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U. S. COMMISSION ON CIVIL RIGHTS

- - -
MEETING
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Friday, October 10, 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
ROBERT P. GEORGE, COMMISSIONER (Via Telephone)
A. LEON HIGGINBOTHAM, COMMISSIONER
CONSTANCE HORNER, COMMISSIONER
YVONNE Y. LEE, COMMISSIONER
RUSSELL G. REDENBAUGH, COMMISSIONER (Via Telephone)

RUBY MOY, STAFF DIRECTOR

STAFF PRESENT:

MICHELLE AVERY
MARLISSA BRIGGETT, PARLIAMENTARIAN
BARBARA BROOKS
SICILIA CHINN
KI-TAEK CHUN
JAMES S. CUNNINGHAM
LYNN DICKINSON
PAMELA DUNSTON
EDWARD HAILES, JR.
GEORGE M. HARBISON

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

STAFF PRESENT: (Continued)

CAROL-LEE HURLEY
FREDERICK ISLER
JACQUELINE L. JOHNSON
REBECCA KRAUS
WILLIAM LEE
STEPHANIE Y. MOORE, GENERAL COUNSEL
LILLIAN MOYANO YOB
CHARLES RIVERA
MARCIA TYLER
ANTHONY K. WELLS, SR.
AUDREY WRIGHT
NADJA ZALOKAR

COMMISSIONER ASSISTANTS PRESENT:

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

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9:30 a.m.

CHAIRPERSON BERRY: The meeting will come to order.

Could I have a motion to approve the agenda, please?

VICE CHAIR REYNOSO: So moved.

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

(Chorus of ayes.)

Opposed?

(No response.)

So ordered.

Could I have a motion to approve the minutes of September 5th, 1997 and September 22nd, 1997?

VICE CHAIR REYNOSO: So moved.

COMMISSIONER LEE: Second.

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

(Chorus of ayes.)

Okay. So ordered.

Announcements. I have some and then we'll see if the Staff Director has any or any other Commissioner.

In November, at the November meeting, the

1 Regional Directors will be here. They will come in the
2 day before for briefings with the Staff Director and
3 staff members and they will attend a Commission meeting
4 and they will brief the Commissioners on activities in
5 their regions and we will have full opportunity to
6 engage in discussion with them.

7 They haven't been here in quite some time.

8 The Executive Summary from the first Los
9 Angeles hearing has been sent to the Office of the
10 Staff Director and is now undergoing editorial review.

11 You probably noticed in the paper or the TV,
12 whatever you use, that the Eddie Bauer consumer racism
13 trial has at least a trial verdict, which the company
14 has not announced that it's going to appeal. We had a
15 briefing, as you may recall, on the whole subject of
16 consumer racism here. And there's an update on the
17 Denny's Restaurant incident in Syracuse which we
18 discussed before that the staff has available, and
19 copies can be made available to you today if you want
20 them or they can be mailed to you. And we should
21 discuss the 1998 Commission meeting calendar which I
22 think was sent to you.

23 The only note I would make is that it says
24 that the March meeting will be on the 13th and I will
25 be in international travel on the 13th, so I would

1 request that that be moved to March 6th. Aside from
2 that -- or some other day in March. Aside from that, I
3 can make all of those that are listed.

4 Are there any Commissioners who have problems
5 with any of these dates?

6 COMMISSIONER HORNER: I'm in the position
7 right now of having two such lists. In other words, I
8 have a list from another association that would, if it
9 came out a certain way, present a conflict. But as of
10 now, I would say that I am able to make all these
11 meetings. If push comes to shove, I'll say I can make
12 all these meetings.

13 CHAIRPERSON BERRY: Could you also make
14 March 6 or would that throw you out into a tizzy?

15 COMMISSIONER HORNER: Let's see. I can tell
16 you in a moment.

17 (Pause.)

18 Just a moment, please. I need to get that
19 other --

20 CHAIRPERSON BERRY: Sure.

21 Anyone else have a conflict while
22 Commissioner Horner is checking her --

23 VICE CHAIR REYNOSO: I look all right.

24 COMMISSIONER HORNER: Yes. I'm okay.

25 CHAIRPERSON BERRY: How about you? You're

1 okay?

2 VICE CHAIR REYNOSO: I'm all right. Thank
3 you, Madam Chairman.

4 CHAIRPERSON BERRY: Commissioner Lee?
5 Commissioner Anderson?

6 COMMISSIONER ANDERSON: It appears okay. I
7 may have a conflict on March 6 but I may be able to do
8 that by telephone.

9 CHAIRPERSON BERRY: Okay.

10 CHAIRPERSON BERRY: Commissioner Redenbaugh?

11 COMMISSIONER REDENBAUGH: Yes. The 6th is
12 actually better for me --

13 CHAIRPERSON BERRY: Okay. Good.

14 COMMISSIONER REDENBAUGH: -- than the 13th.

15 CHAIRPERSON BERRY: Commissioner George?

16 COMMISSIONER GEORGE: Yes. I can do the 6th.

17 CHAIRPERSON BERRY: And can you do the entire
18 calendar, so far as you know?

19 COMMISSIONER GEORGE: I have to get a copy of
20 it.

21 COMMISSIONER HORNER: Is Commissioner
22 Higginbotham on?

23 CHAIRPERSON BERRY: He's on his way here.
24 He's coming.

25 COMMISSIONER HORNER: Oh, okay.

1 CHAIRPERSON BERRY: He's not quite -- he
2 should be here in the next few minutes.

3 Commissioner Redenbaugh?

4 COMMISSIONER REDENBAUGH: Yes.

5 CHAIRPERSON BERRY: Can you do the entire
6 calendar now, insofar as you know?

7 COMMISSIONER REDENBAUGH: So far as I know.

8 CHAIRPERSON BERRY: Okay.

9 Commissioner Horner, did you say -- you said
10 you're okay.

11 COMMISSIONER HORNER: It's fine. Yes. I can
12 do the entire calendar.

13 CHAIRPERSON BERRY: Commissioner George?

14 COMMISSIONER GEORGE: I'm still looking on --

15 CHAIRPERSON BERRY: I can hardly hear you,
16 Robbie, for some reason.

17 COMMISSIONER GEORGE: Sorry, Mary. I'm still
18 trying to get a copy of it in front of me.

19 CHAIRPERSON BERRY: Okay. Well, could you --

20 COMMISSIONER GEORGE: I checked the 6th of
21 March, which is fine by me.

22 CHAIRPERSON BERRY: That's fine. Okay.

23 COMMISSIONER GEORGE: Oh, here. Yes, I've
24 got it.

25 CHAIRPERSON BERRY: Are you an absent-minded

1 professor or are you computerized?

2 COMMISSIONER GEORGE: Not me, Mary, surely.

3 CHAIRPERSON BERRY: What did you say,

4 Commissioner George?

5 COMMISSIONER GEORGE: Yes. I don't see any
6 conflict.

7 CHAIRPERSON BERRY: Okay. Good. Well, then,
8 we will -- assuming that Commissioner Higginbotham
9 hasn't responded in the negative or doesn't have any
10 problem, we'll leave it at that.

11 Okay. Do you have any announcements beyond
12 what I announced? Is there anything else to announce?

13 STAFF DIRECTOR MOY: Madam Chair, I just
14 wanted to let everyone know that we're in continuing
15 resolution right now.

16 CHAIRPERSON BERRY: We're in continuing
17 resolution right now. Which means what for those who
18 don't remember what that means. I mean, in terms of
19 what we have to do, how it affects us in any way.

20 STAFF DIRECTOR MOY: The appropriation was
21 not approved in full and it has gone to conference.
22 And effective as of October 1 for 23 days, we will be
23 in continuing resolution, so we have to watch our
24 budget.

25 CHAIRPERSON BERRY: Okay. Does that mean

1 people -- is there anything people can't do? I mean,
2 Commissioners, I mean. The rest of you can worry about
3 yourselves.

4 STAFF DIRECTOR MOY: I believe the
5 Commissioners can continue --

6 CHAIRPERSON BERRY: Can do whatever it is
7 Commissioners do?

8 STAFF DIRECTOR MOY: Right.

9 CHAIRPERSON BERRY: Okay. All right. We'll
10 leave it at that.

11 Does any Commissioner have any announcement
12 about anything at all that you would like to make at
13 this time?

14 (No response.)

15 If not, let us go to the Staff Director's
16 Report.

17 Does anyone have any questions or comments
18 about the Staff Director's Report?

19 COMMISSIONER REDENBAUGH: Madam Chair?

20 CHAIRPERSON BERRY: Yes, Commissioner
21 Redenbaugh.

22 COMMISSIONER REDENBAUGH: I just had a -- I
23 wanted to make an inquiry somewhere in the Staff
24 Director's Report about the management information
25 system.

1 CHAIRPERSON BERRY: Yes. That's on our
2 agenda for today.

3 COMMISSIONER REDENBAUGH: Oh, it is? Oh,
4 good. I'm sorry. I missed that.

5 CHAIRPERSON BERRY: That's the last item on
6 our agenda today is to be told the details of the
7 management information system.

8 COMMISSIONER REDENBAUGH: Thank you.

9 CHAIRPERSON BERRY: Okay. The only thing I
10 will mention, and I'll do it under the Staff Director's
11 Report, because the next item on the agenda is the
12 Advisory Committee Reports, beginning with the Utah
13 one.

14 The Staff Director sent to us -- I don't know
15 when she sent it -- something about advisory committee
16 SAC reports and I don't know when we got it or if
17 people have been able -- I got it last night, whether
18 people got it last night or what. But there's a memo
19 about the SAC report process and you may recall that we
20 had a taskforce on this subject and then we had a
21 report. And then we had provisions -- requirements for
22 the way the reports were to be done.

23 And in recent meetings we have had some
24 discussion about SAC reports and the Staff Director has
25 given us this memo making some recommendations about

1 what she thinks we might consider doing. And since
2 this is not a totally new subject, I thought maybe we
3 might give some attention to it, if we're prepared to
4 here, and see --

5 Do you want to say anything about this, Staff
6 Director, this memo you sent us?

7 STAFF DIRECTOR MOY: I think it's self-
8 explanatory. It talks about the report process and
9 what SACs have to do in the way of making sure that
10 their concerns are presented in a proper fashion. We
11 also have a checklist that we go through to make sure
12 that it's balanced and that the OGC has legally
13 reviewed it for any legal insufficiencies.

14 May I make a comment that's a little bit off
15 here?

16 I visited two SAC meetings and I must say
17 that it is of great concern to the SAC members who are
18 composed of volunteers, and a lot of the members across
19 the country have been recommended by Commissioners
20 here, and they seem frustrated at our process of doing
21 this. So hopefully this will clear up some of the
22 questions that Commissioners have about balance, how
23 they go about the method of putting together their
24 report.

25 And in fairness to them, I hope that we would

1 be able to consider it.

2 CHAIRPERSON BERRY: We're pretty familiar
3 with the process because we've had this process now
4 since 1994, I guess it is, and that's the one we've
5 been following. And lately we had those two reports,
6 and I've forgotten which states they were, where the
7 people wrote us a memo afterwards.

8 Do you remember? What were those states?

9 Oh, three states that wrote us a memo
10 afterwards in which they were -- I guess unhappy is the
11 way to put it, about what happened to their reports.
12 And so I guess that's something else we -- is that
13 something else you had in mind?

14 STAFF DIRECTOR MOY: Yes.

15 CHAIRPERSON BERRY: Now, you make some
16 recommendations on page 3 of your memo --

17 STAFF DIRECTOR MOY: Correct.

18 CHAIRPERSON BERRY: -- After it describes
19 what we're supposed to do, what we've been doing. And
20 the three recommendations, as I understand it -- and
21 I'm just saying this for those who haven't had a chance
22 to read it. Or if you did, I'm just summarizing.

23 Did you get this, Commissioner Redenbaugh?

24 COMMISSIONER REDENBAUGH: Yes. And I have
25 looked at it. But I would appreciate a review. So if

1 you would, please summarize.

2 CHAIRPERSON BERRY: Okay.

3 The first recommendations is to return to
4 pre-1985 practices, it says. And it says that the
5 Staff Director then approved the publication of SAC
6 reports and Commissioners received the reports after
7 they were published and they voted only on referral of
8 reports and their recommendations to federal agencies.

9 And then it says the advantage to this was
10 Commissioners could increase their distance from a
11 report if they wished. The disadvantage was that
12 sometimes a Commissioner would receive a call about a
13 report and they hadn't seen it and that it might be
14 difficult to get or it's difficult to get the media to
15 attribute reports accurately to an advisory committee
16 and not the Commission.

17 That was the first recommendation though.

18 Then the second recommendation is to change
19 the emphasis of SAC activities so that SACs would do
20 projects that did not produce reports, such as
21 conferences, technical assistance, workshops and
22 forums, and then produce only transcripts or summaries
23 of transcripts, because reports require a lot of work
24 that could be used in other ways.

25 And then it says, however, workshops and

1 technical assistance encounter the risk of violating
2 our volunteer service prohibition unless the SAC
3 members provide the assistance themselves and that fact
4 finding reports are generally the most desirable
5 activity when there are resources.

6 And then there's a third and final
7 recommendation. And the memo says that these are not
8 in any order of preference. They're just listed -- is
9 that we might achieve a new agreement on SAC report
10 voting and publication. A way might be found to
11 respect the judgments of individual Commissioners on
12 specific SAC reports as well as the independent
13 judgments of SAC members who have worked hard to reach
14 agreement.

15 For example, we might consider listing in
16 each SAC report the vote of each Commissioner by name
17 to accept or reject the report, and publish all reports
18 except those that are unanimously rejected. We might
19 also revise the statement that appears on the cover of
20 SAC reports to strengthen the Commissioners'
21 disassociation.

22 And then there's a revision which just says
23 "This report of the State Advisory Committee was
24 prepared for the information and consideration of the
25 United States Commission on Civil Rights. Publication

1 of this report does not constitute an endorsement by
2 the Commissioners as a body or as individuals of the
3 conclusions, findings, recommendations or other content
4 of the report. This report should only be attributed
5 to the State Advisory Committee, not the U.S.
6 Commission on Civil Rights."

7 So those were the Staff Director's
8 recommendations.

9 Yes, Commissioner Horner?

10 COMMISSIONER HORNER: Madam Chair, I
11 participated in the committee under Chairman
12 Redenbaugh's direction that created the checklist for
13 assessing the completeness and appropriateness of SAC
14 reports before they were presented to the Commission
15 for a vote. We spent considerable time assessing this
16 issue and made some recommendations which were then
17 adopted by the Commission, and that occurred within the
18 last two years.

19 Now, according to the Staff Director,
20 according to her memo, out of the last 31 reports, 28
21 have been accepted by the Commission. That's a pretty
22 good record, it seems to me.

23 And therefore, given those two facts, I don't
24 see any reason to make a change now or even to
25 contemplate a change now.

1 CHAIRPERSON BERRY: Okay.

2 Any other comments from Commissioners?

3 Yes, Vice Chair.

4 VICE CHAIR REYNOSO: Well, Madam Chair, the
5 report indicates -- and certainly the correspondence
6 that we've received indicates pretty deep-seated
7 dissatisfaction, it appears to me, by the SACs. Both
8 the SACs involved and the SACs not involved, I think
9 were concerned that maybe the same thing will happen to
10 their reports.

11 And so it seems to me that's clearly a
12 problem that we didn't have two years ago when we were
13 more concerned about the procedure. So I think it's a
14 new experience in the life of the Commission. Thus we
15 have this report before us.

16 I think in light of the vote not to accept
17 those reports, we really do have something new before
18 us that we ought to discuss and see whether we can find
19 our way through that.

20 CHAIRPERSON BERRY: Any other comments from
21 Commissioners?

22 COMMISSIONER REDENBAUGH: Madam Chair?

23 CHAIRPERSON BERRY: Yes, Commissioner
24 Redenbaugh.

25 COMMISSIONER REDENBAUGH: I think if the data

1 are correct that 28 out of 31 reports -- I mean, that
2 seems to me a high standard. And three reports were
3 not approved, roughly 10 percent. I mean, do we think
4 that it should be 95 percent with 5 percent not
5 approved or -- I mean, I'm just trying to locate the
6 magnitude of that problem because it looks like for 28
7 of 31 reports the process worked extremely
8 satisfactorily.

9 CHAIRPERSON BERRY: Any other?

10 (Commissioner Higginbotham enters the room)
11 Welcome, welcome. It's good to see your face.

12 CHAIRPERSON BERRY: Yes, Commissioner Lee?

13 COMMISSIONER LEE: Even though the percentage
14 of reports that were approved has been 90 or 95
15 percent, I am troubled by recent actions by this
16 Commission on several reports. The fact that they were
17 not approved were based on the issue of balance and I
18 think that that is one area that I think we need to
19 have a great discussion.

20 We owe it to the SACs and we owe it to the
21 regional staff because they put in all these efforts.
22 And I do think that besides myself, they would want to
23 know what do we mean by balance. How do you achieve
24 balance. Balance according to which standard do they
25 have to follow.

1 And I do think that we need to have a very
2 frank discussion on that one.

3 CHAIRPERSON BERRY: Any other Commissioner
4 comment?

5 (No response.)

6 My own view is that the concerns of the SACs
7 are serious. That the three SACs would not have
8 written memos to us because they are volunteers and
9 they are people who all have jobs and professions and
10 things to do in addition to giving their time. And
11 they would not bother to sit down and write their
12 concerns out to us if they weren't concerned.

13 And I think that having three of our SACs be
14 concerned -- and we will discover in a minute that
15 there's a fourth one that is concerned -- and to have
16 them put their concerns in writing in detail means that
17 we ought to be concerned.

18 It may be that the number of reports that
19 were approved may have something to do with the topics
20 or the nature of it. It's just like looking at a list
21 of publications that a faculty member has and saying,
22 "Gee, they've published 60 articles. Isn't that
23 terrific" -- without regard to what they were about or
24 what they were or what the issues were, which is
25 something one would have to explore.

1 So I think that having three SACs be very
2 upset with us in a very short period of time, and upset
3 enough to even write to us, and then to have the
4 concerns as listed in the Staff Director's memo on page
5 2 be about balance and about the way draft reports are
6 handled, which they say they were handling them the way
7 they're supposed to and responses, and for us to simply
8 not discuss again. This is another one of those issues
9 we're not going to discuss.

10 For us to not even be willing to discuss
11 their concerns and to just simply dismiss them and move
12 on, I just think is outrageous I think it's
13 irresponsible. I think it shows disrespect for the SAC
14 members. But I can't make the Commissioners discuss
15 anything they don't want to discuss.

16 And I appreciate the recommendations that
17 you've made, Staff Director, and I for one think that
18 the Commissioners are holding the SACs to a standard on
19 balance when they don't have subpoena authority which
20 is -- they've explored it. They've tried. They
21 explained what they've done.

22 And I appreciate their work and I certainly
23 hope that they don't get any angrier with us than they
24 are. But we've been forewarned. And I'll just leave
25 it at that if no one has any other comments about it.

1 Yes, Commissioner Anderson?

2 COMMISSIONER ANDERSON: Thank you.

3 We went through in '94 quite a lengthy
4 process of review of the way the SACs operated, how
5 reports were prepared, how reports were to be
6 considered by the Commission. I don't recall the
7 extent to which -- how many meetings we discussed these
8 issues but we discussed them over a lengthy period of
9 time.

10 I believe the process and the standards that
11 were finally adopted by the Commission to guide the
12 SACs was unanimously adopted or nearly so. We have put
13 into effect a process which now has been in operation
14 about 2-1/2 years and we have adopted, I think, a
15 rigorous and a good standard.

16 And in that period of time the Commission
17 has, in my opinion, said that not only were we going to
18 adopt the rigorous standard regarding quality of
19 reports but we were going to implement that standard
20 and live by it. That means that we've had to make a
21 judgment as to whether some of these reports do not
22 meet the standard.

23 I can appreciate the fact that a SAC work
24 that has been judged by our Commission as not meeting
25 that standard will be concerned, will be disappointed,

1 will be upset and will communicate that to us.
2 However, I don't think it is sufficient grounds for us
3 to change the standard.

4 And so as far as I'm concerned, I think we
5 ought to continue with this policy. It is a policy
6 that has set out quality standards and we've decided
7 that we're going to live by these standards, or at
8 least some of us have decided that.

9 I'm perfectly content to continue with this
10 standard and to encourage the SACs to work harder to
11 attempt to meet it.

12 CHAIRPERSON BERRY: The three reports that
13 were rejected that the SACs complained about were
14 rejected by a vote of 4 to 4. Again, deadlock on this
15 Commission. Four of us thought that the reports had
16 followed the procedures and that the SACs were quite
17 correct in what they'd done. Four of us disagreed.

18 So it seems that at the very least if we take
19 their concerns seriously we would reconvene the
20 taskforce and have the taskforce review the process
21 again to see if there is some way to accommodate these
22 views.

23 It's not as if by a vote unanimously we all
24 agreed that they hadn't followed the procedure. Again,
25 it was a 4 to 4 vote, which means that at least some

1 people thought that they had. At least half of us did.

2 Commissioner Lee.

3 COMMISSIONER LEE: I was just going to make
4 that point. After last month's meeting I went back to
5 read the three reports again and to the best of me, I
6 don't know what standard we're talking about because I
7 went through it. They did all they could. I'm not
8 from those states. I don't know the nature in those
9 states, in Illinois, Ohio and Michigan. And the fact
10 that these SACs are there supposedly to be the
11 Commission's eyes and ears on civil rights issues, we
12 have to trust them.

13 And I think that's what's really troubling to
14 me. That we're telling the SACs that we really value
15 your service, we really value your judgment, we really
16 value your input and your professionalism. But when
17 the reports come in that they have done everything they
18 could under the standard that is set by this
19 Commission, half of us are saying, no, you haven't met
20 the standard that's interpreted by some of us.

21 And I think it's really unfair to have them
22 to re- -- every time when they do a report, okay, what
23 balance do they mean now; what standard do we mean.

24 And I just think that there are times when
25 reports will come to us that we may have personal views

1 against it, but we're not here to make individual
2 judgments. And on the SAC reports, we have to look at
3 whether they followed the procedures. And in these
4 three cases, again, I read those reports three times
5 and I just could not see whether they had missed
6 anything.

7 So, my problem is -- again, it goes back to
8 have we made the standards really clear. And I thought
9 it had and I thought they had followed it. And maybe
10 again we have to go back to how we view SACs. If we
11 don't like what they do, if we don't like what they
12 represent, then we should just say so.

13 CHAIRPERSON BERRY: What I really would like
14 or thought we could do was to ask the taskforce to look
15 at their concerns, to look at the Staff Director's
16 recommendations and to review the process again because
17 I have a view that we probably are going to get more
18 and more complaints whenever there are reports where
19 there's controversy or we have different views about
20 the issues or whatever and we turn them down. And
21 they're going to be very disappointed.

22 I don't want SAC members thinking that we
23 disrespect them or we don't care about their hard work
24 or anything like that. And at least -- at the very
25 least it would seem to me that the taskforce might be

1 willing to review the issues again and to look at these
2 recommendations and the concerns, and either come back
3 and say, well, we still think there's not a problem.

4 But to simply be unwilling to even consider
5 whether there's a problem, I just don't understand it.

6 Yes, Commissioner Anderson?

7 COMMISSIONER ANDERSON: Well, we adopted 21
8 of these reports unanimously. We adopted four of the
9 reports by votes of 7 to 1, 6 to 1, 6 to 1, 6 to 2.
10 So, at least then I would say -- I mean, 25 of the
11 cases we respected the work of the SACs. We concluded
12 that they had met the standard, that they were doing a
13 good job.

14 But apparently if any SAC is judged not to
15 have met our standards, then we somehow disrespect, are
16 not concerned about them or their work or the fact that
17 they're volunteers. I don't think that's necessarily
18 the case. In fact, I would say the record of the last
19 2-1/2 years indicates that it's not the case at all.

20 I don't think we have to be in the position
21 that failure is impossible. And regardless of the work
22 product, that it is entitled to acceptance by this
23 Commission.

24 And I would say an acceptance rate by this
25 Commission of SAC reports of over 90 percent indicates

1 that every single Commissioner on this Commission
2 respects the work of the SACs, appreciates what they
3 do, understands that they're volunteers and is ready
4 and willing to work with them in terms of the reports
5 that they produce. And I think any other conclusion
6 that suggests that there are Commissioners that don't
7 respect the SACs when we have an over 90 percent
8 acceptance rate of their reports, is just a conclusion
9 I personally can't understand.

10 COMMISSIONER GEORGE: Madam Chair?

11 CHAIRPERSON BERRY: Yes.

12 Vice Chair, and then Commissioner Redenbaugh
13 and then Commissioner Lee.

14 VICE CHAIR REYNOSO: Madam Chair, I must
15 confess that this discussion seems unreal to me. I
16 don't know whether we're talking about the same issues
17 or not. The objection, as I understand it, was that
18 these reports were not balanced.

19 We received extensive reports from the SACs
20 as to their efforts to provide balance. So the issue,
21 it seems to me, is whether or not our standards are
22 objective standards where folks sit back and review
23 them and try to meet them.

24 The suspicion, I gather, reading between the
25 lines of those responses to our negative vote was that

1 we're utilizing subjective criteria on basically
2 whether we like the reports or not. And I think we
3 have a duty to have a checklist that's sufficiently
4 clear that the SACs can follow it if they try in good
5 faith.

6 The balance of sources in our checklist now
7 says, "Does the proposal specify the actions that will
8 be taken by the regional staff and SAC to ensure that
9 the research be conducted and testimony be received
10 will be balanced." They obviously felt that they had
11 done that and we ended up disagreeing with them. On
12 what basis? It seems to me, they're entitled to know.

13 "Has the regional staff of SAC identified the
14 sources that will be used to research the topic and do
15 those resources represent a variety of opinions on the
16 issue to be studied?" We received extensive reports of
17 all of the folk they knew who could present contrary
18 views, some of whom did. Several of them did not. And
19 the issue, again, it seems to me is to what standard
20 will be applied to them when they don't have subpoena
21 power.

22 So it seems to me that as it's turned out and
23 the vote for this was unanimous, including my vote. I
24 think that the report should be balanced. I thought
25 that this expressed what we wanted to do. But clearly

1 that's not the way it's turned out in terms of what
2 seemed to me a good faith effort on the SACs to meet
3 our criteria and an explanation by them as to their
4 efforts to meet this criteria. I think a successful
5 effort, incidentally. And yet we disagree with it.

6 I guess I have a hard time concluding that
7 our checklist is an objective checklist.

8 CHAIRPERSON BERRY: I don't want Ohio,
9 Illinois and Michigan SACs to believe that we're
10 violating our own rules. And I think it's important to
11 assure them that we're not. But if the people who were
12 on the taskforce have already made up their mind,
13 there's no sense in asking the taskforce to look at it
14 again.

15 Also, keep in mind that under the procedure
16 the Staff Director and the Regional Directors have
17 already certified that the reports have gone through
18 the checklist before we ever get them. And so has, I
19 assume, the coordinator for the regional programs, who
20 gets this before the Staff Director does.

21 So it's not as if we just get it from the SAC
22 and then make up our own minds as to whether they've
23 gone through the checklist.

24 Commissioner Redenbaugh, you asked to be
25 recognized?

1 COMMISSIONER REDENBAUGH: Well, Cruz, are you
2 saying that -- you know, from your two related issues
3 here -- that striving for balance but not achieving it
4 is sufficient?

5 VICE CHAIR REYNOSO: I think that in light of
6 these reports and how it came about, the SACs need to
7 know what we mean by success. Clearly all views were
8 expressed in this report. I think that the
9 Commissioners who voted in the negative -- that's my
10 own subjective thinking -- didn't think that there was
11 enough expressed about one or opposite views.

12 Then we received a report from them
13 indicating all the folk they had contacted, et cetera.
14 And it seems to me there was a logical explanation why
15 that happened.

16 If we are unhappy with their effort or with
17 the -- I don't know how we can force them to end up
18 having three people testifying on one side of an issue,
19 three testifying on the other side of the issue if they
20 have made every effort to have those folk there and the
21 folk simply haven't come.

22 So we need to set down some standard, it
23 seems to me, for their procedure.

24 COMMISSIONER REDENBAUGH: I just wanted to
25 clarify that. So all you mean is a good faith effort

1 would be sufficient.

2 VICE CHAIR REYNOSO: If we're convinced that
3 it's a good faith effort. Yes.

4 COMMISSIONER REDENBAUGH: Because I think
5 when we wrote the taskforce that we were thinking of
6 our statutory responsibility for balance and I think we
7 were thinking that we wouldn't accept a good faith
8 effort if we had a requirement rather than a striving
9 for.

10 VICE CHAIR REYNOSO: I'm sorry. What
11 statutory requirement?

12 COMMISSIONER REDENBAUGH: I think there's a
13 statutory requirement for balance in the SAC reports.
14 And I'm not clear where that is.

15 CHAIRPERSON BERRY: Counsel is saying there
16 is no such provision.

17 COMMISSIONER REDENBAUGH: There is none?

18 CHAIRPERSON BERRY: We may philosophically
19 believe there should be one and we do in terms of
20 everything we do. That's something we as a Commission
21 have committed ourselves to with agreement to do so.
22 But there isn't any explicit statement about it.

23 Commissioner Lee, did you -- you were next,
24 and then Commissioner Horner.

25 COMMISSIONER LEE: I still would like to have

1 the taskforce. And since I wasn't here in '94, I would
2 like to be a member of the taskforce to go over this
3 process. Because even though we have a 90 percent rate
4 of approving reports, the irony is that three reports
5 that were voted down or did not get majority vote, they
6 were on a very controversial subject, affirmative
7 action.

8 And I think that as civil rights concerns
9 come before not only this body but different SACs in
10 different states, there will be issues that are very
11 controversial. There will be very divergent points of
12 view, whether it's affirmative action, language rights
13 or whatever. But if we do not set clear what we mean
14 by standards and balance, I think these problems are
15 going to keep coming up.

16 We're going to have subjective views on
17 certain things and I think the SACs will be -- we will
18 be better served by the SACs if we have a detailed
19 thoughtful discussion through the taskforce of how we
20 want to review these standards. Because I think that
21 these problems came up because it was a controversial
22 matter that came before us.

23 CHAIRPERSON BERRY: Commissioner Horner?

24 COMMISSIONER HORNER: There is an old saying
25 which is designed to denigrate the quality of the work

1 that government does. And the saying is, "It's good
2 enough for government work." That's a standard that is
3 increasingly rejected, I think, by the American people.

4 In 1961 a Gallop poll asked the question:
5 "Can you trust the federal government to do the right
6 thing all or most of the time?" Gallop asks this
7 question every year. In 1961, 63 percent of the people
8 said yes, they believe they could trust the federal
9 government to do the right thing all or most of the
10 time. In 1995, 13 percent of the American people said
11 they could trust the federal government to do the right
12 thing all or most of the time.

13 In the decade of the '80s, there was a
14 massive quality movement in the private sector which
15 strengthened American corporate practices, heightened
16 quality of manufacturing practices and management
17 practices and produced, at least as a strong
18 contributing factor, part of the economic success that
19 we're experiencing right now.

20 The federal government has lagged in its
21 standards of quality quite seriously. I sat on the
22 first federal quality movement panel back in the late
23 '80s. It is a mighty struggle to get the public sector
24 not to be careless. And it's my view that we have to
25 do our bit here to assure that the public sector is

1 careful and demands a very high quality standard.

2 Now, we all know that the SACs work very hard
3 as volunteers. And because they're volunteers, they
4 have limited amounts of time to contribute to this
5 process. And therefore, our Civil Rights Commission
6 staff heavily contribute, to put it mildly, to the
7 product we evaluate. I believe this is the case.

8 They contribute by assistance and advice, if
9 not writing. And therefore, our injunction for
10 strengthened quality through the process we decided
11 upon when we reviewed this process last is designed as
12 an injunction not just to the SACs but also to our own
13 staff.

14 Our own staff has, by and large, to the
15 extent it does contribute to this process, risen
16 extremely well to the occasion. The reports have
17 gotten a lot better in my tenure on this Commission.
18 And I attribute that to the staff's rising to the
19 demand imposed by the Commission's approved processes.

20 Now, as is all too often the case in American
21 life when we don't like the demand that a standard
22 imposes, we panic and say let's look at the standard
23 again. There's something wrong with the standard.

24 Why can we not simply conclude that not
25 everybody always meets every acceptable standard and be

1 quite content that by and large our SACs are doing a
2 fine job and are achieving that standard.

3 CHAIRPERSON BERRY: Well, one of the things
4 that I know about quality management -- and I don't
5 know that much about it -- is that those who run the
6 highest performance companies in America, some of whom
7 I sit with on nonprofit boards -- I only sit on
8 nonprofit boards -- say that they are constantly
9 reviewing their processes and standards to make sure
10 that they're working just fine. That once they put
11 them in place -- I mean, they have an ongoing process
12 of review.

13 Every time anybody suggests that there's
14 something that is out of alignment, there's a system
15 for seeing whether it is in alignment and whether
16 there's something that can make it better.

17 My only point. It is clear to me from what
18 the Staff Director has written and what we got in those
19 three memos that imposing a balance standard when we
20 know the SACs don't have subpoena power, and having
21 that balance standard mean that certain people must
22 show up on each side of the issue, otherwise your
23 report isn't balanced, means that the Commissioners
24 ought to in good conscience sit down and figure out how
25 they can achieve this. That's what we want.

1 Are we willing to have Commissioners vote
2 them subpoena power or go out to their meetings so that
3 they can subpoena people? Are we willing to do that?
4 What is our answer to how they can achieve, quote,
5 balance -- whatever that is -- in fact, so that we
6 don't raise that as a concern when somebody's worked
7 very hard, they've done a report, they've tried to get
8 everybody there and they end up not getting them there.

9 So that's the kind of question I'd like the
10 taskforce to look at to see if there's some way we can
11 help them to achieve this, because I think those people
12 were honesty working to achieve it. I don't think they
13 were trying to produce poor quality work or didn't care
14 about the standards that they were achieving. That's
15 all I'm asking. If the taskforce is willing to look
16 again and to see if that's some way they help.
17 Especially when it's on a controversial issue and
18 people don't want to show up. How can they get people
19 to show up when they don't want to come?

20 We can subpoena them. They can't. And does
21 that mean they simply can't do the issue? They can
22 only do issues that are noncontroversial? Or what does
23 it mean?

24 And I think they need that help.

25 COMMISSIONER HORNER: Madam Chair, in a

1 report we may be discussing this morning I think we may
2 see some evidence of why people may be declining to
3 show up and it may be that sufficient confidence is not
4 reposed in the balance and objectivity of the product.
5 And that is a deterrent to people to place themselves
6 into the hands of our State Advisory Committees. And
7 that gets to questions like who sits on the Advisory
8 Committee. And that gets to questions like the
9 President's Commission on Race, which does not have
10 Ward Connerly sitting on it and therefore will not have
11 confidence among the complete range of strong
12 viewpoints on this subject.

13 CHAIRPERSON BERRY: Thank God Ward Connerly
14 is not on it. Thank God.

15 COMMISSIONER HORNER: I think the fact is,
16 Madam Chair, --

17 CHAIRPERSON BERRY: Commissioner Redenbaugh,
18 my question is are you willing to have this taskforce
19 look at this again or are you unwilling?

20 Go right ahead. You're recognized.

21 COMMISSIONER REDENBAUGH: I think the issue
22 that Commissioner Lee first raised goes right to the
23 heart of it, I think. I don't think it's the process
24 that's flawed. I think it may be that when the
25 criteria for balance is either ambiguous or wrong -- I

1 mean, if I follow what you said, Commissioner Lee. But
2 I think it may be uncertain enough that clarification
3 of that or a look at that could be a really
4 discussions. And think that's a discussion that eight
5 Commissioners could have with some preparation. I
6 myself am not prepared for it today.

7 But I wanted to ask a question in a different
8 direction. From my contact with the SACs there is, I
9 think, legitimate dissatisfaction but I think it's
10 budgetary in nature. And that is the very long time
11 between when they do their work and when it's
12 published. And I think our part in that, as
13 Commissioners, I think is rather small, in that we
14 generally dispose of these things in 60 or 90 days.
15 But it's work that often is done two or more years
16 before.

17 The people I talked to were concerned about
18 long time lag in that it makes things a little bit less
19 fresh, less relevant and look a little outdated.

20 CHAIRPERSON BERRY: Like ours.

21 COMMISSIONER REDENBAUGH: Well, yes. Exactly.

22 And the larger question -- and we are
23 addressing that issue for our projects. But the larger
24 question of how can the SACs be more valuable and their
25 work be more satisfying I think is one that deserves

1 taking up. And I think there is this big budgetary
2 problem, why these reports take a couple of years to
3 get done.

4 But what's your view on that, Madam Chairman,
5 because you had quite a bit more contact with the SACs,
6 sufficiently more than me.

7 CHAIRPERSON BERRY: Oh, yes. They're
8 concerned about that, too, the issue of how long it
9 takes and the resources that are put into it.

10 I think what we ought to do is -- since I
11 sense an unreadiness on the part of -- to put it mildly
12 -- of the Commissioners to engage this topic generally,
13 why don't we just wait until next time when the
14 Regional Directors will be here. And I'm sure they
15 will have some comments on this subject. And then see
16 what their recommendations are and discuss it again at
17 the next meeting.

18 So why don't we just leave it at that without
19 any action. Is that all right?

20 Yes, Vice Chair.

21 VICE CHAIR REYNOSO: Madam Chair, just a
22 footnote. I received a note from the General Counsel
23 reminding us that there is a requirement of balance in
24 the membership of the SACs and I guess there's a
25 presumption in that requirement that once you have a

1 balance in the SACs that there'd be some balance in
2 terms of the reports that we get.

3 CHAIRPERSON BERRY: You mean the political
4 membership?

5 VICE CHAIR REYNOSO: Yes.

6 CHAIRPERSON BERRY: As on the Commission.
7 Yes.

8 COMMISSIONER HORNER: I think that's the
9 statutory requirement that Russell may have been
10 referring to.

11 COMMISSIONER REDENBAUGH: Thank you for that
12 clarification.

13 CHAIRPERSON BERRY: Let us then go to Item
14 Number 5, which is Advisory Committee Reports. And the
15 first one is the Utah report, which was held over from
16 last time.

17 Staff Director, could you describe to us what
18 has happened concerning the Utah report since the last
19 meeting so that we may decide what action to take?

20 STAFF DIRECTOR MOY: Well, we've had several
21 conversations with the regional head, John Dulles, who
22 expressed concern that the SAC chair from Utah, Michael
23 Martinez, was greatly concerned about his report and
24 the delay that has followed and the time it has taken
25 for it to go through the process to have it approved.

1 He's very disgusted and I believe you have
2 copies -- each Commissioner has copies of his letters
3 in which he expressed his frustration on behalf of the
4 SAC.

5 His letter dated as of September 30th said,
6 "Clearly a vote not to publish will be taken as a
7 repudiation of the effort of the Utah SAC and a lack of
8 confidence in the public input from which the report
9 emanates."

10 CHAIRPERSON BERRY: And we have other
11 letters, too, don't we?

12 STAFF DIRECTOR MOY: Other letters are from
13 Phil Montez, --

14 CHAIRPERSON BERRY: I mean, don't we have
15 other letters from Mr. Martinez? Didn't he write more
16 than one letter?

17 STAFF DIRECTOR MOY: Oh, yes. There are
18 several letters. I indicated earlier, he wrote --

19 CHAIRPERSON BERRY: Could you describe those
20 letters, please?

21 STAFF DIRECTOR MOY: Yes. The recent one,
22 October 6th, he indicated that he would like to be
23 present here to discuss this SAC report. One letter,
24 the October 6 one, I highlighted as saying that he has
25 been researching, writing, obtaining approvals and

1 rewriting for four years. The report has been delayed
2 due to our efforts to allow extensive responses by the
3 Utah Anti-Discrimination Division and so forth on the
4 frivolous reasons to avoid publication.

5 CHAIRPERSON BERRY: Okay. October 9th?

6 STAFF DIRECTOR MOY: The October 9th one says
7 that he is extremely disappointed that we have chosen
8 not to honor his request to be a guest here when we
9 vote on whether or not to publish their SAC report.

10 He did attempt to speak with Commissioner
11 Redenbaugh by leaving word with his assistant to answer
12 any of his questions. However, he indicated that he
13 was not given the reciprocal courtesy of a return call.
14 It is evident that the Commissioner does not accept our
15 advice. Fine. But his and your role is not to have us
16 advise to your satisfaction. Your decision is to
17 publish it or let it perish.

18 So he's quite perturbed that a Commissioner
19 seeks to manipulate advice from a SAC by taking facts
20 out of context and disregards the years of efforts,
21 investigations, hearings, public input, frustration and
22 information that was provided.

23 All the information in the report is
24 substantiated. All the individuals named in the report
25 were given more than sufficient time to refute or

1 respond. And the responses are attached in full to the
2 report.

3 It is not the SACs fault that some
4 individuals are not candid until forced to be, but it
5 seems the purpose of our investigation is to ferret out
6 violations of civil rights. That means that even when
7 painful, it is presented in a forthright manner.

8 I am discouraged by the time delay the
9 publication process has taken but we can live with
10 that. What is intolerable is the sham delay
11 implemented in an effort to obtain text changes which
12 are acceptable to one Commissioner. Advice good or bad
13 is just that. Whether there is a more appropriate
14 agency to perform our advice is not the issue.

15 Another agency did not seek our advice or
16 promise to publish it. We have dealt with you in good
17 faith. We merely request the same.

18 CHAIRPERSON BERRY: Mr. Martinez wrote two of
19 those letters to me with copies to people. I have not
20 talked to him. I did tell the Staff Director that I
21 didn't think that we had ever let a SAC chair come to
22 the meeting at our expense to discuss a report and that
23 clearly if we let Mr. Martinez come we probably would
24 have to let everybody come and I wasn't sure how that
25 would play out. He was offered the opportunity to be

1 on the phone but he thought that that was not
2 sufficient.

3 But you can get from the letters the tone and
4 tenor of Mr. Martinez' discontent.

5 I would like to have a motion to approve the
6 Utah -- Employment Discrimination in Utah report for
7 purposes of discussion. Could I get a motion?

8 VICE CHAIR REYNOSO: So moved.

9 COMMISSIONER LEE: Seconded.

10 CHAIRPERSON BERRY: Discussion?

11 COMMISSIONER REDENBAUGH: I'd like to begin,
12 if I may.

13 CHAIRPERSON BERRY: Yes.

14 COMMISSIONER GEORGE: Before you do, Russell,
15 may I say something?

16 COMMISSIONER REDENBAUGH: I yield.

17 CHAIRPERSON BERRY: Commissioner George.

18 COMMISSIONER GEORGE: These letters from
19 Martinez just came over my fax wires now. I think the
20 fault was probably in my machine but I just got them in
21 my hands. I have three letters: one dated -- I'm
22 sorry. Two letters and one has a covering memorandum,
23 dated September 30, 1997 and then one dated October 6,
24 1997.

25 STAFF DIRECTOR MOY: October 9.

1 COMMISSIONER GEORGE: I don't seem to have
2 one dated October 9th. There's another one dated
3 October 9th?

4 COMMISSIONER HORNER: I didn't get that one
5 either.

6 VICE CHAIR REYNOSO: I didn't either.

7 COMMISSIONER LEE: I didn't get that.

8 COMMISSIONER GEORGE: And if I heard the
9 Staff Director reading I take it from these letters, I
10 heard what struck me as extremely intemperate language.
11 A reference to frivolous reasons for not accepting a
12 report or for delaying acceptance of a report. I think
13 the term sham was used. A reference to an individual
14 Commissioner who is behaving in a -- allegedly behaving
15 in an inappropriate way.

16 Just looking through, I don't see that
17 language in the letters of September 30 nor October
18 6th. Was that language from the October 9th letter?

19 STAFF DIRECTOR MOY: Yes.

20 CHAIRPERSON BERRY: There's a letter
21 addressed, "Dear Chair." I got it on my fax. It's
22 addressed to me. And it says "and Commissioners."

23 COMMISSIONER GEORGE: That's October 9th?

24 STAFF DIRECTOR MOY: Yes.

25 CHAIRPERSON BERRY: When was October 9th?

1 STAFF DIRECTOR MOY: Yesterday.

2 COMMISSIONER HORNER: That was yesterday.

3 COMMISSIONER GEORGE: Could somebody fax
4 through the October 9th letter?

5 CHAIRPERSON BERRY: Yes.

6 Somebody fax that to Commissioner George.

7 COMMISSIONER HORNER: And also fax it --

8 CHAIRPERSON BERRY: Because you may have it
9 on your fax back there but that's not going to do you
10 any good.

11 COMMISSIONER HORNER: Well, it wasn't on my
12 fax as of 7:30 or 8:00 this morning.

13 CHAIRPERSON BERRY: What is he responding to
14 here? What does he mean, this letter, the -- well,
15 I'll wait until they get it before I ask you what it
16 is.

17 VICE CHAIR REYNOSO: Madam Chair?

18 CHAIRPERSON BERRY: Yes.

19 VICE CHAIR REYNOSO: I just want to mention
20 that Mr. Martinez called me also -- I didn't take the
21 call but I had it on my machine -- expressing some of
22 the same concerns that he was expressing in these
23 letters.

24 I've met Mr. Martinez in the past, so I guess
25 he felt he could call me. I didn't get a chance to

1 call him back.

2 CHAIRPERSON BERRY: Well, --

3 COMMISSIONER HORNER: I think his call also
4 to a Commissioner's assistant may have come in
5 yesterday and we aren't all always at our desks at
6 every minute available to respond. I just want to say
7 that for the record.

8 That response might have occurred this
9 morning.

10 CHAIRPERSON BERRY: Well, I've not talked to
11 him.

12 Is there anything else to say about this
13 while we're getting the letter or are we just --

14 STAFF DIRECTOR MOY: Yes, Madam Chair.

15 I would like to go back and mention to you
16 that I did have a conference call with all the regional
17 heads and among other topics of great concern to them
18 was the approval of SAC reports and how the process is.
19 So I really would like to let you know and the
20 Commissioners know that this will be a topic that will
21 be discussed probably prior to the meeting with the
22 Commissioners.

23 CHAIRPERSON BERRY: And here, too, I suppose?

24 STAFF DIRECTOR MOY: Right.

25 CHAIRPERSON BERRY: Well, that's entirely

1 appropriate to discuss it with us.

2 Does anybody have any substantive comments on
3 the Utah report?

4 VICE CHAIR REYNOSO: Madam Chair, I had gone
5 over the report previously, of course, and I was ready
6 to vote favorably on it. Russell wanted some more time
7 to take a look at it, so I think maybe we can hear from
8 Russell in terms of his reaction to it, because he
9 wanted to study it further.

10 But I had gone over it at that time and I
11 thought it was a well done report where folks certainly
12 had an opportunity to respond to it. And we ought not
13 to be shocked -- I'm not -- that the enforcement
14 procedures in some of our states may not be as strong
15 as we would like to have them be.

16 I think it's particularly important to
17 receive this report and I hope other reports in the
18 future, particularly as we go to a system where the
19 federal government is giving more resources to the
20 states to enforce and implement certain federal
21 programs, and those programs take with them the federal
22 civil rights protection. I think we need to know
23 what's happening with the state agencies.

24 As it happens, I think this report comes at a
25 particularly timely fashion in relation to those

1 concerns.

2 CHAIRPERSON BERRY: Any substantive comments
3 from any Commissioner?

4 COMMISSIONER REDENBAUGH: I would like to
5 make some.

6 CHAIRPERSON BERRY: Yes, Commissioner
7 Redenbaugh.

8 COMMISSIONER REDENBAUGH: For me, this goes
9 into the category of no good deed shall go unpunished.
10 My first involvement and awareness of this report was
11 when it came before us in -- I think was it August or
12 September?

13 STAFF DIRECTOR MOY: September.

14 COMMISSIONER REDENBAUGH: And my own view is
15 that there is something -- that the report raises valid
16 questions and that there is something worth looking
17 into. And that's what I find so unfortunate because
18 the tenor and tone of the report is similar to the
19 letter, Mr. Martinez' letter of October 9. It's
20 personal and makes ad hominem attacks in an intemperate
21 way. That, I think, isn't necessary to make the case
22 that there's a problem that ought to be brought to
23 light.

24 Which is why I had to work to have those
25 defects remedied. And in no way was it to suppress the

1 publication of the report.

2 So, to me the report doesn't meet the
3 standards for balance; doesn't meet the standard for
4 language; and has one recommendation which is one we
5 can't act on, the 10.2.

6 It's terrible to have the issue go away but I
7 can't support the report for the reasons I've
8 mentioned.

9 CHAIRPERSON BERRY: What was the one
10 recommendation? I didn't quite understand what you
11 were saying.

12 COMMISSIONER REDENBAUGH: It was that we
13 investigate EEOC.

14 CHAIRPERSON BERRY: Yes.

15 COMMISSIONER REDENBAUGH: And maybe it's a
16 recommendation that we recommend that, but my
17 understanding is that that's outside of our scope.
18 That isn't to say they ought not to be investigated.

19 CHAIRPERSON BERRY: Commissioner Redenbaugh,
20 I think that -- yes, Vice Chair? Did you want to say
21 something?

22 VICE CHAIR REYNOSO: I'm sorry. I thought
23 that was precisely within our scope. In fact, I
24 thought that we're going to do a report on the EEOC.

25 COMMISSIONER REDENBAUGH: As to the regional

1 office?

2 CHAIRPERSON BERRY: Sure.

3 COMMISSIONER REDENBAUGH: Okay.

4 CHAIRPERSON BERRY: We can investigate any
5 agency or anything. We may decide not to but if we
6 want to, we can. We can investigate. We can have
7 hearings. We can subpoena people.

8 COMMISSIONER REDENBAUGH: No. I understand
9 that. I guess my only point is the fact that it's a
10 substantive issue here that needs investigation. Given
11 our schedule for hearings and what we're able to do, it
12 will be a long time before we could do an
13 investigation, particularly down at the level of a
14 regional office in Arizona.

15 CHAIRPERSON BERRY: Well, I just wanted to
16 make clear -- I think it's important for us to be clear
17 that if we should choose as a Commission or ask our
18 regional staff to investigate the EEOC regional office
19 in wherever this place is, we could indeed do that.

20 We may investigate anyone we choose, any
21 agency we choose to investigate at whatever level we
22 choose to investigate it.

23 Now, we don't have the resources to
24 investigate. That's a whole different question. And
25 we have a different agenda. But if the SAC wants to

1 tell us that they think we should, then they can tell
2 us that. But that doesn't mean we do it.

3 Yes, Commissioner Anderson?

4 COMMISSIONER ANDERSON: Thank you, Madam
5 Chair.

6 The October 9th letter by Mr. Martinez refers
7 to an October 3 memorandum apparently to him. Do we
8 have a copy of that? I don't recall seeing it.

9 CHAIRPERSON BERRY: Staff Director, what
10 October 3 -- wait a minute.

11 "I am further disappointed to read in an
12 October 3 memorandum."

13 That's what you're referring to?

14 COMMISSIONER ANDERSON: Yes. I'd like to see
15 a copy of that.

16 CHAIRPERSON BERRY: What is the October 3
17 memorandum that we're talking about here?

18 STAFF DIRECTOR MOY: This is the one that
19 Charlie said that I could fax out to John Dulles and to
20 Martinez.

21 CHAIRPERSON BERRY: Well, you should tell the
22 Commissioners. They're asking.

23 STAFF DIRECTOR MOY: Oh, I'm sorry.

24 This is the memorandum that Charlie
25 Ponticelli indicated that I could send to SAC Chair

1 Martinez, and I did so by way of our regional head so
2 that he would also be informed.

3 CHAIRPERSON BERRY: Could you ask the staff
4 to give copies to all the Commissioners so that they
5 know what you're reading?

6 STAFF DIRECTOR MOY: Yes.

7 VICE CHAIR REYNOSO: I have one. I don't
8 know where it came from.

9 CHAIRPERSON BERRY: Where did you get it
10 from?

11 VICE CHAIR REYNOSO: I think it was in the
12 packet that was delivered to my hotel last night.

13 CHAIRPERSON BERRY: Well, good for you. Good
14 for you.

15 COMMISSIONER HORNER: Well, Commissioner
16 Reynoso, you are a favorite among the staff -- of staff
17 products.

18 CHAIRPERSON BERRY: You are the darling of
19 all the --

20 (Laughter.)

21 COMMISSIONER GEORGE: And I hope you didn't
22 have any contact with them.

23 CHAIRPERSON BERRY: Any contract or contact.

24 COMMISSIONER GEORGE: Contact.

25 CHAIRPERSON BERRY: Yes.

1 Commissioner Horner?

2 COMMISSIONER HORNER: Madam Chair, while
3 we're waiting to receive a copy of that memo, I would
4 like to read again a sentence or two from SAC Chair
5 Martinez' letter to you and to us which we have just
6 received a copy of.

7 CHAIRPERSON BERRY: Which one?

8 COMMISSIONER HORNER: That's the October 9th,
9 from yesterday.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER HORNER: The sentence reads: "I
12 am quite perturbed that a Commissioner seeks to
13 manipulate advice from a SAC by taking facts out of
14 context and disregards the years of effort,
15 investigation, hearings, public input, frustration and
16 information that was provided."

17 And in another place in this letter he refers
18 to a sham delay. I know this has been alluded to
19 already. But it is precisely this kind of wild
20 unjustified unsubstantiated language that occasionally
21 shows up in our reports that does not instill public
22 confidence, that does not make people feel comfortable
23 coming before the Commission if they may differ at all
24 from someone's point of view.

25 This is a very good example of what is most

1 troubling in some of the reports that we receive.

2 This is an attack on Commissioner Redenbaugh.

3 All Commissioner Redenbaugh did was to say he was

4 concerned about some issues in the report and would

5 like an additional one month time to review it, bearing

6 in mind that the fact finding on which this report is

7 based occurred almost four years ago. And after

8 receipt of the report, Commissioner Redenbaugh asked

9 for an additional month.

10 This is the problem that I think we might

11 fruitfully address.

12 VICE CHAIR REYNOSO: Madam Chair, I take it

13 that that letter appears to be in response to his

14 having viewed the October 3 memorandum.

15 CHAIRPERSON BERRY: That's what it says.

16 VICE CHAIR REYNOSO: Where it's being

17 suggested that the report be sent back to them for yet

18 further work.

19 COMMISSIONER HORNER: Madam Chair, when the

20 Staff Director provides us a copy of the letter, it

21 would also be desirable to have a copy of the outgoing

22 as well as the incoming. And once again, we have

23 received during the course of a meeting material which

24 might usefully be provided to us in advance of a

25 meeting for subject that the Chair and the Staff

1 Director intend to discuss at a meeting.

2 STAFF DIRECTOR MOY: Madam Chair, may I say
3 something?

4 CHAIRPERSON BERRY: Well, I think -- yes. I
5 think that the Staff Director -- yes. You go ahead and
6 respond.

7 STAFF DIRECTOR MOY: The October 9th letter
8 was probably sent after we had left last night. And so
9 in checking our faxes this morning, if that's why I
10 have a copy of it, that's why we were only able to do
11 it now.

12 I had not had a chance to read this until
13 this morning.

14 COMMISSIONER HORNER: Then perhaps it would
15 be advisable to defer discussion until a meeting at
16 which the Commissioners are able to review materials
17 before they're called upon to discuss them.

18 I mean, this is not deliberative, is what I'm
19 saying.

20 CHAIRPERSON BERRY: Well, if you want to hold
21 the Utah SAC report over for yet another meeting, then
22 that's fine. But I think the Commissioners needed to
23 be aware that Mr. Martinez had written these letters
24 since I don't know what he intends to do about it.
25 At least you ought to be aware of it.

1 My only concern is I don't understand why a
2 memorandum from Commissioner Redenbaugh's assistant to
3 him was faxed to Mr. Martinez, who is a SAC chair, and
4 to Mr. Dulles, without being faxed to the rest of the
5 Commissioners. And I don't understand this
6 relationship between the Staff Director and Mr.
7 Redenbaugh's assistant and Mr. Martinez, with Mr.
8 Martinez out there being agitated without me knowing
9 anything about it, and then him writing me letters
10 complaining about whatever is going on between them.

11 I think it's completely inappropriate for any
12 Commissioner, the staff or anyone to try to influence -
13 - if that's what happened. Now, I don't know if that's
14 what happened -- the report writing process of the SACs
15 in some subterranean manner without the rest of the
16 Commissioners being informed. And I certainly don't
17 appreciate getting letters from people complaining
18 about something and something they received when I
19 don't even know what it is and wasn't privy to it and
20 didn't have any discussion about how they got it in the
21 first place.

22 So, I find this whole thing rather puzzling.

23 But anyway -- Commissioner Anderson.

24 COMMISSIONER ANDERSON: Well, thank you.

25 First, I have something to say, but I think

1 we ought to hear the Staff Director respond to the
2 subterranean maneuver.

3 So, please explain it. Because I'd like to
4 hear the answer.

5 STAFF DIRECTOR MOY: All right. Yes. Thank
6 you.

7 I received a phone call from Charlie
8 Ponticelli, who indicated concerns from Mr. -- I'm
9 sorry -- Commissioner Redenbaugh concerning the SAC
10 report. And she was hoping that we could go into some
11 sort of discussion to see what the concerns were that
12 Mr. Redenbaugh had.

13 And in checking some of this information out
14 with my staff people, some of it was not factful. And
15 so in other conversations with Charlie I had indicated
16 that Mr. Martinez actually wanted to speak to
17 Commissioner Redenbaugh directly, and Charlie had
18 indicated that he was on travel, et cetera, but he left
19 a message -- she left a message with the Commissioner
20 to see if it would be possible for him to return the
21 call to Mr. Martinez.

22 In subsequent conversations with our Regional
23 Director, John Dulles, he had indicated that he, too,
24 was getting conversations from Mr. Martinez concerning
25 how important it was for him to come here.

1 After that, when I discussed further with
2 Charlie, she suggested that I send a copy of the
3 Commissioners concerns to Mr. Martinez to get his input
4 so that we could see what his response would be.

5 And I did this through John Dulles, through
6 our Regional Director at that time. And then
7 subsequently this October 9th response came in. So
8 this only happened within the last couple of days that
9 we were trying to resolve it.

10 CHAIRPERSON BERRY: Commissioner Anderson?

11 COMMISSIONER ANDERSON: So I guess my further
12 question would be whether or not this was an exchange
13 between you and the Commissioner's assistant in order
14 to clarify his concerns or was it your impression that
15 we were trying to somehow subterraneously influence the
16 work of the SAC?

17 STAFF DIRECTOR MOY: No.

18 COMMISSIONER ANDERSON: Through your office.

19 STAFF DIRECTOR MOY: I didn't. No, I did not
20 consider that at all. I just wanted to hear both
21 sides.

22 CHAIRPERSON BERRY: Why weren't we informed
23 about this? I did not receive a copy of the October
24 3rd. I don't think other Commissioners did. And I
25 don't understand why Mr. Martinez who is a SAC chair

1 sitting out there in Utah getting a memorandum written
2 by a special assistant to a Commissioner, which is an
3 internal document to the Commission and it's not an
4 external document.

5 I plainly don't understand how that part
6 happened. The rest of it I know about and understand
7 how it happened but I don't understand -- and I guess
8 Mr. Martinez is puzzled, too, as to how he ends up
9 responding to a memorandum written by a special
10 assistant to a Commissioner, which is an internal
11 document necessarily because it's internal to the
12 Commission and he's a SAC member and he's out there.

13 I know nothing about it. Other Commissioners
14 know nothing about it. And they're out there having
15 this exchange about what to be done with this report.

16 I don't want to belabor the question. I
17 think it's just your newness and you probably responded
18 and you're trying to be helpful, as you always are.
19 But I just think that it would be better if we just
20 leave open discussion with all the Commissioners when
21 we're discussing reports and changes in reports so that
22 everybody had a full opportunity here at this table to
23 say what they think should be in it.

24 And I clearly don't want to receive letters
25 from people complaining about something when I don't

1 know anything about it, except to tell them I don't
2 know anything about it.

3 Yes, Commissioner Anderson?

4 COMMISSIONER ANDERSON: Okay. Now I would
5 like to say what I was originally going to say, and
6 that is Commissioner Redenbaugh and I came on to the
7 Commission about the same time. We're both in our
8 second term.

9 I want to say that as long as I have known
10 him on this Commission, I have found him to be
11 scrupulously and often painfully principled and fair
12 and have sought in every context I have worked with him
13 to be as above board and as principled in his
14 relationships with both the staff and the Commission as
15 a whole and the other Commissioners.

16 Now, I suspect that the communication of this
17 private memorandum to the Staff Director to share with
18 the SAC chair is precisely an expression of that
19 fairness. I for one would never share my internal
20 staff product with other members of the Commission or
21 with SAC chairs. I would be very reluctant to do that.

22 But I think it is a mark of Commissioner
23 Redenbaugh's openness that he would do so.
24 Particularly he would do so with someone he disagrees
25 with.

1 Now, reading this report by the Utah SAC, I
2 must say that I was struck by the strong language which
3 at times you might say is intemperate language with
4 regard to the subject of the report and the agency
5 focused on by the SAC.

6 One can interpret that in a number of
7 different ways, one of which is that there is indeed a
8 very serious problem here which results in maybe
9 exaggerated language. However, I must say that the
10 October 9th letter from Mr. Martinez suggests to me
11 that the type of intemperate language used in that
12 letter helps to explain the intemperate language used
13 in the report.

14 And so while I share some of the concerns
15 with the SAC about how the Utah agency has acted, it
16 seems to me that now in the context of this letter from
17 Mr. Martinez that perhaps an alternative interpretation
18 of the intemperate language in the report is more
19 accurate from my standpoint.

20 CHAIRPERSON BERRY: Commissioner Redenbaugh,
21 I want to make it clear that nothing I am saying is
22 designed to impugn your integrity. I consider you to
23 be a person who has the greatest integrity and know
24 that you were trying to be helpful. As you say, no
25 good deed goes unpunished.

1 The problem was not with you. The problem
2 was with our own internal mechanisms which led this
3 memorandum to get into the hands of somebody who has an
4 interest, a strong position and who really shouldn't be
5 privy to internal discussions that are going on here.
6 So it had nothing to do with you. And I appreciate
7 your trying to be helpful. And I think Mr. Martinez
8 should have better appreciated them, if I may put it
9 that way.

10 COMMISSIONER REDENBAUGH: Thank you both,
11 Commissioners, for your comments about my character.
12 It was my intention to improve the report so a vote
13 could be provided for it.

14 CHAIRPERSON BERRY: I know.

15 COMMISSIONER REDENBAUGH: It is in the
16 category of -- [off mike]. It's one of the lessons I
17 am learning slowly in politics.

18 CHAIRPERSON BERRY: Well, sometimes people
19 are very grateful.

20 Anyway, you made a valiant effort.

21 Yes, Vice Chair?

22 VICE CHAIR REYNOSO: There have been two
23 comments made thus far of intemperate language in the
24 report and I must say that I went over it very
25 carefully before the last meeting. I've only gone

1 through it quickly, just glancing through it, since
2 that time. And I have strong feelings about reports
3 not having intemperate language in it. And I don't
4 recall being struck by intemperate language.

5 There were strong statements. Ninety-four
6 percent of the state residents believe discrimination
7 exists in Utah according to a report in the Salt Lake
8 Tribune. And for those of us who believe there is no
9 such believe that there's discrimination, that might be
10 disturbing to us. But the language itself is not
11 intemperate.

12 COMMISSIONER REDENBAUGH: Cruz, I was
13 thinking of language like intentional deception.

14 VICE CHAIR REYNOSO: But they went on to
15 explain that in fact when language like that was used,
16 they went on to explain that the individuals themselves
17 indicated that they had not provided all the
18 information, is my recollection.

19 CHAIRPERSON BERRY: Anyway, does anybody have
20 any other comments on this report before we do the
21 usual 4-4 vote and turn it down?

22 Commissioner Lee.

23 COMMISSIONER LEE: Even though it's going to
24 be -- I'll put in my two cents worth.

25 I was ready to vote for the report last month

1 and I reluctantly agreed on this one month delay
2 because the Commissioners wanted more information. I,
3 too, don't find this report to be any -- I don't think
4 there was any offensive language in there. I think they
5 have some very strong language because when you read
6 this, you sense the frustration of the Utah people
7 about the status of employment discrimination. And I
8 think they have the right to express that and they have
9 followed up. They were very responsible.

10 They followed up those statements with facts
11 and they backed it up.

12 So I think that it is a very strong report
13 and I welcome strong reports. I don't like this
14 Commission to approve things as very puffy puffy and I
15 think this will serve the people in Utah very well and
16 I just hope that the end result is not going to be 4-4
17 but I have a feeling I'm going to be proved wrong.

18 CHAIRPERSON BERRY: Yes, Commission Horner?

19 COMMISSIONER HORNER: Madam Chair, I think
20 there are some management problems and management
21 recommendations identified in this report that would
22 most usefully be put into the public sphere for further
23 discussion and deliberation but as it now stands, I
24 can't vote to approve the report because of my lack of
25 confidence in its -- the lack of confidence I have

1 engendered by its tone.

2 It's pretty unusual, I think, although I'm
3 sure the staff will go back and research this and find
4 evidence to the contrary, but my impression is that we
5 don't usually in our SAC reports criticize people
6 extensively as individuals rather than criticizing
7 offices or agencies. And I find this report, to me, a
8 little startling in the degree to which it is
9 explicitly and implicitly critical of individuals at
10 the same time that there are numerous complaints and
11 attacks which are unattributed.

12 Now, I recognize there is a valid use of
13 unattributed complaints and attacks but when the
14 complaints and attacks are so substantially alleged
15 against individuals and then the complainants are
16 frequently, to quote: unnamed critics, anonymous
17 complainant, the general public, constituents of a
18 state representative, employment discrimination law
19 experts.

20 In other words, many of the complainants are
21 unnamed and many of those against whom complaints are
22 levied are named. That makes me a little
23 uncomfortable. And I am still too uncomfortable with
24 that fact to vote for this report at this time.

25 CHAIRPERSON BERRY: Yes, Commissioner Lee?

1 COMMISSIONER LEE: I understand from the
2 staff's report that the General Counsel is in the
3 process of writing an opinion of some sort dealing with
4 someone who testified before the Phoenix or Arizona
5 SAC. And after they testified, they were subjected to
6 harassment of some sort in the workplace.

7 So I could easily see why people would not
8 want to be a named source in these proceedings. That
9 doesn't mean that they're not truthful. I think it's
10 just that until they have full assurances that whenever
11 they appear before the SACs that their rights will be
12 protected, that somehow this Commission will provide
13 some kind of protection for them, I don't think we
14 should disclaim anyone who comes before the SACs as an
15 unnamed source.

16 I think that the SACs have treated them --
17 well, --

18 VICE CHAIR REYNOSO: Madam Chair, did I
19 understand from the earlier report given to us on the
20 general procedure that before we get this report the
21 General Counsel has passed on it in terms of its being
22 proper and sufficient?

23 CHAIRPERSON BERRY: Legally sufficient. And
24 the Staff Director and Regional Director all certify
25 that.

1 VICE CHAIR REYNOSO: But I had particular
2 reference to the General Counsel because Commissioner
3 Horner had raised a concern about individuals being
4 mentioned.

5 COMMISSIONER HORNER: My discomfort is not on
6 a legal basis. It's on a policy basis.

7 CHAIRPERSON BERRY: Okay. Are you ready for
8 the question?

9 All those in favor of approving the Utah SAC
10 report indicate by saying aye.

11 (Chorus of ayes.)

12 Opposed?

13 (Chorus of nays.)

14 The usual 4-4.

15 The report fails by the vote of 4 to 4.

16 Okay. The next report is on the Hmong
17 people, which should be a rather noncontroversial
18 subject -- I think or I'm told, at least -- in Green
19 Bay, Refugees in a New Land.

20 Could I get a motion for the approval of the
21 Wisconsin SAC report on the Hmong people?

22 COMMISSIONER REDENBAUGH: So moved.

23 COMMISSIONER HORNER: Seconded.

24 CHAIRPERSON BERRY: Any discussion?

25 (No response.)

1 All those in favor of approving the report on
2 the Hmong people, indicate by saying aye.

3 (Chorus of ayes.)

4 Opposed?

5 (No response.)

6 So ordered.

7 The next item on the agenda we're going to go
8 to but indulge me to tell you -- and I forgot to say
9 this. You were sent a memorandum done by the Regional
10 Director in the Western Region on police-community
11 relations in Sonoma County. You only got this two days
12 ago, I'm told, and you may not have had a chance to
13 peruse it.

14 The upshot of it is that the Regional
15 Director now has decided that there should be some kind
16 of open meeting held by his SAC and the SAC, they're
17 discussing it. And they have a recommendation that the
18 Commission do something, which we will discuss next
19 time since you haven't had a chance to read this at
20 this point and to be prepared to discuss it.

21 VICE CHAIR REYNOSO: Madam Chair, I just want
22 to report that I did speak with the Regional Director,
23 as had been suggested, and he indicated to me that he
24 thought that the SAC could indeed go on and have a fact
25 finding forum in Sonoma County at which time obviously

1 we would be advised and those of us who could attend
2 perhaps should try to attend.

3 CHAIRPERSON BERRY: Okay.

4 The next item on the agenda is Commissioner
5 Higginbotham's proposal concerning issuance of
6 Commission reports.

7 Commissioner Higginbotham. Welcome.

8 COMMISSIONER HIGGINBOTHAM: Madam Chair and
9 fellow Commissioners, first, above all I want to thank
10 each of you for the enumerable courtesies which were
11 extended to me during my lengthy and serious illness.

12 I've somewhat concluded that despite this
13 Commission's great strength, occasionally we need a
14 nonacerbic sense of humor, so let me give you a story
15 which is personal.

16 During my second illness, in the middle of
17 the morning when the doctors were not certain that the
18 tearing of the aorta could be stopped and that if that
19 were true I would have only a few hours left, they
20 asked me to get enough strength to talk to each member
21 of my family.

22 And my daughter, Karen, who has a Ph.D. in
23 clinical psychology, has a pragmatic view on life and
24 so we had to have her get in touch with a son at 4:00
25 in the morning who was playing in a jazz orchestra in

1 Las Vegas. It was not an easy task but she caught him,
2 got him to get on the next plane. And just before she
3 hung up, she said, "And Kenny, make sure you bring your
4 black suit."

5 (Laughter.)

6 So, in our family now we have this joke about
7 you don't have to bring your black suit. And when I
8 walked in to the room it was tough to not let tears
9 flow because that is true. That when one has been
10 close to what appeared to be a few minutes from death,
11 when one has escaped at least temporarily the fatal
12 stranglehold that could have eradicated your life, from
13 that time forward there are even more compelling forces
14 that drive you to carefully refine your future
15 priorities.

16 After my second open heart surgery I was
17 suffering the syndromes from having received vast
18 amounts of anesthesia for operations which lasted many
19 hours and from time to time I would dwell in a fantasy
20 world far removed from reality where I kept dreaming of
21 a sign I saw decades ago on the bumper of a cab in
22 Nigeria. It read, in huge bold print, "No time for
23 foolishness."

24 And that was the subtle way under which one
25 could implicitly challenge the government without being

1 called a traitor. And I would like to export that
2 powerful message to our current deliberations as we
3 focus on whether the two equal education opportunity
4 reports that have been buried in a stalemate could be
5 reconsidered and published.

6 To not publish these reports in some form for
7 the total scrutiny of the American public I submit
8 would be an act of foolishness that should embarrass
9 all of us profoundly.

10 Why should we be embarrassed? It is because
11 of the illogic of it. If the report had gotten a 5 to
12 3 majority, it would have been published and the views
13 of the majority and the views of the three dissenters
14 would have become known and available for reading. But
15 even if the staff report had been rejected by a
16 majority of 5, the 5 Commissioners could have revised
17 the staff report, finalized it in a new form and the
18 three Commissioners who would then be dissenting would
19 have been able to have their views published.

20 So once again under either of those
21 circumstances the report would have been presented to
22 the marketplace of ideas for a careful evaluation of
23 the inherent wisdom and the rationality of the civil
24 rights position that each side took. But the
25 incredible irony -- and I may boldly say the

1 foolishness that we seem to want to commit is that when
2 there is a stalemate of 4 to 4, rather than having both
3 sides views published, instead nothing is published.
4 And the public will never see the material that has
5 brought the Commission decisionmaking process to a
6 tragic standstill.

7 To the four who voted against having these
8 reports published, I must ask what are we afraid of the
9 public learning. These disagreements are not intimate
10 secrets from one's boudoir nor are these
11 counterintelligence secrets of state. These are merely
12 deliberations as to how one reads social science data.
13 And therefore, I must ask painfully why should the
14 strong views of Chair Mary Frances Berry, Vice Chair
15 Cruz Reynoso, Commissioner Yvonne Y. Lee and A. Leon
16 Higginbotham, Jr., who have one perspective, not have
17 it presented to the public so that their views could be
18 laid against the apparently significantly different
19 perspectives which are strongly held by Commissioners
20 Carl A. Anderson, Robert B. George, Constance Horner
21 and Russell G. Redenbaugh.

22 Let me make one point very clear. I have
23 never, and I do not now at any time impugn the good
24 faith of any persons on this Commission or those who
25 disagree with me. But nevertheless I must recognize

1 that there are profound differences that go to the core
2 of one's view as to how much civil rights progress has
3 been made in this nation and how broad are the civil
4 rights tasks which we face in the future.

5 Now, of course, reasonable people can
6 disagree on all these issues, but reasonable people
7 should never squelch the publication of a difficult
8 debate so that the public will be deprived of the
9 opportunity to sort out where, in their view, the truth
10 lies.

11 I ask have we reached such a deceptive stage
12 in this now purported color blindness that we are
13 required to mask over what our eyes can see and our
14 ears can hear? Is it insignificant or is it merely
15 coincidental that in this polarized division the four
16 persons of color, two African-Americans, one Latino and
17 one person of Asian descent all see this issue
18 profoundly different than their four distinguished
19 adversaries, adversaries who are people of good
20 character and are white.

21 The obvious polarization is so significant
22 that it should say to each of us that what we must have
23 is more public discussion and revelation of our
24 differences than being an ostrich who closes one's eyes
25 to what everyone can see and hear when observing the

1 reality of deep and significant differences.

2 Should this Commission be any less than the
3 United States Supreme Court when in 1857 in the Dred
4 Scott case it held that a black man had no rights which
5 a white man was bound to respect, but nevertheless it
6 at least tolerated five separate opinions among the
7 majority and two among the dissent, the dissents of
8 McClain and Curtis? Should we be oblivious to the
9 history of dissent in American jurisprudence and
10 policy?

11 For most people now agree that the voice of
12 John Harlan in the 1883 civil rights case, the 1896
13 Plessy v. Ferguson and the later Berea College case
14 were profound contributions. It's great that they were
15 published so that later generations could recognize the
16 pathology of the majority and proceed to eradicate it.

17 And that pathology was recognized and the
18 opinions of Justice Kennedy, Justice Suter and Justice
19 O'Connor when in Casey v. Planned Parenthood, when
20 speaking of Plessy v. Ferguson, they said that Plessy
21 was wrong the day it was decided.

22 None of us know clearly whether we are right
23 or wrong and I don't assume that the three others who
24 agree with me have any special niche of wisdom than the
25 four who disagree. But to leave the stalemate on the

1 record, to disregard the thousands of hours of staff
2 time and have nothing published is, I submit,
3 unconscionable.

4 Decades ago when I observed the cab in Lagos,
5 there was no time for foolishness and I submit that
6 today there's no time for foolishness in Washington and
7 at the seat of the United States Commission on Civil
8 Rights. And therefore, my friends, with the maximum of
9 good faith to all of you and without the impugment of
10 any of you, I urge that we correct our past paralysis
11 and have both of the equal educational opportunity
12 reports published with any Commissioner having the
13 opportunity to write a separate statement noting his or
14 her differences.

15 CHAIRPERSON BERRY: Thank you very much,
16 Commissioner Higginbotham.

17 Is there any discussion of Commissioner
18 Higginbotham's statement?

19 VICE CHAIR REYNOSO: Madam Chair, I just want
20 to say that if the Commission were of a mind to discuss
21 and indeed to agree with Commissioner Higginbotham, I
22 certainly would be pleased to write my own separate
23 statement on both of the reports. I think there's some
24 merit to the notion -- a lot of merit to the notion
25 that we as Commissioners have a responsibility to place

1 on the record our own view of these issues and not be
2 tied to what the staff has written if we disagree with
3 it or even have a view that may agree generally but has
4 a different perspective.

5 So, I just want to place on the record my own
6 willingness to do that.

7 CHAIRPERSON BERRY: Any Commissioner have any
8 discussion of Judge Higginbotham's proposal?

9 (No response.)

10 Well, I for one am embarrassed by the lack of
11 discussion. In the last few weeks as I've been
12 traveling around the country, people have said to me,
13 "Why does the Civil Rights Commission need to exist?"
14 And I must tell you I have a question in my own mind
15 why we should continue to exist. I wish some
16 Commissioners would tell me why we should continue.

17 I've been on this thing since 1980 hoping and
18 praying that we'll be able to play a leadership role
19 and do something. There are issues all over this
20 country, whether it's affirmative action or sexual
21 harassment or issues concerning what to do about
22 religious discrimination. There are all kinds of
23 issues and the Commission is nowhere to be found.
24 We're missing in action; 4-4, missing in action.

25 And so when people say to me, well, what do

1 you guys -- what have you given the public for its
2 money, maybe a little bit of money, I'm hard pressed as
3 time goes by to try to figure out what contribution we
4 really are making. And I feel sorry for the staff and
5 I certainly don't want to be the first to agree that we
6 should be closed down. There are some people who think
7 we should be closed down because they think that
8 eventually there might be a majority on here that might
9 do something. They'd like to close down before we can.

10 But I'm saying that the present state of
11 things with these 4-4 deadlocks, with this refusal to
12 even engage discussion about substantive issues, this
13 always concern with process and procedure instead of
14 trying to worry about whether we are producing anything
15 substantive, I think Commissioner should be
16 embarrassed. I am. When people ask me where are you
17 people in this debate about this, that or the other?
18 Nowhere. That's where we are.

19 We come to these meetings month after month
20 and what happens? Commissioners refuse to engage the
21 issues of the day. We like to berate the staff or pick
22 on procedural issues or micromanage what the Staff
23 Director does or this and that and the other. And the
24 staff does it work and we don't step up to the plate.
25 And we even refuse to discuss substantive issues, even

1 refuse to discuss a proposal made by Judge Higginbotham
2 with all its sincerity.

3 There are things about his proposal that you
4 may like or not like or things that he said that you
5 may not like but to just refuse absolutely, just as you
6 did with the education reports when you refused to
7 discuss them, I would like some Commissioner to tell me
8 what I can tell people when they ask me why this
9 Commission should continue to exist. Why should we ask
10 the Office of Management and Budget to recommend a
11 budget for us? Why should we ask the President to
12 recommend a budget for us? Why should this Commission
13 continue to exist? What is it we're doing? What is it
14 any of you think we are doing here month after month
15 after month when we come here?

16 Yes, Commissioner Lee?

17 COMMISSIONER LEE: Madam Chair, for the
18 record, I want a vote on our esteemed colleague's
19 proposal. I want that to be on the record.

20 CHAIRPERSON BERRY: Okay. Why don't you make
21 a motion.

22 COMMISSIONER LEE: So moved.

23 CHAIRPERSON BERRY: Okay. Could I get a
24 second --

25 VICE CHAIR REYNOSO: Seconded.

1 CHAIRPERSON BERRY: -- for further
2 discussion?

3 Is there any?

4 COMMISSIONER REDENBAUGH: Yes.

5 CHAIRPERSON BERRY: Yes. Commissioner
6 Redenbaugh. Is that Commissioner Redenbaugh? Yes.

7 COMMISSIONER REDENBAUGH: Am I recognized?

8 CHAIRPERSON BERRY: Yes, sir.

9 COMMISSIONER REDENBAUGH: Okay. I just
10 didn't hear. There was noise here.

11 I disagree with the statement that we refused
12 to discuss the two reports which were part of the
13 education series. That was two of five? Were there a
14 total of five reports, three of which were approved of
15 four of which were approved?

16 There was discussion and could have been
17 more. I thought the question was called rather quickly
18 at the time. But more substantively, I think one of
19 the geniuses of democracy is that it does require to
20 produce a majority that there be compromise in a
21 deadlock situation particularly. That then someone
22 must pull from one side or the other. And I think we
23 have not done that particularly well in the last recent
24 months. But I think going further back we were
25 accomplishing it much better.

1 And my hope would be that we can return to
2 that. But I think that is one of the aspects of
3 democracy is that it does produce a deadlock which then
4 produces this dynamic that requires compromise.

5 CHAIRPERSON BERRY: What's your answer to why
6 we should continue to exist? What do you tell people?
7 Does anybody ever ask you that?

8 COMMISSIONER REDENBAUGH: They do ask that.
9 And I think that in terms of the attention that we put
10 on certain problems, the recommendations for
11 investigations to other agencies or recommendations to
12 Congress, that we are integral in that area.

13 I don't think -- as my mother said, if our
14 job is to reduce discrimination, we are not getting it
15 done. I think she is done about that as you point out.
16 As I mentioned before, since I joined the Commission,
17 things have only gotten worse, including in Utah.

18 But I think your question is the right one
19 and it is a question that I would like the eight of us
20 to address, as we did, I guess, Mary, six or eight
21 years ago when we had our last retreat.

22 CHAIRPERSON BERRY: Yes.

23 COMMISSIONER REDENBAUGH: Which was what is
24 our mission; what are the big themes that we are likely
25 to agree on; and let's concentrate on those and avoid

1 those worthwhile issues but which we know we are not
2 going to get agreement on. And I thought that was a
3 very -- I'm speaking of the Richmond retreat.

4 CHAIRPERSON BERRY: Right. That's the last
5 time we did that, I think.

6 COMMISSIONER REDENBAUGH: And I think that
7 served us well for -- you know, like four years or
8 something. Because it did produce some very valuable
9 work product which we all supported whether or not we
10 agreed with it. We didn't agree with every aspect with
11 it but we felt that it was valuable and satisfying,
12 that view.

13 So, we have become polarized, and I think in
14 part because we haven't had sort of a revisit to what
15 is our mission and what are the big themes the eight of
16 us can agree to deal with and then how do we proceed
17 about that.

18 So in the absence of guiding vision for the
19 eight of us, we do sort of fall into gridlock.

20 CHAIRPERSON BERRY: Right. That's very
21 helpful, Russell.

22 COMMISSIONER REDENBAUGH: So, I would say
23 that I absolutely, Leon, concur with the problem you're
24 identifying and I think the way to do it is not to
25 change our voting procedures, although that may come

1 out of it, but to revisit the question of what are we
2 going to do now as a Commission; what are the big
3 issues.

4 CHAIRPERSON BERRY: Okay. That's very, very
5 useful. Thank you for that.

6 Any other comment?

7 Commissioner Higginbotham, and then we'll --
8 yes.

9 COMMISSIONER HIGGINBOTHAM: I have the
10 highest respect for the Chair. I have been one of her
11 students, read her great books. But I would like to
12 make it clear that she has raised the level of inquiry
13 beyond the fact on which I was focusing.

14 I was focusing on the gridlock of 4 to 4, not
15 whether this Commission should exist.

16 CHAIRPERSON BERRY: Right.

17 COMMISSIONER HIGGINBOTHAM: But so there can
18 be no doubt, if that is an inference in the dialogue,
19 this Commission must exist because the magnitude of the
20 problems are still so great and still unsolved. And
21 hopefully we can have enough intelligence to contribute
22 to the dialogue of resolution.

23 CHAIRPERSON BERRY: Commissioner
24 Higginbotham, how would your process work?

25 Did you have you hand up?

1 COMMISSIONER ANDERSON: Yes, but you go
2 ahead.

3 CHAIRPERSON BERRY: How would this -- if we
4 did the process you're talking about --

5 COMMISSIONER HIGGINBOTHAM: It's very, very
6 easy. Let's take the equal education reports. The
7 staff last came out with a report on which four
8 supported it and four opposed some aspects of it. Not
9 every word, not every line. I have said confidentially
10 to the Commissioners my analysis of what happened of
11 the hundreds of hours which our staff assistants spent.

12 So how would the process work? If you want
13 to take the last report, you had four people voting for
14 it and four against it. Then what I would say is that
15 you take the last report and the four who disagreed
16 would write a memorandum, if they wanted to, noting
17 their disagreement and why the staff report is
18 inadequate.

19 And any of those who voted for it and who
20 voted for it despite the fact they felt that, as the
21 Vice Chair suggested, it did not go deep enough, would
22 be able to write comments.

23 If you look over the Dred Scot opinion, there
24 are several opinions by good men, all who had gotten
25 Article 3 approval. And if the Supreme Court can do

1 that with all of its power and allow this dialogue, why
2 should the Commission's reports get buried and never
3 come to the light of day for the information of a
4 future public which may be wiser and more insightful
5 than any of us are now.

6 CHAIRPERSON BERRY: Yes, Commissioner
7 Anderson?

8 COMMISSIONER ANDERSON: Well, I would say to
9 Commissioner Higginbotham there are many reasons why I
10 appreciate you being on the Commission, not the least
11 of which is your eloquence, and I think your proposal -
12 - I appreciate having it because it is the kind of work
13 that the Commissioners should be doing in terms of
14 forcing us to confront difficult questions.

15 Unfortunately, I disagree with the proposal
16 and I disagree with it because I think that what we are
17 tasked with doing is acting as a Commission. [Off
18 mike] -- views in the past and I have used op'ed pieces
19 in newspapers and other ways of expressing my views in
20 the marketplace of ideas and in engaging in public
21 discourse and public dialogue. And I think each of us
22 on this Commission have a responsibility to do that.
23 But when we sit around this table I think we have a
24 responsibility to act as a Commission.

25 We're tasked by statute to advise Congress

1 and the President as a Commission, not necessarily as
2 individuals. And so I think our job is to go beyond
3 what you're proposing.

4 Frankly, I don't understand the allusion to
5 Dred Scot. It seems to me that the example works to
6 the contrary of your point; that is, how many millions
7 of Americans had prayed that that decision had been
8 voted down, regardless of how good the dissents were.
9 That decision should have been voted down.

10 And I think part of our responsibility as a
11 Commission, as a Commissioner, is to vote down a report
12 that we think does a disservice either because of its
13 philosophical bent or because of the adequacy or
14 inadequacy of the research and scholarship behind the
15 report. I think that no report is better than a poor
16 report. That's my philosophy.

17 My other philosophy is, and I have sought to
18 do this as much as I could since joining this
19 Commission, is to work to bring us together around
20 issues on which we can make a positive contribution. I
21 have said on a number of occasions we should be looking
22 at areas at what works to remedy problems of
23 discrimination and we should seek issues where we can
24 speak out strongly as a Commission.

25 Now, that will result at times in our

1 avoiding issues on which we have a pretty good
2 understanding from the beginning that there is a high
3 possibility of deadlock, 4 to 4. Other Commissioners
4 may disagree that we ought to avoid some of those
5 issues. But if we want to avoid this kind of deadlock,
6 then it seems to me we have one of two alternatives.
7 We can avoid the issue or we can seek ways to come
8 together in some type of compromise, not perhaps say
9 everything each of us thinks needs to be said but to
10 say strongly what most of us or all of us believe needs
11 to be said.

12 And I can look at a number of important
13 reports, the Asian American Report that we released a
14 number of years ago, on which we were able to do that.
15 And I believe that the hearings we've had in these
16 various cities have accomplished a great deal and have
17 accomplished it with uniformity on the part of the
18 Commission.

19 But I guess the bottom line here is what our
20 responsibility to the country is. And I believe our
21 responsibility is to speak as a Commission on these
22 issues and to advise the President and the Congress as
23 a Commission. If we fail to do that, then each of us
24 has to accept some responsibility for that failure.
25 But I don't believe the way to cure that problem is to

1 simply rubber stamp staff work product with the result
2 that we all file individual or plurality opinions.

3 CHAIRPERSON BERRY: Any further discussion?

4 COMMISSIONER GEORGE: Madam Chair?

5 CHAIRPERSON BERRY: Yes, Commissioner George.

6 COMMISSIONER GEORGE: Thank you.

7 Judge Higginbotham, I sincerely beg your
8 pardon if what I'm about to say offends you in any way
9 because I don't mean to do that. Just as you respect
10 your fellow Commissioners and in no way impugn their
11 motives or good faith, I certainly do not impugn yours.
12 And it's not my place to lecture to you because you're
13 a man of great distinction, much greater achievement
14 than I have attained and it's not my place to lecture a
15 person of distinction.

16 But I do ask you and I do indeed plead with
17 you not to think and not to suggest to the public that
18 the differences, sometimes very serious differences of
19 opinion on basic questions of civil rights and the
20 philosophy of civil rights on this Commission reflect
21 the fact that four Commissioners on one side qualify --
22 I think the term you used was persons of color, and
23 four as whites.

24 I don't think that is at all what accounts
25 for our -- [off mike]. It seems to me that the logical

1 explanation for them is that we were appointed by
2 people of different parties reflecting different
3 philosophies, different philosophies that are held by
4 reasonable people who reasonably disagree about very
5 difficult questions.

6 The Chairman is a person of mixed race, as
7 she has described herself. She was appointed by a
8 liberal. You are an African-American. You were
9 appointed by a liberal. I'm an Arab-American. I was
10 appointed by a conservative. Constance Horner is an
11 Irish-American. She was appointed by a conservative.

12 There was a time on the Commission when there
13 was an African-American who was a strong conservative
14 and there have been persons of European ancestry who
15 have been strong liberals.

16 I attend a church that's racially mixed and
17 ethnically mixed and I know in dealing with my fellow
18 parishioners of various ethnic and racial backgrounds
19 that they reflect, even within their ethnic and racial
20 communities, a wide divergence of views on these very
21 troubling questions of civil rights and what's right
22 and what's wrong as far as government policies,
23 including government policies that are meant to redress
24 a legacy of injustice and discrimination.

25 And it would be, I think, a very great

1 disservice if this Commission were to suggest that
2 those differences do not exist within communities but
3 rather that we're simply divided among whites and
4 blacks and whites and persons of color. I think that
5 that view -- and I'm not suggesting you hold it, but I
6 would ask you not to say anything that would suggest
7 that you hold it -- that color makes philosophy or
8 color makes one's views or requires or necessitates
9 one's views. That, I think, is part of the problem
10 that we're facing. It's something to be overcome.
11 It's not something to be promoted.

12 So, again I say in concluding that I
13 apologize if my remarks offend. They weren't meant to
14 offend. But I hope that you will consider what I've
15 asked.

16 CHAIRPERSON BERRY: I will let -- if
17 Commissioner Higginbotham wants to respond, I will let
18 him. But let me give you one point of information just
19 to make sure that I understood what you said,
20 Commissioner George.

21 There are polls that show that a majority of
22 people who call themselves African-Americans, that is,
23 self-identified African-Americans, have distinct and
24 very strong views which they share on issues of civil
25 rights and that African-Americans who hold different

1 views are a minority in our community.

2 Every poll that's ever done shows that we
3 have cohesion in our community. So that if
4 Commissioner Higginbotham were saying -- and I don't
5 know what anybody is saying -- that African-Americans
6 have certain views about civil rights from the
7 majority, he would be correct.

8 If he's saying that for Latinos that a
9 majority of them have certain views where there is
10 cohesion about civil rights, he would be right about
11 the majority. There would also be some who don't
12 agree.

13 So that if he -- and I suspect the same is
14 true of Asian Americans, although I'm not as familiar
15 with the data as I should be. But if that's what he
16 meant and was using this division as a surrogate for
17 describing those views, would you disagree with that
18 point that I just made, Commissioner George?

19 COMMISSIONER GEORGE: I think across a range
20 of issues, you find quite a wide range of diversity of
21 viewpoint within communities, including the African-
22 American community.

23 CHAIRPERSON BERRY: Not on civil rights.

24 COMMISSIONER GEORGE: Now, majorities do form
25 on certain issues. Sometimes they're wide majorities.

1 Sometimes they're narrow majorities. But I don't think
2 that it's fair to predict how a person will -- what a
3 person's beliefs will be simply on the basis of their
4 color or their ethnicity.

5 And I don't think that it's wrong to suggest
6 -- I'm sorry. I don't think that it's right to suggest
7 -- and I hope this is not what Judge Higginbotham was
8 suggesting but his words might be taken to mean it --
9 that our views on the Commission reflect our racial and
10 ethnic backgrounds rather than reflecting what I
11 strongly believe is the case. They reflect the
12 political philosophy, a philosophy of civil rights of
13 the persons who appointed us independently of our races
14 and ethnic backgrounds.

15 CHAIRPERSON BERRY: Is there any other
16 discussion?

17 COMMISSIONER HIGGINBOTHAM: Madam Chair, if
18 you want me to, I will be ready to answer --

19 CHAIRPERSON BERRY: Oh, go right ahead.

20 COMMISSIONER HIGGINBOTHAM: -- Dr. George
21 because I respect him.

22 As I understand, the logic of his argument
23 is, oh, no, this is not a racial divide. What this is
24 is merely the political philosophy of the persons who
25 appointed us.

1 I'm not wise enough to sort that out but let
2 me make the record clear. And I believe if the Court
3 Reporter goes back and reads the document to you, I did
4 not make an indictment. I asked a question. And
5 according to my notes, I said I ask is it insignificant
6 or merely coincidental that this division is based on
7 color. So I did not, Professor George, make this as an
8 indictment but as an inquiry for further analysis.

9 But if we are to use your rationale, and I
10 purposely did not want to get involved in Republican
11 versus Democrat. Never used those words. You did.

12 And I purposely didn't want to get involved
13 in the dialogue --

14 CHAIRPERSON BERRY: He said conservatives and
15 liberals.

16 COMMISSIONER HIGGINBOTHAM: -- of
17 conservatives or liberals. But if that is the basis
18 for your conclusion, then we have to take account that
19 in 1964 when the Civil Rights Act for public
20 accommodations as to whether kids could go into a 5 and
21 10 cent store and eat a hot dog because they were
22 black, just the way white kids do, when that bill was
23 before the United States Congress, it was opposed by
24 George Bush. It was opposed by then Governor Reagan.
25 And the longest filibuster in the history of the United

1 States Senate was given by Strom Thurmond.

2 Now, I am not relying on the political issue,
3 but if that is the basis, that is the heritage which
4 must be incorporated and it's not merely a question of
5 presidential appointment but it goes back to the fact
6 that we were told by President Bush -- and I'll give
7 you the cites if you want them. We were told by
8 Governor Reagan and we were told by Strom Thurmond that
9 the Public Accommodation Acts were unconstitutional.

10 So I'm willing to deal with the Republican
11 versus the Democratic if you want me to, but that was
12 not the basis of my dialogue. And I purposely did not
13 raise it. But having been raised, I'm not timid and
14 I'll answer.

15 Now, secondly -- and my cardiologist
16 questioned whether I should come here today.

17 (Laughter.)

18 But let me give you my last comment --

19 CHAIRPERSON BERRY: Please.

20 COMMISSIONER HIGGINBOTHAM: -- in terms of
21 striving for consensus.

22 I am not hostile to consensus when it can
23 occur. But Madison and Jefferson spoke of the tyranny
24 of the majority. And if we have to have a philosophy
25 as individuals, I would not go to Madison or Jefferson.

1 I would go to that unique Republican, Theodore
2 Roosevelt, who once wrote it's not the critic who
3 counts nor the strong person who says how the doer of
4 deeds could have done them better. The test of life is
5 whether one enters into the arena and who, at his --
6 and I would add -- or her best, has a fleeting moment
7 of success, so that one will never be like those timid
8 souls who know neither victory or defeat.

9 We should not be timid souls on this
10 Commission.

11 CHAIRPERSON BERRY: Thank you, Judge
12 Higginbotham.

13 Any further conversation and then I'll call
14 for a vote.

15 Yes, Commissioner George?

16 COMMISSIONER GEORGE: Madam Chair, I
17 appreciate Judge Higginbotham's response to me. I took
18 his question to be a rhetorical question and nothing in
19 what he has just said leads me to doubt that I was
20 right in taking it thus.

21 As for the question of the introduction of
22 political philosophy -- and I appreciated your
23 intervention to point out that I did not say
24 Republicans and Democrats but rather said liberals and
25 conservatives -- I stand by my comment that if we are

1 trying to explain the division on the Commission that
2 has resulted in deadlock, it ought to be explained in
3 terms of political philosophy, not in terms of race or
4 ethnicity.

5 That was my purpose in introducing it. And if
6 Judge Higginbotham wants to debate the question as to
7 whether the political philosophy of political life or
8 political morality or civil rights that goes by the
9 name of liberal today is superior to the philosophy of
10 politics and civil rights that goes by the name
11 conservative, I assure him I would be very happy to
12 enter into that debate with him.

13 I did not, however, introduce these political
14 philosophies or these criteria to debate the question
15 of superiority of one political philosophy to another,
16 as happy as I would be to do that, but rather to
17 provide an alternative to the racial or ethnic
18 explanation of the division on the Commission.

19 CHAIRPERSON BERRY: It seems obvious that if
20 you're correct, Commissioner George -- and I have no
21 reason to doubt that you are -- about the basis of the
22 division the Commission, that on issues where
23 conservatives and liberals in your definition have
24 taken a position -- there may be areas where they
25 haven't taken a position -- but where they've taken a

1 position, if the Commission takes up any of those
2 areas, we will be deadlocked unless either the
3 conservatives or the liberals abandon their position.
4 So that what we have to do is find areas where neither
5 liberals nor conservatives have taken a strong position
6 so that we don't end up with 4-4 two years after
7 somebody has worked or a year after somebody has worked
8 to do a report.

9 Which is why I made the suggestion a couple
10 of meetings ago that whenever a project is proposed, we
11 ought to say right then whether we have some strong
12 feeling that that kind of issue is not one where the
13 government should play a role or that we think the
14 government should play a role. And if we know we
15 disagree, then we don't have to spend all the time
16 working on it.

17 So if the ideology is that clear, then we
18 probably know at the front end what we should do, which
19 is another way of saying what Commissioner Anderson
20 said and Commissioner Redenbaugh. Try to pick some
21 things where the positions aren't staked out as
22 strongly. Because wherever they are, whether it's
23 gender equity issues or whether it's race and issues
24 like that that you're going to end up with polarization
25 and a 4-4 vote at the end.

1 So I'll just take that under advisement. But
2 if it is ideology, as you say, then I guess that's
3 where we end up, as long as there are four of us
4 appointed by different people.

5 COMMISSIONER GEORGE: Mary, I want to go back
6 to -- I really think I'm reiterating a point that you
7 made when we had the announcement that the President
8 felt compelled to appoint a separate commission on
9 racial issues and could not go to us to do the required
10 investigations. And you pointed out at that time that
11 the fundamental problem at the Commission, going beyond
12 issues of management and the issues that were raised in
13 the GAO report and so forth, the fundamental problem is
14 the problem that we're deadlocked along ideological
15 lines.

16 I thought that was true when you said it and
17 I think it's true today. And I think we're just going
18 to have to come to terms with that, at least for the
19 short-run.

20 CHAIRPERSON BERRY: Well, I'm happy to have
21 you agree with me, even if belatedly.

22 COMMISSIONER GEORGE: I think I said at the
23 time, the record will show, that I think that's right.
24 And I think we've got a lot of other problems but I
25 think that fundamentally we've got a deadlock. And I

1 think what that means is there's certain types of
2 issues that we can just expect deadlock on.

3 If you'll excuse me just for a second talking
4 a little political science, political scientists
5 identify two types of issues. Some are issues where
6 people divide because they have different views of
7 empirical fact and information and then there are other
8 types of issues where people divide not over facts and
9 information but over values, over normative sorts of
10 considerations of right and wrong, justice and
11 injustice, and so forth.

12 I think it's the latter type of issue where,
13 if we step into the ideological divide, we're just
14 going to deadlock. But at the same time, it might be
15 possible that we don't have to simply go the milktoast
16 route of talking about things that we're all going to
17 agree about.

18 It might be that the types of issues where
19 the division is not fundamental over normative matters
20 but rather over information and empirical findings we
21 can, by the use of our resources and our -- power and
22 our staff, bring to light information that, once
23 brought to light, might narrow the disagreement along
24 ideology lines and help the country to understand that
25 in view of the facts a certain course of action ought

1 to be taken or a certain course of action ought to be
2 ruled out.

3 CHAIRPERSON BERRY: Okay.

4 All those in favor of Judge Higginbotham's
5 proposal, indicate by saying aye.

6 (Chorus of ayes.)

7 Those opposed?

8 (Chorus of nays.)

9 Okay. It's the usual 4-4.

10 Now, the next item on the agenda is the Asian
11 American -- that was one of those normative issues,
12 Robbie -- Asian American complaint and petition.

13 We received and you've got copies of it, a
14 petition and complaint from various Asian American
15 organizations and individuals and we have also received
16 from their organizations and individuals a petition for
17 -- what they call a petition for a hearing on subjects
18 of scapegoating and stereotyping of Asian and Pacific
19 Americans and immigrants, and cite to us the report we
20 did as a Commission or several of the reports the
21 Commission did on Asian Americans.

22 This is under Tab Number 7 in your book. And
23 they cite the reports on page 3 of that report, the
24 Economic Status of Americans of Asian Descent, Recent
25 Activities Against Citizens and Residents and Civil

1 Rights Issues of Asian and Pacific Americans: Myth and
2 Realities.

3 And we have also received a large number of
4 letters from various people who identify as Asian
5 Americans or their supports and organizations
6 encouraging us to view favorably this petition.

7 We have asked the legal staff to look at it
8 to make sure it's jurisdictional, although on the
9 surface it appears to be clearly within our
10 jurisdiction. It's just a question of whether we want
11 to do it. But they were asked anyway. And as I
12 understand it, counsel, --

13 MS. MOORE: It is within our jurisdiction.

14 CHAIRPERSON BERRY: Counsel says it is within
15 our jurisdiction, so we have at least the
16 jurisdictional answer.

17 And so the question here is how would we wish
18 to respond to this complaint and petition, the question
19 on the floor.

20 I suppose in order to discuss it we need some
21 kind of motion for purposes of discussion. A motion to
22 consider and make recommendations concerning the
23 Commission's response to the complaint would be
24 sufficient for discussion or we could have a motion to
25 have a hearing or whatever kind of motion I would

1 entertain.

2 VICE CHAIR REYNOSO: Madam Chair, I'd like to
3 make a more specific motion. The recommendation --
4 their request is that we have a hearing on the issues
5 they've raised. But I must say that we've already
6 discussed the limitations of our staff and --

7 CHAIRPERSON BERRY: Just a moment. I'm going
8 to have to take an immediate recess for medical reasons
9 for Judge Higginbotham. Just a few minutes.

10 (Whereupon, a recess was taken.)

11 CHAIRPERSON BERRY: We were talking about the
12 petition on Asian American and immigrant petition.

13 You were speaking.

14 VICE CHAIR REYNOSO: Yes. I'm sorry, Madam
15 Chair. I was suggesting that I could make a more
16 specific recommendation or motion for purpose of
17 discussion and I was indicating that the petition is
18 really for a hearing. But that in light of our own
19 hearing schedule, it seems to me unlikely that even if
20 we thought that it was a good idea that we would be
21 able to do that and it would take too long.

22 So my suggestion is simply that we have a
23 briefing on this issue so that the folk who have these
24 concerns can bring those concerns directly to us and we
25 can try to have an invitation to folk who will present

1 a balanced view of these types of issues. So that
2 would be a way of responding quickly. And clearly they
3 raise some issues that are of great concern to many in
4 the Asian American community and it wouldn't take the
5 sort of resources that a hearing would take.

6 CHAIRPERSON BERRY: Commissioner Horner?

7 COMMISSIONER HORNER: Yes, Madam Chair. I
8 support that suggestion of Cruz's with this request.
9 There is a legislative proposal which this report
10 discusses having to do with contributions to political
11 parties by non-citizen residents. And that is a
12 legislative proposal.

13 I would suggest that our hearing not focus on
14 -- and that we ask our briefers -- not our hearing, our
15 briefing -- we ask our briefers to focus on the general
16 question of whether there is a racial problem here or a
17 problem of bias and not try to -- and not deal with the
18 pending legislative proposals. Because to do that,
19 we'd need a much more elaborate preparation if we're
20 going to do justice to it and we need to have pros and
21 cons and congressional staff and all of that.

22 So I support Cruz's suggestion with that
23 caveat.

24 CHAIRPERSON BERRY: Commissioner Anderson?

25 COMMISSIONER ANDERSON: If the Vice Chair is

1 putting that in the form of a motion, I'd be happy to
2 second it.

3 CHAIRPERSON BERRY: Okay. Go right ahead.

4 VICE CHAIR REYNOSO: Thank you.

5 CHAIRPERSON BERRY: And I'll speak only to
6 the motion by saying that this briefing -- and the
7 staff can prepare something for us to look at on how it
8 would go -- we would tentatively say we would have it
9 in December. But as Commissioner Horner has suggested,
10 and all of us agree, that it would be restricted to
11 civil rights issues.

12 The briefing would concern such issues as
13 stereotyping, if any, and other matters that might tend
14 to increase discrimination against Asian-Pacific
15 Americans and not issues about campaign financing and
16 how it should be done and all the rest of that. And so
17 it would be clearly within our purview then, as counsel
18 has said, if we consider the civil rights issues. And
19 we very much want to do this and I think it's an
20 important issue for us to consider.

21 And based on the earlier reports we've done,
22 the Commission is very deeply interested in this issue
23 and would take up its civil rights aspects with great
24 interest and vigor.

25 Any other comments?

1 VICE CHAIR REYNOSO: Just a reminder, Madam
2 Chair, that the briefings, of course, are unsworn, so
3 we don't have to come out of this with findings and
4 recommendations.

5 CHAIRPERSON BERRY: We may decide -- well, we
6 don't have to but we may decide we want to say
7 something and we may not or release the transcripts, as
8 we always do.

9 Yes, Commissioner Redenbaugh?

10 COMMISSIONER REDENBAUGH: Yes.

11 Also -- and maybe we want to discuss this
12 first, but I think it would be appropriate and I want
13 to discuss making it -- in the media or an immediate
14 press release of that mission. I think we did
15 something similar to this at the time of the Gulf War.

16 CHAIRPERSON BERRY: Right. So we need to
17 have one. We're quite correct.

18 COMMISSIONER REDENBAUGH: And I think, yes,
19 this briefing is a good idea, but we need to do
20 something sooner than that.

21 CHAIRPERSON BERRY: Right. So why don't we
22 have the staff prepare something, keeping in mind we'll
23 go back and look at the thing we did before cautioning
24 people not to draw these kinds of inferences and to be
25 wary of them and the effect that they might have. And

1 it will be distributed to the Commissioners for them to
2 look at. And we can have that done today, if possible,
3 and pass it around and ask you to respond orally so
4 that we can get it out just as soon as possible.

5 COMMISSIONER REDENBAUGH: Yes. I think
6 that's -- yes. Good.

7 CHAIRPERSON BERRY: Okay. Wonderful
8 suggestion.

9 Could we have a vote on -- was there a
10 motion? Yes.

11 VICE CHAIR REYNOSO: Motion and seconded.

12 CHAIRPERSON BERRY: Yes.

13 All those who agree with the motion, indicate
14 by saying aye.

15 (Chorus of ayes.)

16 Opposed?

17 (No response.)

18 So ordered.

19 Any future agenda items?

20 (No response.)

21 The only one I can think of is we need to set
22 a date for the consultation on citizenship and
23 naturalization. It will be during one of our meetings
24 or in connection with, and staff will get in touch with
25 you about that.

1 With no further business before the body, I
2 will entertain a motion to adjourn.

3 COMMISSIONER REDENBAUGH: So moved.

4 CHAIRPERSON BERRY: Nondebatable.

5 Thank you very much, Commissioners.

6 (Whereupon, at 1:10 the proceedings were
7 concluded.)

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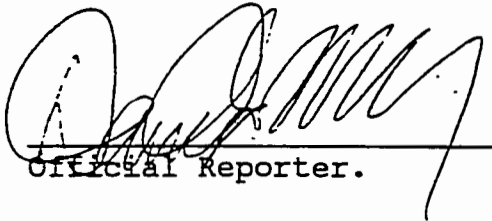
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REPORTER'S CERTIFICATE

This is to certify that the attached
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In the Matter of: 10-10-97 meeting

were held as herein appears and that this is the
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Official Reporter.

Dated: 10-10-97

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