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- - -  
MEETING  
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Friday, August 15, 1997

The Commission met in Room 540, YWCA  
Building, 624 9th Street, N. W., Washington, D. C.  
20425, at 10:00 a.m., MARY FRANCES BERRY, Chairperson,  
presiding.

PRESENT:

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

STAFF PRESENT:

MICHELLE AVERY  
MARLISSA BRIGGETT, PARLIAMENTARIAN  
BARBARA BROOKS  
DAVID CHAMBERS  
KI-TAEK CHUN  
JAMES S. CUNNINGHAM  
M. CATHERINE GATES  
EDWARD A. HAILES, JR.

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## STAFF PRESENT: (Continued)

CAROL-LEE HURLEY  
FREDERICK ISLER  
JACQUELINE L. JOHNSON  
WANDA JOHNSON  
WILLIAM LEE  
ERIC MANN  
REGINALD MARTIN  
STEPHANIE Y. MOORE, GENERAL COUNSEL  
CHARLES RIVERA  
EILEEN RUDERT  
MARCIA TYLER  
CATHERINE WALLACE  
AUDREY WRIGHT  
NADJA ZALOKAR

## COMMISSIONER ASSISTANTS PRESENT:

JOSEPH BROADUS  
WILLIAM L. SAUNDERS, JR.  
KRISHNA TOOLSIE  
CYNTHIA VENZUELA

## A G E N D A

	<u>Page</u>
Approval of Agenda	5
Approval of the Minutes of July 11, 1997	6
Announcements	6
Equal Education Opportunity Reports	12
GPRA Performance Plan	53
GAO Report Recommendations	69

## P R O C E E D I N G S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
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10:00 a.m.

CHAIRPERSON BERRY: The meeting will come to order.

Can I have a motion to approve the agenda?

COMMISSIONER GEORGE: So moved.

VICE CHAIRPERSON REYNOSO: Seconded.

COMMISSIONER ANDERSON: Madam Chair?

CHAIRPERSON BERRY: Yes.

COMMISSIONER ANDERSON: I have an amendment for the agenda when it would be appropriate.

CHAIRPERSON BERRY: All right.

Any other discussion?

(No response.)

If you have an amendment, go ahead.

COMMISSIONER ANDERSON: I would like to add to the agenda to discuss the implementation of the GAO report recommendations.

CHAIRPERSON BERRY: Okay. All right.

Anyone have anything else to add?

(No response.)

Okay. We'll add that down right before the GPRA if that's all right with you, Commissioner Anderson.

COMMISSIONER ANDERSON: All right. Thank

1, you.

2 CHAIRPERSON BERRY: Okay.

3 Any objection to the approval of the agenda  
4 with that addition?

5 (No response.)

6 If there are no objections, then it's  
7 approved unanimously.

8 Commissioner Higginbotham, as I understand  
9 it, you have to leave for a medical appointment. Is  
10 that correct?

11 COMMISSIONER HIGGINBOTHAM: Well, I had hoped  
12 that we would be able to go through the matters on  
13 which there could conceivably be a division within an  
14 hour or an hour and a half.

15 CHAIRPERSON BERRY: Well, I would then ask  
16 that if we do not get to -- I think we will get to the  
17 Education Opportunity Reports before you have to leave.  
18 But if not, then I would ask indulgence from the other  
19 Commissioners to let you express your thoughts while  
20 you are here.

21 COMMISSIONER HIGGINBOTHAM: Okay. Fine.

22 CHAIRPERSON BERRY: Because I know that is a  
23 matter of particular concern.

24 Could I get a motion to approve the minutes  
25 of July 11, 1997?

1 COMMISSIONER GEORGE: So moved.

2 COMMISSIONER LEE: Seconded.

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

5 (Chorus of ayes.)

6 Opposed?

7 (No response.)

8 Okay. So ordered.

9 Announcements. I have four.

10 First of all, today is the last day to turn  
11 in names for the consultation on Crisis of Young  
12 African-American Males. So if any of you still have  
13 names to turn in, we would appreciate it if you would  
14 do so.

15 Secondly, the Office of General Counsel has  
16 the report on the -- the analysis on the Census 2000  
17 multi-racial category and the latest developments for  
18 you. You will be given that next week.

19 The third is that we're coming to the end of  
20 the fiscal year and the staff is very concerned about  
21 Commissioners turning in their time and their travel  
22 vouchers before the closeout for the end of the year.  
23 So if any of you have any travel vouchers or time that  
24 you need to submit, I would urgently hope that you will  
25 do so immediately.

1           The last one is that our new Personnel  
2 Director, Ms. Gates, who we expected to be on board the  
3 last time, is on board. And if you're in the room,  
4 could you please stand?

5           Is she there?

6           VICE CHAIRPERSON REYNOSO: She is, and she  
7 stood up, and we all nodded and said welcome. She's  
8 smiling.

9           COMMISSIONER HORNER: Madam Chair?

10          CHAIRPERSON BERRY: Yes.

11          COMMISSIONER HORNER: Could we hear from Ms.  
12 Gates or you a little bit about her background, where  
13 she has been working before and --

14          CHAIRPERSON BERRY: That's Commissioner  
15 Horner.

16          Ms. Staff Director, are you on the phone?

17          STAFF DIRECTOR MOY: Yes, I am.

18          CHAIRPERSON BERRY: Would you like to do that  
19 or would you like her to do it? How would you like to  
20 do that?

21          STAFF DIRECTOR MOY: I would defer to Cathy.

22          CHAIRPERSON BERRY: Okay. Would she please  
23 come up and just briefly say some things about where  
24 she's been working before and her background?

25          Ms. Gates?

1 MS. GATES: Yes.

2 Okay. Good morning. I've worked for the  
3 last six years at the General Services Administration  
4 as a Personnel Officer for the Federal Supply Service.  
5 Under that, I had classification, staffing, employee  
6 relations, labor relations.

7 Prior to that, I worked as a Supervisory  
8 Personnel Management Specialist, Personnel Office, at  
9 the U.S. Customs Service. I've worked at the  
10 Department of Interior in the Bureau of Land  
11 Management, National Park Service. All in Personnel.

12 CHAIRPERSON BERRY: And that was a Civil  
13 Service appointment which was competed. Is that  
14 correct?

15 MS. GATES: Yes.

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER HORNER: Could I just say, Madam  
18 Chair, we're delighted to have you here and you'll need  
19 every bit of your preparation.

20 VICE CHAIRPERSON REYNOSO: A new challenge.

21 COMMISSIONER HORNER: We have major  
22 management projects underway and we're glad to have you  
23 on the team to work with them.

24 MS. GATES: Great. I'm glad to be here.  
25 Thank you.



1 CHAIRPERSON BERRY: Welcome.

2 Thank you, Commissioner Horner.

3 I also want to point out to you, in case you  
4 have not read -- to the Commissioners, in case you  
5 didn't read today's New York Times, that on page A-31  
6 there's a reference to the incident in Syracuse for  
7 which you received a memo from the Eastern Regional  
8 Director -- a letter to Commissioner Lee, I believe --  
9 about the Asian Americans at Denny's.

10 And apparently the independent auditor or  
11 monitor who was involved in that whole Denny's lawsuit  
12 has reviewed it and recommended that the people there  
13 be fired and certain other things.

14 It's just part of the ongoing discussion. I  
15 thought I'd point that out in case you hadn't seen --  
16 hadn't read your Times yet.

17 The other thing I'm going to do now is go on  
18 to the next item, which is the Equal Education  
19 Opportunities.

20 COMMISSIONER HORNER: Madam Chair?

21 CHAIRPERSON BERRY: Yes.

22 COMMISSIONER HORNER: Under announcements, I  
23 just have one.

24 Your Assistant has just provided me some  
25 information in response to the request I made at the

1 last meeting, and I've just spoken with him to tell him  
2 this isn't quite what I asked for.

3 I had asked -- in reference to the sole  
4 source contract for the statistical analysis of the New  
5 York hearing, I'd asked for the bios of the officers of  
6 the company and a list of the names of the directors,  
7 and also the bio of the person chiefly responsible for  
8 supervising our work. And he has assured me he will  
9 indeed provide me with that information.

10 I know it's a closely-held company and,  
11 therefore, since it's not public, it's all the more  
12 important that I get that information. I'm sure he  
13 will provide it to me soon.

14 CHAIRPERSON BERRY: Well, Commissioner  
15 Horner, I think what he gave you is what he received  
16 from -- [inaudible] -- but I did ask him to tell you --  
17 but I'll just tell you on the record that the President  
18 of the company indicated that if you would like to meet  
19 with her the next time she comes in town, she will give  
20 you whatever information you would like to have and any  
21 other Commissioner who wishes to do so.

22 I think you were given what's in the files.

23 COMMISSIONER HORNER: Madam Chair, I don't  
24 want to meet with her. I want what I asked for, which  
25 is the normal credentialing information that would

1 allow one to scrutinize credentials in writing and  
2 evaluate them. There's no need for me to meet with  
3 her. And I'm not interested in what we happen to have  
4 in the files. I'm interested in the information that I  
5 think is relevant. And I'm sure it will be forthcoming  
6 shortly.

7 CHAIRPERSON BERRY: Well, we will ask the  
8 staff what can be made available. And whatever can be  
9 made available, we will make available to you and any  
10 other Commissioner.

11 COMMISSIONER HORNER: Well, Madam Chair, if  
12 the contractor is not willing to tell us the  
13 credentials of the officers, I would suggest that the  
14 sole source contract should be scrutinized.

15 CHAIRPERSON BERRY: I have just said to you,  
16 Commissioner Horner, that the president of the company  
17 even indicated that she would give you whatever  
18 information you would like to have. I don't think  
19 that's the issue. I think the issue is what was in the  
20 files, going to have the staff get you other  
21 information in addition to that and respond fully to  
22 your inquiry.

23 Okay. Are there any other announcements from  
24 any other Commissioners?

25 COMMISSIONER LEE: Madam Chair, this is

1 Yvonne. Can I ask the Staff Director why there was no  
2 Staff Director's report for this month?

3 CHAIRPERSON BERRY: Of course you may ask.  
4 But I think the reason why -- well, you can go ahead  
5 and answer that, Ruby, because also we have a meeting  
6 this month --

7 STAFF DIRECTOR MOY: That's right.

8 CHAIRPERSON BERRY: -- and the meeting was  
9 only for the purpose of considering the items that we  
10 agreed we would consider.

11 STAFF DIRECTOR MOY: That's correct. And  
12 especially since it will be three weeks before the next  
13 Commission meeting, we deferred to the next.

14 CHAIRPERSON BERRY: That was the only reason  
15 why, Commissioner Lee.

16 COMMISSIONER LEE: Okay.

17 CHAIRPERSON BERRY: Any other comments or  
18 announcements?

19 VICE CHAIRPERSON REYNOSO: Did I miss  
20 something or did we approve the minutes?

21 COMMISSIONER GEORGE: Yes. We approved them.

22 VICE CHAIRPERSON REYNOSO: Okay.

23 CHAIRPERSON BERRY: Okay. Good.

24 The Equal Education Opportunity Reports are  
25 the next item on the agenda.

1           Could I have a motion for the purposes of  
2 discussion?

3           VICE CHAIRPERSON REYNOSO: So moved.

4           COMMISSIONER LEE: Seconded.

5           CHAIRPERSON BERRY: Discussion. The staff is  
6 ready to respond to the comments which were made at the  
7 last meeting in making the revisions. In my view, I  
8 thought they did a pretty good job in trying to weave  
9 their way through the various things the Commissioners  
10 had said. But I'd be happy to hear discussion and see  
11 how you'd like to proceed.

12           VICE CHAIRPERSON REYNOSO: Well, I guess  
13 since I objected to many portions of the report before,  
14 I should speak to it.

15           I'm prepared to vote for the report. I still  
16 would have liked a little bit more of the history that  
17 I think educates us in terms of the civil rights  
18 aspects of ability groupings, not the straight  
19 educational aspects, as we discussed at the last  
20 meeting.

21           But there have been innumerable changes and  
22 some good additions along the lines that concern me, so  
23 I'm prepared to vote for it.

24           CHAIRPERSON BERRY: Thank you, Vice Chair.

25           Any comments from any other Commissioners?

1 (No response.)

2 If there are no comments, are you ready to  
3 vote on this report?

4 (No response.)

5 Hearing no objection, then I will call for  
6 the question.

7 All those in favor of the ability grouping  
8 report, indicate by saying aye.

9 (Chorus of ayes.)

10 Opposed?

11 (Chorus of no's.)

12 Let's have the ayes first.

13 VICE CHAIRPERSON REYNOSO: Would you like --  
14 do you just want to go down the names?

15 CHAIRPERSON BERRY: Please, Vice Chair.

16 VICE CHAIRPERSON REYNOSO: Okay. I have it  
17 here.

18 Anderson?

19 COMMISSIONER ANDERSON: No.

20 VICE CHAIRPERSON REYNOSO: Berry?

21 CHAIRPERSON BERRY: Yes.

22 VICE CHAIRPERSON REYNOSO: George?

23 COMMISSIONER GEORGE: No.

24 VICE CHAIRPERSON REYNOSO: Higginbotham?

25 COMMISSIONER HIGGINBOTHAM: Yes.

1 VICE CHAIRPERSON REYNOSO: Horner?

2 COMMISSIONER HORNER: No.

3 VICE CHAIRPERSON REYNOSO: Lee?

4 COMMISSIONER LEE: yes.

5 VICE CHAIRPERSON REYNOSO: Redenbaugh?

6 (No response.)

7 I thought Russell was going to be on the  
8 phone.

9 COMMISSIONER REDENBAUGH: Oh, I'm sorry. My  
10 microphone was off.

11 No.

12 VICE CHAIRPERSON REYNOSO: Reynoso? Yes.

13 I could the vote 4/4, Madam Chair.

14 CHAIRPERSON BERRY: All right. Then the  
15 ability grouping report fails passage by the  
16 Commission.

17 VICE CHAIRPERSON REYNOSO: Although we've had  
18 the vote, I guess I'm puzzled by the vote. I thought  
19 I was going to be the only one.

20 I must say that Connie had mentioned that  
21 she, if I recall correctly, liked the initial report,  
22 but wasn't sure that she would like the revisions. I  
23 take it the revisions are not acceptable or am I mis-  
24 recollecting?

25 COMMISSIONER HORNER: The revisions kind of

1 put the report out of balance in my view, and tipped it  
2 so strongly in condemnation implicitly, if not  
3 explicitly, of ability grouping as virtually  
4 necessarily connected to racism that I just can't  
5 support it, since I think it is a legitimate  
6 pedagogical technique which in fact can be of enormous  
7 assistance to minority groups if properly used.

8 CHAIRPERSON BERRY: Well, I'm totally sorry  
9 -- [inaudible] -- a lot of work has been expended. It  
10 happens.

11 Moving on to the next report. Could I have a  
12 motion to discuss --

13 COMMISSIONER LEE: So moved.

14 VICE CHAIRPERSON REYNOSO: Seconded.

15 CHAIRPERSON BERRY: All right.

16 Discussion?

17 COMMISSIONER HORNER: Well, I have problems  
18 with this one, too. I don't know whether others want  
19 to start off. If no one else has anything to say, I'll  
20 start with my problems. But --

21 CHAIRPERSON BERRY: Why don't you go ahead,  
22 Commissioner.

23 COMMISSIONER HORNER: Okay. I've got about  
24 four categories of problems with this report. Let me  
25 start with one of the softer problems.



1           The information in the report that tells us  
2 what the lay of the land is now, I think misrepresents  
3 the current lay of the land in terms of how citizens  
4 feel about bilingual education.

5           And therefore, one of the things I would like  
6 to see in the report is a change in the -- I should say  
7 an update in the characterization of citizen sentiment,  
8 and especially minority group citizen sentiment.

9           For instance, a recent L.A. Times poll showed  
10 that 83 percent of Latino respondents opposed bilingual  
11 education. I understand that only about 5 percent of  
12 students in ESL graduate out of it each year, which is  
13 not a particularly strong success rate.

14           And therefore, I would like to see a  
15 rebalancing of this report by inclusion of information  
16 that is not condemnatory of the initiatives designed to  
17 oppose bilingual education in favor of English as a  
18 second language.

19           And also, I would like to see removal of the  
20 recommendation for enrichment, which is in Chapter 10,  
21 page 30, because I believe it is intended to lead  
22 toward a situation in which all American young people  
23 are expected to or required to study both English and  
24 Spanish in order to create an English-Spanish  
25 multilingual society. And since my belief is that we

1 will have greater civic health if English is the  
2 primary language of the country and everyone in the  
3 country is fluent in it, I can't support that.

4 Now, I don't know whether you want to talk  
5 about that now and then I can go on to my other  
6 concerns.

7 CHAIRPERSON BERRY: Why don't we see if  
8 others have something to say. [Inaudible.]

9 COMMISSIONER HORNER: And Madam Chair, I have  
10 a particular place where I would suggest insertion of  
11 an update.

12 CHAIRPERSON BERRY: Okay.

13 VICE CHAIRPERSON REYNOSO: Yes. Madam Chair,  
14 I have some observations.

15 CHAIRPERSON BERRY: Yes. Go right ahead.

16 VICE CHAIRPERSON REYNOSO: First, I'd like to  
17 emphasize that I know of no group -- and I mean, not  
18 all of them -- whose language is not primarily English  
19 that do not agree with Commissioner Horner that their  
20 children should know and command English in the highest  
21 order.

22 English is a marvelously complex and evolving  
23 language that now serves as the language of business  
24 for the world. And to do well both as citizens, as  
25 participants in all parts of this country's life and in

1 the international business, it's of great advantage to  
2 everybody to know English.

3 I believe that those groups share my own view  
4 that indeed it is good to have a common language in a  
5 country. At the same time, however, most such groups  
6 believe strongly that their own languages ought to be  
7 treated with dignity and that it not ought to be  
8 something that's found only in the kitchen or the  
9 bedroom and that it ought to be public and that those  
10 languages should be respected and that indeed we will  
11 do better at international trade and dealing with the  
12 world if our children, those who have the good fortune  
13 of having parents who speak a language other than  
14 English, group up commending both languages.

15 So, to the extent that there's a suggestion  
16 that somehow that's not to the best interest of this  
17 country and that those children will not be  
18 disadvantaged if they are discouraged and made to feel  
19 inferior because of their ethnicity and language, if  
20 that's the suggestion, I certainly would be opposed to  
21 that. And I don't think it represents the best  
22 interests of civil rights in this country.

23 I did not read the Los Angeles Times article  
24 that indicates that 83 percent oppose -- of minorities,  
25 presumably language minorities --

1 COMMISSIONER HORNER: Latinos.

2 VICE CHAIRPERSON REYNOSO: Latinos. --

3 oppose bilingual education. I did read a subsequent  
4 article that indicated the poll only asked whether they  
5 favored their children learning English. And if that's  
6 true, I'd be surprised that it was only 83 percent,  
7 because I would assume that it would be 100 percent.  
8 So I'd be very interested in looking at that poll.

9 But it would come as a great surprise to me  
10 that 83 percent of the Latinos oppose bilingual  
11 education, quite contrary to my own sense of where that  
12 community now is. So if we have factual changes, I  
13 hope it will be indeed tied to the facts of where  
14 current opinion lays in that regard.

15 Further, I must say of those with whom I have  
16 spoken who have qualms about bilingual education, their  
17 qualms are not to the concept of bilingual education,  
18 as I think we find among some Commissioners in this  
19 Commission. It's to the fact that it's not been  
20 properly implemented. And where you don't have good  
21 teachers, when you don't have officials who believe in  
22 the concept, all too often sadly the concept is  
23 sabotages and sometimes does more harm than good. And  
24 I agree with that.

25 We have the worry in bilingual education to

1 properly effectuate it so that youngsters indeed learn  
2 English while at the same time getting a greater and  
3 better command of their native tongues.

4 CHAIRPERSON BERRY: Okay. If anyone has a  
5 comment on that specific point before we -- what we  
6 should do is get all the points that anyone else would  
7 raise and then have Fred have a chance to say  
8 something.

9 COMMISSIONER LEE: Madam Chair?

10 CHAIRPERSON BERRY: Yes. Commissioner Lee.

11 COMMISSIONER LEE: I do not -- I know of  
12 virtually every immigrant community who puts education  
13 for their children as a top priority for the families.  
14 And they would do everything they could to make sure  
15 that the children get the best education possible in  
16 this country because most of them, a large majority of  
17 them, came to this country for better education  
18 opportunities for their children. And they have all  
19 agreed that they want the children to learn English, to  
20 master the language, because the reality is you need to  
21 know the English language in order to succeed in this  
22 country.

23 The question is how do you provide that  
24 opportunity for the children. Do you give them every  
25 tool possible so they could master the new language for

1 them? Because this is a new language for them. Or do  
2 you just throw them in with the rest of the English  
3 speaking population and let them do a sink or swim.

4 I recently had the good fortune of being a  
5 judge for the MCI National Scholarship. There were  
6 over several thousand applications in San Francisco  
7 alone. And of the 10 scholarship winners, nine were  
8 Chinese-Americans and all nine were immigrants.

9 And I was touched by some essays that they  
10 wrote. Half of them were from China. They did not  
11 know A, B, C at all when they got here. And these were  
12 kids who came here when they were teenagers, when it's  
13 harder for them to learn a new language. And one after  
14 another, they would talk about how fortunate it was  
15 that they were able to learn English in ESL programs.

16 And these kids write the best essay and it  
17 wasn't written by other people because the heart was in  
18 those essays. And I know that given proper guidance,  
19 proper training, these kids -- the bilingual education  
20 program books -- I do have a problem with the way the  
21 program is run. The teachers are poorly trained. They  
22 are not monitored.

23 So when people talk about bilingual program  
24 failures, a lot of it has to do with the system's  
25 neglect of taking care of this baby, so to speak. And I

1 do think that the system needs some work.

2           But looking at the quality of these kids who  
3 come through the bilingual program, I do think that we  
4 need to look closer at this report because there's some  
5 good things that I have seen first hand that has helped  
6 school children who first came here, did not know any  
7 language, and because of this, now they're able to  
8 compete equally. And in many instances they have been  
9 able to excel very well.

10           COMMISSIONER HORNER: Madam Chair, I think  
11 Commissioner Lee and I agree that ESL has been  
12 successful for those students. And my concern is that  
13 the full panoply of bilingual education is a deterrent,  
14 not a facilitator of learning English, and that our  
15 report ought to support what Commissioner Lee has just  
16 said; that English as a second language, as a theory  
17 and as a set of programs ought to be given a high  
18 regard as an option for school systems.

19           CHAIRPERSON BERRY: Okay. Are there other  
20 comments from Commissioners either on this point or  
21 other points that you would like to raise about this  
22 report before -- [inaudible].

23           COMMISSIONER HORNER: Madam Chair?

24           CHAIRPERSON BERRY: Yes.

25           COMMISSIONER HORNER: I have one other

1 concern with the report.

2 CHAIRPERSON BERRY: All right. Go ahead then  
3 please, Commissioner.

4 COMMISSIONER HORNER: When we have in the  
5 past confronted disparate impact related issues, as a  
6 Commission we have never resolved our thinking on the  
7 extent to which disparate impact ought to be taken as  
8 effectively a definition of racism. In other words,  
9 disparate impact as the equivalent of racism. And so  
10 we have tended to leave disparate impact out of our  
11 prescriptions as a subject.

12 And in this report, we ask that OCR in its  
13 policy guidance become more specific on the use of  
14 disparate impact. And I would ask that that  
15 recommendation either be removed -- it's on page 31 of  
16 the recommendations -- or that the recommendation be  
17 revised to read simply that we call upon OCR to clarify  
18 the application of Lau without reference to disparate  
19 impact.

20 I fully anticipate that others on the  
21 Commission have an entirely different point of view on  
22 this.

23 VICE CHAIRPERSON REYNOSO: I'm sorry. Which  
24 recommendation was that?

25 COMMISSIONER HORNER: On page 31. And it is



1 in the middle of the page under -- it's in the finding  
2 and recommendation beginning in the middle of the page.

3 Should I read it? It's about two or three  
4 sentences.

5 VICE CHAIRPERSON REYNOSO: Sure.

6 COMMISSIONER HORNER: The finding is: OCR's  
7 Lau policy guidance, such as the September 1991  
8 memorandum, does not contain discussions of the  
9 applicability of the disparate impact theory to OCR's  
10 civil rights policy. Disparate impact analyses are  
11 essential for determining whether or not a school  
12 district's education programs cause segregation or  
13 otherwise adversely affect students with limited  
14 English proficiency.

15 And then the recommendation says: OCR should  
16 develop and issue new policy guidance containing a  
17 detailed discussion of the applicability of the  
18 disparate impact theory to Lau cases. In addition, OCR  
19 should include examples of disparate impact analyses in  
20 a Lau enforcement manual.

21 And I would suggest that that recommendation  
22 either be removed or revised to call on OCR simply to  
23 clarify the application of Lau.

24 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
25 just want to understand specifically what the objection

1 is because I have taken this recommendation to say  
2 something like this. Sometimes bilingual education is  
3 good but it has the effect, the ill effect of  
4 segregating these youngsters in an improper way and  
5 that we ought to be concerned about that. That's what  
6 I took this to mean.

7 And I don't know whether --

8 COMMISSIONER HORNER: I don't think we know  
9 what the Office of Civil Rights will do with this  
10 recommendation if given the opportunity upon our  
11 recommendation to be responsive to our recommendation  
12 and begin to specify in greater detail than has ever  
13 been the case what school districts may or may not do.

14 CHAIRPERSON BERRY: Well, Commissioner  
15 Horner, I take it -- just to shed some light on the  
16 Vice Chair's response to you, it seems we're talking  
17 about the same thing. Do I take it you are referring  
18 to the general area of disparate impact and how it is  
19 used in this setting and how we have avoided discussing  
20 it in the past? And therefore, your suggestion was  
21 that we simply talk about clarification only?

22 COMMISSIONER HORNER: Yes. That's correct.

23 CHAIRPERSON BERRY: Okay.

24 Any other comment on this part of the report?

25 VICE CHAIRPERSON REYNOSO: Well, my own

1 reaction is that I share the concern that we don't know  
2 what would happen. I think that my impression is,  
3 based on personal experience of family members, is  
4 that sometimes if the bilingual education has the  
5 effect of segregating youngsters, then oft times  
6 [folk], including a sister of mine, object to that.  
7 And so, I had thought that's what they were trying to  
8 get to.

9 As I reread it, it's not clear what they're  
10 getting to. So if that would garner the Commissioner's  
11 vote, why then I'd be more than happy to agree to  
12 cutting all of that out.

13 CHAIRPERSON BERRY: Any other comments before  
14 we hear from Mr. Isler?

15 COMMISSIONER GEORGE: Perhaps, before we do,  
16 I wonder if I could just make sure that I could --

17 CHAIRPERSON BERRY: Commissioner George has a  
18 comment.

19 COMMISSIONER GEORGE: Thank you, Madam  
20 Chairman.

21 On the very first point that the colloquy  
22 among Vice Chairman Reynoso and Commissioners Horner  
23 and Lee, perhaps I could ask the Vice Chair to  
24 crystallize the point of disagreement between yourself  
25 and Commissioner Horner.

1 I take it that what is agreed is that all  
2 American children should have a good command of English  
3 for all the reasons recommended?

4 VICE CHAIRPERSON REYNOSO: Yes.

5 COMMISSIONER GEORGE: What's a --

6 VICE CHAIRPERSON REYNOSO: Excuse me, but let  
7 me interrupt. So often I think there's an implication  
8 when we speak of bilingual education that that position  
9 is not the position of us who are in favor of bilingual  
10 education. I just want to underscore that.

11 So far as I know, it would be my own hope for  
12 our country that all of us who live here would have a  
13 good command of the English language.

14 My own model, I guess, right now is Spain,  
15 where everybody speaks Spanish, but you still have  
16 individual groups who have a great command of  
17 literature and history in their own languages, Catalan,  
18 and that sort of thing. But there's a common language  
19 that unites all the folk.

20 COMMISSIONER GEORGE: This is very  
21 interesting and I think important for our nation  
22 question. And I'm curious, as I listen to the debate  
23 about the extent to which the debate turns on matters  
24 of emphasis or particular sensitivities on both or all  
25 sides on the one hand, or matters of principal or

1 prudence that bear directly on what government policies  
2 ought to be on the other hand.

3           So, as the Vice Chair emphasizes, all agree  
4 that English should be firmly commanded by all American  
5 children. I take it that all would also agree that it  
6 is a good thing for children to be able to speak a  
7 second language, and particularly a good thing for them  
8 to be able to speak a language that comes from their  
9 own heritage.

10           If they're the offspring of Spanish -- the  
11 Catalan people, then learning Catalan, of course, has a  
12 special advantage. And I think there's no disagreement  
13 there from Commissioner Horner?

14           COMMISSIONER HORNER: I would not go that  
15 far. And the reason I would not go that far is that I  
16 think that way lays separatism.

17           For example, Catalonia, I believe, is rife  
18 with separatist impulses and that the continuing usage  
19 in daily life of a dialect or a different language  
20 undergirds that tendency. And therefore, I would go  
21 this far. Everyone should command English fluently.  
22 The fluent command of a second language is highly  
23 desirable. But I would not go so far as to say that  
24 that second language ought to be tied to a nation of  
25 origin of one's parents or grandparents or great

1 grandparents.

2 CHAIRPERSON BERRY: Do you think, either of  
3 you who are participating in the discussion, do you  
4 think we should discourage people from any training in  
5 their own language? That is, the language of their  
6 parents or whatever immigrant they have and the  
7 community --

8 VICE CHAIRPERSON REYNOSO: Or Native American  
9 language.

10 CHAIRPERSON BERRY: -- in order to promote  
11 solidarity? Is that what you mean?

12 COMMISSIONER HORNER: I think that public  
13 policy ought to be oriented entirely toward ensuring  
14 fluency in English as a primary language and that  
15 decisionmaking with respect to attainment of a second  
16 language or maintenance of a second language ought to  
17 be a decision made by parents, communities and local  
18 boards of education.

19 VICE CHAIRPERSON REYNOSO: Historically, some  
20 people call that cultural genocide.

21 COMMISSIONER HORNER: I don't. I don't speak  
22 Celtic and yet I feel that my grandparents -- I feel  
23 that my cultural origins are valid, interesting,  
24 useful. Not entirely useful. There are some downsides  
25 to every cultures, as well as upsides. All cultures

1 are not entirely benign, human nature being what it is.

2           And yet I do not resent the fact that I was  
3 not -- my parents and grandparents weren't put in  
4 separate classes for people who were Celtic language  
5 speakers when they came here. I'm very grateful. I got  
6 800 on my College Boards because my parents taught me  
7 English and persisted, insisted on it. Insisted that I  
8 perfect it. It got me everything I ever got in life.  
9 And I want poor black kids and poor Hispanic kids to  
10 have it, too.

11           It's a route to success in the world as well  
12 as good interpersonal relationship communication.

13           CHAIRPERSON BERRY: Commissioner George, you  
14 had discovered that your second point of your three  
15 points is not really in agreement with today's  
16 question?

17           COMMISSIONER GEORGE: Yes. Although I'm very  
18 glad that you introduced the distinction between  
19 government policies which encourage the retention of a  
20 -- would it be appropriate, Vice Chairman, to call it a  
21 heritage language? We need a term for it. The family  
22 language?

23           Since there is agreement that to have a  
24 second language is a good thing, the disagreement  
25 breaks out over whether the second language ought to be

1 the language of the family's heritage.

2 VICE CHAIRPERSON REYNOSO: The first language  
3 of the child.

4 COMMISSIONER GEORGE: The first language of  
5 the child.

6 Now, the Chairman has introduced the  
7 distinction that goes to a question of government  
8 policy. The thrust of my question which generated the  
9 point of disagreement between Connie and Cruz had to do  
10 with the question of whether government policy ought to  
11 encourage the retention of the first language of the  
12 child.

13 The Chairman introduced the distinction  
14 between encouraging and discouraging.

15 If Commissioner Horner thinks that government  
16 ought not to encourage for reasons of solidarity,  
17 social solidarity and cultural unity, ought not to  
18 encourage the first language of the child's retention,  
19 does that mean that it ought to discourage -- and  
20 Commissioner Horner, as I understand her response to  
21 the Chairman's point -- says no. That what she's  
22 arguing for is a policy of government neutrality as to  
23 what the second language ought to be.

24 So we're agreed that there should be a second  
25 language. Whether it should be the first language of



1 the children -- Commissioner Horner is arguing for  
2 government neutrality. I take it that the Vice  
3 Chairman is arguing for -- not a government neutrality  
4 position but one which would encourage first language  
5 retention.

6 COMMISSIONER HORNER: That's correct.

7 VICE CHAIRPERSON REYNOSO: What a great irony  
8 that we encourage our youngsters when they get to high  
9 school to try to learn a language other than English,  
10 but if they happen to have the good fortune to speak a  
11 language other than that, I don't know how you could  
12 have a policy that's, quote, neutral, which then would  
13 do away with any use of that language in any public  
14 institution presumably like a school, and yet consider  
15 it neutral.

16 I think any youngster would consider that a  
17 societal antagonism to their language and their  
18 culture.

19 CHAIRPERSON BERRY: [Inaudible.]

20 COMMISSIONER GEORGE: She catches the  
21 essence.

22 CHAIRPERSON BERRY: The precise issue before  
23 us is really whether indeed there is a way of teaching  
24 children who have a home language or heritage language  
25 of some kind so that they can learn English. And

1 there's a dispute about whether bilingual education  
2 should be one of those ways to do it and whether the  
3 government should encourage, discourage or whatever, or  
4 whether bilingual education is an altogether bad thing.  
5 Which is different from whether or not parents like it  
6 or not.

7 I mean, parents may like it even if it were a  
8 good thing. And they would like it, even if it were a  
9 bad thing, if they didn't know much about it.

10 The question -- [inaudible] -- only that OCR  
11 should be finding that people ought to learn or is  
12 there any way that OCR ought to be doing on the  
13 subject? And I think that's where the bilingual  
14 education comes up insofar as a civil rights and equity  
15 concern. Because if it were proven that bilingual  
16 education was a good way of teaching kids who didn't  
17 know English to learn English and yet someone was  
18 depriving them of it, then you would have some kind of  
19 debate.

20 But I guess on those questions, you need to  
21 have Fred say something or we need to see if there are  
22 other points people want to raise before he says  
23 something.

24 VICE CHAIRPERSON REYNOSO: Madam Chair, I'd  
25 like to make an inquiry of Commissioner Horner.

1           The present law, including Lau, is simply  
2 that youngsters ought to be taught subject matter in  
3 their own language so they don't fall behind while  
4 they're being taught English. And I take that to be  
5 sort of the official policy of the country right now.

6           And in the next to last discussion pertaining  
7 to Lau, Commissioner Horner indicated that she would  
8 not object to the recommendation that OCR should give  
9 Lau guidance.

10           So I have an inquiry whether or not the  
11 Commissioner objects to that aspect of it. It seems to  
12 me it's present national policy.

13           COMMISSIONER HORNER: I am trying to offer  
14 compromise from the full strength of my opinions in  
15 this matter in order to help create a report that can  
16 get a majority vote.

17           That being said, my sense is that the  
18 pedagogical history of bilingual education has been a  
19 disaster. That to the extent that policies coming out  
20 of the Department of Education are supportive of it,  
21 they should be changed. And that a corollary of that  
22 is that we ought to do nothing to support the -- to  
23 shore up the maintenance of what I think of as a  
24 disastrous pedagogical policy with dangerous political  
25 implications over the long term.

1           CHAIRPERSON BERRY: Well, what I heard so  
2 far, if I understood it rightly, is that if we were to  
3 modify one part of the report to include more about the  
4 opposition to bilingual education among parents and  
5 others and to discuss these attitudes -- and there's a  
6 place in the report that Commissioner Horner had  
7 suggested we might do this -- and that it would be well  
8 to remove the question of disparate impact and simply  
9 modify that whole section by taking out, carving it  
10 out, and simply ask OCR to clarify its policies, that  
11 these were the two major objections that Commissioner  
12 Horner had raised to the report.

13                   Did I understand this rightly?

14           COMMISSIONER HORNER: That's correct. And I  
15 had a further one which is the removal of the Chapter  
16 10 segment on enrichment because I believe that it's  
17 not -- for many different reasons. I'll just say now  
18 and won't elaborate now, unless someone wants me to,  
19 that for many different reasons I think that we ought  
20 not to be proposing the policy of enrichment as laid  
21 out here.

22           VICE CHAIRPERSON REYNOSO: What page?

23           COMMISSIONER HORNER: Let's see. I think it  
24 is -- it's either 5 or 10. Just a moment.

25                   I think it's page 30. Yes. It's page 30,

1 the middle paragraph.

2 COMMISSIONER GEORGE: Of Chapter 10?

3 COMMISSIONER HORNER: Of Chapter 10. Yes.

4 Chapter 10, page 30, middle paragraph. And I would ask  
5 that that paragraph be removed.

6 And then I will be prepared to vote for this  
7 report if those three conditions were met.

8 CHAIRPERSON BERRY: Could you read the  
9 paragraph?

10 COMMISSIONER HORNER: Sure. Let's see.  
11 It's not very long.

12 The second of these aspects has been the  
13 exclusive focus on programs for students with limited  
14 English proficiency as remedial or compensatory. Since  
15 it's inception in 1968, federal support for bilingual  
16 education programs has been based on a remedial or  
17 compensatory model in which students' language  
18 differences have been viewed as handicaps that need to  
19 be remedied. However, a number of educational programs  
20 that are based on an enrichment model which seek to  
21 value the language differences among students and use  
22 these differences as the basis for -- and this is what  
23 is problematic to me -- for a single program that  
24 serves both English and non-English speaking students,  
25 have been found to be effective in providing students

1 with educationally sound, fully integrated learning  
2 environments.

3 For instance, two-way bilingual emersion  
4 programs in which students learn through two language  
5 in programs that aim to develop dual language  
6 proficiency along with academic achievement have been  
7 adopted increasingly by school districts across the  
8 country.

9 And let me be clear. I have no problem with  
10 total emersion foreign language programs in schools. I  
11 think it's a -- my guess is it's probably the best way  
12 to learn a language. My problem here is what I view as  
13 the intent of this paragraph, which is to buttress a  
14 conception of the American future that entails the U.S.  
15 being a fully bilingual Spanish and English speaking  
16 country. And because I believe that is the intent of  
17 people who make this assessment, I would want to see  
18 that out of the report.

19 CHAIRPERSON BERRY: Yes?

20 VICE CHAIRPERSON REYNOSO: Madam Chair, while  
21 I -- I'm not sure whether I disagree with everything  
22 that's been said or only 99 percent. Nonetheless, I  
23 would not object to taking that out. I don't think  
24 it's as important a paragraph as the rest of the  
25 report. And I must say that I do try to keep up with

1 some of this literature and some of the most successful  
2 programs, I understand, that don't have the element of  
3 segregation have been some of these programs that  
4 include -- and this has been not just Spanish speaking.  
5 It could be Chinese speaking and English speaking --  
6 all of the youngsters.

7           And indeed, this is the model for many  
8 schools that are often called Stinglish Schools abroad  
9 that children of ambassadors and other personnel attend  
10 in foreign countries where the youngsters learn both  
11 English and Spanish if you're in Argentina or I guess  
12 Chinese, if you're in China. And it has been a quite  
13 effective way of learning languages without some of the  
14 negatives -- that I mentioned one of my sisters object  
15 to -- of segregation and so on.

16           So, I understand. My understanding is that  
17 the second part of this paragraph actually is correct.  
18 But I don't consider this important enough to gut the  
19 report over, so I would be -- again, if this garners an  
20 affirmative vote, I'd vote to cross that whole  
21 paragraph off.

22           COMMISSIONER LEE: I have a question.

23           CHAIRPERSON BERRY: Yes.

24           COMMISSIONER LEE: Would Commissioner Horner  
25 object if we strike out most of the paragraph but

1 retain the last sentence?

2 COMMISSIONER HORNER: Let me read it.

3 COMMISSIONER LEE: Because you mentioned  
4 about the two-way bilingual emersion programs that you  
5 support. Because that's --

6 COMMISSIONER HORNER: Yes, I would, Yvonne.  
7 And again, my -- if some local school district  
8 somewhere wants to adopt this methodology, that would  
9 be fine. But as a matter of public policy, it becomes  
10 a political act embodying not a practical assessment of  
11 what's needed by students locally but instead a  
12 political act with consequences for the future of the  
13 country. And therefore, I would object to keeping it.  
14 Yes.

15 VICE CHAIRPERSON REYNOSO: May I inquire of  
16 Commissioner Horner?

17 Insofar as you've expressed a concern that  
18 there will be separatist influences if various ethnic  
19 groups retain in a fully developed fashion, including  
20 literature and music and so on, their distinctive  
21 language, I just wonder whether or not this way of  
22 teaching bilingualism would in fact have the opposite  
23 effect of both respecting that language but also having  
24 those not in that ethnic group also learn the language  
25 and so on. And therefore, weaken, if you will, any



1 separatist tendencies.

2 I just wonder what your reaction is to that.  
3 Incidentally, that's my impression of what's been  
4 happening in some of these courses. That is, you don't  
5 have a separatist, if you will, attitude when everyone  
6 is learning both English and Spanish, both Chinese and  
7 English, both Navaho and English, et cetera.

8 COMMISSIONER HORNER: History would suggest  
9 to the contrary. History would suggest that where  
10 there is retention by a large group of people of an  
11 alternative primary language to the historical language  
12 of a geographic and political entity, that people's  
13 ties to the political ideas embodied in the primary  
14 language of the country weaken. Their interest in  
15 alternative sources for their political life -- how can  
16 I put this.

17 For instance, "We hold these truths to be  
18 self-evident," is an English language statement that  
19 resonates for every American historically. For my  
20 knowledge, there is no Spanish document that would,  
21 with that degree of resonance, embody the same set of  
22 political ideas.

23 And my concern is that over time, if large  
24 bodies of citizens have an alternative primary language  
25 which is based in alternative history, documents,

1 literature, cultural attitudes, and especially cultural  
2 attitudes undergirding political ideas, that we will  
3 lose the political ideas on which -- we lose in the  
4 full undiluted strength, the commitment to the  
5 political ideas on which this country is founded and  
6 which has allowed it to make a contribution to human  
7 history that is extraordinary.

8 VICE CHAIRPERSON REYNOSO: The notion that  
9 concepts can't be expressed in different languages is  
10 completely novel to me.

11 COMMISSIONER HORNER: They can be expressed  
12 in different languages but we learn the language of our  
13 thought through the literature we read, the history we  
14 read, the political documents we read. And English  
15 contains our history, political documents and history  
16 undergirding those ideas.

17 VICE CHAIRPERSON REYNOSO: I've always  
18 thought it an element of great pride for our country  
19 that many countries studied with great interest the  
20 Constitution that our country had put together. And in  
21 fact, have modeled much of their own constitutions,  
22 including its basic precepts after the American  
23 Constitution. And they've done quite well.

24 COMMISSIONER HORNER: But they continue to  
25 struggle with it, ala -- the Soviet Union has a

1 constitution that for 70 years -- had a constitution  
2 for 70 years that listed all the liberties and freedoms  
3 of ours and then some.

4 VICE CHAIRPERSON REYNOSO: More.

5 COMMISSIONER HORNER: Yes. And of course, it  
6 was not deep in their culture, their thought, their  
7 education, and their political system and history, so  
8 they didn't have it.

9 (Crosstalk.)

10 I really -- I won't fight any more. I've  
11 said all I can say about this.

12 CHAIRPERSON BERRY: [Inaudible.]

13 You were speaking, Commissioner Horner, about  
14 language and about the need not to speak one's native  
15 language. I remember the stories Bambi used to tell us  
16 there on the Commission about little Mexican kids being  
17 beaten because they spoke Spanish when they went to  
18 school.

19 COMMISSIONER HORNER: Of course, I'm not for  
20 that.

21 CHAIRPERSON BERRY: They were told that  
22 unless they learned English they would never be  
23 Americans and they had to stay home and they were not  
24 to be taught in Spanish. Nobody was to speak to them  
25 in Spanish. They must sit in the corner. And they

1 were somehow foul creatures because they spoke a  
2 language. And even when they learned English, if they  
3 were caught saying a word in Spanish, they would be  
4 beaten.

5           And I know that's not what you mean and I  
6 know you don't mean that. But it's just that when you  
7 said that, all I could remember is Bambi sitting there  
8 and telling us those stories about these kids and what  
9 used to happen to them.

10           And were learning the Declaration of  
11 Independence and they learned all of the American  
12 precepts and principle -- [inaudible] -- but they would  
13 slip every now and then and start speaking Spanish and  
14 God forbid. They would be chastised, beaten, made to  
15 feel that they were awful people. And I just don't  
16 think that retaining one's own language somewhere in  
17 the crevice of one's mind or speaking in it or writing  
18 in it, if it's a native language, if one learn's  
19 English. And think everybody should learn English.  
20 It's not something that they should decry.

21           And I also think that the political  
22 traditions of the United States -- I mean, I know this  
23 as a matter of history that many of the political  
24 traditions that are held by Spain and by various Latin  
25 American countries, and in fact, the political

1 philosophy and philosophical history of our country has  
2 many Spanish ideas. I mean, Spain, the Queen, the  
3 colonial period. We share that. So, not only Span  
4 but England and other countries. There's a Western  
5 tradition also.

6 [Inaudible.]

7 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
8 must say though that insofar as Commissioner Horner has  
9 indicated three concerns, I must say that as to two of  
10 them, I'd be more than happy to have those be cut out.  
11 As to the third, I think it would be proper if there  
12 are different views on bilingual education and they are  
13 current, there's current data and so on, including that  
14 there are concerns in the language minority groups  
15 about bilingual education. I would certainly also want  
16 to have that analyzed because my own impression is that  
17 to the extent that there are concerns, it is not with  
18 the conceptual problems, as Commissioner Horner, I  
19 believe, has basic problems with the concept of  
20 bilingual education.

21 I believe that the concerns often come up  
22 with its implementation. Sometimes it's segregation  
23 Sometimes improper teachers. Sometimes, antagonistic  
24 administrators that make the programs ineffectual. But  
25 in terms of updating or having a section here as to

1 concerns and negatives in the Latino or language  
2 minority communities for bilingual education and the  
3 reasons for that, I think that's perfectly proper.

4 So, I just want to put that on the table.

5 COMMISSIONER HORNER: And not in a footnote.

6 VICE CHAIRPERSON REYNOSO: And not in a  
7 footnote. Sure.

8 CHAIRPERSON BERRY: Fred, do you have any  
9 concerns or objections or do you understand how you  
10 might make the modifications?

11 VICE CHAIRPERSON REYNOSO: He's smiling.

12 CHAIRPERSON BERRY: [Inaudible.]

13 MR. ISLER: Yes, I do understand and we will  
14 attempt to make the adjustments with the permission of  
15 the Commissioners.

16 CHAIRPERSON BERRY: Okay. If we vote this  
17 report.

18 COMMISSIONER GEORGE: I have a question for  
19 Fred.

20 CHAIRPERSON BERRY: Yes, Commissioner.

21 COMMISSIONER GEORGE: Fred, when the Vice  
22 Chairman a few minutes ago gave his account of the  
23 prevailing law with respect to bilingual education it  
24 struck me that that was a possible interpretation but  
25 not one that was actually uniformly held by public

1 officials and commentators. Am I right that there's  
2 some dispute on the issue or am I wrong and the Vice  
3 Chairman is right that the law on the matter is  
4 settled?

5 MR. ISLER: No. Lau does not indicate that  
6 or mandate bilingual education at all. Lau says that  
7 all students should have equal participation and also  
8 that they should have the opportunity to master the  
9 subject of English.

10 COMMISSIONER GEORGE: But that would then be  
11 open to a variety of different methods.

12 MR. ISLER: And federal policy is that state  
13 and local school districts can use any educational  
14 program they want to use.

15 CHAIRPERSON BERRY: And I thought the report  
16 had said that, Fred.

17 MR. ISLER: It says it in Chapter 10 on page  
18 3.

19 VICE CHAIRPERSON REYNOSO: Yes.

20 COMMISSIONER HORNER: But if they do that,  
21 they may get sued.

22 MR. ISLER: No. That's not federal policy at  
23 all. And the federal government does not promote any  
24 educational program at all, mandate any particular  
25 federal program.

1 VICE CHAIRPERSON REYNOSO: But so long as Lau  
2 is met. That is, that youngster who don't understand  
3 English don't just sit there but actually understand  
4 the substance of what's being taught. And that can be  
5 done in different ways.

6 MR. ISLER: And they might show that they are  
7 achieving in those subjects.

8 COMMISSIONER GEORGE: Then, Cruz, are we in  
9 disagreement or do we agree? You agree with what Fred  
10 just --

11 VICE CHAIRPERSON REYNOSO: I do. I do.

12 COMMISSIONER HORNER: So it would not be  
13 permissible then to take all kids in early elementary  
14 school years who do not have command of English and put  
15 them in total emersion for six months while the other  
16 students went on with math, science and so on. That  
17 would be subject a school district to immediate lawsuit  
18 because --

19 MR. ISLER: That is correct. That's correct.

20 COMMISSIONER HORNER: Okay. So, in fact,  
21 bilingual education has been believed to be the only  
22 acceptable methodology for achieving the condition of  
23 continuing to give them a full and equal education.

24 COMMISSIONER GEORGE: No.

25 MR. ISLER: That is not correct.



1 CHAIRPERSON BERRY: [Inaudible.]

2 COMMISSIONER GEORGE: That was my point.  
3 That was the point I was trying to bring out.

4 CHAIRPERSON BERRY: Okay. Well, with that,  
5 can we call for the question and vote on the report?

6 COMMISSIONER LEE: Before we do, Madam Chair,  
7 I just want to reemphasize that the new section that  
8 we'll be putting in on the different views on bilingual  
9 education, that if we were to cite polls and whatever,  
10 I would have some problems with that because polls tend  
11 to -- depends on who sponsors the poll. They tend to  
12 phrase the question in such a way that they know what  
13 the outcome is going to be.

14 I think the section should include the  
15 opposing views why they feel bilingual education is out  
16 of step with current educational system or whatever. I  
17 have no problem with that. But I would have problems  
18 if we're going to emphasize a lot on what the polls say  
19 and therefore, --

20 COMMISSIONER HORNER: Would you accept a Los  
21 Angeles -- a recent Los Angeles Times poll as valid?

22 COMMISSIONER LEE: No, I wouldn't because,  
23 number one, I wouldn't know -- first of all, I  
24 shouldn't say that first. I don't know how the poll is  
25 being done, whether the sampling includes parents who

1 may not understand the language. It could be a  
2 sampling of English speaking Hispanic parents. That  
3 would skew the results.

4 COMMISSIONER HORNER: You are, I think,  
5 imposing a standard on this part of the report that is  
6 not routinely imposed because we routinely do use  
7 polling data.

8 CHAIRPERSON BERRY: Yes. May I comment on  
9 that? It would only be if we, consistent with what we  
10 usually do and in all fairness, if we do find --  
11 [inaudible]. What you're asking for is a fuller  
12 discussion, which -- [inaudible].

13 COMMISSIONER HORNER: Oh, sure. Yes.

14 CHAIRPERSON BERRY: So, it needs to explain  
15 the different approaches where parents are opposed to  
16 it. We can do so -- [inaudible].

17 COMMISSIONER HORNER: That is my goal. And if  
18 indeed it turns out that the poll I'm referring to is  
19 flawed, I would not want it included. But it is my  
20 very strong sense that the argument which is raging  
21 over this issue has a very strong side to it which is  
22 not represented in this report and that it needs to be  
23 accurately characterized, the points of view here.

24 VICE CHAIRPERSON REYNOSO: That's fine.

25 COMMISSIONER LEE: Yes.

1 CHAIRPERSON BERRY: [Inaudible.]

2 COMMISSIONER HORNER: And Madam Chair, I'm  
3 prepared to vote yes on the report on those conditions.

4 What is my recourse if it turns out that the  
5 changes are not made according to the transcript,  
6 according to my reading of the transcript?

7 In other words, should I ask that the changes  
8 be made over the next 24 hours and the Commission  
9 polled? What is my recourse otherwise?

10 CHAIRPERSON BERRY: Well, we don't usually do  
11 that. [Inaudible.]

12 COMMISSIONER HORNER: All right.

13 CHAIRPERSON BERRY: So, I think that going on  
14 faith, those would be accepted. If they don't do it,  
15 then you'll know next time. I have no doubt that they  
16 will.

17 COMMISSIONER HORNER: I think they will,  
18 especially given this colloquy. I just wanted to -- I  
19 just wanted the Commission, my fellow Commissioners, to  
20 understand that it can be a very exhausting thing to --  
21 well, never mind. It's all right. Fine. I'm going to  
22 vote yes.

23 CHAIRPERSON BERRY: We are all --  
24 [inaudible].

25 COMMISSIONER HORNER: Yes.

1           CHAIRPERSON BERRY: On all these changes.  
2 From time to time we have to ask people to follow  
3 transcripts.

4           I think on most of these, to be fair, they do  
5 a pretty good job of doing this particular report based  
6 on the kind of discussion we had last time. There's  
7 some holes and there's some problems, but I think we  
8 can rely on them. There's been a full discussion.

9           COMMISSIONER GEORGE: Madam Chairman?

10          CHAIRPERSON BERRY: Yes.

11          COMMISSIONER GEORGE: I must say particularly  
12 that with Fred Isler in charge of the matter, who has  
13 sat here with us and listened and participated briefly  
14 in the discussion, I have no doubt that it will be done  
15 properly.

16          This is really a question of good faith and  
17 Mr. Isler is an exemplary person in that regard, as in  
18 many others. And so I think we can go with complete  
19 trust here.

20          And if there are any questions, I would urge  
21 Mr. Isler to get in touch with Commissioner Horner or  
22 Vice Chairman Reynoso or anyone to clarify any points  
23 in the transcript that aren't clear, so that we aren't  
24 in a situation where anybody is complaining that  
25 changes weren't made according to the discussion.

1           So I'm very comfortable with leaving this in  
2 Fred Isler's hands. We're really not trusting each  
3 other, as willing as I would be to do that. We're  
4 trusting Fred Isler, who's here in the room with us,  
5 and I'm sure is going to do a good job.

6           CHAIRPERSON BERRY: And let me say that  
7 because we're trusting each other, it's not only a  
8 question of what Commissioner Horner and Vice Chair  
9 Reynoso heard. It's a question of what we all heard.

10          COMMISSIONER GEORGE: That's right.

11          CHAIRPERSON BERRY: And therefore, I would  
12 ask if he does have any questions, that he needs to ask  
13 them through the Staff Director and make sure the Staff  
14 Director is satisfied that everybody's concerns have  
15 been met.

16          COMMISSIONER GEORGE: That's fine with me.

17          CHAIRPERSON BERRY: Okay. Shall we call for  
18 the question on this?

19                 All in favor of the report with the  
20 understanding that we need to hear the colloquy, the  
21 discussions, that will be reflected in changes made by  
22 the staff, as well as the usual editorial changes --  
23 all those in favor, signify by saying aye.

24                 (Chorus of ayes.)

25                 Opposed?

1 (No response.)

2 Okay. On that basis, then, it's unanimous.

3 All right, Fred, go forward and do work.

4 VICE CHAIRPERSON REYNOSO: Let the record  
5 show that Fred is smiling.

6 CHAIRPERSON BERRY: The GPRA Performance Plan  
7 is the next item on the agenda. [Inaudible.]

8 VICE CHAIRPERSON REYNOSO: Madam Chairman,  
9 may I inquire? Had you indicated that we would discuss  
10 the GAO report first or after this report?

11 CHAIRPERSON BERRY: I think I said after, but  
12 is there --

13 VICE CHAIRPERSON REYNOSO: Okay. Good  
14 enough. No, no. It was just an inquiry.

15 CHAIRPERSON BERRY: Carl, you were the one  
16 who suggested it.

17 COMMISSIONER ANDERSON: You said after the  
18 Equal Education Opportunity Report.

19 CHAIRPERSON BERRY: Oh, I did? Okay.

20 COMMISSIONER ANDERSON: It's fine with me  
21 either way.

22 CHAIRPERSON BERRY: You don't care? Okay.  
23 Well, since I've started GPRA, let's do it.

24 In any case, after we discussed this, this  
25 report, this performance plan, and agreed to it, then

1 we had -- there were staff discussion on the Hill, many  
2 discussions. Then eventually -- [inaudible]. And we  
3 may ask to make some changes in this as it goes through  
4 the process.

5 But for now we'd like to know, after your  
6 reading of it, the Commissioners' views and whether  
7 there are changes that you would like to have made and  
8 see if we can get this approved by the Commissioners.

9 So, I'll call for a motion just for purposes  
10 of discussion to include this.

11 COMMISSIONER ANDERSON: So moved.

12 VICE CHAIRPERSON REYNOSO: Seconded.

13 CHAIRPERSON BERRY: All right. Discussion.

14 COMMISSIONER HORNER: Madam Chair, we don't  
15 have a draft '99 budget yet for our approval and I am  
16 concerned that the GPRA, since it doesn't contain  
17 associated expenditures, may represent an inflated list  
18 that is not inflated by design but a list that's  
19 inflated beyond our budget capabilities.

20 And I would suggest that we ought to have  
21 some numbers associated with this GPRA and that we  
22 ought, if there are more things than our numbers will  
23 allow, that we ought to refer to the priorities we  
24 discussed and decided on last October, which I think  
25 are a shorter list than this list.

1 I should say, I think it's a well done list.  
2 I'm going to have two questions about the appendix  
3 after we finish the other discussion. But I don't know  
4 how we can in good conscience say this is our plan when  
5 this plan may represent, for all I know -- and likely  
6 represent more expenditures than we are at all likely  
7 to have.

8 CHAIRPERSON BERRY: On page -- there's a page  
9 here that says that this -- [inaudible].

10 COMMISSIONER HORNER: Page 6.

11 CHAIRPERSON BERRY: -- on the theory that we  
12 would receive an appropriation of \$11 million for FY  
13 1998. So it's assuming that we get at least \$11  
14 million for this year, which we're not. That's the  
15 first assumption. And then it's assuming therefore, at  
16 least \$11 [million] -- I draw that inference from the  
17 second sentence -- for the activities that are listed  
18 here. And I really feel that we would probably need to  
19 modify this again once we get the budget submission,  
20 but I guess what the staff was doing here is trying to  
21 outline the kinds of things and have language in terms  
22 of what the Commission would consider as goals and how  
23 they would like to -- we could trim them down or amend  
24 them or whatever, but is this what we would like the  
25 performance plan to look like.



1           COMMISSIONER HORNER: I wonder if we wouldn't  
2 be on safer ground if people who judge us against this  
3 plan later on, to have a plan that does meet the likely  
4 funding. We can always, of course, add back in later,  
5 should funding exceed the likely funding.

6           It's a matter of approach. And I wonder if  
7 our approach wouldn't be sounder if we conformed to our  
8 likely funding in what we say to the public and the  
9 Congress that we're going to do.

10           VICE CHAIRPERSON REYNOSO: Madam Chair, this  
11 report is designated as an initial report. I wonder  
12 what the timing is by when we need the report in and  
13 whether that timing permits us to know what the actual  
14 figure is that we will have to work with or whether we  
15 must indeed proceed on assumptions. I don't know.

16           CHAIRPERSON BERRY: Ruby, do you know that or  
17 do you want Kim or George Harbison to -- well, I guess  
18 they're the co-chairs of this.

19           STAFF DIRECTOR MOY: As far as I remember,  
20 the report is due September 30th. And Kim can correct  
21 me on this. I think the initial discussion or draft is  
22 due before that.

23           Is that right, Kim?

24           MR. CUNNINGHAM: That's essentially correct.  
25 We're supposed to submit our initial performance plan,

1 along with our budget request, to OMB, which will be  
2 due in September. Whenever it goes over, this goes  
3 over. And it should go hand in hand with the request.

4 COMMISSIONER HORNER: So it goes hand in hand  
5 with the request and ought, therefore, to match the  
6 request, not the likely funding?

7 MR. CUNNINGHAM: It should be one-to-one  
8 correspondence.

9 COMMISSIONER HORNER: Can you put figure on  
10 these projects that would add up to the \$11 million  
11 request?

12 STAFF DIRECTOR MOY: I think we could try.

13 COMMISSIONER HORNER: Well, I mean, we it  
14 should add up. What is our request level?

15 MR. CUNNINGHAM: Well, there are two --

16 COMMISSIONER HORNER: I mean, we haven't  
17 voted on it yet.

18 CHAIRPERSON BERRY: [Inaudible.]

19 STAFF DIRECTOR MOY: Right. Well, the Senate  
20 approved \$8.74 [million] and the House has yet to take  
21 it up.

22 CHAIRPERSON BERRY: But we requested \$11  
23 million.

24 STAFF DIRECTOR MOY: Correct.

25 CHAIRPERSON BERRY: Does that answer your

1 question, Connie?

2 COMMISSIONER HORNER: Yes. I think it does.  
3 We should be -- as a Commission, should we not be  
4 deciding --

5 VICE CHAIRPERSON REYNOSO: Madam Chair, it  
6 appears at least from what we've heard that our job is  
7 to present a program that comports to our request. And  
8 I think it seems to me that if that's true, the  
9 contemplation is clearly there that we reevaluate after  
10 Congress acts. And if we get the \$8.74 [million] then  
11 we've got to, to use the current terminology, downsize  
12 our expectations.

13 Apparently that's what the legislation has in  
14 mind.

15 COMMISSIONER HORNER: May I ask Kim if this  
16 matches? If these projects, if all done, match our  
17 request in funding levels?

18 MR. CUNNINGHAM: Well, my understanding is  
19 that we're in the process of putting together estimates  
20 for the cost of these projects and other activities. I  
21 don't believe they match a figure of \$11 million.

22 COMMISSIONER HORNER: Do they exceed \$11  
23 million?

24 MR. CUNNINGHAM: That's my understanding at  
25 this point. The other issue, though, is that there is

1 the difference between what we requested of Congress  
2 and approved by the President and what we are likely to  
3 get. And the impact of that difference in terms of  
4 activities that cannot be, as currently planned for  
5 '98, you would wish to carry forward into '99. That  
6 would also have budgetary consequences and might also  
7 affect the projects that you would want to conduct in  
8 '99.

9 CHAIRPERSON BERRY: Now, if I understand this  
10 correctly, though, the first page on the goals and  
11 indicators, we would have these goals and indicators  
12 whether -- we didn't know how much money we had; right?  
13 And what we would is specific amounts of work depending  
14 on how much money we had. But the overall goals are  
15 the goals of the Commission based on our strategic  
16 plan. Is that correct?

17 COMMISSIONER HORNER: I think that's correct.

18 MR. CUNNINGHAM: Sure. In terms of the  
19 general goals that are not project specific.

20 CHAIRPERSON BERRY: Right. So page 1, let's  
21 say, we're not talking about -- [inaudible] -- or on  
22 page 2. What we're really talking about is when we get  
23 all these projects you have listed, --

24 COMMISSIONER HORNER: That's right.

25 CHAIRPERSON BERRY: -- is where we'd modify

1 that.

2           And if I understand it correctly, if we go  
3 with goal three by which we would promote greater  
4 public awareness, it would depend on how much we would  
5 do under that goal, how many of these things we would  
6 do would depend on how much money we had. But we would  
7 still, of course, have that as a goal; correct?

8           STAFF DIRECTOR MOY: Correct.

9           MR. CUNNINGHAM: Correct.

10           CHAIRPERSON BERRY: And so we'd just be  
11 talking about either performing the ideal or doing  
12 something else; how many issues of the journal we would  
13 publish or what we would do in terms of PSA's and so  
14 on. So, there would be modifications.

15           And so what we really are asking -- we still  
16 have these as goals. We still have to fund it. The  
17 question is how much.

18           So, the letter from the Commission, if I  
19 understand this correct, is whether the Commission  
20 agrees that these goals and these indicators and goals  
21 generally we have any problems with, with the  
22 understanding that we will have to modify how much  
23 productivity there will be or that we expect under each  
24 one of these, based on how much money we have, which is  
25 what Commissioner Horner was saying, if I understood

1 that.

2 Have I understood it or not?

3 COMMISSIONER HORNER: That's my  
4 understanding. My only concern is with the list on  
5 page 3, the list of projects.

6 CHAIRPERSON BERRY: Okay. All right.

7 Now, so with the understanding that that will  
8 have to be modified or changed or need the numbers in  
9 dollars, what about the other items or the overall  
10 approach the way the staff developed it.

11 COMMISSIONER HORNER: I think it's excellent.  
12 I have two questions about the appendix, about wording  
13 in the appendix, but I think it's excellent overall.

14 CHAIRPERSON BERRY: Okay. Do any of the  
15 Commissioners have concerns about the way the staff put  
16 this together or the way it's laid out or --

17 COMMISSIONER REDENBAUGH: I'd like to make a  
18 comment.

19 CHAIRPERSON BERRY: Yes, Commissioner  
20 Redenbaugh.

21 COMMISSIONER REDENBAUGH: I don't have a  
22 concern about what has been done. My concern is more  
23 about the design of the document. I have a concern  
24 that, as Commissioners, we have not directed that we  
25 have the kind of tracking and budgeting required to

1 fulfill the document and I continue to not be reassured  
2 or to not accept the reassurances that we're taking  
3 sufficient action in that area. But that is not a  
4 concern about the document, although it is a concern  
5 about being able to fulfill the requirement of the  
6 legislation.

7 CHAIRPERSON BERRY: Well, we need to ask,  
8 because we made a commitment as to when we would have a  
9 tracking system for this. Isn't that correct?

10 STAFF DIRECTOR MOY: Yes.

11 CHAIRPERSON BERRY: [Inaudible.]

12 COMMISSIONER REDENBAUGH: Yes, it does.

13 CHAIRPERSON BERRY: Now, is that on track,  
14 Staff Director?

15 STAFF DIRECTOR MOY: Yes. I believe we have  
16 a deadline to complete this by October 1 or pretty  
17 close to it. I believe that some one on the staff has  
18 already started with the software packages so that we  
19 could implement this type of tracking.

20 CHAIRPERSON BERRY: Now, we spoke of giving  
21 the Commissioners something to review.

22 STAFF DIRECTOR MOY: Right.

23 CHAIRPERSON BERRY: And to say that it would  
24 be in place according to the timeline that we promised.

25 STAFF DIRECTOR MOY: Right.

1 CHAIRPERSON BERRY: Okay. Does that -- I  
2 know it doesn't answer your question because you  
3 haven't seen it yet.

4 COMMISSIONER REDENBAUGH: And also, my  
5 experience in these things is that we may reach the  
6 October 1 date. We may meet the October 1 date of  
7 having something.

8 STAFF DIRECTOR MOY: Correct.

9 COMMISSIONER REDENBAUGH: But it may not  
10 satisfy the requirement in that all these things, no  
11 matter how well done, have a long period of adjustment  
12 and redesign and breakdown. That's the nature of these  
13 things. So, I would only distinguish we may have a  
14 start on October 1. It would be unrealistic to expect  
15 that we're going to be satisfied and everything will be  
16 just working great by October 2.

17 CHAIRPERSON BERRY: Okay.

18 STAFF DIRECTOR MOY: Unless there is a  
19 miracle.

20 COMMISSIONER REDENBAUGH: If you wish to  
21 offer that, launch your career on that basis, go ahead.

22 CHAIRPERSON BERRY: Now, how does it relate  
23 to the performance plan, though, and whether or not we  
24 should approve one, is the question.

25 COMMISSIONER REDENBAUGH: No. My concern



1 would be about the way we manage the agency. I'm  
2 prepared to approve the performance plan. I think the  
3 direction is correct. And always, the devil is in the  
4 details.

5 CHAIRPERSON BERRY: Well, why don't we then,  
6 if no one has any objection to that, why don't we vote  
7 on whether to approve it or not, with the understanding  
8 that there ought to be changes on it in the project  
9 section and that there may be other changes that are  
10 identified as the staff goes through these discussions  
11 with people on the Hill, OMB and so on, as we go down  
12 the line on this.

13 And I agree with Commissioner Redenbaugh.  
14 It's not that important -- well, I don't if he's saying  
15 it but I'm saying it -- not so important what these  
16 words say on paper about what the goals and indicators  
17 are. What really count is whether we have some kind of  
18 system or hope to actually implement them. And I know  
19 it's a first step. The second step would be the  
20 strategic plan. But the main thing is trying to figure  
21 out whether we can implement them.

22 Did I hear someone try to make a comment?

23 (No response.)

24 I didn't? Okay. Well, then, why don't we go  
25 ahead --

1 COMMISSIONER HORNER: Madam Chair?

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER HORNER: I do request one change  
4 to the appendix. A very simple one, but I think  
5 significant. On page 9 of the appendix, under the  
6 measuring discrimination project description, the final  
7 sentence on page 9 of the measuring discrimination  
8 project I think needs to be changed to represent  
9 accurately where the Commission is on it.

10 The sentence now reads: Based on the  
11 information compiled during that consultation and  
12 additional research, the Commission will develop a  
13 detailed project plan covering FY '98 and '99.

14 I believe it would be accurate to insert  
15 three words so that the sentence would read: Based on  
16 the information compiled during that consultation and  
17 additional research, the Commission will decide whether  
18 to develop a detailed project plan covering FY '98 and  
19 '99. Because my understanding is that we were to look  
20 at the results of the consultation and make a  
21 determination whether it was possible to proceed or  
22 desirable to proceed.

23 CHAIRPERSON BERRY: I don't have a problem  
24 with that.

25 COMMISSIONER HORNER: Okay.

1           COMMISSIONER LEE: Madam Chair, I just have  
2 one -- a minor request. I want to reiterate my earlier  
3 request that for the project, Expanding the Economic  
4 Opportunity for Minority Youth, to put in after "Asian"  
5 -- to put in "Asian and Pacific Islanders." Because  
6 they are two very distinctive groups with very  
7 different experiences and they warrant different  
8 research on that. So if we could put that in on page 3  
9 and 9.

10           CHAIRPERSON BERRY: Asian and Pacific  
11 Islanders.

12           COMMISSIONER LEE: Yes. That's it.

13           CHAIRPERSON BERRY: Okay.

14           Any other amendments?

15           COMMISSIONER GEORGE: Yes, Madam Chairman.

16           CHAIRPERSON BERRY: Yes.

17           COMMISSIONER GEORGE: On page 8, near the  
18 bottom project, Schools and Religion, I would like to  
19 amend the first sentence so it will be in conformity  
20 with the understanding that we've had all along of the  
21 Schools and Religion project.

22           I would like to strike the reference in the  
23 first sentence to legal restrictions. It read: As a  
24 whole now this project examines the enforcement of the  
25 compliance with legal restrictions on religious

1 expression and practice in public schools.

2 I would like it to be more general. The  
3 project examines the enforcement of and compliance with  
4 federal law on religious expression and practice in  
5 public school.

6 CHAIRPERSON BERRY: Okay. All right.

7 Any others? Anything else?

8 (No response.)

9 Going, going -- okay. Well, then I'll call  
10 for the question.

11 VICE CHAIRPERSON REYNOSO: Madam Chair? I'm  
12 sorry. The staff needs a clarification, I'm told, on  
13 Yvonne's suggestion to include Pacific Islanders. It  
14 would now read, "African, Asian, Pacific Islanders and  
15 Latino youths."

16 The question that the staff has is this.  
17 Would that therefore entail having four conferences  
18 instead of three conferences, or would the Asian and  
19 Pacific Islanders, though identified individually  
20 because the problems are separate, be in the same  
21 conference. This is for planning purposes.

22 CHAIRPERSON BERRY: I think the answer is in  
23 the same conference, but that we would understand the  
24 distinct problems of the different -- just, for  
25 example, if you do Latinos, Puerto Ricans are going to

1 have different problems than Cubans.

2 VICE CHAIRPERSON REYNOSO: Yes. Okay.

3 COMMISSIONER LEE: We'll just do it in L.A.  
4 where they all are.

5 CHAIRPERSON BERRY: Yes. Okay.

6 All in favor, signify by saying aye.

7 (Chorus of ayes.)

8 Opposed?

9 (No response.)

10 Okay. Now we go to the GAO item,  
11 Commissioner Anderson.

12 COMMISSIONER ANDERSON: Yes, Madam Chair. I  
13 would -- well, I asked to have this on the agenda  
14 because I think that we said each month in our meeting  
15 we'd hear and update as to how we're proceeding to  
16 implement the GAO report recommendations. So if the  
17 Staff Director is in a position to give us an update,  
18 even a brief one, I think that would be useful.

19 CHAIRPERSON BERRY: Why don't we, for now --  
20 I guess we forgot or something. Why don't we say that  
21 every month -- well, we don't have a Staff Director's  
22 report this month. Under the Staff Director's report,  
23 we will have an update on the GAO recommendations, a  
24 response.

25 COMMISSIONER ANDERSON: Good.

1 CHAIRPERSON BERRY: Okay. Go right ahead,  
2 Ruby.

3 STAFF DIRECTOR MOY: I'm at a loss because I  
4 don't have the GAO report here, but I have been --

5 CHAIRPERSON BERRY: You mean the AI's or how  
6 the AI's -- working on the AI's. That was one of them.  
7 The other one was working on the table of organization  
8 for the Commission to kind of update that. And the  
9 third one --

10 STAFF DIRECTOR MOY: Well, let me put it as I  
11 remember it. The AI -- there is a taskforce meeting  
12 weekly. I get a copy of their work progress and I know  
13 that's going along and I know the AI is going to take a  
14 long time for us to really figure out the instruction  
15 manual. And my time frame is fiscal '98.

16 The other two, the management system, as I  
17 mentioned earlier, about tracking, George was looking  
18 for software to see if we can implement a simplified  
19 mechanism in order to track the projects to cost, et  
20 cetera, and the time involved.

21 My hope is to do it on a quarterly basis so  
22 that we wouldn't have over expenditures either of  
23 manpower or money.

24 VICE CHAIRPERSON REYNOSO: Madam Chair?

1 CHAIRPERSON BERRY: Go ahead, Vice Chair.

2 VICE CHAIRPERSON REYNOSO: The  
3 recommendation, the specific recommendations are short,  
4 though part of them are a little bit broader. Let me  
5 just read them.

6 We recommend that the Commission develop and  
7 document policies and procedures that, one, assign  
8 responsibility for management functions to the Staff  
9 Director and other Commission officials; and two,  
10 provide mechanisms for holding them accountable for  
11 properly managing the Commission's day-to-day  
12 operations.

13 Those are the general recommendations. Then  
14 it goes to the three, Madam Chair, that you mentioned.

15 This effort should include, one, updating the  
16 CFR to provide public access to the current  
17 organizational structure, procedures and program  
18 processes of the Commission; two, updating internal  
19 management guidance so the staff are assured that their  
20 efforts comply with the administrative policies of the  
21 Commission, applicable legislation and federal rules  
22 and regulations; and three, the staff issuing a  
23 management information system for Commissioners and  
24 staff to use to plan projects and track progress using  
25 the best information available about the project's

1 expected and actual cost, time frame, staffing levels  
2 and completion dates.

3 CHAIRPERSON BERRY: Yes. So those were the  
4 specific ones that would impact general ones and  
5 anything else that anybody thought should be added to  
6 the overall ones. But those are the way that they said  
7 we would implement.

8 And we made some promises. I think we just  
9 reiterated it, in terms of when you'd get it done.

10 STAFF DIRECTOR MOY: Right.

11 CHAIRPERSON BERRY: And the AI's, by fiscal  
12 year --

13 STAFF DIRECTOR MOY: '98. And the CFR and  
14 management information system by October 1. With the  
15 addition of our new Personnel Director, she is also  
16 helping with the AI report and I understand that she  
17 has tackled that wholeheartedly.

18 CHAIRPERSON BERRY: Who's working on the --  
19 is OGC or somebody working on the CFR and the table of  
20 organization? Is that another taskforce?

21 STAFF DIRECTOR MOY: Yes. Office and  
22 supports are in place.

23 CHAIRPERSON BERRY: Okay.

24 Now, should we, Commissioners -- should we,  
25 Commissioner Anderson, do you think we should add



1 anything to our performance plan, the update of GAO or  
2 do you expect to have it finished before fiscal year  
3 1991 anyway so that we don't need to put it in the  
4 fiscal year 1999 performance plan?

5 What do you think?

6 COMMISSIONER ANDERSON: Well, for my other  
7 part, I was hoping to be done with this before fiscal  
8 '99.

9 STAFF DIRECTOR MOY: And I would be happy  
10 about maintain the systems that are in place and  
11 maintaining the management level.

12 CHAIRPERSON BERRY: So your plan, Ruby, is to  
13 give us updates every month on this?

14 STAFF DIRECTOR MOY: Correct.

15 CHAIRPERSON BERRY: Do you think it will take  
16 us months to do the AI part?

17 STAFF DIRECTOR MOY: Definitely, because  
18 there's some old personnel policies that are in place  
19 now, and the OPM has a few revisions, and I know Cathy  
20 is taking a hard look at that. Some of them will have  
21 to be canceled out with the way the Commission is doing  
22 things and then implementing the new rules and regs  
23 according to OPM guidelines.

24 So it's a matter of canceling out the old and  
25 implementing the new and then making it as a matter of

1 our administrative things. And there are a lot of  
2 steps.

3 CHAIRPERSON BERRY: Okay.

4 Carl, do you have anything else on that?

5 COMMISSIONER ANDERSON: No, I don't think so,  
6 other than to say that I would hope that as we go  
7 through this on a monthly basis, that if we have some  
8 kind of procedure in place for Commissioners to be able  
9 to become involved in this process a little bit in  
10 terms of reviewing maybe options within the AI,  
11 revisions and that sort of thing.

12 I don't have anything specific in mind but I  
13 think we ought to have the opportunity to affect the  
14 way the whole process is moving.

15 STAFF DIRECTOR MOY: All right.

16 CHAIRPERSON BERRY: Well, that would be --  
17 the AI's are -- let's see. The AI's are issued by the  
18 Staff Director. And what we'd be doing is -- when  
19 there are issues raised in terms of how -- management  
20 issues raised, -- [inaudible].

21 COMMISSIONER ANDERSON: And like I say, not  
22 prejudging any of these issues or even what some of the  
23 issues are, I think it might be helpful to the Staff  
24 Director to during meeting, periodically, to bring to  
25 us sort of what some of the outstanding issues are and

1 see whether she can get a sense of where some of the  
2 Commissioners are on it. In the long-run, that may  
3 save some time.

4 STAFF DIRECTOR MOY: Yes. I think it would,  
5 Commissioner. As I said to a few of you during my  
6 interview, I was looking forward to talking to you  
7 about some of the management systems that I could  
8 implement, or at least have you advise me if this is  
9 the right direction.

10 CHAIRPERSON BERRY: Okay. Any other items  
11 that any one has to discuss here?

12 (No response.)

13 Then we have a complaint that we received  
14 from a citizen about the discrimination alleged in the  
15 Shelby County Jail system in Memphis, Tennessee. And  
16 that complaint, I think, was to be forwarded to the  
17 regular complaint processes. In the meanwhile, we've  
18 had a number of calls and letters from concerned people  
19 about it, and so I don't know much about the details  
20 enough to be able to comment one way or the other, but  
21 I left the complaint -- I think you have it, Cruz. Do  
22 you?

23 VICE CHAIRPERSON REYNOSO: Yes. It was just  
24 handed to me.

25 CHAIRPERSON BERRY: And I would like to ask

1 -- if the Commissioner's have no objection, I would  
2 like to ask the Regional Direction to at least make  
3 some inquiries and try to get a fuller description of  
4 what is going on with this complaint and simply inform  
5 us. [Inaudible.]

6 If nobody has any objection to asking the Regional  
7 Director to look into it and get back to us in the same  
8 way you did on the Syracuse incident, I would like to  
9 go ahead and do that.

10 You have it in your hand, do you?

11 VICE CHAIRPERSON REYNOSO: Yes. It's a  
12 letter addressed to the Chair over the stationery of  
13 the Memphis Public Employees Local 1733.

14 "As Director of the American Federation of  
15 State, County and Municipal Employees Local 1733, our  
16 Union represents deputy jailers of the sheriff's  
17 department in Memphis, Tennessee. These employees  
18 guard inmates who have been arrested within the  
19 community and they are brought to the jail for breaking  
20 the law. The sheriff's department encompasses a number  
21 of employees. Within that department, but the deputy  
22 jailers are the only group of employees who have been  
23 placed under a point system within the department.

24 "This point system, as we are told, is a  
25 tracking system to monitor absenteeism, tardiness and

1 illness. Whenever an employee has accumulated sick  
2 leave, is ill, et cetera, or disabled, or has a  
3 disabled family member and brings in the proper  
4 documentation, he/she is given a point and thereby  
5 given suspension dates.

6 "Some employees have been terminated as a  
7 result of the point system. The memorandum of  
8 understanding is a signed document with the sheriff's  
9 office and the local. This practice violates this  
10 agreement, thereby violating the civil rights of the  
11 employees. This practice is an injustice to these  
12 employees, a degrading act to this department, because  
13 it only applies to deputy jailers.

14 "It is discriminatory in nature because a  
15 large percentage of the employees are African-  
16 Americans. This deleterious position of the sheriff's  
17 office uproots the premise of which this union was  
18 founded. Therefore, please accept this letter as an  
19 official complaint against the sheriff's office and a  
20 request for an investigation concerning our complaint.

21 "I am therefore requesting to meet with a  
22 representative from your office to further discuss this  
23 matter at your convenience.

24 Et cetera.

25 CHAIRPERSON BERRY: Ordinarily, we simply

1 send these complaints to the complaint office, but it's  
2 only because so many people are calling up and yelling  
3 about it that we would have somebody at least to call  
4 up and give a different view or another view of it.

5 COMMISSIONER HORNER: Madam Chair?

6 CHAIRPERSON BERRY: Yes.

7 COMMISSIONER HORNER: This does not sound to  
8 me like something that rises to the level of what, as  
9 you just said, of what we would typically ask the  
10 Regional person to look into. And if we do ask the  
11 Regional person to look into it and if it does turn out  
12 simply to be a labor dispute, a local labor dispute,  
13 there would be a headline in a local newspaper that  
14 says, you know, the U.S. Civil Rights Commission is  
15 looking into this. And it will help one side in the  
16 labor dispute.

17 I really wonder whether we ought to give this  
18 that level of handling.

19 CHAIRPERSON BERRY: Well, the alternative is  
20 I guess I could just call up someone myself then  
21 because all these people have been calling on the phone  
22 asking me if I know anything about it.

23 COMMISSIONER HORNER: What kind of people? I  
24 mean, --

25 CHAIRPERSON BERRY: Ordinary folks --

1 [inaudible].

2 If you don't feel or the Commissioners feel  
3 that that would be inappropriate, then I would simply  
4 do what I usually do, which is just give it to the  
5 complaint office, make a couple of calls myself and say  
6 that I called them and that it's being handled on a  
7 routine complaint process.

8 I don't have any objection to that.

9 [Inaudible.]

10 I've raised this with you to see if you had  
11 any objections. I never send things on to the Regional  
12 Offices unless I mention it in the Commission meetings.  
13 So, I've mentioned it. I've had an objection, so I'll  
14 just handle it in my own way.

15 Okay. Anybody have any other comments about  
16 anything at all?

17 COMMISSIONER ANDERSON: Madam Chair?

18 CHAIRPERSON BERRY: Yes, Commissioner  
19 Anderson.

20 COMMISSIONER ANDERSON: Thank you.

21 A question arises about amendments to  
22 minutes, correction or amendment to the minutes, as  
23 agreed to.

24 For example, at the last meeting I made a  
25 correction to the minutes and this meeting reflects

1 that Commissioner Anderson corrected the minutes and  
2 that was accepted. But there doesn't seem to be an  
3 official record anywhere of what the correction was.

4 I don't care how it is handled but it seems  
5 to me that we either ought to have a corrected version  
6 of the minutes circulated or a subsequent meeting's  
7 minutes. Maybe there could be a footnote where the  
8 correction in its entirety is reprinted at some point  
9 in the next month's minutes.

10 I just bring that up. I don't care how the  
11 Staff Director wants to solve that problem but I just  
12 think there ought to be somewhere you can go to  
13 document the changes that were made.

14 This is insignificant but other times it can  
15 be significant.

16 CHAIRPERSON BERRY: Maybe could -- if you  
17 want to, we could agree to go back and fix this one and  
18 put in whatever language you suggested.

19 COMMISSIONER ANDERSON: Okay. That would be  
20 fine.

21 CHAIRPERSON BERRY: If there's no objection,  
22 we'll do that. And from now on, we'll summarize what  
23 the corrections were.

24 VICE CHAIRPERSON REYNOSO: Madam Chair, maybe  
25 we can talk about this another time, but my



1 understanding was that when there's a motion to amend  
2 the minutes, the minutes are simply amended if it  
3 passes, and the final version of the minutes are as  
4 approved by the Commission, not as the original draft  
5 that was made.

6 COMMISSIONER HORNER: So that we might get a  
7 copy of the amended minutes just informationally.  
8 Maybe that would solve the problem.

9 VICE CHAIRPERSON REYNOSO: Absolutely. Sure.  
10 That would take care of it.

11 CHAIRPERSON BERRY: You mean what was  
12 amended? The minutes as amended or what the  
13 emendations were?

14 VICE CHAIRPERSON REYNOSO: The minutes, as  
15 amended.

16 CHAIRPERSON BERRY: Okay. All right.  
17 Staff Director, you heard that?

18 STAFF DIRECTOR MOY: Yes.

19 CHAIRPERSON BERRY: Okay. Does anyone have  
20 any other comments about anything?

21 (No response.)

22 If no one does, then I would move that we  
23 adjourn at this hour, without objection.

24 Thank you very much. Everybody have a good  
25 weekend.

1 (Whereupon, the proceedings were concluded at  
2 11:47 a.m.)  
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