asian-American students and we  
9 will continue to have a follow-up.

10 VICE-CHAIR REYNOSO: Okay. Questions as to that? I  
11 know it's been much in the news. Very well then, it had  
12 been requested -- that was as I see it, agenda number five,  
13 it has been requested that the Equal Education Opportunity  
14 reports be made item number six, and that I understand it --  
15 oh, I'm sorry, we're still at five. Yes, I -- we just  
16 finished four. We're at five which is the Advisory  
17 Committee Report, Utah: "Employment Discrimination in Utah".  
18 For purposes of placing this on the table, could I have a  
19 motion that this report be received by us?

20 COMMISSIONER: So moved.

21 VICE-CHAIR REYNOSO: Seconded?

22 COMMISSIONER REDENBAUGH: I will second it for  
23 purposes of discussion -- well, actually, I do plan to ask  
24 this be held over, and I ask that we not discuss it today.  
25 So then I'm not going to second.

1 VICE-CHAIR REYNOSO: Alright, we have a request that  
2 it be held over. May the Chair inquire as to the purpose of  
3 this being held over?

4 COMMISSIONER REDENBAUGH: Yes, I discussed this  
5 previously with the Chair Berry. It's an unusual report in  
6 the allegations that are made there and I would like more  
7 time to both read the report and -- and investigate with  
8 staff. So I'm not prepared to vote either for or against it  
9 today, and so --

10 COMMISSIONER HIGGINBOTHAM: Mr. Vice-Chair, is there  
11 any problem if we put it over? If the Commissioner says he  
12 or she wants to have the opportunity to review something for  
13 the next meeting -- if it's not critical I have no  
14 objection.

15 VICE-CHAIR REYNOSO: No, it has been our custom to  
16 indeed honor such requests. The Chair was just inquiring as  
17 to -- as to the nature of the concern.

18 COMMISSIONER HIGGINBOTHAM: I appreciate that --

19 VICE-CHAIR REYNOSO: Yes, I'm -- I am going to say  
20 that I agree that this is a different -- and I must say, to  
21 me, very troubling report --

22 COMMISSIONER REDENBAUGH: Yes.

23 VICE-CHAIR REYNOSO: -- So I can understand a request  
24 for more time, so unless there's objection, the request will  
25 be honored and I'll ask that it be placed on the agenda for

1 the next meeting. Commissioner Lee.

2 COMMISSIONER LEE: Mr. Vice-Chair, I have no objection  
3 holding this over for an additional month. Just a general  
4 comment. We are given these reports two months in advance  
5 so that by the time it gets to us for discussion we would be  
6 ready to vote, because I know that SACs and other folks are  
7 very eager to have the reports approved by us, and for the  
8 Utah staff report, it was done in 1994, I believe, and it's  
9 taken them three years to get to us to begin with. I just  
10 think as a general comment, maybe in the future if  
11 Commissioners have certain specific concerns on certain  
12 reports, maybe before it gets to the next -- it gets  
13 scheduled on the next agenda we could bring it up. For  
14 instance, if we had brought it up on the August meeting,  
15 then we could have done more research or asked the staff for  
16 more information so that by the time the two month period is  
17 up we would be ready to vote. I think it's -- as a courtesy  
18 to SAC.

19 VICE-CHAIR REYNOSO: Yes, I know we have had  
20 expressions of concern from -- from the SACs and I know we  
21 did receive this back in July, if I remember correctly, so  
22 we've had it for a little while, nevertheless --

23 COMMISSIONER REDENBAUGH: Yvonne, your point is well  
24 taken. I could and should have looked into this.

25 VICE-CHAIR REYNOSO: Nonetheless, I -- there is a

1 custom that we ought to be mindful of the SAC concerns --  
2 that sadly we've been reminded of several times by SACs in  
3 the last year or two, but nonetheless, it's been our custom  
4 to honor that request and I would so honor it, and I just  
5 point out that it's an exceptional report and I must say  
6 that if the content of the report is correct, it raises  
7 serious questions for us that we might want to look at in  
8 the future pertaining to the role of state governments in  
9 enforcing civil rights laws, particularly with the emphasis  
10 by Congress in placing more responsibilities on the states.  
11 So to me, this report raises those broader implications, and  
12 I can understand that a Commissioner would want to take a  
13 look at it a second time. So we'll put -- we'll put agenda  
14 item number five -- the Advisory Committee report on -- from  
15 the Utah Advisory Committee, "Employment Discrimination in  
16 Utah", on the agenda for the next -- for the next meeting.

17 CHAIRPERSON BERRY: Continue please, Vice-Chair.

18 VICE-CHAIR REYNOSO: Yes, we then come to agenda item  
19 VI --

20 CHAIRPERSON BERRY: And that's going to be the report  
21 --

22 VICE-CHAIR REYNOSO: And that's the Equal Education  
23 Opportunity Reports, so Madam Chair, if you'd like to --

24 CHAIRPERSON BERRY: Go ahead.

25 VICE-CHAIR REYNOSO: Oh, okay. We had a memo from the



1 Chair indicating that she was going to place these two  
2 reports back on the table for further consideration by us.  
3 It was not a -- as I interpreted it -- a motion for  
4 reconsideration on her part, but she was really utilizing  
5 the prerogative that the regs give her of putting the matter  
6 back -- matters on the agenda -- for our consideration.

7 I -- I'm not quite sure what approach we should  
8 take except that I would like to pick up on Commissioner  
9 Higginbotham's comments early on in making a brief comment  
10 myself, and see what the pleasure of the Commissioners is.  
11 The --

12 CHAIRPERSON BERRY: Could you recognize me, please?

13 VICE-CHAIR REYNOSO: Oh, Madam Chair.

14 CHAIRPERSON BERRY: There is a possibility under the -  
15 - we, the Commission abides by -- we have our own rules,  
16 historically, that we operate under, and on one occasion  
17 years ago, the Commission said that when in doubt, we would  
18 use Robert's Rules. Under Robert's Rules I'm told by the  
19 Parliamentarian who is somewhere around, that there's a  
20 motion -- renewal of motion it's called. A renewal of  
21 motion is proposing the same motion after it's been disposed  
22 of in some way without being adopted, which means that  
23 somebody could renew a motion at a later session if they  
24 wished to renew it. I just point that out in case anybody  
25 wants to renew a motion on the -- on these two reports.

1           VICE-CHAIR REYNOSO: I appreciate that but I did want  
2 to note that at least in terms of my interpretation, the  
3 Chair was just using the power that she has to put it on the  
4 agenda --

5           CHAIRPERSON BERRY: Right.

6           VICE-CHAIR REYNOSO: -- and then what we decide to do  
7 with it is something different. But picking up on Judge  
8 Higginbotham's comments early on, I'm going to say that --  
9 that it seems to me that we, as a Commission, whether or not  
10 we have time to explore all that now in terms of the time,  
11 because I know that we were advised earlier that the  
12 briefing is on for 11:30 -- it seems to me that with the --  
13 with the -- all of the effort that went into these reports,  
14 that we owe it to ourselves, to the public, and to the  
15 agencies that we've been involved with, to issue some sort  
16 of report.

17                   And I was thinking to myself that for example, in  
18 -- in the report having to do with the -- where we included  
19 the background of -- of the practices of schools to have  
20 different strata of student classifications, that there's so  
21 much there that maybe we could agree -- I could agree, for  
22 example, even to file a separate report where I had objected  
23 to the fact that there was enough history and so on, and  
24 maybe I can simply write a separate report. I just think --

25                   The Chair mentioned in an earlier discussion that

1 the rules -- that we have new realities and we have to deal  
2 with those realities. I think in terms of continuing to  
3 serve the public and to serve our purposes, in terms of this  
4 Commission, and then Judge Higginbotham mentioned the  
5 reality that we're not to be ashamed of the fact that one  
6 simply has disagreements. So it seems to me -- I'd like to  
7 have us explore whether there's a way of still issuing those  
8 reports and have those of us who object to certain aspects  
9 of it, simply have a concurring or dissenting or simply  
10 separate opinion that -- that we express and certainly I  
11 know that even though I've objected to certain portions of  
12 reports, I certainly would be willing to do that. So I just  
13 wanted to put that on the table for discussion for at least  
14 a few minutes and see how we come out. Commissioner  
15 Redenbaugh.

16 COMMISSIONER REDENBAUGH: I think there is some merit  
17 in what Judge Higginbotham said but I -- I'm not willing to  
18 discuss it in connection with the -- the issue of the two  
19 reports that are before us. I'm willing to discuss it at  
20 another time, or at this time but in the abstract. Because  
21 I think the -- from my point anyway -- my discussion would  
22 be clouded by how I feel about the instant case. And so I  
23 couldn't participate in what I would think would be a more  
24 reflective way.

25 CHAIRPERSON BERRY: I'll take the chair back.

1           VICE-CHAIR REYNOSO: Yes. I'd like to return this  
2 discussion to the Chair. She was the one that issued the  
3 original memo, and let's see if we can explore this --

4           CHAIRPERSON BERRY: Let me -- as I resume the Chair,  
5 let me ask first of all, if -- since the item is on the  
6 agenda -- if it is possible to get a motion from anyone to  
7 renew -- a motion to renew and to ask that these two reports  
8 be approved by -- well, let's take one at a time -- the  
9 Ability Grouping Report -- be approved by the Commission?  
10 Can I get a motion by somebody that they would ask that that  
11 be done?

12          VICE-CHAIR REYNOSO: So moved.

13          COMMISSIONER: Sure. Sure, I'll second it.

14          CHAIRPERSON BERRY: And can I get a second?

15          COMMISSIONER: Sure.

16          CHAIRPERSON BERRY: Which means that then, without  
17 objection, we can at least discuss it. That was the whole  
18 point -- yes.

19          COMMISSIONER ANDERSON: Commissioner Anderson.

20          CHAIRPERSON BERRY: Yes.

21          COMMISSIONER ANDERSON: I would have an objection, or  
22 at least I would have a parliamentary point of inquiry to  
23 have an explanation from the parliamentarian --

24          CHAIRPERSON BERRY: Okay.

25          COMMISSIONER ANDERSON: -- why this does not

1 constitute a motion to reconsider the previous vote?

2 CHAIRPERSON BERRY: Okay, alright. Marlissa, you want  
3 to respond to that?

4 PARLIAMENTARIAN BRIGGETT: Well, a motion to  
5 reconsider is actually an entirely separate issue and a  
6 renewal of motion is appropriate at a later session. Since  
7 the motion was originally discussed at the last hearing --  
8 at the last Commission meeting -- it would have been  
9 appropriate at that time to have a renewal -- I'm sorry -- a  
10 reconsideration. But at this meeting it is appropriate to  
11 have a renewal of motion, and they're just -- I guess the  
12 short answer is just that they are two separate procedures.

13 COMMISSIONER ANDERSON: Well then, could I ask further  
14 what the context is that provides for a motion -- a renewal  
15 of motion?

16 PARLIAMENTARIAN BRIGGETT: Well, I'll just read from  
17 Robert's Rules which states that "A renewal of a motion is  
18 proposing substantially the same motion after it has been  
19 disposed of in some way by rejection or otherwise, without  
20 being adopted." Does that answer your question?

21 CHAIRPERSON BERRY: Let me make sure Commissioner  
22 Anderson is finished.

23 COMMISSIONER ANDERSON: Well, the --

24 CHAIRPERSON BERRY: Because he's not --

25 COMMISSIONER ANDERSON: Any comment that I have is

1 that the motion to adopt the report was defeated. Now we  
2 are moving to renew the motion to adopt the report? Is that  
3 your --

4 PARLIAMENTARIAN BRIGGETT: That's correct, or it might  
5 be a renewal of a motion to discuss the report. That's  
6 another way to look at it.

7 CHAIRPERSON BERRY: The motion is to renew a motion to  
8 adopt the report having been defeated at a previous meeting.  
9 A motion to reconsider, as I understand from Parliamen-  
10 tarian, is something that would have been taken up in that  
11 other meeting. Is that right?

12 PARLIAMENTARIAN BRIGGETT: That's correct.

13 CHAIRPERSON BERRY: But that the rules that she read  
14 permit somebody at a later time, after time has passed, to  
15 come back and ask that the same motion be passed --  
16 presented again, after some time has been passed to see  
17 whether -- I don't know why Robert's Rules permits that, but  
18 I guess it permits it because after some time has passed,  
19 people may wish to introduce the same motion, having thought  
20 about it, to see whether it gets a vote or not. I don't  
21 know. That seems to me to be logical.

22 PARLIAMENTARIAN BRIGGETT: It doesn't actually say in  
23 Robert's Rules why they have this, but --

24 CHAIRPERSON BERRY: That's why it doesn't.

25 COMMISSIONER ANDERSON: Well, as I understand what

1 you've just read, a similar motion to renew -- to renew a  
2 similar motion, but not the same motion.

3 PARLIAMENTARIAN BRIGGETT: Substantially the same  
4 motion.

5 COMMISSIONER ANDERSON: Substantially the same motion,  
6 which is a different -- similar but not the same. Which, to  
7 my way of thinking, would be an amended motion, but this is  
8 the same motion to reconsider the report that's the  
9 identical --

10 CHAIRPERSON BERRY: No, it's not. No it's not.

11 PARLIAMENTARIAN BRIGGETT: As I see it, this is a  
12 motion to -- to renew the motion after it's already been  
13 voted on, so it -- actually it's a separate motion, because  
14 there's the history of it having been discussed previously.

15 COMMISSIONER ANDERSON: Let me ask a similar question,  
16 then. Do you have an explanation as to why a motion to  
17 reconsider at this meeting is out of order in terms of  
18 Robert's Rules of Order? But an identical action under a  
19 different name is appropriate at this meeting?

20 PARLIAMENTARIAN BRIGGETT: Well, it -- I'll point out  
21 that the renewal of motion is for a motion that's  
22 substantially the same.

23 COMMISSIONER ANDERSON: But you --

24 PARLIAMENTARIAN BRIGGETT: And then the motion to  
25 reconsider -- Robert's Rules just states that that is

1 appropriate in a session that has already considered the  
2 same motion.

3 COMMISSIONER ANDERSON: Different motion --

4 CHAIRPERSON BERRY: Different session.

5 PARLIAMENTARIAN BRIGGETT: This is a different session  
6 so it's a different -- it's a different motion, right.

7 | CHAIRPERSON BERRY: Carl, if it would make you -- if  
8 it would please you more, I am willing to -- even though I  
9 am persuaded that the Parliamentarian's reading is correct,  
10 I am persuaded -- I mean I would be willing, since we still  
11 have four people thinking one thing and four the other, if  
12 no one's changed their minds, if you want to say that you  
13 pose this objection and that if you prefer it, we could have  
14 a motion to waive any rules that might prevent our  
15 considering this. Have that seconded and then those who  
16 don't want to consider it can just vote against the waiver  
17 and then we'll move on. But if that -- if you would accept  
18 that, if people are still in the position that -- because I  
19 think raising technical objections when the Parliamentarian  
20 has told us that it is appropriate to renew it -- if people  
21 just don't want to discuss it, just say I don't want to  
22 discuss it and we can move on.

23 I propose that we do discuss it, put it on the  
24 agenda, because I think it's important, and I think it's  
25 important to staff and their work, and I think it's



1 important in terms of the resources that have been committed  
2 to it, and I want the record to be clear, after the fact,  
3 when I am criticized for the Commission not passing reports  
4 when all this money is spent on them, that I have done  
5 everything that I can do to get the Commission to discuss  
6 this report, to try to reach compromise on this report, to  
7 reach agreement on this report, and if the Commission  
8 doesn't, then I've done all I can. That's just the way I  
9 see it. So I'm willing to do whatever you want to do,  
10 despite the Parliamentarian's ruling.

11 COMMISSIONER ANDERSON: Well, Madam Chairman --

12 CHAIRPERSON BERRY: Yes.

13 COMMISSIONER ANDERSON: The Parliamentarian has made  
14 her ruling, so the Parliamentarian has made her ruling. As  
15 far as I can tell, the ruling is, in effect to permit the  
16 motion to reconsider the action that the Commission took  
17 last meeting. Now, I believe that this is simply more than  
18 just a technical issue because it goes to the finality of  
19 Commission action regarding reports.

20 And as I said in my memorandum of August 26th, as  
21 Robert's Rules of Order says in discussing motions to  
22 reconsider, not only must the motion be made at the same  
23 meeting in which the original motion was made, it must be  
24 made by someone who voted on the prevailing side. So that  
25 the losing side of the issue doesn't have the opportunity to

1 come back in subsequent meetings and try to get the decision  
2 overturned or changed. And I believe that that is more than  
3 just a technical concern. I believe that that goes right to  
4 the heart of the process that this Commission holds, and I  
5 think it's a very established rule, so -- if you like, we  
6 can call this a motion to renew a motion, but in my opinion  
7 it has the effect of a motion to reconsider and there are  
8 very established procedures governing a motion to  
9 reconsider. So, I'm happy to vote on it. I'm happy to  
10 accept the ruling of the Parliamentarian, but I think it is  
11 a wrong ruling of the Parliamentarian. Parliamentarian has  
12 ruled, let's go ahead and vote on the motion to renew the  
13 motion.

14 CHAIRPERSON BERRY: I am going to recognized the Vice-  
15 Chair, but I am just going to say that the logic of the  
16 motion to renew, I would think, would be otherwise a body  
17 could never, even five years from now, have anybody  
18 introduce a motion to do something that was rejected five  
19 years ago, on the grounds that that's a motion to  
20 reconsider. Whereas in five years, the body may have  
21 changed its mind and may be different people, all sorts of  
22 things can happen, and so I would think that a motion to  
23 renew is designed so that if in the fullness of time a body  
24 wants to do something that it failed to do before, unlike a  
25 motion to reconsider which must be done in the same meeting,

1 that the body has to do -- has an opportunity to do that.  
2 Otherwise, you could never pass anything that was once  
3 considered by a body and rejected -- which logically just  
4 doesn't, in my view, make any sense. But anyway -- Vice-  
5 Chair?

6 VICE-CHAIR REYNOSO: Well, Madam Chair, in the August  
7 26th memo by Commissioner Anderson, he indicated, among  
8 other things, suggesting that under certain circumstances he  
9 could vote in favor of one of the reports, and we are  
10 dealing, at least in my experience and what I know of the  
11 Commission, with a relatively unique experience of a  
12 Commission rejecting reports on which the staff has long  
13 worked, reports that involve other agencies of the  
14 government, and then simply rejecting it.

15 CHAIRPERSON BERRY: With no discussion.

16 VICE-CHAIR REYNOSO: So far as I know, that's the --  
17 that's the first time that's ever happened. So the  
18 suggestion that somehow we have a long established policy of  
19 how to deal with these matters is manifestly incorrect. It  
20 seems to me that as we have new experiences, we have to  
21 explore different ways of meeting our obligation to the  
22 American people, and I don't want to sound overly dramatic,  
23 but I think it's a complete failure on our part to meet that  
24 obligation, to simply reject these reports without exploring  
25 further if there's some way that we can place our opinions

1 before those agencies and the American public.

2 So I think we have a duty to explore whether  
3 that's possible in light of the fact that the votes came out  
4 as they did. I guess I'm overly naive because I had not  
5 anticipated it myself, that the votes would come out the way  
6 they did, and so I was rather taken aback that we would  
7 reject all of the work that had been done and the  
8 expenditure of resources, when we may have the opportunity  
9 as Judge Higginbotham indicated earlier, of going on and  
10 expressing our opinions and the basis for that opinion to  
11 the American people, and provide at least that thinking to  
12 advance the public debate on these issues.

13 So I just frankly think we're failing in our --  
14 in our duty, and I think we have a duty to explore whether  
15 or not we can reach some sort of agreement whereby these  
16 reports can be published with separate opinions by any and  
17 all of us, indicating our qualms or concerns about it.

18 CHAIRPERSON BERRY: Commissioner Redenbaugh.

19 COMMISSIONER REDENBAUGH: I have a real problem with  
20 this, and I don't think it's on procedural or technical  
21 grounds. Didn't we vote on Ability Grouping twice?

22 CHAIRPERSON BERRY: I don't know.

23 COMMISSIONER REDENBAUGH: No?

24 COMMISSIONER LEE: No, the first time we just --

25 COMMISSIONER REDENBAUGH: My recollection is that we

1 voted twice -- four-four each time. Am I mistaken?

2 CHAIRPERSON BERRY: I don't think so. I think we  
3 voted on it once after the special assistant --

4 COMMISSIONER REDENBAUGH: Because I was in favor of  
5 the report and voted for it -- or expressed my support for  
6 it as originally written, with each word as written by the  
7 staff.

8 VICE-CHAIR REYNOSO: My recollection is that we had a  
9 full discussion at which time it was clear that there were  
10 four votes for and four against --

11 CHAIRPERSON BERRY: And we sent it back.

12 VICE-CHAIR REYNOSO: -- but we didn't vote at that  
13 time, rather we sent it back for reconsideration.

14 COMMISSIONER REDENBAUGH: Okay --

15 VICE-CHAIR REYNOSO: After an expression of by opinion  
16 by the staff that they could -- in fact they felt rewrite  
17 the report in conformity with all of the different opinions  
18 expressed.

19 COMMISSIONER REDENBAUGH: Right.

20 VICE-CHAIR REYNOSO: I thought they had done that.  
21 Obviously they failed. What I'm saying is, that I think  
22 that even if the report goes out exactly as it was written  
23 before, word by word, I think that would be of some benefit  
24 to the American public, and I would write a separate opinion  
25 report, perhaps -- perhaps adopting their language on

1 history and adding more to it, because I think it was a  
2 faulty report insofar as I was concerned, but I think it's a  
3 benefit to the American people to publish it, and I'll write  
4 my own report saying how I think it's faulty but I think  
5 it's absolutely wrong for us, frankly, to reject the report  
6 and not place it before the -- before the agencies involved  
7 and the American people. That's the way I feel.

8 COMMISSIONER REDENBAUGH: Well, but pursuing that then  
9 for a minute, though Cruz, then we need not vote on reports.

10 VICE-CHAIR REYNOSO: Our practice has been as I --

11 CHAIRPERSON BERRY: The purpose of voting is to see if  
12 in fact you could get a majority or unanimity, that would be  
13 great.

14 COMMISSIONER REDENBAUGH: No, but if we agreed to  
15 publish them without regard to what the vote is, why vote?

16 CHAIRPERSON BERRY: So that we can see if they gain  
17 the -- we haven't agreed to do that. That's --

18 COMMISSIONER REDENBAUGH: No, but I'm just pursuing  
19 that's on the table --

20 CHAIRPERSON BERRY: Oh, I see.

21 COMMISSIONER REDENBAUGH: But I like this report the  
22 way it was written and expressed my support for it. I feel  
23 that -- I'm probably more sensitive about this issue than I  
24 ought to be or than other Commissioners are because there  
25 was a time when I was not allowed to vote on a report that I

1 had a strong feeling about, and I didn't make a motion to  
2 renew or reconsider, and perhaps should have. I didn't know  
3 enough to do that. But I thought we had a -- a fair shot at  
4 this -- this report had its time before us and I -- I'm  
5 troubled by the idea that reports can be brought back again  
6 and again until they get support.

7 CHAIRPERSON BERRY: They don't have to get support,  
8 ever. And I suppose not just a report but any motion about  
9 anything you could have a motion to renew, isn't that right,  
10 Parliamentarian? It's not just reports. This just happens  
11 to be a report.

12 PARLIAMENTARIAN BRIGGETT: That's correct.

13 CHAIRPERSON BERRY: So that any motion that failed at  
14 a given meeting after time has passed, whatever it's about,  
15 if somebody wants to renew it, as I understand the ruling,  
16 it can be renewed, and people can vote for it or agin' it.  
17 What I am looking for and we're not doing it, is for us to  
18 actually discuss the report which is why I had set aside and  
19 hoped we would spend the day on this -- or this afternoon,  
20 so that the staff could hear what it is we think is wrong  
21 with their report. We haven't told them yet what we think  
22 is wrong with it. There was only one comment made at the  
23 last meeting which was after the report was rejected, and so  
24 I just think that in fairness that we ought to do that. But  
25 that's just my opinion, and we had --

1 COMMISSIONER ANDERSON: Madam Chair?

2 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

3 COMMISSIONER ANDERSON: I must say that your comments  
4 are precisely what leads me to take the position I'm taking  
5 now, and that is that there must be finality to Commission  
6 action. We cannot have an interpretation, in my view, of a  
7 motion to renew, that suddenly makes every single action of  
8 the Commission subject to reconsideration at a further time  
9 when one Commissioner may be gone or two Commissioners may  
10 be gone. We must have finality, and it's particularly  
11 beholden in terms of Commission action regarding reports.

12 So, I now condemn what the Parliamentarian said  
13 about motion to renew a motion, and if that were the case,  
14 every single piece of legislation voted by the Congress, for  
15 example, would be open to reconsideration the minute four or  
16 five senators or congressmen in the prevailing side were on  
17 vacation or sick or something like that. There must be  
18 finality to our actions. And while I can understand that it  
19 may not be fair in terms of one particular report because we  
20 don't like the outcome there, the fact of the matter is we  
21 cannot run a Commission with any semblance of credibility if  
22 we embark on a procedure which we just keep voting and  
23 voting and voting on reports until we get the report  
24 adopted.

25 CHAIRPERSON BERRY: Well, Parliamentarian -- yes.



1           PARLIAMENTARIAN BRIGGETT: I just wanted to point out  
2 for Commissioner Anderson's benefit that the renewal of  
3 motion in Robert's Rules -- it does talk about the  
4 circumstances that it must be substantially the same motion,  
5 not the identical motion, and it specifically does say that  
6 a slightly different wording or even a difference in the  
7 time or circumstances may justify allowing a certain motion  
8 to come before the assembly.

9           COMMISSIONER ANDERSON: Well, if I may just ask the  
10 Parliamentarian, how is this a different motion? This is a  
11 motion to bring up to vote again on this report. It's the  
12 same motion. It's a motion to reconsider from what I can  
13 tell.

14          PARLIAMENTARIAN BRIGGETT: Well, there's a difference  
15 in time, and maybe in circumstances.

16          COMMISSIONER ANDERSON: Well, yes, but the -- the  
17 criteria as I hear you say it -- I'm sorry I don't have a  
18 copy with me of Robert's Rules of Order, but the criteria  
19 then must be substantially similar, which means not  
20 identical, and there must be other differences in terms of  
21 circumstances and time. But I think the essential criteria  
22 is that the text of the motion cannot be the same.

23          CHAIRPERSON BERRY: Well, in order to avoid any  
24 dispute about the text of the motion, I ask that the person  
25 who introduced the motion and the seconder can either

1 restate the motion, or they can withdraw it and put it in  
2 language that has different words in it -- if you're  
3 concerned about whether the words are the same as the other  
4 words. I guess I just think that -- I mean, I don't know  
5 about -- I haven't studied Robert's Rules of Order, and I  
6 don't want to spend any more time on it, but what I really  
7 wanted was for us to discuss the reports. I can see we're  
8 not going to do that, so if we're not going to do that,  
9 there's no sense in me trying to get the Commission to do  
10 something it doesn't want to do. And I'm sorry, staff, I  
11 apologize to you for the Commission's refusal to discuss  
12 what they think is wrong with what you did. I think it  
13 makes it even more urgent that we decide ahead of time on  
14 these other reports before the work has gone into them,  
15 whether or not we're just going to end up at loggerheads  
16 with -- sitting here.

17           So that I would ask for -- just for a reading of  
18 the table without a vote. How many of you feel that you  
19 wish to discuss these two reports again? Well, I -- let me  
20 put it -- you feel you do, you feel you do. Three. How  
21 many of you feel you don't want to discuss these reports  
22 again? Just how you feel. How do you feel Commissioner  
23 Anderson?

24           COMMISSIONER ANDERSON: Whatever I feel, I believe it  
25 is important that procedures here be maintained, and so I

1 would not discuss the report.

2 CHAIRPERSON BERRY: Okay, then why don't I ask the  
3 people who made the motions to withdraw the motion and at a  
4 later time when we don't have a briefing we can discuss  
5 motions and procedures and all that, Commissioner Anderson,  
6 to resolve this dispute we're having about what this means  
7 even though we have the ruling of the Parliamentarian. And  
8 we'll just move on. Okay? Anybody object to that.

9 VICE-CHAIR REYNOSO: Madam Chair.

10 CHAIRPERSON BERRY: Yes, Vice-Chair.

11 VICE-CHAIR REYNOSO: May the record indicate the  
12 Commissioners have indicated they had no -- they did not  
13 desire to discuss these reports again, and those that  
14 indicated they did desire, and upon the record so showing,  
15 I'll withdraw my motion. I just think the record needs to  
16 be clear.

17 COMMISSIONER REDENBAUGH: Then you should call for a  
18 vote, Madam Chair.

19 CHAIRPERSON BERRY: No.

20 COMMISSIONER ANDERSON: Where are we now?

21 CHAIRPERSON BERRY: I think that --- Commissioner  
22 Anderson said that he -- he said orally -- I mean he  
23 articulated because he's on the phone and he couldn't raise  
24 his hand, that he, for the reasons he gave, which are in the  
25 record, didn't want to discuss them. Commissioner

1 Redenbaugh and Horner and George for the reasons -- whatever  
2 reasons indicated, and I was just asking for a feeling, that  
3 they weren't interested in discussing the reports. And so I  
4 ask you, on that basis in good faith, to redraw your motion.

5 VICE-CHAIR REYNOSO: I so withdraw my motion.

6 CHAIRPERSON BERRY: And you said you'd withdraw, so  
7 we'll proceed. Now, the last thing we need to do before we  
8 start the briefing, and we apologize for being a bit late  
9 with it, is to consider the responses to the Commissioners'  
10 comments on Illinois, Indiana and Michigan. You have been  
11 given responses prepared by the folks on those SACs to our  
12 sending the reports back to them and asking them whether  
13 they would in fact look at them again, and they have made  
14 detailed responses and have asked us to accept their  
15 reports. Keeping in mind that what we do is accept their  
16 reports, could I have a motion for purposes of discussion,  
17 that we accept the reports of these -- these SACs -- which  
18 is what they've asked us to do?

19 VICE-CHAIR REYNOSO: So moved.

20 COMMISSIONER LEE: Seconded.

21 CHAIRPERSON BERRY: Okay. Discussion. You don't know  
22 what I'm -- is there a problem?

23 COMMISSIONER HORNER: I just have a question, Madam  
24 Chair. Since we did not vote to accept these reports,  
25 aren't we in the same situation on these reports? No we're

1 not. Carol Hurley is shaking her head.

2 CHAIRPERSON BERRY: No.

3 COMMISSIONER HORNER: There was no vote?

4 CHAIRPERSON BERRY: No.

5 COMMISSIONER HORNER: Oh, I see, they were just held  
6 over.

7 CHAIRPERSON BERRY: We asked the SACs to look at them  
8 again and to respond to some questions we had about them.  
9 Which they have done. And I've had a motion to accept the  
10 reports seconded. I'm asking now for discussion.

11 VICE-CHAIR REYNOSO: Madam Chair, I had raised the --  
12 the issue earlier that I -- that I wasn't willing to assume  
13 that the SACs had not taken steps to inviting wide variety  
14 of folk to express their opinions, write papers and so on,  
15 and I just want to note that each of the responses that we  
16 got persuaded me that those efforts had in fact taken place,  
17 so I was persuaded by -- by the responses, that they had  
18 indeed done the job that they're supposed to do under the  
19 guidance that we have given them.

20 CHAIRPERSON BERRY: Any other discussion? Yes,  
21 Commissioner Horner.

22 COMMISSIONER HORNER: I'll defer to Commissioner  
23 George.

24 CHAIRPERSON BERRY: Commissioner George.

25 COMMISSIONER GEORGE: I remain unpersuaded. I've read

1 these letters. They're lengthy. The Chairman says they are  
2 detailed. I don't find new information in them that causes  
3 me at all to reconsider the problem I had with the balance  
4 of the considerations that -- on the basis of which  
5 recommendations were made in these reports. It seems to me  
6 that nothing in the letters deflects me from the view that  
7 Ohio and Wisconsin did manage to achieve what the states  
8 whose chairmen are complaining here about our actions did  
9 not achieve.

10 Frankly, it reminds me a little bit about what my  
11 friend (inaudible) tells me about growing up as a red diaper  
12 baby when the subject turned to the Rosenbergs. He said in  
13 his community it was said that the Rosenbergs weren't spies,  
14 and it's a good thing they were. I take from these letters  
15 essentially the idea that we did have balance, and it's not  
16 our fault that we didn't. We do not have, to my mind,  
17 sufficient basis to conclude that balanced viewpoints were  
18 presented to support the recommendations and findings here.  
19 I'm not ascribing fault or culpability. I didn't at the  
20 last meeting either. I specifically said it was not  
21 necessarily a matter of culpability. But we can only  
22 fulfill our responsibility to the extent that we can satisfy  
23 ourselves that there was balance in the viewpoints under  
24 consideration before the action was taken.

25 CHAIRPERSON BERRY: Further comment from any

1 Commissioner? Okay, Commissioner Lee.

2 COMMISSIONER LEE: I think we have to understand our  
3 interpretation of balance and the State Advisory Committee's  
4 efforts to achieve balance. I remain certain that they did  
5 the best; they did achieve balance. It's just that we  
6 cannot apply our view of what should be a balanced report to  
7 these SACs. I think, we don't live in Illinois. We don't  
8 know what goes on in Indiana. And we trust the SACs to give  
9 us their assessments and I think they did a very good job,  
10 and time and time again we may not agree with what they  
11 said, but we should just base our decision on whether they  
12 had done everything according to the rules and regulations  
13 and apply it to all the hearings and reports they've done.  
14 And I am convinced they've done that.

15 Now, in the area of balanced views on affirmative  
16 action, you know, we may have some one who has one view that  
17 is so far out to the left or the right -- does that mean  
18 that that has to be included in these reports in order to  
19 have a completely balanced report? If we're going to keep  
20 going at it, I don't think we're going to have many more  
21 trust from the SACs because I don't see how they can do  
22 that. And I think that they've reached to every possible  
23 group and they had said, you know, that this is what they've  
24 done and I just really hope that when we talked about having  
25 a balanced report -- balanced approach -- we try to

1 understand that this is a SAC report and it's not a  
2 Commission report and go with that.

3 CHAIRPERSON BERRY: Further comments from any  
4 Commissioner? Yes, Commissioner Redenbaugh.

5 COMMISSIONER REDENBAUGH: I think what's being debated  
6 here is the requirement that we have imposed on ourself that  
7 reports that we accept be balanced. We can discuss that,  
8 but the requirement as I understand it is not that SAC  
9 strive for balance but that they achieve it. I think that  
10 it may not be possible, or it would be at least extremely  
11 difficult to get a balanced report on certain topics,  
12 including this one. And I can understand why elected  
13 politicians would -- would be reluctant to participate in  
14 it. My view is that balance has not been achieved in these  
15 three reports and that we still do have that requirement.

16 CHAIRPERSON BERRY: Okay, are you ready for the  
17 question? All in favor of accepting the SAC --

18 COMMISSIONER HORNER: Madam Chair?

19 CHAIRPERSON BERRY: Yes.

20 COMMISSIONER HORNER: Commissioner George has had to  
21 step out very briefly. Could we defer just a minute and a  
22 half, two minutes -- defer the vote so that he can vote on  
23 this.

24 CHAIRPERSON BERRY: We can do that because I'm  
25 assuming he's going to vote against it and it will be four-



1 four again, so we can wait until he comes back. While we're  
2 waiting for him to come back, can we, in the interest of  
3 time, see if anyone has any problems with the State Advisory  
4 Committee appointments for Illinois and Wisconsin which are  
5 the next item, and last, really last item before the  
6 briefing?

7 COMMISSIONER LEE: After this I don't know why people  
8 want to sit on those SACs.

9 COMMISSIONER HORNER: Is it in order to move their  
10 adoption while we have the other motion pending or do we  
11 need to --

12 CHAIRPERSON BERRY: Why don't we withdraw the other  
13 motion and then we'll renew it -- no, not renew it -- we  
14 will -- no we can't because once you make a motion you can  
15 never make it again. No.

16 VICE-CHAIR REYNOSO: No, but once you've withdrawn it,  
17 it's not made.

18 CHAIRPERSON BERRY: Alright, so we'll withdraw it so  
19 that we can vote and then we can go back. So could somebody  
20 move the adoption of the SAC appointments?

21 COMMISSIONER HORNER: So moved.

22 CHAIRPERSON BERRY: Can I get a second?

23 VICE-CHAIR REYNOSO: Seconded.

24 CHAIRPERSON BERRY: All those in favor indicate by  
25 saying aye.

1 COMMISSIONERS: Aye.

2 CHAIRPERSON BERRY: Okay, now we will just hang on a  
3 minute for Robbie to -- yes?

4 VICE-CHAIR REYNOSO: Madam Chair, I just want to  
5 indicate on the record -- manifesting there's disagreement  
6 with what I'm about to say -- but I really believe that we  
7 as a Commissioner are failing in our function as a  
8 Commissioner that deals with Civil Rights matters to reject  
9 reports that are submitted to us by the SACs. I think  
10 they're statutorily independent groups and they're there to  
11 give us their best advice, make their reports, and I just  
12 think that the way we have -- we have collectively been  
13 treating the SACs is a disgrace to the SACs and to this  
14 Commission.

15 COMMISSIONER LEE: And I would like to concur.

16 CHAIRPERSON BERRY: Commissioner Lee is correct, you  
17 wonder why anybody -- well, some of them aren't willing --  
18 that's what they tell me when I go out, but there's nothing  
19 that we can do about it, so we'll just leave it at that. I  
20 -- we're waiting for Commissioner George to come back.

21 Why don't we get up the -- the panelists -- oh,  
22 maybe he's coming. Okay, could we have the motion  
23 introduced again to accept the SAC reports on the item --  
24 from Illinois, Indiana and Michigan?

25 VICE-CHAIR REYNOSO: I so move.

1 CHAIRPERSON BERRY: And could I have a second again?  
2 Somebody seconded it. Can I get anybody to second it?  
3 Nobody wants to second it.

4 VICE-CHAIR REYNOSO: Commissioner Lee seconded it.

5 COMMISSIONER LEE: I'll second that.

6 CHAIRPERSON BERRY: Oh, she was asleep. Okay, ready  
7 for the question. All those in favor of accepting the SAC  
8 reports from Illinois, Indiana and Michigan indicate by  
9 saying aye.

10 COMMISSIONERS: Aye.

11 CHAIRPERSON BERRY: Opposed?

12 COMMISSIONERS: No.

13 CHAIRPERSON BERRY: Okay, so it's four-four again, and  
14 I want to publicly apologize to the SACs myself.

15 VICE-CHAIR REYNOSO: May we have a roll call here,  
16 Your Honor?

17 CHAIRPERSON BERRY: Yes. Anybody got the sheet?

18 VICE-CHAIR REYNOSO: Your Honor -- Madam Chair.  
19 Sorry.

20 CHAIRPERSON BERRY: Commissioner Anderson.

21 COMMISSIONER ANDERSON: No.

22 CHAIRPERSON BERRY: Berry, yes. George?

23 COMMISSIONER GEORGE: No.

24 CHAIRPERSON BERRY: Higginbotham?

25 COMMISSIONER HIGGINBOTHAM: Yes.

1 CHAIRPERSON BERRY: Horner.

2 COMMISSIONER HORNER: No.

3 CHAIRPERSON BERRY: Lee.

4 COMMISSIONER LEE: Yes.

5 CHAIRPERSON BERRY: Redenbaugh.

6 COMMISSIONER REDENBAUGH: No.

7 CHAIRPERSON BERRY: Reynoso.

8 VICE-CHAIR REYNOSO: Yes.

9 CHAIRPERSON BERRY: It's four-four. Okay. Let us now  
10 go to the panelists and I want to apologize to you for  
11 making you wait while we finish our business. Oh, were there  
12 any future items?

13 I want to welcome you to this briefing on Civil  
14 Rights Implications of Regulatory Obstacles Faced by  
15 Minority Entrepreneurs. The issue here is regulation and  
16 its impact on entrepreneurs and its relationship to issues  
17 of discrimination in the United States. And so we are very  
18 pleased to hear from business people who have had first hand  
19 dealings with government regs, and researchers and  
20 organization representatives who can provide broad  
21 information and perspectives. I want to thank the panelists  
22 for coming and to again apologize to you for your having to  
23 wait.

24 Although briefings are not so systematic as our  
25 hearings and studies, they do serve to alert the

1 Commissioners and the public about enforceable Civil Rights  
2 situations. The transcript of this briefing will be made  
3 available publicly, and information about it will lead --  
4 may lead to full investigation by the Commission.

5 I first want to call on Gerald A. Reynolds who is  
6 President of the Center for New Black Leadership and I have  
7 a bio somewhere -- anybody know where it is? Oh, here it  
8 is. Mr. Reynolds -- the Center for New Black Leadership is  
9 a non-partisan organization dedicated to reviving and  
10 encouraging traditional solutions to the social and economic  
11 problems confronting the black community. He serves on the  
12 National Advisory Board for the Project 21, a program of the  
13 National Center for Public Policy Research, and before  
14 joining the Center he was a legal analyst for the Center for  
15 Economic Opportunity. Mr. Reynolds was also an attorney  
16 with a Connecticut-based law firm.

17 Let me just introduce all of the panelists and  
18 then I'll start in order. Let me just do that first. The  
19 second one is Taalib-Din Abdul Uqdah, who is co-owner and  
20 CEO of Cornrows and Company, which has a hair -- which is a  
21 hair care salon, specializing in braiding and chemical-free  
22 styling, a manufacturing and mail order business in  
23 cosmetics and skin care products and a publishing branch for  
24 books relating to the subject. He is also founder and  
25 executive director of the American Hair Braiders and Natural

1 Hair Care Association. He has worked to change laws,  
2 regulations, policies and standards affecting hair salons  
3 and styling. His experience as an entrepreneur goes back to  
4 the 1970s when he design, constructed and operated a 24-hour  
5 open air food market in Southeast Washington.

6 And the next one is Marina Morales Laverdy, who  
7 is the Executive Director of the Latin American Management  
8 Association, LAMA, a non-profit national trade association  
9 that promotes government contracting opportunities for  
10 Hispanic and other minority-owned small business. Before  
11 joining LAMA she was director of UCLA's alumni advocacy  
12 programs. She's also worked on the staff of US  
13 Representative Esteban Torres of California and was Deputy  
14 Director of the Congressional Hispanic Caucus Institute.

15 Mr. Craig Thompson is General Counsel for the  
16 Council for Economic and Business Opportunity, CEBO, a  
17 business development firm located in Baltimore, where his  
18 responsibilities include overseeing CEBO's legal operations,  
19 counseling clients and brokering mergers. Mr. Thompson has  
20 written and spoken extensively on minority business  
21 development issues. He earlier was an associate counsel  
22 with the Minority Business Legal Defense Fund. He is  
23 currently a member of Baltimore City's Minority and Women  
24 Business Enterprise Advisory Committee which advises the  
25 Mayor and council on issues affecting business enterprise.

1           Nicole Garnett -- oh, let's see -- oh, that's the  
2 next panel. Okay. Let us start first with Mr. Reynolds.  
3 Please proceed and make an opening statement and we'll have  
4 questions.

5           MR. REYNOLDS: Okay, I'd like to start off by thanking  
6 the Commission for providing us an opportunity to share some  
7 of my thoughts on these issues, and I'd also like to give  
8 the Commission a brief description of the Center's work.  
9 The Center was created in 1995, primarily because we  
10 perceived a vacuum of leadership in the black community.  
11 Traditional civil rights organizations seemed to be obsessed  
12 with the maintenance of racial preference policies while  
13 ignoring problems in the black community that are having a -  
14 - a devastating effect on the community. Problems such as  
15 crime, teenage pregnancy and economic development.

16           Now we feel that we should take a three legged  
17 stool approach to problem-solving. We need to enforce the  
18 anti-discrimination laws, while at the same time we need to  
19 promote economic development and spiritual renewal in the  
20 black community.

21           Now with respect to economic development, black  
22 entrepreneurs face many of the same regulatory barriers that  
23 large corporations face, however there is a significant  
24 difference. GM can afford economic inefficiencies whereas a  
25 young black man starting up a business in the inner city may

1 not be able to afford these inefficiencies.

2 Now we have a series of laws and attended  
3 regulations that have a -- that have varying degrees of  
4 utility. They're helpful, many of these statutes, but we  
5 must be mindful of the fact that these statutes and  
6 regulations involve tradeoffs. When we enact a minimum wage  
7 statute, we are going to ensure a basic level of -- of a  
8 wage for those folks who are looking up to get a job. But I  
9 think that it's also clear that we are going to ensure that  
10 those who lack skills will not get jobs. These folks who  
11 lack skills are -- a disproportionate number of them are  
12 minorities.

13 So I guess I'm here to ask the Commissioners to  
14 be mindful of the unintended consequences of some of the  
15 regulations that we have on the books. We can start off  
16 with the Davis-Bacon Act. We can go from there and we can  
17 look at minimum wage statutes. From there we can look at  
18 OSHA. And we can also look at the Civil Rights Act, Title  
19 VII. Again, all of these statutes had -- have worthy goals  
20 in mind, but they also have unintended consequences and we  
21 need to look at those consequences and we need to look at  
22 how they're impacting Americans across the country, but  
23 especially how these regulations are affecting entrepreneurs  
24 in the inner city.

25 Now, we all -- we all talk a good game with



1 respect to economic development. We've been trying to  
2 revitalize the inner city for well over 30 years. I don't  
3 think the government is capable of -- of revitalizing the  
4 inner city. It's up to individuals, and I think that the  
5 government needs to get out of the way in some cases. The  
6 government needs to examine its policies and act like a  
7 business. Those policies that are doing good, fine,  
8 maintain them. But those policies that are having a  
9 negative impact on the -- on the business community -- we  
10 need to examine them and in some cases we need to maintain  
11 them, because again, it involves -- these regulations -  
12 involve tradeoffs, and sometimes you can make an argument  
13 that -- that the economic inefficiencies that are generated  
14 by these regulations are worth it. But there are many -  
15 instances where that is not the case.

16 I was born and raised in New York City and when I  
17 go home now, I look and ride the train there into Jamaica  
18 and see these van drivers there -- these outlaws, these  
19 young black men who have the -- who have had to break the  
20 law in order to earn a living. They've had to break the law  
21 because we've had -- at least New York City has regulations  
22 that has criminalized driving a van -- a delivery service.  
23 The same is true in Houston.

24 Due to the work of numerous organizations, cities  
25 are starting to reexamine these policies, but it's an uphill

1 struggle. We need not hamper economic development in the  
2 inner city. I don't think anyone would stand up and say  
3 it's a good idea to -- to make young black men and women  
4 work harder to get their businesses off the ground.

5 We can look here in Washington, D.C. and across  
6 the country and look at the regulations that require folks  
7 to get a license in order to braid hair. Most Americans  
8 don't understand that. In many instances, there is no down  
9 side. Someone braids your hair. If you don't like it, you  
10 don't pay them, you go home and you take it out. No harm,  
11 no file. But we have regulations on the books that forces  
12 entrepreneurs to expend a significant sum of money in order  
13 to get a license to braid hair.

14 There are many statutes out there that need to be  
15 reexamined, and in some cases, modified. Again, the Civil  
16 Rights revolution, the first leg of it, is over. We have  
17 folks who are running for office. We have folks who can  
18 register to vote.. But we have to examine other -- the other  
19 two legs of the revolution, which are economic development  
20 and also social and spiritual renewal in the black  
21 community.

22 CHAIRPERSON BERRY: Thank you very much. Mr. Uqdah.

23 MR. UQDAH: I too would like to thank this Commission  
24 for holding this hearing, or at least this panel. I bring  
25 to you first hand knowledge on this issue, where its

1 problems are, its history as well as a solution. I have  
2 been self-employed for 23 years. Three years out of high  
3 school. I have been self-employed in the same business for  
4 18 years. We are an African-style braiding salon. I note  
5 the African-ness of it, to dispel any rumors in relationship  
6 to what you may understand personally about what a braid is.  
7 That is more commonly used terms as a French braid or a  
8 basket weave. These are not the types of braids that we do.

9 This is a traditional African art form that can  
10 easily trace its history back over 5000 years. It is the  
11 only thing that African Americans can point to and honestly  
12 say has survived the middle passage. There are women in  
13 this country who have kept that tradition alive. It has  
14 been passed down from generation to generation.

15 For at least ten of the 18 years that I've been  
16 in business, I had to fight the District government, and  
17 when I say fight, I am speaking now of fines, cease and  
18 desist orders, threats of arrest, threats of prosecution.  
19 No fewer than 14 separate hearings over a ten year period,  
20 all of which culminated in the change in District law which  
21 I drafted. In 1993 they gave me everything that I wanted,  
22 which made no sense to me because what it meant was for ten  
23 years I had to spend in a room hollering and pointing  
24 fingers at people, trying to convince them what I was doing  
25 was the right thing.

1           What has transpired since then is that we have  
2 gotten calls from all over the country wanting to know how  
3 did you do this, because for at least the last 30 years  
4 every state in the United States has attempted to prosecute  
5 African Americans in general, women in particular, for  
6 operating braiding salons that they claim are in violation  
7 of cosmetology licenses.

8           What is important that you understand is that  
9 historically, within the African American community,  
10 licenses were never, ever required. It was only white women  
11 in America that violated early American laws that required  
12 anyone in this country who wanted to do hair to have a  
13 barber's license. And the only person who was allowed to  
14 have a barber's license was a man. With the passage of the  
15 19th amendment, which is more popularly known as the Women's  
16 Suffrage Act, in 1921, giving white women the right to vote  
17 in this country, for some strange reason, these same white  
18 women wanted the right to do everything else, including  
19 cutting hair. And by 1928 this country had issued its first  
20 cosmetology license.

21           What I will point out to the Commission, however,  
22 is that a black woman who is clearly recognized as being  
23 this country's first self-made millionaire, Madam C.J.  
24 Walker, who died in 1919, may God have mercy on her soul,  
25 and for two years before the first license was issued made

1 all of her money, every dime, from the first 52 cents that  
2 she invested, to the millions that she made and spent in  
3 purchasing movie theaters, factories, funding the NAACP's  
4 anti-lynching program -- she made her money, and she never,  
5 ever, had a license. Never. And no sooner than she showed  
6 America how money could be made in hair and hair care  
7 products, the establishment regulatory license barriers were  
8 implemented in this country under the guise of Franklin  
9 Delano Roosevelt's New Deal Program. I'm not making this  
10 history up, this is documented within the National  
11 Cosmetology Association's Diamond Jubilee edition. If it's  
12 a lie, they're the ones who told it.

13 In this country, in most -- in all states except  
14 three, including the District of Columbia, in order for you  
15 to braid hair you must go to a cosmetology school for  
16 anywhere from 900 to 2200 hours in order to gain your  
17 license. I am here to tell you that cosmetology is the last  
18 bastion of chattel slavery in America. And I can prove it.  
19 If I'm wrong, I want someone in this Commission to redefine  
20 for me what I'm going to describe for you.

21 When you go to a cosmetology school, you study  
22 roughly three to 500 hours of theory. After that for the  
23 balance of your stay, you are required to do what is called  
24 floor work. During the course of this floor work you go out  
25 and you perform the service on the public, at a reduced

1 cost. That reduced cost is paid to the school, to the owner  
2 of the school. The student gets absolutely nothing. In  
3 most states it is a violation of law for the student to even  
4 accept a tip. If that's not chattel slavery, I don't know  
5 what is. If you have a better phrase for it, I'd appreciate  
6 it if some greater minds, better than mine, will give me  
7 another definition for it. But that's what I call it.

8 Many states have attempted to try and make us a  
9 part of that process, and we have refused. We have been  
10 encouraging our membership all across the country to open up  
11 braiding salons and schools in open defiance of any state's  
12 cosmetology laws. We have had success in the District. We  
13 have had success in the state of Michigan, and in the state  
14 of Maryland. We are suing the state of California as we  
15 speak. We are suing the state of New York as we speak. We  
16 are contemplating law suits against the states of Florida,  
17 Tennessee, Texas, North Carolina, Pennsylvania, Indiana,  
18 Illinois, so forth and so on -- anybody else (inaudible).

19 The last thing that I want to do is tell you  
20 this, and then I'll certainly be willing to answer  
21 questions. This issue is about five things and I want to  
22 put them in the context for which we need to discuss it.  
23 And I think it's always helpful, whenever I've been to  
24 panels of hearings like this, we always bring a prop, and I  
25 have brought mine with me today. And I'd like to just place

1 it here on the table. It's \$100 bill.

2 This issue is about money. It is about race. It  
3 is about politics. It is about control. And it is about  
4 power. In that order. Any one of those five I am able to  
5 give you a detailed explanation of how I came to conclude  
6 this. Thank you.

7 CHAIRPERSON BERRY: Thank you very much Mr. Uqdah.  
8 And there will be questions. Ms. Laverdy, please proceed.

9 MS. LAVERDY: Thank you. It's an honor to be here  
10 today, especially to discuss these issues. I'm here  
11 representing my member companies which are minority-owned  
12 small businesses, most of them do business with the federal  
13 government. The vast majority of them have either been in  
14 the 8A Program or have graduated from the 8A Program, or are  
15 now currently in the 8A Program.

16 For them, government regulations can be a double-  
17 edged sword. As was discussed earlier, government  
18 regulations can be -- can have very worthy goals and of  
19 course our companies believe in those goals, but they can  
20 also be extremely burdensome to these companies. As we all  
21 know, it's still an enormous problem for minorities and  
22 small businesses to gain access to capital, to be bonded, to  
23 even be insured, and on top of having those problems and  
24 getting started with their businesses, once they are started  
25 and established and are trying to break into the government

1 market, then we have to face the vast government regulations  
2 which are very burdensome to them.

3 As small companies trying to get started in  
4 government contracting, they find that they have to employ  
5 very high priced human relations people to deal with things  
6 like the reports that they have to give to the Office of  
7 Federal Contract Compliance Program there at the Department  
8 of Labor. They have to keep high-priced CPAs on retainer in  
9 order to deal with the Defense Contracting Audit  
10 Administration. And they must always have attorneys on  
11 retainer to deal with OSHA issues, EPA issues and a number  
12 of other regulatory issues which are all an extreme burden  
13 on a small, minority business that's trying to get started  
14 and that's had trouble with capitalization.

15 To prove to you that it is still an enormous  
16 problem, capitalization, many of our member companies are in  
17 the computer and software industry. They have moved away  
18 from manufacturing. They were originally called the Latin  
19 American Manufacturers Association, but it is so costly for  
20 them now to capitalize or to gain the capital to be  
21 manufacturers that they are now going into the service  
22 industry.

23 Now the other side of that sword is the side that  
24 allows them to play in the government human market place,  
25 and that's the different government programs, such as the



1 Small Business set-aside program, the 8A Business  
2 Development Program, and the agency-wide STB (ph) Program,  
3 which is a new program. Now prior to -- the one program  
4 that has especially helped minority businesses enter the \$20  
5 billion dollar government contracting market has been the 8A  
6 Program. This was a program established in the 70's by the  
7 Nixon administration, and it was a program that was  
8 established to help create a cadre of minority entrepreneurs  
9 in this country.

10 VICE-CHAIR REYNOSO: What is the program called?

11 MS. LAVERDY: It's the Section 8A Business Development  
12 Program. Right now minority businesses -- in 1996 --  
13 received approximately five percent of the government  
14 contracting pie. Now prior to the 8A program, the only  
15 statistics we've been able to find prior to the beginning of  
16 the 8A program indicate that minority-owned businesses  
17 received less than one percent of government contracting  
18 prior to this program. And that -- and we have been told  
19 that that may not even be true -- it may be less than that  
20 one percent, because they didn't feel there was -- there  
21 were enough companies participating to even count them.

22 So we -- we strongly believe that without this  
23 program minority small businesses would really be non-  
24 existent in the government contracting arena. So this  
25 program has just -- without it we really would not have

1 government -- minority businesses in government contracting.  
2 The 8A Program has been widely criticized by many. It's  
3 been under attack as have all affirmative action programs.  
4 We -- we like to point out that it is not strictly a race-  
5 based program, that's why it's been able to survive much of  
6 the scrutiny within the courts and Congress.

7           And right now the -- about three weeks ago -- the  
8 Small Business Administration issued a new proposed rule  
9 that would tighten up the regulations on the 8A Program, and  
10 this also opens up the program to more groups, especially to  
11 women. They now -- they have changed -- prior to this new  
12 rule which we are in the comment period right now on this  
13 rule -- women who wanted to try to get into the program had  
14 to show by a clear and convincing evidence that they had  
15 been discriminated against and were a discriminated group in  
16 order to be a part of this program. Now it's just -- they  
17 have brought down the level of evidence to preponderance of  
18 the evidence -- yes, preponderance of the evidence -- and  
19 that will make it much easier for women to be a part of the  
20 program. So it will be open to everyone who is socially and  
21 economically disadvantaged.

22           And we'd like to, in closing, just say that some  
23 of the regulations that are burdensome to these minority  
24 owned businesses, we feel should be looked at and not be  
25 done away with, but see how they can be less burdensome to

1 these businesses. And we'd like to ensure that programs  
2 such as the 8A Program are kept in place. Thank you.

3 CHAIRPERSON BERRY: Thank you very much, Ms. Laverdy.  
4 Mr. Thompson, please.

5 MR. THOMPSON: Madam Chair and members of the  
6 Commission, thank you very much for this opportunity to  
7 present at this briefing -- I'm not sure what the procedure  
8 or protocol is, but I'm hopeful that this briefing will give  
9 enough information, or at least spark some interest -- some  
10 additional interest in the topic such as this will turn into  
11 a full hearing with a bit more detail. -

12 As was mentioned earlier, I am General Counsel  
13 for the Council for Economic and Business Opportunity, or  
14 CEBO, which is a business development and consulting firm  
15 located in Baltimore City. CEBO was born out of the  
16 recommendations that were made by the current Commission in  
17 the late 60's after some of the rebellions in various part  
18 of the country, and there were some specific recommendations  
19 that were made in terms of how to remedy some of the effects  
20 of the absolute dismissal or elimination of any interest in  
21 inner cities, one of which of course, as was mentioned  
22 earlier, was the concept of economic development. CEBO's  
23 been around for almost 30 years now and has engaged in that  
24 in a number of ways, and I do have some information about  
25 CEBO I'd like to pass on to you, but I want to get right

1 into the topic.

2 I think it's important throughout the whole  
3 conversation that the issue that -- that most of us know  
4 about, and certainly the president has addressed recently,  
5 the issue of race and racism serves as sort of an  
6 undercurrent throughout this whole briefing, throughout this  
7 whole discussion. Really because when you're talking about  
8 statutes or ordinances or regulations, many times on their  
9 face they don't seem or appear to be discriminatory or in  
10 any way have any kind of disparate treatment. But it's  
11 really in the implementation phase, or in the actual  
12 procedural phase that many of the regulations or ordinances  
13 have their impact, or inordinate impact or disparate impact.  
14 And I think that's really the context in which we have to  
15 discuss these issues, because many times it's not on the  
16 face of many of these regulations that they are  
17 discriminatory, but in fact in the context of their  
18 implementation.

19 Sometimes either consciously or subconsciously  
20 because of the issues of race and racism, many people exert  
21 more energy toward those that they're more comfortable with  
22 and less energy toward those that they're least comfortable  
23 with or least knowledgeable of. I think that's really one  
24 of the issues that we're addressing today.

25 I'm going to sort of broaden the definition of

1 regulation to include -- or to be defined as sort of  
2 government control over any aspect of business, and I want  
3 to broaden that because I think that some of the programs  
4 that Ms. Laverdy had brought up, particularly at the state  
5 and local level, should be included as a -- as regulations  
6 or as controls on businesses. For the most part, state and  
7 local affirmative action or remedial or inclusion programs  
8 aren't discriminatory on their face but the implementation  
9 of many of them have an impact on minority businesses, many  
10 times because they are vague in terms of how exactly to  
11 implement them.

12           And that's where some of the problems arise.  
13 Sometimes procurement officers don't have the requisite  
14 numbers of people to effectively implement some of these  
15 programs and unfortunately, a lot of times minority  
16 businesses sort of fall through the cracks in a number of  
17 ways, some of which I'd like to define.

18           For example, in the certification process itself,  
19 in terms of becoming certified as a minority or woman-owned  
20 business, many times the certification process is time  
21 consuming, which is a luxury that many minority owned  
22 businesses, many small businesses don't have -- very time  
23 consuming.

24           As Ms. Laverdy had mentioned, sometimes minority  
25 businesses have to hire outside consultants, or outside

1 people to come in and actually fill out the applications for  
2 certifications because they just don't have the personnel or  
3 the time to do so, which is a cost burden. Many  
4 certifications are not uniform, so you may have to do one if  
5 you're in a particular state -- you may have to do one for  
6 each jurisdiction that you do business in. Once again,  
7 taking a lot of time and a lot of resources that these  
8 businesses may, in fact, not have.

9           Sometimes they need to be renewed every couple  
10 years or whatever the regulation or ordinance may in fact  
11 state. Once again, taking a good deal of time. And once  
12 again, this is all in the context of how these programs are  
13 implemented, and how they may have a different or a  
14 disparate impact on some of the minority businesses.

15           Many times with some of these regulations or  
16 ordinances and inclusion programs, the contracts are so  
17 large and they're not broken down so they can -- so that  
18 some of the minority businesses that are in fact certified  
19 can -- can actually work on some of the contracts -- and the  
20 breaking down of contracts is not necessarily a difficult  
21 thing to do, but many administrators and procurement  
22 officials say that it is too burdensome -- burdensome on  
23 their time to break down contracts so that some of the  
24 minority owned companies that can do some of the smaller  
25 jobs can in fact work on some of them. And they simply

1 cannot participate because of the contract value of some of  
2 the contracts -- or the dollar value of some of the  
3 contracts. And so that has a direct impact on some of the  
4 businesses.

5 Also what I would call the gratuitous granting of  
6 "good faith waivers". Many of the programs have included in  
7 them what they call good faith waivers, which would allow a  
8 general contractor who is subbing work out, to -- to in  
9 essence say you know, I've done all that I can and I simply  
10 can't find any MBEs or WBEs to work with. Will you give me  
11 a break and give me a waiver on this particular contract?  
12 And once again with regard to the actual administration,  
13 there may not be enough personnel or qualified or  
14 knowledgeable personnel to thoroughly scrutinize these  
15 applications for waiver, therefore a number of the waivers  
16 are gratuitously granted because the -- there's no real  
17 scrutiny or thorough scrutiny of the application. That also  
18 locks out a number of minority-owned businesses because they  
19 may in fact be ready and willing to do the job and to do the  
20 work, but because the general contractor has done whatever  
21 could be done to sort of get away from that, they've done  
22 that and it's been accepted.

23 Also the lack of effective screening processes  
24 for what are known as front companies or companies that are  
25 on paper minority-owned, but in reality not minority owned.

1 This once again goes back to the administrative part where a  
2 number of offices don't do an effective job of screening --  
3 or an efficient job of screening the companies that have  
4 applied for certification, particularly those that may in  
5 fact be owned by women or owned by some minorities that may  
6 have been employed by a company and the next day they're the  
7 owner of the company -- and we've been able to see a number  
8 of instances where that has happened.

9 As Chair Berry mentioned, I once practiced law in  
10 D.C. with the Minority Business Legal Defense Fund, and had  
11 a chance to do some traveling in the compilation of some  
12 disparity studies that documented the statistical as well as  
13 the empirical data that may have been necessary to  
14 substantiate a MBE or WBE program. Throughout my  
15 conversations with a number of entrepreneurs, it was  
16 identified that there were a number of companies that were  
17 in the market that simply were not -- that were getting a  
18 lot of jobs, but were not, in fact, true MBE companies.

19 So those are some of the ways that -- that even  
20 in the context of an inclusion program, the lack of a true  
21 implementation of them has a direct impact on minority owned  
22 businesses.

23 Arthur Anderson Consulting Company did a survey  
24 in 1994 of 'small businesses, and 40 percent of those  
25 businesses that were interviewed, they ranked regulation as



1 one of the most severe challenges to their survival,  
2 particularly those companies who were smaller in nature, and  
3 had to, as Mr. Ugdah mentioned earlier, had to deal with  
4 licensing regulations which may in fact once again be cost  
5 prohibitive as well as time prohibitive.

6 And they were -- identified three major reasons  
7 why regulations were disproportionately affecting minority  
8 owned businesses.

9 The first of which is that there was a lower  
10 capacity to take on additional debt, therefore many of the  
11 regulations which required some cost, directly impacted  
12 those that simply could not afford to pay for the  
13 regulation. I think that Mr. Reynolds brought up earlier  
14 that a GM may in fact be able to take on that cost, but a  
15 smaller business that can't afford to hire additional  
16 personnel wouldn't be able to afford that, and it was  
17 identified that these businesses faced a higher per employee  
18 cost to comply with these regulations than some of the  
19 larger corporations did.

20 The second issue was the barriers to entry even  
21 into an industry. Some industries or agencies like the FCC  
22 have regulations which may in fact serve as a barrier  
23 because of the numbers of qualifications that an owner of  
24 stations and of different companies have to have just to  
25 gain entry into the industry itself, and in some industries

1 where they're required a patent, there have been some  
2 instances where those who couldn't -- simply couldn't afford  
3 that process were sort of locked out of the procedure.

4 And then once again the third was the paperwork  
5 burden. Minority-owned businesses are generally smaller in  
6 nature and do not have the resources, time or personnel, to  
7 -- to sort of handle the paperwork burden in complying with  
8 the numerous regulations that -- depending upon what  
9 industry they're in -- that they have to face.

10 So I think it's important, particularly with  
11 those three subject areas -- lower capacity to take on  
12 additional debt, certain barriers to actual entry, as well  
13 as the paperwork burden, and of course, the overall cost  
14 burden of complying with a number of these programs and  
15 regulations -- those are some of the reasons why minority-  
16 owned businesses are directly impacted or affected by some  
17 of these regulations, and the reason why I think that a more  
18 substantive or detailed hearing on this, as opposed to just  
19 a briefing, may in fact draw back some more or come with  
20 some more results, and hopefully we can take some action on  
21 that.

22 CHAIRPERSON BERRY: Okay, thank you very much.

23 MR. THOMPSON: Thank you.

24 COMMISSIONER ANDERSON: Madam Chair?

25 CHAIRPERSON BERRY: Yes, Commissioner Anderson.

1           COMMISSIONER ANDERSON: Thank you. I have to leave  
2 the meeting at this point, but I would like to thank all of  
3 those who have been on the panel so far and I just want to  
4 let them know that I'm going to read the transcript of those  
5 panelists I won't be able to hear personally and just thank  
6 them all for being with us today.

7           CHAIRPERSON BERRY: Okay. Thank you.

8           COMMISSIONER ANDERSON: Thank you.

9           CHAIRPERSON BERRY: Any questions from any  
10 Commissioner? Commissioner Redenbaugh.

11           COMMISSIONER REDENBAUGH: Yes, I have -- I'd like to  
12 ask these -- actually I have one particular question for  
13 you, Mr. Reynolds, and then I have some general questions  
14 that I'd like any of you to answer. I wonder if you could  
15 give us -- first I should say my own personal view is that  
16 regulations have served an important function to diminish  
17 competition from new entrants into a field. My own  
18 experience and studies run along similar lines to your own,  
19 but regulations are much appreciated by already successful  
20 companies, and it does work to hold out the newcomers.

21           But Mr. Reynolds, I wanted to ask if you could  
22 give some examples from your work, of the more egregious or  
23 more offensive regulations, or regulations that may have  
24 been well-meaning at the time, but so long -- so much time  
25 has passed that now they're perverse.

1           MR. REYNOLDS: Sure, I think that you can pick any  
2 statute and the relating regulations and come up with some  
3 horror stories, but then I think that -- if we're going to  
4 narrow the discussion to say urban centers, I think we all  
5 can agree that the young -- young blacks in urban centers,  
6 many of them don't have any skills. To have a minimum wage  
7 statute and force a potential employer to pay a premium for  
8 labor, the result is -- you could predict with precision,  
9 the result is going to be that many of low-skilled workers  
10 are not going to be employed. No one, except probably the  
11 federal government, is going to pay a premium for labor if  
12 they don't have to.

13           We can also look at OSHA regs. You have to -- in  
14 order to comply with it, you have to have a high level of  
15 sophistication and in many instances that requires that you  
16 engage the services of consultants -- so -- not just  
17 consultants, but high priced engineers and other folks.  
18 Again, large companies can afford this, small companies  
19 cannot.

20           We can also look at things like the Family  
21 Medical Leave Act, the -- well, ADA -- again, all of these  
22 statutes and relating regulations, they had a very good  
23 purpose and I think that in many cases that the burden may  
24 be worth it, but I would just ask that we recognize the fact  
25 that these benefits involve a trade off and that at least in

1 many cases, these statutes and regulations are going to  
2 retard economic development in urban centers across the  
3 country.

4 COMMISSIONER REDENBAUGH: With the Family Leave,  
5 aren't there size regulations under which you are excluded?

6 MR. REYNOLDS: Yes, that's true, but they're low. Let  
7 me give you -- with OSHA it kicks in at ten; Civil Rights  
8 Act, 15; ADA, 15; -- you don't have to -- these regulations  
9 aren't limited to mega-corporations here. Once you get  
10 over, say, 20 -- 20 employees, then you're running a great  
11 risk if you're going to operate your business without a CPA  
12 and an attorney.

13 COMMISSIONER REDENBAUGH: Is it your experience then  
14 this caps these business sizes at 14, 15 or is there a --

15 MR. REYNOLDS: I read some reports where businesses  
16 have intentionally limited the size in order to avoid --  
17 dealing with these particular statutes and regulations. But  
18 I think that most businesses don't limit their size because  
19 of that. I think that they -- the damage is done in  
20 inefficiencies, and with respect to small businesses, it  
21 either prevents a business from growing, or it prevents  
22 entrepreneurs from entering the market. I think those are  
23 the two important problems that result from these  
24 regulations.

25 TELEPHONE: Pardon the interruption, this is the

1 coordinator. Ms. Berry?

2 CHAIRPERSON BERRY: Yes.

3 TELEPHONE: Your line is the only line left in  
4 conference, would you --

5 CHAIRPERSON BERRY: Proceed.

6 COMMISSIONER REDENBAUGH: I'm glad we're saving you  
7 money. Well, I think I'm ready with some more general  
8 questions. What are the most specific changes that you  
9 think would make a substantial difference in -- in  
10 employment opportunities for people starting out?

11 MR. REYNOLDS: For folks with low or no skills, I  
12 think the biggest thing that we can do for that group of  
13 people is to have a -- a dual wage system. Again, if you  
14 don't have any skills, no one is going to pay a premium for  
15 it, and for many folks in the inner city, a job is extremely  
16 important because in many instances that is the only --

17 COMMISSIONER REDENBAUGH: Yes, I understand. If I  
18 could ask the same question to any of the other panelists?

19 MR. UQDAH: From my perspective on this -- this is  
20 Taalib-Din Uqdah --

21 COMMISSIONER REDENBAUGH: Thank you.

22 VICE-CHAIR REYNOSO: I'm sorry I didn't hear the  
23 question.

24 COMMISSIONER REDENBAUGH: What are the changes that  
25 would make a substantial difference for employment?

1 CHAIRPERSON BERRY: Okay.

2 MR. UQDAH: One of the first things that needs to be  
3 done, and I don't know whether this would fall within the  
4 Commission's purview or not, but it's certainly something  
5 that we have proposed around the country as we've gone from  
6 state to state, and it is a part of a proposal that we tried  
7 to get some support for, and that is essentially an economic  
8 civil rights act. We would make it a violation of law of  
9 this country for any state to be able to create any law  
10 which would impinge on an individual's right to be able to  
11 earn a living. We think that we can make such a law more  
12 palatable by tying it to the present Welfare Reform Act  
13 which was signed by the President roughly a year ago.

14 The incentive for the states would be to offer  
15 some sort of limited licensure within the occupational  
16 industry, particularly with service providers. There are  
17 disparities which exist amongst every state, and a few I  
18 would like to point out in order to make my point. As I  
19 indicated to you earlier, there is a cosmetology scheme  
20 which requires a hair stylist to go to schools in most  
21 states, anywhere from 900 hours to as much as 2200 hours.

22 In the state of New York, in order to do  
23 cosmetology services you are required to go to school for  
24 1000 hours. However, to blow up a building in the state of  
25 New York, to get a demolition license, you must be trained

1 in 16 hours of training -- 1-6. To become an emergency  
2 medical technician, that is to perform CPR and fibrillation  
3 and all the other medical terms, 116 hours of training. But  
4 in order for me to pop a curl in your hair, I've got to go  
5 to school for 1000 hours.

6 In states such as, I believe, Kansas, they have a  
7 timekeeper's license, so if you're at a basketball game and  
8 you were keeping the time, or football, or soccer, you're  
9 licensed. In Oklahoma, you must get a post hole digger's  
10 license. Putting a fence up, got to have a license to dig  
11 that hole. I'm not sure in what state this is -- and I can  
12 check and find out for sure -- but to collect tickets in one  
13 of our states, you need to have a license. So if you're at  
14 Camden Yards going to a baseball game, that person who's  
15 taking your ticket has to have a license.

16 Somewhere, somehow, someone is going to have to  
17 take a look at these entry level regulatory barriers.  
18 Because what is happening in this country is this. We look  
19 at our mega-corporations, our international conglomerates --  
20 you look at Marriott, you look at Nordstrom's, you look at  
21 Hewlett-Packard, you look at Apple Computer -- I'm talking  
22 about four businesses in this country that started with  
23 little to nothing. Marriott, selling root beer on the side  
24 of the road in Utah. It's against the law now to sell open  
25 container beverages on the side of any road in this country.



1 Hewlett-Packard, and I put Apple in the same category --  
2 Hewlett-Packard in East Palo Alto, California, and Apple  
3 Computer in Silver Spring -- these guys started their  
4 businesses in their garages. It's a violation of law for  
5 you to have a business in your garage. Nordstrom's -- huge  
6 department store. Two brothers start selling shoes out of a  
7 station wagon in Seattle, Washington. You can't do it now  
8 without a license. And of course I mentioned Madam C.J.  
9 Walker. She never had a license, but she made millions of  
10 dollars.

11 So when I talk to you about the barriers, the  
12 problems, it's -- it's not in terms of mega-businesses. I'm  
13 talking about, you know, if you can envision a ladder, it  
14 has rungs, and I don't know a lot of people that when they  
15 step up onto a ladder they step up to the third rung. I  
16 don't know a lot of folk -- when I start, I start with the  
17 bottom rung, then I move up, et cetera. What I am telling  
18 you is that at least those bottom three rungs have been  
19 removed, and now when you start a business in this country,  
20 see, you've got to be ready to go in leaps and bounds, and  
21 hope that --

22 COMMISSIONER REDENBAUGH: Yes, and your examples are  
23 very compelling, thank you very much. That's all the  
24 questions that I have.

25 CHAIRPERSON BERRY: Okay, Commissioner Horner?

1 COMMISSIONER HORNER: Yes, Mr. Uqdah --

2 MR. UQDAH: Yes, ma'am. I answer to anything  
3 reasonably close.

4 COMMISSIONER HORNER: Thank you. Thank you for your  
5 forbearance, and thank you for your fairly rivetting  
6 testimony supporting what others have said more generally on  
7 this panel. You talked about your many years of fighting  
8 city hall here in Washington among other places. I have  
9 always been puzzled by the following question. When there  
10 are laws and regulations that affect the application of  
11 public and private money, which is what many laws and  
12 regulations are about, I know you know that, I have been  
13 surprised that people who feel outraged at the injury done  
14 them by a law or regulation -- the pure and direct money  
15 injury done them -- are not able to find and support  
16 successfully political champions who will make their  
17 political careers in a city council on something like the  
18 issue that you identified.

19 I've lived in the District of Columbia since  
20 1970, and I have not become aware during that long span of  
21 time of any champion of the cause that you have espoused.  
22 And so my question to you is, why haven't you and like-  
23 minded colleagues not been able to force this onto the  
24 political agenda and get redress?

25 MR. UQDAH: We have, but not with the kind of

1 consistency that I would like to see. They deal with these  
2 matters on an issue by issue basis.

3 COMMISSIONER HORNER: That won't work. You need --  
4 you need a broad assault upon a mindset, and can't you do  
5 that? Can't you find a candidate for the D.C. city council  
6 or the mayoralty --

7 MR. UQDAH: We can once government understands that  
8 its purpose is to serve and not to rule.

9 COMMISSIONER HORNER: Well, the people can be made to  
10 understand that and bring pressure to bear.

11 MR. UQDAH: And -- and -- let me say this -- and it is  
12 happening. It is happening around this country with our  
13 association in particular, and I'm sure amongst these  
14 others, that we are empowering these people to understand  
15 what it means for them to openly defy any law.

16 COMMISSIONER HORNER: Well, I'm not even talking about  
17 defiance, I'm talking about educating your city council  
18 member that he or she won't be elected the next time unless  
19 this particular licensure regulation is raised in the  
20 council vigorously.

21 MR. UQDAH: You know where the problem comes in with  
22 that?

23 COMMISSIONER HORNER: Well, that's what --

24 MR. UQDAH: I'll tell you exactly where it comes in --  
25 and I understand your question now. As a business person,

1 my job is to do this. I don't have time to be running down  
2 city hall trying to lobby a city council person and trying  
3 to lobby the governor, trying to lobby a senator. In fact,  
4 one of the things that I tell my membership is that the  
5 reason that we founded this association is that that becomes  
6 the job of the association.

7 COMMISSIONER HORNER: Exactly.

8 MR. UQDAH: So that my membership can continue to do  
9 what it does best, and that is make money. That's the whole  
10 purpose of being in business. Now, once you've made that  
11 money, if you decide that you want to do philanthropy-type  
12 operations, that's your business, because that's your money.  
13 But I don't advise my membership to get involved in the  
14 political process. That's what we do as an association, and  
15 we are -- we purposely formed a C-6.

16 COMMISSIONER HORNER: What's that?

17 MR. UQDAH: That is an association that is allowed to  
18 lobby.

19 COMMISSIONER HORNER: Oh, okay.

20 MR. UQDAH: It is a tax-exempt -- we don't have to  
21 concern ourselves with C-3 parameters and making sure that  
22 we separate ourselves from the political -- no, we are  
23 heavily into the political process. I have learned a great  
24 deal of lessons in this as I go from state to state. One of  
25 the things that I have discovered is is that this beast,

1 even though we have 50 different states, they all have the  
2 same head. We -- I am dealing with different state  
3 legislatures, and I can substitute a -- a representative or  
4 a senator who would object to the -- in Michigan -- to the  
5 same one who objected in another state, and the same thing  
6 applies to the (inaudible); the same thing applies to any of  
7 these Commissions, and what our job has become is to empower  
8 our associates -- membership -- that you do have control.  
9 You do have the power. We provide them with what they need  
10 -- the telephone numbers, the fax numbers, if I have to, I  
11 draft the letters and send them to them, have you sign it  
12 and we send it on to whoever it needs to be sent to -- and  
13 that puts them on notice. And we've gotten sympathy from  
14 certain state legislators -- one in Tennessee for example,  
15 who is so disturbed by the passage of the law in Tennessee  
16 that she has indicated to me she is willing -- as a  
17 legislator -- to open up a natural hair care salon in the  
18 state of Tennessee in open defiance of a law that was passed  
19 within the Tennessee General Assembly. That's how  
20 ridiculous this matter has become.

21 COMMISSIONER HORNER: Thank you.

22 CHAIRPERSON BERRY: Any other questions? Commissioner  
23 George.

24 COMMISSIONER GEORGE: Yes, I have a couple of more  
25 specific questions for Mr. Ugdah and Mr. Reynolds, but first

1 I'd like to open with a general question for everyone on the  
2 panel who has some expertise on black American history, and  
3 it's this. There is a -- I'm not a historian -- our  
4 chairman is a distinguished historian -- but I know enough  
5 to know that it's a myth to say that the black community in  
6 America never had a spirit of economic initiative and  
7 entrepreneurship because of the history of slavery and then  
8 servitude and so forth. I am told that -- in fact, the  
9 opposite is true and Mr. Uqdah's pointed to one very notable  
10 example in our history.

11 There at least was a very strong tradition in  
12 this community of economic initiative and entrepreneurship,  
13 so it's not so much, I am told, a matter of trying to create  
14 something that never existed in a subcultural circumstance.  
15 It's rather to recover and promote what is already a  
16 tradition that is there to be recovered and promoted. Now,  
17 do you all agree with that?

18 MR. UQDAH: Absolutely. I do.

19 MR. REYNOLDS: Yes, there have been -- once upon a  
20 time there were numerous insurance companies owned by  
21 blacks, banks, catering services --

22 MR. UQDAH: Funeral homes.

23 MR. REYNOLDS: Yes -- yes, indeed -- that's gone by  
24 the wayside for various reasons. One of those reasons, I  
25 believe, is regulations. I mean to imagine what is required

1 to open up a bank in 1997 versus, say, 1897. We live in a  
2 different world now. You have to jump through many hoops  
3 and you have to have a lot of money, as Mr. Uqdah has  
4 pointed out, the rungs have been removed -- the bottom rungs  
5 have been removed so if you want to become an entrepreneur  
6 now, depending on your particular field, it requires lots of  
7 capital.

8 COMMISSIONER GEORGE: Now has -- to play the devil's  
9 advocate here, what would you say to the argument which I've  
10 heard advanced, that the problem is not regulation, the  
11 problem is actually the -- a bad side effect of the very  
12 great good of the elimination of de facto -- de jure  
13 segregation. That what happened was minority businesses  
14 could -- you know this argument -- I can see Mr. Uqdah's  
15 head -- minority businesses flourished when there was a  
16 segregated society and so there was a segregated market.  
17 But once the thing opened up, then we had the collapse of  
18 black enterprise. Now, Mr. Uqdah, you get to answer.

19 MR. UQDAH: I have to say this -- and -- and I'm glad  
20 -- I'm glad you said it because oftentimes when I bring this  
21 argument up, it's very delicate, you know, for some folks,  
22 but the problem for economic development in the African  
23 American community started with integration. Once you  
24 created this feel that -- you would think that prior to  
25 integration the blacks didn't have restaurants, dry cleaners

1 -- you know, we didn't have stores to go to. We didn't have  
2 people that provided services to us -- that is, electricity  
3 and plumbing and masonry and everything that is required in  
4 order to be able to have what was, at that time, a good  
5 standard or a good quality of life.

6           Once this society pushed integration, or rammed  
7 integration down the throats of the American citizen, it  
8 became alright now to go to all of the department stores,  
9 and into the hotels, regardless of the problems that still  
10 exist now in various avenues. But the closure or the rape  
11 of the mom and pop stores -- they don't exist any more --  
12 and that's where I started. I started on a corner of Martin  
13 Luther King and Good Hope Road, and I lived in the back of  
14 my business, and I served the community -- fruits and  
15 vegetables and groceries and health food. You're not going  
16 to find young people doing that any more. They'll go in and  
17 they'll consume it because they're not in a position where  
18 they have to -- that's their --

19           COMMISSIONER GEORGE: Explain. Explain.

20           MR. UQDAH: In other words, if you are in a segregated  
21 community and you are not allowed to go into a particular  
22 store or to visit a particular place of business, that  
23 doesn't mean that you're not going to have that business or  
24 that store within your own community. It will have to be  
25 created -- someone in the community is going to create it



1 for you, because you have to eat, because you need services,  
2 whatever they might be -- whether it's cleaning or  
3 electrical or plumbing -- whatever those services might be.

4 But once you broaden the scope and you allow  
5 people to go outside of their community and contract for  
6 these services, the community suffers, and that's what's  
7 happening now.

8 COMMISSIONER GEORGE: Mr. Thompson, you agree with  
9 that?

10 MR. THOMPSON: To a degree. I think also,  
11 historically, I think you're correct, the spirit has always  
12 been there, but there still have been, even in the earlier  
13 part of the century, structural barriers that have locked  
14 out minority businesses even as early as -- in the 1920's,  
15 there was an estimated 70,000 black owned businesses that  
16 were in the United States, but then when you looked at the -  
17 - the era around the great depression, a number of the  
18 businesses crumbled because they remained solely on the  
19 loyalty of African Americans in certain communities, but as  
20 late as 1944, (inaudible) Murdle (ph) who had written a book  
21 called The American Dilemma had indicated that the Negro  
22 businessmen encounters greater difficulties than whites is  
23 securing something as credit, and this was -- this is an  
24 historical problem.

25 This is partially due to the marginal position of

1 Negro business. It's also partly due to the prejudicial  
2 opinions among whites concerning business ability and  
3 personal reliability of Negroes. In either case, a vicious  
4 circle is in operation, keeping Negro business down. I  
5 agree with Mr. Uqdah in terms of having to rely solely on a  
6 particular market to -- to increase your profits and once  
7 your profits are increased, then to increase the number of  
8 employees -- and I think that's a very telling point. But  
9 at the same time there's still historical structural  
10 barriers that have been there that really do in fact need to  
11 be addressed -- in 1944 and in 1997.

12 COMMISSIONER GEORGE: To what extent is the problem  
13 today -- does it continue to be a problem of what you have  
14 called white prejudicial attitudes towards doing business  
15 with black businesses?

16 MR. THOMPSON: Yes.

17 COMMISSIONER GEORGE: To a large extent? You can't  
18 break out into a larger market because whites won't do  
19 business -- essentially?

20 MR. UQDAH: You can find isolated cases.

21 COMMISSIONER GEORGE: No, I don't mean that. I want  
22 to know to what extent -- I mean -- this Commission needs to  
23 know to what extent that is -- the problem. Not isolated  
24 cases, there are always isolated case of everything. But if  
25 that is really a major part of the problem and regulation is

1 going to be another major part of the problem or a smaller  
2 part of the problem, we need to know that.

3 MR. THOMPSON: I think another issue with that --  
4 raises another area of concern and that's -- well, not  
5 necessarily concern, another issue, and that is where most  
6 minority businesses are located. And many minority  
7 businesses are located in minority communities, communities  
8 where others outside the minority community may not come to  
9 do business. Another unfortunate reality is that because of  
10 the lack of larger chains, or larger organizations or  
11 companies locating in the minority communities, like a Wal-  
12 Mart or a major, major supermarket, or major chain -- a  
13 Macy's or a Hecht's in the inner city -- many of the  
14 consumers in minority communities have to be migratory  
15 consumers and go outside, and of course enrich the companies  
16 that are in the more suburban areas.

17 So another issue that has to be concerned is  
18 where these businesses are located and are they offering the  
19 things that are able to be supported to a large extent by  
20 the community in which they are located.

21 COMMISSIONER GEORGE: Mr. Reynolds, did you want to  
22 say something?

23 MR. REYNOLDS: Yes, I think it's true that as an  
24 empirical -- that once the walls of segregation came down, I  
25 believe that blacks were able to exercise their rights, so

1 if they chose to shop outside their communities, they did  
2 so. If they chose to deal with whites, they did so. And I  
3 think that -- that an individual makes his or her decision.  
4 Now after saying that, I think it would have been better had  
5 blacks been able to maintain that core of business sector  
6 that existed during segregation. It's unfortunate that --  
7 that that did not take place.

8 Now, I'm not -- I'm not -- I'm not nostalgic --  
9 I'm not saying that we should go back to segregation in  
10 order to force blacks to do business with each other. I  
11 don't think we have to do that. I think that there are a  
12 number of steps that we can take that will enable black  
13 entrepreneurs in the inner city to open up businesses in the  
14 inner city. Yes, we see it all the time. We see it with  
15 the green grocer -- green grocers in the inner cities run by  
16 Koreans and other -- other minorities. It can be done, and  
17 it has been done. I think we can make it easier by looking  
18 at some of the regulations that we have in place, but again,  
19 -- oh, and just to respond to one item that was mentioned.  
20 There are no guarantees in business. Racial prejudice has  
21 always existed, and it will always exist. There is no  
22 Nirvana. Human beings have managed to kill each other over  
23 small distinctions, whether it be the Oskanasi (ph) and the  
24 Safardum (ph) -- or look in Bosnia, the Muslims versus the  
25 Christians -- we will manage to kill each other if we don't

1 have the rule of law in place.

2 But we have reached a point in this country at  
3 least, where your race and your sex is not an insurmountable  
4 barrier to success. I think that certain groups have to  
5 work harder, and they have to work harder for no other  
6 reason than their race, their sex, or their ethnic  
7 background. But despite these obstacles, I think that in  
8 1997 you can make progress, and in some case you can become  
9 wildly successful.

10 What we need to do, though, is help people become  
11 wildly successful, and one way to do that is to look at the  
12 economic regulations on the books and to look at some of the  
13 statutes like the Davis-Bacon Act and -- and we need to  
14 modify these laws and regulations. In some cases, we need  
15 to just repeal them because the reason for their existence -  
16 - in some cases it was purely to stifle competition.

17 With the Davis-Bacon Act, northern employers did  
18 not want to compete against the boys in the south. The guys  
19 in the south had lower labor costs, so we pass an Act that  
20 forces anyone doing business with the federal government on  
21 public works projects, they had to pay the prevailing wage,  
22 and in most instances, the prevailing wage is a union wage.

23 Now, if you're a black entrepreneur who is trying  
24 to bid for a government contract, in many cases this is  
25 prohibitive. Having to pay union scale is prohibitive. But

1 again, it's a very complex problem and I hope that we -- we  
2 deal with it.

3 CHAIRPERSON BERRY: Vice-Chair.

4 VICE-CHAIR REYNOSO: Yes, well, first I'm glad to hear  
5 that we aren't advocating a return to segregation. I began  
6 to wonder from the --

7 CHAIRPERSON BERRY: I heard that we were.

8 VICE-CHAIR REYNOSO: Secondly, I understand the  
9 difficulty in dealing with regulation because just in the  
10 news the other day there was a report that some bounty  
11 hunters -- and that industry is related to bail bonds very  
12 often -- had killed some people -- I think in Arizona, I  
13 forget -- and the newscast went on to explain in great  
14 detail how there was no regulation on bail bondsmen, they  
15 don't have to take any training, that they didn't know what  
16 the laws were -- and then they had the relatives of the  
17 victims on television say how do you feel about the fact  
18 that there's no regulation over bail bondsmen? And you  
19 might guess what they said. Terrible. You know anybody can  
20 be a bail bondsman. And so probably in that jurisdiction  
21 there's now going to be an effort to have regulation on bail  
22 bondsmen.

23 So each industry and each item seems to come up  
24 by itself and it's very difficult to attack that, as you  
25 indicated, in terms of a civil -- economic civil rights act

1 that tries to look at it too globally, and I think that's  
2 probably one of the political difficulties you might have.

3 Just one more comment before I ask my general  
4 question. I think history shows that very often minority  
5 groups have been even, percentage-wise, more active in -- in  
6 economic development or entrepreneurship efforts than  
7 majority populations. It certainly seems to be true of the  
8 Latino population. But very often as indicated by the  
9 panel, it's at the lower economic levels. Big battles in  
10 Los Angeles with reference to the Venderores Espudantes (ph)  
11 or the Ambulatory Sellers because these are folk that try to  
12 sell items on the streets, and Los Angeles had very  
13 restrictive regulations.

14 I just spent some time in southern Florida and  
15 was interested that, for example, Coral Gables, prohibits  
16 any selling on street corners and so on. Miami, on the  
17 other hand, permits it. So it goes community by community.  
18 So this is a tough issue.

19 But -- but we had -- we had hearings in  
20 Mississippi a while back, and perhaps they served to  
21 refortify my own notion that civil rights -- that economic  
22 rights are directly related to civil rights. I mean we  
23 heard about so many civil rights issues in southern  
24 Mississippi, many of which would have disappeared if every  
25 black family had a million dollars.

1           And we had a couple of panels as you're talking  
2 today, about -- about their solution. Their solution, I'm  
3 going to say, was approached differently. They weren't  
4 talking so much about regulation, and quite frankly I have  
5 qualms about the notion that the minimum wage, federal  
6 Family Medical Leave Act, ADA, OSHA, Davis-Bacon and so on  
7 -- are as influential as Mr. Reynolds has indicated they are  
8 in this area. They emphasized what they called asset  
9 building -- that government policy, to the extent that it  
10 deals with these matters, ought to help families and human  
11 beings in this country build assets. For example, they  
12 pointed out that welfare very often will pay for rent.  
13 Would we be better off, they said, if we had a couple of  
14 programs where if somebody's on welfare, rather than getting  
15 rent, they have payments on houses they've bought, and so it  
16 helps build assets, so after a while a person has \$40-  
17 \$50,000 worth of equity in their homes and maybe they can  
18 borrow on their homes to go into business and so on.

19           So their notion of how to help the minority  
20 communities was to build assets and I wanted to ask all of  
21 you -- and I know that the purpose of this discussion is a  
22 little bit different, but frankly I was struck by their  
23 testimony. It seemed to me to make a lot of sense. You've  
24 approached it a little bit differently but I just wonder  
25 what your reaction is to that set of thoughts that we got



1 out of the Mississippi hearings.

2 MR. UQDAH: My first reaction would be that -- that  
3 entrepreneurship is not a role that the government should be  
4 involved in. I would tell you that if you were looking at  
5 the proverbial which came first the chicken or the egg, I  
6 would tell you that entrepreneurship was here first.

7 VICE-CHAIR REYNOSO: Of course, but -- but their  
8 suggestion was that we'd have a greater shot at  
9 entrepreneurship if you had assets, just as you have a  
10 better shot at contracting with government if there's a  
11 policy that gives you a shot at it. --

12 MR. UQDAH: Well, let me just give you this from my  
13 perspective. -

14 VICE-CHAIR REYNOSO: Sure.

15 MR. UQDAH: Of the two businesses that I've owned, the  
16 first one I started with \$200. Five years later, at its  
17 peak, I was grossing a quarter million dollars a year. That  
18 was in 1979.

19 VICE-CHAIR REYNOSO: And netting how much?

20 MR. UQDAH: In 1980 -- in 1980 I started the present  
21 business that I have now with \$500 and a four year lease on  
22 somebody else's building. In 1984 I purchased my own  
23 building. It has a net worth of over \$400,000 in a bad real  
24 estate market. And I have consistently grossed at least a  
25 half a million dollars a year for the last ten years. It

1 didn't take -- what I did was what little I had, I worked  
2 with it -- that's what an entrepreneur is. And the idea is  
3 that the joy and the beauty about it is starting with  
4 nothing. You take your chances. You take your risks.

5           And you want to talk about assets? I'd rather  
6 talk about asset management, because one of the things that  
7 I testified to on Capital Hill against minimum wage was that  
8 you could pay an employee \$10,000 an hour -- that's not  
9 going to make them a better employee. That's not going to  
10 make them come to work on time. That's not going to make  
11 them treat your customers the way that they should.

12           VICE-CHAIR REYNOSO: It'd be a little bit of an  
13 incentive. Even if I were the most impolite person in the  
14 world, I would be tempted to be polite for those dollars.

15           MR. REYNOLDS: I'd like to add to that. The notion of  
16 asset building in the abstract, it's fine. But the devil's  
17 in the details. If you're talking about governmental  
18 transfers of wealth -- taking from Peter to pay Paul -- I  
19 think that's the wrong approach. You build assets by making  
20 money, no matter how much it is, and saving some of it.

21           VICE-CHAIR REYNOSO: Sure.

22           MR. REYNOLDS: That is the -- that's the way to go. I  
23 would -- like to talk about a capital gains -- a real one,  
24 not the one we just passed. Let's let people keep more of  
25 their money.

1 MR. UQDAH: It was a good example that you raised  
2 earlier. One of the things that just came to my mind as you  
3 all spoke about this -- under the welfare system, it's a  
4 violation of law for a recipient to save more than \$1000.

5 VICE-CHAIR REYNOSO: Yeah.

6 MR. UQDAH: Now, how are you -- how are we dealing  
7 with this -- and let me go back to what it is that I do.  
8 The average school in this country ranges anywhere from five  
9 to \$12,000. You're going to be there anywhere from nine  
10 months to a year and a half. If it's a violation of law  
11 while you're on welfare to save more than \$1000, where's the  
12 money going to come from for you to try to even better  
13 yourself? You want to, but it's a violation of law for you  
14 to do so. And they've caught a couple of people who had the  
15 nerve to save some of their money towards their education  
16 and they made them pay it back.

17 COMMISSIONER REDENBAUGH: And promise to never save  
18 again.

19 MR. UQDAH: Yes.

20 COMMISSIONER REDENBAUGH: No, that's actually in the  
21 decree. I'm thinking of maybe the same case you are, the  
22 Wisconsin case.

23 MR. UQDAH: Yes.

24 COMMISSIONER REDENBAUGH: Yes.

25 MR. UQDAH: I mean, you know, where it's like

1       ludicrous and ridiculous to come to mind.

2               CHAIRPERSON BERRY: We do have another panel -- I just  
3 want to point that out -- I saw -- looking at their watches.  
4 Yes, Commissioner Lee.

5               COMMISSIONER LEE: I just have a question. The  
6 California Circuit Court just recently ruled that minorities  
7 set-aside programs were unconstitutional, so my question is  
8 to Ms. Laverdy and Mr. Thompson because you represent small  
9 business owners. I'd like to know how have the minority  
10 set-aside programs affected your members, and if they were  
11 to be ruled unconstitutional, how would that affect them?

12              MS. LAVERDY: My companies have been greatly affected  
13 in the positive by the set-aside programs. And if they go  
14 away, if they're judged illegal, it will have a horrible  
15 adverse effect on them.

16              MR. THOMPSON: I'm in agreement with that. I think  
17 that there is -- it has been documented that there's a  
18 direct correlation between existence of many of these  
19 programs and the increase in the numbers of minority owned  
20 businesses. In 1989 when Richmond versus Crossen (ph) was  
21 decided, prior to that time Richmond, Virginia had remained  
22 fairly consistent in terms of having approximately 35  
23 percent and above minority participation on contracts.  
24 After the Crossen (ph) decision was laid down, the numbers  
25 of minority businesses dropped to lower than five percent

1 immediately. And so I think that that demonstrates in a  
2 very demonstrative way, that there's a correlation between  
3 the existence of these programs and but for many of these  
4 programs many minority businesses wouldn't -- wouldn't  
5 survive.

6 I think just -- you know, in the education  
7 context, Prop 209 has shown that -- that even in education,  
8 the numbers of minority applicants to be accepted to many  
9 schools have decreased tremendously because of the  
10 elimination of some of these programs. The same logic  
11 applies with the minority businesses and women-owned  
12 businesses.

13 CHAIRPERSON BERRY: The -- is that your last question,  
14 Commissioner Lee?

15 COMMISSIONER LEE: Yes.

16 CHAIRPERSON BERRY: Let me just say that -- that I  
17 have no quarrel with the positions that the briefers have  
18 espoused, except that I do wonder in terms of the staff  
19 putting it together why there is no one on the panel who  
20 takes an opposite view from the views that have been  
21 expressed. It is what my colleagues call balance. But that  
22 means that I am left to either sit here and condone the  
23 presentation of what is false as history -- as a matter of  
24 fact it is undocumentable in part of the discussion -- and  
25 which was unnecessary to your policy positions which we were

1 likened to hear, or I have to take up time trying to correct  
2 statements that people have made about history. And I guess  
3 I've been sitting here too long.

4 For example, Mr. Uqdah, it is not the case that  
5 hair weaving or the cornrows are the only thing that black  
6 culture has transmitted to this nation which goes back to  
7 Africa 1000 years. Sweet grass baskets, also sorts of  
8 language which is documented by historians -- so that wasn't  
9 necessarily your argument. It's just not true.

10 It's not true that only white women were given  
11 the right to vote in the 19th amendment. Many black women  
12 voted, other women. Of course there was discrimination, but  
13 these -- it's just that when people come before us -- and  
14 I'm not just picking on you -- I'm going to say some thing  
15 about somebody else.

16 If it's not necessary to your argument, why say  
17 things that -- that are not true. Although the death of --  
18 the experiences of Madam C.J. Walker could not have led  
19 directly to the cosmetology licensing that you described if  
20 your dates are correct, because she died in 1919, and the  
21 first licensing was in 1928 -- that's what you said. And if  
22 the National Association of Cosmetologists put that out,  
23 then they're just wrong. And that wasn't necessary to your  
24 argument either.

25 The other thing is that when you folks were

1 talking about regulation, it occurred to me that none of the  
2 issues you raised were race-specific or gender-specific, or  
3 even civil rights issues. They would apply as much to poor  
4 white folk who were trying to get into a business as they  
5 would apply to anybody else, so I don't see why --

6 MR. UQDAH: Well, except --

7 CHAIRPERSON BERRY: -- I don't see why -- it's one of  
8 those issues of focusing it on minorities as a stalking  
9 horse to get some policy change that one wants, by making it  
10 that one is trying to help black folk.

11 And finally, if I may finish, and I'll recognize  
12 you, somebody said that black people were dragged into or  
13 that integration was rammed down our throats. In fact,  
14 people marched and died and went to jail, some of whom I  
15 knew who died, black folk, arguing for what we call  
16 desegregation -- and they called integration -- and nobody  
17 rammed it down their throats. Statements like that aren't  
18 necessary to the argument either and since there's nobody on  
19 the panel who was willing to take up the other side of the  
20 argument, I must simply sit here and tolerate these  
21 statements that are being made before this civil rights  
22 Commission, or I must take up time saying something. And  
23 also, I lived under segregation and it was not all it was  
24 cracked up to be, either for business men, some of whom got  
25 killed and were lynched because they were successful black

1 business men who were trying to get ahead.

2 There are also reports of this Commission from  
3 documented and sworn testimony -- the kinds of abuses and  
4 other things that happened to blacks who were successful  
5 business men, who were trying to get a little credit or get  
6 a bond, or get something to get ahead, and then finally, of  
7 course, if you have an economic civil rights act which  
8 permits people to do whatever they want to to advance  
9 themselves individually, without state interfering with  
10 this, I suppose if it is that broad as you described it, it  
11 would apply to physicians and pharmacists and anybody who  
12 wanted to do anything.

13 And I would also say to you folks sitting on this  
14 side of the table that there are certainly very different  
15 arguments that can be made for business men who are getting  
16 money from the government contracts and who have to meet  
17 certain requirements so that they can be held accountable,  
18 than somebody who's operating a business who is not getting  
19 money from the government. And it seems to me, to sort of  
20 complain about regulations and complain about having to have  
21 certification and complain about turning in things when one  
22 is feeding at the public trough, if I may use that  
23 expression, may be in a little different category.

24 And as for welfare reform, which I was opposed to  
25 and remain opposed to -- it is indeed the case that people



1 on it aren't supposed to save money from welfare. I  
2 understand the principle, that if you want to go to school,  
3 get a job, work, save your money to go to school. I can  
4 understand why some people would think that and that  
5 therefore the government should not be supporting people so  
6 that they can save enough money to go to school. I mean I  
7 understand the argument. Not that I support it.

8           And finally, Mr. Reynolds, there is a great deal  
9 of evidence about the minimum wage and about its impact on  
10 employment in poor, minority areas and everywhere else, and  
11 the evidence, as I read it, is that employers didn't stop  
12 hiring people because of the increase in the minimum wage --  
13 there's been some evidence since then -- and there also is  
14 in the existing law, if I understand it correctly,  
15 provisions for trainees and students and all kinds of  
16 exceptions to it. My only point is that I understand your  
17 policy perspectives and I'm very interested in them, and  
18 some of them I support. But I just don't think that we need  
19 a context for it that fabricates or puts things in and I'm  
20 finally reminded of a guy who I debated on television the  
21 second year of the Reagan administration who was from a -  
22 think tank here in town, who said to me after the show was  
23 over in which he had presented a lot of things that were not  
24 factually correct -- that we should go have a drink and I  
25 shouldn't take it so seriously because this was about public

1 relations, it wasn't about truth. And so I went and had a  
2 drink with him because it was about midnight and I didn't  
3 have nowhere else to go.

4 If any of you want to say anything back to me,  
5 you can say it as we call the next panel.

6 MR. UQDAH: I need to -- I feel compelled to respond  
7 to some of your statements, and I realize that perhaps you  
8 made them in the interest of what I heard earlier was  
9 described as this Commission needing to have balance. And I  
10 can certainly support that. However, I need to remind you,  
11 for example, when I made the comment about the braiding  
12 being the only thing that we can look at to survive the  
13 middle passage, that if I was to give anyone on this  
14 Commission an association test and I showed you a plate of  
15 sushi, you would think Japanese. If I showed you some  
16 spaghetti, you would think Italian, albeit you would be  
17 wrong because it's Chinese -- that's alright. I'm trying to  
18 make a point.

19 My point is that if I showed you a silhouette of  
20 a braided hair style and asked you to associate it with a  
21 country and it had no face, you would think African or  
22 African American. If I showed you a basket or some of these  
23 other items that you mentioned to me, you wouldn't  
24 necessarily associate that with the country of Africa.

25 CHAIRPERSON BERRY: Now I would.

1           MR. UQDAH: So -- that's because you come from a  
2 perspective. I'm now talking to the majority of the people  
3 in this country who are not historians. So -- and I'm  
4 giving you a common perspective. The other thing that I  
5 would mention to you in relationship to my example of Madam  
6 C.J. Walker and the ten year span between her existence and  
7 that of the license, what I mentioned to this Commission  
8 early on in my closing -- opening statement -- is that this  
9 issue was about money, about race, about the last three  
10 things being politics, control and power. And I submit to  
11 this Commission most -- most specifically to its Chair, that  
12 the reason that these things exist in this country is  
13 because of race.

14           That Madam C.J. Walker was a black woman, that  
15 she showed white America how to make money off of hair and  
16 hair care products, and in order for them to maintain the  
17 status quo, to maintain their power, to maintain their  
18 control, to maintain their political status that they  
19 created a licensing process. And once they did, from that  
20 point on, every person needed to have a license.

21           The last thing that I would -- would comment on  
22 is this. That yes, it is true that when they raised the  
23 minimum wage that it didn't have any effect on hiring, and  
24 the reason that it didn't is because an entrepreneur is  
25 going to find a way to survive. That's our job. That's our

1 business. And it was worse for me in the District of  
2 Columbia because the District has a law that requires me to  
3 pay \$1.00 above whatever the federal minimum wage is.  
4 That's law. So while everybody else is screaming about  
5 \$5.25, I've got \$6.25. I've got to bring someone in and  
6 train an unskilled, untrained person at \$6.25 an hour  
7 because the government doesn't trust me to do the right  
8 thing.

9 CHAIRPERSON BERRY: Mr. Reynolds.

10 MR. REYNOLDS: Two comments. I think that there a  
11 fair consensus amongst labor economists -- you raise the  
12 minimum wage and the number of jobs are reduced. There are  
13 a handful of studies that go the other way, but as I said  
14 before, there is a consensus among labor economists on this  
15 issue.

16 Now the fact that we're discussing issues that  
17 you don't believe are directed primarily at the black  
18 community, well, I would say that you're right. These  
19 issues affect all Americans. I'm concerned that in my  
20 capacity as president for this Center for New Black  
21 Leadership -- I'm concerned about the black communities. I  
22 think that blacks, like other Americans, -- well, blacks  
23 share many of the same concerns that other Americans have  
24 and many of these concerns revolve around impersonal market  
25 forces that are impacted by economic regulations issued by

1 the government. Just because I'm not sitting here  
2 discussing an issue that only affects blacks -- and actually  
3 I think that that would be quite difficult to do -- but just  
4 because I'm not -- just because I'm not able to do that  
5 doesn't mean that it's not affecting -- that these policies  
6 aren't affecting the black community in a negative way.

7 CHAIRPERSON BERRY: Mr. -- I didn't -- well, I don't  
8 need to take time to respond to that, but I didn't say  
9 affecting blacks -- I said Civil Rights issues -- I was just  
10 jurisdictionally talking about something. Yes, go ahead.

11 MR. THOMPSON: Certainly, Madam Chair, I want to -  
12 respond to two things, and certainly it's very similar to  
13 what you were just saying to Mr. Reynolds. I want to  
14 revisit something that I said earlier in terms of your  
15 saying that it was not addressed as a Civil Rights issue.  
16 One of the things that I had addressed during the beginning  
17 of my presentation was that many times when you're dealing  
18 with regulations and statutes, on their fact they may in  
19 fact not be discriminatory, but that they may have a  
20 disparate or an inordinate impact on minority owned  
21 businesses. It was in that context that I was attempting to  
22 make it a Civil Rights issue. If I did not substantiate it  
23 as such, you know, I'd like to now. But that was -- the  
24 language that I attempted to use to make it a Civil Rights  
25 issue, even though many of these regulations may in fact

1 affect all small businesses, if they in fact have a  
2 disparate or an inordinate impact on minority-owned  
3 businesses, that is the point at which I think it becomes a  
4 Civil Rights issue and one that I was talking about earlier,  
5 that hopefully this would expand into more of a detailed  
6 hearing as opposed to just a briefing. So I do in fact  
7 think that it was put in the context of a Civil Rights  
8 issue.

9           The second one -- the second issue or response  
10 was to your saying that you feel that there should be some  
11 accountability for those who are involved in government  
12 programs. I agree with you and I think that Ms. Laverdy  
13 would as well. My concern is that -- that in the  
14 implementation of some of these programs there have been  
15 some -- some actions in the implementation that has affected  
16 the existence of the minority-owned businesses. And my  
17 understanding of the structure of the hearing -- or the  
18 briefing, I'm sorry -- is how local, state, or federal  
19 government regulations may impede minority businesses  
20 enterprise at the start up or expansion phase. That is in  
21 fact the context in which many of the comments were made,  
22 because some of the issues, like the -- like certification,  
23 or the refusal to break down contracts, or the gratuitous  
24 granting of waivers, or the lack of effective screening for  
25 front companies -- may impede minority businesses at the

1 start up or expansion phase. And it was in that context that  
2 I wanted that to be addressed.

3 CHAIRPERSON BERRY: Thank you. Commissioner Horner.

4 COMMISSIONER HORNER: Yes, Madam Chair, just a couple  
5 of small points that I think crucial for the record. You  
6 indicated in your remarks a couple of things that I think  
7 need some attention. One is you indicated that you thought  
8 we didn't have a balanced panel. As I listen to this panel,  
9 I heard some people who were for the current level of  
10 government intervention -- economic action through  
11 protection of set-asides if not their expansion, and the  
12 other half of the panel who were for greater deregulation,  
13 less government expansion. So I think indeed we did have on  
14 that issue, some balance.

15 Also you said that -- you made the comment since  
16 no one on the panel cares to rebut the witnesses or correct  
17 the witnesses -- and of course over the years of my service  
18 on this panel I have many times disagreed with many things  
19 factual that I've heard, perhaps even today, but I think our  
20 job is not to rebut or correct errors we perceive among the  
21 witnesses so much as to listen respectfully -- and I think  
22 therefore there should be no presumption -- I just want to  
23 say for the record -- that we agree, if we have not  
24 rebutted. That's all.

25 CHAIRPERSON BERRY: Well, I happen to disagree with

1 you, and I think that if we have a panel and there's no one  
2 on the panel who can make the argument on each side -- we  
3 had no one here to argue that the level of regulation right  
4 now of business is just fine. And there are people who  
5 would argue that in this world. I'm not contending with the  
6 panelists. I'm contending with my colleagues and telling  
7 her what I meant by balance. My balance question was not  
8 about the set-asides, my question was about the overall tone  
9 of the panel, and that's an issue for us to discuss at a  
10 later time because the witnesses are not responsible for  
11 that. And I also think that the Commissioners may ask  
12 witnesses any questions they please and make any comments  
13 that they please with the use of their time when it becomes  
14 available to them.

15 But I want to thank the panel very much. I  
16 appreciate it. I learned a lot and I appreciate your  
17 remarks and I thank you very much for coming.

18 VICE-CHAIR REYNOSO: Thank you.

19 MR. UQDAH: Thank you.

20 CHAIRPERSON BERRY: Could the next panel come forward,  
21 and I understand that there's someone who has to leave  
22 almost right away, so maybe we'll just start with you first.  
23 Who is it? Oh, that's the first person on the panel.

24 The panelists who are coming forward are Nicole  
25 Garnett who is a Staff Attorney for the Institute for



1 Justice, who has litigated cases in New York City and  
2 elsewhere opposing restrictions on entrepreneurs. Ms.  
3 Garnett will also discuss the Institute study of regulatory  
4 barriers in a number of U.S. cities. A 1995 graduate of  
5 Yale Law School, she was a clerk for 8th Circuit Court of  
6 Appeals' Judge Morris Arnold before joining the Institute.

7 Mr. William Dennis, Jr., is a Senior Research  
8 Fellow at the Education Foundation of the National  
9 Federation of Independent Business. He has researched small  
10 business and public policy and he has published widely on  
11 the subject, and frequently addresses organizations. He is  
12 founder and director of the National Small Business  
13 (inaudible) and was President of the International Council  
14 for Small Business in 1996 and 1997.

15 Margaret Simms -- Doctor Simms is Vice President  
16 for Research at the Joint Center for Political and Economic  
17 Studies and has conducted research on minority business  
18 development issues. Dr. Simms earlier was a program  
19 director at the Urban Institute and a college professor.  
20 She has been editor of the Review of Black Political Economy  
21 and has edited a number of books on the economic well-being  
22 of African Americans.

23 We will first begin with Ms. Garnett. Thank you.  
24 If you will just make an opening statement and as you notice  
25 there are questions after.

1           MS. GARNETT: Okay. Thank you very much. I apologize  
2 that I won't be able to stay around, I have to be at a  
3 wedding in Philadelphia this evening. I really appreciate  
4 the opportunity to come here and talk to you all about  
5 economic liberty, a topic that is near and dear to the  
6 hearts of everybody at the Institute for Justice, because  
7 the Institute for Justice was founded upon, and it remains  
8 dedicated to, the principle that economic liberty which we  
9 call the right to earn an honest living, free from  
10 government interference that is -- that is arbitrary and  
11 unnecessary for legitimate public health and safety concerns  
12 -- is a fundamental civil right of every American, no matter  
13 what their race or sex. Today we remain dedicated to that  
14 principle and we fight in the courts and in the courts of  
15 public opinion for every American's right to earn an honest  
16 living.

17                   It seems like every morning, or at least once a  
18 week I pick up the paper and read about welfare reform.  
19 Some people champion reduced welfare roles and say, look,  
20 this experiment is working. Others note that the worse  
21 cases remain behind and predict dire results if the economy  
22 should take a turn for the worse. But everybody agrees that  
23 the success of this reform depends on the ability of former  
24 recipients to find and keep work.

25                   Sadly, the very governments that are now

1 encouraging people to work on the one hand, often erect  
2 arbitrary barriers that make it difficult or impossible for  
3 people who want to work to pursue their chosen profession.  
4 These barriers take many forms and many of these were  
5 discussed in the earlier panel. A few examples are  
6 arbitrary training requirements that require people who want  
7 to engage in the art of African hair braiding spend up to  
8 2000 hours and thousands of dollars of their money to learn  
9 techniques that they will never use in their profession.  
10 The zoning restrictions that keep moms from working at home  
11 so that they can be with their children. The strict  
12 numerical limits on permits that keep would-be cab and  
13 jitney drivers, freight haulers, garbage collectors and  
14 street vendors from serving customers who want and need  
15 their services. To outright prohibitions that all too often  
16 have no relationship to legitimate government concerns about  
17 health and safety; to complicated and confusing application  
18 and procedures that vest unfettered and under-reviewable  
19 discretion in government bureaucrats.

20           These restrictions have three things in common,  
21 at least. First, they hurt people at the bottom of the  
22 economic ladder, both by restricting employment  
23 opportunities and by depriving customers of energetic, high-  
24 quality, new service providers. Second, they protect  
25 existing companies by shielding them from competition. And

1 third, they are all too often completely unrelated to  
2 legitimate health and safety concerns.

3 To illustrate the real world impact of these  
4 regulations, I'd like to tell the story of my client and my  
5 friend, Vincent Cummings. Vincent Cummings emigrated to the  
6 U.S. from Barbados about 25 years ago. He's a machinist by  
7 trade who spent most of his adult life working in a shipyard  
8 in Brooklyn. Seven years ago Vincent's daughter told him  
9 something that changed his life forever. She told him she  
10 wanted to be a doctor. Well, Vincent decided he was going  
11 to help her achieve that goal and he wants more than  
12 anything to do that. He was going to need some extra money.

13 Well, he went to Kennedy Airport and applied to  
14 be a baggage carrier but he realized he wouldn't be able to  
15 keep his day job and still get all the way to Kennedy. So  
16 he thought, well, maybe I'll go into business for myself.  
17 And Vincent had always believed that his neighborhood in  
18 Flatbush -- Brooklyn -- lacked adequate transportation  
19 services, so he decided that maybe he would start a commuter  
20 van service. He recruited a few of his friends and pretty  
21 soon there were 15 members of Brooklyn Van Lines, each one  
22 of them provided inexpensive commuter van service, driving  
23 people door to door for \$1.00.

24 Well, because Mr. Cummings is a law-abiding  
25 citizen, he immediately applied for a permit for his

1 company. Response: application denied. He applied again.  
2 And again, and again, and again. Each time he submitted his  
3 application, he included over 1000 support statements from  
4 his customers and his community -- churches, nurses,  
5 teachers, saying they desperately needed this service  
6 because their community was underserved by the public bus  
7 system. But for seven long years Vincent Cummings was  
8 forced to operate in the underground economy. His American  
9 dream was denied right in the shadow of the Statue of  
10 Liberty.

11 Finally this summer, the New York City Council  
12 agreed to give Vincent Cummings a permit for 20 vans. But  
13 that was only after Mayor Guiliani vetoed a law that had  
14 denied his application for the fourth time. Why this  
15 intransigence? Well, Vincent Cummings committed an  
16 unspeakable crime. He provided a service that was  
17 competitive and better than public transportation. Even  
18 today Vincent's fight is not over, because even with his  
19 permit he cannot provide the service that his customers want  
20 and need. He can't operate on public bus routes -- that's  
21 every major street in the city, and he can't pick up people  
22 who hail him from the street. He can only pick them up if  
23 they call him in advance. And sadly, his victory may be all  
24 for naught, because yesterday the City Council  
25 Transportation Committee voted to adopt legislation that

1 would have the effect of banning all commuter van services,  
2 eliminating all 500 legal commuter vans in the city of New  
3 York, perhaps forever.

4 The situation in New York is outrageous in an era  
5 of welfare reform because after all, commuter van services  
6 not only put people to work, they take people to work. They  
7 take about 60,000 people to work every day. Most of these  
8 people that depend on their services live in poor minority  
9 or immigrant communities. But the simple fact is, as we  
10 heard earlier, as Mr. Uqdah and the other panelists showed  
11 us, these kind of stories are not unique.

12 There's no simple solution to this problem and I  
13 consider it a very serious civil rights problem. But the  
14 fact -- but wherever we should start is the government at  
15 every level -- from the federal government to the smallest  
16 hamlet, should take the time to recognize and respect the  
17 right to earn an honest living, and a good place to start  
18 would be to go through and to eliminate occupational  
19 restrictions that really have no connection to health and  
20 safety concerns. Thank you very much.

21 CHAIRPERSON BERRY: Are you saying you're going to  
22 have to leave? Is that --

23 MS. GARNETT: I am unfortunately, but I'll be glad to  
24 take questions if anyone has any questions right now.

25 CHAIRPERSON BERRY: Does anybody have any questions

1 they'd like to ask? Commissioner Lee.

2 COMMISSIONER LEE: Ms. Garnett, can you explain a  
3 little bit about what you mean by legitimate concerns? Who  
4 defines it? In particular, your example of the gentleman  
5 who wants to operate the community vans -- do you think it  
6 is a legitimate concerns of the riders to expect the van  
7 that he or she gets on is regulated so that he or she is  
8 going to get to a place safely. Is that --

9 MS. GARNETT: In the commuter van context, I think  
10 that we're -- I certainly don't oppose -- when I say  
11 legitimate health and safety concerns, the Institute for  
12 Justice and none of our customers -- none of our clients in  
13 the commuter van case or any other of our cases oppose  
14 narrowly tailored government regulations that address these  
15 concerns. In the van situation, we would certainly support  
16 requiring them to obey traffic laws, to make sure that their  
17 drivers are safe and have good driving records, that their  
18 vans are adequately maintained and that they have adequate  
19 insurance.

20 CHAIRPERSON BERRY: Go ahead.

21 VICE-CHAIR REYNOSO: Yes, I just have a question,  
22 again with respect to your example. I assume that there are  
23 competing arguments here -- the one that comes to my mind  
24 was that -- was that probably the city may have concerns in  
25 terms of the diminution of the use of public transportation

1 and will they be able to continue to provide it. How do  
2 those -- how, in your mind, should those balances be worked  
3 out, because I assume this is the sort of policy  
4 considerations that you run into all the time?

5 MS. GARNETT: Well in the city of New York, and in the  
6 Federal Government and the state of New York have made a  
7 commitment to public transportation and they heavily  
8 subsidize public transportation. I think the argument would  
9 be that if that's the policy judgement of the people of New  
10 York, that they should continue to do that, but that should  
11 not be connected to the question of whether people who want  
12 to use these competing private transportation systems that  
13 have -- that have demonstrated that in certain situations  
14 they perform better than public transportation, that they  
15 need those services to get to work on time, I don't think  
16 that our concern about public transportation should stop  
17 those people from having an additional service.

18 VICE-CHAIR REYNOSO: So -- some communities, for  
19 example, seem to permit the van services that go down  
20 certain streets and actually pick people up on the street  
21 corners. I don't know if it's still permitted or not in San  
22 Francisco, but I know some years ago it was, and it was a  
23 very cheap way of having transportation, so there are many  
24 different configurations that one could come up with.

25 MS. GARNETT: Yes, and I think that actually more and



1 more governments are looking at this. Ironically this case  
2 has gotten a lot of press coverage and our clients have been  
3 contacted by four or five different cities thinking -- that  
4 think that this is kind of a neat thing and wanted to know  
5 if they could come out and show them how to set something  
6 like this up in their cities. So it is an inexpensive  
7 system of transportation and it is very limited in the  
8 United States, but very popular in other countries.

9 COMMISSIONER LEE: I'm just operating five seconds  
10 behind everything today, so my apology. I just have one  
11 follow question on the legitimate concern thing. Do you  
12 think --

13 VICE-CHAIR REYNOSO: That's what a transportation  
14 system that carries you all night does for you.

15 COMMISSIONER LEE: What do you think about  
16 accountability to service recipients? Do you think service  
17 recipients deserve to have regulations to make sure that  
18 whatever service -- services they receive are safe? Not in  
19 the narrowly tailored way that you defined, but the way the  
20 government defines it?

21 MS. GARNETT: Well, I mean -- I guess it's all -- I  
22 don't think I understand completely your question.  
23 Certainly, service recipients of vendors, of taxi cabs -- of  
24 every service you can think of, should -- the government has  
25 a legitimate role in insuring that they receive safe

1 service, that they don't get sick from eating a taco off the  
2 street, and that they don't get in a wreck on the way to  
3 work because that wheel falls off a van. But I think that  
4 narrowly tailoring them, and at least making an effort to  
5 make sure that we're not excluding providers that are  
6 capable from providing good service, is an important -- is  
7 an important task for government.

8 CHAIRPERSON BERRY: Did you have a question?

9 COMMISSIONER GEORGE: Whenever it's my turn. You go  
10 ahead.

11 CHAIRPERSON BERRY: Go ahead.

12 COMMISSIONER GEORGE: I actually have two questions.  
13 One of the things that this Commission would like to be able  
14 to contribute to the policy in the future if we can devise  
15 good, valid conceptual methods and tools and have the money,  
16 is a way of measuring discrimination. And beyond that, I  
17 should think, measuring the impact of discrimination.

18 What that would help us to enable -- what that  
19 would help enable us to do is to figure out to what extent,  
20 for example, underdevelopment -- economic underdevelopment  
21 in predominantly minority communities is the result of  
22 discrimination and to what extent it is the result of other  
23 factors, perhaps in a significant way, overregulation or  
24 irrational regulation, or regulation that's not sufficiently  
25 narrowly tailored which has a negative impact on economic

1 development. Until we discover that somebody else has  
2 figured out a way of measuring discrimination, or until we  
3 figure out a way ourselves, can you provide any  
4 impressionistic evidence, or anything that would contribute  
5 to us resolving in our own minds in a tentative way, as to  
6 what extent economic underdevelopment in predominantly  
7 minority communities is in fact the product of continuing  
8 discrimination and to what extent regulation or  
9 overregulation or irrational regulation bears the burden of  
10 responsibility for this underdevelopment? Or to what extent  
11 those factors interact?

12 MS. GARNETT: Well, I must preface anything that I say  
13 by saying that my area of expertise or the Institute for  
14 Justice's area of expertise is very narrowly focused on  
15 entrepreneurial activities for low income individuals who  
16 have little skills. It's not particularly any minority  
17 community development -- I mean that's not something that we  
18 expand on.

19 COMMISSIONER GEORGE: So your focus is economic status  
20 rather than race?

21 MS. GARNETT: Right. And of course I would say the  
22 overall -- the over-arching sort of theme over all of the  
23 things that we've learned about entrepreneurialship is that  
24 regulations protect existing providers, and these providers  
25 have often been around forever. In Denver, we helped to

1 deregulate the taxi cab market and opened it up for a  
2 minority company there. They had not granted a new permit  
3 to a new company in 50 years.

4 Now, there are lots of factors that played into  
5 who got the initial permits -- some of those may have been  
6 racial discrimination. But now, what we've found for these  
7 entrepreneurs -- it's the protecting of existing competition  
8 that's really the problem, but you know, again, I can't make  
9 a global statement about inner city economic development.

10 COMMISSIONER GEORGE: And my second question is would  
11 you care to comment at all on the question of whether there  
12 are any federal, state, local laws within your knowledge  
13 which are designed to prevent or protect against illegal  
14 discrimination which have the effect of being counter-  
15 productive by damaging the interests of people whom they're  
16 supposed to protect -- by for example, impeding exchange,  
17 enterprise and so forth.

18 MS. GARNETT: Well, are you talking about race?

19 COMMISSIONER GEORGE: No, I'm not talking about race  
20 specifically. Beyond race -- sex, disability, age, national  
21 origin?

22 MS. GARNETT: Well I would actually think that one of  
23 the main things that I think was mentioned earlier that  
24 comes immediately to mind is this. Certain aspects of the  
25 American with Disabilities Act. You hurt small businesses -

1 - for instance, the van has to have a \$15,000 wheel chair  
2 lift in every van -- and you have -- literally, your whole  
3 company is one van you saved up \$20,000 to buy. It makes it  
4 very difficult to operate.

5 I would feel uncomfortable making any global  
6 statements about discrimination laws.

7 COMMISSIONER GEORGE: Has your Institute done any  
8 studies of these particular areas of government regulation?  
9 These are ones we're particularly interested in.

10 MS. GARNETT: We have not. We have and we will be  
11 glad to make available to you -- done studies of seven  
12 cities and how regulations affect would-be entrepreneurs in  
13 these entry-level occupations, and we would be glad to make  
14 those available to you.

15 COMMISSIONER GEORGE: Just generally or with respect  
16 to anti-discrimination?

17 MS. GARNETT: Just generally.

18 COMMISSIONER GEORGE: Has anybody done anything on the  
19 subject of anti-discrimination law? Would it be your view  
20 that there's nothing to do? That --

21 MS. GARNETT: Well, certainly I think that there would  
22 be lots to -- it would be an interesting topic that someone  
23 could take up. It's not the Institute -- it's not what the  
24 Institute for Justice is sort of has done or one of our core  
25 areas, but somebody -- it would be a very interesting study.

1           CHAIRPERSON BERRY: Any other questions from  
2           Commissioners? I have one myself -- or two. Mr. Guiliani,  
3           the mayor of New York is a rather astute politician, I  
4           think, and I find it hard to believe that his only argument  
5           for being against the vans was that they were competing --

6           MS. GARNETT: Mr. Guiliani is for the vans.

7           CHAIRPERSON BERRY: Oh, I thought you said --

8           MS. GARNETT: City Council is against. He voted a law  
9           that denied the license, and he --

10          CHAIRPERSON BERRY: Oh, alright. That's what I  
11          thought, so I didn't know why you were -- but what is the  
12          City Council's reason for being against -- their stated  
13          reason? I'm sure they didn't say we don't like anybody to  
14          compete with people so therefore out you go the door.

15          MS. GARNETT: Well, actually, that's what they do say.  
16          But --

17          CHAIRPERSON BERRY: Oh, come on.

18          COMMISSIONER HORNER: They say we've been bought. And  
19          we stabilize --

20          COMMISSIONER GEORGE: Would the argument be -- it  
21          seems to me it wouldn't be --

22          MS. GARNETT: It's to protect public transportation  
23          and -- but -- if -- I could bring you reports that say we  
24          have to get rid of these vans because they're better than  
25          the public buses. This is a problem of existing competitors

1 being protected from new entrants -- in this case,  
2 immigrants who are operating van services.

3 CHAIRPERSON BERRY: Were you shocked at the Institute  
4 for Justice to find out that regulations protects those  
5 businesses that are already in markets?

6 MS. GARNETT: I wasn't shocked, no.

7 CHAIRPERSON BERRY: I mean that's -- everybody --  
8 that's just generally one of the things that happens when  
9 you have regulation. And also why, if -- in your response  
10 to a question of Commissioner George you said that your  
11 program and activity at the Institute was generally  
12 concerned about these economic -- had an economic agenda --  
13 concern about it wasn't necessarily race, if I understood  
14 you correctly --

15 MS. GARNETT: That's right.

16 CHAIRPERSON BERRY: Well, if that's the case, why do  
17 you have this emphasis on minority business people who are  
18 trying to compete in your cases and in the other kinds of  
19 things? What is the emphasis there? Why don't you have any  
20 cases about poor whites who want to become entrepreneurs?

21 MS. GARNETT: We don't have -- we don't have any  
22 litmus test. We often take cases that come to us and we  
23 focus on people at the bottom of the economic ladder, and  
24 for lots of reasons, they tend to be minorities.

25 CHAIRPERSON BERRY: Do you actually ever seek out

1 cases -- good test cases as other non-profit law firms do?

2 MS. GARNETT: Well, I mean when we come across a case  
3 like the van case that we think illustrates a -- the  
4 outrageous effect of economic regulations and where real  
5 world people are really being hurt -- you know, we would  
6 take that case. We have limited resources and we take -- we  
7 have only so many cases to take, but we don't have any  
8 litmus test. We don't -- we don't pick people just because  
9 they happen to be minority. We pick them because we think  
10 that they deserve our help.

11 CHAIRPERSON BERRY: I only asked you that because  
12 Polly Williams who is from Wisconsin and was in the state  
13 legislature and was very closely associated with the issue  
14 of school choice in that state which -- has been involved  
15 in, told the press that after she had been sort of lionized  
16 as the person who was doing this for poor black children,  
17 that the leaders of the organization then created another  
18 organization called Parents for School Choice and lobbied  
19 for expanding the program to religious schools and then  
20 elbowed her aside, and that she resented it -- "We have got  
21 our black agenda and they've got their own agenda." I  
22 didn't see whether resources were really being used to  
23 empower us as much as it was to co-opt us. That's why I  
24 asked you the question.

25 MS. GARNETT: Well, I mean as far as I am aware,



1 Representative Williams was very much in support of  
2 expanding the program and I think she may have sponsored the  
3 legislation, so --

4 CHAIRPERSON BERRY: Well, she said that to the press.  
5 My last question then, for you, is -- is the Institute an  
6 membership organization or what is it?

7 MS. GARNETT: No, we're not a membership organization.  
8 We are non-profit, 501(c)(3) organization -- a non-profit  
9 public interest law firm.

10 CHAIRPERSON BERRY: Okay, fine, thank you very much.

11 COMMISSIONER HORNER: Madam Chair, just a one sentence  
12 comment. I have seen the studies that Ms. Garnett referred  
13 to -- they're city by city and occupation -- different  
14 occupations in different cities. They're really outstanding  
15 studies and I would commend them to anyone with an interest  
16 in this.

17 MS. GARNETT: We'll send them over.

18 CHAIRPERSON BERRY: And my really last question, have  
19 you heard anything bad about vans and their service to  
20 people in the City of New York? And I ask you that because  
21 I have a graduate student who's from New York City and she  
22 was telling me about her experiences on the vans and about  
23 crime that takes place, about people getting ripped off,  
24 about what the absence of regulation does. And I just  
25 wonder in order to counterbalance your overall glowing view,

1 has anyone made any complaints about vans?

2 MS. GARNETT: There are certainly vans -- there are  
3 bad eggs, and I think that the situation where they don't  
4 allow vans to enter into the regulated market has created a  
5 giant black market where there -- which allows these sort of  
6 bad eggs to continue to compete. And the answer would be to  
7 bring everyone into the above-ground economy and to regulate  
8 them for safety, for crime, for things like this and  
9 everyone would be a lot better off.

10 CHAIRPERSON BERRY: Thank you very much --

11 MS. GARNETT: Thank you very much for having me.

12 CHAIRPERSON BERRY: -- and I hope you enjoy the  
13 wedding. Mr. Dennis, please.

14 MR. DENNIS: Thank you very much.

15 CHAIRPERSON BERRY: Thank you for your patience.

16 MR. DENNIS: Thank you very much. Let me preface my  
17 remarks by saying I am aware of no literature that really  
18 addresses minority business concerns and regulations  
19 directly. Most of the literature that I have seen revolves  
20 around small businesses, and to the extent that minority  
21 businesses tend to be smaller than white-owned businesses as  
22 a whole, a focus on the smallest tend to get to minority,  
23 but I am not aware of a body of literature that directly  
24 addresses the minority issue.

25 I would like to focus my remarks about how the

1 regulatory impact on smaller firms. Then I would like to go  
2 a little bit to home-based business, because I think so many  
3 minority businesses are involved in that type of activity.  
4 And then I would just like to make a few concluding  
5 observations, if I might.

6 Regulation impacts small businesses in a number  
7 of very specific ways. The first one obviously is that it  
8 prohibits certain type of activity. For example, we saw in  
9 Los Angeles just recently, actually in the spring, a law  
10 repealing the repeal of the prohibition on home based  
11 businesses. Prior to the spring, you weren't allowed  
12 essentially to have a home-based business in the city of Los  
13 Angeles. That's still true in some of our cities.

14 Unfortunately, I've never seen any documentation as to how  
15 many cities this affects. And the prevalence of the  
16 problem, although I've heard again that some of the major  
17 cities are involved, such as Detroit, still. Another  
18 example of absolute prohibition would be carriers of first  
19 class mail.

20 I think, however, a more important thing is the  
21 corollary itself which really limits the number of  
22 competitors that was discussed earlier. Of course you know  
23 there's limitation on the number of competitors, and of  
24 course you know who gets the licenses, the permits, and  
25 whatever. It certainly isn't the new people on the block.

1 An example from the federal government is the federal peanut  
2 allotment program which you've probably heard in several  
3 instances before. In the state level, you can look at  
4 licensing for -- might have recalled a segment that Mike  
5 Wallace did on 60 minutes about a year or two ago on doing  
6 wills -- that it was this exclusive purview of lawyers and  
7 other people couldn't provide that service.

8 There is in fact a book put out by Gayle (ph)  
9 Publishing. I wanted to bring it today but I forgot it. It  
10 was about that thick, which has the basic licensure  
11 requirements of various occupations in all 50 states. It's  
12 absolutely voluminous. And then finally on the limitations  
13 -- on the limitation side -- on the local level might be the  
14 New York city taxi medallion example which has been used ad  
15 infinitum.

16 The second thing besides limiting competition is  
17 that regulation raises the cost. For example, large bonds  
18 on small contractors raises the cost to those people and  
19 makes it more difficult for them to enter it, and it makes  
20 it more difficult for them to operate. And of course this  
21 tends to affect the resource constraint, whoever they are in  
22 that particular jurisdiction. But it has another really  
23 insidious effect which most of us don't think about. And  
24 that is it gives the big guys a big advantage, quite  
25 frankly, because it reduces the competitive capacity of

1 smaller firms.

2           There are really two elements to regulatory  
3 compliance. The first one is a variable cost which you --  
4 you know, which is actually a per unit cost. And the second  
5 one is a fixed cost. When you have a fixed cost of course,  
6 in a large firm it can be spread out over more units than a  
7 small one. I want to give an example at the small end. It  
8 might be someone with five employees who needs to buy  
9 several types of personnel manuals to keep up with all the  
10 rules and regulations, and attend certain classes to do  
11 that. If you spread it out over five employees, that's one  
12 cost. If you spread it out over 100, it's a very different  
13 cost.

14           The examples that the Small Business  
15 Administration frequently uses and which they have several  
16 studies to support have to do with pollution and clean air  
17 regs, where there's clearly a disproportionate impact. Now,  
18 the federal government has attempted to do something about  
19 it. About 15 to 20 years ago they passed something called  
20 the Regulatory Flexibility Act. The purpose of that Act in  
21 fact was to have the various federal agencies, the economic  
22 assessments, how various proposed regulations impact small  
23 business, and if they found disproportionate impact, and if  
24 it was within the -- still would achieve the intent of the  
25 regulation -- to change the regulations and make them for

1 smaller firms. Quite frankly, this has been roundly ignored  
2 by almost all federal agencies.

3 So what happened was, just recently we passed  
4 something called the Small Business Regulatory Enforcement  
5 Fairness Act, which in effect gives private parties the  
6 right to take federal agencies to court. As of yet, I am  
7 aware of no example that's been used. I know that many in  
8 the small business community are waiting for a -- you know,  
9 the silver bullet case to come along before they go ahead  
10 and prosecute.

11 And the third thing is that regulation does is  
12 that it creates uncertainty and really increases the hassle  
13 factor, for lack of better terminology. Let me just give  
14 you an example. Assume you're someone out on the street in  
15 Kiatucka (ph) Iowa, for lack of better terminology. And  
16 they read you the following. This is the EEOC's enforcement  
17 guidance for the Americans with Disabilities Act and  
18 psychiatric disabilities. It says, "An employer may refuse  
19 to hire someone based on his or her history of violence or  
20 threats of violence if it can show that the individual poses  
21 a direct threat. A determination of direct threat must be  
22 based on an individualized assessment of the individual's  
23 present ability to safely perform the functions of the job,  
24 considering the most current technical knowledge in or based  
25 on the best available objective evidence." If the town

1 tough comes into your business and applies for a job and  
2 someone reads you that, how do you handle it? So that's  
3 part of uncertainty, clearly, and it's also very much a part  
4 of the hassle factor.

5 Now let me suggest this is really important. For  
6 example, again, another study produced by the Small Business  
7 Administration. They asked sample small business owners  
8 about tax rules and regulations. And by the way, the IRS is  
9 the number one problem, not just -- I'm not talking about  
10 taxes per se, we're talking about administration, rules and  
11 regulations that go along with it. They asked them about  
12 them, and the thing that was really striking about the  
13 results of that survey was it wasn't so much the cost of  
14 complying with these rules and regulations that bothered  
15 these small business owners, it was the unknown of what to  
16 do. It was the frequent changes that occur in them, and  
17 they can't get their questions answered. Those were their  
18 major concerns -- or the amount -- actual cost, you know.

19 People go into business, obviously not to be  
20 hassled. In fact, one of the reasons they go into business  
21 is that they feel hassled where they are. It's one of the  
22 great -- people who are in psychological studies, it's one  
23 of the great emancipators. They're on their own. Then we  
24 have studies which show that the most unanticipated event  
25 for new business owners is dealing with rules and

1 regulations of the federal government -- or all government  
2 for that matter.

3           The simple licensing, for example, the simple  
4 ability to go down to city hall and have something processed  
5 efficiently is one important factor in this regard. For  
6 example, I was told recently -- I didn't personally see it,  
7 but I was told by someone who is very knowledgeable and very  
8 reliable, that downtown here in Washington at the Bureau  
9 where you get variance licenses for construction, that they  
10 now had a new industry called the place holder industry.  
11 What happens is you go down and big long line, you know  
12 you're going to stand there, so there are people there who  
13 for an hourly fee will hold your place. Or something as  
14 simple as getting an inspector out when you need them to do  
15 that.

16           Now, NFIB currently estimates that -- well, I  
17 should say not currently -- 1995 -- that six million people  
18 were involved in creating four and half million businesses  
19 in that year. Three and a half million of those were de  
20 novo starts, the other million were kind of sales and asset  
21 sales and that sort of back and forth. 35 percent were  
22 female, 11 percent black, six Hispanic, and seven were other  
23 minorities. But the critical thing I think for this current  
24 discussion is that two out of three of those began in the  
25 home. And we're not talking necessarily about very



1 marginal, inconsequential operations. One in ten hired  
2 someone other than the owners, and 25 percent were full time  
3 operations, defined as working more than 40 hours. This  
4 mean that zoning becomes a critical issue, and when you  
5 start out by saying that home based businesses simply are  
6 not legal, we've got some problems.

7 Now, the fact of the matter is that people  
8 roundly ignore this. But what happens in those cases is it  
9 limits growth, it creates all types of uncertainties. And  
10 this is really bad because starting in your home saves  
11 money, and that's really important for the capital  
12 constraints. It's just -- it's a nice way to save money to  
13 get going. And when they say no, then effectively you have  
14 a choice -- and the choice is not a good one.

15 As of last count there were -- I mentioned Los  
16 Angeles had changed the rules -- there were 5000 as of -  
17 yesterday that had officially registered. Today is the last  
18 date to register and folks out there told me they expected  
19 the last minute flood which they normally receive, and it  
20 may go as high as 20,000 of these businesses.

21 A second thing along these -- along this zoning  
22 type thing, quite frankly are the high fees involved with  
23 registering some of these businesses. For example, Pasco  
24 County, Florida, which is just north and west of the city of  
25 -- or of the Tampa Bay area -- they charge \$500 if you want

1 a home-based business license. They charge it on the  
2 ostensible ground that they need an inspector to come out  
3 and look at your place of business. Most businesses, by the  
4 way -- I think the issue was addressed earlier -- most  
5 businesses in this day and age start for relatively little  
6 amounts of money. The idea that you need to spend thousands  
7 of dollars to go into business is not typical. So when  
8 you're talking about spending \$500, that's a tough one.

9 I understand that balancing legitimate interests  
10 of commerce and residents -- I mean there certainly are  
11 clear balances here. And they have to be adhered to. But  
12 nonetheless, it really imposes a really severe limitation if  
13 you don't have the balance and we get really carried away  
14 (inaudible).

15 Now I have a whole series of tax issues, but I'm  
16 already way over and I apologize. So I'll be happy to come  
17 back to a couple of those if you'd like during the question  
18 and answer period, but let me just conclude with these  
19 remarks and that is this is not a federal issue even though  
20 the federal people have to look at it this way. It's not a  
21 state issue even though the state people tend to look at it  
22 that way, and it's not a local issue, even though state and  
23 local people tend to look at it that way. It's an overall  
24 encompassing one and that's the one the small business owner  
25 feels.

1           The second point is that the business of business  
2           is business. And the extent that the owner must devote time  
3           to regulatory compliance -- it takes away from the thing  
4           that that person does best, and the reason for its  
5           existence. So we have to be very careful on what we're  
6           demanding.

7           The third thing is that every study that I am  
8           aware of on small business and regulation shows the problem  
9           is becoming much more severe. It has over the last ten to  
10          15 years. It's one that is really growing in the estimation  
11          of small business owners.

12          And the fourth and last one, and maybe the most  
13          important one, is that particularly with respect to the  
14          black community, the overwhelming majority of black people,  
15          by a Gallup poll that we've just recently conducted, show --  
16          show great good will for enterprise and small business  
17          owners. 76 percent believe this is a positive influence in  
18          the way things are going in this country today. More  
19          importantly, blacks more than any other group we broke out;  
20          believe that this is the best -- or one of the best avenues  
21          in this country to economic advancement and social benefit.  
22          So I'll just leave it right there.

23                 VICE-CHAIR REYNOSO: Very good. Thank you very much.  
24          Dr. Simms?

25                 DR. SIMMS: Thank you. Good afternoon. I'm pleased

1 to have the opportunity to be with you and to present some  
2 findings from two studies that I am familiar with, the  
3 impact of government regulations on minority businesses, one  
4 that I conducted for the Minority Business Development  
5 Agency, and another that was recently completed under the  
6 auspices of the Joint Center for Political and Economic  
7 Studies, and the latter study I have left a copy for your  
8 record.

9 VICE-CHAIR REYNOSO: Thank you very much.

10 DR. SIMMS: The -- the focus of one of the studies was  
11 on -- specifically on state and local regulations. The  
12 other focused more on the impact of changes in the  
13 Department of Defense regulations on the minority  
14 contractors. Let me speak first to one that -- and this is  
15 the disadvantage of going last -- that everybody has  
16 addressed -- and that is --

17 VICE-CHAIR REYNOSO: Yes, but you're going to agree or  
18 disagree with that.

19 DR. SIMMS: -- is to speak to the issue of  
20 occupational and business licensing. This is a frequent  
21 complaint about licensing requirements, not licensing per  
22 se, but licensing requirements that go beyond those  
23 necessary to protect the public interests. Often in state  
24 provisions, existing licensees can block the issuance of a  
25 new license to an applicant, and in several of the states in

1 which I did interviews, people complained of discriminatory  
2 impacts in the way in which these complaints were filed --  
3 that existing licensees were much more likely to register  
4 complaints when the applicant was a minority or a woman. As  
5 somebody said in Texas, if you weren't one of the good old  
6 boys, you were not welcomed into the club.

7           The other regulations that people complained  
8 about most had to do with doing business with the  
9 government, and the reason these were -- loomed large in  
10 their estimation is in part because of the industries that  
11 we were focusing on, and because minority businesses tend to  
12 look to government markets because they're often  
13 discriminated against and excluded from opportunities in  
14 private markets.

15           In the case of government contracting, at all  
16 levels of government -- the federal, the state and the local  
17 -- one of the most frequent complaints concerns  
18 specifications in request for bid that exceed those  
19 necessary to achieve a government purpose. For example, the  
20 unique qualifications that were included that only the  
21 current contractor was able to comply with. For example, if  
22 one of the requirement was that you had to have done this  
23 for the city for eight years, obviously only one person was  
24 eligible.

25           Another feature is the large minimum size of

1 contracts. This has been mentioned before and here, in  
2 fact, the current move toward deregulation in the federal  
3 government is having an -- is having and is expected to have  
4 an adverse impact on minority contractors because of certain  
5 features such as bundling of contracts. This -- the  
6 bundling of contracts stems from the reduction of federal  
7 paperwork, the move to be more efficient in government  
8 contracting, so that you want to manage fewer contracts, and  
9 therefore larger contracts, and this in effect, bars the new  
10 and expanding business from being able to bid.

11 Connected to this also is the bonding  
12 requirements that are very prominent at state and local  
13 levels -- often -- as has been documented in a number of  
14 instances -- minority firms are -- have less access to  
15 bonding, in part because of non-discriminatory features  
16 which is basically you can't build up a bonding experience  
17 if you never had one. And secondly that in many states,  
18 bonding agencies and companies can arbitrarily choose not to  
19 bond a company. They're not bound by some of the anti-  
20 discrimination regulation, or at least the way that they  
21 structure themselves it's easy to avoid them.

22 And the way in which the government intersects  
23 with that is that there are often bonding requirements that  
24 exceed those necessary to protect the government's  
25 interests. For -- one example that was given to me is if

1 you have a performance bond it's to protect the government  
2 in case that the contractor fails to perform, and if you  
3 have a janitorial services contract, it usually only takes  
4 three months to rebid and get a new contractor. But in  
5 fact, the bonding that is required is 12 months performance  
6 bond, not three months. Another example was if you wanted  
7 to repair a pot hole on a runway at the airport, that you  
8 had in fact to put up a bond that was the equivalent of the  
9 cost of a jumbo jet in case the tire hit the pothole that  
10 was improperly repaired.

11 And has been mentioned by -- by several people  
12 previously, there are -- there were complaints with regard  
13 to the operation, structure and enforcement of regulations  
14 surrounding minority business specific programs. Many  
15 complaints concerning the certification process, that is  
16 that if you wanted to do business with several state  
17 agencies, each had their own certification form, their own  
18 requirements and -- and very few had any kind of centralized  
19 certification process that you could go one place and that  
20 would take care of your certification.

21 But the other thing that they complained about  
22 was lax enforcement of requirements, that is the failure to  
23 verify that businesses that submitted papers were in fact  
24 really minority owned or really women owned businesses, so  
25 that in fact it diluted the effect of the program.

1           But in sum let me just make two points. One is  
2           that frequently what was -- what was being argued was that  
3           regulation might need to be reduced or modified. Few argued  
4           that no regulation was needed. Secondly, that in the scheme  
5           of -- of barriers or obstacles to minority business  
6           development, very few thought that it was among the top  
7           barriers. Generally it was ranked lower than capital  
8           availability, market opportunity and management expertise.  
9           And in addition, in our examination -- in the examination of  
10          regulatory stringency where states were arrayed in terms of  
11          their regulatory environment, there seemed to be no  
12          connection between stringency and minority business  
13          development as measured by the number of firms and the  
14          number of firms per 1000 population.

15                 I would like to just take an opportunity to  
16          comment on two things in the broader context of minority  
17          business development because -- and related employment  
18          issues, since I've done work in a number of those areas, and  
19          I would like to respond to Mr. Reynolds comment. There is  
20          in fact no consensus among labor economists that the impact  
21          of the minimum wage is significantly negative. The few  
22          studies is -- in fact most studies show very small impact if  
23          any at all in terms of an increase in the minimum wage and  
24          overall employment.

25                 And secondly, I would like to say that in studies



1 -- a study that we recently conducted in terms of minority  
2 business -- businesses and their employment potential --  
3 that minority firms do make a big contribution, they're much  
4 more likely to have minority employees. They are much more  
5 likely to recruit in low income neighborhoods, and they pay  
6 competitive wages and don't seem to find that a problem.

7 And secondly I would just like to respond to the  
8 question of measuring discrimination. There are in fact a  
9 number of studies that have attempted to quantify the impact  
10 of discrimination, but not on this -- in this particular  
11 area. There are many statistical techniques that have been  
12 developed to sort out and separate discrimination from  
13 differences in qualifications, for example, and differences  
14 in wages paid. So there is a literature there. I'm not  
15 aware of any that have been able to measure the impact of  
16 regulation or the level of regulation on minority -- on  
17 minority business expansion. Thank you.

18 VICE-CHAIR REYNOSO: Thank you very much.

19 CHAIRPERSON BERRY: Are there any questions from  
20 Commissioners? Yes, Commissioner Horner.

21 COMMISSIONER HORNER: I have a question for Dr. Simms.  
22 On the subject you alluded to of the size of the federal  
23 government contracts, I know the Clinton administration has,  
24 I think, by new regulations, indicated that contracts now  
25 can be larger. Is that the case?

1 DR. SIMMS: That's correct.

2 COMMISSIONER HORNER: And that -- you expressed some  
3 concern that that will deprive small minority owned  
4 businesses of the opportunity to contract, and that would  
5 seem on the face of it to be correct. And therefore  
6 problematical. But my question is why -- what is -- give me  
7 your critique of an alternative -- and the alternative would  
8 be that for the sake of the government's efficiency, large  
9 contracts be permitted, but minority contractors who are  
10 small then would become subcontractors to the large  
11 contract. What is -- would you critique that scenario?

12 DR. SIMMS: Well, there are two or three reasons,  
13 based on experience, that would suggest that that's not the  
14 most efficient or effective way to engage minority firms.  
15 In fact, many minority firms do operate as subcontractors.  
16 The problem that arises is the making of the connection  
17 between the majority contractor and the minority  
18 subcontractor. That -- this is an avenue where good faith  
19 effort is very wide-spread, not just at the federal  
20 government level but at state and local levels as well.  
21 That is the government can put in provisions or give extra  
22 points for the inclusion of minority subcontractors and  
23 contractors will say that they made a good faith effort but  
24 they weren't able to find them.

25 The other one that is often used is that they

1 will bid or put the names of minority subcontractors when  
2 they bid for the contract, and then won't use them so that  
3 in fact what happens, unless the government continues to  
4 track the actual usage is that a company will say I will use  
5 15 percent -- 15 percent of this money will be passed  
6 through to minority subcontractors and here are the names of  
7 the firms that I will use. And then when they get the  
8 contract, that 15 percent does not go down to those --

9 Let me make just one more point, and that is that  
10 if I go back to the question of the experience then gets you  
11 more experience -- that often serving as a subcontractor  
12 does not give you the credential that you need to go on to  
13 the next step.

14 COMMISSIONER HORNER: How does business become big if  
15 not by starting small? Isn't the big contractor the outcome  
16 of somebody who started as a smaller contractor?

17 DR. SIMMS: That's true, and I don't think anything I  
18 said would dispute that.

19 COMMISSIONER HORNER: I'm sorry, you said -- I may  
20 have misunderstood. Didn't you just say that starting out  
21 as a small subcontractor to a large contractor wouldn't give  
22 you the experience or credential to -- to expand your  
23 business?

24 DR. SIMMS: That -- that is often the case, but that's  
25 not synonymous with saying that big contractors didn't start

1 small.

2 COMMISSIONER HORNER: Okay, I guess I have a paradigm  
3 in my mind of somebody who has a very small business, and  
4 perhaps a specialty business, and that specialty serves a  
5 larger project that may have ten specialties on it. And the  
6 small business may be a small, minority-owned business and  
7 offers the primary contractor a really good deal on the  
8 cost; and the primary contractor being reasonably rational  
9 says yes, I want this minority-owned firm because they're  
10 giving me a really good deal on the cost, and then just over  
11 time the minority contractor learns more about the business,  
12 hires more people, can be more competitive in making demands  
13 of primary contractors, and eventually by virtue of this  
14 activity, gains the magnitude to become a primary  
15 contractor. What's wrong with that scenario? In other  
16 words, I'm asking why do we need to induce inefficiencies in  
17 the government's contracting processes in order to assure  
18 the presence of minority work as a result of government  
19 activity, when the minority work could start small as a  
20 subcontractor and get big on its own?

21 DR. SIMMS: Let me see if I can separate the two  
22 pieces. I'm not going to dispute the question of whether  
23 firms that start small can get big. As to the question of  
24 why should we support government inefficiency for the  
25 purpose of promoting minority business contractors, I would

1 respond by saying that there are many things that government  
2 does that might be viewed as inefficient in a strict for-  
3 profit sense, but they serve a social or public purpose.  
4 And it seems to me that the issue becomes one of how you  
5 weigh the public benefit against the question of the  
6 efficiency.

7 COMMISSIONER HORNER: Yes, and that is how I  
8 understand the choice also. But I guess my question is are  
9 we posing a false choice here in the government decision-  
10 making? Why must the government contract directly with an  
11 inefficient -- and therefore inefficiently, with a very  
12 small provider? What is the failure in the market implied  
13 by that?

14 DR. SIMMS: The failure in the market based on the  
15 experience of 20 years is discrimination.

16 COMMISSIONER HORNER: Okay, that's what I wanted to  
17 know. Okay. In other words, government procurement  
18 officials are discriminating against the interests of the  
19 taxpayer.

20 DR. SIMMS: And contractors in the scenario that you  
21 presented, and prime contractors, are discriminating against  
22 minority subcontractors.

23 COMMISSIONER HORNER: Is it -- are you saying it is  
24 almost exclusively the prime contractor discrimination, or  
25 are you saying that government procurement officials

1 discrimination is also significant?

2 DR. SIMMS: I -- I wouldn't make the blanket statement  
3 that government procurement contractors are all  
4 discriminatory. There are certainly evidence -- there is  
5 certainly evidence that -- both historically and I'm sure  
6 you could find it currently --

7 COMMISSIONER HORNER: Currently. Why do you think the  
8 Clinton administration has, given its record and its  
9 affiliation with a long standing anti-discrimination  
10 tradition through the Democratic party, is not sensitive to  
11 this issue, if it's true?

12 DR. SIMMS: I would not assert that they have not  
13 given attention to it.

14 COMMISSIONER HORNER: But they've made the decision to  
15 make the change.

16 DR. SIMMS: I think that they're -- that here -- this  
17 may be one of the unintended consequences of a government  
18 action that has not been thoroughly reviewed. And in fact,  
19 one -- the purpose of one of the studies that I cited was in  
20 fact to look at what was going on in the Defense Department  
21 as a result of the changes, both in place and those  
22 proposed.

23 CHAIRPERSON BERRY: Any other questions from  
24 Commissioners? I only have one I guess.

25 COMMISSIONER GEORGE: One.

1 CHAIRPERSON BERRY: Well you've got one? Go ahead.

2 COMMISSIONER GEORGE: Well, you --

3 CHAIRPERSON BERRY: No, I'll wait. I'll go last.

4 COMMISSIONER GEORGE: I'd like to address a question  
5 to both.

6 CHAIRPERSON BERRY: Okay.

7 COMMISSIONER GEORGE: Mr. Dennis, your presentation  
8 was very interesting and enlightening -- many valuable  
9 points. But having in mind that we're a Civil Rights  
10 Commission, is there anything that you would like to say to  
11 us as Civil Rights Commissioners about the impact of  
12 overregulation? Much of what you say goes to -- and I could  
13 see if you were testifying before Congress or for a state  
14 legislature or a city council, but as Civil Rights  
15 Commissioners, what is your message to us?

16 MR. DENNIS: My message to you is that most -- the  
17 vast majority of small business -- minority small business  
18 owners are very small business, and to the extent that  
19 regulation really bothers very small businesses, it will  
20 disproportionately impact minority small business.

21 COMMISSIONER GEORGE: Okay. And Dr. Simms, you  
22 anticipated the question that I would of course have asked  
23 you because it was the one that I had put to others, but as  
24 you already have heard, the Chairman is very interested in  
25 balance, and I am very interested in balance in these

1 hearings, and I'm judging from the -- biographical statement  
2 that we've got here, my sense here is that your own  
3 perspective is one that differs quite (inaudible) from  
4 Nicole Garnett's, or say from Mr. Reynolds earlier. Now you  
5 did disagree with Mr. Reynolds on the question of whether  
6 there's a consensus of labor economists --

7 DR. SIMMS: That was an issue of fact.

8 COMMISSIONER GEORGE: That's an issue of fact? Do you  
9 find yourself generally disagreeing with the perspective of  
10 --

11 DR. SIMMS: Well, I think I probably disagree with the  
12 assumption on which your statement is based, that you can  
13 look at my biographical sketch and assume that I differ with  
14 certain people with no other information before you.

15 COMMISSIONER GEORGE: No, I'm guessing. Is my guess  
16 correct?

17 DR. SIMMS: If you wanted to say that what I said in  
18 my formal statement is at odds with theirs, that's one basis  
19 of --

20 COMMISSIONER GEORGE: I'm trying to determine whether  
21 we have balance here or not. I'm just trying -- if I'm  
22 right in surmising -- but maybe I'm not right. Does your  
23 perspective differ from what you heard from Nicole Garnett  
24 or Mr. Reynolds?

25 DR. SIMMS: I would say that it probably does, but the



1 Joint Center is in fact a non-partisan organization, and it  
2 has not taken ideological bent, contrary to your assumption,  
3 and it would appear on the basis of the statements of what I  
4 know about at least one of those organizations, that they do  
5 start from an ideological perspective that colors the way  
6 they look at the issues.

7 COMMISSIONER GEORGE: So -- I'm not sure what you had  
8 in mind but Nicole Garnett told us that her organization was  
9 non-partisan, but it's well known that it's a conservative  
10 libertarian-oriented think tank -- I think I've got it  
11 right. Now you're saying that the Joint Center does not  
12 fall -- could not be characterized in a way which we  
13 characterized Nicole Garnett's organization, even though  
14 it's technically -- and she said, quite accurately, non-  
15 partisan.

16 DR. SIMMS: The only -- the only constant in the Joint  
17 Center's work is that we approach work in terms of the  
18 perspective or the impact on African Americans, since our  
19 main mission is to provide information that would promote  
20 movement of African Americans into the political and  
21 economic mainstream of American life.

22 COMMISSIONER GEORGE: Okay, so it's not ideological,  
23 at least in the sense that the Institute for Justice is  
24 ideological?

25 DR. SIMMS: For the third time, no it does not have an

1 ideological bent.

2 COMMISSIONER GEORGE: You made yourself clearer than  
3 you know.

4 CHAIRPERSON BERRY: I wanted to ask Dr. Simms -- or  
5 you have a question Yvonne? I wanted to ask Dr. Simms if  
6 she would be surprised at the research findings -- one of my  
7 colleagues who is finishing up a study on contracting --  
8 billion dollar contracts in a particular state -- and her  
9 finding was that the contractors who got the contracts, the  
10 big ones, were -- perpetuated themselves over time. In  
11 other words, if you looked at the firms 20 years ago that  
12 got all the bids -- we're talking about billions of dollars  
13 -- from the state, that they still get it, or the successor  
14 firms to them, and that minority firms at first got nothing,  
15 and only begin to get something after the minority  
16 provisions were passed by that state in the 1970's. And  
17 that even now the big firms still perpetuate themselves, and  
18 she also reported the same subcontracting experience that  
19 you were describing for us with contractors saying they're  
20 going to hire people and then they do not, and then even  
21 when they were hired as subcontractors, they were told later  
22 that that experience was not sufficient to make them  
23 eligible to compete as primes because they had only been  
24 small subcontractors. That's one question. And so then the  
25 tag-on, the question about the Clinton administration -- it

1 would not be surprising -- and other states have done this -  
2 - bundling you talked about? This same state that my  
3 colleague does work in, has bundled contracts and they have  
4 found now that it interferes with women-owned businesses,  
5 small businesses in general, whether they're black, white,  
6 whatever they are, trying to compete, and they did it in the  
7 name of efficiency. It would be faster for them, easier,  
8 and only have to do it once. And no one even thought of the  
9 impact, so it wasn't an intended consequence.

10 So I take it what I've described and for my  
11 colleague's work and so on is consistent with what you  
12 reported to us? Is that --

13 DR. SIMMS: It is consistent. It's certainly  
14 consistent with a number of studies across states. I think  
15 one of them referred to earlier in terms of the experiences  
16 in Richmond in reverse. That is when you remove the  
17 minority business focus or goal, that contracting tends to  
18 go down. It was found in Georgia as well. There's also,  
19 which I did not think to bring, there is some work that the  
20 Joint Center did in conjunction with Tim Bates who is now at  
21 Wayne State University, looking at the aspects of minority  
22 business programs in 50 large cities and all the states, in  
23 terms of the effectiveness of certain regulations and how it  
24 relates to minority business development. And that -- if  
25 that's of interest, I can have it for you.

1           CHAIRPERSON BERRY: I'd like to see that. We would.  
2           And the last question from me, on segregation. Was  
3           desegregation -- did it have a negative impact on the growth  
4           and development of small, black-owned business and so from  
5           that perspective we might argue that segregation was better?  
6           I mean I don't understand the statement --

7           DR. SIMMS: I wouldn't argue that segregation was  
8           better. There is some evidence that suggests that the  
9           opening up of markets did have an adverse impact on minority  
10          businesses because they had -- that is, the nature of  
11          minority business at that time, because they were very  
12          neighborhood oriented, and as people began to move among  
13          communities and have more choices in where they made their  
14          purchases, that the -- that in fact the "captive markets"  
15          did disappear.

16          Now, what one could argue -- and in some sense  
17          part of this discussion is about ways of opening up economic  
18          opportunity -- the parallel should be that the black  
19          consumers, or Hispanic consumers, or Asian consumers can now  
20          purchase in more places, then black and Hispanic and Asian  
21          businesses ought to be able to sell to the larger public.  
22          And the question that arises is why is that not the case.  
23          In fact, there is a new world of minority business that is  
24          not often visible because it does not show up in the census  
25          bureau numbers -- and that segment of the minority

1 industries in fact does sell more to the government and to  
2 the general public, and it's just those kinds of firms that  
3 are in the expansion mode, that we need to have an  
4 environment that promotes that. And I guess that I'm  
5 arguing that we should be more concerned not about  
6 individual self-employment, but about nurturing those firms  
7 that employ people, that go beyond the 15 employees, that  
8 have maybe 100 to 200, which may seem like no longer small  
9 business, until you look at the standards of the Small  
10 Business Administration as to what qualifies, and you can  
11 have many millions of dollars in revenue, and under 500  
12 employees I believe it is, and still qualify as a small  
13 business by their standards.

14 CHAIRPERSON BERRY: Well most of the black businesses  
15 during segregation were small operations. There are some  
16 numbers on there -- they weren't huge businesses.

17 DR. SIMMS: They were mostly small -- quite small.

18 CHAIRPERSON BERRY: Okay. Mr. Dennis, you were trying  
19 to say something. Were you?

20 MR. DENNIS: Yes, I would -- one thing to remember is  
21 that virtually all businesses start very, very small. So if  
22 you support the gazelles, for lack of better terminology, at  
23 the expense of the new start, you have a real problem,  
24 particularly if you try and target those -- those gazelles  
25 at a very early stage. We have learned no way to do that.

1           COMMISSIONER HORNER: I'm sorry, would you -- I'm  
2 sorry, I'm missing your metaphor because we've been at this  
3 for about six hours now. Gazelles?

4           MR. DENNIS: Oh, I'm sorry. Yes.

5           VICE-CHAIR REYNOSO: You tell her.

6           COMMISSIONER HORNER: If you support --

7           MR. DENNIS: Yes, gazelles is a term that's used by  
8 the time for high grown, fast-growing businesses.

9           COMMISSIONER HORNER: So you're saying if you support  
10 the high growth, fast growing businesses at the expense of  
11 brand new starts, is that what you're saying?

12          MR. DENNIS: Yes, opening up for starts, yes, because  
13 we have not yet learned how one ought to target -- we don't  
14 have a clue as to how to do that, so if you -- if the  
15 expense is opening up the market and bringing in a bunch of  
16 firms, some of those are going to become these fast growing  
17 companies, and we have no idea how to determine what's in  
18 the mooring. When we get down there, better chance of  
19 handling -- of getting gazelles -- that's only at the  
20 expense, rather than -- a lot of these things are mutually  
21 exclusive.

22          CHAIRPERSON BERRY: Okay, any other questions?  
23 Alright, well thank you both very much for your patience and  
24 for coming to enlighten us. We appreciate it. And if  
25 there's no objection, the meeting is adjourned.

1                   (Whereupon, the hearing in the above captioned . .  
2   matter was concluded.)

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